

Exclusivity clause makes waves again at Enterprise Development Conference

The 5th annual Enterprise Development Conference, sponsored by Anglo American in association with Property Point and Transnet, found many entrepreneurs in the audience able to relate to a live case study regarding the subtle barriers blocking SME butchery, Braeside Meat Market, from entering a number of shopping malls.



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A panel discussion at the conference has given SMEs operating in the retail space a real means of challenging - and potentially overcoming - exclusivity clauses that bar them from entering shopping malls. The discussion, which unpacked the real-life experiences of entrepreneur Caroline McCann from the Braeside Meat Market, saw both Growthpoint Properties and Ramsay Webber Attorneys commit to assisting her to grow her business footprint viably and sustainably within the retail mall environment.

McCann began the discussion by relating her story, explaining how her ethical decision to switch from grain-fed to grass-fed beef had unexpectedly shifted the business onto a new growth trajectory. "Because we now needed to track each animal and purchase it whole, we had to find new ways to use all the meat from each animal. Research showed that the most viable solution for this would be to invest in a deboning plant, but for this we would need additional channels of demand beyond the one store in Parkhurst."

McCann's anticipated solution of expanding her footprint into the retail space soon proved not to be viable - as she routinely encountered exclusivity clauses in mall tenancy agreements favouring anchor tenants that excluded any independent butchery offering, even one unique as this.

Panel discussions

Panel facilitator Nadine Todd, group managing editor for Entrepreneur Media SA, ThinkSales Corporation and SmartCompany Networks, asked Stephan Le Roux, divisional director of the retail portfolio at Growthpoint Properties to explain how these clauses work and their potential effects on SMEs like Braeside. He explained that, while these clauses are no longer best practice, tenants with legacy exclusivity clauses in their contracts are entitled to renew them when they renew their lease. "The Competition Commission has yet to make a ruling on this type of situation - which would hopefully do away with these legacy clauses completely."

Gareth Cremen, director of Ramsay-Webber Attorneys, explained that the difficulty in challenging clauses of this kind was that complaints were evaluated on a case-by-case basis - and that an SME had yet to take a major retailer to the Competition Commission on this issue. "With increasing public and private sector focus on the role of SMEs in job creation, Braeside Meat Market is flagging the issue of potentially anti-competitive behaviour at an opportune time. Her experiences in this sector are by no means unique."

McCann noted that she has made multiple enquiries regarding exclusivity clauses in tenant agreements, both with landlords and anchor tenants in order to engage constructively about them. "Prior to the conference organisers proactively approaching these parties, none of my enquiries had met with any success."

Dialogue opened

Because of these discussions, direct dialogue was facilitated with anchor tenants including Pick 'n Pay and Woolworths - both of which have undertaken to engage with Braeside and other SMEs experiencing similar challenges. Le Roux additionally outlined how McCann and her team have been invited to visit a number of Growthpoint-owned retail malls where her offering could potentially add direct value. "Once she has done appropriate market research, McCann will be able to contact me directly to discuss leasing opportunities at these sites - where we will work to either facilitate a solution with anchor tenants with exclusivity clauses in their leases or ensure that Braeside occupies a smaller space that will not infringe on these."

Cremen similarly invited McCann to meet with him prior to submitting a complaint to the Competition Commission should she decide to pursue this option. He encouraged SMEs in the audience to make use of the legal routes available to them should direct engagement not yield any tangible results: "There's nothing stopping a group of you from approaching the Commission together and paving the way for legal clarity on this important issue."

Growth options now open

With direct channels of communication now open to McCann and other SMEs, she will be pursuing various growth options at the start of 2015, and is hoping to report on these developments at next year's conference.

"For me, it's always been about finding a solution with all parties involved, as opposed to forcing individuals to act. I'm excited about the possibilities the future now holds for Braeside and am grateful to conference sponsors for assisting me to turn my negative experiences into a positive that will potentially impact so many SMEs in the retail space," she concludes.

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