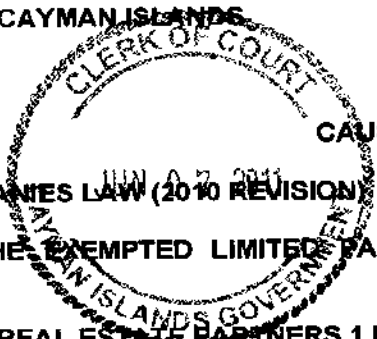
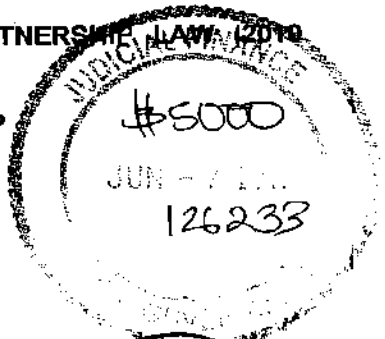


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO. FSD 0100 OF 2011

IN THE MATTER OF THE COMPANIES LAW (2010 REVISION)  
AND IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP LAW (2010 REVISION)  
AND IN THE MATTER OF DUET REAL ESTATE PARTNERS 1 LP



\_\_\_\_\_  
PETITION  
\_\_\_\_\_



TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of ESO Capital Luxembourg Holdings II SARL ("the Petitioner") shows that:

1. Duet Real Estate Partners 1 LP ("the Partnership") is an exempted limited partnership organised and registered under the Exempted Limited Partnership Law (2003 Revision).
2. The Partnership is involved in the development of hotels and apartments in Brazil, India, Switzerland and St Barthelemy, French West Indies and restaurant and entertainment financing in the United Kingdom and France.
3. On 17 April 2008, the Petitioner (as lender) and Duet Trust and Fiduciary Services SA (as borrower) ("the Borrower") entered into a loan agreement ("the Loan Agreement") in connection with the development and construction of the "Niilaia Beach Club Hotel" in St Barthelemy, French West Indies ("the Project").
4. Pursuant to the Loan Agreement (as varied), the Petitioner lent the Borrower the sum of €36m. Pursuant to a Class A Promissory Note dated 17 April 2008 (as varied), the Borrower agreed to repay the sum of €21m on 17 January 2009 ("the A Note").

Pursuant to a Class B Promissory Note also dated 17 April 2008 ("the B Note"), the Borrower agreed to repay the sum of €15m on 17 April 2010.

5. The Borrower failed to pay the A Note or the B Note (together "the Notes") on their maturity dates or at all.
6. Pursuant to clause 5 of the Loan Agreement, the Borrower agreed to complete the Project by 17 April 2010.
7. Pursuant to clause 2.1 of a guarantee dated 6 May 2008 ("the Guarantee"), the Partnership and Saint Barth Drep Hotel Invest S.A.S ("StBartCo" and together with the Partnership "the Guarantors"): *"unconditionally and irrevocably guarantee, jointly and severally, and as a primary obligation to [the Petitioner]"* the obligations set out in clause 2.1(a) to (e) ("the Guaranteed Obligations") including *"the obligation of the Borrower to complete the Project or have the Project completed as set forth in Clause 5 of the Loan Agreement, including failure to complete the Project in the manner and within the time required by the Loan Agreement"* (clause 2.1(b)).
8. Pursuant to clause 2.2 of the Guarantee, the Guarantors undertook to *"immediately on demand by [the Petitioner], unconditionally pay any amount due and owing to the [the Petitioner] on account of the Guaranteed Obligations"*.
9. In addition, pursuant to clause 2.3 of the Guarantee, the Guarantors undertook that:

*"should the Borrower either (i) not perform or (ii) not cause St.BartCo to perform the obligation to complete the Project as prescribed in the Loan Agreement, Guarantors, upon demand shall: (a) diligently proceed to complete construction of the Project at the sole cost and expense of Guarantors; (b) fully pay and discharge all claims for labour performed and material and services furnished in connection with the construction of the Project; (c) release and discharge all claims of stop notices, labour liens and equitable liens that may arise in connection with the construction of the Project; and (d) pay to [the Petitioner] the amount of any loss or damage incurred by [the Petitioner] as a result of any delay in the completion of construction of the Project beyond the time specified in the Loan Agreement for such completion [being April 2010]"*.

10. The Borrower and the Guarantors have failed to complete the Project in the manner and within the time required by clause 5 of the Loan Agreement or at all. In fact, development works at the Project ceased in or around mid 2009.
11. On 16 March 2011, the Petitioner demanded that the Guarantors immediately take steps to recommence the Project and diligently conduct the construction, furnishing and equipping of the Project with a view to accomplishing the completion of the Project. In particular the Petitioner required that the Guarantors immediately take steps to ensure that: (i) all contractors, subcontractors, suppliers, architects and other design professionals and other third parties entitled to such payments are paid such that they return to site and recommence work (including rectifying any damage and deterioration) within 14 days of valid authorisations, approvals, consents, permits, licences and certificates required under all the applicable laws being in place, (ii) the Guarantors demonstrate to the Petitioner within 7 days that the Tangible Net Worth of the Partnership is at least €30m. The Petitioner requested that the Guarantors provide it with evidence within 14 days that all such steps had been taken and provide the Petitioner with a detailed update within 7 days of the steps which had in fact been taken.
12. The Guarantors, have, however, failed to complete the Project or take any of the steps set out in paragraph 11 above.
13. In failing to comply with their obligations under the Guarantee to complete the Project the Partnership has caused the Petitioner loss and damage equal to:
- (1) the amount of the principal under the loan, accrued interest and late fees and other charges under the Loan Agreement, being the sum of €50,755,184.18 as at 5 April 2011 (details of which are set out in the First Interest Schedule below); In the alternative
  - (2) the amount required to complete the Project (which the Partnership accepts is a sum of at least €13.65m) and the Petitioners' losses caused by the delay in completing the Project (including accrued interest due under the Loan Agreement from 17 April 2010 to 27 May 2011 in the sum of €7,753,763 as set out in the Second Interest Schedule below) that is, a sum of at least €21.413m.

14. The Petitioner is an actual creditor alternatively a prospective and/or contingent creditor for the sum of €50,755,184.18 alternatively the sum of at least €21.413m.
15. The Petitioner is also a prospective and/or contingent creditor for the sum of at least €489,470.11 (being the estimated costs incurred by the Petitioner arising out of or in connection with the originating summons (No 77 of 2011 – AJJ) issued by the Partnership on 21 April 2011 (“the Summons”)) pursuant to clause 2.1(c)(iv) of the Guarantee.
16. Further or in the alternative to paragraph 15 above, by reason of the order of Jones J dated 7 June 2011 that the Partnership pay the Petitioner’s costs of and incidental to the Summons, the Petitioner is a prospective and/or contingent creditor in a sum to be taxed or agreed under section 24 of the Judicature Law (2007 Revision).
17. The Partnership is insolvent and unable to pay its debts:
- (1) The Partnership has failed to pay the Petitioner the sum of €50,755,184.18 (alternatively a sum of at least €21.413m) or any sums due under the Guarantee.
  - (2) The cost to complete the Project is estimated to be between €13.65m and €21.87m. The Project ought to have been completed by 17 April 2010. The Partnership however has failed to comply with its obligation to complete the Project on time or at all. It is therefore to be inferred that the Partnership is unable to pay for the completion of the Project.
  - (3) The Partnership’s own management accounts (its Net Asset Value statement as of 31 March 2011 (“the March NAV”) demonstrate that the Partnership is currently unable to pay its debts and has no prospect of being able to pay its debts as they fall due in the future:
    - a. The Partnership’s cash balance was just US\$19,936 as at 31 December 2010. Since then, Duet Cayman has realised an investment for a price of €660,200. However, cash is not recorded as an asset in the March NAV.
    - b. The Partnership has recorded short-term liabilities of US\$22.57m as at 31 March 2011, consisting of interest expense / provisions of US\$20.19m and other expenses and payables of US\$2.37m (including management, audit and legal fees). Additional legal and management costs have no doubt been incurred since 31 March 2011.

- c. Pursuant to clause 2.3(b) of the Guarantee, the Partnership also has an actual obligation to pay any amounts outstanding to contractors in respect of work done on the Project in the sum of between €812,000 and €1.327 million.

18. In the circumstances it is in any event just and equitable that the Partnership be wound up.

### First Interest Schedule

#### Class A Note

Classification	Description	Amount
Principal	Principal lent by the Creditor to the Borrower pursuant to the Class A Note and Loan Agreement	€21,000,000.00
Interest including default interest	Interest payable upon the Principal and accrued interest. This reflects:  (i) Interest charged at rate of 7.5% above the greater of (a) EURIBOR for 3 month deposits and (b) 4.8%. See the definition of Interest Payments (cl. 1(b)) and Base Rate (cl. 7) in the Notes  (ii) a further margin of 5% following failure to pay all sums due under the Class A Note in January 2009. See definition of Default Rate Interest in clause 1(e) of the Notes	€7,463,500.82
Late fees	Late fees -  Late fees in respect of the Principal calculated at 5% of the overdue principal of the Class A Note amount to €1,050,000.00. See clause 1(d) of the Notes.  Late fees in respect of overdue interest calculated at 5% of overdue interest for the period 1 August 2009 to 31 January 2010 amount to €100,418.94. See clause 1(d) of the Notes	€1,150,418.94
Total	Total due and owing under Class A Note and Loan Agreement as at 1 April 2011	€29,613,919.76

#### Class B Note

Classification	Description	Amount
Principal	Principal lent by the Creditor to the Borrower pursuant to the Class B Note and Loan Agreement	€15,000,000.00

<b>Interest including default interest</b>	Interest payable upon the Principal and accrued interest. This reflects:  (i) Interest charged at rate of 7.5% above the greater of (a) EURIBOR for 3 month deposits and (b) 4.8%. See the definition of Interest Payments (cl. 1(b)) and Base Rate (cl. 7) in the Notes  (ii) a further margin of 5% following failure to pay all sums due under the Class A Note in January 2009. See definition of Default Rate Interest in clause 1(e) of the Notes	€5,319,991.30
<b>Late fees</b>	Late fees -  Late fees in respect of the Principal calculated at 5% of the overdue principal of the Class A Note amount to €750,000.00. See clause 1(d) of the Notes.  Late fees in respect of overdue interest calculated at 5% of overdue interest for the period 1 August 2009 to 31 January 2010 amount to €71,273.13. See clause 1(d) of the Notes	€821,273.13
<b>Total</b>	Total due and owing under Class B Note and Loan Agreement as at 1 April 2011	<b>€21,141,264.42</b>

#### Second Interest Schedule

Classification	Description	Amount
<b>Principal</b>	Principal lent by the Creditor to the Borrower pursuant to the Class A and Class B Notes and Loan Agreement	€36,000,000.00
<b>Interest including default interest from 17 April 2010 to 27 May 2011</b>	Interest payable upon the Principal and accrued interest. This reflects:  (i) Interest charged at rate of 7.5% above the greater of (a) EURIBOR for 3 month deposits and (b) 4.8%. See the definition of Interest Payments (cl. 1(b)) and Base Rate (cl. 7) in the Notes  (ii) a further margin of 5% following failure to pay all sums due. See definition of Default Rate Interest in clause 1(e) of the Notes	€7,753,763

**YOUR PETITIONER THEREFORE HUMBL Y PRAYS THAT:**


- (1) The Partnership be wound up under the provisions of the Companies Law (2010 Revision).
- (2) Mr. Kenneth Krys and Ms Margot MacInnis of Krys Global, Governors Square Building 6, 2<sup>nd</sup> Floor, 23 Lime Tree Bay Avenue, PO Box 31237, Grand Cayman

KY1-1205, Cayman Islands be appointed as joint official liquidators of the Partnership.

- (3) The liquidators be authorized to exercise any of the powers listed in the Third Schedule to the Companies Law (2010 Revision) without further sanction or intervention of the Court.
- (4) The liquidators be authorised to do any act or thing considered by them to be necessary or desirable in connection with the liquidation of the Partnership and the winding up of its affairs.
- (5) The liquidators do file with the Clerk of the Court a report in writing of the position of the Partnership and the progress which the liquidators have made with the winding up of the Partnership, with the realisation of its assets and in relation to any other matters connected to the winding up of the Partnership, at such time and in such manner as the Court may direct.
- (6) The liquidators be at liberty to appoint such counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and to remunerate them out of the assets of the Partnership.
- (7) No disposition of the Partnership's property by or with the authority of the liquidators in carrying out their duties and functions and exercise of their powers under this Order shall be voided by virtue of section 99 of the Companies Law (2010 Revision).
- (8) The liquidators and their staff be remunerated for their professional services and time in accordance with Part III of the Insolvency Practitioners Regulations 2008.
- (9) The liquidators be at liberty to apply generally.
- (10) The costs of the Petition and the Petitioner be paid forthwith out of the assets of the Partnership.
- (11) Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray, etc.

 June 2011



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Note: this Petition is intended to be served on:

1. The Registrar of Exempted Limited Partnerships; and
2. The Partnership at its registered office.

Attorneys-at-Law for the Petitioner, whose address for service is 89 Nexus Way, Camana Bay,  
Grand Cayman KY1-9007, Cayman Islands, Tel: +1 (345) 949 9876, Fax: +1 (345) 949 9877,  
(Reference LIT/CRU/MJM/420885.00002)

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on 2011 at 10.00am.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at P.O. Box 495, Grand Cayman, KY1-1106, Tel: (345) 949 4296.