

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

**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

**NINTH REPORT OF THE MANAGER, SCHONFELD INC.**  
**(Motion for approval and vesting order with respect to 78 Tisdale Avenue)**

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## **I. Introduction**

1. This is the Ninth 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**”),<sup>1</sup> together with the properties owned by the Companies (the “**Properties**”).<sup>2</sup>

### **A. Purpose of this Report**

2. The Manager has brought a motion for, among other things:

- (a) an approval and vesting order (the “**Approval and Vesting Order**”) in respect of the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale dated May 28, 2013 (the “**May 2013 Agreement**”, as amended, the “**Tisdale Agreement**”) between IKH Holdings Inc. (“**IKH**”) and Tisdale Mews Inc. (“**Tisdale**”), assigned by IKH to Sunrise Acquisitions (Tisdale II) Inc. (the “**Purchaser**”), in respect of the property known municipally as 78 Tisdale Avenue in Toronto, Ontario (the “**Tisdale Property**”). A copy of the May 2013 Agreement is attached as Confidential Appendix “A”; and
- (b) an Order permitting the Confidential Appendices to this Report, as described below, to be filed under seal without being served on the Service List.

3. This Report provides a summary of the Transaction and a recommendation that this Honourable Court grant the relief described in the Manager’s Notice of Motion.

### **B. Terms of reference**

4. 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

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<sup>1</sup> Schedule “B” was amended by Order dated January 16, 2014.

<sup>2</sup> The Manager was discharged from certain responsibilities with respect to certain of the Properties pursuant to an Order dated April 1, 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. Confidentiality**

5. In the Manager's judgment, disclosure of some of the documents appended to this Report would negatively impact the Manager's ability to carry out its mandate by, among other things, interfering with the integrity of any subsequent sales process in respect of the Tisdale Property if the Transaction is not completed. In particular, and without limiting the generality of the foregoing, it is the Manager's judgment that it would impair the Manager's ability to maximize realization of the Tisdale Property were any information to be made public concerning any discussions of sale process or values of the Tisdale Property among the Manager, the parties or any of their advisers and/or any possible bidders for Tisdale Property or any of them. Accordingly, a number of Appendices to this Report have been identified as Confidential Appendices and will be filed in a separate Confidential Appendix Brief. The Manager respectfully requests an Order authorizing it to file the Confidential Appendices under seal without serving the Confidential Appendix Brief on the Service List.

### **D. 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 Transaction**

### **A. Interested Parties**

9. The Tisdale Property is owned by one of the Companies, Tisdale. A mortgage in the amount of \$3,000,000 (the “**Tisdale Mortgagee**”) and a Notice of Assignment of Rents each in favour of E. Manson Investments Limited, 5 K Investments Inc., Yerusha Investments Inc., National Tire Sales and Service (2011) Ltd., Natme Holdings Ltd., Marvin Teperman, Maxoren Investments Inc., Sheilaco Investments Inc., Errol Gordon, Southern Atlantic Service, Elaine Pepper, B. & M. Handelman Investments Limited and 558678 Ontario Limited (collectively, the “**Mortgagees**”) are registered on title to the Tisdale Property.

10. On December 30, 2013, a lien was registered against the Tisdale Property by Her Majesty the Queen in Right of Canada as represented by The Minister of National Revenue (the “**Minister**”) in the amount of \$92,202 (the “**Tax Lien**”). The Tax Lien was registered pursuant to sections 316(1) and (2) of the *Excise Tax Act* to secure unpaid Goods and Services Tax. The Minister subsequently discharged and released the Tax Lien after being advised of the terms of the November 5 Order by the Manager. Copies of the Minister’s Notice of Lien, the Discharge of Lien and a copy of the Parcel Register for the Tisdale Property prepared on May 1, 2014 are attached as Appendix “3”.

### **B. Power of Sale Proceedings**

11. By Order dated January 20, 2014 (the “**January 20 Order**”, a copy of which is attached as Appendix “4”), the terms of the November 5 Order were varied on consent as they related to a number of Properties, including the Tisdale Property. Pursuant to the January 20 Order, the stay of proceedings against any Company subject to the Order 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.

12. The Tisdale Property does not generate revenue. The Manager advised affected stakeholders 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.

13. 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.

14. On February 3, 2014, the Applicants advised the Manager that they were not prepared to fund any further obligations owed by Tisdale and several other Companies. The Manager notified the Mortgagees that Tisdale would no longer be in a position to meet its obligations under the Tisdale Mortgage on February 3, 2014. Tisdale subsequently breached the Tisdale Mortgage by failing to make the payment due on February 5, 2014. Pursuant to the January 20 Order, this default triggered an automatic lifting of the stay of proceedings to permit enforcement by the Mortgagees.

15. The Mortgagees delivered a Notice of Sale under Mortgage in respect of the Tisdale Property on February 18, 2014. A copy of the Notice of Sale under Mortgage is attached as Appendix "5". The Mortgagees supported the Transaction, accordingly, the Manager and the Mortgagees entered into a Forbearance Agreement dated March 11, 2014 so that the Manager could proceed to complete the Transaction. This Forbearance Agreement provides that the Mortgagees will be entitled to enforce their remedies under the Tisdale Mortgage:

- (a) Ten (10) days after the termination of negotiations between the Manager and the Purchaser without executing the APS; and
- (b) Ten (10) days after the Tisdale Agreement is terminated by either the Manager or the Purchaser prior to closing of the transaction contemplated therein; and
- (c) May 12, 2014, unless such date is extended in writing by agreement of the Manager and the Mortgagees; and

- (d) By Order of the Court upon motion by the Mortgagee or the Manager on notice to the other.

### C. The Tisdale Agreement

16. Tisdale entered into the May 2013 Agreement before the Manager was appointed. The May 2013 Agreement was also amended by Tisdale and IKH by: (i) an amendment dated June 28, 2013 (the “**June 2013 Amendment**”, a copy of which is attached as Confidential Appendix “B”) and (ii) an amendment dated July 16, 2013 (the “**July 2013 Amendment**”, a copy of which is attached as Confidential Appendix “C”).

17. Since Tisdale was already subject to the May 2013 Agreement, as amended by the June 2013 Amendment and July 2013 Amendment, when the Manager was appointed, the Manager could not expose the Tisdale Property to the market without first disclaiming the May 2013 Agreement. In order to determine whether to disclaim the May 2013 Agreement, the Manager carefully considered the value of the May 2013 Agreement and discussed it with the Applicants, the Respondents and the Mortgagees. Each of these stakeholders supported the completion of the Transaction and the Manager determined that the May 2013 Agreement should not be disclaimed.

18. The Transaction under the May 2013 Agreement, as amended by the June 2013 Amendment and July 2013 Amendment, remained subject to certain terms and conditions that Tisdale was not capable of completing. In particular, Tisdale agreed to obtain, at its own expense, site plan approval<sup>3</sup> from the City of Toronto for between 25-35 unserviced town house lots. Tisdale did not have the ability to fund further development efforts and so the Manager asked IKH to submit an “as is” offer to purchase the Tisdale Property.

19. On January 13, 2014, IKH submitted a revised offer for the Tisdale Property (the “**January 2014 Offer**”) on an “as is” basis with a reduced purchase price. A copy of the January 2014 Offer is attached as Confidential Appendix “D”. The Manager determined that IKH’s revised offer contemplated a price abatement that significantly exceeded the cost of, and risk

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<sup>3</sup> Site plan approval is a form of development control provided to municipalities under Ontario’s *Planning Act*.

associated with, obtaining site plan approval. Accordingly, the Manager advised IKH that its revised offer was not be acceptable.

20. On February 11, 2014, IKH submitted a further revised offer for the Tisdale Property (the **"February 2014 Offer"**) on an "as is" basis with an improved purchase price as compared to the January 2014 Offer. A copy of the February 2014 Offer is attached as Confidential Appendix "E".

21. The Manager retained N. Barry Lyon Consultants Limited (**"NBLC"**), a multi-disciplinary real estate consulting firm with expertise in land development, to review and comment on the February 2014 Offer. Based on NBLC's review of comparable land transactions and its experience with this property and comparable infill redevelopment, NBLC concluded that the February 2014 Offer represented a value consistent with market trends. A copy of NBLC memorandum regarding the Transaction is attached hereto as Confidential Appendix "F". Given the scope of the Tisdale Transaction and the support of the affected stakeholders, the Manager determined that the cost of a formal appraisal was not warranted.

22. Following consultation with NBLC, the Applicants, the Respondents and the Mortgagees, the Manager entered into an amendment dated March 21, 2014 (the **"March 2014 Amendment"**, a copy of which is attached as Confidential Appendix "G"). The March 2014 Amendment reflected, among other things, the terms of the February 2014 Offer and a closing date of May 12, 2014.

23. The Applicants, the Respondents and the Mortgagees have advised that they are satisfied with the purchase price set out in the Tisdale Agreement and support completion of the Transaction.

24. In addition, the Manager notes that, if the Tisdale Transaction is not completed, the Mortgagees will be entitled to terminate the Forbearance Agreement and sell the Tisdale Property to the Purchaser or another party in power of sale proceedings. Such proceedings will delay the sale of the Tisdale Property and there is no guarantee that the Mortgagees will obtain a superior purchase price.



25. Based on all of these factors, the Manager considers that it is commercially reasonable under the circumstances to complete the Transaction.

**D. Proposed Distribution of Sale Proceeds**

26. The Manager has asked its counsel, Goodmans LLP ("Goodmans"), to provide an opinion with respect to the validity of the Tisdale Mortgage. Goodmans has advised that the Tisdale Mortgage is validly registered.

27. The Manager recommends that the proceeds of the Transaction, net of closing costs, be used to satisfy amounts owed pursuant to the Tisdale Mortgage and that any excess proceeds be held in trust by the Manager pending further Order of the Court after the Manager has conducted a claims process to identify creditors entitled to payment by Tisdale. The Minister will be given notice of the claims process and the alleged debt that gave rise to the Tax Lien can be addressed through that process.

**E. Conclusion and Recommendations**

28. For reasons set out above, the Manager respectfully recommends that this Honourable Court grant the relief sought by the Manager in its Notice of Motion.

All of which is respectfully submitted this 1<sup>st</sup> day of May, 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.