

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF ALAN SASKIN**

**SEVENTH REPORT TO THE COURT  
OF GUY GISSIN, IN HIS CAPACITY AS COURT APPOINTED  
FUNCTIONARY AND FOREIGN REPRESENTATIVE OF URBANCORP INC.**

November 27, 2017

**A. BACKGROUND**

1. On April 21, 2016, certain direct and indirect subsidiaries (the “NOI Entities”) of Urbancorp Inc. (“UCI”) commenced bankruptcy proposal proceedings (the “NOI Proceedings”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the “BIA”). KSV Kofman Inc. (“KSV”) was appointed as the proposal trustee for the NOI Proceedings.
2. On April 25, 2016, pursuant to an application under Israel’s insolvency regime brought by the indenture trustee of certain notes issued by UCI on the Israeli Stock Exchange (the “Bond Issuance”), the District Court in Tel Aviv-Jaffa, Israel (the “Israeli Court”) granted an order appointing Guy Gissin (the “Foreign Representative”) as functionary officer of UCI and giving him certain management powers, authorities and responsibilities over UCI (the “Israeli Proceedings”).
3. In support of the Bond Issuance, UCI had issued a prospectus in Israel dated November 29, 2015, and a supplement dated December 7, 2015 (collectively, the “Prospectus”). At the time of the Bond Issuance and until the appointment of the Foreign Representative as the Functionary, Alan Saskin was the directing mind and controlling shareholder of UCI.

4. On April 29, 2016, Alan Saskin filed a notice of intention to make a proposal pursuant to section 50.4(1) of the BIA. The Fuller Landau Group Inc. was appointed as proposal trustee in respect of Alan Saskin's proposal proceedings.
5. On May 11, 2016, the Israeli Court granted an order authorizing the Foreign Representative to enter into a protocol between the Foreign Representative and KSV (the "**Protocol**"). The Protocol contemplated, among other things, that the NOI Entities and certain other entities (together, the "**Urbancorp CCAA Entities**") would file for protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").
6. On May 18, 2016, the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") granted an initial order under the CCAA in respect of the Urbancorp CCAA Entities (the "**Initial Order**") and appointed KSV as monitor (the "**Monitor**"). The Initial Order also approved the Protocol.
7. On May 18, 2016, the Ontario Court also granted two orders, the Initial Recognition Order and the Supplemental Order, under Part IV of the CCAA.
8. The Initial Recognition Order recognized the Israeli Proceedings in respect of UCI as a "foreign main proceeding" and recognized the Foreign Representative as foreign representative of UCI.
9. The Israeli Court extended the Foreign Representative's appointment several times, and the Ontario Court granted recognition orders in respect of each extension.
10. On May 21, 2017, the Israeli Court authorized the Foreign Representative to commence an application with the Israeli Court on behalf of UCI (the "**UCI Claim**") for an order *inter alia* declaring that Alan Saskin, Doreen Saskin, TCC/Urbancorp Bay Stadium LP, Urbancorp Management Inc. and the Webster Trust (collectively, the "**Respondents**") breached undertakings, which were published in the Prospectus by failing to transfer certain assets to UCI upon the successful completion of the Bond Issuance. The UCI Claim also alleges that Alan Saskin wrongfully transferred assets from UCI subsidiaries to repay debts owed to his personal creditors.

11. However, in the case of Alan Saskin, due to his BIA proposal proceedings in Canada, the authorization from the Israeli Court as to the claim being commenced against him (but not the other Respondents) was conditional on the Ontario Court granting leave for the claim pursuant to the BIA. A translated copy of this judgement is attached as Appendix "A"
12. In August of 2017, the Israeli Court authorized service of the UCI Claim outside of Israel on Doreen and Alan Saskin. Doreen Saskin was served but is contesting, before the Israeli Court, the ability of that court to exercise jurisdiction over her. The remaining Respondents have until December 6, 2017, to submit their defences to the UCI Claim. A translated copy of this order is attached as Appendix "B"
13. On September 26, 2017, the Israeli Court approved a creditors' arrangement plan in respect of UCI ("**Plan Approval Order**"). The Plan Approval Order appoints the Foreign Representative as trustee of the UCI estate. On October 30, 2017, the Ontario Court granted a recognition order in respect of the Plan Approval Order. A copy of this recognition order is attached as Appendix "C".
14. The Foreign Representative has estimated that Respondents' conduct has cost UCI approximately \$32,568,770 and, accordingly, the UCI Claim seeks \$32,568,770 (plus costs) in damages, jointly and severally, from each of the Respondents.

**B. PURPOSE OF THE REPORT**

15. The purpose of this Seventh Report is to:
  - (A) Report to the Court on the UCI Claim;
  - (B) Request an Order of the Court lifting the stay of proceedings imposed by section 69.1 of the BIA on the proposal proceedings commenced by Alan Saskin ("**Saskin Proposal Proceedings**") pursuant to section 50.1 of the BIA, in order to allow the UCI Claim to proceed.

**C. THE UCI CLAIM**

16. On June 6, 2017, the Foreign Representative commenced the UCI Claim before the Israeli Court. A translated copy of the UCI Claim, without the various schedules, is attached hereto as Appendix "D".<sup>1</sup>
17. The UCI Claim states that the Foreign Representative has been conducting investigations into the collapse of UCI and has concluded that Alan Saskin, as the controlling shareholder, chairman of the board of directors, and operating mind of UCI and the other Respondents to the UCI Claim (other than Doreen Saskin), acted unlawfully and contrary to the undertakings in the Prospectus, causing UCI to suffer approximately CAD \$32,568,770 in damages as a result.
18. The UCI Claim alleges, among other things, that the Respondents breached undertakings made in the Prospectus to assign certain assets to UCI upon the completion of the Bond Issuance. Specifically, it alleges that, contrary to the undertakings in the Prospectus, the Respondents failed to:
  - (i) assign to UCI the right to repayment of \$8 million in loans from related companies;
  - (ii) contribute \$12 million in equity to UCI; and
  - (iii) transfer approximately \$3 million in proceeds from a real estate sale to UCI.
19. The UCI Claim also alleges that Alan Saskin wrongfully misappropriated approximately \$10 million of UCI assets when he transferred UCI's ownership interest in certain residential properties to creditors in satisfaction of his personal debt and the debt of his other companies which are unrelated to UCI.

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<sup>1</sup> A full copy of the claim, including all the schedules, is attached to the affidavit of Nadine Amiel (Part 3), affirmed September 19, 2017, being filed as part of the record for this motion.

20. For example, the Prospectus provides that the “rights holders”, which are defined as Alan Saskin and his family, will assign to UCI the right to repayment of \$8 million in loans. Specifically, the Prospectus states:

“The Rights Holders (as defined above)<sup>2</sup> have committed that, prior to listing for trading on the stock exchange of debentures (Series A) offered to the public pursuant to this prospectus, and subject to successful issuance to the public, they would transfer to the Company<sup>3</sup> their rights (including indirectly through corporations owned thereby) in the transferred entities which indirectly hold rights to rental investment property, development property and geothermal assets in Toronto, Ontario in Canada, including liabilities with respect thereto, and would assign to the Company their right to the repayment of loans from entities held by them, which amounts to CAD 8,000 thousands...”

21. Alan Saskin executed the Prospectus on behalf of UCI and executed a declaration to the Israeli Stock Exchange attesting to the veracity of representations in the Prospectus.
22. Supposedly, this obligation in the Prospectus was satisfied by the assignment of two promissory notes to UCI. The promissory notes were issued by TCC/Urbancorp (Bay) Limited Partnership (“TCC Bay”) in favour of Urbancorp Toronto Management Inc. (“UTMI”) and were subsequently assigned to UCI and to Urbancorp Realty Inc. (“URI”) for the benefit of UCI.
23. After TCC Bay commenced its insolvency proceedings under the CCAA, the Foreign Representative filed a proof of claim in respect of the two promissory notes. The Monitor in the TCC Bay CCAA proceedings disallowed this claim on the basis that the promissory notes were unenforceable because TCC Bay was not indebted to UCI when the notes were issued and consequently, that there was no underlying debt to support the issuance of the promissory notes. The Ontario Court subsequently upheld this disallowance.
24. In its decision, the Ontario Court stated: “I do not put any store in Mr. Saskin’s assertion... that the notes are valid and enforceable *or were at the time he signed them.*” (emphasis added). The decision also noted that Alan Saskin controlled all the relevant entities, including UTMI, TCC Bay, UCI, and URI, at the time and could not have been ignorant that the notes were invalid. A copy of the Ontario Court decision is attached as Appendix “E”.

<sup>2</sup> “Rights Holders” are defined in the Prospectus as Alan Saskin and his family.

<sup>3</sup> “Company” is defined in the Prospectus as Urbancorp Inc.

**D. MOTION TO LIFT STAY IN SASKIN PROPOSAL PROCEEDINGS**

25. Under the Prospectus, Alan Saskin expressly attorned to Israeli jurisdiction in relation to matters connected with UCI. The relevant extracts from the Prospectus are attached as Appendix "F".
26. The order of the Ontario Court made in relation to the claims bar process on March 14, 2017, recognized that Alan Saskin had attorned to Israeli jurisdiction. That order directed Alan Saskin to have any issues regarding the disallowance of his claims as against UCI be made to the Israeli Court (whereas other Canadian creditors who disputed the disallowance of their claims were to have the Ontario Court deal with their claims). A copy of this order is attached as Appendix "G".
27. Alan Saskin is an integral and necessary party for the complete adjudication of issues in the UCI Claim and to fairly assess liability as amongst the various Respondents.
28. At all relevant times, Alan Saskin was the operating mind of UCI.
29. Alan Saskin is also a central figure in the events giving rise to the cause of action pleaded against all Respondents in the UCI Claim. Alan Saskin committed each of the Respondents to the undertakings in the Prospectus that the UCI Claim alleges were breached. He also controls each of the corporate Respondents and failed to satisfy or cause to be satisfied the undertakings on their behalf.
30. Given Alan Saskin's central role in the transactions implicated in the UCI Claim and causes of action pleaded against the other Respondents, he is a necessary party to the complete adjudication of the UCI Claim such that allowing the stay of proceedings against him to continue may jeopardize the Foreign Representative's claim against the other Respondents. Moreover, bifurcating proceedings in respect of the UCI Claim would also increase the risk of inconsistent decisions, as Alan Saskin's liability would still need to be adjudicated in the proposal proceedings, and could lead to duplicative proceedings in Israel and Canada. It would also require the Ontario Court to determine matters of Israeli law in the context where the Israeli Court is already engaged in examining the same factual matrix.

**(b) The UCI Claim contains allegations that give rise to debts that cannot be discharged upon bankruptcy**

31. The causes of action advanced in the UCI Claim, including fraud, misrepresentation and misappropriation, give rise to debts which would not be dischargeable upon bankruptcy pursuant to sections 178(1)(d) and 178(1)(e) of the BIA.
32. Section 178(1)(d) of the BIA provides that an order of discharge does not release the bankrupt from any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity.
33. The UCI Claim alleges that, at all material times, Alan Saskin was a director of UCI and that he engaged in a misappropriation and breach of undertakings while acting in this capacity.
34. Section 178(1)(e) of the BIA prevents a liability incurred as a result of obtaining property by false pretences or fraudulent misrepresentation from being discharged.
35. The UCI Claim alleges that Alan Saskin raised millions of dollars in the Bond Issuance on false pretences, having subsequently breached the undertakings in the Prospectus. It also advances a claim for fraudulent misrepresentation on the basis of inaccurate representations in the Prospectus.

**(c) Alan Saskin has attorned to the jurisdiction of the Israeli Court**

36. Pursuant to the terms of the Prospectus, Alan Saskin has irrevocably undertaken not to oppose the authority of the Israeli Court in connection with any proceeding commenced by the Indenture Trustee and agreed not to oppose the application of Israeli law.
37. Moreover, an endorsement of the Ontario Court dated May 25, 2016, recognizes that the Prospectus and the Deed of Trust (between UCI and the Indenture Trustee) expressly state

that Israeli courts are to have exclusive jurisdiction over matters relating to UCI. A copy of this endorsement is attached as Appendix "I".

**(d) D&O Insurance may respond to the Claim**

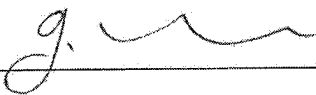
38. Alan Saskin is the beneficiary of D&O Insurance, which may respond to the UCI Claim if it is allowed to proceed.

**E. RECOMMENDATIONS**

39. The Foreign Representative respectfully requests that this Honourable Court grant an Order declaring that the stay of proceedings imposed by section 69.1 of the BIA in these proceedings does not apply in respect of the UCI Claim.

ALL OF WHICH IS RESPECTFULLY  
SUBMITTED THIS 27 DAY OF  
NOVEMBER, 2017.

Guy Gissin, in his capacity as Court-Appointed  
Functionary and Foreign Representative of  
Urbancorp Inc., and not in his personal or  
corporate capacity



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