Tel Aviv-Jaffa District Court

LF 44348-04-16
Application no. 33
Before His Honor Judge Eitan Orenstein, President

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

The 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 andor 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

Answer to Reply to Application to Join Proceedings
[on behalf of the Canadian trustee in the bankruptcy proceedings of
Mr. Alan Saskin in Canada and on behalf of the Company's shareholders]

Further to the application to join the proceedings of February 9, 2017 (hereinafter - the **"joining application"**), and in response to the Functionary's reply of February 15, 2017 (hereinafter - the **"Functionary's reply"**), the Applicants respectfully file their answer to the Functionary's reply.

In light of that stated in the joining application and in this answer to the reply, the Honorable Court is moved to allow the joining application.

And these, *inter alia*, are the grounds of the answer to the reply:

1. The joining application should be allowed, and the conditions precedent set by the Functionary should be rejected, since it is not clear what the one (the conditions set by Adv. Gissin for the purpose of his consent) has to do with the other (the joining application).

2. The joining application is a simple and elementary application filed by parties representing the interests - direct or in a chain - of the shareholders and their creditors to join as a party to insolvency proceedings, which is matter of routine in insolvency proceedings. It is not clear why the Functionary is raising difficulties. It is not clear why the Functionary filed a lengthy and meandering reply, while attempting to create a big "drama" from a simple application, to set "conditions" for joining, to "negotiate" in order to obtain "consideration" so that the Functionary would agree to the joining, and the like.

3. At the outset we would mention that the First Applicant in the joining application is The Fuller Landau Group (hereinafter - the **"Canadian trustee"**), which, *inter alia*, serves as the proposal trustee of Mr. Alan Saskin, the Company's controlling shareholder, in the framework of the insolvency proceedings that are being conducted in respect of him in Canada; and effectively represents the interests of the collective creditors of Mr. Alan Saskin.

   In paragraph 3 of the Functionary's reply, it is expressly written (again) that the Functionary is not objecting to the joining of the Canadian trustee as a party to these proceedings.

   In such regard there is therefore no dispute and the Honorable Court is moved to give a decision on the joining of The Fuller Landau Group as a party to the proceedings.

4. With regard to the Second to Fourth Applicants - as explained in the joining application, involved are three foreign corporations[1], which, as noted in the joining application, hold shares in the company the subject of the proceedings (Urbancorp Inc.) through a corporation by the name of Urbancorp Holdco Inc. As noted in the joining application, these Applicants' holdings as aforesaid **give them the standing of shareholders in insolvency proceedings**, who are entitled,

[1] TCC/Urbancorp Bay Stadium LP, The Webster Trust and Urbancorp Management Inc.

as is known, to receive the value of the Company's surplus assets and/or credit balances after the Company's debts have been covered.

5. Although the application is elementary, only in relation to the Second to Fourth Applicants, the Functionary is raising "qualified objection", or on the other side of the coin - "consent to conditions". The Functionary is pleading that there is a "shroud of secrecy" over the "motives" behind the joining application on the part of these corporations, and he states that he will not object to their joining, "provided" that he receives various confirmations from these Applicants. These necessary confirmations (Chapter C. to the Functionary's reply) include consent regarding the service of court pleadings, declarations regarding the identity of the corporations' shareholders and regarding the absence of a conflict of interest, declarations regarding financing sources, and more.

6. **With all due respect, the position taken by the Functionary is flawed. Shareholders of a corporation have a right to vote at meetings to approve an arrangement and to take part in proceedings in such regard, and the attempt to "set conditions" for joining by shareholders is beside the point (*a fortiori* on the part of an Officer of the Court)**. We would also ask: how do the answers to questions asked by the Functionary shed light on the need to join the proceedings? Let us assume (merely for the sake of the hearing) that there is an address for service in other proceedings, does this mean that the Applicants should be joined to the proceedings? And if there is no address for service - does this mean that the Applicants should not be joined? What does the one thing have to do with the other?

7. The only relevant question with respect to the joining application is the Applicant's standing to join the proceedings as a party. Since the Second to Fourth Applicants are shareholders of the Company, **they should be allowed to join**.

Mention should be made of the words of this honorable panel in re: LF (TA) 49085-11-11, Israel Credit Lines Complementary Financial Services Ltd v. The Official Receiver (published in Nevo, February 8, 2013), in which it was held as follows:

> "Nonetheless, I believe that there was a certain flaw in the trustee's arrangement approval proceedings **that is difficult to come to terms with and I mean failure to convene a shareholders' meeting to consider approval of the trustee's arrangement**. There is no need to say more on the deferred status of the shareholders in the creditors' arrangements, **but this does not do away with the need, in suitable cases, to take the shareholders' wishes into account**. It appears to me that in the case before me, a meeting of the shareholders should have been called, primarily since the shareholders include the general public which purchased Credit Lines' shares, in order to hear their position with regard to the creditors' arrangements that are on the agenda. The trustee's position in paragraph 66-70 of the application, to the effect that, *inter alia*, the arrangement does not include payment to the shareholders, is not a satisfactory and accurate response. According to the liquidators' arrangement, the liquidators' claim will continue and insofar as it is allowed, even if in an amount that exceeds the companies' debts, the participants

will be entitled to consideration for their investment in the companies' shares. Hence, one cannot rule out the possibility that if a shareholders' meeting had been convened, the shareholders would have voted against the trustee's arrangement and supported the liquidators' arrangement. Accordingly, a meeting of the shareholders should have been convened to hear and consider their position, even if at the end of the day the result was that it should not be preferred over the conflicting interests of the creditors. In such regard, I would refer to ALA 2404/11, Pardes Hanna-Karkur Local Council v. Pardes Hanna-Karkur Financial Company Ltd (in liquidation) (published in Nevo) (2011), in which a shareholder objected to the liquidator's decision to reach a settlement arrangement. The Supreme Court stated:

> 'The liquidator should have used his discretion to also consider the interests of the Applicant as a shareholder.'"

8. The Functionary's reply does not contain any plea of substance regarding the only relevant question in the joining application, which is, as aforesaid - why not act in accordance with the ordinary law in insolvency proceedings, and allow the shareholders (the Applicants) to join the insolvency proceedings of the Company in which they hold shares / a property interest. A functionary is not supposed to exercise his powers in order to prevent relevant parties (such as shareholders) from being a party to insolvency proceedings that might affect them, *inter alia* in order to be aware of moves that are being made and steps that are being taken, and insofar as necessary to apply to court.

   To be precise: as is known, in accordance with section 62 of the Companies (Application for a Settlement or Arrangement) Regulations, 5762-2002, any person can be joined to insolvency proceedings, if there is concern that such person might be detrimentally affected by the decision that is given or if it seems that joining him might be beneficial to reaching the arrangement. In our case, we are not dealing with (just) a "person", but with a shareholder, with a recognized standing in insolvency proceedings. Moreover, if any "person" (and not necessarily a "shareholder") may join insolvency proceedings, then *a fortiori* a shareholder (even if he holds the Company's shares through another corporation).

9. It has not escaped our notice that in the Functionary's reply a plea was raised to the effect that the Applicants hold shares of the company Urbancorp Inc. (the company the subject of the proceedings) **through a corporation** by the name of Urbancorp Holdco Inc. According to the Functionary, in view of the fact that the shares are held **through a corporation**, then according to him the Second to Fourth Applicants "lack any **direct** standing" in these proceedings (paragraph 11 of the Functionary's reply).

10. With all due respect, the meaning of the attempt to create a distinction (for which no legal basis was given)[2] between a "direct" holding of shares in the company in insolvency proceedings, and

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[2] In paragraph 11 of the Functionary's reply, there is a quote from the book of Her Honor Judge (Retired) Alshech. The quotes there concern the status that should be given to the position of shareholders compared

holding shares through another corporation, is not clear. This is nothing more than a "technical" plea; after all, to the same extent the Second to Fourth Applicants could have exercised their rights in Urbancorp Holdco Inc. so that the application would be filed in its name and on behalf of this company. Moreover, the Functionary is not object to the joining of the Canadian trustee of Mr. Saskin, even though in respect of him too the holding is through the said company in the name of Urbancorp Holdco Inc.. The fact that this plea was raised **only** against the Second to Fourth Applicants is also flawed.

11. With regard to the Functionary's pleas in connection with the holdings structure in the Second to Fourth Applicants themselves ("from above"), it is noted that the Functionary states, in paragraphs 5 and 20 of his reply, that in these corporations (at least some of them) members of Mr. Alan Saskin's family also have rights. Hence it is clear, even from the Functionary's position, why it is reasonable and necessary for these corporations to **also** join these proceedings, since joining them will make it possible to protect the interest of **other** shareholders of the Company (as distinct from Mr. Saskin, in respect of whom the Canadian trustee in the proceedings against him in Canada is also applying to join). In any event, these are foreign corporations, some of them family trusts, and it is not clear why the Functionary believes that these corporations should "undress" and disclose the holdings structure in them at all, and as a condition for joining (elementary) the proceedings.

12. **It is also not clear from the Functionary's position exactly what considerable damage will be occasioned to the insolvency proceedings if in addition to the joining of the Canadian trustee (an agreed matter), the Second to Fourth Applicants are also joined to the proceedings, such that the interest of all the Company's shareholders are fairly represented in the proceedings.**

13. With regard to the Functionary's comment in paragraph 13 of the reply, to the effect that the Applicants' plea that all the Company's debts will be paid was raised "vaguely", it is noted that the Functionary for some reason changed the plea raised in the joining application, in which it was noted (paragraph 3.2) that the Second to Fourth Applicants' holdings afford them the standing of shareholdings in insolvency proceedings, which are entitled to receive the value of the Company's surplus assets and/or credit balances after the Company's debts have been covered. This is the exact plea.

14. **In conclusion** - the joining application is an elementary application and there is no room not to allow it. The Functionary agrees to the joining of the First Applicant (the Canadian trustee) and this is not disputed. The Functionary's attempt to "set conditions" for the Second to Fourth Applicants' joining is beside the point and should not be allowed. The Functionary's reply contains no reason not to allow also the Second to Fourth Respondents to join the proceedings unconditionally. The Court is moved to rule as aforesaid, and to hold the Functionary liable for costs.

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with the position of the trustee in bankruptcy proceedings with regard to the realization of assets, formulation of an arrangement outline and the like, and they do not deal with the joining issue.

15. **The contents of this reply do not constitute consent by the Second to Fourth Applicants to any of the "conditions" set by the Functionary in his reply. With all due respect, it is inappropriate that in the framework of "this festive opportunity" that came its way, Adv. Gissin should demand an answer to the question (which is interesting *per se*) how much the undersigned's firm is profiting from handling the case; who is paying it' is the undersigned's firm the address for service in Israel, and other curious questions raised by the Functionary. We would mention: the undersigned's firm is not a party to the case.**

(Signed)	(Signed)	(Signed)
_____	_____	_____
Ofer Tzur, Adv.	Harel Shaham, Adv.	Liron Karass, Adv.

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The Applicants' Attorneys