

Claimant
Mr W Friend, 2nd Statement
Date: 21 December 2017
Exhibits: "WOHF10"

Claim No: D00 CT632

IN THE COUNTY COURT AT CANTERBURY

BETWEEN:

WILLIAM OFFLEY HINCHLIFFE FRIEND

Claimant

-and-

PETER MILES

Defendant

**Second Witness Statement
of William Friend**

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

1. I make this statement in response to the two statements filed by Mr Miles dated 26 November 2017 ('Miles I') and 11 December 2017 ('Miles II'). Miles I is Mr Miles' response to my CPR Part 8 Claim; and Miles II was made by Mr Miles in support of an application seeking to strike out my claim, and in the alternative, to proceed on the CPR Part 7 route.
2. Save where I state otherwise, matters set out in my statement are within by own knowledge and belief. I am now shown a bundle of documents, which are true copies of the originals, and which I exhibit to my statement as Exhibit WOHF10.
3. My solicitors served the Claim Form and my witness statement in support on Mr Miles by letter dated 13 November 2017. In his Acknowledgement of Service, Mr Miles has indicated that he contests the Claim; that he disputes the Court's jurisdiction; and he objects to the use of the Part 8 procedure. Upon receipt of Miles I, it was apparent that Mr Miles had not set out any evidence as to why he disputed the

Court's jurisdiction. As a result, my solicitors wrote to Mr Miles on 1 and 6 December 2017 seeking clarification as to precisely what Mr Miles sought to dispute. In particular, my solicitors pointed out to Mr Miles that if he wished to dispute jurisdiction, he should make an application by 11 December 2017 supported by evidence. It appears likely that this is why Mr Miles made his application and statement, both dated 11 December 2017. Copies of the correspondence of 1 and 6 December are at **WOHF10**.

4. I should add that the version of the Application Notice dated 11 December 2017 that Mr Miles has provided to my solicitors is unsealed. I do not know whether Mr Miles managed to issue his application in time, or whether he will need to make a further application if he did not manage to make his application in time.

Mr Miles' statement dated 26 November 2017 (Miles I).

5. References to paragraphs in this section are references to Miles I unless the contrary is apparent.
6. At Paragraph 4, Mr Miles states that I have painted a very simplistic picture of the position between us. I accept that there has been litigation and general difficulties in the relationship between Mr Miles and my family for decades. I have considered what has been set out in Miles I against the very specific claim that I have made, and, without going into the detail, I find it hard to understand how Mr Miles' version of events set out in Paragraphs 5 to 34 will assist the Court. The only point of any interest to the Court in those paragraphs may be that statement at Paragraph 30 that Mr Miles commenced a claim in nuisance in July 2010. In fact those proceedings were issued on 23 December 2011. Those proceedings were discontinued as part of the compromise that we reached in 2013 as set out at Paragraph 11 of the Schedule to the Tomlin Order.
7. On that basis, I am not prepared to rake over old ground within the present application. I confine myself to stating that if this was relevant, I would take issue with many of the allegations levelled at me, my late father, and the rest of my family that pepper those paragraphs of Miles I.

8. As to Paragraph 37, there is reference to 'current defamation proceedings'. At the time of writing, I understand that Mr Miles has discontinued those proceedings (Miles II, Paragraph 18), although my solicitors have informed me that as yet, they have not received any formal confirmation that this has occurred.
9. At Paragraph 38, there is a suggestion that I am trying to exceed the terms of the agreement that we reached in 2013 within the proposed Deed of Grant. It is unfortunate that Mr Miles has elected not to elaborate further. There has been a limited amount of historic correspondence between our respective solicitors when seeking to agree the terms of the Deed of Grant (this correspondence is set out in exhibits WOFH2 to WOFH5 of my first statement), but I do not know what Mr Miles' present position is.
10. I say this because at Paragraph 39, there appears to be a complaint about my purported failure to apportion maintenance contributions for the upkeep of a private road that I own. I believe that the term of the Deed that Mr Miles feels I have failed to observe is likely to be Clause 2.1.4 of the draft Deed of Grant circulated in 2013. In a letter dated 22 November 2013, Mr Miles' then solicitors took issue with this provision, and stated that it needed to be deleted (this in the penultimate paragraph of the letter). My solicitors responded on 3 December 2013, explaining how that provision came to be inserted into the draft (top of page 2 of the letter). My solicitors asked for more details from Mr Miles' solicitors as to why the provision should be deleted, but heard nothing more. These letters are at Exhibit WOHF4 to my first statement. Mr Miles now appears to be affirming a right to rely upon that provision such that only **subsequent** owners of Mr Miles' property need contribute to maintenance costs. So, it is not the case that only historic complaints are necessarily matters upon which Mr Miles still takes issue.

Mr Miles' statement dated 11 December 2017 (Miles II).

11. References to paragraphs in this section are references to Miles II unless the contrary is apparent. Where Miles II makes the same point as Miles I, I do not propose to repeat my position.
12. At Paragraphs 3 and 5, Mr Miles states that the Property Tribunal was to have exclusive jurisdiction to determine the terms of the Deed of Grant, but that the County Court may enforce the agreement. This is derived from Paragraphs 8 and 15 of the

Schedule to the Tomlin Order. I explained at Paragraph 12 of my first statement that my solicitors made an approach to the First Tier Tribunal and that the Tribunal has formed the view that it has no jurisdiction. There is a letter from the FTT dated 16 January 2017 at Exhibit WOHF6 to my first statement which concludes, "The Tribunal therefore cannot assist in determining the terms of the Deed. It is open to the parties to apply to court for that purpose if they wish." Therefore, this Claim is made to the County Court.

13. I note in any event that by Paragraph 3 to the Schedule to the Tomlin Order, the parties are required to enter into a Deed of Grant. This has not been done, and I ask this Court to enforce that term of the agreement between us. I should also note that if Mr Miles is correct, then if he decided to object without any reason or merit to a perfectly sensible Deed of Grant, then this could never be concluded.
14. Whilst no doubt both Mr Miles and I considered that this was a sensible way to deal with matters whilst reaching our compromise, neither Mr Miles nor I can compel the Property Tribunal to accept jurisdiction that it does not have. Indeed, at Paragraph 5, Mr Miles confirms that the parties did not anticipate that the Property Tribunal would take this position. However, we did anticipate that there may need to be some way of resolving any dispute which may occur between us. I should also mention that simply because we agreed that we could apply to the Property Tribunal (the 'liberty to apply'), I did not and do not consider that this did any more than mean we could not object if the other party sought to apply. It did not confer an exclusive jurisdiction as Mr Miles seeks to contend, nor did it bind the Tribunal to accepting any application. I am disappointed that instead of getting on with producing a Deed of Grant, and contrary to the very first recital to the Agreement we reached in 2013, Mr Miles has decided to follow this present route.
15. Despite the parties having come to this agreement, Mr Miles is looking to rely upon the FTT having declined jurisdiction and thus to refuse to finalise the Deed of Grant. Despite this, he expresses the view, at Paragraph 16, that no agreement entered into with me is worth the paper it is written on! I am merely seeking to enforce the terms of our agreement, and it is Mr Miles who is seeking to obstruct that from happening.
16. At Paragraph 17, Mr Miles expresses the view that this claim has been made in retaliation for a defamation claim that he had intimated he would bring, and which he

subsequently issued. I wish to deal with this, but in so doing, I should not be taken to waive any privilege over dealings with my solicitors. I confirm that my instruction to my solicitors to seek to conclude the Deed of Grant pre-dated receipt of Mr Miles' letter before action in the defamation claim. In fact, that this has been my position should be apparent from the contents of Exhibit WOHF6 to my first statement, as by an email dated 4 January 2017, my solicitors approach the FTT stating, "It has not been possible to agree the terms of the Deed of Grant and we wish to make an application ... to refer the matter back to the Property Tribunal". I can confirm that as at January 2017, and indeed up until July 2017, I was not aware that Mr Miles was going to bring proceedings against me.

17. At Paragraph 18, Mr Miles sets out some of the contents of the latest round of litigation he has elected to bring against me. I do not propose to deal with these points within these proceedings, as I do not consider them to be relevant to the issues presently before the Court.

18. At Paragraph 23, Mr Miles suggests that there are substantial issues of fact between us that makes this Claim suitable for trial only under CPR Part 7. Mr Miles points to the need for evidence to be given about the parties' intentions in coming to the agreement. Even if this is correct, then it represents a limited amount of evidence to be given. Mr Miles can set out what he says is a disputed fact, and then we can respond. I suspect much of what Mr Miles wants to dredge up will not assist the Court, and so can be disregarded, whether I agree with Mr Miles or not. It is hard for me to say much more until Mr Miles tells the Court what issues of fact are in dispute, but it does not presently appear that this requires this claim to be transferred to CPR Part 7.

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