

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

NOTICE OF MOTION
(Motion for Sale Approval Returnable February 21, 2014)

Schonfeld Inc., in its capacity as manager (the "**Manager**") of certain companies listed in Schedule "B" to the Order of Justice Newbould dated November 5, 2013 (the "**Companies**"), as amended by Order of Justice Newbould dated January 6, 2014 will make a motion to a judge presiding on the Commercial List on February 21, 2014 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

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

THE MOTION IS FOR:

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1. an Order (the “**Approval and Vesting Order**”):
 - (a) vesting of all of Cityview’s right, title and interest in and to the lands legally described as Part of Lot 22, Concession 2 Fronting the Humber, City of Toronto, designated as Parts 3, 4 and 5 on Plan 66R26674 (the “**Road Widening Lands**”) in the City of Toronto in order to satisfy one (1) of the conditions imposed by the City of Toronto Committee of Adjustments pursuant to a Notice of Decision dated July 18, 2013 (File #B27/13EYK) (the “**Road Widening Conveyance**”); and
 - (b) an approval and vesting order in respect of the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) for the lands and building legally described as Part of Lot 22, Concession 2 Fronting the Humber, City of Toronto, designated as Part 2 on Plan 66R26674 (the “**Part 2 Lands**”) between Cityview and Red Finch Developments Limited (“**Red Finch**” or the “**Purchaser**”) dated March 26, 2013 as amended by first amendment to agreement of purchase and sale made between the Manager and Red Finch as of the 14th day of February, 2014 (the “**Amendment**”);
 - (c) approving the Manager’s execution of the Amendment and authorizing it to enter into and complete the Transaction in accordance with terms of the Sale Agreement;
 - (d) directing that proceeds received by the Manager in connection with the Transaction (the “**Cityview Proceeds**”) be dealt with as follows:
 - (i) the amount of \$969,583.99 to be held in trust pending either a final determination with respect to the quantum, validity and priority of construction liens registered against the Cityview Property;

- (ii) the balance of the Cityview Proceeds, net of closing costs, be paid to the Mortgagee (as defined below) in satisfaction of the First Mortgage (as defined below); and
- (e) granting all ancillary and necessary relief, all as set out in the Approval and Vesting Order, and such further and other relief as the Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

I. Background

1. 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 Ronald Walton and entities that they control (the “**Walton Group**”). Most of the Companies were incorporated to purchase and develop a particular property (collectively, the “**Properties**”).

2. 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.

3. Pursuant to the Order of Justice Newbould dated November 5, 2014, the Manager was appointed to provide independent management of the Companies and the properties that they own (the “**Properties**”) for the benefit of all stakeholders.

II. The Transaction

4. Cityview is one of the Companies. Cityview owns a Property municipally known as 9 and 11 Cityview Drive, Toronto (the “**Cityview Property**”). Before the Manager was appointed, Cityview entered into the Sale Agreement with Red Finch.

5. The Sale Agreement contemplates that Cityview will sell the Part 2 Lands, which are a portion of the Cityview Property, to Red Finch. The balance of the Cityview Property will be retained by Cityview and marketed for sale at a later date.

B. Interested Parties

6. Cityview owns a Property municipally known as 9 and 11 Cityview Drive, Toronto (the “**Cityview Property**”). The Cityview Property is subject to two mortgages (the “**Mortgages**”) in favour of 368230 Ontario Limited (the “**Mortgagee**”), a company controlled by Dr. Bernstein, as described below:

Instrument	Registered Amount	Date	Interest rate
Charge (AT3123206), Notice of Assignment of Rents General (AT3123219) (the “ First Mortgage ”)	\$4,000,000	September 7, 2012	8%
Charge (AT3271120), Notice of Assignment of Rents General (AT3271124)	\$650,000	April 5, 2013	11%

7. In addition, the following four companies have registered construction liens against the Cityview Property, in the amounts set out below:

Instrument	Lien Amount	Party
Construction Lien (AT3426580) Certificate of Action (AT3463563)	\$138,586	Gemtec Wall & Ceiling Systems Ltd.
Construction Lien (AT3426936) Certificate of Action (AT3461899)	\$721,375	Fox Contracting Ltd.
Construction Lien (AT3463067) Certificate of Action (AT3487262)	\$153,691	Laser Heating & Air Conditioning Inc.
Construction Lien (AT3472538) Notice of Change of Lawyer and Statement of Claim	\$4,876.41	Macnaughton Hermsen Britton Clarkson Planning Limited

8. The Manager understands that Gemtec Wall & Ceiling Systems Ltd. (“**Gemtec**”) is a subcontractor of Fox Contracting Limited (“**Fox**”) and that Gemtec’s claims are subsumed in Fox’s claim. In other words, Fox has included amounts owed to Gemtec in its own claim.

C. The Sale Agreement

9. Since Cityview was already subject to the Sale Agreement when the Manager was appointed, the Manager could not expose the Cityview Property to the market without first disclaiming the Sale Agreement. In order to determine whether to disclaim the Sale Agreement the Manager carefully considered the value of the Sale Agreement and discussed it with the Applicants and the Respondents. The Manager also obtained a comfort letter with respect to the sale price offered by Red Finch from Norman Height (a certified appraiser). The Applicants, the Respondents and the Mortgagee have advised that they are satisfied with the purchase price set out in the Sale Agreement. Based on all of these factors, the Manager considers that it is commercially reasonable under the circumstances to complete the Transaction.

10. As a result of the appointment of the Manager, certain changes to the Sale Agreement were required before the Transaction could be completed. Accordingly, the Manager entered into the Amendment with Red Finch on February 14, 2014. The Amendment requires that the Transaction close on or before February 28, 2014. The Manager does not expect that this deadline will be extended and, accordingly, time is of the essence.

D. The Road Widening

11. In order to complete the Transaction, Cityview must sever the Part 2 Lands from the balance of the Cityview Property. As documented in the Notice of Decision dated July 18, 2013 and appended as Appendix 2, Cityview has obtained conditional consent to the necessary severance from the City of Toronto. All of the conditions have now been satisfied except for the conveyance of the Road Widening Lands (a two metre strip at the edge of the Cityview Property) to the City of Toronto free and clear of all encumbrances. The Manager and the City of Toronto have agreed to the form of vesting order being proposed to convey the Road Widening Lands to the City of Toronto (the “**Road Widening Vesting Order**”).

E. Registered interests in the Cityview Property

a. Mortgages

12. The Manager instructed its counsel, Goodmans LLP, to conduct a review of the Mortgages. Goodmans has advised the Manager that the Mortgages are validly registered against the Cityview Property.

b. Construction liens

13. As noted above, four construction liens are registered against the Cityview Property. The Manager has not assessed the validity of these liens, the priority of the liens (if valid) relative to the Mortgages or the lien claimants’ entitlement to the amounts claimed. In order to allow the Transaction to close but protect the interests of the lien claimants, the Approval and Vesting Order provides that \$969,583 (being the amount of the lien claims, less the amounts included in more than one lien plus the amount of \$96,056 to secure any costs award)¹ is to be held in trust

¹ The amount for costs is based on the amount that would have to be paid to vacate the lien pursuant to the *Construction Lien Act*.

by the Manager pending further Order of the Court following a determination with respect to the validity and priority of the liens or a joint direction of the Mortgagee and the lien claimants.

c. Proposed Use of Proceeds

14. The Manager recommends that the proceeds of the Transaction, net of closing costs and the amount described in paragraph 15 above, be paid to partially satisfy the First Mortgage. After providing for the liens as set out above, the net proceeds available on closing will not be sufficient to pay out the First Mortgage. Accordingly, the Mortgages will remain registered against the portion of the Cityview Property being retained by Cityview and the amount outstanding will be reduced by the amount paid to the Mortgagee from the proceeds of the Transaction. The Manager is not at this time anticipating that there will be funds available to Cityview and therefore no other distribution of funds is being proposed in connection with the Transaction.

F. Miscellaneous

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

16. 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:

17. The Third Report of the Manager dated February 18, 2014.

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

Date: February 19, 2014

GOODMANS LLP

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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.
11. DBDC Fraser Properties Ltd.
12. DBDC Fraser Lands Ltd.
13. DBDC Queen's Corner Ltd.
14. DBDC Queen's Plate Holdings Inc.
15. DBDC Dupont Developments Ltd.
16. DBDC Red Door Developments Inc.
17. DBDC Red Door Lands Inc.
18. DBDC Global Mills Ltd.
19. DBDC Donalda Developments Ltd.
20. DBDC Salmon River Properties Ltd.
21. DBDC Cityview Lands Ltd.
22. DBDC Weston Lands Ltd.
23. DBDC Double Rose Developments Ltd.
24. DBDC Skyway Holdings Ltd.
25. DBDC West Mall Holdings Ltd.
26. DBDC Royal Gate Holdings Ltd.
27. DBDC Dewhurst Developments Ltd.
28. DBDC Eddystone Place Ltd.
29. DBDC Richmond Row Holdings Ltd.

SCHEDULE “B” COMPANIES

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline – 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Ltd.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Development Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd.
13. Fraser Properties Corp.
14. Fraser Lands Ltd.
15. Queen’s Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.
23. Weston Lands Ltd.
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Royal Gate Nominee Inc.
29. Royal Gate (Land) Nominee Inc.
30. Dewhurst Development Ltd.
31. Eddystone Place Inc.

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