



Home Buyers' and Vendors' Behaviours: Analysis of judicial decisions

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Abstract

This paper examines the behaviour of vendors and purchasers indirectly through the judicial decisions in Malaysia, Australia, and the United States. The decided cases illustrate that buyers are still indolent in their duty to conduct pre-purchase inspections, some vendors were seen to have actively concealed defects in the property and fraudulently misrepresented the conditions of the properties. This paper suggests consumer education for both the vendors and purchasers and the extension of the jurisdiction of either the Tribunal for Homebuyers Claims or the Tribunal for Consumer Claims to include matters regarding the dispute as to the condition of the property.

Keywords: home buyers' behaviour; vendor behaviour; fraud; inspection

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1.0 Introduction

As increasing numbers of the population begin to own houses, they view a house as a home, a place of comfort, and security. A house is not merely a roof over one's head instead it symbolises family, stability, wealth, and collateral for accessing loan (National Aboriginal Capital Corporations Association, Canada 2005; Reuschke & Houston 2016). Households with modest means need safe and suitable housing that is affordable but does not compromise the quality. Housing preferences and choices differ from one person to another (Zinas & Jusan, 2017). However, it is agreed that when the housing is affordable, low, and middle-income families can put nutritious food on the table, receive necessary health care, and provide reliable day-care for their children (Wardrip, Williams & Hague 2011). The notion of housing quality has a very broad usage, encompassing a variety of meanings but it can be defined as "distinguishing properties that promote a degree of excellence." Housing choice and preference is primarily based on the relationship between prospective house owner's expectations and the property conditions that will support his value needs, and release fulfilment within his housing unit's environment (Zinas & Jusan, 2017).

In realisation of the challenging economic situation and weak consumer sentiment in the real property market, it is no surprise that house buyers consider buying sub-sale of residential properties. Among the benefits of buying homes from the secondary market are huge discounts and readily-available accommodation and facilities. Besides, most second-hand houses are situated in matured towns. Therefore, they have no problem of getting access to public amenities. Besides,

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investors who buy from the sub-sale market can also rent them because there is growing demand for lease and tenancy (Sun Daily 2017a).

In Malaysia, a study by iProperty found that the purchase of sub-sale houses from September 2015 to September 2016 is the highest in Klang, Ipoh, Shah Alam, Puchong, Sungai Petani, Kuching, Johor Baru, Seri Kembangan, Ampang, and Skudai. As for the market share of the building type, most buyers prefer terrace houses with 52% of the market share. Meanwhile, flats comprise of 11% of the market share, apartments (10%), semi-d (9%), condominiums (9%), bungalows (4.9%), serviced residences (2.5%), town houses (0.8%), and cluster houses (0.8%). As for the price of the properties, the study found that 80% of the purchasers paid less than RM800,000 for the houses, 11% between RM500,000 and RM850,000, and 7% bought the sub-sale houses with the price tag of above RM850,000. The statistics evidence the growing sub-sale of residential properties in Malaysia (Sun Daily 2017a).

Despite the attractive pricing and advantages of buying from the sub-sale market, those who are looking to buy sub-sale houses need to be mindful on some matters before signing the sale and purchase agreement (herein after referred to as the SPA). First, there is no specific law to govern the sale of second-hand houses apart from the traditional law of contract, unlike the purchase of a house from a developer, which is regulated by the Housing and Development (Control and Licensing) Act 1966 (herein after referred to as the HAD). The contract for the purchase of new properties from the housing developers have been standardised, but the terms of the sub-sale agreement may vary (Sim 2012). Second, the HAD also establishes the Tribunal for Homebuyers Claim with the jurisdiction to hear disputes between a house buyer and the developer, including on matters on the defect in the house (Sufian & Rahman 2008). By contrast, buyers of the sub-sale houses cannot file a claim against the vendor to the Tribunal because the Tribunal's jurisdiction is restricted to disputes between a housing developer and purchaser only. Third, the "caveat emptor" doctrine compels the buyer to make a thorough investigation and to blame himself if a defect is found due to his inattentiveness, in the absence of fraud or misrepresentation by the vendor. Meanwhile, the "as is, where is" clause in the SPA specifies that the property is sold based on its conditions and the purchaser is ready to accept it "with all faults" (Amstrong & Block 2007). The combined consequence of "caveat emptor doctrine and "as is" clause causes great anguish and nightmare to the buyer of a defective house.

As there is a lack of protection for the purchasers of sub-sale houses in Malaysia, this paper aims to examine the behaviour of vendors and purchasers indirectly through the judicial decisions in Malaysia, Australia, and the United States regarding property disputes due to defective conditions. Australia and United States are selected for the purpose of comparative study as it is interesting to analyse whether there are obvious significant behavior of both the vendors and purchasers in these countries which apply the vendor disclosure laws, unlike Malaysia which applies the "let the buyer be aware" concept. This paper submits that knowing the vendors' and buyers' behaviour is important to identify the proper legal approach to be taken. This paper further adds that the examination of the vendors' and buyers' behaviour will also facilitate the policy makers to determine whether legislative action is necessary to protect buyers from irresponsible vendors.

2.0 Factors Considered in Purchasing a House

In selection of a house, it is vital for the physical attributes of the house to satisfy the buyer's motivations. For this purpose, end-users' participation is a key concept in enhancing the capability of the physical features. Ideally, full participation of end-users ensures the expected outcomes, but practically in the modern days, housing end-users are not able to be connected to the whole process of decision-making (Poor, 2017). Past literature has highlighted that buyers undertake limited pre-purchase information search including even when they buy expensive goods (Beatty & Smith 1987; Ozanne et al. 1992) such as the house (Koklic & Vida 2009). The house is an essential purchase of a household, and the decision-making process is highly complicated. House purchase greatly involves the purchaser, as this choice binds their economic resources in the long term (Grewal et al. 2004). A customer is a concern on the issue of safety, followed by accessibility, reliability, price, communication and experience (Kamaruddin et al., 2017). Nonetheless, houses come at varying quality and price. House purchase is a complicated process, and it is relatively well known to consumers. In most instances, consumers will consider several options, compare them, and ultimately make a choice (Bayus & Carlstrom 1990). Prior information exploration is vital because buying a home involves a certain amount of apparent hazard since it represents huge monetary obligations (Gibler & Nelson 2003). There are various factors that house buyers consider before they make a purchase. As for financial factor, the price of the house, the ability to obtain loan and payment term are important considerations. Besides, factors such as family life cycle and location are also vital (Abdullah et al. 2012). Apart from that, the condition of the property is also a critical element in determining house buyer's purchasing intention (Chia et al. 2016). Most consumers give special attention to the house features such as house design, building quality, interior and exterior designs, or finishing (Sengul et al. 2010). Besides, living space such as the size of kitchen, bathroom, bedroom, living hall and other rooms available in the house is also considered as an important aspect of the condition of the property (Graaskamp 1981). Additionally, the environment of the housing area is important and comprises of several important factors such as the neighbourhood, attractiveness of the area, density of housing, wooded area or tree coverage, slope or topography of the land, attractive views, open space, vacant sites, traffic noise and pollution, security from crime, quality of schools etc. (Adair et al. 1996). According to Mohamad et al. (2017), the functionality of the house, the presentation, environment, and amenities are main characteristics of housing quality considered by the buyers. Although consumers have high expectation for houses,

due to housing affordability issue and stringent financial regulations imposed by banks to obtain a loan, they may end up forced to buy a house that does not match their high expectations in term of quality, design, and environment (Saleh et al., 2017).

The source of information related to the product purchase can be internal (memory) or external (environment). In both instances, information can be acquired by coincidental find and intentional search. The search is influenced by several factors divided into three categories: situational determinants, product determinants and consumer characteristics (Koklic & Vida 2009). For a complicated product such as a house, the information stemming solely from a seller is inadequate (Koklic & Vida 2009). There is a widespread concern not only about the quality of construction of many of houses and apartments but also about the exposure to prohibitively expensive repairs of those who have had the misfortune to become the owners of houses or apartments that are fundamentally defective (Hume 2011). Therefore, it is important for the prospective buyer to conduct thorough search and inspection before the signing of the SPA. Unfortunately, consumers have a very limited knowledge about houses and the buying process (Chaudhuri 2002). For instance, in a survey conducted by Ratchatakulpat, Miller and Marchant (2009) towards 376 property buyers in Queensland, Australia, it was found that construction quality and house conditions are ranked last as factors that influence residential real estate purchase decisions. The most important factor considered by the respondents is maintenance and interior design (mean 5.750), followed by borrowing and affordability (mean 5.706) and good area or neighbourhood (mean 5.702). Affluence and quality only scores mean of 4.666 while features score the mean of 4.241. Purchasers face limitations in term of limited housing options, limitation of the free flow of information between the vendors and the customers, and consumer's limited ability to assess the quality of the housing (Nurdini & Harun, 2017).

In a study by Razak et al. (2013) towards 30 property buyers in Setia Alam, Selangor Malaysia, it was found that pricing is the most important factor for house purchase with 53.3% respondents strongly concurred to it. Only 6.7% of the total respondents are neutral about the pricing factor while 40.0% of the respondents agree that the price of the property is an essential consideration in buying a house. The findings suggest that the customers will find a house with the most competitive and realistic price. As regards to the structural soundness of the property, only 33% of the respondents strongly agree that it is a major factor, 53.3% agree with the statement, 10.0% of the respondents are neutral while 3.3% disagree with the statement. This indicates that structural soundness and built quality is a secondary factor less important than pricing, which is a paramount consideration for house purchase in the eyes of purchasers.

3.0 Purchaser's Recklessness for Non-inspection

The doctrine of "caveat emptor" imposes the duty on the customer to inspect the property to ensure that it fits his intended purpose. Nevertheless, illustration from decided cases shows the carelessness of the purchasers as they signed the SPA without first inspecting the properties.

The case of *Wei Tah Construction (B) Co Sdn Bhd & Anor v Law Wun Ing* [1981] 2 MLJ 147 illustrates that some buyers choose not to inspect personally the property and handed over the duty to the lawyers. In this case, the plaintiff wanted to buy a land described as "near Sibul airport". The plaintiff told his lawyer to conduct a title search. The plaintiff and the defendants signed an agreement for the purchase of the land. The plaintiff later discovered that the land was in fact 8 to 9 miles from the Sibul airport. The court was asked whether the plaintiff had been misrepresented by the defendants. In setting aside the plaintiff's claim, the Court held that there was no representation made by the defendants, which induced the plaintiff to buy the land. Second, even assuming that the plaintiff relied on the description of the land "near Sibul airport", he should not have been misled by the defendants. The plaintiff had earlier instructed his lawyer to do the title search, and the solicitor advised that it was a good deal. Third, the defect was, in fact, discoverable by inspection and ordinary vigilance on the part of the purchaser. However, the plaintiff chose not to check the land before signing the agreement. The High Court observed that the defect was a patent one. They could be discovered if the plaintiff inspects it. The Court further held that when a buyer decides to rely on his judgement or his agent, he cannot claim that he relied upon an earlier statement of the seller.

The Malaysian case of *Wong Soon Hoo dan Satu Lagi lwn Sumbangan Daya Sdn Bhd* [2010] 9 MLJ 559 illustrates that purchasers sometimes were misled by the advertisement where the misleading information could have been discovered via the SPA (including the schedule attached with the SPA). In this case, the plaintiffs made a booking to purchase an apartment. The booking was made upon reading an advertisement in a newspaper stating, 'own a three room two bathroom apartment'. The first plaintiff, in his testimony, stated that he and his mother, upon reading the advertisement in the newspaper, had gone to the development site and met with the defendant's employee who told them that the apartment that they wanted had two bathrooms. After making the payment of 10% deposit, they signed the SPA. According to the first plaintiff, they were given pages 1-10 of the SPA whereas the schedule to the SPA was neither given nor shown to them. The plaintiffs subsequently obtained a loan from the Bumiputra Commerce Bank. When they were given vacant possession, only then they realised that they were given the wrong unit and the unit did not have two bathrooms as stated in the advertisement and the brochures. The plaintiff commenced an action for a declaration that the SPA was null and presumed void and that the defendant to refund the sum of RM78,800 being the purchase price. The plaintiffs contended that the defendant had misrepresented via the newspaper and the two brochures obtained from the defendant. The High Court (Shah Alam) dismissed the plaintiffs' claim as the court found the existence of two situations where the plaintiff had the

opportunity to ensure that their apartment had two bathrooms. The first opportunity was when they had gone to the office of Messrs KC Lim & Teh to sign the SPA. They should have asked the lawyer to give to them the schedule, and they should not have signed the SPA without knowing the content of the schedule. The second opportunity was after they received the stamped SPA. At that time, the SPA was complete with the schedule. They had a choice of not carrying on with the purchase. However, they had proceeded to make a housing loan from Bumiputra Commerce Bank. Again, they did not assess the contents of the SPA in view of the passive attitude of the buyer (plaintiff), the court held that the plaintiffs should not be allowed to alter the terms of the SPA by its contention that the brochures and the advertisement in the newspaper were different from the terms of the SPA.

4.0 Non-Engagement of Professional Opinion

In Malaysia, many consumers are under the mistaken belief that the certificate of completion and compliance is conclusive evidence that the property is in good condition. Quite to the contrast, the certificate does not illustrate the problems about the defect or quality of the house. The narrow role of the certificate is only to ensure that there is no building law violation or safety problem. It is not a quality assurance of the property (Chang, 2012). The problem is worsened by the fact that engaging a building surveyor to make technical and structural inspection on the property has yet to become a common practice in Malaysia. In jurisdictions like the United States and Canada, home inspections are standard practice in the property purchase. The building surveyors are hired to conduct inspections of new or secondhand properties. Prospective home buyers hire home inspectors to inspect and report the condition of a home's systems, components, and structure. In addition to structural quality, they inspect all home systems and features, including roofing as well as plumbing, electrical, and heating or cooling systems (Chang, 2012).

The Malaysian case of *Karupannan a/l Chellapan v Chong Lee Chin* [2000] MLJU 438 illustrates the extreme context where a purchaser who is buying a big scale property—for business purpose did not arrange a surveyor to determine the boundary of the sub-sale building. In this case, the plaintiff is the owner of Hotel Sentosa, which he bought from the defendant. When the owner of the adjoining land sued the plaintiff for trespass of the window protrusions, the plaintiff claimed that the defendant misrepresented him. The plaintiff claimed that he had no knowledge of the condition laid down by Lembaga Bandaran Cameron Highlands (LBCH) on the removal of the protrusions. He alleged that the defendant had misled him by fraudulent misrepresentation in not informing him about the violation and the SPA stated that it was free of any encumbrance. Abdul Hamid Embong J held that the law does not create a fiduciary relationship between a seller and buyer. Thus, the seller cannot be blamed for failing to disclose a patent defect which is discoverable by the purchaser. The purchaser saw and must be inferred to have inspected the said building before purchasing it. He must have seen the window protrusions during his inspection. Besides, as a businessman, the buyer should have hired a surveyor to determine the boundary of the said building. However, he decided not to ask about the window protrusions, which trespassed into the adjacent land. The maxim *caveat emptor* entails that the buyer needs to be vigilant. He also failed to make further enquiry from local authority about the future of the property and its surroundings. Such a scenario would indirectly point to the idea that it is not a norm for a layman who buys property for residential purposes to engage professional opinion especially when the cost of the property is not too large a scale.

Though foreign jurisdictions illustrate that some purchasers are serious in appointing home inspectors, there are also incidents where purchasers chose not to appoint one. This can be seen in the Oklahoma's case of *Carbajal v. Safary* 80 OBJ 1474 (2009), a real estate agent (Safary) acted on behalf of Carbajal (the purchaser) in a house purchase. The SPA provided a 10-day inspection period for the purchaser. However, the buyer opted not to obtain a structural inspection. Instead, he relied on an oral statement of the agent concerning a six-month old structural report given by the sellers which indicated no structural issue. The buyer subsequently discovered foundation cracks and alleged there were "profound structural and foundation problems" with the property. The Supreme Court observed that the six-month old structural report did not point to structural damage or defects, and there was no other proof that the agent knew of the defects. In the North Carolina's case of *Driver v Bagley* 157 N.C. App. 572, 579 S.E.2d 523 (2003), the Court of Appeals blamed the buyers for not making a proper inspection. The Court observed the plaintiff's failure to inspect the property and his reliance on the defendant's survey. The plaintiff also failed to make any effort to locate the property line as between the subject property and the adjacent subdivision. The Court also highlighted that the plaintiff had both the capacity and the opportunity to discover the mistake or discrepancy but failed to do so. There is lack of reasonable diligence by the plaintiff.

Foreign jurisdictions show that home inspectors are sought in a sub-sale transaction due to more exposure on the part of the homebuyers. Homebuyers are also mindful of their rights to sue home inspectors for negligence as a result of an inadequate pre-purchase inspection. In *Salgado v. Toth* 2009 BCSC 1515, the plaintiffs wished to buy a North Vancouver property. They made an offer subject to obtaining a satisfactory pre-purchase home inspection for which they hired Imre Toth, a member of the Canadian Association of Home and Property Inspectors. The inspector attended at the house and discussed his findings on site with the plaintiffs and gave them a handwritten report. They paid him a fee of \$450 for his services. The inspector examined some, but not all, of the structural beams supporting the house. He identified two beams that he felt were rotten and needed to be repaired. He estimated the cost of repairing those two beams to be about \$4,000. After buying the house, the plaintiffs discovered that nearly all the structural beams in the house were rotten and that the cost of undertaking those structural repairs was \$90,000. The purchasers also realized that the home was constructed on a

hillside, and much of the foundation was supported on fill. The inspector had noted some "moderate" settlement of the structure in his report. He suggested that repairs to address the settlement of the home could be completed for approximately \$15,000. After buying the home, another inspection determined that the settlement of the home was a more significant problem and would cost \$126,000 to repair. The purchasers sued the inspector for breach of contract and negligence. The Court found the inspector was negligent due to his decision to inspect only some of the structural beams of the home. Relying on expert evidence, the Court held that the indication there were two rotten beams triggered the need to inspect the remaining beams. The Court also held that the inspector ought to have suggested the service of a structural engineer to assess the structural issues of the beams.

Similarly, in the West Virginia's case of *David Finch & Shirley Finch v Inspetech* 229 W. Va. 147; 727 S.E.2d 823; 2012, the buyers hired the inspector to inspect the property that they had agreed to buy. Within one week after the contract was signed, the purchasers discovered water damage, water infiltration in the basement of the home, and structural problems affecting its foundation. The buyers then sued the sellers and the inspector. The Supreme Court held that the inspector was negligent in failing to comply with the standard of conduct imposed by the statute. The law requires the inspector to specify what components of a house must be inspected and reported upon. An inspector may not relieve themselves of liability for their failure to conduct their home inspection services following the standards. Similarly, those who employ the service of a home inspector are entitled to obtain the statutory protections and should not be expected to surrender such safeguards as a condition of their engagement of home inspection services.

5.0 Concealment and Misrepresentation

As discussed earlier, the pricing factor is one of the most important considerations for the vendors to consider in a sub-sale transaction. This is because of most real estate property buyers shop, by comparison, they preview properties in the areas they are looking and the price range they can afford. Buyers typically base their selection of a house for instance on what is most appealing to their tastes but also what they feel is the best value based on all the houses they have seen (Messah & Kigige 2011). It is not a rocket science that low priced houses have always been connected to substandard quality and defects (Elias 2003; Abdellatif & Othman 2006). A study on low-cost houses in Klang Valley (Abdul-Rahman et al. 2012) found that the main issue facing those houses is cracking of external walls, which affects the water pipes, causing leaks, and allowing this, plus rainfall, to cause increased dampness in the walls. That study infers that the common causes of these defects may be poor workmanship, low-grade materials, and poor supervision and monitoring exercises. It is submitted that the pricing factor pressurises the sellers to sell houses with defects. This is because repairing for those defects would cost them a lot and eventually, the price needs to be increased to cover the repairing cost.

In *Engelhart v. Kramer* 570 N.W. 2d 550 (1997), the seller placed panelling over large cracks in the walls four days before putting the property for sale. The court said this is extremely suspicious action and leads to the conclusion that the only motive for the behaviour was to cover up a defect. The knowledge of the seller of the defect can be implied from his action. The Supreme Court of South Dakota further added section 43-4-38 of the South Dakota Codified Law imposes the duty on the seller to provide vendor disclosure statement to the prospective buyer. If after delivering the statement, the seller becomes aware of any change in the property condition, he must provide the amendment to the statement to the buyer. In this case, it can be concluded that the installation of the panelling over large cracks implies dishonesty on the part of the seller.

In the case of *Mancini v Morrow* 312 Pa. Super. 192; 458 A.2d 580; 1983, the plaintiffs bought a residential property from the defendants. The evidence showed that that the buyers inspected the house on but two occasions, first, on the day before the date of execution of the agreement to purchase and second, immediately preceding the settlement. The buyers on the first visit inspected both the basement and the garage, the two areas of the house where the court found that the sellers had concealed defects. Although the buyers detected a musty odour in the basement, they could not see any water stains on either the floor or walls of the basement since most of the floor was covered by a large area rug; there were approximately eight posters which measured 36" X 36" on the basement walls; and numerous large boxes of ceiling tiles were lined along the perimeter of the basement floor. The buyers also inspected the garage on this first visit and found it to be in a generally cluttered condition; in addition, the one wall of the garage, the back wall where a structural defect was discovered after settlement, was panelled, the panelling was obscured by pool equipment hung on the wall and access to the panel was blocked by a work bench. The buyers subsequently requested permission to re-inspect the property on five different occasions. The sellers, however, refused these requests and limited buyers to one inspection immediately before the settlement. At the time of this second inspection, the condition of the basement was virtually unchanged, and the defective garage wall was still covered with the panelling. Thus, the buyers before settlement discovered neither of the defects. The buyers discovered soon after settlement that the basement had severe water damage that they had not been able to discover during their inspection of the property, that the basement became inundated by six inches of water following a normal rainfall, and that the plywood covering the one wall of the garage concealed a cracked and bulging wall that would have alerted the buyers to the structural defect. The buyers asked whether there were any major problems with the property, and the sellers replied that there were a few minor defects, but failed to mention the water leakage problem. The court noted that the buyers could not have discovered the problem on their own since the weather was dry when they were inspecting

the house, and the damage from the flooding was concealed by the work bench. The court concluded that the sellers had deliberately concealed the water problem and misrepresented the condition of the house.

6.0 Vendor's Failure to Rectify Defect

Defects in necessities in the intended sub-sale property like water supply issue are sometimes not disclosed by vendors. In many instances, the vendors sold the sub-sale property without rectifying the problem. There are widespread criticism on the poor workmanship and low-quality building materials (Wena et al. 2017) which may cause defects or structural problems to the house. In Malaysia, the law primarily focuses on the quality of newly completed buildings. Lack of attention is given to the degree of rectification that needs to be done after the completion of work (Sani et al., 2017). Financial constraint is the primary cause for lack of sustainability practices in building industry, especially in the post-occupancy stage after the buildings have been occupied for a considerable period (Bohari et al., 2016). Economic constraints may limit the applications of good designs and maintenance of good environments (Cubukcu & Salameh, 2016) by the vendors who sell their houses without rectifying the defects. In *Humpage v. Conti* 2001 WL 1249959 (Conn. Super.), the vendor had some years previously applied for permits to drill a deeper well. This indicated the previous efforts to remedy the issue of a water supply shortage, but it failed to rectify the problem. Expert testimony indicated that the amount of water supplied to the premises by the well was far below the normal standard, and anybody living on the premises would have known there was a water shortage unless they did not use the water at all.

Water leakage issue is one of the common issues, and sometimes the vendor conceals this subject matter. In *Nichols v Petroff* 2005-Ohio-481, the plaintiff sued the defendant alleging failure to disclose and intentional concealment of defects of the house. The Court highlighted that the doctrine of caveat emptor precludes damages to the purchaser for a structural defect in the property where reasonable inspection can discover such problem, the purchaser had the chance to inspect the property and the absence of fraud on the part of the vendor. A seller must disclose material facts, which are latent or not discoverable through a purchaser's reasonable inspection. Fraudulent concealment happens where the seller fails to disclose the hidden defect. In this case, the Court held that that the sellers painting of the basement walls and floor in such proximity to the time of sale to be an active concealment of the water leakage issue. An expert revealed that the water leakage issues and the mould developed over the years, and were not the consequence of a one-time occurrence. The sellers were found liable for active concealment of defects.

7.0 Conclusion

The behaviours of the vendors and purchasers as discussed above reflect the fact that many purchasers may be unaware of their legal rights. Few are likely to carry their dispute to court because litigation is time-consuming and expensive and the chances of ultimate success are by no means assured. The Tribunal for Homebuyer Claims only has jurisdiction to determine dispute which accrues between a developer and house buyer. Therefore, those who buy from the sub-sale market has no locus standi to file a claim with the Tribunal for Homebuyer Claims. As for the Tribunal for Consumer Claims, it has no jurisdiction to hear claims regarding the recovery of land or any estate or interest in land; and claims in which the title to any land or any estate or interest in land is in dispute. It is obvious that a dispute on the defective house bought from the sub-sale market can neither be filed in the Tribunal for Homebuyer Claims nor the Tribunal for Consumer Claims.

In summary, a used house buyer has no clear right to relief for physical defects discovered after purchase, given the confusing and unsatisfactory state of the common law. The institutional problems exacerbate his predicament inherent in pursuing relief through litigation. In this light, it should not be surprising that many disappointed purchasers do not exercise their legal rights. They either learn to live with the physical defect, or they pay the cost of rectifying it themselves (Nixon 1982). In connection to this, this article infers that lack of purchaser's knowledge on their legal rights and the difficulty in enforcing their legal rights about the defects discovered after SPA has been closed enable vendors to conceal those defects and go scot-free.

Many real estate advertisements use exaggeration and flowery descriptions. Sellers or agents often utilise the phrases like "rare opportunity", and "must see" to stimulate interest among prospective home buyers who can be easily persuaded by the exaggerated language. Even the most modest houses in need of repair are at times portrayed with words such as "unfinished" and "sweat equity opportunity," and new neighbourhoods built on clear-cut, previously wooded land is wonderfully misdescribed with soothing titles such as "Whispering Pines" and "Windy Oaks" (Marsh 2007).

Although engagement of building surveyors can enable defects to be detected at the early stage and the buyer can ask the vendor to rectify it before signing the SPA, this is not a common practice in Malaysia. This is an invaluable insight into an apparent lack of awareness on the importance of hiring building professional to inspect the property as it is better to be safe than sorry. The monitoring and enforcement division of the Ministry of Housing and Local Government reported that the highest number of complaints is on the defective workmanship of housing units. As shown by Zolkafli et al. (2014), semi-structured interview with representatives from the National Housebuyers Association, developers, architects, and lawyers, 67% of the respondents opined that house buyers need to be educated on their rights and responsibilities. The respondents mentioned that one of the primary issues with house buyers in Malaysia is that they are unaware of the consumer's rights. Consumer awareness and education are crucial for the house buyers to understand their rights and from being duped by

irresponsible sellers. As suggested by Yakob et al. (2016), the government should also play an active role in setting up the standards of quality housing. This paper adds that the standards should also apply to secondhand properties as defects are more common in used homes compared to newly constructed houses.

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