

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) WEDNESDAY, THE 24<sup>TH</sup>  
 )  
JUSTICE NEWBOULD ) DAY OF DECEMBER, 2013

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 ON SCHEDULE B HERETO, TO BE  
BOUND BY THE RESULT

**ORDER**

**THIS MOTION**, made by the third party mortgagees 165 Bathurst Financial Inc. and Computershare Trust Company of Canada, the latter as custodian, nominee and agent for and on behalf of Investors in a Canadian commercial mortgage securitization known as Institutional Mortgage Securities Canada, Commercial Mortgage Pass Through Certificates, Series 2012-2 (each, a “Mortgagee”), for an Order in respect of the Schedule “B” Properties municipally known

as 620 Richmond Street West (as it related to 165 Bathurst Financial Inc.) and 1131A Leslie Street in Toronto, Ontario (as it relates to Computershare Trust Company of Canada);

**ON READING** the affidavits of James Reitan sworn October 1, October 3, October 24 and December 9, 2013 the affidavit of Dr. Stanley K. Bernstein sworn October 1, 2013, the affidavits of Norma Walton sworn October 3 and October 31, 2013, <sup>✓ and December 7, 2013 ✓</sup> the affidavit of Harlan Schonfeld sworn October 1, 2013, the affidavit of Marvin Pernica sworn December 5, 2013, the affidavit of Jean Monardo sworn December 16, 2013 and the Exhibits attached thereto, the First Interim Report of the Inspector, Schonfeld Inc., the Supplemental Report to the First Interim Report of the Inspector and the Exhibits thereto, the Second Interim Report of the Inspector and the facts and books of authorities, filed, and upon hearing counsel for the Applicants, the Respondents, the Manager and the Mortgagees and/or the consent of the Mortgagees.

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notices of Motion and the Motion Records is hereby abridged so that the motions are properly returnable today and hereby dispenses with further service thereof.

### **CONTINUING ORDERS**

2. THIS COURT ORDERS that the Orders of the Honourable Justice Newbould dated October 4, 2013 (the "October 4 Order"), October 25, 2013 and November 5, 2013 (the "November 5 Order") continue in full force and effect except as modified by this Order in respect of the Schedule "B" Properties municipally known as 620 Richmond Street West and 1131A Leslie Street in Toronto, Ontario together with all related rents, revenues and personal property, (the "Carve-Out Properties").

3. THIS COURT ORDERS that the Manager's Borrowing Charge and the Manager's Charge shall rank in subsequent priority to any all security interests, trusts, liens, charges, mortgages and encumbrances, statutory or otherwise, in favour of any Mortgagee or any other Person validly registered on title of the Carve-Out Properties or against the respective Borrower as of December 24, 2013. The Manager's Borrowing Charge and the Manager's Charge shall not be registered on title to the Carve-out Properties and shall not, in the event the stay of proceedings is lifted in accordance with paragraphs 8 and 13 hereof, otherwise impair the relevant Mortgagees' ability to sell or lease the Carve-Out Property.

4. THIS COURT ORDERS that the rents, revenues and other income of each Carve-Out Property and respective Borrower shall be used only to fund the obligations of that Carve-Out Property and for greater certainty shall not be used to fund the obligations of any other Schedule "B" Property.

5. THIS COURT ORDERS that the proceeds of any borrowing under the Manager's Borrowing Charge (as defined in the November 5 Order) in respect of a Carve-Out Property be used only to fund the obligations of that Carve-Out Property.

#### **COSTS**

6. THIS COURT ORDERS that the costs of the Applicants and Respondents of this Application and the costs of the Inspector (as defined in the October 4 Order) shall not form part of the Manager's Charge or the Manager's Borrowing Charge and shall be borne by the Applicants or the Respondents, as may be determined by this Court from time to time.

## COMPLIANCE WITH THE MORTGAGES

7. THIS COURT ORDERS that the mortgagors of the Carve-Out Properties shall hereafter comply with the terms of the respective mortgages, charges and other related loan and security documents, including any general security agreements (collectively, the "Mortgages") in favour of each Mortgagee from and after the date of this amending Order. For greater certainty, nothing in this paragraph 7 requires the mortgagors of the Carve-Out Properties or the Manager to cure the existing or continuing events of default as of the date of this Order listed in Schedules "C" and "D" hereto. Nothing in this paragraph prejudices the right of the Mortgagees to rely on such existing or continuing defaults if the stay of proceedings is lifted in accordance with paragraph 8, 13 or 14 hereof. Nothing in this Order prejudices the rights of a Mortgagee to add any costs, fees or other amounts arising from the existing defaults under its Mortgage and/or these proceedings to the indebtedness secured by its Mortgage as permitted by the Mortgage or applicable laws.

*alleged  
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8. THIS COURT ORDERS that there shall be an automatic lifting of the stay imposed by paragraphs 12 and 13 of the November 5 Order on a Carve-Out Property and the Mortgagee of the Carve-Out Property may enforce its rights under and in accordance with its respective Mortgage in the event of any breach of paragraph 7 above, including without limitation, any failure to pay any monthly payment of principal, interest and all reserves when due.

9. THIS COURT ORDERS that the Manager shall provide each Mortgagee with notice of any breach of paragraph 7 of which it becomes aware in respect of the respective Carve-Out Property and shall, on a monthly basis, provide each Mortgagee with a certificate confirming that it is not aware of any breach of paragraph 7 in respect of the Carve-Out Property.

*the applicants and respondents,  
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*the applicants and respondents  
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10. THIS COURT ORDERS that in the event the stay is lifted in accordance with paragraph 8 hereof, the relief granted herein is without prejudice to the right of the Mortgagee to bring any action, proceeding or claim against the Borrower or any guarantor under the Mortgage or guarantee, or to the right of the Mortgagee to raise any existing, continuing or future events of default in these proceedings.

11. THIS COURT ORDERS that subsection 5(l) and (m) of this Court's Order dated November 5, 2013 is modified to require the consent of the respective Mortgagee(s) for any further steps to market, list for sale, sell, convey, lease, rent, transfer or assign any Carve-Out Properties from and after the date of this amending Order, in accordance with the respective Mortgages. Furthermore, nothing in the Order dated November 5, 2013 or this Order shall prejudice the right of the Mortgagees to object to a prepayment of their respective Mortgages or to claim the prepayment charge provided for under the respective Mortgages.

12. THIS COURT ORDERS that the Manager shall report to the Mortgagees <sup>the applicants and respondents</sup> on the status of the respective Carve-Out Properties, including but not limited to providing timely reports in respect of leasing or sales activity, copies of any appraisals of the Carve-Out Properties and any offers for the sale or lease of the respective Carve-Out Property in the possession of the Manager from time to time, subject to the <sup>recipients</sup> ~~Mortgagee~~ executing a confidentiality agreement in a form acceptable to the Manager and the Mortgagee, acting reasonably. <sub>2013</sub>

13. THIS COURT ORDERS that there shall be an automatic lifting of the stay imposed by paragraphs 12 and 13 of the November 5 Order on a Carve-Out Property permitting any Mortgagee to move to enforce any and/or all of its rights under its respective Mortgage if: (i) by January 31, 2014, the Manager's plans to sell the relevant Carve-Out Property has not been approved by the

respective Mortgagee acting reasonably, the Manager has not commenced the sale process by retaining a reputable real estate agent and listed the property for sale, or has not commenced to actively market the property for sale; (ii) by January 31, 2014, with respect to 1131A Leslie Street, the Manager's plan to lease the vacant space in such property has not been approved by the relevant Mortgagee acting reasonably, the Manager has not commenced the leasing process by retaining a reputable leasing agent on market terms and listed such space for lease, or has not commenced to actively market the property for lease; or (iii) in respect of each Carve-Out Property, at any time after February 1, 2014, the Manager fails to diligently, continuously and prudently market such property for sale and lease, unless the Manager and the relevant Mortgagee have all agreed in writing to extend the deadlines provided in this paragraph 13.

14. THIS COURT ORDERS that there shall be an automatic lifting of the stay imposed by paragraphs 12 and 13 of the November 5 Order on a Carve-Out Property if the sale of the Carve-Out Property is not fully completed by July 31, 2014 (whether or not the relevant Mortgagee is in good standing), unless the Manager and the relevant Mortgagee have all agreed in writing to extend the deadline provided in this paragraph 14.

#### **OTHER RELIEF**

15. THIS COURT HEREBY REQUESTS that aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Manager and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Manager, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Manager and its agents in carrying out the terms of this Order.

16. THIS COURT ORDERS that the Manager be at liberty and is hereby authorized and empowered to apply to any court, tribunal regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

17. THIS COURT ORDERS that any interested party may apply to this Court to seek the advice and direction of the Court in respect of this Order or the activities of the Manager on not less than seven (7) days' notice to the Manager and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
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EDUCATION ACT / ÉDUCATION (TORONTO)  
081 / 333-1000  
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## SCHEDULE "A" COMPANIES

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investment 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 Inc.
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 Industrial 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 Inc.
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. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

## **SCHEDULE "C"**

The following potential events of default as of the date of this Order under the Mortgage on the Schedule "B" Property at 1131A Leslie Street in Toronto, Ontario with Computershare Trust Company of Canada, as custodian, nominee and agent for and on behalf of Investors in a Canadian commercial mortgage securitization known as Institutional Mortgage Securities Canada, Commercial Mortgage Pass Through Certificates, Series 2012-2 are subject to paragraph 7 of this Order:

- a) The Order of this Court dated November 5, 2013;
- b) This Order of the Court; and
- c) Any representation made at the time the Mortgage was entered into regarding the ownership of the Mortgagor/Borrower.

## **SCHEDULE "D"**

The following potential events of default as of the date of this Order under the Mortgage on the Schedule "B" Property at 620 Richmond Street West, Toronto, Ontario with 165 Bathurst Financial Inc. are subject to paragraph 7 of this Order:

- a) The Order of this Court dated November 5, 2013;
- b) This Order of the Court; and
- c) Any representation made at the time the Mortgage was entered into regarding the ownership of the Mortgagor/Borrower; and
- d) The non-payment of utilities, taxes and other obligations prior to the date of this Order.

DBDC SPADINA LTD., et al  
Applicants

-and- NORMA WALTON et al.  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER**

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SMITH GRIFFIN LLP**

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