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

COURT OF APPEAL FOR ONTARIO

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

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

COMPENDIUM OF THE RESPONDENT, CBRE

March 23, 2023

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COURT OF APPEAL FOR ONTARIO

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

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TAB 1

Court File No. BK-21-027334090-0031

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

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

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

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

ORDER

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

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

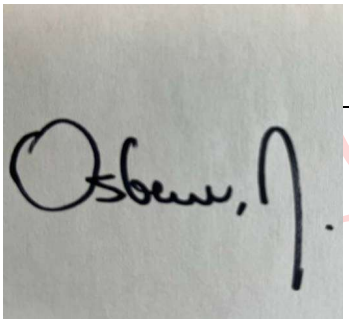
22, 2022, and upon hearing the submissions of counsel for CBRE, YongeSL LPs, the proposal sponsor Concord Properties Developments Corp. and the Proposal Trustee,

1. **THIS COURT ORDERS** that the disallowance of CBRE's claim by the Proposal Trustee is set aside and CBRE's claim is allowed.

2. **THIS COURT FURTHER ORDERS** that the YongeSL LPs pay to CBRE its partial indemnity costs of this motion fixed in the amount of $25,000.00, all inclusive, payable within sixty (60) days of the date of this Order.

3. **THIE COURT FURTHER ORDERS** that the YongeSL LPs pay to the Proposal Trustee its partial indemnity costs of this motion fixed in the amount of $18,000.00, all inclusive, payable within sixty (60) days of the date of this Order.

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



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

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

Court File No. BK-21-027334090-0031

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

ORDER

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

TAB 2

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

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

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

AND:

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

BEFORE: Osborne J.

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

HEARD: September 26, 2022

REVISED ENDORSEMENT

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

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

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

c. should the appeal be allowed in this case?

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

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

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

Background and Context

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

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS

Do the Limited Partners Have Standing?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Should the Appeal Proceed *de Novo*?

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

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

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

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

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

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

Should the Appeal be Allowed?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[58] For all of the above reasons,

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

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

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

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

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

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

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

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

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

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

Osborne, J.

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

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE

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

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

AFFIDAVIT OF CASEY GALLAGHER

I, Casey Gallagher, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

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

Background

2. The applicant, CBRE, is a commercial real estate services firm.

3. I have been a real estate sales representative with CBRE since 2003. I am an Executive Vice President on the National Investment Team at CBRE.

CBRE's Relationship with Cresford and YSL

4. I have known Edward (Ted) Dowbiggin since 2011. Mr. Dowbiggin was the President of Cresford Capital Inc. from 2011 until March 2022. Cresford Capital Inc. is related to Cresford (Rosedale) Developments Inc. ("**Cresford**").

5. I worked primarily with Peter Senst in relation to our work with Cresford. Mr. Senst is another real estate sales representative with CBRE. He advised me that he has known, and worked with, Mr. Dowbiggin since about 1992.

6. Cresford is a real estate developer operating primarily in Ontario. I am aware through Mr. Dowbiggin that, over the last few years, Cresford has had numerous financial difficulties. Cresford was related to corporations that owned development properties located at the following addresses in the city of Toronto:

   a. 587 Yonge Street ("**Clover**");

   b. 484 Yonge Street ("**Halo**");

   c. 33 Yorkville Ave ("**Yorkville**"); and

   d. 363-391 Yonge Street and 3 Gerrard Street East (the "**YSL Property**").

7. CBRE's relationship with Cresford began when CBRE was the exclusive listing brokerage for the vendors that sold the Halo, Yorkville, and the YSL Property to Cresford between 2011 and 2017. I understand from Mr. Dowbiggin that a Cresford related entity purchased Clover directly from the vendor.

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

CBRE's Engagement by Cresford as its Exclusive Listing Brokerage

Initial Meetings

9. In late 2019, Maria Athanasoulis, a prior manager at Cresford, reached out to me about selling Cresford's properties, in light of Cresford's financial difficulties. I met with Ms. Athanasoulis at the Four Seasons in Toronto where she explained that Cresford was thinking about selling the YSL Property. There was no formal agreement at this stage as to CBRE's involvement in the sale. Based on our conversation, I understood that Ms. Athanasoulis was simply looking into options to deal with Cresford's financial difficulties.

10. Following my meeting with Ms. Athanasoulis, Mr. Dowbiggin called me in January 2020 to ask if CBRE would act as exclusive listing brokerage for YSL.

11. On the call, Mr. Dowbiggin explained that Cresford/YSL was in financial trouble and wanted to sell the YSL Property to free up equity for the development of Cresford’s other properties. Because of Cresford/YSL's financial difficulties and sensitives around sales at the time Mr. Dowbiggin did not want CBRE to go "full market" with the YSL Property, which would mean listing the YSL Property for sale

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

12. I agreed that CBRE would act as the exclusive listing brokerage and that I would work with Mr. Senst to find a group of potential purchasers to introduce to YSL. The essential terms of our agreement (the "**Oral Agreement**") were as follows:

    a. CBRE would facilitate introductions between Cresford/YSL and potential purchasers for the YSL Property;

    b. CBRE's commission would be 0.65% of the purchase price of the YSL Property (the "**Commission**"); and

    c. CBRE would earn the Commission if the purchaser of the YSL Property was one of the parties CBRE had introduced.

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

14. During the February Meetings, Mr. Senst and I identified four real estate developers as the best candidates to purchase the YSL Property:

    a. Concord Adex ("**Concord**");

    b. Menkes Developments Ltd. ("**Menkes**");

    c. Lanterra Developments Ltd. ("**Lanterra**"); and

    d. Westbank Corp. ("**Westbank**").

15. Mr. Dowbiggin directed Mr. Senst and me to reach out to these potential purchasers as Cresford/YSL's exclusive listing brokerage.

CBRE Began Work after the Initial Meetings

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

17. CBRE also prepared a form non-disclosure agreement ("**NDA**") for the purposes of the sale of the YSL Property. A copy of the NDA is attached as **Exhibit D** to my affidavit.

18. Around February 13, 2020, CBRE met with Menkes and introduced Mr. Dowbiggin to Alan and Peter Menkes to discuss a potential sale of the YSL Property. CBRE also provided Menkes access to the data room. The email from Tai Kai Li of CBRE to Messrs. Menkes dated February 13, 2020, providing them access to the data room is attached as **Exhibit E** to my affidavit.

19. CBRE arranged a meeting between Mr. Dowbiggin and Christopher Wein, Chief Operating Officer of Lanterra to discuss a potential sale of the YSL Property. This meeting took place on February 20, 2020 at Cresford's office. The meeting invitation listing Ted Dowbiggin, Christopher Wein, and Peter Senst is attached as **Exhibit F** to my affidavit.

20. This meeting resulted in Lanterra executing the NDA prepared by CBRE in respect of the YSL Property. The NDA dated February 20, 2020 and executed by Lanterra is attached as **Exhibit G** to my affidavit.

The Written Agreement and Mandate Letter

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

a. **Exhibit I** – CBRE's mandate letter for the YSL Property dated February 21, 2020 ("**Mandate Letter**"); and

b. **Exhibit J** – the exclusive listing agreement dated February 20, 2020 (the "**Written Agreement**")

22. The Written Agreement provides that YSL would pay CBRE the Commission if CBRE found a purchaser for the YSL Property. Article 4 of the Written Agreement is a "holdover provision" (the "**Holdover Provision**") which provides, among other things, that CBRE is entitled to the Commission if, during the 90 days after the expiration of the Term, negotiations continued which led to the execution of a binding agreement of purchase and sale of the YSL Property with any person or entity introduced by CBRE.

23. The intent of the Holdover Provision is to ensure that CBRE does not lose the Commission simply because negotiations between YSL and a purchaser continued for longer after the term set out in the Written Agreement. Based on my experience with large commercial sales, negotiations between vendors and purchasers can often take months to complete. The Holdover Provision is meant to account for those circumstances.

24. The Mandate Letter identified the potential purchasers that Mr. Senst and I had already discussed with Mr. Dowbiggin: Concord, Menkes, Lanterra, and Westbank. Consistent with Mr. Dowbiggin’s instructions to CBRE at the February Meetings, the Mandate Letter explained that CBRE had already begun work and was in contact with these potential purchasers about purchasing the YSL Property.

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

CBRE continued to market the YSL

26. Following the February 21 Email, CBRE continued to market the YSL Property and introduce Cresford/YSL to potential purchasers, including Concord, the ultimate purchaser.

27. Around mid-February 2020, I reached out to Concord about the YSL Property sale.

28. Around February 23, 2020, I spoke to Gabriel Leung, Vice President of Development at Concord, about the sale of the YSL Property. On the call, I explained CBRE's role as the exclusive listing brokerage for YSL.

29. Following my initial discussion with Mr. Leung, on February 24, 2020, Terry Hui, Chief Executive Officer of Concord, asked if it was possible to meet with a representative of Cresford about purchasing the YSL Property. I emailed Mr. Dowbiggin to relay this information and helped him arrange the meeting. My email to Mr. Dowbiggin on February 24, 2020 is attached as **Exhibit K** to my affidavit.

30. I knew through Mr. Dowbiggin that he was in Mexico at this time so we decided that a conference call would be a good first meeting between Cresford/YSL and Concord.

31. On February 25, 2020, I arranged a conference call between myself, Mr. Senst, Mr. Dowbiggin, and Mr. Leung. This was the first introduction between Cresford/YSL and Concord, as a potential purchaser for the YSL Property. Attached as **Exhibit L** to my affidavit is an email from Mr. Leung dated February 25, 2020 confirming, and thanking CBRE for arranging, the call.

32. Also on February 25, 2020, CBRE sent Mr. Leung CBRE's NDA with respect to the YSL Property. Attached as **Exhibit M** to my affidavit s an email from Tai Kai Li of CBRE to Mr. Leung dated February 24, 2020, attaching the NDA.

33. Around February 26, 2020, CBRE arranged a meeting between Cresford/YSL and Westbank. Attached as **Exhibit N** is an email I sent to Ian Duke (founder of Westbank) dated February 26, 2020 arranging meeting about the YSL Property.

34. On or about February 26, 2020, Mr. Dowbiggin flew to Vancouver in order to meet with Mr. Hui to further discuss the sale of the YSL Property. Mr. Leung confirmed with CBRE that Concord would schedule the meeting between Mr. Hui and Mr. Dowbiggin in Vancouver. Attached as **Exhibit O** to my affidavit is Mr. Leung's email to Vanessa Pinto of CBRE and me dated February 26, 2020.

35. At Concord's advice, CBRE did not attend the meeting in Vancouver because Mr. Leung advised that Concord/YSL would handle meeting. Mr. Leung's email to Ms. Pinto of CBRE dated February 26, 2020 is attached as **Exhibit P** to my affidavit.

36. In addition to arranging the conference call and meeting with Concord, CBRE was also providing Cresford/YSL information about Concord. For example, Mr.

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

37. Following the meeting in Vancouver, I understand from Mr. Dowbiggin that he continued negotiations directly with Concord. I am advised by Mr. Dowbiggin that he began speaking to Cliff McCracken, Senior Vice President at Cresford. I did not expect CBRE to be involved in the negotiations between Cresford/YSL and the potential purchaser, however, Mr. Senst and I remained open to assist negotiations between Cresford and Concord.

38. Despite CBRE not being involved in negotiations between Cresford/YSL and Concord, Mr. Dowbiggin continued to reach out to CBRE about the status of the YSL Property sale as well as introducing Cresford/YSL to other potential purchasers.

39. In early March 2020, Mr. Dowbiggin reached out to me about the current real estate market, which was being affected by the COVID-19 pandemic. I emailed him on March 9, 2020 that there were major shifts in the market. We spoke by phone the next day, on March 10, 2020, to discuss the status of negotiations with Concord and I provided advice on how I thought the market would be affected by the pandemic. Attached as **Exhibit R** to my affidavit is an email I sent to Mr. Dowbiggin confirming the call.

40. In addition, it became clear around late February / early March 2020, that (a) word was getting out in the industry that Cresford was having financial difficulties and

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

a. Around late February, 2020, Julie Di Lorenzo, Chief Executive Officer of Diamante Development, reached out to me about purchasing the YSL Property and requested we provide the site plan application submissions. On February 27, 2020, CBRE provided Ms. Di Lorenzo with the information she requested. Attached as **Exhibit S** to my affidavit is CBRE's email to Ms. Di Lorenzo.

b. On March 5, 2020, Ian McLeod, Vice President of One Properties, emailed me about the Cresford properties. We later spoke and he indicated that One Properties was interested in buying the YSL Property. Mr. McLeod's email is attached as **Exhibit T** to my affidavit.

c. Also on March 5, 2020, Andrew Joyner, Managing Director of Tricon Residential ("**Tricon**"), emailed me about whether YSL was available and if others Cresford properties were as well. We later spoke and he indicated Tricon was interested in purchasing Cresford's properties. Mr. Joyner's email is attached as **Exhibit U** to my affidavit.

d. On March 22, 2020, Robert Hiscox reached out to me on behalf of the Constantine Enterprises Inc. about potentially acquiring the Cresford properties. He noted he was most interested in Yorkville. I relayed this

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

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

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

42. Around September 2020, I played golf with Mr. Dowbiggin and he again confirmed that the negotiations with Concord were ongoing for the purchase of the YSL Property.

Sale of the YSL Property

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

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

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

Non-Payment of Commission / Proposal

45. On November 26, 2021, CBRE sent a demand letter to YSL demanding payment for the Commission. A copy of the demand letter sent by CBRE, with enclosures, is attached as **Exhibit BB** to my affidavit.

46. On January 25, 2022, CBRE's counsel, Gowling WLG, sent a further demand letter to YSL demanding payment for the Commission. Gowling's demand letter is attached as **Exhibit CC** to my affidavit.

47. Around December 22, 2021, CBRE learned that YSL filed a Proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 on May 27, 2021 (the "**Proposal**"). At this time, CBRE had not received notice of the Proposal and did not know that an amended form of the Proposal had been accepted by creditors or approved by the Court.

48. CBRE then proceeded to file a claim in the Proposal proceedings in respect of the Commission which, I understand, the Proposal Trustee disallowed on February 10, 2022.

Concord Confirmed CBRE's Role as Exclusive Listing Brokerage

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

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

DocuSigned by:
Elie Laskin
A62687A47FA54DB...

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

DocuSigned by:
Casey Gallagher
89DC2206BEF3411...

Casey Gallagher

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF CASEY GALLAGHER

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
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Lawyers for the plaintiff, CBRE Limited

Email for party served:
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TAB 4

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

DocuSigned by:
Eli Laskin
A62687A47FA54DB...

A Commissioner for Taking Affidavits

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

BETWEEN

YSL RESIDENCES INC. (the "**Owner**")

-and-

CBRE Limited (the "**Brokerage**")

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

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

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

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

ARTICLE 1 RECITALS

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

ARTICLE 2 TERM

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

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

ARTICLE 3 THE BROKERAGE RENUMERATION

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

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

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

3.3 The Commission shall be payable immediately upon closing of the agreement of purchase and sale referred to in section 3.2(a) above; or upon the completion of the transfer referred to in section 3.2(b) above; notwithstanding that the sale may close, or the transfer may be completed, following the expiry of the Term.

3.4 The Commission payable herein shall be subject to the payment of Harmonized Sales Tax (HST) thereon by the Owner.

ARTICLE 4 HOLDOVER

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

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

5.1 The Owner warrants to the Brokerage that, as at the date of execution of this Agreement, the Owner is not a party to a valid listing agreement with any other real estate brokerage with respect to the sale of the Property. The Owner shall not engage the services of another real estate brokerage during the Term with respect to the sale of the Property.

5.2 The Owner agrees to cooperate with the Brokerage in bringing about the sale of the Property and to refer immediately to the Brokerage all inquiries of anyone interested in the Property. All negotiations are to be through the Brokerage.

5.3 The Owner and the Brokerage hereby acknowledge that this is an exclusive listing and that the Brokerage shall not be required to cooperate with any other brokerage in connection with this exclusive listing. At the sole discretion of the Brokerage, a third-party real estate agent (the "**Cooperating Agent**") may be permitted to cooperate in the sale of the Property and any Cooperating Agent shall comply with the terms of this Agreement.

ARTICLE 6 DUAL AGENCY

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

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

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

ARTICLE 7 GENERAL PROVISIONS

7.1 *Authority.* The Owner declares and certifies that it is the owner of the Property and that it has the authority to enter into and execute this Agreement; and this Agreement, once executed by the Owner, shall be legally binding upon the Owner.

7.2 *Entire Agreement.* This Agreement constitutes the entire agreement between the Owner and the Brokerage, and supersedes all prior discussions, negotiations and agreements, whether oral or written. In case of any inconsistencies between this Agreement and any commission provisions in the agreement of purchase and sale, the provisions of this Agreement shall govern and be paramount.

7.3 *Amendment*. No amendment or alteration of this Agreement shall be valid or binding unless made in writing and signed by the Owner and the Brokerage.

7.4 *Severability*. Should any provision of this Agreement be unenforceable at law, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall continue in force and shall be binding as though such provision had not been included.

7.5 *Interpretation*. The headings inserted in this Agreement are for convenience of reference only and, in no way define, limit or enlarge the scope or meaning of any of the terms and conditions contained in this Agreement. The preamble to this Agreement forms an integral part of this Agreement and shall be used in its interpretation.

7.6 *Jurisdiction*. This Agreement shall be governed by, and shall be subject to, the laws of the Province of Ontario; and the Owner and the Brokerage hereby attorn to the jurisdiction of the courts of the Province of Ontario with respect to any dispute concerning the interpretation, application and enforcement of this Agreement.

7.7 *Counterparts:* This agreement may be executed in counterparts and may be transmitted by email.

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

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

YSL RESIDENCES INC. (the "**Owner**")
Per:

_____
I have authority to bind the company

Print Name: _____

CBRE Limited (the "**Brokerage**")
Per:

_____
I have authority to bind the company

Print Name: _____

TAB 5

This is “Exhibit “ **O** ” referred to in the Affidavit of Casey Gallagher,
sworn remotely before me at the City of Toronto, in the Province of Ontario, on July 21, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Eli Laskin
A62687A47FA54DB...

A Commissioner for Taking Affidavits

From: Gallagher, Casey @ Toronto DT
To: "Ted Dowbiggin"
Subject: Terry
Attachments: image001.jpg

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https://www.vanmag.com/vancouver-magazine-2017-power-50-list
https://globalnews.ca/news/4463964/concord-pacific-ceo-terry-hui-redevelop-northeast-false-creek/

Casey T. Gallagher | Executive Vice President*
CBRE Limited | Brokerage | National Investment Team
145 King Street West, Suite 1100 | Toronto, ON M5H 1J8
T 416-815-2398 | F 416-362-8085
casey.gallagher@cbre.com | www.cbre.com
* Sales Representative

Stay connected! Continue receiving commercial real estate insight

TAB 6

This is “Exhibit “ **R** ” referred to in the Affidavit of Casey Gallagher,
sworn remotely before me at the City of Toronto, in the Province of Ontario, on July 21, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Eli Lastin
A62687A47FA54DB...

A Commissioner for Taking Affidavits

From: Gallagher, Casey @ Toronto DT
To: "Ted Dowbiggin"
Subject: Concord deal
Attachments: image001.jpg

Hi Ted –

We're watching some pretty major shifts in the market right now. Let's connect tomorrow on the status of Concord and your deal.

Best,

Casey T. Gallagher | Executive Vice President*
CBRE Limited | Brokerage | National Investment Team
145 King Street West, Suite 1100 | Toronto, ON M5H 1J8
T 416-815-2398 | F 416-362-8085
casey.gallagher@cbre.com | www.cbre.com
* Sales Representative

Stay connected! Continue receiving commercial real estate insight

TAB 7

This is “Exhibit “ **Z** ” referred to in the Affidavit of Casey Gallagher,
sworn remotely before me at the City of Toronto, in the Province of Ontario, on July 21, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Eli Laskin
A62687A47FA54DB...

A Commissioner for Taking Affidavits

Altus Group

363 Yonge Street

Old Toronto, Downtown Periphery

COMMERCIAL SALE

Residential Land

Location Information

Address	363 Yonge Street 367 Yonge Street 369 Yonge Street 373 Yonge Street 377 Yonge Street 379 Yonge Street 381 Yonge Street 385 Yonge Street
Region	Toronto
Municipality	Old Toronto
Market	GTA
Submarket	Downtown Periphery

Property Information

Land/Lot size	0.92 acres

Record Information

Record type	Commercial transaction
Inventory number	GTA-RLN-2021-07-22-21-1690
Record status	PRC

Transaction Summary

Transaction date	Jul 22, 2021
Price	$168,737,563.00
Sale type	Market
Distress type	
Estate type	Fee Simple
Percent transferred	100%
Product type	Residential Land
Subtype	
Price per unit buildable	$152,565.00
Price per sq.ft. buildable	$167.00
Price per acre	
Residential land use	High Density
Estimated time to develop	Six Months to One Year
Portfolio name	

Price Structure

Cash price	$168,737,563.00	100%
Assumed price	$0.00	
VTB price	$0.00	
Other consideration	$0.00	
Total price	$168,737,563.00	
Percentage transferred	100%	
100% equivalent	$168,737,563.00	

Price structure notes	

Mortgages

Mortgage Type	Subsequent - Demand Debenture	Subsequent - Demand Debenture	Subsequent - Demand Debenture
Primary Lender	Otera Capital Inc.	Westmount Guarantee Services Inc.	
Secondary Lender			
Tertiary Lender			
Interest Rate	The Bank of Nova Scotia Prime Rate + 5.0% per annum	Not Given	Prime Rate plus 2%, per annum
Principle Amount	$750,000,000.00	$150,000,000.00	$100,000,000.00
Calculation Period	Semi-annually		
Payment Frequency			
Payment Amount			
Commencement Date			
Maturity Date			
Instrument Date	Jul 22, 2021	Jul 22, 2021	Jul 22, 2021
Remarks			Lender: 1252707 BC LTD.

Stakeholders

Vendors

Operating name
Cresford Developments

Legal name
YSL Residences Inc.

Vendor profile
Developer

Signing officer
Daniel Casey, ASO

Address
250 Merton Street, Suite 203, Toronto, ON M4S 1B1

Purchasers

Operating name
Concord Adex

Legal name
Concord Properties Developments Corp.

Purchaser profile
Developer

Signing officer
Dennis Au-Yeung, ASO

Address
82 Queens Wharf Road, Toronto, ON M5V 0P2

Brokers

Broker company

Brokerage agent

Legal Structure

Title type	Standard
Legal description	21101-0042: Lots 35 & 36, East Side of Yonge Street, Plan 22A 21101-0044: Part of Lot 34, East Side of Yonge Street, Plan 22A, as described in Instrument No. CT497024 21101-0045: Part of Lot 33, East Side of Yonge Street, Plan 22A, as described in Instrument No. CA310343 21101-0046: Part of Lot 33, East Side of Yonge Street, Plan 22A, as described in Instrument No. CA540937 21101-0047: Part of Lot 32, East Side of Yonge Street, Plan 22A, as described in Instrument No. CA472341 21101-0048: Lot 32 and Part of Lot 31, East Side of Yonge Street, Plan 22A, as described in Instrument No. CA761626 21101-0049: Part of Lot 31, East Side of Yonge Street, Plan 22A, as described in Instrument No. EP126440 21101-0043: Part of Lot 34, East Side of Yonge Street, Plan 22A, as described in Instrument No. OT46105
PINS (PIDS, LINCS)	21101-0042,21101-0045,21101-0047,21101-0048,21101-0049,21101-0044,21101-0046,21101-0043
Lot details	Frontage on Yonge Street: 273.41 feet Frontage on Gerrard Street East: 133 feet (Irregular) : 0 feet
Lot area	0.92 acres | 40,205.88 sqft

Property Notes

General remarks	
Land use details	The City of Toronto Official Plan designates the property Mixed Use Area. The Zoning By-law classifies the property CR 4.0 (c4.0; r1.5) SS1 (x175), a commercial residential classification which permits a maximum gross floor area equal to 4 times the lot area.
Physical details	
Tenancy details	

TAB 8

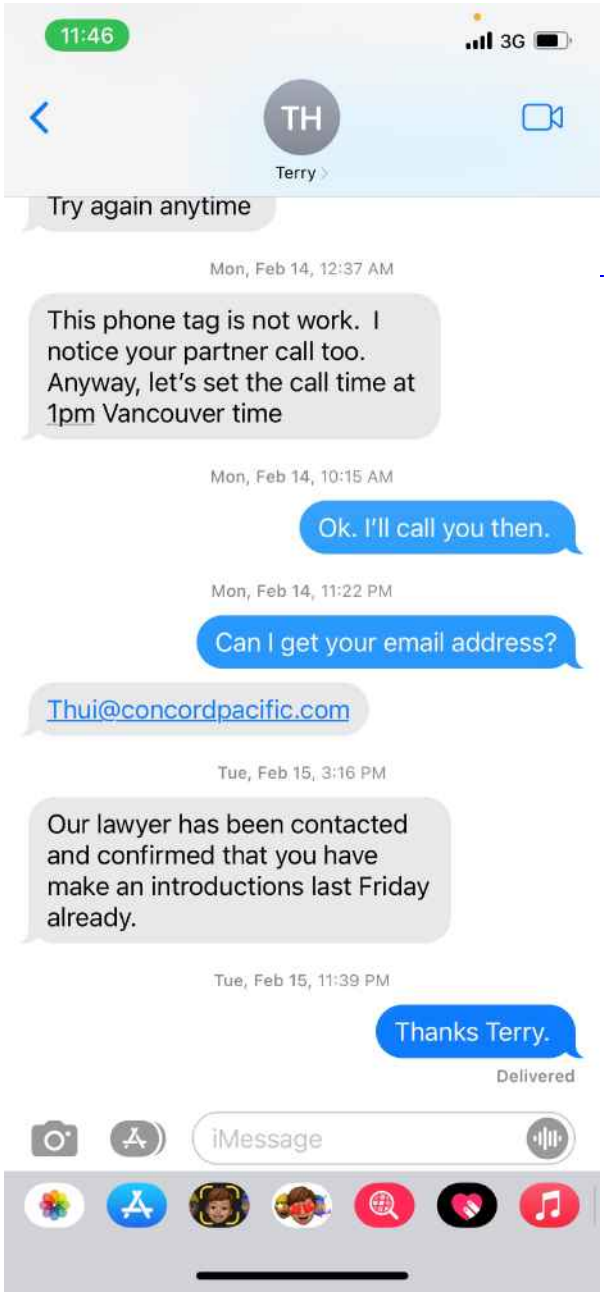
This is "Exhibit "**DD**" referred to in the Affidavit of Casey Gallagher,
sworn remotely before me at the City of Toronto, in the Province of Ontario, on July 21, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Eli Laskin
A62687A47FA54DB...

_____ _____

A Commissioner for Taking Affidavits

[redacted]



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TAB 9

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

ONTARIO
SUPERIOR COURT OF JUSTICE

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

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

AFFIDAVIT OF HEYLA VETTYVEL

I, Heyla Vettyvel, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer with Gowling WLG (Canada) LLP, solicitors and duly authorized agents of CBRE Limited ("**CBRE**") and, as such, have knowledge of the matters contained in this affidavit. Where I have received and relied on information provided to me by others, I verily believe that information to be true.

Background to Proposal Proceeding

2. On April 30, 2021, YSL Residences Inc. ("**YSL**") and YG Limited Partnership (together with YSL, the "**Debtors**") each filed a notice of intention to make a proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"). At that time, KSV Restructuring Inc. was appointed a Proposal Trustee (the "**Proposal Trustee**").

3. The Debtors made numerous proposals, culminating in the second version of the Debtors' Third Proposal dated July 15, 2021 (the "**Third Proposal**"). The Third Proposal is attached as **Exhibit A**.

4. The Third Proposal was approved by the Order of Justice Dunphy on July 16, 2021. The Order of Justice Dunphy dated July 16, 2021 and corresponding Reasons for Decision is attached as **Exhibit B**.

5. The Debtors were the owners and developers of an intended mixed-use office, retail and residential condominium project located at 363-391 Yonge Street and 3 Gerrard Street, Toronto (the "**YSL Property**").

6. The Third Proposal contemplates Concord Properties Developments Corp. (the "**Sponsor**") a related company to Concord Adex, assuming or otherwise satisfying all of the Debtor's secured claims and preferred claims, and establishing a pool of $30,900,000 (the "**Affected Creditor Cash Pool**") to be paid pro-rata to "Affected Creditors", as that term is defined in the Third Proposal. The total consideration from the Sponsor through the Proposal is approximately $169,000,000. In exchange the Sponsor acquired the YSL Property.

7. I understand from reviewing the Proposal Trustee's Fourth Report dated July 15, 2021 and the reasons for Decision of Justice Dunphy dated July 16, 2021 that the total expected distribution in the Proposal to unsecured creditors is approximately 71% to 100% depending on the determination of certain outstanding claims. Attached as **Exhibit C** is Appendix F to the Fourth Report of the Proposal Trustee dated July 14, 2021.

Disallowance of CBRE Claim

8. On January 28, 2022, my colleague, Elie Laskin sent an email to the Proposal Trustee attaching a proof of claim (the "**Proof of Claim**") and an Affidavit sworn by Ms. Laskin on January 28, 2022 (the "**Affidavit**") providing evidence supporting CBRE's claim. Attached as **Exhibit D** is Ms. Laskin's email to the Proposal Trustee dated January 28, 2022 attaching the Proof of Claim and Affidavit.

9. CBRE's claim is based on unpaid commission fees of $1,239,377.40 arising from services performed by CBRE in connection with the sale of the YSL Property pursuant to an exclusive sales listing agreement between CBRE and YSL.

10. On February 1, 2022, the Proposal Trustee responded requesting "a copy of the agreement referenced in the affidavit and a full description of the services rendered by CBRE to YSL. We would like a calculation supporting the amount claimed."

11. Ms. Laskin responded by email the same day providing a copy of the unexecuted agreement dated February 20, 2020 setting out the terms of an Exclusive Sales Listing Agreement (the "**Written Agreement**") and advising the Proposal Trustee that "CBRE was the listing broker for the property and found the purchaser, Concord Adex." With respect to the calculation, Ms. Laskin advised that:

> The property sold for $168,737,563.00. Under the Agreement, CBRE is owed .65% of the Gross Sale Price which is $1,096,794.16. With HST on that ($142,583.24), the total amount owed to CBRE is $1,239,377.40.

This statement was supported by a Realnet record showing that the property had sold for $168,737,563.00.

12. The email chain including the correspondence between Ms. Laskin and the Proposal Trustee on February 1, 2022 is included at **Exhibit D** to this affidavit. The following documents which were attached to Ms. Laskin's February 1, 2022 email are included as exhibits to the affidavit of Casey Gallagher sworn July 21, 2022 (the "**Gallagher Affidavit**") and consequently not included as exhibits to this affidavit:

a. **Exhibit CC to the Gallagher Affidavit** – a demand letter from Gowling WLG on behalf of CBRE to Ted Dowbiggin and Daniel Casey of Cresford Development dated January 25, 2022 attaching:

i. a demand letter from Maya Zor on behalf of CBRE to Mr. Dowbiggin and D. Casey of Cresford Development dated November 26, 2021;

ii. the Written Agreement;

iii. an Invoice from CBRE dated October 13, 2021;

iv. a Mandate Letter from Peter Senst and Casey Gallagher of CBRE to Mr. Dowbiggin of Cresford dated February 21, 2020;

v. a Draft Statement of Claim styled *CBRE Limited v. Cresford Developments Inc. and YSL Residences Inc.*; and

b. **Exhibit Z to the Gallagher Affidavit –** a Realnet search result stating that the YSL Property sold for $168,737,563.00.

13. On February 10, 2022, the Proposal Trustee sent a letter to CBRE attaching a notice of disallowance (the "**Notice of Disallowance**") pursuant to subsection 135(3) of the Bankruptcy and Insolvency Act ("**BIA**"). In the Notice of Disallowance, the Proposal Trustee states:

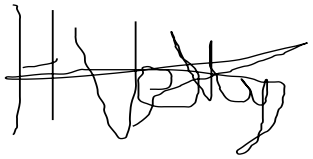
> The Proposal Trustee has disallowed the claim in full as:
>
> - The Agreement is not signed and therefore is not binding;
> - The Sponsor [Concord Properties Developments Corp, the purchaser of the property] advised that at all times it dealt directly with the Companies [YSL Residencies Inc. and YG Limited Partnership Inc.] and that it did not have any dealings with CBRE;
> - The Conveyance does not meet the definition of an event giving rise to a Commission; and
> - To the extent any Commission could apply, which is denied, the Commission was not earned during the Term, or within the 90 calendar days following the expiration of the Term.

14. At no time did the Proposal Trustee contact CBRE's counsel or, to my knowledge, anyone at CBRE, with respect to the issues set out above in respect of the basis on which the Proposal Trustee rejected the claim, including but not limited to:

a. asking any questions about the intention of the parties to form a binding agreement; or

b. informing CBRE of, or asking for a response to, the information that the Proposal Trustee advises it obtained from the Sponsor.

SWORN by video conference by Heyla Vettyvel at the City of Toronto, in the Province of Ontario before me at the City of Toronto on July 22, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(Elie Laskin LSO #80044Q)
(or as may be)

Heyla Vettyvel

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF HEYLA VETTYVEL

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Lawyers for the plaintiff, CBRE Limited

Email for party served:
hfogul@airdberlis.com; dporter@airdberlis.com; bkofman@ksvadvisory.com; mvininsky@ksvadvisory.com; mtallat@ksvadvisory.com; rschwill@dwpv.com;nrenner@dwpv.com; gruberd@bennettjones.com; mightonj@bennettjones.com;jdietrich@cassels.com; mwunder@cassels.com; jbornstein@cassels.com; sthakker@lolg.ca;slaubman@lolg.ca; mgottlieb@lolg.ca; djmiller@tgf.ca; asoutter@tgf.ca; jmaclellan@blg.com; sroy@litigate.com; agrossman@litigate.com; stalebi@litigate.com; george@chaitons.com;jgibson@naymarklaw.com; dnaymark@naymarklaw.com; carmstrong@goodmans.ca;mdunn@goodmans.ca; jbsugar@sugarlawgroup.com; pcho@weirfoulds.com;rsb@botnicklaw.com; duvernet@gsnh.com; jkanji@osler.com; lbruschetta@osler.com;brendanbowles@glaholt.com; johnpaulventrella@glaholt.com;christopher.statham@devrylaw.ca

TAB 10

TAB 2

Bankruptcy and Insolvency Act ("Act")

Proof of Claim

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

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

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

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

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

1. That I am a creditor of the above-named debtor (or that I am lawyer (state position or title) of CBRE Limited (name of creditor)).

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of bankruptcy, (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 30th day of April, 2021, and still is, indebted to the creditor in the sum of $, as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)

4. (Check and complete appropriate category.)

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

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

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

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

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

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

5. That, to the best of my knowledge, I am (or the above-named creditor is) (or am not or is not) related to the debtor within the meaning of Section 4 of the Act, and have (or has) (or have not or has not) dealt with the debtor in a non- arm's-length manner.

6. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of Subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of Section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Subsection 2(1) of the Act: (Provide details of payments, credits and transfers at undervalue.)

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

Witness

Creditor Authorized Signatory

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

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

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

DIRECTIONS FOR COMPLETION OF THIS FORM ARE ON THE REVERSE SIDE

CONDITIONAL CLAIM ADDENDUM

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

a) One or more contractual conditions in your arrangements with the Company were not satisfied as at April 30, 2021 (referred to in the Proposal as "Conditional Claim Conditions");

b) You are undertaking to complete all Conditional Claim Conditions and provide proof of such completion by no later than the Conditional Claim Completion Deadline; and

c) You understand that the failure to complete all Conditional Claim Conditions by the Conditional Claim Completion Deadline will result in your Claim being fully, finally and irrevocably disallowed.

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

_____

Creditor Authorized Signatory

CHECKLIST FOR PROOF OF CLAIM

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

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

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

General

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

Notes:

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

Paragraph 1

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

Paragraph 3

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

Paragraph 4

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

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

Paragraph 5

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

Paragraph 6

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

Conditional Claim Addendum

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

APPOINTING PROXY

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

General

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

Notes:

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

TAB 11

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

ONTARIO
SUPERIOR COURT OF JUSTICE

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

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

AFFIDAVIT OF EDWARD DOWBIGGIN

I, Edward (Ted) Dowbiggin, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President of Cresford Capital Inc., which is related to Cresford (Rosedale) Developments Inc. ("**Cresford**"). I was the President of Cresford Capital Inc. from 2011 until March 2022. Cresford is related to the corporations that are the parents (collectively, the "**Cresford Group**") of YG Limited Partnership and YSL Residences Inc. ("**YSL**"), and therefore, I have knowledge of the matters contained in this affidavit. Where I have received and relied on information provided to me by others, I verily believe that information to be true.

2. Cresford is a real estate developer operating primarily in Ontario. The Cresford Group incorporated companies for the purposes of developing properties. YSL was incorporated for the purposes of developing the property located at 363-391 Yonge Street and 3 Gerrard Street East (the "**YSL Property**").

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

My Background

4. I began working at Cresford Capital Inc. in 2002 and became the President in 2011 until March 2022. I am no longer involved in the Cresford Group.

5. I have worked in the real estate industry for over 50 years. I began around 1970 as a real estate broker, largely selling new homes. Around 1984, I started my own brokerage which focused on selling commercial land for office and retail development. From about 1991 to 1993, I worked for Canada Deposit Insurance Corporation. From about 1993 to 2000, I worked for TD Securities selling mortgage-backed securities. And around 2000, I worked with the Real Estate Transaction group at Deloitte.

6. I have been involved in approximately 500 real estate deals since I began working in the real estate industry.

Relationship with CBRE

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

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

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

CBRE's Involvement in the Sale of the YSL Property

9. In January of 2020, I called Mr. Gallagher to ask if CBRE would be the exclusive listing brokerage for the sale of the YSL Property. I explained that Cresford was experiencing financial difficulties and wanted to free up the equity it had in the YSL Property. I asked CBRE to prepare a list of potential purchasers that they could introduce Cresford/YSL to who would be good candidates to purchase the YSL Property.

10. I contacted Mr. Gallagher both because CBRE had prior experience with the YSL Property, having sold it to Cresford/YSL, and because I believe they were the two best real estate sales representatives in Toronto to find a buyer for a development property in the price range of the YSL Property.

YSL's Agreement with CBRE

11. Mr. Gallagher agreed that CBRE would be the exclusive listing brokerage for the YSL Property during my initial call with him in January 2020. I directed CBRE to begin reaching out to potential purchasers on behalf of Cresford/YSL.

12. There was no written agreement between YSL and Cresford at that time. However, based on our discussions and my experience in the real estate industry (including my understanding of with the standard terms on which real estate brokers like CBRE are engaged), I understood that we had an agreement (the "**Oral Agreement**") that CBRE would introduce Cresford/YSL to potential purchasers for the YSL Property and, should one of those purchasers ultimately acquire the property, CBRE would be entitled to a commission of 0.65% of whatever consideration was given for the property (the "**Commission**"). The Commission would be owed to CBRE if the purchase was related to their introduction.

13. I understood that CBRE's entitlement to Commission was not dependent on whether the YSL Property sold in a certain time frame. The value provided by CBRE was the introduction of Cresford/YSL to a purchaser, not selling within a set period of time.

14. Based on my experience in the industry, the Commission was typical for a deal of similar nature to the YSL Property. In particular, with respect to the entitlement to the Commission, it was common for negotiations to take place over months for deals of this size. This was the case with the YSL Property.

15. I considered the Oral Agreement to be binding and it was clear in my mind that CBRE was engaged as YSL's exclusive listing brokerage.

16. In February 2020, after I had an initial call with Mr. Gallagher, I went to the CBRE office to further discuss the sale of the YSL Property and in particular, CBRE's marketing approach. I met with Mr. Gallagher and Mr. Senst and who suggested that CBRE introduce YSL to Concord Adex ("**Concord**"), Menkes Developments Ltd. ("**Menkes**"), Lanterra Developments Ltd. ("**Lanterra**"), and Westbank Corp. ("**Westbank**").

17. On February 21, 2020, CBRE sent me an email attaching a contract (the "**Written Agreement**") and mandate letter ("**Mandate Letter**") for the engagement of CBRE as YSL's exclusive listing brokerage. The email and attachments are Exhibits H-J of the Affidavit of Casey Gallagher (the "**Gallagher Affidavit**").

18. Although I reviewed the Written Agreement and Mandate Letter when I received them, I did not sign the Written Agreement. My failure to execute the Written Agreement was inadvertent. I was very busy at the time dealing with Cresford's operations and financial difficulties and the Written Agreement was not a high priority as it merely confirmed and expanded on the terms of the Oral Agreement.

CBRE Introduced YSL to Concord

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

20. Because I was in Mexico at this time, CBRE proposed an initial conference call introduction between Concord and YSL.

21. CBRE arranged the call that took place on February 25, 2020 between myself, Gabriel Leung (Concord's Vice President, Development), and Mr. Gallagher. The purpose of the call was to discuss Concord's potential purchase of the YSL Property. A copy of the email where CBRE arranged the introduction call is attached as Exhibit L to the Gallagher Affidavit.

22. After this introduction call, I flew from Mexico to Vancouver in order to meet with Mr. Hui in order to discuss the potential deal between YSL and Concord. CBRE organized the meeting.

23. Following the meeting, I began working directly with Concord (largely, with Gabriel Leung and Cliff McCracken, Concord's Senior Vice President). I did not expect CBRE to be involved in this stage of Cresford/YSL's relationship with Concord.

24. Although the proposed structure and mechanism of the deal between Cresford and Concord went through many iterations, negotiations were ongoing from the point of Concord's introduction until Cresford and Concord agreed that the property would be sold through a proposal made pursuant to section 50(2) of the *Bankruptcy and Insolvency Act* ("***BIA***"). But for CBRE introducing Concord, the sale would not have occurred.

25. Despite Cresford/YSL working directly with Concord after CBRE's introduction, I continued to reach out to Mr. Gallagher and Mr. Senst to get advice about the sale to Concord and the market conditions generally:

a. Around March 10, 2020, I had a call with Mr. Gallagher and Mr. Senst and they provided information about the market generally in order to inform YSL's negotiations with Concord. A copy of an email prior to that meeting is attached as Exhibit R to the Gallagher Affidavit; and

b. I had another call with Mr. Gallagher and Mr. Senst on May 15, 2020 about the status of the deal with Concord. The calendar invitation for that meeting is attached as Exhibit Y to the Gallagher Affidavit.

26. In accordance with our agreement, CBRE also introduced YSL (by way of either arranging meetings or connecting via email) to at least seven[1] other potential purchasers for the YSL Property.

CBRE is Entitled to the Commission

27. On April 30, 2021, YSL and YG Limited Partnership filed notices of intention to make a proposal pursuant to section 50(1) of the BIA (the "**Proposal Proceedings**"). I understand that CBRE filed a claim in the Proposal Proceedings in respect of the Commission.

28. On February 1, 2022, Dave Mann, of Cresford, responded to an email from Mitch Vininsky of KSV Restructuring Inc., the proposal trustee ("**Proposal Trustee**"), requesting information regarding CBRE's Claim. Mr. Mann informed the Proposal Trustee that YSL did have an agreement with CBRE on the fees to be paid to CBRE, CBRE introduced Concord, and CBRE performed services throughout the

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

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

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

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

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

EDWARD (TED) DOWBIGGIN

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF EDWARD DOWBIGGIN

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Brendan Bowles - brendanbowles@glaholt.com
Christopher Statham - christopher.statham@devrylaw.ca

TAB 12

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

ONTARIO
SUPERIOR COURT OF JUSTICE

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

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

SUPPLEMENTARY AFFIDAVIT OF HEYLA VETTYVEL

I, Heyla Vettyvel, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer with Gowling WLG (Canada) LLP, solicitors and duly authorized agents of CBRE Limited ("**CBRE**") and, as such, have knowledge of the matters contained in this affidavit. Where I have received and relied on information provided to me by others, I verily believe that information to be true.

2. This affidavit is a supplement to my initial affidavit, sworn July 22, 2022 (the "**Initial Affidavit**"). Capitalized terms that are not defined in this affidavit have the meaning set out in the Initial Affidavit.

3. At paragraph 13 of my Initial Affidavit sworn July 22, 2022 I referred to the Notice of Disallowance of the Proposal Trustee dated February 10, 2022. The Notice of Disallowance is attached at **Exhibit A** to this supplementary affidavit.

4. Attached as **Exhibit B** to this affidavit is an email from Jesse Mighton, counsel to Concord, to counsel to CBRE, the Cresford Group and the Proposal Trustee dated February 11, 2022, stating that Mr. Hui of Concord "acknowledges that CBRE made an initial introduction to Ted Dowbiggin (Cresford)".

SWORN by video conference by Heyla Vettyvel at the City of Toronto, in the Province of Ontario before me at the City of Toronto on July 27, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Elie Laskin
BAAD7B19897B4D2...

Commissioner for Taking Affidavits
(Elie Laskin LSO #80044Q)
(or as may be)

DocuSigned by:
Heyla Vettyvel
8BEBB2814D694A0...

Heyla Vettyvel

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

SUPPLEMENTARY AFFIDAVIT OF HEYLA VETTYVEL

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TAB 13

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

DocuSigned by:
Chie Loskin
BAAD7B19897B4D2...

A Commissioner for Taking Affidavits

From: Jesse Mighton
To: Laskin, Elie
Cc: Vettyvel, Heyla; Harry Fogul; Mitch Vininsky; Schwill, Robin; David Gruber
Subject: RE: Acknowledgement re CBRE / 363 Yonge Sale to Concord [BJ-WSLegal.FID5464265]
Date: February-11-22 2:53:57 PM
Attachments: image001.png

Hi Elie, we have discussed your email below with Mr. Hui. While he acknowledges that CBRE made an initial introduction to Ted Dowbiggin (Cresford), he does not have any knowledge of a brokerage agreement or similar arrangement between Cresford and CBRE relating to the project formerly known as Yonge Street Living (YSL) residences.

We have copied the Proposal Trustee and Cresford's counsel on this email to provide all parties with visibility.

Sincerely,

Jesse Mighton
***Associate,* Bennett Jones LLP**
T. 416 777 6255 | F. 416 863 1716
BennettJones.com

From: Laskin, Elie <Elie.Laskin@gowlingwlg.com>
Sent: Thursday, February 10, 2022 9:43 AM
To: Jesse Mighton <MightonJ@bennettjones.com>
Cc: Vettyvel, Heyla <Heyla.Vettyvel@gowlingwlg.com>
Subject: Acknowledgement re CBRE / 363 Yonge Sale to Concord

Hi Mr. Mighton,

I hope you are well. We are counsel to CBRE Limited. Quite a while ago, CBRE entered into a brokerage agreement with YSL Residences Inc. and Cresford Developments Inc. for the sale of the attached property. I understand you represented the buyer, Concord Adex.

You may know YSL Residences Inc. and Cresford Developments Inc. are currently in bankruptcy proceedings. CBRE is seeking to recover the commission fee from the sale of the property, which remains unpaid. I understand that Ted Dowbiggin (Cresford) confirmed CBRE's role with Terry Hui (Concord). However, we were asked to reach out to you for formal acknowledgment of CBRE's role as the broker on this deal. I'll then pass this acknowledgement along to the trustee who will decide whether to accept CBRE's claim.

Please let me know if you have any questions. I hope to hear from you soon.

Thanks,

Elie

Elie Laskin
Associate
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M + 1 647 966 1217
elie.laskin@gowlingwlg.com

TAB 14

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

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

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

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

AFFIDAVIT OF CHRIS WAI

I, CHRIS WAI, of the City of Vancouver, in the Province of British Columbia, make oath and say as follows:

1. I am a director of SixOne Investment Ltd., and as such have knowledge of the matters contained in this affidavit. The facts stated in this affidavit are within my personal knowledge. Where I do not have direct knowledge of the matters set out below, I have stated the source of my knowledge and believe it to be true.

The Limited Partners

2. YG Limited Partnership and YSL Residences Inc. (together, the "**Debtors**") were, respectively, the beneficial and registered owners of certain lands in Toronto which were intended to be developed into a mixed-use condominium building (the "**YSL Project**").

3. YG Limited Partnership is comprised of three kinds of partners:

   (a) a general partner, 9615334 Canada Inc., a member of the Cresford Group;

(b) holders of Class A Preferred Units (the "**Class A LPs**"); and

(c) the holder of Class B Units (formerly a member of the Cresford Group).

4. The Class A LPs are as follows:

Limited Partners	**Number of Class A Preferred Units**	**Capital Contribution**
The "YongeSL LPs"		
YongeSL Investment Limited Partnership	7,100	$7.1 million
2124093 Ontario Inc.	500	$0.5 million
SixOne Investment Ltd.	1,000	$1.0 million
E&B Investment Corporation	500	$0.5 million
TaiHe International Group Inc.	1,000	$1.0 million
The "Other Class A LPs"		
Chi Long Inc.	700	$0.7 million
8451761 Canada Inc.	2,000	$2.0 million
2504670 Canada Inc.	2,000	$2.0 million
Total:	**14,800**	**$14.8 million**

5. The YongeSL LPs represent approximately two-thirds (by value and number) of the Class A LPs. The Class A LPs collectively advanced the principal amount of $14.8 million to YG Limited Partnership in exchange for their Class A Preferred Units.

6. Pursuant to the YG Limited Partnership partnership agreement, the Class A LPs are entitled to a preferred return from the proceeds of the YSL Project after its creditors are paid.

Background to this Proceeding

7. In April 2021, the Debtors filed Notices of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act*.

8. KSV Restructuring Inc. was appointed as the Debtors' proposal trustee (in that capacity, the "**Proposal Trustee**").

9. The Debtors made their proposal in May 2021, which they amended twice in June 2021. The proposal, as amended, was approved by the Debtors' creditors in June 2021.

10. The Class A LPs opposed the approval of the Debtors' amended proposal on the basis that it was not made in good faith and was designed to prefer the interests of the Cresford Group.

11. Justice Dunphy agreed and refused to approve the proposal (*YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178). His Honour did, however, permit the Debtors to file a further amended proposal that addressed the concerns he identified in his reasons for refusing to allow the proposal. The Debtors did file such a further amended proposal (the "**Proposal**"), which Justice Dunphy approved (*YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206).

12. Generally, the Proposal provided for the transfer of the YSL Project lands to another developer, Concord (the "**Proposal Sponsor**"), the payment in full or assumption of secured and other priority claims, and the payment by the Proposal Sponsor of $30.9 million. The Proposal provided that those funds would be distributed to the Debtors' unsecured creditors. If, after distribution of such amount to the unsecured creditors, there remains a surplus ("**Surplus**"), that Surplus will be distributed to the Class A LPs.

13. I understand that subject to the resolution of 3 outstanding claims (including CBRE's claim) in a manner favourable to the Debtors' estates, there will be amounts available to distribute to the Class A LPs. Depending on the resolution of these claims, such amounts

may be sufficient to repay the capital contributions of the Class A LPs in full, plus some return on investment.

14. The YongeSL LPs support the disallowance of CBRE's claim against the Debtors in this proceeding.

SWORN before me via videoconference by CHRIS WAI, stated as being located in the City of Vancouver, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, this 19th day of August, 2022, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely.*

Commissioner for Taking Affidavits, etc.

Alexander Soutter
Barrister & Solicitor

CHRIS WAI

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

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

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

Proceeding commenced at **Toronto**

AFFIDAVIT OF CHRIS WAI

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Lawyers for the YongeSL LPs

TAB 15

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

September 12, 2022

Contents

Appendices

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

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

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

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

SEPTEMBER 12, 2022

1.0 Introduction

1. This report ("Report")[1] is filed by KSV Restructuring Inc. ("KSV") in its capacity as Proposal Trustee (the "Proposal Trustee") in connection with Notices of Intention to Make a Proposal (the "NOIs") filed on April 30, 2021 (the "Filing Date") by YG Limited Partnership (the "Partnership") and YSL Residences Inc. ("Residences", and together with the Partnership, the "Companies"), pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA").

2. On May 14, 2021, the Ontario Superior Court of Justice (Commercial List) (the "Court") issued an order (the "Consolidation Order") procedurally and substantively consolidating the NOIs (the "NOI Proceedings") for the purpose of simplifying the administration of the NOI Proceedings, including filing a joint proposal and convening a single meeting of creditors.

3. The principal purpose of the NOI proceedings was to create a stabilized environment to allow the Companies to present a proposal to their creditors that provides them with a recovery greater than they would have received in a bankruptcy or alternative insolvency process.

4. On May 27, 2021, the Companies filed a proposal with the Official Receiver in accordance with Section 62(1) of the BIA (the "Proposal"). On June 3, 2021, the Companies filed an amended proposal (the "First Amended Proposal") and on June 15, 2021, the Companies filed a further amended proposal (the "Second Amended Proposal").

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

5. At a meeting of creditors held on June 15, 2021 (the "Creditors' Meeting"), the creditors voted to accept the Second Amended Proposal.

6. On June 23, 2021, the Companies sought Court approval of the Second Amended Proposal. Pursuant to the Reasons for Interim Decision of the Court made on June 29, 2021, as amended on July 2, 2021 (the "Interim Decision"), the Court did not approve the Second Amended Proposal.

7. A Court hearing for approval of the Second Amended Proposal was scheduled for July 9, 2021 to allow the Companies time to address the Court's concerns set out in the Interim Decision and, should they wish, present a further amended proposal for the Court's consideration. A copy of the Interim Decision is provided in Appendix "A".

8. Shortly before the motion on July 9, 2021, Concord Properties Developments Corp., the sponsor of the proposals filed in this proceeding (the "Sponsor"), served a further amended proposal (the "Third Amended Proposal") and an offer of distributions to be made outside of the Third Amended Proposal by the Sponsor to any equityholders[2] of the Partnership (the "Equityholders") willing to accept such Offer (the "Equity Offer").

9. Pursuant to Section 3.03 of the Second Amended Proposal and the Third Amended Proposal, the Companies required the consent of the Proposal Trustee to file the Third Amended Proposal. As the Third Amended Proposal was provided for the first time to the Proposal Trustee just prior to the motion on July 9, 2021, the Proposal Trustee did not have the time it required to review the Third Amended Proposal prior to that hearing. Accordingly, the motion was adjourned to July 16, 2021 to provide the Proposal Trustee with the opportunity to consider the Third Amended Proposal and for the Proposal Trustee to make a recommendation to the Court.

10. The Proposal Trustee's Fourth Report to Court dated July 15, 2021 set out, among other things, the material changes between the Second Amended Proposal and the Third Amended Proposal, further changes to the Third Amended Proposal (the "Final Proposal"), and the Proposal Trustee's recommendation to the Court that it approve the Final Proposal.

11. Pursuant to Reasons for Decision dated July 16, 2021, as amended on July 27, 2021 (the "Decision"), the Court approved the Final Proposal. A copy of the Decision is provided in Appendix "B".

12. No inspectors were appointed in the Final Proposal.

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

1.1 Purposes of this Report

1. The purposes of this Report are to:

   a) provide background information about the Companies and the Final Proposal;

   b) summarize the claim of CBRE Limited ("CBRE") in these proceedings, including the open and transparent manner in which it has been determined by the Proposal Trustee; and

   c) recommend that the Court issue an order allowing the CBRE claim as filed in the amount of $1,239,377.40.

1.2 Currency

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

1.3 Definitions

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

2.0 Background

1. Information regarding the Companies, the real estate project that was being developed by the Companies known as Yonge Street Living Residences (the "YSL Project"), the history of these proceedings, the receivership application filed by the first mortgagee of the YSL Project in advance of these proceedings, Timbercreek Mortgage Servicing Inc. ("Timbercreek"), that was pending against the Companies, applications by certain of the Partnership's limited partners (the "LPs") and the prior proposals filed in this proceeding is included in the Proposal Trustee's reports to Court and other materials filed with the Court. Copies of all publicly available information in these proceedings can be found on the Proposal Trustee's case website at https://www.ksvadvisory.com/insolvency-cases/case/yg-limited-partnership.

2. The Companies are part of the Cresford Group of Companies ("Cresford"), a Toronto-based real estate developer. In addition to the NOI Proceedings, several of Cresford's other developments have been subject to restructuring proceedings.

3. Residences was the registered owner of the real properties municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (the "Real Property"), acting as a bare trustee and nominee of, for and on behalf of the Partnership.

4. The Partnership was the beneficial owner of the Real Property and was formed for the purpose of developing the Real Property into a mixed-use office, retail and residential condominium development comprised of approximately 1,100 residential units, 190,000 square feet of commercial/retail/institutional space and 242 parking spaces known as the YSL Project.

5. As a result of the successful implementation of the Final Proposal, title to the Real Property was transferred to an affiliate of the Sponsor.

6. In the context of Cresford's various restructuring proceedings, the credibility and availability of Cresford's management, and the reliability of its books and records have been significant issues. As a result, the Proposal Trustee has been involved in addressing the various disputed claims filed in the NOI Proceedings, where in most proposal proceedings the debtor company takes a more active role in the claims process.

2.1 Applications by the Limited Partners and Senior Mortgagee

1. Prior to the Filing Date, certain of the LPs commenced applications (collectively, the "LP Applications") seeking Orders declaring that, among other things:

   a) the General Partner, 9615334 Canada Inc. (the "GP"), is terminated as general partner of the Partnership;

   b) any agreements entered into by the GP with the Sponsor are null and void; and

   c) the GP breached its duty of good faith to the LPs.

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

2. On June 1, 2021, the Court heard motions by the LPs to, among other things, lift the stay of proceedings pursuant to Section 69(1) of the BIA and to authorize the LPs to bring the LP Applications. Pursuant to an endorsement made on the same day, the Court, among other things, set a litigation timetable for a hearing scheduled for June 23, 2021 where certain of the LPs' arguments could be made at the same time that the Companies sought approval of the Amended Proposal, assuming that the Amended Proposal had been accepted by the Affected Creditors voting at the Meeting, which they did on June 23, 2021.

3. In advance of the Proposal, the Companies were in default of their loan agreement with Timbercreek. Pursuant to an agreement dated March 26, 2020 among Timbercreek, the Companies and two Cresford entities (the "Forbearance Agreement"), Timbercreek agreed to, among other things, forbear from enforcing its security against the Real Property. Timbercreek subsequently brought a motion to appoint a receiver on November 13, 2020. The receivership application was adjourned several times and remained pending when the NOIs were filed. On several occasions, Timbercreek scheduled an application for the appointment of a receiver if the Companies' NOI Proceedings were unsuccessful.

3.0 Final Proposal

1. The Final Proposal provides for distributions to the Affected Creditors from the Affected Creditor Cash Pool, being a cash pool funded by the Sponsor in the amount of $30.9 million to be distributed *pro rata* to Affected Creditors with Affected Creditor Claims. The Final Proposal also provides that if any residual amount remains in the Affected Creditor Cash Pool following the final distributions to Affected Creditors, such residual funds, if any, would be held by the Proposal Trustee "pending receipt of a duly issued direction from all of the holders of Class A Preferred Units of YG LP, or otherwise by order of the Court". A copy of the Final Proposal is provided in Appendix "C".

2. On July 22, 2021, the Sponsor funded the Affected Creditor Cash Pool. The corporate transactions summarized in Section 6.01 of the Final Proposal were completed on the same day and resulted in, among other things, title to the YSL Project being transferred to an entity related to the Sponsor.

4.0 Creditors

1. Sixty-five (65) claims have been filed against the Companies, including claims from trade creditors, real estate brokerages, professional advisors and former employees[3]. The status of the claims filed in this proceeding is summarized in the table below.

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

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

2. Of the claims in the table, the following claims remain unresolved, as more fully discussed below (the "Disputed Claims"):

   a) Ms. Athanasoulis;

   b) CBRE; and

   c) Mr. Zhang.

3. On March 24, 2022, the Proposal Trustee paid an interim distribution of 70¢ on the dollar to the creditors with Proven Claims.

4. Since the interim distribution, the Proposal Trustee has resolved various claims, including complex claims filed by four former employees of Cresford (the "Former Employees"), including common employer claims that each Former Employee filed against the Companies. The Proposal Trustee negotiated settlements of these claims, which were approved by the Court on May 24, 2022.

5. The Proposal Trustee paid a catch-up distribution to the Former Employees and other creditors with Proven Claims, except those who continue to have Disputed Claims and four creditors whose claims were recently resolved.

6. The Proposal Trustee has reserved the balance of the Affected Creditor Cash Pool until the Disputed Claims can be determined. The Affected Creditor Cash Pool is approximately $20.5 million.

7. The Sponsor took an assignment of 28 of 65 Affected Creditor claims, totalling approximately $12 million. As assignee, the Sponsor participated in the interim distribution and has received approximately $8.4 million of the total amounts distributed.

8. The table below shows the range of outcomes to stakeholders depending on the resolution of the Disputed Claims. The table illustrates that resolution of the Disputed Claims will determine whether there will be any distributions to the LPs.

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

5.0 Status of the CBRE Claim

1. CBRE, a real estate brokerage, filed a proof of claim dated January 28, 2022 in the amount of approximately $1.2 million. The claim relates to an invoice submitted by CBRE to "Cresford" dated October 13, 2021 and refers to services rendered by CBRE as the exclusive listing broker for the YSL Project pursuant to an unsigned listing agreement between CBRE and Residences (the "Listing Agreement").

2. The Proposal Trustee disallowed CBRE's claim in full for the reasons set out in its Notice of Disallowance of Claim dated February 10, 2022 (the "CBRE Notice"). A copy of the CBRE Notice is provided as Appendix "D".

3. One of the key issues in respect of CBRE's claim is the applicability of the "holdover clause" in the Listing Agreement, which reads as follows:

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

4. The Term expired on August 20, 2020, and the Final Proposal was approved on July 16, 2021, well outside the 90-day period. Accordingly, the holdover provision would only be applicable if "*negotiations continue, resume or commence*" with the Sponsor within such 90-day period and the Sponsor was someone "*to whom the Property was introduced or submitted, …, or to whom the Owner was introduced … prior to the expiration of the Term*".

5. The CBRE Notice was issued based on, among other things, representations the Proposal Trustee received from the Sponsor that the Sponsor dealt directly with Cresford and that it did not have any dealings with CBRE in respect of the YSL Project.

6. Requiring CBRE to respond to the Sponsor's representations would have involved the Proposal Trustee receiving affidavit evidence from CBRE and, in light of that, possibly responding to affidavit evidence from the Sponsor.

7. Given the nature of these proceedings with the history of other stakeholders claiming to have information relevant to the Proposal Trustee's assessments, the Proposal Trustee determined that the best and most transparent way of determining CBRE's claim, based on the information available to it at the time, was to disallow the claim on the basis set out in the CBRE Notice and to permit CBRE to file a full evidentiary response by way of an appeal on notice to all. In this way, all parties would be able to review and respond to the evidence as they saw fit once on one complete record.

8. On February 11, 2022, following the issuance of the CBRE Notice, counsel for the Sponsor copied the Proposal Trustee on email correspondence with counsel for CBRE. In that correspondence, the Sponsor stated that while CBRE had introduced the Sponsor to Cresford, the Sponsor had no "*knowledge of a brokerage agreement or similar arrangement between Cresford and CBRE relating to the project formerly known as Yonge Street Living (YSL) residences*".

9. On March 10, 2022, CBRE served its notice of motion to appeal the CBRE Notice on the service list in these proceedings with scheduling to be dealt with at a case conference on March 16, 2022. Parties intending on taking a position on CBRE's motion were invited to attend at the case conference.

10. The case conference was held before Mr. Justice Cavanagh, at which the LPs' counsel attended. Mr. Justice Cavanagh scheduled the appeal to be heard on September 26, 2022.

11. The Proposal Trustee then canvassed with CBRE's counsel whether the dispute could be dealt with earlier by means of an arbitration, but no agreement could be reached on the terms for doing so.

12. On July 25, 2022, CBRE served its complete motion record containing its affidavit evidence regarding CBRE's role related to the YSL Project and its introduction to the Sponsor. CBRE's position is supported by an affidavit of Ted Dowbiggin, the President of Cresford Capital Inc. CBRE's evidence illustrates an ongoing dialogue between Concord and Cresford, after such introduction, that resulted in the transaction implemented through the Final Proposal. CBRE also provided evidence from Mr. Dowbiggin that Cresford dealt with CBRE on the basis that the listing agreement was in force, notwithstanding that it was never signed. In the Proposal Trustee's view, the ongoing dialogue between Cresford and the Sponsor, as well as Cresford's and CBRE's conduct related to the listing agreement, suggests that the holdover provisions apply and therefore entitle CBRE to its fee.

13. Based on the evidence provided by CBRE, the Proposal Trustee advised the service list that the Proposal Trustee would not be filing any responding material. Rather, at the hearing scheduled for September 26, 2022, the Proposal Trustee will seek the Court's approval of a settlement of the appeal with CBRE by admitting CBRE's claim, as filed, and the withdrawal of the appeal on a without costs basis. The Proposal Trustee informed the service list that, should any party wish to file their own responding material, the current schedule proposed this be done on or before August 18, 2022, and that the Proposal Trustee reserves the right to file reply materials to any responding materials.

14. On August 18, 2022, counsel to the LPs sent a letter to counsel to the Proposal Trustee, among other things, informing the Proposal Trustee that they had instructions to challenge CBRE's appeal and requesting a copy of CBRE's proof of claim and the CBRE Notice. The Proposal Trustee subsequently provided these documents to the LPs' counsel on a without prejudice basis to the Proposal Trustee's and CBRE's rights to contest the LPs' standing on CBRE's motion. A copy of the August 18, 2022 letter is attached as Appendix "E".

15. As of the date of this Report, no parties in these proceedings other than the LPs have contested the Proposal Trustee's allowance of CBRE's claim, including the Proposal Sponsor, which is the largest creditor in these proceedings by way of assignment of the claims discussed in paragraph 4.7 above.

16. The LPs served their responding motion record on August 19, 2022. Their motion record contained no evidence contesting or challenging any of the evidence submitted by CBRE.

17. The LPs then requested to cross-examine Mr. Dowbiggin and Mr. Gallagher, CBRE's other affiant and an Executive Vice President on the National Investment Team at CBRE. The Proposal Trustee understands that CBRE consented to the cross-examinations being conducted without prejudice to contesting the LPs rights to cross-examine CBRE's affiants.

18. The Proposal Trustee notes that the Final Proposal provides that all of the reasonable administrative fees and expenses of the Proposal Trustee must be funded by the Sponsor. Accordingly, all of the Proposal Trustee's costs and expenses, including those of its legal counsel, incurred in dealing with the LPs' opposition to this motion are ultimately payable by the Sponsor and, therefore, do not erode any of the potential recoveries of the LPs.

6.0 Conclusion

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

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Appendix “A”

CITATION: YG Limited Partnership and YSL Residences (Re), 2021 ONSC 4178
COURT FILE NOS.: CV-21-00655373-00CL/BK-21-02734090-0031, CV-21-00661386-00CL & CV-21-00661530-00CL
DATE: 20210629

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: 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

APPLICATION UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED

AND RE: 2504670 CANADA INC., 8451761 CANADA INC. and CHI LONG INC., Applicants

AND

CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC, 9615334 CANADA INC., YG LIMITED PARTNERSHIP and DANIEL CASEY, Respondents

AND RE: 2583019 ONTARIO INCORPORATED AS GENERAL PARTNER OF YONGESL INVESTMENT LIMITED PARTNERSHIP, 2124093 ONTARIO INC., SIXONE INVESTMENT LTD., E&B INVESTMENT CORPORATION and TAIHE INTERNATIONAL GROUP INC., Applicants

AND

9615334 CANADA INC. AS GENERAL PARTNER OF YG LIMITED PARTNERSHIP and YSL RESIDENCES INC., Respondents

BEFORE: S.F. Dunphy J.

COUNSEL: *Harry Fogul* and *Miranda Spence*, for YG Limited Partnership and YSL Residences Inc.

Shaun Laubman and *Sapna Thakker*, for 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc.

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

David Gruber, Jesse Mighton, and *Benjamin Reedijk,* for Concord Properties Developments Corp. and its affiliates

Jane Dietrich and *Michael Wunder,* for 2292912 Ontario Inc. and Timbercreek Mortgage Servicing Inc.

Robin B. Schwill, for KSV Restructuring Inc. in its capacity as the proposal trustee

Roger Gillot and *Justin Kanji,* for Kohn Pedersen Fox Associates PC

Reuben S. Botnick, for Royal Excavating & Grading Limited COB as Michael Bros. Excavation

Daniel Naymark and *Jamie Gibson*, for Sarven Cicekian, Mike Catsiliras, Ryan Millar and Marco Mancuso

Brendan Bowles and *John Paul Ventrella*, for GFL Infrastructure Group Inc.

Mark Dunn and *Carlie Fox*, for Maria Athanasoulis

George Benchetrit, for 2576725 Ontario Inc.

Joshua B. Sugar, for R. Avis Surveying Inc.

Paul Conrod, for Restoration Hardware Inc.

James MacLellan and *Jonathan Rosenstein,* for Westmount Guarantee Services Inc.

Albert Engle, for Priestly Demolition Inc.

HEARD at Toronto: June 23, 2021

AMENDED REASONS FOR INTERIM DECISION

Note: these reasons were amended on July 2, 2021 as more fully described in the in the concluding paragraphs hereof.

[1] The debtors are seeking approval of a bankruptcy proposal that has obtained the near unanimous approval of those affected creditors who cast a vote. Two groups of limited partnership unitholders have challenged the actions of the General Partner of the debtor YG Limited Partnership for much of the past year and urge me to annul the bankruptcy entirely or to reject the proposal and, if need be, to allow a Receiver or Trustee in bankruptcy to canvass the market fairly and objectively. Another unsecured creditor urges me to disregard much of the appraisal evidence tendered because she has been excluded from examining it and the result is a record that casts grave doubt as to whether fair value for stakeholders is being realized by this process.

[2] For the reasons that follow, I have decided that I will not approve the Proposal in the form it has been presented to me. The Proposal is yet able to be amended pursuant to art. 3.01 thereof and it is possible that an amendment may be formulated to address the concerns raised by the findings I outline below before a final decision on the fate of the Proposal is made.

Background facts

[3] A central issue in this case is the value of the "YSL Project" – the property owned by the debtor YSL as bare trustee for the limited partnership (the debtor YG LP) charged with developing it. Valuation is an area on which I must tread lightly in terms of what I can record in writing so as not to impact adversely any potential sale process that may be necessary in future.

[4] What follows is a general description of the capital structure of the debtors and the project sufficient to permit an understanding of the issues. For comparison purposes, it is relevant to consider the size of the project. There is no dispute that the "as if completed" value of the project is above $1 billion. How much above and based on which assumptions is an issue, but I provide the round figure solely for comparison purposes relative to the debt and equity interests discussed.

[5] The project is fully zoned and permitted for construction of an 85-story retail and condominium complex planned for the corner of Yonge St. and Gerard in downtown Toronto. Substantial pre-sales have been made. Demolition of the old structures and shoring up of the excavation have been largely completed. Unfortunately, things ground to halt in March of 2020 and the project has been stuck in the "hole in the ground" stage ever since.

The project ownership structure

[6] YP GP has a General Partner with nominal capital and a nominal interest in the limited partnership. The "equity" in the partnership effectively resides in the "A" units with approximately $14.8 million in capital but a capped right to return on that capital equivalent

to interest (12.25% per year rate of return) and the “B” units who alone receive all of the residual profits from the project without limit.

[7] The owner of the “B” units and the General Partner are under common control within the Cresford group of companies as are the parties recorded as payees of the $38.3 million related party debt to which I shall refer.

The project debt structure

[8] The secured debt – including registered mortgages and construction liens – stands at about $160 million. The figure for secured debt is slightly misleading. There is just over $100 million in deposits from condominium pre-sales made for the most part prior to 2019. These are insured by the second secured creditor whose claim would increase dollar for dollar if the relevant purchase agreements were repudiated and the deposits had to be returned. For this reason and to have an “apples to apples” idea of the debt structure, a figure of about $260 million in secured debt is appropriate.

[9] The third-party unsecured debt that has been identified by the Trustee is in the range of approximately $20 million plus or minus a few million dollars depending upon reserves allowed for claims yet to be filed or finalized. There are also various litigation claims outstanding the largest of which is from a former officer claiming that the limited partnership was a common employer and seeking, among other things, to enforce oral profit-sharing agreements. I have reviewed the Trustee’s report and in particular the Trustee’s reasoned conclusion that these claims are too contingent to be considered valid for voting purposes. I concur in that assessment. A conservative and prudent assessment of potential total unsecured claims is thus in the range of about $25 million – a figure advanced with full knowledge that the total of all contingent claims identified could be in the same order of magnitude again. For the purposes of this motion, I find the figures estimated by me above are reasonable – those findings are, of course, without prejudice to the creditors holding such claims proving them in due course.

[10] There is also $38.3 million in outstanding advances to YG LP recorded on its books from related parties. I have found those claims to be equity claims for all purposes relevant to this hearing for reasons I shall expand upon below.

[11] In round figures, one can thus consider there to be approximately $260 million of secured debt and about $20-$25 million of unsecured debt outstanding. The Proposal assumes all of the former and would pay 58% of the latter when finalized. The “fulcrum” stakeholders in this case are thus the unsecured creditors to the extent of the 42% of their claims that are compromised ($8.4 to $10.5 million) plus the “A” limited partners in YG LP ($14.8 million plus accrued “interest” entitlements) – such figures based upon the estimates and rulings that I have made and explained herein.

Summary of nine findings made

[12] The process of sifting through the mountains of evidence presented to me by the parties has been made exceptionally time-consuming and tedious by reason of the lack of usable electronic indexing in much of the materials filed. Tabs or electronic hyperlinks within compilations of electronically filed documents are non-existent in all but the most recently filed documents and there are many, many thousands of pages of documents presented. The profession is going to need to get on top of this problem as judges cannot and will not in future undertake such gargantuan efforts to sift through a case when a few moments of care and attention at the front end could simplify it to such a great degree.

[13] Time does not permit me to set forth in writing a complete account of my review of the evidence and my conclusions – a written summary of which I was about 75% through before the impossibility of completing it in the form intended within the time available became obvious. I shall instead present below nine conclusions which encapsulate my reasons for finding that the Proposal as it currently stands has failed to satisfy me of the matters required by s. 59(2) of the BIA or the common law test of good faith.

(i) The McCracken Affidavit is inadmissible

[14] As is often the case in Commercial Court matters, this case proceeded on a "real time" schedule. In addition to the bankruptcy case that was commenced with an NOI filed on behalf of the debtors on April 30, 2021, there were two applications commenced the day before by two groups of YG LP limited partners seeking, among other things, the removal of the General Partner and various declarations challenging the authority of the General Partner to act on behalf of the partnership in any capacity and alleging breaches of fiduciary duty by the General Partner. The Proposal itself was filed on May 27, 2021 working towards a scheduled June 10, 2021 creditor meeting. On June 1, 2021 I issued directions for the conduct of all three proceedings with a view to having the sanction hearing ready to proceed on June 23, 2021.

[15] The Proposal Sponsor is Concord Properties. Concord is not a party to any of these proceedings although it is central to all three. Concord sponsored the Proposal and is bearing all the costs of it under a Proposal Sponsor Agreement dated April 30, 2021.

[16] The limited partner applicants issued subpoenas to Mr. McCracken – apparently the officer of Concord responsible for this Proposal. On the advice of counsel, Mr. McCracken declined to appear absent an order compelling him to do so. Counsel took the position that leave was required under the Bankruptcy Rules to compel him to appear in the bankruptcy proceeding and declined to produce him.

[17] The position taken was a curious one given my specific direction on June 1 that I was *not* applying the BIA stay to the two applications and that specific aspects of both

applications would be heard and decided together on June 23, 2021 when the fairness hearing was conducted. The case timetable made specific allowances for responding records with respect to the limited partner applications and facta in relation to them. My ruling on June 1, 2021 was in both the civil and bankruptcy proceedings and bore the style of cause of both.

[18] Whether leave was or was not formally required to *compel* Mr. McCracken to appear, his failure has consequences in terms of the fairness of the process leading to the approval motion in front of me. The opponents of the Proposal were deprived of the opportunity to explore aspects of the unfairness or unreasonableness of the Proposal that they had raised. There was insufficient time available in the tight timetable to drop everything and bring a leave application. The position taken ran utterly contrary to the spirit and intent of my ruling on June 1, 2021 at which Concord's counsel appeared *and made submissions*. This is the sort of issue that counsel applying the "three C's" of the Commercial List ought to have agreed to disagree upon and produced the witness without prejudice to objections that might be raised.

[19] It is against the foregoing backdrop that the affidavit of Mr. McCracken – delivered the day prior to the fairness hearing – must be considered.

[20] The affidavit was filed far too late to permit any interested party to respond to it effectively or to cross-examine upon it. None of the subject-matter of the affidavit was new information. The affidavit was entirely devoted to providing responses to various issues seen in written arguments or that arose on the cross-examination of other witnesses.

[21] Concord appeared to consider itself sufficiently at interest to appear through counsel on June 1, 2021 while declining to submit to examination because of its non-party status when preparations for this hearing were in full swing a few days later. Permitting the admission of this affidavit at this juncture would be to sanction unfairness of the highest order. A timetable was worked out for the hearing of this motion – worked out, I might add, at a motion that Concord was present at through counsel. Whether or not Concord had the *right* to insist upon a further motion to compel its attendance during the pre-hearing procedures, it certainly knew that taking that position when there was no time available to challenge it in court would have the practical effect that it did.

[22] Lying in the weeds is a strategy, but it does not confer the right to spring out of them at will. I find the McCracken affidavit to be inadmissible and attach no weight to it.

(ii) No weight can be attached to the CBR April 2021 Appraisal

[23] The parties have very hotly debated the valuation evidence that is on the record before me. A portion of that valuation evidence has been sealed. My reason for doing so is straightforward: the approval of the Proposal cannot be taken for granted and it is thus

reasonably foreseeable that the project may have to be sold by a Trustee or Receiver in the near future and the ability of whichever court officer is charged with undertaking that sale to achieve the highest and best price available ought not to be impaired more than the circumstances already have by the disclosure of appraisals that may serve to skew market expectations. A significant portion of such evidence is part of the public record and between the public information and the use of carefully-framed circumlocutions I believe that I can convey my conclusions and reasons for them regarding the valuation evidence with reasonable clarity.

[24] Two of the appraisals before me, both from CBRE, are the most central to the questions I must determine. The first in time is dated August 8, 2019 providing CBRE's opinion of value as at July 30, 2019. This appraisal was prepared for the parent company of the debtors within the Cresford group and is based on the particular assumptions set out therein, including some supplied by Cresford. The second in time, also by CBRE, is dated April 30, 2021 as of March 16, 2021. This latter appraisal was prepared for Concord based on the assumptions set out therein, including some supplied by Concord. I shall not discuss in a public document the actual appraisal amounts in either, focusing instead on the differences between them.

[25] For present purposes, it is sufficient for me to observe that the 2021 CBRE appraisal is lower than the 2019 CBRE appraisal and lower by an amount that is significantly higher than the sum of the compromised amount of unsecured claims under the Proposal plus the total capital of the "B" unitholders in YG LP.

[26] I find that I can attach little weight to the 2021 CBRE appraisal in these circumstances because:

a. The assumptions given to CBRE by Concord were materially different than those used in the 2019 CBRE appraisal including as to such things as leasable square footage of residential and retail space;

b. When it formulated the instructions to CBRE, Concord was in the process of attempting to negotiate a Proposal to acquire the property through the bankruptcy process given lack of limited partner consents and was being commissioned at a time when Concord had a clear and obvious interest in having appraisal evidence suggesting that the project was at least partly underwater;

c. The downward alterations made by Concord to the square footage assumptions used by CBRE are unexplained, untested and appear to be admitted as having been quite preliminary at all events;

d. Concord did not submit Mr. McCracken to cross-examination to examine in depth the reasons for the significant negative difference between the two instructions given to CBRE on the conflicting appraisals;

e. The differences between the two have not been reasonably or adequately reconciled. There has been no general downward correction to residential real estate in Toronto that has been brought to the court's attention nor can the difference between the two appraisals reasonably be attributed solely to pandemic-induced alterations to the retail environment.

(iii) ALL Construction Lien Claims are Unaffected Creditors under the Proposal

[27] Under the Proposal, Construction Lien Claims are defined as "Unaffected Creditors". The Trustee indicates that the total amount of such claims is $11.865 million. Of this total, fifteen lien claimants with $9.19 million in lien claims outstanding entered into assignment agreements with the Proposal Sponsor. As these are non-voting Unaffected Creditors under the Proposal, Concord required them to file claims as Affected Creditors in order to acquire the right to vote and to name a proxy designated by Concord.

[28] There was some controversy about what precisely the lien claimants received in return for agreeing to convert claims that were to be paid $1.00 per $1.00 of valid claims under the Proposal into claims receiving no more than $0.58 per dollar of claim value. The Trustee-reported second-hand information from Concord denying any "side" deals does little to address this concern. Assurances as to the lack of a side deal do not serve the purpose of permitting a reasonable understanding of the main deal. None of them have been disclosed beyond a skeletal summary and Concord declined to permit a representative to be examined prior to the hearing.

[29] It is of course open to the Proposal Sponsor to make any proposal that satisfies the formal requirements of the BIA if the debtor is prepared to adopt it and submit it to the creditors and the creditors are willing to accept it with their eyes open. In this case however the Proposal Sponsor has induced $9.19 million of otherwise Unaffected Creditors to file claims as something they are not by definition (i.e. Affected Creditors) thereby effectively reducing the size of the cap from $65 million to $55.8 million and the maximum pool of funds available to the actual Affected Creditors described by the Proposal from $37.7 million to $32.4 million. These are material changes impacting all Affected Creditors that follow from arrangements made by the Proposal Sponsor outside the terms of the Proposal.

[30] The Proposal makes no provision for creditors "downshifting" their claims voluntarily. Lien claims are defined as "Unaffected Claims" and I see no basis for them to be accepted under the Proposal on any other basis particularly where doing so operates to the obvious detriment of the affected class members. This is not a case of a

secured creditor valuing its security and filing an unsecured claim for the shortfall. There are consequences to such a valuation exercise that are absent here.

[31] The "electing" lien claimants have little in common with the actual Affected Creditors who had no election to make. Despite having made the election, assuming there was any basis in the Proposal to make such an election (and it appears to me that there was not), such creditors retained their security intact. Pursuant to art. 9.01 of the Proposal, the Proposal would have "no effect upon Unsecured Creditors" which definition does not cease to apply to them by virtue of a make-shift "election" for which the Proposal makes no provision. They did not agree to surrender their security nor even to value it in the bankruptcy process. They agreed to sell their claims on whatever terms they chose to accept from the Proposal Sponsor secure in the knowledge that if, for any reason, the Proposal does not move forward, their security remains intact and unaffected.

[32] This is an element of unfairness in this that I find particularly disturbing. It is all the more disturbing when I am not at all persuaded that the unsecured creditors face the spectre of near certain annihilation in the event of a bankruptcy or receivership but face the very real prospect of additional and illegitimate dilution of their claim value were I to approve the Proposal as presented with the presence of lien claimants in the Affected Creditor pool.

(iv) The related party claims must be treated as equity

[33] A fundamental principle of the BIA is that equity claims are subordinate to debt claims. This principle is voiced in s. 60(1.7) of the BIA that provides quite simply that "[n]o proposal that provides for the payment of an equity claim is to be approved by the court unless the proposal provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid". Section 140.1 expresses a similar requirement in respect of dividends more generally. While there is some similarity behind the concept of "equity claims" in Canadian insolvency law and that of "equitable subordination" the two are separate and one and must not be confused with the other: *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662 (CanLII) at para. 101.

[34] The limited partner applicants submit that the intercompany advances appearing in the general ledger of YG LP should be treated as equity claims within the meaning of the BIA. The debtors on the other hand urge me to pass over this issue entirely arguing that approval of the proposal does not entail approval of any payment of intercompany claims. Such claims will ultimately be determined by the Trustee and if disallowed for any reason will receive no distribution.

[35] I cannot accept the debtors' argument that I should sweep the equity claims under the carpet to be dealt with another day in another forum. This is so for the following reasons:

a. The applicant limited partners have no standing to challenge the proof of the related party claims within the bankruptcy process even if their claims against related parties are not themselves released by the Proposal.

b. On June 1, 2021 I directed that issues raised in the two applications would be dealt with on June 23. A theme in those applications was, among others, the allegation that the General Partner had been seeking to divert substantial payments to Cresford from various investor proposals negotiated by the Cresford group ahead of limited partners, the allegations that representations had been made in the Subscription Documents and elsewhere that Cresford entities would be paid out of distribution after the "A" unit limited partners, that counsel for Cresford had confirmed that the intercompany loans were subordinated to the limited partners, that the General Partner had acted in breach of its fiduciary duties and that the Proposal was not being advanced in good faith; and
c. The timetable I approved on June 1 specifically contemplated the foregoing aspects of those applications being dealt with on June 23, 2021.

[36] If the related party claims are equity claims under the BIA, then it is also highly likely that the notional purchase price for the project being paid by the Proposal Sponsor under the Proposal must be viewed as being $22 million less than it might otherwise appear, a fact that is also material to the matters I must consider on this motion.

[37] The allegations of the applicant limited partners in the two outstanding applications challenge the good faith with which the Proposal has been advanced by the General Partner in part on the theory that the Proposal has in fact been advanced to secure payment of the related party claims in priority to the "A" unitholders and without securing their consent.

[38] For the foregoing reasons, I cannot avoid a consideration of whether the related party claims are equity claims. My conclusions on that subject are an integral part of any conclusion I must make on the subject of good faith or the criteria to be considered under s. 59(2) of the BIA.

[39] Are the related party claims identified by the Trustee in this case "equity claims"?

[40] The BIA contains a definition of "equity claims" that is deliberately non-exhaustive. In *Sino-Forest Corporation (Re),* 2012 ONCA 816 (CanLII) (at para. 44) the Court of Appeal found that the term should be given an expansive meaning to best secure the remedial intentions of Parliament.

[41] Subsequent cases have explored the concept of "equity claim" with a view to fleshing out its parameters. Some of the guidelines that can be distilled from that jurisprudence include the following:

a. Neither the "intention of the parties" as between non-arm's length parties nor the formal characterization they apply is conclusive as to the true nature of the transaction: *Tudor Sales Ltd. (Re),* 2017 BCSC 119 (CanLII) at para. 35 and *Alberta Energy Regulator v Lexin Resources Ltd*, 2018 ABQB 590 (CanLII) at para. 37.

b. The manner in which the transaction was implemented, and the economic reality of the surrounding circumstances must be examined to determine the true nature of the transaction with the form selected being merely the "point of departure" of the examination: *Lexin* at para. 37.

c. It is helpful to consider whether the parties to the transaction had a subjective intent to repay principal or interest on the alleged loan from the cash flows of the alleged borrower and, if so, was that expectation reasonable: *Lexin* at para. 41.

d. It is also helpful to consider the "list of factors" that courts have looked at in such cases – being careful not to apply them in a mechanical way or as a definitive checklist: *Lexin* at paras. 42-43.

e. Among the factors to examine are:

    i. the presence or absence of a fixed maturity date and schedule of payments (absence of such terms being a potential indicator of equity);

    ii. the presence or absence of a fixed rate of interest and interest payments. Again, it is suggested that the absence of a fixed rate of interest and interest payments is a strong indication that the advances were capital contributions rather than loans;

    iii. the source of repayments. If the expectation of repayment depends solely on the success of the borrower's business, the cases suggest that the transaction has the appearance of a capital contribution;

    iv. the security, if any, for advances; and

    v. the extent to which the advances were used to acquire capital assets. The use of the advance to meet the daily operating needs for the corporation, rather than to purchase capital assets, is arguably indicative of bona fide indebtedness: Lexin at paras. 42-43.

[42] The related party claims may be broken down into different buckets for the purposes of this analysis. The first one consists of payments that were made to retire loans taken out for the specific purpose of financing equity interests in YG LP. This

involved loans used to buy out the $15 million investment of a former limited partner, loans used to finance the Cresford group of companies' $15 million equity investment in Class B units as well as interest paid on both of these loans some or all of which has been recorded as obligations of YG LP on its books.

[43] Clearly advances made or charged to YG LP for the direct or indirect purpose of financing the purchase of an equity interest in YG LP are likely to the point of certainly to be characterized as equity claims of YG LP for the purposes of insolvency law. The evidence to this point supports the reasonable inference that a very substantial portion of the advances charged to YG LP by non-arm's length parties can be so characterized.

[44] A second category of advances made can only be described as "miscellaneous" comprised of various sporadic payments made by members of the Cresford group of companies that were recorded in the ledger of the limited partnership net of other payments made by the limited partnership to the Cresford group.

[45] The terms of the intercompany advances recorded on the general ledger of the limited partnership share the following characteristics:

a. They were all non-interest bearing without any defined term or maturity date; and

b. There are no loan documents evidencing any of them.

[46] Such payments as there were from YG LP on account of these advances were sporadic. The nature of the YG LP project is such that there is no cash flow nor any expectation of cash flow being available to repay the intercompany advances recorded until project completion when deposits and sales proceeds become available. The evidence does not suggest that intercompany advances were primarily short-term bridge advances pending the receipt of project financing that was to be used to repay them.

[47] There is substantial evidence that the related party advances were intended to be subordinated to holders of "A" units of YG LP and are thus equity claims. In the interest of time, I shall only summarize this evidence:

a. Direct written representations were made to the investors in YG LP "A" units as part of the subscription process that after payment of "project expenses" only "external lenders" debt would be repaid ahead of them and that distributions to "Cresford" – unambiguously referencing the group of companies rather than one entity – would come after repayment of invested capital and the agreed return on investment to the limited partner investors;

b. Cresford's communications to the limited partners never disclosed the existence of any "debt" owed to Cresford even when portraying "current debt" in various discussions with or disclosures made to them until very

recently (and long after the advances in question were recorded on YG LP's books);

c. Other Cresford group projects with similar capital structures also made representations that intercompany advances were treated as equity;

d. There was a direct, written representations made by prior counsel to the General Partner in October 2020 that such intercompany advances were "subsequent in priority" to the YG LP "A" unit investors – that admission has since been retracted without an adequate explanation for why it was an alleged error; and

e. Cresford's CFO also advised that the YG LP "A" unitholders would be paid in priority to "Cresford" a term used to describe the related group of Cresford companies under common control.

[48] A review of the foregoing factors in light of the jurisprudence leads me to the conclusion that the related party advances must be considered as equity claims for the purposes of this motion at least. Virtually all indicators reviewed point towards equity and there is little to no evidence leaning the other way.

(v) The implied value of the Proposal is $22 million less than assumed

[49] The Proposal operates to reduce the payments made to unsecured creditors if claims are lower than the $65 million cap. The converse is not the case. Absent the lien claims and the intercompany claims there is no mathematical prospect of the $65 million cap being operative unless the contingent and late-filed claims are resolved at levels far in excess of any reasonable estimate. This means that the consideration paid by Concord under the Proposal must be considered to be worth $22 million less than it might have been had the related party claims not been equity claims.

(vi) The general partner had authority to file the NOI

[50] The two groups of limited partners have raised three broad categories of objections to the capacity of the general partner to have filed the NOI and sought approval of the Revised Proposal: (i) as a matter of law, all partners including limited partners, must approve filing for bankruptcy; (ii) pursuant to the Limited Partnership Agreement, the general partner lacked the authority to file for bankruptcy; and (iii) the general partner ceased to be general partner prior to the filing. I shall consider each of these in turn.

S. 85(1) of the BIA

[51] Section 85(1) of the BIA provides that it "applies to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general

partners of a limited partnership becoming bankrupt, the property of the limited partnership vests in the trustee.”.

[52] The limited partners’ position was that since all partners of a general partnership must authorize a bankruptcy filing and since s. 85(1) of the BIA applies the law in relation to general partnerships to limited partnerships in “like manner”, it follows that an NOI must be authorized by all limited partners in addition to the general partner. In support of this interpretation they cite the case of *Aquaculture component Plant V Limited Partnership (Re)*, 1995 CanLII 9324 (NS SC) where two NOI’s filed on behalf of limited partnerships were annulled on this basis.

[53] While the decision of Hamilton J. in the *Aquaculture* case is entitled to deference, it is not binding upon me. I find that I am unable to agree with its reasoning.

[54] The *Aquaculture* case stands quite alone in the jurisprudence on this topic – alone in the sense that none appear to have followed *or* disagreed with it as far as the research conducted by the parties has been able to determine. In the 26 years since it was decided, a significant number of limited partnerships have passed through our bankruptcy courts either for proposals or liquidations without apparent objection on this score. That practice of course does not have the effect of altering the law but it is at least a factor to consider given the number of times since then that Parliament has examined the BIA including with the addition of s. 59(4) that authorized changes to the constating documents of a debtor including a limited partnership.

[55] I reach a different conclusion than was reached in *Aquaculture* for the following reasons:

a. The use of general “in like manner” language in s. 85(1) of the BIA is intended to ensure that the provision is interpreted consistent with the objects of the BIA and not in a manner as to defeat those objects or render the benefits of the BIA largely inaccessible to limited partnerships. The procedure for filing an NOI was intended to offer debtors a swift and relatively low cost means of seeking creditor protection after a secured creditor gives the required ten-day notice of its intention to enforce. Requiring unanimous consent for filing of an NOI would have the practical effect of making the benefits of bankruptcy law unavailable to limited partnerships in practice in a large number of cases. Limited partnerships often have large numbers of limited partners and the time required to convene a meeting and obtain unanimous consent would require more time than secured creditors are required by law to give in the way of notice.

b. Provincial law generally provides that only general partners may bind a limited partnership (in Manitoba, s. 54(1) of the *The Partnership Act*, CCSM c P30) and the BIA treats partnerships and limited partnerships as a full

"debtor". The policy behind requiring all *general* partners to authorize a bankruptcy filing is obvious – all are liable without limit for the liabilities of the partnership. The same is not the case with a limited partnership.

c. Section 59 of *The Partnership Act* also provides that actions or suits in relation to the limited partnership may be brought and conducted by and against the general partners as if there were no limited partners. This too supports the proposition that the consent of limited partners is not required for the filing of an NOI on behalf of the partnership.

[56] I find that s. 85(1) of the BIA did not require the asset of each limited partner to the filing of an NOI.

[57] The limited partners also pointed to provisions of the Limited Partnership Agreement to allege that the General Partner had automatically ceased to be general partner of the partnership by reason of certain actions or that that it lacked the authority to file on behalf of the partnership.

Did the General Partner cease to be a general partner of YG LP at any time?

[58] The Proposal Sponsor Agreement is dated April 30, 2021 and was entered into between Concord as Proposal Sponsor and YG LP acting through the General Partner. It was executed prior to filing the NOI but *after* the two limited partner groups had filed their separate applications seeking, among other things, to remove the General Partner. To the extent it is relevant, there can be no question but that Concord was aware of the terms of the Limited Partnership Agreement at all relevant times when negotiating and entering into the Proposal Sponsor Agreement.

[59] Pursuant to s. 1.1 of the Proposal Sponsor Agreement, YG LP agreed to "use commercially reasonable efforts to effect a financial restructuring of [YG LP] that will result in the acquisition of the Property by the Proposal Sponsor together with [YG LP's] rights, title and interests in and to such Project-related contracts as may be stipulated". A draft of a proposal, substantially similar to the Proposal before this court for approval, was appended as a schedule to the Proposal Sponsor Agreement. The agreement was signed by Mr. Daniel Casey on behalf of each of the Cresford companies named as parties including YG LP.

[60] Section 10.14 of the YG LP Limited Partnership Agreement provides that "None of the following actions shall be taken unless it has *first* been approved by Special Resolution: (a) approving or disapproving the sale or exchange of all or substantially all of the business or assets of the Partnership"(emphasis added).

[61] The Proposal contemplated by the Proposal Sponsor Agreement clearly provides for the sale or exchange of all or substantially all of the business or assets of the Partnership. Section 1.1 of the Proposal Sponsor Agreement obliged YG LP to "use

commercially reasonable efforts" to cause this to occur, including by filing the NOI and to requesting court approval of the Proposal. As obliged by the Proposal Sponsor Agreement, YG LP filed an NOI, filed the Proposal and subsequently sought court approval of the Proposal.

[62] Entering into the Proposal Sponsor Agreement constituted the "approval" of YG LP to the sale or exchange of all or substantially all of the business or assets of the Partnership" even if approvals of other parties were also required in order to *complete* the transaction. The prohibition in art. 10.14(a) attaches to the approval of the action and not its completion.

[63] Section 7.1(c) of the Limited Partnership Agreement creates an Event of Default if the General Partner "becomes insolvent … consents to or acquiesces in the benefit of [the BIA]". By filing the NOI as a general partner of YG LP, the General Partner necessarily admitted to being insolvent at the time the NOI was filled out. There is no evidence that such state of insolvency arrived suddenly that day. The General Partner has accordingly admitted to the existence of an insolvency default under s. 7.1(c) of the Limited Partnership Agreement at some time prior to filing the NOI failing which no NOI would have been possible. By signing the Proposal Sponsor Agreement and agreeing to file the NOI to advance the Proposal, the General Partner also consented to the receiving the benefit of the BIA proposal provisions.

[64] For all of the foregoing reasons, the signing of the Proposal Sponsor Agreement amounts to an admission of further breaches of the Limited Partnership Agreement.

[65] Do such breaches entail the automatic removal of the authority of the General Partner to act as such at the time the NOI was actually filed? The answer in my view is that none of them have that effect.

[66] Section 11.2 of the Limited Partnership Agreement concerns the removal of the General Partner. Pursuant to s. 11.2(a), the General Partner "'may be removed" by a court of competent jurisdiction on certain named grounds. That has not occurred. Section 11.2(b) provides that the General Partner "shall cease to be general partner" if any of the named events occurs. None of the agreement to file an NOI, the state of being insolvent or the signing of the Proposal Sponsor Agreement can be read to be included in the list of events listed in s. 11.2(b). The *aftermath* of the filing of the NOI may well be such a trigger but the answer to that question would require me to contend with the effects of the automatic stay which has not been raised before me.

[67] Accordingly, I find that the NOI filed by the General Partner was not void or subject to any similar infirmity. The foregoing conclusion refers only to the actual filing of the NOI and specifically does not apply to the breaches of the Limited Partnership Agreement consequent upon entering into the Proposal Sponsorship Agreement discussed above.

(vii) The Proposal was the product of a flawed process and breaches of fiduciary duty by the General Partner

[68] There are two aspects to this part of the objections raised by the objecting limited partners. First, it is alleged that during the year leading up to the Proposal Sponsor Agreement, the General Partner breached its fiduciary duty to act in the best interests of the partnership by seeking to advance the interests of non-arm's length parties to the detriment of the limited partners while simultaneously frustrating every effort of the limited partners to access the information that the Limited Partnership Agreement and the Manitoba *Partnership Act* gave them the rights to see. Second, it is alleged that negotiating and entering into the Proposal Sponsor Agreement was a breach of fiduciary duties of the General Partner in that this was nothing less than deliberately negotiating and entering into an agreement to breach the Limited Partnership Agreement.

[69] As the sole general partner of YG LP, the General Partner was responsible for the management of the affairs of the limited partnership and was the only one able to bind the partnership. The General Partner owed a fiduciary duty to all of the partners of the firm in discharging that role and pursuant to s. 64 of *The Partnership Act*, is liable to account, both at law and in equity to the limited partners for its management of the firm.

[70] As I have outlined above, entering into the Proposal Sponsor Agreement was a clear violation of s. 10.14 of the Limited Partnership Agreement as it agreed to a process whereby substantially all of the property of the firm would be conveyed to a third party without the assent of the limited partners. The fact that the BIA stay of proceeding may impede or prevent the limited partners from seeking a direct remedy for that breach when the agreement was subsequently put into action by filing the NOI does not detract from the existence of a present breach the moment pen was put to paper. Further, whether the negotiations of the Proposal Sponsor Agreement consumed two weeks or two months, it was a breach of fiduciary duty to plan and then put into execution a deliberate breach of the Limited Partnership Agreement and doing so in the teeth of a pending application to stop the General Partner adds further weight to that conclusion.

[71] The debtors suggested that being in the proximity of insolvency dissolved or altered the fiduciary duties of the general partner owed to the limited partners. It is true that the law recognizes that the interests of creditors assume a greater weight the closer to insolvency the enterprise approaches. None of this dissolves the fiduciary obligations of the General Partner so much as it adds to them. It is at this point that the other aspect of the complaint of the limited partners enters the analysis.

[72] Nothing in what I have written suggests that a general partner cannot file an NOI where doing so appears on all of the facts and in the good faith exercise of the best business judgment of the general partner to be in the best interests of the enterprise as a whole to do so – a judgment that necessarily accounts for the obligations of the firm owed to its creditors.

[73] This filing was different because it came with strings attached: a binding Proposal Sponsor Agreement that granted exclusivity to a single party and obliged the General Partner to pursue one path and one path only to emerge from the process. Those strings did not get attached as a result of a process which itself discharged faithfully the fiduciary duties of the General Partner. Rather they were attached as the culmination of almost a year of battling to keep information away from limited partners that they had a right to access (in most cases at least) and the squandering of an expensively purchased window of restructuring breathing room looking not for the solution best able to discharge all of the obligations of the partnership but rather looking for the investor best able to secure the optimal outcome for the Cresford group of companies generally. In that process the limited partners were an obstacle to be circumvented and bankruptcy provided a possible key.

[74] Good faith in such circumstances is not assumed but must be shown. The evidence presented to me has rather persuasively convinced me that good faith took a back seat to self-interest.

[75] The parties have expended considerable effort in outlining the details of what occurred in that time frame. In the interests of time, I shall summarize the important take-aways from those events:

a. Until the Proposal Sponsor Agreement and the April 2021 CBRE report prepared for Concord, *all* appraisal evidence showed a profitable project likely to result in full coverage for all of the outstanding third-party debt obligations plus all of the obligations owed to limited partners;

b. The General Partner presented two potential transactions to the “A” unit limited partners in the second half of 2020 that provided for the full payment of all debt, the payment of approximately $38 million to non-arm’s length parties related to the General Partner and payment of obligations owed to the limited partners at a discount – the latter of the two proposals emanated from Concord;

c. The two proposals failed to proceed primarily because the General Partner was unable to provide a satisfactory explanation as to why Cresford related parties were to receive a substantial payment when limited partners were asked to accept a compromise the obligations due to them and limited partners had been assured that Cresford group obligations ranked behind them both when they made their investment and as late as October 2020 in a letter from counsel the debtors; and

d. The limited partners were in a continual tug-of-war trying to pry information out of the General Partner having had to resort to a court order at the

beginning of this year to obtain access to information that should have been available to them as of right.

[76] Few things are more precious in the restructuring business than time. YG LP was able to "purchase" more than a year of time with the forbearance arrangements that it worked out. That precious time appears to have been devoted solely to finding transactions that offered the greatest level of benefits for the Cresford group of companies. There is no evidence that any canvassing of the market – however constrained the market of developers capable of undertaking the completion of an 85-story mixed use tower in downtown Toronto may be – took place that was not indelibly tainted by the imperative of finding value for the Cresford group of companies rather than for the partnership itself.

(viii) The Affected Creditor vote was unanimous

[77] Despite the fact that I have found that fifteen of the forty-six votes cast in favour of the Proposal ought not to have been considered because they came from Unaffected Creditors, that determination does not impact the conclusion of the Trustee that the required statutory majorities voted in favour of the Proposal. There was but one negative vote cast and the Trustee disallowed that vote as being contingent. I have reviewed the Trustee's reasons for so ruling and find no fault with them. The removal of fifteen creditors and just over $9 million in claims does not detract from the fact that thirty-one creditors holding approximately $9 million in other claims cast votes in favour.

[78] While I am prepared to consider to some degree the impact of the assignment agreements negotiated by Concord (see below), I do not view such agreements as impacting the formal validity of the votes cast.

[79] I find that the Proposal received the required majority of two-thirds in value and over 50% in number of creditors voting in person or by proxy.

(ix) The probative value of most of the Affected Creditor vote is attenuated

[80] In the normal course, the agreement of a broad group of creditors to accept less than 100% of what they are owed is cogent evidence of the fairness and reasonable nature of a proposal. This is so as a matter of common sense and by a very long tradition in our law. It is not an indicator lightly to be ignored.

[81] I must also recognize that whatever doubts the evidence may raise as to the insolvency of the debtors in terms of the realizable value of their assets, there can be little doubt that the liquidity test for insolvency is met. The lien claimants have been unpaid for a year or more without any formal forbearance agreement. The first mortgagee has entered into a forbearance agreements but this expires on June 30, 2021.

[82] There was a window of time to find an out-of-court solution, but it would appear that the debtors have squandered it.

[83] The vote of the Affected Creditors *is* probative of fairness, but I find that its weight is attenuated in this case by the following circumstances:

a. Only a relatively small minority voted who did not also enter into assignment agreements;

b. The evidence is equivocal about precisely what consideration was received by those who entered into such assignment agreements – a relayed denial of "side-deals" without more adds little to the equation particularly when the deal itself is not disclosed;

c. Clearly if assigning creditors received or stand to receive more than the value allocated to them under the Proposal, their positive vote says little about the business judgment of the creditors at large to accept the value offered to satisfy their claims but says more about the willingness of the Proposal Sponsor to pay more than has been reflected in the Proposal itself.

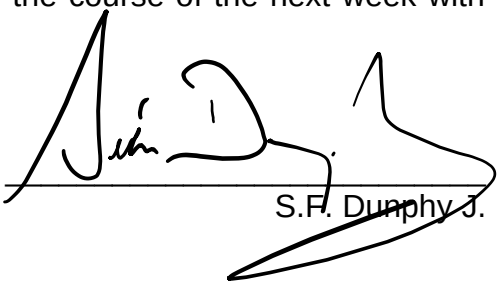
d. This last-in-line class of creditors did not have available to it the range of information produced in connection with this approval motion.

Disposition

[84] I will not approve the Proposal in its present form. I have concluded that, as presented, the Proposal is not reasonable, it is not calculated to benefit the general body of creditors and there are serious issues regarding the good faith with which it has been prepared and presented by the debtors. The debtors and the Proposal Sponsor have the authority under art. 3.06 of the Proposal to amend the Proposal to address the concerns I have raised. It is up to them – with the approval of the Trustee – to do so if they are so inclined.

[85] I am directing the parties to return on Wednesday June 30 at 2:15 pm either to propose amendments to the Proposal that address the concerns I have raised in a substantive way or to address next steps.

[86] These written reasons expand upon the summary reasons I presented orally in a hearing on June 29, 2021. I have released these reasons with relatively little opportunity to proof them and correct typographical errors or minor nits or stylistic glitches. I shall do so over the next week when I have more time available to me and the capacity to call upon my able assistant Ms. Daisy Ng to assist in that effort. Accordingly, I shall be releasing an amended version of these reasons over the course of the next week with such minor and non-substantive corrections.



S.F. Dunphy J.

Date: June 29, 2021

The foregoing is the corrected text of my reasons. Orphaned words have been removed or obvious missing words restored along with corrections of minor errors only. The parties have received a blackline version to compare the changes. Since releasing these reasons, I have adjourned the hearing scheduled for June 30, 2021 at 2:15 until July 9, 2021 at 10:00am. In so doing, I issued the following additional directions:

> As KSV Restructuring Inc. ("KSV") will become the bankruptcy trustee and court-appointed receiver on July 9, 2021 if no satisfactory amended proposal is approved at that time, this Court hereby authorizes and directs KSV to undertake the steps towards formulating a sales process that it would be undertaking if it had been appointed the receiver today.
> KSV's costs of doing so from July 1, 2021 shall be deemed costs of the receiver upon the granting of a receivership order on July 9, 2021 failing which all such costs will be deemed to be costs of the Proposal Trustee in the proposal proceeding.

Issued: July 2,2021

S.F. Dunphy J.

Appendix “B”

CITATION: YG Limited Partnership and YSL Residences (Re), 2021 ONSC 5206
COURT FILE NOS.: CV-21-00655373-00CL/BK-21-02734090-0031, CV-21-00661386-00CL & CV-21-00661530-00CL
DATE: 20210716

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: 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

APPLICATION UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED

AND RE: 2504670 CANADA INC., 8451761 CANADA INC. and CHI LONG INC., Applicants

AND

CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC, 9615334 CANADA INC., YG LIMITED PARTNERSHIP and DANIEL CASEY, Respondents

AND RE: 2583019 ONTARIO INCORPORATED AS GENERAL PARTNER OF YONGESL INVESTMENT LIMITED PARTNERSHIP, 2124093 ONTARIO INC., SIXONE INVESTMENT LTD., E&B INVESTMENT CORPORATION and TAIHE INTERNATIONAL GROUP INC., Applicants

AND

9615334 CANADA INC. AS GENERAL PARTNER OF YG LIMITED PARTNERSHIP and YSL RESIDENCES INC., Respondents

BEFORE: S.F. Dunphy J.

COUNSEL: *Harry Fogul* and *Miranda Spence*, for YG Limited Partnership and YSL Residences Inc.

Shaun Laubman and *Sapna Thakker*, for 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc.

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

David Gruber, Jesse Mighton, and *Benjamin Reedijk,* for Concord Properties Developments Corp. and its affiliates

Jane Dietrich and *Michael Wunder,* for 2292912 Ontario Inc. and Timbercreek Mortgage Servicing Inc.

Robin B. Schwill, for KSV Restructuring Inc. in its capacity as the proposal trustee

Roger Gillot and *Justin Kanji,* for Kohn Pedersen Fox Associates PC

Reuben S. Botnick, for Royal Excavating & Grading Limited COB as Michael Bros. Excavation

Jamie Gibson, for Sarven Cicekian, Mike Catsiliras, Ryan Millar and Marco Mancuso

Brendan Bowles, for GFL Infrastructure Group Inc.

Mark Dunn, for Maria Athanasoulis

James MacLellan and *Jonathan Rosenstein,* for Westmount Guarantee Services Inc.

Albert Engle, for Priestly Demolition Inc.

HEARD at Toronto: July 9 and 16, 2021

REASONS FOR DECISION #2 (REVISED PROPOSAL)

[1] On June 29, 2021, I rejected the debtor's application for approval of its Proposal (identified as "Amended Proposal #2) and provided my detailed reasons for doing so on July 2, 2021. In delivering my reasons, I indicated that that it remained possible for the debtors to amend their Proposal if they so chose. The debtors for their part asked me to adjourn the hearing until July 9, 2021 in order to permit them an opportunity to do so. I granted the requested adjournment.

[2] An amended proposal was filed immediately prior to the hearing on July 9, 2021 entitled "Amended Proposal #3" and I have been asked to consider approving such Amended Proposal. I held a hearing on whether Amended Proposal #3 ought to be approved on July 9, 2021. Amended Proposal #3 was filed only a short while prior to that

hearing. I delayed the start of the hearing for an hour to give parties time to review and analyse the document and proceeded to hear their submissions.

[3] As is usual, I called upon the Trustee to give its comments last. The Trustee requested a further week to review the document and to consider its position. I granted that request and the matter was adjourned to July 16, 2021 at 10:00 a.m. This second adjournment was granted – it must be noted – over the objections of the 1st mortgagee Timbercreek whose forbearance agreement with the debtors expired on June 30, 2021 and who has a long-standing hearing date for its receivership application on July 12, 2021. I adjourned the Timbercreek July 12, 2021 hearing to July 16, 2021 as well such that both proceedings were scheduled to appear before me on July 16, 2021.

[4] A term of the adjournment I granted was that the debtors and Timbercreek should both have circulated draft orders (Proposal approval order in the case of the debtors; Receivership Order in the case of Timbercreek) in advance of the hearing on July 16, 2021 with the expectation that I should sign one of the two orders on July 16, 2021.

[5] On July 15, 2021, a second version of Amended Proposal #3 was filed with the Official Receiver and the Trustee issued its Fourth Report commenting on version 2 of Amended Proposal #3. The Trustee's Fourth Report recommended approval of the Proposal as so amended.

[6] This Proposal has been through a few versions and the nomenclature can get confusing. The amendments made in version 2 of Amended Proposal #3 were minor and technical in nature – they did not adversely affect the rights of any Affected Creditor and at least one of them could just as easily have been added to the approval order outside of the Proposal without objection. My references to "Amended Proposal #3" below should be taken as referencing version 2 of Amended Proposal #3 unless the context requires otherwise.

[7] For the reasons that follow, I have decided to approve version 2 of Amended Proposal #3 and I have signed the approval order.

Background facts

[8] I shall not repeat my review of the facts nor my reasons for rejecting Amended Proposal #2 on June 29, 2021. My detailed reasons for that decision were released on July 2, 2021 and should be considered as if incorporated by reference herein.

[9] In broad strokes, the following summarizes the principal amendments made in Amended Proposal #3:

a. Lien claimants who assigned their claims to the Proposal Sponsor ($9.2 million) will not share in the pool of cash available to unsecured creditors under the Proposal – all lien claimants will be treated as Unaffected Creditors;

b. Related party claims ($38.3 million) will be treated as equity claims and not participate in the pool of cash available to unsecured creditors;

c. Unsecured creditors' recoveries will no longer be limited to $0.58 per dollar of proven claim but will share *pro rata* in the pool of cash available to unsecured creditors up to payment in full;

d. The Proposal Sponsor will fund the full cash pool on Proposal Implementation without reduction should proven claims come in below the amount of the cash pool ($30.9 million);

e. The pool of cash available to unsecured creditors is reduced from $37.7 million to $30.9 million but subject to the above changes reducing the claims eligible to share in the pool;

f. Secured creditors claims – including all construction lien claims – remain unaffected and are assumed by the Proposal Sponsor in purchasing the land and project assets;

g. After Affected Creditor claims have been resolved and all required payments made to them, any residual amount will be returned to the debtor YG Limited Partnership to be dealt with as the partners direct or the court orders; and

h. Proposal Implementation will occur three days after court approval.

[10] The Fourth Report of the Trustee summarized the impact of these changes. Some of the principal points made by the Trustee include the following:

a. Construction lien claimants who agreed to assign their claims to the Proposal Sponsor prior to these amendments might potentially receive less under their assignment agreements than they would under Amended Proposal #3 which had not been made when they agreed to assign their claims. The Trustee contacted the assigning creditors. Two were unable to be contacted but have voiced no objection one way or the other. The remainder of them expressed support for the approval of Amended Proposal #3 or made no objection to it. No assigning creditor was opposed.

b. Version 2 of Amended Proposal #3 contains material improvements to Amended Proposal #2 and addresses concerns raised in my decision of June 29, 2021.

c. Any payments to equity holders are entirely outside of the Proposal.

d. The Trustee has analyzed the known unsecured claims that would share in the $30.9 million pool available to Affected Creditors under Amended Proposal #3. The Trustee's estimate is that Affected Creditors will receive

> between 71% of their claims and payment in full under version 2 of Amended Proposal #3 as contrasted with between 40% and 58% of their claims under Amended Proposal #2. The lower assumption is based on all known claims being allowed in full as claimed with an identical estimate for claims not yet filed. In the event none of the disputed or contingent claims were allowed, the Affected Creditors would be paid in full and up to $19 million may be available to holders of equity claims.

[11] Amended Proposal #3 came with an additional element that the Proposal Sponsor felt it proper to disclose to the Court and the parties. The Proposal Sponsor made a parallel and entirely voluntary offer to holders of limited partnership units in YG LP as well as other claims found by me to be equity claims (i.e. the related party claims) to sell their equity interests for 12.5% of the value of such interests subject to certain structuring conditions.

[12] I cannot say at this juncture whether any equity holders will take the Plan Sponsor up on this offer. The objecting limited partners have shown little interest in it to date at least. The offer has conditions that may or may not be acceptable to them depending upon their own tax situation and their views of value.

[13] Fifty years after the Carter Commission report, it remains the case that business transactions are invariably structured to minimize tax which continues to impact similar economic transactions differently depending upon the structures used. I am satisfied that the "equity offer" is not a disguised transfer of value from creditors to holders of equity claims – the structures required to be used potentially deliver tax attributes to a buyer of the claims that would not otherwise be available. This proposal has been properly disclosed but I do not view it as being particularly relevant to my assessment of Amended Proposal #3. That proposal delivers additional value to creditors under all scenarios compared to its predecessor. There is no diversion of value from creditors to equity holders to be found here. I concur with the Trustee's assessment that the equity offer is quite independent of the Proposal and does not contravene the *BIA* provisions against payment to equity ahead of debt even if it turns out that creditors receive less than payment in full (and that would be a fairly speculative assumption to make).

[14] The Trustee's Fourth Report concluded that the Debtors were proceeding with the request for approval of the Amended Proposal #3 in good faith.

Analysis and discussion

[15] This amended proposal is not perfect. The process that led to it was far from ideal. However, as now amended, this Proposal provides a superior outcome for all classes of creditors under every conceivable scenario and addresses all of the concerns raised in my reasons of July 2, 2021 constructively and substantively.

[16] As so amended, I have no hesitation in finding that Amended Proposal #3 is reasonable, it is calculated to benefit the general body of creditors and is being advanced

at this juncture in good faith notwithstanding the defects that I found marred the negotiation and presentation of the initial version of the Proposal.

[17] There were some critical foundational findings that I made in my reasons of July 2, 2021 including:

a. whatever breaches of the Limited Partnership Agreement may have occurred in the weeks and months prior to the filing of the NOI, the general partner *did* have authority to file the NOI;

b. the Affected Creditor vote in support of Amended Proposal #2 was in fact unanimous; and

c. whatever questions there may be regarding the solvency of the debtors from the perspective of the realizable value of their assets, there can be no question of the insolvency of the debtors from a liquidity point of view: secured and unsecured claims alike are overdue and unpaid and the debtors have no means to satisfy their claims in a timely way. Lien claims are more than a year in arrears for the most part while all forbearance periods have expired for the secured debt.

[18] While I found the probative value of the creditor vote to be attenuated somewhat by the factors I listed in those reasons, the vote did and does have probative value and it is material to note that unsecured creditors agreed to accept payment of less than full payment on their claims on June 15, 2021. All of the Affected Creditors will receive a superior outcome under Version 2 of Amended Proposal #3 under any reasonable assumptions. Their approval of the prior version of the Proposal remains as probative in the context of version 2 of Amended Proposal #3 if not more so.

[19] Version 2 of Amended Proposal #3 clearly satisfies the technical requirements of the *BIA* in that Amended Proposal #2 upon which the creditors did vote authorized the amendments that have been made in Amended Proposal #3 (including version 2 thereof).

[20] Version 2 of Amended Proposal #3 has constructively addressed each of the issues I raised in my June 29 ruling and my July 2 written reasons:

a. The construction lien claims will not dilute the recovery of the unsecured creditors in any way.

b. The related party claims are to be treated as equity claims and disentitled to share in the cash pool.

c. While I expressed grave concerns regarding the lack of good faith and the breaches of fiduciary duty that preceded the filing of the NOI and the entry into the Proposal Sponsor Agreement, those concerns were primarily focused on the efforts made to prefer related party claims over those of other stakeholders in the search for an investor. Amended Proposal #3

cannot undo the past of course but it has addressed those findings constructively. The related party claims are treated as equity claims.

d. There is a strong likelihood that proven creditor claims will be substantially lower than the $30.9 million pool available to satisfy them and Amended Proposal #3 ensures that such surplus is returned to the limited partnership instead of being retained by the Proposal Sponsor.

e. The claims of related parties and their priority relative to limited partners will be dealt with within the limited partnership structure itself, in broad daylight and subject to the full range of remedies open to the limited partners to protect their interests should the need arise. The conflicting interests that marred the development of Amended Proposal #2 have been substantially cured by the amendments effected by Amended Proposal #3. Related parties have been put in their proper place in the claims hierarchy.

[21] The strongest critique levelled at Amended Proposal #3 by the limited partners is that it does not answer the question of what the value of the project might have been had the project been offered on the open market in a competitive process. That is a fair criticism but not one that is sufficient to detract from the overwhelmingly positive attributes of this Proposal.

[22] The past cannot be undone and perfection is not the standard against which a proposal is to be measured. Section 59(2) of the *BIA* requires that approval of a proposal must be refused if its terms are not shown to be reasonable and calculated to benefit the general body of creditors. The common law has added to this the requirement that a proposal must be advanced in good faith.

[23] Amended Proposal #3 is both reasonable and calculated to benefit the general body of creditors. It provides for substantially improved outcomes to all creditors whose claims were impaired by Amended Proposal #2 under any reasonable assessment of the facts. As noted above, it is quite likely that a surplus will remain to be returned to the limited partnership after all affected unsecured claims have been paid in full to be dealt with as the limited partners direct (or by court order if necessary).

[24] The debtors are insolvent today. They are properly in bankruptcy proceedings. Their creditors have a right to payment and – to the extent reasonably possible – to payment in full as soon as possible. Amended Proposal #3 offers payment in full to most secured creditors within a matter of days following court approval. Unsecured creditor payments will be subject to reasonable reserves for unresolved claims but these too will begin flowing in short order. This contrasts to a delay of *many* months on the most optimistic of scenarios were a receiver directed to sell the project.

[25] There is a public interest in moving this very substantial project out of the quicksand in which it has become stuck for over a year. Approval of Amended Proposal #3 at this juncture ensures that the Project is in the hands of a solvent entity

with the wherewithal and experience necessary to put it back on track as soon as possible.

[26] The real question before me today is whether limited partners have the right to require creditors to run the risk of a sale process producing an inferior outcome to Amended Proposal #3 in order to test the hypothesis that a greater value might emerge from a fresh marketing of the project in a liquidation process that might result in payment of some or all of the limited partners' equity claims. In my view, they do not.

[27] It is possible that higher values could emerge from a liquidation process but that possibility is not a one way street. The dissatisfaction I expressed in my reasons of July 2, 2021 regarding the quality of the appraisal evidence before me does not imply any level of probability that market value today is *higher* than the values suggested by the April 2021 CBRE appraisal. I was dissatisfied with the quality of *all* of the appraisal evidence because of the lack of evidence reconciling the differences between them and, in particular, assessing the reasonableness of the assumptions made in each.

[28] It is noteworthy that version 2 of Amended Proposal #3 offers the real prospect that a return on equity of more than 100% of the invested capital of the limited partners may come back to YG LP. The limited partners assent will be needed to any use of those funds unless a court order is obtained. The possible upside to limited partners arising from a new sales process has thus become that much more remote under this last revision to the Proposal compared to the first.

[29] There are costs involved in conducting a receivership that would come ahead of any potential surplus being made available to equity claimants such as the limited partners. Some of the risk of a sale process producing a lower outcome could potentially be insured against by procuring a stalking horse bid to put a floor under the sale process. There is no guarantee that a stalking horse bid would be available at or near the implied value of Amended Proposal #3. Stalking horse bids come with a price tag in the form of a break fee that is usually calculated as a percentage of the price. That too would stand to reduce the recoveries to unsecured creditors and create an additional hurdle to any prospect of additional recovery to limited partners.

[30] This is a real bankruptcy. There is nothing artificial about it. Creditors have been unpaid for over a year. I have before me a transaction that provides a pathway to payment of creditor claims in full and quickly while leaving a realistic prospect for equity claims to receive some significant recovery. Every other option requires the creditors – who bear no responsibility for the mess that this project has found itself in – being subjected to the real risk of partial non-payment and substantial delay being added to the very lengthy delay to which they have already been subjected in order to test the hypothesis that a few percentage points of additional value might potentially be found. That is not a risk that it is fair to impose on creditors on these facts and having regard to the important favourable changes made to the Proposal.

Disposition

[31] Accordingly, an order shall issue approving version 2 of Amended Proposal #3. I have reviewed the draft form of approval order uploaded and approved and signed same. It was amended slightly to include in the preamble corrected references to the limited partners who appeared and the evidence they filed.

[32] This Proposal satisfies the technical requirements of the *BIA*. I have concluded that version 2 of Amended Proposal #3 represents a valid amendment to Amended Proposal #2 in accordance with its terms and thus has received the required double majority of creditor approval. The terms of this Proposal are reasonable and calculated to benefit the general body of creditors. The amendments presented have satisfied the concerns raised by me regarding the good faith of the debtors in pursuing *this* Proposal.

[33] I wish in particular to note that I have included, as requested, an order pursuant to s. 195 of the *BIA* permitting provisional execution of the approval order notwithstanding appeal. I have made this order in consideration of two primary factors:

a. The secured creditors of YG LP have been deferred and stayed for a very, very long time at this point. Some of that deferral was purchased in the form of forbearance agreements with Timbercreek but the last negotiated extension – an extension that included every possible assurance that no further extensions would be sought – expired on June 30, 2021. I made it clear on July 9, 2021 that I would be approving the Proposal or a Receiver today. It would be unjust to Timbercreek to have its period of limbo indefinitely extended by the simple expedient of filing a Notice of Appeal and forcing Timbercreek to seek a lifting of an automatic stay to enforce its security. This project is, at its core, a hard asset consisting of real estate, a bundle of approvals and a hole in the ground. There is no goodwill to speak of. It has been held in limbo for much more than a year at this point and it must either be put in the hands of someone who will bring it forward to completion under the Proposal or of a Receiver who will find someone who can.

b. Our courts have generally sought to achieve a degree of uniformity of practice as between the CCAA and the *BIA*. Approval of a CCAA Plan Is not subject to an automatic stay. An automatic stay in this case would operate as a functional veto of the Proposal itself because the result would be an almost certain slide into receivership unless the stay were promptly lifted.

[34] Timbercreek's receivership application was adjourned by me from July 12, 2016 until today. Based upon my approval of the Proposal today *and subject to the closing of version 2 of Proposal #3 in accordance with its terms by no later than July 31, 2021*, Timbercreek agrees that its application is moot. There is no reason to believe the Proposal will not be completed as planned, however, nothing can be taken for granted. I

am adjourning Timbercreek's application to August 9, 2021 when I shall next be sitting. It is adjourned before me.

[35] Assuming (i) the Trustee confirms to me that the version 2 of Amended Proposal #3 has been completed and (ii) Timbercreek does not advise me in advance of August 9 of its intention to proceed, I shall endorse the Timbercreek application as withdrawn without costs on August 9, 2021. No attendances will be necessary from any party in that eventuality. If there is a reason for the application to move forward, I am relying on the Trustee and Timbercreek to so notify me as soon as practicable after July 31, 2021.

[36] A request was made by the limited partners to make submissions to me regarding costs of the bankruptcy proposal proceeding. For the avoidance of doubt, my signing of the order approving version 2 of Amended Proposal #3 has not disposed of the matter of costs of the proposal proceedings. I have made no order as to costs to this point nor have I heard submissions on the point.

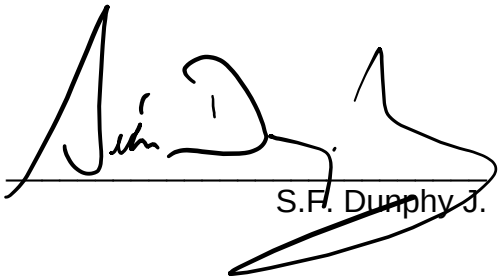
[37] Any party seeking an order of costs in their favour shall have ten days from today to file written submissions and an outline of costs. Submissions should not exceed ten pages excluding the outline of costs. Cases need not be included beyond a hyperlinked table of cases. The Debtors and the Proposal Sponsor shall each have a further ten days to respond to any such requests for costs with similar size restrictions. All submissions are to be uploaded to CaseLines and copied to the Trustee. I am asking the Trustee to provide me with a consolidated set of submissions to which the Trustee may – but shall not be required to – add its own additional comments in the form of a brief supplementary report.

[38] Lastly, I need to give some directions regarding the two civil applications that immediately preceded these bankruptcy proceedings brought by the limited partners of YG LP. My reasons of June 29, 2021 made a number of findings in relation to matters raised in those two applications. However, it must also be clear that neither my ruling of June 29, 2021 nor this decision has fully disposed of either civil application.

[39] It is certainly true that I made findings in the context of the bankruptcy proposal proceedings that were and are relevant to the two applications. Even if those findings were made in the context of the bankruptcy proceedings, the three proceedings were to a degree inextricably intertwined. I was asked to issue a formal order in relation to the findings I did make. I declined to do so not because I am resiling from any findings made – I do not – but because I did not and do not have the full scope of the claims of either application fleshed out before me. I directed certain matters to be explored and argued due to the interrelationship between the proceedings but I do not want my rulings in one context to be taken out of context in another.

[40] The safest course in my view is to let my rulings stand as made knowing that *res judicata* and issue estoppel can be applied as needed to avoid any abuse. I was asked to confirm – and do so now – that costs of those two civil applications have not been dealt

with by me at all. They have not. The limited partner applicants in those two proceedings asked to make submissions regarding costs of the bankruptcy proposal proceeding and I have given them leave to do so as provided above. The costs of the two civil applications remain reserved to the judge disposing of them.



S.F. Dunphy J.

Date: July 16, 2021

Addendum:

As noted, I have reviewed the originally signed reasons and made a small number of clerical and stylistic changes to the text as originally released. As well, I was advised by the Trustee that the transaction was in fact completed on July 22, 2021. Accordingly, I have issued an endorsement today vacating the August 9, 2021 appointment reserved to hear the Timbercreek application and endorsed that matter as being abandoned without costs because moot. No party will be required to appear on August 9, 2021.

Date: July 27, 2021

S.F. Dunphy J.

Appendix “C”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AMENDED PROPOSAL #3

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

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

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

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

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

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

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

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

ARTICLE I
DEFINITIONS

1.01 Definitions

In this Proposal:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Secured Claims**" means:

(a) The Claim of Timbercreek which is secured by, among other things a mortgage, charge, lien or other security validly charging or encumbering the Property;

(b) The Claim of Westmount, which is secured by, among other things, a mortgage, charge, lien or other security validly charging or encumbering the Property;

(c) The Claim of 2576725 Ontario Inc. which is secured by, among other things, a mortgage, charge, lien or other security validly charging or encumbering the Property;

(d) All Construction Lien Claims but only to the extent of such Construction Lien Claims;

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

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

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

"**Unaffected Claim**" means:

(a) the Administrative Fees and Expenses;

(b) the Claim of Timbercreek;

(c) the Claim of Westmount;

(d) the Claim of 2576725 Ontario Inc., which is secured by, among other things, an equitable mortgage encumbering the Property;

(e) any Claim of the City of Toronto;

(f) all Condo Purchaser Claims;

(g) all Construction Lien Claims, but only to the extent such Claims are valid in accordance with the *Construction Act* (Ontario) and have been perfected by the Proposal Implementation Date; and

(h) such other Claims as the Company and Proposal Sponsor may agree with the consent of the Proposal Trustee;

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

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

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

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

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

1.02 Intent of Proposal

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

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

1.03 Date for Any Action

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

1.04 Time

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

1.05 Statutory References

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

1.06 Successors and Assigns

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

1.07 Currency

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

1.08 Articles of Reference

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

1.09 Interpretation Not Affected by Headings

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

1.10 Numbers

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

ARTICLE II
CLASSIFICATION AND TREATMENT OF AFFECTED PARTIES

2.01 Classes of Creditors

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

2.02 Treatment of Affected Creditors

(a) As soon practicable after the Proposal Implementation Date, and after taking an adequate reserve in respect of any unresolved Claims pursuant to Section 5.03:

i. all Affected Creditors (other than Convenience Creditors and Affected Creditors holding Conditional Claims where one or more Conditional Claim Conditions have not been completed) shall receive, in respect of such Affected Creditor Claim, its Pro Rata Share of the Affected Creditor Cash Pool, net of the Superintendent's Levy, made by the Proposal Trustee from the Affected Creditor Cash Pool from time to time in accordance with Article V hereof, provided that aggregate Distributions to an Affected Creditor shall not exceed 100% of the value of such Affected Creditor's Proven Claim; and

ii. all Convenience Creditors shall receive in respect of such Convenience Creditor Claims, the Convenience Creditor Consideration, net of the Superintendent's Levy;

(b) Subject to Section 2.03, on the Proposal Implementation Date, each Affected Creditor Claim shall, and shall be deemed to have been irrevocably and finally extinguished, discharged and released, and each Affected Creditor shall have no further right, title or interest in or to its Affected Creditor Claim.

2.03 Conditional Claims Protocol

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

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

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

(b) if such Affected Creditor provides the Proposal Trustee with proof of the completion of all applicable Conditional Claim Conditions prior to the Conditional Claim Completion Deadline, then, subject to the Proposal Trustee's confirmation of same, such Affected Creditor's Conditional Claim shall be deemed to be a Proven Claim, and such Affected Creditor shall be entitled to a Distribution in accordance with Section 5.02, and, effective immediately upon issuance of such distribution to the Affected Creditor by the Proposal Trustee, the releases set out in Section 7.01 shall become effective; and

(c) if such Affected Creditor has not satisfied one or more Conditional Claim Conditions by the Conditional Claim Completion Deadline, then, effective immediately upon the Conditional Claim Completion Deadline, such Affected Creditor's Conditional Claim shall be irrevocably and finally extinguished and such Affected Creditor shall have no further right, title or interest in and to its Conditional Claim and the releases set out in Section 7.01 shall become effective in respect of such Conditional Claim.

2.04 Existing Equityholders and Holders of Equity Claims

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

2.05 Application of Proposal Distributions

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

2.06 Full Satisfaction of All Affected Creditor Claims

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

2.07 Undeliverable Distributions

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

ARTICLE III
CREDITORS' MEETING AND AMENDMENTS

3.01 Meeting of Affected Creditors

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

3.02 Assessment of Claims

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

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

3.03 Modification to Proposal

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

ARTICLE IV
PREFERRED CLAIMS AND MANDATORY PAYMENTS

4.01 Crown Claims

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

4.02 Preferred Claims

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

ARTICLE V
FUNDING AND DISTRIBUTIONS

5.01 Proposal Sponsor to Fund

(a) On the Proposal Implementation Date, the Proposal Sponsor shall deliver to the Proposal Trustee by way of wire transfer (in accordance with wire transfer instructions provided by the Proposal Trustee at least three (3) business days prior to the Proposal Implementation Date) the amount necessary to establish the Affected Creditor Cash Pool in accordance with the provisions of this Proposal, provided that any surplus amounts over and above the Affected Creditor Cash Pool amount of $30,900,000 that are returned to the Company in connection with the transfer of the YSL Project to the Proposal Sponsor shall be promptly returned to the Proposal Sponsor, including, without limitation, the cash collateral to be released by TD Bank when the letters of credit held by the City of Toronto and the Toronto Transit Commission are replaced by letters of credit to be provided by the Proposal Sponsor; and

(b) The Proposal Trustee shall hold the Affected Creditor Cash Pool in a segregated account and shall distribute such cash, net of any reserves established in respect of unresolved Claims, in accordance with Section 5.03 of the Proposal.

(c) The Proposal Sponsor shall effect payments in respect of the Unaffected Claims to those parties entitled to such payments directly and shall provide the Proposal Trustee with proof of such payments, as applicable.

5.02 Distributions

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

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

5.03 Reserves for Unresolved Claims

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

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

5.04 Method of Distributions

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

5.05 Residue After All Distributions Made

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

ARTICLE VI
IMPLEMENTATION

6.01 Proposal Implementation Date Transactions

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

(a) Either the Proposal Sponsor will, at its election, but subject to obtaining the consent of the applicable Secured Creditor, assume the Secured Claims, or on behalf of the Company, the Proposal Sponsor will make payment in full to Secured Creditors in respect of their Secured Claims, in accordance with Section 5.01(c) calculated as at the Closing Date;

(b) the releases in respect of Secured Claims referenced in section 7.01 shall become effective, and any registrations on title to the Property in respect of such Secured Claims shall, unless otherwise agreed between the Secured Creditor and the Proposal Sponsor with the consent of the Proposal Trustee, be discharged from title to the Property;

(c) the Proposal Sponsor shall provide to the Proposal Trustee the amount necessary to establish the Affected Creditor Cash Pool, in accordance with Section 5.01(a), in full and final settlement of all Affected Creditor Claims;

(d) the Proposal Sponsor shall provide the Proposal Trustee with an amount necessary to satisfy the Administrative Fees and Expenses, including a reserve in respect of the reasonably estimated additional Administrative Fees and Expenses anticipated to be incurred in connection with the administration of Distributions, resolution of any unresolved Claims pursuant to Section 5.03, and the Proposal Trustee's discharge;

(e) title to the Property shall be registered in the name of the Proposal Sponsor, or its nominee, together with any charges applicable to security held by the lenders to the Proposal Sponsor in respect of the purchase of the Property and construction of the Project;

(f) the assumption of the Assumed Contracts by the Proposal Sponsor, or its nominee, shall become effective;

(g) all Affected Creditor Claims (including without limitation all Convenience Creditor Claims) shall, and shall be deemed to be, irrevocably and finally extinguished and the Affected Creditors shall have no further right, title or interest in and to their respective Affected Creditor Claims, except with respect to their right to receive a Distribution, if applicable, and in such case, only to the extent of such Distribution;

(h) subject to Section 7.01, all Equity Claims shall, and shall be deemed to be, irrevocably and finally extinguished and all Existing Equityholders shall have no further right, title or interest in and to their respective Equity Claims as against the Property; and

(i) the releases in respect of Affected Creditor Claims (other than Conditional Claims with Conditional Claim Conditions not satisfied as at the Effective Time) referred to in Section 7.01 shall become effective.

ARTICLE VII
RELEASES

7.01 Release of Released Parties

At the applicable time pursuant to Section 6.01(b), in the case of Secured Claims, and Section 6.01(i), in respect of Affected Creditor Claims, each of the Released Parties shall be released and discharged from all present and future actions, causes of action, damages, judgments, executions, obligations, liabilities and Claims of any kind or nature whatsoever arising on or prior to the Proposal Implementation Date in connection with this Proposal and the Project, and any proceedings commenced with respect to or in connection with this Proposal, the Project, the transactions contemplated hereunder, and any other actions or matters related directly or indirectly to the foregoing, provided that nothing in this paragraph shall release or discharge (i) any of the Released Parties from or in respect of their respective obligations under this Proposal or any order issue by the Court in connection with this Proposal or any document ancillary to any of the foregoing, (ii) any Released Party from liabilities or claims which cannot be released pursuant to s. 50(14) of the BIA, as determined by the final, non-appealable judgment of the Court, or (iii) any Released Party from any Secured Claim of Timbercreek. The foregoing release shall not be construed to prohibit a party in interest from seeking to enforce the terms of this Proposal, including with respect to Distributions, or any contract or agreement entered into pursuant to, in connection with or contemplated by this Proposal. Notwithstanding the forgoing, 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 15th day of July, 2021.

YSL RESIDENCES INC.

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

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

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

SCHEDULE A

PERMITTED ENCUMBRANCES

Instrument Number		Description
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)

Appendix “D”

Mitch Vininsky
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mvininsky@ksvadvisory.com
ksvadvisory.com

February 10, 2022

DELIVERED BY EMAIL AND REGISTERED MAIL

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

Dear Ms. Laskin:

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

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

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

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

Yours very truly,

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

Per: Mitch Vininsky

MV:rk
Encl.

ksv advisory inc.
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F +1 416 932 6266

ksvadvisory.com

Estate File No.: 31-2734090

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

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

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

- The claim is in respect of an invoice submitted by CBRE Limited ("CBRE") to "Cresford" dated October 13, 2021 in the amount of $1,096,794.16 plus HST (the "Invoice"). The Invoice refers to services rendered by CBRE in connection with serving as the exclusive listing brokerage for the land located at 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario, (the "Property"). The Property was to be developed by the Companies into a significant condominium project.

- A demand letter dated November 26, 2021 from CBRE to the Companies (the "CBRE Letter") references that the Invoice was issued in respect of an Exclusive Sales Listing Agreement dated February 20, 2020 (the "Agreement") between CBRE and the Companies, pursuant to which the Companies "agreed to pay commission equivalent to 0.65% of the Gross Sale Price of the Property" (the "Commission"). The CBRE Letter further states that "CBRE has complied with and performed its obligations under the Agreement." The term of the Agreement is six months from February 20, 2020 to August 20, 2020 (the "Term"). The Agreement is appended to the CBRE Letter and it is unsigned.

- The Property was conveyed on or about July 22, 2021 (the "Conveyance") to Concord Adex Inc., an entity related to Concord Properties Developments Corp., the eventual sponsor ("Sponsor") of the Companies' Proposal proceedings which were commenced on April 30, 2021.

- Dave Mann, CFO of the Cresford Group of Companies ("Cresford") advised the Proposal Trustee that CBRE introduced Cresford to the Sponsor. The Sponsor advised the Proposal Trustee that "Cresford, through its representative Ted Dowbiggin, first approached Concord in early 2020 to discuss four of Cresford's distressed projects, however Concord did not have any interest in the YSL project at this time." and that "In September/October 2020, Cresford re-engaged Concord to discuss the YSL project, after it had canvassed a number of other developers. After this outreach in fall 2020 until the time of the proposal proceedings, Cresford and Concord were consistently engaged to explore potential alternatives for the YSL project".

- The Agreement states the following with regards to the Commission:

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

- Furthermore, the Agreement has a holdover clause which states that:

    - *"The Owner further agrees to pay the Brokerage the Commission **if, within 90 calendar days after the expiration of the Term**, the Property is sold to, or the Owner enters into an agreement of purchase and sale for the Property with, or negotiations continue, resume or commence and thereafter continue leading to the execution of a binding agreement of purchase and sale for the Property, provided the transaction subsequently closes, with any person or entity (including his/her/its successors, assigns or affiliates) with whom the Brokerage has negotiated (either directly or through another agent) or to whom the Property was introduced or submitted, from any source whatsoever, or to whom the Owner was introduced, from any source whatsoever, prior to the expiration of the Term; with or without the involvement of the Brokerage."*

- The Proposal Trustee has disallowed the claim in full as:

    - The Agreement is not signed and therefore is not binding;

    - The Sponsor advised that at all times it dealt directly with the Companies and that it did not have any dealings with CBRE;

    - The Conveyance does not meet the definition of an event giving rise to a Commission; and

    - To the extent any Commission could apply, which is denied, the Commission was not earned during the Term, or within the 90 calendar days following the expiration of the Term.

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

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

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

Appendix “E”

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File No. 2063-001

August 18, 2022

VIA EMAIL

Robin Schwill
Davies Ward Phillips Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 2J7

Dear Mr. Schwill,

Re: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc.
Court File No.: CV-20-00650224-00CL

We were surprised to receive your email of August 5, expressing KSV Restructuring Inc.'s (the "**Proposal Trustee**") intention to change its position and admit CBRE Limited's ("**CBRE**") claim as filed, despite previously having denied the claim. For the reasons expressed in this letter, CBRE's appeal is without merit and the Proposal Trustee's denial ought to be maintained.

The Holdover Clause

Even if CBRE is able to establish that a valid agreement exists as between it and YSL Residences Inc. ("**YSL**"), that agreement (the "**Alleged Agreement**") contains a holdover clause (the "**Holdover Clause**"):

> *4.1 [YSL] further agrees to pay [CBRE] the Commission if, within 90 calendar days after [August 20, 2020], the Property is sold to, or [YSL] enters into an agreement of purchase and sale for the Property with, or negotiations continue, resume or commence and thereafter continue leading to the execution of a binding agreement of purchase and sale for the Property, provided the transaction subsequently closes, with any person or entity (including his/her/its successors, assigns or affiliates) with whom [YSL] has negotiated (either directly or through another agent) or to whom the Owner was*

> *introduced, from any source whatsoever, prior to [August 20, 2020]; with or without the involvement of [CBRE]. [CBRE] is authorized to continue negotiations with such persons or entities. [CBRE] agrees to submit a list of such persons or entities to the Owner within 10 business days following [August 20, 2020], provided, however, that if a written offer has been submitted, then it shall not be necessary to include the offeror's name on the list.*

This clause requires that, for CBRE to earn its commission when a sale is agreed to or closes more than 90 days after August 20, 2020, negotiations must "continue, resume or commence" with a party introduced to YSL by CBRE in the 90 days after August 20, 2020. CBRE's motion record does not demonstrate that such negotiations took place.

Mr. Dowbiggin's evidence that "negotiations were ongoing from the point of Concord's introduction until Cresford and Concord agreed that the property would be sold through a proposal…", fails to establish that such negotiations occurred specifically in the 90 days following August 20, 2020, as the Alleged Agreement requires.

Mr. Gallagher's hearsay evidence claims that he was told by Mr. Dowbiggin at a golf game "around" September of 2020 that negotiations with Concord were ongoing lacks specificity, and was not included in Mr. Dowbiggin's affidavit, though it could have been. Mr. Gallagher's evidence is insufficient to demonstrate that the Holdover Clause was satisfied.

The Standard of Review

Finally, we are concerned that the Proposal Trustee's change in position appears to be based on the "evidence filed by CBRE" as part of its appeal. CBRE's appeal is advanced under s. 135(4) of the *Bankruptcy and Insolvency Act* (the BIA"). Such an appeal is an appeal 'on the record', as opposed to an appeal *de novo*.[1] There is no basis to adduce fresh evidence in these circumstances.

The decision to "fully vet" CBRE's claim by consenting to evidence being filed on appeal is not in keeping with the summary nature of BIA claims processes. It is no wonder that the Proposal Sponsor has reiterated its concern regarding the costs of the claims process in the context of this appeal.

Conclusion

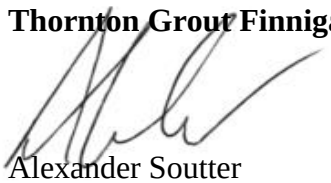
We have instructions to challenge CBRE's appeal of the Proposal Trustee's initial decision. To do so, we will require a full copy of CBRE's proof of claim and a copy of the notice of

[1] See *Re Galaxy Sports*, 2004 BCCA 284 at para. 40, cited with approval in *Casimir Capital*, 2015 ONSC 2819 at para. 31.

disallowance, which we note is conspicuously absent from CBRE's motion record. We would be grateful if you could provide those documents at your earliest convenience.

Yours truly,

Thornton Grout Finnigan LLP



Alexander Soutter

/JH

TAB 16

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

COURT OF APPEAL FOR ONTARIO

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

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

RESPONDENT'S CERTIFICATE RESPECTING EVIDENCE

The respondent, CBRE, confirms the appellant's certificate.

March 23, 2023

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

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

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

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

Court File No. BK-21-02734090-0031
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COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

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