

Orthotouch statement

11 May 2018

Orthotouch has noted recent media reports about the court proceedings in the Supreme Court of Appeal (“the SCA”) in Bloemfontein on 8 May 2018 and believe that certain matters need to be clarified so that certainty is given to the scheme participants that the implementation of the scheme of arrangement will proceed unabated in the interest of the participants. The scheme relates to the compromise of certain claims of those participants.

Two appeals were heard by the SCA. The one related to the withdrawal of an application by a minority of investors in 2015 which sought to set aside the scheme of arrangement and the other related to the withdrawal of the application to certify a proposed class action by four investors who purport to represent a wider body of investors in 2014.

There is a misperception that the Highveld Syndication Action Group (“HSAG”) is undertaking a class action to proceed with claims against Mr. Nic Georgiou and Orthotouch. This is incorrect. The HSAG has no claims in its own name and there are no claims against Orthotouch in the class action. HSAG has never been an applicant in any court proceedings and cannot have any findings made in its favour.

The outcome of this week's court proceeding is that the certification of the class, which is a preliminary step to be allowed to proceed with any class action can now proceed. No class action can begin before a class is certified by the courts. Likewise, the application to set aside the scheme of arrangement may now proceed in the normal course.

Orthotouch is disappointed that the SCA did not allow its full legal argument to be heard this week and believes that had the Orthotouch counsel been given the opportunity to argue the appeals, the court would have been in a position to give clarity on the rights and obligations of the representative plaintiffs in applications to certify class actions.

The appeals were consequently withdrawn by the appellants' legal teams to avoid any inference of impropriety being drawn and costs were tendered. There was furthermore no concession that Mr. Georgiou acted unethically and abused the legal system.

Further allegations were made in the media that Mr. Georgiou and his property companies collected R 4.6 billion from investors. This is not true. Mr. Georgiou has never been involved in Picvest, Bosman & Visser or any of the Highveld Syndication companies (“the HS Companies”).

Zephan Properties (Pty) Ltd (“Zephan”) sold certain properties to Bosman & Visser, at market related prices. Bosman & Visser then on-sold these properties to the HS Companies. The HS Companies, in turn, syndicated the properties to the public contrary to what has been reported, Mr. Georgiou has never received, nor been entitled to receive, any payment from the HS Companies. This is a fact that certain detractors to the scheme of arrangement would like to ignore, as the scheme does not suit their self-serving interests, which are opposed to the interest of the general body of investors.

The HS Companies were placed under voluntary business rescue in 2011 after they ran into financial difficulties and were unable to pay investors their interest on their investments.

Only after the HS Companies were placed into business rescue, did Orthotouch make an offer to purchase the properties and rights in properties held by the HS Companies at market related prices.

The offer was published in the Business Rescue Plan, which was accepted by an overwhelming majority of the investors. A real alternative for the HS Companies would have been liquidation where the investors would have lost everything that they had invested. To date, more than R1,3 billion has been paid from Orthotouch, as interest, to the investors.

As stated in the HS Companies’ Business Rescue Plan and in the interest of the investors, Zephan does not receive any payment until all the investors have been paid in full.

The scheme of arrangement proposed by Orthotouch to buy the properties from the HS Companies was advertised and public meetings were held in 2014. The scheme of arrangement provided expressly that it would be sanctioned by the court after its acceptance. Investors were advised in the documentation circulated before hand to seek independent legal advice before casting their votes.

It was furthermore incorrectly reported that Mr. Georgiou’s companies were placed in business rescue. The HS Companies were never his companies.

Mr. Theron, the attorney for the HSAG, is quoted as saying that the class action will claim back the monies of investors from Orthotouch and Mr. Georgiou. This is incorrect as no claims are being made against Orthotouch in the proposed class action. The class action, if certified will not affect Orthotouch nor the implementation of the scheme of arrangement.

All that the legal actions taken by Mr. Theron and the detractors from the scheme of arrangement serve to achieve, is to delay the implementation of the scheme of arrangement and to erode the monies which would otherwise have been available to

pay the investors.

Orthotouch still believes that the scheme of arrangement offers the greatest potential for investors to realise value from their investment in the HS Companies.

ENDS

On behalf of Orthotouch