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.

# FACTUM OF THE RESPONDENT, CBRE LIMITED

March 23, 2022

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## PART I – INTRODUCTION

1. The respondent, CBRE Limited ("**CBRE**"), filed a proof of claim in the consolidated proposal ("**Proposal**") of YSL Residences Inc. ("**YSL**") and YG Limited Partnership ("**YGLP**" and together with YSL, the "**Debtors**") – two members of the Cresford group ("**Cresford**") – for the payment of a commission relating to the sale of a property located at 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (the "**YSL Property**").

2. The agreement between CBRE and YSL provided that CBRE is entitled to a commission if YSL is introduced to any person within the term of the contract and negotiations with that party continue and lead to a transaction for the YSL Property. It is undisputed that CBRE introduced YSL to Concord Properties Developments Corp. ("**Concord**") during the term of the agreement and that Concord ultimately purchased the YSL Property.

3. The Proposal Trustee initially disallowed CBRE's claim for the commission, prompting CBRE to appeal. At the appeal, every party with any direct involvement in the matter – the Debtors, Concord and even the Proposal Trustee after reviewing CBRE's appeal materials – supported CBRE's entitlement.[1] The only objecting parties were the YongeSL LPs – a subset of five limited partners in YGLP (the "**LPs**").[2]

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[1] Affidavit of Edward (Ted) Dowbiggin, sworn July 25, 2022 at paras 12, 21, 29 [**Dowbiggin Affidavit**], Respondent's Compendium ("**RCOM**"), Tab 11, p 58, 60 and 62; Affidavit of Casey Gallagher, sworn July 21, 2022 at para 49, RCOM, Tab 3, p 14, and Exhibit DD [**Gallagher Affidavit**], RCOM, Tab 8, p 40 and Supplementary Affidavit of Heyla Vettyvel, sworn July 27, 2022 at para 4, RCOM, Tab 12, p 65, and Exhibit B [**Supplementary Vettyvel Affidavit**], RCOM, Tab 13, p 67; and Seventh Report of the Proposal Trustee to the Court dated September 12, 2022 at para 6.0-1 [**Seventh Report**], RCOM, Tab 15, p 85.

[2] Affidavit of Chris Wai, sworn August 19, 2022 at para 14 [**Wai Affidavit**], RCOM, Tab 14, p 73.

4. The LPs argue that Justice Osborne committed a palpable and overriding error in finding that negotiations between YSL and Concord "continued" until the transaction. The uncontroverted evidence before Justice Osborne was that "negotiations were ongoing from the point of Concord's introduction until [the parties] agreed that the property would be sold through a proposal."[3] The LPs did not adduce any evidence relating to CBRE's claim and chose not to cross-examine on the above statement.

5. There is no merit to the appeal and it should be dismissed with costs.

## PART II – FACTS

### CBRE's Entitlement To The Commission

*Oral Agreement*

6. In January 2020, CBRE entered into an oral agreement with YSL on the following terms (the "**Oral Agreement**"):

(a) CBRE would introduce YSL to potential purchasers for the YSL Property;

(b) the Commission would be 0.65% of the purchase price of the YSL Property; and

(c) CBRE would earn the Commission if the purchaser of the YSL Property was one of the parties CBRE had introduced.[4]

[3] Dowbiggin Affidavit at para 24, RCOM, Tab 11, p 60.
[4] Gallagher Affidavit paras 11-12, RCOM, Tab 3, pp 14-15; Dowbiggin Affidavit paras 9-12, RCOM, Tab 11, pp 57-58.

7. Following the Oral Agreement in January 2020, CBRE began performing services in accordance with the Oral Agreement and introduced YSL to various potential purchasers for the YSL Property.[5]

*Written Agreement*

8. On February 21, 2020, after CBRE had already begun doing work under the Oral Agreement, it provided YSL with a copy of a written agreement (the "**Written Agreement**") which contained more extensive terms.[6] Although the Written Agreement was not signed, this was due to inadvertence.[7]

9. The Written Agreement provided that the term of the contract was until August 20, 2020 (the "**Term**"). The Written Agreement also included a clause (the "**Holdover Clause**") providing that:

> [YSL] further agrees to pay [CBRE] the Commission if, within 90 calendar days after the expiration of the Term… negotiations continue, … leading to the execution of a binding agreement of purchase and sale for the Property… with any person or entity (including his/her/its successors, assigns or affiliates) … to whom the Property was introduced or submitted … or to whom [YSL] was introduced… prior to the expiration of the Term….[8]

10. Accordingly, if any negotiations took place between August 20, 2020 and November 18, 2020 and led to a transaction, CBRE is entitled to the commission.

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[5] Gallagher Affidavit at paras 16-20, 26-40, RCOM, Tab 3, pp 16-17 and pp 19-23; Dowbiggin Affidavit at paras 16-26, RCOM, Tab 11, pp 59-61.
[6] Gallagher Affidavit at para 2, RCOM, Tab 3, p 12 and Exhibit J, RCOM, Tab 4.
[7] Dowbiggin Affidavit at para 18, RCOM, Tab 11, p 59.
[8] Gallagher Affidavit at Exhibit J, s. 4.1, RCOM, Tab 4, p 29.

*Conduct of the Parties*

11. At all times, the parties acted as if CBRE was the exclusive listing brokerage for the YSL Property and believed that they had a binding agreement. CBRE introduced YSL to various potential purchasers for the YSL Property[9] including Concord, the eventual purchaser of the YSL Property.[10] Although CBRE was not directly involved in negotiations between YSL and Concord it continued to act in its capacity as listing brokerage by responding to questions from YSL during the negotiation period.[11]

12. The uncontroverted evidence of Mr. Dowbiggin is 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."[12] In addition, Mr. Gallagher affirmed that:

> 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.[13]

The LPs declined to cross-examine either Mr. Gallagher or Mr. Dowbiggin on either of their statements.

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[9] Gallagher Affidavit of paras 16, 20, 26, 42, RCOM, Tab 3, p 16, p 17, p 19, p 23; Dowbiggin Affidavit at paras 16, 26, RCOM, Tab 11, p 59, p 61.
[10] Gallagher Affidavit at paras 26-31, RCOM, Tab 3, pp 19-20 and Exhibit DD, RCOM, Tab 8; Dowbiggin Affidavit of paras 19-22, RCOM, Tab 11, pp 59-60; Supplementary Vettyvel Affidavit at para 4, RCOM, Tab 12, p 65 and Exhibit B, RCOM, Tab 13, p 67; Seventh Report at para 5.0-8, RCOM, Tab 15, pp 83-84.
[11] Gallagher Affidavit at para 38, RCOM, Tab 3, p 21 and Exhibits Q & R, RCOM, Tab 5, p 32, Tab 6, p 34; Dowbiggin Affidavit at para 25, RCOM, Tab 11, pp 60-61.
[12] Dowbiggin Affidavit at para 24, RCOM, Tab 11, p 60.
[13] Gallagher Affidavit at para 42, RCOM, Tab 3, p 23.

13. Concord acquired the YSL Property through the Proposal for $168,737,563.00 on July 22, 2021.[14] The commission (0.65% of the purchase price) is therefore $1,239,377.40.

14. Messrs. Gallagher and Dowbiggin have each adduced evidence that CBRE's entitlement to the Commission is consistent with their considerable experience in the real estate industry[15] and Mr. Dowbiggin affirmed that:

(a) "But for CBRE introducing Concord [to YSL], the sale would not have occurred";[16] and

(b) "CBRE performed all the duties that were asked of it as exclusive listing brokerage including introducing Cresford Group/YSL to Concord… CBRE is entitled to the Commission."[17]

**Disallowance, Appeal and Settlement of the Claim**

15. CBRE submitted its proof of claim for the payment of the commission on January 29, 2022 (the "**Claim**").[18]

16. On February 10, 2022, the Proposal Trustee disallowed the Claim (the "**Disallowance**") but agreed that a *de novo* hearing on a written record was appropriate.[19]

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[14] Gallagher Affidavit at Exhibit Z, RCOM, Tab 7, p 36 and para 43, RCOM, Tab 3, pp 23-24.
[15] Gallagher Affidavit at para 23, RCOM, Tab 3, p 18; Dowbiggin Affidavit at paras 12-14, RCOM, Tab 11, p 58.
[16] Dowbiggin Affidavit at para 24, RCOM, Tab 11, p 60.
[17] Dowbiggin Affidavit at para 29, RCOM, Tab 11, p 62.
[18] Affidavit of Heyla Vettyvel sworn July 22, 2022 at Exhibit 2 [**Vettyvel Affidavit**], RCOM, Tab 10, p 49.
[19] Seventh Report at para 5.0-7, RCOM, Tab 15, p 84.

On March 16, 2022 the parties appeared before Justice Cavanagh to schedule the return of CRBE's motion to appeal the Disallowance.[20]

17. After reviewing CBRE's Motion Record, the Proposal Trustee and CBRE agreed to seek an order admitting the Claim as filed and dispensing of the appeal on a without costs basis (the "**Settlement**").[21]

**Decision at first instance**

18. CBRE's motion to appeal the Disallowance was heard by Justice Osborne on September 26, 2022. In his revised endorsement dated January 10, 2023 (the "**Decision**"), Justice Osborne held that (a) the LPs do not have standing to challenge the position taken by the Proposal Trustee, (b) the appeal should proceed *de novo* and (c) the appeal should be allowed.[22]

19. With respect to the LPs lack of standing, Justice Osborne made the following key determinations:

(a) "Section 135 of the *BIA* sets out the regime pursuant to which proofs of claim are admitted or disallowed";[23]

(b) The LPs are not creditors nor are they debtors, as defined in the *Bankruptcy and Insolvency Act*, RSC 1985, c B.5 ("***BIA***"), "any more than shareholders of a debtor corporation would themselves automatically be debtors";[24]

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[20] Seventh Report at para 5.0-10, RCOM, Tab 15, p 84.
[21] Seventh Report at para 6.0-1, RCOM, Tab 15, p 85.
[22] Decision at para 58, RCOM, Tab 2, p 10.
[23] Decision at para 17, RCOM, Tab 2, p 6.
[24] Decision at para 24, RCOM, Tab 2, p 6.

(c) "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";[25]

(d) The LPs are not a "person aggrieved" within the meaning of section 37 of the *BIA* because "their grievance, or complaint, boils down to the fact that their ultimate potential recovery will presumably be reduced if the claim is allowed."[26]

20. With respect to the merits of CBRE's Claim, Justice Osborne found that:

> [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.[27]

21. Justice Osborne addressed the evidence with respect to whether the negotiations continued until the sale, finding that:

> [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

[25] Decision at para 26, RCOM, Tab 2, p 7.
[26] Decision at para 29, RCOM, Tab 2, p 7.
[27] Decision at para 43, RCOM, Tab 2, p 9.

> 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.[28]

22. On this basis, Justice Osborne set aside the Disallowance and allowed the Claim.

## PART III – STATEMENT OF ISSUES, LAW & AUTHORITIES

23. The LPs' appeal raises the following issues:

**Issue 1:** Did Justice Osborne err in finding that the negotiations continued and accordingly, CBRE has a provable claim?

This is a question of fact with a standard of review of palpable and overriding error.[29]

**Issue 2:** Did Justice Osborne err in finding that the LPs do no have standing in this motion?

Whether parties with a pure economic interest in the outcome of the appeal of a disallowance have standing on the motion is an extricable question of law with a standard of review of correctness;[30] however, the characterization of the nature of the LPs' interest (for example, whether the LPs constitute an "aggrieved person" under section 37 of the *BIA*) requires the motion judge to apply a legal standard to a set of facts. Consequently,

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[28] Decision at para 51, RCOM, Tab 2, p 10.
[29] *Housen v. Nikolaisen*, 2002 SCC 33 at para 10.
[30] *Adams Estate v Wilson*, 2020 SKCA 38 at para 29.

those are questions of mixed fact and law with a standard of review of palpable and overriding error.[31]

24. CBRE submits that Justice Osborne did not err in regards to either issue. The Claim should be allowed and the LPs lack standing in this dispute. Accordingly, this appeal should be dismissed.

***ISSUE 1: CBRE's Claim should be allowed***

25. The LPs argue that Justice Osborne committed (a) an error of law by failing to place the onus on appeal on CBRE or (b) a palpable and overriding error by determining that the evidence that the negotiations continued during the Holdover Period was proof of the Claim.

**(a) Decision does not rely on the onus**

26. The LPs' argument that Justice Osborne's determination was based on applying the onus of proof on a balance of probabilities standard is inconsistent with Justice Osborne's decision. Justice Osborne did not avert to the LPs bearing any onus, nor did he determine the motion on the basis of the LPs' failure to satisfy such an onus. On the contrary, he expressly stated that (a) he considered all of the evidence and arguments before him because "CBRE seeks an order allowing the appeal, in any event of opposition" and (b) his determination is based on his review of the uncontroverted evidence of Messrs. Dowbiggin and Gallagher.[32]

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[31] *Housen v. Nikolaisen*, 2002 SCC 33 at paras 26 and 36; *Adams Estate v Wilson*, 2020 SKCA 38 at para 29.
[32] Decision at paras 39 and 51, RCOM, Tab 2, p 8 and p 10.

27. It is clear from a fair reading of the Decision that Justice Osborne found that CBRE had proven its claim with the evidence it adduced on the hearing. Accordingly, there is no merit to the LPs' argument with respect to onus.

**(b) The evidence supports the Claim**

28. The LPs' second argument is that Justice Osborne made a palpable and overriding error when he found that negotiations between the Debtors and YSL/Concord continued during the Holdover Period until an agreement was reached about the sale of the YSL Property. He did not.

29. Palpable and overriding error is a highly deferential standard of review. "Palpable" means an error that is obvious. "Overriding" means an error that goes to the very core of the outcome of the case. [33]

30. Justice Osborne made no error by accepting the uncontroverted evidence that negotiations continued until the parties agreed to the transaction for the YSL Property.

31. The gravamen of the LPs' argument is that Mr. Dowbiggin's statement 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" [34] is "meagre evidence" that is insufficient to discharge CBRE's onus of proving is claim on a balance of probabilities.[35] No authority is cited for this proposition.

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[33] *HL v Canada (Attorney General)*, 2005 SCC 25, [2005] 1 SCR 401; *Peart v Peel Regional Police Services* (2006) 2006 CanLII 37566 (ON CA), 217 OAC 269 (CA) at paras 158-159; *Waxman v Waxman* (2004), 2004 CanLII 39040 (ON CA), 186 OAC 201 at paras 289-300.
[34] Dowbiggin Affidavit at para 24, RCOM, Tab 11, p 60.
[35] Factum of the Appellants ("**FAP**") at para 67.

32. CBRE disagrees with the LPs' characterization of Mr. Dowbiggin's evidence. Mr. Dowbiggn's statement was specific and probative. However, even if the LPs' position is accepted, "meagre evidence" is capable of satisfying the standard of proof on a balance of probabilities – particularly where it is unchallenged. Accordingly, it was available to Justice Osborne to accept CBRE's Claim and overturn the disallowance on this evidence alone.

33. The LPs' position also disregards Casey Gallagher's evidence that he played golf with Mr. Dowbiggin in September of 2020, at which time Mr. Dowbiggon confirmed that the negotiations between YSL and Concord were ongoing.[36] This uncontroverted evidence was also accepted by Justice Osborne and confirms Mr. Dowbiggin's initial statement and provides a specific date during the Holdover Period when there were ongoing negotiations.

**c) LPs failed to properly raise issue**

34. The LPs adduced no evidence that would challenge the statements made by Mr. Dowbiggin or Mr. Casey on the period during which negotiations continued, and they chose not to ask questions about this issue during the cross-examinations they conducted on Messrs. Dowbiggin and Casey. Had they done so, either Mr. Dowbiggin or Mr. Casey would have had the opportunity to reply and address the alleged issues.

35. The LPs should not be permitted to lay in the weeds on this issue and now claim that the evidence is insufficient.

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[36] Gallagher Affidavit at para 42, RCOM, Tab 3, p 23.

***ISSUE 2: LPs lack standing***

36. The LPs have no standing in the appeal either under section 135(4) of the *BIA* or under section 37 of the *BIA*.

**a) No Standing under section 135**

37. It is trite law that in a proposal under the *BIA,* the debtor retains the power to deal with their rights and property, subject to the provisions of the *BIA* or orders of the Court – hence the common expression, "debtor-in-possession". Claimants rely on the debtor and/or proposal trustee's ability to address claims, subject only to those limitations which are expressly set out in the *BIA*.[37] This provides the necessary certainty for the efficient and effective administration of proposals.

38. Section 135 the *BIA* sets out a complete scheme for the admission or disallowance of proofs of claim as follows:

> **Section 135(1)** – the trustee will examine each proof of claim;
>
> **Section 135(1.1)** – the trustee will determine contingent and unliquidated claims;
>
> **Section 135(2)** – the trustee may disallow a claim;
>
> **Section 135(3)** – if the trustee disallows a claim, it will provide notice of the disallowance;

[37] *Bankruptcy and Insolvency Act*, RSC 1985, c B.5 [***BIA***], s. 30(1)(i).

**Section 135(4)** – the party making the claim may appeal the trustee's decision; and

**Section 135(5)** – a creditor or of the debtor may apply to reduce or expunge a claim if the trustee declines to interfere in the matter.[38]

39. Essentially, subsections 135(1) to (4) prescribe the process for the determination of claims between the claimant and trustee or proposal trustee (as applicable), while subsection 135(5) grants standing to creditors or the debtor to stand in the trustee's shoes if the trustee declines to act.

40. The LPs admit that they are not a creditor or the debtor, and that section 135(5) is not applicable to this case.[39] Rather, the LPs assert that, despite not being entitled to challenge the Trustee's inaction under section 135(5), "[on] CBRE's appeal [under section 135(4)], the YongeSL LPs had standing to make submissions regarding why the appeal should be dismissed."

41. The LPs are not claiming that section 135(4) includes an express grant of standing to all parties with a pure economic interest (nor could they). Instead, they claim that they have no need to rely on section 135 of the BIA for standing because they have a general standing as of right where their economic interests are directly affected. The LPs rely on the Ontario Court of Appeal's decision in *Ivandeava Total Image Salon Inc v Hlemgizky* ("***Ivandeava***") for the proposition that "if a party's proprietary or economic interests will be

[38] *BIA*, s. 135(1)-(5).
[39] FAP at para 42.

directly impacted by the outcome of a hearing, the party has standing to make submissions at the hearing".[40]

42. The LPs' position mischaracterizes the decision in *Ivandeava* in a manner that would lead to clearly inappropriate outcomes.

43. In *Ivandeava* the Court considered what it means to be "affected by" an order in the context of a motion under Rule 37.14(1) of the *Rules of Civil Procedure* to rescind or vary an order made without notice. This Court determined that "the order must be one that **directly affects the rights of the moving party** in respect to the proprietary or economic interests of the party."[41]

44. The reference to directly affecting the rights of the moving party is critical. The existence of a right necessitates a corresponding obligation in order for there to be a party (or parties) against whom the right can be enforced.

45. In this case, the LPs' legal right is to the residual funds, if any, held by the Debtors after the payment of all creditors in the Proposal (the "**Residual**"). This right to the Residual is enforceable against the Debtors. The LPs have no rights as against CBRE. Consequently, although the quantum of the Residual may change, the LPs' underlying right is unaffected by CBRE's Claim being accepted.

46. Furthermore, the LPs' economic interests are not "directly affected." There may or may not be a Residual depending on the outcome of the determination of other

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[40] FAP at para 34.
[41] *Ivandeava Total Image Salon Inc v Hlemgizky*, 2003 CanLII 43168 at para 27 (ONCA), AOA, Tab 5, pp 173-174. [emphasis added]

proofs of claim in the Proposal. If the LPs' position that an interest in a potential residual value grants a party standing in a proceeding were accepted, then equity holders in any company or limited partnership would have a right to appear and interfere in litigation being conducted by the company/partnership in which they hold equity. Justice Osborne's determination on this point, that "[t]he contractual right in the partnership agreement to bind the partnership with respect to things such as claims is granted to the general partner",[42] must be accepted.

47. Within the context of the process prescribed by section 135, the LPs' position would also lead to the irrational result that the trustee's involvement would effectively grant standing to non-parties as, if the trustee declines to interfere then under section 135(5) only a creditor or the debtor may challenge a claim, but if the trustee does interfere and the creditor appeals then anyone with a potential pure economic interest would have standing.

48. Finally, the LPs rely heavily on the decision of Justice Dunphy, where they argue that they were granted standing in the motion to sanction the Proposal. However, they neglect to point out that Dunphy J. held that:

> [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**.

[42] Decision at para 26, RCOM, Tab 2, p 7.

> [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.[43] **[Emphasis added]**

49. In other words – Justice Dunphy held that he must address the issue of equity claims specifically *because* the LPs lack standing to challenge the proof of claims under section 135 of the BIA.

50. The determination of a claim is, in the ordinary course, between the parties with legal rights at stake. Section 135 expressly grants the Proposal Trustee, or where it declines to interfere, either a creditor or the debtor, the right to address claims. There is no basis to read into the express grant of standing to specific parties a broad right for anyone with an economic interest to appear on an appeal. Accordingly, Justice Osborne did not err in finding that the LPs did not have standing in CBRE's motion.

**b) No standing under section 37**

51. Responding to the LPs' position with respect to standing under section 37 of the *BIA* is the purview of the Proposal Trustee. CBRE's sole submission is that, opposing the decision of the Proposal Trustee to the Settlement is a distinct matter from gaining standing to oppose CBRE's motion.

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[43] *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178 at para 35.

52. Section 37 applies when a person is "aggrieved by any act or decision of the trustee." In this case, the act or decision is the Proposal Trustee determining that it would not oppose CBRE's motion to appeal the Disallowance. Section 37 should not be read as a back-door to grant standing in any litigation involving a trustee where a party disagrees with one of the trustee's decisions.

**PART IV – ORDER REQUESTED**

53. CBRE respectfully submits that this Court should order:

(a) that the appeal be dismissed;

(b) costs of this appeal against the LPs; and

(c) such further and other relief as this Honourable Court may deem just.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23rd day of March, 2023.

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Lawyers for CBRE Limited

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**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 23rd day of March, 2023.

C. Haddon Murray

**SCHEDULE "A"**

**LIST OF AUTHORITIES**

| Tab | Title |
|---|---|
| 1 | *YG Limited Partnership and YSL Residences Inc.*, 2022 ONSC 6548 |
| 2 | *Housen v. Nikolaisen*, 2002 SCC 33 |
| 3 | *Adams Estate v Wilson*, 2020 SKCA 38 |
| 4 | *HL v Canada (Attorney General)*, 2005 SCC 25, [2005] 1 SCR 401 |
| 5 | *Peart v Peel Regional Police Services* (2006) 2006 CanLII 37566 (ON CA), 217 OAC 269 (CA) |
| 6 | *Waxman v Waxman* (2004), 2004 CanLII 39040 (ON CA), 186 OAC 201 |
| 7 | *Ivandeava Total Image Salon Inc v Hlemgizky*, 2003 CanLII 43168 |
| 8 | *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178 |

## SCHEDULE “B”

## TEXT OF STATUTES, REGULATIONS & BY - LAWS

*Bankruptcy and Insolvency Act*, RSC 1985, c B.5

**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.

[…]

**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.

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