

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

THIRD REPORT OF THE MANAGER, SCHONFELD INC.

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I. Introduction

1. This is the Third 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**”). Cityview Industrial Ltd. (“**Cityview**”) is one of the Companies.

A. Purpose of this Report

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

- (a) the vesting of all of Cityview’s right, title and interest in and to the lands legally described as Part of Lot 22, Concession 2 Fronting the Humber, City of Toronto, designated as Parts 3, 4 and 5 on Plan 66R26674 (the “**Road Widening Lands**”) in the City of Toronto in order to satisfy one (1) of the conditions imposed by the City of Toronto Committee of Adjustments pursuant to a Notice of Decision dated July 18, 2013 (File #B27/13EYK) (the “**Road Widening Conveyance**”);
- (b) 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 (the “**Sale Agreement**”) for the lands and building legally described as Part of Lot 22, Concession 2 Fronting the Humber, City of Toronto, designated as Part 2 on Plan 66R26674 (the “**Part 2 Lands**”) between Cityview and Red Finch Developments Limited (“**Red Finch**” or the “**Purchaser**”) dated March 26, 2013 as amended by first amendment to agreement of purchase and sale made between the Manager and Red Finch as of the 14th day of February, 2014 (the “**Amendment**”);
- (c) directing that proceeds received by the Manager in connection with the Transaction (the “**Cityview Proceeds**”) be dealt with as follows:

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

- (i) the amount of \$969,583.99 to be held in trust pending either a final determination with respect to the quantum, validity and priority of construction liens registered against the Cityview Property;
- (ii) the balance of the Cityview Proceeds, net of closing costs, be paid to the Mortgagee (as defined below) in satisfaction of the First Mortgage (as defined below); and
- (d) 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 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 Cityview 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 Cityview Property were any information to be made public concerning any discussions of sale process or values of the Cityview Property among the Manager, the parties or any of their advisers and/or any possible bidders for Cityview 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.

II. The Transaction

A. Interested Parties

6. Cityview owns a Property municipally known as 9 and 11 Cityview Drive, Toronto (the “**Cityview Property**”). The Cityview Property is subject to two mortgages (the “**Mortgages**”) in favour of 368230 Ontario Limited (the “**Mortgagee**”), a company controlled by Dr. Bernstein, as described below:

Instrument	Registered Amount	Date	Interest rate
Charge (AT3123206), Notice of Assignment of Rents General (AT3123219) (the “ First Mortgage ”)	\$4,000,000	September 7, 2012	8%
Charge (AT3271120), Notice of Assignment of Rents General (AT3271124)	\$650,000	April 5, 2013	11%

7. Payout statements from the Mortgagee are attached as Appendix 1.

8. In addition, the following four companies have registered construction liens against the Cityview Property, in the amounts set out below:

Instrument	Lien Amount	Party
Construction Lien (AT3426580) Certificate of Action (AT3463563)	\$138,586	Gemtec Wall & Ceiling Systems Ltd.
Construction Lien (AT3426936) Certificate of Action (AT3461899)	\$721,375	Fox Contracting Ltd.
Construction Lien (AT3463067) Certificate of Action (AT3487262)	\$153,691	Laser Heating & Air Conditioning Inc.
Construction Lien (AT3472538) Notice of Change of Lawyer and Statement of Claim	\$4,876.41	Macnaughton Hermesen Britton Clarkson Planning Limited

9. The Manager understands that Gemtec Wall & Ceiling Systems Ltd. (“**Gemtec**”) is a subcontractor of Fox Contracting Limited (“**Fox**”) and that Gemtec’s claims are subsumed in Fox’s claim. In other words, Fox has included amounts owed to Gemtec in its own claim.

B. The Sale Agreement

10. Cityview entered into the Sale Agreement before the Manager was appointed. The Sale Agreement is attached as Confidential Appendix A. The Manager subsequently entered into the Amendment with Red Finch on February 14, 2014, which is attached as Confidential Appendix B. The Amendment requires that the Transaction close on or before February 28, 2014. The Manager does not expect that this deadline will be extended and, accordingly, time is of the essence.

11. The Sale Agreement contemplates that Cityview will sell the Part 2 Lands, which are a portion of the Cityview Property, to Red Finch. The balance of the Cityview Property will be retained by Cityview and marketed for sale at a later date.

12. Since Cityview was already subject to the Sale Agreement when the Manager was appointed, the Manager could not expose the Cityview Property to the market without first disclaiming the Sale Agreement. In order to determine whether to disclaim the Sale Agreement, the Manager carefully considered the value of the Sale Agreement and discussed it with the Applicants and the Respondents. The Manager also obtained a comfort letter with respect to the sale price offered by Red Finch from Norman Height (a certified appraiser), which is attached as Confidential Appendix C. The Applicants, the Respondents and the Mortgagee have advised that they are satisfied with the purchase price set out in the Sale Agreement. Based on all of these factors, the Manager considers that it is commercially reasonable under the circumstances to complete the Transaction.

C. The Road Widening

13. In order to complete the Transaction, Cityview must sever the Part 2 Lands from the balance of the Cityview Property. As documented in the Notice of Decision dated July 18, 2013 and appended as Appendix 2, Cityview has obtained conditional consent to the necessary severance from the City of Toronto. All of the conditions have now been satisfied except for the conveyance of the Road Widening Lands (a two metre strip at the edge of the Cityview Property) to the City of Toronto free and clear of all encumbrances. The Manager and the City of Toronto have agreed to the form of vesting order, set out as Schedule “C” to the Notice of Motion, being proposed to convey the Road Widening Lands to the City of Toronto (the “**Road Widening Vesting Order**”).

D. Registered interests in the Cityview Property

a. Mortgages

14. The Manager instructed its counsel, Goodmans LLP, to conduct a review of the Mortgages. Goodmans has advised the Manager that the Mortgages are validly registered against the Cityview Property.

b. Construction liens

15. As noted above, four construction liens are registered against the Cityview Property. The Manager has not assessed the validity of these liens, the priority of the liens (if valid) relative to the Mortgages or the lien claimants’ entitlement to the amounts claimed. In order to allow the

Transaction to close but protect the interests of the lien claimants, the Approval and Vesting Order provides that \$969,583 (being the amount of the lien claims, less the amounts included in more than one lien plus the amount of \$96,056 to secure any costs award)² is to be held in trust by the Manager pending further Order of the Court following a determination with respect to the validity and priority of the liens or a joint direction of the Mortgagee and the lien claimants.

c. Proposed Use of Proceeds

16. The Manager recommends that the proceeds of the Transaction, net of closing costs and the amount described in paragraph 15 above, be paid to partially satisfy the First Mortgage. After providing for the liens as set out above, the net proceeds available on closing will not be sufficient to pay out the First Mortgage. Accordingly, the Mortgages will remain registered against the portion of the Cityview Property being retained by Cityview and the amount outstanding will be reduced by the amount paid to the Mortgagee from the proceeds of the Transaction. The Manager is not at this time anticipating that there will be funds available to Cityview and therefore no other distribution of funds is being proposed in connection with the Transaction.

E. Recommendations

17. 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.

² The amount for costs is based on the amount that would have to be paid to vacate the lien pursuant to the *Construction Lien Act*.

All of which is respectfully submitted this 19th day of February, 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.

TAB 1

MORTGAGE DISCHARGE STATEMENT

TO: CITYVIEW INDUSTRIAL LTD.

RE: LENDER: 368230 ONTARIO LIMITED
BORROWER: CITYVIEW INDUSTRIAL LTD.
PROPERTY: 1, 9-11 CITYVIEW DRIVE, ETOBICOKE
PRINCIPAL: \$4,000,000.00

PRINCIPAL	\$4,000,000.00
PLUS: Interest outstanding @ 8.0% from January 5, 2014 to and including February 28, 2014 being 55 days @ \$876.71/day	\$48,219.05
Legal Fees (\$15,000.00 + HST)	\$16,950.00
TOTAL AMOUNT OWING	<u>\$4,065,169.05</u>
	(see below)

Note:

1. The Discharge will be registered upon receipt of the following:
- (a) the sum of \$4,065,169.05 payable to Lenczner Slaght, in trust plus per diem if closing is after February 28, 2014
 - (b) the sum of \$466.80 payable to Beard Winter LLP, in trust re the payment of our legal fees herein (\$350.00 plus HST) and the cost to register the Discharge (71.30).

EXECUTED at Toronto, Ontario on the 19 day of February, 2014.

368230 ONTARIO LIMITED

Per: 

I have authority to bind the Corporation

E.&O.E.
GDC/ch

MORTGAGE DISCHARGE STATEMENT

TO: CITYVIEW INDUSTRIAL LTD.

RE: LENDER: 368230 ONTARIO LIMITED
BORROWER: CITYVIEW INDUSTRIAL LTD.
PROPERTY: 1, 9-11 CITYVIEW DRIVE, ETOBICOKE
PRINCIPAL: \$650,000.00

PRINCIPAL	\$ 650,000.00
PLUS: Interest outstanding @ 11.0% from January 5, 2014 to and including February 28, 2014 being 55 days @ \$195.89/day	\$10,773.95
Legal Fees (\$15,000.00 plus HST)	\$16,950.00
TOTAL AMOUNT OWING	<u>\$677,723.95</u>
	(see below)

Note:

1. The Discharge will be registered upon receipt of the following:
- (a) the sum of \$677,723.95 payable to Lenczyner Slaght, in trust plus per diem if closing is after February 28, 2014
 - (b) the sum of \$466.80 payable to Beard Winter LLP, in trust re the payment of our legal fees herein (\$350.00 plus HST) and the cost to register the Discharge (71.30).

EXECUTED at Toronto, Ontario on the 19 day of February, 2014.

368230 ONTARIO LIMITED

Per: 

I have authority to bind the Corporation

E.&.O.E.
GDC/ch

TAB 2



City Planning Division
Jennifer Keesmaat, MES MCIP RPP
Chief Planner and Executive Director

Committee of Adjustment
Etobicoke York Panel
2 Civic Centre Court
Toronto, Ontario M9C 5A3
T:416-394-8080
F:416-394-8042

Thursday, July 18, 2013

NOTICE OF DECISION
CONSENT
(Section 53 of the Planning Act)

File Number:	B27/13EYK	Zoning	I.C2
Owner(s):	CITY VIEW INDUSTRIAL LTD	Ward:	Etobicoke North (02)
Agent:	MACNAUGHTON HERMSEN BRITTON CLARKSON PLANNING		
Property Address:	1 AND 9-11 CITY VIEW DR	Community:	
Legal Description:	CON 2 FTH PT LOT 22		

Notice was given and the application considered on Thursday, July 18, 2013, as required by the Planning Act.

THE CONSENT REQUESTED:

To obtain consent to sever the property into two lots.

Retained - Part 2, Plan 66R-26674

9 City View Drive

The lot frontage is 104.21 m and the lot area is 13 267.19 m². The existing one-storey industrial/office building will be maintained.

Conveyed - Part 1, Plan 66R-26674

1 City View Drive

The lot frontage is 198.32 m and the lot area is 10 739.42 m². The existing one-storey industrial/office building will be maintained.

Dedication - Parts 3, 4 & 5, Plan 66R-26674

Parts 3, 4 & 5 have an area of 573.02 m² and will be dedicated to the City for a public sidewalk.

IT WAS THE DECISION OF THE COMMITTEE OF ADJUSTMENT THAT:

The Consent Application is Approved on Condition

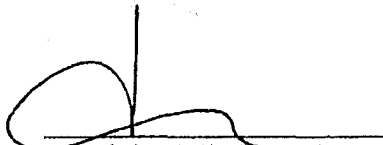
The Committee has considered the provisions of Section 51(24) of the Planning Act and is satisfied that a plan of subdivision is not necessary. The Committee therefore consents to the creation of new lots as shown on the attached plan on the condition that before a Certificate of Consent is issued, as required by Section 53(42) of the Planning Act, the applicant is to file the following with the Committee office within ONE YEAR of the date of this Decision:

1. Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
2. Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Engineering Services, Engineering and Construction Services. Contact: John Fligg @ (416) 338-5031 or Elizabeth Machynia @ (416) 338-5029.
3. The applicant shall satisfy all conditions concerning City/Private owned trees, to the satisfaction of Urban Forestry Services.
4. Where no street trees exist, the owner shall provide payment in an amount to cover the cost of planting a street tree abutting each new lot created, to the satisfaction of Urban Forestry Services.
5. **Two copies of the registered reference plan of survey** integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services. Contact: John House, Supervisor, of Property Records, at 416 392-8338; jhouse@toronto.ca, or his designate, Virgil Gomes at 416 338-5033; vgomes@toronto.ca
6. **Three copies of the registered reference plan of survey** satisfying the requirements of the Manager of Land and Property Surveys, Engineering Services, Engineering and Construction Services, shall be filed with the Committee of Adjustment.
7. The following conditions shall be fulfilled to the satisfaction of the Engineering and Construction Services Division, West District:
 - (i) Prepare all documents and convey to the City, for the purpose of accommodating the existing boulevard sidewalk, at a nominal cost, a 2.0 m wide strip of land (the entire existing easement area on Parts 3, 4 and 5 of the Reference Plan 66R-26674) along the City View Drive frontage of both the conveyed lot (1 City View Drive) and retained Lot (9-11 City View Drive), in fee simple, such lands to be free and clear of all physical and title encumbrances, and subject to a right-of-way for access in favour of the Grantor until such times as said lands have been dedicated as a public highway, all to the satisfaction of the Executive Director, Engineering and Construction Services and the City Solicitor;
 - (ii) Submit a draft Reference Plan of Survey to the Executive Director, Engineering and Construction Services, for review and approval, prior to depositing it in the Land Registry Office. The plan should:
 - (a) be in metric units and integrated to the 1983 North American Datum (Canadian Spatial Reference System and the 3 degree Modified Transverse Mercator Projection);
 - (b) delineate by separate PARTS the lands to be conveyed to the City, the remainder of the site and any appurtenant rights-of-way and easements; and
 - (c) show the co-ordinate values of the main corners of the subject lands in a schedule on the face of the plan;

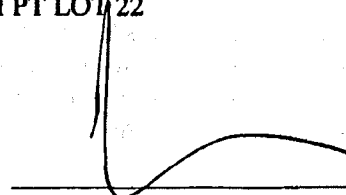
- (iii) Pay all costs for registration and preparation of reference plan(s);
 - (iv) Retain a Qualified Person to conduct environmental site assessment for the lands to be conveyed to the City;
 - (v) Submit all environmental site assessment reports prepared in accordance with the Record of the Site Condition Regulation (O.Reg. 153/04) describing the current conditions of the land to be conveyed to the City and the proposed remedial action plan based on the site condition standards approach, to the Executive Director, Engineering and Construction Services, for peer review;
 - (vi) Pay all costs associated with the City retaining a third-party peer reviewer including a 7% administrative cost to the City, and submit a certified cheque payable to the City of Toronto in the amount of \$3,000.00, as an initial deposit towards the cost of the peer review to the Executive Director, Engineering and Construction Services. Submit further deposits when requested to cover all costs of retaining a third-party peer reviewer (unused funds will be returned to the Owner by the City);
 - (vii) At the completion of the site remediation process, submit a Statement from the Qualified Person, to the Executive Director, Engineering and Construction Services, for peer review and concurrence, that, based on all necessary supporting environmental documents, the land to be conveyed to the City meets either:
 - (a) The applicable MOE Generic Site Condition Standards (Table 1, 2, or 3) for the most environmentally sensitive adjacent land use or
 - (b) The Property Specific Standards (PSSs) as approved by the MOE for a Risk Assessment/Risk Management Plan which was conducted in accordance with the City Policies and Conditions for the Acceptance of the Risk Assessed Lands (Clause 18, of the Works Committee Report 2, April 25, 26, and 27, 2006) and it is unlikely that there is any off-site contamination resulting from past land uses on the development site, that has migrated on to the adjacent rights-of-way, that would exceed the applicable Site Condition Standards;
8. Within **ONE YEAR** of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the *Planning Act*, as it pertains to the conveyed land and/or consent transaction.

SIGNATURE PAGE

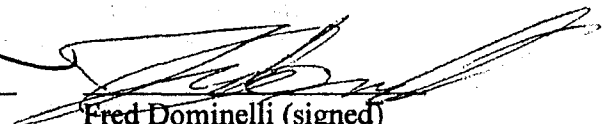
File Number: B27/13EYK Zoning: I.C2
Owner(s): CITY VIEW INDUSTRIAL LTD Ward: Etobicoke North (02)
Agent: MACNAUGHTON HERMSEN
BRITTON CLARKSON
PLANNING
Property Address: 1 AND 9-11 CITY VIEW DR Community:
Legal Description: CON 2 FTH PT LOT 22



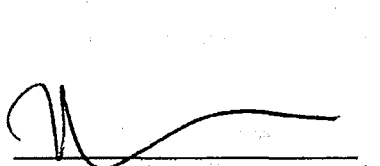
Dominic Gulli (signed)




Douglas S. Colbourne
(signed)



Fred Dominelli (signed)



Mary-Anne Popescu (signed)



Paul Valenti (signed)

DATE DECISION MAILED ON: Friday, July 26, 2013

LAST DATE OF APPEAL TO THE ONTARIO MUNICIPAL BOARD: Thursday, August 15, 2013

CERTIFIED TRUE COPY



Susanne Pringle
Manager & Deputy Secretary Treasurer
Etobicoke York Panel

To appeal this decision to the Ontario Municipal Board, send a completed OMB Appellant Form (A1) to the Manager & Deputy Secretary-Treasurer, Committee of Adjustment. You must pay a filing fee of \$125.00, by certified cheque or money order, in Canadian funds, payable to the Minister of Finance. An additional reduced fee of \$25.00 is required for each connected appeal filed by the same appellant. To obtain a copy of Appellant Form (A1) and other information about the appeal process please visit the Ontario Municipal Board web site at www.omb.gov.on.ca.

NOTE: Only individuals, corporations and public agencies may appeal a decision to the Ontario Municipal Board. The appeal may not be filed by an unincorporated association or group. However, the appeal may be filed in the name of an individual who is a member of the association or group on its behalf.