

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

**MOTION RECORD OF THE MANAGER, SCHONFELD INC.**  
(Motion for distribution of proceeds from the sale of 65 Front Street and other relief)

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TO: **SERVICE LIST**

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

B E T W E E N:

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THOSE CORPORATIONS LISTED IN SCHEDULE B, TO BE  
BOUND BY THE RESULT

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(Updated March 17, 2015)

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Court File No.: CV-13-1 0280-00CL

**ONTARIO**  
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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

**NOTICE OF MOTION**

(Motion for distribution of proceeds from the sale of 65 Front Street and other relief)

Schonfeld Inc., in its capacity as manager (the “**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**”) will make a motion to a judge presiding on the Commercial List on April 16, 2015 at 10 a.m. at 330 University Avenue, Toronto.

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

**THE MOTION IS FOR:**

1. an Order:
  - (a) Approving the distribution of proceeds from the sale of 65 Front Street, Toronto, Ontario ("**65 Front**") to creditors whose claims were accepted by the Manager in the claims process conducted in respect of 65 Front (the "**Front Street Claims Process**");
  - (b) varying, if necessary, the Order of Justice Brown dated May 20, 2014 to permit the Manager to accept the proprietary claim (the "**Cushman Claim**") advanced by Cushman & Wakefield Ltd. ("**Cushman**");
  - (c) approving the Manager's fees and disbursements, and those of its counsel, in connection with the Front Street Claims Process and authorizing payment of such fees and disbursements from proceeds realized from the sale of 65 Front before any further payments to creditors having claims to such proceeds;
  - (d) approving the Front Street Claims Process, including the Manager's disallowance of claims; and
  - (e) Such further and other relief as counsel may advise and the Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

2. By Order dated May 20, 2014, Justice Brown permitted the sale of 65 Front and payment of mortgages secured against 65 Front, outstanding property taxes, standard adjustments and legal fees (defined in Justice Brown's reasons as the "**Primary Payment Creditors**"). Justice Brown directed the Manager to conduct a limited claims process with respect to certain other purported creditors, who were defined as "**Secondary Payment Creditors**" and included 5 types of creditors.

3. After the sale closed, the Vendor paid the Primary Payment Creditors and then paid the remainder to the Manager's counsel in trust. The amount received was \$861,236.17. With interest, the amount available for distribution is approximately \$863,403 as at Feb 27, 2015.

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This figure does not account for payment of any allocation of the Manager's fees and those of its counsel.

4. The Manager proposed a claims procedure in respect of the limited claims process contemplated by the May 20 Order and that claims procedure was approved by Order dated July 18, 2014 (the "**Front Street Claims Procedure Order**").

5. The Front Street Claims Process began on July 22, 2014 when the Manager sent notice of the claims form to each of the Secondary Payment Creditors. The Manager received a total of 21 claims prior to the claims bar date of August 18, 2014.

6. The Manager received claims totaling \$1,762,877.52 before the Claims Bar Date. The Manager accepted Canada Revenue Agency's ("CRA") deemed trust claim of \$246,284.94, secured claims of \$334,738.88 (the "**Accepted Secured Claims**") and \$32,096.00 of unsecured claims, and disallowed claims of \$386,290.18 in their entirety, as well as disallowing the priority of claims totaling \$249,297.42. One claim was filed by a shareholder and was not considered. The Manager also received Notices of Dispute disputing the classification of claims totalling \$249,297.42 and the classification of claims totalling \$349,170. The claims for which the Manager received Notices of Dispute are referred to collectively below as the "**Disputed Claims**").

7. The claims received by the Manager are considered below:

*The Accepted Secured Claims*

- (a) **CRA:** The CRA submitted a deemed trust claim in the amount of \$246,284.94, which the Manager allowed. The Manager also allowed an unsecured claim in the amount of \$32,096.10 that was allowed but is unlikely to be paid because insufficient proceeds are available. The Manager understands that the CRA's deemed trust is entitled to priority over the other secured claims that were allowed.
- (b) **Lien Claims:** The Manager also allowed secured claims filed by contractors that worked on 65 Front and preserved and perfected liens in accordance with the

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*Construction Lien Act.* The Manager accepted lien claims with an aggregate value of \$334,738.

### ***The Disputed Claims***

- (c) **Cushman and Wakefield Ltd. (“Cushman”)**: Cushman submitted a Proof of Claim on its own behalf and on behalf of Harvey Kales Real Estate Ltd. (“Kalles”). Cushman and Kalles sought payment of commission related to the sale of 65 Front in the amount of \$349,170 (the “**Cushman Claim**”). The Manager’s counsel has reviewed the Cushman Claim together with the supporting documents and the applicable law, and is of the view that the Cushman Claim ought to be allowed as a proprietary claim. However, the Manager disallowed Cushman’s proprietary claim because Justice Brown held that the Manager had no ability to vary Cushman’s status as a Secondary Payment Creditor and allowing Cushman to have proprietary status could potentially grant it priority over certain Primary Payment Creditors.
- (d) **Ample Electric Inc. (“Ample”)**: Ample filed submitted a secured claim in the amount of \$8,904 as part of the Front Street Claims Process. The claim for lien was preserved by registration on title but was not perfected within the time required by the *Construction Lien Act*. Accordingly, the Manager disallowed the secured claim.
- (e) **Blue Air Mechanical Inc. (“Blue Air”)**: Blue Air filed a claim in the Front Street Claims Process asserting that it had a secured claim in the amount of \$15,394. The Manager determined that Blue Air was only owed \$13,560, since it had claimed for legal costs that were not owed by Front Church Properties, and that its claim was unsecured because it had not provided any evidence that the lien was perfected within the time period required by the *Construction Lien Act*. Accordingly, the Manager disallowed the secured claim.
- (f) **Eng Con Construction (“Eng Con”)**: Eng Con submitted a secured claim in the amount of \$25,086 as part of the Front Street Claims Process. The claim for lien was preserved by registration on title but was not perfected within the time

- 5 -

required by the *Construction Lien Act*. The Manager remains of the view that Eng Con is not a secured creditor.

8. The Front Street Claims Procedure Order does not establish a mechanism for payment of the Manager's fees. The Manager respectfully submits that it is appropriate in the circumstances to grant the Manager permission to pay fees allocated to 65 Front from the proceeds of the sale of 65 Front in priority to any of the Secondary Payment Creditors. Although such payment will reduce the amount available for distribution to creditors, it is important to note that the proceeds from the sale of 65 Front were not sufficient to pay all of the Secondary Payment Creditors. A claims process was required so that the sale of 65 Front could be completed and it is appropriate that sale proceeds fund the cost of that claims process.

9. The Manager recommends that CRA be paid in full in priority to the other creditors. However, the relative priority of the accepted construction lien claims and Cushman's proprietary claim appears to be unclear based on the jurisprudence reviewed by the Manager's counsel. Accordingly, the Manager is of the view that these priorities ought to be determined by the Court after hearing submissions from interested parties.

## II. Miscellaneous

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

11. 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:**

1. The Twenty-Sixth Report of the Manager dated March 18, 2015; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

Date: March 18, 2015

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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.

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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.

DBDC SPADINA LTD. ET AL

and

NORMA WALTON ET AL

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

Applicants

Respondents

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at TORONTO

**NOTICE OF MOTION**  
(Motion for distribution of proceeds from the sale of 65  
Front Street and other relief)

**GOODMANS LLP**

Barristers &amp; Solicitors

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Tel: 416.979.2211

Fax: 416.979.1 234

Lawyers for the Manager

2

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

**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

**TWENTY-SIXTH REPORT OF THE MANAGER, SCHONFELD INC.**  
(Motion for distribution of proceeds from the sale of 65 Front Street  
and other relief)

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## I. INTRODUCTION

1. This is the Twenty-Sixth Report of Schonfeld Inc. (the “**Manager**”) in its capacity as Manager of (i) certain companies listed at Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Schedule B Companies**”),<sup>1</sup> together with the real estate properties owned by those companies (the “**Schedule B Properties**”); and (ii) the properties listed at Schedule “C” to the Judgment and Order of Justice Brown dated August 12, 2014 (the “**Schedule C Properties**” and together with the Schedule B Properties, the “**Properties**”).

### A. Purpose of this Report

2. This Manager has brought a motion for, among other things:

- (a) Approval of distribution of proceeds from the sale of 65 Front Street, Toronto, Ontario (“**65 Front**”) to creditors whose claims were accepted by the Manager in the claims process conducted in respect of 65 Front (the “**Front Street Claims Process**”);
- (b) An Order varying, if necessary, the Order of Justice Brown dated May 20, 2014 to permit the Manager to accept the proprietary claim (the “**Cushman Claim**”) advanced by Cushman & Wakefield Ltd. (“**Cushman**”);
- (c) An Order approving the Manager’s fees and disbursements, and those of its counsel, in connection with the Front Street Claims Process and authorizing payment of such fees and disbursements from proceeds realized from the sale of 65 Front before any further payments to creditors having claims to such proceeds.

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<sup>1</sup> Schedule “B” was amended by Order dated January 16, 2014.



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- (d) An Order approving the Front Street Claims Process, including the Manager's disallowance of claims;

3. This Report provides a summary of the Front Street Claims Process and the Manager's recommendation with respect to both the interim partial distribution, the dispute resolution process and a further claims process, if necessary.

#### **B. 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 Schedule B Companies or of the companies that own the Schedule C Properties (collectively, 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.

#### **C. Background**

5. The Schedule B Companies are a group of real estate development corporations incorporated as part of a series of joint ventures between Dr. Stanley Bernstein and companies that he controls (the "**Bernstein Group**") and Norma and Ronald Walton and entities that they control (the "**Walton Group**"). Most of the Schedule B Companies were incorporated to purchase and develop a particular Schedule B Property.

6. In the summer and fall of 2013, the relationship between the Walton Group and the Bernstein Group broke down amid allegations that the Walton Group had, among other things, placed mortgages on jointly-held properties without the Bernstein Group's consent and failed to

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provide reporting required by the agreements that govern the joint venture. The dispute between the Walton Group and Bernstein Group is described in more detail in the Endorsement of Justice Newbould dated November 5, 2013.

7. Pursuant to the Order of Justice Newbould dated November 5, 2013 (the “**November 5 Order**”), the Manager was appointed to provide independent management of the Schedule B Companies and the Schedule B Properties for the benefit of all stakeholders.

8. The Manager’s mandate was further expanded to include certain other real estate properties owned by the Walton Group, being the Schedule C Properties, pursuant to the Reasons of Justice Brown dated August 12, 2014, and the Judgment and Order of Justice Brown dated August 12, 2014.

## **II. 65 FRONT**

### **A. Background**

9. Front Church Properties Limited (“Front Church Properties”) is a company that was, prior to these proceedings, controlled by the Waltons. The Manager understands that the Waltons solicited, and ultimately secured, investment in Front Church Properties from various individuals and entities. These investments were in the form of “Secured Preferred” shares in Front Church Properties.

10. On December 18, 2013, the Applicants sought injunctive relief with respect to various companies and properties owned by the Waltons. This motion was adjourned but, as a term of the adjournment, Justice Newbould granted an Order (over the objection of the Respondents) that, among other things, prohibited the sale or encumbrance of any property owned by the Waltons (including 65 Front) without first providing notice to both of the Applicants and the

- 4 -

Manager so as to permit the Applicants and/or the Manager to move for further relief in a timely manner. This Order is attached as Appendix "A".

11. Ms. Walton brought a further motion for sale of 65 Front returnable January 27, 2014. By Order dated January 27, 2014, Justice Wilton-Siegel authorized Front Church Properties to negotiate an agreement to sell 65 Front and provided that the proceeds of such a sale were to be "paid as directed by the further order of this Court." Justice Wilton-Siegel's January 27, 2014 Order is attached as Appendix "B".

12. Beginning on March 21, 2014, Ms. Walton brought a series of motions for leave to sell 65 Front. Ms. Walton proposed using proceeds from the sale of 65 Front to pay individuals and entities that were alleged to be owed money by Front Church Properties. The Applicants opposed payment to certain creditors pending confirmation that they were actually owed money by Front Church Properties and a resolution of priority between these creditors and the Applicants' constructive trust claim into 65 Front.

13. By Order dated March 21, 2014 (the "March 21 Order"), and attached as Appendix "C", Justice Newbould authorized the sale of 65 Front and some, but not all, of the payments proposed by Ms. Walton and ordered that, if the sale proceeded, proceeds of the sale (net of authorized payments) were to be paid to the Manager. The March 21 Order did not require that Ms. Walton complete the proposed transaction and she refused to close on these terms.

14. The events relating to the sale of 65 Front are summarized in Justice Brown's Reasons for Decision dated May 20, 2014 and attached as Appendix "D". The most significant events can be summarized as follows:

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- (a) Both parties sought to vary the payments provided for in the March 21 Order. The parties were unable to reach agreement with respect to how the payment list should be varied. One of the major disputes related to the priority of a lien filed by the CRA;
- (b) On May 1, 2014 counsel for the CRA agreed to discharge its lien on sale of 65 Front and reserved the right to file a proof of claim in any future sales process;
- (c) Ms. Walton reached settlement agreements with all but one of the lien claimants that had registered liens against 65 Front;
- (d) Collins Barrow (Toronto) Limited, in its capacity as receiver over the company that owned 1450 Don Mills Road (which was jointly owned by the Applicants and the Respondents) registered a notice on title of a \$361,750 claim against Front Church Properties in respect of funds diverted by the Waltons from mortgages placed on 1450 Don Mills.

15. Ms. Walton brought a further motion for sale of 65 Front returnable before Justice Brown and heard on May 6 and 16, 2014. By Order dated May 20, 2014 and attached as Appendix “E” Justice Brown permitted the sale of 65 Front and payment of mortgages secured against 65 Front, outstanding property taxes, standard adjustments and legal fees (defined in Justice Brown’s reasons as the “**Primary Payment Creditors**”). Justice Brown directed the Manager to conduct a limited claims process with respect to certain other purported creditors, who were defined as “**Secondary Payment Creditors**”. The Secondary Payment Creditors were as follows:

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<b>Creditor</b>	<b>Claim</b>
CRA HST Lien	\$274,500
Settled construction lien claims	\$454,260
Unsettled construction lien claims	\$49,240
Collins Barrow Notice of Claim	\$361,750
Commission payment to Cushman Wakefield LePage	\$349,170

### **B. The Front Street Claims Procedure**

16. After the sale closed, the Vendor paid the Primary Payment Creditors and then paid the remainder to the Manager's counsel in trust. The amount received was \$861,236.17. With interest, the amount available for distribution is approximately \$863,403 as at Feb 27, 2015. This figure does not account for payment of any allocation of the Manager's fees and those of its counsel.

17. The Manager proposed a claims procedure in respect of the limited claims process contemplated by the May 20 Order and that claims procedure was approved by Order dated July 18, 2014 (the "**Front Street Claims Procedure Order**"), which is attached as Appendix "F".

18. The Front Street Claims Process began on July 22, 2014 when the Manager sent notice of the claims form to each of the Secondary Payment Creditors, together with a form of proof of claim form and instruction letter.

19. The Manager received a total of 21 claims prior to the claims bar date of August 18, 2014. These claims are summarized in the spreadsheet attached as Appendix "G." One of these claims was submitted by a purported shareholder of Front Church Properties, Wendy Gaucher. Since the Manager had no mandate to consider claims from anyone other than Secondary

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Payment Creditors, Ms. Gaucher's claim was not considered. As is described below, the Manager also received a large number of claims from purported shareholders after the claims bar date.

20. The Front Street Claims Process was, for several reasons, significantly more complicated than other claims processes completed by the Manager to date. Firstly, the Manager never managed 65 Front and had no familiarity with the property or the work performed on it by the numerous lien claimants. Secondly, the proportion of disallowed and disputed claims in the Front Street Claims Process was higher than the Manager has experienced on other properties. Thirdly, some of the claims filed by creditors involved complicated issues relating to tax law, construction law and trust law. Lastly, the Front Street Claims Process coincided with a very active period as a result of the release of Justice Brown's August 12, 2014 decision granting, among other things, the appointment of the Manager over the Schedule "C" Properties.

### **C. Payment recommendation**

21. The Manager received claims totaling \$1,762,877.52 before the Claims Bar Date. The Manager accepted CRA's deemed trust claim of \$246,284.94, secured claims of \$334,738.88 (the "**Accepted Secured Claims**") and \$32,096.00 of unsecured claims, and disallowed claims of \$386,290.18 in their entirety, as well as disallowing the priority of claims totaling \$249,297.42. One claim was filed by a shareholder and was not considered. The Manager also received Notices of Dispute disputing the classification of claims totalling \$249,297.42 and the classification of claims totalling \$349,170. The claims for which the Manager received Notices of Dispute are referred to collectively below as the "**Disputed Claims**"). The claims received by the Manager are summarised in the chart below.

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	<b>Deemed Trust</b>	<b>Proprietary</b>	<b>Secured</b>	<b>Unsecured</b>
Claims filed	246,284.94	349,170.00	969,126.48	198,296.10
Approved	246,284.94		334,738.88	32,096.10
Disputed quantum			385,090.18	1,200.00
Disputed classification		349,170.00	249,297.42	
Not considered				165,000.00
<b>TOTAL</b>	<b>\$ 246,284.94</b>	<b>\$ 349,170</b>	<b>\$ 969,126.48</b>	<b>\$ 198,296.10</b>
Accepted Claims	\$ 246,284.94		\$ 334,738.88	\$ 281,393.52

22. The Manager is of the view that the Disputed Claims (other than the Cushman Claim, which is described below) are not valid and, accordingly recommends that its disallowance of these claims be affirmed so that distribution can be made.

#### **D. Unsecured Claims**

23. The Manager does not recommend payment to creditors having accepted unsecured claims as no funds will be available for such payments if the Manager's recommendation is accepted. In any event, as noted above, the Front Street Claims Process was limited to the Secondary Payment Creditors, who all claimed to have security. The Front Street Claims Process Order does not contemplate any process for the identification of unsecured creditors.

#### **E. Shareholder claims**

24. As noted above, the Manager was contacted by a number of preferred shareholders of Front Church Properties (the "**Shareholder Claimants**"). As set out above, the Front Street

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Claims Process Order does not permit consideration of any claims other than those submitted by the Secondary Payment Creditors. This is apparent from the definition of "Claim" in the Front Street Claims Process Order:

**"Claim"** means any right of any Secondary Payment Claimant against the Debtor...

25. In the absence of a further Order, the Manager has no authority to consider claims from other creditors or shareholders. Many of the Shareholder Claimants refused to accept this explanation and asked repeatedly that their claim be included in the Front Street Claims Process.

26. In the course of discussions with the Shareholder Claimants, the Manager learned that Ms. Walton had induced many of them to submit claims by advising that the Manager was not only permitted to consider their claims, but required to do so.

27. Given the limited amount available for distribution and the possibility that creditor claims will exceed this amount, the Manager does not recommend conducting a further claims process to assess the claims of the Shareholder Claimants at this stage.

### **III. THE ACCEPTED CLAIMS**

#### **A. Canada Revenue Agency ("CRA")**

28. The CRA submitted a deemed trust claim in the amount of \$246,284.94, which the Manager allowed. The Manager also allowed an unsecured claim in the amount of \$32,096.10 that was allowed but is unlikely to be paid because insufficient proceeds are available. The Manager understands that the CRA's deemed trust is entitled to priority over the other secured claims that were allowed.



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**B. Lien Claims**

29. The Manager also allowed secured claims filed by contractors that worked on 65 Front and preserved and perfected liens in accordance with the Construction Lien Act. The Manager accepted lien claims with an aggregate value of \$334,738.

**IV. THE DISPUTED CLAIMS**

30. The Manager respectfully recommends that the Cushman Claim be allowed and the Manager's disallowance of the balance of the Disputed Claims be affirmed. The reasons for this recommendation are set out below.

**B. Cushman & Wakefield Ltd.**

31. Cushman and Wakefield Ltd. ("**Cushman**") submitted a Proof of Claim on its own behalf and on behalf of Harvey Kales Real Estate Ltd. ("**Kalles**"). Cushman and Kalles sought payment of commission related to the sale of 65 Front in the amount of \$349,170 (the "**Cushman Claim**"). The background to the Cushman Claim can be summarized as follows:

- (a) the March 21 Order provided that the Cushman Claim would be paid as a closing cost;
- (b) the May 20 Order, subsequently classified Cushman as a Secondary Payment Creditor; and
- (c) On June 2, 2014 and July 18, 2014, counsel for Cushman appeared to ask that the May 20 Order be varied to classify Cushman as a secured creditor and Primary Payment Creditor. At the July 18, 2014 hearing, Justice Brown stated that Cushman could only vary the May 20 Order by seeking a further attendance

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before him, which it did not do. In oral comments made during the hearing, Justice Brown made it clear that the Manager lacked jurisdiction to vary Cushman's status as a Secondary Payment Creditor. A copy of Justice Brown's endorsement dated July 18, 2014 is attached as Appendix "H".

32. Cushman submitted the Cushman Claim in accordance with the 65 Front Claims Process and asserted that it was a secured, proprietary and/or unsecured creditor. The Manager reviewed Cushman Claim and concluded that Cushman was owed a debt. The Manager also concluded (based on advice from its counsel) that Cushman had a valid proprietary claim. However, for the reasons described below, the Manager felt bound by Justice Brown's statement that the Manager had no authority to vary the May 20 Order and determined that allowing the Cushman Claim as a proprietary claim could effectively vary the May 20 Order. On this basis, the Manager disallowed Cushman's claim.

33. Cushman asserted its proprietary claim on the basis that Front Church Properties Limited (the "**Vendor**") made an irrevocable direction to its lawyer to pay the brokerages the commission from the proceeds from the sale of the Property in the agreement of purchase and sale (the "**APS**") between the purchaser of the Property and the Vendor. Cushman further asserts that an irrevocable direction contained in the APS constitutes an equitable assignment of the commission in favour of Cushman and that the irrevocable assignment contained in the APS results in Cushman being the "owner" of the proceeds. Cushman's Proof of Claim is attached as Appendix "I".

34. The Manager's counsel has reviewed the Cushman Claim together with the supporting documents and the applicable law, and is of the view that the Cushman Claim ought to be allowed as a proprietary claim. Based on the review of Canadian case law conducted by the

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Manager's counsel: (i) where an irrevocable direction is made with proper consideration, such irrevocable direction is considered an equitable assignment; (ii) an irrevocable direction made under seal (such as the direction at issue in this case) is an enforceable equitable assignment as a seal operates to import consideration into a contract; and (iii) an equitable assignment is an assignment of property rights, and not a security interest, giving Cushman proprietary rights to the claimed amount against the proceeds.

35. The Manager did not allow the Cushman Claim as a proprietary claim because it is of the view that doing so would potentially violate Justice Brown's statement that the Manager had no authority to vary Cushman's status as a Secondary Payment Creditor. As noted above, a proprietary claim is based on *ownership* of the funds in dispute. If Cushman is correct and it had a proprietary claim on proceeds from the sale of 65 Front then its claim would defeat all unsecured creditors of Front Church Properties and potentially some secured creditors (including Primary Payment Creditors). The Manager's Notice of Disallowance is attached as Appendix "J". Cushman's Notice of Dispute with respect to this disallowance is attached as Appendix "K".

36. That said, the Manager's view is that Justice Brown's May 20 Order was focussed on the *timing* of payment to various claimants. The Primary Payment Creditors were paid first because there was no dispute about their entitlement and security position. The Secondary Payment Creditors were not paid immediately because their debts and security required further review. Accordingly, accepting the Cushman Claim may not contravene the May 20 Order.

37. Even if accepting the Cushman Claim requires variation of the May 20 Order, the Manager is of the view that such a variation is appropriate. As noted the Reasons for Decision that accompanied the May 20 Order, the proceedings that lead to the sale of 65 Front were not under the control of the Manager and were chaotic. Cushman did not receive notice of the

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hearing that resulted in the May 20 Order. Cushman did not assert a proprietary claim at the attendances on June 2, 2014 and July 18, 2014 and so Justice Brown did not have an opportunity to consider this claim before making the July 18 Endorsement.

38. In light of the foregoing, the Manager is of the view that the Cushman Claim should be allowed as a proprietary claim.

**C. Blue Air Mechanical Inc. (“Blue Air”) and Ample Electric Inc. (“Ample”)**

39. Ample filed submitted a secured claim in the amount of \$8,904 as part of the Front Street Claims Process. The claim for lien was preserved by registration on title but was not perfected within the time required by the *Construction Lien Act*. Accordingly, the Manager disallowed the secured claim. The Manager’s Notice of Disallowance with respect to Ample’s claim is attached as Appendix “L”

40. Blue Air filed a claim in the Front Street Claims Process asserting that it had a secured claim in the amount of \$15,394. The Manager determined that Blue Air was only owed \$13,560, since it had claimed for legal costs that were not owed by Front Church Properties, and that its claim was unsecured because it had not provided any evidence that the lien was perfected within the time period required by the *Construction Lien Act*. In order to perfect a claim for lien, the claimant must commence an action and register a Certificate of Action on title to the relevant property all in 45 days of registering the lien on title. The Manager’s Notice of Disallowance with respect to Blue Air’s claim is attached as Appendix “M”.

41. In Notice of Dispute, attached as Appendices “N” and “O”, Blue Air and Ample asserted that they were prevented from perfecting their liens because, before the time for perfection had

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expired, all of the liens registered against 65 Front were expunged from title by virtue of the vesting provisions of the May 20 Order.

42. The Manager does not accept this position. Blue Air and Ample could have issued a Statement of Claim to perfect their liens even after the May 20 Order. Although there is no jurisprudence considering whether an action must be commenced to perfect a lien after a lien is removed from title by a vesting order, it is common for liens to be removed from title as a result of the posting of security. In such cases, the lien claimant is required to commence an action to perfect their security, even though a Certificate of Action cannot be registered on title. The Manager is of the view that the same result should apply in this case.

**D. Eng Con Construction (“Eng Con”)**

43. Eng Can Construction submitted a secured claim in the amount of \$25,086 as part of the Front Street Claims Process. The claim for lien was preserved by registration on title but was not perfected within the time required by the *Construction Lien Act*.

44. Eng Con filed a Notice of Dispute but did not articulate any principled basis for the dispute. Instead, Eng Con’s principal advised that he was a “construction supervisor” for Rose & Thistle and that the claim was an attempt to recover funds owed for work on the “joint portfolio.” These submissions are not relevant to the validity of Eng Con’s lien and the Manager remains of the view that Eng Con is not a secured creditor. If anything, the Notice of Dispute casts doubt on whether Eng Con’s lien would be valid even if it had been perfected (since the claim seems to be for wages owed by Rose & Thistle), although that issue does not need to be determined.

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**E. Manager's fees and those of its counsel**

45. Since its mandate with respect to 65 Front was limited to the discrete task of conducting a claims process, the Manager sought to time spent on the Front Street Claims Process separately from time spent on the balance of its mandate. The time spent to date on that process totals \$21,800 as set out in as the Affidavit of Harlan Schonfeld attached as Appendix "P"

46. It was not possible for the Manager's counsel to track time spent on 65 Front separately from the balance of its activities. The sale of 65 Front involved several court attendances where 65 Front was only one of several matters addressed. Accordingly, the Manager proposes determining the fees to be allocated to 65 Front using a combination of the Fee Allocation Methodology described in the 22<sup>nd</sup> Report and its actual time. In the 22<sup>nd</sup> Report, the Manager recommended allocating a total of \$35,239.33 to 65 Front for the period up to November 20, 2014. The Manager's actual fees are consistent with this amount.

47. The Front Street Claims Procedure Order does not establish a mechanism for payment of the Manager's fees. The Manager respectfully submits that it is appropriate in the circumstances to grant the Manager permission to pay fees allocated to 65 Front from the proceeds of the sale of 65 Front in priority to any of the Secondary Payment Creditors. Although such payment will reduce the amount available for distribution to creditors, it is important to note that the proceeds from the sale of 65 Front were not sufficient to pay all of the Secondary Payment Creditors. A claims process was required so that the sale of 65 Front could be completed and it is appropriate that sale proceeds fund the cost of that claims process.

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## **F. Proposed distribution**

48. The Manager has asked its counsel to review the respective priorities of the CRA, Cushman and the other Accepted Claims. Based on the results of this review, the Manager recommends that CRA be paid in full in priority to the other creditors. However, the relative priority of the accepted construction lien claims and Cushman's proprietary claim appears to be unclear based on the jurisprudence reviewed by the Manager's counsel. Accordingly, the Manager is of the view that these priorities ought to be determined by the Court after hearing submissions from interested parties.

49. In light of the foregoing, assuming the Court accepts the Manager's recommendation to dismiss the Disputed Claims and pay the CRA deemed trust in priority to other creditors, the Manager has attached as Appendix "Q" a chart showing the proposed distribution under three scenarios depending on:

- (a) if the Cushman Claim is found to have priority over the lien claimants;
- (b) if the Cushman Claim is found to rank *pari passu* with the lien claimants;
- (c) if the Cushman Claim is found to be unsecured.

## **V. CONCLUSION**

50. For the reasons described above, the Manager respectfully recommends that the relief sought in its Notice of Motion be granted.

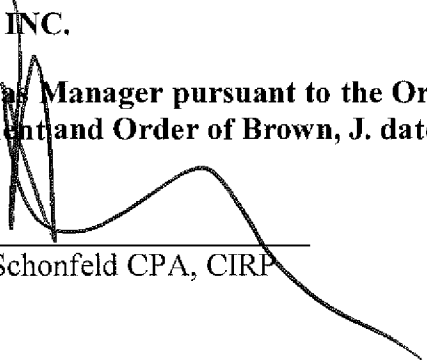
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All of which is respectfully submitted this 17<sup>th</sup> day of March, 2015.

**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:**

  
\_\_\_\_\_  
Harlan Schonfeld CPA, CIRP



**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.

- 2 -

32. Richmond Row Holdings Ltd.
33. El-Ad (1500 Don Mills) Limited
34. 165 Bathurst Inc.

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A

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) <sup>MONDAY</sup>  
 ) ~~FRIDAY~~, THE 27<sup>th</sup> DAY  
 )  
JUSTICE WILTON-~~SIEGAL~~ SIEGEL ) OF JANUARY, 2014

*Handwritten initials*

*Handwritten initials*

BETWEEN:

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

Applicants

and

NORMA WALTON, RONALD 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

**ORDER**

THIS MOTION made by the Respondent Norma Walton for an Order that the Walton Group and Front Church Properties Limited be permitted to negotiate and an offer acceptable to them to complete the sale of 65 Front Street East in accordance with the details set out in paragraphs 9 to 12 of the Affidavit of Mark Goldberg dated January 27, 2014 and corollary relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Mark Goldberg sworn January 27, 2014 and the Exhibits thereto,

## SERVICE

1. THIS COURT ORDERS that 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.

## ORDER

2. THIS COURT ORDERS that the Walton Group and Front Church Properties Limited be permitted to negotiate an offer acceptable to them to complete the sale of 65 Front Street East in accordance with the details set out in paragraphs 9 to 12 of the Affidavit of Mark Goldberg sworn January 27, 2014, *and price range*
3. THIS COURT FURTHER ORDERS that the ~~net~~ proceeds of any sale be paid as ~~set out in paragraph 13 of the Affidavit of Mark Goldberg sworn January 27, 2014.~~ *directed by further order of this Court.*

- 
4. THIS COURT FURTHER ORDERS that the Walton Group produce to the applicants and the *manager* all related agreements to any agreement of purchase and sale or any ~~terms agreements~~ related to the terms of sale of the property.
  5. THIS COURT FURTHER ORDERS that all steps in the negotiation of any offers to purchase and sign back offers be reported to the counsel for the applicant and the *manager* by e-mail at least 1 hour in advance of any step.

**SCHEDULE "A" COMPANIES**

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investment 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 Inc.
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.

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20. DBDC Salmon River Properties Ltd.
21. DBDC Cityview Industrial 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.



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**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 Inc.
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.

-6-

20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
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25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

DBDC SPADINA LTD. et al.

- and - NORMA WALTON et al.

Applicants

Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

**Proceedings commenced at TORONTO**

**ORDER**

**SCHIBLE LAW**

Adelaide Place/DBRS Tower  
181 University Avenue  
Suite 2200  
Toronto, Ontario  
M5H 3M7

**Guillermo Schible (LSUC#51584B)**

Tel: 416 601 6813

Fax: 416 352 5454

Email: guillermo@schiblelaw.com

Lawyer for Norma Walton

**B**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) <sup>MONDAY</sup>  
 ) ~~FRIDAY~~, THE 27<sup>th</sup> DAY *Handwritten initials*  
 )  
JUSTICE WILTON-~~SIEGAL~~ SIEGEL . ) OF JANUARY, 2014

BETWEEN:

DBDC SPADINA LTD.,  
and THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO *Handwritten initials*  
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

**ORDER**

THIS MOTION made by the Respondent Norma Walton for an Order that the Walton Group and Front Church Properties Limited be permitted to negotiate and an offer acceptable to them to complete the sale of 65 Front Street East in accordance with the details set out in paragraphs 9 to 12 of the Affidavit of Mark Goldberg dated January 27, 2014 and corollary relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Mark Goldberg sworn January 27, 2014 and the Exhibits thereto,

## SERVICE

1. THIS COURT ORDERS that 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.

## ORDER

2. THIS COURT ORDERS that the Walton Group and Front Church Properties Limited be permitted to negotiate an offer acceptable to them to complete the sale of 65 Front Street East in accordance with the details set out in paragraphs 9 to 12 of the Affidavit of Mark Goldberg sworn January 27, 2014. *and price range*
3. THIS COURT FURTHER ORDERS that the ~~net~~ proceeds of any sale be paid as set out in ~~paragraph 13 of the Affidavit of Mark Goldberg sworn January 27, 2014.~~ *directed by further order of this Court.*

- 
4. THIS COURT FURTHER ORDERS that the Walton Group produce to the applicants and the manager all related agreements to any agreement of purchase and sale or any ~~term agreements~~ related to the terms of sale of the property.
  5. THIS COURT FURTHER ORDERS that all steps in the negotiation of any offers to purchase and sign back offers be reported to the counsel for the applicant and the manager by e-mail at least 1 hour in advance of any step.

**SCHEDULE "A" COMPANIES**

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7. DBDC Investments St. Clair Ltd.
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9. DBDC Investments Leslie Ltd.
10. DBDC Investments Lesliebrook Ltd.
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12. DBDC Fraser Lands Ltd.
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14. DBDC Queen's Plate Holdings Inc.
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17. DBDC Red Door Lands Inc.
18. DBDC Global Mills Ltd.
19. DBDC Donalda Developments Ltd.

-4-

20. DBDC Salmon River Properties Ltd.
21. DBDC Cityview Industrial Ltd.
22. DBDC Weston Lands Ltd.
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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 Inc.
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.

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20. Donalda Developments Ltd.
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23. Weston Lands Ltd.
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

DBDC SPADINA LTD. et al.

- and -

NORMA WALTON et al.

Applicants

Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

**Proceedings commenced at TORONTO**

**ORDER**

**SCHIBLE LAW**

Adelaide Place/DBRS Tower  
181 University Avenue  
Suite 2200  
Toronto, Ontario  
M5H 3M7

**Guillermo Schible (LSUC#51584B)**

Tel: 416 601 6813  
Fax: 416 352 5454  
Email: guillermo@schiblelaw.com

Lawyer for Norma Walton

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	WEDNESDAY, THE 18 <sup>TH</sup>
	)	
JUSTICE NEWBOULD	)	DAY OF DECEMBER, 2013

BETWEEN:

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

Applicants

and

NORMA WALTON, RONALD 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

**ORDER**

**THIS MOTION**, made by the Applicant, DBDC SPADINA LTD., and THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO, for an Order granting various relief, to be heard on December 18, 2013 was adjourned, in part, to this day;

**ON READING** the Notice of Application dated October 1, 2013, the Amended Notice of Application dated October 24, 2013, the Amended Amended Notice of Application dated

-2-

December 17, 2013, the Notice of Motion dated December 11, 2013, the Amended Notice of Motion dated December 17, 2013, the affidavits of James Reitan sworn October 1, October 3, October 24 and December 9, 2013 the affidavit of Dr. Stanley K. Bernstein sworn October 1, 2013, the affidavits of Norma Walton sworn October 3 and October 31, 2013, the affidavit of Harlan Schonfeld sworn October 1, 2013, the affidavit of Marvin Pernica sworn December 5, 2013, the affidavit of Robert Duranceau sworn December 16, 2013, the affidavit of Jean Monardo sworn December 16, 2013, the Affidavit of Scott Brail, sworn December 17, 2013, the Affidavit of Bruce Shepherd sworn December 17, 2013, the Affidavit of Erle Anderson, sworn December 17, 2013 and the Exhibits attached thereto, the First Interim Report of the Inspector, Schonfeld Inc., the Supplemental Report to the First Interim Report of the Inspector and the Exhibits thereto, the Second Interim Report of the Inspector and the facts and books of authorities, filed, and upon hearing counsel for the Applicants, the Respondents, the Manager and the Mortgagees and, or the consent of the Mortgagees, *and on the objection of the respondents*

NT

1. THIS COURT ORDERS that 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.

2. THIS COURT ORDERS that the Applicants' motion is adjourned returnable ~~in January~~ *on a date to be set* before the Honourable Justice Newbould to permit cross-examination of James Reitan, Dr. Stanley Bernstein and, if so advised, Norma Walton.

NT

3. THIS COURT ORDERS the following interim relief pending the return of the motion:

- (a) the Respondents shall not deal with the Property at 44 Park Lane Circle, without further order of This Court;

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- (b) the Respondents shall not deal with the Property at 65 Front Street East, without further order of This Court;
- (c) the Respondents shall provide reasonable advance written notice to the Applicants and the Manager of any dealings with the following properties, so as to permit the Applicants and/or Manager to seek further relief of this Court in a timely manner:
  - (i) 2 Kelvin Avenue, Toronto, Ontario;
  - (ii) 346 Jarvis Street, Toronto, Ontario;
  - (iii) 3775 St. Clair Avenue East, Toronto, Ontario;
  - (iv) 14/17 Montcrest, Toronto, Ontario;
  - (v) 1 William Morgan Drive, Toronto, Ontario;
  - (vi) 324 Prince Edward Drive, Toronto, Ontario;
  - (vii) 24 Cecil Street, Toronto, Ontario;
  - (viii) 185 Davenport Road, Toronto, Ontario;
  - (ix) 30 and 30A Hazelton Avenue, Toronto, Ontario;
  - (x) 1246 Yonge Street, Toronto, Ontario;
  - (xi) 777 St. Clarens Avenue, Toronto, Ontario;
  - (xii) 17 Yorkville Avenue, Toronto, Ontario;

-4-

- (xiii) 252 Carlton Street and 478 Parliament Street, Toronto, Ontario;
- (xiv) 19 Tennis Crescent, Toronto, Ontario;
- (xv) 66 Gerrard Street East, Toronto, Ontario;
- (xvi) 646 Broadview Avenue, Toronto, Ontario;
- (xvii) 14 College Street, Toronto, Ontario;
- (xviii) 26 Gerrard Street Est, Toronto, Ontario;
- (xix) 2 Park Lane Circle Road, Toronto, Ontario;
- (xx) 2454 Bayview Avenue, Toronto, Ontario; and
- (xxi) 321 Carlaw, Toronto, Ontario,

out of the ordinary course of business, including encumbering or selling the properties.



CHIEF OF POLICE  
METROPOLITAN POLICE  
LEVERAGE FINANCIAL INC.

DEC 24 2013

NB

**SCHEDULE "A" COMPANIES**

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investment 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.
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25. DBDC West Mall Holdings Ltd.
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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 Inc.
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.
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26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

DBDC SPADINA LTD., et al  
Applicants

-and- NORMA WALTON et al.  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

Tel: (416) 865-2921

Fax: (416) 865-3558

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Shara N. Roy (49950H)

Tel: (416) 865-2942

Fax: (416) 865-3973

Email: sroy@litigate.com

Lawyers for the Applicants

**C**

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**Commercial List**

THE HONOURABLE	)	FRIDAY, THE 21 <sup>ST</sup>
	)	
JUSTICE NEWBOULD	)	DAY OF MARCH, 2014

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

Defendant

**ORDER**

**THIS MOTION**, brought by the Applicants for various heads of interim relief was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the motion record, and upon hearing from counsel for the Applicants, the Respondents and the Manager, Schonfeld Inc.,

-2-

1. THIS COURT ORDERS that the time for service of the notice of motion and motion record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service.

2. THIS COURT ORDERS that the Respondents, Norma Walton, Ronauld Walton, the Rose & Thistle Group Ltd. ("Rose & Thistle") and Eglinton Castle Inc. ("the Respondents") and any persons having knowledge of this order are hereby prohibited from dealing in any way with closing proceeds of sale payable to the vendor from the sale of property known municipally as 14 College Street, Toronto, Ontario ("the Sale") without further order of this Honourable Court.

*not of mortgage payments* 205

3. THIS COURT ORDERS that the Respondents, and any person having notice of this order, pay the proceeds of the Sale to Schonfeld Inc. to be held pending further order of this Honourable Court.

*not of mortgage payments* 205

4. THIS COURT ORDERS that subparagraph 3(c) of the Order of this Honourable Court dated December 18, 2013 is hereby amended *nunc pro tunc* to read as follows:

(a) the Respondents shall not deal with the following properties, including any transactions involving the equity of the legal or beneficial owner of the lands, without further Order of this Court:

*25 out of the ordinary course*

- (i) 2 Kelvin Avenue, Toronto, Ontario;
- (ii) 346 Jarvis Street, Toronto, Ontario;
- (iii) 3775 St. Clair Avenue East, Toronto, Ontario;
- (iv) 14/17 Montcrest, Toronto, Ontario;

-3-

- (v) 1 William Morgan Drive, Toronto, Ontario;
- (vi) 324 Prince Edward Drive, Toronto, Ontario;
- (vii) 24 Cecil Street, Toronto, Ontario;
- (viii) 185 Davenport Road, Toronto, Ontario;
- (ix) 30 and 30A Hazelton Avenue, Toronto, Ontario;
- (x) 1246 Yonge Street, Toronto, Ontario;
- (xi) 777 St. Clarens Avenue, Toronto, Ontario;
- (xii) 17 Yorkville Avenue, Toronto, Ontario;
- (xiii) 252 Carlton Street and 478 Parliament Street, Toronto, Ontario;
- (xiv) 19 Tennis Crescent, Toronto, Ontario;
- (xv) 66 Gerrard Street East, Toronto, Ontario;
- (xvi) 646 Broadview Avenue, Toronto, Ontario;
- (xvii) 14 College Street, Toronto, Ontario;
- (xviii) 26 Gerrard Street Est, Toronto, Ontario;
- (xix) 2 Park Lane Circle Road, Toronto, Ontario;
- (xx) 2454 Bayview Avenue, Toronto, Ontario; and
- (xxi) 321 Carlaw, Toronto, Ontario,

5. THIS COURT ORDERS that the Respondents disclose forthwith to Schonfeld Inc. all dealings with each of the properties listed in subparagraph 3(c) of the December 18 Order including the status of each and what transactions, if any, have been entered into since December 18, 2013.

6. THIS COURT ORDERS that the Respondents provide written disclosure weekly by 5:00 p.m. on the Monday of each week to Schonfeld Inc. of the status of, and all dealings with, each of the properties listed in subparagraph 3(c) of the December 18, 2013 Order.

7. THIS COURT ORDERS that the Respondents, Norma Walton, Ronauld Walton and a representative of the Rose & Thistle Group Ltd., attend for examination under oath by the Inspector as to their assets in light of the nonpayment of Inspector fees required by paragraph 13 of the Order of this Honourable Court dated October 4, 2013, upon notice of examination served.

8. THIS COURT ORDERS that the Applicants are permitted to bring forward an application for contempt of the Orders of this Honourable Court against the Respondents to be determined at the scheduled hearing dates before this Honourable Court of May 1 and 2, 2014.

*W. J. T.*

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.

MAR 21 2014

*MB*

**SCHEDULE "A" COMPANIES**

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
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**SCHEDULE "B" COMPANIES**

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27. Royal Gate Holdings Ltd.
28. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

DBDC SPADINA LTD., and those corporations listed on Schedule A hereto  
Applicants

-and- NORMA WALTON et al.  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

**Peter H. Griffin (19527Q)**

Tel: (416) 865-2921  
Fax: (416) 865-3558  
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**Shara N. Roy (49950H)**

Tel: (416) 865-2942  
Fax: (416) 865-3973  
Email: sroy@litigate.com

Lawyers for the Applicants

**D**

**CITATION:** DBDC Spadina Ltd. v. Walton, 2014 ONSC 3052  
**COURT FILE NO.:** CV-13-10280-00CL  
**DATE:** 20140520

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**COMMERCIAL LIST**

**RE:** 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

**BEFORE:** D. M. Brown J.

**COUNSEL:** P. Griffin and S. Roy, for the Applicants

N. Walton, in person

M. Dunn and J. LaBine, for Schonfeld Inc., Manager and Inspector

C. Lax, Q.C. and P. Fruitman, for 2313798 Ontario (14 College St.; 66 Gerrard St. East)

D. Brooker, for Collins Barrow (Toronto) Limited, court-appointed receiver of Global Mills Inc.

A. Zweig, for Abaco Glass, a 65 Front Street East lien claimant

**HEARD:** May 6 and 16, 2014

**REASONS FOR DECISION**

**I. SUMMARY OF THE MOTIONS**

[1] These motions by the applicants and respondents deal with further issues in the on-going litigation between Dr. Bernstein and the respondents, Norma and Ronauld Walton (and their companies), concerning their accounting for funds invested by Dr. Bernstein and his companies with them.

[2] In a separate, handwritten endorsement I gave directions for the scheduling of sale approval motions by the Manager, Schonfeld Inc., and a lift stay motion by a mortgagee of 1485 Dupont Street, Toronto.

[3] Three motions were brought by the applicants and respondents.

[4] First, on March 21, 2014, Newbould J. made an order that any proceeds from the sale of 14 College Street, Toronto (the "College Street Property"), be paid to the Manager "net of mortgage payments". When the sale approval motion came before me, the applicants raised an issue about the validity of the third mortgage on the College Street Property held by 2313778 Ontario Ltd. ("231"). By approval and vesting order made April 2, 2014, I authorized the closing of the sale transaction, but deferred the issue of the payment of the 231 Mortgage until the return of Newbould J. Part of the sales proceeds were placed into the hands of the Manager.

[5] That issue ultimately has come back before me for disposition, and the applicants have moved for orders that the mortgages held by 231 on the College Street Property and 66 Gerrard Street East, Toronto (the "Gerrard Street Property"), "did not constitute charges on the properties and are not in priority to the interests claimed by the Applicants". As well, the applicants have sought: (i) to have the remaining proceeds from the sale of College Street to continue to be held in trust by the Manager until the hearing of the applicants' broader motions in mid-July; and, (ii) to discharge the 231 mortgage from the Gerrard Street Property, with the sale of that property to proceed.

[6] 231 submitted that the applicants' motion should be dismissed, with payment of its substantial indemnity costs, together with 15% interest on its mortgage over 14 College Street from April 2, 2014 until the date the funds from that mortgage are paid to 231.

[7] Second, the respondent, Norma Walton (hereafter "Walton"), has moved for an order approving the sale of 66 Gerrard Street East, together with ancillary orders as follows:

- (i) an order preventing the Manager from taking steps to collect the remainder of monies due to it under this Court's costs order of November 5, 2014, pending the sale of the Gerrard Street Property;
- (ii) an order preventing 231, the second mortgagee on the Gerrard Street Property, from moving to power of sale the property because the monies due to it under the mortgage have been paid to the Manager from the closing proceeds from the sale of the College Street Property; and,
- (iii) an order that the monies held in trust by the Manager from the sale of the College Street Property be paid in full to 231, the third mortgagee of the College Street Property, and the third mortgage then be discharged.

[8] Third, Walton has moved for the approval of the sale of the property at 65 Front Street East or, more specifically, the distribution of the proceeds of that sale.

## II. THE APPLICANTS' CHALLENGE TO 231'S MORTGAGES

### A. The properties in question

[9] Ronauld and Norma Walton own all the issued and outstanding shares in College Lane Ltd., which owned the property at 14 College Street, Toronto, and in Gerrard Church 2006 Inc., which owns the property at 66 Gerrard Street East.

[10] College Lane Ltd. acquired the College Street Property on July 5, 2011 for \$5.6 million. Three mortgages were registered against the property: (i) Rocco Marcello (\$5 million); (ii) Stephen Handelman (\$750,000); and, (iii) 231 (\$1.35 million). Walton deposed that they purchased the property in 2011 without any funding from the Bernstein Group and no monies from the Don Mills Mortgages were used for the property.

[11] Gerrard Church 2006 Inc. owns the Gerrard Street Property. The Waltons acquired the property in late 2009 using a company called The Old Apothecary Building Inc. through a share purchase from the registered owner. Penmor holds a first mortgage of approximately \$4.25 million, and 231 a collateral second mortgage of \$1.35 million. Walton deposed that the purchase had been made without Bernstein Group involvement, except as mortgagee, and that mortgage had been paid off.

### B. The issue in dispute

[12] On November 26, 2014, College Lane and Gerrard Church 2006 granted collateral debentures to 231 in the amount of \$1.35 million each which were registered against title to both the College and Gerrard Street Properties.

[13] The applicants took the position that by seeking to enforce the collateral mortgages, 231 and the Waltons were attempting "to make 14 College Street and 66 Gerrard liable for mortgages that were granted without consideration to the corporate owners", and the applicants sought to declare both charges void as against them and others pursuant to section 2 of the *Fraudulent Conveyances Act*.<sup>1</sup>

[14] The larger context in which that claim by the applicants was made can be found in their Amended Amended Notice of Application dated December 17, 2013, where the applicants pleaded that the respondents owned the College and Gerrard Street Properties and numerous "Other Properties", and went on to allege that the respondents had diverted \$22 million in proceeds from the Schedule B Companies in which the applicants had invested into the Other Properties. The applicants seek certificates of pending litigation and blanket charges over all of the Other Properties, a motion which will be heard in July. As set out in their factum, the applicants seek a tracing of their funds into the College and Gerrard Street Properties and constructive trusts in respect of both properties in their favour.

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<sup>1</sup> R.S.O. 1990, c. F.29

[15] 231 submitted that there was no evidence that by granting the two mortgages the Waltons had intended to delay or defraud the applicants. Further, there was a legitimate business purpose for the transaction and valuable consideration was provided. Moreover, 231 had no knowledge of the applicants' claims in respect of the two charged properties at the time the encumbrances were granted.

### C. The legal framework in which to analyze the dispute

[16] Section 2 of the *Fraudulent Conveyances Act* (the "FCA") provides:

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

Sections 3, 4 and 7(2) of the *FCA* deal with circumstances where the conveyance was made upon consideration:

3. Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section.

4. Section 2 applies to every conveyance executed with the intent set forth in that section despite the fact that it was executed upon a valuable consideration and with the intention, as between the parties to it, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless it is protected under section 3 by reason of good faith and want of notice or knowledge on the part of the purchaser.

...

7(2) No lawful mortgage made in good faith, and without fraud or covin,<sup>2</sup> and upon good consideration shall be impeached or impaired by force of this Act, but it has the like force and effect as if this Act had not been passed.

[17] As put by Sedgwick J. in *Dapper Apper Holdings Limited v. 895453 Ontario Limited* (c.o.b. *Dunn's Famous Delicatessen*):

If the court is satisfied that a conveyance is made with intent on the part of the grantor to defeat, hinder, delay or defraud creditors and others, the parties to the conveyance (the grantor and the grantees) must show that it was made for good consideration and good faith and to a person (or persons) who was (or were) without notice or knowledge of the

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<sup>2</sup> "Covin" is not a word often seen these days, but traces its legal pedigree back to the 1360 Statute of Labourers. It referred to a secret agreement to cheat and defraud, or what today we would refer to as a conspiracy or collusion to cheat and defraud.

grantor's fraudulent intent. *Bank of Montreal v. Jory* (1981), 39 C.B.R. (N.S.) 30 (B.C. S.C.). Otherwise, the conveyance is void against creditors of the grantor.<sup>3</sup>

In *Canadian Imperial Bank of Commerce v. Graaf*<sup>4</sup> the trial judge stated:

In a fraudulent conveyance action there must be proof of fraudulent intent. If the conveyance is made for nominal or no consideration the Court need only consider if there is fraudulent intent on the part of the transferor whereas if there is consideration the transaction can be found to be fraudulent if there is fraudulent intent on the part of both the transferor and transferee.

[18] The presence or absence of "good consideration" in a conveyance, such as the granting of a mortgage, determines whether the court examines only the intention of the transferor, or that of both the transferor and transferee. In their factum and at the hearing the applicants advanced the argument that neither collateral charge granted to 231 was supported by consideration, so one need only examine the intention of the transferor, effectively Walton. Applicants' counsel acknowledged that should the court find the existence of "good consideration", it would be a difficult task to establish that 231 was not a good faith purchaser with want of notice of any impermissible intention by the transferor.

[19] Given the centrality of the issue of "good consideration" to the challenge to the two charges, I intend to first review the law on "good consideration" within the context of the *Fraudulent Conveyances Act*. Since the issue of consideration must be looked at within the entire context of any commercial transaction, I will then review the evidence about the transaction which led up to the granting of the two charges. Finally, I will determine whether the two charges were supported by "good consideration" within the meaning of the *FCA*.

#### **D. The law concerning "good consideration" under the *Fraudulent Conveyances Act***

[20] A fulsome discussion of the meaning of "good consideration" within the context of the *Fraudulent Conveyances Act* was given by Belobaba J. in *Feher v. Healey*:

The law of consideration, as it applies to fraudulent conveyances, can be summarized as follows. "Good consideration" means valuable consideration. It has to be more than just natural love and affection. Normally, courts are not concerned with the adequacy of consideration, only that there is some consideration for the agreement to be binding. Thus, binding agreements are often made for a consideration of one dollar.

Where, however, a transaction is attacked as a fraudulent conveyance, the court is required to examine the adequacy of the consideration. Although the courts do not weigh the adequacy of consideration "in too nice scales", nominal or grossly inadequate

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<sup>3</sup> 1996 CanLII 8253 (ON SC), para. 57.

<sup>4</sup> (1992), 5 B.L.R. (2d) 271 (Ont. Gen. Div.), para. 43; affirmed (1997), 44 C.B.R. (3d) 161 (Ont. C.A.). See also *Cybernetic Exchange, Inc. v. J.C.N. Equities Ltd.*, [2003] O.J. No. 4947 (S.C.J.), para. 220.



consideration is not sufficient and can be an indication or badge of fraud. The court's examination of adequacy is thus an attempt to ensure that there is a *bona fide* exchange and a reasonable *quid pro quo* for the impugned transfer of property: see generally Springman, Stewart and MacNaughton, *Fraudulent Conveyances and Preferences* (1994) at pages 14-22 to 14-29, and *Re Dougmor Realty Holdings Ltd.*, [1967] 1 O.R. 66 (Ont. H.C.J.)

Counsel for Paloma submits that the "good consideration" requirement is easily satisfied because Paloma agreed to waive any future claims for child or spousal support. The case law is clear that the settlement of a matrimonial dispute or the giving up of a claim for spousal or child support can constitute good and valuable consideration for the transfer of a matrimonial home: *Austin Marshall Ltd. v. Bennie*, [1985] O.J. No. 1736 (Ont. H.C.J.); *Caldwell and Cowney v. Simms and Simms*, (1995) 11 R.F.L. (4th) 28 (B.C.S.C.); and Springman et al., *supra*, at 14-25, note 62, and cases cited therein.<sup>5</sup>

[21] Other cases have spoken in terms of "valuable and more than nominal" consideration,<sup>6</sup> and in *Waxman v. Waxman* Farley J. observed that "good consideration must be interpreted as more than 'consideration' but rather something which is arguably in the range of fair market value".<sup>7</sup> That comment was made in the context of additional findings by Farley J. that the transfer in question had lacked any good faith and one person had acted on both sides of the transaction.

[22] Another theme can be found in the jurisprudence about consideration, albeit not specifically in the context of the *FCA*. In *Fred T. Brooks Ltd. v. Claude Neon General Advertising Ltd.* the Ontario Court of Appeal, in considering whether consideration supported an agreement, stated that "consideration need not be a benefit to the promisor":

It is sufficient if the promisee does some act from which a third person benefits and which he would not have done but for the promise or some act which is a detriment to the promisee".<sup>8</sup>

Professor Waddams picked up on this point in the Sixth Edition of his text, *The Law of Contracts*, when discussing the concept of consideration: "the exchanged act or promise need not, however, be of benefit to the promisor", and he proceeded to give the example of the promise of a guarantee.<sup>9</sup>

[23] Perhaps it would be useful to put this discussion about "good consideration" in the larger context of the purpose of fraudulent conveyance statutes. Springman, Stewart and Morrison, in

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<sup>5</sup> [2006] O.J. No. 3450 (S.C.J.), paras. 44 to 46.

<sup>6</sup> *Salna v. Hie* (2007), 88 O.R. (3d) 202 (S.C.J.), para. 36, affirmed 2008 ONCA 677.

<sup>7</sup> (2005), 10 B.L.R. (4<sup>th</sup>) 315 (Ont. S.C.J.), para. 22.

<sup>8</sup> [1932] 2 D.L.R. 45 (Ont. C.A.), para. 8.

<sup>9</sup> S.M. Waddams, *The Law of Contracts, Sixth Edition* (Toronto: Carswell, 2010), §122.

their text, *Frauds on Creditors: Fraudulent Conveyances and Preferences*,<sup>10</sup> when talking about the linkage between the consideration given, the transferee's fraud and the invalidity of the transaction, quoted from a late 19<sup>th</sup> Century American text to set out the rationale behind the principle governing the legislation's safe-harbour provision:

The proviso is general. It exempts any conveyance upon good consideration and *bona fide* to any person not having notice of the fraud or collusion from the effect of the statute. Its benefits therefore extend to any *bona fide* purchaser for valuable consideration, whether he purchases from the fraudulent grantor or the fraudulent grantee. The great object of the law is to afford certainty and repose to titles honestly acquired. It is of no public utility to destroy titles so acquired on account of the taint of a prior secret fraud, which may be unsuspected and unknown, and which, probably, no diligence could detect. A purchaser who pays a fair price for an ostensibly fair title without notice of any latent fraud in any previous link of the title has a higher equity than the creditors.<sup>11</sup>

#### **E. The evidence regarding the transactions in which impugned mortgages were granted**

[24] Against that background, let me review in detail the transactions which gave rise to the two impugned charges. The first in time involved the October 21, 2013 closing of a share purchase transaction, which I will refer to as the "October Transaction". The second, a few weeks later, concerned November 26 amendments to that transaction, which I will call the "November Amending Transaction".

##### **E.1 The October Transaction: the contemporaneous closings of the Yonge Street Property purchase and the Carport share purchase**

[25] The genesis of the impugned mortgages lay in dealings concerning another property, 1027 Yonge Street (the "Yonge Street Property"). According to Eric Silverberg, the President of 231, on July 5, 2013, Carport Realty Holdings Inc., a single-purpose entity incorporated by Silverberg, had entered into an agreement of purchase and sale with 1110359 Ontario Limited to purchase the Yonge Street Property for \$9 million. The due diligence period had commenced on July 5 and was set to expire 45 days later. A subsequent amendment to the APS set the closing for 60 days after the expiry of the due diligence period, or at around October 19, 2013.

[26] Ms. Walton approached Silverberg about the Yonge Street APS, and in a September 17, 2013 letter of intent offered to purchase the shares of Carport for \$2.2 million. The Yonge Street APS was an asset of Carport. Under the LOI, the buyer of the Carport shares would be The Rose and Thistle Group Ltd. – a Walton company - in trust for a company to be incorporated. According to the LOI, the objective of the transaction would be to acquire the shares contemporaneously with the closing of the Yonge Street APS. Rose and Thistle would be

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<sup>10</sup> M.A. Springman, G.R. Stewart and J.J. Morrison, *Frauds on Creditors: Fraudulent Conveyances and Preferences* (Toronto: Carswell, loose-leaf).

<sup>11</sup> *Ibid.*, p. 14-2.

responsible for payment of 100% of the purchase price of the Yonge Street Property. Silverberg accepted and signed back the LOI on September 18, 2013.

[27] Silverberg deposed that although the LOI initially contemplated that Rose and Thistle would acquire the shares of 231 - the company to which the Yonge Street APS would be assigned - he received accounting advice that the most tax-efficient method would be to have Rose and Thistle acquire the Carport shares, not the 231 shares. He asked Walton to so change the structure of the transaction. She agreed, on two conditions: (i) the granting of an indemnity by 231 in respect of a potential third party claim over the Yonge Street Property; and (ii) allowing \$1 million of the \$2.2 million share purchase price to be paid in three installments over two years. Silverberg recalled that he had initially proposed the deferral of a million dollars of the purchase price.<sup>12</sup>

[28] In the result, the closing of the sale of the Yonge Street Property occurred simultaneously with the transfer of Carport's shares on October 21, 2013. On the closing McCarthy Tétrault acted for 231/Carport, and Devry Smith Frank LLP acted for The Rose & Thistle and the Waltons.

[29] The share purchase was structured such that 231, as the owner of all Carport shares, sold those shares to The Rose & Thistle under an October 21, 2013 Share Purchase Agreement, and The Rose & Thistle assigned all of its interest in the Share Purchase Agreement to Ronauld and Norma Walton.

[30] Silverberg deposed that prior to the closing he had been provided with a net worth statement of the Waltons which showed them having \$217 million in equity.

[31] An October 21, 2013 Indemnity and Arrangement Agreement ("IAA") amongst 231, Carport and the Waltons set out the supplemental terms for the share purchase, including the indemnity from 231 against any "litigation claim".

[32] Also, the IAA amended the share purchase price payment terms. The SPA had required the payment of \$500,000 prior to closing, and the balance of \$1.7 million on closing. The IAA amended the term dealing with the amount due on closing, so that the Waltons were required to pay \$1 million in three tranches over the next two years, with the first payment due 45 days following closing, or about December 5, 2013. The Waltons, as purchasers, were to deliver a promissory note in the amount of \$1 million as well as a share pledge agreement for the Carport shares. Section 3.4 of the IAA concluded by stating:

The Note shall contain a provision whereby it shall become due and payable upon the sale of the Real Property [i.e. the Yonge Street Property] or any part thereof.

[33] Some correspondence had passed between the parties and their counsel prior to the closing about the nature of the security for the obligation to pay the balance of the share purchase

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<sup>12</sup> Transcript of the cross-examination of Eric Silverberg conducted May 4, 2014, Q. 50.

price. The vendor, 231, wanted a pledge of all the Carport shares, to which the Waltons agreed. The Waltons had offered a second mortgage on another property instead of the share pledge. Walton's email of October 20 suggested closing on the basis of the share pledge "and that after closing [Jamie] look at whether he wants to exchange that security with the second mortgage we have offered on 252 Carlton..." The next day, October 21, her counsel, Todd Holmes, wrote to Silverberg's counsel at McCarthys stating:

We will not agree to either of your "wants". We have agreed to your request for a pledge of all 100 common shares. We have offered you a second mortgage instead of a pledge. We are done. It's the day of closing.

Following closing, you and Eric can decide whether you wish to exchange the pledge for a second mortgage on 252 Carlton Street. Norma is listing the property for sale for \$3.5 million this week with Colliers. The property has an existing first mortgage with Equitable Trust with about \$1.7 million outstanding under it. We can arrange the second mortgage after closing which offers security superior to the pledge. We await your early reply.

[34] In the result, Norma and Ronauld Walton executed a Share Pledge Agreement dated October 25, 2013 in favour of 231 under which they granted a security interest in the Carport shares. However, the IAA which the parties had executed, specifically contemplated, in Section 3.5(f), the future exchange of security:

3.5(f) The Purchasers [i.e. the Waltons] shall have the right to substitute other security as security for the payment of the Note, provided such substituted security is satisfactory to the Vendor [i.e. 231] in its sole, subjective and absolute discretion.

[35] The events of default contained in the Share Pledge Agreement included the "due on sale" provisions in the promissory note accelerating payment of the debt upon the sale of the Yonge Street Property.

## **E.2 The November Amending Transaction**

[36] On November 5, 2013, Newbould J. had released his decision appointing the Manager over the Schedule B Properties in which the applicants had invested.

[37] On November 6, Walton emailed Silverberg proposing a change in the payments due under the SPA:

We are proposing to change the timing of the share escrow for hopefully mutual benefit. We anticipate we will be quite flush at the beginning of February 2014. We have also made our own enquiries and are comfortable with the ongoing risk of litigation.<sup>13</sup> Hence we propose to pay you the full \$1 million all at once on February 1, 2014, thus delaying

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<sup>13</sup> That is, the litigation in respect of which 231 had given its indemnity.

the payment from December 5<sup>th</sup> to February 1<sup>st</sup> but paying the full amount on February 1<sup>st</sup>. Let me know if agreeable and we'll have the lawyers amend the documents accordingly.

[38] Shortly thereafter Silverberg was informed by his counsel that an error had occurred in the statement of adjustments for the October 21 closing and, in fact, an additional \$350,000 was owed to 231 by the Waltons under the SPA. That brought the total amount outstanding for the Carport shares to \$1.35 million. Silverberg asked for payment of the \$350,000; he deposed that Walton advised she would prefer to add the additional \$350,000 to the repapered security. Walton did not tell him that she lacked the money to pay him the additional amount at that time.<sup>14</sup> On this point the following exchange occurred during the cross-examination of Silverberg:

119. Q. All right, and you say there was no discussion about whether they had the ability to pay you at that time?

A. No, they had already indicated a strong preference. They were contemplating closing two properties as I recall. I believe the numbers, if you combine the two, were somewhere close to 20 million dollars. So they were trying to put off this debt in order to do those deals, and I, you know, with the expedited payout, was happy to say yes.

120. Q. Was the idea that they had a couple of deals coming up, that they would be flush, as I think Ms. Walton puts it in her email to you, and therefore, you could expect the money down the road?

A. She indicated to me that she was doing...closing deals in the near term, at this time, November, December, and then, yes, would have...I think the word was "flush" come early new year.

[39] Silverberg agreed to this proposal, deposing:

I agreed to Ms. Walton's proposal as it meant relief from the indemnity and recovery of the entire balance owing within a couple of months rather than a couple of years.

As Silverberg put it on his cross-examination: "I was going to get the...\$1,350,000...in about two months rather than two years".<sup>15</sup>

[40] The details of the negotiations which fleshed out the share purchase amending agreement were as follows. On November 16 Silverberg emailed Walton: "I will agree to the terms requested below [in the November 6 email] if you will post security in the form of a 1<sup>st</sup> or 2<sup>nd</sup> property mortgage that comes due concurrently with the \$1 million payment in February".<sup>16</sup> On

<sup>14</sup> Silverberg CX, QQ. 106-109.

<sup>15</sup> Silverberg CX, Q. 130.

<sup>16</sup> At that point of time Walton had negotiated a conditional sale of the College Street Property which was scheduled to close at the end of January, 2014.

November 17 Walton responded: "That would work assuming the mortgage replaced the share pledge". Walton proposed putting a second mortgage on property they owned at 252 Carlton. Silverberg replied:

Mortgage can replace the share pledge. I don't know the debt/equity structure of any of 30 & 30A Hazelton, 32 Atlantic or Front and Church but for obvious reasons I like the dirt. Would any of these work in substitute for Carlton?

[41] Then, in a November 19 email entitled "proposed change to share escrow", Silverberg informed Walton that he was prepared to accept a second mortgage on 66 Gerrard as security for the \$1 million owed in February, 2014 subject to his counsel's "approval on terms and diligence". That day Orzech, Silverberg's lawyer, emailed Walton: "I assume this is not one of the assets where you have a partner and the partner's consent is needed for the 2<sup>nd</sup> charge. What is the approach with the first lender vis a vis getting or not getting consent for the second mtg." Walton emailed her lawyer, copying Silverberg's, the following regarding 66 Gerrard:

Let [Silverberg's counsel] know that the first mortgage lender will likely not consent to the second so he'll need to just register the second mortgage knowing that. Also let [Silverberg's counsel] know this is not subject to the partnership but is our asset alone.

The property is currently listed for sale with Noah Rechtsman and we anticipate it will be under conditional contract of sale sometime in the next three weeks, with closing to occur in February.

[42] On November 20 Silverberg's counsel informed Walton that they required a simple limited recourse guarantee by the owner of Gerrard Street guaranteeing the liabilities of the Waltons under the \$1 million note with a "plain vanilla collateral mtg" securing the obligations of the guarantor. Walton responded: "Works for me", subject to her counsel's comments.

[43] On November 21, Silverberg's counsel circulated a draft amending agreement, the purpose of which was "to update the arrangement agreement to: (i) remove the litigation indemnity; (ii) replace the share pledge with the new mortgage/guarantee and (iii) update the Note language to reflect the Feb 2014 payout; (iv) terminate the share pledge agreement and related escrow agreement". As well, counsel sent around a "limited recourse guarantee by Gerrard Church 2006 Inc." and proposed sending a collateral charge later that day.

[44] Further discussions ensued, with Silverberg advising his counsel on November 22 that he had spoken with Walton and had come to the following resolution:

- 1) if Norma can pay out the \$350,000 missing from the closing she will...as soon as the funds are available (in advance of February 1<sup>st</sup>)
- 2) we will do a collateral 2<sup>nd</sup> mortgage for \$1,350,000 on each of Gerrard and Norma's property on College. College has been sold conditionally, and you get the pin etc. from [Walton's counsel]

At the same time Silverberg was advised by Walton that the conditional sale of the College Street Property was scheduled to close on January 31 "assuming it firms up", with a sale price of

\$8 million and total debt registered against the property of \$5.75 million. Silverberg replied that he had presumed his mortgage on College Street would be a second, and he requested from Walton information about leases, the first and second mortgages, and environmental matters. Walton provided that information on November 23.

[45] On November 25 Walton's counsel advised Silverberg's that the 1027 Yonge Street draft documents were fine, with the exception of a small change to the proposed amending agreement.

[46] The November Amending Transaction closed on November 26, 2013. It was papered by 231, Carport and the Waltons entering into an Amending Agreement made as of November 17, 2013, signed on November 25 and 26, and stated to be effective as of October 25, 2013, under which the amount of the Promissory Note was increased to \$1.35 million (the "Second Note")<sup>17</sup>. Section 3.5 of the IAA, which dealt with the security to be given for the outstanding amount, was amended to read as follows:

To secure the obligations of the Purchasers under the Note, they shall cause Gerrard Church 2006 Inc. and College Lane Ltd. to respectively deliver a limited recourse guarantee of the purchaser's obligations under the Note and each guarantee shall be secured by a collateral debenture, each in the amount of \$1,350,000 on the properties municipally known as 66 Gerrard Street, Toronto, Ontario and 14 College Street, Toronto, Ontario...

As well, section 3 of the Amending Agreement declared the Share Pledge Agreement to be "null and void, of no further force or effect, and no party thereunder shall have liability to another party under such agreements following the date hereof. All shares of the Corporation delivered under such agreement shall be returned to the Purchasers concurrent with the execution and delivery of this Agreement."

[47] The Second Note stated that the entire principal amount would become due and payable upon the occurrence of any "event of default" as defined in the two collateral debentures, both of which referred to "events of default" as "such term is defined in the Guarantee". The replacement of the First Note by the Second Note and the cancellation of the Share Pledge Agreement meant that the sale of 1027 Yonge Street by the Waltons would not trigger any obligation by them to pay 231 the entire amount of the indebtedness prior to February 1, 2014.

[48] Collateral demand debentures were executed by both College Lane Ltd. and Gerrard Church 2006 Inc. in the amounts of \$1.35 million. Charges in that amount were registered on both properties on November 26, 2013. The consent of the prior mortgagees was not obtained before registration, but according to Silverberg's transaction counsel, when they were advised about the subsequent registrations they raised no issues.

[49] Walton provided a December 4, 2013 resolution of the Carport directors approving the issuance of the October 25, 2013 Second Note for \$1.35 million in favour of 231.

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<sup>17</sup> Executed and delivered on October 25, 2013.

[50] The Waltons did not pay the remaining \$1.35 million under the Share Purchase Agreement on February 1, 2014. 231 made formal demand on the Second Note on February 6, 2014 and on February 27 informed College Lane Ltd. that it would initiate mortgage enforcement proceedings unless payment in full was made by February 28, which it was not. A notice of power of sale was served.

### **E.3 Subsequent dealings with the Yonge Street Property by Carport/the Waltons**

[51] After the closing, Carport changed its name to Roxborough Properties Ltd. By agreement of purchase and sale dated December 11, 2013, Roxborough agreed to sell the Yonge Street Property to Old Stonehenge Urban Properties Inc. for \$15 million, an amount reduced on January 30, 2014 to \$14.25 million. After acquiring the Yonge Street Property, Roxborough registered debt of \$12.115 million against title. The sale to Old Stonehenge closed around February 4, 2014. The debt the Waltons owed to 231 was not satisfied out of the closing proceeds.

### **F. Analysis of the “good consideration” issue**

[52] The applicants contended that the granting of the collateral charges on the College and Gerrard Street Properties was not supported by “good consideration” because neither of the companies which granted the charges had benefited from the November Amending Transaction. I do not accept that submission.

[53] The applicants acknowledged, quite properly, that they could not attack the *bona fides* of the first, October Transaction. There is no doubt that the October Transaction was an arm’s-length transaction between two parties for good and valuable consideration.

[54] The applicants, in effect, wished to draw a line after the October Transaction and to examine the November Amending Transaction on a stand-alone basis. In my view such an approach would do violence to the commercial context in which that latter transaction took place. Any analysis of a transfer or conveyance, such as a mortgage, under the *Fraudulent Conveyances Act* must be undertaken by looking at the entire commercial context in which the impugned transaction arose.

[55] In the present case, prior to the closing of the October Transaction the parties had discussed the possibility of exchanging the share pledge security granted to 231 for a mortgage on a property owned by the Waltons. That discussion was reduced to a formal contractual entitlement enjoyed by the Waltons, as reflected in Section 3.5(f) of the IAA:

3.5(f) The Purchasers [i.e. the Waltons] shall have the right to substitute other security as security for the payment of the Note, provided such substituted security is satisfactory to the Vendor [i.e. 231] in its sole, subjective and absolute discretion.

[56] Several issues between the parties arose following the closing of the October Transaction. As a result, the parties negotiated a multi-faceted amendment to their agreement and the adequacy of the consideration for the charges must be assessed in light of that entire package of amendments. Specifically, under the Amending Agreement:



- (i) The obligations of the Waltons to 231 increased by \$350,000 as a result of the adjustment error on the October closing;
- (ii) The Waltons gained greater flexibility in dealing with the acquired Yonge Street Property because 231 was prepared to untether the obligation to pay the amount under the Note from the sale of that property;
- (iii) But, in return for the deferral of the December payment under the Note and the greater flexibility they gained to deal with the Yonge Street Property, the Waltons agreed to accelerate the payment of the entire debt, with the Second Note requiring payment in full by February 1, 2014; and,
- (iv) 231 exchanged the security for the outstanding debt from the pledge of the Carport shares to the two collateral debentures charged against the College and Gerrard Street Properties. The obligations of the Waltons under the Second Note to pay 231 the debt of \$1.35 million thereby became secured by the collateral debentures granted by the two companies which owned those properties. Looked at another way, 231 released the security it enjoyed over the Yonge Street Property through the Share Pledge Agreement in favour of faster repayment of the debt secured by mortgages over the College and Gerrard Street Properties.

[57] Silverberg described the effect of the Amending Agreement on 231 as follows:

As a result of the Amending Agreement, 231 Ontario was in no better position than it was at Closing. The original intention was for 231 Ontario to have received \$1.2 million in cash and a \$1 million receivable secured by mortgages and a promissory note bearing a 15 percent annual interest rate. However, because of the error on the Statement of Adjustments, \$350,000 of the \$1.2 million that was to have been paid at Closing was now secured along with the \$1 million receivable. The real benefit to 231 Ontario from the Amending Agreement was the acceleration of the repayment schedule, from two years to two months.

...

I agreed to the Amending Agreement because it meant getting paid in two months rather than two years. I agreed at the same time to change the security over the Walton's debt to reflect the parties' original intention at the time of the IAA of securing that debt with mortgages.

[58] The grant of the collateral debentures to 231 was linked contractually to the un-impugned October Transaction – the Waltons exercised the right specifically granted to them under the IAA to exchange security post-closing. They did so by substituting one asset group which they wholly controlled – the assets owned by College Lane and Gerrard Church 2006 – for another – the shares of Carport, and they did so as part of an amending agreement in which both sides – the Waltons and 231 - received benefits.

[59] Looking at the issue of consideration from a technical point of view, Professor Waddams has written that “the exchanged act or promise need not, however, be of benefit to the promisor”.

<sup>18</sup> Nor does *FCA* s. 3 stipulate that the consideration be exchanged only with the transferor.

[60] But a technical examination of the issue of consideration should not be the starting point. Instead, the examination of the presence or absence of consideration for any conveyance must be alive to the commercial realities of the specific context. Here, the owners of the two property-owning corporations – the Waltons – caused their corporations to grant the charges because they saw benefit in the November Amending Transaction to the overall portfolio of real estate companies of which they were the owners and which they were managing as a collective. That is hardly surprising commercial conduct for a group of closely-held companies directed by common minds, so the mere fact that the specific entity which granted the mortgage did not receive a direct benefit is not sufficient reason, in and of itself, to find that no consideration supported the transaction. To examine the issue of consideration simply at the corporate level of College Lane and Gerrard Church 2006 would ignore the commercial reality in which the October and November Amending Transactions took place and, in my view, would result in a distorted legal analysis.

[61] The applicants’ counter-parties under their investment contracts were the Waltons personally. While the applicants enjoy rights as shareholders of the Schedule B Companies which they co-own with the Waltons, the applicants have framed their claims against the Waltons for recovery in respect of those investments as ones against the Walton’s share of the “equity” in the Schedule B Companies and against the Walton’s other assets, including their “equity” in the Schedule C Companies/Properties which they own. Although the applicants are asserting tracing and constructive trust claims against the Schedule C Companies/Properties, they do so, in large part, in order to satisfy their contractual claim against the Waltons. Put another way, the applicants did not invest directly in the Schedule C Companies/Properties – they are not direct creditors of them. Instead, the applicants now attempt to trace some of their investment funds through the Waltons to the Schedule C Companies/Properties owned by the Waltons. In those circumstances, the analysis of the exchange of benefits, or consideration, must take into account how the Waltons were using their “equity” in various companies/properties vis-à-vis their creditors, rather than focusing exclusively at the lower level of the specific-purpose corporate vehicles used to hold each property. In the case of the October and November Amending Transactions, the Waltons simply substituted one un-impugned charge on their “equity” in certain assets for another charge of equivalent value on other assets. That does not strike me as an unfair exchange from the perspective of their non-231 creditors, or one unsupported by consideration.

[62] Finally, this was not a case where 231 was concerned that the value of the initial security it had taken – the pledge of the Carport shares – would be insufficient to cover the Walton’s debt obligation. 231 was not under-secured following the closing of the October Transaction,

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<sup>18</sup> S.M. Waddams, *The Law of Contracts, Sixth Edition* (Toronto: Carswell, 2010), §122.

deciding later to “trade up”; it was covered adequately by the first security and remained so by the replacement second security.

[63] In sum, I find that the grant of the collateral debentures to 231 in the November Amending Transaction was supported by “good consideration” within the meaning of the *Fraudulent Conveyances Act*.

[64] That being the case, as Spence J. observed in *Cybernetic Exchange*, “applying the concept of fraudulent conveyance to a mortgage for valuable consideration from an unrelated party is an exercise that requires great care”.<sup>19</sup> With that admonition in mind, let me turn now to the issue of intent under the *Fraudulent Conveyances Act*.

### G. The legal principles concerning the issue of intent

[65] The general approach to ascertaining intention in respect of a transfer or conveyance was summarized by Rouleau J., as he then was, in *Conte (Executrix and trustee of) v. Alessandro*:<sup>20</sup>

In this type of case it is unusual to find direct proof of intent to defeat, hinder or delay creditors. It is more common to find evidence of suspicious facts or circumstances from which the court infers a fraudulent intent.

These suspicious facts or circumstances are sometimes referred to as the “badges of fraud.” These badges of fraud are evidentiary indicators of fraudulent intent and their presence can form the *prima facie* case needed to raise a presumption of fraud...

The presence of one or more of the badges of fraud raises the presumption of fraud. Once there is a presumption, the burden of explaining the circumstantial evidence of fraudulent intent falls on the parties to the conveyance. The persuasive burden of proof stays with the plaintiff; it is only the evidentiary burden that shifts to the defendants.

[66] The decision of Anderson J. in *Re Fancy*<sup>21</sup> often is referred to as a classic enumeration of the badges of fraud. In the 1988 decision of *Ricchetti v. Mastrogiovanni* this Court dealt with *Re Fancy* as follows:

The law on the subject of fraudulent conveyances is accurately stated by Mr. Justice Anderson in *Re Fancy* (1984), 51 C.B.R. (N.S.) 29 ....

The plaintiff must prove that the conveyance was made with the intent defined in that section [i.e. section 2 of the *Fraudulent Conveyances Act*]. Whether the intent exists is a question of fact to be determined from all of the circumstances as they existed at the time of the conveyance. Although the primary burden of proving his

<sup>19</sup> *Cybernetic Exchange, supra.*, para. 217.

<sup>20</sup> 2002 CanLII 20177 (ON SC), paras. 20-22.

<sup>21</sup> (1984), 51 C.B.R. (N.S.) 29 (Ont. H.C.J.)

case on a reasonable balance of probabilities remains with the plaintiff, the existence of one or more of the traditional "badges of fraud" may give rise to an inference of intent to defraud in the absence of an explanation from the defendant. In such circumstances there is an onus on the defendant to adduce evidence showing an absence of fraudulent intent. Where the impugned transaction was, as here, between close relatives under suspicious circumstances, it is prudent for the court to require that the debtor's evidence on bona fides be corroborated by reliable independent evidence.

The "badges of fraud" referred to by Mr. Justice Anderson are those et [*sic*] out in *Re Dougmor Realty Holdings Ltd.*, (1966), 59 D.L.R. (2d) 432:

- (1) Secrecy
- (2) Generality of Conveyance
- (3) Continuance in possession by debtor
- (4) Some benefit retained under the settlement to the settlor.

The above passages set out the test to be applied. The badges of fraud alleged by the plaintiff are established.<sup>22</sup>

[67] The case law<sup>23</sup> has identified the following circumstances as constituting "badges of fraud" for purposes of ascertaining the intention of a debtor: (i) the transferor has few remaining assets after the transfer; (ii) the transfer was made to a non-arm's length person; (iii) there were actual or potential liabilities facing the transferor, he was insolvent, or he was about to enter upon a risky undertaking; (iv) the consideration for the transaction was grossly inadequate; (v) the transferor remained in possession or occupation of the property for his own use after the transfer; (vi) the deed of transfer contained a self-serving and unusual provision; (vii) the transfer was effected with unusual haste; or, (viii) the transaction was made in the face of an outstanding judgment against the debtor. As well, the effect of a transaction on creditors may provide evidence of the debtor's intent. For example, if the effect of a conveyance without adequate consideration is to defeat, hinder or delay creditors, then that effect may well justify an inference that, in making the conveyance, there was such an intention. The inference can be rebutted by cogent evidence that there was no such intention, but that the conveyance was made for an honest purpose.<sup>24</sup>

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<sup>22</sup> [1988] O.J. No. 2569 (H.C.J.), pp. 4 and 5.

<sup>23</sup> *Conte, supra.*, para. 43; *Boudreau v. Marler*, 2004 CanLII 19333 (ON CA), para. 70.

<sup>24</sup> See the discussion in *Cybernetic Exchange, Inc. v. J.C.N. Equities Ltd.*, [2003] O.J. No. 4947 (S.C.J.), paras. 211 to 213.

## H. The intention of the transferee, 231

[68] Given my finding that the granting of the two charges to 231 was supported by “good consideration”, it makes sense to deal first with the intention of the transferee, 231, because if it is found that the charges were made in good faith to 231 and at the time of the conveyance 231 did not have notice or knowledge of any fraudulent intent of the transferor within the meaning of *FCA* s. 2, then 231 would enjoy the benefit of the safe-harbour provisions in *FCA* s. 3, and the applicants motion would fail.

[69] Although applicants’ counsel acknowledged that a finding of “good consideration” would make it difficult for the applicants to establish that 231 was not a good faith transferee of the mortgages, the applicants did not concede the issue of good faith or want of notice.

[70] However, in my view the evidence clearly supports a finding that at the time of the granting of the two collateral debentures on the College and Gerrard Street Properties, 231 was a good faith transferee without notice or knowledge of any wrongful intention which might have existed on the part of the Waltons. There was no evidence that 231 knew the Waltons were acting with the intent to defeat their creditors or that it was wilfully blind to the point of dishonesty and refusing to ask obvious questions.<sup>25</sup>

[71] First, as already discussed, the grant of the collateral debenture charges formed part of the overall transaction between 231 and the Waltons for the Carport shares and, indirectly, the Yonge Street Property. That was an arm’s-length commercial real estate transaction supported by good consideration, with commercial good faith written all over it.

[72] Second, as to the issue of notice, the evidence disclosed that 231’s principal, Silverberg, was generally aware of an on-going dispute between the Waltons and Dr. Bernstein. Silverberg deposed that at the time he had heard about “tensions” in the relationship between Walton and Dr. Bernstein and he did not want to take a mortgage “in any property in which a disgruntled business partner had an ownership interest”. He therefore instructed his legal counsel to search title to the Gerrard and College Street properties, which was done on November 20, 2013. He also arranged for his counsel to conduct various corporate and *PPSA* searches against College Lane Ltd. and Gerrard Church 2006 Inc., which were done during the last week of November, 2013. Also, section 2(e) of the Amending Agreement specifically amended the SPA to include the following new section 4.3(e) as a purchaser’s representation and warranty:

**Ownership of the Properties.** Neither of the Properties is owned directly or indirectly by Dr. Bernstein Diet & Health Clinics and/or any affiliate of Dr. Bernstein Diet & Health Clinics, or any natural person who controls directly or indirectly any of Dr. Bernstein Diet & Health Clinics and/or any affiliate of Dr. Bernstein Diet & Health Clinics.

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<sup>25</sup> *Bank Leu AG v. Gaming Lottery Corp.* (2003), 231 D.L.R. (4<sup>th</sup>) 251 (Ont. C.A.), para. 38.

[73] Silverberg testified on cross-examination that as part of the November Amending Transaction he had asked Walton whether she was having a dispute with Dr. Bernstein:

174. Q. And what did she tell you?

A. She told me that they were having some sort of a partnership dispute, but she downplayed it as something that would be resolved quite shortly, and also that it didn't apply to anything...any of the properties I was looking at.

175. Q. Did she tell you that there was anything litigation going on between she and Dr. Bernstein?

A. Never.

176. Q. Did you ask her that question?

A. I don't recall asking specifically.

[74] On cross-examination Silverberg testified that he learned about the substantial allegations Dr. Bernstein was making against the Waltons in a December 8, 2013 National Post newspaper article. Silverberg deposed that he had no knowledge of any possible claim by Dr. Bernstein in either the College or Gerrard Street Properties until served on December 13, 2013 with the applicants' notice of motion seeking certificates of litigation and "a blanket charge" over both properties, nor did his counsel know about the Bernstein/Walton litigation before the November amending agreement was signed.<sup>26</sup> The applicants' notice of application was amended on December 17, 2013 to seek such relief.

[75] That evidence supports a finding that the receipt of the collateral debentures by 231 was done by it in good faith and without notice of any wrongful intention which the Waltons might have had, and I so find. 231 had conducted reasonable due diligence in the public records to ensure the applicants did not have an ownership interest in the properties over which they were taking security. In other words, whatever the intention of the Waltons might have been, 231 enjoys the protection of *FCA* s. 3. As a result, the applicants' motion to invalidate the two charges must fail.

[76] Although that is sufficient to dispose of the applicants' motion, let me continue by stating that were it necessary to make a specific finding about the intent of the transferors, specifically Norma Walton, regarding the two collateral debentures granted to 231, I would have found that Walton did not cause the two companies owned by her husband and herself to grant those charges "with the intent to defeat, hinder, delay or defraud creditors or other of their just and lawful actions, suits, debts..."

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<sup>26</sup> Mr. James Reitan, in his December 10, 2013 affidavit, at paragraph 25, deposed that it was "reasonable to believe that the \$22 million in proceeds diverted from the Schedule "B" Companies have been diverted into the properties listed at paragraph 22 above", which included the College and Gerrard Street Properties.

[77] I accept the submission of 231 that the evidence disclosed the Walton's purpose in causing the grant of the two charges in exchange for the cancellation of the earlier share pledge agreement was to unencumber the Yonge Street Property to enable them to complete a profitable sale. How the Waltons ended up using those sale proceeds does not, in my view, inform the analysis of the validity of the collateral mortgages taken by 231. As noted, the debt owed to 231 by the Waltons was not paid out of the Yonge Street Property sale proceeds.

[78] Further, the applicants conceded the validity of the October Transaction. The evidence specifically showed that (i) the exchange of security which formed part of the November Amending Transaction was expressly contemplated by Section 3.5(f) of the IAA, (ii) 231 was not attempting to remedy a situation of under-securitization, and (iii) 231 simply ended up with security over assets ultimately controlled by the Waltons which offered equivalent protection as the initial security taken under the un-impugned October Transaction. Under those circumstances, it is very difficult to see how the intent by Walton could have changed from the October Transaction to the November Amending Transaction.

### **I. Summary on the applicants' motion challenging 231's mortgage security**

[79] For the reasons set out above, I dismiss the applicants' motion for orders that the mortgages granted to 231 over the College and Gerrard Street Properties are unenforceable, void or inoperative as against any interest of the applicants in those properties.

[80] By order made April 2, 2014, I approved the sale of 14 College Street and ordered that "the proceeds for discharge of the third mortgage (estimated at \$1,385,000.00) are to be paid on closing to Schonfeld Inc. in trust" pending further order of the Court. The applicants submitted that in the event their motion was dismissed, I should direct that the 231 mortgages be discharged out of the proceeds of sale from the Gerrard Street Property, not College Street, because the applicants appeared to enjoy a better tracing claim against College Street than they did against Gerrard Street. 231 did not agree with that alternative submission, contending that the further running of interest and the incurrence of legal costs might well mean that proceeds from the sale of both properties would need to be accessed to pay off 231's mortgages.

[81] I am not prepared to vary my order of April 2, 2014. By 10 a.m. tomorrow, Wednesday, May 21, 2014, 231 shall submit to Schonfeld Inc., in its capacity as court-appointed Manager, a discharge statement for its mortgage as of May 20, 2014 which includes its claim for legal fees, as well as serve copies of that statement on the applicants and respondents. If any party disputes the amount claimed, it must serve and file a brief written objection (no more than 3 pages) to my attention through the Commercial List Office by 10 a.m. on Thursday, May 22, 2014, and I will conduct an oral, summary hearing to determine the dispute at 1 p.m. on Thursday, May 22. Payment of the 231 mortgage shall first be made out of the proceeds of the sale of 14 College Street presently in the hands of the Manager, with any shortfall to be paid out of the proceeds of the sale of 66 Gerrard Street East, the property to which I now turn.

### III. DISTRIBUTION OF THE PROCEEDS FROM THE SALE OF THE 66 GERRARD STREET PROPERTY

#### A. The issues in dispute

[82] By order made December 18, 2013, Newbould J. ordered that the respondents “provide reasonable advance written notice to the Applicants and the Manager of any dealing with the following properties, so as to permit the Applicants and/or Manager to seek further relief of this Court in a timely manner...(xv) 66 Gerrard Street East...(xvii) 14 College Street...out of the ordinary course of business, including encumbering or selling the properties”.

[83] On March 21, 2014, Newbould J. amended that portion of his December 18 Order to read that the respondents “shall not deal with the following properties out of the ordinary course, including any transactions involving the equity of the legal or beneficial owner of the lands, without further Order of this Court...(xv) 66 Gerrard Street East...(xvii) 14 College Street...”

[84] Walton sought approval of the sale of the Gerrard Street Property by Gerrard Church 2006 Inc. to Topp Properties Ltd. pursuant to an agreement of purchase and sale accepted February 7, 2014. The applicants did not oppose the sale itself.

[85] The dispute between the parties concerned the distribution of the \$6 million proceeds of sale. In her April 23, 2014 affidavit Walton deposed that the proceeds would be used to pay off the first mortgage (\$4.1 million), with the second mortgage in favour of 231 discharged upon the payment to it of the proceeds in the Manager’s hands from the sale of the College Street Property. Standard closing adjustments – property tax arrears, utility arrears, etc., real estate commission, and vendor’s legal fees and disbursements - would then consume \$323,400. Next, Walton proposed paying \$50,000 to trade creditors related to the property. Thereafter she would look to disburse the balance of about \$1.526 million (the “Remaining Balance”) to satisfy some of the respondents’ debts, including litigation-related debts.

[86] At the hearing Walton proposed a new distribution of the proceeds. Payments to the first mortgagee, to trades and for standard closing adjustments would remain the same, but Walton now proposed to disburse the Remaining Balance of the proceeds as follows:

- (i) \$140,000, as payment to the Manager and its counsel to satisfy an outstanding cost order against the respondents;
- (ii) \$60,000, as payment to Cohen Sabsay LLP, counsel for the respondents other than Walton - \$16,000 due for services until the end of April, with the balance for the July motions;
- (iii) \$90,000, as payment to Forese Forensics, a forensic accountant retained by the respondents – \$45,000 billed, but unpaid, with the balance for future work relating to the July motions;
- (iv) \$90,000, as payment to BTY Cost Consultants who have been retained by the respondents – to cover \$20,000 already paid, \$37,000 to release prepared cost consultant reports, with the balance due to BTY some 30 days later;



- (v) \$15,000, which was paid to Intrepid Quantity Surveying; and,
- (vi) \$200,000 to Rose and Thistle Properties Ltd. to cover payroll for staff whom Walton stated were assisting the respondents in preparing for the July motions.

Items (i) through (vi) total \$595,500. The balance would be paid to Schonfeld Inc., in trust, pending further order of this Court. Assuming that the Remaining Balance in fact amounts to \$1.526 million, that would mean a payment to the Manager, in trust, of about \$931,000 (the "Surplus Trust Payment").

## **B. Positions of the parties**

[87] The applicants submitted that the March 21 Order was in the nature of a proprietary injunction granted to preserve an asset in the possession of the respondents which the applicants contended belonged to them or was subject to a trust in their favour. As a result, the court had to consider any request by the respondents to use the applicants' money for the purpose of attempting to defeat their claim in light of the factors described in *Canadian Imperial Bank of Commerce v. Credit Valley Institute of Business and Technology*:

- (i) Has the defendant established on the evidence that he has no other assets available to pay his expenses other than those frozen by the injunction?
- (ii) If so, has the defendant shown on the evidence that there are assets caught by the injunction that are from a source other than the plaintiff, i.e. assets that are subject to a *Mareva* injunction, but not a proprietary claim?
- (iii) The defendant is entitled to the use of non-proprietary assets frozen by the *Mareva* injunction to pay his reasonable living expenses, debts and legal costs. Those assets must be exhausted before the defendant is entitled to look to the assets subject to the proprietary claim.
- (v) If the defendant has met the previous three tests and still requires funds for legitimate living expenses and to fund his defence, the court must balance the competing interests of the plaintiff in not permitting the defendant to use the plaintiff's money for his own purposes and of the defendant in ensuring that he has a proper opportunity to present his defence before assets in his name are removed from him without a trial. In weighing the interests of the parties, it is relevant for the court to consider the strength of the plaintiff's case, as well as the extent to which the defendant has put forward an arguable case to rebut the plaintiff's claim.<sup>27</sup>

I accept that this is the governing legal framework.

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<sup>27</sup> [2003] O.J. No. 40 (S.C.J.), para. 26, as cited with approval by the Court of Appeal in *Waxman v. Waxman*, 2007 ONCA 326, paras. 36 and 37.

[88] While the applicants did not object to the payments to the Manager and its counsel, they submitted that the respondents had not adduced evidence to support the necessity or quantum of the other proposed distributions.

[89] The applicants submitted that the respondents had not satisfied the threshold requirement of establishing, on the evidence, that they lacked other assets from which to pay their legal and expert expenses. As well, they submitted that Walton had not filed evidence of the amounts actually owed to her experts needed to obtain the reports upon which she intends to rely at the July hearing. Finally, they argued that the respondents had not put forward a defence to the applicants' claim of fraud against them.

[90] Walton submitted that the respondents required access to funds in order to prepare their response for the July hearing of the competing motions to expand the relief against the Schedule C Properties or to enable the respondents to deal more freely with them.

[91] Before considering the specific factors concerning Walton's requested distributions, let me voice my frustration at how the court process has unfolded for the proposed sales of both this property and the one at 65 Front Street East. For both properties Walton seeks court approval of sales, given the restraining orders previously made against them. In the ordinary course, the person seeking court approval of a sale usually comes to Court with all the "T's dotted and T's crossed", in the sense of an absence of deal-related loose-ends and, as well, files cogent evidence to support any disputed distributions. Walton has not done that. Although a lawyer, Walton's experience rests in negotiating real estate deals. It was apparent from her submissions that she thought court approval could be secured with many loose ends remaining, confident in her ability to tie them up prior to closing. While that might be the dynamic of a typical private real estate deal, that is not how a court sales approval process works.

### **C. Analysis**

[92] Turning, then, to the substantive analysis of Walton's claim for approval of the distribution of sale proceeds, in my view four factors must be balanced in the analysis.

#### **C.1 The quantum of the applicants' claim against 66 Gerrard Street East**

[93] First, although the applicants are asserting tracing and constructive trust claims against the Gerrard Street Property, as the evidence presently stands the amount of those claims would not consume the proceeds of sale remaining after paying the registered encumbrances, standard closing adjustments and trade claims. As mentioned, the Remaining Balance is estimated at \$1.526 million (recognizing that the proceeds might have to cover part of 231's outstanding mortgages), and the amount proposed to be paid to the Manager in trust would be around \$931,000.

[94] The present evidence of the amount of the applicants' proprietary tracing and constructive trust claims against the Gerrard Street Property reveals a much smaller sum. The applicants' Chief Financial Officer, Mr. James Reitan, deposed that of a \$987,165 equity contribution Dr. Bernstein made to a Schedule B Company, Fraser Properties Corporation, on July 31, 2012, about \$215,000 found its way to the account of 66 Gerrard Street East on August 1, 2012 through the bank account of Rose & Thistle.

[95] The Inspector did not include in its Fourth Report any narrative report of a tracing analysis in respect of the Gerrard Street Property. Appendix "B" to the Report showed net transfers from Rose & Thistle to The Old Apothecary Building (i.e. 66 Gerrard Street East) of \$1.258 million. However, the Inspector did not include 66 Gerrard Street East in its more detailed tracing analysis which used the 53 largest advances made by the applicants to the Schedule B Companies. Consequently, Reitan's evidence appears to be the most specific filed to date about the potential quantum of a tracing/constructive trust claim by the applicants against the Gerrard Street Property.

[96] Accordingly, as the evidence presently stands, the amount of the applicants' proprietary claim against 66 Gerrard Street East is much less than the Remaining Balance, and much less than the amount proposed to be paid to the Manager, in trust. To freeze the entire Remaining Balance would result, in effect, to granting the applicants execution before judgment akin to the making of a *Mareva* injunction. As a result, some consideration must be given to Walton's request concerning the proposed distributions.

## C.2 The lack of an accounting from the respondents

[97] To date the respondents have failed to comply with orders of this Court requiring them to provide an accounting of monies received from the applicants. The trail starts with the October 25, 2013 order of Newbould J. where, at paragraph 10, he ordered "that the Respondents shall provide forthwith a full accounting of *all monies* received, disbursed, owed to and owed from the Schedule "B" Corporations and The Rose & Thistle Group Ltd. since September, 2010 to the present".

[98] In her affidavit sworn December 17, 2013, Walton deposed, in response to the applicants' allegation that she had failed to provide a full accounting, that "I have provided all information/documentation to the Receiver/Manager", and she proceeded to give some details, concluding: "The Receiver/Manager is in possession and control of all financial documents held by the Walton Group in relation to the Schedule B Companies, and all documents related to the Rose and Thistle Group have been provided to him." In his endorsement made January 20, 2014, Newbould J. rejected Walton's contention that the respondents had provided a full accounting. He concluded they had not, and he ordered:

Ms. Walton is to provide the accounting ordered in paragraph 10 of the order of October 25, 2013 no later than January 31, 2014. Delivering records to the Manager is not an accounting.

[99] Notwithstanding that clear finding and further order by Newbould J., in her notice of motion dated March 31, 2014, Walton sought an order that the applicants "clarify what is meant by the term 'a full accounting of all monies received, disbursed, owed to and owed from Schedule 'B' Corporations and The Rose and Thistle Group Ltd. since September 2010 to the present' as found in the October 25, 2013 Order." In her affidavit of that date Walton deposed:

I have heard the Applicants complain a number of times to the Court that I have not provided an accounting as ordered on October 25, 2013. I have sworn an affidavit wherein I explain what I provided by October 28, 2013 to fulfill this requirement.

[100] As noted, back on January 31 Newbould J. held that the respondents had not delivered the ordered accounting and directed them to do so. They have not done so. Moreover, it is not for the applicants to explain the meaning of an order of this Court; that job falls to the judges of this Court. When Walton raised this point at a recent hearing before me, I informed her that a full accounting would involve explaining what had happened to every penny of the money invested by Dr. Bernstein with the respondents. That has not occurred, and that most serious failure by the respondents weighs heavily in considering what part, if any, of the net proceeds of the sale from the Gerrard Street Property should be made available to them for their personal use or benefit.

### C.3 The lack of cogent evidence about the respondents' current assets and liabilities

[101] The respondents have not filed a current statement of their assets or net worth and have not filed cogent evidence to demonstrate they lack other assets from which to fund their proposed litigation-related expenses.

[102] The Inspector examined Walton on April 11, 2014. Walton brought no documents to that examination, although directed to do so by the notice of examination.<sup>28</sup> At that time Walton testified that:

- (i) She did not have any income which provided her "with a surplus of funds";<sup>29</sup>
- (ii) The income generated by the Schedule C Properties comprising the Walton Group which were not subject to the receivership order were generating revenues which fell short of expenses by about \$230,000 per month – income of \$370,000 vs. expenses of \$600,000;<sup>30</sup>
- (iii) Walton and her husband use part of that \$370,000 rental income stream "to pay for groceries, children's hockey expenses, those sorts of things".<sup>31</sup> As well, they use that income stream to cover the minimum monthly payment requirements on their credit card debts of about \$120,000;<sup>32</sup>
- (iv) Walton only received income from her activities with the Rose & Thistle Group of companies;<sup>33</sup> the law practice of Walton and her husband was not generating income.<sup>34</sup>

[103] In her proposed Direction for the sale proceeds, Walton sought payment of \$90,000 to BTY in order to release cost reports. Yet, on her April 11 examination by the Inspector, Walton

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<sup>28</sup> Transcript of the examination of Norma Walton conducted April 11, 2014, Q. 6.

<sup>29</sup> *Ibid.*, Q. 12.

<sup>30</sup> *Ibid.*, Q. 130.

<sup>31</sup> *Ibid.*, Q. 215.

<sup>32</sup> *Ibid.*, Q. 211.

<sup>33</sup> *Ibid.*, Q. 227.

<sup>34</sup> *Ibid.*, Q. 233.

testified that the respondents required \$37,000 to pay BTY so that 20 cost reports would be released.<sup>35</sup> Walton undertook to produce the invoices from Intrepid and BTY with respect to the quantity surveying and cost consulting work they were performing.<sup>36</sup> At the start of the May 16 hearing I asked counsel for the Inspector whether Walton had complied with that undertaking; he advised that she had not. That prompted Walton, over the lunch break, to bring some invoices to Court for filing. While I accepted the invoices, I expressed frustration over that course of conduct. Walton explained she thought she had 60 days from my earlier scheduling order to answer undertakings which meant, in her mind, that she did not have to produce those invoices to support her May 16 request for the release of funds to pay them. With respect, that was not a reasonable position for a trained lawyer to take. Courts operate on a very simple, common sense basis: if a party requests court approval for the release of funds to pay certain accounts, the requesting party has to file evidence that those accounts in fact exist and are due for payment. With respect, that principle should have been self-evident to a trained lawyer, and I do not accept Walton's explanation for failing to provide those invoices earlier.

#### **C.4 Procedural fairness**

[104] The final factor involves procedural fairness. As set out in my May 2, 2014 Reasons, the hearing in mid-July involves issues of great importance to both parties. On their part, the applicants' motion seeks: (i) leave to issue the Fresh as Amended Notice of Application; (ii) the cancellation of the respondents' shares in certain Schedule B companies; (iii) declarations of trust interests in Schedule C Properties and 44 Park Lane Circle, the Walton's residence; and, (iv) the appointment of Schonfeld Inc. as Manager for the purposes of selling 44 Park Lane Circle and the Schedule C Properties. On her part Walton, supported by the other respondents, will seek to set aside the March 21, 2014 Properties Freezing Order or to remove several properties from the ambit of that order, and will seek authorization from the Court to sell certain of the Schedule C Properties.

[105] Walton submitted that she required access to some of the Remaining Balance from the sale of 66 Gerrard Street East to fund the work necessary to present her case at the July hearings.

#### **C.5 Conclusion**

[106] Walton's failure to comply with this Court's order to provide a full accounting, her failure to provide a current net worth statement, and her failure to comply with undertakings concerning documents necessary to support her distribution claims weigh heavily against her. On the other hand, the determination of the issues at the mid-July hearings will significantly affect the rights of both parties and the estimated Remaining Balance and Surplus Trust Payment appear to exceed the amount of the tracing/constructive trust claim of the applicants against this property. As a result, I am persuaded that procedural fairness dictates the release of some funds to enable Walton and the other respondents to prepare for the important July hearing, however I intend to impose certain terms.

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<sup>35</sup> *Ibid.*, Q. 192.

<sup>36</sup> *Ibid.*, Q. 194.

[107] I authorize the sale by Gerrard Church 2006 Inc. to Topp Properties Ltd. pursuant to an agreement of purchase and sale accepted February 7, 2014 for the gross sales price of \$6 million, subject to the following terms and conditions:

- (i) The sale proceeds shall be paid and applied in the following order:
  - a. Payment in full of the first mortgage and the balance due to the second mortgagee, 231, if any shortfall existed in respect of the College Street Property Funds;
  - b. Payments for adjustments for property taxes, standard amounts in the statements of adjustments, and vendor's legal fees of up to \$120,000;
  - c. Payment of realty commissions to Cushman Wakefield LePage of up to \$203,400;
  - d. Payments to property-specific creditors, suppliers and trades of up to \$50,000;
  - e. Payment of \$90,000 to Schonfeld Associates Inc. and \$50,000 to its counsel, Goodmans LLP;
  - f. Payment of \$60,000 to Cohen Sabsay LLP;
  - g. Payment of \$90,000 directly to Froese Forensics;
  - h. Payment of \$90,000 directly to BTY Cost Consultants;
  - i. Payment of \$15,000 directly to Intrepid Quantity Surveying;
  - j. I am not prepared to authorize payment of \$200,000 to Rose and Thistle Properties Ltd. given the absence of any supporting documentation;
  - k. The balance of the sale proceeds must be paid on closing to the Manager, Schonfeld Inc., to be held in trust pending further order of this Court; and,
- (ii) *I will not entertain any further request by the respondents for the release of funds prior to the July hearings.* The respondents had ample opportunity to put their best foot forward on this motion; they did not do so. Given the frailty of the evidence they filed on this motion, the order now made is quite generous to the respondents and they will have to make do with the amounts which they have requested for their counsel and experts.

#### **IV. DISTRIBUTION OF THE PROCEEDS OF THE SALE OF 65 FRONT STREET EAST**

##### **A. The remaining issues and the positions of the parties**

[108] By order made January 27, 2014, Wilton-Siegel J. ordered that "the Walton Group and Front Church Properties Limited be permitted to negotiate an offer acceptable to them to complete the sale of 65 Front Street East in accordance with the details and price range set out in

paragraphs 9 to 12 of the Affidavit of Mark Goldberg sworn January 27, 2014” and that “*the proceeds of any sale be paid as directed by the further order of this Court*”.

[109] Newbould J. ordered, on March 21, 2014, that “the proceeds from the sale of the property at 65 Front Street East, net of items 1-5, 7 and 8 on the attached Direction, be remitted to Schonfeld Inc. to be held pending further Order of this Court or written agreement of the Manager”. One of the items ordered paid – Item 4 – was to “pay to CRA the amount to discharge their HST lien (\$203,000 est.)”.

[110] Both parties subsequently sought to vary the list of authorized distributions identified in the March 21 Order. After further discussions the parties came close to reaching agreement on a list of sale proceeds distributions, but could not agree on the treatment of the CRA HST lien claim. Walton wanted that lien claim paid from the sale proceeds; the applicants wanted \$274,500 from the sale proceeds to be paid to the Manager to be held in trust pending a determination of the priority of CRA’s lien claim.

[111] On May 1, 2014, counsel for the CRA advised that it would discharge its lien should a closing of the sale of 65 Front Street East occur, but CRA reserved the right to file a proof of claim with the Manager should the Court approve a claims process in respect of the sales proceeds.

[112] Walton filed a May 15 affidavit which attached signed settlements with all but one construction lien claimants. That one, Abaco Glass, objected to any compromise of its claim while some other lien claimants received payment in full.

[113] Further, Collins Barrow (Toronto) Limited, the court-appointed receiver over Global Mills Inc., the title holder of 1450 Don Mills Road, filed an affidavit explaining that it had filed a notice on title of a \$361,750 claim against the property because Walton had deposed she had diverted that amount out of an advance by lenders to Global Mills to the Front Street Property. Collins Barrow stated that:

[T]he veracity and legitimacy of the lien claims that have been registered on the Front Street East property have also not been proven, including whether or not the alleged amounts are accurate, that the services alleged to be provided were for the property in question and whether or not there may be issues with holdback and if the owner of the said property is liable only for deficiency in holdback as opposed to the total amount of the lien claim. In general, there has been no evidence provided by Ms. Walton as to the legitimacy of the lien claims, the purported deficiency to pay the Global Mills claim to Schonfeld Inc., and payout or any issues whatsoever except for her own bald statements.

## **B. Analysis**

[114] Under the proposed sale, gross proceeds would amount to \$10 million. Payments of the first mortgage (\$5,887,500), second mortgage (\$2,720,000), outstanding property taxes (\$190,000), standard adjustments (\$150,000) and vendor’s legal fees (\$30,000) would total \$8,977,500 (collectively the “Primary Payments”), leaving a Remaining Balance of \$1,022,500. Against that Remaining Balance are the following claims totaling \$1,489,100 consisting of:

- (i) CRA HST lien claim: \$274,500;
- (ii) Settled construction lien claims: \$454,260;
- (iii) Unsettled construction lien claim: \$49,420;
- (iv) Collins Barrow Receiver's notice of claim: \$361,750;
- (v) Commission payment to Cushman Wakefield LePage: \$349,170 (although Walton thought she could further negotiate the amount),

(collectively the "Secondary Payments"). A shortfall therefore exists.

[115] The applicants opposed the direct payment to CRA sought by Walton, and CRA was content to lift its lien in order to facilitate the closing, leaving the adjudication of its claim to part of the sales proceeds to another day. While in *Trang v. Nguyen*<sup>37</sup> the Court of Appeal rejected the argument that sections 223(5)(b) and 223(6) of the *Income Tax Act* created a charge on land within the meaning of section 93(3) of the *Land Titles Act*, that Court observed that arguments had not been made on all aspects of the priority-creation language contained in *ITA* ss. 223(b). Notwithstanding the HST lien claimant's willingness to defer that issue to a later day, Walton wanted the CRA claim paid.

[116] While most construction lien claimants were prepared to settle with Walton, a court-appointed receiver, Collins Barrow, opposed any payment out to those claimants absent a determination of the validity of their claims.

[117] Given that the claims asserted against or in respect of the 65 Front Street East property exceed the gross sales price and given the dispute amongst claimants about the validity of certain claims to the Remaining Balance, I am prepared to authorize the proposed sale of 65 Front Street East property, but only on the basis that the Primary Payments, as defined above, are paid on closing out of the sale proceeds, with the entire Remaining Balance to be paid to the Manager, Schonfeld Inc., to be held in trust pending the conduct of a claims process by those seeking Secondary Payments, and the Remaining Balance would stand in the place of the property to satisfy any such claims.

[118] If the respondents wish to close on that basis, they may submit a formal approval and vesting order to that effect, approved as to form and content by all affected parties, to my attention for signature. I will not entertain any further "re-negotiated distribution deals" unless they are accompanied by a comprehensive formal order with signed consents from all affected parties.

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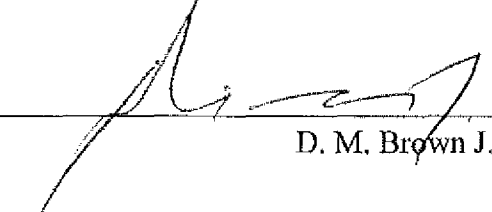
<sup>37</sup> 2012 ONCA 885.



**V. Summary**

[119] By way of summary, I dispose of the three motions before me as follows:

- (i) I dismiss the applicants' motion to invalidate the security held by 231, and I direct payments to satisfy that security in accordance with paragraph 81 above;
- (ii) I authorize the sale of the property at 66 Gerrard Street East with the payment out of the sales proceeds in accordance with paragraph 107 above; and,
- (iii) I authorize the sale of the property at 65 Front Street East with the payment out of the sales proceeds in accordance with paragraphs 117 and 118 above.



D. M. Brown J.

**Date:** May 20, 2014

**E**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

THE HONOURABLE	)	Tuesday, the 20th
	)	
D.M. JUSTICE BROWN	)	day of May, 2014

**B E T W E E N:**

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

**ORDER**

THIS MOTION brought by the Respondents for an order varying the Orders of this Court dated December 18, 2013, January 27 and March 21, 2014 in respect of the property known municipally as 65 Front Street East, Toronto, Ontario (the "Property") and vesting in the Purchaser, 2410077 Ontario Ltd., the right, title and interest in the Property currently held by the Vendor Front Church Properties Limited (the "Vendor") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion records of the Respondent Norma Walton returnable April 1, 2014 and April 29, 2014, the Affidavit of Ken Froese sworn April 28, 2014; the two Affidavits of the Respondent Norma Walton sworn May 5, 2014; the responding motion records of the Applicants returnable April 1, 2014 and April 29, 2014 of the Applicants' Compendium and Supplementary Compendium; the Inspector's Report dated April 23, 2014, the updated Inspector's Report dated May 5, 2014;

ON READING the materials and hearing from the Respondent Norma Walton, counsel for the other Respondents, counsel for the Applicants, counsel for the Manager and counsel for certain other interested parties, but not counsel for Cushman & Wakefield Ltd., and reviewing correspondence from counsel for Her Majesty the Queen in Right of Canada as Represented by the Minister of National Revenue ("CRA"), and upon Cushman & Wakefield Ltd. not having been given notice of this motion and therefore not having had a chance to appear;

1. THIS COURT ORDERS that the time for service of the notices of motion and motion records is hereby abridged, as necessary, so that this motion is properly returnable today.
2. THIS COURT ORDERS that the Order of the Honourable Mr. Justice Newbould made March 21, 2014 is hereby varied to provide that the sale proceeds from the sale of 65 Front Street East, Toronto, Ontario will be paid in accordance with this Order.
3. THIS COURT ORDERS that the Vendor shall, from the sale proceeds of 65 Front Street East, make the following payments upon closing (the "Primary Payments"):

- (a) Apply a credit in the approximate amount of \$5,887,500 to the purchase price of the Property in favour of the Purchaser in respect of the assumption of the first mortgage registered on the Property in favour of Alterna Savings by the Purchaser;
- (b) Payment of the second mortgage registered on the Property in favour of 368230 Ontario Limited in the amount of principal, interest and \$85,000 plus HST in legal fees, being the approximate amount of \$2,720,000;
- (c) Payment of property taxes in arrears for 2013 and adjustments for 2014 property taxes in the approximate amount of \$190,000;
- (d) Standard closing adjustments in the statement of adjustments in the approximate amount of \$150,000; and
- (e) The vendor's legal fees of \$30,000 plus HST.

4. THIS COURT ORDERS that the remaining balance from the sale proceeds of the Property be paid to and be held in trust by Goodmans LLP in trust, being counsel to Schonfeld Inc. in its capacity as Manager.

5. THIS COURT ORDERS AND DECLARES that after the Primary Payments are satisfied, upon Closing of sale of the Property, all of the Vendor's right, title and interest in and to the Property shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims")

including: (i) the lien in favour of Canada Revenue Agency registered against the Property; (ii) the construction lien claims registered against the Property; (iii) the notice of claim registered by Collins Barrow (Toronto) Limited, the court appointed Receiver of Global Mills Inc.; (iv) the Commission payment due to Cushman & Wakefield Ltd. (the "Secondary Payments") and for greater certainty, this Court orders that all of the Secondary Payments affecting or relating to the Property are hereby expunged and discharged as against the Property.

6. THIS COURT ORDERS that upon the registration in the Land Registry Office for the City of Toronto of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Vendor of a Vendor's Certificate in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

7. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, and that from and after the delivery of the Vendor's Certificate all Claims shall attach to the net proceeds from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. THIS COURT ORDERS that following Closing of the sale of the Property, Schonfeld Inc. in its capacity as Manager in these proceedings, will bring a motion for approval of an Order of this Court approving a Claims Process to determine the validity, quantum and priority of the

Secondary Payments and any claims of the Applicants that the Court may order in respect of the Property.

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Manager and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Manager, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Manager and its agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:


JUN 04 2014

**Schedule A – Form of Vendor’s Certificate**

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, 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**

**VENDOR’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Brown of the Ontario Superior Court of Justice (the "Court") dated May 20, 2014, the Vendor was directed to pay to Schonfeld Inc., in its capacity as the Court appointed Manager in these proceedings (the "Manager") the remaining



balance from the sale proceeds from the sale of 65 Front Street East (the "Property") after the Vendor has paid the Primary Payments as defined in said Order.

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE VENDOR CERTIFIES the following:

- 1. The Vendor has paid to the Manager the remaining balance from the sale proceeds from sale of the Property after the Primary Payments were made; and
- 2. This Certificate was delivered by the Vendor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FRIEDMAN & ASSOCIATES LLP as  
Vendor's lawyer**

Per: \_\_\_\_\_

Name:

Title:

**Schedule B – Property**

The real property located at 65 Front Street East, Toronto, Ontario

PIN 21400 – 0089 LT

PART WALKS AND GARDENS PLAN 5A TORONTO; PART STRIP OF LAND BETWEEN WATERS  
EDGE AND TOP OF BANK PLAN 5A TORONTO; PART LOT 30 SOUTHSIDE FRONT STREET EAST  
PLAN 5A TORONTO AS IN CA570607; SUBJECT TO CT273443; CITY OF TORONTO

65 FRONT ST E

TORONTO

*ORDER***Schedule C – Claims to be deleted and expunged from title to Real Property**

- (a) CRA HST lien claim Registration Number AT3488865;
- (b) Construction lien claims including but not limited to Registration Numbers:
  - (i) AT3557508 Laser Heating and Air Conditioning Inc.;
  - (ii) AT3557855 Net Drywall & Acoustics Ltd.;
  - (iii) AT3561737 Roofing Medics Ltd.;
  - (iv) AT3563233 Blue Air Mechanical Inc.;
  - (v) AT3565588 Gentry Environmental Systems Ltd.;
  - (vi) AT3565641 Abaco Glass Inc.;
  - (vii) AT3566416 Maxguard Alarm and Security Company Ltd.;
  - (viii) AT3566462 Net Drywall & Acoustics Ltd.;
  - (ix) AT3567140 Ample Electric Inc.;
  - (x) AT3567258 1771105 Ontario Inc.;
  - (xi) AT3567558 G-Line Sun Control Inc.;
  - (xii) AT3567578 Kerestely, Zoltan;
  - (xiii) AT3568362 WBA Architects and Engineers Inc.;
  - (xiv) AT3568578 Engcon Construction;
  - (xv) AT3570270 Carcol Ltd.;
  - (xvi) AT3570298 Caiquan Construction Co.;
  - (xvii) AT3572541 Memme Joseph;
  - (xviii) AT3573033 World Electric;
  - (xix) AT3573412 MediGroup Incorporated;
- (c) Collins Barrow Receiver's notice of claim Registration Number AT3574922; and
- (d) Commission payment to Cushman Wakefield LePage.

*ORDER*

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vendor's Certificate)**

Purchaser is assuming the first mortgage registered by Alterna Savings pursuant to Registration Numbers AT1262430 and AT1961238 and AT2711991

Vendor is paying out and discharging the second mortgage registered by 368230 Ontario Limited, Registration Number AT2959596

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

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

**ONTARIO SUPERIOR  
COURT OF JUSTICE****[COMMERCIAL LIST]**

Proceeding commenced at:

TORONTO

**ORDER**

NORMA WALTON  
30 Hazelton Avenue  
Toronto, Ontario M5R 2E2

Tel: (416) 489-9790 x103  
Fax: (416) 489-9973  
nwalton@roseandthistle.ca

Respondent

**F**

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

THE HONOURABLE MR.	)	FRIDAY, THE 18 <sup>TH</sup>
JUSTICE D. M. BROWN	)	
	)	DAY OF JULY, 2014

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

**CLAIMS PROCEDURE ORDER**

(65 Front Street East)

THIS MOTION, made by Schonfeld Inc. in its capacity as the Court-appointed manager (the "**Manager**") of certain companies listed in Schedule "B" to the Order of Justice Newbould dated November 5, 2013 (the "**Companies**") together with the real estate properties owned by the Companies (the "**Properties**"), as amended by Order of Justice Newbould dated January 16, 2014, for a Claims Procedure Order to govern the claims process directed by the Order of Brown, J. dated May 20, 2014 with respect to the proceeds from the sale of the property

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municipally known as 65 Front Street East was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Fourteenth Report of the Manager dated July 15, 2014, and on hearing the submissions of counsel for the Manager and \_\_\_\_\_, and no one appearing for any other person on the service list:

### SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record filed in support of this Motion be and it is hereby abridged such that the Motion is properly returnable today and hereby dispenses with further service thereof.

### DEFINITIONS

2. The following terms shall have the following meanings ascribed thereto:
  - (a) “**Business Day**” means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;
  - (b) “**Claim**” means any right of any Secondary Payment Claimant against the Debtor in connection with any indebtedness, liability or obligation of any kind of the Debtor, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, or unknown, by guarantee, surety or otherwise and whether or not such right is executory in nature, including the right or ability of any Secondary Payment Claimant to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, and including any indebtedness, liability or obligation of any kind arising out of the restructuring, termination, repudiation or disclaimer of any lease, contract, employment agreement or other agreement (each a “**Claim**”, and collectively, the “**Claims**”), provided such Claim relates to a Secondary Payment Claim of the Secondary Payment Claimant;



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- (c) “**Claimant**” means any Secondary Payment Claimant asserting a Claim;
- (d) “**Claims Bar Date**” means 4:00 p.m. (Toronto Time) on the date that is 30 days from the date of this Order, or such later date as may be ordered by the Court;
- (e) “**Claims Process**” means the process for the purposes of determining Claims of Creditors of the Debtor against the Debtor commenced and conducted by the Manager in accordance with the terms of this Order;
- (f) “**Companies**” shall have the meaning ascribed to such term in the recitals hereto;
- (g) “**Court**” means the Ontario Superior Court of Justice;
- (h) “**Creditor**” means any Secondary Payment Claimant having a Proven Claim;
- (i) “**Debtor**” means Front Church Properties Limited;
- (j) “**Debtor Property**” means the property known municipally as 65 Front Street East, Toronto, Ontario;
- (k) “**Dispute Notice**” means a written notice to the Manager, in substantially the form attached as Schedule “H” hereto, delivered to the Manager by a Claimant who has received a Notice of Disallowance, of its intention to dispute such Notice of Disallowance and provide further evidence to support its claim;
- (l) “**Instruction Letter**” means the instruction letter to Claimants, in substantially the form attached as Schedule “E” hereto;
- (m) “**Manager**” shall have the meaning ascribed to such term in the recitals hereto;
- (n) “**May 20 Order**” means the Order of Justice D.M. Brown dated May 20, 2014;
- (o) “**Notice of Disallowance**” means the notice, in substantially the form attached as Schedule “G” hereto, advising a Claimant that the Manager has revised or rejected all or part of such Claimant’s Claim set out in the Proof of Claim;

- 4 -

- (p) “**Notice to Creditors**” means the notice to Creditors in substantially the form attached as Schedule “D” hereto;
- (q) “**Person**” means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted;
- (r) “**Proof of Claim**” means the form of Proof of Claim in substantially the form attached as Schedule “F” hereto;
- (s) “**Proof of Claim Document Package**” means a document package that includes a copy of the Notice to Creditors, the Instruction Letter, a Proof of Claim, and such other materials as the Manager may consider appropriate or desirable;
- (t) “**Properties**” shall have the meaning ascribed to such term in the recitals hereto;
- (u) “**Proven Claim**” means the amount, status and/or priority of a Claim of a Creditor against the Debtor as finally accepted and determined in accordance with the provisions of this Order;
- (v) “**Remaining Sale Proceeds**” means the remaining sale proceeds of the Debtor Property following the payment of the Primary Payments (as defined in the May 20 Order) paid to the Manager and held in trust by Goodmans LLP in the amount of \$861,236.17 (together with any interest earned thereon);
- (w) “**Secondary Payment Claims**” means those claims set out in Schedule “C” hereto and identified in Schedule “C” of the May 20 Order;
- (x) “**Secondary Payment Claimant**” means any Person asserting a Secondary Payment Claim.

### MANAGER’S ROLE

3. THIS COURT ORDERS that the Manager, in addition to its rights and obligations under the Order of Justice Newbould dated November 5, 2013, as supplemented, amended or

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varied from time to time, and the May 20 Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order.

4. THIS COURT ORDERS that the rights and protection of the Manager under the Order of Justice Newbould dated November 5, 2013 shall apply *mutatis mutandis* to the Manager in connection with taking such actions and fulfilling such roles as are authorized by this Order.

#### **COMMENCEMENT OF THE CLAIMS PROCESS**

5. THIS COURT ORDERS that the Manager is hereby authorized and directed to commence and conduct the Claims Process in respect of the Debtor, and the Manager shall commence and conduct such Claims Process in accordance with the terms of this Order. For greater certainty, the Manager has no further obligations with respect to the Debtor or the Debtor Property

#### **NOTICE TO CREDITORS**

6. THIS COURT ORDERS that:
  - (a) within three (3) Business Days of this Order, the Manager shall post a copy of the Proof of Claim Document Package on <http://www.schonfeldinc.com> and deliver on behalf of the Debtor to each of the Secondary Payment Claimants (for which it has an address) a copy of the Proof of Claim Document Package; and
  - (b) the Manager shall, provided such request is received prior to the Claims Bar Date, deliver as soon as reasonably possible following receipt of a request, a copy of the Proof of Claim Document Package to any Person claiming to be a Creditor of the Debtor and requesting such material.

#### **CREDITORS' CLAIMS**

7. THIS COURT ORDERS that Proofs of Claim shall be filed with the Manager and that any Creditor that does not file a Proof of Claim in respect of all of its Claims as provided for herein such that such Proof of Claim is received by the Manager on or before the

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Claims Bar Date shall be and is hereby forever barred from making or enforcing any Claim against the Remaining Sale Proceeds.

#### **DETERMINATION OF CLAIMS**

8. THIS COURT ORDERS that the amount and status of every Claim of a Creditor as finally determined in accordance with this Order, including any determination as to the nature, amount, value, priority or validity of any Claim shall be final for all purposes, including without limitation for any distribution made to Creditors of the Debtor pursuant to further Order of the Court.

#### **PROOFS OF CLAIM**

9. THIS COURT ORDERS that:
- (a) the Manager may, where it is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order as to completion and execution of Proofs of Claim; and
  - (b) any Claims denominated in any currency other than Canadian dollars shall, for the purposes of this Order and the Claims Process, be converted to, and constitute obligations in, Canadian dollars, such calculation to be effected by the Manager using the Bank of Canada noon spot rate as at the Claims Bar Date.

#### **REVIEW OF PROOFS OF CLAIM**

10. THIS COURT ORDERS that the Manager shall review all Proofs of Claim filed on or before the Claims Bar Date and shall accept or disallow (in whole or in part) the amount, status and/or priority of the Claim set out therein. At any time, the Manager may request additional information with respect to the Claim, and may request that the Creditor file a revised Proof of Claim. The Manager shall notify each Claimant who has delivered a Proof of Claim by the Claims Bar Date as to whether such Claim has been revised or rejected, and the reasons therefor, by sending a Notice of Disallowance.

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11. THIS COURT ORDERS that, where a Claim has been accepted by the Manager as a Proven Claim, such Claim shall constitute such Creditor's Proven Claim for all purposes, including for the purposes of distribution by the Manager pursuant to further Order of the Court.
12. THIS COURT ORDERS that, where a Claim has been disallowed (in whole or in part), the disallowed Claim (or disallowed portion thereof) shall not be a Proven Claim unless the Claimant has disputed the disallowance and proven the disallowed Claim (or portion thereof) in accordance with paragraphs 13 to 17 of this Order.

#### **DISPUTE NOTICE**

13. THIS COURT ORDERS that any Claimant who intends to dispute a Notice of Disallowance shall file a Dispute Notice with the Manager as soon as reasonably possible but in any event such that such Dispute Notice shall be received by the Manager on or before 4:00 p.m. (Toronto Time) on the day that is fourteen (14) days after the Manager sends the Notice of Disallowance in accordance with paragraph 20 of this Order. The filing of a Dispute Notice with the Manager within the time set out in this paragraph shall constitute an application to have the amount or status of such Claim determined as set out in paragraphs 15 to 17 of this Order.
14. THIS COURT ORDERS that where a Claimant that receives a Notice of Disallowance fails to file a Dispute Notice with the Manager within the time limit set out in paragraph 13 of this Order, the amount and status of such Claimant's Claim shall be deemed to be as set out in the Notice of Disallowance and such amount and status, if any, shall constitute such Claimant's Proven Claim.

#### **RESOLUTION OF CLAIMS**

15. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice to the Manager, the Claimant and the Manager shall attempt to resolve and settle the Claimant's Claim.

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16. THIS COURT ORDERS that in the event that the dispute between the Claimant and the Manager is not settled within a time period or in a manner satisfactory to the Manager, the Manager may bring the dispute before the Court for determination.
17. THIS COURT ORDERS that the determination of a Claim by the Court shall be final and binding for all purposes.

#### **NOTICE OF TRANSFEREES**

18. THIS COURT ORDERS that if, after May 20, 2014, the holder of a Claim on May 20, 2014, or any subsequent holder of the whole of a Claim, transfers or assigns the whole of such Claim to another Person, neither the Debtor nor the Manager shall be obligated to give notice to or to otherwise deal with a transferee or assignee of a Claim as the Claimant in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Manager, at least five (5) Business Days prior to any distribution by the Manager pursuant to a further Order of the Court, and thereafter such transferee or assignee shall for the purposes hereof constitute the "Creditor" in respect of such Claim. Any such transferee or assignee of a Claim, and such Claim, shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Order prior to receipt by the Manager of satisfactory evidence of such transfer or assignment.

#### **DISTRIBUTION**

19. THIS COURT ORDERS that the distribution to Creditors of any funds held by the Manager in respect of the sale of the Debtor Property shall be subject to further Order(s) of the Court. The Manager shall seek such Order(s) by way of motion on notice to the Applicants, Respondents and the Secondary Payment Claimants.

#### **SERVICE AND NOTICE**

20. THIS COURT ORDERS that the Manager shall be at liberty to deliver the Proof of Claim Document Package, and any letters, notices or other documents to Creditors, Claimants or other interested Persons, by forwarding true copies thereof by prepaid

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ordinary mail, courier, personal delivery or electronic or digital transmission to such Persons at the address as last shown on the records of the Debtor and that any such service or notice by courier, personal delivery or electronic or digital transmission shall be deemed to be received on the next Business Day following the date of forwarding thereof, or if sent by mail, on the second Business Day after mailing.

21. THIS COURT ORDERS that any notice or other communication (including, without limitation, Proofs of Claim and Dispute Notices) to be given under this Order by a Claimant or a Creditor to the Manager shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if given by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission addressed to:

Schonfeld Inc.  
Court-appointed Manager of the Companies  
77 King Street West, Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

Attention: Stephanie Williams  
Telephone: 416-862-7785, Extension 4  
E-mail: [swilliams@schonfeldinc.com](mailto:swilliams@schonfeldinc.com)  
Fax: 416-862-2136

with a copy (which shall not be deemed notice) to:

Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Attention: Brian Empey / Mark Dunn  
Telephone: 416-597-4194 / 416-849-6895  
E-mail: [bempey@goodmans.ca](mailto:bempey@goodmans.ca) / [mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)  
Fax: 416-979-1234

Any such notice or other communication by a Claimant or Creditor shall be deemed received only upon actual receipt thereof by the Manager during normal business hours on a Business Day.

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**MANAGER'S ACCOUNTS**

22. THIS COURT ORDERS that expenditures or liability which shall properly be made or incurred by the Manager in connection with the Claims Process and this Claims Procedure Order, including the fees and disbursements of the Manager and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Manager and its counsel, calculated based on a reasonable allocation of the Manager's overall expenditures and liability as approved by the Court in these proceedings, shall rank as a first charge on the Remaining Sale Proceeds in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, provided that nothing herein shall affect any right of the Applicants, Respondents or Secondary Payment Claimants to object to the quantum or allocation of the Manager's expenditures and liabilities in respect of the Remaining Sale Proceeds on notice to the Manager.

**MISCELLANEOUS**

23. THIS COURT ORDERS that nothing in this Claims Procedure Order shall be taken to determine the priorities between the claims made in the Notice of Application in this proceeding and the Proven Claims of any Creditor.
24. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Manager and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Manager, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Manager and its agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO  
 ON / BOOK NO:  
 LE / DANS LE REGISTRE NO.:

6348714

  
 JUL 21 2014



**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.

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32. Richmond Row Holdings Ltd.
33. El-Ad (1500 Don Mills) Limited
34. 165 Bathurst Inc.

**SCHEDULE C****SECONDARY PAYMENT CLAIMS**

1. CRA HST lien claim Registration Number AT3488865;
2. Construction lien claims including but not limited to Registration Numbers;
  - a. AT3557508 Laser Heating and Air Conditioning Inc.;
  - b. AT3557855 Net Drywall & Acoustics Ltd.;
  - c. AT3561737 Roofing Medics Ltd.;
  - d. AT3563233 Blue Air Mechanical Inc.;
  - e. AT3565588 Gentry Environmental Systems Ltd.;
  - f. AT3565641 Abaco Glass Inc.;
  - g. AT3566416 Maxguard Alarm and Security Company Ltd.;
  - h. AT3566462 Net Drywall & Acoustics Ltd.;
  - i. AT3567140 Ample Electric Inc.;
  - j. AT3567258 1771105 Ontario Inc.;
  - k. AT3567558 G-Line Sun Control Inc.;
  - l. AT3567578 Kerestely, Zoltan;
  - m. AT3568362 WBA Architects and Engineers Inc.;
  - n. AT3568578 Engcon Construction;
  - o. AT3570270 Carcol Ltd.;
  - p. AT3570298 Caiquan Construction Co.;
  - q. AT3572541 Memme Joseph;
  - r. AT3573033 World Electric;
  - s. AT3573412 MediGroup Incorporated;
3. Collins Barrow Receiver's notice of claim Registration Number AT3574922; and
4. Commission payment to Cushman Wakefield LePage.

**SCHEDULE D**

**NOTICE TO CREDITORS  
OF FRONT CHURCH PROPERTIES LIMITED,  
BEING THE FORMER OWNER OF THE PROPERTY  
MUNICIPALLY KNOWN AS 65 FRONT STREET EAST  
(hereinafter referred to as the "Debtor")**

**RE: NOTICE OF CLAIMS PROCESS AND CLAIMS BAR DATE**

**NOTICE IS HEREBY GIVEN** that pursuant to an Order of the Ontario Superior Court of Justice (the "**Court**") made ●, 2014 (the "**Claims Procedure Order**"), a claims process has been commenced for the purpose of determining Claims against the Debtor. Schonfeld Inc. (the "**Manager**") has not been appointed as Manager of the Debtor, but has been directed to commence the claims process in respect of the Debtor by Order of the Court made May 20, 2014 (the "**May 20 Order**"). Capitalized terms not defined within this Notice shall have the meaning ascribed thereto in the Claims Procedure Order.

**PLEASE TAKE NOTICE** that the claims process applies only to the Claims described in the Claims Procedure Order. The Debtor's Claimants should have received Proof of Claim Document Packages, if those Claimants are known to the Debtor and if the Debtor has a current address for such Claimants. Any Claimant who has not received a Proof of Claim Document Package and who believes that he, she or it has a Claim against the Debtor under the Claims Procedure Order must contact the Manager by telephone (416-862-7785, Extension 4), by fax (416-862-2136) or by e-mail (swilliams@schonfeldinc.com) in order to obtain a Proof of Claim form. Claimants may also obtain copies of the Claims Procedure Order and Proof of Claim forms from the Manager's website: <http://www.schonfeldinc.com/claimsprocess.html>.

**THE CLAIMS BAR DATE is 4:00 p.m. (Toronto Time) on [INSERT DATE, being 30 days from the Claims Procedure Order].** Completed Proofs of Claim must be received by the Manager by the Claims Bar Date. It is your responsibility to ensure that the Manager receives your Proof of Claim by the above-noted time and date.

**CLAIMS OF CREDITORS WHO DO NOT FILE A PROOF OF CLAIM IN RESPECT OF SUCH CLAIMS BY THE CLAIMS BAR DATE SHALL BE FOREVER BARRED**

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**FROM ENFORCING ANY CLAIM AGAINST THE REMAINING SALE PROCEEDS IN  
RESPECT OF THE SALE OF THE DEBTOR PROPERTY.**

**DATED** at Toronto this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**SCHONFELD INC.,  
in its capacity as Court-appointed Manager  
and pursuant to the May 20 Order**

## SCHEDULE E

### INSTRUCTION LETTER FOR THE CLAIMS PROCESS FOR CREDITORS OF FRONT CHURCH PROPERTIES LIMITED (hereinafter referred to as the "Debtor")

#### A. CLAIMS PROCESS

Schonfeld Inc. (the "**Manager**") has not been appointed as Manager of the Debtor, but has been directed to commence the claims process in respect of the Debtor by Order of the Ontario Superior Court of Justice (the "**Court**") made May 20, 2014 (the "**May 20 Order**").

By Order of the Court made ●, 2014 (the "**Claims Procedure Order**"), a claims process in respect of Claims against the Debtor (the "**Claims Process**") was approved by the Court. A copy of the Claims Procedure Order and other related information can be obtained from the Manager's website: <http://www.schonfeldinc.com/claimsprocess.html>.

This letter provides general instructions for completing a Proof of Claim form in connection with the Claims Process. Capitalized terms not defined within this instruction letter shall have the meaning ascribed thereto in the Claims Procedure Order.

The Claims Process is intended to determine the amount of Claims against the Debtor. Please review the Claims Procedure Order for the full terms of the Claims Process.

If you have any questions regarding the Claims Process, please consult the website of the Court-appointed Manager provided above, or contact the Manager at the address provided below.

All notices and enquiries with respect to the Claims Process should be addressed to the Court-appointed Manager by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission addressed at:

Schonfeld Inc.  
Court-appointed Manager of the Companies  
77 King Street West, Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

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Attention: Stephanie Williams  
Telephone: 416-862-7785, Extension 4  
E-mail: swilliams@schonfeldinc.com  
Fax: 416-862-2136

with a copy (which shall not be deemed notice) to:

Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Attention: Brian Empey / Mark Dunn  
Telephone: 416-597-4194 / 416-849-6895  
E-mail: bempey@goodmans.ca / mdunn@goodmans.ca  
Fax: 416-979-1234

#### **B. FOR CREDITORS SUBMITTING A PROOF OF CLAIM**

If you believe that you have a Claim against the Debtor, you must file a Proof of Claim with the Manager. The Proof of Claim must be received by the Manager **by 4:00 p.m. (Toronto Time) on [INSERT DATE, being 30 days from the Claims Procedure Order], the Claims Bar Date**. It is your responsibility to ensure that the Manager receives your Proof of Claim by the above-noted time and date.

**IF YOU DO NOT FILE A PROOF OF CLAIM IN RESPECT OF ANY SUCH CLAIMS BY THE CLAIMS BAR DATE, YOUR CLAIMS SHALL BE FOREVER BARRED AS AGAINST THE REMAINING SALE PROCEEDS IN RESPECT OF THE SALE OF THE DEBTOR PROPERTY.**

All Claims denominated in a currency other than Canadian dollars shall be converted by the Manager to Canadian dollars at the Bank of Canada noon spot rate as at the Claims Bar Date.

#### **C. ADDITIONAL PROOF OF CLAIM FORMS**

Additional Proof of Claim forms and other related information, including the Claims Procedure Order establishing the Claims Process, can be obtained from the Manager's website at



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<http://www.schonfeldinc.com/claimsprocess.html>, or by contacting the Manager at the telephone and fax numbers indicated above.

**DATED** at Toronto this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**SCHONFELD INC.,  
in its capacity as Court-appointed Manager  
and pursuant to the May 20 Order**

**SCHEDULE F**

---

**PROOF OF CLAIM RELATING TO  
FRONT CHURCH PROPERTIES LIMITED,  
BEING THE FORMER OWNER OF THE PROPERTY MUNICIPALLY KNOWN AS  
65 FRONT STREET EAST  
(hereinafter referred to as "the Debtor")**

---

**A. PARTICULARS OF CREDITOR:**

1. Full Legal Name of Creditor: \_\_\_\_\_

\_\_\_\_\_

(the "Creditor"). (Full legal name should be the name of the original Creditor of the Debtor, notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred).

2. Full Mailing Address of the Creditor (the original Creditor not the assignee):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Telephone Number: \_\_\_\_\_

4. E-Mail Address: \_\_\_\_\_

5. Facsimile Number: \_\_\_\_\_

6. Attention (Contact Person): \_\_\_\_\_

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7. Has the Claim been sold or assigned by the Creditor to another party (check one)?

Yes:  No:

**B. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

8. Full Legal Name of Assignee(s):

\_\_\_\_\_

(If Claim (or a portion thereof) has been assigned, insert full legal name of assignee(s) of Claim (or portion thereof). If there is more than one assignee, please attach a separate sheet with the required information.)

9. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Telephone Number of Assignee(s): \_\_\_\_\_

11. E-Mail Address: \_\_\_\_\_

12. Facsimile Number: \_\_\_\_\_

13. Attention (Contact Person): \_\_\_\_\_

**C. PROOF OF CLAIM:**

I, \_\_\_\_\_  
[name of Creditor or Representative of the Creditor], of

\_\_\_\_\_ do hereby certify:  
(city and province)

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(a) that I (check one)

am the Creditor of the Debtor; OR

am \_\_\_\_\_ (state position or title) of

\_\_\_\_\_  
(name of Creditor)

(b) that I have knowledge of all the circumstances connected with the Claim referred to below;

(c) the Creditor asserts its claim against the Debtor; and

(d) the Debtor was and still is indebted to the Creditor \$ \_\_\_\_\_ : (Claims denominated in a currency other than Canadian dollars shall be converted by the Manager to Canadian Dollars at the Bank of Canada noon spot rate as at the Claims Bar Date.)

#### D. NATURE OF CLAIM

(check and complete appropriate category)

A. UNSECURED CLAIM OF \$ \_\_\_\_\_

That in respect of this debt, I do not hold any security.

B. SECURED CLAIM OF \$ \_\_\_\_\_

That in respect of this debt, I hold security valued at \$ \_\_\_\_\_ particulars of which are as follows:

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

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**E. PARTICULARS OF CLAIM:**

Other than as already set out herein the particulars of the undersigned's total Claim are attached.

(Provide all particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, date and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the Debtor to the Creditor and estimated value of such security.)

**F. FILING OF CLAIM**

**This Proof of Claim must be received by the Manager by no later than 4:00 p.m. (Toronto Time) on [INSERT DATE, being 30 days from the Claims Procedure Order], the Claims Bar Date**, by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission at the following address:

Schonfeld Inc.  
Court-appointed Manager of the Companies  
77 King Street West, Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

Attention: Stephanie Williams  
Telephone: 416-862-7785, Extension 4  
E-mail: [swilliams@schonfeldinc.com](mailto:swilliams@schonfeldinc.com)  
Fax: 416-862-2136

with a copy (which shall not be deemed notice) to:

Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Attention: Brian Empey / Mark Dunn  
Telephone: 416-597-4194 / 416-849-6895  
E-mail: [bempey@goodmans.ca](mailto:bempey@goodmans.ca) / [mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)

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Fax: 416-979-1234

**FAILURE TO FILE YOUR PROOF OF CLAIM AS DIRECTED BY THE CLAIMS BAR DATE WILL RESULT IN YOUR CLAIM BEING BARRED AS AGAINST THE REMAINING SALE PROCEEDS IN RESPECT OF THE SALE OF THE DEBTOR PROPERTY AND IN YOU BEING PREVENTED FROM MAKING OR ENFORCING A CLAIM AGAINST THE REMAINING SALE PROCEEDS IN RESPECT OF THE SALE OF THE DEBTOR PROPERTY. In addition, you shall not be entitled to further notice, and shall not be entitled to participate as a creditor, in these proceedings.**

Dated at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2014.

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Signature of Creditor

**SCHEDULE G**

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**NOTICE OF DISALLOWANCE RELATING TO  
FRONT CHURCH PROPERTIES LIMITED  
(hereinafter referred to as "the Debtor")**

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TO: [insert name and address of creditor]

The Court-appointed Manager hereby gives you notice that it has reviewed your Claim and has revised or rejected your Claim as follows:

	<b>The Proof of Claim as Submitted</b>	<b>The Proof of Claim as Accepted</b>
Claim		

**A. Reasons for Disallowance or Revision:**

[insert explanation]

If you do not agree with this Notice of Disallowance, please take notice of the following:

**If you dispute this Notice of Disallowance, you must, by no later than 4:00 p.m. (Toronto Time) on [INSERT DATE, being fourteen (14) days after the Notice of Disallowance is sent by the Manager pursuant to the Claims Procedure Order], notify the Manager by delivery of a Dispute Notice to the following address:**

Schonfeld Inc.  
Court-appointed Manager of the Companies  
77 King Street West, Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

Attention: Stephanie Williams  
Telephone: 416-862-7785, Extension 4  
E-mail: swilliams@schonfeldinc.com

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Fax: 416-862-2136

with a copy (which shall not be deemed notice) to:

Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Attention: Brian Empey / Mark Dunn  
Telephone: 416-597-4194 / 416-849-6895  
E-mail bempey@goodmans.ca / mdunn@goodmans.ca  
Fax: 416-979-1234

The form of Dispute Notice is enclosed. If you do not deliver a Dispute Notice by the above-noted time and date, your Claim shall be deemed to be as set out in this Notice of Disallowance.

**IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF DISALLOWANCE WILL BE BINDING UPON YOU.**

**DATED** at Toronto, this \_\_\_\_ day of \_\_\_\_\_, 2014.

**SCHONFELD INC.,  
in its capacity as Court-appointed Manager  
and pursuant to the May 20 Order**



**SCHEDULE H**

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**DISPUTE NOTICE RELATING TO  
FRONT CHURCH PROPERTIES LIMITED  
(hereinafter referred to as "the Debtor")**

---

**A. PARTICULARS OF CREDITOR:**

1. Full Legal Name of Creditor: \_\_\_\_\_

\_\_\_\_\_  
(Signature of individual completing this  
Dispute Notice)

\_\_\_\_\_  
Date

2. Full Mailing Address of the Creditor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Telephone Number: \_\_\_\_\_

4. E-Mail Address: \_\_\_\_\_

5. Facsimile Number: \_\_\_\_\_

**B. REASONS FOR DISPUTE:**

We hereby give you notice of our intention to dispute the Notice of Disallowance dated \_\_\_\_\_, 2014.

(Provide full particulars of the Claim and supporting documentation. Attach additional page if necessary.)

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This Dispute Notice must be returned by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission and be received by the Manager by no later than **4:00 P.M. (TORONTO TIME) ON [INSERT DATE, being fourteen (14) days after the Notice of Disallowance is sent by the Manager pursuant to the Claims Procedure Order]** at the following address:

Schonfeld Inc.  
Court-appointed Manager of the Companies  
77 King Street West, Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

Attention: Stephanie Williams  
Telephone: 416-862-7785, Extension 4  
E-mail: [swilliams@schonfeldinc.com](mailto:swilliams@schonfeldinc.com)  
Fax: 416-862-2136

with a copy (which shall not be deemed notice) to:

Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Attention: Brian Empey / Mark Dunn  
Telephone: 416-597-4194 / 416-849-6895  
E-mail: [bempey@goodmans.ca](mailto:bempey@goodmans.ca) / [mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)  
Fax: 416-979-1234

**DBDC SPADINA LTD. ET AL**

and

**NORMA WALTON ET AL**

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

Applicants

Respondents

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at TORONTO

**ORDER****GOODMANS LLP**

Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

Brian Empey LSUC#: 30640G

Mark Dunn LSUC#: 55510L

Tel: 416.979.2211

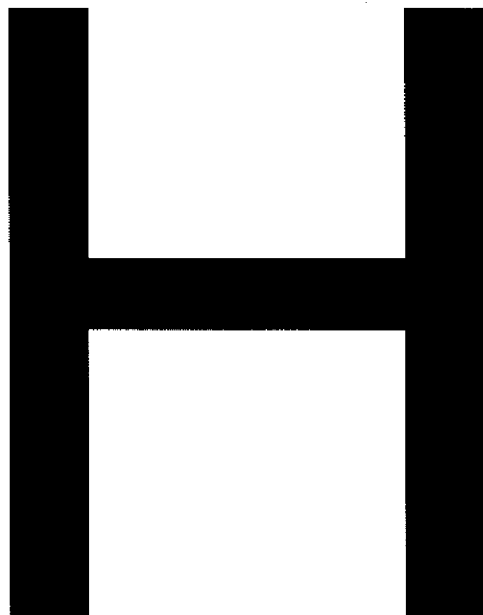
Fax: 416.979.1 234

Lawyers for the Manager

**G**

Front Church Properties  
Claims Summary at March 17, 2015

Creditor	Claim Filed				Deemed Trust		Proprietary		Secured		Unsecured		Disputed
	Amount	Costs	Total Claim	Status	Approved	Disallowed	Approved	Disallowed	Approved	Disallowed	Approved	Disallowed	
Canada Revenue Agency	246,284.94	0.00	246,284.94	Deemed Trust	246,284.94								N/A
	32,096.10	0.00	32,096.10	Unsecured							32,096.10		N/A
1771105 Ontario Inc.	47,742.50	0.00	47,742.50	Secured					47,742.50		43,957.00		No
	0.00	1,200.00	1,200.00	Unsecured								1,200.00	No
Abaco Glass Inc.	49,419.42	0.00	49,419.42	Secured					49,419.42				N/A
Ample Electric Inc.	8,904.40	0.00	8,904.40	Secured					8,904.40		7,006.00		Yes
Blue Air Mechanical Inc.	13,560.00	1,834.10	15,394.10	Secured					15,394.10		13,560.00		Yes
Caiquan Construction Co.	58,556.60	0.00	58,556.60	Secured					58,556.60		53,867.10		No
Carcol Limited	77,299.31	0.00	77,299.31	Secured					77,299.31				N/A
Collins Barrow Toronto Limited	361,750.00	0.00	361,750.00	Secured					361,750.00				No
Cushman Wakefield	349,170.00	0.00	349,170.00	Proprietary			349,170.00						Yes
Engcon Construction	25,086.00	0.00	25,086.00	Secured					25,086.00		24,860.00		Yes
G-Line Sun Control Inc.	3,384.35	0.00	3,384.35	Secured					3,384.35		3,384.35		No
Gentry Environmental Systems Ltd	26,287.70	0.00	26,287.70	Secured					26,287.70				N/A
Joseph Memme	66,670.00	0.00	66,670.00	Secured					66,670.00				N/A
Laser Heating & A/C Inc.	39,852.11	9,963.02	49,815.13	Secured					39,307.45	10,507.68			No
Maxguard Alarms and Security Company Ltd.	4,237.50	0.00	4,237.50	Secured					4,237.50		4,237.50		No
MediGroup Incorporated	0.00	0.00	0.00	No Claim Filed									N/A
Net Drywall & Acoustics Ltd.	75,755.00	0.00	75,755.00	Secured					75,755.00				N/A
Perfect Painting	18,645.00	0.00	18,645.00	Secured					18,645.00		18,645.00		No
Roofing Medics Ltd.	40,002.00	0.00	40,002.00	Secured					40,002.00		40,002.00		No
WBA Architects and Engineers Inc.	11,447.01	0.00	11,447.01	Secured					11,447.01		11,447.01		No
Wendy Gaucher c/o Loopstra Nixon LLP	165,000.00	0.00	165,000.00	Unsecured									N/A
World Electric	28,331.46	399.00	28,730.46	Secured					28,730.46		28,331.46		No
	1,749,481.40	13,396.12	1,762,877.52		246,284.94	0.00	0.00	349,170.00	334,738.88	634,387.60	281,393.52	1,200.00	



DBDC SPADINA LTD., et al  
Applicants

NORMA WALTON, et al  
Respondents

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

July 16/14

July 18/14

The only opposition to the Manager's proposed claim procedure order was as follows:

(a) a "reflects true claimant" sought to cap the Manager's fees in advance. I do not accept that submission. The claimant can make the Manager's fees by making their participation in the claims process as efficient as possible;

(b) Cashman + Wake feel wanted to amend towards to, in effect, delegate to the Agra the ability to vary my May 20/14 order out Primary and Secondary payments. That I am not prepared to do. Cashman + Wake held

by 3 pm this afternoon, may book a 30-minute motion date before me for any day next week to bus; before me, a motion to vary my May 20/14 order. July 25 is my last day on the Commercial list for some time; I do not have the scheduling flexibility over a motion to vary. So, either C + W brings its motion to vary a motion to vary. So, either C + W brings its motion to vary a motion to vary or I have to vary it. I have to vary it. I have to vary it.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial List

Proceeding commenced at Toronto

MOTION RECORD OF THE MANAGER,  
SCHONFELD INC.

(Motion for Claims Procedure Order  
with respect to 65 Front Street East)

GOODMANS LLP  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

Brian Enpey LSUC#: 30640G  
Mark S. Dunn LSUC#: 55510L  
Tel: (416) 979-2211  
Fax: (416) 979-1234

Lawyers for The Manager

the next 12 months to entertain  
next week or it is a rolling  
I oppose the Mgr's  
D.M. Dawson T.





**PROOF OF CLAIM RELATING TO  
FRONT CHURCH PROPERTIES LIMITED,  
BEING THE FORMER OWNER OF THE PROPERTY MUNICIPALLY KNOWN AS  
65 FRONT STREET EAST, TORONTO  
(hereinafter referred to as "the Debtor")**

**A. PARTICULARS OF CREDITOR:**

1. Full Legal Name of Creditor: Cushman and Wakefield Ltd. on its own behalf  
and also on behalf of Harvey Kalles Real Estate Ltd.  
(the "Creditor"). (Full legal name should be the name of the original Creditor of the Debtor, notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred).
2. Full Mailing Address of the Creditor (the original Creditor not the assignee):  
33 Yonge Street, Suite 1000  
Toronto, Ontario  
M5E 1S9
3. Telephone Number: (416) 359 2554
4. E-Mail Address: Nick.Yanovski@ca.cushwake.com
5. Facsimile Number: (416) 359 2613
6. Attention (Contact Person): Nick Yanovski
7. Has the Claim been sold or assigned by the Creditor to another party (check one)?  
Yes:  No:

- 2 -

**B. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

8. Full Legal Name of Assignee(s):

N/A

(If Claim (or a portion thereof) has been assigned, insert full legal name of assignee( s) of Claim (or portion thereof). If there is more than one assignee, please attach a separate sheet with the required information.)

9. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

10. Telephone Number of Assignee(s): \_\_\_\_\_

11. E-Mail Address: \_\_\_\_\_

12. Facsimile Number: \_\_\_\_\_

13. Attention (Contact Person): \_\_\_\_\_

**C. PROOF OF CLAIM:**

I, Nick Yanovski  
 [name of Creditor or Representative of the Creditor], of  
Toronto, Ontario do hereby certify:  
 (city and province)

(a)  that I (check one) am the Creditor of the Debtor; OR am Managing Director, Capital Markets (state position or title) ofCushman & Wakefield Ltd.

(name of Creditor)

- 3 -

- (b) that I have knowledge of all the circumstances connected with the Claim referred to below;
- (c) the Creditor asserts its claim against the Debtor; and
- (d) the Debtor was and still is indebted to the Creditor \$ 349,170; (Claims denominated in a currency other than Canadian dollars shall be converted by the Manager to Canadian Dollars at the Bank of Canada noon spot rate as at the Claims Bar Date.)

**D. NATURE OF CLAIM**

**Proprietary Claim to \$349,170 (primary claim)**  
(check and complete appropriate category)

**UNSECURED CLAIM OF \$ 349,170 (further alternative claim)**

That in respect of this debt, I do not hold any security.

**SECURED CLAIM OF \$ 349,170 (alternate claim)**

That in respect of this debt, I hold security valued at \$ 349,170 particulars of which are as follows:

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

**E. PARTICULARS OF CLAIM:**

Other than as already set out herein the particulars of the undersigned's total Claim are attached.

(Provide all particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, date and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the Debtor to the Creditor and estimated value of such security.)

- 4 -

**F. FILING OF CLAIM**

This Proof of Claim must be received by the Manager by no later than 4:00 p.m. (Toronto Time) on August 18, 2014, the Claims Bar Date, by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission at the following address:

Schonfeld Inc.  
 Court-appointed Manager of the Companies  
 77 King Street West, Suite 3000, P.O. Box 95  
 TD Centre North Tower  
 Toronto, ON M5K 1G8

Attention: Stephanie Williams  
 Telephone: 416-862-7785, Extension 4  
 E-mail: swilliams@schonfeldinc.com  
 Fax: 416-862-2136

with a copy (which shall not be deemed notice) to:

Goodmans LLP  
 Bay Adelaide Centre  
 333 Bay Street, Suite 3400  
 Toronto, ON M5H 2S7

Attention: Brian Empey / Mark Dunn  
 Telephone: 416-597-4194 / 416-849-6895  
 E-mail: bempey@goodmans.ca / mdunn@goodmans.ca  
 Fax: 416-979-1234

**FAILURE TO FILE YOUR PROOF OF CLAIM AS DIRECTED BY THE CLAIMS BAR DATE WILL RESULT IN YOUR CLAIM BEING BARRED AS AGAINST THE REMAINING SALE PROCEEDS IN RESPECT OF THE SALE OF THE DEBTOR PROPERTY AND IN YOU BEING PREVENTED FROM MAKING OR ENFORCING A CLAIM AGAINST THE REMAINING SALE PROCEEDS IN RESPECT OF THE SALE OF THE DEBTOR PROPERTY. In addition, you shall not be entitled to further notice, and shall not be entitled to participate as a creditor, in these proceedings.**

- 5 -

Dated at Toronto this 13th day of August, 2014.

  
 Signature of Creditor

# APPENDIX "A"

## APPENDIX "A" – Particulars of Claim

### Introduction

In this claims bar procedure, Cushman and Wakefield Ltd. ("**Cushman**") asserts a claim in the aggregate amount of \$349,170, consisting of commission of \$309,000 earned in respect of the sale of the property known municipally as 65 Front Street East, Toronto, Ontario (the "**Property**") plus HST. Cushman submits this claim on its own behalf as well as on behalf of Harvey Kalles Real Estate Ltd. (the "**Co-operating Broker**"). The Co-operating Broker consents to have its claim included as part of the Cushman Proof of Claim. Such claim represents the agreed-upon commission of 3 percent plus HST of the agreed-upon selling price of the Property as evidenced by an executed agreement of purchase and sale (the "**APS**") between Bill Mandelbaum in trust for a company to be incorporated (the "**Purchaser**") and Front Church Properties Limited (the "**Vendor**") dated January 23, 2014 (**Appendix "B"**).

### Timeline

On November 6, 2013, the Vendor entered into a listing agreement (the "**Listing Agreement**") with Cushman (**Appendix "C"**). Pursuant to the Listing Agreement, the Vendor gave Cushman the exclusive and irrevocable right to act as the Vendor's agent with respect to the sale of the Property. The Vendor directed Cushman to list the Property for sale in an open and transparent manner at an asking price of \$12 million. Pursuant to section 2 of the Listing Agreement, the Vendor agreed to pay Cushman a commission of 3 percent of the sale price of the Property plus HST if the sale was obtained through the efforts of a co-operating broker or, in the alternative, a commission of 2.5 percent plus HST if the Property was sold without a co-operating broker.

On November 13, 2013, Cushman obtained a copy of the parcel register for the Property (PIN 21400-0069)(LT)) and learned that two mortgages, in the aggregate amount of \$6.4 million, had been registered on title (**Appendix "D"**). Based on a reasonable assessment of the value of the Property, there was substantial remaining equity (after payment of the mortgages) out of which the commission could be paid.

As of December 3, 2013, through the efforts of Cushman, six offers were received for the Property. This was a successful, open and transparent process which led to bid submissions from private entities as well as public companies. Despite the result, the Vendor was not prepared to accept any of the offers. On January 9, 2014, the Vendor executed an amendment to the Listing Agreement directing Cushman to reduce the listing price for the Property to \$11,250,000. Soon thereafter, the Purchaser executed a Confidentiality Agreement in favour of the Vendor in order to allow the Purchaser to conduct pre-due diligence, and finally submit and negotiate a conditional agreement of purchase and sale to buy the Property through Cushman and the Co-operating Broker.

On January 23, 2014, the APS was executed, pursuant to which the Purchaser agreed to pay the Vendor \$10,450,000 in exchange for the Property. The APS also confirmed that the Co-operating Broker was representing the Purchaser and, therefore, it was entitled to its share of the commission. Cushman would be responsible to collect the commission proceeds from the sale and to distribute the co-operating brokerage commission to the Co-operating Broker.

On March 12, 2014, the Purchaser waived all remaining conditions associated with the APS in consideration for a reduction of \$150,000 in the purchase price to \$10,300,000.

- 2 -

On March 21, 2014, by Order of Justice Newbould, the Vendor was directed to pay to Cushman upon closing the full amount of the commission owing to it and the Co-operating Broker, together with HST (**Appendix "E"**).

By Order dated May 20, 2014, which was obtained without notice to Cushman, Mr. Justice David M. Brown directed that the commission owing to Cushman was a "Secondary Payment" and would therefore be subject to a claims process that the court-appointed Manager would run (**Appendix "F"**). Such order did not make any determination about the validity or priority of Cushman's claim but merely gave Cushman the right to participate in a claims process and to assert whatever priority it wished. Nothing in this proof of claim is intended to assert that the May 20, 2014 order of Justice Brown should be set aside.

Cushman and the Co-operating Broker wholly completed their duties pursuant to the Listing Agreement and were a principal contributor to the transaction in question. Like the work performed by the Vendor's solicitors, Cushman's work was integral to the completion of the transaction and the realization of value from the Property for the benefit of creditors.

#### **Priority of Cushman Claim**

Cushman asserts a proprietary claim (i.e., a claim as "owner" of the funds) to \$349,170 (the "**Funds**") in the hands of the Manager. Such claim is in priority to all secured, lien, and unsecured claims in respect of the remaining proceeds from the sale of the Property.

The Funds are the property of Cushman and do not form part of the estate of the Vendor that is subject to the claims of creditors.

On page 5 of the APS, the Vendor signed an irrevocable direction in favour of Cushman on the following terms:

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with the applicable Harmonized Sales Tax and any other taxes as may hereafter be applicable, from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

The commission that was the subject of the irrevocable direction was in two parts. First, at the time that the APS was signed Cushman received, and later held, a deposit of \$200,000 (the "**Deposit**") from the Purchaser in respect of the transaction. Second, the remainder of the commission was the property of Cushman and, pursuant to the irrevocable direction, was to be paid to Cushman off the top of the proceeds of sale paid by the Purchaser on closing.

Paragraph 4 of the amended order of Justice D. M. Brown dated May 20, 2014 required all remaining proceeds of the sale of the Property to be paid to the Manager's counsel in trust. As such, Cushman was compelled to pay this amount to the Manager but, in doing so, Cushman expressly reserved its rights with respect to the Deposit. (**Appendix "G"**) As such, nothing that was done with respect to the payment of the Deposit to the Manager or the receipt of the balance of the commission by the Manager (as opposed to Cushman) changes the nature of Cushman's proprietary claim.

- 3 -

The irrevocable direction contained in the APS constituted an equitable assignment of the commission in favour of Cushman. (See *Re/Max Garden City Realty Inc. v. 828294 Ontario Inc.* (1992), 8 O.R. (3d) 787 (Gen. Div.) at para. 11.) (**Appendix "H"**)

Cushman did not merely hold a security interest in the commission. Instead, the irrevocable assignment in the APS passed title in the commission to Cushman on the date of the assignment (i.e., the date of the APS), not the date that the sale was completed. (See *Vysek v. Nova Gas International Ltd.*, 2002 CarswellAlta 511 (Q.B.) at para. 31.) (**Appendix "I"**)

The irrevocable assignment contained in the APS is an assignment, not a security interest and thus Cushman is the "owner" of the proceeds. (See *Vysek, supra*, at para. 35.)

Cushman asserts this proprietary claim to the entire amount of the commission. However, to the extent that such claim is not allowed in respect of the entire commission, Cushman asserts in the alternative that the proprietary claim extends at least to the amount of the Deposit, which was held by Cushman following execution of the APS.

#### **Alternative Claims**

If Cushman's claim is not given the priority described above, Cushman makes an alternative claim for \$349,170 as a secured creditor or, in the further alternative, as an unsecured creditor.



# APPENDIX "B"

01/30/2014 10:18 FAX

40001

# OREA Agreement of Purchase and Sale Commercial



This Agreement of Purchase and Sale dated this 23 day of January, 2014

**BUYER** BILL MANDELBAUM IN TRUST For a Company to be incorporated agrees to purchase from

**SELLER** FRONT CHURCH PROPERTIES LIMITED the following

### REAL PROPERTY

Address 55 FRONT STREET EAST

fronting on the SOUTH side of FRONT STREET EAST

in the CITY OF TORONTO

and having a frontage of 40 Feet more or less by a depth of IRREGULAR more or less

and legally described as SEE SCHEDULE "B"

Legal description of land including comments and easements (the "property")

**PURCHASE PRICE:** Ten Dollars (CAD) 10,000,000

ONE HUNDRED & FIFTY THOUSAND Dollars

**DEPOSIT:** Buyer submits One hundred Dollars (CAD) 100,000

thousand Dollars (CAD) 100,000

by negotiable cheque payable to CUSHMAN & WAKEFIELD BROKERAGE "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

**SCHEDULE(S) A, B, C and D** attached hereto form(s) part of this Agreement.

1. **IRREVOCABLE:** This offer shall be irrevocable by BUYER until 5:00 p.m. on the 30 day of JANUARY, 2014, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 5:00 p.m. on the 20 day of See Schedule "A", 2014. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S) [Signature]

INITIALS OF SELLER(S) [Signature]

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage or agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices. Any notice relating hereto or provided for herein shall be in writing, in addition to any provision contained herein and in any Schedule hereto, its add, any counter-offer, notice of acceptance (hereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Documents") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or when a facsimile number or email address is provided hereto, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: ..... FAX No.: (416) 441-9925  
 (For delivery of Documents to Seller) (For delivery of Documents to Buyer)

Email Address: ..... Email Address: [info@416.com](mailto:info@416.com)  
 (For delivery of Documents to Seller) (For delivery of Documents to Buyer)

4 **CHATELAIN INCLUDED:**

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5 **FIXTURES EXCLUDED:**

6 **RENTAL ITEMS (including Leases, Leases to Own):** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption

7. **HST:** If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, or warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

8 **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the ..... day of 13 Days prior to Closing, 20..... (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property that its present use (MIXED USE (RESIDENTIAL)) ..... may be lawfully continued and that the principal building may be insured against fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

INITIALS OF BUYER(S)

INITIALS OF SELLER(S)



16. **DOCUMENT PREPARATION:** The Transfer/Deed ~~shall~~, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
17. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not debit such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetred public or private utility charges and unmetred cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion shall to be apportioned to Buyer.
19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
20. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax or as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
21. **TERMS:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
22. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed its consent hereinafter provided.
23. **ASPH:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing urethanolaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains urethanolaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
25. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement (including any Schedule attached hereto) shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
27. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date when the property is located.

INITIALS OF BUYER(S)

INITIALS OF SELLER(S)



28. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of IN WITNESS whereof I have hereunto set my hand and seal:

*Handwritten signature*

*Handwritten signature*  
IN WITNESS whereof I have hereunto set my hand and seal:

DATE: *Handwritten date*

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the Brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of IN WITNESS whereof I have hereunto set my hand and seal:

*Handwritten signature*

*Handwritten signature*  
IN WITNESS whereof I have hereunto set my hand and seal:

DATE: *Handwritten date*

SPOUSAL CONSENT: The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm the Agreement with all changes both typed and written was finally accepted by all parties on *Handwritten date* day of *Handwritten month*, 20*Handwritten year*.

Selling Brokerage: CUSHMAN & WAKEFIELD, BROKERAGE		Tel No: (416) 561-1800
33 YONGE STREET, STE 1006		TORONTO, M5H 1S9
Coop/Buyer Brokerage: HARVEY KALLES REAL ESTATE LTD., BROKERAGE		Tel No: (416) 441-2538
2145 AVENUE ROAD		TORONTO, M5M 4B2

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

DATE: *Handwritten date*

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

DATE: \_\_\_\_\_

Address for Service: *Handwritten address*  
Seller's Lawyer: *Handwritten lawyer name*  
Address: *Handwritten address*  
Email: *Handwritten email*

Address for Service: \_\_\_\_\_  
Buyer's Lawyer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_

FOR OFFICE USE ONLY  
In Commission Brokerage: *Handwritten signature*  
In Commission for the Co-operating Brokerage: *Handwritten signature*  
DATED on the date and time of the completion of the foregoing Agreement of Purchase and Sale.

VA/CO/AVEN 24.01 FPA

WUPP

**SCHEDULE "A"**

**AGREEMENT OF PURCHASE AND SALE - COMMERCIAL**

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** **GILL MANDELBAUM IN TRUST**  
(For a Company to be incorporated)

and

**SELLER,** **FRONT CHURCH PROPERTIES LIMITED**

for the purchase and sale of 45 FRONT STREET EAST, TORONTO, ONTARIO  
dated the 13<sup>th</sup> day of JANUARY, 2014.

The Buyer agrees to pay an additional deposit of **CHEQUE** **THOUSAND DOLLARS** (\$100,000.00) by certified cheque or Bank Draft to the Seller, payable to the Seller's Agent, **CUNYAN & WATSON, REALTORS**, two (2) Business days following upon the date all the Buyer's Conditions have been waived, to be held in trust pending completion or other termination of this Agreement and to be applied toward the Purchase Price on completion.

The Buyer shall on Closing assume the Seller's rights and obligations contained in the existing first charge on the Property securing the principal amount of \$6,370,000.00 held by *Alterra Savings and Credit Union Limited* (the "Charge") and registered in title to the Property as instrument No. AT1262229 on September 22, 2006 and its subsequent notice of security interest registered as Instrument No. AT1262438 on September 22, 2006, notice (agreement ascending charge) registered Instrument No. AT1961237 on November 28, 2008 and notice (agreement ascending charge) registered as Instrument No. AT2711991 on June 3, 2011 and all other loans and security documents relating to or in respect of any of the foregoing, which charge, notice of security interest, notices and other documents are herein after collectively called the "Existing First Charge", and the Buyer shall be credited on Closing the outstanding principal amount and any accrued and unpaid interest thereon. *Estimated current principal balance is \$5,849,979.27.*

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by bank draft or certified cheque, to the Seller on completion of this transaction.

**1. SELLER'S REPRESENTATION** - The Seller hereby covenants, represents and warrants that as of the date of this Agreement and on the Closing Date:

1. the Seller(s) has/have the power, authority, right and capacity to own the Property and to enter into, execute and deliver this Agreement and are permitted and have the authority to carry out the transactions contemplated by this Agreement;
2. the Seller can transfer the legal and beneficial ownership of the Property and the fixtures and equipment thereon upon Closing;

*[Handwritten initials]*

*[Handwritten initials]*

*[Handwritten initials]*

3. to the best of the Seller's knowledge and belief, there are no notices of work orders or violations with respect to the Property which have not been complied with nor are there any actions, suits, expropriation proceedings or any other proceedings pending or threatened against the Seller or affecting the Property or the occupancy or use of the Property by the Seller or the tenants;
4. the Seller is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act (Canada)*;
5. the Seller shall comply with the *Real Estate Act (Ontario)*;
6. all fixtures, chattels and equipment which are the property of the Seller and forming part of the purchase shall be free and clear of encumbrances and shall be included as part of the Property;
7. there has not been received by the Seller or anyone on behalf of the Seller, any notice with respect to any by-law change affecting the Property or relating to any threatened, pending condemnation or expropriation of the Property and the operating business thereon from any governmental department, branch, agency, or office or other authority;
8. following the date of acceptance and up to closing, the Seller shall attend to ordinary day-to-day maintenance and operation of the Property, the Building and the business thereon as it has to do, reasonable wear and tear excepted;
9. the Seller shall make continuous disclosure of all material information pertaining to the Property and the business thereon (whether solicited by the Buyer or not) from the date of execution of this Agreement to the Closing Date;
10. neither the Seller nor any tenant is in default of their respective obligations contained in the Leases and there are no disputes involving the terms of the same;
11. the Seller has not received any notice from any tenant indicating an intention to assign or sublet or surrender the term or otherwise part with possession of the premises governed by its tenancy agreement or lease;
12. on the Closing Date, all costs in respect of household improvements, judgements, moving expense allowances, lease take-over payments and other similar items that are the responsibility of the Landlord under the Leases shall have been paid by the Seller except as disclosed in writing by the Seller to the Buyer and accepted in writing by the Buyer before the Closing Date and adjusted on Closing as provided herein;
13. all leases delivered to the Buyer pursuant to this Agreement are valid leases and constitute the entire agreement between the Seller and each respective tenant and there are no other or additional leases or agreements affecting the Property;



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14. **Environmental History** - The Seller further covenants and agrees to the best of its knowledge and belief that during the period of its ownership of the property, that:

- (a) all environmental laws and regulations have been complied with and no hazardous conditions or substances exist on the land;
- (b) no limitations or restrictions affecting the continued use of the property exist, other than those specifically provided for herein;
- (c) no pending litigation respecting Environmental matters, no outstanding Ministry of Environment and Energy Orders, investigations, charges or prosecutions regarding Environmental matters exist;
- (d) there has been no prior use as a waste disposal site and no hazardous materials or potential contaminants have been stored in the Building or on the Property; and
- (e) all applicable licenses are in force.

15. **All Equipment in Good Working Order** - The Seller warrants that all the mechanical, electrical, heating, ventilation, air conditioning systems, sprinkler systems (if present), all tractors, dryers, soil change machines, crop cover machines and all other equipment on the real property, including all the equipment pertaining to the Seller's business shall be in good working order at completion.

The parties agree that the Seller's representations, warranties, covenants and agreements contained herein shall form an integral part of this Agreement and shall survive the Closing Date but apply only to the state of the property at Completion of this transaction.

**3. SURVEY AND WELL LOG PRODUCTIONS**

The Seller agrees to provide the Buyer or the Buyer's solicitor within five (5) Business days after mutual acceptance of this Agreement of Purchase and Sale the following: *if in the Seller's possession or control:*

1. as to the survey of the property, completed by an Ontario Land Surveyor showing the correct location of all buildings, structures, additions, fences, improvements, easements, rights-of-way and encroachments affecting the property;
2. all documents, records, and reports concerning the building/property insurance, environmental, structural (including roof) and physical matters relating to the Property and Building or any part thereof that are in the possession of the Seller;
3. If requested by the Buyer, authorizations executed by the Seller and addressed to the appropriate municipal building department, zoning department, fire department and the Ministry of the Environment and to all other governmental authorities, authorizing the release of any information on file in respect of the

*[Handwritten initials and signatures]*

*[Handwritten initials]*

*[Handwritten initials]*

\*\*\*\*

*without*

Property ~~without~~ *without* soliciting further inspection by any such governmental authorities prior to closing if requested by the Buyer, *unless agreed upon by Seller in advance.*

4. if in the possession of the Seller, copies of all written contracts and written details of any oral contracts, except as otherwise required to be delivered or made available hereunder, relating to the Property, the Building and the Seller's Business including without limitation, all service and maintenance contracts;
5. copies of all building plans, mechanical drawings, and any other plans relating to the Building and the Property that are in the possession of the Seller;
6. copies of all executed leases, lease agreements, lease renewal agreements or assignments, offers to Lease, and other contracts affecting the Property and details of all tenant improvements, rent free periods, tenant improvement allowances and real estate commissions payable with respect to the Leases;
7. Copy of Phase I Environmental Assessment dated October, 2005 prepared by Briggs Canada Limited;
8. copies of all notices, orders, reports, contracts, tax assessments and any other documents relating to property taxes, including notices of appeal;
9. copies of all service contracts;
10. copy of leasehold binder;
11. list of checks included; and
12. Copies of the Existing First Charge, commitment letter with respect to the Existing First Charge and all other loan and security documents granted to the Chargee in respect of or as collateral for the Existing First Charge.


**4. CONDITIONS FOR REFUND OF DEPOSIT**

The Agreement arising from the acceptance of this Offer is subject to and conditional for a period of FIFTEEN (15) Business Days following the receipt of all of the Seller's Productions (the "Buyer's Condition Date") upon the Buyer satisfying himself in its sole, absolute and unaided discretion on all aspects of the subject property, land, buildings, financial viability, and all and any other factors the Buyer deems pertinent in their evaluation of said property (the "Due Diligence Conditions"). If the Buyer's Conditions referred to herein are not satisfied at the expiration of the Buyer's Condition Date, then the Buyer shall have the option to declare this Agreement null and void whereupon the Deposit will be returned to the Buyer with all accrued interest and without deduction and the parties shall be released from all further obligations hereunder. Provided if no notice is given by the Buyer prior to the Buyer's Condition Date in respect of the conditions set forth herein then, notwithstanding anything to the contrary, including any immediate oral or telephonic between the parties, the Buyer's Conditions referred to herein shall be deemed not to have been waived or satisfied and this Agreement shall be deemed to be null and void and the deposit shall be returned to the Buyer with all accrued interest and without deduction.

*SUBJECTIVE*  
*ANALYSIS*  
*OF EXISTING*  
*FIRST CHARGE*

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Upon the Buyer waiving the "Due Diligence Conditions" as set out above, this Agreement of Purchase and Sale is further subject to and conditional for a period of ~~THIRTY (30)~~ days upon the Buyer having been approved by the Charges of the continuation of the Existing First Charge on Closing (the "Approval Condition"). The Due Diligence Conditions and the Approval Condition are hereinafter collectively called the "Buyer's Conditions". The Buyer's Conditions are for the sole benefit of the Buyer, and may be waived by the Buyer upon notice to the Seller on or prior to the respective expiry date thereof. If the Buyer's Conditions are not satisfied or waived on basis provided on or before the respective expiry date thereof, this Agreement shall be terminated and become null and void and be of no further force or effect whatsoever, and the First Deposit shall be returned to the Buyer. If the Buyer has not given written notice to the Seller that any Buyer's Conditions has been satisfied or waived, such Buyer's Conditions shall be deemed not to have been satisfied.


**5. FREE OF BURDEN, UNASSUMED LIABILITIES AND OTHER LEASERS**

Notwithstanding the Assumption of Debt and the waiving of the Buyer's Conditions, the Seller will not enter into any agreements or contracts relating to the Property or any agreements to lease or license or sublease or any modification, variation, amendment or continuation of any of the Leases, Contracts or Permitted Occupancies (collectively, for the purposes of this Section, the "Agreements") without first obtaining the prior written approval of the Buyer, which may not be unreasonably withheld. For the purposes of this Section, the Seller will promptly deliver to the Buyer a copy of all leases, offers to lease and other contracts affecting the Property as are from time to time proposed to be entered and all correspondence relating thereto, including sufficient financial information relating to any proposed lease to enable the Buyer to make an informed consent decision. The Buyer shall notify the Seller, within three (3) Business Days following the receipt by the Buyer of such documents and information, whether the Buyer approves or does not approve the proposed Agreement, failing which the Buyer shall be deemed to have approved the proposed Agreement. After the Buyer has waived the Buyer's Conditions, the Seller shall not enter into any Agreements without first obtaining the written approval of the Buyer which may be unreasonably withheld.

In addition, the Seller shall not, from and after the date of execution of this Agreement by the Seller and the Buyer until Closing, enter into or commit or cause any agreement relating to the operation, management or maintenance of the Property or the Seller's Business or any part thereof, which is not capable of satisfaction on Closing without the consent of the Buyer, which consent shall not be unreasonably withheld or delayed. The Seller further covenants and agrees that it will operate the Property and the Seller's Business in the ordinary course and will arrange, maintain and keep in repair the Property as a prudent owner would and no major alteration, repairs, improvement or other work will be carried out on the Property or any part thereof except as otherwise set out herein, and/or if approved in writing by the Buyer and/or required as an emergency measure under required by any Governmental Authority, provided all of the above shall be fully paid for by the Seller prior to Closing.

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THIS HAS  
REFERENCE TO  


**6. ACCESS AND INSPECTIONS**

The Buyer shall be entitled to conduct reasonable investigations, tests and inspections in respect of the Building and the Property during normal business hours, upon reasonable notice to the Seller and subject to the rights of or restrictions in favour of the tenants, as may be exercised by their respective Leases. Without limiting the foregoing, the Buyer may enter upon the Property at its own risk and expense, and shall have the right to speak to tenants and employees of the Seller upon obtaining the prior approval of the Seller and in the presence of a representative of 

the Seller; for such purpose the Seller shall make an employee of the Seller available to the Buyer at all reasonable times on reasonable prior notice. All inspections, investigations and testing carried out by the Buyer or its representative shall be carried out at the Buyer's sole cost, expense and risk and in accordance with the inspection rights and notice provisions contained in the respective Leases for each of the tenants of the Property and so as to cause the minimum amount of interference and disruption to tenants, their employees, suppliers and customers. Any damage caused to the Property or the Building as a result of the Buyer's entry upon the Property or the Building, or any part thereof, or any activities carried out by the Buyer or its representatives in respect of the Property, or any part thereof, shall be promptly repaired by the Buyer to the Seller's reasonable satisfaction (but the Buyer shall have no further obligation to the Seller in respect of such repairs if the Buyer completes this transaction). The Buyer agrees to indemnify and save harmless the Seller from all actions, costs, liabilities and damages resulting from the Buyer's entry and the activities carried out by the Buyer or its representatives relating to its inspection of the Property pursuant to this Section.

#### **7. ADJUSTMENTS**

The transaction contemplated by this Agreement shall be completed on the Closing Date, on and after which date, the Buyer shall be entitled to receive all rents and profits and shall bear all expenses in respect of or pertaining to the Property. The Seller shall be entitled to receive all rents and profits and shall bear all expenses in respect of or pertaining to the Property up to and including the day prior to the Closing Date. Realty taxes, water and sewer rates and charges, rentals, monthly additional rent, rental deposits, security deposits and last month's rent, utilities, fuel and all other amounts, matters or items usually adjusted in transactions similar to that contemplated by the terms hereof shall be adjusted, provided however, that no adjustment shall be made for rental payments pursuant to any of the Leases which are in arrears as of the Closing Date. To the extent any adjustment cannot be determined on the Closing Date, or in the event an error or omission is made, the parties will adjust or readjust as between themselves forthwith after such adjustments can be determined.

Rental arrears under the Leases at Closing shall remain the property of the Seller. All funds received by the Buyer from a tenant after Closing designated as payment of rental arrears for a period prior to Closing, shall be remitted to the Seller by the Buyer. The Buyer shall have no obligation, other than as aforesaid, to collect or pursue rental arrears on behalf of the Seller. The Seller agrees that it will not commence legal proceedings against any tenant for the collection of rental arrears after the Closing Date, without the Buyer's prior written consent, which shall not be unreasonably refused. The Seller shall be entitled to a credit for the rent payable by any tenants but uncollected for the month of Closing. No such credit will be available to the Seller for such uncollected rent if Closing occurs on or after the fifteenth day of the month.

The Seller shall prepare and deliver to the Buyer at least five Banking Days prior to Closing a statement of the Adjustments (the "Statement of Adjustments") for the Property to be made on Closing with all Adjustments made as of the Date of Closing.

#### **8. LEGAL, TAX AND ENVIRONMENTAL ADVICE**

The Parties to this Agreement acknowledge that the real estate Broker(s) so named in this Agreement has recommended that they obtain independent professional advice prior to signing this document. The parties further acknowledge that no information provided by such real estate broker(s) is to be construed as legal, tax or environmental advice.

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**9. FACSIMILE TRANSMISSIONS**

In the event the Vendor or Purchaser utilizes facsimile transmitted signed documents, the Purchaser and the Vendor hereby agree to accept and rely upon such documents as if they were original signatures.

**10. ENTIRE AGREEMENT**

This Agreement of Purchase and Sale constitutes the entire agreement between the parties with respect to the subject matter contained herein and, except as herein otherwise expressly stated and in the Instruments or documents to be executed and delivered pursuant to this Agreement, contains all of the representations, warranties and agreements of the respective parties with respect to the Building and the Property. There are no written or verbal representations, understandings, conditions or agreements of any kind between the parties, other than as specifically expressed in writing in this Agreement.

**11. ASSIGNMENT**

The Seller acknowledges and agrees that the Buyer shall be entitled to assign this Agreement, in its entirety and upon notice of such assignment to the Seller, the named Buyer herein shall have no further liability hereunder.

**12. ESTOPPEL CERTIFICATES AND LEASE DECLARATIONS**

The Seller shall use commercially reasonable efforts to obtain timely completed and executed Estoppel Certificates from each of the tenants, and shall deliver all such Estoppel Certificates obtained by the Seller to the Buyer immediately upon receipt thereof and in any event by not later than the fifth (5th) Banking Day prior to the Closing. The Seller shall use the Estoppel Certificates in the form attached hereto as Schedule "C", subject to reasonable modifications. All Estoppel Certificates shall be delivered to the Buyer. *Failing the obtaining of all tenants' estoppel certificates, the Seller shall sign a declaration certifying all lease particulars*

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*Handwritten signature "D. J. J."*

The following schedules are attached to this Agreement and form an integral part hereof:  
Schedule "A" Legal Description and Precedent Encumbrances  
Schedule "C" Form of Estoppel Certificates  
Schedule "D" Rent Roll and Income and Expense Statement

**14. CLOSING DATE**

This Agreement shall be completed by no later than 6:00 PM on the 30<sup>th</sup> day following the date the Buyer waives all of the Buyer's Conditions.

**15. ASSIGNMENT OF EXISTING TENANCIES**

The Buyer agrees to assume the existing tenancies, as set out in the attached Schedule "D", which the Seller warrants are the only tenancies affecting the Property.

**16. NOTICE TO TENANTS OF NEW OWNER**

Upon completion, the Seller shall provide the Buyer with a notice to all tenants advising them of the new owner and requiring all future rents to be paid to the Buyer direct.

**17. HERITAGE**

The Buyer agrees and acknowledges that the Property is designated a Heritage Property under the Ontario Heritage Act.

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**SCHEDULE "B"****AGREEMENT OF PURCHASE AND SALE - COMMERCIAL**

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,**                    **BILL MANDELBAUM IN TRUST**  
(For a Company to be Incorporated)

and

**SELLER,**                    **FRONT CHURCH PROPERTIES LIMITED**

for the purchase and sale of 61 FRONT STREET EAST, TORONTO, ONTARIO  
dated the 23<sup>rd</sup> day of JANUARY, 2014.

**LEGAL DESCRIPTION:**

PT WALKS AND GARDENS FL 1A TORONTO; PT STRIP OF LAND BTN WATERS EDGE  
AND TOP OF BANK FL 5A TORONTO; PT LT JOB S/S FRONT ST E FL 1A TORONTO AS  
IN CA570607; S/T CT73443; CITY OF TORONTO

PIN: 21400-0069 (LT)

**PERMITTED ENCUMBRANCES**

1. Liens for taxes levied upon the Property if same are not yet due and payable.
2. Minor title defects or irregularities.
3. Any subsisting reservations contained in the original grant of the Property from the Crown.
4. Registered agreements, easements, rights of way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any governmental authority or public or private utility, or any registered subdivision, development, servicing, site plan or other similar agreement with any governmental authority or public utility.
5. Transfer easement registered as Instrument No. CT273443.
6. Agreement registered as Instrument No. CT703284.
7. Notice of lease registered as Instrument No. CA582338.
8. Agreement registered as Instrument No. CA601205.
9. Bylaw registered as Instrument No. AT2535742.

**SCHEDULE "C"****AGREEMENT OF PURCHASE AND SALE - COMMERCIAL**

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,**                    **BILL MANDELBAUM IN TRUST**  
                                   **(For a Company to be Incorporated)**

and

**SELLER,**                    **FRONT CHURCH PROPERTIES LIMITED**

for the purchase and sale of 66 FRONT STREET EAST, TORONTO, ONTARIO  
 dated the 23<sup>rd</sup> day of JANUARY, 2014.

**TENANT'S ACKNOWLEDGMENT AND ESTOPPEL CERTIFICATE**

(TENANT'S NAME)

**TO:**

**AND TO:**

**RE:**

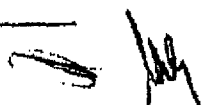
We confirm and acknowledge to the Buyer, any Assignee and to the Mortgagee that with respect to the lease to us for the Premises:

1. The lease from \_\_\_\_\_ to us dated the \_\_\_\_ day of \_\_\_\_\_ (the "Lease") has been validly executed and delivered by the undersigned as Tenant pursuant to due corporate action properly taken by our Corporation.
2. The Lease is in full force and effect and there have been no modifications, assignments or changes in the Lease, other than those listed below.
3. We have accepted and are in possession of the Premises demised to us and such Premises are fully operational.
4. All of the work to our Premises which is the responsibility of the landlord (if any), has been completed to our satisfaction in accordance with the Landlord's obligations. There are no tenant inducements and tenant allowances payable by the landlord which are outstanding, except as follows:
5. The term of the Lease commenced on the \_\_\_\_ day of \_\_\_\_\_, and will expire on the \_\_\_\_ day of \_\_\_\_\_, in accordance with the provisions of the Lease, subject to the right of renewal, if any, as listed below:

- 6. The annual minimum or basic rent currently being paid for the Premises is \_\_\_\_\_  
Such minimum or basic rent and additional rent has been paid in full to \_\_\_\_\_  
The annual or basic rent is subject to adjustment during the term of the Lease on the following basis:  
The said annual minimum or basic rent is paid in equal monthly installments of \$ \_\_\_\_\_. The additional rent is being paid in equal monthly installments of \$ \_\_\_\_\_.
- 7. We occupy approximately \_\_\_\_\_ square feet at the annual rent described in the Lease.
- 8. There is no prepayment of rent or security deposit standing to our credit, except as follows:
- 9. There is no default in respect of the Lease by us and we are not claiming any deduction, abatement or set-off of any rent due and payable under the Lease nor any counterclaim or defence against the enforcement of our obligations to be performed by us under the Lease.
- 10. There is no litigation or governmental or municipal proceedings commenced or pending or threatened against us with respect to the Premises demised to us.
- 11. There is no existing default in the Lease on the part of the landlord.
- 12. There are no agreements between us and the landlord other than that contained in the said Lease pertaining to the obligations of the landlord and the rights of the Tenant relating to the use and occupation by the Tenant of the Premises demised to us.
- 13. The Lease is a net lease save as otherwise provided in the Lease and we are paying, in addition to minimum annual rent, all other charges, including, without limitation, our proportionate share of operating costs, all utilities, realty and business taxes, all insurance premiums provided for in the Lease, all of which payments are up to date and without default.
- 14. The undersigned represents that the above statements, including any additions or exceptions which have been added thereto are correct, accurate, full and complete and are being relied on by the Purchaser, any Assignee and the Mortgagee.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2014.  
(Name of Tenant)

per: \_\_\_\_\_







# APPENDIX "C"

# Listing Agreement – Commercial

## Authority to Offer for Sale

Form 520  
for use in the Province of Ontario

This is a Multiple Listing Service® Agreement  OR This Listing is Exclusive   
(Seller's Initials)


**BETWEEN:**  
**BROKERAGE:** CUSHMAN & WAKEFIELD LTD. BROKERAGE

33 YONGE STREET, STE. 1000 TORONTO (the "Listing Brokerage")

**SELLER(S):** FRONT CHURCH PROPERTIES LIMITED; (the "Seller")

In consideration of the Listing Brokerage listing the real property for sale known as: 65 FRONT STREET EAST  
TORONTO PIN: 21400069 (the "Property")

the Seller hereby gives the Listing Brokerage the exclusive and irrevocable right to act as the Seller's agent,  
commencing at 12:01 a.m. on the 6th day of November, 2013  
until 11:59 p.m. on the 5th day of April, 2014 (the "Listing Period").

{ Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if an MLS® listing, may be subject to minimum requirements of the real estate board, however, in accordance with the Real Estate and Business Brokers Act (2002), if the Listing Period exceeds six months, the Listing Brokerage must obtain the Seller's Initials. } 

to offer the Property for sale at a price of:  
**Twelve Million** Dollars (\$Cdn 12,000,000.00)

and upon the terms particularly set out herein, or of such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are of the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property. The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the property.

1. **DEFINITIONS AND INTERPRETATIONS:** For the purposes of this Listing Agreement ("Authority" or "Agreement"), "Seller" includes vendor and a "buyer" includes a purchaser or a prospective purchaser. A purchase shall be deemed to include the entering into of an agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised, or the causing of a First Right of Refusal to be exercised, or an agreement to sell or transfer shares or assets. "Real property" includes real estate as defined in the Real Estate and Business Brokers Act (2002). The "Property" shall be deemed to include any part thereof or interest therein. A "real estate board" includes a real estate association. This Agreement shall be read with all changes of gender and number required by the context. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property.

2. **COMMISSION:** In consideration of the Listing Brokerage listing the Property for sale, the Seller agrees to pay the Listing Brokerage a commission of 3% of the sale price of the Property or plus HST ~~or~~ if co-brokered and a S/I if sold without a co-broker.

for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement OR such other terms and conditions as the Seller may accept.

The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on the Seller's behalf within 180 days after the expiration of the Listing Period (whichever Period), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.

The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, said commission to be payable on the date set for completion of the purchase of the Property.

Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission.

In the event the buyer fails to complete the purchase and the deposit or any part thereof becomes forfeited, awarded, directed or released to the Seller, the Seller then authorizes the Listing Brokerage to retain as commission for services rendered, fifty (50%) per cent of the amount of the said deposit forfeited, awarded, directed or released to the Seller (but not to exceed the commission payable had a sale been consummated) and to pay the balance of the deposit to the Seller.

All amounts set out as commission are to be paid plus applicable taxes on such commission.

3. **REPRESENTATION:** The Seller acknowledges that the Listing Brokerage has provided the Seller with written information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service. The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage), and to offer to pay the co-operating brokerage a commission of 1.25% of the sale price of the Property or plus HST less marketing costs to a maximum of \$5,000.

INITIALS OF LISTING BROKERAGE: 

INITIALS OF SELLER(S): 



out of the commission the Seller pays the Listing Brokerage. The Seller understands that unless the Seller is otherwise informed, the co-operating brokerage is representing the interests of the buyer in the transaction. The Seller further acknowledges that the Listing Brokerage may be listing other properties that may be similar to the Seller's Property and the Seller hereby consents to the Listing Brokerage acting as an agent for more than one seller without any claim by the Seller of conflict of interest. Unless otherwise agreed in writing between Seller and Listing Brokerage, any commission payable to any other brokerage shall be paid out of the commission the Seller pays the Listing Brokerage.

The Seller hereby appoints the Listing Brokerage as the Seller's agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase the Property.

**MULTIPLE REPRESENTATION:** The Seller hereby acknowledges that the Listing Brokerage may be entering into buyer representation agreements with buyers who may be interested in purchasing the Seller's Property. In the event that the Listing Brokerage has entered into or enters into a buyer representation agreement with a prospective buyer for the Seller's Property, the Listing Brokerage will obtain the Seller's written consent to represent both the Seller and the buyer for the transaction at the earliest practical opportunity and in all cases prior to any offer to purchase being submitted or presented.

The Seller understands and acknowledges that the Listing Brokerage must be impartial when representing both the Seller and the buyer and equally protect the interests of the Seller and buyer. The Seller understands and acknowledges that when representing both the Seller and the buyer, the Listing Brokerage shall have a duty of full disclosure to both the Seller and the buyer, including a requirement to disclose all factual information about the Property known to the Listing Brokerage.

However, the Seller further understands and acknowledges that the Listing Brokerage shall not disclose:

- that the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
- that the buyer may or will pay more than the offered price, unless otherwise instructed in writing by the buyer;
- the motivation of or personal information about the Seller or buyer, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the buyer should offer or the price the Seller should accept; and
- the Listing Brokerage shall not disclose to the buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the Property will be disclosed to both Seller and buyer to assist them to come to their own conclusions.

**Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.**

**MULTIPLE REPRESENTATION AND CUSTOMER SERVICE:** The Seller understands and agrees that the Listing Brokerage also provides representation and customer service to other sellers and buyers. If the Listing Brokerage represents or provides customer service to more than one seller or buyer for the same trade, the Listing Brokerage shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all sellers and buyers of the nature of the Listing Brokerage's relationship to each seller and buyer.

4. **REFERRAL OF ENQUIRIES:** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever, and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage by the Seller before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller's accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period described above, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.
5. **MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or willful act.
6. **WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.
7. **INDEMNIFICATION AND INSURANCE:** The Seller will not hold the Listing Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or willful act. The Seller agrees to indemnify and save harmless the Listing Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement or the accompanying data form. The Seller agrees to indemnify and save harmless the Listing Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury as a result of the Property being affected by any contaminants or environmental problems. The Seller warrants the Property is insured, including personal liability insurance against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, salespersons and brokers (Listing Brokerage) and any co-operating brokerage and all of its employees, representatives, salespersons and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.
8. **FAMILY LAW ACT:** The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the Seller's spouse has executed the consent hereinafter provided.
9. **FINDERS FEES:** The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.
10. **VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.
11. **USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the appropriate MLS® system(s), and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the database(s) of the appropriate MLS® system(s). The Seller hereby indemnifies and saves harmless the Brokerage and/or any of its employees, servants, brokers or sales representatives from any and all claims, liabilities, suits, actions, losses, costs and legal fees caused by, or arising out of, or resulting from the posting of any documents or other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) as aforesaid. The Seller acknowledges that the

INITIALS OF LISTING BROKERAGE:



INITIALS OF SELLER(S):




MLS® database is the property of the real estate board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the real estate board(s) may, during the term of the listing and thereafter, distribute the information in the MLS® database to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; during the term of the listing and thereafter, compile, retain and publish any statistics including historical MLS® data and retain, reproduce and display photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions which may be used by board members to conduct comparative analyses; and make such other use of the information as the Brokerage and/or real estate board(s) deem appropriate, in connection with the listing, marketing and selling of real estate during the term of the listing and thereafter.

In the event that this Agreement expires or is cancelled or otherwise terminated and the Property is not sold, the Seller, by initialling:

Does

Does Not

consent to allow other real estate board members to contact the Seller after expiration or other termination of this Agreement to discuss listing or otherwise marketing the Property.

- 12. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.
- 13. **CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Authority from the Seller to the Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.
- 14. **ELECTRONIC COMMUNICATION:** This Listing Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.

15. **SCHEDULE(S):** A ..... and data form attached hereto form(s) part of this Agreement.

**THE LISTING BROKERAGE AGREES TO MARKET THE PROPERTY ON BEHALF OF THE SELLER AND REPRESENT THE SELLER IN AN ENDEAVOUR TO OBTAIN A VALID OFFER TO PURCHASE THE PROPERTY ON THE TERMS SET OUT IN THIS AGREEMENT OR ON SUCH OTHER TERMS SATISFACTORY TO THE SELLER.**

(Authorized to enter into Listing Brokerage) ..... DATE: Nov 6/13 ..... (Name of Person Signing) Nick Yanovski

**THIS AUTHORITY HAS BEEN READ AND FULLY UNDERSTOOD BY ME AND I ACKNOWLEDGE THIS DATE I HAVE SIGNED UNDER SEAL.** Any representations contained herein or as shown on the accompanying data form respecting the Property are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

**FRONT CHURCH PROPERTIES LIMITED;**

(Name of Seller)

(Signature of Seller/Authorized Signing Officer) .....

(Seal)

DATE: Nov 6/13 .....

(Tel No.) .....

(Signature of Seller/Authorized Signing Officer) .....

(Seal)

DATE: .....

**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the listing of the Property herein pursuant to the provisions of the Family Law Act, R.S.O. 1990 and hereby agrees that he/she will execute all necessary or incidental documents to further any transaction provided for herein.

(Spouse) .....

(Seal)

DATE: .....

**DECLARATION OF INSURANCE**

The broker/salesperson Elliot Medoff, Noah Rechtsman, Nick Yanovski

(Name of Broker/Salesperson)

hereby declares that he/she is insured as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.

Noah Rechtsman

(Signature of Broker/Salesperson)

**ACKNOWLEDGEMENT**

The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a true copy of this Agreement on the ..... day of ..... 20 .....

(Signature of Seller) .....

Date: .....

(Signature of Seller) .....

Date: .....



**SCHEDULE "A" to LISTING AGREEMENT**

Notwithstanding the Commencement Date of the Listing Agreement shall be November 6th, 2013, the parties agree that the Property will not be placed on the Multiple Listing Service until November 14<sup>th</sup> 2013 to allow the Brokerage to prepare the necessary marketing materials.



# APPENDIX "D"



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #66

21400-0069 (LT)

PAGE 1 OF 2  
PREPARED FOR 9513410  
ON 2013/11/13 AT 14:54:27  
\* CERTIFIED BY LAND REGISTRAR IN ACCORDANCE WITH LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*



**PROPERTY DESCRIPTION:** PT WALKS AND GARDENS PL 5A TORONTO; PT STRIP OF LAND BTN WATERS EDGE AND TOP OF BANK PL 5A TORONTO; PT LT 30 S/S FRONT ST E PL 5A TORONTO AS IN CA570607; S/T CT273443; CITY OF TORONTO

**PROPERTY REMARKS:**

**ESTATE/QUALIFIER:**

FEE SIMPLE  
LT CONVERSION QUALIFIED

**RECENTLY:**

FIRST CONVERSION FROM BOOK

**PIN CREATION DATE:**

2003/08/25

**OWNERS' NAMES**

FRONT CHURCH PROPERTIES LIMITED

**CAPACITY SHARE**

ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CRCT/ CHCD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT ON FIRST REGISTRATION UNDER THE LAND TITLES ACT. TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2003/08/25 **						
CT273443	1978/01/06	TRANSFER EASEMENT			THE CORPORATION OF THE CITY OF TORONTO	C
CT703284	1985/02/07	AGREEMENT REMARKS: ENCROACHMENT			CITY OF TORONTO	C
CA582338	1999/01/20	NOTICE OF LEASE			CLEARNET PCS INC.	C
CA601205	1999/05/17	AGREEMENT REMARKS: ENCROACHMENT			CITY OF TORONTO	C
AT1262288	2006/09/22	TRANSFER REMARKS: PLANNING ACT STATEMENTS	\$5,200,000	ROSPIN (65 FRONT) CORP.	FRONT CHURCH PROPERTIES LIMITED	C
AT1262289	2006/09/22	CHARGE	\$2,900,000	FRONT CHURCH PROPERTIES LIMITED	ALTERNA SAVINGS AND CREDIT UNION LIMITED	C
AT1262430	2006/09/22	NO SEC INTEREST REMARKS: SECURITY INTEREST RE: AT1262289		\$1: ALTERNA SAVINGS AND CREDIT UNION LIMITED		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP  
NOTE: RESULTS WERE GENERATED VIA WWW.GEONAREHOUSE.CA





Ontario ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #66

21400-0069 (LT)

PAGE 2 OF 2  
PREPARED FOR 9513410  
ON 2013/11/13 AT 14:54:27

4 GROWHOUSE

\* CERTIFIED BY LAND REGISTRAR IN ACCORDANCE WITH LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT / CHKD
AT1961238	2008/11/28	NOTICE REMARKS: AT1262289		ALTERNA SAVINGS AND CREDIT UNION LIMITED	FRONT CHURCH PROPERTIES LIMITED	C
AT2335742	2010/03/25	BYLAW REMARKS: TO DESIGNATE THE PROPERTY AT 65 FRONT STREET EAST (JOHN SMITH AND COMPANY WAREHOUSE) AS BEING OF CULTURAL HERITAGE VALUE OR INTEREST.		CITY OF TORONTO		C
AT2711991	2011/06/03	NOTICE REMARKS: RE, AT1262289	\$1	ALTERNA SAVINGS AND CREDIT UNION LIMITED	FRONT CHURCH PROPERTIES LIMITED	C
AT2959596	2012/03/05	CHARGE	\$2,500,000	FRONT CHURCH PROPERTIES LIMITED	368238 ONTARIO LIMITED	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.  
NOTE: RESULTS WERE GENERATED VIA WWW.GROWHOUSE.CA

# APPENDIX "E"

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**Commercial List**

THE HONOURABLE	)	FRIDAY, THE 21 <sup>st</sup>
	)	
JUSTICE NEWBOULD	)	DAY OF MARCH, 2014

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 ON SCHEDULE B HERETO, TO BE  
BOUND BY THE RESULT

Defendant

**ORDER**

THIS MOTION, made by the Applicants for an Order varying the Orders of this Court dated December 18, 2013 and January 27, 2014, was heard in writing this day, at the court house, 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario, M5G 1R7.

ON READING the Affidavit of Jim Reitan sworn March 18, 2014 and the Exhibits thereto,

-2-

1. THIS COURT ORDERS that the Orders of December 18, 2013 and January 27, 2014 be varied to provide that the proceeds from the sale of the property at 65 Front Street East, net of items 1-5, 7 and 8 on the attached Direction be remitted to Schonfeld Inc. to be held pending further Order of this Court *or written agreement of the Manager.*

*DMJ*

---

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

MAR 21 2014

*MM*

**SCHEDULE "A" COMPANIES**

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investment 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 Inc.
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 Industrial 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 Inc.
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. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

**DIRECTION**

**TO: TODD HOLMES  
DEVRY SMITH FRANK LLP**

**AND TO: Any other solicitor acting for Front Church Properties Limited**

**RE: Sale of 65 Front Street East**


---

Front Church Properties Limited hereby authorizes and directs you to deal with the gross proceeds of sale (\$10,300,000) as follows:

1. Adjust for the first mortgage assumption of approximately \$5,805,500;
2. Pay out the second mortgage of \$2,500,000 plus accrued interest of approximately \$92,000;
3. Adjust for 2013 and 2014 property taxes (\$165,000 est.);
4. Pay to CRA the amount to discharge their HST lien (\$203,000 est.);
5. Adjust for any other standard amounts in the Statement of Adjustments (\$150,000 est.);
6. Hold back in trust the sum of \$650,000 to pay suppliers, trades and creditors to whom money is due from Front Church to ensure there are no lien claims against the property after Closing, with Front Church to provide a list of those suppliers, trades and creditors upon Closing;
7. Pay realty commissions to Cushman Wakefield LePage (\$349,170 est.);
8. Pay your legal fees and disbursements (\$30,000 est.);
9. Pay to Global Mills Inc. the sum of \$361,750; and
10. Any surplus to be paid to Canada Revenue Agency towards the corporate tax that will be due from Front Church Properties Limited due to the sale of 65 Front Street East.

Dated at Toronto, Ontario this 21st day of March, 2014

Front Church Properties Limited



Norma Walton  
President

I have the authority to bind the Corporation

DBDC SPADINA LTD., and those corporations listed on Schedule A hereto  
Applicants

-and-

NORMA WALTON et al.  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER**

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

**Peter H. Griffin (19527Q)**

Tel: (416) 865-2921

Fax: (416) 865-3558

Email: pgriffin@litigate.com

**Shara N. Roy (49950H)**

Tel: (416) 865-2942

Fax: (416) 865-3973

Email: sroy@litigate.com

Lawyers for the Applicants



# APPENDIX "F"

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

THE HONOURABLE	)	Tuesday, the 20th
	)	
D.M. JUSTICE BROWN	)	day of May, 2014

B E T W E E N:

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

*AS*  
**AMENDED ORDER**

THIS MOTION brought by the Respondents for an order varying the Orders of this Court dated December 18, 2013, January 27 and March 21, 2014 in respect of the property known municipally as 65 Front Street East, Toronto, Ontario (the "Property") and vesting in the Purchaser, 2410077 Ontario Ltd., the right, title and interest in the Property currently held by the Vendor Front Church Properties Limited (the "Vendor") was heard this day at 330 University Avenue, Toronto, Ontario.

- 2 -

ON READING the motion records of the Respondent Norma Walton returnable April 1, 2014 and April 29, 2014, the Affidavit of Ken Froese sworn April 28, 2014; the two Affidavits of the Respondent Norma Walton sworn May 5, 2014; the responding motion records of the Applicants returnable April 1, 2014 and April 29, 2014 of the Applicants' Compendium and Supplementary Compendium; the Inspector's Report dated April 23, 2014, the updated Inspector's Report dated May 5, 2014;

ON READING the materials and hearing from the Respondent Norma Walton, counsel for the other Respondents, counsel for the Applicants, counsel for the Manager and counsel for certain other interested parties, but not counsel for Cushman & Wakefield Ltd., and reviewing correspondence from counsel for Her Majesty the Queen in Right of Canada as Represented by the Minister of National Revenue ("CRA"), and upon Cushman & Wakefield Ltd. not having been given notice of this motion and therefore not having had a chance to appear;

1. THIS COURT ORDERS that the time for service of the notices of motion and motion records is hereby abridged, as necessary, so that this motion is properly returnable today.
2. THIS COURT ORDERS that the Order of the Honourable Mr. Justice Newbould made March 21, 2014 is hereby varied to provide that the sale proceeds from the sale of 65 Front Street East, Toronto, Ontario will be paid in accordance with this Order.
3. THIS COURT ORDERS that the Vendor shall, from the sale proceeds of 65 Front Street East, make the following payments upon closing (the "Primary Payments"):

- 3 -

- (a) Apply a credit in the approximate amount of \$5,887,500 to the purchase price of the Property in favour of the Purchaser in respect of the assumption of the first mortgage registered on the Property in favour of Alterna Savings by the Purchaser;
- (b) Payment of the second mortgage registered on the Property in favour of 368230 Ontario Limited in the amount of principal, interest and \$85,000 plus HST in legal fees, being the approximate amount of \$2,720,000;
- (c) Payment of property taxes in arrears for 2013 and adjustments for 2014 property taxes in the approximate amount of \$190,000;
- (d) Standard closing adjustments in the statement of adjustments in the approximate amount of \$150,000; and
- (e) The vendor's legal fees of \$30,000 plus HST.

4. THIS COURT ORDERS that the remaining balance from the sale proceeds of the Property be paid to and be held in trust by Goodmans LLP in trust, being counsel to Schonfeld Inc. in its capacity as Manager.

5. THIS COURT ORDERS AND DECLARES that after the Primary Payments are satisfied, upon Closing of sale of the Property, all of the Vendor's right, title and interest in and to the Property shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims")

-4-

including: (i) the lien in favour of Canada Revenue Agency registered against the Property; (ii) the construction lien claims registered against the Property; (iii) the notice of claim registered by Collins Barrow (Toronto) Limited, the court appointed Receiver of Global Mills Inc.; (iv) the Commission payment due to Cushman & Wakefield Ltd. (the "Secondary Payments") and for greater certainty, this Court orders that all of the Secondary Payments affecting or relating to the Property are hereby expunged and discharged as against the Property.

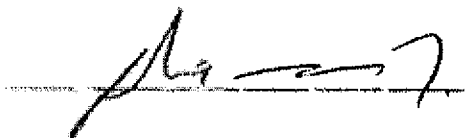
6. THIS COURT ORDERS that upon the registration in the Land Registry Office for the City of Toronto of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Vendor of a Vendor's Certificate in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

7. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, and that from and after the delivery of the Vendor's Certificate all Claims shall attach to the net proceeds from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. THIS COURT ORDERS that following Closing of the sale of the Property, Schonfeld Inc. in its capacity as Manager in these proceedings, will bring a motion for approval of an Order of this Court approving a Claims Process to determine the validity, quantum and priority of the

Secondary Payments and any claims of the Applicants that the Court may order in respect of the Property.

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Manager and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Manager, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Manager and its agents in carrying out the terms of this Order.



COMMUNICATIONS SECTION  
ON 11-03-14  
LE 1105 12.00 14



JUN 10 2014

**Schedule A – Form of Vendor’s Certificate**

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

**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, 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**

**VENDOR’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Brown of the Ontario Superior Court of Justice (the "Court") dated May 20, 2014, the Vendor was directed to pay to Schonfeld Inc., in its capacity as the Court appointed Manager in these proceedings (the "Manager") the remaining

- 7 -

balance from the sale proceeds from the sale of 65 Front Street East (the "Property") after the Vendor has paid the Primary Payments as defined in said Order.

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE VENDOR CERTIFIES the following:

1. The Vendor has paid to the Manager the remaining balance from the sale proceeds from sale of the Property after the Primary Payments were made; and
2. This Certificate was delivered by the Vendor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FRIEDMAN & ASSOCIATES LLP as  
Vendor's lawyer**

Per: \_\_\_\_\_  
Name:  
Title:



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**Schedule B – Property**

The real property located at 65 Front Street East, Toronto, Ontario

PIN 21400 – 0069 LT

PART WALKS AND GARDENS PLAN 5A TORONTO; PART STRIP OF LAND BETWEEN WATERS  
EDGE AND TOP OF BANK PLAN 5A TORONTO; PART LOT 30 SOUTHSIDE FRONT STREET EAST  
PLAN 5A TORONTO AS IN CA570607; SUBJECT TO CT273443; CITY OF TORONTO

65 FRONT ST E

TORONTO

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**ORDER****Schedule C – Claims to be deleted and expunged from title to Real Property**

- (a) CRA HST lien claim Registration Number AT3488865;
- (b) Construction lien claims including but not limited to Registration Numbers:
  - (i) AT3557508 Laser Heating and Air Conditioning Inc.;
  - (ii) AT3557855 Net Drywall & Acoustics Ltd.;
  - (iii) AT3561737 Roofing Medics Ltd.;
  - (iv) AT3563233 Blue Air Mechanical Inc.;
  - (v) AT3565588 Gentry Environmental Systems Ltd.;
  - (vi) AT3565641 Abaco Glass Inc.;
  - (vii) AT3566416 Maxguard Alarm and Security Company Ltd.;
  - (viii) AT3566462 Net Drywall & Acoustics Ltd.;
  - (ix) AT3567140 Ample Electric Inc.;
  - (x) AT3567258 1771105 Ontario Inc.;
  - (xi) AT3567558 G-Line Sun Control Inc.;
  - (xii) AT3567578 Kerestely, Zoltan;
  - (xiii) AT3568362 WBA Architects and Engineers Inc.;
  - (xiv) AT3568578 Engcon Construction;
  - (xv) AT3570270 Carcol Ltd.;
  - (xvi) AT3570298 Caiquan Construction Co.;
  - (xvii) AT3572541 Memme Joseph;
  - (xviii) AT3573033 World Electric;
  - (xix) AT3573412 MediGroup Incorporated;
  - (xx) AT3595633 Gentry Environmental Systems Ltd.; and
  - (xxi) AT3600899 Laser Heating & Air Conditioning Inc.

- 10 -

**ORDER**

- (c) Collins Barrow Receiver's notice of claim Registration Number AT3574922; and
- (d) Commission payment to Cushman Wakefield LePage.

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*ORDER***Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property****(unaffected by the Vendor's Certificate)**

Purchaser is assuming the first mortgage registered by Alterna Savings pursuant to Registration Numbers AT1262289 and AT1262430 and AT1961238 and AT2711991

Vendor is paying out and discharging the second mortgage registered by 368230 Ontario Limited, Registration Number AT2959596

---

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

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

**ONTARIO SUPERIOR  
COURT OF JUSTICE****[COMMERCIAL LIST]**

Proceeding commenced at:

TORONTO

**ORDER**NORMA WALTON  
30 Hazelton Avenue  
Toronto, Ontario M5R 2E2Tel: (416) 489-9790 x103  
Fax: (416) 489-9973  
nwalton@roseandthistle.ca

Respondent

# APPENDIX "G"

**Birch, John**

**From:** Silver, Lorne  
**Sent:** Wednesday, June 11, 2014 1:53 PM  
**To:** Empey, Brian; 'Elena Piperopoulos'; Norma Walton  
**Cc:** Shara N. Roy; Dunn, Mark; Peter Griffin; Paul-Erik Veeli; Mark Goldberg; Todd Holmes; 'dbrooker@smhilaw.com'; 'arnold@azweiglawn.com'; 'gail@tibollo.net'; 'lkotylo@yahoo.com'; 'Jack Copelovici'; 'SafiaLakhani@glaholt.com'; 'verbeeklaw@aim.com'; 'tyler@lkilaw.ca'; Birch, John; 'Edward.Park@justice.gc.ca'; 'mallory@azweiglawn.com'; 'bluesang@gbls.com'; 'cohen@cohensabsay.com'  
**Subject:** RE: 65 Front Street - Amended Order Required

Please be advised that in good faith and without prejudice to any position that may be taken in the Claims Process, Cushman will deliver, to Brian's attention, a cheque in the amount of \$200,000 payable to Goodmans, in trust, representing the deposit being held in respect of 65 Front Street. My understanding is that Cushman will deliver this cheque either later today or tomorrow.



**Lorne Silver**  
 Direct: 416 869 5490 • Fax: 416 640 3018 • lsilver@casselsbrock.com  
 2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, M5H 3C2  
[www.casselsbrock.com](http://www.casselsbrock.com)  
 Services provided through a Professional Corporation

**From:** Empey, Brian [mailto:bempey@goodmans.ca]  
**Sent:** Wednesday, June 11, 2014 12:57 PM  
**To:** 'Elena Piperopoulos'; Norma Walton  
**Cc:** Shara N. Roy; Dunn, Mark; Peter Griffin; Paul-Erik Veeli; Mark Goldberg; Todd Holmes; 'dbrooker@smhilaw.com'; 'arnold@azweiglawn.com'; 'gail@tibollo.net'; Silver, Lorne; 'lkotylo@yahoo.com'; 'Jack Copelovici'; 'SafiaLakhani@glaholt.com'; 'verbeeklaw@aim.com'; 'tyler@lkilaw.ca'; Birch, John; 'Edward.Park@justice.gc.ca'; 'mallory@azweiglawn.com'; 'bluesang@gbls.com'; 'cohen@cohensabsay.com'  
**Subject:** RE: 65 Front Street - Amended Order Required

Thank you. The Vendor's Certificate should not be delivered unless and until the \$200K deposit is paid over to us in trust as well.

**Brian F. Empey**  
 Goodmans LLP

416.597.4194  
[bempey@goodmans.ca](mailto:bempey@goodmans.ca)

**From:** Elena Piperopoulos [mailto:elena@legalpro.ca]  
**Sent:** Wednesday, June 11, 2014 12:38 PM  
**To:** Norma Walton  
**Cc:** Shara N. Roy; Dunn, Mark; Peter Griffin; Paul-Erik Veeli; Empey, Brian; Mark Goldberg; Todd Holmes; 'dbrooker@smhilaw.com'; 'arnold@azweiglawn.com'; 'gail@tibollo.net'; 'lsilver@CasselsBrock.com'; 'lkotylo@yahoo.com'; 'Jack Copelovici'; 'SafiaLakhani@glaholt.com'; 'verbeeklaw@aim.com'; 'tyler@lkilaw.ca'; 'jbirch@casselsbrock.com'; 'Edward.Park@justice.gc.ca'; 'mallory@azweiglawn.com'; 'bluesang@gbls.com'; 'cohen@cohensabsay.com'  
**Subject:** RE: 65 Front Street - Amended Order Required

Hi Norma,

We are pleased to confirm that this transaction is now complete and we are in the process of couriering certified funds to the appropriate parties.

Cheers,

*Elena Piperopoulos*

Elena Piperopoulos  
Law Clerk



**FRIEDMAN & ASSOCIATES**  
BARRISTERS & SOLICITORS

150 Ferrand Drive, Suite 802  
Toronto, ON M3C 3E5

Phone: (416) 496-3340 ext. 158

Fax: (416) 497-3809

Email: [elena@legalpro.ca](mailto:elena@legalpro.ca)

**From:** Norma Walton [<mailto:nwalton@roseandthistle.ca>]

**Sent:** Tuesday, June 10, 2014 5:00 PM

**To:** 'dbrooker@smhilaw.com'; 'arnold@azweiglawn.com'; 'gail@tibollo.net'; 'silver@CasselsBrock.com'; 'lkotylo@yahoo.com'; 'Jack Copelovici'; 'SafiaLakhani@glaholt.com'; 'verbeeklaw@aim.com'; 'tyler@lkilaw.ca'; 'jbirch@casselsbrock.com'; 'Edward.Park@justice.gc.ca'; 'mallory@azweiglawn.com'; 'bluesang@gbls.com'; 'cohen@cohensabsay.com'

**Cc:** Shara N. Roy; Dunn, Mark; Peter Griffin; Paul-Erik Veel; Empey, Brian; Mark Goldberg; Todd Holmes; Elena Piperopoulos

**Subject:** RE: 65 Front Street - Amended Order Required

Thank you to all of you who responded. I am attaching the Amended Order obtained today. Note the four changes as set out above are underlined in the Order.

We anticipate the Front Street sale will close tomorrow.

Regards,

Norma

**From:** Norma Walton

**Sent:** Monday, June 09, 2014 4:16 PM

**To:** 'dbrooker@smhilaw.com'; 'arnold@azweiglawn.com'; 'gail@tibollo.net'; 'silver@CasselsBrock.com'; 'lkotylo@yahoo.com'; 'Jack Copelovici'; 'SafiaLakhani@glaholt.com'; 'verbeeklaw@aim.com'; 'tyler@lkilaw.ca'; 'jbirch@casselsbrock.com'; 'Edward.Park@justice.gc.ca'; 'mallory@azweiglawn.com'; 'bluesang@gbls.com'; 'cohen@cohensabsay.com'

**Cc:** Shara N. Roy; Dunn, Mark; Peter Griffin; Paul-Erik Veel; Empey, Brian; Mark Goldberg; Todd Holmes ([th@legalpro.ca](mailto:th@legalpro.ca)); Elena Piperopoulos ([elena@legalpro.ca](mailto:elena@legalpro.ca))

**Subject:** 65 Front Street - Amended Order Required

Dear all,

I hope you are all well.



We need to amend the Front Street Order to facilitate the closing. There are four changes, all contained in Schedules B, C and D:

1. The PIN number was wrong. Schedule B shows the corrected PIN.
2. There were two Certificates registered on title after our last search, the last being registered Friday after His Honour signed the Order. They are now also listed in Schedule B; and
3. Alterna, the first mortgage lender, has requested that another of their registered instruments be Included in Schedule D.

I have underlined all changes. Please confirm they are agreeable.

We are ready to close, pending this amended Order being signed. We are in front of Mr. Justice Brown at 8 am tomorrow morning, at which point I expect the amended Order will be signed and the closing will be completed.

Thanks,

Norma Walton B.A., J.D., M.B.A.  
THE ROSE AND THISTLE GROUP LTD.  
30 Hazelton Avenue  
Toronto, Ontario, Canada M5R 2E2  
Tel: (416) 489-9790 Ext. 103  
Fax: (416) 489-9973

\*\*\*\*\* Attention \*\*\*\*\*

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# APPENDIX "H"

**Re/Max Garden City Realty Inc. v. 828294 Ontario Inc., 1992 CarswellOnt 589**  
 1992 CarswellOnt 589, [1992] O.J. No. 1080, 25 R.P.R. (2d) 11, 33 A.C.W.S. (3d) 842...

1992 CarswellOnt 589  
 Ontario Court of Justice (General Division)

Re/Max Garden City Realty Inc. v. 828294 Ontario Inc.

1992 CarswellOnt 589, [1992] O.J. No. 1080, 25 R.P.R. (2d) 11, 33 A.C.W.S. (3d) 842, 3 W.D.C.P. (2d) 411, 8 O.R. (3d) 787

**RE/MAX GARDEN CITY REALTY INC. v. 828294 ONTARIO INC., NICHOLAS  
 LOURAS and ARTHUR D. FLEMING**

Philp J.

Judgment: May 5, 1992  
 Docket: Doc. 27,368/91

Counsel: *D.C. DeLorenzo*, for plaintiff.  
*D. Topari* and *D. Parayeski*, for defendants.

Subject: Property; Contracts; Torts

**Related Abridgment Classifications**

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

**Headnote**

**Agency --- Real estate agents --- Agent's relationship with third person --- Where agent's commission payable by third person**

**Contracts --- Contracts under seal --- Execution --- Sealing --- What constitutes seal**

Agreements of purchase and sale --- Particular provisions --- Clause in agreement directing vendor's solicitor to pay real estate agent's commission out of closing proceeds --- Agreement under seal --- Clause constituting equitable assignment --- Agreement under seal being enforceable as equitable assignment.

Real estate agents --- Commission --- Assignment --- Equitable assignment --- Clause contained in agreement of purchase and sale directing vendor's solicitor to pay real estate agent's commission out of closing proceeds --- Agreement under seal --- Clause constituting equitable assignment --- Solicitor in breach of clause by accepting new direction.

The defendant numbered company executed an irrevocable direction to its solicitor, as part of an agreement of purchase and sale, to pay the plaintiff real estate agent the unpaid balance of the commission and taxes out of the proceeds of the sale of certain lands. The agreement contained a small printed black circle resembling a seal. Above the signature of the

**Re/Max Garden City Realty Inc. v. 828294 Ontario Inc., 1992 CarswellOnt 589**  
 1992 CarswellOnt 589, [1992] O.J. No. 1080, 25 R.P.R. (2d) 11, 33 A.C.W.S. (3d) 842...

numbered company's authorized signatory were the standard words "In witness whereof I have hereunto set my hand and seal." There were also the words "Signed, sealed and delivered in the presence of" next to the space where a witness would sign.

When the sale closed, the solicitor, in spite of his knowledge of the irrevocable direction, accepted from the defendant L and the numbered company a further authorization to pay the net real estate commission due and owing to the numbered company. In accepting such direction, the solicitor obtained from L, as president of the numbered company and in his personal capacity, indemnification to save the defendant solicitor F harmless from any and all actions arising from non-payment of the net real estate commission owing to the plaintiff with respect to the transaction. The plaintiff sued for the real estate commission owing to it and moved for summary judgment. F brought a motion for summary judgment for indemnification against L and the numbered company.

**Held:**

The motions were granted.

The irrevocable direction was an equitable assignment, by the numbered company to the plaintiff, of funds that would be coming into possession of its solicitor when the transaction was completed. It was an assignment under seal, and constituted an enforceable equitable assignment. For F to disburse that amount, which was clearly described as the net commission due and owing to the plaintiff, was to breach the equitable assignment made by L on behalf of the numbered company to the plaintiff. F breached his clear direction under seal to pay the balance of the commission to the plaintiff.

The solicitor was entitled to summary judgment against the numbered company and L on the basis of the indemnification agreement.

**Table of Authorities**

**Cases considered:**

*Family Trust Corp. v. Morra* (1987), 44 R.P.R. 250, 60 O.R. (2d) 30, 39 D.L.R. (4th) 762, 24 O.A.C. 6 (Div. Ct.)  
 ---- distinguished

*Pizza Pizza Ltd. v. Gillespie* (1990), 75 O.R. (2d) 225, 45 C.P.C. (2d) 168, 33 C.P.R. (3d) 515 (Gen. Div.) —  
 referred to

**Rules considered:**

Ontario, Rules of Civil Procedure ----

R. 20

r. 20.04

Motions for summary judgment for payment of real estate commission and for indemnification under indemnification

**Re/Max Garden City Realty Inc. v. 828294 Ontario Inc., 1992 CarswellOnt 589**

1992 CarswellOnt 589, [1992] O.J. No. 1080, 25 R.P.R. (2d) 11, 33 A.C.W.S. (3d) 842...

agreement.

*Philp J. (orally):*

1 This is a motion by the plaintiff for summary judgment against the defendant Arthur D. Fleming ("Fleming"). It is based on an irrevocable direction given by the defendant Nicholas Louras ("Louras") on behalf of the defendant 828294 Ontario Inc. ("828"), in which he instructed his solicitor to pay to the plaintiff the unpaid balance of the commission and taxes out of the proceeds of the sale of certain lands by 828 to one Josefina Vrbik in trust. The solicitor for 828 and Louras was Fleming.

2 The transaction was completed on June 21, 1991, and the proceeds of the sale were paid to Fleming, who held them in trust for 828, the vendor of the transaction. Fleming was aware of the irrevocable direction signed by Louras on behalf of 828. In spite of his knowledge of this irrevocable direction, he accepted from Louras and 828 a further authorization and direction to pay the sum of \$35,348, being the net real estate commission due and owing to the plaintiff, to 828 instead of to the plaintiff. In accepting such a direction, Fleming further obtained from Louras, as president of 828 and in his personal capacity, an indemnification to save Fleming "harmless from any and all actions, suits, litigation, causes of action, claims, costs, and demands whatsoever for damages, loss or injury howsoever arising, which may be sustained by" Fleming. The indemnification refers specifically to the "non-payment of the net real estate commission owing to Re/Max Garden City Realty Inc. with respect to the above-noted transaction of purchase and sale." The authorization goes on to state that Louras acknowledged and confirmed that the new direction was contrary to the irrevocable direction that he gave in the subject agreement of purchase and sale, and he made the new direction "with the full knowledge of any and all consequences which may result thereto."

3 The commission payable was \$60,000. The amount paid was \$28,600, leaving an outstanding balance owing on the commission of \$35,600. Incidentally, the statement of claim provides for the payment of \$35,348, and the relief requested on this motion includes an amendment of the amount claimed to \$35,600, and I so allow that relief.

4 The defendant Fleming in his affidavit confirms the above-recited facts and requests in his notice of motion a summary judgment against Louras and 828 in the event that summary judgment is granted against him by reason of the indemnification given by Louras and 828 in the above-mentioned authorization.

5 The affidavit of the defendant Nicholas Louras, dated April 14, sets out that he blames the plaintiff's agent and employee, one Len Lucas, for the failure of another agreement, which he called "more lucrative," to sell to one Tony Serafini. He also, in his affidavit, states that he is filing a third party claim in an action brought by Serafini as plaintiff against the plaintiff in the action before me.

6 There was no factum filed by the solicitor for 828 and Louras, but it would appear from the affidavits that there is some issue between Louras and 828 and one Len Lucas. Attached to his affidavit are the pleadings in the action of Serafini versus 828, including the third party claim against Len Lucas, Re/Max Welland Realty Limited and Re/Max Garden City Inc. There may very well be an issue there that is clearly not capable of being resolved by way of summary judgment, and I do not intend, nor am I asked, to deal with the merits of any claim that 828 and Louras have by way of set-off, counterclaim or cross-claim, whatever, against the plaintiff in the action before me.

Re/Max Garden City Realty Inc. v. 828294 Ontario Inc., 1992 CarswellOnt 589

1992 CarswellOnt 589, [1992] O.J. No. 1080, 25 R.P.R. (2d) 11, 33 A.C.W.S. (3d) 842...

7 The issue before me is clearly one of interpretation of the agreement made by Louras on behalf of 828, including the irrevocable direction contained in the agreement of purchase and sale which was obtained by the plaintiff as agent for 828. The agreement of purchase and sale is attached to the affidavit of Wayne Quirk, who is the president of the plaintiff corporation.

8 There is a question of whether or not proper consideration was given by the plaintiff to 828 and Louras, which would enable him to give the irrevocable direction.

9 The case that has come before me from the Divisional Court of Ontario is *Family Trust Corp. v. Morra* (1987), 44 R.P.R. 250, 60 O.R. (2d) 30, 39 D.L.R. (4th) 762, 24 O.A.C. 6. In that case, Trainor J. held in a similar clause contained in an agreement of purchase and sale that there was no consideration from the agent for the vendor to complete an irrevocable direction to his solicitor and, therefore, in that case, the previous decision of the trial judge was reversed and the agent's right to recover under the irrevocable direction from the solicitor was not allowed. In that case, as pointed out by counsel for the plaintiff, there was no seal contained in the agreement signed by the vendor; on the contrary, the instructions in the agreement opposite the signature of the vendor read "affix seal." No such seal was affixed. Without a seal, the need for consideration must prevail.

10 In the tenth edition of *Cheshire and Fifoot's Law of Contract* (London: Butterworths, 1981), at p. 462, the author states:

a gratuitous agreement to assign a chose in action, like a gratuitous promise to give any form of property, is nudum pactum unless made under seal, and creates no obligation either legal or equitable.

On the basis of that principle, the Divisional Court ruled in the case of *Family Trust Corp. v. Morra* that the agreement could not stand.

11 It appears clear to me that the irrevocable direction is, in effect, an assignment by 828 to the plaintiff of moneys that would be coming into the possession of its solicitor when the purchase was completed. It was an assignment under seal and, in my view, amounted to an equitable assignment which is enforceable. The agreement of purchase and sale before me has printed opposite the signature of Louras a black circle that resembles a seal, and under that circle is the word "(Seal)." It is clear from the document that the parties intended that that black printed circle be deemed a seal. Above the signature of Louras appears the printed words "In witness whereof I have hereunto set my hand and seal," and to the left where the witness signed are the words "Signed, sealed and delivered in the presence of."

12 For the defendant Fleming to pay that money, which is clearly described as the net real estate commission due and owing to Re/Max Garden City Realty Inc., was to breach the equitable assignment made by Louras on behalf of 828 to the plaintiff.

13 I should also state that the defendant, Louras, in cross-examination on his affidavit, agreed that when he signed the acceptance of the agreement and agreed with the plaintiff to pay him the commission of \$60,000 as set out in the listing

Re/Max Garden City Realty Inc. v. 828294 Ontario Inc., 1992 CarswellOnt 589  
1992 CarswellOnt 589, [1992] O.J. No. 1080, 25 R.P.R. (2d) 11, 33 A.C.W.S. (3d) 842...

agreement that he intended that 828 should pay the plaintiff the \$60,000 commission after closing. By irrevocably instructing his solicitor to pay directly to the listing broker the unpaid balance he was, indeed, carrying out his intention, as it then was. The transaction was closed, the money was paid, but Fleming breached his clear direction under seal to pay the balance of the commission to the plaintiff.

14 I see no evidence or conflict that gives me any chance of finding a genuine issue to be tried under r.20.04 of the Civil Rules of Procedure. As Henry J., in *Pizza Pizza Ltd. v. Gillespie* (1990), 75 O.R. (2d) 225, 45 C.P.C. (2d) 168, 33 C.P.R. (3d) 515 (Gen. Div.), stated, the new R.20, which came into force in 1985, contemplated a radically new attitude to motions for judgment. It was designed to screen out claims that ought not to proceed to trial if they cannot survive the "good hard look" test.

15 I am satisfied, having taken a "good hard look," that the plaintiff is entitled to its judgment against Arthur D. Fleming for the sum of \$35,600, and that the defendant Fleming is entitled to a summary judgment against 828 and Louras on the basis of the indemnification agreement that he received from them when they instructed him to pay the balance of the commission to them rather than to the plaintiff. Fleming, therefore, will be entitled to be indemnified for any moneys paid by him to the plaintiff, and to a judgment against 828 and Louras for that purpose.

16 The action will, of course, have to continue to determine whether or not 828 and Louras have a defence to the issue of whether or not one Len Lucas was negligent in the failure of the previous sale to close. There may also be an issue to be tried as to whose fault, if any, caused the number of suites to be listed as 23 rather than 22. There is clearly a genuine issue to be tried on those issues.

17 What about costs, gentlemen?

**Submissions by all counsel.**

18 Having heard submissions from counsel, there will be prejudgment interest payable on the \$35,600 from June 21, 1991, to today at 10 per cent per annum. Costs of the plaintiff on a party and party basis will be fixed at \$3,500, inclusive of disbursements. There will be no stay of execution.

*Motions allowed.*

End of Document

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# APPENDIX "I"



Vysek v. Nova Gas International Ltd., 2002 ABQB 389, 2002 CarswellAlta 511  
 2002 ABQB 389, 2002 CarswellAlta 511, [2002] 10 W.W.R. 52, [2002] A.W.L.D. 269...

2002 ABQB 389  
 Alberta Court of Queen's Bench

Vysek v. Nova Gas International Ltd.

2002 CarswellAlta 511, 2002 ABQB 389, [2002] 10 W.W.R. 52, [2002] A.W.L.D. 269, 314 A.R. 370, 3 P.P.S.A.C.  
 (3d) 269, 49 R.P.R. (3d) 307, 4 Alta. L.R. (4th) 269

**Peter Vysek, Eliska Vysek and Vladimir Vysek (Plaintiffs) and Nova Gas  
 International Ltd. and W.G. (Bill) Howard Memorial Foundation (Defendants)**

Chrumka J.

Heard: February 28, 2002  
 Judgment: April 16, 2002  
 Docket: Calgary 9701-06747

Counsel: No one for Eliska Vysek and Vladimir Vysek  
*Gary Draper, Mary Wyatt Sindlinger*, for Defendant, Nova Gas International Ltd.  
*Brent Mescall*, for Defendant, W.G. (Bill) Howard Memorial Foundation  
*John Drummond, David McKenzie*, for Toronto-Dominion Bank and TD Waterhouse Investor Services (Canada) Inc.  
 No one for Re/Max Classic Realty

Subject: Corporate and Commercial; Property

#### Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

#### Headnote

##### Execution --- Priorities between execution creditors and third parties — Real property — General

Plaintiffs' action against defendants was dismissed and costs were awarded to defendants — Defendants filed writs of enforcement — Plaintiffs gave bank irrevocable assignment of sale proceeds to secure bridge financing for purchase of new property — Defendants obtained attachment order on proceeds from sale of plaintiffs' home — Attachment order was served on plaintiffs' bank, which froze accounts — Defendants brought application for order declaring their priority to proceeds of home over interest of bank and real estate broker — Application dismissed — Irrevocable assignment was not security interest and bank was owner of proceeds assigned to it — Funds were ordered paid to bank — Listing agreement for house assigned remainder of commission to real estate broker — Neither Civil Enforcement Act nor Personal Property Security Act applied to assignments in order to determine priorities — Civil Enforcement Act, S.A. 1994, c. C-10.5 — Personal Property Security Act, S.A. 1988, c. P-4.05.

##### Execution --- Exigibility — Real property interests — Exemptions applying to real property — Residency and occupation requirements

Plaintiffs' action against defendants was dismissed and costs were awarded to defendants — Defendants filed writs of

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enforcement — Plaintiffs gave bank irrevocable assignment of sale proceeds to secure bridge financing for purchase of new property — Defendants obtained attachment order on proceeds from sale of plaintiffs' home — Attachment order was served on plaintiffs' bank, which froze accounts — Defendants brought application for order declaring that proceeds of sale were not subject to exemption from execution — Application granted — Principal residence of enforcement debtor was exempt from execution under Civil Enforcement Act — At time of attachment order, new house was plaintiff's principal residence — Sale was not forced under Act but was voluntary sale — Plaintiffs were entitled to exemption for new house — Civil Enforcement Act, S.A. 1994, c. C-10.5.

**Choses in action — Priorities — Between assignee and judgment creditor of assignor**

Plaintiffs' action against defendants was dismissed and costs were awarded to defendants — Defendants filed writs of enforcement — Plaintiffs gave bank irrevocable assignment of sale proceeds to secure bridge financing for purchase of new property — Defendants obtained attachment order on proceeds from sale of plaintiffs' home — Attachment order was served on plaintiffs' bank, which froze accounts — Defendants brought application for order declaring their priority to proceeds of home over interest of bank and real estate broker — Application dismissed — Irrevocable assignment was not security interest and bank was owner of proceeds assigned to it — Funds were ordered paid to bank — Listing agreement for house assigned remainder of commission to real estate broker — Neither Civil Enforcement Act nor Personal Property Security Act applied to assignments in order to determine priorities — Marshalling and subrogation were not appropriate — Civil Enforcement Act, S.A. 1994, c. C-10.5 — Personal Property Security Act, S.A. 1988, c. P-4.05.

**Creditors and debtors — Garnishment by creditor — Attachability — Proceeds of commercial transactions — Land transactions — Money due under agreement of purchase and sale**

Plaintiffs' action against defendants was dismissed and costs were awarded to defendants — Defendants filed writs of enforcement — Plaintiffs gave bank irrevocable assignment of sale proceeds to secure bridge financing for purchase of new property — Defendants obtained attachment order on proceeds from sale of plaintiffs' home — Attachment order was served on plaintiffs' bank, which froze accounts but affiliate released funds to plaintiffs — Defendants brought application for order declaring their priority to proceeds of home over interest of bank — Application dismissed — Irrevocable assignment was not security interest and bank was owner of proceeds assigned to it — Funds were ordered paid to bank — Defendants did not serve head office of affiliate with attachment order — As affiliate was not properly served at time funds were released, it was not required to repay money to defendants.

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s. 2 “affiliate” — referred to

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s. 1(1)(q) “enforcement debtor” — considered

s. 1(1)(ss) “writ” — considered

s. 31(b)(xi) — referred to

s. 35 — referred to

s. 88(g) — considered

s. 91 — referred to

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*Civil Enforcement Act*, S.A. 1994, c. C-10.5  
*Civil Enforcement Regulation*, Alta. Reg. 276/95

s. 37(1)(e)

s. 37(2)(a)

APPLICATION by judgment creditors for determination of priority respecting proceeds of sale of debtors' house.

*Chrumka J.:*

**INTRODUCTION**

1 This is an application by Nova Gas International Ltd. (“Nova”) and the W.G. (Bill) Howard Memorial Foundation (the “Foundation”) (together, the “Judgment Creditors”). They are Judgment Creditors of Peter Vysek, Eliska Vysek and Vladimir Vysek (collectively, I refer to Eliska and Vladimir Vysek, or, depending on the context, to all three family members, as the “Vyseks”), pursuant to the August 31, 2001 decision of Rawlins J. (the “Trial Decision”). The Trial Decision dismissed all of the Vyseks' claims against Nova and the Foundation relating to damages suffered by Peter Vysek. Justice Rawlins awarded Nova costs of \$649,601.64 (later increased to \$770,701.64) and the Foundation costs of \$199,106.13.

2 Prior to the release of the Trial Decision, Eliska and Vladimir Vysek sold their Calgary home (the “Calgary Property”) and purchased a home in Comox, British Columbia (the “Comox Property”). On learning from the Vyseks of their pending move out of Alberta, Nova and the Foundation sought and obtained an *ex parte* order (before the Trial Decision was issued) attaching the proceeds of the Calgary Property (the “Proceeds”) and freezing Eliska and Vladimir Vysek's bank accounts. The details of these and other orders and proceedings are discussed in the next section of these Reasons.

3 Nova and the Foundation seek an order that:

1. Nova and the Foundation have priority to the Proceeds over the claims of the Toronto-Dominion Bank (the “TD Bank”) and Re/Max Classic Realty (“Re/Max”);
2. alternatively, Nova and the Foundation are subrogated to the TD Bank's rights against the Comox Property, as a result of the TD Bank's exercise of its rights to the monies paid into Court to the prejudice of Nova and the Foundation;

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3. alternatively, the TD Bank is required to assign its security in the Comox Property to Nova and the Foundation as a condition of receiving payment from the monies paid into Court;
4. the Vyseks are not entitled to any exemption from civil enforcement against the Proceeds, as the Calgary Property was not their principal residence at the material time; and
5. the TD Bank and TD Waterhouse Investor Services (Canada) Inc. ("TD Waterhouse") pay Nova and the Foundation \$3,780 as monies wrongfully released to the Vyseks.

## FACTS

4 The Vyseks sued Nova and the Foundation for breach of contract, breach of fiduciary duty and negligence. The plaintiffs alleged that Peter Vysek (the son of the other two plaintiffs) had contracted an infectious disease while working for Nova in Malaysia, and that this disease had caused Peter brain damage. They claimed damages for various consequences of that disease.

5 The trial was heard by Rawlins J. starting November 14, 2000. She reserved her decision on May 31, 2001. At the commencement of the action and throughout the trial, Eliska and Vladimir Vysek resided at the Calgary Property. Peter Vysek lived in Calgary at the commencement of the action, but moved to Vancouver in approximately the spring of 1999.

6 On May 29, 2001, the Vyseks listed the Calgary Property for sale. In affidavits, Eliska and Vladimir Vysek deposed that they wished to move closer to Peter. Under the listing agreement for the Calgary Property, the Vyseks assigned to Re/Max enough of the proceeds of sale to pay the real estate agent's commission.

7 The Vyseks conditionally sold the Calgary Property on June 2, 2001 for \$276,500, with a closing date of July 31, 2001. This left a cash balance of approximately \$266,000 after transactional fees and taxes. The purchasers paid a deposit of \$10,000 to Re/Max. Re/Max took that as part of its commission, leaving \$2,085.65 outstanding. After the sale conditions were satisfied, the Vyseks purchased the Comox Property on June 13, 2001 for \$118,000, with a cash down payment of \$10,000.

8 Vladimir Vysek deposed that he and Eliska Vysek planned to use the remainder of the Proceeds from the Calgary Property for ordinary living expenses, after conducting necessary structural repairs to the Comox Property.

9 Because the purchaser of the Calgary Property was one day late with his financing, the Vyseks required interim or bridge financing to complete their purchase of the Comox Property on the completion date of July 31, 2001. The TD Bank at Chinook Centre provided such financing in the amount of \$110,675, pursuant to an "Irrevocable Assignment of Funds from Real Property Transactions" dated July 31, 2001 (the "Irrevocable Assignment"). The TD Bank also required the Vyseks' lawyer to execute an acknowledgement that that amount was to be paid to the TD Bank. Both of these documents, and their effect, are discussed later in these Reasons.

10 Neither Re/Max nor the TD Bank registered their alleged interests in the Proceeds from the Calgary Property in the Alberta land titles office or at the Alberta personal property registry.

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11 On July 31, 2001, the Vyseks filed and served a Notice of Change of Address for Service on Nova and the Foundation. On August 2, 2001, Nova and the Foundation brought an *ex parte* application before Park J. seeking to attach the Proceeds from the Calgary Property and to freeze any of the Vyseks' bank accounts at the TD Bank and its offices or affiliates. Upon Nova and the Foundation providing undertakings on August 3, 2001 to indemnify the Vyseks for any damages wrongfully caused by the order being provided, it was granted the same day (the "Attachment Order").

12 The Attachment Order was served on the TD Bank at the Chinook Branch, Rick Lehan (the Vyseks' solicitor for the Calgary Property sale), the purchasers' solicitor, and the Vyseks (at both the Calgary address for service and the Comox address). The TD Bank immediately froze accounts at the Chinook Branch; the Vyseks deposed that they were unable to access funds on August 4, 2001. However, on August 8, 2001, TD Waterhouse released \$3,750 to the Vyseks (not \$3,780, as alleged by Nova and the Foundation).

13 The Vyseks claim that the Attachment Order should not have been granted. They also allege that they suffered considerable hardship from the Attachment Order and Nova's refusal to release any funds to them for ordinary living expenses. While it is apparent that the Vyseks have had a difficult time, that hardship is not a relevant factor in my decision on the entitlement to the Proceeds as between the TD Bank, Re/Max and the Judgment Creditors. Further, it is not open to me to study or critique the reasoning behind granting the Attachment Order. It was not set aside nor appealed; therefore, it is a valid and binding order.

14 Following Rawlins J.'s August 31, 2001 dismissal of the Vyseks' claims against Nova and the Foundation, and her sizeable costs awards, the Foundation and Nova filed writs of enforcement on August 31, 2001 and September 5, 2001, respectively. These were registered at the personal property registry on September 4, 2001 and September 5, 2001, respectively.

15 Under the Irrevocable Assignment, the Vyseks were to execute a mortgage in favour of the TD Bank in the event the proceeds were not paid to the TD Bank. After the proceeds were frozen by the Attachment Order, the TD Bank sought such a mortgage, which was not granted. Accordingly, on September 11, 2001, the TD Bank registered a caveat in the British Columbia land registry against title to the Comox Property, and has since started an action to preserve its alleged rights.

16 The Proceeds were paid into Court, along with any money held by Lehan, pursuant to the September 27, 2001 order of Kenny J., who also dismissed the Vyseks' application for a stay of enforcement of the costs' judgment pending appeal (the Notice of Appeal was filed September 10, 2001). She also directed that the present application be brought to determine priority issues with respect to the attached funds. \$269,004.61 was paid into Court on November 7, 2001.

17 Justice Fruman of our Court of Appeal dismissed the Vyseks' November 14, 2001 application for a stay of enforcement of judgment. The Vyseks have sought leave to appeal that decision to a panel of three Court of Appeal justices, but Fruman J.A. has not yet released her decision. On January 9, 2002, Nova and the Foundation brought a security for costs of appeal application. That decision was released on March 1, 2001, the day after this application was concluded. Justice Hunt granted the security for costs motion in the amount of \$30,000 for each of Nova and the Foundation. If these amounts are not paid in full by July 1, 2002, Nova and the Foundation are at liberty to apply to dismiss the appeal (2002 ABCA 55 (Alta. C.A. [In Chambers])).

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## ISSUES

18 The issues are:

1. What are the priorities among the Judgment Creditors, the TD Bank and Re/Max to the money held in Court?
2. If the TD Bank is entitled to \$110,675 under the Irrevocable Assignment, are the Judgment Creditors entitled to be subrogated to the TD Bank's interests in the Comox Property?
3. Are the Vyseks entitled to an exemption under the *Civil Enforcement Act* for the Calgary Property Proceeds paid into Court?
4. Is TD Waterhouse liable to the Judgment Creditors for the \$3,750 released to the Vyseks after the August 3, 2001 Attachment Order?
5. Are the Vyseks entitled to have their debts existing at the time of the Attachment Order paid out from the funds held in Court?

## ANALYSIS

**1. What are the priorities among the Judgment Creditors, the TD Bank and Re/Max to the money held in Court?**

*a) The TD Bank*

19 The Judgment Creditors submit that the TD Bank has only an unperfected security interest, which is necessarily subject to the Judgment Creditors' registered writs of enforcement. This is based on s.35 of the *Civil Enforcement Act*, S.A. 1994, c.C-10.5 (now R.S.A. 2000, c.C-15) (*CEA*), which subordinates a security interest in personal property to a writ that binds the property. They note that the Irrevocable Assignment gave the TD Bank a charge over the Calgary Property, which was never acted upon, indicating to the Judgment Creditors that the TD Bank never intended to act on that charge. Therefore, they argue that the TD Bank had an interest only in the money, which is personal property. Since that interest was never registered nor perfected, it is subordinated to the Judgment Creditors' interests.

20 The Irrevocable Assignment provides:

THE UNDERSIGNED [Eliska and Vladimir Vysek] for good and valuable consideration, hereby irrevocably assign and transfer to THE TORONTO-DOMINION BANK ("the Bank") \$110,675, plus interest at the rate of 8 % (the Bank's prime rate plus 2 %) per annum (both principal and interest hereinafter called "the loan"), of the proceeds resulting from the sale of our lands and premises known as 9148 Oakmount Dr [illegible] being legally described as follows: . . .

and we hereby agree that this assignment constitutes a charge against the above described lands and premises ("the sale lands") in the amount of the loan, until such time as the loan is repaid in full.

THE UNDERSIGNED hereby acknowledges [sic] that they are, or are about to become, owners of the lands and premises known as 647 [illegible] being legally described as follows: . . .

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and we hereby agree for good and valuable consideration that the assignment herein constitutes a charge against the above described lands and premises ("the purchase lands"), in the amount of the loan, until such time as the loan is repaid in full.

IN THE EVENT THAT the proceeds assigned herein for whatever reason are not paid to the Bank upon the closing of the sale contemplated with respect to the sale lands, or are insufficient to repay the loan in full, the undersigned shall, immediately upon the Bank's request, execute and deliver to the Bank a mortgage on the Bank's standard form, against either or both of the sale lands and the purchase lands, as the Bank may require, such mortgage to be prepared and registered at the undersigned's sole expense.

Lehan signed an acknowledgement of the assignment.

21 Lehan also signed an acknowledgement of a letter of direction by the Vyseks, directing the portion of the Proceeds to be remitted to the TD Bank. Those instructions and order to pay could not be revoked without the TD Bank's written consent.

22 Section 35 of the *CEA*, upon which the Judgment Creditors rely, refers to a "security interest in personal property". In order for s.35 to apply here, the Irrevocable Assignment must be characterized as a "security interest". Section 31(b)(xi) of the *CEA* provides that "security interest" in s.35 has the meaning set out in the *Personal Property Security Act*, S.A. 1988, c.P-4.05 (now R.S.A. 2000, c.P-7) (*PPSA*). Section 1(1)(qq) (now s.1(1)(tt)) of the *PPSA* states:

(qq) "security interest" means

(i) an interest in goods, chattel paper, a security, a document of title, an instrument, money or an intangible that secures payment or performance of an obligation, other than the interest of a seller who has shipped goods to a buyer under a negotiable bill of lading or its equivalent to the order of the seller or to the order of the agent of the seller unless the parties have otherwise evidenced an intention to create or provide for a security interest in the goods, and

(ii) the interest of

(A) a transferee arising from the transfer of an account or a transfer of chattel paper,

(B) a person who delivers goods to another person under a commercial consignment, and

(C) a lessor under a lease for a term of more than one year,

whether or not the interest secures payment or performance of the obligation; [emphasis added]

23 Section 3 of the *PPSA* sets out the application of the *PPSA*:

3(1) Subject to section 4, this Act applies to

(a) every transaction that in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral, and

(b) without limiting the generality of clause (a), a chattel mortgage, conditional sale, floating charge, pledge, trust



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indenture, trust receipt, assignment, consignment, lease, trust and transfer of chattel paper where they secure payment or performance of an obligation. [emphasis added]

24 Therefore, the Irrevocable Assignment is only subject to the *PPSA* and to s.35 of the *CEA* if it secures the payment or performance of an obligation. This is a question of substance; the label "Irrevocable Assignment" is not determinative (see s.3(1)(a) of the *PPSA*, which explicitly requires an assessment of substance, not form).

25 The Irrevocable Assignment clearly is an assignment of a portion of the Proceeds from the sale of the Calgary Property. The Irrevocable Assignment was necessitated by the purchaser's late payment of the purchase price for the Calgary Property. The Vyseks, therefore, needed interim or bridge financing for approximately one day (practically, more than one day, as it likely would take some time to receive the purchaser's funds and transfer them to the TD Bank). The type of loan needed by the Vyseks dictated the type of Irrevocable Assignment. The fact that the TD Bank did not need to rely on its charge against the Calgary Property is because the transaction went as contemplated — until the Attachment Order intervened.

26 In my view, the Irrevocable Assignment did not create a "security interest". It did not secure the payment or performance of an obligation. It was, in essence, the obligation itself.

27 The substance of the Irrevocable Assignment here can be contrasted to the assignment of book debts discussed in *Canada Trustco Mortgage Corp. v. Port O'Call Hotel Inc*, [1996] 1 S.C.R. 963 (S.C.C.), where the majority of the Supreme Court of Canada held that "security interest" was broad enough to include that assignment of book debts. In that case, one assignment at issue read, in part (at para.7):

THE PRESENT assignment and transfer shall be a continuing collateral security to Treasury Branches for the payment of all and every present and future indebtedness and liability of the undersigned to Treasury Branches . . . [emphasis added by S.C.C.]

28 The majority summarized the difference between an absolute assignment and a security interest at para.22:

. . . it can be seen that the same instrument cannot be both a 'security interest' and an 'absolute assignment'. If an instrument is an absolute assignment, then since it is complete and perfect in itself, there cannot be a residual right remaining with the debtor to recover the assets. By definition, a complete and perfect assignment cannot recognize the concept of an equity of redemption. An absolute assignment cannot function as a means of 'securing' the payment of a debt since there would be no basis for the debtor to recover that which has been absolutely assigned. An absolute assignment is irrevocable. To say that the same instrument can operate both as an absolute assignment and as a security interest is to simultaneously put forward two incompatible positions. The two conflicting concepts cannot live together in the same document. [emphasis in original]

29 There, if the loan secured by the general assignment of book debts were repaid, the Treasury Branch would have no further interest in the assignment. At para.8, the majority stated:

In my view since the assignment by its terms can be redeemed by payment of the debt it cannot or at least should not be

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construed as an absolute assignment.

30 The Judgment Creditors attempt to use that wording and rationale to their benefit in the present case. They argue that the Vyseks could have used other sources of funds, such as a lottery win or success in the lawsuit, to pay off the TD Bank, at which point the TD Bank would not have recourse to the Irrevocable Assignment. To my mind, that contention completely ignores the substance of the transaction. Were the Judgment Creditors correct, there could never be any absolute or irrevocable assignments of money, since all money is fungible.

31 In the present case, the Irrevocable Assignment was not intended to give security for a debt, but to “transfer ownership” (to use the wording in *Bonavista (Town) v. Atlantic Technologists Ltd.* (1994), 117 Nfld. & P.E.I.R. 19 (Nfld. T.D.), at 24, approved in *Canada Trustco Mortgage Corp. v. Port O’Call Hotel Inc.* at para.25). I also note *Bowering, Re* (1995), 33 C.B.R. (3d) 267 (B.C. S.C.), where the court held an irrevocable assignment of proceeds from the sale of a house meant that all property in the money passed to the assignee on the assignment date, not on the date the house was transferred. In the present case, of course, the distinction in dates would be irrelevant. The important point is that the money became the TD Bank’s property on the date of the Irrevocable Assignment — before the Attachment Order or the writs of enforcement.

32 The Judgment Creditors also submit that the Irrevocable Assignment could not be considered “absolute” because the Vyseks only assigned a portion of the proceeds, not the entire amount (e.g., see Sir G. Trietel, *The Law of Contract*, 10th ed. (London: Sweet & Maxwell, 1999) at 624). However, there are two responses to this argument.

33 First, the rationale for not holding the assignment of a portion of a debt to be absolute is to protect the debtor. In my view, this concern is not valid in the present circumstances. This Irrevocable Assignment did not contemplate the “debtor’s” involvement (i.e., the purchaser of the Calgary Property). Had the purchaser not paid, the TD Bank’s remedy, as noted, was a charge against the Calgary Property, which would still belong to the Vyseks. Had the purchaser paid and the Proceeds not been tied up in Court, the appropriate amount would have been paid to the TD Bank, as assignors. The cases and authorities to which the parties referred me typically deal with the effect of an assignment where the amount assigned is not paid. The assignee (and, in some situations, the assignor) must then take action against the defaulter. Here, however, the debt was paid and the assignment should have come into operation. This could not occur because the money was paid into Court.

34 Second, the passage referred to from Trietel is in a section entitled “Statutory Assignments”, which, in Alberta, would refer to an assignment made under the *Judicature Act*, R.S.A. 1980, c.J-1, s.21 (now R.S.A. 2000, c.J-2, s.20). Trietel does not address the concept of partial assignment directly when discussing equitable assignments. However, there is such a discussion in G.H.L. Fridman, *The Law of Contract in Canada*, 4th ed. (Scarborough: Carswell, 1999) at 714-16. The author notes that an assignment of part of a debt is operative as an equitable assignment. This is confirmed, for example, in *Bitz, Szemenyei, Ferguson & MacKenzie v. Cami Automotive Inc.* (1997), 34 O.R. (3d) 566 (Ont. Gen. Div.), at 571-73, where the court held that an assignment of part of the settlement proceeds was a valid equitable assignment.

35 Given all the circumstances here, I have no hesitation finding that the Irrevocable Assignment is an assignment, and is not a security interest. Therefore, the provisions of the *CEA* and *PPSA* do not apply to assess priorities. The TD Bank is the “owner” of the proceeds assigned to it under the Irrevocable Assignment, and is to be paid those funds out of the amount held in Court.

b) *Re/Max*

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36 Re/Max claims entitlement to \$2,085.65 of the Calgary Property proceeds on two alternative grounds. First, Re/Max submits that its listing agreement with Eliska and Vladimir Vysek assigned that amount to Re/Max as part of the commission owing (clause 7.3), and that a June 18, 2001 letter from Re/Max to Rick Lehan, the Vyseks' solicitor, created an agency relationship. The relevant portions of those documents state:

7.3 You [Eliska and Vladimir Vysek] assign to [Re/Max] enough of the purchase money or forfeited Deposits to pay all money owed under this Contract. You agree not to revoke this assignment. [May 29, 2001 Listing Agreement] [emphasis in original]

As stated in the offer, we confirm that we are holding a deposit of \$10,000.00 in trust. We require protection in the amount of **\$2,085.65** (\$11,295.00 and G.S.T. of \$790.65 less trust balance). [June 18, 2001 letter from Re/Max to Rick Lehan] [emphasis in original]

37 Re/Max's alternative argument is that Re/Max's work in selling the Calgary Property has made available a pool of cash which has benefited all parties. Had the Vyseks not sold the Calgary Property, Nova and the Foundation would have had the trouble and expense of listing the Calgary Property (of course, the TD Bank would not be involved in such a scenario, as its involvement stemmed directly from the purchaser's failure to have funds ready as committed).

38 Nova and the Foundation claim that the assignment was only for a portion of the proceeds; therefore, it was not an "absolute assignment". They further argue that Re/Max never perfected its interest in the personal property (the proceeds), and, therefore, Re/Max's interest is subordinate to the Judgment Creditors' registered claims. They also submit that there was no "agency" relationship, where Lehan was agent for Re/Max.

39 I have already addressed the issue of an assignment which is only for part of the proceeds of a transaction. In these circumstances, it is clear to me that the remainder of the commission owed was assigned to Re/Max under clause 7.3 of the listing agreement. This was confirmed in the June 18, 2001 letter to Lehan. This was not a security interest; therefore, the CEA and PPSA provisions argued for do not apply. On that analysis, \$2,085.65 of the money in Court properly belongs to Re/Max. Accordingly, it is unnecessary to address this issue in the context of agency.

40 My conclusion is fortified by the equities of this situation. I agree with Re/Max that, without its efforts, there would be no liquidated pool of money for Nova and the Foundation to claim. Real estate fees would have been necessary in any event. Nova and the Foundation should not be allowed to benefit at the expense of Re/Max.

***2. If the TD Bank is entitled to \$110,675 under the Irrevocable Assignment, are the Judgment Creditors entitled to be subrogated to the TD Bank's interests in the Comox Property?***

41 As I have determined that the TD Bank was entitled to \$110,675 from the outset under the Irrevocable Assignment, the Judgment Creditors' argument for subrogation is not tenable. It is grounded in a priority scheme, where the TD Bank has somehow "trumped" the Judgment Creditors' interest in the funds. However, the Irrevocable Assignment gave the TD Bank entitlement to the \$110,675 from the outset.

**Vysek v. Nova Gas International Ltd.**, 2002 ABQB 389, 2002 CarswellAlta 511  
 2002 ABQB 389, 2002 CarswellAlta 511, [2002] 10 W.W.R. 52, [2002] A.W.L.D. 269...

42 The Judgment Creditors argue for subrogation on the basis of marshalling — that the TD Bank is a “senior” creditor, with access to two funds (the Proceeds and the Comox Property), while the Judgment Creditors are “junior” creditors, with access to only one fund (the Proceeds). For example, see John S. James, *Stroud’s Judicial Dictionary of Words and Phrases*, 5th ed. (London: Sweet & Maxwell, 1986), vol.3 at 1557. Under that doctrine, fairness would dictate that the TD Bank should satisfy its claim from the Comox Property first, to avoid exhausting the only fund to which the Judgment Creditors have access.

43 Apart from my finding that the TD Bank as the assignor was entitled to the \$110,675 in these highly unusual circumstances, the requirements for marshalling are not met, in my view. Specifically, the Judgment Creditors are not prevented from accessing, or attempting to access, the value in the Comox Property. The Judgment Creditors submitted that the Vyseks would be unjustly enriched if subrogation is not ordered, because:

By the time the judgment creditors can take proceedings in British Columbia to obtain a judgment against the Vyseks which can be registered against the Comox Property, the Vyseks may eliminate any equity beyond their exemptions by encumbering it to third parties. [Nova’s brief, para.82; adopted by the Foundation]

44 That contention acknowledges the very difficulty with the marshalling argument in these circumstances. The Judgment Creditors are admitting that they do, in fact, have the ability to proceed against the Comox Property, but that they have not done so and are afraid they may be too late. As they have the ability to proceed against the Comox Property, marshalling and subrogation would be inappropriate.

45 I also wish to clarify that nothing in the material before me indicated the Vyseks would attempt to defeat the Judgment Creditors’ claims as feared in the above-quoted submission. While the timing of the Calgary Property sale was unfortunate, I am satisfied that there was no improper motive in selling the Calgary Property and purchasing the Comox Property.

**3. Are the Vyseks entitled to an exemption under the Civil Enforcement Act for the Calgary Property Proceeds paid into Court?**

46 The Judgment Creditors submit that the Vyseks are not entitled to an exemption for the Calgary Property Proceeds because the Calgary Property was not their principal residence at the relevant time — August 3, 2001, the date of the Attachment Order. The Judgment Creditors concede that the Vyseks are entitled to the exemption provided for a principal residence under the comparable British Columbia legislation.

47 The Vyseks argue that they did not voluntarily sell the Calgary Property, but were forced to by the circumstances they were in, primarily their need and desire to move closer to their ill son, Peter, who was (and still is) living in Vancouver.

48 Section 88 of the *CEA* provides:

88 The following property of an enforcement debtor is exempt from writ proceedings:

**Vysek v. Nova Gas International Ltd., 2002 ABQB 389, 2002 CarswellAlta 511**  
 2002 ABQB 389, 2002 CarswellAlta 511, [2002] 10 W.W.R. 52, [2002] A.W.L.D. 269...

(g) the principal residence of an enforcement debtor, including a residence that is a mobile home, where the enforcement debtor's equity in that residence does not exceed an amount prescribed by the regulations for that residence but if the enforcement debtor is a co-owner of the residence the amount of the exemption allowed under this provision is reduced to an amount that is proportionate to the enforcement debtor's ownership interest in the residence;

49 Under Alta.Reg. 276/95 (the "Civil Enforcement Regulation"), s.37(1)(e), the maximum exemption under s.88(g) is \$40,000.

50 In addition, the Judgment Creditors cite the following provisions: s.37(2)(a) of the Civil Enforcement Regulation; and s.91 of the *CEA*:

37(2) In addition to the property referred to in section 88 of the Act, the following property is exempt from writ proceedings:

(a) where an enforcement debtor sells

(i) exempt property, or

(ii) property that is exempt up to a stated value,

the proceeds from that sale, or the proceeds from that sale up to the stated value, as the case may be, are exempt for a period of 60 days from the day of the sale if those proceeds are not intermingled with any other funds of the enforcement debtor.

91 On application to the Court to determine whether property is exempt, the Court must make its determination on the basis of the circumstances that exist

(a) at the time of the seizure, in the case of personal property that has been seized, and

(b) at the time that the notice of intention to sell is given, in the case of enforcement against land.

51 Finally, I note two definitions from the *CEA*:

1(1)(q) "enforcement debtor" means a person against whom a writ is in force;

1(1)(ss) "writ" means a writ of enforcement and includes any writ issued by the Court of Appeal, the Federal Court of Canada or the Supreme Court of Canada that is similar in nature to a writ of enforcement;

52 In my view, the Vyseks' claim for the principal residence exemption under the *CEA* must fail on several fronts.

53 First, only the principal residence of an "enforcement debtor" is eligible for the exemption. The Vyseks were not enforcement debtors at the time they sold and transferred the Calgary Property, which was registered in the purchasers'

**Vysek v. Nova Gas International Ltd., 2002 ABQB 389, 2002 CarswellAlta 511**  
 2002 ABQB 389, 2002 CarswellAlta 511, [2002] 10 W.W.R. 52, [2002] A.W.L.D. 269...

names on August 1, 2001.

54 Second, the Calgary Property was not the Vyseks' "principal residence" at the time of the Attachment Order of August 3, 2001, or, even more clearly, when the writs of enforcement were filed on August 31, 2001 and September 5, 2001. By the time of the Attachment Order, the Vyseks' principal residence was the Comox Property. As the exemption only applies to a principal residence, it is not available in these circumstances for the Calgary Property.

55 Third, the sale was not "forced" within the meaning of the *CEA*. It is settled law that the proceeds of voluntary sales do not attract the exemption --- e.g., see *Regal Distributors Ltd. v. Freele*, [1931] 1 D.L.R. 943 (Alta. C.A.), at 944; and *Sawatsky, Re*, [2001] 8 W.W.R. 656 (Alta. Q.B.), at 660.

56 *McAteer, Re* (1981), 32 A.R. 248 (Alta. Master) at para.49 distinguished a "forced sale" from a "voluntary sale". The former is a sale of the property as the result of a third party's actions --- i.e., where the property is "sold out from under the debtor". If this were not determinative enough in the present circumstances, that conclusion was convincingly narrowed by Bielby J. in *Starko v. Starko* (1992), 134 A.R. 48 (Alta. Q.B.) at paras.22 and 30-32 to include only proceeds of sales forced pursuant to a writ of execution:

On the plain reading of these words [the predecessor to the *CEA* provision], the exemption extends only to the proceeds of sales forced as a result of seizure under writ of execution, not to those forced under other legislation.

57 This conclusion is borne out by an examination of the facts in other cases. In *McAteer*, the bankrupt deposed that he sold the property one week before making an assignment into bankruptcy because mortgage arrears, tax arrears, and an outstanding builders lien made a forced sale imminent and inevitable (at para.7). He further deposed that he would not have sold the property had he not believed he would receive the exemption. The Registrar held that the sale was voluntary, and that the bankrupt's assumptions and beliefs regarding exemptions could not entitle him to an exemption he did not otherwise have (paras.8 and 43).

58 In *Starko*, the sale was not considered "forced" even though it was made pursuant to a court order, because that order was in a matrimonial property action, not an enforcement action. In *Dhalla, Re* (1991), 8 C.B.R. (3d) 57 (Alta. Q.B.), the proceeds from the sale of property were not exempt because the sale was voluntary. Even though the vendor was an undischarged bankrupt at the time, the sale was conducted by he and his wife, not by the trustee.

59 Fourth, as counsel for Nova emphasized, the Vyseks are entitled to the appropriate exemption for the Comox Property under British Columbia law. Were I to grant an exemption for the Proceeds here, the Vyseks would be receiving an exemption for two principal residences in two separate provinces. Given my earlier finding that the TD Bank is entitled to be paid for its interim financing, the effective transaction that occurred is that the Vyseks used \$110,675 of the Proceeds to buy the Comox Property. The portion of those Proceeds now in the Comox Property will attract the appropriate exemption there.

60 For all the above reasons, the Proceeds from the sale of the Calgary Property do not attract the *CEA* exemption.

**4. Is TD Waterhouse liable to the Judgment Creditors for the \$3,750 released to the Vyseks after the August 3, 2001**

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Vysek v. Nova Gas International Ltd., 2002 ABQB 389, 2002 CarswellAlta 511  
 2002 ABQB 389, 2002 CarswellAlta 511, [2002] 10 W.W.R. 52, [2002] A.W.L.D. 269...

*Attachment Order?*

61 Nova and the Foundation submit that the TD Bank and TD Waterhouse are jointly liable for \$3,750 that was released to the Vyseks after Park J.'s Attachment Order was granted. Paragraph 7 of that Attachment Order provides:

The Bank [the TD Bank] and any of its offices or affiliates is hereby directed not to release any funds currently in or which may be deposited to the Account, the new account or to any other account held by the Plaintiffs or any of them or to any other person or entity without further Order of this Court.

"Account" is defined to be Eliska and Vladimir Vysek's bank account #80729 . . . , located at the TD Bank in Chinook Centre. The "new account" is an account that was to be opened for the Calgary Property Proceeds in the event that the Account had already been closed.

62 The TD Bank, Chinook Branch was served with the Attachment Order on August 3, 2001. However, on August 8, 2001, TD Waterhouse released the \$3,750 in question. The Judgment Creditors argue that service of the Attachment Order, by the terms of para.7, should have bound "any of [the TD Bank's] offices or affiliates". They further argue that TD Waterhouse is an affiliate because the TD Bank owned the majority of shares in TD Waterhouse and operated it as a division of the TD Bank. In support, Nova submitted evidence showing that TD Waterhouse is a business component of the TD Bank Financial Group, and was 88.6 per cent owned by the TD Bank at the end of the TD Bank Financial Group's fiscal year 2000 (the TD Bank Financial Group's Annual Report 2000, p.1).

63 TD Waterhouse clearly is an "affiliate" of the TD Bank. Section 2 of the *Bank Act*, S.C. 1991, c.46, as amended, defines affiliate as "an entity that is affiliated with another entity within the meaning of section 6". The definition of entity includes a body corporate. Section 6(1) states that an entity is affiliated with another "if one of them is controlled by the other or both are controlled by the same person." Finally, s.3(1)(a) provides that a person controls a body corporate where the person beneficially owns securities to which are attached more than 50 per cent of the votes that may be cast to elect the body corporate's directors. The TD Bank's 88.6 per cent ownership at the time (since increased to 100 per cent) certainly qualifies.

64 Since TD Waterhouse is an affiliate of the TD Bank, the Attachment Order applies to it, as was effectively admitted by TD Waterhouse when it froze the Vyseks' accounts after learning of the Attachment Order. However, an order is not effective until it is properly served.

65 The TD Bank contends that TD Waterhouse has its own head office, where it could have been served. This information was readily available from a corporate records search. The TD Bank points to s.462 of the *Bank Act*, S.C. 1991, c.46 (amended October 24, 2001 -- S.C. 2001, c.9), which states that service of an order only affects accounts at the branch where the order is served. Nova responded that it had such limited information as to the Vyseks' assets that it was unaware of any accounts held at TD Waterhouse. Nova also claims that TD Waterhouse is not a "bank", so would not be affected by that provision of the *Bank Act*.

66 In my view, Nova cannot succeed on its last contention that TD Waterhouse is not a "bank". Either TD Waterhouse is part of the TD Bank and subject to the *Bank Act* service rules, or TD Waterhouse is not part of the TD Bank and should be served on its own. In either event, service on the Chinook Branch of the TD Bank was not valid service on TD Waterhouse. While I acknowledge that the TD Bank Financial Group holds itself out as a single entity comprising several businesses, the

**Vysek v. Nova Gas International Ltd., 2002 ABQB 389, 2002 CarswellAlta 511**  
 2002 ABQB 389, 2002 CarswellAlta 511, [2002] 10 W.W.R. 52, [2002] A.W.L.D. 269...

Judgment Creditors are sophisticated parties and well-represented by counsel. Even if there were a tenable argument that the general public could be confused as to the need for service beyond the single branch, there can be no such interpretation here.

67 TD Waterhouse was not properly served with the Attachment Order at the time it released \$3,750 to Eliska and Vladimir Vysek. TD Waterhouse is not required to repay that money to the Judgment Creditors.

*5. Are the Vyseks entitled to have their debts existing at the time of the Attachment Order paid out from the funds held in Court?*

68 The Vyseks repeatedly requested that I allow them to pay some of their debts existing at the time of the Attachment Order, since they intended to pay those bills from the Proceeds of the Calgary Property, had the Attachment Order not been made. A large part of their rationale was their conviction that the Attachment Order was improperly granted. As mentioned, the Attachment Order is a valid order of this Court and binds me, although the timing is admittedly devastating from the Vyseks' viewpoint. While the Vyseks' desire to pay their other debts is admirable, I cannot allow those unregistered claims to take priority over the writs of enforcement registered by the Judgment Creditors at the personal property registry. Unlike the situation of the TD Bank and Re/Max, there was no evidence of pre-existing assignments for those debtors. Given those considerations, I cannot grant the relief requested.

#### **CONCLUSION AND DISPOSITION**

69 The TD Bank has priority over the claims of Nova and the Foundation for the \$110,675 interim financing.

70 Re/Max has priority over the claims of Nova and the Foundation for the \$2,085.65 outstanding commission.

71 Eliska and Vladimir Vysek are not entitled to a principal residence exemption under the *CEA* for the Calgary Property.

72 TD Waterhouse and the TD Bank are not jointly liable to pay \$3,750 to Nova and the Foundation.

73 Costs of this application may be spoken to.

*Order accordingly.*

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**NOTICE OF DISALLOWANCE RELATING TO  
FRONT CHURCH PROPERTIES LIMITED  
(hereinafter referred to as “the Debtor”)**

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TO: Cushman and Wakefield Ltd.  
33 Yonge Street, Suite 1000  
Toronto, Ontario  
M5E 1S9

T: 416.359.2554  
F: 416.359.2613  
E: Nick.Yanovski@ca.cushwake.com

Attention: Nick Yanovski

The Court-appointed Manager hereby gives you notice that it has reviewed your Claim and has revised or rejected your Claim as follows:

	<b>The Proof of Claim Amount as Submitted</b>	<b>The Proof of Claim as Accepted</b>
Claim	\$349,170 Proprietary Claim, or in the alternative, \$349,170 Secured Claim or in the further alternative, \$349,170 Unsecured Claim	\$349,170 Unsecured Claim

**A. Reasons for Disallowance or Revision:**

**Overview**

Each capitalized term used and not otherwise defined herein has the meaning given to such term in the Proof of Claim form of Cushman and Wakefield Ltd. (“**Cushman**”) dated August 13, 2014 (the “**Cushman Proof of Claim**”) or the Claims Procedure Order dated July 18, 2014 (the “**Front Street Claims Procedure Order**”), as applicable.

The Cushman Proof of Claim asserts, on behalf of Cushman and on behalf of its co-broker, Harvey Kalles Real Estate Ltd., a proprietary claim in respect of the commission payable in connection with the sale of the Debtor Property in the amount of \$349,170, inclusive of HST (the “**Proprietary Claim**”).

The Cushman Proof of Claim asserts, in the alternative if the Proprietary Claim is not accepted as a proprietary claim, a secured claim in the amount of \$349,170 (the “**Alternative Claim**”), and in the further alternative, an unsecured claim in the amount of \$349,170 (the “**Further Alternative Claim**”).

### **Manager’s Position**

The Manager agrees with the analysis set out in the Cushman Proof of Claim with respect to the priority of Cushman’s claim as a proprietary claim; however, the Manager is of the view that, pursuant to the Order of the Honourable Justice D. M. Brown dated May 20, 2014 and the Front Street Claims Procedure Order, the Manager does not have the authority to accept the Proprietary Claim as a proprietary claim.

With respect to Cushman’s Alternative Claim, no evidence has been provided to demonstrate that any security was granted to secure the Debtor’s obligations to pay the commission amount with respect to the sale of the Debtor Property. Accordingly, Cushman’s Alternative Claim is also disallowed.

The Manager has allowed Cushman’s Further Alternative Claim as an unsecured claim against the Debtor.

If you do not agree with this Notice of Disallowance, please take notice of the following:

**If you dispute this Notice of Disallowance, you must, by no later than 4:00 p.m. (Toronto Time) on December 12, 2014, being fourteen (14) days after the Notice of Disallowance is sent by the Manager pursuant to the Claims Procedure Order, notify the Manager by delivery of a Dispute Notice to the following address:**

Schonfeld Inc.  
Court-appointed Manager of the Companies  
77 King Street West, Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

Attention: Stephanie Williams  
Telephone: 416-862-7785, Extension 4  
E-mail [swilliams@schonfeldinc.com](mailto:swilliams@schonfeldinc.com)  
Fax: 416-862-2136

with a copy (which shall not be deemed notice) to:

Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Attention: Brian Empey / Mark Dunn  
Telephone: 416-597-4194 / 416-849-6895  
E-mail [bempey@goodmans.ca](mailto:bempey@goodmans.ca) / [mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)  
Fax: 416-979-1234

The form of Dispute Notice is enclosed. If you do not deliver a Dispute Notice by the above-noted time and date, your Claim shall be deemed to be as set out in this Notice of Disallowance.

**IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF DISALLOWANCE WILL BE BINDING UPON YOU.**

**DATED** at Toronto, this 28<sup>th</sup> day of November, 2014.

**SCHONFELD INC.,  
in its capacity as Court-appointed Manager  
and pursuant to the May 20 Order**

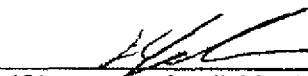


**DISPUTE NOTICE RELATING TO FRONT CHURCH PROPERTIES LIMITED**

**(hereinafter referred to as "the Debtor")**

**A. PARTICULARS OF CREDITOR:**

1. Full Legal Name of Creditor: Cushman and Wakefield Ltd.

  
(Signature of individual completing this  
Dispute Notice)

December 11, 2014  
Date

2. Full Mailing Address of the Creditor:

33 Yonge Street, Suite 1000

Toronto, Ontario

M5E 1S9

3. Telephone Number: (416) 359 2554

4. E-Mail Address: Nick.Yanovski@ca.cushwake.com

5. Facsimile Number: (416) 359 2613

**B: REASONS FOR DISPUTE:**

We hereby give you notice of our intention to dispute the Notice of Disallowance dated November 28, 2014.

(Provide full particulars of the Claim and supporting documentation. Attach additional page if necessary.)

**See Attached Schedule "A"**

- 2 -

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This Dispute Notice must be returned by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission and be received by the Manager by no later than **4:00 P.M. (TORONTO TIME) ON December 12, 2014, [being fourteen (14) days after the Notice of Disallowance is sent by the Manager pursuant to the Claims Procedure Order]** at the following address:

Schonfeld Inc.  
Court-appointed Manager of the Companies  
77 King Street West, Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

Attention: Stephanie Williams  
Telephone: 416-862-7785, Extension 4  
E-mail: [swilliams@schonfeldinc.com](mailto:swilliams@schonfeldinc.com)  
Fax: 416-862-2136

## SCHEDULE "A" – Particulars of Dispute

### Introduction

Cushman and Wakefield Ltd. ("**Cushman**") on its own behalf and on behalf of Harvey Kalles Real Estate Ltd. (the "**Co-operating Broker**"), the co-operating broker on the sale of the property known municipally as 65 Front Street East, Toronto, Ontario (the "**Property**") files this Notice of Dispute to dispute the denial of Cushman's proprietary claim for \$349,170 as particularized in the Proof of Claim. The Notice of Disallowance from the Manager is dated November 28, 2014.

Cushman does not dispute the Manager's allowance of an unsecured claim for \$349,170. Having said this, Cushman only wishes to rely on its status as an unsecured creditor to the extent that its dispute of the denial of the proprietary claim is unsuccessful.

Cushman does not dispute the denial of its secured claim.

The Manager has determined that Cushman has a valid proprietary claim for \$349,170. The only basis for denial of the proprietary claim is that the Manager takes the position that the order and endorsement of Justice Brown dated May 20, 2014 (collectively, the "**May 20 Order**") and the order dated July 18, 2014 (the "**July 18 Order**") that approved a claims procedure (the "**Claims Procedure**") do not grant the Manager the authority to allow proprietary claims. As such, the Notice of Dispute only relates to the Claims Procedure and the types of claims that Cushman is entitled to submit and which the Manager may allow.

### Details of Cushman Position

Cushman did not have notice of the motion that led to the May 20 Order and did not have an opportunity to make submissions at that time.

#### *June 2, 2014 Appearance*

After Cushman became aware of the May 20 Order, its counsel appeared in court on June 2, 2014 to inform the court that it did not have an opportunity to make submissions in respect of the motion leading to the May 20 Order. At that hearing, Justice Brown advised Cushman's counsel that nothing in the May 20 Order precluded Cushman from claiming priority over other Secondary Payments and that claim could be part of the forthcoming Claims Procedure that the Manager was to run. Justice Brown also advised verbally at that time that the Manager's Claims Procedure did not preclude Cushman from making both priority and quantum arguments and that nothing in the May 20 Order should be interpreted as precluding Cushman from making such arguments.

On June 2, 2014, Justice Brown made the following endorsement relative to Cushman:

#### FRONT STREET

1. Cushman & Wakefield – Manager says it intends to seek approval of a claims process.

The formal order dated May 20, 2014 was finalized, issued, and entered after the June 2, 2014 attendance. Paragraph 8 of that order confirmed that all claims, including Cushman's claim, would be adjudicated in a claims process:



8. THIS COURT ORDERS that following Closing of the sale of the Property, Schonfeld Inc. in its capacity as Manager in these proceedings, will bring a motion for approval of an Order of this Court approving a Claims Process to determine the validity, quantum and priority of the Secondary Payments and any claims of the Applicants that the Court may order in respect of the Property.

Paragraph 5 of that order vested all claims out of the Property (including Cushman's claim) and paragraph 7 vested all claims (again, including Cushman's claim) into the sale proceeds with the same priority. As is the case with most vesting orders, this order did not affect the validity or priority of any claim.

*July 18, 2014 Appearance*

Counsel for Cushman also appeared in court on July 18, 2014 at which time, *inter alia*, Justice Brown dealt with a motion to approve the Claims Procedure (relating to the Property). At that time, Cushman again informed Justice Brown that it did not receive notice of the motion leading to the May 20 Order. In his endorsement released that day, Justice Brown stated the following:

Cushman & Wakefield wanted to amend the order to, in effect, delegate to the Manager the ability to vary my May 20/14 Order with respect to Primary and Secondary Payments. That I am not prepared to do.

Justice Brown then gave Cushman the opportunity to vary the May 20 order, failing which Cushman "is otherwise estopped from arguing any variation to my May 20 Order".

Cushman did not attempt to vary the May 20 Order. Such variation was not necessary because both the May 20 Order and the comments, endorsement, and order made by Justice Brown on June 2, 2014 made it clear that Cushman was not prevented from fully participating in the Claims Procedure, including by asserting a priority for its claim.

For example, Justice Brown's May 20 endorsement stated the following in relevant part:

[117] Given that the claims asserted against or in respect of the 65 Front Street East property exceed the gross sales price and given the dispute amongst claimants about the validity of certain claims to the Remaining Balance, I am prepared to authorize the proposed sale of 65 Front Street East property, but only on the basis that the Primary Payments, as defined above, are paid on closing out of the sale proceeds, with the entire Remaining Balance to be paid to the Manager, Schonfeld Inc., to be held in trust pending the conduct of a claims process by those seeking Secondary Payments, and the Remaining Balance would stand in the place of the property to satisfy any such claims.

[118] If the respondents wish to close on that basis, they may submit a formal approval and vesting order to that effect, approved as to form and content by all affected parties, to my attention for signature. I will not entertain any further "re-negotiated distribution deals" unless they are accompanied by a comprehensive formal order with signed consents from all affected parties.

Cushman's claim was identified as a Secondary Payment. Justice Brown clearly directed that those creditors seeking Secondary Payments could assert their claims in the upcoming Claims Procedure. No limit was placed on the nature or priority of the claims that could be made in such process.

The submissions that Cushman made before the court on June 2 and July 18, 2014 were that Justice Newbould's order dated March 21, 2014 had already determined that Cushman was entitled to a priority for the commission and that such amount should be paid to Cushman "off the top" of any closing proceeds. As such, Cushman argued that it should not be subject to the Claims Procedure. Although this argument was ultimately not accepted, the decisions and comments of Justice Brown noted above merely meant that Cushman became subject to the Claims Procedure (rather than benefiting from Justice Newbould's March 21 order granting Cushman priority) and it was entitled to assert any claim it deemed advisable in the Claims Procedure.

At the time that the Claims Procedure was approved and the July 18 Order was granted, no party attempted to limit the nature of the claim that Cushman could assert in the Claims Procedure. The only limitation was the one imposed by Justice Brown, namely that Cushman could not attempt to attack the May 20 Order through the Claims Procedure and any variation of that Order would have to be dealt with by Justice Brown.

The Claims Procedure established by the July 18 Order covers all aspects of the claims that Cushman made, including the proprietary claim. The term "Claim" was very broadly defined to include any claim whatsoever that a Secondary Payment Claimant might have:

- (b) "Claim" means any right of any Secondary Payment Claimant against the Debtor in connection with any indebtedness, liability or obligation of any kind of the Debtor, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, or unknown, by guarantee, surety or otherwise and whether or not such right is executory in nature, including the right or ability of any Secondary Payment Claimant to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, and including any indebtedness, liability or obligation of any kind arising out of the restructuring, termination, repudiation or disclaimer of any lease, contract, employment agreement or other agreement (each a "Claim", and collectively, the "Claims"), provided such Claim relates to a Secondary Payment Claim of the Secondary Payment Claimant;

The July 18 Order also provided that the Claims Procedure would determine the priority of all "Claims" and there were no fixed restrictions on the categories of claim that could be recognized:

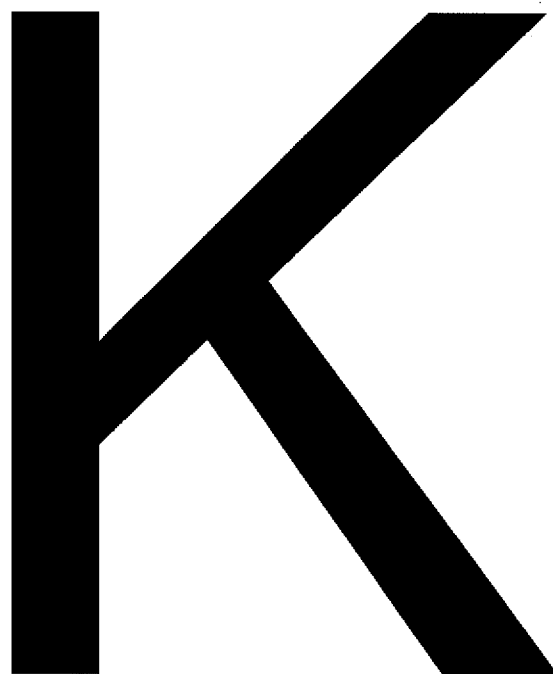
**DETERMINATION OF CLAIMS**

8. THIS COURT ORDERS that the amount and status of every Claim of a Creditor as finally determined in accordance with this Order, including any determination as to the nature, amount, value, priority or validity of any Claim shall be final for all purposes, including without limitation for any distribution made to Creditors of the Debtor pursuant to further Order of the Court.

**Conclusion**

In short, Cushman's assertion of a proprietary claim is entirely consistent with the comments made by Justice Brown on June 2 and July 18, 2014 as well the orders and endorsements granted on those dates (and the May 20 Order). The Manager did have authority to consider and accept Cushman's proprietary claim.

Cushman therefore asks that a proprietary claim in the amount of \$349,170 be allowed.

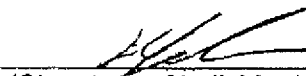


**DISPUTE NOTICE RELATING TO FRONT CHURCH PROPERTIES LIMITED**

**(hereinafter referred to as "the Debtor")**

**A. PARTICULARS OF CREDITOR:**

1. Full Legal Name of Creditor: Cushman and Wakefield Ltd.

  
(Signature of individual completing this  
Dispute Notice)

December 11, 2014  
Date

2. Full Mailing Address of the Creditor:

33 Yonge Street, Suite 1000

Toronto, Ontario

M5E 1S9

3. Telephone Number: (416) 359 2554

4. E-Mail Address: Nick.Yanovski@ca.cushwake.com

5. Facsimile Number: (416) 359 2613

**B: REASONS FOR DISPUTE:**

We hereby give you notice of our intention to dispute the Notice of Disallowance dated November 28, 2014.

(Provide full particulars of the Claim and supporting documentation. Attach additional page if necessary.)

**See Attached Schedule "A"**

- 2 -

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This Dispute Notice must be returned by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission and be received by the Manager by no later than **4:00 P.M. (TORONTO TIME) ON December 12, 2014, [being fourteen (14) days after the Notice of Disallowance is sent by the Manager pursuant to the Claims Procedure Order]** at the following address:

Schonfeld Inc.  
Court-appointed Manager of the Companies  
77 King Street West, Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

Attention: Stephanie Williams  
Telephone: 416-862-7785, Extension 4  
E-mail: [swilliams@schonfeldinc.com](mailto:swilliams@schonfeldinc.com)  
Fax: 416-862-2136

## SCHEDULE "A" – Particulars of Dispute

### Introduction

Cushman and Wakefield Ltd. ("**Cushman**") on its own behalf and on behalf of Harvey Kalles Real Estate Ltd. (the "**Co-operating Broker**"), the co-operating broker on the sale of the property known municipally as 65 Front Street East, Toronto, Ontario (the "**Property**") files this Notice of Dispute to dispute the denial of Cushman's proprietary claim for \$349,170 as particularized in the Proof of Claim. The Notice of Disallowance from the Manager is dated November 28, 2014.

Cushman does not dispute the Manager's allowance of an unsecured claim for \$349,170. Having said this, Cushman only wishes to rely on its status as an unsecured creditor to the extent that its dispute of the denial of the proprietary claim is unsuccessful.

Cushman does not dispute the denial of its secured claim.

The Manager has determined that Cushman has a valid proprietary claim for \$349,170. The only basis for denial of the proprietary claim is that the Manager takes the position that the order and endorsement of Justice Brown dated May 20, 2014 (collectively, the "**May 20 Order**") and the order dated July 18, 2014 (the "**July 18 Order**") that approved a claims procedure (the "**Claims Procedure**") do not grant the Manager the authority to allow proprietary claims. As such, the Notice of Dispute only relates to the Claims Procedure and the types of claims that Cushman is entitled to submit and which the Manager may allow.

### Details of Cushman Position

Cushman did not have notice of the motion that led to the May 20 Order and did not have an opportunity to make submissions at that time.

#### *June 2, 2014 Appearance*

After Cushman became aware of the May 20 Order, its counsel appeared in court on June 2, 2014 to inform the court that it did not have an opportunity to make submissions in respect of the motion leading to the May 20 Order. At that hearing, Justice Brown advised Cushman's counsel that nothing in the May 20 Order precluded Cushman from claiming priority over other Secondary Payments and that claim could be part of the forthcoming Claims Procedure that the Manager was to run. Justice Brown also advised verbally at that time that the Manager's Claims Procedure did not preclude Cushman from making both priority and quantum arguments and that nothing in the May 20 Order should be interpreted as precluding Cushman from making such arguments.

On June 2, 2014, Justice Brown made the following endorsement relative to Cushman:

#### FRONT STREET

1. Cushman & Wakefield – Manager says it intends to seek approval of a claims process.

The formal order dated May 20, 2014 was finalized, issued, and entered after the June 2, 2014 attendance. Paragraph 8 of that order confirmed that all claims, including Cushman's claim, would be adjudicated in a claims process:

8. THIS COURT ORDERS that following Closing of the sale of the Property, Schonfeld Inc. in its capacity as Manager in these proceedings, will bring a motion for approval of an Order of this Court approving a Claims Process to determine the validity, quantum and priority of the Secondary Payments and any claims of the Applicants that the Court may order in respect of the Property.

Paragraph 5 of that order vested all claims out of the Property (including Cushman's claim) and paragraph 7 vested all claims (again, including Cushman's claim) into the sale proceeds with the same priority. As is the case with most vesting orders, this order did not affect the validity or priority of any claim.

*July 18, 2014 Appearance*

Counsel for Cushman also appeared in court on July 18, 2014 at which time, *inter alia*, Justice Brown dealt with a motion to approve the Claims Procedure (relating to the Property). At that time, Cushman again informed Justice Brown that it did not receive notice of the motion leading to the May 20 Order. In his endorsement released that day, Justice Brown stated the following:

Cushman & Wakefield wanted to amend the order to, in effect, delegate to the Manager the ability to vary my May 20/14 Order with respect to Primary and Secondary Payments. That I am not prepared to do.

Justice Brown then gave Cushman the opportunity to vary the May 20 order, failing which Cushman "is otherwise estopped from arguing any variation to my May 20 Order".

Cushman did not attempt to vary the May 20 Order. Such variation was not necessary because both the May 20 Order and the comments, endorsement, and order made by Justice Brown on June 2, 2014 made it clear that Cushman was not prevented from fully participating in the Claims Procedure, including by asserting a priority for its claim.

For example, Justice Brown's May 20 endorsement stated the following in relevant part:

[117] Given that the claims asserted against or in respect of the 65 Front Street East property exceed the gross sales price and given the dispute amongst claimants about the validity of certain claims to the Remaining Balance, I am prepared to authorize the proposed sale of 65 Front Street East property, but only on the basis that the Primary Payments, as defined above, are paid on closing out of the sale proceeds, with the entire Remaining Balance to be paid to the Manager, Schonfeld Inc., to be held in trust pending the conduct of a claims process by those seeking Secondary Payments, and the Remaining Balance would stand in the place of the property to satisfy any such claims.

[118] If the respondents wish to close on that basis, they may submit a formal approval and vesting order to that effect, approved as to form and content by all affected parties, to my attention for signature. I will not entertain any further "re-negotiated distribution deals" unless they are accompanied by a comprehensive formal order with signed consents from all affected parties.

Cushman's claim was identified as a Secondary Payment. Justice Brown clearly directed that those creditors seeking Secondary Payments could assert their claims in the upcoming Claims Procedure. No limit was placed on the nature or priority of the claims that could be made in such process.



The submissions that Cushman made before the court on June 2 and July 18, 2014 were that Justice Newbould's order dated March 21, 2014 had already determined that Cushman was entitled to a priority for the commission and that such amount should be paid to Cushman "off the top" of any closing proceeds. As such, Cushman argued that it should not be subject to the Claims Procedure. Although this argument was ultimately not accepted, the decisions and comments of Justice Brown noted above merely meant that Cushman became subject to the Claims Procedure (rather than benefiting from Justice Newbould's March 21 order granting Cushman priority) and it was entitled to assert any claim it deemed advisable in the Claims Procedure.

At the time that the Claims Procedure was approved and the July 18 Order was granted, no party attempted to limit the nature of the claim that Cushman could assert in the Claims Procedure. The only limitation was the one imposed by Justice Brown, namely that Cushman could not attempt to attack the May 20 Order through the Claims Procedure and any variation of that Order would have to be dealt with by Justice Brown.

The Claims Procedure established by the July 18 Order covers all aspects of the claims that Cushman made, including the proprietary claim. The term "Claim" was very broadly defined to include any claim whatsoever that a Secondary Payment Claimant might have:

- (b) "Claim" means any right of any Secondary Payment Claimant against the Debtor in connection with any indebtedness, liability or obligation of any kind of the Debtor, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, or unknown, by guarantee, surety or otherwise and whether or not such right is executory in nature, including the right or ability of any Secondary Payment Claimant to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, and including any indebtedness, liability or obligation of any kind arising out of the restructuring, termination, repudiation or disclaimer of any lease, contract, employment agreement or other agreement (each a "Claim", and collectively, the "Claims"), provided such Claim relates to a Secondary Payment Claim of the Secondary Payment Claimant;

The July 18 Order also provided that the Claims Procedure would determine the priority of all "Claims" and there were no fixed restrictions on the categories of claim that could be recognized:

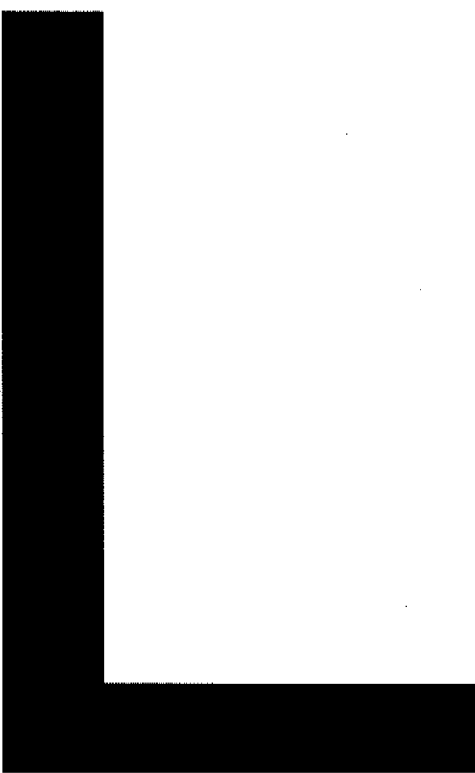
**DETERMINATION OF CLAIMS**

8. THIS COURT ORDERS that the amount and status of every Claim of a Creditor as finally determined in accordance with this Order, including any determination as to the nature, amount, value, priority or validity of any Claim shall be final for all purposes, including without limitation for any distribution made to Creditors of the Debtor pursuant to further Order of the Court.

**Conclusion**

In short, Cushman's assertion of a proprietary claim is entirely consistent with the comments made by Justice Brown on June 2 and July 18, 2014 as well the orders and endorsements granted on those dates (and the May 20 Order). The Manager did have authority to consider and accept Cushman's proprietary claim.

Cushman therefore asks that a proprietary claim in the amount of \$349,170 be allowed.



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**NOTICE OF DISALLOWANCE RELATING TO  
FRONT CHURCH PROPERTIES LIMITED  
(hereinafter referred to as “the Debtor”)**

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TO: Ample Electric Inc.  
90 Esna Park Drive, Unit 3  
Markham, Ontario  
L3R 2R7

Attention: Huang Qing Sheng

The Court-appointed Manager hereby gives you notice that it has reviewed your Claim and has revised or rejected your Claim as follows:

	<b>The Proof of Claim Amount as Submitted</b>	<b>The Proof of Claim as Accepted</b>
Claim	\$8,904.40 Secured claim	\$7,006.00 Unsecured Claim

**A. Reasons for Disallowance or Revision:**

**Your claim has been partially disallowed as shown above and as outlined below.**

**Status as secured claim**

**You have not provided any evidence that your lien was perfected within the time period required by the *Construction Lien Act*. Accordingly, your claim is unsecured.**

**Quantum of your claim**

**You claimed \$8,904.40 for invoices attached to your claim. The books and records of the Debtor indicate an amount owing of \$7,006.00 and this amount has been accepted as an unsecured claim.**

If you do not agree with this Notice of Disallowance, please take notice of the following:

**If you dispute this Notice of Disallowance, you must, by no later than 4:00 p.m. (Toronto Time) on December 17, 2014, being fourteen (14) days after the Notice of Disallowance is sent by the Manager pursuant to the Claims Procedure Order, notify the Manager by delivery of a Dispute Notice to the following address:**

Schonfeld Inc.  
 Court-appointed Manager of the Companies  
 77 King Street West, Suite 3000, P.O. Box 95  
 TD Centre North Tower  
 Toronto, ON M5K 1G8

Attention: Stephanie Williams  
 Telephone: 416-862-7785, Extension 4  
 E-mail: swilliams@schonfeldinc.com  
 Fax: 416-862-2136

with a copy (which shall not be deemed notice) to:

Goodmans LLP  
 Bay Adelaide Centre  
 333 Bay Street, Suite 3400  
 Toronto, ON M5H 2S7

Attention: Brian Empey / Mark Dunn  
 Telephone: 416-597-4194 / 416-849-6895  
 E-mail: bempey@goodmans.ca / mdunn@goodmans.ca  
 Fax: 416-979-1234

The form of Dispute Notice is enclosed. If you do not deliver a Dispute Notice by the above-noted time and date, your Claim shall be deemed to be as set out in this Notice of Disallowance.

**IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF DISALLOWANCE WILL BE BINDING UPON YOU.**

**DATED** at Toronto, this 3<sup>rd</sup> day of December, 2014.

**SCHONFELD INC.,**  
**in its capacity as Court-appointed Manager**  
**and pursuant to the May 20 Order**

**M M**

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**NOTICE OF DISALLOWANCE RELATING TO  
FRONT CHURCH PROPERTIES LIMITED  
(hereinafter referred to as "the Debtor")**

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TO: Blue Air Mechanical Inc.  
54 Stewart Smith Drive  
Toronto, Ontario  
M6M 2S9

Attention: Jamaal Madden

The Court-appointed Manager hereby gives you notice that it has reviewed your Claim and has revised or rejected your Claim as follows:

	<b>The Proof of Claim Amount as Submitted</b>	<b>The Proof of Claim as Accepted</b>
Claim	\$15,394.10 Secured claim	\$13,560.00 Unsecured Claim

**A. Reasons for Disallowance or Revision:**

**Your claim has been partially disallowed as shown above and as outlined below.**

**Status as secured claim**

**You have not provided any evidence that your lien was perfected within the time period required by the *Construction Lien Act*. Accordingly, your claim is unsecured.**

**Claim for legal fees**

**Costs incurred in the course of litigation against the Debtor are not recoverable from the Debtor in the absence of a costs award by the Court. Your claim for \$1,834.10 is not accepted.**

If you do not agree with this Notice of Disallowance, please take notice of the following:

**If you dispute this Notice of Disallowance, you must, by no later than 4:00 p.m. (Toronto Time) on December 17, 2014, being fourteen (14) days after the Notice of Disallowance is sent by the Manager pursuant to the Claims Procedure Order, notify the Manager by delivery of a Dispute Notice to the following address:**

Schonfeld Inc.  
 Court-appointed Manager of the Companies  
 77 King Street West, Suite 3000, P.O. Box 95  
 TD Centre North Tower  
 Toronto, ON M5K 1G8

Attention: Stephanie Williams  
 Telephone: 416-862-7785, Extension 4  
 E-mail: swilliams@schonfeldinc.com  
 Fax: 416-862-2136

with a copy (which shall not be deemed notice) to:

Goodmans LLP  
 Bay Adelaide Centre  
 333 Bay Street, Suite 3400  
 Toronto, ON M5H 2S7

Attention: Brian Empey / Mark Dunn  
 Telephone: 416-597-4194 / 416-849-6895  
 E-mail: bempey@goodmans.ca / mdunn@goodmans.ca  
 Fax: 416-979-1234

The form of Dispute Notice is enclosed. If you do not deliver a Dispute Notice by the above-noted time and date, your Claim shall be deemed to be as set out in this Notice of Disallowance.

**IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF DISALLOWANCE WILL BE BINDING UPON YOU.**

**DATED** at Toronto, this 3<sup>rd</sup> day of December, 2014.

**SCHONFELD INC.,**  
**in its capacity as Court-appointed Manager**  
**and pursuant to the May 20 Order**



**N**

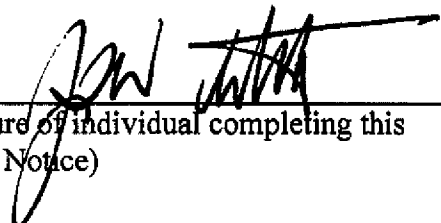
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**DISPUTE NOTICE RELATING TO FRONT CHURCH PROPERTIES LIMITED**  
**(hereinafter referred to as "the Debtor")**

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**A. PARTICULARS OF CREDITOR:**

1. Full Legal Name of Creditor: Blue Air Mechanical Inc.

  
 (Signature of individual completing this  
 Dispute Notice)

December 17, 2014  
 Date

2. Full Mailing Address of the Creditor:

% Langlois Konrad Inkster LLP

6645 Kitimat Road, Unit 14

Mississauga, ON L5N 6J3

3. Telephone Number: 647.494.4310

4. E-Mail Address: tyler@lkilaw.ca

5. Facsimile Number: 647.494.7951

**B. REASONS FOR DISPUTE:**

We hereby give you notice of our intention to dispute the Notice of Disallowance dated  
December 3, 2014.

(Provide full particulars of the Claim and supporting documentation. Attach additional page if  
 necessary.)

Please see attached document Reasons for Dispute and Vesting Order.

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This Dispute Notice must be returned by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission and be received by the Manager by no later than 4:00 P.M. (TORONTO TIME) ON December 17, 2014, [being fourteen (14) days after the Notice of Disallowance is sent by the Manager pursuant to the Claims Procedure Order] at the following address:

Schonfeld Inc.  
Court-appointed Manager of the Companies  
77 King Street West, Suite 3000, P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

Attention: Stephanie Williams  
Telephone: 416-862-7785, Extension 4  
E-mail [swilliams@schonfeldinc.com](mailto:swilliams@schonfeldinc.com)  
Fax: 416-862-2136

## REASONS FOR DISPUTE

Blue Air Mechanical Inc. accepts the reduction of its claim from \$15,394.10 to \$13,560.00 on account of its claim for legal fees; however, it disputes the Court-appointed Manager's finding that its claim for \$13,560.00 is an unsecured claim.

The reason provided by the Court-appointed Manager for classifying Blue Air Mechanical Inc.'s claim as an unsecured claim as opposed to a secured claim, is that Blue Air Mechanical Inc. has failed to provide any evidence that its lien was perfected within the time period required by the *Construction Lien Act*. This if not in fact the case.

Blue Air Mechanical Inc.'s date of last supply of services/materials was April 16, 2014. According to section 31 of the *Construction Lien Act*, Blue Air Mechanical Inc. had until May 31, 2014 to register its lien in order to preserve its lien. It preserved its lien under section 34 of the *Construction Lien Act* by registering its lien on April 23, 2014.

According to s. 36 (2) of the *Construction Lien Act*, Blue Air Mechanical had to the end of the 45 day period next following the last day, under section 31, on which the lien could have been preserved. The end of the 45 day period next following May 31, 2014 was July 15, 2014.

On May 20, 2014, D.M. Justice Brown issued a Vesting Order in which it was ordered in paragraph 5 that upon Closing of the sale of the subject property, all of the Vendor's right, title and interest in and to the subject property was to vest absolutely in the Purchaser, free and clear of and from any and all security interests, including Blue Air Mechanical Inc.'s lien. **It was further ordered that all of the Secondary Payments affecting or relating to the Property were expunged by the Vesting Order and discharged against the subject property.**

Paragraph 6 of the Vesting Order provided that upon the registration of the Transfer/Deed of Land, the Land Registrar was directed to enter the Purchaser as the owner of the subject property in fee simple **and was directed to delete and expunge from title to the subject property all of the Claims, including Blue Air Mechanical Inc.'s lien.**

Once the Vesting Order was registered against the title to the subject property, it was no longer possible to perfect Blue Air Mechanical Inc.'s lien, even though Blue Air Mechanical Inc. had another 34 days after June 11, 2014 within which to perfect its lien by registering a certificate of action, as the terms of the Vesting Order specifically deleted the lien from the title to the subject property and provided further that the Purchaser took title free and clear of Blue Air Mechanical Inc.'s lien.

Notwithstanding the fact that Blue Air Mechanical Inc. had 34 days from June 11, 2014 to perfect its lien by registering a certificate of action against the title to the subject property, **the terms of the Vesting Order did not permit this.** There was simply no legal basis upon which Blue Air Mechanical Inc. could have perfected its lien within the time frames stipulated in the *Construction Lien Act* once the Vesting Order had been registered against the title to the subject property. That fact does not render Blue Air Mechanical

Inc.'s claim an unsecured claim. Its claim is a secured claim and should be classified as such by the Court-appointed Manager, as its right to perfect its lien had not expired as of the date of the registration of the Vesting Order.

LRO # 00 Application For Vesting Order

Registered as AT3604367 on 2014 06 11 at 12:27

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 19

**LRO Annotation**

Executions clear against FRONT CHURCH PROPERTIES LIMITED on 2014/07/07. Certificate #23651913-83677148. Lucy

**Properties**

**Pin** 21400 - 0069 LT  
**Description** PT WALKS AND GARDENS PL 5A TORONTO; PT STRIP OF LAND BTN WATERS EDGE AND TOP OF BANK PL 5A TORONTO; PT LT 30 S/S FRONT ST E PL 5A TORONTO AS IN CA570607; S/T CT273443; CITY OF TORONTO  
**Address** 55 FRONT ST EAST  
 TORONTO

**Consideration**

**Consideration** \$10,000,000.00

**Party From(s)**

**Name** ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)  
**Address for Service** 393 University Avenue, 10th Floor  
 Toronto, Ontario  
 M5G 1E6

**Owner(s)****Capacity****Share**

**Name** 2410077 ONTARIO LTD.  
**Address for Service** 1566 Queen Street East, Toronto, Ontario M4L 1H8

**Statements**

The applicant who is authorized by court order file no. CV-13-10260-00CL dated 2014/05/20, which is still in full force and effect, applies to have the register amended as follows: to show the registered owner of the Property as 2410077 Ontario Ltd.; and to delete the following instruments, as set out in Schedule "C" to the Order attached hereto:

1. CRA HST lien claim Registration Number AT3486865;
2. Construction lien claims including but not limited to Registration Numbers:
  - a) AT3557508 Laser Heating and Air Conditioning Inc.;
  - b) AT3557355 Net Drywall & Acoustics Ltd.;
  - c) AT3561737 Roofing Medics Ltd.;
  - d) AT3563233 Blue Air Mechanical Inc.;
  - e) AT3565588 Gentry Environmental Systems Ltd.;
  - f) AT3565641 Abaco Glass Inc.;
  - g) AT3566416 Maxguard Alarm and Security Company Ltd.;
  - h) AT3566462 Net Drywall & Acoustics Ltd.;
  - i) AT3567140 Amplo Electric Inc.;
  - j) AT3567258 1771105 Ontario Inc.;
  - k) AT3567558 G-Line Sun Control Inc.;
  - l) AT3567578 Kerestely, Zoltan;

**Statements**

- m) AT3568362 WBA Architects and Engineers Inc.;
  - n) AT3568578 Engoon Construction;
  - o) AT3570270 Carcol Ltd;
  - p) AT3570298 Caiquan Construction Co.;
  - q) AT3572541 Memme Joseph;
  - r) AT3573033 World Electric;
  - s) AT3573412 MediGroup Incorporated;
  - t) AT3595633 Gentry Environmental Systems Ltd.;
  - u) AT3600899 Laser Heating & Air Conditioning Inc.
3. Collins Barrow Receivers notice of claim Registration Number AT3574922; and
4. Commission payment to Cushman Wakefield LePage.  
 Schedule: See Schedules

**Signed By**

Noah Kenneth Okell 1600 Steeles Ave. W acting for Owner Signed 2014 06 11  
 Concord (s)  
 L4K 4M2

Tel 9057618711  
 Fax 9057618633

I have the authority to sign and register the document on behalf of the Owners(s).

**Submitted By**

OKELL & WEISMAN 1600 Steeles Ave. W 2014 06 11  
 Concord  
 L4K 4M2

Tel 9057618711  
 Fax 9057618633

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Provincial Land Transfer Tax	\$148,475.00
Municipal Land Transfer Tax	\$147,725.00
Total Paid	\$296,260.00

**File Number**

Party From Client File Number : 3343 (CV-13-10280-00CL)  
 Owner Client File Number : 14-8526

**PROVINCIAL AND MUNICIPAL LAND TRANSFER TAX STATEMENTS**

In the matter of the conveyance of: 21400 - 0069 PT WALKS AND GARDENS PL 5A TORONTO; PT STRIP OF LAND BTN  
WATERS EDGE AND TOP OF BANK PL 5A TORONTO; PT LT 30 S/S  
FRONT ST E PL 5A TORONTO AS IN CA570607; S/T CT273443; CITY  
OF TORONTO

BY: ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

TO: 2410077 ON TARIO LTD.

## 1. WILLIAM MANDELBAUM

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for \_\_\_\_\_ described in paragraph(s) ( ) above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for 2410077 ONTARIO LTD. described in paragraph(s) (c) above.
- (f) A transferee described in paragraph ( ) and am making these statements on my own behalf and on behalf of \_\_\_\_\_ who is my spouse described in paragraph ( ) and as such, I have personal knowledge of the facts herein deposed to.

## 2. I have read and considered the definition of "single family residence" set out in subsection 1(1) of the Act. The land being conveyed herein:

does not contain a single family residence or contains more than two single family residences.

## 3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	4,245,863.33
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	5,754,136.67
(ii) Given Back to Vendor	0.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	10,000,000.00
(h) VALUE OF ALL CHATTELS - items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	10,000,000.00

## PROPERTY Information Record

A. Nature of Instrument: Application For Vesting Order  
LRO 80 Registration No. AT3604387 Date: 2014/06/11

B. Property(s): PIN 21400 - 0069 Address 65 FRONT ST EAST Assessment 1804064 - 17000500  
TORONTO Roll No

C. Address for Service: 1966 Queen Street East, Toronto, Ontario M4L 1H8

D. (i) Last Conveyance(s): PIN 21400 - 0069 Registration No. AT1262288  
(ii) Legal Description for Property Conveyed: Same as in last conveyance? Yes  No  Not known

E. Tax Statements Prepared By: Noah Kenneth Okell  
1600 Steeles Ave. W  
Concord L4K 4M2



**SCHEDULE "A"**  
**VESTING ORDER**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

THE HONOURABLE ) Tuesday, the 20th  
D.M. JUSTICE BROWN ) day of May, 2014

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

*AMENDED* ORDER

THIS MOTION brought by the Respondents for an order varying the Orders of this Court dated December 18, 2013, January 27 and March 21, 2014 in respect of the property known municipally as 65 Front Street East, Toronto, Ontario (the "Property") and vesting in the Purchaser, 2410077 Ontario Ltd., the right, title and interest in the Property currently held by the Vendor Front Church Properties Limited (the "Vendor") was heard this day at 330 University Avenue, Toronto, Ontario.

- 2 -

ON READING the motion records of the Respondent Norma Walton returnable April 1, 2014 and April 29, 2014, the Affidavit of Ken Froese sworn April 28, 2014; the two Affidavits of the Respondent Norma Walton sworn May 5, 2014; the responding motion records of the Applicants returnable April 1, 2014 and April 29, 2014 of the Applicants' Compendium and Supplementary Compendium; the Inspector's Report dated April 23, 2014, the updated Inspector's Report dated May 5, 2014;

ON READING the materials and hearing from the Respondent Norma Walton, counsel for the other Respondents, counsel for the Applicants, counsel for the Manager and counsel for certain other interested parties, but not counsel for Cushman & Wakefield Ltd., and reviewing correspondence from counsel for Her Majesty the Queen in Right of Canada as Represented by the Minister of National Revenue ("CRA"), and upon Cushman & Wakefield Ltd. not having been given notice of this motion and therefore not having had a chance to appear;

1. THIS COURT ORDERS that the time for service of the notices of motion and motion records is hereby abridged, as necessary, so that this motion is properly returnable today.
2. THIS COURT ORDERS that the Order of the Honourable Mr. Justice Newbould made March 21, 2014 is hereby varied to provide that the sale proceeds from the sale of 65 Front Street East, Toronto, Ontario will be paid in accordance with this Order.
3. THIS COURT ORDERS that the Vendor shall, from the sale proceeds of 65 Front Street East, make the following payments upon closing (the "Primary Payments"):

- 3 -

- (a) Apply a credit in the approximate amount of \$5,887,500 to the purchase price of the Property in favour of the Purchaser in respect of the assumption of the first mortgage registered on the Property in favour of Alterna Savings by the Purchaser;
- (b) Payment of the second mortgage registered on the Property in favour of 368230 Ontario Limited in the amount of principal, interest and \$85,000 plus HST in legal fees, being the approximate amount of \$2,720,000;
- (c) Payment of property taxes in arrears for 2013 and adjustments for 2014 property taxes in the approximate amount of \$190,000;
- (d) Standard closing adjustments in the statement of adjustments in the approximate amount of \$150,000; and
- (e) The vendor's legal fees of \$30,000 plus HST.

4. THIS COURT ORDERS that the remaining balance from the sale proceeds of the Property be paid to and be held in trust by Goodmans LLP in trust, being counsel to Schonfeld Inc. in its capacity as Manager.

5. THIS COURT ORDERS AND DECLARES that after the Primary Payments are satisfied, upon Closing of sale of the Property, all of the Vendor's right, title and interest in and to the Property shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims")

- 4 -

including: (i) the lien in favour of Canada Revenue Agency registered against the Property; (ii) the construction lien claims registered against the Property; (iii) the notice of claim registered by Collins Barrow (Toronto) Limited, the court appointed Receiver of Global Mills Inc.; (iv) the Commission payment due to Cushman & Wakefield Ltd. (the "Secondary Payments") and for greater certainty, this Court orders that all of the Secondary Payments affecting or relating to the Property are hereby expunged and discharged as against the Property.

6. THIS COURT ORDERS that upon the registration in the Land Registry Office for the City of Toronto of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Vendor of a Vendor's Certificate in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

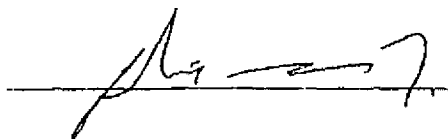
7. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, and that from and after the delivery of the Vendor's Certificate all Claims shall attach to the net proceeds from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. THIS COURT ORDERS that following Closing of the sale of the Property, Schonfeld Inc. in its capacity as Manager in these proceedings, will bring a motion for approval of an Order of this Court approving a Claims Process to determine the validity, quantum and priority of the

-5-

Secondary Payments and any claims of the Applicants that the Court may order in respect of the Property.

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Manager and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Manager, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Manager and its agents in carrying out the terms of this Order.



ENTREED AT LASSORI / TORONTO  
ON / POUR NO.  
LE / DANS LE REGISTRE NO..



JUN 10 2014

Schedule A – Form of Vendor’s Certificate

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

**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, 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

**VENDOR’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Brown of the Ontario Superior Court of Justice (the "Court") dated May 20, 2014, the Vendor was directed to pay to Schonfeld Inc., in its capacity as the Court appointed Manager in these proceedings (the "Manager") the remaining

- 7 -

balance from the sale proceeds from the sale of 65 Front Street East (the "Property") after the Vendor has paid the Primary Payments as defined in said Order.

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE VENDOR CERTIFIES the following:

1. The Vendor has paid to the Manager the remaining balance from the sale proceeds from sale of the Property after the Primary Payments were made; and
2. This Certificate was delivered by the Vendor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FRIEDMAN & ASSOCIATES LLP as  
Vendor's lawyer**

Per: \_\_\_\_\_  
Name:  
Title:



- 8 -

**Schedule B – Property**

The real property located at 65 Front Street East, Toronto, Ontario

PIN 21400 – 0069 LT

PART WALKS AND GARDENS PLAN 5A TORONTO; PART STRIP OF LAND BETWEEN WATERS  
EDGE AND TOP OF BANK PLAN 5A TORONTO; PART LOT 30 SOUTHSIDE FRONT STREET EAST  
PLAN 5A TORONTO AS IN CA570607; SUBJECT TO CT273443; CITY OF TORONTO

65 FRONT ST E

TORONTO

- 9 -

*ORDER***Schedule C – Claims to be deleted and expunged from title to Real Property**

- (a) CRA HST lien claim Registration Number AT3488865;
- (b) Construction lien claims including but not limited to Registration Numbers:
  - (i) AT3557508 Laser Heating and Air Conditioning Inc.;
  - (ii) AT3557855 Net Drywall & Acoustics Ltd.;
  - (iii) AT3561737 Roofing Medics Ltd.;
  - (iv) AT3563233 Blue Air Mechanical Inc.;
  - (v) AT3565588 Gentry Environmental Systems Ltd.;
  - (vi) AT3565641 Abaco Glass Inc.;
  - (vii) AT3566416 Maxguard Alarm and Security Company Ltd.;
  - (viii) AT3566462 Net Drywall & Acoustics Ltd.;
  - (ix) AT3567140 Ample Electric Inc.;
  - (x) AT3567258 1771105 Ontario Inc.;
  - (xi) AT3567558 G-Line Sun Control Inc.;
  - (xii) AT3567578 Kerestely, Zoltan;
  - (xiii) AT3568362 WBA Architects and Engineers Inc.;
  - (xiv) AT3568578 Engcon Construction;
  - (xv) AT3570270 Carcol Ltd.;
  - (xvi) AT3570298 Caiquan Construction Co.;
  - (xvii) AT3572541 Memme Joseph;
  - (xviii) AT3573033 World Electric;
  - (xix) AT3573412 MediGroup Incorporated;
  - (xx) AT3595633 Gentry Environmental Systems Ltd.; and
  - (xxi) AT3600899 Laser Heating & Air Conditioning Inc.

- 10 -

*ORDER*

- (c) Collins Barrow Receiver's notice of claim Registration Number AT3574922; and
- (d) Commission payment to Cushman Wakefield LePage.

- 11 -

*ORDER*

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vendor's Certificate)**

Purchaser is assuming the first mortgage registered by Alterna Savings pursuant to Registration Numbers AT1262289 and AT1262430 and AT1961238 and AT2711991

Vendor is paying out and discharging the second mortgage registered by 368230 Ontario Limited, Registration Number AT2959596

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

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

ONTARIO SUPERIOR  
COURT OF JUSTICE

[COMMERCIAL LIST]

Proceeding commenced at:

TORONTO

**ORDER**

NORMA WALTON  
30 Hazelton Avenue  
Toronto, Ontario M5R 2E2

Tel: (416) 489-9790 x103  
Fax: (416) 489-9973  
nwalton@roseandhistle.ca

Respondent

SCHEDULE "B"  
VENDOR'S CERTIFICATE

**Schedule A – Form of Vendor’s Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

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)  
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**B E T W E E N:**

**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**

**VENDOR’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Brown of the Ontario Superior Court of Justice (the "Court") dated May 20, 2014, the Vendor was directed to pay to Schonfeld Inc., in its capacity as the Court appointed Manager in these proceedings (the "Manager") the remaining

-7-

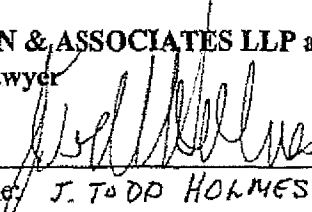
balance from the sale proceeds from the sale of 65 Front Street East (the "Property") after the Vendor has paid the Primary Payments as defined in said Order.

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

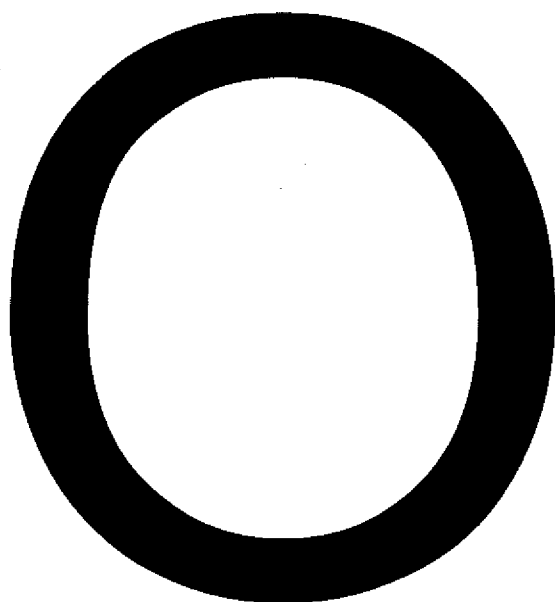
THE VENDOR CERTIFIES the following:

1. The Vendor has paid to the Manager the remaining balance from the sale proceeds from sale of the Property after the Primary Payments were made; and
2. This Certificate was delivered by the Vendor at 10:57<sup>am</sup> [TIME] on June 11, 2014 [DATE].

**FRIEDMAN & ASSOCIATES LLP as  
Vendor's lawyer**

Per:   
 Name: J. TODD HOLMES  
 Title: Associate

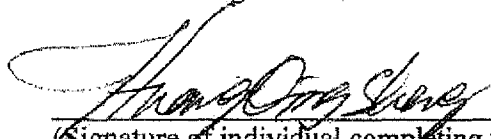




**DISPUTE NOTICE RELATING TO FRONT CHURCH PROPERTIES LIMITED**  
(hereinafter referred to as "the Debtor")

**A. PARTICULARS OF CREDITOR:**

1. Full Legal Name of Creditor: Ample Electric Inc.

  
(Signature of individual completing this  
Dispute Notice)

2014 - Dec - 12  
Date

2. Full Mailing Address of the Creditor:

90 ESNA PARK Drive. Unit-3  
MARKHAM ON.  
L3R 2R7

3. Telephone Number: 416-859-3328

4. E-Mail Address: ampleelectrical@gmail.com

5. Facsimile Number: 905-508-2889

**B. REASONS FOR DISPUTE:**

We hereby give you notice of our intention to dispute the Notice of Disallowance dated Dec. 12, 2014.

(Provide full particulars of the Claim and supporting documentation. Attach additional page if necessary.)

\_\_\_\_\_  
\_\_\_\_\_



P

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

**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 ON SCHEDULE B HERETO, TO BE  
BOUND BY THE RESULT

**AFFIDAVIT OF S. HARLAN SCHONFELD  
(Sworn March 17, 2015)**

I, S. HARLAN SCHONFELD, of the City of Toronto, in the Province of Ontario,

**MAKE OATH AND SAY:**

1. I am the President of Schonfeld Inc., the court-appointed Manager in this proceeding and have knowledge of the facts and matters to which I hereinafter depose either through my own knowledge or by informing myself with respect thereto in which case I have indicated the source of my information and belief.

2. On May 20, 2014, pursuant to an order of the Honourable Justice Brown, the Manager was directed to conduct a claims process with respect to the proceeds of the sale of 65 Front Street (the "Front Street Claims Process"). Details of this claims process are described in the Manager's 26<sup>th</sup> Report.

3. Attached hereto and marked as Exhibit "A" to this my Affidavit is a true copy of the accounts rendered by the Manager with respect to the Front Street Claims Process for a total of \$22,600 inclusive of HST and disbursements.

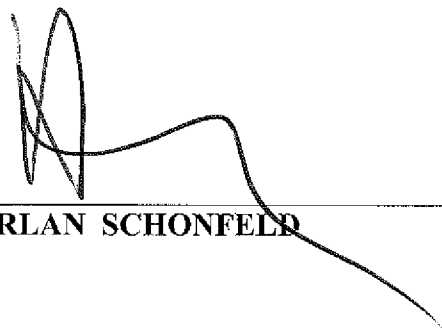
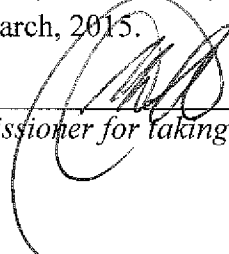
4. A total of approximately 84 hours were expended by the Manager with respect to the Front Street Claims Process.

5. The hourly billing rates outlined in Exhibit "A" to this my Affidavit are normal average hourly rates charged by Schonfeld Inc. for services rendered in relation to engagements similar to its engagement as Manager in this matter. These accounts accurately reflect the services provided by the Manager in this matter.

6. This Affidavit is made in support of the Manager's application for approval by this Honourable Court to, among other things; approve the fees and disbursements of the Manager.

**SWORN BEFORE ME** at the City of Toronto, in the Province of Ontario this 17<sup>th</sup> day of March, 2015.

*A Commissioner for taking Affidavits*



**S. HARLAN SCHONFELD**

**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 Inc.
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 Development 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.

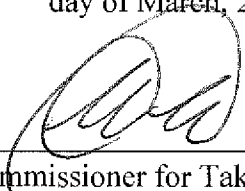
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

**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



This is Exhibit "A" referred to in the  
affidavit of S. Harlan Schonfeld  
sworn before me, this 17<sup>th</sup>  
day of March, 2015.



---

A Commissioner for Taking Affidavits

Schonfeld Inc.  
Receivers+Trustees

March 17, 2015

Norma Walton, Ronauld Walton  
The Rose & Thistle Group Ltd. and  
Eglinton Castle Inc.; and those  
Corporations listed on Schedule "B"  
of an Order made on November 5, 2013  
30 Hazelton Avenue  
Toronto, ON M5R 2E2

Invoice #939

**\* INVOICE \***

**Re: Court Appointed Manager's account**

**Front Street Claims Procedure**

To: Professional services rendered for the period July 22, 2014  
to March 17, 2015 under the terms of an Order dated  
May 20, 2014 and July 18, 2014 approving the Front Street Claims Procedure  
as detailed in the attached timedockets

Our fee:	\$ 22,600.00
HST @ 13%	<u>2,938.00</u>
Our fee	\$ 25,538.00
<b>Total Fees</b>	<b>\$ 25,538.00</b>

James Merryweather, CPA, CGA	40.00	\$400	\$ 16,000.00
Stephanie Williams	<u>44.00</u>	\$150	\$ 6,600.00
TOTAL:	<u>84.00</u>		<u>\$ 22,600.00</u>

H.S.T. #87283 8339 RT0001

Tel. 416.862.7785 Fax. 416.862-2136  
info@schonfeldinc.com  
77 King Street West, Suite 3000, P O Box 95, Toronto, Ontario  
M5K 1G8

KB

DATE	DESCRIPTION	TIME (hh/mm)	HOURLY RATE	AMOUNT
<b>JAMES MERRYWEATHER, CPA, CGA</b>				
22-Jul-14	prepare docs for claims process; build creditor database; corr w M Goldberg re missing info; launch claims process	3.5		
23-Jul-14	update claims register; corr w M Goldberg re creditor info	0.5		
18-Aug-14	review proofs of claim, assess for deficiency, contact creditors re same	3.0		
28-Aug-14	review proofs of claim; update claims database; prepare deficiency letters; corr w counsel; corr w creditors;	6.0		
17-Sep-14	review proofs of claim; assemble info, send to Goodmans; update database; corr w creditors	1.5		
19-Sep-14	mtg w SW to review proofs of claim, process docs for counsel, update claims database	1.0		
13-Nov-14	mtg w SW to review proofs of claim, security registrations; corr w creditors; update creditor database; issue notices of disallowance	2.0		
25-Nov-14	mtg w SW to review proofs of claim, security registrations; corr w creditors; update creditor database; corr w counsel	3.5		
27-Nov-14	review issues re May Order and claims; prepare notice of disallowance	0.5		
01-Dec-14	review Order and lien claim issue; corr w counsel; review invoice support from company	1.0		
03-Dec-14	mtg w SW to review proofs of claim, issue notices of disallowance, reconcile claims to company records	2.0		
04-Dec-14	mtg w SW to review proofs of claim, issue notices of disallowance, reconcile claims to company records	3.0		
09-Dec-14	review dispute notices; prepare summary of disputed claim; tc w counsel	1.5		
21-Jan-15	review proofs of claim and dispute notices; corr w various creditors re o/s issues; prepare summary for counsel	3.0		
18-Feb-15	review proof of claim dispute notices, review legal issues; corr w various creditors	1.5		
19-Feb-15	review varlous corr from creditors; tc w counsel re lien issues; draft letters for disputed claims	2.0		



<b>Date</b>	<b>Staff</b>	<b>Description</b>	<b>Hours</b>
14-07-22	SNW	Attending at SRT, preparing and rolling out claims	3.75
14-07-23	SNW	Completing the roll-out for the Front Church	1.50
14-07-25	SNW	Receiving and tracking proofs of claim packages.	0.25
14-07-27	SNW	Receiving proof of claim, documenting and	0.25
14-07-31	SNW	Attending to creditors' questions with respect to	0.25
14-08-01	SNW	Receiving and tracking Proofs of Claim.	0.25
14-08-05	SNW	Receiving Proofs of Claim.	0.25
14-08-11	SNW	Receiving and responding to creditor emails as	0.50
14-08-12	SNW	Preparing and sending reminder emails for Claims	1.00
14-08-13	SNW	Receiving proofs of claim; responding to creditor	1.00
14-08-14	SNW	Receiving proofs of claim; responding to creditors'	0.50
14-08-15	SNW	Responding to creditors' emails as per J.	0.75
14-08-17	SNW	Receiving and tracking Proofs of Claim.	0.25
14-08-18	SNW	Receiving Proofs of Claim and following up with	3.00
14-08-19	SNW	Responding to creditors' emails as per J.	0.75
14-08-22	SNW	Tracking claims not filed.	0.25
14-08-25	SNW	Reviewing proofs of claims submitted by mail.	0.25
14-08-28	SNW	Correspondence with creditors regarding claims'	2.00
14-09-04	SNW	Receiving revised creditor Proof of Claim.	0.25
14-09-08	SNW	Emails to J. Merryweather regarding next steps in	1.00
14-09-09	SNW	Responding to creditor emails and telephone calls	0.25
14-09-11	SNW	Responding to creditor emails and telephone calls	1.00
14-09-17	SNW	Tracking amended claims received as per J.	1.50
14-09-19	SNW	Reviewing status of Front Claims and updating	0.50
14-09-24	SNW	Responding to telephone inquiry with respect to	0.25
14-10-01	SNW	Responding to creditor emails as per J.	0.75
14-10-07	SNW	Telephone call to an investor inquiring about Front	0.25
14-10-14	SNW	Responding to creditors' telephone calls as per J.	0.50
14-11-12	SNW	Discussions with J. Merryweather regarding next	0.25
14-11-13	SNW	Reviewing claims for supporting documents;	2.00
14-11-17	SNW	Responding to creditor emails as per J.	0.75
14-11-18	SNW	Responding to creditor emails as per J.	0.25
14-11-20	SNW	Tending to creditor emails as per J.	0.25
14-11-25	SNW	Attending onsite and tending to the Claims	2.50
14-11-28	SNW	Tending to creditor emails as per J.	0.50
14-12-01	SNW	Responding to creditor emails as per J. Merryweather's instructions.	0.50
14-12-03	SNW	Attending at the offices of SRT to work on Claims Process with J. Merryweather; Issuing Notices of Disallowance to Creditors as per J. Merryweather's instructions.	2.00
14-12-04	SNW	Attending at SRT to work on claims process with J. Merryweather; Emails to creditors Issuing notices of disallowance as per J. Merryweather's instructions.	3.75

14-12-08 SNW	Emails to creditors as per J. Merryweather's instructions.	0.25
14-12-12 SNW	Tending to creditor emails as per J. Merryweather's instructions.	0.25
14-12-15 SNW	Tending to creditor emails as per J. Merryweather's instructions.	0.50
14-12-16 SNW	Tending to creditor emails as per J. Merryweather's instructions.	0.25
14-12-19 SNW	Discussion with J. Merryweather with respect to next steps relating to Notices of Dispute.	0.25
15-01-21 SNW	Meeting with J. Merryweather and reviewing and documenting the status of each creditor's claim; Emailing creditors as per J. Merryweather's instructions.	2.00
15-02-18 SNW	Emailing creditors as per J. Merryweather's instructions; preparing for next set in claims process.	1.50
15-02-19 SNW	Emailing creditors as per J. Merryweather's instructions with respect to the claims process.	2.25
15-03-10 SNW	Tending to creditor emails as per J. Merryweather's instructions.	0.50
15-03-10 SNW	Tending to creditor emails as per J. Merryweather's instructions.	0.50

<b>TOTAL</b>	<b>Stephanie Williams</b>	<b>44.00</b>
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DBDC SPADINA LTD., et al  
Applicants

NORMA WALTON, et al  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial List**

Proceeding commenced at Toronto

**AFFIDAVIT OF SERVICE OF  
S. HARLAN SCHONFELD  
(Sworn March 17, 2015)**

**GOODMANS LLP  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7**

Brian Empey LSUC#: 30640G  
Mark S. Dunn LSUC#: 55510L  
Tel: (416) 979-2211  
Fax: (416) 979-1234

Lawyers for The Manager

Q



Front Church Properties Limited  
Claims Summary

Creditor	Claim Filed				Accepted by Manager			Proposed Distribution - Cushman Wakefield proprietary claim valid		Proposed Distribution - Cushman Wakefield proprietary claim invalid	
	Trust	Proprietary	Secured	Unsecured	Trust	Proprietary	Secured				
Funds Available								863,403.00		863,403.00	
less: fee estimate								-50,000.00		-50,000.00	
Funds Available for Distribution								813,403.00		813,403.00	
1 Canada Revenue Agency	246,284.94			32,096.10	246,284.94				246,284.94	100%	246,284.94
2 1771105 Ontario Inc.			47,742.50	1,200.00							
3 Abaco Glass Inc.			49,419.42				49,419.42		32,176.92	65%	49,419.42
4 Ample Electric Inc.			8,904.40								
5 Blue Air Mechanical Inc.			15,394.10								
6 Caiquan Construction Co.			58,556.60								
7 Carcol Limited			77,299.31				77,299.31		50,329.48	65%	77,299.31
8 Collins Barrow Toronto Limited			361,750.00								
9 Cushman Wakefield		349,170.00				349,170.00			349,170.00	100%	0%
10 Engcon Construction			25,086.00								
11 G-Line Sun Control Inc.			3,384.35								
12 Gentry Environmental Systems Ltd			26,287.70				26,287.70		17,115.89	65%	26,287.70
13 Joseph Memme			66,670.00				66,670.00		43,408.75	65%	66,670.00
14 Laser Heating & A/C Inc.			49,815.13				39,307.45		25,593.03	65%	39,307.45
15 Maxguard Alarms and Security Company Ltd.			4,237.50								
16 Net Drywall & Acoustics Ltd.			75,755.00				75,755.00		49,323.98	65%	75,755.00
17 Perfect Painting			18,645.00								
18 Roofing Medics Ltd.			40,002.00								
19 WBA Architects and Engineers Inc.			11,447.01								
20 Wendy Gaucher c/o Loopstra Nixon LLP				165,000.00							
21 World Electric			28,730.46								
	246,284.94	349,170.00	969,126.48	198,296.10	246,284.94	349,170.00	334,738.88		813,402.99		581,023.82
				<u>1,762,877.52</u>			<u>930,193.82</u>				

Notes re above:

- 2 Manager issued a Notice of Disallowance re: priority (not secured) - creditor did not dispute
- 4 Manager issued a Notice of Disallowance re: priority (not secured) - creditor disputed Notice; needs to be resolved by Court
- 5 Manager issued a Notice of Disallowance re: priority (not secured) - creditor disputed Notice; needs to be resolved by Court
- 6 Manager issued a Notice of Disallowance re: priority (not secured) - creditor did not dispute
- 8 Manager issued a Notice of Disallowance - creditor did not dispute
- 9 Manager issued a Notice of Disallowance - creditor disputed Notice; Manager believes creditor may have valid claim, needs to be resolved by Court
- 10 Manager issued a Notice of Disallowance re: priority (not secured) - creditor disputed Notice; needs to be resolved by Court
- 11 Manager issued a Notice of Disallowance re: priority (not secured) - creditor did not dispute
- 14 Manager issued a partial Notice of Disallowance re: costs - creditor did not dispute
- 15 Manager issued a Notice of Disallowance re: priority (not secured) - creditor did not dispute
- 16 Manager issued a Notice of Disallowance re: priority (not secured) - creditor disputed Notice; Manager accepted reasons for dispute, claim accepted
- 17 Manager issued a Notice of Disallowance re: priority (not secured) - creditor did not dispute
- 18 Manager issued a Notice of Disallowance re: priority (not secured) - creditor did not dispute
- 19 Manager issued a Notice of Disallowance re: priority (not secured) - creditor did not dispute
- 20 Claim is from shareholder, Manager has no mandate to consider claim
- 21 Manager issued a Notice of Disallowance re: priority (not secured) - creditor did not dispute

DBDC SPADINA LTD., et al  
Applicants

NORMA WALTON, et al  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial List**

Proceeding commenced at Toronto

**MOTION RECORD OF THE MANAGER,  
SCHONFELD INC.**  
(Motion for distribution of proceeds from the sale  
of 65 Front Street and other relief)

**GOODMANS LLP  
Barristers & Solicitors  
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Lawyers for The Manager

File No. 14-0074