

CITATION: DBDC Spadina Ltd. v. Walton, 2014 ONSC 2849
COURT FILE NO.: CV-13-10280-00CL
DATE: 20140506

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: 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

BEFORE: D. M. Brown J.

COUNSEL: P. Griffin and S. Roy, for the Applicants

N. Walton, in person

M. Dunn and J. LaBine, for Schonfeld Inc., Manager and Inspector

L. Wallach, for E. Manson Investments Limited and B & M Handelman
Investments Limited (1 William Morgan Drive; 30/30A Hazelton Avenue; 44
Park Lane; 346 Jarvis St.) and for Martha Sorger and 1363557 Ontario Limited
(777 St. Clarens Ave.; 260 Emerson Ave.)

C. Lax, Q.C., P. Fruitman and M. Law, for 2313798 Ontario (14 College St.; 66
Gerrard St. East)

I. Flett, for the Woodgreen Red Door Family Shelter

S. Lakhani, for 65 Front Street East lien claimants

HEARD: May 6, 2014

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REASONS FOR DECISION

I. Manager's motion for approval and vesting order regarding the sale of 450 Pape Avenue (the "Property")

[1] *Royal Bank of Canada v. Soundair* applies: (1991), 4 O.R. (3d) 1 (C.A.). The respondent, Ms. Walton, opposed the sale for which the Manager sought court approval. Her grounds of opposition did not relate to the fairness, transparency or adequacy of the sales and marketing process used by the Manager for the Property which resulted in the agreement of purchase and sale for which the Manager sought approval.

[2] Initially, one of the reasons for Ms. Walton's opposition was that the sale of 450 Pape would interfere with, or prevent the performance of, assurances or understandings she had given or made with a women's shelter, the Woodgreen Red Door Family Shelter. Earlier in time there had been discussions about moving that Shelter from its Queen Street East location to the Property. That is no longer an issue. The Executive Director of the Shelter, Ms. Bernmitta Hawkins, in her May 5, 2014 affidavit, deposed that contact between the Shelter's Board and Ms. Walton ended last November, discussions about any purchase or temporary arrangements at the Property ended at that time, the Board had lost complete confidence in Ms. Walton, and the Shelter no longer had "any interest in relocating under any terms to 450 Pape Avenue."

[3] The other basis for Ms. Walton's opposition to the Manager's proposed sale involved the delivery to the Manager last week of a May 2, 2014 offer to purchase the Property, together with 875 and 887 Queen Street East, Toronto, from Bill Mandelbaum, in trust. The Manager has entered into an agreement of purchase and sale with another party for the sale of the Queen Street Properties for which it intends to seek court approval. The consideration for all three properties in the Mandelbaum offer is about 8% higher than the combined consideration in the two separate agreements for which the Manager is seeking and will seek court approval. Ms. Walton described the Manager's proposed transactions as "lousy deals", and she submitted that the Court should direct the Manager to negotiate a sale of all three properties with Mr. Mandelbaum.

[4] I do not accept that submission for several reasons. The first concerns the integrity of the sales and marketing process undertaken by the Manager, an officer of this Court. Previous orders of this Court appointed the Manager as, in essence, the receiver of the Property, and authorized the Manager to sell it. Although that November 5, 2013 order of Newbould J. is under appeal, the respondents did not seek to stay its operation.

[5] In his January 6, 2014 endorsement Newbould J. expressed "serious concern with the steps that Ms. Walton has taken regarding the marketing of the properties" by the Manager, and he stated:

Without further court order, Ms. Walton has no business to be involved in any way with the marketing of the properties other than discussing matters with the Manager or Dr. Bernstein.

[6] In paragraph 19 of her May 2, 2014 affidavit, Ms. Walton deposed, in respect of the Manager's proposed sale of the Property, that "we decided that rather than fight to obtain permission to buy it ourselves, we would try to find a better solution for all parties". She then

proceeded, in paragraph 20 of that affidavit, to describe the way in which she had involved herself in the making of the Mandelbaum offer. Ms. Walton went as far as to attach to her affidavit a copy of the deposit cheque payable to Manager's counsel which she contended had accompanied the Mandelbaum offer, yet Manager's counsel advised the Court that his firm had not received that cheque. Such conduct by Ms. Walton supports a finding that she has not abided by the directions given to her by Newbould J. in his January 6 endorsement and, contrary to those directions, she has involved herself in the marketing of the Property. That was wrongful conduct by Ms. Walton.

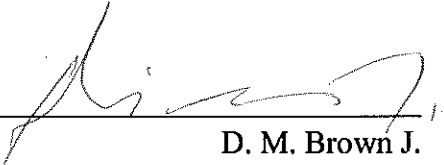
[7] Second, on April 29, 2014 the Manager (and the parties, and others) appeared before me to schedule various matters, including motions to approve the sales of the Tisdale property and the Pape property. I indicated at that time that I would hear those motions today, May 6, which I confirmed in my May 2 Reasons. It was only after the expiration of the sales and marketing bid deadline and the fixing of a date for the hearing of the approval and vesting order that Mandelbaum submitted his May 2 offer.

[8] The Ontario jurisprudence regarding sales and approval processes undertaken by court-appointed officers, such as the Manager, has placed great weight on the need to protect the integrity of such sales processes and Ontario courts rarely consider late bids, absent extraordinary circumstances.

[9] The evidence disclosed that none existed in this case. Although the price offered by Mandelbaum for the three properties was higher than that in the offers entered into by the Manager, the difference was less than 10%. Moreover, the agreements negotiated by the Manager for the Pape and Queen Street properties are firm, subject to court approval. By contrast, the Mandelbaum offer contained a broad 10-day due diligence condition in favour of the offeror, and the Manager reported that Mandelbaum had not approached it, either prior to or after the making of its offer, to have access to due diligence materials. The condition nature of the Mandelbaum offer weighs most heavily against giving it any consideration on the merits. In sum, I see no reason to depart from the business recommendation of the Manager that the court approve the proposed sale of the Property.

[10] Finally, the evidence raised real concerns that Ms. Walton's wrongful involvement in the sales process may have affected its integrity regarding price. I find it difficult to accept as mere coincidence that the price initially agreed upon by the Manager with the proposed purchaser of the Queen Street Properties was identical to that found in the Mandelbaum offer. Although the latter offer was for three, not two, properties, the identity of the offered purchase price I find incapable of explanation as a mere coincidence.

[11] For those reasons, I do not accept the objections made by Ms. Walton to the sale proposed by the Manager. It met the *Soundair* principles. Accordingly, I grant the motion of the Manager for an approval and vesting order. I have signed the draft order submitted by the Manager, and it may be picked up from my Registrar.



D. M. Brown J.

Date: May 6, 2014