

D-1-GN-22-001980

CAUSE NO. ~~D-1-GN-21-000097~~

KE

NP SKYLOFT DST; NP SKYLOFT ST, LLC; NP SKYLOFT JV, LLC; NP SKYLOFT EQUITY, LLC; and NELSON PARTNERS, LLC,
Plaintiffs,

v.

BURGUNDY 523 OFFSHORE FUND, LTD.; AXONIC SPECIAL OPPORTUNITIES SBL MASTER FUND, LP; AXONIC CREDIT OPPORTUNITIES MASTER FUND, LP; TCG SKYLOFT OWNER, LLC; and DOES 1-10,
Defendants,

v.

NELSON PARTNERS, LLC; NP SKYLOFT EQUITY, LLC; NELSON BROTHERS PROPERTY MANAGEMENT, INC d/b/a NELSON PARTNERS PROPERTY MANAGEMENT, INC. and PATRICK NELSON, INDIVIDUALLY,
Counter-Defendants,

and

STACY R. SCHIFFMAN; ADELAIDA MARTINEZ; WILLIAM D. AND SUSAN M. MADDEN; A.H. ROOT BUILDING, LLC; RYAN AND LISSA ONG LIVING TRUST; BLACK TORTUGA GROUP, LLC; ALLA INVESTMENTS, LLC; 2M & 3D LTD, TEXAS LIMITED PARTNERSHIP; BUTT RENTALS, LLC; HUGH G. DYKES III, TRUSTEE OF THE DYKES FAMILY REVOCABLE TRUST DATED JULY 7, 2004; SYDNEY CRISP AND NICOLA CRISP; DANIEL M. BELL; WILLIAM SMITH; PAUL TESSIER, CO-TRUSTEE, ANNE T. TESSIER FAMILY TRUST; DONNA DEKKER, TRUSTEE OF THE DEKKER-ROBERTSON FAMILY

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

TRUST; HARRY V. AND JOANNE P. §
HANSEN, TRUSTEES OF THE HANSEN §
FAMILY TRUST, §
LAWRENCE K. SAMUELS AND JANE §
HEIDER, TRUSTEES OF THE HEIDER §
SAMUELS FAMILY TRUST DATED §
JUNE 29, 2007; AND JOHN C. POLK and §
JANICE C. POLK, §
Intervenors, Individually and §
Derivatively on behalf of §
Nominal Intervenor, §
NP SKYLOFT DST, §

v. §

NP SKYLOFT IB, LLC §
ACO SKYLOFT MANAGER, LLC; §
AXONIC CAPITAL, LLC, AND AXONIC §
CREDIT OPPORTUNITIES MASTER §
FUND, LP, §
Third Party Defendants, §

v. §

JAMES V. PARZIALE, Trustee of THE §
PARZIALE FAMILY TRUST derivatively §
on behalf of NP SKYLOFT DST, §
Intervenor, §

v. §

CLAYTON DEGIACINTO, §
Third-Party Defendant. §

AGREED FINAL JUDGMENT

Came on for consideration the above-styled and numbered proceeding. Each of the parties, as represented by their signatures, and the signatures of their respective counsel below, stipulated and consented to the personal and subject matter jurisdiction of this Court, announced ready, and have agreed and consented to entry of this Agreed Final Judgment on each of the terms set forth herein.

The Court makes the following findings of fact and conclusions of law under a “clear and convincing” burden of proof, based upon the following stipulations made by Nelson Partners, LLC, Nelson Brothers Property Management, Inc d/b/a Nelson Partners Property Management, Inc., NP Skyloft Equity IB, and Patrick Nelson (collectively, the “Nelson Parties”) in favor of Stacy R. Schiffman, Adelaida Martinez, William D. and Susan M. Madden, A.H. Root Building, LLC, Ryan and Lissa Ong Living Trust, Black Tortuga Group, LLC, Alla Investments, LLC, 2M & 3D Ltd., Texas Limited Partnership, Butt Rentals, LLC, Hugh G. Dykes III, Trustee of the Dykes Family Revocable Trust Dated July 7, 2004, Sydney Crisp and Nicola Crisp, Daniel M. Bell, William Smith, Paul Tessier, Co-Trustee, Anne T. Tessier Family Trust, Donna Dekker, Trustee of the Dekker-Robertson Family Trust, and Harry V. and Joanne P. Hansen, Trustees of the Hansen Family Trust, Lawrence K. Samuels and Jane Heider, Trustees of the Heider Samuels Family Trust Dated June 29, 2007, and John C. Polk and Janice C. Polk, individually and derivatively on behalf of NP Skyloft DST, LLC, a Delaware Statutory Trust and James Parziale, derivatively on behalf of NP Skyloft DST, LLC, a Delaware Statutory Trust (collectively, the “Intervenors”):

A. Each of the Nelson Parties were represented by counsel in this proceeding, and each of the Nelson Parties, including without limitation, Patrick Nelson, individually, has had the opportunity to confer with such counsel regarding each of the terms of this Agreed Final Judgment, including without limitation, the stipulations contained herein;

B. By agreement, the Nelson Parties, including without limitation, Patrick Nelson, individually, stipulate and agree that, as of April 18, 2022, they each, jointly and severally, owe Intervenors the total aggregate sum of \$50,000,000.00 (the “Indebtedness”) in damages;

C. The Indebtedness owed by the Nelson Parties, including, without limitation, Patrick Nelson, individually, to the Intervenors is for “money, property, services, or an extension, renewal, or refinancing of credit,” all within the meaning of 11 U.S.C. § 523(a)(2);

D. The Indebtedness owed by the Nelson Parties, including without limitation, Patrick Nelson, to the Intervenor is the result of the acts and conduct of the Nelson Parties, including without limitation, Patrick Nelson, individually, constituting false pretenses, false representations, and actual fraud, all within the meaning of 11 U.S.C. § 523(a)(2)(A);

E. The Nelson Parties, including without limitation, Patrick Nelson, individually, incurred the Indebtedness owed to the Intervenor by use of at least one material statement in writing (i) that was materially false; (ii) was respecting the Nelson Parties, or an insider of the Nelson Parties' financial condition; (iii) on which Intervenor actually and reasonably relied; and (iv) that the Nelson Parties, including without limitation, Patrick Nelson, individually, caused to be made or published with the specific intent to deceive Intervenor, all within the meaning of 11 U.S.C. § 523(a)(2)(B);

F. The Court finds that as a result of the Nelson Parties' false pretenses, false representations, and actual fraud, including without limitation, the false pretenses, false representations, and actual fraud of Patrick Nelson, individually, and the Nelson Parties' use of a materially false statement in writing respecting the Nelson Parties, or an insider of the Nelson Parties' financial condition that the Nelson Parties, including without limitation, Patrick Nelson, individually, caused to be made or published with the specific intent to deceive Intervenor, and, upon which Intervenor actually and reasonably relied, Intervenor have been damaged in the amount of \$50,000,000.00; and

G. The Nelson Parties, including without limitation, Patrick Nelson, individually, have each expressly agreed and do hereby agree that the foregoing facts are sufficient to support the nondischargeability of the \$50,000,000.00 owed to Intervenor in any subsequently filed bankruptcy proceeding by any, each, and/or all of the Nelson Parties, including, without limitation, a subsequently filed bankruptcy proceeding by Patrick Nelson, individually. Each of the Nelson

Parties, including without limitation, Patrick Nelson, individually, intend for this Agreed Final Judgment to be *res judicata* of all issues supporting a determination of nondischargeability under 11 U.S.C. § 523(a)(2)(A) and (B) in favor of Intervenor, and intend for this Agreed Final Judgment to collaterally estop any attempt by any of the Nelson Parties, including, without limitation, Patrick Nelson, in any subsequently filed bankruptcy proceeding, to dispute such a determination of non-dischargeability in favor of the Intervenor, all such necessary elements having been stipulated and actually adjudicated in favor of the Intervenor and against each of the Nelson Parties, including without limitation, Patrick Nelson, individually. Accordingly, based upon the Court's findings of fact, it is therefore:

ORDERED, ADJUDGED and DECREED that Intervenor shall have judgment for damages against each of the Nelson Parties, jointly and severally, in the amount of FIFTY MILLION DOLLARS (\$50,000,000.00), together with post-judgment interest at the rate of 5 (5%), which shall begin to accrue as of the date of entry of this Agreed Final Judgment by the Court; it is further

ORDERED, ADJUDGED, and DECREED that Intervenor shall have all writs of execution and all other processes necessary to enforce this Final Judgment; it is further

ORDERED, ADJUDGED, and DECREED that all other relief requested by any party to this proceeding is hereby denied with prejudice in accordance with applicable law, it being the intent of the Court that this is a final judgment disposing of all claims by the parties to this proceeding.

SIGNED THIS 26th day of September, 2023 at 11:49 am.



PRESIDING JUDGE

KARIN CRUMP
250th DISTRICT COURT

Agreed and Entry Requested:

/s/ D. Douglas Brothers

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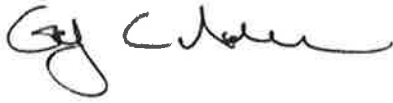
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Family Trust, Derivatively On Behalf Of NP Skyloft DST*

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Sample layout- Draft Judgment - Nelson Settlement with the investors