

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.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

RESPONDING BOOK OF AUTHORITIES OF THE PROPOSAL TRUSTEE

November 10, 2023

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1.	<i>Re Clover on Yonge Inc.</i> , CV-20-00642928, Endorsement of Justice Hainey dated January 8, 2021 (unreported)
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Re CLERK ON YONGE INC

- ① This is a motion for an order sanctioning the Plan of Compromise and Arrangement dated November 6, 2020. ("Plan")
- ② The Plan was approved on December 15, 2020 by the requisite statutory majorities of affected creditors with voting claims in each of the Plan's two classes of creditors. 76.6% of the Depositor Creditor class voted in favour of the

(2)

Plan and 98.8% of the General Unsecured Creditor class voted in favor of the plan.

(3) There is one unsecured Voting claim advanced by Maria Athanaroulis, which she values at \$49 Million ("Maria's claim"). If this claim is accepted in the value asserted, the Plan would be defeated in the General Unsecured Creditor class. All but \$1 million of Maria's claim is a claim for a share of

(3)

profits in a number of projects, including the Clower on Yonge project.

(4) I accept the Monitor's position that with respect to the component of Mania's claim related to an alleged profit sharing agreement with respect to the Clower on Yonge project there was no prospect of any profit from that project because as of March 31, 2020, shortly after the receivership commenced, the Clower on Yonge project was forecast to generate a loss of \$61 Million. As a

④ result because I accept that the proper date to value Monica's claim is when the Receiver was appointed on March 27, 2020. There was no profit from the Clouds on George project that could be shared with Monica.

⑤ Mr. Dunn, on behalf of Monica, concedes there can be no profit from this project under the pre-sale unit purchase contracts are disclaimed. I have already ordered that those contracts can only

(3)

be disclaimed if the Plan is approved.

(6) as the Monitor points out in the Supplementary Report & its 1472 Report any forecast profit is entirely dependent on the restructuring of the revenues of the Clover on the project. I accept and adopt the Monitor's following statement:

"It does not avail Ms. Athanasoulis to argue she is entitled to share in profit denied from a successful Plan that she would vote against and cause to fail

(6)

if she had a claim. "

(7) In my view to argue that the relevant date to calculate her profit-sharing claim is later than the receivership appointment date and that profit will be deemed from the clause on George Project is far too remote and speculative and lacks an air of reality. I agree with the Applicant's

submission that "there is no profit absent disclaimer, and no disclaimer absent the approval, sanction and

(7)

implementation of the Plan.
Accordingly, if the profit component of the alleged Athanasoudis claim is allowed for negative voting purposes, it must follow that the value attributed to it is a profit expectation of \$ nil, and not a profit expectation of \$48 million."

(8) The criterion I must use to determine if Maria's claim, which is a contingent claim, is to be included in the insolvency process is whether the event that has

(8)

not yet occurred is too remote or speculative. In my view Mania's claim cannot be shown to be neither too remote nor speculative under the Plan is approved, sanctioned and implemented. This is the very event that Mania would defeat if her contingent profit-sharing claim of \$48 Million is allowed for voting purposes.

(9) I rely on Justice Morrison's decision in Nalco Energy v. Grant Thornton, 2015 NBRB 20 at para 35 where he

⑨

Opposed the proposal trustee's decision to disallow a contingent creditor's claim for purpose of voting on a summary basis on facts that are strikingly similar to the facts in this case.

⑩ Accordingly, I have concluded, for the reasons outlined above, that Monia's claim is so speculative and remote in the amount of \$48 million to be allowed for voting purposes. I will therefore not have to consider whether Monia's claim is an equity claim that should not be counted for voting purposes.

(10)

(11) With respect to the issue of whether the Plan should be sanctioned, I am satisfied that,

(a) It has been approved by the requisite statutory majority of the Applicants' non-equity creditors;

(b) There has been strict compliance with all statutory requirements and adherence to previous orders of the Court;

(c) Nothing has been done, or purported to be done

That is not authorized by
The CAA; and
(d) The Plan is fair and
reasonable.

(12) In conclusion, for the
reasons set out above,
The Plan is sanctioned by
The Court in its entirety
and I declare that
Hodia's claim cannot be
valued at more than
\$1 Million (the wrongful demand
portion of the claim) for
voting purposes with
respect to The Plan.

(12)

(13) An order shall go
to this effect.

(14) I thank all counsel
for their helpful
submissions.

Hainey J.

January 8, 2021

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