

District of: Ontario  
Court File No. CV-20-00650224-00CL  
Consolidated Court File No. 31-2734090  
Division No: 09 - Toronto

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

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

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

**NOTICE OF MOTION  
(Appeal of Disallowance)**

CBRE Limited (“**CBRE**”) will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List) on a date to be set, at the courthouse at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally

**THE MOTION IS FOR:**

1. An order
  - a) setting aside the Proposal Trustee’s (as defined below) disallowance of the claim of CBRE in the Proposal (the “**Proposal**”) of YSL Limited Partnership and YSL Residences Inc. (together, the “**Debtors**”);
  - b) allowing CBRE’s claim in the Proposal;

- c) declaring that this motion for the appeal of the disallowance of CBRE's claim be heard by way of hearing *de novo*; and
  - d) the costs of this motion.
2. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THIS MOTION ARE:**

1. On or about February 2020, CBRE and the Debtors entered into an agreement whereby CBRE served as the exclusive listing brokerage (the "**Agreement**") for the sale of the properties located at 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (the "**Property**").
2. CBRE introduced the Debtors to Concord Properties Developments Corp. ("**Concord**") in connection with the sale of the Property.
3. On April 30, 2021, the Debtors filed a notice of intention to make a proposal pursuant to section 50.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**"). At that time, KSV Restructuring Inc. was appointed a Proposal Trustee (the "**Proposal Trustee**").
4. The Debtors made numerous proposals, culminating in the Debtors' Third Proposal dated July 15, 2021. The Third Proposal sanctioned by the Order of Justice Dunphy on July 16, 2021.
5. On or about July 22, 2021, the Property was sold or otherwise conveyed to Concord pursuant to the Proposal (the "**Sale**") for a total consideration of \$168,737,563.00. Pursuant to the Agreement, CBRE is entitled to a commission of 0.65% of the sale price.
6. On January 28, 2022, CBRE submitted a proof of claim along with an affidavit in support of its claim the Proposal Trustee (the "**Claim**") in the

amount of \$1,239,377.40 as the commission owing under the Agreement (the “**Commission**”).

7. On February 1, 2022, the Trustee requested certain further information in connection with the Claim (the “**Information Request**”). That same day, CBRE responded providing the requested information.
8. On February 10, 2022, the Proposal Trustee disallowed the Claim by delivering a notice of disallowance to the Creditors (the “**Disallowance of the Claim**”). The Trustee stated that it disallowed the Claim for the following reasons:
  - a) The Agreement is not signed and therefore is not binding;
  - b) Concord advised that at all times it dealt directly with the Debtors and that it did not have any dealings with CBRE;
  - c) The Sale does not meet the definition of an event giving rise to a Commission; and
  - d) To the extent any Commission could apply, which is denied, the Commission was not earned during the Term, or within the 90 calendar days following the expiration of the Term.

### **The Trustee Erred**

9. The Proposal Trustee erred by:
  - a) determining that the failure to execute a written agreement means that the Agreement is not binding;
  - b) finding that CBRE had no interaction with the Plan Sponsor;
  - c) determining that it was necessary for CBRE to interact with the Plan Sponsor in order to be entitled to the Commission;

- d) determining that the Conveyance is not an event that gives rise to a Commission under the contract; and
- e) determining that the Commission was not payable because it was not earned within the 90 calendar day period following the expiration of the Term of the contract.

### **Procedural Unfairness**

10. The process followed by the Proposal Trustee in adjudicating the Claim was procedurally unfair. The Trustee:
  - a) disallowed the Claim for reasons that were unrelated to the Information Request;
  - b) expressly relied on information provided by a third party – Concord – that was not provided to CBRE;
  - c) reviewed materials not otherwise available to CBRE to assist in formulating her decision to disallow the claim;
  - d) failed to undertake any or an adequate investigation of the Claim;
  - e) failed to consult the bankrupt with respect to the truth of the information and evidence filed in support of the Claim;
  - f) did not ask the bankrupt to review the Disallowances for accuracy or ask the bankrupt for his concurrence with the Trustee's position
11. The Proposal Trustee has consented to this Motion proceeding by way of a hearing *de novo*.
12. Section 135 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
13. Rules 1.04, 37 and 57.03 of the *Rules of Civil Procedure*.
14. Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The affidavit of Elie Laskin, to be sworn;
2. The affidavit of Casey Gallagher, to be sworn; and
3. Such further and other evidence as counsel may advise and this Honourable Court permit.

March 10, 2022

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