

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 42334/14

In the application of:

JURIE JOHANNES GELDENHUYS First Applicant

ARTHUR BRADY COCHRANE Second Applicant

SHARON ANN VLOK Third Applicant

and

ORTHOTOUCH LIMITED First Respondent

DEREK PEDOE COHEN N.O. Second Respondent

HANS KLOPPER N.O. Third Respondent

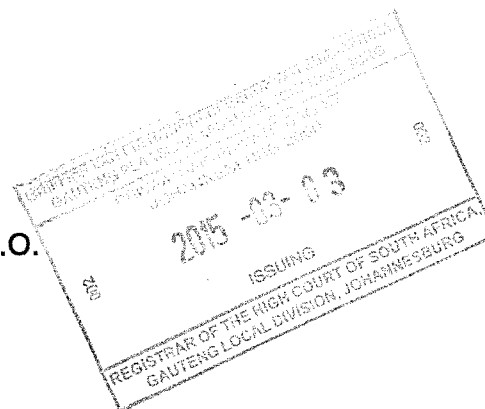
HIGHVELD SYNDICATION NO 15 LTD Fourth Respondent

HIGHVELD SYNDICATION NO 16 LTD Fifth Respondent

HIGHVELD SYNDICATION NO 17 LTD Sixth Respondent

HIGHVELD SYNDICATION NO 18 LTD Seventh Respondent

HIGHVELD SYNDICATION NO 19 LTD Eighth Respondent



HIGHVELD SYNDICATION NO 20 LTD	Ninth Respondent
HIGHVELD SYNDICATION NO 21 LTD	Tenth Respondent
HIGHVELD SYNDICATION NO 22 LTD	Eleventh Respondent
	(“the Highveld Companies”)
NICOLAS GEORGIU	Twelfth Respondent
ZEPHAN PROPERTIES (PTY) LTD	Thirteenth Respondent
NICOLAS GEORGIU N.O.	Fourteenth Respondent
MAUREEN LYNETTE GEORGIU N.O.	Fifteenth Respondent
JOSEPH CHEMALY N.O.	Sixteenth Respondent
GEORGE NICOLAS GEORGIU	Seventeenth Respondent
MICHAEL NICOLAS GEORGIU	Eighteenth Respondent
HENDRIK JACOBUS MYBURGH	Nineteenth Respondent
BOSMAN & VISSER (PTY) LTD	Twentieth Respondent
PICKVEST (PTY) LTD	Twenty-first Respondent
HEINRICH PIETER MOLLER	Twenty-second Respondent
WILLEM MORKEL STEYN	Twenty-third Respondent

BAREND STEFANUS VAN DER LINDE Twenty-fourth Respondent

FREDERICK JULIUS REICHEL Twenty-fifth Respondent

EUGENE KRUGER INC. Twenty-sixth Respondent

**THE COMPANIES AND INTELLECTUAL
PROPERTY** Twenty-seventh
Respondent

COMMISSION OF SOUTH AFRICA (CIPC)

And

THE HIGHVELD SYNDICATION INVESTORS

("the main application")

In re:

The ex parte application of:

ORTHOTOUCH LIMITED

(REGISTRATION NUMBER: 2010/004096/06)

Application for the sanctioning of a Scheme of arrangement in terms of section
155(7) of the Companies Act, No. 71 of 2008

("the ex parte application")

**NOTICE OF APPLICATION TO HAVE COURT ORDER SET ASIDE,
ALTERNATIVELY FOR LEAVE TO APPEAL**

TAKE NOTICE that the applicants in the main application intend to make application in the above Honourable Court on Tuesday 19 May 2015 at 10:00 for the following relief:

- (a) That condonation be granted for the non-compliance with the court rules with regards to the form and service of this application.
- (b) Setting aside the order granted on 26 November 2014 ("the order") in the ex parte application in terms of Rule 42(1)(a) of the Uniform Rules of Court on one or more of the grounds set out in (d)(1) - (12) below, alternatively under the common law;

Alternatively:

- (c) Condonation for the late noting of this appeal and extending the time period prescribed in Uniform Rule 49(1)(b);
- (d) Granting leave to appeal the order granted in the ex parte application on the following grounds:
 - (1) No compromise between the First Respondent, Orthotouch

Limited ("Orthotouch") and its creditors is permitted whilst Orthotouch and the HS Companies (clause 1.29 of the arrangement) or The Highveld Syndication Investors (clause 1.38 of the arrangement) are engaged in business rescue proceedings (section 155(1) of the Companies Act, 2008 ("the Act"): cf clause 1.10, 1.16, 1.44 and 1.49 of the arrangement).

- (2) What is defined in the arrangement as "The Highveld Syndication Investors" are not and have never been creditors of Orthotouch for purposes of section 152(2) of the Act: cf paragraph 2.1.51.
- (3) As some or all of the properties involved were not registered in the names of the HS companies, these companies were accordingly not able to sell such properties to Orthotouch, and as Orthotouch was in any event in breach of its obligations under the December 2011 business rescue plan, investors in the HS companies could not be affected by the latest compromise sanctioned at the behest of Orthotouch in December 2014.
- (4) The HS companies are not creditors of Orthotouch (paragraph 2.1.51 of the compromise).
- (5) Orthotouch has no claim against the HS companies, due to its own default (cf clause 2.1.47.3.2 of the compromise).
- (6) The arrangement is incomplete in material respects: cf paragraphs

1.4.1.3, 1.4.1.5 and 2.1.15, and accordingly did not comply with section 155(3) of the Act.

- (7) Having regard to the definition of *trade creditor* in clause 1.60 of the arrangement read with annexure "H" thereto, Orthotouch had no trade creditors whose claims could be compromised.
- (8) The arrangement seeks to compromise the claims of third parties to the compromise (clauses 1.14, 1.20, 1.38 - 1.40 and 2.1).
- (9) The ex parte application was brought in the wrong division of the High Court (clause 1.19 of the arrangement).
- (10) The arrangement is unintelligible in material respects by way of example:
 - The fixed assets of Orthotouch as per annexure "F" is irreconcilable with paragraphs 2.1.47.3 and 2.1.47.3.2 of the arrangement and annexure "A" thereto, as well as with annexure "C" thereto.
- (11) The opinion of the BRP referred to in paragraph 2.1.54 of the arrangement could not have been rationally held in view of the information disclosed in the arrangement itself, especially with reference to annexure "B" thereto, where it is recorded that the HS Investors in the HS Companies constitute affected parties in the Business Rescue proceedings "... and are indirectly creditors of

Orthotouch.”

- (12) The court could not, on the strength of the averments contained in paragraphs 10 to 15 of the affidavit by the Second Respondent, read with the annexures thereto, have been satisfied that notice of the meeting to consider the arrangement had been received by all interested parties.
- (e) Leave to appeal to the full court will be sought.
- (f) Costs of the application to be paid by Orthotouch (First Respondent) and, in the event of any other Respondents opposing the relief, that such costs be paid jointly and severally by First Respondent and those Respondents opposing the relief.
- (g) Further and/or alternative relief.

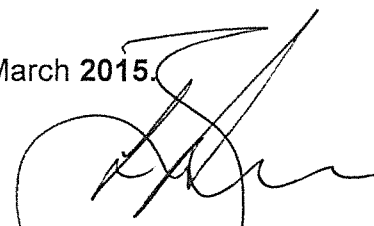
BE PLEASED TO TAKE FURTHER NOTE THAT the accompanying affidavits of Applicants together with annexures thereto will be used in support of this application.

TAKE FURTHER NOTE THAT the Applicant has appointed the undermentioned firm of attorneys as attorneys of record who will accept service of all notices and documents in these proceedings at their address as stated below.

TAKE FURTHER NOTICE THAT if you intend opposing this application you are required:

- a) to file notice of opposition within 5 (five) days of receiving notice of this Application;
- b) and within 15 (fifteen) days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; and further that you are required to appoint in such notification an address referred to in Rule (5)(b) at which you will accept notice and service of all documents in these proceedings.
- c) If no such intention to oppose be given, the application will still be made on the 19th day of May 2015 at 10:00.

DATED at JOHANNESBURG on this 3rd day of March 2015.



Attorneys for Applicants
BDK ATTORNEYS
Ground Floor
3 Ninth Street
Houghton Estate
JOHANNESBURG

For Theron & Partners
Stellenbosch

**TO: THE REGISTRAR OF THE GAUTENG LOCAL DIVISION OF
THE HIGH COURT, JOHANNESBURG**

**AND TO: FIRST TO TWENTY SEVENTH RESPONDENTS (SERVICE BY
SHERIFF AND/OR E-MAIL)**