



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: 31-02734090 DATE: JUNE 8, 2022

NO. ON LIST: 12:00PM

TITLE OF PROCEEDING: **YG LTD/YSL RESIDENCES INC**

BEFORE JUSTICE: **MADAM JUSTICE GILMORE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
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JESSE MIGHTON (CONCORD PROP) mightonj@bennettjones.com SHAUN LAUBMAN (2504670 CAN) slaubman@lolg.ca MITCH VININSKY (KSV, PROP TRUSTEE) mvininsky@ksvestructuring.com MARK DUNN (MARIA ATHANASOULIS) mdunn@goodmans.ca HARRY FOGUL (DEBTORS) hfogul@airdberlis.com XIN LU (CRYSTAL) LI (2504670 CAN; 8451761 CAN)		

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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
ROBIN SCHWILL (PROPOSAL TRUSTEE) rschwill@dwpv.com BOBBY KOFMAN (PROPOSAL TRUSTEE)		
MATTHEW MILNE-SMITH (PROPOSAL TRUSTEE) mmilne-smith@dwpv.com		

ENDORSEMENT OF JUSTICE GILMORE:

Today's conference was scheduled as per my endorsement of May 24, 2022 wherein I asked counsel to collaborate on the issues to be arbitrated.

Mr. Milne-Smith, on behalf of the Proposal Trustee advised that counsel have collaborated and determined that they will work towards the terms of a newly constituted consolidated arbitration which will deal with all outstanding issues including the following:

1. The enforceability of the contract as found by Mr. Horton regarding Ms. Athanasoulis' claim and the quantum of any damages she may have suffered.
2. Whether any claim for damages by Ms. Athanasoulis is in the nature of debt or equity;
3. Any claim for damages that the Limited Partners may assert against Ms. Athanasoulis.
4. The arbitration will **not** consider any claims between Ms. Athanasoulis and Cresford Capital/Dan Casey.
5. The Limited Partners will reserve their rights with respect to whether Mr. Horton's decision at Phase 1 of the arbitration regarding enforceability is rendered *res judicata*.
6. At the conclusion of the arbitration the Proposal Trustee will make a determination as to whether Ms. Athanasoulis' claim is provable and will value it and determine its priority.
7. The parties' rights to appeal are preserved under the *BIA*.

Given concerns about delay I asked counsel to commit to having the arbitration before the end of 2022 which it is hoped will accommodate Mr. Soutter's parental leave and subject to Mr. Horton or another agreed upon arbitrator's availability.

Mr. Mighton, on behalf of the Proposal Sponsor, is concerned that including the issues between the LPs and Ms. Athanasoulis will increase the cost of the arbitration overall, expand the Trustee's role and delay the distribution of funds to creditors. His client does not support the arbitration proposal unless the LPs undertake to fund the Trustee's expenses. As the LPs would not do so, Mr. Mighton requests that the Court order a mandatory mediation of the issues between the LPs, Ms. Athanasoulis and the Trustee. If no settlement is achieved, he requests that the Court then direct the next steps regarding Ms. Athanasoulis' claims. Mr. Mighton also seeks to preserve his client's rights to amend the Proposal to provide that the administrative costs of the Trustee will be paid from the residual Creditor Cash Pool.

Mr. Laubman and Mr. Soutter do not agree. They are in favour of the arbitration procedure proposed. They point out that Ms. Athanasoulis' claim alone was originally scheduled for a two-week arbitration. The parties have now agreed on a two-week arbitration for **all** outstanding issues. The claims all arise from the same set of facts. The Trustee's role is not being expanded. Their clients are also incurring unanticipated costs in moving forward with the arbitration (which Mr. Soutter initially opposed) but now agree it is the most efficient process. The LPs do not consent to a mediation with Ms. Athanasoulis as suggested by Mr. Mighton.

The Trustee has undertaken to ensure that it will avoid duplication and minimize its role in the arbitration except where required.

Mr. Dunn raised an issue with respect to document production from the debtors. They are not parties to the arbitration agreement, but Mr. Dunn asks the Court to make them parties so they are obliged to provide documents as requested. Mr. Fogel on behalf of the debtors assured the Court that the request for documents received on May 12, 2022 will be complied with by June 24, 2022 or earlier and that the General Ledgers, Balance sheets and documents (and emails) related to the termination of the \$650M construction loan will be provided today. Mr. Dunn remains unconvinced and concerned about the nature of the documents produced to date.

Directions for Counsel

This matter must be kept on track to ensure an arbitration occurs before the end of 2022. I am not inclined to order a mandatory mediation of the Athanasoulis/LP issues where the LPs do not agree. The LPs have come around to agreeing to an expanded arbitration process notwithstanding any additional cost which they may incur. The Proposal Sponsor is understandably concerned about additional cost as well.

However, balancing the efficiency of a slightly more costly consolidated arbitration against the cost and timing of various motions, the arbitration must prevail. I urge counsel to immediately contact Mr. Horton such that a date can be secured hopefully in October or November 2022.

The issue of apportionment of costs raised by Mr. Mighton is a reasonable concern. The arbitrator may, in his discretion, apportion costs as he deems appropriate. It is too difficult for the Court at this early stage to attempt to parse the parties' respective responsibility for costs.

Counsel are directed to continue collaborating and refining the issues for the arbitration. They are to return before me on July 29, 2022 at 11:30 a.m. for one hour. By that date it is expected that an arbitration date will have been secured and a finalized list of issues for the arbitration prepared. Counsel are to provide a two-page brief for the July 29th conference. The brief is to be uploaded to Caselines by July 27, 2022 at 11:30 a.m.

Mr. Dunn raises reasonable concerns about document production. Notwithstanding Mr. Fogler's undertakings to produce certain documents today and within two weeks, this matter cannot languish especially given Mr. Mann's imminent departure. **Mr. Dunn, Mr. Fogler and the Trustee are to return before me on June 15, 2022 at 11:00 a.m. for 30 minutes to discuss the status of document production from the debtors.**

June 8, 2022



Justice C. Gilmore