

**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, 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**

---

**RESPONDING FACTUM OF GIDEON AND IRENE LEVYTAM  
(Motions and Applications returnable March 15, 2016)**

---

**BORDEN LADNER GERVAIS LLP**  
Solicitors and Barristers  
Scotia Plaza  
40 King Street West, 44th Floor  
Toronto, Ontario, Canada, M5H 3Y4

**Aaron Blumenfeld** LSUC #: 366260  
Tel.: (416) 367-6070  
Fax: (416) 361-7347

Lawyers for Gideon and Irene Levytam

## Overview

1. These motions \applications raise the question of whether the Dr. Bernstein entities, victims of Norma and Ron Walton's fraud, should have priority over other victims, including Gideon and Irene Levytam (the "Levytams"), who are schedule "C" investors. The Levytams say the answer is "no", mainly for the following reasons:

- a. The Levytams entrusted the Waltons with a net \$337,000, which was much of their life savings. The "Rose and Thistle" statements showed that the Levytams' investments had "grown" to \$715,000 by October 2013. The disappearance of these "investments" was devastating to the Levytams, people of modest means, who are as much the victims of the Waltons' wrongdoing as Dr. Bernstein.
- b. It cannot be fairly argued that Cecil Lighthouse Ltd., for example, "knowingly assisted" in the Walton's fraudulent scheme, merely because Norma was a director. There must at minimum be some specific conduct of Norma in respect of Cecil that the applicants can identify. They have not done so. (This company is referenced, as it has money now in Schonfeld's hands, and the Levytams were preferred shareholders in Cecil.)
- c. Moreover, Dr. Bernstein has not shown that his funds in fact went into Cecil Lighthouse. At most, Dr. Bernstein shows that his money disproportionately went to Rose & Thistle, and money from Rose & Thistle disproportionately went to various Schedule C companies, including Cecil. However, some of the Levytams' money also went to Rose & Thistle, which seems to have acted as a "clearing house", so their money may also have ended up in Cecil and other entities with money available today.
- d. For similar reasons, the "Net Transfer" approach advocated by Dr. Bernstein should not be sufficient to enable a judgment in his favour against Cecil and other schedule "C" companies. Dr. Bernstein identifies no legal theory for that proposition.

e. Importantly, all of the evidence on which Dr. Bernstein relies in respect of the flow of funds was available and before Justice Brown in the summer of 2014.<sup>1</sup> Justice Brown provided a constructive trust to Dr. Bernstein over Schedule “C” entities in which he was able to trace his funds, but declined to do so in respect of other properties. There is no evidentiary or legal basis to revisit this decision now.

2. Dr. Bernstein has not proven an entitlement to Schedule “C” assets, beyond what Justice Brown accepted and ordered, and accordingly this application\motion should be dismissed insofar as it affects the Levytams.

### **Overview of the Levytams’ dealings with the Waltons**

3. In 2002, the Levytams began to invest with Norma and Ron Walton, and their company “The Rose & Thistle Group” through various entities.<sup>2</sup> Over a nine year period, they invested a total of about \$530,000 and received “distributions” of about \$193,000 for a net investment of \$337,000. The Levytams throughout trusted and relied on Norma and her husband Ron, and believed that they had made legitimate, profitable investments. They expected that these investments would become their main retirement “nest egg”.

**Levytam affidavit, para. 2; Responding Motion Record (« RMR ») , p. 2**

4. The Levytams are people of modest means financial, not in a position to hire forensic accountants to try to trace exactly what became of their money. They entrusted much of their life savings with the Waltons, and unless some of that can be recovered, their retirement plans will be fundamentally and negatively affected.

**Levytam affidavit, para. 3; RMR , p. 2**

### **Personal background**

5. Gideon is 60 (born in 1955) and Irene is 62 (born in 1953). They both have a high school education, and no formal schooling afterwards, besides a year of college in carpentry for Gideon. Irene worked for the town of Niagara on the Lake as a secretary until 1981. Other than working with

---

<sup>1</sup> The cash transfers and billing summary was attached as Exhibit “B” to the fourth interim report of the inspector Schonfeld dated April 21,2013.

<sup>2</sup> The investments are referred to herein as being with “Norma” or the “Waltons”, although technically they were made through various legal entities, as the Levytams dealt primarily with Norma throughout.

Gideon, as noted below, Irene has not been employed since 1981, when their first child was born. They have three boys, now in their 20s and 30s.

**Levytam affidavit, paras. 4-5; RMR , p. 2-3**

6. Gideon immigrated to Canada in 1976. He did some carpentry work building yachts. In about 1995, Gideon became a bible teacher for a living, and still does that. Since late 2014, Gideon has been earning about \$55,000 net a year on a self-employed basis and Irene has assisted Gideon and shared this income. They have no other material income besides this.

**Levytam affidavit, paras. 6-7; RMR , p. 3**

### **Investments with Norma**

7. Besides RRSPs and savings accounts and the Walton investments, the Levytams never had any other investments. In particular, they had had never invested in real estate.

**Levytam affidavit, para. 8; RMR , p. 3**

8. The Levytams were introduced to the Waltons by a mutual friend and financial advisor, who assured the Waltons that they had looked into a proposed Toronto real estate investment thoroughly and that this was a sound investment opportunity. In 2003, they invested \$50,000 in a property at 1246 Yonge Street.

**Levytam affidavit, para. 9; RMR , p. 4**

9. In October 2004, Norma advised the Levytams that they had realized a \$25,000 profit. They felt reassured and were happy to reinvest the full \$75,000 into another property called 10-12 Market Street. They received a T5013 statement of partnership from a chartered accounting firm reflecting the gain that we were told we had earned on the 1246 Yonge Street investment. They also received a share transfer and release in respect of these investments.

**Levytam affidavit, para. 10; RMR , p. 4**

**T5013 and share transfer documents are at exhibits A and B thereof**

10. For about a decade, the Levytams made a series of investments with Norma, through various corporations. They signed various “shareholders’ agreements” with Norma with respect to the investments and received share certificates in various companies. They gradually invested more and more money, ostensibly in various properties. At no point did they have their own lawyer. They

understood that Norma was a real estate lawyer and understood that everything was done in accordance with legal requirements.

**Levytam affidavit, paras. 11-12; RMR , p. 4**

**Sample shareholder agreements are at Exhibit 'C', which include records of the preferred shares issued to the Levytams**

11. A summary of the Levytam's investments is contained in a table at Ex. "D" to their affidavit, which lists the dates, amounts and recipients of their cheques, and the ostensible properties in which they believed they were investing. It also attaches the cheques. In some cases, their cheques went to Walton companies (eg. \$50,000 to "The Rose and Thistle Group Ltd." and \$65,000 to "Corporate Communications Interative Inc.").

**Levytam affidavit, para. 13 and Ex. D thereto; RMR , p. 5**

12. The Levytam's son Joab had \$15,000 U.S. in savings, and they encouraged him to invest that money with Norma, hoping that it could generate a sizeable down payment when he was ready to buy his first home.

**Levytam affidavit, para. 14; RMR , p. 5**

13. The Levytams received share investment "certificates" for each of the investments. When the old investments were "rolled" or converted into new investments, Norma told them to return the "old" certificates and they would receive "new" certificates in the new investments. They did not keep a copy of the old certificates. The available share certificates, reflecting ostensible interests in various properties, are at Exhibit "E".

**Levytam affidavit, para. 15 and Ex E; RMR , p. 5**

14. Norma kept the Levytams informed as follows:

- a. She sent letters which generally advised that their investments were doing well, and/or that one investment could be rolled over into a new investment. She would advise when new investment opportunities became available. Sample letters from Norma are attached as Exhibit "F" to the Levytam affidavit.
- b. They also received statements summarizing their investments, which would generally arrive about twice a year. Sample statements are attached as Exhibit "G".

- c. They would see Norma when she presented new investments, including at “wine and cheese” type receptions.

**Levytam affidavit, para. 16 and Ex F and G; RMR , p. 5 and tabs F and G**

15. The Levytams also received money back from Norma. In the early years, the money was “locked in” for a period of time, say two years or so. In such cases, the Levytams generally rolled over the proceeds into a new investment. In or about 2009, Norma started issuing quarterly or other distributions. The Levytams information as to the receipt of funds from Norma is summarized at Exhibit “H”, which includes the supporting cheque stubs as well. A total of \$193,431 was received from Norma.

**Levytam affidavit, para. 17 and Ex. H; RMR , p. 6 and tab H**

16. All of the above gave the Levytams a high confidence level that the investments were real, and doing well.

**Levytam affidavit, para. 18; RMR , p. 6**

#### **The Levytam’s “investments” with the Waltons unravel**

17. As of October 10, 2013, the last statement received from Norma, the Levytams understood they owned investments with a “Value” of \$715,000, consisting of:

- a. 200,000 preferred shares in Lesliebrook Holdings Ltd.
- b. 270,000 preferred shares in Front Church Properties Limited
- c. 245,000 preferred shares in Richmond East Properties

**Statement; RMR, tab G, p. 110**

18. The Levytams became aware that things were seriously not right in about late 2013. At that point, Norma advised that she had investments with Dr. Bernstein, and that she had a conflict with him. Initially Norma said that this related to other properties she owned jointly with Dr. Bernstein, and would not affect the Levytams. The Levytams had never heard of Dr. Bernstein before this, besides seeing his commercials on television.

**Levytam affidavit, para. 20; RMR , p. 6**

**Norma’s December 13, 2013 email to “Investment Team” including the Levytams; RMR, tab “I”**

19. Distribution cheques for October 2013 in the amounts of \$5,050 and \$2,777.50 bounced; December distribution cheques were held back and a further cheque in the amount of \$11,236.25 dated March 15, 2014 also bounced.

**Levytam affidavit, para. 21; RMR , p. 7**

20. In late 2013, Norma advised that she had transferred the Levytam's 445,000 shares in Lesliebrook Holdings Ltd. and Richmond East Properties Ltd., as set out in the statements, into Cecil Lighthouse Ltd. ("Cecil"). The minute book of Cecil contains unsigned copies of share certificates dated October 7, 2013 and April 15, 2012 reflecting a total of 445,000 preferred shares in our names. Attached to these certificates is a December 12, 2013 email from Norma to Tom Trklja, apparently a law clerk, directing that the Levytam's shares in Richmond East and Rose and Thistle be cancelled and replaced with these preferred shares. While this date was after this Court's original orders, it was before any order that prohibited the Waltons from dealing in the shares of these properties. The transfer of share interests in one property to another was consistent with Norma's practice of "rolling over" the Levytam's property interests into new investments.

**Levytam affidavit, para. 22; RMR , p. 7**

**Cecil Lighthouse Share certificates and Norma's December 12, 2013 email; RMR, tab J**

21. The Levytams were not given notice of or made parties to the proceedings before Justice Brown in July 2014. They did not have counsel at the time, nor were they appear in the proceedings. Norma portrayed Dr. Bernstein as adverse in interest to the Levytams, and prepared brief affidavits for them which she filed.

March 9, 2016

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**



---

Aaron Blumenfeld

Lawyer for Gideon and Irene Levytam

DBDC SPADINA LTD., *et al.* - and - NORMA WALTON, *et al.*

---

**ONTARIO SUPERIOR  
COURT OF JUSTICE**

**[COMMERCIAL LIST]**

Proceeding commenced at:

TORONTO

---

**RESPONDING FACTUM OF  
GIDEON AND  
IRENE LEVYTAM**

---

**BORDEN LADNER GERVAIS LLP**

Barristers and Solicitors  
Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3Y4

Aaron Blumenfeld (LSUC # 366260)

Tel: (416) 367-6070

Fax: (416) 361-7347

Lawyers for Gideon and Irene Levytam