

In the Tel Aviv District Court

LF 44348-04-16
Application No. 61
Before His Honor the President
Judge Eitan Orenstein

In re: **The Companies Law, 1999**

the Law

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

the Company

and in re: **Adv. Guy Gissin, the Company's Functionary**

by his attorneys, Adv. _____ from Gissin & Co., Law Offices, of
38B Habarzel Street, Tel Aviv 69710, Tel. 03-7467777, Fax. 03-7467700

the Functionary

and in re: **Reznik, Paz, Nevo Trusts Ltd**

the trustee for the series "A" bondholders
by his attorneys from Amir, Flamer & Co., Law Offices, of 7 Massada
Street (B.S.R. Tower), Bnei Brak, Tel. 03-3730630, Fax. 03-3730650

the Trustee

and in re: **Apex Issuances Ltd**

by its attorneys, Erdinast, Ben-Nathan, Toledano & Co., Law Offices, of
4 Berkowitz Street, Tel Aviv 6423806, Tel. 03-7770111, Fax. 03-
7770101

Apex

and in re: **Tuvia Pechthold**

by his attorneys, Weksler, Bregman & Co., Law Offices
of 3 Yehuda Halevy Street, Discount Tower, Tel Aviv 65136, Tel. 03-
5119393, Fax. 03-5119394

Pechthold

and in re: **The Official Receiver - Corporation Division**

by its attorney, Adv. Gali Atron, of 2 Hashlosa Street, Tel Aviv 61090,
Tel. 03-6899695, Fax. 02-6462502

The Official Receiver

**Supplementary Position of the Official Receiver
on the Application for Approval of Another Interim Dividend**

In accordance with the decisions of the Honorable Court of August 29, 2018 and October 23, 2018, the Official Receiver is respectfully filing its supplementary position on the above application, as follows:

1. After approval and execution of the additional interim dividend that was requested to the **secured** creditors, a dispute remained regarding the Functionary's request for a distribution in a sum of approx. **NIS 4 million** that are attributed to the **unsecured assets (and hence creditors)**¹, with respect to the need to keep reserves in the Functionary's fund for the purpose of "conditional claims" of unsecured creditors, and the proper amount of these reserves.
2. As detailed below, the Official Receiver believes that his proposal as expressed in his position of August 1, 2018 in the framework of this application fits all the considerations and circumstances also in view of that stated in the additional replies filed in the framework of the application (see the details of the pleadings on pages 1-7 of the Functionary's answer of October 8, 2018), including the notice on behalf of the Trustee of October 23, 2018.
3. As noted in our aforesaid position, the Official Receiver believes that a certain amount should be kept from the current distribution for the purpose of the "conditional claims": Pechthold's claim and Apex's appeal (as defined in our position); and contrary to that stated in paragraph 24 of the Functionary's answer - the Official Receiver does not believe that one can settle for "additional distributions are expected in this case" in order to do away with the need for this.
4. We also detailed several reasons justifying in our opinion leaving only a partial amount, that does not reflect the full pro rata share of the conditional claims in the framework of the amounts paid to the unsecured creditors, regardless of the **chances of the conditional claims** - that the Official Receiver does not believe should be reviewed in the framework of this application.

¹ See the Functionary's clarifications in Chapter F. of report no. 18 on behalf of the Functionary and revision of the distribution application.

5. In addition, we noted that in our opinion the "practical solution" proposed in Apex's answer of July 31, 2018 is totally undesirable, and all the more so in these circumstances.
6. In light of all the considerations and data in the case, we proposed leaving for the benefit of Apex and the Pechthold group **as one, at this time**, an overall reserve in a sum of **NIS 700,000**, and we noted that on the receipt of additional amounts it would be possible to review the said amount, in light of the circumstances at such time.
7. In Pechthold's reply of August 23, 2018 it was pleaded *inter alia* with regard to considerations justifying, in our opinion, not leaving as a reserve the full pro rata share of the Pechthold claim -
 - that it seems that even the other defendants who were sued are unable to afford compensation for the damages claimed;
 - and that insofar as some of the holders included in the "Pechthold group" are not interested in the assignment of monies for them - a formal resolution on this matter was not passed by them; and insofar as passed, and at the end of the day there is not enough monies in the fund, the former holders can plead priority with regard to these monies. (It is noted that in Pechthold's appeal against the decision of the Functionary in the debt claim filed in MCA 45140-10-18, an opinion of Prof. Barnea was annexed, to the effect that the assessment of the damage occasioned to the "former holders" is in a sum of NIS 14 million.
8. In the Trustee's reply of August 16, 2018 it was argued that the Trustee is entitled to increase his approved debt to creditors (amounting to an overall sum of NIS 186,053,675) by an additional sum of NIS 40,604,168 correct as at that date, in respect of consensual interest that had accrued to his credit in respect of his debt to the secured creditors from the date of the appointment order. On October 23, 2018, the Trustee gave notice that he had filed an appeal against the debt decision of the Functionary which did not recognize his debt to creditors in this additional amount, and that suitable amounts should be kept in the Functionary's fund for the purpose of the appeal.
9. A revised calculation of the distribution of the debt to creditors in the case, based on the calculation made in paragraphs 26-29 of our position above, results in the maximum amount that should be left for the benefit of the "Pechthold claim" being approx. **NIS 1 million**², as a result of the increase in the amount of the debt to the **unsecured** creditors alleged by the Trustee.

² Pursuant to the provisions of paragraph 28 of report no. 18 on behalf of the Functionary and the distribution application revision, the sum of the dividend distributed to the secured creditor at this time is approx. NIS 97.6 million. Pursuant to the overall debt to secured creditors alleged by the Trustee, NIS 226,657,843,

[In such context it is noted that the pleas in the Trustee's appeal regarding default interest accrued after the commencement of these proceedings are - of course - in his capacity as a secured creditor only, and accordingly *prima facie* they are not relevant to distribution under discussion that is intended for the unsecured creditors. Nonetheless, since according to the appeal pleas one should credit the amounts paid to the Trustee as a secured creditor - first to payments of the interest and only thereafter to payments of the principal, according to the Trustee's method another debt balance in the full amount of the appeal is "squeezed" - and added to the unpaid debt balance, and hence constitutes (at this time) debt to unsecured creditors.]

10. Moreover, as aforesaid, in our opinion it is still necessary to leave for the benefit of the Apex and Pechthold claims jointly a sum of approx. **NIS 700,000**, and we see no room to withhold any monies for the Trustee.
11. Just like there are, in our opinion, weighty considerations not to leave the full pro rata share of the Apex and Pechthold claims for their benefit (as detailed in our aforesaid position), there are also, in our opinion, weighty considerations not to attribute the full pro rata share of the Trustee, which includes the above appeal pleas, when calculating the amounts that should be left for the benefit of all the "conditional claims", regardless of the chances of the appeal.
12. Thus, in light of the Trustee's share even without the debt to creditors pleaded on appeal, which constitutes the absolute majority of the debt to creditors in the case, considerations of **dispersal of the damage** that we raised in relation to the Pechthold and Apex claims are even more valid in relation to the Trustee's appeal; including having regard to the additional amounts that are expected to be received, as noted by the Functionary in his last update reports³; and having regard to the claims filed by the Functionary in the name of the creditors fund.
13. In addition, just like we believed in relation to the Apex claim that one should consider the **substance of the alleged debt to creditors**, this is also the case in relation to the substance of the Trustee's appeal.

the Trustee has a debt to creditors that has not yet been paid in a sum of approx. **NIS 129 million**. With the addition of the said sum to the amount claimed in the Pechthold claim (NIS 43 million), the ordinary debt to creditors amounts to a sum of NIS 172 million, that does not include the unknown amount in respect of which Apex's appeal is pending.

The amount that the Functionary is applying to distribute to unsecured creditors - a sum of approx. NIS 4 million, therefore constitutes approx. 2.3% of the debt to the unsecured creditors correct as at today. It emerges from this that the maximum amount that should be left for the benefit of the "Pechthold claim" is 2.3% of the amount of the claim, that is to say, approx. NIS 1 million (in a calculation that we made without including the Trustee's pleas on appeal a sum of NIS 1.3 million was obtained).

³ Report no. 18 of July 30, 2018 in the framework of application no. 65; report no. 19 of October 7, 2018 in the framework of application no. 76; report no. 20 of October 23, 2018 in the framework of application no. 77.

With regard to the Official Receiver it is believed that even if in these circumstances it is ultimately ruled that the Trustee is entitled to all the alleged consensual interest, **substantively**, when dealing with collective insolvency proceedings in general, and collective proceedings instituted on the initiative and under the leadership of the secured creditor in particular - the status of default interest - "... (that continues to accrue) at a rate of 11.65% ... until the date of payment of the full debt" (beginning of the Trustee's appeal) - is not like the status of the Trustee's debt to creditors that was recognized by the Functionary - that includes the debt principal and also the interest accruing to the date of commencing the collective proceedings.

The aforesaid is noted especially in view of the fact that the collective nature of these proceedings finds expression primarily in relation to those conditional claims for which this application deals with designating certain reserves; and from a "collective" overall glance, it seems that the Trustee's plea that these few reserves should be limited against the background of pleas of default interest that is continuing to accrue to his credit after the date of the proceedings' commencement, is seeking to derogate from "the poor man's lamb" (single prized possession).

14. In the alternative, even though as noted by the Functionary in paragraph 46 of his reply of August 21, 2018 - any delay in distribution of the monies in the case hurts first and foremost the bondholders, and since the Trustee is any event applying to reserve monies in the Functionary's fund for his appeal, it can be determined that in light of the fact that the sum of the "conditional claims" has grown in view of the Trustee's appeal by an additional amount of NIS 40,604,168, which virtually multiplies the known overall amount of the conditional claims⁴, there is room to respectively multiply the sum earmarked **for all of them** (Apex, Pechthold and the Trustee) - **jointly and severally - to NIS 1.4 million.**

(Signed)

Gali Atron, Adv.
Corporation Division
The Official Receiver

⁴ By adding the amount claimed in Pechthold's claim - NIS 43 million, and in the absence of data with regard to Apex's claim.

[Emblem]
The Financial Division of the Tel Aviv-Jaffa District Court

CF 12055-12-17 Gissin v. Saskin *et al*

External case:

Before His Honor Judge Khaled Kabub, Deputy President

Plaintiffs: **Adv. Guy Gissin, the trustee's functionary for implementation of the creditors arrangement for Urbancorp Inc.**

by his attorneys, Guy Gissin & Co., Law Offices, 38(B) Habarzel Street,
Tel Aviv-Jaffa 6971054, Tel. 03-7467777, Fax. 03-7467700

- against -

Defendants:

- 1. Alan Saskin**
- 2. Phillip Gales**

by their attorneys, Advs. Boaz Ben Zur and/or Tomer Shikarchy,
of 4 Berkowitz Street (Museum Tower), Tel Aviv-Jaffa 6423806,
Tel. 03-6075001, Fax. 03-6075029

- 3. Deloitte, Brightman, Almagor, Zohar**

by its attorneys, Fischer, Behar, Chen, Well, Orion & Co., Law
Offices, of 3 Daniel Frisch Street, Tel Aviv-Jaffa, Tel. 03-
6944111, Fax. 03-6091116

- 4. Apex Issuances Ltd**

by its attorneys, Erdinast, Ben-Nathan, Toledano & Co., Law
Offices, of 4 Berkowitz Street (Museum Tower), Tel Aviv-Jaffa
6423806, Tel. 03-777011, Fax. 03-7770101

- 5. Midroog Ltd**

by its attorneys, Adv. Agmon & Co. Rosenberg Hacoheh & Co.,
Law Offices, of 98 Yigal Alon Street (Electra Building), Tel. 03-
6078607, Fax. 03-6078666

and by its attorneys from Yoram Samuel & Co., Law Firm, of 155
Yigal Alon Street, Tel Aviv-Jaffa 6744363, Tel. 03-6858216, Fax.
03-68575333

6. Janterra Real Estate Advisors Inc.

by its attorneys, Lipa Meir & Co., Law Offices, 2 Weizmann Street (Amot Mishpat House), Tel Aviv-Jaffa 6423902, Tel. 03-6070600, Fax. 03-6070666

7. AIG Europe Limited

8. AIG Europe (Services) Limited

the Seventh to Eighth Defendants by their attorneys, S. Horowitz & Co., Law Offices, 31 Ahad Ha'am Street, Tel Aviv-Jaffa 6520204, Tel. 03-5670700, Fax. 03-5660974

9. TCC/Urbancorp Bay Stadium LP

10. The Webster Trust

11. Urbancorp Management Inc.

12. Urbancorp Holdco Inc.

the Ninth to Twelfth Defendants by their attorneys, Bar-Kahan, Zigenlaub & Co., Law Offices, of 5 Azrieli, Floor 25, Tel Aviv-Jaffa, Tel. 03-6962999, Fax. 03-6966191

13. Doreen Saskin

by her attorneys, Goldfarb, Seligman & Co., Law Offices, of 98 Yigal Alon Street, Tel Aviv-Jaffa, Tel. 03-7101616, Fax. 03-7101617

Decision

1. Before me is an application for amendment of a statement of claim in accordance with section 92 of the Civil Procedure Rules, 1984 (hereinafter - the "**Rules**"), and alternative for the joining of defendants in accordance with section 22 of the Rules (hereinafter - the "**amendment application**").
2. In the amendment application the Plaintiff is petitioning for amendment of the later statement of claim that was filed by him on September 6, 2018 such that the principal proceedings will be joined by two additional defendants: Terra Firma Capital Corporation (hereinafter ("**Terra Firma**"), a public company registered and traded in Canada which according to the Plaintiff was, in the period relevant to the statement of claim, the main backer of Urbancorp Inc. (hereinafter - the "**Company**"), and Mr. Dov Meyer, who served as CEO of Terra Firma in the period relevant to the statement of claim (hereinafter - "**Meyer**").

3. According to the Plaintiff during the months of August and September 2018 he received new documents in the framework of discovery proceedings as part of legal proceedings that were being conducted in a Canadian court in connection with insolvency proceedings of companies from the Urbancorp group. In the meantime, a vast amount of correspondence was received that according to the Plaintiff is such as to attest, *inter alia*, to the involvement of Terra Firma and of Meyer in the events the subject of this claim - the process of issuing the bonds and drawing up the prospectus by the Company.

The Plaintiff details that from the aforesaid correspondence it emerges that in addition to their capacity as backers of the Company, Terra Firma and Meyer were in direct contact with the professional entities backing the issue from both inside and outside the Company. In addition, it is pleaded that they were involved in the Company's routine conduct, including the Company's performance of obligations included in the issue prospectus, and they even advised and instructed various officers how they should act.

In light of the aforesaid, the Plaintiff is pleading that Terra Firma and Meyer are jointly liable for the misleading details that were included in the issue prospectus, since they should be considered as having actually served as controlling shareholders or directors of the Company, and alternatively, for the reason that they bear tort liability for a breach of the obligations included in the prospectus, by virtue of the wrong of causation of a breach of contract pursuant to section 62(a) of the Civil Wrongs Ordinance [New Version].

4. The amendment application was brought for the reply of the other Defendants in the case. The date for filing the replies has long passed. The Third to Eighth Defendants, which deemed fit to file a reply, did not express any objection to the joining of the defendants.
5. Having regard to the circumstances of this case, I deemed it correct to approve the amendment application as requested there.

As detailed in the amendment application, the amendment of the statement of claim is necessary due to the discovery of documents to which the Plaintiff was recently exposed. The documents reached the Plaintiff in the course of the last two months in the framework of legal proceedings in Canada. These documents had not yet been reviewed, and some of them had still not reached the Plaintiff, when he filed his later statement of claim in the case.

In addition thereto, the amendment application was filed after the Plaintiff summoned Meyer to an investigation at his firm on August 30, 2018 with the object of obtaining additional information regarding those new documents that he discovered and after the Plaintiff had carried out an investigation and analysis of the information. This investigation led the Plaintiff to the conclusion that the statement of claim filed by him should be amended.

6. After reviewing the Plaintiff's pleas in the amendment application, I believe that *ex facie* the pleas against the additional defendants - Terra Firma and Meyer - are pleas the clarification of which would assist in full disclosure of the relevant facts and the disputed questions between the litigants in the case regarding publication of a misleading detail in the Company's prospectus; accordingly, they should be clarified before the Court.
7. In addition thereto, I deem it fit to note the preliminary stage of the proceedings, before the filing of statements of defense by any of the Defendants and in any event before the commencement of the action's hearing.
8. Accordingly, in light of the fact that we are dealing with pleas that should be clarified, having regard to the fact that the application was filed without delay and at a very preliminary stage of the proceedings and in the absence of any objection on the part of the parties, I am ordering amendment of the statement of claim as requested.
9. An amended statement of claim should be filed by the Plaintiff within 14 days from today.

There is no order for costs.

Given today, October 29, 2018, in the absence of the parties.

(Signed)

Khaled Kabub, Judge, Deputy President