

**CITATION:** DBCD Spadina Ltd et al v. Norma Walton et al, 2016 ONSC 7011  
**COURT FILE NO.:** CV-13-10280-00CL  
**DATE:** 20161128

**SUPERIOR COURT OF JUSTICE – ONTARIO  
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. and THOSE CORPORATIONS LISTED  
ON SCHEDULE C HERETO

Respondents

and

THOSE CORPORATIONS LISTED ON SCHEDULE B HERETO, TO BE  
BOUND BY THE RESULT

and

SUCH OTHER RESPONDENTS FROM TIME TO TIME AS ARE ON NOTICE OF THESE  
PROCEEDINGS AND ARE NECESSARY TO EFFECT THE RELIEF SOUGHT

**BEFORE:** Newbould J.

**COUNSEL:** *Peter H. Griffin, Shara N. Roy and Danielle Glatt* for the Applicants

*Howard C. Cohen and Jessica S. Parise*, for the Respondents Norma Walton,  
Ronald Walton, The Rose & Thistle Group Ltd. and Eglinton Castle Inc.

*Mark S. Dunn and Carlie Fox*, for the Manager

*Rosemary A. Fisher*, for Christine DeJong Medicine Professional Corporation

*Aaron A. Blumenfeld*, for Gideon and Irene Levytam

*Jeffrey Claydon*, for the Attorney General of Ontario

**ENDORSEMENT**

[1] In my endorsement released September 23, 2016 I ordered that the DBDC applicants are entitled to their costs against the respondents other than the Schedule C Companies and that DeJong, the Condos and the Levytams are entitled to their costs against the DBDC applicants.

[2] The DBDC applicants seek costs against the respondents other than the Schedule C Companies on a substantial indemnity basis. I found that the Waltons had committed civil fraud on the applicants and that the counter-application and the claims asserted in the factum of the Waltons were frivolous and vexatious and an abuse of the process of the Court. The DBDC applicants are entitled to costs on a substantial indemnity basis.

[3] The work required in this case was to a very large extent caused by the failure of the Waltons to deliver financial information in spite of several orders to do so, by their concealment of information and by the repeated attempts of the Waltons to reargue matters previously decided against them. I see no reason to hold that the hours claimed by the applicants should not be accepted. The hourly rates charged were reasonable and the work done was appropriately delegated. The DBDC applicants are entitled to substantial indemnity costs of 90% of the actual fees billed plus disbursements and HST in the amount of \$550,832.92 against the respondents other than the Schedule C Companies.

[4] DeJong claims costs against the DBDC applicants on a partial indemnity basis until an offer to settle was made on July 22, 2015 and thereafter on a substantial indemnity basis. I do not think costs should be awarded on the higher scale. The offer was open only for 10 days. While I assume the tactical reason for that was to try to get a settlement with the applicants, who were

opposing the application of DeJong, before further work was required for the hearing of the applications, DeJong or its advisors were aware of the rule requiring an offer to be open until the commencement of the proceeding in order to obtain the higher cost award, and as the offer was not open, the result does not attract costs on a substantial indemnity basis.

[5] Costs on a partial indemnity scale are claimed at \$\$69,992.12 for fees, disbursements and HST. The DBDC applicants accept the counsel rates claimed by DeJong. The hours docketed do not appear to be excessive. The DBDC applicants contend that nothing should be allowed for the application record of DeJong. I do not agree. As a practical matter, the only opposition to the relief claimed was by the DBDC applicants. DeJong has claimed \$10,497.35 against the DBDC applicants for work done in defending funding, recusal and stay motions by the Waltons. I do not think the DBDC applicants should be responsible for these costs. The same applies to \$6,402.89 claimed by DeJong for work done in connection with the claims process as DeJong was required to prove its claim. DeJong is not entitled to costs of \$1,206.33 incurred in its unsuccessful appeal to the Court of Appeal from the decision of Brown J. In the result, costs of \$51,885.55 are to be paid by the DBDC applicants to DeJong.

[6] DeJong also claims costs against the respondents for work in defending the Walton funding motion, the recusal motion and the stay motion. The costs claimed on a partial indemnity basis are \$7,327.65 plus disbursements and HST, totaling \$10,497.35. Costs of this amount are to be paid by the respondents to DeJong.

[7] The Condos claim costs on a substantial indemnity basis. I see no grounds for costs on that scale. They claim costs in the alternative on a partial indemnity basis of \$14,017.28 inclusive of fees of \$12,013.65, disbursements and HST. The DBDC applicants do not contest the rates of counsel and accept costs on a partial indemnity basis of \$14,017.28. Costs of this amount are to be paid by the DBDC applicants to the Condos.

[8] The Levytams seek costs on a substantial indemnity basis as the result of an offer to settle with the applicants. The offer provided for the Levytams being paid \$134,800 by the DBDC applicants in return for the preferred shares held by them in Cecil Lighthouse Ltd. The offer remained open until the commencement of the motion. That offer represented 40% of the net

investment of the Levytams. The Levytams have recovered nothing for their investment but hold their preferred shares in Cecil Lighthouse Ltd. The Manager holds over \$830,000 from the sale of this property after all debts subject to the damage claim of the applicants against Cecil Lighthouse Ltd., which claim was dismissed. Thus the offer of the Levytams was in excess of what they can expect to receive for their investment as a result of my decision, and they are entitled to costs on a substantial indemnity basis from the date of their offer of March 9, 2016.

[9] The cost outline for the Levytams does not contain a breakdown of the work done before and after the offer was made. In light of the fact that the offer was made shortly before the original date of the motion, I take it that most of the work done apart from the hearing and the preparation required for the hearing was done prior to the offer. I think in the circumstances costs on a substantial indemnity basis should be 25% of the costs awarded. The DBDC applicants do not contest the rates of counsel. These rates were discounted by 10% by Mr. Blumenfeld. No time was billed for approximately 10 hours of work done by Mr. Marshall in 2014 and early 2015. No disbursements were charged except for the fee to file an appearance on their behalf. The hourly rate charged by Mr. Blumenfeld was modest.

[10] The total fees claimed for the Levytams on a substantial indemnity basis are \$21,087.08 and on partial indemnity basis are \$14,092.05. The DBDC applicants accept the amount claimed on a partial indemnity basis. However awarding \$25% of the costs claimed on a substantial indemnity basis and 75% on a partial indemnity basis results in a cost award of \$15,840.80 to be paid by the DBDC applicants to the Levytams.



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Newbould J.

**Date:** November 28, 2016