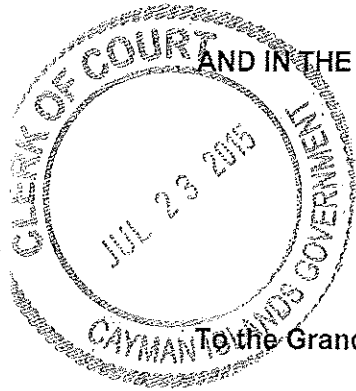


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

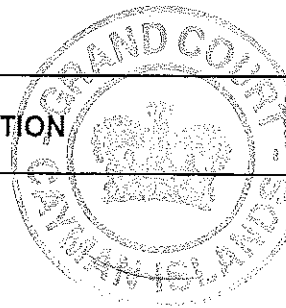
0121  
CAUSE NO: FSD OF 2015 ( )

IN THE MATTER OF SECTION 36 OF THE EXEMPTED LIMITED PARTNERSHIP LAW (2012  
REVISION)

AND IN THE MATTER OF DUET REAL ESTATE PARTNERS 1 LP



WINDING UP PETITION



To the Grand Court

The humble petition of Quotidian No 2 Pty Limited, a company incorporated in Australia whose registered office is 111 Harrington Street, Sydney, NSW 2000, Australia (the **Petitioner**) shows that:

Introduction

1. Duet Real Estate Partners 1 LP (**Duet**) was registered in the Cayman Islands on 4 October 2006 as an exempted limited partnership with registration number 18231 pursuant to the Exempted Limited Partnership Law (2006 Revision).
2. The registered office of Duet is Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Cayman Islands.
3. To the best of the Petitioner's knowledge and belief Duet carries on its business in Europe and the Caribbean, including Switzerland and St Barthelemy. Its principal assets are also located in these jurisdictions, held through subsidiaries that appear to be incorporated in Luxemburg.

4. The General Partner of Duet is Duet Real Estate Partners 1 Ltd. (GP), a Cayman Islands company of the same address as Duet.

**Relevant Provisions**

5. On or around 2 November 2006 Duet issued an information memorandum (IM) to prospective investors. The document described Duet's investment objective as being to maximise income and capital gains by investing in luxury hotels and residential real estate.
6. According to the audited accounts of Duet for the year ended 31 December 2011, Duet had invested in the following:
  - a. A luxury development on the island of St Barthelemy then known as the Nilaia Beach Resort and Spa. This asset was valued at \$114 million in its then undeveloped state in April 2013;
  - b. Another luxury development in Switzerland known as the Royal Hotel and Spa, Villars. This asset was valued at approximately \$55 million in March 2012;
  - c. Shares in a business called Frontier Asset Management II Limited;
  - d. A loan of \$1,633,346 to a company in administration called 17 Berkeley Ltd;
  - e. Artwork valued at \$397,500.
7. The IM (see page 18) stated that Duet would be *"self-liquidating with an estimated lifespan of 5-7 years from launch"*.
8. By an Accession Agreement (AA) and Subscription Agreement (SA) executed by the Petitioner and the GP on or around 12 February 2007, the Petitioner agreed to and did invest the sum of \$250,000 to become a limited partner of Duet.
9. By clause 2 of the AA the Petitioner agreed both to be bound by and have the full benefit of an Amended and Restated Limited Partnership Agreement dated 15 December 2006 (LPA).

10. The LPA contained the following material terms:
  - a. Clause 2.4 provided that the "life" of Duet would continue until the fifth anniversary of the Final Closing Date (defined as 30 March 2007) unless extended for up to two additional one year periods, or terminated in accordance with the terms of the LPA;
  - b. Clause 6.2 provided that after the Final Closing Date (defined as 30 March 2007) the GP shall cause a meeting of the Partners to be held not less often than once every Fiscal Year;
  - c. Clause 7.1(a) provided that appropriate records and books of account of the Partnership shall be kept at the principal place of business of the GP and that each Partner shall have access to the records and books of account and the right to receive copies thereof;
  - d. Clause 7.2 (a) required that the books and records of the Partnership shall be audited using the Accounting Principles consistently applied as of the end of each Fiscal Year and that as soon as reasonably practicable after the end of each Fiscal Year (but in any event no later than 90 Calendar Days thereafter) the GP shall cause to be prepared and mailed to each Limited Partner the report of such auditors.

#### The Petitioner's legitimate expectations

11. In accordance with the relevant lifetime provisions of page 18 of the IM as set out at paragraph 6 above, and clause 2.4 of the LPA as set out at paragraph 9.a. above, the Petitioner was entitled to and did expect that Duet would be wound up and a return on their investment provided to them by no later than 30 March 2014.
12. In accordance with paragraph 6.2 of the LPA as set out at paragraph 10.b above, the Petitioner was entitled to and did expect the GM to cause Duet to hold meetings of the Partners at least once every Fiscal year.

13. In accordance with clause 7.1(a) of the LPA as set out at paragraph 10.c. above, the Petitioner was entitled to and did expect the GP to cause books and records of Duet to be kept and made available to the Petitioner.
14. In accordance with clause 7.2(a) of the LPA, as set out at paragraph 10.d. above the Petitioner was entitled to and did expect the GP to cause the books and records of Duet to be audited at the end of each Fiscal Year and the report of such auditors to be prepared and mailed to it no later than 90 days after the end of each Fiscal Year.
15. In accordance with clause 19 of the Exempted Limited Partnership Law (2014 Revision) (the **Law**) and/or common law, the Petitioner was entitled to and did expect the GP to manage the assets of Duet in good faith and/or with express reference to the interests of the Petitioner and the other Limited Partners of Duet.
16. In accordance with the investment objective described in the IM as set out at paragraph 5 above, the Petitioner was entitled to and did expect that Duet would invest only in luxury hotels and residential real estate.

**Breach of the Petitioner's legitimate expectations**

17. To the best of the Petitioner's information and belief no steps have been taken to wind up the affairs of Duet by the latest possible stated end of its "life" on 30 March 2014, in breach of the IM and clause 2.4 of the LPA.
18. To the best of the Petitioner's information and belief, no meeting of the Partners has ever been held. This is in breach of clause 6.2 of the LPA.
19. Despite repeated requests and in breach of clause 7.1(A) of the LPA and paragraph 30 of the Law, the GP has not made the books and records of Duet available to the Petitioner.
20. The only audit report that has been made available to the Petitioner is in respect of the year ended 31 December 2011. To the best of the Petitioner's information and belief no further audits have been undertaken.

21. In breach of clause 7.2(a) of the LPA and paragraph 30 of the Law, no financial information in respect of the period since 31 December 2011 has been made available to the Petitioner.
22. Duet appears to have invested in asset classes that fall outside of the scope of its investment objective as defined by, and in breach of the IM. Examples of such breaches include investments in money lending, artwork, and shares in businesses outside of the hotel and real estate sector.
23. The manner in which Duet's investments appear to have been managed by the GP lead the Petitioner to believe that an independent investigation is warranted, and may lead to the conclusion that in dealing with these investments the GP has acted in bad faith and/or in breach of its duties to the Petitioner. Examples of such apparent misconduct are as follows:
  - (i) In the absence of any substantive reporting by the GP since 2011, the Petitioner has been forced to resort to internet searches to ascertain the status of its investment. A search of the GP's group's website suggests that the two principal assets of Duet as disclosed in the 2011 accounts (the Nilaia Beach Resort and Spa and Royalp Hotel and Spa, Villars) which then had a combined value of \$169 million, have become the property of another fund seemingly within the same group as the GP, namely the Duet Luxury Hotel Fund.
  - (ii) The investments described at paragraph 22 above that fall outside of the scope of the investment objective appear to have been heavily loss-making and may have been made in bad faith;

#### Correspondence before service of this Petition

24. On 6 May 2015 the Petitioner's attorneys wrote to the GP expressing concerns as to the GP's failure to provide any meaningful information as to Duet's affairs since the end of 2011 and its failure to wind up the affairs of Duet within the period stipulated in the LPA. The letter requested a response within 14 days. The letter concluded with a request for

documents and information as to the affairs of Duet to which the Petitioner was entitled and noted that, should the documents and information not be supplied, then action would be taken to appoint an independent liquidator, amongst other things. No response or acknowledgement was provided.

25. A further letter was sent on 2 June 2015 requesting constructive proposals, failing which a petition would be presented. No response or acknowledgement was provided.

### Grounds for Petitioning

26. The Petitioner is entitled to and now requests that the Court appoint independent liquidators pursuant to paragraphs 36(3)(g) and / or 36(13) of the Law on the following grounds:

- (i) The upper end of the bracket provided for the lifespan of Duet in the IM as set out at paragraph 6 above has expired. The period fixed for the duration of the lifespan of Duet by the LPA as set out at paragraph 9.6 above has also expired. Accordingly upon the application of the terms of the LPA and section 36(10)(d) of the Law, the winding up of Duet shall be deemed to have commenced on 29 March 2011, this being the latest date that Duet could be wound up in accordance with clause 2.4 of the LPA;
- (ii) The Petitioner has justifiably lost trust and confidence in the GP as a result of its breaches of the Petitioner's legitimate expectations and the duties that it owes to the Petitioner, including:
  - a. its failure to take steps to wind down the affairs of Duet by the stated end of its "life" on or before 30 March 2014;
  - b. its failure to maintain and provide the Petitioner with access to the books and records of Duet;

- c. its failure to prepare and disclose audited accounts for any year other than 2011;
  - d. its failure to comply with its own stated objective of investing in luxury hotels and residential real estate;
  - e. its failure to manage Duet's investments in good faith with reference to the interests of the Petitioner, in particular by investing in asset classes outside of the scope of its investment objective and divesting the two principal assets of Duet to another fund within its own group without any explanation;
  - f. its failure to respond to reasonable requests for information and documents to which the Petitioner is legally entitled.
- (iii) There has been a breach, or multiple breaches, of the legal bargain as set out in the relevant provisions and described at paragraphs 5 to 23 and at paragraph 26 (ii) (a) to (f) above, and including the material statutory provisions.
- (iv) There has been a loss of the substratum of Duet. The purpose of Duet was to invest in specified asset classes over a fixed period, which has now expired. Since the expiry of its fixed lifespan, the sole remaining purpose of Duet is to identify, realise its assets and wind up its affairs. Accordingly its substratum has been lost and it is liable to be wound up.
- (v) By divesting the two principal assets of Duet, the substratum has also been divested of, providing a further factor in favour of winding up Duet on this ground.
- (vi) The Petitioner has a legitimate interest in ensuring that independent liquidators rather than the GP manage the winding up of Duet and, if they see fit, investigate the conduct of and pursue claims against the GP, its principals and related parties.
- (vii) In all the circumstances it is just and equitable that Duet is wound up.

### Nomination of Joint Official Liquidators

- (viii) The Petitioner nominates Christopher Smith and Casey McDonald of Krys Global, Governors Square, Building 6, 2nd Floor, 23 Lime Tree Bay Avenue, Grand Cayman, Cayman Islands as joint official liquidators of Duet (**Liquidators**).

### **YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

- (1) Duet Real Estate Partners 1 LP be wound up in accordance with S.36 Exempted Limited Partnership Law (2014 Revision).
- (2) Christopher Smith and Casey McDonald of Krys Global, Governors Square, Building 6, 2nd Floor, 23 Lime Tree Bay Avenue, Grand Cayman, Cayman Islands be appointed as Joint Official Liquidators of Duet.
- (3) The Liquidators shall not be required to give security for their appointment.
- (4) The Liquidators shall have the power to act jointly and severally in their capacity as joint liquidators of the partnership.
- (5) No disposition of the partnership's property by or with the authority of the liquidators shall be voided by virtue of S.99 Companies Law (2013 Revision).
- (6) The Liquidators shall have the power to engage staff (whether or not as employees of the partnership) to assist them in the performance of their functions.
- (7) The Liquidators shall have the power to engage attorneys and other professionally qualified persons to assist them in the performance of their functions.
- (8) The Liquidators have the authority and are directed to take possession of, collect and get in any property of Duet in the name of the General Partner, Duet Real Estate Partners 1 Limited, and for that purpose to take any proceedings in any jurisdiction that they consider necessary;

- (9) The Liquidators shall have the power to pursue applications and/or proceedings in any other jurisdictions for recognition of their appointment and/or to obtain information they require to perform their duties;
- (10) The Liquidators have authority and are directed to take all necessary steps to take control of Duet's subsidiaries, including by exercising voting and other rights attached to the shares in Duet's subsidiaries (namely Duet Trust & Fiduciary Services SA, St Barth Hotel Invest SAS, GSA Investment Management SA and Promoroche SA) and / or by causing themselves to be registered as holders of Duet's shares in their subsidiaries, in place of the General Partner.
- (11) The liquidators be at liberty to apply generally.
- (12) The costs of the Petitioner be paid out of the assets of the partnership as an expense of the liquidation such costs to be taxed if not agreed with the liquidators.
- (13) Such other relief be granted as the Court deems appropriate.

DATED: 13 July 2015

  
TRAVERS THORP ALBERGA  
Attorneys for the Petitioner

NOTE: It is intended that this Petition be served on Duet and its General Partner, Duet Real Estate Partners 1 Ltd, at their registered office in the Cayman Islands.

