

Court File No. BK-21-02734090-0031
Court of Appeal No. COA-22-CV-0451

COURT OF APPEAL FOR ONTARIO

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.**

**SUPPLEMENTARY APPEAL BOOK AND COMPENDIUM of the
APPELLANTS**

YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd.,
E&B Investment Corporation, and TaiHe International Group Inc.
(the “YongeSL LPs”)

June 23, 2023

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Court File No. BK-21-02734090-0031
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COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C
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**IN THE MATTER OF THE NOTICES OF INTENTION
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YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.**

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TAB 1

District of: Ontario
Consolidated Court File No. 31-2734090
Division No: 09 - Toronto

**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.**

**AMENDED NOTICE OF MOTION
(Appeal of Disallowance)**

CBRE Limited (“**CBRE**”) will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List) on September 26, 2022 at 10:00 a.m. ~~a date to be set~~, at the courthouse at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An order
 - a) setting aside the Proposal Trustee’s (as defined below) disallowance of the claim of CBRE in the Proposal (the “**Proposal**”) of YSL Limited Partnership and YSL Residences Inc. (together, the “**Debtors**”);
 - b) allowing CBRE’s claim in the Proposal;

- c) declaring that this motion for the appeal of the disallowance of CBRE's claim be heard by way of hearing *de novo*; and
 - d) the costs of this motion.
2. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

1. On or about ~~February~~ January 2020, CBRE and the Debtors entered into an agreement whereby CBRE served as the exclusive listing brokerage (the "**Agreement**") for the sale of the properties located at 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (the "**Property**").
2. CBRE introduced the Debtors to Concord Properties Developments Corp. ("**Concord**") in connection with the sale of the Property.
3. On April 30, 2021, the Debtors filed a notice of intention to make a proposal pursuant to section 50.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**"). At that time, KSV Restructuring Inc. was appointed a Proposal Trustee (the "**Proposal Trustee**").
4. The Debtors made numerous proposals, culminating in the Debtors' Third Proposal dated July 15, 2021. The Third Proposal sanctioned by the Order of Justice Dunphy on July 16, 2021.
5. On or about July 22, 2021, the Property was sold to Concord pursuant to the Proposal (the "**Sale**") for a total consideration of \$168,737,563.00. Pursuant to the Agreement, CBRE is entitled to a commission of 0.65% of the sale price.
6. On January 28, 2022, CBRE submitted a proof of claim along with an affidavit in support of its claim the Proposal Trustee (the "**Claim**") in the

amount of \$1,239,377.40 as the commission owing under the Agreement (the “**Commission**”).

7. On February 1, 2022, the Trustee requested certain further information in connection with the Claim (the “**Information Request**”). That same day, CBRE responded providing the requested information.
8. On February 10, 2022, the Proposal Trustee disallowed the Claim by delivering a notice of disallowance to the Creditors (the “**Disallowance of the Claim**”). The Trustee stated that it disallowed the Claim for the following reasons:
 - a) The Agreement is not signed and therefore is not binding;
 - b) Concord Properties Developments Corp, (the “Plan Sponsor”) advised that at all times it dealt directly with the Debtors and that it did not have any dealings with CBRE;
 - c) The Conveyance does not meet the definition of an event giving rise to a Commission; and
 - d) To the extent any Commission could apply, which is denied, the Commission was not earned during the Term, or within the 90 calendar days following the expiration of the Term.

The Trustee Erred

9. The Proposal Trustee erred by:
 - a) determining that the failure to execute a written agreement means that the Agreement is not binding;
 - b) finding that CBRE had no interaction with the Plan Sponsor;
 - c) determining that it was necessary for CBRE to interact with the Plan Sponsor in order to be entitled to the Commission;

- d) determining that the Conveyance is not an event that gives rise to a Commission under the contract; and
- e) determining that the Commission was not payable because it was not earned within the 90 calendar day period following the expiration of the Term of the contract.

Procedural Unfairness

10. The process followed by the Proposal Trustee in adjudicating the Claim was procedurally unfair. The Trustee:
 - a) disallowed the Claim for reasons that were unrelated to the Information Request;
 - b) expressly relied on information provided by a third party – Concord – that was not provided to CBRE;
 - c) reviewed materials not otherwise available to CBRE to assist in formulating her decision to disallow the claim;
 - d) failed to undertake any or an adequate investigation of the Claim;
 - e) failed to properly consult the bankrupt or appropriately take into account the bankrupt's responses with respect to the truth of the information and evidence filed in support of the Claim; and
 - f) did not ask the bankrupt to review the Disallowances for accuracy or ask the bankrupt for his concurrence with the Trustee's position
11. The Proposal Trustee has consented to this Motion proceeding by way of a hearing *de novo*.
12. Section 135 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
13. Rules 1.04, 37 and 57.03 of the *Rules of Civil Procedure*; and,

14. Such further and other grounds as counsel may advise.

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

1. The affidavit of Heyla Vettyvel Elie Laskin, to be sworn July 22, 2022;
2. The affidavit of Casey Gallagher, ~~to be sworn July 21, 2022;~~ and
3. The affidavit of Ted Dowbiggin sworn July 25, 2022; and
4. Such further and other evidence as counsel may advise and this Honourable Court permit.

~~March 10~~ July 25, 2022

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

Court File No. CV-20-00650224-00CL
Consolidated Court File No. 31-2734090
District of: Ontario
Division No: 09 - Toronto

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

AMENDED NOTICE OF MOTION

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TAB 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST

Proceedings commenced at Toronto, Ontario

NOTICE OF MOTION
(s.37 Motion re CBRE Settlement)

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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.

Court File No.: BK-21-02734090-0031
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COURT OF APPEAL FOR ONTARIO

**SUPPLEMENTARY APPEAL BOOK AND
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