

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) THURSDAY, THE 26th
)
JUSTICE MYERS) DAY OF OCTOBER, 2017
)

B E T W E E N:

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

APPROVAL AND VESTING ORDER
(Re: Site Plan Agreement & Leslieville Parkland Dedication)

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**”), Urbancorp (Riverdale) Developments Inc. (“**UC Riverdale**”), and Urbancorp (The Beach) Developments Inc. (“**UC Beach**”, together with UC Riverdale and UC Leslieville, the “**Debtors**”), for an order: (i) approving the site plan agreement between UC Leslieville and the City of Toronto (the “**City**”), in the form attached as Appendix “A” to the Supplementary Report to the Fifth Report of the Construction Receiver dated October 24, 2017 (the “**Supplementary Report**”) (the “**Site Plan Agreement**”), (ii) authorizing the Construction Receiver to execute and deliver to the City the Site Plan Agreement in the name of and for and on behalf of UC Leslieville, and (iii) vesting in the City all of UC Leslieville’s right, title and interest in and to the real property identified in **Schedule “A”** hereto (the “**Leslieville Parkland**”) in accordance with the Site Plan Agreement, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report of the Construction Receiver dated October 19, 2017, the Supplementary Report, and on hearing submissions from counsel to the Construction Receiver and counsel on the counsel slip, attached, no one else appearing for any other person on the service list, although properly served as appears from the affidavit of service of Monpreet Bamrah sworn October 20, 2017, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is abridged and validated, such that this Motion is properly returnable today and hereby dispenses with further service thereof.

SITE PLAN AGREEMENT

2. **THIS COURT ORDERS AND DECLARES** that the execution by the Construction Receiver of the Site Plan Agreement in the name of and for and on behalf of UC Leslieville, and not in its personal or corporate capacity, and delivery to the City is hereby authorized and approved, with such minor amendments as the Construction Receiver and the City may deem

necessary or desirable. UC Leslieville is hereby authorized to observe and perform the conditions and covenants contained therein, and the Construction Receiver may take such additional steps and execute such additional documents as may be necessary or desirable to satisfy the conditions contained therein, all without any liability on the part of the Construction Receiver or its directors, officers, agents and employees.

CONVEYANCE OF LESLIEVILLE PARKLAND

3. **THIS COURT ORDERS** that, following the execution and delivery of the Site Plan Agreement by the City and the Construction Receiver and the City advising the Construction Receiver in writing that all conditions have been satisfied to convey the Leslieville Parkland, the Construction Receiver is hereby authorized and directed to execute and deliver a transfer/deed duly executed (or deemed to be executed through electronic signature) by the Construction Receiver in the name of and for and on behalf of UC Leslieville in the form prescribed by the *Land Registration Reform Act* with respect to the Leslieville Parkland to and in favour of the City for nil consideration (the “**Transfer/Deed**”).

4. **THIS COURT ORDERS AND DECLARES** that, upon the registration in the Land Titles Division of the Toronto Land Registry Office (No. 66) of the Transfer/Deed, all of UC Leslieville’s right, title and interest in and to the Leslieville Parkland shall vest absolutely in the City, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of the Honourable Mr. Justice Newbould dated May 31, 2016 and May 2, 2017 (as such orders may be amended, supplemented or restated from time to time, the “**Appointment Order**” and “**Leslieville Settlement Approval Order**”, respectively); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “B”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “C”** hereto, the “**Permitted**

Encumbrances”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Leslieville Parkland are hereby expunged and discharged as against the Leslieville Parkland.

5. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of the Toronto Land Registry Office (No. 66) of the Transfer/Deed, the Land Registrar is hereby directed to enter the City as the owner of the Leslieville Parkland identified in **Schedule “A”** hereto in fee simple, and is hereby directed to delete and expunge from title to the Leslieville Parkland all of the Claims listed in **Schedule “B”** hereto, including such further Claims as may have arisen and/or been registered against title to the Leslieville Parkland as more particularly set out by way of solicitor’s statement or affidavit annexed to such Transfer/Deed (as contemplated by **Schedule “B”**).

GENERAL

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application(s) for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of a Debtor and any bankruptcy order issued pursuant to any such application(s);
- (c) any application(s) for an order now or hereafter issued pursuant to the *Companies’ Creditors Arrangement Act* (Canada) in respect of a Debtor and any order issued pursuant to any such application(s); and
- (d) the assignment in bankruptcy made in respect of the Debtors on May 31, 2017 as authorized by the Order of the Honourable Mr. Justice Newbould dated May 2, 2017;

the vesting of the Leslieville Parkland in the City pursuant to this Order shall be binding on the trustee in bankruptcy or monitor appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Construction Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Construction Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Construction Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 26 2017



PER / PAR:

SCHEDULE "A"

Part of PIN 21051-0408 (LT)

Part of Lot 11, Concession 1 FTB (Geographic Township of York) designated as Parts 2 and 3 on Plan 66R-29585, City of Toronto

SCHEDULE "B"

CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO REAL PROPERTY

1. Instrument No. AT2720786, registered June 15, 2011, being a charge in favour of Travelers Guarantee Company of Canada;
2. Instrument No. AT2958528, registered March 2, 2012, being a transfer of easement in favour of Rogers Communications Inc.;
3. Instrument No. AT3081811, registered July 24, 2012, being a charge in favour of Canadian Imperial Bank of Commerce;
4. Instrument No. AT3082309, registered July 24, 2012, being a postponement of Travelers Insurance Company of Canada charge No. AT2720786 in favour of Canadian Imperial Bank of Commerce charge No. AT3081811;
5. Instrument No. AT3102606, registered August 16, 2012, being a notice with respect to Travelers Insurance Company of Canada charge No. AT2720786;
6. Instrument No. AT3708202, registered October 7, 2014, being a transfer of easement in favour of Bell Canada;
7. Instrument No. AT3728135, registered October 30, 2014, being a transfer of easement in favour of Enbridge Gas Distribution Inc.;
8. Instrument No. AT3954372, registered July 22, 2015, being a charge in favour of Terra Firma Capital Corporation;
9. Instrument No. AT3954373, registered July 22, 2015, being a notice of general assignment of rents in favour of Terra Firma Capital Corporation;
10. Instrument No. AT4011571, registered September 17, 2015, being a construction lien in favour of Alpa Stairs and Railings Inc.
11. Instrument No. AT4039964, registered October 19, 2015, being a certificate of action in favour of Alpa Stairs and Railings Inc.
12. Instrument No. AT4057394, registered November 3, 2015, being a construction lien registered in favour of EXP Services Inc.;
13. Instrument No. AT4072949, registered November 20, 2015, being a construction lien in favour of Roni Excavating Limited;
14. Instrument No. AT4072991, registered November 20, 2015, being a construction lien in favour of Orin Contractors Corp.;
15. Instrument No. AT4073814, registered November 23, 2015, being a construction lien in favour of Sterling Carpet & Tile;

16. Instrument No. AT4106412, registered December 30, 2015, being a certificate of action in favour of Roni Excavating Limited;
17. Instrument No. AT4106476, registered December 30, 2015, being a certificate of action in favour of Orin Contractors Corp.;
18. Instrument No. AT4129370, registered January 26, 2016, being a certificate of action in favour EXP Services Inc.
19. Instrument No. AT4140578, registered February 8, 2016, being a certificate of action in favour of Sterling Tile & Carpet;
20. Instrument No. AT4153410, registered February 25, 2016, being a construction lien in favour of Silvio Construction Co. Ltd.;
21. Instrument No. AT4163132, registered March 8, 2016, being a Notice of Security Interest in favour of Genesis Home Services Inc.
22. Instrument No. AT4165123, registered March 10, 2016, being a construction lien in favour of NG Marin Inc.;
23. Instrument No. AT4165218, registered March 11, 2016, being a construction lien in favour of Commercial Two Construction Inc.;
24. Instrument No. AT4165591, registered March 11, 2016, being a construction lien in favour of MDF Mechanical Limited;
25. Instrument No. AT4166872, registered March 14, 2016, being a construction lien in favour of Uptown Hardware Limited;
26. Instrument No. AT4181331, registered March 31, 2016, being a certificate of action in favour of Silvio Construction Co. Ltd.;
27. Instrument No. AT4194677, registered April 15, 2016, being a construction lien in favour of 207875 Ontario Limited;
28. Instrument No. AT4194686, registered April 15, 2016, being a construction lien in favour of Emergency Propane Services Inc.
29. Instrument No. AT4198081, registered April 20, 2016, being a construction lien in favour of Lido Construction Inc.
30. Instrument No. AT4200385, registered April 22, 2016, being a certificate of action in favour of Uptown Hardware Limited;
31. Instrument No. AT4200654, registered April 25, 2016, being a certificate of action in favour of MDF Mechanical Limited;
32. Instrument No. AT4211208, registered May 4, 2016, being a certificate of action in favour of NG Marin Inc.;

33. Instrument No. AT4215263, registered May 10, 2016, being a certificate of action in favour of Commercial Two Construction Inc.;
34. Instrument No. AT4229855, registered May 30, 2016, being a certificate of action in favour of 207875 Ontario Limited;
35. Instrument No. AT4229857, registered May 30, 2016, being a certificate of action in favour of Emergency Propane Services Inc.;
36. Instrument No. AT4243741, registered June 10, 2016, being an application to register a court order of the Ontario Superior Court of Justice Commercial List appointing Alvarez & Marsal Canada Inc. as appointing receiver and construction lien trustee;
37. Instrument No. AT4244696, registered June 10, 2016, being a certificate of action in favour of Lido Construction Inc.; and
38. Together with such further Claims as may arise and/or be registered against title to the Leslieville Parkland up to and including the time of the delivery of the Transfer/Deed (as set out in more detail by way of solicitor's statement or affidavit annexed to the Transfer/Deed).

SCHEDULE "C"

**PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS
RELATED TO THE REAL PROPERTY**

(unaffected by the Vesting Order)

NIL.

COUNSEL SLIP (COMMERCIAL MOTIONS)

No On List: 7

Court File No CV-16-00011409-000 DATE: October 26, 2017

Title of Proceeding:

CANADIAN IMPERIAL BANK OF COMMERCE -V- URBAN CORP et al

COUNSEL FOR

Plaintiff(s):

Applicant(s):

Petitioner(s):

PHONE NO. & FAX

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In its capacity as Construction Receiver

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COUNSEL FOR

Defendant(s):

Respondent(s):

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for Terra Firma Capital / Craft development Corp

RELIEF SOUGHT:

CANADIAN IMPERIAL BANK OF COMMERCE
Applicant

v.

URBANCORP (LESLIEVILLE) DEVELOPMENTS INC. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
(Re: Site Plan Agreement & Leslieville
Parkland Dedication)**

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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.