

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 80811/2014

In the matter of:

MAGDALENE GERBRECHT VAN DER SANDT

Intervening Party

In re: the matter between:

SHARON ANN VLOK

First Applicant

DANIEL EARNEST LAMPBRECHT

Second Applicant

CHARLENE ESMAY JORDAAN

Third Applicant

JEAN PAPANDONIS

Fourth Applicant

BRIAN JOHN WAXHAM

Fifth Applicant

CHRIS NEL

Sixth Applicant

HYMIE PINSHAW

Seventh Applicant

FRANCOIS STRAUSS

Eighth Applicant

LEA MAGDALENA MEYER

Ninth Applicant

and

NICOLAS GEORGIU

First Respondent

ZEPHAN PROPERTIES (PTY) LTD

Second Respondent

NICOLAS GEORGIU N.O.

Third Respondent

MAUREEN LYNETTE GEORGIU N.O.

Fourth Respondent

JOSEPH CHEMALY N.O.

Fifth Respondent

GEORGE NICOLAS GEORGIU

Sixth Respondent

MICHAEL NICOLAS GEORGIU

Seventh Respondent

HENDRIK JACOBUS MYBURGH

Eighth Respondent

BOSMAN & VISSER (PTY) LTD

Ninth Respondent

PICKVEST (PTY) LTD

Tenth Respondent

HEINRICH PIETER MOLLER

Eleventh Respondent

WILLEM MORKEL STEYN

Twelfth Respondent

BAREND STEFANUS VAN DER LINDE

Thirteenth Respondent

FREDERICK JULIUS REICHEL

Fourteenth Respondent

EUGENE KRUGER INC.

Fifteenth Respondent

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[Signature]

HANS KLOPPER

Seventeenth Respondent

ORTHOTOUCH LTD

Eighteenth Respondent

HIGHVELD SYNDICATION NO 19 LTD

Nineteenth Respondent

HIGHVELD SYNDICATION NO 20 LTD

Twentieth Respondent

HIGHVELD SYNDICATION NO 21 LTD

Twenty-first Respondent

HIGHVELD SYNDICATION NO 22 LTD

Twenty-second Respondent

OPPOSING AFFIDAVIT – INTERVENTION OF VAN DER SANDT

I, the undersigned,

FRANCOIS STRAUSS

do hereby make oath and say that:

1. I am an adult male financial advisor residing at 16 Oranje Street, Paarl, Western Cape.
2. I am the Eighth Applicant herein and also a member of the Highveld Syndication Action Group Steering Committee and duly authorised to attest to this affidavit on behalf of the other Applicants.
3. The facts contained herein fall within my personal knowledge unless otherwise stated or implied, and are true and correct.

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4. I have read the affidavit of Mr Leander Jacobus Opperman (filed on behalf of the Intervening Party) dated 28 April 2019, in support of his client's (Mrs Van der Sandt's) Application to Intervene in the proceedings under the above case number, which proceedings I will hereinafter refer to as "the certification application".

5. As Mr Opperman points out, Mrs Van der Sandt (hereinafter "Van der Sandt") applied to intervene in the so-called "setting aside application" in the Gauteng Local Division under case number 42334/2014. For ease of reference, I will refer to that court as "the Johannesburg Court", and will similarly refer to the proceedings in such Court as "the setting aside application".

6. It is correct that Van der Sandt's Application to Intervene in those proceedings in the Johannesburg Court were not formally opposed and that an order was granted allowing such intervention. Opperman refers to that intervention as "the first intervention application". That application was not opposed simply to save costs and to prevent a hearing of an Opposed Application – and given that Van der Sandt's affidavit is largely irrelevant to the actual merits of our setting aside application.

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7.1 She now however applies to also intervene in these proceedings:-

"....on the same grounds, supported by the same facts and evidence, as was presented to the court in the [first intervention application]". (own emphasis)

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(as appears in paragraph 8 of the affidavit of Mr Opperman).

7.2 Opperman then states that Van der Sandt is “concerned with the issue raised or to be raised in the class action application [the certification application], having a direct and substantial interest in the subject matter thereof, as appears from Annexure B.”

(which annexure is simply the Founding Affidavit of Van der Sandt in the first intervention application).

7.3 In her affidavit, and as referred to in more detail below, Van der Sandt makes numerous malicious and false allegations concerning the Highveld Syndication Action Group (“HSAG”) and its legal representatives (especially about attorney Theron) – all simply again in an attempt, on behalf of the First Respondent (Nicolas Georgiou – hereinafter referred to as “Georgiou”) and his pawns, to reduce the support for the class action amongst investors, given that these allegations are often talked about on social media and sometimes circulated amongst certain Highveld Syndication investors.

8. The certification application relates to (four) intended class actions which are to be brought on behalf of investors in four property syndication companies which are generally referred to as “Highveld 19” to “Highveld 22” (i.e. Highveld Syndication 19 Ltd, Highveld Syndication 20 Ltd, Highveld Syndication 21 Ltd, and Highveld Syndication 22 Ltd). I am advised that the grounds of the claims

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to be instituted in the class actions – and as appears from the First Applicant (“Mrs Vlok’s”) Founding Affidavit herein – can be summarised as follows:

- 8.1 Claims based in contract against First Respondent (“Georgiou”), and two other Respondents which he controls, in terms of the so-called buy-back agreements between them and certain investors. (These agreements apply only to the investors in Highveld 21 and 22 as the buy-back agreements were contained in the relevant Prospectuses of such companies when the property syndication investment schemes were “launched”). These agreements entailed that, after a five year period, the investors would receive back their full monies initially invested. This five year period has lapsed.
- 8.2 Claims based in delict for fraudulent or negligent misrepresentations contained in the various prospectuses of the four companies.
- 8.3 Claims based in delict under the common law for the fraudulent and/or reckless and/or negligent handling by the various directors and individuals concerned in the four companies, of the funds collected from the investors.
- 8.4 Claims under the various provisions of the Companies Act of 1973, and the Companies Act of 2008, for the personal liability of the individuals concerned based on their fraudulent and/or reckless conducting of the business of the (four) related investment schemes.

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8.5 Claims based on statutory provisions which prohibit (and criminalise) the release of funds received from investors in property syndication schemes without simultaneously giving transfer of the property to the relevant investment vehicle.

9. Before I deal with the reasons why we believe Van der Sandt's current Application to Intervene should be dismissed, I will first provide some background in order to explain how the setting aside application in the Johannesburg court relates to the certification application in this court. Although some of the facts I refer to below are already, I am advised, evident from the court file in (this) certification application and are also contained in the Founding Affidavit of First Applicant ("*Mrs Vlok*") filed herein, I nevertheless extract and repeat same very briefly for ease of reference and in order to obviate the need for the court to consider the voluminous Founding Affidavit of Mrs Vlok for purposes of hearing this second intervention application.

BACKGROUND:

The Highveld property syndication schemes

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10.1 As indicated above, the said syndication schemes were conducted through four companies with related names, being "Highveld Syndication No 19 Ltd" to "Highveld Syndication No 22 Ltd".

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- 10.2 These four companies, together with four other companies (being “Highveld Syndication No 15 Ltd” to “Highveld Syndication No 18 Ltd”), have in the meantime all been placed under Business Rescue as explained in more detail below).
- 10.3 The main role player in, and beneficiary of, the investment schemes is Georgiou, who also controls Eighteenth Respondent (Othotouch Ltd - hereinafter referred to as “*Orthotouch*”) as its sole and managing director and controlling shareholder.
- 10.4 The Prospectuses in which members of the public were invited to invest in the four said property syndication schemes all reflected that unencumbered immovable property, as identified therein, would be transferred to the investment vehicles (the Highveld companies), and in respect of which rental income would be paid to investors. However, no such properties (totalling in value R3.2 billion) have been transferred, as confirmed in the report of the business rescue practitioner, in the case of Highveld 19 to 22. Despite this deliberate failure to transfer the properties, the purchase prices have been paid in full, leaving the said Highveld 19 to 22 companies destitute.
- 10.5 This non-transfer of properties forms the heart of the intended class action. The non-transfer was adjudicated by the Appeals Tribunal of the Financial Services Board, to be a criminal act under the relevant statutory regime governing such public investment schemes.

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10.6 To date, various investors have “joined” the class action litigation by giving mandates to the HSAG attorneys and contributing money in support of the class action. This includes the said other four property syndications – i.e. Highveld 15 to 18. The HSAG legal representatives hold instructions to pursue claims of these investors as well, which will be directed against essentially the same (Respondents/Defendants) as those in the current class action.

Business Rescue:

11. As indicated, and as is also set out in Mrs Vlok’s Founding Affidavit, the eight Highveld companies apparently experienced difficulties in meeting their obligations to investors in terms of the Prospectuses. At the apparent behest of Georgiou, these companies then voluntarily put themselves under Business Rescue in 2011.

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12.1 I am advised that, compared to the position under the Prospectuses, the monthly income which was paid to investors was reduced in terms of the adopted Business Rescue Plan (hereinafter “the BRP”). The BRP is attached to Mrs Vlok’s Founding Affidavit as “RV2”. In terms of the BRP, the initial investments (capital) of investors were to be repaid in full after five years, as was also the case in terms of the Prospectuses.

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- 12.2 Certain securities and sureties which were in place in favour of investors in terms of the Prospectuses were either watered down or did not feature any longer in the BRP.
13. The essence of the BRP was that all properties that were already transferred to the Highveld companies (Highveld 15 to 18), as well as those earmarked for transfer (in the case of Highveld 19 to 22), were to be transferred to Orthotouch. Orthotouch was, and is, directly or indirectly controlled by Georgiou, as appears from the Scheme of Arrangement referred to below. It came to my knowledge that two of its directors, Messrs Hans Klopper and Connie Myburgh, resigned, which effectively leaves Georgiou as the sole decision maker in that company.
14. Under the BRP, Orthotouch would then pay monthly income from the properties to the Highveld companies which, in turn, would pay the investors. The investors therefore never became actual creditors of Orthotouch; they remained creditors of the Highveld companies.

The Scheme of Arrangement

15. Despite the reduction in monthly payment obligations to investors in terms of the BRP, Orthotouch apparently struggled to meet its obligations to the Highveld companies who in turn had to pay the investors.

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16. In November 2014, Orthotouch thus proposed a Scheme of Arrangement (hereinafter "*the SoA*") in terms of which investors could choose one of three different options (alternatives), all of which entailed further reduced obligations on the part of Orthotouch.
17. In terms of the SoA, Orthotouch would still be the entity in which, or through which, the schemes would be salvaged in that the properties were still to be transferred to Orthotouch. Not only were investors (again) offered less than before in terms of income, but the already watered-down securities and sureties for the obligations towards the Highveld companies (i.e. investors) were further watered down to something virtually non-existent.
18. At that stage, the Certification Application in this Court had just been launched (in October 2014). The SoA document is briefly referred to in paragraph 54 and 57 of Mrs Vlok's Founding Affidavit, as it had been published shortly before the issuing of the main application.
19. Significantly, however, in terms of the SoA document, all entities and individuals involved in the investment scheme were *ex facie* its terms, absolved from any liability for any action or wrongdoing in the investment schemes – and purported to bind everybody involved in the schemes, including the investors.

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20.1 I am informed that on 12 November 2014, a meeting was held at which a relatively small percentage of the more than 18,000 investors (of the eight companies) were present. The meeting was called to vote on the proposed SoA. There were 2,914 votes in favour of the SoA, including

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proxies. I understand that the majority of voters boycotted the meeting or abstained from voting.

20.2 I am informed that none of the current Applicants voted in favour of the SoA. I was, but as far as I am aware, none of the other Applicants were at the meeting.

20.3 A few days later Orthotouch obtained an order in the Johannesburg High Court, by means of an *ex parte* application, whereby the SoA was sanctioned under Section 158(7) of the Companies Act of 2008, without any notice to the Applicants, their attorneys or the HSAG.

(This occurred despite the fact that the SoA document unambiguously identified the above Honourable Court (Pretoria) as the court that is to sanction the SoA – see clause 1.19 and 1.24 thereof).

The setting aside application:

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21.1 Given that the SoA purports to absolve all relevant role players, including Georgiou, from liability, and given that the main application would have been opposed also on the basis of such absolution, it was decided to first have the sanctioning of the SoA set aside, either by means of an appeal against the order sanctioning it, or by means of an urgent setting aside application, before proceeding with the main application.

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21.2 The SoA therefore *ex facie* its terms thwarted the class action in view of the fact that all individuals concerned, and in particular Georgiou, were absolved from any liability for losses incurred by investors due to the failed investment scheme/s and billions of Rands lost.

21.3 An application for leave to appeal against the sanctioning, alternatively to have it set aside, was therefore launched by HS investors in March 2015, i.e. the said "*setting aside application*". The "participating" applicants in the setting aside application are all investors and members of the HSAG – a voluntary group of investors who support and drive the intended class action litigation. The participating Applicants in the current (certification) application are also members of the HSAG.

(I use the term "participating Applicants" *inter alia* as First to Fourth Applicants in this court "withdrew" their applications after Georgiou conspired with them by paying them an undisclosed amount in return for them "withdrawing" the application behind the back of the HSAG's legal representatives and behind the backs of the HSAG and other investors. This despite such Applicants being mere nominal applicants who knowingly represented the thousands of disgruntled investors and the members of the HSAG. An identical *modus operandi* was executed with the erstwhile Applicants in the setting aside application. Both these stratagems were adjudicated to be irregular and were set aside, whilst also being labelled an abuse of the court process by two judges).

21.4 No Opposing Affidavits have been filed in the setting aside application due to the opportunistic and even *male fide* stratagems employed by

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Georgiou to frustrate and delay it, some of which has been referred to above.

22. The grounds relied upon, amongst others, for the setting aside of, or appeal against, the order sanctioning the SoA are that, in the *ex parte* application, Orthotouch failed to disclose the following material facts to the court:

22.1 That a class action is pending in the Pretoria High Court, based on serious allegations of fraud and misconduct involving parties to the SoA;

22.2 That the SoA purports to absolve all such individuals from liability;

22.3 That the SoA document fails to disclose that most of Orthotouch's property had been sold to an entity controlled by Georgiou's son, Michael Georgiou (who is the Twelfth Respondent). This despite earlier assurances given to investors that the property portfolio will be retained (in Orthotouch) and its value increased for the benefit of the investors.

22.4 That the investors, even though *ex facie* the SoA document were not creditors of Orthotouch – but yet are purported to be creditors for purpose of the SoA and, therefore, also creditors for purposes of Section 155(8) in making it “binding” on all of them.

22.5 That the SoA document states that this Court (Pretoria) will be approached for the sanctioning – despite this, the Johannesburg court

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was approached *ex parte*. Any investor who had wished to oppose the application for an order for the sanctioning, would therefore have "waited" in the wrong court for such approach/application.

23. I point out that the vast majority of the investors are pensioners – with their average age being 75. Most of them have invested their pension pay-outs into the said investment schemes as far back as 2005 to 2009, which is the period over which the schemes were launched. I can confirm that many of these pensioners have died over the last few years and, clearly, will be dying in escalating numbers as time progresses.

THE FACTS:

Points in Limine: Lack of Locus Standi:

24. I am advised that Van der Sandt lacks *locus standi* to intervene in these proceedings, even on her own showing.

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25.1 Firstly, she is not an investor in any of the companies in respect of which a class action is sought to be brought by means of the certification application.

25.2 As Van der Sandt correctly points out (and as appears from the above background), the certification application is brought to seek leave to

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institute four separate class actions on behalf of the investors in four company's generally referred to as Highveld 19 to 22.

25.3 Van der Sandt is however only an investor in Highveld 15, as stated by her in paragraph 5 of her Founding Affidavit in the first intervention application dated 31 January 2019.

25.4 I am advised that this means she has no interest whatsoever in the outcome of the Certification Application, nor in the class action proposed in such Certification Application. Her investment, if still in existence given what is stated below, is not at all affected by the intended class actions.

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26.1 Secondly, and apart from the above consideration, in paragraph 6 of Van der Sandt's affidavit (in the first intervention application), she states that she "falls in Option 2" in relation to the SoA.

26.2 This refers to the 3 Options from which investors could choose as part of their participation in the SoA. Therefore, investors could choose one of three alternatives (options). These options differed insofar as the extent of interest payments and time spans within which capital would be repaid, is concerned.

26.3 In the SoA document itself, option 2 ("Alternative 2") is described in the summary of the document (on the printed page 5 thereof) as follows:

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“HS [Highveld] investors electing Alternative 2, become entitled to be paid their *pro rata* shares of the actual aggregate values of the properties, on 31 March 2017, which value is guaranteed by the company and the financial proposer to be at least R2 billion, and pending such payment, will receive interest calculated and payable at 6% per annum, monthly in arrears, on the amount of R2 billion, as from the final date, the Alternative to Capital being payable on 31 March 2017, as envisaged in paragraph 2.2.5.4 of the Arrangement.

26.4 To my knowledge, the SoA document has never been amended, especially given the fact that it can only be amended by agreement by all stakeholders and given the fact that the court has sanctioned the document. Van der Sandt was therefore repaid, or was supposed to be repaid, her full capital investment on 31 March 2017. In the premises, she no longer has any interest in any of the Highveld companies, and therefore, for that reason, also has no interest in the class action litigation.

27. Thirdly, and coupled with the above, no Confirmatory Affidavit by Van der Sandt seems to have been filed. I am advised that this alone is reason enough to dismiss the application. Should Van der Sandt in due course file such Confirmatory Affidavit, I challenge her and Opperman to demonstrate her *bona fides* in this application in view of what is stated below.

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The grounds for her intervention:

28. As indicated in paragraph 6 above, Opperman states that Van der Sandt wishes to intervene here for the same reasons, and on the same grounds, as set out in the first intervention application.
29. In Van der Sandt's affidavit in the first intervention application, she states (in paragraph 12 of that affidavit) that the purpose of her intervention is twofold: Firstly, to "support the SoA" with a view to continue her receipt of monthly interest and (eventually) her capital, and secondly, that she wishes to oppose the setting aside as she believes she and other investors would be prejudiced by the setting aside. I submit this second ground or purpose amounts to exactly the same as the first one.
30. Much of her said affidavit therefore deals with the alleged negative consequences for all involved, should the SoA be set aside.
31. I have filed an affidavit in response to Van der Sandt's affidavit in the first intervention simply to correct some of the false and vexatious allegations, and not to oppose the actual order allowing her to intervene. This approach was taken in order to avoid the unnecessary arguing of an Opposed Application whilst Van der Sandt's involvement does not alter the merits of the setting aside application.
32. I deal with this fearmongering "by Van der Sandt", and I believe that the fear mongering is without foundation and part of the strategy all along by Georgiou

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and his accolades, since shortly after launching the investment schemes, to “bully” investors into accepting terms that Georgiou suggests.

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33.1 However, whilst Van der Sandt notionally has an interest in upholding the SoA (assuming she is an investor in Highveld 15 who has not received back her capital investment under the said Option 2, which is denied), I submit she does not have an interest in the proposed class actions themselves in this Court. The SoA notionally has an influence and is relevant to the proposed class actions (as the SoA purports to thwart those claims), but the class actions do not have an influence on the SoA.

33.2 Therefore, Van der Sandt’s grounds for intervening in the setting aside application (in order to uphold the SoA) cannot simply be transposed and applied here as grounds to also intervene in the certification application. Her stated interest in upholding the SoA (which is also questioned) does not mean she has an interest in the class actions herein. Even more so if she wishes to oppose the class actions.

33.3 No relief is sought against Orthotouch under the intended class actions, and it is joined as a Respondent in the certification application only in so far as it may have an interest therein - but no relief, it will be noted, is sought against Orthotouch in the proposed class action.

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34. In addition, and as stated by me in my answering affidavit in the first intervention, I deny that Van der Sandt's application is *bona fide*.

34.1 She is not approaching this Court to do her own bidding, so to speak, but to do the bidding of Georgiou (12th Respondent), who is the main beneficiary of the investment schemes.

34.2 It is peculiar that she, as a pensioner, who I assume is not an affluent woman, and who invested a mere R175,000 in Highveld 15, will spend many tens of thousands of Rands in legal fees (if not more) to try and "save" the SoA (and now involve herself in the certification application in relation to Highveld 19 to 22), whilst the litigation in both courts are already opposed by competent sets of lawyers (acting for Georgiou and "his" company, Orthotouch).

34.3 Also, it is strange that Van der Sandt and her attorney, Mr Opperman (who has not been involved in either said applications until very recently when he started acting for Van der Sandt in the first intervention application), seems to know very much of the detail and background of the cases involved and history of the litigation.

34.4 Van der Sandt joined the HSAG on 29 June 2015 and made, besides the registration fee, only one further payment in 2016. It is effectively almost three years since she last supported the HSAG financially and I find it very strange that she now has such intimate knowledge of the current state of affairs of the HSAG and related matters.

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34.5 Van der Sandt is therefore, knowingly or not, just one of Georgiou's pawns in his strategy to make the class action litigation against him (i.e. both said applications) as expensive and drawn-out as possible - as indicated in my earlier Answering Affidavit.

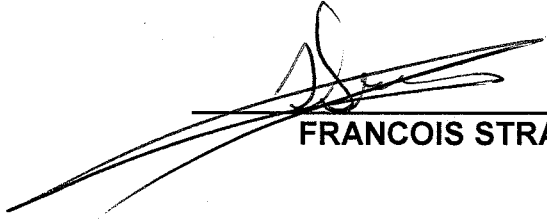
34.6 If Van der Sandt disputes this "status" I attribute to her and her *bona fides*, I challenge her and her instructing attorney (Opperman) to fully disclose the true source of the funding for the litigation herein and, if she claims to be funding it herself, why she would spend more money than her initial investment to "defend" such investment.

34.7 In this regard, I also refer to the contents of my affidavit filed in the first intervention application, to which I also refer to below and attach to this affidavit. For instance, either also referred to the other forms that are used by Georgiou to intervene at the 11th hour, or simply, in order to cause additional costs. Numerous postponements in the past have been caused by such interventions – thereby prolonging the class action litigation.

35. Given that Opperman incorporates into his affidavit, and attaches thereto, the affidavit of Van der Sandt in her first intervention application, I similarly attach hereto (and marked "A") my Answering Affidavit in the first intervention application, and incorporate the contents thereof herein, in response to Van der Sandt's affidavit.

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36. I therefore request that Van der Sandt's Application to Intervene be dismissed with costs on a punitive scale of attorney and client, given the complete lack of merit and given the ulterior motives for bringing this application as set out above.


FRANCOIS STRAUSS

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^{Paarl} THIS^{5th} DAY OF JUNE 2019, 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.


COMMISSIONER OF OATHS

NAME: *H. F. de la...*
DESIGNATION: *CA*
ADDRESS: *Paarl SAPS
Bergendal*

SUID-AFRIKAANSE POLISIEDIENS
COMMUNITY SERVICE CENTRE

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PAARL
SOUTH AFRICAN POLICE SERVICE

Ekertifisering dat bostaande verklaring deur my afgelees is en dat die verklaarder erken dat hy/sy vertroud is met die inhoud van hierdie verklaring en dit begryp. Hierdie verklaring is handtekening/mark/druk in my teenwoordigheid daarop aangebring.
I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the contents of this statement. This statement was sworn to/affirmed before me and deponent's signature/mark/thumbprint was placed thereon in my presence.
te *Paarl* op *2019-06-05* om *15:30* uur
.....
HANTERENDE NEDERLANDSE EN FRANSE WAAKMEESTER VAN DE OATHS
(SIGNATURE) OF COMMISSIONER OF OATHS
.....
VOLLE VOORNAAM EN AFTREK IN DRUKSKRIJF
FULL FIRST NAME AND SURNAME IN BLOCK LETTERS
Van der Sandt
.....
BESIGHEIDSAADRES (STRAATNAAM EN NOO) / BUSINESS ADDRESS (STREET NAME AND NO.)
Paarl
.....
RANG/RANK
SA POLISIEDIENS
SA POLICE SERVICE

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

Case No: 42334/14

In the application of:

MAGDALENA GERBRECHT VAN DER SANDT

Intervening Party

In re:

The matter between:

JURIE JOHANNES GELDENHUYS

First Applicant

ARTHUR BRADY COCHRANE

Second Applicant

SHARON ANN VLOK

Third Applicant

BRIAN JOHN WAXHAM

Fourth Applicant

CHRIS NEL

Fifth Applicant

HYMIE PINSHAW

Sixth Applicant

FRANCOIS STRAUSS

Seventh Applicant

LEA MAGDALENA MEYER

Eighth Applicant

and

ORTHOTOUCH LIMITED

First Respondent

..... and twenty six others

.....

In re:

The *ex parte* application of:

ORTHOTOUCH LIMITED

(REGISTRATION NUMBER: 2010/004096/06)

Affidavit – Van der Sandt intervention

I, the undersigned,

FRANCOIS STRAUSS

do hereby make oath and say that:

1. I am an adult male financial advisor residing at 16 Oranje Street, Paarl, Western Cape.
2. I am the Seventh Applicant herein and also a member of the HSAG Steering Committee and duly authorised to attest to this affidavit. If and when necessary, affidavits on behalf of the other Applicants will be filed.
3. The facts contained herein fall within my personal knowledge unless otherwise stated or implied, and are true and correct.
4. I have read the affidavit of Ms Magdalena Gerbrecht van der Sandt (the Intervening Party) dated 31 January 2019 in support of her application to intervene in the main application herein (i.e. in "the setting aside application").

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5. Without opposing her application, I nevertheless hereby wish to respond to some of her averments on behalf of the above Fourth to Ninth Applicants (*"the Applicants"*).
6. The attorneys of record of the Intervening Party (I will hereinafter referred to the Intervening Party as "Van der Sandt") was notified in writing, shortly after the service of this application on the HSAG's attorneys, that none of the Applicants (in the main application) are opposing her intervention. The decision not to oppose the intervention was made purely in order to prevent unnecessary legal costs and to avoid a pointless opposed application.
7. It is therefore not an acknowledgement that Van der Sandt's application is either *bona fide* or that it has any merit – for the reasons stated below.
8. This affidavit is filed simply to correct many of the incorrect and offensive allegations – some outright falsehoods and even defamatory remarks made by Van der Sandt towards the HSAG and its legal advisors.

SUMMARY

9. From the outset, and in summary of what is stated further below in this affidavit:
 - 9.1. I submit that none of the allegations made by Van der Sandt, even if all of them were true (which they are not), has an influence on the actual merits of the setting aside application. She simply alleges that her intervention is to, firstly, "support the Scheme of Arrangement" – hereinafter referred to as "the SoA" with a view to continue her receipt of monthly interest and (eventually) her capital and, secondly, to oppose the setting aside as she believes she and other investors would be prejudiced by the setting aside – which I submit amounts to exactly the same thing.

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9.2.

- 9.2.1. In essence, this is a continuation of the fear mongering that has continuously been presented on behalf of Georgiou to investors, and now again to this Honourable Court, about the alleged consequences if Georgiou's proposals are "not accepted" and "adhered to".
- 9.2.2. This was also the case when the business rescue plan was proposed - where investors were intimidated and made fearful on how "little" they would receive back (through the liquidation of the Scheme) should the Business Rescue Plan ("BRP"), which involved smaller payments to them than before, was not accepted. This was similarly done when the section 155 SoA was proposed. And now, again, this Honourable Court is told how prejudicial it would be to investors should the SoA be set aside.
- 9.2.3. Meanwhile, Georgiou and the entities he controls have received more than R4.6 billion from investors in the said property scheme, yet (in the case of Highveld 19 to 22) did not transfer to them the properties as agreed and as set out in the prospectuses of the public companies.
- 9.2.4. In the case of Highveld 15 to 18, the investors have been divested of the properties that were transferred to such investment vehicles through the business rescue (and also the SoA). The existence of the SoA, which was sanctioned by the Johannesburg High Court, shields Georgiou, his family, his entities and other Respondents, from any claims by investors for the damages and losses suffered, failed BRP and (now) SoA, in view of the indemnity granted to him and others in terms of the said SoA.
- 9.2.5. Thus far, the investors had to be content with considerably reduced payments to them (under the BRP) and, again further reduced payments and rights under the SoA. Since June 2018, and despite the Court order sanctioning the SoA, Georgiou unilaterally instructed that interest

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payments are simply not paid to investors supporting the class action against him and members of the HSAG.

- 9.2.6. The Appeal Board of the Financial Services Board (FSB), chaired by former Judge President of the SCA (the honourable Howie JA) has already held unanimously in a written judgement that the non-transfers of the properties to the Highveld companies – which forms the heart of the case in the proposed class action – involved fraud on the part of the “individuals concerned”, and also that the non-transfer is a criminal offence under the relevant regulations governing property investment schemes.
- 9.3. The grounds upon which the SoA is sought to be set aside, involve amongst others the deliberate non-disclosure of highly relevant facts not only to this Honourable Court (which was approached on an ex parte basis), but also, more fundamentally, involve misrepresentations to the investors both in the SoA document itself and during the meeting at which a small minority of investors were present to approve the SoA.
- 9.4. Van der Sandt is not approaching this court to do her own bidding, so to speak, but to do the bidding of Georgiou (12th Respondent), who is the main beneficiary of the investment schemes.
- 9.5. It is peculiar that she, as a pensioner, who I assume is not an affluent person, and who has invested a mere R175,000 in the scheme concerned, will spend many tens of thousands of Rands in legal fees (if not more) to try and “save” the SoA, whilst the setting aside application is already opposed by competent sets of lawyers (acting for Georgiou and “his” company Orthotouch (First Respondent)). Ms Van der Sandt joined the HSAG on 29 June 2015 and made, besides the registration fee, only one further payment in 2016. It is effectively almost three years since she last supported the HSAG financially and I find it very strange that she now has such intimate knowledge of the current state of affairs of the HSAG and related matters.

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9.6. I mention in passing that Van der Sandt is, knowingly or not, just one of Georgiou's pawns in his strategy to make the class action litigation against him as expensive and drawn-out as possible (I refer to that briefly below).

(If she disputes this "status" attributed to her, I challenge her and her instructing attorney to fully disclose the true source of the funding for the litigation herein and, if she claims to be funding by herself, why she would spend more money than her initial investment to "defend" such investment). In terms of option 2 of the SoA, Van der Sandt chose to receive 40% of her historical investment in March 2017. In terms thereof she already received the full amount that she was willing to settle for and her joining of these proceedings are absurd. A punitive cost order will be requested against her during the trial of this matter, as she is grossly misleading this Honourable Court.

9.7. Mrs Van der Sandt, I respectfully submit, is one of many "puppets" used by Georgiou in this class action litigation. The few I know of is:

- a) Ms Elna Visagie ("Visagie"), an erstwhile HSAG Steering Committee Member, who had accepted a six figure monthly salary from Georgiou/Orthotouch after being one of the initial drivers of the class action on behalf of investors;
- b) Mr Helgard Hancke, who was Ms Visagie's successor as an HSAG Steering Committee Member, who secretly settled his family's claim with Georgiou whilst still sitting on the steering committee. At a later stage Mr Hancke tried to intervene at legal proceeding in this court, as well as the Pretoria High Court, but withdrew it at the last minute with costs. When the costs were recouped by the HSAG attorneys, Mr Hancke was unable to pay the amount of ± R60 000, but shortly thereafter, his attorneys paid the amount, which was unquestionably paid by Georgiou/at his behest;

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- c) Mr Herman Lombaard, who was a fierce supporter of the class action against Mr Georgiou and other, who admitted to the attorneys and Johan Stander (co-steering committee member) that he was offered a six-figure monthly salary from Georgiou and thereafter jumped ship;
 - d) All the erstwhile Applicants (First to Third Applicants in this Honourable Court) as well as all the (First to Fourth) Applicants in the Pretoria certification of the class action matter. Georgiou also settled their claims in secret with the Applicants, on the condition that they substitute the HSAG attorneys of record and thereafter tried to withdraw the whole class action and setting aside of the SoA. Georgiou and Orthotouch appealed the applicants' favourable judgments but eventually, during argument at the Supreme Court of Appeal, withdrew their appeals and tendered punitive costs for the appeal.
 - e) A certain Mr GR Pollastrini who peculiarly appeared in other Highveld Syndication matters, unrelated to the HSAG.
- 9.8. Insofar as the HSAG and the representation of the HSAG attorneys are concerned:
- a) As explained in more detail below, the HSAG (the Highveld Syndication Action Group) - which is a voluntary association (without separate legal personality), was established by investors in the early stages (2014) of the class action litigation. It has all along represented the interests of all investors, i.e. the investors in each of the eight different Highveld Syndication companies (i.e. Highveld Syndication Ltd 15 to Highveld Syndication Ltd 22).
 - b) The HSAG attorneys (Theron & Partners) take instructions from the steering committee of the HSAG, in consultation and on advice of counsel, believed to be in the best interest of the some 7 000 HSAG members, in conjunction with, where and when necessary, discussions with the

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Applicants. The current steering committee consists of three people, including myself, Stander and attorney Theron.

- c) Apart from taking instructions from the HSAG steering committee, our attorneys and legal team have certainly always represented the interests of all the investors in Highveld 15-22 (and not only those who have invested in Highveld 19 to 22), despite no certification application having been issued yet on behalf of Highveld 15 to 18. For instance, as a mere example, during the long drawn out (unsuccessful) settlement negotiation, it was always clear that the steering committee and attorneys negotiated on behalf of (HSAG-) investors of all the eight Highveld companies, and not only Highveld 19 to 22. I deal with this in more detail later below. During or about September 2016, almost 40% of the HSAG members who opted to settle with Mr Nic Georgiou, were investors who had investments in HS15 to 18. Mrs Van der Sandt was not one of these persons and did not indicate during these settlement negotiations that she wanted to settle her claims. The aforesaid is confirmed by the HSAG attorneys.
- d) Also, the HSAG's website is widely publicised and known to Highveld Syndication investors, not only to the HSAG's members. It is administered at the behest of the HSAG steering committee.
- e) The website has a disclaimer and is available for members and supporters of the HSAG and prospective claimants. The website is updated from time to time on the status of the class action litigation. In that sense, the HSAG is transparent regarding the current state of the litigation conducted. Van der Sandt complains that, as an investor in Highveld 15 only, her interests are not represented, given that "no litigation" has been initiated yet on behalf of the investors of Highveld 15 to 18. Apart from the fact that this is wrong, as all litigation involving the setting aside of the SoA involve the interests of Highveld 15-18 and her intervention would not have been necessary if her rights were not affected. I also mention that membership

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of the HSAG is completely voluntary, meaning that any member of the HSAG who is not happy with the manner in which, his or her interests are being represented, can pursue his or her own litigation. (as in this case).

f) Mrs Van der Sandt has only contributed R2 000 towards the HSAG which contributions were made three years ago and it is clear that she has not supported the HSAG financially for many years. She indicated on 31 August 2017 that she wanted to withdraw from the HSAG but only formally withdrew from the HSAG on 29 May 2018. I find it telling that all the newsletters that she attached to her papers were subsequent to her letter of August 2017. I attach hereto, marked Annexure "FS1.", her cancellation of membership of the HSAG.

9.9. Contrary to what Van der Sandt alleges, the delay in the class action, including the setting aside application, has been of the making of Georgiou and the parties hereto that he controls, as described below. From the facts referred to below, I submit the litigation is more than adequately handled by the HSAG attorneys and counsel that are instructed by them.

9.10. Even though the class action litigation, including this current application, has broad support from the investors, and naturally from the HSAG members, I am advised that the level of such support is irrelevant for purposes of establishing the locus standi of the current Applicants (or for purposes of the existence of an adequate mandate to the HSAG attorneys). Therefore, this application can and should proceed even if the HSAG is to "disband" tomorrow and even if the current application were to receive no outside support, i.e. support apart from the current applicants (or rather from all or some of Fourth to Ninth Applicants, given that the First to Third Applicants are no longer parties to the litigation) – the current applicants, and HSAG's attorneys' mandate from them to continue with this application, remain unaffected.

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9.11.

- a) The setting aside application is integral to and has always been regarded by the HSAG as part and parcel of the "class action litigation" given the fact that the SoA document, ex facie its terms, thwarts the class action in view of its clauses whereby Georgiou and all others are indemnified (absolved) from claims for any losses by investors.
- b) In any event, the certification application will surely be opposed, amongst others, on the basis of such indemnification.
- c) The fact that the setting aside application is regarded by the HSAG as part and parcel of the "class action litigation" – in that the SoA is first to be set aside before the continuance of a large portion of the certification application in Pretoria – has always been stated by HSAG, repeatedly and publicly. This is reflected on its website and in various court papers filed in the various interlocutory matters. If any member of the HSAG is unhappy with this stance or approach, they would either not have become a member of the HSAG or they would have resigned their membership.
- d) I point out, however, that this approach (to first set aside the SoA) has changed partly in that it has been decided a few months ago to proceed with a so called "fast track" application, whereby a certificate is sought to institute a class action on behalf of certain investors (in Highveld 21 and 22) based on the so-called buyback agreements they have with Georgiou and others (which is one of the many grounds for the class action) which agreements, it was recently held by this court, remain unaffected by the SoA. Such claims (buy backs) are already referred to in the founding papers of the certificate application.

9.12. I am also advised, which advice I believe to be to be correct, that actual claims of investors have not become prescribed, opposed to as alleged, amongst others given section 12 and 13 of the Prescription Act 68 of 1969,

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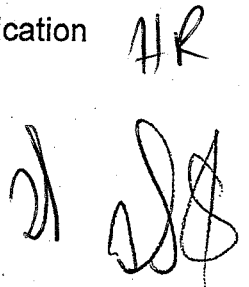
and given the fact that *ex facie* the terms of the SoA, Georgiou and all others are absolved from liability, and that it has been sanctioned by court.

10. I submit that the fear mongering of Van der Sandt, on behalf of Georgiou, should not be countenanced by this court. Such fear mongering, by means of the comparison she wishes to draw between the current scenario (with the SoA in place) is her own opinion and definitely not that of the supporters of the HSAG. The somewhat speculative alternative scenario if it is set aside, is in any event, I submit, irrelevant to the merits of the case. Even if the alternative to the SoA (whatever that might be) might result in short-term prejudice to investors (which I deny), I submit that most investors would be better off over the long run if the class action/s is allowed to run its course. Despite being sanctioned by the court, Mr Georgiou and his entities have breached and still breach the terms thereof as he wishes (e.g. refusal to pay HSAG members in terms of the SOA). The only people currently "winning" are Mr Georgiou and his accolades which I submit, includes Ms Van der Sandt.
11. Apart from Van der Sandt's (or rather Georgiou's) fear mongering, the other obvious aim of "her" intervention is to try to smear and slander the steering committee and attorneys for the HSAG in the eyes of investors with the hope to reduce the support amongst investors for the class action litigation. Given the long delay in the litigation, it is understandable that some investors have become frustrated with the long delay in the class action litigation. Georgiou has been conducting and funding a well-organised smear campaign already since 2015 to undermine the class action litigation, on many fronts. This smearing of Theron and the above parties, and the further costs occasioned by this intervention application, is just part of that campaign.

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The Founding Affidavit of Van der Sandt:

12. As submitted, I believe that all the allegations by Van der Sandt (other than relating to *locus standi*) - even if correct – are irrelevant to the merits of the setting aside application. I therefore proceed to deal only with certain paragraphs of her affidavit, which I believe warrant a response at this juncture. The allegations in her affidavit are therefore denied insofar as they are not expressly dealt with and admitted in this affidavit.
13. In this regard, I am not for current purposes going to deal with the class action in detail, as I believe Georgiou is intent on gaining some knowledge, to his advantage, of the HSAG's current level of support and its current strategy towards the class action litigation. Again, I submit the status of any other litigation involving investors is irrelevant for purposes of this setting aside application.
14. **Ad paragraphs 14 and 15 of Ms Van der Sandt's affidavit:**
- 14.1. Contrary to what Van der Sandt alleges, the delay in the setting aside application is caused by Georgiou and Orthotouch, not by inaction by Applicants. The history of intentional delays on the part of Georgiou is set out later below. Georgiou and Orthotouch have also failed to date to file any opposing affidavits herein, despite same being long overdue, averring simply that they do not have to do so until an order of honorable Mr Justice Spilg's for substituted service have been complied with.
- 14.2. Van der Sandt refers to Applicants' non-compliance with this order for substituted service. The honourable Spilg J on 25 May 2016 made an order for substituted service of the main application (setting aside application) on the investors. The manner in which such service was to take place in terms of the order was not sought by Applicants (who only suggested publication in a newspaper), but was the approach of Spilg J himself in his judgment based on the somewhat limited information reflected in the affidavits before court at the time. (He simultaneously adjudicated on a failed application

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under Rule 30 by Georgiou and others to dismiss the application on procedural grounds).

14.3. The relevant portions of the said order, as amended by his subsequent order of 1 September 2016 - copies of which are attached hereto marked **Annexure "FS1.1"** and **Annexure "FS1.2"** respectively - read as follows at paragraph 48 thereof (own underlining):

- a. The Rule 30A application is dismissed.
- b. It is declared that the joinder of all investors in the application for rescission alternatively for leave to appeal ("*the main application*") is unnecessary.
- c. The first and third respondents are to jointly provide to the applicants' attorneys of record by no later than 6 June 2016 a list agreed between such respondents, of all persons who were entitled to vote in respect of the arrangement and to whom notice thereof was given;
- d. The second respondent is to provide to the applicants' attorneys of record by no later than within three weeks of the Respondents exhausting the appeal process a list of all persons who voted, whether in person or by proxy in favour of or against the approval of the arrangement;
- e. Each such list shall contain a list of all known contact details, including email addresses and cell phone numbers, with leave granted to the applicants to approach this court on the same papers, duly supplemented, if they contend that information available to such respondents of email addresses and cell phone numbers has not been provided;
- f. The applicants shall no later than within eight weeks of the Respondents' exhausting the appeal process, ... give notice of the main application [to investors].....;
- i. Give notice of the main application to each persons who voted at the meeting in terms of section 155(2) of the Companies Act convened on 12

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November 2014 to consider the proposed scheme of arrangement provided that:

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2. Such notice shall be by way of email or SMS, or failing which, by registered post, stating that:

(a) The founding papers in the main application, are accessible and available for reading and download on the website "hsaction.co.za".

(b) stating the date of hearing of the main application and the time period for filing a notice of opposition, which shall be 10 days from date of confirmed transmission, and the time period for filing opposing papers being 20 days from date of such confirmed transmission;

(c) and in the case of emails reproducing the same contents as the notice which is to appear in the newspaper as set in the following paragraph whilst the SMS shall contain a link to the aforesaid website;

14.4. After the appeal processes in respect of Spilg J's orders (as meant in paragraph 48(d) of the order) were finally exhausted at the end of 2016 (but the SCA order was only received by Theron & Partners in April 2017), Third Respondent ("Klopper" – the business rescue practitioner) and Orthotouch – after first having to be put them to terms by letter – purported to provide a "list" as ordered. However, the "list" they provided was not the list ordered. The list of 435 pages merely contained names of all approximately 18,000 investors in no apparent order and with no other detail as ordered, for instance email addresses, cell phone numbers, and so forth. Eventually

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some list was provided on 6 June 2018 after our legal representatives had to approach the judge who was appointed to case manage the matter. It deserves to mention that the proceedings were substantially delayed as a result of an attempted withdrawal of the class action and setting aside litigation by Mr Georgiou, which commenced in November 2016 and only withdrawn by Georgiou and Orthotouch, with the tendering of a punitive cost order at the SCA hearing on 8 May 2018.

- 14.5. More significantly, there were also complications regarding the other list that had to be provided by the Second Respondent (Cohen - the Receiver under the SoA) as referred to in par 48(d) of the order. Cohen has applied to have the order amended (by deleting paragraph 48 d thereof), so as to absolve him from the duty to provide Applicants with such list – on the grounds that he is not in possession of such a list. It is unclear what the status of this application is, but it has not yet been heard. Cohen tendered his resignation as Receiver in terms of S155 in the media but until date hereof nobody has received any formal notification that it indeed happened.
- 14.6. Applicants (and their attorneys) have therefore not yet received such list from Cohen in order to commence effecting the substituted service. A list of some sorts in this regard has recently, after some effort on our part, been obtained from Orthotouch after Cohen informed us that they (Orthotouch) should have such list. But this list is also given in incomplete form, I suspect deliberately so, as it does not contain any contact details of investors as required in terms of the order. I attach in this regard recent correspondence reflecting the attempts by our attorneys to obtain such list, namely **Annexure "FS2."**
- 14.7. It will also be noted from the order of the honourable Spilg J that it provides for the giving of notice to certain investors (namely those that voted on the Scheme or Arrangement) by means of email or SMS, or by registered post, and to all the other investors by means of publication of notices in certain

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newspapers. The order has no bearing on the filing of opposing papers by the Respondents in the application itself. Nor does the order suspend the operation of the court rules pertaining to the filing of further affidavits.

- 14.8. The above reasoning was communicated to Georgiou's attorneys and they were invited to explain on what basis they maintain that the opposing affidavits only need to be filed once the substituted service order has been complied with. They chose not to engage with us on their reasoning, and simply answered that the affidavits are not due until the order for substituted service is complied with. In this regard I attach hereto two recent letters reflecting the aforesaid, marked **Annexure "FS3."**
- 14.9. In any event, and more importantly, even if the complete lists were to be obtained, substituted service cannot yet be effected as the order provides that such notices to investors are to reflect the *date of the hearing* of the setting application (see par f(i)(2)(a) of the order). Such hearing date will only be known once all parties' affidavits have been filed and the registrar allocates/determines such date.
- 14.10. An application on behalf of Applicants to amend the said order of Spilg J will be launched in due course, now that we have eventually heard from Orthotouch regarding their "list" in lieu of Cohen's (non-existing) list. This requested amendment will be sought given the problem of obtaining investors' details (the lists) and due to other administrative issues flowing therefrom. A declaratory order will also possibly be sought to confirm that the substituted service is only to occur once a court date has been obtained.
- 14.11. The above cavalier attitude of Georgiou and Orthotouch concerning their non-filing of papers herein is just part of the long history of a total disregard on their part for the court rules and of intentional delays to frustrate the class action litigation. I refer to this in more detail in the paragraphs which follows, including how it came about that two judges have independently of one another held that Georgiou has "abused the court process" with regards to

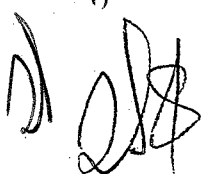
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one particular delaying tactic both in this court and the Pretoria court where the certification application is heard.

Stratagems to delay the class action proceedings:

15. Soon after the commencement of the certification proceedings in the Pretoria court, Georgiou and Orthotouch Ltd, which he controls directly or indirectly, and on occasion Hans Klopper (Third Respondent), started to delay the process by raising numerous wholly unmeritorious "defences" without engaging with the merits of the matters. By so doing they have managed to delay the setting aside application in this court by means of various tactics.
16. Rule 35(12) notices:
 - 16.1. After issuing the setting aside application in March 2015, various rule 35(12) notices were filed by Georgiou and others, including around April 2015, which notices called for numerous documents, for instance copies of the various Prospectuses.
 - 16.2. Not only were these documents already in possession of those Respondents, but they had been requested (and given) under similar rule 35(12) notices by the Georgiou (or entities controlled by him) in the certification application.
17. Irregular step claim:
 - 17.1. Rule 30 notices were filed by Georgiou and others, alleging that the setting aside application is irregular due to procedural shortcomings concerning the substituted service (on investors) proposed by Applicants. On the strength of these notices, a rule 30 application was then brought by Georgiou, Orthotouch and Klopper in May 2015.

(I point out that in a meeting before Majepelo DJP in May 2015, the judge unfortunately indicated that the first available date for an opposed Motion

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was in March 2016, and he set the matter down for then by agreement by the parties).

- 17.2. The said rule 30 application was heard by the honourable Spilg J on 15 March 2016.
 - 17.3. A counter application by Applicants (in Johannesburg) for directions concerning substituted service was heard simultaneously with the said rule 30 application. This application for substituted service succeeded, with Spilg J – as stated earlier above – giving directions as to the manner in which notice has to be given.
 - 17.4. The judgement dismissing the rule 30 application was handed down on 25 May 2016.
 - 17.5. In the judgement, the honourable Spilg J lamented the Respondents for their lack of cooperation in respect of the progress/ continuance of the litigation (in paragraph 29 of the judgment).
18. The application for leave to appeal against Spilg J's orders:
- 18.1. Applications for leave to appeal were brought by Orthotouch and Klopper, despite the interlocutory nature of the proceedings before Spilg J, and despite his order not being appealable.
 - 18.2. Spilg J refused leave to appeal in a judgement handed down on 1 September 2016, finding that not only is the matter not appealable, but that there are no prospects of success on appeal.
 - 18.3. In paragraph 15 and 16 of his judgement, he remarked:

"This is a classic case of a party performing cart wheels with no purpose other than to frustrate the merits of the case been dealt with expeditiously".

and:

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"The issue raised now are symptomatic of a Stalingrad defence, where side issues are taken on appeal simply to delay the matter and build up costs for a litigant against those who have deep pockets".

19. The petitioning of the SCA:

19.1. Despite Spilg J's above stern words in his judgement, both Orthotouch and Klopper petitioned the Supreme Court of Appeal in September 2016.

19.2. Orthotouch's petition was dismissed end 2016. However, in the meantime Klopper *withdrew* his petition before it was considered, in view of the purported "withdrawal" of the setting aside application referred to below. Klopper was of the view that this withdrawal rendered the petition academic.

20. The irregular collusion to "withdraw" the main application:

20.1. In November 2016, Georgiou attempted to sabotage the setting aside application. He conspired with the Applicants there to have them file a Notice of Withdrawal of the application – in return for receiving an undisclosed amount from him.

20.2. This occurred in secret, i.e. without them notifying my attorney of record or any investor supporting the class action, of the plan. At the initiative of Georgiou, a new attorney was appointed (Jeff Donenberg) and, simultaneously, a notice of withdrawal of application was filed on behalf of all the Applicants.

20.3. The exact same strategy was followed in the Pretoria court with the certification application, where First to Fourth Applicants were also persuaded by Georgiou to "withdraw" the main application in return for payment of an undisclosed amount.

20.4. It was however common cause that these cited Applicants were initially chosen (from the many investors actively supporting the litigation) as mere

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nominal or representative Applicants acting not (only) on their own behalf but also of the intended class involved (or at least on behalf of the other investors supporting the class action).

- 20.5. None of the above facts were denied in the Affidavits filed of record, and was also found to be correct by this court.
- 20.6. A successful application to join new nominal Applicants (being me and Fifth to Eighth Applicants) was filed in both respective courts, together with an application to set aside such withdrawal as an irregular step. Such application was opposed by Orthotouch and Georgiou.
- 20.7. This honourable court (per the Honourable Ismail J) agreed that such "withdrawal" constituted an abuse of process, and Ismail J thus – in a judgment handed down on 13 March 2017 – set it aside as being an irregular step. He held in paragraph 33 and 34 of his judgment that:-

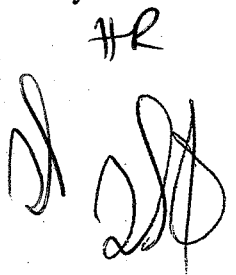
"the withdrawal by the nominal applicants of the action [sic] was nothing other than an act to sabotage the claim of the other investors, in the form of the HSAG".

It was also held that:-

".....this court cannot idly sit by and observe or countenance such conduct designed to deprive the investors of their rights to proceed with any intended action they may have".

- 20.8. Similarly, the honourable Murphy J in the Pretoria court set aside the similar purported withdrawal of the main application, holding in paragraph 19 of his judgment (of 7 April 2017) that it was an abuse of court process. He held (own underlining):-

"The applicants and Georgiou colluded with one another in a manner that can only be described as an abuse of the court process. They have left the other members of the class seeking certification of the class action high and dry. Had the applicants wanted to withdraw from the application on *bona fide* grounds, they were at liberty

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to do so provided they did not do so in a manner compromising the rights and contingent rights of those they sought to represent”.

21. Applications for leave to appeal against the orders of Ismail J and Murphy J:

Unsurprisingly, Georgiou and Orthotouch filed applications for leave to appeal against both the said judgements which set aside the “withdrawal” - which applications are to be heard early August 2017.

22. Leave was granted by both courts, given the novel nature of the issues. On the day of the hearing before the SCA, both appeals were however withdrawn, with Georgiou and Orthotouch tendering costs on the punitive attorney and client scale. I submit this is telling.

23. **Ad paragraph 19 to 22 thereof:**

I refer to of the Founding Affidavit by Mrs Vlok (the (erstwhile) First Applicant), in which the reasons are presented as to why the “dispute” with Bosman and Visser concerning the R883 million is contrived and, therefore, just an excuse from Georgiou (acting through Zephan) not to give transfer of the properties.

24. **Ad paragraph 22 thereof:**

It is common cause that Orthotouch is controlled, directly or indirectly, by Georgiou. This is also reflected in the SoA document.

25. **Ad paragraph 42 thereof:**

- 25.1. As reflected in the *ex parte* application for the court’s sanctioning of the SoA, including proxies, 2,914 votes (at the meeting of investors on 12 November 2014) had been brought out in favour of the SoA (and 155 votes against). Even if these figures were correct, the in favour votes constitute a very small percentage of the total number of investors. There are more than 18,250

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investors, with many having more than one vote given that many are invested in more than one of the eight different Highveld companies.

25.2. Most of those investors deliberately decided not to vote in favour of the Arrangement and to rather abstain from voting. Given that investors could also vote by postal ballot, it is clear that a relatively small percentage of the investors voted at all.

26. **Ad paragraphs 47 and 48 thereof:**

The database to which is referred to in the certification application is outdated and quite incomplete, as indicated. The one received (the spreadsheet) in the meantime from Orthotouch (eventually and pursuant to the order of Spilg J) however does not contain much further (more) detail, it appears, although this spreadsheet is being analysed.

27. **Ad paragraph 54 thereof:**

The certification application was largely already drafted and ready for issuing, when the SoA document was published/received. Since there was some concern regarding the possible prescription of some of the proposed claims, the full implications and terms of the SoA were not fully considered when a few pages were attached thereto prior to issuing. At that stage, it was known that the SoA still needs to be approved and, more importantly, sanctioned by the court, and that such sanctioning could be opposed. Interestingly, however, and as mentioned earlier, this court was approached for such sanctioning despite the SoA reflecting that such court (for purposes of sanctioning) would be the Pretoria Court. I submit it would be interesting to determine what the precise reasons were for Orthotouch approaching a different court.

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28. **Ad paragraph 62 thereof:**

28.1. For the reasons stated earlier, I deny that our attorneys are acting contrary to any mandate received.

29. **Ad paragraph 79 thereof:**

The independently drafted bills are signed off by the steering committee of the HSAG. At the conclusion of the litigation, full accounting can be presented to members of the HSAG. The reason why the financial position of the HSAG is not disclosed more broadly, is that Georgiou is extremely eager to ascertain what the financial position/strength of the HSAG is, so that he can adapt his litigation strategy accordingly. Mr Georgiou has mentioned to Messrs Stander and Theron, during settlement negotiations, that the Highveld Syndication investors do not have the funds to litigate against him. He also insisted that a list of the "weak" and "poor" be given to him. This was obviously not done as it is a transparent attempt from him to exploit those members further. It is clear that Mr Georgiou hopes to run the money coffers of the HSAG dry, so to speak, through drawn-out litigation.

30. **Ad paragraph 82 to 88 thereof:**

I deny that any claims that the investors had has become prescribed, for the reasons already stated above.

31. **Ad paragraph 94 thereof:**

Of the previous 6 688 investors who have signed up to the HSAG, there are currently 6 817 registered members, as confirmed by Mr Johan Furstenberg of the HSAG attorneys (Theron & Partners). According to our records only 158 HSAG members have resigned formally (in the manner that Mrs Van der Sandt has done in May 2018) and about 3% members indicated informally that are forced to by Georgiou/Orthotouch or want to resign.

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32. **Ad paragraph 95 thereof:**

- 32.1. It is stated here that "Theron chose" to bring the setting aside application. Theron does not make such broader or important decisions. Such decisions are made by the HSAG steering committee, of whom he is only one member – in consultation with and on advice of counsel, and he is not at all the dominant or principle decision maker.
- 32.2. It is only on procedural issues that Theron (in conjunction with inputs from counsel if required) will make "decisions", and even then he will inform the steering committee with the view to obtain their views, if it relates to a significant procedural issue.
- 32.3. The impression created by Van der Sandt, also in other paragraphs, that this litigation is driven by Theron, and that it is furthermore done at his behest and/or for his firm's benefit, is ridiculous and totally false.

33. **Ad paragraph 97.1 thereof:**

- 33.1. The allegation that Theron demanded a 1% commission payment, as confirmed by Theron, Stander and Furstenberg, is a blatant lie. He never mentioned payment of commission to him, let alone demanding same. The offering by Georgiou of a 1% commission was always only in relation to Stander, a broker (and also member of the HSAG steering committee) – and more specifically to the possibility of a 1% commission that Georgiou offered him (Stander) earlier (in April 2016) in the event of Georgiou managing to settle with Stander's own clients. This was never a demand by Stander. (I refer to Stander and Theron's confirmatory affidavits in this regard). Stander in fact told Theron and Hancke (erstwhile steering committee member) about this offer of Georgiou to him of a 1% settlement commission.

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33.2. Regarding the handwritten note referred to in paragraph in paragraph 97.1.4, Stander informs me that the handwritten note which he gave Georgiou came about as follows (I refer to his confirmatory affidavit herein):

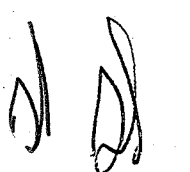
- (a) A meeting (where Stander, Theron and Furstenberg were present) was held in Stellenbosch (Weltevreden farm) over 30 and 31 March 2017 specifically to sign the more than 800 settlement agreements for HSAG members who earlier responded that they wish to settle.
- (b) On the last day, after having concluded the lengthy meeting and realising that Georgiou does not intend signing the contracts, Georgiou indicated that he wanted to settle the whole class action (i.e. the 6 688 HSAG members). Georgiou requested Stander to indicate to him, on a piece of paper, what would be the "worst-case scenario" concerning costs and legal fees payable by him (Georgiou) be under a settlement (apart from capital payments due), in the event of all 6688 HSAG members' claims being settled (and not only the more than 800 at that stage).
- (c) This Stander did in a matter of minutes by writing the note for his own purpose and clarity. Neither Theron nor Georgiou (or Furstenberg) were involved in writing the note and did not give inputs in any items or figures on Stander's note. Georgiou then asked that Stander passes him the page 50 that he can study it, but never returned it. Stander also explained these figures in a letter sent to Georgiou a few days later (on 5 April 2017), a copy of which is attached hereto marked "FS4". To put this handwritten note and Van der Sandt hearsay allegations in perspective, the discussion lasted no more than between three to five minutes, as opposed to the two days of intensive discussions to move Georgiou to sign the 800 plus agreements! Georgiou shifted the goalposts and then indicated that he could not

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only sign 800 contracts whilst the sword of a class action was still over his head.

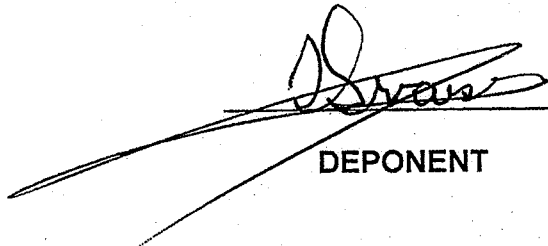
- (d) The first item on the note was a rough indication of total costs for the administration by the HSAG lawyers of 6 688 monthly payments in settlement, given that the settlement figure was payable in twelve instalments over a period of 60 months. (Payments were to be made to the attorneys, who in turn would have to verify and reconcile payments and then pay the various investors). Again, Stander did not inquire from Theron about the fees before writing them down. This amounted to less than R100 per payment per client for each of the twelve instalments (which I submit is a nominal fee) and is an average fee of less than R20 per month (per client).
- (e) The second item was a suggested payment by Georgiou to reimburse investors for the contributions made by them to the class action, calculated on the basis that if every investor were to be paid by Georgiou his/her full requisite contribution (assuming same was indeed paid). (This was however not the case). The rationale behind this was that the litigation do not cost the investors a cent.
- (f) The third item speaks for itself. The 6 688 number refers to the number of members of the HSAG in the event that further requisitions had to be made and if each member pays.
- (g) The 1% negotiator's fee, as indicated above, is the same percentage offered earlier to Stander (in March/April 2016) in the event of settlements being reached, now based on settlement of all HSAG members.

33.3. These figures were presented by Stander as part of a negotiation process, knowing that Georgiou would (as many times before) come back with counter figures. Therefore, Stander "aimed high" with these figures as one

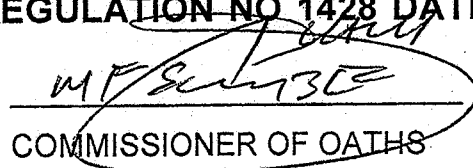
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often does during negotiations. I point out that, and Stander will confirm, that this negotiator's fee is a reference to him, and not a fee payable to Theron. No such fee was ever on the cards for Theron, nor did he ever request or expect same, as confirmed by him. The confirmatory affidavits by Stander, Theron and Furstenberg is specifically in corroboration of my submissions in respect of the so-called handwritten note.

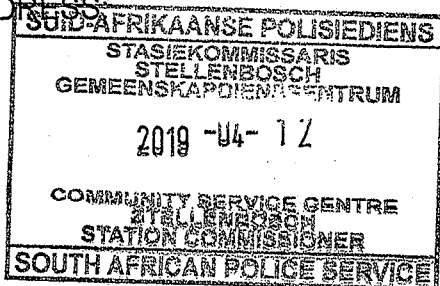
33.4. I trust the above puts to rest the reckless allegations made by Van der Sandt in her affidavit. Again, to avoid unnecessary cost, her intervention is not opposed by me and my co-applicants despite the fact, that her allegations are, so I am advised, legally irrelevant to the merits of the setting aside application. I therefore ask that an appropriate costs order is made in relation to her intervention, which I submit will be an order that she pays the cost occasioned by her (unnecessary) intervention.


DEPONENT

I CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED TO ME THAT HE/SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, WHICH WAS SIGNED AND SWORN TO BEFORE ME AT STELLENBOSCH ON THIS 12th DAY OF APRIL 2019 IN ACCORDANCE WITH THE REQUIREMENTS OF REGULATION R1258 DATED 21 JULY 1972, AS AMENDED BY REGULATION NO R1648 DATED 19 AUGUST 1977, AS FURTHER AMENDED BY REGULATION NO 1428 DATED 11 JULY 1980.


COMMISSIONER OF OATHS

FULL NAMES: *M F CLEGG*
STATUS: *POLICE OFF.*
STREET ADDRESS:



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"FS1"

BEËDIGDE VERKLARING – KANSELLASIE VAN REGISTRASIE TOT DIE HSAG EN
ABANDONERING VAN EIS DEUR MIDDEL VAN KLAS-AKSIE

Ek, die ondergetekende,

VOLLE NAME EN VAN: MAGDALENA GERBRECHT VANDER SANDT
IDNOMMER: 4911026126089
INV-NOMMER SOOS PER HSAG-STAAT: 0004213

verklaar hiermee onder eed as volg:

1. Ek is 'n meerderjarige man vrou, woonagtig te Du PISANIESTRAAT 16
ELSBURG (fisiese adres).

2. Die feite hierin vermeld val binne my persoonlike kennis, tensy die teendeel uit die inhoud blyk, en is na die beste van my wete en mening waar en korrek.

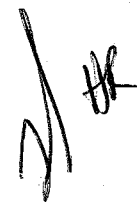
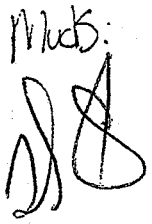
3. Ek het in die volgende Highveld Sindikasies belê:

Sindikasie	X	Ten bedrae van
HS 15	X	R 175000-00
HS 16		
HS 17		
HS 18		
HS 19		
HS 20		
HS 21		
HS 21B		
HS 22		

4. Ek het op 29-6-2015 (dd/mm/jjj) by die Highveld Sindikasie Aksie Groep ("HSAG") aangesluit met die oog op die instel van 'n Klas-Aksie teen die direkteure van die Highveld Sindikasie 15-22 maatskappye ("HS-Maatskappy/e"), mnr Nic Georgiou en ander partye ("Verweerders") uit hoofde van skades en verliese wat ek/my voorganger in titel gelyk het met die aankoop van aandele in een of meer van die HS-Maatskappye. Ek is begerig om my lidmaatskap by die HSAG en my beoogde eis/e teen die gemelde Verweerders deur middel van 'n klas-aksie prys te gee.

* Ek het my (totale) registrasiekoste ten bedrae van R 1000-00 en regs- en administrasiekoste ten bedrae van R 1000-00 betaal op 29-6-2015 (dd/mm/jjj).

* Op 31 Aug 2017 is u KANTOOR IN KENNIS GESTEL VAN ONTREKING WAT OP 31-8-2017 MET 'N SKRYWE VAN LI KANTOOR OPGEVOLG IS.

Parafeer hier: 
V.17.11 

6. Ek is bewus van die feit dat die registrasiekoste/s vir aansluiting by die HSAG, die regskoste en administrasiekoste nie terugbetaalbaar is nie.
7. Ek is verder ook bewus van die feit dat ek hiermee my eis/e op grond van my aandele in die Highveld Sindikasie maatskappy weens verjaring kan verbeur indien ek nie lid is van die aksie groep nie.
8. Ek doen hiermee uitdruklik afstand van my reg om nou of in die toekoms by die Klas-Aksie van die HSAG aan te sluit. Ek sal nie die HSAG of enige van sy agente, waarby ingesluit maar nie beperk daartoe nie, die regsman (of enige lid daarvan) van die HSAG, aanspreeklik hou indien ek wel weens hierdie rede my eis verbeur nie.
9. Ek is ook bewus daarvan dat, indien ek nou my lidmaatskap tot die HSAG prysgee, ek op geen latere stadium weer by die groep sal kan aansluit nie.
10. Ek versoek dus hiermee dat my naam van die HSAG-register verwyder word met onmiddellike effek.
11. Ek kan gekontak word by die volgende:

Huis telefoonnommer:	() _____
Werk telefoonnommer:	() _____
Selfoonnommer:	081 485 0996
Faksnommer:	() _____
E-pos adres*:	_____

Mud Sandt
DEPONENT

Ek sertifiseer dat die bovermelde handtekening die juiste handtekening van die deponent is en dat hy / sy aan my erken het dat hy / sy die inhoud van die verklaring ken en begryp, welke verklaring geteken is te Elsburg op hierdie 29 dag van May 2018 ooreenkomstig die voorskrifte van Regulasie R.1258 van 21 Julie 1972, soos gewysig deur Regulasie R.1648 gedateer 19 Augustus 1972, soos gewysig deur Regulasie R.1428 gedateer 11 Julie 1980.

Volle name: Vuyani Nkomo
 Ampsbetiteling: Capitain
 Adres: 1017 Dutoit Street
Elsburg

Nkomo
 KOMMISSARIS VAN EDE
 SOUTH AFRICAN POLICE SERVICE
 STATION COMMANDER
 2018 -05- 29
 ELSBURG
 SOUTH AFRICAN POLICE SERVICE

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED.
.....	25 May 2016
SIGNATURE	

CASE NO: 42334/2014

In the matter between:

JURIE JOHANNES GELDENHUYS

First Applicant

ARTHUR BRADY COCHRANE

Second Applicant

SHARON ANN VLOK

Third Applicant

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And

ORTHOTOUCH LIMITED

First Respondent

DEREK PERDOE 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

Handwritten initials:
JHR
JH

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)

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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")

JUDGMENT

SPILG, J:

25 May 2016

INTRODUCTION

1. Each applicant had invested in one of a number of public companies that were formed as property syndications. Each company was established to acquire certain specified properties. The properties typically comprised smaller shopping centres around the country.
2. The eight companies are the fourth to eleventh respondents, being Highveld Syndication no 15 Ltd going consecutively up to Highveld Syndication no 22

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Ltd. It is evident that they are associated companies, with at least a common controlling mind. They will be referred to collectively as the Highveld Syndications.

3. In terms of the prospectus of each company the capital raised was to be utilised to fully pay for and procure unencumbered title to the specified properties, many of which, it was stated, had already been acquired. The prospectuses were not provided to the court as they were not considered necessary for present purposes.

It however appears that the net rental income from the shopping centres acquired would be distributed on a monthly basis to investors presumably in the form of dividend income. It is alleged that the investment proved attractive particularly for pensioners. This is understandable as the scheme promised a regular monthly income return while the value of the capital base, comprising the properties, was likely to appreciate over time or at least remain intact.

4. The applicants alleged that the prospectuses intimated that each contract for the purchase of the properties in question was available for inspection. The applicants however claim that the seller was not in fact the owner of many of these properties. It was subsequently ascertained that the purported seller of the properties, which it is alleged was not named in the prospectus, turned out to be Zephan Properties (Pty) Ltd ('Zephan'). It is the thirteenth respondent.
5. Each prospectus mentioned that Zephan had concluding a 'head lease' in terms of which it would leaseback the properties from the particular Highveld Syndication and in turn sub-lease to the existing tenants. Accordingly each Highveld Syndication would not itself conclude a lease with the individual tenants but would look to Zephan for a set rental for the entire centre and presumably Zephan would in turn charge its own rental to the sub-tenants.
6. It is also alleged that the prospectuses contained an undertaking in terms of which Mr N Georgiou, Zephan and the N Georgiou Trust would buy back the shares after five years for the same price at which they were originally bought, thereby also warranting or representing to investors that their investment was safe. Some R3.6 billion was invested by members of the public into the eight Highveld Syndication companies.
7. Each Highveld Syndication was placed under business rescue in about December 2011. Hans Klopper, who is the third respondent, was appointed the business rescue practitioner of each company. In terms of the business rescue plan ("the plan") which was adopted at a duly convened meeting under

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section 151 of the Companies Act 71 of 2008 (*"the Act"*) Orthotouch was to purchase each Highveld Syndication and in the interim pay interest. The investor creditors then proceeded to receive a pro-rated portion of the rental income under the distribution plan.

8. All the Highveld Syndications were lumped together for business rescue purposes in respect of the distribution of rental income although transfer of the properties had only taken place in the case of Highveld Syndication no's 15 to 18.

In terms of the business rescue plan the properties of Highveld Syndication no's 15 to 18 were to be transferred to Orthotouch

9. However Orthotouch subsequently failed to comply with the terms of the plan and on 7 October 2014 a scheme of arrangement was proposed between Orthotouch and its creditors under section 155 of the Act.

10. It is evident that from at least the time the arrangement was proposed that investors were considering instituting a class action. The application to initiate a class action was served on 18 November and a notice of opposition was delivered on 24 November. The class action is intended to be brought on behalf of the investors against a number of directors and other individuals in relation to the affairs of the companies.

11. The intended class action seeks relief on a number of grounds;

- a. enforcement of the buy-back agreements since the 5 year period ended in August 2014;
- b. fraudulent or negligent misrepresentations contained in the prospectuses;
- c. fraudulent, reckless or negligent conduct in the handling of investor funds by directors or others;
- d. personal liability for the fraudulent or reckless conducting of the investment schemes in the companies;

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- e. transgression of statutory provisions prohibiting the release of funds received from investors in property syndication schemes without simultaneously giving transfer of the property to the relevant investment vehicle, which also has a criminal sanction.
12. This court was not provided with the application in that case. However it appears that Zephan is controlled by Nicolas Georgiou, the twelfth respondent. He is also the managing director of Orthotouch which is the first respondent.
13. The applicants contend that 6 300 individual investors, representing 9 700 claims, have already confirmed their participation in the class action. Orthotouch and Klopper contend that there are between 17 000 to 18 000 investors in the companies but the figure of affected claimants could be up to 23 000. It is unclear whether this represents the total number of individuals or the total number of claims (which would be higher because an individual may have invested in more than one of the companies).
14. However, prior to service of the application to institute a class action, a meeting of the investors (being presumably being the only affected class of relevant creditor or member for purposes of section 155(2)) was held on 12 November to consider the proposal. The report of Mr Derek Cohen who presided at the meeting was prepared and on 26 November my brother Moshidi J sanctioned the arrangement. In law the scheme of arrangement therefore became binding on all creditors of the Highveld Syndications.
15. In December the investors commenced receiving the first of nine payments due under the arrangement.
16. On 3 March 2015 the present applicants launched an application to rescind the judgment sanctioning the arrangement alternatively an application for leave to appeal. I will refer to this as the main application unless the context indicates otherwise.

They did not give notice of the main application as required by rule 42(2) on all parties whose interests may be affected; namely all the investors who in terms of section 155(8) of the Companies Act are bound by the scheme.

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17. On 21 April 2015 Orthotouch brought a notice under rule 30A setting out the grounds for declaring the application an irregular proceeding. This was followed up on 8 May with a substantive application to set aside the main application.
18. On 15 May the applicants delivered a notice of intention to oppose the rule 30A application. This was shortly prior to the set down date for the hearing of the main application.
19. The main application was set down for 19 May but could not proceed because the judge allocated to hear the matter was on long leave.
20. The applicants subsequently delivered an opposing affidavit to the rule 30A application on 4 June and a short time later, on 15 June, also brought an application for substituted service.
21. After these events Orthotouch served a replying affidavit to its rule 30A application and subsequently an answering affidavit to the application for substituted service.
22. On 6 August my brother Francis J dismissed an urgent application brought by the applicants to stay the scheme of arrangement process and to put a hold on the finalisation of the liquidation and distribution account ("*L&D account*") in terms of the arrangement. The application was held not to be urgent. The court did not deal with the merits but found that the application could have been brought much sooner and that the applicants had sought to use the notification regarding the L&D account as the peg on which to justify urgency.
23. Shortly afterwards the applicants delivered a replying affidavit to their application for substituted service. Application was again made for the matter to be heard as a special motion and came before me on 15 March 2016.

Orthotouch's rule 30A application is supported by the 3rd to 16th respondents. They are Hans Klopper in his representative capacity, the eight Highveld Syndication companies, Nicolas Georgiou (Georgiou) personally, Zephan, and the trustees of the N Georgiou Trust, being Georgiou, Maureen Georgiou and Joseph Chemaly in their representative capacities.

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THE APPLICATIONS BEFORE COURT

24. There are two applications before me;
- a. Orthotouch's application of 21 April under rule 30A to set aside or dismiss the application to rescind the order sanctioning the scheme of arrangement
 - b. The applicants' application of 15 June for substituted service.
25. Although the applicants have sought substituted service they have not conceded that their main application to rescind the order sanctioning the scheme fails to comply with the rules of court.

ORTHOTOUCH'S APPLICATION UNDER RULE 30A

26. Orthotouch, supported by the 3rd to 16th respondents contend that the rescission application is defective because the applicants failed to join and serve on all the affected persons, who would include the investors in each of the Highveld Syndications, or first to have applied for substituted service. They argue that the failures to first have complied with rule 42(2) for service on all persons affected by a rescission application or rule 4(2) read with 5(2) in regard to substituted service is fatal.
27. The applicants have identified 17 298 investors but, as stated earlier, the number according to the Klopper and Orthotouch could be up to 23 000. It however appears that the applicants to date have the *de facto* support of 6300 investors.
28. It hardly bears repeating that every investor is affected by the rescission application since they have received monthly income under the sanctioned arrangement.
29. In my view the starting point is whether the applicants could have obtained details of all the investors in order to comply with the provisions of rule 42(2), let alone rule 4 at the time the main application was launched.

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In the applicants' affidavit opposing the rule 30A application it is evident that despite written request the attorney representing Cohen who is Natalie Lubbe and Associates Inc failed to provide the list of investors and details of those who voted for and against the arrangement. The same attorneys represent Orthotouch in the present proceedings. It is evident from the papers as a whole that the applicants will not get ice in winter from any of the respondents who have opposed the application for substituted service unless ordered to do so by the court.

30. Secondly, the application for rescission has not yet been heard. Accordingly there can be no prejudice to provide a means whereby the applicant's right to a hearing in order to convince a court that the arrangement should not have been sanctioned. Nor as far as I am aware can the rules of court deprive a person of such a right where any failure to comply can be resolved prior to the hearing date. None have been suggested by either *Mr Brett* or *Mr Rossouw* for the respondents. Accordingly a failure to comply with rule 42(2) at this stage cannot be fatal since it can always be cured.

31. There is a further aspect. The rules regarding service and joinder are by their nature flexible. Indeed substituted service can be sought at any stage, even after a matter has been brought before court and the judge is dissatisfied with the purported service. Cases involving large numbers of occupiers of land or buildings come readily to mind.

There also appears to be no reason why defective service cannot be condoned in the absence of a formal application provided the court is satisfied that the circumstances precluded service under the ordinary rules and where the process as served would have been expected to come to the attention of each affected person. The rules do not take away the court's power to condone a failure of strict compliance with service in appropriate circumstances. Furthermore the court always has a discretion to condone a departure from the rules provided it is exercised judicially and there is no prejudice to an affected party.

32. Mr Brett also challenged the efficacy of bringing an application for rescission at the same time as an application for leave to appeal. Provided the papers cover both contingencies there appears to be no reason for a party to preclude itself by reason of time limits from pursuing both avenues where

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there is uncertainty. It also tactically precludes the opponent from contending that whatever course is chosen that the other course was the correct one. In the present case there is enough before me, if regard is had to the unique but readily comprehensible procedure of notifying those affected of a meeting to consider a proposed arrangement that will be subject to court sanction without further notice, to indicate the difficulties that the applicants would face if forced to make a prior election.

Moreover it is assumed that if the applicants are met with a challenge to the main application properly being one for rescission that they would then deal with this aspect as a point of law, obtain finality and then, if necessary, simply request a set down for leave to appeal before the judge who sanctioned the arrangement. In this way no point could be taken that the application for leave to appeal itself was out of time.

33. It is therefore clear that the application for rescission alternatively for leave to appeal is not fatally defective.
34. Finally on this point it is necessary to give a definitive decision on whether in the circumstances of this case it is necessary to join every investor in the rescission application in order to comply with rule 42. Rule 42(2) only requires notice to all affected parties. The actual application brought before the court to sanction the scheme identifies who brought it and as long as the persons identified in the citation are cited in the rescission application there can be no quarrel. That has taken place.
35. Notice to every other affected party may therefore be given without being formally joined. It would be a task of supererogation to join over 17 000 investors let alone the 23 000 suggested by Orthotouch and Kloppe.
36. If regard is had to the cost incurred by Cohen in just sending notices to investors, in regard to the meeting called under section 155(2) of the Act to consider the proposed arrangement, then it is evidently beyond the present individual applicants to give formal notice by joining or serving through the sheriff, let alone by registered post or email, on each investor together with all relevant documents. The cost would be in the region of R600 000. It is not disputed that most of the investors are elderly and that every investor would have lost a significant percentage of their investment. Moreover a number of investors would have passed away and therefore their rights would have been bequeathed or otherwise have devolved on others.

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37. It is therefore evident that requiring joinder as a *sine qua non* to proceeding with a rescission application under rule 42 would result in lengthy delay before the matter could ever be heard and in exorbitant costs which would negate the right of the applicants, and the over 6 000 investors who expressly support them, of access to justice. Rules of court are there to facilitate justice; not result in undue delay or deprivation of the very right sought to be exercised. They must be read so as not to frustrate the ability to bring a bona fide application and they must be applied in harmony with the right of access to justice, the right to be notified and heard on a matter that may prejudicially affect a person's rights or interests and the right to a fair trial under section 34 of the Constitution¹.

38. While not pertinently sought, but necessarily following on the arguments presented, I therefore also positively find that joinder of all the investors in the rescission alternatively leave to appeal application is unnecessary.

APPLICATION FOR SUBSTITUTED SERVICE

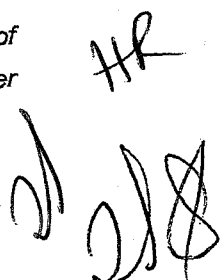
39. I have already found that there is before the court a competent application for substituted service and that it is unnecessary to join each of the investors in the main application.

40. I have also dealt with the factual difficulties of identifying every investor both by reason of the apparent recalcitrance of Klopper, Cohen and Orthotouch, who are the only ones who are likely to have accurate lists of the subscribers, and by reason of such lists not taking into account the identity of the executors or beneficiaries in cases where the investor has passed away.

41. At this juncture I should deal with Mr Brett's contention that there is somehow a right to privacy issue involved in the lists of investors. In the present case this is a red herring by reason of the provisions of rule 42, the purpose for obtaining their names and the obvious entitlement that ordinarily arises under section 26(2) of the Act. The first respondent has not suggested any

¹ Section 34 Access to courts

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

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impediment that might deprive the applicants of that right bearing in mind that his own client, Klopper and Cohen would have accessed the lists for the same purpose as is now sought by the applicants.

42. The prohibitive cost of bulk post or emailing the documents that would have to be served also may frustrate the ability to proceed with the case. I have also considered utilising SENS. However it appears that this method of notification adopted by the JSE is limited to listed companies.
43. It is further evident from the number of investors who allegedly attended the meeting to vote on the arrangement that the phenomenon of voter apathy was prevalent.
44. In my view the first step is to secure the list of all investors. Due to the conduct of the relevant respondents it is necessary that they provide the lists to the applicants. This will include the list that Cohen has of the names and contact details of all those who attended the section 155(2) meeting to vote on the arrangement. They obviously cannot be accused of voter apathy.
45. However among those are investors who have actively joined in the class action. On adequate written proof that they support the class action and support the rescission application, which may be done by a round robin list with their names, identity numbers and signatures it appears unnecessary that they be served with papers, unless they specifically request so in writing.
46. That leaves the balance of investors who still appear to represent the majority of those affected. The requirement of giving notice must however not ultimately frustrate the ability to have the application heard on its merits with adequate safeguards that anyone wishing to oppose it is likely to have acquired knowledge of the application. In this regard I bear in mind that investors may prefer to go along with the arrangement.
47. In my view a hybrid solution appears appropriate in order to secure the likelihood of notice to the greatest number of persons with due regard to cost, avoiding delay in the disposal of the application and the right to have the dispute resolved fairly.

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ORDER

48. I accordingly order that:

- a. The Rule 30A application is dismissed.
- b. It is declared that the joinder of all investors in the application for rescission alternatively for leave to appeal ("*the main application*") is unnecessary.
- c. The first and third respondents are to jointly provide to the applicants' attorneys of record by no later than 6 June 2016 a list agreed between such respondents, of all persons who were entitled to vote in respect of the arrangement and to whom notice thereof was given;
- d. The second respondent is to provide to the applicants' attorneys of record by no later than 6 June 2016 a list of all persons who voted, whether in person or by proxy in favour of or against the approval of the arrangement
- e. Each such list shall contain a list of all known contact details, including email addresses and cellphone numbers, with leave granted to the applicants to approach this court on the same papers, duly supplemented, if they contend that information available to such respondents of email addresses and cellphone numbers has not been provided.
- f. The applicants shall no later than 11 July 2016;
 - i. Give notice of the main application on each persons who voted at the meeting in terms of section 155(2) of the Companies Act convened on 12 November 2014 to consider the proposed scheme of arrangement provided that;

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1. it shall be unnecessary to give notice to any person who has expressly waived in writing an entitlement to receive such application; it being sufficient for such purpose if such person has signed a round robin list against their names, and provided his or her identity number (or in case of a company the responsible person's name and the entities name and registration number), or has otherwise in writing expressly associated with the class action and the application;
 2. such notice shall be by way of email or sms, or failing which by registered post, stating that;
 - a. the founding papers in the main application are accessible and available for reading and download on the website 'hsaction.co.za';
 - b. stating the date of hearing of the main application and the time period for filing a notice of opposition which shall be 10 days from date of confirmed transmission, and the time period for filing opposing papers being 20 days from date of such confirmed transmission;
 - c. and in the case of emails reproducing the same contents as the notice which is to appear in the newspapers as set in the following paragraph while the sms shall contain a link to the aforesaid website;
- ii. Give notice to all the investors referred to in the founding papers in the main application by;

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1. publication of a notice in the Sunday Times, The City Press and Rapport newspapers at least three weeks before the hearing;
2. by making available for reading and download, and keeping so available, the founding papers in the main application on the website "hsaction.co.za";
 - a. the contents of such notice in the aforesaid newspapers shall be similar to the notices which appeared in the Sunday Times and Rapport on 15 March 2015, except for the new date of hearing and that the time period for filing a notice of opposition which shall be 10 days from date of publication, and the time period for filing opposing papers being 20 days from date of such publication;
- g. The first and third to sixteenth respondents inclusive shall pay the costs of R30A application, including the costs of two counsel, jointly and severally the one paying the other to be absolved;
- h. The costs in the application for substituted service shall be costs in the main application unless the court hearing that application directs those costs to be costs in any other application or action, in which case such costs will be costs in that other proceeding.



SPILG, J



DATES OF HEARING: 15 March 2016

DATE OF JUDGMENT: 25 May 2016

LEGAL REPRESENTATIVES:

FOR APPLICANTS: Adv S Burger SC

Adv C Maree

Adv T Du Preez

Theron & Partners c/o BDK Attorneys

FOR FIRST RESPONDENT: Adv Brett SC

Adv J Smit

Nathalie Lubbe & Associates Inc

FOR 3rd to 16th RESPONDENTS: Adv PF Rossouw SC

Adv M Mostert

Faber Goerts Ellis & Austin Inc

Kyriacou Inc

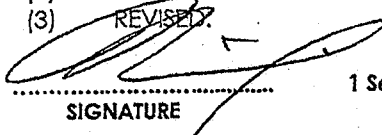
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"FS1.2"



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED:
	
.....	1 September 2016
SIGNATURE	

CASE NO: 42334/2014

In the matter between:

JURIE JOHANNES GELDENHUYS

First Applicant

ARTHUR BRADY COCHRANE

Second Applicant

SHARON ANN VLOK

Third Applicant

And

ORTHOTOUCH LIMITED

First Respondent

DEREK PERDOE COHEN N.O.

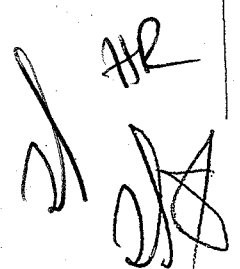
Second Respondent

HANS KLOPPER N.O.

Third Respondent

And OTHERS

Fourth to Twenty-seventh
Respondents



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")

APPLICATION FOR LEAVE TO APPEAL

SPILG, J:

1 September 2016

INTRODUCTION

1. The parties will be identified as in the original application.
2. There were a number of competing interlocutory applications brought which were dealt with as a special motion. They came to be reduced to two applications which required determination.

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[Handwritten signatures]

3. In the one, the first respondent brought a rule 30A application to declare as an irregular proceeding the application brought by the applicants to rescind an order sanctioning a scheme of arrangement. It was contended that the rescission application was defective because of a failure to join and give notice to all the affected persons, who would include the investors in each of the Highveld Syndications, or first to have applied for substituted service. It was common cause that they number between 17 000 to 18 000 individuals. This application was supported by the third to sixteenth respondents. The respondents argued that the failure in not first complying with rule 42(2) (and obtain an order for notice to be given to all persons affected by the rescission application) or in not complying with rule 4(2) read with 5(2) (in regard to substituted service) was fatal.

I held that the rescission application was not fatally defective.

4. In the other, the applicants applied for substituted service of the rescission application allowing for notice to all investors by means of a notice in two national weekend newspapers which would direct them to a website where the application could be viewed and downloaded. The third respondent indicated that he would abide the decision in this regard.

I considered that the form of notice proposed by the applicants was inadequate and would amount to only formalistic compliance. In my view an effective form of notification, having regard to the number of investors (and taking into account those who allegedly supported the rescission application), required a structured order whereby *inter alia* the third respondent (Mr Klopper in his representative capacity) would be involved in providing the names and contact details of the relevant investors. This is reflected in the terms of the order.

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5. The first respondent accepts that the judgment in respect of the rule 30A application is not appealable.

It however contends that the order for substituted service is appealable. Klopper who abided the decision of the court in this regard now enters the fray and also applies for leave to appeal on the grounds that he being subjected to a mandatory order without having been heard.

6. There are two preliminary issues. The first is whether the order for substituted service is appealable. The second is whether Klopper is entitled to apply for leave to appeal without an explanation as to why he is no longer prepared to abide the decision and where he does not assert prejudice.

APPEALABILITY

7. The respondents rely on *Nova Property Group Holdings Ltd v Cobbett and others* 2016(4) SA 317 (SCA) as the basis for being entitled to appeal an order which is purely interlocutory in form and in effect.
8. Leaving aside the requirement, at the time, that the Constitutional Court could only be seized with a constitutional issue in *South African Informal Traders Forum and Others v City of Johannesburg and Others* 2014 (4) SA 371 (CC) (the 'SAITF case') the court held that there is no absolute bar against an interlocutory order being appealable. In the SAITF case the court allowed an appeal because the issue was determinative of the rights and obligations between the parties and that, as stated in the subsequent case of *Zulu and Others v Ethekwini Municipality and Others* 2014 (4) SA 590 (CC) at para 53;

"The qualifier is the interests of justice, since interim orders can be reconsidered and altered by the court of first instance."

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9. In *Nova Property* the SCA held that section 17(1) of the Superior Courts Act gives express recognition that the paramount consideration remains the interests of justice.
10. It appears that one of critical issues that the SAITF case required to be considered was whether the point raised and decided is determinative of the rights and obligations between the parties. Clearly the question of substituted service cannot be.
11. My findings are therefore not definitive of the main issues to be dealt with in the rescission proceedings. My decision is purely concerned with how best to give effective service where there are many thousands of affected investors.
12. *Adv Brett* in anticipation of this contended for a new ground of appeal not foreshadowed in either the application for leave to appeal or in his heads of argument; namely that there was a substantive constitutional law point involving access to information. It was contended that the provisions of the Promotion of Access to Information Act 2 of 2000 ("*PAIA*") would not be respected in that the privacy rights of investors would be affected if Klopper was to provide the information as required in my order without first proceeding in terms of that Act. It was contended that my order was therefore *ultra vires*.
13. *Adv Brett's* attention was drawn to s7(1) of PAIA which exempts from the purview of the Act *inter alia* recorded information requested after the commencement of civil proceedings from any public or private body. The subsection reads:

(1) *This Act does not apply to a record of a public body or a private body if-*

(a) *that record is requested for the purpose of criminal or civil proceedings;*

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(b) *so requested after the commencement of such criminal or civil proceedings, as the case may be; and*

(c) *the production of or access to that record for the purpose referred to in paragraph (a) is provided for in any other law.*

The respondents conceded that the point was not good.

14. It was then contended that there was some substantive irregularity in that I could not make an order which had not been sought by the applicant.

The applicants had sought relief from the strictures of notice to all affected persons or personal service under rules 42 or 4 of the Uniform Rules respectively. I considered that it was unlikely to properly serve its intended purpose and that a more effective means of giving notice should be adopted. It will also be recalled that the application was heard together with the Rule 30A application where it was contended that the failure to give notice of the rescission application to all investors was fatal.

15. The respondents cannot have it both ways. This is a classic case of a party performing cart wheels with no purpose other than to frustrate the merits of the case being dealt with expeditiously.

In the Rule 30A application the respondents challenged the failure to give each investor notice and in the substituted service application Klopper was prepared to abide the decision if the court ordered a much diluted form of giving notice to investors. What was before the court was an application for substituted service and the court determined how best to deal with it bearing in mind that the affected persons who have an interests are the investors whose right to be heard on whether they support or object to the grant of the rescission application are paramount. Accordingly if the interests of justice are taken into account their rights prevail.

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16. Moreover it is difficult to see why it would be in the interests of justice to further delay the determination of the merits. The issues raised now are symptomatic of a Stalingrad defence; where side issues taken on appeal simply delay the matter and build up costs for lay litigants against those who have deep pockets. The risk of being financially out-litigated cannot be in the interests of justice particularly where the interests of justice are served ultimately by ensuring that the most effective and practical means is adopted to bring the rescission application to the notice of the thousands of affected investors.
17. This does not seem to be an issue in respect of which the first respondent can complain.
18. As regards Klopper, who is cited in his capacity as the duly appointed business rescue practitioner, the court required a more effective form of service. This cannot possibly be detrimental to the interests he is required to protect and serve, considering his duties and responsibilities under the Companies Act. If it is, then he was obliged to say so under oath when explaining why he has changed his non-intervention position. The form of notice or service and when and how it will be relaxed is a discretionary judicial power exercised on a regular basis by courts when looking after the interests of all potentially affected parties who are not presently before court.
19. The attempt to make the case fit within the scope of a substantive law point in order render it appealable is misconceived. The respondents are trying to force a square peg into a round hole.
- The order made is neither final nor definitive of any rights. It remains a purely procedural means of giving notice in a practical manner to over 17 000 individuals.
20. In my view this case is not appealable.

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THE MERITS

21. If I am incorrect on the issue of appealability, then save for possibly an immaterial error regarding who attorney Lubbe represented, I am satisfied on re-reading the judgment in light of the points raised that an appeal would not have reasonable prospects of success. I should add that this would be on the assumption that I was not exercising a judicial discretion. I however believe that the issue of substituted service on persons who are not before the court concerns the exercise of a judicial discretion and no acceptable grounds have been raised for challenging the basis upon which the discretion was improperly exercised.

ORDER

22. Aside from deciding the application for leave to appeal it was agreed that I should amend the order for substituted service so as to take into account any further appeal process. The terms were agreed upon.

23. I accordingly order that:

1. *The application for leave to appeal is refused.*

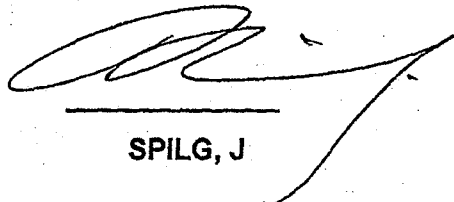
2. *The order of 26 May 2016 is amended as follows;*

a. *The date of 6 June 2016 in para 4 is deleted and replaced with:
"within three weeks of the respondents exhausting the appeal process"*

b. *The date of 11 July 2016 in para 6 is deleted and replaced with:
"within eight weeks of the respondents exhausting the appeal process"*

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3. *The respondents are to pay the costs of the application including the costs of two counsel*



SPILG, J

DATES OF HEARING:

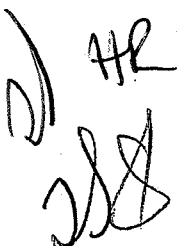
DATE OF JUDGMENT: 1 September 2016

LEGAL REPRESENTATIVES:

FOR APPLICANTS: Adv NJ Graves SC
CH J Maree
Theron & Partners c/o BDK Attorneys

FOR FIRST RESPONDENT: Adv Brett SC
Adv J Smit
Nathalie Lubbe & Associates Inc

FOR 3rd to 16th RESPONDENTS: Adv Smit
Faber Goerts Ellis & Austin Inc
Kyriacou Inc





"FSZ"

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PARTNERS

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Alexander III Gebou, Alexanderstraat 18 STELLENBOSCH 7600
Alexander III Building, 18 Alexander Street STELLENBOSCH 7600

Our ref.: J FURSTENBERG/ka/H080327

25 January 2019

Messrs NLA Legal Inc
North Riding
PRETORIA
(Attorneys for First Respondent - Orthotouch Ltd)

PER EMAIL natalie@natalielubbe.co.za

Dear Sir

Re: GELDENHUYS E.A. VS ORTHOTOUCH LTD E.A. - LIST OF NAMES -
ORDER OF SPILG J - CASE NUMBER 42334/2014 - JOHANNESBURG -
SUBSTITUTED SERVICE:

1. Counsel acting for our clients (Applicants) was instructed to draft court papers to apply for the amendment of the orders pertaining to substituted service as given by the honourable Spilg J on 25 May 2016, (as amended by him on 1 September 2016). These intended amendments have in our view become necessary due to, amongst others, the fact that Mr Cohen (the Second Respondent, being the Receiver under the Scheme of Arrangement) have indicated that he is not in a position to provide the information/list that he was ordered to provide (under paragraph 48 (d) of the said judgement of Spilg J) as he never had such information/list.

Petrus Jacobus Theron (Konsultant) - Jacques Brink Theron
Assisted by: Johan Furstenberg & Frederick van Zyl
B.T.W. Registrasienommer / V.A.T. Registration Number 4260168630

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2. The list that he had to provide is of all the persons (investors) who voted at the relevant meeting where the Scheme of Arrangement was approved.
3. We attach hereto relevant correspondence, which is self-explanatory, which we sent to Mr Cohen's attorneys dated 26 May 2017, in which we complained to him that the "list" that he had provided to us, does not remotely comply with the order granted since, amongst others, there was no indication on the list which of the investors had voted, and who did not vote.
4. Mr Cohen's response thereto dated 13 July 2017, and a later response dated 2 August 2017, are also attached hereto. You will note that, in such reply, Mr Cohen indicates that he does not have the information concerning the investors who voted, compared to those who did not. He also indicated that he would approach the court for the deletion of the paragraph in Spilg J's order which pertain to him (Cohen) given that he is not in a position to comply therewith. Such application was indeed launched by him under the above case number on 8 August 2017. We have managed to ascertain what the current status of such application is.
5. Be that as it may: Although the drafting of the earlier mentioned court papers have been completed, we are advised by counsel that it might be prudent to – before issuing such intended application to amend – to enquire from your client (Orthotouch Ltd) (the First Respondent) whether it is in possession of such "list" or in information to identify the investors who did in fact vote. Mr Cohen intimated, in his aforementioned reply to us, that your client might have this information in its records.
6. We urgently require your response in this regard, as this information would substantially influence/change the relief that we will be seeking in our approach to the court for an amendment to the order of Spilg J.
7. On a different issue, being the filing of papers in the main application:

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DJ

7.1 A considerable time has lapsed since your client withdrew its appeal in the Supreme Court of Appeal pertaining to the order of Ismail J, in which he set aside as an irregular step the "notices of withdrawal" filed in the main application under the above case number (i.e. the setting aside application). May we enquire why your client has not filed an opposing affidavit to such main application? May we assume that we can proceed on the basis that your client will not be filing such Affidavit? We urgently require your response hereto, in order for us to approach the case manager (Weiner J) for further procedural directions. (A similar request is been sent to the attorneys of Mr Georgiou (the 12th Respondent)) We look forward to hearing from you in this regard within three days, failing which we will approach the honourable Weiner J for a date for the hearing on an unopposed basis.

7.2 In this regard, we remind you of the voluminous supplementary Founding Affidavit which was filed in support of the setting aside application by Applicants, which, by order of Weiner J during the case management meeting before her, was accepted as part of the court record – to which your client obviously also needs to answer in the event of filing an opposing affidavit.

8. We look forward to hearing from you urgently.

Yours faithfully
THERON & PARTNERS

PER:

J FURSTENBERG



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PARTNERS

PROKUREURS - AKTEBESORGERE - BOEDELBEREDDERAARS - AFSLAERS
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Alexander III Gebou, Alexanderstraat 18 STELLENBOSCH 7600
Alexander III Building, 18 Alexander Street STELLENBOSCH 7600

Our Ref: JB THERON/jmt/H080327
Your Ref: Case Number 42334/2014

26 MAY 2017

MESSRS: NATALIE LUBBE & ASSOCIATES
PRETORIA

(Attorneys for First Respondent - Orthotouch Ltd)

VIA E-MAIL: natalie@natalielubbe.co.za

Dear Sirs

**RE: CONTEMPT OF COURT PROCEEDINGS RE LIST OF NAMES - ORDER OF
SPILG J - CASE NUMBER 42334/2014 - JOHANNESBURG - SUBSTITUTED
SERVICE:**

1. We refer to our recent letter to you dated 24 April 2017, in which we requested that your client provides us with the list referred to in paragraph 48c of Spilg J's order of 25 May 2016.
2. We have not heard from you or your client (Orthotouch Ltd).
3. We hereby inform you that, should we not receive the said list within 3 days from today (18 May 2017); Applicants will bring an urgent application to declare your client to be in contempt of court.

Petrus Jacobus Theron (Konsultant) - Jacques Brink Theron
Assisted by: Johan Furstenberg
B.T.W. Registrasienommer / V.A.T. Registration Number 4260168630

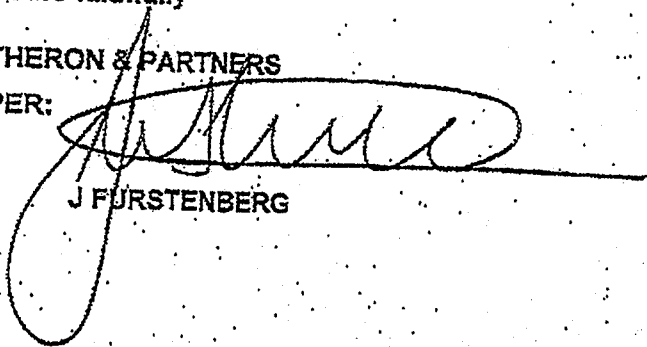
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4. Importantly, given the deliberate delaying tactics employed by your client and others thus far and abuses of process (as held by more than one judge) – we are also considering requesting the appropriate cost orders, on a punitive scale, against the directors of your client personally, jointly and severally, given the deliberate delaying tactics employed by them. This letter will be put before court for purposes of such request for such costs order. We trust that you will provide each director of Orthotouch Ltd with a copy of this letter.
5. We look forward to receiving such list within three days from today, failing which we will have no other option to proceed with the aforementioned court application, as well as a request for such cost order.

Yours faithfully

Theron & Partners

PER:



J FURSTENBERG

HR
JF

Zwiegers

A T T O R N E Y S

Your ref

Our ref

Date

JB Theron/bk/H080327

W Zwiegers/ZC231

13 July 2017

Writer's Direct Fax Line: 086 619 6422

THON & PARTNERS

Email: admin@theronlaw.co.za, Jean-Marie Tosen | Clerk 1 clerk1@theronlaw.co.za

Dear Sir

DEREK PEDOE COHEN N.O.

ORDER OF SPILG J - CASE NO: 42334/2014 JOHANNESBURG HIGH COURT

Our attention has just been drawn to the contents of your letter dated 26 May 2017. For some reason it did not find its way to the file and therefore slipped our attention.

The records regarding the details of the people who voted are not in the possession of our client but is with Orthotouch. The list we delivered to you was received from them.

We are immediately requesting that they provide us with a list of the names of the entities that voted. At this stage however it is important that we remind you that the order of Spilg J requires that you be provided with a list of all persons who voted whether personal or by proxy of or against the approval of the arrangement.

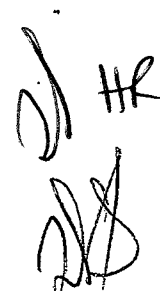
Assuming that such a list within our client's control, we will attempt to obtain a copy thereof and delivered to you in the next day or two. We however have to inform you that our client is presently abroad and will only be returning in a week and half. We record that our client had no intention to disregard the order of the court since the contents of your letter did not come to his attention.

Yours faithfully


ZWIEGERS ATTORNEYS

Willein BJ Zwiegers - BProc
Cell : 082 561 5552

Telephone 0879452100
Fax 0113252207
Email corrie@zwiegers.co.za
Dunkeld West Centre, 2nd floor, Office 288
Cnr Bompas & Jan Smuts Avenue, Dunkeld
PO Box 41917, Craighall 2024



ZWIEGERS

A T T O R N E Y S

Your ref	Our ref	Date
JB Theron/bk/H080327	W Zwiegers/ZC231	2 August 2017

Writer's Direct Fax Line: 086 619 6422

Theron & Partners

Email: admin@theronlaw.co.za, Jean-Marie Tosen | Clerk 1 clerk1@theronlaw.co.za

Dear Sir

**DEREK PEDOE COHEN N.O.
ORDER OF SPILG J - CASE NO: 42334/2014 JOHANNESBURG HIGH COURT**

We refer to our letter of 13 July 2017 and note that you as the author and/or the HSAG steering committee have published an allegation that our client is delaying the process and not complying with court orders.

If your clients had properly considered the scheme of arrangement, they will note that our client is not in control of any of the documents required of him in terms of the court order, but that these documents are in fact under the control and in possession of Orfhotouch.

In the circumstances therefore the court order of Spilg J is ineffective as against our client and we therefore require that the defamatory allegations regarding our client be retracted and apologized for in public before close of business today on the HSAG website.

We now hold instructions to set aside the Spilg judgment for as far as it concerns our client.

Yours faithfully


ZWIEGERS ATTORNEYS

Willem BJ Zwiegers - BProc
Cell : 082 561 5552

Telephone 0879452100
Fax 0113252207
Email corrie@zwiegers.co.za
Dunkeld West Centre, 2nd floor, Office 288
Chr Bompas & Jan Smuts Avenue, Dunkeld
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Theron & Vennote

Partners

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Alexander III Gebou, Alexanderstraat 18 STELLENBOSCH 7600
Alexander III Building, 18 Alexander Street STELLENBOSCH 7600

Our ref.: J FURSTENBERG/ka/H080327

11 March 2019

Messrs NLA Legal Inc
North Riding
PRETORIA
(Attorneys for First Respondent - Orthotouch Ltd)

PER EMAIL: natalie@natalielubbe.co.za

Dear Sir

Re: GELDENHUYS E.A. VS ORTHOTOUCH LTD E.A. - LIST OF NAMES -
ORDER OF SPILG J - CASE NUMBER 42334/2014 - JOHANNESBURG -
SUBSTITUTED SERVICE:

We refer to our letter to you of 25 January 2019, in which we enquired whether your client (Orthotouch Ltd) is in possession of the list of the persons (investors) who voted at the meeting where the Scheme of Arrangement was approved. We urgently require your feedback in order for us to decide on the application to amend Spilg J's order concerning substituted service.

We followed this request up with numerous emails on 25, 28 and 29 January, and again on 4 February 2019 - and also telephone calls on 4 February 2019, 5 February 2019 and 14 February 2019.

Petrus Jacobus Theron (Konsultant) - Jacques Brink Theron
Assisted by: Johan Furstenberg & Frederick van Zyl
B.T.W. Registrasienuommer / V.A.T. Registration Number 4260168630

JH
DB

We also refer to paragraph 7 of such letter (of 25 January 2019), in which we request reasons for your client not yet having filed the opposing affidavit to the application to set aside the Scheme of Arrangement in the Johannesburg High Court. We also urgently await your response thereto.

Kindly also inform us what the current status is with regards to Mr. Cohen's alleged resignation and of his pending application to amend the order of Spilg J is, since this information will have a significant bearing on our intended application to amend the order of Spilg J.

It has been extremely frustrating to deal with your office, given your constant ignoring of our correspondence, which we believe is all part of the strategy to delay and frustrate the class action litigation. Kindly note that we consider reporting your firm to the Legal Practice Council for failure to respond to correspondence.

In addition, we intend approaching the appointed Case manager (Weiner J) should you not respond adequately within 3 days.

Be advised accordingly.

Yours faithfully
THERON & PARTNERS

PER:

J FURSTENBERG

HR
258

To Theron & Partners

Date 2 April 2019

Address info@theronlaw.co.za

Your ref J Furstenberg/ka/H080327

Our ref N Lubbe/M02051

Dear Mr Furstenberg

GELDENHUYS & OTHERS / ORTHOTOUCH LTD & OTHERS

- ↓
1. We refer to your letter dated 25 January 2019. We apologise for the delay in responding thereto: this is the first opportunity writer has had to meaningfully deal with this correspondence.
 2. We note that you have instructed counsel to bring an application to amend Judge Spilg's order granted on 25 May 2016. We have not yet received such an application.
 3. We also note that Mr Cohen has launched an application to, effectively, amend Judge Spilg's order given that he is unable to comply therewith. We were not aware of such an application, and would appreciate it if you would furnish us with a copy thereof.
 4. Despite the fact that we are not obliged to do so, we have obtained a list of investors who voted at the meeting. Same is attached hereto. The contact details of these investors should appear on the list of investors we sent you on 6 June 2018.
 5. On the issue of filing of papers in the main application: until such time as Judge Spilg's order is complied with, or amended and thereafter complied with, our client is not obliged to file its opposing affidavit.
- ↓

Yours faithfully,



N M LUBBE

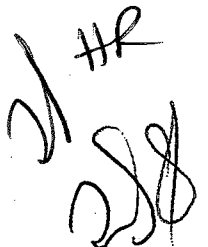
Director

Email: natalie@NLAteam.com

NLA Legal Inc
Reg nr: 2006/016189/21

Directors: N Lubbe, NS Norval, V Phenduka, H van der Westhuizen

Tel: 011 704 1563
Website: www.NLAteam.com





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Theron & Vennote

Partners

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Alexander III Building, 18 Alexander Street STELLENBOSCH 7600

Our ref.: J FURSTENBERG/ka/H080327

25 January 2019

Messrs Kyriacou Incorporated
PRETORIA

PER EMAIL mario@kincorporate.co.za &
legal@kincorporated.co.za

Dear Sir

Re: GELDENHUYS E.A. VS ORTHOTOUCH LTD E.A.
CASE NUMBER 42334/2014 – JOHANNESBURG

The above mentioned matter has reference.

A considerable time has lapsed since your client withdrew its appeal in the Supreme Court of Appeal pertaining to the order of Ismail J, in which he set aside as an irregular step the “notices of withdrawal” filed in the main application under the above case number (i.e. the setting aside application). May we enquire why your client has not filed an opposing affidavit to such main application? May we assume that we can proceed on the basis that your client will not be filing such Affidavit? We urgently require your response hereto, in order for us to approach the case manager (Weiner J) for further procedural directions. (A similar request is been sent to the attorneys of

HR
JF

Mr Georgiou (the 12th Respondent)) We look forward to hearing from you in this regard within three days, failing which we will approach the honourable Weiner J for a date for the hearing on an unopposed basis.

In this regard, we remind you of the voluminous supplementary Founding Affidavit which was filed in support of the setting aside application by Applicants, which, by order of Weiner J during the case management meeting before her, was accepted as part of the court record – to which your client obviously also needs to answer in the event of filing an opposing affidavit.

We look forward to hearing from you urgently.

Yours faithfully
THERON & PARTNERS

PER:

J FURSTENBERG

HR
JF



First Floor, Fussell House
48 Athol Oaklands Street,
Melrose North

PO Box 92754
Norwood
2117

Tel: (011) 444-2665
Fax: (086) 653-5677
e-mail: legal@kincorporated.co.za

Docex 16
Sandton City

6 March, 2019

Our Ref: MK/sn/Z723

Theron & Partners

Your Ref: Mr. Furstenburg/

Per e-mail: litigation@theronlaw.co.za

cc: Natalie Lubbe & Associates

Per e-mail: natalie@natalielubbe.co.za

Dear Sir / Madam,

**RE: GEORGIU & OTHERS v WAXHAM & OTHERS: APPLICATION TO
TRANSFER MATTER TO GAUTENG LOCAL DIVISION
CASE 42334/2014**

1. We refer to the above matter as well as to your letter, dated 25 January 2019.
2. Since your letter under reply was only received on 22 February 2019, we assume that the 25 January 2019 date as appears on your letter is an error.
3. Our clients intend filing an answering affidavit in opposition to the rescission application pending under the above case number. This would only become due once you have complied contained in the order granted by the Honourable Mr. Justice Spilg on 25 May 2016 ("the Spilg Order").
4. Your clients have however taken no steps to advance the matter since the withdrawal of the appeal in respect of the order granted by the Honourable Mr. Justice Ismail, despite the clear directives contained in the Spilg Order.
5. In addition, your client Mr. Waxham makes the following statement in paragraph 52 of the 20 December 2018 replying affidavit, delivered in the application to fast track certain selected claims which currently form the subject matter of the certification application pending in case number 80811/2014:

Director
Mario Kyriacou B.Comm. LL.B. Dip Insolvency Law

Registration number: 2007/022092/21

"I am advised that counsel has almost completed the drafting of further court papers to take the setting aside application further. This, I am informed, entails an application (probably to be heard again by Spilg J) for the amendment to his order pertaining to substituted service, given certain impractical consequences of such order. Such papers, it was hoped, would be ready for issuing in this month (December 2018) but will probably only be issued in early January 2019. I also point out that the honourable Mrs. Justice Wiener (sic) has been appointed as a judge to case manage the setting aside application."

6. We have not been served with any "further court papers to take the setting aside application further", despite the material amount of time that has elapsed since 20 December 2018.
7. Once you have complied with the Spilg Order or the processes relating to your clients' "further court papers", have been concluded, our clients will finalize their answering affidavit, and to deliver same within 15 court days thereof.
8. Our clients' rights are and remain reserved.

Yours faithfully

KYRIACOU INCORPORATED
Per: Mario Kyriacou

HR
2/8



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Alexander III Building, 18 Alexander Street STELLENBOSCH 7600

Our ref.: J FURSTENBERG/ka/H080327

11 March 2019

Messrs Kyriacou Incorporated
PRETORIA

PER EMAIL: mario@kincorporated.co.za

Dear Sir

Re: GELDENHUYS E.A. VS ORTHOTOUCH LTD E.A. - LIST OF NAMES -
ORDER OF SPILG J - CASE NUMBER 42334/2014 - JOHANNESBURG -
SUBSTITUTED SERVICE:

1. Your letter to us dated 6 March 2019 refers, in which you responded to our letter sent to you on 22 February 2019 concerning your non-filing of opposing affidavits in the rescission application under the above 42334/2014.
2. You allege, in paragraph 3 thereof, that your clients' opposing affidavit "would only become due" once our clients have complied with the order of Mr Justice Spilg on 25 May 2016 concerning substituted service.
3. In our view, this is clearly not correct: The order of Spilg J merely provides for the giving of notice to certain investors by means of email or SMS, or by registered post, and to all the other investors by means of publications notices in certain newspapers.

The order has no bearing on the filing of opposing papers by the cited Respondents in the application itself. Nor does the order suspend the operation of the court rules pertaining to the filing of further affidavits. If there is a particular reason why you believe Spilg J's order suspends the operation of the court rules, kindly enlighten us.

4. In any event, substituted service cannot be effected currently, as the said order provides that such notices to investors is to reflect the date of the hearing of the application for rescission of the Scheme of Arrangement (see par f(i)(2)(a) of the order). Such hearing date will only be known once all parties' affidavits have been filed and the registrar allocates/determines such date.
5. Your client's attitude and the non-filing is just a furtherance of the long history of a total disregard for the court rules and intentional delays to frustrate the class action litigation. We hereby provide you with a final opportunity to commit to the filing of opposing papers by a date very soon, failing which we will be obliged to call for a further case management meeting before the honourable Weiner J, the costs of which will be for your firm's account.

(We again remind you of the substantial supplementary Founding Affidavit filed (and allowed by Weiner J) in support of the rescission of the Scheme of Arrangement)

6. With regards to our bringing of an application to amend the order of Spilg J is concerned: We attach hereto a self-explanatory letter from us to Messrs. Natalie Lubbe attorneys (NLA) dated 25 January 2019, in which we seek from their client (Orthotouch Ltd) certain information which, depending on their response, will have a significant influence on the type of relief to be sought for purposes of amending the order of Spilg J. We also enclose herewith a follow up letter to them reflecting our frustration in obtaining the information from NLA.
7. Once we have received information from NLS, we will be in a position to launch our application to amend the Spilg J order.
8. Clearly, the reason for the delay in getting the hearing of the application for rescission of the Scheme of Arrangement ripe for hearing, is not that substituted

HK
[Handwritten signature]

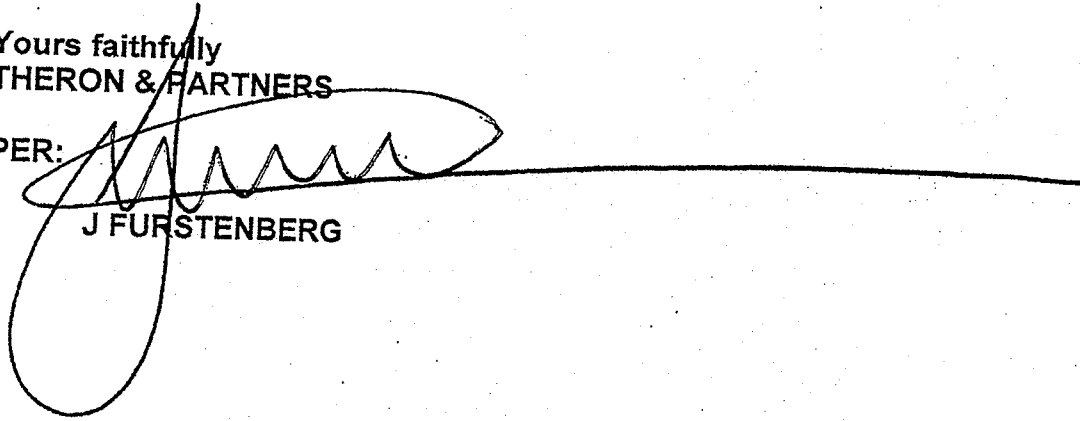
service on the investors have not taken place yet, but the lack of filing of further affidavits by the parties to the application. We again refer to the fact that substituted service cannot even take place yet, given that the hearing date has not been set yet, as indicated above.

9. We look forward to hearing from you urgently, as indicated above.

10. Be advised accordingly.

Yours faithfully
THERON & PARTNERS

PER:

A large, stylized handwritten signature in black ink, starting with a large loop on the left and ending with a long horizontal line extending to the right. The signature is written over the printed name 'J FURSTENBERG'.

J FURSTENBERG

HR
2/21



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Our ref.: J FURSTENBERG/ka/H080327

25 January 2019

Messrs NLA Legal Inc
North Riding
PRETORIA
(Attorneys for First Respondent - Orthotouch Ltd)

PER EMAIL natalie@natalielubbe.co.za

Dear Sir

Re: GELDENHUYS E.A. VS ORTHOTOUCH LTD E.A. - LIST OF NAMES -
ORDER OF SPILG J - CASE NUMBER 42334/2014 - JOHANNESBURG -
SUBSTITUTED SERVICE:

1. Counsel acting for our clients (Applicants) was instructed to draft court papers to apply for the amendment of the orders pertaining to substituted service as given by the honourable Spilg J on 25 May 2016, (as amended by him on 1 September 2016). These intended amendments have in our view become necessary due to, amongst others, the fact that Mr Cohen (the Second Respondent, being the Receiver under the Scheme of Arrangement) have indicated that he is not in a position to provide the information/list that he was ordered to provide (under paragraph 48 (d) of the said judgement of Spilg J) as he never had such information/list.

Petrus Jacobus Theron (Konsultant) - Jacques Brink Theron
Assisted by: Johan Furstenberg & Frederick van Zyl
B.T.W. Registrasienommer / V.A.T. Registration Number 4260168630

AR
[Handwritten signature]

2. The list that he had to provide is of all the persons (investors) who voted at the relevant meeting where the Scheme of Arrangement was approved.
3. We attach hereto relevant correspondence, which is self-explanatory, which we sent to Mr Cohen's attorneys dated 26 May 2017, in which we complained to him that the "list" that he had provided to us, does not remotely comply with the order granted since, amongst others, there was no indication on the list which of the investors had voted, and who did not vote.
4. Mr Cohen's response thereto dated 13 July 2017, and a later response dated 2 August 2017, are also attached hereto. You will note that, in such reply, Mr Cohen indicates that he does not have the information concerning the investors who voted, compared to those who did not. He also indicated that he would approach the court for the deletion of the paragraph in Spilg J's order which pertain to him (Cohen) given that he is not in a position to comply therewith. Such application was indeed launched by him under the above case number on 8 August 2017. We have managed to ascertain what the current status of such application is.
5. Be that as it may: Although the drafting of the earlier mentioned court papers have been completed, we are advised by counsel that it might be prudent to – before issuing such intended application to amend – to enquire from your client (Orthotouch Ltd) (the First Respondent) whether it is in possession of such "list" or in information to identify the investors who did in fact vote. Mr Cohen intimated, in his aforementioned reply to us, that your client might have this information in its records.
6. We urgently require your response in this regard, as this information would substantially influence/change the relief that we will be seeking in our approach to the court for an amendment to the order of Spilg J.
7. On a different issue, being the filing of papers in the main application:

HR
28/8

- 7.1 A considerable time has lapsed since your client withdrew its appeal in the Supreme Court of Appeal pertaining to the order of Ismail J, in which he set aside as an irregular step the "notices of withdrawal" filed in the main application under the above case number (i.e. the setting aside application). May we enquire why your client has not filed an opposing affidavit to such main application? May we assume that we can proceed on the basis that your client will not be filing such Affidavit? We urgently require your response hereto, in order for us to approach the case manager (Weiner J) for further procedural directions. (A similar request is been sent to the attorneys of Mr Georgiou (the 12th Respondent)) We look forward to hearing from you in this regard within three days, failing which we will approach the honourable Weiner J for a date for the hearing on an unopposed basis.
- 7.2 In this regard, we remind you of the voluminous supplementary Founding Affidavit which was filed in support of the setting aside application by Applicants, which, by order of Weiner J during the case management meeting before her, was accepted as part of the court record – to which your client obviously also needs to answer in the event of filing an opposing affidavit.
8. We look forward to hearing from you urgently.

Yours faithfully
THERON & PARTNERS

PER:

J FURSTENBERG



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Alexander III Building, 18 Alexander Street STELLENBOSCH 7600

Our Ref: JB THERON/jmt/H080327
Your Ref: Case Number 42334/2014

26 MAY 2017

MESSRS: NATALIE LUBBE & ASSOCIATES
PRETORIA

(Attorneys for First Respondent - Orthotouch Ltd)

VIA E-MAIL: natalie@natalielubbe.co.za

Dear Sirs

**RE: CONTEMPT OF COURT PROCEEDINGS RE LIST OF NAMES - ORDER OF
SPILG J - CASE NUMBER 42334/2014 - JOHANNESBURG - SUBSTITUTED
SERVICE:**

1. We refer to our recent letter to you dated 24 April 2017, in which we requested that your client provides us with the list referred to in paragraph 48c of Spilg J's order of 25 May 2016.
2. We have not heard from you or your client (Orthotouch Ltd).
3. We hereby inform you that, should we not receive the said list within 3 days from today (18 May 2017), Applicants will bring an urgent application to declare your client to be in contempt of court.

Petrus Jacobus Theron (Konsultant) - Jacques Brink Theron
Assisted by: Johan Furstenberg
B.T.W. Registrasienuommer / V.A.T. Registration Number 4260168630

HR
[Handwritten signatures]

4. Importantly, given the deliberate delaying tactics employed by your client and others thus far and abuses of process (as held by more than one judge) – we are also considering requesting the appropriate cost orders, on a punitive scale, against the directors of your client personally, jointly and severally, given the deliberate delaying tactics employed by them. This letter will be put before court for purposes of such request for such costs order. We trust that you will provide each director of Orthotouch Ltd with a copy of this letter.
5. We look forward to receiving such list within three days from today, failing which we will have no other option to proceed with the aforementioned court application, as well as a request for such cost order.

Yours faithfully

Theron & Partners

PER:


J FURSTENBERG

HR

2/1
2/1

Zwiegers

A T T O R N E Y S

Your ref

JB Theron/bk/H080327

Our ref

W Zwiegers/ZC231

Date

13 July 2017

Theron & Partners

Email: admin@theronlaw.co.za, Jean-Marie Tosen | Clerk 1 clerk1@theronlaw.co.za

Writer's Direct Fax Line: 086 619 6422

Dear Sir

DEREK PEDOE COHEN N.O.
ORDER OF SPILG'J - CASE NO: 42334/2014-JOHANNESBURG HIGH COURT

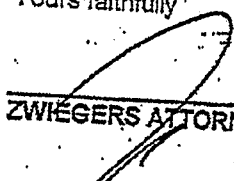
Our attention has just been drawn to the contents of your letter dated 26 May 2017. For some reason it did not find its way to the file and therefore slipped our attention.

The records regarding the details of the people who voted are not in the possession of our client but is with Orthotouch. The list we delivered to you was received from them.

We are immediately requesting that they provide us with a list of the names of the entities that voted. At this stage however it is important that we remind you that the order of Spilg J requires that you be provided with a list of all persons who voted whether personal or by proxy of or against the approval of the arrangement.

Assuming that such a list within our client's control, we will attempt to obtain a copy thereof and delivered to you in the next day or two. We however have to inform you that our client is presently abroad and will only be returning in a week and half. We record that our client had no intention to disregard the order of the court since the contents of your letter did not come to his attention.

Yours faithfully


ZWIEGERS ATTORNEYS

Willelm BJ Zwiegers - BProc
Cell : 082 561 5552

Telephone 0879452100
Fax 0113252207
Email corrie@zwiegers.co.za
Dunkeld West Centre, 2nd floor, Office 288
Cnr Bompas & Jan Smuts Avenue, Dunkeld
PO Box 41917, Craighall 2024



"FS4"

Dear Nic

I refer to our meeting held at Stellenbosch on the 30th and 31st of March 2017 and confirm as follows:

The 800 contracts for settlement due for signing on 30th and 31st March 2017 were tendered to you, Mr Nic Georgiou, to be signed at Stellenbosch, as agreed with you.

You attended the meeting but however declined to sign the agreements and indicated that you soon want to make a more favourable offer than the current one on the table, to enable you to settle the HSAG Action group as a whole and not only a portion thereof. You said that you cannot find finances from the banks due to the class action and therefore need to settle the whole class action.

Nic, during our negotiations last week you asked me to simply explain on a piece of paper the dynamics of the class action and financial effect if you don't settle sooner rather than later. I quickly showed you that, if you don't honour your current offer of contribution to cost and a further R2 000 is requested from our 6 688 members it will cost you an additional R13,376 million. If our 6 688 paid their registration and legal costs and you must also pay the negotiation cost, and therefore you must budget to repay the investors R25 million. You offered a 1% brokerage fee which means R25 million. All in all, it means that you must weigh up the current litigation and negative impact together with penalty interest payments and excessive security requirements of banks against the ability to settle the disputes amicably over an agreed and acceptable period. We insisted on repayment of 65% capital on the same terms and conditions as the current offer with two further payments of 7.5% respectively, the first one 48 months and the second one 60 months after date of signature of the contract. You indicated that, taking the above and all circumstances into consideration, you will positively consider two further payments of 5%, totalling 60% of capital.

The HSAG would like to emphasize the urgency of the matter and therefore urge you to make the offer by not later than 20th April 2017.

We would also like, once again, to list the following requirements which should form part of the offer.

- (i) The offer should be made an order of court by the attorneys, Theron and Partners.
- (ii) Yourself, as a fully authorized representative of all the respondents, will agree to the certification of the class action in the High Court of South Africa.
- (iii) All other requirements, as set out in the original agreements, regarding legal fees and or relating to fees and disbursements pertaining the negotiations, drafting and conclusion of this agreement, whether legal or otherwise, shall be paid by yourself / Orthotouch / cessionary on demand by the attorneys, Theron and Partners.
- (iv) The cessionary irrevocably consents that the cedent's attorney may sign the agreement for and on behalf of the cedent / HSAG member.
- (v) Notwithstanding the date of signature of the contract, the first pay-out shall be made on / before 31st May 2017.

We await your offer.

Johan Stander
HSAG

Handwritten initials and signatures, including "HR" and a large signature.