

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Entwistle v. The Owners, Strata Plan EPS 3242*,  
2019 BCSC 1311

Date: 20190808  
Docket: S187291  
Registry: Vancouver

In the matter of an application to the British Columbia Supreme Court  
under Section 14.12 of the *Strata Property Regulation*, B.C. Reg.  
43/2000, by Thomas Darren Entwistle, also known as Darren Entwistle,  
and Fiona Entwistle, Petitioners

Between:

**Thomas Darren Entwistle and Fiona Entwistle**

Petitioners

And

**The Owners, Strata Plan EPS3242**

Respondent

Before: The Honourable Mr. Justice Sewell

## **Reasons for Judgment**

In Chambers

Counsel for Petitioners:

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Counsel for the Registrar of Land Titles and  
the Respondent:

R. J. M. Janes, Q. C.  
J. Harman

Place and Date of Hearing:

Vancouver, B.C.  
January 17, 2019

Place and Date of Judgment:

Vancouver, B.C.  
August 8, 2019

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**Introduction**

[1] This application raises the question of the respective roles of the court and the Registrar of Land Titles New Westminster Land Title Office (the "Registrar") with respect to the rectification of strata plans registered in the Land Title Office.

[2] It arises out of a petition brought by the petitioners on June 28, 2018 (the "Original Petition") seeking the following relief:

1. A declaration that the strata plan EPS3242 and schedule of unit entitlement deposited in the Land Title Office on May 20, 2016, (the "Strata Plan") contains the following errors within the meaning of s. 14.12 of the Strata Property Regulation, B.C. Reg. 43/2000:
  - (a) All portions of common property on Sheets 15 and 16 that are marked as service common property should have been marked as storage common property;
  - (b) The portion of the common property on Sheet 16 that is marked as storage common property should have been marked as security systems room common property;
  - (c) The portion of common property on Sheet 19 that is marked as corridor common property should have been marked as gym common property;
  - (d) Instead of marking the entire roof as common property, Sheets 43 and 47 should have marked the roof deck area as limited common property appurtenant to strata lot 423, and the portion of the roof that would give access to the roof deck as part of strata lot 423, all as shown in the draft Sketch Plan attached hereto as Appendix "A"; and
  - (e) As a consequence of the failure to include the portion of the roof that would give access to the roof deck as part of strata lot 423, the schedule of unit entitlement did not accurately state the habitable area attributable to strata lot 423,(the "Errors").
2. A direction that the registrar of titles correct the Errors in the Strata Plan.
3. An order that the Petitioners have leave to apply to amend this Order to provide further direction to the registrar of titles if necessary to correct the Errors in the Strata Plan.

[3] The petitioners served the Owners, Strata Plan EPS 3242 (the "Strata Corporation") with the Original Petition. The Strata Corporation consented to the granting of the relief sought in the Original Petition.

[4] The petitioners did not name the Registrar as a respondent nor serve the Original Petition on the Registrar.

[5] The Original Petition came on for hearing in regular chambers on July 18, 2018. At that time counsel for the petitioners submitted that the only parties interested in the relief sought were the petitioners and the Strata Corporation.

[6] On July 18, 2018 I made an order (the “July 18 Order”) in the terms sought by the petitioners. The July 18 Order contained a provision giving the petitioners leave to make further application to provide further directions to the Registrar to correct the errors in the Strata Plan.

[7] However, the Registrar takes the position that he should have been served with the Original Petition and that this court did not have the jurisdiction to make the July 18 Order. He has refused to correct the errors as directed by that order.

[8] As a result of this refusal, the petitioners filed an application to have the Registrar found to be in contempt of this court. The Registrar has responded to that application and has brought his own application to have the July 18 Order set aside. The petitioners’ contempt application was adjourned generally at the hearing and I will not address it in these reasons.

### **Position of the Parties**

[9] The petitioners submit that the court had the jurisdiction to make the July 18 Order and that the Registrar was bound to comply with it in the absence of some specific defect in the instrument being rectified. The petitioners rely on *Chow v. The Owners, Strata Plan NW 3243*, 2017 BCCA 28, and say that the order was made in accordance with that decision. They also submit that the Registrar was not a necessary party to the Original Petition because no relief was sought against him.

[10] The Registrar’s position is that s. 14.12 of the *Strata Property Regulation*, B.C. Reg. 43/2000 (“Regulation 14.12”), vests the Registrar with exclusive jurisdiction to correct errors in registered strata plans and that the court lacked

jurisdiction to do so. The Registrar also submits that he was a necessary party to the Original Petition because the relief sought in it included an order requiring him to correct the registered strata plan. He submits that he is not bound by any order made without notice to him.

[11] The Registrar also submits that *Chow* was wrongly decided and in any event is distinguishable from this case because in *Chow* the Registrar had declined to act pursuant to Regulation 14.12 prior to the petition being brought.

[12] For the reasons that follow, I find that the court had jurisdiction to make the July 18 Order and that it was not necessary to give notice of the Original Petition to the Registrar.

[13] I also find that the terms of the July 18 Order should be varied to make it clear that the Registrar should correct the errors only if he is satisfied that the corrected Strata Plan continues to be in registrable form.

### **Background**

[14] Strata Plan EPS3242 (the “Strata Plan”) is a high rise residential tower which is part of a large mixed use real estate development in downtown Vancouver known as TELUS Garden. The Strata Corporation contains two penthouse strata lots, strata lots 22 and 23, which are owned by the petitioners.

[15] The petitioner Darren Entwistle entered into a contract to purchase strata lot 423 in 2012. In 2015 the petitioners and the developer agreed that if the petitioners purchased both strata lots 423 and 424 the developer would construct a deck on a portion of the roof for the exclusive use of the petitioners’ strata lots and designate that roof deck as limited common property for the benefit of strata lot 423. The petitioners and the developer also agreed that the Strata Plan would designate a portion of the roof as part of strata lot 423 to provide access to the roof deck.

[16] Up to the time of this agreement, the developer had not intended to have any access to the roof for owners of the Strata Corporation. It was therefore necessary to

change the Strata Plan to give effect to the agreed changes. In October 2015 the developer instructed the project architect to make the necessary changes.

[17] The Strata Plan was completed by May 3, 2016.

[18] On May 20, 2016, the developer filed the Strata Plan in the New Westminster Land Title Office. The Registrar accepted the Strata Plan for registration on that date.

[19] Unfortunately, the registered Strata Plan failed to give effect to the agreement between the petitioners and the developer. With respect to the roof deck, the registered Strata Plan designated the whole of the roof as common property and did not show the portion of the roof that would give access to the roof deck as part of strata lot 423. In addition the registered Strata Plan contained a number of other errors described in paras. 1(a)(b)+(c) of the Original Petition.

[20] When these errors were discovered, the petitioners filed the Original Petition seeking to correct them.

[21] After obtaining the July 18 Order, the petitioners' solicitors made an application to the Registrar on August 20, 2018 to amend the Strata Plan pursuant to that order.

[22] On September 29, 2018, the Registrar issued a notice pursuant to s. 308 of the *Land Title Act*, R.S.B.C. 1996, c. 250, declining to register the application for four reasons.

**REASON 1:**

It's not evident what statutory authority the court order is relying upon as section 14.12 of the Strata Property Act Regulations states the determination of an error on a strata plan is that of the registrar.

**REQUIREMENT:**

Clarify the statutory authority the court order is relying upon.

**REASON 2:**

It's not evident what section the designation of limited common property is pursuant to. Please clarify. Further instruments, signatures and approvals may be required. See section 74 and 257 of the Strata Property Act.

**REASON 3:**

Paragraph l(d) of the court order results in a subdivision of land which is now common property to land which will be consolidated with strata lot 423.

**REQUIREMENT:**

I require signatures of owners, approvals and amended sheets in accordance with sections 253, 259, 262 and 265 of the Strata Property Act.

**REASON 4:**

Provide a new Schedule of Unit Entitlement pursuant to sections 246 and 264, Strata Property Act executed by a British Columbia Land Surveyor and the Superintendent of Real Estate. Note: the schedule must be filed as a separate application using the Strata Property Act filing form.

[23] The solicitors for the petitioners responded to the Registrar's notice on October 22, 2018. After setting out the background leading to the July 18 Order, the solicitors submitted as follows;

1. With respect to the first reason the solicitors relied on *Chow* as authority for the proposition that the court has jurisdiction pursuant to Regulation s.14.12 to order the correction of errors in a Strata Plan.
2. With respect to reason 2 the solicitors submitted that the July 18 Order took effect prior to the date the Strata Plan was filed and there was therefore no requirement for the approval of the owners pursuant to ss. 74 and 247 of the *Strata Property Act*, S.B.C. 1988, ch. 43 (the "SPA").
3. The solicitors took essentially the same position with respect to reason 3. They submitted that the July 18 Order amended the Strata Plan "*nunc pro tunc*", that is, immediately upon the Strata Plan being signed by the developer. Therefore the approvals required for approval of a subdivision had no application because no such subdivision would result from the rectification of the Strata Plan.
4. With respect to reason 4, the solicitors proceeded to obtain the necessary amended schedule of unit entitlements brought about by the provisions of the rectified plan.

[24] On December 2, 2018, the Registrar issued a final notice stating that he was unable to proceed with the application to correct the errors.

[25] The Registrar gave written reasons for his decision. In those reasons he concluded that the Registrar had exclusive jurisdiction to decide whether to register the application to correct the errors in the Strata Plan. The Registrar distinguished *Chow* on the grounds that in that case the registrar of land title had declined to exercise his jurisdiction under Regulation 14.12.

[26] The Registrar rescinded reasons 2 and 3 of his original reasons for refusing to register. By that time it appears that the schedule required in reason 4 had been provided. Therefore, as of December 2 the only reason why the Registrar was refusing to register was his conclusion that the court had no jurisdiction to correct errors in registered strata plans.

[27] Upon receipt of the final notice the petitioners made an application to have the Registrar found to be in contempt of Court for failing to comply with the July 18 Order. In response the Registrar filed an application seeking to be added as a party in these proceedings and for an order that the July 18 Order be set aside on the grounds that the court had no jurisdiction to make the that order, that the Registrar was a necessary party to the Original Petition and that no order should have been made requiring him to take any action without giving him notice.

[28] The applications were set for a one day hearing on January 17, 2019. It became apparent that there was not sufficient time to deal with both. I therefore directed that the parties first argue the substantive question of whether I had the jurisdiction to make the July 18 2018 Order and the related question of whether the Registrar ought to have been given notice of the application that led to the order. The parties made submissions on those issues and the application to have the Registrar found in contempt was adjourned generally.



**Does the Court have the jurisdiction to Correct Errors**

[29] The starting point for analyzing this issue is to determine the basis for the remedy granted in the July 18 Order.

[30] In my view, the legal basis for the July 18 Order was the equitable jurisdiction of this court to order the rectification of documents. The Court of Appeal considered the doctrine of rectification in *Arbutus Bay Estates Ltd. v. Canada (Attorney General)*, 2017 BCCA 374. Two principles discussed in *Arbutus Bay* are relevant to this proceeding.

[31] The first is that the power of the court to rectify documents is limited to cases in which the court finds as a fact that an agreement or instrument as recorded did not accurately set out the pre-existing agreement of the parties. This is a question of fact that the court must decide after hearing all relevant evidence, tested by the adversarial process of litigation.

[32] The second is that an order for rectification acts retrospectively to the date the instrument was created. Therefore, the effect of the July 18 Order was to amend the Strata Plan as of the date it was executed, prior to the time it was submitted for registration.

[33] In this case the uncontradicted evidence is that the developer and the petitioners made the agreement alleged in the Original Petition. In addition, there is no dispute that the developer inadvertently failed to cause the Strata Plan to be prepared in accordance with that agreement. Therefore, the elements necessary to order rectification were established.

[34] It is clear from the reasons of the Registrar that he was of the view that, with certain limited exceptions, the Registrar had exclusive jurisdiction to determine both whether there was an error in the Strata Plan and whether that error should be corrected:

With respect, I remain of the view that the statutory authority to determine whether a strata plan contains errors and make any corrections under section 14.12 lies with the Registrar in the first instance, with limited exceptions which

are not applicable to this application, and that *Chow* is not broad authority for the court to exercise that jurisdiction in the first instance in place of the Registrar.

[35] In reason number 1 for his initial declining to register, the Registrar had asked the petitioners to clarify what statutory authority the court had to make the July 18 Order. In my view, in asking that question and in reaching his conclusion that he had exclusive jurisdiction he failed to consider the equitable jurisdiction of the court pursuant to s. 4 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253.

[36] In my view, this court has the jurisdiction to rectify documents that have been registered, provided that in so doing it recognizes and gives effect to the indefeasibility provisions of the *Land Title Act*.

[37] In *Arbutus Bay*, the court rectified an easement registered against the plaintiff's property. In *Banville v. White*, 2002 BCCA 239, the court expressly found that it had the jurisdiction to order rectification of a registered easement although the majority was of the view that the matter should be remitted to the trial court to determine whether the evidence supported such a remedy.

[38] In *Banville* Chief Justice Finch reviewed the authorities dealing with the court's jurisdiction to rectify documents registered in the Land Title Office. Although the majority did not agree that it was appropriate for the Court of Appeal to order rectification because that remedy had not been sought in the court below, they did agree that rectification was available. I therefore consider that Chief Justice Finch's reasons are persuasive on this issue.

[39] *Banville* has particular relevance to this case because in that case the Court of Appeal expressly found that s. 35 of the *Property Law Act*, R.S.B.C. 1996, c. 377, was not available to grant the relief sought. There was therefore no statutory authority for the amendment of the easement in question in that case. Despite this, all of the Court were clearly of the view that the court had the equitable jurisdiction to order that the registered easement be amended pursuant to its power to rectify documents.

[40] In *White v. Banville*, 2003 BCSC 606, the retrial ordered by the Court of Appeal in *Banville*, *supra*, Justice Edwards addressed the indefeasibility issue as follows;

[37] Counsel for the Banvilles argued that principles of the Torrens System, as reflected in the **Land Title Act**, precluded rectification in this case citing **Fowler v. Henry**, [1902] 10 B.C.R. 212.

[38] That neither the **Land Title Act** nor the principles of the Torrens System are a bar to rectification of a registered instrument is clear from the decision of the Court of Appeal in **Hawkes Estate v. Silver Campsites Ltd.** (1991), 79 D.L.R. (4th) 690 which considered **Fowler**.

[39] **McQuiggan v. Sharp**, [1984] B.C.J. No. 1054 (S.C.), cited by Chief Justice Finch at paragraph 30, is an example of rectification of a registered easement where the actual alignment of a road on the ground did not conform to the right of way.

[Emphasis in original.]

[41] The power of the court to order rectification of registered documents was also recognized in *Kaup and Kaup v. Imperial Oil Ltd. et al.*, [1962] S.C.R. 170. In that case the Supreme Court recognized the power of the court to order rectification of a registered instrument except when so doing would defeat the interest of a bona fide purchaser for value.

[42] However, the Registrar submits that this court lacks the jurisdiction to order the rectification of a registered strata plan because Regulation 14.12 gives only the Registrar the power to correct errors in a registered strata plan. He submits that the provisions of Regulation 14.12 vest exclusive jurisdiction in the Registrar to correct errors in plans.

[43] Regulation 14.12 provides as follows;

**Correction of errors**

**14.12** (1) In this section:

"**error**" means any erroneous measurement or error, defect or omission in a registered strata plan;

"**registered strata plan**" includes any document, deposited in the land title office, that

(a) is referred to in section 245 (a) or (b) of the Act,

(b) forms part of a strata plan under the *Condominium Act*, R.S.B.C. 1996, c. 64 or a former Act, or

(c) amends or replaces a document referred to in paragraph (a) or (b).

(2) If it appears to the registrar that there is an error in any registered strata plan, the registrar may give notice or direct that notice be given to any person, in the manner and within the time determined by the registrar, and the registrar, after considering submissions, if any, and examining the evidence, may correct the error.

[am. B.C. Reg. 241/2001, s. 3.]

[44] I do not agree that Regulation 14.12 vests exclusive jurisdiction in the Registrar to rectify registered strata plans.

[45] The effect of the Registrar's argument is that the equitable jurisdiction of the court to rectify documents has been ousted by the terms of a regulation passed pursuant to a statute dealing with strata properties. I do not consider that to be a reasonable interpretation of the regulation. Regulation 14.12 does not expressly grant exclusive jurisdiction to the Registrar to correct errors or to determine whether an error has been made. It is limited by its express terms to correcting errors in strata plans and does not address the elements of rectification. While the regulation does authorize the Registrar to conduct a limited inquiry, it does not vest authority in the Registrar to compel evidence or order cross-examination.

[46] The Registrar's submissions did not address the principles of statutory interpretation. Those principles direct that provisions in statutes must be interpreted purposively in the context of the whole of the statute. I cannot find any intention in the *SPA* or the *Strata Property Act Regulation* to deprive the court of its equitable jurisdiction to rectify documents.

[47] I am also of the view that the Registrar's interpretation of Regulation 14.12 is inconsistent with the principle of statutory interpretation that directs that statutes are not to be taken to have abrogated existing rights unless they do so in clear terms.

[48] Regulation 14.12 does not expressly oust the jurisdiction of the court to rectify documents. The Registrar therefore must be arguing that it implicitly does so.

However, I can no indication that this is the case. In *Bryan's Transfer Ltd. v. Trail (City)*, 2010 BCCA 531, the court reiterated this principle;

[49] The presumption against implicit modification of the common law has been adopted by the Supreme Court of Canada on several occasions. In *Parry Sound (District) Social Services Administration Board v. Ontario Public Services Employees Union*, 2003 SCC 42 at para. 39, [2003] 2 S.C.R. 157 [*Parry Sound*], Iacobucci J. summarized some of the Supreme Court of Canada's consideration of this principle:

To begin with, I think it useful to stress the presumption that the legislature does not intend to change existing law or to depart from established principles, policies or practices. In *Goodyear Tire & Rubber Co. of Canada v. T. Eaton Co.*, [1956] S.C.R. 610, at p. 614, for example, Fauteux J. (as he then was) wrote that "a Legislature is not presumed to depart from the general system of the law without expressing its intentions to do so with irresistible clearness, failing which the law remains undisturbed". In *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, at p. 1077, Lamer J. (as he then was) wrote that "in the absence of a clear provision to the contrary, the legislator should not be assumed to have intended to alter the pre-existing ordinary rules of common law".

[50] In *Parry Sound*, Iacobucci J. went on to find that the impugned legislation, the Ontario *Labour Relations Act*, did not clearly indicate the legislature's intentions to alter common law principles.

[49] In exercising its jurisdiction to order rectification the court must of course give effect to the rights of persons holding registered interests pursuant to the *Land Title Act* and the *SPA*. In this case the owners of all strata lots were served with the Original Petition in accordance with the requirements of the *SPA* and the Strata Corporation consented to the order which was made.

[50] In *Chow* Justice Harris addressed the jurisdiction issue as follows;

[22] There is clearly a jurisdiction for the registrar to correct an alleged error such as the one engaged in this case because what is alleged is an error or defect in a registered strata plan. The registrar may give notice to any person, examine the evidence, and consider submissions in reaching a decision about whether there has been an error, and whether and how to correct it.

[23] If that procedure had been followed here, there may have been no need to resort to a resolution under s. 257. Clearly, s. 257 is not the only way to amend a registered strata plan. Indeed, it may not be the appropriate section under which to proceed, because, as I read the section, it contemplates a procedure for amending a strata plan when there is no issue about the correctness of the plan, but where for other reasons a strata

corporation wants to change the designation of property from one status to another. In light of the existence of s. 14.12 in the *Regulation*, s. 257 is not the only means to amend a registered strata plan and, *prima facie*, is not the relevant provision for correcting errors.

[24] The registrar was asked to exercise the jurisdiction under s. 14.12 but declined, apparently because the issue was before the courts. Whether or not that is all that can be said about the reason for declining jurisdiction, the rectification issue was before the court. The “Legal Basis” portion of the respondents’ Amended Response to Petition, filed April 28, 2014, expressly sought rectification of the “mistake” as provided for under s. 14.12. I am satisfied that in these circumstances a court has the jurisdiction to deal with the issue posed by s. 14.12 and make a declaration determining rights under the section and, if the court determines there was such an error that should be rectified, pronounce an order directing the registrar to correct the record. I do not rule out the possibility that a court might refer the matter back to the registrar to exercise his or her powers under the *Regulation* and stay proceedings in the court pending that determination.

[Emphasis added.]

[51] In my view, *Chow* stands for the proposition that the court and the registrar of land titles have concurrent jurisdiction to determine whether an error has occurred in a registered strata plan and to rectify that error. The court’s jurisdiction to do so is based on its equitable jurisdiction to rectify documents and the registrar’s jurisdiction is found in Regulation 14.12.

[52] I do not accept the Registrar’s submission that *Chow* was not correctly decided. Both this court and the Registrar are bound by a considered decision of the British Columbia Court of Appeal.

[53] Alternatively, the Registrar sought to distinguish *Chow* on the basis that the registrar in that case had declined to act. With respect, it appears that the registrar in that case declined to act because the issue was already before the court (*Chow* para. 24).

[54] I also agree with counsel for the petitioners that the jurisdiction of the court cannot be said to be dependent on the decision of the Registrar whether to assume jurisdiction. It seems to me that the court either has that jurisdiction or it does not. In my view it does.

[55] I consider that the Registrar is bound by a decision of this court that any document, including a strata plan, contains an error that should be rectified. That does not mean that the Registrar has no role to play in the correction of the errors that the court has ordered should be corrected. The Registrar has the statutory power and obligation to ensure that the document as rectified can properly be registered. However, in making that determination, the Registrar must consider the document in its rectified form and direct his mind to the date on which the document was registered. In other words, the question for the Registrar is whether the rectified document was properly registrable at the time it was registered.

[56] I am also of the view that *Heller v. Registrar, Vancouver Land Registration District*, [1963] S.C.R. 229 continues to be binding authority for the proposition that it is not appropriate for the Registrar to adjudicate upon contested rights of parties for the determination of which it would be necessary to receive and weigh evidence.

[57] *Heller* considered s. 256 of the *Land Registry Act*, R.S.B.C. 1960, c. 208, which provided as follows;

256. If it appears to the Registrar

(a) that any instrument has been issued in error or contains any misdescription;

... the Registrar may, so far as practicable, without prejudicing rights conferred for value, cancel the registration, instrument, entry, memorandum, or endorsement, or correct the error in the register or instrument or any entry, memorandum, or endorsement made thereon, or in any copy of any instrument made in or issued from the Land Registry Office, and may supply entries omitted to be made.

[58] Justice Martland at 234-235 commented on the scope of the power granted to the Registrar under that section as follows;

In the first place, the power conferred on the Registrar by this section is one which he is authorized to exercise at his discretion. The section provides that, if it appears to the Registrar that certain things have occurred, he "*may*" do certain things. There is no provision in the section for an application to the Registrar by an interested party, nor is there any direction that, upon such an application, the Registrar shall proceed to exercise his powers. This is not, therefore, a provision which imposed a duty to exercise the power to enforce the right of a party, such as is mentioned by Lord Blackburn in *Julius v. Lord Bishop of Oxford*. The section, which is similar to like provisions in other

statutes in Canada creating a Torrens system of titles, is one which enables a Registrar to exercise a limited power of cancellation, or correction, where he discovers that error has occurred.

In the second place, his powers are limited by the words "so far as practicable, without prejudicing rights conferred for value". Although it appears that the consideration stated in the conveyance from the appellant to the respondent was the sum of \$1, the Registrar would not, without receiving additional evidence, be in a position to know, merely by looking at the conveyance itself, whether the rights conferred upon the respondent by the conveyance were for value or not. In my opinion, it is no part of the function of a Registrar, under this section, to adjudicate upon contested rights of parties, for the determination of which it would be necessary for him to hear, receive and weigh evidence. He can only act upon the material which is before him in his own records.

[59] I appreciate that Regulation 14.12 does give the Registrar the power to receive submissions and examine evidence. However, it is noteworthy that it does not give the Registrar the power to compel witnesses or order the production of documents. I therefore consider that *Heller* continues to be authority for the proposition that it would be inappropriate for the Registrar to attempt to adjudicate disputed questions of fact or law pursuant to Regulation 14.12.

[60] It also seems to me that there is no inconsistency between the power of the Registrar to correct errors and the power of the court to rectify documents. When faced with an application pursuant to Regulation 14.12 made pursuant to a court order for rectification, the Registrar is bound by the finding of the court that the document contained errors that should be rectified. However the Registrar must be satisfied that the rectified document is registrable.

[61] The finding of the court binds all parties to the litigation. In such circumstances there is no need for the Registrar to conduct his own investigation into the error because that issue has already been decided. The Registrar ought to give effect to the court's decision unless the effect of the rectification somehow makes the document unregistrable.

[62] In his submissions the Registrar did not expressly state whether he considered that there was any underlying substantive impediment to the correction of the errors. There was, however, some evidence that the Registrar considered that



it was open to him to inquire into how the error was made. I disagree that that enquiry was appropriate in this case. In my view the question of whether an error had occurred and that the petitioners were entitled to rectification had been determined by the court.

[63] In accordance with the principles set out in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, a decision of this court that a party is entitled to rectification is final and binding on the parties to the decision, subject only to appeal.

[64] I also find the Registrar's submission that the owners of each strata lot should have been named as parties to this proceeding to be without merit. Section 163(1) of the *SPA* provides as follows;

Strata corporation may be sued

163 (1) The strata corporation may be sued as representative of the owners with respect to any matter relating to the common property, common assets, bylaws or rules, or involving an act or omission of the strata corporation.

[65] The Original Petition relates to the common property of the Strata Corporation. Service on the Strata Corporation is therefore deemed to be good service on all of the owners. It was open to any owner to file a response to the Original Petition or to appear at the hearing. None chose to do so.

[66] I therefore find that it was appropriate for the petitioners to apply to this court for an order that the Strata Plan be rectified and that this court had the jurisdiction to make such an order.

[67] It is for the Registrar to decide whether the rectified Plan is properly registrable pursuant to the *Land Title Act* and the *Strata Property Act*. I agree with the Registrar that the July 18 Order unduly usurped his authority pursuant to Regulation 14.12. This court should not make an order that inhibits the ability of the Registrar to ensure that the instrument as rectified is registrable.

[68] In the course of argument, the petitioners suggested that any concerns about fettering the discretion of the Registrar could be addressed by amending the order to make it clear that the court was in no way seeking to usurp the jurisdiction of the

Registrar to ensure that the Strata Plan complied with the requirements applicable to all documents submitted for registration.

[69] In response the Registrar submitted that any order should be limited to directing the Strata Corporation to assist in the preparation of any documents necessary to file an application to the Registrar to correct the errors.

[70] For the reasons I have already stated, I do not accept the Registrar's submission that the power of the court is so limited. I conclude that the court has the jurisdiction to order that the Strata Plan be rectified to reflect the agreement of the parties who submitted it for registration and that the Registrar is bound by any such decision.

[71] The order made by Justice Edwards of the Supreme Court at para. 44 of his reasons in *White v. Banville* was that the rectified document be registered, once it was in a form satisfactory to the Registrar. In my view that is a more appropriate form of order than the July 18 Order.

[72] Nothing in these reasons should be taken to suggest that the Registrar does not have the jurisdiction to correct errors pursuant to Regulation 14.12. The Registrar clearly has that jurisdiction. In this case it may be that the petitioners could have applied directly to the Registrar to correct the errors without obtaining a court order. However, in my view they were not required to have the Registrar determine the question of whether the Strata Plan contained errors that should be rectified.

**Should the Registrar have been given notice of the Original Petition?**

[73] It is implicit from the reasons I have set out above that I do not consider that the Registrar was a necessary party to the Original Petition nor were the petitioners required to give him notice of the petition.

[74] The essential issue that the court was required to decide in the Original Petition was whether the petitioners had established entitlement to the equitable remedy of rectification. That issue did not involve the Registrar.

[75] The Registrar also submits that if the July 18 Order is not set aside, I have no jurisdiction to make any further order because I am *functus* after that order was entered.

[76] I am satisfied that the order I have made is authorized by paragraph 3 of the July 18 Order, which permits the petitioners to make further applications to the court with respect to correction of the errors.

**Summary of Orders Made**

[77] The July 18 Order is varied pursuant to paragraph 3 thereof by deleting paragraph 2 and substituting for it a direction that the rectified Strata Plan be registered once it is in a form acceptable to the Registrar.

[78] The Registrar's application to set aside the July 18 Order is otherwise dismissed.

[79] The parties will bear their own costs of the applications.

"Sewell J."