Court File No. CV-16-11549-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP (WOODBINE) INC., URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KING TOWNS INC. AND DEAJA PARTNER (BAY) INC.

AND IN THE MATTER OF TCC/URBANCORP (BAY) LIMITED PARTNERSHIP

Court File No. CV-16-11389-00CL

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FACTUM OF CERTAIN HOME BUYERS

(Motion Returnable April 13, 2017)

April 7, 2017

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TO: **SERVICE LIST**

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FACTUM OF CERTAIN HOME BUYERS

(Motion Returnable April 13, 2017)

PART I - OVERVIEW

1. This factum is filed on behalf of 55 home buyers (the "**Home Buyers**") in support of their claims for damages arising from the breach by the following Urbancorp companies of their Agreements of Purchase and Sale (the "**Agreements**") with the Home Buyers: Urbancorp (St. Clair Village) Inc., Urbancorp (Mallow) Inc., Urbancorp (Lawrence) Inc., Urbancorp (Bridle Path) Inc. and Urbancorp (Woodbine) Inc. (collectively, "**Urbancorp**" or the "**Vendors**").

2. The Home Buyers are entirely innocent, and are entitled to damages for losses resulting from Urbancorp's failure to perform its obligations under the Agreements. In order to place the Home Buyers in the same position they would have been in had Urbancorp performed the Agreements, the damages must include the difference in value between the purchase price under the Agreements and the value of the land at the date of closing (subject to mitigation).[1]

3. KSV Kofman Inc., in its capacity as Monitor of the Vendors, has disallowed the Home Buyers' claim for damages. Instead, the Monitor proposes to limit the Home Buyers' remedy to the return of the deposits paid by the Home Buyers to Urbancorp. The Monitor relies upon a standard term in the Agreements (the "**Exclusion Clause**") which limits Urbancorp's liability "in the event that construction of the Dwelling is not completed **on or before the Closing Date** for any reason or in the event the Vendor cannot complete the subject transaction **on the Closing Date** [emphasis added]."

4. This case is not about Urbancorp's failure to complete construction of the homes "**on or before the Closing Date**" or Urbancorp's failure to complete the transaction "**on the Closing Date**". This case is about Urbancorp's complete repudiation of its fundamental obligations under

under the Agreements, without any legal justification – an eventuality not contemplated by the Exclusion Clause.

5. If the Court accepts the Monitor's interpretation of the Exclusion Clause, and deprives the Home Buyers of their right to compensation for the losses resulting from Urbancorp's anticipatory breach of the Agreements, it will effectively sanction and reward Urbancorp's wrongful conduct, and permit Urbancorp to appropriate for its benefit the appreciation in the land values which would otherwise ordinarily accrue to the Home Buyers. For the reasons explained more fully below, the Home Buyers submit that the Exclusion Clause only applies to limit Urbancorp's liability for damages in the event of a delay in closing. It does not apply where there is no closing whatsoever.

6. In the alternative, if the Exclusion Clause is found to be applicable, the Home Buyers respectfully submit that the Court should nevertheless refuse to enforce it because to do so would be unconscionable and contrary to public policy.

PART II - FACTS

Background

7. At all material times, Urbancorp was owned and controlled, directly or indirectly, by Alan Saskin ("**Saskin**") or his family. Saskin was also the sole director and officer of each of the Vendors. [2]

8. Saskin has over thirty years' experience in the real estate development industry in Toronto. Under Saskin's control, Urbancorp has developed thousands of homes. At the time the

[2] Agreed Statement of Facts, paras 4-5.

Agreements were executed, Urbancorp was a large, sophisticated group of companies, with approximately 100 employees, and 12-14 different real estate projects under development. Urbancorp had a proven track record of success in the development industry in Toronto, and neither Saskin, nor the Home Buyers contemplated the possibility that Urbancorp would become insolvent.[3]

9. In comparison to Urbancorp, the Home Buyers have relatively minimal experience purchasing real estate: 15 out of 55 Home Buyers are first time home purchasers and 27 had purchased a home on one previous occasion. Many of the Home Buyers are relatively unsophisticated, and have limited education. Some Home Buyers cannot read and understand English. 75% of Home Buyers entered into the Agreements without consulting a lawyer, and 40% signed the Agreements without being represented by a real estate agent.[4]

10. Throughout the period from 2013 to the present date, the price of housing in Toronto has increased significantly year over year. Demand for housing has also exceeded the available supply. The Urbancorp's projects were no exception, and in some cases, there were 5 or 6 purchasers interested in the same unit.[5]

Urbancorp's Acquisition and Financing of the Development Lands

11. Between August 2013 and August 2014, Urbancorp purchased the five sites on which it planned to develop the homes which are the subject of the Agreements. Urbancorp financed between 81% and 96% of the purchase price of each property with loans secured by first

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[3] Examination of Alan Saskin held February 24, 2017 ("**Saskin Examination**"), pp. 18-19, questions 68-81. Confidential Exhibit 1 to Affidavit of Dylan Augruso sworn March 23, 2017 ("**Augruso Affidavit**").

[4] Augruso Affidavit at para 4 (e) and (f).

[5] Saskin Examination, page 156, questions 655-656, and page 177, question 726.

mortgages, at interest rates above the rates charged on conventional first mortgage loans. The following chart summarizes the purchase price, acquisition financing, and loan to value ratio for each of the five development properties in issue in this litigation.[6]

	St. Clair	Lawrence	Mallow	Bridle Path	Woodbine
Land Purchase Date	August 1, 2013	August 29, 2013	August 28, 2014	March 20, 2014	January 30, 2014
Purchase Price	$7,700,000	$8,545,000	$15,300,000	$11,500,000	$5,250,000
Acquisition Financing/Security	$7,380,000 Interest: greater of 10% per annum or prime + 7%	$8,000,00 Interest: greater of 10% per annum or prime + 7%	$12,5000,000	$10,350,000 Interest: 10.1% Maturity: April 1, 2016	$4,725,000 Interest: greater of 10% per annum or prime + 7% Maturity: Feb. 1, 2016
Loan to Value Ratio (LTV)	95.84%	96.39%	81.70%	90.00%	90.00%

The Agreements

12. The Agreements are standard, printed forms which were prepared on behalf of Urbancorp by its counsel, Harris Shaeffer LLP.[7] 36 of the 55 Home Buyers stated that the Agreement was presented to them as a "take it or leave it, standard form contract."[8]

13. Pursuant to each Agreement: (a) Urbancorp agreed to "take all reasonable steps to complete construction of the home on the Property and to Close without delay"; (b) Each Homebuyer paid a deposit of approximately ten percent of the purchase price, with the balance

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[6] Agreed Statement of Facts, paras 6-10; Saskin Examination, page 78-84, questions 325-353; and letter dated March 2, 2017 from Weir Foulds LLP, in Answer to Undertakings, at para 4.

[7] Saskin Examination, page 48, question 202.

[8] Affidavit of Dylan Augruso sworn March 23, 2017 ("Augruso Affidavit").

of the purchase price due on closing; and (c) The transaction of purchase and sale was to be completed on the "First Tentative Closing Date" (as defined in the Tarion Addendum) or such other date established in accordance with the Tarion Addendum (the "**Closing Date**").

14. Schedule A attached to each of the Agreements includes seventy-one "Additional Terms", including the Exclusion Clause which provides as follows:

> 45. Notwithstanding anything contained in this Agreement it is understood and agreed by the parties hereto that in the event that construction of the Dwelling is not completed **on or before the Closing Date** for any reason or in the event the Vendor cannot complete the subject transaction **on the Closing Date**, other than as a result of the Purchaser's default, the Vendor shall not be responsible or liable to the Purchaser in any way for any damages or costs whatsoever including without limitation loss of bargain, relocation costs, loss of income, professional fees and disbursements and any amount paid to third parties on account of decoration, construction or fixturing costs **other than those costs set out in the Tarion Addendum**.
>
> [Emphasis added]

15. Neither Urbancorp nor anyone acting on behalf of Urbancorp explained the Exclusion Clause to the Home Buyers or drew it to their attention.[9]

16. Neither the Exclusion Clause nor any other provision included in the Additional Terms set out in Schedule A of the Agreements was amended from the standard form. Out of 15 Home Buyers who requested an amendment to their Agreements, only 10 were granted, and those were limited to the addition of upgraded appliances, special finishes, rights of assignment, and changing the payment of the deposit to a single payment instead of two installment payments.[10]

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[9] Augruso Affidavit at para 5(c).

[10] Augruso Affidavit, at paragraph 4(g), 5, and 6(d).

limited to the addition of upgraded appliances, special finishes, rights of assignment, and changing the payment of the deposit to a single payment instead of two installment payments.[10]

17. The Exclusion Clause does not expressly limit Urbancorp's liability in the event of a delay in Closing to a return of the deposits. Rather, it expressly provides that Urbancorp's liability is limited to the "**costs**" set out in the Tarion Addendum. The Tarion Addendum provides that:

> If the Vendor cannot close by the Firm Closing Date, then the purchaser is entitled to delayed closing compensation (see Section 7 of the Addendum) and the Vendor must set a Delayed Closing Date.

18. "Delayed Closing Compensation" **is addressed** in section 7 of the Tarion Addendum ~~**addresses**~~ as follows:

> (a) The Vendor warrants to the Purchaser that, if Closing is delayed beyond the Firm Closing Date…then the Vendor shall compensate the purchaser up to a total amount of $7,500…
>
> (b) Delayed Closing Compensation is payable only if:
>
> (i) Closing occurs; or
>
> (ii) The Purchase Agreement is terminated or deemed to have been terminated under paragraph 10(b) of this Addendum.[11]

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[10] Augruso Affidavit, at paragraph 4(g), 5, and 6(d).

[11] Section 10(b) of the Tarion Addendum is not applicable in the case at bar. That section permits a purchaser to terminate the Agreement by written notice to the Vendor in the event that a Closing has not occurred by the Outside Closing Date. If the purchaser does not provide such written notice of termination, Section 10(b) provides that the Purchase Agreement continues to be binding on both parties. None of the Home Buyers have delivered notices to terminate the Agreements.

Development Timeline and Closing Dates

19. Saskin provided the following time estimates for obtaining the necessary development approvals from the City of Toronto and completing construction of each of the Vendors' projects:[12]

(a) Official Plan Amendment ("OPA") and Zoning By-law Amendment – 2 years

(b) OMB Appeal process if rezoning applications are initially rejected – 1 year

(c) Building Permit and Site Plan Approval – 6 to 9 months, if concurrent

(d) Plan of Subdivision – 1 year

(e) Servicing Plan – 6 months

(f) construction contract tendering process – approximately 2 months

(g) completion of construction:

(i) St. Clair Project – 8 months for first deliveries and 12 months to complete.

(ii) Lawrence Project – 7 months for first deliveries and 14 months to complete.

(iii) Mallow Project – 6 months for first deliveries and 13 months to complete.

(iv) Woodbine Project – 7 months for first deliveries and 12 months to complete.

[12] Saskin Examination, pages 35-40, questions 146-170.

(v) Bridlepath Project – 14 months for first deliveries and 20 months to complete.

20. Based on Saskin's time estimates, the Closing Dates set out by Urbancorp under the Agreements were entirely speculative, arbitrary, unrealistic, and incapable of being attained. Urbancorp did not produce any documentation to support the Closing Dates inserted in the Agreements.[13] The absence of any critical path schedules or any documentation supporting the Closing Dates in the Agreements suggests that Urbancorp was negligent to the point of recklessness in fixing the Closing Dates. Given Urbancorp's experience in the development industry, Urbancorp must have known that the Closing Dates were not achievable.

21. The table below sets out the dates on which each of the Vendors submitted the required development approval applications to the City of Toronto and the dates on which development approval and construction should have been completed for each project based on the estimates provided by Saskin:

	St. Clair	Lawrence	Mallow	Bridle Path	Woodbine
OPA + Zoning By-law Amendment Application Date	--- ---	Jan., 2014	Jan., 2015	Sept., 2014	Dec., 2014
OPA + Zoning By-law Amendment Approval (2 years)	June 10, 2015 (actual date of approval)	Jan., 2016	Jan., 2017	Sept., 2016	Dec., 2016
Building Permit + Site Plan Approval (6-9 months, if concurrent)	Dec., 2015 – Mar., 2016	Jun. –Sept., 2016	Jun. – Sept., 2017	Mar. - Jun., 2017	Jun. – Sept., 2017
Plan of Subdivision (1 year)	Dec., 2016 – Mar., 2017	Jun.-Sept., 2017	Jun.-Sept., 2018	Mar. – Jun., 2018	Jun. – Sept., 2018

[13] Saskin Examination, pages 160-162, questions 671-680.

	St. Clair	Lawrence	Mallow	Bridle Path	Woodbine
Servicing Plan (6 months)	June – Sept., 2017	Dec., 2017 - Mar., 2018	Dec., 2018 - Mar., 2019	Sept. - Dec., 2018	Dec., 2018 – Mar., 2019
Contract Tender (2 months)	Aug. – Nov., 2017	Feb., 2018 - May, 2018	Feb., 2019 - May, 2019	Nov., 2018 – Feb., 2019	Jan., 2019 – Apr., 2019
First Home Deliveries	(8 months) Apr. – Jul., 2018	(7 months) Sept. 2018 – Dec., 2018	(6 months) Aug., 2019 – Nov., 2019	(14 months) Jan., 2020 – Apr., 2020	(7 months) Aug., 2019 – Nov., 2019
Project Completion	(12 months) Aug. – Nov., 2018	(14 months) Apr., 2019 – Jul., 2019	(13 months) Mar., 2020 – June, 2020	(20 months) Jul., 2020 Oct., 2020	(12 months) Jan. 2020 – Apr., 2020
Tentative Closing/ Occupancy Date Under Agreements	December 16, 2016	May 31, 2016 Lawrence Maple (Platinum) October 31, 2017 (Lawrence Towns)	June 30, 2017	April 28, 2017	June 30, 2016
Outside Closing/ Occupancy Date Under Agreements	April 18, 2017	September 28, 2017 Lawrence Maple (Platinum) February 28, 2019 (Lawrence Towns)	October 30, 2018	April 28, 2018	October 30, 2017

22. As appears from the above table, the Closing Dates in the Agreements are 1 to 2 and half years earlier than the completion dates which flow from Saskin's evidence. The above estimates do not account for the additional time of approximately one year, which according to Saskin, would be required if a Vendor's rezoning application was rejected and an appeal to the OMB

required. These estimates also do not reflect Saskin's acknowledgment that Urbancorp, like any developer in the City of Toronto, experienced delays in obtaining development approval.[14]

23. As at the commencement of Urbancorp's insolvency proceedings in April 2016, Urbancorp had not started any actual construction of the homes, or any tendering process for the construction contracts required to complete the homes. Urbancorp had also not submitted any formal application for construction financing to finance construction of the homes, or even discussed construction financing of the Bridlepath or Lawrence developments with any potential lenders.[15]

Urbancorp's Precarious Financial Position

24. Urbancorp collected $15.6 million in the aggregate as deposits on account of the purchase prices for homes sold in the five developments in issue. Of that amount, only $9.5 million was invested in these projects. The balance was used elsewhere among the Urbancorp group of companies.[16]

25. The most recent financial statements produced by Urbancorp (Woodbine) Inc. and Urbancorp (Bridlepath) Inc. for the period ending December 31, 2014 reflect a shareholders' deficit for both companies. Nevertheless, in December 2015, Urbancorp further encumbered the real property owned by Urbancorp (Bridlepath) Inc. and Urbancorp (Woodbine) Inc., by granting a mortgage in the principal amount of $12 million. That mortgage was collateral security for funds advanced to other companies in the Urbancorp group. Neither Urbancorp (Bridlepath) Inc.

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[14] Saskin Examination, pages 34-35, question 144-147.

[15] Agreed Statement of Facts, para 11, incl.

[16] Saskin Examination, pages 27-27, questions 101-111.

nor Urbancorp (Woodbine) Inc. received any of the funds advanced under that collateral mortgage.[17] Their coffers were depleted.

26. The most recent financial information produced for Urbancorp Inc., including its wholly owned subsidiaries, Urbancorp (Lawrence) Inc., Urbancorp (St. Clair) Inc., and Urbancorp (Mallow) Inc., for the period ended December 31, 2015 are draft consolidated financial statements dated March 31, 2016. Those draft consolidated statements reflect a working capital deficit of approximately $22.3 million and a loss before income tax of $15,060,000.[18]

27. On March 4, 2016, Tarion Warranty Corporation ("Tarion") issued to each of the Vendors a Notice of Proposal to Refuse to Renew Registration (the "Tarion Notice") pursuant to the *Ontario New Home Warranty Plan Act*. On June 1, 2016, each of the Vendors formally withdrew their respective registration renewal applications with Tarion. The reasons stated in the Tarion Notice for its refusal to renew Urbancorp's registration include the following:

> The Registrar finds that Urbancorp cannot reasonably be expected to be financially responsible in the conduct of its undertaking and that the past conduct of Urbancorp's officer and director, Alan Saskin affords reasonable grounds for belief that Urbancorp's undertakings will not be carried on in accordance with law and with integrity and with honesty.[19]

28. In April and May 2016, Urbancorp filed Notices of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* and sought protection from creditors pursuant to the *Companies' Creditors Arrangement Act* ("*CCAA*"). In these proceedings, Urbancorp

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[17] Saskin Examination, pages 41-44, questions 175-183.

[18] Affidavit of Alan Saskin sworn May 18, 2016, Exhibit R; Saskin Examination, pages 121-124, questions 501-519.

[19] Agreed Statement of Facts, paras. 18-19, and Schedule "A".

acknowledged its inability to meet its liabilities generally as they became due, as well as its inability to raise the financing required to move forward with the construction of the homes sold to the Home Buyers. In light of its liquidity crisis, Urbancorp elected to proceed with a sale of the vacant lands which are the subject of the Agreements.[20]

29. The following table summarizes the profits projected by Urbancorp based on revenue from construction and sale of the homes, in comparison to the gain realized by Urbancorp from the sale of the vacant lands in September 2016:

	St. Clair	Lawrence	Mallow	Bridle Path	Woodbine	Total
Projected Profits based on Revenue from Sales to Purchasers[21]	$5,110,848	$9,338,948	$8,581,356	$10,000,000	$5,000,000	$38,031,152.00
September 2016 Sale Proceeds[22]	$15,150,000	$28,200,000	$21,300,000	$25,888,888	$13,300,000	$103,838,888.00
Carrying Amount as at September 2016[23]	$14,622,856	$14,738,730	$19,769,815	$16,065,075	$7,521,093	$72,717,569.00
Gain from Sale of Vacant Land in September 2016	$527,270.00	$13,461,230	$1,530,185	$9,800,000	$5,700,000	$31,018,685.00

[20] Affidavit of Alan Saskin sworn May 18, 2016 at para 15; Saskin Examination, Exhibit 10.

[21] Saskin Examination, pages 58-63, questions 236-261.

[22] Confidential Appendices 2b and 2d to the Monitor's Fifth Report to Court as CCCA Monitor of Urbancorp (St. Clair Village) Inc., Urbancorp (Mallow) Inc., Urbancorp (Lawrence) Inc., et al. dated September 8, 2016; Confidential Appendix 1 to the Monitor's Ninth Report to Court as CCCA Monitor of Urbancorp (St. Clair Village) Inc., Urbancorp (Mallow) Inc., Urbancorp (Lawrence) Inc., et al. dated November 11, 2016; Confidential Appendices 2a and 2b to the Trustee's Sixth Report to Court as BIA Proposal Trustee of Urbancorp (Bridlepath) Inc. and Urbancorp (Woodbine) Inc. dated September 8, 2016.

[23] Letter from Weir Foulds LLP dated March 8, 2017 in Answers to Undertakings.

30. Given Saskin's estimate of development and construction timelines (see paragraph 19, above), the projected profits from completion of construction and sale to Home Buyers could not even begin to be realized until 2018 and would not be completely realized until 2020. It appears that Urbancorp chose to breach the Agreements in an attempt capitalize on the increase in the value of the vacant lands.[24] Having made that election, Urbancorp cannot escape its resulting obligation to the Home Buyers to compensate them for the damages caused by its anticipatory breach of contract.

PART III - ISSUES, LAW & AUTHORITIES

31. In *Tercon Contractors Ltd. v. British Columbia Minister of Transportation & Highways*,[25] the Supreme Court of Canada set out the legal principles governing the enforceability of an exclusion clause as follows:

> The first issue, of course, is whether as a matter of interpretation the exclusion clause even applies to the circumstances established in evidence. This will depend on the Court's assessment of the intention of the parties as expressed in the contract. If the exclusion clause does not apply, there is obviously no need to proceed further with this analysis. If the exclusion clause applies, the second issue is whether the exclusion clause was unconscionable at the time the contract was made, "as might arise from situations of unequal bargaining power between the parties" (Hunter, at p. 462). This second issue has to do with contract formation, not breach.
>
> If the exclusion clause is held to be valid and applicable, the Court may undertake a third enquiry, namely whether the Court should nevertheless refuse to enforce the valid exclusion clause because of the existence of an overriding public policy, proof of which lies on the party seeking to avoid enforcement of the clause, that

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[24] Affidavit of Alan Saskin sworn May 18, 2016, para 12.

[25] *Tercon Contractors Ltd. v. British Columbia Minister of Transportation & Highways,* 2010 SCC 4 at paras. 122 to 123.

outweighs the very strong public interest in the enforcement of contracts.

32. The analytical framework in *Tercon* requires determination of the following three issues:

(a) As a matter of ordinary contractual interpretation, does the Exclusion Clause apply to the circumstances established by the evidence?

(b) If so, was the Exclusion Clause unconscionable at the time the Agreements were made?

(c) If not, should the court decline to enforce the Exclusion Clause because of an overriding public policy concern?

Issue Number 1: The Exclusion Clause Does Not Apply

(a) Applicable Rules of Construction

33. It is a fundamental principle of contractual interpretation that individual words and phrases must be read in the context of the entire agreement, and in light of its purposes and commercial context.[26] The purpose of each Agreement was that Urbancorp would construct a home and convey it to the Home Buyers. Specifically, Urbancorp agreed to "take all reasonable steps to complete construction of the home on the Property and to Close without delay".

34. Another fundamental aspect of contractual interpretation is that meaning be given to all of the words in a contract, such that the court should reject an interpretation that would render

[26] *Tercon, supra*, at para 64.

one of its terms ineffective. Put another way, "words in a contract are presumed to have meaning."[27]

35. The interpretation of the Exclusion Clause proposed by the Monitor effectively gives no meaning to the words "**on or before the Closing Date**" and "**on the Closing Date"** used in the Exclusion Clause.

36. The Monitor's interpretation of the Exclusion Clause is also inconsistent with the express limitation of the Vendor's liability to the "**costs** set out in the Tarion Addendum". It is submitted that those "costs" refer to "$7500.00, including $150 a day for living expenses, and other expenses incurred by a purchaser", payable by a Vendor as "Delayed Occupancy Compensation" pursuant to Section 7 of the Tarion Addendum.

37. Significantly, Section 7 of the Tarion Addendum expressly provides that the delayed closing compensation is payable only in the event that a Closing occurs, and does not apply where there is no Closing.

38. When the Exclusion Clause is construed in the context of the entire Agreement, including the Tarion Addendum, it is clear that the limitation of liability in the Exclusion Clause is intended to apply only in cases of a delay in Closing. It is therefore respectfully submitted that the Monitor's interpretation of the Exclusion Clause should be rejected.

39. In *Karroll v. Silver Star Mountain resorts Ltd.*,[28] McLauchlin C. J. S. C.(as she then was) stressed the importance of the contractual context within which an exlusion clause is used:

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[27] Geoff R. Hall, Canadian Contractual Interpretation Law, 3rd Edition, 2016, at p. 16; *Pass Creek Enterprises Ltd. v. Kootenay Custom Log Sort Ltd.* 2003 BCCA 580, at para 17.

> The effect of the exclusion clause in relation to the nature of the contract is important because if it is contrary to the party's normal expectations it is fair to assume that he does not intend to be bound by the term.

40. In the context of an agreement for the sale of land, it is generally understood that any increase in the value of the land above the purchase price accrues to the benefit of the purchaser, and the purchaser takes the corresponding risk of any diminution in the value of the land below the purchase price.[29] The Exclusion Clause, as interpreted by the Monitor, is contrary to the ordinary allocation of risk described above. It is also inconsistent with the measure of compensation ordinarily recoverable by an innocent purchaser from a vendor in default. Therefore, it is fair to assume that the Home Buyers did not intend to be bound by the Exclusion Clause as construed by the Monitor.

(b) Contra Proferentem

41. Should this court find that the meaning of the Exclusion Clause is ambiguous, the doctrine of *contra proferentem* should be applied to resolve the ambiguity against Urbancorp.[30] That doctrine has been summarized as follows:

> If there is any doubt as to the meaning and scope of the excluding or limiting term, the ambiguity will be resolved against the party who has inserted it and who is now relying on it. As he seeks to protect himself against liability to which he would otherwise be

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[28] *Karroll v. Silver Star Mountain Resorts Ltd.*, (1988), 33 B.C.L.R. (2d) 160, at para 25.

[29] S.M. Waddams, The Law of Contracts, 6th Edition, 2010 at page 269.

[30] *Tercon*, *supra* at para 79.

> subject, it is for him to prove that his words clearly and aptly describe the contingency that has in fact arisen.[31]

42. It is respectfully submitted that Urbancorp has failed to discharge its onus of establishing that the language in the Exclusion Clause clearly applies in these circumstances.

43. When interpreting "contracts of adhesion", the *contra proferentem* doctrine takes on additional significance, and there is every reason to apply it when construing such contracts.[32]

44. The Agreements in the case at bar fall within the category of "contracts of adhesion", which are defined as having the following five characteristics:[33]

(a) Drafted by one party to the transaction;

(b) On a form regularly used by the drafter;

(c) Presented to the adherent on a take-it-or-leave-it basis;

(d) One in which the adherent enters into relatively few such transactions as compared with the drafting party; and

(e) One in which the principal obligation of the adherent is the payment of money.[34]

45. Finally, the Agreements are consumer contracts, to which the *contra proferentem* rule is especially applicable. Indeed, in the context of the sale of goods or services to consumers, the

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[31] *Consolidated Bathurst Export, Ltd.* v. *Mutual Boiler Machinery Insurance Company*, 1979 CarswellQue 157 at para 25.

[32] *Zurich Life Insurance Co. of Canada v. Davies,* [1981] 2 SCR 670, at para 5 (SCC).

[33] *Brissette Estate v. Westbury Life Insurance Co.,* [1992] 3 S.C.R. 87, at para 37 (SCC).

[34] *Ibid.*

Ontario *Consumer Protection Act, 2002* mandates the application of the *contra proferentem* doctrine, and reflects the policy goal of protecting consumers.[35]

46. In the context of standard form consumer contracts, there is also a special onus on the supplier to point out any terms in a printed form which differ from what the consumer might reasonably expect. In *Tilden Rent-A-Car Co. v. Clendenning*,[36] Dubin, J.A. held that:

> a party seeking to rely on the terms of a standard form contract which contain stringent and onerous provisions must first take reasonable measures to draw such terms to the attention of the other party, and in the absence of such reasonable measures, it is not necessary for the party denying knowledge of such term to prove either fraud, misrepresentation or *non est factum*.
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> ...
>
> We do not allow printed forms to be made a trap for the unwary.

47. In the case at bar, Urbancorp failed to take any steps to draw the Exclusion Clause to the attention of the Home Buyers. Moreover, the Exclusion Clause is buried within a 41 page Agreement, is not capitalized or bolded, and there is nothing in the Agreements which would draw the clause to the Home Buyers' attention.

48. In *Consolidated Bathurst Export, Ltd. v. Mutual Boiler Machinery Insurance Company*, after considering the application of the doctrine of *contra proferentem,* Estey J., stated:

> Even apart from the doctrine of *contra proferentem*, the normal rules of construction lead a court to search for an interpretation which, from the whole of the contract, would appear to promote or advance the true intent of the parties at the time of entry into the contract.... . Where words may bear two constructions, the more reasonable one, that which produces a fair result, must certainly be

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[35] *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Schedule A, s. 11.

[36] *Tilden Rent-A-Car Co. v. Clendenning,* 1978 CarswellOnt 125 at paras 33 and 35.

> taken as the interpretation which would promote the intention of the parties. Similarly, an interpretation which defeats the intentions of the parties and their objective in entering into the commercial transaction in the first place should be discarded in favour of an interpretation of the policy which promotes a sensible commercial result.[37]

49. The Ontario Court of Appeal applied the principles outlined above in circumstances similar to those in the case at bar in *Aita v Silverstone Towers Ltd.*[38]. In that case, the vendor under a contract for the purchase of a condominium, returned the purchaser's deposit cheque and sold the condominium to another party. When the purchaser sued, the vendor relied upon a limitation of liability clause in the contract, which provided that:

> In the event the transaction is not completed by reason of default on the part of the Vendor, the liability of the Vendor shall be limited to the return to the Purchaser of the deposit monies herein.

50. The Ontario Court of Appeal held that the vendor could not rely upon the limitation provision. In delivering the judgment of the Court, Arnup J.A. stated at paras 22 and 24:

> "This is an extraordinary clause. On the defendant's interpretation, it can refuse, arbitrarily, capriciously, or wrongfully, to carry out the bargain it made, and the purchaser's only remedy is to get his money back…
>
> I do not accept the defendant's construction of that paragraph as limiting its liability, even in the event of its arbitrary refusal to carry out the contract. In my view, the paragraph was intended to cover default by the defendant in carrying out a term of the contract that required it to do something. This is the ordinary meaning of the word "default". **The paragraph was not intended to cover a complete and outright repudiation of the entire contract. As the trial Judge pointed out, the defendant's construction makes its promises meaningless. In my words, it makes the defendant's purported agreement a mere sham; it**

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[37] *Consolidated Bathurst, supra*, at para 26.

[38] *Aita v Silverstone Towers Ltd.*, 1978 CasrswellOnt 126 1405 (ONCA) at para 2.

> **could perform or not, as it chose. This cannot have been the intention of the parties."**
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> [Emphasis added]

51. The decision of the Ontario Court of Appeal in *1465152 Ontario Limited v. Amexon Development Inc.*[39] is a more recent example of the court's approach to the interpretation of a limitation of liability clause. In *Amexon*, the landlord wrongfully sought to evict a tenant and demolish a building for redevelopment. When the tenant sought an injunction to prevent its eviction, the landlord relied on the following provision in an effort to limit the tenant's remedy to damages:

> Whenever the Tenant seeks a remedy in order to enforce the observance or performance of one of the terms, covenants and conditions contained in this Lease on the part of the Landlord to be observed or performed, the Tenant's only remedy shall be for such damages as the Tenant shall be able to prove... it has suffered as a result of a breach ...

52. Brown J.A., on behalf of the court, rejected the landlord's position, citing the following comments of Myers J.:

> But this is not just any breach. The Landlord is walking away from its fundamental promise. This is not a balanced win-win but an effort by the Landlord to make more money by denying or rescinding its bargain. Allowing landlords to evict tenants because something better has come along is fraught with a risk of abuse.[40]

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[39] *1465152 Ontario Limited v. Amexon Development Inc.*, 2015 ONCA 86; leave to appeal refused [2015] S.C.C.A. No 102 (S.C.C.).

[40] *Amexon, supra* at para 9.

53. The Court of Appeal concluded that a commercially unreasonable interpretation of the clause would result if the landlord could terminate the lease without any contractual justification and prevent the tenant from restraining its unlawful conduct. Brown J.A. stated:

> Much clearer language would be required in order to restrict the remedies available against the Landlord when it acted arbitrarily and without any basis in the rights conferred on it under the lease.[41]

54. Similarly, the Home Buyers submit that much clearer language would be required in the case at bar to deprive the Home Buyers of their ordinary right to damages in the event of Urbancorp's anticipatory breach of contract.

Issue Number 2 - Unconscionability

55. If the Exclusion Clause is found to be applicable, the Home Buyers submit that the Exclusion Clause should not be enforced because it was unconscionable at the time the contract was made.

56. Madam Justice McLachlin (as she then was) explained the elements of unconscionability as follows:[42]

> Two elements must be established before a contract can be set aside on the grounds of unconscionability. The first is proof of inequality in the position of the parties arising out of some factor such as ignorance, need or distress of the weaker, which leaves him or her in the power of the stronger. The second element is proof of substantial unfairness in the bargain obtained by the stronger person. The proof of these circumstances creates a presumption of fraud which the stronger must repel by proving the bargain was fair, just and reasonable: *Morrison v. Coast Fin. Ltd.*

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[41] *Amexon, supra* at para 16.

[42] *Principal Investments Ltd. v. Thiele Estate,* 1987 CarswellBC 76 (B.C. C.A.) at para 19.

(1965), 54 W.W.R. 257, 55 D.L.R. (2d) 710 (B.C.C.A.); *Harry v. Kreutziger* (1978), 9 B.C.L.R. 166, 95 D.L.R. (3d) 231 (C.A.).

57. More recently, the Supreme Court of Canada described the doctrine of unconscionability in the context of limitation clauses as follows:[43]

> Under the doctrine of unconscionability, a limitation of liability clause will be unenforceable where one party to the contract has abused its negotiating power to take undue advantage of the other. This doctrine is generally applied in the context of a consumer contract or contract of adhesion.

58. In the 2016 case of *Singh v. Trump*,[44] the Ontario Court of Appeal held that "it would be unconscionable and would shock the conscience" to allow a party to use an entire agreement or other exculpatory clause hidden in an agreement for the sale of land to escape liability for misrepresentation…" In support of its conclusion, the court noted that:

> The entire agreement clause functioned as a trap to these unsurprisingly unwary purchasers. Neither the Singhs nor the Lees had anything more than minimal investing experience. Their real estate experience was limited to the purchase of their family homes, although Mr. Lee worked as a mortgage agent (as did Ms. Singh beginning in 2008). They would have known little or nothing regarding luxury hotel rental rates and occupancy and both the Singhs and the Lees signed the agreements of purchase and sale without consulting a lawyer.

59. The Home Buyers submit that the facts in the case at bar are clearly conducive to a finding of inequality of bargaining power. At the time the Agreements were entered into, the residential real estate market in Toronto was clearly a seller's market, with demand exceeding supply. A further imbalance in bargaining strength was created as a result of Urbancorp's size,

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[43] *ABB, Inc. v. Domtar, Inc.*, 2007 SCC 50 at para. 82

[44] *Singh v. Trump*, 2016 ONCA 747 at paras. 114, 116 and 120.

commercial sophistication, access to resources, and its extensive experience and expertise in the development and sale of residential real estate, in comparison to the Home Buyers' relative lack of sophistication, limited education, resources and minimal experience in real estate transactions.

60. If the Exclusion Clause applies in the manner suggested by the Monitor, the bargain obtained by Urbancorp would cause substantial unfairness to the Home Buyers. In similar circumstance in *Martel v. Mohr*,[45] the court refused to enforce a clause in an agreement to purchase a home which provided that if the vendor was in breach, the purchaser was entitled to the return of the deposit and the agreement would otherwise be void. The court commented that "enforcement of the clause would produce a "grossly unfair advantage" to the defendants, as they would be able to cancel the "agreement" at any time with almost no liability for that breach."[46] The court held that the return of the deposit, plus interest to the purchasers "**was unconscionable in comparison to their loss**". It was not a pre-estimation of damages as it provided no damages at all, other than the return of their own money, plus interest.[47]

61. If the interpretation of the Exclusion Clause proposed by the Monitor is accepted by the court, Urbancorp would have the ability to cancel the Agreements at any time, with no liability for damages flowing from its breach. Such a result is clearly unfair, and would effectively create an option in favour of Urbancorp to perform or not perform as it pleased.

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[45] *Martel v. Mohr,* 2011 SKQB 161 (Sask. Q.B.).

[46] *Martel v. Mohr, supra* at para. 91.

[47] *Ibid.* at para 104

Issue Number 3 - Public Policy

62. The courts have consistently restricted the rights of vendors under agreements for the sale of land to rely upon rescission or cancellation clauses where the vendor has acted "capriciously, unreasonably, or recklessly" in entering into the contract or failed to make a *bona fide* effort to satisfy its obligations. In such cases, the vendor's conduct and reasons for terminating a contract are of interest to the court.[48]

63. In *Suntract Holdings Ltd. v. Chassis Service & Hydraulics Ltd.*, Justice Lax reviewed the court's equitable jurisdiction to refuse the remedy of rescission to a vendor of land whose conduct fell short of what the law requires. In describing the nature of the conduct which "falls short", Justice Lax cited with approval the following comments:

> It may stop short of fraud, it may be consistent with honesty; but, at the same time, there must be a falling short on his part – he must have done less than an ordinarily prudent man, having regard to his relations to another person, when dealing with him, is bound to do; and therefore where, knowing the exact facts, he had recklessly made a description of them which would mislead another person who did not know as much as himself (even though he thought that person might know as much as himself), there is a clear failure of duty on the part of the vendor which disentitles him to say that a clause introduced into the contract for his benefit is introduced to meet such cases as that which has arisen here.
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> ...
>
> Thus, it has been said that a vendor, in seeking to rescind, must not act arbitrarily, or capriciously, or unreasonably. Much less can he act in bad faith... Above all, perhaps he must not be guilty of "recklessness" in entering into his contract, a term frequently resorted to in discussions of the legal principle and which their Lordship understand to connote an unacceptable indifference to the situation of a purchaser who is allowed to enter into a contract with the expectation of obtaining a title which the vendor has no

[48] *Suntract Holdings Ltd. v. Chassis Service & Hydraulics Ltd.*, 1997 CarswellOnt 4804 at paras. 30 - 33.

> reasonable anticipation of being able to deliver. A vendor who has so acted is not allowed to call off the whole transaction by resorting to the contractual right of rescission.

64. Justice Lax concluded that whether the test of recklessness is "unacceptable indifference" or "falling short", it was met in that case, such that equity would not permit the rescission clause to be enforced in the circumstances.

65. Similarly, the Ontario Court of Appeal in *Hurley v. Roy*,[49] refused to allow a vendor to invoke a rescission clause where the vendor was unwilling to remove a valid objection to title raised by the purchaser. In that case, the court stated:

> The provision enabling the vendor to rescind has no application to the facts … this provision was not intended to make the contract one which the vendor can repudiate at his sweet will. The policy of the court ought to be in favour of the enforcement of honest bargains and it should be remembered that, when a contract deliberately made is not enforced because of some hardship the agreement may impose on one contracting party, the effect is to transfer the misfortune to the shoulders of the other party, though he is admittedly entirely innocent.

66. *Great Jordan Realty Group v. Genesis Marketing Organization, Ltd.*,[50] involved facts very similar to those in the case at bar. In that case, a developer unsuccessfully sought to rely upon a termination clause that provided that if services were not installed by a specified deadline, the transaction would be terminated and the purchaser would be entitled to the return of its deposit. In granting judgment in favour of the purchaser, the court found that the vendor failed to meet its obligation to use reasonable efforts to complete installation of services by the contract deadline and recklessly agreed to the deadline:

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[49] *Hurley v. Roy,* 1921 CarswellOnt 243 at para. 2.

[50] *Great Jordan Realty Group v. Genesis Marketing Organization, Ltd.*, 1977 15 O.R. (2nd)701 at paras. 65 and 67.

> It is obvious that the basis on which [the vendor] Genesis set the due date was insubstantial and speculative. That in itself could be recklessness and it is obvious as well that the factors that caused Genesis to fail were unknown to Genesis at the time it chose the date of April 19, 1974, and that Genesis had made no real inquiry into them.
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> ...
>
> They made no such inquiries. When they signed the contract they had no real reason to think they could complete it on time. They signed the contract "blind", as it were, with an almost deliberate blindness.

67. Similarly in *Borthwick v. St. James Square Associates, Inc.*,[51] a defendant condominium developer was found to have recklessly set an interim occupancy date in light of existing information. As a result, the developer did not have a right to termination, notwithstanding the wording of the purchase agreements permitting it to terminate if the condominium development was not completed within 14 months.

68. In *Freedman v Mason*,[52] the Supreme Court of Canada held that a rescission clause permitting a vendor to repudiate the transaction in the event that he was "unable or unwilling" to remove a defect in title, did not "**enable a person to repudiate a contract for a cause which he himself has brought about**." At para 6 of his decision, Judson J. stated:

> A vendor who seeks to take advantage of the clause must exercise his right reasonably and in good faith and not in a capricious or arbitrary manner. This measure of his duty is the minimum standard that may be expected of him, and there are cases where a cause which might otherwise be valid as justifying rescission will not be available to him if he has acted recklessly in entering into a contract to convey more than he is able.

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[51] *Borthwick v. St. James Square Associates, Inc.,* 1989 CarswellOnt 2148.

[52] *Freedman v. Mason* [1958] S.C.R. 483, 14 D.L.R. (2d) 529

69. The Home Buyers submit that Urbancorp acted recklessly in entering into the Agreements by undertaking an obligation to complete the transactions of purchase and sale on the Closing Date (as defined in the Homebuyer Agreements), when it knew or ought to have known that construction of the homes could not be completed by those dates.

70. In its recent decision in *Bhasin v. Hrynew,*[53] the Supreme Court of Canada cited *Freedman v. Mason* when recognizing the "organizing principle of good faith", and duty of honest performance of contractual obligations. The Home Buyers submit that Urbancorp owed them a duty of good faith in the performance of its obligations under the Agreements. That duty required Urbancorp to conduct its business in a financially responsible manner so as to permit it to meet its ongoing financial obligations, and to take all reasonable steps to maintain its registration with Tarion. Urbancorp clearly failed in that duty.

71. In the event that the Home Buyers remedy is restricted to the return of their deposits, the Home Buyers will suffer significant financial and personal hardship. Given the increase in the price of residential real estate in Toronto subsequent to the date of the Agreements, in the absence of compensation for Urbancorp's failure to perform, the majority of the Home Buyers will not be able to purchase comparable homes, and in many cases, will be unable to purchase a home at all.

72. There is a public policy interest in protecting Home Buyers and ensuring that developers of residential real estate conduct themselves and their businesses in a fair, financially responsible, and transparent manner. This public policy is reflected in the *Ontario New Home*

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[53] *Bhasin v. Hrynew*, 2014 SCC 71.

Warranties Plan Act, R.S.O. 1990, c. O.31 (the "***Act***"), which provides that "no person may act as a vendor or builder of a new home unless the person is registered" under the *Act*.[54]

73. The *Act* prohibits the registration of any person as a vendor or builder where:

> (a) having regard to the applicant's financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of the applicant's undertakings;
>
> (b) the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on the applicant's undertakings in accordance with law and with integrity and honesty;
>
> (c) the applicant is a corporation and,
>
> > (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its undertakings, or
> >
> > (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its undertakings will not be carried on in accordance with law and with integrity and honesty; ...

74. Urbancorp has admitted by these insolvency proceedings that it is unable to satisfy the above requirements of registration under the *Act*. In such circumstances, it would be unconscionable, and contrary to public policy to permit Urbancorp to transfer the hardship resulting from Urbancorp's insolvency to the innocent Home Buyers, and allow Urbancorp to usurp for its own benefit, the appreciation in the value of the properties subject to the Agreements.

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[54] See section 6 of the *Act*.

75. This case is not a priority contest between secured creditors and unsecured purchasers. This case is a contest between Urbancorp, the Homebuyers, and other unsecured creditors, specifically, the Israeli bond holders.

76. The Israeli bond holders have many avenues of recovery against the numerous Urbancorp companies and estates. In contrast, the Homebuyers have claims only against the specific Vendor with whom they contracted. It is by no means clear that the Israeli bond holders will not be repaid in full, even if the Homebuyers' claims for damages are allowed. This is an important consideration for the court when weighing the equities.

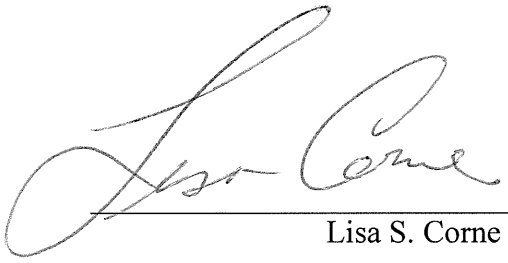
PART V - ORDER REQUESTED

77. For all of the foregoing reasons, the Homebuyers respectfully request an Order:

(a) Setting aside the disallowance by the Monitor of the Homebuyers' claims for damages in excess of the deposits; and

(b) Awarding costs of this motion to the Homebuyers payable out of the Urbancorp estates.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of April, 2017.



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SCHEDULE "A"

LIST OF AUTHORITIES

1. Paul Perell, Lectures in Real Estate Transactions, Canada Law Book, 2011

2. *Tercon Contractors Ltd. V. British Columbia Minister of Transportation & Highways*, 2010 SCC 4

3. Geoff R. Hall, Canadian Contractual Interpretation Law, 3rd Edition, 2016

4. *Pass Creek Enterprises Ltd. v. Kootenay Custom Log Sort Ltd.* 2003 BCCA 580

5. *Karroll v. Silver Star Mountain Resorts Ltd.*, (1988), 33 B.C.L.R. (2d) 160

6. S.M. Waddams, The Law of Contracts, 6th Edition, 2010

7. *Consolidated Bathurst Export, Ltd.* v. *Mutual Boiler Machinery Insurance Company* 1979 CarswellQue 157

8. *Brissette Estate v. Westbury Life Insurance Co.,* [1992] 3 S.C.R. 87

9. *Zurich Life Insurance Co. of Canada v. Davies,* [1981] 2 SCR 670

10. *Singh v. Trump,* 2016 ONCA 747

11. *Tilden Rent-A-Car Co. v. Clendenning,* 1978 CarswellOnt 125.

12. *Aita v Silverstone Towers Ltd.,* 1978 CarswellOnt 126 (ONCA)

13. *1465152 Ontario Limited v. Amexon Development Inc.,* 2015 ONCA 86; leave to Appeal refused [2015] S.C.C.A. No 102 (S.C.C.).

14. *Principal Investments Ltd. v. Thiele Estate*, 1987 CarswellBC 76 (B.C. C.A.)

15. *ABB, Inc. v. Domtar, Inc.,* 2007 SCC 50

16. *Martel v. Mohr,* 2011 SKQB 161 (Sask. Q.B.).

17. *Freedman v Mason* [1958] S.C.R. 483, 14 D.L.R. (2d) 529

18. *Bhasin v. Hrynew*, 2014 SCC 71

19. *Hurley v. Roy,* 1921 CarswellOnt 243

20. *Great Jordan Realty Group v. Genesis Marketing Organization, Ltd.,* 1977 15 O.R. (2nd) 701

21. *Borthwick v. St. James Square Associates, Inc.,* 1989 CarswellOnt 2148

22. *Suntract Holdings Ltd. v. Chassis Service & Hydraulics Ltd.,* 1997 CarswellOnt 4804

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Consumer Protection Act, 2002, S.O. 2002, c. 30, Sched. A

Ambiguities to benefit consumer

11 Any ambiguity that allows for more than one reasonable interpretation of a consumer agreement provided by the supplier to the consumer or of any information that must be disclosed under this Act shall be interpreted to the benefit of the consumer. 2002, c. 30, Sched. A, s. 11.

Ontario New Home Warranties Plan Act, R.S.O. 1990, c. O.31

Registration required

6. No person shall act as a vendor or a builder unless the person is registered by the Registrar under this Act. R.S.O. 1990, c. O.31, s. 6.

Registration of vendors and builders

7. (1) An applicant is entitled to registration by the Registrar except where,

(a) having regard to the applicant's financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of the applicant's undertakings;

(b) the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on the applicant's undertakings in accordance with law and with integrity and honesty;

(c) the applicant is a corporation and,

(i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its undertakings, or

(ii) the past conduct of its officers or directors affords reasonable grounds for belief that its undertakings will not be carried on in accordance with law and with integrity and honesty; or

(d) in the case of an application for registration as a builder, the applicant does not have sufficient technical competence to consistently perform the warranties. R.S.O. 1990, c. O.31, s. 7 (1).

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF URBANCORP (WOODBINE) INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF URBANCORP (BRIDLEPATH) INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No.: 31-2114843
Court File No.: 31-2114850

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP TORONTO MANAGEMENT INC., URBANCORP (ST. CLAIR VILLAGE) INC., URBANCORP (PATRICIA) INC., URBANCORP (MALLOW) INC., URBANCORP (LAWRENCE) INC., URBANCORP DOWNSVIEW PARK DEVELOPMENT INC., URBANCORP (952 QUEEN WEST) INC., KING RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC., BRIDGE ON KING INC. (collectively, the "Applicants") AND THE AFFILIATED ENTITIES IN SCHEDULE "A" HERETO

Court File No. CV-16-11389-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

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