

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 19 March 2009
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

**Brink v Premier of the Free State
(256/08) [2009] ZASCA 16 (19 March 2009)**

Media Statement

Today the Supreme Court of Appeal (SCA) dismissed an appeal by Ms Loïs Brink against a judgment of the Bloemfontein High Court (per Wright J). Ms Brink had concluded a written lease agreement with the Free State Provincial Government in respect of a pleasure resort.

The agreement provided: 'The LEASE is for a period of five (5) years from 1 October 1997 to 30 September 2002, with the proviso that the LESSEE shall have an option to extend the lease period for a period of five (5) years with a second option of 5 years on the same and/or new conditions as will be mutually agreed'.

After the initial term of five years, the first five year option to renew the lease was exercised by Ms Brink and the lease came to be duly extended until 20 September 2007. Things did not go as smoothly, however, when she purported to exercise the second option to extend the lease period for a further five years. On 29 January 2007, Ms Brink gave notice to the Provincial Government that she was exercising the option to extend the lease for a further period of five years effective from 1 October 2007 until 30 September 2012. The response of the Provincial Government was that it did not intend extending the lease. Ms Brink accordingly sought an order in the Bloemfontein High Court that she had lawfully and validly exercised the second option and that the renewal of the lease was valid. The High Court refused to grant her the relief that she sought, but it did issue an order directing the Provincial Government to enter into *bona fide* negotiations with her in respect of the further extension of the lease agreement. The SCA, on appeal to it, held that the expression 'and/or' must in the context of the clause be read disjunctively as well as conjunctively. If that is done, the clause envisages a second option to renew on either (a) the same conditions; or (b) new conditions or (c) a combination of the same and new conditions. According to the SCA, the qualifier 'as will be mutually agreed' applied to (a), (b) and (c). It followed that the appeal had to fail and in the result it was dismissed with costs.

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