

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

CASE NO: A5060/2018

In the matter between

FOURNEWS DEVELOPMENTS (PTY) LTD

APPELLANT

and

BRAND CONTACT CONSULTANT CC

RESPONDENT

SUMMARY

Contract – Repudiation - franchise agreement in respect of operating a News Café franchise for ACSA at Airport - act of repudiation relied on the fixing of a date for performance (payment of operating costs) in terms of agreement – statement by franchisor that if performance not made by cut-off date - ‘they are going to walk away’ from contract and ‘they are drawing a line in the sand’ - and further in insisting that if money required for the performance was not available by the cut-off date franchisor will advise ACSA ‘that News Café is no longer an option for Bloem Airport’.

Appeal – Full Court - against judgment and order of court a quo in favour of franchisee - conduct of and email correspondence between the parties analysed - question arising whether the demands for performance (payment of operating costs)

evinced a deliberate and unequivocal intention no longer to be bound by the contract - held: Cut-off date for performance agreed on by parties - threat of cancellation intended to emphasize urgency and give impetus to franchisor's contractual obligation to pay - both parties remained hopeful that performance would be forthcoming and the contract to remain alive - evidently irreconcilable with an intention no longer to be bound by agreement - 'acceptance' of repudiation relied on not proved - nothing in emails or conduct of the parties that could in any manner be construed as a reference to or for that matter acceptance of alleged repudiation - alternative act of repudiation likewise not proved - appeal upheld with costs.