

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

DBDC SPADINA LTD.,  
and THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO

Applicants

and

NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE GROUP  
LTD. and EGLINTON CASTLE INC.

Respondents

and

THOSE CORPORATIONS LISTED ON SCHEDULE B HERETO, TO BE  
BOUND BY THE RESULT

**RESPONDING APPLICATION RECORD OF THE APPLICANTS**

October 3, 2013

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

**Peter H. Griffin (19527Q)**

Tel: (416) 865-2921  
Fax: (416) 865-3558  
Email: pgriffin@litigate.com

**Shara N. Roy (49950H)**

Tel: (416) 865-2942  
Fax: (416) 865-3973  
Email: sroy@litigate.com

Lawyers for the Applicants

TO: **SCHIBLE LAW**  
Suite 2200  
181 University Avenue  
Toronto, ON  
M5H 3M7

Guillermo Schible

Tel: (416) 601-6813

Fax: (416) 352-5454

Lawyers for the Respondents

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## INDEX

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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

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AND THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO  
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**AFFIDAVIT OF JAMES REITAN**

I, JAMES REITAN, in the City of Woodbridge, in the Province of Ontario,  
MAKE OATH AND SWEAR:

1. I swore an affidavit in this proceeding on October 1, 2013. I have now read the affidavit of Norma Walton sworn October 3, 2013.
2. On October 1, 2013, Norma Walton made available certain documents in respect of Dupont Developments, Double Rose Developments, Dewhurst Developments and Eddystone Place.

3. My review of those documents reveals the following.

4. There are intercompany amounts as at August 31, 2013 owed to all four companies by Rose & Thistle, in the following amounts:

a)	Dupont Developments	\$195,000
b)	Double Rose Developments	\$1,636,000
c)	Dewhurst Developments	\$584,000
d)	Eddystone Place	\$915,000

5. In respect of all four companies, Rose & Thistle transferred monies to its own account on the day or shortly after Dr. Bernstein made his initial investments:

- e) Dupont Developments – On September 4, 2012, Dr. Bernstein contributed \$2.5 million. From September 4 to 6, 2012, Rose & Thistle made multiple transfers totalling \$924,000 to itself. On September 7, 2012, \$1.576 million was transferred to Devry Smith Frank LLP for the property purchase, leaving a bank balance in Dupont Developments of \$100;
- f) Double Rose Developments – October 1, 2012, Dr. Bernstein contributed \$3.326 million. From October 1 to 5, 2012, Rose & Thistle made multiple transfers totalling \$1.526 million to itself. On October 5, 2012 \$1.797 million was transferred to Devry Smith Frank LLP for the property purchase, leaving a bank balance in Double Rose Developments of \$3,000;
- g) Dewhurst Developments – On April 15, 2013, Dr. Bernstein contributed \$1.286 million of which \$666,000 was transferred to Devry Smith Frank LLP for the property purchase and Rose & Thistle transferred \$642,000 to itself, leaving a bank balance in Dewhurst Developments of \$5,000; and
- h) Eddystone – On April 15, 2013, Dr. Bernstein contributed \$1.453 million, of which \$604,000 was transferred to Devry Smith Frank LLP for the property purchase and Rose & Thistle transferred \$866,000 to itself, leaving a bank balance in Eddystone of \$200.

6. Invoices for fees were processed as at September 30, 2013, which had the effect of reducing or eliminating the intercompany amounts otherwise owed by Rose & Thistle:

i)	Dupont Developments	\$670,000+HST
j)	Double Rose Developments	\$689,000+HST
k)	Dewhurst Developments	\$71,000+HST
l)	Eddystone Place	\$239,000+HST

7. Rose & Thistle invoices Dupont Developments \$12,500/month for maintenance fees and services. Dupont Developments has monthly revenue of \$18,000/month. The maintenance fees therefore represent 69% of the revenues generated by this Property.

8. As stated above, I have reviewed the affidavit of Norma Walton sworn October 3, 2013. I do not offer comment on Ms. Walton's affidavit, except as set out below.

9. Ms. Walton states at paragraph 4 of her affidavit that the Applicants bring this application for tactical reasons and to "create the stench of wrongdoing" in order to obtain a discount on the Properties so that they might purchase them themselves. This is not the case. The Applicants seek to understand the whereabouts of their \$110 million investment and seek the disclosure to which they are contractually entitled.

10. With respect to paragraph 10 of Ms. Walton's affidavit, I was not aware of the personal guarantees offered by the Waltons until approximately July 2013, at which time I learned that the Waltons were also collecting fees from the Projects for such guarantees. I understand from Dr. Bernstein and believe that he was also not aware of these personal guarantees.

11. At paragraph 15 of Ms. Walton's affidavit, she refers to various mortgages on certain of the Properties, held by Dr. Bernstein. Dr. Bernstein did not commit to finance the mortgages on



these properties beyond the terms of the respective mortgages. Many Properties held by the Owner Companies are financed by third party loans secured by mortgages.

12. At paragraph 17, Ms. Walton states that Dr. Bernstein's inquiries have only been made in the last 6 months. I am aware that Ziefman & Company, accountants to the Schedule A Companies, have made repeated inquiries of the Waltons for information since at least 2011, including of the type sought now.

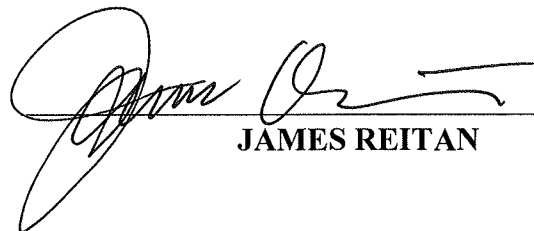
13. At paragraph 24 of her affidavit, Ms. Walton states that she and Mr. Walton have contributed approximately \$15 million in equity to the Projects. This amount reflects the approximate intercompany amount purportedly owed by the Owner Companies to Rose & Thistle and is not in the nature of any equity contribution. Ms. Walton is also in error in her calculations at paragraphs 21 and 22 of her affidavit.

14. Ms. Walton also states at paragraph 40 that it takes an average of 25 hours of bookkeeper time to update the accounting records of a single Property. Rose & Thistle employs at least three fulltime accountants, including Mario Bucci, chief financial officer, and John Geikins, both of whom have a C.M.A. designation. I would expect that these accounting records should have been kept up-to-date and should not require further accounting work.

**SWORN** before me at the City of Toronto, in the Province of Ontario, this 3<sup>rd</sup> day of October, 2013.



A Commissioner for taking affidavits  
Shara N. Roy

  
JAMES REITAN

DBDC SPADINA LTD., et al  
Applicants

-and- NORMA WALTON et al.  
Respondents

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF JAMES REITAN**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

Tel: (416) 865-2921

Fax: (416) 865-3558

Email: pgriffin@litigate.com

Shara N. Roy (49950H)

Tel: (416) 865-2942

Fax: (416) 865-3973

Email: sroy@litigate.com

Lawyers for the Plaintiff

# TAB 2

**ONTARIO  
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BETWEEN:

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**AFFIDAVIT OF HARLAN SCHONFELD**

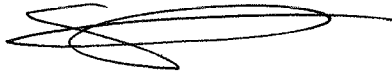
I, Harlan Schonfeld, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I swore an affidavit in this proceeding on October 1, 2013. I have now read the affidavit of Norma Walton sworn October 3, 2013.
2. On October 1, 2013, Norma Walton provided my office with documents in respect of Dupont Developments, Double Rose Developments, Dewhurst Developments, Eddystone Place.

3. Attached hereto as Exhibit "A" is an updated copy of the chart attached to my affidavit sworn October 1, 2013 as Exhibit "C" prepared by my office of the financial information made available by Ms. Walton. This updated chart includes these four additional Properties. I believe that it is accurate.

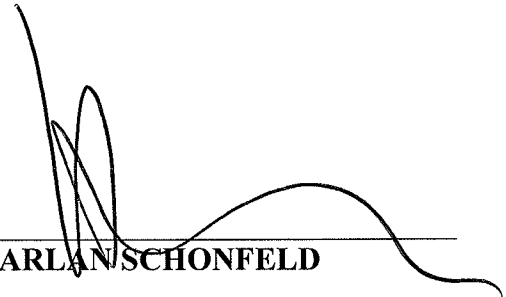
4. If appointed as Inspector, Schonfeld Inc. agrees not to seek access to any privileged information in the possession of Walden Advocates, except to the extent that the privilege belongs to the Applicants or the Schedule B Corporations.

**SWORN BEFORE ME** at the City of Toronto, in the Province of Ontario on this 3<sup>rd</sup> day of October, 2013.



Commissioner for Taking Affidavits  
*(or as may be)*

Shae N. Foy



HARLAN SCHONFELD

DBDC SPADINA LTD., et al  
Applicants

-and- NORMA WALTON et al.  
Respondents

Court File No.

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SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

Tel: (416) 865-2921

Fax: (416) 865-3558

Email: pgriffin@litigate.com

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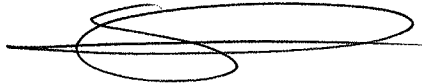
Fax: (416) 865-3973

Email: sroy@litigate.com

Lawyers for the Applicants

# TAB A

This is Exhibit "A" referred to in the Affidavit of Harlan Schonfeld  
sworn before me this 3<sup>rd</sup> day of October, 2013

A handwritten signature consisting of several overlapping loops and a horizontal line, positioned above a horizontal separator line.

---

A Commissioner for Taking Affidavits

Shea N. Roy.



Dr. Bernstein Property Investment Profile

No.	Partnership	Dr. Bernstein Holding Company	Norma/Ronald Walton Holding Company	Capital Cost			Investment				Inter-company Due to (from) Rose&Thistle	Mortgages		Revenue per P&L	Management Fee	% of Revenue	Since Inception		Project Costs	Total Paid to Rose&Thistle	Late fees and interest, mainly taxes & utilities
				Actual	Budget	Under (Over) to date	Dr. Bernstein		Norma/Ronald Walton			Mortgagor	Amount				Total % of Revenue	Maintenance Fee			
							Equity	Debt	Equity	Debt											
1	Twin Dragons Corporation	DBDC Investments Spadina Ltd.		9,971,201	8,541,000	(1,430,201)	1,120,500	0	350,000	0	1,790,944	368230 Ont Windsor	6,660,000 1,090,045	953,400	47,000	4.9%	0	4.9%	180,631	227,631	22,346
2	Banneckburn Lands Inc.	DBDC Investments Eglinton Ltd.		15,863,271	13,203,800	(2,659,471)	100	2,449,300	100	0	1,656,934	Atrium	12,000,000	3,390	0	0.0%	0	0.0%	1,791,050	1,791,050	149,234
3	Wynford Professional Centre Ltd.	2272551 Ontario Ltd		12,093,746	14,709,180	2,615,434	0	0	0	0	853,757	368230 Ont. 368230 Ont.	9,468,721 (81,339)	4,207,235	0	0.0%	0	0.0%	3,945,741	3,945,741	89,281
4	Liberty Village Lands Inc.	DBDC Investments Atlantic Ltd.		2,278,874	incl. below		100	396,636	100	0	641,400	368230 Ont.	2,000,000	0	0		0		250,000	250,000	76
5	Liberty Village Properties Ltd.	DBDC Investments Atlantic Ltd.		14,109,276	15,796,340	(591,810)	100	2,029,959	100	11,351	2,070,503	TCE Beta	13,500,000	1,469,437	63,185	4.3%	135,000 \$10,000/month	13.5%	2,561,500	2,759,685	5,811
6	Riverdale Mansinn Ltd.	DBDC Investment Pape Ltd.		3,781,787	3,940,946	159,159	100	470,373	100	0	487,871	368230 Ont.	3,000,000	0	0		60,000 \$2,500/month		1,183,981	1,243,981	3,671
7	Royal Agincourt Corp.	DBDC Investments Hwy 7 Ltd.		16,078,997	16,115,000	36,003	100	2,371,148	100	0	1,601,511	Harbour Mige	11,600,000	2,546,832	79,608	3.1%	205,000 \$10,000/month	11.2%	508,100	792,708	11,167
8	Hidden Gem Development Inc.	DBDC Investments Trent Ltd.		3,401,849	4,492,300	1,090,451	100	1,166,050	100	0	553,746	Variety Club	2,160,000	166,333	0	0.0%	0	0.0%	700,000	700,000	4,704
11	Lesliebrook Holdings Ltd.	DBDC Investments Lesliebrook Ltd.		7,185,439	0	(7,185,439)	100	1,212,728	100	0	(79,922)	IMC	5,120,347	1,241,131	52,195	4.2%	148,750 \$8,500/month	16.2%	415,000	615,945	4,141
12	Lesliebrook Lands Ltd.	DBDC Investments Leslie Ltd.		2,154,627	0	(2,154,627)	100	187,600	100	0	450,672	Atlantis	1,750,000	0	0		43,750 \$2,500/month		220,000	263,750	415
15	Queen's Corner Corp.	DBDC Queen's Corner Corp.		3,964,754	5,171,650	1,206,896	100	582,365	100	0	324,104	368230 Ont.	4,000,000	0	0		0		1,175,000	1,175,000	58
16	Northern Dancer Lands Ltd.	DBDC Queen's Plate Holdings Inc.		4,822,999	10,896,560	6,073,561	100	1,657,180	100	0	353,913	Carevest	3,270,000	5,770	0	0.0%	0	0.0%	250,000	250,000	0
17	Dupont Developments	DBDC Dupont Developments Ltd.		8,784,972	16,950,625	8,165,653	100	0	0	0	(195,925)	Millwood Mgmt	6,500,000	230,980	9,867	4.3%	159,375 \$12,500/month	73.3%	500,300	669,542	1,061
20	Global Mills Inc.	DBDC Global Mills Ltd.		24,898,758	31,020,625	6,121,867	100	6,510,213	100	0	(6,581)	Computershare	18,000,000	2,286,619	154,244	6.7%	0	6.7%	150,000	304,244	13,576
21	Donalda Developments Ltd.	DBDC Donalda Developments Ltd.		46,050,236	56,823,908	10,773,672	100	13,371,900	100	0	841,828	Otera	30,562,642	4,366,770	190,000	4.4%	237,500 \$25,000/month	9.8%	1,841,380	2,268,880	3,119
23	Cityview Industrial Ltd.	DBDC Cityview Industrial Ltd.		5,717,289	5,983,750	266,461	100	991,775	100	0	195,100	368230 Ont.	4,650,000	197,899	6,750	3.4%	42,000 \$3,500/month	24.6%	295,000	343,750	801

Dr. Bernstein Property Investment Profile

No.	Partnership	Dr. Bernstein Holding Company	Norma/Ronald Walton Holding Company	Capital Cost			Investment				Inter-company Due to (from) Rose&Thistle	Mortgages		Revenue per P&L	Management Fee	% of Revenue	Since Inception		Project Costs	Total Paid to Rose&Thistle	Late fees and interest, mainly taxes & utilities
				Actual	Budget	Under (Over) to date	Dr. Bernstein		Norma/Ronald Walton			Mortgagor	Amount				Maintenance Fee	Total % of Revenue			
							Equity	Debt	Equity	Debt											
25	Double Rnse Developments Ltd.	DBDC Double Rose Developments Ltd.		10,519,676	14,651,750	4,132,074	100	3,325,775	0	0	(1,635,841)	368230 Ont Cdn West Trust	6,500,000 1,500,000	1,507,270	67,004	4.4%	146,875 \$12,500/month	14.2%	475,000	688,879	1,833
26	Skyway Holdings Ltd.	DBDC Skyway Holdings Ltd.		3,868,544	4,305,300	436,756	100	752,550	100	0	1,050	368230 Ont	2,800,000	280,615	11,324	4.0%	29,750 \$3,500/month	14.6%	175,000	216,074	0
29	Dewhurst Developments Ltd.	DBDC Dewhurst Developments Ltd.		2,976,705	5,522,000	2,545,295	100	1,410,900	100	0	(584,450)	Abrium	2,100,000	100,002	0	0.0%	11,000 \$2,000/month	11.0%	60,000	71,000	2
30	Eddystone Place Ltd.	DBDC Eddystone Place Ltd.		2,807,099	5,040,621	2,233,522	100	1,582,710	0	0	(915,000)	Almanox Ltd	1,875,000	0	0		11,000 \$2,000/month		227,500	238,500	47
9	Ascalon Lands Ltd.	DBDC Investments St. Clair Ltd.		0	8,055,200	8,055,200	0	0	0	0	0			0							
10	Tisdale Mews Inc.	DBDC Investments Tisdale Ltd.		0	15,492,000	15,492,000	0	0	0	0	0			0							
13	Fraser Lands Ltd.	DBDC Fraser Lands Ltd.		0	51,644,125	51,644,125	0	0	0	0	0			0							
14	Fraser Properties Corp.	DBDC Fraser Properties Ltd.		0	0	0	0	0	0	0	0			0							
18	Red Door Developments Inc.	DBDC Red Door Developments Inc.		0	11,641,925	11,641,925	0	0	0	0	0			0							
19	Red Door Lands Ltd.	DBDC Red Door Lands Inc.		0	0	0	0	0	0	0	0			0							
22	Salmon River Properties Ltd.	DBDC Salmon River Properties Ltd.		0	1,674,284	1,674,284	0	0	0	0	0			0							
24	Weston Lands Ltd.	DBDC Weston Lands Ltd.		0	8,270,750	8,270,750	0	0	0	0	0			0							
27	West Mall Holdings Ltd.	DBDC West Mall Holdings Ltd.		0	17,323,125	17,323,125	0	0	0	0	0			0							
28	Royal Gate Holdings Ltd.	DBDC Royal Gate Holdings Ltd.		0	28,925,913	28,925,913	0	0	0	0	0			0							
31	Richmond Row Holdings Ltd.	DBDC Richmond Row Holdings Ltd.		0	22,515,776	22,515,776	0	0	0	0	0			0							
				201,330,099	398,708,453	197,378,354					8,405,614			681,176			1,230,000		16,905,183	18,816,360	311,343

# TAB 3

Court File No.: CV-13-10280-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	FRIDAY, THE 4 <sup>TH</sup>
	)	
JUSTICE NEWBOULD	)	DAY OF OCTOBER, 2013

B E T W E E N:

*(Court Seal)*

DBDC SPADINA LTD.,  
and THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO

Applicants

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Respondents

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**ORDER**

**THIS APPLICATION**, made by the Applicant, DBDC SPADINA LTD., and THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO, for an Order appointing an inspector under section 161(2) of the *Business Corporations Act* (Ontario), R.S.O. 1990 c.B-16, as amended, and for other relief, was heard on October 4, 2013;

**ON READING** Notice of Application dated October 1, 2013, the affidavit of James Reitan sworn October 1, 2013, the affidavit of Dr. Stanley K. Bernstein sworn October 1, 2013, the affidavit of Harlan Schonfeld sworn October 1, 2013 and the affidavit of Christopher Hunter sworn October 1, 2012, the affidavit of Anthony Palleschi sworn October 2, 2013, and the affidavit of Norma Walton sworn October 3, 2013, the affidavit of James Reitan sworn October 3, 2013, and the affidavit of Harlan Schonfeld sworn October 3, 2013, and the Exhibits attached thereto, and the facta and books of authorities, filed, and upon hearing counsel for the Applicants and the Respondents ;

1. THIS COURT ORDERS that the Respondents Norma Walton, Ronauld Walton, The Rose & Thistle Group Ltd. (“Rose & Thistle”) and Eglinton Castle Inc. are hereby restrained from, or from causing, any dealings with the underlying real estate properties (the “Properties”) held by the corporations listed on Schedule B hereto (the “Schedule B Corporations”) except in the ordinary course or for amounts not exceeding \$50,000, without the express written consent of the Applicants or further order of this Court;

2. THIS COURT ORDERS that the Respondents shall not encumber any of the Properties, without the express written consent of the Applicants or further Order of this Court;

3. THIS COURT ORDERS that Schonfeld Inc. (the “Inspector”) be and is hereby appointed as Inspector of the Schedule B Corporations, pursuant to the provisions of section 161(2) of the Business Corporations Act, (Ontario), R.S.O. 1990 c.B-16 as amended, (the “Act”), to investigate the affairs of the Schedule B Corporations, as specified hereunder.

4. THIS COURT ORDERS that the Inspector shall investigate and report to this Court no earlier than October 18, 2013 upon the financial position of the Schedule B Corporations, the Projects and the Properties, including but not limited to:

- (a) The equity and debt of the Applicants and Respondents therein, including secured debt;
- (b) The revenues and expenses thereof, including rents received and other amounts, and any intercompany amounts owed to or by the Schedule B Corporations;
- (c) Any related party transactions;
- (d) The aquisition, purchase, financing, management development and operation of the Properties; and
- (e) Tracing of any amounts to and from the bank accounts of the Schedule B Corporations and those of Rose & Thistle or other accounts under the control of the Respondents.

5. THIS COURT ORDERS that the Respondents and their affiliates and associates and their agents, servants, employees, directors and representatives, and any other persons having knowledge of this Order shall cooperate fully with the Inspector in the exercise of its responsibilities derived from its appointment herein.

6. THIS COURT ORDERS that the Respondents and their affiliates and associates and all their agents, servants, employees, directors and representatives, and any other persons having

knowledge of this Order shall upon request provide the Inspector with access to and copies of any and all letters, reports, memoranda, emails, financial records, contracts, agreements or other documents of any kind (“Documents”), including any Documents as may be stored electronically, which are relevant to the investigation ordered herein, including without limiting the generality of the foregoing:.

- (i) All records respecting each of the Properties and the Schedule B Corporations and Eglinton Castle Inc.;
- (ii) The accounting, banking and other records of Rose & Thistle, so as to reflect all dealings by which monies owned or attributable to the Properties, the Schedule B Corporations or the Applicant Corporations;

7. THIS COURT ORDERS that the Inspector may enter the premises of Rose & Thistle at 32 Hazelton Avenue, Toronto, Ontario M5R 2E2, in order to obtain all relevant information and to examine, copy or image any Documents for the purposes of the investigation.

8. THIS COURT ORDERS that the Inspector shall isolate and protect any privileged documents unrelated to the matters under investigation.

9. THIS COURT ORDERS that all lawyers acting on the purchase and financing of the Properties for any of the Respondents and the Schedule B Companies make available all requested documents to the Inspector without assertion of privilege, and in particular, without limiting the generality of the foregoing, the law firm of Devry Smith Frank LLP in respect of the mortgages on 1450 Don Mills Road and 1500 Don Mills Road and Walton Advocates.

Romanova), and that any reasonable and proper expenditure which shall be made by it in so doing shall be allowed to it in passing its accounts, provided that such appointment shall first be subject to Court approval.

15. THIS COURT ORDERS that the Inspector, or any other person, may, from time to time, apply to this Court for direction and guidance regarding the exercise of the powers of the Inspector set out herein, or to amend this Order as amended.

16. THIS COURT ORDERS that liberty be reserved to all or any interested party or parties including the Inspector to apply for such amendments of this Order or for such other Order or to seek such directions regarding the investigation ordered herein as they may be advised.

17. THIS COURT ORDERS that none of the Inspector, its officers, directors, employees, agents, or the Inspector's counsel, acting in good faith, shall be liable for any act or omission whatsoever including, without limitation, any act or omission pertaining to the discharge of duties under the *Business Corporations Act* or this Order as amended or restated from time to time, except in circumstances of gross negligence or wilful misconduct.

18. THIS COURT ORDERS that the costs of this Application shall be the subject of further submissions to this Court following the filing of the Inspector's initial report.

---

(Signature of Judge)



DBDC SPADINA LTD., et al  
Applicants

-and- NORMA WALTON et al.  
Respondents

Court File No.: CV-13-10280-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

**Peter H. Griffin (19527Q)**

Tel: (416) 865-2921  
Fax: (416) 865-3558  
Email: pgriffin@litigate.com

**Shara N. Roy (49950H)**

Tel: (416) 865-2942  
Fax: (416) 865-3973  
Email: sroy@litigate.com

Lawyers for the Applicants

DBDC SPADINA LTD., et al  
Applicants

-and- NORMA WALTON et al.  
Respondents

Court File No.: CV-13-10280-00CL

**ONTARIO  
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PROCEEDING COMMENCED AT TORONTO

**RESPONDING APPLICATION RECORD OF THE  
APPLICANTS**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

**Peter H. Griffin (19527Q)**

Tel: (416) 865-2921

Fax: (416) 865-3558

Email: [pgriffin@litigate.com](mailto:pgriffin@litigate.com)

**Shara N. Roy (49950H)**

Tel: (416) 865-2942

Fax (416) 865-3973

Email: [sroy@litigate.com](mailto:sroy@litigate.com)

Lawyers for the Applicants