

**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  
(s.37 Motion re CBRE Settlement)**

YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc. (collectively, the “YongeSL LPs”) will, if deemed necessary, make a motion pursuant to section 37 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “*BIA*”) to a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) presiding at the hearing of CBRE Limited’s (“**CBRE**”) appeal from the Proposal Trustee’s disallowance of CBRE’s Proof of Claim, scheduled to be heard on September 26, 2022, via Zoom, at Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. An Order:
  - (a) setting aside or refusing to enforce the Proposal Trustee’s (as defined below) settlement of CBRE’s appeal from the Proposal Trustee’s disallowance of its claim;
  - (b) abridging the time for service of this Notice of Motion; and
  - (c) for the costs of this motion against CBRE.

2. Such further and other relief as counsel may request and this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

1. The Debtors YG Limited Partnership and YSL Residences Inc. owned the “**YSL Project**”, a condominium development originally controlled by the Cresford Group, a condominium developer.
2. The YongeSL LPs are among the Class A limited partners of the Debtor YG Limited Partnership. Collectively, these limited partners advanced \$14.8 million to the Debtors and are entitled to a preferred return from the proceeds of the YSL Project after its creditors are paid.
3. The Debtors commenced this proceeding under the *BIA* and made a series of proposals to their creditors.
4. Under the first proposal to creditors filed by the Debtors in this proceeding, the Class A limited partners would have recovered nothing. Unsecured creditors would have recovered a maximum of 58% of their claims.
5. KSV Restructuring Inc., as proposal trustee of the Debtors (the “**Proposal Trustee**”) supported the Debtors’ original proposal. The limited partners did not. Justice Dunphy granted the limited partners standing in this proceeding to object to the original proposal.
6. His Honour agreed that the original proposal was not made in good faith or designed to benefit the general body of creditors, and refused to sanction the original proposal, but gave the Debtors an opportunity to put forward a new one. The new proposal, which was ultimately Court-approved, did not cap unsecured creditor recovery. Indeed, unsecured

creditors may yet recover 100% of their claims, and the limited partners may yet recover much of their advances to the YSL Project.

7. By way of their Court-approved proposal, the Debtors transferred the YSL Project lands to the Proposal's sponsor, Concord Properties Development Corp.
8. CBRE claims that this transfer entitles it to a commission of approximately \$1.2 million. CBRE admitted during cross-examination that an unsigned, written document dated February 20, 2020, governs the legal relationship between the parties.
9. The Proposal Trustee disallowed CBRE's claim for a number of reasons, including finding that:
  - (a) the transfer "does not meet the definition of an event giving rise to a Commission"; and
  - (b) alternatively, "the Commission was not earned during the Term, or within the 90 calendar days following the expiration of the Term".
10. CBRE appealed the Proposal Trustee's disallowance. CBRE served its Notice of Appeal on March 10, 2022. It served its Motion Record on July 25, 2022.
11. On August 5, 2022, the Proposal Trustee advised the service list that it intended to "seek the court's approval of a settlement on the appeal by admitting CBRE's claim as filed and the withdrawal of the appeal on a without-costs basis" (the "**Settlement**").
12. On August 18, 2022, the YongeSL LPs advised the Proposal Trustee that they opposed CBRE's appeal.

13. On August 22, 2022, the Proposal Trustee wrote to the YongeSL LPs and advised that it and CBRE reserved their rights to contest the YongeSL LPs' standing. Neither the Proposal Trustee nor CBRE confirmed that they would do so.
14. In its factum on the CBRE appeal, served on September 15, 2022, CBRE challenged the YongeSL LPs' standing.
15. The YongeSL LPs do not concede that a motion pursuant to s.37 of the *BIA* is necessary for them to challenge CBRE's appeal or the Proposal Trustee's intention to seek Court approval of the Settlement, but if that were incorrect, the YongeSL LPs make this motion.

#### **The YongeSL LPs Challenge the Settlement**

16. Section 37 of the *BIA* permits any person aggrieved by any act or decision of the trustee to apply to Court, and the Court may confirm, reverse or modify the act or decision complained of and make such order as it deems just.
17. The Settlement resulted from an act or decision of the Proposal Trustee.
18. The YongeSL LPs are aggrieved by that act or decision. The Settlement is not commercially reasonable. Settling after CBRE had delivered its Motion Record did not practically avoid any litigation risk. Most importantly, there is inadequate evidence in support of CBRE's claim. It was proper for the Proposal Trustee to have disallowed it.
19. The actions of the Proposal Trustee in entering into the Settlement are neither supportable, nor in the best interest of the Debtors' estates generally.
20. The *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, including section 37.
21. The *Rules of Civil Procedure*, RRO 1990, Reg 194, including Rules 1.03 and 1.04.

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

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

1. the Seventh Report of the Proposal Trustee dated September 12, 2022;
2. CBRE's Motion Record dated July 25, 2022, and the affidavits therein;
3. the YongeSL LPs' Responding Motion Record dated August 19, 2022, and the affidavit therein;
4. the transcripts from the cross-examinations of Casey Gallagher and Ted Dowbiggin on August 31, 2022; and
5. such further and other evidence as counsel may advise and this Court may permit.

September 20, 2022

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Lawyers for the YongeSL LPs

**TO: THIS HONOURABLE COURT**  
**AND TO: THE SERVICE LIST**

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

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

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Proceedings commenced at Toronto, Ontario

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