



ADJUDICATOR TO HER MAJESTY'S LAND REGISTRY

COSTS ORDER

Case Number: REF/2009/0816

Title Number: K947213

Property: Land adjoining East Northdown Farm, Margate, Kent

Applicant: William Offley Hinchliffe Friend

Respondent: Peter Robert Miles

The Adjudicator to HM Land Registry directs the parties as follows:

1. The Respondent is to pay the Applicant's costs of this reference from the date of the reference, 23 June 2009, to be assessed on the standard basis.
2. The Applicant is to file with the Adjudicator and serve on the Respondent a schedule of costs claimed in form N260 or similar by 5pm 14 March 2011.
3. The Respondent is to file with the Adjudicator and serve on the Applicant by 5pm 28 March 2011 any objections to such costs.
4. The Applicant may file with the Adjudicator and serve on the Applicant by 5pm 4 April 2011 any reply to such objections.
5. The Adjudicator will then assess the costs or give further directions.

Reasons

The undertaking to withdraw was not given on the basis that there would be no order as to costs. The undertaking was unconditional and, ultimately the withdrawal was unconditional. Therefore, in relation to this reference the Respondent was the unsuccessful party. Further, instead of immediately withdrawing unconditionally in accordance with the undertaking, the Respondent at first sought to impose conditions on his so acting which led to further costs being unnecessarily incurred. I see no reason why costs should not follow the event.

I can see nothing in the correspondence and other documents to which I have been referred (including correspondence in some cases marked without prejudice except as to costs and in some cases simply without prejudice), or in the arguments advanced in correspondence on the part of the Respondent, which affects this decision, even assuming that all the without prejudice material is now admissible on the question of costs. The attempt in the written submissions of the Respondent's solicitors to suggest that the undertaking was only in the event of a full court hearing in the other case and that the settlement was on the basis that the

terms of settlement agreed would have no bearing on this reference are not borne out by the terms of the undertaking which made no reference to a full court hearing. Had there been some condition as is suggested in the settlement, then one would expect to see this agreed in writing and with an agreement that the Respondent was to be released from his undertaking.

Dated this Monday 28 February 2011

Michael Mark



BY ORDER OF THE ADJUDICATOR TO HM LAND REGISTRY