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. AND URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KINGTOWNS INC. AND DEAJA PARTNER (BAY) INC. (COLLECTIVELY, THE "APPLICANTS")

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

FACTUM OF THE FOREIGN REPRESENTATIVE

PART I – OVERVIEW

1. On December 7, 2015, Urbancorp Inc. ("**UCI**"), an entity within the Urbancorp Group of Companies (the "**Urbancorp Group**"), successfully raised $64 million on the Tel Aviv Stock Exchange through a public bond issuance (the "**Bond Issuance**"). The majority of the Bond Issuance proceeds were loaned to subsidiaries of UCI to repay existing secured, higher interest debt, with the balance being used to fund the Urbancorp Group's continued operations.

2. As a condition of the Bond Issuance, the controlling shareholders of the Urbancorp Group, Alan Saskin and his family, covenanted in the prospectus prepared in connection with the Bond Issuance (the "**Prospectus**") to assign to UCI, *inter alia*, $8 million of receivables, which were evidenced by an $8 million promissory note dated December 15, 2014, issued by TCC/Urbancorp (Bay) Limited Partnership ("**TCC Bay**") in favour of Urbancorp Toronto Management Inc. ("**UTMI**") (the "**2014 Promissory Note**").

3. On December 11, 2015, shortly after the Prospectus had been issued but before the Bond Issuance had been completed, TCC Bay issued two promissory notes (collectively, the "**2015 Promissory Notes**") in the amounts of $6 million and $2 million, which were subsequently

assigned to UCI and to Urbancorp Realty Co. ("**Realtyco**"), for the benefit of UCI, in order to satisfy this obligation. The 2015 Promissory Notes replaced the 2014 Promissory Note.

4. In early 2016, the Urbancorp Group began experiencing financial difficulties and numerous of its entities sought creditor protection under the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). At around the same time, the District Court in Tel Aviv-Jaffa, at the behest of the indenture trustee of the bonds, appointed Guy Gissin as the functionary of UCI pursuant to Israel's insolvency regime. These Israeli proceedings were subsequently recognized as foreign main proceedings under the CCAA by the Ontario Superior Court of Justice and Mr. Gissin was confirmed as the Foreign Representative of UCI (the "**Foreign Representative**").

5. On November 8, 2016, the Foreign Representative submitted a proof of claim to KSV Kofman Inc., the monitor in the Applicants' CCAA proceedings (the "**Monitor**"), in respect of the $6 million, plus accrued interest, owing under the promissory note assigned to UCI (the "**$6 Million Promissory Note**").[1] The Monitor disallowed this proof of claim on December 9, 2016, on the basis that, *inter alia*, the 2015 Promissory Notes were not supported by consideration as, due to various intercompany transactions, there was no debt owing by the issuer at the time it issued the promissory notes.

6. The Foreign Representative has brought this motion to set aside the Monitor's disallowance and to ensure that the $8 million owing under the 2015 Promissory Notes is paid to UCI for the benefit of the bondholders, as the Bond Issuance contemplated.

7. There are sufficient funds in TCC Bay to pay all allowed claims. Should the Monitor's disallowance not be set aside, the perverse result that likely follows is that proceeds that UCI would otherwise be entitled to under the 2015 Promissory Notes will instead flow to Alan Saskin's wife, Doreen Saskin, through Vestaco Investments Inc. ("**Vestaco**"), the limited partner of TCC Bay as nominee for Doreen Saskin. Such a result would be grossly unjust and inequitable given that the beneficiaries of these proceeds had agreed to assign the 2015 Promissory Notes to UCI and, at all times, have maintained their validity and enforceability.

[1] It being accepted that the same principles should apply to the $2 million promissory note (the "**$2 Million Promissory Note**") assigned to Realtyco for the ultimate benefit of UCI.

Alan Saskin and his family should not be allowed to benefit from false representations and promises to the detriment of the bondholders who reasonably relied on them.

PART II – FACTS

8. The facts with respect to this Motion are more fully set out in the First and Third Report of the Foreign Representative and the Sixth Report and Supplement of the Monitor. Capitalized terms not defined herein shall have the meanings ascribed to them in the Foreign Representative's and the Monitor's Reports.

The Issuance of the Promissory Notes

9. On June 10, 2013, UTMI, TCC Bay, and Urbancorp Downsview Park Development Inc. ("**Downsview**"), all members of the Urbancorp Group, entered into a consulting agreement (the "**Original Fee Agreement**") wherein TCC Bay agreed to pay UTMI a management fee of $9.8 million in the event that Downsview's 49% interest in certain properties was sold for more than $18 million. The Original Fee Agreement was entered into to reduce the tax consequence of the sale, at the advice of MNP, the accountants to the Urbancorp Group.[2]

10. As the properties were sold for a price in excess of $18 million, TCC Bay became liable to UTMI for the management fee of $9.8 million.[3] In December of 2013, TCC Bay paid $1.8 million, plus HST, to UTMI in partial satisfaction of this liability. TCC Bay's 2013 financial statements reflect this $1.8 million payment for management expenses in the Statement of Earnings. The remaining $8 million was deferred and kept as a separate liability in order to avoid triggering an immediate HST liability for the balance. [4]

11. On December 15, 2014, TCC Bay issued an $8 million promissory note (the "**2014 Promissory Note**") to UTMI for the $8 million balance of the management fee.[5] TCC Bay's

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[2] Transcript of the Examination of Alan Saskin on April 6, 2017 [*AS Transcript*], Q. 152.

[3] AS Transcript, Q. 149-, 150 & 151.

[4] MNP Reponses to Questions submitted by the Foreign Representative, dated April 10, 2017 [*MNP Response*], Q. 8.

[5] Sixth Report of the Monitor dated March 21, 2017, at Section 6 [*Monitor's Sixth Report*].

2014 financial statements reflect this $8 million management fee in the Statement of Earnings.[6] There is no reference in the 2014 Promissory Note to the terms of the Original Fee Agreement.[7]

12. By agreement dated June 1, 2015 (the "**Amendment Agreement**"), the Original Fee Agreement was amended to reduce the management fee by $3 million to $6.8 million, plus HST.[8] The Amendment Agreement expressly provides that the total fee payable by TCC Bay to UTMI as of June 1, 2015, is $6.8 million, plus HST. No changes were made to the 2014 Promissory Note as a result of any amendments to the Original Fee Agreement.[9]

13. Alan Saskin has confirmed that he believed that $8 million remained outstanding under the 2014 Promissory Note as at the time of the Bond Issuance.[10]

14. On December 11, 2015, while the Bond Issuance in Israel was in the process of being completed, the 2014 Promissory Note was replaced by the $6 Million Promissory Note and the $2 Million Promissory Note, with the $6 Million Promissory Note assigned to UCI, and $2 Million Promissory Note assigned to Realtyco for the ultimate benefit of UCI.[11] The 2014 Promissory Note was replaced with two notes for tax purposes in order to avoid a capital gain on the transfer of certain assets to subsidiaries of UCI.[12]

15. The Monitor has challenged the validity and enforceability of the 2015 Promissory Notes. In doing so, the Monitor incorrectly relies on the transactions recorded in the intercompany account between UTMI and TCC Bay (the "**Intercompany Account**") in 2015, as a result of which the Intercompany Account reflects a balance of $527,655 owing by UTMI to TCC Bay at the time that the 2015 Promissory Notes were issued.

16. UTMI is the management company for the Urbancorp Group.[13] It employs all of the employees who are then contracted out to various entities in the Urbancorp Group to work on

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[6] Appendix "L" to the Sixth Report of the Monitor.

[7] Appendix "A" to the First Report of the Foreign Representative dated February 22, 2017 [*First Report of the Foreign Representative*]

[8] Appendix "N" to the Monitor's Sixth Report.

[9] AS Transcript, Q. 232, 233, 234, 235 & 236.

[10] AS Transcript, Q. 289.

[11] Appendix "A", "B" & "C" to the First Report of the Foreign Representative.

[12] MNP Response, Q. 14.

[13] MNP Response, Q. 1; AS Transcript, 206.

their respective projects.[14] UTMI also holds the excess cash from the Urbancorp Group and funds the cash needs of various Urbancorp Group entities in respect of their various projects.[15] Consequently, the Intercompany Account reflects various ordinary course transactions between UTMI and TCC Bay.[16]

17. MNP, the long-standing accountants for the Urbancorp Group, have confirmed that the entries in the Intercompany Account in 2015 are not accurate as they have not been subject to year-end adjustments.[17]

18. The transactions posted in the Intercompany Account were recorded incorrectly and without regard to tax planning implications.[18] As a result, MNP established a practice of correcting such entries at year-end by posting adjusting entries.[19] No such corrections were made to the Intercompany Account for 2015, due to the intervention of these insolvency proceedings.[20]

19. Alan Saskin has acknowledged that it was the intention of TCC Bay and UTMI for the $8 million to remain outstanding.[21] Accordingly, MNP would have adjusted the entries in the Intercompany Account at the 2015 year-end to reflect the $8 million outstanding on the 2015 Promissory Notes.[22] Given that no such adjustments were made, MNP has advised that the Monitor should not have relied on the transactions recorded in the Intercompany Accounts to disallow the Foreign Representative's claim without the year-end adjusting journal entries first having been completed.[23]

20. All parties involved in the issuance and subsequent transfer of the 2015 Promissory Notes, including Alan Saskin and MNP, believed at all material times, and continue to believe,

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[14] MNP Response, Q. 1; AS Transcript, 206, 207 & 208.
[15] MNP Response, Q. 1; AS Transcript, 206 & 210.
[16] AS Transcript, Q. 210, 211 & 212.
[17] MNP Response, Q. 10.
[18] MNP Response, Q. 3.
[19] MNP Response, Q. 4.
[20] AS Transcript, Q. 218, 219 & 220.
[21] AS Transcript, Q. 289.
[22] MNP Response, Q. 11.
[23] MNP Response, Q. 9.

that the 2014 Promissory Note and the 2015 Promissory Notes represent a valid debt owing by TCC Bay which remains outstanding.[24]

The Terms of the Promissory Notes

21. The 2014 Promissory Note and the 2015 Promissory Notes all expressly provide that the notes were issued for valuable consideration, that they are payable on demand, and that they expressly exclude set-off.[25]

22. Each of the 2015 Promissory Notes further expressly provide that they are issued "in substitution for a portion of the Promissory Note in the amount of $8 million between the Borrower [TCC Bay] and the Holder [UTMI] dated the 11th day of December 2015." Alan Saskin has confirmed that, as a result of a typographical error, this date is erroneous and should instead be the 11th day of December 2014, thereby referring to the 2014 Promissory Note.[26]

Representations in the Prospectus and Financial Statements

23. UCI was created for the sole purpose of the Bond Issuance. It did not carry on any operations, nor did it have any material assets at the time of incorporation. A condition of the Bond Issuance was that Alan Saskin and his family would cause a transfer to UCI of, *inter alia*, certain entities of the Urbancorp Group and the right to repayment of loans held by Urbancorp Group entities.

24. The Prospectus reflects this condition and expressly commits Alan Saskin and his family (the "**Rights Holders**") to assign to UCI the right to repayment of loans held by entities within the Urbancorp Group in the amount of $8 million as part of the Bond Issuance:

> "**The Rights Holders (as defined above) have committed that**, prior to the listing for trading [of the bonds]...they would transfer to [UCI] their rights (including indirectly through corporations owned thereby) in the transferred entities which indirectly hold rights to rental investment property....and **would assign [UCI] their right to the repayment of loans held be [sic] them, which amounts to CAD 8,000 thousand** (hereinafter together "the Transferred Rights")..."[27]

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[24] AS Transcript, Q.260 & 289; Exhibit "2" to the Examination of Alan Saskin on April 6, 2017.

[25] Exhibits "A" and "B" to the First Report of the Foreign Representative.

[26] AS Transcript, Q. 368.

[27] Appendix "D" to the First Report of the Foreign Representative (emphasis added).

25. Alan Saskin has confirmed that the references in the Prospectus to $8 million in loans refer to the 2014 Promissory Note (and the 2015 Promissory Notes issued as a replacement of the 2014 Promissory Note).[28]

26. As part of the Bond Issuance, UCI underwent an audit conducted by Brightman Almagor Zohar & Co. ("**Deloitte Israel**"). Deloitte Israel audited interim pro forma consolidated financial statements as at June 30, 2015 (the "**June 2015 Pro Forma Statements**") and as at September 30, 2015 (the "**September 2015 Pro Forma Statements**"), which were incorporated in the Prospectus.[29]

27. Each of the June 2015 Pro Forma Statements and the September 2015 Pro Forma Statements show that UCI has a current asset of $8 million in respect of "related parties". Alan Saskin has confirmed that this $8 million asset is the 2014 Promissory Note.[30] He has also confirmed the accuracy of the June 2015 Pro Forma Statements and the September 2015 Pro Forma Statements and has advised that he would have notified Deloitte Israel of any inaccuracies in these financial statements had he been aware of them.[31]

28. Moreover, by letters to the underwriters of the Bond Issuance, dated November 29, 2015 and December 7, 2015 (the "**Representation Letters**"), Alan Saskin and Phillip Gales, as President and Chairman of the Board and CFO of UCI, declared that, *inter alia*, the representations in the Prospectus were truthful and accurate and that the Prospectus contained no misleading details.[32]

29. Alan Saskin confirmed that he had discussed with Deloitte Israel the validity of the 2014 Promissory Note (and the 2015 Promissory Notes) and that he believed them to be valid.[33] His discussions with Deloitte Israel also focused on whether there were sufficient assets to generate $8 million of value to repay the 2014 Promissory Note (and the 2015 Promissory Notes).[34] MNP

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[28] AS Transcript, Q. 262.

[29] AS Transcript, Q. 325.

[30] Appendix "A" and "B" to Third Report of the Foreign Representative dated March 24, 2017 [*Third Report of the Foreign Representative*].

[31] AS Transcript, Q. 289 & 326.

[32] Appendix "C" to the Third Report of the Foreign Representative.

[33] AS Transcript, Q. 292 & 293.

[34] AS Transcript, Q. 292, 293 & 294.

has also confirmed that the 2014 Promissory Note was expected to be repaid from the proceeds of the sale of the Bayview and Woodbine projects.[35]

30. On March 31, 2016, Deloitte Israel issued a draft auditor's report to UCI, which was accompanied by financial statements of UCI as at December 31, 2015 (the "**December 2015 Financial Statements**").[36] The December 2015 Financial Statements show the 2015 Promissory Notes as being a non-current asset of $8 million in respect of "related parties" as well as an $8 million "balances with related parties" in Appendix A – non-cash transactions.

31. Note 22 (a)(6) to the Audited Financial Statement references the $8 million asset in respect of "related parties" and states:

> **Following on the assignment of the controlling shareholders' rights to the Company of loans from corporations held by them, which amount to approx. CAD $8,000 thousand,** the Company reclassified the above assignment of rights and instead of presenting it as "current assets" now presents them under section Related parties, classified as "non-current assets". In this matter it should be noted that **the Company estimates that the surplus asset value of the related corporations**, beyond the obligations of the relevant corporations (including the right of the new loan secured as a senior loan over the assignment of rights) **is more than $8 million. This issue was tested by an independent outside assessment of value.**[37]

32. On April 7, 2016, at the request of Deloitte,[38] PricewaterhouseCoopers LLP ("**PwC**") was engaged to review the financial forecasts for certain real estate projects (Bayview, Woodbine, Epic and Valermo) in order to assess the likelihood that the 2015 Promissory Notes would be repaid. PwC issued a draft report dated April 15, 2016 (the "**PwC Report**"). The PwC Report stated that UCI had pledged cash flows from certain projects toward extinguishment of an $8 million obligation to bondholders and estimated this obligation to be approximately $8.2 million, inclusive of interest.[39] Due to the commencement of these proceedings the PwC Report was never finalized.

33. The Prospectus, the June 2015 Pro Forma Statements, the September 2015 Pro Forma Statements, the December 2015 Financial Statements, and the PwC Report all support that the 2014 Promissory Note and the 2015 Promissory Notes have consistently been recognized being

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[35] MNP Response, Q. 13.

[36] Exhibit "R" to the Affidavit of Alan Saskin dated May 13, 2016.

[37] Exhibit "R" to the Affidavit of Alan Saskin dated May 13, 2016, pg. 58 (emphasis added).

[38] AS Transcript, Q. 393.

[39] Appendix "E" to the First Report of the Foreign Representative.

as valid and enforceable and that, even in 2016, UCI's management believed that they were outstanding.

At issuance and at assignment, there was no notice of any defect in the promissory note

34. MNP has advised that when the 2014 Promissory Note was issued, TCC Bay owed UTMI $8 million in management fees.[40]

35. MNP further advised that it is not aware of any payment having been made on account of the 2014 Promissory Note or the 2015 Promissory Notes.[41]

36. UCI provided information to the Israeli Securities Authority as to the conditions and value of the underlying obligations of 2015 Promissory Notes on or around April 11, 2016.[42]

37. Since receiving notice of the Monitor's disallowance of the claim in relation to the $6 Million Promissory Note, both MNP and Alan Saskin have advised the Monitor that they believe the 2014 Promissory Note was not repaid and have supplied further information to the Monitor to support the 2015 Promissory Notes.[43]

Vestaco would receive $12 million after creditor claims are satisfied

38. If for any reason the 2015 Promissory Notes are determined not to be valid, fully outstanding and enforceable, then the representations in the Prospectus relating to the 2015 Promissory Notes would be untrue. The Foreign Representative has been advised by the Monitor that after the claims of creditors of TCC Bay have been satisfied, the next $12 million would otherwise be paid to Vestaco, the limited partner of TCC Bay, as nominee for Doreen Saskin.[44]

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[40] MNP Response, Q. 5 & 6.

[41] MNP Response, Q. 16.

[42] First Report of the Foreign Representative, para. 21.

[43] *Ibid.*

[44] First Report of the Foreign Representative, para. 22; Appendix "E" to the Sixth Report of the Monitor.

PART III – THE ISSUES

39. The issues before this Honourable Court are:

i. whether the 2015 Promissory Notes are valid and enforceable against TCC Bay;

ii. if the answer to (i) is yes, can TCC Bay assert any defences to reduce its liability on 2015 Promissory Notes; and

iii. and if the answer to (i) is no or if TCC Bay can assert valid defences to reduce its liabilities on the 2015 Promissory Notes, would it be just and equitable to grant a declaration that the first $8 million (plus interest outstanding under the 2015 Promissory Notes) that would otherwise be payable to Vestaco (for the ultimate benefit of Doreen Saskin) from TCC Bay should be held in trust for UCI.

PART IV – LAW AND ARGUMENT

Issue (i): the 2015 Promissory Notes are valid and enforceable against TCC Bay

40. The 2015 Promissory Notes are "promissory notes", pursuant to subsection 176(1) of the *Bills of Exchange Act,* R.S.C.1985, c.B-4 (the "**BEA**").[45]

41. The BEA defines a "holder" of a promissory note as "the payee or endorsee of a bill or note who is in possession of it or the bearer thereof."[46]

42. The BEA contemplates two types of holders of promissory notes: a "holder for value" and a "holder in due course."[47] All "holders in due course" are also "holders for value."[48] A "holder for value" does not have to be a holder in due course.[49]

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[45] *Bills of Exchange Act,* R.S.C., 1985, c B-4 at s.176(1) [*BEA*].

[46] BEA, s.2.

[47] Crawford, B., *Law of Banking and Payment in Canada* (loose-leaf), Toronto: Canada Law Book, available on Thomson Reuters Proview eReference at paragraphs 24:20 [*Law of Banking and Payment in Canada*].

[48] *Ibid.*

[49] *Ibid.*

43. UCI meets the requirements under the BEA for a "holder in due course" and is consequently entitled to enforce the $6 Million Promissory Note in accordance with its terms and without regard to any defect or personal defences.

44. Even if UCI is not a holder in due course, it is nevertheless a "holder for value" of the $6 Million Promissory Note and is entitled to enforce it on its terms, subject to any defects or defences, neither of which invalidate or preclude enforcement.[50]

UCI is a "holder in due course" of the $6 Million Promissory Note

45. Under the BEA, a "holder in due course" holds a promissory note free and clear from any defect in title and mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill.[51]

46. Every holder of a promissory note is deemed to be a "holder in due course", in the absence of evidence to the contrary.[52]

47. Promissory notes can be assigned by one related company to another within the same corporate group, without jeopardizing the assignee's status as a holder in due course.[53]

48. Section 55 of the BEA defines a holder in due course:

> 55 (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely,
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> (a) that he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact; and
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> (b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

49. Subsection 55(1)(a) describes the characteristics that the promissory note must have at the time of transfer for its holder to be a "holder in due course". It requires that, at the time of transfer, the note was complete and regular on face and that it was neither overdue nor previously dishonoured.

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[50] The same analysis applies to the $2 Million Promissory Note.

[51] BEA, s.73(b).

[52] BEA, s. 57(2).

[53] *966478 Ontario Ltd. v Hack,* 1995 CarswellOnt 3654 at paras. 5-6, 20-23, 44, 49-50 (Ont. C.J. Gen. Div.).

50. The $6 Million Promissory Note satisfies these requirements. When UCI became the holder and took possession of the note, it was neither overdue (as it is payable on demand) nor had it been previously dishonoured.[54] The $6 Million Promissory Note is also complete and regular, having satisfied the BEA requirements for a "promissory note".[55] It is an unconditional promise made by TCC Bay to UTMI to pay a fixed sum on demand to the order of UTMI, which was made in writing and executed by TCC Bay.

51. Subsection 55(1)(b) describes the conditions under which the holder must take the note and requires the holder to have taken the note for value, without any notice of defect in title, and in good faith.

(a) UCI Acquired the $6 Million Promissory Note for Value

52. In consideration of the $6 Million Promissory Note (and the $2 Million Promissory Note), UCI issued special shares to Urbancorp Holdco, which is wholly-owned by Alan Saskin, the ultimate beneficiary of the assignor.[56]

53. UCI also raised $64 million from the Bond Issuance for the benefit of the Urbancorp Group of Companies, which includes the assignor. The 2015 Promissory Notes' assignment was part of the consideration for the Bond Issuance.[57]

54. UTMI received value for its assignment of the $6 Million Promissory Note to UCI. The adequacy of the consideration is irrelevant.[58] Courts will not inquire into whether the value given for the note is the fair equivalent to its face value, as the giving of any value enables the holder to enforce the promissory note for its full face value.[59]

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[54] Appendix "B" of the First Report of the Foreign Representative; AS Transcript, Q. 103 & 289.

[55] *Law of Banking and Payment in Canada, supra,* note 47 at paragraph 24:30.20(1)(b).

[56] AS Transcript at Q. 351; Prospectus at Exhibit "B" to the Affidavit of Alan Saskin, dated May 13, 2016, pgs. 246-249 of the Application Record dated May 13, 2016.

[57] AS Transcript, Q. 260.

[58] *Law of Banking and Payment in Canada, supra,* note 47 at paragraph 24:20.10(1).

[59] *Ibid.*

55. Importantly, as a "holder in due course", UCI has the right to enforce the $6 Million Promissory Note without regard to whether consideration was given for its issuance in the underlying transaction.[60]

56. UCI was created to receive the proceeds from the Bond Issuance, advance proceeds to the various members of the Urbancorp Group, hold interests in certain transferred subsidiaries, and hold the 2015 Promissory Notes for the benefit of the bondholders. It would be the ultimate triumph of form over substance to disadvantage the bondholders from being a holder in due course as UCI is under the control of the Foreign Representative, not Alan Saskin. Since the commencement of proceedings in Canada and Israel, Alan Saskin exercises no authority over UCI, with authority having vested in Foreign Representative pursuant to the Order of the Israeli Court which was recognized in Ontario.[61] The Foreign Representative is in the process of realizing on the assets of UCI for the benefit of UCI's creditors, of which the bondholders are the substantial majority.

(b) UCI Acquired the $6 Million Promissory Note without Notice of Defect in Title

57. A "holder in due course" must acquire the promissory note without any notice of defect in title.[62]

58. Subsection 55(2) of BEA lists several examples of title defects:

> In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress or force and fear, or other unlawful means, or for illegal consideration, or when he negotiates it in breach of good faith, or under such circumstances as amount to fraud

59. Nothing in the evidence suggests that the 2015 Promissory Notes were issued fraudulently, by duress, force, fear or other unlawful means or for illegal consideration. The same is true for the 2014 Promissory Note.

60. As such, UCI could not have had notice of any such non-existent defects in title. Certainly, the bondholders had no such notice (even if one existed).

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[60] *Ibid*, at paragraph 26:30.40(4)(e).

[61] AS Transcript Q. 417, 418, 419, 420, 421 & 422.

[62] BEA, s.55(1)(b).

(c) UCI Acquired the $6 Million Promissory Note in Good Faith

61. Since every holder is deemed by the BEA to be a holder in due course, there is a rebuttable presumption that each holder obtained the promissory note in good faith.[63]

62. Section 3 of the BEA states:

> A thing is deemed to be done in good faith, within the meaning of this act, where it is in fact done honestly, whether it is done negligently or not.

63. The good faith requirement contains no element of negligence but is a factual inquiry into whether the holder acted in good faith.[64] It is an inquiry that considers the total relationship of the parties and asks whether there are any facts in the transaction, which are known to the person who becomes the holder, that cause a suspicion to arise which the person then supresses and refrains from asking questions or making further inquiries.[65]

64. Such a wilful disregard of the facts will deny good faith, but only if the facts are known to the person whose good faith is at issue.[66] Constructive notice or deemed notice, of an individual who negligently refrains from making inquiries, do not apply to negotiable instruments.[67]

65. A consideration of the total relationship between the parties reveals that Alan Saskin is the principal and controlling mind of each of the entities involved: TCC Bay, as issuer; UTMI, as payee and assignor; and UCI as assignee and holder for the benefit of the Israeli bondholders (as the assignment was conditioned on the success of the Bond Issuance).

66. Alan Saskin's involvement with the three entities does not disqualify UCI from having obtained the $6 Million Promissory Note in good faith because at all material times, Alan Saskin

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[63] BEA, s. 57(2); *Law of Banking and Payment in Canada, supra,* note 47 at para. 24:30:30.

[64] *Law of Banking and Payment in Canada, supra,* note 47 at paras. 24:30:30 and 24:30:30(1)(a).

[65] *National Money Mart Co. v State Farm Fire and Casualty Co.,* 2016 ONSC 6298 at paras. 29 and 42.

[66] *Toronto Dominion Bank v. Jordan,* 1985 CarswellBC 62 at paras. 12 & 13 (B.C.C.A), leave to appeal refused, 1985WL525260.

[67] *Law of Banking and Payment in Canada, supra,* note 47 at paras. 24:30:30(1)(a).

believed, and continues to believe, (as does MNP) that the 2015 Promissory Notes are valid and enforceable.[68]

67. The 2014 Promissory Note was issued by TCC Bay to UTMI in respect of its obligations under the Original Fee Agreement (as defined in the Monitor's Sixth Report).[69] Despite various intercompany transactions between TCC Bay and UTMI, TCC Bay did not repay the 2014 Promissory Note and this debt remained outstanding when the 2014 Promissory Note was replaced by the 2015 Promissory Notes.[70]

68. MNP also confirmed that it is not aware of any facts that would cause the $8 million owing under the 2015 Promissory Notes not to be outstanding.[71]

69. Alan Saskin was not aware of anything that would jeopardize the validity or enforceability of the 2015 Promissory Notes at the time they were issued and assigned to UCI and Realtyco.[72] This is consistent with the PwC Report, the information provided to UCI's audit committee, and the evidence of the Urbancorp Group accountants.[73]

70. UCI was created for the sole purpose of the Bond Issuance,[74] the success of which depended on transferring assets, including the 2015 Promissory Notes, to UCI for the sole comfort and benefit of the bondholders.

71. If Alan Saskin was aware of any defects that jeopardized the validity or enforceability of the $6 Million Promissory Note, he did not bring these to the bondholders' attention. In fact, the bondholders were consistently reassured that the 2015 Promissory Notes were valid and enforceable.[75]

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[68] AS Transcript, Q. 289.

[69] Monitor's Sixth Report at Section 4.

[70] MNP Response Q. 16; AS Transcript, Q. 289.

[71] MNP Response, Q. 16.

[72] AS Transcript, Q. 90, 103, 289.

[73] First Report of The Foreign Representative, paras. 14, 18, & 19.

[74] First Report of the Foreign Representative, para. 15; AS Transcript, Q. 252.

[75] Appendix "C" of the Third Report of Foreign Representative; AS Transcript, Q. 289.

72. Not only did UCI stakeholders not participate in the underlying transactions that could have given rise to any alleged defect in the issuance of the 2015 Promissory Notes, they had no reason to question their validity.

73. Even if it is determined that Alan Saskin was aware of a risk to the enforceability and validity of the 2015 Promissory Notes, this knowledge should not be imputed to UCI. Although Alan Saskin was the controlling mind of UCI, the circumstances at hand do not warrant discounting the lack of knowledge of other UCI stakeholders, namely, the bondholders.

74. Consequently, UCI acquired the $6 Million Promissory Note in good faith, for the benefit of the Israeli bondholders, without notice or suspicion as to anything that would jeopardize its enforceability.

(d) It is appropriate to recognize UCI as a "holder in due course"

75. The requirements for a "holder in due course" under the BEA are satisfied in this case.

76. The doctrine of "close connection" should not apply to disqualify UCI from the status of a "holder in due course".

77. This doctrine disentitles an assignee from the status of "holder in due course" where the assignee and assignor are so interdependent that the businesses operate as one, "each in the conduct of its particular phase being useless without the association of the other."[76]

78. The relief it affords is exceptional and only available where there is evidence of fraud or some clear, overt activity that would make maintaining the distinction between the entities unjust.[77] Applying the doctrine on these facts would have the effect of penalizing the bondholders, arm's length third parties, for the benefit of Doreen Saskin.

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[76] *966478 Ontario Ltd. v Hack*, 1995 CarswellOnt 3654 at para. 47 (Ont. C.J. Gen. Div.), citing *Federal Discount Corporation Ltd. v. St. Pierre,* 1962 CarswellOnt 146 (O.N.C.A).

[77] *Ibid.*, at para. 49.

79. Although UCI, UTMI, and TCC Bay were related entities as part of the larger Urbancorp Group, their businesses were by no means interdependent. UTMI and TCC Bay carried on separate business operations and both existed well before UCI was incorporated.[78]

80. The relationship between UCI, UTMI, and TCC Bay cannot be said to be so interdependent, such that any one is "useless without the association of the others", and therefore the close connection doctrine cannot apply to disqualify UCI from being a holder in due course of the $6 Million Promissory Note.

UCI is a "holder for value" of the $6 Million Promissory Note

81. In the event that UCI is found not to be a "holder in due course", it is nevertheless a "holder for value" of the $6 Million Promissory Note under the BEA. As such, it is entitled to enforce the $6 Million Promissory Note on its terms, subject to any defects or defences, neither of which invalidate, nor preclude enforcement.

82. Section 53(1) of the BEA provides:

> Where value has, at any time, been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to that time.

83. As described in paragraphs 52-55 above, UCI acquired the $6 Million Promissory Note for value. As consideration for its assignment, UCI issued special shares to Urbancorp Holdco, which is wholly-owned by Alan Saskin, the ultimate beneficiary of the assignor.[79] Moreover, the assignment was a condition of the Bond Issuance, which raised $64 million for the benefit of the Urbancorp Group, including UTMI.[80]

84. A "holder for value" is entitled to enforce a promissory note, subject to any defects in title and mere personal defences available arising from the underlying transaction in which the promissory note was issued.[81]

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[78] AS Transcript, Q. 206, 209, 252, 37 & 38.

[79] Prospectus at Exhibit "B" to the Affidavit of Alan Saskin, dated May 13, 2016, at pgs. 246-249 of the Application Record dated May 13, 2016.

[80] Appendix "D" to First Report of the Foreign Representative.

[81] BEA, s. 73.

85. In support of its disallowance of UCI's proof of claim, the Monitor relies on the defence that the issuance of the 2015 Promissory Notes was not supported by consideration.[82] Namely, the Monitor suggests that, due to various intercompany transactions between TCC Bay and UTMI, there was no debt owing by TCC Bay to UTMI in respect of the 2014 Promissory Note to support the issuance of the 2015 Promissory Notes in its place.[83]

86. This defence implies that set-off is available to reduce the debt owing on the 2014 Promissory Note. Set-off is expressly prohibited by both the 2014 Promissory Note and the 2015 Promissory Notes.[84]

87. The Monitor also suggests that amendments to the Original Fee Arrangement, which gave rise to the $8 million obligation in respect of which TCC Bay issued the 2014 Promissory Note, reduced the $8 million obligation such that debt evidenced by the 2014 Promissory Note should also be reduced.[85]

88. For the reasons set out below, neither the evidence nor the law support the Monitor's position.

Issue (ii): If the 2015 Promissory Notes are enforceable, TCC Bay Cannot Maintain any Defences

(a) Sufficient consideration was provided for the issuance of the 2015 Promissory Note

89. The BEA presumes that a holder of a note has given value to obtain it[86] and places the onus of proving a lack of consideration on the promisor.[87] The Monitor bears this onus.

90. Valuable consideration for a note may be constituted by any consideration sufficient to support a simple contract or an antecedent debt or liability.[88] Any antecedent debt or liability

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[82] Appendix D of Monitor's Sixth Report; Monitor's Report at Section 6.

[83] *Ibid.*

[84] Appendix "A" and "B" to the Monitor's First Report.

[85] Monitor's Report at Section 6.

[86] BEA, s. 57(1) and 57(2).

[87] *Westcott v. Luther,* 1933 CarswellOnt 86 at para.14 (S.C.C)

[88] BEA, s. 52

may be found in a prior agreement, the obligations arising from which have not been discharged.[89]

91. The $6 Million Promissory Note expressly replaces the 2014 Promissory Note:

> This Promissory Note is in substitution for a portion of a Promissory Note in the amount of $8,000,000 between the Borrower and Holder dated the 11th day of December, 2015.[90]

92. The words "value received" inscribed on the $6 Million Promissory Note raise the presumption that the maker received consideration or that there is an antecedent debt.[91] The $6 Million Promissory Note expressly recognizes the existence of consideration in stating that the promise to pay is made "for value received":

> "**FOR VALUE RECEIVED**, the undersigned TCC/URBANCORP (BAY) LIMITED PARTNERSHIP (the "Borrower"), hereby promises to pay to the order of URBANCORP TORONTO MANAGEMENT INC. (the "Holder")..."[92]

93. Alan Saskin has rejected the Monitor's proposition that, at the time that the 2015 Promissory Notes were issued, TCC Bay had already repaid its debt to UCI.[93] Any payments by TCC Bay to UTMI were made in the ordinary course of business and were not intended to repay the 2014 Promissory Note.[94]

94. TCC Bay and UTMI intended to make accounting adjustments at the 2015 year-end to leave the $8 million outstanding.[95] It was also intended that such year-end adjustments would recognize the $8 million liability of the 2014 Promissory Note.[96] MNP routinely made such year-end adjustments where they may have been incorrectly posted internally during the year.

(b) Set-off is expressly prohibited by the 2014 Promissory Note

95. TCC Bay cannot rely on intercompany debt that was incurred in the ordinary course of business to set-off the obligation it owes UTMI under the promissory note.

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[89] Sarna, L. *Law of Cheques and Promissory Notes (loose-leaf)*, Toronto: Carswell, at para. 7 [*Sarna*].

[90] Appendix "B" to the First Report of the Foreign Representative. (Note that the December 11, 2015 date is incorrect.)

[91] *Sarna, supra,* note 89 at para. 7; *Riml v Greger*, (November 22, 1991), Doc CA021802 at pg. 2 (B.C.C.A).

[92] Appendix "B" to the First Report of the Foreign Representative.

[93] Exhibit 2 to the Examination of Alan Saskin on April 6, 2017.

[94] AS Transcript, Q. 103 & 289; Exhibit 2 to the Examination of Alan Saskin on April 6, 2017.

[95] AS Transcript, Q. 103 & 289.

[96] *Ibid.*

96. Both the 2014 Promissory Note and the 2015 Promissory Notes expressly prohibit set-off.

97. Set-off is not available in the face of an express prohibition to do so in a promissory note.[97]

98. Where a borrower contracts out of defences or set-off against a lender's claim, it will be held to its bargain.[98]

99. In any event, MNP has confirmed that year-end adjusting entries would have needed to be entered before the Intercompany Accounts could be relied upon.[99]

(c) Adjustments to Original Fee Arrangement do not reduce the debt owing on the 2015 Promissory Notes

100. Importantly, consideration to support a promissory note does not have to be equivalent to the total amount of debt owed to the payee.[100] It is sufficient that the promisee gives up something which may be of value and that the promisor accepts what the promisee gives up as the price for the promise.[101]

101. TCC Bay issued the 2015 Promissory Notes to UTMI in respect of a pre-existing debt evidenced by the 2014 Promissory Note.[102] TCC Bay issued the 2014 Promissory Note to UTMI in respect of the $8 million balance on the $9.8 million obligation for management fees under the Original Fee Agreement.[103] Despite a subsequent amendment to the Original Fee Agreement and several intercompany transactions between UTMI and TCC Bay, the $8 million debt remained outstanding at the time that the 2015 Promissory Notes were issued.[104]

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[97] *PCL Industries Ltd. (Receiver of) v. 431218 B.C. Ltd,* 1996 CarswellOnt 3284 at para. 9 (Ont. C.J. Gen. Div.).

[98] *British Columbia (Attorney General) v Malik*, 2009 BCCA 202 at paras. 44 & 45.

[99] MNP Response, Q. 9.

[100] *Sarna, supra,* note 89 at para. 1; see also *Albert Pearl (Management) Ltd. v JDF Builders Ltd.,* 1974 CarswellOnt 248 at para. 37 (S.C.C).

[101] *Albert Pearl (Management) Ltd. v JDF Builders Ltd.,* 1974 CarswellOnt 248 at para. 37 (S.C.C).

[102] AS Transcript, Q. 367.

[103] Monitor's Sixth Report at Section 6.

[104] MNP Response, Q.16; AS Transcript, Q. 103 & 298.

102. Even if the Original Fee Agreement was amended to reduce the quantum of management fees owed by TCC Bay to UTMI, the 2015 Promissory Notes issued to replace the 2014 Promissory Notes do not need to reflect this reduction. There is nothing on the face of the 2014 Promissory Note limiting it to the terms of the Original Fee Agreement. Upon creation, the 2014 Promissory Note became an independent obligation.

103. This is no different than when a cheque is delivered to satisfy a liability. Once the cheque is created it becomes a separate, distinct and independent obligation that can be negotiated to another regardless of any defences or conditions related to the original liability.

Issue (iii): Should for any reason, the disallowance be maintained, the first $8 million plus interest in TCC Bay proceeds that would be paid to Vestaco, should be held in trust for UCI .

104. If the Monitor's disallowance is upheld, the Monitor has reported that proceeds from TCC Bay would flow to Vestaco, the limited partner of TCC Bay, as nominee for Doreen Saskin.

105. It would be grossly unjust and inequitable to allow TCC Bay proceeds to flow to Vestaco, and, therefore, to Doreen Saskin, to the prejudice of UCI and UCI's creditors.

106. The Prospectus expressly commits the Rights Holders, which include Doreen Saskin,[105] to assign to UCI, should the Bond Issuance be successful, the right to repayment of loans held by Urbancorp Group entities in the amount of $8 million, which the 2015 Promissory Notes evidence.[106]

107. Equitable remedies of unjust enrichment and estoppel by representation prevent Vestaco from recovering TCC Bay proceeds, which would otherwise allow Doreen Saskin, as one of the Right Holders, to benefit from false representations and avoid obligations that bondholders relied upon to their detriment.

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[105] AS Transcript, Q. 357.

[106] Appendix "D" to the First Report of the Foreign Representative; AS Transcript, Q. 262.

(a) Doreen Saskin would be unjustly enriched if she recovers TCC Bay proceeds

108. Unjust enrichment is a doctrine that restores a benefit which justice does not permit one to retain.[107]

109. It allows recovery whenever the claimant can establish three elements: (i) an enrichment of or benefit to the defendant; (ii) a corresponding deprivation of the plaintiff; and, (iii) the absence of a juristic reason for the enrichment.[108]

(i) Enrichment of Doreen Saskin

110. Doreen Saskin would be unjustly enriched if she is able to recover the TCC Bay proceeds ahead of the UCI bondholders. Doreen Saskin would be enriched by recovering these proceeds to the corresponding detriment of the bondholders, who had purchased the UCI bonds on the expectation that, in accordance with the Prospectus, the Rights Holders, including Doreen Saskin, would cause the transfer of the 2015 Promissory Notes to UCI and to Realtyco, for the benefit of UCI prior to the Bond Issuance.

(ii) Deprivation of the Bondholders

111. The Bond Issuance raised $64 million for the benefit of entities within the Urbancorp Group, of which Doreen Saskin is a direct or indirect beneficiary. Doreen Saskin was aware of the Bond Issuance and that Alan Saskin expected his family to benefit from it.[109] The bondholders invested $64 million based on the representations in the Prospectus which included assigning $8 million in debt to UCI. The bondholders will be deprived of these proceeds if they are allowed to flow to Vestaco for the benefit of Doreen Saskin.

(iii) No Juristic Reason for the Enrichment

112. There is no juristic reason for Doreen Saskin's enrichment. The analysis of whether a juristic reason exists involves a consideration of the legitimate expectations of the parties.[110]

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[107] *Kerr v Baranow,* 2011 SCC 10 at para. 31 [*Kerr*].
[108] *Ibid,* at para 32.
[109] AS Transcript, Q. 357, 358, 259, 260 & 361.
[110] *Kerr, supra,* note 108, at para. 41.

113. The expectation of the parties, as the Prospectus evidences, was that the Rights Holders, which term includes Doreen Saskin, would transfer $8 million of liabilities, consisting of the 2014 Promissory Note, which was subsequently substituted with the 2015 Promissory Notes, to UCI if the bonds were purchased.[111] Given that the bonds were purchased, there is no reason in law why Doreen Saskin should be allowed to receive any portion of the $8 million which was assigned.

114. The remedy for unjust enrichment is to require the defendant to repay or reverse the unjust enrichment.[112] Accordingly, $8 million payable by TCC Bay (plus accrued interest), that would flow to Vestaco for the benefit of Doreen Saskin if the disallowance is upheld, should be held in trust for and paid to UCI in satisfaction of the 2015 Promissory Notes.

(b) Doreen Saskin should be estopped from recovering the TCC Bay proceeds

115. The basic effect of estoppel is to hold a person to his or her word.[113] It protects those who have acted improvidently and allows the Court to preserve equities that would otherwise be sacrificed.[114]

116. Estoppel by representation allows the maker of a false statement to be held to that statement as being true by the recipient, if the recipient has relied on it to their detriment.[115]

117. It requires a positive representation by one party made with the intention to bind the other; an act or omission resulting from the representation by the party to whom the representation is made; and, a detriment to the party as a result of its action, such that it would be inequitable for the party making the representation to be permitted to act inconsistently with it.[116]

118. Doreen Saskin should be estopped from recovering TCC Bay proceeds which, through representation in the Prospectus, the Rights Holders, including Doreen Saskin, had represented

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[111] AS Transcript, Q. 260; Appendix "D" to the First Report of the Foreign Representative.

[112] *Kerr, supra*, note 108 at para. 46.

[113] MacDougall, B., *Estoppel*, (2012), Markham: Lexis Nexis. at para. 1.1 [*MacDougall*]; Richards *v Law Development Group (Georgetown) Ltd.*, 1994 CarswellOnt3965 at para. 61 (Ont. C.J. Gen. Div.);

[114] *Canada v. Canadian Pacific Railway Co.*, 1929 CarswellNat32 at para. 45 (Ex.C.), reversed in part, [1930] S.C.R. 574 (S.C.C), reversed and trial judgment restored [1931] 1 W.W.R. 673.

[115] MacDougall, *supra*, note 113 at para 4.1.

[116] *Canadian Superior Oil Ltd. v Paddon-Hughes Development Co.*, 1970 CarswellAlta 101 at para. 19 (S.C.C); *Ryan v Moore*, 2005 SCC 38, at para. 5.

would be assigned to UCI as consideration for the Bond Issuance for the benefit of the bondholders.

119. The Prospectus expressly commits the Rights Holders, including Doreen Saskin, to assign to UCI the right to repayment of loans, evidenced by the 2015 Promissory Notes and held by Urbancorp Group entities, prior to UCI's Bond Issuance.

120. In addition to the Prospectus, UCI's June 2015 Pro Forma Statements, September 2015 Pro Forma Statements, and December 2015 Financial Statements all reflect an $8 million asset in respect of "related parties".

121. At no time did Alan Saskin, Doreen Saskin, or anyone in the Urbancorp Group, suggest that the 2014 Promissory Note or the 2015 Promissory Notes were not valid and enforceable.[117] Alan Saskin has confirmed that he believed they were valid obligations[118] and executed the Representation Letters attesting that the representations in the Prospectus were truthful, accurate, and not misleading.[119]

122. Investors are presumed to rely on representations in a prospectus in deciding whether to invest in a company.[120]

123. The assignment of the 2014 Promissory Note (subsequently replaced by the 2015 Promissory Notes) itself was subject to the success of the Bond Issuance which reinforces the point that the assignment was integral to raising funds from the bondholders.

124. If the disallowance is maintained, and Doreen Saskin recovers the proceeds from TCC Bay, the bondholders will have been deprived of $8 million, plus interest, that they expected to receive based on the representation.

125. Requiring payment of $8 million (plus accrued interest) of TCC Bay proceeds to UCI, instead of to Vestaco for the benefit of Doreen Saskin, would remedy this injustice.

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[117] Appendix "C" to the Third Report of the Foreign Representative; AS Transcript, Q. 289.
[118] AS Transcript, Q. 103 & 289.
[119] AS Transcript, Q. 336 & 337.
[120] *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.* 2005 CarswellBC 395 at para. 150 (B.C.S.C).

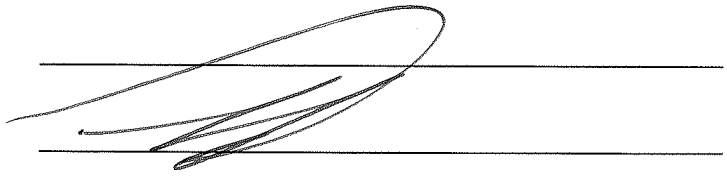
PART V – RELIEF REQUESTED

126. For the foregoing reasons, the Foreign Representative respectfully requests that this Honourable Court:

a. Set aside the disallowance of claim of the Monitor and confirm that the obligations in respect of the 2015 Promissory Notes are valid and outstanding; or

b. If, for any reason, the disallowance is upheld, grant a declaration that the first $8 million (plus interest outstanding under the 2015 Promissory Notes) that would otherwise be payable to Vestaco from TCC Bay should be held in trust and paid to UCI.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



April 18, 2017

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TO: THE SERVICE LIST

Schedule "A" – Table of Cases

1) *966478 Ontario Ltd. v Hack*, 1995 CarswellOnt 3654 (Ont. C.J. Gen. Div.)

2) *National Money Mart Co. v State Farm Fire and Casualty Co.*, 2016 ONSC 6298 (O.N.S.C.)

3) *Toronto Dominion Bank v. Jordan*, 1985 CarswellBC 62 (B.C.C.A.)

4) *Westcott v. Luther*, 1933 CarswellOnt 86 (S.C.C.)

5) *Riml v Greger*, (November 22, 1991), Doc CA021802 (B.C.C.A)

6) *PCL Industries Ltd. (Receiver of) v. 431218 B.C. Ltd*, 1996 CarswellOnt 3284 (Ont. C.J. Gen. Div.)

7) *British Columbia (Attorney General) v Malik*, 2009 BCCA 202 (B.C.C.A.)

8) *Albert Pearl (Management) Ltd. v JDF Builders Ltd.*, 1974 CarswellOnt 248 (S.C.C.)

9) *Kerr v Baranow*, 2011 SCC 10 (S.C.C.)

10) *Richards v Law Development Group (Georgetown) Ltd.*, 1994 CarswellOnt3965 (Ont. C.J. Gen. Div.)

11) *Canada v. Canadian Pacific Railway Co.*, 1929 CarswellNat 32 (Ex. C.)

12) *Ryan v Moore*, 2005 SCC 38 (S.C.C.)

13) *Canadian Superior Oil Ltd. v Hambly*, 1970 CarswellAlta 101 (S.C.C.)

14) *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd*., 2005 CarswellBC 395 (B.C.S.C.)

15) Crawford, B., *Law of Banking and Payment in Canada* (loose-leaf), Toronto: Canada Law Book.

16) Sarna, L. *Law of Cheques and Promissory Notes (loose-leaf)*, Toronto: Carswell.

17) MacDougall, B., *Estoppel*, (2012), Markham: Lexis Nexis.

Schedule "B" – Statutory Provisions

Bills of Exchange Act, R.S.C. 1985, c. B-4

2. Definitions
In this Act,

"acceptance" means an acceptance completed by delivery or notification; *("acceptation")*

"action" includes counter-claim and set-off; *("action")*

"bank" means a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*; *("banque")*

"bearer" means the person in possession of a bill or note that is payable to bearer; *("porteur")*
"bill" means bill of exchange; *("lettre")*

"defence" includes counter-claim; *("défense")*

"delivery" means transfer of possession, actual or constructive, from one person to another; *("livraison")*

"endorsement" means an endorsement completed by delivery; *("endossement")ou("endos")*

"holder" means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof; *("détenteur")*

"issue" means the first delivery of a bill or note, complete in form, to a person who takes it as a holder; *("émission")*

"non-business days" means days directed by this Act to be observed as legal holidays or non-juridical days, and any other day is a business day; *("jours fériés")*

"note" means promissory note; *("billet")*

"value" means valuable consideration. *("Version anglaise seulement")*

52(1) Valuable consideration
Valuable consideration for a bill may be constituted by
(a) any consideration sufficient to support a simple contract; or
(b) an antecedent debt or liability.

52(2) Form of bill
An antecedent debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time.

53 (1) Holder for value
Where value has, at any time, been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to that time.

55(1) Holder in due course
A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely,
(a) that he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact; and
(b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) Title defective
In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

57(1) Presumption of value
Every party whose signature appears on a bill is, in the absence of evidence to the contrary, deemed to have become a party thereto for value.

57(2) Presumed holder in due course
Every holder of a bill is, in the absence of evidence to the contrary, deemed to be a holder in due course, but if, in an action on a bill, it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress or force and fear, or illegality, the burden of proof that he is the holder in due course is on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course.

73. Rights and powers of holder
The rights and powers of the holder of a bill are as follows:
(a) he may sue on the bill in his own name;
(b) where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;
(c) where his title is defective, if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and
(d) where his title is defective, if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

Promissory Notes
176 (1) A promissory note is an unconditional promise in writing made by one person to another person, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer.

Endorsed by maker

(2) An instrument in the form of a note payable to the maker's order is not a note within the meaning of this section, unless it is endorsed by the maker.

Pledge of collateral security

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

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

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. AND URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KINGTOWNS INC. AND DEAJA PARTNER (BAY) INC. (COLLECTIVELY, THE "APPLICANTS")AND IN THE MATTER OF TCC URBANCORP (BAY) LIMITED PARTNERSHIP

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

FACTUM OF THE FOREIGN REPRESENTATIVE

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