

**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.

APPLICATION UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

MOVING PARTIES' REPLY FACTUM

(Motion Returnable June 1, 2021)

May 31, 2021

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TO: SERVICE LIST

PART I - OVERVIEW

1. This reply factum addresses the following points arising from Cresford's and Concord's responding factums:

- (a) Neither responding party has identified any legal precedent for their position that they should be allowed to use the stay as a tool to prevent a challenge to the validity of the Partnership's NOI filing and the Proposal.
- (b) The stay cases relied on by the respondents are distinguishable. They do not address claims brought by limited partners to prevent the general partner from unilaterally initiating a BIA process for the partnership.
- (c) The respondents' position on this stay motion is inherently circular. They are effectively asking this Court to decide the LP Application in their favour on a stay motion by assuming that Cresford had the authority to enter into the Proposal agreement with Concord and file the NOIs without the Limited Partners' approval.
- (d) While the Court does not need to delve deeply into the merits of the LP Application for purposes of the stay motion, the respondents' own submissions make clear that Cresford acted without authority and there are sound reasons for the LP Application to proceed.

Paragraph 52 of Cresford's factum is a tacit admission that the General Partner had no authority to enter into the Proposal Sponsor Agreement with Concord without the Limited Partners' consent. Without citing any law or evidence,

Cresford seems to argue that it can rewrite or override the LP Agreement in the circumstances. While the Moving Parties dispute this novel theory, it can be finally determined by the Court on June 23rd with the benefit of a full record.

- (e) The General Partner is unable to ignore the Limited Partners' interests and act in a manner that contravenes the LP Agreement. At paragraph 57 of Cresford's factum, it relies on *People's Department Stores* to argue that the General Partner's fiduciary duties change once in the "vicinity of insolvency". *People's* was a case about corporations not partnerships and the fiduciary duties of a director are not the same as those of a general partner. The respondents' failure to distinguish partnership law principles from corporate law principles undermines their submissions.
- (f) Cresford misconceives the applications. To succeed, the test is not "to convince the Court based on evidence that a public sale will produce a better result than the Proposal." The issue is whether the General Partner has acted without authority and the NOIs are a nullity. In any event, even if Cresford was correct about the test, the undisputed evidence on this motion, in the form of appraisals and several recent offers to acquire the Project, establishes that a public sales process is very likely going to produce a higher price for the Project.
- (g) Cresford contradicts itself regarding the impact of the LP Application. On the one hand, at paragraphs 33 and 34, it contends the proceeding serves no purpose because the relief will never be granted. On the other hand, at

paragraph 59, it argues that if the relief in the LP Application is granted, the proposal process will be at an end and a receivership will follow.

If the Limited Partners succeed, there will clearly be an impact. The Proposal will be invalid and Cresford's and Concord's attempt to engineer a result using the BIA will fail. A Court-supervised sales process will ensue.

- (h) Concord's factum makes numerous assertions about the state of the Project and its role without citing any evidence. Concord elected not to file any evidence for the motion. As a result, most of its submissions are bare assertions and can be ignored.

If Concord believes its proposal offers the best potential outcome then it should have no concerns about participating in a court-supervised sales process. The fact that it is aggressively pursuing the proposal process speaks to its actual belief and motives.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of May, 2021.



Shaun Laubman

SCHEDULE “A”

Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3), section 85

Partnership Property

Application to limited partnerships

85 (1) This Act applies to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners of a limited partnership becoming bankrupt, the property of the limited partnership vests in the trustee.

Actions by trustee and bankrupt’s partner

(2) If a member of a partnership becomes bankrupt, the court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt’s partner, and any release by the partner of the debt or demand to which the action relates is void or, in the Province of Quebec, null.

Notice to partner

(3) Notice of the application for authority to commence an action under subsection (2) shall be given to the bankrupt’s partner, who may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the court directs.

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Consolidated Court File No.: 31-2734090

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PROCEEDING COMMENCED AT TORONTO

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