Court File No. BK-21-02734090-0031

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

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

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

CASE CONFERENCE BRIEF OF THE "YongeSL LPs"

(YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc.)

(Appointment to Settle the Form of an Order)

Dated: January 6, 2023

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

D.J. Miller (LSO# 34393P)
Tel: (416) 304-0559
Email: djmiller@tgf.ca

Alexander Soutter (LSO# 72403T)
Tel: (416) 304-0595
Email: asoutter@tgf.ca

Lawyers for the YongeSL LPs

Overview

1. The YongeSL LPs request that this Court settle the form of an order made in an appeal by CBRE Limited ("**CBRE**") pursuant to s.135(4) of the *Bankruptcy and Insolvency Act*. The YongeSL LPs also ask that this Court make corrections to certain typographical but material errors in the Court's endorsement (the "**Endorsement**") released following that appeal.

2. Other than the issue relating to the date of the Endorsement, discussed below, the YongeSL LPs, CBRE and KSV Restructuring Inc., in its capacity as proposal trustee to the Debtors (the "**Proposal Trustee**"), agree on the requested corrections and form of the order, which will be uploaded separately to CaseLines.

The Endorsement

3. On September 26, 2022, this Court heard CBRE's appeal. On November 22, 2022, the Court released its Endorsement to the parties.[1]

4. It appears that the Endorsement contains the following typographical errors that the YongeSL LPs ask that this Court correct:

(a) the Court file number in this matter is BK-21-02734090-0031, not BK-<u>22</u>-02734090-0031 as recorded in the Endorsement;

(b) the hearing of CBRE's appeal was on September 28, 2022, not November 7, 2022, as recorded in the Endorsement; and

(c) Thornton Grout Finnigan LLP's clients are the "YongeSL LPs", not the "Yonge Street LPs", as recorded in the Endorsement.

---

[1] **Tab A:** Email from the Court and enclosed Endorsement.

Date of the Endorsement

5. It also appears that there is a typographical error in that the date of the Endorsement is stated as November 16, 2022. There is no dispute that the Endorsement was released to the parties on November 22, 2022, and not November 16, 2022.

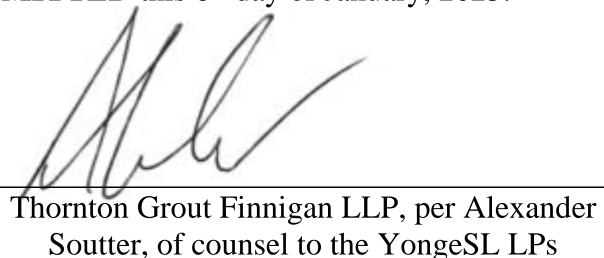
6. The YongeSL LPs have appealed this Court's decision on CBRE's appeal. The date recorded on the Endorsement is relevant to the deadline by which their Notice of Appeal was required to have been filed with this Court.

7. The Proposal Trustee and CBRE take the position that it is not clear that the date recorded on the Endorsement was a typographical error. They advise that:[2]

> the key issue is determining whether the date [recorded on the Endorsement] is indeed a clerical mistake. If it is not and the court was just tardy in sending it out, then I think the proper procedure would be to apply to the Court of Appeal for an extension of the 10-day period. See BIA Rule 31(1).

8. The correct date of an endorsement is the date it is released. The YongeSL LPs respectfully ask the Court to correct the Endorsement such that it is dated November 22, 2022, the date that it was released, and that the form of the Order reflect that date.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of January, 2023.



Thornton Grout Finnigan LLP, per Alexander Soutter, of counsel to the YongeSL LPs

---

[2] **Tab B:** Emails between counsel between December 21, 2022 – January 6, 2023.

TAB A

Linda Wynne

From:	Waltenbury, Lorie (JUD) <Lorie.Waltenbury@ontario.ca>
Sent:	Tuesday, November 22, 2022 12:40 PM
To:	haddon.murray@gowlingwlg.com; elie.laskin@gowlingwlg.com; Alexander Soutter; rschwill@dwpv.com; mightonj.@bennettjones.com; sstothart@goodmans.ca; csipa@mccagueborlack.com
Subject:	YG Limited Partnership and YSL Residences Inc. - BK-21-02734090-0031
Attachments:	BK-31-2734090 2022 ONSC 6548 YG Ltd Ptrshp YSL Residences Endorsement Nov 16 22.pdf

Good afternoon,

With respect to this matter, please find attached the Endorsement of Osborne J.

For tracking purposes, kindly confirm your receipt of the Endorsement by return email to me at your earliest opportunity.

Thank you!

Lorie Waltenbury
Judicial Assistant to:
J.E. Ferguson J., K. Corrick J. and W.D. Black J.
Superior Court of Justice
361 University Avenue
Toronto, ON M5G 1T3
Email: lorie.waltenbury@ontario.ca

CITATION: YG Limited Partnership and YSL Residences Inc., 2022 ONSC 6548
COURT FILE NO.: BK-22-02734090-0031
DATE: 20221116

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

IN THE MATTER of the *Bankruptcy and Insolvency Act*, R.SC. 1985, c.B-3 as amended

AND:

IN THE MATTER of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc.

BEFORE: Osborne J.

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

HEARD: November 7, 2022

ENDORSEMENT

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

a. should the appeal proceed before this Court as a hearing *de novo*, or should the record be limited to those materials considered by the Proposal Trustee at the time [i.e., the materials filed in support of the claim];

b. do limited partners of a limited partnership that has filed an NOI have standing on such an appeal; and

c. should the appeal be allowed in this case?

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

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

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

Background and Context

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

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS

Do the Limited Partners Have Standing?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Should the Appeal Proceed *de Novo*?

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

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

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

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

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

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

<u>Should the Appeal be Allowed?</u>

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

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

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

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

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

a. CBRE entered into a listing agreement with YSL for the YSL Property;

b. CBRE introduced YSL to Concord for the purposes of acquiring the YSL Property;

c. Concord in fact did acquire the YSL Property; and

d. the commission claimed by CBRE is equal to 0.65% of the total consideration paid for the YSL Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[58] For all of the above reasons,

a. the limited partners do not have standing to oppose or the relief sought on this motion by the creditor [CBRE] supported by the Proposal Trustee and the Debtors;

b. in this case, the appeal from the decision of the Proposal Trustee should be considered, and has been considered by me, as a hearing *de novo*, since to do otherwise would result in an injustice to the creditor [CBRE]; and

c. the appeal should be allowed and the motion granted.

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

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

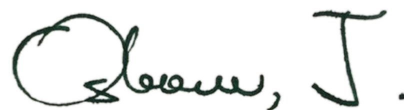
[61] Exercising my discretion pursuant to section 131 of the *Courts of Justice Act*, and considering the factors in Rule 57.01, I have determined that costs should follow the event, and that CBRE and the Proposal Trustee have succeeded on the merits and should be entitled to costs.

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

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

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

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



Osborne, J.

Date: November 16, 2022

TAB B

Linda Wynne

From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: Friday, January 6, 2023 2:05 PM
To: Alexander Soutter; Schwill, Robin
Cc: Shaun Laubman; Jesse Mighton
Subject: RE: YSL re draft order of Justice Osborne [IMAN-CLIENT.FID6731]

Confirmed.

Haddon Murray
Partner
T +1 416 862 3604
haddon.murray@gowlingwlg.com

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Friday, January 6, 2023 1:42 PM
To: Schwill, Robin <rschwill@dwpv.com>; Murray, Haddon <Haddon.Murray@ca.gowlingwlg.com>
Cc: Shaun Laubman <slaubman@lolg.ca>; Jesse Mighton <MightonJ@bennettjones.com>
Subject: RE: YSL re draft order of Justice Osborne [IMAN-CLIENT.FID6731]

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

Hi Haddon,
Can you please also confirm that the only issue in dispute is the date of the endorsement and that you approve of the draft order that I circulated?
Thanks,
Alex

Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca

PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client privilege and contains confidential information intended only for the p
above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this e-mail in error, please notify our office immediately by cal
and delete this e-mail without forwarding it or making a copy.

From: Schwill, Robin <rschwill@dwpv.com>
Sent: Thursday, January 5, 2023 2:15 PM
To: Alexander Soutter <ASoutter@tgf.ca>; Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Cc: Shaun Laubman <slaubman@lolg.ca>; Jesse Mighton <MightonJ@bennettjones.com>
Subject: RE: YSL re draft order of Justice Osborne [IMAN-CLIENT.FID6731]

Alex,

I confirm that the date of the hearing and court file number appear to be typographical errors and the reference to your clients is not how you defined them in your materials.
No other comments on the draft order.

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: January 5, 2023 12:03 PM

To: Murray, Haddon <Haddon.Murray@gowlingwlg.com>; Schwill, Robin <rschwill@dwpv.com>
Cc: Shaun Laubman <slaubman@lolg.ca>; Jesse Mighton <MightonJ@bennettjones.com>
Subject: RE: YSL re draft order of Justice Osborne [IMAN-CLIENT.FID6731]

External Email / Courriel externe

Thanks for responding Haddon and Robin. I'll sign the form on your behalf and submit in order to secure the date. As it is a short hearing I expect it would be virtual – that's what the practice directions call for.

Regarding your other comments to the draft order, I note that we did serve a Notice of Motion in addition to our Responding Motion Record. I'm ok with your other changes, except those regarding the date (obviously). I've updated the draft order (attached) and left the date of the endorsement blank given your positions.

Please take a look at the attached and confirm that, subject to your view on the date of the endorsement, you have no other comments on the draft order. Please also confirm that you agree that: the date of the hearing, the court file number, and the name ascribed to my clients are all typographical errors in the endorsement that require correction.

Thanks,
Alex

Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca
PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client privilege and contains confidential information intended only for the above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this e-mail in error, please notify our office immediately by ca and delete this e-mail without forwarding it or making a copy.

From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: Thursday, January 5, 2023 11:33 AM
To: Schwill, Robin <rschwill@dwpv.com>; Alexander Soutter <ASoutter@tgf.ca>
Cc: Shaun Laubman <slaubman@lolg.ca>; Jesse Mighton <MightonJ@bennettjones.com>
Subject: RE: YSL re draft order of Justice Osborne [IMAN-CLIENT.FID6731]

I agree with Robin's email below – if the Commercial List inadvertently put the wrong date on the endorsement then Justice Osborne can amend it. But if the endorsement was, in fact, issued on the 16th and it's matter of it being slow to get to us, then that is correct date for the Order and the proper procedure is to move before the Court of Appeal.

Haddon Murray
Partner
T +1 416 862 3604
haddon.murray@gowlingwlg.com

From: Schwill, Robin <rschwill@dwpv.com>
Sent: Thursday, January 5, 2023 11:22 AM
To: Murray, Haddon <Haddon.Murray@ca.gowlingwlg.com>; Alexander Soutter <ASoutter@tgf.ca>
Cc: Shaun Laubman <slaubman@lolg.ca>; Jesse Mighton <MightonJ@bennettjones.com>
Subject: RE: YSL re draft order of Justice Osborne [IMAN-CLIENT.FID6731]

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

I can make Jan. 10 at 10 a.m. work if it is virtual. I will have to move some things around.

I think that the key issue is determining whether the date is indeed a clerical mistake. If it is not and the court was just tardy in sending it out, then I think the proper procedure would be to apply to the Court of Appeal for an extension of the 10-day period. See BIA Rule 31(1).

My comments on the draft order are attached – again, the key issue being the date.

Robin Schwill **(he, him)**
T 416.863.5502
rschwill@dwpv.com
Bio | vCard

DAVIES
155 Wellington Street West
Toronto, ON M5V 3J7
dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP
This email may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply email or by telephone. Delete this email and destroy any copies.

From: Murray, Haddon <Haddon.Murray@gowlingwlg.com>
Sent: January 5, 2023 10:26 AM
To: Alexander Soutter <ASoutter@tgf.ca>; Schwill, Robin <rschwill@dwpv.com>
Cc: Shaun Laubman <slaubman@lolg.ca>; Jesse Mighton <MightonJ@bennettjones.com>
Subject: RE: YSL re draft order of Justice Osborne [IMAN-CLIENT.FID6731]

External Email / Courriel externe

Hi Alex, January 10 at 10am works for me (I presume this is virtual).

We will have comments to you on the language in the Order.

Haddon Murray
Partner
T +1 416 862 3604
haddon.murray@gowlingwlg.com

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Thursday, January 5, 2023 9:37 AM
To: Murray, Haddon <Haddon.Murray@ca.gowlingwlg.com>; rschwill@dwpv.com
Cc: Shaun Laubman <slaubman@lolg.ca>; Jesse Mighton <MightonJ@bennettjones.com>
Subject: RE: YSL re draft order of Justice Osborne [IMAN-CLIENT.FID6731]

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

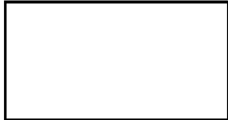
All,

The Court has advised that Justice Osborne has availability on January 10th at 10am. I intend to ask His Honour to approve the form of order previously circulated and correct his endorsement to reflect: the correct date of the hearing, the correct date of release, the correct Court file number and the correct name for my clients.

Please see the attached request form for an appearance before His Honour to settle the form of order that I intend to submit. Please let me know if I can sign on your behalf.

If we can narrow any of the issues relating to the form of order and identify any areas of disagreement, that would be productive.

Thanks,
Alex



Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca
PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client privilege and contains confidential information intended only for the
above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this e-mail in error, please notify our office immediately by ca
and delete this e-mail without forwarding it or making a copy.

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Thursday, December 29, 2022 9:32 AM
To: haddon.murray@gowlingwlg.com; rschwill@dwpv.com
Cc: Shaun Laubman <slaubman@lolg.ca>; Jesse Mighton <MightonJ@bennettjones.com>
Subject: FW: YSL re draft order of Justice Osborne [IMAN-CLIENT.FID6731]

Good morning all,

I am following up on the proposed draft order. Please let me know if you approve of its form and content or have comments. In the new year I intend to ask for a short case conference before His Honour to deal with the two date issues unless I have heard back from the Court by then.

Thanks,
Alex

Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca
PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client privilege and contains confidential information intended only for the
above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this e-mail in error, please notify our office immediately by ca
and delete this e-mail without forwarding it or making a copy.

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Wednesday, December 21, 2022 11:50 AM
To: haddon.murray@gowlingwlg.com; rschwill@dwpv.com
Cc: Shaun Laubman <slaubman@lolg.ca>; Jesse Mighton <MightonJ@bennettjones.com>
Subject: YSL re draft order of Justice Osborne [IMAN-CLIENT.FID6731]

Good morning,

We have prepared a draft order regarding the hearing before Justice Osborne, a copy of which is attached. The draft refers to the date of the hearing as being on September 26th and the date of the order as being November 22nd. Please let me know if you have any comments to the draft order and whether you approve of its form and content.

I have not heard back yet from Justice Osborne's judicial assistant regarding the date of the hearing and date of the order. If I have not heard back from her soon I will seek His Honour's availability for a case conference to deal with the typographical errors in the endorsement and have His Honour issue the Order as we will need it for the purposes of our appeal.

Thanks and happy holidays,
Alex

Alexander Soutter | Associate | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client privilege and contains confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this e-mail in error, please notify our office immediately by calling (416) 304-1616 and delete this e-mail without forwarding it or making a copy. To Unsubscribe/Opt-Out of any electronic communication with Thornton Grout Finnigan, you can do so by clicking the following link: Unsubscribe

The information in this email is intended only for the named recipient and may be privileged or confidential. If you are not the intended recipient please notify us immediately and do not copy, distribute or take action based on this email. If this email is marked 'personal' Gowling WLG is not liable in any way for its content. E-mails are susceptible to alteration. Gowling WLG shall not be liable for the message if altered, changed or falsified.

Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at www.gowlingwlg.com/legal.

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

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, Ontario

CASE CONFERENCE BRIEF OF
THE YONGESL LPs
(Appointment to Settle the Form of an Order)

Thornton Grout Finnigan LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

D.J. Miller (LSO# 34393P)
Tel: (416) 304-0559; Email:djmiller@tgf.ca
Alexander Soutter (LSO# 72403T)
Tel: (416) 304-0595; Email:asoutter@tgf.ca

Lawyers for the YongeSL LPs

Parties served: rschwill@dwpv.com; slaubman@lolg.ca; mightonj@bennettjones.com; haddon.murray@gowlingwlg.com