

Court File No. BK-21-02734090-0031
Court of Appeal No. COA-22-CV-0451

COURT OF APPEAL FOR ONTARIO

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.**

APPEAL BOOK AND COMPENDIUM of the APPELLANTS
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E&B Investment Corporation, and TaiHe International Group Inc.
(the “YongeSL LPs”)

January 23, 2023

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TAB 1

COURT OF APPEAL FOR ONTARIO
 FILED / DÉPOSÉ
 22-DEC-2022/EN
 REGISTRAR / GREFFIER
 COUR D'APPEL DE L'ONTARIO

Court File No. BK-21-02734090-0031
 Court of Appeal No. COA-22-CV-0451

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COURT OF APPEAL FOR ONTARIO
 RECEIVED / REÇU

DEC - 5 2022

NOTICE OF APPEAL

REGISTRAR / GREFFIER
 COUR D'APPEL DE L'ONTARIO

THE APPELLANTS, YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc. (collectively, the “**YongeSL LPs**”), **APPEAL** to this Court from the Order of the Honourable Justice Peter Osborne of the Superior Court of Justice (the “**Motion Judge**”) made on November 22, 2022 at Toronto, Ontario (the “**Order**”).¹

THE APPELLANTS ASK that the Order be set aside and that an order be granted in its place as follows:

1. Dismissing the motion brought by CBRE Limited (“**CBRE**”) for an order setting aside the disallowance of its Proof of Claim in this proceeding by KSV Restructuring Inc., in its capacity as the proposal trustee (the “**Proposal Trustee**”) of the debtors YG Limited Partnership and YSL Residences Inc. (together, the “**Debtors**”);

¹ The Motion Judge’s reasons for decision were dated November 16, 2022, but only released to the parties by email on November 22, 2022. The YongeSL LPs have asked the Court to correct the typographical error in the date but, in the event that it is necessary, seek leave to extend the time to appeal.

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2. Declaring that CBRE's Proof of Claim in this proceeding is disallowed in full;
3. Awarding the YongeSL LPs the costs of the motion below and of this appeal; and
4. Such further and other relief as this Court may deem just.

THE GROUNDS OF APPEAL are:

5. The YongeSL LPs represent the ultimate economic interest in this proceeding and it was an error of law to deny the YongeSL LPs standing on CBRE's motion. In particular, the Motion Judge:
 - (a) erred in applying s.135(5) of the *Bankruptcy and Insolvency Act* ("**BIA**");
 - (b) erred by not following the earlier decision of Justice Dunphy which determined that the YongeSL LPs had standing in this proceeding as an affected group; and
 - (c) erred in determining that the Yonge SL LPs were not "persons aggrieved" under s.37 of the *BIA*.
6. The Motion Judge also committed a palpable and overriding error in allowing CBRE's claim. There was inadequate evidence before the Court such that CBRE's claim could succeed.

Background to the Proceeding

7. In summer 2021, the Debtors commenced this *BIA* proceeding as a pre-packaged liquidation designed primarily to benefit the Cresford Group, the developer that controlled the Debtors. The Debtors' original proposal would have seen the Cresford Group extract approximately \$22 million from the "**YSL Project**", the condominium development

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owned by the Debtors. Unsecured creditors would have recovered a maximum of 58% of their claims. Under the original proposal, the Class A Unit holders of YG Limited Partnership (the “**limited partners**”), who had invested \$14.8 million in the YSL Project, would have recovered nothing.

8. The Proposal Trustee supported the Debtors’ original proposal. The limited partners did not. Justice Dunphy agreed that the original proposal was not made in good faith or designed to benefit the general body of creditors. His Honour refused to sanction it but gave the Debtors an opportunity to put forward a new proposal. The new proposal, which was ultimately Court-approved (the “**Proposal**”), did not cap unsecured creditor recovery. Indeed, unsecured creditors may yet recover 100% of their claims. The limited partners may yet recover their investment in the YSL Project.
9. By way of the Proposal, the Debtors transferred the YSL Project lands to Concord Properties Developments Corp. (“**Concord**”), another developer.
10. Article 5.05 of the Proposal expressly provides that the limited partners, including the YongeSL LPs, are entitled to any residue of the Proposal after final distributions to creditors.

Three Outstanding Claims Against the Debtors

11. Since the Proposal was sanctioned, the Proposal Trustee has been determining claims made against the Debtors. Three claims remain outstanding: (a) CBRE’s claim of approximately \$1.2 million; (b) a claim by Harbour International Investment Group Inc. (“**Harbour**”) for

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\$1 million plus HST; and (c) an \$18 million claim by the Cresford Group's former President of Marketing, Maria Athanasoulis.

12. Subject to the resolution of those three claims, the limited partners may yet recover their \$14.8 million investment in the YSL Project, plus some return thereon.
13. The YongeSL LPs brought an application pursuant to s.37 of the *BLA* to challenge the Proposal Trustee's decision to allow Harbour's claim. That application has been held in abeyance pending a final determination of the Motion Judge's decision.
14. Ms. Athanasoulis' claim involves an allegation that she is entitled to share in the profits of the YSL Project. The Proposal Trustee and Ms. Athanasoulis agreed to a bifurcated arbitration of that claim, pursuant to which the Proposal Trustee defended the claim. The first phase of that arbitration resulted in a finding that Ms. Athanasoulis had an agreement with the Cresford Group whereby she would share in the profits of the YSL Project. The amount of that claim, if any, was not determined.
15. The limited partners and Concord were left out of this process. Once they learned of the outcome, the limited partners took steps to challenge the Proposal Trustee's right to arbitrate Ms. Athanasoulis' claim. Those steps are summarized in an October 17, 2022, decision of Justice Kimmel (*YG Limited Partnership (Re)*, 2022 ONSC 6138). Justice Kimmel held that the arbitration contemplated a final adjudication of Ms. Athanasoulis' claim and went beyond a mere fact-finding exercise. Her Honour held that it was an improper delegation to the arbitrator by the Proposal Trustee of its ultimate responsibility to determine and value Ms. Athanasoulis' claim. The Proposal Trustee is now in the process of developing its protocol for the determination of that claim.

16. Subject to the determination of the three outstanding claims against the Debtors, up to \$16.038 million may be available for distribution to the limited partners.

CBRE's Claim

17. CBRE is a real estate broker retained by the Debtors before the Debtors filed Notices of Intention to Make a Proposal under the *BIA*. CBRE was retained to broker the sale of the YSL Project. The YSL Project was ultimately conveyed to Concord, the proposal sponsor, in this proceeding.
18. CBRE's claim is for more than \$1.2 million as a commission arising after the conveyance of the YSL Project from the Debtors to Concord in this proceeding. CBRE's claim depends on there having been negotiations between the Debtors and Concord during a certain 90-day period (the "**Holdover Period**"). There was no evidence of such negotiations before the Proposal Trustee. The Proposal Trustee disallowed CBRE's claim.

CBRE's Appeal to the Motion Judge

19. CBRE appealed the Proposal Trustee's disallowance of its claim and filed new evidence of negotiations between the Debtors and Concord. The new evidence was set out in and limited to two sentences:
 - (a) Mr. Gallagher, a Vice-President with CBRE, stated that "[a]round September 2020, I played golf with Mr. Dowbiggin and he again confirmed that the negotiations with Concord were ongoing for the purchase of the YSL Property". Mr. Dowbiggin, the former President of a company in the Cresford Group (not the Debtors), did not adopt this hearsay statement in his affidavit; and

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(b) Mr. Dowbiggin's evidence was that,

Although the proposed structure and mechanism of the deal between Cresford and Concord went through many iterations, negotiations were ongoing from the point of Concord's introduction until Cresford and Concord agreed that the property would be sold through a proposal made pursuant to [the *BIA*].

20. The Proposal Trustee changed its position after CBRE appealed and consented to CBRE's appeal from the Proposal Trustee's disallowance of its claim. The Proposal Trustee agreed to seek the Court's approval of a settlement pursuant to which CBRE's claim and appeal would be allowed without costs.
21. The YongeSL LPs opposed CBRE's appeal and the Proposal Trustee's request that the Motion Judge approve its settlement of it. The YongeSL LPs took the position that Mr. Dowbiggin's vague statement that "negotiations were ongoing" during the Holdover Period was not cogent evidence capable of proving a claim. CBRE had not met its onus and the Proposal Trustee ought to have maintained its disallowance of CBRE's claim.

The Motion Judge's Decision

22. The Motion Judge concluded that the YongeSL LPs had no standing before the Court and found that CBRE had proven its claim. Respectfully, the Motion Judge (a) erred in law by concluding that the YongeSL LPs lacked standing; and (b) committed a palpable and overriding error in concluding that CBRE had proven its claim.

The Motion Judge erred in law by concluding that the YongeSL LPs lack standing

23. The Motion Judge held that the YongeSL LPs "lack the standing in this case to challenge the disallowance [of CBRE's claim] by the Proposal Trustee.". The effect of the Motion

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Judge's ruling is to deny the YongeSL LPs the right to be heard in circumstances where their interests are affected by the decision. That conclusion is in error.

24. The Motion Judge erred in applying s.135(5) of the *BIA*, which had no application to the relief sought on CBRE's motion. Section 135(5) provides that the "court may expunge or reduce a proof of claim [...] on the application of a creditor or of the debtor if the trustee declines to interfere in the matter." The section does not apply where a creditor appeals the disallowance of its proof of claim, as CBRE sought on its motion in this proceeding.
25. The YongeSL LPs were not challenging the Proposal Trustee's disallowance of CBRE's claim. To the contrary, they supported it. The YongeSL LPs opposed (a) CBRE's appeal and request that its proof of claim be allowed; and (b) the Proposal Trustee's consent to CBRE's appeal, which consent amounted to the Proposal Trustee agreeing to set aside its own disallowance. Even if s.135(5) did apply, which it did not, the YongeSL LPs would still have standing on CBRE's motion.
26. The Motion Judge also erred in law by failing to apply the earlier decision of Justice Dunphy whereby the YongeSL LPs have already been granted standing in this proceeding, over the objections of Concord and the Debtors. Justice Dunphy addressed that issue in the weeks leading up to the Debtors' unsuccessful motion for approval of their original proposal. Justice Dunphy determined that it was plain that the limited partners' arguments on the Debtors' proposal ought to be fleshed out and heard, and that the sanction hearing was effectively the only opportunity that the limited partners would have to make their case and be heard. They were affected by the outcome of the motion to sanction the original proposal and were entitled to be heard.

27. As a result of the limited partners making that case, the original proposal was rejected and the improved Proposal put forward, to the benefit of all unsecured creditors and the limited partners.
28. The YongeSL LPs represent the ultimate economic interest in this proceeding. The Debtors' proposal expressly provides that the limited partners are entitled to the entire proceeds of the YSL Project after unsecured creditors are paid. Their interests are affected by the determination of CBRE's claim. This alone should have afforded them standing to make submissions on CBRE's appeal. The Motion Judge erred in law by concluding that they lacked standing.

The Motion Judge erred in law by concluding that the YongeSL LPs were not "aggrieved"

29. The YongeSL LPs' primary position was that they had standing to oppose CBRE's appeal and that the Proposal Trustee's purported settlement of the appeal was not determinative of the appeal. In the event that it was necessary, however, they brought a motion under s.37 of the *BIA* for the purpose of challenging the Proposal Trustee's decision to settle the appeal.
30. Without deciding whether the s.37 application was necessary at all, the Motion Judge concluded that the YongeSL LPs were not "persons aggrieved" within the meaning of s.37. The Motion Judge erred in law in his interpretation of that section, which provides that,
- where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

31. If it were necessary to bring a s.37 motion to challenge the Proposal Trustee's proposed settlement of the appeal, the YongeSL LPs were proper persons to make that challenge. The definition of "person aggrieved" should be afforded a wide scope and not be subjected to a restrictive interpretation. While such a person cannot be a "mere busybody", they include a person who has a genuine grievance because a decision of a trustee has prejudicially affected their interests. The YongeSL LPs are not mere busybodies. They have a real economic interest in the Debtors' estates. The Motion Judge's interpretation of s.37 was unduly narrow and constituted an error of law.
32. The Motion Judge held that the YongeSL LPs were not "persons aggrieved" because their complaint boiled down to the fact that their ultimate potential recovery would be reduced if CBRE's claim were allowed. The Motion Judge concluded that that was not sufficient to make them "persons aggrieved" because that would mean that every creditor would have standing to challenge the treatment of another creditor's claim in a bankruptcy, a notion which the Motion Judge rejected. This conclusion was an error of law.
33. A mechanism already exists for creditors to challenge the treatment of other creditors' claims. If a trustee does not disallow a claim, the creditors can apply for that relief under section 135(5). Section 37 is simply a broader, more flexible remedy for *any person*, including an equity claimant, who is aggrieved by a decision of a trustee to challenge that decision.
34. Courts have accepted that shareholders can be aggrieved persons. There is no reason to treat limited partners such as the YongeSL LPs differently.

35. Parties who have claims to the proceeds of an insolvent estate, as the YongeSL LPs do, have standing under s.37. It was an error of law for the Motion Judge to conclude otherwise.

The Motion Judge erred in allowing CBRE's appeal and claim

36. The Motion Judge committed a palpable and overriding error in allowing CBRE's appeal and claim. There was inadequate evidence before the Motion Judge such that CBRE's claim could succeed.
37. In the summary process set out in s.135 of the *BIA*, CBRE is expected to put its best foot forward, just as if it were seeking summary judgment. A creditor is expected to adduce all evidence it has in support of its claim. That evidence must be detailed and particularized as opposed to vague, unparticularized pieces of evidence, which is really no evidence at all. The fact that a summary process is to be used does not call for a lower standard of proof than used in a fuller process.
38. CBRE adduced only vague, unparticularized and hearsay pieces of evidence. The central issue on CBRE's appeal was whether negotiations between the Debtors and Concord took place during the Holdover Period. CBRE's evidence on this issue was limited to the two sentences reproduced above.
39. The Motion Judge's review of the merits of CBRE's claim was limited to mere reference to the affidavits of Mr. Gallagher and Mr. Dowbiggin.
40. It cannot be that such evidence is enough for a creditor to prove a claim in an insolvency proceeding. The Motion Judge committed a palpable and overriding error in accepting that such evidence could prove CBRE's claim.

Basis for the Court of Appeal's Jurisdiction

41. An appeal lies to the Court of Appeal from the Order pursuant to s.183(2) of the *BIA* and s.193(b) and (c), or alternatively (e), of the *BIA*.
42. Pursuant to s.193(b) of the *BIA*, the YongeSL LPs may appeal the Order without leave. The Order is likely to affect other cases of a similar nature in this proceeding:
 - (a) the YongeSL LPs have challenged the Proposal Trustee's decisions in respect of the Harbour claim. The limited partners might challenge the Proposal Trustee's ultimate decision in respect of the Athanasoulis claim or decide to participate in any appeal of such decision (eg if Ms. Athanasoulis appeals). The Motion Judge's conclusions that the YongeSL LPs lack standing affect those cases; and
 - (b) further, the Motion Judge's finding that the vague statements made by CBRE's deponents were sufficient to prove a claim sets too low a bar and affects the quality of evidence necessary for proof of the Harbour and Athanasoulis claims.
43. Pursuant to s. 193 (c) of the *BIA*, the YongeSL LPs may appeal the Order without leave. The property involved in the appeal exceeds ten thousand dollars in value. CBRE's claim is for approximately \$1.2 million. The property involved in the appeal meets the statutory minimum.
44. Alternatively, if leave to appeal is required, the YongeSL LPs seek leave to appeal pursuant to s.193(e) of the *BIA* and ask that the motion for leave be heard at the same time as the appeal. This appeal involves matters of general importance to bankruptcy matters because it involves legal questions of (a) whether equity claimants have standing in bankruptcy

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matters generally, (b) whether they have standing as “persons aggrieved” by an act or decision of a trustee; and (c) what minimum quality of evidence is required to prove a claim. This proceeding would not be unduly delayed by this appeal. The Debtors’ only asset has been liquidated – they will have no ongoing business. Determinations of the outstanding claims described herein, particularly the Athanasoulis claim, will not be unduly delayed by this appeal.

December 2, 2022

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TAB 2

Court File No. BK-21-027334090-0031



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

THE HONOURABLE)	TUESDAY, THE 22nd DAY
)	
MR. JUSTICE OSBORNE)	OF NOVEMBER, 2022

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.**

ORDER

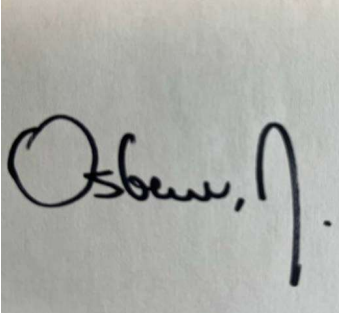
THIS MOTION, brought by the moving party, CBRE Limited (“**CBRE**”), for an order, (a) setting aside the disallowance of its Proof of Claim in this proceeding by KSV Restructuring Inc., in its capacity as proposal trustee of the Debtors YG Limited Partnership and YSL Residences Inc. (the “**Proposal Trustee**”); (b) allowing CBRE’s claim; and (c) its costs of this motion, was heard in person on September 26, 2022, in Toronto, Ontario, with the reasons for decision reserved until November 22, 2022.

ON READING the Motion Record of CBRE dated July 25, 2022, the Factum of CBRE dated September 15, 2022, the Supplementary Affidavit of Heyla Vettyvel sworn on July 27, 2022, the Reply Factum of CBRE dated September 23, 2022, the Notice of Motion of YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc. (collectively, the “**YongeSL LPs**”) dated September 20, 2022, the Responding Motion Record and Factum of the YongeSL LPs dated September 20, 2022, the Compendium of YongeSL LPs dated September 23, 2022, the Seventh Report of the Proposal Trustee to the Court dated September 12, 2022, the Factum of the Proposal Trustee dated September 19, 2022, and the Reply Factum of the Proposal Trustee dated September

22, 2022, and upon hearing the submissions of counsel for CBRE, YongeSL LPs, the proposal sponsor Concord Properties Developments Corp. and the Proposal Trustee,

1. **THIS COURT ORDERS** that the disallowance of CBRE’s claim by the Proposal Trustee is set aside and CBRE’s claim is allowed.
2. **THIS COURT FURTHER ORDERS** that the YongeSL LPs pay to CBRE its partial indemnity costs of this motion fixed in the amount of \$25,000.00, all inclusive, payable within sixty (60) days of the date of this Order.
3. **THE COURT FURTHER ORDERS** that the YongeSL LPs pay to the Proposal Trustee its partial indemnity costs of this motion fixed in the amount of \$18,000.00, all inclusive, payable within sixty (60) days of the date of this Order.

THIS ORDER BEARS INTEREST at the rate of 5 per cent per year commencing on January 21, 2023.



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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.

Court File No. BK-21-027334090-0031

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

ORDER

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Lawyers for the Appellants, YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc.

TAB 3

CITATION: YG Limited Partnership and YSL Residences Inc., 2022 ONSC 6548
COURT FILE NO.: BK-21-02734090-0031
DATE: 20221122

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

IN THE MATTER of the *Bankruptcy and Insolvency Act*, R.SC. 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.

BEFORE: Osborne J.

COUNSEL: *C. Haddon Murray and Elie Laskin*, CBRE Limited
A. Soutter, Yonge SL LPs
Robin Schwill, KSV, Proposal Trustee
Jesse Mighton, Concord Properties
Sarah Stothart, Maria Athanasoulis
A. Sipa, Harbour International Investment Group and Yulei Zhang

HEARD: September 26, 2022

REVISED ENDORSEMENT

[1] This motion raises three questions that can arise where a Proposal Trustee has disallowed a Proof of Claim pursuant to section 135 of the *Bankruptcy and Insolvency Act* [”BIA”], and the claimant has appealed from that disallowance pursuant to section 135(4):

- a. should the appeal proceed before this Court as a hearing *de novo*, or should the record be limited to those materials considered by the Proposal Trustee at the time [i.e., the materials filed in support of the claim];
- b. do limited partners of a limited partnership that has filed an NOI have standing on such an appeal; and
- c. should the appeal be allowed in this case?

[2] CBRE Limited [“CBRE”] moves for an order setting aside the disallowance of its claim by the Proposal Trustee in the Proposal of YSL Limited Partnership and YSL Residences Inc. [together, the “Debtors”], and allowing the claim.

[3] CBRE also seeks an order that this motion, which is effectively the appeal of the disallowance of its claim, be heard by way of hearing *de novo*.

[4] For the reasons that follow, the motion is granted.

Background and Context

[5] On April 30, 2021, YG Limited Partnership and YSL Residences Inc. [collectively, “YSL”] filed Notices of Intention to Make a Proposal pursuant to section 50.4(1) of the BIA. On May 14, 2021, this Court granted a consolidation order consolidating the NOI Proceedings for the purpose of simplifying the administration of the estates and facilitating the filing of a joint proposal and single meeting of creditors, among other things.

[6] YSL is part of the Cresford Group of Companies, a developer of real estate in the Toronto area. YSL Residences Inc. was a registered owner of the YSL Property defined below. It acted as bare trustee for, and nominee of, the limited partnership.

[7] This motion arises out of a dispute over a commission related to the acquisition of property at 363-391 Yonge St., Toronto and 3 Gerrard Street East, Toronto, [together, the “YSL Property”] by Concord Properties Developments Corp. [“Concord”].

[8] More than a year prior to the filing of the NOIs, in January 2020, CBRE had entered into an oral agreement with YSL for the listing of the YSL Property. For the purposes of this motion, the agreement was a relatively typical arrangement pursuant to which CBRE was to be paid a commission equal to 0.65% of the purchase price in the event that the property was sold and the purchaser was one of the parties introduced by CBRE.

[9] On February 21, 2020, as CBRE was already performing the oral agreement, it provided YSL with a proposed written agreement which further clarified and defined the terms of the bargain. In particular, it provided that the term of the contract expired on August 20, 2020 but also included a holdover clause pursuant to which the commission was payable if a binding agreement of purchase and sale was executed within 90 days after the expiry of the term and the transaction subsequently closed.

[10] The evidence on this motion is that the written agreement was never executed through inadvertence, although both parties performed the agreement and acted in all respects as if it had been formally executed.

[11] As noted above, YSL subsequently encountered financial difficulties and filed the NOIs. CBRE filed a claim with the Proposal Trustee in respect of the commission owing on the sale of the YSL Property.

[12] The Proposal Trustee initially disallowed the claim of CBRE as it was not satisfied, on the information initially filed in support of the claim, that it ought to be allowed. However, upon further review and particularly upon reviewing the Motion Record filed by CBRE, the Proposal Trustee and CBRE entered into a settlement agreement pursuant to which the claim would be allowed in exchange for the agreement of CBRE not to seek its costs on this motion.

[13] As a result of that settlement agreement, the Proposal Trustee supports CBRE and the relief sought on this motion.

[14] Indeed, the only parties opposing the relief sought are certain limited partners in the YG Limited Partnership.

[15] CBRE, supported by the Proposal Trustee, submits that the disallowance should be set aside and its claim should be allowed pursuant to the settlement agreement. It argues that, for the purposes of this motion, the Court should in any event consider the matter *de novo*.

[16] The limited partners submit that CBRE has failed to prove its claim with the requisite cogent evidence originally before the Proposal Trustee [i.e., the material originally filed in support of the CBRE claim], or at all.

ANALYSIS

Do the Limited Partners Have Standing?

[17] Section 135 of the BIA sets out the regime pursuant to which proofs of claim are admitted or disallowed.

[18] Pursuant to subsection (2), a trustee may disallow, in whole or in part, any claim.

[19] That disallowance is final and conclusive unless, pursuant to subsection (4), the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the *General Rules*.

[20] Pursuant to subsection (5), the court may expunge or reduce a proof of claim on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

[21] Here, the limited partners are limited partners in one of the Debtors, YG Limited Partnership. In my view, they lack the standing in this case to challenge the disallowance by the Proposal Trustee.

[22] For the purposes of this motion, the creditor is CBRE and the Debtor [or one of them] is YG Limited Partnership. As submitted by the Proposal Trustee, the whole bankruptcy regime is based upon all parties dealing with the debtor entity and/or the proposal trustee to address, determine and/or resolve claims.

[23] I agree with the submission of the Proposal Trustee that pursuant to subsection 135(5), the court may grant relief only where either one of two parties requests it: the creditor applies, or the debtor applies in circumstances where the trustee will not interfere.

[24] The limited partners are not creditors, but rather are exactly that - limited partners - in one of the Debtors. They hold limited partnership units in that entity. That is insufficient to make them debtors [within the meaning of this subsection or generally within the structure of the BIA], any more than shareholders of a debtor corporation would themselves automatically be debtors.

[25] Moreover, the particular contractual entitlements of the limited partners applicable to their units do not assist them here. The partnership agreement sets out the rights and obligations of the general partner to act on behalf of the limited partnership, and of the limited partners themselves.

[26] The contractual right in the partnership agreement to bind the partnership with respect to things such as claims is granted to the general partner. The general partner, on behalf of the limited partnership, consents to the relief sought on this motion.

[27] Finally, the Proposal Trustee has in fact “interfered” here, as contemplated in section 135(5). This is not a case where a trustee simply refuses to take a position or will not engage on the issue.

[28] I also observe that section 37 of the BIA provides that, where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

[29] I have already concluded that the limited partners are not creditors. Are they “persons aggrieved”? In my view they are not. Their grievance, or complaint, boils down to the fact that their ultimate potential recovery will presumably be reduced if the claim is allowed. That is not sufficient to make them aggrieved within the meaning of section 37. To conclude otherwise would mean that every creditor would have standing pursuant to section 37 to challenge the claim of every other creditor in a bankruptcy proceeding and I reject this notion.

[30] As observed in Holden & Morawetz, *The 2022 Annotated Bankruptcy and Insolvency Act*, Thomson Reuters, Toronto, 2022 at p. 102-103,

“the words “any other person is aggrieved” must be broadly interpreted. They do not mean a person who is disappointed of a benefit that he or she might have received if some other order had been made. A “person aggrieved” is a person who has suffered a legal grievance, a person against whom a decision has been pronounced by the trustee that has wrongfully deprived him or her of something, or wrongfully refused him or her something, or wrongfully affected his or her title to something: *Re Sidebotham*, (1880), 14 Ch.D. 458 at 465; *Liu v. Sung*, (1989), 72. C.B.R. (N.S.) 224 (BCSC).”

[31] This Court reached the same conclusion in *Global Royalties Ltd. v. Brook*, 2016 ONSC 6277 at para. 13.

[32] I conclude that in this case, the limited partners lack the requisite standing to oppose the motion.

Should the Appeal Proceed *de Novo*?

[33] As stated above, the authority of the court to expunge or reduce a proof of claim is found in section 135(5) of the BIA.

[34] I am satisfied that this Court may direct that an appeal from a disallowance of a claim by a trustee proceed by way of hearing *de novo* where it determines that to proceed otherwise would result in an injustice to the creditor. (see *Credifinance Securities Limited v DSLC Capital Corp*, 2011 ONCA 160 at para. 24, citing *Charlestown Residential School, Re*, 2010 ONSC 4099 at paras. 1, 18, and *Re: Poreba*, 2014 ONSC 277 at para. 32).

[35] I recognize, as did the Court of Appeal in *Credifinance*, that this practice is not uniform across the country. I also recognize that a major legislative objective of the bankruptcy regime is to maximize efficiency and the expeditious determination of claims between and among the stakeholders, and that this, in turn, could support the exercise of deference in the review of a decision of a trustee. In my view, that is why appeals of this nature should generally proceed as true appeals, based on a record consisting of the materials relied upon by the trustee in its decision to disallow the claim.

[36] However, it seems to me that the present case is an example of precisely the type of case where to proceed otherwise than *de novo*, and limit the record to that material originally filed in support of the claim, would result in an injustice to the creditor. That is exactly what section 135(5) is designed to correct or avoid, and in circumstances such as this, the appeal can and should proceed *de novo* in the sense that materials not originally before the trustee can and should be considered by the court.

[37] The *Poreba* case is such an example, where the Master [now Associate Judge] concluded that a hearing *de novo* was appropriate because there were significant issues of credibility such that fairness required that the claimant be given an opportunity to provide *viva voce* evidence and to explain certain issues.

[38] The evidence that, in my view, is relevant both to a determination of the claim and to my conclusion that to exclude it would work an injustice on the creditor, is described below. The creditor and the Proposal Trustee acted openly and transparently and entering into the settlement agreement, in the context of the appeal by the creditor. They did not act in an underhanded or unfair manner.

Should the Appeal be Allowed?

[39] Notwithstanding my conclusion above that the limited partners lacked the requisite standing to oppose this motion, I have considered their evidence and arguments with respect to the merits of the appeal, in case I am wrong. Moreover, CBRE seeks an order allowing the appeal, in any event of opposition.

[40] In this case, what occurred was rather straightforward. Based on the information and material originally available to it, the Proposal Trustee disallowed the claim. This seems reasonable when one considers the summary nature of claims evaluation by a trustee, in the somewhat unique circumstances of this case where the listing agreement giving rise to the claim for the commission on the sale of the property was first oral and then reduced to writing but through inadvertence the written agreement was never executed.

[41] However, and as stated above, when additional material was filed with the Proposal Trustee, it was of the view that the claim ought properly to be allowed. The Proposal Trustee did not, however, purport to allow an appeal from its own decision. Rather, it agreed, pursuant to the provisions of the settlement agreement, to support and not oppose the appeal by the creditor, properly brought pursuant to section 135(5), in exchange for the agreement of the creditor not to seek costs against the Proposal Trustee.

[42] I point this out in part due to the argument advanced by the limited partners to the effect that the disallowance of a claim by the Proposal Trustee is final and conclusive with the result that the Proposal Trustee has no residual power to reconsider its own decision or reverse itself. Again, that is not what has occurred here. Rather, the settlement agreement was entered into in the context of the appeal properly brought by the creditor.

[43] There is no dispute on this motion as to several relevant facts:

- a. CBRE entered into a listing agreement with YSL for the YSL Property;
- b. CBRE introduced YSL to Concord for the purposes of acquiring the YSL Property;
- c. Concord in fact did acquire the YSL Property; and
- d. the commission claimed by CBRE is equal to 0.65% of the total consideration paid for the YSL Property.

[44] For its part, Concord agrees and acknowledges that CBRE introduced it to YSL, although it has no knowledge of the agreement with CBRE. The evidence on this motion is that the Proposal Trustee in making its decision relied on information provided by Concord to the effect that it dealt with the Debtors at all times and did not have dealings with CBRE.

[45] However, that information was not provided to the creditor that had advanced the claim, CBRE. CBRE accordingly did not have any opportunity to make submissions with respect to, or file evidence to challenge, that statement from Concord.

[46] The evidence of Concord as subsequently provided to the Proposal Trustee and filed on this motion is to the effect that CBRE in fact introduced it to YSL for the purposes of acquiring the YSL Property.

[47] Indeed, the clear and unequivocal evidence of both counterparties to the agreement [CBRE and YSL] is consistent and clear: there was an agreement, CBRE performed the agreement and indeed was involved in negotiations right up until the conveyance of the YSL Property pursuant to the amended Proposal, and the commission is payable according to its terms.

[48] I am satisfied that this is clear from the evidence, and in particular the affidavit of Mr. Ted Dowbiggin, the former president of Cresford, and the affidavit of Mr. Casey Gallagher, VP of CBRE, relied upon by CBRE.

[49] I referred above in these reasons to the oral agreement of January, 2020 and the subsequent written agreement of February 21, 2020 and the fact that the latter had never been formally signed. As noted, the written agreement provided that the term of the contract ended on August 20, 2020, and the holdover clause [section 4.1] essentially extended the entitlement to a commission for an additional 90 days.

[50] The limited partners submit that even if the YSL Property was conveyed pursuant to the [amended] Proposal, that occurred outside the 90-day period with the result that the commission ought not to be payable.

[51] I am satisfied based on the evidence described above and particularly the evidence of Messrs. Dowbiggin and Gallagher, and in the absence of any contrary evidence put forward by any party, that the negotiations between YSL and Concord commenced with their introduction and continued until the acquisition of the YSL Property by Concord through the proposal, and specifically during the holdover period. The limited partners did not cross-examine either of those witnesses on their evidence with respect to these points. CBRE continued to act as listing broker and responded to questions from YSL during the negotiations.

[52] In addition, the Debtors themselves support the claim and have confirmed such to the Proposal Trustee. This is consistent also with the conduct of both the Debtors on the one hand and CBRE on the other, prior to the claim being advanced, as the parties to the agreement performed it according to its terms and acted in all respects as if the written agreement had been executed.

[53] Finally, I observe that Concord itself supports the claim being allowed and it, very arguably, has the most to gain if the claim were denied.

[54] The limited partners oppose the relief sought but were not parties to the impugned agreement nor, obviously, were they present for any of the discussions leading to the oral agreement.

[55] The limited partners argue that the terms of the agreement did not entitle CBRE to the payment of the commission since the sale of the YSL Property was not a sale by agreement of purchase and sale within the meaning the commission agreement.

[56] CBRE, one of the parties to that agreement, supported by both the Debtors [the counterparty to the agreement] and the Proposal Trustee, submits that this includes an agreement pursuant to which consideration is given for the conveyance of title to the YSL Property. I agree. I also agree that a proposal is a form of contract [between the debtor and its creditors]. [See *Jones v. Ontario*, (2003), 66 O.R.(3d) 674 (ONCA)].

[57] In the result, I am therefore satisfied that to exclude this clear and cogent evidence would result in the disallowance of the claim and that would be an unjust result in the circumstances of this case.

- [58] For all of the above reasons,
- a. the limited partners do not have standing to oppose or the relief sought on this motion by the creditor [CBRE] supported by the Proposal Trustee and the Debtors;
 - b. in this case, the appeal from the decision of the Proposal Trustee should be considered, and has been considered by me, as a hearing *de novo*, since to do otherwise would result in an injustice to the creditor [CBRE]; and
 - c. the appeal should be allowed and the motion granted.

[59] Accordingly, the disallowance of CBRE's claim by the Proposal Trustee is set aside and the claim is allowed.

[60] CBRE, the Proposal Trustee and the limited partners have all submitted costs outlines. CBRE seeks partial indemnity costs, inclusive of fees, disbursements and HST, of \$64,896.07. The Proposal Trustee seeks costs on the same basis of \$58,948.48. The costs outline of the limited partners supports a claim for costs on the same basis of \$21,725.48.

[61] Exercising my discretion pursuant to section 131 of the *Courts of Justice Act*, and considering the factors in Rule 57.01, I have determined that costs should follow the event, and that CBRE and the Proposal Trustee have succeeded on the merits and should be entitled to costs.

[62] However, I am conscious of the fact that the Proposal Trustee supported the motion of CBRE and I am conscious of avoiding any duplication in work and fees. I am also cognizant of the somewhat unique nature of the circumstances and chronology in this case.

[63] The validity of the claim flows from the entitlement to the commission under the listing agreement, and the facts that support the fact of that agreement, as they do, are not readily apparent at first blush from a review of the facts given the initial oral agreement and the terms of the holdover clause in the written agreement [i.e., the 90-day period]. The fact that it is not immediately straightforward is illustrated perhaps by the original concerns of the Proposal Trustee.

[64] I also observe, as submitted by the limited partners, that given the manner in which the events unfolded, this appeal would have been necessary even if it had been unopposed. However, it would have been a much more straightforward and less expensive proceeding.

[65] Accordingly, in considering the facts and Rule 57 factors, in my view CBRE is entitled to partial indemnity costs from the limited partners in the amount of \$25,000 and the Proposal Trustee is entitled to costs on the same basis in the amount of \$18,000. All amounts are inclusive of fees, disbursements and HST. Costs payable within 60 days.



Osborne, J.

Date: November 22, 2022, revised January 10, 2023

TAB 4

District of: Ontario
Division No: 09 - Toronto
Consolidated Court File No.: 31-2734090

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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 CASEY GALLAGHER

I, Casey Gallagher, of the City of Toronto, in the Province of Ontario, MAKE

OATH AND SAY:

1. I am a real estate sales representative at CBRE Limited ("**CBRE**") and, as such, have knowledge of the matters contained in this affidavit. Where I have received and relied on information provided to me by others, I verily believe that information to be true.

Background

2. The applicant, CBRE, is a commercial real estate services firm.
3. I have been a real estate sales representative with CBRE since 2003. I am an Executive Vice President on the National Investment Team at CBRE.

CBRE's Relationship with Cresford and YSL

4. I have known Edward (Ted) Dowbiggin since 2011. Mr. Dowbiggin was the President of Cresford Capital Inc. from 2011 until March 2022. Cresford Capital Inc. is related to Cresford (Rosedale) Developments Inc. ("**Cresford**").
5. I worked primarily with Peter Senst in relation to our work with Cresford. Mr. Senst is another real estate sales representative with CBRE. He advised me that he has known, and worked with, Mr. Dowbiggin since about 1992.
6. Cresford is a real estate developer operating primarily in Ontario. I am aware through Mr. Dowbiggin that, over the last few years, Cresford has had numerous financial difficulties. Cresford was related to corporations that owned development properties located at the following addresses in the city of Toronto:
 - a. 587 Yonge Street ("**Clover**");
 - b. 484 Yonge Street ("**Halo**");
 - c. 33 Yorkville Ave ("**Yorkville**"); and
 - d. 363-391 Yonge Street and 3 Gerrard Street East (the "**YSL Property**").
7. CBRE's relationship with Cresford began when CBRE was the exclusive listing brokerage for the vendors that sold the Halo, Yorkville, and the YSL Property to Cresford between 2011 and 2017. I understand from Mr. Dowbiggin that a Cresford related entity purchased Clover directly from the vendor.

8. As a real estate developer, Cresford related corporations and limited partnerships were created for the purposes of developing each of the above properties. Mr. Dowbiggin informed me that the YG Limited Partnership was formed and YSL Residences Inc. ("**YSL**") was incorporated for the purpose of developing the YSL Property into a mixed-use office, retail and residential condominium space.

CBRE's Engagement by Cresford as its Exclusive Listing Brokerage

Initial Meetings

9. In late 2019, Maria Athanasoulis, a prior manager at Cresford, reached out to me about selling Cresford's properties, in light of Cresford's financial difficulties. I met with Ms. Athanasoulis at the Four Seasons in Toronto where she explained that Cresford was thinking about selling the YSL Property. There was no formal agreement at this stage as to CBRE's involvement in the sale. Based on our conversation, I understood that Ms. Athanasoulis was simply looking into options to deal with Cresford's financial difficulties.
10. Following my meeting with Ms. Athanasoulis, Mr. Dowbiggin called me in January 2020 to ask if CBRE would act as exclusive listing brokerage for YSL.
11. On the call, Mr. Dowbiggin explained that Cresford/YSL was in financial trouble and wanted to sell the YSL Property to free up equity for the development of Cresford's other properties. Because of Cresford/YSL's financial difficulties and sensitives around sales at the time Mr. Dowbiggin did not want CBRE to go "full market" with the YSL Property, which would mean listing the YSL Property for sale

publicly. Instead, he wanted the sale to be contained and asked CBRE to find a few potential purchasers who could complete the kind of development project intended for the YSL Property. Given the size and value of the YSL Property, there are few real estate developers that would be appropriate candidates.

12. I agreed that CBRE would act as the exclusive listing brokerage and that I would work with Mr. Senst to find a group of potential purchasers to introduce to YSL. The essential terms of our agreement (the "**Oral Agreement**") were as follows:
 - a. CBRE would facilitate introductions between Cresford/YSL and potential purchasers for the YSL Property;
 - b. CBRE's commission would be 0.65% of the purchase price of the YSL Property (the "**Commission**"); and
 - c. CBRE would earn the Commission if the purchaser of the YSL Property was one of the parties CBRE had introduced.

13. Following our call, Mr. Senst and I met with Mr. Dowbiggin on February 3 and 12, 2020 to discuss the YSL Property sale, including what developers, based on CBRE's experience in the industry, would be good candidates to purchase the YSL Property (the "**February Meetings**"). Attached as Exhibit **A** to my affidavit is an email I sent to Ted Dowbiggin arranging the February 3, 2020 meeting at CBRE's office. Attached as **Exhibit B** to my affidavit is a calendar invitation I sent to Mr. Dowbiggin and Mr. Senst for the February 12, 2020 meeting at CBRE's office.

14. During the February Meetings, Mr. Senst and I identified four real estate developers as the best candidates to purchase the YSL Property:
 - a. Concord Adex ("**Concord**");
 - b. Menkes Developments Ltd. ("**Menkes**");
 - c. Lanterra Developments Ltd. ("**Lanterra**"); and
 - d. Westbank Corp. ("**Westbank**").
15. Mr. Dowbiggin directed Mr. Senst and me to reach out to these potential purchasers as Cresford/YSL's exclusive listing brokerage.

CBRE Began Work after the Initial Meetings

16. Mr. Senst and I began work almost immediately after our meetings with Mr. Dowbiggin. Following our initial meeting on February 3, 2020, CBRE created a dataroom which contained information about the YSL Property for potential purchasers. The dataroom included: the tender schedule, sales grid, permit drawings, contracts, construction schedule, section 37 agreement, permit summaries, and the heritage easement agreement. A snapshot of the dataroom CBRE created is attached as **Exhibit C** to my affidavit.
17. CBRE also prepared a form non-disclosure agreement ("**NDA**") for the purposes of the sale of the YSL Property. A copy of the NDA is attached as **Exhibit D** to my affidavit.

18. Around February 13, 2020, CBRE met with Menkes and introduced Mr. Dowbiggin to Alan and Peter Menkes to discuss a potential sale of the YSL Property. CBRE also provided Menkes access to the data room. The email from Tai Kai Li of CBRE to Messrs. Menkes dated February 13, 2020, providing them access to the data room is attached as **Exhibit E** to my affidavit.
19. CBRE arranged a meeting between Mr. Dowbiggin and Christopher Wein, Chief Operating Officer of Lanterra to discuss a potential sale of the YSL Property. This meeting took place on February 20, 2020 at Cresford's office. The meeting invitation listing Ted Dowbiggin, Christopher Wein, and Peter Senst is attached as **Exhibit F** to my affidavit.
20. This meeting resulted in Lanterra executing the NDA prepared by CBRE in respect of the YSL Property. The NDA dated February 20, 2020 and executed by Lanterra is attached as **Exhibit G** to my affidavit.

The Written Agreement and Mandate Letter

21. On February 21, 2020, after CBRE had already begun work as YSL's exclusive listing brokerage, I sent Mr. Dowbiggin an email containing an exclusive listing agreement dated February 20, 2020 and CBRE's mandate letter dated February 21, 2020 for the YSL Property (the "**February 21, 2020 Email**"). Attached as **Exhibit H** to my affidavit is the February 21, 2020 Email. The following documents which were attached to the email are included as separate exhibits to my affidavit for ease of reference:

- a. **Exhibit I** – CBRE's mandate letter for the YSL Property dated February 21, 2020 ("**Mandate Letter**"); and
 - b. **Exhibit J** – the exclusive listing agreement dated February 20, 2020 (the "**Written Agreement**")
22. The Written Agreement provides that YSL would pay CBRE the Commission if CBRE found a purchaser for the YSL Property. Article 4 of the Written Agreement is a "holdover provision" (the "**Holdover Provision**") which provides, among other things, that CBRE is entitled to the Commission if, during the 90 days after the expiration of the Term, negotiations continued which led to the execution of a binding agreement of purchase and sale of the YSL Property with any person or entity introduced by CBRE.
23. The intent of the Holdover Provision is to ensure that CBRE does not lose the Commission simply because negotiations between YSL and a purchaser continued for longer after the term set out in the Written Agreement. Based on my experience with large commercial sales, negotiations between vendors and purchasers can often take months to complete. The Holdover Provision is meant to account for those circumstances.
24. The Mandate Letter identified the potential purchasers that Mr. Senst and I had already discussed with Mr. Dowbiggin: Concord, Menkes, Lanterra, and Westbank. Consistent with Mr. Dowbiggin's instructions to CBRE at the February Meetings, the Mandate Letter explained that CBRE had already begun work and was in contact with these potential purchasers about purchasing the YSL Property.

25. Although Mr. Dowbiggin did not execute the Written Agreement, he has at all times continued to act in accordance with our Oral Agreement that Cresford/YSL act as CBRE's exclusive listing brokerage for the YSL Property and has, since then, confirmed that CBRE is entitled to the Commission.

CBRE continued to market the YSL

26. Following the February 21 Email, CBRE continued to market the YSL Property and introduce Cresford/YSL to potential purchasers, including Concord, the ultimate purchaser.
27. Around mid-February 2020, I reached out to Concord about the YSL Property sale.
28. Around February 23, 2020, I spoke to Gabriel Leung, Vice President of Development at Concord, about the sale of the YSL Property. On the call, I explained CBRE's role as the exclusive listing brokerage for YSL.
29. Following my initial discussion with Mr. Leung, on February 24, 2020, Terry Hui, Chief Executive Officer of Concord, asked if it was possible to meet with a representative of Cresford about purchasing the YSL Property. I emailed Mr. Dowbiggin to relay this information and helped him arrange the meeting. My email to Mr. Dowbiggin on February 24, 2020 is attached as **Exhibit K** to my affidavit.
30. I knew through Mr. Dowbiggin that he was in Mexico at this time so we decided that a conference call would be a good first meeting between Cresford/YSL and Concord.

31. On February 25, 2020, I arranged a conference call between myself, Mr. Senst, Mr. Dowbiggin, and Mr. Leung. This was the first introduction between Cresford/YSL and Concord, as a potential purchaser for the YSL Property. Attached as **Exhibit L** to my affidavit is an email from Mr. Leung dated February 25, 2020 confirming, and thanking CBRE for arranging, the call.
32. Also on February 25, 2020, CBRE sent Mr. Leung CBRE's NDA with respect to the YSL Property. Attached as **Exhibit M** to my affidavit is an email from Tai Kai Li of CBRE to Mr. Leung dated February 24, 2020, attaching the NDA.
33. Around February 26, 2020, CBRE arranged a meeting between Cresford/YSL and Westbank. Attached as **Exhibit N** is an email I sent to Ian Duke (founder of Westbank) dated February 26, 2020 arranging meeting about the YSL Property.
34. On or about February 26, 2020, Mr. Dowbiggin flew to Vancouver in order to meet with Mr. Hui to further discuss the sale of the YSL Property. Mr. Leung confirmed with CBRE that Concord would schedule the meeting between Mr. Hui and Mr. Dowbiggin in Vancouver. Attached as **Exhibit O** to my affidavit is Mr. Leung's email to Vanessa Pinto of CBRE and me dated February 26, 2020.
35. At Concord's advice, CBRE did not attend the meeting in Vancouver because Mr. Leung advised that Concord/YSL would handle meeting. Mr. Leung's email to Ms. Pinto of CBRE dated February 26, 2020 is attached as **Exhibit P** to my affidavit.
36. In addition to arranging the conference call and meeting with Concord, CBRE was also providing Cresford/YSL information about Concord. For example, Mr.

Dowbiggin asked me to send him information about Mr. Hui following their meeting. On February 27, 2020, I emailed Mr. Dowbiggin with two links to information about Mr. Hui. Attached as **Exhibit Q** to my affidavit is my email.

37. Following the meeting in Vancouver, I understand from Mr. Dowbiggin that he continued negotiations directly with Concord. I am advised by Mr. Dowbiggin that he began speaking to Cliff McCracken, Senior Vice President at Cresford. I did not expect CBRE to be involved in the negotiations between Cresford/YSL and the potential purchaser, however, Mr. Senst and I remained open to assist negotiations between Cresford and Concord.
38. Despite CBRE not being involved in negotiations between Cresford/YSL and Concord, Mr. Dowbiggin continued to reach out to CBRE about the status of the YSL Property sale as well as introducing Cresford/YSL to other potential purchasers.
39. In early March 2020, Mr. Dowbiggin reached out to me about the current real estate market, which was being affected by the COVID-19 pandemic. I emailed him on March 9, 2020 that there were major shifts in the market. We spoke by phone the next day, on March 10, 2020, to discuss the status of negotiations with Concord and I provided advice on how I thought the market would be affected by the pandemic. Attached as **Exhibit R** to my affidavit is an email I sent to Mr. Dowbiggin confirming the call.
40. In addition, it became clear around late February / early March 2020, that (a) word was getting out in the industry that Cresford was having financial difficulties and

was selling the YSL Property and (b) CBRE was acting as Cresford/YSL's exclusive listing brokerage. This was apparent because Mr. Senst and I began getting contacted directly from developers looking to purchase YSL and/or other Cresford properties:

- a. Around late February, 2020, Julie Di Lorenzo, Chief Executive Officer of Diamante Development, reached out to me about purchasing the YSL Property and requested we provide the site plan application submissions. On February 27, 2020, CBRE provided Ms. Di Lorenzo with the information she requested. Attached as **Exhibit S** to my affidavit is CBRE's email to Ms. Di Lorenzo.
- b. On March 5, 2020, Ian McLeod, Vice President of One Properties, emailed me about the Cresford properties. We later spoke and he indicated that One Properties was interested in buying the YSL Property. Mr. McLeod's email is attached as **Exhibit T** to my affidavit.
- c. Also on March 5, 2020, Andrew Joyner, Managing Director of Tricon Residential ("**Tricon**"), emailed me about whether YSL was available and if others Cresford properties were as well. We later spoke and he indicated Tricon was interested in purchasing Cresford's properties. Mr. Joyner's email is attached as **Exhibit U** to my affidavit.
- d. On March 22, 2020, Robert Hiscox reached out to me on behalf of the Constantine Enterprises Inc. about potentially acquiring the Cresford properties. He noted he was most interested in Yorkville. I relayed this

information to Mr. Dowbiggin and connected him with Mr. Hiscox. The emails showing that exchange are attached as **Exhibit V** and **W**.

- e. CBRE also continued to communicate with Lanterra. Attached as **Exhibit X** to my affidavit is an email from Mr. Wein of Lanterra to Richard Casey, Ted Dowbiggin, Peter Senst, Tai Kai Li, and myself dated March 4, 2020 requesting details or documentation on the existing and proposed financing for YSL.

- 41. On May 15, 2020, I had a conference call with Mr. Senst and Mr. Dowbiggin. On this call, Mr. Dowbiggin explained that negotiations with Concord remained underway for the purchase of the YSL Property. He also confirmed on this call that CBRE would be entitled to its Commission. Attached as **Exhibit Y** to my affidavit is the calendar invitation for that conference call.
- 42. Around September 2020, I played golf with Mr. Dowbiggin and he again confirmed that the negotiations with Concord were ongoing for the purchase of the YSL Property.

Sale of the YSL Property

- 43. Around August 2021, I heard that the sale of the YSL Property closed on July 22, 2021 and Concord was the purchaser. I confirmed this information by searching on RealNet, which is a website used in the real estate industry to publicize and provide analytics on property sales. The RealNet search result indicates that the YSL Property was sold for a purchase price of \$168,737,563.00 (the "**Purchase**

Price”). Attached as **Exhibit Z** to my affidavit is the RealNet search result for the YSL Property.

44. On October 13, 2021, in accordance with CBRE's agreement with YSL, CBRE sent Mr. Dowbiggin an invoice in respect of the Commission. The invoice was for \$1,239,377.40 which is 0.65% of the Purchase Price of the Property. The invoice is attached as **Exhibit AA** to my affidavit.

Non-Payment of Commission / Proposal

45. On November 26, 2021, CBRE sent a demand letter to YSL demanding payment for the Commission. A copy of the demand letter sent by CBRE, with enclosures, is attached as **Exhibit BB** to my affidavit.
46. On January 25, 2022, CBRE's counsel, Gowling WLG, sent a further demand letter to YSL demanding payment for the Commission. Gowling's demand letter is attached as **Exhibit CC** to my affidavit.
47. Around December 22, 2021, CBRE learned that YSL filed a Proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 on May 27, 2021 (the “**Proposal**”). At this time, CBRE had not received notice of the Proposal and did not know that an amended form of the Proposal had been accepted by creditors or approved by the Court.
48. CBRE then proceeded to file a claim in the Proposal proceedings in respect of the Commission which, I understand, the Proposal Trustee disallowed on February 10, 2022.

Concord Confirmed CBRE's Role as Exclusive Listing Brokerage

49. On February 14, 2022, I contacted Mr. Hui by phone to tell him that CBRE's claim had been disallowed by the Proposal Trustee. I asked if he would confirm with the Proposal Trustee that CBRE did indeed make the introduction between Concord and Cresford in respect of YSL. On February 15, 2022, Mr. Hui sent me a text message saying that his lawyer already confirmed that CBRE introduced Concord to Cresford. A screenshot of Mr. Hui's text message is attached as **Exhibit DD** to my affidavit.

SWORN by video conference by Casey Gallagher at the City of Toronto, in the Province of Ontario before me at the City of Toronto on July 21, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



DocuSigned by:
Elie Laskin
A62687A47FA54DB...

Elie Laskin (LSO#80044Q)
(or as may be)

DocuSigned by:
Casey Gallagher
89DC22068CF3411...

Casey Gallagher

TAB 5

This is "Exhibit "J" referred to in the Affidavit
of Casey Gallagher,
sworn remotely before me at the City of
Toronto, in the Province of Ontario, on July 21,
2022, in accordance with [O. Reg. 431/20](#),
Administering Oath or Declaration Remotely.

DocuSigned by:

A62687A47FA54DB..

A Commissioner for Taking Affidavits

THIS EXCLUSIVE SALES LISTING AGREEMENT dated February 20, 2020 (the “Agreement”)

BETWEEN

YSL RESIDENCES INC. (the “Owner”)

-and-

CBRE Limited (the “Brokerage”)

WHEREAS the Owner is the legal owner of 363-391 Yonge Street & 3 Gerrard Street East Toronto, Ontario (the “Property”);

AND WHEREAS the Owner wants to retain the Brokerage to serve as the exclusive listing brokerage for the sale of the Property;

AND WHEREAS the Brokerage listing team representing the Owner in the sale of the Property shall consist of Peter D. Senst and Casey Gallagher (the “Listing Team”);

NOW THEREFORE in consideration of the listing for sale of the Property by the Brokerage, and the Brokerage’s efforts to effect a sale of the Property, the Owner and the Brokerage hereby agree as follows:

ARTICLE 1 RECITALS

1.1 The above recitals are true and accurate in all respects.

ARTICLE 2 TERM

2.1 The Owner grants to the Brokerage the exclusive right to sell the Property for a period commencing February 20, 2020 and expiring at midnight on August 20, 2020 (the “Term”).

2.2 Notwithstanding the foregoing, if at any time after the receipt of best-and-final bids, the Owner is not satisfied with pricing, the Owner may terminate this Agreement upon the provision of 10 days’ notice to the Brokerage and all obligations hereunder shall be at an end.

ARTICLE 3 THE BROKERAGE RENUMERATION

3.1 The Owner agrees to pay the Brokerage a commission equivalent to 0.65% of the Gross Sale Price of the Property (the “Commission”). Gross sales price shall include any and all consideration received or receivable, in whatever form, including but not limited to assumption or release of existing liabilities, without any downward adjustments for any capital, environmental issues, mark-to-market adjustment or yield maintenance fees with respect to existing mortgages as adjusted on the closing of the transaction pursuant to an agreement of purchase and sale executed and delivered by Owner. Commission shall be paid and deemed earned if and only if a closing occurs pursuant to a contract of sale executed and delivered by Owner.

3.2 The Commission shall be earned by the Brokerage in the event that during the Term: (a) the Owner enters into a binding agreement of purchase and sale for the Property with a purchaser procured by the Brokerage, the Owner or from any other source whatsoever, and such sale closes; or (b) the Owner is a corporation, partnership or other business entity and an interest in such corporation,

partnership or other business entity is transferred, whether by merger or outright purchase or otherwise in lieu of sale of the Property.

- 3.3 The Commission shall be payable immediately upon closing of the agreement of purchase and sale referred to in section 3.2(a) above; or upon the completion of the transfer referred to in section 3.2(b) above; notwithstanding that the sale may close, or the transfer may be completed, following the expiry of the Term.
- 3.4 The Commission payable herein shall be subject to the payment of Harmonized Sales Tax (HST) thereon by the Owner.

ARTICLE 4 HOLDOVER

- 4.1 The Owner further agrees to pay the Brokerage the Commission if, within 90 calendar days after the expiration of the Term, the Property is sold to, or the Owner enters into an agreement of purchase and sale for the Property with, or negotiations continue, resume or commence and thereafter continue leading to the execution of a binding agreement of purchase and sale for the Property, provided the transaction subsequently closes, with any person or entity (including his/her/its successors, assigns or affiliates) with whom the Brokerage has negotiated (either directly or through another agent) or to whom the Property was introduced or submitted, from any source whatsoever, or to whom the Owner was introduced, from any source whatsoever, prior to the expiration of the Term; with or without the involvement of the Brokerage. The Brokerage is authorized to continue negotiations with such persons or entities. The Brokerage agrees to submit a list of such persons or entities to the Owner within 10 business days following the expiration of the Term, provided, however, that if a written offer has been submitted, then it shall not be necessary to include the offeror's name on the list.

ARTICLE 5 THE OWNER SHALL NOT ENGAGE ANOTHER BROKERAGE DURING THE TERM

- 5.1 The Owner warrants to the Brokerage that, as at the date of execution of this Agreement, the Owner is not a party to a valid listing agreement with any other real estate brokerage with respect to the sale of the Property. The Owner shall not engage the services of another real estate brokerage during the Term with respect to the sale of the Property.
- 5.2 The Owner agrees to cooperate with the Brokerage in bringing about the sale of the Property and to refer immediately to the Brokerage all inquiries of anyone interested in the Property. All negotiations are to be through the Brokerage.
- 5.3 The Owner and the Brokerage hereby acknowledge that this is an exclusive listing and that the Brokerage shall not be required to cooperate with any other brokerage in connection with this exclusive listing. At the sole discretion of the Brokerage, a third-party real estate agent (the "**Cooperating Agent**") may be permitted to cooperate in the sale of the Property and any Cooperating Agent shall comply with the terms of this Agreement.

ARTICLE 6 DUAL AGENCY

- 6.1 The Owner acknowledges and agrees that the Brokerage may represent the Owner and a purchaser in a dual agency relationship. In the event that such dual agency relationship arises, the Listing

Team shall advise the Owner of such dual agency relationship immediately upon becoming aware of the dual agency relationship. The Owner hereby consents to the possibility of a limited dual agency wherein CBRE Limited maintains confidentiality with respect to each pricing intentions, corporate objectives and motivations for both principals to the transaction.

- 6.2 Notwithstanding the foregoing, the members of the Listing Team shall not act adverse in interest to the Owner, nor shall members of the Listing Team represent a purchaser of the Property in a transaction involving the purchase and sale of the Property, during the Term.

ARTICLE 7 GENERAL PROVISIONS

- 7.1 *Authority.* The Owner declares and certifies that it is the owner of the Property and that it has the authority to enter into and execute this Agreement; and this Agreement, once executed by the Owner, shall be legally binding upon the Owner.
- 7.2 *Entire Agreement.* This Agreement constitutes the entire agreement between the Owner and the Brokerage, and supersedes all prior discussions, negotiations and agreements, whether oral or written. In case of any inconsistencies between this Agreement and any commission provisions in the agreement of purchase and sale, the provisions of this Agreement shall govern and be paramount.
- 7.3 *Amendment.* No amendment or alteration of this Agreement shall be valid or binding unless made in writing and signed by the Owner and the Brokerage.
- 7.4 *Severability.* Should any provision of this Agreement be unenforceable at law, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall continue in force and shall be binding as though such provision had not been included.
- 7.5 *Interpretation.* The headings inserted in this Agreement are for convenience of reference only and, in no way define, limit or enlarge the scope or meaning of any of the terms and conditions contained in this Agreement. The preamble to this Agreement forms an integral part of this Agreement and shall be used in its interpretation.
- 7.6 *Jurisdiction.* This Agreement shall be governed by, and shall be subject to, the laws of the Province of Ontario; and the Owner and the Brokerage hereby attorn to the jurisdiction of the courts of the Province of Ontario with respect to any dispute concerning the interpretation, application and enforcement of this Agreement.
- 7.7 *Counterparts:* This agreement may be executed in counterparts and may be transmitted by email.

[this space intentionally left blank; signatures appear on next page]

IN WITNESS WHEREOF the Owner and the Brokerage agree to the terms and conditions as set out herein; and have executed this Agreement as of the date first written above.

YSL RESIDENCES INC. (the “**Owner**”)

Per:

I have authority to bind the company

Print Name: _____

CBRE Limited (the “**Brokerage**”)

Per:

I have authority to bind the company

Print Name: _____

TAB 6

This is "Exhibit " D " referred to in the Affidavit
of Heyla Vettyvel,
sworn remotely before me at the City of
Toronto, in the Province of Ontario, on July 22,
2022, in accordance with [O. Reg. 431/20](#),
Administering Oath or Declaration Remotely.



A Commissioner for Taking Affidavits

Oladosu, Emily

From: Laskin, Elie
Sent: February 1, 2022 10:14 AM
To: 'Mitch Vininsky'
Cc: Vettyvel, Heyla; 'Murtaza Tallat'
Subject: RE: CBRE's Proof of Claim - YSL Residences Inc.
Attachments: CBRE,Cresford- Gowling Demand Letter with Enclosures - 25 January 2022(49250711.1).pdf; 363-385 Yonge Street_ RealNet (1).pdf

Hi Mr. Vininsky,

Thanks. I have attached:

- our demand letter (sent Jan 25) which includes the Agreement and an explanation of CBRE's work (see Tabs 1 and 2); and
- the Realnet record showing the property sold for \$168,737,563.00

In short, CBRE was the listing broker for the property and found the purchaser, Concord Adex. The property sold for \$168,737,563.00. Under the Agreement, CBRE is owed .65% of the Gross Sale Price which is \$1,096,794.16. With HST on that (\$142,583.24), the total amount owed to CBRE is \$1,239,377.40.

Please let me know if this suffices.

Thanks,
 Elie

Elie Laskin
 Associate
 T +1 416 862 3621
 M + 1 647 966 1217
 elie.laskin@gowlingwlg.com



From: Mitch Vininsky <mvininsky@ksvadvisory.com>
Sent: February 1, 2022 9:46 AM
To: Laskin, Elie <Elie.Laskin@ca.gowlingwlg.com>
Cc: Vettyvel, Heyla <Heyla.Vettyvel@ca.gowlingwlg.com>; Murtaza Tallat <mtallat@ksvadvisory.com>
Subject: RE: CBRE's Proof of Claim - YSL Residences Inc.

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Please provide us with a copy of the agreement referenced in the affidavit and a full description of the services rendered by CBRE to YSL. We would also like a calculation supporting the amount claimed.

Regards,

| Mitch Vininsky



Managing Director

T 416.932.6013
M 416.254.4912
W www.ksvadvisory.com

From: Laskin, Elie <Elie.Laskin@gowlingwlg.com>
Sent: January 28, 2022 12:27 PM
To: Mitch Vininsky <mvininsky@ksvadvisory.com>
Cc: Vettyvel, Heyla <Heyla.Vettyvel@gowlingwlg.com>
Subject: CBRE's Proof of Claim - YSL Residences Inc.

Hi Mr. Vininsky,

I hope you're well. I am counsel to CBRE Limited, in respect of the non-payment of fees owing by YSL Residences Inc. and Cresford Developments Inc.

I spoke to Harry Fogul earlier and understand that KSV is trustee to YSL's bankruptcy proceedings, but assets have not yet been distributed. CBRE was not notified of this bankruptcy which is why it did not submit a Proof of Claim. I've attached CBRE's Proof of Claim here in hopes that you will accept it, given the circumstance.

Please let me know if you have any questions.

I hope to hear from you soon.

Kind regards,
Elie

Elie Laskin
Associate

T +1 416 862 3621
M +1 647 966 1217
elie.laskin@gowlingwlg.com



Gowling WLG (Canada) LLP
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Canada



gowlingwlg.com

Gowling WLG | 1,400+ legal professionals | 18 offices worldwide

The information in this email is intended only for the named recipient and may be privileged or confidential. If you are

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References to 'Gowling WLG' mean one or more members of Gowling WLG International Limited and/or any of their affiliated businesses as the context requires. Gowling WLG (Canada) LLP has offices in Montréal, Ottawa, Toronto, Hamilton, Waterloo Region, Calgary and Vancouver.

TAB 1

**IN THE MATTER OF THE BANKRUPTCY OF YSL
RESIDENCES INC. OF THE CITY OF TORONTO, IN THE
PROVINCE OF ONTARIO**

AFFIDAVIT OF ELIE LASKIN

I, Elie Laskin, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer with Gowling WLG (Canada) LLP, solicitors and duly authorized agents for CBRE Limited ("**CBRE**" or the "**creditor**") and, as such, have knowledge of the matters contained in this affidavit. Where I have received and relied on information provided to me by others, I verily believe that information to be true.
2. I am advised by Maya Zor, senior counsel at CBRE, that CBRE entered into an agreement with YSL Residences Inc. ("**YSL**"), whereby YSL agreed to pay CBRE to serve as the exclusive listing brokerage for the sale of the properties located at 363 Yonge Street, 367 Yonge Street, 369 Yonge Street, 373 Yonge Street, 377 Yonge Street, 379 Yonge Street, 381 Yonge Street, 385 Yonge Street, and 391 Yonge Street, Toronto Ontario (the "**Property**").
3. I am advised by Ms. Zor that CBRE performed services in accordance with the agreement and the Property was sold on July 22, 2021.
4. I am advised by Ms. Zor that on or about October 13, 2021, CBRE issued its invoice to YSL in the amount of \$1,239,377.40 and this amount remains outstanding (the "**Unpaid Invoice**").
5. A copy of the Unpaid Invoice is attached as **Exhibit 1**.

YSL Owes CBRE \$1,239,377.40

6. As of the date of this affidavit, the total amount owing to CBRE by YSL is \$1,239,377.40.

SWORN before me on January 28, 2022 via video conference at the City of Toronto, in the Province of Ontario, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
Heyla Vettyvel



Elie Laskin

THIS IS EXHIBIT "1" TO THE AFFIDAVIT OF
ELIE LASKIN SWORN JANUARY 28, 2022

A handwritten signature in blue ink, appearing to read 'HEYLA VETTYVEL', is written above a horizontal line.

HEYLA VETTYVEL

INVOICE

Date: 13-Oct-2021

Our Ref. #: 20210100750

Our HST Number: 101047751RT0001

Our GST Number: 101047751RT0001

Our PST Number: 1022408280 TQ0001

Attention: Ted Dowbiggin
Cresford Developments
59 Hayden Street
Suite/Unit: 200,
Toronto, Ontario, M4Y 0E7

Property Type: Land

365-385 Yonge Street, Toronto, Ontario

CLIENT:

Cresford Developments
59 Hayden Street
Suite/Unit: 200,
Toronto, Ontario, M4Y 0E7

Details	
Description	Amount
Fee for services rendered.	\$ 1,096,794.16
HST @ 13.00 %	Total: \$ 1,096,794.16
	Taxes: \$ 142,583.24
	Gross: \$ 1,239,377.40
	Total Billable: \$ 1,239,377.40
Summary	
Payable to: CBRE Limited	\$ 1,239,377.40
<u>Terms:</u> Due upon receipt	

Please remit payment to the Deal Administrator

Wire to be paid into:

Scotiabank
P.O. Box 4234
Postal Station A
Toronto, ON. M5W 5P6

Bank # 0002
Transit # 47696
Account# 10270 18
Swift# NOSCCATT

145 King Street West
Suite 1100
Toronto, ON M5H 1J8
Tel: 416 362 2244 Fax: 416 362 8085
www.cbre.ca

TAB 2

*Bankruptcy and Insolvency Act ("Act")***Proof of Claim**

(Section 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and Paragraphs 51(1)(e) and 66.14(b) of the Act)

All notices or correspondence regarding this claim must be forwarded to the following address:

Creditor Name: CBRE Limited Telephone: (416) 369 7253
 Address: 100 King Street West Suite 1600 Toronto, Ontario M5X 1G5 Fax: _____
 Email: elie.laskin@ca.gowlingwlg.com
 Account No.: 1027018

In the matter of the bankruptcy (or the proposal, or the receivership) of YSL Residences Inc. (name of debtor) of Toronto, Ontario (city and province) and the claim of CBRE Limited, creditor.

I, Elie Laskin (name of creditor or representative of the creditor), of Toronto, Ontario (city and province), do hereby certify:

1. That I am a creditor of the above-named debtor (or that I am lawyer (state position or title) of CBRE Limited (name of creditor)).
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of bankruptcy, (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 30th day of April, 2021, and still is, indebted to the creditor in the sum of \$ _____, as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)
4. (Check and complete appropriate category.)

A. UNSECURED CLAIM (AFFECTED CLAIM) OF \$ 1,239,377.40
 (other than as a customer contemplated by Section 262 of the Act)
 That in respect of this debt, I do not hold any assets of the debtor as security and
 (Check appropriate description.)

Regarding the amount of \$ 1,239,377.40 I do not claim a right to a priority.

Regarding the amount of \$ _____ I claim a right to a priority under Section 136 of the Act.
 (Set out on an attached sheet details to support priority claim.)

B. SECURED CLAIM OF \$ _____
 That in respect of this debt, I hold assets of the debtor valued at \$ _____ as security, particulars of which are as follows:
 (Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)


C. CONSTRUCTION LIEN CLAIM OF \$ _____
 That in respect of this debt I have registered a lien on title to the Debtors' real property in accordance with the *Construction Act* (Ontario), particulars of which are as follows:

(Give full particulars of the lien, including the date on which the lien was registered and the value secured by such lien, and attach a copy of any relevant documents, including any statement of claim).

- 5. That, to the best of my knowledge, I am (or the above-named creditor is) (or am not or is not) related to the debtor within the meaning of Section 4 of the Act, and have (or has) (or have not or has not) dealt with the debtor in a non- arm’s-length manner.
- 6. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of Subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of Section 4 of the Act or were not dealing with each other at arm’s length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Subsection 2(1) of the Act: (Provide details of payments, credits and transfers at undervalue.)

Dated at Toronto, Ontario, this 28 day of January, 2022.

Witness 


Creditor Authorized Signatory

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to Subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

DIRECTIONS FOR COMPLETION OF THIS FORM ARE ON THE REVERSE SIDE



CONDITIONAL CLAIM ADDENDUM

By checking the box below, you are electing for your Claim to be treated as a Conditional Claim (as defined in the Proposal). By electing for your claim to be treated as a Conditional Claim, you are recognizing that:

- a) One or more contractual conditions in your arrangements with the Company were not satisfied as at April 30, 2021 (referred to in the Proposal as "Conditional Claim Conditions");
- b) You are undertaking to complete all Conditional Claim Conditions and provide proof of such completion by no later than the Conditional Claim Completion Deadline; and
- c) You understand that the failure to complete all Conditional Claim Conditions by the Conditional Claim Completion Deadline will result in your Claim being fully, finally and irrevocably disallowed.

I hereby elect for my Claim to be treated as a Conditional Claim:

Creditor Authorized Signatory

CHECKLIST FOR PROOF OF CLAIM

This checklist is provided to assist you in preparing the accompanying proof of claim form and, where required, proxy form in a complete and accurate manner. Please specifically check each requirement.

Under Section 109 of the *Bankruptcy and Insolvency Act* only those creditors who have filed their claims in the proper form with the trustee, before the time appointed for the meeting, are entitled to vote at the meeting.

Section 124 states that every creditor shall prove his claim and the creditor who does not prove his claim is not entitled to share in any distribution that may be made.

General

- The signature of a witness is required;
- The claim must be signed personally by the individual completing this declaration;
- Provide the complete address and email address where all notices or correspondence are to be forwarded;
- The amount of the statement of account must correspond to the amount indicated on the proof of claim.

Notes:

- It is permissible to file a proof of claim by email.
- A creditor may vote either in person (be videoconference) or by proxy at any meeting of creditors if the proof of claim is filed with the trustee prior to the time appointed for the meeting.
- A quorum at any meeting of creditors consists of at least one creditor with a valid proof of claim in attendance in person or by proxy.
- A corporation may vote through an authorized agent or mandatary at meetings of creditors.
- In order for a duly authorized person to have a right to vote, they must be a creditor or be the holder of a properly executed proxy. The name of the creditor must appear in the proxy.
- A creditor who is participating in any distribution from an estate must have filed a proof of claim prior to the distribution being declared.
- In the case of an individual bankrupt, by checking the appropriate box or boxes at the bottom of the proof of claim form, you may request that the trustee advise you of any material change in the financial situation of the bankrupt or the amount the bankrupt is required to pay into the bankruptcy, and a copy of the trustee's report on the discharge of the bankrupt.

Paragraph 1

- Creditor must state full and complete legal name of company or firm;
- If the individual completing the proof of claim is not the creditor himself, he/she must state his/her position or title.

Paragraph 3

- The amount owing must be set out in paragraph 3.
- A detailed statement of account must be attached to the proof of claim and must show the date, the number and the amount of all the invoices or charges, together with the date, the number and the amount of all credits or payments. A statement of account is not complete if it begins with an amount brought forward.

Paragraph 4

- **Paragraph A** applies to ordinary unsecured claims, referred to as Affected Claims in the Proposal. In addition to recording the amount of the claim, please indicate whether the claim has a priority pursuant to Section 136 of the Act.

- **Paragraph B** applies to secured claims. Please indicate the dollar value of the security and attach copies of the security document. In addition, please attach copies of the security registration documents, where appropriate.
- **Paragraph C** applies to builders lien claims, referred to as Construction Lien Claims in the Proposal. Please indicate the dollar value of the claim.

Paragraph 5

- All claimants must indicate whether or not they are related to the debtor, as defined in Section 4 of the Act, or dealt with the debtor in a non-arm's-length manner.

Paragraph 6

- All claimants must attach a detailed list of all payments or credits received or granted, as follows:
 - a) Within the three (3) months preceding the initial bankruptcy event (including the bankruptcy or the proposal), in the case where the claimant and the debtor are not related;
 - b) Within the twelve (12) months preceding the initial bankruptcy event (including the bankruptcy or the proposal), in the case where the claimant and the debtor were not dealing at arm's length.

Conditional Claim Addendum

- All claimants who want their claim to be treated as a Conditional Claim (as defined in the proposal) must complete the Addendum by checking the box and signing where indicated.
- Conditional Claims apply where the claimant has not completed one or more conditions precedent to establishing its entitlement to payment from the Company prior to April 30, 2021 (referred to as Conditional Claim Conditions in the Proposal).
- If the Conditional Claim Addendum is completed, the claimant will have until the Conditional Claim Completion Deadline to provide the Proposal Trustee with proof of completion of all Conditional Claim Conditions. If the Conditional Claim Addendum is not completed, the claimant's claim will be treated as an ordinary claim.

APPOINTING PROXY

Note: The Act permits a proof of claim to be made by a duly authorized representative of a creditor but, in the absence of a properly executed proxy, does not give such an individual the power to vote at the first meeting of creditors nor to act as the proxyholder of the creditors.

General

- In order for duly authorized persons to have a right to vote, they must themselves be creditors or be the holders of a properly executed proxy. The name of the creditor must appear in the proxy.

Notes:

- A creditor may vote either in person or by proxyholder.
- A proxy may be filed by no later than one Business Day prior to the meeting of creditors.
- A proxy can be filed with the trustee in person, by mail or by any form of telecommunication.
- A proxy does not have to be under the seal of a corporation unless required by its incorporating documents or its bylaws.
- The individual designated in a proxy cannot be substituted unless the proxy provides for a power of substitution.
- Bankrupts/debtors may not be appointed as proxyholders to vote at any meeting of their creditors.
- The trustee may be appointed as a proxyholder for any creditor.
- A corporation cannot be designated as a proxyholder.

TAB 7

This is Exhibit A referred to in the Affidavit of
Heyla Vettyvel,
sworn remotely before me at the City of
Toronto, in the Province of Ontario, on July 27,
2022, in accordance with [O. Reg. 431/20](#),
Administering Oath or Declaration Remotely.

DocuSigned by:

Elio Loshin

BAAD7B19897B4D2

A Commissioner for Taking Affidavits



Mitch Vininsky
ksv advisory inc.

150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9
T +1 416 932 6013
F +1 416 932 6266
mvininsky@ksvadvisory.com
ksvadvisory.com

February 10, 2022

DELIVERED BY EMAIL AND REGISTERED MAIL

Elie Laskin
Gowling WLG (Canada) LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Dear Ms. Laskin:

Re: The Proposal of YSL Residences Inc. and YG Limited Partnership (together, the “Company”)

KSV Restructuring Inc., in its capacity as proposal trustee of the Company, acknowledges receipt of the proof of claim filed in your capacity as counsel to CBRE Limited in the amount of \$1,239,377.40.

We have disallowed the claim for the reasons outlined in the attached notice.

Should you have any questions regarding this matter, do not hesitate to contact the undersigned.

Yours very truly,

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
YSL RESIDENCES INC. AND YG LIMITED PARTNERSHIP
AND NOT IN ITS PERSONAL CAPACITY

A handwritten signature in blue ink, appearing to read 'M. Vininsky', written over a circular stamp or mark.

Per: Mitch Vininsky

MV:rk
Encl.

**ksv advisory inc.**

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

T +1 416 932 6262

F +1 416 932 6266

ksvadvisory.com

Estate File No.: 31-2734090

**IN THE MATTER OF THE PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**NOTICE OF DISALLOWANCE OF CLAIM
(Subsection 135(3) of the *Bankruptcy and Insolvency Act* (“Act”))**

TAKE NOTICE THAT, as Proposal Trustee acting in the matter of the Proposal of YSL Residences Inc. (“Residences”) and YG Limited Partnership Inc. (the “Partnership” and together with Residences, the “Companies”), we have this day disallowed your claim. The reason for the disallowance is as follows:

- The claim is in respect of an invoice submitted by CBRE Limited (“CBRE”) to “Cresford” dated October 13, 2021 in the amount of \$1,096,794.16 plus HST (the “Invoice”). The Invoice refers to services rendered by CBRE in connection with serving as the exclusive listing brokerage for the land located at 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario, (the “Property”). The Property was to be developed by the Companies into a significant condominium project.
- A demand letter dated November 26, 2021 from CBRE to the Companies (the “CBRE Letter”) references that the Invoice was issued in respect of an Exclusive Sales Listing Agreement dated February 20, 2020 (the “Agreement”) between CBRE and the Companies, pursuant to which the Companies “agreed to pay commission equivalent to 0.65% of the Gross Sale Price of the Property” (the “Commission”). The CBRE Letter further states that “CBRE has complied with and performed its obligations under the Agreement.” The term of the Agreement is six months from February 20, 2020 to August 20, 2020 (the “Term”). The Agreement is appended to the CBRE Letter and it is unsigned.
- The Property was conveyed on or about July 22, 2021 (the “Conveyance”) to Concord Adex Inc., an entity related to Concord Properties Developments Corp., the eventual sponsor (“Sponsor”) of the Companies’ Proposal proceedings which were commenced on April 30, 2021.

- Dave Mann, CFO of the Cresford Group of Companies (“Cresford”) advised the Proposal Trustee that CBRE introduced Cresford to the Sponsor. The Sponsor advised the Proposal Trustee that “Cresford, through its representative Ted Dowbiggin, first approached Concord in early 2020 to discuss four of Cresford's distressed projects, however Concord did not have any interest in the YSL project at this time.” and that “In September/October 2020, Cresford re-engaged Concord to discuss the YSL project, after it had canvassed a number of other developers. After this outreach in fall 2020 until the time of the proposal proceedings, Cresford and Concord were consistently engaged to explore potential alternatives for the YSL project”.
- The Agreement states the following with regards to the Commission:
 - *“The Commission shall be earned by the Brokerage in the event that **during the Term:** (a) the Owner enters into a binding agreement of purchase and sale for the Property with a purchaser procured by the Brokerage, the Owner or from any other source whatsoever, and such sale closes; or (b) the Owner is a corporation, partnership or other business entity and an interest in such corporation, partnership or other business entity is transferred, whether by merger or outright purchase or otherwise in lieu of sale of the Property.”*
- Furthermore, the Agreement has a holdover clause which states that:
 - *“The Owner further agrees to pay the Brokerage the Commission **if, within 90 calendar days after the expiration of the Term,** the Property is sold to, or the Owner enters into an agreement of purchase and sale for the Property with, or negotiations continue, resume or commence and thereafter continue leading to the execution of a binding agreement of purchase and sale for the Property, provided the transaction subsequently closes, with any person or entity (including his/her/its successors, assigns or affiliates) with whom the Brokerage has negotiated (either directly or through another agent) or to whom the Property was introduced or submitted, from any source whatsoever, or to whom the Owner was introduced, from any source whatsoever, prior to the expiration of the Term; with or without the involvement of the Brokerage.”*
- The Proposal Trustee has disallowed the claim in full as:
 - The Agreement is not signed and therefore is not binding;
 - The Sponsor advised that at all times it dealt directly with the Companies and that it did not have any dealings with CBRE;
 - The Conveyance does not meet the definition of an event giving rise to a Commission; and
 - To the extent any Commission could apply, which is denied, the Commission was not earned during the Term, or within the 90 calendar days following the expiration of the Term.

AND FURTHER TAKE NOTICE, that if you are dissatisfied with our decision in disallowing your claim as set out above, you may appeal to the Ontario Superior Court of Justice ("Court") within the 30-day period after the day on which this notice is served, or within such other period as the Court may, on application made within the same 30-day period, allow.

DATED at Toronto, Ontario, this 10th day of February, 2022.

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
AND NOT IN ITS PERSONAL CAPACITY**

TAB 8

District of: Ontario
Division No: 09 - Toronto
Consolidated Court File No.: 31-2734090

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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 EDWARD DOWBIGGIN

I, Edward (Ted) Dowbiggin, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am the President of Cresford Capital Inc., which is related to Cresford (Rosedale) Developments Inc. ("**Cresford**"). I was the President of Cresford Capital Inc. from 2011 until March 2022. Cresford is related to the corporations that are the parents (collectively, the "**Cresford Group**") of YG Limited Partnership and YSL Residences Inc. ("**YSL**"), and therefore, I have knowledge of the matters contained in this affidavit. Where I have received and relied on information provided to me by others, I verily believe that information to be true.
2. Cresford is a real estate developer operating primarily in Ontario. The Cresford Group incorporated companies for the purposes of developing properties. YSL was incorporated for the purposes of developing the property located at 363-391 Yonge Street and 3 Gerrard Street East (the "**YSL Property**").

3. Various Cresford Group corporations owned other properties in Toronto for the purpose of development. These development properties were located at 484 Yonge Street ("**Halo**"), 33 Yorkville Ave ("**Yorkville**"), and 587 Yonge Street ("**Clover**"). The corporations related to each of the above properties have been subject to insolvency proceedings.

My Background

4. I began working at Cresford Capital Inc. in 2002 and became the President in 2011 until March 2022. I am no longer involved in the Cresford Group.
5. I have worked in the real estate industry for over 50 years. I began around 1970 as a real estate broker, largely selling new homes. Around 1984, I started my own brokerage which focused on selling commercial land for office and retail development. From about 1991 to 1993, I worked for Canada Deposit Insurance Corporation. From about 1993 to 2000, I worked for TD Securities selling mortgage-backed securities. And around 2000, I worked with the Real Estate Transaction group at Deloitte.
6. I have been involved in approximately 500 real estate deals since I began working in the real estate industry.

Relationship with CBRE

7. I have been working with CBRE since about 1992, when I was working at Canada Deposit Insurance Corporation. At that time, CBRE was involved in the sales of

numerous properties for Canada Deposit and I worked largely with Peter Senst, a real estate sales representative at CBRE.

8. When I joined Cresford, Mr. Senst introduced me to Casey Gallagher, another CBRE sales representative. CBRE, through its real estate representatives Mr. Senst and Mr. Gallagher, sold the Cresford Group the YSL Property, Halo, and Yorkville. A Cresford Group corporation bought the Clover property directly from the vendor.

CBRE's Involvement in the Sale of the YSL Property

9. In January of 2020, I called Mr. Gallagher to ask if CBRE would be the exclusive listing brokerage for the sale of the YSL Property. I explained that Cresford was experiencing financial difficulties and wanted to free up the equity it had in the YSL Property. I asked CBRE to prepare a list of potential purchasers that they could introduce Cresford/YSL to who would be good candidates to purchase the YSL Property.
10. I contacted Mr. Gallagher both because CBRE had prior experience with the YSL Property, having sold it to Cresford/YSL, and because I believe they were the two best real estate sales representatives in Toronto to find a buyer for a development property in the price range of the YSL Property.

YSL's Agreement with CBRE

11. Mr. Gallagher agreed that CBRE would be the exclusive listing brokerage for the YSL Property during my initial call with him in January 2020. I directed CBRE to begin reaching out to potential purchasers on behalf of Cresford/YSL.
12. There was no written agreement between YSL and Cresford at that time. However, based on our discussions and my experience in the real estate industry (including my understanding of with the standard terms on which real estate brokers like CBRE are engaged), I understood that we had an agreement (the "**Oral Agreement**") that CBRE would introduce Cresford/YSL to potential purchasers for the YSL Property and, should one of those purchasers ultimately acquire the property, CBRE would be entitled to a commission of 0.65% of whatever consideration was given for the property (the "**Commission**"). The Commission would be owed to CBRE if the purchase was related to their introduction.
13. I understood that CBRE's entitlement to Commission was not dependent on whether the YSL Property sold in a certain time frame. The value provided by CBRE was the introduction of Cresford/YSL to a purchaser, not selling within a set period of time.
14. Based on my experience in the industry, the Commission was typical for a deal of similar nature to the YSL Property. In particular, with respect to the entitlement to the Commission, it was common for negotiations to take place over months for deals of this size. This was the case with the YSL Property.

15. I considered the Oral Agreement to be binding and it was clear in my mind that CBRE was engaged as YSL's exclusive listing brokerage.
16. In February 2020, after I had an initial call with Mr. Gallagher, I went to the CBRE office to further discuss the sale of the YSL Property and in particular, CBRE's marketing approach. I met with Mr. Gallagher and Mr. Senst and who suggested that CBRE introduce YSL to Concord Adex ("**Concord**"), Menkes Developments Ltd. ("**Menkes**"), Lanterra Developments Ltd. ("**Lanterra**"), and Westbank Corp. ("**Westbank**").
17. On February 21, 2020, CBRE sent me an email attaching a contract (the "**Written Agreement**") and mandate letter ("**Mandate Letter**") for the engagement of CBRE as YSL's exclusive listing brokerage. The email and attachments are Exhibits H-J of the Affidavit of Casey Gallagher (the "**Gallagher Affidavit**").
18. Although I reviewed the Written Agreement and Mandate Letter when I received them, I did not sign the Written Agreement. My failure to execute the Written Agreement was inadvertent. I was very busy at the time dealing with Cresford's operations and financial difficulties and the Written Agreement was not a high priority as it merely confirmed and expanded on the terms of the Oral Agreement.

CBRE Introduced YSL to Concord

19. On February 24, 2020, Mr. Gallagher emailed me to say that Terry Hui, Concord's Chief Executive Officer, wanted to meet with a principle at Cresford. Mr. Gallagher's email is attached as Exhibit K to the Gallagher Affidavit.

20. Because I was in Mexico at this time, CBRE proposed an initial conference call introduction between Concord and YSL.
21. CBRE arranged the call that took place on February 25, 2020 between myself, Gabriel Leung (Concord's Vice President, Development), and Mr. Gallagher. The purpose of the call was to discuss Concord's potential purchase of the YSL Property. A copy of the email where CBRE arranged the introduction call is attached as Exhibit L to the Gallagher Affidavit.
22. After this introduction call, I flew from Mexico to Vancouver in order to meet with Mr. Hui in order to discuss the potential deal between YSL and Concord. CBRE organized the meeting.
23. Following the meeting, I began working directly with Concord (largely, with Gabriel Leung and Cliff McCracken, Concord's Senior Vice President). I did not expect CBRE to be involved in this stage of Cresford/YSL's relationship with Concord.
24. Although the proposed structure and mechanism of the deal between Cresford and Concord went through many iterations, negotiations were ongoing from the point of Concord's introduction until Cresford and Concord agreed that the property would be sold through a proposal made pursuant to section 50(2) of the *Bankruptcy and Insolvency Act* ("**BIA**"). But for CBRE introducing Concord, the sale would not have occurred.
25. Despite Cresford/YSL working directly with Concord after CBRE's introduction, I continued to reach out to Mr. Gallagher and Mr. Senst to get advice about the sale to Concord and the market conditions generally:

- a. Around March 10, 2020, I had a call with Mr. Gallagher and Mr. Senst and they provided information about the market generally in order to inform YSL's negotiations with Concord. A copy of an email prior to that meeting is attached as Exhibit R to the Gallagher Affidavit; and
 - b. I had another call with Mr. Gallagher and Mr. Senst on May 15, 2020 about the status of the deal with Concord. The calendar invitation for that meeting is attached as Exhibit Y to the Gallagher Affidavit.
26. In accordance with our agreement, CBRE also introduced YSL (by way of either arranging meetings or connecting via email) to at least seven¹ other potential purchasers for the YSL Property.

CBRE is Entitled to the Commission

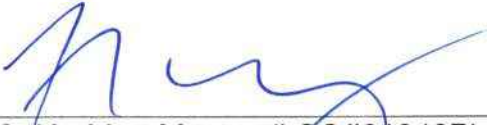
27. On April 30, 2021, YSL and YG Limited Partnership filed notices of intention to make a proposal pursuant to section 50(1) of the BIA (the “**Proposal Proceedings**”). I understand that CBRE filed a claim in the Proposal Proceedings in respect of the Commission.
28. On February 1, 2022, Dave Mann, of Cresford, responded to an email from Mitch Vininsky of KSV Restructuring Inc., the proposal trustee (“**Proposal Trustee**”), requesting information regarding CBRE’s Claim. Mr. Mann informed the Proposal Trustee that YSL did have an agreement with CBRE on the fees to be paid to CBRE, CBRE introduced Concord, and CBRE performed services throughout the

¹ Menkes, Lanterra, Westbank, Diamante Development, OneProperties, Tricon Residential and Robert Hiscox (on behalf of Constantine Enterprises Inc.).

sale process. I agree with the statements in Mr. Mann's email which is attached as attached as **Exhibit A** to my affidavit.

- 29. YSL did not pay CBRE the Commission because it was insolvent. CBRE performed all of the duties that were asked of it as exclusive listing brokerage including introducing Cresford Group/YSL to Concord, who ultimately purchased the YSL Property. Based on my understanding of the agreement between YSL and CBRE, CBRE is entitled to the Commission.

SWORN before me at the City of Toronto in Province of Ontario on July 25, 2022.



C. Haddon Murray (LSO#61640P)
(or as may be)



EDWARD (TED) DOWBIGGIN

TAB 9



**Seventh Report to Court of
KSV Restructuring Inc. as Proposal
Trustee of YG Limited Partnership and
YSL Residences Inc.**

September 12, 2022

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Appendices

Appendix

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COURT FILE NO.: BK-21-02734090-0031

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

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

SEVENTH REPORT TO COURT OF
KSV RESTRUCTURING INC. AS PROPOSAL TRUSTEE

SEPTEMBER 12, 2022

1.0 Introduction

1. This report (“Report”)¹ is filed by KSV Restructuring Inc. (“KSV”) in its capacity as Proposal Trustee (the “Proposal Trustee”) in connection with Notices of Intention to Make a Proposal (the “NOIs”) filed on April 30, 2021 (the “Filing Date”) by YG Limited Partnership (the “Partnership”) and YSL Residences Inc. (“Residences”, and together with the Partnership, the “Companies”), pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”).
2. On May 14, 2021, the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued an order (the “Consolidation Order”) procedurally and substantively consolidating the NOIs (the “NOI Proceedings”) for the purpose of simplifying the administration of the NOI Proceedings, including filing a joint proposal and convening a single meeting of creditors.
3. The principal purpose of the NOI proceedings was to create a stabilized environment to allow the Companies to present a proposal to their creditors that provides them with a recovery greater than they would have received in a bankruptcy or alternative insolvency process.
4. On May 27, 2021, the Companies filed a proposal with the Official Receiver in accordance with Section 62(1) of the BIA (the “Proposal”). On June 3, 2021, the Companies filed an amended proposal (the “First Amended Proposal”) and on June 15, 2021, the Companies filed a further amended proposal (the “Second Amended Proposal”).

¹ Capitalized terms have the meaning provided to them in the Final Proposal (as defined herein), unless otherwise defined in this Report.

5. At a meeting of creditors held on June 15, 2021 (the “Creditors’ Meeting”), the creditors voted to accept the Second Amended Proposal.
6. On June 23, 2021, the Companies sought Court approval of the Second Amended Proposal. Pursuant to the Reasons for Interim Decision of the Court made on June 29, 2021, as amended on July 2, 2021 (the “Interim Decision”), the Court did not approve the Second Amended Proposal.
7. A Court hearing for approval of the Second Amended Proposal was scheduled for July 9, 2021 to allow the Companies time to address the Court’s concerns set out in the Interim Decision and, should they wish, present a further amended proposal for the Court’s consideration. A copy of the Interim Decision is provided in Appendix “A”.
8. Shortly before the motion on July 9, 2021, Concord Properties Developments Corp., the sponsor of the proposals filed in this proceeding (the “Sponsor”), served a further amended proposal (the “Third Amended Proposal”) and an offer of distributions to be made outside of the Third Amended Proposal by the Sponsor to any equityholders² of the Partnership (the “Equityholders”) willing to accept such Offer (the “Equity Offer”).
9. Pursuant to Section 3.03 of the Second Amended Proposal and the Third Amended Proposal, the Companies required the consent of the Proposal Trustee to file the Third Amended Proposal. As the Third Amended Proposal was provided for the first time to the Proposal Trustee just prior to the motion on July 9, 2021, the Proposal Trustee did not have the time it required to review the Third Amended Proposal prior to that hearing. Accordingly, the motion was adjourned to July 16, 2021 to provide the Proposal Trustee with the opportunity to consider the Third Amended Proposal and for the Proposal Trustee to make a recommendation to the Court.
10. The Proposal Trustee’s Fourth Report to Court dated July 15, 2021 set out, among other things, the material changes between the Second Amended Proposal and the Third Amended Proposal, further changes to the Third Amended Proposal (the “Final Proposal”), and the Proposal Trustee’s recommendation to the Court that it approve the Final Proposal.
11. Pursuant to Reasons for Decision dated July 16, 2021, as amended on July 27, 2021 (the “Decision”), the Court approved the Final Proposal. A copy of the Decision is provided in Appendix “B”.
12. No inspectors were appointed in the Final Proposal.

² Defined in the Final Proposal as the holders of the limited partnership units of YG LP and those Equity Claims deemed to be equity pursuant to the Interim Decision.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Companies and the Final Proposal;
 - b) summarize the claim of CBRE Limited (“CBRE”) in these proceedings, including the open and transparent manner in which it has been determined by the Proposal Trustee; and
 - c) recommend that the Court issue an order allowing the CBRE claim as filed in the amount of \$1,239,377.40.

1.2 Currency

1. All references to currency in this Report are to Canadian dollars.

1.3 Definitions

1. Capitalized terms not defined in this Report have the meanings provided to them in the Final Proposal.

2.0 Background

1. Information regarding the Companies, the real estate project that was being developed by the Companies known as Yonge Street Living Residences (the “YSL Project”), the history of these proceedings, the receivership application filed by the first mortgagee of the YSL Project in advance of these proceedings, Timbercreek Mortgage Servicing Inc. (“Timbercreek”), that was pending against the Companies, applications by certain of the Partnership’s limited partners (the “LPs”) and the prior proposals filed in this proceeding is included in the Proposal Trustee’s reports to Court and other materials filed with the Court. Copies of all publicly available information in these proceedings can be found on the Proposal Trustee’s case website at <https://www.ksvadvisory.com/insolvency-cases/case/yg-limited-partnership>.
2. The Companies are part of the Cresford Group of Companies (“Cresford”), a Toronto-based real estate developer. In addition to the NOI Proceedings, several of Cresford’s other developments have been subject to restructuring proceedings.
3. Residences was the registered owner of the real properties municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (the “Real Property”), acting as a bare trustee and nominee of, for and on behalf of the Partnership.
4. The Partnership was the beneficial owner of the Real Property and was formed for the purpose of developing the Real Property into a mixed-use office, retail and residential condominium development comprised of approximately 1,100 residential units, 190,000 square feet of commercial/retail/institutional space and 242 parking spaces known as the YSL Project.

5. As a result of the successful implementation of the Final Proposal, title to the Real Property was transferred to an affiliate of the Sponsor.
6. In the context of Cresford's various restructuring proceedings, the credibility and availability of Cresford's management, and the reliability of its books and records have been significant issues. As a result, the Proposal Trustee has been involved in addressing the various disputed claims filed in the NOI Proceedings, where in most proposal proceedings the debtor company takes a more active role in the claims process.

2.1 Applications by the Limited Partners and Senior Mortgagee

1. Prior to the Filing Date, certain of the LPs commenced applications (collectively, the "LP Applications") seeking Orders declaring that, among other things:
 - a) the General Partner, 9615334 Canada Inc. (the "GP"), is terminated as general partner of the Partnership;
 - b) any agreements entered into by the GP with the Sponsor are null and void; and
 - c) the GP breached its duty of good faith to the LPs.

Additionally, certain of the LPs sought the appointment of an equitable receiver.

2. On June 1, 2021, the Court heard motions by the LPs to, among other things, lift the stay of proceedings pursuant to Section 69(1) of the BIA and to authorize the LPs to bring the LP Applications. Pursuant to an endorsement made on the same day, the Court, among other things, set a litigation timetable for a hearing scheduled for June 23, 2021 where certain of the LPs' arguments could be made at the same time that the Companies sought approval of the Amended Proposal, assuming that the Amended Proposal had been accepted by the Affected Creditors voting at the Meeting, which they did on June 23, 2021.
3. In advance of the Proposal, the Companies were in default of their loan agreement with Timbercreek. Pursuant to an agreement dated March 26, 2020 among Timbercreek, the Companies and two Cresford entities (the "Forbearance Agreement"), Timbercreek agreed to, among other things, forbear from enforcing its security against the Real Property. Timbercreek subsequently brought a motion to appoint a receiver on November 13, 2020. The receivership application was adjourned several times and remained pending when the NOIs were filed. On several occasions, Timbercreek scheduled an application for the appointment of a receiver if the Companies' NOI Proceedings were unsuccessful.

3.0 Final Proposal

1. The Final Proposal provides for distributions to the Affected Creditors from the Affected Creditor Cash Pool, being a cash pool funded by the Sponsor in the amount of \$30.9 million to be distributed *pro rata* to Affected Creditors with Affected Creditor Claims. The Final Proposal also provides that if any residual amount remains in the Affected Creditor Cash Pool following the final distributions to Affected Creditors, such residual funds, if any, would be held by the Proposal Trustee “pending receipt of a duly issued direction from all of the holders of Class A Preferred Units of YG LP, or otherwise by order of the Court”. A copy of the Final Proposal is provided in Appendix “C”.
2. On July 22, 2021, the Sponsor funded the Affected Creditor Cash Pool. The corporate transactions summarized in Section 6.01 of the Final Proposal were completed on the same day and resulted in, among other things, title to the YSL Project being transferred to an entity related to the Sponsor.

4.0 Creditors

1. Sixty-five (65) claims have been filed against the Companies, including claims from trade creditors, real estate brokerages, professional advisors and former employees³. The status of the claims filed in this proceeding is summarized in the table below.

Creditor	Amount (\$000)		Difference
	Filed	Accepted by Proposal Trustee	
<u>Proven Claims:</u>			
Otis Canada Inc.	4,912	390	4,522
Landpower Real Estate Ltd.	4,500	3,847	653
Homelife Landmark Realty Inc.	3,170	3,145	25
Homelife New World Realty Inc.	1,839	1,524	315
Sarven Cicekian	767	383	384
David Ryan Millar	735	450	285
Sultan Realty Inc.	699	671	28
Mike Catsiliras	681	269	412
Home Standards Brickstone Realty	586	208	378
Louie Giannakopoulos	445	308	137
Other Proven Claims	4,142	3,679	463
Total Proven Claims	22,476	14,874	7,602
<u>Disputed Claims:</u>			
Maria Athanasoulis (disputed)	19,000	TBD	TBD
CBRE	1,239	TBD	TBD
Henry Zhang (disputed by the LPs)	1,520	1,130	390
Total Unresolved Claims	21,759	1,130	20,629
Total Claims	44,235	16,004	28,231

³ Since the Proposal Trustee’s last report, there has been one additional unsecured claim filed by a real estate broker.

2. Of the claims in the table, the following claims remain unresolved, as more fully discussed below (the “Disputed Claims”):
 - a) Ms. Athanasoulis;
 - b) CBRE; and
 - c) Mr. Zhang.
3. On March 24, 2022, the Proposal Trustee paid an interim distribution of 70¢ on the dollar to the creditors with Proven Claims.
4. Since the interim distribution, the Proposal Trustee has resolved various claims, including complex claims filed by four former employees of Cresford (the “Former Employees”), including common employer claims that each Former Employee filed against the Companies. The Proposal Trustee negotiated settlements of these claims, which were approved by the Court on May 24, 2022.
5. The Proposal Trustee paid a catch-up distribution to the Former Employees and other creditors with Proven Claims, except those who continue to have Disputed Claims and four creditors whose claims were recently resolved.
6. The Proposal Trustee has reserved the balance of the Affected Creditor Cash Pool until the Disputed Claims can be determined. The Affected Creditor Cash Pool is approximately \$20.5 million.
7. The Sponsor took an assignment of 28 of 65 Affected Creditor claims, totalling approximately \$12 million. As assignee, the Sponsor participated in the interim distribution and has received approximately \$8.4 million of the total amounts distributed.
8. The table below shows the range of outcomes to stakeholders depending on the resolution of the Disputed Claims. The table illustrates that resolution of the Disputed Claims will determine whether there will be any distributions to the LPs.

Estimated Distributions	Amount (\$000)	
	High	Low
Affected Creditor Cash Pool	30,900	30,900
<u>Claims</u>		
Proven Claims	14,874	14,874
Ms. Athanasoulis	-	19,000
CBRE	1,239	1,239
Mr. Zhang	-	1,130
Total Claims	16,113	36,243
Dividend rate	100%	85.3%
Residual for LPs	14,787	-

5.0 Status of the CBRE Claim

1. CBRE, a real estate brokerage, filed a proof of claim dated January 28, 2022 in the amount of approximately \$1.2 million. The claim relates to an invoice submitted by CBRE to “Cresford” dated October 13, 2021 and refers to services rendered by CBRE as the exclusive listing broker for the YSL Project pursuant to an unsigned listing agreement between CBRE and Residences (the “Listing Agreement”).
2. The Proposal Trustee disallowed CBRE’s claim in full for the reasons set out in its Notice of Disallowance of Claim dated February 10, 2022 (the “CBRE Notice”). A copy of the CBRE Notice is provided as Appendix “D”.
3. One of the key issues in respect of CBRE’s claim is the applicability of the “holdover clause” in the Listing Agreement, which reads as follows:

HOLDOVER

4.1

The Owner further agrees to pay the Brokerage the Commission if, within 90 calendar days after the expiration of the Term, the Property is sold to, or the Owner enters into an agreement of purchase and sale for the Property with, or negotiations continue, resume or commence and thereafter continue leading to the execution of a binding agreement of purchase and sale for the Property, provided the transaction subsequently closes, with any person or entity (including his/her/its successors, assigns or affiliates) with whom the Brokerage has negotiated (either directly or through another agent) or to whom the Property was introduced or submitted, from any source whatsoever, or to whom the Owner was introduced, from any source whatsoever, prior to the expiration of the Term; with or without the involvement of the Brokerage. The Brokerage is authorized to continue negotiations with such persons or entities. The Brokerage agrees to submit a list of such persons or entities to the Owner within 10 business days following the expiration of the Term, provided, however, that if a written offer has been submitted, then it shall not be necessary to include the offeror's name on the list.

4. The Term expired on August 20, 2020, and the Final Proposal was approved on July 16, 2021, well outside the 90-day period. Accordingly, the holdover provision would only be applicable if “*negotiations continue, resume or commence*” with the Sponsor within such 90-day period and the Sponsor was someone “*to whom the Property was introduced or submitted, ..., or to whom the Owner was introduced ... prior to the expiration of the Term*”.
5. The CBRE Notice was issued based on, among other things, representations the Proposal Trustee received from the Sponsor that the Sponsor dealt directly with Cresford and that it did not have any dealings with CBRE in respect of the YSL Project.
6. Requiring CBRE to respond to the Sponsor’s representations would have involved the Proposal Trustee receiving affidavit evidence from CBRE and, in light of that, possibly responding to affidavit evidence from the Sponsor.

7. Given the nature of these proceedings with the history of other stakeholders claiming to have information relevant to the Proposal Trustee's assessments, the Proposal Trustee determined that the best and most transparent way of determining CBRE's claim, based on the information available to it at the time, was to disallow the claim on the basis set out in the CBRE Notice and to permit CBRE to file a full evidentiary response by way of an appeal on notice to all. In this way, all parties would be able to review and respond to the evidence as they saw fit once on one complete record.
8. On February 11, 2022, following the issuance of the CBRE Notice, counsel for the Sponsor copied the Proposal Trustee on email correspondence with counsel for CBRE. In that correspondence, the Sponsor stated that while CBRE had introduced the Sponsor to Cresford, the Sponsor had no "*knowledge of a brokerage agreement or similar arrangement between Cresford and CBRE relating to the project formerly known as Yonge Street Living (YSL) residences*".
9. On March 10, 2022, CBRE served its notice of motion to appeal the CBRE Notice on the service list in these proceedings with scheduling to be dealt with at a case conference on March 16, 2022. Parties intending on taking a position on CBRE's motion were invited to attend at the case conference.
10. The case conference was held before Mr. Justice Cavanagh, at which the LPs' counsel attended. Mr. Justice Cavanagh scheduled the appeal to be heard on September 26, 2022.
11. The Proposal Trustee then canvassed with CBRE's counsel whether the dispute could be dealt with earlier by means of an arbitration, but no agreement could be reached on the terms for doing so.
12. On July 25, 2022, CBRE served its complete motion record containing its affidavit evidence regarding CBRE's role related to the YSL Project and its introduction to the Sponsor. CBRE's position is supported by an affidavit of Ted Dowbiggin, the President of Cresford Capital Inc. CBRE's evidence illustrates an ongoing dialogue between Concord and Cresford, after such introduction, that resulted in the transaction implemented through the Final Proposal. CBRE also provided evidence from Mr. Dowbiggin that Cresford dealt with CBRE on the basis that the listing agreement was in force, notwithstanding that it was never signed. In the Proposal Trustee's view, the ongoing dialogue between Cresford and the Sponsor, as well as Cresford's and CBRE's conduct related to the listing agreement, suggests that the holdover provisions apply and therefore entitle CBRE to its fee.
13. Based on the evidence provided by CBRE, the Proposal Trustee advised the service list that the Proposal Trustee would not be filing any responding material. Rather, at the hearing scheduled for September 26, 2022, the Proposal Trustee will seek the Court's approval of a settlement of the appeal with CBRE by admitting CBRE's claim, as filed, and the withdrawal of the appeal on a without costs basis. The Proposal Trustee informed the service list that, should any party wish to file their own responding material, the current schedule proposed this be done on or before August 18, 2022, and that the Proposal Trustee reserves the right to file reply materials to any responding materials.

14. On August 18, 2022, counsel to the LPs sent a letter to counsel to the Proposal Trustee, among other things, informing the Proposal Trustee that they had instructions to challenge CBRE's appeal and requesting a copy of CBRE's proof of claim and the CBRE Notice. The Proposal Trustee subsequently provided these documents to the LPs' counsel on a without prejudice basis to the Proposal Trustee's and CBRE's rights to contest the LPs' standing on CBRE's motion. A copy of the August 18, 2022 letter is attached as Appendix "E".
15. As of the date of this Report, no parties in these proceedings other than the LPs have contested the Proposal Trustee's allowance of CBRE's claim, including the Proposal Sponsor, which is the largest creditor in these proceedings by way of assignment of the claims discussed in paragraph 4.7 above.
16. The LPs served their responding motion record on August 19, 2022. Their motion record contained no evidence contesting or challenging any of the evidence submitted by CBRE.
17. The LPs then requested to cross-examine Mr. Dowbiggin and Mr. Gallagher, CBRE's other affiant and an Executive Vice President on the National Investment Team at CBRE. The Proposal Trustee understands that CBRE consented to the cross-examinations being conducted without prejudice to contesting the LPs rights to cross-examine CBRE's affiants.
18. The Proposal Trustee notes that the Final Proposal provides that all of the reasonable administrative fees and expenses of the Proposal Trustee must be funded by the Sponsor. Accordingly, all of the Proposal Trustee's costs and expenses, including those of its legal counsel, incurred in dealing with the LPs' opposition to this motion are ultimately payable by the Sponsor and, therefore, do not erode any of the potential recoveries of the LPs.

6.0 Conclusion

1. It is the Proposal Trustee's view that CBRE's claim in the amount of \$1,239,377.40 should be allowed and the appeal dispensed, without costs.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
YG LIMITED PARTNERSHIP AND
YSL RESIDENCES INC.,
AND NOT IN ITS PERSONAL CAPACITY**

TAB 10

Appendix “C”

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE PROPOSAL OF YG LIMITED PARTNERSHIP
AND YSL RESIDENCES INC. PURSUANT TO THE
*BANKRUPTCY AND INSOLVENCY ACT***

AMENDED PROPOSAL #3

WHEREAS, pursuant to Notices of Intention to Make a Proposal dated April 30, 2021, YSL Residences Inc. and YG Limited Partnership (collectively, "YSL" or the "**Company**") initiated proceedings under the *Bankruptcy and Insolvency Act* (Canada) R.S.C. 1985, B-3 as amended (the "**BIA**"), pursuant to Section 50(1) thereof;

AND WHEREAS a creditor proposal was filed in accordance with section 50(2) of the BIA on May 27, 2021 (the "**Original Proposal**");

AND WHEREAS an amendment to the Original Proposal was filed in accordance with section 50(2) of the BIA on June 3, 2021 (the "**First Amended Proposal**");

AND WHEREAS an amendment to the First Amended Proposal was filed in accordance with section 50(2) of the BIA on June 15, 2021 (the "**Second Amended Proposal**");

AND WHEREAS, the Second Amended Proposal was approved by the Requisite Majority of creditors at the Creditors' Meeting held June 15, 2021;

AND WHEREAS, pursuant to the Amended Reasons for Interim Decision issued July 2, 2021 (the "**Interim Decision**"), the Second Amended Proposal was not approved by the Court in the form presented and the Company and the Proposal Sponsor were permitted to amend the Second Amended Proposal to address the issues set out in the Interim Decision;

AND WHEREAS the Company and the Proposal Sponsor wish to amend the Second Amended Proposal on the terms and conditions set out herein with the intention of addressing the issues set out in the Interim Decision;

NOW THEREFORE the Company hereby submits the following third amended proposal under the BIA to its creditors (as amended, the "**Proposal**").

ARTICLE I
DEFINITIONS

1.01 Definitions

In this Proposal:

"**Administrative Fees and Expenses**" means the fees, expenses and disbursements incurred by or on behalf of the Proposal Trustee, the solicitors for the Proposal Trustee, the solicitors of the Company both before and after the Filing Date;

"**Affected Creditor Cash Pool**" means a cash pool in the amount of \$30,900,000 to be comprised of (i) all cash on hand in the Company's accounts as at the Proposal Implementation Date; (ii) any and all amounts refunded to or otherwise received by the Company in connection with the transfer of the YSL Project to the Proposal Sponsor as at the Proposal Implementation Date, and (iii) the balance to be provided by the Proposal Sponsor, subject to the refund of any surplus to the Proposal Sponsor in accordance with Section 5.01(a);

"**Affected Creditor Claim**" means a Proven Claim, other than an Unaffected Claim;

"**Affected Creditors**" means all Persons having Affected Creditor Claims, but only with respect to and to the extent of such Affected Creditor Claims;

"**Affected Creditors Class**" means the class consisting of the Affected Creditors established under and for the purposes of this Proposal, including voting in respect thereof;

"**Approval Order**" means an order of the Court, among other things, approving the Proposal;

"**Assumed Contracts**" means, subject to section 8.01(e), those written contracts entered into by or on behalf of the Company in respect of the Project to be identified by the Proposal Sponsor prior to the Proposal Implementation Date, which are to be assumed by the Proposal Sponsor upon Implementation with the consent of the applicable counterparty or otherwise pursuant to an order issued in pursuant to section 84.1 of the BIA;

"**BIA**" has the meaning ascribed to it in the recitals;

"**Business Day**" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;

"**Claim**" means any right or claim of any Person against the Company in connection with any indebtedness, liability, or obligation of any kind whatsoever in existence on the Filing Date (or which has arisen after the Filing Date as a result of the disclaimer or repudiation by the Company on or after the Filing Date of any lease or executory contract), and any interest accrued thereon to and including the Filing Date and costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise),

and whether or not such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against the Company with respect to any matter, cause or chose in action, but subject to any counterclaim, set-off or right of compensation in favour of the Company which may exist, whether existing at present or commenced in the future, which indebtedness, liability or obligation (A) is based in whole or in part on facts that existed prior to the Filing Date, (B) relates to a period of time prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA;

"**Company**" has the meaning ascribed to it in the recitals;

"**Conditional Claim**" means any Claim of an Affected Creditor that is not a Proven Claim as at the Filing Date because one or more conditions precedent to establish such Affected Creditor's entitlement to payment by the Company had not been completed in accordance with any applicable contractual terms as at the Filing Date, and such Affected Creditor has indicated in its proof of claim that the Claim should be treated as a Conditional Claim;

"**Conditional Claim Completion Deadline**" means 5:00pm (Toronto time) on September 27, 2021;

"**Conditional Claim Condition**" has the meaning ascribed to it in Section 2.03(a);

"**Conditions Precedent**" shall have the meaning given to such term in section 8.01 hereof;

"**Condo Purchase Agreement**" means an agreement of purchase and sale in respect of a residential condominium unit in the Project between the Company and a Condo Purchaser;

"**Condo Purchaser**" means a purchaser of a residential condominium unit in the Project pursuant to a Condo Purchase Agreement;

"**Condo Purchaser Claim**" means any Claim of a Condo Purchaser in respect of its Condo Purchase Agreement;

"**Construction Lien Claim**" means any Proven Claim in respect of amounts secured by a perfected lien registered against title to the Property and are valid in accordance with the *Construction Act* (Ontario);

"**Construction Lien Creditor**" means a creditor with a Construction Lien Claim;

"**Convenience Creditor**" means an Affected Creditor with a Convenience Creditor Claim;

"**Convenience Creditor Claim**" means (a) any Proven Claims of an Affected Creditor in an amount less than or equal to \$15,000, and (b) any Proven Claim of an Affected Creditor in an amount greater than \$15,000 if the relevant Creditor has made a valid election for the purposes of

this Proposal in accordance with this Proposal prior to the Convenience Creditor Election Deadline;

"Convenience Creditor Consideration" means, in respect of a Convenience Creditor Claim, the lesser of (a) \$15,000, and (b) the amount of the Proven Claim of such Convenience Creditor;

"Court" means the Ontario Superior Court of Justice (Commercial List);

"Court Approval Date" means the date upon which the Court makes the Approval Order;

"Creditors' Meeting" means the duly convened meeting of the Affected Creditors which took place on June 15, 2021;

"Crown" means Her Majesty in Right of Canada or of any Province of Canada and their agents;

"Crown Claims" means the Claims of the Crown set out in Section 60(1.1) of the BIA outstanding as at the Filing Date against the Company, if any, payment of which will be made in priority to the payment of the Preferred Claims and to distributions in respect of the Ordinary Claims, and specifically excludes any other claims of the Crown;

"Disputed Claim" means any Claim which has not been finally resolved as a Proven Claim in accordance with the BIA as at the Proposal Implementation Date;

"Distributions" means a distribution of funds made by the Proposal Trustee from the Affected Creditor Cash Pool to Affected Creditors in respect of Affected Creditor Claims, in accordance with Article V;

"Effective Time" means 12:00 p.m. (Toronto time) on the Proposal Implementation Date;

"Equity Claim" has the meaning ascribed to it in Section 2 of the BIA, and includes, without limitation, the Claims of all limited partners of YG LP and those Equity Claims deemed to be equity pursuant to the Interim Decision;

"Existing Equity" means the limited partnership units of YG LP and those Equity Claims deemed to be equity pursuant to the Interim Decision;

"Existing Equityholders" means the holders of the Existing Equity immediately prior to the Effective Time;

"Filing Date" means April 30, 2021, being the date upon which Notices of Intention to Make a Proposal were filed by the Company with the Official Receiver in accordance with the BIA;

"First Amended Proposal" has the meaning ascribed to it in the recitals;

"Governmental Authority" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (ii) exercising, or entitled or

purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"**Implementation**" means the completion and implementation of the transactions contemplated by this Proposal;

"**Implementation Certificate**" has the meaning ascribed to it in Section 8.01(j);

"**Interim Decision**" has the meaning ascribed to it in the recitals;

"**Official Receiver**" shall have the meaning ascribed thereto in the BIA;

"**Original Proposal**" has the meaning ascribed to it in the recitals;

"**Outside Date**" means July 31, 2021;

"**Permitted Encumbrances**" means those encumbrances on the Property listed in Schedule "A" hereto;

"**Person**" means any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority and a natural person in such person's capacity as trustee, executor, administrator or other legal representative;

"**Preferred Claim**" means a Claim enumerated in Section 136(1) of the BIA outstanding as at the Filing Date against the Company, if any, the payment of which will be made in priority to distributions in respect of Affected Creditor Claims;

"**Pro Rata Share**" means the fraction that is equal to (a) the amount of the Proven Claim of an Affected Creditor that is not a Convenience Creditor, divided by (b) the aggregate amount of all Proven Claims held by Affected Creditors who are not Convenience Creditors;

"**Project**" means the mixed-used office, retail and residential condominium development to be constructed on the Property currently consisting of approximately 1,100 residential condominium units and 170 parking units and known as Yonge Street Living Residences;

"**Property**" means the real property owned by the Company and municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario, and legally described by PIN numbers 21101-0042 (LT) to 21101-0049 (LT), inclusive;

"**Proposal**" means this Amended Proposal of the Company, and any amendments, modifications and/or supplements hereto made in accordance with the terms hereof;

"**Proposal Implementation Date**" means the date on which Implementation occurs, which shall occur following the satisfaction of the Conditions Precedent, and no later than the Outside Date;

"**Proposal Sponsor**" means Concord Properties Developments Corp.;

"Proposal Sponsor Agreement" means that agreement entered into among the Proposal Sponsor and the Company as of April 30, 2021, as amended from time to time;

"Proposal Trustee" means KSV Restructuring Inc. in its capacity as trustee in respect of this Proposal, or its duly appointed successor;

"Proposal Trustee's Website" means the following website: www.ksvadvisory.com/insolvency-cases/case/yg-limited-partnership;

"Proven Claim" means in respect of an Affected Creditor, the amount of a Claim as finally determined in accordance with the provisions of the BIA, provided that the Proven Claim of an Affected Creditor with a Claim in excess of \$15,000 that has elected to be a Convenience Creditor by submitting a Convenience Creditor Election Form shall be valued for voting purposes as \$15,000;

"Released Claims" means, collectively, the matters that are subject to release and discharge pursuant to Section 7.01;

"Released Parties" means, collectively, (i) the Company, (ii) each affiliate or subsidiary of the Company; (iii) the Proposal Sponsor, (iv) the Proposal Trustee, and (v) subject to section 7.01, each of the foregoing Persons' respective former and current officers, directors, principals, members, affiliates, limited partners, general partners, managed accounts or funds, fund advisors, employees, financial and other advisors, legal counsel, and agents, each in their capacity as such;

"Required Majority" means an affirmative vote of a majority in number and two-thirds in value of all Proven Claims in the Affected Creditors Class entitled to vote, who were present and voting at the Creditors' Meeting (whether online, in-person, by proxy or by voting letter) in accordance with the voting procedures established by this Proposal and the BIA;

"Second Amended Proposal" has the meaning ascribed to it in the recitals;

"Secured Claims" means:

- (a) The Claim of Timbercreek which is secured by, among other things a mortgage, charge, lien or other security validly charging or encumbering the Property;
- (b) The Claim of Westmount, which is secured by, among other things, a mortgage, charge, lien or other security validly charging or encumbering the Property;
- (c) The Claim of 2576725 Ontario Inc. which is secured by, among other things, a mortgage, charge, lien or other security validly charging or encumbering the Property;
- (d) All Construction Lien Claims but only to the extent of such Construction Lien Claims;

"Secured Creditor" means a Person holding a Secured Claim, with respect to, and to the extent of such Secured Claim;

"**Superintendent's Levy**" means the levy payable to the Superintendent of Bankruptcy pursuant to sections 60(4) and 147 of the BIA;

"**Timbercreek**" means, collectively, Timbercreek Mortgage Servicing Inc. and 2292912 Ontario Inc.;

"**Unaffected Claim**" means:

- (a) the Administrative Fees and Expenses;
- (b) the Claim of Timbercreek;
- (c) the Claim of Westmount;
- (d) the Claim of 2576725 Ontario Inc., which is secured by, among other things, an equitable mortgage encumbering the Property;
- (e) any Claim of the City of Toronto;
- (f) all Condo Purchaser Claims;
- (g) all Construction Lien Claims, but only to the extent such Claims are valid in accordance with the *Construction Act* (Ontario) and have been perfected by the Proposal Implementation Date; and
- (h) such other Claims as the Company and Proposal Sponsor may agree with the consent of the Proposal Trustee;

"**Unaffected Creditor**" means a creditor holding an Unaffected Claim, with respect to and to the extent of such Unaffected Claim;

"**Undeliverable Distributions**" has the meaning ascribed to it in Section 5.04;

"**Westmount**" means Westmount Guarantee Services Inc.;

"**YSL**" has the meaning ascribed to it in the recitals; and

"**YSL Project**" means the mixed-use commercial and residential condominium development to be constructed on the Property.

1.02 Intent of Proposal

This Proposal is intended to provide all Affected Creditors a greater recovery than they would otherwise receive if the Company were to become bankrupt under the BIA. More specifically, the Proposal will provide for a payment in full of Secured Claims and will provide a significant recovery in respect of Affected Creditor Claims. While the exact recovery cannot be determined until all Claims have been determined, the Company expects Affected Creditors to receive a significant, if not a full recovery, on their Claims and, in any event, a greater recovery than would occur if the Company were to become a bankrupt under the BIA.

In consideration for, among other things, its sponsorship of this Proposal, including the satisfaction of all Secured Claims, Preferred Claims and the establishment of the Affected Creditor Cash Pool, on the Proposal Implementation Date, title to the Property, subject only to the Permitted Encumbrances, as well as the Company's interests and obligations under the Assumed Contracts and Condo Purchase Agreements shall be acquired by the Proposal Sponsor, or its nominee in accordance with the terms hereof.

1.03 Date for Any Action

In the event that any date on which any action is required to be taken under this Proposal by any of the parties is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.

1.04 Time

All times expressed in this Proposal are local time in Toronto, Ontario, Canada unless otherwise stipulated. Time is of the essence in this Proposal.

1.05 Statutory References

Except as otherwise provided herein, any reference in this Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

1.06 Successors and Assigns

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors, and assigns of any Person named or referred to in the Proposal.

1.07 Currency

Unless otherwise stated herein, all references to currency and to "\$" in the Proposal are to lawful money of Canada.

1.08 Articles of Reference

The terms "hereof", "hereunder", "herein" and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

1.09 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

1.10 Numbers

In this Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

ARTICLE II **CLASSIFICATION AND TREATMENT OF AFFECTED PARTIES**

2.01 Classes of Creditors

For the purposes of voting on the Proposal, there was only one class of creditors, being the Affected Creditors Class. For the purposes of voting on the Proposal, each Convenience Creditor was deemed to vote in and as part of the Affected Creditors Class.

2.02 Treatment of Affected Creditors

- (a) As soon practicable after the Proposal Implementation Date, and after taking an adequate reserve in respect of any unresolved Claims pursuant to Section 5.03:
 - i. all Affected Creditors (other than Convenience Creditors and Affected Creditors holding Conditional Claims where one or more Conditional Claim Conditions have not been completed) shall receive, in respect of such Affected Creditor Claim, its Pro Rata Share of the Affected Creditor Cash Pool, net of the Superintendent's Levy, made by the Proposal Trustee from the Affected Creditor Cash Pool from time to time in accordance with Article V hereof, provided that aggregate Distributions to an Affected Creditor shall not exceed 100% of the value of such Affected Creditor's Proven Claim; and
 - ii. all Convenience Creditors shall receive in respect of such Convenience Creditor Claims, the Convenience Creditor Consideration, net of the Superintendent's Levy;
- (b) Subject to Section 2.03, on the Proposal Implementation Date, each Affected Creditor Claim shall, and shall be deemed to have been irrevocably and finally extinguished, discharged and released, and each Affected Creditor shall have no further right, title or interest in or to its Affected Creditor Claim.

2.03 Conditional Claims Protocol

If an Affected Creditor submits a proof of claim to the Proposal Trustee indicating that its Claim against the Company is a Conditional Claim due to the fact that one or more pre-conditions to such Affected Creditor's right to payment by the Company had not been satisfied as at the Filing Date due to the acts or omissions of such Affected Creditor, then:

- (a) such Affected Creditor shall have until the Conditional Claim Completion Deadline to complete or otherwise satisfy all outstanding pre-conditions to payment in accordance with the terms of the applicable agreement between such Affected

Creditor and the Company (all such conditions, "**Conditional Claim Conditions**"), and provide notice of such completion to the Proposal Trustee along with reasonable proof thereof;

- (b) if such Affected Creditor provides the Proposal Trustee with proof of the completion of all applicable Conditional Claim Conditions prior to the Conditional Claim Completion Deadline, then, subject to the Proposal Trustee's confirmation of same, such Affected Creditor's Conditional Claim shall be deemed to be a Proven Claim, and such Affected Creditor shall be entitled to a Distribution in accordance with Section 5.02, and, effective immediately upon issuance of such distribution to the Affected Creditor by the Proposal Trustee, the releases set out in Section 7.01 shall become effective; and
- (c) if such Affected Creditor has not satisfied one or more Conditional Claim Conditions by the Conditional Claim Completion Deadline, then, effective immediately upon the Conditional Claim Completion Deadline, such Affected Creditor's Conditional Claim shall be irrevocably and finally extinguished and such Affected Creditor shall have no further right, title or interest in and to its Conditional Claim and the releases set out in Section 7.01 shall become effective in respect of such Conditional Claim.

2.04 Existing Equityholders and Holders of Equity Claims

Subject to Section 7.01, all Equity Claims shall be fully, finally and irrevocably and forever compromised, released, discharged, cancelled, extinguished and barred as against the Property on the Proposal Implementation Date in accordance with Section 6.011.1(1)(1)(h).

2.05 Application of Proposal Distributions

All amounts paid or payable hereunder on account of the Affected Creditor Claims (including, for greater certainty, any securities received hereunder) shall be applied as follows: (i) first, in respect of the principal amount of the Affected Creditor Claim, and (ii) second, in respect of the accrued but unpaid interest on the Affected Creditor Claim.

2.06 Full Satisfaction of All Affected Creditor Claims

All Affected Creditors shall accept the consideration set out in Section 2.02 hereof in full and complete satisfaction of their Affected Creditor Claims, and all liens, certificates of pending litigation, executions, or other similar charges or actions or proceedings in respect of such Affected Creditor Claims will have no effect in law or in equity against the Property, or other assets and undertaking of the Company. Upon the Implementation of the Proposal, any and all such registered liens, certificates of pending litigation, executions or other similar charges or actions brought, made or claimed by Affected Creditors will be and will be deemed to have been discharged, dismissed or vacated without cost to the Company and the Company will be released from any and all Affected Creditor Claims of Affected Creditors, subject only to the right of Affected Creditors to receive Distributions as and when made pursuant to this Proposal.

2.07 Undeliverable Distributions

Undeliverable Distributions shall be dealt with and treated in the manner provided for in the BIA and the directives promulgated pursuant thereto.

ARTICLE III CREDITORS' MEETING AND AMENDMENTS

3.01 Meeting of Affected Creditors

As set out in the Interim Decision, the Requisite Majority approved the Proposal at the Creditors' Meeting.

3.02 Assessment of Claims

The provisions of section 135 of the BIA will apply to all proofs of claim submitted by Affected Creditors, including in respect of Disputed Claims. In the event that a duly submitted proof of claim has been disallowed or revised for voting purposes by the Proposal Trustee, and such disallowance has been disputed by the applicable Affected Creditor in accordance with Section 135(4) of the BIA, or in the case of any Claim that is a Conditional Claim as at the time of the Creditors' Meeting, then the dollar value for voting purposes at the Creditors' Meeting shall be the dollar amount of such disputed claim or Conditional Claim, as the case may be, set out in the proof of claim submitted by such Affected Creditor, without prejudice to the determination of the dollar value of such Affected Creditor's disputed claim or Conditional Claim for distribution purposes.

Except as expressly provided herein, the Proposal Trustee's determination of claims pursuant to this Proposal and the BIA shall only apply for the purposes of this Proposal, and such determination shall be without prejudice to a Creditor's right to submit a revised proof of claim in subsequent proceedings in respect of the Company should this Proposal not be implemented.

3.03 Modification to Proposal

Subject to the provisions of the BIA, after the Creditors' Meeting (and both prior to and subsequent to the issuance of the Approval Order) and subject to the consent of the Proposal Trustee and the Proposal Sponsor, the Company may at any time and from time to time vary, amend, modify or supplement the Proposal.

ARTICLE IV PREFERRED CLAIMS AND MANDATORY PAYMENTS

4.01 Crown Claims

Within thirty (30) Business Days following the granting of the Approval Order, the Crown Claims, if any, will be paid by the Proposal Trustee, in full with related interest and penalties as prescribed by the applicable laws, regulations and decrees.

4.02 Preferred Claims

Within thirty (30) Business Days following the granting of the Approval Order, the Preferred Claims, if any, will be paid in full by the Proposal Trustee.

ARTICLE V FUNDING AND DISTRIBUTIONS

5.01 Proposal Sponsor to Fund

- (a) On the Proposal Implementation Date, the Proposal Sponsor shall deliver to the Proposal Trustee by way of wire transfer (in accordance with wire transfer instructions provided by the Proposal Trustee at least three (3) business days prior to the Proposal Implementation Date) the amount necessary to establish the Affected Creditor Cash Pool in accordance with the provisions of this Proposal, provided that any surplus amounts over and above the Affected Creditor Cash Pool amount of \$30,900,000 that are returned to the Company in connection with the transfer of the YSL Project to the Proposal Sponsor shall be promptly returned to the Proposal Sponsor, including, without limitation, the cash collateral to be released by TD Bank when the letters of credit held by the City of Toronto and the Toronto Transit Commission are replaced by letters of credit to be provided by the Proposal Sponsor; and
- (b) The Proposal Trustee shall hold the Affected Creditor Cash Pool in a segregated account and shall distribute such cash, net of any reserves established in respect of unresolved Claims, in accordance with Section 5.03 of the Proposal.
- (c) The Proposal Sponsor shall effect payments in respect of the Unaffected Claims to those parties entitled to such payments directly and shall provide the Proposal Trustee with proof of such payments, as applicable.

5.02 Distributions

As soon as possible after the Proposal Implementation Date and the payments contemplated by Sections 4.01 and 4.02, the Proposal Trustee shall make a Distribution to each Affected Creditor with a Proven Claim, in an amount equal to such Affected Creditor's Pro Rata Share of the Affected Creditor Cash Pool, net of the Superintendent's Levy, and net of any amounts held in reserve in respect of unresolved Claims, in accordance with Section 5.03.

Thereafter, the Proposal Trustee may make further Distributions to Affected Creditors from time to time from the reserves established pursuant to Section 5.03, as unresolved Claims are resolved in accordance with the terms of Section 3.02.

5.03 Reserves for Unresolved Claims

Prior to making any Distribution to Affected Creditors pursuant to Section 5.02, the Proposal Trustee shall set aside in the Affected Creditor Cash Pool sufficient funds to pay all Affected

Creditors with Disputed Claims or Conditional Claims the amounts such Affected Creditors would be entitled to receive in respect of that particular Distribution pursuant to this Proposal, in each case as if their Disputed Claim or Conditional Claim, as the case may be, had been a Proven Claim at the time of such Distribution. Upon the resolution of each Disputed Claim in accordance with the BIA, or upon final resolution of any Conditional Claim, any funds which have been reserved by the Proposal Trustee to deal with such Disputed Claim or such Conditional Claim, as applicable, but which are not required to be paid to the Affected Creditor shall remain in the Affected Creditor Cash Pool and become available for further Distributions to Affected Creditors in respect of their Proven Claims.

5.04 Method of Distributions

Unless otherwise agreed to by the Proposal Trustee and an Affected Creditor, all Distributions made by the Proposal Trustee pursuant to this Proposal shall be made by cheque mailed to the address shown on the proof of claim filed by such Affected Creditor or, where an Affected Creditor has provided the Trustee with written notice of a change of address, to such address set out in that notice. If any delivery or distribution to be made pursuant to Article V hereof in respect of an Affected Creditor Claim is returned as undeliverable, or in the case of a distribution made by cheque, the cheque remains uncashed (each an "**Undeliverable Distribution**"), no other crediting or delivery will be required unless and until the Proposal Trustee is notified of the Affected Creditor's then current address. The Proposal Trustee's obligations to the Affected Creditor relating to any Undeliverable Distribution will expire six months following the date of delivery or mailing of the cheque or other distribution, after which date the Proposal Trustee's obligations under this Proposal in respect of such Undeliverable Distribution will be forever discharged and extinguished, and the amount that the Affected Creditor was entitled to be paid under the Proposal shall be distributed to the Proposal Sponsor.

5.05 Residue After All Distributions Made

In the event that any residual amount remains in the Affected Creditor Cash Pool following the Proposal Trustee's final Distribution to Affected Creditors as provided herein, such residual funds shall be held by the Proposal Trustee pending receipt of a duly issued direction from all of the holders of Class A Preferred Units of YG LP, or otherwise by order of the Court.

ARTICLE VI IMPLEMENTATION

6.01 Proposal Implementation Date Transactions

Commencing at the Effective Time, the following events or transactions will occur, or be deemed to have occurred and be taken and effected, in the following order in five minute increments (unless otherwise indicated) and at the times and in the order set out in this Section 6.01 (or in such other manner or order or at such other time or times as the Company and the Proposal Sponsor may agree, each acting reasonably), without any further act or formality required on the part of any Person, except as may be expressly provided herein:

- (a) Either the Proposal Sponsor will, at its election, but subject to obtaining the consent of the applicable Secured Creditor, assume the Secured Claims, or on behalf of the Company, the Proposal Sponsor will make payment in full to Secured Creditors in respect of their Secured Claims, in accordance with Section 5.01(c) calculated as at the Closing Date;
- (b) the releases in respect of Secured Claims referenced in section 7.01 shall become effective, and any registrations on title to the Property in respect of such Secured Claims shall, unless otherwise agreed between the Secured Creditor and the Proposal Sponsor with the consent of the Proposal Trustee, be discharged from title to the Property;
- (c) the Proposal Sponsor shall provide to the Proposal Trustee the amount necessary to establish the Affected Creditor Cash Pool, in accordance with Section 5.01(a), in full and final settlement of all Affected Creditor Claims;
- (d) the Proposal Sponsor shall provide the Proposal Trustee with an amount necessary to satisfy the Administrative Fees and Expenses, including a reserve in respect of the reasonably estimated additional Administrative Fees and Expenses anticipated to be incurred in connection with the administration of Distributions, resolution of any unresolved Claims pursuant to Section 5.03, and the Proposal Trustee's discharge;
- (e) title to the Property shall be registered in the name of the Proposal Sponsor, or its nominee, together with any charges applicable to security held by the lenders to the Proposal Sponsor in respect of the purchase of the Property and construction of the Project;
- (f) the assumption of the Assumed Contracts by the Proposal Sponsor, or its nominee, shall become effective;
- (g) all Affected Creditor Claims (including without limitation all Convenience Creditor Claims) shall, and shall be deemed to be, irrevocably and finally extinguished and the Affected Creditors shall have no further right, title or interest in and to their respective Affected Creditor Claims, except with respect to their right to receive a Distribution, if applicable, and in such case, only to the extent of such Distribution;
- (h) subject to Section 7.01, all Equity Claims shall, and shall be deemed to be, irrevocably and finally extinguished and all Existing Equityholders shall have no further right, title or interest in and to their respective Equity Claims as against the Property; and
- (i) the releases in respect of Affected Creditor Claims (other than Conditional Claims with Conditional Claim Conditions not satisfied as at the Effective Time) referred to in Section 7.01 shall become effective.

ARTICLE VII **RELEASES**

7.01 Release of Released Parties

At the applicable time pursuant to Section 6.01(b), in the case of Secured Claims, and Section 6.01(i), in respect of Affected Creditor Claims, each of the Released Parties shall be released and discharged from all present and future actions, causes of action, damages, judgments, executions, obligations, liabilities and Claims of any kind or nature whatsoever arising on or prior to the Proposal Implementation Date in connection with this Proposal and the Project, and any proceedings commenced with respect to or in connection with this Proposal, the Project, the transactions contemplated hereunder, and any other actions or matters related directly or indirectly to the foregoing, provided that nothing in this paragraph shall release or discharge (i) any of the Released Parties from or in respect of their respective obligations under this Proposal or any order issue by the Court in connection with this Proposal or any document ancillary to any of the foregoing, (ii) any Released Party from liabilities or claims which cannot be released pursuant to s. 50(14) of the BIA, as determined by the final, non-appealable judgment of the Court, or (iii) any Released Party from any Secured Claim of Timbercreek. The foregoing release shall not be construed to prohibit a party in interest from seeking to enforce the terms of this Proposal, including with respect to Distributions, or any contract or agreement entered into pursuant to, in connection with or contemplated by this Proposal. Notwithstanding the foregoing, the directors and officers of the Company, its affiliates, the former directors and officers, and general partner of the Company shall not be released in respect of any (x) Equity Claim as defined in section 2 of the BIA or any analogous claim in respect of a partnership interest or (y) any claim by a former employee of the Company or its affiliates relating to unpaid wages or other employment remuneration.

7.02 Injunctions

All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Proposal Implementation Date, with respect to any and all Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever of any Person against the Released Parties, as applicable; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, guarantee, decree or order against the Released Parties; (iii) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (iv) taking any actions to interfere with the implementation or consummation of this Proposal or the transactions contemplated hereunder; provided, however, that the foregoing shall not apply to the enforcement of any obligations under this Proposal or any document, instrument or agreement executed to implement this Proposal.

ARTICLE VIII
CONDITIONS PRECEDENT

8.01 Conditions Precedent

This Proposal will take effect on the Proposal Implementation Date. The Implementation of this Proposal on the Proposal Implementation Date is subject to the satisfaction or waiver (in the sole discretion of the Proposal Sponsor) of the following conditions precedent (collectively, the "**Conditions Precedent**"):

- (a) the Proposal is approved by the Required Majority;
- (b) the Approval Order, in form and substance satisfactory to the Proposal Sponsor, has been issued, has not been stayed and no appeal therefrom is outstanding;
- (c) there shall not be in effect any preliminary or final decision, order or decree by a Governmental Authority, no application shall have been made to any Governmental Authority, and no action or investigation shall have been announced, threatened or commenced by any Governmental Authority, in consequence or in connection with the Proposal or the Project that restrains, impedes or prohibits (or if granted could reasonably be expected to restrain, impede or inhibit), the Proposal or any part thereof or the Project or any part thereof or requires or purports to require a variation of the Proposal or the Project;
- (d) registrations in respect of all encumbrances, including without limitation any registrations in respect of Construction Lien Claims, but excluding the Permitted Encumbrances, shall have been deleted from title to the Property, provided that (a) should the Implementation of the Proposal not occur following the deletion of an Affected Creditor's encumbrance pursuant to this provision, such Affected Creditor shall have the right to renew such registration, and (b) the Company and/or the Proposal Sponsor shall be at liberty to pay security into Court (by way of a bond or similar instrument) in respect of any Construction Lien Claim;
- (e) the Proposal Sponsor, or its nominee, shall have entered into assignment and assumption agreements in respect of all Assumed Contracts, or an assignment order pursuant to section 84.1 of the BIA shall have been issued, in each case in form and substance satisfactory to the Proposal Sponsor, provided that it shall be a condition of the assumption of each Assumed Contract that the written agreements set out in the list of Assumed Contracts provided by the Proposal Sponsor (as amended from time to time) represent the totality of the contractual arrangements between the Company and each applicable counterparty, and no verbal or extra-contractual arrangements will be recognized by the Proposal Sponsor;
- (f) sufficient financing for the acquisition of the Property by the Proposal Sponsor, or its nominee, shall have been provided by Otera Capital Inc., on terms satisfactory to the Proposal Sponsor, and all material conditions precedent to such financing shall be capable of completion by the Proposal Sponsor prior to the Proposal Implementation Date;

- (g) the Proposal Implementation Date shall occur on the day that is three Business Days following the issuance of the Approval Order, or such other date prior to the Outside Date as may be agreed by the Proposal Sponsor;
- (h) any required resolutions authorizing the Company to file this Proposal and any amendments thereto will have been approved by the board of directors of the Company;
- (i) the Proposal Sponsor Agreement shall not have been terminated by the Proposal Sponsor; and
- (j) the Company and the Proposal Sponsor shall have delivered a certificate to the Proposal Trustee that all of the conditions precedent to the Implementation of the Proposal have been satisfied or waived (the "**Implementation Certificate**").

Upon the Proposal Trustee's receipt of the Implementation Certificate, the Affected Creditor Cash Pool and the funding required by Section 6.01(d), the Implementation of the Proposal shall have been deemed to have occurred and all actions deemed to occur upon Implementation of the Proposal shall occur without the delivery or execution of any further documentation, agreement or instrument.

ARTICLE IX

EFFECT OF PROPOSAL

9.01 Binding Effect of Proposal

After the issuance of the Approval Order by the Court, subject to satisfaction of the Conditions Precedent, the Proposal shall be implemented by the Company and shall be fully effective and binding on the Company and all Persons affected by the Proposal. Without limitation, the treatment of Affected Creditor Claims under the Proposal shall be final and binding on the Company, the Affected Creditors, and all Persons affected by the Proposal and their respective heirs, executors, administrators, legal representatives, successors, and assigns. For greater certainty, this Proposal shall have no effect upon Unaffected Creditors.

9.02 Amendments to Agreements and Paramountcy of Proposal

Notwithstanding the terms and conditions of all agreements or other arrangements with Affected Creditors entered into before the Filing Date, for so long as an event of default under this Proposal has not occurred, all such agreements or other arrangements will be deemed to be amended to the extent necessary to give effect to all the terms and conditions of this Proposal. In the event of any conflict or inconsistency between the terms of such agreements or arrangements and the terms of this Proposal, the terms of this Proposal will govern and be paramount.

9.03 Deemed Consents and Authorizations of Affected Creditors

At the Effective Time each Affected Creditor shall be deemed to have:

- (a) executed and delivered to the Company all consents, releases, assignments, and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- (b) waived any default by the Company in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Affected Creditor and the Company that has occurred on or prior to the Proposal Implementation Date; and
- (c) agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Affected Creditor and the Company as at the date and time of Court approval of the Proposal (other than those entered into by the Company on, or with effect from, such date and time) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly.

ARTICLE X

ADMINISTRATIVE FEES AND EXPENSES

10.01 Administrative Fees and Expenses

Administrative Fees and Expenses including a reserve in respect of the reasonably estimated additional Administrative Fees and Expenses anticipated to be incurred in connection with the administration of Distributions, resolution of any unresolved Claims pursuant to Section 5.03, and the Proposal Trustee's discharge will be paid in cash by the Proposal Sponsor on the Proposal Implementation Date.

ARTICLE XI

INDEMNIFICATION

11.01 Indemnification of Proposal Trustee

The Proposal Trustee shall be indemnified in full by the Proposal Sponsor for: (a) all personal liability arising from fulfilling any duties or exercising any powers or duties conferred upon it by this Proposal or under the BIA, except for any willful misconduct or gross negligence; and (b) all Administrative Fees and Expenses reasonably incurred but not covered by the payment set out in Section 10.01.

ARTICLE XII
POST FILING GOODS AND SERVICES

12.01 Payment of Payroll Deductions and Post Filing Claims

The following shall continue to be paid in the ordinary course by the Company prior to and after the Court Approval Date and shall not constitute Distributions or payments under this Proposal:

- (a) all Persons, who may advance monies, or provide goods or services to the Company after the Filing Date shall be paid by the Company in the ordinary course of business;
- (b) current source deductions and other amounts payable pursuant to Section 60(1.2) of the BIA, if applicable, shall be paid to Her Majesty in Right of Canada in full by the Company as and when due; and
- (c) current goods and services tax (GST), and all amounts owing on account of provincial sales taxes, if applicable, shall be paid in full by the Company as and when due.

ARTICLE XIII
TRUSTEE, CERTIFICATE OF COMPLETION, AND DISCHARGE OF TRUSTEE

13.01 Proposal Trustee

KSV Restructuring Inc. shall be the Proposal Trustee pursuant to this Proposal and upon the making of the Distributions and the payment of any other amounts provided for in this Proposal, the Proposal Trustee will be entitled to be discharged from its obligations under the terms of this Proposal. The Proposal Trustee is acting in its capacity as Proposal Trustee under this Proposal, and not in its personal capacity and shall not incur any liabilities or obligations in connection with this Proposal or in respect of the business, liabilities or obligations of the Company, whether existing as at the Filing Date or incurred subsequent thereto.

The Proposal Trustee shall not incur, and is hereby released from, any liability as a result of carrying out any provisions of this Proposal and any actions related or incidental thereto, save and except for any gross negligence or willful misconduct on its part (as determined by a final, non-appealable judgment of the Court).

13.02 Certificate of Completion and Discharge of Proposal Trustee

Upon the Proposal Trustee having received the Implementation Certificate, and all Distributions to Affected Creditors having been administered in accordance with Article V, the terms of the Proposal shall be deemed to be fully performed and the Proposal Trustee shall provide a certificate to the Company, the Proposal Sponsor and to the Official Receiver pursuant to Section 65.3 of the BIA and the Proposal Trustee shall be entitled to be discharged.

ARTICLE XIV
GENERAL

14.01 Valuation

For purposes of voting and Distributions, all Claims shall be valued as at the Filing Date.

14.02 Preferences, Transfers at Undervalue

In conformity with Section 101.1 of the BIA, Sections 95-101 of the BIA and any provincial statute related to preference, fraudulent conveyance, transfer at undervalue, or the like shall not apply to this Proposal. As a result, all of the rights, remedies, recourses and Claims described therein:

- (a) all such rights, remedies and recourses and any Claims based thereon shall be completely unavailable to the Proposal Trustee or any Affected Creditors against the Company, the Property, or any other Person whatsoever; and
- (b) the Proposal Trustee and all of the Affected Creditors shall be deemed, for all purposes whatsoever, to have irrevocably and unconditionally waived and renounced such rights, remedies and recourses and any Claims based thereon against the Company, the Property any other Person.


14.03 Governing Law

The Proposal shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. Any disputes as to the interpretation or application of the Proposal and all proceedings taken in connection with the Proposal shall be subject to the exclusive jurisdiction of the Court.


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Dated at Toronto, this 15th day of July, 2021.

YSL RESIDENCES INC.

Per: 
Name: Daniel Casey
Title: President
I have the authority to bind the Corporation.

**YG LIMITED PARTNERSHIP, by its
general partner 9615334 CANADA INC.**

Per: 
Name: Daniel Casey
Title: President
I have the authority to bind the Corporation.

SCHEDULE A

PERMITTED ENCUMBRANCES

<u>Instrument Number</u>	<u>Description</u>
EP138153	- Canopy Agreement with the City of Toronto
EP146970	- Encroachment Agreement with the City of Toronto
CT114131	- Encroachment Agreement with the City of Toronto
CT169812	- Canopy Agreement with the City of Toronto
CA11215	- Development Agreement with the City of Toronto
CA231470	- Encroachment Agreement with the City of Toronto
AT5142530	- Heritage Easement Agreement with the City of Toronto
AT5154721	- Heritage By-Law
AT5154722	- Heritage By-Law
AT5157423	- Heritage By-Law
AT5157424	- Heritage By-Law
AT5246455	- Section 37 Agreement
AT5473163	- Application to Register a Court Order (Equitable Mortgage)

TAB 11

Court File No. BK-21-02734090-0031

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

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

NOTICE OF MOTION

The Proposal Trustee, KSV Restructuring Inc. (the “**Proposal Trustee**”), will make a motion to the Court at 10:00 a.m. on January 16, at the court house, 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1) because it is on consent;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally by Zoom videoconference or in person as the Court may direct.

THE MOTION IS FOR AN ORDER:

- (a) Establishing the process for any appeal from the Proposal Trustee’s notice of determination of the proof of claim filed by Maria Athanasoulis against YG Limited Partnership and YSL Residences Inc. (the “**Companies**”); and
- (b) such further and other Relief as counsel may advise or this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:**A. BACKGROUND TO THE PROPOSAL PROCEEDINGS**

1. On April 30, 2021, the Companies filed Notices of Intention to Make a Proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* (“**BIA**”) (the “**NOIs**”).
2. On May 14, 2021, the Court issued an order consolidating the NOIs into the instant proceeding.
3. After a series of amendments and discussions among the various stakeholders, on July 9, 2021, the Sponsor filed in this proceeding a third amended proposal (the “**Third Amended Proposal**”). Between July 9, 2021 and July 15, 2021, further revisions were made to the Third Amended Proposal at the request of the Proposal Trustee. The Third Amended Proposal, as further amended, is referred to as the “**Final Proposal**” in this notice of motion.
4. On July 15, 2021, the Proposal Trustee filed its Fourth Report to the Court recommending that the Court approve the Final Proposal.
5. On July 16, 2021, the Court approved the Final Proposal.

B. THE ATHANASOULIS CLAIM

6. Of the over 65 claims filed against the Companies in this proceeding, the Proposal Trustee, as of the date of this notice of motion, has resolved all claims except the following:
 - (a) a claim by CBRE for approximately \$1.2 million (the “**CBRE Claim**”);

- (b) a claim by Henry Zhang for approximately \$1.5 million (the “**Zhang Claim**”);
and
- (c) a claim by Ms. Athanasoulis for \$19 million (the “**Athanasoulis Claim**”, and collectively with the CBRE and Zhang Claims, the “**Disputed Claims**”).

7. The CBRE and Zhang Claims are the subject of separate claims proceedings. On November 7, 2022, Justice Osborne set aside the disallowance of the CBRE Claim, and allowed the Claim. Certain of the Limited Partners of the Companies (the “**LPs**”) have appealed that decision. An appeal of the Proposal Trustee’s allowance of the Zhang Claim is awaiting the resolution of the appeal in respect of the CBRE Claim, as it raises the same issues.

8. The Athanasoulis Claim is the largest unresolved Claim. Of the \$19 million claim, \$18 million is based on an alleged oral agreement between Ms. Athanasoulis and Ms. Athanasoulis claims that the Companies gave her a right to 20% of the profits earned upon the completion of the projects undertaken by the Companies. The Companies denied the existence of any such agreement. The remaining \$1 million is based on alleged damages for wrongful dismissal.

9. All of the LPs oppose the Athanasoulis Claim because allowing her claim will reduce the funds potentially available to the LPs. The Proposal Sponsor, Concord, wishes to minimize the expense of the Proposal proceedings and also has acquired various unsecured claims against the Companies thereby making it the largest unsecured creditor, and therefore has an interest adverse to the Athanasoulis Claim.

10. To determine whether an oral agreement existed, the veracity and credibility of witnesses asserting diametrically opposed versions of the facts needed to be assessed through *viva voce* testimony under oath. Given the constrained availability of Court resources, the Proposal Trustee and counsel for Ms. Athanasoulis agreed that the most fair, expeditious, and efficient manner of determining whether such an oral agreement existed was by way of arbitration.

11. In this regard, the Proposal Trustee and Ms. Athanasoulis appointed William Horton as sole arbitrator (the “**Arbitrator**”). The Proposal Trustee and Ms. Athanasoulis agreed to bifurcate the arbitration, with the result that liability for breach of the alleged (as it was then) oral agreement would be determined in Phase 1 and damages for the breach (if any) would be determined later in Phase 2. Despite being aware that the Proposal Trustee intended to arbitrate the merits of the Athanasoulis Claim, no stakeholder took steps to oppose or prevent the Phase 1 arbitration.

12. The Arbitrator rendered his decision in respect of Phase 1 of the arbitration on March 28, 2022. The Arbitrator held that an oral agreement existed between Ms. Athanasoulis and the Companies that entitles her to 20% of the profits on projects completed by the Companies.

13. Following the release of the Arbitrator’s decision, the LPs and Concord expressed concerns regarding the manner and nature of the arbitration proceedings and objected to Ms. Athanasoulis and the Proposal Trustee proceeding to Phase 2 of the arbitration. Concord refused to fund the Proposal Trustee’s fees and expenses associated with pursuing arbitration.

14. In response, and given its agreement with Ms. Athanasoulis to arbitrate her claim, the Proposal Trustee brought a motion before this Court to compel Concord to provide continued funding towards the resolution of the Athanasoulis Claim (the “**Funding Motion**”).

15. On November 1, 2022, Justice Kimmel rendered her decision in the Funding Motion (the “**Funding Decision**”). Among other things, she held that the Phase 2 arbitration was beyond the scope of the authority granted to the Proposal Trustee under s. 135 of the *Bankruptcy and Insolvency Act*, but that Concord was required to indemnify the Proposal Trustee for all fees and expenses reasonably incurred to date and moving forward.

16. Following the Funding Decision, the Proposal Trustee engaged the various interested stakeholders in a series of “without prejudice” communications regarding a process for resolving the Athanasoulis Claim in the most efficient manner possible. The Proposal Trustee was unable to obtain a consensus from the various stakeholders and has therefore brought this motion for directions. No stakeholder objects to the bringing of this motion.

C. THE PROPOSAL TRUSTEE’S PROPOSED PROCEDURE

17. The Proposal Trustee has proposed the following procedure for resolution of the Athanasoulis Claim:

- (a) The Proposal Trustee will issue a Notice of Determination substantially in the form of the draft attached as an Appendix to its Report. The Notice of Determination is based on the full record to date in these proceedings,

including the materials filed and evidence given at the Phase 1 arbitration, the decision of Mr. Horton, and any responses to direct information requests from the Trustee.

- (b) The Notice of Determination accepts all of the factual determinations made by Mr. Horton in his decision in Phase 1 of the arbitration, consistent with Justice Kimmel's direction in the Funding Decision that it be the "factual predicate upon which the determination of [Ms Athanasoulis'] claim will proceed". Ms. Athanasoulis may file any appeal pursuant to Section 135 of the *BIA*.
- (c) Ms. Athanasoulis' appeal shall not be required to adduce detailed evidence valuing and quantifying her profit share claim, but may address any issues raised in the Notice of Determination.
- (d) The LPs shall be entitled only to raise issues in the appeal that pertain directly: (a) to whether the LPs must be repaid in full prior to any payments being made on the Athanasoulis Claim; and (b) to the enforceability of any element of the Athanasoulis Claim given the terms of the Limited Partnership Agreement.
- (e) Ms. Athanasoulis will be entitled to make a full response to any materials filed by the LPs in this regard.

- (f) The LPs shall not be entitled to raise issues relating to any counterclaim or set-off that they may assert against Ms. Athanasoulis. Such issues will be addressed, if necessary, at a future distribution motion.
- (g) To the extent that the decision on appeal finds that a debt is owing and payable to Ms. Athanasoulis on her profit share agreement, then a summary trial on the quantification of damages will be scheduled.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (h) The Eighth Report of the Proposal Trustee, to be delivered ; and
- (i) such further and other evidence as the lawyers may advise and this Honourable Court permit.

December 22, 2022

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IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. BK-21-02734090-0031

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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TAB 12

22-DEC-2022/EN

Court File No. BK-21-02734090-0031
Court of Appeal No. COA-22-CV-0451**COURT OF APPEAL FOR ONTARIO**

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.**

APPELLANTS' CERTIFICATE RESPECTING EVIDENCE

The appellants, YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc. (collectively, the “YongeSL LPs”), certify that the following evidence is required for the appeal, in the appellants’ opinion:

1. Affidavit of Chris Wai, sworn on August 19, 2022;
2. Transcript of the Cross-Examination of Ted Dowbiggin conducted on August 31, 2022;
3. Transcript of the Cross-Examination of Casey Gallagher conducted on August 31, 2022;
4. Affidavit of Casey Gallagher and exhibits, sworn on July 21, 2022;
5. Affidavit of Heyla Vettyvel and exhibits, sworn on July 22, 2022;
6. Affidavit of Edward Dowbiggin and exhibit, sworn on July 25, 2022;
7. Supplementary Affidavit of Heyla Vettyvel with exhibits, sworn on July 27, 2022; and
8. Seventh Report of the Proposal Trustee to the Court dated September 12, 2022.

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December 2, 2022

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

Court File No. BK-21-02734090-0031
Court of Appeal No. COA-22-CV-0451

COURT OF APPEAL FOR ONTARIO

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TAB 13

Court File No. BK-21-02734090-0031
Court of Appeal No. COA-22-CV-0451

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C
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**IN THE MATTER OF THE NOTICES OF INTENTION
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YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.**

CERTIFICATE OF COMPLETENESS

I, Alexander Soutter, lawyer for the Appellants, certify that the appeal book and compendium in this appeal is complete and legible.

January 23, 2023



Alexander Soutter

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