

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

and

NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE GROUP
LTD., EGLINTON CASTLE INC., and THOSE CORPORATIONS LISTED ON
SCHEDULE C HERETO
Respondents

and

THOSE CORPORATIONS LISTED ON SCHEDULE B HERETO AND THE
REAL PROPERTY LISTED ON SCHEDULE C HERETO, TO BE BOUND BY
THE RESULT

and

SUCH OTHER RESPONDENTS FROM TIME TO TIME AS ARE ON NOTICE
OF THESE PROCEEDINGS AND ARE NECESSARY TO EFFECT THE
RELIEF SOUGHT

THIRD FRESH AS 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 a date to be set by a judge of the Superior Court of Justice presiding at the court house, 393 University Ave, 10th Floor, Toronto, ON, 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 Ave, 7th Floor
Toronto, ON, M5G 1R7

APPLICATION

1. The Applicants, DBDC Spadina Ltd., and those Corporations listed on Schedule A hereto, make an Application for:
 - (a) An order abridging the time for delivery of this Notice of Application and supporting materials pursuant to Rule 3.02 of the *Rules of Civil Procedure*, and providing that this application and the companion motion to appoint a manager be properly returnable on October 25, 2013;
 - (b) An order, if necessary, validating and/or dispensing with service on some or all of the responding or other parties;
 - (c) A mandatory order restraining Norma Walton, Ronauld Walton, The Rose & Thistle Group Ltd. (“Rose & Thistle”) and Eglinton Castle Inc. (collectively, the “Respondents”) from, or from causing, any dealings with the underlying real estate properties (collectively, the “Schedule B Properties”) held by the corporations listed on Schedule B (collectively, the “Schedule B Corporations”) without the agreement of the Applicants or a further Order of this Honourable Court;
 - (d) A declaration that the Respondents have fraudulently conveyed the assets and monies of the Schedule B Corporations to themselves and other companies, properties and projects in which they are involved;
 - (e) A mandatory order restraining the Respondents from further encumbering any of the properties without written consent of the Applicants or further Order of this Honourable Court;

- (f) An order appointing Schonfeld Inc. as Inspector pursuant to Section 161(2) of the *Business Corporations Act*, R.S.O. 1980, c.B.16, as amended (the “OBCA”) upon the basis that the business and affairs of the Schedule B Corporations have been carried on or conducted in a manner that is oppressive, is unfairly prejudicial to and unfairly disregards the interests of the Applicants in the Schedule B Corporations;
- (g) An order under Section 248(3)(b) of the OBCA and/or Section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43 (“CJA”) appointing Schonfeld Inc. as manager (“Manager”) over all the assets, undertakings and properties of the Schedule B Corporations, including the bank accounts of those entities at Meridian Credit Union;
- (h) An order under Section 248(3)(b) of the OBCA and/or Section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43 (“CJA”) appointing Schonfeld Inc. as manager (“Manager”) over the following properties where Dr. Stanley Berstein is a secured creditor:
 - (i) 232 Galloway Road;
 - (ii) 295 The West Mall;
 - (iii) 65 Front Street East;
 - (iv) 450 Pape Ave.;
 - (v) 47 Jefferson Ave.; and
 - (vi) 1/9-11 City View Drive;
- (i) An order that the Manager may appoint a property manager or other professional services firm to assist it in performing its duties, including but not limited to one or more of:

- (i) DMS Properties;
- (ii) Sterling Karamar; and
- (iii) Briarlane Property Rental Management Inc.;

- (j) An order enjoining the Respondents from advising creditors not to make payments to the Schedule B Companies in the ordinary course;

- (k) An order that the Respondents provide a full accounting of all monies received and disbursed by the Schedule B Companies and The Rose & Thistle Group Ltd. since September 2010;

- (l) An order that the Respondents disgorge to the Schedule B Companies all amounts which they have, directly or indirectly, improperly taken or removed;

- (m) An order that Norma Walton and Ronald Walton shall, if demanded, make the equity investments as required by the agreements in respect of the Schedule B Companies and the Properties;

- (n) An order that the Respondents shall make the Applicants whole for all amounts owed in respect of mortgage proceeds, equity investments, shareholders loans and interest in respect of the Schedule B Companies and the properties owned by the Schedule B Companies;

- (o) An order that the issued and outstanding shares in the Schedule B Companies held by the Respondents be cancelled where shareholder equity has not been contributed by them;

- (p) An order for restitution and repayment to the Applicants and/or the Schedule B Companies as appropriate by the Respondents in respect of the fees of Schonfeld Inc., in its capacity as Inspector and Manager in this proceeding, and of its counsel Goodmans LLP;
- (q) An order that the Respondents disclose by October 28, 2013 the municipal addresses of all of the properties associated with any companies identified in Schedule M of the First Interim Report of the Inspector;
- (r) An interim order directing the Respondents to disclose any agreements not heretofore disclosed to cross-collateralize any obligations of the Schedule B Companies, the Schedule C Properties or 44 Park Lane Circle, Toronto, Ontario;
- (s) An interim Certificate of Pending Litigation and a blanket charge respecting the property municipally known as 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest;
- (t) A declaration that the property at 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest and/or the proceeds from the sale of 44 Park Lane Circle, Toronto, Ontario and/or the Schedule C Properties in which the Respondents have an interest are subject to a constructive and/or resulting trust or equitable lien from the date of purchase in favour of the Applicants;
- (u) An order tracing the funds from the Applicants to and through the accounts of the Schedule B Companies, the accounts of the Respondent the Rose & Thistle Group

Ltd., the personal accounts of the Respondents Norma and/or Ronauld Walton, the trust account of Walton Advocates and/or the trust account of Devry Smith Frank LLP and otherwise into 44 Park Lane Circle, Toronto, Ontario and/or the Schedule C Properties;

- (v) An order claiming 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest as proceeds of the funds from the Applicants;
- (w) An order that the Applicants may seize and sell 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest, subject to the enforceable rights of properly prior registered charges and liens on the properties;
- (x) An order that Schonfeld Inc. be appointed as Manager of the Schedule C Properties in which the Respondents have an ownership interest for the purposes of the relief sought above;
- (y) An order that Schonfeld Inc. be appointed as Receiver over the Respondents Norma Walton and Ronauld Walton for the purposes of ensuring payment in accordance with any judgment of the Court in this proceeding;
- (z) An order that the Respondents forthwith provide full and unrestricted access to the Inspector of:
 - (i) All records respecting each of the Properties (as defined below) and the Schedule B Corporations and Eglinton Castle Inc.; and

- (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;

- (aa) An order authorizing the Inspector to enter the premises of Rose & Thistle at 32 Hazelton Avenue, Toronto, Ontario M5R 2E2, in order to obtain all relevant information and to examine any records, including accounting and bank records and any other records, therein and to make copies of all such documents for the purposes of the investigation;

- (bb) An order requiring the Respondents, and any of them, to produce all records respecting the acquisition, purchase, financing, management, development and operation of the Schedule B Properties to the Inspector;

- (cc) An order requiring that all lawyers acting on the purchase and financing of the Schedule B 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;

- (dd) An order requiring the Respondents to pay the costs of the Inspector, Manager and property manager;

- (ee) An order granting all necessary directions to the Inspector/Manager;

- (ff) An order that the Inspector provide an interim report to this Honourable Court on or before October 15, 2013;
- (gg) An order approving the reports of the Inspector/Manager;
- (hh) A further order restraining the Respondents from interfering with the work of the manager, including but not limited to the marketing and sale of the properties owned by the Schedule B Companies;
- (ii) An order awarding the Applicants damages in the amount of \$71.2 million against the Respondents;
- (jj) An order awarding the Applicants damages in the amount of \$22.6 million jointly and severally against the Respondents and the Schedule C Company Respondents (defined in more detail below);
- (kk) A declaration that the Applicants' damages were caused by the fraud and/or misappropriation of the Respondents while acting in their capacity as fiduciaries, pursuant to s. 175(1)(d) and (e) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3;
- (ll) The costs of this application and inspectorship/managership; and
- (mm) Such further and other relief as to this Honourable Court may seem just.

2. The Applicants claim against the Schedule C Company Respondents (as defined in more detail below):

- (a) An order awarding the Applicants damages in the amount of \$22.6 million jointly and severally against all of the Schedule C Company Respondents;

- (b) In the alternative, an order awarding the Applicants damages against the following Schedule C Company Respondents in the following amounts:
 - (i) 1780355 Ontario Inc.: \$1,611,359;

 - (ii) 6195 Cedar Street Ltd.: \$556,135;

 - (iii) Atala Investments Ltd.: \$139,139;

 - (iv) Bible Hill Holdings Inc.: \$172,050;

 - (v) Cecil Lighthouse Ltd.: \$776,050;

 - (vi) The Old Apothecary Building: \$1,285,721; and

 - (vii) United Empire Lands Ltd.: \$337,600;

- (c) Such further and other relief as to this Honourable Court may seem just.

3. The grounds for the Application are:

PARTIES

- (a) The Applicants, DBDC Spadina Ltd. and those Corporations listed on Schedule A hereto, are all corporations incorporated pursuant to the laws of Ontario. They are beneficially owned by Dr. Stanley Bernstein (“Dr. Bernstein”);
- (b) Norma Walton (“Ms. Walton”) is a lawyer and a member of the Law Society of Upper Canada. She was a co-founder, along with her husband, Ronauld Walton, of The Rose & Thistle Group Ltd. (“Rose & Thistle”) and President of its subsidiary, Rose & Thistle Properties. Ms. Walton was a principal of Walton Advocates, an in-house law firm and trade mark agent that provided litigation, corporate and real estate legal services to the Rose & Thistle group of companies. She has faced two disciplinary hearings before the Law Society of Upper Canada related to her financial dealings with clients. Ms. Walton is currently suspended from the practice of law;
- (c) Ronauld Walton (“Mr. Walton”) is a lawyer and a member of the Law Society of Upper Canada. He is a co-founder, along with Ms. Walton (collectively, the “Waltons”), of Rose & Thistle and President of its subsidiary, Rose & Thistle Properties. Mr. Walton was a principal of Walton Advocates, an in-house law firm and trade mark agent that provided litigation, corporate and real estate legal services to the Rose & Thistle group of companies. Mr. Walton is currently suspended from the practice of law;

- (d) Rose & Thistle is a holding company incorporated pursuant to the laws of Ontario. It and its various subsidiaries were engaged *inter alia* in the development, management and construction of real estate. It is owned, to the knowledge of the Applicants by the Waltons;
- (e) Eglinton Castle Inc. is a corporation incorporated pursuant to the laws of Ontario. It is owned, to the knowledge of the Applicants, by the Waltons;
- (f) The Corporations listed on Schedule B hereto are all corporations incorporated pursuant to the laws of Ontario (collectively, the “Schedule B Companies”). They were each intended to be owned 50% by Dr. Bernstein (or one of the Corporations listed on Schedule A hereto) and 50% by the Waltons (or Eglinton Castle Inc.) as described below;
- (g) The Schedule B Companies were incorporated for the purpose of purchasing and/or holding commercial real estate properties jointly between Dr. Bernstein and the Waltons (collectively, the “Schedule B Properties”);
- (h) The properties listed at Schedule C to the Notice of Application are properties owned directly or indirectly by the Waltons and, in some cases, other investors (collectively, the “Schedule C Properties”);
- (i) The Respondent companies listed at Schedule C to the Notice of Application (collectively, the “Schedule C Company Respondents”) are a group of companies controlled and/or owned by the Waltons. The Schedule C Company Respondents were incorporated to hold the Schedule C Properties;

- (j) The Schedule C Investors are shareholders who claim to have invested with the Waltons by purchasing shares in those Schedule C Companies that were incorporated for the purpose of purchasing and/or holding Schedule C Properties;
- (k) Christine and Michael DeJong and their related entities (collectively, the “DeJongs”) are Schedule C Investors;
- (l) The DeJongs have brought an application with respect to, *inter alia*, their entitlement to the proceeds of sale of four Schedule C Properties: 324 Prince Edward Drive; 777 St. Clarens Avenue; 260 Emerson Avenue and 3270 American Drive;

THE INVESTMENTS

- (m) Beginning in 2008, Dr. Bernstein acted as the lender/mortgagee of several commercial real estate properties owned by the Respondents, either through their company Rose & Thistle or through other corporations of which the Respondents are the beneficial owners;
- (n) Following several financings, Dr. Bernstein and the Waltons agreed to invest jointly in various commercial real estate projects;
- (o) From 2010 to 2013, Dr. Bernstein through his corporations advanced approximately \$111 million into 31 projects, structured as equity of \$81.6 million and mortgages and loans of \$29.5 million;

- (p) In connection with these equity contributions, Dr. Bernstein and the Waltons entered into separate agreements for each project (collectively, the “Agreements”), each of which provided as follows:
- (i) A new company would be incorporated for each project (the Schedule B Company);
 - (ii) Dr. Bernstein (through a company incorporated for this purpose) would hold 50% of the shares of the Schedule B Company;
 - (iii) The Waltons (either directly or through a company incorporated for this purpose) would hold the other 50% of the shares of the Schedule B Company;
 - (iv) Each of Dr. Bernstein and The Waltons would contribute an equal amount of equity to the purchase and development of the Schedule B Property (the “Project”);
 - (v) The Waltons would manage, supervise and complete the Project for an additional fee;
 - (vi) The Waltons were to be responsible for the finances, bookkeeping, accounting and filing of tax returns, among other things, of the Schedule B Company;
 - (vii) Each Schedule B Company was to have a separate bank account;

- (viii) Dr. Bernstein would not be required to play an active role in completing the Project, but his approval would be required for:
 - (1) Any decisions concerning the selling or refinancing of the Schedule B Property;
 - (2) Any decisions concerning the increase in the total amount of equity required to complete Project; and
 - (3) Any cheque or transfer over \$50,000;
- (ix) The Waltons would provide Dr. Bernstein with:
 - (1) Ongoing reports on at least a monthly basis detailing all items related to the Schedule B Property;
 - (2) Copies of invoices for work completed on the Project monthly;
 - (3) Bank statements monthly; and
 - (4) Listing of all cheques monthly;
- (x) Dr. Bernstein and Ms. Walton were to be the sole directors of the Schedule B Company;
- (q) Each agreement provided that the Schedule B Company would only be used to purchase, complete and refinance the Schedule B Property or such other matters solely relating to that particular Project and Schedule B Property;
- (r) The Applicants advanced funds pursuant to these Agreements;

THE WALTONS' MISCONDUCT IS REVEALED

- (s) A review in June 2013 of Dr. Bernstein's equity investments in the Schedule B Companies revealed that:
- (i) The Waltons were not making their portion of the equity investments into the Schedule B Properties;
 - (ii) The Waltons appeared to be taking on third party investors in the Schedule B Companies;
 - (iii) The Waltons were engaged in significant related party transactions in respect of the Schedule B Companies and/or Properties;
 - (iv) Dr. Bernstein's approval was not being sought for any the matters set out in subparagraph (p)(viii) above; and
 - (v) Dr. Bernstein was not receiving any of the required reporting, as set out in paragraph subparagraph (p)(ix) above; and
 - (vi) As a result of the Waltons not making their portion of the equity investments in the Schedule B Properties, many of Dr. Bernstein's content, to interest bearing shareholder loans;
- (t) Dr. Bernstein caused a letter to be sent to Ms. Walton on June 13, 2013 setting out these concerns;
- (u) Following an unresponsive letter from Ms. Walton, further requests were made, but not responded to or only partially responded to;

- (v) Dr. Bernstein caused title searches to be run on all the Schedule B Properties. Those title searches revealed that additional mortgages totaling \$6 million had been placed on two of the Schedule B Properties, 1450 and 1500 Don Mills Rd., without Dr. Bernstein's knowledge or consent. Ms. Walton had failed to provide sufficient further information regarding the mortgages, including the loan documentation and information about the whereabouts of the funds;
- (w) Ms. Walton stated that she would provide information regarding the mortgages only in the context of a without prejudice mediation;
- (x) On September 17, 2013, Peter Griffin, counsel for Dr. Bernstein, DBDC Spadina Ltd. and the corporations listed on Schedule A to the Notice of Application, sent a letter to Ms. Walton requesting further information regarding the Projects. Among other things, he requested information regarding two additional mortgages of approximately \$3 million each that had been taken out on 1450 Don Mills Rd. and 1500 Don Mills Rd., without Dr. Bernstein's knowledge or approval. Mr. Griffin also requested access to the information The Waltons are contractually obliged to provide to Dr. Bernstein;
- (y) On September 20, 2013, Jim Reitan, Director of Accounting and Finance at Dr. Bernstein Diet and Health Clinics, attended at the offices of Rose & Thistle, along with Harlan Schonfeld and Jim Merryweather of Schonfeld Inc. Schonfeld Inc. was appointed by Dr. Bernstein to conduct a review of the various Schedule B Companies, in which Dr. Bernstein has an interest. Among the matters Schonfeld

Inc. was tasked with reviewing were the two \$3 million mortgages on 1450 Don Mills Rd. and 1500 Don Mills Rd.;

- (z) Ms. Walton sent various correspondence purporting to support her explanation for the additional mortgages. That correspondence did not respond fully or satisfactorily to the information requested;
- (aa) Schonfeld Inc. traced the proceeds of the \$6 million in mortgages to the Waltons, the Rose & Thistle's other businesses, various other investments held by the Waltons and various other Schedule B Companies;
- (bb) Monies have been traced from Schedule B Companies to the Waltons' home and various Schedule C Properties;
- (cc) Ms. Walton effected the sale of various Schedule B Properties without Dr. Bernstein's consent after October 4, 2013;
- (dd) Ms. Walton continued to make disbursements and payments from the Schedule B Companies in excess of \$50,000 without Dr. Bernstein's knowledge or consent after October 4, 2013;
- (ee) Ms. Walton has refused to repay the principal amount of mortgages owed to Dr. Bernstein which terms have expired;
- (ff) Ms. Walton has discharged a mortgage over the property known municipally as 232 Galloway Rd., Toronto without Dr. Bernstein's knowledge or consent where the principal amount of the mortgage has not been repaid;

THESE PROCEEDINGS

- (gg) On September 20, 2013, Dr. Bernstein appointed Schonfeld, Inc. to gather information related to the Schedule B Properties and the Schedule B Companies. However, even then the Waltons did not grant Schonfeld complete access to the documents related to 22 of 31 projects;
- (hh) In light of this conduct, the Applicants commenced an application on October 1, 2013, for various relief, including the appointment of an Inspector over the Schedule B Companies;
- (ii) On October 4, 2013, Justice Newbould found that the Waltons had engaged in conduct that was oppressive and unfairly prejudicial to the Applicants' interests. His Honour appointed Schonfeld Inc. as Inspector over the Schedule B Companies;
- (jj) The Order empowered Schonfeld to conduct a thorough investigation of the Schedule B Companies. The Order also required that Ms. Walton fully cooperate with the Inspector;
- (kk) Since this proceeding was commenced and the Inspector/Manager appointed, the Respondents have:
 - (i) Failed to cooperate, including to provide the information and documentation requested by the Inspector in a timely manner;
 - (ii) Refused to provide an accounting, as requested by the Order of Justice Newbould, dated October 25, 2013; and

- (iii) Organized their affairs to defeat the claims of Dr. Bernstein in favour of themselves and various so-called “preferred-shareholders” and other creditors, most of whom have no genuine claim to the status that they now assert. Many are related to the Respondents and their business;

- (ll) On July 16-18, 2014, the Honourable Justice D.M. Brown heard a motion brought by the Applicants for various relief, including claims for damages against the Respondents, for constructive trusts over various Schedule C Properties and other relief;

- (mm) By Order dated August 12, 2014, Justice Brown ordered:
 - (i) Leave to issue and serve a Fresh as Amended Notice of Application, in the form attached to the Applicants’ Consolidated Notice of Motion, dated June 13, 2014;

 - (ii) Constructive trusts with respect to eight of the Schedule C Properties in the total amount of \$8.2 million;

 - (iii) A tracing of the funds contributed by the Applicants to the Schedule B Companies;

 - (iv) Cancellation of the Respondents’ shares in the Schedule B Companies in which they had not contributed shareholder equity;

 - (v) An expansion of the managers’ mandate to include the Schedule C Properties and the Schedule C Companies;

- (vi) A number of ancillary heads of relief, including the appointment of a Receiver over the personal affairs of the Waltons;
- (vii) Damages in the amount of \$1,518,750 in respect of the mortgages that the Respondents discharged from title of the property at 232 Galloway Road;
and
- (viii) Costs in the amount of \$472,639.51;
- (nn) Justice Brown was not prepared at the time to grant the Applicants' relief with respect to the \$78 million damages claim because he was not satisfied that adequate argument was placed before the Court on the issue;
- (oo) Justice Brown also found in his reasons that the Applicants had demonstrated a strong *prima facie* case of unjust enrichment, up to a possible claim of \$22.6 million, against the Waltons in respect of their diversion of the Applicants' funds into the Schedule C Properties and/or Companies;
- (pp) The Manager currently holds proceeds from the sale of properties owned by certain Schedule B Companies and proceeds from the sale of properties owned by certain Schedule C Companies;
- (qq) To date, the Applicants have recovered approximately \$6.5 million from the Inspector/Manager of the \$81.6 million they invested. Other Schedule B Properties have been sold at a loss, and without excess funds for distribution to the Applicants. Many others have been determined not to be worth the Manager's costs to maintain and sell and have been taken over by the mortgagees or otherwise discharged;

UNJUST ENRICHMENT

- (rr) Monies forwarded by the Applicants have been traced from Schedule B Companies to the Waltons' home and various companies, including the Schedule C Company Respondents and/or Schedule C Properties;
- (ss) The Waltons transferred funds from the Schedule B Companies through Rose & Thistle to the Schedule C Company Respondents and/or Schedule C Properties;
- (tt) Various Walton owned companies, including the Schedule C Company Respondents and/or Schedule C Properties were net beneficiaries of approximately \$22.6 million of the Applicants' funds;
- (uu) The Waltons diverted funds from the Schedule B Companies to fund the purchase, refinancing and/or other costs and/or obligations of various Walton owned companies, including the Schedule C Company Respondents and/or the Schedule C Properties;
- (vv) Various Walton owned companies, including the Schedule C Company Respondents and/or the Schedule C Properties were net beneficiaries (to the detriment of the Applicants) of the Waltons' fraud;
- (ww) Use of funds outside of the property for which they were intended was in breach of the various Agreements between the Applicants and the Waltons;
- (xx) The Waltons concealed their actions from the Applicants. The funds were transferred without the Applicants' knowledge or consent;

- (yy) The Respondents' misappropriation of those funds was fraudulent, in breach of the Agreements, and in breach of the Respondents' fiduciary duties;
- (zz) As a result of the transfers, the Respondents and various Walton owned companies, including the Schedule C Company Respondents were enriched, and the Applicants have been correspondingly deprived;
- (aaa) There was no juristic reason for the enrichment of the Respondents and various Walton owned companies, including the Schedule C Company Respondents and the corresponding deprivation of the Applicants;
- (bbb) Various Walton owned companies, including the Schedule C Company Respondents were knowing recipients of funds obtained as a result of a breach of fiduciary duty committed by the Respondents against the Applicants and Dr. Bernstein;
- (ccc) The following Schedule C Company Respondents were unjustly enriched in the manner described in detail above by the following amounts:
- (i) 1780355 Ontario Inc.: \$1,611,359;
 - (ii) 6195 Cedar Street Ltd.: \$556,135;
 - (iii) Atala Investments Ltd.: \$139,139;
 - (iv) Bible Hill Holdings Inc.: \$172,050;
 - (v) Cecil Lighthouse Ltd.: \$776,050;

(vi) The Old Apothecary Building: \$1,285,721; and

(vii) United Empire Lands Ltd.: \$337,600;

BREACH OF FIDUCIARY DUTY

(ddd) Ms. Walton was at all times a director and officer of the Schedule B Companies;

(eee) Mr. Walton was at all relevant times a director and officer of the majority of the Schedule B Companies;

(fff) Ms. Walton was specifically tasked with responsibility for the day to day management, supervision and budgeting of the Projects;

(ggg) Ms. Walton handled the Applicants' equity contributions and was responsible for ensuring that the Applicants' funds were used for the proper purposes;

(hhh) The Waltons owed fiduciary duties to the Schedule B Companies, the Applicants, and Dr. Bernstein;

(iii) These obligations required Ms. Walton (among other things) to:

(i) Act in the best interests of the Schedule B Companies, the Applicants and Dr. Bernstein;

(ii) Avoid conflicts of interest and duty;

(iii) Use her energy, ability and imagination in the best interests of the Applicants and Dr. Bernstein; and

- (iv) Not conceal any information from the Applicants and Dr. Bernstein;
- (jjj) As a result of the Waltons' conduct described herein, the Waltons breached the fiduciary duties they owed to the Schedule B Companies, the Applicants and Dr. Bernstein;

KNOWING ASSISTANCE

- (kkk) The Schedule C Company Respondents are liable to the Applicants for knowing assistance;
- (lll) Ms. Walton was at all relevant times a director and officer or a de-facto director and officer of all of the Schedule C Company Respondents;
- (mmm) Mr. Walton was at all relevant times a director and officer of the majority of the Schedule D Company Respondents;
- (nnn) In any event, none of the Schedule C Company Respondents were at arms-length from the Waltons;
- (ooo) The Waltons were responsible for the day to day management, supervision and budgeting of the Respondent Schedule C Companies' projects;
- (ppp) The Schedule C Company Respondents had actual knowledge of, or were reckless or wilfully blind to, the Waltons' breach of their fiduciary duties and breach of trust owed to the Applicants;

- (qqq) The Schedule C Company Respondents jointly assisted the Waltons' in breaching their fiduciary duties and duties of trust owed to the Applicants, thereby being known parties to these breaches of duty;
- (rrr) The Schedule C Company Respondents had actual knowledge of and jointly assisted in the Waltons' fraud of the Applicants and Dr. Bernstein;
- (sss) The Schedule C Company Respondents knowingly assisted in a dishonest and fraudulent design on the part of the Waltons;
- (ttt) The Schedule C Company Respondents received property from the Applicants as a result of the Waltons' breach of their fiduciary duties owed to the Applicants;
- (uuu) The Schedule C Company Respondents each received this property from the Applicants having knowledge that the property was transferred in breach of a fiduciary duty;

FRAUDULENT MISREPRESENTATION

- (vvv) The Waltons made multiple false representations of fact to Dr. Bernstein. Specifically:
 - (i) The Waltons represented to Dr. Bernstein that they intended that his funds would only be used in respect of the real property owned by the Schedule B Company, and that they would in fact be so used;

- (ii) The Agreements, drafted by the Waltons, required and represented that any funds that were advanced by the parties be deposited into separate accounts opened for each Schedule B Company;
- (iii) Ms. Walton repeatedly represented in various emails that the funds that were advanced for a particular Schedule B Company would be used in connection with that Schedule B Company;
- (iv) The Waltons did not intend to, and did not in fact, use the funds advanced by the Applicants in the manner in which they represented that they would;
- (v) Indeed, in the majority of cases, as soon as Dr. Bernstein's funds were advanced to a Schedule B Company, the Waltons transferred the funds almost immediately to the Rose & Thistle account or other company account;
- (vi) The Waltons also represented that they would provide 50% of the equity to the Schedule B Companies, as required under the Agreements;
- (vii) The Waltons made few equity contributions to the Schedule B Companies;
- (viii) The contributions that the Waltons did make were with the Applicants' funds and, it appears, to a much smaller extent the Schedule C Investor funds;
- (www) The Waltons made the false representations with the intent that Dr. Bernstein and the Applicants would rely and act upon the false representations;

- (xxx) Dr. Bernstein and the Applicants relied on the Respondents' representations in the Agreements and in emails and representations that the Respondents made orally in making their equity contributions to the Schedule B Companies;
 - (yyy) Dr. Bernstein and the Applicants relied on the Waltons' false representations to their detriment;
 - (zzz) The Waltons made the false representations knowingly, or without believing them to be true, or recklessly without care to their truth or falsity;
 - (aaaa) The Waltons never intended to abide by their representations;
 - (bbbb) As a result of the Waltons' misrepresentations, the Applicants have suffered damages in the amount of \$72.1 million in respect of Dr. Bernstein's equity investments in the Schedule B Companies; and
 - (cccc) Such further and other grounds as the lawyers may advise.
4. The following documentary evidence will be used at the hearing of the Application:
- (a) Affidavit of Norma Walton sworn December 17, 2013;
 - (b) Affidavit of James Reitan sworn January 13, 2014;
 - (c) Affidavit of James Reitan sworn February 14, 2014;
 - (d) Affidavit of Norma Walton sworn April 1, 2014;
 - (e) Affidavit of Norma Walton sworn April 23, 2014;

- (f) Affidavit of James Reitan sworn April 28, 2014;
- (g) First Interim Report of the Inspector;
- (h) Supplement to the First Interim Report of the Inspector;
- (i) Second Report of the Inspector;
- (j) Third Report of the Inspector;
- (k) Fourth Report of the Inspector;
- (l) Supplemental Report to the Fourth Report of the Inspector;
- (m) Motion Record of the Applicants, dated June 26, 2014;
- (n) Reply Motion Record of the Applicants, dated July 3, 2014
- (o) Motion Record of the Manager, Schonfeld Inc., dated June 26, 2014;
- (p) Supplementary Motion Record of the Manager, Schonfeld Inc., dated June 26, 2014;
- (q) Brief of Relevant Inspector/Manager Reports;
- (r) Motion Record of the Respondents, dated June 26, 2014;
- (s) Reply Motion Record of the Respondents, dated July 3, 2014;
- (t) Cross-Motion Record of Christine DeJong, returnable July 16, 2014;
- (u) Motion Record of the Applicants, dated August 4, 2015;

- (v) Supplemental Motion Record of the Applicants, dated October 23, 2015; and
- (w) Such further and other material as the lawyers may advise and this Honourable Court may permit.

November 26, 2015

**LENCZNER SLAGHT ROYCE
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Lawyers for the Applicants

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 Ltd.
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. Royal Gate Nominee Inc.
29. Royal Gate (Land) Nominee Inc.
30. Dewhurst Development Ltd.
31. Eddystone Place Inc.

32. Richmond Row Holdings Ltd.
33. El-Ad (1500 Don Mills) Limited
34. 165 Bathurst Inc.

**SCHEDULE "C" PROPERTIES
(MUNICIPAL ADDRESSES)**

1. 3270 American Drive, Mississauga, Ontario
2. 2 Kelvin Avenue, Toronto, Ontario
3. 346 Jarvis Street, Suites A, B, E and F, Toronto, Ontario
4. 1 William Morgan Drive
5. 324 Prince Edward Drive, Toronto, Ontario
6. 24 Cecil Street, Toronto, Ontario
7. 30 and 30A Hazelton Avenue, Toronto, Ontario
8. 777 St. Clarens Avenue, Toronto, Ontario
9. 66 Gerrard Street East, Toronto, Ontario
10. 14 College Street, Toronto, Ontario
11. 26 Gerrard Street East, Toronto, Ontario
12. 2454 Bayview Avenue, Toronto, Ontario
13. 319-321 Carlaw, Toronto, Ontario
14. 0 Lutrell Avenue, Toronto, Ontario
15. 260 Emerson, Toronto, Ontario
16. 44 Park Lane Circle

SCHEDULE "C" COMPANIES

1. 1780355 Ontario Inc.
2. 6195 Cedar Street Ltd.
3. Atala Investments Ltd.
4. Bible Hill Holdings Inc.
5. Cecil Lighthouse Ltd.
6. Emerson Developments Ltd.
7. Prince Edward Properties
8. St. Clarens Holdings Ltd.
9. The Old Apothecary Building
10. United Empire Lands Ltd.

DBDC SPADINA LTD., and those corporations listed on Schedule A
herefo
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

**THIRD FRESH AS AMENDED
NOTICE OF APPLICATION**

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