



CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT 105/10

In the matter between:

EVERFRESH MARKET VIRGINIA (PTY) LIMITED

REGISTRATION NO. 2002/017631/07

(previously known as WILD BREAK 166 (PTY) LTD)

Applicant

and

SHOPRITE CHECKERS (PTY) LTD

Respondent

DIRECTIONS DATED 01 FEBRUARY 2011

The Chief Justice has given the following directions in the above matter.

1. This application for leave to appeal is set down for hearing on Tuesday 10 May 2011 at 10:00.
2. The record, properly paginated and indexed shall be prepared by the applicant and lodged by Wednesday 23 February 2011.
3. The record shall consist, without duplication, only of those portions relating to the hearing before the High Court and the papers filed in this Court that are necessary for the determination of the appeal.
4. In addition, the applicant shall, not later than ten days before the hearing, –
 - (a) lodge one copy of a supplemental volume to the record, consisting of all documents filed in this Court which do not form part of the record already lodged;
 - (b) number these documents consecutively beginning with the page immediately after the last page of the record already lodged; and
 - (c) provide an updated index which includes the supplementary volume(s).
5. Written argument must include submissions on:

- (a) The precise nature of the obligation (if any) created by a provision in a lease that the rentals for the renewal period shall be agreed upon between the lessor and the lessee.
- (b) If there is an obligation to negotiate in an effort to arrive at an agreement are the parties required, at common law, to negotiate:
 - i. reasonably and/or
 - ii. in good faith.
- (c) If there is no common law obligation like that described in paragraph 5(b) of these directions, is there a constitutional obligation on this Court and other Courts to develop the common law to require fair and/or reasonable conduct or good faith on the part of the lessee and the lessor.
- (d) If so:
 - i. What constitutes fair and reasonable conduct or conduct in good faith in the circumstances of this case?
 - ii. Has the conduct of the respondent fallen below the requisite standard?
- (e) If the conduct of the respondent has fallen below the required standard, what are the terms of an appropriate order that this Court should make to facilitate negotiations in compliance with the standard required by this Court.

6. Written argument must be lodged by:

- (a) The applicant by Wednesday 9 March 2011; and
- (b) The respondent by Thursday 24 March 2011.

7. Further directions may be issued in due course.

MS STANDER
SNR REGISTRAR: CONSTITUTIONAL COURT

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