Claimant
Mr W Friend, 4th
Date: 12 February 2020
Exhibits: "WOHF12"

Claim No: D00CT632

IN THE COUNTY COURT AT CANTERBURY

B E T W E E N:-

WILLIAM OFFLEY HINCHLIFFE FRIEND

Claimant

-and-

PETER MILES

Defendant

FOURTH WITNESS STATEMENT
OF
WILLIAM OFFLEY HINCHLIFFE FRIEND

I, William Offley Hinchliffe Friend, of East Northdown Farm, Margate, Kent, CT9 3TS, DO SAY AS FOLLOWS:

1. I am the Claimant in these proceedings, and I make this statement pursuant to an order of DJ Eyley dated 5 November 2019. I am now shown a bundle of documents, which are true copies of the originals, and which I exhibit as Exhibit WOHF12 to this statement.

2. Matters referred to are within my direct knowledge and belief unless the contrary is stated or is apparent. I make this statement in addition to my other statements dated 24 August 2017, 21 December 2017 and 13 August 2019 and filed in these proceedings. I make this statement primarily in response to Mr Miles' Witness Statement labelled as being his Third Witness statement and dated 17 January 2020. I note that Mr Miles previously prepared and provided to me a witness statement dated 14 August 2019,

which was also described as his third statement. This was meant to have been in support on his application which was heard on 16 August 2019 (and subsequently refused); although no attempt was made to rely upon it at that hearing. Due to this confusion, I shall refer to Mr Miles' latest statement as 'Miles III(b)'. If I refer to paragraph numbers without further reference below, then those are references to that statement.

3. In this statement, I wish to deal with the following issues:
    a. General observations and comments;
    b. Circumstances surrounding the drafting and conclusion of the 2013 Agreement;
    c. Mr Miles' failure to enter into any Deed of Grant;
    d. Does Mr Miles want a grant of rights?
    e. Update on threatened proceedings.

General Observations

Correspondence between the parties

4. I do not consider that I can add much to the correspondence that has passed between the parties since the hearing on 16 August 2019, but I exhibit a run of the more relevant communications at **pages 1 – 69 of Exhibit WOHF12**.

These disputes have gone on too long

5. First, Mr Miles has been involved in arguments against me and my family for many years. As is apparent from much of what Mr Miles writes in his statements, he wishes to re-visit a long history of disputes that stretch back to his initial purchase of East Northdown House in 1982.

6. However, both parties agree and have accepted that the 2013 Agreement was intended to and did have the effect of drawing a line in the sand. It was so important to the Agreement that this was recorded at Recital A. Therefore, whatever complaints and grievances may exist from before 2013, they should not be dredged up and raked over within this litigation or any other litigation. We may both have our own complaints about the other, and from what Mr Miles insists in perpetuating, it appears that our

recollections of the historical facts do not marry (and for the record if there was any relevance to the history that Mr Miles sets out, it would be disputed). However, I do not intend to go into the details. The Court need only be aware that there is a long and sorry history of disputes, and that Mr Miles appears intent on continuing to litigate against me well into the future.

7. I therefore confine myself to some observations about the more misleading parts of Mr Miles's statement. I do not know how useful this will be to the Court when determining the issues before it, but I do so because Miles III(b) is misleading and I wish to set the record straight. By so doing, I should not be taken to accept matters upon which I have not commented, and I have deliberately avoided matters which remain in contention between us.

    a. At Para 12, Mr Miles repeats that my late father had no title to the Road or Paddock. This is untrue, has always been untrue. The Road and Paddock have been in my family's possession for generations, and as such, had not been subject to registration. To be charitable, Mr Miles has misunderstood that the Road was not registered until I applied for first registration in around 2009/ 2010. This should not be confused with not having title to the Road. This is an important illustration of Mr Miles refusing to accept that a factual position is not as he would wish it to be. At **pages 70-73 of WOHF12** are letters dated 22 March 2004; 29 March 2005 and 22 May 2006 between Mr Miles and the Land Registry (I only have the first 2 pages of the 2006 letter, but my recollection is that these two pages contain all of the substance of the letter). This correspondence shows that it was been explained to Mr Miles that the express grant in the 1982 transfer of the land would be an obstacle to his registration as owner of half of the roadway. I note that nearly 16 years later, Mr Miles has yet to come to terms with this point. It is precisely for reasons such as these that I was keen that a line be drawn when the 2013 Agreement was concluded. Finally, in relation to the Road, at Para 15, Mr Miles states that this application was dismissed. It was not.

b. At Paras 15 and 17, Mr Miles misrepresents the position in relation to his claim regarding the Orchard:

   i. Mr Miles claimed title to the Orchard (and its wall) on the basis of various estoppels; part performance of contractual obligations; and adverse possession.

   ii. As stated at Para 16, Mr Miles gave an undertaking to the Court that he would withdraw all objections to my first registration of the Road (and with it, the boundary walls), should he be unsuccessful in establishing paper title (i.e. full title) to the Orchard, and cover my costs etc. For completeness, a copy of that undertaking is contained in the Schedule to the Order of Mr Mark in the 'Road Adjudication' dated 16 March 2010 at **pages 74-75 of WOHF12**.

   iii. The matter was settled by a consent order on the basis that he acquired the title of the Orchard by adverse possession (i.e. possessory, not full title).

   iv. This in turn meant that he had to withdraw his objections to first registration, but Mr Miles claimed that the undertaking to withdraw was subject to there being no order as to costs; that the undertaking was only operative in the event of a determination of the other reference at a full hearing. Mr Miles also went on to allege then as he does again now that he had come to an agreement with Mr Squier that would have meant he was not obliged to withdraw his objection. I exhibit at **pages 76-77 of WOHF12** a copy of the costs order in the 'Road Adjudication' dated 28 February 2011 which sets this out.

   v. These documents are instructive as to Mr Miles' *modus operandus*. Mr Miles agrees something, and then does all he can to wriggle out of complying with that agreement. He is particularly determined to wriggle out of making any payment to me, even when I have agreed to cede my own rights in return for payment of those sums. Again, I fear that history is repeating itself, and this is why it was important that arguments over events that occurred before 2013 were to be consigned to history.

c. At Para 26, Mr Miles suggests that he agreed that I could have title to the wall separating the Orchard and Road. This is not true. Mr Miles has been seeking title to the frontage of his property, including the Orchard; and separately,

during the course of negotiations relating to other matters, had within his list of demands sought agreement that I would not resist his opening up of a new access to the Orchard through the boundary wall. Therefore, I wanted some comfort that this would not become a later point of dispute. Mr Miles' agreement that I was the owner of the wall was recorded at Recital B. Mr Miles did not own the wall, nor has there been any form of transfer as a result of the Agreement. The reason that there has been no transfer is because the wall has always been in my ownership

d. At Para 28, my wife was also present, mainly at East Northdown Farm House. The reference to a secretary to Mr Hall should be a reference to Ms Woolnough, Mr Hall's assistant.

e. At Para 31, under clause 9, what was agreed was that the terms of the 1982 Transfer were to be put into effect; but that there would be a carve out for Mr Miles. However, in part, the price of the carve out was that Mr Miles would no longer complain about the Road: see Para 7 of the Schedule to the Tomlin Order.

f. At Para 41 and 42, Mr Miles complains that certain provisions were not contained within the Agreement, with the implication that he should not have to agree to them. The first draft of these provisions did start with my solicitor (see email dated 8 August 2013 and the attachments at **pages 78 to 86 of WOHF12**). In response, Mr Miles' solicitor chose to amend those provisions (rather than assert that they had no place in the draft Deed because they were not expressly mentioned in the Agreement): see Ms Thakker's email dated 5 September 2013 at WOHF2, and her draft. Mr Miles should be taken to have approved the amendment rather than the deletion of those provisions before the draft was sent to my solicitor in September 2013. That he now seeks to argue that they should not have been present in the draft shows that his present interpretation of how the Agreement was to work is at odds with everyone else's at the time, even his own solicitor.

Mr Miles' legal representation

8. Secondly, it is important to note that since 2013, Mr Miles has changed his legal representation on a number of occasions. At the time of the 2013 Agreement, he was represented by Ms Daksha Thakker at Templetons. At some point thereafter, but by 2017, Templetons ceased to act and Mr Miles was without representation. In August 2017, Mr Miles engaged Mr David Vaughan at Shakespeare Martineau. By the time Mr Miles made an application to strike out the claim in December 2017, he was acting in person. Mr Christopher Davies of Carpenter & Co came on the record for Mr Miles in March 2018. In September 2019, Carpenter & Co came off the record, and at a hearing in November 2019, Mr Miles was represented by solely by Dr Tim Sampson under the Bar Direct Access Scheme. My solicitors have now received correspondence from Wellers Reece-Jones, although it may be that this is because Mr Davies has moved firms.

9. I believe that Mr Miles' decision to change representation has done nothing to assist in bringing any form of conclusion to this matter. Had there been some level of continuity, then I believe that Mr Miles would not have advanced contradictory positions over time.

Mr Miles' failures to engage

10. Thirdly, as can be seen from the Agreement, what had been agreed was that there would be certain rights granted to Mr Miles, which were broadly in satisfaction of the greater claims that he was making within his referral to the Tribunal. It was also agreed that there would be a process whereby the Deed of Grant was drafted to grant those rights which had been agreed.

11. Through my solicitors, I have for many years been trying to get Mr Miles to engage and to explain what his objections to the wording of the Deed of Grant are. Broadly speaking, he has not done so. He has now set out some reasons in his latest statement. If these reasons had been advanced at an earlier stage, there would have been a possibility that these matters could have been dealt with far more quickly and cheaply than has been the case.

A Deed of Grant should have been concluded by November 2019 at the latest

12. However, I need to be careful not to overstate this possibility. Paragraph 35 records all of the attempts that have been made to find a form of words that is agreeable to Mr Miles. Eventually, Dr Sampson wrote on in a second letter dated 9 October 2019 and sent on Mr Miles' behalf accepting that 'in principle, the Deed of Grant now appears to conform to the terms of the Schedule to the 2013 Tomlin Order…'. Later, he stated:

> 'I should make it clear that Mr Miles is not rejecting or agreeing to the terms of the revised 3rd October draft of the Deed of Grant…' and 'Mr Miles would propose that the parties would consider their respective positions once the decision of the Court is known on 5 November 2019.'.

13. DJ Eyley went on to completely dismiss Mr Miles' application. On 17 January 2020, Mr Miles served Miles III(b) in accordance with the terms of the Order of DJ Eyley dated 5 November 2019. Therefore, the position in which we presently find ourselves is that Mr Miles accepted that he holds a draft copy of the Deed of Grant that complies with the terms of the Agreement, has taken an opportunity to consider his position, and has elected not to sign it, but rather to continue to litigate this point. Indeed, Mr Miles has retrenched, and now contends that the draft Deed of Grant that was satisfactory is not so because it (as indeed all of its predecessors have) contains a reference to me granting rights in favour of East Northdown House: see Paras 63 and 64.

14. At no prior point in time has any point been taken about the inclusion of East Northdown House in the draft. I consider those words were meant to assist Mr Miles, and I would have had no problem in removing those words if this had been pointed out. To remove the reference to East Northdown House within the draft could have been done in 2013 in a matter of seconds. I hereby offer to enter into a Deed of Grant in terms identical to the Draft dated 2 October 2019, save with the words 'East Northdown House' removed from Clause 2.1.1. Should Mr Miles not be willing to accept this version of the Deed of Grant, I ask the Court to order Mr Miles to sign it; alternatively, for an officer of the Court to sign on his behalf. I make this request under Paragraphs 1, 4 and/ or 8 of the Prayer to my claim.

Technical points about the Part 8 Claim

15. It is not clear to me why Mr Miles has left it until his Fourth Statement to make points about the form or content of the Claim made against him. At Paragraph 6, he says that it is not clear to him whether the claim is limited to that which is included in the Claim Form or whether it includes matters set out in the attached Particulars of Claim. Should this point be progressed, I shall leave any legal arguments to my advisors, but I can confirm that the matters set out within the Particulars of Claim are referenced in the Claim Form, and all parties have at all times proceeded on the basis that points set out in the Claim Form and Particulars of Claim together represent the matters which the Court is being asked to decide.

16. Due to the way that these proceedings have been conducted, it is not clear to me what point Mr Miles is now seeking to make. This was not an issue that Mr Miles sought to raise when he applied to strike out the claim, and he appeared to appreciate the scope of the claim as he dealt with matters set out in the Particulars of Claim within his Second Statement. I sat and listened to the hearing of that application on 16 August 2019 and 5 November 2019, and it appeared to me that everyone in the room understood the scope of the claim, and nobody was in the slightest bit confused.

Circumstances surrounding the drafting and conclusion of the 2013 Agreement

17. On the morning of 15 July 2013, there was a site view at East Northdown in connection with Mr Miles' claim for various easements. His case was to be heard before the Tribunal sitting in Margate and starting on the following day. After Mr Michell, the adjudicator, had concluded the site view, the parties and their representatives spent many hours extending into the evening attempting to settle matters between themselves. This resulted in the agreement which became the Schedule to the Tomlin Order which was approved by Mr Michell.

18. At Paragraphs 33 and 24, Mr Miles recognises that the 2013 Agreement contains an 'entire agreement' clause. He does not argue that he did not agree to this:- it is clear that he did. Along with Recital A and the 'full and final settlement' provision at Clause

14 of the Schedule, it was included as it was a common objective of both parties to put an end to disputes between us.

19. Neither party was in a position to draft; consider; approve and sign a Deed of Grant during the evening of 15 July 2013, so a mechanism was agreed upon whereby this would be dealt with in the coming weeks. I note from Paragraphs 21(e) and 25 that Mr Miles states and I agree that the intention behind the terms for the Deed of Grant was that my solicitors would draw up a Deed of Grant which would include the easements and other obligations within its terms.

20. This is crucial to understanding what was agreed and why on the evening of 15 July 2013:

    a. Both parties were aware that the wording for an appropriate Deed of Grant would be a longer document than one which simply recorded the wording of the rights and obligations contained in Paragraphs 4-6 of the Schedule.
    b. Both parties were aware that there was neither the time nor the available facilities to be able to conclude the drafting of a Deed of Grant alongside all of the other points that were being negotiated at the time.
    c. Both parties were aware that there may need to be some further discussion of those ancillary parts of the Deed of Grant to produce the final document for signature.
    d. Both parties were aware that this process could cost some further money. I was prepared to absorb the whole of the first £1,000 of those costs. I had my suspicions that seeking Mr Miles' agreement would not be straightforward, and so I was not prepared for Mr Miles to prevaricate, renegotiate or stall at my expense. Therefore, the indemnity was agreed.

21. In his latest statement, Mr Miles now appears to be accepting that this is what was intended to happen. Although on occasions, he objects to clauses being included, he is no longer stating absolutely that nothing that is outside the wording agreed and set out in the Agreement could come within the Deed of Grant. The Agreement that was reached pre-supposed that there would further work on the Deed of Grant. The parties

agreed that they would enter into a Deed of Grant, and yet, Mr Miles has consistently failed to do so.

Mr Miles' failure to enter into any Deed of Grant

22. What happened next is that my solicitors drew up the Deed of Grant. On 5 September 2013, Ms Thakker, who had been present at the negotiations, provided her amendments to the draft. Her changes to my solicitor's draft are instructive. She did not seek to change every additional clause that had been added. She did, however, seek to add in a new provision at Clause 2.1.1(a)(iii), and to change an emphasis at Clause 2.1.4. Each of these points had been the subject of discussions within the negotiations and had been rejected by me and did not form part of the agreement that we reached. In a letter dated 22 November 2013, Ms Thakker stated that she only sought to reflect fully the terms of the Agreement reached, but a comparison of the wording of the Agreement and the changes sought demonstrate that this was not the case, and that Mr Miles was looking to re-open arguments that had been settled by the Agreement.

23. One argument that has been raised is that there was no agreement to enter into a positive covenant requiring a successor in title to observe the positive covenants that had been agreed between the parties (Paras 39 and 40). However, Mr Miles does accept that the Deed of Grant was to include a positive covenant (Para 25(c)). When Mr Miles went on to identify the particular issue that he said that he had, my solicitors provided a fresh form of words to allay his concerns. However, the Deed of Grant is yet to be concluded.

24. Since then, Mr Miles has attempted to thwart the conclusion of a Deed of Grant using whatever arguments he could think of. Recently, he has tried to argue (Miles II, Para 8) that because the Tribunal has ceased to have jurisdiction, there is no mechanism to determine the Deed, with the clear implication that he would not be entering into a Deed despite the terms of the Agreement. We have each spent countless thousands of pounds having legal arguments because Mr Miles appears dissatisfied with the 2013 Agreement, and wants to return to arguments that should have been consigned to history by the Agreement. Mr Miles continues to refuse to sign up to a Deed of Grant, contrary to the terms of the Agreement.

25. This state of affairs cannot be allowed to go on. At Paragraph 20 of my Third Witness Statement, I expressed my belief that Mr Miles needs to be held accountable under the indemnity. Until this day of reckoning comes, I fear that Mr Miles will continue to bring claim after claim against me.

Does Mr Miles want a grant of rights?

26. At Paragraphs 6-12 of my Third Witness Statement, I queried whether Mr Miles actually wanted the rights that he had agreed to receive under the 2013 Agreement. He has indicated previously within his Second Witness Statement (at Para 16) that he was not inclined to conclude the Deed. Therefore, my solicitors have asked the express question as to whether there is any point in continuing to argue about the Deed of Grant. Mr Miles has not responded.

27. It remains in both parties' interests to regularise the position. In October 2019, we got to the stage at which Mr Miles could no longer find any reason to argue against the form of words that had been proffered, other than the costs of the process needed to be determined. However, the costs of the process continue to rise for as long as Mr Miles does not properly engage and conclude this Deed of Grant.

28. If Mr Miles does not want this Deed, which is broadly for his benefit, then he should say so. He has been asked to confirm his position, but refuses to do so. All that is happening is that this is causing costs to escalate.

Update on threatened proceedings

29. In my Third Witness Statement (Paras 16-20), I set out my concerns that these proceedings would not have the effect of bringing litigation between the parties to an end. At around the time of the hearing of the strike out application in August 2019, Mr Miles' then solicitors wrote to my solicitors enclosing a draft Particulars of Claim. Within the claim, Mr Miles alleged that my farming, garden centre and business centre on my land at East Northdown Farm operate without planning permission; are accessed up the Road; and cause damage to the road surface and create noise nuisance. He claims that this nuisance, coupled with the ongoing dispute has caused a diminution in the value of his property, making me liable to the tune of £225,000. He has also made

threats to bring proceedings for breach of the terms of the Agreement not to defame or harass Mr Miles.

30. Whilst this is not the appropriate forum in which to respond in detail to Mr Miles' allegations, in common with most of Mr Miles' other claims, all of the claims are baseless. I instructed my solicitors to respond to that letter as had been requested, and the deficiencies in Mr Miles' case were set out for his latest advisors to consider. Mr Miles has not responded to that letter, and to the best of my knowledge, has not issued proceedings. However, I am disappointed to note that at Paras 13, 22 and 27, Mr Miles continues to make similar allegations to those that he advanced in his draft Claim.

31. Insofar as the contents of Miles III(b) are any guide to the future, Mr Miles will soon be launching another set of proceedings which will cause further time and expense to be incurred. On 5 November 2019, and with knowledge of the intimated claim, DJ Eyley made some observations as to the substantial costs of High Court proceedings. I suspect that this was intended as a warning, but I do not expect it to be heeded.

Conclusions

32. This should have been a simple matter. Both parties agreed to a Deed of Grant. Both parties agreed to the scope and extent of the grant of rights. Both parties agreed to a mechanism to conclude the Deed. In October 2019, Mr Miles recognised that the Deed complied with the requirements of the Agreement. Yet we still do not have a concluded Deed.

33. I ask this Court to deal with the costs of this entire episode. Mr Miles agreed to a contractual indemnity in relation to these costs, and he should be held to the Agreement.

Statement of Truth:

I believe that the facts set out herein are true.

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William Offley Hinchliffe Friend

12 February 2020