



**Fifty-Third Report to Court of
KSV Restructuring Inc. as CCAA Monitor 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. and the Affiliated Entities
Listed in Schedule “A” Hereto**

August 24, 2022

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COURT FILE NO.: CV-16-11389-00CL

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

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

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

FIFTY-THIRD REPORT OF KSV RESTRUCTURING INC

August 24, 2022

1.0 Introduction

1.1 Cumberland CCAA Entities

1. On April 21, 2016, Urbancorp (St. Clair Village) Inc. ("St. Clair"), Urbancorp (Patricia) Inc. ("Patricia"), Urbancorp (Mallow) Inc. ("Mallow"), Urbancorp Downsview Park Development Inc. ("Downsview"), Urbancorp (Lawrence) Inc. ("Lawrence") and Urbancorp Toronto Management Inc. ("UTMI") each filed a Notice of Intention to Make a Proposal ("NOI") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (collectively, St. Clair, Patricia, Mallow, Downsview, Lawrence and UTMI are referred to as the "NOI Entities"). KSV Kofman Inc. ("KSV Kofman") was appointed as the Proposal Trustee of each of the NOI Entities. On August 31, 2020, KSV Kofman changed its name to KSV Restructuring Inc. ("KSV").
2. Pursuant to an Order dated May 18, 2016 (the "Initial Order") made by the Ontario Superior Court of Justice (Commercial List) (the "Court"), the NOI Entities, together with the entities listed on Schedule "A" attached (collectively, the "Cumberland CCAA Entities" and each a "Cumberland CCAA Entity") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and KSV was appointed monitor (the "Monitor") of the Cumberland CCAA Entities (the "CCAA Proceedings"). The corporate chart for the Cumberland CCAA Entities is provided in Appendix "A".

1.2 Urbancorp Inc., Recognition of Foreign Proceedings

1. On April 25, 2016, the District Court in Tel Aviv-Yafo, Israel issued a decision appointing Guy Gissin as the functionary officer and foreign representative (the “Foreign Representative”) of UCI and granting him certain powers, authorities, and responsibilities over UCI.
2. On May 18, 2016, the Court issued two orders under Part IV of the CCAA, which:
 - a) recognized the Israeli Proceedings as a “foreign main proceeding”;
 - b) recognized Mr. Gissin as Foreign Representative of UCI; and
 - c) appointed KSV as the Information Officer.

1.3 Purposes of this Report

1. The purposes of this report (“Report”) are to:
 - a) discuss the status of the arbitration concerning the Downsview Project, as defined below, including a Notice of Application commenced under court file number CV-22-00685084-0000 on the Civil List, on August 5, 2022, by Mattamy (Downsview) Limited (the “Application”); and
 - b) recommend that the Court issue an order transferring the Application from the Civil List to the Commercial List to be heard by Chief Justice Morawetz, who is overseeing these CCAA proceedings.

1.4 Currency

1. Unless otherwise stated, all currency references in this Report are to Canadian dollars.

2.0 Background

1. The Urbancorp Group of Companies (“Urbancorp”) was primarily engaged in the development, construction and sale of residential properties in the Greater Toronto Area.
2. Background information concerning these proceedings has been extensively addressed in KSV’s prior reports in its various capacities in the Urbancorp proceedings, including as Monitor, Receiver, Proposal Trustee and Licensed Insolvency Trustee, and is not repeated herein. KSV’s reports issued in the Urbancorp proceedings are available on its website at <https://www.ksvadvisory.com/experience/case/urbancorp-group>.

3.0 Downsview Update

1. Downsview Homes Inc. (“DHI”) owns land located at 2995 Keele Street in Toronto, Ontario which is being developed into condominiums and other residences (the “Downsview Project”). The shares of DHI were owned by Downsview (51%) and Mattamy (Downsview) Limited (“Mattamy”) (49%).

2. In accordance with an approval and vesting order (the “AVO Order”) issued by the Court on December 29, 2021, the Court approved a sale of the Downsvie Interest to Mattamy in full satisfaction of all obligations owing by Downsvie to Mattamy (the “Transaction”). The Transaction closed in early January 2022.
3. Downsvie’s only material assets were its common shares in DHI and the agreements (the “Project Agreements”) relating to the Project (collectively, the “Downsvie Interest”).
4. Pursuant to the terms of the AVO Order and the Transaction, UTMI retained whatever rights it may have, if any, to recover management fees (estimated by the Monitor and the Foreign Representative to be approximately \$5.9 million) under the Project Agreements, without prejudice to Mattamy’s position that neither Downsvie nor UTMI is entitled to the payment of Management Fees. If UTMI was successful arguing its entitlement to the Management Fees, a portion of the amounts paid in respect of those fees would ultimately be paid to UCI.
5. The Monitor, Mattamy and the Foreign Representative agreed to have the Honourable Mr. Frank Newbould, Q.C. arbitrate the management fee dispute (the “Arbitration”). The Arbitration was binding and confidential and was held on June 3, 2022. Following the arbitration, additional materials were filed by Mattamy and the Monitor concerning their respective positions, including supplemental affidavits filed by Mattamy and supplemental reports filed by the Monitor.
6. The Monitor and Foreign Representative were successful in the Arbitration. On July 6, 2022, Mr. Newbould issued a decision awarding the Monitor the full amount it claims is owing to UTMI in respect of unpaid management fees (the “Decision”), being \$5.9 million. Costs were also awarded to the Monitor. A copy of the Decision is attached as Confidential Appendix “1”.
7. The Arbitration is confidential. The Court previously issued an order sealing the Decision. The Monitor respectfully requests that the Decision remain sealed (the “Sealing Order”). The Monitor is not aware of any party that will be prejudiced if the Decision remains sealed as the only stakeholders in the dispute are UCI and Mattamy. Accordingly, the Monitor believes the proposed Sealing Order remains appropriate.

4.0 The Application

1. Mattamy issued the Application on August 5, 2022. Pursuant to the Application, Mattamy seeks an order:
 - a. setting aside the award of the Honourable Frank J.C. Newbould, Q.C. (the “Arbitrator”) dated July 6, 2022 (the “Award”) pursuant to section 46 of the *Arbitration Act, 1991*;
 - b. directing a new arbitration before a new arbitrator;
 - c. setting aside the Supplemental Cost Award dated July 28, 2022 (the “Cost Award”); and
 - d. staying the Award and the Costs Award pending the resolution of this Application.

2. Mattamy takes the position that:
 - a. The Award deals with a dispute that is beyond the scope of the arbitration and the Arbitrator's jurisdiction (s. 46(1)(3));
 - b. Mattamy was not treated equally and fairly as it was not given an opportunity to present a case to respond to the issues raised for the first time by the Arbitrator at the hearing of arbitration (s. 46(1)(6));
 - c. Mattamy was not permitted to file relevant evidence that would have impacted the outcome of the arbitration (s. 46(1)(6)); and
 - d. The procedures followed in the arbitration did not comply with the *Arbitration Act, 1991* (s.46(1)(7)).

A copy of the Application is attached as Appendix "B".

3. Upon being served with the Application, counsel for the Monitor and Mattamy discussed whether the Application ought to have been made in these proceedings rather than by way of a new proceeding on the Civil List.
4. Mattamy agreed that the most efficient and expedient manner to address the issues raised by the Application is to have them heard by the supervising judge in these proceedings based on his familiarity with the Urbancorp restructuring proceedings, including issues concerning the Downsview Project, provided that the Court approved of the Application being dealt with on the Commercial List.
5. The Arbitration was in respect of assets under administration in these proceedings and the Award itself represents an asset of UTMI. If the Monitor and Mattamy had not agreed to the Arbitration, then the matters subject to the Arbitration would have been dealt with in these proceedings. In addition, the Application is arguably subject to the stay of proceedings provided for in the initial order made in these proceedings for which no leave was sought. All counsel and parties to the Application have their offices in Toronto, Ontario and Mattamy consents to the transfer of the Application to the Commercial List.

5.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that the Court make an order transferring the Application from the Civil List to the Commercial List to be heard by Chief Justice Morawetz and sealing Confidential Appendix "1".

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS CCAA MONITOR OF
THE CUMBERLAND CCAA ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**

Schedule "A"

Urbancorp Toronto Management Inc.

Urbancorp (952 Queen West) Inc.

King Residential Inc.

Urbancorp 60 St. Clair Inc.

High Res. Inc.

Bridge on King Inc.

Urbancorp Power Holdings Inc.

Vestaco Homes Inc.

Vestaco Investments Inc.

228 Queen's Quay West Limited

Urbancorp Cumberland 1 LP

Urbancorp Cumberland 1 GP Inc.

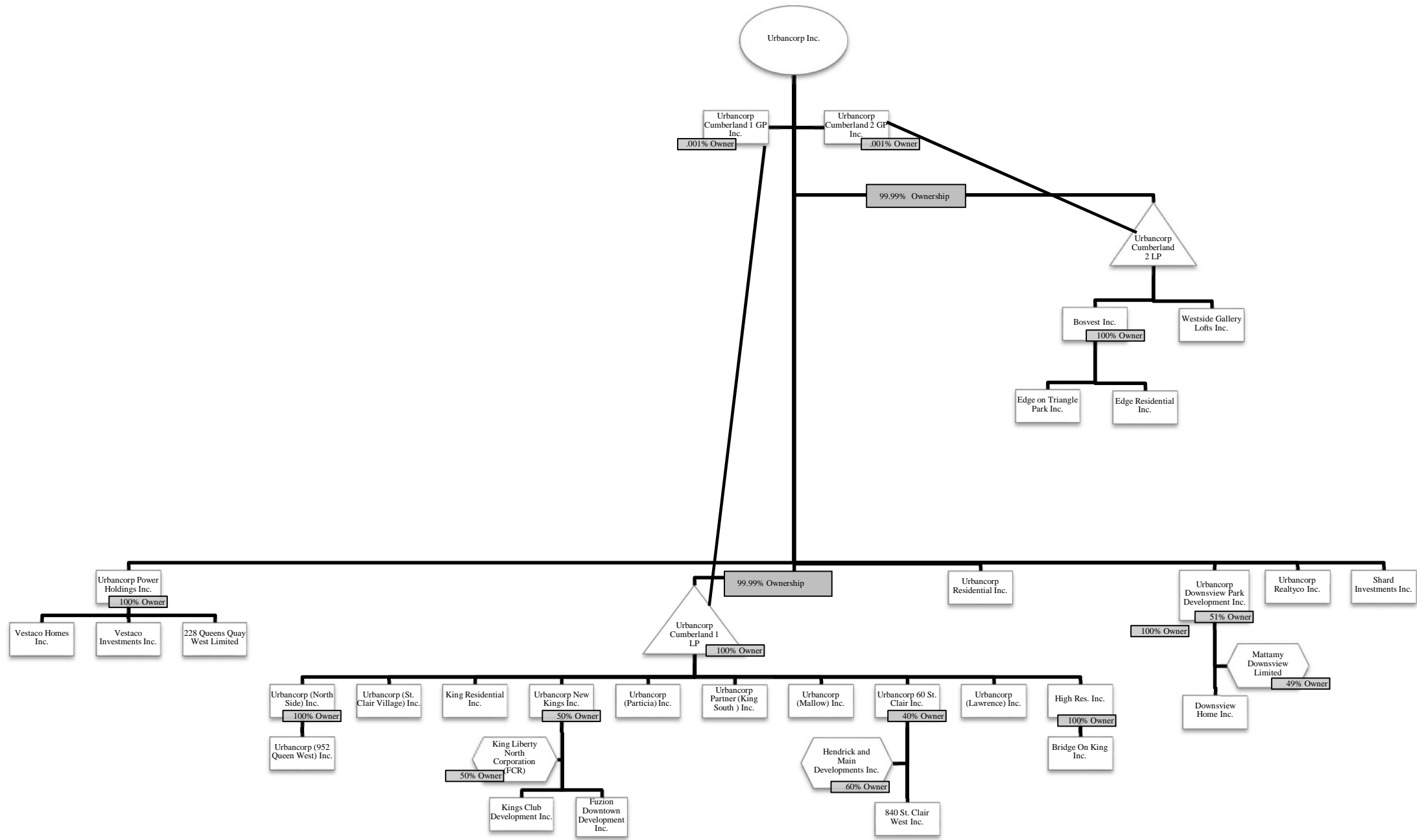
Urbancorp Partner (King South) Inc.

Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.

Appendix “A”



Appendix “B”



ONTARIO
SUPERIOR COURT OF JUSTICE

CV-22-00685084-
0000

BETWEEN:

MATTAMY (DOWNSVIEW) LIMITED

Applicant

KSV RESTRUCTURING INC., IN ITS CAPACITY AS THE
COURT APPOINTED MONITOR OF URBANCORP DOWNSVIEW PARK
DEVELOPMENT INC. PURSUANT TO THE *COMPANIES' CREDITORS ARRANGMENT
ACT* R.S.C. 1985, C. C-36. AS AMENDED, GUY GISSIN, IN HIS CAPACITY AS THE
APPOINTED FUNCTIONARY AND FOREIGN REPRESENTATIVE OF URBANCORP INC.
BY ORDER OF THE DISTRICT COURT IN TEL AVIV-YAFO, ISREAL

Respondents

APPLICATION UNDER RULE 14.05(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg.
194, and Section 46 of the *Arbitration Act 1991*, S.O. 1991, c. 17

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim
made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing

By video conference

at the following location:

330 University Avenue, 8th Floor, Toronto, Ontario M5G 1R7

on a date to be set by the registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the
application or to be served with any documents in the application, you or an Ontario lawyer
acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the

Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Aug 5th, 2022 Issued by H. Marye
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 8th Floor
Toronto ON M5G 1R7

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Lawyers for KSV Kofman Inc., in its capacity as Monitor

APPLICATION

1. The Applicant, Mattamy (Downsview) Limited (“**Mattamy**”) applies for:
 - (a) An order setting aside the award of the Honourable Frank J.C. Newbould, Q.C. (the “**Arbitrator**”) dated July 6, 2022 (the “**Award**”) pursuant to sections 46 of the *Arbitration Act, 1991* and on the following grounds:
 - (i) The Award deals with a dispute that is beyond the scope of the arbitration and the Arbitrator’s jurisdiction (s. 46(1)(3));
 - (ii) Mattamy was not treated equally and fairly, was not given an opportunity to present a case to respond to the issues raised for the first time by the Arbitrator at the hearing of arbitration (s. 46(1)(6));
 - (iii) Mattamy was not permitted to file relevant evidence that would have impacted the outcome of the arbitration (s. 46(1)(6)); and
 - (iv) The procedures followed in the arbitration did not comply with the *Arbitration Act, 1991* (s.46(1)(7)).
 - (b) An order directing a new hearing of the arbitration before a new arbitrator;
 - (c) An order setting aside the Supplemental Cost Award dated July 28, 2022 (the “**Cost Award**”);
 - (d) An order staying the Award and the Costs Award pending the resolution of this Application; and

(e) Such further and other relief as to this Honourable Court may seem just.

2. The grounds of the Application are:

The Dispute Respecting Consulting Fees

- (a) Mattamy and the Respondent, Urbancorp Downsview Park Development Inc. (“**UDPDI**”), entered into an Amended and Restated Co-Ownership Agreement dated July 30, 2013 (the “**Agreement**”);
- (b) The Agreement provides for the potential payment of Consulting Fees to UDPDI pursuant to the requirements and terms of the Agreement;
- (c) Consulting Fees were to be paid as a percentage of “Gross Receipts” received in connection with the sale of residential condominium units and as defined in the Agreement;
- (d) On December 31, 2021, for good and valuable consideration, the Monitor transferred to Mattamy all of UDPDI’s interests in the development project and all rights and obligations under the Agreement, thereby removing UDPDI as a Co-Owner (the “**Transfer Date**”);
- (e) By operation of section 6.15 of the Agreement, UDPDI lost any entitlement to be paid Consulting Fees on Gross Receipts received after the Transfer Date;
- (f) Despite section 6.15, UDPDI took the position that it was entitled to be paid Consulting Fees on Gross Receipts from the sale of “Phase 2” units to be received after the Transfer Date;

- (g) Mattamy took the position that no Consulting Fees were due to UDPDI on Gross Receipts received after the Transfer Date;
- (h) Neither UDPDI nor Mattamy took the position that Gross Receipts for Phase 2 unit sales had already been received as of the Transfer Date;

The Arbitration

- (i) On March 23, 2022, UDPDI delivered Notice of Arbitration claiming a total of \$5,911,624 in Consulting Fees to be paid from (i) Gross Receipts received on the sale of units from Phase 1 of the Project (which had been received prior to the Transfer Date) and (ii) on Gross Receipts yet to be received from the sale of units on Phase 2 of the Project;
- (j) Paragraph 9 of the Notice of Arbitration states that Gross Receipts for Phase 2 unit sales were “expected to total” an amount that would result in the payment of \$5,184,306 in Consulting Fees;
- (k) In the Notice of Arbitration, UDPDI admits that Gross Receipts for Phase 2 had not yet been received;
- (l) Mattamy delivered a Statement of Defence on April 5, 2022;
- (m) In the Statement of Defence, Mattamy took the position that UDPDI had no entitlement to a percentage of future Gross Receipts received after the Transfer Date;
- (n) The Arbitrator’s jurisdiction was defined by the claims asserted in the pleadings;

- (o) The parties proceeded to arbitration based on the disputes identified in the pleadings;

The New Disputes Created by the Arbitrator

- (p) At the hearing of the arbitration on June 3, 2022, the Arbitrator raised new issues, and generated new disputes, over when Gross Receipts from the sale of residential condominium units are to be considered received under the Agreement;
- (q) As there was no evidence respecting the new dispute, the Arbitrator adjourned the hearing and directed the Parties to deliver supplementary evidence respecting ASPE accounting principles for revenue recognition of residential condominium units;

Arbitrator Refuses to Allow Relevant Evidence to be Filed

- (r) In accordance with the Arbitrator's direction, Mattamy's representative, David George, delivered a Further Supplementary Affidavit on June 15, 2022;
- (s) UDPDI and the Monitor objected to parts of the evidence contained in the Further Supplementary Affidavit;
- (t) Despite Mattamy's requests that UDPDI's objections be determined on a formal motion with full written arguments, the Arbitrator directed a case conference to be held on June 27, 2022 during which the Arbitrator summarily determined whether portions of the Further Supplementary Affidavit would be struck out;
- (u) The Arbitrator held at the case conference, without reasons, that Mattamy was not permitted to file as evidence a Handbook from the Real Property Association of

Canada (“**REALPAC**”) entitled “*Recommended Accounting Practices for Real Estate Investment and Development Entities Reporting in Accordance with ASPE*” (the “**Handbook**”);

- (v) Among other things, the Handbook states that revenue from the sale of residential condominium units is to be recognized at the time of interim closing and not at the time the units are sold;
- (w) The Handbook confirmed the common understanding of the Parties and the Project accountants with respect to how and when revenues from the sale of units are to be recognised as Gross Receipts;

The Award

- (x) In the Award, the Arbitrator granted UDPDI all of the relief it sought in the arbitration;
- (y) In the Award, the Arbitrator held that Gross Receipts are to “be treated as received when the units are sold, not when the sale proceeds are actually collected”;
- (z) The Arbitrator’s finding that Gross Receipts ought to be treated as received at the time of sale of the units, rather than upon interim occupancy, led him to find in favour of UDPDI in the arbitration;

Mattamy was Denied Procedural Fairness

- (aa) The Arbitrator’s decision to determine the dispute respecting when Gross Receipts are to be considered received under the Agreement on a basis not

pleaded and in fact contrary to the position pleaded by the Parties amounts to a denial of Mattamy's right of procedural fairness and natural justice;

- (bb) The Award deals with a dispute that the arbitration agreement does not cover and contains a decision on a matter beyond the scope of the agreement and the Arbitrator's jurisdiction;
- (cc) Mattamy was not treated equally and fairly, was not given an opportunity to present a full case to respond to the issues raised for the first time by the Arbitrator at the hearing of arbitration;
- (dd) The Arbitrator solicited evidence and submissions from the Parties respecting issues raised for the first time at the hearing and then decided to not allow Mattamy to file all relevant evidence that would have impacted the outcome of the arbitration;
- (ee) Mattamy asks that the Award and the Cost Award be set aside and that a new arbitration be directed before a new arbitrator.

The Award and the Costs Award Should be Stayed

- (a) Mattamy asks that enforcement of the Award and the Cost Award be stayed pursuant to section 50(5) of the *Arbitration Act, 1991* pending the disposition of this Application;
- (b) UDPDI is an insolvent entity. Guy Gissin, in his capacity as the appointed functionary and foreign representative of Urbancorp Inc. ("FR"), is a foreign entity;

- (c) If the proceeds from the Award and Cost Award are received by UDPDI (and then provided to the FR) they may be distributed and otherwise unrecoverable;

Other Grounds

- (d) Rules 14.05, 38 and 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
and
 - (e) Sections 3, 19, 46 and 50 of the *Arbitration Act, 1991*, S.O. 1991, c. 17.
 - (f) Such further and other grounds as the lawyers may advise.
3. The following documentary evidence will be used at the hearing of this application:
- (a) the affidavit of David George, to be sworn, and the exhibits attached thereto; and
 - (b) such further and other evidence that the lawyers may advise.

(Date of issue)

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-and- KSV RESTRUCTURING INC. et al.
Respondents

Court File No. *CV-22-00685084-0001*

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPLICATION

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