

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**

**FACTUM OF THE PROPOSAL TRUSTEE
(Re: Motion Returnable May 24, 2022)**

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FACTUM OF THE PROPOSAL TRUSTEE

PART I ~ OVERVIEW

1. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Fifth Report of KSV Restructuring Inc., in its capacity as the proposal trustee (the "**Proposal Trustee**") in connection with the Notices of Intention to Make a Proposal filed on April 30, 2021 by YG Limited Partnership and YSL Residences Inc. (collectively, "**YSL**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") dated May 11, 2022 (the "**Report**").

2. The Proposal Trustee has brought a motion returnable on May 24, 2022 (the "**Motion**") for an order approving the settlement agreements between the Proposal Trustee and each of Messrs. Cicekian, Catsiliras, Giannakopoulos, Mancuso and Millar (collectively, the "**Settlements**") as contained in the Report.

PART II ~ FACTS

3. The facts pertaining to the relief being sought in the Motion are set out in the Report.

4. The Report contains a summary of the material terms of each of the Settlement Agreements and each of the Settlement Agreements is provided as an appendix to the Report.

5. The Settlement Agreements pertain to the settlement of employment related amounts claimed to be owing by YSL, as a common employer, to each of Messrs. Cicekian, Catsiliras, Giannakopoulos, Mancuso and Millar, respectively, (collectively, the “**Former Employees**”) pursuant to proofs of claim filed in accordance with the Proposal.

6. In each case, the amounts owing are in dispute.

7. Given the nature of the claims, resolution by the Court of such disputes will involve costly and time consuming litigation.

8. The Proposal Trustee has engaged in active negotiations with counsel to the Former Employees in reaching the Settlement Agreements, and has had discussions concerning the terms of such settlements with the key stakeholders in these proposal proceedings.

9. The Proposal Trustee is of the view that the Settlement Agreements fall within the range of what is fair and reasonable under the circumstances.

10. No inspectors have been appointed in these proposal proceedings.

PART III ~ ISSUES AND THE LAW

The Court has the Jurisdiction to Approve the Settlement Agreements

11. Section 30(1)(i) of the BIA provides that the trustee, with the permission of the inspectors, may compromise any claim against the estate.

12. Pursuant to Section 30(3) of the BIA, if no inspectors are appointed, the trustee may do all or any of the things referred to in subsection (1).

13. Pursuant to Section 66(1) of the BIA, all provisions of the BIA (except for the consumer proposal provisions), in so far as they are applicable, apply, with such modifications as the circumstances require, to proposals made under Division I. The Proposal in this case is made under Division I.

The Legal Test for Approval of the Settlement Agreements

14. In evaluating the trustee's use of its authority under section 30, deference is to be shown to the business decisions made by trustees as professionals entrusted by the creditors and the BIA to make such decisions.

Re Samji, 2013 BCSC 2101 at para 22, Proposal Trustee's Book of Authorities ("**BOA**") Tab 1.

15. Further, settlements, like other solutions under the BIA are to take into account the realities of commerce and business efficacy as well as the objectives of

the BIA, which include ensuring that bankruptcies are dealt with expeditiously and efficiently.

Re Samji, 2013 BCSC 2101 at paras 35-36, BOA Tab 1.

16. It is well-settled that, when asked to approve a settlement or other exercise of powers given to the trustee under the BIA, it is not the function of the court to indicate whether it agrees with the trustee's decision. The court does not second-guess the decision on the merits or substitute its own discretion. The scheme of the BIA is to allow the trustee to administer the estate without interference unless there has been an excess of power, fraud, a lack of bona fides, or unless the actions of the trustee are unreasonable from the stand point of the good of the estate.

Re Levy, 2002 CarswellOnt 4154 at para 15, BOA Tab 2.

17. The court will approve a settlement entered into by a trustee in bankruptcy that compromises claims made against a bankrupt estate where the settlement was commercially reasonable and was in the best interests of the bankrupt estate and the bankrupt's stakeholders.

Re St. Anne-Nackawic Pulp Co., 2005 NBQB 304 at paras 16-19, BOA Tab 3.

The Legal Test has been Met

18. In this case, the Settlement Agreements involve the determination and consideration of a considerable amount of factual evidence in addition to matters of

law. Accordingly, the subject matter of the Settlement Agreements is not a discreet legal issue.

19. The Settlement Agreements are the result of active negotiations between the Proposal Trustee and counsel to the Former Employees and the Proposal Trustee is recommending that the Settlement Agreements be approved.

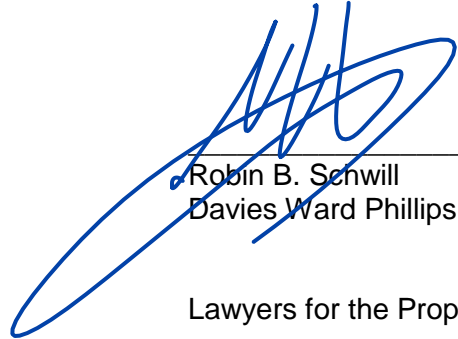
20. The Settlement Agreements are consistent with the spirit of the BIA. The Settlement Agreements take into account the realities of commerce and business efficacy and avoid the continued cost, time and uncertainty of litigating the claims. This, in turn, permits YSL and the Proposal Trustee to move forward to ultimately completing all of the outstanding matters left to administer in these proceedings.

21. As further evidenced in the Report, the settlements are commercially reasonable and in the best interests of the estate.

PART IV ~ RELIEF SOUGHT

22. The Settlement Agreements and the related relief contemplated therein should be approved.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of May, 2022.

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

Robin B. Schwill
Davies Ward Phillips & Vineberg LLP

Lawyers for the Proposal Trustee

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Re Samji*, 2013 BCSC 2101
2. *Re Levy*, 2002 CarswellOnt 4154
3. *Re St. Anne-Nackawic Pulp Co.*, 2005 NBQB 304

SCHEDULE "B"
RELEVANT STATUTES

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, Section 30.

30 (1) The trustee may, with the permission of the inspectors, do all or any of the following things:

...

(i) compromise any claim made by or against the estate;

...

(3) If no inspectors are appointed, the trustee may do all or any of the things referred to in subsection (1).

2. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, Section 66.

66 (1) All the provisions of this Act, except Division II of this Part, in so far as they are applicable, apply, with such modifications as the circumstances require, to proposals made under this Division.

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INC..**

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Proceeding Commenced at Toronto

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(Motion Returnable May 24, 2022)

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