

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

TREZ CAPITAL LIMITED PARTNERSHIP, TREZ CAPITAL (2011)
CORPORATION and COMPUTERSHARE TRUST COMPANY OF CANADA

Plaintiffs

- and -

DR. STANLEY BERNSTEIN, NORMA WALTON, RONAULD WALTON,
DBDC WEST MALL HOLDINGS INC., 2272551 ONTARIO LIMITED, DBDC
GLOBAL MILLS LTD., WEST MALL HOLDINGS LTD., WYNFORD
PROFESSIONAL CENTRE LTD., GLOBAL MILLS INC., DEVRY SMITH
FRANK LLP and JOHN TODD HOLMES

Defendants

MOTION RECORD OF THE MANAGER, SCHONFELD INC.
(Motion returnable April 9, 2018)

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

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Lawyers for the Manager

TO:

SERVICE LIST

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Court File No. CV-15-11147-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

TREZ CAPITAL LIMITED PARTNERSHIP, TREZ CAPITAL (2011)
CORPORATION and COMPUTERSHARE TRUST COMPANY OF CANADA

Plaintiffs

- and -

DR. STANLEY BERNSTEIN, NORMA WALTON, RONAULD WALTON,
DBDC WEST MALL HOLDINGS INC., 2272551 ONTARIO LIMITED, DBDC
GLOBAL MILLS LTD., WEST MALL HOLDINGS LTD., WYNFORD
PROFESSIONAL CENTRE LTD., GLOBAL MILLS INC., DEVRY SMITH
FRANK LLP and JOHN TODD HOLMES

Defendants

NOTICE OF MOTION

(Motion to Intervene, Returnable April 6, 2018)

The proposed Intervenor, Schonfeld Inc. (the “**Manager**”), in its capacity as court-appointed manager in DBDC Spadina Ltd. *et al.* against Norma Walton *et al.* (the “**Receivership Proceedings**”), will make a Motion to a Judge on April 9, 2018 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 393 University Avenue, Toronto, Ontario, M5G 1E6.

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

THE MOTION IS FOR:

- (a) an Order pursuant to Rule 13.01 of the *Rules of Civil Procedure* granting leave to intervene on the defendant’s motion for, *inter alia*, a stay of proceedings;

- (b) an Order abridging the time for service and filing of this motion; and
- (c) such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (d) On March 14, 2018, the Waltons served a motion in an action by Trez Capital Limited Partnership *et al.* against Dr. Stanley Bernstein and Norma Walton *et al.* bearing Court File No. CV-15-11147-00CL (the “**Trez Action**”). The Waltons’ motion seeks a stay of the Trez Action pending the disposition of the criminal proceedings against the Waltons.
- (e) The factum served by the Waltons in support of their stay motion (which was not served on the Manager) alleges that the Manager acted improperly by cooperating with a Toronto Police investigation (the “**Investigation**”) into their activities without disclosing this cooperation to them.
- (f) The Manager prepared its 52nd Report to to clarify the Manager’s activities with respect to the Investigation. The Manager takes no position on the substantive issues in this case, including on whether a stay should be granted.
- (g) The Manager seeks leave to intervene on the Waltons’ motion for the limited purpose of and ensuring that an accurate record of its activities is before the Court.
- (h) Rules 13, 37, 40 of the *Rules of Civil Procedure*, section 101 *Courts of Justice Act*, R.S.O. 1990, c. 43.

- (i) Such further and other grounds as the lawyers may advise.

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

- (a) The 52nd Report of the Manager dated April 6, 2018

TREZ CAPITAL LIMITED - and - DR. STANLEY BERNSTEIN et al.
 PARTNERSHIP et al
 Plaintiffs Defendants

Court File No. CV-15-11147-00CL

**ONTARIO
 SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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Lawyers for the Manager, Schonfeld Inc.

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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

**FIFTY-SECOND REPORT OF THE
MANAGER, SCHONFELD INC.**
(Motion returnable April 9, 2018)

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I. Introduction

1. This is the Fifty-Second 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 (the “**November 5 Order**”) dated November 5, 2013 (the “**Schedule B Companies**”),¹ together with the 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**”), in the proceedings commenced by DBDC Spadina Ltd. *et al.* against Norma Walton *et al.* (the “**Receivership Proceedings**”).

II. Purpose of this Report

2. On March 14, 2018, the Waltons served a motion in an action by Trez Capital Limited Partnership *et al.* against Dr. Stanley Bernstein and Norma Walton *et al.* bearing Court File No. CV-15-11147-00CL (the “**Trez Action**”). The Waltons’ motion seeks a stay of the Trez Action pending the disposition of the criminal proceedings against the Waltons. The factum served by the Waltons in support of their stay motion alleges the Manager acted improperly by cooperating with a Toronto Police investigation (the “**Investigation**”) into their activities without disclosing this cooperation to them.

3. The purpose of this Report is to clarify the Manager’s activities with respect to the Investigation. The Manager takes no position on the substantive issues in this case, including on whether a stay should be granted.

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

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III. The Manager's Involvement in the Investigation

4. The Waltons have previously alleged in the Receivership Proceedings that the Manager acted improperly in relation to the Investigation. At a chambers attendance before Justice Newbould on April 19, 2016, the Waltons' counsel alleged that the Manager may have improperly induced the police to lay charges against the Waltons. The Waltons had not made any attempt at that stage to determine what (if any) interaction the Manager had with the police.

5. Subsequently, on April 22, 2016, the Waltons' counsel wrote to the Manager's counsel requesting that it provide details of any contact or communication between the Manager and the Toronto Police in relation to the Investigation. This correspondence is attached hereto as Appendix "A".

6. The Manager's counsel responded by letter dated April 25, 2016, which is attached hereto as Appendix "B", and provided a detailed and accurate description of all communications that occurred between the Manager and the Toronto Police. More specifically, the Manager advised that it had been contacted by the Toronto Police and asked for certain information about the Manager's work as well as the tracing performed in its capacity as Inspector. The Manager responded to these requests and provided accurate information to the Toronto Police. All of the information provided was publically available, and all but a few documents were publically posted on a website maintained by the Manager at <http://www.schonfeldinc.com/walton.html>.

7. The Waltons' have never responded to this letter and this correspondence is not referenced in the Waltons' factum served in support of their stay motion.

8. The Manager's communications with the Toronto Police since it sent the April 25, 2016 letter are summarized below:

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- (a) On August 4, 2016, Detective Moran contacted James Merryweather of Schonfeld Inc. to inquire as to whether Ms. Walton was subject to any insolvency proceeding personally. On the same day, Mr. Merryweather provided Detective Moran with a copy of the Supplemental Report to the 40th Report of the Manager, which described the Manager's involvement with the Investigation, and which was and is posted on the website maintained by the Manager.
- (b) On October 27, 2016, Detective Moran contacted Mr. Merryweather requesting the corporation numbers for certain companies covered by the Manager's mandate and the PIN numbers for the properties owned or formerly owned by those companies. Mr. Merryweather provided the requested information on October 31, 2016.
- (c) On October 31, 2016, Mr. Merryweather provided to Detective Moran a document setting out the funds distributed to the Applicants in the Receivership Proceedings. This document updated a version provided to Detective Moran a year earlier.
- (d) On January 16, 2018, Mr. Schonfeld was served with a Subpoena to a Witness, a copy of which is attached hereto as **Appendix "C"**, requiring him to give evidence at a preliminary hearing scheduled for March 5, 2018.
- (e) On January 24, 2018, Messrs. Schonfeld and Merryweather attended a call with Detective Moran to discuss the procedure that would be followed in giving evidence in the criminal proceedings. Gary Moulton, formerly of Duff & Phelps also attended this call.
- (f) On February 23, 2018, Mr. Schonfeld received an email from Detective Constable Siu Mia Ng advising that a direct indictment had been approved and thus Mr. Schonfeld would not be required to give evidence at a preliminary hearing.

9. The Manager did not discuss the details of its communications with the Toronto Police with the Applicants, nor did it take any steps at the direction of the Applicants.

- 4 -

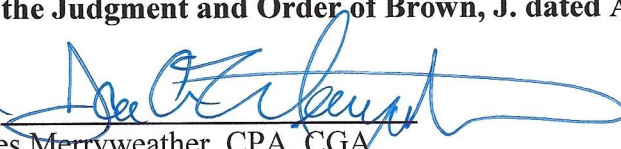
10. The Waltons' factum also asserts that the Manager should have reported its contact with the Toronto Police to the Waltons. The Manager does not agree. The Manager was (and is) of the view that the Toronto Police should be left in control of what information about their investigation was disclosed to the Waltons. Given the Manager's limited involvement in, and knowledge of, the Toronto Police investigation, any information it could have provided to the Court or to the Waltons would have been incomplete in any event.

All of which is respectfully submitted this 6th day of April, 2018.

SCHONFELD INC.

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

Per:


James Merryweather, CPA, CGA
Authorized Signing Officer

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.

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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.
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 Development Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited

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32. 165 Bathurst Inc.

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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

A

Fox, Carlie

Subject: RE: DBDC Spadina Ltd. et al. v. Walton et al.

From: Lesia J. Lawrence [<mailto:Lesia@cohensabsay.com>]

Sent: Friday, April 22, 2016 4:20 PM

To: Dunn, Mark; Peter Griffin

Cc: Howard Cohen; Jessica Parise

Subject: DBDC Spadina Ltd. et al. v. Walton et al.

Dear Sirs,

The following is a message delivered on behalf of Mr. Cohen:

"Please provide me with a clear and precise indication, from both of you, as to how, when, where, to what extent and in what form Dr. Bernstein, Harlan Schonfeld, and any and all designates, including those at his law firms, had any contact or communication with the Toronto Police Services—including, particularly, Detective Ruth Moran of the Fraud Squad—in relation to the laying of criminal charges against the Waltons."

Yours truly,

LESIA J. LAWRENCE

Licensed Paralegal



357 Bay Street, Suite 901

Toronto, Ontario M5H 2T7

Tel.: (416) 364-7436 ext. 226

Fax: (416) 364-0083

This communication, including any attachments, is confidential and is intended only for the use of the individual or entity named above. Where the nature of the communication is such as to give rise to privilege, such privilege is asserted. If the reader of this communication is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, any dissemination, publication or copying of this communication is prohibited in the absence of the consent of the sender. If you have received this communication in error, please notify the sender forthwith and destroy all copies of this communication. The sender does not accept liability for any loss, disruption or damage that may occur as a result of opening this communication.

B



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Facsimile: 416.979.1234
goodmans.ca

Direct Line: 416-849-6895
mdunn@goodmans.ca

April 25, 2016

Delivered via e-mail: cohen@cohensabsay.com

Our File No.: 140074

Cohen, Sabsay LLP
357 Bay Street, Suite 901
Toronto ON
M5H 2T7

Attention: Howard Cohen

Dear Mr. Cohen:

Re: DBDC Spadina Ltd. et al v. Norma Walton et al
Court File No. 13-10280-00CL

I write further to our attendance before Justice Newbould on April 19, 2016 and your subsequent demand for information relating to my client's contact with the police on April 22, 2016.

Let me begin by saying that the allegations made before Justice Newbould are unfounded and your decision to raise them in Court before making any attempt to discern the underlying facts is unacceptable and unprofessional. My client's reputation for honesty and integrity is hard-earned and valuable. It is a court officer whose actions have been, repeatedly and without exception, approved by the Court in this case. Each and every one of the Waltons' attacks on my client have been unfounded and recognized as such by the Court.

In these circumstances, it is most troubling that you chose to speculate before Justice Newbould that my client had conspired with Dr. Bernstein to use the criminal justice system to accomplish some (unspecified) civil purpose. As you know, this is a very serious allegation to make against a court officer. It should not have been made without evidence. Worse still, you engaged in lengthy speculation about my client's alleged wrongdoing without even asking what it had actually done. Inexplicably, you requested information to support your allegations three days *after* making them in Court.

In any event, and as I advised in Court, my client did not engage in any effort (at the behest of Dr. Bernstein or otherwise) to induce the police to charge the Waltons with fraud. My client was contacted by the police and asked to provide information relating to the Manager's mandate and its investigation in its capacity as Inspector. The information consisted of material that had already been provided to, and accepted by, the Court. It is summarized below:

- Prior to August 5, 2015, the Manager had no contact with the police. On that date, the Manager was contacted by Detective Ruth Moran by telephone;
- On August 6, 2015, Messrs. Schonfeld and Merryweather met with the police regarding the Inspector's tracing methodology and findings and various aspects of the Inspector's Reports;
- On August 11, 2015 Mr. Schonfeld and Mr. Moulton of Duff & Phelps (who, as you know, assisted the Inspector with the forensic aspects of its work) had a telephone call with the police relating to the Inspector's tracing mandate and methodology;
- On August 11, 2015, in response to a request by the police, Mr. Merryweather sent the police an e-mail attaching a listing of bank accounts of the Schedule "B" Companies, the Schedule "C" Companies and other companies owned or controlled by Norma Walton;
- On August 14, 2015, in response to a request by the police, Mr. Merryweather sent the police an e-mail attaching Appendix "A" to the Fourth Report in electronic form;
- On August 14, 2015, in response to a request by the police, Mr. Merryweather sent the police an email attaching Appendix "C" to the Supplemental Report to the First Interim Report of the Inspector (Property Investment Portfolio);
- On August 14, 2015, Mr. Merryweather had a telephone call with the police regarding the Property Investment Portfolio document;
- On September 23, 2015, Mr. Merryweather sent the police an email attaching the Donalda Nominee Agreement and the Otera loan commitment and answering questions related to the loans to and investments in Donalda; and
- On January 28, 2016, Mr. Merryweather sent an email to police responding to questions regarding the total amount of Dr. Bernstein's investments and recovery.

In summary, my client provided accurate information in response to inquiries from the police. This is entirely consistent with its role as an officer of the Court. In light of the foregoing, I trust that no further allegations will be made against my client – and certainly not without you first having sought to obtain accurate information.

Yours truly,

Goodmans LLP



per Mark Dunn
MD/en
6565358.5

C

SUBPOENA TO A WITNESS
ASSIGNATION A UN TÉMOIN

Form/Formule 16
Section/Article 699

19

CANADA
PROVINCE OF ONTARIO
PROVINCE DE L'ONTARIO
TORONTO REGION
RÉGION DE TORONTO



To/à: Harlan Schonfeld
Schonfeld Inc.

Of/de: 77 King Street West, Suite 3000, Toronto, ON M5K 1G8
416-862-7785

WHEREAS Norma WALTON and Ronauld WALTON
ATTENDU QUE

of City of Toronto
de

has been charged that he/she, on or about
a été inculpé d'avoir le ou vers

the 1st day of June, 2011, at the City of Toronto
le jour de , à
did commit the offence of:
commis l'infraction consistant à:
Fraud Over \$5000 x2
Theft Over \$5000 x2

and it has been made to appear that you are likely to give material evidence for the prosecution or defence
et qu'on a donné à entendre que vous êtes probablement en état de rendre un témoignage essentiel pour la poursuite ou la
défense

THEREFORE, this is to command you to attend before the presiding judge or justice on the
A CES CAUSES, les présentes ont pour objet de vous enjoindre de comparaître devant le juge ou le juge de paix président à
l'audience le

5th day of March, 2018, at 10:00 AM, at Old City Hall Courts
jour de , à heures, à

60 Queen Street West, Toronto, Ontario courtroom TBD
à la salle d'audience

- (ignore if not completed)
(ne s'applique que si rempli)
- ☒ to give evidence concerning the above charge;
pour rendre témoignage au sujet de ladite inculpation;
- ☐ and to bring with you anything in your possession or under your control that relates to the
et d'apporter avec vous toute chose en votre possession ou sous votre contrôle qui se
said charge, and more particularly the following: (specify any documents, objects or other things required).
rattache à ladite inculpation, et en particulier les suivantes: (indiquer les documents, les objets ou autres choses
requisites)

Dated this 16th day of January, 2018 at the City of Toronto, in the Toronto Region.
Fait le jour de , 2018 à la region of Toronto, dans la région de Toronto.

Case Manager Information:

Det. Ruth Moran #5216
Toronto Police Service
Financial Crimes Unit
416-808-7319

YC 1700 (rev. 08/95) (formerly YC 0183)

Judge, Justice of the Peace in and for Ontario or Clerk of the Court
Juge, Juge de paix dans et pour l'Ontario ou greffier du tribunal

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FOR PERSONS WITH DISABILITIES. CALL 1-800-387-4456
TORONTO AREA 326-0111

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AUX TRIBUNAUX DE L'ONTARIO, COMPOSEZ LE 1-800-387-4456
RÉGION OF TORONTO 326-0111

TREZ CAPITAL LIMITED - and - DR. STANLEY BERNSTEIN et al.
PARTNERSHIP et al
Plaintiffs Defendants

Court File No. CV-15-11147-00CL

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SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT TORONTO

MOTION RECORD OF THE MANAGER
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