

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, C.C36 AS AMENDED**

**AND IN THE PLAN MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF URBANCORP
TORONTO MANAGEMENT INC., URBANCORP (ST.
CLAIR VILLAGE) 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**

**AFFIDAVIT OF GUY GISSIN
(Affirmed October 29, 2020)**

I, Guy Gissin, of the City of Tel Aviv, Israel, solemnly affirm and say:

1. I am the Israeli Court Appointed Functionary Officer of Urbancorp Inc. ("UCI") and Foreign Representative of UCI (the "Foreign Representative") and as such have knowledge of the matters to which I hereinafter depose, except where stated to be on information and belief, in which case, I have stated the source of my information and believe it to be true.
2. I make this affidavit due to the concerns I have in connection with KSV Kofman Inc.'s (the "Monitor") motion for approval of the proposed amendment ("DHI Amendment") to the financing facility for Downsview Homes Inc. ("DHI") in respect of the Downsview Park Project ("Project"). In making this affidavit I have reviewed the forty-first report ("41st Report") of the Monitor. I believe that approval of the DHI Amendment should be adjourned to allow further

discussions directly with Mattamy.¹ I will review the framework for UCI's interest in the Project and then address the specific concerns giving related to the DHI Amendment.

OVERVIEW OF UCI'S INTERESTS IN THE PROJECT

3. UCI is the parent company of UDPDI. UCI is owed approximately 98% of UDPDI's debt, being approximately \$10 million. To the best of my knowledge, no other stakeholder in this proceeding has an economic interest in UDPDI's interest in the Project.

4. The Foreign Representative is responsible to account to the bondholders and other creditors of UCI as well as the Israeli court for its activities.

5. The actual owner of the Project, DHI is neither a CCAA Applicant, nor is it a company listed in Schedule A to the initial CCAA Order in this proceeding (which are collectively defined as the "Urbancorp CCAA Entities").

6. In December 2015, UCI published a prospectus with respect to the issuance of approximately NIS 180 million (approximately CAD \$64,000,000 at the then current rate of exchange) of public traded bonds which were issued and listed on the Tel Aviv Stock Exchange (the "Prospectus"). The Prospectus was publicly filed on Israeli Securities Authority reporting website (MAGNA) and the Tel Aviv Stock Exchange website (MAYA).²

¹ Capitalized terms not otherwise defined in this affidavit have the corresponding meaning ascribed thereto in the 41st Report.

² The Prospectus is a voluminous document and an English translation has been filed several times previously in this proceeding. While it can be made available if the Court requests, it is not appended to this affidavit.

7. The Prospectus contains detailed information relating to the Project, including, among other things, a description of various agreements between UDPDI, DHI, DPHI and Mattamy. Additionally, the Prospectus contains detailed financial information relating to acquisition and construction costs incurred to date, as well as projected revenues, and costs for the various phases of the Project. The Prospectus also discloses information related to projected gross profits for the Project.

8. The Project is the single largest stand-alone asset described in the Prospectus, projected to generate gross profit of approximately \$76 million. Additionally, as noted in the 41st Report, approximately \$10 million of the bond proceeds was transferred to UDPDI as a loan. The money repaid obligations that UDPDI owed to Mattamy under the various agreements.

9. The value of the Project and the ability to realize on the Project is material to the recoveries of the creditors of UCI, the vast majority of whom are Israeli private and institutional bondholders. The UCI bonds continue to trade in the secondary bond market in Israel even though they are not listed anymore.

CONCERNS WITH DHI AMENDMENT

10. I have a number of concerns related to the DHI Amendment. As noted in the 41st Report, the information that Mattamy provides is materially inconsistent and often comes only after repeated requests over long periods, never in a timely manner. Mattamy maintains the Project's books and records. Mattamy's failure to provide detailed, consistent information has frustrated our ability to explore the possibility of obtaining offers from others to finance the suggested equity contribution that might be on more competitive terms than Mattamy has offered.

11. To date, there are material differences between the assessment of the value of DHI's interest in the project by the Foreign Representative and by Mattamy. Our most recent correspondence to Mattamy is attached as Confidential Exhibit "A" to this my affidavit. (We request that the copy of this affidavit with the unredacted Exhibits, which contains sensitive financial information not otherwise publicly available, be sealed from the public record.)

Mattamy also refuses to pay DHI its outstanding purchase price obligations related to the Project. Hylton Levy of Farber Group, our financial adviser on the Project, informs me and I verily believe same to be true that, with interest, the approximate amount that Mattamy owes to date is approximately \$4.22 million. Mattamy's refusal to pay this amount further frustrates our ability to finance our share in the financing. Effectively, Mattamy leaves us no choice but to deal with it to the exclusion of anyone else.

12. At the time of the DHI Facility Charge, in June 2016, these proceedings were at an early stage. Neither the Monitor (I believe) nor I had any real understanding of the economics or issues around the Project. However, over the course of this proceeding, as we started to ask for information it became apparent to us that there were issues with how Mattamy was accounting for UCI's interest in the Project.

13. These disputes resulted in several motions before this Court and eventually the Arbitration. Between the rulings of the Honourable Frank Newbould in the Arbitration, and certain concessions that Mattamy made as the issues were being fleshed out, UDPDI was owed close to \$9 million in relation to various obligations connected to the Project. Some \$4.2 million of that money is due and owing to UDPDI on account of the purchase price for Mattamy's acquiring its interest in the Project. Other amounts that Mattamy owes are to be accounted for in the "waterfalls" dealing with allocation of proceeds from the Project.

14. In addition to these amounts, the Arbitration confirmed that UTMI was entitled to share in management fees for the Project. Mattamy paid itself management fees with respect to the project but after the Arbitration took the position that, these payments should not have been made. Mattamy has never provided any consistent accounting to explain the amounts that it allegedly overpaid itself (and which would have triggered additional payments to UTMI).

15. Mattamy has failed to pay the amounts that were awarded in the Arbitration. Payment would allow us to finance the greatest part of our required financing. In any event, the failure to pay these amounts (unless paid forthwith) should result in a reduction in the amounts to Mattamy set out as outstanding under the DHI Amendment and the corresponding maximum charge amount should be nowhere near \$14 million. Based on the information that Mr. Levy has provided to me, after applying set off to the amounts awarded in the Arbitration, there would be a balance of about \$2.24 million outstanding as at the end of October. That would mean that the maximum amount of the charge should be around \$8.5 million.

16. The fact that the Term Sheet neglects to consider the Arbitration, which materially reduced the previous DIP, is very disturbing to us, and presents a wrongful picture of the current indebtedness. Unless Mattamy is prepared to pay immediately the sum owed on account of the purchase price, the DIP should be amended to set off the amount awarded in the Arbitration.

17. No actual binding term sheet or other financing commitment has been received as far as I am aware. The NBC Term Sheet referenced in the 41st Report is expressly stated to be on the first page as “TRANSACTION OUTLINE – for discussion purposes only – This is not a commitment by the Lender”. The first sentence of the Term Sheet states, “We are pleased to submit the following general terms and conditions under which [NBC] is prepared to consider

financing for the [Project].” Attached as confidential Exhibit “B” to this my affidavit is a copy of the NBC Term Sheet showing these provisions (only the relevant parts have been copied).

18. There should be a binding agreement with NBC. The loan should only be funded at the time that the proceeds are actually needed for the transaction. Mattamy should first provide us with a binding loan agreement before we are put in a position to borrow additional funds.

19. Mattamy’s conduct has precluded us from even being able to start any process to source alternative options for the equity contribution (which would have been in any event partly financed by us if we were paid our management fees). We believe that there should be an opportunity to argue that if better terms and interest rate can be obtained from a third party lender, then Mattamy should not receive a higher rate of interest than the market would dictate.

20. I also believe that it is inappropriate in this context for Mattamy to have a right of first refusal on any additional financing. That also inhibits the ability to find others willing to invest in the time to consider actually putting forward a term sheet to consider if they know that Mattamy can simply choose to match.

21. This is also a situation where, given Mattamy’s conduct, they should not receive reimbursement for their expenses and ongoing monitoring costs (to monitor funds that would be in their exclusive control).

22. Finally, there is the issue of the term. Other than the geothermal assets, the interest in the Project is the last material asset to monetize in this proceeding. I believe that the term of the DHI

Facility Amendment should be much shorter, say for a maximum of 3 months in order to try to force the parties to address the outstanding issues between them as soon as possible.

23. I would request that Mattamy be encouraged to enter into direct discussions with the Foreign Representative, as the only other party with a real financial interest in the Project to resolve these points.

24. I swear the foregoing affidavit in support of an adjournment of the motion to approve the DHI Facility Amendment and for no other or improper purpose.

AFFIRMED before me at the City
of Tel Aviv – Jaffa, in the State of Israel,
this 29th day of October, 2020.



Yael Hershkovitz, Advocate
Israeli License No. 44393

An Israeli Attorney
Name: Yael Hershkovitz, Adv.



GUY GISSIN

THIS IS CONFIDENTIAL EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF
GUY GISSIN AFFIRMED BEFORE ME THIS 29th DAY OF OCTOBER, 2020.

מיון 44393.ג.ד

An Israeli Attorney: Yael Hershkovitz, Adv.

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