

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 679/2007

In the *ex parte* application of:-

EXECUTIVE OFFICER OF THE FINANCIAL SERVICES BOARD

Applicant

In re: the financial services business of

FIDENTIA ASSET MANAGEMENT (PROPRIETARY) LIMITED
(Registration No. 1998/024863/07)

First Respondent

BRAMBER ALTERNATIVE (PROPRIETARY) LIMITED
(Registration No. 2000/024139/07)

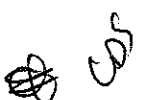
Second Respondent

FIDENTIA HOLDINGS (PROPRIETARY) LIMITED
(Registration No. 2001/022355/07)

Third Respondent

CURATORS' 15th REPORT TO COURT DATED 29 FEBRUARY 2016

Index	Subject
1	Introduction
2	Publishing of Court Order and 14 th Report on FSB website
3	Reporting to the FSB
4	Status of the Curatorship as at 31 May 2015
5	Disputes with the Home Owners' Associations
6	Grant Thornton Report and Sale of Sante properties
7	Rates Dispute relating to Sante properties
8	Dispute with Cliffe Dekker Hofmeyr
9	LHUT
10	Moshate
11	Tanzanite Stone
12	Antheru Trust (Pty) Ltd
13	Cancellation of Orion Lease
14	Irregularities
15	Litigation
	R H Meyerdricks
	Thebe
	Ubank vs Absa Bank / Ayanda
	M I H Holdings vs Absa Bank / Ayanda
	LHUT vs Old Mutual & Others
16	Litigation Costs
17	Ending of Curatorship

 COS

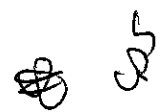
18 Recommendations

First Schedule – Financial Report prepared by George Papadakis

Annexure "A"	A copy of the Order handed down by Ms Justice Salie-Hlophe on 19 August 2015.
Annexure "B"	Unsigned copy of the Order handed down by Ms Justice Salie-Hlophe Order on 16 November 2015.
Annexure "C"	A copy of the Settlement Agreement dated 21 December 2015.
Annexure "D"	Letter dated 28 September 2015 from G Papadakis to the Drakenstein Municipality
Annexure "E"	E-mail dated 16 November 2015 from J A Levin to CDH.
Annexure "F"	Letter dated 25 November 2015 from CDH to J A Levin.
Annexure "G"	Certificate of Indebtedness signed by G Papadakis.
Annexure "H"	A copy of a Letter of Demand from John Levin to Orion dated 15 January 2016.
Annexure "I"	A copy of a Letter of Demand dated 18 January 2016 from John Levin to Orion amending amount outstanding.
Annexure "J"	A copy of an e-mail from Orion to John Levin dated 1 February 2016 regarding repudiation of right to cancel Lease.

1 INTRODUCTION

- 1.1 Fidentia Asset Management (Pty) Ltd ("FAM") and Bramber Alternative (Pty) Ltd ("Bramber") are wholly owned subsidiaries of Fidentia Holdings (Pty) Ltd. For convenience the three companies are referred to hereafter as "the Fidentia Companies".
- 1.2 The whole of the business of providing financial services as contemplated by the Financial Advisory and Intermediary Services Act, No. 37 of 2002 ("the FAIS Act") of the Fidentia Companies was placed under provisional curatorship by this Honourable Court in accordance with the provisions of s5 of the Financial Institutions (Protection of Funds) Act 28 of 2001 (the "FI Act") on 1 February 2007, which order was made final on 12 April 2007.
- 1.3 The curators of the business of the Fidentia companies are:
 - 1.3.1 George Papadakis who was provisionally appointed a co-curator on 1 February 2007, which appointment was made final on 12 April 2007; and



- 1.3.2 John Adrian Levin who was provisionally appointed a co-curator on 15 August 2014, which appointment was made final on 19 September 2014.
- 1.4 We last reported to this Honourable Court by means of our 14th Report dated 26 June 2015 on the state of the curatorship as at 31 May 2015. The 14th Report was considered and accepted by the Honourable Ms Justice Salie-Hlophe on 19 August 2015 and we respectfully refer this Honourable Court to the 14th Report for further details. A copy of the Order dated 19 August 2015 is annexed, marked "A".
- 1.5 When accepting the 14th Report Ms Justice Salie-Hlophe directed, *inter alia*, that:
- "3. *The curators are directed to file a further report to the Court by not later than 29 February 2016 dealing with the following:*
- 3.1 *the status of the curatorship as at 31 January 2016;*
- 3.2 *an overview of assets disposed of or alienated and how the proceeds were distributed, including the distribution to investors who invested through Antheru Beleggings Trust;*
- 3.3 *irregularities committed by the companies or its officers or management or by other persons prior to and after the date of curatorship, and the state of prosecution which may have been instituted;*
- 3.4 *details of civil actions which may have been instituted by or against the Curators and specifically the progress made with regard to the litigation matters involving the Living Hands Umbrella Trust and the Sante Hotel Wellness and Conference Centre;*
- 3.5 *the costs of the curatorship as at 31 January 2016;*

 905

3.6 *any recommendations as to how the continuation of the curatorship, or any related matters, should be dealt with further.*

4. *The information referred to in paragraph 3.4 above must include a detailed breakdown of all civil legal proceedings instituted, prosecuted or defended by the curators on behalf of the companies, indicating in respect of each matter:*

4.1 *Who the attorneys of record for the companies were/are;*

4.2 *The fees incurred in respect of the attorneys of record;*

4.3 *The fees incurred in respect of Counsel;*

4.4 *Whether the litigation has been concluded or not;*

4.5 *In the case of litigation which has been concluded, the success or otherwise of the litigation; and*

4.6 *The amounts recovered on taxation, if any."*


1.6 This Report is being furnished pursuant to Ms Justice Salle-Hlophe's Order referred to in 1.5.

2 **PUBLISHING OF COURT ORDER AND 14TH REPORT ON FSB WEBSITE**

In paragraph 2 of the Order referred to in 1.5 the Court directed that its Order dated 19 August 2015 and the Curators' 14th Report should be published on the website of the Financial Services Board. We confirm that this was done.

3 **REPORTING TO THE FSB**

In accordance with the requirements of paragraph 6 of the FI Act, the Registrar of Financial Services Providers ("the Registrar") has been kept informed of the Curators' activities since 1 June 2015 by furnishing her with copies of relevant correspondence relating to matters being dealt with and personally at meetings on

 GOS

23 June 2015, 6 July 2015, 21 July 2015, 25 August 2015, 28 October 2015, 19 November 2015, 30 November 2015 and 9 February 2016.

4 STATUS OF THE CURATORSHIP AS AT 31 MAY 2015

4.1 From the 14th Report it is apparent that as at 31 May 2015:

4.1.1 total claims admitted by the Curators against the Fidentia companies amounted to R1 366 960 951;

4.1.2 total claims outstanding amounted to R1 042 849 222;

4.1.3 the only remaining assets still available for purposes of the curatorship consisted of:-

4.1.3.1 cash of R23 585 469;

4.1.3.2 property situated at Sante Winelands Estate in the Drakensberg Municipality, District of Paarl, consisting of the Sante Hotel, Conference Centre and Spa, 4 Villas and 1 Spa Housing Unit;

4.1.3.3 an uncut Tanzanite gemstone the value of which was thought to be in the vicinity of R6 000;

4.1.3.4 a 26% shareholding in Moshate (Pty) Ltd the value of which was considered to be uncertain.

4.2 In our 14th Report, we also reported *inter alia*:

4.2.1 about the ongoing disputes between the Curators and the Sante Home Owners' Associations ("the HOAs") relating to the non-payment of levies in respect of the properties owned by the Fidentia property owning subsidiaries at Sante Winelands Estate and arising from various other causes of action;

4.2.2 that with the consent of the Registrar we had appointed Grant Thornton Advisory Services (Pty) Ltd ("Grant Thornton") as experts in the field to advise us on the values of the Sante

properties and on how best to realise their value, and that we were awaiting their report;

- 4.2.3 that in regard to the dispute between the Curators and Cliffe Dekker Hofmeyr relating to the latter's claim for a balance of R2.8 million which they contended was still owing to them in respect of outstanding fees and Mr Papadakis' view that the law firm had been overpaid and were in fact indebted to us, we had proposed an offer of settlement in respect of which we were awaiting a response; (Mr Levin had not yet been appointed a Curator when the dispute arose and as such had no knowledge of the matters.)
- 4.2.4 that following advice obtained by the Registrar from Senior Counsel she had agreed to a recommendation from us that as she has no jurisdiction over the Living Hands Umbrella Trust ("LHUT") and as the Curators have no control over LHUT and as there is no benefit to the other creditors of Fidentia for the Curators to stay involved with LHUT, we should be permitted to disengage from LHUT but that we had refrained from engaging with the LHUT Trustees about such disengagement as further questions had arisen subsequently which necessitated further consideration by the Registrar;
- 4.2.5 that although we had previously reported that we would be writing off our investment in Moshate, it appeared to us, following further investigation by Mr Papadakis, that a fraud may have been perpetrated on Fidentia and the other shareholders in that a cemetery development which should have taken place in Moshate or one of its subsidiaries, was deflected into another company for the benefit of only one or two of the original shareholders to the exclusion of Fidentia and others;
- 4.2.6 that we had been unable to find anyone willing to sell the Tanzanite stone but would endeavour to sell it out of hand;


- 4.2.7 that of the R1 679 782 available for distribution to the Antheru investors we had succeeded in distributing a total of R1 091 673 leaving a balance of R588 109 which still had to be distributed once we could trace the relevant investors.
- 4.3 In our 13th Report to Court dated 29 December 2014 we reported that:-
- 4.3.1 the Sante properties are subject to a Lease dated 28 March 2012 ("the Lease") in favour of Orion Hotels and Resorts (Pty) Ltd ("Orion") for a period of 9 years 11 months commencing on 1 April 2012 and that the Lease contained a 30-day right of first refusal in favour of the tenant in the event of the landlord receiving an offer to purchase the Fidentia Properties and that if the tenant exercises the right of first refusal the landlord is entitled to terminate the lease subject thereto that in such event the purchaser "*shall, if so requested by the Tenant ... be required as a condition to the resultant sale to compensate the tenant in an amount (if any) agreed between the Buyer and the Tenant for the cancellation of this Agreement and failing such Agreement, an amount of compensation as determined by an Expert as fair and reasonable compensation for the Tenant attributable to the premature termination of this Agreement, if having regard to the profit the Tenant would have earned had the lease endured for its full term;*"
- 4.3.2 from inception of the Sante Development it appeared that the viability of the Sante Hotel operation had been problematic and that it appeared as if Orion too was having difficulty in making the hotel financially viable.
- 4.4 We report on developments in respect of each of the matters referred to in paragraphs 4.2 and 4.3 further on in this Report.
- 4.5 The financial information relating to the curatorship as at 31 January 2016 is set out in the separate Financial Report prepared by George Papadakis, annexed to this Report as Schedule 1.

5 DISPUTES WITH THE HOME OWNERS' ASSOCIATIONS

- 5.1 In our 14th Report we reported that:-
- 5.1.1 we had stopped paying the amount of R30 000 per month to the HOAs as a contribution towards security because in accordance with the Court Order dated 6 November 2013 pursuant to which the payments were being made, the HOAs were obliged to furnish us with certain information, which they had failed to do;
 - 5.1.2 the HOAs, in turn, were demanding that we pay them R50 405 per month which they, incorrectly in our view, contended they were entitled to on a proper interpretation of the Court Order;
 - 5.1.3 following settlement discussions between our respective Counsel the HOAs had furnished us with certain information which we had requested regarding the running costs of the estate, in response to which we had made certain proposals as to how the running costs should be apportioned between the various HOAs and the various properties, the owners of which were members of the various HOAs and that we were awaiting a response in respect of those proposals.
- 5.2 Following our cessation of payments in respect of security as referred to in 5.1.1 the HOAs issued 3 Warrants of Execution against the Fidentia property owning companies and attached the Hotel furniture;
- 5.3 As a result we brought an urgent application in this Honourable Court on 17 August 2015 under Case Number 15274/15 to set aside the Warrants of Execution. The application was opposed and was argued before Mr Justice Lee Bozalek on 5 November 2015 at the end of which day it was postponed for further argument to 16 November 2015.
- 5.4 Prior to the resumption of the hearing the application was however settled by agreement between the parties and with the consent of the Registrar, which settlement was made an Order of Court by Mr Justice Bozalek on

16 November 2015. An unsigned copy of the Order is annexed, marked "B". In terms of the Order the parties agreed, *inter alia* that:-

- 5.4.1 we would withdraw the application;
 - 5.4.2 the HOAs would instruct the Sheriff to uplift the attachment of the goods which were attached;
 - 5.4.3 we would resume the payment of R30 000 per month as a contribution towards the costs of security with effect from 1 December 2015 and would make good the amounts which had not been paid during the period 1 April 2015 when we stopped paying and 30 November 2015 by paying the HOAs the sum of R253 590, which was duly paid;
 - 5.4.4 each party would pay its own costs incurred in connection with the application;
 - 5.4.5 each party undertook immediately to resume negotiations with a view to resolving all matters in dispute between them.
- 5.5 The parties duly resumed negotiations for the settlement of all their outstanding disputes and reached agreement in that regard on 21 December 2015. A copy of the Agreement is attached marked "C". In terms of the Agreement it was agreed *inter alia* that:-
- 5.5.1 *"all litigation presently pending between the parties shall be withdrawn forthwith after signature of this agreement and the party which instituted the particular proceedings shall file an appropriate notice of withdrawal; and that*
 - 5.5.2 *each of the parties shall pay its own legal costs in respect of all such withdrawn legal proceedings.*
 - 5.5.3 *Bramber and Fundev (i.e. the Fidentia property owning subsidiaries) shall commence paying levies to the Home Owners' Associations with effect from 1 January 2016 in the sum of:*

 2015

- 5.5.3.1 *R30 000 made up as to R6 000 per Villa for their 4 Villas and R6 000 for their one Spa Unit, which will be the same rate payable by all other Villa owners and Spa Unit owners; and*
- 5.5.3.2 *R30 000 in respect of the Hotel.*
- 5.5.4 *On 15 January 2016, subject to prior receipt of the invoices referred to below, Bramber and Fundev shall pay the Home Owners' Associations the sum of R4 750 000 in full and final settlement of all claims of any kind which any of the Home Owners' Associations may have against either of them as a result of the non-payment of levies at any time prior to 1 January 2016 or from any other cause whatever. Prior to 15 January 2016 each of the Home Owners' Associations shall furnish Bramber with a VAT invoice reflecting the amount due to them, the apportionment of the amount between the respective Home Owners' Associations and shall at the same time furnish the Curators with details of the bank account into which the money must be paid.*
- 5.5.5 *The Home Owners' Associations undertake that:-*
- 5.5.5.1 *the levies of R60 000 per month shall not be increased during 2016;*
- 5.5.5.2 *if and when the levies payable in respect of any of the Sante Estate properties are increased, the levies in respect of the Hotel shall not be increased for one year as from January 2016 to January 2017;*
- 5.5.5.3 *the Home Owners' Associations agree that with immediate effect after signature of this Agreement, the Curators shall be entitled to representation on the boards of trustees of each of the Home Owners' Associations;*

5.5.5.4 *the parties undertake to co-operate with each other to try and regularise the governance and zoning issues at Sante Estate. In this regard, the parties agree that:-*

5.5.5.4.1 *they shall act honestly and fairly in all their dealings with each other; and*

5.5.5.4.2 *they shall use their best endeavours to agree a quick and efficient deadlock breaking mechanism to resolve any differences which may arise between them without the need to resort to legal proceedings."*

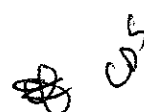
5.6 The Fidentia subsidiaries ("Bramber and Fundev") have complied with their payment obligations under the settlement agreement and notices of withdrawal have been filed in respect of the various litigation matters which were then pending. The remaining provisions of the Settlement Agreement still need to be fulfilled but we do not anticipate any difficulties in this regard.

6 GRANT THORNTON REPORT AND SALE OF SANTE PROPERTIES

6.1 On 23 November 2015 Grant Thornton issued us with their report on what they considered the value of the Fidentia properties at Sante to be and on how in their opinion we should proceed with the disposal of the properties. By its nature the content of the report is confidential for the guidance of the Curators and the Registrar, hence our not attaching a copy to this Report which will in due course become a public document when published on the website of the Financial Services Board;


6.2 On 25 November 2015 we met with the Registrar to discuss the report with her and obtained her consent to go ahead with the disposal of the properties by means of a bid process, subject to reserve prices;

6.3 At the meeting with the Registrar it was decided that before proceeding with the bid process we would first endeavour to settle the various

 CS

disputes with the HOAs as referred to in paragraphs 5.1 and 5.3 as it was thought that any such settlement would benefit the price that we would likely achieve for the properties;

- 6.4 Following the settlement of all disputes with the HOAs on 21 December 2015 we proceeded early this year to have the bid documents for the sale of the Sante properties prepared by our attorney, Barry Adams of Corporate Law Alliance, which documents are ready for submission to the Registrar for approval before proceeding to advertise the invitation for bids;
- 6.5 However, during the course of drafting the invitation for bids, Barry Adams raised with us the negative effect he thought the right of first refusal in favour of Orion referred to in 4.3 would have on the sale of the properties and in particular the provision that if Orion did not exercise its right of first refusal the proposed purchaser whose bid we were wanting to accept would be obliged if so required by Orion *"to compensate the tenant in an amount (if any) agreed between the Buyer and the Tenant for the cancellation of this Agreement and failing such Agreement, an amount of compensation as determined by an Expert as fair and reasonable compensation for the Tenant attributable to the premature termination of this Agreement, if having regard to the profit the Tenant would have earned had the lease endured for its full term"*;
- 6.6 Furthermore, as reported in paragraph 12 below, we had in the meantime issued urgent motion proceedings against Orion on 9 February 2016 for its eviction from the Sante properties after having given it notice of breach of the Lease on 15 January 2016 for payment of various amounts owing under the Lease and it having failed to rectify the breach within the relevant period or at all;
- 6.7 Messrs Levin and Adams then consulted with Lindsay Goldberg of Corporate Law Alliance, a property expert, on the question of whether it was advisable to go ahead with the issuing of the invitation for bids. After a full discussion they came to the conclusion that the existence of the aforesaid provision in the Lease and the opposed application for the eviction of Orion referred to in 6.6 would have a severely detrimental effect

 205

on the prices likely to be achieved. Mr Levin accordingly recommended to Mr Papadakis and the Registrar that the sale of the properties be postponed until the motion proceedings had run their course after which the question of disposal could again be reviewed. This was followed by a meeting between Messrs Papadakis and Levin with the Registrar on 15 February 2016 when it was agreed that the sale of the properties should be postponed as recommended.

7 RATES DISPUTE RELATING TO SANTE PROPERTIES

7.1 Since January 2013 the Fidentia curators have been in dispute with the Drakensberg Municipality regarding their claim for outstanding rates relating to the Sante properties.

7.2 During September 2015, Mr Papadakis met with the responsible official at the Drakensberg Municipality to discuss with him the possibility of compromising the amount claimed to enable us to settle the outstanding amount. The meeting was followed up with a letter dated 28 September 2015, a copy of which is attached marked "D" from Mr Papadakis to the Municipality in which we proposed that the amount of R2 354 765.48 outstanding as at 31 May 2015 be settled as follows:

7.2.1 *"The total interest accrued on the affected accounts be compromised, and future interest charges be suspended;*

7.2.2 *A 50% discount on the capital balance as determined after remission of the interest be granted on the affected accounts;*

7.2.3 *Drakenstein Municipality agrees to immediately enforce the applicable zoning regulations on all of the relevant title holders and body corporate's active and non-active on Sante Estate. This in itself will greatly assist in bringing the hotel back to commercial viability and allow it to meet its debt obligations;*

7.2.4 *The curators will immediately, once agreement has been reached with Drakenstein Municipality make monthly payments of R100 000.00 (one hundred thousand rand) until*

such time as the outstanding balances, as calculated above, on the affected accounts have been settled in full;

7.2.5 *The curators undertake to ensure that future monthly rates as levied are then settled timeously."*

7.3 The Drakensberg Municipality responded by letter dated 25 January 2016 to say that our offer of compromise had been tabled to Drakenstein Municipality's Executive Mayor and Mayoral Committee on 2 December 2015 which resolved as follows:

7.3.1 *"that a 50/50 write-off offer of R1 173 475.05 be offered to the Fidentia Group in terms of the Writing-Off of Irrevocable Debt Policy of Council;*

7.3.2 *that the interest and surcharges accrued on the Fidentia and Fundev accounts amounting to R315,667.09 since January 2013 till November 2015 be written-off;*

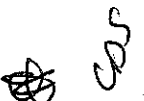
7.3.3 *that the counter settlement offer amounting to R1 489 142.14 in total be offered to the curators of the Fidentia Group;*

7.3.4 *that the curators of the Fidentia Group settle the remaining outstanding amount of R3 298 729.18 prior to the above being effected."*

7.4 As the figure of R3 298 729.18 did not reconcile with our figures Mr Papadakis during February 2016 sent the Drakensberg Municipality a reconciliation reflecting the variances between our figures and those of the Municipality and we are presently awaiting a response in connection therewith."


8 DISPUTE WITH CLIFFE DEKKER HOFMEYR

8.1 The dispute with Cliffe Dekker Hofmeyr ("CDH") about outstanding fees referred to in 4.2.3 was settled on 28 August 2015 when CDH accepted our offer of R1 million excluding VAT in full and final settlement of all

 CDH

claims which either party may have against the other. The settlement amount was duly paid.

- 8.2 We omitted to mention in our 14th Report, as it was not considered necessary to do so, that the decision to propose an offer of settlement to CDH had been preceded by differences of opinion between Messrs Levin and Papadakis as to whether an offer of settlement should be proposed at all. As we could not reach agreement we sought guidance from the Registrar who confirmed that in her view a settlement would be in the interests of the curatorship and recommended that the offer of settlement be submitted. This was done and as stated in paragraph 7.1 agreement was reached on 28 August 2015.
- 8.3 Following the settlement Mr Papadakis nevertheless continued to carry out a detailed analysis of all CDH invoices, as also of all statements in which they account for monies held in trust. As a result he reported to the Registrar that he had found numerous amounts paid from trust funds for which he contended there was no authority given to do so. He also reported that he had found numerous amounts paid for from the trust funds for which he also contended no authority had been given to do so. Furthermore he reported that he had found a number of invoices which did not relate to work done on Fidentia's behalf but on behalf of third parties, which were paid for out of Fidentia monies. In his view the curators have a substantial claim against CDH arising from what he found.
- 8.4 This caused serious concern to the Registrar who raised the issue with Mr Levin and sought his opinion on whether the settlement had pertained only to the R2.8 million claimed or whether it was in full settlement of all fees and charges incurred. Mr Levin responded that in his view " *...it can fairly be said that the settlement was intended to be a full settlement of all the issues then in dispute, namely the arguments relating to CDH's claim for a balance due to them of R2.8 million. It was never intended to cover any claims for fraud or such like which might subsequently be discovered and certainly was not in the contemplation of either of the parties at that time. If there are any such latter claims the curators would have to sue to prove their claims.*"



8.5 The Registrar thereupon responded to Mr Papadakis in an e-mail dated 13 November 2015 to say, *inter alia*:

"This analysis requires more discussion and unpacking. My concern is that we are reneging on an agreement reached with CDH reached by John. The discussion with CDH was around the R2.8m and does not specifically or necessarily go to historical invoices or blatant errors or even fraud. The info you have provided goes almost completely or mostly to invoices outside of the R2.8 m – or prior to it."

.....

"If there is debate as to 'should not or should have' been charged I don't think we should even consider it since then we will just get into more legal costs trying to prove a case that we potentially will lose costing investors even more – I am not prepared to incur more costs on this issue. I am however also not prepared to pay for costs which clearly should not have been paid by Fidentia for cases that had nothing to do with it – unless it falls inside the R1.8m reduction granted."

.....

"So please pay the R1m as agreed to settle the R2.8m dispute. I do not believe that this settlement will preclude us from raising the other issues you are analysing unless Fanie and John you advise differently."

8.6 Mr Levin accordingly e-mailed CDH on 16 November 2015 to inform them of the latest developments and in particular to bring to their notice that: *"...the Registrar has formed the view that the settlement which you and I concluded was intended to be a settlement of all the issues then in dispute, namely those relating to CDH's claim for the balance of R2.8 million which you contended was then due. It was never intended to cover any other claims which might subsequently be discovered and was not in the contemplation of either of the parties at the time of concluding the settlement."* A copy of that e-mail is attached, marked "E"

8.7 CDH responded by letter dated 25 November 2015, a copy of which is annexed marked "F", to say that:

CS

"3. I do not propose at this stage, to deal in detail with the allegations passed on by George – suffice to say that we have heard these rumblings before and, despite requests that clarity and detail be provided to back up what are really scurrulous allegations, nothing has been forthcoming.

4. As far as we are concerned, the matter has been settled. Should there be any further issue arising post payment, we will deal with this appropriately."

9 LHUT

9.1 As referred to in 4.2.4 following the Registrar having authorised us to disengage from the affairs of the Living Hands Umbrella Trust ("LHUT") we refrained from engaging with the Trustees of LHUT about doing so as further questions subsequently arose which necessitated further consideration by the Registrar.

9.2 Following a meeting by us with the Registrar on 9 September 2015 at which her concerns were discussed Mr Levin met with the Trustees of LHUT on 10 September 2015 to discuss the Registrar's concerns and also our disengagement from the Trust and the manner in which we proposed this disengagement should be achieved. One of the Registrar's main concerns was that the various source funds from which LHUT had received money for investment should have representation on the LHUT Board of Trustees and this too was discussed. The Trustees requested that we put our proposals in writing and this was done on 17 September 2015 in a letter in which we proposed, *inter alia*, that:-

9.2.1 the disengagement should be achieved by means of Fidentia Holdings (Pty) Ltd ("Fidentia Holdings") (under curatorship) selling to Wilna Lubbe and Xola Stimela in their capacities as the Trustees of LHUT, the total issued shares of Living Hands, a corporate trustee of LHUT; (The reason for this particular proposal for achieving disengagement is that it will not necessitate any amendment to the pleadings in the damages action instituted by the Trustees of LHUT, including Living

Hands, against Old Mutual and others, on which we report more fully in 15.5 below.)

- 9.2.2 the Trustees should support our request to the Master of the High Court ("the Master") that he should appoint additional trustees to represent the various LHUT source funds;
 - 9.2.3 even though not obliged to do so, the Trustees should in future continue to furnish the Registrar with copies of their regular reports to the Master;
 - 9.2.4 whatever agreement was reached would be subject to our obtaining the approval of the funders of the litigation against Old Mutual & Others.
- 9.3 The LHUT Trustees responded to our proposals by letter dated 30 September 2015 in which they agreed, *inter alia*:-
- 9.3.1 that Wilna Lubbe and Xola Stimela in their capacities as Trustees of LHUT would acquire the total issued shares of Living Hands at a nominal value of R1 per share due to the fact that the company has no assets and only a contingent liability;
 - 9.3.2 that they would support a recommendation by the Curators to the Master that the Chairperson of the Mine Workers' Provident Fund ("MWPF") which comprises 80% of the beneficiaries of the Trust, or an official appointed by the MWPF Board should be appointed a Trustee of LHUT, in which regard they indicated that discussions had already been initiated by them and they would revert once the appropriate official had been nominated;
 - 9.3.3 they would gladly continue to furnish the Registrar with copies of their reports to the Master.
- 9.4 The Trustees also informed us that they had resolved to retain Mr Fred Eksteen, a Chartered Accountant and the Curators' designated

representative of Living Hands as the company's designated representative and most probably also as the Director of Living Hands in the place of Mr Papadakis.

- 9.5 In the meantime following the meeting between Mr Papadakis and myself with the Registrar on 10 September 2015, the Registrar and Mr Papadakis met with the Executive of the MWPF during October 2015 to discuss their nomination of a representative to the LHUT Board of Trustees. The MWPF Board undertook to revert once they had decided. We accordingly informed the LHUT Trustees on 4 November 2015 that in the circumstances we had been instructed for the moment not to go ahead with the disengagement from LHUT until further notice.
- 9.6 The Trustees responded to say that they too had held meetings with various representatives of the MWPF and discussed the appointment of a Trustee and had been advised that the MWPF wished to liaise with the Trustees, but that they did not wish to be part of the management of LHUT as they were concerned about reputational damage to the MWPF.
- 9.7 On 15 February 2016 we again met with the Registrar to discuss, *inter alia*, how she wishes us to proceed regarding our disengagement from LHUT, having regard to the fact that no response had been received from the MWPF regarding the request that they consider appointing a representative to the LHUT Board of Trustees. At the meeting we reiterated our view that because the FSB has no jurisdiction over the Trustees of LHUT we should be permitted to go ahead with the disengagement in accordance with the advice which the Registrar had obtained from Advocate Derek Mitchell SC. At the Registrar's request Mr Papadakis thereupon telephoned Mr Mvombu, the Chief Executive Officer of the MWPF, to ascertain what their decision was regarding the appointment of a Trustee for LHUT and was informed that the fund did not wish itself to be represented on the LHUT Board but wished to engage with the Registrar in that regard. To that end a meeting has been arranged for the Registrar and us to meet with the MWPF Board on 8 March 2016.

- 9.8 At the meeting with the Registrar on 15 February 2016 it was decided that we will inform the MWPF Board that as the curatorship is now fast approaching its conclusion, as more fully referred to in paragraph 17 below, we wish to proceed with the disengagement from LHUT and to impress on them that, in our view, it is in their interests to appoint somebody to represent them on the LHUT Board.
- 9.9 After our meeting with the MWPF on 8 March 2016 we will write to the funders of the LHUT/Old Mutual & Others litigation and to the Master to inform them of our decision and will request the Master to appoint a representative of the MWPF as an LHUT Trustee, if that is what they want.

10 MOSHATE

- 10.1 In our 14th Report we reported that:

"George Papadakis has recommended convening an enquiry in terms of the powers granted to us in the Provisional and Final Orders of Curatorship as read with Sections 4 and 5 of the Inspection of Financial Institutions Act 80 of 1988."

- 10.2 With the consent of the Registrar we consulted with Senior Counsel regarding certain aspects relating to the issuing of subpoenas to compel the attendance of witnesses at enquiries as referred to in 10.1.
- 10.3 Further developments regarding Moshate are fully reported on in paragraph 3 of the Financial Report, Schedule 1.
- 10.4 An assessment of the prospects of success in any subsequent litigation which may be instituted following an enquiry still has to be carried out, as stated in 3.6 of Schedule 1.

11 TANZANITE STONE

We have to date been unable to sell the Tanzanite stone.

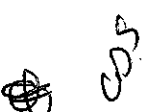


12 ANTHERU TRUST (PTY) LTD

- 12.1 Further developments regarding the distribution of funds to individuals who invested in the Antheru Trust are reported on in Note 2.1 to paragraph 5.2.4 of the Financial Report, Schedule 1.
- 12.2 It will be noted that of the amount of R1 679 782 that was available for distribution to the Antheru investors we have succeeded as at 31 January 2016 in distributing a total of R1 194 722 and there thus remains a balance of R164 984 still to be distributed to 20 investors once the investors entitled thereto can be found. If we are unable to trace these investors their investments will have to be paid into the guardian's fund.

13 CANCELLATION OF ORION LEASE

- 13.1 On 15 January 2016 George Papadakis issued a Certificate in terms of Clause 9.3 of the Lease dated 28 March 2012 between Bramber and Fundev ("the Fidentia property owning subsidiaries") as landlords and Orion as tenant in respect of the Sante properties reflecting, *inter alia*, that as at 30 November 2015 Orion was indebted to its landlords in an amount of R5 537 177.93. A copy of the Certificate is annexed, marked "G".
- 13.2 On 15 January 2016 Mr Levin e-mailed Orion a letter of that same date and demanded *inter alia* that in accordance with the provisions of the Lease Orion should pay the sum of R5 537 177.93 within five days of receipt of the letter and ensure that a sub-tenant which Orion had placed in occupation of a portion of the premises without the consent of the landlord in contravention of the provisions of the Lease, should vacate the premises occupied by it within ten days, a copy of the letter being attached, marked "H". This was followed by an e-mail dated 18 January 2016, a copy of which is annexed marked "I", drawing Orion's attention to the fact that the amount of R5 537 177.93 referred to in paragraph 3 of the letter dated 15 January 2016, should have read R3 537 510.53.
- 13.3 Following a request by Ross Munro Attorneys acting for Orion, an extension of the period within which payment had to be made was granted to 28 January 2016 but Orion failed to pay the sum of R5 537 177.93 or



any other amount by such date or at all. Accordingly, Mr Levin e-mailed Orion on 29 January 2016 to confirm that the Lease was cancelled and that the properties should be vacated by 31 January 2016.

13.4 Orion's representatives e-mailed Mr Levin on 1 February 2016 a letter dated 29 January 2016 in which they on behalf of Orion disputed our right to have cancelled the Lease, *inter alia* on the basis of a denial that Orion is indebted as claimed and furthermore that it claimed to have a claim for damages against the landlords in an amount of R47 million. A copy of the e-mail dated 1 February 2016 is annexed, marked "J".

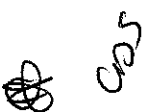
13.5 As a result of Orion's failure to pay the outstanding amounts and in the light of Ross Munro's e-mail of 1 February 2016 repudiating liability, we brought an urgent application by way of motion proceedings issued on 9 February 2016 under Case Number 1870/16 for Orion's eviction from the Sante properties. Orion in turn filed an Affidavit opposing the application on various grounds, including that the application is not urgent. On 19 February 2016, when the matter came before Court, by agreement between the parties it was ordered by Ms Justice Boqwana that the application be postponed to 26 April 2016 for hearing on the Semi-Urgent Roll on the basis that:

13.5.1 *"the Applicants will deliver their Replying Affidavit by no later than Friday, 18 March 2016;*

13.5.2 *the Applicants are to deliver their Heads of Argument by no later than Tuesday, 12 April 2016 and the Respondent is to deliver its Heads of Argument by no later than Tuesday, 19 April 2016;*

13.5.3 *all questions of costs are to stand over for later determination;*

13.5.4 *it is recorded that this Order is granted without prejudice to the Respondents' right to argue that this application was not properly brought as one of urgency or on the timetable prescribed in the original Notice of Motion and that the*

 C/S

application thus falls to be struck off the Roll or dismissed on this basis on 26 April 2016."

14 IRREGULARITIES

- 14.1 In our 13th Report we reported on criminal charges which had been brought against various individuals up to the date of that Report and in our 14th Report we recorded that since that Report there had not been any further charges brought against any other individuals and that we were not aware of any irregularities other than those already reported on.
- 14.2 In our 14th Report we furthermore reported that the criminal trial of Botha, ex CEO of Teta, was still ongoing which remains the position as at date of this Report.
- 14.3 Since our 14th Report we have become aware of the further irregularities relating to Moshate as referred to in paragraph 3.7 of the Financial Report, Schedule 1 in respect of which criminal charges have been initiated by the Curators.

15 LITIGATION

15.1 R H Meyeridricks

With the consent of the Registrar this matter has been settled on the basis that:-

- 15.1.1 *"the present action and any other claims or counterclaims which either party might have against the other will irrevocably be withdrawn;*
- 15.1.2 *each party will bear its own costs;*
- 15.1.3 *the above will constitute a full and final settlement of all or any claims which either party might have against the other."*

A Notice of Withdrawal was duly filed on 22 December 2015.



15.2 Thebe

In our 14th Report we reported that a date is still awaited for the exception raised by Thebe regarding prescription to be argued and that the outcome of that case will determine how we proceed with the matter. This remains the position as at date of this Report.

15.3 Ubank vs Absa Bank / Ayanda

In our 14th Report we reported that in Ayanda Collective Investment Solutions is cited in this action as a third party and that Ayanda will abide the decision of the Court. This remains the position.

15.4 M I H Holdings vs Absa Bank / Ayanda

In our 14th Report we reported that also in this matter Ayanda Collective Investment Solutions is cited as a third party and that Ubank had been advised that Ayanda will abide the decision of the Court. This remains the position.

15.5 LHUT vs Old Mutual & Others

In the matter of Living Hands and Others NNO v Old Mutual and Others case 42728/10:

15.5.1 As indicated in our 13th Report action was instituted in October 2010. A number of exceptions were raised after the action was instituted and settlements were concluded with various parties which ultimately led to the removal of certain defendants.

15.5.2 The pending action is now against Mileham, Gibbs, Baboyi, Brown, Tucker, Malan, De Jongh and Old Mutual Unit Trust Managers. There are also certain third party defendants as well, namely Brown, Tucker, Malan, Mulder, De Jongh and Living Hands from whom Old Mutual is seeking a contribution in the event they are found liable for payment of the dissipated funds.

15.5.3 As indicated in our 14th Report, Judge Wright was appointed the case manager in this matter and is still currently the case manager and this process requires all of the parties to be fully prepared for trial before a date will be allocated.

15.5.4 Pleadings have closed. The Plaintiff is in the process of preparing for the trial. This includes determining whether further and better discovery must be made; meeting with various witnesses and the like.

16 LITIGATION COSTS

- 16.1 We reported in our 14th Report, to which was attached, marked "D", a copy of a schedule which had been annexed to the 12th Report to Court dated 31 March 2014 in which the relevant information regarding all litigation relating to the curatorship as at 28 February 2014 is furnished, that but for the Sante litigation referred to in that schedule and further reported on in the 14th Report, there had not been any other litigation instituted by or against the Curators since then and save as otherwise reported in the 14th Report, all litigation was in the process of being settled.
- 16.2 Since our 14th Report there has been no further litigation instituted by or against the Curators but for the application against the HOAs referred to in paragraph 5.3 above and the eviction application against Orion referred to in paragraph 12.5 above. As referred to in paragraph 13.5 above all the litigation with the HOAs has been settled since that Report.
- 16.3 Previously we furnished all relevant information relating to the costs of litigation with which the curators have been engaged since commencement of the curatorship in a schedule attached to the legal report but as the books of account relating to the curatorship are maintained by Mr Papadakis we consider it more appropriate that these costs should be reported on in the financial report. This has now been done in Annexure "GN3" referred to in paragraph 8 of the financial report attached to this report as Schedule 1.
- 16.4 Schedule D to our 14th report, namely the schedule reflecting all relevant information relating to the costs of litigation from inception of the

curatorship until 28 February 2014, was prepared by and had always been maintained by CDH as they essentially attended to all litigation relating to the curatorship and also maintained a substantial portion of the Fidentia funds in their trust account from which fees and disbursements were settled. Since 1 March 2014 all trust monies have been transferred to the curators and Mr Papadakis alone is now responsible for maintaining a record of all payments and receipts relating to the curatorship. Where disbursement accounts relate to legal matters Mr Papadakis first obtains Mr Levin's approval before effecting payment.

- 16.5 By reason of his concerns relating to CDH's accounts as reported on in paragraph 8 above, Mr Papadakis is not willing to take responsibility for the information contained in Schedule D, hence our further reporting on legal costs incurred since 1 March 2014 separately in the Financial Report.



17 ENDING OF CURATORSHIP

- 17.1 We are now starting to envisage the possibility of bringing this curatorship to an end during the course of this year. If we succeed in having Orion evicted from Sante, we will be able to move ahead with the selling of Fidentia's last assets of any significant value, namely the Sante properties. Following the sale of the Sante properties we should be in a position:-

17.1.1 to distribute the proceeds of the sale together with the cash then still on hand to investors;

17.1.2 thereafter to do whatever may be necessary to bring the curatorship to an end.

- 17.2 In the latter regard, that is to bring the curatorship to an end, we are now starting to give consideration on how such termination can be effected. It would appear that the most probable way of addressing this will be to apply for the liquidation of the Fidentia Companies. We will however need to consult with the Registrar and possibly with Counsel on how best to achieve such a result.

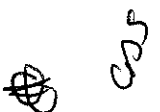
18 RECOMMENDATIONS

- 18.1 We respectfully submit that it is apparent from this Report that there are still matters which need to be attended to by the Curators some of which, such as the litigation with Orion and the disposal of the Sante properties, are still liable to take some time.
- 18.2 We accordingly recommend that the Fidentia companies continue under curatorship in accordance with the Provisional Order of Curatorship dated 1 February 2007 which was made final on 27 March 2007, as read with the Order dated 13 August 2015 of Ms Justice Salie-Hlophe and that we be directed:-
- 18.2.1 to furnish the Registrar with progress reports relating to the curatorship in such manner and at such intervals as she may from time to time require; and
- 18.2.2 to deliver a further report to this Honourable Court by 30 November 2016 or in the event of the Orion litigation being completed and the Sante properties being sold before such date, within forty-five days of the happening of the later of such events, whichever occurs first, in which the remaining matters enumerated in paragraph 8 of the Order dated 1 February 2007 as read with the requirements of Ms Justice Salie-Hlophe as set out in paragraphs 3 and 4 of her Order dated 19 August 2015 are addressed.

DATED AT CAPE TOWN ON THIS 29TH DAY OF FEBRUARY 2016



**J A LEVIN on his own behalf
and on behalf of G Papadakis
by whom he is authorised hereto.**



IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 679/2007

19/8/2015
[Handwritten signature]

On 19 August 2015

Before the Honourable Ms Justice Salle-Hlophe

In the ex parte application of-

EXECUTIVE OFFICER OF THE FINANCIAL SERVICES BOARD Applicant

re the financial services business of

FIDENTIA ASSET MANAGEMENT (PROPRIETARY) LIMITED First Respondent
(Registration No. 1998/024863/07)

and

BRAMBER ALTERNATIVE (PROPRIETARY) LIMITED Second Respondent
(Registration No. 2000/024139/07)

WESTERN CAPE HIGH COURT
CIVIL APPEALS
2015 -08- 19
CAPE TOWN/KAAPSTAD
WES-KAAP HOE HOE

and

FIDENTIA HOLDINGS (PROPRIETARY) LIMITED Third Respondent
(Registration No. 2001/022355/07)

WESTERN CAPE HIGH COURT
CIVIL APPEALS
2015 -08- 19 DRAFT ORDER
CAPE TOWN/KAAPSTAD
WES-KAAP HOE HOE

Having heard counsel for the Applicant;

IT IS ORDERED THAT:

[Handwritten initials]

1. The Curators' fourteenth report dated 26 June 2015 has been considered and accepted.
2. The Applicant is directed to publish this order and the Curators' fourteenth report on its website.
3. The Curators are directed to file a further report to the Court by not later than 29 February 2016 dealing with the following:
 - 3.1 the status of the curatorship as at 31 January 2016;
 - 3.2 an overview of assets disposed of or alienated and how the proceeds were distributed, including the distribution to investors who Invested through Antheru Beleggings Trust;
 - 3.3 irregularities committed by the companies or its officers or management or by other persons prior to and after the date of curatorship, and the state of prosecution which may have been instituted;
 - 3.4 details of civil actions which may have been instituted by or against the Curators and specifically the progress made with regard to the litigation matters involving the Living Hands Umbrella Trust and the Sante Hotel Wellness and Conference Centre;
 - 3.5 the costs of the curatorship as at 31 January 2016;
 - 3.6 any recommendations as to how the continuation of the curatorship or any related matters, should be dealt with further.
4. The information referred to in paragraph 3.4 above must include a detailed breakdown of all civil legal proceedings instituted, prosecuted or defended by

WESTERN CAPE HIGH COURT
CIVIL APPEALS
2015-08-13
CAPE TOWN/KAAPSTAD
WES-KAAP HOE HOF

[Handwritten signature]
C05

the curators on behalf of the companies, indicating in respect of each matter:

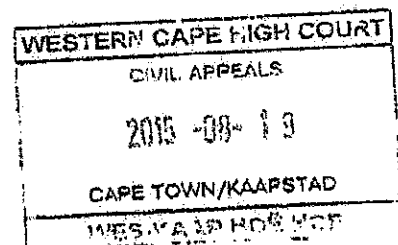
- 4.1 Who the attorneys of record for the companies were/are;
 - 4.2 The fees incurred in respect of the attorneys of record;
 - 4.3 The fees incurred in respect of Counsel;
 - 4.4 Whether the litigation has been concluded or not;
 - 4.5 In the case of litigation which has been concluded, the success or otherwise of the litigation; and
 - 4.6 The amounts recovered on taxation, if any.
5. On receipt of the Curators' report referred to in paragraph 3 above, the Applicant shall within 20 days set the matter down for consideration of the report.
6. The costs of this application shall be costs in the curatorship.


BY ORDER OF THE COURT



COURT REGISTRAR

Box 9 Bisset Boehmke McBlain



 CAS

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No. 15274/15

In the matter between:

BRAMBER PROPERTY LIMITED
(Registration No. 2004/022972/06)

First Applicant

JOHN ADRIAN LEVIN N.O.

Second Applicant

GEORGE PAPADAKIS N.O.

Third Applicant

and

AKARANA MASTER HOME OWNER'S ASSOCIATION

First Respondent

**LA BELLA VITA WINE ESTATE
PROPERTY OWNERS' ASSOCIATION**

Second Respondent

**THE BODY CORPORATE OF
THE SANTE WINELANDS ESTATE**

Third Respondent

THE SHERIFF OF THE HIGH COURT, PAARL



Fourth Respondent

ORDER

BY AGREEMENT BETWEEN the parties (other than Fourth Respondent who is not opposing this application):

IT IS ORDERED THAT:


1. The Applicants shall withdraw the application to set aside the Warrant of Execution issued against First, Second and Third Applicants on 14 July 2015 under case number 7242/2013.
2. The First, Second and Third Respondent shall instruct the Sheriff of the High Court, Paarl, to uplift the attachment of the goods, which were attached on 7 August 2015.

3. Notwithstanding the parties' dispute regarding the proper interpretation of the Court Order issued under case number 7242/2013 and dated 6 November 2013 (the "2013 Order"), First to Third Applicants shall resume the payment of R30,000.00 per month as a contribution towards the employment of security services contemplated in paragraph 2 of the 2013 Order with effect from 1 December 2015 and the first day of every month thereafter.
4. In addition, First to Third Applicants shall pay the sum of R253,590.00, which represents the sum of R13,590.00, being the amount outstanding as at March 2015 and the monthly sum of R30,000.00, which has not been paid during the period April 2015 to November 2015, which shall be paid on 1 December 2015.
5. This agreement is without prejudice to either party's position regarding the interpretation of the 2013 Court Order and the correct amount payable in terms thereof, including the making good of any shortfall owing on the amount payable by Applicants in terms of the aforesaid Order.
6. This agreement does not in any way supersede or vary the 2013 Order, or constitute a novation of the agreement contained therein.
7. In the event of First to Third Applicants failing to comply with their obligations in terms of this Order, First to Third Respondents shall be entitled, at their discretion, to either enforce the 2013 Order, or to enforce the terms of this Order.
8. Each party hereby undertakes immediately to resume negotiations, with a view to resolving the various matters in dispute between them as referred to in the founding affidavit filed of record in this application.
9. In the event of the parties being unable to resolve the disputes, this will not entitle First to Third Applicants to withhold any of the payments referred to in terms of this Order.
10. Each party will pay their own costs incurred in this application.

BY ORDER OF THE COURT

COURT REGISTRAR

 CS

Final version

2015-12-10



AGREEMENT

between

GEORGE PAPADAKIS, Nominee Officio

and

JOHN LEVIN, Nominee Officio

and

BRAMBER PROPERTY LTD

and

FUNDEV PROPERTY INVESTMENTS (PTY) LTD

and

AKARANA MASTER HOME OWNERS' ASSOCIATION

and

LA BELLA VITA WINE ESTATE PROPERTY OWNERS' ASSOCIATION

and

SANTE WINELANDS BODY CORPORATE

John Levin ATTORNEY *A member of Corporate Law Alliance*

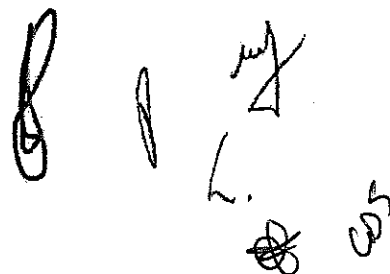
Corporate Law Alliance is an association of independent attorneys who collaborate to provide bespoke corporate law and tax services.

www.corporatelaw.co.za

Ⓢ 005

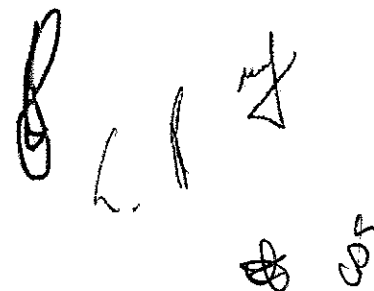
1. INTERPRETATION

- 1.1 In this agreement, unless a contrary intention is indicated:
- 1.1.1 "Akarana HOA" shall mean the Akarana Master Home Owners' Association;
- 1.1.2 "Bramber" shall mean Bramber Property Limited (Reg no: 2004/022972/06), a company registered in accordance with the company laws of the Republic of South Africa;
- 1.1.3 "Bramber Alternative" shall mean Bramber Alternative (Pty) Ltd (Reg no: 2000/024139/07), a company registered in accordance with the company laws of the Republic of South Africa;
- 1.1.4 "Curators" shall mean George Papadakis and John Adrian Levin c/o John Levin, Corporate Law Alliance, 1st Floor, Oakdale House, The Oval, 1 Oakdale Road, Claremont, 7708, email: john@corporatelaw.co.za;
- 1.1.5 "FAM" shall mean Fidentia Asset Management (Pty) Ltd (Reg no: 1998/024863/07), a company registered in accordance with the company laws of the Republic of South Africa;
- 1.1.6 "FAIS Act" shall mean the Financial Advisory and Intermediary Services Act, 2002;
- 1.1.7 "Fidentia Properties" shall mean the undermentioned properties situated at Sante Estate in the Drakenstein Municipality, District of Paarl, namely:
- 1.1.7.1 the Sante Hotel and Conference Centre erected on section 11 Sante Winelands owned by Fundev under Deed of Sectional Title No. ST19/2004;
- 1.1.7.2 the Sante Spa which is operated as an integral part of Sante Hotel and Conference Centre, erected on section 12 Sante Winelands owned by Fundev under Deed of Sectional Title No. ST20/2004;
- 1.1.7.3 a spa unit erected on section 3 Sante Winelands owned by Bramber under Deed of Sectional Title No. ST22708/2005;
- 1.1.7.4 the "villa" known as "Villa Middagkrans" erected on portion 47 of the Farm Simonsvlei 791 owned by Bramber under Deed of Transfer No. T58839/2005;



 [Handwritten initials and signatures, including a large stylized 'B', a smaller 'B', and a signature 'J. L.' with a circular stamp below it, and the number '205' to the right.]

- 1.1.7.5 the "villa" known as "Villa Tierkloof" erected on portion 50 of the Farm Simonsvlei 791 owned by Bramber under Deed of Transfer No. T94256/2005;
- 1.1.7.6 the "villa" known as "Villa Drakenstein" erected on portion 52 of the Farm Simonsvlei 791 owned by Bramber under Deed of Transfer No. T35349/2005;
- 1.1.7.7 the "villa" known as "Villa Haumann" erected on portion 59 of the Farm Simonsvlei 791 owned by Bramber under Deed of Transfer No. T48667/2006.
- 1.1.8 "Fidentia Companies" shall mean FAM, Bramber Alternative and Fidentia Holdings;
- 1.1.9 "Fidentia Holdings" shall mean Fidentia Property Holdings (Pty) Ltd (Reg no: 2001/022355/07), a company registered in accordance with the company laws of the Republic of South Africa;
- 1.1.10 "Fidentia Property Companies" shall mean Bramber and Fundev;
- 1.1.11 "Fi Act" shall mean the Financial Institutions (Protection of Funds) Act, 2001;
- 1.1.12 "Fundev" shall mean Fundev Property Investments (Pty) Ltd (Reg no: 2001/0157779/07), a company registered in accordance with the company laws of the Republic of South Africa;
- 1.1.13 "HOA's" shall mean the Akarana Home Owners' Association, La Bella Vita Wine Estate Property Owners' Association and Sante Winelands Body Corporate, c/o Anthony Arvan, Morris Phillips Welsenberg, 20th Floor, 2 Long Street, Cape Town, 8001;
- 1.1.14 "Hotel" shall mean and include the Sante Hotel, Conference Centre and Spa;
- 1.1.15 "LBV HOA" shall mean the La Bella Vita Wine Estate Property Owners' Association;
- 1.1.16 "Orion" shall mean Orion Hotels and Resorts (Pty) Ltd (Reg no: 1999/006480/07), a company registered in accordance with the company laws of the Republic of South Africa;

Handwritten signatures and initials in black ink, including a large stylized signature, several smaller initials, and the letters 'COS' at the bottom right.

1.1.17 "Registrar" shall mean the Registrar of Financial Services Providers appointed as such pursuant to the FAIS Act;

1.1.18 "Sante Estate" shall mean Sante Winelands Estate in the municipality of Drakenstein, district of Paarl;

1.1.19 "Sante BC" shall mean the Body Corporate of the Sante Winelands Estate;

1.1.20 "Spa Unit" shall mean a sectional title unit forming part of the sectional title development referred to in 2.5.2;

1.1.21 "Villa" shall mean a residence erected on a sub-divided portion of the Farm Simonsvlei no 791, forming part of the sub-division referred to in 2.4 below;

- 1.2 clause headings are for convenience and shall not be used in its interpretation;
- 1.3 unless the context clearly indicates a contrary intention, an expression which denotes any gender includes the other genders, a natural person includes an artificial person and *vice versa* and the singular includes the plural;
- 1.4 the rule of construction that this agreement shall be interpreted against the party responsible for the drafting of this agreement, shall not apply.

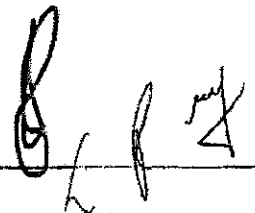
2. INTRODUCTION

2.1 On the application of the Executive Officer of the FSB in his capacity as the Registrar, made in terms of Section 5 of the FI Act, the business of the Fidentia Companies was placed provisionally under curatorship by order of the High Court, Cape Town, under case no: 679/2007, on 1 February 2007, which order was made final on 27 March 2007. In terms of the aforesaid orders, George Papadakis and Dines Gihwala were appointed co-curators of the said business. By order of the said Court, dated 15 August 2014, Dines Gihwala was discharged as a co-curator and John Levin was appointed in his place, which order was made final on 2 October 2014.

2.2 The business at issue consists of the whole of the integrated business of the Fidentia Companies relating to the provision of financial services and the management of investments as contemplated in the FAIS Act and was conducted through the medium of numerous companies, including the Fidentia Property companies.

Handwritten signatures and initials are present at the bottom right of the page, including a large signature, the initials "L.I.", and the number "603".

- 2.3 Amongst the investments made by FAM with investors' funds, were the acquisitions through the medium of the Fidentia Property Companies of the Fidentia Properties.
- 2.4 In 1999 portion 27 of the Farm Simonsvlei no 791 situated in the Municipality of Drakenstein, Administrative District Paarl, Western Cape Province, was subdivided into 7 portions, namely portions 36 to 42. This subdivision resulted in the establishment of the Akarana HOA of which each registered owner of a subdivided portion is a member.
- 2.5 Thereafter, in or about October 2000, portion 39 of portion 27 was further subdivided into 20 portions, namely portions 43 to 63, consisting of:
- 2.5.1 15 residential erven on which are erected residential houses known as villas, namely erven 43 to 57 and erf 59;
- 2.5.2 Erf 58 on which is situated a sectional title development known as Sante Winelands, consisting of the Sante spa units and the Hotel; and
- 2.5.3 Erven 60, 61 and 63 which consist of roads, and a dam.
- The HOA's responsible for portion 39 is the LBV HOA of which each registered owner of a sub-divided portion of portion 39 is a member. In addition, each such owner is also a member of Akarana HOA.
- 2.6 Each owner of a Spa Unit and the owner of the Hotel are members of Sante BC and of Akarana HOA and LBV HOA.
- 2.7 For most of the time since the advent of the curatorship, the Hotel has been operated by one third party or another under leases obtained from the curators in office at the time, the most recent tenant being Orion which is still in occupation. To the best of the Curators' knowledge and belief, the Hotel has never operated profitably.
- 2.8 After the business of the Fidentia Companies was placed under curatorship the then curators stopped paying levies to the HOA's, it being their contention that the Fidentia Property Companies were being asked to pay a disproportionate share of the total levies payable in respect of the Sante Estate as a whole and furthermore that as a result of the HOA's failing to provide the Hotel with all the services to which it is entitled, the Hotel operators have been obliged themselves to arrange for and





pay for such services. The Curators furthermore contended that the HOA's were not complying with and/or enforcing the zoning conditions and conditions of sub-division relating to the Sante Estate and that proper corporate governance on Sante Estate had broken down.

- 2.9 The HOA's on the other hand have denied the Curators' contentions and, in turn, have contended that all the problems besetting the Sante Estate stem from the Curators' failure to pay levies.
- 2.10 The various disputes between the Curators and the HOA's, and in particular the non-payment of levies, have resulted in much acrimony between the parties which, in turn, has led to a number of court cases of which the following are presently pending or have court orders operational, namely:

2.10.1 Application by HOA's against the Curators, Bramber and Orion in Case Number: 7242/2013 and Curators' application to set aside writ in Case Number: 15274/2015

- 2.10.1.1 In the first mentioned of the above matters, the HOA's brought an application against the Curators, Bramber and Orion to evict security guards which they had placed at the guard house at the entrance to the Sante Estate for purposes of access control, so that the HOA's could place their own appointees at the guard house. The matter was settled by agreement between the parties which agreement was made an order of court on 6 November 2013. In terms of the order, the HOA's would arrange for the provision of a minimum level of security at the guard house and the respondents would pay the costs of the security services provided.
- 2.10.1.2 During the early part of 2015 a dispute arose between the parties regarding the payment of the security costs as a result of which the HOA's issued a writ of execution against the respondents and on 7 August 2015 attached certain goods at the Hotel.
- 2.10.1.3 The issuing of the writ and the attachment of the goods resulted in the Curators bringing an application against the HOA's on 17 August 2015 to set aside the writ and the attachment, which application was settled by agreement between the parties, which agreement was made an order of

[Handwritten signatures and initials]

[Handwritten initials]

[Handwritten initials]

[Handwritten initials]

[Handwritten initials]

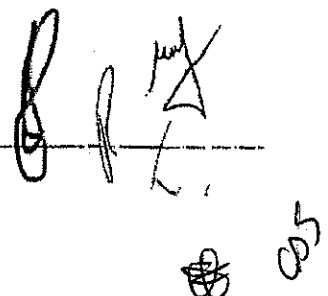
court on 16 November 2015. In terms of the order the Curators are obliged to pay the HOA's the sum of R30 000.00 per month with effect from 1 December 2012.

2.10.2 Application Instituted by Bramber and George Papadakis against the HOA's in Case Number 13093/14

2.10.2.1 In this matter Bramber commenced certain building operations to its villas during June 2014 against the objection of the HOA's which contended that their authority was required for such building work to be undertaken. The HOA's accordingly instructed their security guards at the entrance to the Sante Estate to refuse Bramber's building contractor access to the estate. The Curators then instituted urgent proceedings for a "Mandament van spolie" which application was postponed for hearing on 27 October 2014 when the matter was postponed to 17 February 2015 when the matter was postponed "sine die" to give the parties an opportunity to try and settle their disputes.

2.10.3 Application Instituted by the Akarana HOA and LBV HOA against Bramber and the Trustees in Case Number 16188/2014

2.10.3.1 On 10 September 2014, Akarana HOA and LBV HOA instituted an urgent application against Bramber and the Curators in which they sought an urgent Interim interdict restricting further internal and external renovations to Bramber's villas and an order declaring the respondents to be in contempt of the order referred to in 2.10.1. In addition, the applicants sought final relief for an order directing the respondents to refrain from carrying out any renovation or building work without their approval, other than building work at Villa Tierkloof needed to address certain structural defects and to restore the properties to their original state. This matter too was postponed to 17 February 2015 and then on that date postponed "sine die" as set out in 2.10.1.

Handwritten signatures and initials, including a large stylized signature, a smaller signature, and the number '005' written vertically.

2.10.4 Action in respect of levies: Case Number 9494/14

- 2.10.4.1 The HOA's issued summons on 28 May 2014 against Bramber and Fundev for arrear levies of R5 784 008.00 as at 30 April 2014 plus "moree" interest. The Curators have pleaded and the matter is ready to be set down.
- 2.11 The Curators procured from Tommy Brummer, town planner of Cape Town, a report dated 1 October 2014, which was revised on 4 December 2014, on the planning status of the Sante Estate, a copy of which report has been furnished to the HOA's.
- 2.12 According to the report, it is apparent that there are discrepancies relating to the zoning approvals of the entire Sante Estate including transgressions in respect of the Hotel, the Spa Units and the Villas. Furthermore, there are issues of governance relating to the manner in which the affairs of the HOA's are being conducted which need to be cleared up.
- 2.13 On the basis of the aforesaid report, the Curators are contending "inter alia" that the Akarana HOA and the LBV HOA are not properly constituted in that the constitutions under which they are purporting to act have not been approved.
- 2.14 The parties have reached agreement on the settlement of their legal disputes and on a co-operative "modus vivendi" going forwards and wish to record the terms and conditions of their agreement, as they hereby do.

3. SETTLEMENT OF ALL LEGAL PROCEEDINGS

- 3.1 All litigation presently pending between the parties shall be withdrawn forthwith after signature of this agreement and the party which instituted the particular proceedings shall file an appropriate notice of withdrawal.
- 3.2 Each of the parties shall pay its own legal costs in respect of all such withdrawn legal proceedings.

4. PAYMENT OF LEVIES

- 4.1 Bramber and Fundev shall commence paying levies to the HOA's with effect from 1 January 2016 in the sum of R60 000.00 per month, inclusive of all taxes, if any, against the issue to them of a VAT Invoice from the relevant HOA, apportioned as follows:

[Handwritten signatures and initials]

cos

4.1.1 R30 000.00 made up as to R6 000.00 per Villa for their 4 Villas and R6 000.00 for their one Spa Unit, which will be the same rate payable by all other Villa owners and Spa Unit owners; and

4.1.2 R30 000.00 in respect of the Hotel.

4.2 On 15 January 2016, subject to prior receipt of the invoices referred to below, Bramber and Fundev shall pay the HOA's the sum of R4 750 000.00 in full and final settlement of all claims of any kind which any of the HOA's may have against either of them as a result of the non-payment of levies at any time prior to 1 January 2016 or from any other cause whatever. Prior to 15 January 2016 each of the HOA's shall furnish Bramber with a VAT invoice reflecting the amount due to them, the apportionment of the amount between the respective HOA's and shall at the same time furnish the Curators with details of the bank account into which the money must be paid.

4.3 The HOA's undertake that:

4.3.1 the levies of R60 000.00 per month shall not be increased during 2016;

4.3.2 if and when the levies payable in respect of any of the Sante Estate properties are increased, the levies in respect of the Hotel shall not be increased for one year as from Jan 2016-Jan 2017.

5. BOARD REPRESENTATION

The HOA's agree that with immediate effect after signature of this agreement, the curators shall be entitled to representation on the boards of trustees of each of the HOA's.

6. GOVERNANCE ISSUES

The parties undertake to co-operate with each other to try and regularise the governance and zoning issues at Sante Estate. In this regard, the parties agree that:

6.1 they shall act honestly and fairly in all their dealings with each other; and

6.2 they shall use their best endeavours to agree a quick and efficient deadlock breaking mechanism to resolve any differences which may arise between them without the need to resort to legal proceedings.

7. ORION LEASE

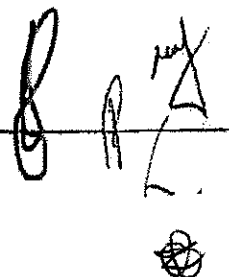
[Handwritten signatures and initials]

[Handwritten initials]

- 7.1. The Fidentia Properties and the movables relating to the Hotel are subject to a lease dated 28 March 2012 in favour of Orion for a period of 9 years 11 months as from 1 April 2012. The lease is a full maintenance and insurance lease in terms of which Orion is responsible for all costs relating to the Fidentia Properties, including all levies payable to the HOA's, rates and taxes and the like. In addition to the fixed rental the lease is also subject to a turnover rental.
- 7.2. The lease contains a 30 day right of first refusal in favour of Orion in the event of Bramber receiving an offer to purchase the Fidentia Properties. If Orion exercises the right of first refusal Bramber is entitled to terminate the lease subject thereto that in such event the purchaser "*shall, if so requested by the Tenant ... be required as a condition to the resultant sale to compensate the tenant in an amount (if any) agreed between the Buyer and the Tenant for the cancellation of this Agreement and failing such Agreement, an amount of compensation as determined by an Expert as fair and reasonable compensation for the Tenant attributable to the premature termination of this Agreement, if having regard to the profit the Tenant would have earned had the lease endured for its full term.*"
- 7.3. The curators record that Orion is presently substantially in arrears with its rent and various other payments, as a result of which it is their intention shortly to put Orion into liquidation and if it fails to pay timely, to terminate the lease.
- 7.4. The curators further record that in the event of the lease being cancelled it is their intention to close the hotel, pending its sale as more fully referred to below.
- 7.5. The HOA's undertake to keep the contents of this clause 7 confidential.

8. SALE OF FIDENTIA PROPERTIES.

- 8.1. The curators record that they have been granted authority by the Registrar to sell the Fidentia properties piecemeal, as is, "warts and all", to which end it is their intention shortly:
- 8.1.1. to call for tenders in respect of each of the properties;
- 8.1.2. to sell the "hotel" not as an hotel but as a guest house in accordance with its zoning.

Handwritten signatures and initials, including a large stylized signature, a smaller signature, and initials 'A' and 'Z'. There is also a small circular stamp or mark at the bottom right.

605

8.2. The curators undertake to grant the HOA's the opportunity, together with all other interested tenderers, to tender for any or all of the Fidentia Properties.

8.3. The curators further undertake to endeavour to align the interests of the curatorship with the interests of the HOA's regarding the sale of the Hotel, subject thereto that the interests of the curatorship shall at all times be paramount.

9. FULL AND FINAL SETTLEMENT

This settlement is intended to be a full settlement of all matters in dispute between the parties, it being agreed that no party shall have any further claim against any other, the cause of which arose prior to signature of this agreement. It is recorded that as from 1 January 2016 neither the Curators nor the Fidentia Property Companies nor Orion shall have any further liability under the court orders dated 6 November 2013 and 16 November 2015 referred to in 2.10.1.

10. REGISTRAR'S CONSENT

This agreement is subject to the written consent of the registrar, which the curators undertake to use their best endeavours to procure forthwith after signature of this agreement.

11. DOMICILIUM

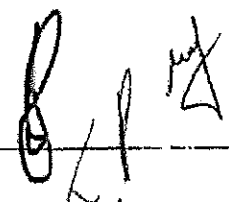
11.1. The parties choose *domicilium citandi et executandi* ("domicilium") for the purposes of giving any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement as set out in clauses 1.1.3 and 1.1.12 above.

11.2. Each of the parties shall be entitled from time to time, by written notice to the others, to vary its *domicilium* to any other address which is not a post office box or *poste restante*.

11.3. Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.

11.4. Any notice given and any payment made by one party to the others ("the addressee") which:

11.4.1. is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;





11.4.2. Is given by electronic mail shall be deemed to have been received on the first business day following transmission in which regard "business day" means any day of the week except a Saturday, Sunday or a public holiday.

11.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to its notwithstanding that it was not sent to or delivered at its chosen *domicilium*.

12. GENERAL

12.1. This document constitutes the sole record of the agreement between the parties.

12.2. No party shall be bound by any express or implied terms, representation, warranty, promise or the like not recorded herein.

12.3. No addition to, variation or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.




12.4. No extension of time or indulgence which either party ("the grantor") may grant to the other ("the grantee") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.



12.5. Each signatory signing this agreement in a representative capacity warrants his authority to do so.

12.6. This agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement as at the date of signature of the party last signing one of the counterparts.

SIGNED BY THE PARTIES AS FOLLOWS:

Place	Date	Signature
-------	------	-----------

Capetown 21/12/2015

J.A. Levin

For George Papadakis N.O. by whom I am duly
authorised hereto.

John Levin N.O.

For G Papadakis for and on behalf of
Bramber Property Ltd, by whom I am duly
authorised hereto.

For G Papadakis for and on behalf of
Fundev Property Investments (Pty) Ltd, by whom I am
duly authorised hereto.

Paarl- 21 Dec 2015

Bruce Glazer for and on behalf of
Akarana Home Owners' Association

Paarl - 21 Dec 2015

Jannie Coetzee for and on behalf of
La Bella Vita Wine Estate Property
Owners' Association

Stellenbosch - 21 Dec 2015

Rudi Krige for and on behalf of
Sante Winelands Body Corporate



Our Ref: G.Papadakis

28 September 2015

Drakenstein Municipality
Finance Department

Dear Sir

Account No: 018079100842; Account No: 018079100859; Account No: 058079100718 (Portion 47 Erf 791); Account No: 058079100677 (Portion 59 Erf 791); Account No: 058079100660 (Portion 52 Erf 791); Account No: 058079100811 (Portion 50 Erf 791)

Offer of Compromise

1. INTRODUCTION

- 1.1 We refer to the alleged debt outstanding on the accounts Bramber Property Ltd ("Bramber"), account numbers 058079100718 (Portion 47 Erf 791); 058079100677 (Portion 59 Erf 791); 058079100660 (Portion 52 Erf 791) and 058079100811 (Portion 50 Erf 791) and Fundev Property Investments Pty Ltd ("Fundev"), account numbers 018079100842 and 018079100859.
- 1.2 Bramber and Fundev are subsidiaries of Fidentia Holdings (Pty) Ltd. These companies form part of the business of the Fidentia companies which were placed under curatorship by the Western Cape High Court on 2 February 2007 at a time when the business had a liability to investors who had invested funds with Fidentia in excess of R1.366 billion. Since then the curators have only managed to make limited recoveries and, to date, to refund to investors an amount of slightly more than R324 million. As a result investors have to date suffered losses in excess of R1.042 billion, with the curators being left with essentially only the Sante properties still to dispose of for the benefit of investors. A copy of the curatorship order has previously been provided to you, in terms of which the process to be followed by any creditor, including the Drakenstein Municipality, who seeks to recover any amounts owing to it at the time that Fidentia was placed under curatorship, is clearly defined.

FIDENTIA ASSET MANAGEMENT (PROPRIETARY) LIMITED (Registration number 1998/024863/07),
(Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001
BRAMBER ALTERNATIVE (PROPRIETARY) LIMITED (Registration number 2000/024139/07),
(Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001
FIDENTIA HOLDINGS (PROPRIETARY) LIMITED (Registration number 2001/022355/07),
(Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001

CURATORS : JOHN LEVIN , GEORGE PAPADAKIS CA (SA)

005

1.3 From an analysis of the amounts recorded to constitute the outstanding debt for the period ended 05 2015, the following becomes apparent:

- The total outstanding debt as at period ended 05 2015 is:

Account Number	Amount R
018079100842	633 890.69
018079100859	1 238 851.65
058079100718 (Portion 47 Erf 791)	23 801.80
058079100811 (Portion 50 Erf 791)	151 027.26
058079100660 (Portion 52 Erf 791)	186 387.97
058079100677 (Portion 59 Erf 791)	120 806.11
TOTAL	2 354 765.48

- The monthly rates are levied in accordance with the valuation assigned to the properties by Drakenstein Municipality. Implicit in the valuation assigned to the properties must be a determination of what the properties are utilized for. In this case the operation of a commercial enterprise in the form of a Hotel, Spa and Conference Centre. It would accordingly follow that the commercial viability of the operation should not be adversely impacted upon by circumstances beyond its control. In line with this

FIDENTIA ASSET MANAGEMENT (PROPRIETARY) LIMITED (Registration number 1998/024863/07),
 (Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001
BRAMBER ALTERNATIVE (PROPRIETARY) LIMITED (Registration number 2000/024138/07),
 (Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001
FIDENTIA HOLDINGS (PROPRIETARY) LIMITED (Registration number 2001/022355/07),
 (Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001

CURATORS : JOHN LEVIN , GEORGE PAPADAKIS CA (SA)

405

submission, we also request that Drakenstein Municipality review the municipal valuations attaching to the above mentioned properties.

- The commercial operation has both prior to and after curatorship has traded at a loss. These losses have been funded by investor funds, particularly funds invested by thousands of widows and orphans. The primary cause for the commercial operation not being in a position to trade profitably has been the lack of available rooms. Should the applicable zoning be adequately enforced for individual Spa Suite and Villa Owners this would have negated the incurring of these losses over many years. Clearly, adequate rooms would have been available and the property in question would have become a commercially viable enterprise, ergo warranting the valuation and correct calculation for charging of rates and taxes.
- The affected ratepayers respectfully submit that under the circumstances the imposition of interest is not appropriate and requests that the full interest accrued on the accounts identified above be compromised based on the reasons and explanations set out above.

1.5 PROPOSED SETTLEMENT

As responsible ratepayers we propose the following settlement:

- The total interest accrued on the affected accounts be compromised, and future interest charges be suspended;
- A 50% discount on the capital balance as determined after remission of the interest be granted on the affected accounts;
- Drakenstein Municipality agrees to immediately enforce the applicable zoning regulations on all of the relevant title holders and body corporate's active and non-active on Sante Estate. This in itself will greatly assist in bringing the hotel back to commercial viability and allow it to meet its debt obligations.
- The curators will immediately, once agreement has been reached with Drakenstein Municipality make monthly payments of R100 000.00 (one hundred thousand rand) until such time as the outstanding balances, as calculated above, on the affected accounts have been settled in full;
- The curators undertake to ensure that future monthly rates as levied are then settled timeously.

Funds to give effect to settlement of this offer will be made available by the curators from funds that would otherwise be available for distribution to the investors whose funds were invested

FIDENTIA ASSET MANAGEMENT (PROPRIETARY) LIMITED (Registration number 1998/024863/07),
(Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001
BRAMBER ALTERNATIVE (PROPRIETARY) LIMITED (Registration number 2000/024139/07),
(Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001
FIDENTIA HOLDINGS (PROPRIETARY) LIMITED (Registration number 2001/022355/07),
(Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001

CURATORS : JOHN LEVIN , GEORGE PAPADAKIS CA (SA)

 005

with Fidentia. By far the majority of the affected investors comprise widows and orphans. The funds that would be made available, from investor funds, will be sufficient to settle the full amount tendered as settlement. Settlement will be effected immediately upon signature of the settlement agreement.

We humbly request that this application for compromise of debt be favourably considered.

Should you have any queries, please do not hesitate to contact me and I hold myself available to discuss the proposed settlement at your convenience.

Yours faithfully

G.Papadakis

CO-CURATOR: FIDENTIA GROUP

Cell:083 7007 824

FIDENTIA ASSET MANAGEMENT (PROPRIETARY) LIMITED (Registration number 1998/024863/07),
(Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001
BRAMBER ALTERNATIVE (PROPRIETARY) LIMITED (Registration number 2000/024139/07),
(Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001
FIDENTIA HOLDINGS (PROPRIETARY) LIMITED (Registration number 2001/022355/07),
(Under final curatorship in terms of Section 5 of the Financial Institutions (Protection of Funds Act) 28 of 2001

CURATORS : JOHN LEVIN , GEORGE PAPADAKIS CA (SA)

Handwritten signature and initials, possibly 'COS'.

John Levin

From: John Levin
Sent: 16 November 2015 12:30 PM
To: Richard Marcus (Richard.Marcus@cdhlegal.com)
Cc: George Papadakis (georgep@gfia.co.za); Caroline Da Silva (Caroline.DaSilva@FSB.co.za); Stefanus Rossouw (Stefanus.Rossouw@fsb.co.za); John Levin
Subject: Fidentia/CDH: fee dispute

Dear Richard

Your letter of 11 November 2015 refers.

I am very sorry for the delay in following through on our settlement of 28 August 2015. The background to this is that subsequent to our agreement George Papadakis has undertaken a further detailed analysis of all invoices emanating from your office, as also of all statements in which you account for monies held in trust. The statements show what monies were deducted from the trust monies to settle various of your accounts, as per the practice then prevailing. He has apparently found and so reported to the Registrar, that he has found numerous amounts paid for from the trust funds for which he contends there was no authority given to do so. In other instances he says that he has found a number of invoices which did not relate to work done on Fidentia's behalf but on behalf of third parties and were paid for out of Fidentia monies. In his view, the curators have a substantial claim against CDH on the investors behalf arising from what he has found.

This has obviously given rise to serious concern on the part of the Registrar who is now obliged to look into the matter more fully and it is quite possible that she may in the future consider it necessary to address your firm in this regard. The registrar is sensitive to the reputational fallout for all concerned, which could arise from any such dispute and it is my understanding that if she were to come to the conclusion that there are grounds for instituting a claim, she would first wish to meet with you to discuss the claim before authorising further action in respect thereof

In the meantime, after careful consideration, the Registrar has formed the view that the settlement which you and I concluded was intended to be a settlement of all the issues then in dispute, namely those relating to CDH's claim for the balance of R2.8 million which you contended was then due. It was never intended to cover any other claims which might subsequently be discovered and was not in the contemplation of either of the parties at the time of concluding the settlement.

The registrar has accordingly instructed George to honour our agreement of 28 August 2015 and pay you the R1 million without further delay. I anticipate that you should receive the money during the course of this week.

Yours sincerely
 John



John Levin
 ATTORNEY

A member of the Corporate Law Alliance

T. (0)21 670 5817 F. +27 (0)86 581 9868 C.+27 (0)82 441 9777 E. john@corporatelaw.co.za
 First Floor, Oakdale House, The Oval, 1 Oakdale Rd, Claremont, 7708 P.O. Box 6186, Roggebaai, 8012, Cape Town, South Africa

www.corporatelaw.co.za

Confidentiality Caution: This email contains information that is privileged or confidential and is intended for the exclusive attention of the person addressed in the salutation. If you are not the intended recipient, kindly notify us immediately and delete the original message

Handwritten initials and number: CD5



CLIFFE DEKKER HOFMEYR

11 Buitengracht Street Cape Town 8001
P O Box 685 Cape Town 8000
South Africa
Dx 5 Cape Town

T +27 21 481 6300
F +27 21 481 6388 / 419 5809
E ctn@cdhlegal.com
W www.cliffedekkerhofmeyr.com

Also at Johannesburg

Corporate Law alliance
CLAREMONT

Attention: John Levin

Email: john@corporatelaw.co.za

Our Reference R E Marcus/cvdw/C058
Account Number 10133507
Your Reference
Direct Line 021 481 6396
Direct Telefax 021 481 9556
Direct e-mail Richard.marcus@cdhlegal.com
Date 25 November 2015

Dear John

FIDENTIA

- 1 I refer to this matter and to your email of 16 November 2015.
- 2 I confirm that we have received payment of the amount of R1 million and that you have requested George to arrange for the payment of the VAT in the amount of R140,000.
- 3 I do not propose, at this stage, to deal in detail with the allegations passed on by George – suffice to say that we have heard these rumblings before and, despite requests that clarity and detail be provided to back up what are really quite scurrilous allegations, nothing has been forthcoming.
- 4 As far as we are concerned, the matter has been settled. Should there be any further issue arising post-payment, we will deal with this appropriately.
- 5 Thank you for your efforts in bringing this matter to a conclusion.

Kind regards

RICHARD MARCUS
CLIFFE DEKKER HOFMEYR INC
#4033289v1

CHAIRMAN AW Pretorius CHIEF EXECUTIVE OFFICER B Williams CHIEF FINANCIAL OFFICER ES Burger

DIRECTORS: JOHANNESBURG A Abro N Alini JA Aukema CD Baird CA Barclay R Beerman E Bester P Bhagatjee R Bonnel TE Brincker IH Burger CWJ Chaner M Chenis CJ Daniel EF Dempster CJ de Villiers S de Vries ML du Preez L Erasmus BV Faber JJ Feris TS Fletcher L Franca TG Fuhrmann F Gatto MZ Gatto S Gill SB Gore J Govender AJ Hofmeyr Q Honey WH Jacobs WH Janse van Rensburg CM Jesseman JCA Jones TTM Kali BL King J King Y Kleiman LJ Kruger J Latsky AM le Grange FE Leppan MW Livington BC Meesdorp Z Malinga G Masina Z Mayot HW Monnen B Meyer WJ Midgley R Moodley MG Mphahudi GL Noeth SP O'Connor N Parbhoo A Patel JS Pennington GH Pienaar V Pityay DB Pinrock AM Polglater AW Pretorius AG Reid M Serfontein P Singh-Dhulam NTY Siwundu P Swart WHH Thyne D Vallebb HR van der Merwe JJ van Dyk WPS van Wyk NJ van Ey JS Webber JG Whittle DA Wilken B Williams LD Wilson JM Wills-Hewinson MP Yeates

DIRECTORS: CAPE TOWN AC Alexander RD Barendse TJ Brevin MA Bromley MR Collins HC Dagut A de Lange LF Egypt GT Ford S Franks DF Fyter SAP Gie JW Green AJ Hannie AM Heiberg PB Hesseling CI Hindley RC Horn S Inimolmen JH Jacobs R Jäga A Keriem IJ Lessing GC Lumb RE Marcus SI Meyer A Moolman NW Muller J Neser FT Newham G Orris CH Pienaar L Rhoadie MB Rodgers BT Rubinstein S Singh BPA Strauss DM Thompson CW Williams TJ Winstanley

EXECUTIVE CONSULTANTS: HS Coetzee PJ Conradie MB Jackson

CONSULTANTS: A Abercrombie JMA Evenhuis EJ Kingdon FF Koibe

SENIOR ASSOCIATES: F Ameer-Maj G Barkhuizen-Barboss B Brown L Brunton K Caddy E Cheng NS Cornie J de Vos YM Duvvuri L Engelbrecht T Erasmus TV Erasmus P Jan T Jordaan KJ Keeney JA Kripe H Laing CJ Lewis HJ Louw NS Mbanzisa N Mchunu N Miz T Moodley CP Müller DJ Naidoo AP Pityay KS Plots B Pollastri NA Preston JR Ripley-Evans BJ Scybs T Sulimen FJ Terblanche T Tosen M Treurnicht R Velayutham M van Zwaai MF Ward NI Zwane

CLIFFE DEKKER HOFMEYR SERVICES PROPRIETARY LIMITED DIRECTORS: ES Burger JA Casselle AB Hoek Z Omar R van Eecen B Williams

*Brush *Canadian =Dutch *Zimbabwean Cape Town Managing Partner


Cliffe Dekker Hofmeyr Inc Reg No 2008/018923/21

Handwritten initials and scribbles at the bottom right corner.

CERTIFICATE IN TERMS OF CLAUSE 9.3 OF THE LEASE DATED 28 MARCH 2012 BETWEEN BRAMBER PROPERTIES LTD ("BRAMBER") AND FUNDEV PROPERTY INVESTMENTS (PTY) LTD ("FUNDEV") AS LANDLORDS AND ORION HOTELS AND RESORTS (PTY) LTD ("ORION") AS TENANT IN RESPECT OF THE PROPERTY SITUATED AT SANTE WINELANDS ESTATE

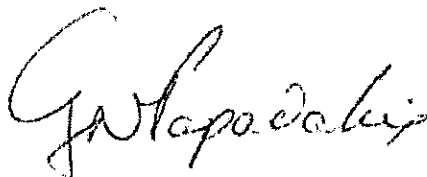
I, the undersigned, GEORGE PAPADAKIS, do hereby certify:

1. I am a co-curator of Fidentia Asset Management (Pty) Ltd, Bramber Alternative (Pty) Ltd and Fidentia Holdings (Pty) Ltd (hereinafter collectively referred to as "the Fidentia companies") having been appointed by order of the High Court, Cape Town, on 1 February 2007, which order was confirmed on 12 April 2007. I am duly authorised by my co-curator, John Levin, to issue this Certificate. John Levin was appointed co-curator in the place of Dines Gihwala by Order of the High Court, Cape Town, on 15 August 2014, which Order was made final on 2 October 2014.
2. In terms of paragraph 2 of the Order dated 1 February 2007 placing the business of the Fidentia companies under curatorship, the curators are *"vested with all executive powers which would ordinarily be vested in, and exercise by, the board of directors or members of the companies, whether by law or in terms of their articles of association, and the present directors, members or managers of the companies shall be divested of all such powers in relation to the business"*. Inasmuch as Bramber and Fundev, which companies form part of the business of the Fidentia companies, are not themselves under curatorship, I certify the certificate in my capacity as the sole director of the companies.
3. I certify that on 30 November 2015 Orion was indebted to the Lessors in terms of the lease in the total amount of 2 799 735.66 made up as follows:
 - 3.1 in respect of rental an amount of R1 149 735.66;
 - 3.2 in respect of rates an amount of R1 350 000.00;
 - 3.3 in respect of the deposit which Orion is obliged in terms of clause 7 of the lease to have replenished after having been called upon to do so on 9 December 2014, an amount of R300 000.00;
4. I furthermore certify that on 30 November 2015 Orion was also indebted to the Landlords:

 605

- 4.1. in respect of security at the guard house at the entrance of the estate an amount of R354 144.00, being payments made to the Akarana Home Owners Association, La Bella Vita Home Owners Association and Sante Winelands Body Corporate, pursuant to a court order dated 6 November 2013 as read with the court order dated 16 November 2015;
- 4.2. In respect of legal fees in respect of which Orion undertook to pay half, an amount of R383 630.87
5. I attach a schedule reflecting how the various amounts referred to above are made up.
6. I furthermore certify that as at 15 January 2016 Orion was also indebted to the landlords in the sum of R1 997 667.40 in respect of arrear levies for the period 1 April 2012 to 31 December 2015 calculated as follows:-
- 6.1 As referred to in paragraph 12.7.6 of the lease, the landlords have been in a dispute with the Home Owners Associations of the various components making up the Sante Winelands Estate (HOAs), which dispute was settled on 21 December 2015;
- 6.2 In terms of the Settlement Agreement, the landlords paid the HOAs the sum of R4 750 000 on 15 January 2016.
- 6.3 Orion's pro rata share of the sum of R4 750 000.00 amounts to R1 997 667.40 being 45 months at an average of R44 392.52 per month.
7. I certify that the total amount due to the landlords as reflected in this Certificate amounts to R5 535 177.93.

Dated at JOHANNESBURG of this 15th day of JANUARY 2016.



George Papadakis



FIDENTIA ASSET MANAGEMENT (PROPRIETARY) LIMITED (Reg: 1998/024863/07)
BRAMBER ALTERNATIVE (PROPRIETARY) LIMITED (Reg: 2000/024139/07)
FIDENTIA HOLDINGS (PROPRIETARY) LIMITED (Reg: 2001/022355/07)
[All three companies are under curatorship and are referred to as "the Fidentia companies"]

c/o John Levin
Corporate Law Alliance
The Oval
1 Oakdale Road
Claremont
7708

c/o J Levin
P O Box 6186
Roggebaai
8012
Tel: 021 670-5817
Fax: 021 674-5220

eMail: john@corporatelaw.co.za

15 January 2016

Orion Hotels and Resorts (Pty) Ltd
16th Floor, Orion House
49 Jorissen Street
BRAAMFONTEIN
JOHANNESBURG

Per Fax: +21 011 718 6458

Per email: fameiner@oriongroup.co.za
cc: Andrew Henderson andrewh@oriongroup.co.za

Attention: Mr Franz Gmeimer

Dear Sirs

LEASE DATED 28 MARCH 2012 BETWEEN BRAMBER PROPERTIES LTD ("BRAMBER") AND FUNDEV PROPERTY INVESTMENTS (PTY) LTD ("FUNDEV") AS LANDLORDS AND ORION HOTELS AND RESORTS (PTY) LTD ("ORION") AS TENANT IN RESPECT OF THE PROPERTY SITUATED AT SANTE WINELANDS ESTATE

1. I am writing to you on behalf of Bramber and Fundev, your landlords in respect of the Sante Hotel and other properties let to you in terms of the above lease. I do so in my capacity as a co-curator of the Fidentia companies being duly authorized hereto by my co-curator, George Papadakis.
2. I attach a certificate dated 15 January 2016 which reflects that as at 30 November 2015 you were indebted to your landlords in the sum of R3 537 510.53 made up as follows:
 - 2.1 in respect of rental an amount of R1 149 735.66;
 - 2.2 In respect of rates an amount of R1 350 000.00;

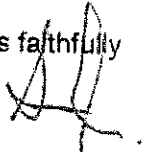
Curators: G Papadakis; J A Levin

- 2.3 in respect of the deposit which Orion is obliged in terms of clause 7 of the lease to have replenished after having been called upon to do so on 9 December 2014, an amount of R300 000.00;
- 2.4 in respect of security at the guard house at the entrance of the estate an amount of R354 144.00, being payments made to the Akarana Home Owners Association, La Bella Vita Home Owners Association and Sante Winelands Body Corporate (collectively hereafter referred to as the "HOAs"), pursuant to a court order dated 6 November 2013 as read with a court order dated 16 November 2015;
- 2.5 in respect of legal fees in respect of which Orion undertook to pay half, an amount of R383 630.87.
3. In accordance with the provisions of clause 18.1.1 of the Lease, I hereby give you notice that unless the full amount of R5 537 177.93 is paid within 5 (five) days of receipt of this letter, the Lease will on expiration of the said period automatically be cancelled without further notice.
4. It has come to our attention that in contravention of the provisions of clause 17.2 of the Lease you have let the suite of offices above the conference center to "Zamgroup" which is conducting its business from there. You are hereby called upon in accordance with the provisions of clause 18.1.2 of the Lease, to comply with the provisions of sub-paragraphs 4.1 and 4.2 below within 10 (ten) days of receipt of this letter, failing which the Lease will on expiration of the said period automatically be cancelled without further notice, namely:-
- 4.1 to ensure that Zamgroup ceases doing business from the premises and vacates the offices;
- 4.2 to account to us in respect of all rent received by you during the time that the premises have been let to Zamgroup.
5. I am pleased to inform you that we have been able to settle all the outstanding disputes with the HOA's on the basis that:
- with effect from 1 January 2016 the lessors will pay the HOA's levies in the sum of R60 000.00 per month, apportioned as follows:
 - R30 000.00 made up as to R6 000.00 per villa for the lessors' 4 villas and R6 000.00 for their 1 spa unit, which will be payable at the same time and the same rate as payable by all other villa and spa unit owners; and
 - R30 000.00 in respect of the hotel, conference facility and spa,the total of which levies will be payable at the same time as levies are payable by all villa and spa unit owners.
 - on 15 January 2016 your landlords would pay and have paid the HOA's the sum of R4.75 million in full and final settlement of all outstanding levies, as a result of which you are indebted to the landlords in the sum of R1 997 667.40 being your

pro rata share of the said amount of R4.75 million, i.e. 45 months at an average of R44 392.52 per month.

6. You are accordingly hereby called upon forthwith to commence payment of levies at the rate of R60 000.00 per month with effect from 1 January 2016 against the issue to you by us of a VAT invoice for the said amount. Payment of the monthly levies must be made to us and we, in turn, will pay the HOA's. Furthermore, you are hereby called upon to pay the sum of R1 997 667.40 within 5 (five) days of receipt of this letter, failing which this Lease will automatically be cancelled on expiration of the said period.
7. If having paid the total of the amounts demanded above, namely R5 537 177.93 within the aforesaid periods of 5 (five) days, you fail to comply with the demands made in paragraph 4 of this letter within 10 (ten) days of receipt of the letter, the Lease will be cancelled automatically without further notice on expiration of the said period.
8. If you fail to comply with the provisions of paragraphs 6 or 7 of this letter, you will be required to vacate the premises by 31 January 2016, failing which legal proceedings will be instituted against you for your eviction.

Yours faithfully



J A LEVIN

John Levin

From: John Levin
Sent: 18 January 2016 04:14 PM
To: Franz Gmeiner (fgmeiner@oriongroup.co.za); 'Andrew Henderson' (andrewh@oriongroup.co.za)
Cc: Barry Adams; John Levin
Subject: LEASE DATED 28 MARCH 2012 BETWEEN BRAMBER PROPERTIES LTD AND FUNDEV PROPERTY INVESTMENTS AS LANDLORDS AND ORION HOTEL & RESORTS AS TENANT IN RESPECT OF PROPERTY SITUATED AT WINELANDS ESTATE

Attention: Mr Franz Gmeiner

Dear Sirs

We refer to the letter of demand emailed and faxed to you on 15 January 2016.

We wish to draw to your attention that the amount of "R5 537 177.93" in paragraph 3 of the said letter is incorrect and should read "R3 537 510.53", being the amount of indebtedness set out in paragraph 2, as should be apparent from the context. The error is hereby corrected.

Yours faithfully

John Levin




John Levin
ATTORNEY

A member of the Corporate Law Alliance

T. (0)21 670 5817 F. +27 (0)86 581 9868 C. +27 (0)82 441 9777 E. john@corporatelaw.co.za
First Floor, Oakdale House, The Oval, 1 Oakdale Rd, Claremont, 7708 P.O. Box 6186, Roggebaai, 8012, Cape Town, South Africa

www.corporatelaw.co.za

Confidentiality Caution: This email contains information that is privileged or confidential and is intended for the exclusive attention of the person addressed in the salutation. If you are not the intended recipient, kindly notify us immediately and delete the original message

 605

John Levin

From: John Levin
Sent: 01 February 2016 07:53 AM
To: De Villiers Coriaan; Brendan Manca; Ashley Adriaans; George Papadakis; John Levin
Subject: Fwd: ORION HOTELS AND RESORTS (PTY) LTD ("OUR CLIENT") - SANTE WINELANDS ESTATE / LEASE DATED 28 MARCH 2012 BETWEEN BRAMBER PROPERTIES LTD ("BRAMBER") AND FUNDEV PROPERTY INVESTMENT (PTY) LTD ("FUNDEV")
Attachments: Annexures A and B to email dated 160129 to CDH.pdf; ATT00001.htm; Annexures C, D and E to email dated 160129 to CDH.pdf; ATT00002.htm; LIST OF ANNEXURES TO LETTER DATED 29 JANUARY 2016 ADDRESSED TO LIQUIDATORS.docx; ATT00003.htm

F Y I

Sent from my iPhone

Begin forwarded message:

From: Sheila - Secretary to Mr Ross Munro <litsec@viningc.co.za>
Date: 01 February 2016 at 7:26:34 AM SAST
To: <john@corporatelaw.co.za>
Cc: <georgep@gfia.co.za>
Subject: ORION HOTELS AND RESORTS (PTY) LTD ("OUR CLIENT") - SANTE WINELANDS ESTATE / LEASE DATED 28 MARCH 2012 BETWEEN BRAMBER PROPERTIES LTD ("BRAMBER") AND FUNDEV PROPERTY INVESTMENT (PTY) LTD ("FUNDEV")

Ross Munro Attorneys

Attorney-at-Law
George Ross Munro BA LLB (Natal)
Assisted by:
 Stefan De Bruyn [B.com](http://www.b.com) LLB (NWU)

44B Wierda Road West
 Wierda Valley
 SANDTON, 2196
 Tel: (011) 784-1970
 Fax: 086 699 8531
 Docex 28, NELSON MANDELA SQUARE
 P O Box 9366, Johannesburg, 2000
 Email: litigation@viningc.co.za

OUR REF: Mr R Munro/sd/A31/253

YOUR REF: Mr J Levin

29 January 2016

**BRAMBER PROPERTY LIMITED AND FUNDEV PROPERTY INVESTMENTS (PTY) LTD
 AND FIDENTIA ASSET MANAGEMENT (PTY) LTD (UNDER CURATORSHIP)
 "THE FIDENTIA COMPANIES"**

C/O THE JOINT CURATORS

MR. GEORGE PAPADAKIS & JOHN LEVIN

PER E-MAIL: john@corporatelaw.co.za; georgep@gfia.co.za

And to:

THE LANDLORD
C/O CLIFFE DEKKER HOFMEYER INC
11 Buitengracht Street
Cape Town 8001
Fax: (021) 405 6199
Attention: Mr. D Gihwala

Dear Sirs

OUR CLIENT: ORION HOTELS AND RESORTS (PTY) LTD ("OUR CLIENT") – SANTE WINELANDS ESTATE / LEASE DATED 28 MARCH 2012 BETWEEN BRAMBER PROPERTIES LTD ("BRAMBER") AND FUNDEV PROPERTY INVESTMENT (PTY) LTD ("FUNDEV")

We act on behalf of our abovenamed client who has handed to our offices a copy of your email dated the 15th instant addressed to our client for our perusal and reply.

We are instructed by our client to place on record:

1. **BREACH NOTIFICATION – CAPACITY TO ADDRESS CORRESPONDENCE**

- 1.1 We note that the capacity under you purport to address our client and in which Mr. Levin and Mr. Papadakis (hereinafter referred to as "Levin" and "Papadakis") allege being authorized to address your letter under reply, such authority allegedly stems from their appointment as curators to the Fidentia Group of companies.
 - 1.2 For the record, neither Bramber or Fundev were placed under the same curatorship as the other Fidentia group companies and for this reason our client disputes the capacity of Papadakis to sign such certificate of balance and your authority to act.
 - 1.3 We further record that the certificate of balance, while detailing various other issues, fails to set out Levin's authority to address the correspondence under reply as alleged and assume that there must be another formal resolution of the curators which provides authority to demand the payments. We suggest you provide a copy thereof.
2. Be that as it may, we are instructed to deal with the contents of your letter under reply *ad seriatum* and do so hereunder. Kindly note however that our failure or omission to answer to each and every specific allegation therein contained, shall not be construed in any way as an admission of the

allegations contained therein, and our client reserves the right to reply thereto at a later stage, should and when same becomes necessary.

3. **BREACH NOTIFICATION CORRESPONDENCE**

AD PARAGRAPHS 2.1 – 2.5

- 3.1 Our client denies that it is indebted to the landlords either as alleged or at all.
- 3.2 Our client disputes such indebtedness as purported in the certificate of balance being relied upon, as well as the validity of the said certificate for the reasons as set out hereunder.
- 3.3 The certificate of balance signed by Papadakis makes reference to a schedule as to how the alleged amounts claimed are calculated. This schedule neither features as an annexure to the said correspondence under reply, nor does it appear as an annexure to the attached certificate of balance.
- 3.4 Furthermore, we are instructed that insofar as any alleged rental owing is concerned, the curators have been advised on more than one occasion that the fixed rental charged cannot be sustained given the income derived from the properties, which has been negatively affected by the declining number of rooms at our client's disposal. With the limited number of rooms available, the hotel fails any business model and becomes a non-viable entity. This fact has been conveyed by the curators themselves to the FSB ("the Financial Services Board") in their reports and also appears from the report filed by Grant Thornton.
- 3.5 Our client has further made several requests of the co-curators to grant a remission of rental based on the failing business model for these reasons.
4. In the circumstances, our client deems it prudent for the purposes of background, as well as support of our client's contentions which in turn will further set the basis for the arguments against the alleged indebtedness to follow, to record a brief synopsis of what transpired at the conclusion of the lease as well as what transpired thereafter during the lease period, including the actions taken by the curators, or lack thereof, which has led to the present situation. The events are summarized hereunder as follows:
- 4.1 At the time of negotiating the lease it was made clear to the curators that our client's business model for running a successful concern, as developed specifically for the Sante Hotel, was based on the assumption that a certain number of rooms would be made available for our client. Anything less than the required number of rooms would,

605

in our client's experience in operating other hotels throughout South Africa, cause the hotel business not to be a viable option for consideration.

- 4.2 Our client was assured by the curators, who themselves were laboring under the impression that the required number of rooms would be made up by the available Spa Suites rooms, that given the current zoning of the properties and the rules of the Sectional Scheme that our client would have access to a more than sufficient number of rooms in order to transact its well established business model.
- 4.3 At no point was it brought to the attention of our client, nor was it ever foreseen, that the Spa Suites could and would be withdrawn from the rental pool by the registered owners for their own personal and private gain. To the contrary it was at all material times represented to our client that these Spa Suites, given the zoning requirements which had been imposed on the properties at the time of creation of the Sante Winelands Estate, had to be made available to the hotel operator as part of the zoning requirement as well as the rules of the Sectional Scheme in which these suites were situated. As such the hotel was represented to our client as being a 64 room operation (inclusive of the Spa Suite rooms) and as such the rental was fixed on this basis. (See annexed zoning conditions and villa and spa suite footprints - Annexure "A").
- 4.4 The ultimate result of aforementioned withdrawal of the rooms from the rental pool by the registered owners was that our client's business model faltered given that the rental and fixed costs for the hotel remained the same despite the declining number of rooms. The conference centre and amenities were all developed with a much larger operation in mind (i.e. the inclusion of guests from the Spa Suites).
- 4.5 Our client was forced as a result of the declining number of rooms to turn away several conferences on a regular basis due to the hotel not being able to accommodate the number of guests with the number of rooms available. The resultant effect of the aforementioned was that the hotel became unable to meet the monthly payments towards levies, operational costs and rentals under the lease agreement from the minimal income being derived.
- 4.6 This was conveyed to the curators on several occasions and was even featured in a report made by the curators as part of their reporting function to the FSB wherein it was admitted that the hotel's lack of profitability was as a direct result of the number of rooms.

4.7 It is further noted that the curators were aware of the zoning issues as far back as 2014 given that they had site of a planning memorandum from Mr. Tommy Brummer, however nothing was done to rectify the situation. (See annexed e-mail correspondence enclosing report from Mr. Brummer – Annexure "B"). The curators further addressed the issues of the zoning with the members of the HOA ("Home Owners" Association") and brought to their attention the resultant issues stemming from the conduct of the Spa Suite owners in relation to the contravention of the zoning. However nothing concrete was done about the situation and the curators never enforced the zoning requirements on the Spa Suite Owners. Had this been done and the rooms made available, the model may have been turned around. (See attached letter from Levin dated 21 October 2014 – Annexure "C").

5. We now turn to the allegations pertaining to the replenishment of the deposit allegedly due by our client:

5.1 While the deposit constitutes a security (and not an indebtedness as alleged in the certificate of balance) in favour of the Landlord in so far the landlord has the right apply same to any liability of the Tenant in terms of the lease, the lease however requires that:

5.1.1 the liability against which the deposit may only be set off against must be a liability for which the Tenant is responsible; and

5.1.2 the deposit must be invested in an interest bearing account with interest to accrue to the benefit of the Tenant; and

5.1.3 the Tenant is only liable to reinstate, and consequently the Landlord can only demand the reinstatement of the balance of the deposit, once the Landlord has notified the Tenant in writing as to the amount so utilized.

5.2 We again record that the alleged liability against which the deposit was seemingly utilized is disputed. Furthermore, the Landlord has not accounted to our client for what interest was earned or utilized. Be that as it may, once the issue of the arrear rental in relation to our client's claims have been resolved, our client will ensure that the deposit is reinstated, provided that there is no balance owing by the curators to our client. If the curators wish to apply a strict interpretation of the lease our client will pay the amount of R300 000 under protest to reinstate the deposit and add same to its claim against the Landlords, alternatively the estate under curatorship. Kindly advise how you wish to proceed in this regard.

5.3 With regard to the issue of the alleged arrears pertaining to the security cost, this has always been a disputed issue and the fact that it features

here once again without due regard to the various litigious efforts by the curators to dispute the security costs, as supported by our client, is tantamount to a deliberate distortion of the facts.

- 5.4 Owing to the fact that your letter under reply, by the very absence of at least a recordal of the true set of events leading up to the alleged indebtedness, as claimed, again seeks to portray a certain delinquency on part of our client, we are forced to record for background purposes the events that transpired in this regard in order to support of the dispute as raised against the amount claimed:
- 5.4.1 It is common cause that an order of court was granted on the 6th of November 2013 whereby the curators and the HOA came to an agreement that the minimum payment per month for which the curators would be liable would be an amount that was the equivalent of the cost to hire one grade D category guard;
- 5.4.2 In fact the court set maximum amount for this cost as being an amount of R 30 000 with the proviso that if the cost for such category guard was less than the benchmark placed then the lesser amount would prevail;
- 5.4.3 As a consequence thereof our client took the liberty of sourcing a security firm which could provide a grade D guard and obtained a quote for R 16 416,00. It must be noted that this quote was one of 3 quotes and was the middling of the three quotes sourced. our client has since made payments on behalf of the co curators on the basis of the middling quote received;
- 5.4.4 Despite this the curators saw fit to make payment of R 30 000 per month in the hope of reaching a settlement with the HOA with regard to their various other disputes. Sometime during 2014, they ceased the payments of R 30 000 due to a breakdown of negotiations and adopted to adhere strictly to the terms of the court order (being the actual cost of a grade D guard);
- 5.4.5 This then culminated in the HOA issuing incorrect warrants based on their misguided interpretation of the court order of the 6th of November 2013 and made an attachment on the movable at the hotel. The curators then brought an interdict on a semi urgent basis to stay the warrants and have same set aside. In their replying papers, the curators reference the dispute as to the security costs and the difference in interpretation and their acts in terms of their strict interpretation of the court order;

- 5.4.6 Despite all of the above, the curators then attended to a complete 360 degree turn around and agreed (without the knowledge nor consent of our client) to the HOA's version (while the interpretation of the court order still to this day remains open for challenge) and further conceded to payments as per the HOA's figures.
- 5.5 As such it is our client's contention that it has been making payments to and on behalf of the curators the amount as per the November 2013 court order. According to our records our client has to date made payments of approximately R 400 000 in relation to the security costs.
- 5.6 It must however be noted and recorded that despite the orders of court obtained in relation to the payment of the security costs, the security costs paid by our client should have been covered by the levy raised by the Sante Winelands Body Corporate given that all of its members also received a benefit from this security.
- 5.7 As such the amount paid by our client insofar as the security is concerned should have been negotiated as an offset against the levies ultimately agreed to by the curators and the HOA. Failure to do so has resulted in our client having a claim against the curators, alternatively the Body Corporate for damages amounting to the value of what has been paid to date.
- 5.8 With regard to the legal fees, we again deem it prudent to set the record straight given that the content of your letter under reply creates a distorted version of that which was actually agreed upon.
- 5.9 The "undertaking" which the curators rely emanated from an informal telephonic discussion between Papadakis for the curators and Mr. Gmeiner on behalf of our client. The discussion took place at the time when the curators were dealing with the opposition of the security application brought by the HOA.
- 5.10 Our client was under no obligation to make payment of the legal costs given that it had not joined issue nor filed any documentation in opposition in this regard. Mr. Gmeiner as a gesture of good will did indeed offer to pay half of the curator's legal costs pertaining only to the security application at the time which culminated in the order of the 6th of November 2013.
- 5.11 This offer however was based on the assumption that our client's portion of the legal costs would amount to no more than R 200 000. This undertaking was however further contingent on our client being presented with the bill prior to taxation (which never took place).

- 5.12 In line with Mr. Gmeiner's undertaking, our client has already paid R 200 000 towards the legal costs. As such we deem this dispute to be a non-issue. Should the curators wish to press this issue then we would be pleased to see the bill of taxed costs which purportedly justify the curator's demands in order to review same.

6. **AD PARAGRAPH 3**

- 6.1 The content of this paragraph is denied in so far as the indebtedness claimed is due and owing and the curators are put to the proof thereof.
- 6.2 Our client's disputes as to the alleged indebtedness have already been hereby noted and as such we dispute any alleged automatic cancellation of the lease by virtue of an alleged breach which has not been remedied.
- 6.3 We specifically record that the curators are not entitled to claim any form of breach on the part of our client where they themselves are currently in breach and have not resolved same. In this regard we refer the curators to the breach notification from our client dated the 13th of January 2015 (a copy of which is annexed hereto – Annexure "D").
- 6.4 Moreover we confirm that we will oppose any relief sought on the part of the curators for either the cancellation of the lease, the eviction of our client or any of its personnel or any action launched to recover the amount allegedly owing.

7. **AD PARAGRAPH 4**

- 7.1 Our client is astounded to hear that the sub-lease to the said sub-tenant is purported to be without knowledge or acceptance by the curators. We record that consent to sublet the office suite was brought to the attention of the curators and request for permission was requested under the auspices of our general manager at the time, Bruce Walker. The consent was provided subject to the HOA not objecting, whom after being notified never objected.
- 7.2 Be that as it may, it is not our client's intention inadvertently contravene of the provisions of the lease if indeed our client was acting under the mistaken belief that permission had indeed been given where in fact permission had not or where permission has subsequently been withdrawn. As such our client confirms that it has provided the said sub-tenant with notice that its sub-lease is cancelled and that it is to vacate the premises and cease conducting business from the premises immediately.

7.3 In so far as accounting to you for the proceeds of the sub-lease our client denies that you are entitled to same by virtue of the valid sublease.

7.4 Although our client disputes your entitlement to cancel the valid sub-lease, our client has complied with your demand and any alleged automatic cancellation arising from an unresolved breach has been made *moot* by our client's compliance. Our client reserves the right to claim damages which may arise from any claim made by the sub-tenant by virtue of the premature cancellation.

8. AD PARAGRAPH 5

8.1 Our client has noted your pleasure in settling the issues between the curators and the HOA, but believes that in the haste to settle the matter you have left several matters unresolved which now have an impact on our client as a Tenant and which will ultimately affect the investors for whom the curators are to protect.

8.2 By way of example, the issue with the Sectional Scheme in which the hotel is situated is still outstanding in that the curator's dispute regarding the proper and correct calculation of the levies as well as the allotment of expenses has still not been resolved despite the attention of the FSB being drawn to this fact by the curators (see annexed report – Annexure "E").

8.3 The curators further did not factor in any of the communal expenses which our client had paid on behalf of the Sectional Scheme and HOA which should have been taken into account when the settlement was negotiated.

8.4 Furthermore, given that the ultimate responsibility of the payment of levies is handed off to our client in terms of the lease, the curators have failed to notify our client as to the proposed settlement nor did they take our client's interests into consideration as they are obliged to under the terms of the lease agreement. In essence the curators have contracted to the detriment of our client for which our client reserves its rights. Our client specifically reserves its rights in this regard.

8.5 As such our client places in dispute the levies claimed and demands a copy of the recorded settlement as well as the calculation behind the amount allegedly claimed within 5 (five) days of receipt hereof. Our client further requires a full list of all the expenses paid by our client as operator on the curator's behalf which was presented to the HOA for purposes offset off against the alleged arrears.

8.6 On a separate issue, we are instructed to point out that in terms of clause 12.7.6 of the lease agreement our client is as a result of the dispute between the HOA and the curators regarding the levies, which existed at the time of conclusion of the lease, only obliged to pay an amount of R30 000.00 in lieu of levies.

8.7 Assuming that this is a monthly calculation, as on a strict interpretation only R30 000.00 in total is due for the entire period, our client is not indebted to the amount of R 1 997 667, 40 as alluded to in paragraph 5 of the letter under reply. In this regard your certificate of balance records a defective calculation given that it relies on the terms of the settlement as opposed to the terms of the lease agreement. Any amount recorded in such certificate of balance has long since been surpassed by the amounts paid by our client which should have been offset against the levies.

9. **AD PARAGRAPHS 6 & 7**

9.1 The manner in which the co-curator's demands have been submitted leads our client to only one inescapable conclusion being, despite relations between our client and the curators prior to the said settlement with the HOA in December being amicable and co-operative, that the curators have come to the conclusion that the easiest way to deal with the our client disputes is to use every possible avenue to effect a cancelation of the lease agreement and to forthwith evict our client at a moment's notice.

9.2 Our client is surprised that when one considers that the curators have taken years to try facilitate a resolution with the HOA while all the while leading our client to believe that their cause is just in arguing for the correct calculation of levies and allocation of expenses, our client is left high and dry when the curators arrive at a hasty settlement to settle their differences with the HOA.

9.3 Our client in turn is therefore led to believe that this settlement, and the clandestine manner in which it was achieved, had one motive alone and that being to cancel the lease in order negate the right of first refusal to purchase the hotel granted in our client's favour so as to make the path open to a potential purchaser waiting in the wings.

9.4 We record as per the lease that the Landlord has an obligation, in terms of clause 27 of the Lease, towards our client to observe the principles of good faith in the performance of their obligations under the agreement and that they will, amongst other obligations imposed by this clause, make a full disclosure to each other of any matter that may affect the execution of the lease agreement. As such Our client confirms its utter displeasure for the manner in which the disputes

have been dealt with as well as the underhanded manner in which disputed matters having direct bearing on our client were allegedly resolved without our client's involvement nor notification.

9.5 Further in keeping with the duty of good faith referred to in clause 27 of the lease, read with the duty of support as set out in paragraph 31 of the lease, our client submits that the Landlord / curators owed a duty towards our client to ensure that the zoning was enforced in order to return the required rooms back to our client and further ensure that the levies were properly calculated by the Body Corporate and HOA, of whom the curators were members by virtue of their ownership in the respective schemes. It is submitted that the curators failed in relation to their aforementioned duties to the detriment of our client.

10. OUR CLIENT'S CLAIMS AGAINST THE LANDLORDS

10.1 Over and above the disputes raised against the alleged indebtedness as submitted by the curators under the lease, our client has suffered damage as a direct result of the conduct of the Landlords and has further paid several expenses to the credit of the Landlord which expenses where ultimately the Landlord's obligation and for which our client to date has not been reimbursed.

10.2 Our client has raised certain of these issues already with the Landlords in its breach notification correspondence dated the 13th of January 2015, the breaches therein remain to this date uncured.

10.3 As such our client records its claims arising from the conduct of the Landlord contrary to the provisions of lease agreement as follows:

10.4 DAMAGES – LOSS OF INCOME

10.4.1 We reiterate what was stated for the purposes of background under clause 4 above.

10.4.2 To this end we record that by not having access to the 64 rooms, as was the intention prior to the concluding of the lease, our client's business model was unable to succeed from the inception of the lease agreement, given that there was less than a third of the anticipated rooms available with which to market and sell.

10.4.3 As discussed with the curators at the time of conclusion of the lease, our client's business model for operating a successful hotel relies heavily on offerings to the ever increasing corporate conference market. Our client has several hotels where the conferencing part of the operation derives a sizable amount of

our client's income from these hotels. However in order to accommodate a medium to larger conference there must be sufficient rooms to house the conference delegates otherwise the conferencing model falls flat.

10.4.4

This is exactly what happened and our client was forced to turn away conferences and weddings on a regular basis. This not only had an impact on our client's income but also in respect of its' reputation.

10.4.5

In light of the aforementioned, on a conservative calculation we have estimated our client's combined loss of income for conference fees and accommodation due to the lack of number of rooms available for the undermentioned periods as being as follows:

Year		Loss of Income
2014	-	R 27 044 928, 00
2015	-	R 19 999 872, 00
Total loss		R 47 044 800, 00

10.4.6

In so far as damages arising from damage to our client's brand and reputation, this will be quantified and the necessary claim submitted in due course.

10.5

DAMAGES – ALLEGED LOSS OF RIGHT OF FIRST REFUSAL

10.5.1

As stated above, our client is entitled in terms of clause 17.3 of the lease agreement to be afforded a right of first refusal in so far as any offer which may be made to purchase the property in question.

10.5.2

Our client is of the view that the breaches raised, which breaches are and have been disputed as the co-curators are aware, amount to nothing short of a contrived attempt to exclude our client from the exercise of the said right of first refusal.

10.5.3

Our client as such demands that the curators put forward any and all offers which they have received and may be considering for the sale of the said leased properties within 5 (five) days hereof.

10.5.4

Should the curators proceed to cancel the agreement forthwith based on the frivolous disputed breaches, thereby nullifying our client's right of first refusal, and it transpires that there existed an any offer which had been put to the curators which had not been presented to our client for consideration, our client shall institute action against the estate under curatorship for the full value of the properties which has been lost based on the right of first refusal.

10.6

ELECTRICITY OVER-PAYMENT

10.6.1

Since taking over of the hotel, the Landlord has failed to arrange for the municipal account to be transferred into the name of our client.

10.6.2

Furthermore the electricity account for the properties has always come as one global account for the hotel and the consumption charges of the Spa Suite owners. The account has further combined the electrical costs for the common property which is the liability of the Body Corporate of Sante Winelands to account for.

10.6.3

Despite numerous requests the Landlord, a member of the Body Corporate has failed to have the account converted and accordingly separated into its constituent parts so as to ensure that each individual owner is liable for their own actual consumption.

10.6.4

Given that the local authority does not take into account these disputes until formally raised with them, various instances were recorded of the hotel being disconnected for the nonpayment by the Landlord and / or the Body Corporate of the communal account.

10.6.5

Our client therefore was placed in a precarious position and as a result thereof was forced to make payment of the entire account merely to ensure that there was no break in the supply to its guests.

10.6.6

As such our client has conducted an audit of the hotel's electricity which has reflected that our client has over the period of the lease overpaid, to the benefit of the combined benefit of the Body Corporate and HOA, to the tune of R 3 600 000,00.

This amount should have been off set against the levies given that the budgets for the HOA and Body Corporate should have made provision for electricity for the common property. Furthermore each and every member of the HOA and Body Corporate are now indebted to our client by virtue of this overpayment in relation to their specific sections.

10.6.7

The curators failed to take this into account in their settlement discussions with the HOA and as such by resolving their disputes with the HOA have more than likely nullified the reclaim of said overpayment against the levies by virtue of the terms of settlement. As such our client holds the estate under curatorship as well as its Landlords directly liable and claims said overpayment from them accordingly.

10.7

REMISSION OF RENTAL

10.7.1

It is common cause between the parties that our client never had access to all of the properties provided for under the lease agreement.

10.7.2

The property known as Villa Tierkloof is especially contentious in that at the outset of the lease it was recorded that the villa was in a state of disrepair and could not be occupied. The Landlord undertook in terms of clause 8.5 of the lease to appoint and manage contractors to repair the villa as "soon as reasonably possible". Three years later the villa was repaired and provided to our client for use. This inordinate delay cannot be considered to be reasonable given that another 4 bedrooms were taken out of the available quota. If one calculates the number of rooms received in relation to the fixed rental multiplied by the number of month which our client did not have access to the villa in question, the Landlord is obligated to grant a remission of rental to our client of approximately R308 571,42.

10.7.3

Further to the above the curators, in an attempt to create more rooms by renovating the existing villas forming part of the properties leased to our client, inadvertently caused the villa rooms to be taken out of commission entirely and as a result out of our client's available stock of rooms by virtue of their failure to obtain the necessary consents from the HOA to attend to these renovations. The ultimate effect of this was that our client was left without use of a further 9 rooms for a period of 6 months.

10.7.4

If one calculates the number of rooms received in relation to the fixed rental multiplied by the number of month which our client did not have access to the villa in question, the Landlord is

obligated to grant a remission of rental to our client of approximately R115 714,27.

10.8

OVERPAYMENTS EXPENSES NOT OFFSET AGAINST LEVY

10.8.1

The lease agreement only provides for the repairs and maintenance to the buildings as well as gardening to be attended to the properties subject to the lease.

10.8.2

The lease however does not take into account that certain of the properties form part of a sectional title scheme where certain property is common to all owners and as such all owners have a liability towards the building and garden maintenance.

10.8.3

Given that the Sante Winelands Body Corporate is a defunct body which fails to properly manage the property, our client was forced to maintain areas of the common property with its own tools and staff costs which were not included under the lease agreement, such as commons walk ways, out buildings, pools and gardens. The actual effect hereof was that Landlord, as a member of the Body Corporate as well as the other members gained a benefit for which they had not made payment in terms of the levies.

10.8.4

As such the overpayments made by our client should have gone to offset any alleged levy liability due to the HOA or Body Corporate. Given the actions of the curators in settling the issue of the arrear levies without considering this element of off set, the curators have caused our client damage amounting to approximately R 880 000, 00.

10.9

SECURITY COSTS NOT OFFSET AGAINST LEVY

10.9.1

The costs of security, while being set by the court order as detailed herein above, is still a shared and communal expense for which the Body Corporate of Sante Winelands would have been liable for under the imposition of levies on all its members.

10.9.2

Given that the Sante Winelands Body Corporate is a defunct body which fails to properly manage the property, our client was forced to maintain the entire security for property and common property which was not included under the lease agreement. The actual effect hereof was that Landlord, as a member of the Body Corporate as well as the other members gained a benefit for which they had not made payment in terms of the levies.



10.9.3

As such the payments made by our client in respect of security should have gone to offset any alleged levy liability due to the HOA or Body Corporate. Given the actions of the curators in settling the issue of the arrear levies without considering this element of off set, the curators have caused our client damage amounting to approximately R 400 000, 00.

11. CONCLUSION

11.1 In light of the aforementioned the Landlord, alternatively the curators, are liable to our client in the following amounts, namely:

11.1.1 Loss of Income R 47 044 800, 00

11.1.2 Damage to brand To be advised

11.1.3 Overpayment in electricity R 3 600 000, 00

11.1.4 Remission in rental R 424 285, 69

11.1.5 Overpayment of communal maintenance costs R 880 000, 00

11.1.6 Security paid R 400 000, 00

11.2 The arguments as raised by our client in its breach notification of the 13th January 2016 as well as its arguments raised in reply to the co-curator's breach notification herein are supported by the report the auditors commissioned by the curators to find value in the properties for the purpose of an eventual sale.

11.3 The report itself sets out that the properties, and hotel business, are not viable based on the fact that there are insufficient rooms with which to market the business of the hotel, so much so that the removal of the rooms by the Spa Suite owners have resulted in a depreciation in the ultimate value of the properties.

11.4 As such, and in light of the disputes raised and the claims set out herein above, we believe that this matter is not as simple as the mere raising of alleged material breaches, especially when the curators themselves are on record as from January 2015 as being in breach of the lease agreement themselves.

12. We again record our client's disputes pertaining to the amounts as claimed as well as our client's dispute in respect of the curator's alleged entitlement to cancel the lease agreement. We further confirm that any action taken, deliberate or otherwise, by the curators to cancel the lease agreement will be vehemently opposed and our client will remain in holding over in so far as the

leased properties are concerned until such time as the numerous disputes have been resolved, whether in the curators favour or in favour of our client.

13. It is however not our client's intention to become embroiled in litigation which could span the better part of several years as this is counterproductive to both the continued operation of the hotel as well as the recoupment of monies for the investors under the curatorship.
14. As such we invite the curators to enter without prejudice discussions with our client in regard to the purchase of the hotel under the right of first refusal as well as discussions regarding the possible set off of claims.
15. We look forward to hearing from you herein, however but are instructed to record that if our client is not able to come to some form of working settlement of our client's issues on or before the 31st of March 2016, our client will have no other option but to institute action against the Landlord and/or the curators in order to ventilate our client's claim and to protect of interests herein.
16. As such this correspondence shall constitute a demand for the amounts as claimed herein above which will be payable within 5 (days) of the 31st of March 2016.
17. We trust that the aforementioned intended action will not be necessary and await your positive reply herein in due course.

Such rights as are vested in our client are hereby reserved *in toto*.

Yours faithfully

ROSS MUNRO ATTORNEYS

Disclaimer: This e-mail and its attachments are private and confidential and are only for the use of the intended recipient/s.

1. Introduction

- 1.1 This financial report deals with *inter alia* the administration and financial performance of the remaining companies comprising the private equity portfolio for the period ended 31 January 2016.
- 1.2 The remaining company comprising the private equity portfolio, for the period covered by this report, is:
- Moshate (not trading).
- 1.3 The report also deals with proceeds realised from the sale of assets and other recoveries affected, and how such proceeds have been applied, distinguishing between proceeds applied toward costs associated with the curatorship and distributions to investors.
- 1.4 As directed by the Court, the report addresses, to the extent possible, the legal fees paid to 31 January 2016, distinguishing between legal fees in respect of those matters instituted by the curators and matters defended by the curators. Discrepancies and irregularities identified thus far in the billing of legal fees by CDH are also dealt with in this report.

"The information referred to in paragraph 3.4 above must include a detailed breakdown of all civil legal proceedings instituted, prosecuted or defended by the curators on behalf of the companies, indicating in respect of each matter:

Who the attorneys of record for the companies were/are;

The fees incurred in respect of the attorneys of record;

The fees incurred in respect of Counsel;

Whether the litigation has been concluded or not;

In the case of litigation which has been concluded, the success or otherwise of the litigation; and

The amounts recovered on taxation, if any."

2. Legatus Trust (Pty) Ltd ("Legatus")

2.1 Conclusion of the Sale Transaction

2.1.1 The condition precedents have essentially been complied with and the sale transaction has accordingly been concluded. The buyer has since the last report contended that an amount of R48 354.77 remains payable to SARS in respect of employees tax, primarily for the period December 2013. Proof of payment to SARS in settlement of the tax liability for this period has been provided, and a request has been made for the payment to be correctly allocated.

2.1.2 The buyer remains liable to pay Fidentia for any assessed loss for the 2014 tax year as may be assessed by SARS. The buyer has been called upon to provide the 2014 year of assessment to establish whether the 2014 tax year has been assessed as a loss. The assessment has to date not been provided.

2.1.3 An amount of R284 197 is held in trust by Fairbridge attorneys, being the remaining proceeds due to Fidentia from the sale.

3. Moshate Holdings (Pty) Ltd (Moshate)

3.1 This is a non-trading company in which approximately R15.5 million of investor funds was invested, with a view to the company procuring land upon which cemeteries would be established. The dispute regarding the effective shareholding in Moshate has not been resolved.

3.2 Despite repeated assurances from the directors of Moshate that audited financial statements would be prepared from the date of commencement of operations, to date the directors have failed to provide audited financial statements for Moshate and/or any of its subsidiaries.

3.3 Since the filing of the 13th Court Report, it has been established that Calgro M3 Ltd, a company listed on the JSE, recently acquired the property known as Aeroton Extension 29 for a consideration of R40 million. This is the property on which a cemetery was to be established at Nasrec, Johannesburg. Calgro M3 acquired the property from an entity styled Skyriders Access Specialists (Pty) Ltd in terms of what appears to be a back to back arrangement the latter had with I Prop (Pty) Ltd. Skyriders Access Specialists (Pty) Ltd appear to have paid I Prop (Pty) Ltd R20 million for the property.

3.4 I Prop (Pty) Ltd is a minority shareholder in an entity styled Bitflow 319 (Pty) Ltd. Bitflow 319 (Pty) Ltd is a subsidiary of Moshate. It has been established that the Fidentia investor funds were to have been applied toward the completion of the cemetery located at Aeroton Extension 29. The sparse documentation provided to the curators by the directors of Moshate confirms that significant amounts, a significant amount of which emanated from funds invested by Fidentia, were spent on improvements on the property where the cemetery was to be located.

3.5 The curators recommended to the Registrar that an enquiry in terms of sections 4 and 5 of the Inspection of Financial Institutions Act 80 of 1998 ("the Inspections Act") be convened. Subpoenas for the production of documents relating to the affairs of Moshate and its subsidiaries were served on various parties with a return date in the latter part of 2015. Of the parties upon whom subpoenas were served, one has responded and the documents have been analysed.

3.6 Based on the documents provided, a recommendation has been made to the Registrar to continue with the enquiry, but to do so only upon assessment of the potential prospects of success in subsequent litigation that would necessarily follow the enquiry. This matter is still under consideration by the Registrar.

3.7 The analysis of the documents provided, together with other documentation in the possession of the curators, supports a reasonable conclusion that the previous directors of Moshate and its subsidiaries appear to have acted with criminal intent. To this end a criminal charge has been initiated by the curators.

4. Compilation of Accounting Records

4.1 Further to our previous report the statutory audits of Bramber Property (Pty) Ltd, Fidentia Administration Services (Pty) Ltd and Fidentia Facilities (Pty) Ltd in respect of the financial years ended August 2015 have commenced and will be completed within the statutorily allowed time frames.

4.2 As regards the statutory audit of Fidentia Holdings (Pty) Ltd, there is nothing further to report, and the audit of this company has not commenced. In light of the difficulties associated with obtaining the necessary information from the previous auditors, coupled with the costs of conducting the audit, it is recommended that the curators be excused from conducting the audit.

5. Court Sanctioned Distribution Plan

5.1 Admitted Claims

5.1.1 The curators have admitted the following claims:

Investor	Capital Claim
TETA	R 185 000 000
Antheru	R 9 205 449
Balltron	R 38 573 680
LHUT	R1 133 911 822
Total admitted claims at date of this report	R1 366 690 951

5.1.2 In respect of the Evertrade transactions there is nothing further to report. Considering the poor prospects of actually recovering any funds in the event of instituting and succeeding in any litigation, no further action in respect of this transaction is contemplated.

5.1.3 In terms of the distribution plan as approved by the Western Cape High Court, the amounts as recorded at 5.2.4 *infra* have, as at 31 January 2016, been distributed to the TETA, Balltron, individual investors who invested with Antheru Trust and LHUT. The distribution to those persons and entities that invested directly with Antheru Trust has been made in accordance with a directive from the Registrar FAIS, and as directed by this Honourable Court.

5.1.4 With the approval of the FSB a guarantee held for the benefit of Balltron, in the amount of R4 418 311 was returned to Balltron. This amount does not form part of the capital claim of Balltron.

5.1.5 The Court approved distribution plan, based on an admitted claim for Antheru of R9 205 449, provides for the following distributions to be made. The distributions have been calculated by taking into account the amounts previously distributed to LHUT in the amount of R113 389 614. This has been done in order to ensure that after giving effect to the Court approved distribution, the distribution to each of the investors is pro rata to the admitted claims.

Investor	Capital Claim R
TETA	33 758 238
Antheru	1 679 782
Balltron	7 038 808
LHUT	93 523 172
Total Distribution	136 000 000

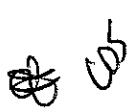
5.2 Disposals of capital assets to date and recoveries of other amounts

5.2.1 The disposal of the capital assets as at 31 January 2016 is summarised as:

5.2.1.1 Proceeds from the Sale of Assets Comprising the Fixed Property Portfolio (exclusive of VAT):

Description of Property	Sales Proceeds R
Facets	43 480 824
Facets - Occupational Rental	6 177 054
Thaba Manzi	34 099 998
Thaba Manzi - Occupational Rental	2 100 000
Sante-Rental (Note 1)	(5 494 458)
Syco Deli	1 750 000
Syco Deli - Occupational Rental	176 250
Waterford Place	34 415 887
Wavelengths 231	5 302 552
Villa Marais	3 900 352
Recovery Transfer Duty & Deposit – Bell Sombre	1 510 268
Recovery Teewaterskloof	265 000
Erf 403, 410 & 411 Blue Horizon Bay	2 760 884
Total	130 444 611

Note 1 The rental figure is recorded net of costs incurred associated with the hotel operation and incurred for the account of the landlord. The hotel and spa is operated under a lease agreement by an independent contractor for its own account. Details regarding the Sante asset are contained in the legal report.



The deficit of approximately R5.5 million has been funded out of the proceeds from the sale of capital assets. It is the expenses associated with the Sante asset that has primarily contributed to the significant reduction, since the last report, in cash available for distribution. The adverse impact on the cash flow is exacerbated by the fact that the lessee has stopped making any payments due in terms of the lease.

The amount of approximately R5.5 million excludes legal fees, curator fees and consultancy fees associated with the Sante asset.

- 5.2.1.2 The proceeds from the sale and realisation of assets associated with such sales, comprising the Private Equity Portfolio, exclusive of VAT, are.

Description	Net Sales Proceeds R
AOS	9 993 668
Software Futures	14 366 636
Fidentia Rangers	3 050 000
Boland Rugby	201 397
Polex	5 293 284
Infinity	13 464 626
Legatus	1 900 000
Saambou Board of Executors (Pty) Ltd	1 900 000
Modus Versekeringsmakelaars (Pty) Ltd	10 000
Sundry Legatus Receipts	68 690
Legatus Settlement	(237 500)
Total	50 010 801

- 5.2.1.3 Other recoveries comprise:

Description	Proceeds R
Sale of Movable Assets (Note 1)	11 528 656
Sale of Cricket Suite	319 200
Recoveries from Previous Directors & Staff (Note 2)	31 819 434
Recoveries from Third Parties (Note 2)	8 124 190
Guarantee (Note 3)	4 418 311
Liquidation Dividend Schekels & Sante Leisure	468 436
Other	111 919
Painting	500
Total	56 790 646

Note 1: This amount is reported inclusive of VAT.

Note 2: Queries relating to amounts received in trust by DLA have been raised. DLA has ignored the queries and has not responded thereto. This may result in the reported figures being amended in future reports.

Note 3: The guarantee represents funds previously held as a guarantee deposited by Balltron.

5.2.2 The inflow of funds as detailed *supra* can be summarized as:

Description	Proceeds R
Sale/rental of fixed properties	130 444 611
Sale of private equity	50 010 801
Other Recoveries (See 5.2.1.3 above)	56 790 646
Inflows from sales and recoveries	237 246 058
Interest earned (Note 1)	26 251 687
Interest Porex	2 260 809
Interest Infinity	729 455
Proceeds from trading activities	96 713 149
Total Inflows	363 201 158

Note 1: No provision for tax on the interest earned has been raised as it is anticipated that the interest income will be offset against the assessed losses and trading expenses of the various companies within the Fidentia Group.

5.2.3 The total outflows, representing expenditure by the Curators (exclusive of VAT), to 31 January 2016 are:

Description	Expenditure R
Curators Fees: D. Gihwala	16 110 111
Curators Fees: G. Papadakis	9 471 907
Curators Fees: J. Levin	3 184 750
Forensic Accounting Services	8 719 949
Legal Services-DLA CDH	49 335 008
Legal Services-Other Legal Practitioners	6 337 259
Recoveries-Legal Fees	(1 958 141)
FSB costs	3 143 542
Advertising Costs	85 813
Total expenditure	94 430 198

The curator fees paid in respect of Papadakis covers the period February 2007 to 31 January 2016, and for Levin, for the period August 2014 to 31 January 2016

5.2.4 The amount currently available can accordingly be summarised as:

Description	R
Total inflows	363 201 158
Less: Total expenditure	(94 430 198)
Less: Distributions for benefit of LHUT	(113 389 614)
Less: Distribution of Guarantee to Balltron	(4 418 311)
Less: Amounts distributed in terms of Court Approved Distribution Order Note 1	(135 514 940)
Amount available	R15 448 095

Note 1: The amounts distributed as at 31 May 2015 comprise:

Investor	Amount Distributed	Remaining Amount to be Distributed	Total Court Approved Distribution
TETA	33 758 238	0	33 758 238
Balltron	7 038 808	0	7 038 808
LHUT Note 1.1	93 523 172	0	93 523 172
Antheru Note 2.1	1 194 722	485 060	1 679 782
TOTAL	135 514 940	485 060	136 000 000

Note 1.1: According to the Trustees of LHUT, as at 31 January 2016, an amount of R29 066 799 of the R93 523 172 distributed to LHUT in accordance with the Court approved distribution, has been paid to the individual beneficiaries of the source funds. This represents 31% of the amount distributed to the LHUT in terms of the Court Approved Distribution. The curators distributed the majority of the R93 523 172 to LHUT in October and November 2012. The Trustees of the LHUT have advised that they are proceeding to make the distributions in accordance with the provisions of an Order obtained in the Gauteng North High Court.

Amounts totalling R29 752.52 have been received into the Fidentia Administration Services bank account. These amounts relate primarily to a single beneficiary of the LHUT. The trustees of the LHUT were requested in February 2015 to provide the curators with instructions regarding these funds. We are currently awaiting instructions from the LHUT.

Note 2.1: The individuals and entities that invested funds via Antheru Trust have been sent, by registered post, correspondence detailing the process and documents that need to be submitted in order for their distributions to be processed. The letters were sent to the addresses as appearing in the records maintained by Fidentia of individual Antheru Investors.

Those individual Antheru investors that have contacted the curators and provided the required documentation have upon verification thereof been paid the distribution due to them.

The table below reflects an analysis of the number of qualifying individual Antheru investors, how much these individuals have been paid and the status of the remaining R485 060 that has not been paid.

Qualifying number of investors	170	Qualifying investors paid as at 31 January 2016	109
Total amount to be distributed	R1 679 782	Amount paid to qualifying investors	R1 194 722
Individuals positively contacted by Registered Post and e-mail who have not responded	10	Value of claims	R113 492
Individuals positively contacted by Registered Post who have not responded	27	Value of claims	R150 038
Individual claims under consideration/awaiting requested documents	4	Value of claims	R56 546
Registered letters returned as unclaimed/untraced. Investors who need to be traced	20	Value of claims	R164 984

6. Distributions

6.1 Since curatorship, the following distributions to investors have been made:

Distribution	R
Distribution to LHUT in terms of Curatorship Order	113 389 614
Distribution to LHUT pursuant to litigation instituted against Lekana Note 1	70 501 913
Distribution to LHUT pursuant to the Global Funding Agreement	340 000
Amounts paid in terms of the Court Approved Distribution Order	135 514 940
Balltron Guarantee Refund	4 418 311
Total Distribution/Refund to Investors	324 164 778

Note 1: Pursuant to litigation initiated by the curators against Lekana Employee Benefits, settlement was reached in terms of which this amount was paid directly to one of the source funds under the LHUT. Beneficiary funds originating from this source fund were invested by LHUT with Fidentia Asset Management (Pty) Ltd. The amount of R70.5 million was provided by the attorneys who attended to this matter. Since the date of the last report has become apparent that there are more than one source fund affected by the secret profits made by Lekana Employee Benefits. To the extent that these other source funds did not receive any settlement will require an adjustment to the reported distribution of R70.5 million. This in turn would impact on the amount and percentages reported at paragraph 6.2 *infra*.

6.2 To date, a total amount of R324 164 778 has been returned to the investors since curatorship. To date distributions to LHUT, Balltron, and TETA have been made in amounts which represent 23.4% of the total admitted claims of all investors. This percentage excludes the refund of the Balltron guarantee. Including the Balltron guarantee refund the percentage increases to 23.7%.

7. Legal Fees

7.1 The analysis of legal fees previously requested by the Court was previously provided in the form of a schedule compiled by CDH. A comprehensive analysis of the fee notes issued by CDH in support of investor fees paid to the firm, as well as outstanding fees claimed, has been performed.

7.2 To this end, a software application was developed which facilitated the conversion of the information as it appears on the invoice into electronic format. This allowed for the analysis of each item as billed for on each invoice. The conversion translated into in excess of 46 000 individual line items of information.

7.3 Utilising the information contained in the electronic workbook I was able to identify the various matters in respect of which fees have been billed. There are 150 different matter codes under which fees have been billed. The matter codes that relate to litigation initiated by the curators and litigation defended by the curators were identified. The total fee incurred in respect of these matters was then quantified.

- 7.4 The results are contained in the attached Annexures labelled GNP1 and GNP2. I have also included, based on available information the amounts recovered pursuant to the litigation instituted or defended. So for example, GNP1 identifies that amounts of R23.1 million were recovered from litigation instituted by the curators and where CDH was the attorney of record, compared to legal fees incurred of R18 million. This compares to legal fees recovered upon taxation of R430, 292.34 The recoveries pursuant to taxation are identified per matter.
- 7.5 The fees as recorded in GNP1 and GNP2 must be treated with circumspection. I say this based on the fact that CDH operated a "General" matters code. On scrutiny of this matter code, it is apparent that a significant amount of fees, billed under this matter code, in fact relate to the matter codes appearing on GNP1 and GNP2. The result is that the amounts reflected as fees under many of the individual matters are understated, and in several cases significantly understated. CDH was requested to reverse the fees billed under the General matter, where such fees relate to specific individual matters, and to then present me with invoices recording the attendant fees. This request was declined. CDH billed approximately R19.8 million under so called General matters.
- 7.6 Included in the amount of approximately R19.8 million are amounts totalling approximately R4 million, charged as Counsels fees. As no supporting documents for this amount, or for which matters the fees billed relate, it is not possible to provide the Court with an accurate figure of Counsels fees billed per matter.
- 7.7 An analysis of the fee notes has identified irregularities relating to fees billed by CDH. My analysis of these irregularities is in the process of being finalised and a detailed report will be tabled with the next Curators report.
- 7.8 Attached as GNP3 and GNP4 are schedules containing the information relating to fees paid to attorneys firms, other than CDH, appointed by the curators to institute (GNP3) and defend (GNP4) matters on behalf of the curators: The schedules provide details of the fees incurred, distinguishing between attorney and Counsel fees, amounts recovered on taxation and recoveries where the actions instituted were successful

GN Papadakis CA (SA)

Co-curator

29 February 2016

	Adam Cloete	Fidentia Ayanda Collective Investment	Baloyi	HR Bam	Big Blue Sky Trust (Andrew Tucker N.O)	Trustees I/E S Brown	Capitalwise Securities PLJ Asset Hold.	Brown, Tucker & Lafegan	Contribution: Estate JAW Brown
	31,559.30	12,139.58	136,867.54	1,649,091.11	41,532.83	51,117.80	125,903.30	37,817.84	146,587.88
Total Fees	31,559.30	12,139.58	136,867.54	1,649,091.11	41,532.83	51,117.80	125,903.30	37,817.84	146,587.88
Recoveries on Taxation				96,744.41					
Recoveries on Success	30,000.00	0	7,955,900.00	0.00	0.00	0.00	0.00	0.00	0.00

Concluded matter

Legatus Trust (Pty) Ltd	Cruickshank (Meyerdricks)	Cunningham	Debtors	De Jongh	Dekker	Erf 19571 Sunset Beach	Flight Solutions	Goodwin	Infinity Rewards / Sanparks	Infinity (PTA) Ltd / AA of SA
683,317.56	269,119.64	3,600,076.44	51,886.51	997,112.15	321,431.61	1,363,560.01	37,531.71	515,146.36	404,680.69	54,854.15
683,317.56	269,119.64	3,600,076.44	31,559.30	997,112.15	321,431.61	1,363,560.01	37,531.71	515,146.36	404,680.69	54,854.15
0.00	0.00	0.00	0.00	5,551,667.32	300,000.00	0.00	0.00	1,000,000.00	0.00	0.00

005

JAW Brown	LHUT	Maddock	Melanie Oettle - Arrest	Mulder	Sante: Sheckles Trading 18 - Liquidation	Bramber Property Ltd & Fundev Property Inv. (Pty) Ltd in re Sante Estate	Ovation	Saudi	Spies	Steri Cycle
3,411,890.02	675,967.78	55,431.43	85,818.20	213,147.71	13,013.11	381,259.75	1,105,859.63	26,404.84	1,298,872.57	239,278.01
3,411,890.02	675,967.78	55,431.43	85,818.20	213,147.71	13,013.11	381,259.75	1,105,859.63	26,404.84	1,298,872.57	239,278.01
77,028.44						200,000.00	56,519.49			
0.00	675,967.78	4,742,929.88	51,097.17	0.00	0.00	0.00	0.00	0.00	2,690,890.90	0.00

Total

18,017,949.85

430,292.34

22,998,453.05

	Liquidation -				Liquidators				Total						
	Alpha Pharm Distributors	Bramber Alternative (Pty) Ltd	Schoombie	Carter & Kloof	JAW Brown Set Aside Curatorship	AL Cruickshank & Co AM	M Lewis	Port Ferry		Sants / Shumant Printers	Van Schaikwyk / Telkom	Webworks			
75,337.82	2,667.60	2,667.60	9,862.63	308,044.31	119,012.46	11,685.00	987,636.77	1,076,442.06	3,614,401.35	10,718.01	31,635.00	116,933.70	15,865.38	35,135.70	9,458.58
<u>75,337.82</u>	<u>2,667.60</u>	<u>2,667.60</u>	<u>9,862.63</u>	<u>308,044.31</u>	<u>119,012.46</u>	<u>11,685.00</u>	<u>987,636.77</u>	<u>1,076,442.06</u>	<u>3,614,401.35</u>	<u>10,718.01</u>	<u>31,635.00</u>	<u>116,933.70</u>	<u>15,865.38</u>	<u>35,135.70</u>	<u>9,458.58</u>
Recoveries on Taxation	80,938.83	423.60			116.28	173.41									
Recoveries on Success															
															81,662.22
															8,000

CS

	Capitalise Securities PLJ Asset Hold.	Fidentia Curatorship	Fidentia/GA Maddock	Sante Wineyards	Fidentia/Akarana HOA(Application)	Fidentia Asset Management/Mos hate	Ovation	Other	Total
Gunningham	3,698,506.00	997,016.27	18,282.88	104,657.69	24,762.01	836,884.08	156,386.53	141,696.50	6,193,845.30
Total Fees	3,698,506.00	997,016.27	18,282.88	104,657.69	24,762.01	836,884.08	156,386.53	141,696.50	6,193,845.30
Recovered on Taxation	0.00	250,000.00	0.00	See GNP1			0.00	0.00	250,000.00
Recoveries on Success	0.00	Not Finalised	0.00	See GNP1	Not Finalised	Not Finalised	0.00	0.00	0.00

	M van Staden (Cost Consultant)	Wertheim Becker Settlement	L.Goldberg	B.Adams	L.Goldberg	Adriaanse	Wertheim Becker	M van Staden (Cost Consultant)	Adriaanse; T Erasmus
Attorneys									
Attorney Fees	705,974.27	3,918.88	104,657.69	24,762.01	591,316.68	14,557.34	156,386.53	1,743,269.90	
Counsel	N/A	Adv Phillips; Adv Bester; Adv Balmelli	Manca; Advr eyolds	N/A	N/A	Adv Manca; Adv Quixley Smit	Adv Dobson; Adv Smit	N/A	N/A
Counsel Fees	0	291,042.00	14,364.00	0	0.00	245,567.40	201,096.00	0.00	752,069.40

 205

GNP4

Akarana HOA vs Bramber (Levies)	Old Mutual vs LHUT	Total
131,670.00	46,740.00	178,410.00

Total Fees 131,670.00 46,740.00 178,410.00

Recoveries on Taxation Not finalised 0.00 0.00

Recoveries on Success 0.00

Attorneys	Adriaanse	Wertheim Becker
Attorney Fees	118,560.00	8,265.00
Counsel	Adv Quixley	Adv Goodman
Counsel Fees	13,110.00	38,475.00
		51,585.00