

CITATION: Urbancorp, 2020 ONSC 6835
COURT FILE NO.: CV-16-11389-00CL
DATE: 2020-11-09

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

RE: **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

BEFORE: Chief Justice G.B. Morawetz.

COUNSEL: *R.B. Schwill*, for the KSV Restructuring Inc., Monitor and Receiver

K. Kraft, for Guy Gissin, Court Appointed Israeli Functionary of Urbancorp Inc.

J. Dietrich, for Mattamy (Downsview) Limited

HEARD and DETERMINED: November 3, 2020

REASONS: November 9, 2020

ENDORSEMENT

[1] At the conclusion of the hearing on November 3, 2020, I granted the motion with reasons to follow. These are the reasons.

[2] KSV Kofman Inc., now KSV Restructuring Inc. (“KSV”), court-appointed Monitor of the Applicants brought this motion for approval and directing the Monitor for and on behalf of Urbancorp Downsview Park Development Inc. (“UDPDI”), as borrower, and the other CCAA entities to enter into, Amendment No. 3 to Single Advance Credit Facility Term Sheet with Mattamy (Downsview) (“Mattamy”), as lender (the “DIP Amendment”).

[3] The Monitor also requested that the DIP Facility Charge as defined in the Order made on June 15, 2016 (the “DIP Order”) shall include all advances made pursuant to the DIP Amendment.

[4] UDPDI owns 51% of the issued and outstanding shares in Downsview Homes Inc. (“DHI”), while Mattamy owns the remaining 49%.

[5] DHI owns lands in Toronto, which are being developed into condominiums and residences (the “Project”).

[6] The DIP Order approved a credit facility in order to facilitate an equity injection into DHI (the “DHI Facility”).

[7] The DHI Facility has been the subject of two amendments.

[8] The Monitor reports that UDPDI requires additional funding in order to contribute its share of required equity to DHI in order to permit DHI to satisfy third-party lending requirements. The Monitor also reports that entering into the DIP Amendment is necessary in order to secure the financing required to complete the construction of the Project which is DHI’s only asset. The Monitor also reports that Mattamy has advised that absent approval of the DIP Amendment, it is considering enforcing its security on the shares of DHI and that the result of an enforcement process would likely be material delays in the completion of the Project. Accordingly, the Monitor reports that entering into the DIP Amendment is the only means of advancing the Project and that preserving this asset is fair and reasonable in the circumstances.

[9] Mattamy is supportive of the relief sought.

[10] The Foreign Representative raised a number of concerns.

[11] The Foreign Representative contends that Mattamy has failed to provide detailed information concerning the Project. Mattamy maintains the Project’s books and records and the failure to provide this information has frustrated the Foreign Representative’s ability to explore the possibility of obtaining offers from others to finance the suggested equity contribution that might be on more competitive terms than Mattamy has offered.

[12] The Foreign Representative also raises concerns that Mattamy has refused to pay DHI its outstanding purchase price obligations related to the Project. The Foreign Representative also complains that pursuant to the ruling of Arbitrator Newbould, certain monies are due and payable by Mattamy on account of the purchase price for Mattamy’s acquiring its interest in the Project.

[13] Additional concerns have also been raised with respect to the entitlement of Urbancorp Toronto Management Inc. to share in management fees for the project and in addition, Mattamy has failed to pay amounts that were awarded in the arbitration.

[14] The Foreign Representative also complains that it was not provided with a detailed term sheet on a timely basis.

[15] In summary, the Foreign Representative contends that Mattamy's conduct has precluded it from being able to start any process to source alternative options for the equity contribution and that it is inappropriate for Mattamy to have a right of first refusal on any additional financing.

[16] The Monitor addressed concerns raised by the Foreign Representative in two Supplements to the 41st Report.

[17] In the First Supplement, the Monitor reports that Mattamy is prepared to reduce the maximum amount of the DHI Facility Charge to \$11 million and that Mattamy is prepared to consent to a maturity date of three months from the date of execution of the amendment.

[18] In the Second Supplement, the Monitor states that it is of the view that none of the issues raised by the Foreign Representative are pertinent to the approval of the DIP Amendment, particularly given Mattamy's agreement to have the facility mature on January 31, 2021 and the reduction in the maximum amount of the DHI Facility Charge, both of which were requested by the Foreign Representative.

[19] With respect to the other concerns raised by the Foreign Representative, the Monitor states that the relevant entities with an interest in the Project are Mattamy and UDPDI. The Foreign Representative represents UCI, the shareholder of UDPDI. UCI is an unsecured creditor of UDPDI in the amount of \$10.1 million. UCI is not a shareholder of DHI nor a creditor of DHI. These points were not challenged.

[20] It is significant to note Mattamy's agreement to reduce the maximum of the DHI Facility Charge to \$11 million and its consent to the maturity date of January 31, 2021. This addresses two of the concerns raised by the Foreign Representative.

[21] It is also significant to note that the DIP Order was approved in 2016. This is a proposed third amendment and is not an opportunity to revisit the granting of the DIP Order.

[22] UDPDI's interest in the Project is being supervised by the Monitor. The Monitor has reporting and fiduciary obligations to the court, creditors and other stakeholders. The Monitor has reviewed the terms of Amendment No. 3 and is satisfied that they are reasonable. I am in no position to second guess the Monitor's recommendation that the DIP Amendment be approved.

[23] It is uncontradicted that UDPDI is in need of funds and the only proposal to provide such funds is the proposal which is the subject of this motion. There is no alternative available. The proposed DIP Amendment has to be approved.

[24] The remaining concerns raised by the Foreign Representative can and should be responded to by the Monitor. In this respect, it is incumbent upon Mattamy to provide more timely and detailed information to the Monitor that can then be provided to the Foreign

Representative. The Monitor has acknowledged that there have been several disagreements among Mattamy, the Foreign Representative and the Monitor concerning the interpretation of a number of agreements and that these disagreements persist notwithstanding the decision of Arbitrator Newbould. These concerns, however, do not affect the disposition of this motion.

[25] The DIP Amendment is approved and the order has been signed in the form presented at the hearing.

[26] The Foreign Representative and Mattamy have agreed to the following language, which is acceptable to me and forms part of this endorsement: “In approving the DIP facility, it is noted that Mattamy has agreed to set off the project expense reimbursement (originally \$2.2 million plus interest) from the outstanding DIP obligations owing by UDPDI to Mattamy. The parties will work through that calculation to determine the correct amount outstanding.”

[27] Finally, it is my expectation that, prior to the maturity date of January 31, 2021, the Monitor will communicate with both Mattamy and the Foreign Representative in an effort to address a number of the outstanding issues. In the event that the parties reach an impasse, a case conference can be scheduled.



Chief Justice G.B. Morawetz

Date: November 9, 2020

SCHEDULE "A"

LIST OF NON-APPICANT 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 Partner (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.