Estate/Court File No.: 31-2734090

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.

Applicants

FACTUM OF CONCORD PROPERTIES DEVELOPMENTS CORP.

(Returnable June 1, 2021)

May 28, 2021

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PART I - INTRODUCTION

1. This motion will determine who controls the ultimate fate of an enterprise that has been insolvent on a cash-flow basis for over one year: (a) aggrieved investors in the enterprise faced with the reality of a nil return on their investment; or (b) its creditors, whose aggregate claims exceeding $300,000,000 have largely been unaddressed until this point. The focus of these competing interests is the Yonge Street Living Residences real estate development project located at the intersection of Yonge Street and Gerrard Street, Toronto (the "**YSL Project**"), currently owned by the applicants in these proceedings, YG Limited Partnership ("**YG LP**") and YSL Residences Inc. (collectively with YG LP, "**YSL**").

2. Certain of YG LP's investors, who subscribed for limited partnership units carrying a preferred return on their capital invested, ask this Court to lift the stay of proceedings (the "**Stay**") automatically imposed by the *Bankruptcy and Insolvency Act* (the "**BIA**") upon the filing of Notices of Intention to Make a Proposal filed by YSL on April 30, 2021, and ultimately seek to

have these proposal proceedings nullified and instead force a situation where the YSL Project is liquidated through a receivership sale (the "**Contemplated Applications**"). The equity investors making these applications are 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc. (collectively, the "**Chi Long LPs**", represented by Lax O'Sullivan Lisus Gottlieb LLP), YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc. (collectively, the "**YongeSL LPs**", represented by Thornton Grout Finnegan LLP, and together with the Chi Long LPs, the "**Investors**").

3. Having elected to participate in the YSL Project as equity investors, and faced with the uncontested fact that YSL has been insolvent on a cash-flow basis for more than one year, the Investors now seek to avoid the consequences of their investment decision. The present motion asks this Court to ignore a fundamental tenet of Canadian insolvency law by allowing the equity-holders of the insolvent YSL enterprise to seize control in a manner that jeopardizes the viability of the creditor proposal put forward by YSL. If the Investors' lift-stay order is granted, the outcome will be that YSL is forced to participate in full-fledged litigation during the most crucial phases of its proposal proceeding – a clear and obvious impairment to the viability of YSL's BIA process.

4. YSL's proposal, filed on May 27, 2021 (the "**Proposal**"), will provide a full recovery to its secured creditors while offering unsecured creditors a dividend equal to 58% of the face value of their proven claims, as determined by KSV Restructuring Inc., the proposal trustee in these proceedings (in such capacity, the "**Proposal Trustee**"). In accordance with section 60(1.7) of the BIA,[1] because YSL's creditors will not be receiving a full recovery of their claims, no payment to equity claimants (including the Investors) is contemplated by the Proposal.

[1] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("BIA"), s. 60(1.7).

5. Instead of addressing the Proposal directly and engaging in the reality of YSL's liquidity crisis, the Investors instead resort to allegations of impropriety against 9615334 Canada Inc., the general partner of YG LP (the "**General Partner**") and Daniel Casey, the head of the Cresford group of companies ("**Cresford**"), of which the General Partner is a member. While Concord, as Proposal sponsor, does not have the factual background to weigh into the sensational factual allegations put forward in the Investors' submissions, it is clear that these allegations have been brought forward in an attempt to defeat the Proposal, in order to force YSL into receivership and a liquidation sale process.

6. These allegations by the Investors are merely a distraction from the task before the Court in the present motion: determining whether it is appropriate to grant the extraordinary relief of lifting the stay of proceedings under the BIA.

7. The stay should not be lifted for a number of reasons, including that:

(a) Lifting the stay and requiring YSL to participate in the extensive and yet condensed litigation timetable proposed by the Investors would prejudicially distract YSL's management and counsel from their focus on the Proposal;

(b) Nothing in the Proposal would limit the Investors' ability to later pursue claims against the General Partner or its directors or ultimate owners, which appears to be the issue at the root of the Investors' complaints;

(c) Condoning the Investors' attempts to seize control of the Proposal proceedings would set a dangerous precedent for future insolvency processes, and doing so would be contrary to the modern theory of Canadian insolvency law, which seeks

to harmonize outcomes under the proposal provisions of the BIA and the *Companies' Creditors Arrangement Act* ("**CCAA**"); and,

(d) Fundamentally, the Investors have not satisfied the test for lifting the stay of proceedings in these circumstances.

Concord Has Standing

8. The Chi Long LPs have given notice to Concord that they assert Concord lacks standing to make submissions on this motion.

9. Concord is the Proposal sponsor and has a significant interest in seeing the Proposal succeed. Concord has agreed to provide the necessary funding for these Proposal proceedings, including funds required for the maintenance and upkeep of the YSL Project property, which was urgently required as critical dewatering work had gone unaddressed for months before Concord's involvement.

10. In addition to its role as Proposal sponsor, Concord is also a secured lender to YSL, being a member of the first mortgage syndicate administered by Timbercreek Mortgage Servicing Inc. ("**Timbercreek**"), YSL's senior secured creditor. Concord also has a contractual right and obligation to purchase the third mortgage position of 2576725 Ontario Inc.

11. On October 28, 2020, Timbercreek and an affiliated entity commenced an application seeking the appointment of a receiver over the YSL Project (the "**Timbercreek Receivership Application**"). Timbercreek has agreed to forbear from pursuing the Timbercreek Receivership Application, and Concord provided the financial commitments required by Timbercreek to extend

forbearance to permit these Proposal proceedings to carry on. Concord secured Timbercreek's consent to and support for the BIA proceeding.

12. The reality is that if the Proposal does not succeed, either as a result of the Investors' relief being granted or because it has been rejected by YSL's creditors or the Court at a sanction hearing, then Timbercreek's forbearance would terminate, and the Timbercreek Receivership Application will resume. Simply put, there is no circumstance under which appointment of a receiver by or in favour of the Investors would proceed. Nor is there any circumstance in which the Investors will ultimately be able to withhold their consent to a sale of the YSL Project.

13. Concord is the only party to these proceedings taking the necessary steps to preserve value, and moreover is the only party that has put forward a plan that would result in both a distribution to creditors, and the completion of the YSL Project. The Investors have neither contributed additional capital to the YSL Project since their initial investment, nor have they brought forward any solutions to YSL's intractable insolvency crisis that has been ongoing for more than a year.

14. If this Court were to decide that proposal sponsors lack standing to make submissions with respect to proceedings that directly threaten the very proposal they have sponsored, that would risk discouraging future proposal sponsorships. Potential proposal sponsors will, understandably, be less inclined to undertake the sponsorship process if they will not even be given the opportunity to respond to legal attacks on their investment.

PART II - FACTS

15. As noted above, Concord does not propose to fully review the facts of the proceeding, nor does it intend to join issue on the numerous differences between the Investors and YSL. Instead, Concord wishes to emphasize a few facts that it says this Court should bear in mind.

16. First, there are only two possible outcomes in this proceeding: (a) the Proposal is successful, or (b) Timbercreek's Receivership Application is heard and granted. There is no reality to the Investors' suggestion that an equitable receiver appointed at their behest is a viable option in these circumstances. They have not suggested any way that YSL can solve its liquidity crisis and avoid Timbercreek obtaining appointment of a receiver if the Proposal fails.

17. Second, it is important not to lose sight of the fact that this is a long-term insolvency.

18. YSL defaulted on its loan agreement with Timbercreek more than a year ago, and subsequently entered into forbearance arrangements, which have been amended and extended several times thanks in no small part to Concord's support.

19. Since the original default, numerous construction trade creditors, project consultants and other unsecured creditors have gone unpaid, and those who purchased presale condominium units in the YSL Project have been left uncertain about the status of their future homes.

20. If the Proposal moves forward to a favourable creditor vote and sanction, YSL's creditors will be paid, either in full for unaffected creditors or, for the Affected Creditors, with a 58% recovery on their proven claims. Upon implementation of the Proposal, Concord will acquire the YSL Project lands and such of YSL's contractual obligations as may be required to complete the YSL Project in its current conception. Importantly, the result of the Proposal will be that the vast majority of condominium unit purchase agreements will be assumed by Concord, and those purchasers will see construction resume on their units in the near term.

21. Alternatively, if the Investors are successful and the Proposal does not move forward, there is a significant risk of unsecured creditors seeing zero recovery under a liquidation sale of the YSL Project, and it is likely that any subsequent purchaser would elect not to assume the existing

condominium purchase agreements – as is typical in these scenarios – resulting in them being terminated.

PART III – ISSUES

22. The issues for determination are whether:

(a) the Investors' Contemplated Applications are stayed; and

(b) appropriate circumstances exist such that the automatic stay of proceedings under section 69(1)(a) of the BIA should be lifted pursuant to Section 69.4 of the BIA.

PART IV – LAW AND ARGUMENT

A. THE STAY APPLIES

23. The Investors ask this Court to apply a technical and narrow reading to section 69(1)(a) of the BIA to conclude that the automatic stay does not apply to the Contemplated Applications. This position is at odds with the well-established principle of applying the s. 69(1)(a) stay purposively, with regard to the effect that the underlying relief would have on the proceedings.

24. In *Golden Griddle Corp v Fort Erie Truck & Travel Plaza Inc.* ("*Golden Griddle*")[2] this Court, when faced with the question as to whether certain injunctive relief that had been sought was subject to the stay, adopted the following approach to interpreting s. 69(1)(a):

> [12] A purposive definition of the word "remedy" in section 69(1)(a) would suggest that, **remedies which in any way hinder or could impair that process are caught within the section and are stayed**. The issue should be approached contextually on a case-by-case basis and the remedy sought should be considered in terms of its impact on the objectives of the statutory stay provision. It is the impact rather than the generic nature of the relief sought which should govern. Therefore, if the

[2] *Golden Griddle Corp. v Fort Erie Truck & Travel Plaza Inc.*, 2005 CanLII 81263 ("*Golden Griddle*").

> injunctive relief sought **detrimentally affects or could impair the ability of the insolvent person to put forth a proposal, it should be stayed**, whereas, if the nature of the injunction sought **would have no effect whatsoever** on that ability, it should not be stayed.[3]
>
> [Emphasis added.]

25. This purposive interpretation is consistent with the "contemporary thrust of legislative reform [which] has been towards harmonizing aspects of insolvency law common to the two statutory schemes [being the CCAA and the BIA] to the extent possible."[4] It is well recognized that "the test for lifting a stay under the BIA and the CCAA are substantially the same,"[5] and Justice Newbould on behalf of this Court has held that "every attempt should be made to interpret the provisions of section 69(1)(a) in a harmonious way with section 11.02 of the CCAA, thus giving effect to the *Century [Services]* principles."[6]

26. Allowing the Investors' Contemplated Applications to proceed would be squarely contrary to the intention of the statutorily imposed stay of proceedings, which is to grant "a reorganizing debtor an opportunity to have some 'breathing room' during which to negotiate with its creditors and hopefully put forward a prospective financial restructuring which would meet their requirements."[7]

27. In *Golden Griddle*, the moving parties sought injunctive relief against the debtor, and in rejecting the request, this Court held that "to enforce such provisions during the proposal period, in my view would be a remedy which would interfere with the 'breathing space' that section 69(1)(a) was meant to create, and, could have implications for and could impair the debtor's ability

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[3] *Golden Griddle* at para 12.
[4] *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 ("*Century Services*") at para 24.
[5] *Alberta Energy Regulator v Lexin Resources Ltd.*, 2019 ABQB 23 at para 23.
[6] *Re Emergency Door Service Inc.*, 2016 ONSC 5284 ("*Emergency Door*") at para 37.
[7] *Golden Griddle* at para 11.

to restructure and put forth a proposal."[8] There, the Court protected the debtor from a collateral attack intended to derail a creditor proposal, and the same should happen here.

28. Paragraph 91 of the Chi Long LPs' factum sets out the litigation timetable sought by the Investors. In considering this request, this Court must have regard to the Proposal timelines, which contemplate that a meeting of creditors will be held on June 15 in advance of a Proposal sanction hearing which has been scheduled for June 23, 2021, pursuant to the endorsement of Justice Gilmore issued May 7, 2021. The extensive litigation processes put forward by the Investors are incompatible with the need to preserve YSL's "breathing space", and represent exactly the type of collateral attack that has been rejected by this Court in *Golden Griddle* and the more recent decision in *Re Emergency Door Services Inc.* ("*Emergency Door*").[9] There can be no question that the Investors' lift-stay application would be summarily rejected in a CCAA scenario,[10] and both *Golden Griddle* and *Emergency Door* require that the same happen here.

29. While both the Chi Long LPs and the YongeSL LPs both attempt to distinguish *Emergency Door*, neither of them take issue with or mention the *Golden Griddle* decision upon which *Emergency Door* is grounded. Arguing about whether or not Justice Newbould identified a comma correctly in his decision misses the point that a purposive interpretation is (a) required, (b) appropriate, and (c) consistent with modern Canadian insolvency law. Concord submits that this Court should not effectively overturn both *Emergency Door* and *Golden Griddle* by granting the Investors' requested lift-stay order.

30. Further, the Investors' assertion that YSL's Proposal is not a restructuring does not withstand scrutiny. If implemented, the Proposal will cleanse YSL's balance sheet through a

[8] *Golden Griddle* at para 19.
[9] *Supra*.
[10] *Companies' Creditors Arrangement Act*, RSC c C-136 ("*CCAA*") at section 11.02 and see paras. 40-41 below.

comprehensive compromise and release of claims. YG LP is not dissolved by the Proposal, and it remains open to the limited partners of that enterprise to determine whether there is further business they wish to engage in or whether there are attributes the firm may still be able to monetize. While, in consideration for its sponsorship of the Proposal, Concord will acquire the YSL Project lands along with those material contracts necessary for the completion of the YSL Project (assuming this outcome is favoured by YSL's creditors and sanctioned by the Court), in an insolvency scenario, the debtors' equity-holders do not have standing to interfere with the outcome. The Court should not grant them that platform here.

31. Moreover, while the purpose of the proposal at issue in *Emergency Door* was to restructure the debtor entity, that is not the only purpose of a proposal or the accompanying stay under s. 69.1. As explained in *Bennett on Bankruptcy*:

> The stay of proceedings under a proposal, as in a bankruptcy, is critical to the orderly distribution of the bankrupt's assets. The stay of proceedings ensures that no creditor will benefit or improve his or position at the expense of other creditors. The stay of proceedings gives the trustee and debtor breathing room to administer the estate. Equally, the stay prevents creditors from jumping the queue in an attempt to get paid while others are prevented from proceeding. The stay operates to level the playing field, with no creditor obtaining an advantage.[11]

32. The Proposal in the instant case operates to ensure the orderly distribution of YSL's assets, to the benefit of YSL's creditors. The Contemplated Applications are a direct attack on the Proposal and, accordingly, are caught by s. 69.1 of the *BIA*.

[11] Frank Bennett, *Bennett on Bankruptcy*, 23rd ed. (2021), at p. 438-39.

B. THE STAY SHOULD NOT BE LIFTED

33. Lifting the stay of proceedings under the BIA is rare, and should not be done lightly. In the leading decision, *Re Ma*, the Ontario Court of Appeal explained the approach as follows:

> [2] Under s. 69.4 the court may make a declaration lifting the automatic stay if it is satisfied (a) that the creditor is "likely to be materially prejudiced by [its] continued operation" or (b) "that it is equitable on other grounds to make such a declaration." The approach to be taken on s. 69.4 application was considered by Adams J. in *Re Francisco* (1995), 32 C.B.R. (3d) 29 at 29-30 (Ont. Gen. Div.), a decision affirmed by this court (1996), 40 C.B.R. (3d) 77 (Ont. C.A.):
>
> > In considering an application for leave, the function of a **bankruptcy court is not to inquire into the merits of the action sought to be commenced or continued**. Instead, the role is one of ensuring that sound reasons, consistent with the scheme of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, exist for relieving against the otherwise automatic stay of proceedings.
>
> [3] As this passage makes clear, **lifting the automatic stay is far from a routine matter**. There is an onus on the applicant to establish a basis for the order within the meaning of s. 69.4. As stated in *Re Francisco*, **the role of the court is to ensure that there are "sound reasons, consistent with the scheme of the *Bankruptcy and Insolvency Act*" to relieve against the automatic stay**.[12]
>
> [Emphasis added.]

34. Therefore, this Court need not and should not engage with the Investors' extensive factual allegations in this motion – its role is not to weigh the merits of their case. Rather, the Court's role at present is to ensure the Investors' lift-stay request is consistent with the scheme of the BIA, and specifically, in this case, with the proposal provisions under Part III thereof.

35. To succeed, the Investors must establish either (a) that they are materially prejudiced by the stay, or (b) that the equities otherwise merit the stay be lifted in the circumstances. They fail on both accounts.

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[12] *Re Ma*, 2001 CanLII 24076 (ON CA) ("*Re Ma*") at paras 2-3.

(a) There is No Prejudice to the Investors

(i) The Stay Does Not Bar the Enforcement of the Investors' Contractual Rights

36. In order to show material prejudice, a party must demonstrate that it is being treated unfairly compared to others.[13]

37. While the Investors articulate prejudice in a variety of forms, this prejudice is not remedied by lifting the stay, and the existence of the stay does not treat them unfairly in the circumstances.

38. First, the Investors seek contractual remedies against the General Partner pursuant to the terms of YG LP's Limited Partnership Agreement ("**LPA**") for commencing these proceedings. However, the section relied on by the Investors does not operate as they suggest, and relates only to actions taken by the General Partner solely on its own behalf and not on behalf of the firm.[14] As the Investors have rightly pointed out, the General Partner is not an applicant within these proceedings, and accordingly no breach of section 11.2(b) of the LPA has occurred.

39. Second, while the Investors nominally seek remedies as against the General Partner, in reality they are asserting claims against the General Partner's directors and/or ultimate owners. Those claims are not released by the Proposal,[15] and the Investors may pursue them on a timeline that does not interfere with the Proposal.

40. Third, in the case of limited partnerships, in *Re Lehdorff General Partner* ("*Lehndorff*"), this Court determined that "a general partner is responsible to defend proceedings against the limited partnership in the firm name, so in procedural law and in practical effect, a proceeding

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[13] *Golden Griddle* at para 19.
[14] Affidavit of Lue (Eric) Li sworn May 3, 2021 ("Li Affidavit"), exhibit "D" (At Tab D of the Motion Record of the YongeSL LPs). See section 11.2(b).
[15] Li Affidavit, exhibit "EE" (At Tab EE of the Motion Record of the YongeSL LPs). See section 7.01 of the draft Proposal and note that this section is identical to the version of the Proposal now filed.

against a limited partnership is a proceeding as against the general partner."[16] In denying a lift-stay application in that case, and in fact extending the stay of proceedings in favour of the non-applicant partner entities, Justice Farley held:

> The business operations of the applicants are so intertwined with the limited partnership that it would be impossible for relief as to a stay to be granted to the applicants which would affect their business without at the same time extending that stay to the undivided interest of the limited partners in such. It also appears that the applicants are well on their way to presenting a reorganization plan for consideration and a vote; this is scheduled to happen within the month so there would not appear to be any significant time inconvenience to any person interested in pursuing proceedings.[17]

41. This passage applies equally to the present case, where permitting the Investors' litigation against the General Partner to proceed at this time would have the same prejudicial effect on YG LP, given that the General Partner has no assets, business or affairs independent of its status as general partner of YG LP.

(ii) The Investors' Concerns Regarding Cresford's Debt Claims are Properly Addressed by the Proposal Trustee

42. The Investors also assert as a primary argument that the Proposal is an attempt for the Cresford group to improperly extract value from the YSL Project at the expense of YG LP's equity-holders. This argument flows from an assertion that advances made to YG LP by entities within the Cresford group (none of whom are parties to YG LP's LPA) at a time when the Investors refused to increase their capital contributions in the face of the enterprise's insolvency are "equity claims" which would improperly receive a dividend under the Proposal.

43. The bald assertion that these advances are "equity claims" appears to ignore the separate legal personality of the various Cresford corporate entities without any rationale having been

[16] *Re Lehndorff General Partner Ltd.*, [1993] 17 CBR (3d) 24 ("*Lehndorff*"), at para 18.
[17] *Lehndorff* at para 21.

articulated as to how the corporate veil might be pierced. It also fails to engage with what would seem to be material differences in the law of business associations between corporations and limited partnerships around the nature of ownership interests in the firm, and the firm's property, as those differences may affect an "equity claims" analysis.

44. But none of that need be settled on this motion because the BIA process itself provides the mechanism to resolve such issues. The Cresford entities that made advances to YSL but who are not parties to YG LP's LPA will have to file proofs of claim, and the Proposal Trustee will have to adjudicate those proofs of claim.

45. Furthermore, if after assessing the Cresford claims the Proposal Trustee determines that Cresford's intercompany claims are unsecured claims, then, under the Proposal, those entities will receive only a 58% recovery on those loans. The Cresford entity that is a party to the LPA as a limited partner, like the Investors, will receive no return on its investment, consistent with the principle that there can be no return to equity until debt claims have been paid in full: BIA section 60(1.7). This type of recovery is not indicative of any sort of self-dealing on the part of Concord, as the outcome would be a substantial net loss overall.

46. While the Investors suggest that the effect of the Cresford claims and their treatment as debt or equity will determine whether there is sufficient value in the YSL Project to permit a return to equity, this suggestion is not supported by any disinterested opinion or analysis. The Proposal Trustee is required to report to creditors as to whether the Proposal represents a better outcome for YSL's creditors than a liquidation. The Investors' complaints in this regard are therefore premature and unsupported. If they were right, this will be reflected in the Proposal Trustee's report and the creditors will presumably reject the Proposal, as is their prerogative. In either case, it is the creditors' voices that should be heard, and not those of the equity-holders.

(b) The Equities Favour Maintaining the Stay

47. The Investors say that "The primary concern of the Court should be the equitable treatment of creditors."[18] Concord agrees. This is precisely why there are not "sound reasons, consistent with the scheme of the *Bankruptcy and Insolvency Act*… to relieve against the automatic stay" as required by the Ontario Court of Appeal decision in *Re Ma*.[19]

48. If the Stay is lifted, the Contemplated Applications will proceed after the creditors' meeting. However, and with regard to the relief sought in the Contemplated Application, there are only two realistic outcomes: (a) the Proposal fails, in which case the Timbercreek Receivership Application moves forward and the YSL Project is liquidated (as the Investors now request), or (b) the Proposal succeeds because it is supported by the creditors and approved by this Court.

49. While the Investors cast themselves as disproportionately prejudiced as a result of their nil investment return and therefore entitled to equitable relief, they ignore completely the impact that rejection of the Proposal would have on YSL's unsecured creditors. Indeed, the claims of the creditor group have gone unaddressed for more than a year, and if the Investors are successful there is a prospect, if not a likelihood, that this delay will go on for many more months at least, while a receivership sale process unfolds – and with no certainty there would be any return to unsecured creditors in such a scenario. In these circumstances, particularly where neither the Investors nor any other party is contesting that YSL is insolvent, it would be wrong in principle to allow YSL's Investors, acting purely in their own self interest, to dictate the process by which creditors determine their fate.

[18] Factum of the YongeSL LPs at para 8.
[19] *Re Ma* at para 3.

50. It must also be noted that Timbercreek, who has had every right to proceed with a receivership but for its forbearance, has agreed to let the Proposal proceed, rather than take its chances in a liquidation sale scenario and wait to get paid until such a sale completes.

51. A lift-stay order in these circumstances would be entirely at odds with the proposal provisions of the BIA and the overall scheme of the BIA. The proposal provisions of BIA, as part of Canada's harmonized insolvency regime, promote creditor democracy. If the Investors succeed here, the votes of the creditors would be ignored. The BIA gives primacy to the rights of creditors over equity-holders in insolvency. Acceding to the Investors' clear attempt to upend this order in order to let them take their chances on a receivership sale in the faint hope that the YSL Project's fortunes will shift and they will get something, rather than nothing, would upend and offend these basic principles.

PART V – RELIEF REQUESTED

52. For these reasons, Concord submits that the Investors' Contemplated Actions are stayed by operation of the BIA and the Investors have not satisfied the applicable tests to grant a lift-stay order in this case. This motion should be dismissed accordingly.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

May 28, 2021.

BENNETT JONES LLP

Schedule "A" – List of Authorities

1. *Alberta Energy Regulator v Lexin Resources Ltd.*, 2019 ABQB 23

2. *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60

3. Frank Bennett, *Bennett on Bankruptcy*, 23rd ed. (2021)

4. *Golden Griddle Corp. v Fort Erie Truck & Travel Plaza Inc.*, 2005 CanLII 81263 (ONSC)

5. *Re Emergency Door Service Inc.,* 2016 ONSC 5284

6. *Lehndorff General Partner Ltd., Re*, 1993 CarswellOnt 183

7. *Re Ma*, 2001 CanLII 24076 (ON CA)

Schedule "B" – Rules and Statutes

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3**

Payment — equity claims

(1.7) No 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.

Stay of proceedings — Division I proposals

69.1 (1) Subject to subsections (2) to (6) and sections 69.4, 69.5 and 69.6, on the filing of a proposal under subsection 62(1) in respect of an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged or the insolvent person becomes bankrupt;

Court may declare that stays, etc., cease

69.4 A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied

(a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or

(b) that it is equitable on other grounds to make such a declaration.

***Companies' Creditors Arrangement Act*, RSC 1985 c C-136**

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

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

Estate/Court File No.: 31-2734090

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

Proceedings commenced in Toronto

FACTUM OF
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(Returnable June 1, 2021)

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