

HIGHVELD SYNDICATION NO 15 LIMITED: REGISTRATION NUMBER (2003/031064/06)
HIGHVELD SYNDICATION NO. 16 LIMITED REGISTRATION NUMBER: (2003/031129/06)
HIGHVELD SYNDICATION NO. 17 LIMITED, REGISTRATION NUMBER: (2003/025913/06)
HIGHVELD SYNDICATION NO. 18 LIMITED, REGISTRATION NUMBER: (2003/030778/06)
HIGHVELD SYNDICATION NO. 19 LIMITED, REGISTRATION NUMBER: (2003/030144/06)
HIGHVELD SYNDICATION NO. 20 LIMITED, REGISTRATION NUMBER: (2005/029425/06)
HIGHVELD SYNDICATION NO. 21 LIMITED, REGISTRATION NUMBER: (2005/027601/06)
HIGHVELD SYNDICATION NO. 22 LIMITED, REGISTRATION NUMBER: (2005/027390/06)

(“the companies”)

BUSINESS RESCUE STATUS REPORT IN TERMS OF SECTIONS 132 OF THE COMPANIES ACT, 71 OF 2008 (“THE ACT”) READ WITH REGULATION 125 OF THE ACT FILED BY THE BUSINESS RESCUE PRACTITIONER JF KLOPPER AND A NOTICE IN TERMS OF SECTIONS 145 AND 146 OF THE ACT.

1. The companies were placed under business rescue in September 2011 and Johannes Frederick Kloppe was appointed as Business Rescue Practitioner (“BRP”) of the companies at the time.
2. A Business Rescue Plan (“the Plan”) in respect of the companies was published on 30 November 2011 and adopted by affected persons (“HS Investors”) on 14 December 2011.
3. As was mentioned in the previous status report as at 31 December 2021 there were certain developments in relation to the Smith Application, also referred to as “the DECA Case” by the applicants’ legal team in their various communications. This is an acronym for what they refer to as a “Derivative Class Action”.
4. The contents of the December version of the monthly newsletter by the so-called Highveld Syndication Action Group (“HSAG”) (“the December newsletter”) which is purportedly prepared and distributed by the firm of attorneys representing HSAG and the applicant (Mr Smith) in the DECA case was brought to the BRP’s attention.
5. This newsletter falsely creates the impression that there were delays by the various Respondents being the late N Georgiou, Michael Georgiou, George Georgiou, the BRP, Connie Myburgh and Jacques du Toit in his capacity as BRP of Zephan Properties (Pty) Limited and Orthotouch (Pty) Limited to file their answering affidavits in the DECA case.
6. Mention was made the December newsletter that there were “cut-off” dates imposed in terms of directives by the case manager, Judge Janse van Nieuwenhuizen (“the case manager”), for the filing of Answering Affidavits by the various Respondents that were not met. This is untrue.
7. The case manager was appointed late in 2020 and at a Case Management meeting held on 24 November 2020 before the case manager the attorneys representing the Applicants failed to disclose their clients’ intention to deliver draft particulars of claim which their client (Smith) had falsely stated in his founding affidavit was attached to it.
8. At the same time the applicant’s attorneys also failed to disclose their client’s attention to adduce further evidence to supplementary papers at a time when the BRP’s attorneys had agreed to deliver the BRP’s answering affidavit by 15 January 2021.

9. The BRP's attorneys recorded this in a letter to the applicant's attorneys on 17 December 2020 which letter the applicant's attorneys has to date failed to respond.
10. Further letters were addressed to applicant's attorneys and the case manager on 11 January 2021 and the case manager's attention was drawn to the fact that on 17 December 2020 the applicants' attorneys were requested to provide draft affidavits which they failed to do.
11. As a consequence of the correspondence to the case manager a further meeting to be held on 3 February 2021 between the case manager and all the various respondents' legal representatives.
12. At the 3 February 2021 meeting with the case manager it was recorded that the applicant/s would be granted leave to file a supplementary affidavit and that the various Respondents would file their answering affidavits as follows:
 - 12.1. the Second Respondent to file its answering affidavit with in twenty days of receipt of the supplementary founding affidavit;
 - 12.2. Eighth and Ninth Respondents to file their opposing affidavits within thirty days of filing of Second Respondent's answering affidavit;
 - 12.3. Third Respondent to file its answering affidavit on or before 26 February 2021;
 - 12.4. Fourth and Fourth Respondents to file their opposing affidavit/s within fifteen days of receipt of the supplementary founding affidavit of the applicants.
 - 12.5. The Answering Affidavit by the late Mr N Georgiou being the First Respondent and acting on behalf of the Eleventh Twelfth and Fourteenth Respondent was filed as long ago as 11 December 2020. He also filed a supplementary affidavit dated 16 March 2021 but unfortunately passed away on 10 September 2021. The issue that many of the parties will now have to come to terms with is as to whether there can ever be triable case as the late Nic Georgiou cannot give evidence.
 - 12.6. The BRP filed his answering affidavit on 9 March 2021 and the Second and Third Respondents filed their answering affidavits on 16 March 2021
13. In October 2021, Smith filed a replying affidavit dealing only with the answering affidavits of the late Mr Nic Georgiou and his sons, Mr George Georgiou and Michael Georgiou and which he referred to as their "Main Replying Affidavit".
14. In terms of a directive issued by the case manager appointed in relation to Smith Application / the DECA case under case number 93417/19, Judge Janse van Nieuwenhuizen, Smith was directed to file his "composite" replying affidavit dealing with the answering affidavits by all the respondents i.e. the Georgiou's, the BRP of Zephan and Orthotouch (Jacques du Toit) and others including the BRP, by 28 October 2021.
15. However, Smith and his co-applicants ignored Judge Janse van Nieuwenhuizen's aforesaid directive and served their "Replying Affidavit - to Klopper and Du Toit" by email on 15 December

2021. It took them just over 9 months to file a Replying Affidavit after the BRP had filed his answering affidavit as long ago as March 2021!

16. This Replying Affidavit by Smith was served without leave of the Court having been obtained and the BRP denies that applicants have any entitlement to file this affidavit and will regard the affidavit as *pro non scripto* (as never written) until leave from the Court has been obtained for its filing.
17. Jacques du Toit's replying affidavit in the application for a declaratory order in relation to the standing of the HS Investors' claims has also now been served and filed. The HSAG newsletter glibly refers to Jacques du Toit's application as a "delaying tactic" but fails to explain the important issues that the court will have to decide upon to their readers.



JF KLOPPER
BUSINESS RESCUE PRACTITIONER
Date: 31 January 2022