

Tel Aviv-Jaffa District Court

LF 44348-04-16

Application no. ____

Before His Honor President E. Orenstein

In re: The Companies Law, 1999

Companies Law

and in re: The Companies Ordinance [New Version], 1983

Companies Ordinance

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

Company

and in re: Adv. Guy Gissin - Functionary, trustee for implementation of the Company's creditors arrangement

by his attorneys, Adv. Yael HersHKovitz and/or Gal Lugasy Spira, of Gissin & Co., Law Offices, 38B Habarzel Street, Tel Aviv 69710, Tel. 03-7467777, Fax. 03-7467700

Functionary

and in re: The Official Receiver

of 2 Hashlosha Street, Tel Aviv, Tel. 03-6899695, Fax. 02-6467558

Official Receiver

Update Report No. 21 on behalf of the Functionary

Further to previous update reports, the Functionary is applying to update the Honorable Court with respect to the following matters:

A. Legal proceedings in Canada

1. Claim against Harris Sheaffer - on January 8, 2019 a defense was filed with the Functionary on behalf of the firm of Harris Sheaffer and Adv. Barry Rotenberg, in relation to a claim filed against them in Canada by the Functionary, as provided in update report no. 16 on behalf of the Functionary of May 28, 2018 (application no. 60).

2. Annexed to the defense was a third party notice against the firm of Shimonov & Co. and lawyers from this firm (hereinafter - "**Shimonov**"), and against Apex Underwriting Ltd (hereinafter - "**Apex**"), which provided services to the Company at the time of the bonds' issue.
3. In the third party notice against Shimonov and Apex, it is pleaded, *inter alia* (paragraphs 79-83), as follows:

"79. The Bondholders did not read the Prospectus. Rather they relied upon Apex and Shimonov who drafted and created the Prospectus and were responsible for its contents. Shimonov and Apex knew the true state of the UCI financed; it was insolvent. They also knew UCI needed the Bond Raise proceeds to carry on its business. Thus the Bondholders and UCI closed with this knowledge.

80. Approximately 2 weeks prior to the scheduled completion of the underwriting, Shimonov and Apex requested that the transaction be changed. Particularly"

- i. The Urbancorp projects: Patricia, Lawrence, Caledonia, Mallow and Downsview would be designated as "Backup Projects".
- ii. The proceeds of the underwriting would be utilized to repay all existing charges owing by Urbancorp entities on the Backup Projects and a restriction would be placed on Urbancorp remortgaging or borrowing against those properties. It could remortgage when it was in a position to commence construction of the 4 Backup Projects other than Downsview.
- iii. All of these Backup Projects, excepts Downsview were at least 2 years away from being developed. Since the Bond Raise proceeds were being utilized to repay the existing mortgages and Urbancorp could not remortgage them, these restrictions effectively cut off all cash flow to Urbancorp, ensuring Urbancorp's insolvency as it was unable to meet its debts as they came due on projects including the 5 Backup Projects.

81. Apex and Shimonov knew that all Urbancorp's projects had been a single basket of assets and liabilities with no internal restrictions on cross-collateralizing in order to raise money to keep the operations going. This was changed. These changes ensured the bonds would go onto default.

82. Accordingly, Apex and Shimonov knowingly caused Urbancorp to be insolvent immediately upon the Bond issue being completed. Thus the defendants are not responsible for any loss the plaintiff may have suffered."

A copy of the defense and third party notice is annexed hereto as **appendix 1**.

4. Edge Group liquidation proceedings - on November 28, 2018, the Canadian court allowed the application of the Edge monitor, in accordance with the Functionary's demand, to institute liquidation proceedings in relation to two companies in the Edge Group (instead of the CCAA arrangement proceedings in which they had been involved since 2016), and in this framework to cancel charges by operation of law that were registered in favor of three creditors, which would henceforth be classified with the same status as the other unsecured creditors of these companies.
5. In the assessment of the Functionary's advisors, the decision would lead to a significant improvement in the repayment percentage of the unsecured creditors of the Edge Group, including the Company.

A copy of the Canadian court's decision is annexed hereto as **appendix 2**.

6. The creditors the charges in favor of which were cancelled filed an application for leave to appeal the aforesaid decision, which has not yet been decided.
7. Proceedings in relation to the Downsview project - the Functionary and the Canadian monitor are currently involved in formulating pleadings against Mattamy, the partner of the subsidiary in the Downsview project, in relation to a right to material amounts of more than CAD 20 million, that, in the opinion of the Functionary and the monitor, are due to the subsidiary from the project. As is recalled, the Downsview project is one of the five "backing projects" for the Company's bonds¹, in favor of which owner's loans were transferred from the issue monies.

B. Legal proceedings in Israel

8. Application for approval of an interim distribution to the Company's creditors (applications nos. 61 and 65) - on June 19, 2018 the Functionary filed update report no. 17 and an application for approval of an interim distribution to the Company's creditors (application no. 16). Subsequently, on July 30, 2018, update report no. 18 was filed that included an update of the distribution application such that application was made for a distribution to the secured creditors of a sum of approx. NIS 21.6 million and to the unsecured creditors in a sum of approx.

¹ The other four backing projects were sold awhile ago.

NIS 4 million (application no. 65). On August 1, 2018 the Official Receiver's reply to the application was filed, and on that same day the Honorable Court approved the distribution to the secured creditors only.

9. Replies were filed to the aforesaid distribution application of the trustee for the series "A" bondholders of the Company, Apex and Mr. Tuvia Pechthold (hereinafter respectively - the "**trustee**" and "**Pechthold**"), which pleaded that amounts should be earmarked from the monies designated for distribution to the unsecured creditors, in favor of the various proceedings pending with respect to them. On October 8, 2018 the Functionary filed his answer to the replies of Apex and Pechthold, and on November 1, 2018 the Official Receiver filed his supplementary position, in which he noted that in his opinion only NIS 700,000 should be earmarked in favor of the Pechthold and Apex claims, while for the trustee the Official Receiver did not see any room to withhold monies.
10. In his decision of December 4, 2018, the Honorable Court ordered those objecting to the distribution application to denominate an amount they wished to withhold, given the damage that could be caused to those entitled to receive the withheld money. Recently, the trustee, Apex and Pechthold have filed their supplementary positions in consequence of the aforesaid decision and the distribution application with respect to the unsecured creditors is accordingly awaiting the Honorable Court's decision.
11. Appeal on behalf of the trustee for the bondholders, in connection with his claim to apply consensual interest to his debt claim, in respect of the period after the date of the Functionary's appointment - on October 22, 2018, the trustee for the bondholders filed an appeal against the Functionary's supplementary decision in the debt claim on behalf of the trustee, with regard to his entitlement to consensual interest after the date of the order and until the debt's full repayment²; on November 21, 2018 the Functionary filed his answer to the appeal and on January 9, 2019 the trustee filed his reply to the Functionary's answer - this appeal, accordingly, is still pending before the Honorable Court.
12. Appeal on behalf of Pechthold against the Functionary's decision in the debt claim - on October 18, 2018 Pechthold filed an appeal against the Functionary's decision in the conditional debt claim on his behalf³; on November 25, 2018 the Functionary filed his answer to the appeal and on December 30, 2018 Pechthold filed his reply to the Functionary's answer - this appeal, accordingly, is still pending before the Honorable Court.
13. Negotiations for a settlement arrangement - the Functionary is conducting negotiations with some of the defendants in the consolidated claim filed by the Functionary (CF 12055-12-17), in relation to a possible settlement arrangement

² In the framework of MCA 51992-10-18.

³ In the framework of MCA 45140-10-18.

in the claim against them, the proceeds of which (insofar as completed and approved), are estimated at more than CAD 7 million, without derogating from the liability of the other defendants in the claim (which amounts to an overall sum of approx. NIS 195 million). Insofar as the negotiations do not lead to a binding arrangement (subject also the approval of the relevant courts), the legal proceedings against all the defendants will continue.

C. Release of reserves, arrangements and realization of other assets

14. On January 10, 2019, a sum of CAD 1,789,561 was transferred to the Functionary's account, as repayment in respect of the debt claim filed by the Functionary for the KSV monitor. These amounts, which were released in favor of the Company's creditors arrangement fund, were received after an arrangement in relation to a guarantee that was provided by Travelers, as provided in update report no. 18 of July 30, 2018 (application no. 65).
15. This amount constitutes payment of the full balance of the approved debt claim filed by the Functionary for the KSV monitor against the Cumberland 1 companies, by virtue of owner's loans that were provided to the subsidiaries under the monitor's management.
16. The balance of the reserves in respect of the Travelers' guarantee that was released in relation to the debt claim of Travelers, in a sum of another approx. CAD 1.8 million, is expected to be transferred to the creditors arrangement fund of the Functionary in the coming weeks, subject to the Canadian court's approval for making distributions (repayment of investments) to the Company, in excess of repayment of the owner's loans that were claimed, approved and distributed as aforesaid. Another sum of approx. CAD 400,000 in connection with this debt claim is being held until completion of the enquiry into Travelers' claim. The possibility of this balance's release is expected to be clarified around June 2020.
17. Reserves in a sum of approx. CAD 2.3 million are being kept by the KSV monitor in relation to the Speedy claim, as provided in chapter D2 of update report no. 19 of October 7, 2018 (application no. 76), the appeal against which has been fixed for hearing on March 28, 2019. The decision on these reserves is expected to be made after the appeal's decision or prior thereto, insofar as an arrangement is reached with Speedy.
18. Advanced negotiations that are being conducted in relation to realization of holdings of a subsidiary in the Kings Club project are expected, insofar as completed and approved by the Canadian court, to yield an amount of approx. CAD 2 million during the coming months.
19. Negotiations for realization that were conducted with the body corporates for the condominiums that use the geothermal assets owned by the Company's

subsidiaries and with third parties, have not progressed to date. Accordingly, it is expected that litigation will continue against the body corporates for the condominiums in which these systems are installed.

20. After receipt of the Honorable Court's decision in relation to the current distribution to the unsecured creditors as provided in paragraphs 8-10 above, the Functionary will look into making further distributions to the Company's creditors having regard to the reserves required to continue conducting the insolvency proceedings and the legal proceedings to which the Company is a party.

(Signed)

Yael Hershkovitz, Adv.

(Signed)

Gal Lugasy Spira, Adv.

Attorneys for the FF for Urbancorp Inc.