

In the Matter Of:  
Urbancorp Insolvency Proceeding

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DANIELLE PECK

June 12, 2018

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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 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  
LISTED IN SCHEDULE "A" HERETO

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 ETOWNHOUSES 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

1 --- This is the Cross-Examination of Danielle Pack,  
2 upon her affidavit sworn June 6, 2018, taken at the  
3 offices of Davies Ward Phillips & Vineberg LLP, 155  
4 Wellington Street West, Toronto, Ontario, M5V 3J7,  
5 on the 12th day of June 2018.

6

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7 A P P E A R A N C E S :

8 Robin B. Schwill Esq., for KSV Kofman

9

10 Adam Slavens, Esq., for Tarion Warranty  
11 & Jonathan Silver, Esq. Corporation

12

13 Neil Rabinovitch, Esq., for Israeli  
14 Functionary

15

16 Also Present: Noah Goldstein

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18 REPORTED BY: Lorraine Fedosoff, (CSR) Ontario

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I N D E X

WITNESS: DANIELLE PECK

PAGE

CROSS-EXAMINATION BY MR. SCHWILL..... 6

\*\*The following list of undertakings, advisements  
and refusals is meant as a guide only for the  
assistance of counsel and no other purpose\*\*

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T  
and appear on the following pages: None

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are  
noted by U/A and appear on the following pages:  
None

INDEX OF REFUSALS

The questions/requests refused are noted by R/F  
and appear on the following pages: None

INDEX OF EXHIBITS

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NUMBER/DESCRIPTION

PAGE NO.

(None Marked)

1 --- upon commencing at 2:39 p.m.

2 DANIELLE PECK: Affirmed

3 CROSS-EXAMINATION BY MR. SCHWILL:

4 1. Q. Good afternoon.

5 A. Good afternoon.

6 2. Q. So I'm going to go just through  
7 some administrative -- brief administrative thing  
8 first. There were two proceedings. There's what I  
9 call the Urbancorp Toronto Management Inc.  
10 proceeding, which is the 11389 proceeding. There's  
11 also a Bay LP proceeding, which is the 11549  
12 proceeding.

13 You've filed responding records in both  
14 proceedings, and your affidavit sworn June 6th,  
15 2018 was filed in both proceedings. I just want to  
16 verify that it's correct, that that affidavit is  
17 identical in both proceedings?

18 A. Yes, it is.

19 3. Q. Thank you. So I will be making  
20 reference to various paragraphs in the affidavit.  
21 So if you have that handy --

22 A. I do.

23 4. Q. -- that would be helpful. And  
24 then, Ms. Peck, in your position as senior legal  
25 counsel at Tarion Warranty Corporation, do you

1 personally administer and determine delayed  
2 warranty claims?

3 A. No, I don't.

4 5. Q. During your time of employment  
5 with Tarion Warranty Corporation, have you ever  
6 administered and determined delay warranty claims?

7 A. No, I haven't.

8 6. Q. Do you know how a delay warranty  
9 claim is administered and determined by Tarion?

10 A. Yes.

11 7. Q. And can you explain to me how a  
12 delay warranty claim is, in fact, administered and  
13 determined?

14 A. There is a delayed closing  
15 warranty form, a standard form that the claimant is  
16 required to complete. It requires certain --  
17 certain documents are attached. It's administered  
18 by warranty services department, and there is a  
19 handful of staff who do just those claims.

20 We seek input from the vendor, and, if  
21 the vendor does not resolve the claim, then Tarion  
22 makes an assessment that goes in a warranty  
23 assessment report. If the claimant wants to  
24 dispute Tarion's assessment, we would issue a  
25 decision letter and that's appealable to the



1 Licence Appeal Tribunal.

2 8. Q. And so when you say you solicit  
3 input from the vendor, what is it that you are --  
4 what information are you soliciting in order to  
5 make a determination with respect to that delayed  
6 compensation or delayed closing claim?

7 A. I believe it's a standard letter  
8 that's sent to the vendor telling them we've  
9 received the claim, attaching a copy of the form  
10 and any form attachments, and just asking for their  
11 position and whether or not they will be resolving  
12 the claim directly with the claimant.

13 9. Q. Right. And are there any legal  
14 determinations made with respect to the delayed  
15 warranty claim? Because the form is pretty simple,  
16 that just says what are the total number of days of  
17 delay, you know, multiplied by the 150, and then  
18 attach receipts for anything other than the  
19 non-receiptable living expenses.

20 Other than verifying the number of days  
21 and the fact that closing was delayed, is there any  
22 other type of analysis or assessment that goes into  
23 verifying these delayed warranty claims?

24 MR. SLAVENS: Are you asking about a  
25 specific claim, or claims generally?

1 MR. SCHWILL: Claims generally.

2 THE WITNESS: Well, I guess first it  
3 depends on what the claim is for. So delay  
4 compensation is payable if there is a delay in  
5 closing. So the transaction actually closes, but  
6 didn't close by the firm closing date.

7 And so they would look at what notices  
8 may have been sent by the builder, if they were  
9 done in the proper manner that's required under the  
10 addendum, if they were done on time.

11 The second claim could be if a  
12 purchaser has terminated an agreement under the  
13 addendum, they're also entitled to delay closing  
14 compensation. So we would be looking at the  
15 circumstances of that determination, whether that  
16 was done on time, whether it was done in writing,  
17 and then, of course, taking in the builder's  
18 position on that as well.

19 BY MR. SCHWILL:

20 10. Q. Okay. Thank you. Can I have you  
21 please refer to paragraph 5 of your affidavit? And  
22 just give that a read, if you will. Take a moment.

23 A. Yes.

24 11. Q. You mentioned in paragraph 5 that  
25 of approximately the 2,500 claims that are related

1 to delayed closing claims, you've referenced that  
2 by a footnote that says:

3 "Tarion gets involved only if  
4 there is a dispute about whether a  
5 delay claim is payable. Many, if  
6 not most delay claims, are paid  
7 directly by vendors without Tarion's  
8 intervention."

9 So over the course of a typical year,  
10 because that's the phraseology you've used in that  
11 paragraph, how many delay claims would, in fact,  
12 require Tarion intervention?

13 A. That I don't know.

14 12. Q. Are we talking less than ten, less  
15 than 100?

16 MR. SLAVENS: She doesn't know.

17 THE WITNESS: I don't know, sorry.

18 BY MR. SCHWILL:

19 13. Q. When you reference requiring  
20 Tarion intervention, what would Tarion's  
21 intervention in such cases entail?

22 A. So as I said, we would send the  
23 claim to the vendor, let them know a claim had been  
24 made and ask for their position, suggest to them  
25 that they resolve directly with the claimant if

1 delayed compensation is, in fact, payable under the  
2 addendum.

3 Tarion intervention would occur if the  
4 vendor does not resolve the claim or if the vendor  
5 makes an offer to the claimant and the claimant  
6 wants more than what the vendor's offering.

7 At that point, they can request Tarion  
8 to do a conciliation, and that -- at that point, we  
9 would actually assess the claim. We wouldn't until  
10 we get notice of the conciliation. We would assess  
11 the claim, issue the warranty assessment report.  
12 That's the intervention referred to.

13 14. Q. Thank you. If I could get you to  
14 refer to paragraph 9 of your affidavit?

15 A. Yes.

16 15. Q. Okay. Did the prior regime that  
17 you refer to under paragraph 9 require living  
18 expenses to actually be incurred?

19 A. So again, I did not assess them.  
20 I don't know what was asked for and required, but  
21 they were required -- purchasers or claimants are  
22 required to submit receipts. So we would be  
23 looking for receipts, evidence of payment. So yes.

24 16. Q. But the current regime, which just  
25 cuts out the need for those receipts, does not

1 require any actual living expenses to be incurred,  
2 does it?

3 A. It doesn't.

4 17. Q. So a vendor could have to pay a  
5 purchaser up to \$7,500 essentially for living  
6 expenses that the purchaser never actually  
7 incurred?

8 A. For the \$150 a day, correct.

9 18. Q. Why does Tarion require vendors to  
10 pay for expenses never actually incurred by a  
11 purchaser?

12 MR. SLAVENS: Hold on a sec. Ms. Peck  
13 is here as an affiant, a fact affiant. She's not  
14 here to provide any sort of legal opinion. So can  
15 you please re-ask the question?

16 MR. SCHWILL: I'm not asking for a  
17 legal opinion. Paragraph 9 of her affidavit refers  
18 to under the old regime certain things were done  
19 and that as a policy matter at Tarion we've got a  
20 new regime in place.

21 So my question is directed to given the  
22 policy regime change that is referred to in her  
23 affidavit, what's essentially the rationale for that  
24 policy change? I'll phrase it more specifically.

25 BY MR. SCHWILL:

1 19. Q. Was the only rationale for the  
2 policy change to 150 to eliminate the  
3 administrative burden of vetting receipts?

4 A. Well, it was the administrative  
5 burden on both Tarion and on the claimant. So in  
6 2006, the Ontario government approached Tarion with  
7 a number of concerns it had about the delayed  
8 closing compensation regime.

9 At the government's request, Tarion put  
10 together a special committee of industry people,  
11 lawyers. It was chaired by Yacobucci (ph), and  
12 that committee looked at a number of concerns that  
13 had been raised and complaints that had been raised  
14 and made a number of recommendations. Those  
15 recommendations were taken to Tarion's board of  
16 directors and implemented.

17 So one of them was that for Tarion,  
18 administratively the amount of time and effort that  
19 went into it was disproportionate to the amount of  
20 compensation paid, but also for consumers who may  
21 not have kept their receipts or, you know, had to  
22 chase down people who never gave them a receipt.  
23 It was also time consuming for the consumer.

24 So my understanding is for both -- for  
25 all parties it was made easier.

1           20.           Q.    Well, is the presumption, though,  
2                    in that policy change that those types of living  
3                    expenses would be incurred?

4                    MR. SLAVENS:  Again, you're asking what  
5                    is Ms. Peck's legal opinion --

6                    MR. SCHWILL:  Well, I don't -- how is  
7                    that --

8                    MR. SLAVENS -- about various  
9                    presumptions and the rationale behind a change in  
10                   legislation.  And so if you'd like to ask a similar  
11                   question, then you can phrase it in a way that's  
12                   appropriate.

13                   BY MR. SCHWILL:

14           21.           Q.    Ms. Peck, you talked about a  
15                    process for input from various stakeholders and  
16                    recommendations being made.  In that process of  
17                    seeking stakeholder recommendations dealing with  
18                    delayed warranty claims, did any of those  
19                    recommendations presume that those living expenses  
20                    would be incurred, in any event, so that providing  
21                    the \$150 a day without receipts would not be an  
22                    issue, or, alternatively, was it that the  
23                    recommendations that were received and that input  
24                    received, the conclusion was that it didn't really  
25                    matter that the living expenses be incurred or not,

1 Tarion was just as a policy matter going to assess  
2 150 a day?

3 MR. SLAVENS: Could you ask that  
4 question in a more digestible fashion? That was  
5 quite a long and confusing question.

6 BY MR. SCHWILL:

7 22. Q. Was that too confusing for you,  
8 Ms. Peck?

9 A. Well, it was a neither or. I  
10 think --

11 MR. SLAVENS: I think the point is just  
12 re-ask the question in a way that is a little bit  
13 more digestible. That was clearly a long and  
14 confusing question.

15 MR. SCHWILL: Well, again --

16 MR. SLAVENS: If you break it up --

17 MR. SCHWILL: -- I didn't hear Ms. Peck  
18 saying that she was confused.

19 MR. SLAVENS: No, I'm saying that it  
20 was a long --

21 MR. SCHWILL: You were confused.

22 MR. SLAVENS: I'm saying that it is a  
23 long and confusing question, and I think you could  
24 break it up into smaller parts.

25 MR. SCHWILL: Well, again, the first



1 objection I got, Mr. Slavens, was that it was a  
2 legal opinion, and I'm not asking about legal  
3 opinions. There was a policy change.

4 I'm trying to understand the rationale  
5 of the policy change when Ms. Peck obviously was  
6 involved in understanding the mechanics of how that  
7 policy change came about.

8 BY MR. SCHWILL:

9 23. Q. So all I'm trying to understand is  
10 in the scope of that policy change, was it well,  
11 because of the way delay closing works and whether  
12 you terminated or you close, we're going to presume  
13 that everybody's going to incur these types of  
14 expenses in any event?

15 MR. SLAVENS: Was that a question for  
16 me, or --

17 MR. SCHWILL: It's a question for  
18 Ms. Peck, obviously.

19 MR. SLAVENS: Maybe you could, again,  
20 just ask it to Ms. Peck this time.

21 BY MR. SCHWILL:

22 24. Q. Ms. Peck, I would ask you the same  
23 question that Mr. Slavens just believes I asked  
24 him.

25 A. So I wasn't part of the special

1 committee and, at that time, I was actually  
2 relatively new to Tarion. So I didn't have much  
3 involvement in that process.

4 What I do know is they would have been  
5 looking at this through the consumer protection  
6 scope that Tarion looks at everything in. So it  
7 was making it easier for the consumer in making a  
8 claim and providing evidence, but also, you know,  
9 it's not called delayed closing reimbursement.  
10 It's called delayed closing compensation.

11 So the idea is if you are delayed past  
12 your first -- your firm closing date that you've  
13 been counting on and that's in your contract, you  
14 get compensation for that, and if it's delayed past  
15 that outside occupancy date, you are -- a purchaser  
16 can terminate and get compensation for that.  
17 That's my understanding.

18 25. Q. Okay. Can I get you to refer to  
19 paragraph 14 of your affidavit, please?

20 A. Okay.

21 26. Q. You say in that paragraph --  
22 you'll see just before subparagraph (a) and (b),  
23 Ms. Peck, that you say with reference to the Act  
24 and the addendum, et cetera:

25 "Tarion concluded the following

1 with respect to Urbancorp delayed  
2 closing claims."

3 When you make a reference there to  
4 Tarion concluding something, who is the Tarion that  
5 you are referring to? And by that I mean you take  
6 this as written, it would be Tarion as the  
7 organization, but I'm presuming that when you said  
8 "Tarion concluded", that's you on behalf of Tarion?

9 A. It's me and our general counsel  
10 has also been consulted on this from time to time,  
11 Tim Schumacher.

12 27. Q. So it would be you and Tim  
13 Schumacher concluded the following in respect of  
14 the Urbancorp delayed closing claims?

15 A. Correct.

16 28. Q. Thank you. And then I'm going to  
17 focus on "concluded" because you say in your  
18 affidavit that:

19 "You've concluded that  
20 purchasers are capable of filing  
21 valid delayed closing claims."

22 So I want to break that apart and say  
23 when you've concluded that purchasers are capable  
24 of filing the claims, what do you mean by  
25 "capable"?

1                   A.    They have the ability to do that  
2                   under the addendums that have been signed.

3   29.               Q.    So you're referring to the  
4                   technical ability to file the claim form?

5                   A.    Yes, not the capability of the  
6                   individual purchasers, but the ability to file,  
7                   yes.

8   30.               Q.    And you're not referring to any  
9                   legal ability to be legally entitled to file the  
10                  claim?

11                  A.    No.

12   31.               Q.    And when you say capable of filing  
13                  valid delay closing claims and you've concluded  
14                  that you're capable of filing a valid claim, what  
15                  did you mean by the term "valid" in that context?

16                  A.    Well, of course we haven't seen  
17                  these -- any of these claims yet, but "valid" would  
18                  be one that is made on time.  So within the  
19                  termination period, proper notice being given in  
20                  writing and how we would assess it at the time  
21                  under the addendum.

22                                So I'm certainly not concluding they  
23                                are valid, but capable of filing one that may be  
24                                valid.

25   32.               Q.    Okay.  Thank you.  And then in

1 (b), Ms. Peck, you refer to:

2 "The compensation due to the  
3 purchasers' right in connection with  
4 such claims if found to be owing  
5 will be 7,500 for each home."

6 And so again, you've concluded that in  
7 the event that compensation to the purchasers if  
8 it's found to be owing will be \$7,500. And so my  
9 question to you, then, is how did you conclude it  
10 was going to be -- it will be 7,500 for each home?

11 A. Well, I would read (a) and (b)  
12 together. So it's first if they filed a valid  
13 claim, and that's the maximum amount payable. So  
14 that may be 7,500.

15 33. Q. But in order to get to the 7,500,  
16 at \$150 a day, I need a certain number of days.  
17 And I'm not going to do the math, but was that part  
18 of the analysis that drove your conclusion, that  
19 they will have a number of days greater than? When  
20 you take that number of days multiplied by 150,  
21 you're always going to get greater than 7,500?

22 A. Well, we would look at each case,  
23 each claim that we got in. The purchase agreement  
24 attached to my affidavit, for example, yes, they  
25 would get the 7,500, but it depends on what the

1 claim is.

2 34. Q. And then you also mentioned -- I  
3 just want to focus on "if found to be owing". So  
4 what did you mean by that? Because you talk about  
5 "you will conclude that the purchasers are capable  
6 of filing valid delayed closing claims" and you've  
7 clarified that for me, and then you go "but if  
8 found to be owing".

9 Can you -- I don't understand what you  
10 meant by "if found to be owing"?

11 A. Again, we haven't seen the claims  
12 yet. So once we get them, we would look at every  
13 aspect of the claim, every notice that was sent,  
14 whether or not they had, in fact, received  
15 compensation from the vendor. So this leaves open  
16 every possibility once we see the claims.

17 35. Q. Fair enough. Thank you. So  
18 paragraph 15, the next one down, I'd like to refer  
19 to that, please.

20 A. Okay.

21 36. Q. Now, in light of what we just  
22 discussed about paragraph 14, is it correct to say  
23 that when you say you have not predetermined any  
24 specific purchaser's delayed closing claim, you're  
25 saying that in paragraph 15 because you haven't

1           seen the actual claims?

2                           A.    That's right.

3    37.                   Q.    In paragraph 15 you also say that:

4                                    "While the facts of the  
5                           Urbancorp case will likely mean that  
6                           any such asserted claims will be  
7                           atypical in the context of..."

8                           What did you mean by "atypical"?

9                           A.    Often we will get those claims  
10                           with no background at all about what's happened.  
11                           So purchasers will wait out their critical dates,  
12                           they'll reach their outside occupancy date or  
13                           closing date, they will send their termination and  
14                           submit the claim to us.

15                                   We have a bit more background here in  
16                           this one. We know that we may expect come claims  
17                           and we know that we already have some of the  
18                           documents and information we may request. So it's  
19                           not your typical claim for this type of  
20                           compensation.

21    38.                   Q.    Sorry, I don't -- when you say  
22                           it's atypical, though, you're only saying it's  
23                           atypical because you have some of the background  
24                           information currently?

25                           A.    And the insolvency proceeding that

1           proceeded, obviously the purchasers and the vendor  
2           have -- and that their claims processes that  
3           they've gone through, we don't see that very often.  
4           More typically, as I say, we have no relationship  
5           with the vendor and purchaser. We get a claim in  
6           and base it just on the claim we receive.

7           39.                   Q.    Lastly, you also mention in  
8           paragraph 15 at the end that:

9                                   "The proofs of claim filed by  
10                                  Tarion reflect this analysis."

11                                 So can you please clarify? What did  
12           you mean by your proofs of claim reflect this  
13           analysis and what analysis is that?

14                                 A.   Well, I guess when we don't know  
15           that a claim is coming, we don't put any thought  
16           into what the claims may be, who the claimants may  
17           be.

18                                 In this case, because we had to put in  
19           a claim in this proceeding, we've had to look at  
20           the number of purchasers who are out there and who  
21           might potentially make claims to us. So that's the  
22           analysis, looking at the number of agreements,  
23           looking at how much they might claim, and that's  
24           how we determine the claim that we filed.

25           40.                   Q.    Okay. Thank you. I have no



1 further questions. Appreciate your time.

2 MR. SLAVENS: Maybe we'll just take a  
3 two-minute break and go off the record just to see  
4 if we have anything else.

5 -- OFF THE RECORD DISCUSSION --

6 MR. SLAVENS: Nothing further from us.

7 -- Whereupon the proceedings adjourned at 3:04 p.m.

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REPORTER'S CERTIFICATE

I, LORRAINE FEDOSOFF, Chartered  
Shorthand Court Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth, at which time the witness was put under oath  
by me;

That the testimony of the witness  
and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed;

That the foregoing is a true and  
correct transcript of my shorthand notes so taken.

Dated this 14th day of June 2018



NEESON COURT REPORTING INC.

PER: LORRAINE FEDOSOFF, CSR (Ontario)

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