

# decision

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## AMSTERDAM DISTRICT COURT

Private Law Division

suspension of payments proceedings number: C/13/21/4 S.  
pronounced on: 15 June 2021

By decision of this District Court of 15 February 2021,

the public limited liability company

**STEINHOFF INTERNATIONAL HOLDINGS N.V.**,

with its corporate seat in Amsterdam,

listed with the Chamber of Commerce under number 63570173,

business address: Building B2, Vineyard Office Park, Cnr Adam Tas & Devon Valley Road,  
Stellenbosch 7600, South Africa,

referred to hereinafter as: SIHNV,

was granted a provisional suspension of payments, appointing F. Verhoeven as administrator and appointing K.M. van Hassel and C.H. Rombouts as supervisory judges. By decision of 18 February 2021, C.R. Zijderveld was appointed as second administrator.

### 1. The proceedings

- 1.1. On 23 April 2021, the administrators submitted a petition for the granting of relief within the meaning of Article 281b, read in conjunction with Articles 281d and 281e, of the Dutch Bankruptcy Act (*Faillissementswet*) and for the introduction of measures to protect the interests of creditors as referred to in Article 225 of the Dutch Bankruptcy Act.
- 1.2. By statement of defence of 12 May 2021, including appendices, Lancaster 101 (Rf) (Pty) Ltd (hereinafter: Lancaster) filed a counterpetition for the withdrawal of the provisional suspension of payments pursuant to Article 242 of the Dutch Bankruptcy Act, for the appointment of experts pursuant to Article 228(1), read in conjunction with Article 225, of the Dutch Bankruptcy Act and for the provision of information pursuant to Article 225 of the Dutch Bankruptcy Act.
- 1.3. By statement of defence of 12 May 2021, including appendices, Hamilton BV and Hamilton 2 BV (hereinafter: Hamilton), filed a counterpetition pursuant to Article 225 of the Dutch Bankruptcy Act.
- 1.4. The District Court ordered that the administrators' requests would be handled at a public hearing on 19 May 2021 and ruled on them by decision of 28 May 2021. A committee of representation was appointed in that respect (hereinafter: committee). By decision of 8 June 2021, the District Court appointed the fifteenth member of the committee, nominated by Hamilton.
- 1.5. Furthermore, the District Court determined that the counterpetitions filed would be heard at a later stage. By e-mail of 25 May 2021, the District Court informed the parties and interested parties that these counterpetitions would be handled on 4 June 2021 and that any statements of defence should be submitted by 1 June 2021 at the

latest. A number of interested parties availed themselves of the opportunity to do so.

- 1.6. The aforementioned counterpetitions were handled on 4 June 2021.
- 1.7. After the case was called on 4 June 2021, the following persons appeared:
  - F. Verhoeven, administrator, assisted by D.G.J. Heems;
  - P. Kuipers, on behalf of SIHNV;
  - O. Salah, on behalf of Conservatorium Holdings LLC;
  - F.M. Peters, on behalf of Public Investment Corporation, Government Employees Pension Fund, Compensation Fund and Unemployment Insurance Fund and 43 institutional investors (referred to collectively hereinafter as: PIC);
  - J.W. de Jong, on behalf of Hamilton;
  - C.B. Schutte, on behalf of Lancaster;
  - V.R. Vroom, on behalf of Baupost Capital LLC, Farallon Capital Europe LLP, Sculptor Investments IV S.a.r.l. and Silverpoint Capital L.P. (hereinafter: G4);
  - Q.L.C.M. Bongaerts, on behalf of Alexander Reus, P.A. d/b/a DRRT and Stichting Steinhoff International Compensation Claims, hereinafter: DRRT/SSICC);
  - K. Rutten, on behalf of Deminor Recovery Services (Luxembourg) SA, DRS Belgium SRL and 127 investors (hereinafter: Deminor);
  - S.C.M. van Thiel, on behalf of Burford Capital LLC (hereinafter: Burford);
  - furthermore, a number of interested parties appeared via video connection, including Mr W.J.P. Jongepier, chairman of the committee, D.A.M.H.W. Strik on behalf of SIHNV, who addressed the court.

During the hearing, the parties explained their positions in further detail, some in part on the basis of memorandum of oral arguments.

## **2. Lancaster's counterpetition**

- 2.1. On commencement of the hearing, Mr Schutte withdrew all the parts of the counterpetition on behalf of Lancaster. This counterpetition therefore need not be further addressed.

## **3. Hamilton's counterpetition**

- 3.1. Hamilton requested the District Court to rule that:
  1. administrators are obliged to adopt such measures and arrangements as are necessary to enable consultation and voting on the agreement to take place digitally;
  2. administrators are obliged to adopt such measures and arrangements as are necessary to complete the verification process within the meaning of Article 266 and Article 267 of the Dutch Bankruptcy Act prior to the digital consultation and voting on the agreement;
  3. administrators are obliged to file the report as referred to in Article 265(1) of the Dutch Bankruptcy Act in good time prior to the "verification process", which report must be published on the website that has been set up;
  4. in deviation from the provisions of Article 266(1) of the Dutch Bankruptcy Act (as the "verification process" was completed prior to the digital consultation regarding and the vote on the agreement), administrators are not allowed to renege on previous acknowledgements and objections during the digital consultation regarding and the vote on the agreement;

5. administrators are obliged to publish the decision on this independent request pursuant to Article 225 of the Dutch Bankruptcy Act on the website that has been set up.

3.2. Hamilton acknowledges that its requests cannot be allowed at present without this violating the decision of 28 May 2021, which allowed the request for the establishment of the committee. Hamilton's requests were submitted as an alternative to such a committee and cannot have their intended effect given the existence of the committee.

3.3. Hamilton is still convinced that its requests offer a suitable and less far-reaching solution to the problems on which the administrators based their request for the establishment of the committee. Hamilton therefore explicitly persists in its requests. In the absence of any relevant defence, Hamilton considers that, in principle, the parts of its requests are ripe for granting.

3.4. As far as Hamilton is concerned, the solution to this impasse lies in the setting aside of the decision of 28 May 2021. Hamilton stated at the hearing that it will lodge or has lodged an appeal – the courier was said to be on his way to the Court of Appeal at the time of the hearing – against the decision of 28 May 2021. Notwithstanding the provisions of Article 282 of the Dutch Bankruptcy Act, it believes that there is a ground that would justify lodging an appeal. The District Court did not hear Hamilton at the hearing on 19 May 2021 regarding its counterpetitions, did not consider the arguments on which they were based when deciding to appoint the committee and thus had in fact already decided on Hamilton's requests in the decision without hearing Hamilton. Against this backdrop, Hamilton has no choice but to lodge an appeal against the decision. This is therefore what Hamilton will do or has already done.

#### **4. SIHNV's further request**

Mr Kuipers submitted a request at the hearing on behalf of SIHNV to declare the decision of 28 May 2021 immediately enforceable regardless of appeal, as far as possible. This request was supported by the administrators and some of the interested parties.

#### **5. The positions**

##### SIHNV

5.1. The measures requested by Hamilton have nothing to do with the preservation of the assets, the relaunch of the company or the increased satisfaction of creditors in the event of bankruptcy, nor with the better functioning of the committee.

5.1.2. Now that the District Court has rendered a final decision on the appointment of the committee and the composition thereof, the right to vote on the agreement is no longer vested in the individual creditors but in the committee. To that extent, "verification" of the claims submitted in the context of the provisional suspension of payments is no longer necessary to be able to vote on the agreement. Consequently, Hamilton's requests as set out in the statement of defence at 1 to 4 are now ripe for dismissal due to a lack of interest.

5.1.3. Lastly, Hamilton requests that the administrators be obliged to publish the District Court's decision on its requests on a website. SIHNV has not objected to this and refers in this respect to the opinion of the District Court.

##### Administrators

5.2. Hamilton's requests mainly concern disciplinary measures relating to the submission of claims and the vote on the agreement. Hamilton introduces its requests as a "less far-reaching alternative to the establishment of a committee". The requests were therefore – also

in the option proposed by Hamilton itself – intended for the case where no committee would be established. Now that a committee actually has been established, Hamilton no longer has an interest in its request and an alternative arrangement is no longer necessary.

5.2.2. As far as the administrators are concerned, the allowance of all or some of the administrators' requests as made in the original application (Brandaris Scheme) has largely eliminated the practical and legal obstacles confronting them. As far as the administrators are concerned, there is currently no need for further disciplinary measures. The administrators do not object to Hamilton's request to publish the decision on the website at Hamilton's independent request.

#### DRRT/SSICC

5.3. DRRT and SSICC concur with SIHNV's defence and with what the other interested parties advance against Hamilton's requests.

5.3.2. As a result of the decision of 28 May 2021, Hamilton's requests must fail due to a lack of interest in the measures sought.

5.3.3. DRRT and SSICC move that Hamilton's requests be dismissed.

#### G4

5.4. G4 is of the opinion that the requests as made by Hamilton are superseded, now that the District Court by decision of 28 May 2021 decided to establish the committee.

## **6. The assessment**

### *Hamilton's counterpetition*

6.1. The District Court appointed the committee by its earlier decision of 28 May 2021. One of the committee's tasks is to vote on the agreement. This means that the voting right on the agreement is no longer vested in the individual creditors, but in the committee or its members. This also means that the contestation and recognition of claims within the meaning of Article 266(2) of the Dutch Bankruptcy Act and the decision of the supervisory judge as to who will be admitted to the vote up to what amount as referred to in Article 267 of the Dutch Bankruptcy Act, referred to by Hamilton as "the verification process", will not take place. Parts 2, 3 and 4 of Hamilton's counterpetition take this process as a starting point, so that these parts cannot be allowed either, which Hamilton has also acknowledged. Part 1 of the counterpetition pertains to a measure for consultation and voting to take place digitally. Now that a committee has been appointed, it is up to the committee, in consultation with the supervisory judges – and not up to Hamilton – to determine whether further digital or other measures are required for the process of the vote. It has not been shown that such measures are currently necessary or desired. This part of Hamilton's counterpetition is also dismissed.

6.2. Now that the administrators do not object to part 5 of Hamilton's counterpetition, i.e. to oblige administrators to publish the decision on this counterpetition on the website, and as they will do so, Hamilton lacks an interest in this part of the counterpetition as well.

6.3. The District Court sees no reason for an order for costs.

### *SIHNV's further request*

6.4. The District Court considers SIHNV's request to declare the decision of 28 May 2021 immediately enforceable regardless of appeal, which is supported by the administrators, to be

an addition to the administrators' original request of 23 April 2021 for the establishment of the committee. As the request was not submitted until the hearing of 4 June 2021, so after the final decision of 28 May 2021 on this original request had been rendered, it was submitted too late and cannot be allowed for this reason alone. SIHNV's request will be declared inadmissible.

## **7. The decision**

### **The decision**

The District Court

- dismisses Hamilton's counterpetition;
- declares SIHNV's further request inadmissible;
- rejects all other or additional requests.

This decision was rendered by N.C.H. Blankevoort, president, A.E. de Vos and M.L.S. Kalff, judges and in the presence of F.T.M. Bruning, court clerk, and pronounced in open court on 15 June 2021.

# Court Record

AMSTERDAM DISTRICT COURT

Private Law Division

suspension of payments number C/13/21/4-S

Record of the hearing of 4 June 2021 in the provisional suspension of payments of :

the public limited liability company

**STEINHOFF INTERNATIONAL HOLDINGS N.V.**,

with its corporate seat in Amsterdam,

listed with the Chamber of Commerce under number 63570173, business address: Building B2, Vineyard Office Park, Cnr Adam Tas & Devon Valley Road, Stellenbosch 7600, South Africa,

referred to hereinafter as: SIHNV.

Those present are: N.C.H. Blankevoort, president, A.E. de Vos and M.L.S. Kalff, judges, and F.T.M. Bruning, court clerk.

The issue at hand here is the hearing of the counterpetition filed by attorneys C.B. Schutte and R. van den Berg, on behalf of Lancaster 101 (RfJ(Pty) Ltd (hereinafter: Lancaster) for the withdrawal of the provisional suspension of payments pursuant to Article 242 of the Dutch Bankruptcy Act, for the appointment of experts pursuant to Article 226(1), read in conjunction with Article 225, of the Dutch Bankruptcy Act and for the provision of information pursuant to Article 225 of the Dutch Bankruptcy Act as well as the counterpetition pursuant to Article 225 of the Dutch Bankruptcy Act filed by attorneys P.W. Schreurs and J.W. de Jong, on behalf of Hamilton BV and Hamilton 2 BV (hereinafter: Hamilton).

After the case was called, the following persons appeared:

- F. Verhoeven, administrator, assisted by D.G.J. Heems;
- P. Kuipers, on behalf of SIHNV;
- O. Salah, on behalf of Conservatorium Holdings LLC;
- F.M. Peters, on behalf of Public Investment Corporation, Government Employees Pension Fund, Compensation Fund and Unemployment Insurance Fund and 43 institutional investors (referred to collectively hereinafter as: PIC);
- J.W. de Jong, on behalf of Hamilton;
- C.B. Schutte, on behalf of Lancaster;
- V.R. Vroom, on behalf of Baupost Capital LLC, Farallon Capital Europe LLP, Sculptor Investments IV S.a.r.l. and Silverpoint Capital L.P. (hereinafter: G4);
- Q.L.C.M. Bongaerts, on behalf of Alexander Reus, P.A. d/b/a DRRT and Stichting Steinhoff international Compensation Claims, (hereinafter: DRRT/SSICC);
- K. Rutten, on behalf of Deminor Recovery Services (Luxembourg) SA, DRS Belgium SRL and 127 investors (hereinafter: Deminor);
- S.C.M. van Thiel, on behalf of Burford Capital LLC (hereinafter: Burford);

- furthermore, a number of interested parties appeared via video connection, including Mr W.J.P. Jongepier, chairman of the committee of representation, and D.A.M.H.W. Strik on behalf of SIHNV, who addressed the court.

The president of the District Court informed those present that on 3 June 2021, a nomination had been received from Hamilton for a fifteenth committee member to be appointed and that this nomination would be decided in the short term.

Succinctly put, Mr Schutte stated the following: I withdraw all requests on behalf of Lancaster.

Mr De Jong explains Hamilton's requests on the basis of a memorandum of oral arguments submitted by him, which is enclosed with the file. The contents are to be regarded as inserted herein.

Succinctly put, Mr De Jong furthermore stated the following:

I would like it to be noted in the record that the president of the District Court asked me at the beginning of the hearing whether Hamilton is persisting in its requests since the decision of 28 May 2021. This because the District Court has not heard anything from Hamilton since then. In response, I have indicated that Hamilton certainly has an interest in this regard and that I will explain a few things on behalf of Hamilton, that I have been given five minutes to do so and that I would also like to make use of that time. Hamilton therefore explicitly persists in its requests. Hamilton will lodge an appeal against the District Court's decision of 28 May 2021 today, or has already done so.

Succinctly put, Mr Kuipers has stated the following:

I request that the District Court, where possible, declare the decision of 28 May 2021 immediately enforceable regardless of appeal.

Succinctly put, Mr Strik has stated the following:

If this request has to be submitted in writing, I request that this District Court stay the hearing so that this request can still be submitted in writing.

Succinctly put, the administrator has stated the following:

I support attorney Kuipers' request.

Article 282 of the Dutch Bankruptcy Act stipulates that no appeal may be lodged against the decision of 28 May 2021, unless the decision expressly so provides. The administrators have never requested that the decision in question be declared open to appeal.

Of which this record was drawn up,

# Court Record

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## AMSTERDAM DISTRICT COURT

Private Law Division

suspension of payments proceedings number: C/13/21/4-S

Record of the hearing of 19 May 2021 in the provisional suspension of payments of:

the public limited liability company

**STEINHOFF INTERNATIONAL HOLDINGS N.V.**,

with its corporate seat in Amsterdam,

listed with the Chamber of Commerce under number 63570173, business address: Building B2, Vineyard Office Park, Cnr Adam Tas & Devon Valley Road, Stellenbosch 7600, South Africa,

referred to hereinafter as: SIHNV.

Those present are: N.C.H. Blankevoort, president, A.E. de Vos and M.L.S. Kalff, judges, and F.T.M. Bruning, court clerk.

The issue at hand here is the hearing of the petition filed for the granting of relief as referred to in Article 281b, read in conjunction with Articles 281d and 281e, of the Dutch Bankruptcy Act (*Faillissementswet*) and for the introduction of measures to protect the interests of the creditors as referred to in Article 225 Dutch Bankruptcy Act. On 30 April 2021, the administrators submitted a revised Appendix 5 to the petition.

After the case was called, the following persons appeared:

- F. Verhoeven and C.R. Zijderveld, administrators, assisted by D.G.J. Heems and F.H. van der Beek;
- P. Kuipers, M.L.J. Noldus and P. Wakkie, on behalf of SIHNV;
- R.D. Vriesendorp and O. Salah, on behalf of Conservatorium Holdings LLC;
- F.M. Peters, on behalf of Public Investment Corporation, Government Employees Pension Fund, Compensation Fund and Unemployment Insurance Fund (referred to collectively hereinafter as: PIC);
- P.W. Schreurs, J.W. de Jong, H.J.T. Kolstee and L.C.H.J. Hox, on behalf of Hamilton BV and Hamilton 2 BV (hereinafter: Hamilton);
- C.B. Schutte, R. van den Berg and L. Heide-Jorgensen, on behalf of Lancaster 101 (rf)(Pty) Ltd (hereinafter: Lancaster);
- A.J. Dunki Jacobs and V.R. Vroom, on behalf of Baupost Capital LLC, Farallon Capital Europe LLP, Sculptor Investments IV S.a.r.l. and Silverpoint Capital L.P. (hereinafter: G4); Q.L.C.M. Bongaerts, on behalf of Alexander Reus, P.A. d/b/a DRRT and Stichting Steinhoff International Compensation Claims, (hereinafter: DRRT/SSICC);
- K. Rutten, on behalf of Deminor Recovery Services (Luxembourg) SA, DRS Belgium SRL and 127 investors (hereinafter: Deminor);
- J. de Rooij and R.E.E. van Dekken, on behalf of Burford Capital LLC (hereinafter: Burford); Burford);

- W.J.P. Jongepier, prospective chairman and independent member of the committee of representation as requested
- furthermore, a number of interested parties appeared via video connection, including representatives of the Association of Shareholders [In Dutch: *Vereniging van Effectenbezitters*] (hereinafter: VEB) and Mr L.J. du Preez, chairman of the Board of Directors of SIHNV, who took the floor.

At the hearing, D.G.J. Heems/F.H. van der Beek, P. Kuipers, C.B. Schutte/R. van den Berg, Ph.W. Schreurs, V.R. Vroom/A J. Dunki Jacobs, Q.L.C.M. Bongaerts and K. Rutten, explained their positions in more detail, partly on the basis of a memorandum of oral arguments, which has been added to the file, and responded to each other's positions. Furthermore, the administrators, R.D. Vriesendorp and F.M. Peters and P. Wakkie and L.J. du Preez made a few comments.

Of which this record was drawn up,