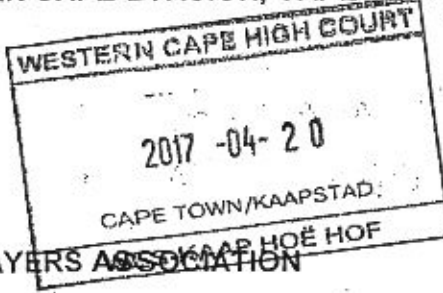


IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN



Case No:

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7031/17

In the matter between:

| | |
|---|-------------------|
| BO-KAAP CIVIC AND RATEPAYERS ASSOCIATION | First Applicant |
| 35 ON ROSE BODY CORPORATE | Second Applicant |
| FABIO TODESCHINI | Third Applicant |
| and | |
| THE CITY OF CAPE TOWN | First Respondent |
| THE MUNICIPAL PLANNING TRIBUNAL, CITY OF CAPE TOWN | Second Respondent |
| THE MAYOR OF CAPE TOWN | Third Respondent |
| BUITENGRACHT PROPERTIES (PTY) LTD | Fourth Respondent |

NOTICE OF MOTION

PART A – INTERDICTIONARY RELIEF

1. **BE PLEASED TO TAKE NOTICE** that the Applicants intend to make application to this Honourable Court, on **Monday, 5 June 2017** for an order in the following terms:

- 1.1 Dispensing with the forms and service provided for in the Uniform Rules of Court and directing that the application be heard as one of urgency in terms of Uniform Rule of Court 6(12)(a).
- 1.2 Interdicting the First, Third and Fourth Respondents from implementing the approvals in respect of Erf 144698 and Erf 8210 Cape Town, which were granted by the Second Respondent on 7 June 2016 and the Third Respondent on or about 19 January 2017 and conveyed to the Applicants by way of a letter dated 25 January 2017, in respect of the following applications ("the impugned decisions"):
 - 1.2.1 the application to permit the consolidation of Erf 8210 Cape Town and Erf 144698, Cape Town ("the property");
 - 1.2.2 the application to permit building work on the property within a Heritage Protection Overlay Zone in terms of Item 162(1) of the Development Management Scheme ("the DMS");
 - 1.2.3 the application in terms of Item 64(e)(ii) and Item 182(e)(f) of the DMS to permit parking bays on the ground and first floor levels to be closer to the 10 metre street boundaries, as stipulated in paragraphs 2.2.1. to 2.2.2.3 of the approval granted on 19 January 2017 and headed "Amended Municipal Planning Tribunal Annexure A".
 - 1.2.4 the application in terms of Item 121(2) of the DMS to permit a building to be 0 metres in lieu of 5 metres from a designated metropolitan road (Buitengracht Street – PMR 139).

- 1.3 Ordering that any of the Respondents who oppose this part of the application pay the costs occasioned by such opposition, jointly and severally.
- 1.4 Directing that the relief sought in Part B of this Notice of Motion be heard on a date to be determined by the Honourable Judge President of this Division or agreed between the parties.
- 1.5 Granting the Applicant further or alternative relief.

TAKE NOTICE FURTHER that the affidavit of **OSMAN ADAM SHABOODIEN**, together with the annexures thereto, and the supporting/confirmatory affidavits of **FABIO TODESCHINI, JASON STAPLETON, WILLEM BÜHRMANN** and **GERALD BIRD** will be used in support of the relief sought in Part A.

TAKE NOTICE FURTHER that the Applicant has appointed the offices of Edward Nathan Sonnenbergs, 1 North Wharf Square, Loop Street, Cape Town as the address at which it will accept notice and service of all process in these proceedings as the address at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that, if any of the Respondents intend opposing the application for the relief set out in Part A, they are required –

- (a) to deliver written notice of intention to oppose by no later than **Tuesday, 2 May 2017**, and they are required in such notice to appoint an address (being an address within fifteen kilometres of the office of the Registrar of this Court) at which such Respondent will accept notice and service of all documents in these proceedings;
- (b) to file answering affidavits, if any, by **Tuesday, 16 May 2017**;

- (c) to file any heads of argument, which will be exchanged with the Applicants' heads of argument by no later than **Friday, 26 May 2017**.

PART B – THE REVIEW

2. **TAKE NOTICE THAT** on a date to be determined by the Honourable Judge President of this Division or agreed between the parties, and/or as directed in terms of paragraph 1.4 hereinabove, the Applicants intend to make application to this Court in terms of Uniform Rule of Court 53 for an order in the following terms:

2.1 Reviewing and setting aside the decision of the Second Respondent on 7 June 2016 and the decision of the Third Respondent on 19 January 2017 to approve the following applications in respect of Erf 144698 and Erf 8210 Cape Town (the "impugned decisions"):

2.1.1 the application to permit the consolidation of Erf 8210 Cape Town and Erf 144698, Cape Town ("the property");

2.1.2 the application to permit building work on the property within a Heritage Protection Overlay Zone in terms of Item 162(1) of the Development Management Scheme ("the DMS");

2.1.3 the application in terms of Item 64(e)(ii) and Item 182(e)(f) of the DMS to permit parking bays on the ground and first floor levels to be closer to the 10 metre street boundaries, as stipulated in paragraphs 2.2.1. to 2.2.2.3 of the approval granted on 19 January 2017 and headed "Amended Municipal Planning Tribunal Annexure A".

2.1.4 the application in terms of Item 121(2) of the DMS to permit a building to be 0 metres in lieu of 5 metres from a designated metropolitan road (Buitengracht Street – PMR 139).

2.2 Ordering that any of the Respondents who oppose this part of the application pay the costs occasioned by such opposition, jointly and severally.

2.3 Granting the Applicants further or alternative relief.

TAKE NOTICE FURTHER that the affidavits of **OSMAN ADAM SHABOODIEN**, together with the annexures thereto, and the supporting/confirmatory affidavits of **FABIO TODESCHINI, JASON STAPLETON, WILLEM BÜHRMANN and GERALD BIRD** will be used, together with such further affidavits as the Applicants may file in terms of Uniform Rule 53(4), in support of the application in Part B.

TAKE NOTICE FURTHER that the Respondents are called upon, in terms of Uniform Rule of Court 53(1)(a), to show cause why the impugned decisions should not reviewed and set aside.

TAKE NOTICE FURTHER that, in terms of Uniform Rule of Court 53(1)(b), the First, Second and Third Respondents are required within **15 days** after receipt of this notice to dispatch to the Registrar of this Honourable Court the record of the impugned decisions (including all correspondence, reports, memoranda, documents, evidence, transcripts of proceedings and other information serving before the Second and Third Respondents in relation to the impugned decisions), together with such reasons as they are required by law or desire to give, and to notify the Applicants that they have done so.

TAKE NOTICE FURTHER that, within **10 days** of receipt of the record from the Registrar, the Applicants may, by delivery of a notice and accompanying affidavit, amend, add to or

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vary the terms of its notice of motion and supplement its founding affidavit in terms of Uniform Rule of Court 53(4).

TAKE NOTICE FURTHER that the Applicants have appointed the offices of Edward Nathan Sonnenbergs, 1 North Wharf Square, Loop Street, Cape Town as the address at which they will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that, if the Respondents intend opposing the application for the relief set out in Part B, such Respondent is required –

- (a) within **15 days** after receipt of the notice of motion or any amendment thereof, to deliver written notice of his intention to oppose and in such notice to appoint an address (being an address within fifteen kilometres of the office of the Registrar of this Court) at which she/it will accept notice and service of all documents in these proceedings; and
- (b) within **30 days** after the expiry of the time referred to in Uniform Rule of Court 53(4), to file answering affidavits, if any.

TAKE NOTICE FURTHER that, if the Respondents elect not to oppose the relief sought in Part B of this application, the application will be made on the unopposed motion court roll on the next available court date allocated by the Registrar.

DATED AT CAPE TOWN ON THIS 20TH DAY OF APRIL 2017.

EDWARD NATHAN SONNENBERGS INC

Per:

Applicants' attorneys

1 North Wharf Square, Loop Street

Foreshore, Cape Town

Tel 021 410 2500

Fax 021 410 2555

E-mail jzieff@ensafrica.com

Ref: J Zieff/S Levetan/0421868

TO: **THE REGISTRAR**
Western Cape High Court
Western Cape

AND TO: **THE CITY OF CAPE TOWN, and THE MUNICIPAL PLANNING TRIBUNAL, CITY OF CAPE TOWN**
First and Second Respondents
c/o Municipality Manager
6th Floor, Podium Block Civic Centre
12 Hertzog Boulevard
Cape Town

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|---------------------------|-------|
| LEGAL SERVICES DEPARTMENT | |
| CITY OF CAPE TOWN | |
| 20 APR 2017 | |
| PRINT NAME | Thami |
| SIGN | |
| TIME | 15h55 |

AND TO: **THE MAYOR OF CAPE TOWN**
Third Respondent
6th Floor, Podium Block Civic Centre
12 Hertzog Boulevard
Cape Town

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AND TO: **BUITENGRACHT PROPERTIES (PTY) LTD**

Fourth Respondent
The Views – Founders Hill Office Park,
18 Centenary Road
Modderfontein
Gauteng

c/o WERKSMANS ATTORNEYS
2nd and 3rd Floors
142 Edward Street
Tyger Valley
Ref: H A Kotze

