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Home Buyers Beware! The *Caveat Emptor* “As Is Where is” Rule

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“As is where is” is a common phrase found across many legal documents such as a sale and purchase agreement, especially those concerning a direct sub-sale purchase between two parties. This term is borne from a Latin phrase of caveat emptor, *quia ignorare non debuit quod jus alienum emit* which can be translated to “Let a purchaser beware, for he ought not to be ignorant of the nature of the property which he is buying from another party.”

In short, it is a responsibility imposed upon the purchaser to ensure that he or she has diligently made enough checks before proceeding to formalise the purchase of a property. Otherwise, the purchaser will be caught by this principle that imposes a stringent rule that the purchaser takes delivery of vacant possession in the same state and condition of the premise on the date of inspection.

The Court of Appeal in *Bayangan Sepadu Sdn Bhd v Jabatan Pengairan dan Saliran Negeri Selangor*¹ reiterated the importance of this principle, stating that the purchaser should have made the necessary inspection and inquiries of the land bought. Ignorance to conduct an inspection could not be used as a mode of complaint when they subsequently discovered the existence of the retention pond and other structures erected on the land. The Court of Appeal commented that:

“The purchaser should have inspected the land and made inquiries as to the property which it was proposing to bid. If the plaintiff omitted to ascertain whether the land is such as it had expected it to be, the plaintiff cannot upon discovering the existence of the retention pond and the structures erected on the land complain”.

Had the purchaser done a physical inspection of the land, they would not have missed the retention pond and

¹ [2021] 1 MLJ 322 (COA), para 31

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structures on it. Mere land searches are not sufficient to cater to this responsibility of having done an inspection, as those additional structures may not appear in the land searches. Inspection on the particular premise is important as it provides room for correction in the description contained in the contract. The Court of Appeal further observed that:

“As a general rule a vendor must deliver property corresponding to the description contained in the contract, yet an error in the particulars or description of the property in the contract is not a ground of objection if it is readily corrected on inspection.”

This step is proven crucial as we contrast this unfortunate situation to another case with differing outcomes where the Purchaser *had* inspected the premises in May 1984, given their stamp of approval and signed the sale and purchase agreement. But when the day came for them to obtain vacant possession, the purchaser was aghast to realise that the premise looked nothing like they had seen during their inspection months back. This was what happened in the Singapore High Court case of *Harvester Baptist Church Ltd v Chua Moh Huat Dennis*².

The decision of the Singapore High Court was that because the premise was not in the same state and condition during the date of the signing of the sale and purchase agreement, which was days after the date of inspection, the vendor was obligated to restore the premise back to its original state and condition.

Commentary

The “as is where is” principle has been cemented into the ground, leaving little to no uncertainty over its interpretation. The general rule of the purchaser having to shoulder this responsibility is one that is hefty and not precarious.

Cases that have been decided by the courts serve as a timely reminder that as future homebuyers, we should always remain vigilant in inspecting the property ourselves before sealing the deal. No matter how busy we are, this is a rather

² [1989] 1 SLR 319

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important step to avoid turning our dream into a nightmare. A minor inconvenience and the spending of some precious time could be a relatively minor sacrifice compared to the potential horrors of failing to do so.

Furthermore, based on the study of the cases, the actual crux of this matter lies in the clause written in the sale and purchase agreement itself, which ought to be worded in a way that leaves no room for ambiguity and potential disputes in the future. Professional legal advice comes into the picture here as ultimately, the terms and conditions stipulated in the sale and purchase agreement must be mutually agreed between both parties. Thus, in certain situations where the general rule of "as is where is" may not be the best arrangement, this peculiarity must be highlighted to your lawyer so that both parties could reach a consensus.

Authored by Kimberly Lim Ming Ying, an Associate with the firm's Corporate & Conveyancing practice at the Penang branch office.



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