

**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

Woodgreen Management Inc. ("Woodgreen") will make a cross- motion to a judge presiding over the Commercial List on Tuesday, June 10, 2014, at 10:00 a.m. or as soon after that time as a judge presiding over the Commercial List directs the motion can be heard at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order determining the priorities between Woodgreen and Riocan with respect to the deferral of a principal payment in the amount of \$400,000.00 payable to Woodgreen on July 6, 2013 and determining the amount of Woodgreen's secured claim;

2. An Order confirming the amount of the Woodgreen's secured claim;
3. A declaration as to the extent of Woodgreen charge in land Municipally known as 887 Queen Street East, Toronto, Ontario.
4. If necessary an Order converting this motion into an application pursuant to Rule 14.05(3)
5. An Order substantially in the form of the draft order attached hereto as Schedule "A", inter alia:
 - a) that the Manager's charges rank behind the Woodgreen Mortgage in respect of 887 Queen Street East, Toronto, Ontario ;
6. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- 1) The Manager seeks approval of the sale of 875 Queen Street East, Toronto and 887 Queen Street East, Toronto.
- 2) Woodgreen Management Inc. is the first mortgagee in respect of 887 Queen Street East, Toronto ("Property") only;
- 3) The principal amount secured by the Woodgreen Mortgage is \$1.2 million.
- 4) On July 9, 2013, Woodgreen and Red Door Lands Ltd. (the "Borrower" or "Red Door") agreed to defer payment, until July 6, 2014, of a principal payment of \$400,000.00 originally due on July 6, 2013.
- 5) There was always a common intention between Woodgreen and Red Door that to make the Property security for \$1,200,000.00. There was no intention that the deferral of the \$400,000.00 principal payment was in anyway a re-advance or a fresh advance.
- 6) Woodgreen relied upon Ms. Walton's representations regarding its receipt on July

- 10, 2013 of a lawyer's certified trust cheque payable to Woodgreen in the amount of \$399,152.50. Specifically Ms. Walton represented that the cheque was prepared in error, and was not intended as a payment on the Woodgreen first mortgage. Woodgreen accommodated Ms. Walton's request to assist in receiving the cheque by depositing and returning to Ms. Walton's company, Red Door as per her executed Acknowledgment. Woodgreen had no knowledge that these funds were an advance from a subsequent mortgagee, nor that Red Door received these subject to any restrictions.
- 7) Woodgreen seeks an Order that its first mortgage against 887 Queen Street East, Toronto, Ontario is fully secured for the full amount of the mortgage, being \$1.2 million plus interests and costs and ranks in priority fully to the Riocan second Mortgage registered against the Property.
 - 8) Woodgreen also seeks a similar Order regarding information and Receiver's charges as was granted to many mortgagees including Riocan on the 887 Queen Street East Property on January 20, 2014 by Newbould J. The draft Order regarding the charges and sales process is attached hereto at Schedule A.
 - 9) Section 110 of the *Courts of Justice Act*, R.S.O. 1990, c.43, as amended;
 - 10) Rules 1.04, 2.03, 14.05(3)(d)(e) and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg.194, as amended; and
 - 11) Such further and other grounds as counsel may advise and this Honourable Court permits.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING
OF THIS MOTION:**

- 1) Affidavit of Jory Kesten dated June 9, 2014 with attached Exhibits filed;
- 2) Draft Order; and

3) Such further and other evidence that counsel may advise and this Honourable Court permit.

Dated: June 9, 2014

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TO: SERVICE LIST