

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

**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 ON SCHEDULE B HERETO,
TO BE BOUND BY THE RESULT**

**SUPPLEMENTARY AFFIDAVIT OF MARVIN PERNICA
(sworn December 20, 2013)**

I, **MARVIN PERNICA**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a director and officer of 165 Bathurst Financial Inc. ("**Financial**"). Financial is a secured creditor of 165 Bathurst Inc. ("**Bathurst**"). I am responsible for the protection and recovery of the amounts owed by Bathurst to Financial. I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. This Affidavit is sworn in support of a motion for an Order, including, among other things:

- (a) excluding the lands and premises owned by 165 Bathurst Inc. ("**Bathurst**"), which are municipally known as 620 Richmond Street West in Toronto, Ontario and legally described in PIN 21239-0081 (LT) (the "**Richmond Street Property**"), from the definition of "Property" contained in paragraph 3 of the Order of the Honourable Mr. Justice Newbould dated November 5, 2013 (the "**Order**") pursuant to which he appointed Schonfeld Inc. as manager (in such capacity, the "**Manager**") of certain properties owned by the corporations listed on Schedule "B" to the Order (the "**Schedule "B" Corporations**");
- (b) lifting the stay of proceedings imposed pursuant to paragraphs 12 and 13 of the Order so as to permit Financial to commence and continue power of sale proceedings to realize upon its mortgage registered on title to the Richmond Street Property;
- (c) amending paragraphs 21 and 24 of the Order so as to provide that the Manager's Charge and the Manager's Borrowings Charge (as such terms are defined in the Order) shall rank subordinate to the security interests, mortgages and encumbrances in favour of Financial on the Richmond Street Property; and
- (d) enjoining the Manager from (i) taking any steps to terminate the Property Management Agreement dated August 1, 2008 between Bathurst and Esbin Property Management Inc. ("**Esbin**") and (ii) engaging a new property manager

for the Richmond Street Property, and, if either of the foregoing has occurred, re-engaging Esbin as the property manager.

3. I swear this Affidavit as a supplement to my affidavit sworn in connection with this matter on December 5, 2013 (the "**First Pernica Affidavit**"). Capitalized terms not defined in this Affidavit are as defined in the First Pernica Affidavit.

4. For the past twenty years during its ownership by the prior owners and even since the sale of the Richmond Street Property in mid-2013, the Richmond Street Property has been managed by Esbin, more recently pursuant to a Property Management Agreement dated August 1, 2008 between Bathurst and Esbin. Ross Lyndon at Esbin has provided the following information with respect to outstanding utility and other amounts owed:

- (a) The realty tax appears to be in arrears in the amount of \$73,827.47. It appears that this notice remains unpaid and the obligation has accrued additional interest and penalties;
- (b) An invoice with respect to water was received December 5, 2013 for unpaid obligations in the amount of \$4,503.38. The notification provided that such unpaid amounts would be added to the tax bill;
- (c) A disconnect notice was received with respect to hydro for unpaid obligations in the amount of \$15,615.99 dated November 25, 2013;
- (d) An Enbridge bill to November 28, 2013, inclusive of the then-current and previous month, for an unpaid balance in the amount of \$3,067.46;

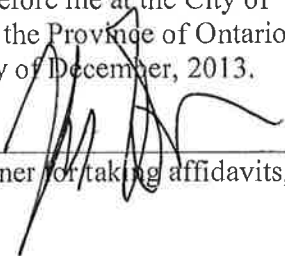
- (e) The Superintendent of the building, Elaine Hughes, advises that she has not been paid for the month of November 2013; and

- (f) A chart detailing the outstanding invoice obligations (the “**Outstanding Obligations**”) that has been received by the Manager via Esbin’s office is attached as **Exhibit “A”** to this Affidavit. The Outstanding Obligations include management fees owing to Esbin for the period from September to November, 2013 that remain unpaid. The total amount of the Outstanding Obligations is \$121,880.45, exclusive of the additional interest and penalties on unpaid amounts. Mr. Lyndon at Esbin has contacted suppliers in his attempt to confirm the accuracy of the Outstanding Obligations, and the amount of any additional interest and penalties, but any evidence is not readily available for my review.

5. This Affidavit is made in support of the within motion, and for no other or improper purpose whatsoever.

SWORN before me at the City of Toronto, in the Province of Ontario, this 20th day of December, 2013.

Commissioner for taking affidavits, etc.



)
)
)
)



MARVIN FERNICA

EXHIBIT "A"

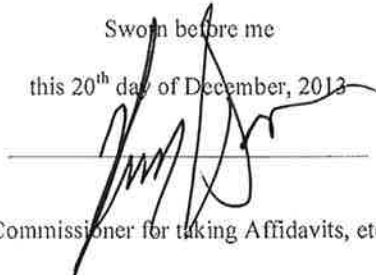
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF MARVIN PERNICA

Sworn before me

this 20th day of December, 2013



Commissioner for taking Affidavits, etc

Outstanding Invoices

Historical

To:

Invoice No	Batch #	Building	Bank	Invoice Date	Due Date	Invoice Amount	Discount Date	Discount Amount	Paid Amount	O/S Balance	Cheque No.	Cheque Date	Cheque Amount
The Rose & Thistle - 165 Bathurst													
Arthur Henry													
155-2013	307445	236	165Bath	25-Aug-13	24-Sep-13	\$186.45		\$0.00	\$0.00	\$186.45			
165-2013	310514	236	165Bath	03-Sep-13	03-Oct-13	\$124.30		\$0.00	\$0.00	\$124.30			
166-2013	310514	236	165Bath	10-Sep-13	10-Oct-13	\$163.85		\$0.00	\$0.00	\$163.85			
176-2013	310514	236	165Bath	04-Oct-13	03-Nov-13	\$163.85		\$0.00	\$0.00	\$163.85			
177-2013	310514	236	165Bath	12-Oct-13	11-Nov-13	\$175.15		\$0.00	\$0.00	\$175.15			
178-2013	310514	236	165Bath	15-Oct-13	14-Nov-13	\$141.25		\$0.00	\$0.00	\$141.25			
						** Supplier Total **			\$954.85				
Bell Canada													
090813	310514	236	165Bath	08-Sep-13	08-Oct-13	\$70.74		\$0.00	\$0.00	\$70.74			
100813	310514	236	165Bath	08-Oct-13	07-Nov-13	\$68.61		\$0.00	\$0.00	\$68.61			
110813-236	310516	236	165Bath	08-Nov-13	08-Dec-13	\$73.90		\$0.00	\$0.00	\$73.90			
						** Supplier Total **			\$203.25				
City of Toronto, Water Section													
070113-236	306125	236	165Bath	01-Jul-13	31-Jul-13	\$537.95		\$0.00	\$0.00	\$537.95			
073113-236	306164	236	165Bath	31-Jul-13	30-Aug-13	\$1,431.76		\$0.00	\$0.00	\$1,431.76			
090113-236	307592	236	165Bath	31-Aug-13	30-Sep-13	\$1,531.76		\$0.00	\$0.00	\$1,531.76			
100113-236	310514	236	165Bath	01-Oct-13	31-Oct-13	\$1,533.47		\$0.00	\$0.00	\$1,533.47			
						** Supplier Total **			\$5,034.94				
David J. Colman													
1309041	307445	236	165Bath	04-Sep-13	04-Oct-13	\$565.00		\$0.00	\$0.00	\$565.00			
						** Supplier Total **			\$565.00				
Enbridge Consumers Gas													
102913-236	310514	236	165Bath	29-Oct-13	28-Nov-13	\$899.61		\$0.00	\$0.00	\$899.61			
112813	311432	236	165Bath	28-Nov-13	28-Dec-13	\$2,167.85		\$0.00	\$0.00	\$2,167.85			
						** Supplier Total **			\$3,067.46				
Esbin Property Management Inc.													
Nov/13 165 RT	310516	236	165Bath	30-Nov-13	30-Dec-13	\$3,697.87		\$0.00	\$0.00	\$3,697.87			
Oct/13-165RT	310516	236	165Bath	31-Oct-13	30-Nov-13	\$3,738.89		\$0.00	\$0.00	\$3,738.89			
Sep/13-165RT	310516	236	165Bath	30-Sep-13	30-Oct-13	\$4,124.88		\$0.00	\$0.00	\$4,124.88			
						** Supplier Total **			\$11,561.64				

amount may change due to penalties

Outstanding Invoices

Historical

Report Date: 19-Dec-13
Invoice Date From:

To:

Invoice No	Batch #	Building	Bank	Invoice Date	Due Date	Invoice Amount	Discount Date	Discount Amount	Paid Amount	O/S Balance	Cheque No.	Cheque Date	Cheque Amount
Focus Pest Control													
318207	310514 236	165Bath		20-Aug-13	19-Sep-13	\$67.80		\$0.00	\$0.00	\$67.80			
318690	310514 236	165Bath		17-Sep-13	17-Oct-13	\$96.05		\$0.00	\$0.00	\$96.05			
318933	310514 236	165Bath		21-Oct-13	20-Nov-13	\$67.80		\$0.00	\$0.00	\$67.80			
				** Supplier Total **		\$231.65		\$0.00	\$0.00	\$231.65			
MOECO Property Services													
3384	311432 236	165Bath		25-Nov-13	25-Dec-13	\$141.25		\$0.00	\$0.00	\$141.25			
				** Supplier Total **		\$141.25		\$0.00	\$0.00	\$141.25			
Quality Allied Elevator													
128341	310514 236	165Bath		01-Nov-13	01-Dec-13	\$492.83		\$0.00	\$0.00	\$492.83			
129240	310516 236	165Bath		01-Dec-13	31-Dec-13	\$492.83		\$0.00	\$0.00	\$492.83			
				** Supplier Total **		\$985.66		\$0.00	\$0.00	\$985.66			
Spadina Security Inc.													
665816	306306 236	165Bath		08-Aug-13	07-Sep-13	\$333.35		\$0.00	\$0.00	\$333.35			
				** Supplier Total **		\$333.35		\$0.00	\$0.00	\$333.35			
Technical Standards & Safety Aut													
5608057	310514 236	165Bath		16-Oct-13	15-Nov-13	\$120.00		\$0.00	\$0.00	\$120.00			
				** Supplier Total **		\$120.00		\$0.00	\$0.00	\$120.00			
Toronto Hydro Electric System Lt													
070213-236	306617 236	165Bath		02-Jul-13	01-Aug-13	\$11,494.47		\$0.00	\$0.00	\$11,494.47			
073013-236	306617 236	165Bath		30-Jul-13	29-Aug-13	\$8,789.89		\$0.00	\$0.00	\$8,789.89			
				** Supplier Total **		\$20,284.36		\$0.00	\$0.00	\$20,284.36			
Treasurer, City of Toronto													
070113-236	306125 236	165Bath		01-Jul-13	31-Jul-13	\$24,609.47		\$0.00	\$0.00	\$24,609.47			
080113-236	306125 236	165Bath		01-Aug-13	31-Aug-13	\$24,609.00		\$0.00	\$0.00	\$24,609.00			
090313-236	306125 236	165Bath		03-Sep-13	03-Oct-13	\$24,609.00		\$0.00	\$0.00	\$24,609.00			
				** Supplier Total **		\$73,827.47		\$0.00	\$0.00	\$73,827.47			
Waste Management													
703-732629	310514 236	165Bath		01-Nov-13	01-Dec-13	\$2,401.14		\$0.00	\$0.00	\$2,401.14			
703-738129	311432 236	165Bath		01-Dec-13	31-Dec-13	\$2,168.43		\$0.00	\$0.00	\$2,168.43			
				** Supplier Total **		\$4,569.57		\$0.00	\$0.00	\$4,569.57			

No one answer phone

*Net sure exact amount
No Invoice*

Report by: Building/Supplier Sequence
by Invoice #

Outstanding Invoices

Historical

Report Date: 19-Dec-13
Invoice Date From:

To: 19-Dec-2013
Page 3

Invoice No	Batch #	Building	Bank	Invoice Date	DueDate	Invoice Amount	Discount Date	Discount Amount	Paid Amount	O/S Balance	Cheque No.	Cheque Date	Cheque Amount
						*** Building Total ***		\$121,880.45	\$0.00	\$121,880.45			

DBDC SPADINA LTD. et al.

- and - NORMA WALTON et al.

Applicants

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

AFFIDAVIT OF MARVIN PERNICA
(sworn December 20, 2013)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Lawyers for 165 Bathurst Financial Inc.