

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

Counsel: *Robin B. Schwill*, for KSV Kofman Inc., the Monitor
Ken Kraft and Neil Rabinovitch, for Guy Gissin, the Israeli Court-appointed
functionary officer and foreign representative of Urbancorp Inc.
Jane Dietrich and John Birch, for Mattamy (Downsview) Limited
Robert Drake, for Fuller Landau LLP, proposal trustee to Alan Saskin

Heard: November 3, 2017

F. L. Myers J.

[1] This proceeding involves an unusual cross-border set of facts that led to plenary restructuring (liquidation) proceedings here and in Israel. There has been and will continue to be excellent co-operation between the two Courts. If and when the Israeli Court considers it appropriate to issue letters of request (Letter Rogatory) for discovery or trial, this Court stands ready to extend co-operative comity in accordance with domestic law.

[2] Among the reasons for the lack of jurisdictional squabbles in the case is the work performed by the Officers of both Courts at the outset that led to the Protocol for Co-operation

dated May 13, 2016 as approved by both Courts. It provides that this Court is exclusively authorized to interpret the Protocol and it contains a mandatory forum selection clause for issues involving the Protocol (widely defined).

[3] The Israeli Functionary has concerns about the Monitor's view to hold UDPDI for now and not to seek early realization on its 51% interest in DHI and the Downsview Park Project. The Israeli Functionary represents UCI which is not a CCAA debtor. He has asked the Israeli Court to Order UDPDI's 49% partner in the Downsview Park Project to present itself for formal "investigation" and to provide all relevant documents concerning the Downsview Park Project. The Israeli Functionary also asks the Israeli Court to make the same mandatory disclosure order against anyone who may have relevant information. The Israeli Functionary says it needs more information to assess the Monitor's decision to refrain from selling the asset at this time.

[4] The Protocol requires the Monitor to share information and consult with the Israeli Functionary. He speaks for the holder of nearly 100% of the unsecured debt of UDPDI. The 49% holder of DHI is both DIP lender and independently the secured lender to UDPDI. However, current expectations are that the secured claims will be paid so that UCI is the "Plimsoll" creditor whose recovery is at risk.

[5] There is a fine line between a Court Officer's duty to report and consider the input of creditors and creditor interference in the Court Officer's duties. The Protocol includes the agreement of the Israeli Functionary to refrain from even suggesting it has a right to instruct the Monitor. In his submissions before this Court, the Israeli Functionary's counsel blurred that line. But as nearly the sole creditor with jeopardy or funds at risk, I readily appreciate the Israeli Functionary's concerns. Procedures do not exist for their own sake. They are a means to a substantive end. I reject the Monitor's submission that the Israeli Functionary should be required to proceed here because that's the approved procedure. Rather, in my view, the issue is how to find a resolution of the underlying issue in dispute: whether the Monitor should sell or hold UDPDI or its interest in DHI and the Downsview Project. Litigating that issue with haste, will ensure that the Israeli Functionary gets all relevant information to which he is entitled. As a creditor of a CCAA debtor he has no entitlement to direct contractual counter-parties in UDPDI's name. The counter-party has declined to open a second channel of communication

with the Israeli Functionary and insists on dealing only with UDPDI's authorized representative – the Monitor.

[6] “Substance is secreted in the interstices of procedure” (H.J.S. Maine, 1883). Here the process should drive the parties to a substantive outcome. Absent allegations of bad faith or intentional misconduct, the Israeli Functionary has agreed that proceedings will occur here. (see Newbould J.'s decision dated May 18, 2016 at paras. 27 and 30). Of greater significance, the Protocol deals expressly with the circumstances that now present themselves, namely disagreement between the Monitor and the Israeli Functionary as to the process for selling or realizing on assets.

[7] The purpose of the Protocol was to avoid deflecting the parties into expensive jurisdictional squabbles when they should be focused on value-maximizing in their mutual economic interests. The Protocol allows substance to flow despite procedural roadblocks.

[8] Para. 3(f) of the Protocol provides the process to deal with the substance of sale or realization issues.

[9] This Court therefore Orders:

1. The Monitor and the Israeli Functionary shall agree on a hearing timeline under para. 3(f) of the Protocol. If they are unable to agree within ten (10) days, they are to book a 9:30 scheduling appointment at which I will help them settle upon the timeline;

2. The Monitor shall disclose to the Israeli Functionary and its professional advisors, under standard N.D.A. terms, all information in its possession concerning the present value of UDPDI's investment in DHI and the Downsview Project. This includes future projections but not historic information that is just relevant to what Urbancorp knew when it issued bonds in Israel. Discovery in Israeli litigation is a separate issue;

3. The Monitor shall also disclose the facts and issues that underpin the ability of UDPDI to obtain financial information from DHI, the 49% holder of DHI, and anyone else with relevant information for the para 3(f) motion. The timeline should provide for interim steps required for the Monitor or the Israeli Functionary to seek third party information bearing in

mind UDPDI's contractual rights and limitations, if any, and Rule 29.2 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 on proportionality.

4. The Court declares that the motion brought by the Israeli Functionary is a violation of paras. 3(f), 6 and 7 of the Protocol. It follows that the Israeli Functionary's action in doing so is null and void in Canada and is to be given no force or effect in these *CCAA* proceedings. See: *Nortel Networks Limited, Re*, 2010, ONSC 1304 (CANLII) at para 44.

5. The Court respectfully seeks the aid and recognition of its order by the Israeli Court.

6. The Israeli Functionary is directed to bring this endorsement and order to the attention of the Israeli Court in connection with any motion or proceeding that he brings, if any, seeking relief enforceable in Canada.

7. The confidential appendices to the Monitor's Report and the Israeli Functionary's motion record are to be sealed and not form part of the public record pending further order of the Court. Both contain confidential financial information which would, if released, prejudice a fair realization process. The public interest in open courts is well protected leaving the Monitor's record and this Endorsement unsealed to convey the substance of the issues. See *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41.



F.L. Myers, J.

Released: November 6, 2017

SCHEDULE "A"

List of Non Applicant Affiliates

- Urbancorp Power Holdings Inc.
- Vestaco Homes Inc.
- Vestaco Investments Inc.
- 228 Queen's Quay West Limited
- Urbancorp Cumberland 1 LP
- Urbancorp Cumberland 1 GP Inc.
- Urbancorp Partner (King South) Inc.
- Urbancorp (North Side) Inc.
- Urbancorp Residential Inc.
- Urbancorp Realtyco Inc.

FILE/DIRECTION/ORDER

BEFORE JUDGE FL MYERS J. ACTION # CV-16-11389-0001

RE: URBAN CORP Downview Park
DEVELOPMENT INC. ET AL. Plaintiff(s)

.v.

Defendant(s)

CASE MANAGEMENT: YES [] NO []

COUNSEL: _____ PHONE NO. _____
_____ PHONE NO. _____
_____ PHONE NO. _____

ORDER [] DIRECTION FOR REGISTRAR

[] REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT _____
[] NO ONE APPEARED ADJOURNED TO TO BE SPOKEN TO COURT _____

SEE ATTACHED PP 1-9.

Nov 6/17
DATE

[Signature]
JUDGE'S SIGNATURE

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Judges Endorsment Continued

THIS PROCEEDING INVOLVES AN UNUSUAL CROSS-BORDER SET OF FACTS THAT LED TO PLENARY RESTRUCTURING (LIQUIDATION) PROCEEDINGS HERE AND IN ISRAEL. THERE HAS BEEN AND WILL CONTINUE TO BE EXCELLENT CO-OPERATION BETWEEN THE TWO COURTS. IF AND WHEN THE ISRAELI COURT CONSIDERS IT APPROPRIATE TO ISSUE LETTERS OF REQUEST (LETTERS ROGATORY) FOR DISCOVERY OR TRIAL, THIS COURT STANDS READY TO EXTEND CO-OPERATIVE COMITY IN ACCORDANCE WITH DOMESTIC LAW.

AMONG THE REASONS FOR THE LACK OF JURISDICTIONAL SQUABBLES IN THIS CASE IS THE WORK PERFORMED BY THE OFFICIALS OF BOTH COURTS AT THE OUTSET THAT LED TO THE PROTOCOL FOR COOPERATION DATED MAY 13, 2016 AS APPROVED BY BOTH COURTS. IT PROVIDES THAT THIS COURT IS EXCLUSIVELY AUTHORIZED TO INTERPRET THE PROTOCOL AND IT CONTAINS A MANDATORY FORUM SELECTION CLAUSE FOR ISSUES INVOLVING THE PROTOCOL (WIDELY DEFINED).

THE ISRAELI FUNCTIONARY HAS CONCERNS ABOUT

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Judges Endorsment Continued

THE MONITOR'S VIEW TO HOLD UDAI FOR NOW AND NOT TO SEEK EARLY REALIZATION ON ITS 51% INTEREST IN DHT AND THE DOWNSVIEW PARK PROJECT. ~~THE~~ THE ISRAELI FUNCTIONARY REPRESENTS UCI WHICH IS NOT A CCAA DEBTOR. HE HAS ASKED THE ISRAELI COURT TO ORDER ~~BY~~ UDAI'S 49% PARTNER IN THE DOWNSVIEW PARK PROJECT TO PRESENT ITSELF FOR PERIODAL "INVESTIGATION" AND TO PROVIDE ALL RELEVANT DOCUMENTS CONCERNING THE DOWNSVIEW PARK PROJECT. THE ISRAELI FUNCTIONARY ALSO ASKS THE ISRAELI COURT TO ~~MAKE~~ MAKE THE SAME MANDATORY DISCLOSURE ORDER AGAINST ANYONE ^{WHO} ~~WHO~~ MAY HAVE RELEVANT INFORMATION. ~~TO ALL~~ THE ISRAELI FUNCTIONARY SAYS IT NEEDS MORE INFORMATION TO ASSESS THE MONITOR'S DECISION TO REFRAIN FROM SELLING THE ASSET AT THIS TIME.

THE PROTOCOL REQUIRES THE MONITOR TO SHARE INFORMATION AND CONSULT WITH THE ISRAELI FUNCTIONARY. HE SPEAKS FOR THE HOLDER OF NEARLY 100% OF THE UNSECURED DEBT OF UDAI. THE 49%

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Judges Endorsement Continued

~~Holder of VDPDT~~ ^{IN ISRAEL} IS BOTH DTP LENDER AND
 INDEPENDENTLY THE SECURED LENDER TO VDPDT.
 HOWEVER, CURRENT EXPECTATIONS ARE THAT THE SECURED
 CLAIMS WILL BE PAID SO THAT DCI IS THE
 "PLIMSOLL" CREDITOR WHOSE RECOVERY IS AT RISK.
 THERE IS A FINE LINE BETWEEN A COURT
 OFFICER'S DUTY TO REPORT AND CONSIDER THE
 INPUT OF CREDITORS AND CREDITOR INTERFERENCE
 IN THE COURT OFFICER'S DUTIES. THE PROTOCOL
 INCLUDES THE AGREEMENT OF THE ISRAELI FUNCTIONARY
 TO REFRAIN FROM EVEN SUGGESTING IT HAS A RIGHT TO
 INSTRUCT THE MONITOR. IN HIS SUBMISSIONS BEFORE
 THIS COURT, THE ISRAELI FUNCTIONARY'S COUNSEL BLURRED
 THAT LINE. BUT AS NEARLY THE SOLE CREDITOR WITH
 JEOPARDY OF FUNDS AT RISK, I READILY APPRECIATE
 THE ISRAELI FUNCTIONARY'S CONCERNS. PROCEDURES
 DO NOT EXIST FOR THEIR OWN SAKE. THEY ARE A
 MEANS TO A SUBSTANTIVE END. I REJECT THE
 MONITOR'S SUBMISSION THAT THE ISRAELI FUNCTIONARY
 SHOULD BE REQUIRED TO PROCEED HERE BECAUSE THAT'S

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Judges Endorsment Continued

THE APPROVED PROCEDURE. RATHER, IN MY VIEW, THE ISSUE IS HOW TO FIND A RESOLUTION OF THE UNDERLYING ISSUE IN DISPUTE: WHETHER THE MONITOR SHOULD SELL OR HOLD UDPDI OR ITS INTEREST IN DHI AND THE DOWNSVIEW PROJECT. LITIGATING THAT ISSUE WITH HASTE, WILL ENSURE THAT THE ISRAELI FUNCTIONARY GETS ALL RELEVANT INFORMATION TO WHICH HE IS ENTITLED. AS A CREDITOR OF A CCAA DEBTOR HE HAS NO ENTITLEMENT TO DIRECT CONTRACTUAL COUNTERPARTIES IN UDPDI'S NAME. THE COUNTER-PARTY HAS DECLINED TO OPEN A SECOND CHANNEL OF COMMUNICATION WITH THE ISRAELI FUNCTIONARY AND INSISTS ON DEALING ONLY WITH UDPDI'S AUTHORIZED REPRESENTATIVE - THE MONITOR.

"SUBSTANCE IS SECRETED IN THE INTERSTICES OF PROCEDURE" (B. J. S., MAINE, 1883). HERE, THE PROCESS SHOULD DRIVE THE PARTIES TO A SUBSTANTIVE OUTCOME. ABSENT ALLEGATIONS OF BAD FAITH OR INTENTIONAL MISCONDUCT, THE

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Judges Endorsment Continued

ISRAELI FUNCTIONARY HAS AGREED THAT PROCEEDINGS WILL OCCUR HERE. (SEE NAROVNA J.'S DECISION DATED MAY 18 2016 AT PARAS. 27 AND 30.) OF GREATER SIGNIFICANCE, THE PROTOCOL DEALS EXPRESSLY WITH THE CIRCUMSTANCES THAT NOW PRESENT THEMSELVES, NAMELY DISAGREEMENT BETWEEN THE MONITOR AND THE ISRAELI FUNCTIONARY AS TO THE PROCESS FOR SELLING OR REALIZING OF ASSETS.

THE PURPOSE OF THE PROTOCOL WAS TO AVOID DEFLECTING THE PARTIES INTO EXPENSIVE JURISDICTIONAL SOUVARLES WHEN THEY SHOULD BE FOCUSED ON VALUE-MAXIMIZING^{IN} THEIR MUTUAL ECONOMIC INTERESTS. THE PROTOCOL ALLOWS SUBSTANCE TO FLOW DESPITE PROCEDURAL ROADBLOCKS.

PARA. 3(F) OF THE PROTOCOL PROVIDES THE PROCESS TO DEAL WITH THE SUBSTANCE OF SALE OR REALIZATION ISSUES.

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Judges Endorsment Continued

THIS COURT THEREFORE ORDERS:

1. THE MONITOR AND THE ISRAELI FUNCTIONARY SHALL AGREE ON A HEARING TIMELINE UNDER PARA. 3(P) OF THE PROTOCOL. IF THEY ARE UNABLE TO AGREE WITHIN TEN (10) DAYS, THEY ARE TO BOOK A 9³⁰ SCHEDULING APPOINTMENT AT WHICH I WILL HELP THEM SETTLE UPON ~~TO~~ THE TIMELINE;

2. THE MONITOR SHALL DISCLOSE TO THE ISRAELI FUNCTIONARY AND ITS PROFESSIONAL ADVISORS, UNDER STANDARD N.D.A. TERMS, ALL INFORMATION IN ITS POSSESSION CONCERNING THE PRESENT VALUE OF UJPAI'S INVESTMENT IN DMT AND THE DOWNSIDE PROJECT. THIS INCLUDES FUTURE PROJECTIONS BUT NOT HISTORIC INFORMATION THAT IS JUST RELEVANT TO WHAT URBANLORD KNOW WHEN IT ISSUES BONDS IN ISRAEL. DISCOVERY IN ISRAELI LITIGATION IS A SEPARATE ISSUE.

3. THE MONITOR SHALL ALSO DISCLOSE ~~TO~~ ~~THE~~

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Judges Endorsment Continued

FACTS AND ISSUES THAT UNDERPIN THE ABILITY OF
 UDPDI TO OBTAIN FINANCIAL INFORMATION FROM
 DNT, THE 99% HOLDER OF ^{IN DAI} ~~SHARES~~, AND ANYONE
 ELSE WITH RELEVANT INFORMATION. FOR THE PARA 3(F)
 MOTION, THE TIMELINE SHOULD PROVIDE FOR INTERIM
 STEPS REQUIRED FOR THE MONITOR OR THE
 ISRAELI FUNCTIONARY TO SEEK THIRD PARTY
 INFORMATION BEARING IN MIND UDPDI'S
 CONTRACTUAL RIGHTS AND LIMITATIONS, IF ANY,
 AND RULE 29.2 OF THE RULES OF CIVIL
 PROCEDURE, RRO 1990, REG. 194 ON PROPORTIONALITY

4. THE COURT DECLARES THAT THE MOTION
 BROUGHT BY THE ISRAELI FUNCTIONARY
 IS A VIOLATION OF PARAS. 3(F) 6 AND 7
 OF THE PROTOCOL. IT FOLLOWS THAT THE
 ISRAELI FUNCTIONARY'S ACTION IN DOING SO
 IS NULL AND VOID IN CANADA AND ~~IS~~ ^{IS} TO
 BE GIVEN NO FORCE OR EFFECT IN THESE
 CCRA PROCEEDINGS. SEE: NORTEL NETWORKS LIMITED

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Judges Endorsment Continued

RE, 2010, OJSC 1304 (CAWLII) AT PARA 44.

5. THE COURT RESPECTFULLY SEEKS THE AID AND RECOGNITION OF ITS ORDER BY THE ISRAELI COURT.

6. THE ISRAELI FUNCTIONARY IS DIRECTED TO BRING THIS ENDORSEMENT AND ORDER TO THE ATTENTION OF THE ISRAELI COURT IN CONNECTION WITH ANY MOTION OR PROCEEDING THAT HE BRINGS, IF ANY, SEEKING RELIEF ENFORCEABLE IN CANADA.

7. THE CONFIDENTIAL APPENDICES TO THE MONITOR'S REPORT AND THE ISRAELI FUNCTIONARY'S MOTION RECORD ARE TO BE SEALED AND NOT FORM PART OF THE PUBLIC RECORD PENDING FURTHER ORDER OF THE COURT. BOTH CONTAIN CONFIDENTIAL FINANCIAL INFORMATION WHICH WOULD, IF RELEASED, PRESUME A FAIR

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Judges Endorsment Continued

REALIZATION PROLESS. THE PUBLIC INTEREST IN
OPEN COURTS IS WELL PROTECTED LEAVING
THE MONITOR'S RECORD AND THIS ENDORSEMENT
UNSEALED TO CONVEY THE SUBSTANCE OF THE
ISSUE. SEE SIERRA CLUB OF CANADA v. CANADA
(MINISTER OF FINANCE), 2002, 5 C.L. 41.