doing extra work under the argument that the work is needed for the work or project to meet established building standards. Therefore, the court's ruling on the plaintiff's unjustified enrichment claim may have undesirable effects on procurement contracts by allowing independent contractors to increase, without the necessary consent, their scope of work and in the process impose enrichment liability on employers. Furthermore, the ruling may effectively deny employers, should this be their desire, the opportunity to shop around for other independent contractors to effect the extra work needed at a lesser price. As a result, this may effectively bring uncertainty to procurement contracts in relation to scope of work because independent contractors may, at their will, increase their scope of work and have valid claims against employers for compensation for the costs thereof.

Therefore, it is proposed that for enrichment claims to succeed in circumstances like these, that an independent contractor must, beyond proving that the extra work is necessary, indicate that the work in question was essential in order for it to complete or provide the required service to the defendant. If this cannot be proven, it is argued that such unjust enrichment claims should fail or the claim be limited by the lesser of the defendant's enrichment (Van Zyl 94; Zimmermann 87). This will discourage any chance of deliberate and opportunistic imposition of enrichment liability inherent in circumstances similar to these under discussion.

However, despite the concerns raised above, the ruling on unjustified enrichment raises a rare but important question regarding the development of general enrichment liability in South Africa. Development of a general enrichment liability is important not only for the enrichment law to develop in harmony with its sister disciplines, but may also assist the law of unjustified enrichment to transform and free its self from its Roman law base matrix. This will also allow enrichment liability to be "based on general principles augmented by more nuanced rules and exceptions to provide for public policy and correctives where need" (Eiselen and Pienaar 4).

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INTERPRETATION OF "FRONTING PRACTICE" IN TERMS OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT 53 OF 2003

***Passenger Rail Agency of South Africa v Swifambo (Pty) Ltd* 2017 6 SA 223 (GJ)**

OPSOMMING

Uitleg van "frontpraktyk" ingevolge die Wet op Breë Basis Swart Ekonomiese Bemagtiging 53 van 2003

Die Wet op Breë Basis Swart Ekonomiese Bemagtiging 53 van 2003 is een van die be–langrikste drywers wat ten doel het om ekonomiese transformasie ten opsigte van alle

swart Suid-Afrikaners te bewerkstellig. Die Wet omskryf die begrip "breë basis swart ekonomiese bemagtiging" en stel lewensvatbare strategieë daar om in die besonder swart vroue, werkers, jeugdiges, gestremdes en plattelanders te bevoordeel. Ten einde ongewensde transaksies wat niks meer as skyn behels nie hok te slaan, maak die Wet ook vir die misdryf "frontpraktyk" voorsiening. Hoewel die insluiting van hierdie omskrywing verwelkom word, is daar egter kommer dat die omskrywing hopeloos te vaag en dubbelsinnig bewoord is. *Passenger Rail Agency of South Africa v Swifambo (Pty) Ltd* 2017 6 SA 223 (GJ) is 'n klinkklare voorbeeld van 'n uitspraak wat met hierdie vae omskrywing geworstel het. Alhoewel die uitkoms van die saak verwelkom word, het die hof verkeerdelik op begrippe gesteun wat voorheen in 'n ander konteks in kodes en beleidsdokumente vervat is. Hierdie bydrae analiseer en kritiseer sekere kwessies wat uit hierdie uitspraak na vore tree.

1 Introduction

The Broad-Based Black Economic Empowerment Act 53 of 2003 ("B-BBEE Act of 2003" or "the Act") is a key driver aimed at enhancing economic transformation for the benefit of all black people in South Africa. It forms part of a bouquet of legislative instruments that seek to broaden ownership, management, representation and participation of black people in sustainable enterprises. The Act operates in unison with the Employment Equity Act 55 of 1998 (which promotes the representivity of all race groups at the workplace), the Preferential Procurement Policy Framework Act 5 of 2000 (which encourages preferential procurement by government from black people) and the Skills Development Act 97 of 1998 (which promotes skills development of all racial groups in the country).

The B-BBEE Act of 2003 defines the term "broad-based black economic empowerment" as any one or more "socio-economic strategies" that encourage the "viable economic empowerment of all black people", but in particular "women, workers, youth, people with disabilities and people living in rural areas" (s 1). As part of its scheme, the Act establishes a Black Economic Empowerment Advisory Council and formulates Codes of Good Practice (s 9) and Transformation Charters (s 12). Significantly so for purposes of this discussion, are the amendments introduced by section 8 of the B-BBEE Amendment Act 46 of 2013 that codify a number of offences associated with the Act and make provision for remedies and penalties (s 13). One of these offences relates to the practice of "fronting" (ss 1 and 13O(1)(d) of the B-BBEE Act of 2003 (as amended)). Fronting falls under the sphere of criminal law and does not specifically provide for the judicial review and setting-aside of contractual agreements in the civil courts. The Act was not designed to advance the economic interests of a select few incumbents who may have been disadvantaged by previous discrimination or to establish get-rich-quick-schemes for agents whose sole purpose is to fleece the system. Upon successful prosecution, fronting activities may lead to imprisonment of ten years and fines of up to ten per cent of turnover (s 130(3)(a)).

Before the introduction of fronting as a statutory criminal offence in 2013, fronting was dealt with under the common-law offence of fraud. The Minister of Trade and Industry, amongst others, attributed government's poor conviction rate in successfully prosecuting fronting practices to the high bar set by the common-law offence of fraud (Davies "Fronting is rife – But proof is scarce" *Cape Times* 12 November 2010). The elements of fraud such as intention, misrepresentation and the fact that it should have the causal effect of prejudice, or potential harm to

another are often cited as "difficult to prove" in prosecuting fronting at common law.

There is no doubt that fronting practices potentially undermine the redistributive goals of the broad-based empowerment strategy. Therefore, the introduction of a definition for fronting in the Act (as amended) is a positive development. However, commentators have raised concerns about the definition's ambiguous formulation. (See, in this regard, Jeffery *BEE helping or hurting?* (2014) 186; Gerber and Curlewis "Criminal liability requirements of the new Broad-Based Black Economic Empowerment (B-BBEE) statutory fronting offence 2018 *THRHR* 355–357.) This, regrettably, will ultimately leave the responsibility with the courts to curtail the contours of fronting on a case-by-case basis.

Passenger Rail Agency of South Africa v Swifambo (Pty) Ltd 2017 6 SA 223 (GJ) ("*PRASA*") is a case in point. Here the High Court had an opportunity to interpret the illusive notion of fronting. The matter did not deal with the definition and sanctions associated with fronting in the context of an alleged criminal offence. The interpretation of the term surfaced in an application for the review and setting-aside of administrative action by a state-owned entity for the irregular and fraudulent awarding of common-law contracts. Even so, the decision highlighted a number of positive and negative developments associated with the concept. This contribution evaluates *PRASA* and makes both positive and critical observations regarding the interpretation adopted in respect of the statutory definition.

2 Facts and arguments

In 2011, the Passenger Rail Agency of South Africa ("Prasa") published a tender for the lease of approximately 60 diesel-electric locomotives for use on the South African rail network. Swifambo Rail Agency (Pty) Ltd ("Swifambo"), a black-owned South African company, submitted a tender in terms of which it would procure and sell the locomotives to Prasa. It is common cause that the newly-formed Swifambo had no expertise, facilities or capacity to manufacture the locomotives. Despite this, Swifambo entered into an agreement with a Spanish manufacturing company, Vossloh AG ("Vossloh"), to provide locomotives to Swifambo for supply to Prasa. In this triangular relationship between Prasa, Swifambo and Vossloh, Swifambo was a mere token participant that received vast sums of money in exchange for its B-BBEE status (*PRASA* para 95).

After conclusion of the sale agreement, Prasa lodged an application to have the decision by the previous board of directors of Prasa to award the tender as well as the agreement concluded with Swifambo, reviewed and set aside. In the alternative, Prasa sought a declaratory order to the effect that the contract had no legal force as a result of Swifambo's failure to comply with the suspensive conditions contained in the contract.

Swifambo argued against the setting-aside of the agreement on the basis that it was an innocent tenderer. It contended that it had already delivered 25 locomotives and another 45 were already at an intermediate stage of completion and that setting the contract aside would cause Swifambo irreparable harm by rendering it insolvent (*PRASA* para 89).

Prasa disputed that Swifambo was an innocent tenderer. Its main argument was that the contract between Swifambo and Vossloh constituted fronting because

the definition and requirements of fronting in terms of the B-BBEE Act of 2003 (as amended) were satisfied; fronting does not require that any party to the agreement has to be misled or exploited; economic empowerment means substantive empowerment and does not include payment to persons for their B-BBEE status (*PRASA* para 91); and that there was no transfer of skills during or after the transaction (para 95).

PRASA took into account that in terms of section 8 of the Promotion of Administrative Justice Act 3 of 2000 courts have a generous discretion in granting any appropriate and effective remedy to correct and reverse any unlawful administrative action (para 83). If therefore Swifambo's actions constituted criminal activity, it would follow that the agreement with Vossloh would be set aside. Before dealing with the decision in *PRASA* in more detail, it is necessary to set out the definition and requirements for fronting and the objectives of the B-BBEE Act of 2003 (as amended).

3 Definitions and requirements for fronting

As alluded to, despite the fact that the B-BBEE Act of 2003 had been in force since the mid-1990s, the criminalisation of fronting was introduced in the Act for the first time by the B-BBEE Amendment Act of 46 of 2013. Commentators surmise that these amendments were introduced as a result of government coming under increasing pressure to curb an escalation of sophisticated fronting schemes which seek to circumvent the purposes of the Act (Jack *Broad-Based BEE: The complete guide* (2013) 470; Balshaw and Goldberg *BEE Black economic empowerment codes and scorecard* (2014) 39 56 57; and Jeffery *BEE helping or hurting?* (2014) 142 185).

The amendments introduced a constitutional duty on organs of state to investigate complaints received regarding alleged fronting activities (*Viking Pony Pumps (Pty) Ltd, Hidro-Tech Systems (Pty) Ltd* 2011 2 BCLR 207 (CC)). The broad introductory part of the definition of "fronting practice" in section 1 of the Act (as amended) defines it as "a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of this Act".

The second part of the definition refers to four specific B-BBEE activities. However, the Act does state that fronting is not limited to these mentioned instances. The specific B-BBEE activities may be summarised as follows: Firstly, an activity in terms of which black people appointed in an enterprise are discouraged or inhibited from substantially participating in the core activities of that enterprise. Secondly, a B-BBEE initiative which does not result in the flow of benefits to black people in relation to an enterprise's B-BBEE status and in the ration specified in the relevant legal documentation. Thirdly, a B-BBEE action involving a legal relationship with a black person in circumstances where an enterprise would achieve a certain B-BBEE compliance without granting the black person the economic benefits that would reasonably be expected to be associated with the position held by that black person. Lastly, a B-BBEE transaction with another enterprise to achieve a B-BBEE status where such an agreement is not negotiated or concluded on an arm's-length basis and where limitations and restrictions are placed on the identity of suppliers, customers and clients, or the enterprise does not have adequate resources to make the maintenance of business operation probable.

Apart from the inclusion of the mentioned definition, the B-BBEE Amendment Act 46 of 2013 also for the first time introduced a number of criminal offences in terms of section 13O, which include the situation where a "person . . . knowingly . . . engages in a fronting practice". The Act furthermore defines "knowing" as meaning that a person "had actual knowledge", or "reasonably ought to have" had actual knowledge of fronting practices.

4 Decision

The court in no uncertain terms held that the agreement between Swifambo and Vossloh amounted to fronting in terms of the first part of the definition of fronting which deals broadly with the undermining of the achievement of the objectives of the Act. It also held that it fell squarely within the fourth specified criterion of the definition which concerns circumstances where an agreement is concluded with another enterprise in order to achieve a B-BBEE Status, in circumstances where, firstly, "there are significant limitations . . . on the identity of suppliers . . . customers or clients" (s 1(d)(i)); secondly, "the maintenance of business operations is . . . improbable, having regard to resources available" (s 1(d)(ii)); or, thirdly, the agreement was not "negotiated at arm's length" (s 1(d)(iii)) (*PRASA* para 98).

PRASA also held that Swifambo was "merely a token participant that received monetary compensation in exchange for the use of its B-BBEE rating" (para 95) and that the deal did not advance the broad purposes of the B-BBEE Act of 2003 (as amended). The court held that society has an interest in getting the beneficiaries of the Act to engage in viable enterprises, rather than situations such as Swifambo's, where they were compensated for "minor administrative activities" (*ibid*).

Furthermore, *PRASA* held that Statement 103, entitled "The Recognition of Equity Equivalents" for "Multinationals", issued under section 9 of the B-BBEE Act of 2003, provides that foreign businesses must invest substantial amounts of money into empowerment initiatives to qualify for B-BBEE recognition purposes. Vossloh did not do this. To allow an agreement such as the one between Swifambo and Vossloh would permit foreign companies that do not comply with B-BBEE requirements to frustrate the purposes of the Act (*PRASA* paras 101–103).

PRASA also concluded that there were severe limitations regarding the identity of suppliers, services and clients in terms of paragraph (d)(i) of the definition of fronting. Whereas Vossloh performed 100 per cent of the work, Swifambo had no knowledge of any of Vossloh's suppliers or service providers. In terms of the contract Swifambo also had to destroy all confidential information pertaining to Vossloh after the implementation of the contract (*PRASA* paras 104–105).

The court moreover held that the definition of fronting does not require "misrepresentation" of the true nature of the agreement (paras 109–110). (This was also confirmed in *Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality* [2014] 2 All SA 493 (SCA).)

5 Analysis

It is submitted that the outcome of the decision in *PRASA* was correct in so far as a contract was set aside that would have advanced or benefited a few individuals at Swifambo, as well as a foreign entity which had made no investment in economic transformation. However, as mentioned at the outset, there are both

positive and negative inferences to be drawn from the decision regarding the way in which the court interpreted the definition of fronting. The court was also misdirected in respect of the application of one of the specific practices provided for by the statutory definition.

Commencing with the positive aspects, three points stand out. Firstly, *PRASA* recognised that the definition of fronting practice consists of two parts. The first is a general part and the second deals with specific practices, initiatives and transactions. This has been described as a "plausible dualist approach" (Warikandwa and Osode "Regulating against business 'fronting' to advance black economic empowerment in Zimbabwe: Lessons from South Africa" 2017 *PER/PELJ* (20) 17–18). This format that provides for general offences, followed by specific offences, is similar to the structure adopted in the formulation of prohibited corrupt activities in terms of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 (Snyman *Criminal law* (2014) 403). However, it is to be noted that the specific offences have not been formulated in the same thorough way as is the case in the last-mentioned Act.

With regard to the allegation of fronting, *PRASA* found that the agreement between Swifambo and Vossloh amounted to fronting as their relationship fell within the first part of the definition in terms of the B-BBEE Act of 2003 (as amended). The court pointed out that Swifambo's role was mainly administrative in nature and that Vossloh had complete control over every aspect of the contract, including the appointment of the members of Swifambo's steering committee. *PRASA* concluded that there were various clauses in the agreement between Swifambo and Vossloh that pointed not only to the true nature of the agreement but also frustrated substantial empowerment and constituted fronting.

Secondly, *PRASA* emphasised the fact that the definition of a fronting practice in terms of the B-BBEE Act of 2003 (as amended) does not require an element of misrepresentation as to the true nature of the arrangement and that the definition should not be interpreted in a manner that would require misrepresentation of the nature of the agreement. The court found that reading a requirement of misrepresentation into the definition would not give effect to the interests of the public. Tenders should be awarded free from fraud and corruption and public money should not end up in the pockets of "corrupt officials and businesses people through *inter alia* fronting practices". *PRASA* added that fronting practices could also occur where public entities, or individuals within their ranks, "conspire or collude" in such conduct. In this regard, *PRASA* relied on *Esorfranki Pipelines* where the court found that fronting constituted fraud against those whom B-BBEE was meant to benefit. In this instance, individuals within the ranks of government conspired to award tenders to a front organisation under the disguise of B-BBEE. *PRASA* followed this decision and found that a fronting practice existed in circumstances where individuals within the ranks of organs of state were "complicit" in the arrangement even though the element of misrepresentation was absent amongst the individuals (*PRASA* para 111).

Thirdly, with regard to whether there was a fronting practice on the facts of the case, *PRASA* dismissed Swifambo's submission that no black person had been exploited or that it had not gained an opportunity to the individual prejudice of a black person. In line with Esorfranki, the court concluded that exploitation and prejudice of a black individual was not required as the relationship between Swifambo and Vossloh amounted to the exploitation of the intended beneficiaries of B-BBEE, being black people, which fits the requirement of fronting

practice as an arrangement that undermines or frustrates the achievement of the objectives of the B-BBEE Act of 2003 (as amended) (*PRASA* paras 114 115). The court found that the contractual agreement between Swifambo and Vossloh amounted to a fronting practice, which is a criminal offence in terms of the B-BBEE Act of 2003 (as amended), and that Swifambo's involvement in an act of fronting justified the setting-aside of the contract between Swifambo and PRASA (*PRASA* para 115).

Despite the above positive aspects, we would like to argue that *PRASA* was misdirected in respect of the following aspect. The court attached a literal – and, consequently, misapplied – meaning to paragraph (d)(i) of the definition of fronting practice in relation to the arrangement between Swifambo and Vossloh. The provision proscribes B-BBEE arrangements involving the conclusion of an agreement with another enterprise to enhance or achieve a B-BBEE status under circumstances where significant limitations and restrictions are placed on the identity of suppliers, customers and clients. This subsection is an almost verbatim replica of a provision that regulates ownership points in the event of a sale of assets, equity instruments or a business or part thereof, that was issued in terms of Statement 102, with the title "Recognition of sale of assets, equity instruments and other businesses" (*Code of Good Practice* published in terms of s 9 of the B-BBEE Act of 2003 in *GG* 38766 on 6 May 2015). These transactions are also referred to as "qualifying transactions" in terms of which an established business sells assets, equity instruments or another separate business or a division thereof to a B-BBEE company to claim ownership points for such a sale subject to certain conditions.

One of the conditions of such a transaction is that the sale of assets, equity instrument and business must involve a separate identifiable related business which has no unreasonable limitations or conditions with regard to its clients, customers or suppliers other than the seller, and where the B-BBEE shareholders or their successive B-BBEE shareholders hold the assets for a minimum period of three years. These provisions or conditions are referred to as "anti-fronting" provisions (Jack *Broad-Based BEE: The complete guide* (2013) 207). Statement 102 also provides for any outsourcing agreement between the seller and the separately identifiable related business to be negotiated at arm's length and on a fair and reasonable basis. The Statement contains criteria that would disqualify the transaction, for instance any re-purchase agreements, in respect of the assets by the seller in future.

In order to fully comprehend these dubious practices it is necessary to provide some background to the principle. Early drafts of Statement 001, with the title "Fronting practices and other misrepresentation of BEE Status" (*Code of Good Practice* published in terms of s 9 of the B-BBEE Act of 2003 in *GG* 28351 on 20 December 2005) and the subsequent 2009 B-BBEE Guidelines issued by the Department of Trade and Industry (with the title "Guidelines on complex structures and transactions, and fronting: (Previously Statement 002)") contained a similar provision in respect of the curtailment of opportunistic intermediary entities preventing undue control over B-BBEE role players.

In *PRASA*, with reference to the confidentiality clause in the agreement between Swifambo and Vossloh, the court applied the paragraph (d)(i) criteria literally to Vossloh's clients, suppliers and customers, which differed from the traditional application, origin and purpose of these provisions. The aim of these provisions is to prevent established entities from controlling B-BBEE companies

in circumstances where the established entities endeavour to continue manipulating the choice (and not the identity) of a supplier, client or customer in respect of a business they had sold to B-BBEE companies. The court should have applied the provisions of paragraph (d)(i) in respect of restrictions or limitations placed on Swifambo's clients, customers or suppliers by Vossloh and not to the relationship of Swifambo in respect of Vossloh's clients (*PRASA* para 103).

6 Conclusion

The significance of *PRASA* from a fronting practice point of view is that the court applied the statutory fronting provision introduced by the B-BBEE Amendment Act 46 of 2013 with reference to the general provisions as broad provisions and the specific transactions listed under paragraphs (a)–(d)(i)–(iii) as interchangeable criteria. The court's approach was to apply the general provisions and the specific transactions in the fronting practice definition in unison and to test the specific transactions against the general provisions of the definition. This approach suggests that the specific transactions in terms of paragraphs (a)–(d) of the fronting practice definition should not be considered as independent, ring-fenced or mutually exclusive provisions but should be measured against the requirements set by the general provisions.

The purpose of the current fronting offence is to provide for less onerous requirements and a lower bar to ensure that the statutory offence serves as an appropriate deterrent for errant operators. In this respect, the court's finding that a conscious misrepresentation is not required to constitute a fronting offence, nor that a specific black person should be prejudiced by a fronting action, is a laudable development that differs from the common law approach.

PRASA illustrates the sentiments expressed in this contribution regarding the broad, vague and ambiguous statutory formulation of a fronting offence. Unfortunately, the specific transactions included in paragraphs (a)–(d) of the definition constitute a clumsy combination of remnants of the old fronting indicators contained in certain outdated Statements to the B-BBEE Codes and Guidelines to fronting. Some of the present transactions are repetitions of the old pre-2013 fronting indicators, while other anti-fronting provisions contained in existing policy documents and Statements to the B-BBEE Codes have been generalised. In some instances these combinations, replications and generalisations of old fronting indicators and anti-fronting provisions relating to specific types of transactions have created new fronting offences that differ from the original meaning. It is doubtful that this was the intention of the legislature.

The word "identity" in respect of suppliers, clients or customers in paragraph (d)(i) was not part of the original provisions in Statement 102. A similar provision in the 2009 Guidelines contained the term "identity", but also included the term "opportunistic intermediary". It is submitted that the inclusion of the word "identity" in paragraph (d)(i) and the omission of the term "opportunistic intermediary" constitute an oversight in the drafting of the provisions by incorporating certain provisions of the original Statement 102 and 2009 Guidelines into the B-BBEE Act of 2003 (as amended). *PRASA* unfortunately confused the term "identity" with the confidential arrangement between the parties instead of applying "identity" to the choice of suppliers by the B-BBEE partner as an indication of undue control over the B-BBEE partner.

The inclusion of the word "identity" in the statutory provision on its own does not make sense as the protection of proprietary information by means of a

confidentiality agreement by a supplier to its own clients or members of a joint venture agreement is a standard commercial practice and cannot in any way undermine the objectives of the B-BBEE Act of 2003 (as amended). The aim of this provision is not to look at the "identity" of suppliers, clients or customers from a confidentiality point of view, but rather whether the agreement limits the commercial activities and independence of a B-BBEE enterprise in terms of its choice of suppliers, customers and clients in respect of undue control by an established entity over a B-BBEE company.

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"FOR WHOM THE BELL TOLLS": THE APPLICATION OF SECTION 14 OF THE CONSUMER PROTECTION ACT 68 OF 2008 TO RESIDENTIAL LEASE AGREEMENTS

Transcend Residential Property Fund Limited v Mati
2018 4 SA 515 (WCC)

OPSOMMING

Die toepassing van artikel 14 van die Wet op Verbruikersbeskerming 68 van 2008 op residensiële huurkontrakte

Sedert die volle implementering van die Wet op Verbruikersbeskerming 68 van 2008 (WVB) het die wye toepassing van die Wet op verskeie soorte transaksies duidelik geword. So 'n wye implementering stem ooreen met die Wet se doel om 'n omvattende wetlike raamwerk vir die bereiking en instandhouding van 'n verbruikersmark te bied wat regverdig, toeganklik, doeltreffend, volhoubaar en verantwoordelik vir verbruikers in die *algemeen* is (a 3(1)(a)). Daar het tot onlangs onsekerheid geheers oor die toepassing van die WVB in die algemeen maar veral oor die toepassing van artikel 14 op residensiële huurkontrakte. Artikel 14 reguleer die verstryking en hernuwing van vaste termyn-ooreenkomste. Die toepassing van artikel 14 op residensiële huurkontrakte is egter bevestig in *Transcend Residential Property Fund Limited v Mati* wat hieronder bespreek word. 'n Kritiese evaluering van die regsposisie word ingesluit asook die redes waarom daar sterk teen die toepassing van artikel 14 (saamgelees met regulasie 5) op residensiële huurkontrakte geargumenteer word. Die bespreking eindig met 'n uiteindelike vasstelling of die toepassing van artikel 14 op residensiële huurkontrakte "volhoubaar en verantwoordelik vir verbruikers in die *algemeen*" is of nie.

1 Introduction

Since the full implementation of the Consumer Protection Act 68 of 2008 (CPA) the extensive reach of the Act to many types of transactions has become clear. On the one hand this accords with the Act's purpose to provide a comprehensive "legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of