

In the Tel-Aviv District Court

LC 44348-04-16

Motion no. ____

Before the honorable President E. Orenstin

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

The Companies Law

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

The Companies Ordinance

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

The company

**And in the matter of: Adv. Guy Gissin – functionary – trustee for the performance
of the creditors’ arrangement of the company**

By his attorneys, Advocates Yael Hershkovitz and/or Amir Paz
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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

Motion for Instructions

(Approval of the Making of a Settlement with Defendants in a Civil Action being litigated by the Functionary)

The honorable court is requested to exercise its authority and to give the functionary approval to enter into a settlement (hereinafter: ‘**settlement**’) with Terra Firma Capital Corporation (hereinafter: ‘**Terra Firma**’) and Mr. Dov Meyer, who held office as CEO of Terra Firma at the relevant time (hereinafter: ‘**Mr. Meyer**’), defendants 14-15 in an action being litigated by the functionary within the framework of CC (Econ.) 12055-12-17 *Gissin v. Saskin* (hereinafter: ‘**the civil action**’).

- A copy of the settlement between the functionary and Terra Firma and Meyer and the Canadian monitor, which was signed by Terra Firma, Mr. Meyer and the Canadian monitor, is attached and marked as **Annex 1**.

Insofar as the functionary will receive approval to sign the settlement, it will be filed for the approval of the insolvency court in Canada, and after its approval, it will be filed for the approval of the Economic Court (the honorable Justice Kabub), who is hearing the civil action.

As we shall see below, this is a settlement that reduces the scope of the lengthy and complex litigation that the functionary is conducting, with a saving of legal expenses, and increases the account of the creditors’ arrangement by a sum of approximately 7 million Canadian dollars

and additional creditors' rights against Mr. Saskin within the framework of his personal insolvency proceedings.

The following are the grounds of the motion

A. Factual background

1. Since the appointment of the functionary, the functionary has acted in order to trace the company's assets in Israel and Canada and has acted to investigate the circumstances of its collapse.
2. As a part of the functionary's operations, he filed two civil actions in Israel,¹ one against the controlling owners of the company and the other against a series of gatekeepers (the underwriter of the issuance, the auditors, the rating company, the appraisers of some of the company's assets) and additional parties that are related to the events set out in the Statement of Claim.
3. As of September 5, 2018, the two actions were consolidated into one proceeding that as of this time is being heard by the honorable Justice Khaled Kabub (the civil action).
4. As is well known, apart from the insolvency proceeding that is taking place in this honorable court and the civil action, there are insolvency proceedings of subsidiaries of the company in the court in Canada.
5. Within the framework of the insolvency proceedings of the subsidiaries in Canada, and as a result of the functionary's demands, on June 15, 2018, the Canadian functionary (hereinafter: **'the Canadian monitor'**) filed a motion in which he petitioned to receive approval to supply the plaintiff with documents that the plaintiff requested for the purpose of continuing the investigation of the circumstances in which the company collapsed (hereinafter: **'the discovery proceedings in Canada'**).
6. On June 26, 2018, the court in Canada gave its decision, in which it granted in part the Canadian monitor's motion and allowed the functionary access to information and documents that he needed in order to continue investigating the circumstances of the company's collapse, except for a list of documents with regard to which Mr. Saskin claimed there was privilege and/or that they were irrelevant to the company's business.
7. After the decision was made, the documents whose transfer was permitted were transferred to the functionary at the end of August 2018, and at the beginning of September, pursuant to an agreement that was made with Mr. Saskin's attorneys to limit the claims of privilege, most of the remaining documents were also transferred to the functionary.
8. Among the documents that were transferred to the functionary as a result of the discovery proceedings in Canada, the functionary was exposed to many documents and considerable correspondence that connected Terra Firma and Mr. Meyer to the events described in the Statement of Claim that was filed.

¹ In addition, a claim was filed by the functionary in Canada against the Canadian attorneys that represented the company, claiming negligence and acting with a conflict of interests.

9. Consequently, on August 26, 2018, the plaintiff sent a letter to Mr. Meyer, in which the plaintiff summoned Mr. Meyer to an interrogation at his office, in order to confront him with the new facts and documents that had been revealed to him, in an attempt to receive information and make an informed decision as to how to continue to act in view of the information that was revealed (hereinafter: **‘the invitation letter’**).

 - A copy of the summons letter that was sent to Mr. Meyer is attached and marked as **Annex 2**.

10. In response to the summons letter, the attorney of Terra Firma and Mr. Meyer, Adv. Yaakov Spiegelman, replied that he gave approval that Mr. Meyer would attend at the plaintiff’s offices for interrogation.

 - A copy of the reply of the attorney of Terra Firma and Mr. Meyer to the summons letter is attached and marked as **Annex 3**.

11. After carrying out the interrogation and analyzing the information that had come into his possession, the functionary reached the conclusion that there was a basis to joint Terra Firma and Mr. Meyer to the action as additional defendants, on the basis of the findings of the investigation and the documents that were revealed to him, and on the basis of their involvement in the issuance proceedings and the acts and decisions of the controlling owner. Consequently, on October 3, 2018, the functionary filed a motion to amend the Statement of Claim and to add defendants, in which he petitioned as aforesaid to join Terra Firma and Mr. Meyer to the action as additional defendants (hereinafter: **‘the Motion to Amend’**).

 - A copy of the Motion to Amend the Statement of Claim and to Join Defendants without its annexes is attached and marked as **Annex 4**.

12. On October 29, 2018 (after none of the defendants opposed the Motion to Amend), on October 29, 2018, a decision was made to grant the Motion to Amend, in which it was determined, *inter alia*, that the functionary’s claims against Terra Firma and Mr. Meyer are claims that merit consideration and will help to discover all of the relevant facts and the questions in dispute, as follows:

‘After I have examined the plaintiff’s claims in the Motion to Amend, I believe that *prima facie* the claims against the additional defendants – Terra Firma and Meyer – are claims whose consideration can help clarify all the relevant facts and the questions in dispute between the litigants in the case regarding the publication of a misleading item in the company’s prospectus, and therefore they should be examined by the court.’

 - A copy of the decision in the Motion to Amend is attached and marked as **Annex 5**.

13. While dealing with and considering the issue of service of the Statement of Claim on Terra Firma and Meyer, and before they filed a statement of defense, settlement discussions were held between the functionary and the attorneys of Terra Firma and

Mr. Meyer, in order to examine the possibility of resolving the disputes between the parties out of court without any need for litigating a legal proceeding.

14. After lengthy discussions between the parties, the parties reached consents that are expected to result in the resolution of the legal disputes between the parties. This arrangement includes significant amounts for the arrangement account in a sum of approximately 7 million Canadian dollars. The arrangement leads to a saving in litigation expenses in Israel and Canada and also gives the company creditor rights within the framework of the personal insolvency proceedings of Mr. Saskin.

B. The benefit to the arrangement account and the amounts that are expected to be received within the framework of the settlement

15. At the outset, it should be stated that the settlement that is attached hereto (Annex 1 above), into which the honorable court is being requested to order the functionary to enter, includes a mutual waiver of the claims of the parties against each other. According to the provisions of the settlement (section 10), **the waiver of the claims only applies between the functionary and Terra Firma and Mr. Meyer, and it does not release or exempt any of the additional defendants and/or any other person and/or entity.**
16. **This agreement makes it unnecessary to litigate a lengthy, complex and expensive legal proceeding, saves the account of the creditors' arrangement considerable resources, on the one hand, and brings in amounts in a sum of approximately 7 million Canadian dollars, on the other.**
17. The consideration from the settlement is being paid by way of an assignment of rights of claim to the functionary from Terra Firma in the insolvency proceedings of a subsidiary of the company (TCC Bay) and in the bankruptcy proceeding of Mr. Alan Saskin, as follows:
- a. Terra Firma will assign to the arrangement account its rights pursuant to a debt claim **that is secured by a charge**, which was filed in the insolvency proceeding of the company TCC Bay, in an amount of approximately 5.6 million Canadian dollars. This is a secured debt claim, which insofar as it will be accepted, will be paid with priority over any payment to the unsecured creditors of that company, including the company.
 - b. Within the framework of the settlement, **the secured debt claim will also be approved** and an irrevocable instruction is being included to the Canadian monitor to pay all the amounts that will be received by virtue thereof, directly into the account of the creditors' arrangement, immediately upon approval of the settlement by the Canadian court and the court in Israel.
 - c. Within the framework of the attached settlement, which the Canadian monitor approved with his signature, it is also agreed that the balance of the money in the account of TCC Bay for the company's account will be used in order to pay the balance of the (unsecured) debt claim, which was approved for the company

within the framework of these proceedings, in a sum of approximately 1.4 million Canadian dollars.

- d. In addition, Terra Firma will assign to the settlement account all of its rights pursuant to the debt claim that it filed in the bankruptcy proceeding of Mr. Alan Saskin, in a sum of approximately 17 million Canadian dollars. The debt claim, which is based mainly on personal guarantees that Mr. Saskin gave in favor of Terra Firma, was recognized by the Proposal Trustee within the framework of the personal insolvency proceedings of Mr. Saskin.

However, the precise amount of the approved claim within the framework of the aforesaid debt claim has not yet been determined, since a part of it is conditional upon certain amounts that are expected to be deducted from it, in accordance with the amounts that will be received *de facto* by Terra Firma, as a result of insolvency proceedings for one of the other assets of Mr. Saskin (which are not a part of the company's group). In the estimation of the functionary's adviser in Canada, even after these amounts will be received by Terra Firma and will be deducted from the debt claim against Mr. Saskin (by virtue of the guarantee that he gave for the debts of companies controlled by him), the debt claim against Mr. Saskin is expected to remain on a scale of several million Canadian dollars.

18. The assignment of the rights by virtue of the debt claim against Mr. Saskin personally will give the functionary and the account of the creditors' arrangement, in addition to the possibility of participating in a repayment that will be received within the framework of those proceedings, also an ability to vote and have influence within the framework of the personal insolvency proceedings of Mr. Saskin.

As will be recalled, the functionary filed a debt claim on behalf of the company and the account of the creditors' arrangement in the personal insolvency proceedings of Saskin, but in the absence of a direct debt or guarantee of Mr. Saskin to the company or its creditors, this is a debt claim that is conditional upon obtaining a judgment against Mr. Saskin within the framework of the civil action. Consequently, the existing debt claim does not give the functionary an ability to have any influence or vote in the personal insolvency proceedings. Upon the assignment of the debt claim of Terra Firma in favor of the functionary, the functionary intends to act to move forward with the personal insolvency proceedings of Mr. Saskin, and within the framework thereof, also to demand an investigation and examination of financial transactions and transfers of assets between companies controlled by Mr. Saskin and his family members or his creditors, prior to the collapse of the Urbancorp Group.

19. At the same time, the functionary will also continue as aforesaid to litigate the civil action against the additional defendants that remain in it.

Insofar as it will be determined in the judgment that any of the other defendants that will be found liable to compensate the account of the creditors' arrangement within the framework of the civil action is entitled to a contribution or indemnification from Terra Firma and/or Dov Meyer, the functionary will reduce the amount that will be collected from that party by an appropriate amount, in a manner in which Terra Firma and Meyer

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