

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

**THIRD SUPPLEMENTAL REPORT TO THE TWENTY-SECOND REPORT OF THE
MANAGER, SCHONFELD INC.**

A. Introduction

1. This is the Third Supplemental Report to the 22nd Report of Schonfeld Inc. ("**Schonfeld**") in its capacity as Manager of certain companies listed at Schedule "B" to the Order of Justice Newbould dated November 5, 2013 (the "**Companies**")¹, together with the properties owned by the Companies (the "**Properties**")² and as manager/receiver of the Properties listed at Schedule "C" to the Order of Justice Brown dated August 12, 2014

¹ Schedule "B" was amended by Order dated January 16, 2014.

² The Manager was discharged from certain responsibilities with respect to certain of the Properties pursuant to an Order dated April 1, 2014.

B. Purpose of this Report

2. The purpose of this Supplementary Report is to provide facts relevant to the cross-motion of certain investors in Schedule “C” Companies (the “**Investors**”) for an Order:

- (a) Directing the Inspector to conduct a tracing of investments made by the Investors to determine whether funds provided to the Waltons for investment in Schedule “C” Companies were diverted for use in Schedule “B” Companies; and
- (b) Adjourning the Manager’s motion for distribution of proceeds from the sale of certain Properties until the tracing described above is completed.

3. The Investors’ motion relates to Schonfeld’s mandates as Inspector and Manager. In the interest of efficiency, Schonfeld has combined its response into this Supplementary Report instead of providing separate reports by the Manager and the Inspector.

C. Terms of reference

4. Based on its review and interaction with the parties to date, nothing has come to the Manager’s attention that would cause it to question the reasonableness of the information presented herein. However, the Manager has not audited, or otherwise attempted to independently verify, the accuracy or completeness of any financial information of the Companies. The Manager therefore expresses no opinion or other form of assurance in respect of any of the Companies’ financial information that may be in this Report.

5. Capitalized terms not otherwise defined have the meaning ascribed to them in the Manager’s 22nd Report.

D. Tracing completed to date with respect to the Interim Distribution Properties

6. As is noted in its 22nd Report and the Second Supplementary Report thereto, the Manager seeks authority to make an interim distribution from certain Companies. In support of this motion, and in order to determine the Applicants’ and Respondents’ shareholdings in accordance with the August 12 Order, the Manager has conducted an analysis of how each of the Interim Distribution Companies was funded. That analysis, which is set out in the Second Supplementary Report, shows that funds provided by the Applicants to fund the Schedule “B”

Companies were constantly circulating through the Rose & Thistle Account, accounts relating to the Schedule "C" Companies and the Respondents' accounts, and that the majority of the funding contributions is traceable either directly to the Applicants (in the sense that the Applicants provided equity contributions directly to the relevant Company) or indirectly to the Applicants (in the sense that the Applicants made an equity contribution to one Company and the funds were diverted for use in another Company). The Manager is unaware of any evidence that any of the Investors' funds were used in any of the Interim Distribution Companies.

E. Tracing request

7. The Investors have taken the position that the Inspector has already been ordered to or, in the alternative, should be ordered to, trace how their investments were used by the Waltons. The Manager does not agree that the Inspector's original mandate is broad enough to incorporate the requested tracing exercise and, in any event, is not aware of any viable source of funding for the proposed tracing.

8. The Inspector was appointed pursuant to the Order of Justice Newbould dated October 4, 2013 (the "**Inspector's Appointment Order**"). In general terms, the Inspector was appointed to determine how funds invested by the Applicants in the Schedule "B" Companies had been used by the Respondents.

9. The Inspector has now worked for more than one year to fulfill its mandate. Among other things, the Inspector has submitted five reports and three supplementary reports. Prior to October 2014, no stakeholder suggested that these reports should (or could) include a tracing of amounts invested by the Investors into the Schedule "C" Companies.³ Indeed, until its appointment as manager/receiver of the Schedule "C" Properties, the Manager did not have access to the Schedule "C" Companies' books and records. The Inspector could trace funds into Schedule "C" Companies from the Rose & Thistle Account, but could not determine what other sources of funds were available to the Schedule "C" Companies.

10. In October 2014 (a year after the Inspector's Appointment Order was granted) the Investors took the position for the first time that the Inspector's Appointment Order required

³ Current counsel for the Investors asked for information relating to the use of funds invested by Christine and Michael DeJong in July 2014 but no request on behalf of the other Investors was made until October 2014.

tracing of the Investors' funds to determine whether such funds were diverted for use in Schedule "B" Companies. By correspondence dated October 30, 2014, the Inspector's counsel advised that, in the Inspector's view, its mandate was not broad enough to include a tracing of the Investors' funds from Schedule "C" Companies.

11. The Inspector also advised the Investors on October 30, 2014 and on several occasions subsequently, that it had no source of funding for the requested tracing. The tracing work performed by the Inspector to date has cost several hundred thousand dollars over the course of more than one year. Despite this effort, the Inspector has not completed a tracing of all of the funds invested by the Applicants. Although the Respondents were ordered to pay and (after a significant time) did pay the Inspector's fees to November 1, 2013, no further funding has been provided by the Respondents. The Applicants have funded the Inspector's work and are entitled to be re-imbursed by the Respondents for that funding pursuant to the Order of Justice Brown dated August 12, 2014.

12. The Investors' motion would, if granted, require that the Inspector complete a new tracing exercise focussed on the Investors' funds. Based on the Inspector's experience to date with the Respondents' poor accounting practices, it expects that the cost of this exercise would be substantial.

13. Beginning on October 30, 2014, and on several occasions thereafter, the Inspector has communicated to the Investors that no funding is available for the requested work. The Investors have never proposed a solution to this issue.

14. The Manager is not prepared to undertake the tracing exercise requested without appropriate funding. Accordingly, if this Court expands the Inspector's mandate to include tracing the Investors' funds without addressing the funding issue, the Inspector will be forced to move for an immediate discharge.

F. The Investors' adjournment request

15. As noted above, the Investors seek an adjournment of the Manager's interim distribution motion pending the completion of the tracing exercise described above and (presumably) some

sort of procedure to determine whether some or all of the Investors have a valid claim against the Schedule “B” Companies.

16. The Manager has conducted claims processes for each of the properties from which it proposes to distribute funds in accordance with the terms of the Order dated June 18, 2014 (the “Claims Procedure Order”). The Claims Procedure Order establishes a process for the Manager to receive and consider claims and states, among other things, that any alleged creditor that does not file a claim on or before the claims bar date provided for in the Order (which is the 30 days from the start of each claims process) is “forever barred from making or enforcing any Claim against the applicable Company.” The forms for each of the property-specific claims processes that have been conducted by the Manager are posted on its website.

17. The Claims Bar Date has long since passed for all of the Companies from which distribution is sought. As a result, even if the tracing exercise they propose was to be undertaken and revealed some claim, that claim would appear to be barred by the Claims Procedure Order. The relevant Claims Bar Dates are set out below:

Property	Claims Process Commencement	Claims Bar Date
Liberty Village	July 11, 2014	August 11, 2014
Twin Dragons	July 11, 2014	August 11, 2014
Lesliebrook	July 18, 2014	August 18, 2014
Royal Agincourt	July 18, 2014	August 18, 2014
Tisdale	July 25, 2014	August 25, 2014
Donalda	July 25, 2014	August 25, 2014
Royal Gate	August 1, 2014	September 2, 2014
Hidden Gem	August 1, 2014	September 2, 2014
Skyway	October 17, 2014	November 17, 2014
Richmond Row	October 17, 2014	November 17, 2014

G. Other allegations made by the Investors

18. In support of their motion, the Investors have made several assertions that are, in the Manager’s view, incorrect. These assertions are addressed below.

19. Contrary to the allegation at paragraph 23 of the Investors' Factum, the Investors have not been "shut out" of the claims process. Claims submitted by the Investors have not been considered by the Manager because they are either:

- (a) **Claims submitted in respect of 65 Front Street ("65 Front"):** 65 Front is a Schedule "C" Property that was sold by the Respondents before the Manager's appointment as manager/receiver of the Schedule "C" Properties. When it was sold, 65 Front was subject to a "no dealings" order which required court approval of any sale or encumbrance of the Schedule "C" Properties. After several court attendances, it became clear that the proceeds of the sale of 65 Front Street would be insufficient to pay all of the creditors asserting secured or proprietary claims against either 65 Front or the proceeds of its sale. Accordingly, Justice Brown directed the Manager to conduct a limited claims process that was expressly limited to the creditors asserting such claims. The Front Street Order provides that mortgagees (defined as "Primary Payment Creditors") were to be paid immediately and that the Manager was to conduct a claims process to assess the position of the construction lien claimants, the real estate broker that worked on the sale and the CRA (defined as the "Secondary Payment Creditor"). The Manager does not have, and has never had, a mandate to conduct a claims process in respect of anyone other than the Secondary Payment Creditors.

Certain Investors have filed Proofs of Claim in respect of the Front Street Property. Since these Investors are not Secondary Payment Creditors, the Manager has no mandate to consider these claims and has so advised the Investors and their counsel.

- (b) **Proofs of claim filed in respect of Properties where no claims process is being conducted:** Several Investors have filed proofs of claim for Properties in respect of which no claims process is being conducted, either because the relevant Property has not been sold or, in at least one case, because the Manager has no mandate with respect to the Property and was not even aware of its existence. Unless and until a Property is sold and proceeds are available for distribution,

there is no reason to consider claims against that Property and the Manager has not done so.

20. Further, contrary to the allegations at paragraph 38 of the Investors' Factum, the Investors purported exclusion from filing a Proof of Claim pursuant to the various Claims Procedure Orders is not "an anomaly or injustice". The Investors have the same rights as anyone else in respect of the various claims processes in that the Investors are required to fit within the claim process set out in the Claims Procedure Order in order to be considered by the Manager. The Manager does not have, and has never had, a mandate to conduct a claims process in respect of anyone other than those who qualify under the various Claims Procedure Orders.

21. In any event, claims arising from or related to an equity interest in the Companies are specifically excluded from the claims procedures by para. 2(k) (iv) of the Claims Procedure Order.

22. At various points in their Factum, the Investors assert that the Inspector has not responded to their request for a tracing. As noted above, this is not correct. The Inspector has consistently and repeatedly advised the Investors of its position.

23. The Investors' complaint appears to be based at least in part on a distinction between the Manager and the Inspector. The Investors repeat several times in their Factum that the Manager has taken a position on their request for a tracing but the Inspector has not. This position is difficult to understand. The Manager and the Inspector are the same entity represented by the same counsel. While the Manager and the Inspector have different mandates and track time separately for billing purposes, the Manager and the Inspector do not take different or inconsistent positions. If the Investors had any confusion with respect to whether the Manager's position relating to their tracing request bound the Inspector, the Investors could have easily sought clarification. They did not.

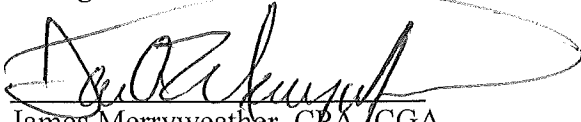
II. Conclusion

24. In light of the foregoing, the Manager has not acceded to the Investors' request to adjourn its motion for interim distribution indefinitely pending completion of the tracing exercise sought by the Investors.

All of which is respectfully submitted this 12th day of January, 2015.

SCHONFELD INC.

**In its capacity as Manager pursuant to the Order of Newbould, J. dated November 5, 2013
and the Judgment and Order of Brown, J. dated August 12, 2014**

Per: 
James Merryweather, CPA, CGA
Authorized Signing Officer

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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.

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