

***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 NOTICE OF INTENTION TO**  
**MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP, A**  
**LIMITED PARTNERSHIP ESTABLISHED UNDER THE**  
**LAWS OF MANITOBA CARRYING ON BUSINESS IN THE**  
**CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**AND**

**IN THE MATTER OF THE NOTICE OF INTENTION TO**  
**MAKE A PROPOSAL OF YSL RESIDENCES INC., A**  
**CORPORATION FORMED UNDER THE LAWS OF**  
**ONTARIO CARRYING ON BUSINESS IN THE CITY OF**  
**TORONTO, IN THE PROVINCE OF ONTARIO**

**FACTUM OF THE APPLICANTS**  
(Motion in Writing)

May 14, 2021

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**PART I - INTRODUCTION**

1. YG Limited Partnership ("**YG LP**") and YSL Residences Inc. ("**YSL Inc.**", and together with YG LP, "**YSL**"), submit this factum in support of an order, among other things, authorizing the procedural and substantive consolidation of the restructuring proceedings and estates of YSL Inc. and YG LP (collectively, the "**Proposal Proceedings**").
2. Consolidation of the Proposal Proceedings and the estates of YG LP and YSL Inc. is warranted because it will save administrative resources, and no creditors of either estate will be prejudiced by so doing.

## PART II - SUMMARY OF FACTS

3. On April 30, 2021 YG LP and YSL Inc. each filed notices of intention to make a proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"), thereby commencing proposal proceedings, and KSV Restructuring Inc. was appointed as proposal trustee in respect of both proceedings (in such capacity, the "**Proposal Trustee**").

4. As set out further in the First Report of the Proposal Trustee dated May 6, 2021, YG LP and YSL Inc. are entities within the Cresford Group of companies both formed for the purpose of owning and developing certain lands at the intersection of Yonge Street and Gerrard Street, Toronto, into a mixed-use office, retail, and condominium development known as Yonge Street Living Residences (the "**YSL Project**").

5. YG LP was formed on February 3, 2016, under *The Partnership Act*, C.C.S.M., c. P30 (Manitoba) and is the beneficial owner of the YSL Project lands. YSL Inc. was incorporated on January 28, 2016 under the Ontario *Business Corporations Act*, R.S.O. 1990, C. B.16, and is the legal owner of the YSL Project lands.

6. On February 16, 2016, YSL Inc. (then named 2502295 Ontario Inc.) and YG LP entered into a nominee agreement (the "**Nominee Agreement**") pursuant to which:

- (a) It was acknowledged that following the completion of certain land purchase agreements in respect of the YSL Project lands (collectively defined in the Nominee Agreement as the "Purchase Agreement"), YG LP would be the beneficial owner of the YSL Project lands (the "**Property**");
- (b) YSL Inc. agreed to take registered title to the Property as YG LP's bare trustee and nominee, and that, other than holding title, it had no legal or beneficial interest in the Property; and

(c) YG LP agreed to indemnify YSL Inc. from "any and all manner of actions, causes of action, suits, debts, obligations, accounts, bonds, covenants, contracts, claims and demands whatsoever which may arise against [YSL Inc.] by virtue of it holding registered title to the Property or by virtue of it performing its obligations hereunder or by virtue of anything arising out of any dealings with the Property, including the Purchase Transaction" (the "**Indemnity Clause**").

7. Other than its interest as legal owner of the Property, YSL Inc. has no other assets.

### **PART III - ISSUE & SUMMARY OF LAW**

8. The sole issue for determination is whether the procedural and substantive consolidation of the Applicants' estates and the Proposal Proceedings is appropriate.

9. This Court has the jurisdiction to issue the requested consolidation order under s. 183 of the BIA, and such orders are regularly granted in the case of interrelated corporate entities where, as here, such consolidation does not prejudice creditors of either estate.<sup>1,2</sup> Courts have also found jurisdiction to consolidate multiple proceedings pursuant to Rule 6.01 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194.<sup>3</sup> These rulings are consistent with s. 138 of the *Courts of Justice Act*, R.S.O. 1990, c C.43, which dictates that, "as far as possible, multiplicity of legal proceedings are to be avoided."<sup>4</sup>

10. To summarize, the procedural consolidation of multiple bankruptcy estates permits such estates to be administered on a consolidated basis as a single proceeding, thus reducing the administrative burden on the trustee and resulting in substantial administrative cost savings. Substantive consolidation, on the other hand, results in the pooling of the assets and pooling of

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<sup>1</sup> Roderick J. Wood, *Bankruptcy and Insolvency Law* (2ed) (2015) at 359; *J.P. Capital Corp. (Re)*, [1995] O.J. No. 538 at para. 11 (Ont. Sup. Ct.).

<sup>2</sup> *Ashley v. Marlow Group Private Portfolio Management Inc.*, [2006] O.J. No. 1195 at para. 71 (Ont. Sup. Ct.); *Kitchener Frame Ltd. (Re)*, 2012 ONSC 234 at para. 30.

<sup>3</sup> Ontario *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, Rule 6.01.

<sup>4</sup> *Courts of Justice Act*, R.S.O. 1990, c C.43, section 138.

claims of multiple entities, such that creditors of each estate receive identical treatment in the case of any distributions made in the course of such proceedings.<sup>5</sup>

11. It is common ground that procedural consolidation is appropriate in the case of two closely related bankruptcy proceedings, where doing so allows the trustee and the Court to administer multiple proceedings under a single process.<sup>6</sup>

12. Substantive consolidation is also appropriate in the case of closely related proceedings, provided that it does not prejudice the creditors of either estate.<sup>7</sup> Such prejudice would arise if, for example, consolidation resulted in reduced distributions to the creditors of one estate than if the consolidation had not occurred. As discussed below, there is no such risk in the present case.

#### **PART IV - APPLICATION OF LAW TO FACTS**

13. YG LP and YSL Inc. comprise two parts of an integrated single-purpose business involved in the development of the YSL Project. Pursuant to the Nominee Agreement, YSL Inc. is a nominee entity of YG LP existing for the sole purpose of being the legal owner of the Property, and with no independent assets or business of its own. Further, as a result of the Indemnity Clause in the Nominee Agreement, all claims against YSL Inc. are ultimately claims against YG LP.

14. It is therefore administratively and economically most efficient to procedurally consolidate the Proposal Proceedings into a single proceeding to be administered by this Court and the Proposal Trustee as one. If procedural consolidation is not granted in this case, the result will be that the Proposal Trustee will be required to carry out two parallel processes for what is effectively a single enterprise, including two notification regimes, administration of two proposals, and

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<sup>5</sup> Roderick J. Wood, *Bankruptcy and Insolvency Law* (2d) (2015) at 358

<sup>6</sup> See e.g. *Electro Sonic Inc. (Re)*, [2014 ONSC 942](#) at para. 4.

<sup>7</sup> *Ashley v. Marlow Group Private Portfolio Management Inc.*, [\[2006\] O.J. No. 1195](#) at para. 75 (Ont. Sup. Ct.).

conducting two creditors' meetings, the result of which will be significantly increased administrative burden and expense, as well as potential negative impacts to the process timeline.

15. Because all claims against YSL Inc. are "flow through" claims against YG LP, and because YSL Inc.'s sole asset is held for the benefit of YG LP, no prejudice results from the substantive consolidation of the entities' estates in this circumstance, either. In effect, the creditors of both estates are already claiming against a single pool of assets. The requested consolidation order, therefore gives effect to the legal reality as it now stands.

16. A similar circumstance occurred in *Ornge Global GP Inc. (Re)*, 2013 ONSC 4518. In this case, Mr. Justice Morawetz (as he then was) ordered a substantive consolidation of the proceedings of a general partner and the limited partnership, recognizing that pursuant to the Ontario *Limited Partnerships Act*, R.S.O. 1990, c. L. 16, the general partner was liable for the limited partnership's debts, while the assets of the limited partnership had vested in the trustee of the general partner.<sup>8</sup>

17. YSL submits that, as in *Ornge Global GP Inc. (Re)*, substantive consolidation is appropriate in these proceedings to reflect the fact that all creditors have a claim to a single pool of assets. This Court should, accordingly, allow those creditors to benefit from the savings and administrative benefits resulting from substantive consolidation.

## **PART V - ORDER REQUESTED**

18. The Applicants submit that, for the reasons discussed herein, an order authorizing and directing the procedural and substantive consolidation of the Proposal Proceedings is warranted and should be granted by this Court.

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<sup>8</sup> *Ornge Global GP Inc. (Re)*, [2013 ONSC 4518](#) at paras. 11-13.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

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## SCHEDULE "A"

### LIST OF AUTHORITIES

1. *Ashley v. Marlow Group Private Portfolio Management Inc.*, [\[2006\] O.J. No. 1195 \(Ont. Sup. Ct.\)](#)
2. *Electro Sonic Inc. (Re)*, [2014 ONSC 942](#)
3. *J.P. Capital Corp. (Re)*, [1995] O.J. No. 538 (Ont. Sup. Ct.)
4. *Kitchener Frame Ltd. (Re)*, [2012 ONSC 234](#)
5. *Ornge Global GP Inc. (Re)*, [2013 ONSC 4518](#)

## SCHEDULE "B"

### RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

#### **Proposal, etc., not to be withdrawn**

50 (4) No proposal or any security, guarantee or suretyship tendered with the proposal may be withdrawn pending the decision of the creditors and the court.

#### **Courts vested with jurisdiction**

183(1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice; [...]

Courts of Justice Act, R.S.O 1990 c C.43

#### **Multiplicity of Proceedings**

138. As far as possible, multiplicity of legal proceedings shall be avoided.

Rules of Civil Procedure, R.R.O 1990, Reg. 194

#### **WHERE ORDER MAY BE MADE**

**6.01 (1)** Where two or more proceedings are pending in the court and it appears to the court that,

- (a) they have a question of law or fact in common;
- (b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences; or
- (c) for any other reason an order ought to be made under this rule, the court may order that,
- (d) the proceedings be consolidated, or heard at the same time or one immediately after the other; or
- (e) any of the proceedings be,
  - (i) stayed until after the determination of any other of them, or
  - (ii) asserted by way of counterclaim in any other of them.

#### **HEARING WITHOUT ORAL ARGUMENTS**

**37.12.1 (1)** Where a motion is on consent, unopposed or without notice under subrule 37.07 (2), the motion may be heard in writing without the attendance of the parties, unless the court orders otherwise.

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Estate/Court File Nos.: 31-459200, 31-2734090

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