



CONSTITUTIONAL COURT OF SOUTH AFRICA

Everfresh Market Virginia (PTY) Limited v Shoprite Checkers (PTY) Limited

CCT 105/10

Hearing date: 10 May 2011

MEDIA SUMMARY

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On Tuesday 10 May 2011 the Constitutional Court will hear an application for leave to appeal against a decision of the KwaZulu-Natal High Court in Pietermaritzburg. Shoprite Checkers (Pty) Ltd sued Everfresh Market Virginia (Pty) Ltd in the High Court for ejection from certain business premises in Durban on the basis that the written agreement of lease under which Everfresh occupied the property expired. Everfresh, in its defence, relied on a clause in the written agreement which was to the effect that the agreement would be renewed for a further period provided that agreement could be reached on rent for the renewal period. The High Court held that the clause was not enforceable and granted the eviction order. The Supreme Court of Appeal refused leave to appeal.

In the Constitutional Court Everfresh applies for leave to appeal and asks the Court to develop the common law so that leases providing for the payment of reasonable rental are enforceable. They contend that the lease in this case is really one for the payment of reasonable rental to be negotiated in good faith. Everfresh also argues that Shoprite is obliged at least to determine the rental by the exercise of a reasonable discretion or to negotiate in good faith.

Shoprite disputes the appropriateness of developing the common law and opposes leave to appeal mainly on the basis that the constitutional issues now raised were raised neither in the High Court nor in the Supreme Court of Appeal.