

Mr. C. de Bres
HBN Law
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Kralendijk, Bonaire
By courier and (without exhibits) by email:
chris.debres@hbnlawtax.com

Haarlem, 17 December 2021

Re: Zebec vs. SMH Cruise et al

Dear Mr. De Bres,

I am writing on behalf of Zebec Development Company N.V. ("**Zebec**"). This letter is addressed to you in your capacity of lawyer to St. Maarten Harbor Cruise Facilities N.V. ("**SMH Cruise**").

You are familiar with Zebec's investigations concerning the reasons for the coordinated efforts by SMH Cruise, Royal Caribbean Cruise Ltd. ("**RCCL**") and St. Maarten Quarter Development Company N.V. ("**SMQDC**") to remove Zebec as the developer of the parcel within the cruise terminal and have it replaced by Ocean Drive Properties N.V. ("**ODP**"). I write to inform you that the investigations have meanwhile established that said replacement was part of a corrupt scheme, designed to have Mr. Theo Heyliger reap illegal benefits from the development of the property. I may draw your attention to the following:

- (i) A lease agreement in respect of the Diamond International store currently located within one of the buildings on the property was concluded on 8 November 2016 (Exhibit 1). The stated name of the lessee is "Private Foundation Skyline".
- (ii) It was established that in the past, Private Foundation Skyline was part of Mr. Heyliger's corrupt structures. Reference is made in this respect to the back-to-back lease agreement in respect of other real estate within the harbor (the so-called 'satellite shops'; Exhibits 2, 3, 4 and 5). By means of these agreements, SMH Cruise rented the stores to a company by the name of Frivol Reality N.V. ("**Frivol**"), which rented the same stores at substantially higher prices to the actual users.
- (iii) A report (*proces-verbaal*) by the Anti-corruption Task Force (Exhibit 6) establishes that the ultimate beneficial owner of Frivol is Mr. Theo Heyliger. The fact that Mr. Heyliger is the actual ultimate beneficial owner of Frivol was, moreover, confirmed to my client both by Mr. Heyliger



himself and by an officer of Diamond International, Mr. Hakimi. Reference is made in this respect to the sworn affidavit by Mr. L.A. Giola dated 27 July 2021 (Exhibit 7). You may note that when Mr. Elfrink on 22 July 2021 stated as a witness that he would be the ultimate beneficial owner of Frivol, he clearly committed perjury.

- (iv) Since Frivol ran no commercial risk in connection with the subletting of the satellite shops and since it did not provide any additional service, it is clear that the insertion of Frivol between SMH Cruise and the actual users served no legitimate purpose, but served as a means of channeling kickbacks to Mr. Heyliger. Frivol was subsequently succeeded by a company by the name of Skylight Real Estate N.V. (Exhibit 8), which was in turn succeeded by Private Foundation Skyline (Exhibit 9), i.e. by the initial lessor of one of the bastions developed by ODP. Private Foundation Skyline is, therefore, also a conduit for illegal payments to Mr. Heyliger.
- (v) Private Foundation Skyline was subsequently succeeded as lessor of the Diamond International store by ODP (Exhibit 10). In view of the fact that the lease agreement remained substantially the same, including its lay-out, it must be concluded that ODP serves the same purpose as Private Foundation Skyline previously did: a conduit for illegal payments to Mr. Heyliger.

For the avoidance of misunderstanding, the above was already known to your client. Mr. Van Kooten's refusal to answer questions on 23 February 2021 on the grounds that he could incriminate himself amounts to an admission of guilt in this respect.

The investigations by Zebec have also confirmed that SMH Cruise (or persons whose conduct is attributable to SMH Cruise) persuaded RCCL and SMQDC to obstruct the development by imposing the double condition of a limitation of retail space (including food & beverage) to 10,000 square feet and that the project would provide for "incidental commercial features" only. As soon as Zebec was replaced as developer by ODP, these conditions were dropped by RCCL and SMQDC, demonstrating that neither the retail area nor the nature of the development were ever a matter of genuine concern to them, but were used by SMH Cruise, RCCL and SMQDC as a pretext to remove Zebec and have it replaced by a party willing to participate in Mr. Heyliger's corrupt practices.

SMH Cruise's participation in the scheme described above was wrongful towards Zebec and obliges SMH Cruise (together with the other participants in the scheme) to compensate the damages sustained by Zebec as a result thereof. Zebec commissioned an expert review of the quantum of damages it sustained as a result of the inability to proceed with the development of the parcel. The expert report prepared by Alvarez & Marsal estimates aggregate damages as per 28 July 2014 to amount to USD 102,177,000. Said amount is to be reduced by the proceeds of the settlement agreement between Zebec and SMH Cruise dated 25 August 2015 in the amount of USD 5 million. Therefore, damages for which SMH Cruise is liable amount to USD 97,177,000. The settlement agreement of 25 August 2015 did not extinguish said liability, since SMH Cruise wrongfully withheld crucial information from Zebec at the time the agreement was negotiated.

I was instructed (jointly with Mr. J. Veen, Lexence) to commence legal action against SMH Cruise to recover the damages sustained by Zebec. My client and me are mindful that SMH Cruise may consider itself a victim of Mr. Heyliger's corrupt practices rather than a perpetrator. However, his actions and those of Mr. Van Kooten are still attributable to SMH Cruise. Moreover, the fact that Mr. Van Kooten still serves as a director of SMH Cruise even after he indirectly confessed to criminal



wrongdoings on 23 February 2021, appears to show that SMH Cruise is still unwilling to distance itself from the perpetrators.

Since an action to recover the damages described above would be related to the settlement agreement, it would according to the text of Article 21 of that agreement be subject to arbitration. I hereby kindly request you to let me know whether your client would invoke that provision, or would be prepared to subject the controversy to litigation before the St. Maarten court of First Instance. Reasons why SMH Cruise would in my view be well advised to agree to litigation before the St. Maarten court include the following:

- (a) Obviously, it would be strange and awkward from a public relations viewpoint (to put it mildly) for a company which is owned by the country of St. Maarten not to have full confidence in the St. Maarten court. It is likely that by invoking the arbitration clause, SMH Cruise would in the public eye be seen to hide the consequences of its participation in Mr. Heyliger's scheme from public scrutiny.
- (b) In view of the fact that Zebec was induced to enter into the settlement agreement by fraud (*bedrog*) which was part of a criminal conspiracy, it is in my view at least questionable whether SMH Cruise could in good faith require application of the arbitration provision.
- (c) Zebec will anyhow commence litigation in the St. Maarten court versus other perpetrators, including SMQDC and ODP. In the event it would be forced to pursue arbitration versus SMH Cruise in parallel, it would request the arbitrator to adjourn the arbitration awaiting the outcome of the St. Maarten litigation, so as to prevent conflicting decisions. Alternatively, and considering that the claims will in part be based on article 6:166 of the Civil Code, the other defendants may implead (*in vrijwaring oproepen*) SMH Cruise, causing that SMH Cruise would anyhow find itself before the St. Maarten court.

I kindly request you to inform me of the position of your client relative to the arbitration provision within two weeks after the date of this letter.

Yours sincerely,
Best regards,

Jacob M.K.P. Cornegoor

Exhibit 1: Lease Agreement dated 8 November 2016 between Private Foundation Skyline and Deliwo N.V.

Exhibit 2: Lease Agreement dated 30 September 2013 between SMH Cruise and Frivol Real Estate N.V.; addendum dated 21 May 2015

Exhibit 3: Lease Agreement dated 30 September 2013 between SMH Cruise and Frivol Real Estate N.V.; addendum dated 22 May 2015



- Exhibit 4: Lease Agreement dated 16 february 2014 between Skylight Real Estate N.V. and Yaelle N.V.
- Exhibit 5: Lease Agreement dated 21 January 2015 between Skylight Real Estate N.V. and Ultrima N.V.
- Exhibit 6: report (*proces-verbaal*) by the Anti-corruption task force dated 28 October 2018;
- Exhibit 7: sworn affidavit Mr. L.A. Giola dated 27 July 2021;
- Exhibit 8: Letter dated 25 January 2015 (Frvol Real Estate N.V. replaced by Skylight Real Estate N.V.)
- Exhibit 9: Letter dated 28 January 2017 (Skylight Real Estate N.V. replaced by Private Foundation Skyline)
- Exhibit 10: Lease Agreement dated 13 April 2017 between ODP and Deliwo N.V.