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at: 4:37:42 PM

8 page(s) (including cover)

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Court of Appeal File No.

Court File No. CV-16-11409-00CL

COURT OF APPEAL FOR ONTARIO

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.,
URBANCORP (RIVERDALE) DEVELOPMENTS INC., &
URBANCORP (THE BEACH) DEVELOPMENTS INC.

Respondents

APPLICATION UNDER section 243 of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended, section 68 of the Construction Lien Act, R.S.O. 1990, c.
C.30, and under section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43

NOTICE OF APPEAL

Terra Firma Capital Corporation APPEALS to the Court of Appeal from the order
of Chief Justice Morawetz dated October 10, 2019 (the “Decision”) made at Toronto.

THE APPELLANT ASKS that the order be set aside and an order be granted as
follows:

1. Declaring that Alvarez & Marsal Canada Inc., as receiver and manager and
construction lien trustee (the “Receiver”), was entitled to collect the Parks
Levy from the Certain Curzon Purchasers on closing of the units they
purchased;

[2]

2. Directing that the Receiver is entitled to retain the \$471,994.39 collected on account of the Park Levy from the Certain Curzon Purchasers; and
3. Awarding costs of the motion below and of the appeal.

THE GROUNDS OF APPEAL are as follows:

1. The Certain Curzon Purchasers acquired condominium units in the Urbancorp Leslieville development from the Receiver in October of 2018;
2. The relevant agreement of purchase and sale was a negotiated document and was part of a larger settlement in which the interests of all stakeholders in the receivership were compromised to permit the completion of the development;
3. Almost all the same persons who comprise the Certain Curzon Purchasers were represented by Dickinson Wright LLP in the course of the negotiations by which the agreement of purchase and sale (and all other settlement documents) were finalized;
4. The agreement of purchase and sale provided in clause 7(d)(iii) that adjustments to the purchase price would be made for:

“the amount of any parks levy or any charges pursuant to a Section 37 Agreement (pursuant to the Planning Act), levied, charged or otherwise imposed with respect to the Condominium, the Property or the Unit by any governmental authority, which is equivalent to the common interest allocation attributable to the Unit as set out in Schedule “D:” to the Declaration”
5. As a term of the municipal approvals for the development, the City of Toronto required that land be conveyed to the City for a park;
6. The Receiver accordingly used the value of the land so conveyed, as the land had been valued by the City in 2012 (and not in 2018 at the time of

[3]

closing) as the basis for an amount to be adjusted pursuant to clause 7(d)(iii);

7. The Certain Curzon purchasers brought a motion to challenge the propriety of that adjustment, arguing that an adjustment for the conveyance of land instead of a cash payment was not appropriate;
8. The term “parks levy” was not defined in the agreement of purchase and sale, nor in the applicable legislation, being the Planning Act and the City of Toronto Municipal Code;
9. The City of Toronto website appears to be the only place where the term “park levy” is used, but in doing so it differentiates between a park levy and the amount that is paid, which it called a “park levy fee”;
10. The term “levy” is also used in several provincial statutes to apply to a taking of an item in kind;
11. The Decision erred in finding that clause 7(d)(iii) of the agreement of purchase and sale did not permit an adjustment at closing for the value of land conveyed to the city as a parks levy;
12. The Decision further erred in finding that if clause 7(d)(iii) of the agreement of purchase and sale was ambiguous then this ambiguity should be resolved on the basis of a contra proferentem approach in a consumer transaction, when the agreement of purchase and sale and clause 7(d)(iii) itself was the subject of negotiation among parties including purchasers represented by able counsel;
13. The Decision further erred in finding that the Receiver suffered no loss in conveying the land to the City, because land in the City of Toronto clearly has value and could have been either sold to a third party or used for further development had the City not required it as a term of the approvals; and

[4]

14. The Appellant is the ranking creditor in the receivership, will suffer the economic results of the Decision, and participated in the hearing below.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS: (i) paragraph 6(1)(b) of the Courts of Justice Act, (ii) the order appealed from is final, and (iii) leave to appeal is not required.

November 11, 2019

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as receiver and manager and construction lien trustee

RCP-E 61A (September 1, 2018)

Court of Appeal File No.
Court File No. CV-16-11409-00CL

CANADIAN IMPERIAL BANK OF COMMERCE
Applicant

- and -

URBANCORP (LESLIEVILLE) DEVELOPMENTS INC. et al.
Respondents

COURT OF APPEAL FOR ONTARIO

Proceedings commenced at Toronto

NOTICE OF APPEAL

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File #: 9796.0001

Date: November 11, 2019

Pages (including cover): 7

RE: Notice of Appeal

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November 11, 2019

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Dear Counsel:

RE: Urbancorp (Leslieville) Developments Inc. et al.

Enclosed please find our client's Notice of Appeal.

Yours truly,

GOLDMAN SLOAN NASH & HABER LLP

Per:

R. Brendan Bissell

RBB:kb
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