

Sneller Verbatim/aj

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 9809/05

2005-08-17

DEUTES WITWATERSRAND IS NOT APPLICABLE	
(1) PERMANENT	✓ NO
(2) TEMPORARY	✓ YES
(3) OTHER JUDGES	YES/NO
DATE	22/0/2007
SIGNATURE	

In the matter between

JOHANNESBURG ZOO

Plaintiff

and

URBAN MERCHANDISING SERVICES (PTY) LTD

Respondent

### J U D G M E N T

WILLIS, J: This is an application for the eviction of the respondent from certain refreshment kiosks and restaurants at the Johannesburg Zoo. It is common cause that there was a lease agreement relating to these premises entered into between the parties and that the applicant purported to cancel this lease. It is also common cause that the respondent is in arrears with the rental but alleges that the applicant granted an extension of time in which to pay the arrear rental.

The applicant has taken the technical objection that the affidavit resisting eviction is not in proper form but in any event it seems to me

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that there is a fax which operates more strongly in the applicant's favour and it has to be decisive in this matter. In paragraph 44.3 of the agreement that it is common cause that it is applicable between the parties, it is expressly provided

"That no extension of time, waiver, indulgence or relaxation or suspension of any of the provisions of this agreement ... shall be binding unless recorded in a written document signed by the parties."

It is common cause that there is no such written document.

The respondent's counsel made a plea *ad misericordiam* that the application be referred to oral evidence. No useful purpose whatsoever would be served by this. In my view the applicant has established a clear right together with all the other necessary elements to obtain the interdict which it seeks. Accordingly an order is made in terms of prayers A, B and C of the notice of motion dated 7 May 2005.

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