



**Second Supplement to the
Forty-First 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**

November 1, 2020

Contents

Page

1.0	Introduction.....	1
2.0	History of the DHI Dispute	2
3.0	Conclusion.....	3

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**

SECOND SUPPLEMENT TO FORTY-FIRST REPORT OF KSV RESTRUCTURING INC.

November 1, 2020

1.0 Introduction

1. This second supplemental report (the "Report") further supplements the Forty-First Report of the Monitor dated October 27, 2020 (the "Forty-First Report").
2. Defined terms in this Report have the meaning provided to them in the Forty-First Report or in the First Supplement to the Forty-First Report, unless otherwise defined herein.
3. This Report is subject to the restrictions and qualifications in the Forty-First Report.
4. This Report is intended to provide the Court with background information regarding the Project and to frame the dispute presently before the Court.
5. The Monitor is of the view that none of the issues raised by the Foreign Representative in the Gissin Affidavit are pertinent to approval of the DHI Amendment, particularly given Mattamy's agreement to have the DHI Facility mature on January 31, 2021 and the reduction in the maximum amount of the DHI Facility Charge, both of which were requested by the Foreign Representative. As further detailed below, none of the matters raised in the Gissin Affidavit are affected by the DHI Amendment.

2.0 History of the DHI Dispute

1. The relevant entities with an interest in the Project are Mattamy and UDPDI, a CCAA applicant over which the Monitor has been appointed. UDPDI is the co-owner of the Project via its equity interest in DHI, the legal and beneficial owner of the Project.
2. The shares of DHI are owned by UDPDI (51%) and Mattamy (49%). UDPDI's only material asset is its interest in DHI. It also has a small cash balance.
3. The Foreign Representative represents UCI, the shareholder of UDPDI. UCI is an unsecured creditor of UDPDI in the amount of \$10,094,562. It is not a shareholder of DHI nor a creditor of DHI.
4. UCI was incorporated on June 19, 2015 to raise debt in the public markets in Israel. UCI made a public offering of debentures (the "IPO") in Israel that raised approximately \$64 million. UCI's loan to UDPDI was made with proceeds sourced from the IPO.
5. According to the Gissin Affidavit, the prospectus issued by UCI in connection with the IPO forecasted that the Project would generate gross profit of approximately \$76 million¹. However, based on financial information provided by Mattamy, the first phase of the Project underperformed significantly. The second phase of the Project is currently projected to be profitable, but the actual profitability will not be determined for several years, and the value of UDPDI's participation in the profit is uncertain. Mattamy has provided the Monitor and the Foreign Representative with financial forecasts reflecting that the UDPDI interest has no value.
6. At the commencement of the Cumberland CCAA Proceedings, UDPDI was required to make an equity injection into the Project of approximately \$8 million to secure construction financing. UDPDI did not have the cash to fund its portion of the required equity; however, Mattamy agreed to loan UDPDI the funds it required. The Court approved the DHI Facility in June 2017. Pursuant to the terms of the DHI Facility, Mattamy has security over UDPDI's property, assets and undertaking for all present and future obligations owing by UDPDI to Mattamy in respect of the Project.
7. UDPDI also has obligations to Mattamy under a co-ownership agreement with Mattamy (the "Ownership Agreement"). Pursuant to the Ownership Agreement, UDPDI's shares of DHI are subject to transfer restrictions in favour of Mattamy and are pledged as security to Mattamy². Mattamy and UDPDI have entered into several other agreements in respect of the Project (collectively, the Ownership Agreement and the other agreements are referred to as the "Agreements").
8. The amount presently owing under the DHI Facility ranges from approximately \$2 million and \$5 million (plus interest and costs which continue to accrue). The amount owing is subject to disputes based on the treatment of certain items decided in favour of UDPDI at an arbitration conducted before Former Justice Newbould (the "Arbitrator") in September 2019 (the "Arbitration"). This is discussed in greater detail in paragraphs 12 and 13 below.

¹ It is not clear that this correct; however, the Prospectus suggests that the Project would generate significant gross profit.

² While the agreement to provide security is in the Ownership Agreement, upon transferring the beneficial ownership in the Project to DHI in exchange for equity in DHI, there is a separate Share Pledge Agreement dated June 3, 2015 which secures all obligations under the Agreements (not just the Ownership Agreement) and the payment of all monies owed by UDPDI to Mattamy.

9. Mattamy has provided the Monitor and Foreign Representative with budgets and “waterfalls” during these proceedings. Mattamy maintains the books and records for the Project and performs all accounting for it. The Foreign Representative and the Monitor are reliant on Mattamy for that information.
10. The budgets reflect the results of the Project at a point in time, as well as the forecasted results of the balance of the Project at that time. The waterfalls reflect Mattamy’s view at certain points in time as to how the proceeds from the Project are to be distributed to each of Mattamy and UDPDI in each phase of the Project. The budgets and waterfalls have been updated as the Project advanced. The Monitor, on behalf of UDPDI, and the Foreign Representative have expressed concerns to Mattamy that, *inter alia*, the budgets and waterfall have been inconsistently prepared.
11. Since the outset of the CCAA Proceedings, there have been several disagreements among Mattamy, the Foreign Representative and the Monitor on behalf of UDPDI concerning the interpretation of the Agreements. In certain instances, the Monitor has disagreed with the Foreign Representative and in others it has disagreed with Mattamy.
12. The Arbitration was intended to resolve disagreements over aspects of the waterfall. The Arbitrator decided some of the issues in favour of UDPDI and others in favour of Mattamy. The Foreign Representative agreed that certain amounts decided in favour of UDPDI could be set off against the DHI Facility. The treatment of other matters decided in favour of UDPDI has not been settled, including an issue concerning certain project expenses³ funded by UDPDI many years ago. Based on the Gissin Affidavit, the Foreign Representative appears to be suggesting that the project expense amount should be set off against the DHI Facility.
13. As a result of the Arbitration decision, the differing views on the Agreements and Project accounting matters, the amount presently owing under the DHI Facility remains unresolved.

3.0 Conclusion

1. Construction financing is required to advance the Project. Mattamy has arranged and negotiated the NBC Facility. UDPDI is required to provide 51% of the equity required under the NBC Facility. UDPDI is impecunious. It cannot fund its portion of the required equity. Pursuant to the DHI Amendment, Mattamy has offered to advance UDPDI the required capital. Without the NBC Facility, the Project will be delayed. Delays will negatively affect the Project’s stakeholders, including Mattamy as secured creditor, trades which have been providing, and which continue to provide, goods and services to the Project, purchasers who have bought units in the development and the Foreign Representative.
2. Nothing in the DHI Amendment affects the issues in dispute between the Foreign Representative, Mattamy and the Monitor on behalf of UDPDI.

³ The principal amount owing for project expenses is \$2.2 million. The \$4.2 million amount was calculated by the Foreign Representative and appears to include interest at 15% per annum. Mattamy has not had the opportunity to provide its opinion on this matter to the Monitor. The Monitor does not believe that Mattamy would have been aware of the Foreign Representative position on the project expense setoff prior to the Gissin Affidavit.

3. There is no commercially reasonable basis for believing that UDPDI's required equity contribution would be funded by anyone other than Mattamy given the co-ownership structure and Mattamy's existing security and control over the development of the Project.

* * *

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.