

REF/2012/0164

**THE ADJUDICATOR TO HER MAJESTY'S LAND REGISTRY
LAND REGISTRATION ACT 2002**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN:-

PETER ROBERT MILES

Applicant

and

WILLIAM OFFLEY HINCHLIFFE FRIEND

Respondent

Property Address: Land to the south of East Northdown, Margate, Kent CT9 3TS

Title Number: K570230, K570231, K599525, K947213, K913678

**RESPONDENT'S
AMENDED STATEMENT OF CASE**

1. References to paragraphs by number alone in this Statement of Case are references to the correspondingly numbered paragraphs in the Applicant's Re-Amended (sic) Statement of Case dated ~~27 June 2012~~ 22 October 2012 ("the Applicant's Statement of Case") unless otherwise expressly stated. The Respondent ("Mr Friend") adopts the definitions employed in the Applicant's Statement of Case herein without making any admissions thereby. Matters outside Mr Friend's knowledge are not admitted and the Applicant ("Mr Miles") is required to prove the same at trial. Reference will be made to all relevant documents at trial for their full terms and effect.

Address for service

2. Mr Friend's name is stated in the heading above; his address for service is c/o Furley Page LLP, 39 St Margaret's Street, Canterbury Kent CT1 2TX.

DEFENCE

3. For clarity, Mr Friend will use the following additional definitions
 - (1) '**East Northdown House**' means the land comprising the title numbered K570231
 - (2) '**the Paddock**' means land comprising the title numbered K570230
 - (3) '**the Orchard**' means the land comprising the title numbered K599525
 - (4) '**the Blue Land**' (so coloured on "PRM 1") means the land comprising the title numbered K913678
 - (5) '**the Road**' means the land comprising the title numbered K947213. For the avoidance of doubt, where access and egress over the Road are admitted, those admissions are confined to the roadway thereon and excluding the banks and verges abutting the same.

Mr Friend is the registered proprietor of the Blue Land and the Road; Mr Miles the registered proprietor of East Northdown House and the Paddock (and has been with effect from 25 May 1984) and of the Orchard (with effect from 12 April 2005). All titles are freehold and are registered with Title Absolute.

4. Paragraphs 1, 2 and 3 are admitted.
5. The first, second and last sentences of the first (unnumbered) sub-paragraph of paragraph 4 are admitted. Mr Miles' claim to title to the Orchard was the subject matter of litigation in the High Court of Justice, Chancery Division under claim number HC06C04403 ("**the Orchard Claim**"); save that it is admitted that Mr

Miles claimed, *inter alia*, a contractual entitlement to the Orchard under a contract dated 22nd June 1983, the third sentence is denied. The Orchard Claim was compromised by consent, Mr Miles' contractual claim being abandoned, it being agreed that title to the Orchard was established by him on the basis of adverse possession.

6. Save that the date is not admitted, the second (unnumbered) sub-paragraph of paragraph 4 is admitted, the land being referred to being (respectively) the Blue Land and the Road. Insofar as the dates are material, Mr Friend has been registered as proprietor of the Blue Land with effect from 7 December 2006 and of the Road with effect from 28 October 2008 on its first registration (the latter following the dismissal of Mr Miles' objection thereto).
7. Paragraph 5 is admitted.

Blue Land (K913678) and the Road (K947213)

8. Paragraph 1 on page 2 of Mr Miles' Statement of Case is admitted. The contract dated 1 June 1982 and made between Mr Friend's father (I J C Friend) and Mr Miles ("**the 1982 Contract**") is (together with other documents provided by Mr Friend's father) the root of Mr Miles' title to East Northdown House and the Paddock and which is now registered in his name.
9. Paragraph 2 (page 2) to paragraph 27 (inclusive) are wholly irrelevant to the claim advanced by Mr Miles and have now been deleted on amendment. ~~, unless Mr Miles consents to their deletion by amendment of his Statement of Case, Mr Friend will apply to strike the same out. Mr Miles is the registered proprietor with freehold title absolute of the land said to have the benefit of prescriptive easements obtained by his own conduct during a period in which it is admitted that he was in occupation of the lands in question. For the avoidance of doubt, it is denied that he occupied those lands for all the purposes which he now alleges.~~
10. ~~In the premises, the conveyancing process in and around 1982 is immaterial and irrelevant.~~

- ~~11. Further, if Mr Miles' assertion(s) that Mr Friend's father had no title to the Paddock in order to sell/convey the same are not struck out because irrelevant, the litigation of any dispute in that regard is an abuse of process and should be struck out. Mr Friend will rely on (a) Mr Miles long established registration as proprietor at HM Land Registry (b) that his title to the Paddock has been and continues to be undisturbed and (c) the matters pleaded in the following paragraph.~~
- ~~12. By a writ dated 14 September 1990, Mr Friend's father began proceedings in the High Court of Justice, Chancery Division (the number of which was 1990 Ch 9459) and in which (by counterclaim) Mr Miles asserted the absence of title in Mr Friend's father to the Paddock ("the 1990 Claim"). Those proceedings were compromised by Consent Order dated 2nd November 1993 under which each abandoned his claim and counterclaim and no order for costs was made save in respect of the Applicant's former solicitors. To seek now to re-litigate those matters in 2012 is an abuse of process, particularly given the passage of time and the death of relevant witnesses. Mr Friend will refer to the pleadings in the 1990 Claim in due course.~~
- ~~13. Further, if Mr Miles' assertion(s) concerning the alleged contractual arrangements entered into by him in relation to the Orchard are not struck out because irrelevant, the litigation of any dispute in that regard is an abuse of process and should be struck out. Mr Friend will rely on (a) Mr Miles registration as proprietor of the Orchard at HM Land Registry (b) the settlement of the Orchard Claim and (c) the terms of that settlement.~~
- ~~14. Without prejudice to the foregoing, paragraph 2 (page 2) to paragraph 27 (inclusive) are denied. Reference will be made to the documents in their full context, as required.~~
15. Save that the Road was not registered land at the time, paragraph 28 is admitted. East Northdown House has registered at HM Land Registry, the benefit of the following:-
- (1) "A right of way for all purposes and at all times over the private road way leading from George Hill Road as is coloured green on the plan" [i.e. that part of the Road from East Northdown House to the highway];

- (2) "A right of way at all times with or without animals for all reasonable purposes over that part of the Transferor's adjoining land as is coloured blue [the Blue Land] expressly excluding any right to park cars or motor vehicles upon the said land coloured blue and such right of way shall be exercised having due regard at all times to the use and enjoyment of the adjoining property known as Old Cottage";
- (3) "The right to [use] so far as may be necessary and applicable to the use and enjoyment of the property hereby transferred (within 80 years from the date hereof) all sewers drains wires cables and other service pipes wires and conduits laid or passing through or under the remainder of the Vendor's adjoining land and the right to make all necessary connections thereto and to enter upon such adjoining land of the Vendor for the purpose of making such connections and for inspecting cleansing and repairing or replacing the said drains sewers pipes wires and cables but doing as little damage as possible and making good all damage caused by the exercise of such right".

16. Entries numbered (1) and (3) above in favour of East Northdown House are registered against the title to the Road; entries numbered (2) and (3) above in favour of East Northdown House are registered against the title to the Blue Land.

17. As to paragraphs 29 – 31 (inclusive), the same have been deleted on amendment. ; ~~Mr Friend repeats paragraphs 9 – 13 (inclusive) above. Without prejudice to the foregoing, paragraphs 29 – 31 (inclusive) are denied.~~

18. Save that it is admitted that no entry has been made in the register concerning the right of way over the Road in relation to the Paddock, paragraph 32 is not admitted. Further, it is admitted and averred that the Paddock

- (1) forms part of the curtilage of East Northdown House and has been used as such;
- (2) is only accessible (whether by foot or with vehicles, animals or otherwise) only through East Northdown House

and that access to and egress from the Paddock (as part of the curtilage of East Northdown House) has been via the Road since 1982.

19. As to paragraph 33, the same have been deleted on amendment. ~~Mr Friend repeats paragraphs 9 – 13 (inclusive) above. Without prejudice to the foregoing, paragraphs 33 is denied.~~

20. Save for 'other uses', paragraph 34 is admitted. By 'other uses' it is inferred that it is being alleged that use was made of the Paddock other than for the purposes of ordinary residence at East Northdown House. This is denied save that Mr Friend admits that (a) by planning permission numbered TH/86/0982, Mr Miles was permitted to hold wedding receptions on a temporary and restricted basis at East Northdown House until 30 September 1989 only (reference will be made to the terms of the permission in due course) and (b) a limited number of such receptions were held during the currency of the planning permission. The planning permission (and the holding of receptions lapsed and ceased on 30 September 1989.
21. It is denied, if the same is to be alleged, that any such use was (in any event) substantial or continued after 1989. A renewed application was made in December 1989 but withdrawn by the Applicant in March 1990.
22. Access into the Paddock from East Northdown House is now by a metal gate approximately 11 feet wide ("**the metal gate**"). That gate was erected in (or about) the Summer of 1986 and extended an aperture (of approximately 4 feet) made in or about 1982 or 1983. That aperture was made following the demolition of a greenhouse and part of the flint wall forming the boundary of the Paddock. Save as aforesaid, paragraphs 35 and 36 are denied.
23. Save that it is admitted that
- (1) A concrete driveway has been laid to the metal gate (and at about the same time as its erection); and
 - (2) The same is visible from Mr Friend's land,
- paragraph 37 is denied.
24. Paragraph 38 is not relevant and, in any event, is denied.
25. It is admitted that in 1986, the metal gate was in position and that a farm tractor and trailer was driven through the gateway. Further, the documents referred to in paragraph 40 are admitted. Save as aforesaid, paragraphs 39 and 40 are not admitted.

26. As to paragraphs 41 and 42
- (1) It is admitted that from about 1986 a former mobile home has been situated in the Paddock Orchard; and
 - (2) Denied (if the same is to be averred) that it has been used for residential purposes and averred that since about 1999 it has remained empty and unused.
27. As to paragraph 43, it is admitted that the widened gate has been in position since about the Summer of 1986 and that this was cut through a flint wall. Reference will be made to the letter in due course.
28. Paragraph 44 is noted; reference will be made to the letter in due course. The 'car park' referred to was created in relation to Mr Miles' planning application referred to in paragraph 20 above.
29. Save as admitted above, paragraph 45 is denied.
30. Paragraph 46 is admitted. Indeed, it is admitted and averred that the use thereof has been associated only with Mr Miles' residential use of East Northdown House as a single private dwelling.
31. Paragraph 47 is denied. It is denied that the access enjoyed for the Paddock as aforesaid (or alleged) has been for the requisite period or as of right; in particular, the said access was permissive in accordance with the terms of the 1982 Contract made with Mr Friend's father, who died on 22 September 2003 and whose interest (and that of his estate) in
- (1) the Road was only assented to Mr Friend by an assent dated 31 July 2007;
 - (2) the Blue Land was only assented to Mr Friend by an assent dated 30 October 2006.

32. In the premises, the said access was permissive until the said assents; alternatively, the death of Mr Friend's father and no prescriptive right therefore arises.

The Orchard

33. As to paragraphs 48 – 53 (inclusive),

- (1) Paragraphs 48 and 49 are denied;
- (2) Paragraphs 50 – 53 have been deleted on amendment.

~~Mr Friend repeats paragraphs 9 – 13 (inclusive) above. Without prejudice to the foregoing, paragraphs 48 – 53 (inclusive) are denied.~~

34. Paragraph 54 is admitted. Indeed, it is admitted and averred that the use thereof has been associated only with Mr Miles' residential use of East Northdown House as a single private dwelling. In particular, it has been used only for stabling, grazing and the keep of a small number of horses. Access onto the Orchard has always been via the Paddock and on foot and with or without horses and barrows from the Paddock; it is denied that any or any sufficient vehicular access has been obtained *via* the Road and the Blue Land to or from the Orchard itself over the Paddock and it is denied that any such access (if established) is of sufficient substance or continuity to establish the concomitant rights claimed or has been exercised 'as of right'.
35. Paragraph 55 is denied. Mr Friend accepts (and as has been established by agreement in the Orchard Claim) that Mr Miles has acquired title thereto.
36. It is admitted that the Orchard Claim was advanced on a number of bases; it is denied that it settled on the terms alleged in paragraph 56; reference will be made to the Part 36 Offer dated 27 August 2010 and Mr Miles' solicitors' acceptance of that offer dated 1 September 2010 and the Consent Order.
37. Paragraphs 57 – 60 are denied. 'Without prejudice' negotiations were entered into between Mr Squier (acting for Mr Friend) and Mr Miles which did not result in any agreement. Mr Friend will refer to the correspondence passing between them

in due course. In particular, it is denied that Mr Squier advised or purported to advise Mr Miles.

38. The first sentence of paragraph 61 is denied. The second and third sentences are admitted but irrelevant in the light of the foregoing.
39. As to paragraphs 63 and 64, the same have been deleted on amendment. ~~Mr Friend repeats paragraphs 9 – 13 (inclusive) above. Without prejudice to the foregoing, paragraphs 63 and 64 are denied.~~
40. Paragraph 65 is read as if the first reference to title numbered K570231 (penultimate line) is a reference to title number K570230).
41. Save that it is admitted and averred that the use of the Orchard above has been as pleaded in paragraph 34 above and associated only with Mr Miles' residential use of East Northdown House as a single private dwelling, paragraph 65 is denied. Further, all vehicular access to East Northdown House has (at all materials times) been pursuant to the right of way granted in 1982 and to the Paddock pursuant to the licence as aforesaid. In the premises, it is denied that any prescriptive right in favour of the Orchard has arisen as alleged or at all.

Livery

42. As to paragraphs 66 and 67:-
 - (1) The first sentence of paragraph 66 is admitted.
 - (2) It is also admitted that, since 1991, planning permission has been granted and remains extant making it lawful to keep up to 4 horses in the Paddock.
 - (3) It is admitted that Mr Miles has kept horses in the Paddock and used his land adjacent thereto for ancillary purposes.
 - (4) Paragraph 34 above is repeated.

Save as aforesaid, those paragraphs are denied.

43. In particular, it is denied that Mr Miles has operated 'livery stables and paddocks' for third parties or to the extent that he has, that has been of sufficient substance

and continuity to establish the (or any) concomitant further rights as he claims. Pending disclosure, Mr Friend can plead no further.

44. Paragraphs 68 and 69 are irrelevant; that which Mr Friend's father did on his land and accessed via the Road (which was also in his ownership) are nothing to the point.
45. Paragraph 70 is noted; to the extent that it is material, reference will be made to the letters in due course.
46. Paragraph 71 is noted and not admitted.
47. Paragraphs 72 – 77 (inclusive) have been deleted on amendment. ~~are immaterial, scandalous and should be struck out and unless Mr Miles consents to their deletion by amendment of his Statement of Case, Mr Friend will apply to strike the same out.~~
48. ~~Paragraph 78 is noted; insofar as is necessary, reference will be made to the Planning Inspector's decision dated 27 May 1992. The relevance of the reference to the affidavit in paragraph 78 is not understood and, in the absence of any material averment as to the same or the relevance of the contents of the same, the paragraph is denied.~~
49. Paragraph 79 is denied. Paragraph 31 above is repeated.

Building Materials

50. Paragraphs 80 and 81 are denied. In any event, paragraph 31 above is repeated.
51. Further, insofar as storage of (i) building materials (ii) plant or machinery and/or (iii) commercial vehicles has taken place it is denied that since 1991 any have been stored beyond that associated with or permitted by Mr Miles' residential use of East Northdown House as a single private dwelling as aforesaid.
52. Alternatively, if and to the extent that the Paddock enjoys a prescriptive right as alleged in paragraph 46, the extent of that right claimed is sufficient and not extended (as Mr Miles is claiming) by reference to the matters pleaded in paragraphs 80 and 81.

Caravan

53. As to paragraph 82, Mr Friend:-

- (1) admits that the caravan has been situated on the Orchard since about the Summer of 1986 and avers that in 1991 Mr Miles stated in the planning appeal that the same was his children's play den and not used for residential accommodation (which use in and around 1991 is admitted). Since about 1999 the caravan has been empty and unused.
- (2) notes (and avers) Mr Miles' confirmation in paragraph 83 that he is not claiming that the caravan's use is residential.

Save as aforesaid, paragraph 82 is denied.

54. In the premises and if a prescriptive right of way can be established, by reason of the admission in paragraph 41 above, it is denied that the matters alleged augment or otherwise increase the prescriptive right claimed. In the premises, the separate right claim in paragraph 82 is denied.

55. Paragraph 84 has been deleted on amendment. ~~is noted; insofar as it is said (as appears to be the case) that the 1982 Contract related to the Orchard, the same is denied. What is now title K599525 (the Orchard) was outwith the 1982 Contract.~~

56. Paragraph 85 has been deleted on amendment. ~~is noted.~~

57. Paragraph 86 has been deleted on amendment. ~~is not understood. The Deed dated 29 October 1982 ("the 1982 Deed") relates to the use and maintenance of a cess pit; rights to enter neighbouring land to repair walls etc and overhanging eaves and gutters. The relief sought is misconceived. Accordingly p Paragraphs 87 and 88 are denied.~~

58. Paragraphs 87 – 88 are not understood, particularly in the light of the abandonment of the case formerly advanced in paragraphs 84 – 86. In any event, the relief sought consequent upon paragraphs 84 ~~87~~ – 88 (inclusive)

- (1) Is outside the terms of the application to and reference by HM Land Registry; and/or

- (2) Is outside the jurisdiction of the Adjudicator.

~~In the premises, unless Mr Miles consents to their deletion by amendment of his Statement of Case, Mr Friend will apply to strike the same out. An application will be made at trial to strike the same out and/or for the same to be dismissed.~~

Parking

59. Save that

- (1) it is admitted that the Applicant and his family have parked on the brown land marked on PRM 1 on occasions since 1982 until Mr Friend's registration as proprietor of the Road in February 2011 (whereupon parking by the Applicant ceased, thus indicating that the prior occasional parking thereon was not considered as of right)
- (2) it is averred that the brown land does not represent the only or main parking for East Northdown House or the land for which the right is claimed. East Northdown House enjoys ample off road parking for normal domestic purposes with 5 or 6 spaces at the front of the house and it is these spaces which provide (and have been used as) for parking by Mr Miles and those visiting him.

paragraph 89 is denied.

60. In particular, it is denied that

- (1) any parking on the Road or on the land alleged has been of sufficient substance and continuity to establish the concomitant rights claimed or has been exercised 'as of right'.
- (2) the allegation in paragraph 89 'for all purposes' means that the parking was for any other purpose than to gain access to land alleged for any purpose other than those admitted above;
- (3) the parts of the Road on which occasional parking took place extended beyond a vehicle's width plus minimal clearance room from the front boundary of East Northdown House on land shown (for the purposes of

illustration) coloured brown on PRM 1 or was such as to obstruct access to or egress from the Blue Land or the Road generally;

(4) the vehicles parked were other than private motor cars.

61. As to paragraph 90:-

(1) Paragraph 60 above is repeated. 'Under normal circumstances', parking was within the curtilage of East Northdown House;

(2) The occasions in which parking as alleged was particularly infrequent. In the premises, it is denied that the right to park elsewhere on the Road has been of sufficient substance and continuity to establish the concomitant rights claimed or has been exercised 'as of right'.

62. Save as aforesaid, paragraph 90 is denied.

63. In the premises and generally:-

(1) Paragraph 91 is denied.

(2) Any right established is subject to not causing an obstruction to the Road or otherwise infringing the rights of way and other easements over the Road enjoyed by neighbouring properties or endangering the safety of users of the public bridleway.

Bins

64. Paragraph 92 is denied.

65. In opposition to Mr Friend's application to register his title to the Blue Land, Mr Miles asserted a right to place bin/bins thereon. The registration of that right was refused by HM Land Registry. Reference will be made to that application and, to the extent that this application is an abuse, an application will be made at trial to strike the same out and/or for the same to be dismissed. The remainder of Mr Friend's case in relation to the bins is pleaded without prejudice thereto.

66. In any event, it is denied that prior to 2007, Mr Miles placed on the Blue Land or caused to be placed thereon more than 1 traditional small bin, this being placed in

the corner of the Blue Land nearest his home, adjacent to the garden wall and below the height of that wall. Since about 2007 he has placed up to 6 much taller wheelie bins on the Blue Land as identified on the Plan at PRM23 which extend beyond the height of the said wall. It is denied that the placement of the 6 wheelie bins since 2007 has given rise to the rights now claimed.

Services

67. Paragraph 93 is admitted.
68. Paragraph 94 is not admitted. In any event, any such user would not be as of right and/or has been undertaken in secret, without the knowledge (actual or otherwise) of Mr Friend.
69. Accordingly, paragraph 95 is denied. (The reference to title K947217 is read as title number K947213).

Gate

70. Paragraph 96 is admitted.
71. As to paragraph 97
- (1) The first sentence is admitted;
 - (2) The last sentence denied.
72. The first sentence of paragraph 98 is admitted. The remainder is denied.
73. Paragraph 99 is denied.
74. Save as expressly admitted or not admitted above, each and every allegation in Mr Miles' statement of case is denied.

IAN CLARKE

IAN CLARKE

DATED 2nd November 2012

Amended pursuant to the Order dated 15 October 2012.

STATEMENT OF TRUTH

The Defendant believes that the facts stated in this Amended Defence are true. I am duly authorised to sign this statement on the Defendant's behalf.



..... Partner

Furley Page LLP

Solicitors for the Respondent

Ref:TDH/FR0844/0013