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RECTIFICATION:

Correcting Errors in Contracts and What You Need to Know

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Intergulf Investment Corporation v. 0954704 B.C. Ltd., 2017 BCSC 430, involved a dispute between a purchaser who wanted to buy several properties in Vancouver (the “Properties”) and a seller who refused to close. The seller claimed that the Agreements of Purchase of Sale (the “Contracts”) were invalid and not legally binding since they contained errors. The plaintiff buyer, a real estate developer named Intergulf Investment Corporation, argued that the Contracts were binding, and that the seller refused to close because it subsequently received higher offers. The plaintiff further argued, namely, that any errors about the parties or the price, the Court should rectify to reflect the true intent of the parties and that the Contracts should be declared as valid and legally binding.

The Contracts had errors. They were incorrectly drafted by the seller’s real estate agent, naming the purchaser as Intergulf Development Corporation. Upon review, the plaintiff noticed the mistake and corrected “Development” to “Investment”, initialed the changes but missed several incorrect references. Using and amending the same forms and initialing the corrections to the plaintiff’s name, the defendant offered to sell the Properties by increasing the price on each by \$100,000. The seller’s real estate agent wrote this price change in the Contracts, the defendant initialed the price change, but for one of the Contracts the real estate agent wrote the purchase price incorrectly as “One Million One Hundred and Fifty” (the word “Dollars” was omitted) beside the correct numeric purchase



price, "\$1,150,000" and for another Contract wrote the purchase price incorrectly as "One Million One Hundred Thousand" beside the correct numeric purchase price "\$1,190,000." The plaintiff accepted these offers by initialing all the changes, not noticing any mistakes in the written prices.

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The Court had to decide whether to apply the principles of rectification to remedy the mistakes regarding the purchaser name and the purchase price. The Court examined the test used by the Supreme Court of Canada in its decision in *Canada (Attorney General) v. Fairmont Hotels Inc.*, 2016 SCC 56. The decision established the following:

1. Rectification is available where it is established that the written agreement, which is purportedly still in effect, does not accurately record the parties' agreement;
2. It is not available to rectify the agreement itself (such as when the parties say that the agreement has led to unintended or unexpected results);
3. The standard of proof remains the civil standard of balance of probabilities; and
4. The quality of the evidence, however, must be "clear, convincing and cogent": para. 36.

Applying this test set out by the Supreme Court of Canada, the Court decided that both the defendant and plaintiff understood and agreed that the party offering to purchase the Properties was "Intergulf Investment Corporation." Similarly, based on statements made during trial and examinations for discovery, the Court concluded that each party fully understood and agreed as to what the correct price was for each of the Properties. As such, the Judge decided that the Contracts fell within the principles set out by the Supreme Court for rectification since the parties agreed on the purchaser and the price and then "mistakenly included something else in the written contract." The Court concluded that rectification was available to correct both discrepancies and the Contracts were valid and legally binding. This case was further confirmed on appeal to the Court of Appeal for British

Columbia.

