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Deputy D Johnson
Chairman
Scrutiny Review Panel

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Our ref: 3000176/67365520/1

Dear Deputy Johnson

Domestic Property Transactions

I refer to your letter of 8 April 2016 regarding the above subject. I am writing to you in my capacity as Head of Property at Mourant Ozannes Jersey and with over 35 years' experience in this field. I have also deliberated with my colleagues in our Property Team all of whom have a vast array of experience in property-related matters and hope you will find the following views useful.

In relation to the questions you have raised I would comment as follows:

1. **The average length of time that transactions take to progress from offer and acceptance to completion.**

This is difficult to determine because, as lawyers, we usually only get involved once we have been instructed by the relevant estate agent but point 2 below will shed more light on this from a legal perspective.

2. **The average time to complete transactions.**

In our experience the majority of residential transactions take between 4-6 weeks to complete, from the moment we are instructed by the clients to commence our due diligence enquiries. There are exceptions to this such as, for example, where a unit may be purchased (or agreed to be purchased) off plan. It is sometimes the case that whilst the letter of instruction may have been received from an agent and the file opened, the client (and in most instances, this is a requirement of the purchaser) is reluctant to incur legal expenses (both lawyers' fees and disbursements such as searches of the Parish and local utility providers) until a survey/valuation has been carried out and the results known and accordingly the substantive work/due diligence on the file starts from the moment we are given the go-ahead from the client, not the issuing of the estate agents' letter.

3. **Whether there is evidence of: a widespread problem with late failures of transactions; transactions aborted at a late stage tended to cause one or more parties to incur significant legal and other fees, plus considerable inconvenience; material negative impact on utility providers and other third parties arising from aborted transactions; material legal, financial, administrative and other complications remaining unidentified until the final days of a transaction process.**

We do not believe there is a wide-spread problem with late failures of transactions, however due to the nature of the Jersey conveyancing process this is inevitable from time to time. Whilst no system is perfect (and this includes our system) there are

MOURANT OZANNES

Page 2

many advantages with Jersey's conveyancing system in that I doubt there are many jurisdictions in the world where transactions complete within such a short timescale, especially in the absence of any registered system of guaranteed title. As a result of the legal work/due diligence being condensed into a short space of time, inevitably a lot of things have to fall into place to achieve a successful completion and generally lawyers are wholly committed to achieving clients' desired timescales.

Problems arise for a multitude of reasons: some because of unrealistic completion dates being set by estate agents. This, coupled with a client's wish to await a survey result can cause tension. The parties themselves may also have unrealistic expectations. Accordingly, the expectations of clients need to be realistically managed initially by agents and thereafter by their lawyer. As described earlier, whilst many clients may tell the agent/the lawyer on the other side that they are progressing with searches/legal due diligence, quite often they will not instruct their lawyer to actually proceed until survey results are received or bank finance agreed, which naturally shortens the timeframe even more and gives rise to the potential of more problems being ascertained nearer the completion date with less time to resolve them. Clearly, if there is a large chain of transactions and one of them is delayed, this has a knock-on effect, but one assumes this would be the same in any jurisdiction.

It is true that if a transaction aborts at a late stage, this may cause one or more parties to incur fees but bear in mind this does not just relate to legal fees as there will be: valuation/surveyor fees, aborted removal fees, disbursements for searches of the Parish, statutory authorities and utility companies, bank charges etc. As you will no doubt be aware, and I think it is important to note, conveyancing fees have reduced dramatically (I would surmise by as much as 60%) since circa 2006 and prior to the enactment of the Competition Law. Sadly, the process of buying and selling or re-mortgaging property has become far more expensive; not as a result of legal fees but due to many other factors including numerous and significant increases in stamp duty and the introduction of Land Transaction Tax in 2009. Clients often perceive the process to be overly expensive but do not necessarily take into account that the major costs are as a result of significant disbursements and other professional fees.

Consideration should also be given as to the role played by the banks and surveyors. A survey/valuation tends to take place only 6/7 days prior to the completion date (because they may have to wait to be instructed by the lender) and accordingly any issues arising can be problematic in terms of achieving a resolution within the desired timescale. The survey might reveal a lower valuation than the agreed price or the requirement for certain remedial works to be done, both of which may result in a price reduction/re-negotiation. Clearly, if there is a chain of transactions this may have a knock-on effect down the line. It is difficult to see how aborted fees can be avoided, save for perhaps a vendor being obliged to offer a regulated 'home information pack' when putting their property on the market containing a survey report and replies to standard enquiries about the property as was trialled in England and Wales. In terms of legal fees, clients are dealing with highly-regulated professional law firms who must pay market-rate salaries to highly trained and qualified members of staff. Legal firms will engage a significant number of support staff and must also cover the cost of procuring Professional Indemnity Insurance. Buying a property is the biggest transaction that most people undertake and they surely want to have the comfort of knowing it has been professionally dealt with?

There may be a negative impact on many third parties if transactions abort but I would ask you to consider this in the light of the above and our conclusion which follows.

MOURANT OZANNES

Page 3

It is accepted that material legal, financial and administrative complications can sometimes arise but, as stated above, this is often due to the short time period between instruction and completion.

4. **Whether there are: specific bottlenecks affecting the average rate of progress of transactions; if so, specific options for alleviating such bottlenecks.**

Aside from the need for the professionals involved in a transaction to properly manage the parties' expectations, we do not believe there are any specific bottlenecks as each transaction and chain has its own peculiarities. If issues arise, it is often the case that all of the professionals involved work together to achieve a satisfactory conclusion. It is rare in my experience for a party to withdraw as a result of a legal problem. When legal problems are identified, we always look at ways to resolve them, but clearly this can create delay.

Perhaps like Guernsey, we could have two court sittings a week so that if there is a delay it is not a whole 7 days the parties have to wait. Furthermore as had been discussed in the past we could do away with the formality of passing contract in the Royal Court altogether and exchange agreements instead. However, the counter-argument is that by having a given Friday to pass contract, it does focus the mind to achieve completion on that day.

5. **Any other matters relating to the existing system of domestic property transactions, arising through evidence gathered.**

As stated above, whilst the present system is not perfect, there are many advantages. Problems arise, in my view, through the parties not always being transparent with their advisors or more particularly the other side.

There has also been media attention about gazumping. Again, in our experience, whilst this does happen occasionally, it is infrequent and ultimately this has little to do with the process but more with a particular party's wish to gain a better return! It has been suggested that we should adopt the English route of exchange and completion whereby the parties bind themselves unconditionally to the transaction. In my view this will be difficult in Jersey for numerous reasons (including the need to get the lending banks to 'buy-in unconditionally' to such an arrangement) and, effectively, all we would be doing is elongating the process. Any of the issues/difficulties referred to above could, in theory, happen prior to exchange of contracts!

Suggested Improvements and Conclusion

In conclusion we believe the present system works well in terms of speed to completion. It is acknowledged there are faults with it, but to change it could be cumbersome and may make the process more long-winded and possibly more expensive. So, how could the system be improved without making wholesale changes:-

1. Often issues arise as a result of uncertainty in relation to our standard response from the local Planning Authority. In Guernsey, their Planning Authority issue an Immunity Certificate generally providing the property with a clean bill of health. Perhaps investigations could be made to see whether this was a worthwhile option in Jersey or something similar whereby a Planning Officer did a site visit and confirms all is in order or otherwise sets out what is wrong?

MOURANT OZANNES

Page 4

2. There is an argument whereby the vendor pays for a survey and valuation prior to placing the property on the market and which could be relied upon by the purchaser and a lending institution. This would have a lifespan limited of, say, 6 months. There may be a negative impact from a vendor's perspective in that an estate agent may offer a much higher valuation initially. Lending institutions would have to accept such initial valuations regardless of the final agreed price and I query whether they would agree to this. The present system where a surveyor provides a valuation when he or she knows the agreed price beforehand is hardly an objective analysis of the value!
3. Estate Agencies become regulated by an independent ombudsman whereby, amongst things, they are obliged to pay at least basic salaries to their staff. The present system could be seen to lead to unrealistic valuations in order to tempt clients to go with that particular agency.
4. There is an argument that once offer and acceptance has taken place the property is then taken off the market. However, again this is not straight forward as many buyers may use this to their advantage and just drag their heels.
5. Although not within the remit of the questions asked consideration will need to be given at some stage in the future regarding the introduction of Registered Title.

In relation to the above suggestions any changes would need very careful consideration before implementation.

We hope the above is useful and would be happy to discuss any of it with you.

Kind regards.

Yours sincerely

Gavin Renault
Head of Property, Jersey

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