



ENGLISH TEXT BELOW

MAANDELIKSE NUUSBRIEF: JUNIE 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)*

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1 INLEIDING

Geagte HSAG-lede,

Terwyl ons hierdie winter deur die uitdagings van ons regsreis aandurf, word ons herinner aan die belangrikheid van elke bydrae, maak nie saak hoe klein nie. Soos elke druppel water tel tydens 'n droogte, hou almal se ondersteuning ons stryd vir geregtigheid aan die gang. Hierdie uitgawe van ons nuusbrieff belig belangrike ontwikkelings en gebeure wat 'n invloed op ons gesamentlike taak het.

In hierdie nuusbrieff verskaf ons gedetailleerde opdaterings oor ons voortgesette litigasie, insluitend die DECA-saak, die CCAF-saak, en onlangse hofuitsprake. Elke paragraaf beklemtoon ons volgehoue pogings en strategiese aksies om die struikelblokke wat ons in die gesig staar, te oorkom.

Ons put inspirasie uit historiese oomblikke soos die ontruiming van Dunkirk tydens die Tweede Wêreldoorlog. Ons vind krag in eenheid en volharding. Net soos die dapper soldate en burgers saamgestaan het teen oorweldigende kansen, moet ons ook vasstaan en verenig bly in ons strewe na geregtigheid teen die Georgians.

Die HSAG se deurlopende ondersteuning en betrokkenheid is die ruggraat van ons stryd. Saam kan ons die onmoontlike bereik en verseker dat geregtigheid seëvier. Dankie vir ons getroue lede se voortdurende toewyding aan ons gesamentlike saak.

Vriendelike groete,

Die HSAG-span

2 ELKE DRUPPEL TEL!

Winter is hier! Dieselfde geld vir ons groepsgeeding, waar ons gewoonlik 'n koue seisoen in hierdie tyd van die jaar ervaar. Terwyl ons die finansiële uitdagings van ons regsreis trotseer, het ons geleer om elke klein bydrae van ons lede te waardeer. Elke druppel inkomste wat ons ontvang, maak nie saak hoe klein nie, is ongelooflik

waardevol. Dit help ons om die koue wintertye van ons stryd vir geregtigheid te verduur. In die woorde van Helen Keller, "Alleen kan ons so min doen; saam kan ons soveel doen."

Hierdie kragtige aanhaling spreuk boekdele oor die belangrikheid van eenheid en gesamentlike poging. Helen Keller, gebore in 1880, was 'n buitengewone individu wat enorme persoonlike uitdagings oorkom het. Ten spyte daarvan dat sy van jongs af doof en blind was, het sy ongelooflike sukses behaal as 'n skrywer, politieke aktivis, en lektor. Haar lewensverhaal is 'n bewys van die krag van vasberadenheid en die impak van gemeenskapsondersteuning.

Helen Keller se prestasies was moontlik gemaak deur die hulp van haar toegewyde onderwyser, Anne Sullivan, en die ondersteuning van diegene rondom haar. Sy het geleer om deur aanraking te kommunikeer en het die eerste doof-blinde persoon geword wat 'n Baccalaureus Artium-graad verwerf het. Helen Keller het 'n prominente stryder vir mense met gestremdhede geword en miljoene wêreldwyd geïnspireer met haar veerkragtigheid en boodskap van hoop.

Net soos Helen Keller se prestasies versterk is deur die kollektiewe ondersteuning wat sy ontvang het, lê ons krag in die eenheid van ons lede. Lede se maandelikse betalings, ongeag hul grootte, dra aansienlik by tot die opdatering van ons jaarlikse en verhoorheffings. Dit hou ons saak lewendig en aan die beweeg.

Ons doen 'n beroep op almal om aan te hou om ons gesamentlike missie te ondersteun. Elke bydrae, maak nie saak hoe klein nie, maak 'n verskil. Deur ons hulpbronne saam te voeg, kan ons die finansiële struikelblokke wat in ons pad staan oorkom en verseker dat ons stryd vir geregtigheid sterk en standvastig bly.

Saam kan ons die onmoontlike bereik. Laat Helen Keller se lewe 'n herinnering wees dat ons gesamentlike pogings 'n kragtige krag vir verandering kan skep. Ons waardeer jou voortgesette ondersteuning en toewyding aan ons gesamentlike saak opreg.

Soos hieronder gesien kan word, is die HSAG tans besig met litigasie in minstens drie afdelings van die Hooggeregshof van Suid-Afrika, wat 'n enorme basis van ondersteuning vereis. Met ons getalle, kan ons dit doen.

3 WAAR IS ONS NOU?

3.1 DECA (HS 15-22): PRETORIA

Vroeër hierdie maand het ons uitspraak ontvang in ons litigasie rakende die Highveld Syndikasieskema. In die Afgeleide aksie (DECA) is ons verheug om te berig dat mnr. Derek Cohen (ontvanger van Orthotouch) se aansoek om sy saak van die ander Respondente te skei, onsuksesvol was. Hierdie uitkoms is 'n beduidende aanduiding vir ons saak, aangesien dit beteken dat ons nie apart teen Cohen saam met die ander Respondente in die Hoofaansoek hoef te litigeer nie. Die hof se beslissing beklemtoon die verweefde aard van die eise en versterk ons posisie. Hieronder verskaf ons 'n opsomming van die uitspraak en die uitkoms:

Opsomming van die Uitspraak

In die Hooggeregshof van Suid-Afrika, Gauteng-afdeling, Pretoria, het Regter Janse Van Nieuwenhuizen op 6 Junie 2024 uitspraak gelewer rakende saaknommer 93417/2019.

Agtergrond

Die Highveld Syndikasieskema, aktief van 2005 tot 2009, het belowe om winsgewende opbrengste op beleggings te lewer en het meer as R4,6 miljard van beleggers ingesamel. Die skema het egter ineengestort en kon nie sy beloftes nakom nie. Die skema het deur agt maatskappye (Respondente HS15-22) gefunksioneer, wat veronderstel was om inkomste te genereer deur kommersiële eiendomsverhuring.

Teen 7 September 2011 is die maatskappye onder sake-reddingsprosedure geplaas as gevolg van finansiële probleme, en mnr. Hans Klopper (Vierde Respondent) is as

die sake-reddingspraktisyn aangestel. Klopper se plan het behels dat Orthotouch Beperk (Negende en Tiende Respondente) eiendomme van die Highveld-maatskappye verkry, met sekere individue en entiteite wat borg gestaan het.

Regskwessies

Die primêre kwessie wat in hierdie uitspraak aangespreek is, is of die eise teen Derek Pedoe Cohen (Veertiende Respondent) geskei moet word van dié teen die ander Respondente. Cohen het aangevoer dat voortgesette verrigtinge teen hom 'n misbruik van die hofproses sou wees. Die uitspraak het ook oorweeg of dit gepas was om voort te gaan kragtens Artikel 165(5) van die Maatskappyywet 71 van 2008, wat individue toelaat om verrigtinge namens 'n maatskappy in te stel of voort te sit onder sekere voorwaardes.

Uitspraak

Regter Janse Van Nieuwenhuizen het soos volg beslis:

1. Aansoek om Skeiding: Die aansoek om die kwessies rakende Cohen te skei van dié teen ander Respondente is van die hand gewys. Regter Janse Van Nieuwenhuizen het beslis dat dit nie prakties sou wees om die kwessies te skei nie, aangesien die eise verweef is.
2. Koste: Die koste verbonde aan die aansoek om skeiding is vir latere beregting voorbehou.
3. Uitstel: Die aansoek teen Cohen, saam met al die ander Respondente, is uitgestel tot 3 Maart 2025.

Die regter het beklemtoon dat die aansoek kragtens Artikel 165(5) vereis dat sekere juridiksionele faktore bevredig moet word voordat die Hof die meriete kan oorweeg. Hierdie faktore sluit in die maatskappy se versuim om gepas op eise te reageer, die aansoeker se goeie trou, die materiële gevolg van die verrigtinge, en die beste belang van die maatskappy. Die regter het bevind dat hierdie voorwaardes nie voldoende

aangespreek is tydens die verhoor nie, wat dit voortydig maak om die befondsingsaansoek teen Cohen te oorweeg.

Implikasies

Die uitspraak beklemtoon die kompleksiteit van die hantering van grootskaalse beleggingskemas wat misluk en die regsoorwegings betrokke by die aanspreeklikheid van individue en maatskappye. Die besluit om die aansoek teen Cohen uit te stel, beklemtoon die behoefte aan deeglike regsondersoek om regverdige en regverdige verrigtinge te verseker.

3.2 CCAF (HS 21-22): PRETORIA

Die Pad Vorentoe in die CCAF-saak

Met die voorlopige sekwestrasie van die boedel van wyle mnr. Nic Georgiou, het alle litigasie teen die voorlopige gesekwestreerde boedel tydelik tot stilstand gekom. Ten spyte van die voorlopige sekwestrasie van die eerste Respondent se boedel, bly ons vasberadenheid om geregtigheid na te streef standvastig. Hier is 'n gedetailleerde blik op ons huidige plan van aksie en die pad vorentoe.

Voortgesette Litigasie Teen die Ander Respondente

Een van die kritieke punte van twis in verwante sake onlangs in die DECA-saak, was die vermoë om voort te gaan met litigasie teen ander Respondente selfs wanneer een party onder sekwestrasie is. Ons HS regspan het bevestig dat tydens die ander verhoor dit na vore gekom het dat sekwestrasie van die eerste Respondent nie 'n Aansoeker verhinder om sy saak teen die oorblywende Respondente voort te sit nie. Alhoewel dit in die hof gedebatteer is maar nie in 'n uitspraak vervat is nie, sal ons ernstig oorweeg om ons regs aansprake teen die ander Respondente voort te sit sonder onderbreking. Ons sal te geleger tyd advies gee oor watter roete gevolg moet word.

Die regsbeginsel wat hierdie strategie onderliggend maak, is duidelik: die sekwestrasie van 'n individuele party stop nie outomaties verrigtinge teen mede-respondente wat steeds in staat is om te litigeer nie. Die erkenning van hierdie beginsel sal 'n posisie ondersteun wat ons in staat stel om momentum in ons saak te handhaaf.

Opskorting van Aksies Teen die Eerste Respondent

Terwyl ons voortgaan teen die ander Respondente, sal ons aksies teen die insolvente boedel van wyle Nic Georgiou tydelik opgeskort word. Hierdie pouse is nodig totdat die boedel in 'n posisie is om weer te litigeer. Tans is die boedel van wyle Nic Georgiou onder voorlopige sekwestrasie, en alle litigasie teen hierdie boedel word uitgestel totdat finale trustees aangestel en hul magte uitgebrei word. Hierdie regsvereiste verseker dat die boedel se bates bewaar word en dat die eise van skuldeisers gedurende hierdie tussenperiode voldoende beskerm word.

Ons verwag dat sodra die finale trustees in plek is en hul gesag bevestig is, ons weer ons litigasie teen die eerste Respondent sal kan hervat. Intussen bly ons waaksaam en gereed om vinnig op te tree sodra die boedel gereed is om weer in regsverrigtinge betrokke te raak.

Aanspreek van Kommer en Handhawing van Momentum

Ons verstaan dat die voorlopige sekwestrasie van die eerste Respondent kommer kan wek oor potensiële verdere vertragings in ons saak. Ons HSAG-regspan is egter voorbereid om hierdie uitdagings te hanteer en te verseker dat die algehele voortgang van ons litigasie op koers bly. Deur ons pogings op die ander Respondente te fokus, kan ons voortgaan om ons saak op te bou en nader te beweeg aan die bereiking van 'n gunstige uitkoms vir alle CCAF-lede.

In samevatting, hoewel die sekwestrasie van die eerste Respondent 'n tydelike pouse in ons aksies teen hulle noodsaak, bly ons algehele litigasiestrategie sterk. Ons sal voortgaan om die ander Respondente met dieselfde ywer en vasberadenheid te vervolg. Die pad mag kompleks wees, maar met jou ondersteuning en ons

gesamentlike toewyding aan geregtigheid, is ons vol vertroue in ons vermoë om 'n suksesvolle uitkoms te behaal.

3.3 OORDRAGAANSOEK (JHB NA PTA): JOHANNESBURG

Namens die Applikante het ons regspan 'n aansoek om verlof tot appèl ingedien teen die onlangse uitspraak gelewer deur haar Edele Regter Crutchfield op 6 Mei 2024. Hieronder lys ons ons gronde vir die appèl en beklemtoon ons belangrike aspekte wat ons glo 'n redelike vooruitsig op sukses bied.

Verskil van Applikante

Een van die primêre twispunte in die uitspraak is die bewering dat die applikante in die Oordragaansoek "verskil" van dié in die Smith (DECA) aansoek. Terwyl dit gemene saak is dat beide groepe applikante lede van die HSAG is, is hulle aangewys deur die HSAG om as nominale applikante op te tree. Ons argumenteer dat hierdie gemeenskaplike verteenwoordiging nie die idee van verskil regverdig nie.

Relevansie van Oorvleuelende Faktore

Die uitspraak het die relevansie van oorvleuelende faktore tussen die stukke wat in die Aansoek om Tersydestelling en die Smith-aansoek ingedien is, van die hand gewys. Ons voer aan dat hierdie oorvleuelende kwessies ernstige aantygings bevat wat hoogs relevant en noodsaaklik is vir die beregting van beide aansoeke. Om hierdie faktore te ignoreer, ondermyn die omvattende oorweging wat nodig is vir 'n billike beslissing.

Konsolidasie-Bede

Die afwesigheid van 'n bede vir die konsolidasie van die Tersydestellingsaansoek met die DECA-aansoek is as 'n beduidende oorsig beskou. Ons glo dat 'n ander hof dalk sou bevind het dat sodanige konsolidasie slegs bevoeg deur die Hooggeregshof in

Pretoria toegestaan kan word nadat die saak oorgedra is. Hierdie oorsig kon die uitspraak foutief beïnvloed het.

Kennisgewing aan Betrokkes

Die vereiste vir die Applikante om kennis te gee aan betrokkes van die Oordragaansoek is deur die hof as noodsaaklik beskou. Ons argumenteer dat hierdie kennisgewing onnodig was, aangesien die regte van hierdie partye om die Tersydestellingsaansoek teë te staan nie negatief beïnvloed sou word deur die oordrag binne dieselfde afdeling van die Hooggeregshof nie. Hierdie prosedurele vereiste het 'n onnodige las op die Applikante geplaas.

Invloed op Reëlinskema

Die uitspraak het verklaar dat die Tersydestellingsaansoek, indien toegestaan, nie die Artikel 155 Reëlinskema sou beïnvloed nie. Ons voer aan dat die uitdruklike bepalings van die Reëlinskema die aanvaarding daarvan heeltemal afhanklik maak van die goedkeuring daarvan deur 'n hofbevel. Hierdie punt is nie voldoende oorweeg in die aanvanklike beslissing nie.

Relevansie van Skikking

Die uitspraak het die relevansie van die skikking deur sommige voormalige Applikante van hul eise met Nic Georgiou (Applikante wat agter die rug van die HSAG met mnr. Georgiou geskik het) opgemerk. Ons argumenteer dat vir 'n geldige Oordragaansoek, slegs een Aansoeker behoorlik voor die hof moes wees. Hierdie oorweging moes nie die algehele beslissing beïnvloed het nie.

Adres van Eerste Respondent

Die relevansie van die Eerste Respondent (Orthotouch) se adres in Fourways is oorweeg, ondanks die feit dat dit 'n korporatiewe entiteit is wat sedert 2019 onder sake-redding is. Ons voer aan dat hierdie punt irrelevant is aangesien die sake-

reddingspraktisyn (wat in Kaapstad werksaam is) nie die Oordragaansoek teëgestaan het nie.

Vertraging in Smith-aansoek

Die potensiële vertraging in die Smith-aansoek as gevolg van die oordrag is as 'n rede aangevoer. Dit is egter belangrik om daarop te let dat die Smith-aansoek steeds nie voor Maart 2025 aangehoor word nie, wat hierdie punt minder betekenisvol maak as wat voorgestel is.

Nakoming van Spilg J se Bevel

Die HSAG-Applikante is deur die regter uitgewys vir nie-nakoming van regter Spilg se bevel rakende kennisgewing nie. Ons voer aan dat hierdie kennisgewing die verhoordatum van die Tersydestellingsaansoek moes insluit, wat nie bepaal kon word totdat die verhoordatum vasgestel is nie. Dus was die kennisgewing voortydig.

Relevansie van Nie-Kennisgewing en Bestraffende Kostebevel

Die nie-kennisgewing is as relevant beskou vir die skaal van die kostebevel, en 'n bestraffende kostebevel is uitgereik. Ons betoog dat geen bestraffende kostebevel geregverdig was nie, en enige kostebevel moes oorstaan totdat die Tersydestellingsaansoek aangehoor word.

In die lig van hierdie gronde, vra ons eerbiediglik om verlof om teen die uitspraak te appelleer. Ons glo dat daar 'n redelike vooruitsig op sukses is met die appèl.

Appèlverhoor Geskeduleer

Die Aansoek om Verlof tot Appèl is geskeduleer deur die Regter se Griffier vir 29 Julie 2024, voor Regter Crutchfield. Die verhoor sal via MS Teams plaasvind, wat deelname vergemaklik sonder die behoefte aan reis. Hierdie reëling stem ooreen met ons voorkeur vir 'n virtuele verhoor en die gerief van een van die Georgiou-seuns. Ons is

voorbereid om ons saak aan te bied en sal voortgaan om jou op hoogte te hou van verdere ontwikkelings in ons komende nuusbriewe.

3.4 TERSYDESTELLINGSAANSOEK AANSOEK: JOHANNESBURG

In die voortgesette saak van Geldenhuys en ander teen Orthotouch Beperk en ander Respondente, het 'n belangrike regsmechanisme, bekend as 'n “*moratorium*”, na vore gekom. [Sake-reddingsprosedures is van nature 'n vinnige proses wat binne 'n paar maande afgehandel moet wees.]

In die konteks van sake-reddingsprosedures kragtens die Maatskappywet van 2008, is 'n moratorium 'n tydelike opskorting van regsdinge teen 'n maatskappy wat herstruktureer om sy herstel te fasiliteer. Hierdie beskermende maatstaf het ten doel om die maatskappy die nodige asemruimte te gee om sy bedrywighede te stabiliseer sonder die druk van dreigende regsdinge. In die bogenoemde konteks kon 'n moratorium beslis nie voorsien word in 'n geval waar sake-reddingsprosedures reeds vyf jaar gelede in 2019 ingestel is nie!

Orthotouch Beperk, die Eerste Respondent in hierdie saak, het 'n moratorium teweeg gebring toe dit op 7 November 2019 besluit het om homself onder toesig te plaas en sake-reddingsprosedures te begin. Hierdie stap is geneem ingevolge artikel 129 van die Maatskappywet, wat effektief enige regsdinge teen hom tydens die sake-reddingsproses opskort.

Die HSAG versoek om met die saak voort te gaan ten spyte van die moratorium (soos in die CCAF-kwessie). Om hierdie doel te bereik, het ons uitgereik na die opponerende prokureurs wat die sake-reddingspraktisyn van Orthotouch, Jacques du Toit, verteenwoordig. In 'n brief gedateer 14 Junie 2024, het ons die indiening van Orthotouch se Antwoordende Beëdigde Verklaring in die Voorwaardelike Teen-aansoek deur Orthotouch versoek. Hierdie dokument is noodsaaklik om voort te gaan, en ons het gevra dat dit binne die voorgeskrewe tien dae betyds ingedien word. Du Toit is bewus van die huidige verrigtinge en die belangrikheid van die saak wat aangehoor moet word.

Die belang van hierdie beëdigde verklaring deur Du Toit kan nie oorskat word nie. As 'n algemene reël, sodra dit ontvang is, word die pleitstukke as gesluit beskou en kan daar aansoek gedoen word om 'n hofdatum vas te stel om die saak op die rol te plaas. In haar uitspraak op 6 Mei 2024 het Haar Edele Regter Crutchfield beklemtoon dat "die hersieningsaansoek in hierdie hof binne ongeveer ses weke vanaf die lewering van die laaste stel hoofde van argumente aangehoor kan word", wat 'n voorvereiste is om 'n datum vir die verhoor vas te stel. Dit beteken dat alle nodige dokumente en reaksies tussen die betrokke partye ingedien en uitgeruil moet word. Du Toit is nie net bewus van hierdie uitspraak nie, maar ook van die belangrikheid vir hom (as onpartydige sake-reddingspraktisyn) om aan die reëls van die hof te voldoen.

Benewens die bogenoemde, het ons ook vir Du Toit gevra om skriftelike toestemming om die moratorium op te hef. Hierdie toestemming is noodsaaklik aangesien dit die litigasie sal toelaat om voort te gaan. Indien Du Toit hierdie versoek weier, sal die HSAG die hof nader vir 'n bevel om die moratorium op te hef, wat verseker dat die verrigtinge kan vorder. Du Toit het in elk geval gesê dat die sake-reddingsplan reeds aangeneem is, wat effektief suggereer dat die opheffing van die moratorium nie die sake-reddingsproses sal belemmer nie. Indien die hof genader moet word sal ons 'n bestraffende kostebevel teen Jacques du Toit, persoonlik versoek word.

In samevatting, dien die moratorium in hierdie geval as 'n tydelike opskorting van regsgedinge, wat ten doel het om Orthotouch se sake-reddingspogings te ondersteun, alhoewel dit ondenkbaar is dat die sake-redding op 'n onbepaalde basis kan voortgaan. Alhoewel dit dalk ondenkbaar mag lyk vir 'n onpartydige sake-reddingspraktisyn om aktief deel te neem aan die bevordering van die vrywaring van sekere rolspelers, sou die HSAG nie verbaas wees as mnr. Jacques du Toit weer eens as 'n struikelblok optree nie, ten spyte daarvan dat in die CCAF-kwessie die regter onmiddellik beveel het dat die verrigtinge teen Zephan voortgaan, wat direk langs Orthotouch staan.

4 LIKWIDASIE AANSOEK: BLOEMFONTEIN

Hier verskaf ons 'n omvattende opdatering oor die jongste regsontwikkelings rakende die Likwidasië Aansoek wat Orthotouch (Pty) Ltd en Zephan Properties (Pty) Ltd by die Vrystaatse Hooggeregshof, Bloemfontein, betrek. Hierdie verrigtinge is van kritieke belang vir ons saak en HSAG-lede.

Eerstens is die funderende stukke in die Likwidasië Aansoek by die Bloemfontein Hooggeregshof ingedien, en daarna teengestaan deur die twee Georgiou-seuns. Tot op hede het mnr. Jacques du Toit nie onder eed verklaar of die twee maatskappye insolvent is of nie.

Verder tot die funderende stukke, het ons ook 'n Voeging-aansoek ingedien, 'n prosedurele stap wat daarop gemik is om die omvang van die regsgedinge uit te brei. Hierdie aansoek beoog om, indien en waar nodig, bykomende partye in te sluit, spesifiek beleggers wat met die Highveld 21 en Highveld 22 maatskappye verbind is. Hierdie beleggers, wat ingestem het tot die groepsgeving teen Zephan, is relevant om 'n omvattende verteenwoordiging in hierdie litigasieproses te verseker.

Die Voeging-aansoek het ten doel om hierdie beleggers in kennis te stel en voorsien ook meganismes vir hul effektiewe deelname. Soos uiteengesit in ons Kennisgewing van Mosie, sal beleggers kennisgewings ontvang onder andere via e-pos en deur aangewese prokureursfirmas. Boonop sal alle relevante dokumente, insluitend die Kennisgewing van Mosie self en ondersteunende stukke, beskikbaar wees vir besigtiging en aflaai op ons HSAG-webwerf by <https://hsaction.co.za/>

Sleutelpunte en Doelwitte van die Ondersteunende Beëdigde Verklaring

In die beëdigde verklaring wat deur die HSAG ingedien is, het ons 'n gedetailleerde tussentydse aansoek uiteengesit wat daarop gemik is om regsgedinge rakende die sake-redding en likwidasië van Orthotouch en Zephan kragtens die Maatskappywet van 2008 te bevorder. Hierdie beëdigde verklaring beklemtoon verskeie belangrike punte.

Eerstens beklemtoon die HSAG die dringendheid om die sake-praktisyn Jacques du Toit te dwing om 'n lank uitstaande opponerende beëdigde verklaring binne vyf dae in

te dien. Hierdie vertraging deur Du Toit het die vordering in die Hoofaansoek frustreer en vereis onmiddellike aksie om die saak deur hofbeslissing vorentoe te beweeg.

Tweedens vra die HSAG hofgoedkeuring vir 'n spesifieke metode om beleggers van die Hoofaansoek in kennis te stel. Hierdie voorgestelde kennisgewingmetode, wat op prosedurele billikheid gemik is, het ten doel om beleggers in te lig en, indien nodig, by die verrigtinge te betrek.

Die beëdigde verklaring gee besonderhede oor die fondse wat vanaf die beleggers ingesamel is wat na bewering bedoel was vir die verkryging van onbelaste eiendomme, wat huurinkomste vir beleggers sou genereer. Wanbestuur en daaropvolgende sake-reddingsaksies het egter die finansiële posisie van die maatskappye gekompliseer en gekompromitteer.

Belangrik, die HSAG verduidelik die beleggers se regstatus vis-à-vis Orthotouch en Zephan. Ons beklemtoon dat beleggers, behalwe vir dié met spesifieke terugkoop-eise teen Zephan, nie as skuldeisers onder die bestaande sake-reddingsplanne beskou word nie. Hierdie onderskeid is van kritieke belang aangesien dit die omvang van hul betrokkenheid by die voortgesette regsgedinge beïnvloed.

Verder verwys die beëdigde verklaring na vorige hofbeslissings wat die aparte regstatus van beleggers onder die terugkoop-ooreenkomste bevestig, onafhanklik van die breër sake-reddingsraamwerke. Hierdie regspraak bevestig beleggers se regte om eise onder die terugkoop-ooreenkomste na te streef, ondanks die bepalinge van die sake-reddingsplanne.

Die HSAG stel spesifiek kennisgewingprosedures voor om te verseker dat alle potensieel geaffekteerde beleggers ingelig is oor die regsontwikkeling. Hierdie benadering poog om enige prosedurele onreëlmatighede te verminder en die beginsels van billikheid en deursigtigheid in die regsgeding te handhaaf.

In samevatting dien die HSAG se beëdigde verklaring as 'n regsmeganisme om die verrigtinge rakende Orthotouch en Zephan te bevorder, met fokus op die afdwing van

prosedurele nakoming en die verseker van voldoende kennisgewing binne die raamwerk van likwidasië-verrigtinge.

5 SAAMSTAANDE: GEÏNSPIREER DEUR DIE DUNKIRK-GEES

Soos ons tans daadwerklik in die stryd van ons lewens teen die Georgious is, moet ons volhard en saamstaan. Onlangs was daar twee insidente waaruit ons inspirasie kan put. Die ongelooflike verhaal van Dunkirk tydens die Tweede Wêreldoorlog, wat die afgelope maand herdenk is, kan dien as ons baken van hoop en vasberadenheid. Daarby die bekende D-Dag, ook tydens die Tweede Wêreld Oorlog.

Eerstens, in 1940, tydens die Tweede Wêreldoorlog, was meer as 300,000 Britse en Geallieerde soldate vasgekeer op die strande van Dunkirk, omring deur vyandige magte. Dit het gelyk of hulle geen kans op oorlewing gehad het nie. Tog het hulle nie opgegee nie. Met vasberadenheid, moed en 'n diep geloof (ook in mekaar), het 'n wonderwerk plaasgevind. Skielik, met die hulp van honderde burgerlike bote is die troepe gered in wat nou bekend staan as die "Wonder van Dunkirk."

Net soos by Dunkirk, staar ons ook oënskynlik onoorkomelike uitdagings in die gesig. Die Johannesburg se Hooggeregshof het teen ons Oordragaansoek beslis, en ons teenstanders gebruik dit en elke moontlike uitstelstaktiek tot hul voordeel. Maar soos die soldate by Dunkirk, sal ons aanhou om saam te werk, elke hulpbron te benut, en elke moontlike strategie in te stel om ons regverdige saak te wen.

In die aangesig van teenspoed moet ons die toegewyde vasberadenheid kanaliseer wat deur die troepe by Dunkirk getoon is. Net soos daardie dapper soldate wat vasgestaan het ondanks oorweldigende kanse, weier ons om moed te verloor. Ons toewyding aan geregtigheid is vasbeslote, en ons sal volhard totdat dit seëvier, ongeag die uitdagings wat voorlê.

Ons volgende hoeksteen is sterk samewerking, geïnspireer deur die burgerlike bote wat saamgestaan het om die soldate wat by Dunkirk gestrand was te red. Elke HSAG spanlid speel 'n noodsaaklike rol, net soos elke boot noodsaaklik was vir die

ontruiming. Deur saam te werk, kan ons ons doelwitte meer effektief en doeltreffend bereik.

'n Slim strategie is noodsaaklik vir sukses. Ons sal buigsaam bly, aanpas by enige hindernisse wat opduik. Hierdie benadering weerspieël die strategiese beplanning wat gelei het tot die sukses van die D-Dag-inval, wat verseker dat ons op koers bly na ons doelwitte.

Gemeenskapsbetrokkenheid is nog 'n kritieke komponent van ons plan. Ons sal ons gemeenskap mobiliseer, ondersteuning vind en ons saak na die voorgrond bring. Soos die Dunkirk-gees waar burgers tot die saak gemobiliseer het, weier ons om stil te bly en sal ons seker maak ons stemme word gehoor.

Volgehoue aksie sal ons pogings dryf, net soos die voortgesette stryd by Dunkirk. Elke klein oorwinning bring ons nader aan ons uiteindelijke doel. Ons toewyding aan deurlopende pogings verseker dat ons nie sal rus totdat geregtigheid bereik is nie.

Tweedens, D-Dag, wat op 6 Junie 1944 plaasgevind het, het die grootste inval in die geskiedenis gekenmerk en die begin van die einde vir Nazi-Duitsland. Hierdie operasie het beplanning en enorme moed getoon, elemente wat ons in ons eie stryd moet omarm. Soos ons die HSAG-lede ingelig het aan die begin van ons groepsGEDING teen die Georgious, was dit 'n eerste van sy soort in Suid-Afrika waar 'n groep bejaarde beleggers 'n privaat individu en eiendomsmagnaat, mnr. Nic Georgiou, in 'n groepsGEDING uitgedaag het.

Deur op hierdie historiese oomblikke te reflekteer, sien ons duidelike parallele met ons eie stryd. Die moed en veerkragtigheid wat tydens Dunkirk en D-Dag getoon is, inspireer ons om vir elke HSAG-lid, vir geregtigheid, en vir die waarheid te veg. Saam kan ons enigiets oorkom, net soos die Geallieerdes in hul donkerste ure gedoen het.

Dunkirk en D-Dag was bepalende oomblikke in die Tweede Wêreldoorlog wat menslike volharding en strategiese briljantheid ten toon gestel het. Dunkirk, van 26 Mei tot 4 Junie 1940, het gesien hoe meer as 330,000 Geallieerde soldate van die strande van Frankryk ontruim is, 'n bewys van moed en burgerlike samewerking.

Churchill se toespraak na hierdie gebeurtenis was 'n moraalversterkende verklaring van Brittanje se vasberadenheid om voort te veg.

Churchill se toesprake na hierdie gebeure het veerkragtigheid beklemtoon en strategiese offensiewe teen formidabele vyande gevier. Hierdie historiese lesse herinner ons daaraan dat met voorbereiding, moed, en eenheid, ons aansienlike struikelblokke kan oorkom.

Net soos die soldate by Dunkirk, staar HSAG aansienlike uitdagings in die gesig. Die gesamentlike poging wat van ons lede vereis word, weerspieël die eenheid wat tydens die Dunkirk-ontruiming nodig was. Die strategiese offensief wat vir D-Dag vereis is, dien as 'n kragtige herinnering aan die belangrikheid van voorbereiding en moed.

Deur inspirasie te put uit hierdie historiese voorbeelde, kan die HSAG die krag en aanmoediging vind wat nodig is om ons eie teenspoed te trotseer. Die pad mag moeilik wees, en die uitdagings mag veel wees, maar met standvastige vasberadenheid, geloof en eenheid, is sukses binne bereik. Net soos die Geallieerde magte die gety van die oorlog gedraai het, kan die HSAG oorwin en triomfeer.

6 UIT DIE PERS SE BEK

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

Article: R60 million shopping mall for sale in South Africa

A journalist from BusinessTech published this article on 11 June 2024 where the article discusses The Accelerate Property Fund (APF) has announced the sale of the Cherry Lane Shopping Centre in Pretoria for R57 million, significantly lower than its previous valuations. We have provided a summary of the article below, which some HSAG members may find interesting

The Accelerate Property Fund (APF) is selling Cherry Lane Shopping Centre in Pretoria for R57 million to QSPACE. Acquired in 2013 and valued at R65 million in

September 2023, the mall's value decreased to R60 million by March 2024. APF's previous attempts to sell it for R65 million in 2023 failed. The sale proceeds will reduce debt and reinvest in core properties.

This aligns with APF's strategy to optimise its assets amid financial challenges, partly due to issues at Fourways Mall, where vacancies increased significantly. APF is raising R200 million through a right offer to stabilise finances and improve Fourways Mall by enhancing navigation, introducing new tenants, providing backup power, improving parking and security, and revitalising the surrounding area. These efforts aim to restore Fourways Mall as a premier shopping destination.

<https://businesstech.co.za/news/property/776384/r60-million-shopping-mall-for-sale-in-south-africa/>

***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.

7 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 rekening inbetaal word met die korrekte verwysingsnommer daarby aangeheg. Die tyd, moeite en administrasie wat dit die HSAG se regspan 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 maak 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

8 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.

9 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 verwysingsnummers (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 kwytskelding 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;
- **hsagstates@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.

10 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: JUNE 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.

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1 INTRODUCTION

Dear HSAG members,

As we steer through the challenges of our legal journey this winter, we are reminded of the importance of every contribution, no matter how small. Much like every drop of water counts during a drought, your support keeps our fight for justice alive. This edition of our newsletter highlights significant developments and events that have an effect on our collective task.

In this newsletter, we provide detailed updates on our ongoing litigation, including the DECA case, the CCAF case, and recent court rulings. Each paragraph highlights our relentless efforts and strategic actions to overcome the obstacles we face.

Drawing inspiration from historical moments like the evacuation of Dunkirk during World War II, we find strength in unity and perseverance. Just as those brave soldiers and civilians came together against overwhelming odds, we too must stand firm and united in our pursuit of justice against the Georgious.

Your continuous support and engagement are the backbone of our struggle. Together, we can achieve what seems impossible and ensure that justice prevails. Thank you for your continued commitment to our shared cause.

Warm regards,
The HSAG Team

2 EVERY DROP COUNTS!

Winter is here! The same also applies for our class action, where we usually experience a cold season in this period of time. As we face the financial challenges of our legal journey, we have learned to appreciate every small contribution from our members. Each drop of income we receive, no matter how small, is incredibly

valuable. It helps us endure the cold winter periods of our struggle for justice. In the words of Helen Keller, "Alone we can do so little; together we can do so much."

This powerful quote speaks volumes about the importance of unity and collective effort. Helen Keller, born in 1880, was an extraordinary individual who overcame immense personal challenges. Despite being deaf and blind from a young age, she achieved incredible success as an author, political activist, and lecturer. Her life story is a testament to the power of determination and the impact of community support.

Helen Keller's accomplishments were made possible through the help of her dedicated teacher, Anne Sullivan, and the support of those around her. She learned to communicate through touch and became the first deaf-blind person to earn a Bachelor of Arts degree. Helen Keller went on to become a prominent advocate for people with disabilities, inspiring millions worldwide with her resilience and message of hope.

Just as Helen Keller's achievements were amplified by the collective support she received, our strength lies in the unity of our members. Your monthly payments, regardless of their size, contribute significantly to bringing our annual and trial levies up to date. They keep our cause alive and moving forward.

We urge you to continue supporting our collective mission. Every contribution, no matter how small, makes a difference. By pooling our resources, we can overcome the financial hurdles that stand in our way and ensure that our fight for justice remains strong and steadfast.

Together, we can achieve what seems impossible. Let Helen Keller's life be a reminder that our combined efforts can create a powerful force for change. We deeply appreciate your ongoing support and commitment to our shared cause.

As you can see below, the HSAG is currently conducting litigation in at least three divisions of the High Court of South Africa, which requires an immense basis of support. With our numbers, we can do it.

3 WHERE ARE WE NOW?

3.1 DECA (HS 15-22): PRETORIA

Earlier this month, we received judgment in our litigation involving the Highveld Syndication Scheme. In the Derivative Action, we are pleased to inform you that Mr Derek Cohen's application for separation of his case from the other Respondents was unsuccessful. This outcome is a significant pointer for our case, as it means we do not have to litigate separately against Cohen alongside the other Respondents in the Main Application. The court's decision emphasises the intertwined nature of the claims and reinforces our position. Herewith we provide you a summary of the judgement and the outcome:

Summary of the Judgment

In the High Court of South Africa, Gauteng Division, Pretoria, Judge Janse Van Nieuwenhuizen delivered a judgment on 6 June 2024, regarding case number 93417/2019.

Background

The Highveld Syndication Scheme, active from 2005 to 2009, promised lucrative returns on investments and accumulated over R4.6 billion. However, the scheme collapsed, failing to deliver on its promises. The scheme operated through eight companies (Respondents HS15-22), which were supposed to generate income through commercial property rentals.

By 7 September 2011, the companies were placed under business rescue due to financial difficulties, and Mr Hans Klopper (Fourth Respondent) was appointed as the business rescue practitioner. Klopper's plan involved Orthotouch Limited (Ninth and Tenth Respondents) acquiring properties from the Highveld companies, with certain individuals and entities providing surety.

Legal Issues

The primary issue addressed in this judgment is whether the claims against Derek Pedoe Cohen (Fourteenth Respondent) should be separated from those against the other Respondents. Cohen argued that continuing proceedings against him would constitute an abuse of process. The judgment also considered whether it was appropriate to proceed under Section 165(5) of the Companies Act 71 of 2008, which allows individuals to bring or continue proceedings on behalf of a company under certain conditions.

Judgment

Judge Janse Van Nieuwenhuizen ruled as follows:

1. Application for Separation: The application to separate the issues pertaining to Cohen from those against other Respondents was dismissed. Judge Janse Van Nieuwenhuizen determined that separating the issues would not be practical, as the claims are interconnected.
2. Costs: The costs associated with the application for separation were reserved for later adjudication.
3. Postponement: The application against Cohen, alongside with all the other Respondents, was postponed to 3 March 2025.

The judge emphasised that the application under Section 165(5) requires the satisfaction of certain jurisdictional factors before the court can entertain the merits. These factors include the company's failure to act appropriately in response to demands, the applicant's good faith, the material consequence of the proceedings, and the best interest of the company. The judge found that these conditions were not sufficiently addressed during the hearing, making it premature to consider the funding application against Cohen.

Implications

The judgment highlights the complexity of dealing with large-scale investment schemes that fail and the legal considerations involved in holding individuals and companies accountable. The decision to postpone the application against Cohen emphasises the need for thorough legal scrutiny to ensure fair and just proceedings.

3.2 CCAF (HS 21-22): PRETORIA

The Way Forward in the CCAF Case

With the provisional sequestration of the estate of late Mr Nic Georgiou, all litigation against the provisional sequestrated estate has come to a temporary halt. Despite the provisional sequestration of the first Respondent's estate, our determination to pursue justice remains steadfast. Here's a detailed look at our current plan of action and the path ahead.

Continuing Litigation Against the Other Respondents

One of the critical points of contention in related matters recently in the DECA case, has been the ability to proceed with litigation against other Respondents even when one party is under sequestration. Our HSAG legal team has confirmed that during the other hearing it emanated that sequestration of the first Respondent does not preclude an Applicant from continuing its case against the remaining Respondents. Although this was debated in court but not contained in a judgment, we will seriously consider to persist with our legal actions against the other Respondents without interruption. We shall advise in due course which route were to be followed.

The legal principle underpinning this strategy by Mr Cohen in the DECA case is clear: the sequestration of an individual party does not automatically halt proceedings against co-Respondents who are still capable of litigation. Giving recognition to this principle will support a position that enables us to maintain momentum in our case.

Suspension of Actions Against the First Respondent

While we proceed against the other Respondents, our actions against the late Nic Georgiou's insolvent estate will be temporarily suspended. This pause is necessary until the estate is in a position to have the capacity to litigate again. Currently, the estate of the late Nic Georgiou is under provisional sequestration, and all litigation against this estate is stayed until final trustees are appointed and their powers expanded. This legal requirement ensures that the estate's assets are preserved and that the claims of creditors are adequately protected during this interim period.

We anticipate that once the final trustees are in place and their authority is confirmed, we will be able to resume our litigation against the first Respondent. In the meantime, we remain attentive and prepared to act swiftly once the estate is ready to engage in legal proceedings again.

Addressing Concerns and Maintaining Momentum

We understand that the provisional sequestration of the first Respondent might raise concerns about potential further delays in our case. However, our HSAG legal team is prepared to handle these challenges and ensure that the overall progress of our litigation remains on track. By focusing our efforts on the other Respondents, we can continue to build our case and move closer to achieving a favourable outcome for all CCAF members.

In summary, while the first Respondent's sequestration necessitates a temporary pause in our actions against them, our overall litigation strategy remains strong. We will continue to pursue the other Respondents with the same vigor and determination. The journey may be complex, but with your support and our collective commitment to justice, we are confident in our ability to achieve a successful outcome.

3.3 TRANSFER APPLICATION (JHB TO PTA): JOHANNESBURG

On behalf of the Applicants, our legal team has filed an application for leave to appeal against the recent judgement delivered by the Honourable Madam Justice Crutchfield

on May 6, 2024. Below, we outline our grounds for the appeal, highlighting key aspects that we believe present a reasonable prospect of success.

Variance of Applicants

One of the primary points of contention in the judgement is the assertion that the applicants in the Transfer Application are "at variance" with those in the Smith (DECA) application. While it is common knowledge that both sets of applicants are members of the HSAG, they have been nominated by the HSAG to act as nominal applicants. We argue that this common representation does not justify the notion of variance.

Relevance of Overlapping Factors

The judgement dismissed the relevance of overlapping factors between the papers filed in the Setting Aside Application and the Smith Application. We contend that these overlapping issues contain serious allegations that are highly relevant and crucial for adjudicating both applications. Ignoring these factors undermines the comprehensive consideration necessary for a fair ruling.

Consolidation Prayer

The absence of a prayer for the consolidation of the setting aside application with the DECA Application was deemed a significant oversight. We believe that another court might have found that such consolidation could competently be granted only by the Pretoria High Court once the matter is transferred. This oversight could have influenced the judgement erroneously.

Notice to Affected Parties

The requirement for the Applicants to give notice to affected parties of the Transfer Application was deemed necessary by the court. We argue that this notice was unnecessary since the rights of these parties to oppose the Setting Aside Application would not be affected negatively by the transfer within the same division of the court. This procedural requirement imposed an undue burden on the Applicants.

Impact on Scheme of Arrangement

The judgement stated that the Rescission Application, if granted, would not affect the S155 Scheme of Arrangement. We submit that the express terms of the Scheme of Arrangement make its adoption completely dependent on its sanctioning by a court order. This point was not adequately considered in the initial ruling.

Settlement Relevance

The judgement noted the relevance of the settlement by some previous Applicants of their claims with Nic Georgiou (Applicants who settled with Mr Georgiou behind the backs of the HSAG). We argue that for a valid Transfer Application, only one Applicant needed to be properly before the court. This consideration should not have influenced the overall decision.

First Respondent's Residency

The relevance of the First Respondent's (Orthotouch) residency in Fourways was considered despite it being a corporate entity in business rescue already since 2019. We argue that this point is moot as the business rescue practitioner (who operates in Cape Town) did not oppose the Transfer Application.

Delay in Smith Application

The potential delay in the Smith Application due to the transfer was cited as a concern. However, it is important to note that the Smith Application is still not being heard until March 2025, rendering this point less significant than portrayed.

Compliance with Spilg J's Order

The HSAG Applicants were mentioned by the Judge for not complying with Judge Spilg's order regarding notice. We submit that this notice had to include the hearing

date of the Setting Aside Application, which could not be determined until the hearing date was set. Thus, the notification was premature.

Relevance of Non-Notice and Punitive Cost Order

The non-notice was deemed relevant to the scale of the costs order, and a punitive cost order was issued. We contend that no punitive cost order was warranted, and any costs order should stand over until the hearing of the Setting Aside Application.

In light of these grounds, we respectfully seek leave to appeal the judgement. We believe that there is a reasonable prospect of success on appeal.

Appeal Hearing Scheduled

The Application for Leave to Appeal has been scheduled by the Judge's Registrar for 29 July 2024, before Justice Crutchfield. The hearing will take place via MS Teams, facilitating participation without the need for travel. This arrangement aligns with our preference for a virtual hearing and the convenience of one of the Georgiou sons. We are prepared in presenting our case and will continue to update you on further developments in our upcoming newsletters.

3.4 SETTING ASIDE APPLICATION: JOHANNESBURG

In the ongoing case of Geldenhuys and others versus Orthotouch Limited and other Respondents, a crucial legal mechanism known as a *moratorium* has come to the forefront. [Business rescue proceedings are by nature an expeditious process which should be completed in a matter of three months].

In the context of business rescue proceedings under the Companies Act of 2008, a *moratorium* is a temporary suspension of legal actions against a company that is undergoing restructuring to facilitate its recovery. This protective measure aims to provide the company with the necessary breathing room to stabilise its operations without the pressure of impending lawsuits. In the above context, a *moratorium*, could

definitely not be envisaged in a case where business rescue proceedings were already instituted some five years ago in 2019!

Orthotouch Limited, the First Respondent in this case, invoked a *moratorium* when it resolved to place itself under supervision and commenced business rescue proceedings on 7 November 2019. This step was taken under section 129 of the Companies Act, effectively pausing any legal actions against it during the business rescue process.

The HSAG is seeking to proceed with the case despite the *moratorium* (as in the CCAF matter). To this end, we have reached out to the opposing attorneys representing the business rescue practitioner of Orthotouch, Jacques du Toit. In a letter dated 14 June 2024, we requested the filing of Orthotouch's Replying Affidavit in the Conditional Counter Application by Orthotouch. This document is essential for moving forward, and we have asked for it to be filed timeously within the stipulated ten days. Du Toit is aware of the current proceedings and the importance of the matter to be heard.

The importance of this affidavit by Du Toit cannot be overstated. As a general rule, once it is received, the pleadings are deemed to be closed and application can be made to apply for a court date to place the matter on the roll. In her judgment on 06 May 2024, the Honourable Judge Crutchfield emphasised that "the recession application can be heard in this court approximately six weeks from the delivery of the last set of heads of argument.", which is a prerequisite for proceeding to set a date for the hearing. This means that all necessary documents and responses must be filed and exchanged between the parties involved. Du Toit is not only aware this judgment, but also the importance for him (as impartial business rescue practitioner) to comply with the rules of court.

In addition to the above, we have also asked Du Toit for written consent to lift the *moratorium*. This consent is crucial as it would allow the litigation to continue. Should Du Toit decline this request, the HSAG will approach the court for an order to lift the *moratorium*, ensuring that the proceedings can advance. Du Toit, in any event, stated that the business rescue plan has already been adopted, which effectively suggests that lifting the *moratorium* will not hinder the business rescue process. If the court must

be approached, we will request a punitive costs order against Jacques du Toit, personally.

In conclusion, the *moratorium* in this case serves as a temporary stay of legal proceedings, which was aimed at aiding Orthotouch's business rescue efforts, albeit unthinkable that the business rescue can continue on a never-ending basis. Although it might appear inconceivable for an impartial business rescue practitioner to actively participate in advancing the indemnification of certain role players, the HSAG would not be surprised if Mr Jacques du Toit once again act as a stumble block, despite the fact that in the CCAF matter the judge immediately ordered that the proceedings continue against Zephan, which company stands side to side with Orthotouch.

4 LIQUIDATION APPLICATION: BLOEMFONTEIN

Herewith we provide to you a comprehensive update on the latest legal developments regarding the Liquidation Application involving Orthotouch (Pty) Ltd and Zephan Properties (Pty) Ltd at the Free State High Court, Bloemfontein. These proceedings are crucial for our case for the HSAG members.

Firstly, the founding papers in the Liquidation Application have been filed at the Bloemfontein High Court, and thereafter opposed by the two Georgiou sons. Until now, Mr Jacques du Toit has refrained to go under oath to state whether the two companies are insolvent or not.

Further to the founding papers, we also filed a Joinder Application, a procedural step aimed at extending the scope of the legal proceedings. This application seeks to include, if and where necessary, additional parties, specifically investors connected with the Highveld 21 and Highveld 22 companies. These investors, who have opted into the class action litigation against Zephan, are relevant to ensure a comprehensive representation in this litigation process.

The Joinder Application intends to notify these investors and also provides mechanisms for their effective participation. As outlined in our Notice of Motion,

investors will receive notifications *inter alia* via email and through designated attorney firms. Additionally, all relevant documents, including the Notice of Motion itself and supporting papers, will be made available for viewing and download on our HSAG website at <https://hsaction.co.za/>

Key points and Objectives of the Supporting Affidavit

In the affidavit submitted by the HSAG to the application, we outlined a detailed interim application aimed at advancing legal proceedings concerning the business rescue and liquidation proceedings of Orthotouch and Zephan under the Companies Act of 2008. This affidavit asserts several important points:

Firstly, the HSAG highlights the urgency of compelling the business practitioner Jacques du Toit to file a long overdue opposing affidavit within five days. This delay by Du Toit has stalled progress in the Main Application and necessitates immediate action to move the matter forward through court adjudication.

Secondly, the HSAG requests court approval for a specific method to notify investors about the Main Application. This proposed notification method, aimed at procedural fairness, is intended to inform and, if necessary, join investors as parties to the proceedings.

The affidavit details that the funds raised by the investors were ostensibly intended for acquiring unencumbered properties, generating rental income for investors. However, mismanagement and subsequent business rescue actions have complicated and compromised the financial position of the companies.

Importantly, the HSAG clarifies the investors' legal status vis-à-vis Orthotouch and Zephan. We highlight that investors, except for those with specific buyback claims against Zephan, are not referred to as creditors under the existing business rescue plans. This distinction is crucial as it influences the scope of their involvement in the ongoing legal proceedings.

Furthermore, the affidavit references previous court decisions that uphold the separate legal status of investors under the buyback agreements, independent of the broader business rescue frameworks. These judicial precedents affirm investors' rights to pursue claims under the buyback agreements, notwithstanding the business rescue plans' provisions.

The HSAG concludes by proposing notification procedures to ensure all potentially affected investors are informed of the legal developments. This approach aims to mitigate any procedural irregularities and uphold the principles of fairness and transparency in the legal process.

In summary, the HSAG's affidavit serves as a legal instrument in advancing the proceedings concerning Orthotouch and Zephan, focusing on compelling procedural compliance and ensuring adequate notification within the framework of liquidation proceedings.

5 STANDING TOGETHER: INSPIRED BY THE DUNKIRK SPIRIT

As we are currently in the battle of our lives against the Georgious, and now in particular, we must endure and stand together. Recently there were two incidents from which we can draw inspiration. Firstly, the incredible story of Dunkirk in World War II, which was commemorated in the past month, may serve as our beacon of hope and determination. Including the famous D-Day, also during the Second World War.

In 1940, during World War II, over 300,000 British and Allied soldiers were trapped on the beaches of Dunkirk, surrounded by enemy forces. It seemed they had no chance of survival. Yet, they did not give up. With determination, bravery, and a deep belief (also in each other), a miracle occurred. Suddenly, with the help of hundreds of civilian boats, the troops were rescued in what is now known as the "Miracle of Dunkirk."

Just like at Dunkirk, we too face seemingly insurmountable challenges. The Johannesburg High Court has ruled against our Transfer Application, and our opponents are using that and every possible delaying tactic to their advantage. But

like the soldiers at Dunkirk, we will continue to work together, utilise every resource, and implement every possible strategy to win our just cause.

In the face of adversity, we must channel the committed determination exhibited by the troops at Dunkirk. Much like those brave soldiers who stood firm despite overwhelming odds, we refuse to lose heart. Our commitment to justice is resolute, and we will persist until it prevails, no matter the challenges ahead.

Our next pillar is strong collaboration, inspired by the civilian boats that united to rescue the soldiers stranded at Dunkirk. Every team member plays a crucial role, just as each boat was vital to the evacuation effort. By working together, we can achieve our goals more effectively and efficiently.

Community engagement is another critical component of our plan. We will mobilise our community, gather support, and bring our case to the forefront. Like the Dunkirk spirit where citizens rallied to the cause, we refuse to suffer in silence and will ensure our voices are heard.

Sustained action will drive our efforts, much like the ongoing fight at Dunkirk. Every small victory brings us closer to our ultimate goal. Our commitment to continuous effort ensures we will not rest until justice is achieved.

Secondly, D-Day, occurring on June 6, 1944, marked the largest invasion in history and the beginning of the end for Nazi Germany. This operation demonstrated planning and immense bravery, elements that we must embrace in our own battle. As we informed the HSAG members at the commencement of our class action against the Georgious, it was a first of its nature in South Africa where a group of elderly investors challenged a private individual and property mogul, Mr Nic Georgiou, in a class action.

A smart strategy is essential for success. We will remain flexible, adapting to any obstacles that arise. This approach mirrors the strategic planning that led to the success of the D-Day invasion, ensuring we stay on course toward our objectives

Reflecting on these historical moments, we see clear parallels with our own struggle. The courage and resilience demonstrated during Dunkirk and D-Day inspire us to fight for every HSAG member, for justice, and for the truth. Together, we can overcome anything, just as the Allies did in their darkest hours.

Dunkirk and D-Day were pivotal moments in WWII that showcase human tenacity and strategic brilliance. Dunkirk, from 26 May to 4 June 1940, saw over 330,000 Allied soldiers evacuated from the beaches of France, a testament to courage and civilian cooperation. Churchill's speech following this event was a morale-boosting declaration of Britain's determination to fight on.

Churchill's speeches following these events highlighted resilience and celebrated strategic offensives against formidable foes. These historical lessons remind us that with preparation, courage, and unity, we can overcome significant obstacles.

Much like the soldiers at Dunkirk, HSAG faces significant challenges. The collective effort required from our members mirrors the unity needed during the Dunkirk evacuation. The strategic offensive required for D-Day serves as a powerful reminder of the importance of preparation and courage.

By drawing inspiration from these historical examples, the HSAG can find the strength and encouragement needed to face our own adversities. The road may be tough, and the challenges many, but with steadfast resolve, faith and unity, success is within reach. Just as the Allied forces turned the tide of the war, the HSAG can overcome and emerge victorious.

6 FROM THE “BENCH PRESS”

Article: R60 million shopping mall for sale in South Africa

A journalist from BusinessTech published this article on 11 June 2024 where the article discusses The Accelerate Property Fund (APF) has announced the sale of the Cherry Lane Shopping Centre in Pretoria for R57 million, significantly

lower than its previous valuations. We have provided a summary of the article below, which some HSAG members may find interesting

The Accelerate Property Fund (APF) is selling Cherry Lane Shopping Centre in Pretoria for R57 million to QSPACE. Acquired in 2013 and valued at R65 million in September 2023, the mall's value decreased to R60 million by March 2024. APF's previous attempts to sell it for R65 million in 2023 failed. The sale proceeds will reduce debt and reinvest in core properties.

This aligns with APF's strategy to optimise its assets amid financial challenges, partly due to issues at Fourways Mall, where vacancies increased significantly. APF is raising R200 million through a right offer to stabilise finances and improve Fourways Mall by enhancing navigation, introducing new tenants, providing backup power, improving parking and security, and revitalising the surrounding area. These efforts aim to restore Fourways Mall as a premier shopping destination.

<https://businesstech.co.za/news/property/776384/r60-million-shopping-mall-for-sale-in-south-africa/>

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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.

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

7 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

8 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.

9 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.

10 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