Furley page

Furley Page LLP, 39 St Margaret's Street,
Canterbury, Kent CT1 2TX
Tel: 01227 763939 Fax: 01227762829
DX5301 Canterbury

Carpenter & Co Solicitors
DX 59950
Wallington

By OX and email
(chrisd@carpenterssolicitors.co.uk)

Our Ref: *JCF/FR0844/0016*
Your Ref: CD1 MIL *138/001*
Direct Line: *012278631n*
Direct Fax: 01227863219
E-Mail: jcf@furleypage.co.uk

26 September 2019

Dear Sirs

Your Client: Mr Peter Miles
Our Client: Mr William Offley Hinchliffe Friend

We write further to your letter dated 5 August 2019 and our subsequent correspondence.

1. It is unclear why your letter of claim consists of sending voluminous draft Particulars of Claim ("dPoc"). That approach is not proportionate of itself, far less when the draft Particulars run to over 30 pages to complain of a limited number of publications.

2. Accordingly, in light of this wholly disproportionate approach, we do not propose to reply ad seriatim to the draft Particulars of Claim but instead confine ourselves to the main issues. The factual background is of course well known to our clients. However, the fact that we have not addressed a particular issue should not be taken as an acceptance of any point. It is not.

3. Your client's claim is without merit. For the reasons we set out in summary, and non-exhaustively below, it fails to set out valid causes of action against our client.

4. Indeed, your client's failure to particularise properly valid claims against our client is all the more telling in light of the extensive and unnecessary length of the dPoC which fall to comply with the requirements of CPR r.16.4. There is no legitimate basis whatsoever to the multiple paragraphs of so-called "background facts" which contain (i) numerous and hopelessly unspecified allegations; and (ii) redundant and unnecessary rhetorical flourishes (for example at paragraph 95).

5. In this regard, the dPoC are a paradigmatic example of a statement of case which is liable to be struck out for failure to comply with the CPR and in particular r.16.4. They completely ignore the dicta of Mr Justice Leggatt (as he then was) in Tchenguiz v Grant Thornton LLP {201511 All E.R. (Comm) 961 that

> *"Statements* of *case must be concise. They must plead only material* facts, *meaning the necessary for the purpose* of *formulating* a *cause* of *action* or *defence, and not background facts* or *evidence. Still less should they contain arguments, reasons* or *rhetoric. These basic rules were developed long ago and have stood the test* of *time*

because they serve *the vital purpose* of *identifying the matters which each party will need to prove by evidence* at *trial. "*

6. Indeed, the central hallmark of the dPoC is to demonstrate the fallacy of the assertion at paragraph 19 of the dPoC that it is our client who regards the Tomlin Order dated 16 July 2013 (the "Tomlin Order") as a "dead letter". On the contrary, it is your client who has failed to take the necessary steps to implement his obligations under the Tomlin Order (not least through his refusal to enter into the Deed of Grant which he was required to do) and who now through the litigation foreshadowed in the dPoC threatens to further flout the Tomlin Order by bringing claims which he has expressly agreed not to bring as part of the settlement. In this regard, the paragraphs of "background facts" infringe the clear admissions and agreement by your client in the Tomlin Order that (i) events to date had not caused any nuisance to your client and (ii) that the Tomin Order was in full and final settlement of all claims, whether the subject of proceedings or otherwise, and which were known or ought to have been known based on reasonable enquiry at the time.

Jurisdiction

7. The first potential breach of the Tomlin Order is your client's threat to institute proceedings in the High Court. As your client is well aware from other litigation which he is involved in, paragraph 15 of the Tomlin Order provides that any necessary enforcement proceedings should be brought in the County Court. Accordingly, there is no basis for your client's threat to bring proceedings in the High Court.

Alleged Breach of the Tomlin Order - Defamation and Harassment

8. The dPoC allege that six publications by our client breach the mutual undertaking in clause 13 of the Tomlin order that the party should not defame the other party. The publications complained of are: (i) an email of 6 August 2016, 0J} an email of 8 August 2016, (iii) an email dated 31 October 2016, (IV) an email dated 3 November 2016, (v) a statement as part of a planning application dated 9 June 2016, and (vi) an attachment to the email dated 6 August 2016. As *we* set out below, in fact there *are* only five publications; the attachment to the email dated 6 August 2016 is the same publication as the email to which it was attached.

9. While we acknowledge that your client's claim is brought in contract, it is clear (and the dPoC accept this) that any such alleged breaches will still be governed by the ordinary defamation law principles, However, the wholesale inadequacies of the claim set out in the dPoC demonstrate that your client does not have a good claim against our client for alleged breaches of the Tomlin Order in respect of defamation.

10. **In** this regard, and non-exhaustively:

    a. It is a fundamental principle that any publication needs to be considered in its entirety. Parts of a publication are not considered in isolation to others - Charleston v News Group Newspapers Ltd [1995] 2 AC 65. There is therefore no basis in law to complain separately about the email of 6 August 2016 and the attachment. They are the same publication.

b. A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the Claimant - see s.1 of the Defamation Act 2013. As the Supreme Court has recently made clear in Lachaux v Independent Print Limited [20191 3 WIR 18 this means that a claimant must prove serious harm to their reputation as a matter of fact, and not merely by reliance on the operation of a legal presumption arising from the tendency of the words complained of to cause harm to reputation. However, your client's complaints that various publications are defamatory of him (and therefore breach the Tomlin Order) are premised on the approach rejected by the Supreme Court. See for example the pleading in respect of the 6 August 2019 email (a formulation repeated in respect of the other publications complained of):

> *"the natural and ordinary meaning of [the words complained of is .... Consequently, the said statement is defamatory and therefore amounts to* a *breach of [the Tomlin order] and* has *caused* serious *harm to the reputation* of *the Claimant ... "*

This does therefore not disclose a valid cause of action in defamation against our client.

C. It is equally well established that in order to prove that a publication meets the threshold it is necessary to properly plead and set out fully a case on serious harm - Tinkler v Ferguson [2019] EWHC 1501 (QB). Your client's statement of case fails to do this at all. It is entirely dependent on the (contrived, as to which see further below) meanings he asserts are borne by each of the publications complained of. This is impermissible. There is no valid cause of action against our client.

d. The complete absence of any properly formulated case on serious harm (which necessarily means that a publication is not defamatory if the threshold is not reached) is not simply a matter of pleading. It is primarily a matter of substance. While the one year limitation period to libel claims may not apply in this case, the policy reason for the limitation period is directly applicable in this case. That is the well-established principle that a genuine claim for damage to reputation will necessarily need to be brought speedily. The position was summarised by Mrs Justice Sharp (as she then was) in Hayden v Charlton [2010] EWHC 3144 (Q8):

> *'The limitation period for libel actions* is 1 *year. Parties who start libel actions are expected to get on with them, not least because* a *claimant with* a *serious claim which he genuinely* wishes to *pursue will want prompt vindication. If he does not do* so, *and can give no proper explanation for his delay, the court may infer* his *motive for the delay* is *not* a *proper one and the action constitutes an abuse* of *the process. Whether that inference can be drawn, depends on the* facts of *the individual* case. "

e. In this case, your client has not pursued any claim arising out of the publications complained of promptly. He has not identified any serious harm to his reputation. The publications, as the dPoC admit were to small numbers of individuals, many of whom were already very familiar with (i) your client and (ii) the planning context

which formed an integral part of the publication. Context is critical to the manner in which a publication will be read and considered by the publishees - see Stocker v Stocker [2019] 2 WLR 1033. Accordingly, it is clear that there is no basis for your client to establish that he has suffered serious harm to his reputation.

f. Indeed, it appears that (at least) in several cases, your client only obtained the publication using Freedom of Information legislation. That reinforces the view that there has not been any actual harm to your client's reputation. Moreover, the courts have previously struck out libel actions based on documents obtained through disclosure as an abuse of process - McBride v Body Shop International Pic [2007] EWHC 1658 (OB).

g. Equally, your client cannot seek to remedy the absence of serious reputation harm by seeking to aggregate publications or defamatory imputations so as to assert that collectively they cause cumulative harm to his reputation - Sube v News Group Newspapers Ltd (No.2) [2018] EWHC 1961 (OB). Therefore, your client's pleading at paragraph 43 of the dPoC is entirely wrong in law, and also liable to be struck out.

h. Further, the meanings which your client seeks to attribute to various statements in the dPoC are entirely unsustainable. They are strained, unreasonable, and fail to abide by the widely accepted principles for determining the meaning of a publication as set out in Koutsogiannis v Random House Group Ltd [2019] EWHC 48 (OB). To take but one example of this hyperbolic approach, the suggestion that the statement of 9 June 2016 meant that your client had been guilty of corrupt behaviour, is entirely unsustainable. Rather, it is through arguing for such forced and unreasonable meanings that your client is trying to generate the basis for his claim that the publications have caused serious harm. Even if that were permissible (which is it not), as the Supreme Court has made clear in Lachaux, that approach is insufficient to make a publication defamatory.

i. Finally, our client's planning application of 9 June 2016 does not name your client There are no particulars of reference pleaded that any of publishees (who are not identified) understood the words complained of to refer to your client. This is yet a further example of the entirely inadequate and unsustainable case advanced by your client. It is also relevant to the absence of serious harm to your client's reputation.

11. For these reasons, it is clear that there has been no breach of the undertaking by our client in the Tomlin Order not to defame your client. The publications of which your client complains are not defamatory; they do not meet the necessary threshold under s.t of the Defamation Act 2013.

12. However, it is also important that we address a few of the important facts which emerge from your client's complaint. We do not rehearse the entirety of the dispute between our respective clients, but identify some key points:

a. All of the publications complained of form part of correspondence concerning planning applications made either by your client or by our client. They are therefore published on occasions of qualified privilege, which can be defeated only by proof of actual malice, which means a dominant and improper motive on the part of our

client. The publications complained of clearly also contain the opinions (honestly held) by Mr Friend. While the dPoC are replete with allegations of malice against our client, they are unsustainable.

b. In this regard, it is alleged at paragraphs 27 and 64 of the dPoC that our client cannot "reasonably believe" that your client is vexatious. However, paragraph 65 of the dPoC admits that your client has been described as vexatious by Thanet District Council (albeit he disputes this categorisation). In these circumstances, the suggestion that our client cannot have had an honest belief in a view which has also been reached by the relevant local planning authority is self-evidently unsustainable. Indeed, our client cannot have caused serious harm to your client's reputation by repeating an allegation which was already believed by the council (whether correctly or not). It is extraordinary this has been pleaded at all and is liable to be struck out as abusive. Indeed, given the entirely unsatisfactory nature of this matter, our client would be entitled to rely on this extraordinary pleading in support of the position that your client is vexatious, a point which runs through almost all of the publications of which your client complains. We hope that this is not necessary.

c. Although you allege that there was an innocent basis for the contents of your client's undated letter of April 1986 to Mr Friend, the explanation advanced for the contents of that letter at paragraph 52 of the dPoC is entirely unsustainable when the full terms of the letter are read. It is difficult to see what other explanation there can be for that correspondence other than threaten to "repercussions" if our client's late father did not agree to what your client wanted.

d. Although we know that your client's position is that the use of the East Northdown House and the surrounding plot is free of any restrictions, your client is equally aware that it is our client's position that there are restrictions on the use. We do not propose to rehearse that here. The fact is that each of the publications of which your client now complains arise in the context of the planning disputes surrounding our respective client's lands. For example, the fact that your client disagrees with our client does not make our client's position wrong or dishonest

13. These potnts are significant because your client has advanced in the dPoC a positive case of (i) falsity and (Ii) malice to defeat any potential defence of substantial truth, qualified privilege or honest opinion. This is doubtless because your client recognises that the law does not permit an individual to recover damages in respect of an injury to character which he does not or ought not to possess - McPherson v Daniels (1829) 10 B & C 263 at 272. Indeed, your client expressly states that he is seeking damages "equivalent to the damages that would be awarded in respect of such claims in defamation". Accordingly, if your client does bring proceedings, it will be necessary for our client to provide the full background and context to these publications, including the relevant defences available to him, in addition to the points addressed above in relation to serious harm. We hope that this will not be necessary but entirely reserve our client's right to do so.

14. For these reasons, our client has not breached the mutual undertaking in the Tomlin Order not to defame your client. Your client's claim discloses no basis for such a claim.

15. Equally our client has not breached the undertaking not to harass your client. To amount to harassment, the conduct complained of must not only be objectively oppressive, but the gravity of the conduct must be sufficiently serious to sustain criminal liability - Majrowski v Guy's and St Thomas' NHS Trust [2007J 1 AC 224. There is no suggestion that any of the publications (collectively or individually) could incur criminal liability and indeed that allegation could not sensibly be sustained.

16. In fact, the publications of which your client complains represent the legitimate views of our client in dealing with the various and numerous planning applications made by your client, many of which have been accepted by the relevant local planning authorities in rejecting your client's applications. It does not amount to harassment for our client to our client to object to your client's various planning applications. This is amply demonstrated by the entirely innocuous quotes complained of at paragraph 87(c) of the dPoC. Even if they were false (which is denied in any event), the passages complained of clearly could not amount to harassment

17. Indeed, it is completely incorrect to hold our client responsible for Thanet District Council's decisions not to give permission for your client's application as alleged at paragraph 87(c). Thanet District Council has reached the decisions it has reached based on its own independent assessment of the merits of the planning application. Any complaint about the conclusions reached by Thanet District Council can in law lie only with them.

18. However, the lack of merit in your client's complaints in this regard is demonstrated by paragraph 89 of the dPoC which alleges that our client has sought to frustrate your client's attempts to "carry out necessary and sympathetic renovation works". However, Planning Inspectors have rejected several of your client's applications, finding that the proposed works would be "contrary to the requirements ... for the preservation of designated heritage assets" - see for example the independent conclusions reached following site visits of Planning Inspector Papworth dated 27 June 2017 and Planning Inspector Wood dated 5 August 2019. Indeed, the conclusion of Mr Wood was reached without any representations being made by our client. It is very clear therefore that the conclusions on the merits of your client's planning applications have been rejected because of independent conclusions reached by the relevant planning authorities.

19. Further, in all the circumstances our client also has a defence to any such claim as his conduct has been reasonable. This must necessarily be afforded a wide ambit in the context of what are numerous applications made by your client for substantial expansion of his property. While your client may not agree with our client's opposition to his proposals, our client is perfectly entitled to make objections to those proposals and doing so does not amount to harassment

20. Accordingly, our client has not harassed your client in objecting to the various planning applications made by him and the dPoC disclose no proper basis for such a claim.

Claim for Nuisance and Diminution in Value of the Claimant's Property

21. Paragraph 94 purports to identify a claim far nuisance. This can be dealt with briefly because it is entirely misconceived. in fact, the very claim amounts to a wholesale

attempt to impugn the settlement agreed in the Tomlin Order.

22. By way of summary in respect of this threatened claim:

a. The dPoC are wholly lacking in any of the necessary particularity to sustain a claim for nuisance. For example, they do not identify the specific buildings of which your client complains.

b. Paragraph 94(a) is incoherent. It alleges that "The Claimant is now in the course of erecting multiple industrial units on his property ... that now interfere with the Claimant's enjoyment of his property" (our emphasis). Clearly our client is not responsible for actions undertaken by your client.

c. If in fact the reference to "the Claimant" should be a reference to our client, this is in any event factually incorrect. Our client is not "now in the course of erecting multiple industrial units on his property in close proximity to East Northdown House". Our client is not and has not erected any industrial units on his property. Nor is anything our client has done "visually overbearing" or will it "substantially increase" the noise emanating from his property.

d. All the building works on our client's property comply with the necessary planning permissions and accord with the approved 2013 Masterplan agreed with the local planning authority. It is incorrect to state that our client has only ever had planning consent for "light weight poly tunnels".

e. There has not been an "unacceptable increase in the use of the private road ... by heavy goods vehicles". On the contrary, the works for which approvals have been given since 2013 have not used the private road as a source of access. Indeed since the Tomlin Order, our client applied for new postcodes for the business centre and the garden centre so as to ensure that vehicles do not use the private road. Our client also closed the entrance to some of the units from the private lane voluntarily after the Tomlin Order. He has also ensured that the signage directs all commercial traffic to the correct entrances directly off George Hill Road.

f. In any event, paragraph 89(c) of the dPoC is internally inconsistent. It alleges that that the "result of the large number of industrial units" was an increase in the use of the road by commercial vehicles. Paragraph 89(a) claimed that the erection of the industrial unit was occurring "now". However, paragraph 89{c) concedes that "there is currently little use of the said road by commercial vehicles" (our emphasis). This complaint is therefore entirely without merit and liable to be struck out.

g. In fact, this complaint appears to be an almost identical repeat of the complaint made by your client in May 2005. It was without merit then and is even more so today. Indeed the complaint that there has been a large and unacceptable increase in the use of the road by industrial vehicles "very recently", cannot be reconciled with your client's own assertions in his complaint of May 2005 that there was then "a continuous, excessive and unauthorised use of the lane by [our client's] industrial tenants [which) has caused the previously perfectly adequate surface to break up."

h. In any event, the complaint in respect of the road is a direct attack on the Tomlin Order, which provides at paragraph 7 that while your client is the freehold owner of the Orchard, Paddock and East Northdown House, that he would not be charged any sums in accordance with road maintenance, and accordingly for the same period, your client would not make any "complaint in relation to the Road or the quality of the maintenance of the Road". This claim in nuisance demonstrates aptly that it is your client who is trying to act as if the Tomlin Order is a "dead letter", not our client It will clearly be struck out as an abuse of process if it is issued.

23. Similarly, it is very clear from paragraph 86 of the dPoC that your client's claim for alleged diminution of his property (which is not accepted in any event) is based on what he describes as a "30 year plus campaign of harassment .... [which] would now have to be disclosed to any future purchaser of East Northdown House".

24. This claim is a plain and obvious breach of paragraph 14 of the Tomlin Order which provides both that (i) "this agreement is in full and final settlement of any and all claims which the parties have against each other whether presently the subject of proceedings or otherwise" and (ii) the parties "hereby waive all rights they may have to bring any further proceedings against the other party in relation to any matter known or which should with reasonable enquiry have been known to that party as at the date of this agreement".

25. Your client cannot rely on events prior to the Tomlin Order to bring the threatened claim. Equally, he cannot now claim that those historic events have caused a diminution in his property when he accepted in 2013 that they did not give rise to an actionable nuisance.

26. In this regard, it is very clear from the opinion of Mr Mitford-Slade dated 1 August 2019 that his opinion has been based on what he believes is the history of thirty years. He clearly has not been told that your client accepted that (i) prior to the Tomlin Order events did not constitute a nuisance and (ii) that your client had agreed a full and final settlement of all potential claims at the time.

27. Therefore, there is absolutely no basis for any such claim of diminution of value. It is wholly misguided and a further example of what is in fact the case, namely your client trying to breach his obligations under the Tomlin Order in order to generate a claim purportedly in the value of £225,000. That claim will be struck out as an abuse of process.

Conclusion

28. For these reasons, your client's claims are rejected. Indeed, as we set out above, multiple aspects of the threatened claim are themselves a breach of the Tomlin Order. We note also that we received your letter of claim in the run-up to the hearing in separate litigation in the County Court. The timing does not appear to be coincidental.

29. In closing however, our client repeats what has always been his position, namely that he would again encourage your client to engage in a constructive attempt to implement the terms of the Tomlin Order so that this long running dispute is conclusively brought to an end. Irrespective of the merits of any litigation, that is clearly the most appropriate way of

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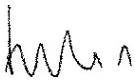
achieving a satisfactory outcome for our clients. Notwithstanding the reasonableness of our client, he will nevertheless robustly defend the claim envisaged in the dPoC if that claim is issued and seek his costs of so doing.

Yours faithfully



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