Court File No.: 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

APPLICATION UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

Joint Compendium of the "Class A LPs"

(Sanction Hearing: June 23, 2021)

June 22, 2021

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Court File No.: 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

APPLICATION UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

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TAB	DOCUMENT
11.	L.W. Houlden and Geoffrey B. Morawetz, *Bankruptcy and Insolvency Law of Canada*, 4th Ed., *D§72 – Section 2(b) – Partnerships*
12.	*Aquaculture Component Plant V Limited Partnership (Re),* 1995 CanLII 9324 (NS SC) – pages 1-3
13.	*Re Lehndorff General Ltd.,* [1993] 17 CBR (3d) – para. 17
14.	*Kingsberry Properties Ltd. Partnership, Re,* 1997 CarswellOnt 5009 – paras. 4, 5, 6, 12, 15
15.	*Tudor Sales Ltd (Re)*, 2017 BCSC 119 – paras. 35-44
16.	*Alberta Energy Regulator v Lexin Resources Ltd*, 2018 ABQB 590 – paras. 45-68
17.	Extracts of Exhibit "D" to First Szeto Affidavit
18.	Extracts of Exhibit "C" to Second Affidavit of Lue (Eric) Li sworn June 9, 2021
19.	Excerpts of the Transcript of the cross-examination of David Mann held on June 11, 2021
20.	Exhibit "U" to First Li Affidavit
21.	Section 4.10 to the Third Report to Court of KSV Restructuring Inc. as Proposal Trustee of YG Limited Partnership and YSL Residences Inc. dated June 18, 2021
22.	Appendix "M" to Third Report to Court of KSV Restructuring Inc. as Proposal Trustee of YG Limited Partnership and YSL Residences Inc. dated June 18, 2021
23.	L.W. Houlden and Geoffrey B. Morawetz, *Bankruptcy and Insolvency Law of Canada*, 4th Edition, The Bankruptcy and Insolvency Act - Proposals (ss. 50-66), *E§80 – Secret Agreements with Creditors*
	CONFIDENTIAL DOCUMENTS
24.	Concord Pro Forma – Exhibit "P" to First Szeto Affidavit
25.	CBRE 2019 Appraisal – pages 1, 5 and 57
26.	CBRE 2021 Appraisal – pages 1, 6-9

TAB 1

This is Exhibit "D" referred to in the Affidavit of Lue (Eric) Li sworn by Lue (Eric) Li of the Woodbridge, in the Vaughan, before me at the City of Toronto, in the Province of Ontario, on May 3, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (or as may be)

ALEXANDER SOUTTER

YG LIMITED PARTNERSHIP

AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT

Effective August 4, 2017

2.4 **Term**

The term (the "**Term**") of the Partnership commenced on the Effective Date, and shall continue until the termination and dissolution in accordance with Article 12 .

2.5 **Fiscal Year**

The fiscal year (the "**Fiscal Year**") of the Partnership for accounting and income tax purposes shall be a year ending on December 31 of each year or, in the case of the first Fiscal Year, the portion of the calendar year commencing on the Effective Date and ending on December 31, 2017, and in the case of the Fiscal Year in which the Partnership is terminated and wound up, the portion of the calendar year ending on the date on which the Partnership is terminated.

ARTICLE 3 - THE PARTNERSHIP

3.1 **Purpose and Scope of Business**

(a) Subject to the restrictions contained herein, the objects, purposes and business of the Partnership shall be:

(i) to own, develop and sell the Project; and

(ii) to engage in any other lawful activities determined by the General Partner to be necessary, advisable, convenient or incidental to the foregoing.

(b) Subject to the restrictions set forth in this Agreement, the Partnership shall have the power to do any and all acts necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the objects and purposes described herein, and shall have, without limitation, any and all of the powers that may be exercised on behalf of the Partnership by the General Partner pursuant to Section 3.2.

3.2 **Powers of the General Partner**

(a) Subject to the other provisions of this Agreement, the General Partner shall have the 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, and the General Partner is hereby authorized and empowered on behalf of and in the name of the Partnership to carry out any and all of the business, objects and purposes of the Partnership and to perform all acts and enter into and perform all contracts and other undertakings that it may in its discretion deem necessary or advisable in connection therewith or incidental thereto. Without limiting the generality of the foregoing, any action taken by the General Partner shall constitute the act of and serve to bind the Partnership. In dealing with the General Partner acting on behalf of the Partnership, no Person shall be required to inquire into the authority of the General Partner to bind the Partnership. Persons dealing with the Partnership are

entitled to rely conclusively on the power and authority of the General Partner as set out in this Agreement.

(b) Without limiting the generality of Section 3.2(a), it is acknowledged and agreed that the General Partner is authorized and has the right, on behalf of and without further authority from the Limited Partners:

(i) to acquire the Property and any other real or personal property from time to time related to the Project;

(ii) to acquire the interest of the limited partner of the Partnership (other than Cresford) under the Original Limited Partnership Agreement;

(iii) to sell condominium units and other portions of the Property or Project;

(iv) to engage such professional advisers as the General Partner considers advisable in order to perform or assist it in the performance of its duties hereunder;

(v) to open and operate in the name of the Partnership a separate bank account in order to deposit and distribute funds with respect to the Partnership;

(vi) to execute, deliver and carry out all other agreements which require execution by or on behalf of the Partnership;

(vii) to pay all taxes, fees and other expenses relating to the orderly maintenance and management of the assets owned by the Partnership;

(viii) to commence or defend on behalf of the Partnership any and all actions and other proceedings pertaining to the Partnership or the assets owned by the Partnership;

(ix) to determine the amount and type of insurance coverage to be maintained in order to protect the Partnership and the assets owned by the Partnership from all usual perils of the type covered in respect of comparable assets and in order to comply with the requirements of the lenders of funds to the Partnership;

(x) to determine the amount, if any, to be claimed by the Partnership in any year in respect of capital cost allowance and expenses incurred by the Partnership;

(xi) to hold the assets owned by the Partnership in the name of the General Partner or such other nominee as may be appointed by the General Partner;

(xxiii) to execute any and all other deeds, documents and instruments and to do all acts as may be necessary or desirable to carry out the intent and purpose of this Agreement.

3.3 Reimbursement of the General Partner

The General Partner is entitled to reimbursement by the Partnership for all reasonable third party costs and expenses that are incurred by the General Partner on behalf of the Partnership in the ordinary course of business or other costs and expenses incidental to acting as general partner to the Partnership. All such expenses shall be otherwise paid by the Partnership.

3.4 Management Fees

The Partnership shall retain the Development Manager pursuant to the provisions of the Development Management Agreement to provide development management services to the Project, the Construction Manager pursuant to the provisions of the Construction Management Agreement to provide construction management services to the Project and the Sales Manager pursuant to the provisions of the Sales Management Agreement to provide marketing and sales services in respect of the sale of condominium units and other portions of the Project. The parties acknowledge that, under such agreements, the Partnership shall pay management fees and commissions to the Development Manager, the Construction Manager and the Sales Manager in connection with the management services performed by them in respect of the Project, plus any goods and services tax and/or harmonized sales tax payable thereon.

3.5 Duty of the General Partner

The General Partner covenants that:

(a) it shall exercise its powers and discharge its duties under this Agreement honestly, in good faith and in the best interests of the Limited Partners and that it shall exercise the care, diligence and skill that a reasonably prudent operator of a business similar to that of the Partnership would exercise in comparable circumstances; and

(b) it shall maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the Partnership, the disclosure of which may adversely affect the interests of the Partnership or a Limited Partner, except to the extent that disclosure is required by law or is in the best interests of the Partnership, and it shall utilize the information and data only for the business of the Partnership; and

(c) it shall not engage in any business, other than acting as a general partner of the Partnership.

3.6 Restrictions upon the General Partner

The General Partner covenants that it shall not:

10.8 Corporations which are Partners

A Partner which is a corporation may appoint under seal, or otherwise an officer, director or other Person as its representative to attend, vote and act on its behalf at a meeting of Partners.

10.9 Attendance of Others

Any officer or director of the General Partner and representatives of the Accountants shall be entitled to attend any meeting of Partners.

10.10 Chairman

The General Partner may nominate an individual (who need not be a Partner) to be chairman of a meeting of Partners and the Person nominated by the General Partner shall be chairman of such meeting.

10.11 Quorum

A quorum at any meeting of Partners shall consist of two or more Persons present in person who collectively hold or represent by proxy more than 50% of all outstanding Units and who are entitled to vote on any resolution.

10.12 Voting

Every question submitted to a meeting shall be decided by a vote conducted in such fashion as the chairman of the meeting may decide. In the case of an equality of votes, the chairman shall not have a casting vote and the resolution shall be deemed to be defeated. The chairman shall be entitled to vote in respect of any Unit held by him or for which he may be proxy holder. On any vote at a meeting of Partners, a declaration of the chairman concerning the result of the vote shall be conclusive.

10.13 Resolutions Binding

Any resolution passed in accordance with this Agreement shall be binding on all the Partners and their respective heirs, executors, administrators, successors and assigns, whether or not any such Partner was present in person or voted against any resolution so passed.

10.14 Powers Exercisable by Special Resolution

None of the following actions shall be taken unless it has first been approved by Special Resolution:

(a) approving or disapproving the sale or exchange of all or substantially all of the business or assets of the Partnership;

(b) changing the fiscal year end of the Partnership;

entitled to vote in respect of such Units at the meeting or be entitled to execute the resolution circulated in respect of which such record date was fixed.

ARTICLE 11 - RESIGNATION, REMOVAL, INCAPACITY OF THE GENERAL PARTNER

11.1 No Assignment

The General Partner shall not make any assignment of its obligations under this Agreement, except (a) to an Affiliate of the General Partner, in which event the General Partner shall be released from its obligations hereunder and (b) that the General Partner may substitute in its stead as General Partner any entity which has, by merger, amalgamation, consolidation or otherwise, acquired substantially all of its assets, without such consent.

11.2 Removal or Cessation of the General Partner

(a) The General Partner may be removed as General Partner without its consent only if a court of competent jurisdiction determines ultimately that the General Partner has engaged in fraud, wilful misconduct or gross negligence in the operations of the Partnership and that such fraud, wilful misconduct or gross negligence has a material adverse effect on the business or properties of the Partnership, provided that a successor General Partner is appointed to continue the business of the Partnership within 60 days of such removal.

(b) The General Partner shall cease to be the general partner of the Partnership if:

(i) the General Partner is dissolved,

(ii) an order for relief against the General Partner is entered under the *Bankruptcy and Insolvency Act* (Canada),

(iii) the General Partner makes a general assignment for the benefit of creditors,

(iv) the General Partner makes a voluntary application under the *Bankruptcy and Insolvency Act* (Canada),

(v) the General Partner files a petition or answer seeking for the General Partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation,

(vi) the General Partner files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in any proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation,

(vii) the General Partner seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the General Partner or of all or any substantial part of the General Partner's properties,

(viii) within 60 days after the commencement of any proceeding against the General Partner commenced by any third Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or

(ix) within 60 days after the appointment without the General Partner's consent or acquiescence of a trustee, receiver or liquidator of the General Partner or of all or any substantial part of the General Partner's properties, the appointment is not vacated or stayed, or within 60 days after the expiration of any such stay, the appointment is not vacated.

(c) The General Partner may resign as general partner by providing notice to the Limited Partners that it intends to resign, with an effective date no sooner than 90 days following such notice. Immediately prior to the effective date of such resignation, a successor General Partner shall be appointed by the General Partner to continue the business of the Partnership.

(d) If the General Partner is removed under Subsection 11.2(a) or ceases to be General Partner under Subsection 11.2(b), then the Limited Partners shall have the right to appoint a new general partner by Special Resolution.

(e) Any successor General Partner appointed to replace a General Partner pursuant to this Article 11 shall, beginning on the date of admission to the Partnership, have the same rights and obligations under this Agreement as the replaced General Partner would have had subsequent to such date if the replaced General Partner had continued to act as General Partner.

11.3 **Admission of a Successor General Partner**

(a) The admission of a successor General Partner pursuant to Section 11.2 shall be effective only if and after the following conditions are satisfied:

(i) the admission of such successor General Partner shall not adversely affect the classification of the Partnership as a limited partnership for income tax and corporate purposes; and

(ii) any Person designated as a successor General Partner pursuant to Section 11.2 shall have become a party to, and adopted all of the terms and conditions of, this Agreement.

(b) The appointment of any Person as a successor General Partner in accordance with the terms hereof shall occur, and for all purposes shall be deemed to have

occurred, prior to the effective date of the removal, resignation or other termination of the General Partner.

11.4 Liabilities and Rights of a Replaced General Partner

Any General Partner who shall be replaced as General Partner shall remain liable for its portion of any obligations and liabilities incurred by it as General Partner prior to the time such replacement shall have become effective, but it shall be free of any obligation or liability incurred on account of the activities of the Partnership from and after such time. Such replacement shall not affect any rights of such General Partner which shall mature prior to the effective date of such replacement.

ARTICLE 12 - DISSOLUTION AND TERMINATION OF THE PARTNERSHIP

12.1 Dissolution

(a) The Partnership shall continue notwithstanding the death, incompetency, bankruptcy, insolvency, dissolution, liquidation, winding-up or receivership of any Limited Partner or the admission, retirement or withdrawal of any Limited Partner or the General Partner or the transfer of any Unit. No Limited Partner may require dissolution of the Partnership. Each of the General Partner and the Limited Partners hereby covenants and agrees not to cause a dissolution of the Partnership by his or its individual acts and should any of the Limited Partners cause the Partnership to be dissolved or this Agreement to be terminated prior to the occurrence of any event of dissolution or termination otherwise provided for herein, such Limited Partner shall be liable to all the other Partners for all damage thereby occasioned.

(b) The Partnership will be dissolved on the earliest of:

(i) the effective date of the resignation or deemed resignation by the General Partner as the general partner of the Partnership unless within 90 days after such resignation or deemed resignation of the General Partner, the Limited Partners agree in writing to continue the business of the Partnership and to the appointment, effective as of the date of the resignation or deemed resignation of the General Partner, of one or more general partners; and

(ii) any date which is approved by the General Partner and by Special Resolution.

In the event of the termination and dissolution of the Partnership, upon satisfaction of all the rights of the Partners under the terms hereof, this Agreement shall terminate and be of no further force and effect.

12.2 **Administrator**

The General Partner shall serve as the administrator of the Partnership in the event that the Partnership is to be dissolved, unless such dissolution is as a result of the removal of the General Partner pursuant to Subsection 11.2(a) or the General Partner ceased to be the General Partner under Subsection 11.2(b) or if the General Partner is unable or unwilling to so act. If the General Partner is so disqualified or unable to act as administrator, then the Limited Partners by Special Resolution shall appoint some other appropriate Person to act as the administrator of the Partnership.

12.3 **Liquidation of Assets**

As soon as practicable after the authorization of the dissolution of the Partnership, the administrator of the Partnership shall prepare or cause to be prepared a statement of financial position of the Partnership which shall be reported upon by the Accountants and a copy of which shall be forwarded to each Limited Partner. The administrator of the Partnership shall proceed diligently to wind up the affairs of the Partnership and all assets of the Partnership shall be disposed of in an orderly fashion having regard to prevailing market conditions. In selling the Partnership's assets, the administrator shall take all reasonable steps to locate potential purchasers in order to accomplish the sale at the highest attainable price. A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership so as to minimize any losses. During the course of such liquidation, the administrator of the Partnership shall operate the undertakings of the Partnership and in so doing shall be vested with all the powers and authorities of the General Partner in relation to the business and affairs of the Partnership under the terms of this Agreement. The administrator of the Partnership shall be paid its reasonable fees and disbursements incurred in carrying out its duties as such.

12.4 **Distribution Upon Liquidation**

After the payment of all liabilities owing to the creditors and the General Partner, the administrator shall set up such Reserves as it deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership. Said Reserves may be paid over by the administrator to a bank, to be held in escrow for the purpose of paying any such contingent or unforeseen liabilities or obligations and, at the expiration of such period as the administrator may deem advisable, such Reserves shall be distributed to the Partners or their assigns as provided below. After provision has been made for the payment or other satisfaction of all liabilities of the Partnership, the net assets of the Partnership will be distributed on dissolution in the manner provided for in Section 6.3(b)(i).

12.5 **Events Not Causing Dissolution**

Notwithstanding any rule of law or equity to the contrary, the Partnership shall not be dissolved except in accordance with this Agreement. In particular, but without restricting the generality of the foregoing, the Partnership shall not be dissolved or terminated by the removal, actual or deemed resignation, death, incompetence, bankruptcy, insolvency, other disability or incapacity, dissolution, liquidation, winding-up or receivership, or the admission, resignation or withdrawal of the General Partner (except as provided for herein) or any Limited Partner.

TAB 2

Partners bound by acts on behalf of firm

9 An act or instrument relating to the business of the firm and done or executed in the firm name, or in any other manner showing an intention to bind the firm, by any person thereto authorized, whether a partner or not, is binding on the firm and all the partners; but this section does not affect any general rule of law relating to the execution of deeds or negotiable instruments.

Engagement de la firme

9 Les instruments intéressant l'entreprise passés par une personne habilitée à cet effet, qu'il s'agisse d'un associé ou non, lient la firme et les associés, s'ils sont passés sous la raison sociale de la firme ou font foi d'une autre manière de l'intention de lier la firme. Il en est de même des gestes posés dans les mêmes circonstances. Cependant le présent article ne touche pas les règles de droit relatives à la passation des actes scellés et des effets négociables.

Partner using credit of firm for private purposes

10 Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorized by the other partners; but this section does not affect any personal liability incurred by an individual partner.

Crédit de la firme à des fins personnelles

10 Lorsqu'un associé engage le crédit de la firme à des fins manifestement sans rapport avec le cours ordinaire des affaires de la firme, celle-ci n'est pas liée à moins que l'associé ne soit spécialement habilité par ses coassociés. Cependant, le présent article ne touche pas la responsabilité personnelle que les associés peuvent encourir individuellement.

Effect of notice that firm will not be bound by acts of partner

11 Where it is agreed between the partners to restrict the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

Notification de non-responsabilité

11 Lorsqu'il a été convenu entre les associés de restreindre pour l'un ou plusieurs d'entre eux le pouvoir de lier la firme, aucun geste posé en violation de la convention ne lie la firme à l'égard des personnes ayant connaissance de cette convention.

Liability of partners

12 Every partner of a firm is liable jointly and severally with the other partners, for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for the debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of his separate debts.

S.M. 1990-91, c. 4, s. 4.

Responsabilité des associés

12 Les associés d'une firme sont conjointement et individuellement responsables des dettes et engagements de la firme contractés alors qu'ils sont associés. Après le décès de l'un d'eux, sa succession répond individuellement, dans le cours normal de l'administration de celle-ci, de ces dettes et engagements dans la mesure où ils ne sont pas réglés, sous réserve du paiement préalable de sa dette individuelle.

Liability of the firm for wrongs

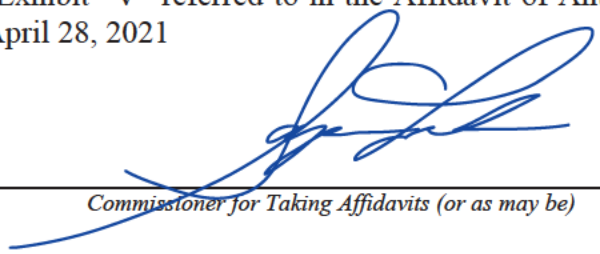
13 Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

Responsabilité quant aux fautes

13 Lorsqu'une perte ou un préjudice est causé à une personne qui n'est pas un associé de la firme, ou qu'une pénalité est encourue, à la suite d'un acte ou d'une omission illicite d'un associé agissant dans le cours ordinaire des affaires de la firme, ou avec l'autorisation de ses coassociés, la firme en est responsable au même titre que l'associé qui a commis l'acte ou qui a omis d'agir.

TAB 3

This is Exhibit "V" referred to in the Affidavit of Anthony Szeto, sworn April 28, 2021



Commissioner for Taking Affidavits (or as may be)

SAPNA THAKKER

Court File No. CV-20-00650224-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 13th
	)	
JUSTICE PETER CAVANAGH	)	DAY OF JANUARY, 2021

B E T W E E N:

TIMBERCREEK MORTGAGE SERVICING INC. and 2292912 ONTARIO INC.

Applicants

and

YSL RESIDENCES INC., YG LIMITED PARTNERSHIP and CRESFORD CAPITAL CORPORATION

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT* , R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

ORDER

THIS MOTION, made by the Moving Parties, 2504670 Canada Inc., 8451761 Canada Inc. and Chi Long Inc., for disclosure of documents by 9615334 Canada Inc, as General Partner of the YG Limited Partnership, was heard this day by video conference.

ON READING the Moving Parties' Motion Record, Factum and Book of Authorities, and on hearing the submissions of the lawyers for the Moving Parties and the General Partner,

1. THIS COURT ORDERS that the General Partner produce to the Limited Partners of the YG Limited Partnership the Empire (Water Wave) Agreement of Purchase and Sale and all correspondence between Empire (Water Wave) and the General Partner relating to the YG Limited Partnership and the "YSL Project", a high rise condominium building in Toronto, Ontario, municipally known as 363, 367, 369, 373, 377, 379, 381, and 385 Yonge Street and 3 Gerrard Street East, Toronto, Ontario.

2. THIS COURT ORDERS that the General Partner produce to the Limited Partners:

(a) any offers, Letters of Intent, term sheets, proposals or agreements regarding the financing, transfer or acquisition of the YSL Project when received;

(b) any proposed agreements relating to the YSL Project before they are entered into, including without limitation any agreements relating to the Timbercreek Mortgage Services Inc.'s mortgage or Concord Property Development Corp.'s proposed financing;

(c) any mortgages, charges, liens or other forms of new security interest in the YSL Project as soon as the General Partner is aware; and

(d) any proposed agreements or terms that may have a material impact on the Limited Partners' interests in the YSL Project and the YG Limited Partnership.

3. THIS COURT ORDERS that, on consent, the General Partner shall provide an accounting of the monies put into the YSL Project and to disclose their uses, by Wednesday January 27, 2021.

4. THIS COURT ORDERS that, on consent, the General Partner shall provide evidence of all payments by Cresford (Rosedale) Developments Inc., and its affiliates, that are alleged to be loans to the YG Limited Partnership, including copies of cheques or other instruments used.

5. THIS COURT ORDERS that the documents produced pursuant to section 4 of this Order shall be provided by Friday, February 19, 2021.

6. THIS COURT ORDERS that the Notice of Motion, the Affidavit of Anthony Szeto, sworn on January 8, 2021 and the exhibits thereto, the Motion Record, the factum, and Book of Authorities of the Moving Parties shall be sealed, kept confidential and not form part of the public record, but rather be placed, separate and apart from all other contents of the Court File and that all documents sent to the Court are subject to a sealing order and shall only be accessed upon further Order of the Court.

7. THIS COURT ORDERS that the Respondent shall pay the costs of this motion in the amount of 10,000.

(Signature of judge, officer or registrar)

IN THE MATTER OF AN APPLICATION PURSUANT SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT* , R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

TIMBERCREEK MORTGAGE SERVICING INC. et al.
Applicants

-and-

YSL RESIDENCES INC. et al.
Respondents

Court File No. CV-20-00650224-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

ORDER

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Lawyers for the Moving Parties,
2504670 Canada Inc., 8451761 Canada Inc.
and Chi Long Inc.

TAB 4

This is Exhibit "DD" referred to in the Affidavit of Anthony Szeto, sworn April 28, 2021

Commissioner for Taking Affidavits (or as may be)

SAPNA THAKKER

From: Harry Fogul
To: Sapna Thakker
Cc: Matt Gottlieb; Shaun Laubman; Alexander Soutter
Subject: RE: YSL - Update
Date: March-10-21 5:25:47 PM
Attachments: image002.jpg

There have been no further negotiations between Concord and the General Partner on behalf of the YG Limited Partnership. There are no draft or final agreements. Concord has continued discussions with Otera with respect to financing, which we previously explained to you and on Concord's request we conveyed a settlement offer to 2576725 Ontario Inc. (Fei Han) through Mr. Soutter. We understand that if those two issues are not resolved Concord may not proceed with the project.

Harry Fogul
Aird & Berlis LLP

T 416.865.7773
E hfogul@airdberlis.com

From: Sapna Thakker <sthakker@lolg.ca>
Sent: March 10, 2021 9:12 AM
To: Harry Fogul <hfogul@airdberlis.com>
Cc: Matt Gottlieb <mgottlieb@lolg.ca>; Shaun Laubman <slaubman@lolg.ca>
Subject: YSL - Update

Harry,

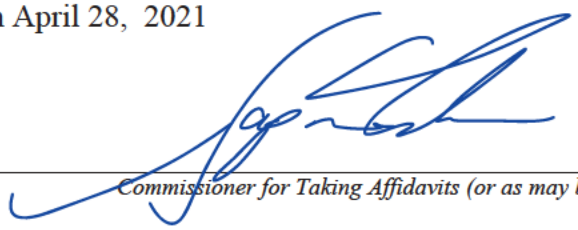
Do you have an update with respect to the Project and the negotiations with Concord? Also, please send over all drafts or final versions of agreements/relevant documentation that relate to the "Concord Transactions".

Thanks,
Sapna

Sapna Thakker
Direct 416 642 3132
Cell 437 213 3408
sthakker@lolg.ca

TAB 5

This is Exhibit "II" referred to in the Affidavit of Anthony Szeto, sworn April 28, 2021



Commissioner for Taking Affidavits (or as may be)

SAPNA THAKKER

From: Harry Fogul
To: Matt Gottlieb
Cc: Sapna Thakker; Shaun Laubman; Alexander Soutter (asoutter@tgf.ca)
Subject: RE: Update - YSL Residence [IWOV-Client.FID106454]
Date: April-13-21 5:39:37 PM

You will see tomorrow what Concord has agreed to do and if you are not happy you can assess your options.

Harry Fogul
Aird & Berlis LLP

T 416.865.7773
E hfogul@airdberlis.com

From: Matt Gottlieb
Sent: April 13, 2021 5:37 PM
To: Harry Fogul
Cc: Sapna Thakker ; Shaun Laubman ; Alexander Soutter (asoutter@tgf.ca)
Subject: RE: Update - YSL Residence [IWOV-Client.FID106454]

Harry, you made the statement. It shouldn't take all day for you to respond one way or the other. I am getting very concerned.

From: Harry Fogul <hfogul@airdberlis.com>
Sent: April-13-21 5:32 PM
To: Matt Gottlieb <mgottlieb@lolg.ca>
Cc: Sapna Thakker <sthakker@lolg.ca>; Shaun Laubman <slaubman@lolg.ca>; Alexander Soutter (asoutter@tgf.ca) <asoutter@tgf.ca>
Subject: RE: Update - YSL Residence [IWOV-Client.FID106454]

Today has been a very hectic day dealing with Concord. I will respond tomorrow.

Harry Fogul
Aird & Berlis LLP

T 416.865.7773
E hfogul@airdberlis.com

From: Matt Gottlieb <mgottlieb@lolg.ca>
Sent: April 13, 2021 8:03 AM
To: Harry Fogul <hfogul@airdberlis.com>
Cc: Sapna Thakker <sthakker@lolg.ca>; Shaun Laubman <slaubman@lolg.ca>; Alexander Soutter (asoutter@tgf.ca) <asoutter@tgf.ca>
Subject: RE: Update - YSL Residence [IWOV-Client.FID106454]
Importance: High

Are you providing a representation from you as counsel that there have been no exchanges of emails or documents of any kind setting out any proposed terms or points of discussion? If so, please confirm that. If not, please confirm that.

From: Harry Fogul <hfogul@airdberlis.com>
Sent: April-12-21 4:59 PM
To: Matt Gottlieb <mgottlieb@lolg.ca>
Cc: Sapna Thakker <sthakker@lolg.ca>; Shaun Laubman <slaubman@lolg.ca>; Alexander Soutter (asoutter@tgf.ca) <asoutter@tgf.ca>
Subject: RE: Update - YSL Residence

The discussions between the parties have been in a number of telephone calls. Since no agreement has been reached in principle, there have been no documents drafted.

Harry Fogul
Aird & Berlis LLP

T 416.865.7773
E hfogul@airdberlis.com

From: Matt Gottlieb <mgottlieb@lolg.ca>
Sent: April 12, 2021 4:43 PM
To: Harry Fogul <hfogul@airdberlis.com>
Cc: Sapna Thakker <sthakker@lolg.ca>; Shaun Laubman <slaubman@lolg.ca>; Alexander Soutter (asoutter@tgf.ca) <asoutter@tgf.ca>
Subject: Re: Update - YSL Residence

There must be documents that have been exchanged. Please provide them immediately or tell us that you will not and we will ask for an urgent appointment with the court.

Matthew Gottlieb
Lax O'Sullivan Lisus Gottlieb LLP
416 644 5353

On Apr 12, 2021, at 4:20 PM, Harry Fogul <hfogul@airdberlis.com> wrote:

Discussions with Concord have been ongoing since the end of last week with no conclusion as yet. Timbercreek is aware of these discussions but there has been no formal extension.

Harry Fogul
Aird & Berlis LLP

T 416.865.7773
E hfogul@airdberlis.com

From: Sapna Thakker <sthakker@lolg.ca>
Sent: April 12, 2021 3:10 PM
To: Harry Fogul <hfogul@airdberlis.com>
Cc: Matt Gottlieb <mgottlieb@lolg.ca>; Shaun Laubman <slaubman@lolg.ca>
Subject: Update - YSL Residence

Hi Harry,

Do you have an update for us with respect to the discussions with either Concord/Timbercreek? Was there any follow-up from the events of last week?

Thanks,
Sapna

Sapna Thakker
Direct 416 642 3132
Cell 437 213 3408
sthakker@lolg.ca

Lax O'Sullivan Lisus Gottlieb LLP

TAB 6

This is Exhibit "KK" referred to in the Affidavit of Anthony Szeto, sworn April 28, 2021

Commissioner for Taking Affidavits (or as may be)

SAPNA THAKKER

From: Sapna Thakker
To: "Harry Fogul"
Cc: Shaun Laubman; Matt Gottlieb; Alexander Soutter (asoutter@tgf.ca)
Subject: RE: YSL Residences Inc. and YG Limited Partnership
Date: April-15-21 7:14:35 AM
Attachments: image001.png

Harry,

Your client's conduct over the last week is shocking. We have been chasing you for an update, yet you waited until after Cresford entered into a formal agreement with Concord to provide us with any update. This is unacceptable and we reserve all rights to seek any and all relief as a result of your client's actions.

Needless to say, your client is in breach of the Order of Justice Cavanagh. In particular, your client was required to provide notice of any proposed agreements relating to the YSL Project before they are entered into and you simply did not (section 2(b)). Therefore, we reserve all rights in connection with your client's breach of the Order and the LP Agreement.

Your client misrepresented the status of the negotiations, purposefully kept us in the dark, and ignored a court order. As such, we have no idea what the specific implications are of this purported agreement for our clients' interest in the Project. **Please clearly explain with as much detail as possible what that means for our client's interest.**

It is not clear at this stage that your client has any authority to represent or bind the partnership. Until we hear from you and understand the impact of your client's actions, we require that no further steps be taken, including taking steps in furtherance of the Proposal or executing an agreement with Concord.

Thank you,

Sapna

Sapna Thakker
Direct 416 642 3132
Cell 437 213 3408
sthakker@lolg.ca

Lax O'Sullivan Lisus Gottlieb LLP
Suite 2750, 145 King St W
Toronto ON M5H 1J8 Canada
T 416 598 1744 F 416 598 3730
www.lolg.ca

From: Harry Fogul <hfogul@airdberlis.com>
Sent: April-14-21 12:26 PM
To: Matt Gottlieb <mgottlieb@lolg.ca>; Sapna Thakker <sthakker@lolg.ca>; Shaun Laubman <slaubman@lolg.ca>; Alexander Soutter (asoutter@tgf.ca) <asoutter@tgf.ca>
Subject: YSL Residences Inc. and YG Limited Partnership

The General Partner has been trying to finalize an arrangement with Concord over the past several weeks. All discussions between the General Partner and Concord have been by telephone. The General Partner tried to resurrect the initial arrangement agreed to by Concord. As I previously advised you Otera who has agreed to provide Concord with the construction financing would not approve the arrangement. As a result no agreement was in place at the Election Date on April 2, 2021 and the Election Notice was not sent . Similarly the forbearance conditions were not met on April 9, 2021 so no extension was granted by Timbercreek.

Discussions continued over the weekend but Concord had made a decision how it wanted to proceed and would not budge from that position. I had telephone discussions with Concord's Toronto and Vancouver Counsel on the Weekend and on Monday but they would not alter the manner in which they wished to proceed. Concord's Counsel explained their plan in general terms but did not provide anything in writing until Monday evening.

On Monday evening I received an e-mail from David Gruber, Concord's Vancouver Counsel setting out their plan. (E-mail set out below). Although I attempted to suggest changes and increase the contribution in a call with Mr. Gruber. Concord refused to alter its position.

With Timbercreek advising that it intended to proceed with its Receivership Application on Wednesday April 21, 2021 the General Partner had little choice but to go along with Concord's Plan as it took care of the secured creditors, the registered lien claimants and included a significant payment to the unsecured creditors. The plan will be in the form of a Proposal under the Bankruptcy and Insolvency Act so the creditors can decide if they like the plan and vote for it or reject it and a bankruptcy will result and I suspect Timbercreek will then move to appoint a Receiver.

Concord has made a side deal with 2576725 Ontario Inc. (Fei Han) to acquire that mortgage. Alexander Soutter acts for Fei Han so if you have any questions

regarding that transaction you should speak to him.
You can call me at 416-918-9914 to further discuss this.

Harry Fogul
Aird & Berlis LLP

T 416.865.7773
E hfogul@airdberlis.com

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error.
If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: David Gruber <GruberD@bennettjones.com>
Sent: April 12, 2021 8:05 PM
To: Harry Fogul <hfogul@airdberlis.com>
Subject: YSL Residences Inc. and YSL Limited Partnership

Dear Mr. Fogul:

I write you in your capacity as counsel to YSL Residences Inc. on behalf of the Concord Group to confirm the basis upon which Concord has agreed to facilitate a restructuring of the Yonge Street Living (a.k.a. YSL) project.

As you know, Otera Capital is prepared to provide a construction financing facility, but has stipulated certain conditions and the satisfaction of these conditions will require effectively a clean slate for the project. Given this, Concord and YSL Residences Inc. will enter into a formal agreement under which Concord will act as sponsor for a Proposal under the *Bankruptcy and Insolvency Act* to be put forward by YSL Residences Inc. in its capacity as general partner of YSL Limited Partnership. The restructuring under the Proposal will close once all applicable periods post-sanction order have expired.

The essential terms of the Proposal will be as follows:

1. On closing, the YSL project will be conveyed to a Concord entity free and clear of all financial encumbrances except as otherwise provided for in the Proposal;
2. As at closing, the Concord purchaser will pay out or assume any secured debt against the YSL property;
3. On or before closing, Concord will ensure the removal of all liens filed against the YSL property;
4. At closing (or the earliest possible date thereafter as may be required to deal

with resolution of disputed claims), Concord will pay the Proposal Trustee an amount sufficient to pay a dividend of 58% on proven unsecured claims, subject to a cap based upon the estimated quantum of such claims which you will provide to us with a *pro rata* reduction on the dividend if the proven claims exceed the estimate; and

5. Concord will reimburse YSL Residences Inc. for professional costs associated with the Proposal process.

We look forward to working with you in documenting the terms of the formal agreement in the coming days.

Best regards,

David Gruber
***Partner,* Bennett Jones LLP**

2500 Park Place, 666 Burrard Street, Vancouver, B.C., V6C 2X8
T. 604 891 5150 | F. 604 891 5100
E. gruberd@bennettjones.com
BennettJones.com

From: Harry Fogul
To: Sapna Thakker; Shaun Laubman; Matt Gottlieb; Alexander Soutter (asoutter@tgf.ca)
Subject: YSL Project
Date: April-15-21 3:08:25 PM

Further to your e-mail this morning we wish to set out the General Partner's position.

Firstly, the General Partner("GP") did not breach S.2 (b) of the Order of Justice Cavanagh dated January 13, 2021. That section requires that the GP advise the Limited Partners ("LPS") of any proposed agreements. If you read Mr. Gruber's e-mail he outlines the basis of a proposed agreement but a formal agreement, which would address many issues not set out in the outline need to be addressed. A formal agreement has not been drafted or agreed to. The e-mail sets out Concord's position.

Secondly, the discussions between the GP and Concord over a period of several weeks was a fluid discussion which resulted in suggestions being proposed by both sides with no meeting of the minds and with no written exchange of offers. No agreement or understanding was arrived at throughout these discussions.

Thirdly, with the deadline for the Election Notice and compliance with the forbearance conditions having passed on Friday April 9, 2021, discussions continued over the weekend that followed. On Monday Concord put forward its position in Mr. Gruber's e-mail, which was the only way Concord was prepared to proceed. It was basically it was a take or leave it proposition.

With the Timbercreek Receivership Application scheduled for April 21, 2021 and Timbercreek confirming that it intended to proceed to appoint a Receiver on that date, Concord's proposal appeared to be the best alternative available for the creditors of the YSL Project. Concord was not prepared to pay more in order to pay the unsecured creditors 100 cents on the dollar and reimburse the LPS. The GP does not believe that a recovery in a Receivership (timing and costs) would improve the return to creditors and provide reimbursement to the LPS.

Harry Fogul

T 416.865.7773
F 416.863.1515
E hfogul@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com

This is Exhibit "LL" referred to in the Affidavit of
Anthony Szeto, sworn April 28, 2021

Commissioner for Taking Affidavits (or as may be)

SAPNA THAKKER

April 22, 2021

Mr. Harry Fogul
Aird & Berlis LLP
Barristers & Solicitors
Brookfield Place
181 Bay Street
Suite 1800
Toronto, ON M5J 2T9

Dear Mr. Fogul:

2504670 Canada Inc. et al v. Cresford Capital Corporation et. al.

We write in response to your email of April 15, 2021.

Your email does not answer my question. We have repeatedly asked for information about your clients' discussions with Concord and to provide us with information regarding negotiations that may affect my clients' interest. Your clients have simply ignored our requests, as well as their obligations pursuant to the Order of Justice Cavanagh.

Given the number of breaches under the Partnership Agreement, the Order, and at law, our clients will be filing the attached Notice of Application with the court immediately. We will reach out to the Court for the earliest available chambers date to establish a schedule.

Your client does not have any authority to represent or bind the partnership. Please advise your client to take **no further steps** until we receive a determination of the issues as set out in the Notice of Application.

Yours trul

Sapna Thakker

ST/ab
Enclosure

cc: Matthew P. Gottlieb, *Lax O'Sullivan Lisus Gottlieb LLP*
Shaun Laubman, *Lax O'Sullivan Lisus Gottlieb LLP*
Alex Soutter, *Thornton Grout Finnigan LLP*
David Gruber, *Bennett Jones LLP*

TAB 7

This is Exhibit "MM" referred to in the Affidavit of Anthony Szeto, sworn April 28, 2021

Commissioner for Taking Affidavits (or as may be)

SAPNA THAKKER

From: Harry Fogul
To: Sapna Thakker; Shaun Laubman; Matt Gottlieb; Alexander Soutter (asoutter@tgf.ca)
Subject: FW: YSL Residences Inc. etc.
Date: April-23-21 7:54:23 PM
Attachments: Proposal Sponsor Agreement - YSL.DOCX
BIA Proposal - YSL.DOCX

I received the attached draft Proposal Sponsor Agreement and BIA Proposal from Concord's Vancouver Counsel this evening.

Harry Fogul
Aird & Berlis LLP

T 416.865.7773
E hfogul@airdberlis.com

PROPOSAL SPONSOR AGREEMENT

THIS PROPOSAL SPONSOR AGREEMENT is dated as of April **[NTD]**, 2021

AMONG:

YSL RESIDENCES INC., a corporation incorporated under the laws of the Province of Ontario ("**YSL Residences**")

- and –

YG LIMITED PARTNERSHIP, a limited partnership formed under the laws of the Province of Manitoba ("**YG LP**")

- and –

9615334 CANADA LIMITED, in its capacity as general partner of YG LP ("**961 Canada**")

- and –

CRESFORD HOLDINGS LTD., a corporation incorporated under the laws of the Province of Ontario ("**CHL**")

- and –

2574733 ONTARIO LIMITED, a corporation incorporated under the laws of the Province of Ontario ("**257 Ontario**" and, together with YSL Residences, YG LP, 961 Canada, and CHL, collectively, "**YSL**")

- and –

[NTD: CONCORD ENTITY TO BE INCORPORATED] a corporation incorporated under the laws of the Province of Ontario (the "**Proposal Sponsor**")

RECITALS:

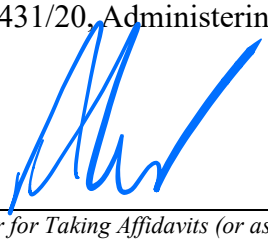
A. YSL Residences is the registered owner of the real properties municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (collectively, the "**Property**") acting as a bare trustee and nominee of for an on behalf of YG LP;

B. YG LP is the beneficial owner of the Property, and was formed for the purpose of developing the Property into a mixed-use office, retail and residential condominium development comprised of approximately 1,100 residential units, 190,000 square feet of commercial/retail/institutional space and 242 parking spaces, and known as Yonge Street Living Residences (the "**Project**");

C. CHL and 257 Ontario are entities within the Cresford Group of companies, a condominium development group involved in the development and financing of the Project;

TAB 8

This is Exhibit "J" referred to in the Affidavit of Lue (Eric) Li sworn by Lue (Eric) Li of the Woodbridge, in the Vaughan, before me at the City of Toronto, in the Province of Ontario, on May 3, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

ALEXANDER SOUTTER

YSL Residences

Proposal to Limited Partners of YG Limited Partnership

Background:

- Current debt:

Timbercreek (1st)	$100,000,000
Westmount purchaser deposits (2nd)	107,748,000
Equity – Limited partners and debt	34,800,000
Cresford	50,000,000
Accounts payable	28,000,000
	$320,548,000

- Cresford has marketed the YSL project since November 2019 and has received several expressions of interest, none as attractive as the current offer from Empire Communities.
- We recently received an offer from Empire which would result in a new partnership with the existing YG Limited Partnership becoming a financial partner. Under the deal, the equity holders (Cresford and limited partners) would receive a distribution upon final closings of the project.
- Pursuant to the reorganization, YG transfers the property, contracts, accounts payable and assumed debt to the new LP for Class A units totalling $75,000,000.
- Empire will contribute capital to the new partnership in exchange for Class B units. The capital will be used to fund accounts payable and costs going forward until a construction lender is finalized.

Proposal:

- The investors will receive their guaranteed return resulting in the doubling of the original investments.
- When final profits are available to distribute to YG, the investors would be paid their original investment in priority to Cresford. The first $34.8M is paid to the investors.
- Cresford will then receive the next $40.2M as final return of the $75M capital.
- The purchaser's budget projects a profit of $166,000,000 which would be distributed prorata to the developer and YG on the basis of equity contributions so that YG receives 65% and the developer 35%. Of the $108,000,000 paid to YG, the investors receive the first $34,800,000 (before any distribution to Cresford) so that the guaranteed return is fully paid.
- The investor return remains personally guaranteed by Dan Casey.

TAB 9

Court File No. CV-21-00661386-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

2504670 CANADA INC., 8451761 CANADA INC.
and CHI LONG INC.

Applicant

- and -

CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC,
9615334 CANADA INC., YG LIMITED PARTNERSHIP and
DANIEL CASEY

Respondent

--- This is the Cross-examination of DAVID MANN, upon his affidavit sworn June 4, 2021 taken via Neesons, A Veritext Company's virtual platform, on Friday, the 11th day of June, 2021.

REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

134 Q. And who was that point person on behalf of Cresford?

A. Dan Casey was involved, and we were also using Debbie Bellinger at Nelligan.

135 Q. She was the legal counsel assisting?

A. Yes.

136 Q. But Dan Casey would have been the Cresford representative actually leading the negotiations with the PJD --

A. Correct.

137 Q. And did you obtain from Mr. Casey any communications, e-mails, texts, or otherwise, that he had with representatives of PJD in response to this request?

A. No, it would have been probably all verbal communications.

138 Q. My question though, sir, is, did you reach out and request from Mr. Casey any communications he had with the PJD group?

A. No.

139 Q. Okay. And with respect to number 2 on this Notice of Examination, it's all communications with Empire about disclosing the agreement of purchase and sale to the limited

partners. And I didn't see any communications, any documents, sir. I take it you don't have any?

A. Correct.

140 Q. And similar to the PJD question, were you the point person on behalf of Cresford for the negotiations with Empire?

A. I was the one providing the information to them, but Dan Casey was really the point person in the negotiations, along with our counsel.

141 Q. Okay. So similar to the PJD arrangement, Dan Casey and Cresford's legal counsel led the negotiation; you helped with providing information?

A. Yes, and we were also using an agent, Andrew Barnicke, at the time as a middleman.

142 Q. And in response to this request in the Notice of Examination, did you obtain or request from Mr. Casey, Mr. Barnicke, from legal counsel at the time representing Cresford, all of their communications with Empire, in respect of disclosing the agreement of purchase and sale to the limited partners?

A. Most of our communications with Empire were meetings at their offices and phone

calls.

143 Q. So I'll go back to my question. I'll just ask it again, Mr. Mann.

Did you request or obtain from Mr. Casey, from Mr. Barnicke, or from Cresford's legal counsel at the time, any communications you may have in respect of number 2 in our Notice of Examination?

A. It was not a specific request of this week, no.

144 Q. Okay. And the same question with respect to number 3, also involving Empire.

Did you request or obtain from Mr. Casey, Mr. Barnicke, or Cresford's legal counsel at the time, any responsive communications they had to number 3?

A. That, not a specific request. But I know all of that was verbal, and the only communication was the e-mail from Morty Gross at Empire saying the deal was terminated.

145 Q. Right. And I've not seen any production or any document spelling out any reasons as to why, from Empire, as to why Empire was terminating the transaction. You're not aware of any such communication --

A. No.

146 Q. -- or document?

(Reporter sought clarification).

BY MR. LAUBMAN:

147 Q. I'll just ask the question one more time, Mr. Mann, just so it's clear for the record. You're not aware of any communications or documents that spell out the reason as to why Empire was terminating the proposed transaction?

A. No.

148 Q. If we look, then, at number 5 in the Notice of Examination, it's all communications with Concord regarding the sale-purchase of the Yonge Street properties. Were you involved in the negotiations with Concord around the sale of those Yonge Street properties?

A. No, I wasn't.

149 Q. Okay. On behalf of Cresford, who was involved?

A. Ted Dowbiggin.

150 Q. Okay. And had you requested or did you obtain in the last two days, in response to this Notice of Examination, from Ted any responsive communications he had?

A. I did ask him, and again, his

conversations or negotiations were verbal with Concord.

151 Q. So I take from that, then, that there are no communications in writing with Concord regarding the negotiation of the sale-purchase of the Yonge Street properties?

A. Correct.

152 Q. Okay. And if we look down at number 6, the request is for all communications with Concord in 2021 regarding alternative structures or terms to the original November 2020 agreement, or proposed agreement, with Concord. Were you the lead person on behalf of Cresford in 2021 negotiating with Concord?

A. No, that was Ted Dowbiggin.

153 Q. Was Dan Casey involved?

A. He was. He's got the most at stake so he did have involvement, so he was speaking with Ted along the way.

154 Q. And I haven't seen any documents in response to this request in the Notice of Examination. I take it you don't have any documents, sir, in your possession?

A. Correct.

155 Q. And did you reach out to

THE WITNESS: Sorry.

Yes.

MR. LAUBMAN: Thank you. Thank you, Mr. Fogul.

BY MR. LAUBMAN:

163 Q. In terms of number 13 in the Notice of Examination, which is all communications and solicitations of interest with other potential purchasers between November 2020 and April 30th, 2021, I hadn't seen anything, we didn't receive any documents.

Can you confirm for me, Mr. Mann, that there are no communications in writing that you have with respect to number 13 in the Notice of Examination?

A. That's correct. We did reach out verbally to Andrew Barnicke in February of this year to see if there was any renewed interest from Empire. And the answer came back, "no".

164 Q. When you say "we", was that you who reached out to Mr. Barnicke?

A. I think it was probably -- I think it was Dan Casey.

165 Q. What you've just described, I take it is what Mr. Casey communicated to you?

A. Yes.

166 Q. Back to my question, though, you have nothing in writing in response to number 13?

A. Correct.

167 Q. Did you make inquiries of Mr. Casey to see if he had anything in response to number 13?

A. Yes. Just the Empire, in conversations with Andrew Barnicke, to get the date of when that happened, but I didn't ask him if there were any more.

168 Q. Okay. And you didn't ask Mr. Casey if there was anything else?

A. Correct.

169 Q. And in terms of this communication that Mr. Casey relayed to you, if I understand correctly, Mr. Casey didn't reach out to Empire directly. This was a communication that was apparently relayed to him by Mr. Barnicke?

A. Yes.

MR. FOGUL: Just to clarify, there is an e-mail I sent to Sapna, explaining this whole thing. It's one of the exhibits in Mr. Szeto's affidavit. I don't know the exact one, but it's in there.

but I can pull them up on my iPad.

190 Q. I think we're fine for now. If you can turn to paragraph 5, please.

A. Okay.

191 Q. At paragraph 5, you describe how, in 2020, the GP had discussions or meetings with a number of large developers.

And what I want to understand is when you describe the GP having the discussions and/or meetings with the developers, would that be Dan Casey?

A. It would have been Dan Casey and Ted Dowbiggin.

192 Q. But you did not meet with each one of these developers, correct?

A. I met with Empire, Concord, and I remember meeting with Trinity. The others I didn't meet.

193 Q. And you didn't have any communications with the others either, correct?

A. I was on a phone call with SmartCentre; that's it.

194 Q. Who else was involved in that phone call, from Cresford?

A. That was about a year ago. Dan

meetings was called by Mr. Li. I believe it happened shortly after Empire pulled out. But I believe we were told along the way not to deal with your clients personally but to communicate with counsel.

202 Q. And those meetings that were held in September, October 2020, my clients' counsel, that would have been me at the time, wasn't invited to those meetings either, correct?

A. I'm not sure.

203 Q. Okay. You don't know?

A. Yes.

204 Q. All right. Now, in the summer of 2020, it's in the record, the general partner and some other Cresford entities consented to a receivership that was requested by Timbercreek; you're aware of that?

A. Yes.

205 Q. All right. And at that time that the consent to the receivership was given by the general partner, you did not communicate back to my clients, correct?

A. I believe that's correct.

206 Q. All right. And to your knowledge, at the time no other representative of Cresford

communicated that consent to the receivership to my clients?

A. Well, I know Debbie Bellinger of Nelligan was involved initially with Timbercreek and doing forbearance agreements. I don't know what she communicated to -- I believe there was another law firm representing your clients at that time.

207 Q. And I don't want you to guess, that's not the exercise, and I don't want to ask questions and make you guess, Mr. Mann. So if you're having to guess, I appreciate your letting me know. My question is: To your knowledge, from what you do know, you're not aware of that consent to the receivership being communicated to my clients at the time?

A. I don't know.

208 Q. Thank you. I want to shift gears for a moment and look at some of the agreements or letters of intent that were entered into over the course of 2020. And we'll go back to the cross-examination brief, and I'll pull it up on my screen so you can see it. Take a look at tab 1.

Do you see that on your screen, Mr. Mann?

A. Yes.

209 Q. And can you confirm for me that what you see on your screen is the letter of intent that was entered into between PJD Properties and I'll say the general partner or the partnership?

A. Yes.

210 Q. All right. And I can scroll forward if you need me to. Just let me know.

You did not share this document or this agreement at the time with my clients, did you?

A. No.

211 Q. And you're not aware, sir, are you, of anyone else at Cresford sharing this agreement with my clients at the time?

A. No.

212 Q. And if we look at the agreement, I just want to confirm with you a couple of the points. I'm going to page 9 of the brief, and it's Exhibit A to the agreement.

And just looking at the financial terms in point 1, was the original offer or letter of intent from PJD based on a $290 million property value for the partnership property?

A. Yes.

213 Q. And as part of this agreement, or

financing terms and conditions, dated November 12, 2020. We'll call this -- this is the agreement that was entered into with Concord in November 2020, correct?

A. Yes.

241 Q. Okay. And were there any other agreements entered into with the Concord -- setting aside the Yonge Street properties for a moment that were sold the next month, were there any other agreements at the time entered into with Concord in respect of the YSL project?

A. I don't recall any others.

242 Q. All right. And I've been through this agreement and I don't see any exclusivity provision. Can you confirm for me that at no point while this agreement was applied to the parties, at no point was Cresford or the general partner bound by any exclusivity to Concord?

A. I believe that's the case.

243 Q. So, the GP was free to solicit interest from other prospective purchasers or financiers at any point in time?

A. There may have been a verbal agreement. I don't know. I'm not aware of it.

244 Q. And similarly, there's no

confidentiality clause that I see in this agreement. Are you aware of any confidentiality clause entered into with Concord at the time regarding the information being shared, as part of the due diligence process?

A. I don't think there's anything in this agreement, but there may have been a verbal agreement on confidentiality.

245 Q. I take it from the way you answered, you don't know either way. There may be, there may not be, you don't know?

A. Correct.

246 Q. Concord did, in fact, perform due diligence related to the YSL project, correct?

A. Yes.

247 Q. And it was provided financial information by the GP related to the partnership?

A. Yes.

248 Q. And the project?

A. Yes.

249 Q. And you would consider Concord to be an experienced developer?

A. Yes.

250 Q. Similar to Empire, they know what they're doing?

A. Yes.

251 Q. And ultimately, the financing terms and condition agreement set out here, the general partner recommended this transaction or proposed transaction to the limited partners, correct?

A. Yes.

252 Q. And I take it it did so because it was satisfied that the consideration and the terms were a fair one for the partnership?

A. Yes.

253 Q. And it represented reasonable or fair value for the partnership's assets?

A. Yes.

254 Q. And in connection with this proposed transaction with Concord, the limited partners were given a pro forma by the general partner. Are you familiar with that document?

A. I'd have to see it.

255 Q. Okay. Just bear with me and I'll toggle to other documents.

So I've gone to Exhibit "P" as in "Peter" to our application record. That's the first affidavit of Mr. Szeto. And it's an e-mail dated November 30, 2020, from Mr. Fogul, attaching

some documents. And you'll see it refers to two pro forma documents provided by the developer. If you'll just scroll forward to one of the attachments, you'll see it's entitled -- this is page 325 of the application record -- "YSL pro forma"; do you recognize this?

A. Yes.

256 Q. And this was provided to the limited partners so that -- with the expectation that the limited partners would review and rely on it, correct?

A. Yes.

257 Q. And I take it that -- well, let me ask: Did you review this pro forma at the time?

A. This was prepared by Concord; I did do a review at the time.

258 Q. Right. And did you have any major or significant issues with the numbers or the forecasts set out in this pro forma?

A. No major issues. We weren't given any back-up for any of the numbers.

259 Q. Well, I take it a lot of these numbers, you yourself would have had, or at least the general partner would have had, as they relate to the project or the project's existing

obligations. That was data that originated with the general partner, I'd assume?

A. No, Concord did not want to look at most of our budget numbers, for instance construction numbers. They wanted to do their own construction budget.

260 Q. Okay. So as far as you understood it, what's reflected here in this pro forma was Concord's own analysis using its own data at the time?

A. Correct.

261 Q. And in your view, having reviewed it, nothing in here struck you as unreasonable?

A. No, we thought their construction budget number was a little high.

262 Q. So you might have lowered that a little bit?

A. Yes.

263 Q. Anything else strike you as unreasonable in the numbers?

A. I don't think so.

264 Q. And I just want to focus in on the box in the lower right-hand corner of this pro forma, just to make sure I understand it.

You'll see it's entitled, "Existing cap

287 Q. And from this e-mail, do you agree with me that it was becoming clear that, notwithstanding any efforts Concord may have been making to persuade Otera, according to Mr. Fogul, Otera was adamant that Cresford and any of its related entities have nothing further to do with the YSL project?

A. Correct.

288 Q. So it looked like the prospects of salvaging or moving forward with that November 2020 agreement were looking pretty grim as of mid-February 2021; is that fair?

A. Yes.

289 Q. And I take it as of this point, or after this point, other than that call with Mr. Barnicke you told me about earlier, the general partner, you're not aware of anything else the general partner did to solicit other offers or interest in the YSL project other than communicating with Concord?

A. Ted Dowbiggin may have had some discussions with perhaps some agents, I'm not sure.

290 Q. You don't know is the bottom line?

A. Yeah.

291 Q. And the information that is set

296 Q. Do you know if they had any e-mail or text communications?

A. I don't think they did.

297 Q. Okay. And given what looked to be the grim status of the November 2020 agreement as of February 2021, what discussion was the general partner having with Concord about an alternative structure or an alternative transaction for the YSL project?

A. I'm not aware of any.

298 Q. And that's because you weren't involved in those negotiations, correct?

A. Correct.

299 Q. Sir, are you able to say one way or the other whether or not there were further discussions taking place, at least as of February 2021, about an alternative structure or transaction with Concord if the November 2020 deal could not proceed?

A. Am I aware of any?

300 Q. Correct.

A. No.

301 Q. Are you able to state one way or the other whether or not those discussions [indiscernible] took place in February 2021?

(Reporter sought clarification).

BY MR. LAUBMAN:

302 Q. My question, Mr. Mann, was: Are you aware one way or the other whether or not there were any such discussions with Concord in February 2021?

A. I'm aware that Ted Dowbiggin was communicating verbally with Concord, just whether we can do a deal or not.

303 Q. And staying focused on this timeframe, February 2021, when it looked like the November 2020 agreement was not going to happen, do you know whether those discussions included whether or not there were alternative transactions that were possible?

A. No.

304 Q. Do you agree with me, sir, that given the grim outlook for the November 2020 agreement by February 2021, it made sense to be exploring alternatives?

A. Yes.

305 Q. Okay. But you just don't know whether that happened or not?

A. Correct.

306 Q. All right. And similarly, if we

go into March 2021, would your evidence be the same; you don't know, in March 2021, whether or not there were alternative transactions being discussed with Concord?

A. I'm not aware of any.

307 Q. Okay. And similarly, are you aware of any efforts by the general partner in March 2021 to solicit or canvas other interests in the YSL project from developers other than Concord?

A. I'm not aware.

308 Q. I want to go back one last time to the cross-examination brief, I'll pull it up on the screen, one further e-mail, at tab 4.

This is a March 25, 2021, e-mail from Mr. Fogul, and it's forwarding to counsel for the limited partners an e-mail Mr. Fogul sent that same day that, according to Mr. Fogul's e-mail, declares the term sheet dated November 20, 2020, null and void, and he's sending it to, amongst other people, Mr. Gruber, who -- you are aware Mr. Gruber is counsel for Concord?

A. Yes.

309 Q. And do you know, sir, yourself, why Mr. Fogul is sending to Concord's counsel, on March 25th, 2021, an e-mail declaring the

November 2020 agreement null and void?

A. You're asking if I know why?

310 Q. Correct. I'm curious as to why Cresford's lawyer is sending this e-mail.

A. I don't know.

311 Q. Okay. But certainly you agree that, as of March 2021, Cresford wasn't bound to deal with Concord one way or the other in respect of the YSL project, correct?

A. Yes.

312 Q. It was free to deal with anyone it wanted to, in terms of trying to solicit or enter into an agreement or some sort of financing arrangement for the YSL project, correct?

A. Yes.

313 Q. All right. Now, just before we leave this document, because I don't intend to come back to it, this is the -- sorry, the brief, the cross-examination brief.

MR. LAUBMAN: Mr. Fogul, can we mark the brief as Exhibit 1 to the cross-examination?

MR. FOGUL: Yes.

MR. LAUBMAN: Thank you.

MR. SOUTTER: Mr. Laubman, sorry to interrupt, I think it will be Exhibit 2. The short

A. I don't know if it was before or after.

327 Q. Okay. And were you involved, sir, at all -- I just want to be clear. I think I know the answer, but I want to be clear. Were you involved at all, before or after this April 12th, 2021 e-mail, in the negotiations with Concord about the specific terms of this proposal as set out in Mr. Gruber's e-mail?

A. No.

328 Q. Okay. And were you personally involved in the decision by the general partner to agree to these terms?

A. No.

329 Q. I'm going to end the share screen now. I'm almost done, Mr. Mann, you'll be happy to hear. A final few questions I had for you, sir.

Are you aware that Concord commissioned an appraisal for the YSL project by CBRE?

A. Yes.

330 Q. Have you reviewed that appraisal report?

A. No.

331 Q. Okay. But it's available to you?

A. I'm not sure.

TAB 10

CITATION: Tridelta Financial Partners Inc. v Zephyr Abl Ser-A 4.875% Jan 25, 2021 GP INC
2020 ONSC 5211
COURT FILE NO.: CV-19-625186-00CL
DATE: 20200901

SUPERIOR COURT OF JUSTICE – ONTARIO

Commercial List

RE: TRIDELTA FINANCIAL PARTNERS INC.,
TRIDELTA FIXED INCOME FUND,
TRIDELTA HIGH INCOME BALANCED FUND, 2679518 ONTARIO INC. and
ZEPHYR ABL SER-A 4.875% JAN 25, 2021 LIMITED PARTNERSHIP

Applicants

- and –

ZEPHYR ABL SER-A 4.875% JAN 25, 2021 GP INC. and
SQUARE CAPITAL MANAGEMENT INC.

Respondents

BEFORE: **Koehnen J.**

COUNSEL: *C. Naudie and L. Tomasich* for the applicants

H. Book and A. Young for the respondents.

HEARD: July 15, 2020

ENDORSEMENT

[1] The applicants invested $7.5 million into Zephyr ABL SER-A 4.875% JAN 25, 2021 Limited Partnership (the "Partnership"). The Partnership was managed by its general partner, the respondent Zephyr ABL SER-A 4.875% JAN 25, 2021 GP Inc. ("Zephyr"). The applicant seeks a declaration to the effect that Zephyr was validly removed as the general partner effective as of February 7, 2019 and for related ancillary relief.

[42] I am satisfied on the facts of this case that Zephyr has committed specific breaches of the Limited Partnership Agreement which it has not remedied, namely entering into related party agreements without seeking the approval of the limited partners, co-mingling of funds and mis-use of Partnership funds for personal expenses.

[43] There is also, however, a broader concern. A general partner is a fiduciary of the limited partners: *Molchan v Omega Oil & Gas Ltd*, [1988] SCR 348 at para 35. Its obligation is to act for and on behalf of the limited partners. More general breaches of fiduciary duty would also disqualify a general partner from acting quite apart from the specific terms of the Limited Partnership Agreement. Courts have recognized that a general loss of trust and confidence in a general partner constitutes a material default under a limited partnership agreement which gives the limited partners the right to terminate the general partner. By way of example, in *Village Gate Resorts Ltd v Moore*, [1997] BCJ No. 2478, 1997 CanLII 4052 (BCCA), the British Columbia Court of Appeal noted at para 34 that:

> "[34] … The phrase "is in material default" … must be informed by a consideration of the fact that the limited partnership structure, even more than that of a company or even of an ordinary partnership, relies on a substratum of trust and confidence in the integrity and ability of the general partner. It was surely the intention of the draftsman of the Agreement that the Limited Partners could take action to bring the relationship to an end where that trust and confidence have fallen away. This loss of trust and confidence cannot now be restored any more than the past breaches can now be "cured" in any real sense."

Relief from Forfeiture

[44] Zephyr brings a cross - application for relief from forfeiture. Zephyr bears the onus on the application: *Kozel v The Personal Insurance Company*, 2014 ONCA 130 at para 28-29.

[45] In *Saskatchewan River Bungalows Ltd v Maritime Life Assurance Co*, [1994] 2 SCR 490 the Supreme Court of Canada has set out the test for relief from forfeiture as follows at para 32:

> "[t]he power to grant relief against forfeiture is an equitable remedy and is purely discretionary. The factors to be considered by the Court in the exercise of its discretion are the conduct of the applicant, the gravity of the breaches, and the disparity between the value of the property forfeited and the damage caused by the breach".

[46] Applying these principles would not lead me to exercise my discretion in favour of relief from forfeiture. The breaches in question here are serious. They are not minor technical

breaches that someone might stumble into inadvertently. Rather, they go to fundamental elements of character and trust.

[47] The fundamental problem with the value of the property forfeited is that the "property" is the value of payments to which SCM is entitled under an agreement that should have been approved by the limited partners but was not. Granting relief from forfeiture in those circumstances would effectively ignore the provision of the Limited Partnership Agreement that requires related party transactions to be approved by a majority of the limited partners.

[48] I do not believe it would be appropriate to exercise the court's equitable discretion to allow a fiduciary to retain the benefit of a self-interested transaction that was entered into in breach of its contractual and common law duties.

Disposition

[49] As a result of the foregoing I grant the following declarations and orders:

(a) A declaration that TriDelta was appointed as the general partner of the limited partnership as of February 7, 2019.

(b) A declaration that Zephyr was removed as the general partner of the limited partnership as of February 7, 2019.

(c) An order requiring Zephyr to deliver all of the books, records and accounts and assets of the limited partnership to TriDelta GP.

(d) An order directing Zephyr to cease representing and asserting that it continues to act as general partner of the limited partnership.

(e) A declaration that the Administrative Services Agreement between the limited partnership and SCM was terminated as of April 12, 2019.

(f) On consent, an order that TriDelta's limited partnership units shall be redeemed no later than January 21, 2021.

(g) An order barring Zephyr GP from using Partnership funds to fund its opposition to this Application or to pay for any cost order.

[50] TriDelta GP shall continue as general partner until TriDelta's limited partnership units have been redeemed. Once TriDelta's units have been redeemed, Zephyr may resume its status as general partner.

TAB 11

HMANALY D§72
Houlden & Morawetz Analysis D§72

Bankruptcy and Insolvency Law of Canada, 4th Edition

THE BANKRUPTCY AND INSOLVENCY ACT

Bankruptcy Orders and Assignments (s. 49)
L.W. Houlden and Geoffrey B. Morawetz

D§72 — Who May Assign

D§72 — Who May Assign

See s. 49

(1) — *Generally*

To make an assignment, the debtor must be an "insolvent person" or the legal personal representative of such a person: s. 49(1). "Insolvent person" is defined by s. 2(1) as meaning a "person" who meets the requirements set out in the definition. The word "person" is also defined by s. 2(1). The definition of "person" is an inclusive, not a restrictive one. "Person" is defined to include, among others, a partnership, an unincorporated association, a corporation and a legal representative of a person.

A debtor who meets the requirements of s. 2(1) for an "insolvent person" is entitled to make an assignment, so long as there is no abuse of the process of the court: *Re Kergan* (1966), 9 C.B.R. (N.S.) 15 (Ont. S.C.); *Kalau v. Dahl* (1966), 57 C.B.R. (N.S.) 296, 39 Alta. L.R. (2d) 156, 59 A.R. 224 (Q.B.). Even though the debtor gains some benefit for himself by making the assignment, *e.g.,* terminating a shareholders' agreement, this does not prevent the making of an assignment: *Kalau v. Dahl, supra.* Similarly if the assignment is filed at the urging of certain creditors who are attempting to change priorities, this does not render the assignment invalid: *Gasthof Schnitzel House Ltd. v. Sanderson,* [1978] 2 W.W.R. 756, 27 C.B.R. (N.S.) 75 (B.C. S.C.); *Re Develox Indust. Ltd.,* [1970] 3 O.R. 199, 14 C.B.R. (N.S.) 132, 12 D.L.R. (3d) 579 (H.C.); *Re Public's Own Market (Prince George) Ltd.* (1984), 54 C.B.R. (N.S.) 222 (B.C. S.C.); *Triona Invts. Ltd. v. Smythe, McMahon Inc.* (1988), 67 C.B.R. (N.S.) 281, 23 B.C.L.R. (2d) 222 (C.A.); *Re Koprel Ent. Ltd.* (1978), 27 C.B.R. (N.S.) 22 (B.C. S.C.).

A trustee can agree to act in an assignment even if the debtor has covenanted with a large creditor not to commit an act of bankruptcy without the consent of the creditor. Such an agreement is

can, therefore, make a valid assignment in bankruptcy: *Re Donaldson* (1992), 13 C.B.R. (3d) 53, 1992 CarswellNS 42, 113 N.S.R. (2d) 356, 309 A.P.R. 356 (T.D.).

If a debtor has incurred debts in Canada but has not carried business in Canada and has no property in Canada, he or she cannot make an assignment in Canada if, at the time that he or she wishes to file an assignment, he or she resides in the United States and intends to continue to reside in that jurisdiction: *Re Purnell* (1998), 5 C.B.R. (4th) 277, 1998 CarswellAlta 464, [1999] 3 W.W.R. 547, 63 Alta. L.R. (3d) 226, 224 A.R. 21 (Q.B.).

(iii) — *Debts of $1,000*

To make a valid assignment, a person must have liabilities to creditors provable as claims under the Act amounting to $1,000: s. 2(1). Although the definition of "insolvent person" in s. 2(1) speaks of "liabilities to creditors", it is sufficient if the debtor has only one creditor with a debt amounting to $1,000: *Canada (Attorney General) v. Gordon (Trustee of)* (1992), 15 C.B.R. (3d) 100, 1992 CarswellSask 32 (Sask. Q.B.).

Even if debts are not, by reason of s. 178, released by a discharge from bankruptcy, they are still provable debts and may be taken into account in deciding whether or not the debtor owes $1,000: *Phaneuf v. Charbonneau* (1961), 3 C.B.R. (N.S.) 212 (Que. S.C.).

Unless there is an agreement to pay interest on a promissory note for $950, interest cannot be added to the principal to form an amount in excess of $1,000: *Dextraze v. Leger* (1953), 34 C.B.R. 61 (Que. S.C.).

A debtor whose main liability is a judgment for $4,900 arising out of a motor vehicle accident can make a valid assignment: *Champagne v. Rivard* (1954), 34 C.B.R. 173 (Que. S.C.).

(2) — *Persons Who Have Made Assignments*

Persons making assignments who have received the attention of the courts are the following:

(a) — *Debtors Without Assets*

Providing he or she falls within the definition of "insolvent person", a debtor need not have assets to make a valid assignment: *Re Labrosse* (1924), 5 C.B.R. 600 (Que. C.A.); *Desjardins v. Ferland* (1960), [1961] Que. Q.B. 299, 2 C.B.R. (N.S.) 68 (Q.B.); *Fournier v. Pinault,* [1961] Que. Q.B. 697, 3 C.B.R. (N.S.) 103 (Q.B.); *Linteau v. Lefaivre* (1943), 1943 CarswellQue 26, 1943 CarswellQue 244, 26 C.B.R. 244, [1944] Que. S.C. 432 (Que. Bktcy.); *Adelard Sevigny Inc. v. St. Onge* (1958), 38 C.B.R. 95 (Que. S.C.).

(b) — *Partnerships*

"Person" is defined by s. 2(1) to include a partnership; hence a partnership may make an assignment. However, since an assignment in bankruptcy is not within the ordinary scope of the business of a partnership, an assignment by a partnership must be signed by all the partners in order for it to be a valid assignment of partnership assets. If it is not, it will only be an assignment of the separate assets of the partners signing the assignment and of their interest in the partnership: *Re Squires Bros.* (1922), 3 C.B.R. 191 (Sask. K.B.); *Re Berthelot* (1922), 3 C.B.R. 386 (Ont. S.C.); *Can. Carbon & Ribbon Co. v. Rung* (1922), 3 C.B.R. 423 (Ont. S.C.); *Re Union Fish Co.* (1923), 3 C.B.R. 779 (Ont. S.C.); *Gibeau v. Vermette* (1953), 33 C.B.R. 197 (Que. S.C.); *Re Reynolds,* 10 C.B.R. 127, 62 O.L.R. 271, [1928] 2 D.L.R. 520 (S.C.), affirmed 10 C.B.R. 127 at 131, 62 O.L.R. 360, [1928] 3 D.L.R. 562 (C.A.).

An assignment executed by all the members of a partnership carries with it all the assets of the partnership as well as the separate assets of the partners: *Taylor v. Leveys* (1922), 2 C.B.R. 390 (Ont. S.C.); *Cohen v. Mahlin,* 8 C.B.R. 23, [1927] 1 W.W.R. 162, 22 Alta. L.R. 487, [1927] 1 D.L.R. 577 (C.A.).

A partner who does not execute the assignment can authorize a partner or partners to execute the assignment for the partnership: *Nolan v. Donnelly* (1883), 4 O.R. 440 (Div. Ct.); *Byers v. Craig* (1922), 2 C.B.R. 528 (Que. S.C.). If this authorization is given, it would seem to be prudent to have the authorization made in writing and to attach a copy to the assignment. Such an assignment will, however, only convey the assets of the partnership and it will be necessary for each individual partner to sign an assignment to convey his or her separate assets.

For the procedure to be followed in making an assignment for a partnership, see D§60 "Formalities of Filing an Assignment," *ante.*

(c) — *Limited Partnerships*

To be valid, an assignment by a limited partnership must be signed by each of the limited partners: *Re Tartan Gold Fish Farms Ltd.* (1996), 41 C.B.R. (3d) 245, 1996 CarswellNS 362 (N.S. S.C.).

(d) — *Corporations*

"Person" is defined by s. 2(1) to include a corporation so that a corporation can make an assignment in bankruptcy, provided it is not a corporation that is precluded by the definition of "corporation" from so doing. For the effect of bankruptcy on a corporation, see B§12 "Corporation," *ante.*

Certain corporations are not permitted to make an assignment in bankruptcy. "Corporation" is defined by s. 2(1) as not including "incorporated banks, saving banks, insurance companies, trust companies, loan companies or railway companies". For a discussion of corporations that are not permitted to make an assignment, see B§12 "Corporation," *ante.*

TAB 12

CANADA
PROVINCE OF NOVA SCOTIA

B8816-17-18-19

IN THE SUPREME COURT OF NOVA SCOTIA
(BANKRUPTCY)

IN THE MATTER OF THE BANKRUPTCIES OF
AQUACULTURE COMPONENTS PLANT V LIMITED PARTNERSHIP,
TARTAN GOLD FISH FARMS LTD.,
TARTAN SPRINGS FISH FARMS LTD.,
AQUACULTURE COMPONENTS PLANT III LIMITED PARTNERSHIP

DECISION

HEARD:	Before the Honourable Justice Jill Hamilton, in Chambers, at Halifax, Nova Scotia, September 7, 1995
DECISION:	Orally, September 8, 1995
WRITTEN RELEASE OF ORAL:	October 19, 1995
COUNSEL:	Timothy Hill, Esq., Solicitor for Ernst & Young (Trustee in Bankruptcy) Robert Aske, Esq., Solicitor for Creditors of Bankrupt

Hamilton, J. (Orally)

Each of the four bankrupts made an assignment in bankruptcy on June 6, 1995. Aquaculture Components Plant III Limited Partnership and Aquaculture Components Plant V Limited Partnership are limited partnerships. Tartan Gold is the general partner for Plant III. Tartan Springs is the general partner for Plant V. All of the assignments were executed by Graham Johnson, president of both Tartan Springs and Tartan Gold. In respect of Plant III and Plant V, he executed those assignments for and on behalf of the respective general partners.

The general partners appear to have no assets. Each of the limited partnerships has assets. There are no secured creditors of the limited partnerships.

Certain of the limited partners made unsecured loans to the respective limited partnerships and there are other unsecured creditors of the limited partnerships who are not limited partners. There are not sufficient assets in the limited partnerships to pay all of the unsecured creditors.

This was an application on behalf of the trustee in bankruptcy, Ernst & Young Inc., for directions with respect to: (1) the validity of the assignments in bankruptcy of the limited partnerships, (2) the status of the limited partnerships in light of the assignment in bankruptcy of their respective sole general partners, (3) the determination of the present ownership of the assets of the limited partnerships, and (4)

the priority of the claims of creditors of the limited partnerships among those creditors who are also limited partners of those limited partnerships and those creditors who are not.

I reviewed the affidavit of Mathew M. Harris, the affidavit of Bruce Groh and Stephen Kuryliw, and the memo of counsel for the trustee. I heard argument from counsel for the trustee and counsel for three creditors who are not limited partners of either of these limited partnerships, namely, David McNearny, Royal Stevens and Karen Westhaver.

I find that the assignments in bankruptcy of the two limited partnerships are invalid because of the provisions of s.85 of the **Bankruptcy and Insolvency Act**. That section provides that the Act will apply to limited partnerships in like manner as if the limited partnership was an ordinary partnership. In order for an ordinary partnership to make an assignment in bankruptcy, the assignment must be executed by each of the partners. In this case, the assignments in bankruptcy of the two limited partnerships were only signed by their general partners, not by each of the limited partners, and, hence, the assignments are invalid. This is in accordance with the decision In **re Squires Brothers** (1922), 3 C.B.R. 191. Accordingly, I order, pursuant to s.181 of the **Bankruptcy and Insolvency Act**, that the assignments in bankruptcy of the two limited partnerships are annulled.

I also find that, as a consequence of the provisions of s.85 of the **Bankruptcy and Insolvency Act**, the assets of each limited partnership vested in the trustee of its general partner by operation of law when its general partner made its assignment in bankruptcy.

The **Partnership Act** of Nova Scotia, in some situations, applies to limited partnerships by virtue of s.3 of the **Limited Partnerships Act**. S.3 states as follows:

> "The **Partnership Act** and the rules of equity and common law applicable to partnerships, except as such rules are inconsistent with the **Partnership Act** and this Act, apply to limited partnerships."

Since the **Limited Partnerships Act** of Nova Scotia does not deal with the consequences to the limited partnership of the bankruptcy of its general partner, the provisions of s.36(1) of the Partnership Act apply. S.36(1) of the **Partnership Act** states as follows:

> "Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy or insolvency of any partner."

Accordingly, I find that as a result of the assignment in bankruptcy of the general partner of each of the limited partnerships, that both limited partnerships have been dissolved.

The result of this dissolution is that the assets of each limited partnership should be distributed in accordance with the **Limited Partnerships Act**.

TAB 13

Most Negative Treatment: Distinguished
Most Recent Distinguished: Bauscher-Grant Farms Inc. v. Lake Diefenbaker Potato Corp. | 1998 CarswellSask 335, 167 Sask. R. 14, [1998] S.J. No. 344, 80 A.C.W.S. (3d) 62, [1998] 8 W.W.R. 751 | (Sask. Q.B., May 11, 1998)

1993 CarswellOnt 183
Ontario Court of Justice (General Division — Commercial List)

Lehndorff General Partner Ltd., Re

1993 CarswellOnt 183, [1993] O.J. No. 14, 17 C.B.R. (3d) 24, 37 A.C.W.S. (3d) 847, 9 B.L.R. (2d) 275

Re Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36; Re Courts of Justice Act, R.S.O. 1990, c. C-43; Re plan of compromise in respect of LEHNDORFF GENERAL PARTNER LTD. (in its own capacity and in its capacity as general partner of LEHNDORFF UNITED PROPERTIES (CANADA), LEHNDORFF PROPERTIES (CANADA) and LEHNDORFF PROPERTIES (CANADA) II) and in respect of certain of their nominees LEHNDORFF UNITED PROPERTIES (CANADA) LTD., LEHNDORFF CANADIAN HOLDINGS LTD., LEHNDORFF CANADIAN HOLDINGS II LTD., BAYTEMP PROPERTIES LIMITED and 102 BLOOR STREET WEST LIMITED and in respect of THG LEHNDORFF VERMÖGENSVERWALTUNG GmbH (in its capacity as limited partner of LEHNDORFF UNITED PROPERTIES (CANADA))

Farley J.

Heard: December 24, 1992
Judgment: January 6, 1993
Docket: Doc. B366/92

Counsel: *Alfred Apps, Robert Harrison* and *Melissa J. Kennedy* , for applicants.
L. Crozier , for Royal Bank of Canada.
R.C. Heintzman , for Bank of Montreal.
J. Hodgson, Susan Lundy and *James Hilton* , for Canada Trustco Mortgage Corporation.
Jay Schwartz , for Citibank Canada.
Stephen Golick , for Peat Marwick Thorne * Inc., proposed monitor.

16 Thus it appears to me that the inherent power of this court to grant stays can be used to supplement s. 11 of the CCAA when it is just and reasonable to do so. Is it appropriate to do so in the circumstances? Clearly there is jurisdiction under s. 11 of the CCAA to grant a stay in respect of any of the applicants which are all companies which fit the criteria of the CCAA. However the stay requested also involved the limited partnerships to some degree either (i) with respect to the applicants acting on behalf of the Limited Partnerships or (ii) the stays being effective vis-à-vis any proceedings taken by any party against the property assets and undertaking of the Limited Partnerships in respect of which they hold a direct interest (collectively the "Property") as set out in the terms of the stay provisions of the order paragraphs 4 through 18 inclusive attached as an appendix to these reasons. [Appendix omitted.] I believe that an analysis of the operations of a limited partnership in this context would be beneficial to an understanding of how there is a close inter-relationship to the applicants involved in this CCAA proceedings and how the Limited Partnerships and their Property are an integral part of the operations previously conducted and the proposed restructuring.

17 A limited partnership is a creation of statute, consisting of one or more general partners and one or more limited partners. The limited partnership is an investment vehicle for passive investment by limited partners. It in essence combines the flow through concept of tax depreciation or credits available to "ordinary" partners under general partnership law with limited liability available to shareholders under corporate law. See Ontario LPA sections 2(2) and 3(1) and Lyle R. Hepburn, *Limited Partnerships* , (Toronto: De Boo, 1991), at p. 1-2 and p. 1-12. I would note here that the limited partnership provisions of the Alberta PA are roughly equivalent to those found in the Ontario LPA with the interesting side aspect that the Alberta legislation in s. 75 does allow for judgment against a limited partner to be charged against the limited partner's interest in the limited partnership. A general partner has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership. In particular a general partner is fully liable to each creditor of the business of the limited partnership. The general partner has sole control over the property and business of the limited partnership: see Ontario LPA ss. 8 and 13. Limited partners have no liability to the creditors of the limited partnership's business; the limited partners' financial exposure is limited to their contribution. The limited partners do not have any "independent" ownership rights in the property of the limited partnership. The entitlement of the limited partners is limited to their contribution plus any profits thereon, after satisfaction of claims of the creditors. See Ontario LPA sections 9, 11, 12(1), 13, 15(2) and 24. The process of debtor and creditor relationships associated with the limited partnership's business are between the general partner and the creditors of the business. In the event of the creditors collecting on debt and enforcing security, the creditors can only look to the assets of the limited partnership together with the assets of the general partner including the general partner's interest in the limited partnership. This relationship is recognized under the *Bankruptcy Act* (now the BIA) sections 85 and 142.

18 A general partner is responsible to defend proceedings against the limited partnership in the firm name, so in procedural law and in practical effect, a proceeding against a limited partnership is a proceeding against the general partner. See Ontario *Rules of Civil Procedure* , O. Reg. 560/84, Rules 8.01 and 8.02.

19 It appears that the preponderance of case law supports the contention that contention that a partnership including a limited partnership is not a separate legal entity. See *Lindley on Partnership* , 15th ed. (London: Sweet & Maxwell, 1984), at pp. 33-35; *Seven Mile Dam Contractors v. R.* (1979), 13 B.C.L.R. 137 (S.C.) , affirmed (1980), 25 B.C.L.R. 183 (C.A.) and "Extra-Provincial Liability of the Limited Partner", Brad A. Milne, (1985) 23 Alta. L. Rev. 345, at pp. 350-351. Milne in that article made the following observations:

> The preponderance of case law therefore supports the contention that a limited partnership is not a separate legal entity. It appears, nevertheless, that the distinction made in *Re Thorne* between partnerships and trade unions could not be applied to limited partnerships which, like trade unions, must rely on statute for their validity. The mere fact that limited partnerships owe their existence to the statutory provision is probably not sufficient to endow the limited partnership with the attribute of legal personality as suggested in *Ruzicks* unless it appeared that the Legislature clearly intended that the limited partnership should have a separate legal existence. A review of the various provincial statutes does not reveal any procedural advantages, rights or powers that are fundamentally different from those advantages enjoyed by ordinary partnerships. The legislation does not contain any provision resembling section 15 of the *Canada Business Corporation Act* [S.C. 1974-75, c. 33, as am.] which expressly states that a corporation has the capacity, both in and outside of Canada, of a natural person. It is therefore difficult to imagine that the Legislature intended to create a new category of legal entity.

20 It appears to me that the operations of a limited partnership in the ordinary course are that the limited partners take a completely passive role (they must or they will otherwise lose their limited liability protection which would have been their sole reason for choosing a limited partnership vehicle as opposed to an "ordinary" partnership vehicle). For a lively discussion of the question of "control" in a limited partnership as contrasted with shareholders in a corporation, see R. Flannigan, "The Control Test of Investor Liability in Limited Partnerships" (1983) 21 Alta. L. Rev. 303; E. Apps, "Limited Partnerships and the 'Control' Prohibition: Assessing the Liability of Limited Partners" (1991) 70 Can. Bar Rev. 611; R. Flannigan, "Limited Partner Liability: A Response" (1992) 71 Can. Bar Rev. 552. The limited partners leave the running of the business to the general partner and in that respect the care, custody and the maintenance of the property, assets and undertaking of the limited partnership in which the limited partners and the general partner hold an interest. The ownership of this limited partnership property, assets and undertaking is an undivided interest which cannot be segregated for the purpose of legal process. It seems to me that

TAB 14

1997 CarswellOnt 5009
Ontario Court of Justice, General Division (In Bankruptcy)

Kingsberry Properties Ltd. Partnership, Re

1997 CarswellOnt 5009, [1997] O.J. No. 5352, 3 C.B.R. (4th) 124, 51 O.T.C. 252, 76 A.C.W.S. (3d) 480

In the Matter of the Bankruptcy of Kingsberry Properties, a Limited Partnership carrying on business in the City of Oshawa, in the Regional Municipality of Durham, in the Province of Ontario

Farley J.

Heard: December 4, 1997
Judgment: December 12, 1997 *
Docket: 31-205055T

Proceedings: affirmed *Kingsberry Properties Ltd. Partnership, Re* (March 6, 1998), CA C28775 (Ont. C.A.)

Counsel: *Michael MacNaughton*, for KPMG Inc. in its capacity as trustee in bankruptcy of the Estate of Kingsberry Properties.
Harold R. Poultney, Q.C., for John Foley, General Partner of Kingsberry Properties.

Subject: Insolvency

Headnote

Bankruptcy --- Assignments in bankruptcy — Types of assignors — Partnerships — General

Receiving order was made against limited partnership — General partner of limited partnership argued he was not affected by receiving order and order did not vest his property in trustee — General partner claimed he was unaffected because he was not served or separately named in proceedings against limited partnership — Trustee in bankruptcy moved for declaration that receiving order affected both limited partnership and limited partner and to compel general partner to comply with provisions of Bankruptcy and Insolvency Act — Motion granted — Bankruptcy and Insolvency Act treats limited partnership as separate legal entity capable of being petitioned into bankruptcy — Limited partnership was sum of its limited partners with particular focus on general partners — Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 85(1) — Limited Partnerships Act, R.S.O. 1990, c. L.16 — Partnerships Act, R.S.O. 1990, c. P.5.

A general partnership in which F was the general partner was petitioned in its own name into bankruptcy. A question arose as to whether F was also, thereby, petitioned into bankruptcy as the general partner. F argued that, since he was not separately named or served, he could not be included in the order and was in the same legal position as the limited partners, that is, only his particular interests in the partnership vested with the trustee, not his own separate personal property. The trustee brought a motion for a declaration that the receiving order also affected F as general partner of the bankrupt partnership.

Held: The motion was granted.

Although in partnership law, as set out in the *Partnerships Act* and the *Limited Partnership Act*, a limited partnership is not generally regarded as a separate legal entity, it is capable of being petitioned into bankruptcy under the *Bankruptcy and Insolvency Act*. Limited partners lose only to the extent of their interests in the partnership in the event of bankruptcy, but a general partner's own assets are available to satisfy the creditors of the partnership. General partners are subject to all the restrictions and liabilities of a partner in a partnership. If a receiving order against a limited partnership did not result in the bankruptcy of its general partner or partners, then the general partner would be in at least as good a position as the limited partners. There could be no justification

Partnerships Act, R.S.O. 1990, c. P.5, as amended - "PAct"

(ordinary) partnership pursuant to PAct - "OP"

(ordinary) partner pursuant to PAct - "op"

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 as amended - "BIA"

2 KPMG as Trustee of Kingsberry moved for:

(a) a declaration that the receiving order in bankruptcy made against Kingsberry by me on October 10, 1997 effects the bankruptcy of both the LP (Kingsberry) and its gp (Foley) as of the date of the petition for the receiving order (December 31, 1993);

(b) in the alternative, a declaration that the property of the gp is vested in the Trustee;

(c) an order compelling Foley to comply with obligations under BIA and in particular s. 158(a), (b), (d), (e), (f), (g), (h), (i), (k) and (o) thereof;

(d) an order pursuant to s. 187 of BIA extending the time for providing notice for the first meeting of creditors and the holding of that meeting; and

(e) such further and other relief as counsel may advise.

3 On February 9, 1994 the Bank served its petition material on Kingsberry "by leaving a copy with an adult female who refused to identify herself, at 319 College Avenue, Oshawa, Ontario" (which address was the "residence address or address for service" as set out in the Declaration under the *Partnerships Registrations Act* and the LP Act as filed and registered with the Government of Ontario on February 12, 1990). The Bank apparently had some difficulty in describing Kingsberry: the heading of the petition correctly identified Kingsberry as an LP; however the body of the petition misdescribed it as a corporation and the affidavit of service in the heading on the face page incorrectly identified it as an OP but the heading in the backing page described it correctly as an LP. While the LPAct and the concept of LPs have been in existence for a long period of time, it seems that there is some degree of mystery accorded same. This is unfortunate in light of growing usage of the concept for investments in the past several decades, with the result that litigation involving LPs has come to court with increased frequency. Perhaps part of the mystery is caused by the (a) reliance on statutory law to exhaustively deal with the subject matter as opposed to recognizing that there is a wealth of common law to draw on and (b) not fully considering that an LP is a special form of partnership which is governed not only by the LPAct (and the common law focussing on LPs) but also by the PAct and the common law affecting partnerships. This aspect is clearly recognized (although somewhat awkwardly worded) by s. 46 of the PAct:

s. 46. This Act [PAct] is to be read and construed as subject to the *Limited Partnerships Act* and the *Business Names Act*.

4 In other words, an LP is a partnership which is governed by the PAct except to the extent that the LPAct supersedes the PAct (and the common law affecting OPs). LPs should not be equated to corporations; they are specialized partnerships. Alison R. Manzer, *A Practical Guide to Canadian Partnership Law* (looseleaf, October 1997; Canada Law Book Inc., Aurora) has a generally helpful chapter (Chapter 9) on LPs subject to some difficulty coping with the "mystery" of LPs: see paragraph 9.10 (it is perhaps unfortunate that the term "general partnership" is chosen to describe the "ordinary partnership" (OP)):

Introduction

> Unlike the general partnership, the limited partnership is created by statute and the limited partnership only exists if it is formed in the manner prescribed by the relevant provincial legislation (see ¶9.240, *infra*). There is no concept of an arrangement reached simply by the agreement of the parties. A prescribed form of public declaration must be filed. It is unclear as to whether the limited partnership is merely the combination of its partners or a separate legal entity as is a corporation. The limited partnership is intended to combine concepts taken from corporate and general partnership law. There is, however, no definition of a limited partnership in the relevant legislation of any of the Canadian jurisdictions. Essentially, the limited partnership appears to be considered a partnership, other than as specifically changed by statute. The statutory provisions which differ from general partnership are those which are required to preserve the limited liability status of the limited partners. Otherwise, the limited partnership appears to be considered an entity closer to that of the general partnership than that of the corporation. What was not identified, in any of the statutory or case materials reviewed, was whether the courts consider the limited partnership as an entity separate and apart from the partners. The concept of legal liability for the limited partners would, in general, indicate that this should be the case. However, the issue is confused as a consequence of the general partner's relationship being essentially identical to that of the general partnership. The absolute restriction on the limited partner's involvement in the business of the limited partnership differs from that of the shareholder. A shareholder may, without fear of loss of limited liability, engage in activities with the corporation, such as in an employer and employee relationship, while the limited partner cannot. It therefore appears that the limited partnership is most similar to a partnership and, accordingly, is conceptually a combination of the partners rather than a separate and distinct legal entity.

5 As described above, an LP is a partnership and should be dealt with as such; it is not, as indicated by the last sentence of the Manzer passage, "similar to a partnership" unless she intended that that be read as "similar to an [ordinary] partnership".

6 I would think it would be helpful to review my analysis of LPs in *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]), at pp. 38 - 40. I set that out for ease of reference:

> A limited partnership is a creation of statute, consisting of one or more general partners and one or more limited partners. The limited partnership is an investment vehicle for passive investment by limited partners. It in essence combines the flow through concept of tax depreciation or credits available to "ordinary" partners under general partnership law with limited liability available to shareholders under corporate law. See Ontario LPA sections 2(2) and 3(1) and Lyle R. Hepburn, *Limited Partnerships*, (Toronto: De Boo, 1991), at p. 1-2 and p. 1-12. I would note here that the limited partnership provisions of the Alberta PA are roughly equivalent to those found in the Ontario LPA with the interesting side aspect that the Alberta legislation in s. 75 does allow for judgment against a limited partner to be charged against the limited partner's interest in the limited partnership. A general partner has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership. In particular, a general partner is fully liable to each creditor of the business of the limited partnership. The general partner has sole control over the property and business of the limited partnership: see Ontario LPA ss. 8 and 13. Limited partners have no liability to the creditors of the limited partnership's business; the limited partners' financial exposure is limited to their contribution. The limited partners do not have any "independent" ownership rights in the property of the limited partnership. The entitlement of the limited partners is limited to their contribution plus any profits thereon, after satisfaction of claims of the creditors. See Ontario LPA sections 9, 11, 12(1), 13, 15(2) and 24. The process of debtor and creditor relationships associated with the limited partnership's business are between the general partner and the creditors of the business. In the event of the creditors collecting on debt and enforcing security, the creditors can only look to the assets of the limited partnership together with the assets of the general partner including the general partner's interest in the limited partnership. This relationship is recognized under the *Bankruptcy Act* (now the BIA) sections 85 and 142.

A general partner is responsible to defend proceedings against the limited partnership in the firm name, so in procedural law and in practical effect, a proceeding against a limited partnership is a proceeding against the general partner. See Ontario *Rules of Civil Procedure*, O. Reg. 560/84, Rules 8.01 and 8.02.

It appears that the preponderance of case law supports the contention that a partnership including a limited partnership is not a separate legal entity. See *Lindley on Partnership*, 15th ed. (London: Sweet & Maxwell, 1984), at pp. 33-35; *Seven Mile Dam Contractors v. R.* (1979), 13 B.C.L.R. 137 (S.C.), affirmed (1980), 25 B.C.L.R. 183 (C.A.) and "Extra-Provincial Liability of the Limited Partner", Brad A. Milne, (1985) 23 Alta. L. Rev. 345, at pp. 350-351. Milne in that article made the following observations:

> The preponderance of case law therefore supports the contention that a limited partnership is not a separate legal entity. It appears, nevertheless, that the distinction made in *Re Thorne* between partnerships and trade unions could not be applied to limited partnerships which, like trade unions, must rely on statute for their validity. The mere fact that limited partnerships owe their existence to the statutory provision is probably not sufficient to endow the limited partnership with the attribute of legal personality as suggested in *Ruzicks* unless it appeared that the Legislature clearly intended that the limited partnership should have a separate legal existence. A review of the various provincial statutes does not reveal any procedural advantages, rights or powers that are fundamentally different from those advantages enjoyed by ordinary partnerships. The legislation does not contain any provision resembling section 15 of the *Canada Business Corporation Act* [S.C. 1974-75, c. 33 as am.] which expressly states that a corporation has the capacity, both in and outside of Canada, of a natural person. It is therefore difficult to imagine that the Legislature intended to create a new category of legal entity.

It appears to me that the operations of a limited partnership in the ordinary course are that the limited partners take a completely passive role (they must or they will otherwise lose their limited liability protection which would have been their sole reason for choosing a limited partnership vehicle as opposed to an "ordinary" partnership vehicle). For a lively discussion of the question of "control" in a limited partnership as contrasted with shareholders in a corporation, see R. Flannigan, "The Control Test of Investor Liability in Limited Partnerships" (1983) 21 Alta. L. Rev. 303; E. Apps, "Limited Partnerships and the 'Control' Prohibition: Assessing the Liability of Limited Partners" (1991) 70 Can. Bar Rev. 611; R. Flannigan, "Limited Partner Liability: A Response" (1992) 71 Can. Bar Rev. 552. The limited partners leave the running of the business to the general partner and in that respect the care, custody and the maintenance of the property, assets and undertaking of the limited partnership in which the limited partners and the general partner hold an interest. The ownership of this limited partnership property, assets and undertaking is an undivided interest which cannot be segregated for the purpose of legal process. It seems to me that there must be afforded a protection of the whole since the applicants' individual interest therein cannot be segregated without in effect dissolving the partnership arrangement. The limited partners have two courses of action to take if they are dissatisfied with the general partner or the operation of the limited partnership as carried on by the general partner - the limited partners can vote to (a) remove the general partner and replace it with another or (b) dissolve the limited partnership. However Flannigan strongly argues that an unfettered right to remove the general partner would attach general liability for the limited partners (and especially as to the question of continued enjoyment of favourable tax deductions) so that it is prudent to provide this as a conditional right: *Control Test*, (1992), supra, at pp. 524-525. Since the applicants are being afforded the protection of a stay of proceedings in respect to allowing them time to advance a reorganization plan and complete it if the plan finds favour, there should be a stay of proceedings (vis-à-vis any action which the limited partners may with to take as to replacement or dissolution) through the period of allowing the limited partners to vote on the reorganization plan itself.

7 See also the views of Callaghan, C.J. in *PWA Corp. v. Gemini Group Automated Distribution Systems Inc.* (1993), 8 B.L.R. (2d) 221 (Ont. Gen. Div. [Commercial List]), affirmed (1993), 10 B.L.R. (2d) 109 (Ont. C.A.), leave to appeal refused (1993), 10 B.L.R. (2d) 244 (note) (S.C.C.) that in choosing the vehicle of a LP, the parties

> To revert to basic legal principles, the law regards as persons with distinct and separate legal rights only individuals and corporations. A partnership may be recognized in law an an association of persons with certain distinctive characteristics and one which, in accordance with rule 8.01 of the Rules of Civil Procedure, is entitled to commence proceedings or have proceedings commenced against it in the name of the partnership. The concept of partnership property is also recognized in law but this does not mean that it is property owned by the partnership but rather property in which all of the partners have undivided interests. In a limited partnership, the legal title is held by the general partner for the benefit of all of the partners. None of these factors, in my view, constitutes a partnership a legal entity or person having a separate existence recognized in law and accordingly being capable of holding title to property and mortgaging or creating security on such property.

11 S. 85(1) of BIA provides:

> This act applies to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners of a limited partnership becoming bankrupt, the property of the limited partnerships vest in the trustee.

12 Thus a partnership, be it an OP or an LP, is a "person" for the purposes of BIA and it can be petitioned into bankruptcy: see s. 2 and s. 43. Since *Langille v. Toronto Dominion Bank* (1982), 40 C.B.R. (N.S.) 113 (S.C.C.), it has been viewed that a petition for a receiving order may name the firm as debtor and it has not been necessary (although permissible) to name the individual partners. A receiving order, if the debtor is a partnership, operates as a receiving order not only against the firm but against each and every member of the partnership: see *Cohen v. Mahlin* (1926), 8 C.B.R. 23 (Alta. C.A.) at p. 31; *Taylor v. Leveys* (1922), 2 C.B.R. 390 (Ont. S.C.) at 391. This general principle must be modified in the situation of an LP, to reflect that as for lps, but only lps, the receiving order only operates to affect an lp to the extent of the lp's interest in (and obligations to) the LP and it is only that aspect which is vested in the trustee in bankruptcy. The extent of that aspect is to be determined pursuant to provincial law: see Rule 79 of the *Bankruptcy and Insolvency Rules* ("BIR"). A creditor need not petition all the members of the partnership into bankruptcy: see s. 43(15) BIA; however, where there are separate petitions against members of the same partnership, proceedings may be consolidated: see s. 43(16). It is therefore a choice of the plaintiff as to s. 43(15) and the discretion of the court as to section 43(16), not the constitution of the partnership.

13 Rule 92 of BIR provides the mechanics for the meetings of creditors and s. 142 of BIA provides the regime for distribution of the estates where there is a bankruptcy of partners.

> **Rule 92**
>
> When a partnership is bankrupt, the creditors of the partnership and of each of the partners shall be convened collectively for the first meeting of creditors.
>
> **s.142(1)**
>
> Where partners become bankrupt, their joint property shall be applicable in the first instance in payment of their joint debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.

14 In the event of a surplus, the surplus is made available to the claimants against the other fund (i.e. *partnership vs. personal*). See above re my views on modification for lps in an LP.

15 If a receiving order against an LP did not result in the bankruptcy of its gp(s), then the gp would be in at least as good a position as the lp(s) of that LP. There can be no justification for such an exercise in bootstrapping.

TAB 15

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tudor Sales Ltd. (Re),* 2017 BCSC 119

Date: 20170125
Docket: B131477
Registry: Vancouver

Between:

IN THE MATTER OF THE BANKRUPTCY OF TUDOR SALES LTD.

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment

Counsel for the Trustee, Boale, Wood & Company Ltd:	S. H. Stephens
Counsel for the Applicant Cascade Steel Rolling Mills Inc.:	W. B. Milman K. Macdonald
Counsel for the Applicant Tavi Eggertson:	D. K. Magnus
Place and Date of Hearing:	Vancouver, B.C. January 8, 2016
Further Written Submissions of Cascade Steel Rolling Mills Inc.:	April 19; June 2, 2016
Further Written Submissions of Tavi Eggertson:	May 19, 2016
Place and Date of Judgment:	Vancouver, B.C. January 25, 2017

[33] Cascade relies upon ss. 137, 139, and 140.1 of the *BIA*, which provide as follows:

> **Postponement of claims — creditor not at arm's length**
>
> 137 (1) A creditor who, at any time before the bankruptcy of a debtor, entered into a transaction with the debtor and who was not at arm's length with the debtor at that time is not entitled to claim a dividend in respect of a claim arising out of that transaction until all claims of the other creditors have been satisfied, unless the transaction was in the opinion of the trustee or of the court a proper transaction.
>
> …
>
> **Postponement of claims of silent partners**
>
> 139 Where a lender advances money to a borrower engaged or about to engage in trade or business under a contract with the borrower that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the trade or business, and the borrower subsequently becomes bankrupt, the lender of the money is not entitled to recover anything in respect of the loan until the claims of all other creditors of the borrower have been satisfied.
>
> …
>
> **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.

Discussion and Analysis

[34] With respect to the shareholder loans claim arising out of the 2005-06 Advances, the threshold question is whether the amounts advanced to Tudor by Mr. Eggertson are properly characterized as a debt, or as equity.

[35] These purported loans having been a non-arm's-length transaction, I am guided by the description of the court's role in characterizing, or re-characterizing, such payments, as recently set out by Justice Wilton-Siegel in *U.S. Steel:*

> [167] Where … the parties are not at arm's length, the issue is not what the parties say they intended regarding the substance of the transaction as a matter of contractual interpretation. The expressed intention of the parties is clear. However, given the absence of any arm's length relationship, there can be no certainty that the language of the agreements reflects the underlying substantive reality of the transaction. Accordingly, the issue for a court is whether, as actually implemented, the substance of the transaction is, in fact, different from what the parties expressed it be in the transaction documentation.

> [168] In other words, the task of a court is to determine whether the transaction in substance constituted a contribution to capital notwithstanding the expressed intentions of the parties that the transaction be treated as a loan. It is therefore not appropriate to limit the inquiry into the intentions of the parties to a review of the form of the transaction documentation. Such an exercise reduces to a "rubber stamping" of the determination of a single party to the transaction, i.e., the sole shareholder, and it does not address the substance of the transaction as it was actually implemented. In such circumstances, the determination of whether a particular claim is to be treated as debt or equity must address not just the expressed intentions of the parties as reflected in the transaction documentation but also the manner in which the transaction was implemented and the economic reality of the surrounding circumstances.

[36] Further on in that judgment, Wilton-Siegel J. discussed the various factors which he found appropriate to determination of the debt claim before him, given the particular financial instruments utilized by the parties. He began that discussion with an explanation of the difference between equity and debt from an expert report tendered by one of the parties, authored by an economist, Dr. John Finnerty, which I also adopt:

> [183] An appropriate starting point is the definition of debt and equity for financial purposes set out in paragraphs 32 and 34 of the Finnerty Report:
>
> > At its heart, the difference between equity and debt lies in the fundamental nature of their respective claims on the assets and cash flow of the company. Debt involves borrowing funds subject to a legal commitment to repay the borrowed money with interest at an agreed rate by a stated maturity date. This commitment is embodied in a contract, and this contract is implemented by the borrower. Lenders receive a contractually agreed set of cash flows, typically through periodic interest payments and one or more principal repayments, the last of which occur on the maturity date. … In contrast to debt, an equity claim entitles the holder to a share of the company's profits and residual cash flows after the company has made all the contractually required debt service payments. That is, the debt ranks senior to the equity with respect to the company's cash flows. Similarly, the debt ranks senior to the equity in the event the company must be liquidated and its assets sold to repay its debt obligations. The equityholders get what is left after the holders of the debt have been paid in full; if the debtholders can't get paid in full, then the equityholders get nothing.

[37] The characterization of the 2005-06 Advances as equity, and not debt, is most strongly supported by the variable nature of the interest payments recorded in the financial statements as having been made to Mr. Eggertson. As a consequence of being variable with the company's profitability, the amount of the payments made

to Mr. Eggertson could not have been determined each year until any and all current liabilities to secured and unsecured creditors had been satisfied. As noted above in the quotation from the Finnerty Report in *U.S. Steel*, "debt ranks senior to the equity with respect to the company's cash flows". Functionally, therefore, Tudor's payments to Mr. Eggertson were being treated as subordinated to all such current liabilities, a fact which is inconsistent with his claim to secured creditor status.

[38] Furthermore, the nature of the company's liability to Mr. Eggertson was more consistent with equity than with debt, in that there was no schedule for repayment of these advances, and there was no certain formula to determine the interest amount. Payments, rather, were discretionary, based on the advice of the accountants, and varying with Tudor's profitability. The ability to draw payment in this manner is not normally incidental to the rights of a creditor; instead, it is a hallmark of ownership.

[39] It is not the lack of a strict schedule for repayment in itself that is relevant; neither do I give any weight to the absence of loan documentation. This is because the relationship of a wholly-owned subsidiary to its parent obviates the need for same: see *U.S. Steel* at para. 217. It is, instead, the nature of those interest payments that reveals the true substance of the transaction.

[40] This characteristic of the transaction – the variable nature of the interest payments, fluctuating with the company's profitability – is, I find, sufficient in itself to lead to the 2005-06 Advances being characterized as equity. In addition, I also regard the circumstances surrounding the 2005-06 Advances as germane. At the time of the first of those advances, October 29, 2005, Mr. Eggertson was not a shareholder of Tudor; the company's sole shareholder was his father, Donald Eggertson. However, as disclosed in the company's securities register, Mr. Eggertson became a shareholder as of January 1, 2006, only approximately two months later, when his father transferred nine of his 100 Class A common shares to Mr. Eggertson. There is no record of any consideration for the transfer having been paid. There is no evidence that it was a gift.

[41] In December 2006, Mr. Eggertson made his second advance, of $500,000. The security register discloses that that same month, his nine Class A common shares – a 9% holding – were exchanged for 100 Class D redeemable preferred shares. Tudor's 2007 financial statements indicate those shares were redeemable for $2,542,539. They therefore represented either approximately 50% or 67% of the value of the company (depending if the value of his father's remaining Class D shares was $1,231,538 – the redemption value noted in the 2007 financial statements – or $2.5 million, the figure at which Mr. Eggertson deposed those shares to have been redeemed in 2010).

[42] I agree with Cascade's submission that the very close proximity in time between these advances made by Mr. Eggertson, and at first his acquisition of a shareholder interest, and then the increase in value of that interest, strongly implies that his advances were in substance consideration paid for his ownership stake, making them equity contributions.

[43] The existence of the GSA does not assist Mr. Eggertson. The GSA itself makes no specific reference to the 2005-06 Advances. In fact, the shareholder loans arising out of those advances were not even described as secured loans in Tudor's financial statements until 2011, when the company went into default on its lending covenants, reinforcing the view that the advances were not originally intended as secured debt. In any event, as *U.S. Steel* makes clear, what is at issue is not the superficial appearance of the transaction or transactions arising out of the transaction documentation, but the manner in which the transaction or transactions were actually implemented in the circumstances of the surrounding economic reality.

[44] I therefore find Mr. Eggertson's claim in respect of the purported shareholder loans of $1,361,359 to be in respect of an equity claim, and subordinated to all creditor claims, pursuant to s.140.1 of the *BIA*.

[45] Alternatively, if characterized more appropriately as debt, rather than equity, Mr. Eggertson's claim would fail by reason of s.139 of the *BIA*. That section is premised on there being a contract between lender and company under which the

TAB 16

Court of Queen's Bench of Alberta

Citation: Alberta Energy Regulator v Lexin Resources Ltd, 2018 ABQB 590

Date: 20180808
Docket: 1701 03460
Registry: Calgary

Between:

Alberta Energy Regulator

Applicant

- and -

Lexin Resources Ltd., 1051393 B.C. Ltd., 0989 Resource Partnership, LR Processing Ltd., and LR Processing Partnership

Respondents

Decision
of the
Honourable Madam Justice B.E. Romaine

I. Introduction

[1] This is an application by the Receiver of Lexin Resources Ltd, 1051393 BC Ltd, 0989 Resource Partnership, LR Processing Ltd and LR Processing Partnership (the Lexin Group) seeking advice and direction respecting the characterization of funds indirectly advanced by MFC Energy Finance Inc to the 0989 partnership, a member of the Lexin Group, on June 30, 2015. The original amount of the advance was $37,570,500 (the Finance Advance). Finance advances a secured claim in the receivership against 0989 in the amount of $15,058,116.08, which it alleges is the remaining amount of the Finance Advance.

V. Analysis

A. Should the Finance Advance be characterized as an investment of capital in 0989 by Finance or as a loan by Finance to 0989?

[28] If the Finance Advance is characterized as an equity contribution, Finance's secured claim will be subordinated to the claims of all other "creditors by the operation of s. 140.1 of the *BIA*, which states that 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".

1. Onus

[29] In the normal course in an insolvency, the onus is on a creditor to prove its claim.

[30] While Finance concedes that it has the "initial" burden to prove that the Finance Advance is a secured claim in the receivership, it submits that it does not have the burden of disproving that the Finance Advance is equity, or that it ought to be subordinated. By this, Finance means that, once it has proved that there is a contract, pursuant to which one person delivers money, and the other person agrees to repay the borrowed amount. Finance has met its burden and the onus proving that the advance is equity shifts to the Receiver. Finance relies in this respect on comments made by the Court in ***U.S Steel***.

[31] Those comments were made in context of a contest between competing creditors, and not an application by a receiver for advice and directions with respect to its findings on the validity of a claim. The Receiver has made its objections to the claim clear: the transaction bears the characteristics of a claim in equity and not in debt. Thus, the normal rule that the creditor bears the onus of establishing otherwise should apply. In any event, even if the burden shifts to the Receiver, the Receiver has met the burden in this case.

2. Analysis

[32] The issue of: supra particular claim is to be treated as debt or equity is a matter of statutory interpretation: ***supra*** at para 152.

[33] An "equity claim" is defined in the *BIA* as a claim that is in respect of an equity interest, including a claim for a return of capital or a contribution in respect of such a claim. An "equity interest" is defined as a share in the corporation, or another right to acquire a share in the corporation, other than one that is derived from a convertible debt. As noted by Wilton-Seigel, J. in ***U.S. Steel***, this type of situation can be distinguished from the situation in ***Canada Deposit Insurance Corp v Canadian Commercial Bank***, [1992] 3 SCR 558, where the transaction was arm's length.

[34] In ***U.S. Steel***, the Court held at para 155-156 that the definition of "equity claim" can extend to a contribution to capital by a sole shareholder unaccompanied by a further issuance of shares. Further, the reference to "a return of capital" need not be limited to a claim in respect of express contribution to capital, and a transaction can be a contribution of capital in substance even if it is expressed otherwise.

[35] Both the Receiver and Finance rely on the decision of U.S. Steel, as the Court in that case considered the specific circumstances of the characterization of the claim, such as this one, involving wholly-owned subsidiaries engaged in non-arm's length transaction.

[36] As noted at para 154 of ***U.S. Steel***:

> In the circumstances of a sole shareholder, there is no practical difference..... between a shareholding of a single share and a shareholding of multiple shares. Accordingly, for the purposes of the definition of an "equity claim", there should be no difference between a payment to a debtor company on account of the issuance of new shares and a payment to a debtor company by way of a contribution to capital in respect of the existing shares.

[37] Thus, as was the case in ***U.S. Steel***, the determination of whether Finance's claim is to be treated as debt or equity must address, not just the expressed intentions of the parties as reflected in the transaction documentation but also the manner in which the transaction was implemented and the economic reality of the surrounding circumstances. The form of the documentation is merely the "point of departure": ***supra*** at para 149.

[38] The issue in situations where the parties are not arm's length is not what the parties say they intended regarding the substance of the transaction but the "underlying substantive reality of the transaction": ***supra*** para 167. As actually implemented, is the substance of the transaction different from what was expressed in the transaction documentation?

[39] It is not as simple as submitted by Finance. The approach to characterization is not merely a narrow "rubber-stamping" of the form of transaction chosen by the sole shareholder: ***supra*** para 168.

[40] While the characterization of the claim must be analyzed at the date of advance, subsequent behavior, rather than subsequent stated intention, may be relevant if it illuminates the intentions of the parties at the date of advance although it cannot on its own justify a re-characterization of such advance: ***U.S. Steel*** at para 195; ***Canadian Deposit Insurance*** at para 52. The determination is not based on inequitable behaviour, but on the underlying substantive reality of the transaction.

[41] ***U.S. Steel*** sets out a helpful two-part test in to be followed in situations involving parent-subsidiary relationships at paras 186-190:

> (a) subjectively, did the alleged lender actually expect to be repaid the principle amount of the loan with interest out of the cashflows of the alleged borrower; and
> (b) objectively, was the expectation reasonable under the circumstances?

[42] The Court in ***U.S. Steel*** referred to various factors used by American courts to aid in determining appropriate characterization, including the following:

> (a) the names given to the instruments, if any, evidencing the indebtedness;
> (b) the presence or absence of a fixed maturity date and schedule of payments. The American cases suggest that the absence of a fixed maturity date and a fixed obligation to repay is an indication that the advances were capital contributions and not loans;
> (c) the presence or absence of a fixed rate of interest and interest payments. Again, it is suggested that the absence of a fixed rate of interest and interest payments is a strong indication that the advances were capital contributions rather than loans;
> (d) the source of repayments. If the expectation of repayment depends solely on the success of the borrower's business, the cases suggest that the transaction has the appearance of a capital contribution;

(e) the adequacy or inadequacy of capitalization. Thin or inadequate capitalization is strong evidence that the advances are capital contributions rather than loans;
(f) the identity of interest between the creditor and the shareholder. If shareholders make advances in proportion to their respective stock ownership, an equity contribution is indicated;
(g) the security, if any, for advances;
(h) the corporation's ability to obtain financing from outside lending institutions. When there is no evidence of other outside financing, some cases indicate that the fact no reasonable creditor would have acted in the same manner is strong evidence that the advances were capital contributions rather than loans;
(i) the extent to which the advances were subordinated to the claims of outside creditors;
(j) the extent to which the advances were used to acquire capital assets. The use of the advance to meet the daily operating needs for the corporation, rather than to purchase capital assets, is arguably indicative of bona fide indebtedness; and
(k) the presence or absence of a sinking fund to provide repayments.

[43] However, these and other factors are no more than an aid in determining substantive reality and should not be used in a "score-card" manner: supra para 181.

[44] However, the Receiver submits that these factors overwhelmingly point to the Finance Advance being in reality equity and not debt, particular factors b), c), e), f) and j).

[45] While there is formal documentation in this case, it does not include a schedule for repayment and there is no obligation to pay interest until default. Since it is characterized as a demand loan, there is no fixed maturity date. Thus, it would be possible, and in fact has been the case, that no demand for repayment has been made. Although there is evidence indicating the commencement of enforcement proceedings by various creditors, and thus default, Finance has issued no formal notice of default and no interest is alleged to be payable.

[46] Payments made under the Finance Advance were sporadic and the first payment made was in the form of an actual transfer of assets to Finance and its subsidiaries. Two variable cash repayments were made in 2016.

[47] It is relevant that the Finance Advance was not available for use by 0989 for daily operations or the acquisition of assets, but was immediately flowed through to its partners as distributions.

[48] It is also relevant that Bancorp was a guarantor of the Austrian bank debt, and that the transaction allowed that debt to be paid down, to the advantage of the parent company.

[49] The Receiver submits that this series of transactions was a plan to save the consolidated Bancorp enterprise at the expense of Lexin, 0989 and their stakeholders and, in effect, to secure ties to equity distributions for themselves against the Lexin Group's assets. Thus, it submits, referring back to the first part of the two-part test, there was no subjective intention for the Finance Advance to have ever been repaid.

[50] As noted at para 257 of ***U.S. Steel***:

> As a polar case, I accept that there may be circumstances in which a parent corporation is expectation from the outset is that it will sacrifice a subsidiary's profitability over the long-term for the benefit of the consolidated enterprise. In

> such circumstances, a court could find that the parent corporation had no intentions of causing the subsidiary to repay with interest any financing extended to the subsidiary or, more precisely, no expectation that the subsidiary would generate sufficient cash flow to enable it to make such payments based on the parent's anticipated business plan for it. In such circumstances, a court could also find that the entire amount of the financing extended by the parent corporation to the subsidiary was, in reality, an equity contribution.

[51] Finance submits that there are valid responses to all of these factors. It submits that the fact that the Finance Advance is a demand loan is responsive to the lack of maturity date. As noted in ***U.S. Steel*** ,a lack of maturity date and the absence of a schedule for the principal payment may only indicate the desire for flexibility to align payments of principal with 0989's economic performance against the back drop of a cyclical industry: ***supra*** at para 224.

[52] Despite submissions by both parties, I am unable on the basis of the evidence before me to determine whether undercapitalization is an issue.

[53] However, for Finance, the lack of any interest provision except on default is more problematic. Mr. Morrow alleges that withholding tax issues are the reasons for the advance being non-interest bearing. While there is nothing improper about this, this lacks of interest implies equity disguised as debt. Business choices on structure, while otherwise entirely proper, can have consequences for characterization.

[54] The Receiver submits that the restructuring of 0989 and Lexin as of June 30, 2015 with additional debt at a time when these entities had no debt does not make commercial sense. I accept the Receiver's view, particularly as none of the funds remained with 0989 or Lexin, and $15 million went full-circle back to M Financial, as Finance was clearly aware was the plan.

[55] Finance states that the commercial propose of the Finance Advance was (i) to fund the repayment of the MFC Austria loans, and (ii) to recapitalize Lexin and 0989 with some additional leverage, with one advantage being to add a "modest amount of local leverage to reduce Lexin and 0989's cost of capital".

[56] However, there was no debt obligation between MCF Austria and Lexin or 0989 at any point in time.

[57] In addition, the explanation that a modest amount of local leverage would reduce 0989 and Lexin's costs of capital is inconsistent with the fact that, as early as December, 2014, Bancorp was pursing the disposition of some of the Lexin properties. The commercially unusual aspects of the Finance Advance, including its nature as a demand loan, the fact that it was payable only upon default and that it included restrictions on redemption, distribution and return of capital without Finance's consent, could hardly be considered to be attractive to a prospective purchaser, even if the loan did not bear interest until default. If a cash and debt offer was more attractive to a purchaser, it could be negotiated at the time of the sale.

[58] However, I am not able to decide the issue of the credibility of Mr. Morrow's assertions with respect to Finance's subjective expectations despite these contradictory indicators without the benefit of viva voce evidence. Thus, given the circumstances in which this application was heard, I must accept that Finance has met the first part of the two-part test.

[59] However, was that expectation reasonable in the circumstances? The surrounding economic circumstances provide context to this question.

[60] While Finance asserts that the Austrian bank loans were intended to be repaid from Lexin's cash flow, in 2013, when the loans were made, Finance provided funds to MFC Austria to repay the principal and interest installments due under the loans, as neither 0989 nor Lexin generated sufficient returns to make equity distributions.

[61] In 2014, Lexin did make payments to MFC Austria, but it was by way of a return of capital. Finance states that MFC Austria used these funds to reduce the MFC Austria loans and to partially repay M Financial for the amounts it had advanced to MFC Austria in 2013.

[62] The funds distributed to Lexin and Bancorp by 0989 on June 30, 2015 are characterized by Finance as distributions to 0989's partners. The funds distributed by Lexin to MFC Austria the same day are characterized by Finance as a return of capital to Lexin's sole shareholder, MFC Austria, by way of a reduction of share capital pursuant to Section 74 of the British Columbia *Business Corporations Act*, SBC 2002 c 57. This raises the issue of why the flow-through of funds to 0989 was structured as a loan.

[63] Finance's answer is that the benefit of this leverage was in reducing 0989 and Lexin's cost of capital. However, Finance also submits that purpose of the loan was to facilitate a future sale.

[64] Finance's counsel included in its brief a hypothetical example that purported to demonstrate this increased saleability. However, the hypothetical example did not adequately take into account the effect of the Finance Loan. The Receiver revised the example, incorporating both the advance and actual data from the June 30, 2015 Lexin financial statements. This revision shows that the result would be the opposite of what Finance suggested would be increased saleability and that the advance would make a sale less attractive. As noted previously, the uncommon aspects of the debt would more likely make the existence of the Finance Advance a negative, rather than a positive, despite the lack of interest prior to default.

[65] Between July and September of 2015, the Bancorp board approved a plan to sell all of Lexin's assets, and in Bancorp's consolidated financial statements dated December 31, 2015, Bancorp referred to declining prices for oil and gas beginning in December 2014 and further declining by September 2015, leading to impairment assessments on its hydrocarbon properties in each of 2013 and 2014. In those financial statements, Bancorp indicates that on December 30th, 2015, it sold a 95 percent interest in certain hydrocarbon assets to a third party for nominal and contingent consideration, and that the contingent consideration was valued at nil.

[66] Even though the June 30, 2015 transactions occurred prior to these financial statements, and thus, some of these records are dated after the date of the Finance Advance, subsequent events are sometimes relevant to the extent they illuminate the intentions of the parties at the time of the advance. In this case, the subsequent events followed within weeks and months of the advance. In any event, Bancorp knew of declining commodity prices in 2013 and 2014, thus, it cannot have had any objectively reasonable expectation that 0989 would be able to pay the principle amount of the Finance Advance out of cashflow, even without interest.

[67] The Receiver submits that it is clear that 0989 and Lexin were underperforming at the time of the Finance Advance, but Mr. Morrow alleges that Lexin was profitable, and that he was not aware of any creditor that was outstanding as of June 30, 2015 or the rest of 2015 that was not paid in full. However, affidavits filed by the municipalities of Willow Creek and Vulcan indicate that Lexin had failed to pay property taxes levied by the counties since 2015, resulting in

liens and seizures beginning in November, 2015. Mr. Morrow also relied on the GLG reserve reports for the period, but failed to mention that the report assumes that the company would have to incur costs of development much higher than expected cash flowed in 2017 in order to earn such cash flows. The unaudited consolidated financial statements, without notes, do not aid in the determination of whether the expectation of repayment was objectively reasonable.

[68] In conclusion, I find that the expectation that the Finance Advance would be repaid by the borrower from cashflow was not objectively reasonable, and that the Finance Advance is properly characterized as an equity contribution.

[69] In the event I am wrong in this determination, I have considered whether it is appropriate to postpone the Finance Advance to all of Lexin and 0989's other creditors.

B. Should the Finance Advance be postponed pursuant to section 137 of the *BIA*?

[70] Section 137 of the *BIA* provides that a non-arm's length creditor that entered into a transaction with the debtor before bankruptcy is not entitled to payment of its claim arising from that transaction "until all claims of the other creditors have been satisfied, unless the transaction was in the opinion of the...court a proper transaction."

[71] It is clear that the Finance Advance was a transaction entered into with a non-arm's length party before bankruptcy. Thus, section 137 would postpone Finance's claim to the claims of other creditors unless this Court finds that the Finance Advance was a "proper transaction".

1. Onus

[72] When a debt claim is being advanced by a non-arm's length party, the claimant has the onus of proving that the transaction is a proper claim if it hopes to avoid having the claim subordinated pursuant to section 137 of the *BIA*: ***Re Tudor Sales Ltd***, 2017 BCSC 119 at para 48. However, even if I am wrong in this regard, the Receiver has satisfied the onus of establishing that the Finance Advance is not a proper transaction for the purpose of section 137.

2. Analysis

[73] Finance submits that, if the Finance Advance is debt, the Court cannot find that it is not a proper transaction under s. 137, relying on ***Stone Mountain Resource Holdings Ltd v Stone Mountain Resources Ltd***, 2012 ABQ 534. That is not what the Court in ***Stone Mountain*** establishes. Kent, J, found that the transaction in that case was for a proper purpose because a) there was no preference, and b) there was an injection of new money from an arm's length creditor to the debtor's parent company, and a subsequent loan of that money to the debtor subsidiary as a direct contribution to the debtor company's working capital, in accordance with a development plan: ***supra*** paras 31, 39-43.

[74] The facts in this case are different from those in ***Stone Mountain***. In this case, the funds advanced were flowed through 0989 as distributions to its partners, leaving 0989 without additional operating funds or working capital but only debt.

[75] In addition, there is nothing in the plain language of section 137 that would prevent it from applying to a transaction that is structured as debt. Indeed, the postponement created by the section would not be necessary if it applied merely to equity.

[76] The Receiver references ***Tudor Sales*** as a case that considered issues similar to the ones that arise here.

[77] In ***Tudor***, the applicant was an unsecured creditor of the bankrupt Tudor, seeking an order under section 135(5) of the *BIA* that the claim of a shareholder of Tudor with respect to shareholder loans be expunged or subordinated to the claims of other creditors.

[78] There was no written documentation of the shareholder loans, no fixed interest rate and no schedule for repayment. The advances were secured by a GSA. The interest rate that the company paid to the shareholder each year fluctuated with the fortunes of the company.

[79] The Court first considered whether the shareholder loans should be characterized a debt or equity, and found them to be equity, not because of the lack of a schedule for repayment or the absence of loan documentation, but because of the variable nature of the interest payments and the circumstances surrounding the advances at the time they were made. The Court considered events that took place shortly after the dates of the advances, noting that the "very close proximity in time" between the advances and these subsequent events "strongly implies that [the] advances were in substance consideration paid for [the shareholder's] ownership stake." Saunders, J. thus found the purported shareholder loans to be equity claims. The Court also considered whether the claim would fail by reason of section 137(1), and was satisfied that there was "simply no justification for allowing [the shareholder] the luxury of securing his investment in [another venture] through the mechanism of the GSA... and thereby defeating the legitimate interests of creditors": para 47.

[80] The Receiver submits that the Finance Advance was not made for the purpose of Lexin or 0989's ongoing operating expenses, or for their benefit at all, rather it was made for the sole purpose of enabling 0989 to issue partnership distributions which were ultimately return to Bancorp, MFC Austria and M Financial the originator of the funds, on the same day they were received.

[81] As previously noted, Finance claims that the purpose underlying the Finance Advance was to "recapitalize Lexin and 0989 with some additional leverage" and "reduce Lexin and 0989's costs of capital. This assertions is inconsistent with certain of Finance's other evidence, including the fact that at the time the Finance Advance was made, neither Lexin or 0989 had any debt. I accept that the substantive reality of the transactions was that, through the Finance Advance, Bancorp and its subsidiaries, including Finance, made equity distributions to themselves with their own funds, and secured such distributions against the assets of Lexin and 0989, both of whom previously had no debt.

[82] Mr. Morrow's evidence is that the purpose of the Finance Advance was to "facilitate a potential sale of the company at some point in the future through a deal that could include as part of the consideration an acquisitions of debt as opposed to a purely cash sale." Finance submits that this is evidence of a legitimate business purpose, and a benefit to 0989 and Lexin. As noted previously, a cash and debt sale could also be accomplished thought negotiation at the time of sale, and the hypothetical submitted through on Finances behalf does not support this theory.

[83] Finance also suggests that a benefit accrued to 0989 and Lexin in that MFC Austria used the proceeds of the MFC Austria loans to satisfy Lexin's pre-acquisition secured debt. However, 0989 and Lexin have no liability for that debt.

[84] Finance submits that, by retiring the debt, it freed up Lexin's cash flow but it is clear that in 2013 and 2014, cash flow was insufficient to warrant distributions sufficient to cover the Austrian loan. The Finance Advance occurred two and a half years after the alleged benefit, after

TAB 17

This is Exhibit "D" referred to in the Affidavit of Anthony Szeto, sworn April 28, 2021

Commissioner for Taking Affidavits (or as may be)

SAPNA THAKKER

YG LIMITED PARTNERSHIP

SUBSCRIPTION FORM, POWER OF ATTORNEY AND ACKNOWLEDGEMENT

TO: YG LIMITED PARTNERSHIP, Toronto, Ontario

AND TO: 9615334 CANADA INC. (the "**General Partner**")

1. Subscription

1.1 The undersigned (the "**Subscriber**") hereby subscribes for 2,000 Class A Preferred Units (the "**Units**") in YG Limited Partnership (the "**Partnership**") pursuant to the amended and restated limited partnership agreement dated July 31, 2017 (the "**Limited Partnership Agreement**") in respect of the Partnership.

1.2 All capitalized terms used herein, unless otherwise defined, have the meanings given to them in the Limited Partnership Agreement.

1.3 The Subscriber hereby acknowledges receipt of a copy of the Limited Partnership Agreement and confirms that it has thoroughly read its contents and understands the nature of the proposed investment. The Subscriber acknowledges that the Units may not be transferred except in accordance with the provisions of the Limited Partnership Agreement.

1.4 The Subscriber agrees to pay the subscription price of $2,000,000 and tenders herewith a certified cheque or bank draft in the amount of $2,000,000 payable to the Partnership or, at the request of the General Partner, agrees to wire transfer the subscription price to the Partnership or to whomever the Partnership directs.

1.5 This subscription may be accepted in whole or in part and the Subscriber acknowledges that participation in the Partnership is subject to acceptance of this subscription by the General Partner and to certain other considerations set forth in the Limited Partnership Agreement.

1.6 It is understood and agreed that this subscription and all funds enclosed herewith or wire transferred in accordance herewith shall be returned to the Subscriber without interest or deduction at the address indicated below if this subscription is not accepted by the General Partner.

1.7 The parties to this Subscription Agreement confirm that, for the purposes of section 4.2 of the Limited Partnership Agreement, the date on which the Capital Contribution (as defined in the Limited Partnership Agreement) referred to in section 1.4 above was made by the Subscriber to the Partnership was July 5, 2017.

2. Covenants, Representations and Warranties

2.1 The Subscriber hereby represents and warrants that:

(a) the Subscriber is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada);

(b) the Subscriber is a resident of Canada;

(c) the Subscriber is not a non-Canadian for the purposes of the *Investment Canada Act*;

Overview of Cresford

Cresford Developments (Cresford) is a group of private companies and partnerships wholly owned by Daniel C. Casey and his family trust.

In business for over 40 years, under the leadership of Mr. Casey and his talented Executive Management Team, Cresford has completed over 60 residential developments and over 20,000 residences.

With a proven track record, Cresford relies on its understanding of the Toronto real estate market and in-depth knowledge to transform each location through thoughtful decisions on architecture, product and quality. The ability to execute a winning sales formula and the capability to control its own construction management have solidified the company's success. Cresford's commitment to deliver on its promise to the consumer has helped define Cresford as a mid market luxury brand in the Downtown Toronto condominium market.

Cresford has a long-standing and solid relationship with all levels of government in Canada including municipal, provincial and federal. It is proud to have met the exacting governance standards and rigorous due diligence requirements of various public institutions and to have been selected by them to partner on real estate transactions that strengthen Toronto communities. Most recent partners include The Children's Aid Society, YMCA, Canada Post Corporation, British Columbia Investment Management Corporation and Ryerson University.

Mr. Casey's business experience extends beyond his primary focus on residential development. He is also a founding shareholder and board member of Onex Corporation, one of the largest publicly traded private equity investment firms in Canada.

Cresford's successful history has led to alliances with top professionals, consultants and business owners to create the very best residential communities.

Distribution of Invested Capital and Return

Revenue proceeds (after payment of project expenses) will be distributed at the end of the project in the following priority:

- First, repayment of all external lenders;
- Second, return of invested capital to the investor;
- Third, distribute the agreed upon return on investment to the investor; and
- Fourth, distribution to Cresford.

YSL
YONGE STREET LIVING RESIDENCES

Cresford

TAB 18

This is Exhibit "C" referred to in the Affidavit of Lue (Eric) Li sworn by Lue (Eric) Li at the City of Woodbridge, in the Province of Ontario, before me in the City of Toronto, in the Province of Ontario, on June 9, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits (or as may be)

ALEXANDER SOUTTER

20 - YG Limited Partnership
Trial Balance for Sep, 2020
Closing Period Balances

Account	Description	Closing Bal Debit	Closing Bal Credit
1100	TD Bank 1992-5289372	0.00	-27,728.98
1103	2517516 Ont Ltd (TD 5248938)	426.28	0.00
1104	TD 5564658 YSL Residences Inc.	59,386.70	0.00
1200	Term Deposit - L/C #1	0.43	0.00
2110	Receivable from Prop Mgmt	775,978.17	0.00
2111	Owner Contrubution	1,435,973.00	0.00
2112	Owner Draw	0.00	-2,194,601.68
2300	Bennett Jones - Trust Acct Phase I	90,696,606.66	0.00
2301	Bennett Jones - Trust Acct Phase II	39,093,975.43	0.00
2303	Bennett Jones - Dep Release Ph I	0.00	-75,262,782.23
2304	Bennett Jones - Dep Release Ph II	0.00	-32,634,937.46
2307	Meyer Wassenaar & Banach In Trust	1,000.00	0.00
2308	Bogart Robertson & Chu - In Trust	1,030.53	0.00
2310	Letter of Credit	4,290,236.10	0.00
3810	Land	163,226,822.60	0.00
3840	Construction Costs	26,840,101.21	0.00
3850	Other Construction Costs	2,164,335.49	0.00
3860	Design and Consultant Costs	10,337,293.62	0.00
3870	Legal and Administrative Costs	16,783,725.16	0.00
3880	Marketing and Sales Costs	24,708,611.33	0.00
3890	Finance Costs	52,324,627.59	0.00
3990	Items Excluded From Draw	15,822,325.39	0.00
4000	Deposit Liablilty	0.00	-129,790,564.59
4100	Accounts Payable	0.00	-24,894,227.86
4110	Holdback Payable	0.00	-1,178,857.80
4115	Loan Payable - 2576725 Ontario	0.00	-20,000,000.00
4200	HST-ITC Receivable/Payable	4,432,595.45	0.00
4201	HST-ITC Refund	0.00	-4,453,317.04
4505	Timbercreek Mortgage - $100M	0.00	-93,500,000.00
4506	Timbercreek $100M Int Reserve $6.5M	0.00	-6,500,000.00
4510	BCMP - $7.35M Mortgage	0.00	-7,350,000.00
5200	Cresford Rosedale Developments Inc.	0.00	-32,271,885.76
5201	EDRP	0.00	-5,810,053.50
6100	bcIMC - Class A Units (Old)	0.00	-0.28
6102	8451761 Canada-Class A Units (New)	0.00	-2,000,000.00

6103	2504670 Ontario-Class A Units (New)	0.00	-2,000,000.00
6104	YongeSL Invest-Class A Units (New)	0.00	-7,100,000.00
6105	Chi Long Inc - Class A Units (New)	0.00	-700,000.00
6106	2124093 Ontario-Class A Units (New)	0.00	-500,000.00
6107	61 Invest-Class A Units (New)	0.00	-1,000,000.00
6108	Tai He-Class A Units (New)	0.00	-1,000,000.00
6111	E&B Investment Corp -Class A Units	0.00	-500,000.00
6112	Cresford (Yonge) LP - Class B Units		-15,000,000.00
6140	Redemption Premium	12,673,906.04	0.00
	Total Assets & Liabilities	465,668,957.18	-465,668,957.18

20 - YG Limited Partnership
Detailed G/L History from Jan 1, 2001 to Sep 30, 2020

Date	JR	Audit#	Reference	Description	Amount			
5200-00 Cresford Rosedale Developments Inc.								
16-Nov-15	GJ	GJ0198	BK Nov16	top D&L for Land YG	-100,000.00		-100,000.00	
9-Dec-15	GJ	GJ0203	Rev GJ0199	OTB Capital Inc	-150,000.00			
11-Jan-16	GJ	GJ0200	42370	OTB-Dep Loan Int Dec9-Jan11	-167,671.23			
19-Jan-16	GJ	GJ0201	BK Jan19	OTB Commitment $15M Dep Loan	-85,000.00			
19-Jan-16	GJ	GJ0202	BK Jan19	OTB Interest Nov16,15 DepLoan	-39,452.00			
19-Feb-16	GJ	GJ0204	42767	OTB Interest	-220,068.49			
19-Feb-16	GJ	GJ0177	42401	OTB Interest	-22,068.49			
19-Feb-16	GJ	GJ0204	Rev 0177	OTB Interest	22,068.49			
19-Mar-16	GJ	GJ0178	1-Mar-16	OTB Interest	-225,000.00			
19-Mar-16	GJ	GJ0179	1-Apr-16	OTB Interest	-225,000.00			-1,112,191.72
19-May-16	GJ	GJ0180	1-May-16	OTB Interest	-225,000.00			
19-Jun-16	GJ	GJ0181	1-Jun-16	OTB Interest	-225,000.00			-450,000.00
30-Jun-16	GJ	GJ0029	Mar11-2016	Maria Athanasoulis	1,272.51			
30-Jun-16	GJ	GJ0029	FEB09-2016	Maria Athanasoulis	1,484.78			
30-Jun-16	GJ	GJ0030	531620	Aird & Berlis	1,808.00			
30-Jun-16	GJ	GJ0031		McGlauclin & Associates	4,445.00		9,010.29	
5-Jul-16	GJ	GJ0034	Tsf Jul05	Fr Cresford Developments Inc	-189,000.00			
5-Jul-16	GJ	GJ0034	Tsf Jul05	Fr Cresford Developments Inc	-9,010.29	-198,010.29		
19-Jul-16	GJ	GJ0182	1-Jul-16	OTB Interest	-225,000.00			-225,000.00
31-Jul-16	GJ	GJ0056	July16Bank	Transfer to Cresford	189,000.00	189,000.00		
19-Aug-16	GJ	GJ0183	1-Aug-16	OTB Interest	-225,000.00			
19-Sep-16	GJ	GJ0184	1-Sep-16	OTB Interest	-225,000.00			
19-Oct-16	GJ	GJ0185	1-Oct-16	OTB Interest	-225,000.00			-675,000.00
1-Nov-16	GJ	GJ0220	Tsf YG	From Cresford Bank Charge	-500.00	-500.00		
19-Nov-16	GJ	GJ0186	1-Nov-16	OTB Interest	-225,000.00			
19-Dec-16	GJ	GJ0187	1-Dec-16	OTB Interest	-225,000.00			
19-Jan-17	GJ	GJ0188	1-Jan-17	OTB Interest	-225,000.00			
19-Jan-17	GJ	GJ0236	1-Jan-18	OTB Interest	-225,000.00			

20 - YG Limited Partnership
Detailed G/L History from Jan 1, 2001 to Sep 30, 2020

Date	JR	Audit#	Reference	Description	Amount			
5200-00 Cresford Rosedale Developments Inc.								
19-Jan-17	GJ	GJ0237	Rev GJ236	OTB Interest	225,000.00			
19-Feb-17	GJ	GJ0189	1-Feb-17	OTB Interest	-225,000.00			-900,000.00
28-Feb-17	GJ	GJ0095	FEB17BANK	Fund Transfer	-275,000.00			
28-Feb-17	GJ	GJ0095	FEB17BANK	Fund Transfer	-200,000.00	-475,000.00		
19-Mar-17	GJ	GJ0190	1-Mar-17	OTB Interest	-225,000.00			-225,000.00
28-Mar-17	GJ	GJ0222	Mar13-2017	Ted Dowbiggin	-6,348.15		-6,348.15	
31-Mar-17	GJ	GJ0097	MAR17BANK	Transfer to Cresford	475,000.00	475,000.00		
15-Apr-17	GJ	GJ0221	Insurance	375 Ayg to Arthur J.G	-4,370.76		-4,370.76	
19-Apr-17	GJ	GJ0191	1-Apr-17	OTB Interest	-225,000.00			
19-May-17	GJ	GJ0192	1-May-17	OTB Interest	-225,000.00			
19-Jun-17	GJ	GJ0193	1-Jun-17	OTB Interest	-225,000.00			
19-Jul-17	GJ	GJ0194	1-Jul-17	OTB Interest	-225,000.00			-900,000.00
1-Aug-17	GJ	GJ0138	Tsf Aug02	From Cresford	-280,000.00			
1-Aug-17	GJ	GJ0138	Tsf Aug04	From Cresford	-8,000.00			
1-Aug-17	GJ	GJ0138	Tsf Aug09	To Cresford	288,000.00	0.00		
19-Aug-17	GJ	GJ0195	1-Aug-17	OTB Interest	-225,000.00			-225,000.00
23-Aug-17	GJ	GJ0145	Tsf Aug23	To Cresford	875,000.00			
7-Sep-17	GJ	GJ0148	Tsf Sep07	Transfer	100,000.00			
7-Sep-17	GJ	GJ0148	Tsf Sep11	Transfer	1,300,000.00	2,275,000.00		
19-Sep-17	GJ	GJ0196	1-Sep-17	OTB Interest	-225,000.00			-225,000.00
20-Sep-17	GJ	GJ0152	Tsf Sep20	Transfer	-963,500.00			
20-Sep-17	GJ	GJ0152	Tsf Sep20	Transfer	-11,500.00			
1-Oct-17	GJ	GJ0166	Rev	Transfer Fee	158,200.00			
5-Oct-17	GJ	GJ0158	Tsf Oct05	Tranfer	-500,000.00			
5-Oct-17	GJ	GJ0158	Tsf Oct05	Transfer	500,000.00			
5-Oct-17	GJ	GJ0158	Tsf Oct05	Transfer	500,000.00			
5-Oct-17	GJ	GJ0158	Tsf Oct05	Transfer	900,000.00	583,200.00		
19-Oct-17	GJ	GJ0197	1-Oct-17	OTB Interest	-225,000.00			-225,000.00

20 - YG Limited Partnership
Detailed G/L History from Jan 1, 2001 to Sep 30, 2020

Date	JR	Audit#	Reference	Description	Amount			
5200-00 Cresford Rosedale Developments Inc.								
31-Oct-17	GJ	GJ0223	I/C Cresf	True up the Project cost bal	3,482.69		3,482.69	
31-Oct-17	GJ	GJ0162	Tsf Oct31	Trasnfer	550,000.00	550,000.00		
19-Nov-17	GJ	GJ0234	1-Nov-17	OTB Interest	-225,000.00			-225,000.00
30-Nov-17	GJ	GJ0207	Tsf Nov30	Transfer	182,599.04	182,599.04		
4-Dec-17	GJ	GJ0271	YG-Dec2017	OTB Capital Int	-182,599.04			
19-Dec-17	GJ	GJ0235	1-Dec-17	OTB Interest	-225,000.00			-407,599.04
20-Dec-17	GJ	GJ0212	Tsf Dec20	Transfer	60,000.00			
20-Dec-17	GJ	GJ0212	Tsf Dec20	Transfer	110,000.00			
21-Dec-17	GJ	GJ0213	Tsf Dec21	Transfer	-170,000.00	0.00		
31-Dec-17				Cresford (Yonge) LP - Class B units	15,000,000.00			
4-Jan-18	GJ	GJ0273	YG-Jan2018	OTB Capital Int	-201,958.33			
19-Jan-18	GJ	GJ0238	1-Jan-18	OTB Interest	-225,000.00			-426,958.33
25-Jan-18	GJ	GJ0226	Tsf Jan25	Transfer	-2,200,000.00	-2,200,000.00		
4-Feb-18	GJ	GJ0274	YG-Feb2018	OTB Capital Int	-201,958.33			-201,958.33
13-Feb-18	GJ	GJ0240	Tsf Feb13	To Cresford OTB Int	225,000.00	225,000.00		
19-Feb-18	GJ	GJ0239	1-Feb-18	OTB Interest	-225,000.00			-225,000.00
21-Feb-18	GJ	GJ0250	Cresf BK	YG P-Tax credit fr Vendor	-80,000.00			
21-Feb-18	GJ	GJ0250	Cresf BK	YG P-Tax Dec2016 Refund	114,455.96			
21-Feb-18	GJ	GJ0250	Cresf BK	YG P-Tax Sep2017 Refund	149,428.23		183,884.19	
22-Feb-18	GJ	GJ0241	Tsf Feb22	To Cresford Fund	1,400,000.00			
27-Feb-18	GJ	GJ0242	Tsf Feb27	Transfer	-42,000.00			
1-Mar-18	GJ	GJ0260	Tsf Mar01	Transfer	-8,000.00	1,350,000.00		
4-Mar-18	GJ	GJ0275	YG-Mar2018	OTB Capital Int	-201,958.33			-201,958.33
28-Mar-18	GJ	GJ0264	Tsf Mar28	Transfer	50,000.00			
28-Mar-18	GJ	GJ0264	Tsf Mar28	Transfer	50,000.00			
28-Mar-18	GJ	GJ0264	Tsf Mar28	Transfer	201,958.00			
28-Mar-18	GJ	GJ0264	Tsf Mar28	Transfer	1,000,000.00			
4-Apr-18	GJ	GJ0299	Tsf Apr04	Transfer	-550,000.00			

20 - YG Limited Partnership
Detailed G/L History from Jan 1, 2001 to Sep 30, 2020

Date	JR	Audit#	Reference	Description	Amount			
5200-00 Cresford Rosedale Developments Inc.								
4-Apr-18	GJ	GJ0299	Tsf Apr04	Transfer	-400,000.00	351,958.00		
4-Apr-18	GJ	GJ0276	YG-Apr2018	OTB Capital Int	-201,958.33			-201,958.33
5-Apr-18	GJ	GJ0300	Tsf Apr05	Transfer	-450,000.00			
5-Apr-18	GJ	GJ0300	Tsf Apr05	Transfer	400,000.00	-50,000.00		
19-Apr-18	GJ	GJ0305	43191	OTB Interest	-225,000.00			-225,000.00
27-Apr-18	GJ	GJ0301	Tsf Apr27	Transfer	-1,400,000.00			
27-Apr-18	GJ	GJ0301	Tsf Apr27	Transfer	-100,000.00			
27-Apr-18	GJ	GJ0301	Tsf Apr27	Trasnfer	-100,000.00			
27-Apr-18	GJ	GJ0301	Tsf Apr27	Transfer	-70,000.00			
27-Apr-18	GJ	GJ0301	Tsf Apr27	Transfer	50,000.00			
27-Apr-18	GJ	GJ0301	Tsf Apr27	Transfer	426,958.00			
27-Apr-18	GJ	GJ0301	Tsf Apr27	Transfer	1,000,000.00	-193,042.00		
4-May-18	GJ	GJ0277	YG-May2018	OTB Capital Int	-201,958.33			
19-May-18	GJ	GJ0306	43221	OTB Interest	-225,000.00			-426,958.33
22-May-18	GJ	GJ0316	Tsf May22	Transfer	-20,000.00	-20,000.00		
25-May-18	GJ	GJ0322	BK May09	OTB Int Cresf IC EDRP	-225,000.00			
25-May-18	GJ	GJ0322	BK May09	OTB Int Cresf IC EDRP	225,000.00			
25-May-18	GJ	GJ0324	BK May09	OT Interest Payment in bank	225,000.00			
4-Jun-18	GJ	GJ0278	YG-JUN2018	OTB Capital Int	-201,958.33			23,041.67
4-Jun-18	GJ	GJ0340	Tsf Jun04	Transfer	-3,200.00			
5-Jun-18	GJ	GJ0341	Tsf Jun05	Trasnfer	-500.00	-3,700.00		
19-Jun-18	GJ	GJ0307	43252	OTB Interest	-225,000.00			-225,000.00
29-Jun-18	GJ	GJ0345	Tsf Jun29	From Cresford	-442,000.00	-442,000.00		
3-Jul-18	GJ	GJ0353	Jul03-2018	OTB Loan $490K commitment Fee	-3,220.50		-3,220.50	
4-Jul-18	GJ	GJ0362	YG-JUL2018	OTB Capital Int	-201,958.33			
19-Jul-18	GJ	GJ0361	Jul-18	OTB Interest	-225,000.00			
20-Jul-18	GJ	GJ0383	Reclass	OTB Capital Inc.	201,958.33			-225,000.00
31-Jul-18	GJ	GJ0524	I/C Cresf	Paid off Dep Loan	-15,096,604.00			

20 - YG Limited Partnership
Detailed G/L History from Jan 1, 2001 to Sep 30, 2020

Date	JR	Audit#	Reference	Description	Amount		
5200-00 Cresford Rosedale Developments Inc.							
31-Jul-18	GJ	GJ0406	Paid off	Cressford dep $490K for VTB ex	-6,641.00		
31-Jul-18	GJ	GJ0355	Tsf Jul09	Transfer	-20,000.00		
31-Jul-18	GJ	GJ0355	Tsf Jul09	Transfer	-10,000.00		
1-Aug-18	GJ	GJ0368	Tsf Aug01	Transfer	-500,000.00		
1-Aug-18	GJ	GJ0368	Tsf Aug01	Transfer	-256,000.00		
1-Aug-18	GJ	GJ0368	Tsf Aug01	Transfer	500,000.00		
2-Aug-18	GJ	GJ0369	Tsf Aug02	Transfer	-120,000.00		
2-Aug-18	GJ	GJ0369	Tsf Aug02	Transfer	-1,000.00		
2-Aug-18	GJ	GJ0369	Tsf Aug02	Transfer	-500.00	-15,510,745.00	
4-Aug-18	GJ	GJ0384	YG-AUG2018	OTB Capital Int	-201,958.33		-201,958.33
7-Aug-18	GJ	GJ0370	Tsf Aug07	Transfer	-202,000.00		
9-Aug-18	GJ	GJ0371	Tsf Aug09	Transfer	-45,000.00		
17-Aug-18	GJ	GJ0372	Tsf Aug17	Transfer	-160,000.00		
17-Aug-18	GJ	GJ0372	Tsf Aug17	Transfer	-32,000.00		
23-Aug-18	GJ	GJ0373	Tsf Aug23	From Cresford	-70,000.00		
28-Aug-18	GJ	GJ0374	Tsf Aug28	Transfer	-1,000,000.00		
31-Aug-18	GJ	GJ0376	Tsf Aug31	Transfer	-570,833.00	-2,079,833.00	
4-Sep-18	GJ	GJ0385	YG-SEP2018	OTB Capital Int	-201,958.33		-201,958.33
4-Sep-18	GJ	GJ0378	Tsf Sep04	Transfer	-25,000.00		
7-Sep-18	GJ	GJ0392	Tsf Sep07	Transfer	-10,000.00		
11-Sep-18	GJ	GJ0393	Tsf Sep11	Transfer	-5,000.00		
24-Sep-18	GJ	GJ0412	Tsf Sep26	Transfer	-2,552,833.00		
24-Sep-18	GJ	GJ0412	Tsf Sep24	Transfer	-40,000.00		
3-Oct-18	GJ	GJ0421	Tsf Oct05	Transfer	-70,000.00	-2,702,833.00	
4-Oct-18	GJ	GJ0437	YG-Oct2018	OTB Capital Int	-201,958.33		-201,958.33
4-Oct-18	GJ	GJ0419	Tsf Oct04	Transfer	201,958.00		
4-Oct-18	GJ	GJ0419	Tsf Oct04	Transfer	218,522.48		
5-Oct-18	GJ	GJ0420	Tsf Oct05	Transfer	-218,522.48		

20 - YG Limited Partnership
Detailed G/L History from Jan 1, 2001 to Sep 30, 2020

Date	JR	Audit#	Reference	Description	Amount			
5200-00 Cresford Rosedale Developments Inc.								
9-Oct-18	GJ	GJ0422	Tsf Oct09	Transfer	-500,000.00			
11-Oct-18	GJ	GJ0423	Tsf Oct11	Transfer	-500,000.00			
30-Oct-18	GJ	GJ0429	Tsf Oct30	Transfer	-500,000.00			
31-Oct-18	GJ	GJ0432	Tsf Oct31	Transfer	-500,000.00	-1,798,042.00		
31-Oct-18	GJ	GJ0673	I/C Cresf	YG Insurance 2017	-94,971.00			
31-Oct-18	GJ	GJ0676	I/C EDRP	YG Insurance 2017	-94,971.00			
31-Oct-18	GJ	GJ0676	I/C EDRP	YG Insurance 2016	-62,947.61			
31-Oct-18	GJ	GJ0673	I/C Cresf	YG Insurance 2016	-61,608.76			
31-Oct-18	GJ	GJ0674	Rev GJ0673	YG Insurance 2016	61,608.76			
31-Oct-18	GJ	GJ0674	Rev GJ0673	YG Insurance 2017	94,971.00		-157,918.61	
4-Nov-18	GJ	GJ0438	YG-Nov2018	OTB Capital Int	-201,958.33			-201,958.33
30-Nov-18	GJ	GJ0445	Tsf Nov30	From Cresford	-1,600,000.00	-1,600,000.00		
4-Dec-18	GJ	GJ0439	YG-DEC2018	OTB Capital Int	-201,958.33			
4-Jan-19	GJ	GJ0440	YG-Jan2019	OTB Capital Int	-201,958.33			-403,916.66
21-Jan-19	GJ	GJ0486	Tsf Jan21	Fund to Cresford	201,958.00			
21-Jan-19	GJ	GJ0486	Tsf Jan22	Fund to Cresford	700,000.00	901,958.00		
4-Feb-19	GJ	GJ0441	YG-Feb2019	OTB Capital Int	-201,958.33			-201,958.33
13-Feb-19	GJ	GJ0503	BK Feb27	YG Legal Retainer I/C Cresf	-16,950.00			
13-Feb-19	GJ	GJ0503	I/C Cresf	Ryerson Planning Alumi Associ	-1,200.00		-18,150.00	
20-Feb-19	GJ	GJ0499	Tsf Feb20	To EDRP>Cresf Loan Int payment	201,958.00			
22-Feb-19	GJ	GJ0504	BK Feb20	Otera Capial commit Fee	-250,000.00			
22-Feb-19	GJ	GJ0500	BK Feb20	Otera Capital comit Fee	250,000.00	201,958.00		
19-Mar-19	GJ	GJ0505	YG-MAR19	OTB Capital Int	-225,000.00			
19-Mar-19	GJ	GJ0697	YG-MAR19	OTB Capital Int	-201,958.33			
19-Mar-19	GJ	GJ0695	YG-MAR19	OTB Capital Int	-201,958.00			
19-Mar-19	GJ	GJ0697	YG-MAR19	OTB Capital Int	201,958.00			
19-Mar-19	GJ	GJ0695	YG-MAR19	OTB Capital Int	225,000.00			-201,958.33
27-Mar-19	GJ	GJ0659	Tsf Mar27	To Cresford trasnfer	201,958.00	201,958.00		

20 - YG Limited Partnership
Detailed G/L History from Jan 1, 2001 to Sep 30, 2020

Date	JR	Audit#	Reference	Description	Amount		
5200-00 Cresford Rosedale Developments Inc.							
1-Apr-19	GJ	GJ0678	I/C Cresf	YG Ins 2018 Jan-Oct	-76,599.44		
1-Apr-19	GJ	GJ0678	I/C Cresf	YG Ins 2018 Oct-Dec	-15,319.89	-91,919.33	
4-Apr-19	GJ	GJ0696	YG-Apr2019	OTB Capital Int	-201,958.33		-201,958.33
17-Apr-19	GJ	GJ0692	Tsf Apr17	From Cresford	-1,000,000.00		
30-Apr-19	GJ	GJ0777	OTB-Loan	OTB-$13.1M Loan	-13,100,000.00		
14-May-19	GJ	GJ0721	Tsf May14	To Cresford	1,000,000.00		
17-May-19	GJ	GJ0722	Tsf May17	To Cresf to CASA3 sale office	600,000.00		
30-Jun-19	GJ	GJ0758	BK Jun04	IC Loan $110 Vox & $290 Casa3	400,000.00		
31-Aug-19	GJ	GJ0789	BankAug'19	Transfer to CresfordRosedale	350,000.00		
31-Oct-19	GJ	GJ0807	BankOct'19	Transfer to Cresford Rosedale	30,000.00		
31-Oct-19	GJ	GJ0802	BK Oct07	Transfer Cresford - insurance	91,919.33		
6-Nov-19	GJ	GJ0824	BankNov'19	Transfer to Vox - I/C Cresford	40,000.00		
30-Nov-19	GJ	GJ0890	BK Nov08	Reclass to I/C 50 Charles	-200,000.00		
30-Nov-19	GJ	GJ0812	Bk Nov08	Transferto CresfordRosedale	200,000.00		
30-Nov-19	GJ	GJ0903	GJ0890	Reverse GJ0890 > I/C Cresford	200,000.00		
31-Dec-19	GJ	GJ0819	Bk Dec23	Transfer to CresfordRosedale	-450,000.00		
31-Dec-19	GJ	GJ0819	Bk Dec23	Transfer to CresfordRosedale	-75,000.00		
31-Dec-19	GJ	GJ0821	Bk Dec23	Transfer CresfordRosedale	75,000.00		
31-Jan-20	GJ	GJ0828	BK Jan02	Transfer from CresfordRosedal	-650,000.00		
31-Jan-20	GJ	GJ0828	BK Jan03	Transfer from CresfordRosedale	-500,000.00		
31-Jan-20	GJ	GJ0828	BK Jan23	Transfer from CresfordRosedale	-30,000.00		
29-Feb-20	GJ	GJ0834	BK Feb03	Transfer from CresfordRosedale	-820,000.00		
29-Feb-20	GJ	GJ0834	BK Feb05	Transfer from CresfordRosedale	-120,000.00		
29-Feb-20	GJ	GJ0834	BK Feb19	Transfer - loan Clover Decor	9,700.00		
29-Feb-20	GJ	GJ0834	BK Feb18	Transfer to CresfordRosedale	36,000.00		
29-Feb-20	GJ	GJ0834	BK Feb06	Transfer to CresfordRosedale	120,000.00		
31-Mar-20	GJ	GJ0836	Bk Mar02	Transfer to CresfordRosedale	-400,000.00		
30-Apr-20	GJ	GJ0846	Bk Apr30	Transfer #500 5233140	-600,000.00		

20 - YG Limited Partnership
Detailed G/L History from Jan 1, 2001 to Sep 30, 2020

Date	JR Audit#	Reference	Description	Amount			
5200-00 Cresford Rosedale Developments Inc.							
30-Apr-20	GJ GJ0845	Bk Apr21	Transfer from CresfordRosedale	-60,000.00			
30-Apr-20	GJ GJ0845	Bk Apr09	Transfer from CresfordRosedale	-12,000.00			
30-Apr-20	GJ GJ0846	Bk Apr01	Transfer #500 5233140	-450,000.00			
30-Apr-20	GJ GJ0845	Bk Apr13	Transfer from CrsfordRosedale	-10,000.00			
30-Apr-20	GJ GJ0845	Bk Apr02	Transfer from CresfordRosedale	-5,000.00			
31-May-20	GJ GJ0858	BK May20	Transfer to CresfordRosedale	285.05			
31-May-20	GJ GJ0858	BK May20	Transfer to CresfordRosedale	10,000.00			
31-May-20	GJ GJ0858	BK May15	Transfer to CresfordRosedale	30,000.00			
31-May-20	GJ GJ0858	BK May14	Transfer #500 5233140	300,000.00			
30-Jun-20	GJ GJ0864	BK Jun10	Transfer #500 5233140	-600,000.00			
30-Jun-20	GJ GJ0864	BK Jun30	Transfer from CresfordRosedale	-15,000.00			
30-Jun-20	GJ GJ0864	BK Jun11	Transfer to CresfordRosedale	15,000.00			
30-Jun-20	GJ GJ0864	BK Jun01	Transfer to CresfordRosedale	60,000.00			
30-Jun-20	GJ GJ0920	BK Jun11	Transfer to CresfordRosedale	7,000.00			
30-Jun-20	GJ GJ0920	BK Jun03	Transfer to CresfordRosedale	10,000.00			
31-Jul-20	GJ GJ0869	BK Jul02	Transfer from CresfordRosedale	-1,210,000.00	-16,722,095.62		
31-Jul-20	PJ PJ0869	WIRE-JUL24	Thornton Grout Finnigan LLP	-40,000.00		-40,000.00	
31-Jul-20	GJ GJ0869	BK Jul24	Transfer from CresfordRosedale	-30,000.00			
31-Jul-20	GJ GJ0869	BK Jul24	Transfer #500 5233140	25,000.00			
31-Aug-20	GJ GJ0907	BK Aug05	TD Bank 1992-5289372	20,000.00			
17-Sep-20	GJ GJ0871	BK Sep01	Transfer from #5001037	-600,000.00			
30-Sep-20	GJ GJ0908	BK Sep01	Transfer from 500-5001037	-4,000.00	-589,000.00		

				-32,271,885.76	-37,097,169.87	-225,550.18	-9,949,165.71
					-47,271,885.76		
			Less: Allocation to Class B units		15,000,000.00		
					-32,271,885.76		

20 - YG Limited Partnership
Detailed G/L History from Jan 1, 2001 to Sep 30, 2020

Date	JR Audit#	Reference	Description	Amount
5200-00 Cresford Rosedale Developments Inc.				

OTB interest paid by CRD
Project costs
Cash transfers to/from CRD

TAB 19

Court File No. CV-21-00661386-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

2504670 CANADA INC., 8451761 CANADA INC.
and CHI LONG INC.

Applicant

- and -

CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC,
9615334 CANADA INC., YG LIMITED PARTNERSHIP and
DANIEL CASEY

Respondent

--- This is the Cross-examination of DAVID MANN, upon his affidavit sworn June 4, 2021 taken via Neesons, A Veritext Company's virtual platform, on Friday, the 11th day of June, 2021.

REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

here. I just want to go through a couple of examples and make sure I have this right.

I'm looking at the third line here. The audit number is GJ0200; do you see that okay?

A. Yup.

91 Q. So this is a payment by Cresford Rosedale on behalf of the partnership?

A. Yes.

92 Q. And it's to OTB?

A. Yes.

93 Q. It's on account of the interest owing under the YSL deposit loan, yes?

A. Yes. It's probably the first interest payment.

94 Q. Got it. And it's $167,000 -- sorry, $167,671.23?

A. Correct.

95 Q. And on the next page, this time the code GJ0148. This is a payment by the partnership, right?

A. Yes.

96 Q. And the recipient isn't specified, so it's someone in the Cresford Group?

A. Yes.

97 Q. So from time to time, payments

were made out of the partnership's accounts?

A. Yes, there was some repayments along the way.

98 Q. Right. And they varied?

A. Yup.

99 Q. And they were either made to Cresford Rosedale or another entity in the Cresford Group?

A. Yes.

100 Q. And they were credited towards Cresford Rosedale?

A. Yes.

101 Q. Okay. I'm going to go to page 48 here. And at GJ0777, we see the buy-out loan, the $13.1 million loan, correct?

A. Yes.

102 Q. That's credited towards Cresford Rosedale?

A. Yes.

103 Q. We see the next row here, GJ0721, there's a $1 million transfer, correct?

A. Yes.

104 Q. And that's from the partnership to a Cresford entity?

A. Yes.

105 Q. And the next row, GJ0722, that's a $600,000 transfer?

A. Yes.

106 Q. And that's to the Casa III sales office?

A. Yeah, that's what it says. I don't -- I didn't do these descriptions.

107 Q. Okay.

A. That's what it says.

108 Q. But it's a transfer to a Cresford entity?

A. Yes.

109 Q. And the next row, $400,000, that's GJ0758. That's another transfer to a Cresford entity, correct?

A. Yes.

110 Q. So if I understand this document correctly, when you sum the interest payments, the project costs and the net transfers in and out of the partnership from Cresford entities, you arrive at just over $47 million, yes?

A. (Witness reviews document).

111 Q. Sorry, did you hear that question?

A. Didn't I answer "yes"?

112 Q. I'm sorry, maybe we spoke over

each other or I didn't hear you. But I'll take your answer as "yes," okay.

Then that total is reduced by $15 million?

A. Yes.

113 Q. And that's allocated to the Class B units held by Cresford Yonge?

A. Yes.

114 Q. And if we go to page 44, we see that allocation here, correct?

A. Yes.

115 Q. So there's the $15 million, the Cresford Rosedale claim, that's earmarked as being on account of Cresford Yonge, right?

A. Yes. Those are the Class B units.

MR. SOUTTER: Why don't we go off the record? I'd like to take a short break.

-- RECESS TAKEN AT 9:27 A.M. --

-- UPON RESUMING AT 9:35 A.M. --

MR. SOUTTER: Mr. Mann, I don't have any further questions for you so I'm going to turn it over to my friend, Mr. Laubman.

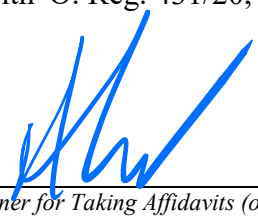
THE WITNESS: Okay.

MR. SOUTTER: Thank you.

MR. LAUBMAN: Can we just hop off the

TAB 20

This is Exhibit "U" referred to in the Affidavit of Lue (Eric) Li sworn by Lue (Eric) Li of the Woodbridge, in the Vaughan, before me at the City of Toronto, in the Province of Ontario, on May 3, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

ALEXANDER SOUTTER

PALIARE ROLAND
BARRISTERS

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File 97727

October 29, 2020

VIA EMAIL **PRIVILEGED & CONFIDENTIAL**

Sapna Thakker
Lax O'Sullivan Lisus Gottlieb LLP
Suite 2750, 145 King St W
Toronto ON M5H 1J8

Dear Ms. Thakker

Re: YG Limited Partnership (the "LP")

I refer to your October 26, 2020 letter.

As you know, the GP strongly rejects your clients' various allegations of impropriety. We have already addressed these allegations and do not intend to do so again.

I also note that Ted Dowbiggin of Cresford met recently with investors representing approximately $10.1 million of the $14.8 million LP units; I understand that these investors are represented by Thornton Grout. I further understand that Mr. Dowbiggin attempted to contact one of your clients for a meeting but that your clients have not been willing to meet. The GP remains happy to meet with your clients at any time.

Our client's responses to your specific questions are as follows:

1. Our position regarding the Empire APS remains as set out in my October 14, 2020 letter.

2. Please see attached.

3. The $29.5 million loan was provided to YG by Cresford (Rosedale) Developments Inc. It is non-interest bearing and has no maturity date. It is subsequent in priority to the LP investments. This loans was required as part of the lenders' equity requirements for the project and, in that regard, was approved by Altus group. The funds were advanced over time and were used for approved project costs including the initial purchase of the land.

4. We attached the June 2020 balance sheet attached. We not understand the request for the books and records associated with the preparation of the balance sheet. There are no cash flow statements prepared for the project.

5. The land at 357A and 357.5 Yonge Street is not part of the YSL condo development. It was purchased to try to prevent other neighbouring developments. This land has a first mortgage of $7.35M with Timbercreek (formerly BCMP). Cresford contributed funds to pay the ongoing interest costs.

6. See response to #5, above.

7. See response to #5, above.

8. With respect to your request for income and cash flow statements, and for "documents supporting the value of the partnership's assets, including the value of the property," there are no such documents. With respect to your request for balance sheets from 2016 to 2020, we have already provided balance sheets for 2019 and 2020. My client is unable to locate any earlier balance sheets.

We trust this fully addresses the questions raised in your letter

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Jeffrey Larry
JL:DR

c. client
D.J. Miller/A. Soutter

TAB 21

Third Report to Court of KSV Restructuring Inc. as Proposal Trustee of YG Limited Partnership and YSL Residences Inc.

June 18, 2021

3. Ms. Athanasoulis voted to reject the Amended Proposal.

4. As indicated by the totals presented in the table above, if Ms. Athanasoulis' claim is accepted for voting purposes, the Amended Proposal would fail. As the other Objected Claims all voted in favour of the Amended Proposal, their treatment would not change the outcome of the Amended Proposal.

5. Copies of the voting register and the minutes of the Meeting are attached as Appendices "M" and "N", respectively.

4.10 Participation of the Sponsor

1. As set out in Section 4.9 of the Report to Creditors, Concord advised the Proposal Trustee that certain of the Companies' creditors, which as of the date of the Report to Creditors were owed approximately $16 million in respect of unsecured or lien claims, had conditionally agreed to assign their claims to the Sponsor or an affiliate of the Sponsor (the "Claim Assignment Agreement"). The Claim Assignment Agreement is subject to Court approval of the Amended Proposal and provides for a payment by the Sponsor to these creditors following Court approval of the Amended Proposal in exchange for the respective creditors:

    a) assigning their Claim to the Sponsor or a Sponsor affiliate; and

    b) agreeing to:

        i. file their Claim as an Affected Claim under the Amended Proposal;

        ii. vote to approve the Amended Proposal; and

        iii. name a representative of the Sponsor as their proxy.

2. The Related Party Claims are not subject to the Claim Assignment Agreement.

3. The Sponsor has advised the Proposal Trustee that as of the date of this Meeting, it had executed Claim Assignment Agreements with 39 creditors representing filed claims allowed for voting purposes of $15.8 million. A schedule listing the creditors and their respective claims is provided as Appendix "O". The Sponsor advised the Proposal Trustee that, as of the Meeting, it had entered into agreements with six other creditors; however, those creditors did not submit votes and therefore the Sponsor considers those agreements to be terminated. Additionally, the Sponsor entered into agreements similar to the Claim Assignment Agreements with the five creditors represented by Naymark that filed claims totalling $3.7 million[4]. The claims of two of those creditors were accepted for voting purposes at $413,000.

4. As a result of the Claim Assignment Agreement, the Sponsor is bearing the risk that the total Proven Claims exceed the Maximum Proposal Claims Amount ($65 million) and therefore that the distributions under the Amended Proposal are less than 58% of Proven Claims.

[4] These claims remain subject to determination by the Proposal Trustee. It is the Proposal Trustee's understanding that the amount payable by the Sponsor is based on the Proven Claim as determined by the Proposal Trustee.

5. Allegations have been made by various parties in these proceedings that to induce creditors to vote to accept the Amended Proposal, Concord negotiated side deals with creditors in addition to the Assignment Agreements. The Proposal Trustee has asked the Sponsor to confirm whether this is the case. The Proposal Trustee has been advised by the Sponsor that no such side deals were entered into.

5.0 Realization in a Bankruptcy/Receivership

5.1 FM Report and Valuation

1. In the First Report, the Proposal Trustee advised the Court that it engaged Finnegan-Marshall Inc. ("FM"), a prominent real estate and development cost consulting firm based in Toronto, to, among other things, prepare a report that opines on:

   a) the sales price for the YSL Project on an as-is basis after assessing the YSL Project budget, project revenue and resultant profitability[5];

   b) the sales price for the YSL Project if the purchaser disclaimed all existing Condominium Purchase Agreements and re-marketed all the units under the assumption that the purchaser could obtain a higher price per square foot for the units based on market rates; and

   c) the CBRE Appraisals, in order to explain the differences between the two appraisals and provide an opinion on the appraised values contained therein.

2. FM was retained to, among other things, prepare a report so that the Proposal Trustee could provide a recommendation to the Companies' creditors with respect to the Amended Proposal.

3. The Proposal Trustee asked FM to consider the purchase price that a purchaser would pay for the Real Property in a sale process if:

   a) all existing Condo Purchase Agreements were assumed by the purchaser (excluding the 56 Condo Purchase Agreements that were disclaimed) (the "As-Is Scenario"); or

   b) all existing Condominium Purchase Agreement were disclaimed and all of the units marketed for sale, on the assumption that the purchaser can obtain a higher price per square foot by re-selling the condominium units based on current market prices (the "Re-Sell Scenario").

4. FM issued a report dated May 26, 2021 to the Proposal Trustee (the "FM Report") which provides detailed projections of the revenues and the costs associated with the YSL Project as well as the two scenarios referenced above. The Proposal Trustee prepared a waterfall analysis ("Waterfall Analysis") that, among other things, summarizes the estimated distributions to the Companies' creditors based on various scenarios, including the Amended Proposal, As-Is Scenario, Re-Sell Scenario and the 2021 CBRE Appraisal. The FM Report, 2021 CBRE Appraisal and Waterfall Analysis

[5] The FM Report estimates the value that a purchaser would be prepared to pay for the land, as well as the implied value of the land in the Amended Proposal.

TAB 22

Appendix “M”

YG Limited Partnership and YSL Residences Inc.
Claims Summary
(unaudited; $C)

Date received	Creditor	Amount as filed	Convenience Claim	Conditional Claim	Value for Voting*	Disputed Amount (For Voting)	Objection to Dispute	Vote	Vote method	Proxy	Notes
08-Jun-21	Master's Choice Realty Inc.	379,298.00	No	Yes	379,298.00	-		Accept	Letter	Cliff McCracken	
08-Jun-21	JDL Realty Inc.	48,154.00	No	Yes	20,478.00	27,676	No	Accept	Letter	Cliff McCracken	
09-Jun-21	Real One Realty Inc.	321,539.99	No	No	181,936.00	139,604	No	Accept	Letter	Cliff McCracken	
09-Jun-21	Home Standards Brickstone Realty	585,858.00	No	No	114,566.00	471,292	No	Accept	Letter	Cliff McCracken	
09-Jun-21	ReMax Realton Realty Inc.	14,458.00	No	Yes	14,458.00	-		Accept	Letter	Cliff McCracken	
10-Jun-21	1st Choice Disposal	8,917.00	Yes	No	8,917.00	-		Accept	Letter	Cliff McCracken	Convenience Creditor Claim as <$15,000
10-Jun-21	David Ryan Millar	935,246.71	No	No	288,333.33	646,913	Yes	Objected - Accept	Email	James Gibson	Contingent - Partially allow for voting at $288,333
11-Jun-21	ERA Architects, Inc.	46,763.76	No	No	46,763.76	-		Accept	Letter	Cliff McCracken	
11-Jun-21	R Avis Surveying Inc.	47,051.79	No	No	47,051.79	-		Accept	Letter	Cliff McCracken	
11-Jun-21	Mulvey & Banani Lighting Inc.	17,987.35	No	No	17,987.35	-		Accept	Letter	Cliff McCracken	
11-Jun-21	Heritage Restoration Inc.	393,005.53	No	No	393,005.53	-		Accept	Letter	Cliff McCracken	
11-Jun-21	WSP Canada Inc.	76,063.71	No	No	76,063.71	-		Accept	Letter	Cliff McCracken	
11-Jun-21	Tradeworld Realty Inc.	82,288.00	No	Yes	67,770.00	14,518	No	Accept	Letter	Cliff McCracken	
11-Jun-21	Municipal Mechanical Contractors Ltd.	11,529.14	Yes	No	11,529.14	-		Accept	Letter	Cliff McCracken	Convenience Creditor Claim as <$15,000
11-Jun-21	architectsAlliance & Stephen Wells Architect Ltd.	1,009,360.03	No	No	1,009,360.03	-		Accept	Letter	Cliff McCracken	
11-Jun-21	You Go Rental & Sales	3,087.91	Yes	No	3,087.91	-		Accept	Letter	Cliff McCracken	Convenience Creditor Claim as <$15,000
11-Jun-21	Reco Cleaning Services	74,482.26	No	No	74,482.26	-		Accept	Letter	Cliff McCracken	
11-Jun-21	Safeline Management Group	8,723.60	Yes	No	8,723.60	-		Accept	Letter	Cliff McCracken	Convenience Creditor Claim as <$15,000
11-Jun-21	Maria Athanasoulis	19,000,000.00	No	No	-	19,000,000	Yes	Objected - Reject	Email	N/A	Contingent and unliquidated
11-Jun-21	PricewaterhouseCoopers LLP	19,266.50	No	No	19,266.50	-		Accept	Letter	Cliff McCracken	
11-Jun-21	Petra Consultants Ltd.	185,969.30	No	No	185,969.30	-		Accept	Letter	Cliff McCracken	
11-Jun-21	Stephenson's Rental Services Inc.	13,202.22	Yes	No	13,202.22	-		Accept	Letter	Cliff McCracken	Convenience Creditor Claim as <$15,000
11-Jun-21	V.A. Siu Design Consultants	96,050.00	No	No	96,050.00	-		Accept	Letter	Cliff McCracken	
11-Jun-21	Myles Burke Architectural Models Inc.	53,698.00	No	No	53,698.00	-		Accept	Letter	Cliff McCracken	
11-Jun-21	Kramer Design Associates Limited	74,184.50	No	No	74,184.50	-		Accept	Letter	Cliff McCracken	
11-Jun-21	Kohn Pedersen Fox Associates PC	1,962,750.00	No	No	1,962,750.00	-		Accept	Letter	Justin Kanji	
11-Jun-21	Priestly Demolition Inc.	660,122.70	No	No	660,122.70	-		Accept	Letter	N/A	
11-Jun-21	Verdi Structures Inc.	775,180.00	No	No	775,180.00	-		Accept	Letter	Cliff McCracken	
11-Jun-21	Dale & Lessmann LLP	21,668.78	Yes	No	15,000.00	-		Accept	N/A	N/A	Filed a Convenience Creditor Election Form. Deemed to Accept.
11-Jun-21	Royal Excavating & Grading Limited										
11-Jun-21	COB Michael Bros Excavation	1,758,732.00	No	No	1,758,732.00	-		Accept	Letter	Cliff McCracken	
11-Jun-21	RE/MAX Goldenway Realty Inc.	125,424.00	No	No	125,424.00	-		Accept	Letter	Cliff McCracken	
11-Jun-21	Marco Mancuso	517,500.00	No	No	-	517,500	Yes	Objected - Accept	Email	James Gibson	Contingent and unliquidated
11-Jun-21	Sarven Cicekian	882,320.00	No	No	-	882,320	Yes	Objected - Accept	Email	James Gibson	Contingent and unliquidated
11-Jun-21	Louie Giannakopoulos	532,115.00	No	No	-	532,115	Yes	Objected - Accept	Email	James Gibson	Contingent and unliquidated
12-Jun-21	Sultan Realty Inc.	699,789.00	No	Yes	-	699,789	No	Fully Disputed - Accept	Letter	Cliff McCracken	
13-Jun-21	Mike Catsiliras	841,877.00	No	No	125,000.00	716,877	Yes	Objected - Accept	Email	James Gibson	Contingent - Partially allow for voting at $288,333
14-Jun-21	Aird & Berlis LLP	10,000.59	Yes	No	10,000.59	-		Accept	N/A	N/A	Convenience Creditor Claim as <$15,000
14-Jun-21	Re/Max Realty Enterprises Inc.	72,090.00	No	Yes	72,090.00	-		Accept	Letter	Cliff McCracken	
14-Jun-21	Cityscape Real Estate Ltd.	246,998.00	No	Yes	246,998.00	-		Accept	Letter	Cliff McCracken	
14-Jun-21	Jia Yi (Joy) Wang	300,000.00	No	Yes	-	300,000	No	Fully Disputed - Accept	Letter	Cliff McCracken	
14-Jun-21	Century 21 Kennect Realty	53,036.00	No	Yes	53,036.00	-	No	Accept	Letter	Cliff McCracken	
14-Jun-21	Bay Street Group Inc.	87,573.99	No	Yes	45,737.98	41,836	No	Accept	Letter	Cliff McCracken	
14-Jun-21	Oakleaf Consulting Ltd.	18,992,620.00	No	No	-	18,992,620	No	Fully Disputed - No Vote	N/A	N/A	
14-Jun-21	East Downtown Redevelopment Partnership (EDRP)	5,810,053.00	No	No	-	5,810,053	No	Fully Disputed - No Vote	N/A	N/A	
14-Jun-21	Cresford (Rosedale) Developments Inc.	13,480,946.00	No	No	-	13,480,946	No	Fully Disputed - No Vote	N/A	N/A	
14-Jun-21	Livnig Realty Inc.	88,588.00	No	Yes	88,588.00	-		Accept	Letter	Cliff McCracken	
14-Jun-21	Brian Isherwood & Assoc. Ltd.	131,668.84	No	No	131,668.84	-		Accept	Letter	Cliff McCracken	
14-Jun-21	PM Sheet Metal & Ventilation Ltd.	29,380.00	Yes	No	15,000.00	-		Accept	Letter	Cliff McCracken	
14-Jun-21	GFL Infrastructure Group Inc.	4,356,940.17	No	No	4,356,940.17	-		Accept	Letter	Cliff McCracken	
14-Jun-21	HomeLife New World Realty Inc.	1,838,587.45	No	No	544,355.99	1,294,231	No	Accept	Letter	Cliff McCracken	
14-Jun-21	HomeLife Landmark Realty Inc.	3,170,389.62	No	No	1,669,032.01	1,501,358	No	Accept	Letter	Cliff McCracken	
14-Jun-21	Innocon Partership	50,239.22	No	No	50,239.22	-		Accept	Letter	Cliff McCracken	
14-Jun-21	2600924 Ontario Inc.	67,800.00	No	No	67,800.00	-		No vote	N/A	N/A	
14-Jun-21	Jablonsky Ast and Partners	349,631.55	No	No	349,631.55	-		Accept	Letter	Cliff McCracken	
14-Jun-21	Landpower Real Estate Ltd.	4,500,000.00	No	No	2,256,548.80	2,243,451	No	Accept	Letter	Cliff McCracken	
15-Jun-21	Investments Hardware Limited	15,081.41	No	No	15,081.41	-		Accept	Letter	Cliff McCracken	
15-Jun-21	Yulei Zhang (Henry Zhang)	1,520,000.00	No	No	-	1,520,000	No	Fully Disputed - Accept	Letter	Cliff McCracken	
Total Claims		**87,455,287.62**	**8**	**11**	**18,601,139.19**	**68,833,099.65**					

*Broker claims are valued for voting at the amount as per the Companies' A/P records, which indicate the "approved" commissions as at the date of the Meeting.

Voting Summary

	Number of Votes	Dollar Value of Votes ($)
Accept	46	18,533,339
Reject	-	-
No Vote	1	67,800
Total	47	18,601,139

	Number of Votes	Dollar Value of Votes ($)
Objected - Accept	3	3,295,725
Objected - Reject	1	19,000,000
Objected - No Vote	3	38,283,619
Total	7	60,579,344

Voting Result (excluding Objected)

% Accept	100%	100%
STAT REQ	PASS	PASS

Voting Result (Including Objected)

% Accept	98%	53%
STAT REQ	PASS	REJECT

TAB 23

HMANALY E§80
Houlden & Morawetz Analysis E§80

Bankruptcy and Insolvency Law of Canada, 4th Edition

THE BANKRUPTCY AND INSOLVENCY ACT

Proposals (ss. 50-66)
L.W. Houlden and Geoffrey B. Morawetz

E§80 — Secret Agreements with Creditors

E§80 — Secret Agreements with Creditors

See ss. 50, 50.1, 50.2, 50.3, 50.4, 50.5, 50.6, 51, 52, 53, 54, 54.1, 55, 56, 57, 57.1, 58, 59, 60, 61, 62, 62.1, 63, 64, 64.1, 64.2, 65, 65.1, 65.11, 65.12, 65.13, 65.2, 65.21, 65.22, 65.3, 66

(1) — *Generally*

In a proposal, all creditors of the same class must be treated equally. A secret bargain which violates that equality is a fraud upon the other creditors and is illegal and unenforceable: *Laferté v. Peladeau* (1929), 11 C.B.R. 89 (Que. S.C.); *Re Hobart & Duclos* (1931), 13 C.B.R. 56 (Que. C.A.); *Glense v. St-Marie* (1943), 26 C.B.R. 125 (Que. S.C.); *Re Cicoria* (2000), 21 C.B.R. (4th) 232, 138 O.A.C. 342, 2000 CarswellOnt 4906 (C.A.).

If, where there has been a secret bargain with certain creditors, the proposal is accepted by creditors and approved by the court, a creditor who had no knowledge of the bargain can apply for an order annulling the proposal: *Re Milner* (1885), 15 Q.B.D. 605, 54 L.J.Q.B. 425, 53 L.T. 652, 2 Morr. 190, 33 W.R. 867 (C.A.); *Re Cobourg Felt Hat Co.,* 28 O.W.N. 131, 5 C.B.R. 622, [1925] 2 D.L.R. 997 (S.C.).

If moneys have been paid pursuant to a secret agreement, the debtor can recover the money back from the creditor: *Atkinson v. Denby* (1861), 7 H. & N. 934, 31 L.J. Ex. 362, 7 L.T. 93, 10 W.R. 389 (Ex. Ch.); *Re Lenzberg* (1877), 7 Ch.D. 650.

An agreement between the debtor and a large secured creditor by which the debtor agreed to assist the creditor in working out its security and this was well known to creditors and was disclosed to the court when the proposal was approved by the court is not a secret bargain: *Anderson v. Canadian Imperial Bank of Commerce* (1999), 11 C.B.R. (4th) 157, 199 CarswellOnt 1896 (Ont. Gen. Div.).

(2) — *Secret Benefit from a Third Party*

The fact that the secret benefit is being furnished by a third party is immaterial; it is just as much a fraud on creditors as a payment or an agreement to pay something additional by the debtor: *Brigham v. La Banque Jacques-Cartier* (1900), 30 S.C.R. 436; *Hochberger v. Rittenberg* (1916), 54 S.C.R. 480, 36 D.L.R. 450.

If a guarantee of a third party is given to obtain a consent of a creditor to a proposal; the guarantee is unenforceable: *Prévoyance v. Giroux* (1932), 14 C.B.R. 174 (Que. C.A.); *Sadler Mfg. Co. v. Golt,* [1955] Que. S.C. 69, 35 C.B.R. 67.

(3) — *Agreement Made After Approval of Proposal for Payment of Creditor's Claim*

If, after the acceptance of a proposal by creditors and approval by the court, the debtor agrees as the price of obtaining goods from a creditor that the creditor's claim under the proposal will be paid in full, when other creditors under the proposal are only receiving 35¢ on the dollar, the agreement is not void; such an agreement is not a secret bargain: *Chamandy Brothers Ltd. v. Albert* (1928), 10 C.B.R. 32 (Ont. C.A.). If, however, a secret agreement is made between the debtor and an inspector, the representative of a large partially secured creditor, for payment in full of the creditor's claim, although the proposal called for a compromise of the claim, the agreement is unenforceable and the creditor is bound by the terms of the proposal: *Re Cicoria* (2000), 18 C.B.R. (4th) 202, 2002 CarswellOnt 2697 (Ont. Bktcy.), affirmed (2000), 21 C.B.R. (4th) 232, 138 O.A.C. 342, 2000 CarswellOnt 4906 (C.A.).

(4) — *Secret Purchase of a Creditor's Claim*

In *Newlands Textiles Inc. v. Carrier* (1983), 47 C.B.R. (N.S.) 148 (Ont. S.C.), a creditor was opposed to a proposal. After the proposal was accepted by creditors but before a court approval, an officer of the debtor company personally purchased the claim of the objecting creditor for $15,000 cash and a promissory note for $15,000. When the note was not paid, an action was brought by the objecting creditor to enforce payment. It was held that the note was invalid and unenforceable on the ground that the giving of the note constituted a secret bargain. With respect, this seems wrong. When the officer purchased the claim, he stepped into the shoes of the creditor; he was receiving no different treatment under the proposal than other creditors. If, by purchasing claims, the officer had been able to procure the necessary majority of creditors in favour of the proposal, that is a matter that might have been relevant on the application for court approval, but the equal treatment of creditors, which is the reason for the rule against secret bargains, was not being violated.

End of Document

TAB 24

Confidential Document

(to be provided to the Court only)

TAB 25

Confidential Document

(to be provided to the Court only)

TAB 26

Confidential Document

(to be provided to the Court only)

APPLICATION UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED
AND IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF **YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.**

Court File No.: 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

JOINT COMPENDIUM OF THE "CLASS A LPs"
(Sanction Hearing: June 23, 2021)

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