



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	MONDAY, THE 6 TH
)	
JUSTICE NEWBOULD)	DAY OF JANUARY, 2014

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 ON SCHEDULE B HERETO, TO BE
BOUND BY THE RESULT

ORDER

THIS MOTION, made by Otera Capital Inc. as agent of CDPQ Mortgage Investment Corporation ("**Otera**") for an order in respect of the lands municipally known as 1500 Don Mills Road, Toronto, Ontario; the buildings thereon;; and all property subject to the mortgage and security of Otera pursuant to the Mortgage (defined below) (the "**Property**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of Otera dated December 12, 2013, the Motion Record of Otera dated December 16, 2013, including the affidavit of Robert Duranceau and the Exhibits attached thereto, the Supplementary Affidavit of Robert Duranceau sworn December 20, 2013 and the Exhibits attached thereto, the affidavits of James Reitan sworn October 1, October 3, October 24 and December 9, 2013 the affidavit of Dr. Stanley K. Bernstein sworn October 1, 2013, the affidavits of Norma Walton sworn October 3, October 31 and December 17, 2013, the affidavit of Harlan Schonfeld sworn October 1, 2013, the First Interim Report of the Inspector, Schonfeld Inc., the Supplemental Report to the First Interim Report of the Inspector and the Exhibits thereto, the Second Interim Report of the Inspector and the facts and books of authorities, filed, and upon hearing counsel for the Applicants, the Respondents, Schonfeld Inc. Receivers + Trustees (the **“Manager”**) and Otera.

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record of Otera is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

CONTINUING ORDERS

2. THIS COURT ORDERS that the Orders of the Honourable Justice Newbould dated October 4, 2013 (the **“October 4 Order”**), October 25, 2013 and November 5, 2013 (the **“November 5 Order”**) continue in full force and effect except as modified by this Order in respect of the Property and all related rents, parking fees, income, receipts, revenues and other proceeds from or in respect of the Property (the **“Property Revenues”**).

3. THIS COURT ORDERS that the Manager’s Borrowing Charge and the Manager’s Charge shall rank in subsequent priority to any all security interests, trusts, liens, charges, mortgages and encumbrances, statutory or otherwise, in favour of Otera or any other Person validly registered on

title of the Property or against El-Ad (1500 Don Mills) Limited and Donalda Developments Ltd. (the “**Borrower**”) as of January 6, 2014. The Manager’s Borrowing Charge and the Manager’s Charge shall not be registered on title to the Property and shall not, in the event the stay of proceedings is lifted in accordance with paragraphs 9, 14, or 15 hereof or by Court Order, impair Otera’s ability to sell or lease the Property.

4. THIS COURT ORDERS that the Property Revenue shall be used only to fund the costs and expenses directly relating to the management, maintenance, operation and sale of the Property, including reasonable fees and disbursements of the Manager incurred directly in connection with the management, maintenance, operation and sale of the Property and the performance of its obligations under this Order and payment of all amounts owing under the Mortgage (defined below), when due (the “**Property-Specific Costs**”) and for greater certainty shall not be used to fund any allocation of the fees, costs and expenses associated with any other land, building or other property subject to the November 5 Order (the “**Other Schedule “B” Properties**”) or fees of the Manager relating thereto, provided that the Manager shall have no personal liability for obligations of the Borrower.

5. THIS COURT ORDERS that the Borrower shall pay when due, all Property-Specific Costs owing by the Borrower to Otera and arm’s length creditors on account of taxes or other amounts that, if not paid, would have the benefit of a lien, charge or other encumbrance ranking in priority to the Mortgage and the Manager will cause such payments to be made from Property Revenue to the extent funds are available provided that the Manager shall have no personal liability for obligations of the Borrower. The Borrower shall not pay any claims against the Borrower that arose prior to the date of the November 5 Order, other than the obligations in relation to the Mortgage, without the consent of Otera.

6. THIS COURT ORDERS that the proceeds of any borrowing under the Manager's Borrowing Charge (as defined in the November 5 Order) in respect of the Property be used only to fund Property-Specific Costs.

COSTS

7. THIS COURT ORDERS that the costs of the Applicants and Respondents of this Application and the costs of the Inspector (as defined in the October 4 Order) shall not form part of the Manager's Charge or the Manager's Borrowing Charge and shall be borne by the Applicants or Respondents, as may be determined by this Court from time to time.

COMPLIANCE WITH THE MORTGAGE

8. THIS COURT ORDERS that the Borrower shall hereafter comply with the terms of the mortgage, charge and other related loan and security documents, including any general security agreement, in favour of Otera and specifically the documents set out in Schedule "D" hereto (collectively, the "**Mortgage**") from and after the date of this amending Order. For greater certainty, nothing in this paragraph 8 requires the Borrower or the Manager to cure the alleged existing or continuing events of default as of the date of this Order listed in Schedule "C" hereto. Nothing in this paragraph prejudices the right of Otera to rely on such existing or continuing defaults if the stay of proceedings is lifted in accordance with paragraphs 9, 14, or 15 hereof or by Court Order. Nothing in this Order prejudices the rights of Otera to add any costs, fees or other amounts arising from the existing defaults under its Mortgage and/or these proceedings to the indebtedness secured by its Mortgage as permitted by the Mortgage or applicable laws.

9. THIS COURT ORDERS that there shall be an automatic lifting of the stay imposed by paragraphs 12 and 13 of the November 5 Order to permit Otera to enforce its rights and remedies against the Borrower or the Property (including the Property Revenues) under and in accordance

with the Mortgage in the event of any breach of paragraph 8 above including without limitation, any failure to pay any monthly payment of principal, interest and all reserves when due.

10. THIS COURT ORDERS that the Manager shall provide Otera, the Applicants and Respondents, with notice of any breach of this Order, including paragraph 8, of which it becomes aware in respect of the Property and shall, on a monthly basis, provide Otera, the Applicants and Respondents with a certificate confirming that it is not aware of any breach of paragraph 8 in respect of the Property.

11. THIS COURT ORDERS that in the event the stay is lifted in accordance with paragraph 9, 14, or 15 hereof or by Court Order, the relief granted herein is without prejudice to the right of Otera to bring any action, proceeding or claim against the Borrower or any guarantor under the Mortgage or guarantee, or to the right of Otera to raise any existing, continuing or future events of default in these proceedings.

SALE OF PROPERTY

12. THIS COURT ORDERS that subsection 5(l) and (m) of this Court's Order dated November 5, 2013 is modified to require the consent of Otera to take further steps to market, list for sale, sell, convey, lease, rent, transfer or assign the Property or put in place a property manager for the Property from and after the date of this amending Order, in accordance with the Mortgage (including from the date of this Order the sales process to market and sell the Property). Furthermore, nothing in the Order dated November 5, 2013 or this Order shall prejudice the right of Otera to object to a prepayment of the Mortgage or to claim the prepayment charge provided for under the Mortgage.

13. THIS COURT ORDERS that the Manager shall report to Otera, the Applicants and Respondents on the status of the Property, including but not limited to providing timely reports in

respect of leasing or sales activity, copies of any appraisals of the Property, all material information, reports and written communications by the sales agent retained by the Manager in respect of the Property (the “Sales Agent”), and any offers for the sale or lease of the Property in the possession of the Manager from time to time, and the Manager shall authorize the Sales Agent to cooperate fully with Otera to provide to Otera timely information and documentation relating to the status of the process to sell the Property or lease space in the Property, subject to the respective recipient executing a confidentiality agreement in a form acceptable to the Manager and Otera, acting reasonably. Otera’s approval shall be required for the sale of the Property or lease of space in the Property. The Manager may request from Otera, and Otera shall provide, a mortgage statement as at the projected closing date in an offer to purchase the Property that the Manager is interested in pursuing. Unless Otera agrees otherwise in writing, and subject to the right of the Manager to seek direction of this Court on notice to Otera, the Manager shall only accept and submit to Court for approval an offer to purchase the Property if the offer provides for payment in full in cash, at closing, of the amount outstanding as shown on the mortgage statement.

14. THIS COURT ORDERS that there shall be an automatic lifting of the stay imposed by paragraphs 12 and 13 of the November 5 Order to permit Otera to enforce its any and/or all of rights and remedies against the Borrower or the Property (including the Property Revenues) under and in accordance with the Mortgage if: (i) by January 31, 2014, the Manager’s plan to sell the Property has not been approved by Otera acting reasonably, the Manager has not commenced the sale process by retaining a reputable real estate agent and listed the Property for sale, or has not commenced to actively market the Property for sale; or (ii) at any time after February 1, 2014, the Manager fails to diligently, continuously and prudently market the Property for sale and market the available space in the Property for lease, unless the Manager and Otera have agreed in writing to extend the deadlines provided in this paragraph 14.

15. THIS COURT ORDERS that there shall be an automatic lifting of the stay imposed by paragraphs 12 and 13 of the November 5 Order to permit Otera to enforce its rights and remedies against the Borrower or the Property (including the Property Revenues) if the sale of the Property is not fully completed by July 31, 2014 (whether or not the relevant Mortgage is in good standing), unless the Manager and Otera have agreed in writing to extend the deadline provided in this paragraph 15.

OTHER RELIEF

16. THIS COURT HEREBY REQUESTS that aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Manager and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Manager, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Manager and its agents in carrying out the terms of this Order.

17. THIS COURT ORDERS that the Manager be at liberty and is hereby authorized and empowered to apply to any court, tribunal regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

18. THIS COURT ORDERS that the stay imposed by paragraphs 12 and 13 of the November 5 Order is lifted for the sole purpose of permitting Otera to deliver a notice for purposes of section 244 of the *Bankruptcy and Insolvency Act* (Canada) if Otera considers it necessary or appropriate to do so.

19. THIS COURT ORDERS that any interested party may apply to this Court to seek the advice and direction of the Court in respect of this Order or the activities of the Manager on not

less than seven (7) days' notice to the Manager and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 07 2014

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SCHEDULE "A" COMPANIES

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investment 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 Inc.
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 Industrial 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 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 Developments Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

SCHEDULE "C"

The following potential events of default as of the date of this Order under the Mortgage on the Property at 1500 Don Mills Road in Toronto, Ontario with CDPQ Mortgage Investments Corporation are subject to paragraph 8 of this Order:

- a) The Order of this Court dated November 5, 2013;
- b) This Order of the Court;
- c) Any representation made at the time the Mortgage was entered into regarding the ownership of the Mortgagor/Borrower;
- d) The existence of a second mortgage on the Property; and
- e) The non-payment of utilities, taxes and other obligations prior to the date of this Order.

SCHEDULE D

The charge/mortgage in the original principal amount of \$31 million, receipted as AT3195767 on December 12, 2012 and all other security agreements and other documents in connection therewith.

DBDC SPADINA and NORMA WALTON, et And THOSE CORPORATIONS
LTD, et al. al. LISTED ON SCHEDULE B
HERETO

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

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at Toronto

PROPERTY-SPECIFIC ORDER
(1500 DON MILLS ROAD, TORONTO)

MCCARTHY TÉTRAULT LLP
Suite 5300, Box 48,
Toronto Dominion Bank Tower
Toronto ON M5K 1E6

James Gage LSUC#: 346761
Tel: (416) 601-7539
Fax: (416) 868-0673
Email: jgage@mccarthy.ca

Heather L. Meredith LSUC#: 48354R
Tel: (416) 601-8342
Fax: (416) 868-0673
Email: hmeredith@mccarthy.ca

Lawyers for CDPQ Mortgage Investment
Corporation
#13068647