

**In the Tel-Aviv District Court**

**LC 44348-04-16**

**Motion no. \_\_\_**

**Before the honorable President, Justice Eitan Orenstin**

**In the matter of:                   The Companies Law, 5759-1999**

**And in the matter of:           The Companies Ordinance [New Version], 5743-1983**

**The Companies Law**

**And in the matter of:           Urbancorp Inc., Canadian company no. 2471774**

**The company**

**And in the matter of:           Adv. Guy Gissin, the functionary of the company**

By his attorneys, Advocates Yael Hershkovitz and/or Gilad Bergstein and/or Michael Misul  
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**The functionary**

**And in the matter of:           The Official Receiver**

Of 2 Hashlosha Street, Tel-Aviv  
Tel. 03-6899695; fax. 02-6467558

**The Official Receiver**

## **Update Report no. 15 from the Functionary with respect to legal proceedings filed in Canada**

Further to Update Report no. 14 that was filed with the honorable court on November 1, 2017 (motion 55) (hereinafter: ‘**Motion 55**’), an update report to Report no. 14 of December 18, 2017, and the decision of the court of December 19, 2017, in motion 55, the functionary is respectfully providing an update with regard to the results and/or status of the proceedings and operations to receive information with respect to the Downsview project.

Moreover, this report includes information about additional legal proceedings that are taking place in Canada by the functionary (through his Canadian attorneys) and by the Canadian functionaries that were appointed to manage the subsidiaries in the insolvency proceedings in Canada:

### **A. Litigation against the partner in the Downsview project**

1. As stated in motion 55, the Downsview project was always presented as the main and material asset of the Urbancorp Group, and it is held by a fully owned subsidiary of the company, Urbancorp Downsview Park Development Inc. (‘**Downsview**’), 51% through a joint company with Mattamy (Downsview) Limited and Downsview Park Management Inc. (‘**Mattamy**’), which is also the development manager of the project (‘**the Downsview project**’ or ‘**the project**’).

2. The company's indirect holdings in the project were valued, both in the issue prospectus and in the monitor's reports as having a value of tens of millions of Canadian dollars.
3. As will be recalled, in motion 55 the honorable court was requested by the functionary to order Mattamy to attend for cross-examination before it, as a result of the lack of willingness of Mattamy to impart all the information in its possession, including all financial information, budgets, etc. with respect to the progress of the project (see section 14 of motion 55).
4. The company is almost the only creditor (98%) of Downsview and is *de facto* the only interested party in the Canadian insolvency proceedings with respect to the project and Downsview.
5. **The information that Mattamy was asked to provide is needed by the functionary in order to make it possible to assess the value of the group's holdings in Downsview and the possibilities of realizing them.**
6. Within the framework of legal proceedings and contacts between the functionary, Mattamy and KSV Kofman Inc., the Canadian functionary who was appointed to manage most of the subsidiaries in the group (**'the monitor'**), it was agreed that the functionary would receive the information requested by him.
7. The parties also agreed, at the functionary's request, to the appointment of **an independent expert ('the expert') who would analyze the financial information with respect to the project in accordance with the rights of Downsview according to the partnership and management agreements that were signed with respect to the project**, and an appropriate expert was chosen that was acceptable to the monitor and the functionary.
8. After additional delays that led to correspondence and demands by the functionary and the monitor, as of the date of this report, Mattamy has, according to the consents, sent the information that was requested by the functionary. According to the information that was provided by the monitor, Mattamy also recently sent the information that was requested by the expert at this time for carrying out his work.

**B. Holding of negotiations with respect to the distribution of the proceeds from the realization of the TCC Bay company and recognition of an assignment of rights for approximately 8 million Canadian dollars in favor of the company**

9. As was stated in detail in previous update reports,<sup>1</sup> according to the prospectus for the issue of the bonds (hereinafter: **'the prospectus'**), the controlling shareholder and his family undertook to assign in favor of the company their right to receive loans from corporations held by them, in a sum of 8 million Canadian dollars (hereinafter: **'the assignment of the rights'**).

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<sup>1</sup> Especially in update report no. 8 of March 30, 2017 (motion no. 36) (**'Update report no. 8'**), update report no. 10 of June 25, 2017 (motion 45) and update report no. 14 of January 1, 2017 (*sic*) (motion no. 55).

10. In practice, the assignment of the rights was carried out by means of an undertaking of RCC/Urbancorp (Bay) Limited Partnership (hereinafter: ‘**TCC Bay**’), a private company owned by the controlling shareholder and his wife, to pay another company owned by the controlling shareholder (Urbancorp Toronto Management Inc.) a sum of 8 million Canadian dollars. This undertaking, which was *prima facie* enshrined in the bonds, was assigned to the company in December 2015 as a part of the undertakings of the controlling owners with respect to the issue of the bonds.
11. TCC Bay, which is not a part of the companies that were transferred to the company’s ownership, is also in insolvency and restructuring proceedings (CCAA), which are also being managed by the monitor KSV (hereinafter, in this capacity: ‘**the monitor of TCC**’).
12. The monitor of TCC acted to realize the assets of TCC Bay, which produced significant sums. According to the information currently held by the functionary, these amounts are supposed to enable the payment of a significant part of the debts of TCC Bay, including the debts that were assigned in favor of the company by virtue of the assignment of the rights.
13. As stated in previous update reports,<sup>2</sup> the debt claim of the functionary against the monitor by virtue of the assignment of the rights was rejected in its entirety, and similarly the appeal of the functionary to the Canadian court with respect to the rejection of the debt claim was also rejected, with the Canadian court adopting the monitor’s conclusion that the bonds did not have any force since they were not based on a debt claim on the date of the assignment of the rights. The Canadian court determined in addition that all the companies involved in the control of Mr. Saskin knew or should have known on the date of the assignment of the rights that there is no real debt on which the assigned rights are based.
14. Accordingly, on June 23, 2017, the functionary filed a motion with the Canadian court to permit the filing of an amended debt claim against TCC Bay, for the damage that was caused as a result of the non-validity of the bonds. For this motion, the monitor of TCC set aside appropriate reserves.
15. The debts of TCC Bay are comprised mainly of the alleged debt (in an amount of 8 million Canadian dollars) of the company, and of an alleged debt (in an amount of approx. 6.5 million Canadian dollars), to a secured creditor of TCC Bay – a finance firm called Terra Firma Capital Corp (‘**TFCC**’).<sup>3</sup> During recent months, the functionary led ongoing contacts with representatives of TFCC, in an attempt to reach an agreement that will allow a distribution of the balance of the realization proceeds in TCC Bay. It is not superfluous to point out that in the absence of an agreed approval of the debts, there is a risk that most of the proceeds money of TCC Bay will ultimately be paid to the shareholders of TCC Bay and the creditors (the company and TFCC or either of them if the amended debt claim that they filed or that is under appeal will not be approved) will be left with nothing.

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<sup>2</sup> See note 1 above.

<sup>3</sup> Whose claim was also rejected by the monitor of TCC for various reasons that are subject to an appeal that was filed by it.

16. On February 13, 2018, the functionary and TFCC reached consents, and on February 16, 2018, they filed a motion with the Canadian court, with the consent of the monitor of TCC, according to which it was proposed that TFCC would receive a reimbursement in a sum of 3 million Canadian dollars (out of a total alleged debt of approximately 6.5 million Canadian dollars), whereas the company would be entitled to a reimbursement of a minimum amount of 5.5 million dollars out of its debt claim, plus any additional amount that it will be possible to recover from the funds of TCC Bay, after payment of the debts and costs of the proceedings in TCC Bay (**‘the TCC arrangement’**).
17. The TCC arrangement is subject first to the approval of the Canadian court and subsequently to the approval of the Israeli court. The TCC arrangement includes a mutual release clause that will prevent the filing of claims against TFCC by the functionary on behalf of the company. The TCC arrangement is expected to be raised for consideration before the Canadian court on February 26, 2018.
18. According to the assessment of the functionary’s advisers, we are speaking of an arrangement that may give the company a significant amount, without it needing lengthy legal proceedings in Canada, where the success thereof is not sufficiently clear and will also involve significant financial expenses.
19. The functionary will provide a further update of the progress of the proceedings for the approval of the TCC arrangement with the Canadian court, and after this will be received, he will file a detailed and separate motion to receive the approval of the honorable court, insofar as the conditions for this are satisfied.
- ‘1’ The functionary’s report to the Canadian court of February 16, 2018, and the TCC arrangement are attached hereto as **Annex 1**.

**C. Raising the stay of proceedings order in order to file claims against Mr. Saskin**

20. Mr. Saskin, the controlling owner, the CEO and the moving force behind the company before its collapse, is being sued in two claims that were filed by the functionary with the Tel-Aviv District Court: CC 46263-06-17 – a claim of the company with respect to the breach of undertakings that were made by the controlling owners prior to the issue of the bonds; CC 12055-12-17 – a claim of the functionary against the controlling shareholder, directors and other watchers, by virtue of the rights of claim that were assigned to the arrangement by the bondholders, for false representations and the inclusion of misleading details in the prospectus.
21. Since within the framework of the personal bankruptcy proceedings of Mr. Saskin a stay of proceedings order against him was imposed, approval is required from the Canadian court to conduct proceedings in these claims against him.
22. Accordingly, the functionary filed an appropriate motion in Canada, to remove the stay of proceedings order with respect to the litigation of these claims. The removal of the stay of proceedings that was requested with respect to the litigation of the proceedings in CC 12055-12-17 (the inclusion of misleading details in the prospectus)

was limited to the amount of the insurance payout insofar as it will be received by virtue of the causes of action stated in that claim.

23. On January 23, 2018, a decision was given by the court in Canada within the framework of the personal liquidation proceedings of Mr. Saskin, which permits the litigation of the aforesaid claims against him, and which makes any enforcement of a judgment or order against him subject to the approval of the Canadian court. The following is what was held in this regard by the honorable Justice Myers (translated from a Hebrew translation of the order:

**‘An order is hereby given to remove the stay of proceedings order as requested in sections 1(a) and (b) of the supplementary notice to the motions of Mr. Gissin of January 5, 2018. Within the framework of this order and with Mr. Gissin’s consent, he and the plaintiffs in the two proceedings in Israel shall not carry out any act to enforce any order or judgment that will be given in their favor in Israel against Mr. Saskin without the approval of this court. At this stage, the approval that was given is intended solely to allow the proceedings to determine the validity of the plaintiffs’ claims and to quantify them. The question whether the enforcement of these claims will take place within the framework of an offer proceeding, a bankruptcy proceeding or otherwise remains undecided.’<sup>4</sup>**

- ‘2’ A copy of the decision of the court in Canada in English, and a convenience translation of the decision is attached hereto as **Annex 2**.
- ‘3’ A copy of the order removing the stay of proceedings order is attached hereto as **Annex 3**.
24. Accordingly, the functionary gave appropriate notices to the relevant courts in the aforesaid claims.
25. The honorable Justice Myers states in his decision that it appears that Mr. Saskin is living off family trust money and money of his spouse,<sup>5</sup> which at a later date may finance the arrangement offer that he will propose to his creditors, but this does not prevent the continued litigation of the aforesaid claims against him. The honorable Justice Myers also stated that there is currently no real undertaking of Mr. Saskin to inject money for the purpose of a debt arrangement with his creditors (our emphases);

‘(12) Mr. Saskin... it would appear that he is **living on family trust money and money of his wife, and from these sources, at least, he may finance at a later debt his offer**. However, **there is nothing that requires Mr. Saskin or the parties related to him to make an offer**. The other creditors are prepared to wait and see if within the framework of the CCAA proceeding Mr. Saskin or the parties related to

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<sup>4</sup> Section 19 of the decision of the court in Canada.

<sup>5</sup> It should be noted that the wife of Mr. Saskin is also one of the defendants in proceeding 46263-06-17 with respect to the breach of prospectus obligations.

him will receive money that they can use afterwards for the offer. They do not have significant other financial resources for collecting.

(13) Tarion claims that the other creditors should receive compensation for their consent to wait until Mr. Saskin will make his offer and because of the effect of the proceedings in Israel on the time and sources of his funding. Tarion claims that the prohibition on the bondholders filing a claim within the framework of the offer, after an insurance payout will be received is a fair “waiver” on their part. Moreover, the wait by all of them serves the common good. Tarion claims that the bondholders do not have a reason to rush to receive a judgment.

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The stay of proceedings order maintains equality between the creditors in that it allows transparency and all of them to participate in the proceeding for the improvement of its stages in order to protect the material rights of all the parties. **The best interests of the group will not be furthered if we wait for the debtor to say that he may consider making an offer of an undefined amount, which will come from an undefined source, on some date that will be chosen by him.** In the CCAA proceeding or in an offer proceeding, the debtor continues in accordance with permission that he received from the creditors. If the creditors are prepared to wait in a situation of an ‘offer in waiting,’ that is OK. However, if some of them have a reason to continue with the claim and they are interested in doing so, this is not fundamentally contrary to the purposes of the offer. Each offer should be supported by the required majority of the creditors. **If the creditors that hold proven claims are not satisfied with the proceeding, they are entitled to try to change it.’**

#### **D. Legal proceedings against third parties in the Edge Group**

26. As stated in previous update reports,<sup>6</sup> as a result of demands of the functionary and approval of the Creditors Committee in the Edge Group, Fuller Landau, the functionary that was appointed to manage the assets of the Edge group of companies (**‘the monitor of edge’**), agreed to conduct to legal proceedings against third parties on the following matters:
- 26.1 A demand from the tax authorities in Canada for a rebate of shareholders’ donation money that Mr. Saskin transferred directly for payments of VAT for residential units in the Edge project.
  - 26.2 The filing of legal proceedings against an unlawful transfer of residential units in the Edge project to private creditors of the controlling shareholder.
27. Accordingly, the monitor of Edge filed a motion with the Canadian court with respect to the rebate of VAT. This motion was denied on November 30, 2017, by the Canadian court on the basis of the determination that a payment to the tax authorities

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<sup>6</sup> Including update report no. 8.

will not constitute a creditor preference. According to advice from the functionary's Canadian attorneys, it was decided not to demand that an appeal should be filed on the decision.

'4' A copy of the decision of the Canadian court with respect to the payment of VAT dated November 24, 2017, is attached hereto as Annex 4.

28. With respect to the transfer of the units in the Edge project, a claim was filed against one of the creditors who received units for personal debts of Saskin, as a test case with respect to the ability to attack such transactions. On December 20, 2017, a decision was given by the Canadian court, according to which the claim was denied on the basis of the aforesaid specific creditor's ignorance of the existence of circumstances of insolvency. It was also held that the monitor of Edge in any case is not the appropriate party to the filing of the claim and that the claim should have been filed by someone who was a creditor of the Edge companies on the date when the transfers were made. Since the transfers that were the subject of the claim were made before the issue of the bonds, there is a doubt whether the company or the functionary could have initiated the filing of a direct claim for the transfer of these units.

'5' A copy of a decision of the Canadian court with respect to the transfer of the units of December 13, 2017, is attached hereto as Annex 5.

**E. Investigations and proceedings in Canada, which were initiated by the functionary with respect to the use of money of the Edge group of subsidiaries**

29. As stated in update report no. 12 of October 2, 2017, for several months legal proceedings have been taking place in Canada with respect to the request of the functionary to examine payments in a sum of approximately \$300 thousand that were made by the monitor of Edge to the firm of attorneys of Bennet Jones, which also serves as the personal attorney of Mr. Saskin. It will be recalled that the monitor of Edge serves separately also as trustee in the personal bankruptcy of Mr. Saskin.

30. Within the framework of the aforesaid proceedings, a report of the monitor of Edge was recently submitted with respect to most of the amounts that were paid to the attorneys as aforesaid. At the request of the functionary, the Canadian court ordered the firm of Bennet Jones to submit to the file of the Canadian court also the fee accounts on which the report of the monitor of Edge was based, up to the date on which the extension of time for the proceedings in the Edge Group will be heard, which is expected to be in April 2018.

'6' A copy of the decision of the Canadian Court of January 24, 2018, is attached hereto as Annex 6.

**F. Debt claim that was filed by a creditor of the companies of the group, for personal debts of Mr. Saskin**

31. On February 2, 2018, a report was filed by the monitor with the Canadian court ('the monitor's report'), with respect to a debt claim in a sum of approximately 2.3 million

Canadian dollars, which was filed against King Residential Inc. (**'King Residential'**) (a granddaughter company of the company, which is in a CCAA proceeding in Canada that is being litigated by the monitor), by Speedy Electrical Contractors Ltd. (**'Speedy'**). The basis for the aforesaid debt claim was a personal debt of Mr. Saskin in a sum of 1 million Canadian dollars. The debt claim also relates to services that were supposedly provided by Speedy to a subsidiary of the Edge Group (approximately 1.2 million Canadian dollars).<sup>7</sup>

32. Speedy's debt claim against King Residential is based on collateral that was registered on the assets of King Residential in favor of Speedy.<sup>8</sup>
  33. The monitor decides to reject Speedy's debt claim against King Residential, on the basis of the fact that it was not proved that King Residential received any consideration for the registration of the collateral.
  34. It is not superfluous to state that although according to the documents that were attached to the monitor's report, the collateral was registered in favor of Speedy already in November 2015, this fact was not stated in the prospectus that the company published in December 2015, on the basis of which the bonds were issued to the public in Israel.
  35. It can also be seen from the monitor's report that already in October 2015, before the issue of the bonds in Israel, the Urbancorp Group suffered from economic difficulties, a stoppage in the projects and cash flow difficulties, and *inter alia* the management of the group hired the services of an economic consultant in October 2015, for the purpose of providing consulting services and the possible making of a plan to deal with these difficulties.
  36. The functionary and his team are examining the information in the monitor's report and its implications regarding the liability of third parties for the damage of the company and/or the bondholders, with respect to the correctness of the information that was given in the issue prospectus and with respect to an improper recording of obligations in the books and on the assets of subsidiaries of the company, for personal debts of Mr. Saskin.
- '7'** A copy of the monitor's report of February 2, 2018, with respect to Speedy's debt claim is attached hereto as **Annex 7**.

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**Yael Hershkovitz, Adv.**  
**Attorney for the functionary**  
**of Urbancorp Inc.**

Today, February 18, 2018, Tel-Aviv

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<sup>7</sup> With respect to the aforesaid alleged services, an examination is being made by the functionary and his team; the monitor of Edge, who approved the aforesaid debt claim, was asked by the functionary to give clarifications regarding the aforesaid approval.

<sup>8</sup> 13 residential units and 13 stores.