IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 2015/

In the matter between:

EAST METALS AG	First Applicant
MASTERCROFT SARL	Second Applicant
and	
EVRAZ HIGHVELD STEEL AND VANADIUM LTD (IN BUSINESS RESCUE) (REGISTRATION NO.: 2008/009382/07)	First Respondent
PIERS MARSDEN NO	Second Respondent
DANIEL TERBLANCHE NO	Third Respondent
MAPOCHS MINE (PTY) LTD (IN BUSINESS RESCUE) (REGISTRATION NO.: 2008/009382/07)	Fourth Respondent
JOHN EVANS NO	Fifth Respondent
JOHN LIGHTFOOT NO	Sixth Respondent

FILING SHEET

DOCUMENT PRESENTED FOR SERVICE AND FILING: **ANSWERING AFFIDAVIT – FOR FOURTH TO SIXTH RESPONDENTS**

DATED AT JOHANNESBURG ON THIS THE 29TH DAY OF NOVEMBER 2015

FLUXMANS INC ATTORNEYS
FOURTH, FIFTH AND SIXTH RESPONDENTS' ATTORNEYS
30 Jellicoe Avenue, Rosebank
Private Bag X41, Saxonwold, 2132
Docex 54, Johannesburg
Tel: (011) 328 1841
Fax: (011) 328 1859

Email: cshapiro@fluxmans.com
Ref: C SHAPIRO /lp/128582

C/O JACOBSON & LEVY INC.
215 Orient Street
Arcadia, Pretoria
Docex 52, Pretoria
Tel: (012) 342 3311
Fax: (012) 342 3313
Email: jonathan@jllaw.co.za
Ref: J. Levy

TO:

THE REGISTRAR OF THE HIGH COURT, PRETORIA

AND TO:

BAKER MCKENZIE
APPLICANTS' ATTORNEYS
1 Commerce Square
39 Rivonia Road
Sandhurst, Johannesburg
(011) 911 4300
Ref: G Rudolph/JB/CO/BM
SERVICE VIA EMAIL
john.bell@bakermckenzie.com
callum.oconnor@bakermckenzie.com

AND TO:
EVRAZ HIGHVELD STEEL AND VANADIUM (IN BUSINESS RESCUE)
First Respondent
PIERS MARSDEN N.O.
Second Respondent
DANIEL TERBLANCE N.O.
Third Respondent

c/o ENSafrica

SERVICE VIA EMAIL
goertel@ens.co.za
lfield@ens.co.za

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JOHN EVANS NO	Fifth Respondent
JOHN LIGHTFOOT NO	Sixth Respondent

ANSWERING AFFIDAVIT

I, the undersigned,

JOHN DYMOKE LIGHTFOOT

do hereby make oath and say that:-

1 I am an adult male and the sixth respondent in this matter. The fifth respondent and I are the duly appointed joint business rescue practitioners of the fourth respondent in business

rescue. I refer to hereinafter to the fifth respondent and myself collectively as "the Mapochs practitioners" and to the fourth fourth, fifth respondents and myself collectively as "the Mapochs respondents". The facts deposed to herein are true and correct, and, save as where otherwise provided or the contrary appears from the context, are within my personal knowledge.

2 By reason of the urgency with which this matter has been brought in the extremely limited time period given to the Mapochs respondents to answer the founding affidavit, I do not intend dealing ad seriatim with the allegations in each of the paragraphs in the founding affidavit. I intend to set out as briefly and simply as is possible, the material facts upon which the Mapochs respondents rely for their principal contentions. These allegations in the founding affidavit not dealt with in this affidavit are, unless stated to the contrary or the context indicates a contrary intention, to be taken as denied.

3 To be annexed hereto is a confirmatory affidavit of the fifth respondent, John Evans.

4 Most of the factual material dealt with in the founding affidavit relates to the first second and third respondents (the "Highveld respondents") whom I understand will separately answer these allegations.

PRINCIPAL CONTENTIONS

5 This matter is not urgent.

6 Any urgency is self created.

7 The applicants fail to comply with the provisions of rule 6(12) of the rules in that they fail to set forth the reasons why they could not be afforded substantial redress at a hearing in due course.

8 This application seeks, in substance, the same relief as that claimed in an earlier urgent application, to which reference is made in paragraph 25 on page 16 of the founding affidavit and which is pending.

9 There has been a material non-compliance by the applicants with the provisions of section 145(1) of the Companies Act, 2008.

10 There has been a material non-joinder of interested parties in the relief sought in paragraph 3.2 of the notice of motion.

11 The applicants are non-suited and do not have the sufficient legal standing to seek relief in paragraphs 3 and 4 of the notice of motion.

12 The relief sought in paragraph 3.2 of the notice of motion is premature.

13 The applicants have not made out a case for any right to the relief, even a prima facie, clear, or at all.

14 The balance of convenience does not favour the grant of the relief sought in paragraphs 3 and 4 of the notice of motion.

15 The applicant shall not suffer irreparable harm if the relief sought in paragraphs 3 and 4 is not granted.

16 Should the applicant succeed in what they refer to as the "pending main application" they will be entitled to exercise remedies flowing consequentially thereupon. If the applicants will not be able to claim any remedy in respect of the approval and implementation of a business rescue plan to be presented on the afternoon of Monday, 30 November 2015 in respect of the fourth respondent, it will be on account of the fact that:

16.1 they have no entitlement to any such relief, alternatively

16.2 they will not have suffered any damage.

FACTUAL BACKGROUND

17 The second applicant is the holding company of the first respondent (the first respondent is hereinafter referred to as "Highveld").

18 Highveld holds 74% of the ordinary shares and equity capital of the fourth respondent. A company Umnotho Iron and Vanadium (Pty) Ltd holds 23% of the ordinary shares and equity capital of the fourth respondent. The remaining 3% is held by the Mapochs Mine Community Trust.

19 In addition to the ordinary shares, there is a separate class of shares "A ordinary" shares. These are held by a company Vanchem Vanadium Products (Pty) Ltd ("VVP"). The shares entitle VVP to limited voting rights to veto decisions which would breach, amend or postpone the fourth respondent's obligations to supply VVP as a customer of its fine particulate ore. The shares do not entitle VVP to any of the equitable capital of the fourth respondent nor to participate in any of the profits or assets of the fourth respondent.

20 Both Highveld and the fourth respondent went into business rescue by way of resolution in April 2015.

21 The fourth respondent conducts the business of mining iron ore deposits.

22 The greatest and most valuable asset that the fourth respondent possesses is its statutory right granted to it by the Department of Mineral Resources to conduct its operations under the Mineral and Petroleum Resources Development Act. That right is not freely transferable. The alienation of such a right is subject to regulatory consent being granted under section 11 of the said Act which can be a lengthy process.

23 Upon the liquidation of the fourth respondent, that right would be lost under section 56(d) of the said Act.

24 The iron ore that is mined also contains vanadium and titanium. The iron ore is crushed into smaller pieces which fall into one of two categories, lumpy ore and fine ore.

25 The larger material is suitable for the processing and production of iron. The slag by-product that results from the iron production can be reprocessed for the production of vanadium. The finer material is suitable for the processing and production of vanadium.

26 The fourth respondent has only two customers for the entire off-take of its mine under long-term supply agreements.

Highveld purchases all the larger material for iron production and VVP purchases all the finer material for vanadium production.

27 By reason of the business rescue, the fourth respondent has currently ceased its mining operations. However the entire staff complement of the fourth respondent has not been dismissed or retrenched; its staff is on short time and its labour force in a position to be immediately re-activated.

28 The practitioners are conscious that a successful business rescue plan would be one which, if approved, would involve a restructure that would either maximise the likelihood of the fourth respondent continuing in existence on a solvent basis or, if that is not possible, that would result in a better return for the creditors and shareholders than would result from the immediate liquidation of the company.

29 Any business rescue plan which has a result other than the fourth respondent continuing in existence and operating its mine, would involve the alienation of fourth respondent's statutory rights. This would result in a breach of the fourth respondent's supply obligations to Highveld and the VVP, creating damages liabilities which would further dilute any dividend that would be paid to creditors.

30 On 13 October 2015, the creditors of Highveld adopted a business rescue plan. The party funding the restructure of Highveld's affairs was to be International Resource Products Ltd ("IRPL"). That business rescue plan had two primary alternatives to the winding down of the business of Highveld. These were:

30.1 the acquisition by IRPL of the shareholding of Highveld; alternatively

30.2 the acquisition of Highveld's assets and business as a going concern including Highveld's shares and claims in Mapochs as well as acquiring the claims of other creditors of Mapochs.

31 Although one of the conditions for Highveld's business rescue plan is the successful conclusion of the fourth respondent's business rescue proceedings. The successful conclusion of the fourth respondent's business rescue proceedings is not conditional on the success of Highveld's business rescue proceedings.

32 Shortly thereafter and on 16 October 2015, the Mapochs practitioners circulated a letter, a copy which is annexed hereto marked **"JL1"**. In this letter notice was given of an extension of the time period for the publication of the business rescue

plan which had been approved on 15 October 2015, requiring that the plan had to be published on or before 24 November 2015.

33 Not only have the applicants known since the adoption of the Highveld business rescue plan on 13 October 2015 that a Mapochs business plan would be proposed thereon but also that the plan would be published on or before 24 November 2015.

34 In the course of the fourth respondent's business rescue, a committee of creditors was formed by the larger creditors of the fourth respondent.

35 In the process of formulating its business rescue plan, the Mapochs practitioners sought purchasers for which shares or assets and funders of its business.

36 Any proposal which involved the acquisition of the assets and business of Mapochs would be unattractive and unacceptable to creditors. This is primarily due to 3 reasons:

36.1 by alienating business, Mapochs would be in default of its supply agreements and liable to Highveld and the VVP for substantial damages claims; and

36.2 such an offer would require regulatory consent from the Department Mineral Resources this could take up to 18 months and its success would not be certain. Furthermore the staff could not be retained on short time for the duration of such period; and

36.3 VVP could potentially veto such a transaction per its "A" shares.

37 The practitioners received three offers. These were from Global Renewable Energy limited ("GRE"), VVP and Highveld (funded by IRPL). The offer of the GRE and VVP had in common the purchase of the fourth respondent's assets which would have the result of the fourth respondent no longer continue in existence and dividends being paid to the creditors in a winding up, other than the immediate winding up, of the fourth respondent. The implementation of such an offer in a business rescue plan would be delayed until the statutory consent obtained, if at all, and the staff being retrenched.

38 Highveld is creditor of the fourth respondent.

38.1 It has a claim of R1,68 billion which has been subordinated in favour of all other claims and as such is currently worthless.

38.2 It has a claim of approximately R56 million which is not subordinated.

38.3 It has a claim of approximately R5,2 million in respect monies it paid to the fourth respondent (post commencement of business rescue) for product purchased which product was never delivered to it..

39 The proposal to rescue Mapochs that was most attractive was Highveld's proposal. Highveld's offer was to introduce the R35 million of IRPL to purchase the claims of the other creditors with a further sum of R18 million which represented the purchase price of stocks of iron ore, in situ, presently situated at the mine. This additional R18 million would be available to repay the post-commencement liabilities and advances (which includes the R5,2 million) as well as the expenses of the business rescue supervision. In addition this proposal provided that the proceeds of certain assets, referred to in paragraphs 20.5.1 – 20.5.4 (including claims due Highveld to Mapochs) which are estimated to be between R14 million and R21 million, and which would be paid to the creditors of Mapochs, other than Highveld.

40 The sum of R53 million (after deduction for post-commencement funding and cost of supervision) would thus be

immediately available to pay creditors for the claims which Highveld would purchase.

41 Further as part of Highveld's offer all of the fourth respondent's further operations would be funded by Highveld, it contracting with all the fourth respondent's suppliers and service providers. Thus any further credit incurred by the fourth respondent would be only to Highveld on loan account.

42 The result of the adoption and implementation of the plan on this basis would be:

42.1 The creditors of Mapochs, other than Highveld will be paid:

42.1.1 R53 million, net of post-commencement costs and advances being the sum of R35 million and the additional R18 million (after deduction of post-commencement costs and advances); together with

42.1.2 a further sum of between R14 million and R21 million.

42.2 Highveld would be repaid its R5,2 million and would be the sole creditor of the fourth respondent. Highveld's claims would be made up of the:

42.2.1 R1,68 billion,

42.2.2 the R56 million; and

42.2.3 the balance of the other creditors' claims, reduced by R18 million after deduction of post-commencement costs and advances and the further sum of between R14 million and R21 million.

42.3 The debt owed to Highveld would be subordinated in favour of third-party creditors.

42.4 The fourth respondent would be restored to solvency.

43 The subordination was omitted from the first draft of the business rescue plan based on Highveld's offer. This will be remedied in the plan to be presented at the meeting for approval by the creditors.

44 The business rescue plan that was initially proposed is only commercially viable to IRPL in the context of a rescue of

Highveld, in terms whereof IRPL became the holding company of Highveld through purchasing the shares in Highveld. However such a situation required the participation in cooperation of the second applicant which has been withheld.

45 As a result the plan to be proposed at the meeting on Monday, 30 November 2015 is to be modified to make the proposal that of IRPL and not Highveld.

45.1 The same monies will be provided by IRPL – namely an immediate injection of R53 million to acquire the claims of creditors (excluding Highveld, employees claims and existing shareholder loans) and the stockpile of iron ore.

45.2 Highveld will not sell its claims which will be subordinated in favour of new creditors post Business Rescue (except that Highveld will be repaid its R5,2 million), and

45.3 the claims acquired by IRPL will be subordinated subject to being reduced by the payments from the proceeds of the assets.

46 The Highveld offer was accompanied by a payment by IRPL of the sum of R53 million into the trust account of ENS attorneys

with an undertaking to pay such sum, conditional on the acceptance of the business rescue plan. Those moneys are available for the amended plan in accordance with the amended offer by IRPL.

47 The result of the adoption and implementation of the amended plan on this basis would be:

47.1 The creditors of Mapochs, other than Highveld will be paid:

47.1.1 R53 million, net of post-commencement costs and advances being the sum of R35 million and the additional R18 million (after deduction of post-commencement costs and advances); together with

47.1.2 a further sum of between R14 million and R21 million.

47.2 Highveld would be repaid its R5,2 million and would remain a creditor of the fourth respondent. Highveld's claims would be made up of the:

47.2.1 R1,68 billion, and

47.2.2 the R56 million.

47.3 The debt owed to Highveld would be subordinated in favour of third-party creditors.

47.4 IRPL will become a creditor of Mapochs for the balance of the other creditors' claims, reduced by R18 million after deduction of post-commencement costs and advances and the further sum of between R14 million and R21 million.

47.5 IRPL's claims will similarly be subordinated.

47.6 The fourth respondent would be restored to solvency.

48 What is intended to be put at the meeting:

48.1 involves the purchase of claims of creditors of Mapochs, not by Highveld but by IRPL, which the applicants have no business seeking to prevent;

48.2 does not involve Highveld making any payments in the fourth respondent's business rescue plan;

48.3 does not involve waving any of Highveld's claims in or against the fourth respondent; and

48.4 does not waive any right to a dividend or distribution from the fourth respondent, which the first respondent is entitled to receive.

49 No doubt it is intended by IRPL that the business rescue plan of Highveld will be successfully implemented. If this were to happen, the claims of Highveld referred to in paragraphs 47.2 and 47.3 above will be transferred to IRPL together with the shares of Mapochs held by IRPL. However the occurrence of this event is not a condition for the successful conclusion of the Mapochs' business rescue.

50 Should the Mapochs business rescue proceed on this basis and should the applicant be successful in the "pending main application" in due course, the transfer of the Highveld shares in claims will not be set aside as a consequence thereof. In such event Highveld will remain the controlling shareholder of Mapochs and a creditor to exactly the same extent as it currently is (except that it would have been repaid R5,2 million) and it will be the holding company of a solvent subsidiary company in which IRPL will be a subordinated creditor.

51 While this result would not be commercially attractive to IRPL, it is nevertheless a risk which IRPL takes in making its offer in the event that the business rescue plan in Highveld is ultimately set aside.

52 That being so, I am unable to understand on what basis the applicants will be irreparably harmed or had any locus standi to attempt to set aside the Mapochs' business rescue.

53 Furthermore as the Mapochs practitioners we are duty bound to formulate a business rescue plan and put same to the creditors of Mapochs for the consideration and vote. This is a statutory duty and I am unable to understand on what basis the applicants have any entitlement to obstruct the performance of such duty.

54 In any event, GRE is to be afforded the opportunity of putting its proposal, the buyout of the creditors of the sum of R180 million for the assets and liabilities of Mapochs. The Mapochs practitioners had a number of difficulties with such proposal:

54.1 it contemplates the cancellation of the supply agreement with Highveld and raises the spectre of a damages claim and also affects the rights of the VVP;

54.2 it would require the section 11 regulatory consent;

54.3 it may be uncertain and delayed pending a due diligence investigation; and

54.4 it is not all clear that GRE has the funding to back up such an offer. It has not provided any cogent proof of funding at all at this time despite being given many opportunities to do so.

55 However these are issues to be considered by the creditors at the meeting and whether or not they want an alternative business plan formulated on the basis of the GRE offer.

56 I am unable to understand on what basis it is unlawful for the Mapochs practitioners to hold the meeting which the applicant seeks to interdict. Highveld is entitled to be represented at any such meeting. It is only the second and third respondents who can represent Highveld, which they are duty bound to do unless and until they ceased to be its business rescue practitioners.

57 No notice has been given to the affected parties in the Mapochs business rescue as contemplated by section 145(1) of the Companies Act, 2008.

58 The applicants have not joined either IRPL or GRE as interested parties in these proceedings. The applicants have not joined the creditors, holding voting interests whom they seek to interdict in paragraph 3.2 of the notice of motion and his statutory rights under section 152 of the Companies Act,

2008, with which they seek to interfere in paragraph 4 of the notice of motion.

59 This application was served on the Mapochs respondents by email after 8pm on the night of Friday 27 November 2015. The notice of motion was signed but there was no commissioned affidavit. A copy of the commissioned affidavit was only sent by email after 11h30 on the morning of Sunday 29 November 2015. Notwithstanding the appearance that the correspondence, of the applicants' attorneys attached to the founding papers, was copied to the Mapochs practitioners, I and the fifth respondent were not privy to any such correspondence. We only first became aware of same on receipt of this application.

60 Furthermore Mapochs has run out of funds post-commencement or otherwise to continue any operations. In the opinion of the Mapochs practitioners, the only viable business rescue plan is that funded by IRPL. If a business rescue is not immediately accepted and implemented, the business rescue proceedings will be required to be converted into liquidation proceedings. Mapochs' statutory rights will lapse, it will lose its most valuable asset, employees will be retrenched and the creditors will receive a miniscule dividend, if any.

61 The harm to Mapochs, its employees, shareholders and creditors will be irrevocable. There is no tender of compensation by the applicants, if the relief were granted, to put Mapochs in the position it would be if the relief had not been granted.

WHEREFORE I pray that the application be dismissed with costs, alternatively struck from the roll with costs.

DEPONENT

Thus signed and sworn to at Johannesburg on this the 29th day of November 2015, the deponent having declared to know and understand the contents of this affidavit, has no objection to taking the prescribed oath and regards the oath as binding on the deponent's conscience.

7001870-7
SGT, B

COMMISSIONER OF OATHS
MOSIBUDI MABICE
15 STURDEE AVENUE
ROSEBANK SAPS
JHB
2196

SOUTH AFRICAN POLICE SER
CLIENT SERVICE CENTRE
2015 -11- 29
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ROSEBANK
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EVRAZ MAPOCHS

16 October 2015

Dear Affected Persons,

RE: MAPOCHS MINE - CONSENT TO EXTENSION

The business rescue proceedings of Mapochs Mine Pty Ltd ("the Company") commenced on 20 April 2015. The joint business rescue practitioners ("the Practitioners") were appointed on 21 April 2015.

In terms of section 150(5), of the Companies Act, 71 of 2008 ("the Companies Act"), the business rescue plan ("the Plan") must be published by the Company within 25 days after the date on which the Practitioners were appointed, or such longer time as may be allowed by the Court or the holders of a majority of the creditors' voting interests.

In accordance with the above provision, the Plan had to be published on or before 28 May 2015, in the absence of a further extension allowed as set out above.

On 15 October 2015, the Practitioners further addressed a letter to all creditors requesting their consent to the aforementioned extension of the publication of the Plan ("the Letter").

The Practitioners hereby advise that pursuant to the Letter, the holders of a majority of the creditors' voting interests voted in favour of the extension of the date by which the Plan must be published to 24 November 2015.

In the circumstances, the last date for publication of the Plan is now no later than 24 November 2015.

Yours sincerely,

J. LIGHTFOOT

J. EVANS

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JOHN EVANS NO	Fifth Respondent
JOHN LIGHTFOOT NO	Sixth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

JOHN FRANCIS EVANS

do hereby make oath and say that:-

1 I am an adult male and the fifth respondent in this matter. The facts deposed to herein are true and correct, and, save as

where otherwise provided or the contrary appears from the context, are within my personal knowledge.

2 I have read the answering affidavit of John Dymoke Lightfoot. I confirm the truth of the content of that affidavit.

WHEREFORE I pray that the application be dismissed with costs, alternatively struck from the roll with costs.

DEPONENT

Thus signed and sworn to at Johannesburg on this the 29th day of November 2015, the deponent having declared to know and understand the contents of this affidavit, has no objection to taking the prescribed oath and regards the oath as binding on the deponent's conscience.

7001870 7
Mabace SGT, B

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