

Court File No. BK-21-02734090-0031  
Court of Appeal No. COA-23-CV-0288

**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”)

March 31, 2023

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COURT OF APPEAL FOR ONTARIO  
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COUR D'APPEL DE L'ONTARIO

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YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.**

**NOTICE OF APPEAL**

**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 Jessica Kimmel of the Superior Court of Justice (the “**Motion Judge**”) made on February 10, 2023, at Toronto, Ontario (the “**Order**”).

**THE APPELLANTS ASK** that the Order be varied and an order be made in its place:

1. Declaring that the limited partners have standing to participate, without restriction, in any appeal by Maria Athanasoulis from the disallowance of her claim in this proceeding;
2. Awarding the YongeSL LPs the costs of this appeal; and
3. Granting such further and other relief as this Court may deem just.

**THE GROUNDS OF APPEAL** are:

4. The YongeSL LPs represent the ultimate economic interest in this proceeding and are directly affected by the determination of Ms. Athanasoulis’ claim, including any appeal

therefrom.. The Motion Judge erred in concluding that the YongeSL LPs have only limited standing to make submissions on certain legal issues in Ms. Athanasoulis' anticipated appeal, but not others.

5. The Order arises from an \$18 million claim by Maria Athanasoulis that she is entitled to a share in the profits of the insolvent debtors' failed condominium development. The debtors' proposal trustee (the "**Proposal Trustee**") intends to disallow that claim. Ms. Athanasoulis intends to appeal that disallowance pursuant to s.135(4) of the *Bankruptcy and Insolvency Act* (the "**BIA**"). The Proposal Trustee sought directions from the Motion Judge regarding Ms. Athanasoulis' anticipated future appeal from the notice of disallowance that the Proposal Trustee intends to deliver.
6. In connection with its motion for directions, the Proposal Trustee asked for a determination that the limited partners of the debtor YG Limited Partnership, including the YongeSL LPs, be restricted in their right to make submissions on Ms. Athanasoulis' anticipated appeal. The Motion Judge made that direction on the basis that the Yonge SL LPs' have limited standing in this proceeding.
7. In doing so, the Motion Judge erred by:
  - (a) failing to follow the earlier decision of Justice Dunphy which determined that the YongeSL LPs had standing in this proceeding as an affected group;
  - (b) assuming the position of the Proposal Trustee and the YongeSL LPs will be aligned on an appeal not yet commenced;
  - (c) determining that the YongeSL LP's legal standing is limited to certain issues in which they have a "unique perspective";



- (d) failing to recognize that a person's standing and unfettered legal right to appear before a Court when they are affected by the relief being sought is distinct from the exercise of a Court's discretion to control its own process and facilitate the efficient hearing of an appeal.

### **Background to the Proceeding**

8. In summer 2021, the debtors YG Limited Partnership and YSL Residences Inc. (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 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. The limited partners include the YongeSL LPs.
9. 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. Justice Dunphy refused to sanction the original proposal 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, including the Yonge SL LPs, may yet recover their investment in the YSL Project.

10. By way of the Proposal, the Debtors transferred the YSL Project lands to Concord Properties Developments Corp. (“**Concord**”), another developer.
11. 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**

12. Since the Proposal was sanctioned, the Proposal Trustee has been determining claims made against the Debtors. Three claims remain outstanding: (a) a claim by CBRE Limited (“**CBRE**”) for approximately \$1.2 million; (b) a claim by Harbour International Investment Group Inc. (“**Harbour**”) for \$1 million plus HST; and (c) a claim by the Cresford Group’s former President of Marketing, Maria Athanasoulis, for \$19 million.
13. Subject to the resolution of the CBRE, Harbour and Athanasoulis claims, up to \$16.038 million may be available for distribution to the limited partners.

### ***The CBRE and Harbour Claims***

14. CBRE’s claim is for a commission arising after the YSL Project was conveyed to Concord. The Proposal Trustee disallowed the claim but consented to CBRE bringing an appeal *de novo*. In the face of CBRE’s appeal, the Proposal Trustee reversed its position. It no longer supported its disallowance of CBRE’s claim and instead supporting CBRE’s appeal. The YongeSL LPs opposed CBRE’s appeal. In allowing CBRE’s appeal, the Court held that the YongeSL LPs lacked standing to oppose CBRE’s appeal (*YG Limited Partnership and YSL Residence Inc.*, 2022 ONSC 6548). The YongeSL LPs have perfected their appeal

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from this decision (Court of Appeal File No. COA-22-CV-0451; the “**CBRE Appeal**”). A hearing date for the CBRE appeal has not yet been set.

15. The YongeSL LPs brought an application pursuant to s.37 of the *BIA* 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 CBRE claim.

*Ms. Athanasoulis’ Claim*

16. Ms. Athanasoulis’ claim has two parts: (a) an \$18 million claim that she is entitled to share in the profits of the Debtors’ failed condominium project (the YSL Project) (the “**Profit-Sharing Claim**”); and (b) a \$1 million claim for wrongful dismissal damages.
17. 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.
18. Certain issues were not decided at the arbitration, including whether the Profit-Sharing Claim:
  - (a) is an equity claim;
  - (b) has any value at all;
  - (c) is unenforceable given (i) the terms of the limited partnership agreement that governs YG Limited Partnership, (ii) Ms. Athanasoulis’ fiduciary duties to YG Limited Partnership and the limited partners and/or (iii) statements made by Ms.

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Athanasoulis to the limited partners when they made their advances to YG Limited Partnership; and

(d) entitles Ms. Athanasoulis to be paid before the limited partners have recovered their advances to YG Limited Partnership, plus their preferred return thereon.

19. The limited partners and Concord were left out of the arbitration process. Once they learned of the outcome, they took steps to challenge the Proposal Trustee's right to arbitrate Ms. Athanasoulis' claim. Those steps are summarized in an October 17, 2022, decision in this proceeding where the arbitration was found to be an improper delegation of the Proposal Trustee's ultimate responsibility to determine and value Ms. Athanasoulis' claim (*YG Limited Partnership (Re)*, 2022 ONSC 6138).

#### **The Proposal Trustee's Motion Before the Motion Judge**

20. The Proposal Trustee has confirmed that based on the evidence before it, it intends to:

(a) disallow the Profit-Sharing Claim in full because: (i) it is an equity claim; (ii) the Debtors did not actually earn any profit from the YSL Project, and therefore nothing was payable to Ms. Athanasoulis; and (iii) Ms. Athanasoulis has admitted that her entitlement to profit from the YSL Project arises only after the limited partners are repaid in full; and

(b) allow Ms. Athanasoulis' wrongful dismissal claim in the amount of \$880,000.

21. The Proposal Trustee has not yet formally determined Ms. Athanasoulis' claim. The Proposal Trustee expects that Ms. Athanasoulis will appeal its determination pursuant to

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s.135(4) of the *BIA*. The Proposal Trustee sought directions from the Motion Judge regarding Ms. Athanasoulis' anticipated future appeal.

22. Among other things, the Proposal Trustee sought directions that,

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.

### **The Motion Judge's Decision**

23. The YongeSL LPs take no issue with several directions made by the Motion Judge in the Order. They agree that Ms. Athanasoulis should be given the evidentiary record before the Proposal Trustee, and that there is no basis to conclude now that an appeal by Ms. Athanasoulis should be an appeal *de novo*.

24. The YongeSL LPs also take no issue with the timetable imposed by the Motion Judge pursuant to which: (a) Ms. Athanasoulis will have until April 2023 to file further evidence with the Proposal Trustee; (b) the Proposal Trustee will have until June 2023 to gather further evidence and formally make its determination of Ms. Athanasoulis' claim; and (c) Ms. Athanasoulis will have 30 days following such determination to bring her anticipated appeal pursuant to s.135(4) of the *BIA*.

### ***Directions regarding the limited partners' standing***

25. The Motion Judge held that the limited partners' standing on any appeal by Ms. Athanasoulis should be restricted. The Motion Judge held that,

it is anticipated that the LPs will be afforded an opportunity to participate on the appeal to the extent of any unique or added

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perspective or submissions that they have that are not advanced by the Proposal Trustee, or that the Proposal Trustee defers to the LPs on. In contrast, the LPs should not expect to be permitted to make submissions on points already being addressed by the Proposal Trustee, such as, the argument that the Profit Share Claim is a claim in equity, not a debt owing by the Debtor.

26. The Motion Judge also held that,

Subject to the discretion of the appeal judge, the LPs standing on the appeal shall be limited to submissions in respect of the impact of the prohibition contained in the Limited Partnership Agreement on non-arm's length agreements (such as the Profit Sharing Agreement), on the question of enforceability of the Profit Share Claim and in respect of the priority/subordination of the Profit Share Claim to the LPs recovery of their initial investment based on alleged breaches of contractual and fiduciary duties and alleged misrepresentations.

27. These directions are errors of law.

***The Motion Judge erred by concluding that the YongeSL LPs have limited standing***

28. The effect of the Motion Judge's directions is to deny the YongeSL LPs the right to be heard on key issues in circumstances where their interests are affected. Those directions are in error.

29. The limited partners are the ultimate economic interest in this proceeding. Their interests are affected by the determination of the Athanasoulis claim and any appeal from that determination. Subject to the treatment of the three outstanding claims against the Debtors, the limited partners may recoup their \$14.8 million in advances to the Debtors, plus some return thereon. Ms. Athanasoulis' \$18 million Profit-Sharing Claim is the largest of these outstanding claims. If it is allowed, the limited partners will receive nothing. They have the right to be heard in these circumstances. This alone should afford them standing to make submissions on any appeal of Ms. Athanasoulis' claim.

30. The Motion Judge 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.
31. 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.
32. The Motion Judge erred by assuming that the Proposal Trustee's position and the limited partners' positions will be aligned. The limited partners hope that the Proposal Trustee disallows the Profit-Sharing Claim in full and vigorously defends its decision to do so on an appeal. The Proposal Trustee has, however, changed its position before (eg. in respect of the CBRE claim). The limited partners should not be pre-emptively prohibited from protecting their interests and making submissions on any appeal brought by Ms. Athanasoulis.
33. The Motion Judge erred in law by restricting the limited partners' standing in this proceeding to certain issues where they have a "unique perspective". They are directly

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affected by the outcome of Ms. Athanasoulis' appeal. They have standing to fully participate and make submissions in this proceeding and in any appeal as a matter of law.

34. The limited partners' standing to participate and make submissions is distinct from the Court's authority to control its own process (for example, by assigning time limits to parties' submissions). A party's legal standing is not affected by a Court's exercise of discretion in facilitating the efficient hearing of an appeal.
35. The Motion Judge recognized that the limited partners may have their own claims against Ms. Athanasoulis and that if certain issues are determined in this proceeding they will become *res judicata* and subject to issue estoppel vis-à-vis the limited partners. Having accepted that, it was an error to then restrict the limited partners' standing to certain of those issues but not others.
36. The Motion Judge erred by concluding that,

At some level, every creditor has an interest in minimizing or eliminating the claims of other creditors on equal footing. That is not a reason to grant the LPs advance standing on an appeal, or even to give them full standing in the determination of the Athanasoulis Claim.
37. This conclusion fails to recognize that a mechanism 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 s.135(5) of the *BIA*. Both creditors and interested persons, like the limited partners, can also challenge decisions of a trustee pursuant to s.37 of the *BIA*.



**Basis for the Court of Appeal's Jurisdiction**

38. 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*.
39. 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. The YongeSL LPs have challenged the Proposal Trustee's decision in respect of the Harbour claim. The Motion Judge's conclusions that the YongeSL LPs lack unfettered standing in this proceeding affects the YongeSL LPs participation in its challenge of that claim.
40. 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. Ms. Athanasoulis' Profit-Sharing Claim is for \$18 million. The property involved in the appeal meets the statutory minimum.
41. 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.
42. This appeal involves matters of general importance to bankruptcy matters because it involves the legal question of whether equity claimants have standing in bankruptcy matters generally.
43. This proceeding and the determinations of the outstanding claims described herein, particularly the Athanasoulis claim, will not be unduly delayed by this appeal. The Debtors' only asset has been liquidated – they will have no ongoing business. As contemplated by

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the Order, Ms. Athanasoulis can file further evidence with the Proposal Trustee, the Proposal Trustee can determine her claim, and Ms. Athanasoulis can appeal the Proposal Trustee's decision in advance of this appeal being heard.

44. If an appeal of the Motion Judge is not heard, there is risk of inconsistent decisions regarding standing in this proceeding having regard to the CBRE Appeal in this proceeding, also before this Court.

45. The YongeSL LPs ask that this appeal be heard at the same time as the CBRE Appeal.

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Court File No.: BK-21-02734090-0031

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

THE HONOURABLE MADAM JUSTICE )  
 JESSICA KIMMEL )  
 )

FRIDAY, THE 10<sup>TH</sup>  
 DAY OF FEBRUARY, 2023



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

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

**ORDER**

**THIS MOTION**, made by KSV Restructuring Inc. in its capacity as the proposal trustee (the “**Proposal Trustee**”) of the debtors YG Limited Partnership and YSL Residences Inc. (the “**Debtors**”) for directions establishing the process for any appeal from the Proposal Trustee’s notice of determination of the proof of claim filed by Maria Athanasoulis against the Debtors (the “**Athanasoulis Claim**”), was heard on January 16, 2023 at the courthouse at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of the Proposal Trustee dated December 30, 2022, the Responding Motion Record of Concord Properties Developments Corp. (the “**Proposal Sponsor**”) dated January 4, 2023, the Responding Motion Record of Maria Athanasoulis dated January 4, 2023, the Joint Responding Motion Record of the Limited Partners (defined below) dated January 4, 2023, the Joint Responding Factum of the “Class A LPs” dated January 12, 2023, the

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Responding Factum of Maria Athanasoulis dated January 12, 2023, the Responding Factum of the Proposal Sponsor dated January 13, 2023, and on hearing the submissions of counsel for the Proposal Trustee, counsel for the Proposal Sponsor, counsel for Ms. Athanasoulis, counsel for YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, TaiHe International Group Inc. (the “**YongeSL LPs**”), and counsel for 2504670 Canada Inc., 8451761 Canada Inc. and Chi Long Inc. (the “**Chi Long LPs**” and together with the YongeSL LPs, the “**Limited Partners**”);

1. **THIS COURT ORDERS AND DIRECTS** that within one (1) week of the date of this Order, the Proposal Trustee shall provide Ms. Athanasoulis with a complete record of all evidence and submissions received from other stakeholders in connection with the Proposal Trustee’s draft Notice of Determination attached at Tab H to the Eighth Report of the Proposal Trustee dated December 30, 2022.
2. **THIS COURT ORDERS AND DIRECTS** that within two (2) weeks of the date of this Order, Ms. Athanasoulis may make reasonable and targeted document requests from the Proposal Trustee, the Debtors and/or Cresford, or any other participating party for documents not already in her possession and that she claims she needs as proof in support of the Athanasoulis Claim and to establish that it should be valued at more than zero.
3. **THIS COURT ORDERS AND DIRECTS** that Ms. Athanasoulis’ requests shall be responded to, and any documents in the possession, control or power of the Proposal Trustee, the Debtors and/or Cresford shall be provided, within three (3) weeks of any such request.



4. **THIS COURT ORDERS AND DIRECTS** that within two (2) months of the date of this Order, Ms. Athanasoulis shall deliver her submissions and a supplementary record containing any further evidence she relies on in support of the Athanasoulis Claim, or that she relies upon to challenge any determination that may be made to disallow her claim to a share of the profits earned on the YSL Project (the “**Profit Share Claim**”) on the grounds that:

- (a) it is equity, not debt;
- (b) the YSL Project did not generate any profits at, or at any time prior to, the date of the Debtors’ Court-approved proposal in this proceeding (the “**Proposal**”);
- (c) it is subordinated to the Limited Partners’ return of equity because of representations to that effect made to the Limited Partners by Ms. Athanasoulis; and/or
- (d) it is not enforceable as against the Limited Partners because it was entered into in breach of the Limited Partnership Agreement, breach of fiduciary duties owed to the Limited Partners by YG Limited Partnership’s general partner and/or misrepresentations made to the Limited Partners by Ms. Athanasoulis.

5. **THIS COURT ORDERS AND DIRECTS** that the Proposal Trustee may request further submissions, evidence or documents in respect of its consideration and assessment of the supplemental material provided by Ms. Athanasoulis, the Debtors, the Limited Partners or elsewhere as it deems appropriate. Any such evidence or documents shall be requested by the Proposal Trustee and shall be provided to Ms. Athanasoulis within four (4) weeks of the delivery of her supplementary record.

6. **THIS COURT ORDERS AND DIRECTS** that within two (2) weeks of the earlier of the provision of any further evidence or documents to the Proposal Trustee and the deadline for doing so:

- (a) the Proposal Trustee may question, by way of an examination under oath, Ms. Athanasoulis about any evidence or submissions she provides in support of the proof of the Athanasoulis Claim; and
- (b) Ms. Athanasoulis may examine a representative of the Debtors and/or Cresford under oath on the question of whether there were any profits in the YSL Project as at the date of the Proposal or at any time prior to that date.

7. **THIS COURT ORDERS AND DIRECTS** that the Proposal Trustee shall deliver to all interested parties its final Notice of Determination in accordance with section 135(3) of the BIA within two (2) weeks of the earlier of the completion of any questioning or cross-examination and the deadline for the completion of such questioning or cross-examination. The Proposal Trustee may, in its discretion, revise the draft Notice of Determination previously delivered to take into account the additional evidence and submissions it receives.

8. **THIS COURT ORDERS AND DIRECTS** that Ms. Athanasoulis may thereafter appeal the Proposal Trustee's Notice of Determination in accordance with section 135(4) of the BIA.

9. **THIS COURT ORDERS AND DIRECTS** that subject to the discretion of the appeal judge, the Limited Partners' standing on the appeal shall be limited to submissions in respect of the impact of the prohibition contained in the Limited Partnership Agreement on non-arm's length agreements, on the question of the enforceability of the Profit Share Claim and in respect of the priority or subordination of the Profit Share Claim to the Limited Partners' recovery of their initial

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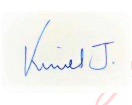
investment based on alleged breaches of contractual and fiduciary duties and alleged misrepresentations.

### **COSTS OF THIS HEARING**

10. **THIS COURT ORDERS** that Ms. Athanasoulis and the Limited Partners may request their costs of this motion as against each other if there is a future adjudication of costs in connection with the determination and valuation of the Athanasoulis Claim.

### **GENERAL**

11. **THIS COURT ORDERS** that this Order is effective from February 10, 2023 and is enforceable without the need for entry or filing.

 Digitally signed  
by Jessica Kimmel  
Date: 2023.03.10  
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**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

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

Court File No.: BK-21-02734090-0031

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

Proceedings commenced at Toronto

**ORDER**

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# TAB 3



SUPERIOR COURT OF JUSTICE

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: BK-21-2734090-0031

HEARING

DATE: Monday January 16, 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: 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

BEFORE JUSTICE: KIMMEL

**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Matthew Milne-Smith	Counsel for KSV Restructuring Inc. (Proposal Trustee)	mmilne-smith@dwpv.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info

**For Other, Counsels:**

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Alexander Soutter	Counsel for Yonge SL Investment Limited Partnership	asoutter@tgf.ca
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**For Other, Counsels:**

Name of Person Appearing	Name of Party	Contact Info
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**ENDORSEMENT OF JUSTICE KIMMEL:**

**Background to the Proposal Trustee’s Motion for Directions**

1. Maria Athanasoulis filed a proof of claim against YG Limited Partnership and YSL Residences Inc. (together, the “Debtor”). The proof of claim was filed in the context of a court approved proposal (the “Proposal”) under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”) in respect of unsecured claims she asserts as follows (together, the “Athanasoulis Claim”):
  - a. \$1 million in respect of damages for wrongful dismissal (the “Wrongful Dismissal Claim”); and
  - b. \$18 million in respect of damages for breach of an oral agreement that Ms. Athanasoulis would be paid 20 percent of the profits earned on the YSL Project (the “Profit Share Claim”).
2. The Debtor was developing the YSL Project, which was part of a broader development group controlled by Daniel Casey that used the brand name “Cresford”.
3. As part of the Proposal that was eventually approved by the court on July 16, 2021, Concord Properties Developments Corp. (the “Sponsor”) acquired the YSL Project and set aside \$30.9 million to satisfy proven creditor claims, with the balance of that fund to be distributed to equity stakeholders (including the limited partners of the YG Limited Partnership, the “LPs”).
4. My November 1, 2022 endorsement dealt with the Sponsor’s obligation to fund administrative fees and expenses incurred by KSV Restructuring Inc. (the “Proposal Trustee”) in connection with the resolution of the Athanasoulis Claim: see *YG Limited Partnership (Re)*, 2022 ONSC 6138 (the “Funding Decision”).
5. The Funding Decision determined that the Sponsor was not obligated to fund phase 2 of an arbitration in which Ms. Athanasoulis and the Proposal Trustee had agreed to participate (the “Arbitration”). That determination was made on the basis that phase 2 of the proposed arbitration improperly delegated to the arbitrator the responsibility of determining the Athanasoulis Claim. In phase 2 of the arbitration, the arbitrator was asked to determine any damages payable in respect of the Wrongful Dismissal Claim and/or the Profit Share Claim, based on his findings in phase 1 of the arbitration (the “Phase 1 Arbitration Findings”) that: Ms. Athanasoulis was wrongfully terminated (constructively dismissed) in December 2019 and that she had entered into a valid and enforceable oral profit sharing agreement that entitled her to 20 percent of the profits earned on any of Cresford’s (including the Debtor’s) current and future projects (the “Profit Sharing Agreement”).
6. The Funding Decision determined that the Sponsor is obligated to indemnify the Proposal Trustee for Administrative Fees and Expenses (as defined in the Funding Decision) reasonably incurred to itself determine the Athanasoulis Claim.
7. The following specific orders and directions were provided in the Funding Decision with respect to the Proposal Trustee’s determination of the Athanasoulis claim:

- a. The Proposal Trustee shall reasonably determine and value the Athanasoulis Claim in a timely and principled manner. It will be afforded significant deference. All parties agree that it can use the Arbitration Award from phase 1 of the Arbitration and build on it so that time and effort is not wasted.
  - b. The Proposal Trustee shall, in its discretion, determine an appropriate procedure to receive the further evidence and submissions of Ms. Athanasoulis and other interested stakeholders. The Proposal Trustee may choose to share its proposed procedure with the other participating stakeholders and seek their input.
  - c. If expert inputs are deemed necessary to determine the Athanasoulis Claim, the Proposal Trustee may choose to invite expert evidence and input from Ms. Athanasoulis and then determine if it needs its own expert to review and comment upon what is provided.
  - d. The process by which the Proposal Trustee will determine the Athanasoulis Claim may need to account for the fact that the LPs are expected to advance claims that may require determinations from the Proposal Trustee and/or the court regarding the subordination and/or priority of their claims in relation to the Athanasoulis Claim, the enforceability of any proven Athanasoulis Claim as against them and the damages that they claim to be entitled to for alleged breaches of fiduciary and other duties and contractual obligations that they seek to set-off against the Athanasoulis Claim, if the Athanasoulis Claim is allowed.
8. In the Funding Decision, the court indicated that if the Proposal Trustee chose to share its proposed procedure for the determination of the Athanasoulis Claim with the Sponsor and/or other stakeholders, and if the parties require some further direction and assistance from the court, they may arrange a case conference before me.
9. The Proposal Trustee engaged in a consultative process with Ms. Athanasoulis, the Sponsor and the LPs about the procedure for determining the Athanasoulis Claim. There were fundamental points of disagreement, largely between Ms. Athanasoulis on one side and the Sponsor and the LPs on the other.
10. Based on the input received, the Proposal Trustee suggested the following compromise procedure for resolving the Athanasoulis Claim:
- a. The Proposal Trustee will issue a notice pursuant to ss. 135(2) and (3) of the BIA, substantially in the form of the draft attached as an appendix to its report (the “Notice of Determination”). Under the draft Notice of Determination, the Proposal Trustee would allow the Wrongful Dismissal Claim in part (in the amount of \$880,000) as an unsecured claim but would disallow the Profit Share Claim in its entirety. The Proposal Trustee bases its Notice of Determination upon:
    - i. the proof of claim, as filed;
    - ii. all material on the record in these proposal proceedings to date, together with all material on the record in the proceedings by the LPs against YSL Residences Inc. et al in court file numbers CV-21-00661386-00CL and CV-21-00661530-00CL and some additional submissions provided by the LPs to the Proposal Trustee (that were initially not shared with Ms. Athanasoulis but eventually were shared with her counsel prior to the January 16, 2023 hearing);
    - iii. the partial arbitration award of Mr. William G. Horton (the “Arbitrator”) dated March 28, 2022 (the “Partial Award”);
    - iv. all material filed and produced, and all testimony given, in phase 1 of the Arbitration; and
    - v. all responses received by the Proposal Trustee from counsel to the LPs and counsel to Ms. Athanasoulis in respect of any information requests made by the Proposal Trustee.
  - b. Consistent with the Funding Decision, the Partial Award and factual findings and determinations therein form part of the “factual predicate upon which the determination of [Ms. Athanasoulis’] claim will proceed”.
  - c. Ms. Athanasoulis may file any appeal pursuant to s. 135 of the BIA.



- d. In the appeal, Ms. Athanasoulis 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.
  - e. The LPs shall be entitled only to raise issues in the appeal that pertain directly to: (a) whether the LPs must be repaid in full prior to any payments being made on the Athanasoulis Claim; and (b) the enforceability of any element of the Athanasoulis Claim given the terms of the Limited Partnership Agreement (a point not decided in the Arbitration that may be separately advanced by the LPs if the enforceability is being argued on an appeal).
  - f. Ms. Athanasoulis will be entitled to make a full response to any materials filed by the LPs in this regard.
  - g. 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 (see below), after the LPs breach of contract, tort and other claims against Ms. Athanasoulis have been decided in the separate legal proceedings in which they are being advanced (the “LP’s Claims”).
  - h. To the extent that the decision on appeal finds that a debt is owing and payable to Ms. Athanasoulis under her Profit Sharing Agreement, then a summary trial to quantify her damages will be scheduled.
  - i. Thereafter, if the Profit Share Claim is proven and determined to have any value then the LPs priority, subordination, and set-off arguments (in turn, dependent upon the determination of the LP’s Claims against Ms. Athanasoulis being pursued in separate proceedings) can be raised for consideration in the context of any proposed distribution in respect of the Profit Share Claim.
11. None of the other stakeholders wholly accepted or endorsed the Proposal Trustee’s compromise procedure. Thus, the Proposal Trustee requested a case conference (held on December 21, 2022) at which the Proposal Trustee’s within motion for directions regarding the procedure for determining the Athanasoulis Claim and related issues was scheduled. Despite the Proposal Trustee’s discretion to determine the procedure and impose it on the stakeholders, it was appropriate for the Proposal Trustee bring this motion for directions given the divergent positions and competing interests at stake.

### **The Competing Positions**

12. Each stakeholder filed extensive materials on this motion. The focus of the motion, the submissions and this endorsement are on the procedure for determining the Profit Share Claim and any appeal therefrom. The procedure for the determination of the Wrongful Dismissal Claim and any appeal therefrom, and the positions of the parties regarding that procedure, will be addressed at the end of this endorsement.

#### *a) The Proposal Trustee’s Position*

13. The Proposal Trustee’s position, reflected in its suggested, and rejected, compromise, is as follows:
- a. The Proposal Trustee says that it does not require any further evidence or submissions to make its determination to disallow the Profit Share Claim. It anticipates that it will disallow the Profit Share Claim for the reasons set out in its draft Notice of Determination, as follows:
    - i. The Profit Share Claim is, in substance, a claim in equity, rather than in debt, and is therefore not a provable claim under s. 121(1) of the BIA.
    - ii. The Profit Sharing Agreement was to be based on profits calculated using *pro forma* budgets, to be paid by the project owner when earned, usually upon the completion of a project (according to the Phase 1 Arbitration Findings). Under the Proposal, the YSL Project was effectively transferred to the Sponsor and the Debtor could no longer earn profits. As of the date of the Proposal, the Debtor had not completed the YSL Project. It

was nothing more than a hole in the ground, such that there was no profit earned or to be shared by the Debtor at that time.

- iii. Insofar as the Athanasoulis Claim relies on projected future profitability of the YSL Project as a contingent claim as at the date of the Proposal, that contingent and unliquidated claim is too speculative, and the alleged damages are too remote, to be considered a provable claim or subject to any meaningful and reasonable computation. Therefore, the claim is valued at zero dollars.
  - iv. Any claim by Ms. Athanasoulis for unrealized hypothetical gains (future profitability) of the YSL Project prior to the Proposal, dating back to the date of her wrongful termination, is inconsistent with the Phase 1 Arbitration Findings that profits were only payable under the Profit Sharing Agreement when earned at the completion of the YSL Project.
  - v. Even if she could predicate her claim on earned but unrealized profits at a point in time, Ms. Athanasoulis has admitted under oath that any entitlement she may have to a profit share would arise only after the LPs are repaid their original investment, and the Profit Share Claim is therefore subordinated to the LP's Claims since the LPs will not be receiving a full return of their equity investment in the YSL Project.
- b. On this basis the Proposal Trustee suggests that it should issue its Notice of Determination based on the identified matters of principle and law, Ms. Athanasoulis should then appeal that determination (within the 30 days prescribed under s. 135(4) of the BIA) and the appeal should be decided based on the reasons provided for the disallowance in the Notice of Determination. This defers the significant time and expense that will be incurred to value the aspects of the Athanasoulis Claim that are dependent on the future profitability of the YSL Project (whether as at the date of her wrongful termination in December 2019 or as at the date of the Proposal) that will entail further evidence and expert analysis, at least until it is determined on appeal whether the Profit Share Claim is a provable claim.
  - c. The valuation of the Athanasoulis Claim, if found on appeal to be provable, will be determined in a summary trial thereafter, only if necessary.
  - d. The priorities, set-offs and other arguments of the LPs in relation to the Athanasoulis Claim will be determined in a later distribution hearing.

*b) Ms. Athanasoulis' Position*

14. Ms. Athanasoulis does not accept the Proposal Trustee's determination that her claim is a claim in equity, although she does not dispute that her appeal of that ground of disallowance could be argued based on the existing record (as defined by the Proposal Trustee).
15. However, Ms. Athanasoulis does not accept the Proposal Trustee's premise that profits were only payable upon completion of the YSL Project. This leads her to a different view of what is required for the determination of her Profit Share Claim on any appeal, because:
  - a. She claims that the damages from her Profit Share Claim (in other words, its value) should be calculated as at the date she was wrongfully terminated from her employment (the repudiation date), or as of the Proposal Date, based on the real and significant chance that existed at that time that the YSL Project would ultimately generate profits ("Future Oriented Damages").
  - b. Alternatively, she maintains that there is a distinction between earned vs. realized profits, and that her Profit Share Claim can be proven and valued based on "earned profits" even if none were realized because of the Proposal. She claims to have already received documents from the Debtor in the Arbitration that establish that, as of the date of the Proposal, the expenses of the YSL Project did not exceed its revenues, which she points to as an indication that it was "profitable" at least in that sense. Further, she claims to have documents evidencing the withdrawal or distribution of funds (profits) to others prior to the date of the Proposal. These are not future oriented profit

calculations, and could be proven without the time and expense of significant further evidence, including from experts.

16. Ms. Athanasoulis seeks to appeal all of the grounds upon which the Proposal Trustee intends to disallow her Profit Share Claim. If successful, she will ask the court to value her entitlements. She says that, while she has some of the necessary documents that she could submit now, she requires further disclosure from the Debtor and/or Cresford and others to establish the value of her Profit Share Claim (which she had anticipated obtaining in phase 2 of the Arbitration process). Ms. Athanasoulis asks that the court either order that disclosure and permit her to complete the evidentiary record before she is required to appeal the disallowance of her Profit Share Claim, or to declare now that the appeal will be *de novo* and she will be at liberty to put in further evidence on the appeal.
17. Further, Ms. Athanasoulis challenges the premise of the Proposal Trustee's suggested procedure since its purported efficiency (in terms of time and cost savings) will only be achieved if she loses on appeal. If she wins, there will be at least three separate steps beyond the appeal itself:
  - a. The valuation of her claim at a summary trial.
  - b. The determination of the LPs damages in a separate proceeding, and then the determination of any entitlement that they have to set-off.
  - c. A distribution hearing (at which priorities will be determined).
18. Ms. Athanasoulis argues that the Proposal Trustee's suggested incremental process is inefficient and not in keeping with the principles of speed, economy and finality that s. 135 of the BIA demands of a trustee in the determination and valuation of claims.
19. At the hearing of this motion, Ms. Athanasoulis conceded that there might be a way to defer the briefing and argument of her Future Oriented Damages claims until after the determination of the appeal of whether the Profit Share Claim is a provable claim with a value of more than "zero".
20. Ms. Athanasoulis challenges the LPs standing to participate in the appeal of the disallowance of the Athanasoulis Claim on any matters that are being addressed by the Proposal Trustee. However, she submits that since there is overlap between the priority and subordination issues as between the Profit Share Claim and the LPs allegation against her for breach of contract and misrepresentation, she considers it to be most expeditious for the LP's Claims to be adjudicated all at once in this proceeding to avoid a multiplicity of proceedings in respect of overlapping claims.

*c) The LPs' and Sponsor's Positions*

21. The LPs' and the Sponsor's positions are largely aligned. Coming into the motion, they both argued that it was premature and unnecessary for any directions to be provided by the court, in particular (for the LPs) with respect to limiting the scope of the participation in the appeal. However, once at the hearing, all were content to make submissions and receive the court's advice and directions so that the matter can move forward.
22. The LPs and Sponsor oppose the suggestion that the court can now order that Ms. Athanasoulis' appeal of the disallowance of her claim be heard as a *de novo* appeal. They contend that under s. 135 of the BIA, an appeal is to be a true appeal, and not *de novo*, unless the court is satisfied that there was some unfairness in the process of the determination of the claim under appeal.
23. Neither the Sponsor nor the LPs expect to be providing any further evidence or submissions if the Proposal Trustee's suggested process is adopted. They have no objection to the court allowing Ms. Athanasoulis to file further evidence and submissions addressing the specific grounds of disallowance, the points raised in the LPs further brief and submissions on the issues of enforceability of the Profit Share Agreement under the Limited Partnership Agreement and/or on the issues of subordination and priority. They invite Ms. Athanasoulis to file further evidence relevant to the Proposal Trustee's grounds for its determination to disallow her Profit Share Claim so that the record is complete before the Notice of Determination is formally issued and she can then appeal (a true appeal) based on that record.

24. The Sponsor and the LPs agree with the Proposal Trustee that the valuation questions (including any further factual or expert evidence to decide those questions) ought to be deferred with further directions to be provided when the appeal is decided, if necessary, as to how the Athanasoulis Claim will be valued and finally determined if the preliminary grounds of disallowance are not found to preclude the proof of her Profit Share Claim. The parties concede that further evidence will be required if the Profit Share Claim is to be valued.
25. The Proposal Trustee suggests the LPs play a limited role in the appeal process since the stated grounds for disallowance would only engage issues associated with their claims insofar as they relate to their entitlement to be repaid in full prior to any payments being made on the Athanasoulis Claim and the enforceability of any element of the Athanasoulis Claim given the terms of the Limited Partnership Agreement.
26. Other aspects of the LPs' Claims and their claimed set-off would only arise in the event that the Athanasoulis Claim is allowed and valued above zero (upon or after any appeal). The LPs maintain that the LP's Claims cannot be determined in these bankruptcy proceedings. However, they acknowledge that there may be some overlap with the subordination/priority arguments that they seek to advance in relation to the determination of the Athanasoulis Claim and the LP's Claims being prosecuted outside of these proceedings. To that extent, they recognize that there may be some issues that, if determined in this process, will become *res judicata* and subject to issue estoppel in the LP's Claims civil proceeding. They are prepared to accept that outcome.
27. The LPs are not content with the restricted role suggested for them by the Proposal Trustee in the appeal process. They contend that they should have full party standing on all issues if there is to be an appeal. They have also requested the opportunity to respond to any further evidence or submissions provided by Ms. Athanasoulis to the Proposal Trustee in support of her claim.

### **Analysis and Directions – Profit Share Claim**

28. The following issues require advice and direction from the court regarding the procedure for determining the Profit Share Claim:
  - a. Can and should the court provide directions now about whether the appeal of the Proposal Trustee's disallowance of the Profit Share Claim will be a true appeal or an appeal *de novo*?
  - b. What will the appeal record be comprised of if it is not an appeal *de novo*?
    - i. Should Ms. Athanasoulis be permitted to obtain additional evidence by way of production from the Debtor and/or Cresford or others and an examination for discovery of a representative of them?
    - ii. Should Ms. Athanasoulis be permitted to submit additional evidence and make further submissions before a final Notice of Determination is issued so that it is available to be considered by the Proposal Trustee and in the context of any appeal from the Notice of Determination?
  - c. What issues will the LPs have standing to participate in on the appeal?
  - d. What directions should the court provided regarding the procedure to be followed for the determination of the Profit Share Claim?

#### *a) True Appeal or Appeal de novo*

29. The default for appeals of a trustee's decision under s. 135 of the BIA is that appeals are to proceed as true appeals, based on the materials relied upon by the trustee in its decision, and not *de novo*: see e.g. *Galaxy Sports Inc. (Re)*, 2004 BCCA 284, 29 B.C.L.R. (4th) 362, at para. 40; *Asian Concepts Franchising Corporation (Re)*, 2017 BCSC 1452, 51 C.B.R. (6th) 313, at para. 24. This is in keeping with the efficient and cost-effective administration of bankrupt estates and the objective of the BIA to enable parties to

have their rights and claims determined in an expeditious fashion: see *Credifinance Securities Limited v. DSLC Capital Corp.*, 2011 ONCA 160, 74 C.B.R. (5th) 161, at para. 26.

30. The court has discretion to conduct an appeal *de novo* “if the Trustee committed an error or the interests of justice require it”: *Bambrick (Re)*, 2015 ONSC 7488, 32 C.B.R. (6th) 228, at para. 18. An appeal *de novo* may be ordered where to proceed otherwise would result in an injustice to the creditor: see *Credifinance*, at paras. 1, 18, 24.
31. However, there is no basis for finding that there will be an injustice to Ms. Athanasoulis without an appeal *de novo*, or that the interests of justice require an appeal *de novo*. She was invited to provide further evidence and make further submissions if she wishes to do so before the Proposal Trustee makes the final determination of whether the Profit Share Claim is provable. No one opposes this. All parties agree that Ms. Athanasoulis should be provided with all material that the Proposal Trustee has received in connection with the Athanasoulis Claim, including material received from the LPs in December 2022 that was not initially provided to her but now has been.
32. I do not agree with Ms. Athanasoulis’ submission that there is an inherent injustice in the claims process simply because the Proposal Trustee originally agreed to arbitrate the entirety of her claim. The court ruled that procedure was an improper delegation of the Proposal Trustee’s duty to determine whether the Athanasoulis Claim is provable and, if so, to value it. There is no injustice in the procedure for the determination of her claim being reset now, even if that means that the Profit Share Claim may not be fully valued (in respect of her Future Oriented Damages claims) until the determination of whether it is a provable claim and/or that it does not have a value greater than zero has been appealed and, only then, if she is successful.
33. Nor do I agree that the Proposal Trustee’s participation in phase 1 of the Arbitration and advocating for an outcome that is now reflected in its draft Notice of Determination creates an inherent injustice by allowing the Proposal Trustee to determine that her Profit Share Claim is not provable and should be disallowed. The Proposal Trustee intends to do so on similar grounds to those that it was urging the Arbitrator to consider to reach that same determination in the Arbitration. The fact that the Proposal Trustee had urged the Arbitrator to reach the same determination on the same grounds that the Proposal Trustee has now determined that the Profit Share Claim is not a provable claim, or should be valued at zero, does not derogate from the integrity of that determination. The Proposal Trustee is a court appointed officer. There is nothing in the record before the court to suggest that the Proposal Trustee did not impartially and fairly reach its determination regarding the Profit Share Claim.
34. Ms. Athanasoulis’ concern about the injustice of a true appeal is predicated on her preclusion from filing any further evidence or submissions in support of the Athanasoulis Claim before the Notice of Determination is formally issued. In circumstances where a creditor has not had a full opportunity to put forward its claim or to respond to the disallowance of a trustee, or the interests of justice otherwise require it, an appeal *de novo* may be appropriate: see *Credifinance*, at para. 24; *Charlestown Residential School, Re*, 2010 ONSC 4099, 70 C.B.R. (5th) 13; *Poreba, Re*, 2014 ONSC 277, at para. 27. See also *Bambrick*, at paras. 16-18.
35. In any event, this claimed prejudice can be avoided by the directions that the court provides in this endorsement regarding additional evidence and submissions to be filed by Ms. Athanasoulis before the Notice of Determination is finalized. Ms. Athanasoulis raises a secondary concern about the delay that this procedure will entail while she gathers the necessary evidence. Notably, much of the anticipated delay would be for the retention and instruction of experts in connection with her Future Oriented Damages claims, that she has acknowledged could be deferred until after the appeal as long as her rights are preserved. However, some delay will be inevitable, particularly because, to avoid the prospect of any injustice, the Proposal Trustee will also be required to review and consider any such new evidence filed before making the final decision and issuing its Notice of Determination.
36. I prefer to provide advice and directions now with a view to avoiding these injustices. In a complicated situation such as this, in which it is acknowledged that there are stakeholders with specific interests and

evidence, it makes sense that a process be put in place to create a complete record for the Proposal Trustee's determination and for any appeal.

37. I am not prepared to provide any directions now about whether any appeal taken from the final Notice of Determination issued by the Proposal Trustee will proceed *de novo*, rather than presumptively as a true appeal. If some injustice or prejudice ensues, those concerns will have to be raised with the appeal court.

*b) The Appeal Record: Further Discovery and Evidence*

38. Section 135(1.1) of the BIA requires the Proposal Trustee to determine whether any contingent claim or unliquidated claim is provable and, if provable, the Proposal Trustee shall value it. The wording of this section at least allows for the possibility that the determination of whether a claim is provable might happen before the claim is valued.
39. Ms. Athanasoulis was understandably concerned with the suggested procedure for determining the Athanasoulis Claim, in which the Proposal Trustee would issue its Notice of Determination of the Profit Share Claim based on the record to date and Ms. Athanasoulis would appeal that disallowance based on the existing record. When the court concluded that phase 2 of the Arbitration amounted to an improper delegation of the Proposal Trustee's responsibility for determining the Athanasoulis Claim, it was not intended that Ms. Athanasoulis be precluded from relying on any further evidence in support of the proof of her Profit Share Claim. Up until that time, she had quite justifiably assumed that there would be an opportunity for her to support her claim through the agreed upon arbitration process, which was cut short because of my Funding Decision, through no fault of her own.
40. A trial-like procedure is not something that a claimant in a bankruptcy proceeding is entitled to, nor is it the norm. The proposed expansion of the Arbitration into that type of trial-like process is in part to blame for the court's decision to put an end to that process. The s. 135 claims process under the BIA is "intended to be an efficient and summary process" for the determination of claims: *Asian Concepts Franchising Corporation (Re)*, 2018 BCSC 1022, 62 C.B.R. (6th) 123, at para. 53.
41. That said, the court recognizes that the Profit Share Claim is the most significant claim in this bankruptcy proceeding and that it is a complex fact-dependent claim. If there is information and documents to support the Athanasoulis Claim that she anticipated having the ability to obtain from the Proposal Trustee or the Debtor and/or Cresford in the context of the Arbitration, it is reasonable to make some accommodation to enable her to access that information and documentation and include it with the material that the Proposal Trustee will be asked to consider and that will be in the record for appeal purposes.
42. While all parties recognize that there may be some efficiency in carving out the Future Oriented Damages from the Profit Share Claim pending the determination of whether it is a provable claim under s. 135(1.1) of the BIA, there remain aspects of the procedure suggested by the Proposal Trustee that are too limiting and unfair to Ms. Athanasoulis. They include:
- a. Having been advised of the grounds upon which the Proposal Trustee intends to determine that the Profit Share Claim is not a provable claim, Ms. Athanasoulis should be permitted to put the evidence that she relies upon to counter the identified grounds for this determination.
  - b. Similarly, having now just received the materials and submissions provided by the LPs to the Proposal Trustee in respect of the positions they seek to assert on the question of whether the Profit Share Claim is a provable claim and on the question of the subordination of that claim to the LPs' interests which they say should be given priority, fairness requires that Ms. Athanasoulis be given the opportunity to put into the record any evidence and submissions that she relies upon to counter the LPs' positions.
43. A procedure must be established that will ensure that the evidence that Ms. Athanasoulis seeks to rely upon is available in an established record before the Proposal Trustee makes its determination of whether the Profit Share Claim is provable.
44. Under a reservation of rights, the valuation of the Future Oriented Damages included in the Profit Share Claim (beyond the ascribed "zero" valuation by the Proposal Trustee for reasons that do not involve an

actual valuation) can be deferred, along with all evidence and submissions about the calculation of these Future Oriented Damages, until after the appeal of the Proposal Trustee's determination to disallow it.

45. As mentioned earlier, during oral argument, counsel for Ms. Athanasoulis agreed that it might be more efficient and economical to defer the valuation of her Future Oriented Damages claims (based on the repudiation date or the date of the Proposal), given that those valuations will be dependent upon expert input, until the appeal of the determination of whether the Profit Share Claim is provable on the principled/legal grounds (equity vs. profit, earned vs. realized profits and subordinated to the LPs' Claims) has been decided (with a reservation of her right to pursue those Future Oriented Damages if the appeal succeeds).
46. In addition to evidence that Ms. Athanasoulis may already have and that could be compiled for submission to the Proposal Trustee, she has identified further evidence that she may need to obtain from the Debtor (and/or Cresford). For example, evidence to counter the Proposal Trustee's determination that the Profit Share Claim is to be valued at zero predicated on the assumption that there were no profits in the YSL Project at, or at any time prior to, the date of the Proposal (because it was not built). Ms. Athanasoulis is entitled to test that determination. To do so she may need additional production from the Debtor and/or Cresford of historic financial documents, beyond those that she has already received. Insofar as the Proposal Trustee is in control of any of the Debtor's records that Ms. Athanasoulis may ask for, it too may be required to produce documents to Ms. Athanasoulis.
47. I agree with Ms. Athanasoulis that if the goal is to create a record now that can be used for a true appeal, the issues identified in the Proposal Trustee's draft Notice of Determination warrant an opportunity for a further exchange of materials and some (circumscribed and limited) cross-examinations so that there is a complete record for the appeal.
48. While the claims process is intended to a summary process and not a full adjudicative process with a trial, this is a complex claim with a multitude of competing interests. Fairness requires that Ms. Athanasoulis be given access to documentary records (and a witness from the Debtor or Cresford who can explain/prove them, if necessary) that she needs to prove her claim and counter the grounds upon which it is expected to be ruled by the Proposal Trustee not to be provable.
49. The court has the jurisdiction to order this under its general discretionary powers in s. 183(1)(a) of the BIA. See also *Toronto-Dominion Bank v. Brad Duby Professional Corporation*, 2022 ONSC 6066, at para. 33. In this instance, the use of those powers in the unique circumstances of this case is appropriate to ensure procedural fairness in the determination of the Athanasoulis Claim and any appeals that may arise from the Proposal Trustee's determination.

*c) Standing of the LPs on the Appeal of the Profit Share Claim Disallowance*

50. The LP's Claims are not part of this proceeding, except to the extent that they are relevant to the identified grounds for the Proposal Trustee's intended disallowance of the Profit Share Claim. I cannot accede to the request from Ms. Athanasoulis to order the LP's Claims to be adjudicated on their merits in this proceeding, absent the consent of the LPs, which is not forthcoming.
51. The Proposal Trustee suggests that the LPs be entitled only to raise issues in the appeal that pertain directly to: (a) whether the LPs must be repaid in full prior to any payments being made on the Athanasoulis Claim (the enforceability of the Profit Share Claim as against the LPs, which in turn is tied into preliminary questions of subordination and priority); and (b) the enforceability of any element of the Athanasoulis Claim given the terms of the Limited Partnership Agreement."
52. The LPs argue that because they would be the ones most immediately and directly impacted by any aspect of the Athanasoulis Claim that is allowed, and by the value ascribed to any allowed claim, they should have full participation rights on all issues. At some level, every creditor has an interest in minimizing or eliminating the claims of other creditors on equal footing. That is not a reason to grant the LPs advance standing on an appeal, or even to give them full standing in the determination of the Athanasoulis Claim.

53. The Proposal Trustee's suggestion is reasonable and strikes the appropriate balance. Subject, always, to the discretion of the judge hearing the appeal, I see no reason to grant the LPs *carte blanche* to double down on all the arguments already being made by the Proposal Trustee. The LPs have a legitimate interest in bringing forward any unique evidence, claims and arguments that they can offer, but not to duplicate or pile onto arguments already being made by the Proposal Trustee.
54. I consider this situation to be distinguishable from another situation that arose in this case, in relation to a different proof of claim: see *YG Limited Partnership and YSL Residences Inc.*, 2022 ONSC 6548 (now under appeal). In that circumstance, the LPs were held not to have any standing to participate in the adjudication of a creditor's claim at the *de novo* appeal of a claim filed by CBRE involving a contract that the LPs had no involvement in or evidence to offer in respect thereof. The justification for not granting the LPs standing in that situation was fact specific (as it often is). Notably, as well, no one in the circumstances of this case is suggesting that the LPs should have no standing to address any issues on appeal.
55. Here, the LPs have been afforded standing to provide evidence and make submissions to the Proposal Trustee in connection with the Notice of Determination regarding the "provability" of the Profit Share Claim. They have a unique perspective to offer with respect to their argument that the Profit Share Agreement should be found to be unenforceable because it is contrary to the Limited Partnership Agreement (a ground not relied upon by the Proposal Trustee but raised and therefore forms part of the record for appeal purposes that Ms. Athanasoulis must respond to).
56. The LPs may also have a unique perspective on the preliminary question of whether the Profit Share Agreement can be enforced in the face of Ms. Athanasoulis' admissions that she agreed with the LPs that they would be paid out before her. These unique perspectives have been placed before the Proposal Trustee; Ms. Athanasoulis will be permitted to respond to and challenge them, and they will be "in play" on any appeal.
57. Subject to the discretion and views of the judge hearing the appeal, I would anticipate that the LPs will have at least some status at the appeal to address at least these points, but perhaps not beyond them.
58. Finally, the certainty and finality that the determination of these issues will bring is important because of the LP's Claims outside of this proceeding. The LPs need to be given standing to participate in order for an issue estoppel to arise so as to prevent the re-litigation of the same points in the context of the LP's Claims.
59. For all these reasons, it is anticipated that the LPs will be afforded an opportunity to participate on the appeal to the extent of any unique or added perspective or submissions that they have that are not advanced by the Proposal Trustee, or that the Proposal Trustee defers to the LPs on. In contrast, the LPs should not expect to be permitted to make submissions on points already being addressed by the Proposal Trustee, such as, the argument that the Profit Share Claim is a claim in equity, not a debt owing by the Debtor.
60. The LPs asked to be afforded the opportunity to make further submissions in response to Ms. Athanasoulis' further evidence and submissions. I do not consider that to be necessary or appropriate. However, if the Proposal Trustee asks them for further information or documents after receiving the further evidence and submissions from Ms. Athanasoulis, whatever the LPs provide must be given to Ms. Athanasoulis as well.

*d) Directions Regarding the Procedure for the Determination of the Profit Share Claim*

61. Having considered all the written and oral submissions received, and in the exercise of my discretion, the following directions are provided in respect of the suggested procedure by the Proposal Trustee for the determination and appeal of the Profit Share Claim:
  - a. Within one week of the release of this endorsement, Ms. Athanasoulis will be provided with a complete record of all evidence and submissions received from other stakeholders in connection with the Proposal Trustee's draft Notice of Determination with respect to her Profit Share Claim.



This may have already occurred by the delivery of materials previously provided by the LPs to the Proposal Trustee just prior to the hearing of this motion; however, in the interests of completeness a further week is being afforded to ensure that she has now been provided with all materials.

- b. Within two weeks of the release of this endorsement, Ms. Athanasoulis may make reasonable and targeted document requests from the Proposal Trustee, the Debtor and/or Cresford, or any other participating party for documents that she does not have and claims she needs to support the proof of the Athanasoulis Claim and to establish that it should be valued at more than “zero” (for example, in support of any grounds upon which she challenges the Proposal Trustee’s determination that there were no profits in the YSL Project as at the date of the Proposal or at any time prior to that date).
- c. Ms. Athanasoulis’ requests shall be responded to, and any documents that are in the possession, control or power of the Proposal Trustee or the Debtor and/or Cresford shall be provided, within three weeks of any such request.
- d. Within two months of the release of this endorsement, Ms. Athanasoulis shall deliver her submissions and a supplementary record containing any further evidence that she relies upon in support of the Athanasoulis Claim or that she relies upon to challenge any determination that may be made to disallow her Profit Share Claim on the grounds that:
  - i. it is equity, not debt;
  - ii. the YSL Project did not generate any profits at, or at any time prior to, the date of the Proposal;
  - iii. it is to be subordinated to the LPs return of equity (that will inevitably be subject to a shortfall) because of representations to that effect made to the LPs by Ms. Athanasoulis; and/or
  - iv. it is not enforceable as against the LPs because it was entered into in breach of the Limited Partnership Agreement, breach of fiduciary duties owed to the LPs by the general partner and/or misrepresentations made to the LPs by Ms. Athanasoulis.
- e. The Proposal Trustee may request further submissions, evidence or documents in respect of its consideration and assessment of the supplementary material provided by Ms. Athanasoulis, the Debtor, the LPs or elsewhere as it deems appropriate. Any such evidence or documents shall be requested by the Proposal Trustee and provided to Ms. Athanasoulis within four weeks of the delivery of her supplementary record.
- f. Within two weeks after the provision of any further evidence or documents received by the Proposal Trustee (or the deadline for so doing),
  - v. the Proposal Trustee may question (by way of an examination under oath) Ms. Athanasoulis about any evidence or submissions she provides in support of the proof of the Athanasoulis Claim;
  - vi. Ms. Athanasoulis may examine a representative of the Debtor and/or Cresford under oath on the question of whether there were any profits in the YSL Project as at the date of the Proposal or at any time prior to that date.
- g. The Proposal Trustee shall deliver to all interested parties its final Notice of Determination in accordance with s. 135(3) of the BIA (which may, in the Proposal Trustee’s discretion, be revised from the draft Notice of Determination previously delivered, taking into account the additional evidence and submissions it receives) within two weeks of the completion of any questioning/cross-examinations (or the date for their completion having lapsed).
- h. Ms. Athanasoulis may thereafter appeal the Proposal Trustee’s Notice of Determination and its anticipated disallowance of any aspect of the Athanasoulis Claim in the normal course in accordance with s. 135(3) of the BIA.
- i. Subject to the discretion of the appeal judge, the LPs standing on the appeal shall be limited to submissions in respect of the impact of the prohibition contained in the Limited Partnership Agreement on non-arm’s length agreements (such as the Profit Sharing Agreement), on the

question of enforceability of the Profit Share Claim and in respect of the priority/subordination of the Profit Share Claim to the LPs recovery of their initial investment based on alleged breaches of contractual and fiduciary duties and alleged misrepresentations.

- j. If the parties require further directions or clarifications from the court as they progress through these steps, a case conference may be requested before me through the Commercial List scheduling office.
62. I realize that this will result in a number of months delay in the ultimate determination of the Athanasoulis Claim before any appeal; however, it is still a far less cumbersome process than what was contemplated by the Arbitration, and it is a process that places the determination of the provability of the Athanasoulis Claim, and its valuation, in the hands of the Proposal Trustee.
63. To be clear, it is not expected that there will be any material or submissions at this time regarding the Future Oriented Damages (whether calculated at the repudiation date or the Proposal date). If Ms. Athanasoulis is successful on appeal of any disallowance of the Profit Share Claim, the parties shall make an appointment for a case conference before me (if my schedule permits within the time frame requested) to seek directions about the process for the determination of the more complex valuation question that will likely require expert input.

### **Analysis and Directions – Wrongful Dismissal Claim**

64. The Proposal Trustee allowed the Wrongful Dismissal Claim in part and valued it at \$880,000. \$120,000 was discounted because the Proposal Trustee determined that this amount had already been paid to Ms. Athanasoulis in the context of another proceeding. It has not been suggested that there is a need for further evidence or submissions in respect of the Proposal Trustee’s determination of this claim reflected in the draft Notice of Determination. If Ms. Athanasoulis has further evidence or submissions on the narrow question of whether she has already received \$120,000 on account of this claim, those may be provided to the Proposal Trustee when she delivers her supplementary record in connection with the Profit Share Claim (as indicated in the previous section, to be provided within two months of this endorsement).
65. The issues raised for the court’s consideration in respect of this aspect of the Athanasoulis Claim are:
- a. Whether the LPs have standing in respect of the determination of the Wrongful Dismissal Claim.
  - b. Should the allowed portion of this claim be paid out in a manner consistent with other employee claims, or deferred until the appeal and other steps in the determination of the entire Athanasoulis Claim have been resolved?
66. The Proposal Trustee is of the view that the LPs have no standing with respect to the Proposal Trustee’s determination of the Wrongful Dismissal Claim for the reasons set out in the decision of Osborne J. in respect of the CBRE claim (discussed earlier in this endorsement at paragraph 54, *YG Limited Partnership and YSL Residences Inc.*). The Proposal Trustee is aware that certain of the LPs have appealed this decision.
67. There has been no indication that the LPs have any unique perspective or evidence to offer in respect of this issue (unlike the Profit Share Claim, where they do, and have accordingly been afforded rights of participation commensurate with their unique perspective and evidence). I do not see any basis on which they should be involving themselves in the determination or valuation of the Wrongful Dismissal Claim.
68. It will be a matter for the Proposal Trustee to decide, but it was indicated at the hearing that the “allowed” portion of the Wrongful Dismissal Claim will be treated in same way as “like” employee claims which, if not appealed, have been paid out at 70 cents on the dollar.

### **Costs and Final Disposition**

69. The Proposal Trustee does not seek costs from any party in respect of this motion.

70. Ms. Athanasoulis and the LPs asked that the court reserve to the parties the ability to request their costs of this motion if there is a future adjudication of costs in connection with the determination and valuation of the Athanasoulis Claim. That makes sense and I so order.
71. The Court's orders and directions are set out in paragraph 61 in the previous sections of this endorsement and will not be repeated. This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out. Any party may take out a formal order by following the procedure under r. 59.



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Kimmel J.

February 10, 2023

# TAB 4



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

December 30, 2022

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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

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

DECEMBER 30, 2022

## 1.0 Introduction

1. This report (“Report”)<sup>1</sup> 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 receive 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”).

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

5. The creditors voted to accept the Second Amended Proposal at a meeting of creditors held on June 15, 2021.
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 motion to approve the Second Amended Proposal was scheduled to be heard on 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 equityholders<sup>2</sup> of the Partnership willing to accept such 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 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 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.
13. Of the sixty-six (66) proofs of claim filed against the Companies, three claims remain unresolved (the “Disputed Claims”), being the claims of Maria Athanasoulis (\$19 million), CBRE Limited (“CBRE”) (approximately \$1.2 million) and Henry Zhang (approximately \$1.1 million).

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<sup>2</sup> 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.



14. The Proposal Trustee and the Sponsor had differing views on the approach to determine Ms. Athanasoulis' claim (the "Athanasoulis Claim") and the Sponsor's obligation to fund the fees and costs of the Proposal Trustee to complete these proceedings as set out in Sections 10.01 and 11.01 of the Final Proposal.
15. On October 17, 2022, Justice Kimmel heard a motion by the Proposal Trustee (the "Funding Motion") for an Order, among other things, declaring that the Sponsor is required to fund the Administrative Fees and Expenses of the Proposal Trustee pursuant to Section 11.01 of the Final Proposal and declaring that the commencement of arbitration to determine the Athanasoulis Claim by the Proposal Trustee was a valid exercise of the power conferred upon the Proposal Trustee under the Final Proposal and/or the BIA. The basis for this motion was provided in the Proposal Trustee's Sixth Report to Court dated August 19, 2022 and in other Court materials filed by the Proposal Trustee. A copy of the Sixth Report is provided in Appendix "C", without attachments.
16. On September 26, 2022, Justice Osborne heard CBRE's appeal of the Proposal Trustee's Notice of Disallowance of Claim dated February 10, 2022 (the "CBRE Appeal"). Background related to this motion was provided in the Proposal Trustee's Seventh Report to Court dated September 12, 2022 (the "Seventh Report") and in other Court materials filed by the Proposal Trustee. A copy of the Seventh Report is provided as Appendix "D", without attachments. Pursuant to the Seventh Report, the Proposal Trustee recommended that CBRE's claim in the amount of approximately \$1.2 million be allowed and the appeal allowed, without costs. Certain of the Partnership's limited partners objected to the allowance of this claim and took the position that they had standing to do so as "aggrieved persons", as defined in Section 37 of the BIA.
17. On November 1, 2022, Justice Kimmel released her decision (the "November 1<sup>st</sup> Decision") requiring the Sponsor to fund the costs of the Proposal Trustee incurred to that date and in respect of the process to determine the claim filed by Ms. Athanasoulis, but that it was not in the Proposal Trustee's powers to have an arbitrator determine the value of Ms. Athanasoulis' claim. The November 1<sup>st</sup> Decision is discussed further in Section 5 of this Report. A copy of the November 1<sup>st</sup> Decision is provided as Appendix "E".
18. On November 22, 2022, Justice Osborne released his decision regarding the CBRE Appeal<sup>3</sup> (the "CBRE Decision"). Justice Osborne's decision states that "the limited partners do not have standing to oppose or [*sic*] the relief sought on this motion by the creditor [CBRE] supported by the Proposal Trustee and the Debtors" and that "the disallowance of CBRE's claim by the Proposal Trustee is set aside and the claim is allowed". A copy of the CBRE Decision is provided as Appendix "F". The limited partners represented by Thornton Grout Finnigan LLP ("TGF") opposed the Proposal Trustee's allowance of CBRE's claim and have appealed Justice Osborne's decision. A date has not been set to hear the appeal.

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<sup>3</sup> The decision is dated November 16, 2022 but was sent by the Court on November 22, 2022.

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Companies;
  - b) summarize the Proposal Trustee's discussions with counsel representing Ms. Athanasoulis and counsel representing the Limited Partners (the "LPs")<sup>4</sup> regarding the Proposal Trustee's recommended approach to determine the Athanasoulis Claim and the manner each of the parties will be entitled to participate in the process (the "Athanasoulis Claim Process"); and
  - c) seek advice and directions from the Court on the Athanasoulis Claim Process as set out in Section 5.1 below, or as may be modified following submissions from counsel for each of Ms. Athanasoulis and the LPs.

## 1.2 Currency

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

## 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 Timbercreek Mortgage Servicing Inc., the first mortgagee of the YSL Project, in advance of these proceedings, applications by certain of the LPs and the prior proposals filed in this proceeding is included in the Proposal Trustee's previous reports to Court and other materials filed with the Court.
2. Copies of the publicly available information filed in these proceedings can be found on the Proposal Trustee's case website at <https://www.ksvadvisory.com/insolvency-cases/case/yg-limited-partnership>.

## 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 "G".

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<sup>4</sup> There are two groups of LPs. One is represented by TGF and the other by Lax O'Sullivan Lissus Gottlieb LLP.

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. As noted, sixty-six (66) claims have been filed against the Companies, including claims from trade creditors, real estate brokerages, professional advisors and former employees. 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.	1,855	1,541	314
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	4,140	3,721	419
<b>Total Proven Claims</b>	<b>22,490</b>	<b>14,933</b>	<b>7,557</b>
<u>Disputed Claims:</u>			
Maria Athanasoulis (disputed)	19,000	TBD	TBD
CBRE	1,239	1,239 <sup>5</sup>	0
Henry Zhang (disputed by the LPs)	1,520	1,130	390
<b>Total Unresolved Claims</b>	<b>21,759</b>	<b>2,369</b>	<b>19,390</b>
<b>Total Claims</b>	<b>44,249</b>	<b>17,302</b>	<b>26,947</b>

2. The Sponsor took an assignment of 28 of 66 Affected Creditor claims, totalling approximately \$12.1 million. As assignee, the Sponsor participated in the interim distribution and has received approximately \$8.4 million of the total amounts distributed.
3. Of the claims in the table, the following claims are the Disputed Claims:
  - a) Ms. Athanasoulis;
  - b) CBRE; and
  - c) Mr. Zhang.

<sup>5</sup> Pursuant to the CBRE Decision, this claim has been accepted. As referenced above, the CBRE Decision has been appealed.

4. The status of the Athanasoulis Claim is discussed in Section 5 below. The status of CBRE's and Mr. Zhang's claims is not relevant to the present motion other than any issues related to the LPs' standing resulting from the CBRE Decision, which has been appealed by the LPs represented by TGF.
5. On March 24, 2022, the Proposal Trustee paid an interim distribution of 70¢ on the dollar to the creditors with Proven Claims at that time.
6. Since the interim distribution, the Proposal Trustee has resolved various claims, including complex claims filed by four former employees of Cresford (the "Former Employees"). The Proposal Trustee negotiated settlements of these claims, which were approved by the Court on May 24, 2022.
7. 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 several others whose claims were recently resolved.
8. The Proposal Trustee has reserved the balance of the Affected Creditor Cash Pool until the Disputed Claims can be determined. The balance of the Affected Creditor Cash Pool is presently approximately \$20.5 million, excluding any interest, which accrues to the Sponsor pursuant to Section 5.01(a) of the Final Proposal.
9. The table below 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	14,933	14,933
Ms. Athanasoulis	-	19,000
CBRE	1,239	1,239
Mr. Zhang	-	1,130
Total Claims	16,172	36,302
Dividend rate	100%	85.1%
Residual for LPs <sup>6</sup>	14,728	-

## 5.0 Ms. Athanasoulis' Claim

1. Ms. Athanasoulis, Cresford's former President and Chief Operating Officer, filed a proof of claim in the amount of \$19 million. This is related to a Statement of Claim she filed on January 21, 2020 against the Companies, other Cresford affiliates and Dan Casey, Cresford's founder. The Athanasoulis Claim is in respect of, *inter alia*, allegations of:
  - a) wrongful dismissal damages in the amount of \$1 million; and

<sup>6</sup> If the CBRE, Zhang and Athanasoulis claims are disallowed in full, the estimated distributions to the LPs would be approximately \$16 million.

- b) damages in the amount of \$18 million for breach of an oral agreement that the owner of each Cresford project, including the YSL Project, would pay Ms. Athanasoulis 20% of the profits earned on each project. The YSL Project is the only Cresford project that Ms. Athanasoulis alleges to have earned a profit.
2. Cresford denied the existence of an oral agreement entitling Ms. Athanasoulis to 20% of the profits earned on each project.
3. In order to determine whether an oral contract existed, witness testimony was required to be called under oath and the credibility of such evidence assessed. Given the limited Court time available for such a hearing, together with the desire to make a determination of the merits of the Athanasoulis Claim in a fair, expedient, and efficient manner, the Proposal Trustee and Ms. Athanasoulis agreed to arbitrate the determination of liability (*i.e.*, did an enforceable contract exist between Ms. Athanasoulis and Cresford, and was that contract breached?) in respect of her claim (“Phase 1”) before William G. Horton (the “Arbitrator”), an experienced commercial litigator and arbitrator.
4. If a contract was found to exist, the parties also agreed to have the Arbitrator determine the quantum of damages, if any, flowing from breach of the contract in the second phase of the arbitration (“Phase 2”).
5. On March 28, 2022, the Arbitrator rendered a decision in respect of Phase 1 of the arbitration. He held that an oral agreement existed between Ms. Athanasoulis and Cresford entitling her to 20% of the profits earned on each project.
6. After Ms. Athanasoulis prevailed in Phase 1, both the Sponsor and the LPs took the position that the Proposal Trustee acted without jurisdiction in arbitrating the Athanasoulis Claim rather than determining it itself, and then litigating an anticipated appeal on any such determination (by either the LPs or Ms. Athanasoulis, depending on the nature of the determination). The LPs and the Sponsor then took the position that the Proposal Trustee improperly delegated its authority to determine the Athanasoulis Claim to the Arbitrator. As detailed in Section 5.1 below, Justice Kimmel agreed with this position, in part.
7. The scheduling of Phase 2 of the arbitration was deferred pending the outcome of the Funding Motion.

## 5.1 Athanasoulis Claim Process

1. As referenced above, Justice Kimmel heard the Funding Motion. She decided, among other things, that:
  - “The continuation of phase 2 of the Arbitration provided for in the Agreement to Arbitrate the Athanasoulis Claim is not a valid exercise of the authority granted to the Proposal Trustee under the Proposal or s. 135 of the BIA. Therefore, the court no order [sic] requiring the Sponsor to fund (and/or indemnify the Proposal Trustee for) the budgeted Administrative Fees and Expenses associated with phase 2 of the Arbitration (of approximately \$700,000)<sup>7</sup>.” [paragraph 96 a)]
  - “The Sponsor is required to indemnify the Proposal Trustee for all of the reasonably incurred Administrative Fees and Expenses in relation to the determination and valuation of the Athanasoulis Claim, including for phase 1 of the Arbitration and for whatever procedure the Proposal Trustee, in its discretion, determines appropriate to receive the further evidence and positions of Ms. Athanasoulis and other interested stakeholders and any expert inputs deemed necessary.” [paragraph 96 c)]
  - “The Proposal Trustee should first determine how it intends to proceed in light of the court’s decision on this motion, and may prepare a budget for the anticipated Administrative Fees and Expenses associated with this exercise, or seek indemnification after the fact, as it deems appropriate.” [paragraph 96 d)]
2. Since the date of the November 1<sup>st</sup> Decision, the Proposal Trustee has considered the process to determine the Athanasoulis Claim and has sought input from Ms. Athanasoulis, the LPs, the Companies and the Sponsor regarding this process. Based on the feedback received, the Proposal Trustee summarized its proposed approach which it presented to Ms. Athanasoulis, the LPs, the Companies and the Sponsor for comments.
3. On December 7, 2022, the Proposal Trustee’s counsel sent the following recommended process by email to counsel representing Ms. Athanasoulis, the LPs, the Companies and the Sponsor:

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<sup>7</sup> This represented the Proposal Trustee’s estimated professional costs associated with Phase 2 of the arbitration.

All,

Here is a revised process proposal based on feedback received.

#### Steps Prior to Process Motion

1. LPs, Athanasoulis and Trustee to issue briefs “with prejudice” (whether based on their mediation briefs or otherwise as they see fit) as basis for Trustee’s determination. LPs and Athanasoulis may issue responding briefs at their discretion on an expedited schedule to be agreed between the parties. Please advise when you can deliver such briefs.

The Trustee would then bring a motion for directions before Justice Kimmel to determine the process. The Trustee will propose the following and the parties will have the opportunity to contest any portion of the Trustee’s recommendation. As per my previous email, please advise if you believe such a motion should be booked for more or less than two hours. We would like to book it as soon as possible.

#### Process Motion Proposed Steps/Process

1. Trustee to issue Notice of Determination on Athanasoulis Claim (a draft may be provided in advance of the motion so that parties may take it into consideration on the motion). The Notice of Determination will not be shared with any party prior to issuance but a copy will be provided to counsel to the LPs and Concord when issued.
2. Notice of Determination to be based on full record to date in these proceedings, including the “with prejudice” briefs noted above, the materials filed and evidence given at the Phase One arbitration the decision of Mr. Horton, and any responses to direct information requests from the Trustee. It will address both the wrongful dismissal and profit share claims.
3. The Notice of Determination shall set out all of the grounds supporting the Trustee’s determination in sufficient detail to appropriately frame the issues for any appeal.
4. Notwithstanding the position of the LPs, the Trustee considers Mr. Horton’s decision to be binding in this proceeding, consistent with Justice Kimmel’s direction that it be the “factual predicate upon which the determination of [Ms Athanasoulis’] claim will proceed”. The LPs will have an opportunity to argue before Justice Kimmel that Mr. Horton’s decision is merely non-binding “inputs” to the extent it is germane to the process.
5. Athanasoulis to file any appeal pursuant to Section 135 of the BIA.
6. Athanasoulis appeal shall not be required at this time to adduce detailed evidence valuing and quantifying her profit share claim but may address any issues raised in Notice of Determination.
7. Justice Kimmel to decide appeal procedure (e.g., de novo vs true appeal) based on submissions from the parties.
8. 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) the enforceability of any element of the Athanasoulis Claim given the terms of the Limited Partnership Agreement.
9. Athanasoulis entitled to full response to any materials filed by LPs in this regard.
10. The LPs shall not be entitled to raise issues relating to any counterclaim or set-off they may assert against Ms. Athanasoulis.

4. As Ms. Athanasoulis and the LPs disagree with certain aspects of the process summarized above, the Proposal Trustee scheduled a case conference on December 21, 2022 with Justice Kimmel. The purpose of the case conference was to schedule a motion for advice and directions regarding the Athanasoulis Claim Process.
5. Pursuant to an endorsement dated December 21, 2022, Justice Kimmel scheduled a motion to be heard on January 16, 2023 to address the Athanasoulis Claim Process.
6. The Proposal Trustee has prepared a Notice of Disallowance regarding the Athanasoulis Claim (the “Notice”), a draft of which is provided as Appendix “H”. The Notice has not yet been issued in order to avoid commencement of the 30-day appeal period but a draft is being filed with this Report in order to provide context to the Athanasoulis Claim and issues that may be raised at the hearing of the Proposal Trustee’s motion.

## 6.0 Conclusion

1. In the Proposal Trustee’s view, the Athanasoulis Claim Process fairly balances the interests of the stakeholders while also providing them an opportunity to make submissions regarding the procedure for an appeal of the Athanasoulis Claim to be heard.

\* \* \*

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 5

**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](http://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.


*[remainder of page left intentionally blank]*

Dated at Toronto, this 15<sup>th</sup> 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

<b><u>Instrument Number</u></b>	<b><u>Description</u></b>
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 6



## Appendix “H”

## FORM 77

**Notice of Disallowance of Claim, Right to Priority or Security or Notice of Valuation of Claim**  
**(Subsection 135(3) of the *Bankruptcy and Insolvency Act*)**

## TAKE NOTICE THAT:

As Licensed Insolvency Trustee acting IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. (collectively, “**YSL**”), KSV Restructuring Inc. (the “**Trustee**”) has disallowed the unsecured claim of Maria Athanasoulis, in part, pursuant to subsection 135(2) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), for the reasons set out below.

Your Proof of Claim, as filed with the Trustee, claims:

1. \$1 million in respect of damages for wrongful dismissal (the “**Wrongful Dismissal Claim**”); and
2. \$18 million in respect of damages for breach of an oral agreement that YSL would pay Ms. Athanasoulis 20% of the profits earned on the YSL project (the “**Profit Share Claim**”).

In determining your claims, the Trustee has reviewed and is relying on the following, which represents the support and record for your claim:

1. the Proof of Claim, as filed;
2. all material on the record in these proposal proceedings to date, together with all material on the record in the proceedings by the limited partners of YG Limited Partnership (the “**LPs**”) against YSL Residences Inc. et al. in Court file numbers CV-21-00661386-00CL and CV-21-00661530-00CL;
3. the partial arbitration award of Mr. William G. Horton (the “**Arbitrator**”) dated March 28, 2022 (the “**Partial Award**”);
4. all material filed and produced, and all testimony given, in the “Phase 1” arbitration (the “**Arbitration**”) before the Arbitrator; and
5. all responses received by the Trustee from counsel to the LPs and counsel to Ms. Athanasoulis in respect of any information requests of the Trustee.

**Wrongful Dismissal Claim**

Pursuant to the Partial Award, the Arbitrator held that: (i) YSL was a common employer of Ms. Athanasoulis; and (ii) Ms. Athanasoulis was constructively dismissed from her employment in December 2019. The Trustee accepts the findings of fact of the Arbitrator.

The records of the relevant Cresford entity reflect that Ms. Athanasoulis’ employment income was \$889,400 in each of 2017 and 2018.

The Trustee has confirmed that Ms. Athanasoulis received \$120,000 as a combined, aggregate settlement in respect of both her similar wrongful dismissal and profit share claims in: (a) the 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership proceedings; and (b) The Clover on Yonge Inc. and The Clover on Yonge Limited Partnership proceedings. The Trustee has confirmed with PricewaterhouseCoopers Inc., the court officer in those other proceedings, that such settlement did not incorporate any value in respect of the profit share claim. The Trustee has also determined that Ms. Athanasoulis has not received any other payments in respect of her claims in any other Cresford entity insolvency proceedings.

The Trustee has also taken into account Ms. Athanasoulis' mitigation efforts subsequent to the wrongful termination of her employment and the advice of its counsel on the amount of damages generally awarded by Ontario courts given similar facts and circumstances.

Given the foregoing, the Trustee has determined to allow the Wrongful Dismissal Claim in the amount of \$880,000 as an unsecured claim.

The Trustee received objections from certain of the LPs to any allowance of the Wrongful Dismissal Claim and it has considered these objections in making its determination. The Trustee is of the view that the LPs have no standing to object to the Trustee's determination of the Wrongful Dismissal Claim for the reasons set out in the decision of Mr. Justice Osborne in respect of another claim in the proceedings in *YG Limited Partnership and YSL Residences Inc.*, 2022 ONSC 6548. The Trustee is aware that certain of the LPs have appealed this decision.

### **Profit Share Claim**

The Trustee has determined to disallow the Profit Share Claim in full for several, independent reasons that follow.

### **Equity Not Debt**

Pursuant to the Partial Award, the Arbitrator found that Ms. Athanasoulis had a profit share agreement (the "PSA") that entitled her to 20% of the profits earned on any of Cresford's current and future projects. The Arbitrator also found that: (a) profits were to be calculated, on a good faith basis, based on the *pro forma* budgets prepared by Cresford in respect of each project; (b) Ms. Athanasoulis' share of the profits was to be paid by the relevant owner that earned the profit; and (c) profits were to be shared when earned, usually at the completion of a project. The Trustee accepts the findings of fact of the Arbitrator.

Section 121 of the BIA provides as follows:

121 (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

An entitlement to a share of the profits earned by YSL (*i.e.*, the relevant owner) is not a "provable claim" pursuant to the BIA. It is not a debt obligation of YSL but rather, in substance, an equity entitlement. Profits are, by definition, the difference between the amount earned and the amount spent in buying, operating, or producing something. It is the amount remaining for distribution to

the owners of the enterprise. This is also reflected on YSL's *pro forma* budgets. As such, the Trustee has determined that the PSA, which is an agreement to share in the profits earned by the owner of the YSL project is, in substance, not a debt or liability to which YSL was subject on the day on which these proposal proceedings were commenced.

A claim based on a breach of the PSA that has not been reduced to a judgment debt is also not a "provable claim". The Partial Award also makes no finding as to whether or not the PSA has in fact been breached or the damages associated with such breach assuming one exists.

### **No Profits Earned by YSL**

The Arbitrator held that Ms. Athanasoulis' share of profits resulting from the YSL project was to be paid by the relevant owner that earned the profit, meaning a profit must be earned by the owner of the YSL project for there to be any profit in which to share.

As of the date that these proposal proceedings were initiated, YSL had not completed the YSL project. Indeed, the initial excavation phase of the YSL project was not complete at that time and the construction schedule for the YSL project as of October 2019 contemplated that the YSL project would not be completed until 2025 at the earliest. Accordingly, as of the date of the proceedings, no profit had been earned by the YSL project and, therefore, there was no profit in which to share.

Without prejudice to the Trustee's determination that any claim based on the PSA is not a provable claim, to the extent that Ms. Athanasoulis relies upon the projected profitability of the YSL project as a contingent claim for a lost profit share, the Trustee values such a contingent and unliquidated claim at zero. The assumptions required to determine such a possible amount over such a long time horizon are far too speculative and the alleged damages far too remote to be capable of being considered a provable claim or the subject of any meaningful and reasonable computation.

In addition to the foregoing, the Trustee notes that an affiliate of Concord Properties Developments Corp. ("**Concord**"), the sponsor of the proposal filed and sanctioned by the Court in these proposal proceedings (the "**Proposal**"), became the owner of the YSL project upon implementation of the Proposal. Accordingly, even if the YSL project is successfully brought to completion, despite all of the intervening events challenging such an outcome, any profits earned on the YSL project will not accrue to the relevant owner, *i.e.*, YSL. Ms. Athanasoulis is not entitled to claim a profit-share under the PSA for amounts earned by Concord's affiliate who is not a party to the PSA.

Moreover, the LPs made a total capital contribution of \$14.8 million to the YG Limited Partnership in exchange for Class A Preferred Units. Pursuant to the limited partnership agreement in respect of the YG Limited Partnership, the LPs are entitled to a preferred return from the proceeds of the YSL project. Once the LPs are repaid their capital contribution plus their preferred return, any remaining proceeds from the YSL project would be paid to the Class B unit holder, being Cresford (Yonge) Limited Partnership, a Cresford entity. Depending on the resolution of the remaining disputed claims in these proposal proceedings, the most that would be available for distribution to the LPs is approximately \$16 million<sup>1</sup> which is less than the amount of their capital contribution

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<sup>1</sup> Assuming that the CBRE, Zhang and Athanasoulis claims are all disallowed.

plus their preferred return. Accordingly, the disposition of the YSL project in these proceedings also has not resulted in any profit earned by Cresford (Yonge) Limited Partnership.

Ms. Athanasoulis provided evidence in the Arbitration that “profit” pursuant to her PSA is determined by taking revenue, minus costs, minus the amount returned to the LPs, “and the balance is your net profit”.<sup>2</sup> Again, on this basis, there is no profit earned by YSL.

Lastly, to the extent that Ms. Athanasoulis claims that she is entitled to a share of unrealized hypothetical gains on the YSL project as of the date of her dismissal, the Trustee notes that this is contrary to an essential term of the PSA established by the Arbitrator. The Arbitrator found that profits were to be calculated based on *pro formas*, but only payable when earned at the completion of the YSL project. There is no dispute that the *pro formas* would be revised continuously throughout the life of the YSL project in order to take into account actual events that transpired. Ms. Athanasoulis cannot claim a share in profits based on an unrealized vision of the YSL project that, as we now know, will never materialize. Such profits are not “earned” until the project is completed. Profits are not “earned” during the life of project because the paper value of the project may increase at a particular point in time. The earning of a profit and asset appreciation are two very different concepts. Furthermore, given that an essential term of the PSA requires profits to be calculated at project completion, any claim for damages for a breach of the PSA must take into account the actual profits earned by YSL upon completion of the project, which as noted above is zero.

### **Profit Share Claim is Subordinated**

In connection with the Arbitration, Ms. Athanasoulis admitted three times under oath – in discovery, in direct examination, and on cross-examination – that any entitlement to a profit-share she may have would arise only after the LPs are repaid their original investment.

On examination for discovery on January 13, 2022, Ms. Athanasoulis stated:

Q. Did you discuss anything about how profit would be calculated?

A. It was going to be calculated -- you know, in my conversations with Dan, it would be calculated after paying the costs and any... and after paying the equity to... and specific to YSL and 33 Yorkville, it would be paid after the equity was repaid to the LP investors.

Q. You said specific to YSL and 33 Yorkville that you discussed with Dan that profit would be after equity paid to limited partners. So is it right if I understand that Clover and Halo, that was not the definition of profit that you discussed?

A. Clover and Halo didn't have limited partners. So it was after the equity was... like, the equity of -- Dan's equity was repaid.<sup>3</sup>

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<sup>2</sup> Transcript of Direct Examination of Ms. Athanasoulis on February 22, 2022, page 153, lines 13-23.

<sup>3</sup> Transcript of Discovery of Ms. Athanasoulis on January 13, 2022, qq. 211-212.

Ms. Athanasoulis confirmed the same understanding in her evidence in-chief during Phase 1 of the Arbitration:

Q. Okay. And turning down to the profit listed here on the, on the pro forma, in general terms, how was this calculated on the pro forma?

A. How is the profit calculated? So, basically, it takes your revenue, minuses your costs, minuses the amount returned on equity, and the balance is your net profit.

Q. And was Cresford consistent in how it assessed and how it calculated profits?

A. Yes.<sup>4</sup>

She also confirmed the same evidence on cross-examination at Phase 1 of the Arbitration:

Q. Once construction of a condominium is complete, you register the condominium with the Condominium Authority of Ontario. Do I have that right?

A. Correct. I mean, you register it with -- yes. You register it with the authorities that -- the city.

Q. Right. And we talked about registration before. I'm just trying to make sure we have it clear what that means. And then, once it's registered, you turn the building over to the condominium corporation for that particular property, right?

A. Yes.

Q. And you collect the balances due from purchasers, and you sell any remaining units that might be in the building?

A. Yes.

Q. And then you pay the trades and any fees that might be owing to the kind of management companies that you've described?

A. Sure. You would, you would be paying them along the way, yeah.

Q. And you repay the loans and return equity to investors?

A. Yes.

Q. And it's at this point that you can calculate the actual profits earned by the project, correct?

A. Okay, yes.<sup>5</sup>

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<sup>4</sup> Transcript of Direct Examination of Ms. Athanasoulis on February 22, 2022, page 153, lines 13-23.

<sup>5</sup> Transcript of Cross-Examination of Ms. Athanasoulis on February 23, 2022, page 232, line 24 to page 234, line 3.

As the LPs will not be receiving a full return of their equity investment in the YSL project, it is unclear to the Trustee how Ms. Athanasoulis can make a successful claim for a share in profits amount when she has admitted repeatedly that her Profit Share Claim would be calculated after a full return of equity to the LPs.

AND FURTHER TAKE NOTICE that if you are dissatisfied with our decision in disallowing your claim in whole or in part (or a right to rank or your security or valuation of your claim), you may appeal to the court within the 30-day period after the day on which this notice is served, or within any other period that the court may, on application made within the same 30-day period, allow.

Dated at Toronto, this \_\_\_\_ day of December, 2022.

**KSV RESTRUCTURING INC.,  
in its capacity as the proposal trustee  
for YG LIMITED PARTNERSHIP AND  
YSL RESIDENCES INC.**

by \_\_\_\_\_  
Name: Robert Kofman  
Title: President

# TAB 7



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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Lawyers for the Proposal Trustee,  
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# TAB 8

Court File No. BK-21-02734090-0031  
Court of Appeal No.

**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. Motion Record of the Proposal Trustee, KSV Restructuring Inc. dated December 30, 2022;
2. Responding Motion Record of Maria Athanasoulis dated January 4, 2023;
3. Responding Motion Record of Concord Properties Developments Corp. dated January 4, 2023;
4. Joint Responding Motion Record of 2504670 Canada Inc., 8451761 Canada Inc., Chi Long Inc., YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc. dated January 4, 2023;
5. Supplementary Responding Motion Record of Maria Athanasoulis dated January 12, 2023;

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6. Factum of Maria Athanasoulis dated January 12, 2023;
7. Joint Responding Factum of the “Class A LPs dated January 12, 2023.
8. Book of Authorities of Maria Athanasoulis dated January 13, 2023; and
9. Submissions of Concord Properties Developments Corp. dated January 13, 2023.

February 21, 2023

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-4-

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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-21-02734090-0031  
Court of Appeal No.

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**COURT OF APPEAL FOR ONTARIO**

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**APPELLANT'S CERTIFICATE RESPECTING  
EVIDENCE**

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# TAB 9

Court File No. BK-21-02734090-0031  
Court of Appeal No. COA-23-CV-0288

**COURT OF APPEAL FOR ONTARIO**

IN THE MATTER OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C  
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TO MAKE A PROPOSAL OF  
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.

March 31, 2023



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Alexander Soutter

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**COURT OF APPEAL FOR ONTARIO**

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**CERTIFICATE OF COMPLETENESS**

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**COURT OF APPEAL FOR ONTARIO**

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**APPEAL BOOK AND COMPENDIUM**

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