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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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") et al.

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PART I - OVERVIEW

1. Mattamy supports the Monitor's motion for an order approving the Transaction.

2. Mattamy makes these submissions in reply to the Foreign Representative's position that the Order approving the Transaction must "preserve" UDPDI's "residual rights" to value in DHI. The request is (i) improper; (ii) illustrates a misunderstanding (or misstatement) of the Sales Process and the consequence/outcome of the Sales Process; and (iii) an attempt to deprive Mattamy of the benefit of the Purchased Assets for which it will extinguish over $10.1 million in secured debt.[1]

3. To put it plainly, UDPDI does not have any "residual rights" to value in DHI – there is nothing to preserve. Pursuant to the Sales Process approved by this Court and carried out by the Monitor, the ultimate purchaser identified by the Sales Process was to acquire **all** of Downsview's interests in the Project (in whatever form) including the shares in DHI and the relevant project agreements between the parties. It is from those agreements that the parties derive their rights to benefit from the outcome of the Arbitration. The value flowing from the agreements is a significant part of what Mattamy, as the successful purchaser, is to acquire when it acquires the Purchased Assets (subject to Court approval). The Foreign Representative asks that this Court carve-out those very interests, rendering the Purchased Assets worthless.

[1] Being the estimated amount of the DHI Facility as of November 2, 2021.

4. The Foreign Representative has opposed the Sales Process from the outset. On this motion, the Foreign Representative re-asserts its opposition despite all of its arguments having already been made and rejected on the motion approving the Sales Process. They were also rejected by the Court of Appeal in denying both the Foreign Representative's request for a stay of the Sales Process Order and the Foreign Representative's request for leave to appeal the Sales Process Order.

5. The carve-out requested by the Foreign Representative is inappropriate and must be rejected. If it is not, Mattamy will not close the Transaction with the result that the DHI Facility, which has matured and not been repaid, will continue in default, will continue to accrue interest, and expenses will continue to be needlessly incurred. Mattamy will be left with no option but to pursue costly enforcement remedies in respect of the court-approved DHI Facility.

PART II - ARGUMENT

6. Mattamy adopts the defined terms and facts set out in the Monitor's factum dated December 1, 2021.

A. The Foreign Representative Cannot Now Redefine the Purchased Assets

7. On June 30, 2021, over the objection of the Foreign Representative, this Court approved the Sales Process. The Court-approved Sales Process was for the "Downsview Interest", which includes Downsview's interest in DHI and "the related project agreements".[2] The Monitor ran the Sales Process in accordance with the Sales Process Order.

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[2] *Urbancorp Toronto Management Inc.*, 2021 ONSC 4262, para. 2.

8. Because no LOIs were received for the Downsview Interest, the Monitor is to convey the Downsview Interest to Mattamy in full satisfaction of all obligations owing by Downsview to Mattamy. This outcome was specifically contemplated by this Court in approving the Sales Process:

> [23] The proposed Sales Process provides that at the end of the sixth week, each bidder will be required to submit letters of intent ("LOIs"). If no LOIs are submitted, the Monitor shall be entitled to terminate the Sales Process and convey the Downsview Interest to Mattamy in full satisfaction of all obligations of Downsview owing to Mattamy.[3]

9. Consistent with the court-approved Sales Process, Mattamy entered into the Transaction to acquire all of the Downsview Interest, which is defined in the Transaction as the "Purchased Assets":

> Purchased Assets: the right, title and interest of Downsview in and to the common shares in Downsview Homes Inc., all cash held by Downsview, all contracts to which Downsview is party which relate in any way to the Downsview project and all related proceeds.

10. The Arbitration only seeks a declaration about the interpretation of the Project Agreements – it does not in any way seek to transfer the benefit of the Project Agreements to the Foreign Representative. The only issue in the Arbitration is a determination of how Project receipts will be distributed under the contractual waterfall. As acknowledged by the Foreign Representative in its factum, if the Transaction is approved, the Arbitration will be moot because Mattamy will become the only party to the relevant agreements.

11. The interplay between the Arbitration and the sale of the Downsview Interests was extensively canvassed on the sales process approval motion. On that motion, the Foreign

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[3] *Urbancorp Toronto Management Inc.*, 2021 ONSC 4262, para 26.

Representative sought an order adjourning the sales process until after the completion of the Arbitration. That relief was not granted.[4]

12. With the benefit of the Foreign Representative's arguments, including its expressed concerns that no realistic offers would be received, this Court approved the Sales Process. The Court of Appeal refused to stay the Sales Process or grant leave to appeal the Sales Process Order after hearing the Foreign Representative's same arguments and concerns about the Sales Process.

13. This Court imposed no reservation, restriction or carve-out related to the Arbitration, or its potential impact on waterfall payments. The Arbitration was fully disclosed to potential purchasers, who were asked to provide LOIs on two bases (both Mattamy being successful and unsuccessful on the Arbitration). However, Downsview's interests in the project agreements, including any interest in the outcome of the Arbitration, were to be conveyed free and clear of any restrictions, regardless of who the buyer was to be.

14. The impropriety of the proposed carve-out is readily apparent when considered in the context of a hypothetical sale to a third-party purchaser under the Sales Process. That third-party purchaser would now be told, after having agreed to acquire the Purchased Assets, that it would not actually be acquiring certain distributions under the waterfall—the sole mechanism for distributions from the Project and that, somehow, UDPDI retained rights to receive payments from the Project. That result would be absurd.

[4] *Urbancorp Toronto Management Inc.*, 2021 ONSC 4262.

15. If the Foreign Representative wanted to "preserve" any of Downsview's entitlement to receive such distributions, it could have bid on the Downsview Interest in an attempt to acquire them. It did not.

16. An approval and vesting order that includes the proposed carve-out would not be acceptable to Mattamy. The Transaction would not close, the DHI Facility would remain in default and continue to grow. In that undesirable circumstance, as a matter of practicality, Mattamy would need to enforce its matured debt facility. The result for the Foreign Representative would be the same.

17. The Sales Process was conducted by the Monitor in a clear and transparent manner. The Foreign Representative's attempt to re-write the Sales Process after the fact to deprive Mattamy of the interests it has agreed to acquire is improper. It should be rejected.

B. No Meaningful "Positive Value" in Downsview's Equity

18. At paragraph 12 of its factum, the Foreign Representative asserts that both its and the Monitor's waterfalls show that "if the position asserted in the arbitration is upheld then there would be positive value to the Downsview interest".

19. Projections showing the two possible outcomes of the Arbitration were made available to prospective purchasers. Notwithstanding those projections, no prospective purchaser provided an LOI to purchase the Downsview Interest at any price, let alone a price that would pay off Mattamy's secured debt. Given the complexity, size and liabilities associated with the Project, those *potential* positive values simply do not make the Project attractive to any rational prospective buyers.

20. At paragraph 15 of its factum, the Foreign Representative asserts that, by soliciting bids on two bases (to reflect both possible outcomes of the Arbitration), the Sales Process somehow "expressly contemplated" preserving UDPDI's rights. That position is nonsensical—the fact that no LOIs were received on either bases proves that there was not sufficient "positive value" in the Downsview Interests to attract bidders under any scenario. The process did not purport to preserve anything for UDPDI.

C. This Court's Section 38 Analysis out of Context

21. At paragraphs 17-19 of its factum, the Foreign Representative quotes from this Court's decision approving the Sales Process and uses those quotes out of context to support its argument for a carve-out.

22. The quoted excerpts relate to this Court's analysis of whether an order akin to those made pursuant to section 38 of the *BIA* could be made under a *CCAA* process. This Court concluded that the Monitor should either issue the Notice to Arbitrate itself or assign its right to do so to UCI in a process analogous to that contemplated section 38 of the BIA.[5] That is all.

23. Nothing in this Court's analysis could reasonably be read to suggest that it was preserving potential outcomes of the Arbitration from the Sales Process. In fact, this Court's refusal to order that the Arbitration take place prior to the Sales Process suggests the opposite.

24. Without any evidence, the Foreign Representative makes the unfortunate argument that the Arbitration has been improperly "delayed" and that Mattamy is somehow being "rewarded" for that delay. This argument does not align with the facts. As acknowledged by the Foreign

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[5] *Urbancorp Toronto Management Inc.*, 2021 ONSC 4262, para 38.

Representative, the Arbitration was scheduled on consent of the parties and was primarily dictated by the appointed Arbitrator's availability.

D. The Foreign Representative Could Have Paid Down the DHI Facility

25. At paragraph 24 of its factum, the Foreign Representative argues that it could not have repaid the DHI Facility because it has a duty to maximize the value to UCI's creditors.

26. If the Foreign Representative believed that repaying the DHI Facility would lead to recoveries to Downsview in excess of the DHI Facility amounts (i.e. if the Foreign Representative believed the Purchased Assets were worth more than the DHI Facility) it would have been entirely appropriate and consistent with a duty to maximize value to UCI's creditors to repay the DHI Facility, thereby maximizing the potential value of waterfall distributions. The reality is that Foreign Representative chose not to use funds in that manner and is instead attempting to retain the value of the Purchased Assets without bearing any of the risk.

PART III - ORDER REQUESTED

27. Mattamy supports the form and content of the sale approval and vesting order sought by Monitor.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this fifth day of December, 2021.

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TEXT OF STATUTES, REGULATIONS & BY-LAWS

None.

IN TH E MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. c-36, AS AMENDED

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PROCEEDING COMMENCED AT TORONTO

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