



NOVA DEBENTURE CREDITORS ACTION GROUP

NOVA DEBENTURE KREDITEURE AKSIEGROEP

c/o 17 Gorst Avenue

Primrose Hill

Germiston

1401

Nova Property Group Limited

**105 Club Avenue
Waterkloof Heights
Pretoria
0186**

CC: Mr Deon Pienaar

CC: Mr Cuma Zwane, CIPC

For attention: the Chairman of the Board

11 December, 2021

Sir,

We (referred to herein as NDCAG) write with reference to the announced meeting to be held on 11 January for the purpose of the approval of the Company's nomination of Mr. J Tromp as the new Trustee for the Debenture Trust

We wish to table the following for your information, attention and we trust, agreement (where appropriate) ahead of the meeting

1. Nova failure to adhere to the requirements of Clause 15.3 of the Debenture Trust Deed

Said clause states:

15.3 Upon the termination of office of a trustee, the company shall immediately notify the debenture holders and nominate a new trustee, which nomination shall be approved by debenture holders at a meeting convened as an ordinary meeting, by a debenture special resolution, within 90 (NINETY) business days of termination of such office or such additional period as may be reasonable in the circumstances. In the event of the company failing, within a reasonable time, to nominate a person approved by debenture holders, the debenture holders may themselves, by debenture ordinary resolution, make such appointment.

Whilst we understand that you believed (at the time and subsequently) that Mr. Derek Cohen's resignation was illegal in that he, apparently, did not do so consistent with the requirements of the Trust Deed, clearly you reached a point where the resignation became a *fait accompli*

This is evidenced by two pieces of information that have come out of Nova:

- your statement in the election meeting emails that you have sent to Debenture Holders, viz: " the outgoing Trustee, Mr. Derek Cohen, in circumstances where Mr. Cohen's office as Trustee has been terminated."
- The following extract from the 2019 Financial statements (published date: 20 February 2020) in which you stated under "Events after the reporting period" (page 6, item 12):

Purported resignation by Debenture Trustee

The Nova Property Group has taken legal advice in regard to Mr Cohen's purported resignation as Trustee of the Debenture Trusts. The advice received was that Mr Cohen could not resign and that his resignation was unlawful and void. No action is due to be taken by the Nova Property Group in consequence of Mr Cohen's unlawful and void resignation.

We are aware that Mr. Cohen resigned in June, 2019 and that – probably due to the issue of the legality of his resignation – you continued to pay him monthly the Trustee Fees “due” to him and which funds he promptly credited to a trust account in the Company’s name and forwarded credit notes for each receipt to Nova

We have also received information from a reliable source that:

- Mr. Cohen gave the required sixty days’ notice as per Clause 15.2.1 of the Trust deed
- The letter of resignation was hand delivered to the Nova Head office where its receipt was signed for

We also understand that the issue about the resignation was that, in your opinion at the time, the Trustee was not allowed to resign without the prior permission of the Courts

This is not the case

Clause 15.2.1 of the Trust Deed states:

15.2.1 he resigns having given at least 60 business days’ written notice to the company in the manner prescribed herein. Such resignation shall be effective without any leave of any Court or any other person. At the expiration of such period of notice the trustee shall be discharged from the trusts hereof and shall not be responsible for any loss or costs occasioned by its resignation; or,

The operative words in the above being; “Such resignation shall be effective without any leave of any Court or other person.”

Out of the above, a question now arises about the timing of the decision to “accept” the resignation as a *fait accompli* and to record the event officially in the appropriate records of the Company

It’s certainly clear from the two corroborating statements out of the Company that it did not take from June, 2019 to the present time to reach that point and that at an early point in time following the resignation, the requirements of Clause 15.3 became obligatory upon the Company

We are also of the opinion that the statement about the “purported resignation” in the 2019 Financial statements means that by 20 February, 2020, the resignation was, to all intents and purposes, in fact, formalized and finalized in the Nova records

Clause 15.3 required that the Company immediately inform the Debenture Holders of the resignation

You did not do so

The Company was required to nominate a new Trustee and convene an ordinary meeting for the approval of a nominated Trustee candidate by the Debenture Holders, by special resolution, within ninety days of “termination of such office”

You did not do so

Having made the above statements and given the supporting evidence, we would not accept a response to the effect that you only finalized/formalized the resignation in the Company records at some time around the beginning of September this year and that therefore you are convening the meeting “within ninety days of termination of such office”

Your failure to comply with the requirements detailed in Clause 15.2 empowered the Debenture Holders to appoint a new Trustee, by “Debenture ordinary resolution” without any reference to or the approval of the Company

Of course, the Debenture holders did not do this because they were never informed of the resignation **when it actually occurred**, and/or was accepted and processed internally at the Company

Given the multiple failures of the Company as regards proper actions and communication following the resignation, we believe that the Debenture Holders have the right, in terms of Clause 15.2, to appoint a new Trustee on their own

That the Debenture Holders did not do as described above, does not negate their right to do so. Whilst Clause 15.2 imposes a time frame and consequently, a deadline on the Company, it does not do the same as far as Debenture Holder action is concerned in the subject situation where the Company has defaulted in the execution of its obligations. Therefore, the Debenture Holders may now initiate a “class action” comprising of the drafting of a special resolution, vote on and accept it and present to the Company, a new Trustee of their choice without having to consult with or involve the Company in any way

We ask you to note that this action, whilst contemplated, has not been initiated by ourselves although, in our opinion, we, on behalf of our members, or any other

Debenture Holder, or any other “collective” of Debenture Holders are not, in the default circumstances detailed above, precluded from initiating such action at some future time

But we are also of the opinion that, having failed to execute its obligations under Clause 15.2 of the Trust Deed, **the Company does not have the power to convene one and certainly not without the prior explicit permission of the Debenture Holders**

Therefore, on behalf of NDCAG, its members and also those non-member persons who have given (or will still give) their proxy to NDCAG or one or more of its operating committee, we:

- Declare your attempt to convene and hold the meeting to approve your nominated candidate for Trustee as an action outside of your powers and therefore, irregular and that the meeting should, consequently, not take place
- Reject your nomination of a person who is entirely unknown to the Debenture Holders, who cannot be found in internet searches and about whom you have not provided any details in your Trustee appointment emails, thus leaving it to be (possibly) given, with the minimum detail, at the January 11 meeting and in the usual Nova manner: rush it through with, you hope, a minimum of debate and contestation

2. Nomination of Mr. Deon Pienaar for the position of Trustee of the Debenture Trust

On behalf of NDCAG, its registered members (who have registered with us online and who, in the registration process, give us their mandate to speak and act on their behalf) and also on behalf of those non-NDCAG member who have given (and will still give) their proxy to NDCAG or to one or more of the operating committee members, we nominate for the position of Trustee of the Debenture Trust:

Mr. Deon Johann Pienaar

South African Identity #: 631221 5142 087

Residential Address: Van Bruggen Street 17, Parow North, 7500

Postal Address: As above

Email Address: deonpie@mweb.co.za

Telephone numbers:

- Home/Office: 021 939 0059
- Cell Phone: 082 465 7330

We believe that Mr. Pienaar is an ideal candidate for the following reasons:

- He is one of the few brokers who were marketing the Sharemax syndications up to 2010, who have taken upon themselves the cause of the investors, now the Nova Debenture Holders
- He has actively been involved in a crusade on behalf of affected persons over the last decade, to address the irregularities and injustices (if not criminality?) of the processes and decisions that led to the demise of Sharemax, the business rescue process, the sanctioning of the Section 311 Schemes of Arrangement, the massive diminution of the value of the assets of the Sharemax investors following the business rescue approval and implementation of the Schemes of Arrangement.,
- He has actively taken matters to the Courts. That he has not always achieved successful outcomes, in no way diminishes his value to the cause of the Debenture Holders
- He has the requisite experience in that he is currently the Debenture Trust Trustee for The Steelpoort Debenture Trust that held a security bond of R450m over Spitskop, and he is a Trustee of the Deonette Trust related to the Realcor saga.
- Most importantly, to us **and to the people who are most at risk**, he has and has evidenced that he has, the interests of the Debenture Holders at heart

Mr. Pienaar is being copied in this letter and he is requested, upon receipt hereof, to formally convey his acceptance of the nomination to Nova Property Group and ourselves

His formal acceptance will also be announced by us in our Facebook page and web site together with the above motivation of his suitability, for the information of our members and other Debenture Holders and indeed, the general public, together with our recommendation that Mr. Pienaar is the best person for the position

3. Media presence at meetings

We request that you permit members of the media to attend meetings between the Company and the Shareholders or Debenture Holders

More importantly, that, should a member of the media arrive in possession of valid proxies given by Debenture Holders, you do not refuse them entry to the meeting locale.

You might argue that the proxies are obtained by media persons for ulterior purposes, ie; to enable them to be privy to the proceedings but out of which to give the Company negative press.

You cannot but agree that there is nothing to stop any person, whether a Shareholder or a Debenture Holder from giving their proxy to anyone in whom they have confidence that their best interests will be served **and that should be respected by the Company**

That you have, and might again in the future, bar media persons holding valid proxies, from attending and participating in, meetings arranged by the Company with Shareholders and Debenture Holders, is irregular and, however much you gain from it (whilst only adding to your negative press woes), **in the process you deny the rights of the persons who gave their proxies**. We suggest that any such occurrences in the future might necessitate a complaint to appropriate authorities

Whilst you frequently complain that the negative press the Company receives has a detrimental effect on its reputation and severely impacts its ability to raise funds with which to build the company and improve its financial status and therefore, ultimately improve the eventual (but overdue) settlements to the Debenture Holders, the press performs a valuable service for the Debenture Holders - a group with whom you do not have a stellar reputation when it comes to communication

We remind you that, in March of 2018 you refused our application under the Provision of Access to Information Act, to be provided with the contact details of the Debenture Holders in order that we may recruit them to form an interest group. In the same application, you also declined our request to be recognized as an entity representing a group of Debenture Holders (with our ultimate intention of representing all of the Debenture Holders)

In these actions you missed an opportunity to form a dynamic working relationship with the Debenture Holders. Instead, as has been the case over the last ten years, communication has been one sided with the Company only communicating "when it wants something" or in the case of the recent AGM for 2020 and the proposed Trustee meeting, when driven to do so to resolve the CIPC raised irregularity issues in the hope of being allowed to operate rather than being placed under administration

We trust that you will see the benefits of free media access to the forthcoming and future meetings, and it is our hope that your openness and transparency in this regard will lead to an improvement in your media relations

We request that you give prompt consideration to the matters raised and provide us with your early response. We will be happy to meet with you to discuss any of these matters ahead of the January 11 meeting

Thank you in anticipation

A handwritten signature in black ink, consisting of several overlapping loops and a final horizontal stroke.

Herman Lombaard
Email: herman@legacyinv.co.za
Cell: 079 505 9524

A handwritten signature in black ink, featuring a large loop at the top and a long horizontal stroke extending to the right.

Roger Johnson
rogerj@absamail.co.za
082 336 8617

Operating Committee members and Debenture Holders