

**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.**

**FACTUM of the APPELLANTS**

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

March 31, 2023

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## PART I - OVERVIEW

1. This is an appeal by the YongeSL LPs from a decision by Justice Kimmel (the “**Motion Judge**”) that restricts the YongeSL LPs’ standing to participate in this proceeding. The Motion Judge concluded that because the YongeSL LPs and other Class A Preferred Unit holders of YG Limited Partnership (collectively, the “**limited partners**”) had a “unique perspective” on certain issues, the Court had the discretion to restrict their standing in the proceeding to make submissions on those issues, but not others. This conclusion was in error.

2. The proposal in this *Bankruptcy and Insolvency Act*, RSC 1985, c B-7 (“**BIA**”) proceeding expressly provides that the limited partners are entitled to the proceeds of YG Limited Partnership and YSL Residences Inc. (the “**Debtors**”) after all unsecured creditors are paid. The limited partners have the ultimate economic interest in this proceeding and are directly impacted by the determination of three outstanding claims. Subject to the determination of these claims, the limited partners may yet recover the principal of their \$14.8 million investment in the Debtors.

3. One such outstanding claim is asserted by Maria Athanasoulis, a former senior officer of the Cresford Group, the condominium developer that controlled the Debtors and their condominium project: the “**YSL Project**”. Ms. Athanasoulis asserts an entitlement to \$19 million in damages for wrongful dismissal (\$1 million) and a share of the profits in the YSL Project (\$18 million) (the “**Profit-Sharing Claim**”).

4. The Debtors’ proposal trustee, KSV Restructuring Inc. (in such capacity, the “**Proposal Trustee**”) determined that, based on the evidence before it, it intended to disallow the Profit-Sharing Claim in full. If that disallowance is upheld, the limited partners are certain to recover at least \$12 million (more if the two other outstanding claims are disallowed).

5. The Proposal Trustee expects that Ms. Athanasoulis will appeal the disallowance of her claim pursuant to s.135(4) of the *BIA*. The Proposal Trustee sought directions regarding the conduct of Ms. Athanasoulis' potential future appeal before (a) it formally disallowed the Profit-Sharing Claim and (b) any appeal was commenced from such disallowance. The Proposal Trustee's motion for directions was heard by the Motion Judge.

6. The Motion Judge accepted the Proposal Trustee's submission that the limited partners standing on Ms. Athanasoulis' future appeal should be pre-determined and restricted to certain legal issues, and the Motion Judge gave directions accordingly.

*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* (February 10, 2023), Toronto BK-21-2734090-0031 (ONSC Commercial List) at [paras 51-53 and 61\(i\)](#) [*Motion Decision*], [Book of Authorities \("AOA"\)](#), Tab 1, pp. 17-18 and 19-20 and ABCO, Tab 3, pp. [39-42](#).

7. The Motion Judge's conclusion that the limited partners' standing on a future appeal should be restricted was in error because:

- (a) Justice Dunphy previously determined that the limited partners have standing in this proceeding as an affected group;
- (b) the limited partners are directly impacted by the relief sought; and
- (c) the limited partners' standing cannot be curtailed by an exercise of the Court's discretion to control its own process.

## PART II - FACTS

### A. Background

#### *i. The limited partners successfully opposed the original proposal*

8. In summer 2021, the Debtors advanced a pre-packaged liquidation proposal under the *BIA* (the “**original proposal**”). The Debtors’ original proposal would have seen the Cresford Group extract approximately \$22 million from the YSL Project’s unsecured creditors. Under the original proposal, the YSL Project’s unsecured creditors would have recovered a maximum of 58% of their claims. The limited partners, who had collectively invested \$14.8 million in the YSL Project, would have recovered nothing.

*YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178 at [paras 11, 36 and 49](#) per Dunphy J [*YSL re Sanction Hearing*], [AOA, Tab 2, pp. 26, 32 and 35](#).

9. The Proposal Trustee supported the original proposal. The limited partners did not.

10. On a preliminary hearing, over the objections of the Debtors and their proposal sponsor, Concord Properties Developments Corp. (“**Concord**”), Justice Dunphy held that the limited partners had standing in the proceeding and could make submissions on why the original proposal should not be sanctioned.

[\*In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc \(June 1, 2021\), Toronto 31-2734090 \(ONSC Commercial List\), per Dunphy J \[YSL re Standing\], AOA, Tab 3, p. 45.\*](#)

11. The limited partners took the position that the Debtors’ original proposal was made without good faith and did not benefit the general body of creditors. Justice Dunphy agreed and refused to

sanction it. His Honour did, however, allow the Debtors to make another proposal (the “**Proposal**”), which was ultimately approved by the Court.

*YSL re Sanction Hearing* at [paras 73-76](#) and [84](#), *AOA*, Tab 2, pp. 40-41.

*ii. The terms of the Proposal*

12. Pursuant to the Proposal, the YSL Project was transferred to Concord. In exchange, Concord paid \$30.9 million to the Proposal Trustee. From that pool of funds, unsecured creditors were to receive up to 100% of their claims (an increase from up to 58% under the original proposal).

13. Article 5.05 of the Proposal expressly provides that the limited partners are entitled to any residue of the Proposal after final distributions to creditors.

The Proposal, article 5.05 – Appendix G to the Eighth Report to the Court of KSV Restructuring Inc. as Proposal Trustee of YG Limited Partnership and YSL Residences Inc. dated December 30, 2022 (the “**Eighth Report**”), Appeal Book and Compendium (“**ABCO**”), Tab 5, p. 70.

14. The improved terms of the Proposal meant that both the YSL Project’s unsecured creditors and the limited partners might fully recover their investment in the YSL Project.

*iii. Three outstanding claims remain against the Debtors*

15. Three claims against the Debtors remain outstanding: (a) a claim by CBRE Limited (“**CBRE**”) of approximately \$1.2 million; (b) a claim by Harbour International Investment Group Inc. (“**Harbour**”) for \$1 million plus HST, which the Proposal Trustee has allowed; and (c) Ms. Athanasoulis’ \$19 million claim.

Eighth Report, p. 5, ABCO, Tab 4, p. 51.

16. Subject to the determination of the three outstanding claims against the Debtors, up to \$16.038 million may be available for distribution to the limited partners. If Ms. Athanasoulis' Profit-Sharing Claim is disallowed in full, the limited partners will recover at least \$12 million pursuant to the Proposal.

Eighth Report at p. 6, ABCO, Tab 4, p. 52.

*iv. The CBRE and Harbour claims*

17. CBRE's claim is for a commission arising after the YSL Project was conveyed to Concord. The Proposal Trustee initially disallowed the claim but consented to CBRE bringing an appeal *de novo*. In the face of CBRE's appeal, the Proposal Trustee reversed its position. It no longer supported its disallowance of CBRE's claim and instead supported CBRE's appeal. The YongeSL LPs opposed CBRE's appeal. In allowing CBRE's appeal, the Court held that the YongeSL LPs lacked standing to oppose CBRE's appeal. The YongeSL LPs have appealed this decision (Court of Appeal File No. COA-22-CV-0451, the "**CBRE Appeal**"). The CBRE Appeal is scheduled to be heard on June 14, 2023.

*YG Limited Partnership and YSL Residence Inc.*, 2022 ONSC 6548, AOA, Tab 4, p. 51.

18. YongeSL LPs brought an application pursuant to s.37 of the *BIA* to challenge the Proposal Trustee's decision to allow Harbour's claim. That application has been held in abeyance pending a final determination of CBRE's claim.

*v. Ms. Athanasoulis' claim*

19. Ms. Athanasoulis' claim involves an allegation that she is entitled to share in the profits of the YSL Project. The Proposal Trustee and Ms. Athanasoulis agreed to a bifurcated arbitration of

that claim, without the knowledge and involvement of the limited partners and Concord. The first phase of that arbitration resulted in a finding that Ms. Athanasoulis had an agreement with the Cresford Group whereby she would share in the profits of the YSL Project.

20. Certain issues were not decided at the arbitration, including whether the Profit-Sharing Claim:

- (a) is an equity claim;
- (b) has any value at all;
- (c) is unenforceable given (i) the terms of the limited partnership agreement that governs YG Limited Partnership, (ii) Ms. Athanasoulis' fiduciary duties to YG Limited Partnership and the limited partners and/or (iii) statements made by Ms. Athanasoulis to the limited partners when they made their advances to YG Limited Partnership; and
- (d) entitles Ms. Athanasoulis to be paid before the limited partners have recovered their advances to YG Limited Partnership, plus their preferred return thereon.

21. Once the limited partners and Concord learned the outcome of the arbitration, the limited partners took steps to challenge the Proposal Trustee's right to arbitrate Ms. Athanasoulis' claim. Justice Kimmel held that the arbitration contemplated a final adjudication of Ms. Athanasoulis' claim and went beyond a mere fact-finding exercise. Her Honour held that it was an improper delegation to the arbitrator by the Proposal Trustee of its ultimate responsibility to determine and value Ms. Athanasoulis' claim.

*YG Limited Partnership (Re)*, 2022 ONSC 6138 at [paras 10, 52](#) and [81](#), per Kimmel J [*YSL re Funding*], [AOA, Tab 5, pp. 62-63, 70 and 75-76](#).



## **B. The Proceeding Before the Motion Judge**

22. The Proposal Trustee has since confirmed that, given the evidence before it, it intends to:
- (a) disallow the Profit-Sharing Claim in full because: (i) it is an equity claim; (ii) the Debtors did not actually earn any profit from the YSL Project, and therefore nothing was payable to Ms. Athanasoulis; and (iii) Ms. Athanasoulis has admitted that her entitlement to profit from the YSL Project arises only after the limited partners are repaid in full; and
  - (b) allow Ms. Athanasoulis' claim for wrongful dismissal damages in the amount of \$880,000.

Draft Notice of Disallowance – Appendix “H” to the Eighth Report,  
ABCO, Tab 6, p. 82.

23. The Proposal Trustee has not yet formally determined Ms. Athanasoulis' claim. The Proposal Trustee expects that Ms. Athanasoulis will appeal any disallowance of the Profit-Sharing Claim pursuant to s.135(4) of the *BIA*. The Proposal Trustee sought directions from the Motion Judge regarding Ms. Athanasoulis' anticipated future appeal.

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

The LPs shall be entitled only to raise issues in the appeal that pertain directly: (a) to whether the LPs must be repaid in full prior to any payments being made on the Athanasoulis Claim; and (b) to the enforceability of any element of the Athanasoulis Claim given the terms of the Limited Partnership Agreement.

Notice of Motion of the Proposal Trustee dated December 22, 2022 at para. 17(d), ABCO, Tab 7, p. 94.

### C. The Motion Judge's Decision

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

For all these reasons, it is anticipated that the LPs will be afforded an opportunity to participate on the appeal to the extent of any unique or added perspective or submissions that they have that are not advanced by the Proposal Trustee, or that the Proposal Trustee defers to the LPs on. In contrast, the LPs should not expect to be permitted to make submissions on points already being addressed by the Proposal Trustee, such as, the argument that the Profit Share Claim is a claim in equity, not a debt owing by the Debtor.

[...]

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

Motion Decision at [paras 59 and 61\(i\)](#), AOA, Tab 1, pp. 18 and 19-20 and ABCO, Tab 3, pp. 40-42.

26. The Motion Judge imposed a timetable and declined to order that Ms. Athanasoulis' appeal would proceed as an appeal *de novo*. The YongeSL LPs take no issue with these directions.

27. The timetable provides that the Proposal Trustee will determine Ms. Athanasoulis' claim on or before early June 2023. If Ms. Athanasoulis' claim is disallowed she will have 30 days to appeal.

### PART III - ISSUES & ARGUMENT

28. The Motion Judge erred in determining that the limited partners have restricted standing on Ms. Athanasoulis' appeal because,

- (a) Justice Dunphy previously determined that the limited partners have standing in this proceeding as an affected group;
- (b) the limited partners are directly impacted by the relief sought; and
- (c) the limited partners' standing cannot be curtailed by an exercise of the Court's discretion to control its own process.

*i. Standard of review is correctness*

29. The standard of review on this appeal is correctness. The issue on appeal is whether the limited partners have standing on an appeal by Ms. Athanasoulis pursuant to s.135(4) of the *BIA*. This is a question of law. Questions of law are reviewed on a correctness standard.

*Housen v Nikolaisen*, 2002 SCC 33 at [para 8](#), *AOA*, Tab 6, p. 93.

**A. The Motion Judge Erred by not Following Justice Dunphy's Earlier Decision**

30. The Motion Judge erred in failing to follow an earlier decision of Justice Dunphy. The question before Justice Dunphy was whether the limited partners could oppose the Debtors' motion for approval of the original proposal. Over the objections of the Debtors and Concord, Justice Dunphy held that the limited partners' arguments ought to be heard. Justice Dunphy recognized that the approval hearing was "effectively the only opportunity" that the limited partners would have to make their case.

*YSL re Standing* at [paras 3, 6, 10 and 12\(b\)](#), *AOA*, Tab 3, pp. 46-48.

31. An analogous question was before the Motion Judge: whether the limited partners could take a position on an appeal by Ms. Athanasoulis from the Proposal Trustee's determination of her claim (when made). Both hearings affect the limited partners' rights and interests in the same proceeding. Both hearings were effectively the only opportunity for the limited partners to advance their position. Justice Dunphy correctly held that those circumstances support granting the limited partners standing. The Motion Judge erred in failing to make the same finding.

32. The Motion Judge's decision also offends the principle of horizontal judicial comity. The Motion Judge ought to have followed Justice Dunphy's decision unless the Motion Judge "[was] convinced that the prior decision is wrong and can advance cogent reasons in support of this view." The Motion Judge did not refer to Justice Dunphy's decision. There were no reasons given for departing from it, let alone cogent reasons. The Motion Judge's decision that the limited partners lacked standing was in error.

*Stegenga v Jans*, 2021 ONSC 7898 at [paras 50-51](#), AOA, Tab 7, p. 192-193. *Pfizer Ireland Pharmaceuticals*, 2021 ONSC 6345 at [paras 24-25](#), AOA, Tab 8, pp. 203-204.

## **B. The Limited Partners Have Standing**

33. It is a basic principle of fundamental justice that if a party's proprietary or economic interests will be directly impacted by the outcome of a hearing, the party has standing to make submissions at the hearing.

*Ivandaeva Total Image Salon Inc v Hlemgizky*, 2003 CanLII 43168 at [para 27](#) (ONCA), AOA, Tab 9, p. 225-226. See also: *Fontaine v Canada (Attorney General)*, 2018 ONCA 1023 at [para 21](#), AOA, Tab 10, p. 245; and *Blake v Blake*, 2021 ONSC 7189 at [paras 59-60](#) (Div Ct), AOA, Tab 11, p. 264-265.

34. The Proposal expressly provides that the limited partners are to be paid the residual of the Proposal after unsecured creditors are paid.

Article 5.05 of the Proposal (**emphasis added**) – Appendix G to the Eighth Report, ABCO, Tab 5, p. 70.

35. The reasoning in *Ethier, Re*, applies to this case. In that case, a bankrupt sought to remove a trustee due to a conflict of interest. The Court held that, because the evidence “clearly indicates there is **no possibility** of a surplus”, the bankrupt had no standing to bring its motion. The Court accepted, however, that where there will or might be a surplus in the trustee’s hands after payment to creditors, a bankrupt would have standing.

*Ethier, Re*, 1991 CarswellOnt 213 at [paras 21-22](#) (Gen Div) (emphasis added), AOA, Tab 12, p. 273.

36. The Proposal Trustee has advised of its intention to disallow the Profit-Sharing Claim, which would result in over \$12 million being available to the limited partners. Any appeal from that disallowance will determine both the Profit-Sharing Claim and the limited partners’ recovery under the Proposal. The limited partners are “directly impacted” by the relief sought on that appeal and therefore have standing.

37. That fact has been recognized by both Justice Dunphy, who characterized the YongeSL LPs as among the “fulcrum stakeholders in this case”, and the Motion Judge, who in an earlier decision confirmed that the limited partners have a “direct interest” in the determination of claims in this proceeding.

*YSL re Sanction Hearing* at [para 11](#), AOA, Tab 2, p. 26; *YSL re Funding* at [para 59](#), AOA, Tab 5, p. 72.

38. The Motion Judge erred by concluding that,

At some level, every creditor has an interest in minimizing or eliminating the claims of other creditors on equal footing. That is not a reason to grant the LPs advance standing on an appeal, or even to give them full standing in the determination of the Athanasoulis Claim.

Motion Decision at [para 52](#), [AOA, Tab 1, p. 17](#) and [ABCO, Tab 3, p. 39](#).

39. This conclusion fails to recognize that a mechanism exists for creditors to challenge the treatment of other creditors' claims. If a trustee does not disallow a claim, the creditors can apply for that relief under s.135(5) of the *BIA*. Further, both creditors and interested persons, like the limited partners, can also challenge decisions of a trustee pursuant to s.37 of the *BIA*.

### **C. Error to Restrict Standing**

40. The Motion Judge erred in law by restricting the limited partners' standing in this proceeding to certain issues where they have a "unique perspective". A person either has standing in a proceeding or they do not. The Motion Judge recognized that the limited partners have standing, but erred by finding that the Court had the discretion to restrict that standing to certain legal issues in a future appeal and not others, especially in advance of the appeal being brought and all legal issues flushed out.

41. The Motion Judge also noted that the limited partners may have their own claims against Ms. Athanasoulis and if certain issues are determined in a future appeal by Ms. Athanasoulis, they will become *res judicata*. Having noted this, it was an error to then restrict the limited partners' standing to certain of those issues but not others. A conclusion that a matter may become *res judicata* presumes that the limited partners have standing in that matter.

Motion Decision at [para 26](#), [AOA, Tab 1, p. 14](#) and [ABCO, Tab 3, p. 36](#).

42. The limited partners' standing is a legal right. It is an error for a Court to pre-determine the legal issue of standing and frame it as a matter of discretion. Curtailing the limited partners' standing through an exercise of the Court's discretion appears to have formed the basis of the Motion Judge's decision and is an error:

The Proposal Trustee's suggestion is reasonable and strikes the appropriate balance. Subject, always, to the discretion of the judge hearing the appeal, I see no reason to grant the LPs *carte blanche* to double down on all the arguments already being made by the Proposal Trustee. The LPs have a legitimate interest in bringing forward any unique evidence, claims and arguments that they can offer, but not to duplicate or pile onto arguments already being made by the Proposal Trustee.

Motion Decision at [para 53](#), AOA, Tab 1, p. 18 and ABCO, Tab 3, p. 40.

43. There is no dispute that, if Ms. Athanasoulis appeals the Proposal Trustee's determination of her claim, the Court hearing that appeal will have the discretion to control its own process. The Court can set time limits on submissions or make other procedural directions. The Court cannot, however, direct that a party whose interests are to be directly affected by the Court's order has no standing to be heard on all issues that directly impact their interests.

44. It was also an error to assume that the Proposal Trustee's position and the limited partners' positions will be aligned on a future appeal by Ms. Athanasoulis, which has not been brought, from a determination that has not yet been made. The limited partners hope that the Proposal Trustee disallows the Profit-Sharing Claim in full and vigorously defends its decision to do so on an appeal. The Proposal Trustee has, however, changed its position before (eg. in respect of the CBRE claim). The limited partners should not be pre-emptively prohibited from protecting their interests and making submissions on any appeal brought by Ms. Athanasoulis.

Motion Decision at [para 53](#), AOA, Tab 1, p. 18 and ABCO, Tab 3, p. 40.

#### PART IV - ADDITIONAL ISSUES

45. The YongeSL LPs do not need leave to appeal the Motion Judge's Order for two reasons. First, this appeal is likely to affect other cases of a similar nature in this proceeding and therefore leave to appeal is not required.

[BIA, s.193\(b\).](#)

46. The YongeSL LPs have challenged the Proposal Trustee's treatment of Harbour's claim pursuant to s.37 of the BIA. The Motion Judge's conclusion that the YongeSL LPs lack unfettered standing in this proceeding is likely to affect the YongeSL LPs participation in its challenge of the Harbour claim in this proceeding.

47. Leave to appeal is also not required because the "property involved in the appeal exceeds in value ten thousand dollars". Ms. Athanasoulis' claim is for approximately \$19 million.

[BIA, s.193\(c\).](#)

*Friedland, Re*, 2011 BCCA 540 at [paras 7 and 8](#), AOA, Tab 13, p. 278-279.

*Roman Catholic Episcopal Corporation of St. George's, Re*, 2007 NLCA 17 at [paras 25-27](#), AOA, Tab 14, p. 290.

48. Alternatively, if leave to appeal is required, it should be granted. Leave to appeal may be granted where (a) the appeal raises issues of general importance to the practice in bankruptcy or insolvency matters, or to the administration of justice as a whole, (b) the appeal is *prima facie* meritorious, and (c) the appeal would not unduly hinder the progress of the proceeding.

[BIA s.193\(e\).](#)

*Business Development Bank of Canada v Pine Tree Resorts Inc*, 2013 ONCA 282 at [para 29](#), AOA, Tab 15, p. 299-300.

49. This appeal involves matters of general importance to bankruptcy matters because it involves the legal question of whether equity claimants have standing in bankruptcy matters



generally. This appeal is *prima facie* meritorious given the errors identified above. This proceeding would not be unduly delayed by this appeal. The Debtors' only asset has been liquidated – they will have no ongoing business. Determinations of the outstanding claims against the Debtors will not be unduly delayed by this appeal.

#### **PART V - CONCLUSION & ORDER SOUGHT**

50. The Motion Judge erred in restricting the limited partners' right to make submissions in any future appeal from the determination of Ms. Athanasoulis' claim. The limited partners have the ultimate economic interest in this proceeding and are directly impacted by the outcome of such an appeal, which will determine both Ms. Athanasoulis' Profit-Sharing Claim and the limited partners' recovery pursuant to the Proposal. There was no basis to distinguish the limited partners' right to standing to issues where they have a "unique perspective" – standing is a legal right, not a matter of discretion. It was an error for the Motion Judge to have circumscribed that right in respect of a potential future appeal.

51. The YongeSL LPs seek an order varying the order of the Motion Judge and granting an order in its place: (a) declaring that the limited partners have standing to participate, without restrictions, in any appeal by Ms. Athanasoulis from the disallowance of her claim in this

proceeding; (b) awarding the YongeSL LPs their costs of this appeal; and (c) granting such further and other relief as this Court deems just.

Estimated time for oral argument of the appeal (not including reply): 1 hour.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of March, 2023.



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Alexander Soutter

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

**COURT OF APPEAL FOR ONTARIO**

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

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

**CERTIFICATE**

I estimate that one hour will be needed for my oral argument of the appeal, not including reply. An order under subrule 61.09(2) (original record and exhibits) is not required.

DATED AT Toronto, Ontario this 31<sup>st</sup> day of March, 2023.



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Alexander Soutter

**SCHEDULE “A”**  
**List of Authorities**

No.	Case
1.	<a href="#"><u><i>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</i> (February 10, 2023), Toronto BK-21-2734090-0031 (ONSC Commercial List)</u></a>
2.	<a href="#"><u><i>YG Limited Partnership and YSL Residences (Re)</i>, 2021 ONSC 4178</u></a>
3.	<a href="#"><u><i>In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc</i> (June 1, 2021), Toronto 31-2734090 (ONSC Commercial List), per Dunphy J</u></a>
4.	<a href="#"><u><i>YG Limited Partnership and YSL Residence Inc.</i>, 2022 ONSC 6548</u></a>
5.	<a href="#"><u><i>YG Limited Partnership (Re)</i>, 2022 ONSC 6138</u></a>
6.	<a href="#"><u><i>Housen v Nikolaisen</i>, 2002 SCC 33</u></a>
7.	<a href="#"><u><i>Stegenga v Jans</i>, 2021 ONSC 7898</u></a>
8.	<a href="#"><u><i>Apotex Inc v Pfizer Ireland Pharmaceuticals</i>, 2021 ONSC 6345</u></a>
9.	<a href="#"><u><i>Ivandaeva Total Image Salon Inc v Hlemgizky</i>, 2003 CanLII 43168 (ON SC)</u></a>
10.	<a href="#"><u><i>Fontaine v Canada (Attorney General)</i>, 2018 ONCA 1023</u></a>
11.	<a href="#"><u><i>Blake v Blake</i>, 2021 ONSC 7189</u></a>
12.	<a href="#"><u><i>Ethier, Re</i>, 1991 CarswellOnt 213 (Gen Div)</u></a>
13.	<a href="#"><u><i>Friedland, Re</i>, 2011 BCCA 540</u></a>
14.	<a href="#"><u><i>Roman Catholic Episcopal Corporation of St. George’s, Re</i>, 2007 NLCA 17</u></a>
15.	<a href="#"><u><i>Business Development Bank of Canada v Pine Tree Resorts Inc</i>, 2013 ONCA 282</u></a>

**SCHEDULE “B”**  
**Excerpts of Relevant Statutes**

[Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)

**Appeal to court against trustee**

**37** 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.

**Admission and Disallowance of Proofs of Claim and Proofs of Security**

**Trustee shall examine proof**

**135** (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.

**Determination of provable claims**

(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

**Disallowance by trustee**

(2) The trustee may disallow, in whole or in part,

- (a) any claim;
- (b) any right to a priority under the applicable order of priority set out in this Act; or
- (c) any security.

**Notice of determination or disallowance**

(3) Where the trustee makes a determination under subsection (1.1) or, pursuant to subsection (2), disallows, in whole or in part, any claim, any right to a priority or any security, the trustee shall forthwith provide, in the prescribed manner, to the person whose claim was subject to a determination under subsection (1.1) or whose claim, right to a priority or security was disallowed under subsection (2), a notice in the prescribed form setting out the reasons for the determination or disallowance.

**Determination or disallowance final and conclusive**

(4) A determination under subsection (1.1) or a disallowance referred to in subsection (2) is final and conclusive unless, within a thirty day period after the service of the notice referred to in

subsection (3) or such further time as the court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the General Rules.

### **Expunge or reduce a proof**

(5) The court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

### **Court of Appeal**

**193** Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

- (a) if the point at issue involves future rights;
- (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
- (c) if the property involved in the appeal exceeds in value ten thousand dollars;
- (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and
- (e) in any other case by leave of a judge of the Court of Appeal.

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

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

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

COURT OF APPEAL FOR ONTARIO

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