

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**HOME TRUST COMPANY**

Applicant  
(Respondent in Appeal)

-and-

**2122775 ONTARIO INC.**

Respondent  
(Appellant)

**RESPONDING MOTION RECORD OF THE  
RESPONDENT, URBANCORP (DOWNTOWN)  
DEVELOPMENTS INC.  
(Appellant's Motion to Stay a Vesting Order)**

March 6, 2014

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(Respondent in Appeal), Urbancorp  
(Downtown) Developments Inc.**

TO: Service List

**COURT OF APPEAL FOR ONTARIO**

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**INDEX**

<b>TAB</b>	<b>DOCUMENT</b>	<b>PAGES</b>
1.	Affidavit of Susanna Han sworn March 4, 2014 with attached Exhibit:	1-8
A.	Email exchange dated March 20, 2014	9-12
2.	Notorized copy of Affidavit of Susanna Han sworn February 14, 2014	13-19

Court of Appeal File No.

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**HOME TRUST COMPANY**

Applicant  
(Respondent in Appeal)

-and-

**2122775 ONTARIO INC.**

Respondent  
(Appellant)

**AFFIDAVIT OF SUSANNA HAN**  
(sworn March 4, 2014)

I, **SUSANNA HAN**, of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Financial Officer for Urbancorp (Downtown) Developments Inc. ("**Urbancorp**"), the purchaser of the lands and premises municipally known as 2425 and 2427 Bayview Avenue, Toronto, Ontario (the "**Property**") pursuant to an agreement of purchase and Sale entered into between Urbancorp, as purchaser, and Collins Barrow Toronto Limited (the "**Receiver**"), as vendor, in its capacity as Court-Appointed Receiver and Manager of the assets and undertakings of 2122775 Ontario Inc. (the "**Appellant**"), made as of January 22, 2014. As such, I have knowledge of the matters to which I hereafter depose. Where my evidence is based upon information and

belief, I identify the source of that information and verily believe that information to be true.

- 2. I swear this affidavit in response to the Affidavit of Naheel Suleman sworn February 27, 2014 (the "**Suleman Affidavit**"), and in opposition to the motion by the Appellant for a stay of the Approval and Vesting Order of the Honourable Mr. Justice D. Brown dated February 14, 2014 (the "**Order**"), which approved the sale of the Property pursuant to the APS, with His Honour releasing written Reasons for Decision dated February 18, 2014 (the "**Reasons**").
- 3. As well, on February 14, 2014, I swore an affidavit (the "**First Han Affidavit**") for the motion that gave rise to the Order that is the subject of the Appellant's appeal. I repeat and rely upon the First Han Affidavit and make this affidavit further to same.

**THE COURT'S PROCESSES MUST BE RESPECTED**

- 4. The APS between the Receiver, as vendor, and Urbancorp, as purchaser, was entered in the course of the marketing of the Property pursuant to the Order of the Honourable Justice D. Brown dated December 11, 2013, which approved of the Receiver's plan for the marketing and sale of the Property. Urbancorp has advanced the deposit amount stipulated in the APS and has otherwise complied with all of its obligations under the APS to date.

5. The Property consists of lands that the Appellant was developing into residential condominiums. Urbancorp intends to develop the lands into residential condominiums. The Appellant commenced construction on the Property but construction of the Property and, in particular, of the building envelope is, at present, incomplete.
6. On January 30, 2014, the Receiver accepted Urbancorp's offer, which was the highest and best offer that the Receiver could obtain. The Receiver's acceptance of Urbancorp's offer resulted in a binding agreement of purchase and sale (the "**APS**"). Urbancorp has advanced the deposit amount stipulated in the APS and has otherwise complied with all of its obligations under the APS to date.
7. On February 14, 2014, the Honourable Justice D. Brown heard the motion by the Receiver for the approval of the APS and granted the Order that is the subject of the within appeal.
8. Pursuant to the APS, Urbancorp and the Receiver have agreed that the purchase and sale of the Property is to close on March 20, 2014 (the "**Closing Date**"). Attached hereto and marked as **Exhibit "A"** is a copy of the email communications exchanged between the lawyers for the Receiver and Urbancorp's lawyers confirming the Closing Date of March 20, 2014.

- 9. The fact is that the Appellant had, approximately, seven months to secure financing prior to the commencement of the within proceeding and, between the commencement of the within proceeding and the date of the Order, an additional three months to secure financing so that it could avoid the sale of the Property by the Appellant's mortgage lender.

**A DELAY IN CLOSING PREJUDICES URBANCORP**

- 10. In the First Han Affidavit I deposed, at paragraphs 8 to 13, as to the prejudice that Urbancorp would suffer if the approval of the sale of the Property was delayed. All of the prejudice to which I deposed in those paragraphs if the approval of the sale were to be delayed would also occur if the closing date for the purchase and sale of the Property be delayed pursuant to the stay of the Order requested by the Appellant.
- 11. In these circumstances, if a stay of the Order occurs, then the delay in closing is likely to give rise to an extensive delay in the development of the Property of approximately 6 months or more - to Urbancorp's detriment. Specifically, if Toronto city council approvals are required in connection with the development of the Property, it is imperative that the application process commence immediately. If applications are required and are not completed in time for hearing at the July or August 2014 council sessions, then the approval process will be delayed

practically speaking until the end of January 2015 in light of the upcoming municipal elections.

12. Moreover, as deposed to in the First Han Affidavit, such a delay will increase the costs that Urbancorp will incur to develop the Property because:

(a) a compressed construction schedule will be necessary to complete development of the Property; and,

(b) Urbancorp will encounter restrictions on the construction methods and processes that it would otherwise be able to use in developing the Property.

13. Furthermore, as development of the Property remains stagnant, and the partially constructed site continues to be exposed to the elements (in this particularly harsh winter). Urbancorp has serious concerns about the physical deterioration of the Property, including but not limited to, the possibility of: soil erosion, flooding, collapsing of structures if shoring of same is not in place or completed, shifting as a resulting of frost, and/or leakage or other damage to the unfinished model unit. The occurrence of any of the foregoing would not only diminish the value of the Property being purchased, but also give rise to further challenges and delay in advancing development of the site.



**URBANCORP'S EXPENSES**

14. In addition, Urbancorp has incurred additional expenses subsequent to the granting of the Order. As at the date of my affidavit, I can confirm that Urbancorp has agreed to, approximately, \$325,500.00, in expenses referable to the APS and the Property, including but not limited to:

(a) a commitment fee to Urbancorp's lender in the amount of \$195,000.00 to finance the purchase of the Property;

(b) fees for architectural services by Tact Architecture in the amount of, approximately, \$40,000.00;

(c) fees for environmental studies by EXP Services Inc. in the amount of, approximately, \$5,000.00;

(d) fees for sales services by International Home Marketing Group in the amount of \$5,000.00;

(e) fees for marketing services by Guidelines Ad in the amount of \$10,000.00;

(f) fees for engineering services by Randal Brown & Associate in the amount of, approximately, \$5,000.00;

(g) fees for land appraisal by Janterra Real Estate Advisors in the amount of \$5,000.00;

(h) fees for a geotechnical services by Bruce A. Brown Associates in the amount of, approximately, \$500.00; and,

(i) fees for legal services to Harris Sheaffer LLP and Berkow, Cohen LLP in the amount of, approximately, \$60,000.00.

In light of the short timeframe between the incurring of these expenses and the date of my affidavit, Urbancorp has not yet been invoiced for the above expenses, which is the reason why I am unable to annex backing documents to support the amounts set out above. However, each expense is consistent with recent expenses incurred by Urbancorp in similar circumstances.

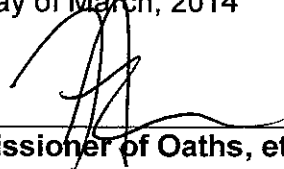
15. In addition, upon payment of the commitment fee referred deposed to hereinabove at paragraph 14(a), Urbancorp became contractually obligated to accept the funds advanced by its lender and to pay the

interest that accrues thereon. For that reason, I verily believe that the actual harm that Urbancorp will suffer will be significantly more than the estimate of the expenses incurred to date if a stay of the Order is granted.

16. In summary, Urbancorp expended significant time, effort and financial resources to negotiate and enter into a binding APS. Urbancorp committed these resources to the purchase of the Properties in the belief an offer accepted by the Receiver and subsequently approved by the Court would be respected by the Courts. To grant the stay of the Order requested by the Appellants would undermine the integrity of the Court-approved sale process. It is therefore my honest belief that it would be manifestly unfair and prejudicial to Urbancorp the Order, which approved of the sale of the Property, is granted in these circumstances.

17. I swear this affidavit in opposition to the Appellants motion for, *inter alia*, an order staying the Order of the Honourable Justice D. Brown dated February 14, 2014, and for no other or improper purpose.

**SWORN BEFORE ME** at the City of Toronto, in the Province of Ontario, this 4th day of March, 2014

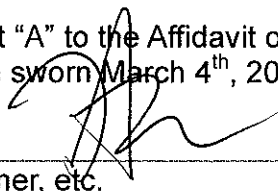


A Commissioner of Oaths, etc.



SUSANNA HAN

This is Exhibit "A" to the Affidavit of  
Susanna Han sworn March 4<sup>th</sup>, 2014

A handwritten signature in black ink, appearing to be 'A. Han', written over the text of the affidavit.

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A Commissioner, etc.

**Adam Wygodny**

---

**From:** Luisa A. Salerno <LSalerno@dickinson-wright.com>  
**Sent:** March 3, 2014 11:27 AM  
**To:** Adam Wygodny  
**Cc:** Lisa S. Corne  
**Subject:** FW: Urbancorp p/f Collins Barrow

Dear Mr. Wygodny,

Please see email exchange below confirming closing date of transaction.

Luisa

**Luisa A. Salerno Legal Assistant**

199 Bay Street Phone 416-777-2411  
Suite 2200  
Commerce Court West Fax 416-865-1398  
Toronto ON M5L 1G4 Email [LSalerno@dickinsonwright.com](mailto:LSalerno@dickinsonwright.com)

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**DICKINSON WRIGHT LLP**  
MICHIGAN ARIZONA NEVADA OHIO TENNESSEE WASHINGTON D.C. TORONTO

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**From:** Lisa S. Corne  
**Sent:** Thursday, February 27, 2014 3:06 PM  
**To:** Leslie Wittlin; Marc A. Lean  
**Cc:** Barry Rotenberg; Susanna Han; Tony Manocchio; [btannenbaum@collinsbarrow.com](mailto:btannenbaum@collinsbarrow.com); Brenda Wong ([bywong@collinsbarrow.com](mailto:bywong@collinsbarrow.com))  
**Subject:** RE: Urbancorp p/f Collins Barrow

Les, As discussed, I confirm that the Receiver is agreeable to March 20, 2014 as the closing date . Thank you

---

**From:** Leslie Wittlin [<mailto:lwittlin@harris-sheaffer.com>]  
**Sent:** Wednesday, February 26, 2014 8:00 PM  
**To:** Marc A. Lean  
**Cc:** Lisa S. Corne; Barry Rotenberg; Susanna Han; Tony Manocchio  
**Subject:** Urbancorp p/f Collins Barrow

Marc :

We were given instructions to try to close the transaction on March 20 . I spoke with Lisa Corne and you about firming up that date with the receiver yesterday . It just came up again here as the receiver spoke with our client about notice periods for service contracts and other matters that need to be addressed on closing as a result of the change in possession of the property on closing .

We do need to firm up the closing date by way of written record in the usual way , so please get back to us . I spoke with Lisa Corne a little while ago , but she wanted me to deal with you on firming up the closing date and to just copy her .

Thanks ,

Les.

Leslie Wittlin  
[lwittlin@harris-sheaffer.com](mailto:lwittlin@harris-sheaffer.com)  
direct dial 416.250.2886

# HARRIS, SHEAFFER LLP

## BARRISTERS & SOLICITORS

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**HOME TRUST COMPANY**  
Applicant (Respondent in Appeal)

- and - **2122775 ONTARIO INC.**  
Respondent (Appellant)

Court of Appeal File No.

**COURT OF APPEAL FOR  
ONTARIO**

Proceedings commenced at  
Toronto

**AFFIDAVIT OF SUSANNA HAN  
(SWORN MARCH 4, 2014)**

**BERKOW, COHEN LLP**  
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Fax: (416) 364-3865

**Lawyers for the Respondent  
(Respondent in Appeal), Urbancorp  
(Downtown) Developments Inc.**

**NOTARIAL CERTIFICATE**

CANADA )

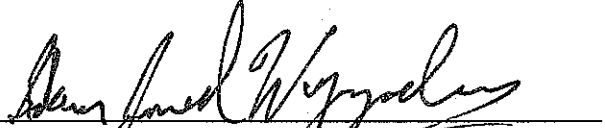
PROVINCE OF ONTARIO )

I, Adam J. Wygodny, a Notary Public for the Province of Ontario, duly appointed by Royal Authority, residing in the City of Toronto, in the Province of Ontario, certify that the document attached to this certificate is a true copy of a document produced, shown to me, and purporting to be:

Affidavit of Sussanna Han sworn February 14, 2014

As requested, I have compared this copy against the original document and have certified the copy under my notarial seal of office.

I have signed my name and affixed my notarial seal of office to this Certificate at the City of Toronto, in the Province of Ontario, this 6<sup>th</sup> day of March, 2014.



**ADAM JARED WYGODNY**  
A Notary Public for the Province of Ontario.  
My commission does not expire.



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**HOME TRUST COMPANY**

Applicant

-and-

**2122775 ONTARIO INC.**

Respondent

**AFFIDAVIT OF SUSANNA HAN  
(Sworn February 14, 2014)**

I, SUSANNA HAN of the City of Toronto in the Province of Ontario, **MAKE**

**OATH AND SAY:**

1. I am the Chief Financial Officer Urbancorp (Downtown) Developments Inc. ("Urbancorp"), the purchaser of the lands and premises municipally known as 2425 and 2427 Bayview Avenue, Toronto, Ontario (the "Property") pursuant to an agreement of purchase and Sale entered into between Urbancorp, as purchaser, and Collins Barrow Toronto Limited (the "Receiver"), as vendor, in its capacity as Court-Appointed Receiver and Manager of the assets and undertakings of 2122775 Ontario Inc. (the "Debtor"), made as of January 22, 2014 (the "APS"). As such, I have knowledge of the matters to which I hereafter depose. Where my evidence is based upon information and belief, I state the source of that information and belief, and I do verily believe that information to be true.

2. I swear this motion in support of the Receiver's motion seeking, *inter alia*, approval of the sale of the Property to Urbancorp pursuant to the APS, and in response to the motion of the Debtor, served today, seeking a temporary stay of the receivership. Urbancorp expressly reserves its right to submit further evidence hereafter as may be necessary.

#### **APS ACCEPTED PURSUANT TO THE COURT-APPROVED SALE PROCESS**

3. As particularized in the Second Report of the Receiver, dated February 5, 2014, from December 12, 2013 through to January 30, 2014, the Receiver conducted a sale and marketing process for the Property, in accordance with the process approved by the Honourable Justice Brown dated December 11, 2013 (the "**Marketing Order**").
4. In and around December 12, 2013, Urbancorp received marketing materials from the Receiver as part of the Court-approved sale and marketing process for its consideration. Urbancorp thereafter determined to evaluate the investment potential of the Property, and in so doing, proceeded to retain legal counsel and other professionals and conduct considerable due diligence and analysis.
5. On or around January 22, 2013, Urbancorp submitted an offer (the APS) to the Receiver. The APS was prepared by Urbancorp's corporate solicitor, at the expense of Urbancorp.
6. On January 30, 2014, the Receiver accepted the APS, creating a binding agreement of purchase and sale, subject to the approval of the Court.

Urbancorp has advanced the deposit amount stipulated in the APS and has otherwise complied with all of its obligations under the APS to date.

- 7. As stated by the Receiver in its Notice of Motion herein, the APS submitted by Urbancorp represented the highest and best offer that the Receiver obtained for the Property.

**PREJUDICE TO URBANCORP IF CLOSING IS DELAYED OR DERAILED**

- 8. On February 13, 2014, and on the eve of the Receiver's motion for an order approving the sale of the Property to Urbancorp and the related vesting order, the Debtor has served a Motion Record seeking a temporary stay of the receivership.
- 9. Urbancorp is desirous of completing the sale of the Property as soon as possible, and objects to the Debtor's proposed temporary stay, as Urbancorp stands to suffer material prejudice in the event of any delay and/or derailment of the sale, as described below.
- 10. In these circumstances, a brief delay in closing is likely to give rise to an extensive delay in the development of the Property of approximately 6 months or more - to Urbancorp's detriment. Specifically, if Toronto city council approvals are required in connection with the development of the Property, it is imperative that the application process commence immediately. If applications are required and are not completed in time for hearing at the July or August 2014 council sessions, then the approval process will be delayed practically speaking until the end of January 2015 in light of the upcoming municipal elections.

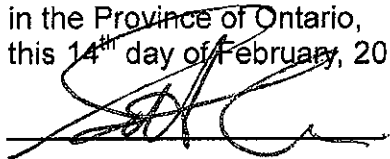
11. Any delay in closing at this stage will consequently compress the construction period, placing constraints on the construction methodology utilized at the site, which in turn will increase costs and delay timing of the development – again, to the detriment of Urbancorp. As development at the site stays inactive, the project becomes further “contaminated” in the eyes of potential buyers.

12. Furthermore, as development of the Property remains stagnant, and the partially constructed site continues to be exposed to the elements (in this particularly harsh winter), Urbancorp has serious concerns about the physical deterioration of the Property, including but not limited to, the possibility of: soil erosion, flooding, collapsing of structures if shoring isn't in place or completed, shifting as a resulting of frost, and/or leakage or other damage to the unfinished model unit. The occurrence of any of the foregoing would not only diminish the value of the Property being purchased, but also give rise to further challenges and delay in advancing development of the site.

13. In summary, Urbancorp expended significant time, effort and financial resources in engaging in negotiations with the Receiver and entering into a binding APS, and did so with the advice of legal counsel, and on the *bona fide* understanding and belief that an offer accepted by the Receiver and submitted for approval to the Court, would be respected by the Court, whose central concern is to preserve and protect the integrity of the Court-approved sale process. It is therefore my honest belief that it would be manifestly unfair and prejudicial to Urbancorp if the approval of the sale is not granted in these circumstances.

14. I swear this affidavit in support of an order, *inter alia*, approving the sale of the Property to Urbancorp, and in objection to the Debtor's motion to stay the receivership, and for no other or improper purpose.

**SWORN BEFORE ME**  
at the City of Toronto,  
in the Province of Ontario,  
this 14<sup>th</sup> day of February, 2014



**A Commissioner, etc.**

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**Susanna Han**

**HOME TRUST COMPANY**

Applicant

- and -

**2122775 ONTARIO INC.**

Respondent

Court File No.: CV-13-10313-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at **TORONTO**

**AFFIDAVIT OF SUSANNA HAN  
(Sworn February 14, 2014)**

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Developments Inc.**

**HOME TRUST COMPANY**  
Applicant (Respondent in Appeal)

- and - **2122775 ONTARIO INC.**  
Respondent (Appellant)

Court of Appeal File No. M43512  
Superior Court File No: CV-13-10313-00CL

**COURT OF APPEAL FOR ONTARIO**

Proceedings commenced at  
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**RESPONDING MOTION RECORD OF THE  
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