

MEMORANDUM TO THE MASTER OF THE HIGH COURT

(GAUTENG JOHANNESBURG DIVISION)

IN RE: REPORT BY THE COMMISSIONER INTO THE AFFAIRS OF
HARRISON AND WHITE INVESTMENTS (PTY) LTD (IN LIQUIDATION)

MASTER'S REFERENCE NUMBER: G1274/2016

MEMORANDUM

1. Harrison And White Investments (Pty) Ltd (In Liquidation) (“**the company**”) was placed into provisional liquidation on 7 December 2016. Prior to that, it was in business rescue. I, Hans Klopper, was its business rescue practitioner.
2. An enquiry in terms of sections 417 and 418 of the Companies Act 61 of 1973 (“**the Act**”) was held into the affairs of the company and retired Judge Bertelsmann was the Commissioner. I testified under oath at the enquiry on 23 July 2018 for approximately one hour. On 7 May 2019, the Commissioner submitted a report to the Master.
3. The report finds that the directors of the company (Gavin Zietsman and Michael Ralston) were reckless and even fraudulent in their management of the company.
4. The report is critical of me for not placing the company into winding-up sooner and says that I should have known that the promised funding that would restore the company to solvency after business rescue was illusory. It recommends that the liquidators should seek to hold me personally liable for the damage allegedly caused by not terminating the business rescue process.

5. The enquiry was private and the report was meant to be kept confidential in terms of section 417(2) of the Act. However, it was leaked to Ryk van Niekerk, the editor of Moneyweb, who published an article based on the report on 29 August 2019.
6. Moneyweb did this despite the Commissioner personally informing him that the report was confidential and that the information contained therein could not be published.
7. The article quotes extensively from the report and claims that the business rescue process was to delay an inevitable liquidation and allow for the looting of the company's assets.
8. The report and the article are factually incorrect in many material respects and the Commissioner's recommendations are neither fair nor justified. I was not present, and was not permitted to be present, during the enquiry other than when I testified. I testified willingly and cooperatively and in an effort to assist the liquidators and the Commissioner in the winding-up process. I left the enquiry believing that I had done so and did not contemplate for a moment that I would be one of the targets of the report.
9. The report came to my attention on 7 August 2019 and the article when it was published on 29 August 2019.
10. I was appalled at their content. The Commissioner had grouped everybody involved in the company's management together, myself included, even though my involvement was completely different in time and purpose to that of the erstwhile managers and directors. Then, with the same brush, he tarred us all.
11. He did so without properly taking into account my evidence. I saw, for the first time, that the evidence of other witnesses that was never put to me during my testimony, had informed the Commissioner's findings and recommendations. The recommendations themselves (or even the fact that the Commissioner was considering them) were never put to me. I was not given an opportunity to respond to any of the adverse contents of the report.

12. In effect, I have been found guilty in a matter where I was only called to testify and did so for no more than an hour. It is guilt without trial. Unlike any other defendant or accused in civil or criminal proceedings, I had none of the basic rights and protections afforded to a person before their fate is decided, including the right to cross-examine their accusers and appeal the decision.
13. Instead, I, as a cooperative witness, have been left to deal with the fallout of a factually incorrect report by a respected member of the legal fraternity and an unlawfully published article by Moneyweb in flagrant disregard of the Act and the Commissioner.
14. I have taken legal advice from my attorney, as well as senior and junior counsel. I wanted to take the report on review in court to have it set aside but was advised that I could not do so because it does not constitute administrative action nor does it fall within the principle of legality. I am advised that because the Commissioner did not make "*findings*" against me (as a court might), there is no prejudice to me.
15. Although this may be the position adopted by courts of law, the courts of public opinion do not operate in the same way. In that space, where I conduct my day to day business activities and deal with colleagues and clients, far from the sanctity of a court room, I have suffered a great deal of damage to my personal and professional reputation.
16. As I am left without a legal remedy, I will deal with the content of the report and its inaccuracies in a court of law should proceedings ever be instituted against me.

Dated at Stellenbosch on 25 September 2019

A handwritten signature in black ink, appearing to read 'J. Kloppe', is written over a solid horizontal line.

JOHANNES FREDERICK KLOPPER