THE WATERKLOOF BOULEVARD REPORT

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PRELIMINARY REPORT
ON CERTAIN ILLICIT ACTIVITIES PERPETRATED BY NEDBANK OFFICIALS (CURRENT AND FORMER) AND OTHERS PARTIES AGAINST THEIR OWN CLIENTS DURING 1996 TO 2012

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1. Background

The background and history (timeline) of the Waterkloofspruit Projects company ("WKS") (aka Waterkloof Boulevard) saga that started in August 1995 and that is still continuing today are clearly , fully and intensively set out in this Report (File One – Part A) read together and with references the **SCA Record in the Application (Case 4741/06)** (Files Two and Three) and The Combined Summons (Case 1012/07) (File No 4)

File One – Part B also includes all **Judgments** taken to date in the WKS matter. It includes the Judgments of **Judges Southwood (original liquidation of WKS) Molopo** , **Muvundla** (two Judgments – 4741/06 and 1012/07) and that of the Supreme Court of Appeals ("**SCA")** . These Judgments all highlight the frauds and other irregularities committed illicitly by several of the Respondents in Case 4741/06 and **all** of the Defendants in Case 1012/07 together with several outside parties.

The Application (Case 4741/06) that was brought by Hillcrest Village and CMT Trust in terms of Section 420 of the companies Act commenced in early 2006 and after several postponement ended with a Supreme Appeal Court hearing on 17 July 2009 with the SCA Judgment.

Three of the Respondent's (Nedbank , Cronje & Motala) inexplicable and overwhelming opposition in Case 4741/06, in which no relief whatsoever were sought against them and where they were therefore not prejudice in any way, gave credence to all the allegations made by the Applicants in Case 4741/06

The civil case **(Case 1012/07) a Combined Summons (and Claim for Restitution alternative Damages)** was issued on 12 January 2007. The issue of this Combined Summons was done whilst the parties were still awaiting the SCA Judgment in the Application (Case 4741/07) and was done solely to avoid any possible prescription of their claim. The Defendants in this case all lodged Notices to Defend the action except for the two liquidators (Cronje and Motala) who each lodged an Exceptions.

These Exceptions were however overruled by Judge Mavundla on the same day that he ruled on the Application.

Nedbank and both liquidators were granted right to Appeal Judge Mavundla's Judgment in Case 4741/06 After the SCA appeal ruling the Plaintiff's decided to proceed with Case 1012/07 and applied for a Court date . The merits of case 1012/07 were therefore scheduled to be heard on 31 January 2012 for the first time in the High Court in Pretoria on a derivative action basis.

The Defendants (Case 1012/07) then requested security for cost in terms of Rule 47 (2) from the Plaintiff's before the Trial could commence on 31 January 2012. At that stage the Plaintiff's did not have the required funds available and they decided to remove the matter from the role for the time being. After removing the case from the role the Plaintiff's spend the rest of 2012 to weigh their options and decided to move forward with Case 1012/07 using two different routes

The civil case or the merits thereof has to date not been heard by any Court

The first route is to arrange for the required finance and cost security to continue with the civil matter that had to been taken off the 31 January 2012 Court role.

This (civil) route resulted in the forming of the South African **Litigating Funding** Company ("SALFCO") that is currently busy raising the required funds to continue with the civil action. This continuation of the civil case will however only commence after the finalization of the second route (i.e. criminal investigation)

The second route that the Plaintiff's have decided on is based on the legal advice they received from their legal advisors. The advice is to further investigate their case via a criminal investigation based on (and because of) all the facts regarding gross and illicit irregularities that had come to light during the various Court Hearings and documents utilized in Case 4741/06 and also as set out in Case 1012/07 and all the legal opinions and various Judgments they had received to date in both the cases.

As a first step, in this second route, the Plaintiff's decided to voluntary liquidate the company Hillcrest to enable them to appoint a liquidator/s to assist them to further investigate all the irregularities that came to the fore in the various Judgments in Cases 4741/06 and 1012/07.

One of the two liquidators that were appointed for Hillcrest Village (the first Plaintiff in Case 1012/07) is Mr. Dewald Breytenbach of BBM Services. He immediately after being appointed started to correspond with Nedbank to obtain outstanding information and documents from them. He also wanted to find out from Nedbank the whereabouts of certain funds retained by BoE / Nedbank in the sale of the Hillcrest property known as Gilboa House and their reason/s for retaining the said funds.

However after several months of receiving no co-operation from Nedbank he decided to obtained an **Court Order to hold a Sect 417 /418 Enquiry** to investigate the prima facie evidence of frauds and other irregularities set out in

the various Judgments and to obtain the documents previously requested from Nedbank and to ascertain the validity of the reasons for Nedbank's refusal to pay over to him the surplus funds from the mentioned Gilboa House sale transaction.

Nedbank however again succeeded in frustrating this investigating with postponements, empty promises and false documentation. After several months of getting nowhere the Plaintiffs together the Hillcrest liquidators, on advice from their legal advisors, decided to proceed with a criminal investigation and to assist them appointed Crash Data Forensics. ("Crash Data")

Crash Data, after perusing all available documentation and taking Sworn Affidavits from the liquidators and the director of Hillcrest proceeded with the opening a criminal file with the SAPS in Pretoria. The file was then forwarded to the Commercial Branch of the SAPS (Lt Col Lottering) for further investigation. After several weeks the Commercial Branch advised that the matter belonged at the Hawks whereto it was then transferred and where it is presently being investigated.

Crash Data is now also assisting the Hawks with the obtaining of certain affidavits from other related parties. (witnesses relating to WKS such as Botha and Wagner

2. Introduction

This report covers explanations and documentation to prove :

- The mismanagement , collusion and frauds as found and set out in Cases 4741/06 and 1012/07 and the various Judges opinions and Judges Judgments in these two matters.

3. Mismanagement of Waterkloof Boulevard Funds

The Waterkloof Boulevard saga started with the mismanagement of the funds borrowed from BoE is clearly set out in the SCA Record of Case 4741/06 from Page 320 – 327. Para 22.3 – 22.30.3. The annexures included here that prove and confirm that BoE mismanage the funds are the following

3.1 Bond Approval Letter dated 31 August 1995 – (SCA Rec Page 451 -457)

Important is Par 8 (first para) Par 14, Par 21 (esp 21.2)

3.2 SKC Letter of Appointment to HA Construction dated 24 /4/1996 (SCA Rec Page 458 -459) confirms and proof the fixed price (as required by BoE per 21 . 11 of the Bond Approval Letter) and clearly state that the contract is for all phases and all stands.

3.3 Two WKS Letters to Paul O Shaughnessy (SCA Rec Pages 460 & 462) shows our concern regarding the speed that payments were made to the contractor.

3.4 A Letter (and attachment) from HA Swanepoel , the contractor (SCA Page 462 -464) again confirms the final and full contract price and how the price was derived at.

The above documents (3.1 – 3.4) prove that the contract to install the infrastructural services was for ALL 211 subdivided stands and at a **fixed lump sum price.** It also shows how the full amount of the R 14,2 million bond was controlled and then (mis) managed by BoE.

It is clear that their erstwhile manager (Paul O Shaughnessy and the BoE inspectors that authorized the (incorrect) payments to the contractors were not qualified for the task. O' Shaughnessy left (was fired ?) by BoE Bank soon after the contractor left the unfinished works (with 90% of the contract price). He later threatened to sue BoE when they tried to withhold the 10% retention .

They capitulated to his threads and paid the full retention to the contractor even after receiving a letter from WKS requesting that they should hold back the retention amount until the contract was 100% completed. After this retention payment WKS again informed (BoE) that they would be held liable for any damages caused by their ((unqualified) employees (incorrect and irregular) actions and the mismanagement of the bond moneys.

The best proof of the above fact (that BoE was liable for the non –installation of the services to 75 sold cluster stands) can be found in the document known as the **Four Party Agreement (Annexed hereto marked 2 - Also SCA Rec Page 411 - 423)** In this document whereto BoE was a party they (BoE) acknowledged that they were liable for the problem. This acknowledgement can be found on Page 416 Par 13.1 where BoE accepted the responsibility to provide (the outstanding) services to THE CLUSTER stands **at their cost**

There was no other reason for BoE to be a party to this Four Party Agreement (insisted by WKS) or to except this financial responsibility other that the fact that they were liable for these services in the first place and had they managed the funds correctly all services would have been installed, all sold (pre-sold and ready to be transferred)stands would have been transferred and the R 14,2 bond and all interest thereon would have been repaid in full by and then all these Court Cases would have been unnecessary.

BoE's subsequent efforts to hide the mismanagement and the actions of their unqualified staff not only caused WKS and both the Plaintiff's to suffer damages but it also led to the demise of Gilboa Properties Ltd the best VC Company on the JSE Securities Exchance in 2001. All the Gilboa shareholders therefore suffered incalculable damages that could, if South African Law catered for punitive damages (as in the USA and elsewhere) run in billions of Rands.

However , instead of sorting out the problems caused by their employees the Nedbank managers that took over the management of the Boulevard project (Adams and van Rensburg)(when O Shaughnessy left their employ) under who's direct supervision O Shaughnessy worked) then delayed the matter for several years with various excuses and promises to fix the problem and also by pacifying WKS with promises of further bonds on it's other projects

Only after WKS was sold to Gilboa , with BoE 's consent, and when the new directors and shareholders of Gilboa started demanding action to sort out the impasse at the Waterkloof Boulevard project did the matter come to a point and culminated in the abovementioned Four Party Agreement which on hindsight was BoE 's method/ plan to play for time until they could come up with another illicit solutions as they then did.

It is clear that BoE never intended to keep to their undertaking in the Four Party Agreement. This can be concluded from the fact that from July 2000 to January 2001 they did NOT even start with the installation of any services (not even to one of the stands as they undertook to do) They rather decided to abuse the rights they obtained from WKS via the GPOA.

4. Collusion and Fraud

What is fraud?

In South Africa, fraud is defined as the unlawful and intentional **misrepresentation** which can lead to actual (as per our claim) or potential disadvantage (loss of the other Gilboa projects) to another individual or group. The use of the term is in its widest possible meaning and is intended to include all aspects of economical crime and acts of dishonesty.

The Penalties for Fraud can be found in The Criminal Procedures Act

What is collusion?

Collusion is an agreement between two or more persons, sometimes illegal and therefore secretive, to limit, by deceiving, misleading, or defrauding others of their legal rights. It includes any agreement involving " undue advantages, kickbacks, or misrepresenting the independence of the relationship between the colluding parties. In legal terms, all acts affected by collusion are considered illegal and void

The collusions in the Waterkloof Boulevard matter

The collusion (i.e. Fraud) in the Waterkloof Boulevard matter can be divided in two phases

4.1 Collusion between BoE Bank / Nedbank , Da Silva and Rojahn prior to the liquidation of 14 February 2001 and

4.2 Collusion between the same group and certain outsiders such as the liquidators (Cronje & Motala) , auctioneers (Sterling Auctions) , advocates (Marc Leathern) attorneys (Berlowitz & Reinette Leathern) and later the Master of the High Court (Leon Lategan)

4.3 There are evidence indicating that at least Cronje and Berlowitz were part of the collusion prior to the liquidation of the 14 February 2001

After the mismanagement as set out above in Section 3 was perpetrated and after the Gilboa directors demanded action in the matter of the outstanding services from BoE the WKS director/s were requested to attend a meeting at BoE Sandton where the Nedbank managers then presented their Da Silva (savior) plan to the WKS management. The meeting ended abruptly and badly as the one Nedbank manager (Adams) made derogatory remarks about the newly appointed Gilboa directors.

The next day at a breakfast meeting that took place at the Zwartkops Golf Club near Pretoria between the Gilboa Chairman (de la Pierre) and the BoE legal manager , Herman van Rensburg. (Who was also in attendance at the previous days meeting and requested the breakfast meeting a hour or so after the failed meeting of the day before) , certain possibilities to sort out the problems at the Boulevard project were discussed and certain oral agreements were reached. These oral agreements then culminated, a few days later, firstly in the **Four Party Agreement signed on 18 July 2000. (Attach hereto as annexure 2)**

A few days later this Four Party Agreement was followed up , in line with the oral agreements reached at the breakfast meeting , with an **irrevocable General Power of Attorney (Attached hereto as annexure 3)** that placed the unfettered (and sole) control of the WKS company in the hands of BoE's managers.

As at the signing of the GPOA the only assets of the WKS company possessed were the 137 un-transferred stands (two stands had houses on) The GPOA therefore gave BoE / BoE managers (Adams and van Rensburg) absolute and sole control of WKS . As the GPOA was irrevocable and none of the Gilboa or WKS directors and/or shareholders could reverse these ceded powers.

This GPOA was seen as the second part of the oral agreements reached at the Zwartkops breakfast meeting. (The third part of stopping all monthly interest and even reversing interest charged during the delay period caused solely by BoE was to be part of a third agreement (as per the oral agreement) This agreement however never materialized in any written form.

The GPOA is very important because it links BoE and WKS in the collusion that followed after the signing of the GPOA. In their later Affidavits in Case 4741/06 BoE / Nedbank and the two BoE mentioned (now ex-managers) managers

endeavored to distance themselves from the fact that they had full control of WKS from 21 July 2000 to 14 February 2001. Via this GPOA the BoE managers (Adams and van Rensburg) now acted both for the mortgagor (BoE) and for the mortgagee (WKS) This dual situation allowed them to plan and execute the frauds and collusion.

They also hid this fact from the Court when they brought the pre-planned and collusive (and mala fide) liquidation application that resulted in the final liquidation of WKS on 14 February 2001 and that then also started the demise of the Gilboa company and all it's other projects.

In their Affidavits in Case 4741/06 (BoE/ Nedbank) tried hard to get away from this fact (of their full and absolute control of WKS) and endeavored to create the impression that the Gilboa Chairman and WKS Director (de la Pierre) was in control on the company in this period (From date of signing of GPOA to date of liquidation)

The documentation however proof that they lied, they misled the Court and they are still today trying to create confusion around this fact. They are aware that if they are found guilty of collusion as set out in Art 31 of the Insolvency Act they and all those that colluded with them will then

- Lose any claim they had (or might have had) against WKS
- They will have to repay any amount or benefit they received back to the estate of WKS (alternative the Plaintiffs) in DUPLUM.
- Forfeit any profit/s generated or assets acquired or obtained from these collusive , fraudulent and illicit dealings

The exact amounts involved mentioned that each of these three categories from the various parties that are guilty of collusion received and what they did with those illegal funds must still be established via investigation.

The following documents will proof the collusion between the parties mentioned prior to the liquidation

4.4 The Affidavits by **Koos Botha & Jurg Wagner (Attached hereto Annexure 4)**

4.5 The documents referred to in the Koos Botha Affidavit refers to his and Wagners dealings with Rojahn and BoE , their attendance of the sham auction on 20 March 2001, their later visit to Cronje at his office in Pretoria North as well as Botha's legal action against Rojahn and BoE . These documents are found in SCA Rec Pages 424 - 444

Interesting fact is that although BoE claim that they only started negotiating with Rojahn / his company Dotcom) after the liquidation the BoE reference on page 1 (attached hereto as Annexure 5)shows a file date of 16 Aug 2000 on the Letter of Grant where BoE granted Rojahn's company Dotcom 100% bonds on certain of the WKS stands) prove otherwise.

This (file reference date)(16/8/2000) on this Letter of Grant co-inside exactly with the timeframe as set out in the Botha & Wagner's Affidavits and proves that BoE (Adams) was again lying (under oath) and that they both (BoE and Rojahn) are guilty of collusion

There are also various other facts in this Letter of Grant document (SCA Rec Pages 424 – 444) that prove the collusion and gives an indication on the motive. (Such as the much larger price Rojahn was willing to pay for un-serviced stands) In his Affidavit Adams also further lies about the date of the Letter of Grant to Dotcom endeavoring to hide the pre-liquidation collusion (SCA Rec Page 433 Clause 8 second par- The Letter of Grant of a 100% bond to Dotcom was dated 14 May 2001 and NOT 11 July 2001.

Rojahn' s actions as described in the Botha Affidavit is also not the only indication of the collusion prior to the liquidation.

The strange behavior of Da Silva ,the purchaser of all 137 stands in the Four Party Agreement also give credence to the collusion between the parties mentioned and the pre-planning of the (mala fide and illegal) liquidation.

Da Silva was in the process of building 14 Tuscany cluster houses at the Boulevard project at the time of the liquidation. As he was introduce to the project by BoE (and worked closely with them on the project on a daily basis, he must have known of the Rojahn interest in taking over certain of the stands and of the planned liquidation by late Oct – early Nov 2000 (The time Botha and Wagner were told of the planned liquidation)

It is an accepted fact (by WKS and BoE /Adams) that the Da Silva works (done on the property of WKS under the supervision and absolute control of BoE) were valued at app. R 8 million.

The curious and strange part (**as set out in Case 1012/07**) is that

- DA Silva did not stop with the works when WKS was liquidated but actually continued with the construction on all 14 houses throughout the liquidation period. He was clearly not worried as any other contractor / creditor of WKS would have been. His behavior was more of a man that knew what was going to happen but already had an agreement in place.

- He therefore also did not exercise his Builders Lien like any other builder in his position would have done immediately. (In SCA Rec Page 591 Para 12.2.1 Cronje refers to Da Silva as a Preferred Creditor who had a builders lien over the immovable property**)(but he did not exercise his lien or entered a claim against WKS !)**

- He also attended the auction but did not mention or asked anything regarding the 14 stands that he had already spend R 8 million on. He was clearly not concerned about his position or that of his 14 Houses when the stands (including the 14 he was busy building on was offered as one Lot and then later after the auction sold to BoE for just R 730 / stand)

- He further never entered a claim against WKS for his R 8 million. (He acted as if he was not a creditor of WKS) This is the oddest part. Is it possible that he did not invest any funds into the project but that the funds came from the WKS bond over the property ? That would explain why the WKS bond went from R 22 mil (when the GPOA was

signed)(with an oral agreement of an interest standstill) to an amount of R 29 million (as at the liquidation date)

- Cronje in SCA Rec Page 591 refers to Da Silva as a Preferred instead of a Concurrent Creditor) It is possible that these funds were from the WKS Bond (controlled by Adams and van Rensburg in the 6 month prior to the Liquidation of WKS)) That would also further prove the Plaintiff's contention that the 14 Tuscany House built by Da Silva were the assets of WKS.

His actions suggest that Da Silva already had an agreement ("business like")in place (oral or written) with BoE before the liquidation. His "business like" agreement with the liquidators (and BoE) to sell the 14 Tuscany stands and 19 others to his company Rand Park Ridge has still never been seen. According to Deeds Office information he did not take transfer of these 33 stands until he had completed the houses with funds from BoE and he then only took transfer of the 33 stands from BoE on the same day that he directly transferred the properties to his new purchaser (simultaneous transfers) (See SCA Page 697 Para 16.2.3 and Page 598 Para 16.2.8 regarding Da Silva's lien and the businesslike (pre-liquidation cum collusive) deal done between Da Silva and BoE)

Another important document that prove not only the collusion as set out above but also that the liquidator Arno Cronje was involved in the collusion and the pre-planning of the liquidation is the **Letter from Arno Cronje (Attached hereto a annexure 6)** (Case 1012/07 Annexure "K") received by the Master on the 19 February 2001. (5 days after the WKS liquidation) after Cronje was speedily appointed on the day of the liquidation (14 Feb 2001) bypassing all the standard protocol in the appointment of liquidators.

The strange thing about this letter received by the Master on the 19 February 2001 was that **it was dated 2000-11-19**. This date however again co-inside exactly with the evidence given by Botha and Wagner about when they for the first time heard that WKS was to be liquidated. It then also confirms and proves Cronje's participation in the collusion and pre-planning of the liquidation.

Even the Founding Affidavit that Cronje used to apply to the Master to hold the Sect 417/418 on the 5 March 2001 (19 days after the liquidation) was already drawn up and typed in 2000. This again show that he surely had insight of the matter and was therefore part of the collusion that occurred during Jul – Dec 2000. Even this pre-dated Founding Affidavit were full or lies and misleading statements.

The collusion between BoE Bank and the liquidators continued immediately after the liquidation of WKS . They immediately employed the services of Tony Berlowitz, an attorney , Marc Leathern (Advocate) and his attorney wife Reinette Leathern for a Section 417/418 Enquiry against the directors of Gilboa / WKS and other parties(See section 6 hereunder)

5. Fraud by Misleading the Court in the Liquidation Application

One of BoE's pre-conditions for approving the R 14,2 million bond to WKS was that WKS had to produce gross pre-sales to the a minimum amount of R 20, 4 before the bond was to be registered. (SCA Rec Page 456 Clause 21.2) In clause 4.3 of this same document (SCA Rec Page 452) it also stated that all monthly interest added would form part of the capital. **(Letter of Grant attached hereto as Annexure 7) (We also attach as part of Annexure 7 a copy of Bond Deed B 85563/96 registered on 4 Oct 1996)(See clause 5 thereof)**

BoE's (and WKS) assumption was that all transfers from the R 20,4 million pre-sales would be sufficient to cover and repay the total bond plus any interim interest thereon. If the mismanagement and the incorrect payments by BoE to the contractors did not occur in the fashion that it did the full bond of R 14,2 million and interest thereon would have been easily repaid in the allotted time period. The list in (SCA Rec Page 474 and 475) shows that 74 stands were transferred by 2000 with the bulk thereof transferred by the end of 1997 which was no more than 6 months after the total contract was to have been completed. (See SCA Rec Page 463 for contract completion date)

If the value of these 74 stands that represented a gross amount of R 11, 294,984 is added to the total value of the sold but un-serviced stands it proves that the bond could easily have been repaid by the end of 1997. The un-serviced stands sold to Da Silva for app R 10 million (where BoE was obliged to install and pay for the installation) was later sold to Rojahn's company Dotcom at a price that represented almost R 12 million as **un-serviced stands**. (SCA Rec Pages 430 and 444 confirm these higher prices that Rojahn paid for stands without services.

BoE therefore had created a problem for themselves in the conditions of their bond to WKS. Clause 5 of Bond Deed B 85563/96 Registered on 7 October 1996 states that interest was to be added monthly **but there were no monthly repayments applicable.** The only repayments on the bond were therefore as and when transfers of any of the 211 stands occur. BoE could therefore not call up the bond for non payment of monthly interest. They had to find another way out of this dilemma.

The Da Silva Agreement was clearly only an interim (delaying) measure. This document and the GPOA gave them a breather (period) to sort our "their"

problem (dilemma) and plan the collusion and fraud. They never intended to install and pay for the outstanding services and they had also made sure that the promised interest standstill / write back (agreed at Swartkops) were side stepped. (After the GPOA was signed and they took control of WKS they ignored this third part of the oral agreement)

The entry and involvement of Rojahn into the Boulevard project then presented them with an opportunity whereby they (BoE) would not have to install the outstanding services as Rojahn was willing to pay a higher price **without the outstanding services** than in the DA Silva Agreement wherein they (BoE) were obliged to install and pay for the services. But they now needed a way out of the Four Party Agreement.

BoE knew that by the beginning of 2001 that it would be obvious to WKS that they had not even started with the installation of the outstanding services as they were suppose to do and also the fact that as pointed out to them by Jurg Wagner at the first meeting he and Koos Botha had with BoE that Da Silva'a progress was very slow. BoE knew that they would soon come under fire from Gilboa for the funds that Gilboa was expecting to receive as described in the GPOA.

Instead of simply introducing the Rojahn proposal and his interest to the project via an addendum to the Four Party Agreement (that would have resulted in a larger profit to WKS as that WKS would get via the Da Silva transaction) they then launched their pre-planned the illegal and male fide liquidation application wherein they misrepresented (committed fraud) the true facts of the WKS project , the WKS assets and the reasons for it's situation caused by BoE and it's employees.

The fraud committed by BoE when they brought the Urgent Liquidation in January 2001 (first of a series of fraud) is fully described in our Particulars of Claim Clause 2.16

6. Intimidation and Blackmailing at the Section 417 /418 Enquiry

Even before proceeding with the permission requested and obtained from the Master (Leon Lategan) on 19 Feb 2001 to sell all the WKS properties even before the first creditors meeting was held Cronje (and BoE) arranged / obtained (again in record time) permission from Leon Lategan to conduct a Sect 417 /418 Enquiry against the Gilboa directors , its auditors and other employees.

At the enquiry held on 6 March 2001 (also arranged in record time – pre-planned) at the house office of attorney Reinette Leathern the persons subpoenaed were subject to blackmail, intimidation and threads of personal sequestrations. They were inter alia accused of theft and stealing the WKS funds and asked were they hid the moneys they had stolen. Several were sworn at by Adv Leathern.

The Enquiry ended shortly after they subpoenaed parties were forced under duress to sign an Agreement to pay R 10 million plus interest to the estate of WKS as the parties representing BoE at the Enquiry were sure that BoE would make a loss of this amount when the WKS assets was sold off at an auction. (SCA Rec. Page 134 -135)

The liquidator (Cronje) and the other BoE appointed parties at the Enquiry were very anxious that all the WKS members subpoenaed and present had to sign the Agreement before any auction was held. We now know why.

The frauds and other illegal acts committed by the Defendants in Case 1012/07 and their outside helpers are fully describe in the Summons and Particulars of Claim Case 1012/07 (in Clause 2) under the Heading **Re-Po scam , the Collusive Conduct , the Sham Auction and the Benefits of these illegal actions**.

7. Fraud Committed at the Sham Auction of 20 March 2001

The fraud perpetrated at the sham auction is also clearly described in clause 2 of the Plaintiff's Particulars of claim. It is further highlighted in **the Tintinger Letter (attached hereto as Annexure 8)(Also SCA Rec Page 62 -65**. This letter is also referred to in

7.1 the **Opinion of Ret. Judge van Dijkhorst attached hereto a Annexure 9** See his reference to the Tintinger Letter)

7.2 the Affidavits of Koos Botha and Jurg Wagner **(Attached hereto a Annexures 4)**

7.3 the various Judgments of Judge Mavundla and SCA

It is clear that BoE could not allow for an ordinary and just public auction to take place . Not only did they ignore the Master's instructions to sell the stands individually but they could also not afford that **any stands** is sold off because that would jeopardize the collusive agreements that they already had in place with Da Silva and Rojahn

Ret Judge van Dijkhorst is thus correct when he found that BoE committed fraud at the auction and that the liquidators assisted therein

The announcements made by BoE (or that was made on their behalf at the sham auction) were already illegal as no creditor or any other person have the right to make any announcement at a liquidation auction. This could only be done by the officially appointed liquidator. The facts show that BoE actually controlled the liquidators (and the auction) This is also evident if the fact is taken into account that every document, agreement or settlement singed after the liquidation had BoE as the acting (controlling) party instead of only the liquidators.

Some of the false statements that were made (by or obo BoE) at the sham auction includes the following:

7.5 That the properties was to be sold only as one Lot . BoE's Deon Fourie later stated under oath in the first Answering Affidavit in Case 4741/06 that the properties could not be sold because the subdivisions were not yet registered.

7.5.1 The Applicants in this matter then attached copies of all the approved Land Surveyor General's Plans for all the stands in the Boulevard project with the approved LG stamps thereon confirming that the subdivision were all approved and registered in 1996 and 1997. The Plans were accompanied by a Certificate from the Land Surveyor that had the plans approved to confirm this fact

7.5.2 If the stands subdivisions were not approved as state by Deon Fourie then it is strange that BoE could the same day themselves acquired the stands

individually (See SCA Rec. Page 50 -54) as well as the Annexure A referred to on Page 51. The annexure (SCA Rec Page 486 – 505) clearly shows that Deon Fourie was lying and misleading the Court.

7.5.3 The same proof can be found on SCA Rec Page 35 showing in the final (and approved) L & D Account that they stands were acquired by BoE individually. **(Why could they then not be sold individually to the 60 odd potential buyers – like Koos Botha and Jurg Wagner – at the sham auction?)**

(Note)

Both these documents also prove that the 14 Tuscany stands where Da Silva was busy with construction were still assets of WKS otherwise BoE was sold properties that did not even belong to the liquidated company.

This is also confirmed in the Letter dated 14 February by a van Rensburg attorney urging the Master to immediately appoint Cronje as liquidator attached hereto as Annexure 10s) This letter also prove that attorney Tony Berlowitz , Renette and Marc Leathern and Cronje had prior knowledge of the liquidation. Berlowitz and Marc Leathern drew to liquidation application already in November 2000

7.6 BoE also stated that <u>they</u> would not accept any amount that did not cover their bond of app. R 30 mil and immediate added that if there was any purchaser that was willing and able to acquire the Lot for R 30 million that he would also be liable for the following cost: (Deon Fourie stated – as related to him by Lorna Somers that attended the auction) in his Answering Affidavit that the parties present at the auction were also

informed that any person acquiring the Lot for the price BoE wanted would have to also:

7.6.1 To install the outstanding infrastructure services

This was off course the 75 stands that BoE was liable to install as per the Four Party Agreement and that arose from their mismanagement. They only made this announcement to further put off any would be purchaser to save guard their collusive deals with Da Silva and Rojahn.

7.6.2 To develop the adjacent Nature Park and do Environmental Impact Studies

The Park was to be developed (as a Nature Park) for an amount of R 2,158,000 for which BoE gave a Guarantee to the City Council of Pretoria. This fact is reflected in SCA Rec Page 96) On SCA Rec Page 90 (Minutes of Meeting 6 Dec 2001) BoE claimed that they had already (AS APPROVED BY THEIR OWN INSPECTORS – THE SAME INSPECTORS THAT INSPECTED THE INFRA STRUCTURE WORKED IN THE BOULEVARD PROJECT) paid out R 2,000,000 on the Park Development.

On SCA Rec Page 75 Deon Fourie claimed that BoE later had to spend an additional R 542,000 for additional works relating to with the environmental impacts. Strange that this Impact Study was never offered as evidence

This was again misleading and a lie designed to confuse and put blame on the developers of the Boulevard project. The truth and the reason why no such Impact Study exists (or ever required) is the fact the whole Boulevard project was a mere subdivision of a large stand (Stand 1856) in a township that was proclaimed decades ago when EIA studies were not even discovered. If any such EIA was necessary and applicably then surely the Land Surveyor General the City Council and the Deeds Office that allowed the first 74 transfers would have requested such a EIA at that stage

7.6.3 To pay for the upkeep of the Park for 30 years

The story of the upkeep of the Park as per Deon Fourie was a further lie. In each Sale Agreement to all Purchasers (R 20,5 pre-sales) there was a clause regarding the usage of the adjacent Nature Park

From the same City Council Minutes referred to above it is clear that the rental per stand would be minimal (R 10.000 arrear (for at least 12 months) calculates to app. R 4 /month /stands. And it was payable by the HOME OWNERS ASS OF BOULEVARD (an separate legal entity that had nothing to do with any obligation of WKS in liquidation

All these statements made at the auction were lies and designed to put off any possible buyer and further to put the WKS developers in bad light and ultimately to hide the mismanagement and frauds that BoE (and the other Defendants of Case 1012/07 had committed.

The last item to mention here is the amount that Deon Fourie incorrectly stated (SCA Rec. Page 75 (Top of the Page) Clause 14 that was eventually spend on the Park after the liquidation to be R 2,7 million . This makes one wonder where Lorna

Summers got the her figure of R 6,185,095-41 spend on the Park (SCA Rec Page 573 third amount from the top) from. This entry of her on a blank unofficial white page reads Expenses Development Cost / Park (There were no other development cost except the Park (DA Silva and Rojahn acquired the un-serviced stands as such. They were responsible to now install those services) This makes the Summers amount compare to the Deon Fourie amount quite inexplicable

The conclusion of all the Judges and the SCA are thus correct when they said that the auction and the peculiar actions following immediately after the auction was illegal and a fraud on the estate of WKS

The strongest condemnation can be found in the Opinion of Ret. Judge van Dijk when he stated in paragraph 13 of his opinion that the liquidators acted contrary to their statutory duties and that their **intentional actions were mala fide and a fraud on the (WKS) estate . He also found prima facie evidence that BoE was an party to this fraud.**

8. Case 4741/06 – Misleading and Untrue Statements

After the Plaintiffs became aware of the Ombudsman stance on bank actions as set out in the Pretoria News articles in February 2004 (SCA Rec Pages 60 & 61) they started via their erstwhile attorneys Klagsbruns to asked certain questions from one of the WKS liquidators i.e. Arno Cronje. The L & D account of WKS was drawn up by Cronje and his co-liquidators and signed off by the Master (Leon Lategan) on the 13 12/2002. After the L & D account was advertised in the Gazette both the liquidators were released and discharges from their duties as liquidators.

That is why it is very odd that he (Cronje) (they) , soon after they received the Klagsbrun request for information suddenly on 27 May 2004 (SCA REC Page 40) (almost 2 years later) that they thought it necessary to suddenly dissolve the liquidated company WKS.

They did this without having any right thereto (as they were already dismissed as liquidators in this matter and were *functus officio* with no right or standing to dissolve WKS in liq) but clearly did so illegally because they expected that they could (would soon) face legal action. They then used the fact that WKS was not *in esse* (dissolved –by Cronje illegally) as a defense in both the Application (Case 4741/06) and Case 1012/07. In case 1012/07 they used the fact that WKS was dissolved) as an excuse to file Exceptions. Unfortunately for them they were overruled by Judge Mavundla (See Mavundla's Ruling of the Exceptions at the end of the Case 1012/07 documents)

Their action to dissolve WKS resulted in the Application be brought by the Plaintiff's to have the dissolution be declared void in terms of Art 420 of the Companies Act

This Application wherein no relief was asked against Nedbank or the liquidators and wherein they were not prejudiced at all resulted in an enormous opposition that in stead of 1 week took more that 3 years and 4 months

Nedbank and the liquidators overwhelming Answering Affidavits and delaying tactics , instead of assisting them, actually exposed their fraudulent activities in the case 1012/07 and the other cases since uncovered. This then also resulted in three different Judges and the SCA noticing and pointing out the fraudulent and irregular activities even though none of these Judges were requested to do so.

Most of the statements made in the sworn Answering Affidavits contained lies and were untrue. This can easily be concluded when one reads and compares the Replying Affidavit in Case 4741/06 (where the statements were backed (proved) by annexed documents that answered and proved the deliberate incorrectness on Nedbanks statements by Deon Fourie and others

9. Case 1012/07 – The Da Silva / 14 Tuscany Houses question

The most important issue of Case 1012/07 is the question around the 14 Tuscany stands where Da Silva partly constructed 14 houses between Jul 2000 and the date of the liquidation and that was sold to his company Rand Park Ridge. The Plaintiff's opinion is set out in their Particulars of Claim in Case 1012/07

If these houses were the assets of WKS and their undisputed value of R8 mil were part of the assets of WKS (as claimed) then BoE lied and misled the Court at the liquidation in February 2001. If this value of R 8 million is added to BoE deflated value of R 26 mil the total of R 34 million would have shown that WKS was not insolvent

Nedbank, knowing and realizing that WKS was NOT insolvent however stated in their Plea Case 1012/07 Page 162 Clause 25.1 that Da Silva (personally) took transfer of the 14 stands (with improvements thereon) PRIOR (BEFORE) the liquidations. They needed to omit the value of these 14 stands to prove WKS insolvency.

THIS IS HOWEVER AGAIN A LIE AND PROVES THAT WKS WAS NEVER INSOLVENT

9.1 In his Plea in Case 1012/07 Page Da Silva confirms that his company Rand Park Ridge purchase 33 stands from that include the 14 Tuscany stands with semi completed houses. Deon Fourie also confirm this sale of 33 stands to Randpark Ridge Developments.

9.2 One of the annexure's attached by Keith Adams himself to his Affidavit in the second Answering Affidavit in Case 4741/06 is a copy of a Deed of Transfer (SCA Rec Pages 553 – 566) This Deed of Transfer show the 33 stands including the Tuscany stands was transported to Randpark Ridge Developments (Da Silva's) company . The Deed also show that a bond of R 5,8 million was registered over the same 33 stand and that 3 other stands (No 185 - Bentley , No 24 – RR Klein and another and No 178 – Forum SA) were simultaneously transferred out to new owners on the same date. This date was 4 July 2001 THUS AFTER THE LIQUIDATION

9.3 The annexure A to the Sterling Sale Agreement also show the all 33 these stands as being sold to BoE on the day of the auction (20 March2001)

9.4 The L & D account signed off in December 2002 also (incorrectly) reflect these 33 stands as being sold to BoE

9.5 The Letter dated 14 February 2001 to the Master by the van Rensburg / Reinette Leathern / Berlowitz group confirm that the (14) stands that was being built on had not yet been transferred to the builder and was therefore the assets of WKS

THESE FACTS AND DOCUMENTS PROVE THAT WKS WAS NOT INSOLVENT AND THAT THE BOE / NEDBANK MANAGERS COMMITTED FRAUD.

10. History / Motala – Leon Lategan (Fraud committed at the signing off of the L & D Account)

The liquidators (Cronje and Motala) and the Master also committed fraud when they convinced the Master to sign off the **L & D Account (Attached hereto as Annexure 11)**that clearly showed that the stands were sold to BoE for just R 730 each. But it is clear from the speed and the way Cronje (14/2/2001) and Motala (19/2/2001) were appointed as liquidators that they knew the Master personally and very well.

Cronje & Motala both certified the L & D Account that was signed of by the Master (Lategan) showing the sales price of all 137 properties of R 100,000 excluding VAT (or R 730 /stand) which was as said by Judge van Dijkhorst in clause 13 of his opinion "a fraud on the estate"

Cronje' knowing that the sales price in the L & D Account reflected an sales price of R 100,000 for all the stands later on 2001 -10-23 issued **a Letter of Reference Attached hereto as Annexure 12)** to assist Sterling Auctions to secure further appointments as auctioneer

Motala himself told the **Pta News (See annexure 13 hereto)** that he had reservations about the way the (WKS) liquidation was handled.

11. The Anonymous Letter to Mike Brown

The anonymous letter send to Mike Brown proves that he had prior knowledge of the alleged irregularities . At the time of this letter Mike Brown was the Head of Property Finance and immediate boss of Adams and van Rensburg who were both part of the collusion and fraud committed against WKS. **(The letter to Mike Brown is attached hereto as Annexure 1)**

12. Summary

To summarize and describe the illicit actions of Nedbank , the liquidators and others in the Waterkloof Boulevard matter.

12.1 BoE mismanaged the R 14,2 million granted to WKS

12.2 Their appointed BoE project manager and the site inspectors were not qualified to manage the project or to approve the progress payments to the contractor.

12.2 BoE (O'Shaughnessy) did not heed the various oral and written warnings send to them (his) by WKS regarding the incorrect progress payments

12.3 When all the funds were paid out to the contractor, and he had abandoned the site, without completing the contract, Paul O' Shaughnessy, the BoE manager that was in charge of the Boulevard project from the beginning

suddenly also left the employ of BoE (alternatively he was fired because of his handling of the Boulevard project)

12.4 O'Shaughnessy's superior's Adams and van Rensburg, then took charge of the management of the Boulevard project. This was also the first time that they met personally with the developer WKS . (de la Pierre) They immediately promised WKS that they would solve the problem.

12.5 Over the next 2-3 years BoE however further delayed the project from going forward. Instead of immediately appointing another contractor to install the outstanding services to the stands that were already sold and ready to be transferred, they kept on wasting time with all different suggestion such as first selling the remaining serviced unsold stands.

12.6 If they kept to their own rules as set out in their Letter of Grant and followed the normal accepted general construction code market practice of having the outstanding services installed immediately by a new contractor, the 75 pre-sold cluster stands could have been transferred and the bond would have been paid in full

12.7 In this period, while they were delaying the installation of the outstanding services they did kept on adding monthly interest to the bond. At the same time the rates and taxes were also starting to become a problem.

12.8 Soon after WKS was sold to Gilboa Properties Ltd, BoE was informed that the new Board of Directors of Gilboa expected that BoE resolve the problems of the outstanding services at WKS without delay. They also confirmed WKS earlier stance taken and conveyed to BoE when the

contractor left the un-complete site that BoE would be held liable for any damage caused by their employees unqualified actions and mismanagement of the WKS bond funds

12.9 A few months later , as still nothing happened at the site , and BoE had not responded to Gilboa's earlier request , BoE was informed (orally) informed that WKS was planning to take legal steps against BoE to enforce them to comply to their undertakings.

12.10 Soon thereafter BoE requested a meeting where they introduced the Da Silva proposal. This meeting, held at BoE Rivonia Sandton Branch, did not end in a friendly fashion and no agreement of any kind was reached.

12.11 This meeting was followed by the breakfast meeting at the Zwartskop Golf Club the next morning between van Rensburg acting for BoE and de la Pierre acting for Gilboa and WKS. At this meeting where certain proposals were discussed and certain oral agreements were reached.

12.12 These oral agreements were a few days later put in writing. The first in the form of a Memorandum of Agreement (Four Party Agreement) that was signed on the 18 July 2000 followed by a second document signed on 21 July 2000 in the form of a SPOA that gave BoE full and unfettered control of WKS

12.13 The third part of the oral agreements reached at the Zwartkops breakfast meeting, that of an interest standstill (and reversal of interest) never materialized

12.14 Da Silva immediately started with the construction of the 14 Tuscan houses on the 14 cluster stands in phase 2 of the Boulevard project with the permission of BoE (who now had unfettered control of WKS). Da Silva however did not take transfer of these 14 stands until after the liquidation of WKS. For this reason he could not have registered any bond on the properties and he would have had to finance the buildings out of his own pocket which is very unlikely in the speculation building trade.

The more likely scenario was that BoE utilized the remaining funds available on WKS bond (now under their control) to fund Da Silva's building activities on the 14 Tuscan stands. This would explain Da Silva's attitude at the sham auction where it was clear that he was not in the least concerned about "his R 8 mil" This would also explain why the WKS bond of app. R 22 million (with a promised interest standstill) went to R 29 million in Jan / Feb 2001.

12.15 Da Silva's (the savior of WKS) progress was very slow as pointed out to BoE by Wagner at his first meeting with BoE when he and Koos Botha met with them to obtain a mandate to also sell the Boulevard properties. Da Silva's progress was clearly caused by a lack of funds. This was a new problem for BoE. They also had to install the outstanding services but up to the date of the liquidation of WKS never even started with any of the outstanding services as they undertook to do in the Four Party Agreement

12.16 When Rojahn appeared on the scene, via Botha and Wagner, BoE saw an opportunity to get out of the Four Party Agreement. Firstly Rojahn was offering a higher price than that of Da Silva for un-serviced stands. This could release BoE of their undertaking to install and PAY for the outstanding services. They only had to get Da Silva to agree and as they

controlled WKS there was nobody to stop them. But in the Four Party and GPOA their was certain benefits (“surplus”) that would have to go to the real owners of WKS , Gilboa Properties Ltd. (The Rojahn involvement would increase the surplus that would eventually have to be paid to the WKS shareholders) To avoid this they **colluded** with Da Silva and Rojahn and together with Cronje , Berlowitz, both the Leatherns (Marc and Renette) and Henk van der Walt (then still Auction Alliance Pretoria) started to plan the liquidation of WKS.

12.17 In early 2001 they also grabbed another opportunity when WKS wrote to BoE regarding the fact that WKS (now a part of a listed company) required the consent of all the Gilboa’s shareholders to ratify the Four Party Agreement and SPOA

12.18 BoE used this letter to proclaim that WKS had repudiated the said agreements and demanded (Gilboa) shareholders consent within 24 hours which they knew was impossible to get. They even ignored the fact that CMT Trust , the controlling shareholder of Gilboa, pledged to vote in favor of the said agreements.

12.19 BoE ignored all undertakings and within days proceeded with and served an Urgent Liquidation Application claiming mainly that according to them WKS was insolvent. This was untrue and the true facts are as set out in our Particulars of Claim in Case 1012/07

12.20 The history of what happened after the liquidation of WKS is well conveyed and proved in both Cases 4741/06 and 1012/07 and the various annexures thereto.

13.Conclusion

We believe that as pointed out by the facts above and the documents attach hereto and the Opinions and Judgments by the various Judges mentioned herein that there are indeed "overwhelming" prima facie evidence of fraud and collusion have been committed and that an investigation by the SAPS / Hawks are indeed justified.

Note

This report was prepared to assist the SAPS / Hawks. The information herein was obtained, by Crash Data, from the documents, affidavits and discussions supplied to Crash Data by the Hillcrest liquidator and the Applicants of Case 1012/07.

Walter Pretorius

Crash Data Forensics

11 Dec 2012

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