

Claimant  
Mr W Friend: 1<sup>st</sup>  
Date: 24-8-17  
Exhibits: "WOHF1 to 9"

IN THE COUNTY COURT AT CANTERBURY

Claim No:

BETWEEN:

WILLIAM OFFLEY HINCHLIFFE FRIEND

Claimant

-and-

PETER MILES

Defendant

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Witness Statement of William Friend

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I, William Friend of East Northdown Farm, Margate, Kent, CT9 3TS will say as follows:-

1. I live at East Northdown Farm with my wife and family and operate a plant growing and nursery business on the adjoining land together with a small complex of business units which I let out to small business enterprises.
2. The Defendant resides at East Northdown House which is opposite my property, separated by a private road in my ownership.
3. I have been engaged in litigation with the Defendant for many years.
4. By July 2013, proceedings brought by the Defendant in the First Tier Tribunal for prescriptive easements over my private road and other land were due to be heard (the Tribunal Claim). In addition, the Defendant had commenced a separate set of proceedings in the Thanet County Court claiming that I had caused a nuisance (the Nuisance Claim). The morning before the Tribunal Claim was to be heard, a site visit was held by the Judge. After the site meeting our respective solicitors and barristers

took the opportunity of seeing if the disputes between the Defendant and me might be resolved by negotiation.

5. Consequently, during the 15<sup>th</sup> July 2013 negotiations took place over the course of many hours and an agreement was finally signed by the parties on that day. The agreement was drawn up into an Order overnight and presented to the Court and dated 16<sup>th</sup> July 2013. Under the terms of the agreement and of the Order both the Nuisance Claim and the Tribunal Claim were settled. I exhibit a copy of the Order and signed agreement marked "WOHF1".
6. As part of the settlement within the Tribunal Claim the parties agreed to enter into a Deed of Grant to record the rights which we had agreed. This is provided for at paragraphs 3, 4 and 5 of the Order and at clauses 6, 7 and 8 of the agreement signed by us.
7. Paragraph 8 of the Order (and clause 11 of the agreement) provided that my solicitors should draft the Deed of Grant and that the Defendant's solicitors should respond with any comments and amendments to the Deed with such steps to be taken by the dates specified.
8. These steps were taken with agreed extensions of time. The Defendant's solicitor responded by an email of 5<sup>th</sup> September 2013 with comments and amendments to the draft Deed. A copy of that email and of the amended Deed are produced as exhibit "WOHF2".
9. After discussion with me, my solicitors replied to that letter on 10<sup>th</sup> October 2013 rejecting many of the amendments and they submitted a revised draft with an explanation for the amendments. A copy of that letter and of the amended draft Deed is exhibited as "WOHF3".
10. There was then an exchange of correspondence between the solicitors between 21<sup>st</sup> October 2013 and 4<sup>th</sup> February 2014 but unfortunately terms were not agreed and the Deed of Grant was not concluded during that period and remains outstanding. A copy of the exchange of correspondence is now exhibited as "WOHF4".
11. I became rather busy with my work and decided not to press matters further at that stage. However, I did revive matters in 2016 and after discussion with my land agent

and my solicitors I instructed my solicitors to write to the Defendant's solicitors to press for resolution of the outstanding Deed of Grant. My solicitors wrote to the Defendant's solicitors on 16<sup>th</sup> November 2016 reviewing what had occurred before and produced a revised Deed to include a professionally drawn plan and requested a response within 21 days. A copy of that correspondence and the documents submitted with that letter are exhibited as "WOHF5".

12. There was no response to that letter from the solicitors. My solicitors then wrote to the Property Tribunal as provided for at paragraph 8 of the Order that there be liberty to apply for determination of the terms of the grant. The Tribunal decided that it had no further jurisdiction and that the proceedings had been disposed of in August 2013 following the Order of 16<sup>th</sup> July. Copies of my solicitor's email dated 4<sup>th</sup> January 2017 and of the Property Chamber's letter dated 18<sup>th</sup> January 2017 are produced marked "WOHF6".

13. After some delay on the part of my solicitors a final letter was prepared for sending to the Defendant's solicitors but before it was sent my solicitors contacted those solicitors and found that the firm of Templetons was no longer acting for the Defendant. The final letter was then prepared to be sent to Mr Miles personally and my solicitors also drafted the proposed proceedings. A copy of the letter dated 20<sup>th</sup> July to the Defendant and the documents (excluding the draft Claim Form and Particulars of Claim) are exhibited marked "WOHF7".

14. A response was requested from the Defendant within 21 days which took the time to 10<sup>th</sup> August 2017. I understand from my solicitors that the Defendant emailed to acknowledge receipt of that letter and to say that he was referring papers to his solicitors but this email was not sent until the 8<sup>th</sup> August, only 2 days before the deadline. The Defendant's new solicitors, Shakespeare Martineau, have also been in contact with my solicitors by letter dated 9<sup>th</sup> August and have requested a further 4 weeks in order to respond to the letter. A copy of that letter and Defendant's email are produced marked "WOHF8". However, given the history of this matter and the considerable difficulty in negotiating a relatively simple document with the Defendant, I have no faith that there will be any constructive proposals advanced, nor do I have any faith that even with a 4-week period over which to explain matters to the Defendant and to take instructions on the basis of those explanations that this will result in the Deed of Grant being concluded. Whilst I would be delighted to be proved

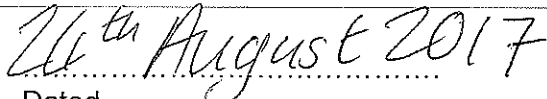
wrong, I foresee correspondence between solicitors extending for many more months without resolution.

15. Finally, I should note that the task of drafting a Deed of Grant to take into account the agreement that had been reached should have been straightforward. However, I have over the years had a good deal of experience in dealing with the Defendant, and am aware that matters that should be straightforward can often be anything but. During the negotiations, this concern was raised as a matter that would need to be addressed, and it is for this reason that the costs indemnity was incorporated at Paragraph 11 of the agreement. The idea was that if the Deed of Grant could be completed in a straightforward manner, then I would be prepared to bear my own costs of that process, which my solicitors estimated would be in the region of £1,000. The provision was intended to focus the Defendant's mind on concluding an agreement as efficiently as possible, as he was made aware that if the process was drawn out, then he would be responsible for all of the costs that flowed from the additional time expended. As yet, the Defendant has not made any payment towards the costs that I have incurred in trying to finalise the Deed of Grant under the indemnity agreed between us as part of the compromise agreement. The costs that have been incurred to date, including the costs of issuing these proceedings, are £18,212.80, and I exhibit a bill of costs in relation to this matter which I am liable to pay marked as "WOHF9". I have no plans to stop using the services of my legal advisers, and so these costs will continue to increase until the matter is resolved.

Statement of truth:

I believe that the facts stated in this witness statement are true.

  
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William Offley Hinchliffe Friend

  
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Dated