

[EMBLEM]
TEL AVIV-JAFFA DISTRICT COURT

LF 44348-04-16

Reznik Paz Nevo Trusts Ltd v. Urbancorp Inc., Canadian Company 2471774 *et al*

Applications 10 and 21

Before His Honor Judge Eitan Orenstein, President

In re: The Companies Law, 5759-1999
 The Companies Ordinance, 5743-1983

and in re: Urbancorp Inc.

The Company

and in re: Adv. Guy Gissin

The Official

and in re: Reznik Paz Nevo Trusts Ltd
 Trustee for the Company's series "A" bondholders

The Trustee

and in re: Tuvia Pechthold
 acting by his attorney Adv. Yael Moskowitz

The Applicant

and in re: Ronen Nakar *et al*
 acting by his attorney, Adv. Maya Tzabari

Third Party

and in re: The Official Receiver

The Official Receiver

Decision

1. General

- 1.1 Mr. Tuvia Pechthold (hereinafter - the "**Applicant**") filed a class action together with an action for recognition of a class action against Urbancorp, the Company's directors, the Company's internal auditor and the trustee for the bondholders (hereinafter - the "**Company**"). The proceedings were filed in the Financial Division of the Tel Aviv-Jaffa District Court (CA 1746-04-16).
- 1.2 Shortly after the filing of the class action and the application for recognition of a class action, the Company became insolvent. At the request of the trustee for the Company's bondholders, who are the Company's main creditors, on April 25, 2016 I appointed Adv. Guy Gissin as the Company's official, in order to seize its property, operate it, institute suitable proceedings and advance the interest of the creditors (hereinafter - the "**Official**").
- 1.3 I would note that the Company is registered in Canada and engages primarily in the rental and development of residential real estate. The Company's controlling shareholder is Mr. Alan Saskin, who is also in bankruptcy proceedings in Canada. The Company published a prospectus in Israel and raised capital from the Israeli public by an issue of bonds.

2. The application

The Applicant filed an application for the grant of instructions pursuant whereto the Court is asked to order the Official to stop representing the Company in the class action proceedings - the application the subject of this decision.

In the application it was argued that the Official petitioned the Court in which the class action is being heard, in certain interim applications, including for a stay and clarification of the proceedings in order to exhaust investigations and amend the pleadings in the proceedings. It was argued that the Official has a conflict of interest that might derive from the fact that he was appointed to his position at the request of the trustee for the bondholders, who is one of the defendants in the class action.

It was also argued that the Official was not authorized to represent the Company in the legal proceedings and the class action and more.

3. The Official for his part argued for staying the class action in all the other legal proceedings against the Company, for the purpose of formulating a creditors' arrangement for the Company pursuant to section 350 of the Companies Law, 5759-1999. for several reasons, *inter alia* that it is possible to file a debt claim,

as well as detail them, for the purpose of the decision. With regard to the conflict of interest attributed to him, the Official believes that the plea lacks any substance.

I would note that the Official's application to stay the class action was filed with the court hearing the proceedings and which ordered him to file it with this court.

4. The Applicant disagrees with the Official's stand primarily because there is no room to settle for the filing of a debt claim, and that it is necessary to continue the class action's clarification.
5. At this point it should be noted that other defendants in the class action petitioned to be allowed to file a third party notice in the framework of the class action (application 21).
6. The Official Receiver proposed an innovative outline for continuing the class action's clarification.
7. **Hearing in the parties' presence**

In the hearing, which took place in the parties' presence, the Official made it clear that in light of the Court's stand, he would not insist on a stay of proceedings in the class action, provided that the Applicant deposited a bond to secure the costs of defending the application for recognition of a class action.

The Applicant's attorney did not insist [on] their plea regarding the Official's conflict of interest, believing that the Applicant should not be ordered to make a financial deposit to secure the costs.

8. **Decision**

8.1 At the outset, I would clarify that in the past I was called upon to address the grant of authorization to continue clarifying the application for recognition of a class action against a company in liquidation (LF 5937-10-13, applications 6, 8), Heves Investments (1960) Ltd v. Shenkar (May 7, 2014) (hereinafter - "**in re Heves**"). The parties referred to in re Heves in their pleadings. I believe that there is a difference between in re Heves and the case before me, and hence I suggested that the Official not insist on his application to stay the proceedings, and my aforesaid proposal was accepted.

8.2 Nonetheless, I believe that the Applicant should be ordered to deposit a financial bond to secure the costs of litigating the application for recognition of a class action, and I will explain why:

Although as a rule a court which orders a plaintiff or applicant to deposit a bond to secure the costs of the defendant or respondent in the proceedings is the court in which the action is being heard, and as provided *inter alia* in section 519 of the Civil Procedure Rules, 5744-1984, section 267 of the Companies Ordinance, 5743-1983 authorizes the insolvency court to allow the continued clarification of an action against the insolvent corporation, on such terms and conditions as it deems fit, as follows:

"Once a liquidation order has been given, or a provisional liquidator has been appointed, one should not continue or commence any proceedings against the company without the permission of the court and subject to the terms and conditions decided by it."

In the case before me, I believe that it would be correct to order the Applicant to make the proceedings' continuation conditional upon the deposit of a bond to secure the cost involved in clarifying the application for recognition of a class action. Let it be known, there is no doubt that the Company will have to defend itself against the application and to such end hire the services of a lawyer and if the Official wishes to represent the Company, his services are in addition to what is required of him and will entitle him to separate remuneration. Moreover, one cannot rule out the possibility that an expert's opinion will be necessary, insofar as the person representing the Company believes that it is necessary to file such an opinion, separately from that of the other respondents.

These costs should not be imposed on the Company's creditors, when it is already absolutely clear that they will not be paid their debt, and even if they are paid a respectable dividend, as is expected.

Furthermore, the rule is that claims against the Company are generally stayed and that continued clarification of proceedings against it is an exception; this would require the insolvent entity to incur costs for the purpose for the purpose of defending itself that would otherwise be avoided, since the claim is clarified before the Official in the scope of the debt claim.

Also supporting my conclusion is the difficulty that the Applicant supposedly faces regarding some of the causes of action. In such regard I would state that in any event the bondholders are its main creditors and insofar as the class action is allowed, this will increase the overall number of creditors relative to the bondholders, such that the benefit to them is not relevant and in any event marginal. Although the Applicant points out the differences between the groups of bondholders such that it cannot be ruled out that the bondholders - the current creditors - would be

joined by other bondholders, it stands to reason that a considerable number of the bondholders are in any event the current creditors of the Company; accordingly the result in respect of them will not be relevant. All the aforesaid are issues that the court hearing the class action proceedings will have to address, and this decision does not lay down hard and fast rules, but is only for the purpose of the bond.

With regard to the amount of the bond:

One should act in such regard according to the criteria in the rulings of the Supreme Court and I would refer to ALA 5188/16, IDB Development Corporation Ltd v. Yael Cabiri Shamia (October 13, 2016); in this case, the court outlined rules regarding ordering costs in an application for recognition of a class action. These rules should be taken into account when ordering a bond. I have applied these for the purpose of the decision.

9. In light of the aforesaid, I have reached the following conclusion:
 - 9.1 a permit is hereby given to continue clarifying the application for recognition of a class action and insofar as the application is allowed, the class action will be allowed;
 - 9.2 a condition for the aforesaid is that the Applicant deposits with the Court, by January 1, 2017, a sum of NIS 75,000 or a bank guarantee in this amount. Insofar as the bond is not deposited by the said date, the action's continued clarification will be stayed.
 - 9.3 The Official will continue to represent the Company in the class action proceedings.

The court clerk will send the decision to the parties and close the applications.

Given today, November 14, 2016, in the absence of the parties.

(Signed)

Eitan Orenstein, Adv.