

**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. and EGLINTON CASTLE INC.**

Respondents

- and -

**THOSE CORPORATIONS LISTED IN SCHEDULE "B" HERETO, TO BE
BOUND BY THE RESULT**

FIFTH REPORT OF THE MANAGER, SCHONFELD INC.

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I. Introduction

1. This is the Fifth Report of Schonfeld Inc. (the “**Manager**”) in its capacity as Manager of certain companies listed at Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Companies**”),¹ together with the real estate properties owned by the Companies (the “**Properties**”).

A. Purpose of this Report

2. The Manager brought a motion for an Order discharging it from any obligation for the management, control preservation or protection of the Properties known municipally as:

- (a) 7-15 Fraser Avenue, Toronto, Ontario (“**7-15 Fraser**”);
- (b) 30 Fraser Avenue, Toronto, Ontario (“**30 Fraser**”);
- (c) 140 Queen’s Plate Drive, Toronto, Ontario (“**140 Queen’s Plate**”);
- (d) and 3765 St. Clair Avenue East, Toronto, Ontario (“**3765 St. Clair**” collectively, the “**Discharge Properties**”).

3. For greater certainty, the Manager has not sought any discharge or other relief in respect of its mandate as Manager of the Companies that own the Discharge Properties.

4. This Report provides a summary of the circumstances that, in the Manager’s view, require that it be relieved of responsibility for the Discharge Properties and a recommendation that this Honourable Court grant the relief described in the Manager’s Notice of Motion.

B. Terms of reference

5. Based on its review and interaction with the parties to date, nothing has come to the Manager’s attention that would cause it to question the reasonableness of the information presented herein. However, the Manager has not audited, or otherwise attempted to independently verify, the accuracy or completeness of any financial information of the

¹ Schedule “B” was amended by Order dated January 16, 2014.

Companies. The Manager therefore expresses no opinion or other form of assurance in respect of any of the Companies' financial information that may be in this Report.

C. Background

6. The Companies are a group of real estate development corporations incorporated as part of a series of joint ventures between Dr. Stanley Bernstein and companies that he controls (the "**Bernstein Group**") and Norma and Ronauld Walton and entities that they control (the "**Walton Group**"). Most of the Companies were incorporated to purchase and develop a particular Property.

7. In the summer and fall of 2013, the relationship between the Walton Group and the Bernstein Group broke down amid allegations that the Walton Group had, among other things, placed mortgages on jointly-held properties without the Bernstein Group's consent and failed to provide reporting required by the agreements that govern the joint venture. The dispute between the Walton Group and Bernstein Group is described in more detail in the Endorsement of Justice Newbould dated November 5, 2013, which is attached as Appendix "1".

8. Pursuant to the Order of Justice Newbould dated November 5, 2013 (the "**November 5 Order**"), which is attached as Appendix "2", the Manager was appointed to provide independent management of the Companies and the Properties for the benefit of all stakeholders.

II. The Discharge Properties

A. Variation of the November 5 Order

9. Once the November 5 Order was issued and entered, the Manager obtained contact information for third party mortgagees with interests registered against the Properties and notified these mortgagees of the November 5 Order.

10. A number of mortgagees objected to the appointment of the Manager and the terms of the November 5 Order. Several mortgagees served motions to either exempt the Property against which they had registered an interest from, or substantially vary the terms of, the November 5 Order. The Applicants, the Manager and the moving mortgagees ultimately reached a series of compromises to address the mortgagees' concerns while continuing the Manager's efforts to

realize on the assets at issue. These compromises were reflected in Consent Orders dated December 24, 2013 (the “**December 24, Order**”, attached as Appendix 3) January 6, 2014 (the “**January 6 Order**”, attached as Appendix 4) and January 20, 2014 (the “**January 20 Order**”, attached as Appendix 5). These Orders all included similar terms. More specifically, the relevant parties agreed that:

- (a) the relevant mortgagees would withdraw their motions;
- (b) the Manager’s fees and borrowing would be subordinated to pre-existing security interests validly registered on title to each Property;
- (c) revenues derived from a Property would only be used to fund expenses relating to that Property and would not be co-mingled with revenues from other Properties;
- (d) the relevant Properties would be sold according to pre-established timelines and the mortgagees would have defined rights to participate in, or consent to, the sale process; and
- (e) the stay of proceedings against any Company subject to these Orders would automatically be lifted to permit the relevant mortgagee to enforce its rights if, among other things, the Company failed to comply with its mortgage obligations or if the sale of the relevant Property did not proceed in accordance with the agreed-upon timelines.

B. Funding issues

11. Several Properties do not generate revenue or do not generate enough revenue to fund the obligations of the relevant owner Company. The Manager advised the parties early in these proceedings that it would not comingle funds between the various Companies and, accordingly, the Companies that did not generate revenue required an outside funding source. The Manager and the Applicants agreed that the Applicants would provide funding of approximately \$1.3 million between December 20, 2013 and January 31, 2014. That funding was provided.

12. The Applicants had no obligation to advance further amounts unless they agreed to provide further funding in writing or were ordered to provide funding by the Court. Since

January 31, 2014, the Manager has submitted monthly funding requests to the Applicants. The Applicants have assessed these funding requests and determined what obligations they were prepared to fund.

C. The Discharge Properties

13. Syndicates of private lenders led by Stephen Handelman (the “**Handelman Group**”) registered mortgages on title to each of the Discharge Properties. The Discharge Properties are subject to the January 20 Order.

14. On February 3, 2014, the Applicants advised the Manager that they were not prepared to fund any further obligations with respect to the Discharge Properties and several other Properties. The Manager notified the Handelman Group that the Companies that own the Discharge Properties would no longer be in a position to meet their obligations under the applicable mortgages on February 3, 2014. Each of the Companies that own the Discharge Properties defaulted on its mortgage obligations in early February 2014 by, among other things, failing to make monthly mortgage payments and failing to pay realty taxes.

15. On February 18, 2014, the Handelman Group commenced power of sale proceedings in respect of 7-15 Fraser, 30 Fraser and 3765 St. Clair.² On March 4, 2014, the Handelman Group commenced power of sale proceedings in respect of 140 Queen’s Plate. Copies of the Handelman Group’s Notice of Sale under Mortgage in respect of each of the Discharge Properties (the “**Notices**”) are attached as Appendix 6.

16. The Manager’s marketing efforts cannot co-exist with active power of sale proceedings. Accordingly, the Manager stopped its efforts to market the Discharge Properties upon receipt of the Notices.

17. The Notices served February 3, 2014 stated that the Handelman Group would sell the Discharge Properties if the amounts outstanding were not paid by March 26, 2014. No payment was made on or before March 26, 2014.

² The Handelman Group also served power of sale proceedings with respect to the Property at 78 Tisdale. However, the Manager and the Handelman Group negotiated a forbearance agreement so that the Manager can complete a sale of that Property that is presently underway.

18. The Notice in respect of 140 Queen's Plate stated that the Handelman Group would sell 140 Queen's Plate if the amount outstanding was not paid by April 9, 2014. To date, no payment has been made.

19. The Manager has worked with the Handelman Group to effect an orderly of transfer of possession of, and responsibility for, the Discharge Properties to the Handelman Group. The Handelman Group has requested that the transition of 7-15 Fraser, 30 Fraser and 3765 St. Clair occur on April 1 and the Manager has agreed to accommodate that request. The 35 day period set out in the Notice with respect to 140 Queen's Plate will expire on April 9, 2014 and the Manager proposes transferring control of, and responsibility for, 140 Queen's Plate on April 10, 2014.

20. The Manager intends to continue as manager/receiver of the Companies that own the Discharge Properties to ensure that these Companies are able to effectively exercise whatever rights they may have in respect of the Handelman Group's ongoing power of sale proceedings.

III. Conclusion and Recommendations

21. For the reasons set out above, the Manager respectfully recommends that the relief sought in its Notice of Motion be granted and that possession of, and responsibility for, the Discharge Properties be transferred to the Handelman Group.

All of which is respectfully submitted this 31st day of March, 2014.

SCHONFELD INC.

**In its capacity as Manager pursuant to
the Order of Newbould, J. dated
November 5, 2013**

Per: _____

Harlan Schonfeld CPA•CIRP

SCHEDULE "A" COMPANIES

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investments 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 Ltd.
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 Lands 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.

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