Land Contract: Victims of a Scam

> *In the context of land law I am just an ordinary layman. So herein I simply do my best to understand this particular situation in the light of the information to which I have been able to gain access within the time available. I make no factual statements about the law of any particular country or jurisdiction. I only state from my own subjective viewpoint how it appears to me to have affected Jes and others.*

In the year 2001, Jes bought a *plot of land* within a kind of legal construct known as a Rural Condominium. The name of this Rural Condominium is *Sagarana - Fazendinhas Inteligentes*. I shall refer to it from here on as *Sacanagem* - Fazendinhas Inteligentes. The Portuguese word *sacanagem* means *trickery* or *devious behaviour,* which in the circumstances, seems to me to be much more appropriate.

The vendor of the plot of land is a limited liability entity called:
INTERURAL - Empreendimentos Turisticos e Participações Ltda.
CPNJ N°04.219.748/0001-30
Address:
Fazenda de Serra e Areão
Near Água Limpa
Caeté-MG, Brazil
With office at:
Sala C1, Avenida Getúlio Vargas 1624
Savassi
Belo Horizonte-MG
Brazil 30112-021

Circumstances have led me to believe that the owner of the farm from which the plots of land were being sold is Itamar Melgaço. He is the one who showed us around on 16 January 2004. Notwithstanding, his name appears nowhere on any contract or correspondence relating to the sale of the plots. He seems somewhat insulated from the whole process.

The vendor is this limited liability entity called "INTERURAL - Empreendimentos Turisticos e Participações Ltda." This, it seems, is run, managed, owned - or whatever - by Itamar's son, Daniel Melgaço. I have also been led to suppose that Itamar's daughter and ex-wife are also somehow involved. Correspondence is never signed with the signature of a physical person, but as the name of the entity. And that's all I have ever managed to find out regarding the identity and nature of the vendor.

Jes bought her plot of land from the vendor by signing a document called an "Instrumento Particular de Compromisso de Compra e Venda Sobre Imóvel Rural", comprising 7 pages as follows: 1, 2, 3, 4, 5, 6, 7. In English, that is "A Particular Instrument of Promise to Buy and to Sell a Rural Property". Although the document bears the subtitle *CONTRATO N°34*, it is in fact deemed not to be a contract. It contains a promise that it will be replace by a contract after the process of sale and purchase has been completed. However, for simplicity, and because it effectively should act as a contract, I shall refer to it herein as the "contract".

The "contract" includes the promise to buy and to sell various engineering and administration services and infrastructure. However, these are not relevant until the purchased property becomes that of the buyer, which never happened. So, right from the outset, I wish to make two things crystal clear. As a result of entering into this "contract":

1. From 2001 to 2004, Jes paid a lot of money to the vendor.
2. As of 2012, Jes has received absolutely nothing in return.

An Illegal Contract

Though it be embedded within a seemingly impenetrable morass of confusing legal gobbledegook, the object of the promise to buy and to sell is clearly stated in Section 2 of the "contract" as follows.

> "A nomeada vendedora {..A..} promete vender à compradora uma gleba de aproximamente 5.000,30 m² {..B..}"
>
> "The named vendor {..A..} promises to sell to the buyer a plot of land of approximately 5,000·30 m² {..B..}"

The plot of land that the vendor is selling and which Jes is buying therefore comprises just over half a hectare. The word *gleba* means an area of physical land that exists at some specified location. It cannot mean simply an abstract area of land whose physical reality and location are to be defined later.

The gobbledegook between the braces {A} states the following:

1. The vendor is the owner of a large farm called Fazenda Água Limpa, Serra e Areão located in the municipality of Barão de Cocais, Minas Gerais, Brazil.

2. This farm has been officially divided into separate units. Each unit has the size of a módulo rural. A módulo rural is the minimum area of rural land that can be legally traded (bought and sold) as a single indivisible object. [In this particular region it is 2 hectares (20,000 m²).]

3. The identity of the act of official division is registered N° R-27.063 of 29/03/01, Book 2 at the Land of Registry of Barão de Cocais, which is itself registered with the Brazilian Federal Land Authority (INCRA) N° 221058 092762-0

The gobbledegook between the braces {B} states the following:

1. The 5,000·30 m² plot of land that Jes has bought corresponds to 24·57% of Gleba Rural N°03. [This simply identified where Jes's plot of land is located]

2. Gleba Rural N°03 is called (named or identified as) "Fazenda Inteligente Ipê Amarelo" on the plan of the act of division mentioned above. [Jes has been consistently refused sight of this documentation.]

3. The sale is made in accordance with Laws 4.504/64, 5.868/72, 10.267/01 and The Brazilian Land Authority's (INCRA) Standard Instruction N° 50/97.

4. The buyer, Jes, is deemed to be fully familiar with all the above laws and instruction.

The vendor, who is the author of the "contract", promises to sell to Jes, the buyer, a particular physical plot of rural land of area 5,000·30 m². The area of the plot is less than the minimum area

(20,000 m²) of rural land that can legally constitute an object of trade. Consequently, irrespective of any other laws and regulations that may be referred to, the "contract" is fundamentally illegal.

Unequal Before The Law

As a mere consumer, naturally unacquainted with the complexities of land law, Jes reasonably but naïvely assumed that *the sale* of the 5,000·30 m² unit of "condominium" land being offered to her by this professional vendor was legal. It never entered her mind that her 5000·30 m² plot was smaller than a *módulo rural* - the *Minimum Fraction of Parcelment* - mentioned in the "contract". She didn't even know what a *módulo rural* was, or even that such a thing existed.

On the other hand, it is reasonable to suppose that the vendor - as a professional in the business of the dismemberment and sale of rural land, and author of the contract - must have known full-well in advance that the size of a *módulo rural* in that region was 20,000 m², and that what he was selling to Jes was less than the minimum area permitted by law to be bought or sold. From this it is now blindingly obvious that this whole business is a deliberate scam.

The "contract" states the price to be paid and how the payments are to be made. Jes as a naïve consumer with no professional knowledge of Brazilian land law, therefore signed the "contract". She then went on to fulfil to the letter all the requirement of payment. In an act of buying and selling, once the buyer has paid for the object of purchase, nothing should impede the process of the buyer becoming declared and recognised as the new owner of that object.

Having finished paying for her *plot* (the object of sale and purchase) in August 2004, Jes naturally tried to register her ownership of it. This, of course, she found to be legally impossible.

A Rural Condominium

When Jes asked why she could not register her ownership of the land she had bought, the vendor referred her to a clause in the "contract" that says that she can only register her ownership of her land "in condominium". The apparent implication was that she could only register the ownership of her *plot* jointly with the owners of two other *plots*.

A document entitled *The Internal Regulations of Rural Condominium: Sacanagem Fazendinhas Inteligentes* (authored and supplied by the vendor and forming part of the "contract") defines a particular condominium entity. These Internal Regulations are purportedly registered as a public document at the local *Cartório de Títulos e Documentos*. However, we found no evidence that *Sacanagem Fazendinhas Inteligentes* had been registered as a rural condominium at the local *Registro de Imóveis* in any proximate city.

According to its Internal Regulations, the Rural Condominium *Sacanagem Fazendinhas Inteligentes* occupies a Gleba Rural comprising 23 legally-saleable *módulos rurais* (plural of módulo rural),

which the vendor refers to as *Fazendinhas Inteligentes* (Intelligent Farmlets). These, the vendor offers for sale to prospective condominium members.

Jes's Particular Contract

The *object* of the *promise to buy and to sell* is stated in a subtitle within Section 2 of the "contract" as the Gleba Rural. Jes therefore reasonably assumed that this was the contractual term for what the vendor was selling to her and what she was buying from the vendor.

According to the First Clause, these units of land were divided off from a large farm - owned by the vendor - through a legal instrument of *dismemberment*. This stated that the land, that was thus separated from the farm, was divided into *módulos rurais*. These the first clause of the Contract itself acknowledges to be the [legal] minimum unit of parcelment for rural land.

The Object of Jes's Purchase

The First Clause then goes on to specify the *object of the promise to sell and to buy*. It states that the vendor promises to sell to the buyer a *gleba*, which is the Portuguese word for a contiguous plot of land of unspecified size.

The clause then specifies the size of this gleba as "approximately" 5000·30 m², which it says corresponds to 24·57% of Gleba Rural N°03 known as *Fazendinha Inteligente Ipê Amarelo*. Gleba Rural N°03 must therefore be "approximately" 20351·24 m².

From four of the 32 receipts for her monthly payments it appears that Jes was paying for "Lots 7 and 8" of some entity called *Condonínio Apê Amarelo*, which it also seems to be referred to as a "reserve" called *Imóvel Rural N°34*. Her contract document bears the subtitle CONTRATO N° 34. Consequently, she reasonably assumed that *Imóvel Rural N°34* refers to the gleba she had bought.

Initial Deduction

The first clause of the contract that Jes signed says that the vendor's farm was - through an instrument of dismemberment - divided into *módulos rurais*, and that a módulo rural is synonymous with the Fração Mínima de Parcelamento (minimum legal unit of parcelment for rural land). The Internal Regulations of the Rural Condominium: *Sacanagem Fazendinhas Inteligentes* say that 26 of these *módulos rurais* were to become 26 Fazendinhas Inteligentes. Therefore, I reasonably deduce that one Fazendinha Inteligente must occupy one *módulo rural*.

The first clause of the contract equates Gleba Rural N°03 with Fazendinha Inteligente *Ipê Amarelo*. Therefore I reasonably deduce that Gleba Rural N°03 is a módulo rural. The size of the *módulo rural* in the zone where Jes's land is located is 2 hectares, which is 20,000 m².

Gleba Rural N°03
= Fazendinha Inteligente *Ipê Amarelo*
= 1 módulo rural
= 20,351·24 m²(approximately!)

The plot of land "sold" to Jes
= Lots 07 and 08 of *Ipê Amarelo*
= Imóvel Rural N°34
= 5,000·30 m² (approximately!)

The size of the gleba the vendor "sold" to Jes through this contract is "approximately" 5000·30 m², which is smaller than (in fact only a quarter the size of) the minimum parcel of rural land that can be legally traded. Therefore it is illegal for the vendor to sell the 5000·30 m² gleba to another party as a separate contiguous parcel of land. Consequently the contract is illegal.

A Web of Confusion

The term "gleba rural" simply signifies an extent or field of rural land of no particular size or shape. Notwithstanding, in both the Contract and the Internal Regulations, the vendor confusingly uses the general term *Gleba Rural* to refer - in various places - to 3 different objects:

1. the 5000·30 m² gleba that is the object of the *promise to buy and to sell* that the vendor made specifically with Jes

2. the 20351·24 m² módulo rural of which Jes's gleba is a part

3. the entire area occupied by the Rural Condominium: *Sacanagem Fazendinhas Inteligentes*

The vendor's use of initial capital letters in the term *Gleba Rural* confusingly and wrongly implies that it refers to one definite object throughout both documents.

In the contract, *Ipê Amarelo* (the name of a type of tree) seems merely to be a name the vendor gave to the particular *Fazendinha Inteligente* of which Jes's gleba is a part. There is no mention in the contract of Ipê Amarelo being a "condomínio". From the receipts it appears that the vendor had divided the *módulo rural* called "Gleba Rural N°03" into 8 lots and that Jes's piece of land effectively comprised Lots 7 and 8.

> *"Recebemos de Jes ..... a importância de R$202,00 referente á segunda das 32 parcelas mensais do pagamento dos lotes números 07 e 08 do Condomínio Ipê Amarelo (Reserva de Imóvel Rural no. 34) do Complexo Ecoturístico Canela de Ema. 25 fev 2001"*

Thus the vendor had sold to Jes a *part* of a *módulo rural*. And he called this *part* Imóvel Rural N°34, which is the identification number of the particular "contract" he made with Jes. The "contract" leads me to believe that Ipê Amarelo is a "Fazendinha Inteligente". The RECEIPT declares it to be part of an entity called "Complexo Ecoturístico Canela de Ema". The RECEIPT also declares Ipê Amarelo to be a condominium. The only entity in the "contract" that is mentioned as a condominium is Sacanagem - Fazendinhas Inteligentes, which comprises 23 legally-saleable módulos rurais. Besides, where on Earth does an entity involved in eco-tourism come into any of this? How utterly confusing!

Over 3 years after Jes signed the "contract" - after much research - I discovered that, in any given locality, the law specifies a *minimum* area of rural land that can be legally traded - sold and bought. This minimum area is a unit which in Brazil is called the módulo rural. In the region where Jes bought her land, the size of the *módulo rural* is officially set at 2 hectares (20,000 m²). Hence, within the municipality within which the "condominium" lies, it is illegal to sell or buy any piece of rural land with an area less than 2 hectares.

What's a Condominium?

A city condominium comprises privately owned apartments plus commonly owned infrastructure comprising lifts, stairs, corridors, the exterior of the building and its surrounding grounds. Likewise, a rural condominium comprises privately owned elements (glebas) plus commonly owned infrastructure comprising such things as access roads and utility services.

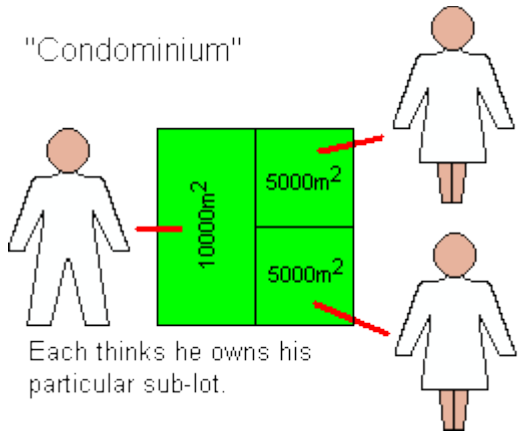
As with privately owned apartments within a city condominium, each privately owned element (gleba) of a rural condominium must be separately saleable, independently of the rest of the privately owned elements. The gleba that the vendor "sold" to Jes is too small to be independently saleable. The "contract" that the vendor made with Jes (of which the Internal Regulations are deemed to form a part) therefore attempts to create an additional sub-structure that cannot be a condominium.

By chance, Jes happens to know the person who bought another 5,000m² *plot* in the same *módulo rural*. It is Tes, the friend and colleague who had naïvely introduced her to the whole scheme in the first place. Like Jes, Tes has now paid in full for her *plot*. Neither Jes nor Tes know - and have never had any contact with - the person who apparently bought the remaining 10,000 m² of the same *módulo rural*.

Jes and I have, however, learned indirectly that this third person stopped paying the instalments for his *plot* and does not intend to resume. The vendor says that because it is necessary for them to "register in condominium", it is impossible for any one of them to register his or her ownership until all three of them have paid in full.

Condominium vs Partnership

Within the "contract", the vendor seems to confuse the concept of "condominium" with that of "partnership". Sadly, Brazilian Portuguese does not seem to make the same distinction between "condominium" and "partnership" that is commonly understood in English. So despite exhaustive searches on the Internet and elsewhere, I have been unable to find any definitions that make a clear distinction between the two. The best I have found is in the Brazilian Civil Code that seems to distinguish between two different forms of what it calls "condomínios".



Nevertheless, there exists, within the context of Jes's "contract", two distinctly different forms of associative ownership, between which it is vital to distinguish.

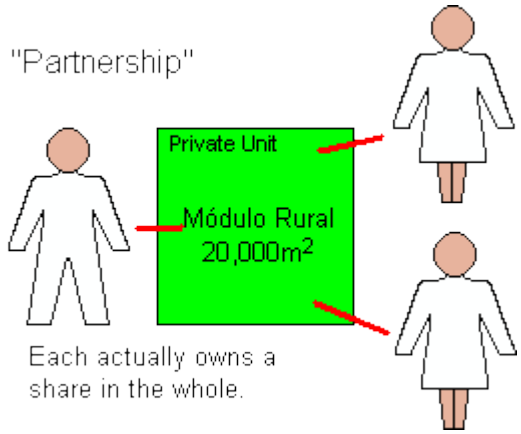
By "condominium" (within the context of this article) I mean a number of separately owned **private plots** of land supported by **common areas** of land that are owned jointly by all the owners of the **private plots**.

The contract conveyed to Jes that she was buying the full ownership of a separate and distinct contiguous piece of private land that had an area of 5,000·30 m², plus a share in the joint-ownership of associated common roads, areas and infrastructure.

This is directly analogous to the way a person buys an apartment in a condominium apartment building in Brazil. The person buys the apartment as a distinct and separate piece of personal property, independently of whether or not any other apartments are or are not bought, or have or have not been paid for, by other people. The owner of the apartment also has joint ownership, along

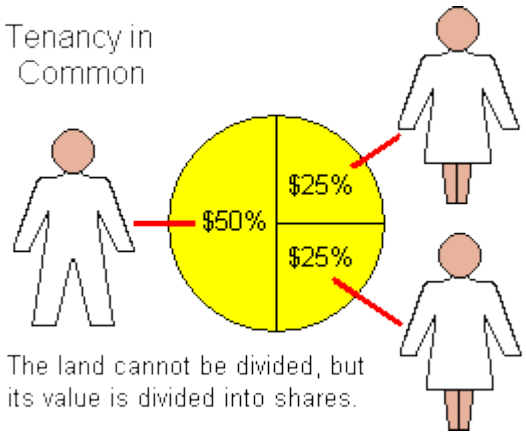
with all the other apartment-owners in the building, of the corridors, stairs, common rooms, plus the the exterior and its grounds.

By "partnership" (within the context of this article) I refer to the situation in which two or more people jointly own the whole of a 20,000 m² *módulo rural*. Hence, in a partnership, each of the participants does not legally own his separate area, even though these areas be physically separated by fences.



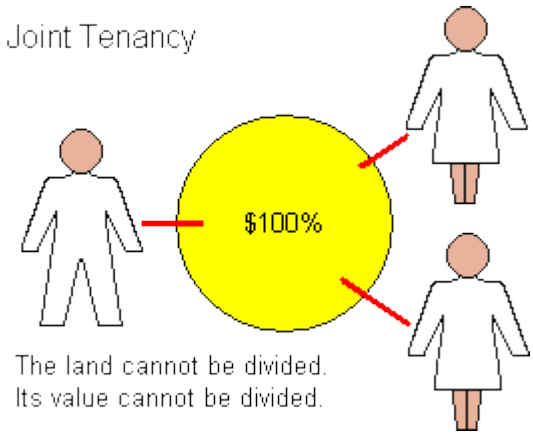
Partnership makes participants jointly responsible for any and all liabilities that may arise from the ownership of the whole *módulo rural*. This includes taxes levied by the nation, the state or the municipality upon the whole *módulo rural*. If any one participant does not pay his share, then the others must pay his share as well as their own.

An additional complication arises for the three joint-owners of this divided módulo rural in that there are two different fundamental concepts of joint-ownership. Although the following may not be the correct legal terms for them in many jurisdictions, I shall refer to them within this article as *Tenancy-in-Common* and *Joint Tenancy.*



Under *Tenancy-in-Common* each "partner" owns all of the land jointly with his fellows as illustrated in the diagram above. However, he possesses only a specified proportion of the *value* of the land, as illustrated in the diagram on the left. This means that if one "partner" leaves, his fellow partners must buy him out - they must pay him his share of the value or find a new partner to buy his share. If a partner dies, his share of the *value* of the whole of the land is considered to be part of his *estate* to be distributed according to his *will* or according to the default law.

Under *Joint Tenancy* each "partner" owns all of the land jointly with his fellows, as with *Tenancy-in-Common.* However, in the case of *Joint Tenancy,* he also co-owns all of the *value* of the land jointly with his fellows, as illustrated on the right. The consequence of this is that if one partner leaves or dies, effectively nothing happens. The ownership of the land simply and automatically becomes shared by one less person. The only way the *value* of the land can be divided among the partners is by all of them together at one time selling the land in a single transaction.



Which of these situations applies by default in any particular case is obviously determined by prevailing law.

Partners by Default

It appears that the vendor has not had his rural land re-classified to urban land so that it can be legally sold in lots smaller than a *módulo rural*. In fact, I have since been led to understand that the area in which Jes's land is located is classed as an area of outstanding natural beauty. Consequently, any application to have it re-classified is very unlikely to be granted. Since a *módulo rural* cannot legally be divided into smaller saleable *plots* my only conclusion is that the law must view Jes, Tes and the third person not as separate owners of their respective plots but as joint owners of the whole of the 2-hectare *módulo rural* within which their *plots* lie. The only way I can see that this could be done legally would be for the vendor to have made a single contract between himself as one party and the 3 of them together as the other party.

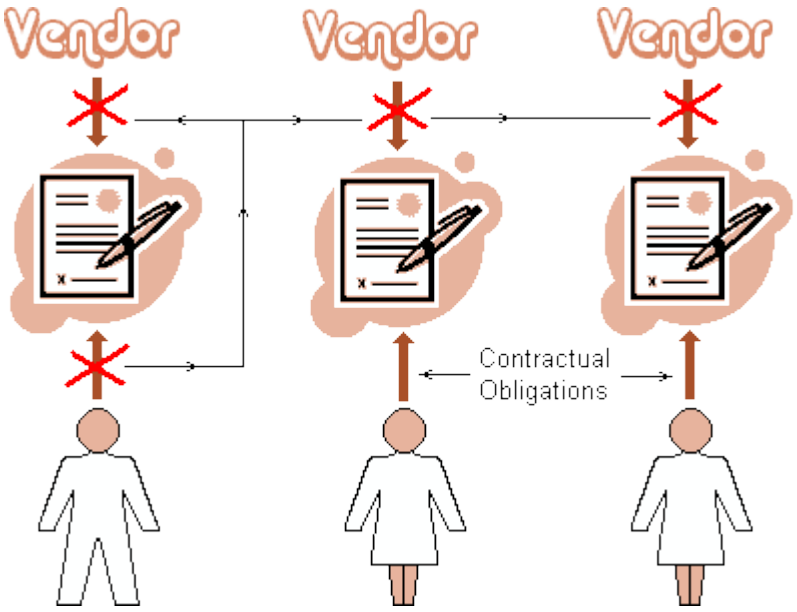
But this form of joint-ownership is **not** a "condominium": it is a "partnership". The term "register in condominium" used in the "contract" is clearly incongruous. Members of a condominium are not *partners* in the ownership of the *private units* of their condominium. Each is the separate absolute exclusive owner of his particular *private unit*. As a result of the incongruity of the "contract" Jes finds herself in "partnership" with two other people with whom she has not entered into any form of contract - one of whom she does not even know, has never met, and for whom she does not even have a name or address. In fact, it is only a matter of co-incidence that she knows the other "partner", namely Tes.

This would make things very difficult if one of the three were to die. If the local law by default decrees that they are *Tenants-in-Common* then the two of them that remain alive might be required to pay one third the value of the *plot* into the estate of their "unknown" dead "partner". At least, it would do, if all three "partners" had paid their share and officially registered their joint ownership of the relevant *módulo rural.*

A Dysfunctional Contract

Jes's "contract" nowhere mentions or implies that she is in "partnership" with the others who have bought *plots* within the same *módulo rural.* In fact, it does not mention the term "partnership". Jes's contract is solely between her and the vendor. With the inclusion of the Internal Regulations, the contract effectively states that she is buying a *plot* as part of a *condominium.*

Jes has fulfilled her side of the "contract", yet she is unable to register officially her personal ownership of her *plot* (her *private element* within the so-called "condominium"). The reason for this is that her "contract" with the vendor is consequentially linked to the supposedly independent "contracts" the vendor made with the other two buyers of land within the same *módulo rural,* as illustrated below.



The fact that one of the buyers failed to fulfil his side of his "contract" with the vendor, caused the vendor to be fundamentally unable to fulfil his side of his supposedly independent "contracts" which he made with each of the other two buyers, even though each of these other two buyers fulfilled her part of her "contract" with the vendor. All three "contracts" are therefore dysfunctional. Furthermore, since under the "contract" the vendor attempts to sell to Jes a piece of land that is smaller than the minimum size that can be legally traded, the "contract" must also be inherently illegal.

OK, so Jes signed an illegal "contract". So, in effect, she is a party to this illegal "contract" along with the vendor. But as a simple consumer, naturally unacquainted with the complexities of land law, how can she reasonably be expected to suspect an established professional land vendor of offering a "contract" that is both illegal and dysfunctional - leaving her (and probably many others) having paid him lots of money in return for absolutely nothing?

Vendor's Failed Obligations

Failure to provide a contract: I have referred to the document that Jes signed when she started to purchase her *plot* as a "contract". As I said at the beginning, it is in fact not a contract. It is only a "particular instrument of promise to buy and to sell". It states that when Jes has finished paying for her land, the proper "contract of sale and purchase" will be provided. She finished paying in August 2004. As of the date of this article, she has not received a "contract of sale and purchase". The vendor never answered her repeated requests for it.

Failure to provide a map: When Jes signed the original instrument, she signed to the effect that she had received with it a map (the Portuguese word is *croquis*, which more accurately means *sketch*) showing the precise location and boundary of her *plot*. The vendor did not have a map available to give her (or any of the other purchasers) at the time and promised to send her map to her shortly. Thus she signed the contract on the verbal promise (witnessed by all the would-be purchasers) that the map would be sent to her shortly. Since she signed the contract in 2001, she has made repeated requests for the vendor to send her a copy of the map. The vendor has ignored all her requests.

The fact that she is deemed by the contract to have already received a map is no reason for the vendor to refuse to send her what he would naturally view as "another copy". If the map exists, then it is a small matter just to send her a photocopy of the original. She even offered to pay the vendor

for the "extra" copy if he so required - even though strictly speaking he has no right to do so. Suppose she had lost the "original" copy? It should be no great issue for the vendor just to send "another" copy to "replace it".

The fact that, despite requests extending over 4 years, the vendor has not sent a copy of the map strongly suggests to me that either he does not have one or that he has some ulterior motive for not sending one to her. My impression and opinion is that the vendor does not want to send her a map so that she cannot establish the location and boundaries of the land for which she has paid. This categorically prevents her - or any professional surveyor she may hire - from being able to conduct the survey required of her by Clause 5.1 of the contract.

This way, the vendor is able to prevent her fulfilling this irrelevant and ancillary Clause and hence the Contract as a whole. Thus he is able to keep her money without transferring ownership of the land to her. The land, for which she has paid in full and on time, thus remains forever the registered property of the vendor.

Consequently, as things stand, Jes has no *documentary evidence* that she owns the 5,000·30 m² *plot* for which she has paid an almost residential price. She cannot prove she has the right to build her home on it, plant crops on it or even walk on it. She cannot even prove where it is. All she has is the "particular instrument of promise to buy and to sell" plus the bank receipts for all her monthly payments. On the other hand, the vendor has no copy of any *croquis* initialled by her as constituting an essential part of the "particular instrument of promise to buy and to sell". Consequently, he has no physical proof that she has received a copy.

A Letter of Ultimatum

After a final concerted effort by Jes to contact the vendor by telephone, he eventually responded on 12 May 2005. This was almost 10 months since Jes had finished paying for her land and almost 3½ years since she signed the contract and made her first payment. In his brief telephone call he said that within a week he would telephone her again with a solution to registering her land. He said this after first trying to persuade her to buy the 10,000 m² of land for which the third "partner" had stopped paying.

He did not make that promised phone call, so after 30 days from his first phone call on 12 June 2005 Jes wrote him a letter of ultimatum, which she sent by registered post. This was confirmed as received by the vendor on 15 June 2005. In the letter Jes outlined the problem resulting from his selling to her a specifically demarcated contiguous area of rural land that was less than the legal *Minimum Fraction of Parcelment* - the módulo rural. She told him that to save the inconvenience of legal action he should either provide the documentation for her to register her land within 30 days (which obviously he could not do) or return her money with interest and appropriate statutory compensations.

The Vendor's Reply

The vendor eventually replied 82 days later in a letter pre-dated 11 July so its date fell within 30 days of Jes's letter to him. It arrived on 2 September in an envelope postmarked 30 August 2005.

In this letter the vendor gives the area of Jes's gleba as 5,285·80 m² and states that this is 25·98% of the Gleba Rural within which it lies. This gives a size for the Gleba Rural of 20345·65 ±0·1 m², which is 5·59 m² different from that produced from the figures given in the "contract". This difference equates to an error of 2·75 parts per 1000, which is 27·5 times the precision of the stated percentages and 275 times the stated precision of the area of her gleba. I suspect that the vendor sent

the same letter to the "purchaser" of another plot of land and that he neglected to change the figures before using it as the basis for replying to Jes.

In the letter the vendor reiterates that the "contract" clearly states that Jes can only register her ownership of the land "in condominium" with all the purchasers of the other plots within Gleba Rural N°03. The impossibility of this has already been dealt with.

Topographical Survey

The vendor then goes on to say that, although Jes has paid in full for her land, she has still failed to meet a further obligation under the "contract". I expect this "failure" applies equally to the other purchasers also. What she has apparently "failed" to do is to have Gleba Rural N°03 professionally surveyed, as required under Clause 5.1 of the "contract". Clause 5.1 states:

> A compradora declara que tomou conhecimento do perfil topográfico da Gleba Rural, devendo todavia efetuar a respectiva demarcação final, por sua conta exclusiva e/ou solicitá-la, após o pagamento de sua taxa de serviço, referente ao levantamento topográfico.

The wording is appallingly constructed. The best I can translate it is as follows:

> The buyer declares that she has knowledge of the topographical profile of the Gleba Rural, [the gerund form of "must" = "being required"] however to make the respective final demarcation, at her own expense, and/or request it, after paying the appropriate fee, for the relevant topographical survey.

Clause 5.1 conveys to me that "although Jes be familiar with the topographical profile of the Gleba Rural, she must pay for a survey to establish the final demarcations". From the word "respective" I deduce that this means the demarcations of her plot of land within the Gleba Rural.

The title to Section 5 of the contract is simply "OF THE GLEBA". In Section 2 of the contract, the word "GLEBA" refers to Jes's 5,000·30 m² *plot*. Consequently, when she signed the contract, she naturally assumed that Gleba Rural mentioned in Clause 5.1 was "THE GLEBA" in the title to Section 5, which, in turn, referred to "GLEBA" in Section 2, which is the object of the "contract", namely, the plot of land that she was buying.

Notwithstanding, in his letter, the vendor tells her that the term "Gleba Rural" in Clause 5.1 refers to the whole of a 20345·65 ±0.1 m² Gleba Rural Nº03 of which her specifically demarcated GLEBA is a part. This does not make sense. As a single private buyer of one particular piece of land, how and why would she be obliged by the "contract" to pay for a survey of land that belongs to other people? Are each of the other "purchasers" also obliged to pay for a professional survey of the whole of Gleba Rural N°03? Presumably so, if their contracts are the same.

Clause 5.1 states that Jes may expedite this survey either independently at her own expense or by requesting it of the vendor. If she opts for the latter, she must first pay the vendor the appropriate service fee. The amount of this fee is unspecified. Naturally, the only surveying option acceptable to Jes is for her to enlist the services of an independent professional surveyor to enter Gleba Rural N°03 and survey it. But a professional surveyor cannot measure land if he does not know where it is and has no pre-defined base position from which to start.

Besides, the owner has rather threatening personnel around the farm that would render anybody attempting to enter the land for this purpose very uncomfortable with regard to their personal safety.

Both Jes and I heard say that somebody had been disposed of (I presume this meant murdered) in connection with the vendor. So this too cannot be considered a very comfortable option.

The word "final" in Clause 5.1 implies that the survey that Jes is obliged to perform must be a more accurate (non-approximate) measurement than that which was specified in the "contract" to a precision of one hundredth of a square metre!

Unquestionable Boundaries

Section 2c of the "contract" states:

> *"Declara a compradora, para fins de direito, conhecer "in loco" a área e limitações descritas de sua fração, assim como a exata configuraçaõ e topografia da gleba compromissado, não podendo, portanto, questionar ou reinvindicar o uso das outras percentagens (frações), que também compõem o terrano: o uso e direito de seu terreno estão absolutamente limitados ao perímetro em memorial descritivo descrito e de acordo com os croquis de demarcação particular do referido imóvel, que acompanham o presente instrumento; renunciando desde já ao direito de preferência previstos nos artigos N°632 e 1.139 do Código Civil."*

This sub-clause is directed entirely at the buyer, namely, Jes. I have therefore made a paraphrased translation in which the word "you" addresses Jes:

> *"You declare, before the law, that you know, from having been there, the prescribed area and boundaries of **your fraction†**, as well as the exact configuration and topography of the **pledged gleba**."*

In the context of this "contract", the **pledged gleba** is, in fact, Jes's 5,000·30 m² plot, but I think they mean the 20351·24 m² Gleba Rural N°03 of which Jes's plot is a part.

> *"Consequently, you have no power to question these* [prescribed area and boundaries] *or demand the use of the other percentages (fractions), that also compose the **terrain**".*

Presumably **terrain** here refers to Gleba Rural N°03?

> *"Your rights and use of the **terrain†** are absolutely limited to the perimeter as prescribed by, and in accordance with, the particular map of demarcation of the **respective property†**, which accompanies the present instrument."*

† I think that the confusing variety of daggered terms in all the above quotations are meant to refer to Jes's 5000·30 m² plot of land.

> *"You herewith renounce the right of first refusal provided for in Articles No. 632 and 1139 of the Civil Code."*

Presumably, this last little gem is to prevent any one "purchaser" of an [illegal] fraction from ever potentially becoming able to buy out the "purchasers" of the other [illegal] fractions of Gleba Rural N°03 and thereby become the legal owner of an entire módulo rural of the vendor's land.

The upshot of this entire convoluted sub-clause is that Jes, by signing the "contract", accepts the area and demarcation of the plot of land she has "bought" to be exclusively as specified on the [non-existent] map [literally "sketch"] that was deemed to have accompanied, and form part of, the

document that she signed. Consequently, she has no power to dispute or question these demarcations in the light of any survey she may commission to be carried out after the signing of the "contract".

So Why Another Survey?

In the light of Section 2c of the "contract", what on Earth is the point of the survey required by Clause 5.1? The vendor states in the "contract" that the "contract" document itself effectively includes a map of Jes's plot that shows its demarcations so accurately that he is able to quote its area as "approximately 5,000·30 m²". He thus quotes the area of Jes's plot to a precision of one hundredth of a square metre. That is about the area of the sole of a man's shoe.

In the absence of any specific statement about the accuracy of a measurement, the universal convention is that it is assumed to be equal to the stated precision. This convention is universal throughout mathematics, science and engineering. The subject of Surveying falls within these classifications. The use of the word “approximately” reinforces this assumption. Thus, the vendor, in effect, states in the contract that he is selling Jes a plot of rural land of area 5,000·30±0·01 m².

The most accurate and technologically advanced instrumentation for measuring land is a device known as a *total station.* This device uses laser interferometry to measure distance with reference to the wavelength of a particular spectral line of laser light. It feeds its information to an attached computer running software that calculates areas and produces map images.

A *total station* can measure distance typically to an accuracy of 1 part in 100,000. That is equivalent to ±0.01mm per metre, or ±1 cm per kilometre. When measuring area, pure geometry shows that the error is at least double that for measuring distance. So, in theory at least, the accuracy for measuring area using a total station is at best ±2 parts per 100,000.

> "The best quality total stations are capable of measuring angles to 0·5 arc-second. Inexpensive "construction grade" total stations can generally measure angles to 5 or 10 arc-seconds... A typical total station can measure distances with an accuracy of about 1·5 millimetres + 2 parts per million over a distance of up to 1,500 metres." http://en.wikipedia.org/wiki/Total_station

Notwithstanding, a median accuracy for angular measurement of between 3 and 5 seconds of arc, results in an effective accuracy, when measuring a complex polygon of land, of only 1 to 4 cm per kilometer. Certainly the accuracy of a total station was no better than this in the year 2001, when the Contract was instigated.

Used to measure a square of around 5,000 m², the maximum accuracy a total station could achieve would be 2 times 5,000 divided by 100,000 = ±0·1 m². That is only a tenth of the accuracy to which the vendor states the area of Jes's plot. The accuracy for measuring the extremely irregular plot that Jes "bought" would be very much less than this. Conventional surveying instruments could not hope to achieve anything approaching the vendor's quoted accuracy.

The vendor specifies in the "contract" - and therefore must know from a "survey" he has already carried out - the **size** of the gleba he is selling to Jes to at least 50 times the accuracy that the most advanced surveying equipment is capable of achieving. Even so, he refers to this measurement as "approximate". This implies that a “more accurate” final measurement must be made later.

A more accurate survey is technologically impossible. Even if it were possible, it would be pointless. Its only possible use could be to verify or correct the original size and demarcation given in the contract. And this is prohibited by Section 2c. The only possible function of Clause 5.1 must be to act as an impediment to the fulfilling of the contract once the buyer has finished paying.

Accuracy Required by INCRA

INCRA is the acronym for the official organization in Brazil that manages the land register. Instrução Especial INCRA/Nº 02 - 08/02/2002 - Art. 2º - states:

> "A identificação do imóvel rural, na forma do §3º do art.176 e do §3º do art.225, da Lei nº 6.015, de 31 de dezembro de 1973, alterado pela Lei n°10.267, de 28 de agosto de 2001, será obtida a partir de memorial descritivo, assinado por profissional habilitado e com a devida Anotação de Responsabilidade Técnica - ART, contendo as coordenadas dos vértices definidores dos limites dos imóveis rurais, geo-referenciadas ao Sistema Geodésico Brasileiro, e com **precisão posicional de 50 cm**, ou melhor, reservada ao INCRA a faculdade de normatizar critérios para aprimoramento dessa precisão, ou para adequá-la às áreas com particularidades topográficas."
> See: INCRA Accuracy

It is remarkable that INCRA only asks for positional distances to be measured to an accuracy of ±50 cm. This translates into an accuracy in the measurement of area to ±1m². They ask for only a tenth of the accuracy provided by a *total station* and only a hundredth of the accuracy of the "approximate" measurements given by the vendor in the "contract".

The vendor could simply have specified the size of Jes's plot in the "contract" to the nearest square metre. Then there would be no confusion. I can only suppose that he has some ill-conceived ulterior motive for specifying it to an unachievable accuracy and then referring to it as "approximate".

In 2010, I was able to do a survey of Jes's land remotely from satellite images of the Google Earth application program, within which very accurate coordinates were accessible. I have provided the full results of my satellite survey to Jes. Therefore, she has now completed her obligation under Clause 5.1 of the "contract". But, of course, this is probably not acceptable because it wasn't "done by a skilled professional with proper technical responsibility". Restrictive practice is still alive and well!

Cutting Through The Bullshit

The only opportunity Jes was ever given to "know, from having been there, the prescribed area and boundaries of her fraction, as well as the exact configuration and topography of the pledged gleba" was the view from a dirt track of a piece of impenetrable tropical forest that was pointed out as being her plot. There was no sign of any fence posts or demarcations.

This took place on 16 January 2004, when we were invited to go there with Tes as a purely social visit. The motive behind the invitation, as I later learned, was that Itamar had mistakenly assumed that, because I was a foreigner, I, *ipso facto*, had lots of money that he could possibly fleece from me to invest in his various ventures. Had this not occurred, Jes would probably never have seen "her" land at all. I don't know if any of the other victims ever saw "their" lands.

The stalwart refusal of the vendor to furnish the promised map renders me unable to believe that any survey of "Sacanagem - Fazendinhas Inteligentes" was ever carried out or any plans ever drawn. I think "Sacanagem - Fazendinhas Inteligentes" is simply a fiction that is written within the pages of the "contract" and the associated "Regulamentos".

I think the vendor bulldozed the dirt tracks simply to convince his victims that something tangible was taking form. This belief is irrefutably substantiated by the following satellite image pulled in October 2012, showing that those paths have now all been overgrown again by the forest.

Result: the vendor - a vast landowner - has taken Jes's money, which she almost certainly will never get back, and still has title and possession of the land that he "sold" to her. The same probably applies to all the vendor's other victims.

Consequently, with great sadness, I decided that Brazil was not a place where I could feel comfortable attempting to realise my ecological dream of constructing a *Fazendinha Inteligente*.

Jes and her fellow victims are just ordinary people. They do not have the enormous financial resources to be able to mount a legal battle against this leviathan of land. The Law is no use to them. So this is yet another case that has proven the following adage that I coined in my book The Lost Inheritance.

> *The purpose of the law is*
> *to facilitate and enforce*
> *the ordered and peaceful*
> *containment and exploitation*
> *of the poor by the rich,*
> *the weak by the strong,*
> *the honest by the devious,*
> *the meek by the exigent,*
> *the many by the few.*

Conclusions

In my opinion, the *contract* should be declared void and Jes should receive back all the money she paid together with interest, plus payment for the time and costs both she and I have incurred in this matter. She is just an ordinary person with an ordinary job. So sadly, the cost of unravelling this long confusing convoluted dysfunctional contract in a court of law is way beyond her personal means.

I think that the concept of the *rural condominium* is sound provided it is properly constructed - both geographically and legally. Notwithstanding, it is vital for anybody buying a piece of rural land to investigate whether or not a minimum saleable quantum is in force within the locality concerned, and its actual size. This is not easy. For instance, in Brazil, the Federal Government decrees a *maximum* size of the *módulo rural* for each State. Then each State has power to fix the actual size of the *módulo rural* for each municipality at or below the Federally-decreed maximum for that State. At least, this is the best understanding I have at the moment as to how it works!

Beware of vendors who bear long rambling contracts that are difficult to understand. In some countries there is protection for consumers against unfair contracts. However, whether or not this helps depends on whether or not - within a particular jurisdiction - an individual who buys a piece of rural land is regarded as a consumer in the same way as one who buys a washing machine.

The name of the vendor referred to in this sad case implies that it is an enterprise well established in the business of selling rural land. As such, it authored the complex voluminous contract obviously to its own advantage. The individual buyer of a *plot* within one of its condominiums has no influence over the form or wording the contract. It is therefore self-evidently unfair for the law to regard the seller and the buyer as parties of equal strength and responsibility in the contract. There should be a cheap channel through which a consumer can have a contract legally examined when there is a problem like in this case.

Always **read** the contract and make sure you **understand** all of it, the laws it refers to and all other documents - such as maps - to which it refers **before you sign it**. If you are unable to do this because the contract is too big or difficult to understand or if some of the documents referred to are not available, then turn round and **walk away**.

NEXT PREV