

CAUSE NO. D-1-GN-22-001980

STACY R. SCHIFFMAN, <i>et al</i> ,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff</i> ,	§	
	§	
v.	§	
	§	
NELSON PARTNERS, LLC, NELSON	§	TRAVIS COUNTY, TEXAS
BROTHERS PROPERTY	§	
MANAGEMENT INC. D/B/A NELSON	§	
PARTNERS PROPERTY	§	
MANAGEMENT, INC., NP EQUITY,	§	
LLC, AND PATRICK NELSON,	§	
	§	
<i>Defendants.</i>	§	98th JUDICIAL DISTRICT

FINDINGS AND ORDER GRANTING PLAN ADMINISTRATOR GREGORY S. MILLIGAN’S MOTION FOR CONTEMPT AND FOR SANCTIONS

On this day, the Court considered the Plan Administrator, Gregory S. Milligan’s (“Plan Administrator”) Motion for Contempt and for Sanctions and Amended Motion for Contempt and for Sanctions (as supplemented and amended from time to time, collectively, “Motion”). Having reviewed the Motion, the evidence, any response, arguments of counsel and parties, if any, the Court finds the Motion should be **GRANTED**.

THE COURT FINDS Defendants Nelson Partners, LLC, Nelson Brothers Property Management, Inc. d/b/a Nelson Partners Property Management, Inc. and Patrick Nelson (together, the “Nelson Parties”) in contempt of the following Court orders: (1) Agreed Temporary Injunction dated April 25, 2022 entered in Cause No. D-1-GN-21-0000097; (2) Order of Final Approval of Liquidation Plan dated July 21, 2022; (3) Order Approving Nelson Parties’ Motion to Approve Sale of Property for Partial Satisfaction of Joint Stipulation and Liquidation Plan and Partial

Release from Temporary Injunction dated October 21, 2022; and (4) Temporary Restraining Order dated November 18, 2022¹ (altogether, this “Court’s Orders”).

THE COURT FINDS the definition of “Net Proceeds” in the Joint Stipulation and Liquidation Plan (“Liquidation Plan”) shall mean total sales price minus any outstanding indebtedness, closing costs, commissions, legal fees, reasonable transaction fees, and operating reserves owed by the Nelson Parties to independent third parties as a result of the sale of the Properties described in Exhibit A to the Liquidation Plan. The term “Net Proceeds” does not include any outstanding indebtedness, commissions, closing costs, disposition fees, or acquisition fees charged by or for the benefit of the Nelson Parties or a Nelson Partners-affiliated entity controlled by Patrick Nelson or the Nelson Parties. For the avoidance of doubt, the Nelson Parties and its affiliates are not entitled to deduct outstanding indebtedness, closing costs, commissions, legal fees, reasonable transaction fees, and operating reserves beyond 2% of the net amount that would have been distributed to the Nelson Parties upon sale of the Properties absent the Liquidation Plan.

THE COURT FURTHER FINDS based on the evidence presented, the Nelson Parties violated the Court’s Orders by deducting, receiving, and/or taking the following payments or distributions from the proceeds of the sale of the Sol y Luna Property, which should have been deposited with the Plan Administrator for the benefit of fulfilling the Liquidation Plan:

- \$6,090,000 from the Sol y Luna sale proceeds for a Seller’s Commission allocated to Nelson Partners, LLC;
- \$3,000,000 from the Sol y Luna sale proceeds for Principal Paydown allocated to SP 180 Fund, LLC;
- \$2,030,000 from the Sol y Luna sale proceeds for a Disposition Fee allocated to NP Sol y Luna Leaseco, LLC; and

¹ The November 18, 2022 Temporary Restraining Order was continued by agreed orders entered by the Court on November 29, 2022, December 22, 2022, January 12, 2023, and February 24, 2023.

- \$5,670,000 from the Sol y Luna sale proceeds for Buyer's Commission to Nelson Partners Property Management, Inc.

THE COURT FURTHER FINDS based on the evidence presented, Patrick Nelson, Nelson Partners, LLC, and NP Sol y Luna Leaseco, LLC violated the Court's Orders when they paid and transferred \$1,137,000 from the Sol y Luna sale proceeds directly to and for the personal benefit of Patrick and Mindy Nelson, Kathy Nelson, and Stephanie Nelson, which amount should have been deposited with the Plan Administrator for administration under the Liquidation Plan.

THE COURT FURTHER FINDS the Nelson Parties had at least \$3,800,000 in cash available to deposit into the registry of the Court on November 18, 2023, and the Nelson Parties violated this Court's November 18, 2022 Temporary Restraining Order by transferring and dissipating at least \$1,400,000 after November 18, 2023, which payments were ordered to be maintained and/or paid into the registry of the Court.

THE COURT FURTHER FINDS, as an inducement to entering the Order granting the Nelson Parties' Emergency Motion to Approve Sale of Sol y Luna, the Nelson Parties represented to the Court and the Plan Administrator that \$18 million would be deposited with the Plan Administrator. Upon the closing of the sale, after the Nelson Parties improperly took the above-referenced commissions and fees, the Nelson Parties only deposited \$9,300,000 with the Plan Administrator, leaving a balance owed of \$8,700,000 to the Plan Administrator.

IT IS THEREFORE ORDERED the Plan Administrator's Motion is **GRANTED** in its entirety.

IT IS FURTHER ORDERED the Nelson Parties, jointly and severally, shall pay **\$8,700,00.00** to the Plan Administrator's trust account (Tristate Capital Bank Account No. ending in 3456) on or before **September 29, 2023**, which represents the amount of Net Proceeds the Nelson Parties improperly took from the Sol y Luna sale in violation of the Liquidation Plan and

April 25, 2022 Temporary Injunction and which should have been deposited with the Plan Administrator under the Liquidation Plan but was improperly withheld by the Nelson Parties.


IT IS FURTHER ORDERED the Nelson Parties shall, jointly and severally, pay **\$155,000.00** into the Plan Administrator's trust account (Tristate Capital Bank Account No. ending in 3456) on or before **September 29, 2023**, which represents a civil fine of \$500.00 per day from November 19, 2022 to September 25, 2023 for being in contempt of the Court's November 18, 2022 Temporary Restraining Order.

IT IS FURTHER ORDERED the Nelson Parties shall pay a fine of \$500.00 into the Plan Administrator's trust account (Tristate Capital Bank Account No. ending in 3456) for each day following September 29, 2023 until the Nelson Parties are in compliance with this order's requirement to pay **\$155,000.00** in civil fines and **\$ 8,700.00.00** in Net Proceeds to the Plan Administrator.

IT IS FURTHER ORDERED that the Nelson Parties shall pay the Plan Administrator's reasonable and necessary fees, expenses, and attorneys' fees and expenses in the amount of **\$ 357,512.35** related to the prosecution of the Motion, which is an additional sanction for the Nelson Parties' contempt of this Court's Orders.

IT IS FURTHER ORDERED this Order is independent from and without prejudice to the Agreed Judgment that secures the Nelson Parties' obligation under Sections 8 and 19 of the Liquidation Plan, and nothing herein is intended to prejudice or otherwise affect the enforceability of any other Judgments or Orders entered by the Parties or this Court.

SIGNED at 11:43 o'clock a.m./p.m. on the 26th day of September, 2023.



JUDGE PRESIDING
KARIN CRUMP
250TH DISTRICT COURT

APPROVED AS TO FORM AND SUBSTANCE:

WICK PHILLIPS GOULD & MARTIN, LLP MILLER LLOYD P.C.

/s/ Jason M. Rudd

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