

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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 MOTION  
(Re: LIMITED LIFT STAY)  
(Returnable September 27<sup>th</sup>, 2017)

Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manager (in such capacity, the “**Receiver**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended, and as construction lien trustee (in such capacity, the “**Construction Lien Trustee**”), pursuant to section 68 of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the “**CLA**”) (the Receiver together with the Construction Lien Trustee, the “**Construction Receiver**”), of all of the assets, undertakings, and property acquired for, or used in relation to the business including all proceeds thereof (the “**Property**”) of Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”), Urbancorp (Riverdale) Developments Inc. (“**UC Riverdale**”) and Urbancorp (The Beach) Developments Inc. (“**UC Beach**”, together with UC Riverdale, the “**Guarantors**”, and the Guarantors, together with UC Leslieville, the “**Debtors**”) will make a motion to a Judge of

the Commercial List at 9:30 a.m. on September 27, 2017, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion will be unopposed and be heard orally.

**THE MOTION IS FOR:**

- (a) an unopposed, administrative order lifting the stay in these proceedings (the “**Stay of Proceedings**”) for the limited purpose of deeming the Lien Proceedings (defined below) to be set down for trial solely to comply with section 37 of the CLA, all in accordance with the draft order substantially in the form attached as **Schedule “A”** hereto (the “**Limited Lift Stay Order**”); and
- (b) such further and other relief as counsel may request and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On May 31, 2016, the Court issued an order appointing A&M as the Construction Receiver of all of the Property of the Debtors.
2. Prior to the appointment of the Construction Receiver, the Debtors had carried on business as land developers principally focused on the development, construction and sale of residential projects located in the Greater Toronto Area all as described in the Second Report of the Construction Receiver dated April 21, 2017 (the “**Second Report**”).
3. As a result of the insolvency of the Debtors, twenty (22) lien claimants have registered liens on title and commenced lien proceedings against the Debtors and the mortgagees of two residential projects subject to this receivership, the Leslieville Project and the Beach Project (the “**Lien Proceedings**”). The lien claims are described in the Second Report.
4. The Lien Proceedings have been stayed by virtue of the Stay of Proceedings contained in the Appointment Order.

5. Pursuant to section 37 of the CLA, a lien action must be set down for trial or an order granted fixing a trial date within two (2) years of the date the lien action was commenced otherwise the lien will immediately expire.

6. In late August 2017, the Construction Receiver received a request from counsel to one of the lien claimants, Alpa Stairs and Railings Inc. (“**Alpa**”), requesting an order to lift the Stay of Proceedings in order to deem its Lien Proceeding be set down for trial without any further step being taken in the proceeding. The lift stay request was solely out of an abundance of caution to comply with section 37 of the CLA in the event that the Stay of Proceedings did not toll the two-year time period and to avoid the possible adverse impact of the expiration of its lien.

7. In anticipation of similar requests from counsel to other lien claimants, the Construction Receiver is seeking the same relief for all Lien Proceedings with respect to the Leslieville Project and the Beach Project.

8. The Construction Receiver has consulted with counsel to the mortgagees named in the Lien Proceedings and each has advised the Construction Receiver they consent to the Limited Lift Stay Order.

9. Counsel to the Construction Receiver circulated the proposed Limited Lift Stay Order to all counsel in the Lien Proceedings and advised them of the request received from Alpa and the inclusion of their Lien Proceeding in the proposed Limited Lift Stay Order. No counsel in any Lien Proceeding has objected.

10. The proposed form of Limited Lift Stay Order coordinates with other Court orders previously granted in these proceedings, which provide for the dismissal of claims against the mortgagees of the Leslieville Project and Beach Project after a reserve of funds from sale proceeds has been established by the Construction Receiver.

11. Given the scope of the Limited Lift Stay Order, it is the Construction Receiver’s view that the lift stay does not result in prejudice to the parties to the Lien Proceedings and the relief is appropriate in the circumstances.

12. Rules 1.04, 2.03, 3.02 and 37 of *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;  
and
13. Section 37 and section 60(1) of CLA;
14. 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:

- (a) the Appointment Order;
- (b) the Leslieville Settlement Approval Order;
- (c) the Beach Project Order;
- (d) the proposed Limited Lift Stay Order;
- (e) the pleadings and proceedings herein; and
- (f) such further and other material as counsel may advise and this Honourable Court permit.

Date: September 25, 2017

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Pamela L. J. Huff**  
LSUC #27344V  
Tel: 416-863-2958  
Fax: 416-863-2653  
Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Kelly Peters**  
LSUC#: 59914W  
Tel: 416-863-4271  
Fax: 416-86302653  
Email: [kelly.peters@blakes.com](mailto:kelly.peters@blakes.com)

Independent Counsel for Alvarez & Marsal  
Canada Inc., in its capacity as both Receiver and  
Manager and Construction Lien Trustee of the  
assets, undertakings and property of Urbancorp  
(Leslieville) Developments Inc., Urbancorp  
(Riverdale) Developments Inc., and Urbancorp  
(The Beach) Developments Inc.

TO: THE SERVICE LIST

**SCHEDULE “A”**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) WEDNESDAY, THE 27<sup>th</sup>  
MR. JUSTICE MYERS ) DAY OF SEPTEMBER, 2017  
)

BETWEEN:

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- and -

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c. C.30, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**ORDER**

**(Re: Limited Lift Stay)**

**THIS MOTION** made by Alvarez & Marsal Canada Inc., in its capacity as receiver and manager (in such capacity, the “**Receiver**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended, and in its capacity as construction lien trustee (in

such capacity, the “**Construction Lien Trustee**”), pursuant to section 68 of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (“**CLA**”) (the Receiver, together with the Construction Lien Trustee, the “**Construction Receiver**”), of all of the assets, undertakings, and property acquired for, or used in relation to the business, including all proceeds thereof (the “**Property**”) of Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”), and Urbancorp (The Beach) Developments Inc. (“**UC Beach**”, together UC Leslieville, the “**Debtors**”), for an order temporarily lifting the stay of proceedings for the limited purpose of setting down certain claims in the Lien Proceedings (defined below) was heard this day at 330 University Avenue Toronto, Ontario.

**ON READING** the Notice of Motion and the Orders of the Honourable Mr. Justice Newbould granted in these proceedings on May 2, 2017 (the “**Beach Project Order**” and the “**Leslieville Settlement Approval Order**”, respectively), and on hearing submissions from counsel to Construction Receiver, Alpa Stairs and Railings Inc., no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of ●, 2017, filed.

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion is abridged and validated, such that this motion is properly returnable today.

## **DEFINITIONS**

2. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meaning given to them in the Leslieville Settlement Approval Order.

## **LIMITED LIFT STAY**

3. **THIS COURT ORDERS** that to avoid the adverse implications of the two-year limitation period under the CLA, if applicable, the stay of proceedings herein be and is hereby lifted such that:

- (a) the lien proceedings listed on **Schedule “A”** hereto (the “**Leslieville Lien Proceedings**”) are hereby deemed to have been set down for trial, provided that nothing herein derogates from the dismissal of the claims with respect to the Mortgagee Actions upon the establishment of the Holdback Reserve in accordance with Leslieville Settlement Approval Order; and
- (b) the lien proceedings listed on **Schedule “B”** hereto (the “**Beach Lien Proceedings**”) are hereby deemed to have been set down for trial, other than the claims relating to Mortgagee Actions (as defined in the Beach Project Order) which have been dismissed as the Beach Holdback Reserve (as defined in the Beach Project Order) has been established in accordance with the Beach Project Order,

in each case, solely to comply with section 37 of the CLA and in accordance with the provisions of section 60(1) of the *Act*.

4. **THIS COURT ORDERS** that the trial of each of the Leslieville Lien Proceedings and the Beach Lien Proceedings (collectively, the “**Lien Proceedings**”) shall be listed for trial in Toronto, Ontario but shall not be called for trial and no further steps shall be taken in the Lien Proceedings without further order of the Court.

5. **THIS COURT ORDERS** that a Trial Record need not be filed in the Lien Proceedings until so ordered by the Court or as agreed by counsel for the parties.

6. **THIS COURT ORDERS** that the Lien Proceedings are hereby set down for trial without prejudice to all parties’ rights. This Order is not, and shall not be deemed to be, an acknowledgement of any merits or substance of the Lien Proceedings, and no party to the Lien Proceedings shall be deemed by virtue of this Order to have made any admission, acknowledgement or acquiescence of or to any liability in the Lien Proceedings. All rights, remedies and defences of the parties are expressly reserved.

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**SCHEDULE "A"**

**LESLIEVILLE LIEN PROCEEDINGS**

	<b>Plaintiff</b>	<b>Defendants</b>	<b>Court File No.</b>
1.	207875 Ontario Limited	Urbancorp (Leslieville) Developments Inc., Urbancorp Construction Company Inc., Terra Firma Capital Corporation, Canadian Imperial Bank of Commerce, Travelers Insurance Company of Canada	CV-16-553611
2.	Alpa Stairs and Railings Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-537937
3.	Commercial Two Construction Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-552495
4.	Emergency Propane Services Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp Construction Company Inc., Terra Firma Capital Corporation, Canadian Imperial Bank of Commerce, Travelers Insurance Company of Canada	CV-16-553614
5.	EXP Services Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-545215

	<b>Plaintiff</b>	<b>Defendants</b>	<b>Court File No.</b>
6.	Lido Construction Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce, Terra Firma Capital Corporation	CV-16-554573
7.	MDF Mechanical Limited	Urbancorp (Leslieville) Developments Inc., Travelers Guarantee Company of Canada also known as Travelers Insurance Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-551542
8.	NG Marin Inc.	Urbancorp (Leslieville) Developments Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-552136
9.	Orin Contractors Corp.	Urbancorp (Leslieville) Developments Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543587
10.	Roni Excavating Limited	Urbancorp (Leslieville) Developments Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543574
11.	Silvio Construction Co. Ltd.	Urbancorp (Leslieville) Developments Inc., Urbancorp Toronto Management Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-549968

	<b>Plaintiff</b>	<b>Defendants</b>	<b>Court File No.</b>
12.	Sterling Tile & Carpet	Urbancorp (Leslieville) Developments Inc., Urbancorp Inc., Urbancorp Financial Inc., Urbancorp Construction Company, Canadian Imperial Bank of Commerce, Travelers Insurance Company of Canada and Terra Firma Capital Corporation	CV-16-546232
13.	Uptown Hardware Limited	Urbancorp (Leslieville) Developments Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-551471

**SCHEDULE “B”**

**BEACH LIEN PROCEEDINGS**

	<b>Plaintiff</b>	<b>Defendants</b>	<b>Court File No.</b>
1.	207875 Ontario Limited	Urbancorp (The Beach) Developments Inc., Urbancorp (Leslieville) Developments Inc., Urbancorp Construction Company Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-554931
2.	Alpa Stairs and Railings Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-537936
3.	Furkin Construction Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543051
4.	Lido Construction Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp Inc., Canadian Imperial Bank of Commerce, and Terra Firma Capital Corporation	CV-16-556542
5.	NG Marin Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-552135

	<b>Plaintiff</b>	<b>Defendants</b>	<b>Court File No.</b>
6.	Orin Contractors Corp.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543581
7.	Roni Excavating Limited	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543577
8.	Silvio Construction Co. Ltd.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-549973
9.	Uptown Hardware Limited	Urbancorp (Leslieville) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-551477

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Proceeding commenced at Toronto

**ORDER  
(RE: LIMITED LIFT STAY)**

**BLAKE, CASSELS & GRAYDON LLP**  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Pamela L.J. Huff** - LSUC#: 27344V  
Tel: 416-863-2958  
Fax: 416-863-2653  
Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Kelly Peters** – LSUC#: 59914W  
Tel: 416-863-4271  
Fax: 416-863-2653  
Email: [kelly.peters@blakes.com](mailto:kelly.peters@blakes.com)

Independent Counsel for Alvarez & Marsal Canada Inc.,  
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Inc., Urbancorp (Riverdale) Developments Inc., and  
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**NOTICE OF MOTION  
RE: LIMITED LIFT STAY ORDER**

**BLAKE, CASSELS & GRAYDON LLP**  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Pamela L.J. Huff** - LSUC#: 27344V  
Tel: 416-863-2958  
Fax: 416-863-2653  
Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Kelly Peters** – LSUC#: 59914W  
Tel: 416-863-4271  
Fax: 416-863-2653  
Email: [kelly.peters@blakes.com](mailto:kelly.peters@blakes.com)

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