

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

DBDC SPADINA LTD et al

Plaintiff(s)

AND

NORMA WALTON et al

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
See attached		
Counsel slip		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

MS Walton moves on short notice for an order (i) directing a 30-day moratorium to January 15, 2014 on any sale of the properties subject to the Manager order; (ii) that any listing agreement to be made by the Manager be non-exclusive so that no agent is entitled to a commission unless a sale procured by the agent is approved by the court and (iii) that Norma Walton be free to solicit,

January 6, 2014
Date

[Signature]
Judge's Signature

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Judges Endorsment Continued

provide information to, and obtain firm offers to purchase all or some of the properties from joint owned property development groups and any other group that she may identify and the court permit.

The order sought is opposed by the manager, the plaintiffs and several of the mortgagees on properties that the Manager intends to list for sale.

The order of November 5, 2013 appointing the Manager authorized the Manager to appoint agents and to market the properties.

The Manager has proposed to firstly list 9 properties for sale, chosen because in the Manager's opinion, they are in a state of development that makes them readily saleable. The mortgagees of these properties have also supported an early sale.

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Ms Walker in her affidavit sworn yesterday says she has been discussing a potential en bloc sale of all of the properties with four potential purchasers. She opposes the listing of only 9 properties and asserts that an en bloc sale of all of the properties will fetch more than a piecemeal sale of the various properties.

I have serious concern with the steps that Ms Walker has taken regarding the marketing of the properties.

The order appointing the Manager gave the Manager the exclusive powers to market the properties, to solicit offers and negotiate terms and conditions of the sale. In spite of that, Mr Cohen who acts for Mr Ronald Walton and Rose Pirike, wrote on December 30, 2013 to Colliers to advise that negotiations

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regarding 13 properties by ~~the~~ Fore & Wistle did not entitle any existing court order. This was clearly wrong. On ~~the~~ the same day counsel to the Manager advised Mr. Cohen that ~~both~~ Fore & Wistle and Mr. Walton had no authority to instruct others or to deal with or communicate with anyone other than the Manager with respect to marketing the properties. It is not clear why Mr. Cohen has been retained, but in light of the fact that it is admitted that it is Ms. Walton, not Mr. Walton, who is running this operation on behalf of Fore & Wistle, it is clear that he was supporting the efforts of Ms. Walton to negotiate with prospective purchasers.

Without further court order, Mr. Walton has no business to be involved in anyway with the marketing of the properties other

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than discussing matters with the Manager
or Dr. Bernstein.

Moreover, Ms. Walton has now obtained
two letters of intent from two interested
parties for the purchase of all of the
properties subject to the Manager's order
that was sold. This is far more than
Mr. When was discussing in his letter to
Colliers. What discussions have taken
place with these prospective purchasers
is not at all known. This in itself is
a problem for the Manager. Worse is
that these letters of intent with
the proposed purchase price have
been attached to Ms. Walton's affidavit
and thus made public. This can only
have a negative effect on any marketing
effort for as the prospective purchasers
on an en bloc basis now know the
ceiling of these two prospective

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purchasers. These letters of intent are by their terms non-binding and in no way are akin to stacking horse bids that are firm and approved by a court.

It is completely counter-protective to have two people, the Manager and Ms. Walton, dealing with the marketplace in marketing the properties. There was a reason for giving the Manager the exclusive right to market the properties and to expressly prevent the respondents from being involved, as the order of November 5, 2013 provided. Nothing has changed. I would not give Ms Walton any authority to deal with any prospective purchasers. Her motion to be given such authority is denied. She is simply not entitled to do anything regarding prospective purchasers other than to direct them

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to the Manager.

The request for a 30 day restriction in any sale is based on the condition in the two letters of intent obtained by Mr. Walton that the purchaser be given 30 days to do due diligence. I see no reason why they should be given the advantage of requiring the Manager to not sign any agreement, subject to court approval, hereafter. Normally, any request by a purchaser ~~to~~^{for} an exclusive right to bargain, or to prevent a seller such as a receiver or manager from selling for a period of time, is ~~not~~ a matter of negotiation between the prospective purchaser and the receiver or manager. It is possible that in this case the Manager might want to put pressure on a prospective purchaser.

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to move quickly by just agreeing to such a term.

The Manager is an officer of the Court. Any agreement signed by the Manager would be subject to court approval and the Saunders principles would come into play. I am sure that the Manager and his counsel are well aware of this and I am not prepared to harvest the Manager's judgment at this stage by imposing any 30 day restrictions.

The request for ~~an order~~ an order that any listing agreement must be a non-exclusive listing is driven by the assertion that if there is an open block sale for all of the properties, then should not be two commissions paid - one to the listing agent on the 9 properties, and one to the agent for

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the purchase of all of the properties.
The Manager has stated that he welcomes the involvement of potential public purchasers. His counsel has stated that he intends to negotiate a term with the listing agent that will deal with the issue of an on floor offer. These are matters that are best dealt with by the market players and not by a court. Counsel for Collins, who took out a bid to be the listing agent for the 9 properties to be first listed, requested an order that the issue of a commission to Collins, should it exist be an on floor purchase price of the properties, be a matter to be dealt with by the court. I would not make such an order. These are matters for the marketplace, subject to approval of any sale based on the Standard

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principles. Moreover, I am concerned that if the listing agreement with CBRE were non-exclusive, there would be less incentive on the agent to market the properties.

In the result, the motion of Ms. Walton is dismissed.

If costs are requested, a proper cost outline and a cost argument no longer than 3 pages may be delivered within 10 days, and the respondents will be entitled to a further 10 days to deliver a responding argument of no more than 3 pages.

J. D. J.

COUNSEL SLIP (COMMERCIAL MOTIONS)

2:30

No On List: 5

Court File No CV-13-00010280 DATE: JAN 06 2013

Title of Proceeding: DBDC Spadina vs Walton

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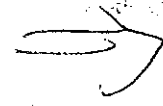
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