

**ONTARIO
SUPERIOR COURT OF JUSTICE
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 OF JOSHUA FOSTER
(Sworn June 11, 2021)**

I, Joshua Foster, of the city of Oakville, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an Associate with the law firm of Bennett Jones LLP, counsel for Concord Properties Developments Corp. and its affiliates (collectively, "**Concord**"). As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I have relied on other sources for information, I have so stated and I believe them to be true.

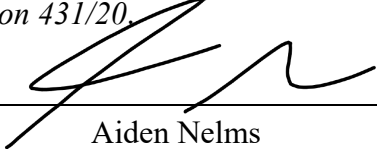
2. On June 10, 2021, Concord was served with an affidavit of Ashley McKnight, which was affirmed that same day. Ms. McKnight attaches, at Exhibit "D" of her affidavit, correspondence from June 9 between Jesse Mighton, counsel for Concord, and Sapna Thakker, counsel for 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc. This correspondence concerned Notices of Examination Ms. Thakker purported to serve on two of Concord's employees. Ms.

McKnight also attaches, at Exhibit "F" of her Affidavit, a letter dated June 10, 2021 sent by Ms. Thakker on the same subject matter.

3. Mr. Mighton responded to Ms. Thakker's letter by email later that day. Ms. Thakker's co-counsel, Shaun Laubman, then briefly replied to Mr. Mighton. Attached as **Exhibit "A"** to this Affidavit is a true copy of the full June 9 to 10 email chain between Mr. Mighton, Ms. Thakker, and Mr. Laubman.

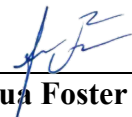
4. I swear this affidavit in support of the motion to sanction and approve the proposal of YSL Residences Inc. and YG Limited Partnership scheduled to be heard June 23, 2021, and in response to the application of 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc., scheduled to be heard June 23, 2021, and for no other or improper purpose.

SWORN BEFORE ME over)
videoconference on this 11th day of June)
2021. The affiant was located in the City of)
Oakville, in the Province of Ontario and the)
Commissioner was located in the City of)
Toronto, in the Province of Ontario. This)
affidavit was commissioned remotely as a)
result of COVID-19 and the declaration was)
administered in accordance with Ontario)
Regulation 431/20,)



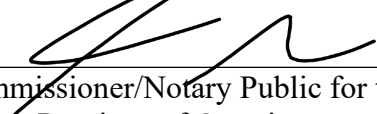
Aiden Nelms

A Commissioner for Oaths in and for the
Province of Ontario



Joshua Foster

This is Exhibit "A" referred to in the
Affidavit of Joshua Foster
sworn (or affirmed) before me on
this 11th day of June 2021.



A Commissioner/Notary Public for the
Province of Ontario

Victor Fong

From: Shaun Laubman <slaubman@lolg.ca>
Sent: Thursday, June 10, 2021 1:35 PM
To: Jesse Mighton; Sapna Thakker
Cc: David Gruber; 'Alexander Soutter'
Subject: RE: Notices of Examination [BJ-WSLegal.FID5464265] [IWOV-Client.FID106454]

Jesse,

We don't agree with your reading of the endorsement and completely disagree with your position that the stay applies. That's entirely inconsistent with both the hearing and the endorsement. In any event, there's probably not much to be gained by trading emails on this issue. We have our respective positions.

Shaun Laubman
 Direct 416 360 8481
 Cell 416 315 4122
slaubman@lolg.ca

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From: Jesse Mighton <MightonJ@bennettjones.com>
Sent: June-10-21 3:24 PM
To: Sapna Thakker <sthakker@lolg.ca>
Cc: Shaun Laubman <slaubman@lolg.ca>; David Gruber <GruberD@bennettjones.com>; 'Alexander Soutter' <ASoutter@tgf.ca>
Subject: RE: Notices of Examination [BJ-WSLegal.FID5464265]

Sapna,

Concord's position remains that the Limited Partners' applications are stayed, and contrary to your letter, no determination has been made on this issue (refer to paragraph 3 of Justice Dunphy's Endorsement of June 1, 2021). Rather, Justice Dunphy determined that the Limited Partners' complaints would be heard at the proposal sanction hearing – this is a process governed by the BIA and the General Rules set out below. You should also refer to paragraphs 12-14 of Justice Dunphy's June 1 Endorsement. These paragraphs are clear that these matters are to be dealt with in the context of whether or not the court should approve the proposal. I note in particular that while the timetable set out in paragraph 13 contemplates "cross-examinations" it does not in any way give you a right of examination for parties that are not affiants within the proposal proceedings.

Therefore, in order to sustain your argument that any adverse inference should be drawn, you will first need to obtain relief declaring that the BIA stay of proceedings does not apply to your application such that the Rules of Civil Procedure govern. Otherwise, Justice Dunphy's June 1 Endorsement is clear that the BIA rules apply.



Jesse Mighton
Associate, Bennett Jones LLP

T. [416 777 6255](tel:4167776255) | F. [416 863 1716](tel:4168631716)
BennettJones.com

From: Sapna Thakker <sthakker@lolg.ca>
Sent: Thursday, June 10, 2021 2:31 PM
To: Jesse Mighton <MightonJ@bennettjones.com>
Cc: Shaun Laubman <slaubman@lolg.ca>; David Gruber <GruberD@bennettjones.com>; 'Alexander Soutter' <ASoutter@tgf.ca>
Subject: RE: Notices of Examination [BJ-WSLegal.FID5464265]

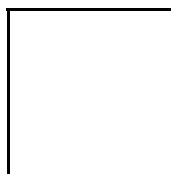
Jesse,

Please find attached correspondence of today's date.

Thanks,
Sapna

Sapna Thakker
Direct 416 642 3132
Cell 437 213 3408
sthakker@lolg.ca

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From: Jesse Mighton <MightonJ@bennettjones.com>
Sent: June-09-21 6:31 PM
To: Sapna Thakker <sthakker@lolg.ca>
Cc: Shaun Laubman <slaubman@lolg.ca>; David Gruber <GruberD@bennettjones.com>; 'Alexander Soutter' <ASoutter@tgf.ca>
Subject: RE: Notices of Examination [BJ-WSLegal.FID5464265]

Sapna,

This is the first time we are hearing of your intention to examine any Concord representatives, and this request was not included in your materials before Justice Dunphy at our June 1 attendance. Moreover contrary to your note below, these proposed depositions could not possibly be cross-examinations as neither Mr. McCracken or Mr. Au-Yeung have

sworn testimony in these proceedings. Rather, this is an attempt to force an examination of a party to an insolvency proceeding.

Indeed, your proposed examinations would be taking place pursuant to the Endorsement of Justice Dunphy issued on June 1, 2021 in respect of Court File No. 31-2734090, a proposal proceeding under Part III of the *Bankruptcy and Insolvency Act*. As such, the procedures are governed by the *Bankruptcy and Insolvency General Rules*, CRC, c 368 (the "General Rules"), and not the Ontario Rules of Civil Procedure, as suggested in the two notices sent below.

Pursuant to section 14 of the General Rules, leave is required to examine another party and require them to produce documents. Leave will only be granted where to do so is necessary in the interests of justice (see: *Farm Credit Canada v. Gidda*, 2015 BCCA 236 and *Grains Patenaude Itee (Proposition de)*, 2008 QCCS 1342). It would appear to us that any evidence you may seek to obtain from Messrs. McCracken and Au-Yeung would be available through a cross-examination of Cresford's deponent. As such, there is no apparent necessity. Accordingly, Concord will not present these individuals for examination, nor will it engage in any documentary production absent an order granting leave under the General Rules.



Jesse Mighton
Associate, Bennett Jones LLP

T. [416 777 6255](tel:4167776255) | F. [416 863 1716](tel:4168631716)

BennettJones.com

From: Sapna Thakker <sthakker@lolg.ca>
Sent: Wednesday, June 9, 2021 10:44 AM
To: Jesse Mighton <MightonJ@bennettjones.com>
Cc: Shaun Laubman <slaubman@lolg.ca>; David Gruber <GruberD@bennettjones.com>; 'Alexander Soutter' <ASoutter@tgf.ca>
Subject: Notices of Examination

Jesse,

Please find attached Notices of Examination for Dennis Au-Yeung and Cliff McCracken served upon you pursuant to the *Rules*.

The Notices note that cross-examinations will begin at 9:00am on Friday, but we anticipate that we can work out a schedule for the various witnesses so you can plan accordingly with your clients.

In addition, the Notices request a number of documents:

1. All communications regarding the sale/purchase of the Yonge Street properties;
2. All pro formas, projections, budgets, and forecasts relating to the YSL Project;
3. All communications between Concord and/or its representatives and Cresford and/or its representatives in 2021 regarding any alternative structures or terms to the original proposed transaction;
4. All communications regarding the negotiations of the Proposal or any potential transaction involving the YSL Project;
5. All communications regarding the scope of the release in the Proposal; and,

6. All communications with Cresford and/or its representatives regarding payments and/or proposed payments to Cresford and/or its affiliates, principals and directors/officers.

Please send these documents to us as soon as possible.

Thanks,
Sapna

Sapna Thakker

Direct 416 642 3132

Cell 437 213 3408

sthakker@lolg.ca

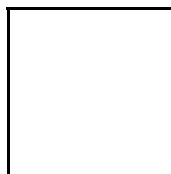
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MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND
YSL RESIDENCES INC.**

Consolidated Court File No. 31-2734090

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

AFFIDAVIT OF JOSHUA FOSTER
(Sworn June 11, 2021)

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Jesse Mighton (LSO# 62291J)

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Lawyers for the Concord Properties
Developments Corp., and its affiliates