COURT OF APPEAL FOR ONTARIO

CITATION: Urbancorp Toronto Management Inc. (Re), 2022 ONCA 181
DATE: 20220303
DOCKET: M52860

Strathy C.J.O., Roberts and Sossin JJ.A.

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

Neil Rabinovitch and Kenneth Kraft, for the moving party, Guy Gissin, in his capacity as Foreign Representative of Urbancorp Inc.

Robin B. Schwill, for the responding party, KSV Kofman Inc., in its capacity as Monitor

Bobby Kofman, Noah Goldstein and Robert Harlang, for the responding party, KSV Restructuring Inc.

Andrew Winton, for the responding party, Doreen Saskin

Heard: in writing

Motion for leave to appeal from the order of Chief Justice Geoffrey B. Morawetz of the Superior Court of Justice, dated September 16, 2021, with reasons at 2021 ONSC 5073.

REASONS FOR DECISION

[1] Pursuant to s. 13 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "*CCAA*"), the moving party, in his capacity as Foreign Representative of Urbancorp Inc., seeks leave to appeal from the distribution order of the Supervising Judge of the Superior Court of Justice (the "Supervising Judge") dated September 16, 2021, authorizing the court-appointed Monitor of the applicants to make a distribution to King Towns North Inc. ("KTNI"). KTNI is the owner of certain lands known as the "Berm Lands" and the landlord under a lease of these lands to certain entities, described below. The Monitor does not join in the appeal.

[2] Section 13 provides that any person dissatisfied with an order or decision made under the *CCAA* may appeal from the order or decision with leave.

[3] In determining whether leave should be granted, this court considers whether:

a. the proposed appeal is *prima facie* meritorious or frivolous;
b. the points on the proposed appeal are of significance to the practice;
c. the points on the proposed appeal are of significance to the action; and
d. the proposed appeal will unduly hinder the progress of the action.

See *Stelco Inc. (Re)* (2005), 75 O.R. (3d) 5 (C.A.), at para. 24; *Nortel Networks Corporation (Re)*, 2016 ONCA 332, 130 O.R. (3d) 481, at para. 34, application for leave to appeal discontinued, [2016] S.C.C.A. No. 301; *Timminco Limited (Re)*,

2012 ONCA 552, 2 C.B.R. (6th) 332, at para. 2; *DEL Equipment Inc. (Re)*, 2020 ONCA 555, at para. 12.

[4] Leave to appeal is granted sparingly and only where there are "serious and arguable grounds that are of real and significant interest to the parties": *Nortel Networks*, at para. 34.

Background

[5] The facts are set out in detail in the reasons of the Supervising Judge. We summarize only those facts necessary to explain our decision.

[6] *CCAA* proceedings of the Urbancorp group of companies (the "Urbancorp Group") have been overseen by the Commercial List since 2016. In related proceedings, Urbancorp Renewable Power Inc. ("URPI") has been in receivership since 2018. The Supervising Judge has been case managing both proceedings since 2019.

Urbancorp's Geothermal Assets

[7] The Urbancorp Group owned certain assets, described as the "Geothermal Assets", located in four condominium buildings in Toronto. These assets provided heating and air conditioning to each condominium and included, among other things, assets located within the condominium building itself, below-ground wells to supply water to the heating and air conditioning systems, supply agreements

with the various condominium corporations and a management agreement between the manager of the Geothermal Assets and the owners of those assets.

[8] In the course of these proceedings, the Geothermal Assets pertaining to three of the condominiums were sold to Enwave Geo Communities LP ("Enwave") for $24 million.

The Bridge Geothermal Assets

[9] The assets at issue before the Supervising Judge (the "Bridge Geothermal Assets") pertained to one of those condominiums, referred to as "Bridge", located at 38 Joe Shuster Way in Toronto. At the time of the motion before the Supervising Judge, there was approximately $7.7 million available for distribution to stakeholders in relation to the Bridge Geothermal Assets. KTNI's claim was one of seven claims against those funds. The Monitor admitted six claims totaling $5.086 million, but disallowed KTNI's claim of $5.875 million. As noted above, the Supervising Judge rejected the Monitor's disallowance and allowed KTNI's claim.

The Berm Lands

[10] In the case of the Bridge Geothermal Assets, the majority of the wells were located on a parcel of land adjacent to the Bridge condominium, referred to as the Berm Lands. KTNI was the owner of the Berm Lands.

The Berm Lease

[11] Pursuant to a lease dated July 10, 2010 (the "Berm Lease"), the Berm Lands were leased by KTNI jointly to Vestaco Homes Inc. ("Vestaco Homes"), an Urbancorp-related entity which owned the Bridge Geothermal Assets, and URPI, which was the manager of the Geothermal Assets. The Berm Lease was set to expire on July 9, 2060, with provision for renewals, making its term consistent with the relevant geothermal energy supply agreement.

[12] All parties to the Berm Lease – KTNI as landlord and Vestaco Homes and URPI as tenants – were beneficially owned or controlled by the Saskin family. Alan Saskin signed the lease on behalf of each party. Pursuant to a declaration of trust dated December 27, 2012, KTNI is declared to be holding all of its interests in the Berm Lands in trust for Urbancorp Management Inc. ("UMI"). The Saskin Family Trust is considered to be the sole shareholder of UMI. Doreen Saskin, Alan Saskin's spouse, claims to be a secured creditor of UMI for approximately $2.8 million.

[13] The tenants' interest in the Berm Lease was one of the assets sold to Enwave. Enwave allocated a value of $2.049 million to the Berm Lease. The Supervising Judge found that this was an appropriate valuation.

[14] The Berm Lease initially provided for an annual rent of $200,000, payable to KTNI. In 2015, Urbancorp Inc. was in the process of raising funds from the

issuance of bonds in Israel. There was evidence that in order to increase the value of the Geothermal Assets for the purpose of the bond issuance, Alan Saskin amended the Berm Lease to provide a rental of $100 per annum, rather than $200,000, because a payment of rent to a related company outside the bond structure would reduce the net income and the net value of the Bridge geothermal system, made up of the Bridge Geothermal Assets.[1]

[15] It was not disputed that $100 per annum was not a market rent for the Berm Lease. However, the Berm Lease provided that the lease could not be transferred or assigned without the consent of the landlord, KTNI. The effect was that a tenant that was not controlled or beneficially owned by the Saskin family could not benefit from a nominal rent at the expense of a Saskin-related landlord.

[16] This brings us to the provision of the Berm Lease, referred to below as the "Transfer Provision", which is at the heart of this dispute:

> 13.4(e) Where the Transferee pays or gives to the Transferor money or other value that is reasonably attributable to the desirability of the location of the Leased Premises or to leasehold improvements that are owned by the Landlord or for which the Landlord has paid in whole or in part, then at the Landlord's option, the Transferor will pay to the Landlord such money or other value in addition to all Rent payable under this lease and such amounts shall be deemed to be further Additional Rent.

---

[1] For further clarity, Vestaco Homes was added as a party to the Berm Lease at the time it was amended in 2015.

[17] The effect of the Transfer Provision is that on a transfer of the lease, KTNI is entitled to the "value" of the lease. Doreen Saskin contended that the effect of this provision in the circumstances is that any amount of the proceeds of sale of the Geothermal Assets to Enwave that are attributable to the transfer of the Berm Lease should be allocated to KTNI.

The Sale of the Bridge Geothermal Assets to Enwave

[18] In December 2020, over the objection of KTNI, the Supervising Judge approved the sale of the Bridge Geothermal Assets to Enwave. The order provided that the assignment was free of any payment obligations to KTNI that might arise pursuant to s. 13.4 of the Berm Lease. The sale order also provided that the allocation of the proceeds of sale was to be determined at a later date. As noted earlier, all claims against the Bridge Geothermal Assets, other than those related to the Berm Lease, have been resolved.

[19] The Monitor disallowed KTNI's claim to a portion of the proceeds of sale of the Bridge Geothermal Assets to Enwave, giving the following reasons:

> The Berm Lease is an asset of Vestaco Homes and URPI, as tenants, to the extent it provides for under market rent. The Berm Provision has the effect of stripping this value away from Vestaco Homes and URPI for no consideration. While this would be of little concern if all parties were related parties and solvent, the fact is that Vestaco Homes and URPI are now insolvent and subject to CCAA and receivership proceedings, respectively. Accordingly, in the Court Officer's view, a clause set up between related parties to manage inter-

> group asset allocations and tax consequences should not be enforceable under the circumstances as a matter of equity and fairness when doing so would deprive the estates of value that they possessed on the filing date, for no consideration, with the consequential beneficiary being the sole officer and director of the Urbancorp Group, Alan Saskin, or members of his family.
>
> The Court Officer believes that URPI was made a tenant under the Berm Lease as a matter of pure convenience as it was the manager of the Bridge Geothermal Assets for the benefit of Vestaco Homes, and the party who would be exercising access rights for repairs and maintenance. Commercially, as Vestaco Homes is the owner of the Bridge Geothermal Assets, which includes the geothermal piping located on the Berm Lands, it makes sense that the economic value of the Berm Lease would be allocated fully to it.

[20] The Monitor moved before the Supervising Judge for directions concerning the distribution of the proceeds of the sale of the Geothermal Assets. The only contested issue related to which party was entitled to the funds reserved ($2.8 million) in relation to the Berm Lease. The Monitor recommended that the amount allocated to the Berm Lease be for the benefit of the tenant Vestaco Homes and that KTNI's claim be disallowed. KTNI opposed this recommended proposal.

The Decision of the Supervising Judge

[21] The central issue on the motion below was the interpretation and application of the Transfer Provision of the "Berm Lease", and specifically whether the provision offended either the "*pari passu*" rule or the "anti-deprivation" rule, both of which were discussed and explained in the decision of the Supreme Court of

Canada in *Chandos Construction Ltd. v. Deloitte Restructuring Inc.*, 2020 SCC 25, 449 D.L.R. (4th) 293.

[22] The Monitor, supported by the Foreign Representative of Urbancorp Inc., took the position that Vestaco Homes, one of the tenants, should receive the amount Enwave attributed to the Berm Lease. KTNI, supported by Doreen Saskin, opposed this proposal.

[23] The Supervising Judge described the Monitor's position as follows, at para. 17:

> The Monitor is of the view that the Berm Lease is an asset of Vestaco Homes and URPI, as Tenants, to the extent it provides for under market rent. The Berm Provision has the effect of stripping this value away from Vestaco Homes and URPI for no consideration. The Monitor is of the view that a clause set up between related parties to manage inter-group asset allocations and tax consequences should not be enforceable under the circumstances as a matter of equity and fairness when doing so would deprive the estates of value that they possessed on the filing date, for no consideration, with the consequential beneficiary being the sole officer and director of the Urbancorp group, Alan Saskin, or members of his family.

[24] The Supervising Judge rejected evidence tendered by Urbancorp Inc. concerning the drafting of the Berm Lease, the purpose of s. 13.4 and the decision to reduce the annual rent. He found that the affiant, Mr. Mandell, had failed to disclose a cooperation and immunity agreement he had made with the Foreign Representative and that his evidence was unreliable and would be disregarded.

[25] As a result, the Supervising Judge based his determination of the issues on the documentary record. Applying the principles of contract interpretation (referring to *Ventas, Inc. v. Sunrise Senior Living Real Estate Investment Trust*, 2007 ONCA 205, 85 O.R. (3d) 254, at para. 24), he accepted the submission of Doreen Saskin concerning the interpretation of the Transfer Provision and found that, as a matter of contract interpretation, the portion of the distribution funds allocated to the Berm Lease was to be transferred to KTNI. He observed, at paras. 55-57:

> Counsel to Ms. Saskin submits that the starting point for the interpretation of the provision is the plain language in s. 13.4(e) of the Berm Lease, which expressly states that the Transferor is required to pay the proceeds of transfer of the lease to the Landlord.
>
> Counsel further submits that this provision needs to be read in the context of the objective factual matrix of the terms of the Berm Lease as a whole. This is a long-term lease between non-arm's length parties for nominal rent and there is no dispute that the rent does not reflect the market value of the leasehold interest – which is precisely why EGC allocated $2 million in value to the lease. EGC paid URPI that sum to "buy" the right to pay $100 annual rent to KTNI for so long as the Berm Lands were being used to generate geothermal energy. Accordingly, this is precisely the circumstance contemplated by s. 13.4(e) of the Berm Lease, and there is a contractual obligation for the portion of the Distribution Funds allocated to the lease to be transferred to KTNI.
>
> I have been persuaded by the submissions of counsel to [Ms.] Saskin. In my view, the plain language of s. 13.4(e) of the Berm Lease establishes the basis for the claim of KTNI.

[26] The Supervising Judge then turned to the Monitor's submission that the Transfer Provision should be invalidated under either the *pari passu* rule or the anti-deprivation rule. The *pari passu* rule prohibits contractual provisions that allow creditors to obtain more than their fair share on the insolvency of the counterparty. The anti-deprivation rule, he said, "protects third party creditors, by rendering void contractual provisions that, upon insolvency, remove value that would otherwise have been available to a debtor's creditors from their reach": referring to *Chandos*.

[27] In rejecting this submission, the Supervising Judge referred to and adopted the submissions made by counsel for Doreen Saskin. After setting out those submissions, the Supervising Judge observed, with respect to the *pari passu* rule, at para. 65:

> In my view, the submissions put forth by Doreen Saskin on this issue are a complete answer to the arguments raised by the Monitor. Specifically, the Berm Lease makes clear that Vestaco does not have an interest in the transfer value of the lease – that value was retained by the landlord, KTNI in accordance with s. 13.4(e). The Berm Lease reserved the transfer value to KTNI and, accordingly, the *pari passu* rule, which invalidates contractual terms that prefer one creditor ahead of the others, does not come into play on these facts, because KTNI's interest in the Distribution Funds does not alter any scheme of distribution.

[28] With respect to the anti-deprivation rule, counsel for Doreen Saskin submitted that "the anti-deprivation rule requires as a precondition that the impugned term of a contract is triggered by an event of insolvency or bankruptcy."

Counsel noted that the provision in the Berm Lease did not mention bankruptcy or insolvency and was “agnostic” as to whether the transfer occurs in the insolvency context or not. The Supervising Judge agreed, at para. 66:

> The anti-deprivation rule does not apply as the relevant clause does not mention insolvency or bankruptcy. Rather, it applies to all transfers of the lease. The clause is triggered by the transfer of the lease.

[29] The Supervising Judge concluded that s. 13.4(e) of the Berm Lease was not invalidated under either the *pari passu* rule or the anti-deprivation rule.

[30] The Supervising Judge therefore ordered the Monitor to distribute $2.049 million to KTNI from the funds available for distribution, with the proviso that there be no distribution to Doreen Saskin until such time as her claim in the bankruptcy of UMI, KTNI’s parent, had been fully and finally accepted by the trustee in bankruptcy of UMI.

The Moving Party’s Submissions

[31] The moving party submits that the proposed appeal is meritorious and is significant to the parties and the profession. He submits that it raises an issue of significance to bankruptcy practice concerning the application of the decision of the Supreme Court of Canada in *Chandos*, which he submits should be seen as a statement of first principles, rather than as a complete code. He submits that the practice needs to know whether the anti-deprivation rule can be excluded by drafting a provision that omits reference to the words “bankruptcy” or “insolvency”.

[32] If granted leave to appeal, the moving party proposes to address the following issues:

a. Whether the anti-deprivation rule applies in circumstances where an impugned provision is not expressly triggered by an event of insolvency, but the effect of the clause is to "strip value" from the insolvent debtor's estate. The Supervising Judge elevated form over substance in the application of *Chandos* by finding that the anti-deprivation rule does not apply to provisions that do not expressly reference an event of insolvency. He failed to consider that, practically speaking, the only scenario in which s. 13.4(e) could apply would be an insolvency or bankruptcy. While the Supreme Court in *Chandos* held that the anti-deprivation rule does not apply to a provision that is not triggered by an event other than insolvency or bankruptcy, it did not find that the rule could be avoided by "clever drafting" where, as a practical matter, it could only apply in bankruptcy or insolvency;
b. Whether the Supervising Judge failed to determine whether the value attributed to the Berm Lease is "reasonably attributable to the desirability of the location of the Leased Premises" within the meaning of the Transfer Provision; and
c. Whether the Supervising Judge erred by failing to consider the evidence of both Mr. Mandell and Mr. Saskin concerning the factual matrix of the amendment of the lease.

[33] The moving party submits that granting leave to appeal will not unduly delay the insolvency proceedings, which have been continuing since 2016. The asset has been monetized but there will be no distribution to Doreen Saskin until such time as her claim against UMI has been accepted by UMI's trustee in bankruptcy.

Discussion

[34] The errors identified by the moving party are, at their highest, mixed questions of fact and law and will not be set aside in the absence of an extricable error of law or a palpable and overriding error in the assessment of the evidence.

[35] In our view, the moving party has not satisfied the first branch of the test for leave. None of the alleged errors raise a *prima facie* meritorious issue for appeal.

[36] As to the first proposed ground of appeal, we do not accept the moving party's submission that the Supervising Judge erred in his application of *Chandos*. It bears noting, as the Supreme Court did, that the anti-deprivation rule has relatively ancient roots in Canadian law, dating to *Watson v. Mason* (1876), 22 Gr. 574 (Ont. C.A.) and *Hobbs v. The Ontario Loan and Debenture Co.*, (1890) 18 S.C.R. 483. The rule was referred to by Blair J., as he then was, in *Canadian Imperial Bank of Commerce v. Bramalea Inc.* (1995), 33 O.R. (3d) 692 (Gen. Div.), in which he adopted the following summary of the rule, at p. 694:

> A provision in an agreement which provides that upon an insolvency, value is removed from the reach of the insolvent person's creditors to which would otherwise have been available to them, and places that value in the hands of others – presumably in a contract other than a valid secured transaction – is void on the basis that it violates the public policy of equitable and fair distribution amongst unsecured creditors in insolvency situations.

[37] He added, at p. 695:

> … I am satisfied that the principle which underlies the notion is the deprivation of the creditors' interests in a bankruptcy as a result of a contractual provision that is triggered only in the event of bankruptcy or insolvency and which results in property that would otherwise be available to the bankrupt and the creditors, or its value, being diverted to which is in effect, a preferred unsecured creditor. [Citations omitted.]

[38] In *Chandos*, the majority confirmed that the anti-deprivation rule exists in Canadian law and has not been judicially or statutorily eliminated. Referring to *Bramalea*, it described the rule as follows, at para. 31:

> As *Bramalea* described, the anti-deprivation rule renders void contractual provisions that, upon insolvency, remove value that would otherwise have been available to an insolvent person's creditors from their reach. This test has two parts: first, the relevant clause must be triggered by an event of insolvency or bankruptcy; and second, the effect of the clause must be to remove value from the insolvent's estate. This has been rightly called an effects-based test. [Emphasis added.]

[39] After stating that the focus of inquiry is on the effects of the provision rather than the intention of the parties in drafting it, the majority in the Supreme Court stated, at para. 35:

> The effects-based rule, as it stands, is clear. Courts (and commercial parties) do not need to look to anything other than the trigger for the clause and its effect. The effect of a clause can be far more readily determined in the event of bankruptcy than the intention of contracting parties. An effects-based approach also provides parties with the confidence that contractual agreements, absent a provision providing for the withdrawal of assets upon bankruptcy or insolvency, will generally be upheld. [Emphasis added.]

[40] The Court added, at para. 40:

> All that said, we should recognize that there are nuances with the anti-deprivation rule as it stands. For example, contractual provisions that eliminate property from the estate, but do not eliminate value, may not offend the anti-deprivation rule (see *Belmont*, at para. 160, per Lord Mance; *Borland's Trustee v. Steel Brothers & Co. Limited*, [1901] 1 Ch. 279; see also *Coopérants*). Nor do provisions whose effect is triggered by an event other than insolvency or bankruptcy. Moreover, the anti-deprivation rule is not offended when commercial parties protect themselves against a contracting counterparty's insolvency by taking security, acquiring insurance, or requiring a third-party guarantee. [Emphasis added.]

[41] The emphasized portions of the above extracts make it clear that the focus of the concern is (a) whether the provision in question is "triggered" by an event of bankruptcy or insolvency and (b) whether the effect of the contractual provision is to deprive the estate of assets upon bankruptcy: see Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra, *The 2021 Annotated Bankruptcy and Insolvency Act* (Toronto: Thomson Reuters, 2021), at F§108. The Supreme Court in *Chandos* was clearly aware of the commercial importance of the issue when it stated that "contractual agreements, absent a provision providing for the withdrawal of assets upon bankruptcy or insolvency, will generally be upheld."

[42] As counsel for Doreen Saskin submitted before the Supervising Judge and reiterated in their written submissions, the Supreme Court confirmed in *Chandos* that the anti-deprivation rule does not apply to provisions the effect of which is not triggered by bankruptcy or insolvency: *Chandos*, at para. 40. The Transfer

Provision was triggered by the transfer of the lease, not the insolvency of the Urbancorp Group and its affiliates.

[43] We do not accept the submission of the moving party that the Supervising Judge elevated form over substance because the only circumstance in which the Transfer Provision could apply was an insolvency proceeding. In confirming an effects-based approach, as opposed to an intention-based (or commercial reasonableness) test, the Supreme Court emphasized the need for commercial certainty, at para. 35:

> The effects-based rule, as it stands, is clear. Courts (and commercial parties) do not need to look to anything other than the trigger for the clause and its effect. The effect of a clause can be far more readily determined in the event of bankruptcy than the intention of contracting parties. An effects-based approach also provides parties with the confidence that contractual agreements, absent a provision providing for the withdrawal of assets upon bankruptcy or insolvency, will generally be upheld. [Emphasis added.]

[44] It cannot possibly be said, in the case of a 50-year lease, with provision for renewals, that the Transfer Provision could only ever apply in the case of insolvency or bankruptcy.

[45] The interpretation of the Transfer Provision and the application of the anti-deprivation rule to the circumstances of this case is a question of mixed fact and law and the Supervising Judge's decision in that regard is entitled to deference. We therefore see little merit to the proposed appeal on the first ground.

[46] Nor do the remaining proposed grounds raise *prima facie* meritorious issues. These grounds relate to the Supervising Judge's interpretation of the agreement, including his assessment of the utility of the factual matrix in the interpretative exercise and his assessment of the evidence. Again, his interpretation is entitled to deference. While the Supervising Judge did not expressly consider whether the value of the Berm Lease was reasonably attributable to the location of the premises, it can be inferred that he did so. The proximity of the Berm Lands to the Bridge condominium, served by the wells on those lands, was undoubtedly a significant factor of its value.

[47] In our view, none of the proposed grounds for appeal can be described as matters of importance to the practice. In the case of the application of the anti-deprivation rule, *Chandos* quite clearly lays out the framework, at para. 40: a contractual provision does not offend the anti-deprivation rule so long as it can be triggered by an event other than insolvency or bankruptcy. Further, the application of the rule will necessarily be fact-specific and dependent upon the interpretation of the particular terms of the contract in each individual case. For this reason, alleged interpretive errors by the Supervising Judge will be of limited assistance in future cases.

[48] While the appeal may be of significance to this action, standing alone, this factor is insufficient to warrant granting leave to appeal in this case: *Nortel Networks*, at para. 95.

[49] Having regard to these conclusions, the proposed appeal would unduly hinder the completion of the proceedings, which have been underway for nearly six years and are nearing completion. The allocation of the proceeds of the sale of the Bridge Geothermal Assets is one of the final steps.

[50] Finally, we note that having completed his contractual analysis in the absence of any extricable error of law or palpable and overriding error, the Supervising Judge was entitled to make a discretionary decision as to the distribution of the sale proceeds. As the Supreme Court of Canada has recently noted, supervising judges in *CCAA* proceedings are entitled to "broad discretion" and appellate courts must "exercise particular caution before interfering with orders made in accordance with that discretion": *Canada v. Canada North Group Inc.*, 2021 SCC 30, 460 D.L.R. (4th) 309, at para. 22. Intervention is only appropriate where the judge has erred in principle or exercised their discretion unreasonably: *Grant Forest Products Inc. v. The Toronto-Dominion Bank*, 2015 ONCA 570, 387 D.L.R. (4th) 426, at para. 98; *Laurentian University of Sudbury (Re)*, 2021 ONCA 199, 87 C.B.R. (6th) 243, at paras. 19-20; *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, 78 C.B.R. (6th) 1, at paras. 53-54. We see no error in principle or unreasonable exercise of discretion in the making of the distribution order.

Disposition

[51] For these reasons, the motion for leave to appeal is dismissed.

[52] If not otherwise resolved, the parties may address the costs of this motion by written submissions. The responding party shall file its submissions within 15 days of the release of these reasons. The moving party shall have 15 days to reply. The submissions shall not exceed three pages in length, excluding the costs outlines.

G.R. Strathy CJO

I.B. Paluetto J.A.

L. Sossin J.A.

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.