Sixth Report to Court of KSV Restructuring Inc. as Proposal Trustee of YG Limited Partnership and YSL Residences Inc.

August 19, 2022

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

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

SIXTH REPORT TO COURT OF
KSV RESTRUCTURING INC. AS PROPOSAL TRUSTEE

AUGUST 19, 2022

1.0 Introduction

1. This report ("Report")[1] is filed by KSV Restructuring Inc. ("KSV") in its capacity as Proposal Trustee (the "Proposal Trustee") in connection with Notices of Intention to Make a Proposal (the "NOIs") filed on April 30, 2021 (the "Filing Date") by YG Limited Partnership (the "Partnership") and YSL Residences Inc. ("Residences", and together with the Partnership, the "Companies"), pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA").

2. On May 14, 2021, the Ontario Superior Court of Justice (Commercial List) (the "Court") issued an order (the "Consolidation Order") procedurally and substantively consolidating the NOIs (the "NOI Proceedings") for the purpose of simplifying the administration of the NOI Proceedings, including filing a joint proposal and convening a single meeting of creditors.

3. The principal purpose of the NOI proceedings was to create a stabilized environment to allow the Companies to present a proposal to their creditors that provides them with a recovery greater than they would have received in a bankruptcy or alternative insolvency process.

4. On May 27, 2021, the Companies filed a proposal with the Official Receiver in accordance with Section 62(1) of the BIA (the "Proposal"). On June 3, 2021, the Companies filed an amended proposal (the "First Amended Proposal") and on June 15, 2021, the Companies filed a further amended proposal (the "Second Amended Proposal").

[1] Capitalized terms have the meaning provided to them in the Final Proposal (as defined herein), unless otherwise defined in this Report.

5. At a meeting of creditors held on June 15, 2021 (the "Creditors' Meeting"), the creditors voted to accept the Second Amended Proposal.

6. On June 23, 2021, the Companies sought Court approval of the Second Amended Proposal. Pursuant to the Reasons for Interim Decision of the Court made on June 29, 2021, as amended on July 2, 2021 (the "Interim Decision"), the Court did not approve the Second Amended Proposal.

7. A Court hearing for approval of the Second Amended Proposal was scheduled for July 9, 2021 to allow the Companies time to address the Court's concerns set out in the Interim Decision and, should they wish, present a further amended proposal for the Court's consideration. A copy of the Interim Decision is provided in Appendix "A".

8. Shortly before the motion on July 9, 2021, Concord Properties Developments Corp., the sponsor of the proposals filed in this proceeding (the "Sponsor"), served a further amended proposal (the "Third Amended Proposal") and an offer of distributions to be made outside of the Third Amended Proposal by the Sponsor to any equityholders[2] of the Partnership (the "Equityholders") willing to accept such Offer (the "Equity Offer").

9. Pursuant to Section 3.03 of the Second Amended Proposal and the Third Amended Proposal, the Companies required the consent of the Proposal Trustee to file the Third Amended Proposal. As the Third Amended Proposal was provided for the first time to the Proposal Trustee just prior to the motion on July 9, 2021, the Proposal Trustee did not have the time it required to review the Third Amended Proposal prior to that hearing. Accordingly, the motion was adjourned to July 16, 2021 to provide the Proposal Trustee with the opportunity to consider the Third Amended Proposal and for the Proposal Trustee to make a recommendation to the Court.

10. The Proposal Trustee's Fourth Report to Court dated July 15, 2021 set out, among other things, the material changes between the Second Amended Proposal and the Third Amended Proposal, further changes to the Third Amended Proposal (the "Final Proposal"), and the Proposal Trustee's recommendation to the Court that it approve the Final Proposal.

11. Pursuant to Reasons for Decision dated July 16, 2021, as amended on July 27, 2021 (the "Decision"), the Court approved the Final Proposal. A copy of the Decision is provided in Appendix "B".

12. No inspectors were appointed in the Final Proposal.

[2] Defined in the Final Proposal as the holders of the limited partnership units of YG LP and those Equity Claims deemed to be equity pursuant to the Interim Decision.

13. The Second Amended Proposal and the Third Amended Proposal both contain identical Sections 10.01 and 11.01 that were drafted by representatives of the Companies and the Sponsor, without the input of the Proposal Trustee, and that read as follows:

10.01 Administrative Fees and Expenses

Administrative Fees and Expenses will be paid in cash by the Company on the Proposal Implementation Date together with a reserve in respect of the discharge of the Proposal Trustee.

11.01 Indemnification of Proposal Trustee

The Proposal Trustee shall be indemnified in full by the Company for all personal liability arising from fulfilling any duties or exercising any powers or duties conferred upon it by this Proposal or under the BIA, except for any willful misconduct or gross negligence.

14. Based on input from the Proposal Trustee, these sections were modified in the Final Proposal to read as follows:

10.01 Administrative Fees and Expenses

Administrative Fees and Expenses including a reserve[3] *in respect of the reasonably estimated additional Administrative Fees and Expenses anticipated to be incurred in connection with the administration of Distributions, resolution of any unresolved Claims pursuant to Section 5.03, and the Proposal Trustee's discharge will be paid in cash by the Proposal Sponsor on the Proposal Implementation Date.*

11.01 Indemnification of Proposal Trustee

The Proposal Trustee shall be indemnified in full by the Proposal Sponsor for: (a) all personal liability arising from fulfilling any duties or exercising any powers or duties conferred upon it by this Proposal or under the BIA, except for any willful misconduct or gross negligence; and (b) all Administrative Fees and Expenses reasonably incurred but not covered by the payment set out in Section 10.01.

15. These changes were made for several reasons, including to:

    a) ensure that the Administrative Fees and Expenses of the Proposal Trustee would not reduce creditor recoveries under the Final Proposal, which was a key consideration for various stakeholders, including the LPs (as defined below);

[3] The amount of the reserve was $1 million. See paragraph 1.16 below.

b) set out the Sponsor's obligation to fund the Administrative Fees and Expenses of the Proposal Trustee, subject to such fees and costs being reasonably incurred. Section 11.01 was included given the uncertainty regarding the fees and costs to complete the proceedings, including completing the claims determination process. The Proposal Trustee required this provision given the history of the litigation between the Companies and certain of its stakeholders that preceded these proceedings, and which continued during these proceedings; and

c) change the indemnifier from the Company to the Sponsor, as the Proposal Trustee was not prepared to be indemnified by the Company given its financial position.

16. Prior to implementation of the Proposal, the Sponsor provided the Proposal Trustee with $1 million (plus HST) in respect of the Proposal Trustee's future fees and costs (the "Initial Advance"). The Proposal Trustee's fees and cost have exceeded this amount due to, *inter alia*, ongoing litigation involving certain of the claims, the administration of the Final Proposal and numerous and ongoing procedural disputes, including the manner in which the Athanasoulis Claim (as defined below) is to be determined. The litigation concerning the Athanasoulis Claim ultimately became more complex and expensive than the Proposal Trustee had anticipated.[4]

17. The Sponsor has also consented to the payment to the Proposal Trustee for its fees and those of its counsel, Davies Ward Philips & Vineberg LLP ("Davies"), of approximately $170,000 of accrued interest on the Affected Creditor Cash Pool (as discussed in Section 3.01 below), the use of which was not addressed in the Final Proposal.

18. Despite the unambiguous language in Section 11.01 of the Final Proposal, on or about July 4, 2022 the Sponsor advised the Proposal Trustee that it was not prepared to continue to fund the fees and costs of the Proposal Trustee to complete these proceedings.

1.1 Purposes of this Report

1. The purposes of this Report are to:

a) provide background information about the Companies and the Final Proposal;

b) summarize the three remaining disputed claims (the "Disputed Claims") in these proceedings, including the manner in which the Proposal Trustee has attempted to determine them to-date and how it proposes to determine them going forward;

[4] Judges in proceedings concerning the restructuring of affiliates of the Companies remarked that the Athanasoulis Claim was "speculative". See, *e.g.*, the Endorsement of Justice Hainey dated January 8, 2021 attached in Appendix "C".

c) discuss the Proposal Trustee's dealings with the Sponsor in respect of its obligations under Section 10.01 and 11.01 of the Final Proposal;

d) summarize the Administration Fees and Expenses of the Proposal Trustee in these proceedings since July 22, 2021 (the "Implementation Date"), the date that the Final Proposal was implemented (the "Post-Implementation Fees"); and

e) recommend that the Court issue an order:

i. declaring that the conduct of the Proposal Trustee in determining the claims, including the Disputed Claims, has been reasonable, and accordingly, the Administrative Fees and Expenses have been reasonably incurred;

ii. declaring that the Sponsor remains bound by Section 11.01 of the Final Proposal;

iii. declaring that the Sponsor is required to fund the Administrative Fees and Expenses of the Proposal Trustee pursuant to Section 11.01 of the Final Proposal;

iv. declaring that the commencement of arbitration to determine the Athanasoulis Claim by the Proposal Trustee was a valid exercise of the power conferred upon the Proposal Trustee under the Final Proposal and/or the BIA;

v. declaring that, in discharging its duties under the Final Proposal and the BIA, the Proposal Trustee has not engaged in wilful misconduct or gross negligence;

vi. providing the Proposal Trustee with a charge on,

- all distributions made to-date to the Sponsor (or any of its affiliates) on the claims it purchased in this proceeding, including a reimbursement obligation, if required, and

- all future distributions that may be payable to the Sponsor in respect of the claims it purchased in this proceeding; and

vii. declaring that if the Sponsor fails to pay an invoice rendered by the Proposal Trustee or its counsel pursuant to Section 11.01 of the Final Proposal within 30 days of the invoice, the Proposal Trustee is entitled to set-off amounts owing by the Sponsor pursuant to such invoice against any amounts held by the Proposal Trustee and otherwise payable to the Sponsor as a result of any future distributions to the Sponsor in respect of claims it purchased in this proceeding.

1.2 Currency

1. All references to currency in this Report are to Canadian dollars.

1.3 Definitions

1. Capitalized terms not defined in the Report have the meanings provided to them in the Final Proposal.

2.0 Background

1. Information regarding the Companies, the real estate project that was being developed by the Companies known as Yonge Street Living Residences (the "YSL Project"), the history of these proceedings, the receivership application filed by the first mortgagee of the YSL Project in advance of these proceedings, Timbercreek Mortgage Servicing Inc. ("Timbercreek"), that was pending against the Companies, applications by certain of the Partnership's limited partners (the "LPs") and the prior proposals filed in this proceeding is included in the Proposal Trustee's reports to Court and other materials filed with the Court. Copies of all publicly available information in these proceedings can be found on the Proposal Trustee's case website at https://www.ksvadvisory.com/insolvency-cases/case/yg-limited-partnership.

2. The Companies are part of the Cresford Group of Companies ("Cresford"), a Toronto-based real estate developer. In addition to the NOI Proceedings, several of Cresford's other developments have been subject to restructuring proceedings.

3. Residences was the registered owner of the real properties municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (the "Real Property"), acting as a bare trustee and nominee of, for and on behalf of the Partnership.

4. The Partnership was the beneficial owner of the Real Property and was formed for the purpose of developing the Real Property into a mixed-use office, retail and residential condominium development comprised of approximately 1,100 residential units, 190,000 square feet of commercial/retail/institutional space and 242 parking spaces known as the YSL Project.

5. As a result of the successful implementation of the Final Proposal, title to the Real Property was transferred to an affiliate of the Sponsor.

6. In the context of Cresford's various restructuring proceedings, the credibility and availability of Cresford's management, and the reliability of its books and records have been significant issues. Those issues have increased the extent to which the Proposal Trustee has been involved in addressing the various disputed claims filed in the NOI Proceedings.

2.1 Applications by the Limited Partners and Senior Mortgagee

1. Prior to the Filing Date, certain of the LPs commenced applications (collectively, the "LP Applications") seeking Orders declaring that, among other things:

   a) 9615334 Canada Inc. (the "GP") is terminated as general partner of the Partnership;

   b) any agreements entered into by the GP with the Sponsor are null and void; and

   c) the GP breached its duty of good faith to the LPs. Additionally, certain of the LPs sought the appointment of an equitable receiver.

2. On June 1, 2021, the Court heard motions by the LPs to, among other things, lift the stay of proceedings pursuant to Section 69(1) of the BIA and to authorize the LPs to bring the LP Applications. Pursuant to an endorsement made on the same day, the Court, among other things, set a litigation timetable for a hearing scheduled for June 23, 2021 where certain of the LPs' arguments could be made at the same time as the Companies sought approval of the Amended Proposal, assuming that the Amended Proposal had been accepted by the Affected Creditors voting at the Meeting, which they did on June 23, 2021.

3. In advance of the Proposal, the Companies were in default of their loan agreement with Timbercreek. Pursuant to an agreement dated March 26, 2020 among Timbercreek, the Companies and two Cresford entities (the "Forbearance Agreement"), Timbercreek agreed to, among other things, forbear from enforcing its security against the Real Property. Timbercreek subsequently brought a motion to appoint a receiver on November 13, 2020. The receivership application was adjourned several times and remained pending when the NOIs were filed. On several occasions, Timbercreek scheduled an application for the appointment of a receiver if the Companies' NOI Proceedings were unsuccessful.

3.0 Final Proposal

1. The Final Proposal provides for distributions to the Affected Creditors from the Affected Creditor Cash Pool, being a cash pool funded by the Sponsor in the amount of $30.9 million to be distributed *pro rata* to Affected Creditors with Affected Creditor Claims. The Final Proposal also provides that if any residual amount remains in the Affected Creditor Cash Pool following the final distributions to Affected Creditors, such residual funds, if any, would be held by the Proposal Trustee "pending receipt of a duly issued direction from all of the holders of Class A Preferred Units of YG LP, or otherwise by order of the Court". A copy of the Final Proposal is provided in Appendix "D".

2. On July 22, 2021, the Sponsor funded the Affected Creditor Cash Pool. The corporate transactions summarized in Section 6.01 of the Final Proposal were completed on the same day and resulted in, among other things, title to the YSL Project being transferred to an entity related to the Sponsor.

3. Section 10.01 of the Final Proposal required the Sponsor to pay all "*Administrative Fees and Expenses including a reserve in respect of the reasonably estimated additional Administrative Fees and Expenses anticipated to be incurred in connection with the administration of Distributions, resolution of any unresolved Claims pursuant to Section 5.0, and the Proposal's Discharge*". Additionally, Section 11.01 of the Final Proposal requires the Sponsor to indemnify the Proposal Trustee for "*all Administrative Fees and Expenses reasonably incurred but not covered by the payment set out in Section 10.01*". Together, these provisions require the Sponsor to fund the Administrative Fees and Expenses of the Proposal Trustee separately from the Affected Creditor Cash Pool. The term Administrative Fees and Expenses is defined in the Final Proposal as "*the fees, expenses and disbursements incurred by or on behalf of the Proposal Trustee, the solicitors for the Proposal Trustee, the solicitors of the Company both before and after the Filing Date*". The Sponsor is therefore required to fund the costs reasonably incurred by the Proposal Trustee to determine all claims filed in these proceedings. Section 11.01 was required by the Proposal Trustee given the uncertain costs resolving various disputed claims in these proceedings.

4. The effects of Sections 10.01 and 11.01 of the Final Proposal were to: (i) guarantee that the Affected Creditor Cash Pool would be a certain amount not subject to reduction by the fees and costs of the Proposal Trustee and its counsel; and (ii) ensure that there would be funding for the Proposal Trustee to complete the administration of these proceedings. The indemnity in Section 11.01 is not subject to a fee cap or any other limitation other than the fees must have been reasonably incurred.

5. The Court approved the Final Proposal as it was superior to the Second Amended Proposal, for the following key reasons:

    a) creditor recoveries were not capped at 58¢ on the dollar, as they were under the Second Amended Proposal, and may end up being paid in full, with residual funds left over to be distributed to the LPs, depending on the determination of the Disputed Claims;

    b) related party claims were treated as equity claims; and

    c) construction lien creditors were treated as unaffected creditors.

6. The differences referenced above, among others, were made in response to the issues raised in the Interim Decision, based largely on submissions from counsel representing the LPs.

4.0 Creditors

1. Sixty-four (64) claims have been filed against the Companies, including claims from trade creditors, real estate brokerages, professional advisors and former employees. As reflected below, claims accepted to-date are almost $7.6 million less than the amount of the filed claims, the effect of which is to increase distributions to Affected Creditors with Proven Claims, including the Sponsor, due to its purchase of various Proven Claims.

	Amount ($000)		
Creditor	Filed	Accepted by Proposal Trustee	Difference
Proven Claims:			
Otis Canada Inc.	4,912	390	4,522
Landpower Real Estate Ltd.	4,500	3,847	653
Homelife Landmark Realty Inc.	3,170	3,145	25
Homelife New World Realty Inc.	1,839	1,524	315
Sarven Cicekian	767	383	384
David Ryan Millar	735	450	285
Sultan Realty Inc.	699	671	28
Mike Catsiliras	681	269	412
Home Standards Brickstone Realty	586	208	378
Louie Giannakopoulos	445	308	137
Other Proven Claims	4,105	3,642	463
Total Proven Claims	22,439	14,837	7,602
Unresolved Claims:			
Maria Athanasoulis (disputed)	19,000	TBD	TBD
CBRE Limited (“CBRE”)	1,239	TBD	TBD
Henry Zhang (disputed by the LPs)	1,520	1,130	390
Total Unresolved Claims	21,759	1,130	20,629
Total Claims	44,198	15,967	28,231

2. Of the claims in the table, the claims filed by the following parties are the remaining Disputed Claims:

   a) Ms. Athanasoulis;

   b) CBRE; and

   c) Mr. Zhang.

3. The status of the Disputed Claims is discussed in Section 5 below.

4. On March 24, 2022, the Proposal Trustee paid an interim distribution of 70¢ on the dollar to the creditors with Proven Claims.

5. Since the interim distribution, the Proposal Trustee has resolved various claims, including complex claims filed by four former employees of Cresford (the “Former Employees”), including common employer claims that each Former Employee filed against the Companies. The Proposal Trustee negotiated settlements of these claims, which were approved by the Court on May 24, 2022.

6. The Proposal Trustee paid a catch-up distribution to the Former Employees and other creditors with Proven Claims, except those who continue to have Disputed Claims and three creditors whose claims were recently resolved.

7. The Proposal Trustee reserved the balance of the Affected Creditor Cash Pool until the Disputed Claims can be determined. The Affected Creditor Cash Pool is presently approximately $20.5 million.

8. The Sponsor took an assignment of 28 of 64 Affected Creditor claims. As assignee, the Sponsor participated in the interim distribution and has received approximately $8.4 million of the total amounts distributed.

9. The table below shows the range of outcomes to stakeholders depending on the resolution of the Disputed Claims. The table illustrates that resolution of the Disputed Claims will determine the amount of distributions, if any, to the LPs.

	Amount ($000)	
Estimated Distributions	High	Low
Affected Creditor Cash Pool	30,900	30,900
Claims		
Proven Claims	14,837	14,837
Ms. Athanasoulis	-	19,000
CBRE	1,239	1,239
Mr. Zhang	-	1,130
Total Claims	16,076	36,206
Dividend rate	100%	85.3%
Residual for LPs	14,824	-

5.0 Status of the Disputed Claims

5.1 Ms. Athanasoulis

1. Ms. Athanasoulis, Cresford's former President and Chief Operating Officer, filed a claim in the amount of $19 million. This is related to a Statement of Claim she filed on January 21, 2020 against the Companies, other Cresford affiliates and Dan Casey, Cresford's founder (the "Athanasoulis Claim"). The Athanasoulis Claim is in respect of, *inter alia*, allegations of:

    a) wrongful dismissal in the amount of $1 million; and

    b) damages in the amount of $18 million for breach of an oral agreement that the owner of each Cresford project, including the YSL Project, would pay Ms. Athanasoulis 20% of the profits earned on each project.

2. Cresford denied the existence of an oral agreement entitling Ms. Athanasoulis to 20% of the profits earned on each project. In order to determine whether an oral contract existed, witness testimony was required to be called under oath and the credibility of such evidence assessed. Given the limited Court time available for such a hearing, together with the desire to make a determination of the merits of the Athanasoulis Claim in a fair, expedient, and efficient manner, the Proposal Trustee and Ms. Athanasoulis agreed to arbitrate the determination of liability (*i.e.*, did an enforceable contract exist between Ms. Athanasoulis and Cresford, and was that contract breached?) in respect of her claim ("Phase 1") before William G. Horton (the "Arbitrator"), an experienced commercial litigator and arbitrator.

3. If a contract was found to exist, the parties also agreed to have the Arbitrator determine the quantum of damages, if any, flowing from breach of the contract in the second phase of the arbitration ("Phase 2").

4. Cresford, the LPs, and the Sponsor were well aware of the Proposal Trustee's intention to arbitrate the Athanasoulis Claim before Phase 1 occurred. None of them objected to this manner of proceeding. However, after Ms. Athanasoulis prevailed in Phase 1, both the Sponsor and the LPs have taken the position that the Proposal Trustee acted without jurisdiction in arbitrating the Athanasoulis Claim rather than determining it itself, and then litigating an anticipated appeal on any such determination (by either the LPs or Ms. Athanasoulis, depending on the nature of the determination). The LPs and the Sponsor have taken the position that the Proposal Trustee improperly delegated its authority to determine the Athanasoulis Claim to the Arbitrator.

5. The Proposal Trustee does not view this process as having the Arbitrator determine whether to allow the claim in these proceedings, as suggested initially by the LPs and more recently by the Sponsor. Rather, the Proposal Trustee views the Arbitrator as an independent and impartial adjudicator who can assess whether an oral agreement existed, and if so, the nature and terms of that agreement and the potential damages flowing from a breach of that agreement. Based on those findings, the Proposal Trustee would be in a position to determine whether Ms. Athanasoulis's claim should be allowed or disallowed.

6. The Proposal Trustee, Ms. Athanasoulis and two other witnesses participated in Phase 1 of the arbitration, including Ms. Athanasoulis and Mr. Casey. The arbitration was conducted over five days. The involvement of the Companies and Cresford was limited as, among other things, Cresford has few remaining employees and, other than Mr. Casey, their first-hand knowledge of the issues raised by Ms. Athanasoulis is very limited. This and the credibility issues referenced above related to Mr. Casey required the Proposal Trustee to participate extensively in the arbitration.

7. The Proposal Trustee informed counsel to all relevant stakeholders, including the Sponsor, the LPs, the Companies, and Mr. Casey, in late 2021 before Phase 1 of the arbitration that the Proposal Trustee intended to arbitrate the Athanasoulis Claim in the manner described above, and that the Proposal Trustee would determine the Claim following the arbitration. Neither the Sponsor, the LPs, nor any other stakeholder took any steps to oppose the arbitration.

8. On March 28, 2022, the Arbitrator rendered a decision in respect of Phase 1 of the arbitration. He held that an oral agreement existed between Ms. Athanasoulis and Cresford that entitled Ms. Athanasoulis to 20% of the profits earned on each project. The Arbitrator's decision raised concerns with the credibility of the Companies, Mr. Casey and Ms. Athanasoulis.

9. As explained below, the parties have not yet scheduled Phase 2 of the arbitration. If scheduled, Phase 2 is to include evidence from Ms. Athanasoulis, the LPs, expert witnesses, Mr. Casey, and perhaps others. Much of the lay evidence will concern oral conversations where there is no documentary record.

5.2 CBRE

1. CBRE, a real estate brokerage, filed a proof of claim dated January 28, 2022 in the amount of approximately $1.2 million. The claim relates to an invoice submitted by CBRE to "Cresford" dated October 13, 2021 and refers to services rendered by CBRE serving as the exclusive listing broker for the YSL Project.

2. The Proposal Trustee disallowed CBRE's claim in full for the reasons set out in its Notice of Disallowance of Claim dated February 10, 2022 (the "CBRE Notice"). A copy of the CBRE Notice is provided as Appendix "E".

3. The CBRE Notice was issued based on representations the Proposal Trustee received from the Sponsor that the Sponsor dealt directly with Cresford and that it did not have any dealings with CBRE in respect of the YSL Project.

4. In light of the Sponsor's position, the Proposal Trustee determined that the best and most transparent way of determining CBRE's claim based on the information available to it at the time was to disallow the claim on the basis set out in the CBRE Notice and permit CBRE to file a full evidentiary response by way of an appeal on notice to all.

5. Following the issuance of the CBRE Notice, counsel for the Sponsor copied the Proposal Trustee on email correspondence with counsel for CBRE on February 11, 2022. In that correspondence, the Sponsor stated that while CBRE had introduced the Sponsor to Cresford, the Sponsor had no "knowledge of a brokerage agreement or similar arrangement between Cresford and CBRE relating to the project formerly known as Yonge Street Living (YSL) residences".

6. CBRE appealed the CBRE Notice and provided evidence regarding CBRE's role related to the YSL Project and its introduction to the Sponsor. CBRE's position is supported by an affidavit of Ted Dowbiggin, the President of Cresford Capital Inc. CBRE's evidence illustrates an ongoing dialogue between Concord and Cresford that resulted in the transaction implemented through the Final Proposal.

7. The appeal is scheduled to be heard on September 26, 2022. Based on the evidence provided by CBRE to the Proposal Trustee in response to the CBRE Notice, the Proposal Trustee intends to seek the Court's approval of a settlement of the appeal by admitting CBRE's claim, as filed, and withdrawing the appeal, on a without costs basis. The Proposal Trustee has informed the service list of this position and advised that should any party wish to file its own responding material, it should do so by the scheduled date and that the Proposal Trustee reserves the right to file reply materials to any responding materials.

5.3 Mr. Zhang

1. Mr. Zhang, a real estate broker, filed a proof of claim dated September 19, 2021 in the amount of approximately $1.5 million. For reasons that will be provided in a further report to Court, if necessary, the Proposal Trustee partially accepted the claim for $1 million (plus HST) that was filed by Harbour International Investment Group ("Harbour International"), a company owned by Mr. Zhang, and not by Mr. Zhang personally.

2. The LPs disagree with the Proposal Trustee's partial acceptance of this claim. Certain LPs issued a Notice of Motion in which they seek an Order, among other things, setting aside the Proposal Trustee's partial acceptance of Harbour International's claim.

3. The Proposal Trustee, the LPs, the Sponsor and the Companies are discussing procedural issues related to the proposed motion by the LPs, which has not yet been scheduled.

4. As a result of the concerns raised by the LPs and the status of this dispute, neither Mr. Zhang nor his company, Harbour International, has received an interim distribution in respect of this claim.

6.0 Proposal Sponsor Funding Dispute

1. After the Arbitrator determined that an oral agreement existed in respect of the Athanasoulis Claim, the LPs expressed concern regarding the manner and nature of the ongoing arbitration proceedings and a desire to participate in any further proceedings in respect of the Athanasoulis Claim. The LPs also wished to raise issues concerning whether the Athanasoulis Claim was debt or equity, the priority of the Athanasoulis Claim as against the LPs, certain claims that the LPs asserted against Ms. Athanasoulis, as well as the sequence in which various disputes concerning the Athanasoulis Claim should be addressed, *i.e.*, whether the priority of the Athanasoulis Claim vis-à-vis the LPs should be determined before the Arbitrator considers the amount of damages flowing from the oral agreement.

2. The Proposal Trustee welcomed the involvement of the LPs, as certain evidence from the LPs will likely be necessary in resolving the issues raised in Phase 2 of the arbitration.

3. Discussions between counsel to the LPs and counsel for Ms. Athanasoulis regarding the scope and parameters of the LPs' involvement have been contested. Among other things, the LPs (i) are not prepared to share in the funding of the initial costs of the Arbitrator in respect of Phase 2, (ii) believed that the priority issue should be determined prior to the quantum of damages issues, (iii) take the position that the Proposal Trustee had no jurisdiction to arbitrate matters related to the Athanasoulis Claim, and (iv) asserted that all remaining issues in respect of the Athanasoulis Claim should be adjudicated before this Court.

4. Throughout May 2022, counsel to the Proposal Trustee had numerous communications with all stakeholders, including the Sponsor, to encourage mediation to resolve the Athanasoulis Claim.

5. On May 24, 2022, the LPs asked the Court to schedule a motion to "stay the upcoming arbitration of Ms. Athanasoulis' claim". The Court refused to schedule the motion, agreed with the Proposal Trustee's submission that the Athanasoulis Claim was properly before the Arbitrator, and issued an endorsement (a copy of which is attached in Appendix "F") stating that arbitration "would be far more efficient than putting off the arbitration and scheduling a full day motion". The Court therefore declined to schedule the motion. Instead, the Court directed the parties "*to collaborate on the outstanding issues*", and the LPs to "*particularize their equitable claims against Ms. Athanasoulis*". Counsel to the Proposal Trustee also proposed mediation at this case conference, and the Court's endorsement recorded that "*the issues for the arbitration could be the subject of a mediation*". A further case conference was scheduled for June 8, 2022.

6. At no point up to the May 24, 2022 hearing had the Sponsor taken the position that the Proposal Trustee had acted improperly or that their fees and expenses had not been reasonably incurred, although the Sponsor had made clear that it preferred that the Athanasoulis Claim be resolved via mediation versus arbitration.

7. In advance of the June 8, 2022 case conference, the Proposal Trustee continued to encourage the parties to mediate the Athanasoulis Claim. Ultimately all stakeholders (including the Sponsor) except the LPs agreed to mediation. The Proposal Trustee, Ms. Athanasoulis, and the LPs also worked diligently in accordance with the Court's May 24th endorsement and agreed to a list of issues for arbitration. The Proposal Trustee undertook "*to ensure that it will avoid duplication and minimize its role in the arbitration except where required*".

8. The Sponsor did not agree to further arbitration and continued to propose mediation.

9. The Court's endorsement following the June 8, 2022 case conference (attached as Appendix "G") states that the Court was "*not inclined to order a mandatory mediation of the Athanasoulis/LP issues where the LPs do not agree*". The Court directed counsel to "*continue collaborating and refining the issues for the arbitration*" and to obtain dates from the Arbitrator. The Court recognized the Sponsor's concern about the costs of arbitration, but concluded that "arbitration must prevail". The Court also directed counsel for Cresford and Ms. Athanasoulis to work cooperatively on document production issues. Cresford complied with the direction of the Court and produced numerous documents to Ms. Athanasoulis in respect of the arbitration.

10. At the beginning of July 2022, the Sponsor asserted for the first time that the Proposal Trustee acted without jurisdiction in arbitrating the Athanasoulis Claim. The Sponsor also stated that it would refuse to fund the Proposal Trustee's ongoing costs, notwithstanding the express terms of Section 11.01 of the Final Proposal which require it to do so. The position taken by the Sponsor in this regard affects not only the Athanasoulis Claim but also the CBRE and Harbour International claims, and seems to be the case regardless of the manner in which the claims are determined (*i.e.*, by arbitration or a contested disallowance motion). Counsel to the Sponsor set out the Sponsor's position in this regard in a letter dated July 5, 2022 (attached as Appendix "H"). The Proposal Trustee responded to this letter on July 6, 2022 (attached as Appendix "I").

11. The Proposal Trustee cannot advance these proceedings if it does not have any means to pay its reasonable fees and costs, meaning that these proceedings will be at a standstill, claims will remain unresolved and millions of dollars will remain undistributed. As a result, the Proposal Trustee has scheduled a motion to confirm its right to indemnification from the Sponsor under the Final Proposal.

12. Notwithstanding the Court's direction that the Athanasoulis Claim is to be resolved by arbitration, the Sponsor takes the position that the Proposal Trustee acted without jurisdiction in proceeding to arbitration, and has therefore refused to fund the Proposal Trustee's outstanding Administrative Fees and Expenses totalling $88,266 (excluding HST)[5], plus the costs to complete these proceedings, which the Proposal Trustee and its counsel have estimated could be as much as $1.5 million, plus HST. A significant portion of the Proposal Trustee's unpaid costs relate to dealing with the issues in this motion.

13. The Sponsor's position appears to be that the Proposal Trustee was required to either allow or disallow the Athanasoulis Claim, and that it did not have the authority to refer aspects of that claim to arbitration to assist the Proposal Trustee in making its determination. This position is analogous to the position that certain LPs took in bringing a motion to stay arbitration in May 2022. The Court refused to schedule that motion on the grounds that arbitration was an appropriate process for resolving the Athanasoulis Claim.

14. Section 135 of the BIA provides that the Proposal Trustee has substantial discretion as to the process to determine and value of claims. The Proposal Trustee has not been provided with evidence at this time establishing that Ms. Athanasoulis has a valid claim that should be allowed. If the Proposal Trustee had disallowed or allowed the Athanasoulis Claim, the inevitable result would have been an appeal of that disallowance by Ms. Athanasoulis (as confirmed by her counsel) or the LPs, and an ensuing contested proceeding before the Court that would be nearly identical to the arbitration that the parties are attempting to conduct before Mr. Horton, albeit over an extended period of time due to limited Court availability.

[5] Comprised of $19,307 plus HST owing to the Proposal Trustee since July 1, 2022 and $68,959 plus HST owing to the Proposal Trustee's counsel since June 1, 2022.

15. The Proposal Trustee has at all times worked to administer the estate in the most fair and cost-efficient manner possible. In this regard, a summary of the invoices of the Proposal Trustee and its counsel to address all matters in this proceeding from the Implementation Date is provided in the table below.

	Amount ($000)			
Period	Fees	Disbursements	HST	Total
Proposal Trustee				
July 17-31, 2021	36,615	577	4,835	42,027
Aug 1-31, 2021	52,355	440	6,863	59,658
Sept 1-30, 2021	50,399	128	6,568	57,095
Oct 1-31, 2021	30,868	119	4,028	35,015
Nov 1-30, 2021	30,250	86	3,944	34,280
Dec 1-31, 2021	19,514	-	2,537	22,051
Jan 1-31, 2022	40,326	35	5,247	45,607
Feb 1-28, 2022	44,123	11	5,737	49,871
Mar 1-31, 2022	33,091	442	4,359	37,892
Apr 1-30, 2022	25,718	1	3,343	29,062
May 1-31, 2022	36,389	-	4,731	41,120
June 1-30, 2022	16,135	94	2,110	18,339
Total	415,783	1,933	54,302	472,017
Davies				
July 8-31, 2021	41,553	23	5,405	46,981
Aug 1-31, 2021	26,479	15	3,442	29,936
Sept 1-30, 2021	17,599	282	2,323	20,204
Oct 1-31, 2021	6,503	15	845	7,363
Nov 1-30, 2021	32,820	36	4,269	37,125
Dec 1-31, 2021	34,230	29	4,452	38,711
Jan 1-31, 2022	60,325	64	7,849	68,238
Feb 1-28, 2022	210,548	1,610	27,579	239,737
Mar 1-31, 2022	41,205	13,287	7,082	61,574
Apr 1-30, 2022	62,183	15	8,084	70,282
May 1-31, 2022	90,183	75	11,724	101,982
June 1-30, 2022	26,617	1,210	3,616	31,443
Total	650,245	16,661	86,670	753,576
Grand Total	1,066,028	18,594	140,972	1,225,593

16. In addition to the amounts in the table above, the unbilled time of the Proposal Trustee and Davies to the end of July 2022 totals approximately $60,439 plus HST, a substantial portion of which has been incurred dealing with the procedural and related issues addressed in this Report. The total amount owing to the Proposal Trustee and Davies for unpaid accounts and unbilled time as of July 31, 2022 is $88,266 plus HST.

17. The Proposal Trustee believes that such costs are reasonable in the context of these proceedings, which have been extensively contested and involve several Disputed Claims. The Proposal Trustee has been involved to a greater degree than would ordinarily be the case as a result of the poor state of the Companies' books and records, the lack of written documentation in respect of many of the Companies' material transactions, the absence of any inspectors, the credibility issues referenced herein regarding certain of the Companies' management and certain of the claimants, the limited involvement by representatives of the Companies in the administration of most of the estate, and the litigation commenced or pending by the LPs.

18. The Proposal Trustee's estimate of $1.5 million to complete the administration of these proceedings is broken down as follows[6], exclusive of HST:

    a) $88,266 regarding outstanding fees and costs of the Proposal Trustee and its counsel;

    b) $700,000 in respect of Phase 2 of the arbitration of the Athanasoulis Claim (which includes anticipated expert witness fees);

    c) $300,000 in respect of the appeal taken by certain of the LPs regarding the claim by Zhang/Harbour International; and

    d) approximately $400,000 in administrative steps to complete the Final Proposal, including making final distributions and seeking its discharge. If no other issues arise in these proceedings, these costs should be less than this estimate.

19. Costs in respect of a final determination of the CBRE claim, assuming no further materials are filed, are expected to be insignificant if determined consistent with the Proposal Trustee's recommendation herein. It should be noted, however, that on August 18, 2022, the LPs wrote to Davies to advise that they object to the proposed allowance of CBRE's claim.

20. The above is an estimate only and could vary significantly up or down depending on the manner in which Disputed Claims are resolved. The estimate does not contemplate any appeals of any decisions rendered by the Arbitrator or the Court.

21. All of the above cost estimates are provided on a best effort basis on currently available information. The costs will vary depending upon any number of factors that arise regularly in contested litigation. Other than the outstanding fees and costs of the Proposal Trustee and Davies, the cost estimates above do not include the costs of the Proposal Trustee and Davies in bringing the instant motion to compel the Sponsor to perform its obligations under the Final Proposal.

[6] Includes the Proposal Trustee's costs and Davies costs.

22. The Proposal Trustee is of the view that the delay in resolving the Athanasoulis Claim will be longer, and the costs greater, if the Athanasoulis Claim is adjudicated before the Court based on a disallowance of that claim by the Proposal Trustee. It has been estimated by the parties that a two-week trial would be required to adjudicate the Athanasoulis Claim. The Proposal Trustee will continue to make every effort to minimize its costs in determining the remaining claims.

23. The Sponsor has offered no reasonable recommendation to resolve the Athanasoulis Claim other than mediation (in which the LPs have advised they will not participate and which Justice Gilmore refused to order) and settlement, which does not appear to be possible at this time given the positions of the parties. The Proposal Trustee has attempted on numerous occasions to see if there is a middle ground acceptable to the parties. None has been found.

7.0 Conclusion

1. It is the Proposal Trustee's view that the position taken by the Sponsor to withhold any further funding is inconsistent with the explicit terms of the Final Proposal and the Sponsor's obligation to indemnify the Proposal Trustee. The Sponsor's position has delayed the administration of this proceeding and increased the costs for all parties.

2. The Proposal Trustee continues to believe that an arbitration of the Athanasoulis Claim is the most expedient and cost-efficient method to determine the claim and fits within the scope of Section 135 of the BIA, particularly given the estimated two-week trial required to determine the Athanasoulis Claim. As Justice Gilmore acknowledged at the May 24, 2022 case conference, a disallowance of the Athanasoulis Claim, followed by an appeal, will result in a similar procedural and fact-finding process, though likely longer and more expensive. The Proposal Trustee has therefore chosen a path, supported by Ms. Athanasoulis and, as of the date of this Report, accepted by the LPs, to determine the claim in the most efficient process possible in the circumstances.

3. Absent resolution of the funding issue, completion of the Final Proposal will be at a standstill.

4. Based on the foregoing, the Proposal Trustee recommends that the Court make an order:

    a) declaring that the conduct of the Proposal Trustee in determining the claims, including the Disputed Claims, has been reasonable, and accordingly, the Administrative Fees and Expenses have been reasonably incurred;

    b) declaring that the Sponsor remains bound by Section 11.01 of the Final Proposal;

    c) declaring that the Sponsor is required to fund the Administrative Fees and Expenses of the Proposal Trustee pursuant to Section 11.01 of the Final Proposal;

d) declaring that the commencement of arbitration to determine the Athanasoulis Claim by the Proposal Trustee was a valid exercise of the power conferred upon the Proposal Trustee under the Final Proposal and/or the BIA;

e) declaring that, in discharging its duties under the Final Proposal and the BIA, the Proposal Trustee has not engaged in wilful misconduct or gross negligence;

f) providing the Proposal Trustee with a charge on:

i. all distributions made to-date to the Sponsor (or any of its affiliates) on the claims it purchased in this proceeding (being distributions of $8.4 million), including a reimbursement obligation to the extent required; and

ii. all future distributions that may be payable to the Sponsor in respect of the claims it purchased in this proceeding (being a range of $1.8 million to $3.6 million, depending on the resolution of the Disputed Claims); and

g) declaring that if the Sponsor fails to pay an invoice rendered by the Proposal Trustee or its counsel pursuant to Section 11.01 of the Final Proposal within 30 days of the invoice, the Proposal Trustee is entitled to set-off amounts owing by the Sponsor pursuant to such invoice against any amounts held by the Proposal Trustee and otherwise payable to the Sponsor as a result of any future distributions to the Sponsor in respect of claims it purchased in this proceeding.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
YG LIMITED PARTNERSHIP AND
YSL RESIDENCES INC.,
AND NOT IN ITS PERSONAL CAPACITY

Appendix “A”

CITATION: YG Limited Partnership and YSL Residences (Re), 2021 ONSC 4178
COURT FILE NOS.: CV-21-00655373-00CL/BK-21-02734090-0031, CV-21-00661386-00CL & CV-21-00661530-00CL
DATE: 20210629

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: 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

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

AND RE: 2504670 CANADA INC., 8451761 CANADA INC. and CHI LONG INC., Applicants

AND

CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC, 9615334 CANADA INC., YG LIMITED PARTNERSHIP and DANIEL CASEY, Respondents

AND RE: 2583019 ONTARIO INCORPORATED AS GENERAL PARTNER OF YONGESL INVESTMENT LIMITED PARTNERSHIP, 2124093 ONTARIO INC., SIXONE INVESTMENT LTD., E&B INVESTMENT CORPORATION and TAIHE INTERNATIONAL GROUP INC., Applicants

AND

9615334 CANADA INC. AS GENERAL PARTNER OF YG LIMITED PARTNERSHIP and YSL RESIDENCES INC., Respondents

BEFORE: S.F. Dunphy J.

COUNSEL: *Harry Fogul* and *Miranda Spence*, for YG Limited Partnership and YSL Residences Inc.

Shaun Laubman and *Sapna Thakker*, for 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc.

Alexander Soutter, for YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc.

David Gruber, Jesse Mighton, and *Benjamin Reedijk,* for Concord Properties Developments Corp. and its affiliates

Jane Dietrich and *Michael Wunder,* for 2292912 Ontario Inc. and Timbercreek Mortgage Servicing Inc.

Robin B. Schwill, for KSV Restructuring Inc. in its capacity as the proposal trustee

Roger Gillot and *Justin Kanji,* for Kohn Pedersen Fox Associates PC

Reuben S. Botnick, for Royal Excavating & Grading Limited COB as Michael Bros. Excavation

Daniel Naymark and *Jamie Gibson*, for Sarven Cicekian, Mike Catsiliras, Ryan Millar and Marco Mancuso

Brendan Bowles and *John Paul Ventrella*, for GFL Infrastructure Group Inc.

Mark Dunn and *Carlie Fox*, for Maria Athanasoulis

George Benchetrit, for 2576725 Ontario Inc.

Joshua B. Sugar, for R. Avis Surveying Inc.

Paul Conrod, for Restoration Hardware Inc.

James MacLellan and *Jonathan Rosenstein,* for Westmount Guarantee Services Inc.

Albert Engle, for Priestly Demolition Inc.

HEARD at Toronto: June 23, 2021

AMENDED REASONS FOR INTERIM DECISION

Note: these reasons were amended on July 2, 2021 as more fully described in the in the concluding paragraphs hereof.

[1] The debtors are seeking approval of a bankruptcy proposal that has obtained the near unanimous approval of those affected creditors who cast a vote. Two groups of limited partnership unitholders have challenged the actions of the General Partner of the debtor YG Limited Partnership for much of the past year and urge me to annul the bankruptcy entirely or to reject the proposal and, if need be, to allow a Receiver or Trustee in bankruptcy to canvass the market fairly and objectively. Another unsecured creditor urges me to disregard much of the appraisal evidence tendered because she has been excluded from examining it and the result is a record that casts grave doubt as to whether fair value for stakeholders is being realized by this process.

[2] For the reasons that follow, I have decided that I will not approve the Proposal in the form it has been presented to me. The Proposal is yet able to be amended pursuant to art. 3.01 thereof and it is possible that an amendment may be formulated to address the concerns raised by the findings I outline below before a final decision on the fate of the Proposal is made.

Background facts

[3] A central issue in this case is the value of the "YSL Project" – the property owned by the debtor YSL as bare trustee for the limited partnership (the debtor YG LP) charged with developing it. Valuation is an area on which I must tread lightly in terms of what I can record in writing so as not to impact adversely any potential sale process that may be necessary in future.

[4] What follows is a general description of the capital structure of the debtors and the project sufficient to permit an understanding of the issues. For comparison purposes, it is relevant to consider the size of the project. There is no dispute that the "as if completed" value of the project is above $1 billion. How much above and based on which assumptions is an issue, but I provide the round figure solely for comparison purposes relative to the debt and equity interests discussed.

[5] The project is fully zoned and permitted for construction of an 85-story retail and condominium complex planned for the corner of Yonge St. and Gerard in downtown Toronto. Substantial pre-sales have been made. Demolition of the old structures and shoring up of the excavation have been largely completed. Unfortunately, things ground to halt in March of 2020 and the project has been stuck in the "hole in the ground" stage ever since.

The project ownership structure

[6] YP GP has a General Partner with nominal capital and a nominal interest in the limited partnership. The "equity" in the partnership effectively resides in the "A" units with approximately $14.8 million in capital but a capped right to return on that capital equivalent

to interest (12.25% per year rate of return) and the “B” units who alone receive all of the residual profits from the project without limit.

[7] The owner of the “B” units and the General Partner are under common control within the Cresford group of companies as are the parties recorded as payees of the $38.3 million related party debt to which I shall refer.

The project debt structure

[8] The secured debt – including registered mortgages and construction liens – stands at about $160 million. The figure for secured debt is slightly misleading. There is just over $100 million in deposits from condominium pre-sales made for the most part prior to 2019. These are insured by the second secured creditor whose claim would increase dollar for dollar if the relevant purchase agreements were repudiated and the deposits had to be returned. For this reason and to have an “apples to apples” idea of the debt structure, a figure of about $260 million in secured debt is appropriate.

[9] The third-party unsecured debt that has been identified by the Trustee is in the range of approximately $20 million plus or minus a few million dollars depending upon reserves allowed for claims yet to be filed or finalized. There are also various litigation claims outstanding the largest of which is from a former officer claiming that the limited partnership was a common employer and seeking, among other things, to enforce oral profit-sharing agreements. I have reviewed the Trustee’s report and in particular the Trustee’s reasoned conclusion that these claims are too contingent to be considered valid for voting purposes. I concur in that assessment. A conservative and prudent assessment of potential total unsecured claims is thus in the range of about $25 million – a figure advanced with full knowledge that the total of all contingent claims identified could be in the same order of magnitude again. For the purposes of this motion, I find the figures estimated by me above are reasonable – those findings are, of course, without prejudice to the creditors holding such claims proving them in due course.

[10] There is also $38.3 million in outstanding advances to YG LP recorded on its books from related parties. I have found those claims to be equity claims for all purposes relevant to this hearing for reasons I shall expand upon below.

[11] In round figures, one can thus consider there to be approximately $260 million of secured debt and about $20-$25 million of unsecured debt outstanding. The Proposal assumes all of the former and would pay 58% of the latter when finalized. The “fulcrum” stakeholders in this case are thus the unsecured creditors to the extent of the 42% of their claims that are compromised ($8.4 to $10.5 million) plus the “A” limited partners in YG LP ($14.8 million plus accrued “interest” entitlements) – such figures based upon the estimates and rulings that I have made and explained herein.

Summary of nine findings made

[12] The process of sifting through the mountains of evidence presented to me by the parties has been made exceptionally time-consuming and tedious by reason of the lack of usable electronic indexing in much of the materials filed. Tabs or electronic hyperlinks within compilations of electronically filed documents are non-existent in all but the most recently filed documents and there are many, many thousands of pages of documents presented. The profession is going to need to get on top of this problem as judges cannot and will not in future undertake such gargantuan efforts to sift through a case when a few moments of care and attention at the front end could simplify it to such a great degree.

[13] Time does not permit me to set forth in writing a complete account of my review of the evidence and my conclusions – a written summary of which I was about 75% through before the impossibility of completing it in the form intended within the time available became obvious. I shall instead present below nine conclusions which encapsulate my reasons for finding that the Proposal as it currently stands has failed to satisfy me of the matters required by s. 59(2) of the BIA or the common law test of good faith.

(i) The McCracken Affidavit is inadmissible

[14] As is often the case in Commercial Court matters, this case proceeded on a "real time" schedule. In addition to the bankruptcy case that was commenced with an NOI filed on behalf of the debtors on April 30, 2021, there were two applications commenced the day before by two groups of YG LP limited partners seeking, among other things, the removal of the General Partner and various declarations challenging the authority of the General Partner to act on behalf of the partnership in any capacity and alleging breaches of fiduciary duty by the General Partner. The Proposal itself was filed on May 27, 2021 working towards a scheduled June 10, 2021 creditor meeting. On June 1, 2021 I issued directions for the conduct of all three proceedings with a view to having the sanction hearing ready to proceed on June 23, 2021.

[15] The Proposal Sponsor is Concord Properties. Concord is not a party to any of these proceedings although it is central to all three. Concord sponsored the Proposal and is bearing all the costs of it under a Proposal Sponsor Agreement dated April 30, 2021.

[16] The limited partner applicants issued subpoenas to Mr. McCracken – apparently the officer of Concord responsible for this Proposal. On the advice of counsel, Mr. McCracken declined to appear absent an order compelling him to do so. Counsel took the position that leave was required under the Bankruptcy Rules to compel him to appear in the bankruptcy proceeding and declined to produce him.

[17] The position taken was a curious one given my specific direction on June 1 that I was *not* applying the BIA stay to the two applications and that specific aspects of both

applications would be heard and decided together on June 23, 2021 when the fairness hearing was conducted. The case timetable made specific allowances for responding records with respect to the limited partner applications and facta in relation to them. My ruling on June 1, 2021 was in both the civil and bankruptcy proceedings and bore the style of cause of both.

[18] Whether leave was or was not formally required to *compel* Mr. McCracken to appear, his failure has consequences in terms of the fairness of the process leading to the approval motion in front of me. The opponents of the Proposal were deprived of the opportunity to explore aspects of the unfairness or unreasonableness of the Proposal that they had raised. There was insufficient time available in the tight timetable to drop everything and bring a leave application. The position taken ran utterly contrary to the spirit and intent of my ruling on June 1, 2021 at which Concord's counsel appeared *and made submissions*. This is the sort of issue that counsel applying the "three C's" of the Commercial List ought to have agreed to disagree upon and produced the witness without prejudice to objections that might be raised.

[19] It is against the foregoing backdrop that the affidavit of Mr. McCracken – delivered the day prior to the fairness hearing – must be considered.

[20] The affidavit was filed far too late to permit any interested party to respond to it effectively or to cross-examine upon it. None of the subject-matter of the affidavit was new information. The affidavit was entirely devoted to providing responses to various issues seen in written arguments or that arose on the cross-examination of other witnesses.

[21] Concord appeared to consider itself sufficiently at interest to appear through counsel on June 1, 2021 while declining to submit to examination because of its non-party status when preparations for this hearing were in full swing a few days later. Permitting the admission of this affidavit at this juncture would be to sanction unfairness of the highest order. A timetable was worked out for the hearing of this motion – worked out, I might add, at a motion that Concord was present at through counsel. Whether or not Concord had the *right* to insist upon a further motion to compel its attendance during the pre-hearing procedures, it certainly knew that taking that position when there was no time available to challenge it in court would have the practical effect that it did.

[22] Lying in the weeds is a strategy, but it does not confer the right to spring out of them at will. I find the McCracken affidavit to be inadmissible and attach no weight to it.

(ii) No weight can be attached to the CBR April 2021 Appraisal

[23] The parties have very hotly debated the valuation evidence that is on the record before me. A portion of that valuation evidence has been sealed. My reason for doing so is straightforward: the approval of the Proposal cannot be taken for granted and it is thus

reasonably foreseeable that the project may have to be sold by a Trustee or Receiver in the near future and the ability of whichever court officer is charged with undertaking that sale to achieve the highest and best price available ought not to be impaired more than the circumstances already have by the disclosure of appraisals that may serve to skew market expectations. A significant portion of such evidence is part of the public record and between the public information and the use of carefully-framed circumlocutions I believe that I can convey my conclusions and reasons for them regarding the valuation evidence with reasonable clarity.

[24] Two of the appraisals before me, both from CBRE, are the most central to the questions I must determine. The first in time is dated August 8, 2019 providing CBRE's opinion of value as at July 30, 2019. This appraisal was prepared for the parent company of the debtors within the Cresford group and is based on the particular assumptions set out therein, including some supplied by Cresford. The second in time, also by CBRE, is dated April 30, 2021 as of March 16, 2021. This latter appraisal was prepared for Concord based on the assumptions set out therein, including some supplied by Concord. I shall not discuss in a public document the actual appraisal amounts in either, focusing instead on the differences between them.

[25] For present purposes, it is sufficient for me to observe that the 2021 CBRE appraisal is lower than the 2019 CBRE appraisal and lower by an amount that is significantly higher than the sum of the compromised amount of unsecured claims under the Proposal plus the total capital of the "B" unitholders in YG LP.

[26] I find that I can attach little weight to the 2021 CBRE appraisal in these circumstances because:

a. The assumptions given to CBRE by Concord were materially different than those used in the 2019 CBRE appraisal including as to such things as leasable square footage of residential and retail space;

b. When it formulated the instructions to CBRE, Concord was in the process of attempting to negotiate a Proposal to acquire the property through the bankruptcy process given lack of limited partner consents and was being commissioned at a time when Concord had a clear and obvious interest in having appraisal evidence suggesting that the project was at least partly underwater;

c. The downward alterations made by Concord to the square footage assumptions used by CBRE are unexplained, untested and appear to be admitted as having been quite preliminary at all events;

d. Concord did not submit Mr. McCracken to cross-examination to examine in depth the reasons for the significant negative difference between the two instructions given to CBRE on the conflicting appraisals;

e. The differences between the two have not been reasonably or adequately reconciled. There has been no general downward correction to residential real estate in Toronto that has been brought to the court's attention nor can the difference between the two appraisals reasonably be attributed solely to pandemic-induced alterations to the retail environment.

(iii) ALL Construction Lien Claims are Unaffected Creditors under the Proposal

[27] Under the Proposal, Construction Lien Claims are defined as "Unaffected Creditors". The Trustee indicates that the total amount of such claims is $11.865 million. Of this total, fifteen lien claimants with $9.19 million in lien claims outstanding entered into assignment agreements with the Proposal Sponsor. As these are non-voting Unaffected Creditors under the Proposal, Concord required them to file claims as Affected Creditors in order to acquire the right to vote and to name a proxy designated by Concord.

[28] There was some controversy about what precisely the lien claimants received in return for agreeing to convert claims that were to be paid $1.00 per $1.00 of valid claims under the Proposal into claims receiving no more than $0.58 per dollar of claim value. The Trustee-reported second-hand information from Concord denying any "side" deals does little to address this concern. Assurances as to the lack of a side deal do not serve the purpose of permitting a reasonable understanding of the main deal. None of them have been disclosed beyond a skeletal summary and Concord declined to permit a representative to be examined prior to the hearing.

[29] It is of course open to the Proposal Sponsor to make any proposal that satisfies the formal requirements of the BIA if the debtor is prepared to adopt it and submit it to the creditors and the creditors are willing to accept it with their eyes open. In this case however the Proposal Sponsor has induced $9.19 million of otherwise Unaffected Creditors to file claims as something they are not by definition (i.e. Affected Creditors) thereby effectively reducing the size of the cap from $65 million to $55.8 million and the maximum pool of funds available to the actual Affected Creditors described by the Proposal from $37.7 million to $32.4 million. These are material changes impacting all Affected Creditors that follow from arrangements made by the Proposal Sponsor outside the terms of the Proposal.

[30] The Proposal makes no provision for creditors "downshifting" their claims voluntarily. Lien claims are defined as "Unaffected Claims" and I see no basis for them to be accepted under the Proposal on any other basis particularly where doing so operates to the obvious detriment of the affected class members. This is not a case of a

secured creditor valuing its security and filing an unsecured claim for the shortfall. There are consequences to such a valuation exercise that are absent here.

[31] The "electing" lien claimants have little in common with the actual Affected Creditors who had no election to make. Despite having made the election, assuming there was any basis in the Proposal to make such an election (and it appears to me that there was not), such creditors retained their security intact. Pursuant to art. 9.01 of the Proposal, the Proposal would have "no effect upon Unsecured Creditors" which definition does not cease to apply to them by virtue of a make-shift "election" for which the Proposal makes no provision. They did not agree to surrender their security nor even to value it in the bankruptcy process. They agreed to sell their claims on whatever terms they chose to accept from the Proposal Sponsor secure in the knowledge that if, for any reason, the Proposal does not move forward, their security remains intact and unaffected.

[32] This is an element of unfairness in this that I find particularly disturbing. It is all the more disturbing when I am not at all persuaded that the unsecured creditors face the spectre of near certain annihilation in the event of a bankruptcy or receivership but face the very real prospect of additional and illegitimate dilution of their claim value were I to approve the Proposal as presented with the presence of lien claimants in the Affected Creditor pool.

(iv) The related party claims must be treated as equity

[33] A fundamental principle of the BIA is that equity claims are subordinate to debt claims. This principle is voiced in s. 60(1.7) of the BIA that provides quite simply that "[n]o proposal that provides for the payment of an equity claim is to be approved by the court unless the proposal provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid". Section 140.1 expresses a similar requirement in respect of dividends more generally. While there is some similarity behind the concept of "equity claims" in Canadian insolvency law and that of "equitable subordination" the two are separate and one and must not be confused with the other: *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662 (CanLII) at para. 101.

[34] The limited partner applicants submit that the intercompany advances appearing in the general ledger of YG LP should be treated as equity claims within the meaning of the BIA. The debtors on the other hand urge me to pass over this issue entirely arguing that approval of the proposal does not entail approval of any payment of intercompany claims. Such claims will ultimately be determined by the Trustee and if disallowed for any reason will receive no distribution.

[35] I cannot accept the debtors' argument that I should sweep the equity claims under the carpet to be dealt with another day in another forum. This is so for the following reasons:

a. The applicant limited partners have no standing to challenge the proof of the related party claims within the bankruptcy process even if their claims against related parties are not themselves released by the Proposal.

b. On June 1, 2021 I directed that issues raised in the two applications would be dealt with on June 23. A theme in those applications was, among others, the allegation that the General Partner had been seeking to divert substantial payments to Cresford from various investor proposals negotiated by the Cresford group ahead of limited partners, the allegations that representations had been made in the Subscription Documents and elsewhere that Cresford entities would be paid out of distribution after the "A" unit limited partners, that counsel for Cresford had confirmed that the intercompany loans were subordinated to the limited partners, that the General Partner had acted in breach of its fiduciary duties and that the Proposal was not being advanced in good faith; and
c. The timetable I approved on June 1 specifically contemplated the foregoing aspects of those applications being dealt with on June 23, 2021.

[36] If the related party claims are equity claims under the BIA, then it is also highly likely that the notional purchase price for the project being paid by the Proposal Sponsor under the Proposal must be viewed as being $22 million less than it might otherwise appear, a fact that is also material to the matters I must consider on this motion.

[37] The allegations of the applicant limited partners in the two outstanding applications challenge the good faith with which the Proposal has been advanced by the General Partner in part on the theory that the Proposal has in fact been advanced to secure payment of the related party claims in priority to the "A" unitholders and without securing their consent.

[38] For the foregoing reasons, I cannot avoid a consideration of whether the related party claims are equity claims. My conclusions on that subject are an integral part of any conclusion I must make on the subject of good faith or the criteria to be considered under s. 59(2) of the BIA.

[39] Are the related party claims identified by the Trustee in this case "equity claims"?

[40] The BIA contains a definition of "equity claims" that is deliberately non-exhaustive. In *Sino-Forest Corporation (Re),* 2012 ONCA 816 (CanLII) (at para. 44) the Court of Appeal found that the term should be given an expansive meaning to best secure the remedial intentions of Parliament.

[41] Subsequent cases have explored the concept of "equity claim" with a view to fleshing out its parameters. Some of the guidelines that can be distilled from that jurisprudence include the following:

a. Neither the "intention of the parties" as between non-arm's length parties nor the formal characterization they apply is conclusive as to the true nature of the transaction: *Tudor Sales Ltd. (Re),* 2017 BCSC 119 (CanLII) at para. 35 and *Alberta Energy Regulator v Lexin Resources Ltd*, 2018 ABQB 590 (CanLII) at para. 37.

b. The manner in which the transaction was implemented, and the economic reality of the surrounding circumstances must be examined to determine the true nature of the transaction with the form selected being merely the "point of departure" of the examination: *Lexin* at para. 37.

c. It is helpful to consider whether the parties to the transaction had a subjective intent to repay principal or interest on the alleged loan from the cash flows of the alleged borrower and, if so, was that expectation reasonable: *Lexin* at para. 41.

d. It is also helpful to consider the "list of factors" that courts have looked at in such cases – being careful not to apply them in a mechanical way or as a definitive checklist: *Lexin* at paras. 42-43.

e. Among the factors to examine are:

    i. the presence or absence of a fixed maturity date and schedule of payments (absence of such terms being a potential indicator of equity);

    ii. the presence or absence of a fixed rate of interest and interest payments. Again, it is suggested that the absence of a fixed rate of interest and interest payments is a strong indication that the advances were capital contributions rather than loans;

    iii. the source of repayments. If the expectation of repayment depends solely on the success of the borrower's business, the cases suggest that the transaction has the appearance of a capital contribution;

    iv. the security, if any, for advances; and

    v. the extent to which the advances were used to acquire capital assets. The use of the advance to meet the daily operating needs for the corporation, rather than to purchase capital assets, is arguably indicative of bona fide indebtedness: Lexin at paras. 42-43.

[42] The related party claims may be broken down into different buckets for the purposes of this analysis. The first one consists of payments that were made to retire loans taken out for the specific purpose of financing equity interests in YG LP. This

involved loans used to buy out the $15 million investment of a former limited partner, loans used to finance the Cresford group of companies' $15 million equity investment in Class B units as well as interest paid on both of these loans some or all of which has been recorded as obligations of YG LP on its books.

[43] Clearly advances made or charged to YG LP for the direct or indirect purpose of financing the purchase of an equity interest in YG LP are likely to the point of certainly to be characterized as equity claims of YG LP for the purposes of insolvency law. The evidence to this point supports the reasonable inference that a very substantial portion of the advances charged to YG LP by non-arm's length parties can be so characterized.

[44] A second category of advances made can only be described as "miscellaneous" comprised of various sporadic payments made by members of the Cresford group of companies that were recorded in the ledger of the limited partnership net of other payments made by the limited partnership to the Cresford group.

[45] The terms of the intercompany advances recorded on the general ledger of the limited partnership share the following characteristics:

a. They were all non-interest bearing without any defined term or maturity date; and

b. There are no loan documents evidencing any of them.

[46] Such payments as there were from YG LP on account of these advances were sporadic. The nature of the YG LP project is such that there is no cash flow nor any expectation of cash flow being available to repay the intercompany advances recorded until project completion when deposits and sales proceeds become available. The evidence does not suggest that intercompany advances were primarily short-term bridge advances pending the receipt of project financing that was to be used to repay them.

[47] There is substantial evidence that the related party advances were intended to be subordinated to holders of "A" units of YG LP and are thus equity claims. In the interest of time, I shall only summarize this evidence:

a. Direct written representations were made to the investors in YG LP "A" units as part of the subscription process that after payment of "project expenses" only "external lenders" debt would be repaid ahead of them and that distributions to "Cresford" – unambiguously referencing the group of companies rather than one entity – would come after repayment of invested capital and the agreed return on investment to the limited partner investors;

b. Cresford's communications to the limited partners never disclosed the existence of any "debt" owed to Cresford even when portraying "current debt" in various discussions with or disclosures made to them until very

recently (and long after the advances in question were recorded on YG LP's books);

c. Other Cresford group projects with similar capital structures also made representations that intercompany advances were treated as equity;

d. There was a direct, written representations made by prior counsel to the General Partner in October 2020 that such intercompany advances were "subsequent in priority" to the YG LP "A" unit investors – that admission has since been retracted without an adequate explanation for why it was an alleged error; and

e. Cresford's CFO also advised that the YG LP "A" unitholders would be paid in priority to "Cresford" a term used to describe the related group of Cresford companies under common control.

[48] A review of the foregoing factors in light of the jurisprudence leads me to the conclusion that the related party advances must be considered as equity claims for the purposes of this motion at least. Virtually all indicators reviewed point towards equity and there is little to no evidence leaning the other way.

(v) The implied value of the Proposal is $22 million less than assumed

[49] The Proposal operates to reduce the payments made to unsecured creditors if claims are lower than the $65 million cap. The converse is not the case. Absent the lien claims and the intercompany claims there is no mathematical prospect of the $65 million cap being operative unless the contingent and late-filed claims are resolved at levels far in excess of any reasonable estimate. This means that the consideration paid by Concord under the Proposal must be considered to be worth $22 million less than it might have been had the related party claims not been equity claims.

(vi) The general partner had authority to file the NOI

[50] The two groups of limited partners have raised three broad categories of objections to the capacity of the general partner to have filed the NOI and sought approval of the Revised Proposal: (i) as a matter of law, all partners including limited partners, must approve filing for bankruptcy; (ii) pursuant to the Limited Partnership Agreement, the general partner lacked the authority to file for bankruptcy; and (iii) the general partner ceased to be general partner prior to the filing. I shall consider each of these in turn.

S. 85(1) of the BIA

[51] Section 85(1) of the BIA provides that it "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.”.

[52] The limited partners’ position was that since all partners of a general partnership must authorize a bankruptcy filing and since s. 85(1) of the BIA applies the law in relation to general partnerships to limited partnerships in “like manner”, it follows that an NOI must be authorized by all limited partners in addition to the general partner. In support of this interpretation they cite the case of *Aquaculture component Plant V Limited Partnership (Re)*, 1995 CanLII 9324 (NS SC) where two NOI’s filed on behalf of limited partnerships were annulled on this basis.

[53] While the decision of Hamilton J. in the *Aquaculture* case is entitled to deference, it is not binding upon me. I find that I am unable to agree with its reasoning.

[54] The *Aquaculture* case stands quite alone in the jurisprudence on this topic – alone in the sense that none appear to have followed *or* disagreed with it as far as the research conducted by the parties has been able to determine. In the 26 years since it was decided, a significant number of limited partnerships have passed through our bankruptcy courts either for proposals or liquidations without apparent objection on this score. That practice of course does not have the effect of altering the law but it is at least a factor to consider given the number of times since then that Parliament has examined the BIA including with the addition of s. 59(4) that authorized changes to the constating documents of a debtor including a limited partnership.

[55] I reach a different conclusion than was reached in *Aquaculture* for the following reasons:

a. The use of general “in like manner” language in s. 85(1) of the BIA is intended to ensure that the provision is interpreted consistent with the objects of the BIA and not in a manner as to defeat those objects or render the benefits of the BIA largely inaccessible to limited partnerships. The procedure for filing an NOI was intended to offer debtors a swift and relatively low cost means of seeking creditor protection after a secured creditor gives the required ten-day notice of its intention to enforce. Requiring unanimous consent for filing of an NOI would have the practical effect of making the benefits of bankruptcy law unavailable to limited partnerships in practice in a large number of cases. Limited partnerships often have large numbers of limited partners and the time required to convene a meeting and obtain unanimous consent would require more time than secured creditors are required by law to give in the way of notice.

b. Provincial law generally provides that only general partners may bind a limited partnership (in Manitoba, s. 54(1) of the *The Partnership Act*, CCSM c P30) and the BIA treats partnerships and limited partnerships as a full

"debtor". The policy behind requiring all *general* partners to authorize a bankruptcy filing is obvious – all are liable without limit for the liabilities of the partnership. The same is not the case with a limited partnership.

c. Section 59 of *The Partnership Act* also provides that actions or suits in relation to the limited partnership may be brought and conducted by and against the general partners as if there were no limited partners. This too supports the proposition that the consent of limited partners is not required for the filing of an NOI on behalf of the partnership.

[56] I find that s. 85(1) of the BIA did not require the asset of each limited partner to the filing of an NOI.

[57] The limited partners also pointed to provisions of the Limited Partnership Agreement to allege that the General Partner had automatically ceased to be general partner of the partnership by reason of certain actions or that that it lacked the authority to file on behalf of the partnership.

Did the General Partner cease to be a general partner of YG LP at any time?

[58] The Proposal Sponsor Agreement is dated April 30, 2021 and was entered into between Concord as Proposal Sponsor and YG LP acting through the General Partner. It was executed prior to filing the NOI but *after* the two limited partner groups had filed their separate applications seeking, among other things, to remove the General Partner. To the extent it is relevant, there can be no question but that Concord was aware of the terms of the Limited Partnership Agreement at all relevant times when negotiating and entering into the Proposal Sponsor Agreement.

[59] Pursuant to s. 1.1 of the Proposal Sponsor Agreement, YG LP agreed to "use commercially reasonable efforts to effect a financial restructuring of [YG LP] that will result in the acquisition of the Property by the Proposal Sponsor together with [YG LP's] rights, title and interests in and to such Project-related contracts as may be stipulated". A draft of a proposal, substantially similar to the Proposal before this court for approval, was appended as a schedule to the Proposal Sponsor Agreement. The agreement was signed by Mr. Daniel Casey on behalf of each of the Cresford companies named as parties including YG LP.

[60] Section 10.14 of the YG LP Limited Partnership Agreement provides that "None of the following actions shall be taken unless it has *first* been approved by Special Resolution: (a) approving or disapproving the sale or exchange of all or substantially all of the business or assets of the Partnership"(emphasis added).

[61] The Proposal contemplated by the Proposal Sponsor Agreement clearly provides for the sale or exchange of all or substantially all of the business or assets of the Partnership. Section 1.1 of the Proposal Sponsor Agreement obliged YG LP to "use

commercially reasonable efforts" to cause this to occur, including by filing the NOI and to requesting court approval of the Proposal. As obliged by the Proposal Sponsor Agreement, YG LP filed an NOI, filed the Proposal and subsequently sought court approval of the Proposal.

[62] Entering into the Proposal Sponsor Agreement constituted the "approval" of YG LP to the sale or exchange of all or substantially all of the business or assets of the Partnership" even if approvals of other parties were also required in order to *complete* the transaction. The prohibition in art. 10.14(a) attaches to the approval of the action and not its completion.

[63] Section 7.1(c) of the Limited Partnership Agreement creates an Event of Default if the General Partner "becomes insolvent … consents to or acquiesces in the benefit of [the BIA]". By filing the NOI as a general partner of YG LP, the General Partner necessarily admitted to being insolvent at the time the NOI was filled out. There is no evidence that such state of insolvency arrived suddenly that day. The General Partner has accordingly admitted to the existence of an insolvency default under s. 7.1(c) of the Limited Partnership Agreement at some time prior to filing the NOI failing which no NOI would have been possible. By signing the Proposal Sponsor Agreement and agreeing to file the NOI to advance the Proposal, the General Partner also consented to the receiving the benefit of the BIA proposal provisions.

[64] For all of the foregoing reasons, the signing of the Proposal Sponsor Agreement amounts to an admission of further breaches of the Limited Partnership Agreement.

[65] Do such breaches entail the automatic removal of the authority of the General Partner to act as such at the time the NOI was actually filed? The answer in my view is that none of them have that effect.

[66] Section 11.2 of the Limited Partnership Agreement concerns the removal of the General Partner. Pursuant to s. 11.2(a), the General Partner "'may be removed" by a court of competent jurisdiction on certain named grounds. That has not occurred. Section 11.2(b) provides that the General Partner "shall cease to be general partner" if any of the named events occurs. None of the agreement to file an NOI, the state of being insolvent or the signing of the Proposal Sponsor Agreement can be read to be included in the list of events listed in s. 11.2(b). The *aftermath* of the filing of the NOI may well be such a trigger but the answer to that question would require me to contend with the effects of the automatic stay which has not been raised before me.

[67] Accordingly, I find that the NOI filed by the General Partner was not void or subject to any similar infirmity. The foregoing conclusion refers only to the actual filing of the NOI and specifically does not apply to the breaches of the Limited Partnership Agreement consequent upon entering into the Proposal Sponsorship Agreement discussed above.

(vii) The Proposal was the product of a flawed process and breaches of fiduciary duty by the General Partner

[68] There are two aspects to this part of the objections raised by the objecting limited partners. First, it is alleged that during the year leading up to the Proposal Sponsor Agreement, the General Partner breached its fiduciary duty to act in the best interests of the partnership by seeking to advance the interests of non-arm's length parties to the detriment of the limited partners while simultaneously frustrating every effort of the limited partners to access the information that the Limited Partnership Agreement and the Manitoba *Partnership Act* gave them the rights to see. Second, it is alleged that negotiating and entering into the Proposal Sponsor Agreement was a breach of fiduciary duties of the General Partner in that this was nothing less than deliberately negotiating and entering into an agreement to breach the Limited Partnership Agreement.

[69] As the sole general partner of YG LP, the General Partner was responsible for the management of the affairs of the limited partnership and was the only one able to bind the partnership. The General Partner owed a fiduciary duty to all of the partners of the firm in discharging that role and pursuant to s. 64 of *The Partnership Act*, is liable to account, both at law and in equity to the limited partners for its management of the firm.

[70] As I have outlined above, entering into the Proposal Sponsor Agreement was a clear violation of s. 10.14 of the Limited Partnership Agreement as it agreed to a process whereby substantially all of the property of the firm would be conveyed to a third party without the assent of the limited partners. The fact that the BIA stay of proceeding may impede or prevent the limited partners from seeking a direct remedy for that breach when the agreement was subsequently put into action by filing the NOI does not detract from the existence of a present breach the moment pen was put to paper. Further, whether the negotiations of the Proposal Sponsor Agreement consumed two weeks or two months, it was a breach of fiduciary duty to plan and then put into execution a deliberate breach of the Limited Partnership Agreement and doing so in the teeth of a pending application to stop the General Partner adds further weight to that conclusion.

[71] The debtors suggested that being in the proximity of insolvency dissolved or altered the fiduciary duties of the general partner owed to the limited partners. It is true that the law recognizes that the interests of creditors assume a greater weight the closer to insolvency the enterprise approaches. None of this dissolves the fiduciary obligations of the General Partner so much as it adds to them. It is at this point that the other aspect of the complaint of the limited partners enters the analysis.

[72] Nothing in what I have written suggests that a general partner cannot file an NOI where doing so appears on all of the facts and in the good faith exercise of the best business judgment of the general partner to be in the best interests of the enterprise as a whole to do so – a judgment that necessarily accounts for the obligations of the firm owed to its creditors.

[73] This filing was different because it came with strings attached: a binding Proposal Sponsor Agreement that granted exclusivity to a single party and obliged the General Partner to pursue one path and one path only to emerge from the process. Those strings did not get attached as a result of a process which itself discharged faithfully the fiduciary duties of the General Partner. Rather they were attached as the culmination of almost a year of battling to keep information away from limited partners that they had a right to access (in most cases at least) and the squandering of an expensively purchased window of restructuring breathing room looking not for the solution best able to discharge all of the obligations of the partnership but rather looking for the investor best able to secure the optimal outcome for the Cresford group of companies generally. In that process the limited partners were an obstacle to be circumvented and bankruptcy provided a possible key.

[74] Good faith in such circumstances is not assumed but must be shown. The evidence presented to me has rather persuasively convinced me that good faith took a back seat to self-interest.

[75] The parties have expended considerable effort in outlining the details of what occurred in that time frame. In the interests of time, I shall summarize the important take-aways from those events:

a. Until the Proposal Sponsor Agreement and the April 2021 CBRE report prepared for Concord, *all* appraisal evidence showed a profitable project likely to result in full coverage for all of the outstanding third-party debt obligations plus all of the obligations owed to limited partners;

b. The General Partner presented two potential transactions to the “A” unit limited partners in the second half of 2020 that provided for the full payment of all debt, the payment of approximately $38 million to non-arm’s length parties related to the General Partner and payment of obligations owed to the limited partners at a discount – the latter of the two proposals emanated from Concord;

c. The two proposals failed to proceed primarily because the General Partner was unable to provide a satisfactory explanation as to why Cresford related parties were to receive a substantial payment when limited partners were asked to accept a compromise the obligations due to them and limited partners had been assured that Cresford group obligations ranked behind them both when they made their investment and as late as October 2020 in a letter from counsel the debtors; and

d. The limited partners were in a continual tug-of-war trying to pry information out of the General Partner having had to resort to a court order at the

beginning of this year to obtain access to information that should have been available to them as of right.

[76] Few things are more precious in the restructuring business than time. YG LP was able to "purchase" more than a year of time with the forbearance arrangements that it worked out. That precious time appears to have been devoted solely to finding transactions that offered the greatest level of benefits for the Cresford group of companies. There is no evidence that any canvassing of the market – however constrained the market of developers capable of undertaking the completion of an 85-story mixed use tower in downtown Toronto may be – took place that was not indelibly tainted by the imperative of finding value for the Cresford group of companies rather than for the partnership itself.

(viii) The Affected Creditor vote was unanimous

[77] Despite the fact that I have found that fifteen of the forty-six votes cast in favour of the Proposal ought not to have been considered because they came from Unaffected Creditors, that determination does not impact the conclusion of the Trustee that the required statutory majorities voted in favour of the Proposal. There was but one negative vote cast and the Trustee disallowed that vote as being contingent. I have reviewed the Trustee's reasons for so ruling and find no fault with them. The removal of fifteen creditors and just over $9 million in claims does not detract from the fact that thirty-one creditors holding approximately $9 million in other claims cast votes in favour.

[78] While I am prepared to consider to some degree the impact of the assignment agreements negotiated by Concord (see below), I do not view such agreements as impacting the formal validity of the votes cast.

[79] I find that the Proposal received the required majority of two-thirds in value and over 50% in number of creditors voting in person or by proxy.

(ix) The probative value of most of the Affected Creditor vote is attenuated

[80] In the normal course, the agreement of a broad group of creditors to accept less than 100% of what they are owed is cogent evidence of the fairness and reasonable nature of a proposal. This is so as a matter of common sense and by a very long tradition in our law. It is not an indicator lightly to be ignored.

[81] I must also recognize that whatever doubts the evidence may raise as to the insolvency of the debtors in terms of the realizable value of their assets, there can be little doubt that the liquidity test for insolvency is met. The lien claimants have been unpaid for a year or more without any formal forbearance agreement. The first mortgagee has entered into a forbearance agreements but this expires on June 30, 2021.

[82] There was a window of time to find an out-of-court solution, but it would appear that the debtors have squandered it.

[83] The vote of the Affected Creditors *is* probative of fairness, but I find that its weight is attenuated in this case by the following circumstances:

a. Only a relatively small minority voted who did not also enter into assignment agreements;

b. The evidence is equivocal about precisely what consideration was received by those who entered into such assignment agreements – a relayed denial of "side-deals" without more adds little to the equation particularly when the deal itself is not disclosed;

c. Clearly if assigning creditors received or stand to receive more than the value allocated to them under the Proposal, their positive vote says little about the business judgment of the creditors at large to accept the value offered to satisfy their claims but says more about the willingness of the Proposal Sponsor to pay more than has been reflected in the Proposal itself.

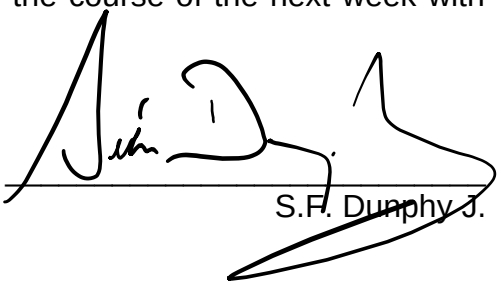
d. This last-in-line class of creditors did not have available to it the range of information produced in connection with this approval motion.

Disposition

[84] I will not approve the Proposal in its present form. I have concluded that, as presented, the Proposal is not reasonable, it is not calculated to benefit the general body of creditors and there are serious issues regarding the good faith with which it has been prepared and presented by the debtors. The debtors and the Proposal Sponsor have the authority under art. 3.06 of the Proposal to amend the Proposal to address the concerns I have raised. It is up to them – with the approval of the Trustee – to do so if they are so inclined.

[85] I am directing the parties to return on Wednesday June 30 at 2:15 pm either to propose amendments to the Proposal that address the concerns I have raised in a substantive way or to address next steps.

[86] These written reasons expand upon the summary reasons I presented orally in a hearing on June 29, 2021. I have released these reasons with relatively little opportunity to proof them and correct typographical errors or minor nits or stylistic glitches. I shall do so over the next week when I have more time available to me and the capacity to call upon my able assistant Ms. Daisy Ng to assist in that effort. Accordingly, I shall be releasing an amended version of these reasons over the course of the next week with such minor and non-substantive corrections.



S.F. Dunphy J.

Date: June 29, 2021

The foregoing is the corrected text of my reasons. Orphaned words have been removed or obvious missing words restored along with corrections of minor errors only. The parties have received a blackline version to compare the changes. Since releasing these reasons, I have adjourned the hearing scheduled for June 30, 2021 at 2:15 until July 9, 2021 at 10:00am. In so doing, I issued the following additional directions:

> As KSV Restructuring Inc. ("KSV") will become the bankruptcy trustee and court-appointed receiver on July 9, 2021 if no satisfactory amended proposal is approved at that time, this Court hereby authorizes and directs KSV to undertake the steps towards formulating a sales process that it would be undertaking if it had been appointed the receiver today.
> KSV's costs of doing so from July 1, 2021 shall be deemed costs of the receiver upon the granting of a receivership order on July 9, 2021 failing which all such costs will be deemed to be costs of the Proposal Trustee in the proposal proceeding.

Issued: July 2,2021

S.F. Dunphy J.

Appendix “B”

CITATION: YG Limited Partnership and YSL Residences (Re), 2021 ONSC 5206
COURT FILE NOS.: CV-21-00655373-00CL/BK-21-02734090-0031, CV-21-00661386-00CL & CV-21-00661530-00CL
DATE: 20210716

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: 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

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

AND RE: 2504670 CANADA INC., 8451761 CANADA INC. and CHI LONG INC., Applicants

AND

CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC, 9615334 CANADA INC., YG LIMITED PARTNERSHIP and DANIEL CASEY, Respondents

AND RE: 2583019 ONTARIO INCORPORATED AS GENERAL PARTNER OF YONGESL INVESTMENT LIMITED PARTNERSHIP, 2124093 ONTARIO INC., SIXONE INVESTMENT LTD., E&B INVESTMENT CORPORATION and TAIHE INTERNATIONAL GROUP INC., Applicants

AND

9615334 CANADA INC. AS GENERAL PARTNER OF YG LIMITED PARTNERSHIP and YSL RESIDENCES INC., Respondents

BEFORE: S.F. Dunphy J.

COUNSEL: *Harry Fogul* and *Miranda Spence*, for YG Limited Partnership and YSL Residences Inc.

Shaun Laubman and *Sapna Thakker*, for 2504670 Canada Inc., 8451761 Canada Inc., and Chi Long Inc.

Alexander Soutter, for YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc.

David Gruber, Jesse Mighton, and *Benjamin Reedijk,* for Concord Properties Developments Corp. and its affiliates

Jane Dietrich and *Michael Wunder,* for 2292912 Ontario Inc. and Timbercreek Mortgage Servicing Inc.

Robin B. Schwill, for KSV Restructuring Inc. in its capacity as the proposal trustee

Roger Gillot and *Justin Kanji,* for Kohn Pedersen Fox Associates PC

Reuben S. Botnick, for Royal Excavating & Grading Limited COB as Michael Bros. Excavation

Jamie Gibson, for Sarven Cicekian, Mike Catsiliras, Ryan Millar and Marco Mancuso

Brendan Bowles, for GFL Infrastructure Group Inc.

Mark Dunn, for Maria Athanasoulis

James MacLellan and *Jonathan Rosenstein,* for Westmount Guarantee Services Inc.

Albert Engle, for Priestly Demolition Inc.

HEARD at Toronto: July 9 and 16, 2021

REASONS FOR DECISION #2 (REVISED PROPOSAL)

[1] On June 29, 2021, I rejected the debtor's application for approval of its Proposal (identified as "Amended Proposal #2) and provided my detailed reasons for doing so on July 2, 2021. In delivering my reasons, I indicated that that it remained possible for the debtors to amend their Proposal if they so chose. The debtors for their part asked me to adjourn the hearing until July 9, 2021 in order to permit them an opportunity to do so. I granted the requested adjournment.

[2] An amended proposal was filed immediately prior to the hearing on July 9, 2021 entitled "Amended Proposal #3" and I have been asked to consider approving such Amended Proposal. I held a hearing on whether Amended Proposal #3 ought to be approved on July 9, 2021. Amended Proposal #3 was filed only a short while prior to that

hearing. I delayed the start of the hearing for an hour to give parties time to review and analyse the document and proceeded to hear their submissions.

[3] As is usual, I called upon the Trustee to give its comments last. The Trustee requested a further week to review the document and to consider its position. I granted that request and the matter was adjourned to July 16, 2021 at 10:00 a.m. This second adjournment was granted – it must be noted – over the objections of the 1st mortgagee Timbercreek whose forbearance agreement with the debtors expired on June 30, 2021 and who has a long-standing hearing date for its receivership application on July 12, 2021. I adjourned the Timbercreek July 12, 2021 hearing to July 16, 2021 as well such that both proceedings were scheduled to appear before me on July 16, 2021.

[4] A term of the adjournment I granted was that the debtors and Timbercreek should both have circulated draft orders (Proposal approval order in the case of the debtors; Receivership Order in the case of Timbercreek) in advance of the hearing on July 16, 2021 with the expectation that I should sign one of the two orders on July 16, 2021.

[5] On July 15, 2021, a second version of Amended Proposal #3 was filed with the Official Receiver and the Trustee issued its Fourth Report commenting on version 2 of Amended Proposal #3. The Trustee's Fourth Report recommended approval of the Proposal as so amended.

[6] This Proposal has been through a few versions and the nomenclature can get confusing. The amendments made in version 2 of Amended Proposal #3 were minor and technical in nature – they did not adversely affect the rights of any Affected Creditor and at least one of them could just as easily have been added to the approval order outside of the Proposal without objection. My references to "Amended Proposal #3" below should be taken as referencing version 2 of Amended Proposal #3 unless the context requires otherwise.

[7] For the reasons that follow, I have decided to approve version 2 of Amended Proposal #3 and I have signed the approval order.

Background facts

[8] I shall not repeat my review of the facts nor my reasons for rejecting Amended Proposal #2 on June 29, 2021. My detailed reasons for that decision were released on July 2, 2021 and should be considered as if incorporated by reference herein.

[9] In broad strokes, the following summarizes the principal amendments made in Amended Proposal #3:

a. Lien claimants who assigned their claims to the Proposal Sponsor ($9.2 million) will not share in the pool of cash available to unsecured creditors under the Proposal – all lien claimants will be treated as Unaffected Creditors;

b. Related party claims ($38.3 million) will be treated as equity claims and not participate in the pool of cash available to unsecured creditors;

c. Unsecured creditors' recoveries will no longer be limited to $0.58 per dollar of proven claim but will share *pro rata* in the pool of cash available to unsecured creditors up to payment in full;

d. The Proposal Sponsor will fund the full cash pool on Proposal Implementation without reduction should proven claims come in below the amount of the cash pool ($30.9 million);

e. The pool of cash available to unsecured creditors is reduced from $37.7 million to $30.9 million but subject to the above changes reducing the claims eligible to share in the pool;

f. Secured creditors claims – including all construction lien claims – remain unaffected and are assumed by the Proposal Sponsor in purchasing the land and project assets;

g. After Affected Creditor claims have been resolved and all required payments made to them, any residual amount will be returned to the debtor YG Limited Partnership to be dealt with as the partners direct or the court orders; and

h. Proposal Implementation will occur three days after court approval.

[10] The Fourth Report of the Trustee summarized the impact of these changes. Some of the principal points made by the Trustee include the following:

a. Construction lien claimants who agreed to assign their claims to the Proposal Sponsor prior to these amendments might potentially receive less under their assignment agreements than they would under Amended Proposal #3 which had not been made when they agreed to assign their claims. The Trustee contacted the assigning creditors. Two were unable to be contacted but have voiced no objection one way or the other. The remainder of them expressed support for the approval of Amended Proposal #3 or made no objection to it. No assigning creditor was opposed.

b. Version 2 of Amended Proposal #3 contains material improvements to Amended Proposal #2 and addresses concerns raised in my decision of June 29, 2021.

c. Any payments to equity holders are entirely outside of the Proposal.

d. The Trustee has analyzed the known unsecured claims that would share in the $30.9 million pool available to Affected Creditors under Amended Proposal #3. The Trustee's estimate is that Affected Creditors will receive

> between 71% of their claims and payment in full under version 2 of Amended Proposal #3 as contrasted with between 40% and 58% of their claims under Amended Proposal #2. The lower assumption is based on all known claims being allowed in full as claimed with an identical estimate for claims not yet filed. In the event none of the disputed or contingent claims were allowed, the Affected Creditors would be paid in full and up to $19 million may be available to holders of equity claims.

[11] Amended Proposal #3 came with an additional element that the Proposal Sponsor felt it proper to disclose to the Court and the parties. The Proposal Sponsor made a parallel and entirely voluntary offer to holders of limited partnership units in YG LP as well as other claims found by me to be equity claims (i.e. the related party claims) to sell their equity interests for 12.5% of the value of such interests subject to certain structuring conditions.

[12] I cannot say at this juncture whether any equity holders will take the Plan Sponsor up on this offer. The objecting limited partners have shown little interest in it to date at least. The offer has conditions that may or may not be acceptable to them depending upon their own tax situation and their views of value.

[13] Fifty years after the Carter Commission report, it remains the case that business transactions are invariably structured to minimize tax which continues to impact similar economic transactions differently depending upon the structures used. I am satisfied that the "equity offer" is not a disguised transfer of value from creditors to holders of equity claims – the structures required to be used potentially deliver tax attributes to a buyer of the claims that would not otherwise be available. This proposal has been properly disclosed but I do not view it as being particularly relevant to my assessment of Amended Proposal #3. That proposal delivers additional value to creditors under all scenarios compared to its predecessor. There is no diversion of value from creditors to equity holders to be found here. I concur with the Trustee's assessment that the equity offer is quite independent of the Proposal and does not contravene the *BIA* provisions against payment to equity ahead of debt even if it turns out that creditors receive less than payment in full (and that would be a fairly speculative assumption to make).

[14] The Trustee's Fourth Report concluded that the Debtors were proceeding with the request for approval of the Amended Proposal #3 in good faith.

Analysis and discussion

[15] This amended proposal is not perfect. The process that led to it was far from ideal. However, as now amended, this Proposal provides a superior outcome for all classes of creditors under every conceivable scenario and addresses all of the concerns raised in my reasons of July 2, 2021 constructively and substantively.

[16] As so amended, I have no hesitation in finding that Amended Proposal #3 is reasonable, it is calculated to benefit the general body of creditors and is being advanced

at this juncture in good faith notwithstanding the defects that I found marred the negotiation and presentation of the initial version of the Proposal.

[17] There were some critical foundational findings that I made in my reasons of July 2, 2021 including:

a. whatever breaches of the Limited Partnership Agreement may have occurred in the weeks and months prior to the filing of the NOI, the general partner *did* have authority to file the NOI;

b. the Affected Creditor vote in support of Amended Proposal #2 was in fact unanimous; and

c. whatever questions there may be regarding the solvency of the debtors from the perspective of the realizable value of their assets, there can be no question of the insolvency of the debtors from a liquidity point of view: secured and unsecured claims alike are overdue and unpaid and the debtors have no means to satisfy their claims in a timely way. Lien claims are more than a year in arrears for the most part while all forbearance periods have expired for the secured debt.

[18] While I found the probative value of the creditor vote to be attenuated somewhat by the factors I listed in those reasons, the vote did and does have probative value and it is material to note that unsecured creditors agreed to accept payment of less than full payment on their claims on June 15, 2021. All of the Affected Creditors will receive a superior outcome under Version 2 of Amended Proposal #3 under any reasonable assumptions. Their approval of the prior version of the Proposal remains as probative in the context of version 2 of Amended Proposal #3 if not more so.

[19] Version 2 of Amended Proposal #3 clearly satisfies the technical requirements of the *BIA* in that Amended Proposal #2 upon which the creditors did vote authorized the amendments that have been made in Amended Proposal #3 (including version 2 thereof).

[20] Version 2 of Amended Proposal #3 has constructively addressed each of the issues I raised in my June 29 ruling and my July 2 written reasons:

a. The construction lien claims will not dilute the recovery of the unsecured creditors in any way.

b. The related party claims are to be treated as equity claims and disentitled to share in the cash pool.

c. While I expressed grave concerns regarding the lack of good faith and the breaches of fiduciary duty that preceded the filing of the NOI and the entry into the Proposal Sponsor Agreement, those concerns were primarily focused on the efforts made to prefer related party claims over those of other stakeholders in the search for an investor. Amended Proposal #3

cannot undo the past of course but it has addressed those findings constructively. The related party claims are treated as equity claims.

d. There is a strong likelihood that proven creditor claims will be substantially lower than the $30.9 million pool available to satisfy them and Amended Proposal #3 ensures that such surplus is returned to the limited partnership instead of being retained by the Proposal Sponsor.

e. The claims of related parties and their priority relative to limited partners will be dealt with within the limited partnership structure itself, in broad daylight and subject to the full range of remedies open to the limited partners to protect their interests should the need arise. The conflicting interests that marred the development of Amended Proposal #2 have been substantially cured by the amendments effected by Amended Proposal #3. Related parties have been put in their proper place in the claims hierarchy.

[21] The strongest critique levelled at Amended Proposal #3 by the limited partners is that it does not answer the question of what the value of the project might have been had the project been offered on the open market in a competitive process. That is a fair criticism but not one that is sufficient to detract from the overwhelmingly positive attributes of this Proposal.

[22] The past cannot be undone and perfection is not the standard against which a proposal is to be measured. Section 59(2) of the *BIA* requires that approval of a proposal must be refused if its terms are not shown to be reasonable and calculated to benefit the general body of creditors. The common law has added to this the requirement that a proposal must be advanced in good faith.

[23] Amended Proposal #3 is both reasonable and calculated to benefit the general body of creditors. It provides for substantially improved outcomes to all creditors whose claims were impaired by Amended Proposal #2 under any reasonable assessment of the facts. As noted above, it is quite likely that a surplus will remain to be returned to the limited partnership after all affected unsecured claims have been paid in full to be dealt with as the limited partners direct (or by court order if necessary).

[24] The debtors are insolvent today. They are properly in bankruptcy proceedings. Their creditors have a right to payment and – to the extent reasonably possible – to payment in full as soon as possible. Amended Proposal #3 offers payment in full to most secured creditors within a matter of days following court approval. Unsecured creditor payments will be subject to reasonable reserves for unresolved claims but these too will begin flowing in short order. This contrasts to a delay of *many* months on the most optimistic of scenarios were a receiver directed to sell the project.

[25] There is a public interest in moving this very substantial project out of the quicksand in which it has become stuck for over a year. Approval of Amended Proposal #3 at this juncture ensures that the Project is in the hands of a solvent entity

with the wherewithal and experience necessary to put it back on track as soon as possible.

[26] The real question before me today is whether limited partners have the right to require creditors to run the risk of a sale process producing an inferior outcome to Amended Proposal #3 in order to test the hypothesis that a greater value might emerge from a fresh marketing of the project in a liquidation process that might result in payment of some or all of the limited partners' equity claims. In my view, they do not.

[27] It is possible that higher values could emerge from a liquidation process but that possibility is not a one way street. The dissatisfaction I expressed in my reasons of July 2, 2021 regarding the quality of the appraisal evidence before me does not imply any level of probability that market value today is *higher* than the values suggested by the April 2021 CBRE appraisal. I was dissatisfied with the quality of *all* of the appraisal evidence because of the lack of evidence reconciling the differences between them and, in particular, assessing the reasonableness of the assumptions made in each.

[28] It is noteworthy that version 2 of Amended Proposal #3 offers the real prospect that a return on equity of more than 100% of the invested capital of the limited partners may come back to YG LP. The limited partners assent will be needed to any use of those funds unless a court order is obtained. The possible upside to limited partners arising from a new sales process has thus become that much more remote under this last revision to the Proposal compared to the first.

[29] There are costs involved in conducting a receivership that would come ahead of any potential surplus being made available to equity claimants such as the limited partners. Some of the risk of a sale process producing a lower outcome could potentially be insured against by procuring a stalking horse bid to put a floor under the sale process. There is no guarantee that a stalking horse bid would be available at or near the implied value of Amended Proposal #3. Stalking horse bids come with a price tag in the form of a break fee that is usually calculated as a percentage of the price. That too would stand to reduce the recoveries to unsecured creditors and create an additional hurdle to any prospect of additional recovery to limited partners.

[30] This is a real bankruptcy. There is nothing artificial about it. Creditors have been unpaid for over a year. I have before me a transaction that provides a pathway to payment of creditor claims in full and quickly while leaving a realistic prospect for equity claims to receive some significant recovery. Every other option requires the creditors – who bear no responsibility for the mess that this project has found itself in – being subjected to the real risk of partial non-payment and substantial delay being added to the very lengthy delay to which they have already been subjected in order to test the hypothesis that a few percentage points of additional value might potentially be found. That is not a risk that it is fair to impose on creditors on these facts and having regard to the important favourable changes made to the Proposal.

Disposition

[31] Accordingly, an order shall issue approving version 2 of Amended Proposal #3. I have reviewed the draft form of approval order uploaded and approved and signed same. It was amended slightly to include in the preamble corrected references to the limited partners who appeared and the evidence they filed.

[32] This Proposal satisfies the technical requirements of the *BIA*. I have concluded that version 2 of Amended Proposal #3 represents a valid amendment to Amended Proposal #2 in accordance with its terms and thus has received the required double majority of creditor approval. The terms of this Proposal are reasonable and calculated to benefit the general body of creditors. The amendments presented have satisfied the concerns raised by me regarding the good faith of the debtors in pursuing *this* Proposal.

[33] I wish in particular to note that I have included, as requested, an order pursuant to s. 195 of the *BIA* permitting provisional execution of the approval order notwithstanding appeal. I have made this order in consideration of two primary factors:

a. The secured creditors of YG LP have been deferred and stayed for a very, very long time at this point. Some of that deferral was purchased in the form of forbearance agreements with Timbercreek but the last negotiated extension – an extension that included every possible assurance that no further extensions would be sought – expired on June 30, 2021. I made it clear on July 9, 2021 that I would be approving the Proposal or a Receiver today. It would be unjust to Timbercreek to have its period of limbo indefinitely extended by the simple expedient of filing a Notice of Appeal and forcing Timbercreek to seek a lifting of an automatic stay to enforce its security. This project is, at its core, a hard asset consisting of real estate, a bundle of approvals and a hole in the ground. There is no goodwill to speak of. It has been held in limbo for much more than a year at this point and it must either be put in the hands of someone who will bring it forward to completion under the Proposal or of a Receiver who will find someone who can.

b. Our courts have generally sought to achieve a degree of uniformity of practice as between the CCAA and the *BIA*. Approval of a CCAA Plan Is not subject to an automatic stay. An automatic stay in this case would operate as a functional veto of the Proposal itself because the result would be an almost certain slide into receivership unless the stay were promptly lifted.

[34] Timbercreek's receivership application was adjourned by me from July 12, 2016 until today. Based upon my approval of the Proposal today *and subject to the closing of version 2 of Proposal #3 in accordance with its terms by no later than July 31, 2021*, Timbercreek agrees that its application is moot. There is no reason to believe the Proposal will not be completed as planned, however, nothing can be taken for granted. I

am adjourning Timbercreek's application to August 9, 2021 when I shall next be sitting. It is adjourned before me.

[35] Assuming (i) the Trustee confirms to me that the version 2 of Amended Proposal #3 has been completed and (ii) Timbercreek does not advise me in advance of August 9 of its intention to proceed, I shall endorse the Timbercreek application as withdrawn without costs on August 9, 2021. No attendances will be necessary from any party in that eventuality. If there is a reason for the application to move forward, I am relying on the Trustee and Timbercreek to so notify me as soon as practicable after July 31, 2021.

[36] A request was made by the limited partners to make submissions to me regarding costs of the bankruptcy proposal proceeding. For the avoidance of doubt, my signing of the order approving version 2 of Amended Proposal #3 has not disposed of the matter of costs of the proposal proceedings. I have made no order as to costs to this point nor have I heard submissions on the point.

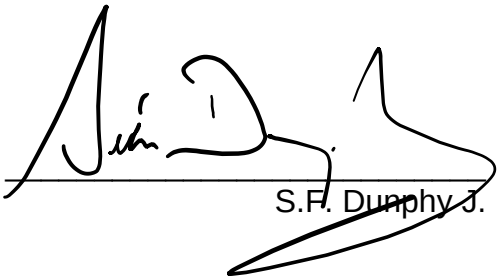
[37] Any party seeking an order of costs in their favour shall have ten days from today to file written submissions and an outline of costs. Submissions should not exceed ten pages excluding the outline of costs. Cases need not be included beyond a hyperlinked table of cases. The Debtors and the Proposal Sponsor shall each have a further ten days to respond to any such requests for costs with similar size restrictions. All submissions are to be uploaded to CaseLines and copied to the Trustee. I am asking the Trustee to provide me with a consolidated set of submissions to which the Trustee may – but shall not be required to – add its own additional comments in the form of a brief supplementary report.

[38] Lastly, I need to give some directions regarding the two civil applications that immediately preceded these bankruptcy proceedings brought by the limited partners of YG LP. My reasons of June 29, 2021 made a number of findings in relation to matters raised in those two applications. However, it must also be clear that neither my ruling of June 29, 2021 nor this decision has fully disposed of either civil application.

[39] It is certainly true that I made findings in the context of the bankruptcy proposal proceedings that were and are relevant to the two applications. Even if those findings were made in the context of the bankruptcy proceedings, the three proceedings were to a degree inextricably intertwined. I was asked to issue a formal order in relation to the findings I did make. I declined to do so not because I am resiling from any findings made – I do not – but because I did not and do not have the full scope of the claims of either application fleshed out before me. I directed certain matters to be explored and argued due to the interrelationship between the proceedings but I do not want my rulings in one context to be taken out of context in another.

[40] The safest course in my view is to let my rulings stand as made knowing that *res judicata* and issue estoppel can be applied as needed to avoid any abuse. I was asked to confirm – and do so now – that costs of those two civil applications have not been dealt

with by me at all. They have not. The limited partner applicants in those two proceedings asked to make submissions regarding costs of the bankruptcy proposal proceeding and I have given them leave to do so as provided above. The costs of the two civil applications remain reserved to the judge disposing of them.



S.F. Dunphy J.

Date: July 16, 2021

Addendum:

As noted, I have reviewed the originally signed reasons and made a small number of clerical and stylistic changes to the text as originally released. As well, I was advised by the Trustee that the transaction was in fact completed on July 22, 2021. Accordingly, I have issued an endorsement today vacating the August 9, 2021 appointment reserved to hear the Timbercreek application and endorsed that matter as being abandoned without costs because moot. No party will be required to appear on August 9, 2021.

Date: July 27, 2021

S.F. Dunphy J.

Appendix “C”

CV-20-00642928

Re Clover 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. 96.6% of the Depositor Creditor claims voted in favour of the

Plan and 98.8% of the General Unsecured Creditor Class voted in favour of the plan.

(3) There is one unresolved Voting claim advanced by Maria Athanasoulis, 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

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

④ I accept the Monitor's position that with respect to the component of Maria's claim related to an alleged profit sharing agreement with respect to the Clover 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 Clover on Yonge project was forecast to generate a loss of $61 Million. As a

result because I accept that the proper date to value Maria's claim is when the receiver was appointed on March 27, 2020 There was no profit known. The closest on Gorge Project that could be shared with Maria.

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

be disclaimed if the Plan is approved.

(6) As the Monitor points out in the Supplementary Report & its 14th Report any forecast profit is entirely dependent on the restructuring of the leases of the Clover Leaf Project. I accept and adopt the Monitor's following Statement:

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

if she had a claim.))

(7) In my view I agree that the relevant date to calculate her profit-sharing claim is later than the secondment appointment date and that profit could be deemed from the Cloud on Yonge Project is just too remote and speculative and lacks an air of reality. I agree with the Applicants' submission that "there is no profit absent disclaimer, and no disclaimer absent the approval, sanction and

implementation of the Plan. Accordingly, if the profit component of the alleged Athanasoulis 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 proceeding is whether the event that has

not yet accrued is too remote or speculative. For my view Maria's claim cannot be shown to be neither too remote nor speculative unless the plan is approved, sanctioned and implemented. This is the very event that Maria 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 Nelson Energy v. Grant Thornton, 2015 NBQB 20 at para 35 where he

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 Mona'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 Mona's claim is an equity claim that should not be counted for voting purposes.

(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

(11) that is not authorized by the CCAA; 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 Maria's claim cannot be valued at more than $1 Million (the wrongful dismissal 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.

Harvey J.

January 8, 2021

Appendix “D”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. PURSUANT TO THE *BANKRUPTCY AND INSOLVENCY ACT*

AMENDED PROPOSAL #3

WHEREAS, pursuant to Notices of Intention to Make a Proposal dated April 30, 2021, YSL Residences Inc. and YG Limited Partnership (collectively, "**YSL**" or the "**Company**") initiated proceedings under the *Bankruptcy and Insolvency Act* (Canada) R.S.C. 1985, B-3 as amended (the "**BIA**"), pursuant to Section 50(1) thereof;

AND WHEREAS a creditor proposal was filed in accordance with section 50(2) of the BIA on May 27, 2021 (the "**Original Proposal**");

AND WHEREAS an amendment to the Original Proposal was filed in accordance with section 50(2) of the BIA on June 3, 2021 (the "**First Amended Proposal**");

AND WHEREAS an amendment to the First Amended Proposal was filed in accordance with section 50(2) of the BIA on June 15, 2021 (the "**Second Amended Proposal**");

AND WHEREAS, the Second Amended Proposal was approved by the Requisite Majority of creditors at the Creditors' Meeting held June 15, 2021;

AND WHEREAS, pursuant to the Amended Reasons for Interim Decision issued July 2, 2021 (the "**Interim Decision**"), the Second Amended Proposal was not approved by the Court in the form presented and the Company and the Proposal Sponsor were permitted to amend the Second Amended Proposal to address the issues set out in the Interim Decision;

AND WHEREAS the Company and the Proposal Sponsor wish to amend the Second Amended Proposal on the terms and conditions set out herein with the intention of addressing the issues set out in the Interim Decision;

NOW THEREFORE the Company hereby submits the following third amended proposal under the BIA to its creditors (as amended, the "**Proposal**").

ARTICLE I
DEFINITIONS

1.01 Definitions

In this Proposal:

"**Administrative Fees and Expenses**" means the fees, expenses and disbursements incurred by or on behalf of the Proposal Trustee, the solicitors for the Proposal Trustee, the solicitors of the Company both before and after the Filing Date;

"**Affected Creditor Cash Pool**" means a cash pool in the amount of $30,900,000 to be comprised of (i) all cash on hand in the Company's accounts as at the Proposal Implementation Date; (ii) any and all amounts refunded to or otherwise received by the Company in connection with the transfer of the YSL Project to the Proposal Sponsor as at the Proposal Implementation Date, and (iii) the balance to be provided by the Proposal Sponsor, subject to the refund of any surplus to the Proposal Sponsor in accordance with Section 5.01(a);

"**Affected Creditor Claim**" means a Proven Claim, other than an Unaffected Claim;

"**Affected Creditors**" means all Persons having Affected Creditor Claims, but only with respect to and to the extent of such Affected Creditor Claims;

"**Affected Creditors Class**" means the class consisting of the Affected Creditors established under and for the purposes of this Proposal, including voting in respect thereof;

"**Approval Order**" means an order of the Court, among other things, approving the Proposal;

"**Assumed Contracts**" means, subject to section 8.01(e), those written contracts entered into by or on behalf of the Company in respect of the Project to be identified by the Proposal Sponsor prior to the Proposal Implementation Date, which are to be assumed by the Proposal Sponsor upon Implementation with the consent of the applicable counterparty or otherwise pursuant to an order issued in pursuant to section 84.1 of the BIA;

"**BIA**" has the meaning ascribed to it in the recitals;

"**Business Day**" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;

"**Claim**" means any right or claim of any Person against the Company in connection with any indebtedness, liability, or obligation of any kind whatsoever in existence on the Filing Date (or which has arisen after the Filing Date as a result of the disclaimer or repudiation by the Company on or after the Filing Date of any lease or executory contract), and any interest accrued thereon to and including the Filing Date and costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise),

and whether or not such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against the Company with respect to any matter, cause or chose in action, but subject to any counterclaim, set-off or right of compensation in favour of the Company which may exist, whether existing at present or commenced in the future, which indebtedness, liability or obligation (A) is based in whole or in part on facts that existed prior to the Filing Date, (B) relates to a period of time prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA;

"**Company**" has the meaning ascribed to it in the recitals;

"**Conditional Claim**" means any Claim of an Affected Creditor that is not a Proven Claim as at the Filing Date because one or more conditions precedent to establish such Affected Creditor's entitlement to payment by the Company had not been completed in accordance with any applicable contractual terms as at the Filing Date, and such Affected Creditor has indicated in its proof of claim that the Claim should be treated as a Conditional Claim;

"**Conditional Claim Completion Deadline**" means 5:00pm (Toronto time) on September 27, 2021;

"**Conditional Claim Condition**" has the meaning ascribed to it in Section 2.03(a);

"**Conditions Precedent**" shall have the meaning given to such term in section 8.01 hereof;

"**Condo Purchase Agreement**" means an agreement of purchase and sale in respect of a residential condominium unit in the Project between the Company and a Condo Purchaser;

"**Condo Purchaser**" means a purchaser of a residential condominium unit in the Project pursuant to a Condo Purchase Agreement;

"**Condo Purchaser Claim**" means any Claim of a Condo Purchaser in respect of its Condo Purchase Agreement;

"**Construction Lien Claim**" means any Proven Claim in respect of amounts secured by a perfected lien registered against title to the Property and are valid in accordance with the *Construction Act* (Ontario);

"**Construction Lien Creditor**" means a creditor with a Construction Lien Claim;

"**Convenience Creditor**" means an Affected Creditor with a Convenience Creditor Claim;

"**Convenience Creditor Claim**" means (a) any Proven Claims of an Affected Creditor in an amount less than or equal to $15,000, and (b) any Proven Claim of an Affected Creditor in an amount greater than $15,000 if the relevant Creditor has made a valid election for the purposes of

this Proposal in accordance with this Proposal prior to the Convenience Creditor Election Deadline;

"**Convenience Creditor Consideration"** means, in respect of a Convenience Creditor Claim, the lesser of (a) $15,000, and (b) the amount of the Proven Claim of such Convenience Creditor;

"**Court**" means the Ontario Superior Court of Justice (Commercial List);

"**Court Approval Date**" means the date upon which the Court makes the Approval Order;

"**Creditors' Meeting**" means the duly convened meeting of the Affected Creditors which took place on June 15, 2021;

"**Crown**" means Her Majesty in Right of Canada or of any Province of Canada and their agents;

"**Crown Claims**" means the Claims of the Crown set out in Section 60(1.1) of the BIA outstanding as at the Filing Date against the Company, if any, payment of which will be made in priority to the payment of the Preferred Claims and to distributions in respect of the Ordinary Claims, and specifically excludes any other claims of the Crown;

"**Disputed Claim**" means any Claim which has not been finally resolved as a Proven Claim in accordance with the BIA as at the Proposal Implementation Date;

"**Distributions**" means a distribution of funds made by the Proposal Trustee from the Affected Creditor Cash Pool to Affected Creditors in respect of Affected Creditor Claims, in accordance with Article V;

"**Effective Time**" means 12:00 p.m. (Toronto time) on the Proposal Implementation Date;

"**Equity Claim**" has the meaning ascribed to it in Section 2 of the BIA, and includes, without limitation, the Claims of all limited partners of YG LP and those Equity Claims deemed to be equity pursuant to the Interim Decision;

"**Existing Equity**" means the limited partnership units of YG LP and those Equity Claims deemed to be equity pursuant to the Interim Decision;

"**Existing Equityholders**" means the holders of the Existing Equity immediately prior to the Effective Time;

"**Filing Date**" means April 30, 2021, being the date upon which Notices of Intention to Make a Proposal were filed by the Company with the Official Receiver in accordance with the BIA;

"**First Amended Proposal**" has the meaning ascribed to it in the recitals;

"**Governmental Authority**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (ii) exercising, or entitled or

purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"**Implementation**" means the completion and implementation of the transactions contemplated by this Proposal;

"**Implementation Certificate**" has the meaning ascribed to it in Section 8.01(j);

"**Interim Decision**" has the meaning ascribed to it in the recitals;

"**Official Receiver**" shall have the meaning ascribed thereto in the BIA;

"**Original Proposal**" has the meaning ascribed to it in the recitals;

"**Outside Date**" means July 31, 2021;

"**Permitted Encumbrances**" means those encumbrances on the Property listed in Schedule "A" hereto;

"**Person**" means any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority and a natural person in such person's capacity as trustee, executor, administrator or other legal representative;

"**Preferred Claim**" means a Claim enumerated in Section 136(1) of the BIA outstanding as at the Filing Date against the Company, if any, the payment of which will be made in priority to distributions in respect of Affected Creditor Claims;

"**Pro Rata Share**" means the fraction that is equal to (a) the amount of the Proven Claim of an Affected Creditor that is not a Convenience Creditor, divided by (b) the aggregate amount of all Proven Claims held by Affected Creditors who are not Convenience Creditors;

"**Project**" means the mixed-used office, retail and residential condominium development to be constructed on the Property currently consisting of approximately 1,100 residential condominium units and 170 parking units and known as Yonge Street Living Residences;

"**Property**" means the real property owned by the Company and municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario, and legally described by PIN numbers 21101-0042 (LT) to 21101-0049 (LT), inclusive;

"**Proposal**" means this Amended Proposal of the Company, and any amendments, modifications and/or supplements hereto made in accordance with the terms hereof;

"**Proposal Implementation Date**" means the date on which Implementation occurs, which shall occur following the satisfaction of the Conditions Precedent, and no later than the Outside Date;

"**Proposal Sponsor**" means Concord Properties Developments Corp.;

"**Proposal Sponsor Agreement**" means that agreement entered into among the Proposal Sponsor and the Company as of April 30, 2021, as amended from time to time;

"**Proposal Trustee**" means KSV Restructuring Inc. in its capacity as trustee in respect of this Proposal, or its duly appointed successor;

"**Proposal Trustee's Website**" means the following website: www.ksvadvisory.com/insolvency-cases/case/yg-limited-partnership;

"**Proven Claim**" means in respect of an Affected Creditor, the amount of a Claim as finally determined in accordance with the provisions of the BIA, provided that the Proven Claim of an Affected Creditor with a Claim in excess of $15,000 that has elected to be a Convenience Creditor by submitting a Convenience Creditor Election Form shall be valued for voting purposes as $15,000;

"**Released Claims**" means, collectively, the matters that are subject to release and discharge pursuant to Section 7.01;

"**Released Parties**" means, collectively, (i) the Company, (ii) each affiliate or subsidiary of the Company; (iii) the Proposal Sponsor, (iv) the Proposal Trustee, and (v) subject to section 7.01, each of the foregoing Persons' respective former and current officers, directors, principals, members, affiliates, limited partners, general partners, managed accounts or funds, fund advisors, employees, financial and other advisors, legal counsel, and agents, each in their capacity as such;

"**Required Majority**" means an affirmative vote of a majority in number and two-thirds in value of all Proven Claims in the Affected Creditors Class entitled to vote, who were present and voting at the Creditors' Meeting (whether online, in-person, by proxy or by voting letter) in accordance with the voting procedures established by this Proposal and the BIA;

"**Second Amended Proposal**" has the meaning ascribed to it in the recitals;

"**Secured Claims**" means:

(a) The Claim of Timbercreek which is secured by, among other things a mortgage, charge, lien or other security validly charging or encumbering the Property;

(b) The Claim of Westmount, which is secured by, among other things, a mortgage, charge, lien or other security validly charging or encumbering the Property;

(c) The Claim of 2576725 Ontario Inc. which is secured by, among other things, a mortgage, charge, lien or other security validly charging or encumbering the Property;

(d) All Construction Lien Claims but only to the extent of such Construction Lien Claims;

"**Secured Creditor**" means a Person holding a Secured Claim, with respect to, and to the extent of such Secured Claim;

"**Superintendent's Levy**" means the levy payable to the Superintendent of Bankruptcy pursuant to sections 60(4) and 147 of the BIA;

"**Timbercreek**" means, collectively, Timbercreek Mortgage Servicing Inc. and 2292912 Ontario Inc.;

"**Unaffected Claim**" means:

(a) the Administrative Fees and Expenses;

(b) the Claim of Timbercreek;

(c) the Claim of Westmount;

(d) the Claim of 2576725 Ontario Inc., which is secured by, among other things, an equitable mortgage encumbering the Property;

(e) any Claim of the City of Toronto;

(f) all Condo Purchaser Claims;

(g) all Construction Lien Claims, but only to the extent such Claims are valid in accordance with the *Construction Act* (Ontario) and have been perfected by the Proposal Implementation Date; and

(h) such other Claims as the Company and Proposal Sponsor may agree with the consent of the Proposal Trustee;

"**Unaffected Creditor**" means a creditor holding an Unaffected Claim, with respect to and to the extent of such Unaffected Claim;

"**Undeliverable Distributions**" has the meaning ascribed to it in Section 5.04;

"**Westmount**" means Westmount Guarantee Services Inc.;

"**YSL**" has the meaning ascribed to it in the recitals; and

"**YSL Project**" means the mixed-use commercial and residential condominium development to be constructed on the Property.

1.02 Intent of Proposal

This Proposal is intended to provide all Affected Creditors a greater recovery than they would otherwise receive if the Company were to become bankrupt under the BIA. More specifically, the Proposal will provide for a payment in full of Secured Claims and will provide a significant recovery in respect of Affected Creditor Claims. While the exact recovery cannot be determined until all Claims have been determined, the Company expects Affected Creditors to receive a significant, if not a full recovery, on their Claims and, in any event, a greater recovery than would occur if the Company were to become a bankrupt under the BIA.

In consideration for, among other things, its sponsorship of this Proposal, including the satisfaction of all Secured Claims, Preferred Claims and the establishment of the Affected Creditor Cash Pool, on the Proposal Implementation Date, title to the Property, subject only to the Permitted Encumbrances, as well as the Company's interests and obligations under the Assumed Contracts and Condo Purchase Agreements shall be acquired by the Proposal Sponsor, or its nominee in accordance with the terms hereof.

1.03 Date for Any Action

In the event that any date on which any action is required to be taken under this Proposal by any of the parties is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.

1.04 Time

All times expressed in this Proposal are local time in Toronto, Ontario, Canada unless otherwise stipulated. Time is of the essence in this Proposal.

1.05 Statutory References

Except as otherwise provided herein, any reference in this Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

1.06 Successors and Assigns

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors, and assigns of any Person named or referred to in the Proposal.

1.07 Currency

Unless otherwise stated herein, all references to currency and to "$" in the Proposal are to lawful money of Canada.

1.08 Articles of Reference

The terms "hereof", "hereunder", "herein" and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

1.09 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

1.10 Numbers

In this Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

ARTICLE II
CLASSIFICATION AND TREATMENT OF AFFECTED PARTIES

2.01 Classes of Creditors

For the purposes of voting on the Proposal, there was only one class of creditors, being the Affected Creditors Class. For the purposes of voting on the Proposal, each Convenience Creditor was deemed to vote in and as part of the Affected Creditors Class.

2.02 Treatment of Affected Creditors

(a) As soon practicable after the Proposal Implementation Date, and after taking an adequate reserve in respect of any unresolved Claims pursuant to Section 5.03:

i. all Affected Creditors (other than Convenience Creditors and Affected Creditors holding Conditional Claims where one or more Conditional Claim Conditions have not been completed) shall receive, in respect of such Affected Creditor Claim, its Pro Rata Share of the Affected Creditor Cash Pool, net of the Superintendent's Levy, made by the Proposal Trustee from the Affected Creditor Cash Pool from time to time in accordance with Article V hereof, provided that aggregate Distributions to an Affected Creditor shall not exceed 100% of the value of such Affected Creditor's Proven Claim; and

ii. all Convenience Creditors shall receive in respect of such Convenience Creditor Claims, the Convenience Creditor Consideration, net of the Superintendent's Levy;

(b) Subject to Section 2.03, on the Proposal Implementation Date, each Affected Creditor Claim shall, and shall be deemed to have been irrevocably and finally extinguished, discharged and released, and each Affected Creditor shall have no further right, title or interest in or to its Affected Creditor Claim.

2.03 Conditional Claims Protocol

If an Affected Creditor submits a proof of claim to the Proposal Trustee indicating that its Claim against the Company is a Conditional Claim due to the fact that one or more pre-conditions to such Affected Creditor's right to payment by the Company had not been satisfied as at the Filing Date due to the acts or omissions of such Affected Creditor, then:

(a) such Affected Creditor shall have until the Conditional Claim Completion Deadline to complete or otherwise satisfy all outstanding pre-conditions to payment in accordance with the terms of the applicable agreement between such Affected

Creditor and the Company (all such conditions, "**Conditional Claim Conditions**"), and provide notice of such completion to the Proposal Trustee along with reasonable proof thereof;

(b) if such Affected Creditor provides the Proposal Trustee with proof of the completion of all applicable Conditional Claim Conditions prior to the Conditional Claim Completion Deadline, then, subject to the Proposal Trustee's confirmation of same, such Affected Creditor's Conditional Claim shall be deemed to be a Proven Claim, and such Affected Creditor shall be entitled to a Distribution in accordance with Section 5.02, and, effective immediately upon issuance of such distribution to the Affected Creditor by the Proposal Trustee, the releases set out in Section 7.01 shall become effective; and

(c) if such Affected Creditor has not satisfied one or more Conditional Claim Conditions by the Conditional Claim Completion Deadline, then, effective immediately upon the Conditional Claim Completion Deadline, such Affected Creditor's Conditional Claim shall be irrevocably and finally extinguished and such Affected Creditor shall have no further right, title or interest in and to its Conditional Claim and the releases set out in Section 7.01 shall become effective in respect of such Conditional Claim.

2.04 Existing Equityholders and Holders of Equity Claims

Subject to Section 7.01, all Equity Claims shall be fully, finally and irrevocably and forever compromised, released, discharged, cancelled, extinguished and barred as against the Property on the Proposal Implementation Date in accordance with Section 6.011.1(1)(1)(h).

2.05 Application of Proposal Distributions

All amounts paid or payable hereunder on account of the Affected Creditor Claims (including, for greater certainty, any securities received hereunder) shall be applied as follows: (i) first, in respect of the principal amount of the Affected Creditor Claim, and (ii) second, in respect of the accrued but unpaid interest on the Affected Creditor Claim.

2.06 Full Satisfaction of All Affected Creditor Claims

All Affected Creditors shall accept the consideration set out in Section 2.02 hereof in full and complete satisfaction of their Affected Creditor Claims, and all liens, certificates of pending litigation, executions, or other similar charges or actions or proceedings in respect of such Affected Creditor Claims will have no effect in law or in equity against the Property, or other assets and undertaking of the Company. Upon the Implementation of the Proposal, any and all such registered liens, certificates of pending litigation, executions or other similar charges or actions brought, made or claimed by Affected Creditors will be and will be deemed to have been discharged, dismissed or vacated without cost to the Company and the Company will be released from any and all Affected Creditor Claims of Affected Creditors, subject only to the right of Affected Creditors to receive Distributions as and when made pursuant to this Proposal.

2.07 Undeliverable Distributions

Undeliverable Distributions shall be dealt with and treated in the manner provided for in the BIA and the directives promulgated pursuant thereto.

ARTICLE III
CREDITORS' MEETING AND AMENDMENTS

3.01 Meeting of Affected Creditors

As set out in the Interim Decision, the Requisite Majority approved the Proposal at the Creditors' Meeting.

3.02 Assessment of Claims

The provisions of section 135 of the BIA will apply to all proofs of claim submitted by Affected Creditors, including in respect of Disputed Claims. In the event that a duly submitted proof of claim has been disallowed or revised for voting purposes by the Proposal Trustee, and such disallowance has been disputed by the applicable Affected Creditor in accordance with Section 135(4) of the BIA, or in the case of any Claim that is a Conditional Claim as at the time of the Creditors' Meeting, then the dollar value for voting purposes at the Creditors' Meeting shall be the dollar amount of such disputed claim or Conditional Claim, as the case may be, set out in the proof of claim submitted by such Affected Creditor, without prejudice to the determination of the dollar value of such Affected Creditor's disputed claim or Conditional Claim for distribution purposes.

Except as expressly provided herein, the Proposal Trustee's determination of claims pursuant to this Proposal and the BIA shall only apply for the purposes of this Proposal, and such determination shall be without prejudice to a Creditor's right to submit a revised proof of claim in subsequent proceedings in respect of the Company should this Proposal not be implemented.

3.03 Modification to Proposal

Subject to the provisions of the BIA, after the Creditors' Meeting (and both prior to and subsequent to the issuance of the Approval Order) and subject to the consent of the Proposal Trustee and the Proposal Sponsor, the Company may at any time and from time to time vary, amend, modify or supplement the Proposal.

ARTICLE IV
PREFERRED CLAIMS AND MANDATORY PAYMENTS

4.01 Crown Claims

Within thirty (30) Business Days following the granting of the Approval Order, the Crown Claims, if any, will be paid by the Proposal Trustee, in full with related interest and penalties as prescribed by the applicable laws, regulations and decrees.

4.02 Preferred Claims

Within thirty (30) Business Days following the granting of the Approval Order, the Preferred Claims, if any, will be paid in full by the Proposal Trustee.

ARTICLE V
FUNDING AND DISTRIBUTIONS

5.01 Proposal Sponsor to Fund

(a) On the Proposal Implementation Date, the Proposal Sponsor shall deliver to the Proposal Trustee by way of wire transfer (in accordance with wire transfer instructions provided by the Proposal Trustee at least three (3) business days prior to the Proposal Implementation Date) the amount necessary to establish the Affected Creditor Cash Pool in accordance with the provisions of this Proposal, provided that any surplus amounts over and above the Affected Creditor Cash Pool amount of $30,900,000 that are returned to the Company in connection with the transfer of the YSL Project to the Proposal Sponsor shall be promptly returned to the Proposal Sponsor, including, without limitation, the cash collateral to be released by TD Bank when the letters of credit held by the City of Toronto and the Toronto Transit Commission are replaced by letters of credit to be provided by the Proposal Sponsor; and

(b) The Proposal Trustee shall hold the Affected Creditor Cash Pool in a segregated account and shall distribute such cash, net of any reserves established in respect of unresolved Claims, in accordance with Section 5.03 of the Proposal.

(c) The Proposal Sponsor shall effect payments in respect of the Unaffected Claims to those parties entitled to such payments directly and shall provide the Proposal Trustee with proof of such payments, as applicable.

5.02 Distributions

As soon as possible after the Proposal Implementation Date and the payments contemplated by Sections 4.01 and 4.02, the Proposal Trustee shall make a Distribution to each Affected Creditor with a Proven Claim, in an amount equal to such Affected Creditor's Pro Rata Share of the Affected Creditor Cash Pool, net of the Superintendent's Levy, and net of any amounts held in reserve in respect of unresolved Claims, in accordance with Section 5.03.

Thereafter, the Proposal Trustee may make further Distributions to Affected Creditors from time to time from the reserves established pursuant to Section 5.03, as unresolved Claims are resolved in accordance with the terms of Section 3.02.

5.03 Reserves for Unresolved Claims

Prior to making any Distribution to Affected Creditors pursuant to Section 5.02, the Proposal Trustee shall set aside in the Affected Creditor Cash Pool sufficient funds to pay all Affected

Creditors with Disputed Claims or Conditional Claims the amounts such Affected Creditors would be entitled to receive in respect of that particular Distribution pursuant to this Proposal, in each case as if their Disputed Claim or Conditional Claim, as the case may be, had been a Proven Claim at the time of such Distribution. Upon the resolution of each Disputed Claim in accordance with the BIA, or upon final resolution of any Conditional Claim, any funds which have been reserved by the Proposal Trustee to deal with such Disputed Claim or such Conditional Claim, as applicable, but which are not required to be paid to the Affected Creditor shall remain in the Affected Creditor Cash Pool and become available for further Distributions to Affected Creditors in respect of their Proven Claims.

5.04 Method of Distributions

Unless otherwise agreed to by the Proposal Trustee and an Affected Creditor, all Distributions made by the Proposal Trustee pursuant to this Proposal shall be made by cheque mailed to the address shown on the proof of claim filed by such Affected Creditor or, where an Affected Creditor has provided the Trustee with written notice of a change of address, to such address set out in that notice. If any delivery or distribution to be made pursuant to Article V hereof in respect of an Affected Creditor Claim is returned as undeliverable, or in the case of a distribution made by cheque, the cheque remains uncashed (each an "**Undeliverable Distribution**"), no other crediting or delivery will be required unless and until the Proposal Trustee is notified of the Affected Creditor's then current address. The Proposal Trustee's obligations to the Affected Creditor relating to any Undeliverable Distribution will expire six months following the date of delivery or mailing of the cheque or other distribution, after which date the Proposal Trustee's obligations under this Proposal in respect of such Undeliverable Distribution will be forever discharged and extinguished, and the amount that the Affected Creditor was entitled to be paid under the Proposal shall be distributed to the Proposal Sponsor.

5.05 Residue After All Distributions Made

In the event that any residual amount remains in the Affected Creditor Cash Pool following the Proposal Trustee's final Distribution to Affected Creditors as provided herein, such residual funds shall be held by the Proposal Trustee pending receipt of a duly issued direction from all of the holders of Class A Preferred Units of YG LP, or otherwise by order of the Court.

ARTICLE VI
IMPLEMENTATION

6.01 Proposal Implementation Date Transactions

Commencing at the Effective Time, the following events or transactions will occur, or be deemed to have occurred and be taken and effected, in the following order in five minute increments (unless otherwise indicated) and at the times and in the order set out in this Section 6.01 (or in such other manner or order or at such other time or times as the Company and the Proposal Sponsor may agree, each acting reasonably), without any further act or formality required on the part of any Person, except as may be expressly provided herein:

(a) Either the Proposal Sponsor will, at its election, but subject to obtaining the consent of the applicable Secured Creditor, assume the Secured Claims, or on behalf of the Company, the Proposal Sponsor will make payment in full to Secured Creditors in respect of their Secured Claims, in accordance with Section 5.01(c) calculated as at the Closing Date;

(b) the releases in respect of Secured Claims referenced in section 7.01 shall become effective, and any registrations on title to the Property in respect of such Secured Claims shall, unless otherwise agreed between the Secured Creditor and the Proposal Sponsor with the consent of the Proposal Trustee, be discharged from title to the Property;

(c) the Proposal Sponsor shall provide to the Proposal Trustee the amount necessary to establish the Affected Creditor Cash Pool, in accordance with Section 5.01(a), in full and final settlement of all Affected Creditor Claims;

(d) the Proposal Sponsor shall provide the Proposal Trustee with an amount necessary to satisfy the Administrative Fees and Expenses, including a reserve in respect of the reasonably estimated additional Administrative Fees and Expenses anticipated to be incurred in connection with the administration of Distributions, resolution of any unresolved Claims pursuant to Section 5.03, and the Proposal Trustee's discharge;

(e) title to the Property shall be registered in the name of the Proposal Sponsor, or its nominee, together with any charges applicable to security held by the lenders to the Proposal Sponsor in respect of the purchase of the Property and construction of the Project;

(f) the assumption of the Assumed Contracts by the Proposal Sponsor, or its nominee, shall become effective;

(g) all Affected Creditor Claims (including without limitation all Convenience Creditor Claims) shall, and shall be deemed to be, irrevocably and finally extinguished and the Affected Creditors shall have no further right, title or interest in and to their respective Affected Creditor Claims, except with respect to their right to receive a Distribution, if applicable, and in such case, only to the extent of such Distribution;

(h) subject to Section 7.01, all Equity Claims shall, and shall be deemed to be, irrevocably and finally extinguished and all Existing Equityholders shall have no further right, title or interest in and to their respective Equity Claims as against the Property; and

(i) the releases in respect of Affected Creditor Claims (other than Conditional Claims with Conditional Claim Conditions not satisfied as at the Effective Time) referred to in Section 7.01 shall become effective.

ARTICLE VII
RELEASES

7.01 Release of Released Parties

At the applicable time pursuant to Section 6.01(b), in the case of Secured Claims, and Section 6.01(i), in respect of Affected Creditor Claims, each of the Released Parties shall be released and discharged from all present and future actions, causes of action, damages, judgments, executions, obligations, liabilities and Claims of any kind or nature whatsoever arising on or prior to the Proposal Implementation Date in connection with this Proposal and the Project, and any proceedings commenced with respect to or in connection with this Proposal, the Project, the transactions contemplated hereunder, and any other actions or matters related directly or indirectly to the foregoing, provided that nothing in this paragraph shall release or discharge (i) any of the Released Parties from or in respect of their respective obligations under this Proposal or any order issue by the Court in connection with this Proposal or any document ancillary to any of the foregoing, (ii) any Released Party from liabilities or claims which cannot be released pursuant to s. 50(14) of the BIA, as determined by the final, non-appealable judgment of the Court, or (iii) any Released Party from any Secured Claim of Timbercreek. The foregoing release shall not be construed to prohibit a party in interest from seeking to enforce the terms of this Proposal, including with respect to Distributions, or any contract or agreement entered into pursuant to, in connection with or contemplated by this Proposal. Notwithstanding the forgoing, the directors and officers of the Company, its affiliates, the former directors and officers, and general partner of the Company shall not be released in respect of any (x) Equity Claim as defined in section 2 of the BIA or any analogous claim in respect of a partnership interest or (y) any claim by a former employee of the Company or its affiliates relating to unpaid wages or other employment remuneration.

7.02 Injunctions

All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Proposal Implementation Date, with respect to any and all Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever of any Person against the Released Parties, as applicable; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, guarantee, decree or order against the Released Parties; (iii) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (iv) taking any actions to interfere with the implementation or consummation of this Proposal or the transactions contemplated hereunder; provided, however, that the foregoing shall not apply to the enforcement of any obligations under this Proposal or any document, instrument or agreement executed to implement this Proposal.

ARTICLE VIII
CONDITIONS PRECEDENT

8.01 Conditions Precedent

This Proposal will take effect on the Proposal Implementation Date. The Implementation of this Proposal on the Proposal Implementation Date is subject to the satisfaction or waiver (in the sole discretion of the Proposal Sponsor) of the following conditions precedent (collectively, the "**Conditions Precedent**"):

(a) the Proposal is approved by the Required Majority;

(b) the Approval Order, in form and substance satisfactory to the Proposal Sponsor, has been issued, has not been stayed and no appeal therefrom is outstanding;

(c) there shall not be in effect any preliminary or final decision, order or decree by a Governmental Authority, no application shall have been made to any Governmental Authority, and no action or investigation shall have been announced, threatened or commenced by any Governmental Authority, in consequence or in connection with the Proposal or the Project that restrains, impedes or prohibits (or if granted could reasonably be expected to restrain, impede or inhibit), the Proposal or any part thereof or the Project or any part thereof or requires or purports to require a variation of the Proposal or the Project;

(d) registrations in respect of all encumbrances, including without limitation any registrations in respect of Construction Lien Claims, but excluding the Permitted Encumbrances, shall have been deleted from title to the Property, provided that (a) should the Implementation of the Proposal not occur following the deletion of an Affected Creditor's encumbrance pursuant to this provision, such Affected Creditor shall have the right to renew such registration, and (b) the Company and/or the Proposal Sponsor shall be at liberty to pay security into Court (by way of a bond or similar instrument) in respect of any Construction Lien Claim;

(e) the Proposal Sponsor, or its nominee, shall have entered into assignment and assumption agreements in respect of all Assumed Contracts, or an assignment order pursuant to section 84.1 of the BIA shall have been issued, in each case in form and substance satisfactory to the Proposal Sponsor, provided that it shall be a condition of the assumption of each Assumed Contract that the written agreements set out in the list of Assumed Contracts provided by the Proposal Sponsor (as amended from time to time) represent the totality of the contractual arrangements between the Company and each applicable counterparty, and no verbal or extra-contractual arrangements will be recognized by the Proposal Sponsor;

(f) sufficient financing for the acquisition of the Property by the Proposal Sponsor, or its nominee, shall have been provided by Otera Capital Inc., on terms satisfactory to the Proposal Sponsor, and all material conditions precedent to such financing shall be capable of completion by the Proposal Sponsor prior to the Proposal Implementation Date;

(g) the Proposal Implementation Date shall occur on the day that is three Business Days following the issuance of the Approval Order, or such other date prior to the Outside Date as may be agreed by the Proposal Sponsor;

(h) any required resolutions authorizing the Company to file this Proposal and any amendments thereto will have been approved by the board of directors of the Company;

(i) the Proposal Sponsor Agreement shall not have been terminated by the Proposal Sponsor; and

(j) the Company and the Proposal Sponsor shall have delivered a certificate to the Proposal Trustee that all of the conditions precedent to the Implementation of the Proposal have been satisfied or waived (the "**Implementation Certificate**").

Upon the Proposal Trustee's receipt of the Implementation Certificate, the Affected Creditor Cash Pool and the funding required by Section 6.01(d), the Implementation of the Proposal shall have been deemed to have occurred and all actions deemed to occur upon Implementation of the Proposal shall occur without the delivery or execution of any further documentation, agreement or instrument.

ARTICLE IX
EFFECT OF PROPOSAL

9.01 Binding Effect of Proposal

After the issuance of the Approval Order by the Court, subject to satisfaction of the Conditions Precedent, the Proposal shall be implemented by the Company and shall be fully effective and binding on the Company and all Persons affected by the Proposal. Without limitation, the treatment of Affected Creditor Claims under the Proposal shall be final and binding on the Company, the Affected Creditors, and all Persons affected by the Proposal and their respective heirs, executors, administrators, legal representatives, successors, and assigns. For greater certainty, this Proposal shall have no effect upon Unaffected Creditors.

9.02 Amendments to Agreements and Paramountcy of Proposal

Notwithstanding the terms and conditions of all agreements or other arrangements with Affected Creditors entered into before the Filing Date, for so long as an event of default under this Proposal has not occurred, all such agreements or other arrangements will be deemed to be amended to the extent necessary to give effect to all the terms and conditions of this Proposal. In the event of any conflict or inconsistency between the terms of such agreements or arrangements and the terms of this Proposal, the terms of this Proposal will govern and be paramount.

9.03 Deemed Consents and Authorizations of Affected Creditors

At the Effective Time each Affected Creditor shall be deemed to have:

(a) executed and delivered to the Company all consents, releases, assignments, and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;

(b) waived any default by the Company in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Affected Creditor and the Company that has occurred on or prior to the Proposal Implementation Date; and

(c) agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Affected Creditor and the Company as at the date and time of Court approval of the Proposal (other than those entered into by the Company on, or with effect from, such date and time) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly.

ARTICLE X
ADMINISTRATIVE FEES AND EXPENSES

10.01 Administrative Fees and Expenses

Administrative Fees and Expenses including a reserve in respect of the reasonably estimated additional Administrative Fees and Expenses anticipated to be incurred in connection with the administration of Distributions, resolution of any unresolved Claims pursuant to Section 5.03, and the Proposal Trustee's discharge will be paid in cash by the Proposal Sponsor on the Proposal Implementation Date.

ARTICLE XI
INDEMNIFICATION

11.01 Indemnification of Proposal Trustee

The Proposal Trustee shall be indemnified in full by the Proposal Sponsor for: (a) all personal liability arising from fulfilling any duties or exercising any powers or duties conferred upon it by this Proposal or under the BIA, except for any willful misconduct or gross negligence; and (b) all Administrative Fees and Expenses reasonably incurred but not covered by the payment set out in Section 10.01.

ARTICLE XII
POST FILING GOODS AND SERVICES

12.01 Payment of Payroll Deductions and Post Filing Claims

The following shall continue to be paid in the ordinary course by the Company prior to and after the Court Approval Date and shall not constitute Distributions or payments under this Proposal:

(a) all Persons, who may advance monies, or provide goods or services to the Company after the Filing Date shall be paid by the Company in the ordinary course of business;

(b) current source deductions and other amounts payable pursuant to Section 60(1.2) of the BIA, if applicable, shall be paid to Her Majesty in Right of Canada in full by the Company as and when due; and

(c) current goods and services tax (GST), and all amounts owing on account of provincial sales taxes, if applicable, shall be paid in full by the Company as and when due.

ARTICLE XIII
TRUSTEE, CERTIFICATE OF COMPLETION, AND DISCHARGE OF TRUSTEE

13.01 Proposal Trustee

KSV Restructuring Inc. shall be the Proposal Trustee pursuant to this Proposal and upon the making of the Distributions and the payment of any other amounts provided for in this Proposal, the Proposal Trustee will be entitled to be discharged from its obligations under the terms of this Proposal. The Proposal Trustee is acting in its capacity as Proposal Trustee under this Proposal, and not in its personal capacity and shall not incur any liabilities or obligations in connection with this Proposal or in respect of the business, liabilities or obligations of the Company, whether existing as at the Filing Date or incurred subsequent thereto.

The Proposal Trustee shall not incur, and is hereby released from, any liability as a result of carrying out any provisions of this Proposal and any actions related or incidental thereto, save and except for any gross negligence or willful misconduct on its part (as determined by a final, non-appealable judgment of the Court).

13.02 Certificate of Completion and Discharge of Proposal Trustee

Upon the Proposal Trustee having received the Implementation Certificate, and all Distributions to Affected Creditors having been administered in accordance with Article V, the terms of the Proposal shall be deemed to be fully performed and the Proposal Trustee shall provide a certificate to the Company, the Proposal Sponsor and to the Official Receiver pursuant to Section 65.3 of the BIA and the Proposal Trustee shall be entitled to be discharged.

ARTICLE XIV
GENERAL

14.01 Valuation

For purposes of voting and Distributions, all Claims shall be valued as at the Filing Date.

14.02 Preferences, Transfers at Undervalue

In conformity with Section 101.1 of the BIA, Sections 95-101 of the BIA and any provincial statute related to preference, fraudulent conveyance, transfer at undervalue, or the like shall not apply to this Proposal. As a result, all of the rights, remedies, recourses and Claims described therein:

(a) all such rights, remedies and recourses and any Claims based thereon shall be completely unavailable to the Proposal Trustee or any Affected Creditors against the Company, the Property, or any other Person whatsoever; and

(b) the Proposal Trustee and all of the Affected Creditors shall be deemed, for all purposes whatsoever, to have irrevocably and unconditionally waived and renounced such rights, remedies and recourses and any Claims based thereon against the Company, the Property any other Person.

14.03 Governing Law

The Proposal shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. Any disputes as to the interpretation or application of the Proposal and all proceedings taken in connection with the Proposal shall be subject to the exclusive jurisdiction of the Court.

[*remainder of page left intentionally blank*]

Dated at Toronto, this 15th day of July, 2021.

YSL RESIDENCES INC.

Per: _____
Name: Daniel Casey
Title: President
I have the authority to bind the Corporation.

YG LIMITED PARTNERSHIP, by its general partner 9615334 CANADA INC.

Per: _____
Name: Daniel Casey
Title: President
I have the authority to bind the Corporation.

SCHEDULE A

PERMITTED ENCUMBRANCES

Instrument Number		Description
EP138153	-	Canopy Agreement with the City of Toronto
EP146970	-	Encroachment Agreement with the City of Toronto
CT114131	-	Encroachment Agreement with the City of Toronto
CT169812	-	Canopy Agreement with the City of Toronto
CA11215	-	Development Agreement with the City of Toronto
CA231470	-	Encroachment Agreement with the City of Toronto
AT5142530	-	Heritage Easement Agreement with the City of Toronto
AT5154721	-	Heritage By-Law
AT5154722	-	Heritage By-Law
AT5157423	-	Heritage By-Law
AT5157424	-	Heritage By-Law
AT5246455	-	Section 37 Agreement
AT5473163	-	Application to Register a Court Order (Equitable Mortgage)

Appendix “E”

Mitch Vininsky
ksv advisory inc.
150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9
T +1 416 932 6013
F +1 416 932 6266
mvininsky@ksvadvisory.com
ksvadvisory.com

February 10, 2022

DELIVERED BY EMAIL AND REGISTERED MAIL

Elie Laskin
Gowling WLG (Canada) LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Dear Ms. Laskin:

Re: The Proposal of YSL Residences Inc. and YG Limited Partnership (together, the "Company")

KSV Restructuring Inc., in its capacity as proposal trustee of the Company, acknowledges receipt of the proof of claim filed in your capacity as counsel to CBRE Limited in the amount of $1,239,377.40.

We have disallowed the claim for the reasons outlined in the attached notice.

Should you have any questions regarding this matter, do not hesitate to contact the undersigned.

Yours very truly,

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
YSL RESIDENCES INC. AND YG LIMITED PARTNERSHIP
AND NOT IN ITS PERSONAL CAPACITY

Per: Mitch Vininsky

MV:rk
Encl.

ksv advisory inc.
150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9
T +1 416 932 6262
F +1 416 932 6266

ksvadvisory.com

Estate File No.: 31-2734090

**IN THE MATTER OF THE PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**NOTICE OF DISALLOWANCE OF CLAIM
(Subsection 135(3) of the *Bankruptcy and Insolvency Act* ("Act"))**

TAKE NOTICE THAT, as Proposal Trustee acting in the matter of the Proposal of YSL Residences Inc. ("Residences") and YG Limited Partnership Inc. (the "Partnership" and together with Residences, the "Companies"), we have this day disallowed your claim. The reason for the disallowance is as follows:

- The claim is in respect of an invoice submitted by CBRE Limited ("CBRE") to "Cresford" dated October 13, 2021 in the amount of $1,096,794.16 plus HST (the "Invoice"). The Invoice refers to services rendered by CBRE in connection with serving as the exclusive listing brokerage for the land located at 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario, (the "Property"). The Property was to be developed by the Companies into a significant condominium project.

- A demand letter dated November 26, 2021 from CBRE to the Companies (the "CBRE Letter") references that the Invoice was issued in respect of an Exclusive Sales Listing Agreement dated February 20, 2020 (the "Agreement") between CBRE and the Companies, pursuant to which the Companies "agreed to pay commission equivalent to 0.65% of the Gross Sale Price of the Property" (the "Commission"). The CBRE Letter further states that "CBRE has complied with and performed its obligations under the Agreement." The term of the Agreement is six months from February 20, 2020 to August 20, 2020 (the "Term"). The Agreement is appended to the CBRE Letter and it is unsigned.

- The Property was conveyed on or about July 22, 2021 (the "Conveyance") to Concord Adex Inc., an entity related to Concord Properties Developments Corp., the eventual sponsor ("Sponsor") of the Companies' Proposal proceedings which were commenced on April 30, 2021.

- Dave Mann, CFO of the Cresford Group of Companies ("Cresford") advised the Proposal Trustee that CBRE introduced Cresford to the Sponsor. The Sponsor advised the Proposal Trustee that "Cresford, through its representative Ted Dowbiggin, first approached Concord in early 2020 to discuss four of Cresford's distressed projects, however Concord did not have any interest in the YSL project at this time." and that "In September/October 2020, Cresford re-engaged Concord to discuss the YSL project, after it had canvassed a number of other developers. After this outreach in fall 2020 until the time of the proposal proceedings, Cresford and Concord were consistently engaged to explore potential alternatives for the YSL project".

- The Agreement states the following with regards to the Commission:

    - "*The Commission shall be earned by the Brokerage in the event that **during the Term:** (a) the Owner enters into a binding agreement of purchase and sale for the Property with a purchaser procured by the Brokerage, the Owner or from any other source whatsoever, and such sale closes; or (b) the Owner is a corporation, partnership or other business entity and an interest in such corporation, partnership or other business entity is transferred, whether by merger or outright purchase or otherwise in lieu of sale of the Property*."

- Furthermore, the Agreement has a holdover clause which states that:

    - *"The Owner further agrees to pay the Brokerage the Commission **if, within 90 calendar days after the expiration of the Term**, the Property is sold to, or the Owner enters into an agreement of purchase and sale for the Property with, or negotiations continue, resume or commence and thereafter continue leading to the execution of a binding agreement of purchase and sale for the Property, provided the transaction subsequently closes, with any person or entity (including his/her/its successors, assigns or affiliates) with whom the Brokerage has negotiated (either directly or through another agent) or to whom the Property was introduced or submitted, from any source whatsoever, or to whom the Owner was introduced, from any source whatsoever, prior to the expiration of the Term; with or without the involvement of the Brokerage."*

- The Proposal Trustee has disallowed the claim in full as:

    - The Agreement is not signed and therefore is not binding;

    - The Sponsor advised that at all times it dealt directly with the Companies and that it did not have any dealings with CBRE;

    - The Conveyance does not meet the definition of an event giving rise to a Commission; and

    - 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.

AND FURTHER TAKE NOTICE, that if you are dissatisfied with our decision in disallowing your claim as set out above, you may appeal to the Ontario Superior Court of Justice ("Court") within the 30-day period after the day on which this notice is served, or within such other period as the Court may, on application made within the same 30-day period, allow.

DATED at Toronto, Ontario, this 10th day of February, 2022.

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
AND NOT IN ITS PERSONAL CAPACITY

Appendix “F”

SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: BK-21-02734090-0031 **DATE:** 24 May 2022

NO. ON LIST: 3

TITLE OF PROCEEDING: YSL RESIDENCES INC., et al

BEFORE JUSTICE: JUSTICE GILMORE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Harry Fogul	YSL Residences Inc, YG Limited Partnership, Cresford Capital Corporation, and for Cresford (Rosedale) Developments Inc.	hfogul@airdberlis.com
Alexander Soutter	YongeSL Investment Limited Partnership, 2124093 Ontario Inc., Sixone Investment Ltd., E&B Investment Corporation, and Taihe International Group Inc.	asoutter@tgf.ca

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Jesse Mighton	Concord Properties Developments Corp.	mightonj@bennettjones.com
Mark Dunn	Maria Athanasoulis	mdunn@goodmans.ca
Daniel Naymark	Claimants- Ryan Millar, Louis Giannakopoulos, Marco Mancuso, Sarven Cicekian, and Mike Catsiliras	dnaymark@naymarklaw.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Robin B Schwill	**Interim Receiver – KSV Restructuring Inc.**	**Rschwill@dwpv.com**
Matthew Milne-Smith	**Interim Receiver – KSV Restructuring Inc.**	**Mmilne-smith@dwpv.com**
Shaun Laubman	**2505670 Canada, 8451761 Canada Inc. and Chi Long Inc.**	**slaubman@lolg.ca**

ENDORSEMENT OF JUSTICE GILMORE:

Two issues were dealt with at today's hearing; the motion of the Proposal Trustee to approve settlements with certain claimants, and issues related to Ms. Athanasoulis' claims against YSL.

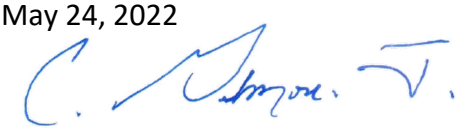
The motion in relation to the settlements was not opposed. The signed Order is attached.

With respect to the second issue, counsel for the LPs requested that the Court schedule motions related to the Proposal Trustee's authority, whether Ms. Athanasoulis' equitable claims are subordinate to the LP's entitlement, and a request to stay the upcoming arbitration of Ms. Athanasoulis' claim.

I declined to schedule the motion. It struck me that the priority issues and the damages could all be arbitrated at the arbitration already scheduled for September 2022. This would be far more efficient than putting off the arbitration and scheduling a full day motion (which likely could not be heard before November 2022 given the current Court schedule). Counsel for KSV, Ms. Athansoulis and Concord did not disagree that this would be an efficient way to proceed. Mr. Laubman did not disagree but Mr. Soutter who acts for 2/3 of the LPs objects to the arbitration process as his position is that it was never authorized.

Counsel are to return before me on **June 8, 2022 at 12:00 p.m. for one hour.** Counsel are directed to collaborate on the outstanding issues and the LPs are to particularize their equitable claims against Ms. Athanasoulis so that a meaningful discussion can take place on June 8th. If necessary, the issues for the arbitration could be the subject of a mediation.

May 24, 2022



Justice C. Gilmore

Appendix “G”

SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: **31-02734090** **DATE:** **JUNE 8, 2022**

NO. ON LIST: **12:00PM**

TITLE OF PROCEEDING: **YG LTD/YSL RESIDENCES INC**

BEFORE JUSTICE: **MADAM JUSTICE GILMORE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
A. SOUTTER **(YONGE SL LPS)** **asoutter@tgf.ca**		
JESSE MIGHTON **(CONCORD PROP)** **mightonj@bennettjones.com** **SHAUN LAUBMAN** **(2504670 CAN)** **slaubman@lolg.ca** **MITCH VININSKY** **(KSV, PROP TRUSTEE)** **mvininsky@ksvestructuring.com** **MARK DUNN** **(MARIA ATHANASOULIS)** **mdunn@goodmans.ca** **HARRY FOGUL** **(DEBTORS)** **hfogul@airdberlis.com** **XIN LU (CRYSTAL) LI** **(2504670 CAN; 8451761 CAN)**		

cli@lolg.ca **SARAH STOTHART FOR MARIA ATHANASOULIS** **sstothart@goodmans.ca**		

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
ROBIN SCHWILL (PROPOSAL TRUSTEE) **rschwill@dwpv.com** **BOBBY KOFMAN (PROPOSAL TRUSTEE)**		
MATTHEW MILNE-SMITH (PROPOSAL TRUSTEE) **mmilne-smith@dwpv.com**		

ENDORSEMENT OF JUSTICE GILMORE:

Today's conference was scheduled as per my endorsement of May 24,2022 wherein I asked counsel to collaborate on the issues to be arbitrated.

Mr. Milne-Smith, on behalf of the Proposal Trustee advised that counsel have collaborated and determined that they will work towards the terms of a newly constituted consolidated arbitration which will deal with all outstanding issues including the following:

1. The enforceability of the contract as found by Mr. Horton regarding Ms. Athanasoulis' claim and the quantum of any damages she may have suffered.
2. Whether any claim for damages by Ms. Athanasoulis is in the nature of debt or equity;
3. Any claim for damages that the Limited Partners may assert against Ms. Athansoulis.
4. The arbitration will **not** consider any claims between Ms. Athanasoulis and Cresford Capital/Dan Casey.
5. The Limited Partners will reserve their rights with respect to whether Mr. Horton's decision at Phase 1 of the arbitration regarding enforceability is rendered *res judiciata.*
6. At the conclusion of the arbitration the Proposal Trustee will make a determination as to whether Ms. Anathasoulis' claim is provable and will value it and determine its priority.
7. The parties' rights to appeal are preserved under the *BIA.*

Given concerns about delay I asked counsel to commit to having the arbitration before the end of 2022 which it is hoped will accommodate Mr. Soutter's parental leave and subject to Mr. Horton or another agreed upon arbitrator's availability.

Mr. Mighton, on behalf of the Proposal Sponsor, is concerned that including the issues between the LPs and Ms. Athanasoulis will increase the cost of the arbitration overall, expand the Trustee's role and delay the distribution of funds to creditors. His client does not support the arbitration proposal unless the LPs undertake to fund the Trustee's expenses. As the LPs would not do so, Mr. Mighton requests that the Court order a mandatory mediation of the issues between the LPs, Ms. Athanasoulis and the Trustee. If no settlement is achieved, he requests that the Court then direct the next steps regarding Ms. Athanasoulis' claims. Mr. Mighton also seeks to preserve his client's rights to amend the Proposal to provide that the administrative costs of the Trustee will be paid from the residual Creditor Cash Pool.

Mr. Laubman and Mr. Soutter do not agree. They are in favour of the arbitration procedure proposed. They point out that Ms. Athanasoulis' claim alone was originally scheduled for a two-week arbitration. The parties have now agreed on a two-week arbitration for **all** outstanding issues. The claims all arise from the same set of facts. The Trustee's role is not being expanded. Their clients are also incurring unanticipated costs in moving forward with the arbitration (which Mr. Soutter initially opposed) but now agree it is the most efficient process. The LPs do not consent to a mediation with Ms. Athanasoulis as suggested by Mr. Mighton.

The Trustee has undertaken to ensure that it will avoid duplication and minimize its role in the arbitration except where required.

Mr. Dunn raised an issue with respect to document production from the debtors. They are not parties to the arbitration agreement, but Mr. Dunn asks the Court to make them parties so they are obliged to provide documents as requested. Mr. Fogul on behalf of the debtors assured the Court that the request for documents received on May 12, 2022 will be complied with by June 24, 2022 or earlier and that the General Ledgers, Balance sheets and documents (and emails) related to the termination of the $650M construction loan will be provided today. Mr. Dunn remains unconvinced and concerned about the nature of the documents produced to date.

Directions for Counsel

This matter must be kept on track to ensure an arbitration occurs before the end of 2022. I am not inclined to order a mandatory mediation of the Athanasoulis/LP issues where the LPs do not agree. The LPs have come around to agreeing to an expanded arbitration process notwithstanding any additional cost which they may incur. The Proposal Sponsor is understandably concerned about additional cost as well.

However, balancing the efficiency of a slightly more costly consolidated arbitration against the cost and timing of various motions, the arbitration must prevail. I urge counsel to immediately contact Mr. Horton such that a date can be secured hopefully in October or November 2022.

The issue of apportionment of costs raised by Mr. Mighton is a reasonable concern. The arbitrator may, in his discretion, apportion costs as he deems appropriate. It is too difficult for the Court at this early stage to attempt to parse the parties' respective responsibility for costs.

Counsel are directed to continue collaborating and refining the issues for the arbitration. They are to return before me on July 29, 2022 at 11:30 a.m. for one hour. By that date it is expected that an arbitration date will have been secured and a finalized list of issues for the arbitration prepared. Counsel are to provide a two-page brief for the July 29th conference. The brief is to be uploaded to Caselines by July 27, 2022 at 11:30 a.m.

Mr. Dunn raises reasonable concerns about document production. Notwithstanding Mr. Fogul's undertakings to produce certain documents today and within two weeks, this matter cannot languish especially given Mr. Mann's imminent departure**. Mr. Dunn, Mr. Fogul and the Trustee are to return before me on June 15, 2022 at 11:00 a.m. for 30 minutes to discuss the status of document production from the debtors.**

June 8, 2022

Justice C. Gilmore

Appendix “H”

From: Jesse Mighton <MightonJ@bennettjones.com>
Sent: July 5, 2022 11:00 AM
To: Bobby Kofman <bkofman@ksvadvisory.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>
Cc: Schwill, Robin <rschwill@dwpv.com>; David Gruber <GruberD@bennettjones.com>; Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Subject: RE: YSL [BJ-WSLegal.FID5543351]

Gentlemen, please see the attached correspondence further to my call with Bobby yesterday.

Note that David is overseas this week but will be back next if a call is to be scheduled.

Jesse Mighton, *Partner,* Bennett Jones LLP
T. 416 777 6255 | F. 416 863 1716

From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: Monday, July 4, 2022 1:48 PM
To: Bobby Kofman <bkofman@ksvadvisory.com>; Jesse Mighton <MightonJ@bennettjones.com>
Cc: Schwill, Robin <rschwill@dwpv.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>
Subject: RE: YSL

Jesse,

We are equally disturbed by these unfounded accusations and misguided complaints. We have done nothing but advocate for the most efficient resolution of the claim at all times, as you should know well from having participated in the case conferences with Justice Gilmore.

Please be advised that we will also seek full indemnification of the costs of bringing the motion described below from the Proposal Trustee.

Matt

Matthew Milne-Smith **(he, him)**
T 416.863.5595
mmilne-smith@dwpv.com
Bio | vCard

DAVIES
155 Wellington Street West
Toronto, ON M5V 3J7
dwpv.com

From: Bobby Kofman <bkofman@ksvadvisory.com>
Sent: July 4, 2022 11:37 AM
To: Jesse Mighton <MightonJ@bennettjones.com>
Cc: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>; Schwill, Robin <rschwill@dwpv.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>
Subject: YSL

External Email / Courriel externe

Jesse,

I'm confirming our discussion a few minutes ago where you expressed your disappointment, David Gruber's disappointment and the disappointment of your client with the approach taken by the Proposal Trustee and its counsel regarding the claims resolution process. You advised you would be sending a letter advising that your client will not be funding the ongoing costs of the claims resolution process, notwithstanding the express terms of the Proposal. That will leave the Proposal Trustee no choice but to bring a motion to compel compliance. KSV and its counsel have done everything possible to resolve claims expeditiously and efficiently, and the suggestion to the contrary and the comments you made on the call were offside and inappropriate. We remind you that the Proposal (and the various amended proposals) was drafted exclusively by Mr. Gruber, with little visibility by the Proposal Trustee, until completed. The fact that there was a lack of understanding by Mr. Gruber of the claims resolution process, and of the circumstances surrounding the claims, is not the responsibility of the Proposal Trustee.

Regards,

Bobby

Bobby Kofman
President

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M 647.282.6228
E bkofman@ksvadvisory.com

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Bennett Jones LLP
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T: 416.863.1200
F: 416.863.1716

David E. Gruber
Partner
Direct Line: 604.891.5150
e-mail: gruberd@bennettjones.com
Our File No.: 079830.00017

July 5, 2022

Via E-Mail

KSV Advisory Inc.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9

Attention: Bobby Kofman

Dear Bobby:

Re: YG Limited Partnership (the "Partnership"), YSL Residences Inc. ("Residences", and together with the Partnership, the "Debtors")

I write further to the letter we received from Mitch Vininsky of June 29, 2022, your telephone conversation with Mr. Mighton of our firm of July 4, 2022, your email to Mr. Mighton of July 4, 2022 at 11:37 a.m. and Mr. Milne-Smith's email to Mr. Mighton of July 4, 2022 at 1:48 p.m.

Email Correspondence of July 4, 2022

I understand that you may well have had an emotional reaction to the position communicated to you from Mr. Mighton, but nevertheless I take exception to the attack on my personal competence. Your comments in this regard, are experienced by me as being in the vein of so many Toronto insolvency professionals who casually assume a lesser level of competence among practitioners in the provinces. Yet, I have been practicing in this area for over two decades, including three years in Toronto. I was trained by well-respected insolvency lawyers including Kevin McElcheran, Steve Weisz and Terry O'Sullivan. I have acted for sponsors on more *Bankruptcy and Insolvency Act* ("BIA") proposals than anyone else I know, having been part of the team at Farris LLP that developed the leading strategy to monetize tax losses through insolvency without a grind resulting from debt forgiveness. I have a wall full of BIA proposal tombstones. You may rest assured that I was and am well familiar with the claims resolution processes under the BIA. And at the time the Proposal was drafted, I was already well familiar with Ms. Athanasoulis' claim through my retainer in the Clover on Yonge proceedings under the *Companies' Creditors Arrangement Act* ("CCAA").

Furthermore, the claim that the Proposal was drafted exclusively by me (apparently personally) with little visibility from the Proposal Trustee until completed is inaccurate and an exercise in revisionist

history. While it is true that the original business terms between Cresford and Concord were determined without input from the Proposal Trustee, that was as a result of a negotiation between the principals, not my personal drafting. Aside from the business terms, the Proposal Trustee was given ample opportunity to comment on the drafting of the Proposal and did so. The Proposal Trustee itself provided the $500,000 estimate provided for in Section 10.01 of the Proposal. And the Proposal was amended with visibility from the Proposal Trustee three times (or perhaps four depending on how one counts) before being approved.

As far as Mr. Milne-Smith's email is concerned, the reference to a claim for full indemnity costs appears to be an implicit accusation that Concord is engaging in some kind of abuse of process. It would seem to me that before any such accusation is levelled, it should be incumbent upon counsel for the Proposal Trustee to review and digest the legal basis for Concord's position.

Mr. Vininsky's Request Falls Outside the Indemnity in s. 11.01 of the Proposal

Mr. Vininsky's June 29th letter represents a request that Concord provide the Proposal $500,000 against professional fees to engage in a multi-party arbitration among itself, Ms. Athanasoulis and the limited partners of the YG Limited Partnership. With respect, this request plainly falls outside the indemnity in section 11.01 of the Proposal.

The powers of a proposal trustee post-approval of a proposal are determined by reference to the terms of the proposal itself.[1] In this case the Proposal specifically provides in section 3.02 that Disputed Claims will be determined in accordance with s. 135 of the BIA. It does not provide for any other means by which claims may be determined, and in particular does not provide for claims to be determined by submission to arbitration.

Section 135 of the BIA, in turn, provides for a summary process.[2] That summary determination is followed by an appeal to the Court in the nature of a true appeal.[3]

Unlike in proceedings under the CCAA, where claims procedure orders may be flexible, including delegating determination of disputed claims to a claims officer or to the court, there is no ability under s. 135 of the BIA for a trustee to delegate claims determinations. The language of subsection 135(1.1) is mandatory. The trustee "shall" determine and value claims.

The position the Proposal Trustee has taken thus far with respect to the Athanasoulis claim is strongly analogous to the position taken by the proposal trustee in the recent *Conforti Holdings* matter,[4] where orders and directions were sought relieving the proposal trustee from determining a disputed claim in favour of that claim being determined by litigation in another jurisdiction. There the Court, per Justice Cavanagh, held that there is no jurisdiction to relieve the proposal trustee from making a determination as required by s. 135(1.1),[5] and furthermore if there were such a jurisdiction, the Court would not

[1] *Coopers & Lybrand Ltd. v. Bruncor Leasing Inc.*, 1994 NSCA 122
[2] See: e.g. *Re: In the Matter of the Proposal of Rajneesh Mathur*, 2018 ONSC 4425
[3] *Re Galaxy Sports Inc.*, 2004 BCCA 284
[4] *In the Matter of the Proposal to Creditors of Conforti Holdings Limited*, 2022 ONSC 3264 ("*Conforti*")
[5] *Ibid* at para. 45

exercise discretion in favour of a trustee being relieved of the obligation to determine and value a disputed claim merely because the claim is complex.[6] Rather, *Conforti's* central holding as relates to s. 135(1.1) is that "the regime under the *BIA* provides for a summary procedure for (i) determination by the trustee of whether a contingent or unliquidated claim is a provable claim and, if so, (ii) for the trustee to value it."[7] That logic is consistent with the decision in *Prue v. Skyrider Holdings Ltd. (Trustee of)*[8] which held that a trustee's claims determination under s. 135 should be characterized by "speed, economy and informality,[and] this importance is highlighted by the statutory requirements of the *BIA* that the Trustee's decision is final and that any disagreement with the Trustee's disallowance must be brought on quickly."

In short, the power of the Proposal Trustee in this case to determine the Athanasoulis claim is limited by the terms of the Proposal to the summary procedure under s. 135 of the BIA. The indemnity requested in Mr. Vininsky's June 29, 2022 letter for the Proposal Trustee to engage as a primary litigant in an arbitration proceeding falls outside the power of the Proposal Trustee and therefore outside the indemnity in section 11.01.

Concord has been Seeking to Avoid Conflict with the Proposal Trustee

It brings me no joy to have to take the position set out above. Indeed I have been anxiously trying to avoid doing so for months, at least a few times at the cost of loss of sleep. That I should have to do so is despite the fact that my client has earnestly tried to avoid such conflict.

Although Concord would have been within its rights to refuse any further funding of professional fees given that the Proposal Trustee deviated substantially from the claims resolution process under section 3.02 of the Proposal, Concord instead sought to encourage the Proposal Trustee to bring the claims resolution process back under control by engaging in settlement negotiations, through mediation if necessary. To that end, in May, 2022 Concord agreed to provide the Proposal Trustee with an additional approximately $178,000, by letting it keep the interest that had accrued on the funds provided by Concord on implementation[9] – funds that Concord was otherwise entitled to keep pursuant to section 5.01(a) of the Proposal. This payment has already represented an increase of **35%** over and above the Proposal Trustee's original estimate made under section 10.01 of the Proposal.

In May 2022, Concord requested that the Proposal Trustee provide a budget to mediate the Athanasoulis's claim and indicated funds for a process intended to result in the expeditious resolution of that claim would be funded. During our phone conference of May 20, 2022, these concerns were raised directly with the Proposal Trustee and its counsel. We told you at this time in no uncertain terms that Concord did not support the Proposal Trustee's litigation strategy.

This message was received and at least to our perception supported by the Proposal Trustee, as seen in your email to Mr. Mighton of May 20, 2022, 10:29am (copying Messrs. Milne-Smith and Mr. Schwill, counsel to the Proposal Trustee), where you stated that the Proposal Trustee would attempt

[6] *Ibid* at paras. 47-50
[7] *Ibid*. at para 42.
[8] 2014 ABQB 764 at para 24
[9] Refer to email of Bobby Kofman to the undersigned and Mr. Mighton dated May 9, 2022, 6:20pm.

to "force a mediation", and you noted that "practicality needs to prevail" while recognizing that the Proposal Trustee's current process "is very expensive and litigation delay is unfair to creditors".

Despite these instructions, we did not receive the expected budget for an attempt to resolve the Athanasoulis claim by mediation. Indeed, from what we can ascertain, counsel to the Proposal Trustee did not earnestly pursue any alternative to its arbitration strategy. In fact, when we spoke with counsel for Ms. Athanasoulis on May 24, 2022, he indicated that no one from the Proposal Trustee's team had contacted them since your email of May 20. Similarly, when we spoke with counsel to the Limited Partners on May 30, 2022, they also indicated they had not heard from the Proposal Trustee to discuss any potential mediation or otherwise. Lastly, Jason Wadden, the proposed mediator recommended by Concord, advised that he never heard from anyone on behalf of the Proposal Sponsor at all.

Thereafter, counsel for the Proposal Trustee did not make a sincere effort to promote mediation during the case conferences before Justice Gilmore, and indeed we perceived that it actually undermined our efforts to do so.

Alternative Paths

I remain firmly convinced that an early settlement of the Athanasoulis claim, subject to Court approval, would be far preferable to engaging in an unnecessary dispute between Concord and the Proposal Trustee, not only for ourselves but also for the creditors generally. While no doubt any settlement of that claim will be opposed by the limited partners of YG Limited Partnership, the sooner and more summarily such objection plays out the better for all concerned. I fully expect I could obtain instructions to provide funding to the Proposal Trustee to follow this course.

I do not accept that the Proposal Trustee is not yet in a position to settle the Athanasoulis claim. The reasoning in the *Conforti Holdings* matter applies on all fours to this situation. If the Proposal Trustee can write a memorial in the arbitration, it can determine the claim. And if it can determine the claim, it can settle the claim (with the added comfort of a mediator's recommendation if need be).

If notwithstanding, the Proposal Trustee will not entertain this option, there are other options that could be explored in preference to a contested application between Proposal Sponsor and Proposal Trustee. Pursuant to section 3.03 of the Proposal, further amendments are possible with the consent of the Proposal Trustee, the Proposal Sponsor and the Company. Concord and the Company would be prepared to consider consenting to an amendment of the Proposal to have the Athanasoulis claim submitted to arbitration instead of being determined summarily under s. 135 of the BIA, but Concord's consent as Proposal Sponsor would be conditioned upon the manner in which such submission to arbitration is to be funded, and its exposure to costs, if any.

In this latter regard, we are particularly concerned that under the usual practice of full indemnity costs being awarded in arbitration, should Ms. Athanasoulis be substantially successful (of which we think there is a serious risk), the Proposal Trustee could be exposed to a costs award in the seven figure range over and above its own litigation fees and expenses. Concord naturally considers that indemnifying the Proposal Trustee against a costs claim that would not have arisen but for a voluntary submission to arbitration would not satisfy the "reasonably incurred" language of section 11.01 of the

Proposal. So any amendment to the Proposal to allow the Athanasoulis claim to be submitted to arbitration instead of being determined summarily would have to cover off this eventuality.

If you are not prepared to consider either of these paths to avoid conflict, another one we could discuss would be substituting another proposal trustee who would be comfortable determining the Athanasoulis claim summarily.

If there are other options you see that do not require Concord to advance funding of more than double your original estimate under section 10.01 of the Proposal (with potential exposure of up to 500% or more of the original estimate after costs exposure and appeals are factored in) then we would welcome a discussion of those.

If instead, you decide to bring an application so be it. I gather from Mr. Mighton that you believe such an application would reflect badly on Bennett Jones. I happen to think there is a risk it would reflect badly on yourselves and Davies. One or the other of us may be right, or we may both be right. But I doubt very much it is in the interest of the stakeholders generally that we find out.

Yours truly,

BENNETT JONES LLP

David E. Gruber
Partner

DEG:nw
cc: Mitch Vininsky, KSV Restructuring Inc.
Jesse Mighton, *Bennett Jones LLP*

Appendix “I”

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July 6, 2022

DELIVERED BY E-MAIL

Bennett Jones LLP
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Vancouver, BC V6C 2X8

Attention: David E. Gruber

Dear David:

Re: YG Limited Partnership and YSL Residences Inc.

I write in response to your letter of July 5, 2022. It is unfortunate that procedural issues that have already been addressed will need to be re-litigated, which will only serve to increase costs for your client and result in further delay.

Email Correspondence of July 4, 2022

My email dated July 4, 2022 did not question your personal skills, experience and abilities; rather, it suggested that there was a lack of understanding of the particular claims resolution process and the circumstances surrounding the claim of Maria Athanasoulis (the "**Claim**").

As to the actual facts of the manner in which the Proposal was drafted, we appear to mostly agree. In your words, the "business terms" were negotiated "between Cresford and Concord without input from the Proposal Trustee". The Trustee was given the opportunity to comment only on the "drafting" of the Proposal, not on the "business terms". (You will recall that the Trustee requested an adjournment to review the version of the proposal that was ultimately approved by the Court because it was received shortly before the hearing to consider the proposal.) The Trustee now relies on those fundamental business terms negotiated between Concord and Cresford. Those terms include Concord funding the expenses of the Trustee. We acknowledge we had input into the specifics of the fee and cost indemnity provision, which was required for the very issues we are now facing.

Finally, Mr. Milne-Smith's reference to full indemnity costs is simply a reflection of the *status quo*, not any kind of allegation of abuse of process. The Trustee's position is that Concord must fund all of the expenses of the estate—the equivalent of full indemnity costs. That includes the costs of any motion to compel Concord to comply with the Proposal and fund the Trustee's costs.

The Trustee's Request Falls Within Section 11.01 of the Proposal

Concord's position appears to be that the Trustee was required to either allow or disallow Ms. Athanasoulis' claim, and that it did not have the authority to refer the determination of that Claim to arbitration. As a result, you assert that the Claim cannot "be determined by submission to arbitration," and that doing so is inconsistent with both s. 135 of the *BIA* and s. 3.02 of the Proposal (which requires that claims be adjudicated in a manner consistent with s. 135 of the *BIA*). We respectfully disagree, for at least three reasons.

First, this argument has already been considered and rejected by Justice Gilmore. As you know, on May 18, 2022, the LPs served a Notice of Motion seeking, among other things, a declaration that the arbitration of the Claim was "invalid as having been conducted without jurisdiction". In its grounds for the Motion, the LPs argued—as you do now—that s. 135 of the *BIA* requires the Trustee to determine the Claim and prohibits it from referring the matter to arbitration.

At the case conference on May 24, 2022, at which your partner Mr. Mighton attended, Justice Gilmore squarely rejected this position (which, I might add, was advanced by the LPs, not by Concord). Indeed, she refused to even schedule the LPs' motion "related to [among other things] the Proposal Trustee's authority". Instead, she concluded that it would be far more efficient to have all disputed issues arbitrated at once. Significantly, she recorded that "Counsel for KSV, Ms. Athanasoulis and Concord did not disagree that this would be an efficient way to proceed" (emphasis added). The parties were directed to return before her on June 8, 2022.

At the case conference on June 8, 2022, Justice Gilmore's endorsement records that Mr. Mighton "requests that the Court order a mandatory mediation of the issues". (The Trustee agreed with and did not undermine Mr. Mighton's request—your email is the first we heard of this suggestion.) After noting the refusal of the LPs to participate in mediation, Justice Gilmore declined to order mediation and instead directed the parties to proceed to arbitration. That is all that the Trustee has done. Your attempt to re-litigate these procedural issues is again, with respect, inappropriate and serves only to further drive-up costs.

Second, Justice Gilmore's determination in this regard was sensible. Section 135 of the *BIA* provides the Trustee with substantial discretion in how to determine and value claims. The Trustee has not been provided with evidence at this time that would justify allowing the Claim and so cannot do so. If, on the other hand, the Trustee had simply disallowed the Claim, the inevitable result would have been an appeal of that disallowance by Ms. Athanasoulis, and a contested proceeding (whether before an associate judge, a judge, or a claims officer) just like the one we are attempting to hold before Mr. Horton. Indeed, Justice Gilmore made exactly this point at the case conference on May 24, 2022 as your partner Mr. Mighton well knows, without Davies even having to make the submission.

Third, your reliance on *Conforti* is misplaced. That decision concerned whether a trustee could avoid determination of a claim entirely and defer the adjudication to a foreign court. Justice Cavanaugh held that it could not because claims must "be determined and valued through a single claims process under the supervision of a single Bankruptcy Court". That is entirely consistent with the position of the Trustee, and the directions of Justice Gilmore.

Concord Has Created Unnecessary and Belated Conflict with the Trustee

Your allegation that the Trustee has failed to "make a sincere effort to promote mediation" is an example of the kind of revisionism of which you accuse the Trustee. Your allegation is also simply false.

The Trustee began working towards mediation as early as May 9, 2022 when Davies emailed Mark Dunn to propose mediation. The next day, Davies emailed counsel to the LPs, Messrs. Laubman and Soutter, proposing mediation, and followed up on that proposal again on May 11, 2022.

On May 13, 2022, Mr. Laubman delivered a letter indicating that he intended to bring a motion to stay the arbitration and have all outstanding issues as between the LPs and Ms. Athanasoulis determined by the Court. We advised you of this turn of events by email on May 16, 2022, but continued our efforts to promote mediation. Indeed, contrary to your assertion that "we did not receive the expected budget for an attempt to resolve the Athanasoulis claim by mediation", we did exactly that the very next day, on May 17, 2022. Once again, your position to the contrary is simply false. Davies emailed both you and Mr. Mighton as follows:

> "Jesse, any mediation budget is meaningless until I have a better sense of who might be participating and on what terms. If we can largely play a facilitating role and the LPs take the lead with Maria, it could be as little as $25,000. If we have to take the lead it is likely more like $100,000.
>
> To date the LPs have shown no willingness to participate."

At the case conference before Justice Gilmore on May 24, 2022 referred to above, the Trustee again argued for mediation as an alternative to arbitration, and Justice Gilmore's endorsement recorded that "the issues for the arbitration could be the subject of a mediation."

At no time following this case conference did Concord suggest that Trustee or Davies were not pursuing mediation in good faith. Instead, the LPs and Ms. Athanasoulis were considering whether they would be willing to participate in the mediation proposed by the Trustee (not Concord). Mr. Dunn did not advise Davies until May 31, 2022 that his client was willing to consider mediation. That same day, Davies reached out to the LPs to again advocate for mediation, and proposed Doug Cunningham, Bob Blair, Frank Marrocco and Joel Richler as potential mediators. Davies did not propose Jason Wadden because he had until very recently been Mr. Dunn's partner at Goodmans and it seemed highly improbable that the LPs would accept him.

Thereafter, the parties spent several days negotiating potential issues to be subject to arbitration/mediation leading up to a call on June 6, 2022 in which Mr. Mighton again participated. Davies worked diligently during the period before and after the June 6, 2022 call to obtain consensus, with countless emails and telephone calls among the various parties. Davies sent an email on June 6, 2022 summarizing that call, noting (among other things) that:

- "The parties will attempt to schedule a mediation in mid-July [Alex needs instructions on this point].
    - All parties are welcome to participate in the mediation.
    - The mediator will not make a formal proposal at the end of mediation."

Mr. Mighton expressed no objection to this course of action.

The next day, after numerous additional rounds of email correspondence, Mr. Soutter advised that his clients refused to participate in mediation. This, not any lack of effort on the part of the Trustee or Davies, is why no mediation will occur. As described above, Justice Gilmore rejected Concord's submission that the parties should be compelled to mediate over the objection of Mr. Soutter on behalf of his clients, which represent the majority of the LPs. Your suggestion that Davies did not make a sincere effort to promote mediation and that it undermined Concord's efforts in that regard is, again, simply false. Mediation was never a reasonable possibility once one of the key stakeholders had flatly refused to participate and Justice Gilmore stated that she was not prepared to compel unwilling parties to mediate.

Concord's Proposed Alternative Paths Are Unworkable and Unwise

Your first proposed alternative is "an early settlement of the Athanasoulis claim". You assert that "If the Proposal Trustee can write a memorial in the arbitration, it can determine the claim". As a matter of fact, the Trustee cannot write a memorial at this time. Evidence must first be submitted by Ms. Athanasoulis, the LPs, expert witnesses, Dan Casey, and perhaps others. Much of the lay evidence will concern oral conversations of which there is no documentary record. All of this is made more complex by the fact that there appear to be significant credibility issues with both Ms. Athanasoulis and Mr. Casey. As described above, the Trustee is not yet aware of facts that would justify allowing the Claim. At the same time, disallowing the Claim would inevitably result in an appeal and put the parties back in effectively the same place but with additional delay and cost, for the reasons described above (and independently also recognized by Justice Gilmore at the May 24, 2022 case conference).

Your second proposed alternative, as I understand it, is that the Claim be submitted to arbitration subject to amendments to the Proposal as to funding and exposure to costs. I am unaware of the "usual practice of full indemnity costs being awarded in arbitration" to which you refer and indeed Davies advises me that such an order would be extraordinary. In any event, I can advise that Ms. Athanasoulis and the Trustee agreed in advance that the arbitration was to be conducted on a "no costs" basis, and indeed no costs were awarded in respect of Phase I of the arbitration. Mr. Mighton raised the issue of apportioning costs of Phase II before Justice Gilmore on June 8, 2022 and she directed that the "arbitrator may, in his discretion, apportion costs as he deems appropriate". At the present time, the Trustee expects that costs for Phase II of the arbitration will be governed by the same "no costs" regime agreed by Ms. Athanasoulis and the Trustee in Phase I. The Trustee has no intention of modifying that "no costs" regime and will advocate for a continuation of that regime notwithstanding the participation of the LPs in the arbitration. It is therefore unclear to me what agreement on "exposure to costs" you are proposing in light of the arbitration agreement, and there appears to be no realistic prospect of the type of multi-million dollar cost award that you purport to fear.

As to the funding of the arbitration, Mr. Horton has requested a deposit of $100,000. The Trustee and Ms. Athanasoulis have each agreed in principle to fund one-third of this amount. The LPs have refused to do so and we intend to raise this issue at the next case conference before Justice Gilmore on July 29, 2022.

Conclusion

In summary, every step taken by the Trustee has been in consultation with relevant stakeholders (including Concord) and at the direction of Justice Gilmore. Neither I nor Davies understands what the substitution of an alternative Trustee would accomplish given these constraints. What is not reasonable or tenable, however, is to require the Trustee and Davies to proceed in exactly the manner directed by Justice Gilmore, but to have Concord refuse to fund their costs of doing so in breach of the Proposal, the business terms of which by your own admission were negotiated entirely by Cresford and Concord without input from the Trustee.

We are open to a cooperative discussion of these issues with the objective of finding a solution. However, if this matter cannot be consensually resolved, it is the Trustee's intention to bring a motion at the earliest possible date to seek an order that:

i. requires Concord to fund the Trustee's expenses in accordance with the Proposal; and

ii. provides the Trustee with a charge on,

   a. all distributions made to-date to Concord on the claims it purchased in these proceedings, including a reimbursement obligation, to the extent required, and

   b. all future distributions that may be payable to Concord in respect of the claims it purchased in these proceedings.

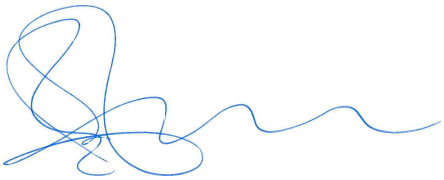
As we have said to Mr. Mighton on many occasions, we agree that we had hoped that practicality would prevail and that compromise could be reached. We have also suggested that your firm bring a motion before the Court to address the source of funding for the litigation of claims commenced by the LPs (and others) on several occasions, if Concord felt that the Proposal should be amended. That has not happened. As it stands, the Proposal requires Concord to fund the Trustee's expenses until claims are resolved.

Other Claims

The focus of your letter is the claim filed by Ms. Athanasoulis. The Trustee reminds you that there are two other claims that remain contested, and which still must be resolved: the claim filed by CBRE and the claim filed by Henry Zhang.

Yours very truly,

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.,
AND NOT IN ITS PERSONAL CAPACITY



Per: Bobby Kofman

BK:rk