

Court File No. 31-2734090

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

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

**FACTUM OF THE RESPONDENTS**

Date: May 28, 2021

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**TO: ATTACHED SERVICE LIST**

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**PART I - INTRODUCTION**

1. The purpose of the Court hearing is to determine whether there is a stay of proceedings that stay the Applications of the Limited Partners and if there is a stay of proceedings whether the Court should lift the stay of proceedings.

**PART II - SUMMARY OF FACTS**

2. YG Limited Partnership and YSL Residences Inc. are the owners and developers of an intended mixed-use office, retail and residential condominium project located at 363-385 Yonge Street, Toronto (the “YSL Project”). To date the only work completed is partial excavation and shoring.<sup>1</sup>

3. YG Limited Partnership is subject to an Amended and Restated Limited Partnership Agreement Effective August 4, 2017.<sup>2</sup>

4. The General Partner of the YG Limited Partnership is 9615334 Canada Inc. (the “GP”). There are 8 Limited Partners who are investors in the YG Limited Partnership and have Class A Preferred Units.

5. The Limited Partners have limited partnership units in the YG Limited Partnership. Lax, O’Sullivan, Lisus Gottlieb LLP (Shaun Laubman) acts for 3 Limited Partners and it issued an

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<sup>1</sup> Affidavit of Lue (Eric) Li, sworn May 3, 2021, at para 6. **Motion Record of 2583019 Ontario Incorporated, et al at Tab 2 [Li Affidavit]**

<sup>2</sup> *Ibid*, at para 15

Application in the Superior Court of Justice (Commercial List) bearing Court File No. CV-21-0061386-00CL requesting among other relief terminating the GP and declaring any agreements that it entered into null and void.

6. Thornton Grout Finnigan LLP (Alexander Soutter) acts for 5 Limited Partners and it issued an Application in the Superior Court of Justice (Commercial List) bearing Court File No. CV-21-00661530-00CL requesting among other relief the appointment of a receiver and removing the GP.

7. The YSL Project has been in financial trouble since early 2020. The GP attempted to find a buyer for the YSL Project since January of 2020.<sup>3</sup>

8. Due to financial difficulties YG Limited Partnership defaulted on its loan agreement with its main lender Timbercreek Mortgage Servicing Inc. (“Timbercreek”) and it entered into a series of forbearance agreements with Timbercreek starting in March 2020. The last forbearance agreement requires that Timbercreek be paid in full by June 30, 2021 or Timbercreek will proceed with its Application to appoint a receiver that is scheduled to be heard on July 12, 2021.<sup>4</sup>

9. The GP entered into a Term Sheet with Concord Properties Developments Corp. (“Concord”) in November 2020 in which the GP would hand over management of the YSL Project to Concord entity. But the Concord entity had to obtain construction financing. There were no further discussions for some time until Concord sourced construction financing. Once a construction financier was located the construction financier required substantial changes to the structure initially envisaged by the above referenced agreement. As a result, Concord proposed that it would sponsor a proposal under the *Bankruptcy and Insolvency Act*, whereby all secured creditors and registered construction lien claimants would be paid in full and the unsecured creditors would receive 58cents on the dollar.<sup>5</sup>

10. In order to commence the process YG Limited Partnership and YSL Residences (collectively “YSL”) filed Notices of Intention to Make a Proposal (“NOIs”) on April 30, 2021

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<sup>3</sup> *Ibid*, at paras 25 and 26

<sup>4</sup> Affidavit of David Mann, sworn May 12, 2021, at paras 2 and 3. **Respondents Motion Record at Tab 1 [Mann Affidavit]**

<sup>5</sup> Li Affidavit, at paras 62 and 77

and KSV Restructuring Inc. was named as Trustee.<sup>6</sup> A Proposal Sponsor Agreement was entered into with Concord dated April 30, 2021.

11. The two Estates were consolidated by an Order of Madam Justice Gilmore on May 14, 2021 and the Consolidated Estates now bear Court File No. 31-2734090.

### **PART III - ISSUES**

12. Did the filing of the NOIs filed by YSL result in a stay of proceedings under Section 69(1)(a) of the *Bankruptcy and Insolvency Act* (“BIA”)<sup>7</sup> with respect to the two Applications issued by the Limited Partners.

13. If the filing of the NOIs did result in a stay of proceedings, should the stay be lifted pursuant to Section 69.4 of the BIA.

### **PART IV - LAW AND ARGUMENT**

#### **Stay of Proceedings - Notice of Intention**

14. The Limited Partners are creditors under the BIA in that they have an equity claim that includes a claim for return of capital. Although the Limited Partners’ Claim is subordinate to the claims of unsecured creditors it is a claim that could get paid in some situations. A claim provable in bankruptcy, which includes proposals is a claim or liability provable in proceedings under the BIA by a creditor.<sup>8</sup> A creditor under the Act is a person having a claim provable as a claim under the BIA.<sup>9</sup>

15. Section 54.1 of the BIA confirms that persons having equity claims are creditors.<sup>10</sup>

16. Section 140.1 of the BIA provides that an equity claim is entitled to a dividend, but it is postponed to other claims.<sup>11</sup>

17. Section 69(1)(a) of the BIA provides as follows:

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<sup>6</sup> First Report to the Court of KSV Restructuring Inc., dated May 6, 2021, Appendix A. **Respondents Motion Record at Tab 7**

<sup>7</sup> *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#), at S.69(1)(a). [**the BIA**]

<sup>8</sup> *BIA*, *supra* S.2 Definitions, “claim provable in bankruptcy”

<sup>9</sup> *BIA*, *supra* S.2 Definitions, “creditor”

<sup>10</sup> *BIA*, *supra* S.54.1

<sup>11</sup> *BIA*, *supra* S.140.1

**69 (1)** Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by 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,

18. Accordingly, since the Limited Partners are creditors, they are subject to the stay of proceedings under Section 69(1)(a) of the BIA. The stay under Section 69(1)(a) applies to proceedings and claims that are not only monetary claims like injunctions.

19. In the Emergency Door Service Inc. decision<sup>12</sup> the claimants were seeking an injunction and the issue was whether the claim for an injunction was caught by the stay as it was not aimed at recovery of any monetary claims. The issue required an interpretation of Section 69(1)(a) of the BIA.

20. Justice Newbould stated that the stay of proceedings in the case of a bankruptcy is different from the stay of proceedings when dealing with a notice of intention to file a proposal. He states at paragraph 23 "The purpose of a proposal is to give a debtor some breathing space to negotiate a compromise with the debtor's creditors in the hopes of saving the debtor. Such a purpose does not exist in the case of a bankruptcy." Although in this case the debtor is not being saved, but the YSL Project is being saved, and the proposal will result in a significant recovery for unsecured creditors and Concord will accept almost all of the pre-sale contracts.

21. Justice Newbould reconciles the difference in the French version and the English version of Section 69(1)(a) of the BIA by concluding that you take into account the purpose of the BIA involved in proposals made by a debtor. Relying on a Supreme Court Decision dealing with the purposes of insolvency legislation Justice Newbould concludes that remedial purpose of legislation is applicable to the BIA.<sup>13</sup>

22. Justice Newbould<sup>14</sup> cites the case of Golden Griddle v. Fort Erie Truck<sup>15</sup>, which provides that the word "remedy" in Section 69(1)(a) should be given a broad interpretation and it must be

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<sup>12</sup> Emergency Door Service Inc., 2016 ONSC 5284. **Brief of Authorities -Tab 1 [Emergency Door]**

<sup>13</sup> Emergency Door, *supra* at paras 28 to 29

<sup>14</sup> Emergency Door, *supra* at para 30

<sup>15</sup> Golden Griddle Corp. v. Fort Erie Truck & Travel Plaza Inc., 2005CarswellOnt 9935. **Brief of Authorities - Tab 2 [Golden Griddle]**

a purposive one that is in accord with the objectives of the BIA. Accordingly, this interpretation is not restricted to the Emergency Door case.

23. Justice Newbould<sup>16</sup> concludes that the principle enunciated in the Golden Griddle case gives effect to the aim of the proposal provisions of the BIA being to permit a debtor who has filed a notice of intention to file a proposal some space to achieve a successful proposal.

24. Accordingly, the relief requested by the Limited Partners falls within the word “remedy” and should be stayed to allow the proposal to proceed.

### **Lifting the Stay**

25. Section 69.4 of the BIA<sup>17</sup> sets out matters to consider in determining whether to lift the stay.

**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.

26. Some grounds on which courts will lift stays of proceedings were set out in *Re Advocate Mines Ltd.*<sup>18</sup>

27. It is clear that the burden is on the applicant for a declaration under Section 69.4 to satisfy the court that one or more of those grounds is present and that the applicant is likely to be materially prejudiced or that it is equitable on other grounds to make such a declaration.

28. In the case of *Maple Homes*<sup>19</sup> the Court sets out the Advocate Mines grounds but goes on to say that some principles emerge from the jurisprudence that may be summarized as follows:

**33.** The principles that emerge from the jurisprudence may be summarized:

<sup>16</sup> Emergency Door, *supra* at para 31

<sup>17</sup> BIA, *supra* S.69.4

<sup>18</sup> Re Advocate Mines Ltd., 1984 CarswellOnt 156, at paras 3 to 7. **Brief of Authorities -Tab 3**

<sup>19</sup> Maple Homes Canada Ltd., 2000 BCSC 1443, at paras 33 to 34. **Brief of Authorities -Tab 4 [Maple Homes]**

(1) The general scheme of bankruptcy proceedings is that civil actions are stayed against the insolvent person; exemptions are to be made only where there are “compelling reasons”. This flows from one the major purpose of the *Bankruptcy and Insolvency Act*, which is to permit the rehabilitation of the bankrupt unfettered by past debts.

(2) An applicant for exemption from the stay must show that there will be material prejudice to the applicant if the stay is continued or that it is equitable on other grounds to allow the exemption.

(3) The existence of one or more of the factors listed in *Advocate Mines Ltd.* will be an important consideration but is not determinative.

(4) The court is not to attempt to determine the proposed claim, on its merits.

(5) Rather, it must assess whether it is a claim of the nature that would survive discharge, whether it is a claim that could not succeed, and whether if it did succeed it could not result in recovery against the defendants.

29. The Court goes onto say as follows:

“Given the purpose of bankruptcy legislation and the fact that continuing an action is the exceptional situation, I think that generally there must be more than pleadings or proposed pleadings disclosing a claim. There must also be some evidence supporting the conclusion that there is a fair issue to be tried. However, to expect more than that would be inconsistent with the statutory scheme.”<sup>20</sup>

30. General statements regarding lifting the stay appear in several cases.

31. The burden is on the applicant for a declaration under Section 69.4 to satisfy the Court that one or more of the grounds set out in the *Maple Homes*<sup>21</sup> case is present and the applicant is likely to be materially prejudiced or it is equitable on other grounds to lift the stay.

32. In the case of *Re Ma*<sup>22</sup> the Court made the following observations. There is an onus on the applicant to establish a basis for the order within the meaning of Section 69.4. The role of the court is to ensure that there are sound reasons consistent with the scheme of the BIA to relieve against the automatic stay. Although there is no requirement for the applicant to show it has a *prima facie* case, the court can review the merits of the proposed proceeding in considering whether there are sound reasons to lift the stay. The Court gives as an example that if the

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<sup>20</sup> *Maple Homes, supra*, at para 34. **Brief of Authorities -Tab 4**

<sup>21</sup> *Maple Homes, supra*, at para 29. **Brief of Authorities -Tab 4**

<sup>22</sup> *Re Ma, 2001 CarswellOnt 1019*, at para 3. **Brief of Authorities -Tab 5**

proposed proceedings has little prospect of success, it would be difficult to find that there were sound reasons for lifting the stay.

33. The relief sought by the Limited Partners in their two Applications, declaring that the GP is no longer GP or removing the GP, declaring that the GP cannot exercise its powers as GP or sign the documents that it did or that it breached the Order of Justice Cavanagh made January 13, 2021 have little chance of practical success since if any of that relief was granted Timbercreek will appoint a Receiver.<sup>23</sup>

34. Lifting the stay of proceedings and allowing the Limited Partners to proceed with their Applications is a waste of the Court's time.

35. The only clear issue before the Court will be is it in the best interests of the unsecured creditors to approve the Proposal, if it is accepted by the unsecured creditors. The Limited Partners will have to convince the Court that a receivership and public sale of the YSL Project will result in a better recovery for the unsecured creditors and possibly a recovery for the Limited Partners. This determination can be made by the Court at the hearing to approve the Proposal on June 23, 2021, if it is approved by the unsecured creditors. At that point the Court will have the results of the unsecured creditors vote and the Report as Proposal Trustee analyzing whether the Proposal or a resulting bankruptcy and receivership MAY produce a better result.

36. If the Proposal is rejected by the unsecured creditors a bankruptcy will automatically occur and as a result Timbercreek will move to appoint a Receiver on its Application currently scheduled for July 12, 2021.<sup>24</sup>

37. In *Re Karaoglu*<sup>25</sup> the Court cites with approval the cases of *Re Advocate Mines Ltd.*, *Maple Homes Canada Ltd.*, *Re Francisco* and *Re Ma*, and what is clear is that the onus is on the applicants to show that they would be materially prejudiced or that it is equitable to make a declaration lifting the stay. There must be compelling reasons to lift the stay. Clearly that is not the case in these proceedings. The only real issue is whether the recovery of the unsecured creditors is better under the Proposal or under a public sale conducted by a Receiver. This determination can be made at June 23, 2021 Court hearing. There is no need for the Court to hear

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<sup>23</sup> Mann Affidavit, Exhibit "A" - Consent and Forbearance Agreement Amendment #4, at para 2.1(f)

<sup>24</sup> *Ibid*, at para 2.4

<sup>25</sup> *Re Karaoglu*, 2014 ONSC 4496, at paras 13 to 20. **Brief of Authorities - Tab 6**



the Limited Partners Applications because if they are successful, there will be a default in the forbearance arrangement with Timbercreek who will proceed to appoint a Receiver.

38. The Limited Partners are not materially prejudiced by the stay not being lifted as they will have the opportunity to present their position of wanting a Receiver appointed at the Court hearing on June 23, 2021.

39. The Courts have held that the material prejudice referred to in the BIA is an objective prejudice as opposed to a subjective prejudice. For example, it refers to the degree of prejudice suffered objectively not to the extent that such prejudice may affect the creditor qua a person or entity. The Applicants have not shown any quantitative or qualitative prejudice.<sup>26</sup>

40. This analysis has been accepted by many Courts in dealing with notices of intention to make a proposal and proposals. Even where there is no doubt that the creditor would suffer some prejudice because of the stay of proceedings, the Courts have refused to lift the stay where it would prevent the debtor from making a proposal which the Court believed would benefit the general body of creditors.<sup>27 28 29</sup>

41. There is no equitable reason or basis to lift the stay at this time. The main and only relevant request of the applicants being to appoint a Receiver will be heard by the Court on June 23, 2021.

42. There must be some compelling reason to lift the stay of proceedings on the basis that it is equitable on other grounds which are not present in this case.<sup>30 31 32</sup>

### **Removal of General Partner**

43. The Applicants want the GP removed for various reasons and allege that the GP had no authority to file NOIs.

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<sup>26</sup> Re Cumberland Trading Inc., 1994 CarswellOnt 255, at para 11. **Brief of Authorities -Tab 7**

<sup>27</sup> Toronto Dominion Bank v. Ty (Canada) Inc., 2003 CarswellOnt 1371, at para 22. **Brief of Authorities -Tab 8 [Toronto Dominion Bank]**

<sup>28</sup> Re Acepharm Inc., 1998 CarswellOnt 1801, paras 9 to 11. **Brief of Authorities -Tab 9**

<sup>29</sup> Re 616813 N.B. Ltd., 2012 NBQB 86, paras 27 to 31 and paras 35 to 36. **Brief of Authorities -Tab 10 [616813]**

<sup>30</sup> Toronto Dominion Bank, *supra*, at para 22(h). **Brief of Authorities -Tab 8**

<sup>31</sup> 616813, *supra*, at para 26. **Brief of Authorities -Tab 10**

<sup>32</sup> Golden Griddle, *supra*, at paras 33 to 34. **Brief of Authorities -Tab 2**

44. The Applicants base their argument on Section 11.2 of the YG Limited Partnership Amended and Restated Limited Partnership Agreement Effective August 4, 2017 (the “YG Partnership Agreement”).

45. A close reading of that Section 11.2(b) of the YG Partnership Agreement indicates that the section relates to the GP as a corporate entity not in its capacity of a GP.<sup>33</sup>

46. The logical and plain reading of the section is that if the GP in its corporate capacity goes bankrupt, is dissolved or consents to an appointment of a Receiver with respect to its corporate entity, it obviously would cease to be the GP.

47. The section does not deal with the GP in its capacity of a GP of the Partnership.

48. The GP consenting to the appointment to a receiver as part of a forbearance arrangement with Timbercreek in order to buy more time to find a buyer and in filing an NOI and later to file a Proposal does not violate Section 11.2(b) of the YG Partnership Agreement as that section has no application to the GP as GP of the YG Limited Partnership.

49. There are no provisions of the YG Partnership Agreement that restricts or prohibits the GP from filing an NOI as the GP has exclusive authority and power to manage, control, administer and operate the business, policies and affairs of the Partnership and to make all decisions regarding the business, policies and affairs of the Partnership.<sup>34</sup>

50. A substantial portion of the relief requested by the Limited Partners is based on their misinterpretation of Section 11.2(b) of the YG Partnership Agreement.

51. The GP clearly had the right to file the NOI and the unsecured creditors should be given the opportunity to decide their own fate. If the unsecured creditors conclude that the Proposal offering of 58cents on the dollar unfair they can reject the Proposal and a bankruptcy will result and Timbercreek will proceed to appoint a Receiver.

#### **Selling All or Substantially All the Assets of the YG Limited Partnership**

52. The YG Partnership Agreement provides in Section 10.14 that the GP cannot approve or disapprove the sale of all or substantially all of the business or assets of the Partnership without a

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<sup>33</sup> Li Affidavit, Exhibit “D” - YG Limited Partnership Agreement, s.11.2(b)

<sup>34</sup> *Ibid*, s.3.2(a)

Special Resolution, which requires all the Limited Partners to approve such a sale. This provision makes sense in a solvent operation. However once a partnership is insolvent, subject to an imminent receivership and the GP puts forward a lifeline for a reasonable recovery for the unsecured creditors, which the secured creditors also support, then the tables turn and the will of the unsecured creditors should determine the fate of the assets, particularly since the sale to Concord is part of the Proposal and is subject to court review and approval in accordance with Section 59 of the BIA. Since the Limited Partners have an equity claim that is subordinate to the unsecured creditors, the Limited Partners should not be able to impede the will of the unsecured creditors. Otherwise they are in a blocking position and can hold the unsecured creditors to ransom. In addition, the right of the Limited Partners to have a say in the transfer of assets is lost in insolvency situations be it a bankruptcy, proposal or receivership.

#### **Response to Allegations and Issues in Applicants' Factums**

53. The threshold issues of whether the GP had authority to commence the proposal process is answered by Section 3.2(a) and Section 11.2(b) of the Amended and Restated YG Limited Partnership Agreement.

54. The issue of the sale of the assets of YSL is answered in paragraph 52 of this Factum.

55. The Limited Partners make numerous allegations with respect to the actions of the GP which would be responded to in the GP's response to these allegations in the proceedings commenced by the Limited Partners. However, from a practical perspective any findings in favour of the Limited Partners including their request to appoint a receiver will result in a default in the forbearance arrangement with Timbercreek and will result in Timbercreek proceeding with their Receivership Application, currently before this Court.<sup>35</sup> The sole issue to be decided in these proceedings is whether the Court should approve the proposal to be filed by YSL, if accepted by the YSL creditors, or refuse to approve the proposal and allow a receiver to be appointed to conduct a public sale. The Limited Partners in those circumstances must convince the Court based on evidence that a public sale will produce a better result than the Proposal.

56. The GP has not acted in its own self interest, but in the interest of the YG Limited Partnership. The forbearance arrangement with Timbercreek was negotiated to avoid a receivership in 2020 and allow the GP to find a buyer for the YSL Project. Concord's change of

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<sup>35</sup> Mann Affidavit, Exhibit "A" - Consent and Forbearance Agreement Amendment #4, at para 2.1(f)

position was caused by demands from Otera Capital that imposed conditions on its being willing to fund construction financing. This resulted in Concord pursuing the proposal process. In addition, the fiduciary duty of the GP changes once a limited partnership is in the “vicinity of insolvency”. The GP must consider the rights of creditors in priority to the rights of limited partners.<sup>36</sup>

57. The unsecured claims of the Cresford entities will be reviewed by the Trustee in accordance with Section 135 of the BIA. The Trustee’s review of claims is no different from a receiver reviewing claims under a court ordered claims process.<sup>37</sup> These unsecured claims are being made by Cresford (Rosedale) Developments Inc., Oakleaf Consulting Ltd. and East Downtown Redevelopment Partnership who loaned money to the YG Limited Partnership. These entities are not limited partners. These loans were not made by Cresford (Yonge) Limited Partnership, the Limited Partner that had previously provided \$15 million in equity.

58. The GP has not breached the Disclosure Order. The GP has provided updates on negotiations with Concord as is evidenced by the numerous emails from Aird & Berlis LLP set out in the Exhibits of the Affidavits of Anthony Szeto and Eric Li. Counsel for the Limited Partners continued to insist that the information was insufficient and that draft agreements and emails between the GP and Concord had not been provided even though they were told that there were no draft agreements and that all discussions took place in telephone calls.

59. Any adverse finding against the GP will impact the proposal process as it will trigger a default in the forbearance arrangement with Timbercreek and a receiver will be appointed. In fact the all the relief requested by the Limited Partners including the request to appoint a receiver of YSL has the effect of stopping the proposal process and preventing the creditors from determining their own fate as creditors who have priority over the claims of the Limited Partners. In addition, the GP is a party to the Proposal proceedings as it holds a unit in the YG Limited Partnership.

60. Restructuring of a debtor is not required in order for a proposal to be accepted by creditors and approved by a court. The issue is whether the Proposal will produce a better result for the creditors in the circumstances.

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<sup>36</sup> Re Peoples Department Store Ltd. (1992) Inc., 2004 SCC 68, at paras 44 to 45. **Brief of Authorities - Tab 11**

<sup>37</sup> *BIA, supra* S.135

61. If the stay of proceedings is lifted, YSL will have to spend a great deal of time replying to the Limited Partners' Applications as opposed to focusing their attention on the Proposal.

**Sealing Order is Appropriate**

62. A sealing order is appropriate in that, as set out in the Factum of Thornton Grout Finnigan LLP, portions of the Affidavits, Exhibits and Factum of Lax O'Sullivan, Lisus Gottlieb LLP includes sensitive commercial information that would be helpful to potential bidders if a public sale took place.

**PART V - ORDER REQUESTED**

63. Order confirming that a stay under Section 69(1)(a) applies to the Limited Partners' Applications.

64. An Order refusing to lift the stay of proceedings.

65. If the stay of proceedings is lifted the schedule set out in the Factum of Lax O'Sullivan Lisus Gottlieb LLP is acceptable, except for paragraph 91(a), where we are requesting that the Respondents' Responding Record be produced 2 days following the decision on the motion, but no earlier than June 4, 2021.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of May, 2021.



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**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

Jurisprudence

1. Emergency Door Service Inc., 2016 ONSC 5284; **Brief of Authorities, Tab 1**
2. Golden Griddle Corp. v. Fort Erie Truck & Travel Plaza Inc., 2005CarswellOnt 9935; **Brief of Authorities, Tab 2**
3. Re Advocate Mines Ltd., 1984 CarswellOnt 156; **Brief of Authorities, Tab 3**
4. Maple Homes Canada Ltd., 2000 BCSC 1443; **Brief of Authorities, Tab 4**
5. Re Ma, 2001 CarswellOnt 1019; **Brief of Authorities, Tab 5**
6. Re Karaoglu, 2014 ONSC 4496; **Brief of Authorities, Tab 6**
7. Re Cumberland Trading Inc., 1994 CarswellOnt 255; **Brief of Authorities, Tab 7**
8. Toronto Dominion Bank v. Ty (Canada) Inc., 2003 CarswellOnt 1371; **Brief of Authorities, Tab 8**
9. Re Acepharm Inc., 1998 CarswellOnt 1801; **Brief of Authorities, Tab 9**
10. Re 616813 N.B. Ltd., 2012 NBQB 86; **Brief of Authorities, Tab 10**
11. Re Peoples Department Store Ltd. (1992) Inc., 2004 SCC 68; **Brief of Authorities, Tab 11**

**SCHEDULE “B”**  
**TEXTS OF STATUTES**

**SECTION 69(1)(a) OF BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, C B-3**

**Stay of proceedings - Division I proposals**

**69 (1)** Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by 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,

**SECTION 2 OF BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, C B-3**

**Definitions**

**2** In this Act,

**claim provable in bankruptcy, provable claim or claim provable** includes any claim or liability provable in proceedings under this Act by a creditor;

**creditor** means a person having a claim provable as a claim under this Act;

**SECTION 54.1 OF BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, C B-3**

**Class - creditors having equity claims**

**54.1** Despite paragraphs 54(2)(a) and (b), creditors having equity claims are to be in the same class of creditors in relation to those claims unless the court orders otherwise and may not, as members of that class, vote at any meeting unless the court orders otherwise.

**SECTION 69.4 OF BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, C B-3**

**Lifting the Stay**

**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.



**SECTION 135 (1)(1.1)(2) OF BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, C B-3****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.

**SECTION 140.1 OF BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, C B-3****Postponement of equity claims**

**140.1** A creditor is not entitled to a dividend in respect of an equity claim until all claims that are not equity claims have been satisfied.

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

Court File No. 31-273-2019

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

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