

Ontario Superior Court Lifts Stay to Allow Foreign Litigation to Proceed

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Urbancorp Inc., a large real estate development company involved in various projects in the Greater Toronto Area, became subject to proceedings under the Companies' Creditors Arrangement Act (the "CCAA") in April of 2016. Alan Saskin, Urbancorp's President and primary shareholder, filed a Notice of Intention to Make a Proposal (the "NOI") in his personal capacity under the Bankruptcy and Insolvency Act (the "BIA") shortly thereafter.

Prior to filing the NOI, Saskin raised a substantial amount of money on Israeli financial markets while acting on behalf of Urbancorp. As a consequence, Saskin has a number of foreign creditors and is also currently subject to insolvency proceedings in Israel.

In Proposal of Alan Saskin, Re, the Israeli court-appointed foreign representative of Urbancorp moved to lift the automatic stay of proceedings under s.69.1 of the BIA so as to allow a number of claims in Israel to proceed against Saskin. In particular, Saskin is the defendant in a bond-holder class action alleging fraudulent misrepresentation and breaches of fiduciary duty related to the Israeli bond financing transaction. Two of Saskin's creditors opposed the motion on the basis that Saskin should first be allowed to present his proposal given that he intended to fund the Israeli-based litigation through proceeds that he expected to receive as a creditor of Urbancorp in the CCAA proceedings.

The court agreed to lift the stay on the condition that the foreign creditors would not take any steps to enforce a foreign judgment without leave of the court in Ontario. In reaching this decision, the court found that the Israeli causes of action were sufficiently complex so as to render the summary process under the BIA inappropriate. Additionally, Justice Myers stated that a stay "is not a sword to hold creditors at bay until the debtor feels like the time is right to make an offer." In that respect, this case should serve as a reminder to debtors that a stay of proceedings is not absolute in the course of bankruptcy proceedings.

By

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