

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE PATTILLO

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THURSDAY, THE 9TH
DAY OF OCTOBER, 2014



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 IN Schedule B HERETO, TO BE
BOUND BY THE RESULT

APPROVAL AND VESTING ORDER

(66 Gerrard Street East, Toronto, Ontario)

THIS MOTION, made by Schonfeld Inc. in its capacity as the Court-appointed receiver/manager (the “**Manager**”), without security, of all of the assets, undertakings and properties of Gerrard Church 2006 Inc. (“**Gerrard**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale for the lands and building legally described as Lot 17, North side of Gerrard Street, Plan 22A, Toronto; Part of Lot 16, North side of Gerrard Street, Plan 22A, Toronto, as in CT750712; City of Toronto, being all of PIN 21102-0200(LT) (the “**Lands**”) initially between Gerrard (and subsequently the Manager) and William Mandelbaum in trust for 2434874 Ontario Ltd. (the “**Purchaser**”) dated

June 13, 2014, as amended by agreements dated June 23, 2014 and August 1, 2014, as further amended by third amendment to agreement of purchase and sale dated October 1, 2014 (collectively, the “**Sale Agreement**”) and appended to the Eighteenth Report of the Manager dated October 6, 2014 (the “**Report**”), and vesting in the Purchaser all of Gerrard’s right, title and interest in and to the Lands, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Manager, no one appearing for any other person on the service list:

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Manager is hereby authorized and approved, with such minor amendments as the Manager may deem necessary. The Manager is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Lands to the Purchaser.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Manager’s certificate to the Purchaser substantially in the form attached as Schedule C hereto (the “**Manager’s Certificate**”) and the registration of this Order on title to the Lands, all of Gerrard’s right, title and interest, in and to the Lands shall vest absolutely in the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), purchase options, liens, executions, writs of seizure and sale, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Newbould dated November 5, 2013; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those claims listed on Schedule D hereto (all of which items (i) and (ii) are collectively referred to as the “**Encumbrances**”, which term

shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule E) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Lands are hereby expunged and discharged as against the Lands. Despite the foregoing, in accordance with the Sale Agreement, the first ranking charge registered against the Lands as AT3041079 shall be assumed by the Purchaser and, therefore, shall not be expunged and discharged by operation of this Order.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (No. 80) of an Application for Vesting Order with respect to the Lands, in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Lands in fee simple, and is hereby directed to delete and expunge from title to the Lands all of the Claims listed in Schedule D hereto.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of the Claims, the proceeds of the Transaction, net of closing costs, (the “**Net Proceeds**”) shall stand in the place and stead of the Lands, and that from and after the delivery of the Manager’s Certificate all Claims and Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Lands immediately prior to the sale, as if the Lands had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the conveyance and sale, respectively.

6. THIS COURT ORDERS that the Net Proceeds shall be distributed according to the following priority:

- (a) an amount sufficient to satisfy the charge registered as AT3615240 shall be paid to 2389069 Ontario Ltd. in satisfaction of the second ranking charge;
- (b) an amount sufficient to satisfy the Manager’s shortfall, if any, in paying the operating costs of Gerrard from August 12, 2014 to the date of closing; and
- (c) the balance of the Net Proceeds shall be held in trust by the Manager or its counsel pending further Order of this Court.

7. THIS COURT ORDERS AND DIRECTS the Manager to file with this Court a copy of the Manager's Certificate, forthwith after delivery thereof.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Gerrard and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Gerrard;

the vesting of the Lands in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Gerrard and shall not be void or voidable by creditors of Gerrard, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

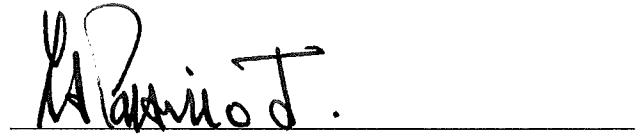
9. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. THIS COURT ORDERS that no holder of any Encumbrances shall take any steps or proceedings, or make any filings or claims in connection therewith, against the Lands or against the Purchaser in connection with any of such Encumbrances following delivery of the Manager's Certificate in accordance with paragraph 3 hereof.

11. THIS COURT ORDERS that the Confidential Appendices to the Report contained in the Gerrard Confidential Appendix Brief (as defined in the Report) be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from the contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened ~~upon further Order of this Court.~~ *after the Transaction herein is completed.*

Y.P.

12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



OCT 9 2014

Schedule A Companies

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investments 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 Ltd.
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 Lands 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 Ltd.
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. Royal Gate Nominee Inc.
29. Royal Gate (Land) Nominee Inc.
30. Dewhurst Development Ltd.
31. Eddystone Place Inc.
32. Richmond Row Holdings Ltd.

33. El-Ad (1500 Don Mills) Limited
34. 165 Bathurst Inc.

Schedule C– Form of Manager’s Certificate

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

**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 IN Schedule B HERETO, TO BE
BOUND BY THE RESULT

MANAGER’S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (the “**Court**”) dated November 5, 2013 and a Judgment and Order of the Honourable Justice Brown dated August 12, 2014, Schonfeld Inc. was appointed as the Receiver/Manager (the “**Manager**”), without security, of all of the assets, undertakings and properties of Gerrard Church 2006 Inc. (“**Gerrard**”) and others;
- B. Pursuant to an Order of the Court dated ●, 2014 (the “**Approval and Vesting Order**”), the Court approved the agreement of purchase and sale dated June 13, 2014, as amended by agreements dated June 23, 2014 and August 1, 2014, as further amended by third amendment to agreement of purchase and sale dated October 1, 2014 and as may be further amended and/or assigned from time to time (collectively, the “**Sale Agreement**”) initially between Gerrard (and subsequently the Manager) and William Mandelbaum in trust for 2434874 Ontario Ltd. (the “**Purchaser**”) and provided for: (A) the vesting in the Purchaser of Gerrard’s right, title and interest, in and to the lands legally described as Lot

17, North side of Gerrard Street, Plan 22A, Toronto; Part of Lot 16, North side of Gerrard Street, Plan 22A, Toronto, as in CT750712; City of Toronto, being all of PIN 21102-0200(LT) (the "**Lands**"), which vesting is to be effective with respect to the Lands upon: (1) the delivery by the Manager to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Lands; (ii) that the conditions to Closing as set out in Section ● on Schedule A to the Sale Agreement have been satisfied or waived by the Manager and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Manager; and (2) the registration of the Approval and Vesting Order on title to the Lands.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MANAGER CERTIFIES the following:

1. The Purchaser has paid and the Manager has received the Purchase Price for the Lands payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Section ● on Schedule A to the Sale Agreement have been satisfied or waived by the Manager and the Purchaser; and
3. The transaction contemplated in the Sale Agreement has been completed to the satisfaction of the Manager.

This Certificate was delivered by the Manager at Toronto, Ontario on _____, 2014.

SCHONFELD INC., in its capacity as Court appointed Receiver/Manager of **GERRARD CHURCH 2006 INC.**, and not in its personal capacity

Per: _____

Name: Harlan Schonfeld

Title: President

Schedule D—Claims to be deleted and expunged from title to the Lands

1. Charge from Gerrard in favour of 2389069 Ontario Ltd. registered as Instrument No. AT3615240; and
2. Certificate of Pending Litigation registered by DBDC Spadina Ltd as Instrument No. AT3638591.

Schedule E– Permitted Encumbrances, Easements and Restrictive Covenants related to the Lands

(unaffected by the Vesting Order)

1. Charge from Gerrard in favour of RBC Dexia Investor Services Trust, CIBC Mellon Global Securities Services Company and CMLS Financial Ltd. registered as Instrument No. AT3041079; and
2. Notice of Assignment of Rents and Leases in favour of RBC Dexia Investor Services Trust, CIBC Mellon Global Securities Services Company and CMLS Financial Ltd. registered as Instrument No. AT3041080.

DBDC SPADINA LTD. ET AL
and **NORMA WALTON ET AL**

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

Applicants

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER

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Barristers & Solicitors
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