

I N D E P E N D E N T

C O R P O R A T E R E C O V E R Y A D V I S O R S

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Date: **19 DECEMBER 2009**

TO WHOM IT MAY CONCERN

Dear Sir / Madam

BIZ AFRICA 1332 T/A KING FINANCIAL HOLDINGS (PTY) LTD (IN LIQUIDATION) SUBSIDIARIES: RZT ZELPY 4619 (PTY) LIMITED (IN LIQUIDATION) KINGVEST 3 (PTY) LIMITED (IN LIQUIDATION) (“THE SUBSIDIARIES”)

1. In a comment posted on our website on 7th December 2009 a number of queries were raised with regard to the realisation of immovable properties belonging to the subsidiaries by public auction.
2. We deal with the queries *seriatim* as follows:
3. **Ad: “the speed at which the recent auctions came upon us was mind boggling. For how long had you known about these events before you advised?”**

3.1. Shortly after their appointment during August and October 2009 respectively the joint provisional liquidators (“the liquidators”) appointed in the subsidiaries approached the High Court of South Africa (Western Cape High Court, Cape Town) for Orders in terms of the provisions of Section 386 of the Companies Act, 61 of 1973 (“the Act”) to obtain the powers ordinarily required for the administration of the affairs of a company.

3.2. The High Court extended the liquidators’ powers to enable them to fulfil their duties which, inter alia, included the authority to sell assets.

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Directors:

JF Klopper* B Com B Proc R Pieters* B Econ LDR Van der Merwe* B Com LLB
MJ Maseko B Juris LLB HA Plaatjies* B Juris LLB

* Member of the Association of Insolvency Practitioners of Southern Africa (“AIPSA”)

3.3. On or about 9th October 2009 the liquidators in both the subsidiaries received written instructions from the secured creditors whose claims are secured by first mortgage bonds over the immovable properties (“the bondholders”) belonging to the subsidiaries to the effect that they required the immovable properties to be sold by public auction as a matter of urgency in order to minimise their exposure.

3.4. These directions by the bondholders are provided for in Law. Section 386 (2B) of the Act provides that the sale of an immovable property may be authorised by the Master or the Court (in this instance the Court as explained above). It further states that if such a property or portion thereof is subject to a preferential right the Master or the Court shall not authorise the sale of the property unless the person entitled to such preferential right has given his consent thereto in writing. (Preferential right in the context of section 386 (2B) means the mortgage bonds registered over the immovable property). This was precisely what the bondholders required in writing.

3.5. The liquidators were therefore duty bound in Law to act in terms of lawful instructions from the bondholders.

3.6. Pursuant to the written instructions by the bondholders Alliance was instructed to include the immovable properties at their next available platinum auction which was due to be held in early December in Sandton, Johannesburg.

3.7. Upon examination of the affairs of the subsidiaries it transpired that no investors whatsoever had invested any funds directly into these companies.

3.8. The subsidiaries were funded by:

3.8.1. loans from the bank which are secured by mortgage bonds as stated above; and

3.8.2. by way of inter-company loans from Autumn Star Trading 96 (Pty) Limited, a company in the King Group.

3.9. The liquidators, however, also sent a circular to all investors on 30th November 2009 advising them of the forthcoming sale of the immovable properties.

4. Ad: “he also personally told me that no creditors’ meeting was required as no creditors’ money was involved”

4.1. This question or statement is not understood.

4.2. It was never communicated that the auction sales took place pursuant to a “creditor’s meeting”.

4.3. The process that was followed was pursuant to the provisions of Section 386 of the Companies Act and the obtaining of an Order of Court which was explained above.

5. Ad: “I understand that Rynette Pieters has a slightly different explanation in that the Master of the Supreme Court had arranged the meeting”.

5.1. This statement is also not understood. Neither Rynette Pieters, nor the writer made any reference to the Master of the Supreme Court (sic) and “meetings arranged” by the Master.

5.2. As was explained above that the process that was followed for the sale of the property was pursuant to an Order of Court authorising the liquidators to sell the immovable properties together with instructions by the bondholders as is provided for in Law.

5.3. No creditors’ meetings or meetings with the Master of the High Court took place in connection with or were necessary in this regard.

5.4. The discussion with the Chairperson of the King Investor Forum and the apology by the writer related to the fact that the Media was alerted of the sales by the auctioneers without authorisation to do so by the liquidators and that it created the wrong impression with and unnecessary anxiety amongst investors.

6. Ad: “flow of emails resulted where Stephen King stated that he had personally deposited investor’s funds into Heritage Hill”.

6.1. It is correct that Stephen King disputed the statement that no direct investors’ funds were involved in financing the acquisition of the properties by the subsidiaries and stated that he personally “deposited” investors’ funds into Heritage Hill.

6.2. Upon being pushed for details of such investors’ deposits he stated that the funds emanated from Autumn Star Trading 96 (Pty) Limited (“also known as King Property Finance (“KPF”)) (and therefore not from investors) but deemed the KPF funds to be “investors’ funds”. We do not agree with that statement.

6.3. The fundamental issue that the former directors of companies in the King Group would not appear to understand is the fact that the various companies in the group are all separate legal entities.

6.4. The directors seem to have:

6.4.1. no regard whatsoever for the principle that the funds belonging to a specific entity vests in that entity and in that entity alone;

6.4.2. no understanding of fact that when funds are deposited into one entity that such funds become mixed with the funds deposited by other parties together with monies and accruals from whatsoever nature;

6.4.3. no understanding that such money, by virtue of a principle known as *commixtio* loose its identity, mingles with the other funds in the account and becomes the property of that company and that investors and other parties who have claims against the companies are all creditors with claims against that company;

6.4.4. no understanding that where such a company, like KPF, thereafter advance funds to other companies it cannot be deemed to be “investors’ funds”. A loan between the KPF, in which the investor invested the money, and the subsidiary to whom the funds were lent by KPF comes into existence.

6.4.5. no understanding that these loan accounts need to be repaid to KPF and once repaid investors, as creditors of KPF, in which they have made their initial investments, may participate in the proceeds of such repaid loan accounts as a creditor of KPF.

6.5. It is therefore in terms of legal and accounting principles incorrect to allege that the properties acquired by the subsidiaries were acquired by “investor’s funds” as such funds were advanced to these subsidiaries by KPF and not by investors.

6.6. To summarise therefore - investors whose moneys were invested in KPF have claims against that company.

7. Ad: “the new angle, indirect and direct deposits”

7.1. The situation has been explained in paragraph 6 above and need no further explanation.

7.2. This is not “new” in legal and/or accounting terms and is therefore not a “new angle”.

7.3. It is simply a legal consequence of loan transactions which the directors seem to have misunderstood at all times.

8. Ad: relating to the auction sale, the advertising thereof and the interaction with the auctioneers.

8.1. Save to say that the auctioneers have already responded to this query, we deny that the sales were “poorly advertised”.

8.2. The Alliance platinum sales which are being held on a regular basis all over are being held in high esteem by all investors in commercial property in South Africa and virtually no additional advertisement is normally required as buyers with the means to invest attend these sales as matter of course.

8.3. The sales were in fact very well attended as some 220 buyers registered. We therefore believe that the best possible return that was achievable in the present market conditions was obtained.

9. Ad: How much notice would you think is acceptable to buyers of multi million rand properties?

9.1. This has been dealt with by Alliance in their response. We reiterate that some 220 people attended the auction.

9.2. We are not in position to speak on behalf of possible investors about how much notice they require in order to invest in possible transactions but would imagine that the buyers who regularly attend Alliance auctions are willing and able to buy at short notice.

10. Ad: What was the outstanding bank balance?

10.1. It would appear that this query relates to the amount outstanding to the bondholders.

10.2. The bondholders have not as yet submitted their formal claim documents in respect of their loans to the subsidiaries. It would appear that in respect of the property belonging to RZT Zelpy 4619 (Pty) Ltd where the properties were sold at the forced sale valuation of R7 500 000,00

(Seven million five hundred thousand rand) that the bank is owed approximately R2000 000,00 (Two million rand).

10.3. In respect of Kingvest 3 (Pty) Limited where the bank bought the property at the auction for R9 000 000, 00 we are advised that the bank is owed in excess of R 12m.

10.4. Upon registration of transfer of both properties an interim liquidation dividend will immediately be paid to the bank to ensure that interest no longer runs against the outstanding loan.

10.5. In the case of RZT Zelpy 4619 (Pty Limited the balance of the funds on hand will accrue to the free residue for the distribution amongst concurrent creditors in RZT Zelpy 4619 (Pty) Limited.

10.6. KPF will be by far the largest concurrent creditor of this company. This will then be dealt with in a liquidation and distribution account to be drawn and submitted to the Master of the High Court and upon confirmation of that account by the Master will dividends be paid to concurrent creditors.

10.7. In the matter of Kingvest 3 (Pty) Ltd the purchaser of the property was the bank itself and as the highest bid was nowhere near what was owing to the bank there will be no dividend to concurrent creditors.

11. Ad: With the poor prices fetched will investors be billed for any shortfall on liquidation costs?

11.1. It is denied "poor prices" were fetched.

11.2. It has been stated by experts that the prices were market related and the best that could possibly have been achieved in present market conditions.

11.3. The investors will not be "billed" for any shortfall on liquidation costs.

11.4. There seems to be an ongoing misunderstanding of how liquidation costs are calculated.

11.5. Liquidation costs are calculated as follows:

11.5.1. By way of an example, let's say an immovable property with a mortgage bond of R2000 000, 00 registered over it gets sold for R10 000 000, 00.

11.5.2. The realisation will then be as follows and the standard costs deductible will be as follows:

ENCUMBERED ASSET ACCOUNT NO. 1					
Encumbered:					
Description					
Nature of Encumbrance:					
Subject to mortgage		Acc:			
bond in favour of XYZ					
Details	Vchr No.	Breakdown	VAT	Excl VAT	Incl VAT
REALISATIONS					
Proceeds			-	10 000 000.00	10 000 000.00
Description	val	10 000 000.00			
	<i>Total Output VAT</i>		-		
					10 000 000.00
DISBURSEMENTS					
Bond of security:			6 140.35	43 859.65	50 000.00
As per Tariff		50 000.00			
Master's fees:			-	25 000.00	25 000.00
As per Tariff (R25k max)		25 000.00			
Liquidators' fees			42 000.00	300 000.00	342 000.00
3% on immovable property		300 000.00			
Realisation Cost:			81 666.67	583 333.33	665 000.00
Valuation:		10 000.00			
Advertising cost:		25 000.00			
Rates and Taxes paid		30 000.00			
Rates and Taxes recovered		-			
Auctioneers' commission @ 6%		600 000.00			
Total Input VAT			129 807.02		
Distribution Account:					
Available for Distribution		8 918 000.00			
Secured award to: XYZ Bank (Ct)					2 000 000.00
Balance to free residue for distribution in terms of the Act					6 918 000.00
					10 000 000.00

11.6. It should be clear from the above that:

11.6.1. from the proceeds of the assets, as a first charge, the costs and charges to be deducted are those provided for in Section 89 of the Insolvency Act which are the costs of realising, maintaining and preserving the assets which include inter alia:

11.6.1.1. liquidators fees,

11.6.1.2. auctioneers commission,

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- 11.6.1.3. costs of advertising,
 - 11.6.1.4. master's fees,
 - 11.6.1.5. bond of security costs,
 - 11.6.1.6. insurance,
 - 11.6.1.7. security charges and
 - 11.6.1.8. sundry costs relating to the realisation of that specific property.
- 11.6.2. In our example above the costs are estimates and for illustrative purposes only.
- 11.6.3. As mentioned above these costs are deducted as a first charge and the balance remaining then accrue to the secured creditor.
- 11.6.4. In our abovementioned example the balance of R 8 918 000, 00 will be available for distribution to the bondholder.
- 11.6.5. After payment to the bondholder (in our example R 2 000 000, 00), in full, R 6 918 000, 00 will then be transferred to the free residue. (Bearing in mind that that the bondholder is entitled to interest to the date of payment and that the R2m balance at the date of sale will accrue interest at the prevailing bond rate – hence the motivation for the urgent sale)
- 11.6.6. There will be no further liquidation costs remaining payable out of the free residue, save for the taxed bill of legal costs relating to the liquidation application and for other legal work done, if any.
- 11.6.7. The taxed bill of costs is normally in the vicinity of R50 000, 00 and in our example with R6 918 000.00 being available there is therefore no danger that there will be a shortfall and consequently no contribution.
- 11.6.8. If the bondholder's claim was more than R 8 918 000,00 in our example there will be contribution payable which in this instance, if no concurrent creditors proved claims, the applicant for the liquidation will be liable to pay.
- 11.6.9. That is why the liquidators will hold onto all claims submitted and assess the position after the assets have been realised.

11.6.10. If it is then clear, as was explained in this example, that there is no danger of contribution, a meeting of creditors will be convened for purposes of proving the claims.

11.6.11. It should further be borne in mind that, as the largest concurrent creditor in this instance is KPF, being the company in the group that advanced lent money to the subsidiaries, in the event of contribution, KPF would have been liable for the contribution and not any investor.

12. Ad : The first sales seem a far cry from the “highly unlikely contribution scenario” quoted to the investors before the Eversheds “worst case scenario” of R350 000 000,00 in assets”

12.1. This question is not understood at all.

12.2. The assets belonging to the subsidiaries which were sold by auction are a small portion of the total assets in the Group and as to whether the aggregate realisation of the remaining assets in the group will be in excess of or less than the R350 000 000, 00 quoted by the company itself in its instructions to Eversheds in July 2009 remains to be seen in the fullness of time.

13. Ad: If investors funds can “indirectly” KPF or KFH, will the losses go to sold off entities or to KPF or KFH shareholders

13.1. This question is likewise not understood.

13.2. It is sure not what the “losses” are supposed to mean.

13.3. Whatever the proceeds of the properties might be such proceeds are distributed to creditors in terms of the Laws of Insolvency as was demonstrated in the example above.

13.4. If there are insufficient funds to pay concurrent creditors in full they participate on a pro rata basis.

13.5. It is KPF, who advanced the money to the subsidiary, who will suffer the initial losses.

13.6. Investors will obviously, in view of the return to KPF not being achieved, eventually have less accruing to them by way of dividend.

14. Ad: Several callers asked if it would not have been appropriate to give feedback re: the losses incurred by the bank instigated fire sales

14.1. The truth of the matter is that the properties in the Group are worth what they are worth.

14.2. They are being sold at market related prices and the “losses” are not through the making of the liquidators or the banks.

14.3. The losses are as a consequence of present market conditions and because the companies in the King Group are insolvent and have been liquidated the Laws of Insolvency provide for certain procedures which have to be followed.

14.4. It is not the liquidator’s fault that the companies have failed and the liquidators are merely appointed to ensure that the companies are liquidated in terms of the provisions of the Laws of Insolvency.

15. Ad : “Idea of transparency”

15.1. Whether investors agree with the liquidators’ “idea of transparency” or not we cannot comment upon.

15.2. We have a professional duty and function to fulfil and will continue to do so without fear.

15.3. We will respond to legitimate queries but will ignore uncalled-for and scurrilous attacks on our professionalism.

16. Ad: Some people believe we should have applied ourselves on capitalising the interest on the small Heritage Hill and selling it after two to three years at a profit instead of loosing a good chunk of investors' funds. What is your view?

- 16.1. The liquidators are at all times open to offers that make commercial sense and would have been prepared to consider any offers and would have presented such offers to the banks. No offers have as yet been submitted.
- 16.2. The investors who were really interested in looking after their interest had time arrange their affairs and to attend at the auction and to engage in discussions with the liquidators with a view to submitting an offer. The properties were not sold on the fall of the hammer. There was a confirmation period and during that period any party could have submitted a higher offer.
- 16.3. There was therefore adequate time for investors who have the necessary funding to make bids themselves and to protect their own eventual interests.
- 16.4. The view of many market commentators is that the market might get even worse during 2010.
- 16.5. There seems to be consensus amongst all property developers that vacant development land is a disaster at the moment.
- 16.6. Where there are banks involved and who hold security in the form of mortgage bonds they are in Law the party who determine when and how their security will be realised or not.
- 16.7. A liquidator is not permitted to speculate with assets. There is a limited period that that the liquidators may wait before they must sell assets. This period will in the King Group most probably be until at the latest April / May 2010. If no buyers for assets have been found by the end of March next year or decent proposals have submitted for schemes of

arrangements in terms of section 311 of the Act decisions will have to be made to sell all assets by public auction.

16.8. As a scheme of arrangement is proposed between the company and its creditors the company must be party to any scheme. The liquidators are the only parties who are authorised in Law to represent the companies. It is therefore not true, as has been suggested, that schemes of arrangement in terms of section 311 of the Act could be proposed without involving the liquidators in the process.

Yours faithfully



HANS KLOPPER

JOINT LIQUIDATOR AND ON BEHALF OF JOINT LIQUIDATORS