

In the Tel Aviv District Court

LF 44348-04-16
Application No. 55
Before His Honour President E. Orenstein

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, the Company's Functionary

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

and in re: Mattamy (Downsview) Limited and
Downsview Park Management Inc.

by Adv. Jane Dietrich, Cassels Brock Lawyers, Suite 2100, Scotia Plaza, 40 King Street West, Toronto, ON, M5H 3C2, Canada

Mattamy

Update to Report No. 14 on behalf of the Functionary
In Connection with Legal Proceedings Taken in Canada

Further to update report no. 14 that was filed in the honourable court on November 1, 2017 (application 55) (hereinafter referred to as "application 55"), the functionary hereby updates the court in respect of the proceedings that have taken place in Canada between the Canadian functionary, KSV Kofman Inc (hereinafter referred to as "the monitor") and the functionary and in respect of the understandings that have been reached with the monitor and Mattamy for the appointment of an independent expert to examine the Downsview project (as defined below), all as set out below in this report:

A. **The Hearing in Canada of the Functionary's Application**

1. As detailed in application 55, the Downsview project has always been represented as a major, material asset of the Urbancorp group. It is a mixed real estate project, that comprises partly income yielding property and partly development property, of which a wholly-owned subsidiary of the company, Urbancorp Downsview Park Development Inc. (hereinafter referred to as "Downsview Inc."), holds 51% through a joint company with Mattamy (Downsview) Ltd and Downsview Park Management Inc. (hereinafter referred to as "Mattamy"). Mattamy is also the development manager of the project ("the Downsview project" or "the project"). The project has been appraised both in the issue prospectus and in the monitor's reports as being of significant value to the company, worth tens of millions of Canadian dollars.
2. As will be recalled, in application 55 the honourable court was moved by the functionary to order Mattamy to attend for examination before him due to Mattamy's unwillingness to deliver all the information in its possession, including all financial information, budgets etc. in respect of the progress of the project (see paragraph 14 of application 55). The company is almost the only creditor (98%) of Downsview Inc. (which is wholly-owned by it) and it is in fact the only interested party in the Canadian insolvency proceedings in respect of the project (hereinafter referred to as "the Canadian insolvency proceedings"), in respect of Downsview Inc.
3. The information that Mattamy has been asked to provide is necessary to enable the functionary to appraise the value of the holdings in Downsview Inc. and the possibilities of realising the company's holdings in the project and also for completing the functionary's investigations.¹

¹ In accordance with the honourable court's approval in privileged application no. 57, on December 5, 2017 the functionary filed a claim in the District Court of Tel Aviv, Economics Department, by virtue of the rights of action that had been assigned to the creditors arrangement by the bond holders, pleading misrepresentations

4. On November 2, 2017 the monitor petitioned the Canadian court in an application for an urgent hearing regarding the application for directions (hereinafter referred to as "the urgent application"), in which he applied for a declaratory order, inter alia, that application 55 constitutes a contravention of the cooperation protocol made between the functionary and the monitor and should therefore not be recognised (insofar as approved by the Israeli court).
 - The monitor's urgent application (without the appendices thereto) is annexed hereto as appendix 1.
5. On November 3, 2017 the functionary, through the Canadian attorneys, filed his reply to the urgent application.
6. In his reply the functionary first and foremost moved the Canadian court to appoint an independent expert without delay to analyse the financial information in respect of the project according to the rights of Downsview Inc. in accordance with the partnership and management agreements made in respect of the project, and he proposed the candidacy of several agreed consultancy companies.
7. The functionary explained that to date, despite repeated requests, he had not been given the information that Downsview is entitled to obtain from Mattamy by virtue of the partnership and management agreements made in respect of the project and that from examinations made with the monitor it appears that the said information is not in his possession either.
8. The functionary added that his objective is to exercise the powers of investigation granted to him by the honourable court (that have been recognised by the Canadian court) and to fix the date and most suitable method for realising the company's holdings in the project, which it will be recalled was represented in the issue prospectus as a very material asset. The functionary therefore asserted that application 55 is not such as to impair the powers of the monitor or to constitute an intervention in the Canadian insolvency proceedings.

in the prospectus that was published by the company in December 2015. One of the alleged misleading representations relates to the description and value of the Downsview project, as included in the prospectus.

9. In view of the foregoing the functionary moved the Canadian court to dismiss the monitor's urgent application and order the urgent appointment of an expert to analyse the financial information relating to the project.
10. Due to sensitive, privileged information included in the functionary's application, parts of the functionary's application and its appendices are still privileged.
 - The functionary's reply of November 3, 2017 without the appendices thereto, after deletion of the privileged parts is annexed hereto as appendix 2.

B.1. The Canadian Court's Decision

11. After the urgent hearing before him in the presence of the parties' attorneys on January 3, 2017, his honour Judge Myers held in his decision of November 6, 2017 that the functionary's application to the honourable court to obtain an order for the examination of Mattamy in application 55 did indeed constitute a contravention of the cooperation protocol made with the monitor and that it should not be given effect. It was also held that the Israeli court should be notified of his said decision in any application or proceeding for the enforcement of an Israeli order in Canada.²
12. Nevertheless, the Canadian court expressed its willingness to act in accordance with domestic law and cooperate with the honourable court should the honourable court deem fit to issue letters rogatory / a letter of request for discovery of documents, the taking of evidence or a summons in Canada.
13. His honour Judge Myers also held that he was aware of the functionary's concerns as almost the only creditor whose money is at risk and that he recognises that the legal process does not exist for himself but in order to serve the real objective which relates to the possibilities of realising the holdings in the project.
14. Such being the case, an order was awarded by the Canadian court directing the monitor and the functionary to reach an understanding with regard to a timetable for discussions to be conducted before him and directing the monitor to supply the functionary and his professional advisers (subject to signing a standard confidentiality agreement) with all the information in his possession in respect

² Notice of the decision was given to the honourable court on November 7, 2016 in a privileged application.

of the present value of Downsview Inc's investment in the project, including a forecast in respect of the project's future profitability.

15. An order was also awarded directing the monitor to disclose to the functionary the circumstances that precluded Downsview Inc. under the supervision of the monitor from obtaining financial information in respect of the project.
 16. Finally, it was held that should the functionary and the monitor be unable to agree on discussions in respect of the schedule concerning the process of realising the project in accordance with the protocol within 10 days, another hearing would be fixed before the Judge in which he would assist the parties reach understandings in such respect.
- Copies of his honour Judge Myers's decision of November 6, 2017, the orders awarded in the scope thereof and a Hebrew translation thereof are annexed hereto as appendix 3.

C. **Understandings in Respect of the Appointment of an Expert and the Furnishing of Information**

17. In the week after his honour Judge Myers's decision, the functionary had a videoconference and meetings with the monitor and Mattamy in an attempt to obtain the information necessary for appraising the value of the holdings in the project and the possibilities of realising it.
18. In that context an understanding was reached with Mattamy in respect of the furnishing of information directly to the functionary and a confidentiality agreement was made with Mattamy so that back on November 17, 2017 there was a meeting with Mattamy together with the monitor and the functionary's financial adviser.
19. At the functionary's request the monitor also agreed to the appointment of an independent expert, agreeable to the monitor and the functionary, to examine the Downsview project data. On December 11, 2017 an agreement was made for the employment of the consultancy firm of Pelican Woodcliff to analyse the project data ("the financial consultant for reviewing the project").

20. According to the information that has been given to the functionary, Mattamy has stated that it will cooperate and furnish the necessary information to the financial consultant for reviewing the project.
21. On December 14, 2017 an initial meeting was held between Mattamy's representatives and the financial consultant for reviewing the project, the monitor and the functionary's financial adviser.
22. The functionary intends to act in cooperation with the monitor and Mattamy in the project review process which is to be conducted through the financial consultant for reviewing the project, with the object of clarifying everything necessary.
23. Needless to say that despite repeated requests over several months, to date the functionary has not yet been given historic data relating to the project, which are vital both for the functionary's investigations and in order to understand the value of the company's holdings in the project.
24. The functionary will continue to update the honourable court on the developments herein and on any need to file a request on behalf of the honourable court for the taking of evidence in respect of Mattamy by the Canadian court insofar as the information sought is not furnished to the functionary.

(Signed)

Yael Hershkovitz, Adv.
Counsel for the functionary of Urbancorp Inc.

Dated this 18th day of December 2017 in Tel Aviv