

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

CHRISTINE DEJONG MEDICINE PROFESSIONAL CORPORATION

APPELLANT
(Respondent)

- and -

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

RESPONDENTS
(Appellants)

- and -

SCHONFELD INC. IN ITS CAPACITY AS THE COURT-APPOINTED MANAGER OF
THOSE COMPANIES LISTED IN SCHEDULE B AND THOSE PROPERTIES LISTED IN
SCHEDULE C HERETO and CANADIAN CHAMBER OF COMMERCE

INTERVENERS

[style of cause continued on Schedule A]

**REPLY FACTUM OF THE APPELLANT, CHRISTINE DEJONG MEDICINE
PROFESSIONAL CORPORATION TO THE FACTUM OF THE INTERVENER,
SCHONFELD INC.**

(Rule 42 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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PART I – OVERVIEW AND STATEMENT OF FACTS

Overview

1. The intervener, Schonfeld Inc. (“Schonfeld”), has submitted a factum in which it takes no position on the legal issues before this Court. Instead, Schonfeld limits its submissions to factual argument. Below, the appellant (“DeJong PC”) responds to the factual issues that are central to this dispute.

2. Schonfeld’s submissions emphasize the disparity at the heart of this case between DeJong PC and the respondents, a collection of companies owned and controlled by Dr. Bernstein (the “DBDC Applicants”). Dr. Bernstein advocates an approach he calls “*pari passu*” so that Dr. Bernstein and the DeJongs are “treated equitably as fellow victims of the Waltons’ fraud.”¹ Schonfeld’s factum shows that this is not so. Under Dr. Bernstein’s approach, his companies recover 13% of their outstanding claim, while the DeJongs recover almost nothing.

3. What Schonfeld omits is a broader discussion of Dr. Bernstein’s recovery to date and Schonfeld’s role in those recoveries. Neither Schonfeld nor Dr. Bernstein have taken any steps to advance a *pari passu* approach whereby all victims of the Waltons’ fraud are treated equally, proportionate to their losses. Instead, both have taken steps to oppose any such treatment. As a result, Dr. Bernstein has already recovered 44% of his \$110 million investment with the Waltons. The DeJongs have recovered nothing.

4. If Dr. Bernstein is successful on this appeal, he will increase his recovery by nearly \$2 million. The DeJongs’ recovery will remain near zero. This result is not the fair and equitable treatment the respondents now advocate for.

Background

5. The background of this matter is fully explored in DeJong PC’s appellant’s factum. Essentially this appeal involves a dispute between Dr. Stanley K. Bernstein and Dr. Christine and Michael DeJong. Dr. Bernstein (through DBDC Applicants²) and the DeJongs (largely through

¹ Factum of the Respondents dated April 26, 2019, para. 7.

² A glossary of the identity of the parties and other entities and terms relevant to this appeal is appended as Schedule D to this memorandum.

Dr. DeJong's professional corporation, DeJong PC) invested in project-specific real estate companies with Norma and Ronauld Walton. Unbeknownst to the DeJongs, the Waltons were running a fraud.

6. Contrary to what Schonfeld implies in its factum, and as admitted by the DBDC Applicants in theirs,³ the DeJongs invested with the Waltons in exactly the same way as Dr. Bernstein did. Both Dr. Bernstein and the DeJongs invested with the Waltons in the project-specific companies through a series of contractual agreements. Under those agreements, the DeJongs, like Dr. Bernstein, held a 50% interest in the companies alongside the Waltons, who held the other 50%. Four of the companies that the DeJongs invested in with the Waltons in this manner (the "DeJong Companies") are at issue in this appeal.

Schonfeld's involvement with these proceedings

7. Schonfeld has been involved in these proceedings since the beginning, when it was engaged by Dr. Bernstein to support his efforts against the Waltons.

8. Schonfeld's involvement in assisting Dr. Bernstein's recovery dates back to at least September 2013, when Dr. Bernstein hired Schonfeld to gather information on his investments in real estate projects with the Waltons.⁴ In October 2013, the DBDC Applicants successfully moved to appoint Schonfeld as Inspector, with a mandate dedicated to investigating the affairs and financial position of companies in which the DBDC Applicants had invested with the Waltons (the "DBDC Companies").⁵

9. In November 2013, at the DBDC Applicants' request, Schonfeld was appointed Manager of the DBDC Companies.⁶ In August 2014, again at the DBDC Applicants' request, Schonfeld

³ Factum of the Respondents dated April 26, 2019, paras. 2, 13-14.

⁴ Endorsement of Newbould J., dated October 7, 2013 ("Newbould J. October 7, 2013 Reasons"), para. 9, Appeal Record ("AR"), Vol. III, Tab 21, pp. 114.

⁵ Order of Newbould J., dated October 7, 2013, paras. 3-4, AR, Vol. III, Tab 20, pp. 102-103; Newbould J. October 7, 2013 Reasons, paras. 2-3, 32, AR, Vol. III, Tab 21, pp. 119.

⁶ Order of Newbould J., dated November 5, 2013, paras. 3-5 AR, Vol. III, Tab 24, pp. 146-150; Endorsement of Newbould J., dated November 5, 2013, paras. 2-3, 53 AR, Vol. III, Tab 23, pp. 127, 143.

was appointed Manager of the all other companies owned by the Waltons, including those co-owned by innocent investors (the “non-DBDC Companies”), four of which are the DeJong Companies.⁷ The DeJong Companies are the only non-DBDC Companies at issue in this appeal.

10. For the purpose of assisting Dr. Bernstein’s recovery, Schonfeld conducted an analysis tracing the DBDC Applicants’ funds into other accounts implicated in the Walton’s scheme. This analysis became known as the “Net Transfer Analysis”. At no point was a similar transfer analysis done to show the transfer of the funds of the other investors, such as the DeJongs, despite their repeated requests for one. The DBDC Applicants relied on the Net Transfer Analysis as evidence of the non-DBDC Companies’ alleged participation in the Waltons’ fraud.⁸

11. When Schonfeld assembled the Net Transfer Analysis, it was not the Manager of the non-DBDC Companies. Rather, Schonfeld was acting solely in its capacity as Inspector, a role to which it had been appointed exclusively for the purpose of assisting Dr. Bernstein to investigate and recover his investments. As Schonfeld described its own role:

The Inspector was appointed pursuant to the Order of Justice Newbould dated October 4, 2013 (the “Inspector’s Appointment Order”). In general terms, the Inspector was appointed to determine how funds invested by the [DBDC] Applicants in the [DBDC] Companies had been used by the Respondents.⁹

12. It is in this capacity that Schonfeld drafted the Net Transfer Analysis as a one-sided inquiry. The analysis examines the flow of funds between the Waltons’ Rose & Thistle Group Inc. “clearing house” account and two groups of accounts: (1) those of DBDC Companies, and (2) all other accounts to which the Waltons had access,¹⁰ which were grouped together solely on the basis that they were not DBDC Company accounts. The analysis therefore indiscriminately pools the accounts belonging to companies co-owned by innocent investors, including the DeJong Companies, with accounts belonging to the fraudsters themselves.

⁷ Order of Brown J., dated August 12, 2014, paras. 14-15, AR, Vol. IV, Tab 33, p. 180.

⁸ Cash Transfer Analysis of the Inspector, circulated February 21, 2014, Exhibit “A”, Fourth Interim Report of the Inspector, dated April 23, 2014, AR, Vol. XIV, Tab 68A, pp. 148-158.

⁹ Third Supplemental Report to the 22nd Report of the Manager (“Manager’s Third Supplemental Report”), dated January 12, 2015 para. 8, AR, Vol. XIV, Tab 77, p. 3.

¹⁰ Reasons of Brown J., August 12, 2014, paras. 17-20, AR, Vol. IV, Tab 32, pp. 83-85.

Under the *pari passu* approach, the DeJongs will recover little if anything at all

13. Schonfeld's analysis shows that, if the Court of Appeal's judgment stands, the so-called *pari passu* recoveries will be remarkably uneven in favour of Dr. Bernstein. By Schonfeld's estimates, the DBDC Applicants will recover 13% of their claims against the DeJong Companies. DeJong PC will get next-to-nothing, recovering only 2% of its claims.¹¹ This amount is in addition to what Dr. Bernstein has already been able to recover: around 44% of his \$110 million investment with the Waltons.¹²

14. Schonfeld does not explain why the results of a *pari passu* distribution will be so lopsided. The reasons are twofold:

- (1) As a result of their joint and several claim, the DBDC Applicants assert a \$22.6 million claim against *every* individual DeJong Company. In contrast, DeJong PC has smaller, individual claims against each DeJong Company. The DBDC Applicants' \$22.6 million claim will dilute DeJong PC's individual claims.
- (2) DeJong PC has an unsecured claim against St. Clarens, Emerson, and Prince Edward as a result of its shareholder loans. In contrast, it only has an equity claim against United Empire as a shareholder. While Dr. Bernstein and Schonfeld speak of a *pari passu* recovery against each DeJong Company, under the Court of Appel's decision, DeJong PC will recover *nothing* from United Empire.

¹¹ Factum of the Intervener, Schonfeld Inc. dated May 1, 2019, para. 24.

¹² Reasons of the Application Judge, dated July 16, 2016 ("Application Judge's Reasons"), para. 19, AR, Vol. I, Tab 4, p. 73. The Application Judge noted that the DBDC Applicants' claim of \$66.9 million "represented the balance of [their] investment lost to the Waltons." Of that, \$81.6 million was shareholder equity or debt and \$29.5 million was mortgage debt. When before the Application Judge, the DBDC Applicants had recovered \$14.6 million of their shareholder contributions, but at footnote 99 of their factum, they state that they have now recovered \$18.7 million. This \$18.7 million, in addition to the \$29.5 million in mortgage amounts recovered, represent around 44% of Dr. Bernstein's \$110 million investment with the Waltons.

15. This disproportionality is best represented in tabular form:

Company	DeJongs' Investment	Nature of Investment	Application Judge Affirmed	Court of Appeal Affirmed	
			DeJongs' recovery	DeJongs' recovery	Dr. Bernstein's recovery
United Empire	\$992,750 ¹³	Equity	\$769,544 ¹⁴	\$0 (0%)	\$769,543 (100%)
Prince Edward	\$816,019 ¹⁵	Shareholder loan ¹⁶	\$640,813 ¹⁷	\$17,607 (2.7%)	\$623,205 (97.3%)
St. Clarens & Emerson	\$665,000 ¹⁸	Shareholder loan ¹⁹	\$664,730 ²⁰	\$18,927 (2.8%)	\$645,802 (97.2%)
Lesliebrook Holdings Ltd.	\$500,000 ²¹	Preferred shares ²²	No funds left available	No funds left available	No funds left available
Academy Lands Ltd.	\$615,000 ²³ + \$131,500 ²⁴	Preferred shares ²⁵	No funds left available	No funds left available	No funds left available
Total	\$3,720,269		\$2,075,087²⁶	\$36,534	\$2,038,550

¹³ Application Judge's Reasons, para. 65, AR, Vol. I, Tab 4, p. 89.

¹⁴ Application Judge's Reasons, para. 73, AR, Vol. I, Tab 4, pp. 90-91.

¹⁵ Application Judge's Reasons, para. 75, AR, Vol. I, Tab 4, p. 91.

¹⁶ Application Judge's Reasons, para. 82, AR, Vol. I, Tab 4, p. 93.

¹⁷ Application Judge's Reasons, para. 69, AR, Vol. I, Tab 4, p. 90.

¹⁸ Application Judge's Reasons, para. 84, AR, Vol. I, Tab 4, p. 93.

¹⁹ Application Judge's Reasons, para. 90, AR, Vol. I, Tab 4, p. 95.

²⁰ Application Judge's Reasons, para. 89, AR, Vol. I, Tab 4, p. 95.

²¹ Affidavit of Christine DeJong, sworn July 8, 2014 ("DeJong July 8, 2014 Affidavit"), para. 5, AR, Vol. V, Tab 47, p. 91.

²² DeJong July 8, 2014 Affidavit, paras. 5, 8, AR, Vol. V, Tab 47, pp. 91-92.

²³ DeJong July 8, 2014 Affidavit, paras. 5, 8, AR, Vol. V, Tab 47, pp. 91-92.

²⁴ DeJong July 8, 2014 Affidavit, paras. 19, AR, Vol. V, Tab 47, p. 95.

²⁵ DeJong July 8, 2014 Affidavit, paras. 5, 8, AR, Vol. V, Tab 47, pp. 91-92.

²⁶ Although Schonfeld asserts at para. 23 of its factum that a total of \$1,958,678 remains in the

DeJong Companies, it provides no reference for this evidence nor is this figure anywhere in the

16. The illustrative recoveries in the table omit the 44% of their investment that Dr. Bernstein and the DBDC Applicants have already recovered. The recoveries also omit other third party creditors (which appear minimal)²⁷ and the professional fees of the Manager and counsel (which are likely to be material).²⁸ Once these charges are accounted for, it is possible that the recoveries of DeJong PC will be in the same 44% range as those of Dr. Bernstein.

17. In contrast, under Dr. Bernstein's purported *pari passu* approach, Dr. Bernstein recovers the \$48.2 million from his previous recoveries and the lion's share of the money from the sale of the DeJong Companies' properties. DeJong PC gets almost nothing. Its small recovery is wiped out by the cost award ordered by the Court of Appeal.²⁹ And, in contrast to Dr. Bernstein, the DeJongs have recovered nothing to date and have no other sources of recovery from the fraud.

18. Whether using Schonfeld's analysis or the figures in this factum, it is clear that the *pari passu* approach is neither proportional or fair.

Schonfeld, as Inspector or Manager, has never advocated for pari passu

19. As Schonfeld details in its factum, it is the Manager of both the DBDC Companies and the non-DBDC Companies, including the DeJong Companies. In that capacity it has overseen the claims process and distributions to the stakeholders of its subject companies.

record. *See*: Factum of the Intervener, Schonfeld Inc. dated April 26, 2019, para. 23. This factum therefore uses the figure of \$2,075,087 based on the Application Judge's reasons (*see*: Application Judge's Reasons, paras. 69, 74, 89, AR, Vol. I, Tab 4, pp. 89, 91, 94). To the extent that the correct figure is \$1,958,678, DeJong PC's recoveries will be even lower.

²⁷ Schedule C Companies Claims Process, Appendix "A" to Addendum to Forty-second Report of the Manager, dated May 2, 2016, AR, Vol. XVI, Tab 81B, p. 95.

²⁸ *See e.g.* Thirteenth Report of the Manager, dated June 12, 2014, paras. 67-68, AR, Vol. XV, Tab 74, p. 156; Supplemental Report to the Twenty-second Report of the Manager, dated December 16, 2014, paras. 32-33, AR, Vol. XV, Tab 76, pp. 195-196. Second Interim Report of the Inspector, dated October 31, 2013, paras. 24-26, AR, Vol. XV, Tab 66, p. 101.

²⁹ Reasons of the Court of Appeal, dated January 25, 2018 ("Court of Appeal 2018 Reasons"), para. 6, AR, Vol. II, Tab 7, p. 4.

20. In its factum, Schonfeld addressed the consequences of the *pari passu* distribution raised by the DBDC Applicants on this appeal. But Schonfeld omits the history of how a *pari passu* approach has been treated in the claims processes it administered and its previous positions on this issue.

21. This context is important. It demonstrates that *pari passu* recovery has never been advocated by either the Manager or Dr. Bernstein. Indeed, the suggested approach emerges for the first time on this appeal.

22. As early as December 2013, Schonfeld knew about third party investors similarly situated to Dr. Bernstein and the DBDC Applicants.³⁰ At no point did Schonfeld—or Dr. Bernstein—demand a global *pari passu* recovery that permitted each innocent investor to recover in proportion to its investments in the fraud. Instead, they actively worked against it.

23. Dr. Bernstein, supported by the Schonfeld, took a “finders keepers” approach, seeking to aggregate the greatest recovery from the existing assets to the DBDC Applicants, as the first victims to commence suit. This has led to Dr. Bernstein and the DBDC Applicants recovering \$48.2 million to date, while the DeJongs have received nothing.

24. First, the DBDC Applicants retained Schonfeld, later appointed as Inspector, to trace their assets into the non-DBDC Companies. No tracing was undertaken on behalf of the other innocent investors, nor has any occurred to date. This issue is addressed further below.

25. Second, when some innocent investors sought to postpone a distribution of funds to Dr. Bernstein in order to allow them to make claims against the DBDC Companies, Schonfeld actively opposed them. Such an adjournment would have permitted an exploration of a *pari passu* recovery across the entire fraud *i.e.* holding the DBDC Companies liable in the same way that Dr. Bernstein now seeks to hold the DeJong Companies liable. Schonfeld insisted that the innocent investors had missed a claims-bar by a matter of months.³¹

³⁰ Affidavit of Norma Walton, sworn December 17, 2013 (“Walton December 17, 2013 Affidavit”), paras. 16-20, AR, Vol. XI, Tab 54, pp. 8-32.

³¹ Manager’s Third Supplemental Report, paras. 15-17, AR, Vol. XIV, Tab 77, pp. 4-5.

26. Third, in relation to the claims process for the DeJong Companies, administered by Schonfeld, Dr. Bernstein contested the claims of DeJong PC. He argued that DeJong PC had no unsecured claims and therefore would recover only *after* Dr. Bernstein had recovered the entirety of his \$22.6 million claim:

Norma Walton's gratuitous re-characterization of [DeJong PC]'s investment as a "shareholder loan" is transparent. [DeJong PC] is an equity investor. Its claims rank behind those of other creditors, including the Bernstein Applicants.³²

27. In short, Dr. Bernstein did not advocate for *pari passu*: he wanted DeJong PC to recover nothing. Schonfeld took no position on this issue. The Application Judge rejected the DBDC Applicants' position, finding that DeJong PC was an unsecured creditor with shareholder loans.

Schonfeld's refusal to conduct a tracing analysis for investors other than Dr. Bernstein

28. Schonfeld notes that it had no obligation to trace funds invested by the DeJongs or other innocent investors despite the fact that it had engaged in that tracing exercise for Dr. Bernstein. It, however, omits a discussion of its rationales for taking such a position. These are explored below and illustrate (i) that the Net Transfer Analysis was conducted to assist Dr Bernstein and for that purpose alone; and (ii) why the innocent investors have not conducted a tracing.

29. The DeJongs did request that that Schonfeld conduct a tracing of their investments. When Schonfeld refused, the DeJongs brought a motion for directions on the scope of Schonfeld's tracing obligations, contending that Schonfeld was obliged to trace all investors' funds, as "opposed to focusing on ... the [DBDC] Applicants' funds."³³ In response, Schonfeld took the position that it was not obliged to assist any investor except Dr. Bernstein for three reasons.

30. Schonfeld first claimed that its mandate was "not broad enough to include a tracing of the Investors' funds from [DeJong and other non-DBDC] Companies."³⁴

³² Factum of the DBDC Applicants before the Application Judge, dated May 13, 2016, Supplemental Appeal Record, para. 24, Vol. I, Tab 1, p. 9.

³² Order of Newbould J., dated October 7, 2013, paras. 3-4, AR, Vol. III,

³³ Reasons of the Court of Appeal, dated September 10, 2015 ("Court of Appeal 2015 Reasons"), para. 14, AR, Vol. V, Tab 43, p. 70.

³⁴ Manager's Third Supplemental Report, paras. 7, 10, AR, Vol. XVI, Tab 77, pp. 3-4.

31. Second, Schonfeld stated that the tracing was too expensive. Conducting tracing for the DBDC Applicants had “cost several hundred thousand dollars over the course of more than one year” and was not yet complete. The cost of conducting tracing for the DeJongs and the other innocent investors “would be substantial.”³⁵

32. Third, Dr. Bernstein was paying Schonfeld’s bills. While Schonfeld acknowledged that the Waltons paid its fees until November 1, 2013, no funds were available after that.³⁶ As the Court of Appeal aptly summarized: “The Bernstein Applicants are paying for the Inspector. He is tracing their funds.”³⁷

33. The effect of Schonfeld’s position was that recovery from fraud was only available to those who could pay for it. Because they moved first, the DBDC Applicants had some of the costs of the tracing funded by the fraudsters themselves, and they could continue due to Dr. Bernstein’s resources. The same options were not available to smaller investors.

The implications of this appeal on other non-DBDC Companies

34. Schonfeld contends that, if the DeJongs’ “argument is accepted, then further analysis will be required to determine whether and to what extent the same reasoning should be applied to other parties not before the Court.”³⁸ This is a red herring. DeJong PC is the only appellant and seeks an order that applies to the DeJong Companies alone. The other three innocent investors who were before the application judge did not appeal to this Court, and at least two have settled with the DBDC Applicants.³⁹

³⁵ Manager’s Third Supplemental Report, paras. 11-12, AR, Vol. XVI, Tab 77, p. 4.

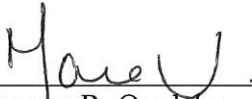
³⁶ Manager’s Third Supplemental Report, para. 11, Vol. XVI, Tab 77, p. 4.

³⁷ Court of Appeal 2015 Reasons, para. 15, AR, Vol. V, Tab 43, p. 70.

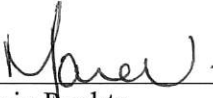
³⁸ Factum of the Intervener, Schonfeld Inc. dated May 1, 2019, para. 26.

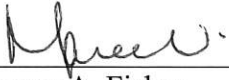
³⁹ Court of Appeal 2018 Reasons, para. 6, AR, Vol. II, Tab 7, p. 4.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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PART VI – TABLE OF AUTHORITIES

None.

SCHEDULE A – LIST OF RESPONDENTS (APPELLANTS)*

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.

* Companies are numbered in accordance with the Schedule A to the Reasons of the Court of Appeal for Ontario, dated January 25, 2018.

29. DBDC Richmond Row Holdings Ltd.

SCHEDULE B – LIST OF 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 Developments Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd
13. Fraser Properties Group
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 – LIST OF SCHEDULE “C” COMPANIES

1. 3270 American Drive, Mississauga, Ontario
2. 0 Luttrell Ave., Toronto, Ontario
3. 2 Kelvin Avenue, Toronto, Ontario
4. 346 Jarvis Street, Suites A, B, C, E and F, Toronto, Ontario
5. 1 William Morgan Drive, Toronto, Ontario
6. 324 Price Edward Drive, Toronto, Ontario
7. 24 Cecil Street, Toronto, Ontario
8. 30 and 30A Hazelton Avenue, Toronto, Ontario
9. 777 St. Clarens Avenue, Toronto, Ontario
10. 252 Carlton Street and 478 Parliament Street, Toronto, Ontario
11. 66 Gerrard Street East, Toronto, Ontario
12. 2454 Bayview Avenue, Toronto, Ontario
13. 319-321 Carlaw, Toronto, Ontario
14. 260 Emerson Ave., Toronto, Ontario
15. 44 Park Lawn Circle, Toronto, Ontario
16. 19 Tennis Crescent, Toronto, Ontario
17. 646 Broadview Avenue, Toronto, Ontario

SCHEDULE D – GLOSSARY OF TERMS IN APPELLANT’S FACTUM

Term used in Appellant’s factum	Term used in DBDC Applicants’ Factum	Term used in courts below	Definition
DeJong Companies	“Certain” Walton Schedule C Companies (“WSC”)	N/A	4 project-specific companies in which DeJong had invested with the Waltons as equal shareholders: (1) United Empire Lands Ltd. (2) Prince Edward Properties Ltd. (3) St. Clarens Holdings Ltd. (4) Emerson Developments Ltd.
DBDC Applicants	Bernstein Companies	DBDC Applicants	Investment companies owned and controlled by Dr. Bernstein, through which he invested with the Waltons. These are DBDC Spadina Ltd. and the companies listed on Schedule A to this factum.
DBDC Companies	Dr. Bernstein Project Companies or Walton Schedule B Companies (“WSB Companies”)	Schedule B Companies	Project-specific companies in which the DBDC Applicants had invested with the Waltons as equal shareholders. These companies are listed on Schedule B to this factum.
Non-DBDC Companies	Project Companies or Walton Schedule C Companies (“WSC Companies”)	Schedule C Companies	Companies included in the Net Transfer Analysis in which the DBDC Applicants had no interest. These are included in Schedule C to this factum.
Non-DBDC Accounts	N/A	N/A	Accounts belonging to the Non-DBDC Companies, as considered by the Net Transfer Analysis.
Innocent Investor Companies	N/A	N/A	Companies in which both the Waltons and innocent investors had an interest.

Walton Companies	N/A	N/A	Companies solely owned by the Waltons, in which no innocent investors had any interest.
Walton Respondents	N/A	Walton Respondents	The respondents named in the DBDC Applicants' original application in these proceedings: Norma Walton, Ronald Walton, Rose & Thistle Group Ltd., and Eglinton Castle Inc.
Respondent Companies	N/A	Listed Schedule C Companies	10 project-specific companies that the DBDC Applicants named in their Third Fresh as Amended Application and against which they advanced claims of knowing assistance and knowing receipt. These include the 4 DeJong Companies and are listed at Schedule C to this factum.