

Was the retention of Lots 1 & 2 by the Suttles as shown on the Suttle Plan a fundamental term of the agreement?

[37] Mrs. Maraj, counsel for the Suttles, submits that it was a fundamental term of the agreement for the sale of the land to System Sales that the Suttles would retain lots 1 and 2 as shown on the Suttle Plan admitted into evidence by consent as *Exhibit "GDS1"* particularly in relation to the orientation of both lots as adjoining on the South the public road shown thereon and the size of the lots also shown on that plan.

[38] In his affidavit filed on 8 February 2000 Mr. Suttle deposed as follows:

- “5. It was a fundamental term of the original agreement that the two front lots would be retained by my wife and myself and that we would grant a right of way to the Purchaser over the portion of land to be retained by us.
6. These two lots were properly described as lots numbered 1 and 2 on a proposed subdivision plan in respect of which approval of the Minister of Housing and Lands was granted. This said plan was marked “PERMISSION/REF. No. 699/4/92” and signed by the Chief Town Planner. A true copy of the said proposed subdivision plan is hereto annexed and marked “GDS1”
7. The said plan shows that the two lots intended to be retained by my wife and I both faced a public road which lies along the southern boundary of the property. In addition, Lot 1 comprised 571.5 square metres and Lot 2 comprised 699.7 square metres giving a total area of 1,271.2 square metres. This plan formed part of the original agreement and at the time of signing the agreement my wife and I