

COURT OF APPEAL FOR ONTARIO

CITATION: YG Limited Partnership and YSL Residences Inc. (Re),
2023 ONCA 504
DATE: 20230720
DOCKET: COA-23-CV-0288

Huscroft, Miller and Paciocco JJ.A.

In the Matter of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

And in the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc.

Deborah Palter and Alexander Souter, for the appellants, YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation and TaiHe International Group Inc.

Robin Schwill and Matthew Milne-Smith, for the respondent, KSV Restructuring Inc.

Mark Dunn, Sarah Stothart, Carlie Fox, and Brittini Tee, for the respondent, Maria Athanasoulis

Heard: June 30, 2023

On appeal from the order of Justice Jessica Kimmel of the Superior Court of Justice, dated February 10, 2023.

REASONS FOR DECISION

[1] The Proposal Trustee, KSV Restructuring Inc., administering an approved *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 proposal relating to a failed condominium development, brought a motion for directions “establishing the process for any appeal from the Proposal Trustee’s notice of determination of the proof of claim filed by Maria Athanasoulis against [the debtors]”. The motion judge issued an order providing directions. The appellants, the Limited Partners of the debtor, YG Limited Partnership – namely YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investments Ltd., E&B Investment Corporation, and TaiHe International Group Inc. (the “Limited Partners”) – have appealed the order providing directions because of “orders” the motion judge made relating to their standing at the anticipated Athanasoulis appeal. The motion judge made no orders in respect of standing. The appeal is therefore premature and is dismissed. We will elaborate.

[2] The Proposal Trustee brought the motion for directions because the resolution of the Athanasoulis claim was proving to be problematic. An earlier attempt by the Proposal Trustee to resolve the Athanasoulis claim resulted in litigation and was set aside. Moreover, the Limited Partners wanted to dispute the Athanasoulis claim, which was for approximately \$19 million. They were claiming standing in any such appeal because its outcome would determine whether they would receive any residue from the YG Limited Partnership estate after creditors were paid.

[3] Apart from establishing a scheduling order, the motion judge's order addressed the Limited Partners' anticipated participation in an anticipated appeal of the decision the Proposal Trustee was expected to make relating to the Athanasoulis claim. But the motion judge did not determine the standing that the Limited Partners would have during the anticipated appeal. The directions that the motion judge provided relating to standing were explicitly made "subject to the discretion of the judge hearing the appeal". Therefore, until the appeal is undertaken, it is not yet resolved whether the Limited Partners will be given any standing at the appeal hearing, or if so, whether that standing will be limited. This appeal is therefore premature.

[4] We are not persuaded by the Limited Partners' submissions to the contrary. The possibility that the motion judge's comments about the anticipated process could influence the appeal judge's ultimate standing determination is not a basis for appeal. The motion judge's underlying conclusion that standing rights are discretionary does not provide a basis for appeal, either. Even if that conclusion is incorrect, the appeal judge is not bound by it and will be free to provide a right to standing if the law allows.

[5] Given that the Limited Partners' appeal of the motion judge's order is premature, it is dismissed. There is therefore no need to address the merits of the submissions advanced in support of that appeal.

[6] The Limited Partners will pay costs to the respondent, Maria Athanasoulis, in the amount of \$15,000 inclusive of applicable taxes and disbursements. No costs were sought by KSV Restructuring Inc., and none will be awarded.

Grant Humphreys J.A.

[Signature] J.A.

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