

AMENDED THIS Dec 17, 2013 PURSUANT TO  
MODIFICATION CE CONFORMÉMENT À  
☒ RULE/LA RÉGLE 26.02 ( A )  
☐ THE ORDER OF  
L'ORDONNANCE DU  
DATED/FAIT LE \_\_\_\_\_  
LOCAL REGISTRAR  
SUPERIOR COURT OF JUSTICE  
GREFFIER LOCAL  
COUR SUPÉRIEURE DE JUSTICE

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 ON SCHEDULE B HERETO, TO BE  
BOUND BY THE RESULT

**AMENDED AMENDED NOTICE OF APPLICATION**

TO THE RESPONDENTS


A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The Claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be set by a judge of the Superior Court of Justice presiding at the court house, 393 University Ave, 10th Floor, Toronto, ON, M5G 1E6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Oct 1/13 Issued by A. Anissimova  
Registrar  
Local Registrar   
Address of court office: 393 University Ave, 10th Floor  
Toronto, ON, M5G 1E6

## APPLICATION

1. The Applicants, DBDC Spadina Ltd., and those Corporations listed on Schedule A hereto, make an Application for:

(a) An Order abridging the time for delivery of this Notice of Application and supporting materials pursuant to Rule 3.02 of the *Rules of Civil Procedure*, and providing that this application and the companion motion to appoint a manager be properly returnable on October 25, 2013;

(b) A mandatory Order restraining the Respondents Norma Walton, Ronauld Walton, The Rose & Thistle Group Ltd. ("Rose & Thistle") and Eglinton Castle Inc. from, or from causing, any dealings with the underlying real estate properties ("the Properties") held by the Schedule B Corporations, such that no transactions out of the ordinary course or in excess of \$50,000 be authorized without Corporations without the agreement of the Applicants or a further Order of this Honourable Court;

(a)(c) A declaration that the Respondents have fraudulently conveyed the assets and monies of the Schedule B Corporations to themselves and other companies, properties and projects in which they are involved;

(b)(d) A mandatory Order restraining the Respondents from further encumbering any of the properties without written consent of the Applicants or further Order of this Honourable Court;



(e)(e) An Order appointing Schonfeld Inc. as Inspector pursuant to Section 161(2) of the *Business Corporations Act*, R.S.O. 1980, c.B.16, as amended (the "OBCA") upon the basis that the business and affairs of the corporations listed on Schedule B ("Schedule B Corporations") have been carried on or conducted in a manner that is oppressive, is unfairly prejudicial to and unfairly disregards the interests of the Applicants in the Schedule B Corporations;

(d) —.

(f) An Order under Section 248(3)(b) of the OBCA and/or Section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43 ("CJA") appointing Schonfeld Inc. as manager ("Manager") over all the assets, undertakings and properties of the Schedule B Corporations, including the bank accounts of those entities at Meridian Credit Union;

(g) An Order under Section 248(3)(b) of the OBCA and/or Section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43 ("CJA") appointing Schonfeld Inc. as manager ("Manager") over the following properties where Dr. Stanley Bernstein is a secured creditor:

- (i) 232 Galloway Road;
- (ii) 295 The West Mall;
- (iii) 65 Front Street East;
- (iv) 450 Pape Ave.;
- (v) 47 Jefferson Ave.; and
- (vi) 1/9-11 City View Drive;

- (h) An Order that the Manager may appoint a property manager or other professional services firm to assist it in performing its duties, including but not limited to one or more of:
  - (i) DMS Properties;
  - (ii) Sterling Karamar; and
  - (iii) Briarlane Property Rental Management Inc.
- (i) An Order that the Respondents provide a full accounting of all monies received and disbursed by the Schedule B Companies and The Rose & Thistle Group Ltd. since September 2010;
- (j) An Order that the Respondents disgorge to the Schedule B Companies all amounts which they have improperly taken or removed, directly or indirectly;
- (k) An Order enjoining the Respondents from advising creditors not to make payments to the Schedule B Companies in the ordinary course;
- (l) An Order that Norma Walton and Ronald Walton shall make the equity investments as required by the agreements in respect of the Schedule B Companies and the Properties;
- (m) An Order that the Respondents disclose by October 28, 2013 the municipal addresses of all of the properties associated with any companies identified in Schedule M of the First Interim Report of the Inspector

(a)(n) A Certificate of Pending Litigation respecting the property municipally known as 44 Park Lane Circle, Toronto, Ontario and any properties associated with any companies identified in Schedule M of the First Interim Report of the Inspector;

(e)(o) Certificates of Pending Litigation and a blanket charge over the properties where the Respondents have an ownership interest (the "Other Properties"), municipally known as:

- (i) 620 Richmond Street West, Toronto, Ontario;
- (ii) 875 Queen Street East, Toronto, Ontario;
- (iii) 3270 American Drive, Mississauga, Ontario;
- (iv) 2 Kelvin Avenue, Toronto, Ontario;
- (v) 346 Jarvis Street, Toronto, Ontario, other than those units sold to third parties;
- (vi) 3775 St. Clair Avenue East;
- (vii) 14/17 Montcrest, Toronto, Ontario;
- (viii) 1 William Morgan Drive, Toronto, Ontario;
- (ix) 324 Prince Edward Drive, Toronto, Ontario;
- (x) 24 Cecil Street, Toronto, Ontario;
- (xi) 185 Davenport Road, Toronto, Ontario;

- (xii) 30 and 30A Hazelton Avenue, Toronto, Ontario;
- (xiii) 1246 Yonge Street, Toronto, Ontario;
- (xiv) 777 St. Clarens Avenue, Toronto, Ontario;
- (xv) 17 Yorkville Avenue, Toronto, Ontario;
- (xvi) 252 Carlton Street and 478 Parliament Street, Toronto, Ontario;
- (xvii) 19 Tennis Crescent, Toronto, Ontario;
- (xviii) 66 Gerrard Street East, Toronto, Ontario;
- (xix) 646 Broadview Avenue, Toronto, Ontario;
- (xx) 14 College Street, Toronto, Ontario;
- (xxi) 26 Gerrard Street Est, Toronto, Ontario;
- (xxii) 3 Post Road, Toronto, Ontario;
- (xxiii) 2 Park Lane Circle Road, Toronto, Ontario;
- (xxiv) 2454 Bayview Avenue, Toronto, Ontario; and
- (xxv) 321 Carlaw, Toronto, Ontario.

(f)(p) An Order that the Respondents forthwith provide full and unrestricted access to the  
Inspector of:



- (i) All records respecting each of the Properties (as defined below) and the Schedule B Corporations and Eglinton Castle Inc.;
- (ii) The accounting, banking and other records of Rose & Thistle, so as to reflect all dealings by which monies owned or attributable to the Properties, the Schedule B Corporations or the Applicant Corporations;

~~(g)~~(q) An Order authorizing the Inspector to enter the premises of Rose & Thistle at 32 Hazelton Avenue, Toronto, Ontario M5R 2E2, in order to obtain all relevant information and to examine any records, including accounting and bank records and any other records, therein and to make copies of all such documents for the purposes of the investigation;

~~(h)~~(r) An Order requiring the Respondents, and any of them, to produce all records respecting the acquisition, purchase, financing, management, development and operation of the Properties to the Inspector;

~~(i)~~(s) An Order requiring that all lawyers acting on the purchase and financing of the Properties for any of the Respondents and the Schedule B Companies make available all requested documents to the Inspector without assertion of privilege, and in particular, without limiting the generality of the foregoing, the law firm of Devry Smith Frank LLP in respect of the mortgages on 1450 Don Mills Road and 1500 Don Mills Road;

~~(j)~~(t) An Order requiring the Respondents to pay the costs of the investigation, Manager and property manager;



~~(k)~~(u) An Order granting all necessary directions to the Inspector/Manager;

~~(t)~~(v) An Order that the Inspector provide an interim report to this Honourable Court on or before October 15, 2013;

~~(m)~~(w) The costs of this application and inspection/manager; and

~~(n)~~(x) Such further and other relief as to this Honourable Court may seem just.

2. The grounds for the Application are:

## **PARTIES**

- (a) The Applicants, DBDC Spadina Ltd., and those Corporations listed on Schedule A hereto, are all corporations incorporated pursuant to the laws of Ontario. They are beneficially owned by Dr. Stanley Bernstein;
- (b) Norma Walton is a lawyer and a member of the Law Society of Upper Canada. She is a co-founder, along with her husband Ronauld Walton, of The Rose & Thistle Group Ltd. ("Rose & Thistle") and President of its subsidiary, Rose & Thistle Properties. Ms. Walton is a principal of Walton Advocates, an in-house law firm and trade mark agent that provides litigation, corporate and real estate legal services to the Rose & Thistle group of companies. She has faced two disciplinary hearings before the Law Society of Upper Canada related to her financial dealings with clients;
- (c) Ronauld Walton is a lawyer and a member of the Law Society of Upper Canada. He is a co-founder, along with his wife Norma Walton, of Rose & Thistle and

President of its subsidiary, Rose & Thistle Properties. Walton is a principal of Walton Advocates, an in-house law firm and trade mark agent that provides litigation, corporate and real estate legal services to the Rose & Thistle group of companies;

- (d) Rose & Thistle is a holding company incorporated pursuant to the laws of Ontario. It and its various subsidiaries are engaged *inter alia* in real estate development, management and construction;
- (e) Eglinton Castle Inc. is a corporation incorporated pursuant to the laws of Ontario. It is owned, to the knowledge of the Applicants, by Norman Walton and Ronauld Walton;
- (f) The Corporations listed on Schedule B hereto, are all corporations incorporated pursuant to the laws of Ontario. They are owned 50% by Dr. Bernstein (or one of the Corporations listed on Schedule A hereto) and 50% by Norman Walton and Ronauld Walton (or Eglinton Castle Inc.). They were incorporated for the purpose of purchasing commercial real estate properties jointly between Dr. Bernstein and the Waltons;

## **THE INVESTMENTS**

- (g) Beginning in 2008, Dr. Bernstein acted as the lender/mortgager of several commercial real estate properties owned by the Respondents Norma Walton and Ronauld Walton either through their company Rose & Thistle or through other corporations of which they are the beneficial owners;

- (h) Following several financings, Dr. Bernstein and the Waltons agreed to invest jointly in various commercial real estate projects;
- (i) To date, Dr. ~~Bernstien~~Bernstein has invested approximately \$110 million into 31 projects;
- (j) Dr. Bernstein and The Waltons entered into separate agreements for each project which provided as follows:
  - (i) A new company would be incorporated for each project (the "Owner Company");
  - (ii) Dr. Bernstein (through a company incorporated for this purpose) would hold 50% of the shares of the Owner Company;
  - (iii) The Waltons (either directly or through a company incorporated for this purpose) would hold the other 50% of the shares of the Owner Company;
  - (iv) Each of Dr. Bernstein and The Waltons would contribute an equal amount of equity to the Project;
  - (v) The Waltons would manage, supervise and complete the Project for an additional fee;
  - (vi) The Waltons also agreed to be responsible for the finances, bookkeeping, accounting and filing of tax returns, among other things, of the Owner Company;
  - (vii) The Owner Company was to have a separate bank account;

- (viii) Dr. Bernstein would not be required to play an active role in completing the Project, but his approval would be required for:
  - (1) Any decisions concerning the selling or refinancing of the Property;
  - (2) Any decisions concerning the increase in the total amount of equity required to complete Project; and
  - (3) Any cheque or transfer over \$50,000.
- (ix) The Waltons agreed to provide Dr. Bernstein with:
  - (1) Ongoing reports on at least a monthly basis detailing all items related to the Properties;
  - (2) Copies of invoices for work completed the Projects monthly;
  - (3) Bank statements monthly; and
  - (4) Listing of all cheques monthly;
- (x) The agreements provided generally that Dr. Bernstein and Norma Walton were to be the sole directors of the Joint Venture Company.
- (k) A review in June 2013 of Dr. Bernstein's equity investments in the Projects revealed that:
  - (i) The Waltons were not making their portion of the equity investments into the Properties;



- (ii) The Waltons appeared to be taking on third party investors in the Projects;
  - (iii) The Waltons were engaged in significant related party transactions in respect of Projects;
  - (iv) Dr. Bernstein's approval was not being sought for any the matters set out in subparagraph (j)(viii) above; and
  - (v) Dr. Bernstein was not receiving any of the required reporting, as set out in paragraph subparagraph (j)(ix) above; and
  - (vi) As a result of the Waltons not making their portion of the equity investments in the Properties, many of Dr. Bernstein's content, to interest bearing ~~shareholder~~shareholder loans.
- 
- (l) Dr. Bernstein caused a letter to be sent to Ms. Walton on June 13, 2013 setting out these concerns;
  - (m) Following an unresponsive letter from Ms. Walton, further requests were made, but not responded to or only partially responded to;
  - (n) Dr. Bernstein caused title searches to be run on all the Properties. Those title searches revealed that additional mortgages totaling \$6 million had been placed on two Properties, without Dr. ~~Bernstein's~~Bernstein's knowledge or consent. Ms. Walton had failed to provide sufficient further information regarding the mortgages, including the loan documentation and information about the whereabouts of the funds.

- (o) Ms. Walton has stated that she will provide information regarding the mortgages only in the context of a without prejudice mediation;
- (p) On September 17, 2013, Peter Griffin, counsel for Dr. Bernstein, DBDC Spadina Ltd. and the corporations listed on Schedule A to the Notice of Application, sent a letter to Ms. Walton requesting further information regarding the Projects. Among other things, he requested information regarding two additional mortgages of approximately \$3 million each had been taken out on 1450 Don Mills Rd. and 1500 Don Mills Rd., without Dr. Bernstein's knowledge or approval. Mr. Griffin also requested access to the information The Waltons are contractually obliged to provide to Dr. Bernstein;
- (q) On September 20, 2013, Jim Reitan, Director of Accounting and Finance at Dr. Bernstein Diet and Health Clinics, attended at the offices of Rose & Thistle, along with Harlan Schonfeld and Jim Merryweather of Schonfeld Inc. Schonfeld Inc. was appointed by Dr. Bernstein to conduct an [independent] review of the various Joint Venture Projects in which Dr. Bernstein has an interest. Among the matters Schonfeld Inc. was tasked with reviewing were the two \$3 million mortgages on 1450 Don Mills Rd. and 1500 Don Mills Rd.;
- (r) Ms. Walton sent various correspondence purporting to out her explanation for the additional mortgages. That correspondence does not respond fully or satisfactorily to the information requested;
- (s) ~~Mr. Reitan and Mr. Schonfeld have been unable to find any record of the \$6 million in mortgage proceeds in the respective companies' accounts and do not know~~

where the mortgage proceeds are Schonfeld Inc. has traced the proceeds of the \$6 million in mortgages to Norma and Ron Walton, the Rose & Thistle's other businesses, various other investments held by Norma and Ron Walton and various other Schedule B Companies;

(t) Monies have been traced from a Schedule B Corporation to work completed on Norma and Ron Walton's home;

(u) Ms. Walton proposes to use the funds from the \$6 million mortgages to discharge equity obligations she has to the Schedule B Corporations;

(v) Ms. Walton has effected the sale of various properties without Dr. Bernstein's consent since October 4, 2013;

(w) Ms. Walton has continued to make disbursements and payments from the Schedule B Companies in excess of \$50,000 without Dr. Bernstein's knowledge or consent since October 4, 2013;

(x) Ms. Walton has refused to repay the principal amount of mortgages owed to Dr. Bernstein which terms have expired;

(y) Ms. Walton has discharged a mortgage over a property without Dr. Bernstein's knowledge or consent where the principal amount of the mortgage has not been repaid;

(s)(z) Ms. Walton has advised that she will continue to act unilaterally;

(t)(aa) the Respondents and/or Rose & Thistle own or participate in the ownership of the following properties:

- (i) 620 Richmond Street West, Toronto, Ontario;
- (ii) 875 Queen Street East, Toronto, Ontario;
- (iii) 3270 American Drive, Mississauga, Ontario;
- (iv) 2 Kelvin Avenue, Toronto, Ontario;
- (v) 346 Jarvis Street, Toronto, Ontario, other than those units sold to third party purchasers;
- (vi) 3775 St. Clair Avenue East;
- (vii) 14/17 Montcrest, Toronto, Ontario;
- (viii) 1 William Morgan Drive, Toronto, Ontario;
- (ix) 324 Prince Edward Drive, Toronto, Ontario;
- (x) 24 Cecil Street, Toronto, Ontario;
- (xi) 185 Davenport Road, Toronto, Ontario;
- (xii) 30 and 30A Hazelton Avenue, Toronto, Ontario;
- (xiii) 1246 Yonge Street, Toronto, Ontario (this address includes 24 individually owned Condominium Units: a title search of unit 1 was conducted);



- (xiv) 777 St. Clarens Avenue, Toronto, Ontario;
  - (xv) 17 Yorkville, Toronto, Ontario, other than those units sold to third party purchasers;
  - (xvi) 252 Carlton Street and 478 Parliament Street, Toronto, Ontario (a title search was conducted for 478 Parliament and indicates that there is no municipal address matching that address);
  - (xvii) 19 Tennis Crescent, Toronto, Ontario;
  - (xviii) 66 Gerrard Street East, Toronto, Ontario;
  - (xix) 646 Broadview Avenue, Toronto, Ontario;
  - (xx) 14 College Street, Toronto, Ontario;
  - (xxi) 26 Gerrard Street East, Toronto, Ontario;
  - (xxii) 3 Post Road, Toronto, Ontario (a title search was conducted and indicates that there is no municipal address matching 3 Post Road);
  - (xxiii) 2 Park Lane Circle Road, Toronto, Ontario;
  - (xxiv) 2454 Bayview Avenue, Toronto, Ontario; and
  - (xxv) 321 Carlaw, Toronto, Ontario (this address includes 12 individually owned Condominium Units: a title search of unit 6 was conducted).
- (the "Other Properties")

~~(u)(bb)~~ Notwithstanding paragraph 10 of the Order of Justice Newbould dated October 25, 2013, the Respondents have provided no accounting whatsoever, let alone to meet their onus to demonstrate that corporate funds did not reach the Respondents' other companies. It is reasonable to believe that the \$22 million in proceeds diverted from the Schedule "B" Companies have been diverted into the Other Properties.

~~(v)~~ — Ms. Walton has to date provided information on 16 of 31 Projects in which Dr. Bernstein has an interest. That information is not complete and what information has been provided raises further concerns about the financing and management and fees charged to the Properties, among other things;

~~(w)~~ — Ms. Walton has advised that she requires several more weeks to provide the information requested by Dr. Bernstein on the balance of the 16 Projects;

~~(x)(cc)~~ Such further and other grounds as the lawyers may advise.

3. The following documentary evidence will be used at the hearing of the Application:

(w) Affidavit of Dr. Stanley Bernstein sworn October 1, 2013;

(x) Affidavit of James Reitan sworn October 1, 2013;

(y) Affidavit of Harlan Schonfeld, CA, CIRP sworn October 1, 2013, including the consent of Schonfeld Inc. to act as Inspector;

(z) Affidavit of James Reitan sworn October 3, 2013;

(aa) Affidavit of James Reitan sworn October 24, 2013;

(y)(bb) First Interim Report of the Inspector; and

(z)(cc) Such further and other material as the lawyers may advise and this Honourable  
Court may permit.

~~October 12~~December 17, 2013

**LENCZNER SLAGHT ROYCE  
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DBDC SPADINA LTD., and those corporations listed on Schedule A -and- NORMA WALTON et al.

hereto  
Plaintiffs

Defendants

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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PROCEEDING COMMENCED AT TORONTO

AMENDED

**NOTICE OF APPLICATION**

AMENDED

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