

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CHRISTINE DEJONG MEDICINE PROFESSIONAL CORPORATION

Applicant

and

NORMA WALTON, RONAULD WALTON, and THE ROSE & THISTLE GROUP LTD., **UNITED EMPIRE LANDS LTD.**, PRINCE EDWARD PROPERTIES LTD., ST. CLARENS HOLDINGS LTD., AND EMERSON DEVELOPMENTS LTD.

Respondents

**AMENDED
NOTICE OF APPLICATION**

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on November 5 and 6, 2015, at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, Toronto, Ontario, M5G 1E6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date

Issued by

Local registrar

Address of

Court Office 330 University Avenue
Toronto, Ontario, M5G 1E6

- TO: **Norma Walton**
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- AND TO: **St. Clarens Holdings Inc.**
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- AND TO: **Emerson Developments Ltd.**
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AND TO: **United Empire Lands Limited**
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Courtesy Copy

AND TO: Lenczner Slaght Griffin LLP
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Counsel to the Respondents, DBDC Spadina Ltd. and those
Corporations listed on Schedule A hereto

APPLICATION

1. The Applicant makes Application for:

- a) An Order lifting the stay of proceedings referred to in paragraphs 9 and 10 of the Order of Justice Newbould dated September 12, 2014, appointing Ira Smith Trustee & Receiver Inc., to permit Christine DeJong Medicine Professional Corporation, ("CDJ"), as an owner and creditor of United Empire Lands Ltd., ("UEL"), Prince Edward Properties Ltd. ("Prince Edward"), St. Clarens Holdings Inc. ("St. Clarens") and Emerson Developments Ltd. ("Emerson") to proceed in respect of the within Application;
- b) An Order that the Respondents forthwith provide full and unrestricted access to, or a Direction to those persons holding same relative to, the accounting, banking and other records of UEL, Prince Edward, St. Clarens, Emerson and The Rose & Thistle Group Ltd., ("Rose & Thistle");
- c) An Order requiring the Respondents, and any of them, to produce all records respecting the acquisition, purchase, financing, management, development and operation of 3270

American Drive, 324 Prince Edward Drive, 777 St. Clarens Avenue and 260 Emerson Avenue, Toronto, (the "Properties");

d) A declaration that the Respondents have fraudulently conveyed the monies of the Applicant to themselves and other companies, properties and projects in which they are involved such that the Properties or proceeds thereof are subject to a constructive and/or resulting trust from the date of their purchase by the Respondents, UEL, Prince Edward, St. Clarens and Emerson, in favour of the Applicant;

di) A declaration that the Respondents are fiduciaries of the Applicant and further a declaration that the Applicant's damages are caused by the fraud and misappropriation committed by the Respondents while acting in their capacity as fiduciaries, pursuant to s. 175(1)(d)&(e) of the *Bankruptcy and Insolvency Act*, RSC, 1985 c. B-3.

e) An Order tracing the Applicant's funds. ~~to and through the accounts of UEL, Prince Edward, St. Clarens, Emerson, Rose & Thistle and the personal accounts of Norma Walton and/or Ronald Walton into the Properties;~~

f) A declaration that the Properties in which the Respondents have an interest and/or the proceeds from the sale of said properties are subject to a constructive trust and/or resulting trust from the date of purchase in favour of the Applicant;

g) An Order claiming the proceeds of the Properties as proceeds of the funds from the Applicant;

h) An Order that the issued and outstanding shares in UEL, Prince Edward, Emerson and St. Clarens held by the Respondents, Norma and/or Ronald Walton, be cancelled or

reduced as the case may be where shareholder equity has not been contributed by them;

- i) An Order for restitution and repayment to the Applicant by the Respondents or any of them in the amount of ~~\$1,481,526~~ \$2,198,232 for breach of contract and/or unlawful misappropriation and/or unjust enrichment;
- j) The costs of this Application; and,
- k) Such further and other relief as to this Honourable Court may seem just.

2. The grounds for the Application are:

- a) Norma Walton is a lawyer and a member of the Law Society of Upper Canada. She is a co-founder, along with her husband, Ronald Walton, of Rose & Thistle. Ms. Walton is a principal and president of its subsidiary, Rose & Thistle Properties.
- b) Ronald Walton is a lawyer and a member of the Law Society of Upper Canada. He is a co-founder, along with his wife, Norma Walton, of Rose & Thistle and officer of its subsidiary, Rose & Thistle Properties.
- c) Rose & Thistle is a holding company incorporated pursuant to the laws of the Province of Ontario. It and various subsidiaries are engaged, inter alia, in real estate development, management and construction.
- d) UEL, Prince Edward, St. Clarens and Emerson are corporations incorporated pursuant to the laws of the Province of Ontario, (the "Companies"). The Companies are owned 50% by CDJ and 50% by Norma Walton and/or Ronald Walton. They were

incorporated for the purpose of purchasing commercial real estate properties jointly between CDJ and the Waltons, (the “Project”).

di) In December of 2012, CDJ Inc. entered into an Investment Agreement with Ronald and Norma Walton (the “Waltons”) and relative to UEL wherein CDJ Inc. and the Waltons would each own half of the common shares of UEL and in respect of which each were to contribute the sum of \$716,906 which funds were to be utilized to purchase 3270 American Drive. CDJ Inc. provided the required funds on January 28, 2013. The Waltons did not make their contribution and, moreover, granted an unauthorized second mortgage securing the sum of \$670,000 on the property.

e) In January of 2013, CDJ entered into an Investment Agreement with Ronald and Norma Walton (the “Waltons”) and relative to Prince Edward wherein CDJ and the Waltons would each own half of the common shares in the company and in respect of which would each contribute \$816,019.00 to the company, Prince Edward, as a shareholder’s loan for the purpose of purchasing, renovating, completing leasehold improvements and occupying 324 Prince Edward Drive.

f) In or about December of 2013, CDJ entered into joint ownership agreements in respect of St. Clarens and Emerson in respect of same, CDJ acquired 100 common shares in each company in consideration for the sum of \$665,307.00.

g) CDJ and the Waltons were each to own 100 shares in each of St. Clarens and Emerson in consideration for the provision of the sum of \$665,307.00 each to the companies as shareholder loans for the purpose of purchasing, renovating, completing leasehold improvements and occupying the property.

- h) CDJ conducted itself in accordance with each of the agreements and provided the funds as agreed: the Walton Respondents did not.
- i) CDJ and the Waltons entered into separate agreements for each Project which provided as follows:
 - i) A new company would be incorporated for each project (the “Owner Company”);
 - ii) CDJ would hold 50% of the shares of the Owner Company;
 - iii) The Waltons would hold the other 50% of the shares of the Owner Company;
 - iv) Each of CDJ and the Waltons would contribute an equal amount of equity to the Project which was to inject as a shareholders’ loan;
 - v) The Waltons would manage, supervise and complete the Project;
 - vi) The Waltons agreed to be responsible for the finances, bookkeeping, accounting and filing of tax returns, amongst other things, of the Owner Company;
 - vii) The Owner Company was to have a separate bank account; and,
 - viii) CDJ would not be required to play an active role in completing the Project but its approval would be required for any decisions concerning the selling or refinancing of the property and any decisions concerning the increase in the total amount of equity required to complete the Project;
- j) A review of CDJ’s investments in the projects revealed that:
 - i) The Waltons were not making their portion of the equity investments into the Properties;

- ii) The Waltons were engaged in significant related party transactions in respect of the Projects and did not advance shareholder loans;
 - iii) The Applicant overpaid for the investments;
 - iv) The Waltons misappropriated funds unjustly enriching themselves and/or corporations in which they had an interest to the detriment of the Applicant;
 - v) As a result of the Waltons not making their portion of the debt and equity investment into the Properties, CDJ is entitled to the net proceeds from the sale of the Properties;
 - vi) CDJ was not receiving accurate reporting and specifically reporting the absence of the full equity contribution by the Waltons, the failure to advance shareholder loans, undisclosed assignment fees being funded by the Applicant, converting funds contributed by the Applicant to unauthorized uses and to other properties; and
- k) S-248 of the *Ontario Business Corporations Act* and Rule 14.05(2) of the *Rules of Civil Procedure*.

3. The following documentary evidence will be used at the hearing of the application:

- a) The Affidavits of Christine DeJong, sworn February 11, 2015 and October 7, 2015,
- b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

Date: October 7, 2015
February 11, 2015

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