

**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” HERETO, TO BE  
BOUND BY THE RESULT**

**EIGHTH REPORT OF THE MANAGER, SCHONFELD INC.**

**(Motion for approval and vesting order with respect to 450 Pape Avenue)**

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## **I. Introduction**

1. This is the Eighth Report of Schonfeld Inc. (the “**Manager**”) in its capacity as Manager of certain companies listed at Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Companies**”),<sup>1</sup> together with the real estate properties owned by the Companies (the “**Properties**”).<sup>2</sup>

### **A. Purpose of this Report**

2. This Manager has brought a motion for, among other things:

- (a) an approval and vesting order (the “**Approval and Vesting Order**”) in respect of the sale transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale (the “**Pape Agreement**”) dated March 24, 2014 between Alex Marero in trust (the “**Purchaser**”), and the Manager in respect of the property known municipally as 450 Pape Avenue in Toronto, Ontario (the “**Pape Property**”). The Pape Agreement is attached as Confidential Appendix “A”; and
- (b) an Order permitting the Confidential Appendices to this Report, as described below, to be filed under seal without being served on the Service List.

3. This Report provides a summary of the Transaction and a recommendation that this Honourable Court grant the relief described in the Manager’s Notice of Motion.

### **B. Terms of reference**

4. Based on its review and interaction with the parties to date, nothing has come to the Manager’s attention that would cause it to question the reasonableness of the information presented herein. However, the Manager has not audited, or otherwise attempted to independently verify, the accuracy or completeness of any financial information of the Companies. The Manager therefore expresses no opinion or other form of assurance in respect of any of the Companies’ financial information that may be in this Report.

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<sup>1</sup> Schedule “B” was amended by Order dated January 16, 2014.

<sup>2</sup> The Manager was discharged from certain responsibilities with respect to certain of the Properties pursuant to an Order dated April 1, 2014.

### **C. Confidentiality**

5. In the Manager's judgment, disclosure of some of the documents appended to this Report would negatively impact the Manager's ability to carry out its mandate by, among other things, interfering with the integrity of any subsequent sales process in respect of the Pape Property if the Transaction is not completed. In particular, and without limiting the generality of the foregoing, it is the Manager's judgment that it would impair the Manager's ability to maximize realization of the Pape Property were any information to be made public concerning any discussions of sale process or values of the Pape Property among the Manager, the parties or any of their advisers and/or any possible bidders for Properties or any of them. Accordingly, a number of Appendices to this Report have been identified as Confidential Appendices and will be filed in a separate Confidential Appendix Brief. The Manager respectfully requests an Order authorizing it to file the Confidential Appendices under seal without serving the Confidential Appendix Brief on the Service List.

### **D. Background**

6. The Companies are a group of real estate development corporations incorporated as part of a series of joint ventures between Dr. Stanley Bernstein and companies that he controls (the "**Bernstein Group**") and Norma and Ronauld Walton and entities that they control (the "**Walton Group**"). Most of the Companies were incorporated to purchase and develop a particular Property.

7. In the summer and fall of 2013, the relationship between the Walton Group and the Bernstein Group broke down amid allegations that the Walton Group had, among other things, placed mortgages on jointly-held properties without the Bernstein Group's consent and failed to provide reporting required by the agreements that govern the joint venture. The dispute between the Walton Group and Bernstein Group is described in more detail in the Endorsement of Justice Newbould dated November 5, 2013, which is attached as Appendix "1".

8. Pursuant to the Order of Justice Newbould dated November 5, 2013, which is attached as Appendix "2", the Manager was appointed to provide independent management of the Companies and the Properties for the benefit of all stakeholders.

## **II. The Transaction**

### **A. Interested Parties**

9. The Pape Property is owned by one of the Companies, Riverdale Mansion Ltd. (“**Riverdale**”). A mortgage in the amount of \$3,000,000 in favour of 368230 Ontario Limited (“**368 Limited**”) is registered on title of the Pape Property (the “**Pape Mortgage**”).

### **B. The Marketing Process**

10. As noted in the Second Report of the Manager dated January 14, 2014 (the “**Second Report**”), the Manager solicited proposals from five leading commercial real estate firms to market nine properties. After considering these proposals, the Manager retained CBRE Limited (“**CBRE**”) to market these Properties. CBRE was subsequently retained to market a number of other Properties, including the Pape Property.

11. The Pape Property was subject to an extensive marketing campaign that included:

- (a) a direct e-mail “blast” to 939 recipients;
- (b) a direct mail campaign to more than 950 recipients;
- (c) web promotion;
- (d) e-mails to potentially interested brokers;
- (e) MLS posting;
- (f) signage on the Pape Property; and
- (g) site tours.

12. Approximately 8 potential purchasers toured the Pape Property. The marketing process, and the results achieved, are described in CBRE’s recommendation letter dated March 25, 2013 and attached as Confidential Appendix “B”. CBRE recommended acceptance of the Purchaser’s offer.

13. The Manager also notes that the price offered by the Purchaser is higher than the price paid by the Respondent to acquire the Pape Property in February 2011. The Agreement of Purchase and Sale between the Respondents and the Pape Property's previous owner is attached as Confidential Appendix "C".

**C. Timing of the Transaction**

14. The expected closing of the Transaction is May 1, 2014.

**D. Stakeholder positions**

15. The Applicants and Respondents have been provided with copies of the Pape Agreement. The Applicants support completion of the Transaction. 368 Limited is controlled by the Applicants and it also supports the Transaction.

16. Norma Walton has advised that she opposes the Transaction and offered to purchase the Pape Property for a higher purchase price. The e-mail exchange between Ms. Walton and the Manager with respect to this position is attached as Confidential Appendix "D". Ms. Walton articulated two primary reasons for her opposition to the Transaction:

- (a) the Respondents were prepared to pay a higher price; and
- (b) the Respondents had previously committed to build a new home for the Woodgreen Family Red Door Shelter (the "**Shelter**"), a non-profit organization that provides shelter services for families, at the Riverdale Property.

17. There is no reason to believe that the Respondents have the financial resources to complete a more favourable transaction. Indeed, the Respondents have taken the position that they are unable to pay approximately \$150,000 owed to the Manager (in its capacity as Inspector) and its counsel pursuant to the Order of Justice Newbould dated November 1, 2013. At a recent examination conducted as a result of this non-payment, Ms. Walton confirmed that the Respondents had no ability to pay any portion of the purchase price she offered for the Pape Property and would need to finance the entire purchase price. The relevant portion of Ms. Walton's examination is attached as Appendix "E".

18. In order to properly understand Ms. Walton's other objection to the Transaction, it is necessary to understand the history of Riverdale, the Pape Property and the Respondents' dealings with a separate property at 875-887 Queen Street (the "Queen Street Property").

19. The Queen Street Property is occupied by the Shelter. In June 2010, the Shelter entered into an agreement with Ronauld and Norma Walton whereby, among other things:

- (a) the Shelter agreed to assign its right to purchase the Queen Street Property to the Waltons; and,
- (b) the Waltons agreed to make a substantial donation to, and build a new facility for, the Shelter.

20. The agreement between the Waltons and the Shelter is attached as Appendix "3".

21. The agreement between the Shelter and the Waltons contemplated that the new facility for the Shelter would be built at the Queen Street Property. However, in her affidavit sworn October 31, 2013, Ms Walton deposed that she had negotiated an agreement to build this new facility at the Pape Property. The Manager understands that the Shelter agreed to purchase the Pape Property for \$6.5 million once its new facility was completed, with \$2 million of that amount to be paid as a charitable contribution by the Waltons.

22. The Respondents routinely co-mingled funds contributed to the various Companies in an account belonging to the Rose & Thistle Group Limited ("Rose & Thistle"). Between June 2011 and the appointment of the Manager on November 5, 2013, Rose & Thistle received a net transfer of \$908,100 from Riverdale. Rose & Thistle provided the Manager (in its capacity as Inspector) with invoices addressed to Riverdale for construction management fees totalling \$1,183,981 plus HST and maintenance fees totalling \$60,000. These invoices are attached as Appendix "4".

23. The Manager questioned the validity of these invoices and asked Rose & Thistle to provide documentation to support the amount allegedly owed to it by Riverdale. These documents were not provided. On October 18, 2013, the Manager (in its capacity as Inspector) received a Credit Note dated December 31, 2011 from Rose & Thistle which showed that the invoice to Riverdale had been reversed except for \$257,065.62 charged for work performed in

2011. This credit note, which is attached as Appendix "5", does not appear to have been accompanied by a return of funds to Riverdale by Rose & Thistle.

24. One effect of the foregoing transactions was that, when the Manager was appointed, Riverdale had a balance of -\$4,123 in its bank account. Rose & Thistle's November 2013 bank statement is attached as Appendix "6". Very little construction work appears to have been done on the Pape Property and Riverdale has no ability to fund further construction. Accordingly, the Manager does not believe that a sale to the Shelter is a viable alternative to the Transaction.

#### **E. Proposed Distribution of Sale Proceeds**

25. The Manager has asked its counsel, Goodmans LLP ("**Goodmans**"), to provide an opinion with respect to the validity of the Pape Mortgage. Goodmans has advised that the Pape Mortgage is validly registered. The Manager recommends that the proceeds of the Transaction, net of closing costs, be used to partially satisfy amounts owed pursuant to the Pape Mortgage. The sale proceeds will not be sufficient to pay the Pape Mortgage in its entirety.

#### **F. Conclusion and Recommendations**

26. As set out above, the Transaction is the result of a broad, transparent and competitive marketing process conducted with the assistance of a leading commercial brokerage firm. The Applicants support the Transaction. Ms. Walton opposes the Transaction but she has not advanced any specific objection to the Manager's sales process or a realistic way to achieve a more favourable result. Accordingly, the Manager respectfully recommends that this Honourable Court grant the relief sought by the Manager in its Notice of Motion.

All of which is respectfully submitted this 23<sup>rd</sup> day of April, 2014.

**SCHONFELD INC.**

**In its capacity as Manager pursuant to  
the Order of Newbould, J. dated  
November 5, 2013**

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 Pape 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 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.

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