

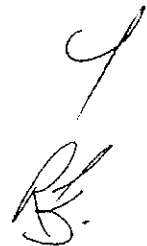
AFFIDAVIT

I, the undersigned,

RODERICK ANDREW COLE LEWIS

do hereby state under oath that:

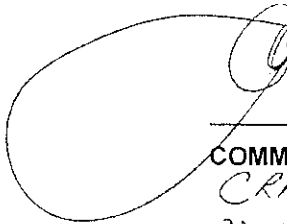
1. I am an adult male Land Surveyor carrying on business at A6 Waverley Court, 7 Kotzee Road, Observatory, Western Cape.
2. The facts contained herein are within my personal knowledge and belief unless the context indicates to the contrary, and are both true and correct.
3. I have obtained a Bachelor of Science (B.Sc.), Engineering Degree at the University of the Witwatersrand and a Masters Degree in Business Administration (MBA) at the University of Cape Town. I have also practised as a Land Surveyor for 35 years to date.
4. I refer to my report annexed hereto, and marked "RL1", and hereby confirm that it was prepared by me, is both true and correct in so far as it reflects my research findings and that any conclusions contained therein are my professional opinion.





RODERICK ANDREW COLE LEWIS

Signed and sworn to by the deponent at **CAPE TOWN** on this 16th day of NOVEMBER 2012 the deponent having acknowledged that he/she knows and understands the contents of this affidavit and the oath having been administered in the form and manner set out in Government Notice R1258 dated 21 July 1972, as amended by Government Notices R1648 dated 19 August 1977, R1428 dated 11 July 1980 and R774 dated 23 April 1982.


00433583-0
W/OFFICER
C.A. DELL
COMMISSIONER OF OATHS
CRATG DELL
32 MAIN RD
MOWBRAY

SUID-AFRIKAANSE POLISIEDIENS
STASIEKOMMISSARIS MOWBRAY
16 NOV 2012
STATION COMMISSIONER MOWBRAY
SOUTH AFRICAN POLICE SERVICE

Our ref: L6099

PRESCRIPTIVE RIGHT INVESTIGATION : ERF 2795 CAPE TOWN

Erf 2795 Cape Town is located on the northern side of Buitengracht Street at the intersection with Wale Street in the city. The physical address is 59 Wale Street. It is developed with a long-standing building, part of which encroaches over the Wale and Buitengracht Streets road reserves. I have surveyed the building position and the extent of the encroachment (69 m²), which is depicted on the attached Land Surveyor's Certificate (Annexure 1). I have also investigated public records to establish how long the encroachment has existed and whether there is a basis for a prescriptive claim to the land in question. As the building is evidently much older than the period required for a prescriptive claim to exist, it was necessary also to question why the encroached land had not already been claimed.

For a prescriptive claim to be considered, the encroachment would have to have existed before 8th August 1944 in the case of state land, according to the provisions of the Prescription Act (Act 68 of 1969).

In order to prove that the encroachment existed before 1944 I have:

- examined the file held by the City's Property Management and obtained copies of key documents from this file;
- discussed the matter with Mike Simms, senior official at Property Management;
- researched the public record at the Western Cape Archives; and
- scrutinized early aerial photographic records Senior Professional Officer : Strategic Information and GIS at the City of Cape Town.

My findings are:

Western Cape Archives

In file B513 (Source 3/CT Volume 4/2/1/3/2136) a copy of a plan to alter the encroaching part of the building (by inserting windows) was found, together with the Building Survey Branch comments (on Form A) (Annexure 2). This proves that in 1951, the encroachment already existed and that a prescriptive claim was already on the table (vide comment from the Chief Surveyor reading "Area encroached upon has been claimed by prescription. See endorsement on Plan No 41393 dated 1-6-1934.") I have not been able to trace any further references to this claim, but the plan concerned may throw some more light on this aspect. To this end I have ordered a copy.

Property Management File Records

This file goes back to July 1996 when a prospective buyer of the property, BIMCO, apparently as part of a due diligence process, asked the city for indemnity against prosecution for the encroachment, should they buy the property. It appears that a Mr McNish of Surveys and Land Information had

discussions with BIMCO and mentioned the possibility of prescription, as there is a note signed by McNish to this effect, reading "Per DS & LI To BIMCO to confirm prescriptive claim as discussed". However there are no further details about this discussion or its outcome.

Mr Milne wrote to Mr Mc Nish pointing out that he could not commit the Council to an undertaking but that a prescriptive claim should not be opposed by the City. On the 12th July 1996 the City Planner wrote to the owners of the erf, Jan S Marais Trust, advising (amongst other matters) that his records showed that the encroachment had existed since prior to 1862, that a prescriptive claim could be made against the Council for the approximately 70 m² involved, that it was reasonable to assume that Council could and would not rebut the claim and that his department would recommend in favour of the claim. (Annexure 3). Pending such an action, to indemnify the City against possible public liability claims, the encroachment would be regularised by a permit. It is specifically stated that signing the permit does not prejudice the right to claim the land by prescription and that this is an interim arrangement, pending finalisation of the claim. This permit was duly signed and a nominal rent paid by this owner and another permit signed by subsequent owners: Charl Meyer Familie Trust (1997) and Basfour 2480 (Pty) Ltd (2003). This last permit has not expired (Annexure 4), but as it is signed by the previous owner, a new permit should have been signed by the buyer. (There is no record of this on file). It is a mystery as to why the prescriptive claim was not finalised or if, indeed, it was ever made.

The encroachment is shown on a Land Information Branch Sketch (Annexure 5) and interestingly, a hand written note on this plan states "But a prescriptive claim for this area will not be rebutted by CCC".

Another interesting record (Annexure 6) concerns the abutting property, Erf 9803 Cape Town. This property also encroaches in a similar way as the subject erf and a decision to dispose of this portion of land to the owners of Erf 9803 was made on 15/12/1997. However this land appears never to have been transferred. This record indicates the willingness of the City to dispose of the land and to resolve the encroachments.

Early Aerial Photographic Record

I met with Peter Guise (Senior Professional Officer : Strategic Information and GIS at the City) and examined aerial photography taken in 1935 (Photograph numbers 31165/31164) and 1951 (7672/7673) of the subject erf. It was apparent that the encroachment existed in 1935 and was unchanged in 1951. Unfortunately, although the encroachment can be seen in the attached print from the 1935 photograph (Annexure 7), it is not as clear as seen on the 3D viewer.

RECOMMENDATIONS

It was clear from my discussion with Mike Simms that Property Management considers regularisation by means of Encroachment Permits to be last resort methods. The Property Management file indicates that City is not opposed to a

C
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to a prescriptive claim and that it is unlikely that the Council could oppose such an action. In this instance encroachment permits have been used since 1996 as a means of regularising the situation, but that the City specifically confirms that the signing of such permits does not prejudice the owners of the subject erf from claiming prescription and that the permits are a temporary method pending finalisation of such a claim.

We can prove from the City's aerial photographs that the encroachment existed before 1935, and Mr McNish's letter proves that the City believed from its records that the encroachment existed prior to 1862. We know from the Archive material that in 1951 a prescriptive claim was on the table. There is therefore overwhelming evidence that the encroachment existed prior to 1944, the cut off date required by the Act for prescriptive claims of this nature. It is somewhat perplexing therefore as to why such a claim was not apparently lodged and why, if it was, it was not finalised. Similarly, the decision to sell encroached land to the abutting property was not finalised either. Could it be simply a matter of owners not wanting the expense and accepting the permit system as an easier and cheaper means of official sanction? Or could it be that the land changed hands before bringing these matters to fruition? As our investigations could find no comment at all about this, we take such factors to be the cause.

I am of the opinion that a prescriptive claim should be considered, based on this evidence and based on these records. I found no evidence of any matter which would prevent the Act from being implemented in this instance. Indeed there is ample evidence that the City would support such an action and that the officials would welcome a final resolution of the problem. Normally, the existence of an encroachment permit would prejudice the claimants rights, but in this case the City has specifically confirmed that the permit was a temporary means, pending prescription and that it would not prejudice the owner's rights to prescription.



R A C LEWIS
Professional Land Surveyor
PLS 0345-D



LAND SURVEYOR'S CERTIFICATE

ANNEXURE 1

FORM (b)

I hereby certify that I have inspected the property known as
 ERF 2795 CAPE TOWN
 Located at the corner of Buitengracht Street and Wale Street, Cape Town in the City of Cape Town
 Registered owner : Basfour 2480 Pty Ltd
 By Deed of Transfer No. T 37254/2003
 and that-

- (A) I have either located or, where necessary replaced every survey beacon.
- (B) There exists an encroachment onto this erf in the area surveyed.
- (C) Certain structures or other things on or connected with such property encroaches on a public street, public place or private property abutting such property, in the area surveyed.

Date : 3 August 2010

Signature :

R.A.C. Lewis, Professional Land Surveyor

BIFF LEWIS GEOMATICS

Professional Land Surveyors

A6 Waverley Court, 7 Kotzee Road, Observatory, 7925

Tel. : (021) 442-3480 Fax. : (021) 442-3488

Our Ref. : L6099 Lsc 001

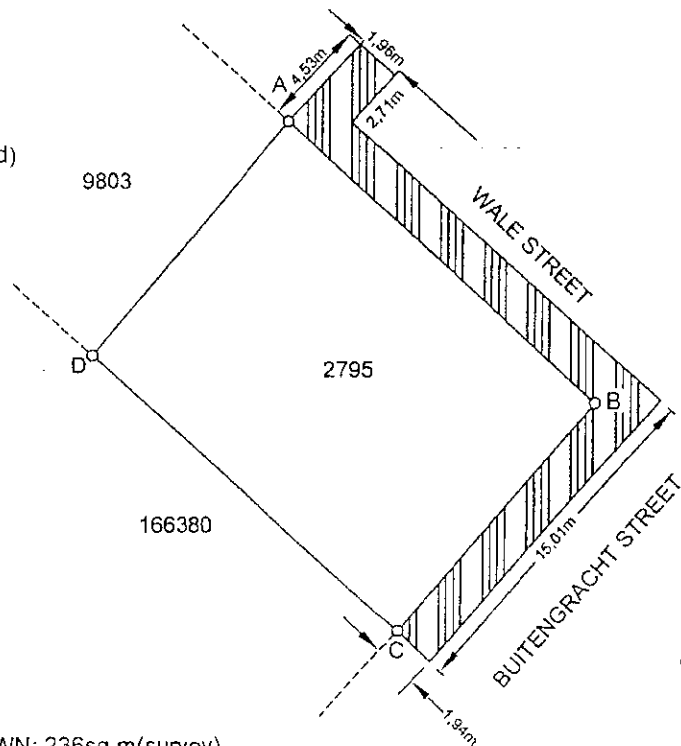
SKETCH

SCALE 1:250

Beacon Descriptions

A,B,C,D ... wall corner (Adopted)

SIDE	DIRECTION	DISTANCE
A-B	312.21.10	18,04m
B-C	41.10.40	12,97m
C-D	131.28.30	17,92m
D-A	220.40.40	13,25m



AREA OF ERF 2795 CAPE TOWN: 236sq.m(survey)

CERTIFICATE OF EXPERT OPINION**TO WHOM IT MAY CONCERN:**

I, PETER GUISE, an adult Senior Photogrammetrist, employed by the Strategic Development Information (SDI) and Geographic Information System (GIS) Department of the City of Cape Town, hereby certify as follows:

Whereas I was requested by Biff Lewis Geomatics and Chris Fick & Associates to view the building with the physical address of 59 Wale Street, Cape Town, Western Cape on the property described as Erf 117648 Cape Town, on certain aerial photographs to determine whether a structure commonly known as a "stoep" can be seen abutting this building; and

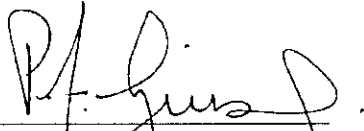
Whereas I have viewed the following aerial photographs:

1. 31165/31164 of 1935, and
2. 7672/7673 of 1951, and

Whereas the above mentioned aerial photographs depict a "stoep" abutting the building, with the physical address of 59 Wale Street, Cape Town, Western Cape, along Wale and Buitengracht Streets on Erf 117648 Cape Town.

Now therefore I hereby confirm and certify that the abutting "stoep" on the property located at 59 Wale Street, Cape Town, was in existence in 1935 and 1951.

SIGNED at CAPE TOWN on this 6th day of November 2012.



PETER FRANCOIS GUISE