



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2023

BETWEEN

**STERLING MIF GP LTD
(IN ITS CAPACITY AS GENERAL PARTNER OF
STERLING MORTGAGE INCOME MASTER FUND LP)**

PLAINTIFF

AND

DAVID NELSON

DEFENDANT

WRIT OF SUMMONS

TO: DAVID NELSON of 27 Viers Close, Spotts, Grand Cayman, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court office, PO Box 495G, George Town, Grand Cayman the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 30th day of June 2023

NOTE - This Writ may not be served later than four calendar months (or, if leave is required to effect service out of the jurisdiction, six months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times the general partner of Sterling Mortgage Income Master Fund LP, an open-ended Mortgage Investment Fund established in February 2012 which, as part of its business, provides secured credit facilities.
2. The Defendant is and was at all materials times:
 - a. A director of Indigo Bay Development Ltd, an exempted company registered in the Cayman Islands with company number 301009 carrying out the business of property development.
 - b. The sole shareholder of Indigo Bay Development Ltd.
3. By a loan agreement between, amongst others, FirstCaribbean International Bank (Cayman) Limited (**Lender**) and Indigo Bay Development Ltd. (**Borrower**) dated 17 April 2020 (**Loan Agreement**), the Lender agreed to grant the Borrower a revolving demand loan to assist with construction of development located at Prospect Block 23B Parcel 113 and known as Indigo Bay for a total credit facility USD \$14,525,546.00.
4. The Plaintiff will rely on the terms of the Loan Agreement for their true meaning and effect, including but not limited to the following clauses:

4. Interest

4.1 The applicable interest rate for the Credit Facility shall be determined as the floating prime rate (with current effective rate at 4.75% per annum) for United States Dollars in the Cayman Islands (the "Prime Rate"), and the Prime Rate shall be deemed to be 4.00% per annum if any rate obtained pursuant to this clause would otherwise be below 4.00% per annum.

4.2 Interest shall accrue from day to day and shall be calculated on the basis of a 365 day year.

4.3 Interest shall accrue on the outstanding balance of the Principal Sum and shall be capitalized quarterly commencing three (3) months after the first drawdown of the Credit Facility.

4.4 If at any time the amounts available under the Credit Facility is insufficient to pay the Interest on the Credit Facility, the Borrower shall be required within five (5) Business Days' notice from the Lender to deposit additional amounts to cover such shortage.

5. Repayment

The Borrower shall repay the Credit Facility together with Interest in accordance with this Agreement as follows:

5.1 The Lender agrees to moratorium on Principal Sum payments by the Borrower during the Construction Term.

5.2 The Borrower shall make Interest only payments to accrue on the outstanding balance of the Principal Sum which shall be paid quarterly commencing three (3) months after the initial drawdown of the Credit Facility and shall be capitalized within the Credit Facility.

5.3 All net sales proceeds from the Project are to be applied to the Principal reduction of the Credit Facility.

5.4 All amounts outstanding under the Credit Facility are due and payable at the end of the Project Term.

"Loans are repayable on demand and in full twenty-four (24) months after initial loan advance (the "Maturity")"

8. Event of Default

Notwithstanding any other provisions of this Loan Agreement, the Principal Sum, Interest and all other monies payable hereunder shall become immediately owing and payable and all unpaid Interest and any other monies secured hereby or by any collateral or additional charges or securities hereto shall become immediately owing and payable upon the occurrence of an Event of Default and in addition to all other rights or powers statutory or otherwise which will also then arise and become immediately exercisable the Lender shall have power to appoint any person or persons to be a Receiver or Receivers of the Properties hereby charged or any part thereof and to remove any Receiver or Receivers so appointed and appoint another or others in his or their place, namely:

(a) if the Borrower fails to pay any sum in respect of the Principal Sum and/or Interest when the same becomes due and fail to remedy such failure to pay within five (5) days of the Lender serving notice on the Borrower requiring it to do so;

(b) if the Borrower is in breach of any term, condition, undertaking, covenant or provision contained or implied in this Agreement and/or the Security Documents and fails to remedy such breach within fourteen (14) days of the Lender serving notice on the Borrower requiring it to do so provided however that if Borrower demonstrates to Lender's satisfaction that Borrower is taking steps to remedy such breach the Lender may in the Lender's sole and absolute discretion permit the Borrower additional time to remedy such breach;

(c) if the Borrower shall default in the performance or observance of any agreement covenant stipulation or obligation contained or implied in this Agreement and/or the Security Documents whether negative or otherwise (other than obligations in respect of the payment of any monies hereunder);

(d) if any representation or warranty made to the Lender by the any Obligor prior to or at the time of execution of this Agreement is or becomes incorrect or misleading in a material respect;

(e) if a petition is presented or an order made or analogous proceedings are taken for the insolvency or bankruptcy of any Obligor;

- (f) if any judgment or order made against an Obligor is not complied with within fourteen (14) days or if any execution distress sequestration or other process is levied or enforced upon or sued out against any part of the property assets or revenues of the Borrower;*
- (g) if the Borrower shall without the written consent of the Lender assign any of its individual book debts or pledge any of their individual assets or save as provided for in this Agreement with the Lender and under the Security Documents create or purport to attempt to create any charge or mortgage ranking or which may by any means be made to rank pari passu with or in priority to the Security Documents;*
- (h) if the Borrower stops payment or agrees to declare a moratorium or becomes or is deemed to be bankrupt or unable to pay its debts as and when they fall due or if the Borrower proposes or enters into any composition or arrangement with its creditors generally;*
- (i) any incumbrance to secure any indebtedness of the Borrower becomes enforceable;*
- (j) if the Borrower fails to utilize the Credit Facility in accordance with the specific purpose set out in Clause 3 hereof;*
- {k) if an order is made or an effective resolution is passed for the winding-up of the Borrower except for the purpose of a reconstruction or amalgamation the terms of which have been previously approved in writing by the Lender;*
- (I) if an incumbrance takes possession or a receiver is appointed of any part of the assets of the Borrower;*
- (m) if the Borrower cease or threatens to cease to carry on its business or substantially the whole its individual and/or collective business;*
- (n) if the Borrower shall have sold or agreed to sell the whole of his or their undertaking or any substantial part thereof otherwise than with the previous written consent of the Lender;*
- (o) if at any time the Lender shall in good faith determine that a Material Adverse Change in the financial condition of an Obligor have occurred or that the Obligor are unlikely to be able to meet any of his or their obligations hereunder;*
- (p) if there shall be any breach or default whatsoever of any of the express or implied terms and conditions of any of the said collateral or additional charges or securities hereto;*
- (q) if there is a breach in the performance of any other term or condition under the Credit Facility or of any security held for the Credit Facility, subject to cure periods agreed between the parties;*
- (r) if the Borrower fails to discharge any material indebtedness on its due date;*
- (s) if there is breach of representations and warranties and/or covenants by any Obligor;*
- (t) if the occurrence of a judgment in an amount in excess of US\$100,000.00 against an Obligor, or the making of any claim against the Project which would prevent construction of the Project for any period, or which otherwise materially threatens the Project in the opinion of the Lender;*
- (u) if any material consent, approval, licence or material agreement relating to the Project is revoked, becomes ineffective, is terminated or is amended without the Lender's consent;*
- (v) if a Borrower default or Event of Default occurs under any of the Material Contracts;*

(w) if there is a cessation of construction in the Project for a period of four (4) weeks or more, or for any other reason, other than reasons acceptable to the Lender or an event of force majeure;

(x) if the Insurance Policies required to be maintained hereunder lapses;

(y) if the Guarantor fails to comply with any agreements under this Agreement or under any Material Contract;

(z) if there is material destruction to the Project; or

(aa) in the opinion of the Lender, a Material Adverse Change to the business, assets, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of an Obligor.

The Borrower hereby covenants immediately to notify the Lender in writing of the occurrence of any of the Event of Default specified herein or of the occurrence of any event which with the lapse of time or giving of notice would or might constitute an Event of Default.

5. Also on 17 April 2020, the Lender and David Nelson (**Guarantor**), entered two guarantees: (i) the Cost Overrun and Shortfall Guarantee (**COS Guarantee**); and (ii) the Debt Service Guarantee (**DS Guarantee**) pursuant to which the Guarantor gave certain guarantees of the Borrower's obligations to the Lender arising from the Loan Agreement (Collectively, the **Guarantees**). The Plaintiff will rely on the terms of both the COS Guarantee and the DS Guarantee for their true meaning and effect, including but not limited to the following clauses:

COS Guarantee

1. The Guarantor, hereby unconditionally and irrevocably guarantees to Bank that, in the event of any of the following:

a) any cost overrun in excess of the contingency reserve of US\$1,300,000.00; or

b) any cost overrun in excess of the cost overrun reserve of US\$500,000.00; or

c) any shortfalls that may arise due to default by purchasers or actual tenants in respect of deposits due or closings delayed beyond the agreed term under the Agreement (a "Shortfall");

(including any agreed contingency amounts for cost overruns as set out therein) at any time (a "Cost Overrun"), on demand in writing by the Bank, the Guarantor will promptly, but no later than 10 business days from receipt of such written demand, arrange funding on terms satisfactory to the Bank from resources outside the Project in an amount sufficient to satisfy the amount of such Cost Overrun or Shortfall and shall apply such amount towards the Project (such obligations hereinafter referred to as the "Obligations").

7. *This Guarantee shall enure to the benefit of the Bank and its respective successors and assigns and shall be binding upon the Guarantor and his personal representatives, executors, administrators, heirs, successors and permitted assigns, provided that the Guarantor may not assign his obligations hereunder without the prior written consent of the Bank.*

DS Guarantee

1. *The Guarantor guarantees for the benefit of the Bank that in the event that the Borrower fails to make any scheduled payment of interest or principal pursuant to and in accordance with (and in the amounts required by) the terms of the Agreement, the Guarantor shall make such payments to the Bank as are required to ensure that the full amount of such scheduled payment of interest and/or principal (as applicable) required to be paid pursuant to the terms of the Agreement are received by the Bank (such obligations hereinafter referred to as the "Obligations").*

2. *Any payment required to be made pursuant to clause 1 above shall be made within 30 days of the Guarantor receipt of a notice from the Bank which sets out (i) the amount of interest and/or principal (as applicable) that should have been paid by the Borrower on the relevant date; (ii) the amount actually received by the Bank from the Borrower with respect to such amount; and (iii) the shortfall in such payment which is required to be paid by the Guarantor.*

8. *This Guarantee shall enure to the benefit of the Bank and their respective successors and assigns and shall be binding upon the Guarantor and his personal representatives, executors, administrators, heirs, successors and permitted assigns, provided that the Guarantor may not assign his obligations hereunder without the prior written consent of the Bank.*

6. On 29 July 2022, the Lender assigned (the **Assignment**) the Loan Agreement together with the COS Guarantee by to Sterling MIF GP Ltd (in its capacity as general partner of Sterling Mortgage Income Master Fund LP) (**Assignee**). The Plaintiff will rely on the terms of the Assignment for its true meaning and effect, including but not limited to the following clauses:

1. DEFINITIONS AND INTERPRETATION

1.1 *The definitions and rules of interpretation in this clause apply in this deed.*

Finance Documents: the documents set out in the Schedule together with any other Guarantee or Security.

2. ASSIGNMENT

2.1 Subject to the terms of this deed, the Assignor unconditionally, irrevocably and absolutely assigns to the Assignee, with effect from the date of this deed, all the Assignor's rights, title, claims, interest and benefits in and to:

(a) the Debt; and

(b) the Finance Documents,

and any claims of any nature against the Borrower and the counterparties to any of the Finance Documents in connection therewith.

Schedule

Description of document: Debt Service Guarantee, Parties: David Nelson and FirstCaribbean International Bank (Cayman) Limited, Date: 17 April 2020

Description of document: Cost Overrun and Shortfall Guarantee, Parties: David Nelson and FirstCaribbean International Bank (Cayman) Limited, Date: 17 April 2020

7. On 12 September 2022, the Plaintiff served a Notice of Demand on the Defendant as Guarantor in relation to the COS Guarantee (**COS Guarantee Demand**). On 1 March 2023, the Plaintiff served a Notice of Demand on the Defendant as Guarantor in relation to the DS Guarantee (**DS Guarantee Demand**). (Collectively, the **Demands**).
8. The Demands were served on the Defendant in accordance with the express terms of the respective underlying guarantees:
 - a. By mail to PO Box 650, Grand Cayman KYI-1502, Cayman Islands; and
 - b. By email to dnelson@charltondevelopments.ky.
9. US\$9,632,580.44 is the amount guaranteed by the Guarantor pursuant to Clause 1 of the COS Guarantee (the **Overrun Amount**). This comprises the cost overrun to 9 June 2023 in relation to the Project (as defined in the Loan Agreement) in excess of the contingency reserve and cost overrun reserve. As Assignee, the Plaintiff is entitled pursuant to Clause 7 of the COS Guarantee to demand this of the Defendant as guarantor for the Overrun Amount.
10. US\$772,560.70 is the amount guaranteed by the Guarantor, pursuant to Clause 1 of the DS Guarantee (the **Interest Shortfall**). The Lender notified the Borrower of an Event of Default on 9 June 2021. Pursuant to Clause 8 of the Loan Agreement, interest accruing became immediately payable. The Loan Agreement expired in accordance with its own terms on 30 September 2022. As of 9 June 2023, the interest accrued under the Loan Agreement which should have been paid by the Borrower, and which is guaranteed by the Guarantor pursuant to

Clause 1 of the DS Guarantee comprises US\$772,560.70. All of this remains outstanding. As Assignee, the Plaintiff is entitled pursuant to Clause 8 of the DS Guarantee to demand this of the Defendant as Guarantor for the Interest Shortfall.

11. The sum of the Overrun Amount and the Interest Shortfall is USD\$ 10,405,141.14.
12. In breach of his obligations as guarantor, the Defendant has failed to pay the demanded sums or any part of them.
13. Further, the Plaintiff is entitled to recover, and claims, pursuant to the Loan Agreement continuing interest as it has varied over time from the dates of the respective Demands to the date of judgment, the Demands having included interest up to their respective dates.
14. Alternatively, the Plaintiff claims statutory interest pursuant to section 34 of the Judicature Act on any sum found to be due from the Defendant for such periods and at such a rate as the Court shall deem fit.

AND THE PLAINTIFF CLAIMS:

- (1) The Outstanding Sum, being USD\$ 10,405,141.14;
- (2) Continuing contractual interest or alternatively statutory interest as aforesaid;
- (3) Costs;
- (4) Such further or other relief as the Court shall deem fit.

If, within the time for returning the Acknowledgment of Service, the Defendant pays to to the Plaintiff or their Attorneys the total amount claimed of US\$10,405,141.14 (being the sum of the Overrun Amount and the Interest Shortfall), further proceedings will be stayed.

30 June 2023



APPLEBY (CAYMAN) LIMITED
Attorneys-at-Law for the Plaintiff

This **WRIT** was filed by Appleby (Cayman) Ltd Attorneys-at-Law for the Plaintiff, whose address for service is 9th Floor, 60 Nexus Way, Camana Bay, Grand Cayman, PO Box 190, KY1-1104 (Ref. THW/RM/44438.0019)

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If A Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for Notes for Guidance

Please complete overleaf

Notes for Guidance

3. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
4. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
5. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
6. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
7. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
8. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
9. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
10. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2022

BETWEEN STERLING MORTGAGE INCOME FUND LTD PLAINTIFF

AND DAVID NELSON DEFENDANT

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important.

Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

11. State whether the Defendant intends to contest the proceedings (tick appropriate box)

YES

NO

12. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box).

YES

NO

Service of the Writ is acknowledged accordingly

(Signed) _____

Attorney for

Please complete overleaf

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by Plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Appleby (Cayman) Ltd. 9th Floor, 60 Nexus Way Camana Bay, Grand Cayman PO Box 190, KY1-1104 Cayman Islands (Ref. THW/444368.0019)
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Indorsement by Defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

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