

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST**

**IN THE MATTER OF *THE BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICES OF INTENTION TO
MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND
YSL RESIDENCES INC.**

**AFFIDAVIT
(Sworn June 22, 2021)**

I, **CLIFF McCracken**, of the City of Vancouver, in the Province of British Columbia,

MAKE OATH AND SAY:

1. I am a Senior Vice President of Concord Pacific Developments Inc. ("**Concord Pacific**", and together with its various project specific companies, affiliates and subsidiaries, "**Concord**"). I have knowledge of the matters to which I hereafter depose. Where the information set out in this affidavit is based upon information that I have received from others, I have stated the source of that information and believe it to be true.

2. I understand that yesterday, June 21, 2021, YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, TaiHe International Group Inc., 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc (collectively, the "**Investors**") filed a joint factum (the "**Investor Factum**") opposing the approval of the Amended Proposal #2 dated June 15, 2021 (the "**Proposal**") unanimously adopted by voting creditors of YG Limited Partnership ("**YG LP**") and YSL Residences Inc. (collectively, "**YSL**") which Concord has sponsored in these proceedings pursuant to a proposal sponsorship agreement (the "**Proposal Sponsorship Agreement**"). Because the Investor Factum contains a number of extraordinary and serious allegations against Concord, the Proposal Trustee, KSV Restructuring Inc. (the "**Proposal Trustee**") has asked Concord to present evidence in response to certain of the issues raised, and this affidavit is sworn for that purpose.

CBRE's 2021 Appraisal

3. Beginning in the fall of 2020, Concord began discussions with Otera Capital ("**Otera**") concerning Otera providing financing to complete the YSL Project. At the time, Concord was proposing to manage construction and provide a mezzanine loan with a profit participation earned for providing its covenant to the new senior financing, but not to own the project.
4. By late 2020, Otera began indicating to Concord that Otera was comfortable with the project but uncomfortable with financing a project in which Cresford had any ongoing involvement. Concord continued to press Otera to work with its proposed structure, which would have left Cresford in the project, and to seek to develop mechanisms that would give Otera confidence in lending on that basis.
5. By the beginning of March 2020, Concord and Otera determined that commissioning an updated appraisal valuing the land was necessary to advance discussions.
6. On or about March 8, 2021, CBRE was engaged to prepare an appraisal report to Otera regarding the lands comprising the YSL Project (the "**CBRE Report**"). As the intended development manager, Concord facilitated this engagement and provided CBRE with assumptions to be used. Concord gave CBRE instructions and assumptions that were most reasonable for the purposes of obtaining project financing (in the maximum amount possible), and consistent with the project that Concord intends to develop at this site.
7. CBRE provided Otera and Concord with a draft report on or about March 16, 2021. Otera was not yet far enough advanced with its credit process for it to instruct CBRE to finalize the draft report at that time, but it did subsequently provide questions and comment to CBRE for its consideration prior to finalizing the report.
8. On or about April 7, 2021, or very shortly before, Otera advised Concord that it had reached a firm and final decision not to finance the YSL Project unless Cresford had no further involvement. Up until that date, Concord had continued to try to persuade Otera to come to a compromise position on Cresford's involvement. After that date, Concord turned to Cresford to seek to negotiate some transaction by which Cresford would exit the project.

9. Further drafts of the CBRE report were issued by CBRE on April 21, 27 and 29, 2021 following questions and comment from Otera. The CBRE report was finalized on April 30, 2021 on the basis that Otera was satisfied that all its questions and comments had been addressed.

10. I have reviewed the Investor Factum, and note that the Investors allege that Concord "directed CBRE not to take all value [of the YSL Project] into account"¹ and as a result the "true value of the YSL Project lands has been hidden" from creditors.² In essence, the Investors allege that Concord manipulated the CBRE Report in order to reduce the perceived value of the YSL Project, thereby enabling Concord to acquire the YSL Project for less than it was worth.

11. This is categorically false.

12. As stated, the CBRE report was commissioned prior to the contemplation of the Proposal Sponsorship Agreement, for the purposes of obtaining project financing from Otera.

13. Concord did not change the instructions originally provided to CBRE when the report was finalized at the end of April 2021. Concord did not manipulate the CBRE Report as alleged by the Investors or at all.

14. Nor was the nature of the CBRE Report kept a secret.³ After the CBRE report was finalized, Mr. Gruber, Concord's counsel, provided the report to the Proposal Trustee. In the same email that attached the CBRE report, I am informed by Concord's counsel, and believe, that counsel explicitly highlighted to the Proposal Trustee that the "as is" value in the CBRE report was "bare land only and doesn't take into account the value of work in place". Concord's counsel explained that the appraisal had been commissioned on this basis because the value of the work in place was, in Concord's opinion, better evaluated by a quantity surveyor, preferably the quantity surveyor that would be engaged by Otera.

15. Subsequently, I understand that Finnegan Marshall Inc. ("**Finnegan Marshall**") was engaged by the Proposal Trustee to evaluate the cost to complete the YSL Project. It was the Proposal Trustee, not Concord, that instructed Finnegan Marshall. I note that because Finnegan

¹ Investor Factum, paragraph 39.

² Investor Factum, heading above paragraph 41.

³ Investor Factum, paragraph 43.

Marshall's analysis considers the cost to complete the YSL Project, it implicitly incorporates the value of the work completed to-date. Because Finnegan Marshall analyzes the cost to complete the YSL Project, it takes into account those costs already spent to advance the YSL Project to its current status as a partially excavated hole.

16. In short, there is no truth to the suggestion that Concord conspired to lower the perceived value of the YSL Project in its instructions to CBRE or in its subsequent use of the CBRE Report, or in any other way.

(i) Response to Retail Component Concerns

17. Mr. Gruber advises that a concern has been raised with respect to the fact that the CBRE Report assumes, based on Concord's instructions, that there is a net leasable retail area of approximately 60,000 square feet, which is lower than what was referenced in a 2019 CBRE appraisal report for the YSL Project commissioned by Cresford (the "**2019 CBRE Report**"). The 60,000 square feet assumption was developed by Isaac Chan, Concord's Vice President of Sales, based on his experience in the commercial leasing market in Toronto. I am informed by Mr. Chan that he determined that a certain percentage of each floor plate in the retail area would not be leasable, as it would be needed for services and circulation.

18. At the request of the Proposal Trustee, Concord sought clarification from CBRE with respect to the difference between the 2019 and 2021 retail area assumptions. Attached hereto as **Exhibit "A"** is an email received by my colleague, Wendy Shum from Vid Stambolovic of CBRE in response to this inquiry.

19. In this email, CBRE explains that the retail estimates set out in the 2019 CBRE Report were based on instructions from Cresford, which assumed that the entire retail component of the YSL Project would be purchased by a single purchaser intending to use the entire retail component for its own operations for an aggregate value of \$97,000,000.

20. I understand from CBRE's email and my discussions with Cresford that this prospective sale of the retail component did not move forward. Accordingly, Concord's notional approach to the retail component, based on its experience with prior development projects and knowledge of the local retail market, was to assume it would be demised for leasing to several tenants.

21. Based on our experience in similar multi-use development projects, in Concord's opinion, it is not reasonable to assume that the entire gross retail area is leasable, having regard to gross floor area ("GFA") that is not leasable due to demising, service areas, corridors and the like. Attached hereto as **Exhibit "B"** is an email from Architects Alliance, the architect of record for the YSL Project, who has advised Concord that in its view the net leasable area of the retail component is 62,870 square feet, slightly higher than the retail area assumed by CBRE for the purposes of the 2021 CBRE Report.

(ii) Response to Residential Component Concerns

22. Mr. Gruber advises me that Maria Athanasoulis has questioned why the GFA of the residential component of the YSL Project was reduced by approximately 6,200 square feet in the 2021 CBRE Report relative to the 2019 CBRE Report. As set out in the 2021 CBRE Report, the YSL Project in aggregate comprises approximately 876,000 square feet of GFA.

23. The 6,200 square foot discrepancy in question represents only approximately 0.7% of the overall GFA in the YSL Project and less than 0.9% of its residential component. This discrepancy cannot be described as "moving the needle" in any meaningful way in terms of project revenues.

24. Moreover, I have discussed this discrepancy with Isaac Chan, and am advised by him and do believe that at this time, the YSL Project has only been fully designed and residential units sold up to the 70th floor (of 85 total stories). As with all of Concord's developments, the objective of Mr. Chan and his team is to put forward the most accretive residential strategy having regard to a number of factors including local sub-market demand, constructability, and overall project revenue.

25. Given that design development for floors 71-85 is still very much open for further refinement, it is premature for any conclusions as to a reduction of residential GFA to be drawn from a reading of the 2019 CBRE Report and the 2021 CBRE Report.

Concord's Willingness to Transact

26. Finally, I wish to address an assumption made in the Investor Factum about Concord's willingness to pay for the YSL Project. The Investor Factum states that if Cresford's claim is

deemed an equity claim, and accordingly it is not entitled to the \$22,000,000 that represents 58% of its claim, then Concord will pay \$22,000,000 less than it was willing to pay, to the detriment of creditors.⁴

27. This assumption ignores that fact that in calculating what it was willing to pay, Concord accounted for the fact that if the Cresford claims are disallowed, it would ultimately need to pay less under the Proposal. If Concord had instead put forward a proposal structured where there was a pool of funds that would be split by creditors (such that a disallowed claim would increase the distribution to other creditors), it is unlikely that it would have agreed a fund amount that is as high as the Maximum Proposal Fund Amount contemplated in the Proposal.

28. Furthermore, it is not necessarily the case that in another process Concord would be willing to put forward an offer equivalent to its funding requirement under the Proposal if the Maximum Claims Amount is exceeded. Before making any firm offer in respect of the YSL project, Concord determined that it needed to have at least an agreement in principle for financing. That was the case because the project is simply so massive, and credit markets are so tight, that making an offer without confidence in being able to finance acquisition and construction would present too great a commercial risk.

29. Given this determination, and Concord's expectation that anyone else interested in purchasing the project would come to the same conclusion, the amount Concord would be willing to pay in a different process would depend very much on its assessment of the market conditions applicable to that process. It might very well be less than the amount it is required to fund if the Maximum Claims Amount is exceeded.

⁴ Investor Factum, paragraph 3.

30. I make this Affidavit in support of the motion to approve the Proposal, and for no other or improper purpose.

SWORN BEFORE ME over)
videoconference on this 22nd day of June,)
2021. The affiant was located in the City of)
Vancouver, in the Province of British)
Columbia and the Commissioner was located)
in the City of Oakville, in the Province of)
Ontario. This Affidavit was commissioned)
remotely as a result of COVID-19 and was)
commissioned in accordance with *Ontario*)
Regulation 431/20.)



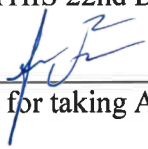
JOSHUA FOSTER

A Commissioner for Oaths in and for the
Province of Ontario



CLIFF McCRACKEN

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF CLIFF McCracken,
SWORN BEFORE ME THIS 22nd DAY OF JUNE, 2021.



A Commissioner for taking Affidavits, etc.

Jesse Mighton

From: Wendy Shum <Wendy.Shum@concordadex.com>
Sent: Friday, June 18, 2021 5:11 PM
To: David Gruber
Cc: Isaac Chan; Dennis Au-Yeung; Gabriel Leung
Subject: FW: YSL 2019 vs 2021 Retail component

Wendy Shum
Controller, CPA
Concord Adex Inc.
d 416.813.1038 | f 416.813.0888 | c 647.328.2710
www.concordadex.com | www.concordpacific.com

From: Stambolovic, Vid @CBRE VAS Canada <Vid.Stambolovic@cbre.com>
Sent: Friday, June 18, 2021 4:11 PM
To: Wendy Shum <Wendy.Shum@concordadex.com>
Cc: Chernenkoff, Grant @CBRE VAS Canada <Grant.Chernenkoff@cbre.com>
Subject: YSL 2019 vs 2021 Retail component

Hi Wendy,

Further to our conversation and in response to your inquiry regarding the differences between CBRE's appraisal reports in 2019 and 2021 regarding the retail space at the YSL project, we would note the following:

- The 2019 appraisal report was based on information provided by Cresford, our client the time. The leasable area of 73,378 was given to us by Cresford, and we have an Extraordinary Assumption outlined on page 9 of that report that we assumed that the information provided was accurate and that a material change in the areas provided would result in a change in our value conclusions.
- Notwithstanding the above, the value of the retail component in the 2019 report was based upon a reported forward sale of \$97,000,000. This was again outlined in another Extraordinary Assumption, also on page 9 of the 2019 report.
- The calculation provided on pages 51 and 52 of the 2019 report, as stated, was a secondary check on value and relied upon projected rental rates provided by Cresford. You will note that in our summary of the component values on page 54 of the report, we have utilized the \$97,000,000 figure of the reported forward sale, and not the value determined via the income approach as a secondary check. However, based on the information that we were provided, the \$97,000,000 amount did not appear to be unreasonable.
- The leasable area of 60,914 square feet for the retail area in the 2021 report was again based on information provided by our new client, Concord. There is once again an Extraordinary Assumption in the 2021 report (this time on page 8) stating that we assumed the information provided was accurate. However, we noticed the discrepancy between this and that provided by Cresford when we had previously appraised the site and asked Concord about this. They informed us that they had done some reconfigurations to the retail areas in ways that they felt made it more marketable and that they had also determined that there were additional areas that they felt would not contribute towards the total leasable area.

- We were further informed that the forward sale initially reported to us by Cresford was no longer valid, so we relied upon the income approach to determine the value of the retail component in the 2021 report.
- The projected rental rates for the retail space will fluctuate with market conditions as of the date of the appraisal. Our discussions with leasing professionals informed our rate selection in 2021.
- The retail sector was one of the hardest hit by the COVID-19 pandemic and has led to numerous closures and leasing challenges. We adjusted our lease rates (which were generally the least impacted input), projected vacancy rates and capitalization rates accordingly, which accounts for some of the additional discrepancy between the overall calculated values via the income approach.

I trust this answers your questions. If you require any further assistance, please let us know.

Vid

Vid Stambolovic, MBA, AACI | Director
CBRE Limited | Valuation & Advisory Services
145 King Street West, Suite 1100 | Toronto, Ontario M5H 1J8
T 416 847 3266 | F 416 362 8085 | C 647 836 8987
vid.stambolovic@cbre.com | www.cbre.ca/vas

Meet the VAS Land and Development Team at CBRE

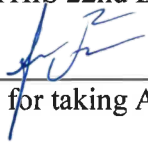
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THIS IS **EXHIBIT "B"** REFERRED TO IN THE
AFFIDAVIT OF CLIFF McCracken,
SWORN BEFORE ME THIS 22nd DAY OF JUNE, 2021.



A Commissioner for taking Affidavits, etc.

Jesse Mighton

From: Isaac Chan <Isaac.Chan@concordadex.com>
Sent: Monday, June 21, 2021 7:36 PM
To: David Gruber; Cliff McCracken; Jason Ha (ConcordPacific.com); Gabriel Leung; Dennis Au-Yeung; Jesse Mighton; Wendy Shum
Subject: FW: YSL
Attachments: Untitled attachment 00009.htm; 210621 Concord Retail Mark ups.pdf

David and Cliff,

Please see the attached.

AA have done the area calculation of the units (which I added up to be a total of 62,870 SF) – relatively close to what I had estimated.

Regards
Isaac

| | | | total partitioned unit leasable area by floor - (SF) |
|--------|-----|--|---|
| Retail | L3 | | 12,784 |
| Retail | L2 | | 19,124 |
| Retail | L1 | | 15,641 |
| Retail | B1M | | 4,480 |
| Retail | B1 | | 10,841 |
| | | | Total (SF) 62,870 |

From: Michael Monier <mmonier@architectsalliance.com>
Sent: Monday, June 21, 2021 7:03 PM
To: Isaac Chan <Isaac.Chan@concordadex.com>
Cc: Jason Lee <Jason.Lee@concordadex.com>; Adam Feldmann <afeldmann@architectsalliance.com>; Omair Qubti <Omair.Qubti@concordadex.com>; George Riopelle <George.Riopelle@concordadex.com>; Jason Ha (ConcordPacific.com) <jason.ha@concordpacific.com>; Lauren Medeiros <Lauren.Medeiros@concordadex.com>
Subject: Re: YSL

Hi Isaac,

We took a quick pass at calculating the retail areas based on your sketches. With such a short turn around time we weren't able to provide you with an area summary per floor. Hopefully this will do for what you need tomorrow. Let us know if you need anything else and we'll see if we can accommodate you.

When you have some time we can go over the plans together. There are a lot of grade changes around the site requiring different finished floor elevations in each store. Also ramping is required from the loading dock area to retail stores located on Yonge Street

Regards

.....
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**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED
PARTNERSHIP AND YSL RESIDENCES INC.**

Estate/Court File No.: 31-2734090

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST**

Proceedings commenced in Toronto

AFFIDAVIT

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

David Gruber (LSO#43758V)
Jesse Mighton (LSO# 62291J)
Benjamin Reedijk (LSBC# 513577)

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for Concord Properties Developments
Corp.