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P.R. Miles, Esq.,
East Northdown House,
Margate,
Kent.
CT9 3TS

Our Ref: NRM/CF/CROF/nm

Your Ref:

Date: 24 September 1991

Without Prejudice

Dear Mr. Miles,

Re: Land at East Northdown, Margate, Kent

Thank you for your recent faxes.

I have now had an opportunity to consider the draft pleadings supplied to me by your solicitors.

I take the view that the case set out in the Statement of Claim has no merits whatsoever.

I hold this view for the following reasons.

Taking the draft Statement of Claim together with the purported Notice to Complete dated 14th May 1991 served on Mary, Lady Crofton, it appears that your claim is based on an alleged contract dated 22nd June 1983, the evidence for which is a letter from Mrs. Sheilah Stanton alternatively the matters of part performance set out in the particulars to paragraph 5 of your draft Statement of Claim.

You will have been aware (or ought to have known) that, as a matter of law, land can only be held by more than one owner subject to a trust for sale. In this case, the co-owners were all Trustees of that trust for sale. It is also a basic principle of law that trustees can only act unanimously. So far as I am aware from previous correspondence emanating from you, prior to the letter of 22nd June 1983, none of the other Trustees, namely, Lady Creasey, Lady Crofton and Mr. Michael Fisher as the trustee for the daughters of the late Mrs. Courtenay Hood, informed you that they had given specific prior authority to Mrs. Stanton to act on their behalf. In the absence of such specific authority or any other holding out by each of them to you of Mrs. Stanton as being empowered to act on behalf of all of the Trustees, Mrs. Stanton, as a matter of law, had no power whatsoever as only one out of the four trustees to enter into any contract with you relating to the land at East Northdown.

I believe that Lady Creasey and Lady Crofton subsequently signed and returned to solicitors acting for them contractual documents from which you might be able to derive some support for an argument that they had thereby "ratified" Mrs. Stanton's acts. Those documents were, however, always held by solicitors

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acting for the Trustees on a "subject to contract" basis and no exchange has, as you know, taken place because the fourth Trustee, Mr. Fisher could not be contacted and the other trustee for the daughters of the late Mrs. Courtenay Hood refused to give his consent.

It follows, therefore, that you cannot, as a matter of law, establish any contractual right to purchase the land at East Northdown and that you have occupied the land solely as licensee and have no legal rights therein. I note from the draft Statement of Claim that this was pointed out to you as long ago as May 1986.

Your reference to "part performance" in the purported Notice to Complete served on Lady Crofton is wholly misguided. So far as is relevant, part performance is a doctrine of equity whereby the previous strict statutory requirement that a contract for the sale of land must be evidenced in writing would be waived so that a contract could be proved by reference to conduct. However, the rule only permits the proof of an oral contract or a contract which did not in all respects comply with those statutory requirements; as I have explained above, you cannot establish any contract at all because Mrs. Stanton did not have the requisite authority to enter into any contract on behalf of the other Trustees. The Notice to Complete purportedly served on Lady Crofton is, therefore, a nullity.

It further follows, equally, that none of the works which you carried out on the land had the authority of the owners (since such authority could only be given unanimously) and to the extent that the land has been damaged the owners have the right to claim damages against you. Any alleged improvements made by you are purely gratuitous and you have no legal rights to claim compensation, whether on a "quantum meruit" basis or otherwise.

Perhaps you would like to consider the above analysis and let me know what proposals, if any, you wish to make.

You referred in your fax to me of 10th September to my mentioning the possibility of a "challenge" to your title to the land known as "Paddock". Your recollection of that conversation is inaccurate. I told you that I was aware that you had raised the issue of your title to that land. From what I know of your claim in that respect, I consider that it has no relevance to Lady Crofton. Presumably, solicitors acting on your behalf investigated title at the time of purchase and were satisfied that the title deduced to you was what you had contracted to purchase, since otherwise you would not have completed that transaction. I do not propose to discuss this aspect further.

Yours sincerely,

Nigel Moore