

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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 IN SCHEDULE "B" HERETO, TO BE  
BOUND BY THE RESULT

**MOTION RECORD**

August 10, 2018

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# INDEX

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# TAB 1

Court File No. CV13-10280-00CL

**ONTARIO  
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**NOTICE OF MOTION**  
*(Motion returnable August 24, 2018)*

The Applicants will make a Motion to a Judge presiding over the Commercial List on August 24, 2018 at 10:00 a.m., or as soon after that time as the Motion can be heard, at the court house, 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard orally.

**THE MOTION IS FOR AN ORDER:**

1. Abridging the time for service of the Notice of Motion and the materials filed in support of the Motion and dispensing with further service thereof; and

2. Discharging Schonfeld Inc. (the “**Manager**”) of any responsibilities that it may have had in respect of Fraser Lands Ltd. and Fraser Properties Corp. (collectively, the “**Discharge Companies**”).
3. Declaring the Applicants to be the owners of all of the shares of the Discharge Companies and transferring management and control of the Discharge Companies to the Applicants.
4. Ordering that any claims, now extant or that could exist, whether discovered or undiscovered against any of the Discharge Companies, other than the claims of the Applicants, shall be deemed to be extinguished and satisfied, and that such claims shall not flow through to any successor corporation or amalgamated entity of any of the Discharge Companies.
5. Releasing the Manager from any and all liability that the Manager has or may have by reason of, or in any way arising out of, the acts or omissions of the Manager while acting in its capacity as the Manager of the Discharge Companies, other than any liability arising out of any gross negligence or wilful misconduct on the part of the Manager; and
6. Such further and other relief as to this Honourable Court seems just.

**THE GROUNDS FOR THE MOTION ARE:**

7. Pursuant to the Order of Justice Newbould dated November 5, 2013, the Manager was appointed as manager of (i) certain companies listed in Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Schedule B Companies**”), together with the real estate properties owned by the Companies (the “**Schedule B Properties**”), as amended by Order of Justice Newbould dated January 16, 2014, and (ii) the properties listed at Schedule “C” to the Order of Justice Brown dated August 12, 2014 (the “**Schedule C Properties**”, together with the Schedule B Properties, the “**Properties**”).

8. Each of the Discharge Companies is a Schedule B Company, and owned property that was sold by their mortgagees (the “**Handelman Mortgagees**”) by power of sale. Unfortunately, the sale of these properties did not generate sufficient sale proceeds to pay the mortgages in full.

9. The Applicants require any claims, now extant or that could exist, whether discovered or undiscovered against any of the Discharge Companies, other than the claims of the Applicants, to be deemed to be extinguished and satisfied, as a pre-condition before it can perform any amalgamation of the Discharge Companies. The extinguishing of such claims will not prejudice the Handelman Mortgagees, or any other creditor, as the Discharge Companies possess no further assets that are available for distribution.

10. Pursuant to the Order of Justice Brown dated August 12, 2014, the shareholder interests in each of the Schedule B Companies are to be calculated by reference to the Applicants’ and Respondents’ equity contributions.

11. The Manager has concluded that the Applicants are the owners of 100% of the shares of the Discharge Companies, as described in the 54<sup>th</sup> Report of the Manager dated August 9, 2018. The Manager has determined that the Applicants invested \$2,651,530 in Fraser Lands, and invested \$13,373,530 in Fraser Properties, while the Respondents made nominal equity contributions of \$100 to each of the Discharge Companies.

12. The Manager has reviewed the relevant account activity relating to the Discharge Companies. As described in the 54<sup>th</sup> Report of the Manager, the Respondents made deposits totalling \$1,357,261 to the Discharge Companies, but almost immediately after such deposits, the Respondents transferred \$2,685,100 in funds to Rose & Thistle. In so doing the Respondents



effectively repaid any funds provided by them to the Discharge Companies, and withdrew an additional \$1.3 million from the Discharge Companies.

13. The Manager has, in consultation with the Applicants, determined that no further steps should be taken in respect of the Discharge Companies. The transfer of control over the Discharge Companies represents an important step towards the completion of the Manager's mandate, will allow the Applicants to benefit from certain tax losses incurred by the Discharge Companies and, to the knowledge of the Manager and the Applicant, the relief granted will not compromise any recovery that would otherwise be available to any stakeholder of the Discharge Company if the relief were not granted.

14. Rules 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

15. Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The 54<sup>th</sup> Report of the Manager dated August 9, 2018; and
- (b) Such further and other material as counsel may advise and this Honourable Court may permit.

August 10, 2018

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Lawyers for the Applicants

DBDC SPADINA LTD. et al.  
Applicants

-and- NORMA WALTON et al.  
Respondents

Court File No. CV13-10280-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

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Lawyers for the Applicants

# TAB 2

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE _____	)	FRIDAY, THE 24 <sup>th</sup>
	)	
JUSTICE _____	)	DAY OF AUGUST, 2018

B E T W E E N:

DBDC SPADINA LTD.,  
and THOSE CORPORATIONS LISTED ON SCHEDULE “A” HERETO

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- 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

**DISCHARGE ORDER**  
**(Discharge of Manager re: Fraser Lands Ltd. and Fraser Properties Corp.)**

THIS MOTION, made by the Applicants for an order, *inter alia*:

1. discharging Schonfeld Inc. in its capacity as the manager (the “**Manager**”) appointed pursuant to the Order of Justice Newbould dated November 5, 2013 and pursuant to the Judgment and Order of Justice Brown dated August 12, 2014, as Manager of Fraser Lands Ltd. and Fraser Properties Corp. (collectively, the “**Discharge Companies**”); and
2. releasing the Manager from any and all liability in connection with the Discharge Companies, as set out in paragraph 10 of this Order,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the 54<sup>th</sup> Report of the Manager dated August 9, 2018 and on hearing the submissions of counsel for the Applicant and the Manager, no one appearing for any other person on the service list;

3. THIS COURT ORDERS that, to the extent necessary, 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.

4. THIS COURT ORDERS that Dr. Bernstein, or another entity or person(s) as directed by Dr. Bernstein in his sole discretion, shall hold all of the issued and outstanding shares of each of the Discharge Companies (the “**Shares**”), including but not limited to any shares which would otherwise be or have been held by Norma Walton or Ronauld Walton, and shall be deemed to have held all such shares since the date(s) on which those shares were first issued.

5. THIS COURT ORDERS that, for greater certainty, all shares of each of the Discharge Companies that were issued and outstanding, either at the present or at any point in the past, other than the shares described in paragraph 4 of this Order, shall be cancelled and shall be deemed not to have been issued.

6. THIS COURT ORDERS that Norma Walton and Ronauld Walton be removed as directors and officers of the Discharge Companies.

7. THIS COURT ORDERS that Dr. Stanley Bernstein be appointed as the sole director and president of the Discharge Companies.

8. THIS COURT ORDERS that the Manager shall deliver the Minute Books and other corporate records of each of the Discharge Companies to Lenczner Slaght LLP.

9. THIS COURT ORDERS that upon the delivery of the Shares to Dr. Bernstein, the Manager shall be discharged as Manager of the Discharge Properties, provided however that notwithstanding its discharge herein (a) the Manager shall remain Manager for the performance of such incidental duties as may be required to complete the administration of the receivership/managership herein, and (b) the Manager shall continue to have the benefit of the

provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Manager in its capacity as Manager.

10. THIS COURT ORDERS AND DECLARES that the Manager is hereby released and discharged from any and all liability that the Manager now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Manager while acting in its capacity as Manager herein, save and except for any gross negligence or wilful misconduct on the Manager's part. Without limiting the generality of the foregoing, the Manager is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Manager's part.

11. THIS COURT ORDERS that any claims, now extant or that could exist, whether discovered or undiscovered as of the date of this Order, against any of the Discharge Companies, other than the claims of the Applicants, shall be deemed to be extinguished and satisfied, and that such claims shall not flow through to any successor corporation or amalgamated entity of any of the Discharge Companies.

12. THIS COURT ORDERS that any amounts payable to or receivable from any of the Discharge Companies by any of Norma Walton, Ronauld Walton, the Rose & Thistle Group Limited and/or Eglinton Castle Inc. shall be cancelled and eliminated, without prejudice to the Applicants' ability to make or continue a claim and/or enforce any judgment for damages or otherwise in this Application.

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**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” PROPERTIES**

1. 3270 American Drive, Mississauga, Ontario
2. 0 Luttrell Ave., Toronto, Ontario
3. 2 Kelvin Avenue, Toronto, Ontario
4. 346 Jarvis Street, Suites A, B, C, E and F, Toronto, Ontario
5. 1 William Morgan Drive, Toronto, Ontario
6. 324 Prince Edward Drive, Toronto, Ontario
7. 24 Cecil Street, Toronto, Ontario
8. 30 and 30A Hazelton Avenue, Toronto, Ontario
9. 777 St. Clarens Avenue, Toronto, Ontario
10. 252 Carlton Street and 478 Parliament Street, Toronto, Ontario
11. 66 Gerrard Street East, Toronto, Ontario
12. 2454 Bayview Avenue, Toronto, Ontario
13. 319-321 Carlaw, Toronto, Ontario
14. 260 Emerson Ave., Toronto, Ontario
15. 44 Park Lane Circle, Toronto, Ontario
16. 19 Tennis Crescent, Toronto, Ontario
17. 646 Broadview, Toronto, Ontario

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

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

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(Commercial List)  
Proceeding commenced at TORONTO

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*(Discharge of Manager re: Fraser Lands Ltd. and  
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