

**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

**MOTION RECORD OF THE RESPONDENT
(Returnable November 16, 2017)**

**HOWARD C. COHEN &
ASSOCIATES**

357 Bay St., Suite 901
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COUNSEL FOR THE RESPONDENTS

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NOTICE OF MOTION

The Respondent, Norma Walton, will make a motion to the Court on November 16, 2017 at 10 am, or such other date determined by the Court.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

1. An Order that the sum of \$330,000 that the Manager is holding in trust from Twin Dragons be paid as follows:

- (a) \$150,000 capital repayment plus \$15,000 profits be paid to Duncan Coopland;

(b) \$100,000 capital repayment plus \$10,000 profits be paid to Joe and Teresa Memme; and

(c) \$50,000 capital repayment plus \$5,000 profits be paid to Gideon and Irene Levytam.

2. An Order that the \$553,200 that is due to the Waltons and that is being held in trust by the Manager continue to be held in trust by the Manager pending a determination of the following two claims:

(a) Trez Capital's litigation wherein they are suing both the Waltons and Dr. Bernstein personally in fraud for \$15.3 million; and

(b) The monies due from the Waltons to the Schedule C investors in the amount of \$14 million less whatever amount is ultimately paid to the Schedule C investors from the proceeds the Manager is holding related to the sale of the Schedule C properties; and

3. Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Monies due to Coopland, Memme and Levytam

1. Schonfeld Associates Inc. ("Schonfeld") brought a motion to pay their fees and disbursements; to pay their lawyers' fees and disbursements; to distribute monies to the Applicants; to hold back in their trust account the sum of \$330,691.84 that is due to Duncan Coopland, Joe and Teresa Memme and Gideon and Irene Levytam; and other relief claimed.

2. Schonfeld has confirmed that Duncan Coopland provided \$150,000 to Twin Dragons; Joe and Teresa Memme provided \$100,000 to Twin Dragons; Gideon and Irene Levytam provided \$50,000 to Twin Dragins; and Ange Boudle provided \$50,000 to Twin Dragons.

3. Schonfeld has further confirmed that Ange Boudle was repaid his \$50,000 plus profits of \$25,000 in 2013, but the other investors have not been paid back.

4. There is no reason to hold back the monies due to Coopland, Memme and Levytam. It has already been four years of litigation and it is clear that those people contributed money directly to Twin Dragons in exchange for equity.

5. Schonfeld is recommending that Dr. Bernstein be paid back money from Twin Dragons based on his equity contributions to Twin Dragons. It is only fair and equitable, then, that Coopland, Memme and Levytam be treated the same.

Monies due to the Waltons

6. Schonfeld proposes to pay to the Applicants \$2,426,800 representing the Applicants' claimed equity in five of the Schedule B companies. That is not opposed.

7. Schonfeld proposes to pay to the Applicants \$553,200 of monies that is due to the Waltons or to the Waltons' creditors. That is opposed.

8. It is premature to make any such payments; there is no urgency; and Schonfeld does not have a court ordered mandate to make recommendations for payment in favour of the Applicants as one creditor of the Waltons over and above the interests of the Waltons and their other creditors.

9. There are two creditors that should be taken into account before any such distributions are authorized:

- (a) Trez Capital has sued both the Waltons and Dr. Bernstein for \$15.3 million alleging fraud. That litigation is ongoing.
 - (i) Just prior to his retirement, Justice Newbould rendered an Endorsement that was damning of Dr. Bernstein's credibility and the credibility of his CFO James Reitan. In that Endorsement, Justice Newbould stated that had he known back in November 2013 what he knows now, he would not have ordered the receivership.
 - (ii) The Trez Capital matter has raised significant triable issues which could result in a finding of fraud, which could arguably disentitle Dr. Bernstein to any equitable distribution.
- (b) The Waltons' Schedule C investors are due money from the Waltons.
 - (i) The Schedule C investors invested \$14 million into the Waltons' real estate portfolio.
 - (ii) Schonfeld is holding between \$4 and \$5 million for distribution to the Schedule C investors from the sale of property owned by the Schedule C investors.
 - (iii) Depending on how much of the \$4 to \$5 million is distributed to the Schedule C investors, the Waltons will owe to them the difference.

- (iv) Those creditors need to be considered before any distributions are made to Dr. Bernstein of the Waltons' monies.

10. Such further and other grounds as the Respondents may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Cross-Motion:

- (a) Affidavit of Norma Walton sworn October 4, 2017;
- (b) Endorsement of Justice Newbould dated May 24, 2017; and
- (c) Such further and other material as the lawyers may advise and this Honourable Court may permit.

October 20, 2017

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COUNSELS FOR THE RESPONDENTS

TO: SERVICE LIST

DBDC SPADINA LTD., and those corporations listed on Schedule

-and- NORMA WALTON et al.

A hereto
Applicants

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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COUNSELS FOR THE RESPONDENTS

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**ONTARIO
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AND THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO**

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Respondents

and

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

AFFIDAVIT OF NORMA WALTON

SWORN OCTOBER 18, 2017

I, NORMA WALTON, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am one of the Respondents in this matter and as such have knowledge of the matters herein.

Twin Dragons Equity Payments

2. In the Fiftieth Report of the Manager, at page 14 and 23 of his report and in Schedules Y, attached as Exhibit "A" to my affidavit, he confirms that the following individuals contributed the following amounts to Twin Dragons as equity:

- a. \$150,000 from Duncan Coopland;
 - b. \$100,000 from Joe and Teresa Memme;
 - c. \$50,000 from Gideon and Irene Levytam; and
 - d. \$50,000 from Ange Boudle.
3. At page 23, paragraph 88, and in Schedule Z, attached as Exhibit "B", the Manager demonstrates that Ange Boudle was repaid in 2013 the sum of \$50,000 of principal and \$25,000 of profits.
 4. Duncan Coopland, Joe and Teresa Memme, Gideon and Irene Levytam and Ange Boudle contributed \$350,000 of equity into Twin Dragons.
 5. Ange Boudle was repaid \$50,000 principal plus \$25,000 profits in 2013.
 6. Duncan Coopland, Joe and Teresa Memme and Gideon and Irene Levytam are still owed back their \$300,000 plus profits.
 7. It is my belief that there is no equitable reason to delay payment to them given that Dr. Bernstein has already received partial payment from Twin Dragons and given that the Manager is proposing to pay him more on the basis of his equity investment.

Monies due to us

8. This litigation has been very difficult.
9. My husband and I have debts as a result of the litigation.
10. I oppose the Manager paying any of the monies due to me and my husband to Dr. Bernstein.
11. There are two additional creditors that will also be entitled to part of that money:
 - a. Our Schedule C Investors:
 - i. Before we met Dr. Bernstein, my husband and I owned a portfolio worth about \$120 million with about \$14 million of equity from third party investors;
 - ii. As a result of this litigation, those investors have not recovered their money;

- iii. There is between \$4 and \$5 million in trust with the Manager from the sale of the Schedule C properties that I am hopeful will be paid to the Schedule C investors;
- iv. My husband and I will owe them the difference between \$14 million and whatever is paid to them.

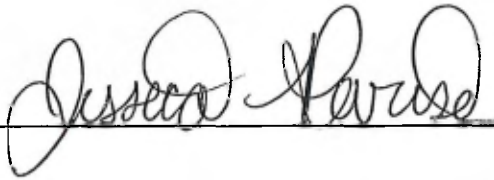
b. Trez Capital:

- i. Trez Capital was one of our lenders.
- ii. My husband and I are being sued for \$15.3 million. So is Dr. Bernstein.
- iii. Trez Capital is alleging fraud against us and against Dr. Bernstein.
- iv. Just prior to his retirement, Justice Newbould rendered a decision that was very critical of the credibility of both Dr. Bernstein and his CFO, James Reitan. James Reitan has been the main affiant in this litigation and has been part of the Inspectorship team with Harlan Schonfeld.
- v. In that decision, Justice Newbould found that Dr. Bernstein deceived Trez Capital and that both Dr. Bernstein and James Reitan lied under oath.
- vi. Justice Newbould said that had he known that Dr. Bernstein instructed me to keep his ownership interest silent, as I had always said, Justice Newbould would never have ordered the receivership that Dr. Bernstein requested.
- vii. That receivership has been so destructive of portfolio value and of every investor's equity in that portfolio. At the behest of Dr. Bernstein, the Manager sold for \$333 million a portfolio appraised at just under \$500 million, all in a rising real estate market.
- viii. Justice Newbould's decision forms part of this Motion Record.
- ix. I believe that Trez Capital will succeed in obtaining a judgment against Dr. Bernstein in fraud.

- x. The Trez Capital matter has raised significant triable issues which could result in a finding of fraud, which would arguably disentitle Dr. Bernstein to any equitable distribution.

12. I make this affidavit for no improper purpose.

SWORN before me at the City of Toronto, in)
the Province of Ontario, this 18 day of)
OCTOBER, ~~18~~ 2017.)



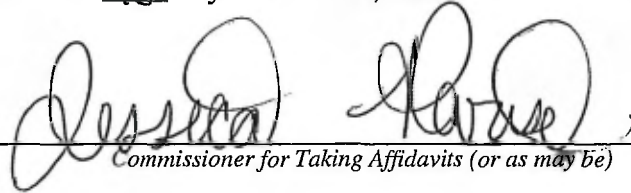
A Commissioner for Taking Affidavits



NORMA WALTON

A

This is Exhibit "A" referred to in the Affidavit of Norma Walton,
sworn on this 18 day of October, 2017.

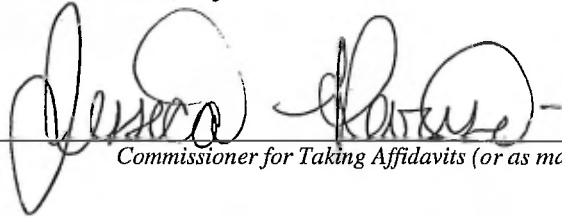


Commissioner for Taking Affidavits (or as may be)

Trans #	Type	Entered/Last Modified	Last modified by	Date	Name	Memo	Account	Amount	Balance
1	Deposit	04/23/2013 10:40:39	Admin	09/01/2010	Gideon and Irene Levylam	Investment	Share Subscription Receivable	(50,000.00)	(50,000.00)
4	Deposit	04/23/2013 10:38:55	Admin	09/30/2010	Ange Boudle	investment in Twin Dragons (US\$ cheque converted to CDN\$)	Share Subscription Receivable	(50,000.00)	(100,000.00)
706	Cheque	04/23/2013 10:39:13	Admin	10/22/2010		Ange Boudle US\$10,000 cheque returned	Share Subscription Receivable	10,000.00	(90,000.00)
23	Deposit	04/23/2013 10:46:17	Admin	10/27/2010	Teresa and Joe Memme	Investment	Share Subscription Receivable	(100,000.00)	(190,000.00)
28	Deposit	04/23/2013 10:40:20	Admin	10/29/2010	Duncan Coopland	Deposit	Share Subscription Receivable	(150,000.00)	(340,000.00)
29	Deposit	04/23/2013 10:39:28	Admin	11/02/2010	Ange Boudle	Deposit	Share Subscription Receivable	(10,000.00)	(350,000.00)
718	Cheque	04/23/2013 10:39:44	Admin	11/30/2010		\$US \$10,000 - returned item	Share Subscription Receivable	10,000.00	(340,000.00)
111	Deposit	04/23/2013 10:39:57	Admin	12/29/2010	Ange Boudle	Deposit	Share Subscription Receivable	(10,000.00)	(350,000.00)
1,748	General Journal	05/17/2012 10:00:41	Kendra	12/31/2010		To reclassify funds owed by Ron and Norma Walton for equity	Share Subscription Receivable	1,120,500.00	770,500.00
								<u>770,500.00</u>	<u>770,500.00</u>

B

This is Exhibit "B" referred to in the Affidavit of Norma Walton,
sworn on this 18 day of October, 2017.

A handwritten signature in black ink, appearing to read "Jessica Rouse", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Trans #	Type	Entered/Last Modified	Last modified by	Date	Num	Name	Memo	Account	Debit	Credit
2,122	Cheque	07/25/2013 14:53:25	Admin	10/02/2012	483	Ange Boudle	Partial capital return - 241 Spadina	26200 - I/C Payable - Rose and Thistle	40,000.00	
2,122	Cheque	07/25/2013 14:53:25	Admin	10/02/2012	483	Ange Boudle	Partial return of capital return - 241 Spadina	10100-1 - Bank - 421100		40,000.00
2,383	Cheque	04/23/2013 10:43:36	Admin	02/01/2013	547	Ange Boudle	-MULTIPLE-	Due From Shareholders	35,000.00	
2,383	Cheque	04/23/2013 10:43:36	Admin	02/01/2013	547	Ange Boudle	Repayment of capital and Pref. shares dividend	10100-1 - Bank - 421100		35,000.00

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Respondents

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AFFIDAVIT OF NORMA WALTON
(Sworn October 18, 2017)

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PROCEEDING COMMENCED AT TORONTO

MOTION RECORD

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