

**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 OF MARIA ATHANASOULIS
(Re: Motion to Compel Production of Documents)

TAKE NOTICE that the Claimant, Maria Athanasoulis (“**Athanasoulis**”), will make a motion to the Court on a date and time to be fixed by the court at the court house at 393 University Avenue, Toronto, Ontario or by Zoom videoconference.

THE MOTION IS FOR:

1. An order requiring YSL Limited Partnership and YSL Residences Inc. (together, “**YSL**”) and its principal, Daniel Casey, to disclose and produce any documents in their possession, control or power that are relevant to a determination of Ms. Athanasoulis’ claim, including the documents listed at Appendix “A” hereto;
2. Costs of the motion on a substantial indemnity basis; and

3. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. YSL was the owner of a major real estate development in Toronto, Ontario (the “**YSL Project**”). It is part of a group of companies that developed, built, and sold real estate under the brand name “**Cresford**”. Cresford is controlled by Daniel Casey.
2. YSL filed Notices of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) in April 2021. Its amended Proposal was ultimately approved by the Court in July 2021 (the “**Proposal**”).
3. The moving party, Maria Athanasoulis, is Cresford’s former President and Chief Operating Officer. She was wrongfully terminated in December 2019, and began an action against YSL (and other Cresford entities) in January 2020. Her claim was stayed when the Proposal was filed, and she filed a claim in accordance with the Proposal seeking damages for wrongful dismissal and breach of contract (the “**Claim**”).
4. Ms. Athanasoulis and the Proposal Trustee agreed that her Claim would be determined through a bifurcated arbitration process.¹ Ms. Athanasoulis prevailed at the first phase, and established that she had a binding contract that entitled her to (among other things) 20% of the profits that YSL earned on the YSL Project (the “**Profit Sharing Entitlement**”).

¹ Certain third party purchasers of limited partnership units in YG Limited Partnership have objected to the arbitration process and have sought to have Ms. Athanasoulis’ Claim determined outside of that process. That objection is not relevant to the relief sought in this motion. However Ms. Athanasoulis’ Claim is determined, the relevant documents that YSL has refused to produce will be required.

5. Ms. Athanasoulis then served her Statement of Issues for the second phase of the arbitration hearing. She 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.

6. Ms. Athanasoulis' Claim requires an analysis of YSL's financial history. The documents required to complete that analysis are held by YSL.

7. YSL has not produced these documents to either Ms. Athanasoulis or the Proposal Trustee. On May 12, 2022, upon being advised by the Trustee that it did not have such documents, counsel for Ms. Athanasoulis contacted counsel for Cresford to demand production of relevant documents and records by May 19, 2022. YSL has not provided a substantive response to Ms. Athanasoulis' detailed document request.

8. This should not be countenanced. YSL 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. YSL must also accept the burdens of the *BIA*, including its 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. The *BIA* specifically requires that YSL produce all documents "in any way relating to [its] property or affairs". The requested documents, including those listed at Appendix

“A”, fit within this broad definition. YSL has not articulated any basis for its refusal, and none exists.

10. Rules 1.04(1), 30.01, 30.02, 30.03, 30.06 and 30.08 of the *Rules of Civil Procedure*.

11. Section 158 of the *BIA*.

12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

13. Affidavit of Emily Seaby, to be sworn;

14. The pleadings and proceedings herein; and

15. Such further and other material as counsel may advise and as this Honourable Court may permit.

June 1, 2022

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Appendix A

1. Financial statements for YG Limited Partnership and YSL Residences Inc. (collectively, “YSL”);
2. Financing agreements, in draft or final form, relating to the Yonge Street Living Residences condominium tower at Yonge and Gerrard (the “YSL Project”);
3. General ledger for YSL;
4. Bank statements for YSL;
5. All pro formas prepared on the YSL Project;
6. Reports or appraisals prepared by any third party, in draft or final form, that comment upon or review the financial status of the YSL Project, including at least:
 - a. Altus Group cost reports
 - b. CBRE appraisals
7. Documents relating to any potential sale processes or offers to purchase the YSL Project or parts thereof (including the two properties adjacent to the YSL Project);
8. Documents relating to any equity investments in the YSL Project, including the total amount invested by the LPs and Fei Han and when it was invested;
9. Documents relating to the purchase of BCIMC’s interest in the YSL Project, including the trust ledger prepared in connection with the sale and the refinancing together with documents showing how any excess funds were distributed;
10. Documents relating to the \$20 million loan agreement entered into between OTB Capital Inc. (“OTB”), YSL, 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership on December 20, 2017;
11. Documents relating to the \$10 million loan issued by OTB to YSL on December 17, 2019;
12. Documents relating to the construction financing agreement between Otera Capital and YSL and its termination;
13. Documents relating to any payments made by YSL or any entities related to Concord to Cresford, Mr. Casey, or any of Cresford’s project companies;
14. Documents relating to the lending facility extended by Westmount to YSL, including draw information;

15. Documents relating to the vendor take-back mortgage advanced by BCIMC to YSL;
16. Documents relating to advances made by Timbercreek to YSL, and how they were used;
17. Documents provided to the Trustee to show that Cresford/Casey invested \$38.2 million in YSL, as alleged in the *BIA* proceeding; and
18. Documents showing all payments from Concord (or any related entities) to Mr. Casey, Cresford, or any related entities in connection with the YSL *BIA* proceeding including, without limitation, documents relating to the payment disclosed to the court.

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

Consolidated Court File No. 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
(C O M M E R C I A L L I S T)

Proceeding commenced at Toronto

NOTICE OF MOTION
(Re: Production of Documents)

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