

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

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

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 Responding Factum of the “Class A LPs”

(YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc., 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc.)

(Proposal Trustee’s Motion for Directions: January 16, 2023)

January 12, 2023

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PART I - OVERVIEW

1. It is premature to give directions on an appeal that has not yet been brought, from a claims determination that has not yet been made. That is, however, what the Proposal Trustee seeks on this motion.
2. This motion should be dismissed until the Proposal Trustee has determined Ms. Athanasoulis' claim and a motion is brought, pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**"), challenging that determination. The dismissal can be without prejudice to any party to seek directions on the applicable procedure.

PART II - BACKGROUND FACTS

3. The debtors YG Limited Partnership and YSL Residences Inc. (the "**Debtors**") were members of the Cresford Group, a condominium developer. The Debtors controlled the "**YSL Project**", a condominium development near Yonge Street and Gerrard Street in Toronto.
4. Maria Athanasoulis was a principal and the "face" of the Cresford Group.¹
5. The Class A LPs collectively advanced \$14.8 million the Debtors in exchange for Class A Preferred units in YG Limited Partnership.²

¹ Partial Award of William G. Horton dated March 28, 2022 ("**Arbitration Award**") at para 72, Responding Motion Record of Maria Athanasoulis ("**Athanasoulis MR**"), Tab 1E, p 79.

² *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178 at [para 11](#), per Dunphy J [*YSL re Sanction Hearing*].

6. The Class A LPs allege that Ms. Athanasoulis told them that they would be repaid their advances, plus a preferred 100% return thereon, before the Cresford Group received anything from the YSL Project. The Class A LPs relied on these alleged representations when making their advances. These representations are reflected in the Amended and Restated Limited Partnership Agreement and subscription agreements that governed the Class A LPs' advances to the Debtors.³

A. Procedural History

i. The Class A LPs successfully opposed the original proposal

7. In summer 2021, the Debtors advanced a pre-packaged liquidation proposal under the *BIA* (the “**original proposal**”). The Debtors' original proposal would have seen the Cresford Group extract approximately \$22 million from the YSL Project's unsecured creditors. Under the original proposal, the YSL Project's unsecured creditors would have recovered a maximum of 58% of their claims. The Class A LPs would have recovered nothing.⁴

8. KSV Restructuring Inc., the Debtors' proposal trustee (in that capacity, the “**Proposal Trustee**”), supported the original proposal. The Class A LPs did not.

9. On a preliminary hearing, over the objections of the Debtors and Concord Properties Developments Corp. (“**Concord**”), Justice Dunphy held that the Class A LPs had standing to make submissions on why the original proposal should not be sanctioned.⁵

³ Draft Statement of Claim at paras 11, 13 and 20, Athanasoulis MR, Tab 1B, pp 30 – 33; Notice of Motion dated October 13, 2022 at paras 1 and 23, Athanasoulis MR, Tab 1C, pp 47 and 51.

⁴ *YSL re Sanction Hearing* at [para 11](#).

⁵ *In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc* (June 1, 2021), [Toronto 31-2734090 \(ONSC Commercial List\)](#), per Dunphy J [*YSL re Standing*].

10. The Class A LPs took the position that the Debtors' original proposal was made without good faith and did not benefit the general body of creditors. Justice Dunphy agreed and refused to sanction it. His Honour did, however, allow the Debtors to make another proposal (the "**Proposal**"), which was ultimately approved by the Court.⁶

ii. The terms of the Proposal

11. Pursuant to the Proposal, the YSL Project was transferred to Concord. In exchange, Concord paid \$30.9 million to the Proposal Trustee. From that pool, unsecured creditors would receive up to 100% of their claims (an increase from up to 58% under the original proposal).⁷

12. Article 5.05 of the Proposal expressly provides that the limited partners are entitled to any residue of the Proposal after final distributions to creditors.⁸

13. The improved terms of the Proposal meant that both the YSL Project's unsecured creditors and the limited partners may yet fully recover their investment in the YSL Project.⁹

⁶ *YSL re Sanction Hearing* at paras [73 - 76](#) and [84](#).

⁷ *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206 at [paras 9 & 10](#), per Dunphy J. [*YSL re Proposal*].

⁸ The Proposal, article 5.05 – Appendix G to the Eighth Report of the Proposal Trustee dated December 30, 2022 (the "**Eighth Report**"), Motion Record of the Proposal Trustee ("**Trustee MR**"), Tab 2G, p 133.

⁹ *YSL re Proposal* at [para 28](#).

B. The Claims Process

i. Three outstanding claims remain against the Debtors

14. Three claims against the Debtors remain outstanding: (a) a \$1.2 million claim by CBRE Limited (“**CBRE**”) of approximately \$1.2 million; (b) a claim by Harbour International Investment Group Inc. for \$1 million plus HST; and (c) an \$19 million claim by Ms. Athanasoulis.¹⁰

15. Subject to the determination of the three outstanding claims against the Debtors, up to \$16.038 million may be available for distribution to the limited partners.¹¹

ii. Ms. Athanasoulis’ claim

16. Ms. Athanasoulis submitted a Proof of Claim to the Proposal Trustee comprised of two parts: (a) a wrongful dismissal damages claim for \$1 million; and (b) the “**Profit-Sharing Claim**”, an \$18 million claim premised on the assumption that Ms. Athanasoulis is entitled to a 20% share in the profits of all of the Cresford Group’s projects, including but not limited to the YSL Project.¹²

17. Ms. Athanasoulis’ claim threatens to overwhelm all claims to the remaining Proposal funds.

iii. The Profit-Sharing Claim arbitration

18. The Proposal Trustee and Ms. Athanasoulis agreed to a bifurcated arbitration (the “**Arbitration**”) of Ms. Athanasoulis’ claim, without the knowledge and involvement of the Class A LPs or Concord. The Proposal Trustee did not invite the Class A LPs to participate in the

¹⁰ Eighth Report, Trustee MR, Tab 2, p 16.

¹¹ Eighth Report, Trustee MR, Tab 2, p 20.

¹² Draft Notice of Disallowance re Athanasoulis Claim - Appendix H to the Eighth Report, Trustee MR, Tab 2H, p 144.

first phase of the Arbitration and refused to share the underlying Arbitration material (except for the pleadings).¹³

19. The first phase of the Athanasoulis Arbitration resulted in the arbitrator finding that Ms. Athanasoulis was constructively dismissed from her employment with the Cresford Group, there was an agreement between Ms. Athanasoulis and the Cresford Group regarding profit-sharing, and that Cresford breached that agreement when Ms. Athanasoulis was constructively dismissed.¹⁴

iv. This Court's directions regarding the Athanasoulis arbitration

20. Once the Class A LPs and Concord learned the outcome, scope and anticipated cost of the Arbitration, they took steps to challenge the Proposal Trustee's right to arbitrate Ms. Athanasoulis' claim. This Court held that the arbitration contemplated a final adjudication of Ms. Athanasoulis' claim and went beyond a mere fact-finding exercise. This Court held that it was an improper delegation to the arbitrator by the Proposal Trustee of its ultimate responsibility to determine and value Ms. Athanasoulis' claim.¹⁵

C. The Class A LPs Have an Interest in the Outcome of Ms. Athanasoulis' Claim

i. The Court has confirmed the Class A LPs' interest in the outcome

21. The Class A LPs entitlement to the proceeds of the Proposal are directly affected by the determination of claims against the Debtors. That fact has been recognized by both Justice

¹³ Email Correspondence between Counsel on May 13 – 17, 2022, LP MR, Tab 1B, pp 17 – 18 and 20 – 22; *YG Limited Partnership (Re)*, 2022 ONSC 6138 [*YSL re Funding*] at paras [12 - 14](#), [48](#), [81](#) and [83](#), per Kimmel J.

¹⁴ Arbitration Award at para 191, Athanasoulis MR, Tab 1E, p 109.

¹⁵ *YSL re Funding* at [paras 52](#) and [81](#).

Dunphy, who characterized the YongeSL LPs as among the “fulcrum stakeholders in this case”, and Justice Kimmel, who confirmed that the YongeSL LPs have a “direct interest” in the determination of claims in this proceeding.¹⁶

ii. The Proposal Trustee has conceded the Class A LPs’ interest in the outcome

22. The Proposal Trustee has repeatedly confirmed that the Class A LPs have an interest in respect of Ms. Athansoulis’ claim:

(a) in December 2021, it assured the Class A LPs that it would seek court approval for any determination of Ms. Athanasoulis’ claim and that the Class A LPs would have full participation rights in any subsequent court approval hearing;¹⁷

(b) in May 2022, after the first phase of the Arbitration, the Proposal Trustee confirmed that:

(i) the Class A LPs’ evidence “will be necessary to respond to” the Profit-Sharing Claim, and the Proposal Trustee is “open to [the Class A LPs] seeking an expanded role” in the second phase of the Arbitration;¹⁸

(ii) the Class A LPs “are important stakeholders” in the Arbitration;¹⁹

(iii) the second phase of the Arbitration raised “broader issues” that the Proposal Trustee “explicitly invited the [Class A LPs] to participate in”;²⁰

¹⁶ *YSL re Sanction Hearing* at [para 11](#); *YSL re Funding* at [para 59](#).

¹⁷ Affidavit of Ashley McKnight sworn January 4, 2023 (“**McKnight Affidavit**”) at para 4, Joint Responding Motion Record of the Limited Partners (“**LP MR**”), Tab 1, pp 4 – 5.

¹⁸ Email from M. Milne-Smith to Counsel dated May 11, 2022 with enclosure, LP MR, Tab 1A, p 11.

¹⁹ Email from M. Milne-Smith to Counsel dated May 11, 2022 with enclosure, LP MR, Tab 1A, p 11.

²⁰ Aide Memoire of the Proposal Trustee dated May 20, 2022 at para 15, LP MR, Tab 1C, p 30.

(c) in its Sixth Report dated August 19, 2022, the Proposal confirmed that it “welcomed the involvement of the LPs, as certain evidence from the LPs will likely be necessary in resolving the issues raised in Phase 2 of the arbitration”.²¹

iii. Ms. Athanasoulis has conceded the Class A LPs’ interest in the outcome

23. Athanasoulis has also conceded the Class A LPs’ interest in the outcome of the Proposal Trustee’s determination of her claim:

5. Ms. Athanasoulis agrees that the arbitration can and should be expanded to include the LPs, provided that the arbitration can proceed efficiently and expeditiously to determine all issues relevant to her claim against YSL and her entitlement to payment in these proceedings. [...] **[emphasis added]**²²

D. The Proposal Trustee’s Proposed Process

i. Proposal Trustee originally said it would seek directions on determination procedure

24. Following this Court’s decision in *YSL re Funding*, the Proposal Trustee proposed a process for the determination of Ms. Athanasoulis’ claim that involved the Class A LPs and Ms. Athanasoulis submitting briefs relating to the Profit-Sharing Claim consisting of evidence and argument. The proposed process contemplated that the Class A LPs and Ms. Athanasoulis would have an opportunity to respond to one another’s briefs.²³

²¹ Sixth Report of the Proposal Trustee dated August 19, 2022 without Appendices, Trustee MR, Tab 2C, p 74.

²² Case Conference Brief of Maria Athanasoulis dated June 8, 2022 without attachments, paras 5 and 9, LP MR, Tab 1E, pp 41 – 42.

²³ Email Correspondence between Counsel on December 2-21, 2022 (redacted), LP MR, Tab 1G, pp 63 – 64.

25. The proposed process also contemplated restrictions on the Class A LPs' ability to participate on any appeal from the Proposal Trustee's disallowance of the Profit-Sharing Claim. The Class A LPs disagreed that there should be any such limitations. Ms. Athanasoulis also objected to aspects of the proposed procedure and refused to submit any brief to the Proposal Trustee until a process was established.²⁴

ii. Class A LPs submitted their brief; Ms. Athanasoulis has not

26. In late December 2022, the Class A LPs submitted their brief of evidence and argument relating to the Profit-Sharing Claim to the Proposal Trustee.²⁵

27. The Class A LPs' position on the Profit-Sharing Claim is that:

- (a) it is an equity claim, not a provable claim;
- (b) on her own evidence and explanation of her profit-sharing agreement with the Cresford Group, Ms. Athanasoulis' share of profits accrues only after the Class A LPs are paid in full;
- (c) the YSL Project did not generate any profits; and
- (d) the Profit-Sharing Claim is unenforceable against the Debtors because Ms. Athanasoulis' profit-sharing agreement is a breach of the limited partnership agreement and would be a breach of Ms. Athanasoulis' and Cresford's fiduciary duties.

²⁴ Email Correspondence between Counsel on December 2-21, 2022 (redacted), LP MR, Tab 1G, pp 55 – 56 and 62 – 63.

²⁵ McKnight Affidavit at para 17, LP MR, Tab 1, p 9.

28. There is no evidence that Ms. Athanasoulis submitted a brief to the Proposal Trustee as contemplated by its original proposed procedure.

iii. Proposal Trustee now only seeks directions regarding appeal procedure

29. The Proposal Trustee's position on this motion differs from its earlier proposed procedure. Among other things, it no longer provides that the stakeholders should submit briefs of their evidence and argument relating to the Profit-Sharing Claim, nor does it contemplate the parties responding to one another's briefs.²⁶

30. Contrary to its earlier advice that it intended to seek directions regarding the procedure for the determination of Ms. Athanasoulis' claim,²⁷ the Proposal Trustee now only seeks directions regarding the procedure for an appeal from its disallowance of Ms. Athanasoulis' Profit-Sharing Claim.²⁸

PART III - ISSUES & ARGUMENT

31. There are three issues on this motion:

- (a) whether it is premature for directions to be given regarding an appeal that has not been brought from a claims determination that has not yet been made (it is);

²⁶ Notice of Motion dated December 22, 2022 at para 17, Trustee MR, Tab 1, pp 5 – 6; Eighth Report, Trustee MR, Tab 2, p 24.

²⁷ Email Correspondence between Counsel on December 2-21, 2022 (redacted), LP MR, Tab 1G, pp 63 – 64.

²⁸ Notice of Motion dated December 22, 2022, Trustee MR, Tab 1, p 3; Correspondence between Bennett Jones and Davies dated December 29, 2022, Responding Motion Record of Concord Properties Development Corp. ("**Concord MR**"), Tab 1E, pp 33 – 34.

- (b) if this motion is premature, whether the Proposal Trustee should be directed to determine Ms. Athanasoulis' claim by undertaking a process that minimizes the risk that an appeal *de novo* will be necessary (such directions should be given); and
- (c) if this motion is not premature, and directions regarding an appeal are given,
 - (i) whether Ms. Athanasoulis' appeal from the disallowance of her claim should be *de novo* (it should not) and
 - (ii) whether the Class A LPs should be restricted from participating on the appeal (they should not).

32. Those issues are addressed below after putting the Proposal Trustee's role in determining claims in context.

A. Role of the Proposal Trustee in Determining Claims

33. The Proposal Trustee has a mandatory statutory duty to review claims and, if necessary, value them.²⁹ The Proposal Trustee does not need to value Ms. Athanasoulis' Profit-Sharing Claim if the Proposal Trustee determines that that claim is not a provable claim. It is proper and efficient for the Proposal Trustee to determine Ms. Athanasoulis' Profit-Sharing Claim on the basis that it is not a provable claim. It is not necessary to incur the time and expense of valuing the claim.

34. If the Proposal Trustee is not satisfied with the proof of claim, it may require further evidence.³⁰ The onus, however, is on the claimant, Ms. Athanasoulis, to prove her claim.

²⁹ *YSL re Funding* at paras [43 - 44](#).

³⁰ BIA at [s.135\(1\)](#).

35. In disallowing a claim, the Proposal Trustee must act equitably.³¹ It should give Ms. Athanasoulis an opportunity to make her case and respond to all of the material before the Proposal Trustee (including the Class A LPs' brief). If Ms. Athanasoulis ultimately elects to maintain her position that she will not submit her own brief to the Proposal Trustee, that is her right.

B. Directions on Any Appeal

36. It is premature to give directions on an appeal *before* the Proposal Trustee has determined Ms. Athanasoulis' claim. If Ms. Athanasoulis appeals the disallowance of her Profit-Sharing Claim, the onus would lie with her to satisfy this Court that the strong presumption in favour of true appeals should be displaced and an appeal *de novo* is appropriate.

37. If, however, directions are given in respect of an appeal that has not yet been brought, the Class A LPs' position is that:

- (a) the appeal should be based on the record before the Proposal Trustee, including the Class A LPs' brief, and not be an appeal *de novo*; and
- (b) the Class A LPs' should be given the opportunity to respond to the appeal without restrictions.

³¹ Lloyd W. Houlden, Geoffrey Morawetz & Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed. (Toronto: Thomson Reuters, 2022) at [§6:269](#) (Westlaw).

i. No Appeal De Novo

38. In keeping with the summary nature of *BIA* proceedings, appeals from the disallowance of a proof of claim should be true appeals (ie. on the record originally before the Proposal Trustee), not hearings *de novo*.³²

39. This approach is appropriate because it: (a) recognizes the experience and expertise of trustees; (b) is reasonable to put the onus on a creditor to properly prove their claim at the first instance; and (c) promotes an efficient and cost-effective means for the administration of insolvent estates.³³

40. The Ontario Court of Appeal has affirmed that this approach is appropriate because,³⁴

if evidence that was not before a Trustee were to be presented on an appeal as a matter of course, much of the efficiency in the operation of the bankruptcy scheme would be lost. Creditors who neglected to file a proof of claim in compliance with the requirements of the scheme would be at an advantage because they could expect to enhance their proof on appeal. This, it seems to me, would impact on the objective implicit in the *BIA*, which is to enable parties to have their rights and claims determined in an expeditious fashion, and add unwanted expense, delay and formality.

41. It is only where “the trustee has committed an error or the interests of justice would only be served with an appeal *de novo*” that the Court should direct that the appeal proceed as a hearing *de novo*. Otherwise, the appeal of a trustee’s disallowance of a claim ought to proceed based on the record before the trustee.³⁵ In *Charlestown*, for example, the Court permitted the appeal to

³² *Eureka 93 Inc et al (Re)*, 2020 ONSC 6036 at paras [26 - 27](#), per MacLeod J [*Eureka 93*].

³³ *Charlestown Residential School, Re*, 2010 ONSC 4099, 2010 CarswellOnt 5343 at paras [14 - 16](#), per Registrar Mills [*Charlestown*].

³⁴ *Credifinance Securities Ltd, Re*, 2011 ONCA 160 at para [26](#).

³⁵ *Bambrick, Re*, 2015 ONSC 7488 at para [18](#), per Mesbur J.

proceed *de novo* because the trustee had relied on evidence not made available to the creditor. Injustice would have resulted if the appeal had proceeded based on the documents submitted by the creditor alone.³⁶

42. The Proposal Trustee can satisfy its obligation to determine claims equitably, and avoid the time and expense of an appeal *de novo*, by sharing all of the material made available to the Proposal Trustee with Ms. Athanasoulis and permitting her an opportunity to respond.

43. This issue is, however, premature. To conclude *now* that an appeal *de novo* is appropriate is tantamount to conceding that, *before even determining Ms. Athanasoulis' claim*, the Proposal Trustee has caused an injustice. The Class A LPs³⁷ and Concord³⁸ have each previously warned the Proposal Trustee that appeals *de novo* should be avoided.

44. If there are reasonable concerns regarding the Proposal Trustee's proposed process for the determination of Ms. Athanasoulis' claim (not any appeal therefrom), the Proposal Trustee should be directed to address them before determining the claim.

ii. The Class A LPs Are Entitled to Participate on any Appeal

45. It is undisputed that the Class A LPs are the ultimate economic interest in this proceeding. If the Proposal Trustee's disallows Ms. Athanasoulis' Profit-Sharing Claim, the Class A LPs will

³⁶ *Charlestown* at para [16](#).

³⁷ Email Correspondence between Counsel on December 2-21, 2022 (redacted), LP MR, Tab 1G, p 59.

³⁸ Correspondence between Bennett Jones and Davies dated December 29, 2022, Concord MR, Tab 1E, pp 32 – 34.

recover their \$14.8 million advance to the Debtors, plus some return thereon. If, however, that disallowance is overturned on appeal, the Class A LPs will receive nothing.³⁹

46. It is a basic principle of fundamental justice that if a party's proprietary or economic interests will be directly impacted by the outcome of a hearing, the party has standing to make submissions at the hearing.⁴⁰

47. The Class A LPs' economic interests will be directly impacted by the outcome of any appeal from the Proposal Trustee's determination of Ms. Athanasoulis' claim. They have standing to make submissions on that appeal. There is no basis to restrict their rights of participation to certain issues.

48. The Proposal Trustee relies on a recent decision in this proceeding⁴¹ in support of its argument that the Class A LPs do not have standing to address all issues on an appeal brought by Ms. Athanasoulis from the disallowance of her claim. This reliance is misplaced.

49. First, the Proposal Trustee's position is contrary to their earlier reassurance that the Class A LPs would have full participation rights in any hearing for approval of the Proposal Trustee's determination of Ms. Athanasoulis' claim. The Proposal Trustee is estopped from taking a contrary position now.⁴²

³⁹ Eighth Report, Trustee MR, Tab 2, p 20.

⁴⁰ *Ivandaeva Total Image Salon Inc v Hlemgizky*, 2003 CanLII 43168 at para [27](#) (ONCA).

⁴¹ *YG Limited Partnership and YSL Residences Inc*, [2022 ONSC 6548](#) [*YSL re CBRE*].

⁴² McKnight Affidavit at para 4, LP MR, Tab 1, p 2.

50. Second, the *YSL re CBRE* decision that the Proposal Trustee relies on is under appeal.⁴³ That decision related to an appeal by CBRE, pursuant to s.135(4) of the *BIA*, from the Proposal Trustee's disallowance of its proof of claim. The *YSL re CBRE* decision suffers from a number of errors, including but not limited to the following:

- (a) the conclusion that the Class A LPs lack standing was unfair because it ignored that they were directly affected by the outcome of the hearing;
- (b) the decision was inconsistent with *YSL re Standing*, where Justice Dunphy held that the Class A LPs had standing; and
- (c) the Court's analysis relied on s.135(5) of the *BIA*, which had no application to CBRE's appeal, and misinterpreted s.37 of the *BIA* by holding that the Class A LPs were not "persons aggrieved".

51. There are now conflicting decisions of this Court regarding the Class A LPs' standing in this proceeding:

- (a) *YSL re Standing*, which was not appealed, that provides that the Class A LPs have standing; and
- (b) *YSL re CBRE*, which is under appeal, that provides that the Class A LPs do not have standing.

⁴³ Notice of Appeal, LP MR, Tab 1I, p 78.

52. This Court should not give any directions restricting the Class A LPs' standing or rights to fully participate on any appeal from the Proposal Trustee's disallowance of the Profit-Sharing Claim in these circumstances, particularly as such a determination is premature.

PART IV - CONCLUSION & ORDER SOUGHT

53. The Proposal Trustee should be directed to engage in an equitable and efficient process relating to the determination of Ms. Athanasoulis' claim. It should present the creditor with all material before it, including the Class A LPs' brief, and give Ms. Athanasoulis the opportunity to comment so as to avoid any injustice. The Proposal Trustee should determine the claim in such a way as to avoid an appeal *de novo*.

54. It is premature to give directions on an appeal that has not been brought yet. It should not be assumed that the Proposal Trustee will create an injustice by disallowing Ms. Athanasoulis' Profit-Sharing Claim. If, however, directions are given, this Court should direct that any appeal following the Proposal Trustee's determination of Ms. Athanasoulis' Profit-Sharing Claim be a true appeal and allow the Class A LPs to participate fully in any appeal from that determination.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of January, 2023.

A handwritten signature in black ink, appearing to be 'A. L. Sullivan', written over a horizontal line.

Thornton Grout Finnigan LLP
Lax O'Sullivan Lissus Gottlieb LLP

**SCHEDULE “A”
List of Authorities**

No.	Case
1.	<u><i>YG Limited Partnership and YSL Residences (Re)</i>, 2021 ONSC 4178</u>
2.	<u><i>In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc</i> (June 1, 2021), Toronto 31-2734090 (ONSC Commercial List)</u>
3.	<u><i>YG Limited Partnership and YSL Residences (Re)</i>, 2021 ONSC 5206</u>
4.	<u><i>YG Limited Partnership (Re)</i>, 2022 ONSC 6138</u>
5.	<u><i>Eureka 93 Inc et al (Re)</i>, 2020 ONSC 6036</u>
6.	<u><i>Charlestown Residential School, Re</i>, 2010 ONSC 4099, 2010 CarswellOnt 5343</u>
7.	<u><i>Credifinance Securities Ltd, Re</i>, 2011 ONCA 160</u>
8.	<u><i>Bambrick, Re</i>, 2015 ONSC 7488</u>
9.	<u><i>Ivandaeva Total Image Salon Inc v Hlemgizky</i>, 2003 CanLII 43168</u>
10.	<u><i>YG Limited Partnership and YSL Residences Inc</i>, 2022 ONSC 6548</u>
	Secondary Sources
11.	Lloyd W. Houlden, Geoffrey Morawetz & Janis P. Sarra, <i>Bankruptcy and Insolvency Law of Canada</i> , 4th ed. (Toronto: Thomson Reuters, 2022) at <u>§6:269</u> (Westlaw)

SCHEDULE “B”
Excerpts of Relevant Statutes

Bankruptcy and Insolvency Act, RSC 1985, c B-3, Section 135

Admission and Disallowance of Proofs of Claim and Proofs of Security

Trustee shall examine proof

135 (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.

Determination of provable claims

(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

Disallowance by trustee

(2) The trustee may disallow, in whole or in part,

- (a) any claim;
- (b) any right to a priority under the applicable order of priority set out in this Act; or
- (c) any security.

Notice of determination or disallowance

(3) Where the trustee makes a determination under subsection (1.1) or, pursuant to subsection (2), disallows, in whole or in part, any claim, any right to a priority or any security, the trustee shall forthwith provide, in the prescribed manner, to the person whose claim was subject to a determination under subsection (1.1) or whose claim, right to a priority or security was disallowed under subsection (2), a notice in the prescribed form setting out the reasons for the determination or disallowance.

Determination or disallowance final and conclusive

(4) A determination under subsection (1.1) or a disallowance referred to in subsection (2) is final and conclusive unless, within a thirty day period after the service of the notice referred to in subsection (3) or such further time as the court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee’s decision to the court in accordance with the General Rules.

Expunge or reduce a proof

(5) The court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

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.

Court File No.: BK-21-02734090-0031

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

Proceedings commenced at Toronto

JOINT RESPONDING FACTUM OF THE “CLASS A LPs”
(Proposal Trustee’s Motion for Directions: January 16, 2023)

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