

Court File No. BK-21-02734090-0031

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

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

**JOINT RESPONDING MOTION RECORD OF
2504670 CANADA INC., 8451761 CANADA INC., CHI LONG INC., YONGESL INVESTMENT LIMITED PARTNERSHIP, 2124093 ONTARIO INC., SIXONE INVESTMENT LTD., E&B INVESTMENT CORPORATION, AND TAIHE INTERNATIONAL GROUP INC.**

**(Proposal Trustee's Motion for Direction re Claims Process
returnable January 16, 2023)**

January 4, 2023

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Lawyers for Maria Athanasoulis

ONTARIO
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IN THE MATTER OF THE NOTICES OF INTENTION OT MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

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AFFIDAVIT OF ASHLEY MCKNIGHT

I, Ashley McKnight, of the City of Oshawa, in the Regional Municipality of Durham, MAKE OATH AND SAY:

1. I am a law clerk with the law firm of Lax O'Sullivan Lisus Gottlieb LLP (“**LOLG**”), lawyers for the limited partners, 2504670 Canada Inc., 8451761 Canada Inc. and Chi Long Inc., and, as such, have knowledge of the matters contained in this Affidavit. Where my knowledge is based on information from another source, I state the source of that information and believe that information to be true.
2. I am informed by Shaun Laubman, counsel at LOLG, that in December 2021, KSV Restructuring Inc. (the “**Proposal Trustee**”)’s counsel advised that the Proposal Trustee had entered into an arbitration process with Maria Athanasoulis to determine the existence of an alleged oral agreement between her and Cresford. The Proposal Trustee did not communicate

this fact to LOLG until after the arbitration agreement between the Proposal Trustee and Ms. Athanasoulis was entered into.

3. I am advised by Mr. Laubman that the limited partners' requests for access to the underlying arbitration material was denied by the Proposal Trustee, except for Ms. Athanasoulis' Statement of Claim, and the Proposal Trustee's Statement of Defence, which were provided. The Proposal Trustee stated that the arbitration process was designed to be a closed process between it and Ms. Athanasoulis, without third party participation, but that the limited partners of the debtor YG Limited Partnership would have full participation rights in a subsequent court approval hearing, as summarized below.

4. Mr. Laubman has also advised that the Proposal Trustee's counsel has repeatedly confirmed in discussions that the limited partners have an interest in respect of Ms. Athanasoulis' claim. The Proposal Trustee's counsel confirmed in discussions in December 2021 that the Proposal Trustee would bring an approval hearing once Ms. Athanasoulis' claim was determined on notice to the limited partners. The Proposal Trustee's counsel represented that the limited partners would have the right to raise any arguments they wished to make in connection with Ms. Athanasoulis' claim at the approval hearing.

5. I attach as **Exhibit "A"** an email from the Proposal Trustee's counsel to other parties' counsel sent May 11, 2022. The Proposal Trustee asked the limited partners to participate in the arbitration because it believed that their evidence will be necessary to respond to Ms. Athanasoulis' claim, and the Proposal Trustee is open to the limited partners seeking an expanded role.

6. I attach as **Exhibit “B”** correspondence between counsel for the Proposal Trustee and the limited partners sent May 13 to 17, 2022. In his email to the limited partners’ counsel on May 16, 2022, the Proposal Trustee’s counsel acknowledges that “with the broadened scope of relevance for Phase II, we solicited your clients’ involvement and participation”. Reference to “Phase II” was to the second phase of the bifurcated arbitration of Ms. Athanasoulis’ claim.

7. I attach as **Exhibit “C”** the Aide Memoire of the Proposal Trustee dated May 20, 2022. At paragraph 15, the Proposal Trustee acknowledges that “Phase II of the arbitration raises broader issues and the Proposal Trustee explicitly invited the LPs to participate in it”.

8. I attach as **Exhibit “D”** the Endorsement of Justice Gilmore dated May 24, 2022. Justice Gilmore urged the parties to work out an arrangement that would allow the limited partners’ priority claims to be added to, and determined in, the existing arbitration

9. I attach as **Exhibit “E”** the Case Conference Brief of Maria Athanasoulis (without attachments) dated June 8, 2022, which states that:

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.

...

9. Ms. Athanasoulis agrees that the issues that are (arguably) relevant to her right to payment in these proposal proceedings should be determined in a single arbitration. The LOLG LPs identify three issues that they seek raise that are relevant to Ms. Athanasoulis’ Claim against the debtors: (i) enforceability, (ii) priority, and (iii) damages. The TGF LPs identify substantially similar issues in their case conference brief and attached Amended Notice of Motion. **Ms. Athanasoulis does not object to the LPs asserting their claim for damages in the Arbitration in the interest of expedience.** [emphasis added]

10. I attach as **Exhibit “F”** the Endorsement of Justice Gilmore dated June 8, 2022. Justice Gilmore summarized that the Proposal Trustee had confirmed that the parties’ counsel would work towards the terms of a newly consolidated arbitration which will deal with all outstanding issues including:

- (a) The enforceability of the contract as found by Mr. Horton regarding Ms. Athanasoulis’ claim and the quantum of any damages she may have suffered;
- (b) Whether any claim for damages by Ms. Athanasoulis is in the nature of debt or equity;
- (c) Any claim for damages that the Limited Partners may assert against Ms. Athanasoulis;
- (d) The arbitration will not consider any claims between Ms. Athanasoulis and Cresford Capital/Dan Casey;
- (e) The Limited Partners will reserve their rights with respect to whether Mr. Horton’s decision at Phase 1 of the arbitration regarding enforceability is rendered *res judicata*;
- (f) At the conclusion of the arbitration the Proposal Trustee will make a determination as to whether Ms. Athanasoulis’ claim is provable and will value it and determine its priority; and,
- (g) The parties’ rights to appeal are preserved under the *Bankruptcy and Insolvency Act*.

11. The Proposal Trustee’s motion record includes its Sixth Report of the Proposal Trustee dated August 19, 2022. The Report 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”.¹

12. I am advised by Shaun Laubman that a mediation of Ms. Athanasoulis’ claim was held on October 7, 2022. The Proposal Trustee, Ms. Athanasoulis, the proposal sponsor Concord Properties Developments Corp. and the limited partners all participated in the mediation. However, the mediation failed to resolve the dispute.

13. The Proposal Trustee’s motion record also includes the Endorsement of Justice Kimmel dated November 1, 2022. In her decision, Justice Kimmel held that:

[81] Unfortunately, the Sponsor and the LPs did not have a copy of the Agreement to Arbitrate until July, 2022. Their concerns were raised in a timely manner upon learning more about the scope of the Arbitration and its anticipated cost. The fact that this discovery also coincided with their learning that the phase 1 outcome favoured Ms. Athanasoulis does not automatically lead to the inference that their objections are disingenuous.

...

[83] While I do not go so far as to accept the suggestion by the Sponsor and LPs that Ms. Athanasoulis knowingly took on the risk of this challenge and outcome, the Sponsor and LPs were left out of the process and cannot be precluded from raising the legal objections that have ultimately dictated the outcome of this motion on the Jurisdiction Question, as it relates to phase 2 of the Arbitration.²

14. I attach as **Exhibit “G”** email correspondence between the parties’ counsel sent December 2 to 21, 2022 regarding the process for adjudicating the remaining issues in Maria

¹ Motion Record of the Proposal Trustee dated December 30, 2022, [Tab 2\(C\)](#), p 74.

² *Ibid*, Tab 2(E), pp 107-108, [paras 81](#) and [83](#).

Athanasoulis' claim and any potential appeal, with "without prejudice" correspondence redacted. Counsel also discussed the potential of conducting a mediation prior to continuing the arbitration.

15. I am advised by Mr. Laubman that on November 22, 2022, Justice Osbourne released a decision following an appeal, pursuant to s.135(4) of the *Bankruptcy and Insolvency Act*, by CBRE Limited from the Proposal Trustee's disallowance of its claim. A copy of the email from the Court enclosing that decision, and a copy of the decision, are attached collectively as **Exhibit "H"**. Justice Osborne's decision is under appeal. A copy of the Notice of Appeal is attached as **Exhibit "I"**.

16. I attach as **Exhibit "J"** the endorsement of Justice Kimmel on December 21, 2022 scheduling the motion for directions with respect to the proposed procedure for January 16, 2023.

17. I am informed by Shaun Laubman that on December 27, 2022, the limited partners sent the Proposal Trustee a brief containing their evidence and submissions relating to Ms. Athanasoulis' claim to a share in the debtors' profits.

SWORN by Ashley McKnight before me at the City of Toronto, in the Province of Ontario, on January 4, 2023.

Commissioner for Taking Affidavits
(or as may be)
XIN LU (CRYSTAL) LI

ASHLEY MCKNIGHT

This is Exhibit "A" referred to in the Affidavit of Ashley McKnight sworn January 4, 2023.



Commissioner for Taking Affidavits (or as may be)

XIN LU (CRYSTAL) LI

From: [Milne-Smith, Matthew](#)
To: [Milne-Smith, Matthew](#); [Alexander Soutter](#); [Shaun Laubman](#); [Bobby Kofman](#); [Li, Chenyang](#); [Crystal Li](#); [Mitch Vininsky](#); [Murtaza Tallat](#); [Schwill, Robin](#)
Subject: RE: Update
Date: May-11-22 10:19:01 AM
Attachments: [RE Athanasoulis.msg](#)

Last Thursday Alex advised that you were declining to participate further in the arbitration and would be writing to us with your position. We have yet to hear from you in that regard. I attach an email we received late last night from Maria's counsel proposing a schedule for the arbitration. I believe that the evidence of your clients will be necessary to respond to her claims, and we are open to you seeking an expanded role.

As per my email of yesterday we are also hoping that a mediation may be appropriate, and that your participation would improve the odds of a mediation succeeding.

Things are going to move quickly and your clients are important stakeholders. I hope to hear your position as soon as possible.

Matt

Matthew Milne-Smith (he, him)
T 416.863.5595
mmilne-smith@dwpv.com

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Toronto, ON M5V 3J7
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DAVIES WARD PHILLIPS & VINEBERG LLP

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-----Original Message-----

From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: May 9, 2022 6:27 PM
To: Alexander Soutter <ASoutter@tgf.ca>; Shaun Laubman <slaubman@lolg.ca>; Bobby Kofman <bkofman@ksvadvisory.com>; Li, Chenyang <CLi@dwpv.com>; Crystal Li <cli@lolg.ca>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Murtaza Tallat <mtallat@ksvadvisory.com>; Schwill, Robin <rschwill@dwpv.com>
Subject: Update

Shaun and Alex,

Could we have a call to check up on where your clients stand in respect of Maria's claim? We understand you do not intend to participate in the ongoing arbitration but are not sure if you intend to take any steps to challenge or stay that process while it continues.

Matt

Crystal Li

From: Stothart, Sarah <sstothart@goodmans.ca>
Sent: May-10-22 5:31 PM
To: Milne-Smith, Matthew; Dunn, Mark
Cc: Li, Chenyang; Schwill, Robin
Subject: RE: Athanasoulis

External Email / Courriel externe

Matt,

A proposed schedule is below. Please let us know if you have any comments.

These dates are subject to obtaining the documents we will request and that our expert needs to prepare its report on a timely basis. To the extent any delay impacts delivery of our expert report by the date stated below, we will advise.

1. Case management conference: **May 13**
2. Trustee to deliver responding pleading: **May 24**
3. Document motion to be heard by: **May 27**
4. Parties to exchange documents by: **June 3**
5. Any third party / LP motion by: **June 15**
6. Any oral discovery to be conducted by: **June 30**
7. Any answers to undertakings to be delivered by: **July 11**
8. Athanasoulis expert report: **July 22**
9. Responding expert report: **August 19**
10. Reply expert report: **September 2**
11. Written opening argument (mutual exchange): **September 8**
12. Hearing: **September 12 for 2 weeks** (excluding Sept. 20)
13. Written closing argument: **September 28**
14. Closing: **September 30**

Thanks,

Sarah Stothart

(she/her)
Goodmans LLP

416.597.4200
sstothart@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: Tuesday, May 10, 2022 4:54 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Stothart, Sarah <sstothart@goodmans.ca>; Li, Chenyang <CLi@dwpv.com>; Schwill, Robin <rschwill@dwpv.com>
Subject: RE: Athanasoulis

Thanks Mark. I would hope any mediation could be done expeditiously, and concurrently with our working on a responding pleading and you working on your expert reports. Let me reach out to Alex and Shaun.

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: May 10, 2022 4:51 PM
To: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Cc: Stothart, Sarah <sstothart@goodmans.ca>; Li, Chenyang <CLi@dwpv.com>; Schwill, Robin <rschwill@dwpv.com>
Subject: RE: Athanasoulis

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We are interested in a mediation, although a final determination would depend on the details in terms of timing, participation and mediator. We do not want any potential mediation to delay the litigation. Happy to discuss next steps if that is helpful, or you can canvass others and come back to me.

***** Attention *****

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From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: Monday, May 9, 2022 11:21 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Stothart, Sarah <sstothart@goodmans.ca>; Li, Chenyang <CLi@dwpv.com>; Schwill, Robin <rschwill@dwpv.com>
Subject: Re: Athanasoulis

As soon as possible. I think you, me and the LPs. And I think we want a mediator who will be willing to make a mediator's proposal.

Matthew Milne-Smith (he, him)
T 416.863.5595
mmilne-smith@dwpv.com
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On May 9, 2022, at 6:32 PM, Dunn, Mark <mdunn@goodmans.ca> wrote:

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Potentially. It would depend on timing and participants. What did you have in mind?

Sent from my iPhone

> On May 9, 2022, at 6:25 PM, Milne-Smith, Matthew <MMilne-Smith@dwpv.com> wrote:

>

> Mark, is there any interest on your part to trying to mediate your claim?

>

> Matt

>

>

> Matthew Milne-Smith (he, him)

> T 416.863.5595

> mmilne-smith@dwpv.com

>

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> 155 Wellington Street West

> Toronto, ON M5V 3J7

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This is Exhibit "B" referred to in the Affidavit of Ashley McKnight sworn January 4, 2023.



Commissioner for Taking Affidavits (or as may be)

XIN LU (CRYSTAL) LI

Crystal Li

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: May-17-22 1:23 PM
To: Milne-Smith, Matthew; Shaun Laubman
Cc: Crystal Li; Li, Chenyang; Schwill, Robin
Subject: RE: YG Limited Partnership - Athanasoulis claims [LOLG-DMS.FID106454] [IMAN-CLIENT.FID6731]

Matt,

We agree to use the May 24th court time as a case conference. We have instructions to bring a motion to set aside the arbitration process and determine the issues we have raised. We disagree with the analysis in your email and agree with the analysis in Shaun's most recent letter. We will send you our Notice of Motion soon and will ask the Court on May 24th to set a timetable for the motion and schedule a date.

Regards,
 Alex



Alexander Soutter | Associate | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: Monday, May 16, 2022 7:19 PM
To: Shaun Laubman <slaubman@lolg.ca>
Cc: Alexander Soutter <ASoutter@tgf.ca>; Crystal Li <cli@lolg.ca>; Li, Chenyang <CLi@dwpv.com>; Schwill, Robin <rschwill@dwpv.com>
Subject: RE: YG Limited Partnership - Athanasoulis claims [LOLG-DMS.FID106454]

Shaun,

We acknowledge receipt of your letter dated May 13, 2022.

We disagree that the chosen arbitration process is inconsistent with s. 135 of the *BIA*, as it is just another means of determining a claim where the Trustee lacked sufficient evidence to assess Ms. Athanasoulis' claim. Had the Trustee issued a Notice of Revision or Disallowance then the appeal of that disallowance would have wound up in a functionally identical process, only with the additional delay and expense of being intermediated by a court process. With the lack of availability of time on the Commercial List, a multi-day trial may very well have resulted in a delay of a year or more.

The Trustee rejects your suggestion that the arbitration process "ignores the rights of [your] clients". Your clients were at all times aware of the process and took no objection until it produced a preliminary result with which you disagreed. The Trustee provided you with copies of the pleadings and had numerous discussions with you about whether your clients could provide any relevant information to Phase 1 Phase I of the

18

arbitration was properly conducted with oral evidence from the only parties who were party to the alleged contract formation: Dan Casey, Maria Athanasoulis, and John Papadakis. With the broadened scope of relevance for Phase II, we solicited your clients' involvement and participation, including specifically at the first case conference with Mr. Horton. While Ms. Athanasoulis opposed your participation, the Trustee did not and you have made no material effort to participate, including by declining to participate in the case conference at the last minute.

With respect to your claims of breach of fiduciary duty and breach of the YG Limited Partnership's partnership agreement, the Trustee takes no position other than to note that any such claim can presumably be asserted against Ms. Athanasoulis if she succeeds in recovering any damages from the estate.

Finally, with respect to the issue of whether Ms. Athanasoulis' claim is a provable debt claim in bankruptcy as opposed to a claim for equity in the bankrupt estate, we invited your clients to participate in Phase II so that any evidence they may have relevant to that issue may be considered. Additionally, the Trustee has an agreement with Mr. Dunn as to the conduct of the arbitration. Nothing prevents your clients from bringing a motion to address the priority of any damages claim in favour of Ms. Athanasoulis.

In light of your clients' position, the Trustee proposes to use the court time reserved on May 24 as a case conference at which you can raise your concerns with Justice Gilmore and she can provide informal guidance on the issues. By copy of this email I would ask Mr. Soutter if he is amenable to such an approach. I will similarly contact Mr. Dunn by separate email.

Yours very truly,

Matt

Matthew Milne-Smith (he, him)

T 416.863.5595

mmilne-smith@dwpv.com

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From: Shaun Laubman <slaubman@lolg.ca>

Sent: May 13, 2022 10:00 AM

To: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Schwill, Robin <rschwill@dwpv.com>

Cc: Alexander Soutter <ASoutter@tgf.ca>; Dunn, Mark <mdunn@goodmans.ca>; Crystal Li <cli@lolg.ca>

Subject: YG Limited Partnership - Athanasoulis claims [LOLG-DMS.FID106454]

External Email / Courriel externe

Please see the attached letter sent on behalf of the limited partners.

Shaun Laubman (he/him)

Direct 416 360 8481

Cell 416 315 4122

slaubman@lolg.ca

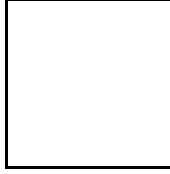
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Shaun Laubman

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**Lax
 O'Sullivan
 Lisus
 Gottlieb**

May 13, 2022

BY EMAIL

Matthew Milne-Smith / Robin Schwill
 Davies Ward Phillips & Vineberg LLP
 Barristers and Solicitors
 155 Wellington Street West
 Toronto ON M5V 3J7

Dear Sirs:

Maria Athanasoulis Arbitration – Objection to Arbitration Process

As you know, we are counsel for 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc. in respect of their claims arising from the YG Limited Partnership (the “**Partnership**”) and the YSL Project. This letter is also sent on behalf of Mr. Soutter and his clients.

This letter constitutes our formal objection to the arbitration process between the Proposal Trustee and Maria Athanasoulis for the adjudication of Ms. Athanasoulis’ claim against the Partnership. We have never consented to or supported the private arbitration of Ms. Athanasoulis’ claim.

Our clients’ understanding is that the Proposal Trustee and Ms. Athanasoulis have agreed to refer the issues of liability and quantum of her claim to a private and confidential arbitration. Our clients’ position is that the referral is not a proper exercise of the Proposal Trustee’s powers and duties under the *Bankruptcy and Insolvency Act* (the “**BIA**”).

Section 135 of the *BIA* requires the Proposal Trustee to “examine every proof of claim” and “the grounds therefor” and determine whether a claim is a provable claim (and if a provable claim, the value of the claim):

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.

(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.

If the Proposal Trustee is not satisfied that a claim has been established, it should issue a notice of determination or disallowance and the claimant can appeal the decision to the court within 30 days.¹ The *BIA* does not give the Proposal Trustee the right to refer a claim to adjudication by an arbitrator. Such a referral is not equivalent or analogous to requiring further evidence in support of the claim or security under section 135(1).

In the alternative, the Proposal Trustee can bring an application under section 34(1) of the *BIA* for court's directions with respect to the claim. Again, the *BIA* does not give the Proposal Trustee the right to refer a claim to adjudication by an arbitrator.

The arbitration procedure ignores the rights of our clients. Our clients have a direct interest in the outcome of Ms. Anathasoulis' claim, both as limited partners of the Partnership and as parties with claims to the Partnership's funds. Had Ms. Anathasoulis' claim proceeded in court, either through an appeal or application for directions, our clients would have rights to participate in the proceedings and the proceedings would be open and transparent.

However, the current arbitration process does not give our clients participation rights and the private nature of the arbitration means the materials and decisions in the arbitration will be confidential. The adjudication process is not open and transparent.

Significantly, it is not clear that the arbitration process between the Proposal Trustee and Ms. Athanasoulis is addressing or can address what we consider to be threshold and important issues with respect to Ms. Athanasoulis' claim. As we now understand that claim based on her most recent pleading, she is asserting that she had an oral agreement that binds the Partnership and entitles her to be paid notional profits of the Partnership in priority to any recovery by the limited partners.

The assertion by Ms. Anathasoulis of such an agreement is deeply concerning to our clients and raises serious issues of a breach of her fiduciary duties (as well as a corresponding breach by Dan Casey) and a breach of the YG Limited Partnership's Partnership Agreement, dated August 4, 2017 ("**Partnership Agreement**"). Ms. Athanasoulis' claim appears to be premised on an oral agreement with Mr. Casey that pre-dated the existence of the Partnership and that was never disclosed to the limited partners when their investments were solicited by Ms. Athanasoulis and others at Cresford. In fact, the existence of an agreement that entitles Ms. Athanasoulis to payments of the Partnership's profits in priority to the limited partners receiving the full return of their investment plus their guaranteed return on investment is directly contrary to the terms of their investments.

To the extent that Ms. Athanasoulis' claim is premised on an agreement between her and Mr. Casey that post-dates the formation of the Partnership and the effective date of

¹ *Bankruptcy and Insolvency Act*, RSC, 1985, c B-13, s 135(4).

the Agreement, it is in breach of 3.2(b)(xix) and 3.6(b) of that agreement as well as a breach of the fiduciary duties owed to the limited partners by the General Partner, and by extension Ms. Athanasoulis.

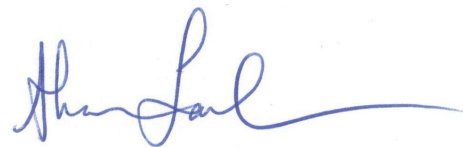
Therefore, even if Ms. Athanasoulis could establish that the Partnership was somehow profitable and that her agreement was to profits of the Partnership rather than the Cresford entities that held Class B Units of the Partnership, our clients dispute that any such agreement would be enforceable against the Partnership. Our clients' position is also that Ms. Athanasoulis would be liable to them for the full amount of any payment she receives out of the claims process in relation to the alleged profit sharing agreement between her and Mr. Casey.

There is also the issue that Ms. Athanasoulis' claim is an equity claim and clearly subordinate to the limited partners' claims. It is unclear if, when or how this issue is to be determined in the arbitration process and why the Proposal Trustee has not already made a determination and rejected Ms. Athanasoulis' claim on this basis.

Our clients were not invited to participate in the arbitration process and are not parties to it. They are not bound by the process. It does not appear that the issues highlighted above are before the arbitrator.

As such, our clients object to the arbitration proceeding for the adjudication of Ms. Athanasoulis' claim. Our clients demand that the arbitration be stayed and the issues referred to a court for adjudication. It does not serve the interests of justice to proceed in a piecemeal fashion where discrete issues regarding Ms. Athanasoulis' claim are adjudicated across multiple proceedings and between different parties. There should be a single proceeding, in Court, involving all interested parties including our clients, to finally determine the merits of Ms. Athanasoulis' claim and any claims that the limited partners have against her. Absent agreement to this, we will be bringing a motion to have the arbitration stayed and the issues determined by the Court.

Yours truly,



Shaun Laubman

SL/rp

cc: Mark Dunn, Goodmans LLP

This is Exhibit “C” referred to in the Affidavit of Ashley McKnight sworn January 4, 2023.



Commissioner for Taking Affidavits (or as may be)

XIN LU (CRYSTAL) LI

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

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

**AIDE MEMOIRE OF THE PROPOSAL TRUSTEE,
KSV RESTRUCTURING INC.**

(Hearing before Justice Gilmore on May 24, 2022)

May 20, 2022

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Lawyers for Limited Partners

1. The Proposal Trustee, KSV Restructuring Inc. (“**KSV**”), delivers this aide memoire in respect of the notice of motion dated May 18, 2022¹ of YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc. (the “**YongeSL LPs**”) and certain issues raised by 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc. (the “**250 LPs**”, and together with the YongeSL LPs, the “**LPs**”) in their letter dated May 13, 2022.²

A. Background to the Dispute

2. This dispute centres around a condominium development in downtown Toronto that was being developed by YSL Residences Inc. and YG Limited Partnership (together, “**YSL**”). YSL was a project company within the Cresford group of companies, created to develop the YSL project. In the course of 2020, the Cresford group encountered financial challenges, and in April 2021, YSL filed a notice of intention to make a proposal under s. 50.4(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”). KSV Restructuring was appointed the Proposal Trustee by the Court. A proposal was approved on July 16, 2021 by this Court. Concord Properties Developments Corp. (“**Concord**”), a third party, sponsored the proposal and became the owner of YSL’s condominium development.

3. As part of the Proposal Trustee’s mandate under the BIA, it is required to allow and disallow claims made by creditors against YSL. Pursuant to the proposal, the costs of the Proposal Trustee in adjudicating and settling creditor claims are being funded by Concord.

4. Maria Athanasoulis submitted a proof of claim within this process. Ms. Athanasoulis made

¹ Attached hereto as **Appendix “A”**.

² Attached hereto as **Appendix “B”**.

a claim for \$1 million (for what she characterizes as wrongful dismissal damages) and a claim for \$18 million (for what she characterizes as lost profits pursuant to an oral contract). Ms. Athanasoulis's claim is the largest claim filed and has not been determined.

5. The Trustee lacks sufficient information to make a determination of Ms. Athanasoulis's claim given that the existence of any oral contract and her constructive dismissal were being disputed by Cresford. In order to determine certain facts pertinent to Ms. Athanasoulis's claim, the Proposal Trustee entered into an arbitration agreement with Ms. Athanasoulis. The arbitration was limited to the determination of the following three issues: (i) whether Ms. Athanasoulis had an oral profit sharing contract with YSL; (ii) whether Ms. Athanasoulis had been constructively dismissed; and (iii) if so, what is the quantum of damages in each case. These are all primarily factual determinations.

6. Under the arbitration agreement, the Proposal Trustee and Ms. Athanasoulis agreed to bifurcate the issues of liability and damages. Liability would be dealt with in Phase I of the arbitration, and damages would be dealt with in Phase II of the arbitration.

7. The arbitration procedure is authorized under s. 135(1) of the *Bankruptcy and Insolvency Act*, which provides that: "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". Arbitration was the means the Trustee chose to "require further evidence".

8. The Trustee advised the LPs of the arbitration proceedings and provided them with a copy of the arbitration pleadings in December 2021. The Trustee also asked the LPs for any evidence that may have been relevant to Phase I of the arbitration proceedings, which evidence was considered by the Proposal Trustee. At no time did the LPs take any steps to stay or otherwise

prevent the arbitration from proceeding.

9. Phase I of the arbitration was tried in February 2022 before Arbitrator William Horton. Arbitrator Horton released his partial award in respect of Phase I of the arbitration on March 28, 2022. In his partial award, Arbitrator Horton held that Ms. Athanasoulis had an oral profit sharing contract with YSL, and that YSL was liable to Ms. Athanasoulis for constructive dismissal and breach of the oral profit sharing contract.

10. Following the release of the partial award, the Proposal Trustee and Ms. Athanasoulis set tentative dates for the hearing of Phase II of the arbitration in September 2022.

B. Complaints of the LPs

(i) Notice

11. Following the release of the partial award, the Proposal Trustee reported to various stakeholders, including Concord and the LPs. Upon receiving notice of the partial award, the LPs for the first time raised objections to the arbitration process agreed to between the Proposal Trustee and Ms. Athanasoulis.

12. The 250 LPs claim that they “have never consented to or supported the private arbitration of Ms. Athanasoulis’ claim”. However, the Proposal Trustee was fully transparent with the LPs about its intention to enter into the arbitration agreement with Ms. Athanasoulis before it was executed, and the LPs did not raise any objection to that procedure.

(ii) Choice of Arbitration Process

13. The LPs further complain that the Proposal Trustee should have adjudicated the existence Ms. Athanasoulis’s claim by issuing a Notice of Disallowance and then requiring Ms. Athanasoulis to appeal the disallowance, rather than going to arbitration. The Proposal Trustee agrees that this

was one course of action available to it. However, in the Proposal Trustee's view, the arbitration procedure was the faster and more efficient means of determining the facts in respect of Ms. Athanasoulis's claim. This is so because any appeal of a disallowance would have been adjudicated by the Court or under the Court's supervision. In the experience of the Proposal Trustee and its counsel, adjudication by the Court would have entailed significant delay given the demands on the Court's time.³ Alternatively, the Court could have appointed a claims officer to adjudicate Ms. Athanasoulis's claim, in which case the final endpoint of that process would have been an out-of-court claims process very similar to the arbitration that the Proposal Trustee and Ms. Athanasoulis are currently engaged in. In both instances, the decision is appealable or subject to Court approval.

(iii) Participation in Arbitration

14. As described above, the Proposal Trustee was transparent with the LPs regarding the arbitration process with Ms. Athanasoulis. The Proposal Trustee did not invite the LPs to participate in Phase I because it raised narrow issues concerning whether an oral agreement had been entered into between Ms. Athanasoulis and Dan Casey, the principal of the Cresford Group. The LPs were not a party to any of the discussions concerning that oral agreement.

15. Phase II of the arbitration raises broader issues and the Proposal Trustee explicitly invited the LPs to participate in it. The LPs have advised that they do not intend to do so and have instead brought their motion to stay the arbitration.

16. With respect to the issue of priorities, the Proposal Trustee has entered into an agreement to arbitrate with Ms. Athanasoulis and she has refused to defer arbitration pending an adjudication of the priorities issue. In any event, it is unclear whether the question of priorities can be resolved

³ For reference, Phase I of the arbitration required a four day hearing.

until a final determination of Phase II of the arbitration is made.

(iv) Proposal Trustee's Position on Ms. Athanasoulis's Claim

17. Based on the evidence currently available, the Proposal Trustee presently takes the position that Ms. Athanasoulis has not suffered any damages flowing from YSL's breach of the oral profit sharing contract because YSL earned no profits, which is consistent with the position of the LPs. The Proposal Trustee also presently takes the position that that any damages owed to Ms. Athanasoulis pursuant to the oral profit sharing contract rank after the return of capital to the LPs in terms of priority in this claims adjudication process, and/or that Ms. Athanasoulis's claims are in the nature of equity, which is also consistent with the position of the LPs. However, those issues cannot be decided in this case conference. The first issue of damages should be decided by way of the agreed arbitration process between Ms. Athanasoulis and the Proposal Trustee. The second issue is difficult to adjudicate definitively while the nature of Ms. Athanasoulis's claim remains unresolved, and may ultimately be for the Court to determine upon considering the recommendation of the Proposal Trustee following the conclusion of arbitration.

C. Issues with LPs Position

18. Based on the submissions made in the YongeSL LPs notice of motion, the LPs appear to seek to expand significantly the issues involved in the adjudication of claims in this BIA process. By way of example only, the LPs assert claims against Ms. Athanasoulis for breach of fiduciary duty and breach of the LPs' partnership agreement. Those are not issues that involve YSL or the administration of the proposal process. Those are direct claims by the LPs against Ms. Athanasoulis, and they do not bear on Ms. Athanasoulis's claims against YSL. The LPs can commence legal proceedings against Ms. Athanasoulis outside of these proceedings if they believe their claims have merit.

19. In the Proposal Trustee's view, it is not in the interests of other creditors of YSL to suspend the final distribution of funds and the settlement of claims while the issues between the LPs and Ms. Athanasoulis are litigated. Nor is it fair or appropriate for Concord to bear the cost of funding the Proposal Trustee's participation in litigation that only involves the LPs and Ms. Athanasoulis.

20. The numerous issues raised in the LPs' Notice of Motion will give rise to significant cost and delay, particularly given the long delays already incurred in making distributions to creditors. In the context of the multitude of relatively complex issues being raised by several parties with opposing interests, and as an alternative to continued arbitration, the Proposal Trustee had canvassed the idea of the parties submitting their disputes to mediation as being a more pragmatic and effective approach. While not all parties have agreed to mediation, the Proposal Trustee continues to believe that there is significant merit to a mediation given that the economic interest of Ms. Athanasoulis is directly opposite the LPs and there remains the prospect of all creditors being paid in full. In the absence of a negotiated resolution, the Proposal Trustee would seriously consider the recommendation of a mediator in respect of the various outstanding issues.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of May, 2022.



Davies Ward Phillips & Vineberg LLP
Counsel for the Proposal Trustee,
KSV Restructuring Inc.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

AIDE MEMOIRE OF THE PROPOSAL
TRUSTEE, KSV RESTRUCTURING INC.

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Lawyers for the Proposal Trustee,
KSV Restructuring Inc.

This is Exhibit "D" referred to in the Affidavit of Ashley McKnight sworn January 4, 2023.

A handwritten signature in blue ink, appearing to read "Xin Lu", written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

XIN LU (CRYSTAL) LI



SUPERIOR COURT OF JUSTICE

COUNSEL SLIPCOURT FILE NO.: BK-21-02734090-0031 DATE: 24 May 2022NO. ON LIST: 3TITLE OF PROCEEDING: YSL RESIDENCES INC., et alBEFORE JUSTICE: JUSTICE GILMORE**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

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Alexander Soutter	YongeSL Investment Limited Partnership, 2124093 Ontario Inc., Sixone Investment Ltd., E&B Investment Corporation, and Taihe International Group Inc.	asoutter@tgf.ca

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For Other, Self-Represented:

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Shaun Laubman	2505670 Canada, 8451761 Canada Inc. and Chi Long Inc.	slaubman@lolg.ca

ENDORSEMENT OF JUSTICE GILMORE:

Two issues were dealt with at today's hearing; the motion of the Proposal Trustee to approve settlements with certain claimants, and issues related to Ms. Athanasoulis' claims against YSL.

The motion in relation to the settlements was not opposed. The signed Order is attached.

With respect to the second issue, counsel for the LPs requested that the Court schedule motions related to the Proposal Trustee's authority, whether Ms. Athanasoulis' equitable claims are subordinate to the LP's entitlement, and a request to stay the upcoming arbitration of Ms. Athanasoulis' claim.

I declined to schedule the motion. It struck me that the priority issues and the damages could all be arbitrated at the arbitration already scheduled for September 2022. This would be far more efficient than putting off the arbitration and scheduling a full day motion (which likely could not be heard before November 2022 given the current Court schedule). Counsel for KSV, Ms. Athanasoulis and Concord did not disagree that this would be an efficient way to proceed. Mr. Laubman did not disagree but Mr. Soutter who acts for 2/3 of the LPs objects to the arbitration process as his position is that it was never authorized.

Counsel are to return before me on **June 8, 2022 at 12:00 p.m. for one hour**. Counsel are directed to collaborate on the outstanding issues and the LPs are to particularize their equitable claims against Ms. Athanasoulis so that a meaningful discussion can take place on June 8th. If necessary, the issues for the arbitration could be the subject of a mediation.

May 24, 2022

Justice C. Gilmore

This is Exhibit "E" referred to in the Affidavit of Ashley McKnight sworn January 4, 2023.



Commissioner for Taking Affidavits (or as may be)

XIN LU (CRYSTAL) LI

Consolidated 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

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

Claim of Maria Athanasoulis against
YG Limited Partnership and YSL Residences Inc.

CASE CONFERENCE BRIEF OF MARIA ATHANASOULIS
(Case Conference scheduled for June 8, 2022)

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Lawyers for the Claimant, Maria
Athanasoulis

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PART I. BACKGROUND

1. Maria Athanasoulis sued YSL Residences Inc. and YG Limited Partnership (collectively, “YSL”) in February 2020 for breach of an agreement by which YSL agreed to pay her 20% of the profits on its real estate development project (the “Profit Sharing Agreement”).

2. Ms. Athanasoulis’ claim was stayed when YSL filed a bankruptcy proposal and she then delivered a Proof of Claim (the “Claim”) to the Proposal Trustee, KSV Restructuring Inc. (the “Trustee”). Ms. Athanasoulis and the Trustee agreed to a bifurcated arbitration for the determination of her Claim (the “Arbitration”).

3. Ms. Athanasoulis won the first phase of the Arbitration and established the existence and breach of the Profit Sharing Agreement. Ms. Athanasoulis and the Trustee agreed that if Ms. Athanasoulis won the first phase of the Arbitration, they would proceed to a second hearing to determine damages.

4. On May 18, 2022, a group of limited partner investors in YSL (the “LPs”) served a Notice of Motion seeking to (among other things) set aside the arbitration process and raise a host of new issues relating to Ms. Athanasoulis’ right to payment in these proceedings. Ms. Athanasoulis, and the Proposal Trustee, opposed scheduling the motion. The parties were directed to discuss an efficient process for resolving the various issues in dispute, and return for a further case conference on June 8, 2022.

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.

6. In order for the arbitration to proceed efficiently, YSL must produce relevant documents. Although YSL has agreed to search for documents, its voluntary efforts have fallen far short of the candid disclosure that is required of a debtor that seeks the benefits of the *Bankruptcy and Insolvency Act* (the “BIA”). YSL claims that relevant documents were destroyed around the time that Ms. Athanasoulis made her document request, but that some (as yet unspecified) set of documents has been recovered. YSL has delayed production of documents that ought to be readily available, including its general ledger, and it has provided information contradicted by the sworn testimony of its principal at the first phase of the Arbitration.

7. In the circumstances, YSL should be directed to join the arbitration proceeding, for the sole purpose of being bound by document production orders made in that proceeding.

PART II. THE ARBITRATION PROCESS

8. The LPs represented by Lax O’Sullivan Lissu Gottlieb LLP (the “LOLG LPs”) and those represented by Thornton Grout Finnegan LLP (the “TFG LPs”) have each filed a case conference brief articulating the issues that they seek to raise in the arbitration before William G. Horton (the “Arbitrator”).

9. Ms. Athanasoulis agrees that the issues that are (arguably) relevant to her right to payment in these proposal proceedings should be determined in a single arbitration. The LOLG LPs identify

three issues that they seek raise that are relevant to Ms. Athanasoulis' Claim against the debtors: (i) enforceability, (ii) priority, and (iii) damages. The TGF LPs identify substantially similar issues in their case conference brief and attached Amended Notice of Motion. Ms. Athanasoulis does not object to the LPs asserting their claim for damages in the Arbitration in the interest of expedience.

PART III. DOCUMENT PRODUCTION FROM THE DEBTORS

10. In the second phase of the Arbitration, Ms. Athanasoulis claims damages calculated based on:

- (a) 20% of the profits that YSL would have earned but-for its breach of contract; or,
- (b) In the alternative, 20% of the profits that YSL actually earned.

11. The LPs assert that YSL did not earn a profit, and so Ms. Athanasoulis is not entitled to any damages. But this assumes, without proving, that YSL's revenues were less than its expenses. Based on the financial disclosure available to date, YSL's revenues substantially *exceeded* its expenses. YSL earned a profit, even though that profit was not available for distribution in these proposal proceedings.

12. It is unclear, at this stage, what happened to the profits that YSL seems to have earned and why those profits were not available for distribution as part of these proceedings. Ms. Athanasoulis has pleaded that Mr. Casey caused YSL to divert the profits for his own purposes. This issue will be determined in the second phase of the Arbitration.

13. This aspect of Ms. Athanasoulis' Claim requires a detailed understanding of YSL's financial history, and that understanding requires documentary production from YSL. The Trustee does not have possession of the relevant documents.

14. Ms. Athanasoulis wrote to YSL's counsel on May 12, 2022 to demand production of relevant documents and records.¹

15. The debtors did not provide a substantive response, and so Ms. Athanasoulis prepared and served a Notice of Motion to compel production of relevant records.²

16. After being served with the Notice of Motion, YSL claimed that many of the documents sought by Ms. Athanasoulis had been destroyed in an alleged ransomware attack.³ The attack is alleged to have occurred approximately two weeks before Ms. Athanasoulis demanded documents required to assess whether YSL had improperly diverted profits. Stranger still, YSL knew that Ms. Athanasoulis and the Trustee were working toward an expedited arbitration but said nothing about the alleged attack for several weeks. These circumstances are likely to require further investigation to ensure the integrity of whatever documents YSL produces and determine how the absence of relevant documents should be treated in the arbitration.

17. On June 6, 2022, the debtors purported to provide certain limited documents and an explanation of why other documents could not be provided.⁴ But the documents were not

¹ Emails between Sarah Stothart and Harry Fogul dated May 12-16, 2022, Case Conference Brief ("Brief"), Tab A

² Notice of Motion to Compel Production of Documents, Brief, Tab B

³ Email from Harry Fogul dated June 2, 2022, Brief, Tab C

⁴ Email from Harry Fogul dated June 6, 2022, Brief, Tab D

responsive and the information provided was contradicted by the sworn testimony of the debtors' *own principal*, Mr. Casey.

18. By way of example, Ms. Athanasoulis requested production of a loan agreement dated December 17, 2019.⁵ Counsel to the debtors claimed, in response to the document request, that “there was no loan on December 17, 2019”.⁶ But Mr. Casey testified in the first phase of the arbitration that the debtors *had* taken out a \$10 million loan on that date:⁷

22 Q. So it's accurate to say that
23 you took out a \$10 million loan on December 17th,
24 2019?
25 A. Yes.

19. YSL has been unwilling or unable to explain this inconsistency, and has not yet clarified in response to inquiries from Ms. Athanasoulis and the Proposal Trustee about it.

20. By way of further example, Ms. Athanasoulis requested production of documents relating to the termination of YSL's construction loan.⁸ These documents are required to respond to an allegation made by the Trustee during the first phase that Ms. Athanasoulis herself caused that termination. But YSL produced only the term sheet for the loan. The term sheet provides no information at all with respect to when and why the construction loan was terminated.

⁵ Brief, Tab A

⁶ Brief, Tab D

⁷ Excerpt from Transcript of Daniel Casey dated February 24, 2022, Brief, Tab E

⁸ Brief, Tab A

21. There is no doubt that the debtors must produce relevant documents. The debtors took the benefits of the *BIA*, including a payment of approximately \$6.7 million made to a related party by an affiliate of the Proposal's sponsor. The debtors must also accept the burdens of the *BIA*, including their obligation to produce documents required to complete an efficient and expeditious evaluation of the Claim and to "aid to the utmost of [the bankrupt's] power in the . . . distribution of the proceeds among his creditors".⁹

22. The debtors' voluntary efforts have fallen well short of this requirement, and so Ms. Athanasoulis respectfully submits that the debtors should be directed to produce documents that are relevant to this proceeding. She further submits that the most effective way to accomplish this is to direct the debtors to execute the arbitration agreement with the Arbitrator, for the sole purpose of being bound by production orders made in the Arbitration.

⁹ *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s. 158(a), (b) and (k)

June 8, 2022

Goodmans LLP

Barristers & Solicitors

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Lawyers for the Claimant, Maria Athanasoulis

This is Exhibit "F" referred to in the Affidavit of Ashley McKnight sworn January 4, 2023.



Commissioner for Taking Affidavits (or as may be)

XIN LU (CRYSTAL) LI



SUPERIOR COURT OF JUSTICE

COUNSEL SLIPCOURT FILE NO.: 31-02734090 DATE: JUNE 8, 2022NO. ON LIST: 12:00PMTITLE OF PROCEEDING: **YG LTD/YSL RESIDENCES INC**BEFORE JUSTICE: **MADAM JUSTICE GILMORE****PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
A. SOUTTER (YONGE SL LPS) asoutter@tgf.ca		
JESSE MIGHTON (CONCORD PROP) mightonj@bennettjones.com		
SHAUN LAUBMAN (2504670 CAN) slaubman@lolg.ca		
MITCH VININSKY (KSV, PROP TRUSTEE) mvininsky@ksvestructuring.com		
MARK DUNN (MARIA ATHANASOULIS) mdunn@goodmans.ca		
HARRY FOGUL (DEBTORS) hfogul@airdberlis.com		
XIN LU (CRYSTAL) LI (2504670 CAN; 8451761 CAN)		

cli@lolg.ca**SARAH STOTHART FOR MARIA
ATHANASOULIS****sstothart@goodmans.ca**For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
ROBIN SCHWILL (PROPOSAL TRUSTEE) rschwill@dwpv.com BOBBY KOFMAN (PROPOSAL TRUSTEE)		
MATTHEW MILNE-SMITH (PROPOSAL TRUSTEE) mmilne-smith@dwpv.com		

ENDORSEMENT OF JUSTICE GILMORE:

Today's conference was scheduled as per my endorsement of May 24, 2022 wherein I asked counsel to collaborate on the issues to be arbitrated.

Mr. Milne-Smith, on behalf of the Proposal Trustee advised that counsel have collaborated and determined that they will work towards the terms of a newly constituted consolidated arbitration which will deal with all outstanding issues including the following:

1. The enforceability of the contract as found by Mr. Horton regarding Ms. Athanasoulis' claim and the quantum of any damages she may have suffered.
2. Whether any claim for damages by Ms. Athanasoulis is in the nature of debt or equity;
3. Any claim for damages that the Limited Partners may assert against Ms. Athanasoulis.
4. The arbitration will **not** consider any claims between Ms. Athanasoulis and Cresford Capital/Dan Casey.
5. The Limited Partners will reserve their rights with respect to whether Mr. Horton's decision at Phase 1 of the arbitration regarding enforceability is rendered *res judicata*.
6. At the conclusion of the arbitration the Proposal Trustee will make a determination as to whether Ms. Athanasoulis' claim is provable and will value it and determine its priority.
7. The parties' rights to appeal are preserved under the *BIA*.

Given concerns about delay I asked counsel to commit to having the arbitration before the end of 2022 which it is hoped will accommodate Mr. Soutter's parental leave and subject to Mr. Horton or another agreed upon arbitrator's availability.

Mr. Mighton, on behalf of the Proposal Sponsor, is concerned that including the issues between the LPs and Ms. Athanasoulis will increase the cost of the arbitration overall, expand the Trustee's role and delay the distribution of funds to creditors. His client does not support the arbitration proposal unless the LPs undertake to fund the Trustee's expenses. As the LPs would not do so, Mr. Mighton requests that the Court order a mandatory mediation of the issues between the LPs, Ms. Athanasoulis and the Trustee. If no settlement is achieved, he requests that the Court then direct the next steps regarding Ms. Athanasoulis' claims. Mr. Mighton also seeks to preserve his client's rights to amend the Proposal to provide that the administrative costs of the Trustee will be paid from the residual Creditor Cash Pool.

Mr. Laubman and Mr. Soutter do not agree. They are in favour of the arbitration procedure proposed. They point out that Ms. Athanasoulis' claim alone was originally scheduled for a two-week arbitration. The parties have now agreed on a two-week arbitration for **all** outstanding issues. The claims all arise from the same set of facts. The Trustee's role is not being expanded. Their clients are also incurring unanticipated costs in moving forward with the arbitration (which Mr. Soutter initially opposed) but now agree it is the most efficient process. The LPs do not consent to a mediation with Ms. Athanasoulis as suggested by Mr. Mighton.

The Trustee has undertaken to ensure that it will avoid duplication and minimize its role in the arbitration except where required.

Mr. Dunn raised an issue with respect to document production from the debtors. They are not parties to the arbitration agreement, but Mr. Dunn asks the Court to make them parties so they are obliged to provide documents as requested. Mr. Fogel on behalf of the debtors assured the Court that the request for documents received on May 12, 2022 will be complied with by June 24, 2022 or earlier and that the General Ledgers, Balance sheets and documents (and emails) related to the termination of the \$650M construction loan will be provided today. Mr. Dunn remains unconvinced and concerned about the nature of the documents produced to date.

Directions for Counsel

This matter must be kept on track to ensure an arbitration occurs before the end of 2022. I am not inclined to order a mandatory mediation of the Athanasoulis/LP issues where the LPs do not agree. The LPs have come around to agreeing to an expanded arbitration process notwithstanding any additional cost which they may incur. The Proposal Sponsor is understandably concerned about additional cost as well.

However, balancing the efficiency of a slightly more costly consolidated arbitration against the cost and timing of various motions, the arbitration must prevail. I urge counsel to immediately contact Mr. Horton such that a date can be secured hopefully in October or November 2022.

The issue of apportionment of costs raised by Mr. Mighton is a reasonable concern. The arbitrator may, in his discretion, apportion costs as he deems appropriate. It is too difficult for the Court at this early stage to attempt to parse the parties' respective responsibility for costs.

Counsel are directed to continue collaborating and refining the issues for the arbitration. They are to return before me on July 29, 2022 at 11:30 a.m. for one hour. By that date it is expected that an arbitration date will have been secured and a finalized list of issues for the arbitration prepared. Counsel are to provide a two-page brief for the July 29th conference. The brief is to be uploaded to Caselines by July 27, 2022 at 11:30 a.m.

Mr. Dunn raises reasonable concerns about document production. Notwithstanding Mr. Fogler's undertakings to produce certain documents today and within two weeks, this matter cannot languish especially given Mr. Mann's imminent departure. **Mr. Dunn, Mr. Fogler and the Trustee are to return before me on June 15, 2022 at 11:00 a.m. for 30 minutes to discuss the status of document production from the debtors.**

June 8, 2022



Justice C. Gilmore

This is Exhibit "G" referred to in the Affidavit of Ashley McKnight sworn January 4, 2023.



Commissioner for Taking Affidavits (or as may be)

XIN LU (CRYSTAL) LI

Crystal Li

From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: December-21-22 9:33 AM
To: Jesse Mighton; Shaun Laubman; Dunn, Mark
Cc: Alexander Soutter; Stothart, Sarah; hfogul@airdberlis.com; Schwill, Robin; D. J. Miller; David Gruber; Li, Chenyang
Subject: RE: 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 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454] [BJ-WSLegal.FID5464265]
Attachments: TRUSTEE - Aide Memoire for Case Conference on December 21, 2022.pdf

All, in case you missed it on CaseLines last night, we uploaded this Aide Memoire. It just gives a brief and uncontroversial background, and then sets out the Trustee's procedural proposal. I did not want to try to characterize your various objections to the proposal so just indicated that it did not have the support of the stakeholders, hence this case conference to request a motion.

From: Jesse Mighton <MightonJ@bennettjones.com>
Sent: December 15, 2022 5:06 PM
To: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Shaun Laubman <slaubman@lolg.ca>; Dunn, Mark <mdunn@goodmans.ca>
Cc: Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>; hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; D. J. Miller <DJMiller@tgf.ca>; David Gruber <GruberD@bennettjones.com>; Li, Chenyang <CLi@dwpv.com>
Subject: RE: 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 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454] [BJ-WSLegal.FID5464265]

External Email / Courriel externe

This time is ok for us.

Jesse Mighton, Partner, Bennett Jones LLP
 T. 416 777 6255 | F. 416 863 1716

From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: Thursday, December 15, 2022 5:02 PM
To: Shaun Laubman <slaubman@lolg.ca>; Dunn, Mark <mdunn@goodmans.ca>
Cc: Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>; hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; D. J. Miller <DJMiller@tgf.ca>; David Gruber <GruberD@bennettjones.com>; Jesse Mighton <MightonJ@bennettjones.com>; Li, Chenyang <CLi@dwpv.com>
Subject: RE: 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 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

What Alsou said was "We need counsel to appear for scheduling before Justice Kimmel in order to book ½ day ."

I took that to mean she's not going to give us a ½ day motion without talking to us about why we think it's needed. I certainly do not expect any substantive argument on the merits, though I wouldn't rule out us getting collectively yelled at for being unable to agree on a process.

Matt

From: Shaun Laubman <slaubman@lolg.ca>

Sent: December 15, 2022 4:52 PM

To: Dunn, Mark <mdunn@goodmans.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>

Cc: Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>; hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Li, Chenyang <CLi@dwpv.com>

Subject: RE: 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 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

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Is this simply to book a motion date or longer case conference date and not to deal with any substantive matters? If so, that's fine.

Shaun Laubman (he/him)

Direct 416 360 8481

Cell 416 315 4122

slaubman@lolg.ca

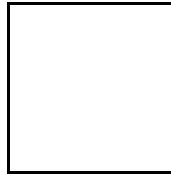
Lax O'Sullivan Lisus Gottlieb LLP

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Toronto ON M5H 1J8 Canada

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From: Dunn, Mark <mdunn@goodmans.ca>

Sent: December-15-22 4:50 PM

To: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Shaun Laubman <slaubman@lolg.ca>

Cc: Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>; hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Li, Chenyang <CLi@dwpv.com>

Subject: RE: 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 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

We will make that work on our end.

From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>

Sent: Thursday, December 15, 2022 4:47 PM

To: Dunn, Mark <mdunn@goodmans.ca>; Shaun Laubman <slaubman@lolg.ca>

Cc: Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>; hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Li, Chenyang <CLi@dwpv.com>

Subject: RE: 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 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

Everyone, I have been in touch with Alsou about booking a date. Justice Kimmel has asked that we appear to address scheduling, and we have been offered December 21 at 9:45 a.m. Can you please advise whether someone from your firm can attend. We are loathe to delay this any further.

Yours very truly,

Matt

From: Dunn, Mark <mdunn@goodmans.ca>

Sent: December 14, 2022 6:19 PM

To: Milne-Smith, Matthew <MMilne-Smith@dpvp.com>; Shaun Laubman <slaubman@lolg.ca>

Cc: Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>; hfogul@airdberlis.com; Schwill, Robin <rschwill@dpvp.com>; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Li, Chenyang <CLi@dpvp.com>

Subject: RE: 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 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

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Matt,

We are not prepared to file a “brief” without knowing what issues it needs to address, what evidence needs to be filed and what the process will be.

By way of example, the process below seems to contemplate a potential valuation trial (which obviously implies some further evidence) but it is not clear what issues will be resolved before that trial is heard and what will be determined at trial.

In the circumstances, we should proceed to court and get clarity on process so everyone can know the rules. Let’s proceed as soon as possible.

From: Milne-Smith, Matthew <MMilne-Smith@dpvp.com>

Sent: Wednesday, December 14, 2022 5:05 PM

To: Dunn, Mark <mdunn@goodmans.ca>; Shaun Laubman <slaubman@lolg.ca>

Cc: Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>; hfogul@airdberlis.com; Schwill, Robin <rschwill@dpvp.com>; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Li, Chenyang <CLi@dpvp.com>

Subject: RE: 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 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

Mark, thanks for your response. As you know, we cannot agree unilaterally to what evidence will be permitted following the process motion. That motion is required because of a fundamental disagreement between the stakeholders as to whether the appeal from KSV’s determination will be a true appeal, or an appeal de novo.

The most we can offer for KSV’s part is that if Ms. Athanasoulis submits a brief, it will be without prejudice to your ability to argue that she should be permitted to submit additional evidence in the future. I do not know whether the other stakeholders will make a similar concession.

Absent agreement on these issues I propose that we simply proceed with the motion and the Trustee will make the initial determination in the information and evidence available to it.

Yours very truly,

Matt

From: Dunn, Mark <mdunn@goodmans.ca>

Sent: December 14, 2022 3:18 PM

To: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Shaun Laubman <slaubman@lolg.ca>

Cc: Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>; hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Li, Chenyang <CLi@dwpv.com>

Subject: RE: 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 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

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We can provide a with prejudice brief by the end of next week. However, we require confirmation that we will have an opportunity to supplement the brief as necessary once the process is established. We are not prepared to submit a brief at this stage if others are going to take the position that the trustee will make its determination on the brief and that Ms. Athanasoulis will have no right to submit further evidence or argument.

From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>

Sent: Wednesday, December 14, 2022 2:24 PM

To: Shaun Laubman <slaubman@lolg.ca>

Cc: Dunn, Mark <mdunn@goodmans.ca>; Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>; hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Li, Chenyang <CLi@dwpv.com>

Subject: Re: 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 [IMAN-CLIENT.FID6731] [LOLG-DMS.FID106454]

Thanks. Mark, can you do the same?

On Dec 14, 2022, at 11:08 AM, Shaun Laubman <slaubman@lolg.ca> wrote:

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Assuming Ms. Athanasoulis does likewise, the LPs expect to get their brief to the trustee by the end of next week.

Shaun Laubman (he/him)

Direct 416 360 8481

Cell 416 315 4122

slaubman@lolg.ca

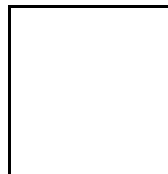
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From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>

Sent: December-12-22 5:49 PM

To: Dunn, Mark <mdunn@goodmans.ca>; Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>

Cc: hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; Shaun Laubman <slaubman@lolg.ca>; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Li, Chenyang <CLi@dwpv.com>

Subject: RE: 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 [IMAN-CLIENT.FID6731]

I agree that we should get in front of Justice Kimmel as soon as possible. When does everyone think they can get us "without prejudice" briefs, or are parties not willing to do so?

From: Dunn, Mark <mdunn@goodmans.ca>

Sent: December 12, 2022 12:53 PM

To: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>

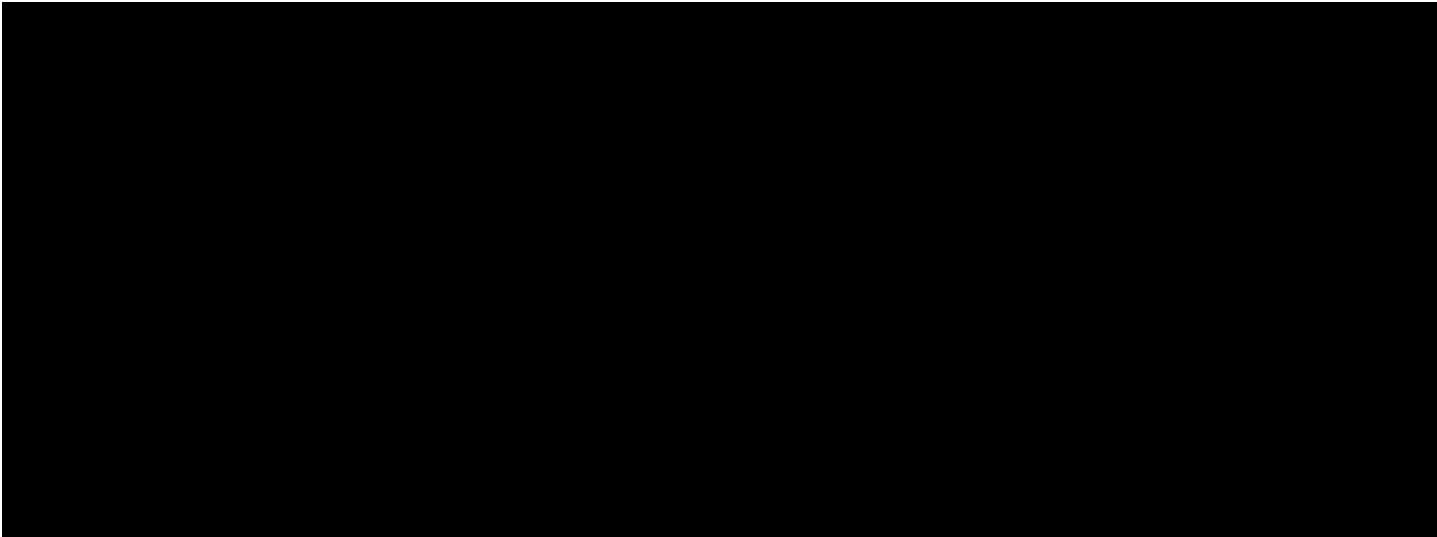
Cc: hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; slaubman@lolg.ca; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Li, Chenyang <CLi@dwpv.com>

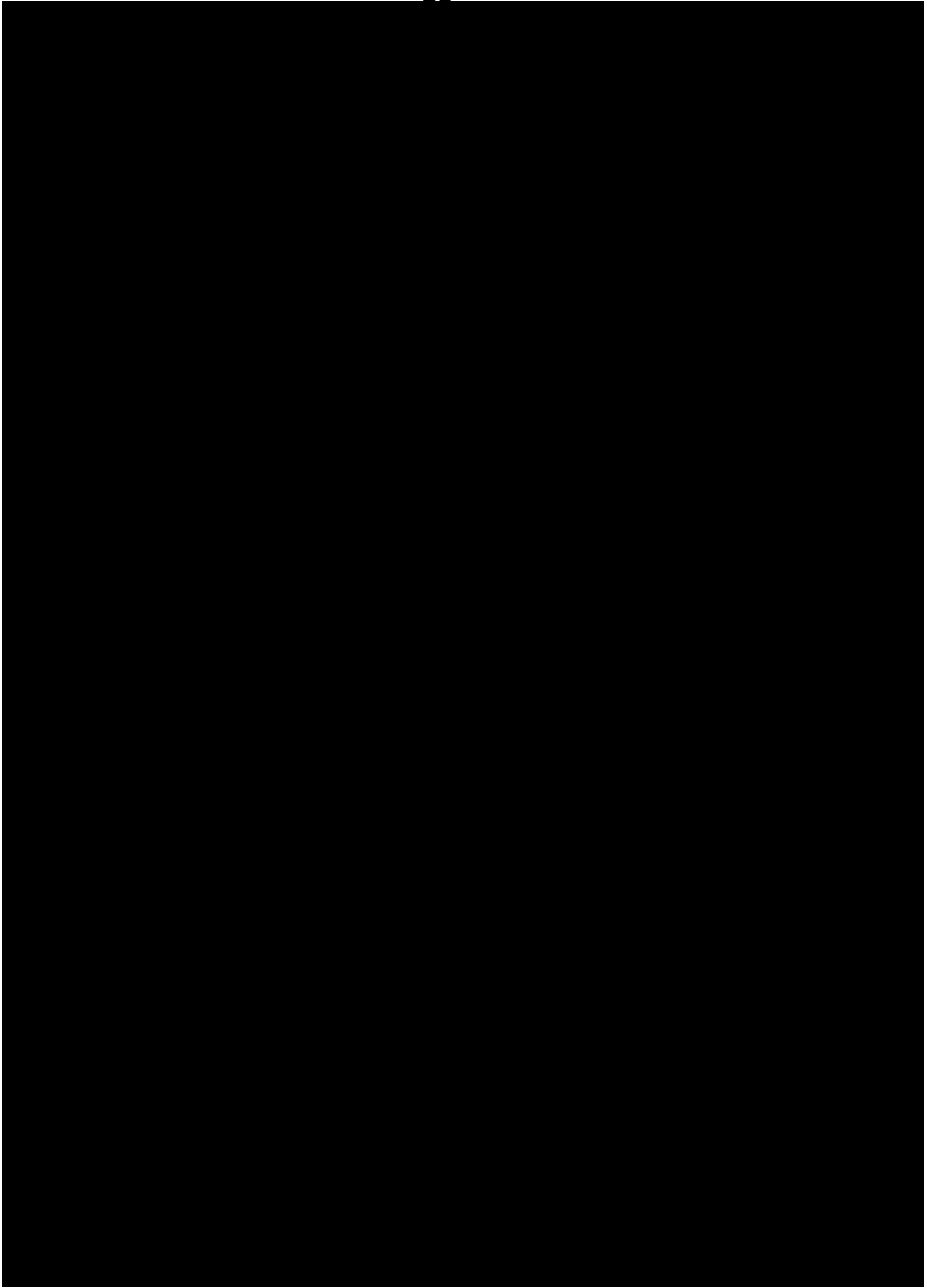
Subject: RE: In the Matter of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc. // Court File No. BK-21-02734090-0031 [IMAN-CLIENT.FID6731]

External Email / Courriel externe

We are writing further to the e-mail below. We appreciate that the Trustee has addressed some (but not all) of the concerns we have raised. It is also clear that there are outstanding disputes between the parties that will need to be resolved by the court, and we can hopefully use the time between now and the motion to narrow and clarify those disputes. In particular, and without limitation, the process below seems to contemplate a two stage process but it is not clear what issues will be addressed at what stage of the process.

In our view, the motion should be scheduled immediately so that we can get certainty on process and move this matter forward.





From: Dunn, Mark <mdunn@goodmans.ca>

Sent: December 7, 2022 11:59 AM

To: Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <sstothart@goodmans.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>

Cc: hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; slaubman@lolg.ca; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com

Subject: RE: 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 [IMAN-CLIENT.FID6731]

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We do not agree with either point advanced by the LPs, and believe that the second point was rejected by (or is at least inconsistent with) the decision of Justice Osborne relating to the CBRE claim. In any event, it is clear that there are matters that will require guidance from the court and I would suggest that we book a date as soon as possible so that we can all have certainty on the path forward.

From: Alexander Soutter <ASoutter@tgf.ca>

Sent: Wednesday, December 7, 2022 11:56 AM

To: Stothart, Sarah <sstothart@goodmans.ca>; Dunn, Mark <mdunn@goodmans.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>

Cc: hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; slaubman@lolg.ca; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com

Subject: RE: 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 [IMAN-CLIENT.FID6731]

Hi Matt,

With respect to the issues raised in Mark's November 21, 2022, letter:

1. Justice Kimmel held that the first phase of the arbitration resulted in inputs that the Proposal Trustee can take into account when it determines Ms. Athanasoulis' claim. The first phase of the arbitration is not binding on the Proposal Trustee.
2. The law regarding whether an appeal proceeds *de novo* is well established. Appeals should proceed as true appeals unless there has been an injustice that requires a hearing *de novo*. It is premature to draw a conclusion regarding whether a *de novo* appeal is necessary. Agreeing that any appeal should be *de novo* now, before any determination is made, is tantamount to conceding that the determination involves an injustice.

The evidence and arguments that the LPs intend to advance will be included in the briefs contemplated by the proposed procedure. We also confirm our position that the first phase of the arbitration does not bind the limited partners or address the issues that we raise in respect of Ms. Athanasoulis' claim.

Thanks,
Alex



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From: Stothart, Sarah <ssothart@goodmans.ca>
Sent: Tuesday, December 6, 2022 2:37 PM
To: Dunn, Mark <mdunn@goodmans.ca>; Alexander Soutter <ASoutter@tgf.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Cc: hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; slaubman@lolg.ca; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com
Subject: RE: 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 [IMAN-CLIENT.FID6731]

Alex – the letter referenced in our email is attached.

Thanks,

Sarah Stothart

(she/her)
 Goodmans LLP

416.597.4200
ssothart@goodmans.ca
goodmans.ca

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Tuesday, December 6, 2022 2:35 PM
To: Alexander Soutter <ASoutter@tgf.ca>; Stothart, Sarah <ssothart@goodmans.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Cc: hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; slaubman@lolg.ca; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com
Subject: RE: 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 [IMAN-CLIENT.FID6731]

We'll circulate a copy of our letter shortly.

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Tuesday, December 6, 2022 1:56 PM
To: Stothart, Sarah <ssothart@goodmans.ca>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Cc: hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; slaubman@lolg.ca; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Dunn, Mark <mdunn@goodmans.ca>
Subject: RE: 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 [IMAN-CLIENT.FID6731]

Good afternoon Matt,

We would like a copy of the letter referred to and highlighted below, please.

Alex

✉ Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca

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From: Stothart, Sarah <[sstothart@goodmans.ca](mailto:ssothart@goodmans.ca)>

Sent: Monday, December 5, 2022 6:33 PM

To: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Alexander Soutter <ASoutter@tgf.ca>

Cc: hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; slaubman@lolg.ca; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Dunn, Mark <mdunn@goodmans.ca>

Subject: RE: 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 [IMAN-CLIENT.FID6731]

Matt,

Thank you for your e-mail.

As a preliminary matter, we would like to understand when a determination will be made on Ms. Athanasoulis' employment claim. We have previously expressed our concerns about delays to valuing that claim, since other similar claims have already been allowed and paid. Ms. Athanasoulis' wrongful termination claim should not be delayed further.

With respect to the proposal for the resolution of the other aspects of her claim, we have the following questions.

First, we require the Trustee's confirmation that Phase One of the Arbitration remains binding on it and that the Trustee's determination will only address matters that were to be addressed in the second phase of the arbitration. We believe this should be stated explicitly in the proposed process.

Second, we would like to understand the Trustee's position on appeal procedure. Your e-mail does not address what procedure will be followed and what evidence will be used or allowed. This is obviously an important point, especially given the relatively short time contemplated to file material. It would be unfair if Ms. Athanasoulis was forced to file material within one week (as proposed) and then prevented from filing any additional material. We explained why we believe an appeal should proceed *de novo* in our letter. But even if the appeal does not proceed *de novo*, it is important to have clarity on the process at the outset.

Third, the Trustee seems to be proposing a phased process whereby some issues would be determined at an issue appeal and others would be reserved for a trial. It is not clear what issues are to be addressed in the first hearing, or what issues are likely to be deferred to a later date. You refer to "valuation" issues, but in our view everything is a valuation issue because liability has been established. Without presuming the result of the Trustee's determination, if, for example, the Trustee determined that Ms. Athanasoulis has no claim because there are no profits, then our response would involve (among other positions) both a "legal" argument regarding the appropriate test to assess damages as well as a factual "valuation" argument regarding the fact there are actual profits that were earned by YSL. We are not clear on how these issues can be divided between separate steps in the Trustee's proposed process.

Fourth, with respect to the LPs, we agree with the Trustee that the LPs have no standing to provide their "views" on Ms. Athanasoulis' claim (as referenced in Mr. Soutter's claim below). To the extent that the LPs have standing to raise issues, and seek to raise those issues, we suggest that a process be established for that as well. The first step in the process would be for the LPs to serve whatever material they intend to rely on in support of their motion. This has not yet occurred. Once it does, we can address an appropriate procedure for resolving the dispute with the LPs. We have previously explained why we do not believe that a procedure for addressing the LPs' allegations can or should be set until there is further clarity about those allegations.

To be clear, as it relates to the LPs, we object to the Trustee considering the LPs' allegations unless those allegations are substantiated by appropriate evidence. If the LPs were to make allegations similar to those made in their mediation brief or notice of motion without providing evidence, then those allegations should not be considered by the Trustee.

Thank you,

Sarah Stothart

(she/her)

Goodmans LLP

416.597.4200

sstothart@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>

Sent: Monday, December 5, 2022 10:27 AM

To: Alexander Soutter <ASoutter@tgf.ca>

Cc: hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; slaubman@lolg.ca; D. J. Miller <DJMiller@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; Dunn, Mark <mdunn@goodmans.ca>; Stothart, Sarah <sstothart@goodmans.ca>

Subject: Re: 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 [IMAN-CLIENT.FID6731]

Alex, to be clear the Trustee does not intend to refer to anything that was delivered on a "without prejudice" basis. The mediation materials referred to in paragraph two below would only be to the extent they were "re-filed" in accordance with Step One.

So we can start putting together a timeline, when do people think that they can deliver with prejudice briefs?

Matt

On Dec 5, 2022, at 9:44 AM, Alexander Soutter <ASoutter@tgf.ca> wrote:

External Email / Courriel externe

Good morning,

We have the following comments regarding the process suggested below.

We can submit a brief to the Proposal Trustee regarding our views of Ms. Athanasoulis' claim within a reasonable amount of time. A one week turnaround for a responding brief might be unworkable if the holidays interfere, but we can respond as promptly as possible.

Nothing in this process should refer to or rely on what was served in connection with or said at the mediation. If the parties decide to recycle arguments or views into a new, with prejudice brief, that is different. It would not be appropriate for the Proposal

Trustee to base its decision on the without prejudice mediation or any part of it as is suggested in paragraph 2 of the proposed process.

The LPs do not agree that there are any restrictions on their right to challenge the Proposal Trustee’s determination or make submissions on any issue raised on any other stakeholder’s challenge of such decision. We do not consent to the limitations relating to such challenges identified in your email below. If any order is sought that restricts such rights we will oppose the relevant terms.

Alex

=

Alexander Soutter | Associate | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | Suite 3200, TD West Tower, 100 Wellington West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: Friday, December 2, 2022 3:11 PM
To: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Cc: hfogul@airdberlis.com; Schwill, Robin <rschwill@dwpv.com>; slaubman@lolg.ca; D. J. Miller <DJMiller@tgf.ca>; Alexander Soutter <ASoutter@tgf.ca>; gruberd@bennettjones.com; mightonj@bennettjones.com; mdunn@goodmans.ca; sstothart@goodmans.ca
Subject: Re: 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

Counsel, the Trustee wishes to address the process moving forward for determination of the Athanasoulis claim. The following is what we would propose.

Steps Prior to Process Motion

1. LPs, Athanasoulis and Trustee to issue mediation briefs “with prejudice” as basis for Trustee’s determination. LPs and Athanasoulis may issue responding briefs at their discretion within approximately one week.

The Trustee would then bring a motion for directions before Justice Kimmel to determine the process, and propose the following:

Process Motion Proposed Steps/Process

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1. Trustee to issue Notice of Determination on Athanasoulis Claim. The Notice of Determination will not be shared with any party prior to issuance but a copy will be provided to counsel to the LPs and Concord when issued.
2. Notice of Determination to be based on full record to date in these proceedings, the arbitration and the mediation plus any responses to direct information requests from the Trustee.
3. The Notice of Determination shall set out all of the grounds supporting the Trustee's determination in sufficient detail to appropriately frame the issues for any appeal.
4. Athanasoulis to file any appeal pursuant to Section 135 of the BIA.
5. Athanasoulis appeal shall not be required to adduce detailed evidence valuing and quantifying her profit share claim but may address any issues raised in Notice of Determination.
6. LPs shall be entitled only to raise issues in the appeal that pertain directly: (a) to whether the LPs must be repaid in full prior to any payments being made on the Athanasoulis Claim; and (b) the enforceability of any element of the Athanasoulis Claim given the terms of the Limited Partnership Agreement.
7. Athanasoulis entitled to full response to any materials filed by LPs in this regard.
8. To the extent that the decision on appeal finds that a debt is owing and payable to Athanasoulis on her PSA, then a summary trial on quantification will be scheduled.

We are happy to consider any feedback before proceeding as indicated.

Yours very truly,

Matt

Matthew Milne-Smith (he, him)

T 416.863.5595

mmilne-smith@dwpv.com

[Bio](#) | [vCard](#)

DAVIES

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DAVIES WARD PHILLIPS & VINEBERG LLP

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This is Exhibit “H” referred to in the Affidavit of Ashley McKnight sworn January 4, 2023.



Commissioner for Taking Affidavits (or as may be)

XIN LU (CRYSTAL) LI

From: [Waltenbury, Lorie \(JUD\)](#)
To: haddon.murray@gowlingwlg.com; elie.laskin@gowlingwlg.com; [Alexander Soutter](#); rschwill@dwpv.com; mightonj.@bennettjones.com; ssothart@goodmans.ca; csipa@mccagueborlack.com
Subject: YG Limited Partnership and YSL Residences Inc. - BK-21-02734090-0031
Date: November-22-22 12:40:22 PM
Attachments: [BK-31-2734090 2022 ONSC 6548 YG Ltd Ptrshp YSL Residences Endorsement Nov 16 22.pdf](#)

Good afternoon,

With respect to this matter, please find attached the Endorsement of Osborne J.

For tracking purposes, kindly confirm your receipt of the Endorsement by return email to me at your earliest opportunity.

Thank you!

Lorie Waltenbury

Judicial Assistant to:

J.E. Ferguson J., K. Corrick J. and W.D. Black J.

Superior Court of Justice

361 University Avenue

Toronto, ON M5G 1T3

Email: lorie.waltenbury@ontario.ca

CITATION: YG Limited Partnership and YSL Residences Inc., 2022 ONSC 6548
COURT FILE NO.: BK-22-02734090-0031
DATE: 20221116

**SUPERIOR COURT OF JUSTICE – ONTARIO
 (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.

BEFORE: Osborne J.

COUNSEL: *C. Haddon Murray and Elie Laskin*, CBRE Limited
A. Soutter, Yonge Street LPs
Robin Schwill, KSV, Proposal Trustee
Jesse Mighton, Concord Properties
Sarah Stothart, Maria Athanasoulis
Conner Sipa, Harbour International Investment Group and Yulei Zhang

HEARD: November 7, 2022

ENDORSEMENT

[1] This motion raises three questions that can arise where a Proposal Trustee has disallowed a Proof of Claim pursuant to section 135 of the *Bankruptcy and Insolvency Act* [”BIA”], and the claimant has appealed from that disallowance pursuant to section 135(4):

- a. should the appeal proceed before this Court as a hearing *de novo*, or should the record be limited to those materials considered by the Proposal Trustee at the time [i.e., the materials filed in support of the claim];
- b. do limited partners of a limited partnership that has filed an NOI have standing on such an appeal; and
- c. should the appeal be allowed in this case?

[2] CBRE Limited [“CBRE”] moves for an order setting aside the disallowance of its claim by the Proposal Trustee in the Proposal of YSL Limited Partnership and YSL Residences Inc. [together, the “Debtors”], and allowing the claim.

[3] CBRE also seeks an order that this motion, which is effectively the appeal of the disallowance of its claim, be heard by way of hearing *de novo*.

[4] For the reasons that follow, the motion is granted.

Background and Context

[5] On April 30, 2021, YG Limited Partnership and YSL Residences Inc. [collectively, “YSL”] filed Notices of Intention to Make a Proposal pursuant to section 50.4(1) of the BIA. On May 14, 2021, this Court granted a consolidation order consolidating the NOI Proceedings for the purpose of simplifying the administration of the estates and facilitating the filing of a joint proposal and single meeting of creditors, among other things.

[6] YSL is part of the Cresford Group of Companies, a developer of real estate in the Toronto area. YSL Residences Inc. was a registered owner of the YSL Property defined below. It acted as bare trustee for, and nominee of, the limited partnership.

[7] This motion arises out of a dispute over a commission related to the acquisition of property at 363-391 Yonge St., Toronto and 3 Gerrard Street East, Toronto, [together, the “YSL Property”] by Concord Properties Developments Corp. [“Concord”].

[8] More than a year prior to the filing of the NOIs, in January 2020, CBRE had entered into an oral agreement with YSL for the listing of the YSL Property. For the purposes of this motion, the agreement was a relatively typical arrangement pursuant to which CBRE was to be paid a commission equal to 0.65% of the purchase price in the event that the property was sold and the purchaser was one of the parties introduced by CBRE.

[9] On February 21, 2020, as CBRE was already performing the oral agreement, it provided YSL with a proposed written agreement which further clarified and defined the terms of the bargain. In particular, it provided that the term of the contract expired on August 20, 2020 but also included a holdover clause pursuant to which the commission was payable if a binding agreement of purchase and sale was executed within 90 days after the expiry of the term and the transaction subsequently closed.

[10] The evidence on this motion is that the written agreement was never executed through inadvertence, although both parties performed the agreement and acted in all respects as if it had been formally executed.

[11] As noted above, YSL subsequently encountered financial difficulties and filed the NOIs. CBRE filed a claim with the Proposal Trustee in respect of the commission owing on the sale of the YSL Property.

[12] The Proposal Trustee initially disallowed the claim of CBRE as it was not satisfied, on the information initially filed in support of the claim, that it ought to be allowed. However, upon further review and particularly upon reviewing the Motion Record filed by CBRE, the Proposal Trustee and CBRE entered into a settlement agreement pursuant to which the claim would be allowed in exchange for the agreement of CBRE not to seek its costs on this motion.

[13] As a result of that settlement agreement, the Proposal Trustee supports CBRE and the relief sought on this motion.

[14] Indeed, the only parties opposing the relief sought are certain limited partners in the YG Limited Partnership.

[15] CBRE, supported by the Proposal Trustee, submits that the disallowance should be set aside and its claim should be allowed pursuant to the settlement agreement. It argues that, for the purposes of this motion, the Court should in any event consider the matter *de novo*.

[16] The limited partners submit that CBRE has failed to prove its claim with the requisite cogent evidence originally before the Proposal Trustee [i.e., the material originally filed in support of the CBRE claim], or at all.

ANALYSIS

Do the Limited Partners Have Standing?

[17] Section 135 of the BIA sets out the regime pursuant to which proofs of claim are admitted or disallowed.

[18] Pursuant to subsection (2), a trustee may disallow, in whole or in part, any claim.

[19] That disallowance is final and conclusive unless, pursuant to subsection (4), the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the *General Rules*.

[20] Pursuant to subsection (5), the court may expunge or reduce a proof of claim on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

[21] Here, the limited partners are limited partners in one of the Debtors, YG Limited Partnership. In my view, they lack the standing in this case to challenge the disallowance by the Proposal Trustee.

[22] For the purposes of this motion, the creditor is CBRE and the Debtor [or one of them] is YG Limited Partnership. As submitted by the Proposal Trustee, the whole bankruptcy regime is based upon all parties dealing with the debtor entity and/or the proposal trustee to address, determine and/or resolve claims.

[23] I agree with the submission of the Proposal Trustee that pursuant to subsection 135(5), the court may grant relief only where either one of two parties requests it: the creditor applies, or the debtor applies in circumstances where the trustee will not interfere.

[24] The limited partners are not creditors, but rather are exactly that - limited partners - in one of the Debtors. They hold limited partnership units in that entity. That is insufficient to make them debtors [within the meaning of this subsection or generally within the structure of the BIA], any more than shareholders of a debtor corporation would themselves automatically be debtors.

[25] Moreover, the particular contractual entitlements of the limited partners applicable to their units do not assist them here. The partnership agreement sets out the rights and obligations of the general partner to act on behalf of the limited partnership, and of the limited partners themselves.

[26] The contractual right in the partnership agreement to bind the partnership with respect to things such as claims is granted to the general partner. The general partner, on behalf of the limited partnership, consents to the relief sought on this motion.

[27] Finally, the Proposal Trustee has in fact “interfered” here, as contemplated in section 135(5). This is not a case where a trustee simply refuses to take a position or will not engage on the issue.

[28] I also observe that section 37 of the BIA provides that, where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

[29] I have already concluded that the limited partners are not creditors. Are they “persons aggrieved”? In my view they are not. Their grievance, or complaint, boils down to the fact that their ultimate potential recovery will presumably be reduced if the claim is allowed. That is not sufficient to make them aggrieved within the meaning of section 37. To conclude otherwise would mean that every creditor would have standing pursuant to section 37 to challenge the claim of every other creditor in a bankruptcy proceeding and I reject this notion.

[30] As observed in Holden & Morawetz, *The 2022 Annotated Bankruptcy and Insolvency Act*, Thomson Reuters, Toronto, 2022 at p. 102-103,

“the words “any other person is aggrieved” must be broadly interpreted. They do not mean a person who is disappointed of a benefit that he or she might have received if some other order had been made. A “person aggrieved” is a person who has suffered a legal grievance, a person against whom a decision has been pronounced by the trustee that has wrongfully deprived him or her of something, or wrongfully refused him or her something, or wrongfully affected his or her title to something: *Re Sidebotham*, (1880), 14 Ch.D. 458 at 465; *Liu v. Sung*, (1989), 72. C.B.R. (N.S.) 224 (BCSC).”

[31] This Court reached the same conclusion in *Global Royalties Ltd. v. Brook*, 2016 ONSC 6277 at para. 13.

[32] I conclude that in this case, the limited partners lack the requisite standing to oppose the motion.

Should the Appeal Proceed *de Novo*?

[33] As stated above, the authority of the court to expunge or reduce a proof of claim is found in section 135(5) of the BIA.

[34] I am satisfied that this Court may direct that an appeal from a disallowance of a claim by a trustee proceed by way of hearing *de novo* where it determines that to proceed otherwise would result in an injustice to the creditor. (see *Credifinance Securities Limited v DSLC Capital Corp*, 2011 ONCA 160 at para. 24, citing *Charlestown Residential School, Re*, 2010 ONSC 4099 at paras. 1, 18, and *Re: Poreba*, 2014 ONSC 277 at para. 32).

[35] I recognize, as did the Court of Appeal in *Credifinance*, that this practice is not uniform across the country. I also recognize that a major legislative objective of the bankruptcy regime is to maximize efficiency and the expeditious determination of claims between and among the stakeholders, and that this, in turn, could support the exercise of deference in the review of a decision of a trustee. In my view, that is why appeals of this nature should generally proceed as true appeals, based on a record consisting of the materials relied upon by the trustee in its decision to disallow the claim.

[36] However, it seems to me that the present case is an example of precisely the type of case where to proceed otherwise than *de novo*, and limit the record to that material originally filed in support of the claim, would result in an injustice to the creditor. That is exactly what section 135(5) is designed to correct or avoid, and in circumstances such as this, the appeal can and should proceed *de novo* in the sense that materials not originally before the trustee can and should be considered by the court.

[37] The *Poreba* case is such an example, where the Master [now Associate Judge] concluded that a hearing *de novo* was appropriate because there were significant issues of credibility such that fairness required that the claimant be given an opportunity to provide *viva voce* evidence and to explain certain issues.

[38] The evidence that, in my view, is relevant both to a determination of the claim and to my conclusion that to exclude it would work an injustice on the creditor, is described below. The creditor and the Proposal Trustee acted openly and transparently and entering into the settlement agreement, in the context of the appeal by the creditor. They did not act in an underhanded or unfair manner.

Should the Appeal be Allowed?

[39] Notwithstanding my conclusion above that the limited partners lacked the requisite standing to oppose this motion, I have considered their evidence and arguments with respect to the merits of the appeal, in case I am wrong. Moreover, CBRE seeks an order allowing the appeal, in any event of opposition.

[40] In this case, what occurred was rather straightforward. Based on the information and material originally available to it, the Proposal Trustee disallowed the claim. This seems reasonable when one considers the summary nature of claims evaluation by a trustee, in the somewhat unique circumstances of this case where the listing agreement giving rise to the claim for the commission on the sale of the property was first oral and then reduced to writing but through inadvertence the written agreement was never executed.

[41] However, and as stated above, when additional material was filed with the Proposal Trustee, it was of the view that the claim ought properly to be allowed. The Proposal Trustee did not, however, purport to allow an appeal from its own decision. Rather, it agreed, pursuant to the provisions of the settlement agreement, to support and not oppose the appeal by the creditor, properly brought pursuant to section 135(5), in exchange for the agreement of the creditor not to seek costs against the Proposal Trustee.

[42] I point this out in part due to the argument advanced by the limited partners to the effect that the disallowance of a claim by the Proposal Trustee is final and conclusive with the result that the Proposal Trustee has no residual power to reconsider its own decision or reverse itself. Again, that is not what has occurred here. Rather, the settlement agreement was entered into in the context of the appeal properly brought by the creditor.

[43] There is no dispute on this motion as to several relevant facts:

- a. CBRE entered into a listing agreement with YSL for the YSL Property;
- b. CBRE introduced YSL to Concord for the purposes of acquiring the YSL Property;
- c. Concord in fact did acquire the YSL Property; and
- d. the commission claimed by CBRE is equal to 0.65% of the total consideration paid for the YSL Property.

[44] For its part, Concord agrees and acknowledges that CBRE introduced it to YSL, although it has no knowledge of the agreement with CBRE. The evidence on this motion is that the Proposal Trustee in making its decision relied on information provided by Concord to the effect that it dealt with the Debtors at all times and did not have dealings with CBRE.

[45] However, that information was not provided to the creditor that had advanced the claim, CBRE. CBRE accordingly did not have any opportunity to make submissions with respect to, or file evidence to challenge, that statement from Concord.

[46] The evidence of Concord as subsequently provided to the Proposal Trustee and filed on this motion is to the effect that CBRE in fact introduced it to YSL for the purposes of acquiring the YSL Property.

[47] Indeed, the clear and unequivocal evidence of both counterparties to the agreement [CBRE and YSL] is consistent and clear: there was an agreement, CBRE performed the agreement and indeed was involved in negotiations right up until the conveyance of the YSL Property pursuant to the amended Proposal, and the commission is payable according to its terms.

[48] I am satisfied that this is clear from the evidence, and in particular the affidavit of Mr. Ted Dowbiggin, the former president of Cresford, and the affidavit of Mr. Casey Gallagher, VP of CBRE, relied upon by CBRE.

[49] I referred above in these reasons to the oral agreement of January, 2020 and the subsequent written agreement of February 21, 2020 and the fact that the latter had never been formally signed. As noted, the written agreement provided that the term of the contract ended on August 20, 2020, and the holdover clause [section 4.1] essentially extended the entitlement to a commission for an additional 90 days.

[50] The limited partners submit that even if the YSL Property was conveyed pursuant to the [amended] Proposal, that occurred outside the 90-day period with the result that the commission ought not to be payable.

[51] I am satisfied based on the evidence described above and particularly the evidence of Messrs. Dowbiggin and Gallagher, and in the absence of any contrary evidence put forward by any party, that the negotiations between YSL and Concord commenced with their introduction and continued until the acquisition of the YSL Property by Concord through the proposal, and specifically during the holdover period. The limited partners did not cross-examine either of those witnesses on their evidence with respect to these points. CBRE continued to act as listing broker and responded to questions from YSL during the negotiations.

[52] In addition, the Debtors themselves support the claim and have confirmed such to the Proposal Trustee. This is consistent also with the conduct of both the Debtors on the one hand and CBRE on the other, prior to the claim being advanced, as the parties to the agreement performed it according to its terms and acted in all respects as if the written agreement had been executed.

[53] Finally, I observe that Concord itself supports the claim being allowed and it, very arguably, has the most to gain if the claim were denied.

[54] The limited partners oppose the relief sought but were not parties to the impugned agreement nor, obviously, were they present for any of the discussions leading to the oral agreement.

[55] The limited partners argue that the terms of the agreement did not entitle CBRE to the payment of the commission since the sale of the YSL Property was not a sale by agreement of purchase and sale within the meaning the commission agreement.

[56] CBRE, one of the parties to that agreement, supported by both the Debtors [the counterparty to the agreement] and the Proposal Trustee, submits that this includes an agreement pursuant to which consideration is given for the conveyance of title to the YSL Property. I agree. I also agree that a proposal is a form of contract [between the debtor and its creditors]. [See *Jones v. Ontario*, (2003), 66 O.R.(3d) 674 (ONCA)].

[57] In the result, I am therefore satisfied that to exclude this clear and cogent evidence would result in the disallowance of the claim and that would be an unjust result in the circumstances of this case.

[58] For all of the above reasons,

- a. the limited partners do not have standing to oppose or the relief sought on this motion by the creditor [CBRE] supported by the Proposal Trustee and the Debtors;
- b. in this case, the appeal from the decision of the Proposal Trustee should be considered, and has been considered by me, as a hearing *de novo*, since to do otherwise would result in an injustice to the creditor [CBRE]; and
- c. the appeal should be allowed and the motion granted.

[59] Accordingly, the disallowance of CBRE's claim by the Proposal Trustee is set aside and the claim is allowed.

[60] CBRE, the Proposal Trustee and the limited partners have all submitted costs outlines. CBRE seeks partial indemnity costs, inclusive of fees, disbursements and HST, of \$64,896.07. The Proposal Trustee seeks costs on the same basis of \$58,948.48. The costs outline of the limited partners supports a claim for costs on the same basis of \$21,725.48.

[61] Exercising my discretion pursuant to section 131 of the *Courts of Justice Act*, and considering the factors in Rule 57.01, I have determined that costs should follow the event, and that CBRE and the Proposal Trustee have succeeded on the merits and should be entitled to costs.

[62] However, I am conscious of the fact that the Proposal Trustee supported the motion of CBRE and I am conscious of avoiding any duplication in work and fees. I am also cognizant of the somewhat unique nature of the circumstances and chronology in this case.

[63] The validity of the claim flows from the entitlement to the commission under the listing agreement, and the facts that support the fact of that agreement, as they do, are not readily apparent at first blush from a review of the facts given the initial oral agreement and the terms of the holdover clause in the written agreement [i.e., the 90-day period]. The fact that it is not immediately straightforward is illustrated perhaps by the original concerns of the Proposal Trustee.

[64] I also observe, as submitted by the limited partners, that given the manner in which the events unfolded, this appeal would have been necessary even if it had been unopposed. However, it would have been a much more straightforward and less expensive proceeding.

[65] Accordingly, in considering the facts and Rule 57 factors, in my view CBRE is entitled to partial indemnity costs from the limited partners in the amount of \$25,000 and the Proposal Trustee is entitled to costs on the same basis in the amount of \$18,000. All amounts are inclusive of fees, disbursements and HST. Costs payable within 60 days.



Osborne, J.

Date: November 16, 2022

This is Exhibit "I" referred to in the Affidavit of Ashley McKnight sworn January 4, 2023.



Commissioner for Taking Affidavits (or as may be)

XIN LU (CRYSTAL) LI

COURT OF APPEAL FOR ONTARIO

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

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

COURT OF APPEAL FOR ONTARIO
 RECEIVED / REÇU

DEC - 5 2022

NOTICE OF APPEAL

REGISTRAR / GREFFIER
 COUR D'APPEL DE L'ONTARIO

THE APPELLANTS, YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc. (collectively, the “**YongeSL LPs**”), **APPEAL** to this Court from the Order of the Honourable Justice Peter Osborne of the Superior Court of Justice (the “**Motion Judge**”) made on November 22, 2022 at Toronto, Ontario (the “**Order**”).¹

THE APPELLANTS ASK that the Order be set aside and that an order be granted in its place as follows:

1. Dismissing the motion brought by CBRE Limited (“**CBRE**”) for an order setting aside the disallowance of its Proof of Claim in this proceeding by KSV Restructuring Inc., in its capacity as the proposal trustee (the “**Proposal Trustee**”) of the debtors YG Limited Partnership and YSL Residences Inc. (together, the “**Debtors**”);

¹ The Motion Judge’s reasons for decision were dated November 16, 2022, but only released to the parties by email on November 22, 2022. The YongeSL LPs have asked the Court to correct the typographical error in the date but, in the event that it is necessary, seek leave to extend the time to appeal.

2. Declaring that CBRE's Proof of Claim in this proceeding is disallowed in full;
3. Awarding the YongeSL LPs the costs of the motion below and of this appeal; and
4. Such further and other relief as this Court may deem just.

THE GROUNDS OF APPEAL are:

5. The YongeSL LPs represent the ultimate economic interest in this proceeding and it was an error of law to deny the YongeSL LPs standing on CBRE's motion. In particular, the Motion Judge:
 - (a) erred in applying s.135(5) of the *Bankruptcy and Insolvency Act* ("**BIA**");
 - (b) erred by not following the earlier decision of Justice Dunphy which determined that the YongeSL LPs had standing in this proceeding as an affected group; and
 - (c) erred in determining that the Yonge SL LPs were not "persons aggrieved" under s.37 of the *BIA*.
6. The Motion Judge also committed a palpable and overriding error in allowing CBRE's claim. There was inadequate evidence before the Court such that CBRE's claim could succeed.

Background to the Proceeding

7. In summer 2021, the Debtors commenced this *BIA* proceeding as a pre-packaged liquidation designed primarily to benefit the Cresford Group, the developer that controlled the Debtors. The Debtors' original proposal would have seen the Cresford Group extract approximately \$22 million from the "**YSL Project**", the condominium development

owned by the Debtors. Unsecured creditors would have recovered a maximum of 58% of their claims. Under the original proposal, the Class A Unit holders of YG Limited Partnership (the “**limited partners**”), who had invested \$14.8 million in the YSL Project, would have recovered nothing.

8. The Proposal Trustee supported the Debtors’ original proposal. The limited partners did not. Justice Dunphy agreed that the original proposal was not made in good faith or designed to benefit the general body of creditors. His Honour refused to sanction it but gave the Debtors an opportunity to put forward a new proposal. The new proposal, which was ultimately Court-approved (the “**Proposal**”), did not cap unsecured creditor recovery. Indeed, unsecured creditors may yet recover 100% of their claims. The limited partners may yet recover their investment in the YSL Project.
9. By way of the Proposal, the Debtors transferred the YSL Project lands to Concord Properties Developments Corp. (“**Concord**”), another developer.
10. Article 5.05 of the Proposal expressly provides that the limited partners, including the YongeSL LPs, are entitled to any residue of the Proposal after final distributions to creditors.

Three Outstanding Claims Against the Debtors

11. Since the Proposal was sanctioned, the Proposal Trustee has been determining claims made against the Debtors. Three claims remain outstanding: (a) CBRE’s claim of approximately \$1.2 million; (b) a claim by Harbour International Investment Group Inc. (“**Harbour**”) for

\$1 million plus HST; and (c) an \$18 million claim by the Cresford Group's former President of Marketing, Maria Athanasoulis.

12. Subject to the resolution of those three claims, the limited partners may yet recover their \$14.8 million investment in the YSL Project, plus some return thereon.
13. The YongeSL LPs brought an application pursuant to s.37 of the *BLA* to challenge the Proposal Trustee's decision to allow Harbour's claim. That application has been held in abeyance pending a final determination of the Motion Judge's decision.
14. Ms. Athanasoulis' claim involves an allegation that she is entitled to share in the profits of the YSL Project. The Proposal Trustee and Ms. Athanasoulis agreed to a bifurcated arbitration of that claim, pursuant to which the Proposal Trustee defended the claim. The first phase of that arbitration resulted in a finding that Ms. Athanasoulis had an agreement with the Cresford Group whereby she would share in the profits of the YSL Project. The amount of that claim, if any, was not determined.
15. The limited partners and Concord were left out of this process. Once they learned of the outcome, the limited partners took steps to challenge the Proposal Trustee's right to arbitrate Ms. Athanasoulis' claim. Those steps are summarized in an October 17, 2022, decision of Justice Kimmel (*YG Limited Partnership (Re)*, 2022 ONSC 6138). Justice Kimmel held that the arbitration contemplated a final adjudication of Ms. Athanasoulis' claim and went beyond a mere fact-finding exercise. Her Honour 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. The Proposal Trustee is now in the process of developing its protocol for the determination of that claim.

16. 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.

CBRE's Claim

17. CBRE is a real estate broker retained by the Debtors before the Debtors filed Notices of Intention to Make a Proposal under the *BIA*. CBRE was retained to broker the sale of the YSL Project. The YSL Project was ultimately conveyed to Concord, the proposal sponsor, in this proceeding.
18. CBRE's claim is for more than \$1.2 million as a commission arising after the conveyance of the YSL Project from the Debtors to Concord in this proceeding. CBRE's claim depends on there having been negotiations between the Debtors and Concord during a certain 90-day period (the "**Holdover Period**"). There was no evidence of such negotiations before the Proposal Trustee. The Proposal Trustee disallowed CBRE's claim.

CBRE's Appeal to the Motion Judge

19. CBRE appealed the Proposal Trustee's disallowance of its claim and filed new evidence of negotiations between the Debtors and Concord. The new evidence was set out in and limited to two sentences:
 - (a) Mr. Gallagher, a Vice-President with CBRE, stated that "[a]round September 2020, I played golf with Mr. Dowbiggin and he again confirmed that the negotiations with Concord were ongoing for the purchase of the YSL Property". Mr. Dowbiggin, the former President of a company in the Cresford Group (not the Debtors), did not adopt this hearsay statement in his affidavit; and

- (b) Mr. Dowbiggin's evidence was that,

Although the proposed structure and mechanism of the deal between Cresford and Concord went through many iterations, negotiations were ongoing from the point of Concord's introduction until Cresford and Concord agreed that the property would be sold through a proposal made pursuant to [the *BIA*].

20. The Proposal Trustee changed its position after CBRE appealed and consented to CBRE's appeal from the Proposal Trustee's disallowance of its claim. The Proposal Trustee agreed to seek the Court's approval of a settlement pursuant to which CBRE's claim and appeal would be allowed without costs.
21. The YongeSL LPs opposed CBRE's appeal and the Proposal Trustee's request that the Motion Judge approve its settlement of it. The YongeSL LPs took the position that Mr. Dowbiggin's vague statement that "negotiations were ongoing" during the Holdover Period was not cogent evidence capable of proving a claim. CBRE had not met its onus and the Proposal Trustee ought to have maintained its disallowance of CBRE's claim.

The Motion Judge's Decision

22. The Motion Judge concluded that the YongeSL LPs had no standing before the Court and found that CBRE had proven its claim. Respectfully, the Motion Judge (a) erred in law by concluding that the YongeSL LPs lacked standing; and (b) committed a palpable and overriding error in concluding that CBRE had proven its claim.

The Motion Judge erred in law by concluding that the YongeSL LPs lack standing

23. The Motion Judge held that the YongeSL LPs "lack the standing in this case to challenge the disallowance [of CBRE's claim] by the Proposal Trustee.". The effect of the Motion

Judge's ruling is to deny the YongeSL LPs the right to be heard in circumstances where their interests are affected by the decision. That conclusion is in error.

24. The Motion Judge erred in applying s.135(5) of the *BIA*, which had no application to the relief sought on CBRE's motion. Section 135(5) provides that the "court may expunge or reduce a proof of claim [...] on the application of a creditor or of the debtor if the trustee declines to interfere in the matter." The section does not apply where a creditor appeals the disallowance of its proof of claim, as CBRE sought on its motion in this proceeding.
25. The YongeSL LPs were not challenging the Proposal Trustee's disallowance of CBRE's claim. To the contrary, they supported it. The YongeSL LPs opposed (a) CBRE's appeal and request that its proof of claim be allowed; and (b) the Proposal Trustee's consent to CBRE's appeal, which consent amounted to the Proposal Trustee agreeing to set aside its own disallowance. Even if s.135(5) did apply, which it did not, the YongeSL LPs would still have standing on CBRE's motion.
26. The Motion Judge also erred in law by failing to apply the earlier decision of Justice Dunphy whereby the YongeSL LPs have already been granted standing in this proceeding, over the objections of Concord and the Debtors. Justice Dunphy addressed that issue in the weeks leading up to the Debtors' unsuccessful motion for approval of their original proposal. Justice Dunphy determined that it was plain that the limited partners' arguments on the Debtors' proposal ought to be fleshed out and heard, and that the sanction hearing was effectively the only opportunity that the limited partners would have to make their case and be heard. They were affected by the outcome of the motion to sanction the original proposal and were entitled to be heard.

27. As a result of the limited partners making that case, the original proposal was rejected and the improved Proposal put forward, to the benefit of all unsecured creditors and the limited partners.
28. The YongeSL LPs represent the ultimate economic interest in this proceeding. The Debtors' proposal expressly provides that the limited partners are entitled to the entire proceeds of the YSL Project after unsecured creditors are paid. Their interests are affected by the determination of CBRE's claim. This alone should have afforded them standing to make submissions on CBRE's appeal. The Motion Judge erred in law by concluding that they lacked standing.

The Motion Judge erred in law by concluding that the YongeSL LPs were not "aggrieved"

29. The YongeSL LPs' primary position was that they had standing to oppose CBRE's appeal and that the Proposal Trustee's purported settlement of the appeal was not determinative of the appeal. In the event that it was necessary, however, they brought a motion under s.37 of the *BIA* for the purpose of challenging the Proposal Trustee's decision to settle the appeal.
30. Without deciding whether the s.37 application was necessary at all, the Motion Judge concluded that the YongeSL LPs were not "persons aggrieved" within the meaning of s.37. The Motion Judge erred in law in his interpretation of that section, which provides that,

where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

31. If it were necessary to bring a s.37 motion to challenge the Proposal Trustee's proposed settlement of the appeal, the YongeSL LPs were proper persons to make that challenge. The definition of "person aggrieved" should be afforded a wide scope and not be subjected to a restrictive interpretation. While such a person cannot be a "mere busybody", they include a person who has a genuine grievance because a decision of a trustee has prejudicially affected their interests. The YongeSL LPs are not mere busybodies. They have a real economic interest in the Debtors' estates. The Motion Judge's interpretation of s.37 was unduly narrow and constituted an error of law.
32. The Motion Judge held that the YongeSL LPs were not "persons aggrieved" because their complaint boiled down to the fact that their ultimate potential recovery would be reduced if CBRE's claim were allowed. The Motion Judge concluded that that was not sufficient to make them "persons aggrieved" because that would mean that every creditor would have standing to challenge the treatment of another creditor's claim in a bankruptcy, a notion which the Motion Judge rejected. This conclusion was an error of law.
33. A mechanism already exists for creditors to challenge the treatment of other creditors' claims. If a trustee does not disallow a claim, the creditors can apply for that relief under section 135(5). Section 37 is simply a broader, more flexible remedy for *any person*, including an equity claimant, who is aggrieved by a decision of a trustee to challenge that decision.
34. Courts have accepted that shareholders can be aggrieved persons. There is no reason to treat limited partners such as the YongeSL LPs differently.

35. Parties who have claims to the proceeds of an insolvent estate, as the YongeSL LPs do, have standing under s.37. It was an error of law for the Motion Judge to conclude otherwise.

The Motion Judge erred in allowing CBRE's appeal and claim

36. The Motion Judge committed a palpable and overriding error in allowing CBRE's appeal and claim. There was inadequate evidence before the Motion Judge such that CBRE's claim could succeed.
37. In the summary process set out in s.135 of the *BIA*, CBRE is expected to put its best foot forward, just as if it were seeking summary judgment. A creditor is expected to adduce all evidence it has in support of its claim. That evidence must be detailed and particularized as opposed to vague, unparticularized pieces of evidence, which is really no evidence at all. The fact that a summary process is to be used does not call for a lower standard of proof than used in a fuller process.
38. CBRE adduced only vague, unparticularized and hearsay pieces of evidence. The central issue on CBRE's appeal was whether negotiations between the Debtors and Concord took place during the Holdover Period. CBRE's evidence on this issue was limited to the two sentences reproduced above.
39. The Motion Judge's review of the merits of CBRE's claim was limited to mere reference to the affidavits of Mr. Gallagher and Mr. Dowbiggin.
40. It cannot be that such evidence is enough for a creditor to prove a claim in an insolvency proceeding. The Motion Judge committed a palpable and overriding error in accepting that such evidence could prove CBRE's claim.

Basis for the Court of Appeal's Jurisdiction

41. An appeal lies to the Court of Appeal from the Order pursuant to s.183(2) of the *BIA* and s.193(b) and (c), or alternatively (e), of the *BIA*.
42. Pursuant to s.193(b) of the *BIA*, the YongeSL LPs may appeal the Order without leave. The Order is likely to affect other cases of a similar nature in this proceeding:
 - (a) the YongeSL LPs have challenged the Proposal Trustee's decisions in respect of the Harbour claim. The limited partners might challenge the Proposal Trustee's ultimate decision in respect of the Athanasoulis claim or decide to participate in any appeal of such decision (eg if Ms. Athanasoulis appeals). The Motion Judge's conclusions that the YongeSL LPs lack standing affect those cases; and
 - (b) further, the Motion Judge's finding that the vague statements made by CBRE's deponents were sufficient to prove a claim sets too low a bar and affects the quality of evidence necessary for proof of the Harbour and Athanasoulis claims.
43. Pursuant to s. 193 (c) of the *BIA*, the YongeSL LPs may appeal the Order without leave. The property involved in the appeal exceeds ten thousand dollars in value. CBRE's claim is for approximately \$1.2 million. The property involved in the appeal meets the statutory minimum.
44. Alternatively, if leave to appeal is required, the YongeSL LPs seek leave to appeal pursuant to s.193(e) of the *BIA* and ask that the motion for leave be heard at the same time as the appeal. This appeal involves matters of general importance to bankruptcy matters because it involves legal questions of (a) whether equity claimants have standing in bankruptcy

matters generally, (b) whether they have standing as “persons aggrieved” by an act or decision of a trustee; and (c) what minimum quality of evidence is required to prove a claim. This proceeding would not be unduly delayed by this appeal. The Debtors’ only asset has been liquidated – they will have no ongoing business. Determinations of the outstanding claims described herein, particularly the Athanasoulis claim, will not be unduly delayed by this appeal.

December 2, 2022

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

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

Court File No. BK-21-02734090-0031
Court of Appeal No. COA-22-CV-0451

COURT OF APPEAL FOR ONTARIO

NOTICE OF APPEAL

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This is Exhibit “J” referred to in the Affidavit of Ashley McKnight sworn January 4, 2023.

A handwritten signature in blue ink, appearing to read "Xin Lu", written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

XIN LU (CRYSTAL) LI



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENTCOURT FILE NO.: BK-21-02734090-0031 DATE: 21 December 2022NO. ON LIST: 2TITLE OF PROCEEDING: YSL RESIDENCES INC., et alBEFORE JUSTICE: MADAM JUSTICE KIMMEL**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

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ENDORSEMENT OF JUSTICE KIMMEL:

1. My November 1, 2022 endorsement in this matter contemplated that there would be a procedure put in place by the Proposal Trustee to finally determine the claim filed by Maria Athanasoulis. The parties with an economic interest in this determination, Ms. Athanasoulis and the Limited Partners, do not agree on the procedure, nor have they accepted the compromise procedure that the Proposal Trustee has suggested.
2. The Proposal Trustee thus seeks to schedule a motion for directions from the court in respect of the proposed procedure that it suggests, in the context of which the interested stakeholders will be given the opportunity to put forward their respective positions.
3. The parties agree that a half-day will be sufficient time for this motion and it has been scheduled to be heard on January 16, 2023.
4. The parties who are participating in this motion shall work out a timetable for the exchange of all materials to be relied upon for this motion. That schedule shall ensure that all materials have been served, filed and uploaded onto CaseLines by no later than noon on Friday January 13, 2023.

A handwritten signature in black ink that reads "Kimmel J." with a stylized, cursive script.

KIMMEL J.

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A
PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. BK-21-02734090-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

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SWORN JANUARY 4, 2023

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IN THE MATTER OF THE NOTICES OF INTENTION OT MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES
INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. BK-21-02734090-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
IN BANKRUPTCY AND INSOLVENCY

PROCEEDING COMMENCED AT TORONTO

JOINT RESPONDING MOTION RECORD OF
2504670 CANADA INC., 8451761 CANADA INC., CHI LONG INC.,
YONGESL INVESTMENT LIMITED PARTNERSHIP, 2124093
ONTARIO INC., SIXONE INVESTMENT LTD., E&B INVESTMENT
CORPORATION, AND TAIHE INTERNATIONAL GROUP INC.
(Proposal Trustee's Motion For Direction Re Claims Process returnable
January 16, 2023)

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