



Employing Professionals for Construction

Writing this article I was struck by a story carried in the Jamaica Observer on Monday April 19, 2010 entitled “Left Without a Home”. In the article the reporter Alesia Edwards recounts the harrowing tale of two Jamaicans based overseas who engaged the services of a contractor only to be fleeced of their hard earned money. It reminded of the well worn principle that when employing professionals, one needs to engage with professionals. In this article I want to take a look at some of the best practices that should be used by well thinking Jamaicans who are parting with their money to build their dream home in Jamaica.

Hiring a Lawyer

At the risk of being called out for a conflict of interest my first recommendation for anybody about to embark on a home building exercise is to employ an attorney. Why is this role so crucial in the building process? will simple highlight some of the more pertinent reasons:

1. It will be the attorney who will be required to draft the basis of the agreement between the land owner (you) and the building company/contractor. A construction contract as it is popularly called is a very involved document with many nuances which should be tailored to a particular client's need. A stock contract received from the contractor may not fully express what your needs are for the construction of the property.
2. Due diligence – while we can not fault Mr. Young for relying on the word of his pastor, he might not have been in such a pickle if he had hired an attorney to conduct the relevant due diligence on the professional he was hiring. For instance, an attorney would have been able to have checked if the contractor was registered with the Companies Office of Jamaica. A good attorney, with a specialist conveyancing practice, would have been able to touch base with the Incorporated Masterbuilders Association of Jamaica ('IMAJ') to determine if the contractor himself checks out. Indeed the good attorney would have done a plethora of checks to ensure that their client was dealing with persons with a track record and who are legit.
3. Management of money – despite the unfortunate episodes of attorneys mishandling client's funds, it is my view that the safest place for an overseas resident to place the monies for the payment of funds to a contractor is through their attorneys. Attorneys are required by the Canons of the Legal Profession to account to their client for every dime that passes through their hands. A breach of these Canons can result in not only the attorney being disbarred, but more importantly an order can be made that he pay back any unaccounted for funds to the client. Importantly many law firms and smart practitioners now have professional indemnity insurance, so if an order is made against an attorney for malfeasance the client may make a claim against the attorney's malpractice insurance policy.

Hiring an Architect

In order for construction to take place in Jamaica the home owner is required to obtain approval from the relevant Parish Council. The Parish Council requires that drawings of the relevant structure be submitted to them for approval. By virtue of the Architects Registration Act it is my humble opinion that such drawings would constitute the practice of architecture in one of its branches, and as such would require preparation by a licensed architect. The Architect Registration Board set up by the said Act constitutes a resource for the concerned home owner to verify that they are dealing with a lawful professional who is in good standing. Importantly, many construction contracts will require that before a contractor is paid out that an architect certifies the stage of completion has been met to satisfaction. As with anything of quality, accept no substitutes, hire a registered architect not a draughtsman. Despite what the whispers in your ears may tell you in the end you may end up with a structurally unsound (not to mention aesthetically unappealing) house if you don't go with the professional, in this case a registered Architect.

Hiring a Quantity Surveyor

Though there is no specific legislation, I would recommend to any serious home owner who is looking to construction to hiring a Quantity Surveyor ('QS'). He is an essential professional, especially for those who are spending significant sums of money, in the construction process. A relatively well drafted construction agreement will speak to the issuance of a certificate by the QS in stages to the contractor as entitling the contractor to be able to recover monies for work done. Further, the QS would report to you, the home owner, of the stage of construction that has been reached. So Mr. Young wouldn't have had to rely on the pictures sent by his contractor but on the black and white words of his QS setting out the percentage completion of the home and the materials used to date. The Jamaica Institute of Quantity Surveyors is a good resource for the serious home owner to verify the professional status of the QS he is seeking to hire.

Hiring a Land Surveyor

The last professional I would like to look at is the Land Surveyor. This profession is governed by the Land Surveyors Act and form an essential backbone to the construction industry for a quite a few reasons:

1. It may seem elementary, but in order for any construction to take place, the contours and topography of the land will have to be known. Any contractor, who is building, especially in rural parishes, must have a topographical survey prepared by a registered Land Surveyor. Otherwise any building he is constructing will not take into account the viscidities of the land itself, which is a recipe for disaster.
2. A survey diagram will be essential to the contractor and the home owner to ensure that they are building within the confines of the land allotted by the title to the property.
3. Further, it is the surveyor who is able to determine with professional certainty whether the proposed building will breach any restrictive covenants. Distance covenants are normally the biggest bugbear in this area.

As with any professional organisation there is a resource available to the wise home owner to investigate the bona fides of the professional they are dealing with, in this case the Land Surveyor's Association of Jamaica.

I hope that the above information will prove useful to not only Jamaicans based overseas but also persons based in Jamaica who are using their hard earned money to build a home. It may cost you a little more but the losses you could possibly suffer if you don't hire a professional will make it worth it to you to employ a professional to deal with construction of your dream home.

Robert Collie is an Associate at Myers Fletcher & Gordon and a member of the Firm's Litigation Department. Robert may be contacted at Robert.collie@mfg.com.jm or through www.myersfletcher.com