

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No:

In the application of:

ROBERT JAN BLACK

First Applicant

ARTHUR BRADY COCHRANE

Second Applicant

and

ORTHOTOUCH LIMITED

First Respondent

DEREK PEDOE COHEN N.O.

Second Respondent

NICOLAS GEORGIU

Third Respondent

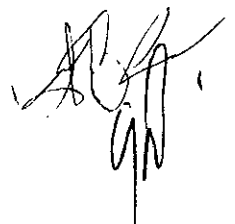
SUPPORTING AFFIDAVIT

I the undersigned,

ARTHUR BRADY COCHRANE

do hereby make oath and state as follows:

1. I am the second applicant as described in the main founding affidavit to which this affidavit is annexed.
2. The purpose of this supporting affidavit is to deal with two issues.
 - 2.1. The first is the defects in the notice issued by the second respondent dated 29 July 2015, purportedly in terms of clause 4 of the Scheme of



Arrangement ("the Arrangement"), copy of which is annexed to the main founding affidavit.

2.2. The second is to deal with the issue of substituted service.

3. As alluded to in the main founding affidavit, in terms of clause 4.3 of the Arrangement, the second respondent is obliged to give notice by email to the parties referred to in that paragraph that the liquidation and distribution account *"is lying for inspection for period of 7(seven) days calculated from the third business day succeeding that upon which the notice is despatched ..."*.
4. However, as appears from the second respondent's letter dated 29 July 2015, it is stated in paragraph 3.1 thereof that the letter constitutes the email notice required in terms of paragraph 4.3 of the arrangement; that the account will lie for inspection from 31 July 2015 to 6 August 2015 and that these dates comply with the time line set out in paragraph 4.3 of the Arrangement.
5. Clearly, these dates do not comply with clause 4.3. If as stated therein the email was despatched on 29 July 2015, then the first of the three business days referred to in paragraph 4.3 of the arrangement would be 30 July 2015 and the three business day period would have expired on Monday 3 August 2015. The seven day period for which the Liquidation and Distribution account would have to lie for inspection could have commenced no earlier than Tuesday 4 August 2015 and expired (provided the first respondent's offices were open over weekends during normal weekday business hours) no earlier than Monday 10 August 2015.
6. I now turn to deal with the issue of substituted service.
7. As appears from the main founding affidavit, there are literally tens of thousands of potentially interested parties who may be affected by the final



relief claimed in Part B of this application. It has not been possible to effect any kind of service in relation to the interim relief claimed in Part A, but it is envisaged that substituted service be given to those interested parties in relation to the relief claimed in Part B, so that any party desirous of doing so can join in the proceedings.

8. It is unlikely that a substantial number, if any, of those interested parties will join in the present application because the relief claimed is entirely for their benefit. However, in order to comply with the requirement that interested parties be given notice of relief in which they may have an interest, the applicants propose the form of substituted service contemplated in paragraph 3 of Part A of the notice of motion.
9. It is apparent that the first and second respondents are able to despatch email communications to the persons referred to in clause 4.3 of the Arrangement, as they purported to do in their notice dated 29 July 2015. The applicants do not have access to that database of email addresses. This application has been necessitated by the conduct of the first and second respondents and hence the applicants contend that the first and second respondents be required to assist in giving notice of this application to the parties whose rights they have breached in the manner described above and in the main founding affidavit.
10. The substituted service contemplates that any person who receives a copy of the court order in Part A of this application and a copy of the notice of motion will, if he or she desires, obtain a full copy of the papers from the website of the HS Action Group, being "hsaction.co.za" under the tab "documents".
11. Should the applicants be required to furnish hard copies of the application and should a substantial number of respondents request such hard copies,



the cost of doing so would be prohibitive and may cause the applicants to have to abandon the vindication of their rights through this application.

- 12. Finally, I confirm that have I read the notice of motion and the founding affidavit herein and I confirm the contents of the founding affidavit insofar as it refers or relates to the investors and to me.

WHEREFORE I pray for the relief claimed in the notice of motion.



Deponent

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which affidavit was signed and sworn to before me in my presence at *BENONI* on this *4th* day of **August 2015**, in accordance with Government Notice No. R1258 dated 21 July 1972, as amended by Government Notice No R1648 dated 19 August 1977, as further amended by Government Notice No. R1428 dated 11 July 1980, and by Government Notice No R774 of 23 April 1982.

CERTIFIED A TRUE COPY OF THE ORIGINAL DOCUMENT
 COMMISSIONER OF OATHS

[Signature]

J. A. Dennison
 Ex Officio - TT (SA)
 Commissioner of Oaths (RSA)
 100 Bantshof Avenue Birchleigh, 1616

DATE: *04/08/2015* PLACE: *BENONI*


COMMISSIONER OF OATHS