What is the scope of relationship to consider for an alleged transfer at undervalue?

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In *Urbancorp Toronto Management Inc. (Re)*(*Urbancorp*), the Ontario Court of Appeal confirmed that in determining whether to reverse an improvident transfer under s. 96(1)(b) of the *Bankruptcy and Insolvency Act* (the *BIA*), the analysis must focus on the relationship between the transferor and transferee, rather than the transferor and other related parties that may have benefitted from the transaction.

The decision in *Urbancorp* arose in the context of *Companies' Creditors Arrangement Act* proceedings relating to King Residential Inc. (KRI), part of the Urbancorp group of companies. Speedy Electrical Contractors Ltd. (Speedy) filed a claim against KRI pursuant to a secured guarantee given by KRI to Speedy for debts owed by Edge on Triangle Park Inc. (Edge) and Alan Saskin. KRI's monitor (the Monitor) argued that the court should disallow Speedy's claim, in part on the basis that the secured guarantee was a transfer at undervalue pursuant to s. 96(1)(b) of the *BIA*.

The motion judge concluded that the transaction was between arm's length parties. On appeal, the Monitor argued that the motion judge erred in law in focussing on the relationship between KRI and Speedy, rather than the relationships among KRI, Edge, and Mr. Saskin.

The Court of Appeal rejected the Monitor's submissions. It held that under a proper construction of s. 96(1)(b) of the *BIA*, the issue was whether the transferee, Speedy, was dealing at arm's length with KRI, the transferor, in relation to the impugned transfer, which was the secured guarantee.

The Court of Appeal held that the motion judge properly considered the relationship between KRI and Speedy, rather than the relationship between KRI, Edge, and Mr. Saskin. Although Edge and Mr. Saskin were parties to, and beneficiaries of, the *transaction* that provided for the secured guarantee, the *transfer* the Monitor sought to impugn was KRI's secured guarantee in favour of Speedy. Accordingly, the Court only needed to examine the relationship between those two parties.

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