

**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 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

**RESPONDING MOTION RECORD OF
SPEEDY ELECTRIC CONTRACTORS LIMITED
(MOTION FOR LEAVE TO APPEAL)**

July 12, 2018

LEVINE SHERKIN BOUSSIDAN
Barristers
23 Lesmill Road., Suite 300
Toronto ON M3B 3P6

KEVIN D. SHERKIN- LSUC#: 27099B
Email: kevin@lsblaw.com
JEREMY SACKS – LSUC#62361R
Email: jeremy@lsblaw.com
Tel: 416-224-2400
Fax: 416-224-2408

Lawyers for Speedy Electric Contractors Limited

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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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
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"APPLICANTS") AND THE AFFILIATED ENTITIES LISTED IN
SCHEDULE "A" HERETO

AFFIDAVIT OF MICHELLE CRUZ

I, MICHELLE CRUZ, of the City of Toronto, in the Province of Ontario MAKE OATH AND
SAY AS FOLLOWS:

1. I am a legal assistant with the law firm of Levine, Sherkin, Boussidan, A Professional Corporation of Barristers, lawyers for Speedy Electric Contractors Limited ("Speedy") as such, have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, these facts are within my personal knowledge and are true. Where I indicate that I have obtained the information from other sources, I verily believe those facts to be true.

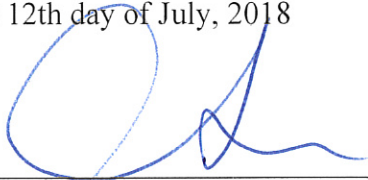
2. Attached hereto and marked as **Exhibit "A"** is a true copy of an email exchange, from March 10-13, 2017, between Jeremy Sacks, counsel for Speedy, and Robin Schwill,

counsel for the Monitor, KSV Kofman Inc. (the "Monitor").

3. Attached hereto and marked as **Exhibit "B"** is a true copy of an email exchange, from March 23, 2017 to May 5, 2017, between Jeremy Sacks, counsel for Speedy, and Robin Schwill, counsel for the Monitor.
4. Attached hereto and marked as **Exhibit "C"** is a true copy of an email, dated September 7, 2017, from Natasha MacParland, counsel for the Monitor, to Jeremy Sacks, counsel for Speedy.
5. Attached hereto and marked as **Exhibit "D"** is a true copy of an email exchange, from September 7, 2017 to December 8, 2017, between Jeremy Sacks, counsel for Speedy, and Natasha MacParland, counsel for the Monitor.
6. Attached hereto and marked as **Exhibit "E"** is a true copy of an email exchange, from September 7, 2017 to December 11, 2017, between Jeremy Sacks, counsel for Speedy, and Natasha MacParland, counsel for the Monitor.
7. Attached hereto and marked as **Exhibit "F"** is a true copy of an email exchange, from September 7, 2017 to January 18, 2018, between Jeremy Sacks, counsel for Speedy, and Natasha MacParland, counsel for the Monitor.
8. Attached hereto and marked as **Exhibit "G"** is a true copy of an email exchange, from July 9, 2018, between Jeremy Sacks, counsel for Speedy, and Robin Schwill, counsel for the Monitor.

9. Attached hereto and marked as **Exhibit "H"** is a true copy of a Statement of Claim issued against the Defendants, Harris Sheaffer LLP and Barry Rotenberg, dated May 24, 2018

SWORN BEFORE ME
at the City of Toronto,
in the Province of Ontario
this 12th day of July, 2018



A Commissioner for Taking Affidavits
Jeremy Sacks

)
)
)
)
) 

MICHELLE CRUZ

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 TORONTO MANAGEMENT INC., URBANCORP (ST. CLAIR VILLAGE) INC., URBANCORP (PATRICIA) INC., URBANCORP (MALLOW) INC., URBANCORP (LAWRENCE) INC., URBANCORP (DOWNSVIEW PARK DEVELOPMENT INC., URBANCORP (952 QUEEN WEST) INC., KING RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC., BRIDGE ON KING INC. (COLLECTIVELY, THE "APPLICANTS") AND THE AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO

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

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

PROCEEDING COMMENCED IN TORONTO

AFFIDAVIT OF MICHELLE CRUZ

LEVINE SHERKIN BOUSSIDAN

Barristers

23 Lesmill Road, Suite 300

Toronto ON M3B 3P6

KEVIN D. SHERKIN LSUC# 27099B

JEREMY SACKS LSUC#62361R

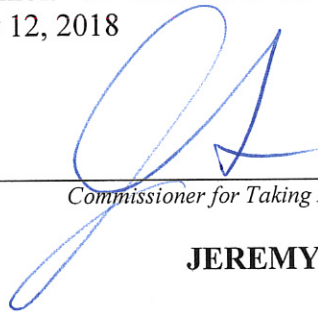
Tel: 416-224-2400

Fax: 416-224-2408

Email: Kevin@lsblaw.com

Lawyers for Speedy Electric Contractors Limited

This is Exhibit "A" referred to in the Affidavit of Michelle Cruz sworn July 12, 2018



Commissioner for Taking Affidavits (or as may be)

JEREMY SACKS

Jeremy Sacks

From: Jeremy Sacks
Sent: Monday, March 13, 2017 12:23 PM
To: Schwill, Robin
Cc: Swartz, Jay; Michelle Cruz
Subject: RE: Urbancorp (King Residential Inc.) -- Speedy Electrical Contractors Ltd. (Your File No. 5204-001)

Hi Robin,

The process you propose below sounds fine. Let me know what the proposed dates are for the motion. I don't know if you have taken a look at our client's claim against King Residential Inc., but I don't understand the Monitor's position. The Monitor is claiming that there was no consideration for the granting of the collateral mortgage – but the documentation is very clear that the collateral mortgage was granted in consideration of the extension of the debt maturity.

Jeremy Sacks

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From: Schwill, Robin [mailto:rschwill@dwpv.com]
Sent: Friday, March 10, 2017 4:40 PM
To: Jeremy Sacks <Jeremy@lsblaw.com>
Cc: Swartz, Jay <JSwartz@dwpv.com>
Subject: Urbancorp (King Residential Inc.) -- Speedy Electrical Contractors Ltd. (Your File No. 5204-001)

Jeremy,

We'd like to move forward with resolving your client's objection to its disallowed claim. I suspect that this will require a motion before the CCAA Court pursuant to the Claims Procedure Order.

I would like to discuss the timing and any procedural issues with you in that regard.

My initial thought is that the Monitor should bring a motion for an order upholding its disallowance on the basis of a report which would include your client's proof of claim, the notice of disallowance, your clients dispute and a full description of the Monitor's reasons for disallowing the claim. You can then respond by filing a responding motion record upon which a cross-examination may need to be scheduled. Each party I suspect will also wish to deliver a factum. We'd like to schedule the hearing of such a motion in early April.

Would appreciate your thoughts as to timing and scheduling for this.



Robin B. Schwill | Bio

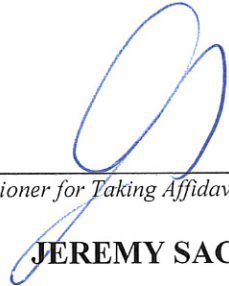
155 Wellington Street West
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rschwill@dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

This e-mail may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply e-mail or by telephone (collect if necessary), delete this e-mail and destroy any copies.

This is Exhibit "B" referred to in the Affidavit of Michelle Cruz
sworn July 12, 2018



Commissioner for Taking Affidavits (or as may be)

JEREMY SACKS

Jeremy Sacks

From: Schwill, Robin <rschwill@dwpv.com>
Sent: Friday, May 05, 2017 11:22 AM
To: Jeremy Sacks
Cc: Michelle Cruz; Kevin Sherkin
Subject: RE: Urbancorp (King Residential Inc.) -- Speedy Electrical Contractors Ltd. (Your File No. 5204-001)

Follow Up Flag: Flag for follow up
Flag Status: Completed

OK. I'm happy to lead with the Monitor's position and you respond. That just means we may need to file reply materials after any examinations/cross-examinations.

From: Jeremy Sacks [mailto:Jeremy@lsblaw.com]
Sent: May 5, 2017 11:19 AM
To: Schwill, Robin
Cc: Michelle Cruz; Kevin Sherkin
Subject: Re: Urbancorp (King Residential Inc.) -- Speedy Electrical Contractors Ltd. (Your File No. 5204-001)

Robin - given I am am out of the country, we will not be in a position to deliver materials by the 23rd. I also note that your previous timetable required the monitor to deliver materials first, and Speedy would be serving responding materials (now you have reversed this order). It seems necessary for the Monitor to deliver their materials first, given it's still not clear what evidence the Monitor is relying upon to "invalidate" the mortgage. Are you filing evidence that King Residential was insolvent when the mortgage was granted? Are you filing evidence that Alan Saskin intended to prefer Speedy over other creditors? We don't know what issues we must address in our materials as I still don't understand the Monitor's position. We also still do not understand the premise at law (or factually) being advanced by the Monitor that would result in Speedy's mortgage being unenforceable.

Jeremy Sacks BMOS JD
 Levine Sherkin Boussidan
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 23 Lesmill Road, Suite 300
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 (416) 224-2408 (fax)

On May 5, 2017, at 4:52 PM, Schwill, Robin <rschwill@dwpv.com> wrote:

Jeremy,

I know that you said you were out of the country for the first two weeks in May. Perhaps one of your colleagues can respond in the interim, or you will do so upon your return. On the assumption that you will be filing affidavit evidence and will want to examine Alan Saskin, perhaps it would make more sense to have the litigation schedule be as follows (with a view to making any examinations and cross-examinations more efficient.)

1. May 23 – Service of Speedy's Motion Record with Affidavit evidence
2. June 5 – Examination of Alan Saskin and cross-examination of Speedy's affiant
3. June 12 – Service of Monitor's Responding Report
4. June 19 – Service of Speedy's Factum
5. June 26 – Service of the Monitor's Factum
6. June 29 – Hearing Date

From: Jeremy Sacks [<mailto:Jeremy@lsblaw.com>]
Sent: April 18, 2017 2:41 PM
To: Schwill, Robin
Cc: Swartz, Jay; Michelle Cruz; Kevin Sherkin
Subject: RE: Urbancorp (King Residential Inc.) -- Speedy Electrical Contractors Ltd. (Your File No. 5204-001)

Hi Robin,

I will be out of the Country the first two weeks of May. Can we push back the dates by two weeks?

Thanks,

Jeremy Sacks

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From: Schwill, Robin [<mailto:rschwill@dwpv.com>]
Sent: Monday, April 17, 2017 12:39 PM
To: Jeremy Sacks <Jeremy@lsblaw.com>
Cc: Swartz, Jay <JSwartz@dwpv.com>; Michelle Cruz <Michelle@LSBLAW.com>; Kevin Sherkin <Kevin@LSBLAW.com>
Subject: RE: Urbancorp (King Residential Inc.) -- Speedy Electrical Contractors Ltd. (Your File No. 5204-001)

Jeremy,

I would proposed the following schedule:

1. May 5 – Service of Monitor's Motion Record
2. May 12 – Service of Responding Motion Record
3. May 19 – Service of Monitor's Factum
4. May 26 – Service of Responding Factum
5. May 31 – Hearing date

The open item in the above schedule is whether or not there need be an examination of a witness (i.e., Alan Saskin) by you or other creditors of King Residential Inc. or a cross-examination on an affidavit based on your responding motion record.

The issue is not the lack of sufficient consideration to support a contract. The main issue is, rather, whether the granting of the mortgages is a transfer at undervalue, which is defined to mean, in relevant part, where the consideration received *by the debtor* is conspicuously less than the fair market value of the consideration given *by the debtor*.

Your client was a lien claimant against a company that is not subject to our CCAA proceedings. The Monitor is simply attempting to carry out the provisions of the Claims Procedure Order in these CCAA proceedings. It is not clear to us how value provided to the Edge companies benefited King Residential Inc. at all. The evidence available to us currently suggests that the granting of the mortgages may be void as transfers at undervalue, among other things. Other creditors in our CCAA proceedings, most notably the Israeli Functionary on behalf of Urbancorp Inc., stand to benefit if your client does not have enforceable security. Accordingly, we cannot simply treat your client's claim as secured without advice and direction from the Court on a motion where other creditors may wish to make submissions.

From: Jeremy Sacks [<mailto:Jeremy@lsblaw.com>]
Sent: April 12, 2017 12:00 PM
To: Schwill, Robin
Cc: Swartz, Jay; Michelle Cruz; Kevin Sherkin
Subject: RE: Urbancorp (King Residential Inc.) -- Speedy Electrical Contractors Ltd. (Your File No. 5204-001)

Mr. Schwill,

I have not received a proposed timetable from you regarding the motion to determine the validity of Speedy's mortgage registered against the property owned by King Residential.

You had raised the issue of lack of consideration, so I have attached an excerpt from "Practice in Mortgage Remedies In Ontario" by Marriot and Dunn, which clearly confirms that consideration should not be an issue in this case. The consideration in this case was the discharge of the lien from the Edge Project, the extension of the Promissory Note, and the payment of the sum of \$2.00 (I have attached the Debt Extension Agreement executed by the parties). The governing law in Ontario states that the guarantor is not required to benefit from the consideration, and it is enough that, but for the collateral mortgage, the principal debtor would not have received the benefit/consideration (i.e. the discharge of the lien and the extension of the Promissory Note). The excerpt from the book I have attached also clearly states that "granting the principal debtor an extension in which to pay the debt is sufficient consideration to support a guarantee". Further, the payment of \$2.00 to King Residential should also be sufficient consideration.

With respect to the XDG Ltd. case you sent me that discusses preferences under the *Fraudulent Conveyances Act* and *Assignment and Preferences Act*, I respectfully don't see the relevance. It is not clear that King Residential was insolvent when the mortgage was granted in November 2015, and further, I don't see how you will establish that Mr. Saskin was intending to prefer Speedy over other creditors given their arm's length relationship.

Further, I don't understand why the Monitor is attempting to undo Speedy's status as a secured creditor. Speedy was a secured creditor as a lien claimant before Alan Saskin convinced them to take a mortgage in lieu of its lien. This was obviously done so that the financing for the project would not be held up by the lien, and benefited the overall project. Is there other creditors that are taking issue with Speedy's mortgage? If not, why would the Monitor be taking this position that is so obviously not in the interest of fairness (without even looking at the meritless position at law). I would ask that the Monitor reconsider its position.

Regards,

Jeremy Sacks

Levine Sherkin Boussidan
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 (416) 224-2408 (fax)

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From: Jeremy Sacks
Sent: Wednesday, April 05, 2017 1:16 PM
To: 'Schwill, Robin' <rschwill@dwpv.com>
Cc: Swartz, Jay <JSwartz@dwpv.com>
Subject: RE: Urbancorp (King Residential Inc.) -- Speedy Electrical Contractors Ltd. (Your File No. 5204-001)

Robin – please propose a timetable so that I can get instructions. We don't need a 9:30 appointment. Thanks.

Jeremy Sacks

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From: Schwill, Robin [mailto:rschwill@dwpv.com]
Sent: Tuesday, April 04, 2017 2:32 PM
To: Jeremy Sacks <Jeremy@lsblaw.com>
Cc: Swartz, Jay <JSwartz@dwpv.com>
Subject: RE: Urbancorp (King Residential Inc.) -- Speedy Electrical Contractors Ltd. (Your File No. 5204-001)

Jeremy,

Following up on this.

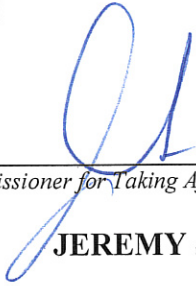
If we cannot work out a schedule, then I'll book a 9:30 a.m. scheduling hearing before Newbould J. next week to get this moving.

From: Schwill, Robin
Sent: March 23, 2017 5:21 PM
To: 'Jeremy Sacks'
Cc: Swartz, Jay
Subject: RE: Urbancorp (King Residential Inc.) -- Speedy Electrical Contractors Ltd. (Your File No. 5204-001)

Jeremy,

The Monitor can confirm that the \$1 million that Alan received was paid to Urbancorp Toronto Management Inc. ("UTMI") which UTMI used to pay sundry expenses, none of it being paid or transferred to King Residential Inc. Please call me so that we can work out a schedule towards a hearing date.

This is Exhibit "C" referred to in the Affidavit of Michelle Cruz sworn July 12, 2018



Commissioner for Taking Affidavits (or as may be)

JEREMY SACKS

Jeremy Sacks

From: MacParland, Natasha <NMacParland@dwpv.com>
Sent: Thursday, September 07, 2017 11:23 AM
To: Jeremy Sacks
Subject: Urbancorp

Jeremy – I am writing further to our discussion on timing for the Monitor’s delivery of its motion record on the Speedy Electric claim. The Monitor is waiting for additional information from Urbancorp which is required in order to complete its report and as a result, we will be unable to deliver the Motion Record tomorrow as originally anticipated. The materials are well advanced and we will get it to you as soon as we can. Once you have had an opportunity to review, we can set a schedule for responding materials, etc. thank you, Natasha



Natasha MacParland | Bio

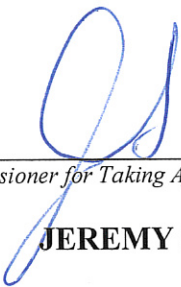
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DAVIES WARD PHILLIPS & VINEBERG LLP

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This is Exhibit "D" referred to in the Affidavit of Michelle Cruz
sworn July 12, 2018



Commissioner for Taking Affidavits (or as may be)

JEREMY SACKS

Jeremy Sacks

From: Jeremy Sacks
Sent: Friday, December 08, 2017 12:12 PM
To: 'MacParland, Natasha'
Subject: RE: Urbancorp

Follow Up Flag: Follow up
Flag Status: Completed

Natasha – I am following up with you about the Monitor's delivery of its motion record on the Speedy Electric claim. It has been three months since I received your email below. Can you please provide a status update? Can you also please advise whether the Monitor would be in a position to pay our client if the mortgage is found to be valid. Thanks.

Jeremy Sacks

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From: MacParland, Natasha [mailto:NMacParland@dwpv.com]
Sent: Thursday, September 07, 2017 11:23 AM
To: Jeremy Sacks <Jeremy@lsblaw.com>
Subject: Urbancorp

Jeremy – I am writing further to our discussion on timing for the Monitor's delivery of its motion record on the Speedy Electric claim. The Monitor is waiting for additional information from Urbancorp which is required in order to complete its report and as a result, we will be unable to deliver the Motion Record tomorrow as originally anticipated. The materials are well advanced and we will get it to you as soon as we can. Once you have had an opportunity to review, we can set a schedule for responding materials, etc. thank you, Natasha



Natasha MacParland | Bio

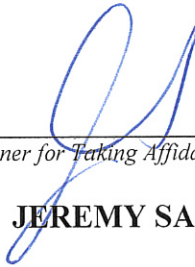
155 Wellington Street West
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T 416.863.5567
 NmacParland@dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

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This is Exhibit "E" referred to in the Affidavit of Michelle Cruz sworn July 12, 2018



Commissioner for Taking Affidavits (or as may be)

JEREMY SACKS

Jeremy Sacks

From: MacParland, Natasha <NMacParland@dwpv.com>
Sent: Monday, December 11, 2017 4:08 PM
To: Jeremy Sacks
Cc: Mighton, Jesse
Subject: RE: Urbancorp

Follow Up Flag: Follow up
Flag Status: Completed

Jeremy – thanks for the email. We plan to serve the report by Dec 21. Once you have had an opportunity to review, we will be in touch early January to set a schedule. Subject to obtaining a court order, the Monitor is in a position to distribute with respect to King Residential Inc.. However, I note that due to prior ranking mortgages on the properties and the proceeds received, we do not anticipate that your client will fully recover even if the mortgage is valid.

From: Jeremy Sacks [mailto:Jeremy@lsblaw.com]
Sent: December 8, 2017 12:12 PM
To: MacParland, Natasha
Subject: RE: Urbancorp

Natasha – I am following up with you about the Monitor's delivery of its motion record on the Speedy Electric claim. It has been three months since I received your email below. Can you please provide a status update? Can you also please advise whether the Monitor would be in a position to pay our client if the mortgage is found to be valid. Thanks.

Jeremy Sacks

Levine Sherkin Boussidan
 A Professional Corporation of Barristers
 23 Lesmill Road., Suite 300
 Toronto, Ontario
 M3B 3P6
 (416) 224-2400 ext. 119
 (416) 224-2408 (fax)

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From: MacParland, Natasha [mailto:NMacParland@dwpv.com]
Sent: Thursday, September 07, 2017 11:23 AM
To: Jeremy Sacks <Jeremy@lsblaw.com>
Subject: Urbancorp

Jeremy – I am writing further to our discussion on timing for the Monitor's delivery of its motion record on the Speedy Electric claim. The Monitor is waiting for additional information from Urbancorp which is required in order to complete its report and as a result, we will be unable to deliver the Motion Record tomorrow as originally anticipated. The materials are well advanced and we will get it to you as soon as we can. Once you have had an opportunity to review, we can set a schedule for responding materials, etc. thank you, Natasha

This is Exhibit "F" referred to in the Affidavit of Michelle Cruz
sworn July 12, 2018



Commissioner for Taking Affidavits (or as may be)

JEREMY SACKS

Jeremy Sacks

From: MacParland, Natasha <NMacParland@dwpv.com>
Sent: Thursday, January 18, 2018 5:35 PM
To: Jeremy Sacks
Cc: Mighton, Jesse; Kevin Sherkin
Subject: Re: Urbancorp

Follow Up Flag: Follow up
Flag Status: Completed

Jeremy - thank you for your email. The Monitor has advised that the report will be delivered next week.

On Jan 18, 2018, at 2:10 PM, Jeremy Sacks <Jeremy@lsblaw.com> wrote:

Natasha,

I am following up about your materials regarding Speedy Electric's mortgage against the property owned by King Residential Inc. There has been unexplained delay since March 2017, when Robin Schwill had carriage of the file, as he would not respond to communications regarding a timetable. You then assumed carriage of the file, and undertook to deliver your materials by September 8, 2017. You then requested multiple extensions, the last of which, was to deliver your materials prior to the Christmas holiday. It is now January 18th, and we still have not received anything. Please let us know why this is being delayed in this manner, and also, when we can expect your materials. It is coming to the point where we will need to ask the court for some relief, as you stated below that there would be a distribution to our client if our client's mortgage is valid.

Jeremy Sacks

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From: MacParland, Natasha [<mailto:NMacParland@dwpv.com>]
Sent: Monday, December 11, 2017 4:08 PM
To: Jeremy Sacks <Jeremy@lsblaw.com>
Cc: Mighton, Jesse <JMighton@dwpv.com>
Subject: RE: Urbancorp

Jeremy – thanks for the email. We plan to serve the report by Dec 21. Once you have had an opportunity to review, we will be in touch early January to set a schedule. Subject to obtaining a court order, the Monitor is in a position to distribute with respect to King Residential Inc.. However, I note that due to prior ranking mortgages on the properties and the proceeds received, we do not anticipate that your client will fully recover even if the mortgage is valid.

From: Jeremy Sacks [<mailto:Jeremy@lsblaw.com>]
Sent: December 8, 2017 12:12 PM
To: MacParland, Natasha
Subject: RE: Urbancorp

Natasha – I am following up with you about the Monitor's delivery of its motion record on the Speedy Electric claim. It has been three months since I received your email below. Can you please provide a status update? Can you also please advise whether the Monitor would be in a position to pay our client if the mortgage is found to be valid. Thanks.

Jeremy Sacks

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From: MacParland, Natasha [<mailto:NMacParland@dwpv.com>]
Sent: Thursday, September 07, 2017 11:23 AM
To: Jeremy Sacks <Jeremy@lsblaw.com>
Subject: Urbancorp

Jeremy – I am writing further to our discussion on timing for the Monitor's delivery of its motion record on the Speedy Electric claim. The Monitor is waiting for additional information from Urbancorp which is required in order to complete its report and as a result, we will be unable to deliver the Motion Record tomorrow as originally anticipated. The materials are well advanced and we will get it to you as soon as we can. Once you have had an opportunity to review, we can set a schedule for responding materials, etc. thank you, Natasha



Natasha MacParland | Bio

155 Wellington Street West
 Toronto, ON M5V 3J7

T 416.863.5567
NmacParland@dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

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This is Exhibit "G" referred to in the Affidavit of Michelle Cruz sworn July 12, 2018



Commissioner for Taking Affidavits (or as may be)

JEREMY SACKS

Jeremy Sacks

From: Schwill, Robin <rschwill@dwpv.com>
Sent: Monday, July 09, 2018 4:53 PM
To: Jeremy Sacks
Cc: Bobby Kofman; Noah Goldstein
Subject: RE: Urbancorp and Speedy

Subject to the appeal, yes.
 Why do you ask?

Robin B. Schwill | [Bio](#) | [vCard](#)
 T 416.863.5502
 rschwill@dwpv.com

DAVIES

155 Wellington Street West
 Toronto, ON M5V 3J7
 dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

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From: Jeremy Sacks [mailto:Jeremy@lsblaw.com]
Sent: July 9, 2018 12:56 PM
To: Schwill, Robin
Subject: RE: Urbancorp and Speedy

Robin – Can you please advise whether, subject to the Monitor’s appeal, the Monitor is in a position to make distributions to Speedy on its Claim/Secured Guarantee?

Thanks,

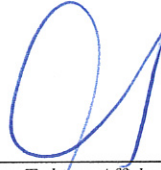
Jeremy Sacks

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This is Exhibit "H" referred to in the Affidavit of Michelle Cruz
sworn July 12, 2018



Commissioner for Taking Affidavits (or as may be)

JEREMY SACKS

Court File No. CV-18-596633

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

**GUY GISSIN SOLELY IN HIS CAPACITY AS ISRAELI COURT APPOINTED
FUNCTIONARY OFFICER AND FOREIGN REPRESENTATIVE OF
URBANCORP INC. and GUY GISSIN SOLELY IN HIS CAPACITY AS FOREIGN
REPRESENTATIVE AND AS TRUSTEE OF THE CLAIMS OF THE
HOLDERS OF BONDS ISSUED BY URBANCORP INC. AND NOT IN HIS PERSONAL
CAPACITY**

Plaintiffs

- and -

HARRIS SHEAFFER LLP and BARRY ROTENBERG

Defendants

STATEMENT OF CLAIM

Notice of Action issued on April 25, 2018

CLAIM

1. The plaintiff, Guy Gissin, solely in his capacity as the Israeli court-appointed functionary and foreign representative of Urbancorp Inc. ("UCI"), and not in his personal capacity, claims:

- (a) damages in the amount of \$25 million or such greater or other amount as may be proven at trial for negligence, breach of contract, breach of fiduciary duty and breach of trust;
- (b) contribution and indemnity for any amounts that UCI is found liable to pay the Bondholders as a result of the facts alleged below;
- (c) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

- 2 -

- (d) costs of the action on a substantial indemnity scale;
 - (e) HST on the foregoing amounts; and
 - (f) such further and other relief as this Honourable Court may deem just.
2. The plaintiff, Guy Gissin, solely in his capacity as trustee of the claims of the holders of bonds issued by UCI (the “**Bondholders**”), and not in his personal capacity, claims:
- (a) damages for negligence and intentional interference with economic relations in the amount of NIS 180,583,000 less any amounts recovered through the pending *Companies' Creditors Arrangement Act* (Canada) (“**CCAA**”) proceedings of any of the Urbancorp entities, which shall be paid by an equivalent amount of Canadian currency sufficient to purchase the amount of NIS 180,583,000 at a bank in Ontario listed in Schedule 1 to the *Bank Act*, R.S.C. 1985, c. B-1, at the close of business on the first day on which the bank quotes a Canadian dollar rate for the purchase of NIS before the day payment of this sum is received by the plaintiff;
 - (b) pre-judgment interest at the rate payable on the Bonds (as defined below) or, in the alternative, in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (c) post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (d) costs of the action on a substantial indemnity scale;
 - (e) HST on the foregoing amounts; and
 - (f) such further and other relief as this Honourable Court may deem just.

The Parties and Background

3. UCI is a corporation incorporated under the laws of the Province of Ontario that carried on business as a real estate holding company and issuer of certain bonds on the Tel Aviv stock exchange in the State of Israel. UCI was part of the Urbancorp group of companies (the "**Urbancorp Group**"), which were principally involved in the development of real estate projects in the Greater Toronto Area. The Urbancorp Group was owned and controlled, directly or indirectly, by Alan Saskin ("**Saskin**"), his family members and family trusts.
4. The defendant, Harris Sheaffer LLP ("**Harris Sheaffer**"), is a limited liability law partnership with offices in Toronto, Ontario.
5. The defendant, Barry Rotenberg ("**Rotenberg**"), was at all material times a partner with Harris Sheaffer and currently practices in Toronto. As such, Harris Sheaffer is vicariously liable for Rotenberg's conduct.
6. On or about December 11, 2015, UCI raised NIS 180,583,000 by issuing bonds (the "**Bonds**") (approximately CAD \$64 million at the then-current rate of exchange) on the Tel Aviv stock exchange (the "**Bond Raise**"), pursuant to a prospectus dated November 30, 2015, as amended on December 7, 2015 (the "**Prospectus**"). The Bondholders are the holders of the Bonds.
7. To the knowledge of Harris Sheaffer and Rotenberg, UCI was incorporated solely for the purpose of issuing the Bonds.
8. The Bonds accrued interest at 8.15% per annum until the actual date of payment, with an additional 3% default interest from the date of acceleration until the date of actual payment.

9. Within a few months of the Bond Raise, it was discovered that the Urbancorp Group was experiencing significant cash flow challenges and financial difficulties, and did not have sufficient liquidity to advance its various development projects. As a result of these difficulties, amongst other things, on April 21, 2016, trading of the Bonds was suspended on the Tel Aviv stock exchange by Israeli securities regulators.
10. In addition, on April 21, 2016, certain direct and indirect subsidiaries of UCI commenced bankruptcy proposal proceedings under the *Bankruptcy and Insolvency Act* (Canada).
11. On April 25, 2016, Guy Gissin was appointed as functionary officer (the "**Functionary**") of UCI by Order of the District Court in Tel Aviv - Jaffa, Israel (the "**Israeli Court**").
12. On May 18, 2016, the Ontario Superior Court of Justice (Commercial List) in Toronto (the "**Ontario Court**") granted an initial Order under the CCAA in respect of certain direct and indirect subsidiaries of UCI (the "**Cumberland 1 Entities**").
13. On May 18, 2016, the Ontario Court granted Orders pursuant to Part IV of the CCAA recognizing the Israeli proceedings in respect of UCI as a foreign main proceeding, and recognizing the Functionary as the foreign representative of UCI.
14. On September 26, 2016, the Israeli Court approved a Creditors' Arrangement Plan (the "**Plan**") in respect of UCI. The Plan appointed the Functionary as trustee of the UCI estate and, pursuant to the Plan, the Bondholders' rights to pursue any causes of action in connection with the Bond Raise were assigned to the Functionary.

15. On October 18, 2016, the Ontario Court granted an initial Order under the CCAA in respect of certain other direct and indirect subsidiaries of UCI (the "**Cumberland 2 Entities**", and together with the Cumberland 1 Entities, the "**Cumberland Entities**").

16. This action relates to claims against Rotenberg and Harris Sheaffer on behalf of both UCI and the Bondholders. The facts giving rise to these claims only came to the Functionary's attention following his appointment on April 26, 2016, and during the course of his investigations.

The Defendants' Duties

17. At all material times before, during, and after the Bond Raise, Harris Sheaffer and Rotenberg were retained as counsel to UCI and its direct and indirect subsidiaries, as well as Saskin and various of his family corporations, partnerships and trusts.

18. At all material times, Harris Sheaffer and Rotenberg owed to UCI contractual and fiduciary duties, a duty of loyalty, and a duty of care. Pursuant to these duties, the defendants were required to take all necessary steps to ensure that UCI's interests would be protected, and to carry out their duties to the standard of competent solicitors.

19. UCI specifically retained Harris Sheaffer and Rotenberg for the purpose of the Bond Raise and to ensure that the Prospectus fully and accurately disclosed all material aspects of the business and affairs of UCI. In this regard, Harris Sheaffer was paid at least \$500,000 for this work by UCI.

20. As part of the Bond Raise, the Urbancorp Group would undergo a reorganization, conducted by Harris Sheaffer, pursuant to which UCI would become the parent company to the

Cumberland Entities and would undertake certain transactions as a condition precedent to the Bond Raise, as well as transactions required to be performed post-closing. As such, it was critical that the Prospectus was true and accurate in all material respects, including but not limited to accurately describing the assets and liabilities of the Cumberland Entities, and the defendants were required pursuant to the duties they owed to UCI to exercise reasonable care to ensure that this was the case.

21. In addition, in the period leading up to the Bond Raise and in connection with the preparation of the Prospectus, Rotenberg and Harris Sheaffer were required to provide certain opinions to UCI and its Israeli counsel, as well as the bond underwriter, Apex Issuances ("Apex"), and its Israeli counsel. It was reasonably foreseeable that if the defendants' opinions were false, inaccurate or misleading, UCI and the Bondholders (as eventual purchasers and holders of the Bonds) could suffer damage. The defendants thus owed UCI and the Bondholders a duty to ensure that the opinions and disclosures therein were true, accurate and not in any way misleading.

22. Additionally, Rotenberg and Harris Sheaffer knew that in making their decision to participate in the Bond Raise, the Bondholders would rely upon the due diligence that Apex and its counsel would be conducting in order to ensure that the Prospectus was true and accurate in all material respects, which was informed in part by the defendants' opinions. It was reasonably foreseeable that the Bondholders would reasonably rely on the accuracy of the Prospectus, and that if the defendants failed to take reasonable care in ensuring the accuracy of both their opinions and the Prospectus, the Bondholders could suffer damage. Rotenberg and Harris Sheaffer therefore owed the Bondholders a duty of care to ensure that the Prospectus and their opinions were true, accurate and not in any way misleading, and to exercise reasonable care to

ensure that the Prospectus accurately described the assets and liabilities of UCI and of the Cumberland Entities.

The Defendants' Failures and Breaches of Duty

23. In the period leading up to, during and following the Bond Raise, Harris Sheaffer and Rotenberg breached the duties they owed to UCI and the Bondholders by failing to take reasonable care to ensure the accuracy of their opinions and of the disclosure in the Prospectus regarding the assets and liabilities of UCI and the Cumberland Entities and, in some cases, preferring the interests of other parties over those of UCI, as more particularly described below.

Edge and King Residential Inc.

24. Edge on Triangle Park Inc. ("**Edge**") was an indirect, wholly owned subsidiary within the Cumberland 2 Entities.

25. On September 30, 2015, Speedy Electrical Contractors Ltd. ("**Speedy**"), a contractor who had completed work for Edge and had not been paid, registered a claim for lien against Edge in the amount of \$1,038,911.44 (the "**Lien**").

26. Rotenberg was aware that registration of the Lien would likely have resulted in the Bond Raise aborting. As a result, Rotenberg, acting as counsel to Edge and Saskin, negotiated a settlement pursuant to which Speedy's claim was secured by a mortgage (the "**Mortgage**") granted on King Residential Inc. ("**KRI**"), an indirect, wholly owned subsidiary within the Cumberland 1 Entities, in exchange for Speedy discharging the Lien.

27. In addition, Saskin was personally indebted to Speedy in the amount of \$1 million under a promissory note dated September 23, 2014. At or around the time that Speedy registered the

Lien against Edge, Saskin had defaulted on the note and Speedy was threatening bankruptcy proceedings against him. Rotenberg therefore included Saskin's personal liability as part of the Mortgage so as to avoid any such bankruptcy proceedings.

28. Saskin agreed on behalf of KRI to provide the Mortgage on November 1, 2015, and the Mortgage was registered on November 16, 2015.

29. Following the registration of the Mortgage, and in anticipation of the closing of the Bond Raise, Harris Sheaffer and Rotenberg provided UCI, Apex and their respective Israeli counsel with opinions and clarifying memoranda dated November 26, November 28, and December 8, 2015, regarding the status of Edge and KRI (together, the "**Opinions**"). The Opinions failed to disclose the Mortgage prior to the issuance of the Prospectus, and failed to disclose at any time the fact that the Mortgage secured Saskin's personal liability to Speedy or that Saskin, as UCI's controlling shareholder, was personally experiencing financial difficulties. As a result, the Prospectus did not disclose the existence of the Mortgage or the above facts regarding Saskin.

30. The granting of the Mortgage by KRI in respect of pre-existing obligations of Edge and Saskin personally was a material fact that was required to be disclosed. In addition, given Saskin's obligation to make an equity contribution to UCI (as detailed below), and given other relations between UCI and the Urbancorp Group, Saskin's personal financial difficulties were also a material fact that was required to be disclosed. In failing to fully disclose the existence of these material facts in their Opinions, or to ensure they were disclosed in the Prospectus, Harris Sheaffer and Rotenberg were negligent, to the detriment of UCI and the Bondholders.

31. On May 11, 2018, the Ontario Court released a decision confirming the validity of the Mortgage.

32. The effect of the Mortgage on UCI was to replace Speedy's Lien against Edge with a materially larger secured obligation against KRI, which had the effect of reducing the equity that would otherwise flow to UCI from KRI. But for the Mortgage, all remaining funds at KRI would flow to UCI, which would have accorded with the reasonable expectations of the Bondholders at the time of the Bond Raise.

33. Had the Mortgage and the true status of the financial issues around Edge, Saskin and KRI been disclosed in the Prospectus, the Bond Raise likely would not have closed and the damages claimed herein could have been avoided. In the alternative, the Bondholders would not have made the decision to invest in the Bonds. In the further alternative, the failure to disclose the Mortgage and circumstances surrounding its grant deprived the Bondholders of the opportunity to properly assess the financial circumstances of UCI and Saskin and therefore make an informed investment decision.

34. In addition, by negotiating the settlement and the Mortgage, and failing to make full disclosure in the Opinions prior to the issuance of the Prospectus, Rotenberg and Harris Sheaffer preferred the interests of Edge and Saskin over those of UCI, in breach of their contractual and fiduciary duties to UCI.

Downsview Park

35. One of the material assets of UCI that was represented to the Bondholders in the Prospectus was UCI's ultimate interest in a real estate development project known as Downsview Park. The Downsview Park project was a joint venture between Urbancorp Downsview Park Development Inc. ("UDPDI"), a wholly owned subsidiary of UCI, and

Mattamy (Downsview) Limited (“**Mattamy**”). The project consists of a multiphase, multi-thousand unit development located in the City of Toronto.

36. The Prospectus estimated Phase I of Downsview Park as having an expected profit of approximately \$37 million. The entire project was projected to have a profit of close to \$80 million. UCI’s ultimate interest would be 50% of those figures, subject to a \$21 million adjustment in favour of Mattamy (i.e. Mattamy was entitled to the first \$21 million in profits). Accordingly, it was anticipated that in addition to its return of equity, the Downsview Project would generate approximately \$16 million of profit in Phase I, and \$59 million of profit overall, to be split between UCI and Mattamy.

37. A complex set of legal documents, drafted by Harris Sheaffer as counsel for UDPDI, governed the Downsview Park project. The principal agreements were a payment and profit distribution agreement amongst Mattamy, UDPDI, Downsview Park Homes Inc. (“**DPHI**”), and Downsview Homes Inc. (“**DHI**”), made as of July 30, 2013 (the “**Profit Distribution Agreement**”), as amended April 23, 2014 (the “**Profit Distribution Amending Agreement**”), and a co-ownership agreement, originally dated July 30, 2013, as amended, amongst Mattamy, UDPDI, Downsview Park Management Inc., DPHI and DHI (the “**Co-Ownership Agreement**”).

38. The Prospectus failed to disclose the existence of numerous significant amendments to the foregoing agreements, which materially impacted both the ownership controls and profitability of Downsview Park. In particular:

- (a) At the time of the original Profit Distribution Agreement, the profit for Phase 1 was estimated to be just over \$40 million. The Profit Distribution Amending Agreement reduced that estimated profit to just

over \$26.6 million. This reduced profit is not reflected in the Prospectus which was issued 18 months later.

- (b) In addition, as a result of the reduced estimated profit, certain amendments would be made to the profit distribution scheme set out in the Co-Ownership Agreement with the result that UCI's profit distribution on both Phase 1 and Phase 2 would be significantly less than anticipated.
- (c) Due to UDPDI's inability to meet various financial commitments to Mattamy, the parties to the Co-Ownership Agreement and Saskin entered into an amending agreement on July 22, 2015, which was drafted by Rotenberg and Harris Sheaffer (the "**Co-Ownership Amending Agreement**"), pursuant to which management of the Downsview Park project was turned over to Mattamy and UDPDI lost virtually all of its management rights (subject to repayment of certain amounts described below). These facts were not disclosed in the Prospectus.
- (d) The Co-Ownership Amending Agreement also provided that if certain payments totalling approximately \$8.6 million were made to Mattamy on or before November 15, 2015 (later amended to December 21, 2015), UDPDI would regain some, but not all, of its rights under the Co-Ownership Agreement. These payments were in fact made using proceeds from the Bond Raise.

39. Rotenberg and Harris Sheaffer, having acted as counsel to UDPDI in respect of Downsview Park and, more specifically, the negotiation of the documentation that governed the project and the various amending agreements, and having also acted as counsel for UCI in respect of the Bond Raise, knew or ought to have known that the disclosure in the Prospectus regarding the profitability, profit distribution and ownership control of Downsview Park was materially inconsistent with the actual state of affairs and the provisions of the agreements

prepared and negotiated by them. In failing to ensure the Prospectus accurately disclosed the facts regarding the Downsview Park project, Rotenberg and Harris Sheaffer were negligent and breached their duties to UCI and the Bondholders.

40. In light of the significance of the Downsview Park project to the Bond Raise, had the various amending agreements and revised profit projections been fully and properly disclosed in the Prospectus, the Bond Raise would likely not have proceeded and the damages claimed herein could have been avoided. In the alternative, the Bondholders would not have made the decision to invest in the Bonds. In the further alternative, the failure to properly disclose the state of affairs regarding the Downsview Park project deprived the Bondholders of the opportunity to properly assess the financial circumstances of UCI and therefore make an informed investment decision.

Edge/HST Issues

41. To the knowledge of Rotenberg and Harris Sheaffer, the Prospectus required Saskin to contribute \$12 million of equity to UCI.

42. In January 2016, UCI publicly announced that it had obtained the required equity contribution from Saskin. In fact, the equity contribution arose out of a transaction structured as a loan by Terra Firma Capital Corporation ("**Terra Firma**") to Urbancorp Holdco Inc. (UCI's parent company) (the "**Loan Agreement**"), which would in turn make an equity contribution to UCI. Simultaneously, the parties entered into a side letter (the "**Side Letter**") which effectively provided that Terra Firma had complete control over the loaned funds (notwithstanding that they were deposited in an account nominally in the name of UCI) and could recover them at any time. In addition, the Side Letter was not disclosed in the public announcement. As such, the purported

contribution was a sham. Although Rotenberg and Harris Sheaffer purportedly acted as counsel to UCI and Saskin, as well as other related and affiliated entities, in negotiating the Loan Agreement and Side Letter, in reality, the defendants took instructions solely from Saskin and did not consult UCI's board of directors at any time.

43. At or around the time of the Bond Raise, Edge was indebted to the Canada Revenue Agency in excess of \$14 million in respect of collected but unremitted HST on condominium sales. As a director of Edge, Saskin was personally liable for this amount. In March 2016, the Loan Agreement with Terra Firma was cancelled and replaced with a new agreement between Urbancorp Holdco Inc. and Terra Firma, which was prepared by the defendants (the "**March 2016 Agreement**"). The March 2016 Agreement contained a provision, inserted at Saskin's instructions, requiring that the funds to be advanced by Terra Firma (now \$10 million) be used by UCI to fund the HST obligations of Edge. UCI's board of directors was unaware of the negotiation of the March 2016 Agreement or of the requirement to use the loan proceeds to pay the HST obligations of Edge.

44. The \$10 million equity infusion from Terra Firma was deposited into Harris Sheaffer's trust account for the benefit of UCI and, on the instructions of Saskin, was subsequently disbursed to pay part of Edge's HST obligation.

45. To the knowledge of Harris Sheaffer and Rotenberg, as a matter of corporate governance, UCI's board of directors had passed a resolution requiring certain authorized signatories to approve any material transaction, and UCI's Audit Committee was required to approve any transaction in which Saskin (as controlling shareholder) had a personal interest. In addition, the defendants knew or ought to have known that Saskin had a conflict of interest with respect to this

transaction as it would relieve him from \$10 million of personal liability to CRA and, accordingly, they could not accept instructions from him on behalf of UCI. Instead, UCI's board of directors and Audit Committee were required to approve the transaction.

46. None of the authorized signatories of UCI, the Audit Committee, or the board of directors at large, approved the March 2016 Agreement or the disbursement of funds from Harris Sheaffer's trust account to reduce Edge's HST obligations. In failing to disclose the existence of the March 2016 Agreement to UCI's board of directors and ensure that it was properly approved, and in disbursing funds without proper corporate authority, the defendants were negligent, breached their contractual and fiduciary duties to UCI, and committed a breach of trust.

47. In addition, and to the defendants' knowledge, use of the \$10 million equity infusion to pay a portion of Edge's HST liability in March 2016 was not in the best interests of UCI as, at that point in time, Edge was insolvent. As such, there was no benefit to UCI from this payment; rather, the only benefit was to Saskin, whose personal liability for collected but unremitted HST in his capacity as a director of Edge was significantly reduced. Harris Sheaffer and Rotenberg thus preferred the interests of Saskin and Edge over those of UCI, in breach of their duties, and caused UCI to suffer damages in the amount of \$10 million.

Bay LP Promissory Notes

48. To the knowledge of Harris Sheaffer and Rotenberg, the Prospectus provided that Saskin would assign to UCI approximately \$8 million in loan receivables owing to him or certain companies controlled by him, which would form part of the material assets of UCI. In fact, and to the defendants' knowledge, the asset to be assigned to UCI was an alleged \$8 million promissory note (the "**Promissory Note**") held by Urbancorp Toronto Management Inc.

("UTMI") in respect of management fees to be paid by TCC/Urbancorp (Bay) Limited Partnership ("Bay LP") (both of which were part of the Urbancorp Group).

49. Bay LP's obligation to UTMI stemmed from a consulting agreement between Bay LP, UDPDI and UTMI dated June 10, 2013 (the "**Original Fee Agreement**"), pursuant to which Bay LP would pay UTMI a fee of \$9.8 million. On December 15, 2014, Bay LP allegedly issued the Promissory Note in relation to the unbilled \$8 million balance of the fee payable under the Original Fee Agreement.

50. On June 1, 2015, the parties to the Original Fee Agreement entered into an amending agreement (the "**Amended Fee Agreement**") pursuant to which the fee payable by Bay LP to UTMI was reduced to \$6.8 million. This had the effect of reducing the amount payable under the alleged Promissory Note to \$5 million. Harris Sheaffer and Rotenberg negotiated the Amended Fee Agreement and, as such, were aware of this reduction.

51. Further, by December 2015, due to various accounting adjustments made within the Urbancorp Group, the fee payable by Bay LP to UTMI had been reduced to zero. As such, the defendants knew or ought to have known that the Promissory Note no longer had any value. Indeed, in the context of the ongoing CCAA proceedings, the Functionary made a claim under the Promissory Note on behalf of UCI, which claim was denied by the Monitor on the basis that Bay LP did not owe UTMI anything under the Original Fee Agreement. A May 11, 2017 decision of the Ontario Court confirmed that nothing was owing.

52. Further, on December 10, 2015 (the day prior to the Bond Raise), Rotenberg was advised by the Urbancorp Group's CFO that she had no record or copy of the Promissory Note and was not aware of the debt obligation underlying it. Rotenberg, despite being aware that this debt had

been reduced to zero, subsequently drafted the original Promissory Note (dated retroactively to December 2014), as well as two replacement promissory notes in the amounts of \$6 million and \$2 million (together with the Promissory Note, the "Notes"), to backstop the non-existent debt obligation.

53. Based on the above, Harris Sheaffer and Rotenberg knew or ought to have known that the representation in the Prospectus that an \$8 million asset would be assigned to UCI and form part of UCI's material assets was inaccurate and misleading, as the debt obligation backing the Notes had been reduced to \$5 million and then to zero. In creating the Notes where no underlying obligation existed, and in failing to ensure the Prospectus accurately disclosed the facts regarding the Notes, Rotenberg and Harris Sheaffer were negligent and breached their duties to UCI and the Bondholders.

54. Had the true status of the Notes and the underlying obligation been disclosed in the Prospectus, the Bond Raise likely would not have closed and the damages claimed herein could have been avoided. In the alternative, the Bondholders would not have made the decision to invest in the Bonds. In the further alternative, the failure to disclose the true status of the Notes deprived the Bondholders of the opportunity to properly assess the financial circumstances of UCI and therefore make an informed investment decision.

55. Alternatively, UCI has been deprived of the \$8 million it was to have received but for the negligence and breaches of duty of Harris Sheaffer and Rotenberg.

952 Queen West Sale Proceeds

56. 952 Queen West was a residential real estate project owned by Urbancorp (952 Queen West) Inc., an indirect wholly owned subsidiary within the Cumberland 1 Entities. 952 Queen West was sold in October 2015. To the knowledge of Harris Sheaffer and Rotenberg, the Prospectus provided that the sale proceeds from 952 Queen West would flow back to UCI in order to fund ongoing business expenses.

57. Contrary to the Prospectus, and to the knowledge of the defendants, approximately \$3 million of the sale proceeds were not transferred to UCI, but instead diverted at the instruction of Saskin to pay unrelated obligations. Specifically, approximately \$1.5 million was transferred to UTML, and approximately \$1.5 million was transferred to Terra Firma in respect of various interest and debt payments owing by some of Saskin's private companies, including a \$750,000 loan which had been made by Terra Firma to Urbancorp Management Inc. only days prior to the sale. These payments were not related to UCI's business activities and were not approved by UCI's board of directors or the Audit Committee.

58. Harris Sheaffer and Rotenberg knew that the sale proceeds from 952 Queen West were owed to UCI. In facilitating the unauthorized transfers described above, the defendants preferred the interests of Saskin over UCI, breached their contractual and fiduciary duties to UCI, and committed a breach of trust. As a result, UCI has suffered damages in the amount of approximately \$3 million.

59. In addition, at least \$732,000 of the sale proceeds from 925 Queen West were paid to Terra Firma from Harris Sheaffer's trust account prior to the issuance of the Prospectus. The defendants thus knew that the Prospectus, which provided that the sale proceeds would flow

back to UCI for ongoing business expenses, was inaccurate and misleading. In failing to ensure the accuracy of the Prospectus in this respect, Rotenberg and Harris Sheaffer were negligent and breached their duties to UCI and the Bondholders.

60. Had the true use of the 952 Queen West sale proceeds been disclosed in the Prospectus, the Bond Raise likely would not have closed and the damages claimed herein could have been avoided. In the alternative, the Bondholders would not have made the decision to invest in the Bonds. In the further alternative, the failure to disclose this information deprived the Bondholders of the opportunity to properly assess the financial circumstances of UCI and therefore make an informed investment decision.

Defendants' Breaches of Duty and Liability

61. Through their acts and omissions described above, Harris Sheaffer and Rotenberg breached their fiduciary and contractual duties owed to UCI, and negligently failed to carry out their duties to the standard of competent solicitors. Further, by preferring the interests of Saskin and companies controlled by him over the interests of their client UCI, the defendants breached their duty of loyalty and failed to ensure that UCI's interests would be protected.

62. In addition, through their failures to exercise reasonable care to ensure that their Opinions and the Prospectus accurately described and disclosed all material aspects of the business and affairs of UCI, including the assets and liabilities of the Cumberland Entities, the defendants breached the duty of care they owed to both UCI and the Bondholders.

63. Harris Sheaffer and Rotenberg's various breaches of duty to UCI were unlawful acts. The defendants knew and intended that these unlawful acts would cause injury to the Bondholders, or

were reckless or wilfully blind to that possibility, and the Bondholders in fact suffered economic loss (as detailed below). The defendants are therefore liable to the Bondholders for the tort of unlawful means and/or intentional interference with economic relations.

Damages

64. As a result of the defendants' negligence and intentional interference with economic relations, the Bondholders have suffered damages in an amount equal to NIS 180,583,000 plus interest, less any monies recovered during the pendency of the CCAA proceedings. Further, as a result of the defendants' negligence, breach of contract, breach of fiduciary duty and breach of trust, UCI has suffered damages in an amount no less than \$25 million.

65. In addition, the plaintiffs claim contribution and indemnity in respect of any amounts that UCI is required to pay to the Bondholders with respect to the matters set out herein. The plaintiffs plead and rely upon the *Negligence Act*, R.S.O. 1990, c. N.1.

66. The plaintiffs propose that this action be tried in Toronto, Ontario.

May 24, 2018

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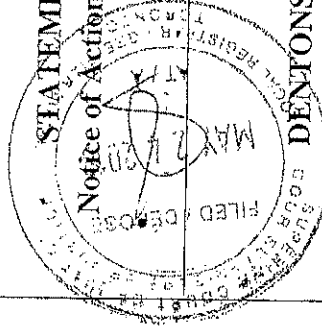
HARRIS SHEAFFER LLP et al

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto



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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 TORONTO MANAGEMENT INC., URBANCORP (ST. CLAIR VILLAGE) INC., URBANCORP (PATRICIA) INC., URBANCORP (MALLOW) INC., URBANCORP (LAWRENCE) INC., URBANCORP DOWNSVIEW PARK DEVELOPMENT INC., URBANCORP (952 QUEEN WEST) INC., KING RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC., BRIDGE ON KING INC. (COLLECTIVELY, THE "APPLICANTS") AND THE AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO

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

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

PROCEEDING COMMENCED IN TORONTO

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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 TORONTO MANAGEMENT INC., URBANCORP (ST. CLAIR VILLAGE) INC., URBANCORP (PATRICIA) INC., URBANCORP (MALLOW) INC., URBANCORP (LAWRENCE) INC., URBANCORP DOWNSVIEW PARK DEVELOPMENT INC., URBANCORP (952 QUEEN WEST) INC., KING RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC., BRIDGE ON KING INC. (COLLECTIVELY, THE "APPLICANTS") AND THE AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO

Court of Appeal File No: M49270
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ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED IN TORONTO

**RESPONDING MOTION RECORD OF
SPEEDY ELECTRIC CONTRACTORS LIMITED**

(MOTION FOR LEAVE TO APPEAL

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