

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
Commercial List**

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

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

**Applicants**

**- and -**

**NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE GROUP  
LTD. and EGLINTON CASTLE INC.**

**Respondents**

**- and -**

**THOSE CORPORATIONS LISTED IN SCHEDULE “B” HERETO, TO BE  
BOUND BY THE RESULT**

**MOTION RECORD OF THE MANAGER, SCHONFELD INC.**  
(Motion for approval and vesting order with respect to 0 Luttrell Avenue, returnable  
June 26, 2015)

**GOODMANS LLP**  
Barristers & Solicitors  
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333 Bay Street, Suite 3400  
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Lawyers for The Manager

TO: **SERVICE LIST**

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## **I N D E X**

<b>TAB NO.</b>	
1.	Notice of Motion returnable June 26, 2015
2.	33 <sup>rd</sup> Report of the Manager, Schonfeld Inc. dated June 23, 2015

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

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**NOTICE OF MOTION**

(Motion for approval and vesting order with respect to 0 Luttrell Avenue, returnable June 26,  
 2015)

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**”) 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**”) will make a motion to a judge presiding on the Commercial List on June 26, 2015 at 10:00 a.m. at 330 University Avenue, Toronto.

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

**THE MOTION IS FOR:**

1. An approval and vesting order in respect of the sale transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale dated June 17, 2015 (the “**Luttrell**”

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**Agreement**”) between the Manager and 2465499 Ontario Inc. (the “**Purchaser**”), in respect of the Property known municipally as 0 Luttrell Avenue, Toronto, Ontario (the “**Luttrell Property**”); and

2. An Order permitting the confidential appendices (the “**Luttrell Confidential Appendices**”) to the 33<sup>rd</sup> Report of the Manager (the “**33<sup>rd</sup> Report**”) to be filed under seal without being served on the Service List.

#### **THE GROUNDS FOR THE MOTION ARE:**

##### **I. The Transaction**

3. The Luttrell Property is one of the Schedule “C” Properties that is adjacent to another Schedule “C” Property, 2 Kelvin Street (the “**Kelvin Property**”). There is no mortgage registered against the Luttrell Property.

4. The Luttrell Property is vacant commercial land that abuts an active rail line. The Luttrell Property is relatively small (approximately 4,791 square feet). Accordingly, the Manager determined that the best way to maximize the value of the Luttrell Property was to sell it to the Purchaser, who also recently purchased the adjacent, and much larger, Kelvin Property (approximately 70,568 square feet).

##### **B. Stakeholder Approval**

5. The Applicants and Ira Smith Inc., the Waltons’ receiver, have been kept informed of the Manager’s efforts to market and sell the Luttrell Property and to complete the Transaction. The Manager is not aware of my opposition to the Transaction.

##### **C. Proposed Distribution of Sale Proceeds**

6. The Manager recommends that the proceeds of the Transaction, net of closing costs, be held in trust by the Manager pending further Order of the Court.

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**D. Confidential Appendices**

7. Disclosure of the information contained in the Luttrell Confidential Appendices included in the confidential appendix brief to the 33<sup>rd</sup> Report would negatively impact the Manager's ability to carry out its mandate by, among other things, interfering with the integrity of any subsequent sales process in respect of the Luttrell Property if the Transaction is not completed. In particular, and without limiting the generality of the foregoing, it is the Manager's judgment that it would impair the Manager's ability to maximize realization of the Luttrell Property were any information to be made public concerning any discussions of sale process or value of the Luttrell Property among the Manager, the parties or any of their advisers and/or any possible bidders for the Luttrell Property or any of the Properties.

**II. Miscellaneous**

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

9. 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:**

10. The 33<sup>rd</sup> Report of the Manager dated June 23, 2015; and

11. Such further and other material as counsel may advise and this Honourable Court may permit.

Date: June 23, 2015

**GOODMANS LLP**

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Mark Dunn LSUC#: 55510L

Tel: (416) 979-2211  
Fax: (416) 979-1234

Lawyers for the Manager



**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.
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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 Ltd.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
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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**

Applicants

and

**NORMA WALTON ET AL**

Respondents

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

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Proceeding commenced at TORONTO

**NOTICE OF MOTION**  
(Motion for approval and vesting order  
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**33<sup>rd</sup> REPORT OF THE MANAGER, SCHONFELD INC.**  
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## **I. Introduction**

1. This is the 33<sup>rd</sup> Report of Schonfeld Inc. (the “**Manager**”) in its capacity as Manager of certain companies listed at Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Schedule “B” Companies**”) and certain properties listed at Schedule “C” to the Order of Justice Brown dated August 12, 2014 (the “**Schedule “C” Properties**”).

### **A. Purpose of this Report**

2. This Manager has brought a motion for:
- (a) an approval and vesting order in respect of the sale transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale dated June 17, 2015 (the “**Luttrell Agreement**”) between 2465499 Ontario Inc. (the “**Purchaser**”) and the Manager in respect of the property known municipally as 0 Luttrell Avenue, Toronto, Ontario (the “**Luttrell Property**”), which is attached as Confidential Appendix “A”; and
  - (b) an Order permitting the Confidential Appendices to this Report (the “**Luttrell Confidential Appendices**”) to be filed under seal without being served on the Service List.
3. This Report provides a summary of the Transaction and a recommendation that this Honourable Court grant the relief described in the Manager’s Notice of Motion.

### **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 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. Confidentiality

5. In the Manager's judgment, disclosure of some of the documents appended to this Report would negatively impact the Manager's ability to carry out its mandate by, among other things, interfering with the integrity of any subsequent sales process in respect of the Luttrell Property if the Transaction is not completed. In particular, and without limiting the generality of the foregoing, it is the Manager's judgment that it would impair the Manager's ability to maximize realization of the Luttrell Property were any information to be made public concerning any discussions of sale process or value of the Luttrell Property among the Manager, the parties or any of their advisers and/or any possible bidders for the Luttrell Property or any of the Properties. Accordingly, a number of appendices to this Report have been identified as confidential appendices and will be filed in a separate confidential appendix brief. The Manager respectfully requests an Order authorizing it to file the confidential appendices under seal without serving the Luttrell Confidential Appendix Brief on the Service List.

### D. Background

6. The 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 Ronauld Walton and entities that they control (the "**Walton Group**"). Most of the Companies were incorporated to purchase and develop a particular Property.

7. 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 provide reporting required by the agreements that govern the joint venture.

8. 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 Companies and the Properties for the benefit of all stakeholders.

9. The Manager's mandate was further expanded to include all of the real estate properties owned by the Walton Group pursuant to the Reasons of Justice Brown dated August 12, 2014

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(the “**August 12 Reasons**”), and the Order of Justice Brown dated August 12, 2014 (the “**August 12 Order**”).

## II. The Transaction

10. The Luttrell Property is a Schedule “C” Property that is adjacent to another Schedule “C” Property, 2 Kelvin Street (the “**Kelvin Property**”). The Luttrell Property is owned by Bible Hill Holdings Ltd., a company that was controlled by the Waltons prior to the August 12 Order. At paragraph 153 of the August 12 Reasons, Justice Brown concluded that the purchase of 0 Luttrell was funded by an equity contribution made by Dr. Bernstein to Salmon River Properties Ltd., a Schedule “B” Company that owned a property at 0 Trent Avenue (the “**Trent Property**”). The Kelvin Property, Trent Property and Luttrell Property are adjacent to each other.

11. There is no mortgage registered against the Luttrell Property.

12. The Luttrell Property is vacant commercial land that abuts an active rail line. The Luttrell Property is relatively small (approximately 4,791 square feet). Accordingly, the Manager determined that the best way to maximize the value of the Luttrell Property was to sell it to the purchaser of the adjacent, and much larger, Kelvin Property (approximately 70,568 square feet).

13. The Kelvin Property and Trent Property were both sold by its mortgagees under power of sale to the Purchaser. After the closing of these Transactions, the Manager entered into negotiations with the Purchaser, which culminated in the Luttrell Agreement.

14. The Manager obtained an Opinion of Value dated May 25, 2015 from Metropolitan Commercial Realty Inc. (“**Metropolitan**”). Metropolitan’s Opinion of Value is attached as Confidential Appendix “B”. The purchase price offered by the Purchaser is slightly lower than the value estimated by Metropolitan. Despite this, the Manager is of the view that the Transaction is the best available way to maximize the value of the Luttrell Property. The difference in value between the estimate in the Opinion of Value and the purchase price offered by the Purchaser is less than \$40,000 and there is no certainty that a more favourable price for the Luttrell Property if it is exposed to the market. Moreover, any further marketing process would result in increased professional fees that could easily exceed any increase in the purchase



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price. Lastly, lengthy environmental due diligence periods were required to sell the Trent Property and the Kelvin Property. Having already conducted due diligence on the adjacent properties, the Purchaser was prepared to make a firm offer. Another prospective purchaser would likely require an environmental due diligence condition and there is no certainty of the result of that due diligence.

**B. Timing of the Transaction**

15. The Transaction is scheduled to close on July 2<sup>nd</sup>, 2015.

**C. Stakeholder Approval**

16. The Applicants and the Waltons' receiver, Ira Smith Inc., have been kept informed of the Manager's efforts to market and sell the Luttrell Property and to complete the Transaction. The Manager is not aware of my opposition to the Transaction.

**D. Proposed Distribution of Sale Proceeds**

17. The Manager recommends that the proceeds of the Transaction, net of closing costs, be held in trust by the Manager pending further Order of the Court.

**III. Conclusion and Recommendations**

18. As set out above, the Transaction is, in the Manager's view, the best way to maximize value for affected stakeholders. Accordingly, for the reasons set out in the above report, the Manager respectfully recommends that this Honourable Court grant the relief sought in the Manager's notice of motion.

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All of which is respectfully submitted this 23<sup>rd</sup> day of June, 2015.

**SCHONFELD INC.**

**In its capacity as Manager pursuant to the Order of Newbould, J. dated November 5, 2013**

Per: 

James Merryweather, CPA, CGA  
Authorized Signing Officer

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Lawyers for The Manager

**File No. 14-0074**