

RECEIVED
24 MAR 2005
T.M.L.R.

East Northdown House,
Margate,
Kent. CT9 3TS
22nd March 2004

Tunbridge Wells District Land Registry
Tunbridge Wells,
Kent TN2 5AQ

Dear Sirs,

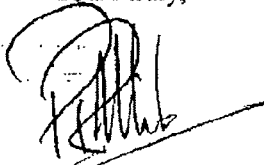
RE: Private roadway, East Northdown, Margate, Kent.

My property is accessed over a private roadway, which is not a highway maintainable at public expense.

Exhaustive enquiries have confirmed that there is no known owner of this land, and I am informed that there is a presumption in law that a roadway in such circumstances, belongs to the adjoining property owners up to the centre line.

Could you please advise me how I can register my interest in this land.

Yours truly,



P.R. Miles.



Land Registry
Tunbridge Wells Office

Mr P R Miles
East Northdown House
Margate
Kent
CT9 3TS

Date
29 March 2005

Your Reference

Our Reference
K570231/ANO/248/MLB

Land Registry
Tunbridge Wells Office
Forest Court
Forest Road
Tunbridge Wells
Kent TN2 5AQ

DX No 3999
Tunbridge Wells (2)

Tel 01892 510015
Fax 01892 510032

www.landregistry.gov.uk

Dear Mr Miles

Title No: K570231
Property: East Northdown House, East Northdown,
Margate

I write further to my colleague's letter to you of 24 March.

I assume that the presumption to which you refer in your letter dated 22 March is the "ad medium filium" presumption, being the presumption that the subsoil of a road belongs to the adjoining landowners up to the middle point of the road. This presumption is, however, rebuttable, for example, the presumption may be rebutted by actual evidence of ownership of the soil.

The express grant of a right of way over the road may also rebut the presumption. I note that entry 2 of the Property Register of your title to East Northdown House sets out a number of rights granted in favour of the property by a transfer dated 9 November 1982, one of which is a right of way over the private road leading from George Hill Road. In the circumstances, an application for the inclusion of the land on the basis of the ad medium filium presumption in this case is unlikely to succeed.

I hope this is of assistance to you. If you have any further queries please let me know.

Yours sincerely

Mary Brophy
Assistant land Registrar



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RS 0901 Rd Reg

Land Registry
Tunbridge Wells Office

Mr P R Miles
East Northdown House
Margate
Kent
CT9 3TS

Date
22 May 2006

Your Reference
N/a

Our Reference
K570231/ANO/248/MLB

Dear Mr Miles

Title No: K570231
Property: East Northdown House, East Northdown, Margate

Thank you for your letter of 24 April. Please accept my apologies for the delay in responding but it has been necessary for me to revisit our correspondence last year concerning this matter.

I note that you and 2 other owners wish to make an application for registration of those sections of the roadway abutting your respective properties under the ad medium filum presumption.

You will recall that in my letter to you of 22 June 2005 I indicated that I felt that an application for registration of part of the roadway abutting your property on the basis of the ad medium filum presumption would be unlikely to succeed given that the transfer of the property dated 9 November 1982 granted an express right of way over the private road. The ad medium filum presumption is just that, a presumption, and the presumption may be rebutted. It is possible that the history of the use or repair of the land or acts of ownership over the years may rebut the presumption. As mentioned in my previous correspondence I am of the view that the existence of the entry in the register of your title relating to the express grant contained in the 1982 transfer would appear to rebut the presumption.

Given the entry in your register relating to the grant of the right of way it seems to me that before being able to make such an application this aspect would need to be addressed. In my

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earlier correspondence I mentioned that it would be necessary for you to make an application for alteration of your register to remove the right of way and in doing so you would need to clearly demonstrate to the Registry's satisfaction that the right of way was not validly granted and provide evidence to establish that Mr Friend was not able to make the grant because he did not own the road and did not have the benefit of a right of way over the road. You would need to bear in mind the contents of the statutory declaration of Mr I J C Friend dated 28 October 1982 a copy of which has been forwarded to you. There is also the question of your having presumably relied upon the benefit of the right of way since acquiring the property.

As you know, your property has the benefit of a right of way over the extent of the roadway shown coloured yellow on your title plan. Any application for registration of part of the road based upon the presumption could only relate to that section of the roadway abutting your property to the mid-point of the roadway. The implications of making an application to alter your register to remove the entry relating to the right of way would need to be carefully considered.

In your letter you suggest that the right of way registered in favour of your property relates to a right acquired on the basis of prescription i.e. long user. The entry was, however, made pursuant to the express grant contained in the 1982 transfer. It seems to me that relying upon a prescriptive right of way over a piece of land is unlikely to assist since seeking to rely upon a right of way is at odds with a claim to ownership of the land in question.

I remain of the view that in order to make an application for registration based upon the presumption you would need to satisfactorily address the question of the right of way granted by the 1982 conveyance and provide convincing evidence to establish that the presumption has not been rebutted. While writing I would mention that although I have not investigated all of the titles to those properties within the vicinity of the roadway I see that the titles to East Northdown Cottage and Lawn Cottage also refer to the benefit of an express right of way having been granted by Mr I J C Friend. In order to succeed with the type of application you have in mind it would be necessary to address these express grants of rights of way over the roadway.

With regard to the final paragraph of your letter, an application for alteration of the register should be made in form AP1 accompanied by a fee of £40 and evidence in support. An application for registration based upon the presumption would need to be made in form FR1 again with the necessary supporting evidence and a fee of £40. I would point out that if a satisfactory application were to be made notice of the application would be sent to appropriate persons which would include the owners of properties within the vicinity of the roadway and any other interested parties and those people would have an opportunity to object to the application. However, I do believe that you and your neighbours face real difficulties in making an application for registration based upon the ad medium filum presumption for the reasons set out in this letter.

As you will appreciate I am not able to offer you legal advice and if you have any queries concerning the contents of this letter or this matter generally I would recommend that you take independent legal advice.



ADJUDICATOR TO HER MAJESTY'S LAND REGISTRY

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

Upon hearing Counsel for the Applicant and Counsel for the Respondent
And upon the Respondent giving the undertaking appended hereto

BY CONSENT

IT IS DIRECTED that:

1. The Respondent shall have permission to file and serve an amended Statement of Case in the form produced to the Adjudicator (with typographical errors corrected) by 4pm on 22 March 2010.
2. The Respondent do pay the Applicant's costs of and occasioned by that amendment in any event.
3. The Respondent do provide the Applicant's solicitors with copies of the documents requested by email dated 24 December 2009 and by letter dated 5 March 2010 by 4pm on 12 April 2010.
4. The parties do file and serve the statements of the witnesses of fact upon whose evidence they rely by 4pm on the 28th day after judgment has been handed down in *Miles v Stanton* (HC6TT01414).
5. The parties are to notify the Adjudicator of the judgment in the above case within 7 days of its being handed down and of the decision in that judgment as to the matters referred to in the appended undertaking.
6. This reference is to be listed now for hearing in London on the first available dates after 1 February 2011 with a time estimate of 2 days with a site view on the afternoon before the hearing.
7. In the event that the Respondent withdraws his objection, the Applicant may apply to the Adjudicator to determine the incidence of costs.
8. Both parties have permission to apply.
9. Costs of today are to be costs in the reference.

THE UNDERTAKING

In the event that the Respondent fails to establish a paper title to the orchard land the subject matter of the proceedings in the High court Chancery Division (Ref HC6TT01414) as pleaded in paragraphs 9-12 in the Particulars of Claim the Respondent undertakes to withdraw his objection to the application for first registration of title to the road the subject matter of the current application.

Dated this Tuesday 16 March 2010

Michael Mark

BY ORDER OF THE ADJUDICATOR TO HM LAND REGISTRY



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 Respondent 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