IN THE KWAZULU-NATAL HIGH COURT, DURBAN

REPUBLIC OF SOUTH AFRICA

REPORTABLE

CASE NO.: 6467/2010

Heard: 13 August 2010

Reasons Delivered: 3 September 2010

In the matter between

GROWTHPOINT PROPERTIES LIMITED **APPLICANT**

and

SOUTH AFRICA COMMERCIAL CATERING AND ALLIED WORKERS UNION ("SACCAWU") **1ST RESPONDENT**

DIS-CHEM PHARMACIES (PTY) LIMITED **2ND RESPONDENT**

MAKHOSI ZONDO & THE OTHER EMPLOYEES OF THE SECOND RESPONDENT LISTED ON ANNEXURE A TO THE FOUNDING AFFIDAVIT **FURTHER RESPONDENT**

JUDGMENT

PILLAY D, J

Introduction

1. When picketing strikers make a noise in a shopping mall, do they

commit nuisance? Superficially, this is the main issue in this application to confirm a rule *nisi* granted on 3rd of June 2010 for an order directing both the first respondent, South African Commercial Catering and Allied Workers Union ("SACCAWU"), and the workers of the second respondent, Dis-Chem Pharmacies (Pty) Limited, who are the further respondents, to cease committing nuisance by shouting, singing, chanting, ululating or using instruments to make a noise. Fundamentally, the dispute turns on balancing the constitutional rights of owners and occupiers to their property, to the environment and to trade on the one hand, and the right of strikers to freedom of expression, to bargain collectively, to picket, protest and demonstrate peacefully on the other hand.

Background

2. The applicant, Growthpoint Properties Limited obtained an interim interdict against the striking employees who picketed La Lucia Shopping Mall in Durban.

3. The strike started on 27th May 2010. Strikers picketed in the basement parking entrance to the Mall.

4. SACCAWU and Dis-Chem had secured a picketing agreement in terms of section 69(5) of the Labour Relation Act No.66 of 1995 (LRA) from the Commission of Conciliation, Mediation and Arbitration (CCMA). Growthpoint was not a party to that agreement.

5. On Growthpoint's version, whatever the picketing agreement contained, it did not stop the striking workers from creating a nuisance by demonstrating loudly. Shouting, singing, chanting, ululating, blowing whistles and horns and banging various instruments and objects was amplified by the covered parking garage. The noise disturbed and intimidated members of the public

and disrupted normal business operations in the immediate vicinity of the basement parking entrance.

6. A registered occupational hygienist, Shaun Chester, undertook a noise survey on 1 June 2010. He reported that the ambient noise level was normally 65 decibels near Dis-Chem, but when it increased by 10 to 15 decibels, it invoked widespread complaints from the community. When the noise increased to between 15 and 20 decibels community reaction was stronger. Mr Chester recorded that the noise at the pay station in the parking garage exceeded the ambient level by almost 30 decibels. This exceeded the legal limit of 85 decibels set by the regulation governing noise-induced hearing loss.

7. Growthpoint alleged that the strikers committed a nuisance to its tenants and that it was entitled to the order.[1]

8. SACCAWU and the employees did not dispute that they sang, chanted and blew whistles; however, they denied that they were noisy, disruptive and constituted a nuisance.

9. Leaving aside for a moment the factual dispute, the more substantial questions were:
   (a) Firstly, did the High Court have jurisdiction over what SACCAWU submitted was a labour dispute for which the Labour Court and the CCMA were the proper forums?
   (b) Secondly, did Growthpoint have *locus standi* to limit the rights of employees of its tenants?
   (c) Thirdly, should SACCAWU's constitutional right to freedom of

1 *De Charmoy v Day Star Hatchery (Pty) Ltd* 1967 (4) SA 188 (D); *Nelson Mandela Metropolitan Municipality and Others v Greyvenouw CC and Others* 2004 (2) SA 81 (SECLD) at 109 at 86; The Law of Delict, 5th Edition by Neethling, Potgieter & Vissser, pages 107-108; *Moskeeplein (EDMS) BPK en 'n Anders v Die Vereniging van Advokate (TPA) en Andere* 1983 (3) SA 896 (T)

expression,[2] to bargain collectively[3] and to demonstrate and picket[4] trump Growthpoint's right to property,[5] to trade[6] and to a healthy environment[7]?

(d) Fourthly, did Growthpoint have an alternative remedy?

Jurisdiction

10. The dispute turned on the nature, form and place of the picket. Mr R Pillemer who appeared for SACCAWU and its members submitted that by their nature, pickets are never silent. Picketing rules recognise that toyi-toying, singing and chanting always accompany pickets. Noise is plainly part of the picket. The only issue is one of degree. That should be governed by the rules of the CCMA which has jurisdiction to impose and vary those rules.

11. Pickets are usually held on property which the picketers do not own. Yet the LRA allows picketing. The common law of nuisance developed to regulate the conduct of neighbours does not apply to picketers[8].

12. All strikes, protests and picketing have the potential to cause inconvenience and some nuisance to third parties not involved in the labour dispute.

13. However this conduct is regulated by the CCMA. In employment, section 69 of the LRA gives effect to the constitutional right to picket. The High Court should therefore be cautious of interfering with the

2 section 16 of the Bill of Rights. Although SACCAWU did not expressly mention the grounds in section 16 and 23, the tenor of its submissions included them.
3 section 23 of the Bill of Rights.
4 section 17 of the Bill of Rights
5 section 25 of the Bill of Rights
6 Section 22 of the Bill of Rights. Although Growthpoint did not expressly mention the grounds in section 22, the tenor of its submissions included them.
7 section 24 of the Bill of Rights
8 East London Western District Farmers' Association v Minister of Education & Development Aid 1989 (2) SA 63 (A)

exercise of the right to picket to prevent interference or nuisance to third parties on the basis of some common law right.

14. The High Court is singularly unsuitable to deal with picketing issues and confirming the rule *nisi* would conflict with the picketing rules. As a labour matter the picketing dispute should be ventilated before the CCMA and, if necessary, the Labour Court. If the High Court accepts jurisdiction it would encourage forum shopping and the development of contradictory jurisprudence. So submitted Mr Pillemer.

15. In the opinion of the Court, its jurisdiction depends on what the cause of action is and how it is framed.[9] In this case, Growthpoint pinned its mast to the common law of nuisance and its constitutional rights to property, to trade and to a healthy environment. These causes of action fall squarely within the jurisdiction of High Court.

16. Whether they also fall within the jurisdiction of the CCMA and the Labour Court is not for this Court to decide.

17. The High Court accordingly has jurisdiction.

Locus Standi

18. Mr Pillemer submitted that when Growthpoint let out its premises to tenants who employ people and who must therefore be governed by the LRA, it consented to the consequences of such employment relationships. More specifically, it acknowledged that labour disputes would occur, giving rise to the possibility of strikes and pickets on its premises. Growthpoint cannot now have standing to claim the right to its property when employees exercise their labour rights. It cannot have *locus standi* to interfere with constitutional rights of employees of its tenants in order to undermine those employees' rights in a

9 *SAMSA v McKenzie* (017/09) [2010] ZASCA 2 (15 February 2010) para 8

labour dispute.

19. In the opinion of the Court, standing is related to the cause of action and the jurisdiction of the High Court discussed above. Growthpoint is not the employer and its cause of action does not arise from an employment relationship with the strikers. Its cause of action stems from its rights to property, to trade and a healthy environment. Assuming in favour of the strikers that Growthpoint consented to the use of its property for picketing, Growthpoint cannot be denied standing to prove how it accommodated the employment rights of its tenants and their employees and what rights to its property it retained or relinquished.

20. Growthpoint has an interest as the owner of the premises and the landlord of the tenants conducting businesses on its property to apply to Court to protect and enforce its rights. The rights engaged are its rights to peaceful and undisturbed occupation of its property, to trade and to a healthy environment. Whether its interference with the rights of the employees is justifiable is discussed below.

21. Accordingly, Growthpoint has standing.

Right to Freedom of Expression, to Bargain Collectively and Demonstrate vs Rights to Property, to Trade and the Environment

22. SACCAWU's opposition was based on section 17 of the Bill of Rights, namely, the constitutional right to picket, subject to Dis-Chem justifying a limitation of the right in terms of 36. Although it did not expressly invoke the right to fair labour practices, which incorporates the right to bargain collectively for which picketing is an intrinsic right, it follows from the its reliance on section 67 of the LRA below that collective bargaining rights was also at issue. So too was right to freedom of expression once the dispute turned around the noise

created by the picketers, even though SACCAWU did not specifically discuss this ground.

23. To establish that this application conflicted with the scheme of collective bargaining in the LRA, SACCAWU cited the following sections:

a) Section 67(2) of the LRA:

> "(2) A person does not commit a delict or a breach of contract by taking part in-
>
> *(a)* a protected *strike* or a protected *lock-out* ; or
>
> *(b)* any conduct in contemplation or in furtherance of a protected *strike* or a protected *lock-out."*

b) Section 67(6) of the LRA:

> "(6) Civil legal proceedings may not be instituted against any person for-
>
> *(a)* participating in a protected *strike* or a protected *lock-out* ; or
>
> *(b)* any conduct in contemplation or in furtherance of a protected *strike* or a protected *lock-out."*

c) Section 67(8) of the LRA:

> "The provisions of subsections (2) and (6) do not apply to any act in contemplation or in furtherance of a *strike* or a *lock-out*, if that act is an offence."

d) Section 69(7) of the LRA:

> "The provisions of section 67, read with the changes required by the context, apply to the call for, organisation of, or participation in a picket that complies with the provisions of this section."

24. This legislative scheme, SACCAWU contended, disallowed

applications such as this. As its strike was protected, its picket in furtherance of the strike could not be interdicted, unless its or its members' conduct amounted to an offence. They committed no offence and none was proved.

25. Growthpoint contended that SACCAWU could not raise section 69(7) as a defence as it had not complied with the picketing rules.

26. The picketing rules provided:

> "2.13 Walking and singing, protesting, marching and toy-toying and the like either individually or in groups shall be done peacefully and within the demarcated area. Such action outside the demarcated area is prohibited."
>
> 2.15 The employees may picket outside stand-alone stores provided that there are no more than 25 (twenty-five) picketers at any one time and they are at least 20 (twenty) metres from the store entrance in places designated by the local management for this purpose, in consultation with the local Convenor.
>
> 3. No picketing may commence until the union has complied with all its obligations in terms of this agreement and the relevant prescribed areas have been determined and demarcated. No party shall unreasonably delay the demarcation process."

27. Growthpoint contended that SACCAWU and Dis-chem had not agreed on the designated area for picketing. SACCAWU persisted that there was an agreement about the demarcated area for picketing as its local organiser, Thulani Mbeje had agreed with Jacque van Niekerk, the store manager of Dis-chem on the demarcated area on 27 May 2010.

28. Growthpoint further contended that by committing nuisance, SACCAWU and its members subjected themselves to criminal sanctions in terms of the by-laws of the city.

29. Their conduct was nonetheless excluded from immunity because unlawful conduct is generally excluded from the protection of the LRA.[10]

30. Growthpoint was not opposed to SACCAWU and its members picketing, striking or demonstrating. Its only complaint in this application is the nuisance created by the loud noises. Growthpoint and its tenants have a right not to be arbitrarily deprived of the use of their property[11] as a result of the noise.

31. Landowners and land occupiers have a right to reasonable enjoyment of their land[12].

32. Unjustifiable interference with such a right creates a public nuisance[13].

33. Various rights contained in the Bill of Rights may clash with each other and need to be balanced[14].

34. There is no hierarchy of rights[15]. So Mr Gardner submitted for Growthpoint.

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10 Paragraph 7.4 at 326 of Labour Relations Law, 5th Edition by Du Toit et al; *Mondi Ltd - Mondi Kraft Division v CEPPWAWU & Others* 2005 (26) ILJ 1458

11 *Margre Property Holding CC v Jewula* 2005 (2) All SA 119 (E) per Pickering J; *Victora & Alfred Waterfront (Pty) Ltd v Police Commissioner of the Western Cape* 2004(4) SA 444 (C); *Fourways Mall (Pty) Ltd v SACCAWU 1999* (2) SA 752

12 *EL Farmers' Association v Minister of Education and Development Aid* 1989 (2) SA63(A) at 66 I

13 *EL Farmers' Association v Minister of Education and Development Aid* 1989 (2) SA63(A) at 67 E

14 *Qozeleni v Minster of Order and Another* 1994 (3) SA 625E at 634 E (per Froneman J)

15 *Van Zyl v Jonathan Ball Publishers (Pty) Ltd* 1999(4) SA571 (W) at 591 H (per Navsa J); *Holomisa v Argus Newspapers LTD* 1996 (2) SA 588(W) at 607B; *Laugh it Off Promotiona CC v SAB International (Finance) BV t/a Sabmark International 2006* (1) SA 144 (CC) at para 19; *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* 2004 (5) SA 124 (W)

35. The Court finds that although SACCAWU and Dis-chem have a broad picketing agreement in place, and that ideally they should have agreed at the local management level to designating the area for picketing, the lack of agreement about the designated area does not vitiate the picket. The responsibility for designating the picketing area vested in the local management, “in consultation with the local Convenor”. Local management merely has to designate the area after giving the local Convenor an opportunity to participate in the designation. If the local Convenor does not accept the invitation, SACCAWU does not breach the picketing rules.

36. However, if the local management has not designated the picketing area then it has not made the rule. Accordingly, SACCAWU and its members cannot be in breach of a non existent rule.

37. However, the designation of the picketing area would be a non issue if:
    a. the picket, 20 metres from the store entrance, took a less noisy form,
    b. the picket was loud but moved away from the shopping area, or
    c. the picket was loud but the noise occurred intermittently at say, agreed intervals and for a short duration.

38. As for committing an offence, proof that SACCAWU and its members broke municipal bylaws is weak. Proof of what the bylaws are consisted of extracts copied off the Durban municipality’s website. Whether the website was updated is uncertain. Proof of what the bylaws are is therefore uncertain.

39. Even if the bylaws are what the website purports them to be, Growthpoint fails to prove that SACCAWU and its members committed any offences under the bylaws. People commit a bylaw offence if they are ordered, presumably by the municipality, to do or

not to do something and they refuse or fail to comply.[16] There is no evidence that the municipality ordered SACCAWU and its members to stop causing a nuisance. Summoning the municipal police to control the picket is not proof that the municipality informed SACCAWU and its members that they were committing an offence. It is common cause that the employees have not been prosecuted for nuisance.

40. The Court accordingly finds that SACCAWU and its members have not committed any offence.

41. The dispute is whittled down to the lawfulness of the exercise of constitutional rights only. Do sections 16, 17 and 23 of the Bill of Rights permit SACCAWU and its members to picket as loudly as they wish in furtherance of their freedom of expression, collective bargaining and demonstration rights, even if they commit nuisance to others? Do these constitutional rights trump and annihilate the rights to property, to trade and a healthy environment? Or, does the doctrine of proportionality apply to balance competing rights to determine what constitutes lawful picketing?

42. SACCAWU disputed that its members created a nuisance at all. In view of the dispute of fact, it invited the Court to invoke the *Plascon-Evans* test.[17]

43. Without conceding that the sound levels were unacceptable, it nevertheless undertook to ensure that its members did not blow horns and whistles. Without admitting liability it tendered to be bound by an order on the basis that the picketers would not blow horns, whistles, bang plastic bottles or use any other instruments to make a noise.

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16 Paragraph 2 of Bylaws for the Control of Public Behavior
http://www.durban.gov.za/durban/government/bylaws-for-the-control- of-public-behavior
17 *Plascon- Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA623 (A)

44. SACCAWU objected that the interim order was so wide and vague that the picketers were bound to be held in contempt of court. It contended that Growthpoint had not made out a case for a final interdict as it failed to show a clear right and that the respondents had infringed that right.

45. SACCAWU could not deny Growthpoint's right to its property, to trade and to a healthy environment. All that remains then is for the Court to balance SACCAWU'S rights against those of Growthpoint.

46. Sixteen years of constitutional jurisprudence leaves no doubt that the doctrine of proportionality applies to rights in the Bill of Rights. As a result rights are balanced by other rights and the limitation clause in the Bill of Rights. However, the eternal challenge remains how to accomplish the balance for particular rights.

47. In the time available, the Court has considered two Canadian cases: *William Whatcott v The Saskatchewan Association of Licensed Practical Nurses and Canadian Civil Liberties Association*, intervenor [2008] 166 CRR (2d) 272 and *Pepsi-Cola Canada Beverages (West) Ltd. v Retail, Wholesale and Department Store Union, Local 558, Burkart and Reiber personally and as representatives of all members of Retail, Wholesale and Department Store Union,* Local 558 [2002] 90 CRR (2d) 189.[18]

48. In both cases the right to picket was viewed from the prism of the right to freedom of expression. Helpfully, the following extracts from *Pepsi-Cola* summarises the nature and purpose of picketing:

> " [26]The term "picketing" attaches to a wide range of diverse activities and objectives, and allows for innumerable variations. One text on Canadian labour law hazards this general description of the common themes that define

18 Indexed as: R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd

picketing, as well as the diversity this broad term allows:

> Ingredients common to the act of picketing in all jurisdictions appear to be the physical presence of persons called pickets, the conveying of information, and the object of persuasion. The "presence" element may take many forms, from one or two persons, in the vicinity of the entrance of the premises, comparatively indifferent to the outcome of the dispute, to large numbers calculated physically to prevent ingress and egress . . . The conveying of information may also take many forms, from the use of handbills, arm bands, placards and sandwich boards to sound trucks, and from the recitation of events to the conveying of exhortative messages. The object of persuasion appears to remain constant, to induce a boycott of the picketed operations by employees, customers, suppliers and others on whom the employer is dependent for the successful operation of his enterprise. (A.W.R. Carrothers, E.E. Palmer and W.B. Rayner, *Collective Bargaining Law in Canada*, 2nd ed. (Toronto: Butterworths, 1986), at pp. 609-10)

[27] In labour law, picketing is commonly understood as an organized effort of people carrying placards in a public place at or near a business premises. The act of picketing involves an element of physical presence, which in turn incorporates an expressive component. Its purposes are usually twofold: first, to convey information about a labour dispute in order to gain support for its cause from other workers, clients of the struck employer, or the general public, and second, to put social and economic pressure on the employer, and often by extension, on its suppliers and clients: see for example *Great Atlantic & Pacific Co. of Canada (Re)*, [1994] O.L.R.B. Rep. March 303, at paras. 32-33, *per* McCormack, chair."

49. The summary above corresponds with the South African conception and practice of picketing.

50. Furthermore, in *Whatcott* and *Pepsi-Cola* the proportionality test was applied to balance freedom of expression against other rights and

limitations.

51. In *Whatcott*, the limitation was the professionalism of a licensed professional nurse. He picketed carrying placards saying e.g. that "Planned Parenthood murders innocent babies." He was suspended for 45 days, fined $15,000 and prohibited from practising as a licensed nurse until the fine was paid.

52. On appeal, the Saskatchewan court held that as the nurse was engaged in "communicative activity that conveyed, or attempted to convey, meaning… (h)is activities were protected by s. 2(*b*) of the *Charter*."[19] Discipline infringed his freedom of expression unjustifiably. Although the objective of the discipline was to ensure respect for the status of the licensed nurse, the court found no rational connection between the objective and the disciple. No evidence suggested that the public would gain greater respect for licensed nurses because the nurse could no longer work. Furthermore, he had not held himself out to be a licensed nurse while picketing. The court concluded that there was no proportionality between the effects of the discipline and the objective.

53. Defamation and intimidation arising from his manner of picketing and the comments on the placards[20] featured in the lower court but fell away once the appeal court decided to conduct a constitutional analysis.[21]

54. *Pepsi-Cola* settled the issue of picketing in secondary strikes by permitting all picketing whether "primary" or "secondary", unless it

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19 *William Whatcott v The Saskatchewan Association of Licensed Practical Nurses and Canadian Civil Liberties Association*, intervenor
[2008] 166 CRR (2d) 272. Paragraph 51
20*William Whatcott v The Saskatchewan Association of Licensed Practical Nurses and Canadian Civil Liberties Association*,
[2008] 166 CRR (2d) 272. Paragraph 23
21 *William Whatcott v The Saskatchewan Association of Licensed Practical Nurses and Canadian Civil Liberties Association*,
[2008] 166 CRR (2d) 272. Paragraph 36

involves tortuous (delictual) criminal conduct. The right of freedom of expression was balanced against protection from economic harm in the following way:

> "Protection from economic harm is an important value capable of justifying limitations on freedom of expression. Yet to accord this value absolute or pre-eminent importance over all other values, including free expression, is to err. The law has never recognized a sweeping right to protection from economic harm."

55. Returning to section 67(6) of the LRA, the prohibition against civil legal proceedings to interdict conduct such as picketing in furtherance of a protected strike cannot be absolute. If it were, then all other constitutional rights of every other person have to surrender to the right to strike and to picket. That could never have been the intention behind the right to strike clauses in either the LRA or the Constitution.

56. Within itself, the LRA represents a particular balance by imposing specific limitations. For instance, essential service workers do not enjoy a right to strike. Although the effect of such internal balance is to set the threshold high for external interference, it can not exclude such interference altogether when the source of such interference is other rights in the Constitution. Therefore, the Constitution readjusts the balance set in the LRA.

57. Like all other rights, the right to demonstrate, bargain collectively, strike and picket are not unlimited and absolute. Inevitably in the nature of pickets, non parties to the labour dispute are inconvenienced and sometimes even prejudiced.

58. Although protests and demonstrations are part of the fabric of everyday life and non parties to the disputes develop some tolerance to withstand the disruption caused by pickets, such tolerance has its limits.

59. Tolerance levels are exceeded when Growthpoint and its tenants can not conduct their business. The noise emanating from the picketers was unacceptably high; it disturbed tenants and the public. The evidence of the expert and tenants of Growthpoint show that a persistent, loud noise was intolerable. Growthpoint, its tenants and customers were inconvenienced and prejudiced. Businesses not party to the labour dispute suffered a loss of revenue as the public took its custom elsewhere. The noise of the picketers also created an unhealthy environment and impeded Growthpoint and its tenants from using their properties.

60. In the opinion of the Court, SACCAWU and its members can exercise their rights reasonably without interfering with Growthpoint, its tenants and the public. Interference with their rights to the extent that tenants cannot conduct business and in fact lose business is an unacceptable and unjustifiable limitation on their right to their property, to trade and to a healthy environment.

61. The limitation on SACCAWU and its members is only to lower their noise level. They are not precluded from demonstrating, picketing, carrying placards, singing and chanting softly.

62. The Court invited the parties to fashion an order that would allow for intermittent noisy picketing for short periods and in areas that the parties might designate. They were unable to agree to self-regulation in this way. They therefore left it in the hands of the Court to set the standard of permissible picketing behaviour. It remains open to all parties interested in this application to vary this order by agreement.

Alternative remedy

63. SACCAWU contended that there were alternative remedies that Growthpoint could pursue. When Growthpoint accepted Dis-Chem

as its tenant it must have anticipated that Dis-Chem would be bound by the LRA. Consequently, Growthpoint would have known that Dis-Chem would endure pickets and demonstrations. As the landlord, Growthpoint could prevail upon Dis-Chem to engage with SACCAWU or to invoke the assistance of the CCMA to resolve the labour dispute. So Mr Pillemer submitted.

64. Growthpoint has no right or duty to instruct or compel Dis-Chem to relate to SACCAWU or to resolve its dispute. At most, Growthpoint might voluntarily engage Dis-Chem and persuade it to meet its employees' demands. Such access as it might have to Dis-Chem does not deprive Growthpoint of its right to protect its own interests in this application.

Costs

65. Mr Pillemer submitted that costs should not be awarded against SACCAWU or the further respondents because they had tendered to picket without using instruments. Furthermore, they were brought to court at short notice.

66. In view of SACCAWU's concession and tender that its members would not use instruments to make a loud noise, the Court considered not making any order as to costs. However, the tender did not go far enough; SACCAWU persisted that it had a right to chant loudly. It also raised substantial constitutional and procedural challenges to the application. Hence costs followed the result.

Confirmation of the Rule

67. Accordingly, the Court amended and confirmed the rule on 13 August 2010 in the following terms:
    e) the further respondents are ordered to cease forthwith

committing a nuisance at the premises of La Lucia Mall by shouting, chanting loudly, ululating or using any kind of instrument or object with which to make any loud noise in the vicinity of any of the entrances to La Lucia Mall at 90 William Campbell Drive, La Lucia;

f) the South African Police Services are authorised to assist in the enforcement of this order;

g) the further respondents to pay the costs of this application.

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DHAYA PILLAY J

COUNSEL

Counsel for the Applicant	:	Adv G.O. van Niekerk SC
Instructing Attorneys	:	Thorpe and Hands Inc 4th Floor 6 Durban Club Place Durban Ref: RGP/AB/04/G084/0013
Counsel for the Respondents:		Adv R. Pillemer
Instructing Attorneys	:	Brett Purdon Attorneys 72 Bulwer Road Glenwood, Durban Ref: J Harries/M085/0001 Tel: (031) 201-4100

Date of hearing : 13 August 2010

Date of Judgment : 3 September 2010