

**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 ON SCHEDULE B HERETO, TO BE  
BOUND BY THE RESULT

**MOTION RECORD OF THE APPLICANTS  
(RETURNABLE SEPTEMBER 2 & 4, 2015)  
VOLUME 1 OF 6**

August 4, 2015

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TAB A

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

**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 ON SCHEDULE B HERETO AND THE  
REAL PROPERTY LISTED ON SCHEDULE C 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

**SECOND FRESH AS AMENDED NOTICE OF APPLICATION**

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The Claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be set by a judge of the Superior Court of Justice presiding at the court house, 393 University Ave, 10th Floor, Toronto, ON, M5G 1E6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of 330 University Ave, 7<sup>th</sup> Floor  
court office: Toronto, ON, M5G 1R7

## APPLICATION

1. The Applicants, DBDC Spadina Ltd., and those Corporations listed on Schedule A hereto, make an Application for:

- (a) An order abridging the time for delivery of this Notice of Application and supporting materials pursuant to Rule 3.02 of the *Rules of Civil Procedure*, and providing that this application and the companion motion to appoint a manager be properly returnable on October 25, 2013;
- (b) A mandatory order restraining the Respondents, Norma Walton, Ronauld Walton, The Rose & Thistle Group Ltd. (“Rose & Thistle”) and Eglinton Castle Inc. from, or from causing, any dealings with the underlying real estate properties (collectively, the “Schedule B Properties”) held by the corporations listed on Schedule B (collectively, the “Schedule B Corporations”) without the agreement of the Applicants or a further Order of this Honourable Court;
- (c) A declaration that the Respondents have fraudulently conveyed the assets and monies of the Schedule B Corporations to themselves and other companies, properties and projects in which they are involved;
- (d) A mandatory order restraining the Respondents from further encumbering any of the properties without written consent of the Applicants or further Order of this Honourable Court;
- (e) An order appointing Schonfeld Inc. as Inspector pursuant to Section 161(2) of the *Business Corporations Act*, R.S.O. 1980, c.B.16, as amended (the “OBCA”) upon



the basis that the business and affairs of the Schedule B Corporations have been carried on or conducted in a manner that is oppressive, is unfairly prejudicial to and unfairly disregards the interests of the Applicants in the Schedule B Corporations;

- (f) An order under Section 248(3)(b) of the OBCA and/or Section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43 (“CJA”) appointing Schonfeld Inc. as manager (“Manager”) over all the assets, undertakings and properties of the Schedule B Corporations, including the bank accounts of those entities at Meridian Credit Union;
- (g) An order under Section 248(3)(b) of the OBCA and/or Section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43 (“CJA”) appointing Schonfeld Inc. as manager (“Manager”) over the following properties where Dr. Stanley Bernstein is a secured creditor:
  - (i) 232 Galloway Road;
  - (ii) 295 The West Mall;
  - (iii) 65 Front Street East;
  - (iv) 450 Pape Ave.;
  - (v) 47 Jefferson Ave.; and
  - (vi) 1/9-11 City View Drive;
- (h) An order that the Manager may appoint a property manager or other professional services firm to assist it in performing its duties, including but not limited to one or more of:
  - (i) DMS Properties;

- (ii) Sterling Karamar; and
- (iii) Briarlane Property Rental Management Inc.
- (i) An order enjoining the Respondents from advising creditors not to make payments to the Schedule B Companies in the ordinary course;
- (j) An order that the Respondents provide a full accounting of all monies received and disbursed by the Schedule B Companies and The Rose & Thistle Group Ltd. since September 2010;
- (k) An order that the Respondents disgorge to the Schedule B Companies all amounts which they have, directly or indirectly, improperly taken or removed;
- (l) An order that Norma Walton and Ronald Walton shall, if demanded, make the equity investments as required by the agreements in respect of the Schedule B Companies and the Properties;
- (m) An order that the Respondents shall make the Applicants whole for all amounts owed in respect of mortgage proceeds, equity investments, shareholders loans and interest in respect of the Schedule B Companies and the properties owned by the Schedule B Companies
- (n) An order that the issued and outstanding shares in the Schedule "B" Companies held by the Respondents be cancelled where shareholder equity has not been contributed by them;

- (o) An order for restitution and repayment to the Applicants and/or the Schedule B Companies as appropriate by the Respondents in respect of the fees of Schonfeld Inc., in its capacity as Inspector and Manager in this proceeding, and of its counsel Goodmans LLP;
- (p) An order that the Respondents disclose by October 28, 2013 the municipal addresses of all of the properties associated with any companies identified in Schedule M of the First Interim Report of the Inspector;
- (q) An interim order directing the Respondents to disclose any agreements not heretofore disclosed to cross-collateralize any obligations of the Schedule B Companies, the Schedule C Properties or 44 Park Lane Circle, Toronto, Ontario;
- (r) An interim Certificate of Pending Litigation and a blanket charge respecting the property municipally known as 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest;
- (s) A declaration that the property at 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest and/or the proceeds from the sale of 44 Park Lane Circle, Toronto, Ontario and/or the Schedule C Properties in which the Respondents have an interest are subject to a constructive and/or resulting trust or equitable lien from the date of purchase in favour of the Applicants;
- (t) An order tracing the funds from the Applicants to and through the accounts of the Schedule B Companies, the accounts of the Respondent the Rose & Thistle Group

Ltd., the personal accounts of the Respondents Norma and/or Ronauld Walton, the trust account of Walton Advocates and/or the trust account of Devry Smith Frank LLP and otherwise into 44 Park Lane Circle, Toronto, Ontario and/or the Schedule C Properties;

- (u) An order claiming 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest as proceeds of the funds from the Applicants;
- (v) An order that the Applicants may seize and sell 44 Park Lane Circle, Toronto, Ontario and the Schedule C Properties in which the Respondents have an interest, subject to the enforceable rights of properly prior registered charges and liens on the properties;
- (w) An order that Schonfeld Inc. be appointed as Manager of the Schedule C properties in which the Respondents have an ownership interest for the purposes of the relief sought above;
- (x) An order that Schonfeld Inc. be appointed as Receiver over the Respondents Norma Walton and Ronauld Walton for the purposes of ensuring payment in accordance with any judgment of the Court in this proceeding;
- (y) An order that the Respondents forthwith provide full and unrestricted access to the Inspector of:
  - (i) All records respecting each of the Properties (as defined below) and the Schedule B Corporations and Eglinton Castle Inc.;

- (ii) The accounting, banking and other records of Rose & Thistle, so as to reflect all dealings by which monies owned or attributable to the Properties, the Schedule B Corporations or the Applicant Corporations;
- (z) An order authorizing the Inspector to enter the premises of Rose & Thistle at 32 Hazelton Avenue, Toronto, Ontario M5R 2E2, in order to obtain all relevant information and to examine any records, including accounting and bank records and any other records, therein and to make copies of all such documents for the purposes of the investigation;
- (aa) An order requiring the Respondents, and any of them, to produce all records respecting the acquisition, purchase, financing, management, development and operation of the Schedule B Properties to the Inspector;
- (bb) An order requiring that all lawyers acting on the purchase and financing of the Schedule B Properties for any of the Respondents and the Schedule B Companies make available all requested documents to the Inspector without assertion of privilege, and in particular, without limiting the generality of the foregoing, the law firm of Devry Smith Frank LLP in respect of the mortgages on 1450 Don Mills Road and 1500 Don Mills Road;
- (cc) An order requiring the Respondents to pay the costs of the Inspector, Manager and property manager;
- (dd) An order granting all necessary directions to the Inspector/Manager;

- (ee) An order that the Inspector provide an interim report to this Honourable Court on or before October 15, 2013;
- (ff) An order approving the reports of the Inspector/Manager;
- (gg) A further order restraining the Respondents from interfering with the work of the manager, including but not limited to the marketing and sale of the properties owned by the Schedule B Companies;
- (hh) An order awarding the Applicants damages in the amount of \$71.2 million against the Respondents;
- (ii) An order awarding the Applicants damages in the amount of \$22.6 million jointly and severally against the Respondents and those corporations listed at Schedule C hereto (collectively, the “Schedule C Companies”);
- (jj) A declaration that the Applicants’ damages were caused by the fraud and/or misappropriation of the Respondents while acting in their capacity as fiduciaries, pursuant to s. 175(1)(d) and (e) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3;
- (kk) The costs of this application and inspectionship/managership; and
- (ll) Such further and other relief as to this Honourable Court may seem just.

2. The grounds for the Application are:

## PARTIES

- (a) The Applicants, DBDC Spadina Ltd. and those Corporations listed on Schedule A hereto, are all corporations incorporated pursuant to the laws of Ontario. They are beneficially owned by Dr. Stanley Bernstein (“Dr. Bernstein”);
- (b) Norma Walton (“Ms. Walton”) is a lawyer and a member of the Law Society of Upper Canada. She was a co-founder, along with her husband, Ronauld Walton, of The Rose & Thistle Group Ltd. (“Rose & Thistle”) and President of its subsidiary, Rose & Thistle Properties. Ms. Walton was a principal of Walton Advocates, an in-house law firm and trade mark agent that provided litigation, corporate and real estate legal services to the Rose & Thistle group of companies. She has faced two disciplinary hearings before the Law Society of Upper Canada related to her financial dealings with clients. Ms. Walton is currently suspended from the practice of law;
- (c) Ronauld Walton (“Mr. Walton”) is a lawyer and a member of the Law Society of Upper Canada. He is a co-founder, along with Ms. Walton (collectively, the “Waltons”), of Rose & Thistle and President of its subsidiary, Rose & Thistle Properties. Mr. Walton was a principal of Walton Advocates, an in-house law firm and trade mark agent that provided litigation, corporate and real estate legal services to the Rose & Thistle group of companies. Mr. Walton is currently suspended from the practice of law;
- (d) Rose & Thistle is a holding company incorporated pursuant to the laws of Ontario. It and its various subsidiaries were engaged *inter alia* in the development,

management and construction of real estate. It is owned, to the knowledge of the Applicants by the Waltons;

- (e) Eglinton Castle Inc. is a corporation incorporated pursuant to the laws of Ontario. It is owned, to the knowledge of the Applicants, by the Waltons;
- (f) The Corporations listed on Schedule B hereto are all corporations incorporated pursuant to the laws of Ontario (collectively, the "Schedule B Companies"). They were each intended to be owned 50% by Dr. Bernstein (or one of the Corporations listed on Schedule A hereto) and 50% by the Waltons (or Eglinton Castle Inc.) as described below;
- (g) The Schedule B Companies were incorporated for the purpose of purchasing and/or holding commercial real estate properties jointly between Dr. Bernstein and the Waltons (collectively, the "Schedule B Properties");
- (h) The properties listed at Schedule C to the Notice of Application are properties owned directly or indirectly by the Waltons and, in some cases, other investors (collectively, the "Schedule C Properties");
- (i) The Schedule C Properties were held by companies, the Schedule C Companies, that were controlled by the Waltons;
- (j) The Schedule C Investors are shareholders who claim to have invested with the Waltons by purchasing shares in various Schedule C Companies;



- (k) Christine and Michael DeJong and their related entities (collectively, the “DeJongs”) are Schedule C Investors;
- (l) The DeJongs have brought an application with respect to, *inter alia*, their entitlement to the proceeds of sale of three Schedule C Properties: 324 Prince Edward Drive; 777 St. Clarens Avenue; and 260 Emerson Avenue;

## THE INVESTMENTS

- (m) Beginning in 2008, Dr. Bernstein acted as the lender/mortgagee of several commercial real estate properties owned by the Respondents, either through their company Rose & Thistle or through other corporations of which the Respondents are the beneficial owners;
- (n) Following several financings, Dr. Bernstein and the Waltons agreed to invest jointly in various commercial real estate projects;
- (o) From 2010 to 2013, Dr. Bernstein through his corporations advanced approximately \$111 million into 31 projects, structured as equity of \$81.6 million and mortgages and loans of \$29.5 million;
- (p) In connection with these equity contributions, Dr. Bernstein and the Waltons entered into separate agreements for each project (collectively, the “Agreements”), each of which provided as follows:
  - (i) A new company would be incorporated for each project (the Schedule B Company);

- (ii) Dr. Bernstein (through a company incorporated for this purpose) would hold 50% of the shares of the Schedule B Company;
- (iii) The Waltons (either directly or through a company incorporated for this purpose) would hold the other 50% of the shares of the Schedule B Company;
- (iv) Each of Dr. Bernstein and The Waltons would contribute an equal amount of equity to the purchase and development of the Schedule B Property (the "Project");
- (v) The Waltons would manage, supervise and complete the Project for an additional fee;
- (vi) The Waltons were to be responsible for the finances, bookkeeping, accounting and filing of tax returns, among other things, of the Schedule B Company;
- (vii) Each Schedule B Company was to have a separate bank account;
- (viii) Dr. Bernstein would not be required to play an active role in completing the Project, but his approval would be required for:
  - (1) Any decisions concerning the selling or refinancing of the Schedule B Property;
  - (2) Any decisions concerning the increase in the total amount of equity required to complete Project; and

- (3) Any cheque or transfer over \$50,000;
- (ix) The Waltons would provide Dr. Bernstein with:
  - (1) Ongoing reports on at least a monthly basis detailing all items related to the Schedule B Property;
  - (2) Copies of invoices for work completed on the Project monthly;
  - (3) Bank statements monthly; and
  - (4) Listing of all cheques monthly;
- (x) Dr. Bernstein and Ms. Walton were to be the sole directors of the Schedule B Company;
- (q) Each agreement provided that the Schedule B Company would only be used to purchase, complete and refinance the Schedule B Property or such other matters solely relating to that particular Project and Schedule B Property;
- (r) The Applicants advanced funds pursuant to these Agreements;

#### **THE WALTONS' MISCONDUCT IS REVEALED**

- (s) A review in June 2013 of Dr. Bernstein's equity investments in the Schedule B Companies revealed that:
  - (i) The Waltons were not making their portion of the equity investments into the Schedule B Properties;

- (ii) The Waltons appeared to be taking on third party investors in the Schedule B Companies;
  - (iii) The Waltons were engaged in significant related party transactions in respect of the Schedule B Companies and/or Properties;
  - (iv) Dr. Bernstein's approval was not being sought for any the matters set out in subparagraph (bbb)(viii) above; and
  - (v) Dr. Bernstein was not receiving any of the required reporting, as set out in paragraph subparagraph (bbb)(ix) above; and
  - (vi) As a result of the Waltons not making their portion of the equity investments in the Schedule B Properties, many of Dr. Bernstein's content, to interest bearing shareholder loans.
- 
- (t) Dr. Bernstein caused a letter to be sent to Ms. Walton on June 13, 2013 setting out these concerns;
  - (u) Following an unresponsive letter from Ms. Walton, further requests were made, but not responded to or only partially responded to;
  - (v) Dr. Bernstein caused title searches to be run on all the Schedule B Properties. Those title searches revealed that additional mortgages totaling \$6 million had been placed on two of the Schedule B Properties, 1450 and 1500 Don Mills Rd., without Dr. Bernstein's knowledge or consent. Ms. Walton had failed to provide sufficient

further information regarding the mortgages, including the loan documentation and information about the whereabouts of the funds.

- (w) Ms. Walton stated that she would provide information regarding the mortgages only in the context of a without prejudice mediation;
- (x) On September 17, 2013, Peter Griffin, counsel for Dr. Bernstein, DBDC Spadina Ltd. and the corporations listed on Schedule A to the Notice of Application, sent a letter to Ms. Walton requesting further information regarding the Projects. Among other things, he requested information regarding two additional mortgages of approximately \$3 million each had been taken out on 1450 Don Mills Rd. and 1500 Don Mills Rd., without Dr. Bernstein's knowledge or approval. Mr. Griffin also requested access to the information The Waltons are contractually obliged to provide to Dr. Bernstein;
- (y) On September 20, 2013, Jim Reitan, Director of Accounting and Finance at Dr. Bernstein Diet and Health Clinics, attended at the offices of Rose & Thistle, along with Harlan Schonfeld and Jim Merryweather of Schonfeld Inc. Schonfeld Inc. was appointed by Dr. Bernstein to conduct a review of the various Schedule B Companies, in which Dr. Bernstein has an interest. Among the matters Schonfeld Inc. was tasked with reviewing were the two \$3 million mortgages on 1450 Don Mills Rd. and 1500 Don Mills Rd.;
- (z) Ms. Walton sent various correspondence purporting to support her explanation for the additional mortgages. That correspondence did not respond fully or satisfactorily to the information requested;

- (aa) Schonfeld Inc. traced the proceeds of the \$6 million in mortgages to the Waltons, the Rose & Thistle's other businesses, various other investments held by the Waltons and various other Schedule B Companies;
- (bb) Monies have been traced from Schedule B Companies to the Waltons' home and various Schedule C Properties;
- (cc) Ms. Walton effected the sale of various Schedule B Properties without Dr. Bernstein's consent after October 4, 2013;
- (dd) Ms. Walton continued to make disbursements and payments from the Schedule B Companies in excess of \$50,000 without Dr. Bernstein's knowledge or consent after October 4, 2013;
- (ee) Ms. Walton has refused to repay the principal amount of mortgages owed to Dr. Bernstein which terms have expired;
- (ff) Ms. Walton has discharged a mortgage over the property known municipally as 232 Galloway Rd., Toronto without Dr. Bernstein's knowledge or consent where the principal amount of the mortgage has not been repaid;

#### **THESE PROCEEDINGS**

- (gg) On September 20, 2013, Dr. Bernstein appointed Schonfeld, Inc. to gather information related to the Schedule B Properties and the Schedule B Companies. However, even then the Waltons did not grant Schonfeld complete access to the documents related to 22 of 31 projects;

- (hh) In light of this conduct, the Applicants commenced an application on October 1, 2013, for various relief, including the appointment of an Inspector over the Schedule B Companies;
- (ii) On October 4, 2013, Justice Newbould found that the Waltons had engaged in conduct that was oppressive and unfairly prejudicial to the Applicants' interests. His Honour appointed Schonfeld Inc. as Inspector over the Schedule B Companies;
- (jj) The Order empowered Schonfeld to conduct a thorough investigation of the Schedule B Companies. The Order also required that Ms. Walton fully cooperate with the Inspector;
- (kk) Since this proceeding was commenced and the Inspector/Manager appointed, the Respondents have:
  - (i) Failed to cooperate, including to provide the information and documentation requested by the Inspector in a timely manner;
  - (ii) Refused to provide an accounting, as requested by the Order of Justice Newbould, dated October 25, 2013; and
  - (iii) Organized their affairs to defeat the claims of Dr. Bernstein in favour of themselves and various so-called "preferred-shareholders" and other creditors, most of whom have no genuine claim to the status that they now assert. Many are related to the Respondents and their business;

- (ll) On July 16-18, 2014, the Honourable Justice D.M. Brown heard a motion brought by the Applicants for various relief, including claims for damages against the Respondents, for constructive trusts over various Schedule C Properties and other relief;
- (mm) By Order dated August 12, 2014, Justice Brown ordered:
  - (i) Leave to issue and serve a Fresh as Amended Notice of Application, in the form attached to the Applicants' Consolidated Notice of Motion, dated June 13, 2014;
  - (ii) Constructive trusts with respect to eight of the Schedule C Properties in the total amount of \$8.2 million;
  - (iii) A tracing of the funds contributed by the Applicants to the Schedule B Companies;
  - (iv) Cancellation of the Respondents' shares in the Schedule B Companies in which they had not contributed shareholder equity;
  - (v) An expansion of the managership's mandate to include the Schedule C Properties;
  - (vi) A number of ancillary heads of relief, including the appointment of a Receiver over the personal affairs of the Waltons;



- (vii) Damages in the amount of \$1,518,750 in respect of the mortgages that the Respondents discharged from title of the property at 232 Galloway Road; and
- (viii) Costs in the amount of \$472,639.51;
- (nn) Justice Brown was not prepared at the time to grant the Applicants' relief with respect to the \$78 million damages claim because he was not satisfied that adequate argument was placed before the Court on the issue;
- (oo) Justice Brown also found in his reasons that the Applicants had demonstrated a strong *prima facie* case of unjust enrichment, up to a possible claim of \$22.6 million, against the Waltons in respect of their diversion of the Applicants' funds into the Schedule C Properties and/or Companies;
- (pp) The Manager currently holds proceeds from the sale of properties owned by certain Schedule B Companies and proceeds from the sale of properties owned by certain Schedule C Companies;
- (qq) To date, the Applicants have recovered approximately \$6.5 million from the Inspector/Manager of the \$81.6 million they invested. Other Schedule B Properties have been sold at a loss, and without excess funds for distribution to the Applicants. Many others have been determined not to be worth the Manager's costs to maintain and sell and have been taken over by the mortgagees or otherwise discharged;

## UNJUST ENRICHMENT

- (rr) Monies forwarded by the Applicants have been traced from Schedule B Companies to the Waltons' home and various Schedule C Properties;
- (ss) The Waltons transferred funds from the Schedule B Companies through Rose & Thistle to the Schedule C Companies and/or Properties;
- (tt) The Schedule C Companies and/or Properties were net beneficiaries of approximately \$22.6 million of the Applicants' funds;
- (uu) The Waltons diverted funds from the Schedule B Companies to fund the purchase, refinancing and/or other costs and/or obligations of the Schedule C Companies and/or Properties;
- (vv) The Schedule C Companies and/or Properties were net beneficiaries (to the detriment of the Applicants) of the Waltons' fraud;
- (ww) Use of funds outside of the property for which they were intended was in breach of the various Agreements between the Applicants and the Waltons;
- (xx) The Waltons concealed their actions from the Applicants. The funds were transferred without the Applicants' knowledge or consent;
- (yy) The Respondents' misappropriation of those funds was fraudulent, in breach of the Agreements, and in breach of the Respondents' fiduciary duties;
- (zz) As a result of the transfers, the Respondents and the Schedule C Companies were enriched, and the Applicants have been correspondingly deprived;

(aaa) There was no juristic reason for the enrichment of the Respondents and the Schedule C Companies and the corresponding deprivation of the Applicants;

(bbb) The Schedule C Companies were knowing recipients of funds obtained as a result of a breach of fiduciary duty committed by the Respondents against the Applicants and Dr. Bernstein;

### **BREACH OF FIDUCIARY DUTY**

(ccc) Ms. Walton was at all times a director and officer of the Schedule B Companies;

(ddd) Mr. Walton was at all relevant times a director and officer of the majority of the Schedule B Companies;

(eee) Ms. Walton was specifically tasked with responsibility for the day to day management, supervision and budgeting of the Projects;

(fff) Ms. Walton handled the Applicants' equity contributions and was responsible for ensuring that the Applicants' funds were used for the proper purposes;

(ggg) The Waltons owed fiduciary duties to the Schedule B Companies, the Applicants, and Dr. Bernstein;

(hhh) These obligations required Ms. Walton (among other things) to:

(i) Act in the best interests of the Schedule B Companies, the Applicants and Dr. Bernstein;

(ii) Avoid conflicts of interest and duty;

- (iii) Use her energy, ability and imagination in the best interests of the Applicants and Dr. Bernstein; and
- (iv) Not conceal any information from the Applicants and Dr. Bernstein;
- (iii) As a result of the Waltons' conduct described herein, the Waltons breached the fiduciary duties they owed to the Schedule B Companies, the Applicants and Dr. Bernstein;

#### **FRAUDULENT MISREPRESENTATION**

- (jjj) The Waltons made multiple false representations of fact to Dr. Bernstein. Specifically:
  - (i) The Waltons represented to Dr. Bernstein that they intended that his funds would only be used in respect of the real property owned by the Schedule B Company, and that they would in fact be so used;
  - (ii) The Agreements, drafted by the Waltons, required and represented that any funds that were advanced by the parties be deposited into separate accounts opened for each Schedule B Company;
  - (iii) Ms. Walton repeatedly represented in various emails that the funds that were advanced for a particular Schedule B Company would be used in connection with that Schedule B Company;
  - (iv) The Waltons did not intend to, and did not in fact, use the funds advanced by the Applicants in the manner in which they represented that they would;

- (v) Indeed, in the majority of cases, as soon as Dr. Bernstein's funds were advanced to a Schedule B Company, the Waltons transferred the funds almost immediately to the Rose & Thistle account or other company account;
- (vi) The Waltons also represented that they would provide 50% of the equity to the Schedule B Companies, as required under the Agreements;
- (vii) The Waltons made few equity contributions to the Schedule B Companies;
- (viii) The contributions that the Waltons did make were with the Applicants' funds and, it appears, to a much smaller extent the Schedule C Investor funds;
- (kkk) The Waltons made the false representations with the intent that Dr. Bernstein and the Applicants would rely and act upon the false representations;
- (lll) Dr. Bernstein and the Applicants relied on the Respondents' representations in the Agreements and in emails and representations that the Respondents made orally in making their equity contributions to the Schedule B Companies;
- (mmm) Dr. Bernstein and the Applicants relied on the Waltons' false representations to their detriment;
- (nnn) The Waltons made the false representations knowingly, or without believing them to be true, or recklessly without care to their truth or falsity; and
- (ooo) The Waltons never intended to abide by their representations;

(ppp) As a result of the Waltons' misrepresentations, the Applicants have suffered damages in the amount of \$72.1 million in respect of Dr. Bernstein's equity investments in the Schedule B Companies; and

(qqq) Such further and other grounds as the lawyers may advise.

3. The following documentary evidence will be used at the hearing of the Application:

- (a) Affidavit of Norma Walton sworn December 17, 2013;
- (b) Affidavit of James Reitan sworn January 13, 2014;
- (c) Affidavit of James Reitan sworn February 14, 2014;
- (d) Affidavit of Norma Walton sworn April 1, 2014;
- (e) Affidavit of Norma Walton sworn April 23, 2014;
- (f) Affidavit of James Reitan sworn April 28, 2014;
- (g) First Interim Report of the Inspector;
- (h) Supplement to the First Interim Report of the Inspector;
- (i) Second Report of the Inspector;
- (j) Third Report of the Inspector;
- (k) Fourth Report of the Inspector;
- (l) Supplemental Report to the Fourth Report of the Inspector;

- (m) Motion Record of the Applicants, dated June 26, 2014;
- (n) Reply Motion Record of the Applicants, dated July 3, 2014
- (o) Motion Record of the Manager, Schonfeld Inc., dated June 26, 2014;
- (p) Supplementary Motion Record of the Manager, Schonfeld Inc., dated June 26, 2014;
- (q) Brief of Relevant Inspector/Manager Reports;
- (r) Motion Record of the Respondents, dated June 26, 2014;
- (s) Reply Motion Record of the Respondents, dated July 3, 2014;
- (t) Cross-Motion Record of Christine DeJong, returnable July 16, 2014;
- (u) Motion Record of the Applicants, dated August 4, 2015; and
- (v) Such further and other material as the lawyers may advise and this Honourable Court may permit.

August 4, 2015

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

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Lawyers for the Applicants



**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 Ltd.
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. Royal Gate Nominee Inc.
29. Royal Gate (Land) Nominee Inc.
30. Dewhurst Development Ltd.
31. Eddystone Place Inc.

- 32. Richmond Row Holdings Ltd.
- 33. El-Ad (1500 Don Mills) Limited
- 34. 165 Bathurst Inc.

**SCHEDULE "C" PROPERTIES  
(MUNICIPAL ADDRESSES)**

1. 3270 American Drive, Mississauga, Ontario;
2. 2 Kelvin Avenue, Toronto, Ontario;
3. 346 Jarvis Street, Toronto, Ontario, other than those units sold to third party purchasers;
4. 3775 St. Clair Avenue East, other than those units sold to third party purchasers;
5. 14/17 Montcrest, Toronto, Ontario;
6. 1 William Morgan Drive, Toronto, Ontario;
7. 324 Prince Edward Drive, Toronto, Ontario;
8. 24 Cecil Street, Toronto, Ontario;
9. 185 Davenport Road, Toronto, Ontario;
10. 30 and 30A Hazelton Avenue, Toronto, Ontario;
11. 1246 Yonge Street, Toronto, Ontario;
12. 777 St. Clarens Avenue, Toronto, Ontario;
13. 17 Yorkville, Toronto, Ontario, other than those units sold to third party purchasers;
14. 252 Carlton Street and 478 Parliament Street, Toronto, Ontario;
15. 19 Tennis Crescent, Toronto, Ontario;
16. 66 Gerrard Street East, Toronto, Ontario;
17. 646 Broadview Avenue, Toronto, Ontario;
18. 14 College Street, Toronto, Ontario;
19. 26 Gerrard Street East, Toronto, Ontario;
20. 3 Post Road, Toronto, Ontario;
21. 2 Park Lane Circle Road, Toronto, Ontario;
22. 2454 Bayview Avenue, Toronto, Ontario;
23. 321 Carlaw, Toronto, Ontario;
24. 0 Lutrell Avenue, Toronto, Ontario; and
25. 260 Emerson, Toronto, Ontario.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**SECOND FRESH AS AMENDED  
NOTICE OF APPLICATION**

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Lawyers for the Applicants

TAB B

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

**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 ON SCHEDULE B HERETO, TO BE  
BOUND BY THE RESULT

**NOTICE OF MOTION  
(RETURNABLE SEPTEMBER 2 & 4, 2015)**

The Applicants will make a Motion to the Honourable Justice Newbould of the Commercial List at 330 University Avenue, Toronto on September 2 and 4, 2015, at 10:00 a.m., or such other date determined by the Court.

**PROPOSED METHOD OF HEARING:** The Motion and Application are to be heard orally.

**THE MOTION IS FOR:**

1. The Applicants, DBDC Spadina Ltd. and those Corporations listed on Schedule A to the Notice of Application, make a Motion for:

- (a) An order granting leave to issue and serve the Second Fresh as Amended Notice of Application (the “Notice of Application”);
- (b) An order awarding the Applicants damages in the amount of \$72.1 million against the Respondents;
- (c) An order awarding the Applicants damages in the amount of \$22.6 million jointly and severally against the Respondents and those corporations listed at Schedule C to the Notice of Application (collectively, the “Schedule C Companies”);
- (d) A declaration that the Applicants’ damages, pursuant to paragraphs (b) and (c) above and the other Orders made by this Court against the Respondents, were caused by the fraud and/or misappropriation of the Respondents while acting in their capacities as fiduciaries, pursuant to s. 175(1)(d) and (e) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3;
- (e) The costs of this Motion on a substantial indemnity basis; and
- (f) Such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION AND APPLICATION ARE:**

**The Parties**

- (g) The Applicants, DBDC Spadina Ltd. and those Corporations listed on Schedule A to the Notice of Application, are all corporations incorporated pursuant to the laws of Ontario. They are beneficially owned by Dr. Stanley Bernstein (“Dr. Bernstein”);



- (h) Norma Walton (“Ms. Walton”) is a lawyer and a member of the Law Society of Upper Canada. She was a co-founder, along with her husband, Ronauld Walton, of The Rose & Thistle Group Ltd. (“Rose & Thistle”) and President of its subsidiary, Rose & Thistle Properties. Ms. Walton was a principal of Walton Advocates, an in-house law firm and trade mark agent that provided litigation, corporate and real estate legal services to the Rose & Thistle group of companies. Ms. Walton is currently suspended from the practice of law;
- (i) Ronauld Walton (“Mr. Walton”) is a lawyer and a member of the Law Society of Upper Canada. He was a co-founder, along with Ms. Walton (collectively, the “Waltons”), of Rose & Thistle and President of its subsidiary, Rose & Thistle Properties. Mr. Walton was a principal of Walton Advocates, an in-house law firm and trade mark agent that provided litigation, corporate and real estate legal services to the Rose & Thistle group of companies. Mr. Walton is currently suspended from the practice of law;
- (j) Rose & Thistle is a holding company incorporated pursuant to the laws of Ontario. It and its various subsidiaries were engaged *inter alia* in the development, management and construction of real estate. It is owned, to the knowledge of the Applicants, by the Waltons;
- (k) Eglinton Castle Inc. is a corporation incorporated pursuant to the laws of Ontario. It is owned, to the knowledge of the Applicants, by Waltons;
- (l) The Corporations listed on Schedule B to the Notice of Application are all corporations incorporated pursuant to the laws of Ontario (collectively, the

“Schedule B Companies”). They were each intended to be owned 50% by Dr. Bernstein (or one of the Corporations listed on Schedule A to the Notice of Application) and 50% by the Waltons (or Eglinton Castle Inc.) as described below;

- (m) The Schedule B Companies were incorporated for the purpose of purchasing and/or holding commercial real estate properties jointly between Dr. Bernstein and the Waltons (collectively, the “Schedule B Properties”);
- (n) The properties listed at Schedule C to the Notice of Application are properties that are currently or were previously owned directly or indirectly by the Waltons and, in some cases, other investors (collectively, the “Schedule C Properties”);
- (o) The Schedule C Properties were held by companies, the Schedule C Companies, that were controlled by the Waltons;
- (p) The Schedule C Investors are shareholders who claim to have invested with the Waltons by purchasing shares in various Schedule C Companies;
- (q) Christine and Michael DeJong and their related entities (collectively, the “DeJongs”) are Schedule C Investors;
- (r) The DeJongs have brought an application with respect to, *inter alia*, their entitlement to the proceeds of sale of three Schedule C Properties: 324 Prince Edward Drive; 777 St. Clarens Avenue; and 260 Emerson Avenue;

### **The Applicants' Investments**

- (s) Beginning in 2008, Dr. Bernstein acted as the lender/mortgagee of several commercial real estate properties owned by the Respondents, either through their company Rose & Thistle or through other corporations of which the Respondents are the direct or indirect beneficial owners;
- (t) Following several financings, Dr. Bernstein and the Waltons agreed to invest jointly in various commercial real estate projects;
- (u) From 2010 to 2013, Dr. Bernstein through his corporations advanced approximately \$111 million into 31 projects, structured as equity of \$81.6 million and mortgages and loans of \$29.5 million;
- (v) In connection with the equity contributions, Dr. Bernstein and the Waltons entered into separate agreements for each project (collectively, the "Agreements"), each of which provided as follows:
  - (i) A new Schedule B Company would be incorporated for each project;
  - (ii) Dr. Bernstein (through a company incorporated for this purpose) would hold 50% of the shares of the Schedule B Company;
  - (iii) The Waltons (either directly or through a company incorporated for this purpose) would hold the other 50% of the shares of the Schedule B Company;

- (iv) Each of Dr. Bernstein and The Waltons would contribute an equal amount of equity to the purchase and development of the Schedule B Property (the “Project”);
- (v) The Waltons would manage, supervise and complete the Project for an additional fee;
- (vi) The Waltons were to be responsible for the finances, bookkeeping, accounting and filing of tax returns, among other things, of the Schedule B Company;
- (vii) Each Schedule B Company was to have a separate bank account;
- (viii) Dr. Bernstein would not be required to play an active role in completing the Project, but his approval would be required for:
  - (1) Any decisions concerning the selling or refinancing of the Schedule B Property;
  - (2) Any decisions concerning the increase in the total amount of equity required to complete Project; and
  - (3) Any cheque or transfer over \$50,000;
- (ix) The Waltons would provide Dr. Bernstein with:
  - (1) Ongoing reports on at least a monthly basis detailing all items related to the Schedule B Property;

- (2) Copies of invoices for work completed on the Project monthly;
- (3) Bank statements monthly; and
- (4) Listing of all cheques monthly;
- (x) Dr. Bernstein and Ms. Walton were to be the sole directors of the Schedule B Company;
- (w) Each agreement provided that the Schedule B Company would only be used to purchase, complete and refinance the Schedule B Property or such other matters solely relating to that particular Project and Schedule B Property;

**These Proceedings**

- (x) A review in June 2013 of Dr. Bernstein's equity investments in the Projects revealed that:
  - (i) The Waltons were not making their portion of the equity investments into the Properties;
  - (ii) The Waltons appeared to be taking on third party investors in the Projects;
  - (iii) The Waltons were engaged in significant related party transactions in respect of the Projects;
  - (iv) Dr. Bernstein's approval was not being sought for any the matters set out in subparagraph (v)(viii) above; and

- (v) Dr. Bernstein was not receiving any of the required reporting, as set out in paragraph subparagraph (v)(ix) above;
- (y) On September 20, 2013, Dr. Bernstein appointed Schonfeld, Inc. to gather information related to the Schedule B Properties and the Schedule B Companies. However, even then the Waltons did not grant Schonfeld complete access to the documents related to 22 of 31 projects;
- (z) In light of this conduct, the Applicants commenced an application on October 1, 2013, for various relief, including the appointment of an Inspector over the Schedule B Companies;
- (aa) On October 4, 2013, Justice Newbould found that the Waltons had engaged in conduct that was oppressive and unfairly prejudicial to the Applicants' interests. Justice Newbould appointed Schonfeld Inc. as Inspector over the Schedule B Companies;
- (bb) The Order empowered Schonfeld to conduct a thorough investigation of the Schedule B Companies. The Order also required that Ms. Walton fully cooperate with the Inspector;
- (cc) Since this proceeding was commenced and the Inspector/Manager appointed, the Respondents have:
  - (xi) Failed to cooperate, including to provide the information and documentation requested by the Inspector in a timely manner;

- (xii) Refused to provide an accounting, as requested by the Order of Justice Newbould, dated October 25, 2013; and
- (xiii) Organized their affairs to defeat the claims of Dr. Bernstein in favour of themselves and various so-called “preferred-shareholders” and other creditors, most of whom have no genuine claim to the status that they now assert. Many are related to the Respondents and their business;
- (dd) On July 16-18, 2014, the Honourable Justice D.M. Brown heard a motion brought by the Applicants for various relief, including claims for damages against the Respondents, for constructive trusts over various Schedule C Properties and other relief;
- (ee) By Order dated August 12, 2014, Justice Brown ordered:
  - (i) That the Applicants be granted leave to issue and serve a Fresh as Amended Notice of Application, in the form attached to the Applicants’ Consolidated Notice of Motion, dated June 13, 2014;
  - (ii) Constructive trusts with respect to eight of the Schedule C Properties in the total amount of \$8.2 million;
  - (iii) A tracing of the funds contributed by the Applicants to the Schedule B Companies;
  - (iv) Cancellation of the Respondents’ shares in the Schedule B Companies in which they had not contributed shareholder equity;

- (v) An expansion of the manager's mandate to include the Schedule C Properties;
  - (vi) A number of ancillary heads of relief, including the appointment of a Receiver over the personal affairs of the Waltons;
  - (vii) Damages in the amount of \$1,518,750 in respect of the mortgages that the Respondents discharged from title of the property at 232 Galloway Road; and
  - (viii) Costs in the amount of \$472,639.51;
- (ff) In his reasons released on August 12, 2014, Justice Brown was not prepared at the time to grant the Applicants' relief with respect to the \$78 million damages claim because he was not satisfied that adequate argument was placed before the Court on the issue;
- (gg) Justice Brown also found in his reasons that the Applicants had demonstrated a strong *prima facie* case of unjust enrichment, up to a possible claim of \$22.6 million, against the Waltons in respect of their diversion of the Applicants' funds into the Schedule C Properties and/or Companies;
- (hh) The Manager currently holds proceeds from the sale of properties owned by certain Schedule B Companies and proceeds from the sale of properties owned by certain Schedule C Companies;



- (ii) To date, the Applicants have recovered approximately \$9.5 million from the manager of the \$81.6 million they invested. Other Schedule B Properties have been sold at a loss, and without excess funds for distribution to the Applicants. Many others have been determined not to be worth the Manager's costs to maintain and sell and have been taken over by the mortgagees or otherwise discharged;

### **Unjust Enrichment**

- (jj) Monies forwarded by the Applicants have been traced from Schedule B Companies to the Waltons' home and various Schedule C Properties;
- (kk) The Waltons transferred funds from the Schedule B Companies through Rose & Thistle to the Schedule C Companies and/or Properties;
- (ll) The Schedule C Companies and/or Properties were net beneficiaries of approximately \$22.6 million of the Applicants' funds;
- (mm) The Waltons diverted funds from the Schedule B Companies to fund the purchase, refinancing and/or other costs and/or obligations of the Schedule C Companies and/or Properties;
- (nn) The Schedule C Companies and/or Properties were net beneficiaries (to the detriment of the Applicants) of the Waltons' fraud;
- (oo) Use of funds outside of the property for which they were intended was in breach of the various Agreements between the Applicants and the Waltons;

- (pp) The Waltons concealed their actions from the Applicants. The funds were transferred without the Applicants' knowledge or consent;
- (qq) The Respondents' misappropriation of those funds was fraudulent, in breach of the Agreements, and in breach of the Respondents' fiduciary duties;
- (rr) As a result of the transfers, the Respondents and the Schedule C Companies were enriched, and the Applicants have been correspondingly deprived;
- (ss) There was no juristic reason for the enrichment of the Respondents and the Schedule C Companies and the corresponding deprivation of the Applicants;
- (tt) The Schedule C Companies were knowing recipients of funds obtained as a result of a breach of fiduciary duty committed by the Respondents against the Applicants and Dr. Bernstein;

#### **Breach of Fiduciary Duty**

- (uu) Ms. Walton was at all times a director and officer of the Schedule B Companies;
- (vv) Mr. Walton was at all relevant times a director and officer of the majority of the Schedule B Companies;
- (ww) Ms. Walton was responsible for the day-to-day management, supervision and budgeting of the Projects;
- (xx) Ms. Walton handled the Applicants' equity contributions and was responsible for ensuring that the Applicants' funds were used for the proper purposes;

- (yy) The Waltons owed fiduciary duties to the Schedule B Companies, the Applicants, and Dr. Bernstein;
- (zz) These obligations required Ms. Walton (among other things) to:
  - (i) Act in the best interests of the Schedule B Companies, the Applicants and Dr. Bernstein;
  - (ii) Avoid conflicts of interest and duty;
  - (iii) Use her energy, ability and imagination in the best interests of the Applicants and Dr. Bernstein; and
  - (iv) Not conceal any information from the Applicants and Dr. Bernstein;
- (aaa) As a result of the Waltons' conduct described herein, the Waltons breached the fiduciary duties they owed to the Schedule B Companies, the Applicants and Dr. Bernstein;

#### **Fraudulent Misappropriation**

- (bbb) The Waltons made multiple false representations of fact to Dr. Bernstein. Specifically:
  - (i) The Waltons represented to Dr. Bernstein that they intended that his funds would only be used in respect of the real property owned by the Schedule B Company, and that they would in fact be so used;

- (ii) The Agreements, drafted by the Waltons, required and represented that any funds that were advanced by the parties be deposited into separate accounts opened for each Schedule B Company;
- (iii) Ms. Walton repeatedly represented in various emails that the funds that were advanced for a particular Schedule B Company would be used in connection with that Schedule B Company;
- (iv) The Waltons did not intend to, and did not in fact, use the funds advanced by the Applicants in the manner in which they represented that they would;
- (v) Indeed, in the majority of cases, as soon as Dr. Bernstein's funds were advanced to a Schedule B Company, the Waltons transferred the funds almost immediately to the Rose & Thistle account or other company account;
- (vi) The Waltons also represented that they would provide 50% of the equity to the Schedule B Companies, as required under the Agreements;
- (vii) The Waltons made few equity contributions to the Schedule B Companies;
- (viii) The contributions that the Waltons did make were with the Applicants' funds and, it appears, to a much smaller extent the Schedule C Investor funds;
- (ccc) The Waltons made the false representations with the intent that Dr. Bernstein and the Applicants would rely and act upon the false representations;

- (ddd) Dr. Bernstein and the Applicants relied on the Respondents' representations in the Agreements and in emails and representations that the Respondents made orally in making their equity contributions to the Schedule B Companies;
- (eee) Dr. Bernstein and the Applicants relied on the Waltons' false representations to their detriment;
- (fff) The Waltons made the false representations knowingly, or without believing them to be true, or recklessly without care to their truth or falsity; and
- (ggg) The Waltons never intended to abide by their representations;
- (hhh) As a result of the Waltons' misrepresentations, the Applicants have suffered damages in the amount of \$72.1 million in respect of Dr. Bernstein's equity investments in the Schedule B Companies; and
- (iii) Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion and Return of Application

- (a) Motion Record of the Applicants, dated June 26, 2014;
- (b) Reply Motion Record of the Applicants, dated July 3, 2014
- (c) Motion Record of the Manager, Schonfeld Inc., dated June 26, 2014;
- (d) Supplementary Motion Record of the Manager, Schonfeld Inc., dated June 26, 2014;

- (e) Brief of Relevant Inspector/Manager Reports;
- (f) Motion Record of the Respondents, dated June 26, 2014;
- (g) Reply Motion Record of the Respondents, dated July 3, 2014;
- (h) Cross-Motion Record of Christine DeJong, returnable July 16, 2014;
- (i) Motion Record of the Applicants, dated August 4, 2015; and
- (j) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

August 4, 2015

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

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Lawyers for the Applicants

TO: **SERVICE LIST**

<div><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>COMMERCIAL LIST</b></div> <div>PROCEEDING COMMENCED AT TORONTO</div>	
<div><b>NOTICE OF MOTION</b> <b>(RETURNABLE SEPTEMBER 2 &amp; 4, 2015)</b></div>	
<div><b>LENCZNER SLAGHT ROYCE</b> <b>SMITH GRIFFIN LLP</b> Barristers Suite 2600 130 Adelaide Street West Toronto ON M5H 3P5  Peter H. Griffin (19527Q) Tel: (416) 865-2921 Fax: (416) 865-3558 Email: pgriffin@litigate.com Paul-Erik Veel (58167D) Tel: (416) 865-2842 Fax: (416) 865-2861 Email: pveel@litigate.com Danielle Glatt (65517N) Tel: (416) 865-2887 Fax: (416) 865-22878 Email: dglatt@litigate.com  Lawyers for the Applicants</div>	

**TAB C**



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

**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 ON SCHEDULE B HERETO, TO BE  
 BOUND BY THE RESULT

**AFFIDAVIT OF DR. STANLEY BERNSTEIN**  
**(SWORN AUGUST 4, 2015)**

I, Dr. Stanley Bernstein, of the City of Toronto , in the Province of Ontario, MAKE OATH  
 AND SAY:

1. I am a medical doctor and the founder and principal of Dr. Bernstein Diet and Health Clinics. I am also the beneficial owner of DBDC Spadina Ltd. and the corporations listed on Schedule A to the Notice of Application, and, as such, have knowledge of the matters contained in this affidavit. Where matters are sworn to by way of information and belief, I have stated the source of that information and verily believe it to be true.

2. I swore an affidavit in this proceeding on October 1, 2013. I was cross-examined by Norma Walton on July 9 and 10, 2014. I rely on the evidence I gave in my affidavit and my cross-examination.

3. I have read the affidavits of Jim Reitan sworn June 26, 2014 and July 3, 2014. To the best of my knowledge, the information set out in those affidavits is accurate.

4. The Court has previously issued various reasons and made various Orders in this matter. Attached hereto as **Exhibits "1" and "2"** are copies of the Order of Justice Newbould, dated October 4, 2013 and the Endorsement of Justice Newbould, dated October 7, 2013, respectively. Attached hereto as **Exhibits "3" and "4"** are copies of the reasons and Order, respectively, of Justice Newbould, dated November 5, 2013. Attached hereto as **Exhibits "5"-"7"** are copies of the reasons and the Orders, respectively, of Justice D.M. Brown, dated August 12, 2014.

### **Background**

5. I first became acquainted with Norman Walton and Ronauld Walton in 2008 when I was approached to act (through one of my companies) as lender and mortgagee for a commercial real estate property in Toronto owned by the Waltons and another investor.

6. I completed several loan transactions where the Waltons borrowed funds as mortgagors of commercial real estate properties in Toronto.

7. In 2010, Ms. Walton approached me to participate in a real estate purchase with her and Mr. Walton as an equity investor, rather than a lender. On September 24, 2010, we entered into our first agreement to purchase together a property at 241 Spadina Avenue.

8. From 2010 to 2013, I, through my corporations, advanced approximately \$111 million into 31 projects, structured as equity of \$81.6 million and mortgages and loans of \$29.5 million.

9. I incorporated a separate company for each investment with the Waltons. Those companies are the Applicants as set out in Schedule A to the within application.

### **The Agreements**

10. I entered into a separate agreement for each of my joint real estate investments with the Waltons (collectively, the “Agreements”). The Agreements each provided that:

- (a) A new company would be incorporated for each project (collectively, the “Schedule B Companies”);
- (b) I (through a company incorporated for this purpose) would hold 50% of the shares of the Schedule B Company;
- (c) The Waltons (either directly or through a company incorporated for this purpose) would hold the other 50% of the shares of the Schedule B Company;
- (d) The Waltons and I would contribute an equal amount of equity to the purchase and development of the Schedule B Property (the “Project”);
- (e) The Waltons would manage, supervise and complete the Project for an additional fee;
- (f) The Waltons would be responsible for the finances, bookkeeping, accounting and filing of tax returns, among other things, of the Schedule B Company;

- (g) Each Schedule B Company was to have a separate bank account;
- (h) I would not be required to play an active role in completing the Project, but my approval would be required for:
  - (i) Any decisions concerning the selling or refinancing of the Schedule B Property;
  - (ii) Any decisions concerning the increase in the total amount of equity required to complete Project; and
  - (iii) Any cheque or transfer over \$50,000;
- (i) The Waltons would provide me with:
  - (i) Ongoing reports on at least a monthly basis detailing all items related to the Schedule B Property;
  - (ii) Copies of invoices for work completed on the Project monthly;
  - (iii) Bank statements monthly; and
  - (iv) Listing of all cheques monthly; and
- (j) Ms. Walton and I were to be the sole directors of the Schedule B Company.

11. Attached as Exhibits "1"- "27" to the Affidavit of Jim Reitan, sworn June 26, 2014, are copies of the Agreements between the Waltons and me, with respect to the Schedule B Companies and Properties. I executed the Agreements on behalf of the Applicants, and the Waltons executed the Agreements personally.

12. Various other properties in which the Waltons have or previously had an interest in are referred to in this affidavit as the Schedule C Properties.

13. The Agreements contained restrictions on the use of the funds that I invested as equity. The Agreement provides that an individual bank account would be opened in respect of each company. I relied on the promises of the Waltons in the Agreements when I decided to advance funds to them.

14. In addition to the clear wording of the Agreements, the Waltons made various representations to me in person and via email that caused me to believe that my funds would only be used in respect of a particular project. At no time did the Waltons advise that they would be withdrawing monies from the Schedule B Companies' bank accounts for any purpose other than the needs of the associated property.

15. At all times I understood that I was dealing with both Norma and Ronauld Walton and that Norma Walton spoke for and bound Ronauld Walton with respect to the above mentioned representations.

16. Attached hereto as **Exhibits "8"- "51"** are copies of various emails, with attachments, between Norma Walton and me, with respect to my investments in the various Schedule B Companies and Properties. I understood from these emails that the Waltons were soliciting my funds with respect to particular investments and that the funds I advanced would be used only in respect of the particular investment. The emails Ms. Walton sent me attached proposals and pro-formas that represented how the equity I advanced to a particular project was to be used. I describe below specific examples of some of that correspondence.

17. I relied on the Waltons' various email and oral representations to invest approximately \$81.6 million in equity in the Schedule B Companies. Attached hereto as **Exhibit "52"** is a copy of a spreadsheet prepared by Jim Reitan titled "Bernstein Investments into Walton Properties" that sets out my investments into the Schedule B Companies.

18. Attached hereto as **Exhibits "53"-"125"** are copies of the cheques I provided to the Waltons with respect to my equity investments in the Schedule B Companies. All the cheques that I provided to the Waltons are from 368230 Ontario Limited ("368 Ontario"), a company that I own and control.

19. If not for the representations made by the Waltons as to the use of my funds, I would not have invested my monies in the Schedule B Companies and/or Properties.

20. As set out in more detail below and in the Affidavit of Jim Reitan sworn June 26, 2014, the various Reports of the Manager/Inspector, and the Reasons for Decision of Justice Brown dated August 12, 2014, the Waltons caused the funds that I forwarded to the Schedule B Companies to be withdrawn from the Schedule B Companies for purposes unrelated to the Schedule B Companies, without my knowledge or consent. In most cases, this was done almost immediately after I invested the funds. It appears that the funds were typically diverted through the Rose & Thistle account or, on occasion, directly into other properties or companies in which the Respondents had an interest. In some cases the funds were transferred to the Waltons directly.

21. In the following paragraphs, I list examples where shortly after my funds were advanced to a particular Schedule B Company, the Waltons almost immediately transferred the funds to the Rose & Thistle account or the account of another company they controlled.

22. This pattern repeated itself with the vast majority of my investments in the Schedule B Companies. These are described in more detail in the Affidavit of Jim Reitan sworn June 26, 2014, the Affidavit of Jim Reitan sworn July 3, 2014, and the reports contained in the Responding Motion Record of the Inspector, Volumes 1-4 (returnable July 16, 2014).

**Dupont Developments Ltd.**

23. On or about June 13, 2012, the Waltons approached me to solicit an investment in 1485 Dupont Street. Attached hereto as **Exhibit "34"** is a copy of the email to me from Ms. Walton dated June 13, 2012.

24. I understood, from the emails and attachments at **Exhibits "34"**, various telephone conversations with the Waltons, and the Agreement that governed our joint-investment in Dupont Developments Ltd., that the equity funds that I provided to Dupont Developments Ltd. would only be used in respect of developing the property at 1485 Dupont Street. Attached hereto as **Exhibit "35"** is a copy of the email to me from Ms. Walton, dated September 3, 2012, re: 1485 Dupont.

25. On September 4, 2012, I advanced an equity payment of approximately \$2.5 million to Dupont Developments Ltd. Attached hereto as **Exhibit "96"** is a copy of the cheque to Dupont Development Ltd. from 368 Ontario, dated September 4, 2012 for \$2,500,313. This represented my equity investment in Dupont Developments Ltd., a Schedule B Company.

26. The Inspector's tracing has shown that from September 4-6, 2012, the Waltons caused multiple transfers totalling \$924,000 from the Dupont Developments Ltd. account to the Rose and Thistle account. Attached hereto as **Exhibit "126"** is a copy of the Dupont Developments Ltd. account statement for September 2012.

27. I was not asked for approval for these transfers. It is clear that they occurred almost immediately after I advanced were deposited.

**Eddystone Place Inc.**

28. On or about April 4, 2013, the Waltons approached me with respect to investing in 153 Eddystone Ave. Attached hereto as **Exhibit "50"** is a copy of the email to me, with attachments, from Ms. Walton dated April 4, 2013.

29. I understood, from emails, various telephone conversations with the Waltons and the Agreement that governed our joint-investment in Eddystone Place Inc. that the equity funds that I provided to Eddystone Place Inc. would only be used in respect of developing the property at 153 Eddystone Ave.

30. The Agreement contained restrictions on the use of the funds I loaned and invested as equity. The Agreement provided that an individual bank account would be opened in respect of the company.

31. On April 15, 2013, I advanced an equity payment of \$1,452,810 to Eddystone Place Inc. for the purchase and development of 153 Eddystone Ave. Attached hereto as **Exhibit "120"** is a copy of the cheque to Eddystone Place Inc. from 368 Ontario dated April 15, 2013 re: 153 Eddystone (Equity).

32. On the same day, the Waltons transferred \$866,000 from the Eddystone Place Inc. account to Rose & Thistle. Attached hereto as **Exhibit "127"** is a copy of Eddystone Place Inc. account statement for April 2013.



33. I was not asked for approval for these transfers. It is clear that they occurred almost immediately after I advanced were deposited.

**Funds Paid to Rose & Thistle**

34. Through the companies listed at Schedule A to the within application, I advanced nearly \$9 million to Rose & Thistle directly in respect of my equity investments in the Schedule B Companies. Attached hereto as **Exhibit "52"** is a copy of a Chart of Bernstein Investments into Walton Properties that was prepared by Jim Reitan for the purpose of the hearing before Justice Brown in July 2014.

35. Each deposit was ear-marked for and intended to be directed to a particular Schedule B Company. I understood, on the basis of various oral representations, email representations and the Agreements themselves, that the amounts that I forwarded would be deposited into the relevant Schedule B Company account by the Waltons once those accounts were established.

**Funds Paid to Walton Advocates in Trust**

36. Through the companies listed at Schedule A to the within application, some of the funds advanced in in respect of my equity investments in the Schedule B Companies were advanced to Walton Advocates in trust. Walton Advocates was Rose & Thistle's in-house law firm.

37. Each deposit was intended to be directed to a Schedule B Company. I understand now, from the records produced in this matter, that the funds that I paid to Walton Advocates in trust were not placed in a trust account, as I expected on the basis of the Waltons' various representations and as is required by the Law Society of Upper Canada. Rather, they were comingled in an operating account.

### **Directorships**

38. I understood that I would be made a director of the Schedule B Companies, which companies were incorporated by Walton Advocates. I only learned later that I was not made a director of the majority of the Schedule B Companies. Attached hereto as **Exhibit “128”** is a copy of a chart prepared by Jim Reitan setting out the directorships of the Schedule B Companies.

39. I now understand that only Ms. Walton and, in most cases, Mr. Walton were made directors of the Schedule B Companies.

40. I understood from various representations made by the Waltons that Ms. Walton would be responsible for the day-to-day operations of the Schedule B Companies and/or Properties. I expected that she (and the Respondents more generally) would conduct the affairs of the Schedule B Companies in a manner that protected my interests and the interests of the Applicants.

### **Monies Recovered to Date**

41. I invested a total of approximately \$81.6 million in equity into the Schedule B Companies and/or Properties. Attached hereto as **Exhibit “129”** is a copy of the spreadsheet titled Bernstein Investment Summary, prepared by Jim Reitan on July 16, 2015.

42. Before the commencement of these proceedings, I received equity payments totalling \$2,991,053.16 from Rose & Thistle in respect of:

- (a) Donalda Developments Ltd., in the amount of \$160,000.00;
- (b) Wynford Professional Centres Ltd., in the amount of \$2,269,920.78;
- (c) Twin Dragons Corporation, in the amount of \$41,527.80;

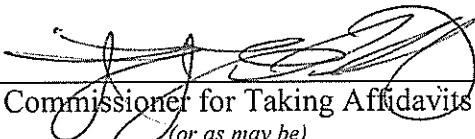
- (d) West Mall Holdings, in the amount of \$92,878.58;
- (e) Liberty Village Properties Inc., in the amount of \$263,750.00; and
- (f) Royal Agincourt Corp., in the amount of \$162,976.00.

43. Since the commencement of these proceedings, I have recovered approximately an additional \$6.5 million due to the efforts of the Inspector/Manager in respect of the equity contributions that I made to the Schedule B Companies and/or Properties.

44. As compared to the amount I initially invested, my total losses in respect of my equity investments in the Schedule B Companies at the date of swearing this affidavit are approximately \$72.1 million.

45. I swear this affidavit in support of the Applicants motion and application returnable September 2 and 4, 2015 and for no other or improper purpose.

**AFFIRMED BEFORE ME** at the City of  
Toronto, in the Province of Ontario on August  
4, 2015

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

DANIELLE GLATT

  
\_\_\_\_\_  
DR. STANLEY BERNSTEIN



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF DR. STANLEY BERNSTEIN**  
**(SWORN AUGUST 4, 2015)**

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Lawyers for the Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF THE APPLICANTS  
(RETURNABLE SEPTEMBER 2 & 4, 2015)  
VOLUME 1 OF 6**

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