

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

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28/1/2013

CASE NO: 24285/2012

Before the Honourable Mr Justice Yekiso
Cape Town, Monday 28 January 2013

In the matter between:

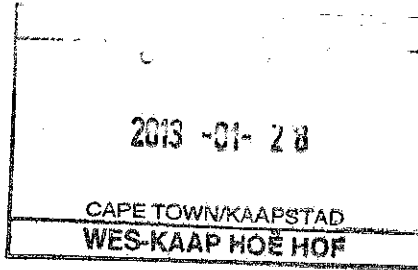
CARDINET (PROPRIETARY) LIMITED
(Registration No: 2011/007102/07)

Applicant

and

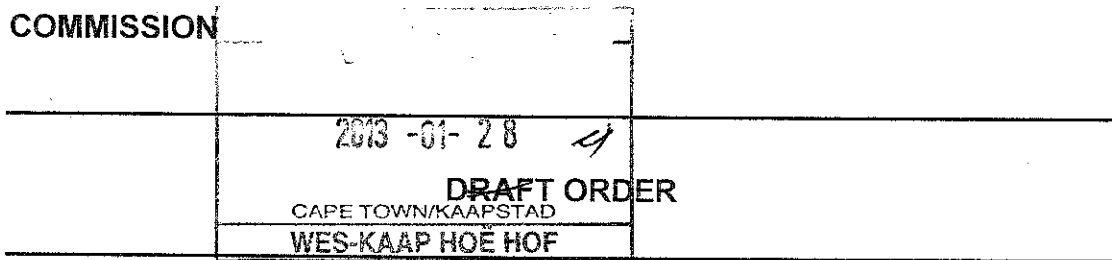
**DANGER POINT ECOLOGICAL
DEVELOPMENT COMPANY
(PROPRIETARY) LIMITED (IN
LIQUIDATION)**
(Registration No: 2002/022486/07)

First Respondent



**THE COMPANIES AND
INTELLECTUAL PROPERTY
COMMISSION**

Second Respondent



Having heard counsel for the applicant and having read the papers filed
of record, it is ordered that:

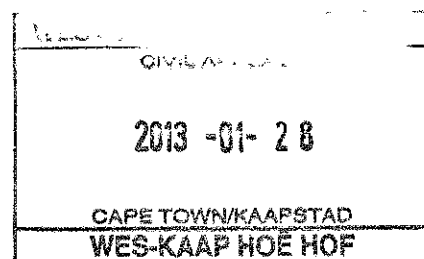
1. The First Respondent is placed under supervision and business rescue proceedings are hereby commenced as contemplated in section 131(4)(a) of the *Companies Act* 71 of 2008 ("**the Act**").
2. Mr Johannes Frederik Klopper is appointed as the interim business rescue practitioner as contemplated in Section 131(5) of the Act.
3. The First Respondent is directed to notify each affected person (as defined in section 128(1)(a) of the Act) of this Order within 5 (five) days.
4. The Applicant shall indemnify the joint liquidators of the First Respondent in respect of their reasonable relevant fees and the expenses incurred by them in the winding up of the First Respondent in accordance with the indemnity agreement (the "**indemnity agreement**") concluded between the Applicant and the joint liquidators, a copy of which is annexed marked "A".
5. As security for the Applicant's obligation to indemnify the joint liquidators, the Applicant shall deposit the sum of R200,000.00 into the trust account of Edward Nathan Sonnenbergs Inc within 14 days of this Order, as provided for in clauses 4 and 5.1 of the indemnity agreement.

BY ORDER OF THE COURT



COURT REGISTRAR

John Taylor & Associates
c/o 145 Alan Goldberg



A

INDEMNITY

CARDINET PROPRIETARY LIMITED
(Registration No. 2011/007102/07)
("Cardinet")

hereby indemnifies and holds harmless:

THOMAS CHRISTOPHER VAN ZYL N.O.
("Van Zyl")

and

GERHARDUS CORNELIUS KACHELHOFFER N.O.
("Kachelhoffer")

and

BASHIER ADAM N.O.
("Adam")

in their capacities as the joint liquidators of:

DANGER POINT ECOLOGICAL DEVELOPMENT COMPANY PROPRIETARY LIMITED (IN LIQUIDATION)
(Registration No. 2002/022486/07)
("Danger Point (in liquidation)")

(Van Zyl, Kachelhoffer and Adam hereinafter referred to together as "the Liquidators", such reference also being a reference to either and each one of them)

in relation to:

DANGER POINT ECOLOGICAL DEVELOPMENT COMPANY PROPRIETARY LIMITED
(Registration No. 2002/022486/07)
("Danger Point")

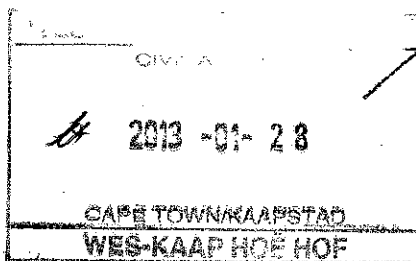
in respect of:

1. all claims of the Liquidators against Danger Point in respect of a reasonable fee for services rendered in regard to the administration of Danger Point (in liquidation) from the commencement date of Danger Point's liquidation to the date on which Danger Point is placed under supervision and business rescue proceedings as contemplated in 2 below ("the Business Rescue Date"), it being agreed that such reasonable fee is in the amount of R100 000; and
2. all expenses incurred by the Liquidators in the administration of the winding-up of Danger Point (in liquidation) including for, *inter alia*, the preservation of the assets of Danger Point (in liquidation) during the period referred to in 1 above.

("the Indemnified Claims")

on the basis that:

1. if the Indemnified Claims, or any part of them, are not paid to the Liquidators, in full, by or on behalf of Danger Point, on or before 31 July 2013 or are not otherwise secured to the satisfaction of the Liquidators (in their sole discretion) then Cardinet shall, on demand in writing from the Liquidators to such effect, be liable to the Liquidators:
 - 1.1. to make payment to the Liquidators of such of the Indemnified Claims as have not been paid or secured as aforesaid ("the Indemnified Claim Balance Due"); and
 - 1.2. for interest on the Indemnified Claim Balance Due calculated at the prime rate (being the prime lending rate expressed as a percentage rate per annum calculated daily and compounded monthly in arrear from time to time quoted as such by Standard Bank of South Africa Limited as being its prime lending rate, as certified by any director or manager of Standard Bank of South Africa Limited whose



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- appointment need not be proved) from the date upon which the Liquidators makes such demand to the date of payment thereof;
2. this indemnity is entirely suspensive upon an order being granted by the Western Cape High Court, Cape Town (pursuant to the application to that court instituted by Cardinet under case number 24285/2012) placing Danger Point under supervision and into business rescue as contemplated in Section 131(4)(a) of the Companies Act, No. 71 of 2008;
 3. in the event that Cardinet pays the Indemnified Claim Balance Due, with effect from the date of such payment, the Liquidators shall and hereby do cede and transfer to Cardinet their right, title and interest in and to such portion of the Indemnified Claims as constitutes the Indemnified Claim Balance Due;
 4. as security for its obligations in terms of this indemnity, Cardinet shall, with effect from the Business Rescue Date, deposit R200 000.00 into the trust account of Edward Nathan Sonnenbergs ("ENS") to be invested by ENS in an interest bearing Rand denominated deposit account in ENS's name with such South African bank as it may determine ("the Security Funds") and to be applied by ENS to the extent and in the manner provided for herein, provided that before making any payment to the Joint Liquidators from the Security Funds ENS shall first give 7 (seven) days written notice thereof to Cardinet including as to amount. Cardinet shall, by no later than 25 January 2013, furnish the Liquidators with proof, to the Liquidators' reasonable satisfaction, of funding in respect of the Security Funds.
 5. Cardinet furthermore agrees and declares in favour of the Liquidators that:
 - 5.1. it shall procure that any order granted by the Western Cape High Court, Cape Town (pursuant to the application to that court instituted by Cardinet under case number 24285/2012) placing Danger Point under supervision and into business rescue as contemplated in Section 131(4)(a) of the Companies Act, No. 71 of 2008 shall include a provision to the effect that Cardinet must indemnify the Liquidators in respect of the Indemnified Claims and that, in support of such indemnification, the Security Funds must be paid to ENS as contemplated above within 14 business days of such order;
 - 5.2. it is fully acquainted with all the terms and conditions hereof and the basis for the Indemnified Claims;
 - 5.3. no act of indulgence, relaxation or grace granted by the Liquidators to Danger Point in respect of the Indemnified Claims (including any act of accepting payment after due date or in accepting a lesser sum than the amount due) shall prejudice or affect the Liquidators' rights in terms hereof;
 - 5.4. the amount of Cardinet's indebtedness hereunder and that of Danger Point to the Liquidators at any time, shall be determined and proved by a certificate signed by the Liquidators (or by one of the members of the Liquidators whose appointment and/or authority need not be proved), which certificate shall be binding on Cardinet, shall be *prima facie* proof of the amount of Cardinet's indebtedness hereunder and shall be valid as a liquid document against Cardinet in any competent court for the purpose of obtaining provisional sentence or judgement against Cardinet thereon;
 - 5.5. Cardinet chooses its *domicilium citandi et executandi* at care of John Taylor & Associates Incorporated, Rose Street Chambers, 35 On Rose, Rose Street, Bo-Kaap, Cape Town (Attention John Taylor / Jacqui Grouwsira);
 - 5.6. this indemnity undertaking shall continue to bind Cardinet irrespective of any reconstruction or amalgamation that may be effected by the Liquidators with any other company, person or entity, or any change in the Liquidators' names or any complete or partial transfer of the Liquidators' business and shall survive additionally for the benefit of any new entity so created and for the time being continuing the Liquidators' business or any part thereof as successor or assignee to the Liquidators whether or not the Liquidators' business or any part thereof as successor or assignee to the Liquidators. It is the express intent that this indemnity undertaking shall continue to be valid and effectual for all purposes and in all respects in favour of any such new entity or other of Cardinet's successors or assigns as well as the Liquidators and may be enforced in the same way to all intents and purposes as if such new entity or other of the Liquidators' successors or assigns had been explicitly named and referred to in this indemnity undertaking instead of the Liquidators;
 - 5.7. this indemnity undertaking constitutes the entire agreement between Cardinet and the Liquidators in relation to the subject matter hereof and no variation thereof shall be of any force or effect unless it is in writing and signed by both the Liquidators and Cardinet;



5.8. If Danger Point and/or the Liquidators is placed under provisional or final winding-up, Cardinet's liability hereunder shall not be affected in any way. In particular this indemnity undertaking shall continue to guarantee, subject to all the provisions set out in this document, the payment of any indebtedness of whatsoever nature which may become due by the provisional trustee and/or trustee, or the provisional liquidator and/or liquidator, as the case may be, in connection with this indemnity, irrespective of whether such indebtedness is in respect of damages or arises in any way out of any statutory or other intervention of one or more of the aforesaid persons.

5.9. If any payment which has the effect of reducing or discharging Cardinet's liabilities hereunder is set aside under the insolvency laws or by order of court for any reason whatsoever or if such payment is refunded to Danger Point or to its provisional and/or final liquidators by agreement, or should any security be set aside by the court or be released by agreement, Cardinet shall be liable to the Liquidators in the amount of Danger Point's indebtedness to the Liquidators arising from or revived by the setting aside and/or refund of such payment or the setting aside or release of such security, notwithstanding that the same may take place after the termination of Cardinet's liability hereunder in other respects and all reference herein to the obligations of Danger Point shall include the indebtedness arising from or revived by the setting aside and/or refund of such payment or the setting aside or release of such security. The Liquidators shall accordingly be entitled to retain this indemnity undertaking notwithstanding any termination of Cardinet's liability hereunder in other respects and it is agreed that this indemnity undertaking is and shall at all times remain the Liquidators' property; and

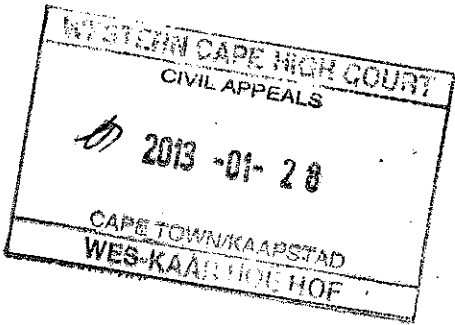
5.10. Cardinet acknowledges that no representations or undertaking whatsoever have been made to Cardinet in order to induce him to sign this indemnity undertaking otherwise as is expressly provided for herein; and

6. Cardinet and the Liquidators agree to the terms hereof being made an order of court.

Dated at Cape Town on this the 28 day of Jan 2013

As witnesses
1. [Signature]
2. [Signature]

for: **CARDINET PROPRIETARY LIMITED**
[Signature]
Geoffrey Guyson McIver
Director



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Dated at
As witnesses:

on this the day of 2013

for : THOMAS CHRISTOPHER VAN ZYL N.O.



- 1.
- 2.

Dated at
As witnesses:

on this the day of 2013

for : GERHARDUS CORNELIUS KACHELHOFFER N.O.

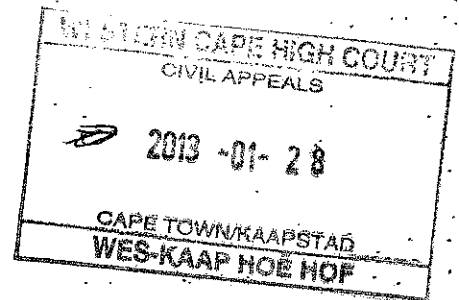
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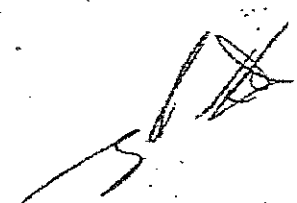
Dated at
As witnesses:

on this the day of 2013

for : BASHIER ADAM N.O.

- 1.
- 2.




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