



ENGLISH TEXT BELOW

MAANDELIKSE NUUSBRIEF: APRIL 2024

HIERDIE NUUSBRIEF WORD AAN U GERIG AS LID VAN DIE HOËVELD SINDIKASIE AKSIEGROEP (“HSAG”) OP GROND VAN U BELEGGING IN DIE HOËVELD SINDIKASIEMAATSKAPPYE 15-22 EN/OF U ONDERSTEUNING VAN DIE HSAG.

HIERDIE E-POS IS VERTROULIK EN UITSLUITLIK VIR DIE GEADRESSEERDE HSAG LID BEDOEL. (SIEN ONS VRYWARING HIERONDER)*

HSAG AMPTELIKE NUUSBRIEF – INHOUDSOPGAWE

1. INLEIDING.....	2
2. LAASTE GELEENTHEID VIR BYDRAES VOOR DIE REGSAAK.....	3
3. WAAR IS ONS NOU?.....	4
3.1 DECA (HS 15-22): REGTER BEVESTIG - VERHOOR GAAN VOORT!	4
3.2 CCAF (HS 21-22)	7
3.3 OORDRAGAANSOEK (JHB NA PTA).....	9
3.4 TERSYDESTELLING AANSOEK	11
4. SKOKKENDE NUUS: LAASTE POGING DEUR GEORGIOUS OM VERIGTINGE TE VERTRAAG. APPEL TEEN VOORLOPIGE SEKWESTRASIE.	11
5. LIKWIDASIE OMSKAKELING: ZEPHAN EN ORTHOTOUCH	12
6. DIE ROL VAN 'N BESIGHEIDSREDDINGSPRAKTISYN.....	14
7. DECA: WAT IS 'N AFGELEIDE AKSIE IN SUID-AFRIKA	16
8. UIT DIE PERS SE BEK	19
9. BELANGRIK: GEBUIK VAN KORREKTE REKENINGNOMMERS EN VERWYSINGS.	22
10. ALGEMENE NAVRAE	23
11. BELANGRIK: GEBUIK VAN KORREKTE E-POS ADRESSE.....	24
12. BELANGRIKE ALGEMENE TERME EN VOORWAARDES.....	25

1. INLEIDING

Beste HSAG-lede,

Terwyl ons deur die regsuitdagings van April 2024 voortstuur, word ons gesamentlike deursettingsvermoë getoets, maar bly dit steeds sterk. Hierdie uitgawe van ons nuusbrief beskryf die beduidende gebeure en ontwikkelinge wat noodsaaklik is op ons pad na geregtigheid en aanspreeklikheid.

Op Woensdag, 24 April 2024, is 'n belangrike Saakbestuursvergadering gehou voor die Agbare Regter Van Nieuwenhuysen om die lewensvatbaarheid te bepaal om met die verhoor in die DECA (HS 15-22) saak voort te gaan, in die lig van die voorlopige sekwestrasie van wyle Nic Georgiou se boedel.

Die besprekings, gelei deur die advokaat van die HSAG, het gefokus op die potensiële regsonbevoegdheids van die voorlopige trustees, wie se aanstelling verdrag was en slegs op die 18de April 2024 plaasgevind het na die Georgiou se appèl teen die voorlopige sekwestrasie. Bekommernisse is geopper oor die beduidende kostes en voorbereidings wat vermors kan word indien die trustees, sonder die regskrag om voort te gaan, tot 'n uitstel lei. Ten spyte van hierdie bekommernisse, was op aandrang van die respondente versoek om met die verhoor voort te gaan, ongeag die huidige regstatus van die trustees. Die regter het ook die potensiële koste-implikasies van sodanige besluite genoem.

Verder was die belangrikheid om die uitspraak in die Oordragaansoek aangaande die Aansoek om Tersydestelling van die A155 Reëlinskema ("SoA") af te wag, 'n sleutel fokus, met uitkomst wat die HSAG se strategiese benaderings vorentoe potensieel kan beïnvloed.

Die vergadering het ook die rolle en huidige kompleksiteite bespreek wat deur die betrokkenheid van die N Georgiou Trust en sy regsverteenvoerders teweeggebring is, wat verder uitdagings gestel het vir die voorlopige trusteeskap.

Namate ons voortgaan om hierdie uitdagings in die gesig te staar, gaan die verdragings soos veroorsaak deur wyle Nic Georgiou en sy medewerkers voort, en beïnvloed dit die tydsberekening en verrigtinge van ons sake.

Hierdie nuusbrieff poog om ons lede goed ingelig te hou oor elke stap, om te verseker dat elke lid van die HSAG toegerus is met die kennis om die belange en vordering van ons gesamentlike regsoggings te verstaan. U voortdurende ondersteuning en betrokkenheid is onskatbaar terwyl ons hierdie teenstand saam te hoof bied. Die langarm van die gereg is 'n bekende term (en was ons saak geen uitsondering nie), maar was daar geweldig baie vordering gemaak, nieteenstaande die feit dat ons lede met hul eie beleggings beveg was.

Bly betrokke terwyl ons deurlopende inligting verskaf oor die stappe en die implikasies vir ons regsstrategieë en aksies wat dit inhou. Ons is steeds vasberade om ons verbintenis tot geregtigheid en aanspreeklikheid te handhaaf.

2. LAASTE GELEENTHEID VIR BYDRAES VOOR DIE REGSAAK

Soos al so dikwels die geval was, vra die HSAG weer eens sy lede om hul jaarlikse en / of spesiale verhoorheffing bydraes te maak om ons sake voort te sit. Binne minder as twee weke is ons volgende verhoor geskeduleer om plaas te vind vanaf Maandag, 13 Mei 2024, tot Vrydag, 17 Mei 2024. Die regter het op Woensdag, 24 April 2024, bevestig dat die saak moet voortgaan, ten spyte van die besorgdheid wat deur die HSAG uitgespreek is dat een van die hoof-respondente, die voorlopig insolvente boedel van wyle Nic Georgiou, nie voor die hof was nie. Minder as 'n week voor die Sakebestuursvergadering (sien hieronder) is voorlopige trustees aangestel as gevolg van die pogings van die Georgious om die voorlopige sekwestrasie te appelleer, wat beteken dat die trustees nie voor die hof was nie. Die Georgious en Hans Klopper dring daarop aan dat die verhoor voortgaan, terwyl hulle presies weet dat selfs 'n voorlopige trustee nie die mag het om in regsprosedures op te tree nie totdat dit magtiging van die skuldeisers ontvang het na 'n finale aanstelling gemaak is.

Slegs 'n fraksie van ons lede is op datum met hul jaarlikse en spesiale verhoorheffings, en ons wil ons lede dringend versoek om te verseker dat ons die beste moontlike regsverteenvoordinging by die verhoor ontvang. Duur reis- en verblyfreëlings is reeds gemaak, en bo en behalwe dit moet die regspan, bestaande uit onder andere 'n senior prokureur en advokaat, beskikbaar wees om die hele periode by die verhoor teenwoordig te wees. As gevolg van ons groot aantal lede is klein bedrae vir 'n saak van hierdie omvang, wat miljarde rande behels wat teruggevorder moet word, aangevra.

U samewerking word waardeer.

3. WAAR IS ONS NOU?

3.1 DECA (HS 15-22): REGTER BEVESTIG - VERHOOR GAAN VOORT!

Op Woensdag 24 April 2024 het alle deelnemende partye 'n Saakbestuursvergadering bygewoon voor die Agbare Regter Van Nieuwenhuysen om vas te stel of die verhoor kan voortgaan as gevolg van die voorlopige sekwestrasie van die boedel van wyle Nic Georgiou.

Die vergadering het begin met 'n belangrike bespreking, gelei deur die advokaat van die HSAG waar hy sy bekommernis uitgespreek het dat, indien die wet nie 'n voorlopige trustee toelaat om in regsprosedures op te tree nie, en die voorlopige trustee nie in staat is of weier om tot die verrigtinge toe te stem, dan kan die saak moontlik uitgestel word as gevolg hiervan. 'n Uitstel sou nie alleen baie voorbereiding verg nie, maar ook vermorsde koste vir duur reis en vlug- en verblyfkoste, asook die bywoning van die hof. Voorlopige trustees, weens die Georgious se appèl teen die voorlopige sekwestrasie, is eers op die 18de April 2024 aangestel.

Hierdie kwessie van vermorsde koste blyk geen invloed op die respondente te hê nie, en hulle het aangedring dat die verhoor moet voortgaan, ongeag of die voorlopige trustees tans regsrag het al dan nie. Die regter het verder opgemerk dat dit koste-implikasies mag hê.

Ons het voorheen in ons nuusbriewe uiteengesit dat wyle Nic Georgiou en sy afsterwe tot dusver beduidende verdragings in die verhoor van ons sake veroorsaak het, en sy medewerkers en familie blyk geen uitsondering hierop te wees nie.

Al die uitstelle as gevolg van Georgiou se dood, sy eksekuteur se dood en die huidige voorlopige sekwestrasie is heeltewel buite beheer van die HSAG of sy regspan. Die regter het voorheen beklemtoon dat die saak nie stuksgewys aangehoor kan word nie. Die fokus van die vergadering was dus vierkantig op die beduidende impak van die voorlopige sekwestrasie van die wyle boedel van Nic Georgiou, spesifiek die implikasies daarvan vir ons komende hofverrigtinge. Die HSAG advokaat het ook die noodsaaklikheid om die uitspraak in die Oordragaansoek oor die Aansoek om Tersydestelling van die A155 Reëlinskema ("SoA") af te wag, alvorens daarmee voortgegaan word, uiteengesit.

Bespreking oor N Georgiou Trust en Aanstelling van Trustees

Die advokaat vir die N Georgiou Trust het die vergadering toegesprek en bevestig dat hy ook voorheen vir wyle Nic Georgiou opgetree het. Hy het die trust se rol op hierdie punt verduidelik, tesame met die voorlopige sekwestrasiebevel en die kompleksiteite wat deur die aanstelling van voorlopige trustees veroorsaak is. Die besprekings het kommer oor verdragings en die onsekerheid wat dit na die DECA-saak se vordering bring, beklemtoon. Hierdie voorleggings het egter geen bykomende hulp gebied of die saak regtens aangehoor kan word of nie.

Oordragaansoek en Saakvordering

Verdere besprekings het ook betrekking gehad op die Oordragaansoek. Onder die respondente (almal van wie "kwytskel" is deur die SoA) was daar 'n sterk konsensus om die saak op die rol te hou en voort te gaan met die verhoor, ongeag die uitkoms van die Oordragaansoek. Die HSAG het nooit die gesag van die Hof oorgeneem nie en sou daarom slegs kommentaar kan lewer op die uitslag van die beslissing van die Oordragaansoek, sodra dit ontvang is. Hetsy ten gunste van, hetsy teen die HSAG, sal ons nooit optree asof ons bo die Howe verhewe is en dus sy uitsprake of uitkomst

voortloop nie. (Ons was verheug om na die vergadering ingelig te word dat die uitspraak deur die Johannesburgse Hooggeregshof gelewer sal word voor die aanvang van die DECA-verhoor, soos hieronder uiteengesit.)

Skedulering en Oorwegings vir die verhoor van Hoofaansoek (DECA)

Ten spyte van die sterk aandrang deur die “kwytskelde” respondente dat die verhoor moet voortgaan, het 'n beduidende deel van die vergadering gegaan oor skedulering en die logistieke kwessies rakende nuwe datums, indien die saak nie kan voortgaan nie. Op hierdie punt is die verhoor vasgestel om voort te gaan op 13-17 Mei 2024 en die regter het aangedui dat sy haar finale uitspraak op die dag van die verhoor sal gee. Die vergadering is daarna verdaag.

Verdere Opmerkings

Hierdie vergadering het weer eens die kompleksiteit en strategiese besluite wat ons regsplan moet oorweeg, onderstreep, omdat aan die een kant die HSAG vasbeslote is dat sy sake moet voortgaan, maar aangesien ons tans slegs 'n baie klein gedeelte van lede het wat die klasaksie finansieel ondersteun, moet ons finansies versigtig hanteer word. 'n Feit is 'n feit, en ten spyte van verskeie vorige versoeke, is ons heeltemal in die hande van ons lede.

Ons verstaan volkome waarom mense gefrustreerd en algeheel volkome in twyfel verkeer oor die regsproses, veral omdat hulle al hul lewenspaargeld in die hande van mense geplaas het, wat hulle geglo het na hulle belange sou omsien, maar nou het hulle alles verloor. Ons deel hierdie sentiment ten volle en dit is waarom die HSAG bo alle verwagtinge onverpoosd voortgegaan het om vir die belange en waardigheid van sy lede te veg.

Ons land het ook deur 'n moeilike dekade van Staatskaping, beurtkrag, COVID-19 en ander ongelukkige gebeure gegaan, maar daar is steeds net twee opsies oor, naamlik dat die hofsake afgehandel of geskik moet word.

Tot dusver het die Georgious getoon dat hulle eerder tot die bitter einde sal veg, maar intussen brand Rome en op een stadium sal alle sake op 'n punt van geen terugkeer vir skikking wees. Daarom is die HSAG, ten spyte van ernstige uitdagings, gedwing om met sy regsproses voort te gaan. (Die uitdrukking "Rome brand" word metafoories gebruik om 'n toestand van dringendheid of krisis te suggereer, wat aandui dat 'n beduidende probleem of situasie ontvou en onmiddellike aandag vereis. Dit verwys na die historiese voorval van die Groot Brand van Rome in AD 64, waar 'n aansienlike deel van die stad deur vlamme verwoes is.)

Ons sluit af deur u te herinner dat u as lede die getalle het maar ons as die HSAG het die stem om die gruweldade wat teenoor elkeen van u gepleeg is, uit te wys. Sonder u voortgesette morele en finansiële ondersteuning, asook begrip sou dit onmoontlik wees om met enige verhoor (wat slegs twee weke weg is) of enige van ons sake voort te gaan.

(Mnr. Hans Klopper het kort voor hierdie nuusbrieff 'n "Besigheidreddingstatusverslag" uitgereik ingevolge artikel 132 van die Maatskappywet. Uit die inhoud daarvan is dit duidelik dat Klopper se nuusbriewe nie aan die Wet voldoen nie, maar bloot 'n poging van hom is om HSAG-lede te ontmoedig om dit finansiëel te ondersteun om teen hom en ander voort te gaan.)

3.2 CCAF (HS 21-22)

In teenstelling met die naderende verhoor in die DECA-saak, is dit interessant om waar te neem dat die respondente in die CCAF-saak almal verteenwoordig is deur dieselfde regsverteenwoordigers, wat nog geen verdere stappe gedoen het nie, hetsy hul Betoogshoofde of Bykomende Eedsverklarings in te dien, ten spyte daarvan dat daarom gevra is.

Verder is regsaksies ingestel teen drie respondente in die Gesertifiseerde Klasaksies saak ("CCAF"), naamlik: Nic Georgiou, Zephan Eiendomme en die N Georgiou Trust. Al hierdie partye was ook verteenwoordig deur dieselfde firma van

prokureurs wat die dienste van dieselfde junior en senior advokate in diens geneem het.

Intussen is mnr. Nic Georgiou oorlede en sy bestorwe boedel word nou verteenwoordig deur 'n onafhanklike eksekuteur wat wetlik verplig is om na die belange van die oorlede boedel se skuldeisers om te sien en ook die bewaring van sy bates. Wanneer 'n eksekuteur besef dat 'n bestorwe boedel insolvent is, is hy wetlik verplig om aansoek te doen vir die sekwestrasie van die bestorwe boedel. Ten spyte van sy regspligte sowel as die eise van byna R1 miljard wat aan die eksekuteur voorgelê is, het die eksekuteur duidelik niks gedoen om na die boedel om te sien of na die belange van die CCAF- en ander skuldeisers om te sien nie, maar eerder die litigasie aangevuur terwyl die boedel insolvent was, en selfs 'n aansoek om die voorlopige sekwestrasie van die boedel teëgestaan. Dit sou rampspoedige gevolge hê vir die betrokkenes deur te verhoed dat die insolvente boedel afgehandel word. Dit het tot enorme onnodige koste gelei.

Tydens 'n onlangse Saakbestuursvergadering in 'n ander saak (net voor die uitreiking van hierdie nuusbrief), het dit duidelik geword dat die regspan van die wyle Nic Georgiou se boedel *functus officio* geword het (sy gesag om namens die boedel op te tree het tot 'n einde gekom) toe die boedel voorlopig insolvent verklaar is, en voorlopige trustees is 'n paar dae voor die vergadering op die 18de April 2024 aangestel. Dit beteken dat die nuut aangestelde trustees (verteenwoordigers van die voorlopig insolvente boedel) nie teenwoordig was by die genoemde vergadering nie en dat die regspan nie die magtiging gehad het om namens die insolvente boedel op te tree nie. Dit is 'n groot afwyking van die huidige bedeling waar die hoofrespondente deurgaans en vir byna 'n dekade deur dieselfde regspan verteenwoordig is.

Dit het gelei tot 'n ander kritieke punt, en dit is of die boedel se vorige regspan, wat insgelyks optree vir die N Georgiou Trust, ook die magtiging ontbreek om vir daardie trust op te tree, aangesien dit blyk dat die trust nie die minimum vereiste trustees het nie, soos gemagtig deur die Trustakte of die Meester van die Hooggeregshof. Ongelukkig is ons nie in besit van daardie dokumente nie en, aangesien dit 'n belangrike aspek is, wat ook 'n impak op die CCAF-saak het, sal ons voortgaan om die korrekte stand van sake te bepaal. Dit is 'n beduidende ontwikkeling in ons

deurlopende regsverrigtinge en die HSAG regsman sal 'n kennisgewing teen die respondent se regsman uitreik om hul reg tot verteenwoordiging te bevestig.

Dit is veral vreemd dat dieselfde regsman wat opgetree het vir die bevooroordeelde Mnr Nic Georgiou, ook optree vir sy trust en die “onbevooroordeelde” BRP, Mnr Jacques du Toit, namens Zephan en Orthotouch, wat beteken hierdie regsman mag 'n aansienlike belangebotsing hê wanneer hulle vir dieselfde partye tydens 'n verhoor verskyn.

Die spesifieke reël is 'n belangrike bepaling binne ons regstelsel, wat ons die reg gee om die wettigheid van enigiemand wat namens 'n opponerende party optree, te bevraagteken. Indien suksesvol, kan hierdie uitdaging moontlik daartoe lei dat die respondent se regsverteenvoorder verbied word om verdere betrokkenheid in die verrigtinge te hê, tensy hulle voldoende kan aantoon dat hulle gemagtig is om hul kliënt te verteenwoordig.

Die enigste redelike gevolgtrekking wat gemaak kan word, is dat 'n onbekende party tans die litigasie teen die HSAG befonds, aangesien die boedel van wyle Nic Georgiou altyd, en onlangs deur die Hof voorlopig as insolvent verklaar is. Dit is ook duidelik uit kopieë van die openbare rekord in die boedel, wat van die kantoor van die Meester van die Hooggeregshof verkry is.

Die opdrag aan die HSAG se regsverteenvoorders om dienooreenkomstig op te tree, herbevestig ons toewyding aan ons saak, en verseker die nakoming van standarde van deursigtigheid en aanspreeklikheid deur alle betrokkenes. Ten spyte van ons uitdagings om te veg vir die regte van ons aansoekers en lede, sal ons voortgaan in ons strewe na geregtigheid om so ver moontlik die beste paaie beskikbaar te volg.

3.3 OORDRAGAANSOEK (JHB NA PTA)

Die langverwagte uitspraak in die Oordragaansoek is geskeduleer om na die vrystelling van hierdie nuusbrief gelewer te word, en ons sal in 'n posisie wees om terugvoer te verskaf in ons Mei 2024-uitgawe.

Die belang van hierdie uitspraak draai om die oordrag van die Aansoek om Tersydestelling van die Artikel 155 Reëlinskema (“SoA”) van die Johannesburg Hooggeregshof na die Pretoria Hooggeregshof. Dit is algemeen bekend dat die Besigheidreddingspraktisyn, Hans Klopper, agter die rûe van die HSAG, sy lede en regsman gegaan het om 'n *ex parte* aansoek deur Klopper in te dien om die hof se goedkeuring van sy mislukte SoA sowel as Besigheidreddingsplan wat hy die HS beleggers oorreed het om te aanvaar, te verkry. Die verskil tussen sy Besigheidreddingsplan en die SoA is dat hy in die eerste instansie beleggers kon oorreed om in sy Besigheidreddingsplan te belê, maar vyf jaar later besef het dat dit onmoontlik sou wees om die HS beleggers daartoe te oorreed, en dus waarskynlik hierdie skema heimlik in 'n ander Hooggeregshof (Johannesburg) as voorgeskryf deur die SoA self (Pretoria Hooggeregshof) uitgereik het.

Die belangrike kwessie om te bepaal is of die Aansoek om Tersydestelling oorgedra moet word al dan nie, en die gewigtigheid en kompleksiteit van net hierdie tegniese aspek is weerspieël in die feit dat dit byna drie en 'n half maande geneem het vir die regter om oor hierdie kwessie te besin. Die HSAG het vertroue in die regstelsel dat die regte uitspraak gelewer sal word.

Hiermee 'n opsomming van die Oordragaansoek van die aansoek om die SoA ter syde te stel. Hierdie aansoek vra dat die saak na die Noord-Gautengse Afdeling in Pretoria oorgedra word vir gesamentlike oorweging met die verwante saak, die Smith-aansoek (DECA). Beide sake deel aansienlike oorvleueling in kwessies en betrokke partye, wat hul gesamentlike verhoor, ideaal voor dieselfde regter, regverdig. Die Georgiou seuns het die oordrag heftig teengestaan, alhoewel hulle selfs nie die Tersydestelling van die SoA teengestaan het nie. Hierdie teenstand blyk te spruit uit die kwytskelding wat in die Hans Klopper / Nic Georgiou SoA toegestaan is.

3.4 TERSYDESTELLING AANSOEK

Die voortsetting van die Aansoek om Tersydestelling rus op die skouers van die Oordragaansoek. Indien die Oordragaansoek suksesvol is, dan sal die Aansoek om Tersydestelling na die Pretoria Hooggeregshof oorgedra word en 'n aansoek sal deur die HSAG gemaak word om hierdie saak saam met die DECA-saak te konsolideer.

Aan die ander kant, as die Hof beslis dat die saak in Johannesburg aangehoor moet word, dan sal die HSAG-span oorweeg om by die hof aansoek te doen om die DECA-saak op te skort aangesien die Georgiou seuns en Hans Klopper swaar leun op hulle kwytskelding wat hulle deur die geheime *ex parte* aansoek in Johannesburg verkry het.

4. SKOKKENDE NUUS: LAASTE POGING DEUR GEORGIOS OM VERIGTINGE TE VERTRAAG. APPÈL TEEN VOORLOPIGE SEKWESTRASIE.

In 'n skuif wat beskou word as 'n finale poging om regsverrigtinge te vertraag, het die Georgious 'n appèl aangeteken teen die voorlopige sekwestrasie van wyle Nic Georgiou se bestorwe boedel. Hierdie aksie, wat deur Artikel 150 van die Insolvensiewet beheer word, het kommer onder sommige HS-beleggers aangewakker, wat dit beskou as 'n strategiese skuif deur die Georgious en hulle medewerkers om die oplossing van die litigasie te verleng.

Artikel 150 van die Insolvensiewet bepaal dat terwyl appèlle in ander gevalle toelaatbaar is, geen sodanige regshulp beskikbaar is teen die voorlopige sekwestrasie self nie. Hierdie regs-konsep is fundamenteel in die verstaan van die Georgious se jongste taktiek.

Volgens die Insolvensiewet, wat lig werp op die saak, verbied Artikel 150 uitdruklik appèlle teen 'n voorlopige sekwestrasie, en behou die reg om te appelleer slegs vir finale bevel. Hierdie bepaling is van kardinale belang om onnodige vertragings in insolvensie verrigtinge te voorkom. Nietemin, die besluit van die Georgious (deur die

N Georgiou Trust) om teen voorlopige sekwestrasie te appelleer, daag hierdie regsraamwerk uit.

Deur die geleentheid vir 'n appèl te benut, bevestig dit vrae oor die Georgious se goeie trou (insluitend Hans Klopper en Jacques du Toit) en hulle verbintenis om die saak spoedig op te los.

Alhoewel die HSAG nie direk betrokke is by die sekwestrasie verrigtinge nie, kan sy lede, wat lank gewag het vir restitusie vir hulle verliese, verseker wees dat die HSAG, na die beste van sy vermoë, sy strewe na geregtigheid, en finansiële herstel deur die mees moontlike en finansiële lewensvatbare paaie te bereik.

Die tydsberekening van hierdie appèl is veral noemenswaardig. Te midde van 'n reeks regsgevegte en strategiese besluite, beklemtoon dit die kompleksiteit en intensiteit van die regstryd rondom die Georgious se boedel. Daarom is die fokus van die HSAG om die vloeï van geld te volg.

Namate die appèlproses ontvou, is alle oë op die howe om die beginsels van geregtigheid en billikheid te handhaaf. HSAG-lede is hoopvol dat die regsverrigtinge teen almal wat aanspreeklik gehou word en betrokke is, so spoedig moontlik sal voortgaan, en 'n regverdige en billike uitkoms verseker wat hulle belange beskerm en die respondente aanspreeklik hou vir hulle dade.

In die aansig van teenspoed, bly 'n toegewyde, al is dit 'n klein groep HSAG-beleggers, stewig verenig en vasberade in hulle besluit om hierdie regsgevegte tot sy regmatige afsluiting deur te sien. Terwyl die pad vorentoe vol uitdagings mag wees, bly ons vasberadenheid onwrikbaar soos ons voortgaan om te veg vir dit wat regmatig joune is. Daarom word alle lede versoek om te verseker dat ons sake deur middel van hulle bydraes aangehoor word.

5. LIKWIDASIE OMSKAKELING: ZEPHAN EN ORTHOTOUCH

Soos voorheen berig, het die BRP beide likwidasië aansoek teëgestaan, maar het maande later nog geen opponerende stukke in die likwidasië aansoek ingedien nie. Dit beteken dat die BRP geen gronde het om die likwidasië teë te staan nie, alternatiewelik is hy nie bereid om onder eed die finansiële posisie van die besighede te verklaar nie, aangesien dit ernstige regs- en ander implikasies vir hom kan inhou. Albei hierdie alternatiewe blyk feitelike toestande te wees.

Die HSAG het daarom besluit om met 'n proses voort te gaan om 'n verdere Kennisgewing van Mosie in te dien, wat by die Vrystaatse Hooggeregshof, Bloemfontein, geliasseer sal word. Hierdie kennisgewing spreek sekere kwessies rakende Orthotouch en Zephan aan.

Aard van Regsverrigtinge wat Ingestel is

Die prokureurs van die HSAG sal 'n tussentydse aansoek bring rakende die voortdurende besighedsreddingsverrigtinge en hierdie aksie versoek die hof om billike regshulp vir HS-beleggers te verseker en Zephan en Orthotouch te beskerm teen enige roekelose optrede.

Belangrike Aspekte van die Aansoek

Afdwing van die Indiening van Opponerende Eedsverklarings: Die aansoek sal die hof versoek om Mnr. Jacques du Toit, die Besighedsreddingspraktisyn, te dwing om sy opponerende eedsverklaring binne vyf dae in te dien. Dit is noodsaaklik aangesien die eedsverklaring lank reeds agterstallig is, en die afwesigheid daarvan belemmer die verhoor van die hoofaansoek gemik op die likwidasië van die genoemde maatskappy.

Goedkeuring vir Beleggers kennisgewing: Nog 'n aspek van hierdie aansoek sal wees om aanwysings te verkry oor die voorgestelde metode van kennis aan beleggers oor die hoofaansoek. Dit verseker die voorkoming van onnodige tegniese verwere wat deur respondente gebring mag word.

Konteks en Implikasies

Die hoofaansoek versoek die omskakeling van besigheidsredding in likwidasië. Dit daag ook die huidige bestuur onder Mnr. Jacques du Toit uit om verrekening van sy verrigtinge te verskaf.

Ons sal die HSAG-lede op hoogte hou van enige verdere verwickelings. Om die geheue van ons lede te verfris, stel ons hieronder die rol van 'n Besigheidsreddingspraktisyn in Suid-Afrika uiteen. Sowel mnr. Hans Klopper, as BRP van die HS-maatskappye, en mnr. Jacques du Toit, as BRP van Zephan en Orthotouch, is wetlik gebonde aan hierdie reëls en regulasies.

6. DIE ROL VAN 'N BESIGHEIDSREDDINGSPRAKTISYN

Met verloop van tyd het ons HSAG-lede onseker geword oor die rol en posisie van Besigheidsreddingspraktisyns ("BRP's"), soos Mnr. Hans Klopper (BRP van HS15-22) en Mnr. Jacques du Toit (BRP van Orthotouch & Zephan). Ons verskaf dus hieronder die belangrike regspligte en verpligtinge van 'n BRP.

In Suid-Afrika is die rol van 'n Besigheidsreddingspraktisyn (BRP) gedefinieer onder die Maatskappywet, No. 71 van 2008, veral in Hoofstuk 6, wat handel oor besigheidsreddingsverrigtinge. Die BRP speel 'n sleutelrol in die poging om maatskappye wat finansiëel in die knyp is en moontlike insolvensie in die gesig staar, te rehabiliteer. Hulle pligte en verpligtinge is omvattend en gemik daarop om te verseker dat die proses met integriteit, deursigtigheid, en doeltreffendheid bestuur word.

Belangrike Regspligte en Verpligtinge van 'n Besigheidsreddingspraktisyn sluit in:

Algemene Pligte:

'n BRP moet hul pligte onpartydig en onafhanklik uitvoer, met die doel om die regte en belange van alle relevante belanghebbendes te balanseer. Hulle moet ook enige belangebotsings vermy en enige potensiële botsings aan die maatskappy en sy skuldeisers openbaar.

Ywerige Finansiële Verslagdoening:

Die BRP is verplig om akkurate en op-datum finansiële rekords van die maatskappy onder besigheidsredding te hou. Dit sluit die instandhouding van rekords van alle transaksies, bates, en laste van die maatskappy in en verseker dat die maatskappy se finansiële sake verantwoordelik bestuur word.

Jaarlikse Finansiële State (AFS):

Alhoewel die BRP nie direk verantwoordelik is vir die voorbereiding van die maatskappy se AFS nie, moet hulle toesig hou oor die proses om te verseker dat hierdie state volgens die relevante finansiële verslagdoeningstandaarde voorberei word en die maatskappy se finansiële status akkuraat weerspieël. Die BRP mag nou saamwerk met die maatskappy se finansiële beamptes of eksterne ouditeurs om dit te bereik.

Maandelikse Verslae:

Die BRP is verplig om maandelikse verslae aan die maatskappy se skuldeisers en die hof, indien van toepassing, voor te lê. Hierdie verslae behoort in te sluit:

- 'n Opdatering oor die besigheidsreddingsverrigtinge,
- Die finansiële situasie van die maatskappy,
 - Beduidende ontwikkelings en enige veranderinge in die vooruitsigte om die doelwitte van die besigheidsreddingsplan te bereik,
- Kontantvloeiprojeksies en werklike kontantvloei, en
- Uitgawes aangegaan deur die BRP.

Besigheidsreddingsplan:

Een van die BRP se sleutelverantwoordelikhede is om 'n besigheidsreddingsplan te ontwikkel en aan te bied vir oorweging deur die maatskappy se skuldeisers. Hierdie plan behoort die stappe te beskryf wat nodig is om die maatskappy se finansiële

situasie om te keer, en dit moet realisties en uitvoerbaar wees. Die BRP moet 'n vergadering van skuldeisers belê vir die doel om die reddingsplan te oorweeg.

Implementering van die Besigheidsreddingsplan:

Na goedkeuring van die besigheidsreddingsplan deur die vereiste meerderheid van skuldeisers, is die BRP verantwoordelik vir die toesig oor die implementering van die plan, insluitend die herstrukturering van die maatskappy se sake, besigheid, eiendom, skuld, en ekwiteit.

Vinnige Afhandeling van die Proses:

Die BRP moet daarop gemik wees om die besigheidsreddingsverrigtinge so spoedig moontlik af te handel. Hulle moet nie die proses onnodig verleng nie, met erkenning van die beduidende impak wat die duur van besigheidsreddingsverrigtinge kan hê op die waarde van die benarde maatskappy se bates en die belange van skuldeisers.

Regs Nakoming en Verslagdoening:

Die BRP moet verseker dat die maatskappy voldoen aan alle toepaslike regsvereistes gedurende die besigheidsreddingsproses. Dit sluit in die indiening van enige nodige dokumente by die Maatskappy en Intellektuele Eiendoms Kommissie (CIPC) en die nakoming van die bepalinge van die Maatskappywet.

Die rol van die BRP is krities in die rigting van 'n maatskappy deur die uitdagings van finansiële nood. Hulle is belas met 'n beduidende verantwoordelikheid teenoor alle belanghebbendes, insluitend skuldeisers, werknemers, en aandeelhouers, om die besigheidsreddingsproses effektief, deursigtig, en met behoorlike sorg te bestuur.

7. DECA: WAT IS 'N AFGELEIDE AKSIE IN SUID-AFRIKA

'n Ander vraag wat gevra word en voorheen bespreek was, is wat 'n afgeleide aksie in Suid-Afrika is. 'n Afgeleide aksie in Suid-Afrika verwys na 'n regsgeleding wat 'n

aandeelhouer van 'n maatskappy toelaat om regsdinge namens die maatskappy in te stel. Dit word tipies nagestreef wanneer die maatskappy op 'n manier opgetree het wat teen sy beste belange is, en die maatskappy self, gewoonlik as gevolg van die beheer van dié wat verkeerd doen, nie optree om die probleem aan te spreek nie. Hierdie meganisme bied 'n manier vir aandeelhouders om die maatskappy en sy aandeelhouders te beskerm teen optrede wat misbruik, bedrieglik of nalatig mag wees.

Die Maatskappywet 71 van 2008 het die regte van aandeelhouders om afgeleide aksies in Suid-Afrika te bring, aansienlik uitgebrei en geformaliseer. Onder hierdie Wet kan enige aandeelhouer 'n afgeleide aksie inisieer, maar die proses word streng gereguleer om te verseker dat sulke optrede te goeder trou gebring word en nie vir kwellende doeleindes nie. Ons is van die standpunt dat HSAG-lede as aandeelhouders benadeel is deur die HS-maatskappye onder die beheer van dié wat respondente in die aansoek is.

Proses vir die Uitoefening van 'n Afgeleide Aksie in Suid-Afrika:

Aanmaning:

As 'n algemene reël moet die betrokke aandeelhouer(s) eerste van diegene wat die maatskappy beheer (gewoonlik die direkteure) aanmaan om die nodige regstappe te neem. Van hierdie aanmaning kan afgesien word as dit getoon kan word dat dit futiel sou wees of as daar 'n ernstige behoefte is om op te tree om die belange van die maatskappy te beskerm. In ons geval het die respondente, insluitende Hans Klopper, bewys dat hulle elke aksie wat deur die HSAG-lede geneem word, gaan teengaan (hierdie verdediging staan ook bekend as die Stalingrad-verdediging - sien nuusbrieff van Maart 2024).

Aansoek by die Hof:

Wanneer dit duidelik is dat die maatskappy nie die vereiste optrede neem nie, moet die aandeelhouer aansoek doen aan die hof vir verlof (toestemming) om dit in die naam van die maatskappy te doen. Die aansoek moet ondersteun word deur bewyse wat aantoon dat die optrede in die beste belange van die maatskappy is en dat daar

'n ernstige vraag is wat probeer moet word. In ons geval het miljarde rande verdwyn terwyl die maatskappye onder die bestuur of beheer van die respondente was.

Oorweging deur Hof:

Die hof sal verskeie faktore oorweeg wanneer beslis word of verlot vir die afgeleide aksie verleen moet word. Hierdie sluit in die waarskynlikheid dat die maatskappy self die optrede sou nastreef as dit nie vir die ongepaste invloed van die vermeende oortreders was nie, die bedoelings van die aansoeker om die optrede te bring, die voordeel vir die maatskappy as die optrede suksesvol is, en of die optrede in die belang van die maatskappy is.

Verrigtinge:

As die hof verlot verleen, verloop die afgeleide aksie soos enige ander hofsaak. Die applikant wat die aksie bring, doen dit namens die maatskappy en moet die litigasieproses bestuur, insluitend enige potensiele skikkings.

Uitkoms en Koste:

As die afgeleide aksie suksesvol is, kom enige opbrengste of voordele uit die litigasie aan die maatskappy toe, nie aan die individuele applikant wat die optrede geïnisieer het nie. Die hof het diskresie oor die kostebevel, en tipies, as die optrede te goeder trou gebring was en in die beste belang van die maatskappy was, kan die maatskappy of die respondente, soos in ons geval, gelas word om die regskoste wat deur die aansoeker gemaak is, te betaal. Ons het aansoek gedoen aan die hof deur middel van 'n Befondsingsaansoek om die aansoekers finansiëel by te staan.

Hierdie proses beklemtoon die balans tussen die toelaat van aandeelhouers en direkteure om die maatskappy en sy belanghebbendes teen verkeerde optrede te beskerm terwyl dit frivole of kwellende litigasie voorkom wat die belange van die maatskappy kan benadeel.

8. UIT DIE PERS SE BEK

Hierdie artikels het in Engels verskyn en word as sulks deur gegee

First Article: Beleaguered Owner Of Fourways Mall Asks Shareholders For R200m

A journalist from Moneyweb published this article on 15 April 2024 where the article discusses Accelerate Property Fund's financial challenges, including its plan to raise R200 million to reposition Fourways Mall. We have provided a summary of the article below, which some HSAG members may find interesting:

Accelerate Property Fund, co-owner of Fourways Mall, is in dire need of financial infusion amounting to R200 million. This capital is earmarked to revamp the struggling mall and settle existing debts. Accelerate, along with its co-owner Azrapart, is spearheading this effort to rejuvenate the mall, which has been grappling with high vacancy rates, notably over a quarter of its outlets vacant, as reported earlier this year. Despite official figures indicating 15,000m² of vacancies by the end of 2023, the actual vacant space, especially under the head lease, is visibly apparent to visitors.

To tackle this challenge, Accelerate has engaged the services of Flanagan & Gerard, renowned for their work in developing successful shopping centers, to restructure the tenant mix. The strategic plan involves emphasising family-oriented attractions within the mall. However, the success of this ambitious endeavour, fuelled by a total investment of R400 million, remains uncertain.

Accelerate's proposal for raising funds through a right offer, albeit dilutive to existing shareholders, is a strategic move to ensure broader shareholder participation and minimise dilution. The market capitalisation of Accelerate stands just below R850 million, with shares hovering around 60c. The rights offer involves issuing 500 million new shares at 40c each, significantly impacting existing shareholders.

Accelerate has been actively divesting its assets since 2020 to mitigate debt. Notable sales include its European portfolio and various properties across South Africa.

Despite these efforts, Accelerate still faces a considerable debt load, with short-term debt comprising a significant portion. The company has secured funding terms to extend expiring facilities and plans to settle a substantial portion of short-term debt through asset sales and corporate actions.

Moreover, changes in ownership dynamics are evident, with an entity linked to Castlevision Property Fund emerging as the largest shareholder of Accelerate, surpassing Michael Georgiou. This entity is poised to underwrite a substantial portion of the rights offer, potentially increasing its stake in Accelerate. The actions of key shareholders, particularly Nedbank and Georgiou, in response to the rights offer remain uncertain, adding another layer of complexity to Accelerate's financial restructuring efforts.

<https://www.moneyweb.co.za/investing/property/beleaguered-fourways-mall-owner-asks-shareholders-to-stump-up-r300m/>

Second Article: Did Regulators Sink Property Syndication Schemes?

A journalist from Moneyweb published this article on 12 April 2024, pertaining to the collapse of several property syndication schemes in South Africa between 2010 and 2012, including Sharemax. A link to the full article can be found below. We have provided a summary of the article below, which some HSAG members may find interesting:

The Companies and Intellectual Property Commission (CIPC) has concluded a comprehensive investigation into the collapse of several property syndication schemes in South Africa, notably Sharemax, between 2010 and 2012. This investigation, spanning two years, aimed to uncover the events and conduct leading to the loss of billions of rands invested by approximately 40,000 individuals, most of whom suffered significant financial setbacks.

The CIPC's preliminary findings revealed numerous irregularities, procedural anomalies, and potential criminal conduct within the syndication schemes. These findings prompted the commission to convene a special hearing, inviting various

regulators, including the South African Reserve Bank (SARB), the Financial Sector Conduct Authority (FSCA), and others, to respond to the identified issues.

A particular focus of the investigation was the SARB's role in the matter. Despite its previous investigation into the syndication schemes, which found their funding models to contravene the Banks Act, no individuals have faced prosecution for these violations. Moreover, the SARB's findings were never formally documented, hindering legal recourse for the affected schemes.

Former broker and activist Deon Pienaar, a vocal critic of the SARB's decisions, welcomed the CIPC's investigation as a crucial step towards addressing corruption and fraud within the industry. Pienaar has been advocating for a review of the SARB's actions since as early as 2010, highlighting concerns regarding the collapse of the property syndication market.

The CIPC's inquiry involved extensive engagement with various stakeholders, including law enforcement agencies, former directors, auditors, and investors. However, the commission has chosen not to disclose its preliminary report to the media and has restricted media attendance at the upcoming hearing.

Overall, the investigation represents a significant effort to shed light on the circumstances surrounding the failure of property syndication schemes in South Africa and to hold accountable those responsible for the substantial financial losses incurred by investors.

<https://www.moneyweb.co.za/in-depth/investigations/did-regulators-scuttle-sharemax-and-other-property-syndication-schemes/>

***VRYWARING**

As u dit per ongeluk / verkeerdelik ontvang het, stel asseblief die versender onmiddellik in kennis by hsagenquiries@gmail.com en vernietig dit. U mag nie 'n e-pos, of enige deel daarvan, wat foutiewelik ontvang aan enigiemand anders

stuur, kopieer of openbaar nie. HSAG se webmeester gebruik antivirusprogrammatuur om virusse en ander kwaadwillige kodes te voorkom. Hierdie sagteware kan egter nie so 'n kode altyd voorkom of uitwis nie. Die HSAG of sy verteenwoordigers sal nie aanspreeklik wees vir enige verlies of skade wat voortspruit uit ontvangs of gebruik van hierdie e-pos of andersins, of dit voortspruit uit die nalatigheid van HSAG, sy lede, bestuurskomitee en agente of andersins nie.

ALHOEWEL E-POSSE, HSAG NUUSFLITSE EN HSAG INLIGTINGSBROKKIES VAN TYD TOT TYD UITGESTUUR WORD, IS DIE WWW.HSACTION.CO.ZA WEBTUISTE DIE PRIMÊRE PLEK WAAR U HSAG INLIGTING, ONDERHEWIG AAN DIE VRYWARING DAARIN VERVAT (EN OOK HIEROP VAN TOEPASSING) KAN BEKOM.

Die verpligting rus op u as HSAG lid om ons op hoogte van enige onakkurate inligting of enige veranderinge van u persoonlike en/of kontakbesonderhede asook dat die inhoud van u maandelikse state korrek is.

9. BELANGRIK: GEBRUIK VAN KORREKTE REKENINGNOMMERS EN VERWYSINGS.

HSAG lede wie in beide HSAG en CCAF is, moet asseblief by beide die HSAG en CCAF se epos-adresse enige verandering aanmeld, hetsy afsterwe van 'n lid, verandering van 'n e-pos-adres, selfoonnommer of woonadres.

Lede word daaraan herinner om te let op die verwysingsnommers soos vervat op hul state. Opvragings moet deur lede in die korrekte rekeninge inbetaal word met die korrekte verwysingsnommer daarby aangeheg. Die tyd, moeite en administrasie wat dit die HSAG se regsplan kos om elke foutiewe betaling te korrigeer ly daartoe dat die HSAG saak onnodig duur word.

Rekeningnommers en verwysings word op elke staat aangebring en ons versoek dat lede asseblief hul state noukeurig deurgaans wanneer hulle betalings maak.

Indien jy jou bedrag in 'n verkeerde rekening inbetaal het, stuur 'n e-pos met 'n versoek om die bedrag na die korrekte rekening oor te dra, en onthou om jou bewys van betaling by die e-pos aan te heg.

Indien u die bedrag in bv. CCAF Trustrekening 3 inbetaal het, maar die bedrag was bedoel vir u HSAG Trustrekening 2, of anders om.

Betalings verkeerd in CCAF betaal, stuur e-pos na admin@ccaf.co.za.

Betalings verkeerd in HSAG betaal, stuur epos aan hsactiongroup@gmail.com

10. ALGEMENE NAVRAE

'n Navraag wat ons gereeld kry is aangaande oordrag van aandele, na 'n geliefde se afsterwe. Ons wil almal graag herinner dat dit deur Orthotouch gedoen word. Dit is die maatskappy wat die aandele se oordrag behartig en dit is eers ná ons 'n dokument, deur hulle uitgereik, wat aandui dat die aandele in 'n nuwe naam oorgedra is, ontvang het, wat ons dit op ons stelsel kan verander. Ons is ook bewus van die feit dat dit in besigheidsredding is – dit behoort egter geen impak op hul werksverrigting te hê nie een ons vra dat almal hulle op dié epos kontak: admin@orthotouch.co.za.

Oor jare het sommige mense se eise vermeerder tot 'n bedrag groter as die aanvanklike beleggings wat in die Hoëveld Sindikasie belê is, weens die feit dat hulle onder andere beleggings vanaf hulle ouers die geërf het. Lede moet baie seker maak dat hulle dokumente en sertifikate wat die oordrag bewys lewer, aangesien dit uiteindelik by die bewys van die verhoogte eisbedrag gaan nodig word. Op hierdie stadium aanvaar ons mense se waarde van hul belegging op grond van hul skriftelike bewyse.

Laastens, neem asseblief kennis dat indien geen betalings oor 'n lang tydperk deur u gemaak is nie, dit moontlik is dat vorige trustopvragings en betalings nie op die staat gereflekteer kan word nie.

11. BELANGRIK: GEBRUIK VAN KORREKTE E-POS ADRESSE

Die korrekte gebruik van e-pos adresse (soos vervat op ons webtuiste en e-posse) asook HSAG-lede se voorletters en van, sindikasiennommers en verwysingsnommers (bv. identiteitsnommer ens.) vir alle kommunikasie, is uiters noodsaaklik en verpligtend. Versuiming om hieraan te voldoen kan die gevolg hê van onnodige vertraging of dat u geen antwoord sal ontvang nie.

Die amptelike en bestaande e-pos adresse vir die HSAG, is as volg:

- **hsactiongroup@gmail.com** vir alle Algemene Navrae (Bv. – selfoon of adres veranderinge, betalingsbewyse, betalings foutiewelik in HSAG Trust Rek 2 betaal het, foutiewe verwysing gebruik het ensovoorts);
- **hsagenquiries@gmail.com** vir Spesifieke Navrae (Bv. – navrae rakende besonderhede van 'n spesifieke belegger, navrae rakende kwytstelling van 'n spesifieke belegger, ensovoorts);
- **hsagregister@gmail.com** vir die Registrasie en Deregistrasie (indien 'n lid uit die klas-aksie wil onttrek), sowel as kennis van lede wie gesterf het;
- **hsagwhistle@gmail.com** vir alle Vertroulike Inligting wat anoniem aan ons gestuur moet word;
- **hsagestates@gmail.com** vir alle Boedel navrae.

Die amptelike en bestaande e-pos adresse vir CCAF (gesertifiseerde HS 21 & 22 klas-aksie), is as volg:

- **accounts@ccaf.co.za** vir betalingsbewyse, foutiewe verwysing op betalings bewyse;
- **admin@ccaf.co.za** vir die amptelike versoek vir afbetaling-vorm, sowel as onttrekkings, betalings foutiewelik aan CCAF Trust Rek 3 , onttrekking uit CCAF;
- **enquiries@ccaf.co.za** vir ander CCAF navrae, bv. navrae oor state wat nie ontvang is nie.

- Indien 'n belegger of enige persoon 'n epos na die verkeerde adres sou stuur sal dit daartoe lei dat daardie e-pos nie spoedig of enigsins die nodige aandag geniet nie. Indien u nie verder enige verdere e-posse wil ontvang nie, stel ons ook asseblief skriftelik in kennis daarvan.

12. BELANGRIKE ALGEMENE TERME EN VOORWAARDES

Die algemene en herhalende terme, voorwaardes en ander algemene inligting wat voorheen in die Nuusbrief vervat was, word nou beskikbaar gestel op die HSAG se webtuiste by www.hsaction.co.za en kan direk besigtig word by die volgende skakel: <http://hsaction.co.za/wp-content/uploads/2020/01/HSAGTsCs.pdf>

Die HSAG Bestuur wil iedere en elke lid alle voorspoed en sukses toewens met die afsienbare toekoms.

Vriendelike groete

HSAG-Bestuurskomitee

Kontak die HSAG en prokureurs by:

Tel: (021) 887 7877

hsactiongroup@gmail.com

AFRIKAANS HIERBO

MONTHLY NEWSLETTER: APRIL 2024

THIS NEWSLETTER IS ADDRESSED TO YOU AS A MEMBER OF THE HIGHVELD SYNDICATION ACTION GROUP (“HSAG”) ON ACCOUNT OF YOU HAVING MADE AN INVESTMENT IN THE HIGHVELD SYNDICATION COMPANIES 15-22 AND/OR SUPPORT OF THE HSAG. (SEE OUR DISCLAIMER HEREUNDER*)

THE WWW.HSACTION.CO.ZA WEBSITE IS THE PRIMARY PLACE WHERE YOU WILL FIND HSAG INFORMATION, SUBJECT TO THE DISCLAIMER CONTAINED THEREIN (AND ALSO APPLICABLE HERETO), ALTHOUGH EMAILS ARE ALSO SENT OUT FROM TIME TO TIME.

HSAG OFFICIAL NEWSLETTER – CONTENTS

1	INTRODUCTION	27
2	LAST OPPORTUNITY FOR CONTRIBUTIONS BEFORE TRIAL.....	28
3	WHERE ARE WE NOW?	29
	3.1 DECA (HS 15-22): JUDGE CONFIRMS - TRIAL GOES AHEAD!	29
	3.2 CCAF (HS 21-22)	32
	3.3 TRANSFER APPLICATION (JHB TO PTA)	34
	3.4 SETTING ASIDE APPLICATION	35
4	SHOCKING NEWS: LAST ATTEMPT BY GEORGIOUS TO DELAY PROCEEDINGS. APPEAL AGAINST PROVISIONAL SEQUESTRATION.....	36
5	LIQUIDATION CONVERSION: ZEPHAN AND ORTHOTOUCH.....	37
6	THE ROLE OF A BUSINESS RESCUE PRACTITIONER.....	38
7	DECA: WHAT IS A DERIVATIVE ACTION IN SOUTH AFRICA	41
8	FROM THE “BENCH PRESS”	43
9	IMPORTANT USE OF ACCOUNT NUMBERS AND REFERENCES	46
10	GENERAL ENQUIRIES.....	47
11	IMPORTANT USE OF CORRECT EMAIL ADDRESSES!.....	48
12	IMPORTANT GENERAL TERMS AND CONDITIONS.....	49

1. INTRODUCTION

Dear HSAG members,

As we steer through the legal complexities of April 2024, our collective resolve is tested but remains strong. This edition of our newsletter details the significant events and developments that are pivotal in our journey towards justice and accountability.

On Wednesday, 24 April 2024, a critical Case Management Meeting was held before the Honourable Judge Van Nieuwenhuysen to determine the feasibility of proceeding with the trial in the DECA (HS 15-22) case, in light of the provisional sequestration of the late Nic Georgiou's estate.

The discussions, led by the HSAG's counsel, centred on the potential legal incapacities of the provisional trustees, which appointment was delayed and only took place on the 18th of April 2024 following the Georgiou's appeal against the provisional sequestration. Concerns were raised about the significant costs and preparations that might be wasted if the trustee, lacking the legal power to proceed, leads to a postponement. Despite these concerns, the insistence from respondents was to push forward with the trial, regardless of the trustee's current legal standing. The judge noted the potential cost implications of such decisions.

Moreover, the importance of awaiting the judgement in the Transfer Application concerning the Setting Aside Application of the S155 Scheme of Arrangement ("SoA") was a key focus, with its outcomes potentially affecting the HSAG's strategic approaches moving forward.

The meeting also highlighted the roles and current complexities introduced by the involvement of the N Georgiou Trust and its counsel, who further detailed the challenges brought on by the provisional trusteeship.

As we continue to face these layered legal challenges, the legacy of delays caused by the late Nic Georgiou and his associates persists, influencing the timeline and proceedings of our cases.

This newsletter aims to keep you well-informed of each development, ensuring that every member of the HSAG is equipped with the knowledge to understand the stakes and progress of our collective legal endeavours. Your ongoing support and engagement are invaluable as we confront these adversities together. The long arm of the law is a well-known term (and is our matter no exception to the rule) but we can confirm that vast progress has been made, notwithstanding the fact that our members were fought with their own investments.

Stay engaged as we provide comprehensive information regarding the steps and the implications for our legal strategy and actions. We are still determined to uphold our commitment to justice and accountability.

2. LAST OPPORTUNITY FOR CONTRIBUTIONS BEFORE TRIAL

As has been the case many times before, the HSAG once again requests its members to make their yearly and/or special trial levy contributions to enable our matters to proceed. In less than two weeks, our next hearing is scheduled to take place from Monday, 13 May 2024, until Friday, 17 May 2024. The judge confirmed on Wednesday, 24 April 2024, that the case must proceed, despite concerns raised by the HSAG that one of the main respondents, the provisionally insolvent estate of the late Nic Georgiou, was not before the court. Less than a week before the Case Management Meeting (see below), provisional trustees were appointed due to the attempts by the Georgious to appeal the provisional sequestration, which means that the trustees were not before the court. The Georgious and Hans Klopper insist that the trial goes ahead, whilst knowing full well that even a provisional trustee does not have the authority to act in legal proceedings until they receive authorisation from the creditors after a final appointment is made.

Only a fraction of our members is up to date with their annual and special trial levies, and we wish to implore our members to ensure that we receive the best possible legal representation at the trial. Expensive travel and accommodation arrangements were made, and besides this, the legal team, consisting, among others, of a senior attorney and advocate, must make themselves available to attend the trial for the whole period. Due to our large number of members, small amounts were requested for a case of this magnitude involving billions of rand that needs to be recovered.

Your cooperation is appreciated.

3. WHERE ARE WE NOW?

3.1 DECA (HS 15-22): JUDGE CONFIRMS - TRIAL GOES AHEAD!

On Wednesday 24 April 2024 all the participating parties attended a Case Management Meeting before the Honourable Judge Van Nieuwenhuysen to establish whether the trial can go ahead as a result of the provisional sequestration of the estate of the late Nic Georgiou.

The meeting commenced with a crucial discussion led by the counsel of the HSAG where he expressed his concern that, if the law does not permit a provisional trustee to act in legal proceedings, and the provisional trustee cannot or refuses to concede to the proceedings, then the matter may be postponed as a result thereof. A postponement would not only cause much preparation, but also wasted costs for expensive travel and flight costs, as well as attending court. Provisional trustees, due to the Georgious' appeal against the provisional sequestration, were only appointed on the 18th of April 2024.

This issue of wasted cost did not appear to have any bearing on the respondents, and they insisted that the trial must go ahead, regardless whether the provisional trustees currently has legal powers or not. The judge furthermore remarked that it may have cost implications.

We have previously set out in our newsletters, that the Late Nic Georgiou and his passing away have so far caused considerable delays in the hearing of our matters, and his associates and family seem to be no exception.

All of the postponements due to Georgiou's death, his executor's death and the current provisional sequestration completely outside the HSAG or its legal team's control. The judge previously emphasised that the matter cannot be heard on a piecemeal basis. The focus of the meeting was therefore squarely on the significant impact of the provisional sequestration of the deceased estate of Nic Georgiou, specifically its implications for our upcoming court proceedings. Counsel also articulated the necessity of awaiting the judgment in the Transfer Application on the Setting Aside Application of the S155 Scheme of Arrangement ("SoA") before proceeding further.

Discussion on N Georgiou Trust and Appointment of Trustees

Counsel for the N Georgiou Trust addressed the meeting and confirmed that he also previously acted for the late Nic Georgiou. He explained the trust's role at this point, together with the provisional sequestration order and the complexities introduced by the appointment of provisional trustees. The discussions highlighted concerns about delays and the uncertainty this brings to the DECA case's progression. However, these submissions did not add any assistance to whether the matter legally be able to be heard or not.

Transfer Application and Case Progress

Further discussions related also to the Transfer Application. Amongst the respondents (all of whom were "indemnified" by the SoA) there was a strong consensus to keep the matter on the roll and continue with the trial, regardless of the outcome of the Transfer Application. The HSAG has never assumed the authority of the Court and would only comment on the outcome of the judgment of the Transfer Application, once it is received. Whether in favour of or against the HSAG, we would never act in such a manner as if we are above the Courts and therefore disregard its judgements or outcomes. (We were delighted to be informed after the meeting that judgment will be

passed by the Johannesburg High Court prior to the commencement of the DECA trial, as set out hereunder.)

Scheduling and Considerations for Hearing of Main Application (DECA)

Despite the strong insistence by the “indemnified” respondents that the trial proceed, a significant portion of the meeting revolved around scheduling and the logistical issues regarding new dates, if the matter cannot proceed. At this point the trial set to proceed on 13-17 May 2024 and the judge advised that she shall give her final verdict on the day of the hearing. The meeting was thereafter adjourned.

Further Remarks

This meeting again underlined the complexities and strategic decisions our legal team must consider, because on the one hand the HSAG is adamant that its matters must proceed but, as we only have a very small portion of members currently supporting the class action financially, our finances must be dealt with cautiously. A fact is a fact, and despite various previous plights, we are completely in the hands of our members.

We fully understand why people are frustrated and completely doubtful about the legal process, in particular because they have entrusted all their life savings in the hands of people they believed to look after their interests, but now have lost everything. We share this sentiment completely and that is why the HSAG has above all expectations relentlessly continued to fight for its members' interest and dignity.

Our country also went through a tough decade of State Capture, loadshedding, COVID-19 and other unfortunate events, but there are still only two options left, namely that the court matters must be concluded or settled.

So far, the Georgious have shown that they would rather fight until the bitter end, but in the meantime, Rome is burning and at one stage all matters would be at a point of no return for settlement. Therefore, the HSAG, despite severe challenges is forced to continue with its legal process. (The expression "Rome is burning" is used metaphorically to suggest a state of urgency or crisis, indicating that a significant

problem or situation is unfolding and demands immediate attention. It refers to the historical incident of the Great Fire of Rome in AD 64, where a substantial part of the city was devastated by flames.)

We conclude to state that you as members have the numbers but we as the HSAG have the sound to voice the atrocities that were committed against each and every one of you. Without your continued moral and financial support, and understanding it would be impossible to continue with any trial (which is two weeks away) or our matters.

(Mr. Hans Klopper also issued shortly before this newsletter a “Business Rescue Status Report” in terms of s132 of the Companies Act. From its contents it’s clear that Klopper’s newsletters do not comply to the Act but is merely an attempt from him to discourage HSAG members to support it financially to continue against him and others.)

3.2 CCAF (HS 21-22)

As opposed to the nearing trial in the DECA case, it is interesting to observe that the respondents in the CCAF matter, were all represented by the same legal representatives, who have not proceeded with any further steps, either by filing their Heads of Argument or Additional Affidavits, despite being requested to do so.

Furthermore, legal proceedings were instituted against three respondents in the Certified Class Action case (“CCAF”), namely: Nic Georgiou, Zephan Properties and the N Georgiou Trust. All these parties were also represented by the same firm of attorneys who employed the services of junior & senior counsel.

In the meantime, Mr. Nic Georgiou passed away and his deceased estate was now represented by an independent executor who is, by law obliged to look after the interests of the deceased estate’s creditors and also the preservation of its assets. When an executor realises that a deceased estate is insolvent, he is by law obliged to

apply for the sequestration of the deceased estate. Despite his legal obligations as well as the claims of nearly R1 billion, which were submitted to the executor, the executor clearly did not do anything about the estate or looking after the interests of the CCAF creditors, but rather fuelled the litigation, whilst the estate was insolvent, and even opposed an application for the provisional sequestration of the estate. This would have dire consequences for those involved by preventing the insolvent estate to be finalised. This led to enormous unnecessary costs.

During a recent Case Management Meeting in another matter (just before the issuing of this newsletter), it became apparent that the legal team of the deceased Nic Georgiou's estate became *functus officio* (its authority to act on behalf of the estate has come to an end) when the estate was declared provisionally insolvent, and provisional trustees were appointed a few days before the meeting on the 18th of April 2024. This means that the newly appointed trustees (representatives of the provisionally insolvent estate) were not present at the said meeting and that the legal team did not have the authority to act for and on behalf of the insolvent estate. This is a major shift away from the current dispensation where main respondents were throughout and for almost a decade represented by the same legal team.

This led to another crucial point, and that is whether the estate's erstwhile legal team, who similarly acts for the N Georgiou Trust, also lacks the authority to act for that trust, as it seems that the trust does not have the minimum required trustees, as authorised by the Deed of Trust or the Master of the High Court. Unfortunately, we are not privy to those documents and, as this is an important aspect, which also impacts on the CCAF matter, we will continue to establish the correct state of affairs. It is a significant development in our ongoing legal proceedings and the HSAG legal team will issue a notice against the respondent's legal team to confirm their right to representation.

Peculiarly, the same legal team that acted for the biased Mr Nic Georgiou, also acts for his trust and the "unbiased" BRP, Mr Jacques du Toit, for and on behalf of Zephan and Orthotouch, which means this legal team may have a substantial conflict of interest when appearing for the same parties during a trial.

The particular rule is an important provision within our legal framework, that grants us the authority to question the legitimacy of anyone acting on behalf of the opposing party. If successful, this challenge could potentially result in the respondent's counsel being prohibited from further involvement in the proceedings unless they can adequately demonstrate their authorisation to represent their client.

The only reasonable conclusion that could be reached is that an unknown party is currently funding the litigation against the HSAG, since the estate of the Late Nic Georgiou was always, and recently by Court provisionally declared insolvent. This is also evident from copies of the public record in the estate, which was obtained from the Master of the High Court's office.

The instruction to the HSAG legal representatives to act accordingly, reaffirms our dedication to our case, and ensuring adherence to the standards of transparency and accountability by all parties involved. Despite our challenges to fight for the rights of our applicants and members, we shall continue in our pursuit of justice to follow as far as possible the best avenues available.

3.3 TRANSFER APPLICATION (JHB TO PTA)

The long-awaited judgment in the Transfer Application is scheduled to be handed down after the release of this newsletter, and we will be in a position to provide feedback in our May 2024 issue.

The importance of this judgment revolves around the transfer of the setting aside of the Section 155 Scheme of Arrangement ("S155 SoA") from the Johannesburg High Court to the Pretoria High Court. It is well-known that the Business Rescue Practitioner, Hans Klopper, went behind the backs of the HSAG, its members, and legal team to issue an *ex parte* application by Klopper to obtain the court's approval of his failed S155 SoA as well as Business Rescue Plan which he persuaded the HS investors to accept. The difference between his Business Rescue Plan and the SoA is that in the first instance he was able to persuade investors to buy into his Business

Rescue Plan, but five years later he realised that it would be impossible to convince the HS investors, and probably therefore secretly issued this scheme in another High Court (Johannesburg) than prescribed by the SoA itself (Pretoria High Court).

The important issue to determine is whether the Setting Aside Application should be transferred or not, and the gravity and complexity of just this technical aspect were reflected in the fact that it took almost three and a half months for the judge to deliberate upon this issue. The HSAG has confidence in the judicial system that the right judgment will be delivered.

Herewith a summary of the Transfer Application of the application to set aside the SoA. This application seeks to transfer the matter to the North Gauteng Division in Pretoria for joint consideration with the related case, the Smith application (DECA). Both cases share considerable overlap in issues and involved parties, which justifies their combined hearing, ideally before the same judge. The Georgiou sons vehemently opposed the transfer, although they did not even oppose the setting aside of the SoA. This opposition appears to stem from the exemption that was granted in the Hans Klopper / Nic Georgiou SoA.

3.4 SETTING ASIDE APPLICATION

The continuation of the Setting Aside Application rests on the shoulders of the Transfer Application. If the Transfer Application is successful, then the Setting Aside Application will be transferred to the Pretoria High Court and an application will be made by the HSAG to consolidate this matter with the DECA case.

On the other hand, if the Court rules that the matter must be heard in Johannesburg, then the HSAG team will consider to apply to court to have the DECA matter stayed as the Georgiou sons and Hans Klopper heavily rely on their indemnification which they obtained through the secretive *ex parte* application in Johannesburg.

4. SHOCKING NEWS: LAST ATTEMPT BY GEORGIOUS TO DELAY PROCEEDINGS. APPEAL AGAINST PROVISIONAL SEQUESTRATION.

In a move perceived as a final attempt to delay legal proceedings, the Georgious have lodged an appeal against the provisional sequestration of the Late Nic Georgiou's deceased estate. This action, governed by Section 150 of the Insolvency Act, has sparked concern among some HS investors, who see it as a strategic manoeuvre by the Georgious and their associates to prolong the resolution of the litigation.

Section 150 of the Insolvency Act stipulates that while appeals are permissible in other instances, no such recourse is available against the provisional sequestration itself. This legal nuance is fundamental in understanding the Georgious' latest tactic.

According to the Insolvency Act, which sheds light on the matter, Section 150 explicitly prohibits appeals against a provisional sequestration, reserving the right to appeal only for final orders. This provision is crucial in preventing undue delays in insolvency proceedings. However, the Georgious' decision (through the N Georgiou Trust) to appeal against provisional sequestration challenges this legal framework.

By exploiting the avenue for an appeal, it confirms questions about the Georgious' intentions (including Hans Klopper and Jacques du Toit) and their commitment to expeditiously resolving the matter.

Although the HSAG is not directly involved in the sequestration proceedings, its members, who have long awaited restitution for their losses can rest assured that the HSAG, to the best of its ability, will continue its furtherance quest for justice and financial recovery through the most possible and financially viable avenues.

The timing of this appeal is particularly noteworthy. Coming amidst a series of legal battles and strategic decisions, it emphasises the complexity and intensity of the legal battle surrounding the Georgious' estate. Therefore, the focus of the HSAG is to follow the money.

As the appeal process unfolds, all eyes are on the courts to uphold the principles of justice and fairness. HSAG members are hopeful that the legal proceedings against all those held accountable and involved, will proceed expeditiously as possible, ensuring a just and equitable outcome that safeguards their interests and holds the respondents accountable for their actions.

In the face of adversity, a committed, albeit small group of HSAG investors, still stand firmly united and steadfast in their determination to see these legal battles through to its rightful conclusion. While the road ahead may be full of challenges, our determination remains steadfast as we continue to fight for what is rightfully yours. Therefore, all members are requested to ensure that our matters be heard by means of their contributions.

5. LIQUIDATION CONVERSION: ZEPHAN AND ORTHOTOUCH

As reported before the BRP opposed both liquidation applications, but has months later not filed any opposing papers in the liquidation application. This means that the BRP does not have any grounds for opposing the liquidation, alternatively he does not prepare to state under oath the financial position of the businesses, as this may have serious legal and other ramifications for him. Both those alternatives appear to be factual states of affairs.

The HSAG therefor decided to continue with a process and furthermore, file a further Notice of Motion, which will be submitted to the Free State High Court, Bloemfontein. This notice, addresses certain issues regarding Orthotouch and Zephan.

Nature of Legal Proceedings Initiated

The HSAG attorneys will bring an interlocutory (interim) application concerning the ongoing business rescue proceedings and this action seeks court intervention to ensure the equitable relief for HS investors and to safeguard Zephan and Orthotouch from any reckless actions.

Key Aspects of the Application

Compelling the Filing of Opposing Affidavits: The application will request the court to compel Mr. Jacques du Toit, the Business Rescue Practitioner to submit his opposing affidavit within five days. This is crucial as the affidavit is long overdue, and its absence thwarts the hearing of the main application aimed at the liquidation of the aforementioned companies.

Approval for Investor Notification: Another aspect of this application will be to obtain court directions on the proposed method for notifying certain investors about the main application. This ensures the prevention of unnecessary technical issues raised by respondents about informing all relevant parties regarding the application and, if necessary, join them as respondents.

Context and Implications

The main application seeks to convert the business rescue proceedings into liquidation proceedings, challenging the current management under Mr. Jacques du Toit's administration.

We shall keep the HSAG members apprised of any further developments. To refresh the memories of our members, we hereunder set out the role of a Business Rescue Practitioner in South Africa. Both Mr Hans Klopper, as BRP of the HS companies, and Mr Jacques du Toit, as BRP of Zephan and Orthotouch are legally bound to these rules and regulations.

6. THE ROLE OF A BUSINESS RESCUE PRACTITIONER

Over time we had HSAG members who were uncertain about the role and position of Business Rescue Practitioners ("BRPs"), as Mr Hans Klopper (BRP of HS15-22) and Mr Jacques du Toit (BRP of Orthotouch & Zephan). We therefor give hereunder key legal duties and obligations of a BRP.

In South Africa, the role of a Business Rescue Practitioner (BRP) is defined under the Companies Act, No. 71 of 2008, particularly in Chapter 6, which deals with business rescue proceedings. The BRP plays a pivotal role in attempting to rehabilitate companies that are financially distressed and facing potential insolvency. Their duties and obligations are comprehensive and aimed at ensuring that the process is managed with integrity, transparency, and efficiency.

Key Legal Duties and Obligations of a Business Rescue Practitioner include:

General Duties:

A BRP must perform their duties impartially and independently, with the aim of balancing the rights and interests of all relevant stakeholders. They must also avoid any conflicts of interest and disclose any potential conflicts to the company and its creditors.

Diligent Financial Reporting:

The BRP is required to keep accurate and up-to-date financial records of the company undergoing business rescue. This includes maintaining records of all transactions, assets, and liabilities of the company and ensuring that the company's financial affairs are managed responsibly.

Annual Financial Statements (AFS):

While the BRP is not directly responsible for preparing the company's AFS, they must oversee the process to ensure that these statements are prepared according to the relevant financial reporting standards and reflect the company's financial status accurately. The BRP may need to work closely with the company's financial officers or external auditors to achieve this.

Monthly Reports:

The BRP is obligated to prepare and deliver monthly reports to the company's creditors and the court, if applicable. These reports should include:

- An update on the business rescue proceedings,
- The financial situation of the company,
- Significant developments and any changes in the prospects of meeting the goals of the business rescue plan,
- Cash flow projections and actual cash flows, and
- Expenses incurred by the BRP.

Business Rescue Plan:

One of the BRP's key responsibilities is to develop and present a business rescue plan for consideration by the company's creditors. This plan should detail the steps necessary to turn around the company's financial situation, and it must be realistic and achievable. The BRP must convene a meeting of creditors for the purpose of considering the rescue plan.

Implementation of the Business Rescue Plan:

Upon approval of the business rescue plan by the requisite majority of creditors, the BRP is responsible for overseeing the implementation of the plan, including the restructuring of the company's affairs, business, property, debt, and equity.

Expediently Wrapping Up the Process:

The BRP must aim to conclude the business rescue proceedings as quickly as practicable. They should not unduly prolong the process, recognising the significant impact that the duration of business rescue proceedings can have on the value of the distressed company's assets and the interests of creditors.

Legal Compliance and Reporting:

The BRP must ensure that the company complies with all applicable legal requirements during the business rescue process. This includes filing any necessary

documents with the Companies and Intellectual Property Commission (CIPC) and adhering to the Companies Act's provisions.

The role of the BRP is critical in directing a company through the challenges of financial distress. They are tasked with a significant responsibility to all stakeholders, including creditors, employees, and shareholders, to manage the business rescue process effectively, transparently, and with due diligence.

7. DECA: WHAT IS A DERIVATIVE ACTION IN SOUTH AFRICA

Another question which is asked and previously discussed, is what a derivative action in South Africa is. A derivative action in South Africa refers to a legal procedure that allows a shareholder of a company to institute legal proceedings on behalf of the company. This is typically pursued when the company have acted in a way that is against its best interests, and the company itself, usually due to the control of those in the wrong, is not acting to address the issue. This mechanism provides a way for shareholders to protect the company and its shareholders from actions that may be abusive, fraudulent, or negligent.

The Companies Act 71 of 2008 significantly expanded and formalised the rights of shareholders to bring derivative actions in South Africa. Under this Act, any shareholder can initiate a derivative action, but the process is strictly regulated to ensure that such actions are brought in good faith and not for vexatious purposes. We are of the firm believe that HSAG members as shareholders have been done in by the HS companies under the control of those who are respondents in the application.

Process for Conducting a Derivative Action in South Africa:

Demand:

As a general rule, the concerned shareholder(s) must first demand from those who control the company (usually the directors) to take the necessary legal action. This demand can be waived if it can be shown that it would be futile or if there is a serious

need to act to protect the company's interests. In our case, the respondents, including Hans Klopper, have proven that they will stonewall every action taken by the HSAG members (this defence is also commonly known as the Stalingrad defence – see newsletter of March 2024).

Application to Court:

When it is clear that the company does not take the required action, the shareholder must apply to the court for leave (permission) to do so in the name of the company. The application must be supported by evidence demonstrating that the action is in the best interests of the company and that there is a serious question to be tried. In our case billions of rands disappeared whilst the companies were under the management or control of the respondents.

Court Consideration:

The court will consider various factors when deciding whether to grant leave for the derivative action. These include the likelihood that the company itself would pursue the action if it were not for the improper influence of the alleged wrongdoers, the intentions of the applicant in bringing the action, the benefit to the company if the action is successful, and whether the action is in the interest of the company.

Proceedings:

If the court grants leave, the derivative action proceeds like any other court case. The applicant bringing the action does so on behalf of the company and must manage the litigation process, including any potential settlements.

Outcome and Costs:

If the derivative action is successful, any proceeds or benefits from the litigation accrue to the company, not the individual applicant who initiated the action. The court has discretion over the costs order, and typically, if the action was brought in good faith and was in the best interest of the company, the company or the respondents, as in

our case, may be ordered to pay the legal costs incurred by the applicant. We have applied to court by means of a Funding Application to assist the applicants financially.

This process emphasises the balance between allowing shareholders and directors to protect the company and its stakeholders from wrongful acts while preventing frivolous or vexatious litigation that could harm the company's interests.

8. FROM THE “BENCH PRESS”

First Article: Beleaguered Owner Of Fourways Mall Asks Shareholders For R200m

A journalist from Moneyweb published this article on 15 April 2024 where the article discusses Accelerate Property Fund's financial challenges, including its plan to raise R200 million to reposition Fourways Mall. We have provided a summary of the article below, which some HSAG members may find interesting:

Accelerate Property Fund, co-owner of Fourways Mall, is in dire need of financial infusion amounting to R200 million. This capital is earmarked to revamp the struggling mall and settle existing debts. Accelerate, along with its co-owner Azrapart, is spearheading this effort to rejuvenate the mall, which has been grappling with high vacancy rates, notably over a quarter of its outlets vacant, as reported earlier this year. Despite official figures indicating 15,000m² of vacancies by the end of 2023, the actual vacant space, especially under the head lease, is visibly apparent to visitors.

To tackle this challenge, Accelerate has engaged the services of Flanagan & Gerard, renowned for their work in developing successful shopping centers, to restructure the tenant mix. The strategic plan involves emphasising family-oriented attractions within the mall. However, the success of this ambitious endeavour, fuelled by a total investment of R400 million, remains uncertain.

Accelerate's proposal for raising funds through a right offer, albeit dilutive to existing shareholders, is a strategic move to ensure broader shareholder participation and

minimise dilution. The market capitalisation of Accelerate stands just below R850 million, with shares hovering around 60c. The rights offer involves issuing 500 million new shares at 40c each, significantly impacting existing shareholders.

Accelerate has been actively divesting its assets since 2020 to mitigate debt. Notable sales include its European portfolio and various properties across South Africa. Despite these efforts, Accelerate still faces a considerable debt load, with short-term debt comprising a significant portion. The company has secured funding terms to extend expiring facilities and plans to settle a substantial portion of short-term debt through asset sales and corporate actions.

Moreover, changes in ownership dynamics are evident, with an entity linked to Castlevue Property Fund emerging as the largest shareholder of Accelerate, surpassing Michael Georgiou. This entity is poised to underwrite a substantial portion of the rights offer, potentially increasing its stake in Accelerate. The actions of key shareholders, particularly Nedbank and Georgiou, in response to the rights offer remain uncertain, adding another layer of complexity to Accelerate's financial restructuring efforts.

<https://www.moneyweb.co.za/investing/property/beleaguered-fourways-mall-owner-asks-shareholders-to-stump-up-r300m/>

Second Article: Did Regulators Sink Property Syndication Schemes?

A journalist from Moneyweb published this article on 12 April 2024, pertaining to the collapse of several property syndication schemes in South Africa between 2010 and 2012, including Sharemax. A link to the full article can be found below. We have provided a summary of the article below, which some HSAG members may find interesting:

The Companies and Intellectual Property Commission (CIPC) has concluded a comprehensive investigation into the collapse of several property syndication schemes in South Africa, notably Sharemax, between 2010 and 2012. This

investigation, spanning two years, aimed to uncover the events and conduct leading to the loss of billions of rands invested by approximately 40,000 individuals, most of whom suffered significant financial setbacks.

The CIPC's preliminary findings revealed numerous irregularities, procedural anomalies, and potential criminal conduct within the syndication schemes. These findings prompted the commission to convene a special hearing, inviting various regulators, including the South African Reserve Bank (SARB), the Financial Sector Conduct Authority (FSCA), and others, to respond to the identified issues.

A particular focus of the investigation was the SARB's role in the matter. Despite its previous investigation into the syndication schemes, which found their funding models to contravene the Banks Act, no individuals have faced prosecution for these violations. Moreover, the SARB's findings were never formally documented, hindering legal recourse for the affected schemes.

Former broker and activist Deon Pienaar, a vocal critic of the SARB's decisions, welcomed the CIPC's investigation as a crucial step towards addressing corruption and fraud within the industry. Pienaar has been advocating for a review of the SARB's actions since as early as 2010, highlighting concerns regarding the collapse of the property syndication market.

The CIPC's inquiry involved extensive engagement with various stakeholders, including law enforcement agencies, former directors, auditors, and investors. However, the commission has chosen not to disclose its preliminary report to the media and has restricted media attendance at the upcoming hearing.

Overall, the investigation represents a significant effort to shed light on the circumstances surrounding the failure of property syndication schemes in South Africa and to hold accountable those responsible for the substantial financial losses incurred by investors.

<https://www.moneyweb.co.za/in-depth/investigations/did-regulators-scuttle-sharemax-and-other-property-syndication-schemes/>

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The obligation to keep us up to date with any inaccurate information or of any changes to your personal and/or contact details as well as to make sure that the contents of your monthly statements are correct rests on you as HSAG member. Participation in the HSAG is voluntary, however, persons that do not belong to the HSAG or who are not up to date with their payments, would not be able to claim any rights or privileges that faithful members of the HSAG can. Persons that refuse or neglect to pay their membership fees, would be removed as members of the class action

9. IMPORTANT USE OF ACCOUNT NUMBERS AND REFERENCES

HSAG members who are in both HSAG and CCAF, please report any change to both HSAG and CCAF's e-mail addresses, be it death of a member, change of email address, mobile phone number or residential address.

Members are reminded to note the reference numbers as contained on their statements. Requisitions must be paid by members into the correct accounts with the correct reference number attached. The time, effort and administration it costs the HSAG's legal team to correct any erroneous payment leads to the HSAG case becoming unnecessarily expensive.

Account numbers and references are affixed to each statement and we request that members please review their statements carefully when making payments.

If you have paid your amount into an incorrect account, send an e-mail with a request to transfer the amount to the correct account, and remember to attach your proof of payment to the email.

If you paid the amount into e.g. CCAF Trust Account 3, but the amount was intended for your HSAG Trust Account 2, or vice versa.

Payments made incorrectly in CCAF, send email to admin@ccaf.co.za.

Payments incorrectly paid in HSAG, send email to hsactiongroup@gmail.com

10. GENERAL ENQUIRIES

A query we often get is regarding the transfer of shares, after the death of a loved one. We would like to remind everyone that this is done by Orthotouch. It is the company that handles the transfer of the shares, and it is only after we have received a document, issued by them, indicating that the shares have been transferred in a new name, that we can change it on our system. We are also aware of the fact that it is in Business Rescue - however, this should have no impact on their work performance, and we ask that everyone contact them on this email: admin@orthotouch.co.za.

Over the years, some people's claims have increased to an amount greater than the initial investments invested in the Highveld Syndication, due to the fact that, among

other things, they inherited investments from their parents. Members must make sure that they provide documents and certificates that prove the transfer, as they will eventually be needed to prove the increased claim amount. At this stage we accept people's value of their investment based on their written evidence.

Finally, please note that if no payments have been made by you over a long period of time, it is possible that previous trust requisitions and payments may not be reflected on the statement.

11.IMPORTANT USE OF CORRECT EMAIL ADDRESSES!

The correct use of e-mail addresses (as stipulated on our website and e-mails) as well as HSAG members' initials and surnames, syndication numbers and reference numbers (e.g. identity number, etc.) for all communications are essential and obligatory. Failure to comply herewith may lead to unnecessary delays or any reply at all.

The official and existing e-mail addresses for the HSAG are as follows:

- **hsactiongroup@gmail.com** for all General Enquiries; (For Example - to change contact details, Proof of Payments, Death of a Member, payments erroneously paid into HSAG Trust Account 2, incorrect references etc.);
- **hsagenquiries@gmail.com** for Specific Enquiries; (For Example requesting information/statements regarding a specific member, exemption queries for a specific member);
- **hsagregister@gmail.com** for the registration and deregistration of HSAG members, as well as notice of members who have died;
- **hsagwhistle@gmail.com** for all Confidential Information that you would like to send to us anonymously;
- **hsagstates@gmail.com** for all estate related questions.

The official and existing e-mail addresses for CCAF (HS 21 & 22 certified class action) are as follows:

- accounts@ccaf.co.za for proof of payments, incorrect references on proof of payments
- admin@ccaf.co.za for the official request to pay registration fees over 6 months form, payments erroneously made to CCAF Trust Account 3, as well as deregistering from CCAF;
- enquiries@ccaf.co.za for statements not received and all other CCAF questions and enquires

If an investor or any person sends an email to the wrong address, it will result in the email not receiving the speedy or necessary attention, if any. If you do not wish to receive any further emails, please inform us thereof in writing.

12.IMPORTANT GENERAL TERMS AND CONDITIONS

The general and repetitive terms, conditions and other general information that was previously contained in the Newsletter, is now available on the HSAG website at [www.hsaction.co.za](http://hsaction.co.za) and can directly be accessed via the following link: <http://hsaction.co.za/wp-content/uploads/2020/01/HSAGTsCs.pdf>

The HSAG Steering Committee wishes prosperity and success to each and every member for the foreseeable future.

Kind regards

HSAG Steering Committee

Contact the HSAG's attorneys at:

Tel: (021) 887 7877

hsactiongroup@gmail.com