

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 IN SCHEDULE "A" HERETO

Court File No.: 31-2114850

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF URBANCORP (WOODBINE) INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF URBANCORP (BRIDLEPATH) INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

CONSOLIDATED AND AMENDED
FACTUM OF CERTAIN PURCHASERS

August 24, 2016

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TO: **SERVICE LIST**

ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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PART I - OVERVIEW

1. This motion is made at the request of 40 different purchasers of residential units from Urbancorp (Lawrence) Inc. ("**Lawrence**"), Urbancorp (St. Clair Village) Inc. ("**St. Clair**"),

Urbancorp (Woodbine) Inc. (“**Woodbine**”), and Urbancorp (Bridlepath) Inc. (“**Bridlepath**” and collectively, the “**Urbancorp Entities**”) for the appointment of Dickinson Wright LLP (“**Dickinson Wright**”) as their representative counsel in the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) proceedings and *Bankruptcy and Insolvency Act* (“**BIA**”) proceedings.¹ Attached hereto as Schedule “A” is a list of the purchasers on whose behalf this motion is made (the “**Purchasers**”).

2. As discussed in greater detail below, the Purchasers are a particularly vulnerable group of creditors with a significant financial stake in these proceedings and face devastating financial consequences as a result of the insolvency of the Urbancorp Entities. Absent the appointment of representative counsel, the Purchasers have limited means to retain counsel to pursue their claims and interests in the context of this complex restructuring proceeding.

3. It is respectfully submitted that the appointment of representative counsel is fair and reasonable and will ensure that the Purchasers interests are placed before this Court in a time efficient and cost effective manner.

PART II - FACTS²

A. Background

CCAA Proceedings

4. Pursuant to an Order dated May 18, 2016 (the “**Initial Order**”), St. Clair, Lawrence and other entities related to them (the “**CCAA Entities**”) were granted protection under the CCAA

¹ Letter from Dickinson Wright to Davies dated August 24, 2016, **Exhibit “A”**, Supplementary Affidavit of Michael Brzezinski sworn August 24, 2016 (“**Supplementary Brzezinski Affidavit**”).

² Unless otherwise stated, all references herein are to the Affidavits of Michael Brzezinski sworn June 29, 2016 in the CCAA and BIA proceedings.

and KSV Kofman Inc. (“**KSV**”) was appointed as monitor, in such capacity hereinafter referred to as the “**Monitor**”.³

5. In August of 2013, St. Clair purchased the real property located at 19 Innes Avenue, and 177 Caledonia Road, Toronto (the “**St. Clair Property**”) for \$7.7 million. Apart from charges securing debtor in possession financing facilities, administrative charges, and a construction lien registered on May 24, 2016 in the amount of \$209,954.00, there are no mortgages or existing encumbrances registered against the St. Clair Property.⁴

6. In August of 2013, Lawrence acquired the real property located at 1780 Lawrence Avenue West, Toronto (the “**Lawrence Property**”) for a purchase price of \$8.3 million. Apart from charges securing debtor in possession financing facilities, administrative charges, and a certificate of action dated May 31, 2016 claiming a lien in the amount of \$24,251.00, there are no mortgages or existing encumbrances registered against the Lawrence Property.⁵

7. The Affidavit of Alan Saskin sworn May 13, 2016, sets out the following relevant facts regarding St. Clair and Lawrence:

- (a) The Lawrence Property is the proposed site of an eighty-eight (88) unit residential project, consisting of townhomes and single and semi-detached homes, sixty-five (65) of which were sold prior to construction;
- (b) The St. Clair Property is the proposed site of forty-one (41) residential townhomes, all of which were sold prior to construction; and

³ Initial Order, **Exhibit “A”**, Affidavit of Michael Brzezinski sworn June 29, 2016 (“**Brzezinski Affidavit**”).

⁴ Parcel Register of the St. Clair Property, **Exhibit “B”**, Brzezinski Affidavit.

⁵ Parcel Register of the Lawrence Property, **Exhibit “C”**, Brzezinski Affidavit.

- (c) Construction has not commenced on either the Lawrence or St. Clair Properties, apart from demolition of a building on the St. Clair Property.

BIA Proceedings

8. On April 25, 2016, Woodbine and Bridlepath (the “**BIA Entities**”) filed Notices of Intention to make a proposal under the BIA and KSV was appointed as Proposal Trustee, in such capacity hereinafter referred to as the “**Trustee**”.

9. The Trustee’s Reports to the Court set out the following relevant facts regarding Woodbine and Bridlepath:

- (a) Woodbine purchased the real property located at 9064 Woodbine Avenue, Markham (the “**Woodbine Property**”) in January 2014 for \$5,250,000;
- (b) Bridlepath purchased the real property located at 2425 Bayview Avenue, Toronto (the “**Bridlepath Property**”) in March 20, 2014 for \$11,500,000;
- (c) The Woodbine Property is the proposed site of twenty-eight (28) low-rise residential units; and
- (d) The Bridlepath Property is the proposed site of thirty-seven (37) low-rise residential units.

10. The table below summarizes the mortgages against the Woodbine Property and Bridlepath Property:

Company	Lender	Security	Amount (\$)
Woodbine	Laurentian Bank of Canada	9064 Woodbine Ave.	4,725,000 ⁶
Bridlepath	Atrium Mortgage Investment Corporation, Terra Firma Capital Corporation (“TFCC”)	2525 Bayview Ave.	10,350,000 ⁷
Woodbine and Bridlepath (as guarantors of Urbancorp Holdco Inc. ⁸)	TFCC – collateral Mortgage	2425 Bayview Ave. 9064 Woodbine Ave.	5,000,000
			20,075,000 ⁹

B. The Purchasers have a Significant Financial Stake in these Proceedings

11. In the Monitor’s Second Report to Court dated June 24, 2016, the Monitor reported that purchasers from St. Clair and Lawrence collectively paid deposits in the aggregate amount of \$7 million (\$3.7 million as against Lawrence and \$3.3 million against St. Clair, respectively) on account of the purchase price of their homes.

12. In the Trustee’s First Report dated May 13, 2016, the Trustee reported that purchasers from the BIA Entities collectively paid deposits totalling \$7.4 million (\$1.9 million to Woodbine and \$5.6 million to Bridlepath) on account of the purchase price of their homes.

⁶ Principal amount outstanding as at March 4, 2016.

⁷ Principal amount outstanding as at April 11, 2016.

⁸ Urbancorp Holdco Inc. (“Holdco”) owns 100% of the share of Urbancorp Inc. The Companies are guarantors of the TFCC loan to Holdco. TFCC has a registered mortgage on the title to the Properties.

⁹ Total amount owing is likely not inclusive of all interest and other fees that may be payable.

13. KSV further reported in both the CCAA proceedings and the BIA proceedings that the deposits were not held in trust and have been spent.¹⁰

14. The deposits paid by the Purchasers substantially exceed the \$40,000 maximum coverage available to each Purchaser from Tarion Warranty Corporation. There is no additional insurance or bond to cover the return of the deposits.

15. In addition to the uncertainty regarding the deposits, most of the Purchasers want to protect their rights to complete the purchase of their homes under the agreements they entered into with the Urbancorp Entities. The Purchasers have serious concerns that should they be unable to complete the purchase of these homes, they will face significant personal and financial hardship, given the appreciation in the value of residential real estate in Toronto.¹¹

16. On June 30, 2016, Justice Newbould issued Orders in the CCAA proceedings and the BIA proceedings approving the sale processes proposed by KSV for the subject properties. In its most recent report to the Court, KSV reported that it has accepted offers to purchase the Lawrence Property, the Bridlepath Property and a property owned by Urbancorp (Mallow) Inc. (“**Mallow**”). The accepted offers contemplate the disclaimer of the Purchasers’ purchase agreements so as to give “clean title” to the prospective purchasers of the properties.¹²

¹⁰ Monitor’s Second Report to Court dated June 24, 2016 at p. 11; Trustee’s First Report to Court dated May 13, 2016 at p. 8.

¹¹ Affidavit of Anthony Salmon sworn July 29, 2016 (“**Salmon Affidavit**”) at para. 17 and Affidavit of Trudy Huynh (“**Huynh Affidavit**”) sworn July 29, 2016 at para. 17, Supplementary Motion Record (CCAA), pp.5 and 40; Affidavit of Gloriana Field sworn Jul 29, 2016 (“**Field Affidavit**”) Supplementary Motion Record (BIA)

¹² Monitor’s Fourth Report/Trustee’s Fifth Report dated August 23, 2016 at p. 4.

17. KSV does not guarantee that the proceeds of the transactions agreed to by KSV with prospective purchasers of the Lawrence Property and the Bridlepath Property will be sufficient to repay the Purchasers' deposits in full.¹³

C. Retainer of Dickinson Wright

18. At the request of the Purchasers, representatives of Dickinson Wright, including Lisa Corne and David Preger who will have carriage of this file, met with a larger group of purchasers from those developments to discuss the possibility of retaining Dickinson Wright to represent their collective interests in these and related proceedings.

19. Dickinson Wright has extensive experience and expertise in restructuring and insolvency law, and in particular, in relation to insolvent real estate development companies.

20. In May 2016, Dickinson Wright was retained by a group of approximately 35 purchasers (the "**Ad Hoc Curzon Purchasers**") of residential townhouse condominium units from Urbancorp (Leslieville) Developments Inc. ("**Urbancorp Leslieville**"). Due to Urbancorp Leslieville's failure to complete the construction and sale of the Leslieville homes, the Ad Hoc Curzon Purchasers retained Dickinson Wright to commence an Application for the appointment of an investigative receiver of Urbancorp Leslieville. That Application prompted Urbancorp Leslieville's senior secured creditor to seek the appointment of Alvarez & Marsal Canada as receiver of Urbancorp Leslieville. Dickinson Wright is continuing to represent the Ad Hoc Curzon Purchasers in respect of the ongoing receivership proceedings of Urbancorp Leslieville.

¹³ Monitor's Fourth Report/Trustee's Fifth Report dated August 23, 2016 at p. 4.

D. Amended Draft Order

21. Dickinson Wright circulated a new draft Order to counsel for KSV on August 16, 2016, and subsequently to the Service List, which adjusts the cap on the Purchasers' legal fees and disbursement to be paid by Urbancorp to \$75,000 in the CCAA proceedings and \$75,000 in the BIA proceedings, for a total of \$150,000.¹⁴

PART III – ISSUES, LAW & AUTHORITIES

22. The issues before this Court are as follows:

- (a) Should the Court approve legal representation for the Purchasers by appointing Dickinson Wright as representative counsel?
- (b) Should the Court direct the Urbancorp Entities to pay the reasonable fees and disbursements of representative counsel?
- (c) Should the Court exercise its discretion to approve a court-ordered charge to secure payment of the reasonable fees and disbursements of representative counsel?

A. Appointing Representative Counsel

23. In CCAA proceedings the Court may exercise its discretion to appoint representatives on behalf of vulnerable stakeholders and order that their legal and other professional fees be paid by the Applicants' estate.¹⁵

¹⁴ Letter from Dickinson Wright to Davies dated August 16, 2016 (p. 4), **Appendix "B"**, Monitor's Fourth Report/Trustee's Fifth Report dated August 23, 2016

¹⁵ *Re Target Canada Co.*, 2015 CarswellOnt 620 at para. 61; *Re Nortel Networks Corp.*, 2009 CarswellOnt 3028 at paras. 13.

24. As noted by Justice Morawetz in *Nortel Networks Corporation*, the Court's authority to appoint representative counsel in CCAA proceedings derives from the following statutory sources:¹⁶

- (a) Rules 10.01 and 12.07 of the *Rules of Civil Procedure*; and
- (b) Section 11 of the CCAA.

25. In *Kitchener Frame Limited*, Justice Wilton-Siegel, in appointing representative counsel to the union and non-union employees and providing for payment of the reasonable legal fees and disbursements of representative counsel by the debtors, confirmed that representative counsel appointments are appropriate in BIA proposals, "particularly in view of the authority granted under section 183(1) of the *Bankruptcy and Insolvency Act*."¹⁷ The courts also derive authority to make representation orders from Rules 10.01 and 12.07 of the *Rules of Civil Procedure*.

26. The following factors, first summarized by Justice Pepall in *CanWest Publishing Inc.*, are regularly referenced by this Court when considering representative counsel orders:¹⁸

- the vulnerability and resources of the group sought to be represented;
- any benefit to the companies under CCAA protection;
- any social benefit to be derived from representation of the group;
- the facilitation of the administration of the proceedings and efficiency;
- the avoidance of a multiplicity of legal retainers;

¹⁶ *Re Nortel Networks Corp.*, 2009 CarswellOnt 3028 at paras. 10 to 12.

¹⁷ *Re Kitchener Frame Limited*, Endorsement of Justice Wilton-Siegel dated July 7, 2011 (unreported).

¹⁸ *Re CanWest Publishing Inc.*, 2010 CarswellOnt 1344 at para. 21 [*CanWest*]; *Re Target Canada Co.*, 2015 CarswellOnt 620 at paras. 60 to 61;

- the balance of convenience and whether it is fair and just, including to the creditors of the Estate;
- whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and
- the position of other stakeholders and the Monitor.

Application of the *CanWest* Factors

(a) Vulnerability of the Purchasers

27. The Purchasers are an especially vulnerable and disparate group of creditors. As individuals, their unsecured claims are relatively small and do not factor significantly into the decision making of the key players in these proceedings, whose interests may be at odds with those of the Purchasers. This places the Purchasers on the sidelines, while these other parties make the decisions that will ultimately determine whether there is sufficient money to refund deposits, and whether the Purchasers will have the right to complete the purchase of their homes.

28. As matters currently stand, the Purchasers are at significant risk of losing their deposits. Moreover, in the time since they signed their purchase agreements, the price of real estate in Toronto has appreciated.¹⁹ As a result, the Purchasers are not only at risk of losing their deposits and any increase in value they may have received when the projects are completed, they also face the unenviable prospect of having to make another substantial financial outlay in order to find new homes in Toronto.

¹⁹ Salmon Affidavit at paras. 12, 13 and 17 and Huynh Affidavit at paras. 14, 15 and 17, Supplementary Motion Record (CCAA), pp. 4-5 and 40; Field Affidavit at para. 8, Supplementary Motion Record (BIA).

29. For the majority of the Purchasers, it would not be economical to retain their own legal counsel to represent their interests in these proceedings.²⁰

(b) Benefit to the Applicants and the Efficient Administration of the Estate

30. Representative counsel will benefit the estate by removing the need for KSV and the Applicants to deal with a potentially large number of individual unrepresented purchasers advancing individual claims. This objective was promoted by Justice Morawetz in *Cash Store Financial Services*.²¹

I am also satisfied that a representation order will facilitate the administration of the CCAA proceeding and enhance its efficiency. The appointment of representative counsel will avoid the need for the Applicants to deal with a potentially large number of individual unrepresented borrowers advancing individual and possibly inconsistent claims.

31. Representative counsel can promote the interests of the Purchasers in a consistent and streamlined manner that will provide an overall benefit for the estate.

(c) Avoidance of Multiplicity of Legal Retainers

32. With such a potentially large and diverse group of Purchasers, a multiplicity of individual legal retainers will cause significant inefficiencies and delay in these proceedings. Moreover, although the Purchasers are similarly situated claimants with aligned interests, they are at risk of putting forward inconsistent positions when there are multiple individuals or small groups being represented independently.

²⁰ Salmon Affidavit at paras. 14 and Huynh Affidavit at paras. 16, Supplementary Motion Record (CCAA), pp. 4 and 40.

²¹ *Re The Cash Store Financial Services*, 2014 ONSC 4567 at para. 20.

(d) The Balance of Convenience Favours the Appointment

33. In *Dugal v. Research in Motion*, Justice Campbell relied on the following “balance of convenience” test described in *Police Retirees of Ontario Inc. v. Ontario (Municipal Employees' Retirement Board)* in granting a representation order:²²

.... the test to be applied in considering a request for a representation order is not whether the individual members of the group can be ascertained or found, but rather whether the balance of convenience favours granting of a representation order instead of individual service upon each member of the group and individual participation in the proceedings. Such an interpretation is consistent with the legislative purpose behind this provision, which is designed to encourage an expeditious means of resolving contentious issues without the cost and expense associated with a Rule 12 order. In analyzing the balance of convenience, I must consider the inconvenience that would be experienced by each party if the representation order were or were not granted.

34. The balance of convenience strongly favours granting a representation order in this case. While no stakeholder participating in this proceeding will be prejudiced by a representation order, the Purchasers are likely to suffer substantial prejudice if they do not have representative counsel who can advocate for their rights and put forward their collective position in all matters affecting their interests.

(e) No other Representative Counsel has been Appointed

35. No other representation order has been made for the Purchasers.

²² *Dugal v. Research in Motion Ltd.*, 2007 CarswellOnt 7565 at para. 21.

Commonality of Interest

36. A further consideration in granting a representative order is the “commonality of interest” among the Purchasers. The following principles are applicable to assessing commonality of interest:²³

- (a) Commonality of interest should be viewed based on the non-fragmentation test, not on an identity of interest test;
- (b) The interests to be considered are the legal interests that a creditor holds qua creditor in relationship to the debtor company prior to and under the plan as well as on liquidation;
- (c) The commonality of interests are to be viewed purposively, bearing in mind the object of the CCAA or BIA proposal, namely to facilitate reorganizations if possible;
- (d) In placing a broad and purposive interpretation on the CCAA, the court should be careful to resist classification approaches that would potentially jeopardize viable plans;
- (e) Absent bad faith, the motivations of creditors to approve or disapprove [of the Plan or proposal] are irrelevant; and
- (f) The requirement of creditors being able to consult together means being able to assess their legal entitlement as creditors before or after the plan or proposal in a similar manner.

37. In *Rosseau Resort Developments Inc.*, Justice Peppal appointed representative counsel on behalf of purchasers of condominium units that had yet to close in the context of the receivership

²³ *Re Stelco Inc.*, 2005 CarswellOnt 6818 (Ont. C.A.) at para. 23.

of a resort. She found that there was a “common interest” between the purchasers which justified a representative order.²⁴

B. Representative Counsel Funding and Charge

38. Section 11.52 of the CCAA states:

On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of [...]

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

...

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

39. This section is permissive and does not contain any specific criteria for a court to consider in granting such a charge.

40. With respect to the funding of representative counsel in a BIA proposal, the following statutory provisions are relevant:

Section 131 of the *Courts of Justice Act*

Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid

²⁴*Rosseau Resort Developments Inc.*, Endorsement of Justice Peppal, August 20, 2009 (unreported).

Section 197(1) of the BIA

Costs in discretion of court

197 (1) Subject to this Act and to the General Rules, the costs of and incidental to any proceedings in court under this Act are in the discretion of the court.

41. The following is a non-exhaustive list of factors which have been considered by the court in approving a charge:²⁵

- (a) The size and complexity of the business being restructured;
 - The Urbancorp Entities are part of a large and sophisticated group of companies with complex financing arrangements.
- (b) The proposed role of the beneficiaries of the charge;
 - The Purchasers are a particularly vulnerable group who face devastating financial consequences if they are unable to recover their deposits or complete their purchase transactions.
- (c) Whether there is an unwarranted duplication of roles;
 - There has been no representation of the interests of the Purchasers in these proceedings to date.
- (d) Whether the quantum of the proposed charge appears to be fair and reasonable;
 - The unsecured claims of the Purchasers in respect of their deposits alone are \$7 million in CCAA proceedings and \$7.4 million in the BIA

²⁵ *Re Target Canada Co.*, 2015 CarswellOnt 620 at paras. 73-74.

proceedings. In addition, if the Purchasers are unable to preserve their purchase agreements, they face substantial additional losses. In the circumstances, the proposed charges of \$75,000 against the St. Clair and Lawrence estates together and \$75,000 against the Woodbine and Bridlepath estates together are fair and reasonable.

- (e) The position of the secured creditors likely to be affected by the charge; and
 - There are no secured creditors of St. Clair and Lawrence and the proposed representative counsel charge does not otherwise seek to prime any existing secured creditors of Woodbine or Bridlepath.
- (f) The position of the Monitor or Trustee.

42. In *Re Edgeworth Properties Inc.* (“*Edgeworth*”), Justice Campbell appointed representative counsel for stakeholders known in these CCAA proceedings as “investors of undivided interest units” and “Lot Purchasers”. In appointing representative counsel, Justice Campbell ordered that the reasonable legal fees and disbursements of the represented stakeholders be paid by the company up to a maximum of \$150,000 for the investors in the undivided interest units (who were represented by two different law firms - \$75,000 for each) and \$75,000 for the Lot Purchasers, to be secured by a charge ranking equally with the charge in favour of counsel for the Monitor and the company.²⁶

43. In a subsequent decision in the *Edgeworth* CCAA proceedings less than eight months later, Justice Campbell did not find the charge to be unreasonable, but did note that funding

²⁶ *Re Edgeworth Properties Inc.*, Order of Justice Campbell dated November 10, 2011 at paras. 38, 54 and 60 (unreported).

available to representative counsel had been exhausted and as a result, counsel could not continue in its representation.²⁷

44. The funding and security sought by the Purchasers in the CCAA proceedings and the BIA proceedings is commensurate with what was granted and ultimately insufficient in the *Edgeworth* case.

C. Response to the KSV's Report

45. With the greatest of respect to KSV, its suggestion that the appointment of representative counsel is “not necessary” does not consider the best interests of the Purchasers. Moreover, KSV’s most recent report does not properly characterize the Purchasers represented by Dickinson Wright.

46. As of the date of filing this Factum, Dickinson Wright has been asked by 40 Purchasers to represent their interests in these proceedings. In other words, of the 168 homes purchased from the Urbancorp Entities, 23.8% are represented by Dickinson Wright.²⁸ KSV’s statement that no “Woodbine homebuyers have engaged Dickinson” is disingenuous. Dickinson Wright has been asked by 11 different individuals to represent them in these proceedings. This was expressly stated in Dickinson Wright’s August 16, 2016 letter to counsel for KSV that was selectively quoted and referenced in KSV’s most recent report.²⁹

²⁷ *Edgeworth Properties Inc. v. Romspen Investment Corporation*, 2012 ONSC 3789 at para. 6

²⁸ Letter from Dickinson Wright to Davies dated August 24, 2016, **Exhibit “A”**, Supplementary Brzezinski Affidavit.

²⁹ Letter from Dickinson Wright to Davies dated August 16, 2016 (p. 4), **Appendix “B”**, Monitor’s Fourth Report/Trustee’s Fifth Report dated August 23, 2016.

47. In addition, Dickinson Wright has been approached by four purchasers from Mallow who wish to organize a group to jointly retain Dickinson Wright to seek a representative counsel order on their behalf as well.³⁰

48. The Purchasers have also been largely consistent in terms of their intended use for the homes and objectives. Save for two Purchasers from Bridepath, all of the Purchasers purchased homes from the Urbancorp Entities to live in or for family members to live in. Further, of the Purchasers who responded to Dickinson Wright's inquiries, only three prefer to simply get their deposits back, while all of the other Purchasers' primary objective is to move into their homes (two of the Purchasers have no preferred outcome).

49. Notwithstanding that the overarching objective of the vast majority of the Purchasers in seeking legal representation is to have a seat at the table to negotiate the closing of their purchase agreements or otherwise enter into new agreements of purchase or sale with interested bidders of the subject properties, KSV has already accepted offers for three of the properties without any consideration of the interest of the Purchasers to preserve the ability to move into their homes. There was no effort to consult with the Purchasers before agreeing to the offers.

50. The fact of the matter is that KSV prefers to accept offers at a higher dollar value instead of offers that would honour the interests of the Purchasers. However, in so doing, KSV is appropriating the increased value in the homes which the Purchasers hoped to preserve for the benefit of Urbancorp.

³⁰ Letter from Dickinson Wright to Davies dated August 24, 2016, **Exhibit "A"**, Supplementary Brzezinski Affidavit.


51. There has been a total disregard of the Purchasers' interests in the process to date. It is now imperative that representative counsel be appointed. With proper legal representation that is adequately funded by the estates of the Urbancorp Entities, the Purchasers will have their voices heard and can obtain various outcomes that would satisfy each of them and that are not mutually exclusive.

52. The Purchasers deserve and ought to be given the right to legal representation to ensure that they have a seat at the table and that their interests are put before this Court throughout these proceedings.

PART V - ORDER REQUESTED

53. For all of the foregoing reasons, Dickinson Wright respectfully requests, on behalf of the Purchasers, an Order appointing it as representative counsel.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of August, 2016.



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Lawyers for Certain Purchasers

SCHEDULE "A"

LIST OF PURCHASERS
(Current as of August 24, 2016)

Urbancorp (Lawrence) Inc.

Lawrence Chelaru
Khadija Ibrahim
James Dong
Steven Cassata
Alex Oren
Trudy Huynh
Marissa Virtusio
Jessica Okenwa
Jessie Diong
Justin Polce
Helen Su
Chike Udobi
Jianhua Zeng
Hyacinth Ballen

Urbancorp (St. Clair Village) Inc.

Yana Kultysheva
Christina Nguyen
John Stevenson
Jeffrey Lemos
Vishal Khanna
Shazad Bilwani
Anthony Salmon
Loraine Salmon-Adal
Catalina Morales
Angnele SinWing Wong

Urbancorp (Woodbine) Inc.

Eric Tah Mahwah
Karima Dhanani
Hu Xuging
Benjamin H. Ho
GuoXiong Li
Ivan Wang
Jie Lu
Kui Chen
Lincoln Yeung
Xiao Yong Lin
HuiTing You

Urbancorp (Bridlepath) Inc

Wing Tak Chan
Godwin Tang
Gloriana Fields
Ann Chan
Ryan King Yu Lam
Henry Ching

SCHEDULE "B"

LIST OF AUTHORITIES

1. *Re Kitchener Frame Limited.*, Endorsement of Justice Wilton-Siegel dated July 7, 2011 (unreported)
2. *Re Nortel Networks Corp.*, 2009 CarswellOnt 3028
3. *Re Target Canada Co.*, 2015 CarswellOnt 620
4. *Re CanWest Publishing Inc.*, 2010 CarswellOnt 1344
5. *Re The Cash Store Financial Services*, 2014 ONSC 4567
6. *Dugal v. Research in Motion Ltd.*, 2007 CarswellOnt 7565
7. *Re Stelco Inc.*, 2005 CarswellOnt 6818 (Ont. C.A.)
8. *Rosseau Resort Developments Inc.*, Endorsement of Justice Peppal, August 20, 2009.
9. *Re Edgeworth Properties Inc.*, Order of Justice Campbell dated November 10, 2011 (unreported).
10. *Edgeworth Properties Inc. v. Romspen Investment Corporation*, 2012 ONSC 3789

SCHEDULE "C"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;

(b) [Repealed, 2001, c. 4, s. 33]

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;

- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
- (e) in the Province of Prince Edward Island, the Supreme Court of the Province;
- (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
- (g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
- (h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

Costs in discretion of court

197 (1) Subject to this Act and to the General Rules, the costs of and incidental to any proceedings in court under this Act are in the discretion of the court.

Rules of Civil Procedure, RRO 1990, Reg 194

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,

- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, settlement or other transaction;
- (d) the approval of an arrangement under the Variation of Trusts Act;
- (e) the administration of the estate of a deceased person; or
- (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 (1).

Order Binds Represented Persons

(2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to rule 10.03. R.R.O. 1990, Reg. 194, r. 10.01 (2).

Settlement Affecting Persons who are not Parties

(3) Where in a proceeding referred to in subrule (1) a settlement is proposed and some of the persons interested in the settlement are not parties to the proceeding, but,

(a) those persons are represented by a person appointed under subrule (1) who assents to the settlement; or

(b) there are other persons having the same interest who are parties to the proceeding and assent to the settlement,

the judge, if satisfied that the settlement will be for the benefit of the interested persons who are not parties and that to require service on them would cause undue expense or delay, may approve the settlement on behalf of those persons. R.R.O. 1990, Reg. 194, r. 10.01 (3).

(4) A settlement approved under subrule (3) binds the interested persons who are not parties, subject to rule 10.03.

PROCEEDING AGAINST REPRESENTATIVE DEFENDANT

12.07 Where numerous persons have the same interest, one or more of them may defend a proceeding on behalf or for the benefit of all, or may be authorized by the court to do so.

Courts of Justice Act, RSO 1990, c C.43

Costs

131. (1) Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF URBANCORP (WOODBINE) INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF URBANCORP (BRIDLEPATH) INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No.: 31-2114843
Court File No.: 31-2114850

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 IN SCHEDULE "A" HERETO

Court File No. CV-16-11389-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

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FACTUM OF CERTAIN PURCHASERS

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