

Court File No.: CV -13-1 0280-00CL

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, TO BE BOUND
BY THE RESULT

SECOND INTERIM REPORT OF THE INSPECTOR, SCHONFELD INC.

I. Introduction

1. This is the Second Interim Report (the “Second Report”) of Schonfeld Inc. (the “Inspector”) in its capacity as inspector pursuant to subsection 161(2) of the *Business Corporations Act (Ontario)* and the Order of Justice Newbould dated October 4, 2013 (the “Appointment Order”). The Inspector has previously filed its First Interim Report dated October 21, 2013 (the “First Report”) and its Supplemental Report to the First Report dated October 24, 2013 (the “Supplemental Report”) on October 24, 2013.

A. Purpose of this Report

2. The purpose of this Second Report is to: (i) update the analysis previously provided to this Honourable Court; and (ii) advise this Honourable Court of the status of the Inspector’s investigation.

B. Terms of reference

3. In preparing this report, the Inspector has relied upon documents and information provided to it by the parties and has not verified the authenticity or accuracy of these documents. The Inspector has assumed that the documents provided to it (other than the parties’ internal accounting records) are authentic and accurate. For example, the Inspector has assumed that documents purporting to be bank statements are true copies of statements provided by the relevant financial institution and that these statements accurately describe the transactions in the relevant account.

4. The Inspector has not performed an audit or other verification of the internal accounting documents provided to it by the parties. Some of the parties’ internal accounting records have been reconciled with the documents referenced in paragraph 3 above (including bank statements and government registrations) but the internal records remain subject to further verification once sufficient information is provided.

C. Currency

5. All currency references are in Canadian dollars.

II. Updated analysis

A. Cash Transfers and Billing Summary

6. The Inspector updated the Cash Transfers and Billing Summary that was attached as Appendix "E" to the First Report and Appendix "D" to the Supplemental Report to include information to October 28, 2013. The updated Cash Transfers and Billing Summary is attached as Appendix "A".

7. Transfers to and from Rose & Thistle continued between October 1, 2013 and October 24, 2013. During this period, Rose & Thistle received approximately \$240,000 more from the Companies than it transferred to the Companies. After the all-parties meeting on October 17, 2013, Rose & Thistle transferred funds to the Companies but did not receive any further electronic transfers from the Companies.

B. Updated property investment profile

8. The Inspector also updated the Property Investment Profile that was attached to the First Report as Appendix "D" and the Supplemental Report as Appendix "C". The only change to the Property Investment Profile is that Rose & Thistle transferred \$100 to 17 Companies to fund the Waltons' share subscription. These amounts had previously been listed as a receivable owed to each Company. The updated Property Investment Profile is attached as Appendix "B".

III. The Inspector's activities since October 25, 2013

9. On October 28, 2013, Harlan Schonfeld and Jim Merryweather attended at Rose & Thistle's offices on behalf of the Inspector. One of the primary goals of this attendance was to review documentation underlying the invoices issued by Rose & Thistle to the Companies. Messrs. Schonfeld and Merryweather met with:

- (a) Mario Bucci, the Chief Financial Officer of Rose & Thistle;
- (b) Mark Goldberg, executive vice-president of Rose & Thistle; and,
- (c) Yvonne Liu, Rose & Thistle's Director, Strategic Development.

B. Information obtained by the Inspector

10. Mr. Goldberg advised Mr. Schonfeld that he was responsible for (among other things) the construction project being undertaken at 1485 Dupont (the "Dupont Project") by Dupont Developments Ltd. ("Dupont Developments"). Mr. Goldberg provided Mr. Schonfeld with a construction budget for the Dupont Project but advised that it was out of date. The budget provided by Mr. Goldberg is attached as Appendix "C". Mr. Goldberg also provided a budget for environmental remediation of 1485 Dupont, which is attached as Appendix "D". These budgets indicate that Dupont Developments spent \$385,000 on construction and approximately \$20,000 on environmental remediation.

11. The Inspector was previously provided with an invoice issued by Rose & Thistle to Dupont Developments in the amount of \$565,339.34. This invoice, which is attached as Appendix "E", includes an entry for construction management services in the amount of \$175,300.30. The invoice states that the construction management fee was "10% of hard costs" which appears to imply that Rose & Thistle had supervised construction that cost approximately \$1.75 million.

12. The Inspector also received a general ledger for Dupont Developments on October 24, 2013. The general ledger shows capitalized expenses of approximately \$248,000, construction in progress of \$36,000 and various consulting fees of approximately \$563,000.

13. Based on the foregoing, it appears that Dupont Developments' construction budget (which is out of date), its general ledger (which was updated before being provided to the Inspector) and invoice from Rose & Thistle all show different construction expenditures in respect of the Dupont Project.

14. It also does not appear that Rose & Thistle is maintaining project budgets on an ongoing basis to track expenses and measure construction costs against the *pro forma* statement prepared when the property at 1485 Dupont was purchased.

C. Requests for further information

15. Before attending at Rose & Thistle's office on October 28, 2013, Mr. Schonfeld e-mailed Ms. Walton to ask her to instruct Rose & Thistle's employees to extend their co-operation to the Inspector. Mr. Schonfeld's e-mail is attached as Appendix "F".

16. On October 28, 2013, the Inspector re-iterated its request for the documents underlying Rose & Thistle's invoices to the Companies, including construction budgets. These budgets should list each expense incurred by or on behalf of each Company in connection with the construction or renovation of the various Properties. Detailed construction budgets will significantly streamline the Inspector's review because the Inspector should be able to verify each item of the budget against appropriate documentation such as third party invoices, payroll records and contracts.

17. Both Mr. Bucci and Mr. Goldberg advised Mr. Schonfeld that Ms. Liu was responsible for maintaining construction budgets at Rose & Thistle and that Ms. Liu was also familiar with the documents underlying these budgets. Ms. Liu advised the Inspector that she would begin to provide the requested documents on Tuesday October 29, 2013.

18. Mr. Schonfeld returned to Rose & Thistle's offices on Tuesday October 29, 2013 but was not provided with the requested documents. At 2:02 p.m. on October 29, 2013, Ms. Liu e-mailed Mr. Schonfeld and advised that the documents would not be provided until the end of the week:

Harlan, I am sorry, we got few emergencies with project deadline of Nov. 1. I will definitely get the information you need by end of week. Sorry.

19. Mr. Merryweather forwarded Ms. Liu's e-mail to Ms. Walton to advise her that the Inspector had not received the requested documents. Ms. Walton responded as follows:

Thanks for keeping me in the loop. Yvonne works hard and I know she is busy right now. She always delivers so I'm sure she'll get you what you need in the timeline she's indicated.

20. The e-mail chain between Ms. Liu, Mr. Merryweather and Ms. Walton is attached as Appendix "G". Ms. Liu provided one construction budget on October 30, 2013.

21. On October 30, 2013, Mr. Schonfeld e-mailed Mr. Bucci to request access to the construction budgets in an “as is” condition. Mr. Bucci advised that he did not have access to construction files but had passed the request on to Ms. Liu. This e-mail exchange is attached as Appendix “H”.

22. Also on October 30, 2013, counsel to the Inspector wrote to counsel to the Respondents to advise that the Inspector had not yet received the backup documentation that it required and asking that further documentation be provided before this Second Report was finalized and filed. This e-mail is attached as Appendix “I”. On October 31, 2013, counsel to the Respondents replied to the Inspector’s inquiries and posed certain questions of the Inspector. This e-mail is attached as Appendix “J”. The Inspector is making best efforts to answer these questions.

IV. Interim relief granted October 25, 2013

23. The Inspector can advise as follows with respect to the interim relief set out in the Order of Justice Newbould dated October 25, 2013 (the “October 25 Order”):

- (a) **on-line access to bank accounts (paragraph 3(b)):** the Inspector was granted online access to the Company Accounts on October 28, 2013. The Inspector understands that access was granted to the Applicants at the same time. Meridian Credit Union (“Meridian”) subsequently froze the Company Accounts after receiving the October 25 Order. On-line access to the accounts was terminated when the accounts were frozen;
- (b) **no withdrawal or transfer from the Company Accounts without consent (paragraph 3(c))** the Inspector is not aware of any transfers from the Company Accounts without the Applicants’ consent;
- (c) **co-signing authority for a representative of the applicants (paragraph 3(d)):** the Inspector understands that Meridian has insisted on receiving corporate resolutions before adding the Applicants’ representative as a co-signor on the Company Accounts. Accordingly, the Applicants’ representative has not yet been added as a co-signor on the Company Accounts. The Inspector advised the Applicants’ counsel of this issue on October 29, 2013;

- (d) **continuation of ordinary course payments (paragraph 3(e)):** the Inspector is not aware of any diversion of payments from the Company Accounts; and,
- (e) **no steps in furtherance of any sale of Property (paragraphs 3(f)):** the Inspector understands that the sale of a Property at 1 Regalcrest Court in Vaughan, Ontario owned by Royal Gate Holdings Ltd was completed the week of October 28, 2013. The Inspector requested a Statement of Adjustments showing how the sale proceeds were directed. Attached hereto as Appendix "K" is the Statement of Adjustments provided to the Inspector by Mr. Goldberg.

V. Fees and disbursements of the Inspector and Goodmans LLP ("Goodmans")

24. Attached hereto as Appendix "L" is the Affidavit of Mr. Schonfeld sworn October 31, 2013, attesting to the fees and disbursements of the Inspector for the period from October 22, 2013 to October 30, 2013 in the amount of \$34,281.38 inclusive of HST. The Inspector's account for fees and disbursements totalling \$58,451.97 for the period from October 4, 2013 to October 20, 2013 was attached to the Affidavit of Mr. Schonfeld sworn October 21, 2013, which is attached as Appendix "R" to the First Report.

25. Attached hereto as Appendix "M" is the Affidavit of Fred Myers, a partner of Goodmans, attesting to the fees and disbursements of Goodmans to October 30, 2013.

26. The Inspector has received and reviewed Goodmans' invoice dated October 31, 2013 describing fees and disbursements in the amount of \$60,975.94 inclusive of HST. The Inspector confirmed that the fees and disbursements set out in Goodmans' invoice relate to advice sought by the Inspector and that, in the Inspector's view, Goodmans' fees and disbursements are reasonable.

VI. Conclusions and recommendation

27. For the reasons set out in this report, the Inspector respectfully requests an Order:

- (a) approving the fees and disbursements of the Inspector and Goodmans and providing that, upon approval, the Inspector's fees shall be paid by the Respondents in accordance with the Appointment Order; and,

(b) approving the activities of the Inspector described in this report.

All of which is respectfully submitted this 31st day of October, 2013.

Schonfeld Inc.

In its capacity as Inspector pursuant to section 161(2) of the *Business Corporations Act* (Ontario)

Per: _____

Harlan Schonfeld CPA-CIRP

SCHEDULE “A” COMPANIES

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investments 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 Ltd.
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 Lands 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 Development Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.