

**SOUTH GAUTENG HIGH COURT
(HELD AT JOHANNESBURG)**

Case no. 2009/7907

In the matter between:

JOHN ARNOLD BREEDENKAMP
Applicant

First

BRECO INTERNATIONAL LTD
Applicant

Second

HAMILTON PLACE TRUST
Applicant

Third

**INTERNATIONAL CIGARETTE
MANUFACTURERS (PTY) LTD**
Applicant

Fourth

and

STANDARD BANK OF SOUTH AFRICA LTD

First
Respondent

MINISTER OF FINANCE

Second
Respondent

Jajbhay J

1. Purporting to rely on *pacta servanda sunt*, the first respondent ('the bank') contends that it is entitled to terminate the contract without reason upon simply giving the applicants reasonable notice of its decision to do so. Its argument followed along these lines:

- 1.1. The common law entitles a bank to cancel by simply giving reasonable notice to its customers of its intention to do so;
 - 1.2. The common law does not require the bank to provide a reason when doing so;
 - 1.3. The bank did not furnish a reason because it did not have to do so and it gave reasonable notice as it was required to do;
 - 1.4. Thus, under the common law, the bank has not behaved unlawfully.
2. To the extent that a reason needs to be provided, and although one was not provided at the time, the bank stated in their answering affidavit that they do have a reason for terminating its contracts with the applicants. Their reasons are essentially two-fold:
 - 2.1. First, the applicants appear on two sanctions lists created by the US Treasury and the European Union; and
 - 2.2. Second, the bank does not approve of the relationship that Mr John Bredenkamp and his companies have had with the Mugabe government and, as a consequence, they regard the applicants as a reputational risk to them.
3. The applicants, in reply, denied that the common law entitles the bank to act as it has. A proper construction of the contracts and a proper analysis of the authorities suggest that:

- 3.1. The contracts can never be interpreted to mean that the banks can cancel without giving a reason; and
- 3.2. The common law regulating mandate, which defines the relationship between a bank and its customer, does not permit a mandatory to simply terminate the mandate upon giving reasonable notice unless it is possible for the mandatory to obtain the service elsewhere. In this case, because of the oligopoly, it would be impossible for the applicants to obtain other banking facilities if Standard Bank are entitled to terminate as they have contemplated they will. Should the bank be entitled to terminate, the consequences for the applicants will be harsh, onerous and oppressive. The common law mechanism facilitating this hardship is unfair and unreasonable because it produces an injustice. To that extent the common law needs to be developed so as to bring it in line with the constitutional imperative, in private contractual relationships, to do simple justice between the parties in a manner which can be characterised as both reasonable and fair.
4. The Court was requested to determine the following:
 - 4.1. What are the terms of the contract between Standard Bank and the applicants?
 - 4.2. How does the existing common law regulate the dispute that has arisen between the parties?
 - 4.3. Is there a need for the existing common law to be developed under the guise of section 39(2) of the Constitution? and

4.4. To what extent should the contract between a large powerful institution and an ordinary citizen in the private sphere, attract the rules of natural justice?