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RESPONSE FROM WILLIAM MATHAMELA

Note: The following are extracts from letters received from Mr. Mathamela's attorney. We have not published the letters in full as they cover additional allegations that have not been published in this article. If those additional allegations are made public, we will publish the letters in full. We have also redactced the name of a Regiments employee who has not been named in the article or asked for comment.

LETTER 1: 27 AUGUST 2020

AD QUESTION 7

4.6. as your offices are aware, our Client was employed as the Treasurer of the COJ and left the employ of the COJ during or about the end of **June 2009**;

4.7. in accordance with the generally accepted practice regarding senior officials and/or employees in the treasury, upon the termination of one's employment in treasury, the exiting employee/official is expected to leave/vacate office immediately on the date of termination of their employment. Accordingly, the transactions which your offices request our Client's response in relation to, occurred after our Client had left the employ of the COJ. Our Client accordingly cannot comment further on same;

AD QUESTION 8

4.8. your advices in this respect are purely speculative and our Client does not wish to engage in same. However, our Client at this point will venture only as far as to confirm that our Client did not divert any fees as suggested by your offices, as our Client at the time, was not in the employ of the COJ;

AD QUESTION 10

4.9. it was unnecessary for Pro-Grace to inform the City of Tshwane Metropolitan Municipality ("**COT**") about the fact that Regiments would assist Pro-Grace in respect of the execution of the mandate, as the task and mandate were undertaken by Pro-Grace and further, the necessary report with regard to the restructuring was prepared and submitted by Pro-Grace. The involvement of Regiments Capital was limited to

rendering various sub-contracted services to Pro-Grace in the course of Pro-Grace's attendances in the execution of Pro-Grace's mandate, in return for remuneration;

4.10. the above would be no different if another service provider was utilised for the attendances by Regiments Capital. Our Client did not at the time consider it to be prudent to advise the COT of all service providers who would be assisting our Client with the performance of its obligations, as same simply would be unnecessarily cumbersome;

AD QUESTION 11

4.11. our Client was not aware that Regiments Capital had bid for the tender. The remainder of the contents of your paragraph under reply fall outside of our Client's knowledge and accordingly, our Client cannot comment further thereon;

AD QUESTION 12

4.12. Mr [redacted] elected contact details cannot be explained by our Client and your offices' probe in this regard has been misdirected. Regardless, our Client denies that he sought to deceive any parties as to the identity of Mr [redacted] employment;

AD QUESTION 13

4.13. as mentioned *ad* paragraph 4.9 *supra*, pursuant to the provision of services to Pro-Grace by Regiments Capital, monies would no doubt have become due, owing and payable to Regiments Capital by Pro-Grace. Our Client accordingly dispatched such correspondence to Mr Wood in order to assuage Mr Wood that the necessary funding to make payment to Regiments Capital pursuant to its services had been secured. The remainder of your offices' allegations in your paragraph under reply are purely speculative and our Client does not wish to engage in same;

AD QUESTION 14

4.14. as mentioned ad paragraph 4.9 *supra*, Regiments Capital assisted Pro-

Grace with the debt-restructuring initiative. Accordingly, our Client does not find it inconceivable that consultation was had with Regiments Capital, and further, that our Client would seek comments from Regiments Capital in respect of various aspects of same;

4.15. moreover, as part of the arrangement between Regiments Capital and Pro-Grace, all parties were to be kept fully apprised of the progress of the report and the necessary attendances towards the debt-restructuring initiative;

AD QUESTION 15

4.16. your offices' understanding of the relevant paragraphs does not seem to be correct in that the quoted text clearly states that the costs in respect of phase 2 would need to be confirmed. Without resorting to complex interpretation of plain language, it is clear that there was no resolution as to the costs relating to phase 2 at the time;

AD QUESTION 16

4.17. the City was at all material times informed that a joint venture had subsequently been formed between Regiments Capital and Pro-Grace Investments.;

AD QUESTIONS 17 AND 18

4.18. as your offices easily would have surmised, insofar as Pro-Grace secured new business for the relevant lenders, Pro-Grace would have referred the COT to the relevant lenders, in the course of which new business, the relevant lenders would derive a benefit. As is the normal course in origination, consultancy and referrals, the relevant lender pay a fee and/or commission of some nature;

4.19. the correct manner of reference to the necessary fees and/or commissions would be "consultancy fees";

AD QUESTIONS 21 AND 22

4.20. on **8 March 2013**, the COT furnished our Client with an approval document, penned by A Dyakala for and on behalf of the Executive Acquisition Committee;

4.21. paragraph 3 of the aforementioned document clearly stipulates that "*...there are two ways that the Advisors get paid for their valuable services. In situations when the new lending banks agree to directly pay*

the Advisory fee, the all-in-rates (the rates that are approved by the City's Council) will appear in the loan agreements and the lending banks serve as paying agent, the relevant loan agreements reflect the clean rates and the City will pay the Advisors the amount equivalent to the difference between the all-in-rates and the clean rates. This is particularly the case with the FirstRand Bank Limited or RMB...";

AD QUESTION 23

4.22. this question has been misdirected, and should rather be directed to Nedbank as it was a prerequisite for Nedbank and RMB that the relevant fees be fully disclosed;

LETTER 2: 2 SEPTEMBER 2020

AD COJ SWAPS

12. Your offices advise that a "proposal to enter into swaps" which allegedly was tabled before our Client on **23 June 2009** and further, that on or about **30 June 2009**, our Client signed a memorandum relating thereto. As your offices no doubt will appreciate, upon the cessation of our Client's employment with the COJ during or about the end of June 2009, our Client ceased having access to the documentation which he had encountered during his employment at the COJ, which includes the documentation referred to by your offices. Moreover, as is standard procedure, upon the termination of our Client's employment with the COJ, our Client was precluded from making copies of any such documentation, the effect of the aforegoing being that our Client lacks the documentation referred to by your offices.

13. In the above premises, your offices' request for information and/or confirmation of events relating to the COJ without providing our Client with the necessary documentation basing your offices' allegations is tantamount to entrapment, in that your offices wish to entice our Client to furnish a version without the courtesy of full disclosure as to the extent of the information informing such allegations by your offices. Moreover, and noting that a period of approximately 11 years has lapsed since the events in question, your offices will very well understand that our Client finds it difficult to recall fine detail such as that which is required by your offices without the benefit of some documentation in order to revisit his memory as to the exact events and the rationale for same, more especially in light of the fact that your offices queries relate to decisions which may or may not have been taken by the COJ.

14. Notwithstanding the above, we advise that:

14.1. our Client's recollection is that at the outset, the COJ ran a perfect hedge however, the COJ repaid such debt, leaving the swap naked. It was for this reason that the Auditor General requested the swap to be unwound;

14.2. logically, the next step would be to transfer the "liability" to the sinking fund where a series of swaps belonging to the COJ already were ran and managed in different buckets;

14.3. it was always contemplated to be the better option for the COJ to include the "new" swap in the existing liability portfolio of the COJ. Over-simply put, this entailed the swap simply being assigned from one COJ debt portfolio to another COJ debt portfolio. To our Client's best recollection, the contemplation at all material times was that the relevant series of transactions would be undertaken at the prevailing historical costs and not marked-up to market. It was at this point and understanding that our Client left the employ of the COJ;

14.4. the transfer of the residual swaps was a logical consequence of the above in that all the COJ's swaps were *inter alia*:

14.4.1. within the aforementioned segregated portfolio; and

14.4.2. the transfer into the aforementioned segregated portfolio was both optimal and efficient for the COJ due to the fact that the newly transferred swaps potentially could match some of the COJ's exposures within certain risk baskets; and accordingly to attend to the necessary swaps in any other way or outside the fund would have meant that the interest rate risk from those 2 swaps would need to be managed haphazardly or utilising a methodology that does not consider the existing interest rate exposure for the COJ; whilst

14.5. it is best practice to conduct interest rate management activities under a single or unified unit. Ordinarily, banking institutions manage all the relevant bank's interest rate risks on a consolidated basis through their interest derivatives desk. This meant that in any event, in order for the COJ to benefit from the swaps, a unified approach to the banks would have to have been taken in order to rationalise the different exposures of the COJ to the relevant banking institutions; and

14.6. to this end, Regiments Capital was already approved and mandated *qua* agent to manage the COJ's debt obligations as at **2006**. This appointment was structured as a "segregated mandate" in order to ensure the independence of the redemption fund, whilst simultaneously performing certain risk management activities in accordance with the mandate for same.

AD REGIMENTS CAPITAL'S APPOINTMENT QUA SUB-CONTRACTOR FOR COT LOAN RESTRUCTURING

15. At the outset, our Client finds your offices' further query as to the supply of services by Regiments Capital as our Client's subcontractor to be sinister in that the value and purpose of a subcontractor in any business relationship is *inter alia* to augment the main contractor's expertise and capacity to deliver on the given mandate, as also to provide niche expert advice, to assist in the decision-making process on projects and in certain instances, to draft communications aligned to the work at hand.

16. Our Client finds nothing untoward or sinister in the business relationship between our Client and Regiments Capital, save for the connotations from the verbiage of your offices' line of questioning, which, in very overt undertones seems to wish to allude *inter alia* to:

16.1. some form of perceived (or expected) improper relationship between our Client and Regiments; and

16.2. to some extent and for some or other undisclosed premise, that Regiments Capital was not fit to the task of providing "expert advice" to our Client in

the pursuit of the execution of our Client's mandate.

17. Whilst our Client could very easily join your offices in churning up vitriol on matters that our Client is not properly versed in, it is not our Client's intention to demean himself by engaging your offices or any other person for that matter, in such fruitless banter.

18. Notwithstanding the above, our advices per our correspondence under your offices' reply are reiterated in that *inter alia*:

    18.1. Regiments Capital was appointed by our Client as its subcontractor in respect of the tender which our Client was awarded to address the contemplated loan restructuring for the City of Tshwane Metropolitan Municipality ("**COT**");

    18.2. as your offices no doubt are aware, Mr [redacted] in fact is/was in the employ of Regiments Capital; however,

    18.3. in that Regiments Capital was a sub-contractor of our Client, to the extent that Mr [redacted] would have represented to be in the employ of Regiments Capital whilst attending to work which was assigned to our Client, same no doubt would have caused confusion in various stakeholders. Notwithstanding the aforegoing and noting that Regiments Capital was under the sub-employ of our Client (who held the tender for the relevant services and therefore was the expected point of call and contact for various other stakeholders), it seems to our Client to be common and understandable for Mr [redacted] to not present himself as an employee of Regiments Capital in order to avoid brand confusion between Regiments Capital and Pro-Grace ("**Pro-Grace**").

AD COT LOAN RESTRUCTURING

19. We pause to digress in that our Offices referred to a document with reference "[ST B12/23–ST/F/9/8/2 A DYAKALA (358-8100) EAC:08 MARCH 2013]" as Annexure A to our correspondence dated **27 August 2020**. Upon further and competent counsel, our Client has reconsidered his position with regard to providing same to you in that inter alia, the document in reference is a COT confidential and internal document which our Client encountered in the course and scope of the exercise of its/his functions as the duly authorised agent of the COT pursuant to the award of the relevant tender to our Client.

20. The relevant documentation remains the property of the COT which our Client is

not at liberty to furnish your offices with due to certain confidentiality and restraint covenants which preclude our Client from doing so. However, and noting that the full and relevant document reference has been furnished to yourselves, your offices are directed to request same from the COT, who is the correct entity/person from whom the relevant documentation may be requested, should your offices be so conscientious as to enquire regarding same, for the completeness of your offices' research and information as to the matter.

21. Notwithstanding the above and insofar as the remainder of the queries put to our Client by your offices which do not refer to the aforementioned document, our Client's advices are as follows:

21.1. the appointment of Pro-Grace to supply the relevant services to the COT was from **23 March 2012**, however, the necessary transactions were only completed during or about **February 2013** after final Council approval was furnished in February 2013;

21.2. the COT was very cautious of proceeding with the transactions in that they were fully aware that the necessary transactions were high-risk transactions due to the fact that the banks had the leverage to either refuse for their loans to redeemed ahead of term, or to otherwise levy exorbitant penalties and/or ancillary penal costs which would make it almost impossible to settle the COT's indebtedness to them;

21.3. the real risk for the COT thus was that if they proceeded with the swaps without certainty as to the costs and risks thereof, the COT risked having incurred waste and fruitless expenditure if the transactions could not continue. This was in addition to the risk of having incurred expenditure in the process of preparing phase 2 of the contemplated transactions, which too, would have proved fruitless and/or wasteful. This has obvious consequences for the COT's annual audit by the Auditor-General, which consequences the COT wished to avoid as far as possible;

21.4. the COT formed and functioned using a restructuring committee led by Mr Max van Heerden ("**van Heerden**"), Antoinette van Zyl and the erstwhile Treasurer of the COT, being Collins Mashigo. All communication was channeled through van Heerden and the necessary reports were compiled by him including council and other reports such as Executive Acquisition Committee reports;

21.5. as a mitigation against these risks, it was agreed that the implementation

of the relevant transactions would be phased. In respect of the first phase, the COT capped its liability for the attendant fees at approximately **R460,000.00 (Four Hundred and Sixty Thousand Rand)**;

21.6. further, the COT was very adamant in its refusal to pay more than the above amount irrespective of the additional attendances that became necessary in order to conclude the contemplated transactions;

21.7. whilst noting that the intended transactions required *inter alia* a full due diligence including legal analysis on approximately **38 (Thirty Eight)** loan agreements, the COT refused to expend more than the aforementioned amount in respect of the costs associated with the execution of the mandate of Pro-Grace;

21.8. Pro-Grace accordingly was left to attend *inter alia* to the following on risk, and funded by itself in respect of phase 1:

21.8.1. carry the costs including those related to the necessary legal and financial due diligence, together with the ancillary costs therefor,

21.8.2. examine each term loan;

21.8.3. attend to benchmarking the COT with other metropolitan municipalities in the country;

21.8.4. attend to market sounding;

21.8.5. negotiate the relevant pricing;

21.8.6. determine the fixed-floating mix in the erstwhile portfolio of the COT;

21.8.7. establish the value of existing escrows or assets; and

21.8.8. establish the underlining in some of the loans,

for which debts, some of the lenders were not banks or other ordinary financial service providers;

21.9. the continuation of the above attendances, together with further tasks in the course of the execution of our Client's mandate, was thereafter attended to in the course of phase 2 by our Client;

21.10. in the course of the restructuring meetings, it became clear that Pro-Grace would have to continue phase 2 on risk as the COT remained intent

on not remunerating Pro-Grace for this phase as well;

21.11. the COT's position was that Pro-grace would recover its cost and fees via the savings that that would materialise for the COT through the restructuring exercise;

21.12. further, and to the extent that Pro-Grace would be able to generate substantial savings for the COT as envisaged, Pro-Grace would recover its costs in the restructuring exercise, however, Pro-Grace's fees would be capped at 25% (**Twenty Five per cent**) of all savings realized by the COT;

21.13. in that the COT was further not in a position to make payment of the above fees itself, Pro-Grace was then instructed to negotiate with the lenders itself for an arrangement such that the lenders would refinance the loans with the COT, with the fees that Pro-Grace would ordinarily stand to gain being locked into the restructured loans. RMB and Nedbank to such terms agreed on condition that the relevant fees be disclosed such that the banks would satisfy themselves thereof;

21.14. our Client was advised that the above was duly attended to in that van Heerden advised our Client that there was an approval which was to be tabled at an Executive Acquisition Committee meeting which was scheduled on or about **8 March 2013**; and

21.15. the implementation of phase 2 of the restructuring exercise in fact took longer than expected due to the fact that DBSA demanded that the COT make payment to it of an amount in excess of **R200,000,000.00 (Two Hundred Million Rand)** in penalties, in the event that the COT wished or intended to repay its debt(s) to DBSA ahead of term. This also had the real risk of rendering the whole loan restructuring exercise futile after almost a year of attendances by Pro-Grace. Through the legal due diligence attended to by our Client, as also our Client's best endeavours, the risk was averted and managed accordingly, and DBSA agreed to terms which benefitted the COT;

21.16. notably, as a result of the attendances of Pro-Grace, including the negotiations with the lenders, the COT was able to save approximately **R200,000,000.00 (Two Hundred Million Rand)** or approximately **R145,000,000.00 (One Hundred and Forty Five Million Rand)** if calculated

on the basis of net profit value;

21.17. the COT made a further **R86,000,000.00 (Eighty Six Million Rand)** cash profit as a direct result of the loan restructuring by Pro-Grace; and

21.18. in light of the above, our Client confirms that it received no consultancy fees and/or commission from the COT in respect of phase 2 of the restructuring exercise, however, Pro-Grace received fees from the total savings that the COT enjoys from the restructuring exercise as aforementioned.

AD COUNCIL RESOLUTIONS AND CONFLICT OF INTEREST

22. The contents of our paragraph 19 supra are repeated herein.

23. Moreover, your offices' request with regard to the relevant Council Resolutions is technically unsound in that section 117 of the MFMA precludes Council from engaging in discussions relating to the procurement process. This is the competency of the Accounting Officer of a municipality, who performs this function through committees such as the Executive Acquisition Committee, whose recommendations are to be ratified by the Council for implementation. Accordingly, for the Council to indulge in deliberations relating to the appointment of service providers would be in contravention of section 117 of the MFMA.

24. The Executive Acquisition Committee is a committee established in law under the MFMA Supply Chain Management Regulations and is the only body in a municipality that can approve a service provider's mandate to perform and to be remunerated by a municipality and not the municipal council.

25. Consequent to the above, our Client disregards your advices insofar as your offices advise *inter alia* that "*...Mr. Ngobeni's email of 7 December 2012...*", incorrect as Council does not deliberate on issues relating to procurement and service providers. Your offices would do well to acquaint yourselves with s117 of the MFMA which precludes council from engaging in matters or deliberations pertaining to the procurement process and/or service providers.

26. Further to the above, your offices' assertion that "...*council was presented with renegotiated rates without being told that the lenders had offered lower rates*..." is refuted by our Client as same again is incorrect. However, in that our Client is only prepared to venture as far as the aforegoing as the reports prepared by Pro-Grace and submitted to him do not support your assertions. Your offices accordingly are directed to van Heerden, as he was responsible for the submission of the relevant Council reports.

27. [redacted]

28. [redacted]

AD YOUR OFFICES' ASSESSMENT

29. Ultimately, our Client advises as follows:

    29.1. our Client confirms that it has never received the amount of approximately **R36,600,000.00 (Thirty Six Million Rand)** from the COT;

    29.2. your offices' advices insofar as your offices advise inter alia that "... *fundamental conflict of interest*..." are biased, malicious and unsubstantiated. Your aforegoing advices conveniently ignore *inter alia* that:

        29.2.1. our Client secured the tender in respect of the restructuring exercise pursuant to a public bidding process;

29.2.2. once the tender was secured by our Client, our Client was mandated to approach such lenders as may be necessary for and on behalf of the COT;

29.2.3. in the course of the necessary negotiations with the lenders, our Client was instructed to recover its fees therefrom, alternatively, from the savings which would be derived by the COT;

29.3. insofar as your offices advise that our Client was "enticed" by the lenders in order to initiate the relevant transactions, such allegations fall far short of the expected standard of an organisation such as your offices. Your offices are advised that the relationship between our Client and the lenders was pursuant to our Client securing the relevant tender in an open bidding process and further your advices in general, have been devoid of the crucial aspect of the benefit derived by the COT, which was the crux of the whole restructuring exercise;

29.4. your offices' advices that our Client was "enticed" by commissions from specific lenders is purely sensationalist and your offices' allusion at impropriety and/or collusion between Pro-Grace and the relevant banks is rather regrettable and puts into question your offices' own objectives and/or inarticulate premise in the course of your offices' queries;

29.5. the restructuring exercise was always premised on securing the maximum attainable interest rate savings for the COT. The attainment of the intended objective cannot be seen as wrong. Further, the agreed rewards accruing to Pro-Grace pursuant to the success of the restructuring exercise cannot therefore not be slated;

29.6. we pause to note at this juncture that contrary to your offices' allegation that Standard Bank was not invited to participate in the matter, Standard Bank in fact was approached first and enjoyed a right of first refusal with regard to the proposal to reduce the interest rates applicable to the COT in exchange for a longer term for the debt of the COT to Standard Bank, however Standard Bank rejected such proposal. It was only after such rejection by Standard Bank, that Pro-Grace approached RMB; and

29.7. accordingly, which regrettably is a recurring theme in your correspondence under our reply herein, your advices and the basis thereof fall short of truth and/or fact, and accordingly are denied by our

Client

CONCLUSION

30. Notwithstanding our Client's accession to your offices' request for comment, your offices have conducted yourselves in a recalcitrant manner in relation to our Client. Our Client does not expect to be coerced into a trial by media by your offices and our Client is fully cognizant of your offices' negative choice of verbiage when describing our Clients' engagements and/or alleged involvement herein, and our Client takes high exception thereto. Needless to say, to the extent that harm is caused to our Client by your offices' utterances herein, whether same may be in the public domain, or not, our Clients strictly reserve their rights to seek the appropriate recourse from your offices, *in toto*.

31. Regardless, our Client has now furnished your offices with the extent of his advices herein (save where new matters with merit may arise),and will no longer engage your offices herein. As such, your offices are advised to cease communicating with our Client directly, and further, any and all further communications herein should be channeled to our Client through our Offices.

32. We trust that the above now addresses your offices' various queries herein.

Our Clients' rights remain strictly reserved in toto.

Yours faithfully,

PP Andre Pienaar

Managing Partner

Andre Pienaar And Associates

Attorneys • Notaries • Conveyancers