

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION – PORT ELIZABETH**

Case no: 3462/2012
Date Heard: 04/04/2014
Date Delivered: 08/04/2014

In the matter between:

CROSS POINT TRADING 199 (PTY) LTD PLAINTIFF / RESPONDENT

AND

TRADE LINK RETAIL SYSTEMS (PTY) LTD DEFENDANT / APPLICANT

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

SMITH J:

[1] The defendant applies for leave to appeal against the whole of my judgment delivered on 25 February 2014. The defendant relies on a plethora of grounds set out in its comprehensive application for leave to appeal.

[2] Mr *Sholto-Douglas SC*, for the defendant, has, however, confined his argument to only a few of those grounds (without abandoning the remainder set out in the application for leave to appeal). He accordingly submitted that another court:

- (i) may find that in requesting a system as good as or better than that installed at the Fig Tree Spar the plaintiff did not become entitled to a system that had precisely the same security features as that at the latter store;

- (ii) might reasonably apply policy considerations differently, and may thus arrive at a different conclusion in respect of the issue of causation; and
- (iii) may reasonably find that the plaintiff failed to take reasonable steps to mitigate its damages.

[3] Mr *Beyleveldt SC*, who appeared for the plaintiff, opposed the application.

[4] I am, however, persuaded that there are indeed `reasonable prospects that another court might find differently in respect of one or more of the grounds relied upon by the defendant.

[5] And this being the only test at this stage, I am constrained to grant leave to appeal.

[6] In the result the following order issues:

- (a) The defendant is granted leave to appeal against the whole of the judgment delivered on 25 February 2014, on the grounds set out in its application for leave to appeal;
- (b) Costs of this application shall be costs in the appeal.

J.E SMITH
JUDGE OF THE HIGH COURT

Appearances

Counsel for the Plaintiff / Respondent	:	Advocate Beyleveldt SC
Attorneys for the Plaintiff/ Respondent	:	Friedman and Scheckter Newton Park Port Elizabeth 6001 Re: Mr Friedman/eg/L08279
Counsel for the Defendant / Applicant	:	Advocate Douglas SC
Attorneys for the Defendant/ Applicant	:	Wilke Weiss van Rooyen 2 Cuyler Street, Central Port Elizabeth Ref: P van Rooyen/Irma/P47
Date of Hearing	:	04 April 2014
Date of Delivery	:	