

**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 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**

MOTION RECORD

(Returnable December 22, 2020)

December 14, 2020

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foreign representative of Urbancorp Inc.*

TO: THE SERVICE LIST

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ONTARIO
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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NOTICE OF MOTION

(Returnable December 22, 2020)

THE MOVING PARTY, Guy Gissin, the Israeli Court-appointed functionary officer and foreign representative (the “**Foreign Representative**”) of Urbancorp Inc. (“**UCI**”), will make a motion to the Honourable Chief Justice Morawetz, at 9:00 am on Tuesday, December 22, 2020.

THE PROPOSED METHOD OF HEARING: The motion is to be heard orally via Zoom.

THE MOTION IS FOR an Order:

1. Requiring Mattamy (Downsview) Limited, and related companies (collectively, “**Mattamy**”) to provide the audited financial statements for Downsview Homes Inc. (“**DHI**”) with respect to the Downsview Park Project (the “**Project**”) for the years 2015-2019;
2. To determine forthwith (either by arbitration or in a hearing before this Honourable Court) the issue of an alleged Mattamy entitlement to an additional \$21 million distribution from

the Project in priority to any distributions to Urbancorp Downsview Developments Inc. (“**UDPDI**”) that would be to the ultimate benefit of UCI; and

3. Such further and other relief that the moving party may request and this Honourable Court may consider just.

THE GROUNDS FOR THE MOTION ARE:

1. UCI is the parent company of UDPDI. UDPDI owns 51% of the equity of DHI. Mattamy owns the balance of the equity in DHI.
2. UDPDI is one of the debtors in this Proceeding for which KSV Restructuring Inc. acts as monitor (“**Monitor**”).
3. UCI is owed approximately 98% of UDPDI’s unsecured debt, being approximately \$10 million. No stakeholder in this proceeding, other than Mattamy and UCI, has any economic 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. Resolving these issues is urgent as they negatively affect any ability to monetize UDPDI’s interest in the Project. Transparency around the financial situation related to the Project and resolving the alleged additional priority distribution issues are necessary for anyone to consider purchasing UDPDI’s interest.
6. The Foreign Representative supports a sale process for UDPDI’s interest in the Project. However, any attempt to generate real offers requires these two points be resolved.

7. The ability to realize on any value in the Project remains 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.

8. Pursuant to Section 5.7 of the Co-Ownership Agreement between UDPDI and Mattamy, the co-owners are to be provided with copies of all audited financial statements annually forthwith after preparation. Neither the Monitor nor the Foreign Representative have been provided with audited financial statements since these proceedings commenced in 2016.

9. Mattamy has advised that the Monitor told Mattamy that audited financial statements were not needed. Mattamy has further advised that no independent financial statements have been prepared.

10. This is a project with a budget of over \$500,000,000 in the aggregate. Mattamy is the sole source of information regarding the Project. It is normal commercial practice for joint venture projects of this type to have audited financial statements prepared. This is even more critical when one of the two parties controls all the financial information.

11. In addition to not providing audited financial information, Mattamy has provided numerous “waterfalls” throughout these proceedings that purport to reflect the economics of the now completed Phase 1 of the Project, as well as project the likely profitability of Phase 2.

12. Both the Monitor and the Foreign Representative have expressed concerns relating to the inconsistency of the details that Mattamy has provided through various budgets and waterfalls. This would include what amounts have, or have not, been paid to Mattamy in Phase 1.

Significant intercompany transactions could have a material impact on the economics of Phase 2, which will impact the overall economic performance of the Project and thereby affect projected value for UDPDI and UCI.

13. Audited financial statements would also assist in resolving inconsistent information that Mattamy has provided as to what management fees it has received to date out of the proceeds from Phase 1. An audit should shed light on these transactions and serve to validate (or not) Mattamy's claims related to economic performance of Phase 1.

ADDITIONAL PREFERRED RETURN CLAIM

14. Before the arbitration, Mattamy had essentially asserted that UDPDI no longer had any real economic interest in the Project. However, UCI disagreed with the proposed waterfall that Mattamy had provided to support this position.

15. Before the arbitration commenced, Mattamy conceded certain points in terms of how UCI asserted that the waterfall should work. At the arbitration another element was confirmed in favour of UDPDI (although one issue was also resolved in Mattamy's favour).

16. After the arbitration decision, Mattamy produced a new waterfall to reflect their view of the decision. As part of this new waterfall, Mattamy now claims an additional \$21 million preferred return entitlement in respect of a promissory note that DHI issued.

17. If there is an additional \$21 million amount owed to Mattamy then it likely is true (subject to the audit of Phase 1), that there is no remaining economic interest of UDPDI in the Project (although there is a separate claim of UTMI for management fees which has been

estimated to be in excess of \$5 million). However, whether UDPDI has any remaining equity in the Project likely depends on resolving this issue.

18. Rules 1.04(1), 1.04(2), 2.03, and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194; and,

19. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Affidavit of Guy Gissin, affirmed December 14, 2020; and,
2. Such further and other evidence as counsel may advise and this Honourable Court may admit.

December 14, 2020

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Lawyers for the Moving Party, Guy Gissin, the Israeli Court-appointed functionary officer and foreign representative of Urbancorp Inc.

TO: THE SERVICE LIST

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

**ONTARIO
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Proceeding commenced at Toronto

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*Lawyers for the Moving Party, Guy Gissin, the Israeli
Court-appointed fiduciary officer and foreign
representative of Urbancorp Inc.*

Tab 2

**ONTARIO
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**IN THE MATTER OF THE *COMPANIES' CREDITORS
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PARK DEVELOPMENT INC., URBANCORP 952 QUEEN
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(COLLECTIVELY, THE "APPLICANTS") AND THE
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HERETO**

**AFFIDAVIT OF GUY GISSIN
(Affirmed December 14, 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 in support of a motion requiring Mattamy (Downsview) Limited, and related companies (collectively, "**Mattamy**"): (i) to provide the audited financial statements for Downsview Homes Inc. ("**DHI**") with respect to the Downsview Park Project (the "**Project**") for the years 2015-2019; and (ii) to determine forthwith (either by arbitration or in a hearing before this Honourable Court) the issue of an alleged Mattamy entitlement to an additional \$21 million distribution from the Project in priority to any distributions that would be to the ultimate

benefit of UCI. The Israeli court approval for the Functionary to take part in such legal proceedings is expected shortly, possibly today or tomorrow. An update will be provided once received.

3. Resolving these issues is urgent as they negatively affect any ability to monetize the interest of Urbancorp Downsview Park Development Inc. (“**UDPDI**”) in the Project.

Transparency around the financial situation related to the Project and resolving the alleged additional priority distribution issues are necessary for anyone to consider purchasing UDPDI’s interest.

4. In general, I support the idea of looking to monetize UDPDI’s interest in the Project. However, I believe that any attempt to generate real offers requires these two points be resolved.

OVERVIEW OF UCI’S INTERESTS IN THE PROJECT

5. UCI is the parent company of UDPDI. UDPDI owns 51% of the equity of DHI. Mattamy owns the balance of the equity in DHI.

6. UDPDI is one of the debtors in this Proceeding for which KSV Restructuring Inc. acts as monitor (“**Monitor**”).

7. UCI is owed approximately 98% of UDPDI’s unsecured debt, being approximately \$10 million. To the best of my knowledge, no other stakeholder in this proceeding, other than Mattamy, has any economic interest in the Project.

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

9. The actual owner of the Project, DHI, is not a debtor company in this proceeding.
10. 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).¹
11. The Prospectus contains detailed information relating to the Project, including, among other things, a description of various agreements between UDPDI, DHI, Downsview Park Homes Inc. (“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 first phase of the Project which had been estimated at around \$36 million.
12. The ability to realize on any value in 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.

¹ The Prospectus is a voluminous document and an unofficial English translation has been filed several times previously in this proceeding. While it can be made available if the Court requests, the Prospectus is not appended to this affidavit. I do note that the English translation is not official and the Hebrew version governs.

AUDITED FINANCIAL INFORMATION

13. Pursuant to Section 5.7 of the Co-Ownership Agreement between UDPDI and Mattamy, the co-owners are to be provided with copies of all audited financial statements annually forthwith after preparation. To the best of my knowledge, neither the Monitor nor the Foreign Representative have been provided with audited financial statements since these proceedings commenced in 2016.

14. Section 5.7 of the Co-Ownership Agreement provides:

5.7 Accountants

The Accountants of the Co-Ownership shall be the firm of PricewaterhouseCoopers, or such other qualified accountants as shall from time to time be appointed by the Project Management Committee. The Accountants shall, at the end of each fiscal year of the Co-Ownership, and at such other time as may reasonably be required by a Co-Owner, prepare audited financial statements of the books and accounts of the Co-Ownership, and for such purpose the Accountants shall have access to all books of account, records, vouchers, cheques, papers and documents of or which relate to the Co-Ownership. The Accountants shall furnish copies of all audited financial statements to each Co-Owner forthwith after preparation.

15. Mattamy has advised our Canadian counsel, Dentons Canada LLP, that the Monitor told Mattamy that audited financial statements were not needed. Mattamy has further advised that no independent financial statements have been prepared.

16. This is a project with a budget of over \$500,000,000 in the aggregate. Mattamy is the sole source of information regarding the Project. We are unaware of the Monitor ever waiving the audit requirement. I find it extremely unlikely that the Monitor would simply agree to waive this requirement and certainly without first discussing it with me given UCI's financial interest in the Project.

17. It is normal commercial practice as far as I am aware for joint venture projects of this type to have audited financial statements prepared. This is even more critical when one of the two parties controls all the financial information.

18. In addition to not providing audited financial information, Mattamy has provided numerous “waterfalls” throughout these proceedings that purport to reflect the economics of the now completed Phase I of the Project, as well as project the likely profitability of Phase II.

19. Both the Monitor and the Foreign Representative have expressed concerns relating to the inconsistency of the details that Mattamy has provided through various budgets and waterfalls. This would include what amounts have, or have not, been paid to Mattamy in Phase I. Significant intercompany transactions could have a material impact on the economics of Phase I, which will impact the overall economic performance of the Project and thereby affect projected value for UDPDI and UCI.

20. Another reason to have the audited financial statements would be to assist in resolving inconsistent information that Mattamy has provided as to what management fees it has received to date out of the proceeds from Phase 1. This is another area where Mattamy has provided inconsistent information.

21. An audit should shed light on these transactions and serve to validate (or not) Mattamy’s claims related to economic performance of Phase 1.

ADDITIONAL PREFERRED RETURN CLAIM

22. Before the arbitration, Mattamy had essentially asserted that UDPDI no longer had any real economic interest in the Project. However, UCI disagreed with the proposed waterfall that Mattamy had provided to support this position.
23. Before the arbitration commenced, Mattamy conceded certain points in terms of how UCI asserted that the waterfall should work. At the arbitration another element was confirmed in favour of UDPDI (although one issue was also resolved in Mattamy's favour).
24. After the arbitration decision, Mattamy produced a new waterfall to reflect their view of the decision. As part of this new waterfall, Mattamy now claimed an additional \$21 million preferred return entitlement in respect of a promissory note that DHI issued.
25. If there is an additional \$21 million amount owed to Mattamy then it likely is true (subject to the audit of Phase 1), that there is no remaining economic interest of UDPDI in the Project (although there is a separate claim of UTMI for management fees which has been estimated to be in excess of \$5 million). However, whether UDPDI has any remaining equity in the Project likely depends on resolving this issue.
26. I make the foregoing affidavit in support of an order that requires Mattamy: (i) to provide the audited financial statements for DHI for the years 2015-2019; and (ii) to determine forthwith (either by arbitration or before this Honourable Court) the issue of an alleged entitlement to an additional \$21 million distribution from the Project in priority to any distributions that would be to the ultimate benefit of UCI, and for no other or improper purpose.

AFFIRMED before me at the City
of Tel Aviv – Jaffa, in the State of Israel,
this 14 day of December, 2020.



An Israeli Attorney
Name: Yael Hershkovitz, Adv.

GUY GISSIN

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

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*Lawyers for Guy Gissin, Foreign Representative of
Urbancorp Inc.*

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