

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

DBDC SPADINA LTD.
and THOSE CORPORATIONS LISTED ON SCHEDULE "A" HERETO

Applicants

and

NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE
GROUP LTD. and THOSE CORPORATIONS LISTED ON SCHEDULE
"B" HERETO

Respondents

and

THOSE CORPORATIONS LISTED IN SCHEDULE "C" HERETO, TO
BE BOUND BY THE RESULT

MOVING PARTY'S MOTION RECORD

(hearing scheduled April 18, 2016)

April 7, 2016

MINDEN GROSS LLP
Barristers and Solicitors
2200 - 145 King Street West
Toronto, ON M5H 4G2

Catherine Francis (LSUC# 26900N)
cfrancis@mindengross.com
Tel: 416-369-4137
Fax: 416-864-9223

Lawyers for the Moving Party, 295 The
West Mall Portfolio Ltd.

TO: SERVICE LIST

WEST MALL HOLDINGS LTD. – Court File No. CV-13-10280-00CL

Service List

Minden Gross LLP

Barristers & Solicitors
145 King Street W., Suite 2200
Toronto, ON M5H 4G2

Timothy R. Dunn

E-mail: tdunn@mindengross.com

Tel: 416-369-4335

Fax: 416-864-9223

Counsel to 295 The West Mall Portfolio
Ltd.

Robins Appleby LLP

Barristers & Solicitors
2600-120 Adelaide Street West
Toronto, ON M5H 1T1

Irving Marks

E-mail: imarks@robapp.com

Dominique Michaud

E-mail: dmichaud@robapp.com

Tel: 416-868-1080

Fax: 416-868-0306

Counsel to Computershare Trust
Company of Canada as nominee for
Trez Capital Limited Partnership

Lenczner Slaght Griffin LLP

Barristers & Solicitors
2600-130 Adelaide Street West
Toronto, ON M5H 3P5

Peter Griffin

E-mail: pgriffin@litigate.com

Shara N. Roy

E-mail: sroy@litigate.com

Danielle Glatt

E-mail: dglatt@litigate.com

Tel: 416-865-9500

Fax: 416-865-9010

Counsel to DBDC West Mall Holdings
Ltd. and Dr. Stanley Bernstein

Norma Walton

P.O. Box 22070
East York Post Office
Toronto, ON M4H 1N9

E-mail: waltonlitigation@gmail.com

Tel: 416-444-3950

Fax: 416-489-9973

Respondent

Ronald Walton

15 Montessor Drive
Toronto, ON M2P 1Y9

Respondent

Goodmans LLP

Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Brian Empey

E-mail: bempey@goodmans.ca

Mark Dunn

E-mail: mdunn@goodmans.ca

Tel: 416-979-2211

Fax: 416-979-1234

Counsel to the Manager Schonfeld Inc.

Steinberg Title Hope & Israel LLP

Barristers & Solicitors
5255 Yonge Street, Suite 1100
Toronto, ON M2N 6P4

David A. Brooker

E-mail: dbrooker@sthilaw.com

Tel: 416-225-2777

Fax: 416-225-7112

Counsel to Collins Barrow Toronto
Limited, court appointed Receiver of
West Mall Holdings Ltd.

Feige Nawrocki LLP

Barristers and Solicitors
130 Adelaide St. W., Suite 3300
Toronto, ON M5H 3P5

R. Eric Feige
E-mail: feige@fnlawyers.com
Tel: 416-366-8833
Fax: 416-366-3992

Counsel to Bridgeport West Mall Inc.

McMillan LLP

Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON M5J 2T3

Tushara Weerasooriya
E-mail: tushara.weerasooriya@mcmillan.ca
Tel: 416-865-7890
Fax: 416-865-7048

Counsel to Canadian Institute of
Plumbing and Heating and The Pace
Law Firm

Keg Restaurants Ltd.

10100 Shellbridge Way
Richmond, BC V6X 2W1

Tel: 604-821-6449
Fax: 604-276-0138
Andrea Janzen, Vice-President
E-mail: andrea.j@kegrestaurants.com

Community Living Toronto

20 Spadina Road
Toronto, ON M5R 2S7

Lily Llazarevski, Properties Coordinator
E-mail: llazarevski@cltoronto.ca
Gordon Cavan, Property/Insurance
Manager
E-mail: gordon.cavan@cltoronto.ca
Flavian Pinto, CFIO
E-mail: fpinto@cltoronto.ca

Tel: 416-968-0650
Fax: 416-968-6463

Ellisdon Corporation

1004 Middlegate Road, Suite 1000
Mississauga, ON L4Y 1M4

Michael Casey
E-mail: mcasey@ellisdon.com
Tel: 905-896-8900
Fax: 905-803-3059

Counsel to Edgebuilder Inc.

The George Hull Centre

81 The East Mall, 3rd Floor
Toronto, ON M8Z 5W3

Jane Bray, Executive Director
E-mail: reachus@georgehullcentre.on.ca

Rick Arseneau, Director of Finance
E-mail: arseneau.rick@gmail.com

Tel: 416-622-8833
Fax: 416-622-7068

Hudson Group Consulting

295 The West Mall, Suite 215
Etobicoke, ON M9C 4Z4

Lerone Mullin, President
E-mail: staffing@hudsongroupjobs.com
Tel: 416-626-2947
Fax: 416-626-3026

Investors Group

One Canada Centre
447 Portage Avenue,
Winnipeg, MB R3C 3B6

Natalie Tonner
Eastern Regional Facilities Manager
natalie.tonner@investorsgroup.com
Tel: 905-602-3723
Cell: 647-291-8519

Marhen Insurance Brokers

295 The West Mall, Suite 412
Etobicoke, ON, M9C 4Z4

Colin Moor – President
E-mail: colin@marheninsurance.com
Tel: 416-255-3728 ext. 222
Fax: 416-255-7585

Dr. Janusz Mierzwa

295 The West Mall, Suite 120,
Etobicoke, ON M9C 4Z4

E-mail: sudentdental@gmail.com
Tel: 416-622-8283

United Grocers Inc

21 Four Seasons Place, Suite 110
Toronto, ON M9B 6J8

Denis Gendron, President

E-mail: dgendron@ugi.ca
Tel: 416-626-6746
Fax: 416-626-5131

Energy Profiles Limited

3300 Bloor Street West
Centre Tower, Suite 500
Toronto, ON M8X 2X3

Neal Bach

Email: nbach@energyprofiles.com
Tel: 416-440-1323
Fax: 416-440-0301

Shaljero Advisors Inc.

John Martin

17 Four Seasons Place, Suite 200
Toronto, ON M9B 6E6
E-mail: jmartin@mercap.ca
Tel: 416-986-8660

Cushman & Wakefield

33 Yonge St., Suite 1000
Toronto, ON M5E 1S9

Gloria Blows

E-mail: Gloria.blows@ca.cushwake.com
Tel: 416-359-2612
Fax: 416-359-2613

DTZ Canada Inc.

201 – 1595 Sixteenth Avenue
Richmond Hill, ON L4B 3N9

Alicia Indarjit

Email: alicia.indarjit@cushwake.com
Tel: 416-449-1710
Fax: 905-940-7999

**ThyssenKrupp Elevator (Canada)
Limited**

1200 Aerowood Drive, Unit 19
Mississauga, ON L4W 2S7

Louis Sideris, Account Manager

E-mail: louis.sideris@thyssenkrupp.com
Tel: 905-602-6232
Fax: 905-602-1109

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#2511608 | 4083428

**ONTARIO
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BETWEEN:

DBDC SPADINA LTD.
and THOSE CORPORATIONS LISTED ON SCHEDULE "A" HERETO

Applicants

and

NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE
GROUP LTD. and THOSE CORPORATIONS LISTED ON SCHEDULE
"B" HERETO

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and

THOSE CORPORATIONS LISTED IN SCHEDULE "C" HERETO, TO BE
BOUND BY THE RESULT

NOTICE OF MOTION

295 THE WEST MALL PORTFOLIO LTD. ("West Mall Portfolio"), a secured creditor of West Mall Holdings Ltd. ("WMHL"), will make a Motion to a Judge presiding over the Commercial List on Monday, the April 18, 2016, at 10:00 a.m. or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard:

[] in writing under subrule 37.12.1(1);

in writing as an opposed motion under subrule 37.12.1(4);

orally.

THE MOTION IS FOR:

1. If necessary, an Order abridging the time for service of this Notice of Motion.
2. An Order directing Collins Barrow Toronto Limited (“CBTL”) in its capacity as Court-Appointed Receiver of the assets, undertakings and property of WMHL (the “Receiver”) to distribute all remaining funds being held by it to West Mall Portfolio, subject to a holdback of \$75,000 (plus Harmonized Sales Tax) to cover remaining costs of the receivership;
3. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. WMHL was incorporated on November 5, 2012.
2. On March 19, 2013, WMHL purchased 291-295 The West Mall (the “West Mall Property”) from West Mall Portfolio for consideration which included a first-position vendor take-back mortgage (the “Portfolio Mortgage”).
3. Pursuant to the Portfolio Mortgage, West Mall Portfolio is the first position secured creditor of WMHL.
4. The West Mall Property is comprised of a seven-storey multi-tenant office building of approximately 86,000 square feet and an adjacent one-storey single-tenant commercial building of approximately 8,000 square feet).

5. On November 5, 2013, Schonfeld Inc. Receivers + Trustees (“Schonfeld”) was appointed as Manager of a number of companies and properties, including the West Mall Property, pursuant to legal proceedings between the principals and shareholders of the various Respondent corporations.
6. In its 24th report to the Court dated January 12, 2015, Schonfeld reported that, as a result of a significant tenant terminating its lease, the West Mall Property no longer generated enough revenue to pay expenses associated with its operation.
7. As Schonfeld’s charge ranked behind the mortgages registered against the West Mall Property, Schonfeld requested that it be discharged from any further responsibility for the management, preservation and marketing of the West Mall Property.
8. On January 27, 2015, Computershare Trust Company of Canada as nominee for Trez Capital Limited Partnership (“Trez”), a secured creditor of WMHL, applied for the appointment of CBTL as Receiver of the assets, undertakings and property of WMHL. The Receivership Order was granted on February 3, 2015.
9. Trez had advanced \$1,937,500 to WMHL in March 2013 secured by a second mortgage on the West Mall Property, ranking subordinate to the Portfolio Mortgage (the “Trez Mortgage”).
10. As of the date of the Receivership Order, West Mall Portfolio was owed approximately \$9,687,500 under the Portfolio Mortgage.
11. As detailed in the First Report of the Receiver, the Receiver has obtained legal opinions as to the validity of the Portfolio Mortgage and the Trez Mortgage.

12. On May 6, 2015, Trez advised that it was no longer willing to fund the receivership as it was anticipated that there would be insufficient proceeds from the sale of the West Mall Property to pay the Portfolio Mortgage.

13. The Receiver issued its First Report on October 9, 2015. In its First Report, the Receiver sought, among other things, an order approving the sale of the West Mall Property, an Order authorizing the Receiver to hold back a portion of the proceeds and an order authorizing the Receiver to make a partial distribution to West Mall Portfolio.

14. The Receiver's motion was granted by Mr. Justice Penny by Order dated October 20, 2015.

15. The sale of the West Mall Property closed on November 4, 2015 and the Receiver made a partial distribution of funds to West Mall Portfolio.

16. The Receiver issued its Second Report on March 10, 2016.

17. In both the First Report and the Second Report, the Receiver advised that Briarlane Rental Property Management Inc. ("Briarlane"), the property manager, had conducted a reconciliation of payments by tenants on account of operating costs and realty taxes (the "TMI Reconciliation").

18. Based upon the TMI Reconciliation, the Receiver calculated that tenants had overpaid rents in the amount of \$229,098 during the period of the receivership. The Receiver was of the view that it should refund any tenant overpayments made to the Receiver during the period of the receivership.

19. The Receiver brought a motion returnable on March 21, 2016 for authorization to refund the overpayments made during the receivership, supported by the Second Report.

20. West Mall Portfolio has not audited the TMI Reconciliation or confirmed the accuracy of the amounts. However, West Mall Portfolio agreed not to oppose the refund of \$229,098 for overpayments made during the receivership.

21. West Mall Portfolio advised the Receiver that it would be bringing a motion for an order requiring that the Receiver distribute the remaining funds held back from the sale transaction after payment of the \$229,098 and after a reserve for the balance of the Receiver's fees. The Receiver disclosed in its Second Report that West Mall Portfolio had booked a hearing date of April 18, 2016.

22. The Receiver's motion was granted by Mr. Justice Hainey by Order dated March 21, 2016.

23. No other person attended the Receiver's motion other than the Receiver and its counsel and counsel for West Mall Portfolio.

24. The Receiver has distributed the funds which were overpaid during the receivership to tenants as authorized by this Order.

25. West Mall Portfolio seeks an order distributing the balance of funds held back by the Receiver from the closing of the sale transaction to West Mall Portfolio.

26. West Mall Portfolio is the recognized first position secured creditor of WMHL. West Mall Portfolio's security gives it a priority interest in the proceeds from the sale transaction. The debt owing to West Mall Portfolio exceeds the amounts being held by the Receiver.

27. Section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*.

28. Order of Mr. Justice Newbould dated February 3, 2015 appointing CBTL as Receiver and the powers set out therein.

29. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The First and Second Reports of the Receiver (filed previously).

2. The Affidavit of Timothy R. Dunn sworn April 7, 2016.
3. Such further and other evidence as the lawyers may advise and this Honourable Court permit.

April 7, 2016

MINDEN GROSS LLP
Barristers and Solicitors
2200 - 145 King Street West
Toronto, ON M5H 4G2

Catherine Francis (LSUC# 26900N)
cfrancis@mindengross.com
Tel: 416-369-4137
Fax: 416-864-9223

Lawyers for the Moving Party, 295 The West
Mall Portfolio Ltd.

TO: SERVICE LIST

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and

THOSE CORPORATIONS LISTED IN SCHEDULE "C" HERETO, TO BE
BOUND BY THE RESULT

**AFFIDAVIT OF TIMOTHY R. DUNN
(SWORN APRIL 7, 2016)**

I, **Timothy R. Dunn**, of the Town of Erin, in the County of Wellington,
Province of Ontario, MAKE OATH AND SAY:

1. I am a partner with the law firm of Minden Gross LLP, the lawyers for 295
The West Mall Portfolio Ltd. ("West Mall Portfolio"), and as such I have knowledge of
the matters hereinafter deposed to.

2. West Mall Portfolio is the first position secured creditor of West Mall
Holdings Ltd. ("WMHL"), one of the Respondents herein.

3. WMHL was incorporated on November 5, 2012.
4. On March 19, 2013, WMHL purchased 291-295 The West Mall (the "West Mall Property") from West Mall Portfolio for consideration which included a first-position vendor take-back mortgage (the "Portfolio Mortgage").
5. The West Mall Property is comprised of a seven-storey multi-tenant office building of approximately 86,000 square feet and an adjacent one-storey single-tenant commercial building of approximately 8,000 square feet).
6. On November 5, 2013, Schonfeld Inc. Receivers + Trustees ("Schonfeld") was appointed as Manager of a number of companies and properties, including the West Mall Property, pursuant to legal proceedings between the principals and shareholders of the various Respondent corporations.
7. In its 24th report to the Court dated January 12, 2015, Schonfeld reported that, as a result of a significant tenant terminating its lease, the West Mall Property no longer generated enough revenue to pay expenses associated with its operation.
8. As Schonfeld's charge ranked behind the mortgages registered against the West Mall Property, Schonfeld requested that it be discharged from any further responsibility for the management, preservation and marketing of the West Mall Property.
9. On January 27, 2015, Computershare Trust Company of Canada as nominee for Trez Capital Limited Partnership ("Trez"), a secured creditor of WMHL, applied for the appointment of Collins Barrow Toronto Limited ("CBTL") as Receiver of

the assets, undertakings and property of WMHL. The Receivership Order was granted on February 3, 2015.

10. Trez had advanced \$1,937,500 to WMHL in March 2013 secured by a second mortgage on the West Mall Property, ranking subordinate to the Portfolio Mortgage (the "Trez Mortgage").

11. As of the date of the Receivership Order, West Mall Portfolio was owed approximately \$9,687,500 under the Portfolio Mortgage.

12. As detailed in the First Report of the Receiver, the Receiver has obtained legal opinions as to the validity of the Portfolio Mortgage and the Trez Mortgage.

13. On May 6, 2015, Trez advised that it was no longer willing to fund the receivership as it was anticipated that there would be insufficient proceeds from the sale of the West Mall Property to pay the Portfolio Mortgage.

14. The Receiver issued its First Report on October 9, 2015. In its First Report, the Receiver sought the following relief:

- (a) Approval of the Receiver's activities described in the First Report;
- (b) Approval of a sale transaction (the "Transaction") contemplated by an accepted Agreement of Purchase and Sale between the Receiver and Bridgeport West Mall Inc. (the "Purchaser" or "Bridgeport") dated as of September 9, 2015 (the "Bridgeport APS");

- (c) Vesting in the Purchaser or its nominee WMHL's right, title and interest in and to the property as such term is defined in the Bridgeport APS including the West Mall Property;
- (d) Authorizing the Receiver to hold back a portion of the proceeds of the Transaction and to make a partial distribution to West Mall Portfolio;
- (e) Varying portions of the initial order appointing the Receiver to grant it priority to West Mall Portfolio;
- (f) Vesting all potential claims of tenants of the West Mall Property and of certain real estate brokers in the proceeds of the Transaction, with the determination of the entitlement, quantum and priority of the said claims to be adjudicated by the Court at a future date to be determined;
- (g) The costs of its motion payable from the estate of the WMHL; and,
- (h) Such further and other relief as to this Honourable Court may deem just.

15. The Receiver's motion was granted by Mr. Justice Penny by Order dated October 20, 2015.

16. The sale to Bridgestone closed on November 4, 2015 and the Receiver made a partial distribution of funds to West Mall Portfolio.

17. The Receiver issued its Second Report on March 10, 2016. In both the First Report and the Second Report, the Receiver advised that Briarlane Rental Property Management Inc. ("Briarlane"), the property manager for the West Mall Property, conducted a reconciliation of payments by tenants on account of operating costs and realty taxes (the "TMI Reconciliation").

18. Based upon the TMI Reconciliation, the Receiver calculated that tenants had overpaid rents in the amount of \$229,098 during the period of the receivership. The Receiver was of the view that it should refund any tenant overpayments made to the Receiver during the period of the receivership. The Receiver brought a motion returnable on March 21, 2016 for authorization to refund the overpayments made during the receivership.

19. West Mall Portfolio has not audited the TMI Reconciliation or confirmed the accuracy of the amounts. However, West Mall Portfolio agreed not to oppose the refund of \$229,098 for overpayments made during the receivership.

20. West Mall Portfolio advised the Receiver that it would be bringing a motion on April 18, 2016 for an order requiring that the Receiver distribute the remaining funds held back from the Transaction after payment of the \$229,098 and after a reserve for the balance of the Receiver's fees. The Receiver disclosed this in its Second Report.

21. The Receiver's motion was granted by Mr. Justice Hainey by Order dated March 21, 2016.

22. I am advised by my partner, Catherine Francis, and believe that she attended on the motion. No other person attended other than the Receiver and its counsel.

23. I understand from the Receiver's counsel that the Receiver has distributed the funds which were overpaid during the receivership to tenants as authorized by this Order.

24. West Mall Portfolio seeks an order distributing the balance of funds held back by the Receiver from the closing of the Transaction to West Mall Portfolio.

25. In bringing this motion, I undertook to the Receiver to include in the motion material a copy of the overall TMI Reconciliation prepared by Briarlane, which includes the period prior to the receivership. Attached hereto as Exhibit "A" to this my affidavit is a copy of the TMI Reconciliation, which has not been audited or verified by West Mall Portfolio.

26. The position of West Mall Portfolio is that any potential overpayments by tenants made prior to the receivership are unsecured creditor claims ranking subordinate in priority to the rights of West Mall Portfolio.

27. West Mall Portfolio is the recognized first position secured creditor of WMHL. West Mall Portfolio's security gives it a priority interest in the proceeds from the Transaction. The debt owing to West Mall Portfolio exceeds the amounts being held by the Receiver. Accordingly, I am not aware of any reason why the funds being held by the Receiver should not be distributed to West Mall Property.

28. The Receiver does not oppose the distribution of funds, subject to a holdback for further fees.

29. I make this affidavit in support of the relief sought in the Notice of Motion and for no improper purpose.

SWORN BEFORE ME at the City of)
Toronto, in the Province of Ontario)
this 7th day of April, 2016)



Commissioner for Taking Affidavits
(or as may be)

#2511612 | 4083428

Catherine Francis



TIMOTHY R. DUNN

B E T W E E N

DBDC SPADINA LTD. et al.
Applicants

-and-

NORMA WALTON, et al.
Respondents

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

**ONTARIO
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Proceeding commenced at Toronto

AFFIDAVIT OF TIMOTHY R. DUNN

MINDEN GROSS LLP
Barristers and Solicitors
2200 - 145 King Street West
Toronto, ON M5H 4G2

Catherine Francis (LSUC# 26900N)
cfrancis@mindengross.com
Tel: 416-369-4137
Fax: 416-864-9223

Lawyers for the Moving Party,
295 The West Mall Portfolio Ltd.

291-295 The West Mall
Summary of TMI Amounts That May Be Owed to Tenants
For the Period March 19, 2013 to October 31, 2015

Name of Tenant	Pre-Receivership				Receivership	Total
	2013	2014	2015	Subtotal	2015	2013-2015
	Mar 19 - Dec 31	Jan 1 - Dec 31	Jan 1 - 31		Feb 1 - Oct 31	
	Under (Over) Payment	Under (Over) Payment	Under (Over) Payment	Under (Over) Payment	Under (Over) Payment	Under (Over) Payment
Current tenants						
Canadian Institute of Plumbing and Heating	\$ (11,927)	\$ (19,442)	\$ (1,500)	\$ (32,869)	\$ (13,501)	\$ (46,370)
Community Living Toronto	(32,110)	(51,724)	(4,100)	(87,934)	(36,899)	(124,833)
Dr. Janusz Mierzwa	(5,048)	(8,625)	(699)	(14,372)	(6,291)	(20,663)
Edgebuilder Inc.	(11,922)	(23,297)	(1,890)	(37,110)	(17,009)	(54,119)
Hudson Group Consulting Inc.	(1,346)	(3,330)	(253)	(4,929)	(2,275)	(7,204)
Investors Group Financial Services Inc.	(41,254)	(130,146)	(11,273)	(182,673)	(101,455)	(284,127)
Keg Restaurant Ltd.	(21,683)	(51,842)	(2,741)	(76,265)	(24,667)	(100,932)
Marhen Insurance Brokers Ltd.	(1,671)	(4,259)	(322)	(6,253)	(2,901)	(9,154)
The George Hull Centre for Children and Families	-	(5,669)	(1,766)	(7,435)	(15,898)	(23,334)
United Grocers Inc.	(6,317)	(11,588)	(911)	(18,816)	(8,203)	(27,019)
Sub-total - current tenants	\$ (133,279)	\$ (309,922)	\$ (25,455)	\$ (468,656)	\$ (229,098)	\$ (697,755)
Former tenants						
Energy Profiles	\$ (14,624)	\$ (4,768)	\$ -	\$ (19,392)	\$ -	\$ (19,392)
Shaljero Advisors Inc.	(7,128)	(9,122)	-	(16,250)	-	(16,250)
The Pace Law Firm	(51,837)	(90,982)	-	(142,818)	-	(142,818)
Sub-total - former tenants	\$ (73,589)	\$ (104,871)	\$ -	\$ (178,460)	\$ -	\$ (178,460)
Total amount	\$ (206,867)	\$ (414,794)	\$ (25,455)	\$ (647,116)	\$ (229,098)	\$ (876,215)

1474
This is Exhibit.....referred to in the
affidavit of.....*Timothy R. Dunn*.....
sworn before me, this.....*7th*.....
day of.....*April*.....20*16*.....
.....
A COMMISSIONER FOR TAKING AFFIDAVITS

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 Inc.
16. DBDC Red Door Developments Inc.
17. DBDC Red Door Lands Inc.
18. DBDC Global Mills Ltd.
19. DBDC Donalda Developments Ltd.
20. DBDC Salmon River Properties Ltd.
21. DBDC Cityview Industrial Ltd.
22. DBDC Weston Lands Ltd.
23. DBDC Double Rose Developments Ltd.
24. DBDC Skyway Holdings Ltd.
25. DBDC West Mall Holdings Ltd.
26. DBDC Royal Gate Holdings Ltd.
27. DBDC Dewhurst Developments Ltd.
28. DBDC Eddystone Place Ltd.
29. DBDC Richmond Row Holdings Ltd.

SCHEDULE "B" COMPANIES

1. Twin Dragons Corporation
2. Bannockburn Lands Inc./Skyline — 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Inc.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Development Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd.
13. Fraser Properties Corp.
14. Fraser Lands Ltd.
15. Queen's Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.
23. Weston Lands Ltd.
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Royal Gate Nominee Inc.
29. Royal Gate (Land) Nominee Inc.
30. Dewhurst Developments 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, Suites A, B, E and F, Toronto, Ontario
4. 1 William Morgan Drive
5. 324 Prince Edward Drive, Toronto, Ontario
6. 24 Cecil Street, Toronto, Ontario
7. 30 and 30A Hazelton Avenue, Toronto, Ontario
8. 777 St. Clarens Avenue, Toronto, Ontario
9. 66 Gerrard Street East, Toronto, Ontario
10. 14 College Street, Toronto, Ontario
11. 26 Gerrard Street East, Toronto, Ontario
12. 2454 Bayview Avenue, Toronto, Ontario
13. 319 – 321 Carlaw, Toronto, Ontario
14. 0 Lutrell Avenue, Toronto, Ontario
15. 260 Emerson, Toronto, Ontario
16. 44 Park Lane Circle

B E T W E E N

DBDC SPADINA LTD. et al.
Applicants

-and-

NORMA WALTON, et al.
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

MOTION RECORD

MINDEN GROSS LLP
Barristers and Solicitors
2200 - 145 King Street West
Toronto, ON M5H 4G2

Catherine Francis (LSUC# 26900N)
cfrancis@mindingross.com
Tel: 416-369-4137
Fax: 416-864-9223

Lawyers for the Moving Party, 295 The West Mall
Portfolio Ltd.