

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
PROPERTY LIST

S CI 2017 04200

IN THE MATTER of a restrictive covenant contained in Instrument of Transfer AM695039Q registered in the Land Titles Office in the Register Book and imposed upon the land known as 30 Banon Street, Wallan, more particularly described in certificate of title volume 11624 folio 592 kept by the Registrar of Titles under the *Transfer of Land Act 1958* (Vic)

- and -

IN THE MATTER of an application for a modification of the covenant under s 84 of the *Property Law Act 1958* by:

ALEXANDER RONALD JAMES SALIBA and
EBONY VAHER-COLENSO

Plaintiffs

ORDER

JUDGE:	The Honourable Associate Justice Mukhtar
DATE MADE:	24 November 2017
ORIGINATING PROCESS:	Originating Motion
HOW OBTAINED:	On return of the motion filed 18 October 2017 and adjourned on 16 November 2017
ATTENDANCE:	Not required. The Court was willing to make these orders 'on the papers'.
OTHER MATTERS:	The Transfer of Land to which reference is made in this order is annexed. See attached statement of reasons.

THE COURT DECLARES –

1. The restrictive covenant ('the restrictive covenant') created in the Transfer of Land AM695039Q dated 5 April 2016 ('the transfer of land') as registered under the *Transfer of Land Act 1958* (Vic) made between Darraweit Road Pty Ltd as transferor and the plaintiffs as transferee of the land in Lot 53 on Plan of Subdivision No. PS637422V being the whole of the land described in certificate of title volume 11624 Folio 592, shall be rectified in the manner specified in this order to correct a common mistake made by the parties to the transfer in the expression of part of a restrictive covenant in that transfer.



THE COURT ORDERS -

2. The restrictive covenant in the transfer of land shall be rectified by deleting in paragraph (b)(iii) the word 'excluding' and replacing it with the word 'including' as shown below, so the relevant part of the covenant states —

... DO HEREBY and as separate covenants COVENANT with the Transferor its assigns and transferees and other registered proprietor or proprietors for the time being of the land comprised in Plan of Subdivision PS637422V and every part or parts thereof (other than the Land) that the Transferees shall not:

- (a) Erect or permit to remain erected on the Land any buildings other than one single dwelling house and the usual outbuildings.
- (b) Erect or permit to remain erected a dwelling house unless:
 - (i) at least 75% of the face of each of the outer walls thereof (excluding windows and doors) are of brick, brick veneer, stone or masonry or other materials agreed by the Transferors; and
 - (ii) the roof is of tiles or other non-reflective materials or other materials approved by the Transferor; and
 - (iii) the floor area is at least 225 square metres including the outer walls thereof, but ~~excluding~~ including the area of carports, garages, terraces, pergolas and/or verandahs, and
 - (iv) the whole of the exterior facings of the dwelling house are of material not previously used in building construction; and
 - (v) the dwelling house has not been erected or constructed on any other Land prior to its erection or construction on the Land.

...

THE COURT FURTHER DECLARES -

3. The restrictive covenant as rectified shall take effect as if the rectification had been in the transfer of land at the time of its execution.

AND THE COURT FURTHER ORDERS -

4. A copy of this order and the Court's order of 16 November 2017 shall be served on the Registrar of Titles as soon as practicable.
5. The plaintiffs and the Registrar of Titles have liberty to apply to the Court for any other orders necessary, incidental or convenient for the effectuation of the



declarations made, including an application for a direction under s 103 (1) of the
Transfer of Land Act.

DATE AUTHENTICATED: 24 November 2017



ASSOCIATE JUDGE

THE HON ASSOCIATE JUSTICE MUKHTAR

ANNEXURE

Delivered by LANDATA® Land Victoria timestamp 21/04/2017 16:13 Page 1 of 4

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AM695039Q

Transfer of Land

Section 45 Transfer of Land Act 1958

Privacy Collection Statement
The information from this form is collected by the Registrar of Titles under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes.

Lodged by

Name:

Phone:

Address:

Reference:

Customer Code:

Scott Ashwood P/L
Code 1557Q

The transferor at the direction of the directing party (if any) transfers to the transferee the estate and interest specified in the land described for the consideration expressed-

- together with any easements created by this transfer;
- subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this transfer; and
- subject to any easements reserved by this transfer or restrictive covenant contained or covenant created pursuant to statute and included in this transfer.

Land: (volume and folio) **Lot 53 on Plan of Subdivision No. PS637422V being the whole of the land described in Certificate of Title VOLUME 11624 FOLIO 592**

Estate and Interest: (e.g. "all my estate in fee simple")
All its estate in fee simple

Consideration: **\$167,500-00**

Transferor: (full name) **DARRAWAIT ROAD PTY LTD ACN.602 057 009**

Transferee: (full name and address including postcode) **ALEXANDER RONALD JAMES SALIBA and EBONY VAHER - COLENZO both of 2 Cottage Crescent Kilmore 3764 as Joint Proprietors**

Directing Party: (full name)

Creation and/or Reservation of Easement and/or Restrictive Covenant

The Transferees for themselves their respective heirs executors administrators and transferees the registered proprietor or proprietors for the time being of the land hereby transferred (the Land) and of every part thereof DO HEREBY and as separate covenants COVENANT with the Transferor its assigns and transferees and other registered proprietor or proprietors for the time being of the land comprised in Plan of Subdivision PS637442V and every part or parts thereof (other than the Land) that the Transferees shall not-

30800812A

Order to Register

Duty Use Only

T2

Please register and issue the Certificate of Title to

Page 1 of 2

Signed

Customer Code

464174433956

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

AM695039Q

Transfer of Land

Section 45 Transfer of Land Act 1958

Dated:

Parties:

DARRAWAIT ROAD PTY LTD and ALEXANDER RONALD JAMES SALIBA and
EBONY VAHER - COLENSO

Signatures of the Parties

Dated:

5/4/2016

Execution and attestation:

EXECUTED by DARRAWAIT ROAD PTY LTD

ACN 602 057 009

by being signed by the persons who are
authorised to sign for the company:

Director

or Sole Company Secretary

Director/Secretary (delete one if not applicable)

Douglas Colin Newham

Full name (please print)

Full name (please print)

1811 Ramsey Road Ramsey 3431

Usual address

Usual address

SIGNED by the Transferees

in the presence of:

Witness

See Annexure page 1

30800812A

T2

Page 2 of 2

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AM695039Q

Annexure Page

Transfer of Land Act 1958

Privacy Collection Statement
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This is page 1 of T2

dated 5/4/2016

between DARRAWAIT ROAD PTY LTD and

Signatures of the Parties

ALEXANDER ROLAND JAMES SALIBA and EBONY VAHER - COLENSO

Covenant content:

- (a) Erect or permit to remain erected on the Land any buildings other than one single dwelling house and the usual outbuildings.
- (b) Erect or permit to remain erected a dwelling house unless:
 - (i) at least 75% of the face of each of the outer walls thereof (excluding windows and doors) are of brick, brick veneer, stone or masonry or other materials agreed by the Transferors; and
 - (ii) the roof is of tiles or other non reflective materials or other materials approved by the Transferor; and
 - (iii) the floor area is at least 225 square metres including the outer walls thereof, but excluding the area of carports, garages, terraces, pergolas and/or verandahs; and
 - (iv) the whole of the exterior facings of the dwelling house are of material not previously used in building construction; and
 - (v) the dwelling house has not been erected or constructed on any other Land prior to its erection or construction on the Land.(the burden of clauses (i), (ii), (iii) and (iv) shall not apply to the Land when 10 years has elapsed from the grant of a Certificate of Occupancy to a single dwelling house on the Land, first erected or constructed after the date of this transfer).
- (c) Erect or permit to remain erected any outbuilding unless:
 - (i) at least 70% of the face of each of the outer surfaces thereof (excluding windows and doors) are of brick, brick veneer, stone or masonry or non reflective materials; and
 - (ii) the total floor area of all outbuildings is no more than 60 square metres; and
 - (iii) the whole of the exterior facings of any outbuildings are of materials not previously used in building construction; and
 - (iv) the outbuildings have not been erected or constructed on any other Land prior to its erection or construction on the Land.
- (d) Erect or leave any fence within 4 metres of the street boundary of the said Lot.
- (e) Permit the nature strip at the street boundary of the land to be kept in other than a neat and tidy condition or permit any rubbish or any building debris to be placed on the nature strip.
- (f) Allow any clothesline to be visible from the road frontage of the Lot.
- (g) Permit or allow any commercial motor vehicles caravans and/or boats to be parked on the roadway or in the driveway of the Lot forward of the building line.
- (h) Subdivide the Lot.

See Annexure page 2

30800812A

A1

1. If there is insufficient space to accommodate the required information in a panel of the attached form insert the words "See Annexure Page 2" (or as the case may be) and enter all the information on the Annexure Page under the appropriate panel heading.
2. The approved Annexure Pages must be properly identified and signed by the parties to the attached form to which it is annexed.
3. All pages must be attached together by being stapled in the top left corner.

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Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

AM695039Q

Annexure Page

Transfer of Land Act 1958

Privacy Collection Statement
The information from this form is collected by the Registrar of Titles under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes.

This is page 2 of 12 dated 5/11/2016 between DARRAWAIT ROAD PTY LTD and
Signatures of the Parties ALEXANDER ROLAND JAMES SALIBA and EBONY VAHER - COLENSO

Covenant cont:

- (i) Allow or permit any car bodles or other waste or refuse to remain on the Lot.
- (j) (within twelve months of the date of this transfer) affix or place or allow to be affixed or places any form of board or notice advertising or announcing that the Lot is or might be available for sale.

AND THE benefit of the forgoing covenants and each of them shall be attached to and run at law and in equity with the land attached in the said Plan of Subdivision other than the said land and the burden thereof shall be annexed to and run at law and in equity with the said land and that the same shall be noted on and appear on every further Certificate of Title for the said land.

30800812A

A1

1. If there is insufficient space to accommodate the required information in a panel of the attached form insert the words "See Annexure Page 2" (or as the case may be) and enter all the information on the Annexure Page under the appropriate panel heading.
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Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

STATEMENT OF REASONS

MUKHTAR AsJ:

1. The plaintiffs are the joint registered proprietors of land known as 30 Banon Street, Wallan. That is the land in certificate of title volume 11624 folio 592. They were registered on 12 April 2016. They purchased the land under a Contract of Sale of Real Estate signed by the vendor on 6 February 2016.
2. Clause 9 of the Special Conditions of their contract stated, where relevant (with my underlining):

The Purchaser hereby agrees that any transfer from the Vendor of the land hereby purchased will incorporate a restrictive covenant substantially in the following terms:

The Transferee for himself his heirs executors administrators and transferees the registered proprietor or proprietors for the time being of the land hereby transferred (the Land) and of every part thereof DOTH HEREBY and as separate covenants COVENANT with the Transferor its assigns and transferees and other registered proprietor or proprietors for the time being of the land comprised in Plan of Subdivision PS637422V and every part or parts thereof (other than the Land) that the Transferees shall not:-

...

- (b) Erect or permit to remain erected a dwelling house unless:
 - (i) At least 75% of the face of each of the outer walls thereof (excluding windows and doors) are of brick, brick veneer, stone or masonry or other materials agreed by the Transferor; and
 - (ii) The roof is of tiles or non reflective materials or other materials approved by the Transferor; and
 - (iii) the floor area is at least 225 square metres including the outer walls thereof, but including the area of carports, garages, terraces, pergolas and/or verandahs; and
 - (iv) the whole of the exterior facings of the dwelling house are of material not previously used in building construction; and
 - (v) the dwelling house has not been erected or constructed on any other Land prior to its erection or construction on the Land.

(the burden of clauses (i), (ii), (iii) and (iv) shall not apply to the Land when 10 years has elapsed from the grant of a Certificate of Occupancy to a single

dwelling house on the Land, first erected or constructed after the date of this transfer).

3. A transfer of the land dated 5 April 2016 was signed by the parties. The dealing number was AM695039Q. Within the transfer under the heading 'Creation and/or Reservation of Easement and/or Restrictive Covenant', there was what appears to be a transcription of the covenant contained in clause 9 of the contract of sale, with one material exception, which is the source of the problem in this case. It concerns sub-paragraph (b)(iii). Under the contract, that sub-paragraph said (with my underlining):

...the floor area is at least 225 square metres including the outer walls thereof, but including the area of car ports, garages, terraces, pergolas and/or verandahs; and ...

Yet, under the transfer of land paragraph (b)(iii) said (with my underlining):

...the floor area is at least 225 square metres including the outer walls thereof, but excluding the area of car ports, garages, terraces, pergolas and/or verandahs; and ...

4. Restrictive covenants are recorded on title under the Torrens system of registration.
5. The plaintiffs have prepared building plans and submitted them to the Mitchell Shire Council for a Building and Planning Permit, only to be advised that a permit could not issue as their plans did not comply with the restrictive covenant concerning minimum floor area that burdens their land. The plaintiffs say that, until then, they did not know that the transfer of land contained an error in paragraph (b)(iii) where the word 'excluding' was inserted instead of the word 'including' as was agreed under the contract. Consequentially, unless the error is rectified, there will be additional costs incurred by the plaintiffs if the plans have to be amended to conform with the floor area requirement of the restrictive covenant.
6. Under clause 6 of the Special Conditions in the contract of sale, the purchaser was responsible for preparing the transfer. The contract shows the plaintiffs had solicitors acting on the sale, who are not the solicitors acting in this

proceeding. There is no evidence before the Court from the person or organisation that prepared the transfer.

7. The purchasers say their understanding based on the contract was that the restrictive covenant required them to build a house with a minimum floor area of 225 square metres *including* the area of car ports, garages, terraces, pergolas and/or verandahs. That is certainly what the contract says. And the contract says the transfer must follow the words of the contract. The mutual contractual intention is clear and manifest.

8. The vendor of the land was Darraweit Road Pty Ltd of 1811 Romsey Road, Romsey. Its sole director Douglas Colin Newnham swore an affidavit in this proceeding on 10 September 2017. He says that the presence of the word 'excluding' in the transfer of land was a mistake. He confirms the making of the contract and says of the vendor's intention –

6. Clause (b)(iii) of the proposed covenant in the contract contains a minimum building area restriction. It was the Company's intention at that time that the minimum area restriction allowed for the inclusion of the area of carports, garages, terraces, pergolas and/or verandahs. This is confirmed by the wording of special condition 9 itself.

9. He exhibits a copy of the transfer of land and says –

8. The Company in its capacity as the covenantee is satisfied that an error has occurred in the preparation of the Transfer document for Lot 53 and that the restrictive covenant shown in the Transfer does not reflect the intention of this Company.

9. The Company consents to the variation of the restriction as sought in the Originating Motion in this matter.

10. The Company seeks no compensation in relation to this matter.

10. Before these proceedings were commenced on 18 October 2017, the plaintiffs' solicitors wrote to the Registrar of Titles on 31 July 2017 and 28 September 2017. They explained the facts of the matter and looked to an administrative or internal solution, rather than court action. They enquired of the Registrar whether, as an alternative to making an application under s 84 of the *Property*

Law Act or methods under the *Planning and Environment Act*, the Registrar had administrative or inherent powers to correct errors in the register of the type that occurred here. On 2 October 2017, they received an informative response which said, where relevant –

The phone advice that you were given by the Registrar's legal adviser is correct. It appears that an application under section 88(1)(b) *Transfer of Land Act 1958* to vary the covenant is appropriate. If it is your intention to support this application with an Order made by a court under section 84 *Property Law Act*, this would seem appropriate.

The Registrar has no power to make these types of amendments on his own initiative. Unfortunately similar types of errors occur from time to time and I can, from personal observation and experience, confirm that your clients' situation is not unique.

11. Section 84 of the *Property Law Act* gives the Court a discretionary power to 'modify' a restrictive covenant, usually sought to free an owner from restrictions, but only on certain statutory grounds such as obsolescence, or no substantial injury or that the restriction impedes a reasonable use of the land. It is a statutory modification procedure that broadly speaking considers modification to matters such as character of a neighbourhood and changes over time, building type and building density, and features of the proposed building development on the burdened land.
12. The Registrar referred to the appropriateness of an application under s 88(1)(b) of the *Transfer of Land Act* to vary the covenant here, and acknowledged, without endorsing, the plaintiffs' intention to apply for an order under s 84 of the *Property Law Act* in support of the application. Section 88(1)(b) provides that subject to subsections (1AA), (1AB) and (1AC), the Registrar has the power to record on a folio of the Register 'any instrument purporting to vary or release the operation of a restrictive covenant. An 'instrument' is defined in s 4 to include 'every document registered or capable of registration under this Act or in respect of which any recording is, by this Act or any other Act, directed, required or permitted to be made in the Register.'

13. Sections 88 (1AA) and (1AB) appear to be irrelevant. They concern a restrictive covenant that was created in a plan of subdivision or consolidation or created by a planning scheme or permit under the *Planning and Environment Act*. This covenant was created otherwise, which attracts s 88(1AC). That says that the recording on a folio of a restrictive covenant may be 'deleted or amended' by the Registrar if the covenant is released or varied by, relevantly here, 'an order of the court.' As I follow the correspondence, the Registrar was saying that by operation of s 88(1)(b) which is subject to s 88(1AC) a recording on a folio of a restrictive covenant may be deleted or amended by the Registrar by amongst other means, an order of the court. The plaintiffs had in mind an application for an order of the court to modify the covenant under s 84 to therefore satisfy s 88(1AC).
14. When the motion first came before this Court, I formed the view that despite the obvious good intentions or the perceived expedience of an application under s 84 of the *Property Law Act*, it was dubious. But to my mind, the 'modification' sought is not of the type or nature that comes within the purview of s 84. The predicament here was an error by common mistake in an instrument made between two parties which needs to be corrected, and should be of no concern to anyone else in the neighbourhood but the parties to the contract.
15. I think what has occurred in this case is a paradigm example of a common mistake which would readily attract a court's equitable jurisdiction under the doctrine of rectification. The court can discern from the transfer of land itself and the surrounding evidence that 'something has gone wrong' which cannot be cured by construction. The basis of the equitable jurisdiction is to rectify mistaken expression in order to effectuate the relevant intention, and the corrected instrument is to be read as if it had been executed in its rectified form: see generally Spry, *Equitable Remedies*¹ and Meagher Gummow

¹ (9th ed, 2014) pp 632-636.

and *Lehane's Equity Doctrines and Remedies*.² In the latter work, reference is made to this statement in *Lovell & Christmas Limited v Wall*:³

The essence of rectification is to bring the document which was expressed and intended to be in pursuance of a prior agreement into harmony with that prior agreement. Indeed, it may be regarded as a branch of the doctrine of specific performance. It presupposes a prior contract, and it requires proof that, by common mistake, the final and completed instrument as executed fails to give proper effect to the prior contract.

16. The relevant intention was manifested plainly in the special conditions of the contract of sale, as now confirmed, if that be necessary, by a director of the vendor. The parties were in complete agreement about the word 'including' in the covenant, but by error the word 'excluding' was put in. Although rectification is most commonly sought over agreements, the width of the remedy means that it may be applied to a variety of classes of documents, and I can see no reason why it would not apply to a transfer of land particularly as the transfer is a concomitant of an agreement to sell and buy land.
17. By an order made on 16 November 2017, I gave the plaintiffs leave to amend the originating motion to seek an order for rectification and an ancillary order under s 103(1) of the *Transfer of Land Act* that a direction be given to the Registrar 'to do any act or make any recordings necessary to give effect to any judgment decree or order of the court'. By that means, as I saw it, the Court was attending to the apposite or fitting legal remedy to correct the error that had occurred. The conceptual problem, as I saw it, was that a *variation*, by whatever means, gave no recognition to the origin of the error that had occurred when the transfer was signed and left the error in operation until it was varied. The originating motion has now been amended in accordance with my previous order.

² (5th ed, [27-025]).

³ [1911-13] All ER Rep Ext 1630.

18. Before making an order for rectification, an important consideration in the discretion to do so is the possible availability of a statutory measure to repair the mistake. This is especially important in the field of Torrens system of indefeasible title by registration. In *Spry, Equitable Remedies* the discretionary principle is explained this way:⁴

Where statutory provisions require the registration of a document and accord it statutory force an intention may appear in the relevant legislation that rectification should no longer be open after the document has been registered, especially if a statutory procedure for modification may be available, such as a procedure for the variation of articles of association of a company. [footnote omitted] Where rectification would otherwise be appropriate it is a matter of construction whether particular statutory provisions that, for example, provide a special procedure for variation or amendment are inconsistent with the jurisdiction of the court to grant rectification or are intended to displace it. [footnote omitted]

19. In the last of those footnotes, the author states 'even if rectification remains open, the existence of other remedies is taken into account by the court in exercising its discretion'.

20. To similar effect is this statement in *Meagher, Gummow & Lehane*:⁵

An instrument executed pursuant to statute may or may not be susceptible to rectification by a court of equity. Its susceptibility to equitable correction will depend on the proper construction of the statute. A statute may contain its own means, express or implied, for correcting the instrument. Or the statute may indicate, directly or not, that rectification is contrary to the terms and purposes of the legislation.

21. The *Transfer of Land Act* has a general provision for the correction of errors, in s 103. Section 103(2)(a) states:

The Registrar may upon such evidence as appears to him sufficient correct errors in the Register or in any plan of subdivision or unregistered instrument and supply entries or recordings omitted to be made therein under the provisions of this Act, but in any such case he shall not erase, delete or render illegible the original entry or recording, and shall indicate on that entry or recording the date on which the correction or recording was made.

⁴ At 633.

⁵ [27-165].

22. Section 103(2)(b) is interesting as it goes to the effect of correction of an error back to the date on which it occurred. It says:
- Every correction recording or entry under subsection (2)(a) shall have the like validity and effect as if the error or omission had not occurred, but without prejudicing any rights accrued from any recording made in the Register prior to the actual time of correcting the error or supplying the omitted entry or recording.
23. In *Sahade v Owners Corporation SP 62022*,⁶ a case which involved a corresponding provision of the New South Wales *Real Property Act 1900*, Kunc J held that the 'errors and omissions' over which such a power was to be exercised by the Registry is not confined to errors and omissions attributable to the Registrar-General. That is, if the Registrar-General was satisfied that there was an error or omission in the Register, that error or omission does not lose its character as being capable of correction depending on the identity of the person responsible for the error or omission. His Honour also held that upon its proper construction, the scope of the power of correction is to be ascertained by reference to whether the correction of the error would impinge upon a right to which indefeasibility attached.
24. I do not re-agitate the question whether it was open to the Register here to correct the error 'internally' or 'administratively'. I think what matters for the question whether an order for rectification should be made in the face of a statute is to see s 88 as a specific provision giving the Registrar power to 'vary' the operation of a restrictive covenant. On principle therefore, if there is such a statutory power it could be said there is no occasion for a rectification order to be made. But on the very terms of s 88(1AC) to which I have already referred, the Register's power of amendment cannot be exercised without an order of a court.
25. Thus, the legal upshot in all of this is to make an order for rectification which is the relevant order on which the Registrar can act. It is not a perfect fit in

⁶ [2013] NSWSC 1791.

the sense that an order for rectification is not an order to *vary* the covenant; it is an order to *rectify* it and to rectify at the time the error was made. If the Registrar takes the view that there is no practical difference between variation and rectification for the purposes of s 88 then my order should suffice. It is only if a distinction is drawn between the two that the question of deploying s 103(1) arises which permits this Court to direct the Registrar to make amendments to the Register 'or otherwise to do any act or make any recordings necessary to give effect to any ... order of the Court'. In that regard, it was thought in decisions of this Court that s 103 should only be used as a last resort and only after exhausting any other avenue to achieving the same object. More recently, the approach has been seen as not being so strict but requiring no more than exercising the power with caution: see *Marchesi v Registrar of Titles*⁷ and *Official Trustee in Bankruptcy v Registrar of Titles*.⁸

26. I should like to adhere to the outcome of the correspondence between the plaintiffs' solicitors and the Registrar of Titles which informs that the Registrar regards s 88 as being available to meet the problem that has arisen here, as it has arisen with the very same problem in other cases. Should it be that the Registrar comes to take the view that the Court's order for rectification is by its nature and effect somehow distinguishable from a variation within the meaning of s 88, then, I think the situation can be met with an ancillary order giving the plaintiffs the right to apply subsequently for a direction under s 103(1).
27. Accordingly, I will determine this application by making an order for rectification of the transfer of land as sought. I will not pronounce on the merits or sustainability of the claim under s 84(1)(c) of the *Property Law Act*

⁷ [2010] 30 VR 397.

⁸ [2015] VSC 563.

but leave it as not necessary to decide on its merits. It is enough to restate my view that s 84(1)(c) is a dubious source to effect the rectification.

DATED: 24 November 2017
