

In the Tel-Aviv District Court

LC 44348-04-16

Application no. _____

Before the Honorable President, Justice E. Orenstein

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 Eisner Bel
Of the firm of Gissin & Co., Law Offices
Of 38B Habarzel Street, Tel-Aviv 69710
Telephone: 03-7467777; fax. 03-7467700

The functionary

And in the matter of: The Official Receiver

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

The Official Receiver

The Functionary's Update Report No. 16

Further to update report no. 15 that was filed with the honorable court on February 18, 2018 (application 58) (hereinafter referred to as "application 58"), the functionary is respectfully providing an update with regard to the results and/or status of the legal proceedings and action being taken in Canada; further anticipated distributions to the company's creditors from funds expected to be received from Canada; the lawsuit filed by the functionary in Canada against Canadian lawyers who acted for the company and the controlling shareholder, including at the time of the debenture issue; and an update in connection with the rights asserted by Mr Pechthold – in respect of the class action that he has filed, including against the company.

An update will also be provided in respect of staying the transfer of funds in accordance with the TCC arrangement (as defined below) as a result of the opposition filed by Mrs Doreen

Saskin, the wife of Mr Alan Saskin and together with him – the company's controlling shareholders. According to the notice sent by the proposal trustee of Mr Saskin in his personal bankruptcy proceedings, insofar as Mrs Saskin succeeds in her opposition and the transfer of the funds to the company pursuant to the arrangement is frustrated, those funds might be applied by Doreen Saskin in support of Mr Saskin's personal creditors arrangement in Canada.

A. **The Lawsuit Brought against the Company's Canadian Lawyers in the Canadian Court**

1. In accordance with the honourable court's approval of May 3, 2018, in a privileged application (application no. 59), on May 24, 2018 the functionary filed a lawsuit in the Ontario Superior Court of Justice against the Canadian law firm of Harris Scheafer LLP and Barry Rotenberg Esq., who was a member of the said firm and regularly headed the legal advice that was given to the company at the relevant times, as set out below ("the defendants").
2. The legal proceedings concern acts and omissions of the defendants who, according to the information in the possession of the functionary, provided legal services and advice to the company, including acting in Canada in respect of the state of the group's rights, for the purpose of the company's reorganisation and preparing and publishing the bond prospectus in Israel. At the same time the defendants also provided legal advice to the company's controlling shareholder, Mr Alan Saskin and companies under his control, **all in an apparent conflict of interest, with gross negligence and in breach of the duties of care and/or trust that the defendants owed both to the company and to the investor public in the Israeli capital market, who purchased the bonds.**
3. The defendants (whether on behalf of the company or as trustees for the funds of the company's transactions) acted in a series of transactions in which funds and assets of the company were transferred to the controlling shareholder or his creditors otherwise than in accordance with the law and not in accordance with the company's corporate documents.
4. These acts and omissions caused immense damages to the company and its bondholders on a scale that is estimated at tens of millions of Canadian dollars.
5. The lawsuit, which has been brought in accordance with the provisions of clauses 57, 58 and 64 of the company's creditors arrangement, was filed in court in Canada (unlike other proceedings that the functionary is taking in Israel) after consultation with the functionary's Canadian legal advisers, the official receiver and of course in accordance with the Israeli insolvency court's approval and having regard, inter alia, to the fact that the defendants' main acts were performed in respect of the trust of funds and assets in Canada; in accordance with opinions and legal advice pursuant to Canadian law because the alleged breaches of care and trust should be examined in light of Canadian

law; and in view of the anticipated need to take collection proceedings in Canada (after the application itself has been decided).

The statement of claim filed by the functionary on May 24, 2018 is annexed hereto as appendix 1.

B. Hearing the Arrangement in Respect of the Distribution of the TCC Bay Proceeds of Sale

6. As set out at length in previous update reports and in particular application 58,¹ the functionary and another material creditor of TCC/Urbancorp (Bay) Limited Partnership (hereinafter referred to as "TCC Bay"), a finance company called Terra Firma Capital Corporation ("TFCC") reached an understanding with regard to the distribution of the proceeds of sale of TCC Bay's assets, which were supposed to yield significant amounts in excess of C\$5.5 million for the creditors arrangement ("the TCC arrangement").
7. The TCC arrangement was subject firstly to approval by the Canadian court and then, to the approval of the Israeli court. The TCC arrangement includes a mutual exemption that will preclude lawsuits being brought against TFCC by the functionary on behalf of the company.
8. In the Canadian court there were no opponents to the TCC arrangement, except on behalf of Mrs Doreen Saskin, as a shareholder of DS Bay Holdings Inc ("DS Bay") which apparently holds capital rights in TCC Bay and should prima facie benefit from the proceeds of sale of TCC Bay's assets, insofar as the claims of the functionary and TFCC are dismissed.

The opposition to the TCC arrangement filed on behalf of TS Bay is annexed hereto as appendix 2.

9. The TCC arrangement should have been heard by the Canadian court on February 26, 2018 but on the application of Mrs Saskin's lawyer, as a result of a medical procedure that had been arranged for her, the hearing was adjourned until May 1, 2018.
10. Further to the hearing that was held on May 1, 2018 (which was also attended by the functionary's Israeli attorney), the Canadian court (his honour Judge Myers) held that in view of the opposition filed by DS Bay, before hearing the TCC arrangement's approval it was necessary for KSV Kofman Inc, which serves as the TCC Bay monitor ("the TCC monitor"), to consider and evaluate the proof of debt filed by the company

¹ In particular update report no. 8 of March 30, 2017 (application no. 36) ("update report no. 8"), update report no. 10 of June 25, 2017 (application 45), and update report no. 14 of January 1, 2017 (application no. 55).

and then, as a condition for approving the TCC arrangement, the TCC monitor should be a party thereto and actively support it.

His honour Judge Myers' decision of May 11, 2018 is annexed hereto as appendix 3.

11. In accordance with the decision of his honour Judge Myers the functionary filed an amended proof of debt with the TCC monitor. The amended proof of debt was approved by the monitor on May 23, 2018 in respect of the principal (C\$8 million).²

The amended proof of debt filed by the functionary is annexed hereto as appendix 4.

12. In the coming period the parties will consider whether to file the TCC arrangement again with the consent and support of the TCC monitor in such a way as will enable its approval by the Canadian court.
13. According to the notice of May 3, 2018 that was sent by Fuller Landau – the proposal trustee in the personal insolvency proceedings of Mr Saskin in Canada – to Mr Saskin's creditors, insofar as Mrs Doreen Saskin succeeds in frustrating the TCC arrangement and gaining receipts from TCC Bay, those receipts might be applied as a source to finance a proposed arrangement in Mr Saskin's personal insolvency proceedings.

A copy of Fuller Landau's letter of May 3, 2018 to Mr Saskin's personal creditors is annexed hereto as appendix 5.

C. **The Proof of Debt Filed against the Company's Subsidiary by a Creditor in Respect of Personal Debts of Mr Saskin**

14. As detailed in application 58, KSV Kofman Inc, the Canadian functionary appointed to administer most of the group's subsidiaries ("the monitor") filed an application in the Canadian court for the dismissal of a proof of debt of approximately C\$2.3 million that was filed against King Residential Inc ("King Residential") (a sub-subsidiary of the company, which is in CCAA proceedings in Canada under the management of the monitor), by Speedy Electrical Contractors Ltd ("Speedy"). The basis for the said proof of debt was a personal debt of C\$1 million of Mr Saskin. The proof of debt also refers to services ostensibly provided by Speedy to a subsidiary of the Edge group (approximately C\$1.2 million).
15. The Speedy proof of debt against King Residential is based on collateral registered against King Residential assets in favour of Speedy back in November 2015, which was not disclosed in the prospectus.³

² The proof of debt filed by the functionary has not yet been approved in respect of the interest and expense elements and they are subject to further review by the monitor.

³ 13 dwelling units and 13 parking spaces.

16. On May 11, 2018 his honour Judge Myers dismissed the monitor's application for the dismissal of the Speedy proof of debt on the basis of the fact that Mr Saskin's creditors, other than the bondholders, knew that he was the owner of the whole Urbancorp group and they could rely on obtaining collateral from another company of the group.

His honour Judge Myers' decision of May 11, 2018 in respect of the Speedy proof of debt is annexed hereto as appendix 6.

17. The monitor intends to file an application for leave to appeal the decision in the coming days.
18. The failure to give appropriate disclosure in respect of the provision of the collateral as aforesaid for the benefit of Speedy and in respect of the financial difficulties to which the controlling shareholder was subject that led to the provision of that collateral from the company's assets constitute one of the causes in the action brought by the functionary in Canada against the defendants, as set out in Section A and appendix 1 above of this report.

D. **Distributions Made by the Monitor**

19. As reported in previous update reports, and in particular report no. 8 of March 30, 2017, the monitor has kept reserves of more than C\$11 million in connection with proofs of debt that have been filed but not approved by him. A complete breakdown of the reserves that have been kept and of the status of the proceedings in respect of each one of the proofs can be found in paragraph no. 7 of section no. 3 of report no. 24 of the monitor of April 24, 2018 ("the monitor's report").

The monitor's report of April 24, 2018 is annexed hereto as appendix 7.

20. According to the monitor's report and further to the updates in this report, of the reserves an amount of approximately C\$4.6 million will be released, as a result of settlement agreements that have been made with employees of the group and the Toronto Housing Association (Tarion), and transferred to the functionary for the benefit of the company during May 2018. Another amount of approximately C\$380,000 is expected to be received in the coming months as a result of an agreement concerning the reduction of another proof of debt.
21. That amount will be added to another distribution that was made in December 2017 in the sum of approximately C\$750,000, which was applied to cover expenses and liabilities in Canada.

22. Of the reserves approximately C\$2.3 million is expected to be paid in order to settle the Speedy proof of debt as detailed in section C above insofar as the application for leave to appeal that the monitor is expected to file, as set out in paragraph 17 above, is not allowed.
23. The Tarion proof with regard to the delays in occupation, for which a reserve of more than C\$2 million has been kept, is fixed for hearing by the Canadian court on June 26, 2018.
24. Another proof of debt in dispute in the sum of approximately C\$4 million in respect of a guarantee provided for the benefit of an external project, which is not part of the insolvency proceedings that the monitor is conducting, is expected to be heard on completion of the sale of the houses in the project, probably not before the summer of 2018.

E. **Realisation of the Subsidiaries' Assets**

25. The realisation proceedings in respect of the housing units owned by Urbancorp Residential Inc and King Residential Inc have yielded net receipts totalling C\$5 million (see paragraph 3.5 of the monitor's report – appendix 7 above).
26. The functionary is maintaining regular contact with the monitor and together with him is considering possible action to continue realising the subsidiaries' assets, including holdings and rights of the company's subsidiaries in the Downsview project (the shareholders loans provided to it by the company from the bond issue proceeds are charged to the bondholders' trustee), the geothermal assets and the Kingsclub project.
27. As detailed in previous update reports and in the lawsuit filed by the functionary on December 6, 2017, there was a wealth of misleading particulars in the bond issue prospectus and duties of disclosure were breached in respect of those assets and the rights of the company and of companies under its control so that they cannot be expected to be realised in the values stated in the prospectus. As at the date of filing this report, the functionary cannot give an estimate of the likely value of those assets and rights.

F. **Review of an Application to Take Bankruptcy Proceedings in the Edge Group**

28. According to information received from Fuller Landau, the functionary appointed to administer the assets of Edge Group of companies ("the Edge monitor"), a distribution of the Edge Group's assets is not envisaged.
29. Accordingly, at the hearing with regard to the extension of the suspension of proceedings in the CCAA proceedings of the Edge Group on April 30, 2018, the

functionary gave notice, through his attorney to the Edge monitor and the Canadian court, that he was examining the possibility of taking bankruptcy and winding-up proceedings in the scope of the Edge Group proceedings, instead of the present arrangement proceedings (CCAA), insofar as he reaches the conclusion that such will promote a distribution to the Group's creditors.

I. **Pechthold's Application to Obtain the Status of a Secured Creditor**

30. On May 15, 2018 the court's decision was awarded in Pechthold's application for recognition as a secured creditor (application no. 56 in the case herein), providing that Mr Pechthold and the members of the group that he seeks to represent should not be recognised as secured creditors and it is inappropriate to assign for them funds that are designated for distribution to its secured creditors.
31. Mr Pechthold was also given time to file an application for an extension to file a proof of debt with the functionary until June 10, 2018 to enable the functionary to consider and decide it in accordance with the law. An application for an extension in which to file a proof of debt as aforesaid has not yet been made to the functionary.

The court's decision of May 15, 2018 in Pechthold's application is annexed hereto as appendix 8.

(Signed)

(Signed)

Guy Gissin, Adv.
The Functionary

Yael Hershkowitz, Adv
Attorney of the Urbancorp
Inc Functionary