

Decision

29/10/2017

Application 54 in Case 44348-04-16

Judge Eitan Orenstein

I have studied and noted the content of the update before me. The Trustee shall continue to update the Court insofar as necessary on the developments in the claim filed by him.

In the Tel Aviv District Court

LF 44348-04-16

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

Companies Law

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

Company

**and in re: Adv. Guy Gissin, trustee for the execution of the Company's creditors
 arrangement**

by his attorneys, Advs. Yael Hershkovich and/or Gilad Bergstein and/or
Michael Missul, of Gissin & Co., Law Offices, 38B Ha'Barzel Street, Tel
Aviv 69710, Tel. 03-7467777, Fax. 03-7467700

Functionary

and in re: The Official Receiver

of 2 Ha'Shlosha Street, Tel Aviv, Tel. 03-6899695, Fax. 03-6467558

Official Receiver

**Update Report No. 13 on behalf of the Functionary -
Trustee for the Execution of the Creditors Arrangement**

Adv. Guy Gissin as Functionary - Trustee for the Execution of the Creditors Arrangement
for Urbancorp Inc. (hereinafter respectively - the "**Functionary**" and the "**Company**"),
respectfully update the Honorable Court on the two following matters:

the first - the claim filed by the Functionary against the Company's shareholders in
CF 46263-06-17 (hereinafter - the "**claim**");

the second - the appeal filed by Gornitzky & Co., Law Offices against the decision of His
Honor Judge Naftali Shiloh (in his capacity as Registrar) of August 9, 2017, in which it
was held that the service of the statement of claim (and the ancillary applications) effected
on the First to Fifth Defendants¹ through Gornitzky & Co. is due service.

**Update on the claim filed by the Functionary against the shareholders in CF 46263-
06-17**

¹ Mr. Alan Saskin, TCC/Urbancorp Bay Stadium LP, The Webster Trust, Urbancorp Management Inc., Urbancorp
Holdco Inc.

1. As will be recalled, on June 20, 2017 a statement of claim was filed by the Functionary against the shareholders in a sum of approx. NIS 95.5 million. The statement of claim was served on the First to Fifth Defendants on June 21, 2017 through Gornitzky & Co., and on the Sixth Defendants through service outside the jurisdiction in accordance with the Court's decision in the claim proceedings of June 26, 2017 (application 4).
2. On June 29, 2017 the statement of claim and the ancillary applications were returned by Gornitzky & Co. to the Functionary on the ground that Gornitzky & Co. is the address for the service of process only in respect of the Company's insolvency proceedings.
3. On August 9, 2017, the Honorable Court (His Honor Judge Naftali Shiloh, in his capacity as Registrar) held, as requested by the Functionary, that the service of the statement of claim (and the ancillary applications) on Gornitzky & Co. for the First to Fifth Defendants **was duly effected** and that the First to Fifth Defendants should file a defense within 30 days, the First to Fifth Defendants being ordered to pay NISS 5,000 for the Functionary's fee. This amount has not been paid to date by the First to Fifth Defendants. It is emphasized that the payments of this amount shall be made to the creditors arrangement fund.
4. On October 20, 2017, an application was filed on behalf of the First to Fifth Defendants, with the Functionary's consent, in the claim proceedings for the grant of an extension for filing the defense.
5. Pursuant to this application, the First Defendant will be represented in these proceedings for all intents and purposes by the firm of Boaz Ben-Tzur & Co., and the Second to Fifth Defendants will be represented for the purpose of filing the application and serving pleadings in the claim proceedings by the agreed date for filing defenses by Adv. Dr. Roy Bar-Kahan.
6. In the framework of this application, the Court was moved to grant the Defendants an extension for filing a defense, such that the defense shall be filed by December 6, 2017, it being agreed, *inter alia*, that the First to Fifth Defendants shall not file any application claiming that the statement of claim (and the ancillary applications) were not served on them and that they may not apply for any postponement of the date for filing a defense, including on the grounds of filing preliminary applications.
 - A copy of the application to extend the date for filing a defense is annexed hereto as **appendix 1**.
7. On October 22, 2017 the Court gave a decision approving extension of the date for filing a defense as provided in the application.

8. Meanwhile, on October 18, 2017, a notice was filed in the claim proceedings on behalf of the law firm of Goldfarb, Seligman & Co., regarding the representation of the Sixth Defendant, Ms. Doreen Saskin, pursuant to a limited power of attorney only for the purpose of filing an application to set aside the Court's decision of June 26, 2017 on the "application for the grant of leave to effect service outside the jurisdiction on the Sixth Defendant (*ex parte*)" and for the purpose of filing an application to extend the date for filing a defense on behalf of the Sixth Defendant until a decision on the application to set aside.
 - A copy of the notice that was filed on October 18, 2017 is annexed hereto as **appendix 2**.

Update on the appeal filed on behalf of Gornitzky & Co. in AR 26579-09-17

9. On September 12, 2017 an appeal was filed by Gornitzky & Co. (and not by the Defendants themselves) against the decision of the Honorable Registrar Naftali Shiloh of August 9, 2017, which held that the service of the statement of claim and the ancillary applications on its offices on June 21, 2017 for the First to Fifth Defendants constitutes due service.
10. In the framework of the appeal Gornitzky & Co. applied to extend the date for filing a defense on the First to Fifth Defendants. This application was dismissed in the Appeal Court's decision, it being held that the defense on behalf of the First to Fifth Defendants shall be filed by October 22, 2017.
11. After the filing of the key arguments of Gornitzky & Co. and the Functionary, and following the filing of the notice of representation in the claim proceedings (see paragraphs 4-6 above), on October 22, 2017 the Functionary filed a notice and application to dismiss the appeal summarily. After the filing of Gornitzky & Co.'s reply and the Functionary's answer, on October 26, 2017 a hearing took place on the appeal before Her Honor Judge Hanna Plinner. In the judgment given at the end of the hearing, it was held, *inter alia*, that "there had been a change of circumstances in respect of which the appeal, which had become irrelevant, should be struck out" and accordingly the appeal was struck out without an order for costs, even though the Functionary believed that there was room to order Gornitzky & Co. to pay costs that would of course have been paid to the creditors arrangement fund.
 - A copy of the hearing record and the judgment of October 26, 2017 is annexed as **appendix 3**.²

² It is noted that, contrary to what is written in the hearing record, the Functionary was present in person at the hearing and the words written that were supposedly stated by Adv. "Elad Bernstein" (the intention being - to Adv. Gilad Bergstein) were stated by the Functionary himself. The Functionary will file an application to amend the record.

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