

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(WESTERN CAPE HIGH COURT, CAPE TOWN)**

**CASE NUMBER:** 4385/2005

5 **DATE:** 4 MARCH 2010

In the matter between:

**IMPERIAL TRUCK SYSTEMS (PTY) LTD**

**t/a IMPERIAL TOYOTA CENTRE**

Applicant

10 and

**FUEL LOGISTICS GROUP (PTY) LTD**

Respondent

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**J U D G M E N T**

**Application for Leave to Appeal**

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**BREITENBACH, AJ:**

This is an application for leave to appeal against the whole of the judgment and orders in a trial action between the current  
20 applicant, as defendant, and the current respondent, as plaintiff. I handed down the judgment on 5 January this year and in essence held that the applicant was liable to the respondent for the damages the respondent may prove it suffered as a result of the theft from the applicant's premises  
25 at Elsies Rivier on 7 June 2004, of two Toyota Hino trucks.

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The applicant seeks leave to appeal to the Supreme Court of Appeal, alternatively to the full bench of this division. During the course of argument this morning, I understood Mr Moller,  
5 who appeared for the applicant, to say that if leave were granted, it would be appropriate to direct that the appeal be heard by the full bench not the Supreme Court of Appeal. I agree with that, because the issues raised in this matter are essentially ones concerning the interpretation of agreements  
10 between the parties. No new questions of law or important issues of legal principle arise for decision.

The argument this morning focused on those of the applicant's grounds of appeal which relate to the general terms and  
15 conditions of trading of the applicant, which were printed on the reverse of an application for credit facilities form, signed by Mr Colin Gayle, the regional manager of what is now the respondent's business, on 19 November 2003. The applicant's reliance on exemption clauses in those general terms and  
20 conditions is discussed in paragraphs 60 to 74 of my judgment, where I ultimately concluded that the applicant could not rely on those terms of trading.

The point of discussion this morning concerned the prospects  
25 of an appeal court holding that the wide wording of the form

and certain of the general terms and conditions of trading, meant that the exemption clauses in those terms and conditions were not confined to future negotiations and business between the respondent and the applicant, but also  
5 to future business between Imperial Fleet Services and the applicant under the full maintenance lease agreement between the respondent and IFS.

The applicant's point is that the implementation of the full  
10 maintenance lease agreement entails a contract of deposit concluded between the respondent and the applicant in respect of each vehicle left with the applicant for servicing under the full maintenance lease agreement and that the conclusion of that agreement or contract, which is the one on  
15 which the respondent sued in the main action, was a transaction of the sort described in the general terms and conditions of trading.

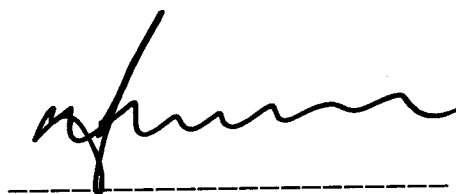
I remain unconvinced that the reasoning in paragraphs 72 and  
20 73 of the judgment is incorrect, but having said that I cannot exclude the possibility that an appeal court might differ from me, and in particular might hold that the distinction I drew between transactions for cash or credit between the respondent and the applicant, which are subject to the  
25 applicant's general terms and conditions of trading on the one

hand, and deposit contracts between them, as an incident to the servicing of vehicles under the full maintenance lease agreement on the other hand, is incorrect.

5 Differently put, in my judgment there is a reasonable prospect of an appeal court holding that the wide words "all transactions and negotiations between the applicant and yourselves" on the face of the application for credit form, and the corresponding wide words in the general terms and conditions themselves,  
10 apply not only to business between the respondent and the applicant, but also to deposit contracts between them incidental to business between the applicant and IFS under the full maintenance lease agreement.

15 For these reasons I make the following order:

1. Leave to appeal is granted to the full bench of this division.
- 20 2. The costs of this application shall be costs in the appeal.

A handwritten signature in black ink, appearing to be 'Breitenbach', written over a horizontal dashed line.

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BREITENBACH, AJ

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