

COURT OF APPEAL FOR ONTARIO

CITATION: DBDC Spadina Ltd. v. Walton, 2015 ONCA 624

DATE: 20150917

DOCKET: C59434

Gillese, Lauwers and Benotto JJ.A.

BETWEEN

DBDC Spadina Ltd. and those corporations listed on Schedule A hereto

Applicants (Respondents)

and

Norma Walton, Ronauld Walton, The Rose & Thistle Group Ltd. and Eglinton
Castle Inc.

Respondents (Appellants)

and

Those corporations listed on Schedule B hereto, to be bound by the result

Norma Walton, acting in person

Peter H. Griffin and Danielle Glatt, for the respondents DBDC Spadina Ltd. and
those corporations listed on Schedule A hereto

Mark Dunn, for Schonfeld Inc., Manager and Inspector

Heard: September 10, 2015

On appeal from the judgment of Justice David M. Brown of the Superior Court of
Justice, dated August 12, 2014.

ENDORSEMENT

[1] Ms. Walton appeals the judgment and order of Brown J. dated August 12, 2014 (the "Judgment"). At para. 12 of the Judgment, the motions judge ordered constructive trusts over certain properties.

[2] At the oral hearing of this appeal, Ms. Walton advised the court that she would pursue only the issues she had raised in respect of the constructive trusts. She asked that para. 12 of the Judgment be set aside and that the constructive trust matter be remitted for trial of an issue. Her wide-ranging attack on the validity of the constructive trusts included the submissions that the matter was too complex to be decided without the benefit of hearing oral evidence and that the motion judge erred by accepting the Inspector's report because he failed to understand that the methodology in that report created the potential for double recovery on the part of the Bernstein applicants. She spoke of the commingling of funds and the failure to properly trace monies in and out of the various properties.

[3] We do not accept these submissions.

[4] The motions judge correctly articulated the applicable legal principles in respect of constructive trusts. He imposed them based on the conduct of the Waltons and their companies, namely, their fraud, deceit and misappropriation of the Bernstein applicants' funds for their own personal use and in contravention of their agreements.

[5] We wholly reject the suggestion that the motions judge failed to appreciate the evidence. His reasons are a hundred pages in length. They are cogent and thorough. In them, the motions judge demonstrates a full appreciation of the issues, relevant legal principles and extensive evidentiary record.

[6] In respect of the attack on tracing, we begin by observing that the motion judge was entitled to prefer the Inspector's report and its methodology over that of Mr. Froese, the Waltons' expert. Further, it is important to note that the motion judge imposed constructive trusts over only those properties in which the Bernstein applicants' monies could be traced and commingling was not an issue.

[7] The claims process provides a mechanism to prevent double recovery, as both counsel for the Inspector and for the Bernstein applicants acknowledged.

[8] For these reasons, the appeal is dismissed with costs to the respondent fixed at \$35,000, inclusive of applicable taxes and disbursements.

R. R. Giese Jt.

Pham JA

M. L. Benotto J.A

Schedule “A” Companies

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investment Pape Ltd.
5. DBDC Investments Highway 7 Ltd.
6. DBDC Investments Trent Ltd.
7. DBDC Investments St. Clair Ltd.
8. DBDC Investments Tisdale Ltd.
9. DBDC Investments Leslie Ltd.
10. DBDC Investments Lesliebrook Ltd.
11. DBDC Fraser Properties Ltd.
12. DBDC Fraser Lands Ltd.
13. DBDC Queen’s Corner Inc.
14. DBDC Queen’s Plate Holdings Inc.
15. DBDC Dupont Developments Ltd.
16. DBDC Red Door Developments Inc.
17. DBDC Red Door Lands Inc.
18. DBDC Global Mills Ltd.
19. DBDC Donalda Developments Ltd.
20. DBDC Salmon River Properties Ltd.
21. DBDC Cityview Industrial Ltd.
22. DBDC Weston Lands Ltd.
23. DBDC Double Rose Developments Ltd.
24. DBDC Skyway Holdings Ltd.
25. DBDC West Mall Holdings Ltd.
26. DBDC Royal Gate Holdings Ltd.
27. DBDC Dewhurst Developments Ltd.
28. DBDC Eddystone Place Ltd.
29. DBDC Richmond Row Holdings Ltd.

Schedule “B” Companies

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline – 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Inc.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Development Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd.
13. Fraser Properties Corp.
14. Fraser Lands Ltd.
15. Queen’s Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.
23. Weston Lands Ltd.
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.