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

Reportable

CASE NO: 13689/2016

In the matter between:

BEADICA 231 CC	First Applicant
BEADICA 232 CC	Second Applicant
BEADICA 234 CC	Third Applicant
BEADICA 235 CC	Fourth Applicant

and

THE TRUSTEES FOR THE TIME BEING OF THE OREGON TRUST (IT 728/1995)	First Respondent
SALE'S HIRE CC	Second Respondent
NATIONAL EMPOWERMENT FUND	Third Respondent

JUDGMENT: 16 November 2017

DAVIS J

Introduction

[1] This case goes to the heart of the debate as to what now constitutes the law of contract in constitutional South Africa. Applicants are franchisees in terms of a franchise agreement entered into with second respondent. Their businesses primarily consist of the rental and sale of builders' equipment and tools. They are all black owned enterprises, having acquired their businesses in 2011 as part of a black economic empowerment transaction funded by the third respondent. At some

point, it appears that they were employees of second respondent, who according to Mr Allister Fisher who deposed to a founding affidavit had 'worked their way up through the business of second respondent becoming either store or area managers' before the second respondent embarked on a process of franchising its business to a number of its historically disadvantaged employees, including applicants.

[2] Pursuant to the agreed franchise arrangements, the applicants each concluded lease agreements providing for a lease of first respondents premises with a commencement date of 1 August 2011. The lease would be for an initial period of five years terminating on 31 July 2016 with a right to renew the lease for a further five years, provided the lessee gave notice of its exercise of the option of the renewal at least six months prior to the initial termination date of 31 July 2016.

[3] The lease agreements required the applicants to give notice of the exercise of the renewal option by no later than 31 January 2016. The lease agreement ran parallel to a franchise agreement in terms of which franchise rights were granted to each applicant respectively for an initial period of ten years, thus corresponding with the initial five year period of the lease agreement together with a renewal period for a further five years.

[4] It is common cause that the applicants did not renew their leases by 31 January 2016. The first respondent, which owns the premises from which the applicants operated their business, now seeks to evict the applicants from the premises. It is also common cause that, as the franchise agreements contemplate that the business will operate from the premises from which they presently operate,

applicants face the real prospect that their businesses will close and/or that their franchise agreements will be terminated, if the lease agreements are terminated.

[5] Applicants accordingly seek an order declaring that the correspondence they generated which they claim purported to constitute an exercise of their options in respect of these lease agreements delivered in March 2016 served as a valid exercise of the renewal options for reasons I shall traverse presently, alternatively that each of the applicants have concluded new lease agreements on the same terms as the existing leases, subject to certain provisos which are set out in the notice of motion.

The challenge for the law of contract

[6] Even this brief synopsis of the dispute between the parties is sufficient to illustrate the nature of the fundamental question. How does the South African law of contract post the Republic of South Africa Constitution Act 108 of 1996 deal with this dispute?

[7] This question is based on a central premise, summarised thus: there is an overarching tension between the protection of individual freedom in terms of which individuals are entitled to engage with each other, free of the fetter of coercion, while at the same time the bargain struck requires some form of communal coercive action through a State organ, which, has as its ultimate objective, the construction of a community welded together from the wishes of individuals and flowing from the exercise of the individual freedoms which they claim. For an early exposition see Duncan Kennedy: "*The Structure of Blackstone's Commentaries*" 1979 (28) Buffalo Law Review 205.

[8] In a series of cases culminating most recently in *Botha v Rich NO* 2014 (4) SA 124 (CC) the Constitutional Court nodded in the direction of a more communitarian construction of the foundational values of freedom, dignity and equality in order to infuse a greater degree of fairness into the law of contract. For this reason, the Court spoke about the fact that honouring a contract cannot 'be a matter of each side pursuing his or her own self-interest... without regard to the other party's interest'. (para 46)

[9] The struggle to balance of these competing visions can be located in the tension between individual autonomy and what in the South African context is generally sourced in the value of ubuntu. In this context ubuntu means, a person becomes a person through other persons meaning by way of a communal relationship with others. See, as an example, the decision by Metz 2011 African Human Rights Law Journal 537. For a more general exposition of competing values operating in the law of contract, see A Cockrell "*Substance and Form in the South African Law of Contract*" 1992 (109) SALJ 40; J Barnard-Naude "*Oh what a tangled web we weave: hegemony, freedom of contract, good faith and transformation*" (2008) Constitutional Court Review 155.

[10] The application of an appropriate normative framework for contract law raises the question of legal certainty; in particular, the problem of enforcement of contractual obligations being dependent upon a judicial sense of reasonableness, fairness and good faith rather than in terms of a contract. See Malcolm Wallis "*Commercial Certainty and Constitutionalism: Are they compatible*" 2016 (133) SALJ 545.

[11] In dealing with this issue Fritz Brand, for example, is in no doubt that the courts must tread warily if they wish to move from the individualistic assumptions of contract for they do so at their and the law's peril:

> 'If we say that the principles regarding the role of fairness and equity in our contract law, as formulated, for example, in *York* and *Bredenkamp*, offend the spirit, purport and objects of the Bill of Rights, why do we say that; and to what extent do they so offend? Where exactly does the deficiency lie? If we are to formulate exceptions to these principles, where will we draw the line? For instance, if a contact provides for payment on a specified future date, would it be a sustainable defence that, payment on that date would be severely prejudicial to the debtor, while the creditor does not really need the money? Furthermore, if we are to recognise exceptions to these established principles, what would happen to equally well established remedies based on concepts of equity and fairness, such as misrepresentation, rectification, undue influence and so forth? Will they retain their independent existence? Or will they be subsumed by these undefined exceptions? I believe that unless and until questions such as these can be satisfactorily answered, the rule of law requires that the established principles be protected by our highest court.' 2016 (27) Stellenbosch Law Review 233 at 258

[12] Without engaging in an extensive debate about the value of certainty, suffice to say that, prior to the decision in *Bank of Lisbon South Africa v De Ornelas* 1998 (3) SA 580 (A), South African courts did, albeit on occasion, make use of the *exceptio doli generalis* as an instrument for ameliorating the strictness of a legal rule by introducing more equitable principles into the law. For a more recent exposition as to why the *exceptio* was considered not to be part of South African law, see *Bredenkamp and others v Standard Bank of South Africa Ltd* 2010 (4) SA 468 (SCA).

[13] In his judgment in *Bredenkamp, supra* Harms DP said the following:

> 'Every rule has to pass constitutional muster ... This does not mean that public policy value cannot be found elsewhere. A constitutional principle that tends to be overlooked when generalised resort to constitutional values is made is the principle of legality. Making rules discretionary or subject to value judgments may be destructive of the rule of law'. (para 39)

[14] There are a number of responses sourced in the recent jurisprudence of the Constitutional Court, to the core premises contain in this passage; see in particular *Botha v Rich, supra.* Suffice to mention but two: If public policy is to be sourced in a concept of *boni mores,* then it is surely inconceivable how the normative framework underpinning the Constitution would not provide the source thereof. To suggest that the value of legality is sourced in the Constitution and then to continue to argue that this somehow justifies a search for public policy outside of the Constitution is puzzling, at best. Secondly, the use of public policy generally occurs when a court is confronted with the tension between the individual and communal impulses of the law of contact and invariably what follows therefrom is the exercise of a value judgment. Difficult cases invariably entail a balancing exercise, just as further legal developments involve value judgments; that is when courts develop the common law. See in Leo Boonzaier and Michael Mbikiwa 2015 (132) SALJ 769 for an incisive critique of the approach adopted by Harms DP in *Bredenkamp, supra.*

[15] Whether the merits of the two cited decisions regarding the *exceptio*, the fact was, that as early as *Weinerlein v Goch Buildings Ltd* 1925 AD 282, our courts made use, albeit in limited circumstances, of this *exceptio* to resolve the tension to which I have made reference. As Wessels JA said in *Weinerlein*, *supra* at 292:

> 'As a general proposition your claim may be supported by a strict interpretation of the law, but it cannot be supported in this particular case against your particular adversary, because to do so would be inequitable and unjust, for it would allow you under the cloak of the law, to put forward a fraudulent claim.'

[16] Legal certainty therefore, at least in limited circumstances, gave way to an application of a value of equity as sourced in the *exceptio*. It would be dangerous therefor to hold out that the principle of legal certainty always acted as a decisive trump in the South African law of contract. See *Barnard Naude, supra* at 177-178. That the law of contract should follow a similar idea to that captured in *Weinerlein, supra* in the light of the legal revolution which the Constitution envisaged should be axiomatic. Sadly, it is not so considered by many in the legal community.

Back to this case

[17] With these introductory remarks, it is necessary to turn to a more detailed examination of the facts of this case. As indicated in the introduction, the lease agreements were concluded on substantially the same terms for the various applicants. They were all concluded around the same time (during May 2011) as part of a black economic empowerment initiative funded by the third respondent.

[18] Mr Shaun Sale represented first respondent during the negotiations of the lease agreements and he signed the agreements on behalf of first respondent. He is also the sole member of first respondent and signed the franchise agreements on behalf of the second respondent.

[19] It is common cause that the lease agreements contained the following provision.

> '20.1 the lessee shall have the right to extend the lease period by a further period as set out in section 13 of the Schedule [a further period of five years] on the same terms and conditions as set out herein, save as to rental, provided that the lessee gives the lessor written notice of its [sic] exercising of the option of renewal at least six (6) months prior to the termination date.
>
> 20.2 The rental during the renewal period shall be mutually agreed to between the lessor and lessee and reduced to writing at least three (3) months prior to the termination date [of 31 July 2016].
>
> 20.3 In the event of the lessor and the lessee being unable to reach written agreement of the rental for the renewal period as referred to in 20.2 above three (3) months prior to the lease termination date, then and in such event the rental for the renewal period shall be determined on the following basis...'

[20] On 29 March 2016 first applicant, by way of a letter written by Mr Fisher, informed second respondent: 'this letter is a formal request to propose a renewal on our already existing lease agreement with the option to purchase. I trust that this proposal meet with your favourable consideration. Please do not hesitate to contact me should you wish to discuss this matter further.'

[21] Mr Donovan Lotter, on behalf of third applicant, on 15 March 2016, wrote as follows:

> 'I *Mr Donovan Lotter hereby would respectfully like to request your consideration of an offer to purchase premises situated at Unit 9 Pine tree Business Park Lekkerwater Road Noordhoek. Should you find my offer consideration favourable, please don't hesitate to contact me to discuss the sale. In the interim could you*

kindly forward to us the draft to the renewal of premises lease for Sale Hire Noordhoek current lease expiring 31 July 2016.'

[22] On 03 March 2016 the following email was generated on behalf of the fourth applicant.

'My name is Gerald and I am Gavin's accountant. The reason for emailing you is that we check through the lease agreement and saw that the termination date is 31 July 2016. How soon you can draw up a new lease agreement for Gavin and can you also send me a draft copy for discussion purposes.' (sic)

[23] Respondents did not respond to these letters nor did they reject the contents thereof. The only correspondence received by some of the applicants followed upon the delivery of these communications was a notification from Mr Sale's personal assistant that he was out of town and that first respondent would revert once a renewal notice had been discussed with him. No explanation was provided by first respondent for its failure to respond to the applicant's notices.

[24] Applicants received no further correspondence concerning the renewal of the lease agreements. The first and third applicants then received termination letters approximately one week before the termination date. The letters provided as follows:

'In terms of clause 20 of the Agreement you had the right to extend the lease period for a further 5 (five) years, provided that you gave our client written notice of your intention to do so, which notice had to have been provided at least 6 (six) months prior to the termination date, i.e. 31 July 2016 (hereinafter referred to as the "option"). It is our instructions that you did not validly exercise the option.

We accordingly hereby notify you to vacate the property on or before 31 July 2016.'

[25] On 29 July 2019 two days before the initial termination date, termination letters were delivered to second and fourth applicants. They were framed slightly differently:

> 'In terms of clause 20 of the Agreement you had the right to extend the Lease Period for a further 5 (five) years, provided that you gave our client written notice of you intention to do so, which notice had to have been provided at least 6 (six) months prior to the termination date i.e. 31 July 2016 (hereinafter referred to as the "option"). It is our instructions that you did not validly exercise the option. The Agreement shall therefore terminate on 31 July 2016.
>
> In light of the above it is our client's instructions to inform you that our client is amendable to meet and discuss the possibility of concluding a new agreement for the lease of the premises for a fixed period. We are therefore instructed to confirm that our client is available to meet at the offices of [their attorneys] in order to negotiate such new agreement.
>
> In the interim our client is amendable [sic] to lease the premises on a month-to-month basis on the terms and conditions as set out in the current Agreement.
>
> It is our further instructions that should you fail to respond timeously or elect not to meet with our client you will be required to vacate the property on or before 31 July 2016.'

[26] Mr Fisher claims in his affidavit that first respondent, through the termination letters, seeks to terminate the lease agreements that are essential to the survival of the applicants businesses. The franchise agreements clearly contemplated that the business would operate from the premises from which they presently operate. As Mr Fisher states:

> 'The applicants face the real prospect that their businesses will close and/or that the franchise agreements will be terminated if the lease agreements are terminated.'

He further claims that the first respondent has, in effect, given the applicants approximately one week's notice that their businesses will close. Significantly, these specific set of allegations, as set out in the founding affidavit, are not denied within the answering papers.

[27] The applicants also contend that they are not sophisticated business men, and that they were not fully apprised of their rights and obligations, including the obligation to exercise a renewal option at least six months prior to the initial termination date. Respondent had merely reacted to this allegation in a form a bald denial.

[28] Mr Manca, who appeared together with Mr Quixley on behalf of the applicants, submitted that enforcing the strict terms of the renewal provisions of the lease agreements in this case would result inevitably in the eviction of the applicants. This consequence would be contrary to public policy but it would follow because first respondent brought a counter application for the eviction of the applicants from their premises, pursuant to the termination of the lease. It is clear that, in the event that the application fails, the counter application must succeed.

[29] Two further aspects of the evidence placed before this court are relevant. In the first place, there is no suggestion that the applicants had not meticulously complied with their obligations pursuant to both the franchise and lease agreements. Secondly, the third respondent filed an affidavit in support of the relief sought by applicants. Third respondent stated that the approach of first and second respondent was inconsistent with its BEE objectives and those of the franchise transaction and the cooperation agreement entered into with second respondent, which was designed to promote the transformation objectives that third respondent

sought to achieve. It also emphasised that the applicants had diligently complied with their obligations in terms of the NEF loans, to the extent that these loans were largely being paid off. Third respondent contends that, were it not for the actions of the second respondent, the BEE objectives of the transaction would have been successfully achieved. It would be a devastating blow to these objectives if these businesses were to collapse and be taken away from the applicants when they had diligently paid off their loans to the NEF and were finally in a position to enjoy the 'full economic benefit of their businesses unencumbered by these loan obligations'.

Application of the law to this factual matrix

[30] Mr Manca candidly conceded that, if this Court was to enforce a strict terms of the lease agreement, that would be end of applicants case. His entire argument was predicated on the approach that the law of contract in South Africa was now infused with constitutional values which, for the determination of this case, not only were predicated on the strict terms of the lease agreements but which had to be examined further within the broader context of the purpose behind both agreements read together with the doctrine of good faith and fairness.

[31] In this connection Mr Manca referred to the decision in *Everfresh Market Virginia (Pty) Ltd v Shoprite Checkers (Pty) Ltd* 2012 (1) SA 256 (CC) at para 24 where Yacoob J said the following:

> 'It may be said that a contract of lease between two business entities with limited liability does not implicate questions of ubuntu. This is, in my view, too narrow an approach. It is evident that contractual terms to negotiate are not entered into only between companies with limited liability. They are often entered into

> between individuals and often between poor, vulnerable people on one hand and powerful, well-resourced companies on the other. The idea that people or entities can undertake to negotiate and then not do so because this attitude becomes convenient for some or other commercial reason, certainly implicates ubuntu.'

In the same case Moseneke DCJ at paras 71-72 took up this theme and continued its development thus:

> 'Had the case been properly pleaded, a number of inter-linking constitutional values would inform a development of the common law. Indeed, it is highly desirable and in fact necessary to infuse the law of contract with constitutional values, including values of ubuntu, which inspire much of our constitutional compact. On a number of occasions in the past this Court has had regard to the meaning and content of the concept of ubuntu. It emphasises the communal nature of society and "carries in it the ideas of humaneness, social justice and fairness" and envelopes "the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity".
>
> Were a court to entertain Everfresh's argument, the underlying notion of good faith in contract law, the maxim of contractual doctrine that agreements seriously entered into should be enforced, and the value of ubuntu, which inspires much of our constitutional compact, may tilt the argument in its favour. Contracting parties certainly need to relate to each other in good faith. Where there is a contractual obligation to negotiate, it would be hardly imaginable that our constitutional values would not require that the negotiation must be done reasonably, with a view to reaching an agreement and in good faith.

For a recent application of these dicta see *Mohamed's Leisure v Southern Life* 2017 (4) SA 243 (GJ) at paras 27-28.

[32] In *Botha v Rich NO* 2014 (4) SA 124 (CC) at para 46, as indicated earlier in this judgment, Nkabinde J on behalf of a unanimous court, developed the approach which had been expressed in *Everfresh* even further:

> 'The principle of reciprocity falls squarely within this understanding of good faith and freedom of contract, based on one's own dignity and freedom as well as respect for the dignity and freedom of others. Bilateral contract are almost invariably cooperative ventures where two parties have reached a deal involving performances by each in order to benefit both. Honouring that contract cannot therefore be a matter of each side pursuing his or her own self-interest without regard to the other party's interest. Good faith is the lens through which we come to understand contracts in that way. In this case good faith is given expression through the principle of reciprocity and the *exceptio non adimpleti contractus*.'

[33] Of added significance in the judgment in *Botha v Rich, supra* was the approach that the Court adopted to the cancellation clause. Botha had concluded an instalment sale agreement to buy a movable property from a trust. The cancellation clause stated that a breach by Botha would entitle the trust to cancel the agreement and retain all payments made. When Botha, having paid three quarters (¾) of the purchase price, began to default on the instalments, the trust successfully sued for cancellation and eviction. Botha invoked s 27 of the Alienation of Land Act 68 of 1981 which provides, inter alia, that any purchaser who, in terms of a deed of alienation, has undertaken to pay the purchase price of land in specified instalments over a period in the future and who has paid to the seller such instalments which are not less than 50% of the purchase price shall, if the land is registrable, be entitled to demand from the seller a transfer of the land on condition that, simultaneously with the registration of the transfer, there shall be registered in

favour of the seller a first mortgage bond over the land to secure the balance of the purchase price.

[34] A full bench of the Northern Cape High Court had decided that s 27 (1) of the Act did not give an immediate enforceable right to the transfer of the property when half the purchase had been paid. The full bench found that all that the section did was to enable the purchaser "to demand" transfer on condition that a bond was registered in favour of a seller to secure the balance of the purchase price. However, if the seller refused to so accept, the only remedy available to the purchaser was to cancel the sale and seek relief pursuant thereto. The Constitutional Court found otherwise;

> '[t]o deprive Ms Botha of her opportunity to have the property transferred to her under s 27 (1) and in the process cure her breach in regard to the arrears, would be a disproportionate sanction in relation to the considerable portion of the purchase price she has already paid and would thus be unfair. The other side of the coin is however, that it would be equally disproportionate to allow registration of transfer without making that registration conditional upon payment of the arrears and the outstanding amounts levied in municipal rates, taxes and service fees.' (para 49)

[35] It appears that, with this *dictum,* the Court invoked the principle of proportionality to determine whether, in such a case, the sanction claimed by the seller was proportionate to the consequences of the breach.

[36] In the present case the substance of the agreements indicates that the franchise was coupled to the lease agreement. After all, the applicants were afforded a right to extend their lease agreements by a further five years which would bring the lease period into congruence with the franchise agreement which

was for a period of ten years. Indeed, all that the lessee was required to do was to give the lessor written notice, at least six months prior to the termination date, and then to agree to the rent for the next five years and have this agreement reduced to writing. Indeed if the parties were unable to reach an agreement in respect of the rental, a dispute resolution mechanism was provided in the contract in order to achieve agreement. It was clear that the lease extension should not present an obstacle to the franchise agreement lasting the full ten years.

[37] Mr Roux, who appeared together with Mr Rappaport on behalf of the respondents, contended that there had not been sufficient evidence placed before the court as to why the applicants had not complied with the written stipulation in respect of the renewal of the lease. When it was pointed out that they had stated that they were not sophisticated business people who understood the intricacies of contractual provisions, Mr Roux submitted that much more would have been expected in the founding affidavit in order to justify applicants' case.

[38] I am not sure what more is required in these circumstances. Applicants contend that they were sales people who were once employed by the second respondent, that they were not acquainted with the intricacies and implications of the law of contract and/or of lease and that they genuinely wished to renew the lease as is evidenced by the somewhat crude documents to which I have made reference, albeit that they were out of time.

[39] Consider the sanction which is being urged upon me by the respondents, namely to cancel the lease. It does not appear to be disputed that, if the lease agreements are cancelled, the franchise agreements will not have effect and the businesses will collapse. The vitally important initiative designed to encourage

ownership of business by historically disadvantaged people will be dealt a blow, a vital one insofar as these applicants are concerned. The sanction is in the form of "capital punishment"; that is they lose their businesses if their application fails. The case really turns on the question as to whether they complied strictly with the provisions of the lease or whether in substance they did comply.

[40] There can be little doubt that when the contracts were concluded it was envisaged by both parties that a franchise agreement would enure for ten years, that their businesses would be located in the leased premises and that after five years, the applicants would have a right (a substantively unqualified right) to renew their leases. The two agreements are inextricably tied one to the other. If honouring a contract is not merely a matter of each side pursuing his or her own self-interest with regard to the other party's interest and that is not the exclusive lens through which our contract law should be evaluated, then, in order to promote a more nuanced focus, it must follow that the relief sought by applicants should be granted. To contend that such a conclusion would undermine legal certainty is to take a somewhat myopic view of the history of contract law. To repeat the point made by Wessels JA in *Weinerlein*, *supra* at 292:

> 'The commentators put it thus, as a general proposition your claim had been supported by a strict interpretation of the law. But it cannot be supported in this particular case against your particular adversary because to do so would be inequitable and unjust. For it would allow you, under the cloak of the law to put forward a fraudulent claim.'

[41] This result is dependent, as is all law, on the context of the particular case. Thus I agree with the caution expressed by Wallis:

> 'We must accept that the courts cannot resolve every case that excites the sympathies of judges, or lays hold upon the judicial mind as raising issues of unfairness, in favour of the party the judges perceive to be unfairly treated. It is the nature of law and the judicial process that it is required to draw lines and define boundaries and sometime cases that fall on the wrong side of the line will be of such a nature as to excite the sympathy of the judges. They are, after all, human. Sometimes, but only occasionally, they will prompt a reconsideration of existing law and some development. But if the court makes this the determinative factor it fails to discharge an obligation that lies at the heart of the rule of law. A rule of law base solely on the exercise of judicial discretion and a sense of reasonableness and fairness may be no rule at all.' at 566

[42] In this case I find that the sanction was disproportionate because the contracts signed maximised the interests of both parties and this meant that they intended ensuring that the franchise agreements be underpinned by the lease agreements. It does not follow that this conclusion implies that in every case a court will dispense with the strictures of a legal rule with the consequence that all or most 'litigants will not turn to courts if they are uncertain of the law that will be applied to their disputes.' (Wallis at 567)

[43] As indicated earlier, until 1988 courts operated at various time, on the basis that in exceptional cases the *exceptio doli* could be invoked. How much more so should the prism of the normative framework of the Constitution not provide judges with some residual basis by which to examine the substance of an agreement and to conclude that the sanction which might follow a strict application of a formal rule is and of itself insufficient to justify the relief sought, when the key intention of parties can be clearly divined from as in this case, the substance of the two

agreements read together. The Constitution demands an audit of all law and that demand cannot be defended by the idea that legal certainty will be compromised. The journey to legal change may cause understandable anxiety but if honestly managed it will introduce a rule of law for the protection of fifty five million South Africans without the detrimental consequences suggested, often as if they required no justification.

[44] Legal certainty is a shibboleth, if it is meant to imply that inevitably there is one right answer that stares litigants in the face, so much so that there is never a risk that an opposite conclusion may not be reached by a court. I venture to suggest that in the vast majority of cases the approach adopted in this disputed on its specific facts will not necessarily be followed, where the consequence of a breach so reasonably foreseen and the remedy is appropriate. But in this case, when the very idea of the transaction was to promote the interests of historically disadvantaged applicants to participate fully in the economy and to be embraced not simply as political but economic citizens in terms of agreements which were entered into for this purpose, more is surely required to justify the respondent's case than that applicants, without the requisite business knowledge, requested a renewal of their leases in a form which should have been more precise and which should have been submitted within the specified dates.

[45] As a result the following orders are made:

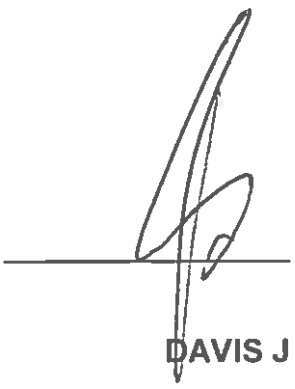
45.1 It is declared that the options to renew the lease agreements between the first respondent and each of the applicants for a further period of five years from 31 July 2016 have been validly exercised;

45.1. 1 the rentals under the new lease agreements are to be determined in accordance with the rental determination provisions of the existing lease agreements in respect of the renewal option (the "existing renewal provisions");

45.1.2 the three- and two-month period referred to in the existing renewal provisions are to be construed as three and two months respectively, determined from the date of this court order.

45.2 The first respondent is prohibited from taking steps to evict the applicants from their premises until the termination of the lease agreements or their extended termination dates of 31 July 2021, or earlier in the event of a breach of a lease agreement that entitles a party to terminate the agreement.

45.3 The costs of the application are to be paid by the first and second respondents jointly and severally, the one paying the other to be absolved.



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