

**Is the Plaintiff entitled to specific performance of the Agreement?**

[83] Mr. Hal Gallop, counsel for the plaintiff, submits that System Sales is seeking to enforce a contract and not a plan; that the parties entered into a contract for the sale of a portion of land excluding lots 1 and 2; that what System Sales could do with that land from a development point of view depended on the permission it got from the Chief Town Planner; that the SSL Plan was approved on 26 March, 1998 prior to the date of the agreement 15 July, 1998 and that the inference may be drawn that System Sales entered into the agreement after it had obtain the permission of the Chief Town Planner.

[84] The real issue, however, in this case is not what System Sales could do with the portion of land it agreed to buy from the Suttles, but, rather, whether the Suttles were getting what they had bargained for under the agreement.

[85] It is well settled that specific performance is a discretionary remedy. (See *Scott v Alvary* [1895] 2 Ch. 603, 612.) It is equally well settled that that discretion must be exercised in accordance with fixed rules and principles. (See *Chitty On Contracts 29<sup>th</sup> Edition Vol. 1 at para 27-029* and the cases cited thereunder).