

**Some procedural Aspects of the Purchase of Land
Under the Registration of Titles Act**

Under the Registration of Titles Act the proprietor of land.....
“may transfer the same, by transfer in one of the Forms.....in
the fourth schedule of the Act” Section 88.

The simplicity of the above quotation belies the complex problems
Which may be encountered when effecting a transfer of land. Quite often a purchaser of
land regards the role of an Attorney acting on his behalf as inconsequential and embarks
upon the transaction which often involves several thousand dollars without consulting
anyone and when the transaction goes sour as quite often happens, he then turns to the
Attorney expecting him to perform a miracle. The dangers of this approach are numerous
– Three examples are given.

- (a) The purported Vendor may not be the legal owner of the land although he may
have an equitable interest, indeed the purported Vendor may have no interest in
the land whatsoever;

For example, real estate agent x observes premises with a sign offering it
for sale. He returns to his office and finds out by some means the name of
the owner of the premises. He then without any instructions prepares a
contract between the owner of the premises and a prospective purchaser
that he has listed seeking a property in that area. He then takes the
contract to the prospective purchaser requesting him to sign and pay a
deposit. The purchaser without any consultation signs the contract and
pays the deposit to x.

X then contracts the owner of the premises and indicates that he has a
purchaser who has paid a deposit and request the owner to sign the
contract on condition that he will pay a commission of 5%.

The owner may then tell the agent that he is not interested and the
purchaser more often than not experiences difficulty in recovering his
deposit when he ultimately realizes that the agent had no authority to sell.

Permutations of the above example may be given as

illustrations.

b) The Vendor although being the owner may have a mortgage on the property and an unwary purchaser who pays a deposit to a Vendor without consulting an Attorney on his behalf to make the necessary investigation of Title may find that if the Vendor is delinquent in his arrangements with the mortgagee the mortgagee may exercise his power of sale to the detriment and dismay of the Purchaser.

c) The Vendor may attempt to deal with the property in a manner prejudicial to the Purchaser's interest after the Purchaser has entered into an Agreement. The question arose in the local case of Barclays Bank vs the Administrator General and Hamilton 53 (1970) 15 W.I.R. 461.

"In 1958, Reid, the registered proprietor of a parcel of land entered into an agreement to sell same to Hamilton, who paid a part of the purchase price and entered into possession. In January, 1960 Reid applied to Barclays Bank for a loan and offered three parcels of land as security. The Bank Manager asked to be shown the land and Reid took him and pointed out to him the same parcel of land he had contracted to sell Hamilton, and of which Hamilton was in possession and had constructed a house and established a pig farm among other improvements. On 5th February, Reid executed an equitable charge in respect of the land and deposited the duplicate Certificate of Title with the Bank. The Bank made a search at the Titles Office and the register disclosed that no caveat was lodged against the Title. On 3th February, 1960 the Bank lodged a

In July, 1961 Reid died intestate, insolvent and indebted to the Bank for a sum in excess of Two Thousand Dollars."

The Ratio Decidendi in that case was that a Purchaser must take effective steps to protect his equitable interest including the lodging of a caveat.

In practice however, if an agreement is signed today a caveat need not necessarily be lodged immediately. Nevertheless if there is reason to suspect the Vendor a caveat should be lodged.

A prospective Purchaser consulting an Attorney should first be asked if he has signed a contract and immediately advised not to sign any contract until you have had the opportunity to advise him. It is not uncommon for Purchasers to sign contracts and then consult an Attorney to represent them not realizing that they leave the Attorney with very few options when rendering advice.

The Purchaser should be asked a number of questions prior to attempting the preparation of any contract.

a) If he has agreed with the Vendor on a price - we would not recommend that Attorneys negotiate the price of a property on behalf of the Purchaser as we feel this is a role which is better reserved for real estate agents and professional valuers. Nevertheless our opinion here is purely subjective.

b) The Purchaser should be asked whether he can afford the price and enquiries made as to his source of finance - at this stage an outline of the likely expenses should be given. The importance of this question cannot be overstressed as although one may encounter Purchasers who become indignant upon being asked this question it is not uncommon to find Purchasers depending on a source of finance which is quite uncertain and should not be relied upon in a transaction of this nature. For

most demise was prior to the Status of Children's Act hoping to obtain the proceeds of the estate to conclude the purchase.

(c) If the Purchaser has not got all the cash he should be asked whether he requires a mortgage and if so his Attorney should try to ascertain whether he will be able to meet the monthly payments.

(d) If he has inspected the premises as to

- i. State or repair
- ii. existence of tenants - whether he requires the premises tenanted or vacant possession
- iii. Whether he has enquired of the Vendor if the premises has been derated under the Rent Restrictions Act or is the subject of an order or pending hearing, a check with the Rent Restriction Board for the area will easily reveal this.
- iv. Whether the property has been affected at any time by flooding, subsidence, termites, dampness or rot.
- v. drainage system surrounding the premises, manner in which sewerage disposed of - if by public system whether system taken over by the Water Commission or other responsible authority
- vi. Whether roads abutting on the property - especially in housing schemes have been taken over by the Parish Council or the K.S.A.C or P.W.D.

(e) Purpose for which the property is required as Restrictive covenants and zoning regulations under the Town & Country Planning Act may restrict the use of the premises.

(f) Whether he is purchasing the property alone as quite often after the contract has been prepared and executed and the transfer is about to be prepared the purchaser says he wants his wife's name on the Title.

The Vendor's lawyer should then be contacted with a

view to instructing him to prepare the contract upon such terms and conditions which have become necessary as a result of your client's instructions.

For example:

- A. If the Purchaser needs a mortgage the contract should be so drafted so as to protect the Purchaser by making it conditional on the Purchaser obtaining by a specified date a commitment for a mortgage on specified basic terms such as the time for re-payment, rate of interest and amount required.
- B. Where one of the parties reside abroad the contract should recite that it is subject to the approval of the Bank of Jamaica.
- C. If the contract is to purchase a portion of land owned by the Vendor then the contract should be expressed to be subject to sub-division approval. For the purposes of this paper however, we shall confine the transaction to one which does not involve sub-division approval and the obtaining of splinter titles.

The Purchaser's Attorney may also take the initiative in preparing the contract and submit same to the Vendor's lawyer for approval. Where the contract is subject to several conditions it is prudent to indicate in the contract that the deposit is payable to the Vendors Attorneys as stakeholder.

Special care should be taken in fixing the date for completion and every effort should be made to make this date as realistic as possible as under the Common Law interest is payable on the balance of purchase money if the sale is not completed by the date fixed for completion unless the delay is due to the wilful delay of the Vendor - (Cases re Pigott and the Great Western Railway (1881) 18 Ch. D. 146. Spencer Bell to L. & S.W. Railway (1883) 33 W.R. 771. Re Keeble and Stilwell's Fletton Brich Co. (1898) 78 L.T. 383. North vs Percival (1898)

best practice however in Jamaica

date of completion has passed and this charge is usually reserved to cases where the Purchaser has taken possession prior to the payment of the balance of purchase money. A number of the older practitioners however have been known to invoke the rule in relation to the date set for completion. If the Purchaser desires to take possession prior to completion then this should be expressed in the contract and a specified rental agreed if possible until completion.

Upon execution of the contract by the Purchaser he should be advised that on no account should payments be made direct to the Vendor. All payments should be made through his Attorney-at-Law so that the appropriate apportionment and conditions may be attached to each payment.

Of course this does not prevent the Purchaser making cheques payable direct to the Vendors Attorney and routing them through his Attorney as the Purchaser's Attorney needs only to make the appropriate accounting entries. This also saves the Attorney the problem of having to wait until the cheques are cleared. The agreement when signed by the Purchaser should be sent to the Vendors Attorney in duplicate with a request that if it meets the Vendor and his Attorney's approval that it be executed and the counterpart copy returned whereupon payment of the deposit should be made.

Upon payment of the deposit being made the duplicate Certificate of Title should be requested by the Purchaser's Attorney who should give an undertaking to use it for the purposes of inspection only and not to deal ^{or part} with the Title in any manner prejudicial to the Vendor's Attorney or his client's interest. The Title should then be inspected in order to:-

- a) Verify ownership by the Vendor.
- b) Ascertain that the duplicate Certificate of Title has a corresponding original in the Title's office and has not been

- c) Verify the accuracy of the description and location of the property as represented by the Vendor - in this regard the assistance of a Commissioned Land Surveyor must be sought who should be instructed to prepare a Surveyors Identification Report which should certify the civic address of the property as being the same premises that is described in the title, indicate whether there are any discrepancies in the boundaries on earth as compared with those described in the title. To this end it is advisable to supply the Surveyor with a photocopy of the duplicate certificate of title and not the actual duplicate certificate so as to minimize the risk of the transaction being delayed because of the Title being mislaid.
- d) Ascertain whether there are any legal charges such as mortgages against the title.
- e) Ascertain by a check at the Title's Office whether there are any equitable charges evidenced by the presence of Caveats
- f) Ascertain whether there are any easements over the land comprised in the title. An on earth inspection of the land is also required to assist in this investigation and the surveyors should also be asked to check this out.
- g) Ascertain whether any leasehold interest has been endorsed on the Title.
- h) Ascertain the nature of the restrictive covenants affecting the land - the surveyor in his report would indicate whether any of these covenants have been breached.

Further enquiries should be made of the Vendor at this time:-

- a) Whether the land taxes have been paid up to date. The last tax receipts should be produced and an appropriate deduction made from the final purchase price if taxes are outstanding in respect of the period that the Vendor is in possession.
- b) Whether water rates have been paid. The last water rate receipts should also be produced and an appropriate deduction made from the final purchase price if these rates are out-

c) Although the light bill and telephone bill are private contracts between the occupants of the premises and the suppliers of these utilities, it is important to ascertain whether these have been paid up to date so that the Purchaser will not temporarily lose the facilities until he has had the opportunity of convincing the suppliers that they should enter into a fresh contract with him.

The Vendors Attorney should be advised of any faults, defects or shortcomings that may turn up. If there are none the Vendors Attorney should be instructed to prepare the transfer in favour of the Purchaser whose full name, address and occupation should be given. The Title should at that time be returned to the Vendors Attorney-at-Law to facilitate the preparation of the transfer with a request for a statement of account.

The manner in which the transaction may be closed will vary with the circumstances.

If the Purchaser is paying for the property cash as sometimes happens nowadays the Vendors Attorney should be requested to send you stamped, registrable transfer executed by the Vendor, duplicate Certificate of Title, and *any discharge of mortgage and Statement of account* *the balance* due from the Purchaser on your undertaking NOT TO DEAL OR PART WITH SAME IN ANY MANNER PREJUDICIAL TO THE VENDOR'S ATTORNEY'S INTEREST OR THAT OF HIS CLIENT until you place yourself in a position to pay him the amount due upon registration of the documents. The Purchaser should be requested to come in and sign the transfer and pay the balance due plus your costs. Payment should be by Manager's cheque or by certified cheque if it is not desired to wait until the cheque is cleared.

Upon being satisfied that the cheque has been cleared the transfer and other documents should be sent to the Office of Titles for registration.

Out of an abundance of caution the moneys collected

received from the Titles Office so that if any corrections are required to the documents the Vendors co-operation may easily and expeditiously be obtained.

If the Purchaser is getting a mortgage from a financial institution then the Purchaser's lawyer should return the transfer and appurtenant documents to the Vendor's Attorney with a request that he forward the registrable transfer and Title to the Lender's Attorney on their undertaking to send the proceeds of the mortgage loan upon registration of the documents. The Purchaser's Attorney should simultaneously give an undertaking to the Vendor's Attorney to pay the difference between the mortgage proceeds and the sale price upon completion. Payment should be made promptly upon completion and the necessity for strict compliance with undertakings cannot be overstressed as failure so to do impairs the reputation of the Attorney involved and can lead to disciplinary proceedings. Finally a letter of possession should be obtained from the Vendor's Attorney if possession has not already been given and the Vendor should be requested to sign one of the official forms used by the Tax Office to have the name on the Tax roll changed to that of the Purchaser.

Simultaneously letters should be written to the Water Commission and the Jamaica Public Service Co. Ltd. advising them of the change of ownership of the property.

Arturo Stewart

and

Herbert Grant

February, 1978.