

- [2] The Functionary was appointed under Israeli law and is performing his duties and obligations further to his appointment.
- [3] The respondents oppose the recognition and enforcement of the Judgments on the basis that it would be contrary to public policy for the court to recognize them. The respondents take the position that recognition and enforcement of these Judgments would result in double recovery. The respondents also take the position that this Court had previously decided the issues and therefore the recognition of the foreign Judgments would be an abuse of process. There has been no recovery under the Judgments.
- [4] For the reasons set out below, the application is granted.

Background

- [5] Mr. Saskin started a land development business under the name Urbancorp in or about 1991. There were two groups within the Urbancorp enterprise. The companies in Urbancorp Inc. (“UCI”) and its subsidiaries are relevant to this application.
- [6] UCI was created as a vehicle to raise financing in the Israeli debenture market, which financing was to benefit certain UCI subsidiaries.
- [7] Between November 30 and December 7, 2015, UCI published a prospectus and supplementary documents (the “Prospectus”) within which UCI offered the Israeli public debentures (the “Bonds”) under terms and conditions set out in a deed of Trust between UCI and the Bond Trustee. The Bonds were traded on the Tel Aviv Stock Exchange (“TASE”). Approximately \$63 million was raised through this offering.
- [8] The Bonds contemplated UCI repaying them in five installments, with the last payment in December 2019. The interest rate on the Bonds was 8.15% and was subject to adjustment.
- [9] In March 2016, in Canada, Tarion Warranty Corporation¹ issued a notice of proposal to revoke 17 of the Urbancorp group’s registered warranties, including those belonging to UCI subsidiaries. Soon thereafter, the market value of the Bonds that were traded on the TASE declined significantly.
- [10] On or about April 21, 2016, the trading of the Bonds on the TASE was suspended by the Israeli securities regulators.

¹ Tarion Warranty Corporation provides warranties on new residential construction in Ontario.

- [11] Mr. Gissin (the “Functionary”) was appointed by the Israeli Court as Functionary of UCI on April 25, 2016, pursuant to an application under Israel’s insolvency regime brought by the Bond Trustee.
- [12] The Functionary was given certain management powers, authorities, and responsibilities over UCI pursuant to the appointment.
- [13] On April 21, 2016, certain UCI companies each filed a Notice of Intention to Make a Proposal under s. 50.4(1) of the BIA. KSV Advisory was named as the proposal trustee of certain UCI companies, and The Fuller Landau Group Inc. was named as the proposal trustee for certain other UCI companies.
- [14] In May 2016, certain of UCI’s subsidiary companies sought protection under the *Companies’ Creditors Arrangement Act*. KSV and Fuller Landau were each appointed monitor of certain affected companies.
- [15] On May 18, 2016, an Initial Recognition Order was granted in Ontario, recognizing the Israeli proceedings for UCI as a “foreign main proceeding” and recognizing the Functionary as foreign representative of UCI. KSV was appointed as the Information Officer.
- [16] In June 2017, the Israeli Court authorized the Foreign Representative to commence legal proceedings in Israel on behalf of UCI (the “UCI Claim”) against various persons, including the respondents, related to the Bond issuance.
- [17] The respondents filed defences to the UCI Claim in Israel.
- [18] The Functionary brought a motion before the Israeli Court on April 22, 2021 to have the Respondents’ defences struck and for default judgment as a result of certain defaults by the respondents. The Court gave the respondents time to cure the defaults.
- [19] On June 23, 2022, the Israeli Court struck the respondents’ defences and granted judgment because of the respondents’ continuing defaults. The Israeli Court granted judgment with the amounts owing from the respondents to be subsequently quantified.
- [20] The respondents brought a motion to set aside the default judgment, which was dismissed by the Israeli Court on August 11, 2022.
- [21] Subsequently, the Israeli Court issued the Decree, which quantified the amounts owing. The Israeli Court ordered the following:
- Each of the respondents to pay the Functionary, jointly and severally, the sum of NIS 39,406,006.06;

- The respondents TCC/Urbancorp Bay Stadium L.P. and UHI to pay the Functionary, jointly and severally, the sum of NIS 31,893,658.67;
- Urbancorp Management Inc. [currently bankrupt] to pay the Functionary the sum of NIS 9,963,035.53; and
- The amounts above bear interest from June 23, 2022 until the date of actual payment.

[22] The applicant seeks an order requiring the respondents to pay 39,406,006.06 NIS (in CAD) and 31,893,658.67 NIS (in CAD).

[23] The respondents have not yet paid any amounts owing under the Judgments.

[24] The application was originally scheduled to be heard on December 11, 2024, but was adjourned to March 27, 2025. At the December 11, 2024 appearance, Kimmel J. heard the respondents' motion for leave under Rule 39 to deliver an affidavit and attached expert report on Israeli law. The Rule 39 leave motion was dismissed: *Gissin v. TCC/Urbancorp Bay Stadium L.P.*, 2025 ONSC 521.

Analysis

[25] As noted above, the applicant asks the court to recognize and enforce a foreign judgment.

[26] There are three primary requirements for the court to consider in determining whether it is appropriate to recognize and enforce a foreign judgment. First, as set out by the Supreme Court of Canada in *Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52, [2006] 2 S.C.R. 612, at para. 10, for a foreign judgment to be recognizable and enforceable it must be for a definite and ascertainable sum of money, other than a sum payable in respect of taxes and penalties. Second, the foreign court must have had jurisdiction to hear the underlying dispute: *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416, at para. 34. Third, the judgment must be final and conclusive in the foreign jurisdiction: *Continental Casualty Co. v. Symons*, 2015 ONSC 6394, 127 O.R. (3d) 758, at paras. 35-36.

[27] The respondents accept the jurisdiction of the Israeli Court, the finality of the Judgments and the certainty of the amount of the Judgments.

[28] However, the respondents oppose the recognition and enforcement of the Judgments on the basis that it would be a double recovery.

[29] The narrow defences available to a party resisting the enforcement of a foreign judgment that meets the above three requirements were set out in *Beals v. Saldanha*, 2003 SCC 72, [2003] S.C.R. 416, at para. 40:

- Fraud;
- Denial of natural justice; and
- Public policy.

[30] In *Beals*, at para. 40, the Supreme Court of Canada noted the following with regard to the defences of fraud, denial of natural justice, and public policy when considering an enforcement matter with international scope:

This Court has to consider whether those defences, when applied internationally, are able to strike the balance required by comity, the balance between order and fairness as well as the real and substantial connection, in respect of enforcing default judgments obtained in foreign courts.

[31] The Supreme Court in *Beals*, at para. 41, further noted that these defences are “narrow in application.”

[32] With regard to the defence of public policy, relied upon by the respondents, the Supreme Court of Canada in *Beals* stated at paras. 71, 72 and 75:

71 [...] This defence [of public policy] prevents the enforcement of a foreign judgment which is contrary to the Canadian concept of justice. The public policy defence turns on whether the foreign law is contrary to our view of basic morality. [...]

72 How is this defence of assistance to a defendant seeking to block the enforcement of a foreign judgment? It would, for example, prohibit the enforcement of a foreign judgment that is founded on a law contrary to the fundamental morality of the Canadian legal system. Similarly, the public policy defence guards against the enforcement of a judgment rendered by a foreign court proven to be corrupt or biased.

[...]

75 The use of the defence of public policy to challenge the enforcement of a foreign judgment involves impeachment of that judgment by condemning the foreign law on which the judgment is based. It is not a remedy to be used lightly. The expansion of this defence to include perceived injustices that do not offend our sense of morality is unwarranted. The defence of public policy should continue to have a narrow application.

[33] Double recovery has been held to be a violation of public policy: *Lambert, Re* (2001), 26 C.B.R. (4th) 235 (Ont. Sup. Ct.), at paras. 76 and 81. *Lambert* was upheld by the Court of Appeal: *Buth-Na-Bodhiaga Inc. v. Lambert* (2002), 60 O.R. (3d) 787 (C.A.). At para. 41, the Court of Appeal noted:

[...] [I]t seems to me that the Body Shop’s repossession of the six stores formerly operated by the Lamberts without providing any accounting to them for the value of the retained assets, amply justifies Cameron J.’s characterization of this attempted double recovery as “sufficient causes” to dismiss the petitions.

- [34] *Lambert* is different from the matter before me. In *Lambert*, the Body Shop had repossessed six stores that had been operated by the Lamberts, without any accounting. Body Shop then obtained default judgments against the Lamberts in two states further to guarantees they had provided under the franchise agreements. Body Shop then attempted to obtain receiving orders against the Lamberts on the basis that they had a debt exceeding \$1,000 owing to the Body Shop. Cameron J. stated, at para. 76:

Body Shop seeks a double recovery not available to it in law either in Ontario or in Michigan. It seeks to retain assets transferred to it without taking account of their value in the Complaints or complying with its obligation to account to the Franchisees for the value of those assets. It seeks to recover the amounts of the primary indebtedness to it at the time of the Consent Judgments when it knew it was under an obligation to account for the assets it retained. There was no accounting in the Complaints for the value of the retained assets. The assertion of both the claims in the Consent Judgments and failing to account for the value of the retained assets is unconscionable. Enforcement of the Default Judgments would be an egregious breach of widely accepted commercial morality and contrary to the public policy expressed in the creditors’ rights legislation of both Michigan and Ontario. It is not consonant with our system of justice and general moral outlook to countenance a double recovery in these circumstances. See *Boardwalk Regency Corp. v. Maalouf* (1992), 6 O.R. (3d) 737 (Ont. C.A.) per Carthy J.A. at p. 743 cited in *Beals* at p. 142. It would, in my view, bring the administration of justice into disrepute.

- [35] In the matter before me, there is no suggestion that Mr. Gissin has collected on the Judgments as there was in Body Shop. Instead, as discussed below, the respondents take the position that the applicant has recovered more than the total losses.
- [36] The applicant says that none of the three prescribed defences to recognition and enforcement of a foreign judgment apply in this case. There has been no denial of natural justice and no fraud, and the applicant’s position is that the Judgments are not contrary to public policy.
- [37] The respondents are of the view that the Judgments are contrary to public policy and should not be recognized and enforced. The respondents submit that the loss sought to be remedied has already been remedied through other recoveries.

(i) *Can the respondents rely upon the defence of contravention of public policy?*

[38] The respondents submit that the applicant has already recovered more than the losses and therefore enforcement would contravene public policy.

[39] There has been no recovery to date under the Judgments.

[40] The applicant states that the respondents raised these same concerns about the amounts recovered in Canada, both in their Statement of Defence and their Motion to set aside the judgment in Israel. Further, they did not appeal in Israel.

[41] Guy Gissin's evidence is that:

- To date, the Foreign Representative has recovered and distributed approximately 189 million NIS to UCI's creditors. None of these recoveries has been from the respondents or relates to the claims that are the subject of the Judgments (other than \$8 million CAD in respect of which the Foreign Representative did not seek judgment because the amount had been recovered).
- A minimum of 30 million NIS (approximately \$11 million CAD) remains due and owing to UCI's creditors, after accounting for all recoveries from proceedings in Israel and Canada.
- There remains an additional claim by UCI's creditors for post-filing interest from the date of the UCI insolvency proceedings in April 2016. This issue will only need to be determined by the Israeli Court in the event that there is recovery in full on principal.

[42] Mr. Gissin explained on cross-examination that he was appointed by the Israeli Court to take control of UCI's assets, including the Judgments, and to distribute recoveries according to law.²

[43] As noted in the applicant's reply factum, in the event that the Functionary succeeds in recovering more than the currently allowed claims (after payment of all expenses) and satisfied creditors' contingent interest claim, any surplus would be distributed according to Israeli insolvency law. This makes sense and is consistent with Canadian insolvency law.³

² Mr. Gissin, in making these statements in his affidavit, was not giving opinion evidence on Israeli law. He was setting out the requirements of his role.

³ Section 144 of the BIA deals with surplus: "The bankrupt, or the legal personal representative or heirs of a deceased bankrupt, is entitled to any surplus remaining after payment in full of the bankrupt's creditors with interest as provided by this Act and of the costs, charges and expenses of the bankruptcy proceedings."

- [44] I agree with the applicant that it would be contrary to the principles of comity for this Court to adjudicate issues regarding the scope of the Functionary's authority. The issue of whether there are any limits on the Functionary's recoveries is a matter of Israeli law. This Court is just being asked to enforce a valid Judgment.
- [45] There is no expert evidence before me from either the applicant or the respondent regarding Israeli law. Accordingly, I cannot assess whether "the foreign law is contrary to our view of basic morality."
- [46] In the recent case of *Costco Wholesale Corporation v. TicketOps Corporation*, 2023 ONSC 573, TicketOps had attempted to argue the defence of public policy because of a possible double recovery. Vermette J. dismissed this argument, at para. 96, stating that "TicketOps' argument regarding double jeopardy also does not show that the Awards are contrary to the public policy of Ontario."
- [47] I am not satisfied that the respondents can rely on the defence of public policy to block the enforcement of the foreign Judgments.
- (ii) *Was the bringing of this proceeding an abuse of process?*
- [48] The respondents further submit that the bringing of this proceeding was an abuse of the Court's process. The respondents say that the causes of action have already been considered and dismissed by this Court.
- [49] I agree with the applicant that the Court has not dismissed or even addressed the causes of action in the Judgments.
- [50] The respondents point to three Canadian court judgments as being dispositive:
- The November 30, 2017 Endorsement of Myers J. (*Urbancorp Cumberland 2 GP Inc., (Re)*, 2017 ONSC 7156) related to two payments made to the Canada Revenue Agency by Edge, which was part of the Urbancorp group of companies (the "Myers HST Endorsement");
 - The September 25, 2023 decision of Penny J. (*Gissin v. 994697 Ontario Inc.*, 2023 ONSC 5280) on the summary judgment motion (the "Penny Decision"); and
 - The December 20, 2017 endorsement of Myers J. (*Urbancorp Cumberland 2 GP Inc., (Re)*, 2017 ONSC 7649) regarding the use of condominium units owned by Edge to satisfy certain debts (the "Myers 2 Endorsement").
- [51] As set out in more detail below, these three court decisions are not dispositive of the issues that were before the Israeli Court leading to the Judgments. These decisions involved different causes of action, different issues, and different parties than the Judgments.

Myers HST Endorsement

[52] The respondents submit that the Myers HST Endorsement, which dismissed the Monitor's claim that \$12 million paid to CRA should be returned to the Edge Monitor, addressed the breach in paragraph 13(b) of the Israeli claim:

13(b) A breach of the undertaking to make available to the Company equity [capital], an owners' contribution in the amount of 12 million Canadian [...]

[53] The Israeli statement of claim alleges, among other things:

- According to the Prospectus, the Defendants committed, subject to the success of the issuance, to provide the Company [UCI] with an owners' contribution in the amount of 12 million Canadian dollars (hereinafter: the "Owners' Contribution"), that would be contributed to the Company's pro forma equity.
- [C]ontrary to the undertakings in the Prospectus and contrary to the Company's public reports and those that Mr. Saskin provided, the "Owners' Contribution" was not made, either at the time of issuance or thereafter. Even after the subject was clarified and the Company reported that the funds were provided as required, it was discovered that, contrary to the reports to the public that were signed by Mr. Saskin (in the Company's name), an "Owners' Contribution" was never deposited into the Company's account, but rather in March 2016, transferred by a third party lender, Terra Firma Capital Corporation (hereinafter: "TFCC") to the Canada Revenue Agency (hereinafter: "CRA") for the purpose of paying outstanding value added tax payments in Canada (hereinafter: "HST") relating to the Edge project. [The footnote to this statement references the proceeding that the Edge Monitor would be bringing in Canada. It states: [...] The Edge Monitor will be bringing a proceeding against the CRA to seek the return of the HST payments as an unlawful preference under Canadian bankruptcy law. [...] To the extent that the Functionary receives any amount whatsoever, if at all, on account of the HST recovery claim, it will be reported to the Court and such will [be] credited against the Defendants' debts accordingly from this Motion.]
- Therefore, the Owners' Contribution to be included in the equity was never transferred to the Company as required under the Prospectus, and the use of these funds to repay the Edge HST liability was never presented to the UCI board of directors and was never approved in accordance with the signature rights in the Company. Mr. Saskin and his family member had a personal and direct interest in the transfer of the funds directly to the CRA because it allowed Mr. Saskin, who served as a director of the subsidiary companies, to be released from alleged personal liability that was imposed on him due to the HST obligations of the Edge Company.

- [54] The respondents submit that the Myers HST Endorsement, which was rendered prior to the Israeli decision, disposed of the relief sought under para. 13(b) of the Israeli statement of claim.
- [55] Edge was a debtor under the CCAA. Edge’s Monitor sought the return of \$12 million that Edge paid to the CRA for HST arrears. The Court was asked to consider whether two payments made to the CRA by an insolvent debtor less than three months before it commenced a proposal proceeding should be declared void as an unjust preference. Myers J. noted at para. 20 that “one key effect of the payment of HST by Edge however, was to reduce Mr. Saskin’s statutory personal liability for the HST as the sole director and officer of Edge under s. 323 of the *Excise Tax Act*.” Myers J. dismissed the motion. He determined that the \$12 million payment to CRA had not been an unjust preference.
- [56] I agree with the applicant that Myers J.’s determination that there had not been an unjust preference in the payment by Edge to the CRA is not dispositive of the issue that was claimed in the Israeli action. As set out above, the Israeli action concerned the failure of the respondents to make the \$12 million contribution to UCI. The footnote in the Israeli statement of claim referencing the Canadian proceeding pursuant to which the Edge Monitor was seeking the return of the \$12 million paid to CRA simply acknowledged that had the Canadian court determined that it was an unjust preference and ordered the return of the funds from the CRA to the Edge Monitor, the payment would be credited against the defendants’ debts in the Israeli proceedings.
- [57] The Myers HST endorsement did not address the breach at 13(b) of the Israeli statement of claim.

Penny Decision

- [58] The second breach to which the Judgments relate is described at G.3 of the Israeli statement of claim:

The third incident - The transfer of residential units in the value of approximately 10 million Canadian dollars in the Edge project of the Company to private creditors of Mr. Saskin contrary to the Prospectus (and in contradiction to the information that has been presented in the financial statements that were attached to the Prospectus that defined a part of the transaction (about 5 million Canadian dollars) as Owners’ Contribution to the Company).

- [59] The claim relates to the transfer of certain condominium units in the Edge project (valued at approximately \$10 million CAD) to private creditors of Mr. Saskin, which transfer was contrary to the Prospectus, among other things.

- [60] The respondents submit that the losses in respect of the above allegation were addressed in the Penny Decision and the Myers 2 Endorsement.
- [61] The parties in the matter before Penny J. were Guy Gissin, solely in his capacity as the Foreign Representative of Urbancorp Inc. and the Israeli Court Appointed Functionary officer of Urbancorp Inc. and Downing Street Financial Inc. (plaintiffs) and 994697 Ontario Inc., KJ Equity Inc., Ned Holdings Inc., Peakhill Investments Ltd., Wellesley Residences (2014) Corp. formerly 2000 Jane Street Inc., Yonge-Abell GP Limited in its capacity as the general partner of the Yonge-Abell Limited Partnership (defendants).
- [62] The respondents submit that the Penny Decision addressed the allegations in the Israeli statement of claim related to the transfer of condominium units from Edge, which is a project under the ownership of a subsidiary of Urbancorp, to 994697 Ontario Inc., also referred to as Plaza or 994. The allegations in the Israeli statement of claim related to this issue include:
- Mr. Saskin entered into an informal “creditors arrangement” to transfer units in the Edge project to a combination of his personal creditors and those creditors of various companies in which the Company has no interest, to satisfy amounts owed to those creditors.
 - The most significant transaction that was made in this matter by Mr. Saskin was with a company called 994697 Ontario Inc. (hereinafter “994”), which was a partner in another unprofitable project of his, the Epic project. The agreement between Mr. Saskin and 994 includes, to the best of the Functionary’s knowledge, the transfer of residential units, parking lots and storage rooms to 994 in exchange for the exit of Saskin’s private company from the Epic project.
- [63] In the matter before Penny J., both sides in the action had moved for summary judgement. The court had to consider whether the transfer of certain condominium units from Edge to 994697 Ontario Inc. [Plaza] should be set aside on the basis that they were fraudulent conveyances or preferences. The transfer had been done in April 2015 prior to Edge’s insolvency, and Guy Gissin sought to set the transfer aside.
- [64] Penny J. determined that the transfer of the condominium units was not done with the intent to defeat creditors. Accordingly, the transfers from Edge to Plaza were not set aside.
- [65] I agree with the applicant that the fact that the defendant was successful in not having the transfers set aside in the Canadian insolvency proceedings does not address the issues in the Israeli Statement of Claim. Penny J. does not deal with the prospectus breaches. As noted by the applicant, there is some overlap in the facts. However, Penny J. does not determine whether there was proper disclosure in Israel.

- [66] In Canada, Edge’s Monitor brought the claim to attempt to recover the condo units from Plaza. They were not successful. The parties were different. In the instant case, the claim relates to the transfer of the condominium units being contrary to the prospectus. There are different parties advancing different actions arising from the same or similar facts.
- [67] The applicant referenced *SFC Litigation Trust v. Chan*, 2019 ONCA 525, 147 O.R. (3d) 145, which I agree is applicable. In *SFC* the Court of Appeal made clear that there may be more than one similar cause of action arising from similar facts. The Court of Appeal stated, at para. 86, that “the same or similar facts may give rise to a cause of action by a shareholder and one by the corporation.”

Myers 2 Endorsement

- [68] As noted above, the respondents submit that the losses in respect of the third incident described at section G.3 of the Israeli statement of claim were also addressed in the Myers 2 Endorsement. The claim relates to the transfer of certain condominium units in the Edge project to private creditors, which transfer was contrary to the Prospectus, among other things.
- [69] In the Myers 2 case, the monitor moved for advice and directions regarding whether payments in kind (condo units) made by the CCAA debtors, Edge, to creditors of other Urbancorp affiliates were oppressive. The responding parties, Cooltech, were creditors of Edge and other Urbancorp entities. Condo units worth approximately \$2.3 million were transferred by Edge to Cooltech to satisfy certain Edge debts to Cooltech. The Court dismissed the monitor’s motion. The court indicated that the monitor, as a neutral court appointed person, should not be empowered to “bring a claim that pits creditors against each other.”
- [70] The Myers 2 decision, again, does not address the issues that were before the Israeli court.

Disposition and Costs

- [71] The application is granted.
- [72] The parties are encouraged to resolve costs. If they are unable to do so by August 1, 2025, they shall notify my judicial assistant. In such case, the applicant shall file its costs submissions (limited to 3 pages in length, double spaced) by August 15, 2025. The respondent shall file its costs submissions (limited to 3 pages in length, double spaced) by August 29, 2025.
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J Steele J.

Released: July 8, 2025

CITATION: Gissin v. TCC/Urbancorp Bay Stadium L.P., 2025 ONSC 4042
COURT FILE NO.: CV-23-713232-00CL
DATE: 20250708

ONTARIO
SUPERIOR COURT OF JUSTICE
[Commercial List]

BETWEEN:

GUY GISSIN, SOLELY IN HIS CAPACITY AS
FOREIGN REPRESENTATIVE OF URBANCORP
INC. and TRUSTEE FOR THE IMPLEMENTATION
OF THE URBANCORP INC. DEBT
ARRANGEMENT v. TCC/URBANCORP BAY
STADIUM L.P. et al

Applicant

– and –

TCC.URBANCORP BAY STADIUM L.P., THE
WEBSTER TRUST and URBANCORP HOLDCO
INC.

Respondents

REASONS FOR DECISION

J. Steele J.

Released: July 8, 2025