

Court File No.

**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, and THE ROSE & THISTLE  
GROUP LTD., AND THOSE CORPORATIONS LISTED ON SCHEDULE B  
HERETO

Respondents

and

THOSE CORPORATIONS LISTED ON SCHEDULE C HERETO, TO BE  
BOUND BY RESULT

**AFFIDAVIT OF NORMA WALTON  
SWORN OCTOBER 3, 2013**

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

1. I am a respondent in this litigation, and I am also an officer and director of the respondent The Rose and Thistle Group Ltd. My husband Ronauld Walton (“Ron”) is the only other officer and director of The Rose and Thistle Group Ltd.

2. I am also a director of the respondent corporations listed in Schedule B of the application and motion record herein.

3. As such, I have personal knowledge of the matters deposed to herein. Where I do not have personal knowledge, I set out the source of my information, which information I believe to be true.

4. I believe that this application and motion are brought for purely tactical reasons. I speculate that the principal behind the applicant corporations, Dr. Stanley Bernstein, hopes that the appointment of an Inspector will create the stench of wrongdoing and make it more difficult for the respondents (Ron and I, in particular) to raise funds, in pursuit of his intent to buy all of our properties at a discount.

5. The applicants have attached six (6) executed agreements between certain applicants and certain respondents as Exhibit "A" to the affidavit of James Reitan sworn October 1, 2013, contained in the application and motion record.

6. I attach as **Exhibit "A"** hereto, copies of additional executed agreements relating to the other real estate properties/projects. There is an executed agreement with an arbitration clause for everyone one of the properties in question.

7. Dr. Stanley Bernstein always indicated a preference to be a silent investor. Dr. Bernstein told me that he wanted to be silent to avoid personal liability for the mortgages registered against our real estate portfolio. This is the reason that, to his knowledge, Dr. Bernstein is not a director of most of the properties' holding companies to this day. Dr. Bernstein's representatives have copies of all of the respondent holding companies' minute books.

8. Although Dr. Bernstein's numbered company has provided private mortgage financing to some of the properties we own together, Dr. Bernstein has never personally guaranteed any of the portfolio's mortgage debts, yet he has always insisted that Ron and I personally guarantee the mortgage debts to his numbered company.

9. Ron and I, on the other hand, have personally guaranteed \$206,057,500 of the \$249,019,500 of mortgage debt across the real estate portfolio.

10. Ron and I have a beneficial interest in 21 real estate properties, in which Dr. Bernstein has no interest. These 21 properties involve their own mortgages, which Ron and I have also personally guaranteed. Dr. Bernstein would be aware of this; we have disclosed our net worth to him in the past.

11. Dr. Bernstein would be aware that public litigation will prevent Ron and I from refinancing the properties that we own, both inside the portfolio wherein Dr. Bernstein is an investor, and outside it.

12. I have no other explanation for Dr. Bernstein wanting to damage the value of our real estate portfolio or for purporting to ignore the arbitration clauses that we have signed, not once but signed over 30 times in the past 2.5 years.

13. As Dr. Bernstein knows, many lenders conduct a litigation check before placing a new mortgage, especially where the amount is substantial. I believe that Dr. Bernstein wants to cause Ron and I to lose both the properties in which he is invested and the properties in which he is not invested, so that he can keep them or acquire them at a discount.

14. Dr. Bernstein has demanded repayment of certain mortgages. I attach as **Exhibit “B”** hereto, an email confirming this. Yet Dr. Bernstein knows that he has prevented our ability to do exactly what he is asking by commencing this application.

15. Further, Dr. Bernstein is acting contrary to the portfolio’s interest because two of the properties wherein he has demanded mortgage repayment (“Pape” and “Jefferson”) are in development and thus in need of his private mortgage *to complete the project*—of this he was aware when he accepted the mortgage. The pro forma shows Dr. Bernstein as a debtor through to project completion. By announcing now that he will not renew, Dr. Bernstein is pulling the rug out from under the project to which he had committed and liked. This is baffling—except that Ron and I have personally guaranteed the debt.

16. Dr. Bernstein complains about the accounting and reporting to him on the projects. I have already acknowledged deficiencies, while at the same time reminding Dr. Bernstein of the stellar returns of over 20% compounded annually that the portfolio has achieved to date and is on track to continue to achieve between now and December 31, 2013. Attached as **Exhibit “C”** is an Excel sheet that gives a financial snapshot of the projects, which I created. I verily believe that the Excel sheet that I have created provides accurate figures and information on each of the real estate projects.

17. Notably, the parties’ investing relationship lasted 2.5 years without complaint from Dr. Bernstein. Only approximately six months ago, Dr. Bernstein started saying he needed more from me in the way of accounting and reporting; again, this is after 2.5 years. Other members of my team and I did what we could to meet Dr. Bernstein’s new expectations, while continuing our obligations in managing the real estate portfolio—a real estate portfolio that was only getting bigger and bigger as time went on, in part because Dr. Bernstein was satisfied with the projects’ progress and returns, and kept investing in new property acquisitions (right up until June 30, 2013, *i.e.*, after Reitan’s June 7, 2013 letter which contains a laundry list of complaints).

18. Dr. Bernstein’s complaints led to him to instal one of his accountants, Anjela Romanova, at the offices of The Rose and Thistle Group Ltd. at 30 Hazelton Ave., Toronto. The respondents had no issue with Romanova being at our premises to help us catch up on the accounting and facilitate reporting to Dr. Bernstein. Hence, Romanova has been attending at The Rose and Thistle’s offices on a full-time basis since May, 2013, or more than four months now.

Soon thereafter, the affiant Jim Reitan also started attending at our premises with Romanova, to gather information for Dr. Bernstein.

19. For the last four months, the respondents have made best efforts to satisfy Dr. Bernstein's increasing expectations about the level of his involvement. We provided to Romanova and to Reitan the documents they requested, as we could make them available.

20. On the issue of the two \$3 million mortgages, I have made arrangements to discharge the \$3 million mortgage registered against 1500 Don Mills Road, which discharge will occur on October 21, 2013. I have also made arrangements to wire the monies obtained from the new mortgage on 1450 Don Mills Road into the Global Mills account, also by October 21, 2013.

21. Dr. Bernstein has made \$73,927,445 in equity investments into the portfolio herein; this contribution is secured by \$164,227,060 of existing and projected equity in the portfolio, leaving a cushion of approximately \$99,700,385 million to support Dr. Bernstein's investment and ours.

22. Dr. Bernstein, through corporations, is also a mortgagee on some of the real estate properties herein, having provided \$22,790,000 in mortgage financing and \$1,937,500 in loans. Mortgages in place are secured by the entire portfolio value of approximately \$431,607,000 upon completion(s).

23. Therefore, Dr. Bernstein's current total funding is \$98,654,445 million, not \$110 million.

24. Ron and I have \$15,707,733 in equity investments to date, with our contribution increasing every day as the projects require more money and work all the way to completion. Dr. Bernstein, on the other hand, will not invest further after his initial investments—with the exception of projects that have completely changed in scope, such as "Don Mills" and "Fraser".

25. Further, Ron and I have personally guaranteed \$206,057,500 of debt to facilitate the purchase and refinancing of the properties, whereas Dr. Bernstein has not. In the past, I secured financing without Dr. Bernstein's prior approval in accordance with the project pro formas. Again, until recently, Dr. Bernstein never previously objected nor attempted to outline preconditions to refinancing.

26. Even on this issue of the \$6 million on "Don Mills", my recollection is that I told Dr. Bernstein about the \$6 million before he ever complained to me. He is maintaining that he found out first, and maybe he did; but no one challenged me on this before I told him.

27. I emphasize that, although Dr. Bernstein provided most of the initial financing on properties, Ron and I provided the personal guarantees. Without our good credit and willingness to risk it all, there would be no real estate portfolio. Ron and I have provided the personal guarantees that we have, only because they were required by the lender.

28. In relation to the appointment of the Inspector that the applicants are making, I wish to make three points. The first is that, if Schonfeld Inc. is permitted to enter the respondents' business premises and take whatever it wants, the very appointment would likely preclude the respondents from further discharging their accounting and reporting function.

29. Secondly, as mentioned, Ron and I own 21 properties in which Dr. Bernstein has no interest at all. We also hold legal files in the office; some are ours and some belong to third parties. If any inspection order is made, respectfully, no material should be provided to the respondents until protocols have been established and followed to protect the confidentiality of information and solicitor-client privilege.

30. Thirdly, an order is not necessary, and it is certainly over the top. I have promised in writing to continue providing Dr. Bernstein's representatives with the information he is entitled to. We have made significant progress and I expect that, by October 21, 2013, even the increasingly demanding Dr. Bernstein will be generally satisfied with the accounting situation.

31. The proposed Inspector himself, Mr. Harlan Schonfeld, has been attending Rose & Thistle's offices since September 30, 2013, and we have been providing Mr. Schonfeld with whatever we reasonably can. Mr. Schonfeld is welcome to continue attending every day, with our consent. Indeed, I have just completed (with one of our architects, Tom Gluck) a space plan for our 30 and 30A Hazelton Ave. offices. As part of that space plan, we have created three



permanent work stations for Dr. Bernstein's accountants. Romanova, Reitan and others have been in lower level boardroom. We thought it made sense to create a permanent space with permanent computers for them, given our expectation that they will be with us for the foreseeable future. The new office space will roll out next week.

32. If the applicants believe that Mr. Schonfeld must be clothed with robust legal powers, they can try to persuade an arbitrator that this is necessary. On behalf of the respondents, I submit that this is not necessary because we would willingly comply with any direction from the arbitrator. As part of the arbitration—to which the respondents wish to get—the respondents would not say that mediation is a precondition to procedural orders or an interim award of the kind the applicants seek herein. In other words, the respondents are willing to respond to the arguments the applicants are raising herein, before an arbitrator, as soon as possible.

33. Although The Rose and Thistle Group Ltd. is not a signatory to the arbitration clauses, The Rose and Thistle Group Ltd. is prepared to participate in the arbitration and obey and be bound by any arbitral directions, as well as any interim or final awards.

34. I have read the affidavit of Anthony Palleschi sworn October 2, 2013. Based upon the comments in his letter attached as Exhibit "B" thereto, and based upon my own sense of the matter after significant experience in the real estate market, I believe that, by litigating this matter publicly, Dr. Bernstein will bring about a 10% to 15% discount to our portfolio. He will also hamper our ability to refinance the portfolio. The appointment of an Inspector, which on its own

suggests to the market the presence of serious wrongdoing, could bring the litigation discount to 20%. The respondents wish to enforce the arbitration clause(s) to protect the value of the real estate portfolio, because arbitration is expected to be more efficient and cost-effective than court proceedings, and because our three-year business relationship (which has been mutually financially rewarding) should not become unnecessarily and publicly confrontational.

35. I expect that the portfolio will cash out over the next two years for approximately \$431,607,000. But failing to arbitrate Dr. Bernstein's concerns privately could erase between \$40 to \$80 million of value. Again, my only explanation is that Dr. Bernstein's objective is to force Ron and I to fold on some properties, allowing him to acquire same, perhaps indirectly.

36. My lawyer on this application, Guillermo Schible, had proposed any of three individuals to act as a mediator. We have now proposed any of those three individuals to act as an arbitrator. I attach as **Exhibit "D"** the formal notice submitting matters to arbitration, which was faxed to counsel for the applicants today.

37. There are only two properties ("West Mall" and "Richmond") in which part of Dr. Bernstein's equity contributions have been converted to attract interest.

38. The complete rent roll of the entire portfolio, as well as copies of all the leases in our possession, have now been provided to Reitan.

39. Moreover, Dr. Bernstein's accountants have been provided Quickbooks access to present day for 20 of the 34 properties. That allows Dr. Bernstein to have draft financial statements for 2012 and year-to-date statements for 2013, changing daily in real time.

40. It takes an average of 25 hours of bookkeepers' time to update to present day one property. I expect that, by October 18, 2013, Dr. Bernstein's accountants will have Quickbooks access to present day for the remaining 14 properties.

41. After this, the respondents will work with Dr. Bernstein's accountants, as in 2011, on preparing the 2012 financial statements.

42. Finally, we have recently provided Dr. Bernstein's accountants with bank statements from project inception through to the end of August, 2013 for the bulk of the properties. Dr. Bernstein will have the bank statements for the balance of the properties over the next few business days.

43. I attach as **Exhibit "E"** a copy of an email from October 2, 2013 and a copy of an email from September 26, 2013, confirming the recent disclosures referred to above.

44. I attach as **Exhibit "F"** a copy of the 9:30 am scheduling appointment signed by both counsel herein (as added to, by my counsel) and a copy of the order scheduling these hearings.

45. I make this affidavit in response to the applicants' request that an Inspector be appointed, and in support for the respondents' own application and motion that this proceeding be stayed and for an order appointing an arbitrator for the parties.

SWORN before me at the City of Toronto, in )  
the Province of Ontario, this 3rd day of )  
October, 2013. )

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GUILLERMO SCHIBLE  
A Commissioner for Taking Affidavits

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NORMA WALTON

**ONTARIO SUPERIOR  
COURT OF JUSTICE  
[COMMERCIAL LIST]**

Proceeding commenced at:

TORONTO

**AFFIDAVIT OF  
NORMA WALTON  
Sworn October 3, 2013**

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