

[COURT EMBLEM]

Tel Aviv-Jaffa District Court

LF 44348-04-16

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

Application no. 33

Before His Honor Judge Eitan Orenstein, President

In re: The Companies Law, 5759-1999

The Law

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

The Functionary

and in re: Urbancorp Inc., a Canadian company

The Company

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

The Applicants

and in re: The Official Receiver

The Official Receiver

Decision

1. General

Before me is an application to join proceedings in the matter of Urbancorp Inc. (hereinafter - the "**Company**"), which was filed by the Canadian trustee of Mr. Alan Saskin, the Company's controlling shareholder, and by three companies which are indirect shareholders of the Company.

2. Background

2.1 **The Company:**

The Company is a Canadian company which issued bonds in Israel. Insolvency proceedings are being conducted against the Company. Adv. Guy Gissin was appointed as the Company's functionary (hereinafter - the "**Functionary**"). The Functionary is expected to convene a meeting for approval of a creditors' arrangement in the first quarter of 2017. The Applicants, as identified below, are petitioning to join the proceedings in the matter of the Company so that they will be able to participate in the creditors' arrangement approval meeting.

2.2 **The Applicants' identity:**

The Applicants are four Canadian companies related to the Company:

- (a) The Fuller Landau Group Inc. (as proposal trustee of Alan Saskin) (hereinafter - the "**First Applicant**"): the Canadian trustee for Mr. Alan Saskin in the framework of the bankruptcy proceedings in Canada. The First Applicant is also the trustee appointed for subsidiaries of the Company, Edge Group, and it operates them in the framework of the restructuring proceedings under the Canadian court's supervision.
- (b) The Webster Trust (hereinafter - the "**Second Applicant**"); TCC / Urbancorp Bay Stadium LP (hereinafter - the "**Third Applicant**"); Urbancorp Management Inc. (hereinafter - the "**Fourth Applicant**"), companies held by Mr. Saskin, some of which are also held by members of Mr. Saskin's family. The Second to Fourth Applicants hold shares of the Company through a corporation by the name of Urbancorp Holdco Inc. (hereinafter - "**UHI**"). UHI is held by Mr. Saskin.

In accordance with the Company's issue prospectus, before the bonds' listing for trade and as a condition for the issue, the Second to Fourth Applicants undertook to transfer assets to the Company. In consideration the Company issues shares to UHI and allotted parallel class shares to the Second to Fourth Applicants.

3. **The application**

As aforesaid, the Applicants are petitioning to join the proceedings against the Company. There is a collaboration agreement between the First Applicant and the Functionary; thus, according to the Applicants [sic - should be "First Applicant"], it should be joined to the proceedings without dispute. With regard to the Second to Fourth Applicants, we are dealing with the holding of shares in the Company in a chain. According to the Applicants, the fact that the Second to Fourth Applicants hold shares in a chain is a technicality and does not prevent the Second to Fourth Applicants from joining the proceedings. Moreover, the fact that the Functionary states that the Second to Fourth Applicants are held by members of Mr. Saskin's family, is such as to incentivize their joining the proceedings, since in this way they will protect other shareholders, besides Mr. Saskin.

The Applicants objected to the terms and conditions set by the Functionary for them to join the proceedings; these terms and conditions will be detailed below. According to the Applicants, they are not required to disclose the holding structure therein; it is of no relevance to the Functionary to know the professional fee payable to the Applicants' attorneys and who is paying it; also, it is of no relevance to the Functionary if the Applicants' firm of attorneys is an address for the service of court pleadings of the Applicants.

In the application, the Applicants are petitioning, besides to be joined as a party to the proceedings, to be given the following relief: to be served with any document filed in the proceedings so that they can respond thereto; to be invited to the shareholders' meeting for discussion of the proposed arrangement; to be allowed access to the file through the Net Ha'Mishpat [electronic records] system.

4. **The Functionary's position**

There is no dispute between the Applicants and the Functionary to the First Applicant joining the proceedings, since there is a collaboration agreement between the First Applicant and the Functionary.

With respect to the Second to Fourth Applicants, the Functionary noted that he was checking a transfer of geothermal assets between the Second to Fourth Applicants and the Company, a transfer that according to him was never completed. The Functionary contends that the fact of the geothermal assets and the non-completion of their transfer raises weighty questions which are currently being reviewed by him. With respect to the Fourth Applicant, which according to the Functionary is fully held by Mr. Saskin, it is necessary to review transactions executed between it and the Company in a volume of millions of Canadian dollars. The Functionary is arguing that these transactions raise suspicion of the mixing of assets and transfer of monies and assets of the Company's group in favor of the Fourth Applicant and other assets belonging to it.

Moreover, the Functionary believes that the Second to Fourth Applicants should not be allowed to join the proceedings for the following reasons: the Second to Fourth Applicants have no direct

ties with the Company, but hold the Company through the interim company UHI; hence, the Second to Fourth Applicants lack, according to him, any direct standing in the proceedings; the Functionary further argues that even if the Second to Fourth Applicants are shareholders of the Company, they are not entitled to be a party to proceedings to the extent that the entire file will be open to them, especially given the fact that they are not direct shareholders of the Company; the Functionary further argues that the Second to Fourth Applicants' plea that all the Company's debts will supposedly be paid was raised vaguely and without reference, and even if they are recognized as shareholders by virtue of a chain, they will be considered possible injured parties from the Functionary's acts.

Nonetheless, the Functionary is not objecting to the Second to Fourth Applicants joining the proceedings, but is making his consent subject to the following conditions:

- 4.1 **Address for the service of court pleadings:** the Functionary is asking the Court to direct that the Applicants' firm of attorneys serve as the address for the service of court pleadings for all intents and purposes on the Applicants.
- 4.2 **Consent to the application of Israeli law and jurisdiction:** the Functionary is asking the Court to direct that the joining of the Second to Fourth Applicants to the proceedings constitutes consent by them that they recognize, without qualification, the Israeli law and jurisdiction, in relation to the Company and in relation to themselves, with regard to the insolvency proceedings, the affairs and the arrangement.
- 4.3 **Avoidance of conflict of interest:** the Functionary is asking that the Applicants explain the relationship between the Second to Fourth Applicants and the First Applicant. The Functionary is also asking for details if the Second to Fourth Applicants are in insolvency proceedings in Canada; has a Canadian functionary been appointed for them; who are the owners of the rights in the Second to Fourth Applicants. According to the Functionary, insofar as Mr. Saskin is the only shareholder of the Second to Fourth Applicants, it is sufficient to join the First Applicant to the proceedings and it is not necessary to join the Second to Fourth Applicants.
- 4.4 **Clarification of the financing arrangements for the Applicants' representation:** the Official is asking the Court to direct the Applicants to provide details in an affidavit of the expected sources of financing for the Applicants' representation. The Official based this condition on concern of the mixing of assets, between the assets and monies of the Company and the companies under its control and Mr. Saskin, his family members and the companies under their control. For example, the Functionary states that Mr. Saskin paid from the Company's monies for his own personal legal advice services.

5. **The Official Receiver's position**

The Official Receiver is not objecting to the First Applicant joining the proceedings. With regard to the Second to Fourth Applicants, the Official Receiver is emphasizing that their standing is very tenuous, because they do not own shares of the Company directly.

With regard to the conditions set by the Functionary, in the Official Receiver's opinion the first condition set by the Functionary, regarding the address for the service of court pleadings on the Applicants, should be allowed; the second condition, that the Applicants agree to application of the Israeli law and jurisdiction, is not necessary, according to the Official Receiver, for the reason that merely by filing the application the Applicants are recognizing the Israeli law and law [sic - should be "jurisdiction"]; with respect to the third and fourth conditions, regarding conflict of interest and financing arrangements for the Applicants' representation, the Official Receiver believes that these are not necessary to nor derive from the application, and insofar as they are relevant subsequently there will be room to consider the need for them.

6. **Discussion and decision**

6.1 Since there is no dispute between the parties with respect to the First Applicant joining the proceedings and moreover there is collaboration between it and the Functionary, I am allowing what has been asked and agreed. Hence, the First Applicant will join the proceedings.

6.2 With respect to the Second to Fourth Applicants:

6.2.1 The application to join them should be dismissed, if only for the reason that the Applicants are objecting to giving an address in Israel for the service of court pleadings, while applying to join the legal proceedings, since this object doesn't sit well with me. It is inconceivable that in order to subsequently serve court pleadings, the Functionary will have to institute proceedings for service outside the jurisdiction that are not certain and involve considerable costs, and without need. I would add that joining the legal proceedings, and in particular the insolvency proceedings, is a two-way situation. That is to say, the legal proceedings are not only accessible to the party applying to join them, but the party applying to join must be accessible to the proceedings themselves.

Accordingly, the condition for allowing the application is that the Second to Fourth Applicants furnish an address for the service of court pleadings in Israel, whether the address is that of their attorneys or another address to which the Applicants have access.

6.2.2 **Application of law and jurisdiction:** another condition for the application is that joining the Applicants to the proceedings constitutes their consent to application of the Israeli law and jurisdiction. In my opinion, the mere filing of

the application by the Applicants with the Israeli court constitutes their consent to accept the Israeli law and jurisdiction. I disagree with the position of the Official Receiver that this provision is not expressly necessary, since it would be correct, for the avoidance of doubt, to direct that joining the Applicants to the proceedings as per their application is subject to application of the Israeli law and jurisdiction.

6.2.3 **Avoidance of a conflict of interest:** with respect to this condition - the Functionary requested clarification in respect of the relationship between the Second to Fourth Applicants and the First Applicant, details of the Applicants' legal standing and details of their shareholders. In my opinion, this information is not necessary at the current stage of the proceedings and for the purpose of this application. Insofar as this information becomes relevant in the future, the Functionary may request it.

6.2.4 **Clarification of the financing arrangements for the Applicants' representation:** in the framework of this condition the Functionary requested details of the Applicants' expected financing sources. I see no reason to order the Applicants to disclose the financing sources as requested in the absence of an adequate legal basis, at least at this time.

For the avoidance of doubt, this decision does not lay down hard and fast rules with respect to the Second to Fourth Applicants' standing in the proceedings.

Conclusion:

The First Applicant, in respect of which there is no dispute, will join the proceedings.

The Second to Fourth Applicants will not join the proceedings unless an authorized entity on their behalf furnishes an address for the service of court pleadings in Israel and consent to the Israeli courts' jurisdiction and application of the Israeli law thereto, with respect to the insolvency proceedings in Israel and in the framework thereof also the creditors' agreement, all by no later than April 25, 2017, given the Passover recess.

The court clerk will send the decision to the parties.

Given today, April 4, 2017, in the absence of the parties.

(Signed)

Eitan Orenstein, President