

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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**

Unofficial Transcript of Written Endorsement

June 18, 2014

The respondent, Ms. Walton, opposed two aspects of this motion, but otherwise did not oppose.

Claims Process

Ms. Walton submitted that the order should contain a requirement that the Manager respond to any claim within 45 days. While deadlines can serve a useful purpose, this ability depends upon the circumstances. I accept the Manager’s argument that it requires some flexibility given the number of properties and the number of the lien claimants. The Manager has worked with reasonable dispatch in this case, and I have no doubt it will bring the same approach to the various claims processes. Accordingly, I find that the claims process proposed by the Manager is reasonable, I approve it and I have signed the order.

Fees of Manager's Counsel

Ms. Walton specified her objections to the fees claimed by Manager's counsel in her factum dated June 17, 2014, which she summarized in open court. I have re-read the invoices of counsel in light of Ms. Walton's submissions. Exhibit "F" to the affidavit of Mr. Empey provided a useful summary of the time spent by all timekeepers, and it allowed an understanding of the amount of litigation vs. real estate time, as well as the distribution or allocation of work amongst partners, associates and clerical staff.

I disallow the \$1,677.00 billed for word processing – such a service forms part of the over-head captured in the hourly rates of the professionals. I otherwise approve the Goodmans' accounts, for the following reasons:

1. the reasonableness of the fees must be assessed within the context of this specific piece of litigation. It has been hotly contested, has involved a very large number of court appearances over the span of 9 months, has dealt with accounting issues and has dealt with a large number of properties. The adversarial nature of most of the attendances covered by the account, inevitably has resulted in high litigation costs. It would not be reasonable for the respondent to expect otherwise;

2. The Manager's proceedings have involved the preparation, marketing, sale and conveyance of a large number of properties - \$62.6 million according to paragraph 10 of the Manager's report – which, in turn, the respondent must reasonably expect would raise large legal fees.

3. Exhibit "F" allows a consideration of the extent to which work has been delegated down the timekeeper chain to the most appropriate level. This case involves complexity, so it is no surprise that significant partner time has been incurred. At the same time, I conclude that Exhibit "F" discloses an appropriate and reasonable delegation of tasks; and,

4. the hourly rates fall within the rate of reasonable full indemnity rates for the downtown Toronto markets.

Accordingly, I approve the fees of the counsel to the Manager, subject to that one adjustment. The order sought should otherwise go.

Counsel for the Manger may submit a revised version of the order for my signature. The issued Claims Procedure Order may be picked up from the Commercial List Court.

D.M. Brown J