

Claimant
Mr W Friend, 3rd Statement
Date: 13 August 2019
Exhibits: "WOHF11"

Claim No: D00 CT632

IN THE COUNTY COURT AT CANTERBURY

BETWEEN:

WILLIAM OFFLEY HINCHLIFFE FRIEND

Claimant

-and-

PETER MILES

Defendant

**Third 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 application made by Mr Miles dated 11 December 2017, by which Mr Miles seeks 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 my 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 WOHF11.
3. The application was made and responded to over 18 months ago. Given the passage of time, the purpose of this statement is to update the Court as to events in the interim.
4. As the Court is aware from correspondence with the parties, the hearing of the application has been adjourned on more than one occasion to allow for a mediation and subsequent settlement negotiations to take place. The present position is that

the parties have not been able to settle the issues between them, hence this application is now before the Court.

5. I refer to the '2013 agreement', below. This is a shorthand reference to the agreement reached between the parties on 15 July 2013, and encapsulated within the Schedule to a Tomlin Order in proceedings before the FTT (Property Chamber) under Claim No 2012/0164.

Does Mr Miles want a grant of rights?

6. I have, on a number of occasions, tried to get Mr Miles to engage in relation to finalising the Deed of Grant. Despite my efforts, the draft Deed of Grant remains unsigned, the costs of trying to get this completed continue to rise, and the amount due to me from Mr Miles under the contractual indemnity contained within the 2013 agreement continues to increase.
7. Since the 2013 agreement was made, Mr Miles has been able to use my land as though the rights that were to be granted had indeed been granted. As such, he has been using my land in this manner with my permission. If he does not wish to take a grant of these rights (as he indicated in his December 2017 witness statement), and is prepared to release me from this obligation, then this would have an effect upon the ultimate amount of my claim under the indemnity provision within the 2013 agreement.
8. Therefore, on 13 July 2018, my solicitors wrote to Mr Miles' solicitors to determine whether Mr Miles would rather not take the grant of the rights that were agreed as part of the 2013 agreement. A copy of this letter is at page **1 to 2 of WOHF11**.
9. My solicitors did not receive a response to this letter, and chased for an answer by letter on 22 August 2018 **page 3 of WOHF11**; and again by email on 28 August 2018 **page 4 of WOHF11**. I understand from my solicitors that they have not had the courtesy of a reply.

10. I cannot overemphasise how frustrating it has been for me that Mr Miles has failed to engage in respect of the Deed of Grant. By electing not to do so, he increases costs and expense.
11. I do not know whether Mr Miles actually wants to be granted these rights or not. In any event, Mr Miles needs to be aware that if he decides he does not wish for a Deed of Grant to be concluded, he will not be able to change his mind. I anticipate that since making his statement in December 2017, Mr Miles has been advised that if he does not want the Deed of Grant to be concluded, then that will, in effect, be an end to the matter. This is because until such time as I may withdraw my present and ongoing permission for him to use my land as if he had the rights that were agreed to be granted as a part of the 2013 agreement, Mr Miles will not be able to establish any rights by prescription rights for at least 20 years thereafter.
12. It is therefore in both parties' interests to regularise the position. Once this is done, the precise amount due under the contractual indemnity can be calculated. As Mr Miles will not progress the Deed of Grant, and will not indicate conclusively that he no longer wants a grant of these rights, I am left in limbo.

Further contemplated proceedings

13. Finally, I mentioned at Paragraphs 6 and 7 of my second statement that there is a significant history to the present proceedings. It remains my wish not to rake over old ground, and do not propose to do so. However, the fact that there is a significant and complicated history between the parties is important as it helps to understand the ongoing issues between the parties.
14. As part of the background, Miles issued proceedings by claiming that I was causing a nuisance on my land and by the use of a private road that I own and from which Mr Miles accesses his property ('the Road'). Those proceedings were compromised as part of the 2013 agreement (Paragraph 11 of the Schedule to the Tomlin Order).
15. As part of that agreement, Mr Miles also confirmed that the manner in which I was using my land at that time would not be sufficient to constitute a nuisance (Recital D

to the Schedule to the Tomlin Order); and that for as long as he was the owner of certain properties, he would not need to pay his proportion of maintenance for the private road that I own and from which he accesses his property. In exchange, Mr Miles is prevented from making any complaint about the private road or the quality of its maintenance (Paragraph 7 to the Schedule to the Tomlin Order).

16. Later, Mr Miles also issued a claim against me alleging that I had defamed him. (Claims along similar lines have been intimated by Mr Miles against me ^{and my late father} over the years, including in 1990 by Burtons solicitors and in 2010 by Templetons solicitors.) Mr Miles' solicitors in 2017, Shakespeare Martineau, failed to serve that claim on me within the required timeframe. By the time this had been noticed by Shakespeare Martineau, it was too late to bring a fresh claim. *WOLF.*
17. I mention these three points in particular, as Mr Miles appears to be gearing up to re-visit these claims. On 5 August 2019, Mr Miles' present solicitors, Carpenter & Co, sent my solicitors a Letter of Claim alleging breaches of the schedule to the Tomlin Order. The letter includes a 31-page draft Particulars of Claim. I exhibit a copy of this letter and its enclosures at **pages 5 to 56 of WHOHF11**.
18. The draft relies upon the Tomlin Order as forming a basis of a contractual claim for a failure not to harass or defame Mr Miles, with a claim that my alleged defamatory acts together with the manner in which I use my land has devalued his property by £225,000.
19. I believe that it is important to place Mr Miles' application in context. Whilst on the one hand he is in breach of the 2013 agreement (which resulted in the present proceedings being issued); he is also seeking to enforce other terms of that agreement against me. In complaining about the Road at Paragraph 94(c) of the draft, Mr Miles' again disregards his own obligations under the 2013 agreement. I am concerned that the Court will not have the opportunity to understand sufficient of the background to the present proceedings to be sure that it would be appropriate to strike them out as sought by Mr Miles.
20. I also believe that at some point, Mr Miles needs to be held accountable for his failure to pay under the indemnity. If we aren't able to settle our differences by negotiation, it is only when Mr Miles realises that he cannot simply continue to make claim after

claim against me with impunity that the ongoing disputes between us have any chance of coming to an end.

Statement of truth:

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

W Offley

William Offley Hinchliffe Friend

13th August 2019

Dated