

**Tel Aviv-Jaffa District Court**

**LF 44348-04-16**

**Application 33**

**Before His Honor Judge Eitan Orenstein, President**

**In re:**           **The Companies Law, 5759-1999**  
**The Companies Ordinance [New Version], 5743-1983**

**The Companies Law**

**and in re:**       **Urbancorp Inc., Canadian company no. 2471774**

**The Company**

**and in re:**       **Adv. Guy Gissin - temporary functionary of the Company**

acting by his attorneys, Advs. Yael Hershkovitz and/or Gilad Bergstein ad/or Sandra Schneider, of Gissin & Co., Advocates, 38B Ha'Barzel Street, Tel Aviv 69710, Tel. 03-7467777, Fax. 03-7467700

**The Functionary**

**and in re:**       **1.       The Fuller Landau Group Inc. (as proposal trustee of Alan Saskin)**  
**2.       The Webster Trust**  
**3.       TCC / Urbancorp Bay Stadium LP**  
**4.       Urbancorp Management Inc.**

acting by their attorneys, Adv. Ofer Tzur and/or Harel Shaham and/or Liron Karass *et al*, of Gornitzky & Co., Law Firm, 45 Rothschild Boulevard, Tel Aviv 6578403, Tel. 03-7109191, Fax. 03-5606555

**The Applicants**

**and in re:**       **The Official Receiver**

of 2 Ha'Shlosa Street, Tel Aviv, Tel. 103-6899695, Fax. 02-6467558

**The Official Receiver**

## Reply to Joining Application and Application for the Grant of Instructions

In accordance with the Honorable Court's decision of February 10, 2017, the Functionary respectfully files his reply to the Applicants' application to join these proceedings (application no. 33) (hereinafter - the "joining application").

**As we will show below, involved is an application that was filed with the Honorable Court while concealing material details from it. With regard to the Applicants' motives for their application to join this case, much is shrouded in secrecy. Nonetheless, in order to enable the continued efficient conduct of these proceedings, and subject to grant of the orders and transfer of the confirmations requested to the Official as provided in Chapter C. below, the Official will not object to the Applicants joining the proceedings as a party.**

### **A. Factual background - the Applicants' identity and their relationship with the Company**

#### **A.1 The First Applicant (The Fuller Landau Group)**

1. The First Applicant is, as noted in the joining application, the proposal trustee of Mr. Alan Saskin, the Company's controlling shareholder, in the framework of the bankruptcy proceedings that are being conducted in Canada in connection with his personal affairs (hereinafter - the "**trustee in bankruptcy**"). In addition, and as noted in the joining application, the trustee in bankruptcy is simultaneously also serving as the functionary appointed by the Canadian court, for some of the companies in the Company's group, which are called the "Edge Group" companies. These companies are operated by the First Applicant, as monitor, in the framework of restructuring proceedings (CCAA), and under the Canadian court's supervision.
2. Collaboration minutes were executed between the trustee in bankruptcy and the Functionary, which determine the fabric of the relationship and collaboration between them and that was approved by the Honorable Court and by the Court of Insolvency in Canada.  
  
"1" A copy of the collaboration minutes between the Functionary and the trustee in bankruptcy, as approved, is annexed hereto as **appendix 1**.
3. **In a telephone conversation between the Applicants' attorneys and the Functionary of January 12, 2017, the Applicants' attorneys requested the Functionary's consent to joining the trustee in bankruptcy to the proceedings. In light of the collaboration undertaken by the Functionary and the trustee in bankruptcy pursuant to the minutes (appendix 1 above), the Functionary confirmed that it would not have any objection to joining the trustee in bankruptcy to the proceedings. It is emphasized that today as well the Functionary is not objecting to joining the trustee in bankruptcy to these proceedings. In any event, the Functionary is collaborating and sharing information with the trustee in bankruptcy routinely with respect to each act.**

4. **This is not the position with the Second to Fourth Applicants, in respect of which the Applicants' attorney, for some reason, "forgot" to mention in his conversation with the Functionary that he is applying to join also in their name.** Accordingly, after, at the Functionary's request, the Applicants' attorney transferred the draft application herein and the Functionary learned that his consent was also requested for the Second to Fourth Respondents, the Functionary stated his position (annexed as appendix 1 to the joining application) to the effect that he would agree to the provisions of the application, subject to fulfillment of the basic conditions as detailed at length in Chapter C. below.

**A.2 The Second to Fourth Applicants (The Webster Trust, TCC/Urbancorp Bay Stadium LP and Urbancorp Management Inc.)**

5. The Second to Fourth Applicants are some of the companies which to the best of the Functionary's knowledge are held by Mr. Saskin and some of them also by members of his family. In accordance with paragraph 3.3.2 of the issue prospectus for the Company's bonds of December 7, 2015 (hereinafter - the "**issue prospectus**"), the Second to Fourth Applicants (together with other companies held by Mr. Saskin and members of his family) undertook that before the bonds' listing for trade and as a condition for their issue, they would transfer assets owned by them to the Company (hereinafter - the "**transferred assets**").

6. Against transfer of the transferred assets, an issue was made of shares of various classes of the Company to Urbancorp Holdco Inc. (hereinafter - the "**Company's direct shareholder**"), which would be under the full control of Mr. Saskin, and which would allot shares of a parallel class to the Second to Fourth Applicants.

**"2"** A copy of paragraph 3.3.2 of the issue prospectus is annexed hereto as **appendix 2**.

7. The assets transferred by the Second to Fourth Applicants included several "geothermal assets". As detailed in the Functionary's application of January 8, 2017 to extend the appointment and convene a creditors' meeting (application no. 29), the whole subject of the geothermal assets and their transfer to the Company raises weighty questions that are currently being reviewed by the Functionary. *Inter alia*: "**It transpired that transfer of the rights in the geothermal assets to the Company's subsidiaries was not completed, and that the structure of ownership and rights therein requires complex legal and accounting clarification that is not yet complete**" (see paragraph 40 of the application of January 8, 2017. In addition, as mentioned in the application of January 8, 2017, the Functionary is reviewing the reasonableness of the representations and valuations pursuant whereto the transactions with the geothermal assets were executed, which were set at an overall value of approx. CAD 44 million.

8. Moreover, the Fourth Applicant, Urbancorp Management Inc. (hereinafter - "**UMI**"), is a company held by Mr. Saskin. The Functionary is reviewing various transactions of millions of Canadian dollars, which Mr. Saskin executed with the Company's monies and assets, which raise

heavy suspicion of the mixing of assets and transfer of monies and assets of the Company's group, unlawfully, in favor of UMI and other assets belonging to it.

9. Initial details of the information accumulated by the Functionary regarding UMI's involvement as aforesaid were included in the debt claims submitted against Mr. Saskin, as officer of the Company's subsidiaries and in the framework of his personal bankruptcy proceedings. The said debt claims were annexed to update report no. 6 of the Functionary of November 9, 2016 (hereinafter - "**update report no. 6**"). These claims concern a transfer of the Company's monies in a sum of approx. CAD 1.35 and assets worth approx. CAD 2.35 million, from the Company's group to UMI.

"3" For the Court's convenience, the debt claim that was submitted against Mr. Saskin as an officer of the subsidiaries is annexed hereto as **appendix 3**.

**B. The Applicants' standing in these proceedings**

10. As distinct from the trustee in bankruptcy, who, as aforesaid, has collaborated with the Functionary since his appointment in accordance with the minutes, the Second to Fourth Applicants' interest in these proceedings has not been sufficiently clarified, not in the joining application and certainly not in the telephone conversation in which the Functionary was asked to consent to the joining application, but the involvement of the Second to Fourth Applicants was generally hidden.

11. The Second to Fourth Applicants are basing their entitlement to be a party to this case on the plea that they will be entitled "to receive the value of the Company's surplus assets and/or credit balances after the Company's debts have been covered". **However, as aforesaid, the Second to Fourth Applicants are not shareholders of the Company. The Company's shares are as aforesaid held by Urbancorp Holdco Inc., and therefore, effectively, the Applicants do not have any direct standing in these proceedings.** See in such regard the book of Her Honor Judge (Retired) Alshech, Effective Suspension of Proceedings (Second Edition), page 668:

"... It is the opinion of the trustee, and not the opinion of the shareholders and directors, that will be determinative with regard to the realization of assets, formulation of an arrangement outline and the like ... **at the most, the shareholders may apply for the grant of instructions to the court of insolvency, as a possible "injured party" from the acts of the trustee, requesting the Court to intervene therein"**.

12. Thus, even if the Applicants were shareholders of the Company (and they are not, as aforesaid), they would not be entitled to be a party to this case such that the entire case would be open to them, *a fortiori* given that the Applicants are not direct shareholders of the Company.
13. Moreover, the Applicants' plea that all the Company's debts will supposedly be paid in the scope of these proceedings was raised vaguely, without being supported by an affidavit detailing the sources that, according to the information that the Applicants had, would be used to pay all the

Company's debts to its creditors. Even if the Functionary invests considerable effort in maximizing the Company's assets in favor of the creditors' fund, unfortunately, at this stage, in the foreseeable future there is no sight of sufficient sources enabling repayment of all the Company's debts (without taking into account the results of legal proceedings that have not yet commenced).

Accordingly, even if we recognize the Second to Fourth Applicants as shareholders by virtue of their holdings chain (and see no basis to recognize this), at this stage they are nothing more than a "possible injured party from the trustee's acts".

**C. The conditions on fulfillment of which the Functionary will not object to joining the Respondents to the proceedings**

14. Nonetheless, in order to streamline these proceedings, and since in any event insolvency proceedings should be transparent and the Functionary does not wish to prevent any relevant party from being a partner thereto, the Functionary will not object to the joining of all the Applicants to the proceedings, **subject to grant of the orders and transfer of the confirmations from the Applicants to the Functionary, as provided below:**

**C.1 Address for the service of court pleadings**

15. In light of the possible need for the Functionary to take action against the Second to Fourth Applicants in connection with the transferred assets, and in particular in connection with the transfer of monies and assets to UMI, **the Honorable Court is moved to order that the Applicants' attorney is the address for the service of court pleadings for all intents and purposes on the Applicants in Israel.** The refusal of the Second to Fourth Applicants' attorney to consent to this attests to the Applicants' attempt to have it both ways - on the one hand to join the proceedings and on the other hand to avoid the service of court pleadings in future.

**C.2 Consent to application of the Israeli law and jurisdiction**

16. As clarified above, the Company's direct shareholder, Urbancorp Holdco Inc., has all the holdings in the Company, while the Second to Fourth Applicants do not hold shares of the Company, but only shares of the Company's direct shareholder.

"4" A diagram of the Company's holdings as appearing in the rating report that was included in the issue prospectus is annexed hereto as **appendix 4.**

17. The Applicants' attorney did not detail in his application why precisely the Second to Fourth Applicants, as distinct from the Company's direct shareholder, are applying to join the proceedings, and what is in fact their right against the Company, in the absence of shareholdings therein. In the framework of the issue prospectus, Mr. Saskin undertook to recognize the Israeli law and jurisdiction for the purpose of a settlement, arrangement and insolvency (hereinafter - the "**controlling shareholder's undertaking**").

18. Accordingly, the Honorable Court is moved to direct **that the joining of the Second to Fourth Applicants to the proceedings constitutes confirmation by them that they are adopting and assuming the controlling shareholder's undertakings [sic - should be "undertaking"], as defined above, and recognizing, without qualification,** the Israeli law and jurisdiction for the purpose of a settlement, arrangement and insolvency both in relation to the Company and in relation to themselves. This requirement is essential, in order to prevent cynical use of another legal entity in order to evade the undertakings at the basis of the issue prospectus.

### **C.3 Avoidance of a conflict of interest**

19. In the joining application the Second to Fourth Applicants' standing and the relationship between the trustee in bankruptcy and them was not clarified. Thus, for example, it was not specified if the companies were under insolvency proceedings in Canada, for which a Canadian functionary had been appointed, who is supposed to be entrusted with representing their interests. In addition, it was not specified who are the shareholders of the Second to Fourth Applicants and if Mr. Saskin is the only holder of rights therein or maybe other members of his family or third parties.
20. This is the place to emphasize that to the best of the Functionary's knowledge, in accordance with the information published by the trustee in bankruptcy, at least in relation to some of the Second to Fourth Applicants, the rights therein are not held by Mr. Saskin alone, but also by members of his family. This distinction enables the Saskin couple (as the Functionary learned in the framework of the debt claim proceedings filed against another company held by them) to plead that Mr. Saskin is liable for the losses of the joint company while his wife - Mrs Doreen Saskin (who to the best of the Functionary's knowledge is not in any insolvency proceedings) is the sole beneficiary of any accumulated profit.
21. To be precise, if Mr. Saskin is the sole holder of the rights in the Second to Fourth Respondents [sic - should be "Applicants"], **it is sufficient to join the trustee in bankruptcy in order to represent the interest of Mr. Saskin's creditors, and there is no need to join the Second to Fourth Applicants.**
22. **The concealment of these details, together with the fact that the Applicants' attorney did not say anything in his conversation with the Functionary about representing the Second to Fourth Applicants, as well as the omission of reference to the identity of the Second to Fourth Applicants' shareholders and disregard of the fact that the Company's direct shareholder (which at the least might have a legitimate interest in being a party to the proceedings) is not applying to join the proceedings, show that there is a shroud of secrecy in connection with the Applicants' desire to join these proceedings as a party thereto, and accordingly the Functionary is asking this Honorable Court to direct the Applicants to clarify in a duly drawn up affidavit the identity of the interested parties in the transferring companies, the relationship between them and the interests of Mr. Saskin's personal creditors and the existence or absence of a conflict of interest between them.**

#### **C.4 Clarification of the Applicants' representation financing arrangements**

23. In the framework of the Functionary's investigations, there repeatedly arises, like a recurring motif, concern of the mixing of assets between the assets and monies of the Company and the companies under their control, on the one hand, and Mr. Saskin, members of his family and companies held by them. In this framework, the Functionary is reviewing payments of hundreds of thousands of dollars that were made by the Company and its subsidiaries, prior to the consultancy services that were provided to Mr Saskin and/or members of his family and/or companies held by them which are not part of the group.
24. Thus, for example, in the framework of update report no. 6, details were given of checks carried out by the Functionary in relation to money transfers that were made on the instruction of Mr. Saskin to law firms in Israel at or about the time of the Company's collapse. The Functionary also managed to obtain a refund of monies paid by a subsidiary of the Company on account of the provision of legal services to the Company and to Mr. Saskin as one.
25. Accordingly, the Honorable Court is moved **to direct the Applicants to provide details in advance, in a duly drawn up affidavit, of the expected financing and sources for the Applicants' representation by the attorney noted at the top of this document.** The object of the affidavit is to ascertain that these costs will not ultimately be imposed on the Company's fund and/or the creditors' fund in the personal insolvency proceedings of Mr. Saskin, of which the Company is one of its main creditors.

#### **D. Conclusion**

26. Subject to the grant of the orders and receipt of the affidavits and clarifications requested in Chapters G.1 to G.4 above, the Functionary will not object to the joining of the Applicants as party to the proceedings.

(Signed)

\_\_\_\_\_  
Yael Hershkovitz, Adv.

(Signed)

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Gilad Bergstein, Adv.

Attorneys for the Functionary of Urbancorp Inc.

Today, February 15, 2017, Tel Aviv