Court File No. B-21-02734090-0031

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.

NOTICE OF MOTION
(Appeal of disallowance of claim)

Maria Athanasoulis will make a motion to the Court on a date to be fixed by way of appeal from the disallowance by the Trustee of her claim against YG Limited Partnership and YSL Residences Inc. in the bankruptcy proposals of YG Limited Partnership and YSL Residences Inc.

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

☐ In writing under subrule 37.12.1 (1);

☐ In writing as an opposed motion under subrule 37.12.1 (4);

☒ In person;

☐ By telephone conference;

☐ By video conference.

THE MOTION IS FOR:

(a) A declaration setting aside the determination of the proposal trustee, KSV Advisory Inc. ("**Trustee**") dated August 10, 2023 (the "**Determination**");

(b) A declaration that Maria Athanasoulis' Claim (as defined below) against YG Limited Partnership and YSL Residences Inc. (together "**YSL**") is a valid claim and ought to be allowed in an amount to be determined by further order of this Court;

(c) An Order directing a reference to determine the profits that Ms. Athanasoulis would have earned but-for YSL's breach of contract;

(d) An Order valuing the Claim in an amount equal to 20% of the amount determined in the reference referenced in (c) above;

(e) In the alternative to (c) and (d) above, an Order allowing the Claim in the amount of 20% of YSL's actual profits (calculated based on actual revenues less actual expenses) which are equal to $7.8 million or such other amount as the Court may determine;

(f) A declaration that the Claim is not an equity claim, and is a provable claim within the meaning of section 121(1) of the *Bankruptcy and Insolvency Act* ("**BIA**");

(g) A declaration that the Claim is entitled to priority over the claims asserted by limited partner investors in YSL (the "**LPs**");

(h) Costs of this motion on a substantial indemnity basis; and

(i) Such further or other order as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

A. OVERVIEW

0. Maria Athanasoulis brings this motion to appeal the Trustee's determination that $18 million of her claim (defined above as the "**Claim**") against YSL should be valued at $0.[1] Ms. Athanasoulis has already established through binding arbitration that she had the right to receive 20% of the profits earned by YSL as part of her oral employment agreement (the "**Agreement**"), and that YSL had a contractual obligation to maximize the profits earned on the large and successful real estate development that it owned (the "**YSL Project**").

[1] The Trustee allowed Ms. Athanasoulis' related $1 million wrongful termination claim in the amount of $880,000. This aspect of the Trustee's determination is not being appealed.

1. Ms. Athanasoulis also proved that YSL breached the Agreement by constructively terminating her employment. Justice Dunphy previously found in these proceedings that YSL tried to enrich its principal, Daniel Casey, instead of maximizing the value of the YSL Project. This, too, was a breach of the Agreement. YSL's efforts to enrich Mr. Casey culminated in a bankruptcy proposal that should never have been required (because the YSL Project could have been sold for a significant profit through an open and honest marketing process) and rested on misleading evidence about the value of the YSL Project and the expenses that YSL had actually incurred.

2. Damages for breach of contract must put the injured party in the position she would occupy but-for the breach. In this case, Ms. Athanasoulis is entitled to the amount that she would have earned if YSL had honoured the Agreement *and* maximized the value of the YSL Project.

3. YSL's breaches caused enormous losses. YSL's financial projections, which were vetted by a leading cost consulted, forecast $200 million in profits. More importantly, the YSL Project was *already* worth approximately $100 million more than YSL had invested in it when YSL repudiated the Agreement. Even after YSL destroyed most of the value of the YSL Project in its attempt to enrich Mr. Casey, YSL *still* earned a profit (calculated based on actual revenue less actual expenses, based on YSL's records) of *at least* $35 million.

4. Despite all of this, the Trustee concluded that the Claim is worth *nothing*. This is not—and cannot be—correct.

5. The Trustee reached the wrong conclusion, because it applied the wrong principles. In fact, it disregarded the well-established legal principles that apply to Ms. Athanasoulis' claim, and failed to analyze key evidence submitted to it. The Trustee:

(a) concluded that Ms. Athanasoulis suffered no damages without applying—or even referencing—the legal principles that govern the assessment of damages for breach of contract;

(b) concluded that the YSL Project did not earn a profit without calculating—or even considering—what revenue YSL earned and what expenses it paid;

(c) concluded that Ms. Athanasoulis' claim was an equity claim by explicitly *rejecting* the definition of "equity claim" in the *BIA*;

(d) concluded that certain third party investors who held limited partnership units in YSL (defined above as the "**LPs**") were entitled to priority over Ms. Athanasoulis without any legally coherent justification for its conclusion.

6. If the Trustee had considered the relevant evidence, and applied the correct legal principles, then it would have concluded that Ms. Athanasoulis' claim was worth $18 million or more.

B. Background facts

(i) YSL and Cresford

7. Ms. Athanasoulis was, until December 2019, the President and COO of a group of companies engaged in the development, construction, marketing and sale of condominiums in Toronto using the brand name "Cresford." Cresford was founded by Daniel Casey, and owned by companies and trusts that he controlled.

8. Each of Cresford's development and construction projects was owned by a separate legal entity. That entity purchased the land where the relevant project was to be built, obtained the required permissions, marketed the project to proposed purchasers, hired contractors to build the project, and took all of the other steps to convert real estate into a major condominium development. Ms. Athanasoulis' role extended to overseeing each of Cresford's individual project companies as well.

9. The Claim concerns Yonge Street Living Residences (the previously-defined "**YSL Project**"), an 85-story condominium tower located at the corner of Yonge and Gerrard in Toronto. The YSL Project was owned by YSL.

(ii) YSL's limited partners

10. The YSL Project was Cresford's largest project. To raise capital for the YSL Project and fund the buyout of a joint venture interest held by a major pension fund, Mr. Casey decided to solicit outside investment from limited partners.

11. The LPs purchased Class "A" Units in YG Limited Partnership ("**YSL LP**"). Cresford Yonge Limited Partnership ("**Cresford LP**"), an entity controlled by Mr. Casey and/or his family trusts, owned all of the Class "B" Units. YSL LP is the beneficial owner of the YSL Project.

12. Ms. Athanasoulis did not hold any interest in, or contract with, Cresford LP. She did not otherwise hold any units in YSL LP. She did not receive (and was not entitled to receive) any units, or other equity interest, in YSL.

(iii) YSL's success

13. YSL had achieved significant progress on the YSL Project by December 2019. It had (among other things) obtained all of the approvals required to build the YSL Project and pre-sold approximately $650 million worth of condominium units at record-setting prices under Ms. Athanasoulis' leadership. It had negotiated fixed-price contracts for the majority of its expenses, so it had certainty about construction costs.

14. This progress yielded tangible financial gains. By July 2019, the YSL Project was valued at $375.5 million, approximately $125 million more than YSL had invested into it. YSL's internal projections, which had been vetted by leading external consultants, forecasted profits of close to $200 million.

(iv) Cresford's collapse

15. Cresford's other major projects suffered significant cash flow problems in 2019, which culminated in insolvency proceedings in the spring of 2020. These proceedings, and the lender investigations that preceded them, uncovered serious financial wrongdoing at Cresford. This Court found, among other things, that Cresford entities kept two sets of books in order to hide information from lenders.

16. YSL did not face similar financial issues. It was properly capitalized and, according to Mr. Casey, had "everything going for it."

17. Ms. Athanasoulis discovered Cresford's financial issues in 2019, and pressed Mr. Casey to take concrete steps to address Cresford's funding issues and preserve value for all stakeholders.

Mr. Casey refused, and constructively terminated Ms. Athanasoulis. YSL denied that it entered into the Agreement, or owed anything to Ms. Athanasoulis.

(v) YSL breached its agreement with Ms. Athanasoulis by terminating her

18. After a contested arbitration between Ms. Athanasoulis and the Trustee, Arbitrator William Horton (the "**Arbitrator**") found that:

(a) YSL and Ms. Athanasoulis entered into a valid agreement to pay Ms. Athanasoulis 20% of the profits earned on the YSL Project;

(b) Profits were to be calculated as revenues less expenses;

(c) YSL was obliged to work to maximize the profits earned on the YSL Project; and

(d) YSL had repudiated the Agreement by constructively terminating Ms. Athanasoulis' employment in December 2019.

(vi) YSL breached the Agreement by destroying the value of the YSL Project with efforts to enrich Mr. Casey

19. YSL's repudiation of the Agreement had important consequences. It converted Ms. Athanasoulis' future right to receive 20% of the profits the YSL Project actually earned into a present right to be paid the damages caused by YSL's repudiation.

20. On a more practical level, YSL's termination of Ms. Athanasoulis—and a number of other Cresford staff—left Mr. Casey and a small group of loyalists free to pursue their own interests. Instead of maximizing and, if necessary, realizing the value of the YSL Project, Mr. Casey caused YSL to embark on a campaign to enrich him.

21. YSL undeniably breached its obligation to maximize the profits from the YSL Project. Justice Dunphy found, in these Proposal proceedings, that efforts to sell or refinance the YSL Project in 2020 and 2021 were "indelibly tainted" by Mr. Casey's self-interest. Justice Dunphy specifically found that in the year between Cresford terminating Ms. Athanasoulis and agreeing to sell the YSL Project, "good faith took a back seat to self-interest." There was no effort to market the YSL Project to all potential purchasers. There was no marketing campaign at all. There was,

instead, a laser focus on two potential purchasers (first Empire and then Concord) who were prepared to negotiate a transaction that would benefit Mr. Casey at the expense of other stakeholders.

22. The management of the YSL Project between December 2019 (when Ms. Athanasoulis was terminated) and July 2021 (when YSL's proposal under the *BIA* was accepted) had one goal: to enrich Mr. Casey and the entities he controlled. This was a breach of the Agreement.

(vii) YSL's insolvency proceedings

23. Mr. Casey's efforts culminated in these proposal proceedings. The initial proposal made by YSL and the Proposal Sponsor, an affiliate of Concord Developments, contemplated payments to Cresford totaling more than $20 million. Despite creating a previous *pro forma* that forecast substantial profits, Concord submitted a *pro forma* in support of the Proposal that suddenly forecast a loss. Concord and YSL also tendered a highly suspect appraisal, which inexplicably assumed that the YSL Project would be substantially smaller than it was approved to be.

24. Justice Dunphy refused to approve its initial proposal, because it was tainted by Mr. Casey's attempt to enrich himself and was supported by unreliable evidence.

25. YSL and the Proposal Sponsor tendered an amended proposal, which was approved on July 16, 2021 (the "**Proposal**"). Justice Dunphy *did not* find that the Proposal offered fair value of the YSL Project. The Proposal was approved because, by the time it came before the Court, creditors had not been paid for more than one year and Justice Dunphy found it would be unfair to force these creditors to wait through a prolonged sales process.

26. As part of the Proposal, Concord acquired the YSL Project and set aside a pool of $30.9 million to satisfy creditor claims. The Proposal Trustee was responsible for resolving disputed claims against YSL. By this appeal, Ms. Athanasoulis seeks her share of these funds.

C. Procedural History

(i) Ms. Athanasoulis wins the first phase of a bifurcated arbitration

27. Ms. Athanasoulis' claim was, by its nature, ill-suited to summary determination in a traditional claims process. The Agreement was oral, and its terms were disputed. Valuing the claim involved a host of legal and factual complexities.

28. After the Proposal was approved, Ms. Athanasoulis and the Trustee agreed to a bifurcated arbitration process to determine her claim within the Proposal, in which liability issues would be determined in the first phase and issues relating to the quantification of Ms. Athanasoulis' damages would be determined in the second phase. At this stage, no one alleged that Ms. Athanasoulis held an equity claim or that she was subordinate to the LPs.

29. The first phase of the arbitration proceeded over four days in February 2022 (the "**Arbitration**"). Ms. Athanasoulis succeeded at the first phase of the Arbitration. The Arbitrator found that the Agreement was binding and that Ms. Athanasoulis was entitled to 20% of the profits from the YSL Project. The Arbitrator also found that YSL had repudiated the Agreement by constructively terminating Ms. Athanasoulis.

(ii) Challenges to the Arbitration

30. Shortly after the Arbitrator's award was released, the LPs and Concord objected to the arbitration process on the basis that it was too expensive and that the Proposal Trustee did not have the jurisdiction to agree to it. The LPs claimed, for the first time, that they were entitled to be paid in priority to Ms. Athanasoulis. No such claim was made before Ms. Athanasoulis spent substantial sums on the Arbitration.

31. By Endorsement dated November 1, 2022, Justice Kimmel found that the second phase of the arbitration could not proceed. Her Honour ordered the Trustee to establish a new process for determining Ms. Athanasoulis' Claim (the "**Jurisdiction Decision**").

32. By Endorsement dated February 10, 2023, Justice Kimmel established a procedure for determining Ms. Athanasoulis' claim, as well as a procedure for any appeal from the Trustee's determination of the claim (the "**Process Decision**"). Pursuant to the Process Decision,

Ms. Athanasoulis' entitlement to damages was to be determined by the Trustee. The Trustee's determination is subject to appeal pursuant to the *BIA*.

33. The Jurisdiction Decision and the Process Decision dramatically altered the Trustee's relationship to Ms. Athanasoulis' claim. The Trustee participated in the Arbitration as Ms. Athanasoulis' adversary, and stated—clearly and repeatedly—that Ms. Athanasoulis had not suffered any damages. But the Jurisdiction Decision required that the Trustee change from advocate to adjudicator. In practice, the Trustee was called on to determine whether Ms. Athanasoulis' damages theory was correct or whether *its own* position on damages should be preferred.

(iii) The Draft Notice of Disallowance and Ms. Athanasoulis' submissions

34. Before the Process Decision was issued, and Ms. Athanasoulis tendered evidence or argument to support her damages claim, the Trustee issued a "Draft Notice of Disallowance" explaining why it believed that Ms. Athanasoulis was not entitled to any payment in respect of the Claim.

35. Since February 2023, Ms. Athanasoulis delivered close to one hundred pages of written argument supported by thousands of pages of supporting evidence. Among other things, Ms. Athanasoulis demonstrated—based on YSL's own accounting records—that YSL had earned a substantial profit. YSL's records showed expenses totalling approximately $265 million, including payments of approximately $11 million to Cresford that have not been adequately explained and may not be valid project costs. YSL earned revenues of approximately $305.4 million, including the sale of the YSL Project to Concord for an implied purchase price of $291 million.

36. Some aspects of Ms. Athanasoulis' costs and revenue analysis were disputed by Cresford and/or the LPs. But Cresford did not provide *any* evidence that YSL's *actual* expenses exceeded its revenue. In fact, Cresford's primary response to Ms. Athanasoulis was to argue that certain expenses had been properly accrued for accounting purposes even though they were never paid. Unpaid expenses are not expenses at all, and they are not relevant to Ms. Athanasoulis' entitlement.

(iv) The Trustee did not accept any of Ms. Athanasoulis' submissions, and did not consider most of them

37. In any event, the Proposal Trustee appears to have largely disregarded both Ms. Athanasoulis' submissions and the responses to those submissions.

38. The Trustee issued its Disallowance on August 10, 2023, the Trustee issued a Notice of Disallowance setting out its determination of the value of Ms. Athanasoulis' Claim (the "**Disallowance**"). The Trustee did not make any material change to the reasoning or conclusions articulated in the Draft Notice of Disallowance.

39. The Disallowance makes no reference at all to critical aspects of Ms. Athanasoulis' argument. The Proposal Trustee did not provide any meaningful response to Ms. Athanasoulis' primary legal argument, which is that her damages must be calculated based on what would have happened but-for YSL's breach of contract. Nor did it adequately address her alternative argument that she was entitled to payment even if that payment is calculated based on actual profits. It did not reach any conclusion, or conduct any apparent analysis, to determine whether YSL had actually earned profits.

D. GROUNDS OF APPEAL

40. The Trustee denied that Ms. Athanasoulis is entitled to anything, apart from the previously approved wrongful dismissal damages, for three reasons:

(a) The Trustee asserted that the Claim is an "equity claim" that is not "provable" pursuant to the *BIA*, without regard for the *BIA* requirement that an "equity claim" be in "respect of" an "equity interest";

(b) The Trustee concluded that no profits were earned by YSL, without considering either YSL's revenue or its expenses; and

(c) The Trustee concluded that Ms. Athanasoulis' claim was "subordinated" to the LPs, without finding that there was any agreement between Ms. Athanasoulis and the LPs.

41. The Disallowance is, with respect, deeply flawed. It should be set aside.

(i) The Trustee should have applied well-established legal principles to the established facts

42. The Arbitrator's award, together with the well-established principles that apply to all breach of contract claims, provide a clear path for the Trustee. The Trustee ought to have calculated damages that put Ms. Athanasoulis in the position that she would be in but-for YSL's breaches of the Agreement. Based on the findings of the Arbitrator, and Justice Dunphy, this means that the Trustee ought to have considered what would have happened if YSL had honoured the Agreement *and* worked to maximize the value of the YSL Project. Ms. Athanasoulis is entitled to damages equal to the difference between what she actually was paid (nothing) and what she would have been paid if YSL had honoured the Agreement.

43. This analysis would, necessarily, have resulted in the conclusion that Ms. Athanasoulis' claim had significant value. All of the contemporaneous evidence supports the conclusion that, but-for YSL's breaches of the Agreement, the YSL Project would have yielded substantial profits either from a sale or continued development.

44. Contemporaneous valuation evidence, which was reviewed and accepted by third parties, shows that the YSL Project was worth $375 million at the time of termination and that YSL had incurred expenses of approximately $241 million. But-for the breach, these profits would have been realized. Ms. Athanasoulis' entitlement under the Agreement was, therefore, worth approximately $26 million (being 20% of the difference between $375 million and $241 million: $375 million - $241 million = $134 million. $134 million x 20% = $26.8 million)

45. The Trustee did not reference, or engage with, this analysis. It simply assumed that Ms. Athanasoulis' entitlement is limited to 20% of the actual profits earned by YSL.

46. Once the Trustee had valued Ms. Athanasoulis' contract, in accordance with the ordinary rules of damages, it should then have considered whether Ms. Athanasoulis' claim is subordinate to the LPs' claims in accordance with the priority scheme set out in the *BIA*. As detailed below, Ms. Athanasoulis is a creditor, and the LPs are equity claimants. Ms. Athanasoulis is entitled to priority.

47. Ms. Athanasoulis is a creditor. The Claim is based on an action for breach of contract. YSL agreed to pay Ms. Athanasoulis 20% of the profits that it earned. The Agreement was meant to induce Ms. Athanasoulis to remain at Cresford and continue to drive the YSL Project (and Cresford's other projects) forward. YSL repudiated the Agreement, and Ms. Athanasoulis accepted that repudiation. After the repudiation, in December 2019, Ms. Athanasoulis had a valid—and valuable—claim for breach of contract. She provided services, and YSL failed to pay what it agreed to pay for those services. The Claim is a debt within the meaning of the *BIA*.

48. Conversely, Ms. Athanasoulis does not advance an equity claim. Critically, Ms. Athanasoulis *did not* have any equity interest in YSL. She was an employee. Nothing more. According to the *BIA*, an "equity claim" must be "in respect of" an "equity interest". The Claim has no connection to any "equity interest," which the *BIA* defines to include shares, warrants, or options in YSL. No one alleges that Ms. Athanasoulis held any equity interest. The Claim is not "in relation to" any such interest. This is a complete answer to the allegation that Ms. Athanasoulis has an "equity claim" that is not provable in this proceeding.

49. The *BIA* therefore provides a clear answer to the priority issue. Ms. Athanasoulis is a creditor and she is entitled to priority over the equity claims advanced by the LPs.

E. The Trustee's errors

50. The Trustee's fundamental error is that it concluded—before considering any meaningful argument from Ms. Athanasoulis—that the LPs *should be* paid before Ms. Athanasoulis. The Trustee concluded that, since the LPs *have not* been paid then Ms. Athanasoulis *cannot* be paid. This conclusion drives essentially every aspect of its determination. But it does not rest on any sound legal theory or evidentiary basis.

51. More importantly, the Trustee's approach to the Claim was simply wrong. The Trustee was tasked with valuing Ms. Athanasoulis' claim. That valuation is *separate* from any determination about Ms. Athanasoulis' priority relative to the LPs.

(i) Ms. Athanasoulis' Claim is a provable claim, not an equity claim.

52. The Trustee concluded that the Claim is an equity claim that is not provable in bankruptcy. As noted above, the *BIA* sets clear criteria for identifying an equity claim. Ms. Athanasoulis does not meet that criteria. Despite this, the Trustee concluded that the Claim is an equity claim. The Trustee even said explicitly that it "does not consider" Ms. Athanasoulis' lack of an equity interest relevant because Ms. Athanasoulis' claim is "in substance" an "equity claim".

53. With respect, the Trustee is bound by the statutory definition of an "equity claim". An equity claim can exist if—and only if—it is "in relation to" an "equity interest". The Trustee cannot ignore the definition because it has decided that Ms. Athanasoulis' claim *should* be an equity claim.

54. As found by the Arbitrator, the compensation contemplated by the Agreement was intended to incentivize Ms. Athanasoulis' extraordinary contributions to the Cresford Group. Like most other forms of recoverable incentive-based compensation, the parties chose to tie the quantification of this compensation to the company's performance. This does not transform the "true nature" of this compensation from a contractual obligation into an equity claim.

(ii) The Profit Sharing Claim should not be valued at zero—Ms. Athanasoulis suffered damages of $26 million or, in the alternative, $7.8 million

55. The Trustee concluded that there were "no profits earned by YSL". With respect, this conclusion is infected by two fundamental errors.

56. First, the Trustee disregards the well-established principles that govern the assessment of damages. The Trustee assumes that Ms. Athanasoulis is only entitled to the *actual* profits earned by YSL in connection with the Proposal. But the Trustee is wrong about *how* damages are to be assessed.

57. Damages for breach of contract must put the injured party in the position she *would* occupy if the other party had met its contractual obligations. The Trustee has not made any attempt to assess what position Ms. Athanasoulis would occupy but-for the breach. It has simply assumed that Ms. Athanasoulis is limited to 20% of YSL's actual profits.

58. Second, and in the alternative, even if Ms. Athanasoulis is only entitled to 20% of actual profits, valuing her claim requires a calculation of YSL's actual revenue and actual expenses. The Trustee concluded that Ms. Athanasoulis' claim had no value without evaluating *either* YSL's revenue *or* its expenses.

59. If the Trustee had performed the required calculation, it would have concluded that YSL earned substantial profits

60. In determining that YSL earned no profits, the Trustee has conflated *profits* with *cash on hand*. The Trustee assumes that because YSL did not have cash after the Proposal closed, it did not earn a profit. But profit is calculated based on revenue less expenses, not cash on hand. The Trustee has not conducted any apparent analysis with respect to *why* YSL did not have cash available to pay Ms. Athanasoulis and the LPs. The assumption underlying its analysis is not valid.

(iii) The Claim is not subordinate to the LPs' claims

61. The Trustee's Disallowance also concluded that Ms. Athanasoulis is not entitled to be paid anything unless and until the LPs are paid in full.

62. There is no basis for this conclusion. It is wrong. Ms. Athanasoulis never agreed to subordinate her claim to the LPs' claims. In fact, Ms. Athanasoulis and the LPs had no agreement or legal relationship with each other at all. Ms. Athanasoulis' entitlement is independent from—and not affected by—the LPs' entitlements *vis-à-vis* YSL.

63. The Trustee does not claim that Ms. Athanasoulis agreed to subordinate her position to the LPs' position. Its conclusion is based entirely on her testimony at the Arbitration, and in discoveries conducted in advance of the Arbitration, about how profits would be calculated.

64. None of the supposed admissions referenced by the Trustee or the LPs have the legal effect apparently attributed to them by the Trustee or the LPs. Ms. Athanasoulis testified at the Arbitration about the terms of the Agreement and specifically about how she expected profits to be calculated. She testified that profits were to be calculated as revenues less expenses, consistent with the YSL Project *pro formas*. Within that equation, repayment of investors, including the LPs,

was among the expenses or project costs that would be deducted before determination of the profits from which Ms. Athanasoulis was promised to be paid.

65. It is true that, if YSL had not breached the Agreement, Ms. Athanasoulis would have been paid after YSL's profits crystalized. The LPs may have been paid before her, or they may have been paid after her. There is no agreement one way or the other. Either way, this is a matter of *timing*—not priority. Ms. Athanasoulis *never* agreed to subordinate her interests to the LPs. No one involved in negotiating the Agreement says that she did.

66. More importantly, YSL dramatically altered Ms. Athanasoulis' entitlement when it repudiated the Agreement. It converted a *future* right to receive *actual* profits into a *current* right to receive *damages* for breach of contract. If this insolvency had not occurred, Ms. Athanasoulis would likely have been awarded (and paid) her damages before the YSL Project was complete and the LPs were paid.

F. The LPs' Standing in this Appeal Should Be Limited to the Issues Outlined in the Process Decision

67. As described above, the LPs have raised separate objections to Ms. Athanasoulis' claims and allegations about why they should recover ahead of Ms. Athanasoulis. But the LPs were not parties to the Agreement, or any agreement with Ms. Athanasoulis. Ms. Athanasoulis and the LPs assert separate claims against YSL. Ms. Athanasoulis respectfully submits that the LPs' allegations have nothing to do with her entitlement to damages.

68. The Process Decision directs that, subject to the discretion of the appeal judge, the LPs' standing on Ms. Athanasoulis' appeal of the Trustee's Disallowance is limited. The Process Decision provides that the LPs' submissions are to be limited to: (a) the impact of the prohibition contained in the Limited Partnership Agreement on non-arm's length agreements; (b) the question of the enforceability of the Profit Sharing Claim; and (c) the priority or subordination of the Profit Sharing Claim to the LPs' recovery of their initial investment based on alleged breaches of contractual and fiduciary duties and alleged misrepresentations. The LPs can advance these allegations, if they choose to. But they have no standing simply to repeat or support submissions

made by the Trustee. There is no basis on which to depart from the considered reasons of Justice Kimmel in the Process Decision.

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

(a) The Proof of Claim of Maria Athanasoulis;

(b) The affidavit of Maria Athanasoulis dated May 5, 2023;

(c) Submissions of Maria Athanasoulis dated May 5, 2023;

(d) The Brief of Documents submitted by Maria Athanasoulis to the Proposal Trustee dated May 5, 2023;

(e) Transcript of the Cross-Examination of David Mann held June 21, 2023;

(f) Transcript of the Cross-Examination of Maria Athanasoulis held June 15, 2023;

(g) Letter dated July 5, 2023 providing answers to undertakings given on the cross-examination of Maria Athanasoulis together with the attachments thereto;

(h) The Notice of Disallowance of the Proposal Trustee dated August 10, 2023; and

(i) Such further and other evidence as the parties may submit and this Honourable Court may allow.

DATE: September 8, 2023

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

Court File No. B-21-02734090-0031

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

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION

(Appeal of Disallowance of Claim)

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