

**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 THE RESULT

FACTUM OF RESPONDENT NORMA WALTON

(Motion to Refinance 44 Park Lane)

January 15, 2014

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**FACTUM OF THE RESPONDENT NORMA WALTON
(Motion to Refinance 44 Park Lane)**

Part I - The Facts

1. The Respondent Norma Walton moves to be permitted to refinance 44 Park Lane Circle and 65 Front Street East in accordance with the details set out in paragraphs 7 to 12 of the Affidavit of Norma Walton sworn January 10, 2014.

2. The only issue raised is whether Dr. Bernstein can claim that he owns or has an interest in 44 Park Lane, the Walton's personal home. Dr. Bernstein purchased a 50% interest in the Red Door Project (defined below) and was given shares accordingly. The purchase price for

Dr. Bernstein for the Red Door Project was \$9,504,425. Of that amount \$2,350,000 belonged to Ronauld and Norma Walton, as set out below. Dr. Bernstein claims an interest in the Red Door Project for this money, and an interest in 44 Park Lane for the same money.

Affidavit of Norma Walton sworn January 15, 2014, para. 4

3. The documents marked at Exhibit 2 to the examination of Todd Holmes on January 15, 2014 confirm that the source of closing funds for the purchase of 44 Park Lane property came from:

- (a) a first mortgage of approximately \$5 million, whereby the sum of approximately \$4.9 million was advanced after fees and interest adjustment;
- (b) a second mortgage of approximately \$3 million, whereby the sum of approximately \$2.9 million was advanced after fees and interest adjustment;
- (c) a \$500,000 deposit comprised of two \$250,000 payments made in January 2012 and March 2012 respectively; and
- (d) approximately a \$2.6 million certified cheque from my husband and my personal account.

Affidavit of Norma Walton sworn January 15, 2014, para. 3

4. In Mr. Reitan's Affidavit sworn January 13, 2014, he claims that Dr. Bernstein provided funds that were used to purchase 44 Park Lane. Dr. Bernstein provided \$2.3 million to purchase a part interest in 875-887 Queen Street East (the "Queen Street Project"). As set out in Exhibit "A" of Mr. Reitan's Affidavit (p. 25 of the Cross Motion Record dated January 14, 2014), Dr. Bernstein bought into the Queen Street Project at a purchase price of \$9,504,425. This purchase price included the sum of \$2,215,000. The \$2,215,000 was payable to Norma and Ronauld Walton because, at the time Dr. Bernstein bought into the Queen Street Project, the Walton's had already owned and developed the project for a year. This amount represented their "pre-existing" equity in the Project because the Walton's were the sole owners of the Queen

Street Project between June 2011 and June 2012, during which period the property was under firm contract of sale, closing in June 2012.

Affidavit of Norma Walton sworn January 15, 2014, para. 4

Exhibit "A" to the Affidavit of James Reitan, Cross Motion Record dated January 14, 2014, p. 25

5. In June 2012 the property was shown to be purchased for \$9,504,425 in the proforma given to Dr. Bernstein when he purchased through his company the 50% interest in the Red Door Project. The proforma is Exhibit "A" to the affidavit of Mr. Reitan, p. 25 of the Applicants' Cross Motion Record. Norma and Ronauld Walton paid \$65,000 for due diligence material and \$70,000 for the land transfer tax from their own funds. The total purchase price of \$9,504,425 was therefore made up of the original purchase price plus \$2,350,000. These monies were the funds of Norma and Ronauld Walton in the transaction whereby Dr. Bernstein received 50% of the shares of the Red Door Project.

Affidavit of Norma Walton sworn January 15, 2014, para. 4

Exhibit "A" to the Affidavit of James Reitan, Cross Motion Record dated January 14, 2014, p. 25

6. In the proforma the monies needed to develop the property and carry the costs were \$1,171,500 and \$966,000 respectively. These funds were to be provided by Ronauld and Norma Walton over time pursuant to paragraph 7(b) of the Agreement (Exhibit B to the affidavit of Mr. Reitan, p. 29 of the Cross Motion Record).

Exhibit "B" to the Affidavit of James Reitan, Cross Motion Record dated January 14, 2014, p. 25 and 29.

7. Mr. Reitan claims in his Affidavit that funds from Dr. Bernstein were used for the Purchase of 44 Park Lane. This is not factually correct. Dr. Bernstein purchased an interest in

the Queen Street Project. That is the interest which he received by purchasing 50% of the shares of Red Door Developments and Red Door Lands. Having purchased the shares in these two corporations, he has no claim on the purchase funds used to purchase those shares. Those purchase funds were those of Ronauld and Norma Walton. In attempting to claim an interest in 44 Park Lane based on the purchase price paid regarding the Queen Street Project, Mr. Reitan's double counts the \$2,337,850. Dr. Bernstein has no interest in 44 Park Lane.

Affidavit of Norma Walton sworn January 15, 2014, para. 6

8. Dr. Bernstein cannot buy a mature and valuable interest in the Queen Street holding company and in 44 Park Lane with the same money.

Affidavit of Norma Walton sworn January 15, 2014, para. 6

9. At paragraph 6(d) of his Affidavit (p. 12 of the Applicants' Motion Record) Mr. Reitan relies upon paragraph 15 of the Agreement made between the Bernstein Group and the Walton Group and Red Door Developments Inc. and Red Door Lands Ltd. as preventing the transfer of funds received as a result of the sale of a 50% interest in the companies to the Bernstein Group. Paragraph 15 of the Agreement has no relevance to the transfer of purchase funds paid by the Bernstein Group, as part of acquiring a 50% interest in the companies. The Agreement was not in effect until after the shares had been sold and delivered to Dr. Bernstein.

Affidavit of Norma Walton sworn January 15, 2014, para. 8

10. On page 12 of the Applicants' Motion Record (p. 3 of Mr. Reitan's Affidavit) in paragraph 6(b), Mr. Reitan claims there is no reference in the agreement regarding the increase in property value in relation to the Queen Street Project. This is incorrect. As 100% shareholders of Red Door Developments Inc., Ronauld and I contracted to purchase the Queen Street Project in approximately April 2011. The deal went firm in June 2011. We sold an

interest in the project to Dr. Bernstein in June 2012 for the purchase price indicated in the proforma. The proforma attached as Exhibit "A" to Mr. Reitan's affidavit. Dr. Bernstein knew and understood that we were only willing to sell the property for the price set out in the proforma.

Affidavit of Norma Walton sworn January 15, 2014, para. 13

Exhibit "A" to the Affidavit of James Reitan, Cross Motion Record dated January 14, 2014

11. The present value of 44 Park Lane is between \$13 million and \$16 million. Even after the financing is put in place, there will therefore be equity in the property in the amount of \$4 million to \$7 million. 44 Park Lane is planned to be severed into two parcels at the end of February 2014. This will increase the total value of the two properties by approximately \$2 million.

Affidavit of Norma Walton sworn January 15, 2014, para. 9

12. Ronauld and Norma Walton have put in a total of approximately \$4,702,222 into the 44 Park Lane property (comprised of \$3,127,222 to purchase, \$25,000 in due diligence expenses prior to purchase, \$1,500,000 in renovations and another \$50,000 in severance costs).

Affidavit of Norma Walton sworn January 15, 2014, para. 10

13. On page 13 of the Applicants' Motion Record (p. 4 of Mr. Reitan's Affidavit) Mr. Reitan indicates that the purchase price for 887 Queen is \$1.2 million instead of \$2.4 million. That is inaccurate. Exhibit "C" to Mr. Reitan's Affidavit confirms the transfer price was \$2.4 million (at page 42 of the Applicants' Motion Record).

Affidavit of Norma Walton sworn January 15, 2014, para. 14

Exhibit "C" to the Affidavit of James Reitan, Cross Motion Record dated January 14, 2014, p. 42

14. On page 9 of Mr. Reitan's Affidavit, at paragraph 23(f), Mr. Reitan indicates that the Respondents are not paying \$81,000 in costs. The Managership Order of November 5, 2013 and the related costs order are currently under appeal.

Affidavit of Norma Walton sworn January 15, 2014, para. 15

15. On page 9 of his Affidavit, in paragraph 24, Mr. Reitan attaches notices of default of mortgage dated January 10, 2014. As of January 15, 2014, Norma Walton has not received either letter. Further this motion proposes to pay in full the Front Street mortgage.

Affidavit of Norma Walton sworn January 15, 2014, para. 16

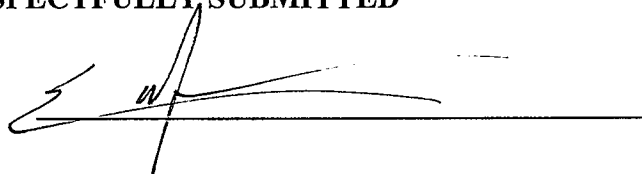
16. On page 9 of his Affidavit, in paragraph 25, Mr. Reitan discusses the prospective sale negotiations of 65 Front Street as set out in my affidavit of December 17, 2013. Those negotiations did not result in an agreement of purchase and sale. We still have 65 Front Street listed for sale but to date have not come to terms with any prospective purchaser.

Affidavit of Norma Walton sworn January 15, 2014, para. 17

Part II - Order Requested

17. It is respectfully submitted that the proposed refinancing ought to be permitted by this Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



per : **John A. Campion**

DBDC SPADINA LTD., et al.

- and - NORMA WALTON, et al.

Applicants

Respondents

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

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Proceeding commenced at TORONTO

**SUBMISSIONS OF RESPONDENT
NORMA WALTON**

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