

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

**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 APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The claim made by the applicant is set out on the following pages.

THIS APPLICATION will come on for a hearing on Tuesday, May 31, 2016 at 9:30 a.m., or as soon thereafter as the application can be heard, at the Courthouse located at 330 University Avenue, Toronto.

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 38C 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 not later than 2:00 p.m. on the day 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: May 25, 2016

Issued by 
Local Registrar

Address of Court Office:
330 University Avenue, 7th floor
Toronto, Ontario, Canada
MSG 1R7 ←

TO: URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.
120 Lynn Williams Street
Suite #2A
Toronto, ON, M6K 3P6

AND TO: URBANCORP (RIVERDALE) DEVELOPMENTS INC.
120 Lynn Williams Street
Suite #2A
Toronto, ON, M6K 3P6

AND TO: URBANCORP (THE BEACH) DEVELOPMENTS INC.
120 Lynn Williams Street
Suite #2A
Toronto, ON, M6K 3P6

1. **THE CANADIAN IMPERIAL BANK OF COMMERCE (“CIBC”), MAKES APPLICATION FOR** an Order substantially in the form of the draft Order attached hereto as **Schedule “A”,** *inter alia*:

- (a) Abridging the time for service of the Notice of Application and Application Record, if necessary, and declaring that this motion is properly returnable on Tuesday, May 31, 2016, and dispensing with further service thereof;
- (b) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manager pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (the “**CJA**”) (in such capacity, the “**Receiver**”), without security, and Construction Lien Trustee, without security, pursuant to s. 68 of the *Construction Lien Act*, R.S.O. 1990, c. C.30 (the “**CLA**”) (in such capacity, the “**Construction Lien Trustee**” and collectively with the Receiver, the “**Construction Receiver**”) of all of the property, assets, and undertakings of (a) Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”), (b) Urbancorp (Riverdale) Developments Inc. (“**UC Riverdale**”); and (c) Urbancorp (The Beach) Developments Inc. (“**UC Beach**”, together with UC Riverdale, the “**Guarantors**”, and the Guarantors, together with UC Leslieville, the “**Debtors**”) acquired for, or used in relation to the Debtors’ business and the Projects (as defined below); and
- (c) such further and other relief as may be just and equitable.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

- (a) UC Leslieville, UC Riverdale, and UC Beach are corporations incorporated pursuant to Ontario’s *Business Corporations Act* with their head offices located at 120 Lynn Williams Street, Toronto, Ontario, Canada. UC Leslieville, UC Riverdale, and UC Beach are privately-owned corporations carrying on business as land developers principally focused on the purchase of lands, the construction and development of improvements on the lands, and the sale of residential units on residential projects

situate on the Leslieville Project Lands, Riverdale Project Lands, and the Beach Project Lands (collectively, the “**Project Lands**”);

- (b) As at May 12, 2016, the Debtors are indebted and liable to the syndicate of lenders comprising CIBC, Canadian Western Bank, and Laurentian Bank of Canada (collectively, the “**Syndicate**”) wherein CIBC serves as the Administrative Agent of the Syndicate in an approximate amount of \$27,221,342.01 (the “**Debt**”) pursuant to, *inter alia*, a Credit Agreement dated July 13, 2012, and amendments thereto (the “**Credit Agreement**”), under which the syndicate of lenders granted a loan, as guaranteed by the Guarantors pursuant to the Credit Agreement, comprising (a) a term construction facility in respect of the Leslieville Project; (b) a term construction facility in respect of the Riverdale Project; (c) a term construction facility in respect of the Beach Project; (d) a demand revolving letter of credit facility; and (e) a capital loan facility (collectively, the “**Syndicate Loan**”);
- (c) The funds advanced pursuant to the Syndicate Loan were for the purposes of, *inter alia*, financing the construction, development, and sale of residential lot subdivisions and construction of presold condominiums located on the Projects lands;
- (d) The Leslieville Project comprises fifty-six (56) homes (55 condominium townhomes and 1 proposed freehold detached house). The condominium townhomes are located at 50 Curzon Street in east Toronto’s Leslieville neighbourhood. The proposed detached house is located on Jones Avenue, adjacent to the condominium townhomes;
- (e) The Riverdale Project is located in east Toronto’s Riverdale neighbourhood, with twenty-two (22) homes located on Howie Avenue and twenty (20) homes located on Boulton Avenue. All of the townhomes are the same size (2,085 square feet) and include a detached garage;
- (f) The Beach Project comprises thirty-three (33) homes comprising: (a) thirty-two (32) semi-detached homes; and (b) one (1) detached home. The semi-detached and detached homes are freehold properties. The Beach Project is located on Vince Avenue

(30 homes) and Hemlock Avenue (3 homes), a short distance from east Toronto's Beach neighbourhood;

- (g) The Debtors' indebtedness owing to the Syndicate is secured by, *inter alia*, Charges/Mortgages of Land registered on the applicable Project Lands and a perfected security interest in all of the property, assets, and undertakings of the Debtors (the **"Syndicate Security"**);
- (h) The Credit Agreement and Syndicate Loan have matured and the term of the Credit Agreement has expired;
- (i) the Debtors are currently in default of their obligations under, *inter alia*, the Credit Agreement and Syndicate Loan secured by the Syndicate Security and the Syndicate Security is now enforceable;
- (j) The Debtors are insolvent and will be unable to pay the Debt;
- (k) On Thursday, May 12, 2016, CIBC made written demand for repayment of the Debt and provided the Debtors with notice of its intention to enforce its security in accordance with section 244 of the BIA;
- (l) The appointment of the proposed Receiver and Construction Lien Trustee is necessary and urgently required in order to preserve, conserve, and secure the property and assets of the Debtors and to proceed with an orderly realization for the benefit of stakeholders;
- (m) The appointment of A&M as the Construction Receiver of the assets and property of the Debtors is necessary to, *inter alia*, (i) protect the Syndicate's interests and collateral and to prevent further deterioration of the Syndicate's collateral; (ii) manage and realize on the Project Lands with a view to protecting the interests of stakeholders; (iii) complete required registration and compliance steps under the *Condominium Act*, if determined to be advisable, (iv) continue and complete the construction, development, marketing, sale, and closing of the condominium units, if determined to be advisable; (v) deal with construction lien claims, including trust claims; and (vi) provide a

mechanism for further required funding of the Projects, if deemed advisable, through the issuance of the Construction Receiver's certificates to the Syndicate;

- (n) The appointment of a Receiver and Construction Lien Trustee is in the interests of justice and is just, convenient, and necessary for the protection of the Debtors, its estate, the interests of CIBC, the Syndicate, and other creditors;
- (o) A&M has agreed to be appointed as the Receiver and Construction Lien Trustee of the property, assets, and undertakings of the Debtors in relation to the Projects;
- (p) The provisions of the *BIA*, including section 243;
- (q) The provisions of the *Construction Lien Act*, R.S.O. 1990, c. C.30, including sections 68 and 78;
- (r) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43;
- (s) Rules 1.04, 3.02, 16.08, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, c. C.43; and
- (t) Such further and other grounds as counsel may advise and this Honourable Court permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- (a) The Affidavit of Paul Montgomery, sworn May 25, 2016; and
- (b) Such further material as counsel may advise and this Honourable Court may permit.

Date: May 25, 2016

GOWLING WLG (CANADA) LLP
Barrister and Solicitors
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**Solicitors for the Applicant,
Canadian Imperial Bank of Commerce**