Court of Appeal File No. COA-24-CV-0468
Court File No. BK-21-02734090-0031

COURT OF APPEAL FOR ONTARIO

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

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

APPEAL BOOK AND COMPENDIUM OF THE APPELLANT KSV RESTRUCTURING INC. (IN ITS CAPACITY AS PROPOSAL TRUSTEE)

May 9, 2024

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TAB 1

COURT OF APPEAL FOR ONTARIO
FILED / DÉPOSÉ
09 MAY 2024 VB
REGISTRAR / GREFFIER
COUR D'APPEL DE LONTARIO

Court of Appeal File No.COA-24-CV-0468
Superior Court File No. BK-21-02734090-0031

COURT OF APPEAL FOR ONTARIO

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

AND IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

NOTICE OF APPEAL

THE APPELLANT, KSV RESTRUCTURING INC. (the "Proposal Trustee"), IN ITS CAPACITY AS PROPOSAL TRUSTEE, APPEALS to the Court of Appeal for Ontario from the Order and Endorsement of the Honourable Justice Kimmel dated March 19, 2024 (the "**Judgment**"), made at Toronto, Ontario.

THE APPELLANT ASKS that this Court to:

(a) vacate the Judgment which set aside the Proposal Trustee's disallowance of a proof of claim in the amount of $18 million filed by Maria Athanasoulis on the basis of a 20% interest in the profits of the debtors (the "**Profit-Share Claim**"), YG Limited Partnership and YSL Residences Inc. (together, "**YSL**"), in the proposal proceedings of YSL administered under the *Bankruptcy and Insolvency Act*[1] ("***BIA***");

(b) affirm the Proposal Trustee's disallowance of the Profit-Share Claim;

[1] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [*BIA*].

(c) award costs of the appeal to the Proposal Trustee on a partial indemnity basis;

(d) grant, in the event that leave to appeal is required, leave to appeal the Judgment pursuant to section 193(e) of the *BIA*;

(e) grant, to the extent necessary or required, leave to appeal the costs award imposed in the Judgment; and

(f) such further and other relief as the Proposal Trustee may request and this Honourable Court may deem just.

THE GROUNDS OF APPEAL are as follows:

A. Overview

2. The issue on this appeal is whether the Profit-Share Claim filed by Ms. Athanasoulis is a “provable claim” or “claim provable” under sections 121 and 135 of the *BIA*. A provable claim must be a claim by a creditor against the bankrupt debtor for a debt or liability that is not too remote or speculative.

3. The determination of whether a claim filed by a purported creditor in bankruptcy proceedings is a provable claim is a threshold issue. Only provable claims filed by creditors in bankruptcy proceedings need to be valued by a licensed insolvency trustee. A purported creditor that files a claim in the bankruptcy proceeding that is not a provable claim is not entitled to a *pro rata* share of the proceeds distributable from the bankrupt estate.

4. The *BIA* gives broad latitude and powers to a licensed insolvency trustee appointed to administer a bankrupt estate and to determine whether a claim filed by a purported creditor is a provable claim. The powers granted to a trustee in this regard include the power to require further evidence from stakeholders, establish a claims administration process, and allow or disallow any claim.[2]

5. The Proposal Trustee was appointed to administer YSL's proposal proceedings and claims process pursuant to a Court Order dated April 30, 2021. On August 10, 2023, the Proposal Trustee determined that the Profit-Share Claim filed by Ms. Athanasoulis was not a provable claim under the *BIA* and issued a Notice of Disallowance in that regard. The Proposal Trustee disallowed the Profit-Share Claim for two principal reasons: (i) the Profit-Share Claim arising from an oral profit sharing agreement ("**PSA**") for 20% of the profits of YSL was not a claim for the repayment of a debt or liability, but rather in substance a claim in the nature of equity; and in any event, (ii) the Profit-Share Claim was a contingent claim that was premised on the occurrence of an event that was too remote or speculative to constitute a provable claim in the claims process under the *BIA*. Ms. Athanasoulis disagreed with the Notice of Disallowance and brought a motion to appeal the Proposal Trustee's determination.

6. On March 19, 2024, Justice Kimmel issued her Judgment allowing Ms. Athanasoulis's appeal from the Notice of Disallowance. The motion judge held that the Notice of Disallowance was entitled to appellate deference, but found extricable errors of law. Among other things, the motion judge held that: (i) "[t]here is no concept of an equity claim 'in substance' under the *BIA*" and that the Proposal Trustee was not entitled to

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[2] *BIA*, ss. 135(1), 135 (1.1), and 135(2).

disallow the Profit-Share Claim on that basis; and (ii) it was an extricable error of law for the Proposal Trustee to have considered events that occurred after the date of breach of the PSA in assessing whether the Profit-Share Claim was too remote or speculative to be a provable claim. Both of these conclusions constitute reversible error.

7. First, a licensed insolvency trustee *must* assess the true nature of a claim to determine whether it is in substance in the nature of equity (rather than indebtedness) in the course of administering a claims process under the *BIA*.

8. Second, a licensed insolvency trustee *may* consider events arising after an alleged breach of contract to determine whether a claim is too remote or speculative to be a provable claim. A trustee's determination in this regard is entitled to deference.

9. The motion judge erred by misapplying the law and impermissibly replacing the Proposal Trustee's determinations of fact with her own. The Judgment dramatically alters how the law concerning fundamental principles of the administration of estates under the *BIA* and *Companies' Creditors Arrangements Act*[3] – particularly in respect of the claims determination process – is applied in Ontario. This Court should allow this appeal and set aside the Judgment.

B. Background Facts

10. YSL was a single-purpose project entity established to develop an 85-plus storey, 300 metre tall condominium tower located at Yonge and Gerrard Streets in Toronto (the "**YSL Project**"). YSL was part of the Cresford group of companies ("**Cresford**"). Ms.

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[3] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

Athanasoulis was the Chief Operating Officer and second highest ranking executive of Cresford.

11. YSL's capital structure includes approximately $15 million received from limited partners holding Class A Units of the partnership (the "**LPs**"). The LPs are contractually entitled to a return of their $15 million investment plus a 100% return on that investment before Cresford could receive any profits from the YSL Project.

12. Cresford experienced financial difficulties in 2019, and in late 2019 Ms. Athanasoulis was constructively dismissed. In early 2020, Ms. Athanasoulis commenced an action against Cresford asserting, among other things, the Profit-Share Claim based on the oral PSA in which Cresford's principal, Dan Casey, agreed to give her 20% of the profits of all Cresford projects.

13. Ms. Athanasoulis has admitted that she understood that a term of the PSA was that the LPs would receive a return of their capital plus their 100% return before YSL could earn a profit to which the PSA would apply.

14. Ultimately, the YSL Project failed and by Spring 2021 it was insolvent.

15. YSL filed a Notice of Intention to Make a Proposal under the *BIA* on April 30, 2021. At the time it filed for protection under the *BIA*, the forecasted costs to complete the YSL Project exceeded $1 billion. The YSL Project was still at the excavation stage—literally, just a hole in the ground—at the time of insolvency, and even the most ambitious forecasts did not anticipate the Project being completed until 2025 at the earliest.

16. On July 16, 2021, the Ontario Superior Court of Justice approved a proposal pursuant to which the YSL Project was sold to a third party, Concord Properties Development Corp. ("**Concord**"). As consideration for the acquisition of the YSL Project, Concord: (i) assumed the obligation to pay all of the debts owed by YSL to secured lenders and construction lien claimants; (ii) agreed to pay $30.9 million for distribution to unsecured creditors of YSL (the "**Cash Pool**"); and (ii) agreed to pay all of the administrative fees and expenses of the Proposal Trustee to administer the proposal process. The Cash Pool was paid to the Proposal Trustee for distribution in accordance with the claims process established under the court-approved proposal.

17. Under any scenario, there will be no funds left in the Cash Pool for the owners of YSL (*i.e.*, Cresford). Based on all of the evidence received to date, YSL is insolvent and will never generate a profit for Cresford.

(i) The Profit-Share Claim

18. On June 10, 2021, Ms. Athanasoulis submitted a proof of claim to the Proposal Trustee pursuant to section 124 of the *BIA*. In her proof of claim, Ms. Athanasoulis separated her claim into two elements: (i) a claim for damages for wrongful dismissal in the amount of $1 million (the "**Wrongful Dismissal Claim**"); and (ii) a claim for a 20% interest in the profits of YSL, which she alleged totalled $18 million (*i.e.*, the Profit-Share Claim). As explained below, the Wrongful Dismissal Claim has since been settled by the Proposal Trustee and accepted by Ms. Athanasoulis.

19. The Proposal Trustee and Ms. Athanasoulis agreed to a bifurcated arbitration to resolve her claim. The first phase of the arbitration was to resolve the issues of whether:

(a) Ms. Athanasoulis was constructively dismissed; and (b) the PSA was an enforceable agreement. The second phase of the arbitration, if applicable, was intended to address whether the PSA was breached, and whether any damages were owing for any such breach.

20. On March 22, 2022, the arbitrator rendered his award concerning the first phase of the arbitration. He held that Ms. Athanasoulis had been constructively dismissed, that the PSA was an enforceable contract, that the PSA was part and parcel of Ms. Athanasoulis's employment agreement, and that it was repudiated by YSL on the same date that Ms. Athanasoulis was constructively dismissed.

21. Following the release of the phase one arbitral award, Concord successfully brought a motion to prevent the parties from proceeding with the second phase of the arbitration. On November 1, 2022, the Court ordered that the second phase of the arbitration would not proceed, and that the Proposal Trustee was required to determine whether the Wrongful Dismissal and Profit-Share Claims submitted by Ms. Athanasoulis were provable claims pursuant to sections 121 and 135 of the *BIA*.

22. On March 30, 2023, the Proposal Trustee gave Ms. Athanasoulis notice that it was accepting her Wrongful Dismissal Claim as a provable claim in the insolvency proceedings in the amount of $880,000. This amount represents the employment remuneration that Ms. Athanasoulis would have earned from YSL or its affiliates during a 24-month reasonable notice period. Ms. Athanasoulis has not appealed or contested the Proposal Trustee's determination and valuation of her Wrongful Dismissal Claim.

23. With regard to the Profit-Share Claim, the Proposal Trustee delivered a Notice of Disallowance to Ms. Athanasoulis on August 10, 2023. There were two principal bases for the disallowance. First, the Profit-Share Claim is in substance a claim in the nature of equity and is therefore not a provable claim. Second, in any event, the Profit-Share Claim was too remote or speculative to be a provable claim because it was an unliquidated claim that was contingent on the profitable completion of the YSL Project.

24. Given YSL's failure to return a profit, as demonstrated by the fact that the LPs have not and will not recover their investment plus their contractual 100% return, the Proposal Trustee determined that the condition precedent to the Profit-Share Claim (*i.e.*, the existence of profits being earned by YSL) has not and will never transpire because, including other things:

(a) the YSL Project was sold to Concord, and will be completed by Concord rather than YSL or Cresford;

(b) profits earned, if any, upon the completion of the YSL Project by Concord accrue to Concord and not to YSL;

(c) all of the funds paid by Concord to acquire the YSL Project will be distributed to creditors of YSL or the LPs who have a contractual right to a return of their investment before there can be any funds remaining to be distributed to YSL or Cresford; and

(d) from the amount paid by Concord to acquire the YSL Project, there will be no funds left for distribution to Cresford in respect of its partnership interests.

C. The Motion Below and the Judgment

25. By Notice of Motion dated September 8, 2023, Ms. Athanasoulis brought a motion to appeal the Proposal Trustee's disallowance of the Profit-Share Claim.

26. The motion was heard on December 18 and 22, 2023.

27. In her Judgment dated March 19, 2024, the motion judge granted the motion and reversed the Proposal Trustee's disallowance of the Profit-Share Claim. The principal bases for the motion judge's decision were as follows:

(a) the definition of "equity claim" in the *BIA* is "exhaustive" and there is no such thing as an equity claim "in substance" that does not fit within the scope of the applicable statutory definitions. The only equity claims under the *BIA* applicable to a corporation are claims "in respect of shares or rights to acquire shares in a company". Because the Profit-Share Claim is not tied to shares or rights to acquire shares in YSL, it is not an equity claim and must be a provable claim; and

(b) the Profit-Share Claim was not too remote or speculative because the PSA was part and parcel of Ms. Athanasoulis's employment agreement. As such, the PSA was breached when Ms. Athanasoulis was constructively dismissed in December 2019, and YSL's contractual obligation to Ms.

Athanasoulis crystallized on that date. However, YSL's liability to Ms. Athanasoulis for the breach of the PSA is not limited by a reasonable notice period despite the PSA being an integral part of her employment contract. On the contrary, the liability owed by YSL to Ms. Athanasoulis under the PSA runs indefinitely. Consequently, the fact that YSL earned no profit in the 24-month reasonable notice period following Ms. Athanasoulis's dismissal is irrelevant to the assessment of whether the Profit-Share Claim is a provable claim.

28. Both decisions of the motion judge are wrong in law and should be corrected by this Court.

(i) The Motion Judge Erred in Applying the Test for Identifying Equity Claims in Bankruptcy Proceedings

29. The Proposal Trustee, other court officers, and courts must apply a contextual test to determine in a claims process whether a claim submitted by an alleged creditor is in substance a debt claim or a claim in the nature of equity. This determination is important because debt claims rank ahead of equity claims in terms of priority to distributions from a bankrupt estate.

30. The statutory definition of equity claims in the *BIA* is <u>non-exhaustive</u> and the concept of equity claims that fall behind debt claims must be given an expansive meaning to best secure the remedial intentions of Parliament. Case law indicates that the following non-exhaustive list of considerations and factors should be taken into account in determining whether a claim is in substance an equity claim:

(a) the intention of the parties, the purpose of the transaction/agreement, and the parties' reasonable expectations;

(b) the manner in which the transaction/agreement that gave rise to the claim was implemented;

(c) the economic reality of the surrounding circumstances giving rise to the claim;

(d) the presence or absence of fixed repayment dates or interest terms;

(e) whether there is an expectation that payment of the claim depends on the success of the debtor's business; and

(f) the presence of security for the alleged debt or liability.

31. The jurisprudence also demonstrates that the factors above are not to be applied in a mechanical way or as a definitive checklist.

32. The motion judge failed to consider that even in the course of these proposal proceedings, various intercompany loans owed by YSL to related parties were held to be equity claims in substance because of the context surrounding those loans, notwithstanding that they did not meet the statutory definition of "equity interest" or "equity claim" in the *BIA*.

33. The motion judge erred in law when she held that the Proposal Trustee erred in assessing the Profit Share Claim contextually to determine whether it is in substance in the nature of equity. The motion judge also erred in law in determining that the statutory

definition of “equity interest” and by extension “equity claims” is exhaustive, and that any claim that does not fit within those strict confines must be a claim for a debt or liability.

34. The motion judge’s decision on this issue departs dramatically from jurisprudence across Canada concerning the determination of provable claims in bankruptcy proceedings.

(ii) The Motion Judge Erred in Overturning the Proposal Trustee’s Determination that the Profit-Share Claim is Too Remote or Speculative to be a Provable Claim under the *BIA*

35. Licensed insolvency trustees in bankruptcy proceedings have a broad discretion to disallow claims on the basis that they are too remote or speculative, including because the claim is subject to ongoing litigation.

36. The Profit-Share Claim is contingent on the profitability of the YSL Project. The Proposal Trustee acted reasonably and did not commit an extricable error of law or a palpable and overriding error in determining that any claim for profit arising from the YSL Project was too remote and speculative, whether calculated at the date of Ms. Athanasoulis’s dismissal in 2019 or at the time of YSL’s insolvency in 2021.

37. Requiring licensed insolvency trustees to complete complex, costly and time-consuming valuation exercises for highly speculative claims like the Profit-Share Claim will result in significant prejudice to creditors of insolvent estates who will see their distributions held up in years of litigation and potentially diminished recoveries as trustees are forced to incur litigation costs to resolve such speculative claims. This case is a prime example of these dangers.

38. Finally, if the motion judge was correct that the PSA was an integral part of Ms. Athanasoulis's employment agreement, then the motion judge erred by refusing to apply well-established common law holding that damages for wrongful dismissal represent the remuneration that the employee would have earned during the reasonable notice period. The common law requires that the same 24-month reasonable notice period that applied to Ms. Athanasoulis's Wrongful Dismissal Claim be applied to the Profit-Share Claim as well.

39. Instead, the motion judge held that the damages owing to Ms. Athanasoulis under the PSA extended indefinitely because she reasoned that there was no term in the oral PSA requiring damages to be limited to the common law reasonable notice period. The motion judge's reasoning in this regard is backwards. The law is that the common law reasonable notice period applies as a default <u>unless</u> the parties unambiguously contract out of it. Here, the parties did no such thing in their oral employment agreement and oral PSA.

40. Had the motion judge properly applied the law of common law reasonable notice to the Profit-Share Claim, she would have concluded that no damages in respect of the Profit-Share Claim would be owing to Ms. Athanasoulis because YSL earned no profit during Ms. Athanasoulis's 24-month reasonable notice period that extended from December 2019 to December 2021. As such, Ms. Athanasoulis's Profit-Share Claim for amounts that would have accrued outside the reasonable notice period is too remote or speculative. The Profit-Share Claim is therefore not a provable claim under sections 121 and 135 of the *BIA*.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

41. An appeal lies to the Court of Appeal as of right pursuant to sections 183(2), 193(a), and 193(c) of the *BIA*, including because:

(a) the appeal concerns future rights under section 193(a) of the *BIA* because the Judgment awards Ms. Athanasoulis an indefinite right to future profits from YSL; and

(b) the appeal concerns property that exceeds $10,000 in value under section 193(c) as the Judgment grants Ms. Athanasoulis a claimed right to property valued at up to $18 million.

42. In the alternative, if leave to appeal is required, this Court should grant leave to appeal the Judgment under section 193(e) of the *BIA*, including because:

(a) the issues raised in this appeal are of significance to bankruptcy practice generally. In particular, the decision in the Judgment holding that the statutory definitions of "equity interest" and "equity claims" in the *BIA* are exhaustive and displace (as opposed to supplement) the common law runs contrary to longstanding case law;

(b) the issues raised in this appeal are of significance to this proposal proceeding because the Profit-Share Claim, if allowed in any material manner, will dramatically reduce or entirely eliminate the amounts available to be distributed to other creditors and/or the LPs;

(c) the appeal is not frivolous. On the contrary, it has significant merit;

(d) the appeal will not unduly hinder the progress of this proposal proceeding. On the contrary, the appeal may effectively result in an end to the proceedings; and

(e) the appeal seeks to correct significant errors of law in the Judgment.

March 28, 2024

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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

Court of Appeal File No. ___________________
Superior Court File No. BK-21-02734090-0031

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPEAL

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TAB 2

Court File No. BK-21-02734090-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	TUESDAY, THE 19TH
	)	
JUSTICE KIMMEL	)	DAY OF MARCH, 2024

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

AND IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

ORDER

THIS MOTION, made by the Moving Party, Maria Athanasoulis, for an Order allowing an appeal of the Notice of Disallowance issued by the Responding Party, KSV Restructuring Inc. (the "**Proposal Trustee**"), on August 10, 2023 was heard on December 18 and 22, 2023 at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

ON READING the motion record dated September 8, 2023, supplementary motion record dated October 31, 2023, factum of the Moving Party dated October 27, 2023, reply factum of the Moving Party dated December 13, 2023, oral argument compendium of the Moving Party dated December 18, 2023, supplementary oral argument compendium of the Moving Party dated December 22, 2023, joint factum of the Class A Limited Partners ("**Class A LPs**") dated November 22, 2023, oral argument compendium of the Class A LPs dated December 15, 2023, costs outline of the Moving Party dated December 28, 2023, the two costs outlines of the Class A LPs dated December 18, 2023, responding record of the Proposal Trustee dated October 16, 2023, supplemental responding record

of the Proposal Trustee dated November 10, 2023, second supplemental responding record of the Proposal Trustee dated December 14, 2023, factum of the Proposal Trustee dated November 10, 2023, oral argument compendium of the Proposal Trustee dated December 15, 2023, and costs outline of the Proposal Trustee dated December 18, 2023.

ON HEARING the submissions of counsel for the Moving Party, counsel for the Proposal Trustee, and counsel for both groups of Class A LPs.

1. **THIS COURT ORDERS** that the Notice of Disallowance of the "**Profit Share Claim**" (as defined in paragraph 3(b) of the reasons for decision reported at *YG Limited Partnership and YSL Residences Inc. (Re)*, 2024 ONSC 1617 (the "**Reasons**")) dated August 10, 2023 is set aside.

2. **THIS COURT DECLARES** that the Profit Share Claim is not an equity claim, and is a provable claim within the meaning of s. 121(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

3. **THIS COURT ORDERS** that the Profit Share Claim is entitled to priority over the claims asserted by the Class A LPs.

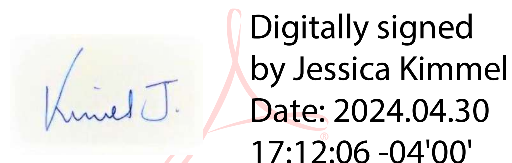
4. **THIS COURT DECLARES** that the Profit Share Claim against "**YSL**" (as defined in paragraph 1 of the Reasons) is a valid claim and ought to be allowed in an amount to be determined by further order of this court or by such other process as the court may direct.

5. **THIS COURT ORDERS** that the Moving Party shall be paid forthwith costs of this motion in the amount of $169,715.93 plus applicable taxes and total disbursements of $6,812.08 (inclusive of HST) by the Proposal Trustee, subject to further directions from

the court to be provided at a case conference, if requested, regarding by whom, in what proportions and from what source these costs are to be paid.

6. **THIS COURT DIRECTS** that the parties shall arrange a case conference before Justice Kimmel for the purpose of making submissions and receiving directions regarding the process for determination of the amount (valuation) of the Profit Share Claim. Concord Properties Development Corp. (or its counsel) shall also attend this case conference.

7. **THIS COURT DECLARES** that the ongoing civil proceedings among and between the Moving Party and the Class A LPs and members of the "**Cresford Group**" (as defined in paragraph 1 of the Reasons) may continue, subject only to the determinations in the Reasons regarding the validity, provability and priority of the Profit Share Claim.



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

Court File No. BK-21-02734090-0031

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER

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Lawyers for the Appellant, KSV Restructuring Inc., in its Capacity as Proposal Trustee

TAB 3

CITATION: YG Limited Partnership and YSL Residences Inc. (Re), 2024 ONSC 1617
COURT FILE NO.: BK-21-02734090-0031
DATE: 20240319

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

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

BEFORE: KIMMEL J.

COUNSEL: *Mark Dunn and Brittni Tee*, Lawyers for the Appellant, Maria Athanasoulis

Matthew Milne-Smith and Chenyang Li, Lawyers for the Proposal Trustee, KSV Restructuring Inc.

Shaun Laubman, Lawyers for 2504670 Canada Inc., 8451761 Canada Inc. and Chi Long Inc.

Alexander Soutter, Lawyers for 2576725 Ontario Inc., Yonge SL Investment Limited Partnership, 2124093 Ontario Inc., E&B Investment Corporation, SixOne Investment Ltd., Taihe International Group Inc.

HEARD: December 18 and 22, 2023

ENDORSEMENT
(APPEAL FROM DISALLOWANCE OF CLAIM)

The Appeal

[1] The debtor YSL Residences Inc. ("YSL") owned a development property (upon which it was intended that an 85-story retail and condominium complex in downtown Toronto would be built in two stages, the "YSL Project"). YSL was the general partner and held the YSL Project as bare trustee for the YG Limited Partnership ("YG"). Maria Athanasoulis was employed by YSL and the Cresford group of companies, owned and controlled by Daniel Casey and his family members (the "Cresford Group").

[2] YSL and YG filed a Proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") and were deemed bankrupt on April 21, 2021. The Proposal Trustee, KSV Restructuring Inc. ("Proposal Trustee"), was appointed in the context of the Proposal proceedings.

[3] Maria Athanasoulis filed a proof of claim against YSL for two unsecured claims (together, the “Athanasoulis Claim”):

a. $1 million in respect of damages for wrongful (constructive) dismissal (the “Wrongful Dismissal Claim”); and

b. $18 million in respect of damages for breach of an oral agreement that Ms. Athanasoulis would be paid 20 percent of the profits earned on the YSL Project (the “Profit Share Claim”).

[4] In accordance with the established claims procedure,

a. On March 30, 2023, the Proposal Trustee delivered to Ms. Athanasoulis notice that it would accept her Wrongful Dismissal Claim in the amount of $880,000.39.

b. On August 10, 2023, the Proposal Trustee delivered to Ms. Athanasoulis a Notice of Disallowance of her $18 million Profit Share Claim (the “Disallowance”).

[5] The Proposal Trustee’s partial allowance of the Wrongful Dismissal Claim has not been challenged. This is an appeal (by way of motion under the BIA) from the Proposal Trustee’s Disallowance in full of Ms. Athanasoulis’ $18 million Profit Share Claim.

[6] Ms. Athanasoulis moves for an order setting aside the Disallowance of her Profit Share Claim and directing a reference to quantify the value of her damages, and ancillary relief with respect to the validity, value and priority of that claim, among other relief. The Disallowance is ordered to be set aside and certain of the other requested relief is granted (as detailed at the end of this endorsement), for the reasons that follow.

The Proposal Proceedings

[7] YG and YSL (together in the context of these proceedings referred to as “YSL” or the “Debtor”) filed Notices of Intention to Make a Proposal under the BIA, which were procedurally consolidated pursuant to an Order dated May 14, 2021. The original filing and deemed date of bankruptcy was on April 30, 2021.

[8] An Amended Third Proposal dated July 15, 2021 (the “Proposal”) was supported by the unsecured creditors of the Debtors and approved by this court on July 16, 2021. Under the Proposal, the Proposal Trustee was authorized to deal with various claims against the Debtor, some of which (such as the Athanasoulis Claim) were disputed.

[9] The Proposal provided that Concord Properties Developments Corp. (the “Sponsor”) would acquire the YSL Project in exchange for three principal forms of consideration: (i) the Sponsor would assume 100% liability for of all secured creditor claims and construction lien claims; (ii) the Sponsor would pay to the Proposal Trustee a pool of cash of $30.9 million to be distributed to unsecured creditors with proven claims; and (iii) any residual amounts left unclaimed from the cash pool to be distributed to equity stakeholders through the limited partners or as they may direct in accordance with the limited partnership agreements.

[10] These equity stakeholders include the Class A limited partners (unitholders) of the YG Limited Partnership (the "LPs"). The LPs include 2504670 Canada Inc., 8451761 Canada Inc. and Chi Long Inc. (collectively sometimes referred to as the "250 LPs"), and 2576725 Ontario Inc., Yonge SL Investment Limited Partnership, 2124093 Ontario Inc., E&B Investment Corporation, SixOne Investment Ltd., and Taihe International Group Inc. The LPs collectively advanced $14.8 million to the Debtors in exchange for Class A Preferred units in YG Limited Partnership.

[11] The Athanasoulis Claim is an unsecured claim that, if proven, would be funded from the $30.9 million pool of cash that has been set aside to satisfy proven unsecured creditor claims.

[12] Dunphy J. made the following findings (in *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206, 93 C.B.R. (6th) 139) at the time the Proposal was approved:

a. 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 (para. 17).

b. The Proposal 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 (para. 21).

c. 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 (para. 33(a)).

[13] Dunphy J. made certain findings in his decision not to approve an earlier proposal put forward by the Debtors, in *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178, 93 C.B.R. (6th) 109 as follows:

a. 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 (para. 76).

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

The Arbitration

[14] The Proposal Trustee and Ms. Athanasoulis agreed to submit the Athanasoulis Claim to arbitration. The arbitration was to proceed in two stages. The first stage proceeded and Arbitrator William Horton issued an initial award on March 22, 2022 (the "Arbitral Award") in which he held that an oral Profit Sharing Agreement had been entered into as a term of Ms. Athanasoulis' employment (the "Profit Sharing Agreement") entitling her to 20% of the profits earned on all

current and future Cresford projects, including the YSL Project.[1] This Profit Sharing Agreement was expected to represent fair compensation for her existing and expected future contributions to the profitability of the projects.

[15] Arbitrator Horton found that the Profit Sharing Agreement was not a standalone agreement. It was an existing part of an integral contract of employment that had been acted on by both sides for fifteen years as Ms. Athanasoulis worked her way up through the ranks of the Cresford Group.

[16] The Arbitrator found the key terms of the Profit Sharing Agreement as they pertain to the YSL Project to be the following:

a. Profits were to be calculated, on a good faith basis, based on the pro forma budgets prepared by Cresford using revenues less expenses for each project (updated from time to time as expenses were incurred and circumstances evolved). It was understood that the realized profits for each project would ultimately have to be accounted for with third party investors.

b. Profits could not be artificially reduced by “bad faith” transactions.

c. It was expected to take several years (possibility 5–7 years) in the normal course to complete a project like the YSL Project. This implied a mutual commitment on both sides.

d. Ms. Athanasoulis’ profit-share interest was to be paid by YSL.

e. The Profit Share was to be paid to Ms. Athanasoulis when profits were earned, usually at the completion of a project.

f. There was no requirement that Ms. Athanasoulis remain employed at the time that a profit was earned.

[17] Arbitrator Horton made certain findings about Ms. Athanasoulis’ employment history with the Cresford Group. She began working at the Cresford Group in 2004 as a Manager, Special Projects. She had limited prior education or experience. By 2013 she had worked her way up to one of the two senior officer positions reporting directly to the founder, president and sole director, Daniel Casey. She served as an officer of various companies in the Cresford Group and was the Vice President and Secretary of YSL.

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[1] The Arbitrator found that there had been an earlier profit sharing agreement dating back to 2014 to pay Ms. Athanasoulis an agreed upon 10% of the profits from a successfully completed project that was then expanded to cover other future projects and eventually increased to 20%.

[18] Arbitrator Horton found that Ms. Athanasoulis was constructively dismissed by YSL in December 2019. She was, at the time of her termination in December 2019, the President and COO of the Cresford Group, and an employee and officer of YSL.

[19] The Proposal Trustee and Ms. Athanasoulis agree that they are bound by the findings made by the Arbitrator in the Arbitral Award.

[20] In her testimony during the Arbitration, Ms. Athanasoulis testified in response to questions about the terms of the oral Profit Sharing Agreement and specifically about how the profit would be calculated under that agreement: "it would be calculated after paying the [specific project] costs and after the equity was repaid to the LP investors."

[21] In the second stage of the Arbitration, the Proposal Trustee and Ms. Athanasoulis had intended (and agreed) that the Arbitrator would determine any damages payable arising out of his findings in the first stage (as reflected in the Arbitral Award) regarding the Profit Sharing Agreement and Ms. Athanasoulis' constructive dismissal, corresponding with her Profit Share Claim and her Wrongful Dismissal Claim.

[22] However, after the first stage Arbitral Award was released, as a consequence of opposition raised by the LPs and the Sponsor (who had not been privy to the original submission to arbitration), this court ordered in the Funding Decision (described below) that the second phase of the Arbitration would not proceed. Instead, the court directed the Proposal Trustee to determine the Athanasoulis Claim. It is the Proposal Trustee's initial determination, and Disallowance, of the Profit Share Claim that is the subject of this appeal.

The Funding Decision: Directions for the Proposal Trustee to Determine the Athanasoulis Claim

[23] The Sponsor's obligation to fund administrative fees and expenses incurred by the Proposal Trustee in connection with the resolution of the Athanasoulis Claim was determined in a November 1, 2022 endorsement: *YG Limited Partnership (Re)*, 2022 ONSC 6138, 5 C.B.R. (7th) 389 (the "Funding Decision").

[24] The Funding Decision determined that the Sponsor was not obligated to fund phase two of the arbitration in which Ms. Athanasoulis and the Proposal Trustee had agreed to participate. That conclusion was reached on the basis that phase two of the proposed arbitration improperly delegated to the Arbitrator the responsibility of determining the Athanasoulis Claim. Neither the Sponsor nor the LPs had been privy to the submission to Arbitration. For different reasons, they each objected to the Arbitration proceeding to phase two.

[25] The Funding Decision directed the Proposal Trustee to determine and value the Athanasoulis Claim in a timely and principled manner based on the findings in the Arbitral Award and building on them. Upon the request of the Proposal Trustee, the court provided advice and directions concerning the process for determining of the Athanasoulis Profit Share Claim and any appeal therefrom (the "Claim Procedure"). See *YG Limited Partnership (Re)*, 2023 ONSC 4638 (the "Claims Procedure Endorsement").

[26] The LPs were granted standing to participate in the Claim Procedure for the determination of the Profit Sharing Claim and any appeal thereof, subject to the discretion and further direction of the appeal judge. The rationale and terms for the standing granted to the LPs is described at paragraphs 55 and 56 of the Claims Procedure Endorsement:

> [55] Here, the LPs have been afforded standing to provide evidence and make submissions to the Proposal Trustee in connection with the Notice of Determination regarding the "provability" of the Profit Share Claim. They have a unique perspective to offer with respect to their argument that the Profit Share Agreement should be found to be unenforceable because it is contrary to the Limited Partnership Agreement (a ground not relied upon by the Proposal Trustee but raised and therefore forms part of the record for appeal purposes that Ms. Athanasoulis must respond to).
>
> [56] The LPs may also have a unique perspective on the preliminary question of whether the Profit Share Agreement can be enforced in the face of Ms. Athanasoulis' admissions that she agreed with the LPs that they would be paid out before her. These unique perspectives have been placed before the Proposal Trustee; Ms. Athanasoulis will be permitted to respond to and challenge them, and they will be "in play" on any appeal.

[27] The Proposal Trustee had indicated that there were threshold issues that it wished to raise that did not involve an in-depth valuation of the Profit Share Claim and that might be dispositive. The parties agreed that they should not be required to go to the expense of fully briefing the valuation issues, with experts if deemed appropriate, until those threshold issues had been considered.

[28] That is how the Proposal Trustee has proceeded, leading to its Disallowance of the Profit Share Claim. The Claims Procedure Endorsement (at paras. 44 and 63) indicated that it was not expected that there would be any material or submissions at this time regarding the future oriented (or "but-for") damages, whether calculated at the repudiation date or the date of bankruptcy. If Ms. Athanasoulis is successful on her appeal of any disallowance of the Profit Share Claim, the Claims Procedure Endorsement directs the parties to make an appointment for a case conference to seek directions about the process for the determination of the more complex valuation questions that may require expert input.

The Grounds for the Disallowance and Grounds of Appeal

[29] Following the Funding Decision and the Claims Procedure Endorsement, and the implementation of the procedures contemplated thereby, the Proposal Trustee issued its Notice of Disallowance in respect of the Athanasoulis Claim. The Proposal Trustee's stated grounds in the Notice of Disallowance for disallowing the Profit Share Claim were that:

a. It is not a debt obligation or liability of YSL but rather, in substance, an equity claim, that is not a provable claim under the BIA.

b. There was no profit to be shared, because none had been earned by YSL as of the date of either the termination of Ms. Athanasoulis' employment (December 2019) or the date of bankruptcy (April 2021). Ms. Athanasoulis cannot claim a share of a non-existent profit.

c. Further, to the extent it is based upon projected future profitability, it is a contingent claim for a lost profit share that is far too remote to be capable of being considered a provable claim. Nor can it be the subject of any meaningful and reasonable computation, and it is thus valued at zero.

d. It is subordinated to the LPs' entitlements because she was only to receive her share of the profits when Cresford did, which would occur only after the LPs had been repaid their capital and earned their entire preferred return. The LPs have not, and due to lack of available funds will not, receive all such amounts.

[30] The following errors are identified in Ms. Athanasoulis' September 8, 2023 Notice of Motion appealing from the Trustee's Disallowance of her Profit Share Claim:

a. The Trustee erred in its conclusion that the Profit Share Claim is not a claim provable in bankruptcy, having erroneously characterized it as:

   i. "in substance" an "equity claim" without regard to the statutory definition of an "equity claim" in the BIA, which provides that an equity claim can exist if, and only if, it is "in relation to" an "equity interest";

   ii. a contingent claim that is too speculative or remote.

   (Collectively, the "Provable Claim Errors")

b. The Trustee erred in valuing the Profit Share Claim at zero:

   i. based on the erroneous assumption that Ms. Athanasoulis is only entitled to 20% of the actual profits earned by YSL or that YSL is capable of earning, taking into consideration its subsequent insolvency, whereas damages for breach of contract must put the injured party in the position she would be in if the other party had met its contractual obligations, calculated at the time of the breach or repudiation of the contract without regard to subsequent events;

   ii. without even attempting to calculate either YSL's revenues or expenses to determine its profits earned on the relevant date (of repudiation), despite the existence of contemporaneous evidence about the prospect of a sale of the YSL Project or YSL's contemporaneous pro forma projections that indicated YSL's expectation of profits at that time.

   (Collectively, the "Claim Valuation Errors")

c. The Trustee erred in concluding that Ms. Athanasoulis is not entitled to be paid anything unless and until the LPs are paid in full, thereby subordinating her Profit Share Claim to the LPs equity claims.

(The "Subordination Error")

[31] The alleged errors addressed in the written and oral submissions made on behalf of Ms. Athanasoulis on the appeal generally fall within the originally identified above three categories of errors identified in the Notice of Motion on appeal. These core errors are focused on the extricable errors of law that were identified during oral submissions and subject to review on the standard of correctness. To the extent that they depend upon mixed errors of fact and law, Ms. Athanasoulis argues that they reflect unreasonable findings and palpable and overriding errors that warrant this court's intervention.

Economic/Financial Implications

[32] The available pool of funds set aside upon the sale to the Sponsor under the approved Proposal will be paid first to satisfy accepted claims of all unsecured creditors with proven claims and then the remaining balance will be paid to the LPs. The total amount of other unsecured claims is not yet known, but the Proposal Trustee does not expect them to come close to the available $30.9 million in the pool. The estimate at the time of this appeal was that the total of other unsecured claims that the Trustee has accepted add up to approximately $14.9 million. However, even if the Profit Share Claim is not allowed (or valued at or close to zero) and the LPs receive the balance of the pool of available funds, it is not expected to cover the full amount of their claims.

[33] If Ms. Athanasoulis is found to have a provable claim, the available pool of funds will be distributed *pro rata* to her (based on the value of her claim once determined) and to the other unsecured creditors whose claims have been allowed. If the Profit Share Claim is allowed and is valued at or close to what has been claimed, the other unsecured creditors will receive something (although possibly not the full amount of their allowed claims) but it is not expected that the LPs will be repaid any of their investments in this scenario.

[34] The "either or" scenario comes down to the competing claims of the LPs and Ms. Athanasoulis if her Profit Share Claim is allowed and is valued as she suggests. However, there are variables in the valuation of the Profit Share Claim that could lead to amounts being paid to both, for example under the alternative valuation scenario that Ms. Athanasoulis proposes of $7.8 million the unsecured creditors (including Ms. Athanasoulis) and the LPs may all receive something from the pool.

The Standard of Review

[35] The parties agree that is a "true appeal" of the Proposal Trustee's determination.

[36] Although a reasonableness standard of review was suggested by both Ms. Athanasoulis and the Proposal Trustee as one that may apply in Ontario, I have concluded that the appropriate standard of review is palpable and overriding error absent an extricable question of law, which is reviewable on a correctness standard. See *8640025 Canada Inc. (Re)*, 2018 BCCA 93, 8 B.C.L.R. (6th) 225 at para. 65. See also *Re Casimir Capital*, 2015 ONSC 2819, 25 C.B.R. (6th) 149, at para.

33 regarding the standard of review for extricable errors of law. Ms. Athanasoulis has the onus of demonstrating such errors.

[37] Earlier cases dealing with the standard of review of a decision of a trustee disallowing a claim under the BIA on a reasonableness standard (including cases in Ontario, such as *Re Charlestown Residential School*, 2010 ONSC 4099, 70 C.B.R. (5th) 13, at para. 17) followed the earlier case of the British Columbia Court of Appeal, in *Galaxy Sports Inc. (Re)*, 2004 BCCA 284, 29 B.C.L.R. (4th) 362, at paras. 39 and 43. It was brought to the court's attention in the course of the full briefing on this appeal that the line of reasoning emanating from *Galaxy Sports* has been superceded by the later decision of the same (BC) Court of Appeal in *864*.

[38] While the decision in *864* deals specifically with appeals from decisions of claims officers under the *Companies' Creditors Arrangement Act* ("CCAA"), applying the same standard of review to appeals brought in respect of determinations of claims made pursuant to s. 135(4) of the BIA would accord with the Supreme Court of Canada's directive that CCAA and BIA proceedings should be treated as one "integrated body of insolvency law". See *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at paras. 76–78.

[39] The Ontario Court of Appeal has made reference to the standard of review of determinations of BIA claims applied in *Galaxy Sports*, but also observed that "reasonableness" standard has not been explicitly adopted in Ontario. See, for example, *Credifinance Securities Limited v. DSLC Capital Corp.*, 2011 ONCA 160, 277 O.A.C. 377, at paras. 24–27). The Supreme Court's decision in *Canada v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 which held that statutory appeals from administrative decision makers are subject to the ordinary appellate review standard as opposed to a reasonableness standard, supports the evolved reasoning of the British Columbia Court of Appeal in the more recent decision in *864*.

[40] Ms. Athanasoulis contends that there are errors of law underpinning all of the grounds of appeal, which are reviewable on the standard of correctness. Ms. Athanasoulis further contends that to the extent any errors are not found to be reviewable on the correctness standard because they are dependent upon factual determinations or the application of the law to the facts, those errors fail under both the reasonableness and the palpable and overriding error standards.

[41] The following analysis applies the standard used in *864* of palpable and overriding error to any of the identified errors not found to be extricable errors of law (which are reviewed applying the standard of correctness). However, the outcome would have been the same if the errors not subject to the correctness standard had been reviewed on the reasonableness standard.

Summary of Outcome

[42] Ultimately, while the court does so cautiously and only sparingly, I have concluded that the grounds for the Disallowance are predicated upon a fundamental and extricable error in the mischaracterization of the nature of the Profit Share Claim as an equity claim contingent upon existing or future profits that have not been, and will now never be, realized. This mischaracterization of the Profit Share Claim has led to further compounding errors, in that the Disallowance also failed to properly consider and assess the type of loss that the Profit Share Claim seeks to recover, which is in damages for breach of contract that crystalized when Ms.

Athanasoulis was constructively dismissed in December 2019 (once she accepted the repudiation and sued for damages).

[43] As a result of these mischaracterizations of the nature of the Profit Share Claim and the type of loss that it entails, the Proposal Trustee did not to attempt to value it. That is the valuation exercise that the Claims Procedure Decision contemplated might be required if the threshold "provability" determinations were found to be in error, which they have been.

[44] The Profit Share Claim must now be valued, even if it might be difficult to do so and might depend upon expert inputs to quantify her damages. It is not guaranteed that the result of that process will be that its value is established at, or even near, the levels that Ms. Athanasoulis has claimed; however, that exercise cannot be avoided by the Proposal Trustee's threshold determinations that were predicated upon fundamental mischaracterizations of the nature of the Profit Share Claim and the appropriate timing and measure of the loss.

[45] The court understands why the Proposal Trustee proposed to proceed in the manner it did, by its initial determination of the Profit Share Claim based on somewhat complex threshold "provability" considerations that might have saved considerable time and expense had the Proposal Trustee's characterizations been correct in law. However, they were not. The Profit Share Claim is significant, and its ultimate determination has implications for other creditors (not just the LPs). Thus, the further time and effort to determine this claim will need to be invested by the Proposal Trustee.

[46] The court also understands why the Proposal Trustee and Ms. Athanasoulis originally agreed to arbitrate the Athanasoulis Claims given the complexity of the issues underlying the necessary determinations. However, that is water under the bridge in light of the objections raised by the Sponsor and the LPs in conjunction with the Funding Decision (and the later Process Decision). Whether this procedure of having the Proposal Trustee do its best to determine and value the Athanasoulis Claims and then have the court review those determinations on appeal proves to be less expensive remains to be seen, but, absent further agreement, this is the process that the parties are now engaged in. It is more transparent for the stakeholders.

Analysis: Allege Errors of the Proposal Trustee in the Notice of Disallowance

[47] Each of the categories of errors alleged by Ms. Athanasoulis to have been made by the Proposal Trustee will be addressed in turn, followed by a discussion of the additional points raised by the LPs that do not come directly within the parameters of the alleged errors.

A) The Provable Claim Errors

[48] Did the Proposal Trustee err in its conclusion that the Profit Share Claim is not a claim provable in bankruptcy, on the basis that:

a. it is "in substance" an "equity claim"; and/or

b. it is a contingent unliquidated claim that is too speculative or remote.

[49] A "provable claim" is defined in s. 121(1) of the BIA, which provides: "All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt ... shall be deemed to be claims provable in proceedings under this Act."

[50] Sections 121(2) and 135(1.1) or the BIA require the Proposal Trustee to determine whether any contingent claim or unliquidated claim is a provable claim, and, if it is a provable claim, to value it.

Equity Claim

[51] An equity claim is not a debt or liability and is not a provable claim under the BIA.

[52] An "equity claim" is defined in s. 2 of the BIA to be a claim "that is in respect of an equity interest." Section 2 of the BIA states that an equity interest means "a share in the corporation, or warrant or option or another right to acquire a share in the corporation...".

[53] When a word or phrase is defined with reference to what it "means" that has been held to signal that this definition is intended to be exhaustive, in accordance with well-accepted principles of statutory interpretation. See *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 34, [2012] 2 S.C.R. 231, at para. 42; *Alexander College Corp. v. R.*, 2016 FCA 269, 410 D.L.R. (4th) 299, at para 14.

[54] The definition of "equity claim" in s. 2 goes on to provide, by way of example, a non-exhaustive list of types of equity claims, including a claim for a dividend, return of capital, redemption or retraction, monetary loss resulting from the ownership, purchase or sale of an equity interest, or a claim for contribution or indemnity in respect of these other types of claims. However, all of these examples are tied to the originally essential component of the definition that it be "a claim that is in respect of an equity interest", meaning a share (or warrant or option to acquire a share).

[55] The Trustee asserts in its Notice of Disallowance that it "does not consider it relevant that Ms. Athanasoulis does not hold equity in YSL". Its position on this appeal is that the Profit Share Claim is "in substance" an equity claim. It argues that since the Profit Share Claim is derivative of the residual "profit" or equity that would be left for the owners (the Class B Unitholders) it is a claim inextricably linked to and therefore in respect of an ownership interest even if not itself an ownership interest.

[56] The Proposal Trustee relies on the Ontario Court of Appeal's decision in *Sino-Forest Corporation (Re)*, 2012 ONCA 816, 114 O.R. (3d) 304, at para. 44, which states that the term equity interest should be given an expansive meaning. In that case, the claim by the auditors for contribution and indemnity was derivative of a claim against them by corporate shareholders (equity holders). A claim for contribution and indemnity in respect of a claim for a monetary loss resulting from the ownership, purchase or sale of shares falls squarely within the examples of equity claims expressly provided for in the definition of equity claims under s. 2 of the BIA. In *Sino Forest*, the Court's expanded view was in its recognition that the auditors' claim grounded in a cause of action for breach of contract did not change its essential character as a claim for contribution and indemnity in respect of shareholder (equity) claims.

[57] In each case cited by the Proposal Trustee where a claim has been found to be an equity claim, it was in some way related to a direct or indirect equity interest within the meaning of the BIA.

a. *Sino-Forest* concerned a claim for contribution and indemnity relating to a shareholder class action.

b. *Bul River Mineral Corporation (Re)*, 2014 BCSC 1732, 16 C.B.R. (6th) 173 concerned a shareholder's claim against the debtor that had been reduced to a court judgment before the bankruptcy filing.

c. *Return on Innovation v. Gandi Innovations*, 2011 ONSC 5018, 83 C.B.R. (5th) 123 involved a claim relating to the recovery of a $50 million dollar equity investment through an arbitration.

d. *US Steel Canada Inc. (Re)*, 2016 ONSC 569, 34 C.B.R. (6th) 226 concerned a claim relating to the recovery of loans advanced by the parent company/sole shareholder of the debtor.

e. *Tudor Sales Ltd. (Re)*, 2017 BCSC 119, 44 C.B.R. (6th) 45 concerned a claim relating to advances made by a shareholder of the debtor and its sole officer and director.

f. *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178, 93 C.B.R. (6th) 109 (Dunphy J.'s judgment declining to approve the proposal, referred to earlier) concerned claims brought by parties related to Cresford that had an equity interest in the YSL Project.

[58] The suggested approach of the Proposal Trustee relies upon *Re Central Capital Corp.* (1996), 27 O.R. (3d) 494 (C.A.), at para. 67 and *Re Canada Deposit Insurance Corp.* [1992] 3 S.C.R. 558). These cases were decided before there was a statutory definition of "equity claim". They seek to characterize a claim as debt or equity by looking at "the surrounding circumstances to determine whether the true nature of the relationship is that of a shareholder who has equity or whether it is that of a creditor owed a debt or liability by the company". In *Sino-Forest* (at para. 53) the court stated that the statutory definition of equity claim "is sufficiently clear to alter the pre-existing common law". Thus, the earlier approach adopted in these cases is not instructive.

[59] Even if profit sharing has equity features, there is no evidence or suggestion that the Profit Sharing Agreement granted, or in any way relates to the granting of, shares or rights to acquire shares in YSL or any of the Cresford Group of companies to Ms. Athanasoulis. There is no evidence or finding that Ms. Athanasoulis was a shareholder or held any right to become a shareholder. Nor is her claim for contribution and indemnity in respect of ownership or equity rights.

[60] The only connection to equity or ownership is her acknowledgement that the Profit Share Claim is to be calculated as a percentage of the profits that would otherwise be payable to the

Cresford Group Class B unitholders[2] comprised of Mr. Casey and his family members (the ultimate owner/developer of the YSL Project and the Cresford Group). Ms. Athanasoulis' testimony at the Arbitration was that the profit under the Profit Sharing Agreement "would be calculated after paying the [specific project] costs and after the equity was repaid to the LP Investors". She testified that profits were to be calculated as revenues less expenses, consistent with the YSL Project pro formas, which included among the other expenses or project costs the repayment of funds advanced by the LPs.

[61] A claim by terminated employees for damages in respect of incentive-based compensation, including where such compensation is calculated with reference to sales or profitability, can be, and has been, successfully pursued as a claim for damages against a bankrupt company. See *Noble v. Principal Consultants Ltd. (Trustee of)*, 2000 ABCA 133, 17 C.B.R. (4th) 274, at paras. 41–42.

[62] The fact that the parties chose to tie the quantification of the amounts payable under the Profit Sharing Agreement to the YSL's (and the Cresford Group') performance (profits, after deducting, or net of, amounts payable to the LPs) does not transform a contractual obligation or debt to Ms. Athanasoulis into an equity claim within the meaning of the BIA, even if the practical effect of this would have been that payments under the Profit Sharing Agreement in the normal course would be made after payments to the LPs.

[63] The present situation did not arise in the normal course and was not specifically contemplated when the Profit Sharing Agreement was made. As the Arbitral Award found (at para. 147), "it is not essential to the enforceability of the agreement that every option regarding the calculation of profits be affirmed or negated" at the time it is made.

[64] The definition of equity claim under the BIA is clearly and unequivocally a claim in respect of shares or rights to acquire shares in a company. There is no suggestion that the Profit Share Claim is in respect of that type of interest. At best, it is a claim to be calculated based on the residual profits remaining in YSL that would otherwise be available to be distributed or paid to the Cresford Group, the ultimate owners or equity holders. The calculation of this claim based on profits is separate and distinct from a claim in respect of shares or the right to acquire shares.

[65] The concept of an equity claim "in substance" was introduced into the Notice of Disallowance by the Proposal Trustee. There is no concept of an equity claim "in substance" under the BIA, even giving the definition of equity claim an expansive meaning.

[66] The Proposal Trustee made an extricable error in law by expanding the definition of "equity claim" under the BIA to a claim that is not in respect of an equity interest (shares or the right to

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[2] These Cresford Group members are referred to by the parties sometimes as shareholders and sometimes as unitholders, but always with the understanding that they have the status of shareholders or equity holders for purposes of this decision.

acquire shares or an ownership interest in YSL) within the meaning of s. 2 of the BIA. This determination is reviewable on the standard of correctness.

[67] Having regard to the definitions of "equity claim" and "equity interest" under the BIA, I find that the Profit Share Claim is not an equity claim within the meaning of the BIA.

ii. Contingent vs. Unliquidated Damages Claim and Remoteness

[68] There are two aspects to the Proposal Trustee's determination that the Profit Share Claim is a contingent claim that is too speculative or remote. The first requires consideration of the distinction between a contingent claim and an unliquidated claim. The second requires consideration of the remoteness of damages more generally.

[69] The cases relied upon by the Proposal Trustee dealing with contingent claims that were found to be too remote and speculative to be provable claims in a bankruptcy are all claims that were contingent upon a future uncertain event that had not yet occurred and was not inevitable. As the Supreme Court held in *Newfoundland and Labrador v. AbitibiBowater Inc*., 2012 SCC 67, [2012] 3 S.C.R. 443, at para. 36, the determination of whether such contingent claims are provable claims depends on "whether the event that has not yet occurred is too remote or speculative". See also *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, [2019] 1 S.C.R. 150, at para. 138.

[70] Here, the hypothetical contingency that the Proposal Trustee relies upon was whether any profits would be earned by YSL or any other entities in the Cresford Group: unless and until there were profits (calculated after repayment of the amounts advanced by the LPs), there would be nothing to share under the Profit Sharing Agreement. That hypothetical contingency assumes the continuation of the Profit Sharing Agreement.

[71] However, the Arbitrator found that Ms. Athanasoulis' employment contract was repudiated in December 2019 and found that the Profit Sharing Agreement was part of that integral contract of employment (and her employment compensation). The Arbitrator also found that her entitlement to compensation under the Profit Share Agreement was not dependent upon her continued employment (in other words, that compensation could not be avoided by her termination). While no express finding was made that the Profit Share Agreement was breached, it follows from these findings that the Profit Sharing Agreement, an integral part of her employment contact, was also repudiated when she was constructively dismissed.

[72] Ms. Athanasoulis accepted the repudiation by YSL in early January 2020 and she sued YSL (and others) for breach of contract and damages, including damages in respect of the Profit Sharing Agreement, in January 2020.[3] In her January 21, 2020 Statement of Claim she claimed

[3] Little was said in the course of submissions about the parallel civil proceedings between Ms. Athanasoulis and the Cresford Group and between the LPs and the Cresford Group and Ms. Athanasoulis, although it was generally agreed

damages for, among other things, breach of the Profit Sharing Agreement equal to 20% of what she estimated the anticipated profits would be on all projects, the most significant of which was YSL.

[73] Until there was a breach, the Profit Sharing Agreement would remain in place and any claim for payment under that agreement might reasonably be considered to be contingent upon profits actually being earned (to be calculated based on revenues less expenses, where expenses would include any amounts payable to the LPs). It might have been open to Ms. Athanasoulis not to accept the repudiation of the Profit Sharing Agreement and let it continue even though she was no longer employed by YSL and wait to be paid in the normal course, but she clearly did the opposite, as evidenced by her civil claim for damages for breach of that agreement commenced in January 2020.[4]

[74] As a matter of law, the accepted repudiation of the Profit Sharing Agreement converted a future right to receive actual profits if and when earned into a current right to receive damages for breach of contract. Once converted to a damages claim, the "normal course" that Ms. Athanasoulis would be paid once the profits had been earned, usually at the end of a project, no longer applied. Rather, the Profit Share Claim became an unliquidated claim for damages for breach of contract that would presumptively be assessed at the time of repudiation. This is explained in more detail later in this endorsement.

[75] The Proposal Trustee made an extricable error in law by characterizing the Profit Share Claim, which is a claim for unliquidated damages for breach of contract, as a contingent claim dependent upon actual profits having been or being earned.

[76] The erroneous characterization of the Profit Share Claim as a contingent claim led the Proposal Trustee to the further erroneous determination that it, as contingent claims often are, was too remote and speculative to be a "provable" claim under the BIA.[5]

[77] I turn to the second aspect of the remoteness of the Profit Share Claim. Even if not a contingent claim dependent upon an event that has not occurred, unliquidated claims are still subject to quantification and related considerations of remoteness or speculation.

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that those proceedings would be subject to arguments of *res judicata* and estoppel if determinations are made on this appeal in respect of any overlapping issues involving the same parties.

[4] Even if the Profit Sharing Agreement continued, the Profit Share Claim might still have been a provable claim. The court in *Abitibi* held (at para. 34) that "the broad definition of "claim" in the BIA includes *contingent and future* claims that would be unenforceable at common law or in the civil law."

[5] If a claim is contingent, the claimant must demonstrate sufficient certainty that the contingency will occur during the relevant period for the damages calculation. See *Abitibi* at para. 36 and 84 and *Confederation Treasury Services Ltd., Re* (1997), 96 O.A.C. 75 (C.A.), at para. 4.

[78] The court in *Abitibi* specifically found at para. 34 (in the context of a CCAA proceeding) that a court (in that case, the CCAA court) assessing unliquidated claims in statutory insolvency proceedings "has the same power to assess their amounts as would a court hearing a case in a common law or civil law context." The Profit Share Claim should be viewed under the same lens in terms of its provability.

[79] The Court of Appeal explained in *Schnier v. Canada (Attorney General)*, 2016 ONCA 5, 128 O.R. (3d) 537, at para. 49, that "a creditor's inability to enforce a claim bears directly on the creditor's ability to prove its claim under the BIA. In order to be a provable claim within the meaning of BIA s. 121, a claim must be one recoverable by legal process". Ms. Athanasoulis says her Profit Share Claim is recoverable by legal process, and that was the very course she was following by the lawsuit that she commenced in January 2020.

[80] In *Schnier*, the court found the opposite because the claim in that case was dependent upon the outcome of ongoing tax proceedings. The Proposal Trustee seeks to analogize the Profit Share Claim (said to be dependent upon the outcome of litigation that Ms. Athanasoulis had commenced following her wrongful dismissal from YSL, and thus contingent in that sense) to the situation in *Schnier*. The analogy is not apt, for various reasons including that:

a. *Schnier* was about whether the special provisions of the BIA regarding income-tax driven bankruptcies applied to unpaid tax assessments that were being appealed. The trustee had found that the tax claim in question was not provable. That finding was not challenged (at para. 14). The court conducted a detailed review of the statutory scheme and concluded that those rules were not meant to be triggered by contingent tax claims that the trustee has determined to be unproven (see paras. 24–50 and 73).

b. The mere fact that a disputed claim is in litigation but has not yet resulted in a judgment cannot be sufficient to render a claim unprovable under the BIA. If that were the case, it would mean that anyone who claims to have been wronged by a debtor would be disqualified from making a claim in a bankruptcy proceeding if they had not been able to obtain a pre-BIA judgment.

c. Through the Arbitration, it has already been established in this case that there was an oral Profit Sharing Agreement that was part of Ms. Athanasoulis' employment agreement, that she was wrongfully (constructively) dismissed in December 2019 and that her Profit Sharing Agreement did not depend upon her continuing to be employed. Her claim for damages arising out of the breach of that agreement is a claim that is recoverable by legal process even if that legal process has not yet run its course.

[81] The Proposal Trustee considered the potential for damages associated with the Profit Share Claim insofar as that might inform the assessment of whether it is too remote or speculative to be a provable claim. Even if it is not a contingent claim, the Proposal Trustee determined that the Profit Share Claim is too remote and speculative to qualify as a provable claim because it seeks:

a. a share of the profits in a failed project that never did, and never will, generate any profits; and

b. profits to be calculated on the basis of an agreed formula that assumes that the amounts owing to the LPs will be treated as expenses and netted out of the calculated profits even though they have not been paid and are not expected to be paid in full under any scenario.

[82] The Proposal Trustee points to the earlier findings of Hainey J. (in an insolvency proceeding involving a different Cresford entity) and Dunphy J. in this proceeding that Ms. Athanasoulis' Profit Share Claim was too speculative or remote to be valued for voting purposes. However, those earlier determinations were made at a time when there was uncertainty about the existence of the Profit Sharing Agreement and about whether Ms. Athanasoulis had been wrongfully terminated from her employment. Those aspects of the claim are no longer subject to speculation. I do not consider those earlier assessments to be determinative of the question of whether the Profit Share Claim is too remote or speculative to be provable. That must be independently assessed in the context of the Disallowance.

[83] The Proposal Trustee's rationales for the Profit Share Claim being too remote or speculative (above) are, in part, a function of its original error in having failed to recognize it to be an unliquidated damages claim for breach of contract. This resulted in a compounding further extricable error of law because it led the Proposal Trustee not to consider the well-established legal principle that damages for breach of contract are presumptively to be calculated at the date of breach. See *Kinbauri Gold Corp. v. Iamgold International African Mining Gold Corp.* (2004), 192 O.A.C. 24 (C.A.), at para. 125; see also *Kipfinch Developments Ltd. v. Westwood Mall (Mississauga) Limited*, 2010 ONCA 45, 260 O.A.C. 110, at para. 15; *Baud Corp., N.V. v. Brook* (1978), [1979] 1 S.C.R. 633, at p. 648.

[84] The value of the promised performance is measured by evaluating what would have happened if the contract had been performed. The correct approach is illustrated in *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19, [2002] 1 S.C.R. 678. In that case, one party to an option agreement breached the contract and, as a result, the other party lost the opportunity to develop the land. The Supreme Court of Canada upheld the trial judge's award of the profits that the wronged party would have made. In *Sylvan* no one actually earned profits. But that did not matter.

[85] The Proposal Trustee points out in response to these submissions on the appeal that the presumptive date for assessing damages (as of the date of the breach) is not an absolute. The Court of Appeal has departed from this presumptive date in appropriate circumstances, such as in *Maple Leaf Foods Inc. v. Ryanview Farms*, 2022 ONCA 532, at paras. 35 and 41. In that case, it was found that the assessment of damages at the date of breach would not fairly reflect a party's loss in light of intervening events rendering the loss suffered to be more uncertain, such that it would not be just to burden the breaching party with more than its fair share of the liability.

[86] On this appeal, the Proposal Trustee suggested that it considered that the COVID-19 pandemic, record inflation, rapidly increasing interest rates, the state of the real estate market and the fact that YSL became insolvent and entered into these proposal proceedings all would have

adversely affected the profitability of YSL even if Ms. Athanasoulis had never been constructively dismissed. Thus, the consideration of what would have happened if the Profit Share Agreement had not been repudiated still would lead to the conclusion that the prospect of any damages is too remote and speculative for there to be any provable loss.

[87] Ms. Athanasoulis points out that these considerations were not all set out in the stated grounds for the Disallowance of her Profit Share Claim and would, at most, be factors that might be considered in the eventual valuation of her Profit Share Claim, but not grounds for the Disallowance without any attempt to value it.

[88] As previously outlined, absent a breach and in the normal course Ms. Athanasoulis would have been paid out of YSL's earned profits, and the timing of the actual payments to the LPs and to Ms. Athanasoulis would have followed the completion of the YSL Project. However, when YSL repudiated the Profit Share Agreement and the repudiation was accepted as of January 2020, Ms. Athanasoulis' future right to receive a 20% share of earned profits was converted into a current right to receive damages for breach of contract. If the appropriate approach to the assessment of damages had been adopted, speculation and concerns about the remoteness of those future events (the actual profits that may or may not be earned, and the order in which they might have been distributed in the normal course) might not be relevant at all to the determination of the Profit Share Claim under the BIA, but even if relevant at the valuation stage, those concerns would not be determinative at this threshold "provability" stage in the face of the presumptive valuation date.

[89] There are two branches to remoteness in assessing damages, that have to do with the type of loss at issue. In *The Rosseau Group Inc. v. 2528061 Ontario Inc.*, 2023 ONCA 814 at paras. 68–70, the Court of Appeal reminds us that damages will not be considered to be too remote and may be recovered if:

a. In the "usual course of things", they arise fairly, reasonably, and naturally as a result of the breach of contract; or

b. They were within the reasonable contemplation of the parties at the time of contract.

Damages that fall outside of either branch are not recoverable because they are too remote.

[90] Importantly, the Court of Appeal explains in *The Rosseau Group* (at para. 70) that "the remoteness test deals with the 'type' of loss that is recoverable, while the measure is about how it is quantified." The type of loss at issue here is in respect of the lost opportunity to contribute to and eventually share in the profits that the parties anticipated would eventually be earned by YSL when the YSL Project was completed. The remoteness concerns identified by the Proposal Trustee are in respect of the measure of the damages, not the type of loss.

[91] There is a well-established legal principle that a party should not be denied damages just because those damages are difficult to calculate or measure. See *General Mills Canada Ltd. v. Maple Leaf Mills Ltd.*, 52 C.P.R. (2d) 218 (Ont. H. Ct.), at para. 4; *Gould Outdoor Advertising Co. v. Clark*, [1994] O.J. No. 3094 (Gen. Div.), at para. 26. In such cases, damages are assessed with a broad axe and a sound imagination. See *Colonial Fastener Co. Ltd. v. Lightning Fastener Co. Ltd.*, [1937] S.C.R. 36, at p. 44; *Apotex Inc. v. Eli Lilly and Company*, 2018 FCA 217, 161 C.P.R.

(4th) 411, at para. 142; *Janssen Inc. v. Teva Canada Limited*, 2016 FC 593, 141 C.P.R. (4th) 1, at para. 69. This is an issue for another day in these proceedings.

[92] The Proposal Trustee's consideration of subsequent events in its determination that the Profit Share Claim is not a provable claim under the BIA was an extricable error of law. While those subsequent events may be relevant to the measure or calculation of the ultimate loss, to say that they affect the type of loss and render it so remote as to be unprovable results in a misapplication of the law of remoteness.

[93] The bar for establishing a provable claim is low and only requires that a claimant proves that there is an "air of reality" to their claim. See *Oil Lift Technology Inc. v. Deloitte & Touche Inc.*, 2012 ABQB 357, 98 C.B.R. (5th) 77, at para. 18. There is an air of reality to the Profit Share Claim, particularly since the Arbitrator has determined that: the Profit Sharing Agreement existed, it was a key element of Ms. Athanasoulis' employment contract, Ms. Athanasoulis was constructively terminated from her employment in December 2019, but the Profit Sharing Agreement was not dependent upon her continuing to be employed. The fact that a claim involves some complexity in quantification is not a bar to it being a provable claim.

[94] Considering the Profit Share Claim in its proper light (which the Proposal Trustee did not do as a result of its previously identified errors), I find it to be a provable claim.

B) The Valuation Errors

[95] Ms. Athanasoulis alleges that it was an error for the Proposal Trustee to value her Profit Share Claim at zero based on the determination that there was no profit to share, as at the date of the breach (December 2019), the date of these insolvency proceedings (April 2021) or two years after the breach when her claimed employment termination notice period ran out (December 2021), because doing so was predicated on the absence of any actual, earned profits on any of these dates.

[96] It is alleged that the Proposal Trustee erred in valuing the Profit Share Claim at zero:

a. Based on the erroneous assumption that Ms. Athanasoulis is only entitled to 20% of the actual profits earned by YSL or that YSL is capable of earning in light of its insolvency and the Proposal, whereas damages for breach of contract must put the injured party in the position she would be in if the other party had met its contractual obligations, calculated at the time of the breach or repudiation of the contract;

b. Without even attempting to calculate either YSL's revenues or expenses to determine its profits earned on the relevant date (of repudiation);

c. Without considering contemporaneous evidence (on the repudiation date) about the prospect of a sale of the YSL Project or YSL's contemporaneous pro forma projections for continued development that indicate a reasonable expectation of profits.

[97] The Arbitrator's finding that Ms. Athanasoulis' employment contract, of which the Profit Sharing Agreement was found to have been an integral part, was breached in December 2019 crystalized her claim for damages for breach of the Profit Sharing Agreement. No assessment was

undertaken of what her loss was as of that date, to put her in the position she would have been in if the Profit Sharing Agreement had not been breached in December 2019. The Proposal Trustee did not undertake this exercise because her losses were assumed to be zero given that no profits have been or will be earned by YSL. This approach built upon the previously described errors in the mischaracterization of the Profit Share Claim. Much of the same analysis applies to here to the Valuation Errors, as was applied to the Provable Claim Errors discussed in the previous section of this endorsement.

[98] The Proposal Trustee's answer to this, when considered from a claim valuation (as opposed to provability) perspective, is to treat the Profit Share Claim as part of the Wrongful Dismissal Claim, such that Ms. Athanasoulis would only be entitled to reasonably foreseeable amounts payable under the Profit Sharing Agreement during her claimed termination notice period (specified in her statement of claim issued in January 2020 to be two years). This approach was adopted based on the case of *Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26, [2020] 3 S.C.R. 64, at para. 49 involving a terminated employee whose profit sharing agreement was found to have been limited to actual profits earned during the notice period. Since the YSL Project was not completed and no profits were earned or paid out by it during that notice period, nor would the parties have expected them to be given the usual five to seven year completion period for a project such as the YSL Project, the Proposal Trustee maintains that there could be no damages or losses suffered as a result of the repudiation of the Profit Share Agreement.

[99] However, there is an important distinguishing feature of this case compared to *Matthews*. In *Matthews*, the profit sharing was expressly tied to his continued employment (see para. 63). In *Matthews*, there was a long-term incentive plan that required the claimant to be employed full time at time of triggering event (sale), but he had been constructively terminated 13 months before (para. 18).

[100] The Proposal Trustee's position is that the Arbitrator's finding that entitlements under the Profit Sharing Agreement are not dependent upon Ms. Athanasoulis' continued employment with YSL (or equivalent notice period) should not give her an indefinite claim to 20% of any and all profits earned, beyond the notice period. However, this position is not tied to any finding of fact or legal principle.

[101] Conversely, even if Ms. Athanasoulis had been given two-years working notice and her employment had then terminated, it is not a given that her entitlements under the Profit Sharing Agreement would have automatically ended. The preservation of entitlement under the Profit Sharing Agreement is consistent with the Arbitrator's finding that the Profit Sharing Agreement was intended to recognize her past and continuing contributions and was not just an incentive for future contributions. The Arbitrator expressly found that YSL could not eliminate Ms. Athanasoulis' claim by terminating her and could not reduce her share to zero after her prior years of contributions in the form of advance sales, etc. simply by terminating her employment on notice (at para. 160). It follows from these findings of the Arbitrator that, unlike in *Matthews*, the termination notice period is not determinative of the Profit Share Claim.

[102] Further, the fact that these voluntary insolvency proceedings occurred is not evidence that they were inevitable. Dunphy J. specifically found that the effort to sell or refinance the YSL Project that culminated in the earlier proposal was "indelibly tainted" by Mr. Casey's self-interest

(see *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178, 93 C.B.R. (6th) 109, at para. 76).

[103] The Proposal Trustee's determination that, with no profits having been earned during the two-year notice period or thereafter, the damages for the repudiation of the Profit Share Claim are zero, was an extricable error of law. In order to justify this conclusion, the Trustee departed from the law of damages for breach of contract.

[104] The Trustee also relies upon equity, by arguing that it is not "just and reasonable" to calculate profits on the repudiation date because "no profit had been earned" and the LPs had not been repaid. This is not grounded in any authority, but if relevant at all it would arise in the context of the calculation of the loss and valuation of the claim, not at this threshold stage before any attempt has been made to value the Profit Share Claim. That too was an extricable error of law.

[105] Even if the Valuation Errors involve a misapplication of the law to the facts, which might be viewed as mixed errors rather than extricable errors of law, those errors were palpable and overriding in this case.

[106] In this vein, in addition to the extricable legal errors, Ms. Athanasoulis argues that there is evidence to contradict the Proposal Trustee's underlying factual assumptions. The failure to consider that evidence is reviewable on a standard of palpable and overriding error (or reasonableness). However, given the findings to this point, there is no need to go into an in-depth analysis of what are errors of fact and mixed fact and law.

[107] The primary point that is made by Ms. Athanasoulis at this stage is that the Proposal Trustee has not done any in-depth analysis to attempt to assess the damages as at the date of repudiation. It is sufficient for purposes of this appeal to have identified that there will be points of contention to be considered when the Profit Share Claim is valued, for example:

a. According to Ms. Athanasoulis, when she was terminated the YSL Project had progressed significantly. The YSL Project was purchased for $157 million but was appraised in July 2019 for $375 million. YSL had invested approximately $241 million in the project. YSL's October 2019 pro forma, which had been vetted by experienced third party professionals, forecast a profit of close to $200 million. Even the Proposal Trustee's third report implies YSL was profitable. Further, Ms. Athanasoulis points to contemporaneous evidence about the prospect of a sale of the YSL Project. According to her testimony, there was a buyer for the YSL Project that would have yielded profits, who Casey inexplicably rejected around the time of her wrongful dismissal. She claims that, at that time, YSL was fine financially and that it was other Cresford projects that were in trouble.

b. The Proposal Trustee points to a letter that Ms. Athanasoulis wrote in December 2019 about ongoing financial issues. She has since admitted that there were statements made in that letter that were untrue and she has apologized for sending it. However, the Proposal Trustee says it is evidence from Ms. Athanasoulis herself about the dire financial situation that YSL and the Cresford Group were in at that time.

c. The Proposal Trustee urges the court to look at other contemporaneous evidence that had been in the Arbitration record to counter the evidence Ms. Athanasoulis put forward and the anticipated profitability of the YSL Project at the time of the Profit Sharing Agreement. The Proposal Trustee points to high-level financial information that it says demonstrates that YSL was underwater in December 2019 (and that is consistent with its eventual insolvency). Ms. Athanasoulis objected to the Proposal Trustee's last-minute reliance upon this evidence, that was not a stated basis for the Disallowance of her Profit Share Claim and that she claims is selective and unreliable. For example, certain of the reports referenced had been previously ruled to be unreliable by Dunphy J. and another expresses opinions about the value of the YSL Project as at May 2021 which is after the December 2019 repudiation date.

[108] At this stage in these proceedings where the damages have been bifurcated in accordance with the court's earlier Claims Procedure Endorsement, it is sufficient for Ms. Athanasoulis to have demonstrated that damages could be calculated (based on either actual profits earned as of the date of contract repudiation or "but-for", future oriented profits calculated, possibly with the assistance of expert evidence, as at that date), since it was not intended that there be a valuation of the Profit Share Claim at this stage. The very existence of this evidentiary controversy is itself reason to require a more fulsome damages assessment, as the Claims Procedure Endorsement provides for.

[109] Sufficient grounds have been established to satisfy me that the damages valuation phase should proceed.

C) Subordination Error

[110] Ms. Athanasoulis' testimony at the Arbitration that the profit under the Profit Sharing Agreement "would be calculated after paying the [specific project] costs and after the equity was repaid to the LP Investors" led the Proposal Trustee to conclude that the Profit Share Claim was an equity claim that was subordinated to the equity claims of the LPs. For the reasons previously indicated, the Profit Share Claim does not come within the BIA definition of "equity claim". Not all entitlements calculated on the basis of profits are equity claims. The formula used to calculate the amount of an entitlement is also not determinative of the priority of a claim in a bankruptcy. Here, the calculation of the entitlement under the Profit Sharing Agreement was to be based on a percentage of funds distributable to the owners (equity holders) whose claims were subordinated to the LPs. That does not mean that the Profit Share Claim was subordinated.

[111] The LPs assert that Ms. Athanasoulis (and others) told them that they would be paid ahead of the Cresford Group , who were themselves Class B unitholders. However, Ms. Athanasoulis was not a shareholder. Nor did she enter into any agreement directly with the LPs to subordinate her claims or interests to theirs.

[112] The Proposal Trustee made an extricable error of law when it found the Profit Share Claim to be subordinated to the equity claims of the LPs and that Ms. Athanasoulis is not entitled to be paid anything unless and until the LPs are paid in full, in the absence of any agreement between Ms. Athanasoulis and the LPs to subordinate her claims to theirs.

[113] This error originated from the same incorrect determination that led to earlier errors, namely that all claims calculated based on profits are equity claims. It was further compounded by the incorrect conclusion that by agreeing with YSL and the Cresford Group that the profits to which the 20% profit sharing would be applied would be calculated net of amounts to be paid to the LPs, Ms. Athanasoulis had agreed to subordinate her entitlements under the Profit Sharing Agreement to the claims of the LPs claims for insolvency and BIA purposes.

[114] It is common ground that each LP holds an "equity claim" within the meaning of the BIA. The BIA provides that every creditor who does not hold an "equity claim" is entitled to be paid before any creditor that has an equity claim. These statutory priorities were ignored by the Proposal Trustee because of the error in mis-characterizing the Profit Share Claim (entitlements under the Profit Sharing Agreement) as an equity claim.

D) Other Identified Errors

[115] Other errors were identified by Ms. Athanasoulis. However, the appeal can be decided based on the identified extricable errors of law (above).

The Unique Perspective of the LPs on the Validity/Enforceability of the Profit Sharing Agreement

[116] The LPs argue that there are specific provisions in two contracts that they entered into that render the Profit Sharing Agreement unenforceable, namely that the Profit Sharing Agreement:

a. breaches s. 3.6(b) of the Amended and Restated Limited Partnership Agreement dated August 4, 2017 (the "LPA") that prohibits non-arm's length transactions with a "Related Party" (meaning the Affiliates of the General Partner in the sense of controlling or controlled by or under common control with, YSL and their officers and directors, employees and shareholders) other than on market terms; and

b. breaches s. 3.2 of the Sales Management Agreement dated February 16, 2016 (the "Management Agreement") that prohibits any compensation being paid to the corporation or its Affiliates (defined under the LPA to be the Affiliates of the General Partner in the sense of controlling or controlled by, or under common control with, YSL) that is not specifically provided for in that agreement (and there is no reference to the Profit Sharing Agreement).

[117] These are the matters that the LPs were granted standing to address in the Claims Procedure Endorsement. They provided their submissions to the Proposal Trustee on these (and other) issues. These grounds were not adopted or relied upon by the Proposal Trustee as a reason for its Disallowance of the Profit Share Claim. There is no reviewable error by the Proposal Trustee in relation to the LPs' submissions.

[118] In terms of the merits of the LPs arguments if they are to be addressed *de novo*, there is no evidentiary foundation for the suggestion that Ms. Athanasoulis is an Affiliate of YSL that would render the Profit Sharing Agreement to be offside of s. 3.2 of the Management Agreement. Ms. Athanasoulis maintains that she was neither a shareholder nor an affiliate of the Cresford Group and was never represented to be such in any written or oral presentation made to the LPs, nor is it

apparent on what legal basis a declaration of unenforceability would be the appropriate remedy for such a breach, in any event. The alleged breaches of Management Agreement appear to have been an after-thought (not mentioned in the LPs' factum on this appeal). There is no basis upon which to find that the Profit Sharing Agreement was a breach of the Management Agreement.

[119] It has also not been established that the Profit Sharing Agreement constitutes a prohibited Related Party agreement under s. 3.6(b) of the LPA. The Profit Sharing Agreement was entered into before the LPA, although the percentage of shared profits increased after the LPA was signed). The LPs claim not to have been told about either the original or amended Profit Sharing Agreement. The Profit Sharing Agreement was found by the Arbitrator to be binding and enforceable as between the parties to it, YSL and Ms. Athanasoulis.

[120] The LPs have presented no evidence to establish that the Profit Sharing Agreement was not on market terms. The Arbitrator found that there was "nothing disproportionate, in the realm of executive compensation," about the Profit Sharing Agreement, in light of Ms. Athanasoulis' value and contributions to the YSL Project (and the Cresford Group's other projects). The evidence before the Arbitrator was that a third party marketing company would have charged 1.5% of sales and expected to have been paid earlier. The LPs were not party to the Profit Sharing Agreement and complain that they were not party to the Arbitration and should not be bound by findings made by the Arbitrator. If the LPs had wanted the court to revisit that determination for purposes of this appeal that would have required some further direct evidence.

[121] There is no basis upon which the court could or should conclude based on the record on this appeal that the Profit Sharing Agreement is unenforceable as a result of the alleged breaches of the LPA and the Sales Management Agreement. These arguments raised by the LPs do not affect the court's determinations earlier in this endorsement that the Profit Sharing Claim is a provable claim and should be valued.

Additional Issues Raised by the LPs

[122] The LPs claim that the Profit Sharing Agreement was a "secret" undisclosed agreement. They assert that she made misrepresentations by omission (by not disclosing the existence and terms of the Profit Sharing Agreement). They claim that statements made by Ms. Athanasoulis regarding the priority of payments to the LPs over any payments out to Cresford Group members were misleading if they were not intended to include payments to Ms. Athanasoulis, who they (rightly or wrongly) understood to be a member of the Cresford Group. They say they were induced to advance funds as a result of these representations. They assert that even if she owed no duty to them directly, she knowingly assisted in the alleged misrepresentations made to them by others.

[123] The LPs rely on cases that extend fiduciary disclosure duties and duties not to self-deal to general partners and their directors and officers such as *Naramalta Development Corp. v. Therapy General Partner Ltd.* 2012 BCSC 191, at paras. 63–64 and 71–72; *OSC v. Go-to Developments Holdings Inc.* (October 31, 2023), Toronto, CV-21-00673521(S.C.), *per* Steele J.; *Advanced Realty Funding Corp. v. Bannink* (1979), 27 O.R. (2d) 193 (C.A.); and *Extreme Venture Partners Fund 1 LP v. Varma*, 2021 ONCA 853, 24 B.L.R. (6th) 38, at paras. 74 and 86–89, leave to appeal refused.

[124] Ms. Athanasoulis denies that the existence of the Profit Sharing Agreement renders her statements about the Cresford Group to be untrue or misleading. Further, she denies any duty to make disclosure and argues that this situation (that she and the LPs would be competing for the same pool of funds) was not reasonably foreseeable. In any event, these alleged misrepresentations are not properly raised in the context of the Proposal Trustee's determination of the validity and quantum of the Profit Share Claim.

[125] The 250 LPs have commenced a separate lawsuit against Ms. Athanasoulis, and others, asserting claims against them personally in respect of the alleged misrepresentations and breaches of fiduciary and other duties arising out of the failure to disclose her Profit Sharing Agreement to them. All of the LPs have raised these issues with the Proposal Trustee as further grounds for disallowing her Profit Share Claim, but their allegations were not among the grounds relied upon in the Disallowance.

[126] While the 250 LPs confirmed that there would be a *res judicata* or estoppel argument against re-litigating these claims in another context if the court decides these issues in this appeal, there remains the more fundamental concern that these issues fall outside of the scope of the standing that was granted to the LPs in the context of the Profit Share Claim, which was to raise issues that they were uniquely situated to address relating to the determination of that claim. Those issues include matters relating to the validity and enforceability of the Profit Share Agreement having regard to the provisions and restrictions under the agreements that the LPs were party to, such as the LPA and the Management Agreement. Those grounds have been addressed in the preceding section of this endorsement.

[127] The other claims of the LPs, which include an estoppel argument arising out of the alleged misrepresentations and breaches of duties by Ms. Athanasoulis, or her alleged knowing assistance of breaches by others, are not properly adjudicated in the context of the determination and valuation of the Profit Share Claim. Further, Ms. Athanasoulis points out that the LPs have not put forward evidence of their reliance on the representations to enable any ruling to be made in their favour.

[128] The mere allegation of an "omission" to make disclosure is not sufficient to determine their claims in the circumstances of this case. Not only is there a dispute about Ms. Athanasoulis' status as a member of the "Cresford Group", but the LPAs expressly preclude reliance upon extra-contractual representations. The facts surrounding these allegations against Ms. Athanasoulis are not settled, which could explain why this was not one of the reasons relied upon by the Proposal Trustee in the disallowance of the Profit Share Claim. This case is distinguishable from *OSC v. Go-To Developments Holdings Inc.*, at paras. 10-16; 25-26 that the LPs seek to rely upon, involving alleged misrepresentations made by a director and shareholder.

[129] This is not the forum for determining those other claims by the LPs. The determination of those claims involves contentious factual disputes and credibility assessments. The issues raised by the LPs cannot be properly adjudicated in a summary fashion on a paper record in the context of this appeal. Ultimately, these are matters that are more properly addressed between Ms. Athanasoulis and the LPs outside of the context of these insolvency proceedings. It would not be reasonable or appropriate for the court to attempt to determine the LPs' claims for breach of fiduciary duty and misrepresentation, etc. on this appeal.

[130] These claims by the LPs (for alleged misrepresentations, breaches of fiduciary and other duties, estoppel and knowing assistance) are extraneous to the Trustee's Disallowance and to any future valuation of the Profit Share Claim. It may be that the valuation of the Profit Share Claim for purposes of the BIA process could have some bearing upon those other claims, but that is an issue for another day and another court.[6]

[131] However, findings have been made regarding the enforceability and validity of the Profit Sharing Agreement and the subordination issue for purposes of the determination of priority of claims in these BIA proceedings and will be binding upon the LPs in any future proceedings.

Valuation and Damages

[132] At paragraph 63 of the Claims Procedure Endorsement, the court clarified that:

> To be clear, it is not expected that there will be any material or submissions at this time regarding the Future Oriented Damages (whether calculated at the repudiation date or the Proposal date). If Ms. Athanasoulis is successful on appeal of any disallowance of the Profit Share Claim, the parties shall make an appointment for a case conference before me (if my schedule permits within the time frame requested) to seek directions about the process for the determination of the more complex valuation question that will likely require expert input.

[133] Since Ms. Athanasoulis has succeeded on her appeal of the Disallowance, the Profit Share Claim needs to be valued. The Profit Share Claim is a claim for unliquidated damages for the breach of the Profit Sharing Agreement in December 2019 that was accepted in January 2020 (by correspondence and eventually the issuance of a statement of claim seeking to recover damages for this breach, among other damages). The April 30, 2021 bankruptcy date may also be relevant to this determination. The relevance and impact of intervening events remains an open question. Expert inputs may be appropriate on this and other points. That will be for Ms. Athanasoulis and the Proposal Trustee to decide.

[134] Ms. Athanasoulis has provided sufficient foundational evidence to satisfy the court that, while it may be difficult, efforts should be made to value the Profit Share Claim. As previously directed, the parties shall arrange to attend before me on a case conference at which proposals will be made and directions will be provided regarding the process for the valuation of the Profit Share Claim.

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[6] The same may be true for the ongoing litigation that Ms. Athanasoulis has commenced against Mr. Casey regarding the alleged breaches of his fiduciary and other duties to attain, or at least maintain, the profitability of the YSL Project (and other Cresford Group projects) and to keep the YSL Project out of insolvency.

[135] At that case conference, directions may also be provided regarding any continued participation of the LPs, whose standing was granted for purposes of this stage because of unique perspectives that they might provide on the question of the validity or enforceability of the Profit Sharing Agreement (discussed later in this endorsement). It is not apparent that they have any unique perspective or entitlement to participate in the valuation of the Profit Share Claim, any more so than the other unsecured creditors who may also be impacted by that determination and who have not been granted standing. No standing arises merely from an economic interest in the outcome of the Proposal Trustee's determination (or valuation) of a proof of claim in these proceedings. See *YG Limited Partnership and YSL Residences Inc. (Re)*, 2023 ONCA 50, at para.19

Costs

[136] The parties have now uploaded their Bills of Costs or Costs Outlines referable to this appeal.

[137] All costs are presented on a partial indemnity basis. The amounts certified are as follows:

a. By the Proposal Trustee, $100,000 in fees (for approximately 157 lawyer hours, excluding the time of students and clerks) plus disbursements and applicable taxes, for a total of $114,745.85;

b. By the 250 LPs, approximately $62,927.21 in fees (for approximately 145 lawyer hours) inclusive of applicable taxes;

c. By the other LPs, $77,377.69 in fees (for approximately 190 lawyer hours), inclusive of applicable taxes;

d. By Ms. Athanasoulis, $193,612.50 in fees (for in excess of 400 lawyer hours) plus applicable disbursements and taxes, for a total of $231,057.19. By my estimation, approximately $24,000 of these fees claimed were for the earlier Jurisdiction Motion heard on October 17, 2022 and $13,000 of these fees claimed were for the Claims Procedure motion heard on January 16, 2023.

[138] At the hearing of the appeal, in the event that the court allows the appeal and sets aside the Disallowance the Proposal Trustee and LPs asked that any award of costs be deferred until after damages have been determined and the Profit Share Claim has been valued, on the premise that there still may be no, or a lower, amount attributed than has been claimed. It was also submitted that Ms. Athanasoulis should not be permitted to claim costs incurred for the earlier Jurisdiction and Claims Procedure motions.

[139] In that event, Ms. Athanasoulis asked for her costs to be fixed and ordered payable forthwith. She argues that this is consistent with the principles under r. 57 and that the only relevant prior costs ruling was that she was denied the right to claim costs thrown away relating to the work that had been done in respect of phase two of the Arbitration which the court ordered be terminated in the Funding Decision and replaced with this Claims Procedure.

[140] The total partial indemnity costs of Ms. Athanasoulis of just over $231,000 is just slightly less than the combined total costs of the Proposal Trustee and LPs of just over $240,000. The total lawyer hours are less for Ms. Athanasoulis compared to the aggregate lawyer hours on the opposing side. On that basis, there is no need for the court to get into a line-by-line review of the amounts claimed, hours spent or hourly rates. All parties were represented by excellent counsel who charged accordingly for their work. Ms. Athanasoulis had to address the arguments raised from all perspectives.

[141] Ms. Athanasoulis is a private individual who is funding this dispute regarding her Profit Share Claim herself. She was facing, as a result of the Disallowance, the complete loss of her $18 million Profit Share Claim. As a result of her success on this appeal she can now pursue that claim through the next valuation stage.

[142] The issues are important to Ms. Athanasoulis and to the other creditors of YSL from a financial perspective. She, also has reputational issues at stake. The private arbitration process that she and the Proposal Trustee had agreed to for the determination of the Athanasoulis Claims was derailed part way through as a result of objections raised by the Sponsor and the LPs, and through no fault of her own. While the bifurcation of the damages/valuation means there will be another stage, this stage dealing with the provability of the Profit Share Claim was decided in favour of Ms. Athanasoulis and she is entitled, as the successful party, to her partial indemnity costs as claimed.

[143] Costs associated with the damages/valuation stage will be separately determined and, if Ms. Athanasoulis is not successful at that stage, there may be cost consequences for her at that time. However, I do not agree that she should be deprived of any award of costs associated with this appeal and with the motion that determined the Claims Procedure that got the parties to this point. I do agree that the costs of the earlier Jurisdiction Motion (that resulted in the Funding Decision dealing with the Arbitration) should not be included and I have deducted those fees from the total partial indemnity fees that I am awarding to Ms. Athanasoulis, fixed in the amount of $169,715.93 plus applicable taxes and total disbursements of $6,812.08 (inclusive of HST).

[144] These costs have been determined in the exercise of my discretion under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and with regard to the applicable factors under r. 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, including those discussed above and the principles of proportionality and indemnity.

[145] I did not hear any submissions about whether these costs are sought only from the Proposal Trustee or if any party takes the position that some should be paid by the LPs. Unless there are submissions that any party wishes to make on that point (in which case, a case conference may be arranged to speak to this issue), I order the partial indemnity costs fixed at the amount of $169,715.93 plus applicable taxes and total disbursements of $6,812.08 (inclusive of HST) to be paid to Ms. Athanasoulis by the Proposal Trustee forthwith. If there are submissions to be made about the source of funds to be used by the Proposal Trustee to pay those costs, I may be spoken to about that as well.

Order and Final Disposition

[146] The following orders, declarations and directions are made or granted based on the relief requested in Ms. Athanasoulis' Notice of Motion on appeal:

a. The Proposal Trustee's Disallowance of the Profit Share Claim dated August 10, 2023 is set aside;

b. The Profit Share Claim is declared not to be an equity claim, and to be a provable claim within the meaning of s. 121(1) of the BIA;

c. The Profit Share Claim is entitled to priority over the claims asserted by the LPs;

d. Maria Athanasoulis' Profit Share Claim against YSL is declared to be a valid claim and ought to be allowed in an amount to be determined by further order of this court or by such other process as the court may direct;

e. Maria Athanasoulis shall be paid forthwith her partial indemnity costs of this motion/appeal from the Disallowance fixed in the amount of $169,715.93 plus applicable taxes and total disbursements of $6,812.08 (inclusive of HST), subject to further directions from the court to be provided at a case conference, if requested, regarding by whom, in what proportions and from what source these costs are to be paid;

f. The parties shall arrange a case conference before me for the purpose of making submissions and receiving directions regarding the process for the determination of the amount (valuation) of the Profit Share Claim. The Sponsor (or its counsel) shall also attend this case conference as it may have implications for the ongoing funding of administrative and other expenses of the Proposal Trustee associated with the determination of the Profit Share Claim;

g. The ongoing civil proceedings among and between Ms. Athanasoulis and the LPs and members of the Cresford Group may continue, subject only to the determinations herein regarding the validity, provability and priority of the Profit Share Claim.

[147] This endorsement and the orders, declarations and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out, although any party may take out a formal order if so advised by following the procedure under r. 59.

Kimmel J.

Date: March 19, 2024

TAB 4

In the Matter of an Arbitration pursuant to the Arbitration Act, S.O. 1991

of a Claim between:

Maria Athanasoulis

("Claimant")

and

KSV Restructuring Inc.
in its capacity as Proposal Trustee
of YG Limited Partnership and YSL Residences Inc.

("Respondent")

In relation to Consolidated Court File No. 31-2734090 in the *ONTARIO* SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT,* R.S.C. 1985, c. B-3, as amended IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.

Counsel for Claimant: Mark Dunn
Sarah Stothart

Counsel for Respondent: Matthew Milne-Smith
Chenyang Li
Robin Schwill

Hearing Dates: February 22, 23, 24 and 25, 2022

Arbitrator: William G. Horton, FCIArb, C.Arb.

PARTIAL AWARD
(March 28, 2022)

I. Introduction

1. This arbitration arises in the context of a court proceeding relating to the insolvency of YG Limited Partnership and YSL Residences Inc. (together, "**YSL**").

2. Until its insolvency, YSL was part of a group of companies (collectively, "**Cresford**" or the "**Cresford Group**") which was engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario. Cresford incorporated a separate company for each condominium project upon which it embarked. YSL was incorporated to pursue a high-rise condominium project at the corner of Yonge Street and Gerrard Street in Toronto (the "**YSL Project**").

3. Mr. Dan Casey ("**Casey**") is the founder and President of Cresford, and the sole director of all the companies in the Cresford Group.

4. KSV Restructuring Inc. ("**KSV**") was appointed as the Proposal Trustee for YSL pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") on April 30, 2021. It should be noted at the outset that, while counsel for KSV advances the position of Cresford in this arbitration, they are not in fact counsel for Cresford and are not in a solicitor client relationship with Cresford or Casey.

5. Ms. Maria Athanasoulis ("**Athanasoulis**"), who was employed by Cresford in various roles between 2004 and 2020, advances this claim against the insolvent estate of YSL.

6. Athanasoulis alleges that she was entitled to a share of the profits earned by Cresford, on the YSL Project among others, pursuant to an oral agreement ("**PSA**") or agreements with Casey. She claims that the most recent PSA entitled her to 20% of the profits (the "**20% PSA**"). She asserts that the existence of this agreement is corroborated by the evidence of Mr. John Papadakis ("**Papadakis**") who attended a meeting at which the alleged agreement was discussed. Papadakis was a lawyer acting for Cresford at the time and is also a friend of Athanasoulis through a family connection with her husband.

7. Athanasoulis further alleges that Cresford repudiated her employment contract and constructively terminated her employment in or around early or mid-December 2019.

8. Prior to the proceedings under the BIA which led to this arbitration, Athanasoulis' claims were advanced in an action in the Superior Court of Ontario (the "**Action**") against various corporate entities within the Cresford Group and against Casey (collectively the "**Defendants**"). In the Action, Athanasoulis delivered a Statement of Claim and the Defendants delivered a Statement of Defence and Counterclaim.

9. In their Statement of Defence and Counterclaim, the Defendants alleged that Athanasoulis would only have been entitled to 10% of the net profits realized on the successful completion of certain projects, including the YSL Project, if she remained an employee of Cresford at the date of the project's completion. Subsequently, in this arbitration, Casey denied ever entering into any PSA with Maria Athanasoulis.

10. KSV takes the position that none of the discussions Athanasoulis relies upon gave rise to any PSA that was binding and enforceable. KSV maintains that Athanasoulis was fairly compensated by Cresford for her services at all material times.

11. KSV further alleges that Athanasoulis was not constructively dismissed; rather, she resigned from her employment at Cresford effective January 2, 2020. KSV does not allege any cause for Athanasoulis' dismissal, in the event she is found to have been dismissed.

II. Agreement to Arbitrate

12. The parties appointed me as sole arbitrator to determine this dispute by way of Terms of Appointment dated December 9, 2021.

13. Paragraph 2 of the Terms of Appointment sets out the parties' agreement to bifurcate Athanasoulis' claim such that the arbitration scheduled to proceed from February 22 to 25, 2022 was to resolve only the liability of YSL.

14. In the event that I were to find that YSL is liable to Athanasoulis, the parties have agreed to schedule an additional hearing before me to determine the quantum of YSL's liability.

III. Issues to be Determined

15. The issues to be decided in this phase of the arbitration are as follows:

a. Did Athanasoulis have a PSA that entitled her to 20% of the profits earned by the YSL Project?

b. If so, what were the terms of the PSA?

c. Was Athanasoulis employed by YSL?

d. Was Athanasoulis constructively dismissed, i.e. did she resign or was she constructively dismissed?

IV. Agreed Facts

16. The parties provided various documents to assist me:

a. an Agreed Statement of Facts delivered on February 18, 2022;

b. a Chronology; and

c. a cast of Characters.

17. In order to avoid duplication, I have incorporated the contents of these documents into my factual findings rather than separately identifying the agreed facts for the purposes of this Award.

V. Evidence of Fact Witnesses

18. The witness evidence in the arbitration was provided by oral testimony given under solemn affirmation as to truth. Three witnesses testified: Athanasoulis, Casey and Papadakis.

19. By agreement, each of the witnesses had previously been examined for discovery in the arbitration.

VI. Findings of Fact

20. Based on the facts agreed upon between the parties, and upon the evidence adduced in the arbitration with respect to facts not covered by their agreement, the following are my findings of fact.

A. The Parties

21. YSL was part of the Cresford Group, which was engaged in the development, construction, marketing and sale of significant condominium projects in the central core of the City of Toronto, Ontario.

22. Daniel Casey was the founder and President of Cresford and the sole director of all Cresford entities at all material times.

23. Each of Cresford's development and construction projects was owned by a separate legal entity (each an "**Owner**"). That entity purchased the land where the relevant project was to be built, obtained the required permissions, marketed the project to proposed purchasers, hired contractors to build the project and took all of the other steps to convert real estate into a major condominium development. Each project pursued by a Cresford entity had its own financing and involved family trusts which Casey controlled, or Limited Partnerships involving third party investors.

24. YSL was the Owner of the YSL Project.

25. Athanasoulis joined Cresford in 2004 as Manager, Special Projects. Her prior education and experience were limited. She had graduated from high school and took a business administration course at Seneca College which she did not finish. While at Seneca College she had a part time job at Canada Trust (as it then was), which she decided to focus on instead of college. She worked with two individuals at TD Canada Trust, Ted Dowbiggin ("**Dowbiggin**") and Ian Scott ("**Scott**"). Following the merger of Canada Trust with TD Bank, Dowbiggin and Scott left to join Cresford and offered Athanasoulis a job in the finance department of Cresford. She was also given a role as manager of special projects.

B. Career of Athanasoulis at Cresford before February 16, 2019

26. In her capacity as manager of special projects, Athanasoulis quickly demonstrated a particular talent for marketing condominiums.

27. Athanasoulis was promoted to Vice-President, Sales and Marketing in 2005. In that position she worked with Casey and outside marketing consultants hired by Cresford in the marketing aspects

of Cresford's business. At that time, Cresford paid its outside marketing consultants on average about 1.5% of total sales as a marketing fee. This was a substantial expense as total sales from a single Cresford condominium project normally ran into the hundreds of millions of dollars. In addition, these fees were payable at the time condominiums were sold, whereas a developer usually only earns the revenues from condominium sales when the condominium corporation is registered upon completion of the project.

28. In about 2007, based on Athanasoulis' success in the marketing field, Cresford began to be less dependent on outside consultants and relied more on her leadership, thus saving on external sales marketing fees. She was promoted to President, Sales and Marketing in 2012.

29. By the end of 2013, Athanasoulis and Dowbiggin were the only two senior officers of Cresford reporting directly to Casey and, together with Casey they formed the Executive Committee of Cresford. Dowbiggin was President, Land and Finance and Athanasoulis was President, Marketing and Sales. During this period, Athanasoulis was responsible for operational matters: sales, marketing, customer service, construction and property management. The only aspects of Cresford's business Athanasoulis did not manage were financing and land acquisition.

30. Around August 2018, Dowbiggin left Cresford. Athanasoulis assumed Dowbiggin's responsibilities and became the President and Chief Operating Officer. After Dowbiggin's departure, all of Cresford's employees reported, directly or indirectly, to Athanasoulis and she reported to Casey. However, Casey retained the responsibility for raising the capital necessary for Cresford's business and remained the primary contact with Cresford's lenders.

31. As part of her responsibilities, Athanasoulis oversaw a property management company within Cresford, which was a fee generating business for which many developers hire a third party. She also oversaw a high-rise construction team, which allowed Cresford to manage its product and earn additional fees.

32. Athanasoulis also served as an officer of individual companies within Cresford. In the case of YSL, she was Vice-President and Secretary.

33. At all times, Casey had the ultimate authority to make decisions on behalf of Cresford and each of its constituent entities, including YSL, and to enter into contracts on behalf of Cresford.

C. The YSL Project

34. The YSL Project was planned as an 85-story condominium tower, potentially to be built in two stages with each stage being a separately registered condominium corporation.

35. Cresford initially bought the YSL Project as part of a joint venture but bought out its joint venture partner's interest. Cresford considered selling the YSL Project after it achieved zoning for high rise condominium development but did not ultimately proceed with a sale.

36. The marketing of the YSL Project was launched in October 2018. Under the leadership of Athanasoulis, the launch was very successful. The YSL Project achieved the highest price per square foot that had ever been achieved in the neighbourhood and was "a first" in terms of pre-sale numbers in a short period of time.

37. YSL sold condominium units worth approximately $650 million in the period up to January 2, 2020, with the bulk of the sales coming in the early stages of the campaign. At the time Athanasoulis was terminated, Cresford expected to earn a net profit of $196,641,600 on the YSL Project, and to generate fees of $59,462,617 for Cresford.

D. Cresford's Other Projects During the Period at Issue

38. In addition to the YSL Project, Cresford had three other active projects as of January 2020:

a. The Clover on Yonge (the "**Clover**"), a 44-story condominium located near Yonge and Bloor in Toronto. Clover was owned by Clover on Yonge Inc. in its capacity as General Partner of Clover on Yonge Limited Partnership. Pursuant to a plan of compromise and arrangement that was approved in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") commenced by Clover on Yonge Inc. and Clover on Yonge Limited Partnership on June 22, 2020, all of Clover's equity was acquired by entities related to Concord Pacific Developments Inc. ("**Concord**").

b. Halo Residences on Yonge ("**Halo**"), a 38-story condominium tower located on Yonge Street between Wellesley and Carlton in Toronto. Halo was owned by 480 Yonge Street Inc., the general partner of 480 Yonge Street Limited Partnership. 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership were the subject of a Receivership Order issued on March 27, 2020. An Approval and Vesting Order issued September 15, 2021 vested Halo in 494 Yonge Street Inc.

c. The Residences of 33 Yorkville ("**33 Yorkville**"), a condominium with one 64-story tower and one 41-story tower. 33 Yorkville was owned by 33 Yorkville Residences Inc., in its capacity as general partner of 33 Yorkville Residences Limited Partnership. 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership were the subject of a Receivership Order issued on March 27, 2020. Pursuant to an Approval and Vesting Order issued March 11, 2021, 33 Yorkville was vested in PEM (Yorkville) Holdings Inc.

39. Casey explained that the difficulties faced by these three projects were largely the result of rising construction costs in the period before construction of those projects began. The YSL Project was launched later and did not suffer from the same difficulties.

40. As of the beginning of 2020, the costs recorded in YSL's *pro forma* projections were regarded by both Casey and Athanasoulis as being current and reliable projections.

E. Athanasoulis Compensation History

41. The management of Cresford was conducted on a very informal basis. Corporate formalities were not observed. Many aspects of the business especially in relation to employment and compensation issues were conducted on the basis of oral discussions and understandings. Employment agreements, on the rare occasions in which they were put in writing (usually at the request of an employee) were made out between the employee and "Cresford Developments", a name which does not correspond to any distinct legal entity.

42. If Athanasoulis ever signed an employment contract with Cresford, it was early in her career with Cresford and no copy of it has been located.

43. The property management and other fee generating entities within the Cresford Group, generated the cash necessary to pay expenses of the organization, including the salaries, on a current basis.

44. Fees earned within Cresford were ultimately collected within East Downtown Redevelopment Partnership ("**EDRP**") which paid employee salaries within Cresford. EDRP did not own any projects and conducted no business in its own name. There is nothing to suggest that EDRP exercised any management or control over Athanasoulis, or indeed communicated with her in any way relative to her employment. On the evidence in this arbitration, EDRP essentially served the role of paymaster and financial clearing house with the Cresford Group of companies.

45. Throughout most of her employment, Athanasoulis reported directly to Casey. Latterly, the ambit of her employment encompassed all of Cresford's development activities, with some of her energies being directed to the service of the entire group and some of her energies being directed to the fulfillment of responsibilities with respect to individual projects, to the benefit of Cresford, the Owners and other stakeholders in those projects.

46. Athanasoulis' compensation included a base salary and, from time-to-time, bonuses. Her base salary was paid by EDRP. It is not clear from the evidence on record, whether all performance bonuses were paid by the individual Owners to which the performance that earned the bonus related. It is admitted by KVC that one cash bonus was paid by YSL to a company owned by Athanasoulis husband. Bonuses were paid either in cash or through credits on condominium units within the relevant Owner's project. Clearly, bonuses paid by way of credits on condominium purchases had to come from the relevant Owners. There is no evidence as to cash flows between EDRP and the Owners.

47. Athanasoulis' compensation in and before 2014 was summarized in a consultant's report as comprising a base salary of $200,000 with eligibility for a bonus up to $100,000 on certain parameters (sales of units on three projects and input to the Strategic Advisory Committee) and a further bonus of 0.125% to 0.175 % on total sales of the newly launched Casa III project.

48. Casey's evidence that Athanasoulis was never paid commissions on sales, is not credible. His memory of such matters is poor and is contradicted by the positions taken on behalf of him and the other Cresford Defendants in their Statement of Defence and Counterclaim. However, there is room for debate in relation to exactly how Athanasoulis' compensation at any point in time related to previously agreed terms. Her compensation appears to have been finalized in periodic

discussions between her and Casey. There is no evidence of any issue ever arising as to whether she was properly compensated in relation to prior agreements.

49. In 2014, in light of the successful launch of a Cresford condominium project known as Vox ("**Vox Project**"), Casey agreed to pay Athanasoulis 10% of the profits earned on the Vox Project (the "**10% PSA**"). At about the same time they agreed that Athanasoulis' base salary would be increased to $500,000.

50. Again, Casey's denial of having agreed to this (as part of his blanket denial of having agreed to pay any commissions, including the 10% PSA in relation to future projects) is contradicted by factual assertions in paragraph 51 of the Statement of Defence where it was stated: "After the Vox Project, Casey agreed to pay Athanasoulis 10% of the net profits realized on the successful completion of future projects." In addition, the Defence in this arbitration contains the admission that "…Cresford agreed to pay Athanasoulis 10% of the net profits realized on the completion of certain projects, including YSL." Both pleadings assert that "…Athanasoulis would only be entitled to this benefit if she contributed to the successful completion of the project and remained an employee of Cresford at the date of project completion."

51. Casey admits that the information in these pleading must have come from him and that he would very likely have had an opportunity to review and correct the pleading, but he has no explanation as to how his counsel or KSV's counsel came to acknowledge the existence of an agreement to pay a bonus in the amount of 10% of net profits – albeit on an alleged condition of continued employment which is itself subject to dispute – an agreement to which only he could have committed on behalf of Cresford.

52. With respect to the condition of continued employment, I note that neither pleading asserts that the condition was specifically discussed and agreed upon between Casey and Athanasoulis. Athanasoulis denies that any such condition was discussed, and Casey is in no position to assert that it was, having now testified that no such discussion took place.

53. Athanasoulis did attempt to put the 10% PSA into written form, using as a template the written agreement of another employee. She gave her draft, dated November 14, 2014 ("**November 14 Draft**") to Casey. However, it does not appear that either of them followed up, and there is no

evidence that it was ever discussed. This is not surprising in the corporate culture that prevailed at Cresford. As with all prior agreements relating to Athanasoulis' employment, the 10% PSA was not documented. The details surrounding the arrangement were never clarified. Athanasoulis trusted Casey to fulfill the promise and continued to replicate and surpass her prior success.

54. In this arbitration, both sides sought to use the November 14 Draft to argue what Athanasoulis' understanding of the 10% PSA must have been, especially with respect to any condition of continued employment. The submissions of the parties focussed on the following provisions:

    a. Under the heading "The Employee's employment may be terminated as follows" Paragraph 4 states: "Bonus payments will be paid in full at the completion of any project in the construction phase."

    b. Schedule A 4): "A bonus of 10% of final profits will be paid on final closing on any future site Cresford acquires."

55. Despite the failure to follow up on the November 14 Draft, Athanasoulis was generously compensated in the years after the 10% PSA, although no occasion arose to apply the 10% PSA. It is difficult on the evidence in this arbitration to reconcile the compensation she received to the agreements or understandings that were in place. However, there is no suggestion that she was undercompensated by reference to what is set out in the November 14 Draft. As no projects were completed or sold at a profit during this period of time, the 10% PSA was not triggered.

56. Athanasoulis' taxable income from employment as declared on her T4 slips was as follows for the years indicated:

    2014 - $301,900
    2015 - $314,400
    2016 - $617,195
    2017 - $621,871
    2018 - $889,400
    2019 - $889,400

57. Between 2014 and 2019, Athanasoulis received, as part of her compensation, discounts on the purchase of condominium units on Cresford projects totalling a minimum of $3,717,378. These

discounted transactions were done with companies held by Athanasoulis and/or her husband. These agreements required no investment or deposit until closing, at which time any additional value of the unit over the launch price would also accrue to the benefit of Athanasoulis and her husband. Given the rising prices of condominiums in Toronto, the discounts were therefore considered to be the minimum value of the benefit. There is some overlapping between compensation recorded on Athanasoulis' T4 slips and compensation paid by way of discounted transactions with Athanasoulis and her husband. Compensation paid in cash was paid through EDRP. Compensation paid by way of discounted transactions was "paid" by the relevant Owner, sometimes by way of discounts in favour of companies owned by Athanasoulis' husband.

58. Although there is a lack of arithmetical specificity in the evidence, it is not disputed that Athanasoulis was paid substantial bonuses from the project Owners, including a cash bonus from YSL. Unlike profit share, which in the normal course could only be calculated at the end of a project, bonuses were paid primarily based on sales of condominiums in each project in any given year.

59. Athanasoulis was never paid a profit share while she was at Cresford. None of the projects, other than the Vox Project, reached the point of registration or were otherwise disposed of at a profit. The Vox Project was not profitable. Athanasoulis testified that the project was primarily acquired to earn fees and was expected to be a "tight deal".

60. Following the 10% PSA, Athanasoulis became an increasingly valuable contributor to the success of Cresford. Casey and Athanasoulis discussed raising her profit share from 10% to 15%. However, these discussions were not concluded before they were overtaken by other events.

61. After the successful launch of the 33 Yorkville Project in 2017, Casey and Athanasoulis discussed increasing Athanasoulis' profit share to 20% of current and future projects. The evidence of Athanasoulis is somewhat inconsistent as to whether she thought that they came to an agreement with respect to increasing the profit share to 20% at that time, or later after the successful launch of YSL in 2018. As with all matters surrounding Athanasoulis' compensation, there is a lack of clarity and no documentary confirmation. Nevertheless, it rings true that such discussions began in 2017 and rose to the level of a mutual understanding after the launch of the YSL Project, by which time Dowbiggin had left Cresford.

62. The YSL Project was off to an exceptional start, with initial sales of approximately $550 million, and was at all times projected to be profitable. Athanasoulis was the only employee of Cresford who spoke at the launch event. In her capacity as an officer of YSL she signed contracts on behalf of YSL.

63. Athanasoulis' role continued to expand. Following Dowbiggin's departure at the beginning of 2018, and even more so after a health issue experienced by Casey in December 2018, she was responsible for essentially all of Cresford's operations. This included:

    a. all aspects of design, marketing, and sales;

    b. Cresford's relationship with its contractors, including negotiating contracts and addressing any ongoing issues;

    c. Cresford's relationship with its lenders. Mr. Casey had little contact with lenders, in this period, apart from what he described as "social" interactions; and

    d. overseeing all of Cresford's employees.

F. Meeting with John Papadakis

64. At some point in late 2018, Casey had a serious health issue. In light of that, and to secure Athanasoulis' conditions of employment and continued role in the company, Casey and Athanasoulis decided that a meeting would take place to discuss putting a written agreement in place with respect to Athanasoulis' compensation, in case Casey was "hit by a bus". It is not clear from the evidence, who initiated the meeting. However, Athanasoulis was the one who contacted Papadakis to set up the meeting. She told Papadakis that the purpose of the meeting was to discuss putting her agreement with Casey into writing.

65. Papadakis was a partner in the Blaney McMurtry law firm which acted for Cresford. He practices commercial law and commercial real estate lending and acquisition. His primary dealings with Cresford were through Athanasoulis, although he did meet with Casey on occasion.

66. Papadakis was also a close family friend of Athanasoulis. Athanasoulis' husband's parents were Papadakis' godparents. Papadakis was best man at Athanasoulis' wedding and her husband is a

godparent to Papadakis' child. He was called upon to give evidence in the arbitration by Athanasoulis.

67. Athanasoulis and Mr. Casey met with John Papadakis on Saturday, February 16, 2019 at Cresford's office. The meeting, which was described as "informal", included a discussion of Casey's health as well as a review of Athanasoulis' employment arrangements. While there is an issue in this arbitration as to whether or not an enforceable agreement was reached at, or before, the meeting, it is important to note that there is no evidence as to any disagreement or point of contention as to any matter that was discussed at the meeting.

68. The meeting lasted about two hours. In broad terms, it is clear that the purpose of the meeting was not to negotiate any new terms but to review the terms of the existing arrangements with a view to putting them into a formal document. The purpose of putting the arrangements into a written document was described to Papadakis at the meeting by Casey as being "in case I get hit by a bus". Casey agrees that he made this statement.

69. The 20% profit share was discussed at the meeting as part of the arrangements that were already in place.

70. Casey presented evidence regarding the meeting which differed in some respects from the evidence given by Athanasoulis and Papadakis. To a large extent these differences are matters of characterization rather than matters of fact. To the extent that Casey's evidence differs I accept the evidence of Athanasoulis and Papadakis. Casey's memory is imprecise and is at odds with highly germane allegations, clearly pleaded on his behalf in two different legal proceedings, that could only have originated from, or been confirmed by, him. His characterizations of the facts do not ring true in the overall context.

71. I was urged by KSV to make findings of credibility against Athanasoulis on the basis of her conduct following her departure from Cresford in January 2020. As Athanasoulis has acknowledged, her conduct (as described below in relation to the Mann Letters) was inexcusable – although she did provide an explanation. However, KSV has not sought to at this stage to justify certain conduct of Casey which is referenced in the Mann letters, which also does not reflect well on him. I have not based my findings of credibility on general observations or judgments

regarding the conduct of Athanasoulis or Casey, or a consideration as to which of them behaved less badly. Rather, I have based my findings on an evaluation of the evidence in relation to the events to which the evidence relates and its congruency with the overall context.

72. Athanasoulis had become critically important to the success of Cresford. There was nothing unusual, unfair or contentious about the arrangements that were in place with Athanasoulis, including the 20% profit share which would, by its nature, depend entirely on the size of the overall profit. Casey had every reason to want to make her feel secure in her position. In light of his recent health concerns, he wanted to ensure that she would carry on and complete the projects even if something happened to him, as he explained to Papadakis at the meeting. Although she remained an employee in legal terms, Casey often referred to her in public as his "partner". For many important entities doing business with Cresford, she had become the "face" of Cresford especially after Dowbiggin's departure and Casey's illness. Casey was in no position to create any doubt in Athanasoulis' mind that he would not fulfill that which he had promised in relation to her compensation, or resist it being put into writing. It is clear, even on his own evidence, that he did not do so at the meeting.

73. Despite his personal ties to Athanasoulis and her family, I found the evidence of Papadakis to be balanced and objective. On a number of important points where it would have been easy for him to fabricate answers useful to Athanasoulis, he did not do so. He was careful to distinguish between what was actually said at the meeting and things he assumed based on his understanding of the situation. Apart from legal characterizations of what took place at the meeting, the evidence of Papadakis is not substantially at odds with Casey's evidence.

74. I accept the evidence of Papadakis that, at the meeting, it was confirmed that Athanasoulis was to receive 20% of the profits from existing and future projects. There was no discussion of which entities within the Cresford Group would pay the profits. Papadakis assumed that each entity that earned the profit would be obligated to pay, but he did not recall any specific discussion of that point. He did recall that he asked for a list of the companies involved to assist him in drafting the agreement. There was no discussion about how profits would be calculated, other than that they would be *bona fide* profits, i.e. there would not be any sort of non-bona fide transactions that would

decrease profits. There was no discussion about when profits would be paid. No restrictions or conditions were discussed in relation to the profit sharing.

75. At the conclusion of the meeting, Papadakis asked to be given a corporate chart so that he could begin drafting the agreement. He received the corporate chart from a senior employee of Cresford about 2 weeks later. However, he never did create a written agreement. YSL objected, on grounds of legal privilege, to Papadakis providing evidence as to why he did not do so. In this context, I would note that legal privilege attaches to communications between lawyers and their clients. In this case, Papadakis and his firm were the lawyers. Cresford was the client.

76. Thereafter, Athanasoulis would occasionally remind Papadakis not to forget that "we've got to get to that agreement". There is no evidence that she was ever told that Papadakis did not prepare the written agreement as a result of the privileged communications with Cresford.

77. After the events (described below) which led to the end of Athanasoulis' employment with Cresford, Athanasoulis brought the previously mentioned action against Cresford in the Superior Court of Ontario. In that context, Papadakis was interviewed over the phone by Mr. Al O'Brien ("**O'Brien**") litigation counsel for Cresford, with respect to the meeting of February 16, 2019. O'Brien prepared a memorandum relating to that telephone conversation dated February 4, 2020 ("**O'Brien Memo**").

78. Counsel for Athanasoulis objected to the introduction of the O'Brien Memo into evidence. The memo was offered as a document that had been given to counsel for KSV in this arbitration by Aird & Berlis, Cresford's current litigation counsel. No one was called to give evidence as to the document itself. O'Brien has since passed away. Significant portions of the document have been redacted on the basis of privilege.

79. After receiving submissions as to the admission of the O'Brien Memo into evidence, for reasons stated on the record, I admitted the document into evidence subject to weight and to give Papadakis an opportunity to confirm, deny or explain the assertions in the O'Brien Memo.

80. The O'Brien Memo recounts that O'Brien had sent Papadakis extracts from Athanasoulis' Statement of Claim prior to the telephone conversation. Prior to the call Papadakis had informed O'Brien that he had not been able to locate any notes of the February 16, 2019 meeting.

81. The O’Brien memo stated that Papadakis had made the following comments:

    a. The February 16, 2019 meeting was a “informal” and “very preliminary meeting” and Papadakis “was not to be drafting anything”. “He was never instructed to draft anything and in fact never did draft anything”.

    b. Papadakis “will state that Maria and Dan never got to a point of “meeting of the minds” as to how to move forward”.

    c. Papadakis stated that he was “never in a position to draft anything” and “Dan never told him not to proceed with drafting anything”. “They were never at a stage to start drafting an agreement.”

82. With a few unimportant exceptions, Papadakis flatly contradicted these statements in the O’Brien Memo. He agreed that the meeting was informal in that it was conducted in an informal manner, i.e., not in a boardroom wearing suits. However, he disagreed that he told O’Brien that he was “not to be drafting anything”. He testified that he advised O’Brien that there was a verbal agreement in place that he was asked to put in writing. Papadakis testified that the term “meeting of the minds” never came up in his conversation with O’Brien and that it was not correct to say that there was no meeting of the minds. He testified that it was outside the realm of possibility that he would have said that to O’Brien because it was a legal conclusion and is incorrect. He would not have used that term in his conversation with O’Brien.

83. Papadakis gave evidence that the discussion on February 16, 2019 was not a negotiation, it was a verbal arrangement that he was asked to put into writing. He agreed that he told O’Brien that there was no written contract. He agreed that he was not in a position to draft the agreement right after the meeting because he needed the information he had requested about the corporate structure.

84. I accept the evidence of Papadakis in preference to the information in the O’Brien Memo.

85. Papadakis’ evidence was clear, consistent and convincing as summarized in the following exchange during his cross examination:

> Q. Let me rephrase. I'm going to put it to you, Mr. Papadakis, that on January 31st, 2020, you told Mr. O'Brien that there was no enforceable contract between Mr. Casey and Athanasoulis. Will you accept that?
>
> A. No. No. I said exactly what I've been saying this whole time. There was a verbal agreement in place. You're talking about me using the words "enforceable contract"; those terms did not come up in my conversation. What he asked me is what was asked of me earlier, what was said, what happened at that meeting. He did not go into any, was there an enforceable contract, was there a meeting of the minds. It was what was said, you know -- going back to what you had shown me earlier, those paragraphs, that just talks about what happened at the meeting. That's what we talked about.

86. At the time of their conversation, both Papadakis and O'Brien had potential reasons not to be objective: Papadakis for the reasons previously mentioned in paragraph 66 above and O'Brien because he was not just Cresford's counsel but also a personal friend of Casey and a Trustee of Casey's Estate. However, the objective evidence and surrounding circumstances favour Papadakis' evidence.

87. It is not credible that Papadakis told O'Brien that he was "not to be drafting anything" after the meeting when it is known that the purpose of asking Papadakis to attend the meeting was to create a written agreement in case Casey was "hit by a bus". Any such statement by Papadakis would also be inconsistent with the fact that he did not draft anything after the meeting because of a communication which took place after the meeting, for which Cresford claims privilege.

88. Given that there were in fact no matters of disagreement at the meeting (a matter on which all three attendees at the meeting agree) to say that there was "no meeting of the minds" is a strikingly inapt comment – one that is not supported by the facts, and is at best an arguable legal conclusion. Ironically, the biases alleged against Papadakis make it all the more unlikely that he would have made that comment.

89. Certainly, as Papadakis agreed under cross examination, the matters on which Casey and Athanasoulis confirmed their agreement at the meeting were at a high level of generality. Casey testified that he and Athanasoulis had a "conceptual agreement". Thus, the issue arises as to whether or not their conceptual agreement lacked any contractual intent or essential terms needed to create an agreement enforceable at law. That is a matter for legal argument and analysis, as

discussed below. But there was no reason based on what occurred at the meeting to conclude that there was not, or would not continue to be, a "meeting of the minds".

90. In the circumstances, I am unable to give the O'Brien Memo any weight as against the testimony given by Papadakis in this arbitration.

G. Terms of the PSA

91. The following facts are relevant to the issue of reasonable certainty regarding the calculation of profits in the context of Cresford's business. They are not intended to be definitive findings in terms of how profits should be calculated in the circumstances of any particular project.

92. Cresford prepared budgets, called *pro formas*, that were submitted to lenders and used for internal decision-making. The *pro formas* were prepared on a project by project basis and included a profit calculation.

93. Project profits were calculated by taking project revenues and deducting project expenses.

94. It was Athanasoulis' evidence that the *pro formas* served as a basis to calculate the profits to which she was entitled and that this was something she discussed with Casey. Casey agreed that he and Athanasoulis had a shared understanding as to what was meant when they discussed project profits.

95. The *pro formas* for each project began as pure projections of revenue and categories of expenses at the beginning of each project. They show how all the anticipated financial elements would be treated in the overall calculation of profits. For example, fees charged to a project by other Cresford companies were treated as expenses to the project. As the project progressed, the components of revenues and expenses would be updated with new estimates based on changing circumstances, and with known costs as they were incurred. *Pro formas* became more reliable as construction of the project progressed.

96. Projections can prove to be wrong and events could occur that would significantly affect projections. The COVID pandemic which began in early 2020 is a dramatic example. However, revenues from condominium projects are not earned until construction is completed and the

condominium corporation is registered. By the time the project is registered and revenues are released, costs and revenues are known and, using the *pro formas*, profits can be calculated.

97. Profits can also be earned on projects prior to registration, although not from sales of the condominium units themselves. For example, land may be sold after successful rezoning of the property or at a point where a partial development has occurred.

98. There was never any discussion between Casey and Athanasoulis as to any condition attaching to Athanasoulis' entitlement to a share of the profits. Specifically, it was never discussed that Athanasoulis would cease to be entitled to a share of the profits if her employment was terminated. Casey agreed that Cresford could not extinguish any entitlement by simply terminating Athanasoulis' employment.

H. Events of 2019

99. In the course of 2019, a number of challenges unfolded with respect to the Cresford projects.

100. The three ongoing projects, other than the YSL Project, began to experience serious cost over-runs due to conditions in the construction industry at that time.

101. The YSL Project, which had proceeded to the demolition and excavation stage, was experiencing some difficulties satisfying a condition relating to drawing down its construction loan for the erection of the tower. The condition was that the retail segment of the project had to be pre-sold. Athanasoulis had attempted to put together a consortium to purchase the retail space, but that had been unsuccessful. Casey then engaged in discussions to sell the retail space to Hawalius Inc. ("**Hawalius**").

102. In the course of dealing with these issues, Casey and Athanasoulis discussed the possibility of selling the entire Cresford business. Patrick Dovigi ("**Dovigi**"), the owner of GFL Environmental, which had worked on the foundation for the YSL Project, had expressed an interest in owning rental projects. Casey and Athanasoulis agreed that Dovigi would be approached to see if he had any interest in acquiring Cresford. Dovigi expressed interest, but on the condition that Athanasoulis join him and take a 50% interest. Casey was aware of this and promoted Athanasoulis in his discussions with Dovigi. Casey was extravagant in his praise to Athanasoulis

herself for being in a position to facilitate such a transaction. However, the potential sale to Dovigi created significant issues which ultimately led to Athanasoulis leaving the company without any transaction with Dovigi taking place.

103. Casey testified that he asked Athanasoulis to focus on the transaction with Dovigi. However, he himself took the lead in negotiations with Dovigi and asked Athanasoulis to "remain totally quiet regarding [Dovigi] so he cannot triangulate". In his text message to Athanasoulis of November 22, 2019 Casey went on to say:

> I have a good feeling we can do the deal. If any new information comes up, I will keep you informed.
>
> [Underlining added.]

104. Nevertheless, it appears that Athanasoulis did continue to have discussions with Dovigi. She appears to have played a role in providing information regarding Cresford to Dovigi to inform the negotiations.

105. At the same time, Casey continued to negotiate with Hawalius, without involving Athanasoulis.

106. Casey sought and obtained the assistance of Dowbiggin and Joe Bolla, as external advisors to assist him with the negotiations with Dovigi and Hawalius, and with the other financial issues facing Cresford.

107. While these events were unfolding, Casey instructed employees of Cresford who previously reported to Athanasoulis to report to him instead, and to take other measures regarding record keeping, that caused the employees serious distress. On December 11, 2019, Sean Fleming, Cresford's VP of Finance and Planning ("**Fleming**") stated in an email to Dan Casey, among other things:

> We were asked to join you for a confidential meeting on Wednesday December 11, 2019 that left us feeling uncomfortable. The direction to no longer put anything in writing and to only communicate by way of telephone was alarming. We are also concerned with the sudden change in leadership and decision making without any explanation as to why and for how long.

[Underlining added.]

108. In the arbitration, Casey sought to explain his instructions to Cresford employees not to report to Athanasoulis as a temporary measure which was to remain only in place while she was focussed on negotiations with Dovigi. However, this was never explained to Athanasoulis or other Cresford employees.

109. Casey achieved an agreement in principle (expressed in an unsigned letter of intent ("**LOI**")) with Hawalius and represented to the construction lender that the condition regarding the sale of the retail space had been satisfied. Athanasoulis was aware that Dovigi wanted to acquire the retail space as part of any transaction to acquire Cresford. Athanasoulis felt that the Hawalius transaction negatively impacted the negotiations with Dovigi and that she had been blindsided.

110. On December 13, 2019, Fleming forwarded to Casey an email from the construction lender which sought additional information regarding the LOI. Fleming also raised a number of issues regarding the accuracy and business intent of a number of aspects of the LOI.

111. In a telephone conversation with Bolla, Athanasoulis also disputed whether the agreement in principle with Hawalius satisfied the condition for the construction loan advance. Athanasoulis felt that the lender was being misled regarding the satisfaction of the condition and she raised various issues with Bolla regarding the LOI. Athanasoulis also sent an email to Casey suggesting that he was "presenting a suspicious LOI to the bank".

112. Later the same day, O'Brien on behalf of Cresford sent an email to Athanasoulis in which he referred to the conversation and stated that Athanasoulis had "threatened to take steps to interfere with the closing of the YSL financing". In the email (which was sent by O'Brien's assistant on his behalf) O'Brien reminded Athanasoulis of her fiduciary duties to Cresford and warned her not to interfere in the Hawalius transaction, or with the drawdown of the construction loan.

113. During her involvement with the Dovigi transaction, Athanasoulis also discovered what she believed to be a major violation of Cresford's obligations to its lenders in that it had represented

that it had invested significant equity in the order of $20 million in the YSL Project (as required by the terms of the loan agreement), whereas Casey had borrowed the money and was charging the interest as an expense to the project. The financial difficulties experienced by Cresford and the issues regarding the YSL construction financing caused Athanasoulis to question Casey's past assurances that he had substantial means and assets at his disposal to support Cresford's business.

114. Over the course of the fall of 2019, Casey excluded Athanasoulis from all aspects of Cresford's business except the transaction with Dovigi. In addition to the particular matters noted above, he instructed her to have no further dealings with lenders and conducted certain discussions regarding the potential acquisition of a major new site, the Chelsea Hotel, without her involvement. When Athanasoulis complained, at a meeting on December 5, 2019, Casey berated her and called her "crazy".

115. In his evidence, Casey sought to characterize the situation as Athanasoulis having been instructed to focus on negotiating with Dovigi and being "on assignment" during that period. There was some variation in the evidence as to whether Casey told Athanasoulis to work "exclusively" on the Dovigi transaction, or to give that transaction her primary attention. Casey has complained in his Statement of Defence and Counterclaim regarding her failure to follow up on another matter that was brought to her attention during this period. On the other hand, he agreed in cross-examination with counsel's suggestion that Athanasoulis' attention to the Dovigi transaction was to be exclusive.

116. Casey's evidence was that Athanasoulis' primary or exclusive concern with the Dovigi transaction to the exclusion of other matters was to be temporary, and that the direction to her employees not to report to her was temporary and part of an ethical screen, given Athanasoulis' potential involvement with Dovigi in any purchase of Cresford. Whether or not this was so, these intentions were not communicated to Athanasoulis or to any of the staff, or third parties with whom Athanasoulis had been dealing on behalf of Cresford. There is no evidence of any communication to Athanasoulis or Cresford employees regarding an ethical screen.

I. Athanasoulis' Departure from Cresford

117. On January 2, 2020, Mark Dunn, as counsel for Athanasoulis, wrote to O'Brien indicating that Athanasoulis considered her employment with Cresford to have been constructively terminated, and that she would cease to work for Cresford effective that day. The letter set out the grounds for that contention, most of which have been referred to above. The letter set out various steps to be taken to formalize and communicate the fact that Athanasoulis was no longer employed by Cresford. The letter advised that a claim would be filed on January 10, 2020 if an amicable settlement could not be reached by that date.

118. O'Brien responded to Dunn's letter disputing the allegation of constructive dismissal, but agreeing to discuss the steps to be taken in light of her departure.

119. Athanasoulis' last day of work was January 2, 2020.

J. Subsequent Events

120. Athanasoulis filed a lawsuit against Cresford in the Ontario Superior Court of Justice on January 21, 2020.

121. The Statement of Claim, in addition to advancing the claims that are the subject of this arbitration, contained allegations as to Cresford's financial difficulties and Athanasoulis' concerns regarding dealings with Cresford's lenders which are referenced above.

122. Before delivering the Statement of Claim, Athanasoulis sent a letter to each of two lenders to Cresford: QuadReal Finance and Otera Capital ("**Mann Letters"**). Each letter contained serious allegations of financial wrongdoing against Casey and Cresford, and expressly alleged fraud. Athanasoulis falsely signed the letter in the name of David Mann, the Chief Financial Officer of Cresford ("**Mann**"), a fact that she has since acknowledged.

123. Apart from the allegation of "fraud", KSV does not contest the accuracy of the information in the Mann Letters, and in fact relies on those facts in support of its position that Cresford would never have achieved the profit in which Athanasoulis is claiming a share.

124. As stated above, KSV relies on the Mann Letters as going to Athanasoulis' credibility.

125. On February 21, 2020, the Statement of Defence and Counterclaim was filed. By way of defence, the Defendants denied any liability, including for damages in lieu of notice or for a share of profits. By way of counterclaim, the Defendants sued for damages for, among other things, breach of fiduciary duty, breach of contract and intentional interference with contractual relationships and for defamation. None of the claims raised in the Counterclaim are being dealt with in this arbitration.

126. YSL became subject to a Notice of Intent for Proposal pursuant to the BIA on April 30, 2021.

K. Issues and Analysis

127. By way of preliminary comments, it is useful to address four points which KSV identifies as unusual aspects of this case that should guide the decisions in this case.

128. First, KSV asserts that it is important to note that this case concerns an equity claim, i.e. a claim to a share of the profits, by an employee who has invested no equity. However, I would note that the ranking of the PSA claim in the insolvency proceedings is not an issue that I have been tasked with addressing. I am not aware of any principle of law that the only legally adequate consideration for a promise to share profits, is a contribution to the capital structure of the promisor by way of an investment of equity.

129. KSV's second over-arching point is that this is a claim for a share of profits in an insolvent company, in relation to a project that has not been built and will never be built by this group of companies. However, the existence or non-existence of an agreement, and the determination of the terms of the agreement, does not depend upon whether or not the subject matter of the contract had a favourable outcome. The existence or non-existence of a profit, payable by YSL as a profit share or as damages in lieu, in the circumstances of this case would appear to be a potentially complex determination which – apparently for that reason – has been reserved by agreement of the parties to the second stage of this arbitration.

130. Third, KSV points out that this claim concerns a "life changing amount of money" based on the "flimsiest of alleged oral agreements". However, the existence or non-existence of any agreement is to be determined based on legal tests that are to be applied to the facts of the case at

the time the agreement was allegedly formed. Any opinion the arbitrator may hold as to the providence or fairness of the bargain is not relevant. In addition, as KSV itself points out in other submissions, an agreement to share profits is highly contingent and as of February 16, 2019 Cresford had not yet achieved a profit.

131. Fourth, KSV argues that the claim for wrongful dismissal is unusual in that it is made by a senior employee who was merely asked to step aside from certain duties where there was a potential conflict of interest, until that conflict of interest was resolved. Certain aspects of this assertion are factually contentious.

i. Did Athanasoulis have a PSA that entitled her to 20% of the profits earned by the YSL Project?

132. The fundamental issue in relation to the first question is whether or not Athanasoulis and Casey (representing Cresford) entered into a complete and binding agreement with respect to 20% of the profits earned by the YSL Project. The primary argument against this conclusion by KSV is that there were many other terms that were essential to any such agreement that were not in fact discussed or agreed upon. KSV takes the position that, as stated by Casey, what the parties had was at best a "conceptual agreement" that was subject to details being fleshed out in a written agreement that was yet to be drafted. For example, it is suggested that details would need to be set out as to which entity within the Cresford Group would be responsible to pay the profit share, how profit share was to be calculated, when it would be paid, and so on.

133. In my view, it is clear that Athanasoulis and Casey believed by February 16, 2019 that they had agreed that, as a term of her employment, Athanasoulis would receive 20% of the profits of current and future projects completed by companies in the Cresford Group. They understood the agreement to be binding. They expected Athanasoulis to act upon it as representing fair compensation for her existing, and expected future, contributions to the profitability in which she was to share. Their instructions to Papadakis to reduce the agreement to writing were given for the purpose of memorializing the agreement so that Athanasoulis could rely on it in case Casey "was hit by a bus". What was objectively conveyed by this explanation was that a written agreement was only necessary if Casey was not available to honour the agreement since the parties otherwise trusted each other to give effect to their oral agreements as they had in the past. When

giving those instructions, they did not identify any issues upon which they disagreed or sought advice.

134. At the meeting Papadakis sought further information so that the agreement could be reduced to writing. In particular, he required a corporate chart so as to identify which companies within the Cresford Group would need to be parties. However, Casey at all times had the power to bind all of the relevant entities on behalf of which the 20% PSA was entered into.

135. It is possible that many additional issues could have been identified and provided for in any draft of a written agreement prepared by Papadakis, had his work not been discontinued as a result of privileged communications with Cresford. While Cresford is within its rights to claim privilege over communications related to why the agreement was not drafted, it is not open to KSV (standing in the shoes of Cresford) to offer an affirmative explanation as to why Papadakis was unable to draft an agreement, for example based on a lack of instructions as to "essential terms". In any event, there is no reason to believe that any such terms would have been contentious.

136. Given, as I have found, the subjective intention of the parties that their agreement with respect to the PSA was binding as of February 16, 2019, the issue is whether the agreement nevertheless fails to be enforceable because of a lack of essential terms.

137. The need for an agreement to include all essential terms in order to be enforceable has been dealt with in a number of cases. In general, the legal principles may be summarized as follows:

a. *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.*, [1991] O.J. No. 495:

> "20. As a matter of normal business practice, parties planning to make a formal written document the expression of their agreement, necessarily discuss and negotiate the proposed terms of the agreement before they enter into it. They frequently agree upon all of the terms to be incorporated into the intended written document before it is prepared. Their agreement may be expressed orally or by way of memorandum, by exchange of correspondence, or other informal writings. The parties may "contract to make a contract", that is to say, they may bind themselves to execute at a future date a formal written agreement *containing* specific terms and conditions. When they agree on all of the essential provisions to be incorporated in a formal document with the intention that their agreement shall thereupon

become binding, they will have fulfilled all the requisites for the formation of a contract. The fact that a formal written document to the same effect is to be thereafter prepared and signed does not alter the binding validity of the original contract.

21. However, when the original contract is incomplete because essential provisions intended to govern the contractual relationship have not been settled or agreed upon; or the contract is too general or uncertain to be valid in itself and is dependent on the making of a formal contract; or the understanding or intention of the parties, even if there is no uncertainty as to the terms of their agreement, is that their legal obligations are to be deferred until a formal contract has been approved and executed, the original or preliminary agreement cannot constitute an enforceable contract. In other words, in such circumstances the "contract to make a contract" is not a contract at all. The execution of the contemplated formal document is not intended only as a solemn record or memorial of an already complete and binding contract but is essential to the formation of the contract itself. See, generally, Von Hatzfeld Wildenburq v. Alexander, [1912] 1 Ch. 284; Canada Square Corp. Ltd. et al. v. Versafood Services Ltd. et al. (1980), 1979 CanLII 2042 (ON SC), 25 O.R. (2d) 591 (H.Ct.), aff'd., (1981), 1981 CanLII 1893 (ON CA), 34 O.R. (2d) 250 (C.A.); Bahamaconsult Ltd. v. Kellogg Salad Canada Ltd. (1976), 1975 CanLII 379 (ON SC), 9 O.R. (2d) 630 (H.Ct.), rev'd, (1977), 1976 CanLII 554 (ON CA), 15 O.R. (2d) 276 (C.A.); Chitty on Contracts, 26th ed. (1990), at pp.79-91; Corbin on Contracts, (1963), Vol. 1, § 29-30; and Treitel, Law of Contract, 7th ed. (1987), at pp.42-47."

b. *Canada Square Corp. v. Versafood Services Ltd*., [1981] O.J. No. 3125 (Ont. C.A.) at para. 37:

"… accepting that the parties intended to create a binding relationship and were represented by experienced businessmen who had full authority to represent their respective companies, a court should not be too astute to hold that there is not that degree of certainty in any of its essential terms which is the requirement of a binding contract."

c. *McPherson v. Scully*, [2004] O.J. No. 5235 at para. 56:

"It is the tendency of modern courts to favour enforcement of contracts, particularly where there has been reliance."

138. As with the application of all legal principles relating to contract formation and interpretation, the exercise is highly fact dependent. For example, the *Bawitko* case involved a complex legal arrangement involving a possible franchise agreement. A draft of over 50 pages had already been produced by the franchisor, but had not been subject to any detailed discussions. The parties did not have any prior business dealings to inform their contractual expectations. The court held that the parties had not achieved a meeting of the minds on all essential terms. In the *Canada Square* case, although the final lease had not been signed, the landlord had sent a letter to the tenant outlining basic terms which were described by the court as "crudely expressed", containing "some very loose language" and "not crystal clear". Nevertheless, in that case, the agreement to lease an entire floor of an as yet unconstructed project was enforced. In the *McPherson* case, the court placed considerable reliance on the dealings between the parties over an extended period of time to find that an enforceable agreement had been reached.

139. The important context for the issue in this case is that the 20% PSA was not a standalone agreement nor the first profit sharing agreement between the parties. It was an integral part of an existing contract of employment. That contract was oral and had been acted on by both sides for about 15 years. Despite being referred to in a few documents and despite an inconclusive attempt in 2014 by Athanasoulis to document the employment relationship, no definitive written agreement containing the PSA ever came into existence.

140. None of the written documents, including the November 14 Draft, could be confidently stated to set out the complete and precise terms of her employment. For example, the November 14 Draft was based on an employment agreement of another employee that Athanasoulis modified. It is not certain that she understood the implications of all the terminology, and there is no evidence that the specific wording was ever agreed to (or, for that matter, disagreed to) by Casey. Nevertheless, there is no doubt that Athanasoulis was employed by Cresford and held office in various Cresford entities based on an oral agreement that was defined by an ongoing pattern of conduct between the parties which appear to have given rise to few, if any, disagreements regarding compensation prior to February 16, 2019. On the contrary, there is a history of Athanasoulis being paid compensation that was broadly consistent with what she has alleged to be the terms of her employment.

141. Clearly, the avoidance of uncertainty regarding a contractual relationship is one of the virtues of a written agreement. However, it should be borne in mind that most commercial *disputes* are based on the interpretation of agreements which *have* been reduced to writing. For example, written agreements that require a sharing of profits regularly give rise to disputes regarding the calculation of profits, even when the agreement contains specific terms as to how profit is to be calculated (for example "in accordance with GAAP" or IFRS). Indeed, profit sharing agreements are notoriously more litigious than, for example, agreements that involve sharing of top line revenues (such as sales).

142. To assert that any particular issue that might arise with respect to the calculation of profit must be addressed as an "essential term" sets a very high standard for the degree of certainty required by commercial agreements, oral or written. For example, if an express statement as to whether profit is to be calculated before or after tax is an "essential term", that would mean that any agreement that failed to contain a particular term in that regard would lack an essential term and be unenforceable. In my view, the relevant legal principles are not to be applied in that manner, and do not lead to that conclusion.

143. Here, there was continuous performance/reliance by Athanasoulis (before and after February 16, 2019) on the terms of her employment, including incentive-based elements, as defined by her discussions with Casey. The recording of their agreement into a written document would have been a departure from their previous practices and was embarked upon for a specific reason, the emergence of health issues with Casey.

144. In this case, the relationship is one of long-term employment. This is not a case where a claimant with a scant prior relationship to the defendant claims a massive finder's fee based on an off-hand comment at a cocktail party. Over a period of 15 years, Athanasoulis had risen to the level of being the most senior officer reporting to the CEO in an organization with projects in the hundreds of millions of dollars (and in the case of the YSL Project exceeding $1 billion). Her contributions to the operational success of the Cresford Group appear to have eclipsed that of Casey, although his involvement remained crucial in terms of sourcing capital. Her work had justified significant bonuses and incentives being added to her compensation. Cresford had already agreed to a PSA of 10%, and was discussing increasing that to 15%. With Dowbiggin's

departure and Casey's illness, it is perfectly logical that Casey would see a need to confirm an increase in the PSA to 20% and seek to memorialize that agreement in a formal document. Despite KSV's attempt to minimize the contributions of Athanasoulis as simply those of an employee with a talent for condo sales, there is nothing disproportionate, in the realm of executive compensation, about the agreement to increase her profit share to 20%.

145. The situation here is not analogous to that in the case of *Ayers v. Carewell Holdings Inc.*, 2002 CarswellOnt 1761 (Sup. Ct.). The individual who claimed the bonus in that case was found not to be credible because of an inconsistency in how he documented a lesser bonus for his wife as compared to the larger bonus he claimed for himself. Also, the bonus was found to be "too one sided and the amount to be too rich to be credible" based precisely on the fact that it was allegedly payable even if there was no increase in profitability. In the present case, the failure to record the agreement, despite the parties' intention to do so, was consistent with past practice (including prior fruitless attempts to document their agreements). Athanasoulis had been paid significant bonuses based on sales long before profitability from a particular project could be determined, and the 20% PSA did not require any payment to Athanasoulis unless a profit was obtained. Were that to be the case, her anticipated contribution to the result was not in doubt.

146. When they agreed to the 20% PSA, Athanasoulis and Casey had a common understanding of what "profits" meant. Broadly speaking they understood that profits are revenues less expenses. It is reasonable to infer that they understood profits to be as calculated within the *pro forma* process that they used generally for all projects within their business. As given in evidence by Papadakis, they agreed that profits would not be artificially reduced by "bad faith" transactions.

147. In my view, given that the calculation of ultimate profits was an ongoing exercise with respect to each of the projects through the *pro forma* process, and would ultimately have to be accounted for with third party investors, there is a strong factual matrix and history of dealings between the parties within which any dispute regarding the meaning or calculation of profits could be determined. It is not essential to the enforceability of the agreement that every option regarding the calculation of profits be affirmed or negated.

148. I therefore find that Athanasoulis and Casey did agree, on or before February 16, 2019, to amend her employment agreement to provide for a 20% share of the profits calculated in good faith on the basis of the *pro forma* statements used in Cresford's business.

149. As to the question of who were parties to the agreement, I find that the intention of the 20% PSA was to bind all relevant entities that Casey had the power to bind – hence Papadakis' need for a corporate chart when memorializing the agreement. The profits that Casey and Athanasoulis had in mind were profits from the projects carried on by the Owners, such as YSL. Sharing of profits earned by any entity other than YSL is not the subject of the present claim. In the case of the YSL Project, any profit to be shared would necessarily have to be shared by YSL, and it is an inescapable inference that was the common intention of the Athanasoulis and Casey.

150. I therefore find that Athanasoulis did have a PSA that entitled her to 20% of the profits earned by the YSL Project.

ii. If so, what were the terms of the PSA?

151. In the course of answering the first question, I have found that the 20% PSA did not lack essential terms. The essential terms of that agreement, emerging from the foregoing analysis, were:

a. Athanasoulis was to be entitled to 20% of the profits earned on any of Cresford's current and future projects.

b. Profits were to be calculated, on a good faith basis, based on the pro forma budgets prepared by Cresford with respect to each project.

c. Athanasoulis' share of the profits was to be paid by the relevant Owner that earned the profit.

d. Profits were to be shared when earned, usually at the completion of a project.

152. Beyond these terms, certain other issues regarding the terms of the agreement arise in the context of the present situation. In particular:

a. the termination of Athanasoulis' employment before the completion of the YSL Project raises an issue as to whether her right to a share of the profits survived termination of her employment;

b. the fact that an insolvency proposal has been approved by the court at a time when the YSL Project has not proceeded to above-ground construction places in doubt whether, on any interpretation of the agreement, YSL has earned or will earn a profit; and

c. the circumstances giving rise to the termination of Athanasoulis' employment, her subsequent lawsuit against Cresford and Casey, her revelation of damaging information regarding Cresford finances, and the insolvency of YSL raise issues regarding causation in terms of the YSL Project not being completed and whether YSL would have earned a profit.

153. There is no evidence that any of these circumstances were in the minds of the parties when they entered into the 20% PSA. Indeed, each of these circumstances would appear to be contrary to the assumptions on the basis of which the 20% PSA was entered into. In particular:

a. the notion that Athanasoulis employment might be terminated without cause was the furthest thing from the minds of the parties. The entire premise of the 20% PSA was that she was a key employee whose contributions were needed in order to achieve a profit;

b. the object of the agreement was retention of Athanasoulis as a key employee until a profit was earned; and

c. the objective of earning and sharing a profit was the antithesis of Cresford or the Owners becoming insolvent.

154. Unquestionably, parties can and should provide in their agreements for events that commonly occur, even if they consider that they are unlikely to arise in their case. As observed in argument, that is the essence of what commercial lawyers do when they draft an agreement.

However, many if not most commercial disputes involve events that the parties did not anticipate or did not provide for, clearly or at all, in their agreement, despite the use of lawyers.

155. With respect to the issue of continued employment, Athanasoulis argues that the November 14 Draft provides the basis of a determination that the parties had an understanding that the PSA would be payable “on final closing” without any reference to Athanasoulis remaining employed by Cresford at that time. I am not prepared to draw that conclusion from the November 14 Draft as there is no evidence that that specific language was ever discussed or agreed to. Even if one were to accept the November 14 Draft as defining the terms of the PSA with respect to continued employment, it would leave open the questions as to whether the profit share could be defeated by a termination of Athanasoulis’ employment for cause, or by voluntary resignation, before a profit was earned.

156. Nor is there any evidence of discussions on February 16, 2019 to the effect that Athanasoulis had to be employed at the end of a project in order to earn a share of the profit, as alleged (in the alternative) by Cresford and KSV.

157. There was no *express* term of the oral agreement regarding continued employment. However, there is a term which can readily be implied, and which Casey himself has accepted as obvious, namely that Cresford cannot avoid the obligation to pay a share of the profits by simply terminating Athanasoulis’ employment. I understood his admission in this regard to relate to a situation where termination was without cause.

158. KSV accepts that the avoidance of such an obligation by terminating an employee just before the obligation falls due would not avail an employer. However, it argues that such a right could be defeated if it did not fall due within a contractual or common law notice period for termination without cause.

159. Athanasoulis argues that in the absence of any express agreement that the 20% PSA would be defeated by termination of Athanasoulis’ employment, the result is that it cannot be so defeated.

160. The purpose of the profit share was to incentivize Athanasoulis to work towards the objective of creating and maximizing the profit to be earned by the Owners. It is not in dispute that, in the ordinary course, it would take several years (possibly 5 to 7 years) to complete the

types of projects Cresford was undertaking. That was the case with respect to the YSL Project. The 20% PSA necessarily implied a mutual commitment on both sides to work to the objective of making a profit over that period of time. It would defeat the fundamental purpose of the agreement if Cresford could increase its profit share by 20% and decrease Athanasoulis' share to zero, possibly after several years of crucial contributions by her in the form of advance sales etc, simply by terminating her employment on notice. It is not necessary to consider whether Cresford may have been able to do so in the event it terminated Athanasoulis' employment for cause, as that is not in issue in this case.

161. I therefore accept Athanasoulis' submission that, in the absence of an express agreement to the effect that the 20% PSA only applies if Athanasoulis is employed by Cresford when the profit is earned, there is no such limitation on that right.

162. Although I have found the November 14 Draft not to be determinative of the terms of the 10% PSA, my conclusion that employment at the time a profit is realized is not required pursuant to the 20% PSA is consistent with the provisions of the November 14 Draft.

163. In my view, there were no express or implied terms with respect to the issues relating to insolvency. These issues will have to be determined in the next phase of the arbitration by the application of the relevant legal principles to the factual circumstances giving rise to the insolvency.

164. I fully appreciate KSV's submissions that it appears incongruous to be discussing profit share in the context of companies that have subsequently gone through insolvency proceedings. However, the parties have agreed to bifurcate liability issues from damage issues, and to have me address specific questions relating to liability at this stage. Without hearing more evidence and submissions regarding what led to the insolvency proceedings and what their financial outcome was in terms of YSL, I am not in a position to accede to KSV's submission that I should find no breach on the basis that there has not been, and will never be, any profit to share. Equally, I do not rule out the possibility that the profit may be shown to be nil and the damages for any breach to be nominal.

165. Similarly, as a matter of causation, I am not able to determine at this stage whether or not the actions of Athanasoulis were the cause of Cresford's demise. All of those issues are necessarily reserved to the second stage of the arbitration.

166. Based on the foregoing analysis with respect to the first and second issue, I find the following with respect to the terms of the 20% PSA:

a. Athanasoulis was to be entitled to 20% of the profits earned on any of Cresford's current and future projects.

b. Profits were to be calculated, on a good faith basis, based on the pro forma budgets prepared by Cresford with respect to each project.

c. Athanasoulis' share of the profits was to be paid by the relevant Owner that earned the profit.

d. Profits were to be shared when earned, usually at the completion of a project.

e. There was no requirement that Athanasoulis remain employed at the time that a profit was earned.

iii. Was Athanasoulis employed by YSL?

167. KSV submits that Athanasoulis was not employed by YSL. Therefore, even if a PSA was found to exist, the obligations under it could not be owed by YSL. In KSV's oral submissions, various other possible candidates for the employer were suggested including: the Cresford organization, EDRP and "various other management organizations within the Cresford Group".

168. KSV relies primarily on the decision of the Ontario Court of Appeal in *O'Reilly v. ClearMRI Solutions Ltd.,* 2021 ONCA 385 to support its submissions. KSV submits that YSL was among the lowest companies on the organization chart and did not exercise the degree of effective control over Athanasoulis which is required to give it the status of employer, and to impose upon it any attendant obligations.

169. In my view, the description of the common employer doctrine in the *O'Reilly* case, supports a finding that YSL was a common employer of Athanasoulis, along with other Owners and companies in the Cresford Group of companies. I base that finding on paragraphs 49 to 65 of the *O'Reilly* decision and the following facts in this case:

a. Athanasoulis was an officer of YSL. Her employment status is therefore not based merely upon the relationship between YSL and another company or companies by which she was employed. There is no issue of "piercing the corporate veil" in this case.

b. As with the *Downtown Eatery (1993) Ltd. v Ontario* 2001 CarswellOnt 1680, cited with approval in the *O'Reilly* case, Athanasoulis" employment "rested more on her relationship to the group of companies rather than the relationships among the companies in the group".

c. YSL was a distinct corporate entity (with distinct stakeholders) which was separately and directly benefitted by the work performed by Athanasoulis.

d. Casey had the authority to bind YSL. Where Casey made promises to Athanasoulis that only YSL was in a position to fulfill (e.g., an agreement to share YSL's profits) it is objectively reasonable to infer that those promises were made on behalf of YSL.

e. Although in the context of Cresford it may have been a formality, there is no reason to believe that YSL could not have exercised its control by making a different decision with respect to Athanasoulis' employment than other members of the group. The fact that YSL was structured to exercise that control through Casey (as were all other companies within the group) does not negate YSL's control over Athanasoulis with respect to its own business, as a legal matter.

f. There was no written agreement of employment, but such documents that refer to the relationship between Cresford and its employees do not refer to any particular legal entity within the Cresford Group. Where no individual employer is specified,

it is reasonable to conclude that each member of the group is an employer in relation to aspects of the employment relationship particular to it.

g. There is no evidence of EDRP as an entity being involved substantively in any of Athanasoulis' activities on behalf of the Cresford Group or exercising any control. EDRP was not identified on a corporate chart used by KSV counsel to make the argument that YSL was at the bottom of the corporate ladder. At best, it appears to have been a financial clearing house within the group.

h. In any event, the companies on the "bottom rung" of the corporate chart are the Owners. They are the operating companies. As such, they are precisely the companies for which Athanasoulis worked. Her activities related to their operations, not merely to aggregated "head office" types of functions. She was involved in dealing with contractors and lenders and with managing sales programs for specific projects, such as the YSL Project.

i. The agreement with Athanasoulis included elements of compensation (e.g., bonuses) which were directly attributable to her contributions to individual companies within the group (e.g., YSL) and which were in many instances advanced by those companies to her (e.g., in the form of discounts on condominium sales).

170. Based on the foregoing, I find that Athanasoulis was an employee of YSL.

iv. Was Athanasoulis constructively dismissed i.e., did she resign or was she constructively dismissed?

171. The basic legal framework for the law relating to constructive dismissal was set out by the Supreme Court of Canada in *Farber v. Royal Trust Co*., 1997 CanLII 387 (SCC), [1997] 1 SCR 846, in which it was stated:

> 24. Where an employer decides unilaterally to make substantial changes to the essential terms of an employee's contract of employment and the employee does not agree to the changes and leaves his or her job, the employee has not resigned, but has been dismissed. Since the employer has not formally dismissed the employee, this is referred to as "constructive dismissal". By unilaterally seeking

> to make substantial changes to the essential terms of the employment contract, the employer is ceasing to meet its obligations and is therefore terminating the contract. The employee can then treat the contract as resiliated for breach and can leave. In such circumstances, the employee is entitled to compensation in lieu of notice and, where appropriate, damages.
>
> 25. On the other hand, an employer can make any changes to an employee's position that are allowed by the contract, *inter alia* as part of the employer's managerial authority. Such changes to the employee's position will not be changes to the employment contract, but rather applications thereof. The extent of the employer's discretion to make changes will depend on what the parties agreed when they entered into the contract.

172. As set out in *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10, paragraph 63, the question in any constructive dismissal case is whether a reasonable person *in the employee's position* would conclude the essential terms of the contract had been substantially changed.

> "There is no requirement that the employer actually intend no longer to be bound by the contract. The question is whether, given the totality of the circumstances, a reasonable person in the employee's situation would have concluded that the employer's conduct evinced an intention no longer to be bound by it."

173. The issue is whether a breach of an express or implied term of the contract has occurred and whether that breach has caused a substantial change to an essential term of the employment contract.

174. The responsibilities that an employee must perform are, of course, part of the employment contract. Taking those responsibilities away will often result in constructive termination. The Supreme Court of Canada recognized in *Potter* (para. 83) that work is a "fundamental aspect" in a person's life and an "essential component of his or her sense of identity, self-worth and emotional well-being". That is particularly applicable in this case in which Athanasoulis success was completely defined by her role at Cresford, with few other qualifications or accomplishments, and her remarkable rise to be the "face" of Cresford to the public.

175. I accept Athanasoulis' submissions (and there does not appear to be any serious dispute) that the *Potter* case, and other authorities cited by her establish the following general principles:

- Employment is not only a way to earn money – the responsibilities associated with a position, and the reputation and status that flows from those responsibilities, are critically important.

  Potter, paras. 83-84;

  Blight v. Nokia Products Ltd., 2012 ONSC 2093, paras 23-24 and 31

- A reduction to an employee's responsibilities is a substantial breach of an essential term of the employment contract, and thereby constitutes constructive dismissal. This is especially the case if there is an associated loss of reputation or status.

  Farber, paras. 38 and 46;

  See also Schumacher *v. Toronto Dominion Bank*, [1999] O.J. No. 1772 (Ont. C.A.), paras. 27-28

- Changing reporting structures can also be a constructive termination.

  Robinson v. H. J. Heinz Company of Canada LP, 2018 ONSC 3424, para. 29

- Without proper justification, suspending or denying an employee the opportunity to work almost "inevitably" leads to a finding of constructive dismissal.

  Potter, para. 84 and para. 106;

  Shah v. Xerox Canada Ltd., [2000] O.J. No. 849, para. 9

- It is not generally enough for the employer to *have* cause for the suspension, it must almost always *articulate* that cause to the employee at the time of the suspension.

  Potter, paras. 98-99

- It is a fundamental implied term of any employment contract that the employer will treat the employee with dignity and respect. An employer who verbally abuses an employee has often effected a constructive termination of that employee.

  Drew v. Canadian National Railway, 2009 CarswellNat 2256, para 222;

  Nasser v. ABC Group Inc., 2007 CarswellOnt 8884, paras. 32-33, aff'd 2008 CanLII 4264 quoting *Lloyd Imperial Parking*, [1996] A.J. No. 1087, para. 41

176. KSV does not contest any of the above principles. It defends the constructive dismissal claim against Cresford by denying that Athanasoulis was treated in an unfair or disrespectful manner. On the contrary, KSV maintains, the changes in her role and responsibilities were fair and reasonable having regard to her potential involvement with Dovigi after his possible purchase

of Cresford. KSV argues that it was a reasonable measure in the legitimate interests of Cresford that Athanasoulis and Dovigi not be given any information about Cresford outside of the negotiations and that an "ethical screen" be established between Athanasoulis and other employees at Cresford. KSV maintains that these necessary arrangements were temporary and should have been understood by Athanasoulis to be temporary, and dependent on whether a transaction with Dovigi was achieved.

177. It is not unusual in M&A transactions for senior management employees to find themselves in near conflict positions, particularly when incentives are offered by the purchaser for them to remain in place after the transaction is complete. In this case, the incentive offered to Athanasoulis was unusually substantial in that she was offered a profit participation of 50%. However, it is important to keep this fact in the context of the actual dealings between Casey and Athanasoulis. The sale of the company was mutually identified by Casey and Athanasoulis as a solution to Cresford's financial difficulties and a possible sale to Dovigi was welcomed by Casey as much as by Athanasoulis. Casey was aware of the importance Dovigi placed on Athanasoulis continued involvement, he actively promoted her to Dovigi and was aware of the condition that she remain involved after the sale with an even greater share of the profits.

178. In the words of KSV's counsel:

> So Mr. Casey understood that Athanasoulis was to have a financial interest in the company, along with Mr.Dovigi, following the potential sale. And she gave evidence to that. She said I was going to, I was going to have a stake in it; we were going to be partners; we were going to split it 50/50.
>
> Mr. Casey instructed Athanasoulis to seek a deal that worked for Cresford and for Mr. Dovigi and for herself. Remember, he said it was those three parties.
> …
>
> … it probably wasn't the best idea in the world to have Athanasoulis trying to satisfy the interest of all three parties at once. But that's the situation they were in. They dealt with things informally. They trusted each other.
>
> As a result of her special interest in the sale to Mr. Dovigi, Mr. Casey assigned Athanasoulis to devote most of her work during that time period to the sale.

179. The foregoing is a fair summary of the situation with the possible qualification of the last paragraph. The exact role Athanasoulis was to play in negotiations with Dovigi is unclear. The evidence is somewhat inconsistent on this aspect. Clearly, Casey himself continued to conduct negotiations with Dovigi and at one point advised Athanasoulis to "…remain totally quiet regarding [Dovigi] so he cannot triangulate. I have a good feeling we can do the deal. If any new information comes up I'll keep you informed." [Underlining added.] Indeed, it seems an odd choice that Athanasoulis would be directed to devote most of her attention to the very transaction which gave rise to her conflict of interest. Nevertheless, Casey's evidence is that Athanasoulis was to devote most of her time to the sale and to negotiating with Dovigi.

180. In any event, Athanasoulis did continue to negotiate with Dovigi and, in that process, learned negative information regarding Cresford's financial dealings of which she was previously unaware. That information was eventually set out in the Mann Letters, after Athanasoulis' departure from Cresford.

181. Given that Casey continued to negotiate a sale to Hawalius of the retail space in YSL, which Dovigi considered to be inconsistent with his purchase of Cresford, a conflict was inevitable between the two transactions and between Casey and Athanasoulis.

182. In these challenging circumstances, some adjustments to the scope of Athanasoulis' role and responsibilities were justifiable. However, in my view, the extreme measures that were taken by Casey and, as importantly, the manner in which they were implemented were not justified and rendered Athanasoulis' continued employment untenable. Perhaps the most serious of these were:

a. Casey told Athanasoulis that she was not to deal with Cresford's lenders, despite the fact that Athanasoulis had played an important role in interfacing with lenders on behalf of Cresford. This was occurring at a time when irregularities in Cresford's lending arrangements were coming to light, and at a time when Casey had brought Dowbiggin back in as a consultant to deal with financial matters.

b. Casey excluded Athanasoulis completely from negotiations relating to the sale of YSL's retail component. In that regard, while directing Athanasoulis to focus on the Dovigi transaction, he negotiated an agreement with Hawalius that undermined the Dovigi transaction. At the same time Casey's representations to YSL's construction lender regarding the Hawalius transaction raised doubts in the minds of Athanasoulis and another senior Cresford employee as to whether the representations were accurate.

c. In response to the issues raised by Athanasoulis with respect to the Hawalius transaction, Casey had Cresford's litigation counsel write Athanasoulis to accuse her of breaching her fiduciary duty and re-iterating that she was not to contact any lenders. The involvement of an employer's litigation counsel to communicate with an employee, especially accompanied by accusations of breach of fiduciary duty and interference with contractual relations, is not usually a hallmark of secure employment.

d. Without notice to Athanasoulis or explanation to senior Cresford staff he instructed the latter to report directly to him, and not to Athanasoulis. At the same time, he instructed them not to put communications in writing.

e. Athanasoulis testified that Mr. Casey "berate[d]" her, "bl[ew] up" and called her "crazy" at a meeting on December 5, 2019.

183. The foregoing actions by Casey, separately and in combination, precluded Athanasoulis from performing most of the functions critical to her role at Cresford and had serious potential reputational consequences for Athanasoulis. In particular, the instructions to senior Cresford employees not to report to her – which they perceived as a change of leadership – combined with an instruction not to communicate in writing, created an aura of crisis and wrongdoing that understandably caused confusion and concern among those who had previously reported to Athanasoulis.

184. The case of *MacKinnon v Acadia University* 2009 NSSC 269, was cited by KSV as a case with many facts comparable to the present case in which no constructive dismissal was found to have occurred. In that case, the court found that, absent expressed restriction, the employer was entitled to change the scope of an employee's duties to meet changing circumstances and priorities, including by creating, deleting, or reallocating spheres of responsibility (para 83). KSV argues that the fact that, on a temporary basis, certain projects may have been removed from Athanasoulis' oversight does not amount to constructive dismissal when there is no change in title or salary. KSV argues that "implicitly" on the objective facts the changes to Athanasoulis' employment were temporary.

185. In reviewing the *MacKinnon* case, I note that the court observes that "Case law provides helpful but limited guidance and should be read with caution…" (Para 62). It notes that the cases have swung "like a pendulum" in concert with economic conditions but has probably reached the current position that "Legitimate business interests can justify a degree of change in the employees

duties, provided the degree of change is not fundamental to the employment contract." (para 63). The court concludes that the current test remains that described by Gonthier J. in *Farber* in that "save in exceptional cases, an employer's change must be fundamental (severe, serious, unilateral and substantial and without reasonable notice) to amount to a repudiation of the employment contract." (Para 69.)

186. In my view that test for constructive dismissal is met in this case. The degree of change in status and role which was abruptly imposed on Athanasoulis was fundamental to the employment contract. The change was "severe, serious, unilateral, substantial and without any notice".

187. While the actions of Cresford may have been justified in the abstract on a limited and temporary basis in terms of the Dovigi transaction, the indiscriminate and non-transparent manner in which they were implemented placed Athanasoulis in an untenable position in terms of critical relationships with other senior employees who reported to her and with third parties who looked to her as their principal contact.

188. It is not disputed that the changes were made without any notice to Athanasoulis and were not described to Athanasoulis nor to anyone else as being temporary. The suggestion that the temporary nature of these changes was implicit is not viable in the context of the financial irregularities which were then in play, the legal warnings given to Athanasoulis and Casey's deteriorating personal communications with her. The relationship of trust which had been the foundation of a very successful employment relationship, based entirely on oral agreements, was destroyed. In reality, the changes and the way in which they were implemented carried a very high risk that Athanasoulis' reputation and standing with others, upon whom her effectiveness as an employee and her future career in business depended, would be permanently compromised.

189. In the circumstances, I find that the changes in Athanasoulis' employment and in her relationship with Casey:

a. fundamentally changed the nature of Athanasoulis' employment and her ability to continue as an employee;

b. were not justified by any conduct on her part; and

c. were made unilaterally without reasonable notice or explanation.

190. I find that she was constructively dismissed by these actions.

L. Summary of findings

191. For the foregoing reasons, I make the following findings at this stage of the arbitration:

a. Athanasoulis did have a PSA that entitled her to 20% of the profits earned by the YSL Project.

b. I find that the terms of the 20% PSA were:

i. Athanasoulis was to be entitled to 20% of the profits earned on any of Cresford's current and future projects.
ii. Profits were to be calculated, on a good faith basis, based on the *pro forma* budgets prepared by Cresford with respect to each project.
iii. Athanasoulis' share of the profits was to be paid by the relevant Owner that earned the profit.
iv. Profits were to be shared when earned, usually at the completion of a project.
v. There was no requirement that Athanasoulis remain employed at the time that a profit was earned.

c. Athanasoulis was an employee of YSL.

d. Athanasoulis was constructively dismissed in December 2019.

M. Next Steps in the Arbitration

192. If either party wishes to make submissions as to costs at this stage of the arbitration, such submissions shall be made within 21 days of release of this Partial Award. Written responses to any requests for costs shall be delivered within the next 21 days. I will provide directions as to how any further submissions are to be made.

193. Counsel shall confer as to the procedures they wish to adopt for the next phase of the arbitration. Either or both sides may seek directions at any time. If no agreement is reached within 30 days of release of this Partial Award, I will convene a case management conference.

Date: March 28, 2022

William G. Horton, FCIArb, C.Arb.
Sole Arbitrator
Toronto

TAB 5

Bankruptcy and Insolvency Act ("Act")

Proof of Claim

(Section 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and Paragraphs 51(1)(e) and 66.14(b) of the Act)

All notices or correspondence regarding this claim must be forwarded to the following address:

Creditor Name: **Maria Athanasoulis**

Telephone: **(416) 849-6895 (Counsel)**

Address: **Creditor:**
44 Glenallan Rd, North York, Ontario, M4N 1G8

Counsel to Creditor:
Goodmans LLP
3400 - 333 Bay Street, Toronto, Ontario, M5H 2S7

Fax: **(416) 979-1234 (Counsel)**

Email: mdunn@goodmans.ca (Counsel)
cfox@goodmans.ca (Counsel)

Account No.: ______________________

In the matter of the bankruptcy (or the proposal, or the receivership) of **YG Limited Partnership and YSL Residences Inc.** and the claim of **Maria Athanasoulis**, creditor.

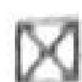
I, **Maria Athanasoulis**, of **North York, Ontario**, do hereby certify:

1. That I am a creditor of the above-named debtors.

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of bankruptcy, (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 30th day of April, 2021, and still is, indebted to the creditor **in the amount of $19 million, as described in Schedule "A" hereto and in the Statement of Claim attached as Schedule "B".** ~~in the sum of $, as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)~~

4. (Check and complete ap

 A. UNSEC
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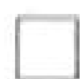 B. SECUR
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SCHEDULE "A" TO THE PROOF OF CLAIM OF MARIA ATHANASOULIS

A. Ms. Athanasoulis' Action Against Cresford

1. Maria Athanasoulis is the former President and Chief Operating Officer of Cresford (Rosedale) Developments Inc. and its affiliates and subsidiaries (collectively, "**Cresford**"), including the debtors, YG Limited Partnership and YSL Residences Inc. (together, "**YSL**" or the "**YSL Debtors**"). She is also the Plaintiff in the Action having Court File No. CV-20-00635914-00CL (the "**Action**") against Cresford, including YSL.

2. The Action seeks (among other things) damages for wrongful dismissal and damages for breach of an oral agreement that the owner of each Cresford project, including YSL, would pay Ms. Athanasoulis 20% of the profits earned on each project (the "**Profit Sharing Agreement**").

B. The Profit Sharing Agreement

3. The Profit Sharing Agreement was an agreement entered into between Ms. Athanasoulis and the owners of each Cresford development project (the "**Owners**"). The YSL Debtors own Yonge Street Living Residences (the "**YSL Project**"), and they are bound by the Profit Sharing Agreement.

4. The terms of the Profit Sharing Agreement were negotiated between Ms. Athanasoulis and Mr. Dan Casey who was, at the time, the sole officer and director of each of the Owners, including the YSL Debtors.

5. The YSL Debtors are bound by the Profit Sharing Agreement. In fact, the YSL Debtors specifically admitted that they are bound by the Profit Sharing Agreement in their Statement of Defence and Counterclaim.

(i) The Terms of the Profit Sharing Agreement

6. The terms of the Profit Sharing Agreement were initially negotiated in 2014. The parties agreed that each Owner would pay Ms. Athanasoulis 10% of the profits earned on each project undertaken by an Owner (each, a "**Project**") when the Project was completed and profits were realized.

7. In November 2014, Ms. Athanasoulis drafted an employment agreement based on a form of agreement that Cresford had used for another employee. The draft employment agreement prepared by Ms. Athanasoulis, which is attached as **Appendix "A"**, specified (among other things) that Ms. Athanasoulis' entitlement under the Profit Sharing Agreement would not be extinguished if Ms. Athanasoulis left Cresford or was terminated by it. Ms. Athanasoulis provided the draft agreement to Mr. Casey, but does not recall whether Mr. Casey signed it. Ms. Athanasoulis does not have a signed copy of the agreement.

8. The draft agreement is between Ms. Athanasoulis and "Cresford Developments." Although each Owner is not specifically named in the draft agreement, it was these Owners that had the ability to pay a share of the profits. "Cresford Developments" did not have any right to receive profits from the Owners, and it therefore had no ability to pay these profits to Ms. Athanasoulis. Ms. Athanasoulis and Mr. Casey agreed that the obligation to pay profits would rest with the Owners.

9. In 2015, Ms. Athanasoulis and Mr. Casey agreed that the Profit Sharing Agreement would be amended to provide that Ms. Athanasoulis would receive 15% of the profits earned on each project.

10. In October 2018, the parties (including the YSL Debtors) agreed that Ms. Athanasoulis' entitlement would increase to 20% of the profits earned on each Project. This included the YSL Project.

11. In late 2018 and early 2019, Ms. Athanasoulis also pressed Mr. Casey to properly document the Profit Sharing Agreement. Ms. Athanasoulis and Mr. Casey agreed that John Papadakis, a lawyer with Blaney McMurtry LLP, would reduce the terms of the Profit Sharing Agreement into a formal agreement.

12. The terms of the Profit Sharing Agreement were discussed and confirmed at a meeting with Mr. Papadakis on February 16, 2019. Specifically, Mr. Casey and Ms. Athanasoulis both confirmed during the meeting that:

(a) Although it had never been reduced to writing, the Profit Sharing Agreement was an existing agreement that had been in place since 2014;

(b) Under the Profit Sharing Agreement, Ms. Athanasoulis was entitled to 20% of the profits earned on each of the Projects, including the YSL Project; and

(c) The Profit Sharing Agreement was an agreement between Ms. Athanasoulis and each Owner, including the YSL Debtors.

13. Ms. Athanasoulis never received a written Profit Sharing Agreement for her review and approval. She does not know why a written copy of the Profit Sharing Agreement was not provided to her, since Mr. Casey promised that it would be.

14. Although Ms. Athanasoulis was entitled to be paid a share of the YSL Debtors' profits, she was never a shareholder of the YSL Debtors.

(ii) The YSL Debtors' repudiation of the Profit Sharing Agreement

15. As noted, Ms. Athanasoulis commenced the Action, which seeks (among other things) a declaration that she is entitled to 20% of the profits earned on each of Cresford's Projects including the YSL Project. In their Defence and Counterclaim, the Defendants (including the YSL Debtors) admit the existence of the Profit Sharing Agreement but claim that Ms. Athanasoulis' entitlement was conditional on her continued employment by Cresford. They claim that Ms. Athanasoulis effectively waived her rights under the Profit Sharing Agreement by accepting her constructive termination (which is described below).

16. By refusing to honour or acknowledge the Profit Sharing Agreement, the YSL Debtors repudiated the essential terms of that agreement, thereby crystallizing Ms. Athanasoulis' claim against them for breach of contract. The YSL Debtors are liable for the damages caused by their repudiation of the Profit Sharing Agreement.

(iii) Damages for breach of the Profit Sharing Agreement

17. Ms. Athanasoulis is entitled to damages that will put her in the position that she would occupy but-for the YSL Debtors' breach of the Profit Sharing Agreement. Specifically, she is entitled to compensation for the lost opportunity to receive 20% of the profits from the YSL Project.

18. As described in detail in Ms. Athanasoulis' Statement of Claim, a copy of which is attached as **Appendix "B"**, as of the date of YSL's repudiation of the Profit Sharing Agreement, YSL was in a positon to earn substantial profits. In fact, Cresford's internal documents forecast a profit of in excess of $90 million as of February 2020. Thus, as of the date of the YSL Debtors' repudiation

of the Profit Sharing Agreement, Ms. Athanasoulis' claim under that agreement was worth approximately $18 million.

C. Wrongful termination claim

(i) Cresford's wrongful termination of Ms. Athanasoulis

19. The corporate defendants in the Action (including the YSL Debtors) are all part of a group of companies engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario using the brand name Cresford.

20. Ms. Athanasoulis was hired by Cresford in 2004, and worked in progressively more senior positions thereafter. These positions are described in more detail in Ms. Athanasoulis' Statement of Claim.

21. Until 2014, Ms. Athanasoulis earned a salary of $300,000 plus benefits. Recognizing Ms. Athanasoulis' value, Mr. Casey agreed to (among other things) increase her salary to $500,000 per annum in 2014 and pay her 0.15% of Cresford's sales on every project going forward.

22. As described in Ms. Athanasoulis' Statement of Claim, Ms. Athanasoulis discovered how Mr. Casey had funded Cresford's business, and the need for significant further funding in 2018. She urged Mr. Casey to find stable funding for Cresford so it could complete the Projects and comply with its lending agreements. She worked diligently to help him do so, but made it clear she would not help him deceive lenders, contractors or anyone else. As more time passed, and the issues grew more serious, Ms. Athanasoulis' efforts to convince Mr. Casey to address the issues became more urgent and forceful.

23. Despite Ms. Athanasoulis' efforts, Mr. Casey took no steps to rectify the situation.

24. Ms. Athanasoulis, and other members of Cresford's management, asked Mr. Casey to clarify these issues. Mr. Casey provided no meaningful response. Instead, he instructed his litigation lawyer, Allan O'Brien, to write to Ms. Athanasoulis to accuse her of breaching her fiduciary duties to Cresford. Mr. O'Brien provided no particulars to support this allegation because there was no such breach.

25. Mr. Casey then prohibited Ms. Athanasoulis from communicating with any of Cresford's lenders, and indicated that he alone would speak to these lenders.

26. Mr. Casey then went further still, and advised that he alone would deal with *all* of Cresford's key stakeholders, including contractors. He also told Cresford's staff, who previously reported to Ms. Athanasoulis, that they would now report to him directly.

27. Mr. Casey's actions stripped Ms. Athanasoulis of essentially all of her responsibilities as Cresford's president and COO. She was terminated in all but name. On December 20, 2019, Mr. Casey even told Cresford staff that Ms. Athanasoulis was gone and would not be returning. He said that Cresford would be better and stronger without her.

28. Mr. Casey refused to formalize this termination because he was concerned about how Cresford's key stakeholders, including contractors, lenders, investors and employees, would react.

29. All of this put Ms. Athanasoulis in an impossible situation. She was nominally an officer of Cresford (and a director of YSL Residences Inc.) but had no ability to understand or affect how Cresford conducted business. She had good reason to believe that Mr. Casey planned to take steps that would violate Cresford's legal obligations and potentially expose her to personal liability.

30. The conduct described above, and set out in more detail in Ms. Athanasoulis' Statement of Claim, constituted repudiation of Ms. Athanasoulis' employment contract, and constructive termination of her employment by Cresford. By letter dated January 2, 2020, Ms. Athanasoulis wrote to accept this repudiation.

(ii) Damages for wrongful termination

31. Ms. Athanasoulis was constructively dismissed without notice or cause. The Defendants, including the YSL Debtors, are liable for damages in an amount equal to what Ms. Athanasoulis would have earned during the notice period to which she was entitled. Ms. Athanasoulis is entitled to 24 months' notice, having regard to:

(a) **Character of employment:** Ms. Athanasoulis was Cresford's most senior employee except for Mr. Casey, with overall responsibility for virtually all aspects of Cresford's business except financing. In that capacity, she successfully executed some of the most ambitious development and construction projects in Canada;

(b) **Age and length of employment:** Ms. Athanasoulis worked at Cresford for 16 years and was 42 years old at the time of her termination;

(c) **Availability of similar employment:** similar employment is not currently available to Ms. Athanasoulis and will not be available to her for the foreseeable future. There are only a handful of developers in Canada that execute projects of the type, size and scope that Ms. Athanasoulis worked on while she was at Cresford. These developers already have presidents. As a result, Ms. Athanasoulis is unlikely to find comparable employment for at least 24 months.

(iii) Punitive and exemplary damages

32. As described above, and in the Statement of Claim, Ms. Athanasoulis was terminated because she insisted that Mr. Casey deal honestly with Cresford's stakeholders. Cresford's actions demonstrate a wanton and contumelious disregard for Ms. Athanasoulis' rights and warrant an award of punitive and exemplary damages. Those actions also caused significant mental and emotional distress to Ms. Athanasoulis such that an award of aggravated damages is also warranted.

(iv) YSL's liability for wrongful termination

33. Ms. Athanasoulis was simultaneously employed by each of the Cresford companies, including the YSL Debtors. They are jointly and severally liable for her wrongful termination.

34. Ms. Athanasoulis did not have a written employment agreement. Accordingly, YSL's liability is determined by the common law.

35. Cresford functioned as a single, integrated unit under the ultimate control of Mr. Casey. Each Cresford company operated form the same premises, and all were marketed as being part of the same entity. Each Cresford company had the same director and shareholder, Mr. Casey.

36. One important aspect of Cresford's integrated business was Mr. Casey's practice of moving funds between companies to meet liabilities. Mr. Casey routinely directed Cresford's accounting personnel to use funds belonging to one company to satisfy debts owed by another.

37. Cresford was in the business of buying, developing, marketing and selling new condominiums. Each new condominium project was owned by one of the Owners, and Ms. Athanasoulis provided her services directly to each of the Owners. Although the Owners sometimes paid fees to other Cresford entities, there was no written management agreement setting

out what fees would be paid and when. The timing and quantum of the fee payments were determined by Ms. Casey.

38. In light of the foregoing, the YSL Debtors and the other Cresford companies are common employers who are jointly and severally liable with the other Defendants in the Action for Ms. Athanasoulis' wrongful termination damages.

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APPENDIX "A"

THIS AGREEMENT, made as of **1st** day of **November**, 2014,

BETWEEN:

Cresford Developments

(the "Employer")

-and-

Maria Athanasoulis

(the "Employee")

The Employee and the Employer wish to confirm a change to the compensation terms governing the terms and conditions of employment.

THEREFORE THE EMPLOYER AND THE EMPLOYEE AGREE AS FOLLOWS:

TITLE:

The Employer is employing the Employee as the President of Marketing and Sales.

Salary:

The Salary of the Employee will be $500,000 per annum, payable bi-monthly less applicable statutory deductions. In addition, the Employee will participate in the group benefit plan provided by the Employer as amended from time to time. The Employee will be entitled to leave as required for absence due to illness.

The Employee will be eligible for bonus payments earned at the registration of the condominium declaration of each development as well as bonus on gross revenue sold. The specific process for allocation of the bonus will be determined and agreed upon by the Employer and the Employee and outlined in schedule "B" of this agreement.

Other Benefits:

The Employer will pay the Employee a monthly vehicle allowance of $1200 (less statutory deductions). The Employee will be responsible for the cost of his vehicle, including insurance and gas. The Employer will pay the monthly allowance on a bi-montly basis.

The Employer will provide a cellular phone to the Employee.

The Employer will reimburse the employee for all reasonable travel and other business expenses incurred while carrying out his responsibilities on behalf of the Employer, upon presentation of appropriate receipts for the expenses claimed.

The Employer will reimburse the Employee for the cost of memberships in business related professional associations, provided these membership fees are approved in advance by the Employer.

Annual Leave:

The Employee is entitled to 5 weeks vacation with pay.

Performance Review:

The performance of the Employee will be reviewed on an annual basis based on criteria agreed upon by the Employee and the Employer at the beginning of the year subject to review, and based on the agreed duties to be performed by the Employee as outlined in schedule "A".

The Employee's annual performance will be reviewed at the end of each calendar year and at that time the Employer and the Employee may make amendments to this contract and to compensation at their mutual agreement.

Termination of Employment:

The Employee's employment may be terminated as follows:

1. By the Employee at any time upon providing the employer with 6 weeks notice in writing; or

2. By the Employer at any time for just cause, without notice; or

3. By the Employer without cause upon ten months notice or, bi-monthly pay in lieu thereof, subject to the following. In the event of the employee finding comparable alternative employment, the employee will be paid 50% of the balance owing on the remainder of the termination payment from the date of commencement of such employment to the end of the notice period herein. The Employee agrees that he will advise the Employer forthwith upon finding such comparable employment.

4. Bonus payments will be paid in full at the completion of any project in the construction phase if employee's employment is terminated.

Confidential Information:

It is essential to the success of the Employer that the business and affairs of the Employer be kept in the strictest confidence. Therefore, the Employee shall not at any time nor in any manner, except where authorized or required by law or by the Employer, divulge, disclose or communicate to any person, firm or corporation any information concerning any matters affecting or relating to the enterprise of the Employer, including without limiting the generality of the foregoing, any information concerning the

Employers products and product designs, customer lists, the prices it obtains or has obtained from the sale of, or at which it sells or has sold its products, types and kinds of raw materials used by it, the suppliers and costs thereof, the manner of its operation, its marketing, product development and other plans, its manufacturing and other processes and any financial affairs of the Employer.

Company Property:

The Employee agrees that upon termination of his employment, all property belonging to Employer will be returned immediately.

Amendment of Agreement:

Any amendment to this agreement must be in writing and signed by both parties.

Dated at Toronto this ___ day of October, 2014

Witness

Per: Dan Casey, President & C.E.O "Employer"

Cresford Developments Inc.

Witness

Per: Maria Athnasoulis "Employee"

SCHEDULE 'A"

The following outlines the terms agreed to for bonus between the employer and the employee.

1) A $500,000 bonus will be paid upon the final registration of 1000 Bay Condominiums
2) A $500,000 bonus will be paid upon the final registration of CASA 2 Condominiums
3) A $500,000 bonus will be paid upon the final registration of CASA 3 Condominiums
4) A bonus of 10% of final profits will be paid upon the final registration of VOX Condominiums
5) A bonus of 10% of final profits will be paid on final closing on any future site Cresford acquires
6) A bonus of 0.15% on the gross sales of each project marketed by Cresford will be paid on construction start for sales earned to date, with the balance after construction start paid on final closing

Court File No./N° du dossier du greffe: CV-20-00634836-0000

APPENDIX "B"

Electronically issued
Délivré par voie électronique : 21-Jan-2020
Toronto

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARIA ATHANASOULIS

Plaintiff

- and -

CRESFORD (ROSEDALE) DEVELOPMENTS INC., EAST DOWNTOWN REDEVELOPMENT PARTNERSHIP, THE CLOVER ON YONGE INC., THE CLOVER ON YONGE LIMITED PARTNERSHIP, 33 YORKVILLE RESIDENCES INC., 33 YORKVILLE RESIDENCES LIMITED PARTNERSHIP, 480 YONGE STREET INC., 480 YONGE STREET LIMITED PARTNERSHIP, YG LIMITED PARTNERSHIP, YSL RESIDENCES INC., YSL RESIDENCES LIMITED PARTNERSHIP, 50 CHARLES STREET LIMITED, 50 CHARLES STREET LIMITED PARTNERSHIP and DANIEL C. CASEY

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date January 21, 2020 Issued by ______________________
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 7th Floor
Toronto ON M5G 1R7

TO: **NELLIGAN O'BRIEN PAYNE LLP**
50 O'Connor Street, Suite 300
Ottawa, ON K1P 6L2

Allan R. O'Brien LSO No.: 15326T

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Tel 613.231.8224
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Counsel to the Defendants

CLAIM

1. The Plaintiff, Maria Athanasoulis, claims against the Defendants for:

(a) A declaration that the Defendants wrongfully terminated Ms. Athanasoulis;

(b) Damages for wrongful dismissal in the amount of $1,000,000;

(c) A declaration that Ms. Athanasoulis is entitled to 20% of the profits earned by each of the Projects (as defined below);

(d) Damages in the amount of $48 million, representing the value of the entitlement referenced in (c) above;

(e) Damages for defamation, in an amount to be provided prior to trial;

(f) Punitive, aggravated and exemplary damages;

(g) Pre and post judgment interest; and

(h) Such further and other relief as this Court deems just.

PART I. BACKGROUND

A. THE DEFENDANTS' BUSINESS

(i) Cresford

2. The corporate defendants (collectively, "**Cresford**") are all part of a group of companies engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario using the brand name Cresford.

3. Cresford's corporate predecessors were founded by the Defendant, Daniel C. Casey, approximately 40 years ago. However, until approximately 2014, Cresford and its predecessors focused on small and medium-sized condominium developments.

4. Since 2014, Cresford has developed a reputation for developing and building large luxury condominium communities, largely as a result of the Plaintiff's efforts (which are described below). It has completed some of the largest and most ambitious condominium development and construction projects in the Greater Toronto Area.

5. Each of Cresford's development and construction projects is owned by a separate legal entity. That entity purchases the land where the relevant project is to be built, obtains the required permissions, markets the project to proposed purchasers, hires contractors to build the project and takes all of the other steps to convert real estate into a major condominium development.

6. The staff required to complete this work, including Ms. Athanasoulis, were paid by East Downtown Redevelopment Partnership ("**EDRP**"). However, EDRP does not own any real estate or conduct any active business. Cresford employees, including Ms. Athanasoulis, provided services directly to the entities that owned, developed and built Cresford's projects.

(ii) Ms. Athanasoulis was critical to Cresford's success

7. Ms. Athanasoulis joined Cresford in 2004 as its Manager, Special Projects. Although she had not previously worked in real estate, she quickly demonstrated a talent for marketing development projects. In 2005, she was promoted to Vice President of Sales and Marketing.

8. In 2012, Ms. Athanasoulis was promoted again to President, Sales and Marketing. In that capacity, she reported directly to Mr. Casey. Over time, her role expanded to include virtually all aspects of Cresford's business except for land acquisition and project finance. In 2018, Ms. Athanasoulis was promoted again to President and Chief Operating Officer ("**COO**") around the time that Ted Dowbiggin, the President of Cresford Capital, resigned.

(iii) The real estate development and construction process

9. Condominium development and construction projects are complex, and each is unique to some extent. However, certain steps are common to virtually all projects. The builder/developer must:

(a) identify an attractive development site;

(b) negotiate an agreement to purchase the site;

(c) hire third parties to design the proposed project;

(d) obtain the municipal permissions required to build the proposed project, which often involves a long and extensive review and approval process. The process of obtaining these approvals is typically called the "development process";

(e) market condominium units to purchasers. These purchasers provide a deposit (or a series of deposits) to secure their purchases;[1]

[1] These deposits must be insured before they can be used to fund construction costs. The deposit insurer guarantees that the deposits will be repaid to purchasers if the units are not built, and registers a mortgage on title to protect itself against the risk of repayment.

(f) hire contractors to supply the labour and materials required to build the project; and

(g) register the condominium and transfer control of it to the condominium corporation.

10. Importantly, the vast majority of revenues earned on a project are not released to the builder/developer until construction is complete and the condominium is registered. This means that the builder/developer must fund development and construction costs using both debt and equity.

(iv) Mr. Casey was responsible for providing or securing the equity that Cresford required

11. In recent years, Mr. Casey has had very little involvement in Cresford's day to day operations. He rarely attended Cresford's offices and was largely unaware of – and uninvolved in – Cresford's business except for financing matters and cost overruns. Unlike other aspects of the business, which were operated by Ms. Athanasoulis, Mr. Casey always kept control of Cresford's financing and limited Ms. Athanasoulis' access to information about it.

12. As noted above, almost all of the revenue from a condominium development is earned after the condominium is built and registered. Almost all of the costs required to complete the development must be incurred before then. Real estate development projects, and particularly the large-scale projects that Cresford has pursued recently, have substantial (and complex) funding needs.

13. Cresford, like all major developers, secures third party mortgage financing to fund a significant portion of its construction and development costs. Lenders agree to fund based on a detailed budget prepared for each project and carefully monitor costs. A project inspector reviews

detailed information to ensure that funds are properly used and the project can be completed in accordance with the original budget. If the project inspector identifies cost overruns, then the owner of the project must immediately provide the required funds. The Altus Group ("**Altus**") is the project inspector on Cresford's current projects.

14. In addition, lenders rely on the financial position of the project owner in deciding to advance funds. As a result, the loan agreements all prohibit further borrowing without prior consent from the lender.

15. Cresford's lenders required that the owner of each project make a significant equity investment before funds were advanced. Mr. Casey's primary role at Cresford was to provide or secure these equity investments. The investments were critical. In order to complete its projects, Cresford needed a stable source of equity funds. Without such funds, Cresford could not meet its commitments to lenders, construction contractors, consultants, brokers, purchasers and other stakeholders.

16. Mr. Casey represented to Ms. Athanasoulis that he was a wealthy and successful businessman. Ms. Athanasoulis believed that Mr. Casey had the ability to make the investments that Cresford's business required.

17. As described below, these funds either did not exist or Mr. Casey was not prepared to invest them in Cresford's business. Mr. Casey was unwilling or unable to provide the equity funding that Cresford required. This failure threatened (and continues to threaten) the viability of Cresford's business.

18. Importantly, prior to the fall of 2018, Ms. Athanasoulis was not responsible for acquiring development sites or financing the purchase and construction of projects. Ted Dowbiggin, the President of Cresford Capital, was responsible for site acquisitions and finance until his resignation effective August 31, 2018. Mr. Dowbiggin reported directly to Mr. Casey, and together, they were solely responsible for financing Cresford's acquisition and development activities. Finance activities were separated from the rest of Cresford's operations. Ms. Athanasoulis and her team had little information about how Mr. Casey and Mr. Dowbiggin financed projects and what they communicated to lenders.

19. Thus, Ms. Athanasoulis was responsible for executing Cresford's projects successfully but was not responsible for how those projects were financed, did not participate in communications with lenders and did not know what Mr. Casey did (and did not) tell lenders.

(v) Cresford's recent success

20. Although Ms. Athanasoulis developed (and has) significant expertise in every aspect of the real estate development and construction business, she has a unique talent for designing and marketing residential condominium units to purchasers. As a result, Cresford was able to sell a large volume of condominium units quickly and for premium prices. Every condominium must pre-sell units worth a minimum amount before construction loan funding will be advanced – typically 65% or more of the total project revenue. Cresford's most recent projects have met their targets very quickly.

21. As importantly, Ms. Athanasoulis built Cresford into a recognized luxury condominium brand. Satisfied customers bought units in multiple Cresford projects, and the real estate brokers

that represented Cresford's target customers trusted Cresford to keep its promises. This allowed Cresford to charge premium prices for its units. Few, if any, Canadian developers have the sort of reputation that Ms. Athanasoulis built for Cresford.

22. Put simply, Ms. Athanasoulis was the driving force behind Cresford's success. In the last five years alone, Cresford has sold more than 3,000 condominium units and generated revenues in excess of $2.5 billion. In the process, she built a reputation (both for herself and for Cresford) for dealing honestly and fairly with consultants, construction contractors and real estate agents.

(vi) Ms. Athanasoulis' compensation

23. Mr. Casey recognized Ms. Athanasoulis' value. He knew that Ms. Athanasoulis was the key to Cresford's success and, over the years, he offered her significant incentives to remain at Cresford.

24. In 2014, Ms. Athanasoulis supervised the design, marketing and sales on the Vox project at Yonge and Wellesley in Toronto, as she had done on several previous projects. The Vox project met its sales targets with ease, and the project was a success. Moreover, because of Ms. Athanasoulis' sales and marketing expertise, Cresford saved the substantial cost of a third party marketing company. A third party marketing company would have charged Cresford more than $3 million to market only the Vox project, but Ms. Athanasoulis was paid only $300,000 per annum, plus a payment equal to 0.15% of Cresford's sales on every project, to market all of Cresford's projects and fulfill her other duties. Ms. Athanasoulis realized that she could earn much more working as a contractor for Cresford and other developers.

25. Recognizing Ms. Athanasoulis' value, Mr. Casey agreed to increase her salary to $500,000 per annum in 2014 and pay her 0.15% of Cresford's sales on every project going forward. Most importantly, after the Vox project, Mr. Casey agreed that Ms. Athanasoulis would be entitled to 15% of the profits earned on all projects launched by Cresford thereafter as well as an additional $500,000 at registration of each of the active projects (i.e., 1000 Bay, Casa II and Casa III). Following the successful launch of YSL, Mr. Casey increased the percent of profits that Ms. Athanasoulis was to be entitled to from 15% to 20%. In an effort to assist with monthly cash flow, Ms. Athanasoulis never drew her increased salary. Mr. Casey knew this, and knew that Ms. Athanasoulis was still owed her increased salary.

26. Ms. Athanasoulis worked closely with Mr. Casey, and trusted him to protect her interests. As a result, their agreement was not immediately reduced to writing. Ms. Athanasoulis launched three more very successful projects in 2015, 2016 and 2017.

27. After the successful launch of YSL (as defined below) in October 2018, Ms. Athanasoulis realized that the services she provided to Cresford on its four most recent projects had saved it approximately $37.5 million on fees that would otherwise have been paid to a third party marketing consultant. She asked Mr. Casey to memorialize his agreement to pay her 20% of the profits on existing projects. She subsequently attended a meeting with Mr. Casey and John C. Papadakis, Cresford's corporate lawyer. At the meeting, Mr. Casey confirmed that Ms. Athanasoulis was entitled to 20% of the profits generated by Cresford's projects and asked Mr. Papadakis to document the agreement.

28. Ms. Athanasoulis did not receive the agreement that Mr. Papadakis was instructed to draft. She did not press for a written agreement, however, because Mr. Casey had confirmed her entitlement several times and she trusted him.

29. As described below, her trust was misplaced.

PART II. CRESFORD'S CASH CRISIS

A. CRESFORD'S CURRENT PROJECTS

30. In recent years, Cresford has focused on large condominium developments in or near downtown Toronto. Cresford currently has four active condominium developments (collectively, the "**Projects**"):

(a) The Clover on Yonge ("**Clover**"), a 44 story condominium located near Yonge and Bloor. Clover is owned by Clover on Yonge Inc. ("**Clover Inc.**") in its capacity as General Partner of Clover on Yonge Limited Partnership ("**Clover LP**"). Clover LP is beneficially owned by entities related to or controlled by Mr. Casey;

(b) Halo Residences on Yonge ("**Halo**"), a 38 story condominium tower located on Yonge Street between Wellesley and Carlton in Toronto. Halo is owned by 480 Yonge Street Inc. ("**Halo Inc.**"), the general partner of 480 Yonge Street Limited Partnership ("**Halo LP**"). Halo LP is, in turn, beneficially owned by entities related to or controlled by Mr. Casey;

(c) The Residences of 33 Yorkville ("**33 Yorkville**"), a condominium with one 64-story tower and one 41-story tower. 33 Yorkville is owned by 33 Yorkville

Residences Inc. ("**33 Yorkville Inc.**"), in its capacity as general partner of 33 Yorkville Residences Limited Partnership ("**33 Yorkville LP**"). There are two classes of limited partnership units in 33 Yorkville LP. The Class A limited partnership units are held by 20 third parties, who collectively invested $75 million. These investments are described in more detail below; and

(d) Yonge Street Living Residences ("**YSL**"), an 85-story condominium tower located at the corner of Yonge and Gerrard in Toronto. YSL is owned by YSL Residences Inc. ("**YSL Inc.**"), in its capacity as general partner of YG Limited Partnership ("**YSL LP**"). YSL LP is beneficially owned by entities controlled by or related to Mr. Casey and third party investors.

31. Revenue from the project will not be realized unless and until the Projects are completed. In order to complete the Projects, Cresford must meet its obligations to lenders, contractors and other stakeholders. This requires access to funding that Cresford does not currently have.

B. MR. CASEY'S FAILURE TO MAKE (OR SECURE) EQUITY INVESTMENTS

32. As noted above, each lender required that Cresford (or Mr. Casey) invest significant equity into each Project. Ms. Athanasoulis only role in these equity investments was to introduce potential investors to Mr. Casey.

33. Mr. Dowbiggin resigned from Cresford in August 2018. Around the time of Mr. Dowbiggin's resignation, Ms. Athanasoulis learned, for the first time, that Cresford was woefully underfunded on Clover and Halo. Cresford did not have the funds required to complete the Projects, and Mr. Casey did not have a plan to secure the funds it needed.

34. Mr. Casey and Mr. Dowbiggin initially directed Ms. Athanasoulis to reach out to CBRE, a well-known commercial real estate brokerage, to explore the possibility of selling the land owned by YSL Inc. Mr. Casey hoped to earn a gross profit on the sale of $80-$100 million and use that profit to fund cost overruns on the Clover and Halo projects.

35. Given the scale of the YSL Project, the pool of potential buyers was quite small. CBRE reached out to the most likely purchasers, but did not find an interested buyer. Accordingly, the only alternative was to design, market and sell the project in order to make it viable. Ms. Athanasoulis worked tirelessly in September and October to launch the YSL Project quickly. This work paid off, and the YSL launch was a huge success. Among other things, the purchasers were contracted to pay approximately $140 million in deposits on YSL units.

36. Ms. Athanasoulis continued to work with Mr. Casey to try to find a solution to Cresford's cash issues. However, in the summer of 2019 she learned that Mr. Casey's own financial position was far more precarious than he had claimed.

37. Worse still, Ms. Athanasoulis learned in the fall of 2019 that Cresford had made significant misrepresentations to its lenders. When Ms. Athanasoulis pressed Mr. Casey to make the equity investments the business required and to deal honestly with lenders, she was stripped of her responsibilities and constructively terminated.

(i) Mr. Casey's secret loans

38. Cresford did not actually make many of the equity investments that it was contractually required to make, and claimed to have made. Instead, Mr. Casey represented to lenders that funds borrowed from a third party lender, OTB Capital Inc. ("**OTB**"), were equity investments made by

Mr. Casey or entities that he controlled. These so-called equity investments were, in fact, high interest financing that was specifically prohibited by the applicable loan documents. OTB's loans are secured by every piece of collateral that Mr. Casey could offer, including the unsold retail and residential condominium units in the Clover and Halo projects. Neither Ms. Athanasoulis nor the affected lenders were aware of this.

39. Specifically, Ms. Athanasoulis learned that Mr. Casey had borrowed money from OTB in or around 2014. She also knew that Cresford had to make substantial monthly interest payments to OTB. This was a significant burden on Cresford's cashflow, since interest on most loans in the real estate development industry is capitalized and paid at the end of the project.

40. Ms. Athanasoulis did not, however, know the details of Mr. Casey's arrangements. Most importantly, she did not know what Mr. Casey had told lenders about OTB. She assumed that Mr. Casey had disclosed the nature of his relationship with OTB to existing and prospective lenders, as he was required to do. Shortly before her termination (which is described below), she learned that he had not.

(ii) Clover

41. Mr. Casey's scheme is illustrated by the funding of Clover. Pursuant to a commitment letter dated April 27, 2016 (the "**Clover Loan Agreement**"), British Columbia Investment Management Corporation ("**QuadReal**") agreed to provide Clover Inc. with:

(a) a construction financing and letter of credit facility in the amount of approximately $175 million, which was to be secured by a first mortgage charge; and

(b) a third mortgage facility in the amount of approximately $30 million (including a $9 million interest reserve).

42. The Clover Loan is managed by QuadReal Property Group (“QuadReal”), a real estate company owned by BC IMC.

43. The Clover Loan Agreement required that the borrower, Clover Inc., invest equity of approximately $20.6 million before any funds could be advanced. The Clover Loan Agreement prohibited any other financing without the prior written consent of QuadReal, but it allowed Clover Inc. to register *its own* mortgage on title to secure the equity investment it was required to make.

44. Clover Inc. represented to QuadReal that it made the required equity investment, and registered a mortgage on title in favour of Cresford Financial Limited (“**CFL**”). Once it was satisfied that this investment had been made, QuadReal began to advance funds.

45. Unbeknownst to QuadReal, and to Ms. Athanasoulis, neither Clover Inc. nor any other entity related to Mr. Casey invested $20.6 million in Clover. Most of the so-called equity investment was borrowed from OTB.

46. Specifically, OTB lent CFL $17 million. The loan was guaranteed by Clover Inc., Mr. Casey and a host of other Cresford companies. CFL pledged all of its shares to OTB until OTB’s loan was repaid. Accordingly, the mortgage registered by CFL secured OTB’s loan and was effectively controlled by OTB.

47. Put simply, the majority of the “equity” in the Clover project was actually high interest secured debt.

(iii) Halo

48. Mr. Casey made substantially identical arrangements relating to Halo, without the knowledge of Ms. Athanasoulis or QuadReal.

49. By commitment letter dated November 24, 2016 (the "**Halo Loan Agreement**"), QuadReal agreed to fund a first mortgage construction loan (including a $2 million letter of credit facility) in the amount of approximately $159 million and a third mortgage mezzanine loan in the amount of approximately $29 million to fund the Halo Project. The Halo Loan Agreement required that Halo Inc. invest equity of $13.6 million before any loan advances were made, and prohibited any other borrowing by Halo Inc. without QuadReal's prior consent. Halo Inc. was, however, allowed to register a mortgage to secure its own equity investment in the Project.

50. Halo Inc. did not make the equity investment required of it. By Loan Agreement dated November 30, 2016, Cresford Equities Inc. ("**Cresford Equities**") agreed to borrow $10.1 million from OTB. This amount was guaranteed by, among other companies, Halo Inc.

51. Cresford Equities registered a fifth mortgage against the lands owned by Halo Inc. However, Cresford Equities pledged all of its shares to OTB until the loan was repaid. Thus, the fifth mortgage that was meant to secure Cresford's equity was in fact registered to secure OTB's loan. None of this was shared with Ms. Athanasoulis, or QuadReal.

(iv) 33 Yorkville

52. The budget submitted to lenders in respect of 33 Yorkville required an equity investment of approximately $75 million. Mr. Casey approached Ms. Athanasoulis and asked her to identify third party investors who might fund some of this commitment. As a result of Cresford's

reputation for successful projects, and her own close relationships with a number of potential investors, Ms. Athanasoulis was able to introduce Mr. Casey to investors that ultimately purchased $75 million worth of limited partnership units in 33 Yorkville LP (the "**33 Yorkville Investors**"). She trusted Mr. Casey to make appropriate arrangements and disclose those arrangements to the lenders. This did not happen.

53. Without Ms. Athanasoulis' knowledge, Mr. Casey represented to QuadReal that the 33 Yorkville Investors had invested approximately $20.5 million in 33 Yorkville and that Cresford and/or Mr. Casey had made the balance of the equity investment required.

(v) YSL

54. YSL is Cresford's largest project to date, with its most complex funding structure. The purchase price and early stage project costs were funded by a $100 million first mortgage from Timbercreek Financial Corp. ("**Timbercreek**") and a deposit insurance facility in the amount of $120 million from Westmount Guarantee Services Inc. ("**Westmount**") that was arranged after the success of the YSL launch to repay a prior mortgage that had come due. Timbercreek's first mortgage was to be repaid using a first mortgage construction loan from Otera Capital Inc. ("**Otera**") in the amount of approximately $623 million (the "**YSL Construction Loan**"). The YSL Construction Loan was arranged after the successful launch of YSL.

55. The YSL Construction Loan required equity of $75 million. Mr. Casey represented to lenders that these funds had been raised from equity investments in YSL LP. Mr. Casey and YSL Inc. guaranteed that the investments would be repaid with interest.

56. Indeed, Mr. Casey and YSL Inc. even agreed to grant one of the so-called limited partners, 247625 Ontario Inc. ("**247 Inc.**") a mortgage over the YSL lands to secure its $20 million "equity" investment. Mr. Casey told Cresford's staff that he had personally borrowed the funds from 247 Inc. to invest in YSL, but this is not true. YSL Inc.'s corporate predecessor borrowed the funds, and YSL Inc. is liable for them. Although the mortgage has not yet been registered on title, the funds advanced by 247 Inc. (like the so-called equity investments in Halo and Clover described above) were high interest secured debt in all but name.

C. CRESFORD'S MANAGEMENT IDENTIFIES CASH SHORTFALLS

57. Beginning in mid-2018, Cresford's management team identified significant cash shortfalls in the Clover and Halo projects. In late 2018, after the launch of YSL, a cash shortfall was identified in the 33 Yorkville Project. Each of these projects could (and still can) be completed successfully. But each project requires additional equity funding, and Mr. Casey has been unwilling or unable to provide or secure that funding.

(i) Clover cash shortfall

58. Clover is currently under construction. Construction costs are funded through the Clover Construction Loan, which is described above. These costs are carefully monitored by Altus, the project inspector hired by QuadReal (although paid by Clover Inc.). Clover Inc. must provide detailed information about the status of construction, and the projected cost to complete the project, in order to secure the advances that it needs to pay contractors. Clover Inc. is responsible for cost overruns, and if projected costs exceed the original budget, then Clover Inc. must fund the increased costs before further funds will be advanced.

59. As noted, Clover is a 44-story condominium tower. Clover Inc. (through its contractors and suppliers) had to purchase a significant volume of steel and other material in order to build the project. In 2018, the price of steel and other construction materials increased significantly, primarily as a result of tariffs imposed by the United States. At the same time, unions representing the workers required to build Clover negotiated new agreements that significantly increased labour costs. These factors significantly increased the cost of building the Clover project, and all of the other condominium developments in Toronto.

60. In addition, the original construction schedule proposed for the Clover project was very aggressive. After construction began, it became clear that the original schedule was unrealistic. The delay further increased construction and project costs.

61. By the fall of 2018, Ms. Athanasoulis, and the rest of Cresford's senior management team, advised Mr. Casey that Clover would require an additional $50 million to complete construction. Though this additional funding requirement would mean that no profit would be earned on this project, all lenders, trades and costs would be paid in full and Cresford could continue as a going concern with a solid reputation. Cresford funded some of the Clover obligations using fees earned on other projects, but a shortfall of $37 million remains.

(ii) Halo cash shortfall

62. Cresford faces a similar cash shortfall on the Halo project, for substantially the same reasons. Halo construction costs increased substantially as a result of the increased costs of steel and other materials. In addition, the aggressive schedule originally proposed for the Halo project proved unachievable.

63. Halo Inc. awarded a number of construction contracts in November 2018. When the contracts were awarded, Cresford's management estimated that the total overrun would be $45 million. Some of the shortfall has been funded using fees earned on other projects, leaving a $38 million funding shortfall for the Halo project. Though this additional funding requirement would mean that no profit would be earned on the Halo project, all lenders, trades and costs would be paid in full, and Cresford could continue as a going concern with a solid reputation.

(iii) 33 Yorkville cash shortfall

64. In late 2018, Cresford's construction team hired a third party peer review cost consultant, CB Ross, to assess the construction budget for 33 Yorkville to confirm the magnitude of anticipated cost overruns. As a result of this review, the projected cost of the project that had been presented by the construction team was confirmed. Based on the new estimate, 33 Yorkville is facing a cash shortfall of approximately $65 million. Though an additional $65 million funding requirement would mean that only nominal profit would be earned on this project, all lenders, trades and costs would be paid in full, and Cresford could continue as a going concern with a solid reputation.

(iv) Casa III

65. As noted, Mr. Casey used funds earned from earlier projects to fund overruns on later projects. One of these earlier projects was Casa III, a luxury condominium that was owned by 50 Charles Street Limited and registered in August 2018. Funds earned from Casa III were used to pay amounts due on other projects, which left Casa III without the funds required to make the final payments that it owed. The final work on Casa III, which will cost approximately $4.5 million,

cannot be completed. The owner of Casa III already owes approximately $5 million to construction contractors and real estate contracts. It is unable to fund either the outstanding payables or the construction required to complete the project, leaving the building and landscaping unfinished for the past two years.

(v) Mr. Casey proved unwilling or unable to address Cresford's cash flow issues

66. Mr. Casey was unwilling or unable to provide an adequate solution – or any solution – to Cresford's cash flow problems. As noted, Mr. Casey told Ms. Athanasoulis for years that he had substantial assets available to him. Mr. Casey refused to use these funds (if they existed) to fund Cresford's business. The only funds invested in Clover, Halo, 33 Yorkville and YSL were generated from earlier projects that Cresford completed but these projects did not generate nearly enough cash to satisfy the requirements.

67. But taking funds from predecessor projects did not solve the problem. Instead, it caused the cash flow problem to grow and spread. For example, real estate brokers that were owed commissions for previously completed projects (including Cresford's own brokers, employed by Cresford Real Estate Corporation) are owed approximately $5 million.

(vi) Cresford's cash flow crisis worsened

68. The understanding of the overall cash flow issues grew significantly worse over time. The projected cash shortfall across Casa III, Clover, Halo and 33 Yorkville ballooned to a combined $150 million. Projects were unable to pay contractors what they were owed as payments came due on Casa III and Halo. Clover and 33 Yorkville would soon have the same issue, because Cresford did not have a plan in place, and because Mr. Casey was unwilling to use funds available

to him personally, to fund the contracts it had entered into. These contractors pressed Cresford's construction staff (who reported to Ms. Athanasoulis) for payment. As the situation grew worse, contractors demanded answers from Ms. Athanasoulis. She did not have those answers. In addition, Cresford could not enter into new construction contracts because it did not have the ability to fund the resulting costs.

(vii) Mr. Casey could not or would not help solve Cresford's cash problems

69. As noted, Mr. Casey had repeatedly represented to Ms. Athanasoulis that he had access to significant funds. Ms. Athanasoulis believed that Mr. Casey could use some of this wealth to solve Cresford's cash problems. In the summer of 2019, however, Mr. Casey told Ms. Athanasoulis that he had substantial mortgages registered against both his cottage and home. Ms. Athanasoulis began to suspect that Mr. Casey was not as wealthy as he claimed, and that he would not be able to contribute the funds that Cresford required.

70. Ms. Athanasoulis' concerns about Mr. Casey were exacerbated by his lavish lifestyle. He told her in the summer of 2019 that he required between $4 million and $5 million annually to maintain his lifestyle, and Ms. Athanasoulis learned that funds needed by Cresford had been used for personal purposes. As noted, Cresford had used fees earned on earlier projects to fund some of the cost overruns on later projects. But Mr. Casey prioritized his own interests over Cresford's. For example, in February 2019, when Cresford was desperate for cash, he took approximately $750,000 from Casa III (which should have been used to pay creditors) to buy a house for his son.

(viii) The Defendants conduct caused significant mental and emotional harm

71. This caused Ms. Athanasoulis significant stress and anxiety. Ms. Athanasoulis had spent years building Cresford's reputation with Toronto's largest and most reliable contractors and real estate brokers. She developed close personal and professional relationships with many of these contractors and brokers. Her hard work and critical relationships were threatened by Cresford's inability to pay contractors and brokers on time, or at all. She also worried about how contractors and brokers would react when they learned that there were no funds available to pay them. She worried about what would happen to purchasers who had trusted Cresford and paid deposits on condominium units. She worried about what would happen to Cresford's staff if funding was not secured.

(ix) Potential purchaser to solve Cresford's cash flow crisis

72. Ms. Athanasoulis worked diligently to solve Cresford's financial difficulties. She explored a number of potential solutions once it became clear Mr. Casey could not or would not provide the funds that Cresford desperately needed. In the course of these discussions, Mr. Casey suggested that he would consider selling the business to solve the cash flow crisis.

73. Ms. Athanasoulis was ultimately introduced to a well-known Toronto businessman who expressed an interest in buying Cresford's four ongoing projects and other assets. The potential purchaser was, however, only interested in Cresford if Ms. Athanasoulis stayed with the company and continued to operate its business. Mr. Casey was of the same opinion and agreed the opportunity should be explored.

74. Ms. Athanasoulis discussed the potential sale with Mr. Casey and he authorized her to continue discussions with the potential purchaser. The potential purchaser signed a non-disclosure agreement, and began to evaluate Cresford's business.

75. The potential purchaser offered Ms. Athanasoulis an interest in the business to incentivize her to participate in the transaction and remain with Cresford after the sale.

76. Ms. Athanasoulis told Mr. Casey that, if the purchase was completed, she would have an interest in the purchaser. He did not object, nor did he suggest that Ms. Athanasoulis' potential interest with the purchaser would interfere with her continued role at Cresford.

77. Discussions with the purchaser progressed to the point that the potential purchaser provided Mr. Casey with a non-binding letter of intent ("LOI") setting out the terms of a potential deal in December 2019. The proposed transaction would have addressed Cresford's cash flow issues, injected the proper required equity by paying out the high interest loans and investors, and generated a significant personal profit for Mr. Casey. But Mr. Casey did not accept, or even negotiate to improve, the LOI.

(x) Mr. Casey tries to conceal Cresford's cash flow crisis

78. Instead of completing the proposed purchase, or pursuing an alternative solution to Cresford's cash crisis, Mr. Casey focused on concealing that crisis from lenders and other stakeholders.

79. As noted above, Halo Inc. had an obligation to provide Altus with copies of all of its construction contracts. This allowed Altus to (among other things) identify cost overruns. In

October 2018, Cresford hired Verdi Inc. ("**Verdi**") to perform concrete forming work on the Halo project. The Verdi contract created a cash shortfall of approximately $4.5 million. Instead of funding this overrun with equity (or finding outside funding), Mr. Casey directed Cresford's staff to withhold the Verdi contract and all progress bills from Altus. This was a breach of the Halo Loan Agreement. It was also very short-sighted. Verdi erected a large crane on the Halo site, which is prominently located on Yonge Street, to complete its work. It is only a matter of time before Altus sees the crane, identifies the breach of contract and notifies the affected lenders.

80. The cash flow issues on 33 Yorkville are also urgent. The applicable loan agreements require that 75% of the remaining construction contracts be awarded by January 1, 2020. Awarding these contracts would crystallize cost overruns in the approximate amount of $65 million, and 33 Yorkville Inc. would have to fund these overruns. Mr. Casey had no plan in place to fund the overruns, so he instructed Cresford's construction staff to delay awarding the contracts. This breached the 33 Yorkville loan agreements. It is also short-sighted, since the contracts will still need to be awarded, and the cost overruns will need to be addressed.

81. In addition, contractors and real estate brokers already working on the Projects have not been paid on time. The owners of these projects owe approximately $20 million to contractors and real estate brokers. Many of these amounts are significantly overdue. Mr. Casey has no funding in place to pay the contractors, and several have threatened to sue and/or register liens in accordance with the *Construction Lien Act* if they are not paid immediately.

D. CONSTRUCTIVE TERMINATION

82. As soon as Ms. Athanasoulis discovered how Mr. Casey had funded Cresford's business, and the need for significant further funding, she urged Mr. Casey to find stable funding for Cresford so it could complete the Projects and comply with its lending agreements. She worked diligently to help him do so, but made it clear she would not help him deceive lenders, contractors or anyone else. As more time passed, and the issues grew more serious, Ms. Athanasoulis' efforts to convince Mr. Casey to address the issues became more urgent and forceful.

83. Despite Ms. Athanasoulis' efforts, Mr. Casey took no steps to rectify the situation.

84. Instead of focusing on the projects that required cash, Mr. Casey told Ms. Athanasoulis that Cresford's sole priority was to satisfy the conditions precedent on the YSL Construction Loan. In order to access that funding, YSL Inc. had to enter into an agreement to sell the retail component of YSL. This was the final funding condition, so once a suitable purchaser was found YSL could access the first tranche of the YSL Construction Loan.

85. As is standard, funds advanced pursuant to the YSL Construction Loan can only be used to fund construction costs on YSL. Thus, funding the YSL Construction Loan would do nothing at all to help Cresford's overall cash position unless YSL diverted funds to other projects. Such diversions would be fraud.

86. Ms. Athanasoulis raised this concern with Mr. Casey, but did not receive a meaningful response. Instead, Mr. Casey sent a non-binding letter of intent purporting to relate to the sale of the retail component of YSL directly to YSL's construction lender, Otera. The letter of intent did not satisfy the condition of the YSL Construction Loan, since an actual agreement of purchase and

sale was required, no one (including Cresford's management) knew who the purchaser was and the transaction contemplated by the letter of intent did not satisfy the requirements of the YSL Construction Loan in any event. The YSL Construction Loan required that the deposit on the retail component be available to fund construction costs, and such use was prohibited by the letter of intent Mr. Casey provided.

87. Ms. Athanasoulis, and other members of Cresford's management, asked Mr. Casey to clarify these issues. Mr. Casey provided no meaningful response. Instead, he instructed his litigation lawyer, Allan O'Brien, to write to Ms. Athanasoulis and accuse her of breaching her fiduciary duty by interfering with YSL Inc.'s attempts to close the YSL Construction Loan. Mr. O'Brien provided no particulars to support this allegation, because there was no interference.

88. Otera was, understandably, confused by Mr. Casey's e-mail. Ms. Athanasoulis had been responsible for Cresford's relationship with Otera since early 2019, so Otera asked to speak with her. Mr. Casey prohibited her from communicating with Otera, or any other lender, and indicated that he alone would speak to Cresford's lenders.

89. Mr. Casey then went further still, and advised that he alone would deal with *all* of Cresford's key stakeholders including contractors and lenders. He also told Cresford's staff, who previously reported to Ms. Athanasoulis, that they would now report to him directly.

90. Mr. Casey's actions stripped Ms. Athanasoulis of essentially all of her responsibilities as Cresford's president and COO. She was terminated in all but name. But Mr. Casey refused to formalize this termination because he was concerned about how Cresford's key stakeholders, including contractors, lenders, investors and employees, would react.

91. All of this put Ms. Athanasoulis in an impossible situation. She was nominally an officer of Cresford (and a director of YSL Inc.) but had no ability to understand or affect how Cresford conducted business. She had good reason to believe that Mr. Casey planned to take steps that would violate Cresford's legal obligations and potentially expose her to personal liability.

92. The conduct described above constituted repudiation of Ms. Athanasoulis' employment contract, and constructive termination of her employment by Cresford. By letter dated January 2, 2020, Ms. Athanasoulis wrote to accept this repudiation.

E. DEFAMATION

93. Ms. Athanasoulis' January 2, 2020 letter indicated that she would like to negotiate an amicable separation from Cresford and that, while negotiations were ongoing, she would tell third parties only that she was no longer with Cresford and that all inquiries relating to Cresford should be directed to Mr. Casey.

94. Ms. Athanasoulis did what she said she would do. When lenders, contractors and other stakeholders contacted her, she referred them to Mr. Casey and said nothing about Cresford's business.

95. Unfortunately, Mr. Casey followed the opposite path. Before Ms. Athanasoulis accepted Cresford's repudiation, Mr. Casey began telling lies meant to harm her reputation and blame her for Cresford's cash flow issues. His false and defamatory statements continued after Ms. Athanasoulis' termination.

96. On December 21, 2019, Mr. Casey told the potential purchaser – who was also Ms. Athanasoulis' potential business partner – that "people" had invented Cresford's cash crisis to further their own financial interests. Mr. Casey's statement obviously referred to Ms. Athanasoulis, since she was the only person in a position to "create" the cash flow crisis and then profit from it. Mr. Casey's statement was, in essence, an allegation that Ms. Athanasoulis committed a grievous breach of her duties as President by harming Cresford to further her own interests.

97. In addition, on January 2, 2020, Mr. Casey told members of Cresford's staff that Ms. Athanasoulis had caused Cresford's cash crisis by selling condominium units for less than they were worth. This, too, was defamatory.

98. Mr. Casey's defamatory campaign continued. After terminating Ms. Athanasoulis, Mr. Casey hired Ted Dowbiggin, the former president of Cresford Capital. He told Mr. Dowbiggin that Ms. Athanasoulis had devalued Cresford so that she could buy it. Mr. Dowbiggin relayed Mr. Casey's false allegations to Cresford personnel and others.

99. On January 7, 2020, Mr. Casey met again with the prospective purchaser. At that meeting, Mr. Casey repeated his allegations against Ms. Athanasoulis. He claimed again that "people" had "hidden" Cresford's profits for their own benefit. It was clear to the potential purchaser that Mr. Casey was referring to Ms. Athanasoulis, and alleging again that she had breached her duties to Cresford in order to further her own financial interests.

100. Ms. Athanasoulis has spent many years building a stellar reputation in the real estate development industry. She is known to be a talented executive who conducts business honestly.

This reputation is very valuable. Indeed, because of her reputation, Ms. Athanasoulis had the opportunity to acquire an interest in Cresford's business if the purchase transaction described above was completed. That reputation is particularly important now, since Ms. Athanasoulis has been terminated by Cresford and must now seek new opportunities in the industry.

101. Mr. Casey's statements harmed – and were meant to harm – Ms. Athanasoulis' reputation. Mr. Casey's false allegations that she betrayed him would, if believed, make it difficult or impossible for Ms. Athanasoulis to do business with the potential purchaser or other business partners. Potential new employers would, of course, never hire an executive who had tried to destroy her previous employer so its business could be purchased at a discount.

102. Mr. Casey's statements are unquestionably defamatory. They are also entirely false. Ms. Athanasoulis did not – and would not – do anything to harm Cresford. Cresford's cash crisis was (and is) real. It was caused by Mr. Casey's own failure to inject equity into the business, and the secret high interest loans he took out to fool lenders into thinking he had made the equity injections he agreed to make.

F. COMPENSATORY DAMAGES

(i) Notice period

103. Ms. Athanasoulis was constructively dismissed without notice or cause. The defendants are liable for damages in an amount equal to what Ms. Athanasoulis would have earned during the notice period that she was entitled to. Ms. Athanasoulis is entitled to 24 months' notice, having regard to:

(a) **Character of employment:** Ms. Athanasoulis was Cresford's most senior employee except for Mr. Casey, with overall responsibility for virtually all aspects of Cresford's business except financing. In that capacity, she successfully executed some of the most ambitious development and construction projects in Canada;

(b) **Age and length of employment:** Ms. Athanasoulis worked at Cresford for 16 years and is 42 years old;

(c) **Availability of similar employment:** similar employment is not currently available to Ms. Athanasoulis and will not be available to her for the foreseeable future. There are only a handful of developers in Canada that execute projects of the type, size and scope that Ms. Athanasoulis worked on while she was at Cresford. These developers already have presidents. As a result, Ms. Athanasoulis is unlikely to find comparable employment for at least 24 months.

(ii) Profit and revenue shares owed

104. As noted, Ms. Athanasoulis was entitled to $500,000 per annum, plus benefits. She also was entitled to 0.15% of all revenue earned by Cresford on new projects during her notice period.

105. In addition, and most importantly, Ms. Athanasoulis continued to dedicate her time, energy and talent to Cresford's business because Mr. Casey agreed to pay her 20% of the profits yielded by that business. She is entitled to 20% of all the profits earned by Cresford on the Projects. The Projects are expected to yield profits of $242 million, with a majority of this coming from YSL, and Ms. Athanasoulis is entitled to 20% of those profits, which are equal to $48 million.

G. PUNITIVE AND EXEMPLARY DAMAGES

106. As described above, Ms. Athanasoulis was terminated because she insisted that Mr. Casey deal honestly with Cresford's stakeholders. Cresford's actions, and those of Mr. Casey, demonstrate a wanton and contumelious disregard for Ms. Athanasoulis' rights and warrant an award of punitive and exemplary damages. Those actions also caused significant mental and emotional distress to Ms. Athanasoulis, and an award of aggravated damages is also warranted.

January 21, 2020

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Lawyers for the Plaintiff, Maria Athanasoulis

MARIA ATHANASOULIS - and - DANIEL CASEY *ET AL.*
Plaintiff Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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Lawyers for the Plaintiff, Maria Athanasoulis

TAB 6

ksv advisory inc.

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

May 6, 2021

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COURT FILE NO.: 31-459200 AND 31-2734090

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

and

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

MAY 6, 2021

1.0 Introduction

1. This report ("Report") 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 ("NOIs") filed on April 30, 2021 (the "Filing Date") by YG Limited Partnership (the "Partnership") and by YSL Residences Inc. ("YSL Inc.", and together with the Partnership, the "Companies"), a company related to the Partnership, pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). Copies of the certificates of filing issued by the Office of the Superintendent of Bankruptcy are provided in Appendix "A".

2. The principal purpose of these proceedings is to create a stabilized environment to allow the Companies to file a proposal that provides creditors with a better result than they would realize in a bankruptcy (a "Proposal").

1.1 Purposes of this Report

1. The purposes of this Report are to:

   a) provide background information about the Companies;

   b) comment on appraisals and analyses thereon to be performed of the YSL Project, as defined in Section 2 below; and

   c) summarize the Proposal Trustee's activities since the Filing Date.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Companies' representatives, the Companies' books and records and discussions with representatives of Concord Adex Inc. ("Concord").

2. The Proposal Trustee has not performed an audit or other verification of such information. An examination of the Companies' financial forecasts as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based on the Companies' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Proposal Trustee expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report or relied upon by the Proposal Trustee in its preparation of this Report.

3. The Companies' business and operations may be affected by the Covid-19 pandemic and the effect of the pandemic on the Companies may be material.

2.0 Background

1. The Partnership was formed on February 3, 2016 under *The Partnership Act*, C.C.S.M. c. P30 (Manitoba). 9615334 Canada Inc. (the "GP") is the Partnership's general partner. The GP has not filed a NOI. YSL Inc. was incorporated on January 28, 2016 under the *Business Corporations Act* (Ontario).

2. The Companies are part of the Cresford Group of Companies ("Cresford"). YSL Inc. is the registered owner of the real properties municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (the "Property") acting as a bare trustee and nominee of, for and on behalf of the Partnership. The Partnership is the beneficial owner of the Property, and was formed for the purpose of developing the 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, and known as Yonge Street Living Residences (the "YSL Project"). Approximately 800 residential condominium units have been pre-sold.

3. Based on the Partnership's records, the YSL Project is subject to three mortgages totaling approximately $249 million. Other claims, including lien and unsecured claims, are estimated to be $64 million. A copy of the Proposal Trustee's notices to creditors dated May 5, 2021, which include creditor listings, is provided as Appendix "B".

4. Due to the ongoing financial difficulties of the Companies and Cresford, construction of the YSL Project has been suspended for more than a year and it is presently at the excavation stage.

5. Pursuant to an agreement dated April 30, 2021 between the Companies, certain Cresford entities and Concord Properties Development Corp. (the "Sponsor"), an affiliate of Concord (the "Agreement"), the Sponsor, with the consent and support of the Companies' secured lenders, has agreed to sponsor a Proposal to be made to the Companies' creditors. If the Proposal is implemented, the Sponsor or another Concord-affiliate would become the owner and developer of the YSL Project. The Proposal Trustee understands that the Proposal is in the process of being finalized and is intended to be filed in the near term.

2.1 Applications by Limited Partners

1. Certain of the Partnership's limited partners (the "LPs") have commenced separate applications before the Ontario Superior Court of Justice (Commercial List) (the "Court") seeking Orders declaring that, among other things: a) 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; c) the GP breached its duty of good faith to the limited partners; and d) appointing a receiver.

2. Timbercreek Mortgage Servicing Inc. ("Timbercreek"), the Companies' senior secured creditor, takes the position that the granting of any of the relief sought in the LPs' applications would trigger a forbearance event, and that Timbercreek will seek to be in a position to bring on for hearing its application for appointment of a court-appointed receiver (currently scheduled for July 12, 2021) in preference to any such relief being granted.

3. In their materials, the LPs have filed with the Court three appraisals prepared by CBRE Limited ("CBRE") of the YSL Project on "as is" and "as if complete" bases. The most recent CBRE appraisal included in the LP's application is dated August 8, 2019 (the "2019 Appraisal").

4. The 2019 Appraisal estimates the "as is" market value of the YSL Project to be \$375.5 million, reflecting the estimated Land Residual Value and the Costs Incurred to Date Beneficial to a Potential Purchaser (as those terms are defined in the 2019 Appraisal) and \$1.225 billion on an "as if complete" basis.

5. CBRE also prepared an appraisal of the YSL Project dated April 30, 2021 (the "2021 Appraisal"). The appraisal is addressed to Concord. Concord provided the appraisal to the Proposal Trustee on a confidential basis. The Proposal Trustee has been advised that Concord has offered to provide a copy of the 2021 Appraisal to each of the LPs upon execution of a confidentiality agreement.

6. As the value of the YSL Project is central to determining the reasonableness of the Proposal, the Proposal Trustee engaged Finnegan-Marshall Inc. (“FM”), a real estate and development cost consulting firm, to, among other things:

   a) review CBRE’s most recent appraisal;

   b) analyse the differences between the 2019 Appraisal and the 2021 Appraisal;

   c) assess the value of the improvements and work performed to-date; and

   d) prepare a report that will opine on “the sales price for the project on an as-is basis after assessing the project budget, project revenue and resultant profitability”.

7. A copy of the Proposal Trustee’s engagement letter with FM dated May 3, 2021 (the “FM Engagement Letter”) is provided as Appendix “C”. Pursuant to the FM Engagement Letter, FM estimates that its report will be completed in three weeks.

8. It is the Proposal Trustee’s intention, following the filing of a Proposal by the Companies, to report to the Companies’ creditors on the terms of the Proposal and provide a comparison of the recoveries under the Proposal to a bankruptcy. The Proposal Trustee’s report will include a recommendation as to whether the creditors should vote in favour of the Proposal. It is presently contemplated that the meeting of creditors would be convened on or around June 11, 2021.

3.0 Proposal Trustee’s Activities

1. In addition to the activities summarized in this Report, the Proposal Trustee’s activities since the Filing Date have included:

   - Corresponding with the Partnership, its counsel and Concord’s counsel regarding the pre-sold condominium units;

   - Assisting the Partnership to prepare a statement of projected cash flow pursuant to Section 50.4(2) of the BIA;

   - Considering an application to consolidate the BIA proceedings of the Partnership and YSL Inc.;

   - Dealing with notices of disclaimer which will be issued pursuant to Section 65.11 of the BIA;

   - Corresponding with Concord regarding funding for these proceedings;

   - Attending at Court, virtually, on May 3, 2021;

- Establishing the Proposal Trustee's website;
- Reviewing CBRE's appraisals; and
- Responding to creditor inquiries.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.,
AND NOT IN ITS PERSONAL CAPACITY

Appendix “A”

Industry Canada | Industrie Canada

Office of the Superintendent of Bankruptcy Canada | Bureau du surintendant des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-459200
Estate No. 31-459200

In the Matter of the Notice of Intention to make a proposal of:

YG Limited Partnership

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: April 30, 2021

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 30, 2021, 22:54

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Industry Canada / Industrie Canada
Office of the Superintendent of Bankruptcy Canada / **Bureau du surintendant des faillites Canada**

District of Ontario
Division No. 09 - Toronto
Court No. 31-2734090
Estate No. 31-2734090

In the Matter of the Notice of Intention to make a proposal of:

YSL Residences Inc.

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: April 30, 2021

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

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Date: April 30, 2021, 22:54

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

Appendix "B"

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May 5, 2021

To: Creditors of YG Limited Partnership (the "Partnership")

We are writing to advise you that on April 30, 2021, the Partnership commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal ("NOI") pursuant to the *Bankruptcy and Insolvency Act* ("BIA"). A copy of the NOI and a preliminary listing of the Partnership's creditors are attached. KSV Restructuring Inc. ("KSV") has been appointed as the trustee under the NOI (the "Proposal Trustee"). KSV is also the proposal trustee of YSL Residences Inc., a company related to the Partnership that also filed an NOI on April 30, 2021.

Although the NOI proceedings are pursuant to the BIA, it is important to note that the Partnership is not bankrupt.

The principal purpose of these proceedings is to create a stabilized environment to allow the Partnership to prepare a proposal that provides creditors with a better result than they would receive through a bankruptcy.

At present, creditors are not required to file a proof of claim. The Proposal Trustee will provide you with further information, a proof of claim form and further instructions at a later date.

During the restructuring proceedings, among other things:

- no person may terminate or amend any agreement, including a security agreement, with the Partnership, or claim an accelerated payment, or a forfeiture of the term, under any agreement, including a security agreement, by reason only that the Partnership is insolvent or by reason of the filing of the NOI, pursuant to Section 65.1(1) of the BIA;

- no creditor has any remedy against the Partnership or its property or shall commence or continue any action, execution, or other proceedings against the Partnership, pursuant to Section 69.1(1) of the BIA; and

- to the extent applicable, suppliers should discuss directly with their usual Partnership representative the terms of payment for ongoing goods and/or services that they provide to the Partnership.

If you have any questions after speaking with your contact at the Partnership, please contact Murtaza Tallat from the Proposal Trustee's office at mtallat@ksvadvisory.com.

Yours very truly,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.
TRUSTEE UNDER THE NOTICE OF INTENTION TO MAKE
A PROPOSAL OF YG LIMITED PARTNERSHIP

Industry Canada | Industrie Canada

Office of the Superintendent of Bankruptcy Canada | **Bureau du surintendant des faillites Canada**

District of Ontario
Division No. 09 - Toronto
Court No. 31-459200
Estate No. 31-459200

In the Matter of the Notice of Intention to make a proposal of:

YG Limited Partnership

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: April 30, 2021

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 30, 2021, 22:54

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

FORM 33

Notice of Intention to Make a Proposal
[Subsection 50.4(1)]

IN THE MATTER OF THE PROPOSAL OF YG LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORM UNDER THE LAWS OF THE PROVINCE OF MANITOBA

TAKE NOTICE THAT:

1. **YG Limited Partnership**, an insolvent person, pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, intends to make a proposal to its creditors.

2. **KSV Restructuring Inc.** of 150 King Street West, Suite 2308, Toronto, Ontario, a licensed trustee, has consented to act as trustee under the proposal and a copy of the consent is attached hereto.

3. A list of the names of the known creditors with claims amounting to $250 or more and the amounts of their claims is attached.

4. Pursuant to section 69 of the *Bankruptcy and Insolvency Act*, all proceedings against YG Limited Partnership are stayed as of the date of filing this notice with the Official Receiver in its locality.

DATED at Toronto, Ontario this 9 day of April, 2021.

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

Per:
Name: Daniel Casey
Title: President

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Preliminary List of Creditors as at April 29, 2021, as submitted by YG Limited Partnership
without admission as to any liability or privilege herein shown
(Unaudited)

Creditor	Address	Amount ($)*
Secured		
2576725 Ontario Inc	35 Wembley Avenue, Markham, ON L3R 1Z1	30,865,424
Timbercreek Mortgage Servicing Inc.	25 Price Street, Toronto, Ontario M4W 1Z1	106,798,989
Westmount Guarantee	600 Cochrane Drive, Ste 205, Markham, Ontario L3R 5K3	111,757,134
Total - Secured		249,421,547
Unsecured and Lien Claims		
2600924 Ontario Inc.	18 Leone Lane, Brampton, Ontario L6P 0K9	67,800
1st Choice Disposal	2117 Codlin Crescent, Rexdale, Ontario M9W 5K7	8,917
AEC Paralegal Corporation	640 - 10 Carlson Crt, Etobicoke, Ontario M9W 6L2	593
Aim Home Realty Inc	2175 Sheppard Avenue E, #106, Toronto, Ontario M2J 1W8	15,018
Aird & Berlis LLP	181 Bay Street, Ste 1800, Box 754 Toronto, Ontario M5J 2T9	16,583
Altus Group Limited	126 Don Hillock Drive, Aurora, Ontario L4G 0G9	20,960
AlumaSafway, Inc	c/o Lockbox 919760, PO Box 4090 STN A Toronto, Ontario M5B 1S1	46,505
Architects Alliance	317 Adelaide Street West, 2nd Floor, Toronto, Ontario M5V 1P9	1,009,360
Arthur J. Gallagher Canada Li	P.O. Box 57194, Station A,, Toronto, Ontario M5W 5M5	105,288
BA Consulting Group Ltd.	45 St. Clair Avenue West, Suite 300, Toronto, Ontario M4V 1K9	7,919
Baaron Group Inc.	51 Adirondack Drive, Vaughan, Ontario L6A 2V7	20,398
Bay Street Group Inc	8300 Woodbine Avenue, Ste 500, Markham, Ontario L3R 9Y7	45,738
Beck Taxi	1 Credit Union Drive, Toronto, Ontario M4A 2S6	4,037
Bell Canada	1 Carrefour Alexandre-Graham-Bell, Aile E 3, Verdun, QC H3E 3B3	456
Bennett Jones LLP	3400 One First Canadian Place, P.O. Box 130 Toronto, Ontario M5X 1A4	20,813
Blaney McMurtry LLP	2 Queen Street East,Suite 1500, Toronto, Ontario M5C 3G5	100,057
BVDA Group Ltd.	107 Toronto St South, Suite 1, Uxbridge, Ontario L9P 1H4	1,130
Canon Canada Inc.	Lockbox 914820, PO Box 4090, Stn A Toronto, Ontario M5W 0E9	38
CBSC Capital Inc.	c/o T9649, PO Box 9649, STN A, Toronto, Ontario M5W 1P8	6,126
Century 21 Kennect Realty	7780 Woodbine Avenue, U#15, Markham, Ontario L3R 2N7	53,036
Century 21 King's Quay Real E	7300 Warden Avenue, Suite 401, Markham, Ontario L3R 9Z6	37,594
Century 21 Leading Edge Realty	165 Main Street North, Markham, Ontario L3P 0E7	10,878
Cityscape Real Estate Ltd.	25 Waitline Avenue, Suite 402, Mississauga, Ontario L4Z 2Z1	246,999
Citywide Door & Hardware Inc.	80 Vinyl Court, Woodbridge, Ontario L4L 4A3	1,130
Cresford (Rosedale) Developments Inc.	203 – 250 Merton Street, Toronto, ON M4S 1B1	13,100,000
Dale & Lessmann LLP	181 University Avenue, Suite 2100, Toronto, Ontario M5H 3M7	5,322
Dekla Corporation	288 Judson Street, Unit 8, Toronto, Ontario M8Z 5T6	25,000
E.R.A. Architects Inc.	600-625 Church St., Toronto, Ontario M4Y 2G1	46,764
East Downtown Redevelopment Part.	203 – 250 Merton Street, Toronto, ON M4S 1B1	5,810,053
Entuitive Corporation	200 University Avenue, 7th FL, Toronto, Ontario M5H 3C6	5,509
Federal Wireless Communication	5250 Finch Avenue East, #11, Scarborough, Ontario M1S 5A5	4,292
Forest Hill Real Estate Inc	441 Spadina Road, Toronto, Ontario M5P 2W3	30,876
Foster Interactive Inc.	80 Ward St. Office #213, Toronto, Ontario M6H 4A6	1,627
Four Seasons Hotel Toronto	60 Yorkville Avenue, Toronto, Ontario M4W 0A4	97,938
GFL Infrastructure Group Inc.	100 New Park Place, # 500, Vaughan, Ontario L4K 0H9	4,296,801
Heritage Restoration Inc	14 Paisley Lane, Stouffville, ON L4A7X4	393,006
Home Standards Brickstone Realty	#30 - 180 Steeles Ave. West, Thornhill, Ontario L4J 2L1	114,566
Homelife/Bayview Realty Inc	505 Hwy. 7 East, Unit#201, Thornhill, Ontario L3T 7T1	1
Homelife Classic Realty Inc	1600 Steeles Ave. W., #36, Vaughan, Ontario L4K 4M2	12,478
HomeLife Frontier Realty Inc.	7620 Yonge Street, Suite 400, Toronto, Ontario L4J 1V9	25,376
HomeLife Landmark Realty Inc.	7240 Woodbine Ave, Suite 103, Markham, Ontario L3R 1A4	1,669,032
HomeLife New World Realty Inc	201 Consumers Road, Suite 205, Willowdale, Ontario M2J 4G8	544,356
Howe Gastmeier Chapnik Limited	Suite 203-2000 Argentia Rd, Plaza One, Mississauga, Ont L5N 1P7	15,343
Hunter & Associates Ltd.	1133 Yonge Street. 3rd Floor, (The Exchange) Toronto, Ontario M4T 1W1	2,924
Innocon Partnership	T10094, PO Box 10094, Stn A, Toronto, Ontario M5W 2B1	50,239
Investments Hardware Limited	250 Rowntree Dairy Road, Woodbridge, Ontario L4L 9J7	15,091
Isherwood	3100 Ridgeway Drive, Unit 3, Mississauga, Ontario L5L 5M5	131,669
Jablonsky, Ast and Partners	1129 Leslie Street, Don Mills, Ontario M3C 2K5	349,632
JanetRosenberg&Studio Inc.	148 Kenwood Avenue, Toronto, Ontario M6C 2S3	16,690
JDL Realty Inc.	95 Mural Street, Ste 105, Richmond Hill, Ontario L4B 3G2	20,478
Jensen Hughes Consulting Cana	C/O T56207C, PO Box 56207, Station A Toronto, Ontario M5W 4L1	53,889
Keller Williams Referred	Urban Realty, Brokerage, 156 Duncan Mill Rd., Unit 1 Toronto, Ontario M3B 3N2	39,174
Kohn Pedersen Fox Associates	11 West 42nd Street, New York, NY 10036	2,149,015

Creditor	Address	Amount ($)*
Kramer Design Associates Limited	103 Dupont Street, Toronto, Ontario M5R 1V4	74,185
Lam & Associates Ltd.	160 Applewood Crescent, #25, Concord, Ontario L4K 4H2	129,925
LandpowerReal Estate Ltd.	3621 Highway 7 E., Ste. 403, Markham, Ontario L3R 0G6	2,256,549
Lerch Bates	9780 S. Meridian Blvd., #450, Englewood, Colorado USA 80112	11,900
Live Patrol Inc.	2645 Skymark Avenue, #205, Mississauga, Ontario L4W 4H2	16,781
Living Realty Inc.	8 Steelcase Road West, Markham, Ontario L3R 1B2	88,588
Master's Choice Realty, Inc.	3190 Steeles Avenue E. #110, Markham, Ontario L3R 1G9	379,298
McIntosh Perry	200-6240 Highway 7, Woodbridge, Ontario L4H 4G3	218
Michael Bros. Excavating	240 Toryork Drive, Weston, Ontario M9L 1Y1	1,758,732
Mike Catsiliras	62 Presteign Avenue, Toronto, Ontario M4B 3B2	1
Montana Steele	5255 Yonge Street Ste 1050, Toronto, Ontario M2N 6P4	73,928
Mulvey & Banani Lighting Inc.	44 Mobile Drive, Toronto, Ontario M4A 2P2	29,979
Municipal Mechanical Contract	9418 The Gore Road, Brampton, Ontario L6P 0A8	11,303
Myles Burke	10 Planchet Road, #29, Vaughan, Ontario L4K 2C8	53,698
Naf-Muk Contracting Inc	23 Gillingham Street, Scarborough, Ontario M1B 5X1	2,440
North American Sign Company I	499 Edgeley Boulevard, Unit 3, Concord, Ontario L4K 4H3	2,825
Oakleaf Consulting Ltd.	203 – 250 Merton Street, Toronto, ON M4S 1B1	19,363,566
Otis Canada Inc.	PO Box 57445 Station A, Toronto, Ontario M4Y 0E7	5,395,110
PETRA Consultants Ltd.	104-93 Dundas Street E., Mississauga, Ontario L5A 1W7	185,969
PM Sheetmetal & Ventilation	140 Bowes Road, Unit B, Concord, Ontario L4K 1J6	29,042
Powerland Realty, Brokerage	160 West Beaver Creek Rd., #2A, Richmond Hill, Ontario L4B 1B4	10,678
PricewaterhouseCoopers LLP	18 York Street, Suite 2600, Toronto, Ontario M5J 0B2	19,267
Priestly Demolition Inc.	3200 Lloydtown-Aurora Rd., King, Ontario L7B 0G3	660,123
R. Avis Surveying Inc.	235 Yorkland Boulevard, Suite 203, Toronto, Ontario M2J 4Y8	53,758
Rapid Equipment Rental Limited	5 St. Regis Crescent, N. U# 2, Toronto, Ontario M3J 1Y9	4,520
Re/Max Condo Plus Corp	45 Harbour Square, Toronto, Ontario M5J 2G4	16,358
RE/MAX Goldenway Realty Inc.	15 Wertheim Court, Suite 309, Richmond Hill, Ontario L4B 3H7	125,424
RE/MAX Realtron Realty Inc.	88 Konrad Crescent, Markham, Ontario L3R 8T7	42,576
RE/MAX Realty Enterprises Inc	125 Lakeshore Road East, Mississauga, Ontario L5G 1E5	72,090
Real One Realty Inc.	15 Wertheim Crt., Unit 302, Richmond Hill, Ontario L4B 3H7	181,936
Reco Cleaning Services	260 Spinnaker Way, Unit 9&10, Concord, Ontario L4K 4P9	74,482
ReMax Ultimate Realty Inc.	1739 Bayview Avenue, Toronto, Ontario M4G 3C1	16,718
Reprodux Limited	1120 Brevik Place, Mississauga, Ontario L4W 3Y5	724
Right At Home Realty Inc.	895 Don Mills Rd., Ste 202, Toronto, Ontario M3C 1W3	10,678
Rosa Trading Ltd.	552 Wellington Street W #1203, Toronto, Ontario M5V 2V5	1
Royal Elite Realty Inc., Broker	7050 Woodbine Ave Unit101, Markham, Ontario L3R 4G8	16,198
Royal LePage - New Concept	1993 Leslie Street, Toronto, Ontario M3B 2M3	85,770
Royal LePage - Signature Real	8 Sampson Mews #201, Toronto, Ontario M3C 0H5	14,678
Ryan Property Tax Paralegal	640 - 10 Carlson Crt, Etobicoke, Ontario M9W 6L2	5,360
Safeline Management Systems	260 Spinnaker Way, Unit 9&10, Concord, Ontario L4K 4P9	9,074
Sebba Steel Construction Ltd.	PO Box 27, Gormley, Ontario L0H 1G0	86,075
Soberman Engineering Inc	55 St Clair Avenue W Ste 205, Toronto, Ontario M4V 2Y7	1,271
Stantec Consulting Ltd.	c/o Lockbox 310260, PO Box 578, Stn M Calgary, Alberta T2P 2J2	9,023
Stephenson's Rental Services	6895 Columbus Road, Mississauga, Ontario L5T 2G9	13,202
Strada Aggregates	30 Floral Parkway, Suite 400, Concord, Ontario L4K 4R1	36,999
The Odan/Detech Group Inc.	5230, South Service Rd, U#107, Burlington, Ontario L7L 5K2	6,526
The Treasurer, City of Toronto	55 John Street, 26th Floor, Metro Hall Toronto, Ontario M5V 3C6	486,245
Toronto Hydro-Electric System	Misc Accounts Receivable, 500 Commissioners Street Toronto, Ontario M4M 3N7	44,098
Tradeworld RealtyInc.	411 Dundas Street W., #202, Toronto, Ontario M5T 1G6	67,770
V.A. Siu Design Consultants	596 Queen Street W., #301, Toronto, Ontario M6J 1E3	96,050
Verdi Structures Inc	91 Parr Blvd., Bolton, Ontario L7E 4E3	775,180
Westmount Guarantee Services	600 Cochrane Drive, Ste 205, Markham, Ontario L3R 5K3	231,504
WSP Canada Inc.	c/o TX4022 C PO Box 4590 Stn A, Toronto, Ontario M5W 7B1	76,063
You-Go Rental & Sales	9418 The Gore Road, Brampton, Ontario L6P 0A8	2,809
Total - Unsecured and Lien Claims		64,091,776

*An amount of $1.00 indicates that the amount due is undetermined or unknown.

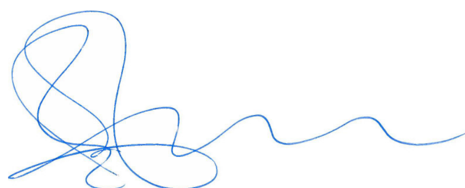
IN THE MATTER OF THE PROPOSAL OF YG LIMITED PARTNERSHIP

CONSENT

KSV RESTRUCTURING INC. hereby consents to act as Trustee under the Notice of Intention to Make a Proposal and/or Proposal to be filed by YG Limited Partnership.

DATED at Toronto, Ontario this 29th day of April, 2021.

KSV RESTRUCTURING INC.



Per: ______________________________
Name: Bobby Kofman
Title: Authorized Signing Officer

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

May 5, 2021

To: Creditors of YSL Residences Inc. ("YSL")

We are writing to advise you that on April 30, 2021, YSL commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal ("NOI") pursuant to the *Bankruptcy and Insolvency Act* ("BIA"). A copy of the NOI and a preliminary listing of YSL's creditors are attached. KSV Restructuring Inc. ("KSV") has been appointed as the trustee under the NOI (the "Proposal Trustee"). KSV is also the proposal trustee of YG Limited Partnership, a partnership related to YSL that also filed an NOI on April 30, 2021.

Although the NOI proceedings are pursuant to the BIA, it is important to note that YSL is not bankrupt.

The principal purpose of these proceedings is to create a stabilized environment to allow YSL to prepare a proposal that provides creditors with a better result than they would receive through a bankruptcy.

At present, creditors are not required to file a proof of claim. The Proposal Trustee will provide you with further information, a proof of claim form and further instructions at a later date.

During the restructuring proceedings, among other things:

- no person may terminate or amend any agreement, including a security agreement, with YSL, or claim an accelerated payment, or a forfeiture of the term, under any agreement, including a security agreement, by reason only that YSL is insolvent or by reason of the filing of the NOI, pursuant to Section 65.1(1) of the BIA;

- no creditor has any remedy against YSL or its property or shall commence or continue any action, execution, or other proceedings against YSL, pursuant to Section 69.1(1) of the BIA; and

- to the extent applicable, suppliers should discuss directly with their usual YSL representative the terms of payment for ongoing goods and/or services that they provide to YSL.

If you have any questions after speaking with your contact at YSL, please contact Murtaza Tallat from the Proposal Trustee's office at mtallat@ksvadvisory.com.

Yours very truly,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.
TRUSTEE UNDER THE NOTICE OF INTENTION TO MAKE
A PROPOSAL OF YSL RESIDENCES INC.

Industry Canada | Industrie Canada
Office of the Superintendent of Bankruptcy Canada | Bureau du surintendant des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2734090
Estate No. 31-2734090

In the Matter of the Notice of Intention to make a proposal of:

YSL Residences Inc.

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: April 30, 2021

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 30, 2021, 22:54

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

FORM 33

Notice of Intention to Make a Proposal
[Subsection 50.4(1)]

IN THE MATTER OF THE PROPOSAL OF YSL RESIDENCES INC., A CORPORATION INCORPORATED PURSUANT TO THE LAWS OF ONTARIO

TAKE NOTICE THAT:

1. **YSL Residences Inc.**, an insolvent person, pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, intends to make a proposal to its creditors.

2. **KSV Restructuring Inc.** of 150 King Street West, Suite 2308, Toronto, Ontario, a licensed trustee, has consented to act as trustee under the proposal and a copy of the consent is attached hereto.

3. A list of the names of the known creditors with claims amounting to $250 or more and the amounts of their claims is attached.

4. Pursuant to section 69 of the *Bankruptcy and Insolvency Act*, all proceedings against YG Limited Partnership are stayed as of the date of filing this notice with the Official Receiver in its locality.

DATED at Toronto, Ontario this 29 day of April, 2021.

YSL RESIDENCES INC.

Per:
Name: Daniel Casey
Title: President

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
YSL RESIDENCES INC.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Preliminary List of Creditors as at April 29, 2021, as submitted by YSL Residences Inc.
without admission as to any liability or privilege herein shown
(Unaudited)

Creditor	Address	Amount ($)
Secured		
Timbercreek Mortgage Servicing Inc.	25 Price Street, Toronto, Ontario M4W 1Z1	106,798,989
Total - Secured		106,798,989

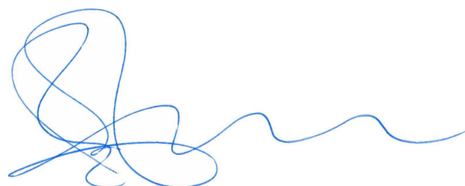
IN THE MATTER OF THE PROPOSAL OF YSL RESIDENCES INC.

CONSENT

KSV RESTRUCTURING INC. hereby consents to act as Trustee under the Notice of Intention to Make a Proposal and/or Proposal to be filed by YSL Residences Inc.

DATED at Toronto, Ontario this 29th day of April, 2021.

KSV RESTRUCTURING INC.



Per: ______________________________
Name: Bobby Kofman
Title: Authorized Signing Officer

Appendix “C”

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

May 3rd, 2021

Attn: Bobby Koffman

RE: YSL project, Toronto, ON

Dear Sir,

KSV Restructuring Inc. ("KSV") has advised that they have been appointed as Proposal Trustee for the YSL project on the south/east corner of Yonge & Gerrard. The project comprises generally of an 86-storey tower with 6 levels of underground with 1,106 residential condo suites, approximately 96,000sf office, 60,000sf retail and 251 parking stalls. Sales of the condominiums are partially undertaken, and there is also an agreement with Ryerson University for some of the office space. Construction has also commenced with the heritage exterior wall structure retention work in place and shoring and excavation underway.

KSV have requested that Finnegan Marshall ("FM") review pertinent project documentation and prepare a report that will provide the sales price for the project on an as-is basis after assessing the project budget, project revenue and resultant profitability.

CBRE has prepared a land appraisal and FM will review the appraisal and opine on the land value therein. FM will also review a prior appraisal prepared by CBRE and explain the reasons for the reduction in value in the current appraisal vs the former appraisal, to the extent possible.

Our approach will be as follows:

1. Project Revenue – prepare a projection of the overall sales revenue based on retaining the existing sales, selling the unsold condo units/parking stalls/storage lockers at market price, completing the sale to Ryerson, leasing the remaining commercial space at market rents, and providing for a capitalized value for sales disposal of same. Any miscellaneous additional income such as closing recoveries will be accounted for. To be deducted from the sales revenue will be all purchaser deposits previously used to pay for project costs.

2. Project Budget – prepare a detailed project budget addressing all land, hard and soft costs. In this regard, the land cost will be as advised by KSV as being the proposed purchase price by the land vendor of the project which is understood to be equal to the sum of all secured creditors and lien claimants plus 58cents to the dollar for unsecured creditors. FM will prepare a detailed trade by trade division 16 construction budget taking into account work already completed, any prior construction contracts and whether same can be maintained with those trades taking into account prevailing market costs. If the costs are no longer applicable, FM will adjust the construction costs based on prevailing market costs. FM will also prepare a detailed budget for all soft costs taking into account costs already expended and those left to complete the project.

3. Source of Funding – a key element for the budget preparation will be to calculate the projected capital stack to be available to finance the budget, especially considering that a large amount of the residential deposits are not available as they have been already used. This will impact equity requirements and IRR return for the new vendor and is an important consideration.

4. Executive Summary providing the profit return and its comparison to market.

To undertake this report, to the extent available, we will require receipt of the following documentation:

1. Project drawings.
2. Cost Ledger for project costs incurred to date including making available certain more recent invoices we will want to see that will indicate status of contact billings. So, as we know what balance is left to complete.
3. Accounts payable listing.
4. Sales Summary of suites/parking stalls/storage lockers sold and unsold.
5. Coty of standard Purchase & Sale Agreement to understand deposit structure and closing recoveries.
6. Summary of Co-Broker sales commissions.
7. Zoning By-Law.
8. Section 37 agreement.
9. Ryerson purchase and sale agreement for office.
10. Realty Tax invoices for interim 2021.
11. Tieback & Neighbour Agreements.
12. Construction contracts.
13. Geotechnical, Hydro Geotechnical & Environmental Reports.
14. All building permits issued.
15. Insurance certificates summarizing existing coverage.

There may be some other items, but the foregoing are the primary ones.

Our fees to complete this report will be billed on an hourly basis. We will provide you with a list of our hourly rates for the staff we intend to use on this report as well as a fee projection.

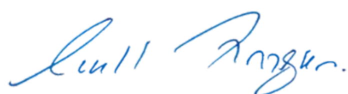
Our timeline to complete our report will be 3 weeks from date of authorization to proceed and we will try to complete it in a shorter timeframe.

FM will also advise whether it is possible that a developer would consider terminating all existing APSs and whether a higher a better price could be achieved through an alternative development.

I trust I have addressed the necessary points, but if not, please advise.

Yours Truly,

FINNEGAN MARSHALL INC.



Per: Niall Finnegan

TAB 7

ksv advisory inc.

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

May 14, 2021

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3.0 Consolidation of the NOI Proceedings 3
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4.0 Conclusion and Recommendation 4

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Draft Order .... E

COURT FILE NOS.: 31-459200 AND 31-2734090

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED PURSUANT TO THE LAWS OF THE PROVINCE OF MANITOBA

and

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

MAY 14, 2021

1.0 Introduction

1. This report ("Report") 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 ("NOIs") filed on April 30, 2021 (the "Filing Date") by YG Limited Partnership (the "Partnership") and by YSL Residences Inc. ("Residences", and together with the Partnership, the "Companies"), a company related to the Partnership, pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). Copies of the certificates of filing issued by the Office of the Superintendent of Bankruptcy are provided in Appendix "A".

2. The principal purpose of these proceedings is to create a stabilized environment to allow the Companies to file a proposal (a "Proposal") that provides creditors with a better result than they would realize in a bankruptcy.

1.1 Purposes of this Report

1. The purposes of this Report are to:

   a) provide background information about the Companies;

   b) discuss the rationale to procedurally and substantively consolidate the NOI proceedings and estates of the Partnership and Residences (the "NOI Proceedings") for the purpose of simplifying the administration of the NOI Proceedings (the "Consolidation"); and

   c) recommend that the Court make an order approving the Consolidation.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Companies' representatives, the Companies' books and records and discussions with representatives of Concord Adex Inc. ("Concord"), an entity related to Concord Properties Developments Corp., the sponsor of the Proposal (the "Sponsor").

2. The Proposal Trustee has not performed an audit or other verification of such information. An examination of the Companies' financial forecasts as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based on the Companies' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Proposal Trustee expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report or relied upon by the Proposal Trustee in its preparation of this Report.

3. The Companies' business and operations may be affected by the Covid-19 pandemic and the effect of the pandemic on the Companies may be material.

2.0 Background

1. The Partnership was formed on February 3, 2016 under *The Partnership Act*, C.C.S.M. c. P30 (Manitoba). 9615334 Canada Inc. (the "GP") is the Partnership's general partner. The GP has not filed a NOI on its own behalf. Residences was incorporated on January 28, 2016 under the *Business Corporations Act* (Ontario).

2. The Companies are part of the Cresford Group of Companies ("Cresford"). A corporate organization chart for Cresford is attached as Appendix "B".

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

4. The Partnership is the beneficial owner of the Property and was formed for the purpose of developing the 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 Yonge Street Living Residences (the "YSL Project"). Approximately 800 residential condominium units have been pre-sold, with such contracts executed by Residences and each purchaser.

5. Based on the Partnership's records, the YSL Project is subject to three mortgages totaling approximately $249 million. Other claims, including lien and unsecured claims, are estimated to be $64 million, which amounts may change.

6. Due to the ongoing financial difficulties of the Companies and Cresford, construction of the YSL Project has been suspended for more than a year and it is presently at the excavation and shoring stage.

7. Pursuant to an agreement dated April 30, 2021 between the Companies, certain Cresford entities and the Sponsor, and with the consent of the Companies' mortgagees, the Sponsor has agreed to sponsor a Proposal to be made to the Companies' creditors. If the Proposal is implemented, the Sponsor or another Concord-affiliate would become the owner and developer of the YSL Project. The Proposal Trustee understands that the Proposal is in the process of being finalized and is expected to be filed in the near term.

8. Additional information about these proceedings is included in the Proposal Trustee's First Report to Court dated May 6, 2021 (the "First Report") and, accordingly, that information is not repeated in this Report. A copy of the First Report is attached as Appendix "C", without appendices.

9. Court materials in these proceedings are available on the Proposal Trustee's website at https://www.ksvadvisory.com/insolvency-cases/case/yg-limited-partnership.

3.0 Consolidation of the NOI Proceedings

1. The Companies are seeking an order to procedurally and substantively consolidate the NOI Proceedings and estates of the Partnership and Residences, and authorizing and directing the Proposal Trustee of the consolidated proceedings to administer the NOI Proceedings as if they were a single proceeding for the purpose of carrying out its duties and obligations as a proposal trustee under the BIA.

2. The Companies were formed solely to develop the YSL Project. Pursuant to a nominee agreement dated February 16, 2016 (the "Nominee Agreement") between Residences (formerly known as 2502295 Ontario Inc.) and the Partnership, Residences is the nominee of the Partnership and as such holds title to the Property and condominium purchaser agreements on behalf of its beneficial owner, the Partnership. As a result of the Nominee Agreement, the assets and liabilities of Residences are assets and liabilities of the Partnership. A copy of the Nominee Agreement is attached as Appendix "D".

3.1 Recommendation

1. Based on the above, the Proposal Trustee believes that the Consolidation is appropriate for the following reasons:

   a) The assets and liabilities of Residences are held in trust for the Partnership in accordance with the Nominee Agreement;

   b) the only claims in the NOI Proceedings are ultimately against the Partnership;

   c) the Companies were formed for the single purpose of completing the YSL Project;

d) no party will suffer any prejudice as a result of consolidating these proceedings; and

e) consolidation would promote cost efficiency and avoid delays associated with having to separately administer the proceedings of the Partnership and Residences.

2. As reflected in the draft Order, a copy of which is provided as Appendix "E", if the NOI Proceedings are consolidated, the Companies will be able to file a joint proposal and convene a single meeting of creditors for the purpose of voting on the Proposal. Additionally, the Proposal Trustee will be authorized to administer the proceedings as follows:

   a) issue consolidated reports on the Proposal;

   b) prepare, file, advertise and distribute any and all filings and/or notices relating to the administration of the Proposal of the Companies on a consolidated basis;

   c) reflect the assets and liabilities of Residences and the Partnership, which is consistent with the legal effect of the Nominee Agreement; and

   d) bring motions to the Court on a consolidated basis.

4.0 Conclusion and Recommendation

1. For the reasons set out in this Report, the Proposal Trustee respectfully recommends that this Honourable Court make an Order granting the relief detailed in Section 1.1(1)(c) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.,
AND NOT IN ITS PERSONAL CAPACITY

Appendix "A"

Industry Canada | Industrie Canada

Office of the Superintendent of Bankruptcy Canada | Bureau du surintendant des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-459200
Estate No. 31-459200

In the Matter of the Notice of Intention to make a proposal of:

YG Limited Partnership

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: April 30, 2021

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 30, 2021, 22:54

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Industry Canada — Industrie Canada

Office of the Superintendent of Bankruptcy Canada — **Bureau du surintendant des faillites Canada**

District of Ontario
Division No. 09 - Toronto
Court No. 31-2734090
Estate No. 31-2734090

In the Matter of the Notice of Intention to make a proposal of:

YSL Residences Inc.

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: April 30, 2021

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 30, 2021, 22:54

E-File/Dépôt Electronique

Official Receiver

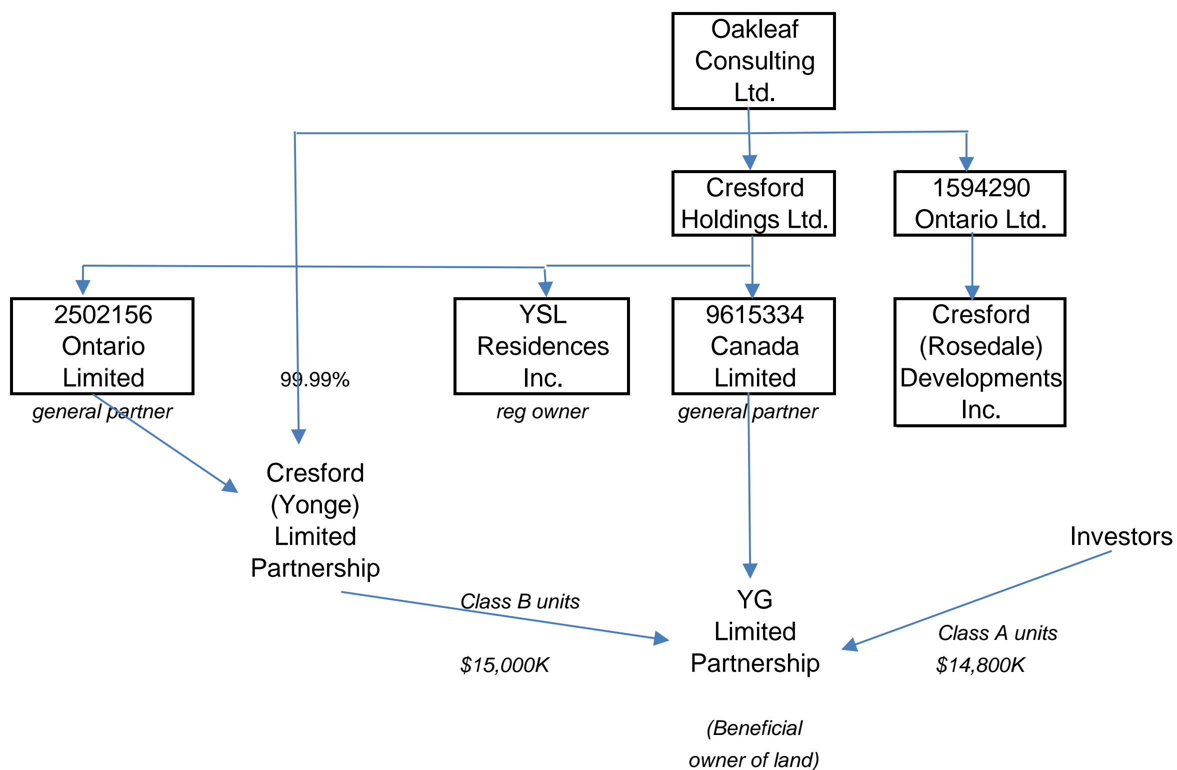
151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

Appendix “B”

Cresford Group

Organization Chart - Yonge/Gerrard



Appendix “C”

ksv advisory inc.

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

May 6, 2021

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COURT FILE NO.: 31-459200 AND 31-2734090

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

and

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

MAY 6, 2021

1.0 Introduction

1. This report ("Report") 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 ("NOIs") filed on April 30, 2021 (the "Filing Date") by YG Limited Partnership (the "Partnership") and by YSL Residences Inc. ("YSL Inc.", and together with the Partnership, the "Companies"), a company related to the Partnership, pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). Copies of the certificates of filing issued by the Office of the Superintendent of Bankruptcy are provided in Appendix "A".

2. The principal purpose of these proceedings is to create a stabilized environment to allow the Companies to file a proposal that provides creditors with a better result than they would realize in a bankruptcy (a "Proposal").

1.1 Purposes of this Report

1. The purposes of this Report are to:

   a) provide background information about the Companies;

   b) comment on appraisals and analyses thereon to be performed of the YSL Project, as defined in Section 2 below; and

   c) summarize the Proposal Trustee's activities since the Filing Date.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Companies' representatives, the Companies' books and records and discussions with representatives of Concord Adex Inc. ("Concord").

2. The Proposal Trustee has not performed an audit or other verification of such information. An examination of the Companies' financial forecasts as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based on the Companies' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Proposal Trustee expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report or relied upon by the Proposal Trustee in its preparation of this Report.

3. The Companies' business and operations may be affected by the Covid-19 pandemic and the effect of the pandemic on the Companies may be material.

2.0 Background

1. The Partnership was formed on February 3, 2016 under *The Partnership Act*, C.C.S.M. c. P30 (Manitoba). 9615334 Canada Inc. (the "GP") is the Partnership's general partner. The GP has not filed a NOI. YSL Inc. was incorporated on January 28, 2016 under the *Business Corporations Act* (Ontario).

2. The Companies are part of the Cresford Group of Companies ("Cresford"). YSL Inc. is the registered owner of the real properties municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario (the "Property") acting as a bare trustee and nominee of, for and on behalf of the Partnership. The Partnership is the beneficial owner of the Property, and was formed for the purpose of developing the 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, and known as Yonge Street Living Residences (the "YSL Project"). Approximately 800 residential condominium units have been pre-sold.

3. Based on the Partnership's records, the YSL Project is subject to three mortgages totaling approximately $249 million. Other claims, including lien and unsecured claims, are estimated to be $64 million. A copy of the Proposal Trustee's notices to creditors dated May 5, 2021, which include creditor listings, is provided as Appendix "B".

4. Due to the ongoing financial difficulties of the Companies and Cresford, construction of the YSL Project has been suspended for more than a year and it is presently at the excavation stage.

5. Pursuant to an agreement dated April 30, 2021 between the Companies, certain Cresford entities and Concord Properties Development Corp. (the "Sponsor"), an affiliate of Concord (the "Agreement"), the Sponsor, with the consent and support of the Companies' secured lenders, has agreed to sponsor a Proposal to be made to the Companies' creditors. If the Proposal is implemented, the Sponsor or another Concord-affiliate would become the owner and developer of the YSL Project. The Proposal Trustee understands that the Proposal is in the process of being finalized and is intended to be filed in the near term.

2.1 Applications by Limited Partners

1. Certain of the Partnership's limited partners (the "LPs") have commenced separate applications before the Ontario Superior Court of Justice (Commercial List) (the "Court") seeking Orders declaring that, among other things: a) 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; c) the GP breached its duty of good faith to the limited partners; and d) appointing a receiver.

2. Timbercreek Mortgage Servicing Inc. ("Timbercreek"), the Companies' senior secured creditor, takes the position that the granting of any of the relief sought in the LPs' applications would trigger a forbearance event, and that Timbercreek will seek to be in a position to bring on for hearing its application for appointment of a court-appointed receiver (currently scheduled for July 12, 2021) in preference to any such relief being granted.

3. In their materials, the LPs have filed with the Court three appraisals prepared by CBRE Limited ("CBRE") of the YSL Project on "as is" and "as if complete" bases. The most recent CBRE appraisal included in the LP's application is dated August 8, 2019 (the "2019 Appraisal").

4. The 2019 Appraisal estimates the "as is" market value of the YSL Project to be $375.5 million, reflecting the estimated Land Residual Value and the Costs Incurred to Date Beneficial to a Potential Purchaser (as those terms are defined in the 2019 Appraisal) and $1.225 billion on an "as if complete" basis.

5. CBRE also prepared an appraisal of the YSL Project dated April 30, 2021 (the "2021 Appraisal"). The appraisal is addressed to Concord. Concord provided the appraisal to the Proposal Trustee on a confidential basis. The Proposal Trustee has been advised that Concord has offered to provide a copy of the 2021 Appraisal to each of the LPs upon execution of a confidentiality agreement.

6. As the value of the YSL Project is central to determining the reasonableness of the Proposal, the Proposal Trustee engaged Finnegan-Marshall Inc. (“FM”), a real estate and development cost consulting firm, to, among other things:

   a) review CBRE’s most recent appraisal;

   b) analyse the differences between the 2019 Appraisal and the 2021 Appraisal;

   c) assess the value of the improvements and work performed to-date; and

   d) prepare a report that will opine on “the sales price for the project on an as-is basis after assessing the project budget, project revenue and resultant profitability”.

7. A copy of the Proposal Trustee’s engagement letter with FM dated May 3, 2021 (the “FM Engagement Letter”) is provided as Appendix “C”. Pursuant to the FM Engagement Letter, FM estimates that its report will be completed in three weeks.

8. It is the Proposal Trustee’s intention, following the filing of a Proposal by the Companies, to report to the Companies’ creditors on the terms of the Proposal and provide a comparison of the recoveries under the Proposal to a bankruptcy. The Proposal Trustee’s report will include a recommendation as to whether the creditors should vote in favour of the Proposal. It is presently contemplated that the meeting of creditors would be convened on or around June 11, 2021.

3.0 Proposal Trustee’s Activities

1. In addition to the activities summarized in this Report, the Proposal Trustee’s activities since the Filing Date have included:

   - Corresponding with the Partnership, its counsel and Concord’s counsel regarding the pre-sold condominium units;

   - Assisting the Partnership to prepare a statement of projected cash flow pursuant to Section 50.4(2) of the BIA;

   - Considering an application to consolidate the BIA proceedings of the Partnership and YSL Inc.;

   - Dealing with notices of disclaimer which will be issued pursuant to Section 65.11 of the BIA;

   - Corresponding with Concord regarding funding for these proceedings;

   - Attending at Court, virtually, on May 3, 2021;

- Establishing the Proposal Trustee's website;
- Reviewing CBRE’s appraisals; and
- Responding to creditor inquiries.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.,
AND NOT IN ITS PERSONAL CAPACITY

Appendix “D”

NOMINEE AGREEMENT

THIS AGREEMENT (the "**Agreement**") made as of February 16, 2016.

BETWEEN:

YG LIMITED PARTNERSHIP

(the **"Beneficial Owner"**)

\- and -

2502295 ONTARIO INC.

(the **"Nominee"**)

WHEREAS:

A. Pursuant to an agreement of purchase and sale dated July 31, 2013 between The Yonge Street Mission, as vendor, and 2380991 Ontario Inc., as purchaser, (as amended by agreements dated August 29, 2013 and January 20, 2016, and as further restated, modified, and supplemented from time to time, and as assigned by assignment and assumption agreement made as of February 16, 2016 between 2380991 Ontario Inc., as assignor, and the Beneficial Owner, as assignee, collectively, the **"381 Purchase Agreement"**), the Beneficial Owner agreed to purchase the property municipally described as 381 Yonge Street, Toronto, Ontario and legally described in Schedule A attached hereto (the **"381 Yonge Property"**);

B. Pursuant to an agreement of purchase and sale made of November 12, 2015 between 2364624 Ontario Inc., 2302889 Ontario Inc., 2364625 Ontario Inc., 2417933 Ontario Inc., 2364626 Ontario Inc., 2379901 Ontario Inc., 2364627 Ontario Inc. and 2380991 Ontario Inc., Kingsett Real Estate Growth LP No. 4, KS 379 Yonge Street LP, KS 373-375 Yonge Street LP, and KS 367 Yonge Street LP, collectively as vendor, and Cresford Capital Corporation (**"Cresford"**), as purchaser, (as amended by agreements dated December 14, 2015, January 11, 2016 and January 15, 2016, and as further restated, modified, and supplemented from time to time, and as assigned by an assignment and assumption agreement made as of February 16, 2016 between Cresford, as assignor, and the Beneficial Owner, as assignee, collectively, the **"Yonge Street Purchase Agreement"**), the Beneficial Owner agreed to purchase, *inter alia*, (i) the interest of 2380991 Ontario Inc. in the 381 Purchase Agreement, and (ii) the properties municipally known as 363, 365, 367, 369, 371, 373, 375, 377, 379 and 385 Yonge Street, Toronto, Ontario and legally described in Schedule A attached hereto (collectively, the **"Multiple Yonge Street Properties"**) (the 381 Yonge Property and the Multiple Yonge Street Properties are hereinafter collectively referred to as the **"Property"**);

C. The 381 Purchase Agreement and the Yonge Street Purchase Agreement are hereinafter collectively referred to as the **"Purchase Agreement"**;

D. The Beneficial Owner is acquiring beneficial ownership of the Property upon completion of the transactions contemplated by the Purchase Agreement (the **"Purchase Transaction"**);

E. The Nominee has agreed to act as agent, nominee and bare trustee for and on behalf of the Beneficial Owner to take and hold registered title to the Property upon completion of the Purchase Transaction; and

F. The Nominee is not required to advance any of the funds necessary to acquire, hold, maintain the Property.

NOW, THEREFORE, in consideration of the sum of $1.00 paid by the Beneficial Owner to the Nominee and the mutual covenants and conditions herein contained (the receipt and sufficiency of which are hereby acknowledged) the parties hereto do hereby agree as follows:

1. The Nominee hereby acknowledges and agrees that as and from the date hereof the Nominee is to take and hold registered title to the Property solely as agent, nominee and bare trustee title holder for and on behalf of the Beneficial Owner and not for itself, and that, save for taking and holding such registered title, the Nominee will otherwise have no legal or beneficial interest in or to the Property or in or to any mortgage proceeds, rents, income, issues, advantages or benefits therefrom, whether or not it may execute under direction of the Beneficial Owner any contracts, notes, mortgages, leases or other agreements for the ownership, use and leasing of the Property by the occupants, users or lessees, and that it will do no act relating to the Property without the express approval of and direction from the Beneficial Owner.

2. The Beneficial Owner acknowledges and agrees with the Nominee that, for the purpose of convenience in dealing with the Property for and on behalf of the Beneficial Owner, registered title to the Property will remain in the name of the Nominee from and after completion of the Purchase Transaction.

3. The Nominee shall remain the registered owner and hold the Property for the Beneficial Owner provided that when so requested by the Beneficial Owner, the Nominee will convey registered title of the Property or any part or parts thereof to the Beneficial Owner or as the Beneficial Owner may direct, or as its successors or assigns may direct, by proper transfers of land and other transfers, and will have all other formalities complied with in order to vest title to the Property in the Beneficial Owner or as the Beneficial Owner may direct, or as its successors and assigns may direct, all without expense to the Nominee in connection with such transfers of land.

4. The Beneficial Owner irrevocably authorizes and directs, instructs and fully empowers the Nominee to accept the transfer/deed in connection with the transfer of registered title of the Property to the Nominee and to make all applicable land transfer tax statements required for the acceptance and registration of such transfer/deed by the transferee.

5. The Nominee shall promptly remit to the Beneficial Owner all rents, revenues and other receipts from the Property, and all funds that are received by the Nominee (whether as registered titleholder of the Property or as a nominal party to any instrument entered into in

connection with the Property). The obligation of the Nominee pursuant to the immediately preceding sentence is subject to the rights of any secured creditor, mortgagee or other person who the Nominee reasonably believes has a claim to all or any part of such funds. The Nominee shall incur no liability to the Beneficial Owner for making any such remittance as the Nominee is directed to make pursuant to (a) any notice received from any such creditor, mortgagee or other person, or (b) pursuant to any standing or special instructions received from the Beneficial Owner. The Nominee, at the expense and request of the Beneficial Owner, will account to the Beneficial Owner for all funds received by the Nominee in connection with the Property.

6. The Nominee will promptly transmit to the Beneficial Owner copies of all directions, notices, claims, demands or other communications that the Nominee receives and which relate in any way to the Property, whether in connection with the Purchase Transaction or otherwise. The Nominee shall promptly notify the Beneficial Owner upon becoming aware of any default by any party to, or beneficiary of, any instrument relating to the Property.

7. All costs and expenses incurred by the Nominee in connection with the performance of its duties and obligations hereunder, in connection with the Purchase Transaction, or in connection with any other aspect of the holding by the Nominee of registered title to the Property, shall be borne by the Beneficial Owner.

8. No party dealing with the Nominee in relation to the Property in any manner whatsoever and (without limiting the generality of the foregoing) no party to whom the Property or any part thereof or interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the Nominee, shall be obligated to investigate whether:

   (i) at the time of such dealings this Agreement was in full force and effect and was unamended;

   (ii) any document, instrument or other writing executed by the Nominee was executed in accordance with the terms and conditions of this Agreement;

   (iii) the Nominee was duly authorized and empowered to execute and deliver every such document, instrument and other writing; and

   (iv) if a conveyance has been made to a successor or successors in trust, that such successor or successors have been properly appointed and are fully vested with all the title, estate, rights, powers, duties and obligations of its or their predecessor.

9. In consideration of the Nominee accepting the responsibilities and obligations set out herein, the Beneficial Owner hereby releases the Nominee from any and all liability that the Nominee may incur in respect of any action taken by the Nominee either pursuant to the instructions of the Beneficial Owner or pursuant to the terms of this Agreement. The Beneficial Owner does hereby agree to indemnify and save harmless the Nominee from any and all manner of actions, causes of action, suits, debts, obligations, accounts, bonds, covenants, contracts, claims and demands whatsoever which may arise against the Nominee by virtue of it holding registered title to the Property or by virtue of it performing its obligations hereunder or by virtue of anything arising out of any dealings with the Property, including the Purchase Transaction.

10. There shall be no fee payable to the Nominee by the Beneficial Owner for any of the activities of the Nominee carried out on behalf of the Beneficial Owner as contemplated hereby.

11. The Nominee covenants and agrees to do all such things and execute all documents that may hereafter be required to give effect to the purpose and intent of this Agreement.

12. The Nominee shall not be obligated to file any income tax returns with respect to the Property, but the Beneficial Owner shall file all such returns and pay all taxes on the earnings and avails of the Property or growing out of its interest therein.

13. This Agreement shall not be recorded or registered against the title to the Property or elsewhere except with the consent of the Beneficial Owner.

14. The Beneficial Owner hereby acknowledges that the Nominee is acting as an agent, nominee and bare trustee for and on behalf of the Beneficial Owner.

15. All notices or other communications and deliveries required by this Agreement or desired to be given or made by any of the parties hereto shall be sufficiently given if personally delivered or if mailed by registered mail, receipt requested, and posted in Canada, addressed as follows:

In the case of the Beneficial Owner:

170 Merton Street
Toronto, ON M4S 1A1

Attention: Daniel C. Casey

with a copy to:

Suite 300, 2950 Jutland Rd.
Victoria, BC V8T 5K2

Attention: Senior Vice President, Real Estate

In the case of the Nominee:

170 Merton Street
Toronto, ON M4S 1A1

Attention: Daniel C. Casey

with a copy to:

Suite 300, 2950 Jutland Rd.
Victoria, BC V8T 5K2

Attention: Senior Vice President, Real Estate

or to such other address of which written notice is given in accordance with this Section. Each such notice, communication or delivery shall be deemed delivered on the date of

delivery (if personally delivered) or on the third business day following the date of mailing thereof (if mailed). Notwithstanding the foregoing, notice given by mail during a strike or other generally recognized disruption in mail service will not be effective until actually received.

16. This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on all the parties hereto notwithstanding that all parties are not signatories to the same counterpart, provided that each party has signed at least one counterpart. This Agreement may be executed and delivered by facsimile or other electronic transmission and the parties hereto may rely upon all such facsimile or electronic signatures as though such facsimile or electronic signatures were original signatures.

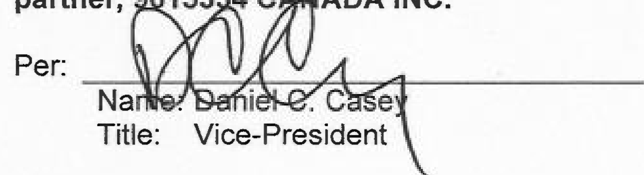
17. This Agreement may be amended, revoked or terminated only by written agreement executed by all parties hereto.

18. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the date first written above.

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

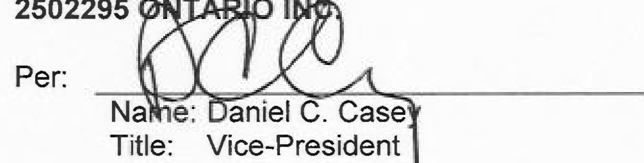


Per: ______________________________
Name: Daniel C. Casey
Title: Vice-President

Per: ______________________________
Name:
Title:

I/We have the authority to bind the Beneficial Owner.

2502295 ONTARIO INC.



Per: ______________________________
Name: Daniel C. Casey
Title: Vice-President

Per: ______________________________
Name:
Title:

I/We have the authority to bind the Nominee.

SCHEDULE A

LEGAL DESCRIPTION

	Municipal Address	Legal Description
1.	363-365 Yonge Street, Toronto, Ontario	PIN: 21101–0049 (LT) PT LT 31 E/S YONGE ST PL 22A TORONTO AS IN EP126440; TORONTO , CITY OF TORONTO
2.	367 Yonge Street, Toronto, Ontario	PIN: 21101–0048 (LT) PT LT 31 E/S YONGE ST, 32 E/S YONGE ST PL 22A TORONTO AS IN CA761626; TORONTO , CITY OF TORONTO
3.	369-371 Yonge Street, Toronto, Ontario	PIN: 21101–0047 (LT) PT LT 32 E/S YONGE ST PL 22A TORONTO AS IN CA472341; TORONTO , CITY OF TORONTO
4.	373-375 Yonge Street, Toronto, Ontario	PIN.: 21101-0046 (LT) PT LT 33 E/S YONGE ST PL 22A TORONTO AS IN CA540937; TORONTO, CITY OF TORONTO
5.	377 Yonge Street, Toronto, Ontario	PIN: 21101–0045 (LT) PT LT 33 E/S YONGE ST PL 22A TORONTO AS IN CA310343; TORONTO , CITY OF TORONTO
6.	379 Yonge Street, Toronto, Ontario	PIN: 21101–0044 (LT) PT LT 34 E/S YONGE ST PL 22A TORONTO AS IN CT497024; TORONTO, CITY OF TORONTO
7.	381 Yonge Street, Toronto, Ontario	PIN. 21101-0043 (LT) PART OF LOT 34 ON THE EAST SIDE OF YONGE STREET, PLAN 22A AS DESCRIBED IN INSTRUMENT NO. OT46105, CITY OF TORONTO
8.	385 Yonge Street, Toronto, Ontario	PIN: 21101–0042 (LT) LT 35 E/S YONGE ST, 36 E/S YONGE ST PL 22A TORONTO; TORONTO , CITY OF TORONTO

Appendix "E"

Estate/Court File Nos.: 31-459200
31-2734090

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

THE HONOURABLE MADAM	)	•, THE •
	)	
JUSTICE GILMORE	)	DAY OF •, 2021

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP ESTABLISHED UNDER THE LAWS OF MANITOBA CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC., A CORPORATION FORMED UNDER THE LAWS OF ONTARIO CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

ORDER
(Consolidation)

THIS MOTION made by YSL Residences Inc. ("**YSL Inc.**"), and YG Limited Partnership ("**YG LP**", and together with YSL Inc., "**YSL**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the "**BIA**"), was heard in writing in accordance with the endorsement of Justice Gilmore dated May 7, 2021 and Rule 37.12.1(1) of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

ON READING the Second Report of KSV Restructuring Inc. (the "**Proposal Trustee**") in its capacity as proposal trustee of YSL dated May 13, 2021 and the written submissions of counsel for YSL, no one else appearing although duly served as appears from the affidavit of • dated May •, 2021;

NOTICE AND SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record be and is hereby abridged so that the Motion is properly returnable today, and that further service thereof be and it is hereby dispenses with further service thereof.

CONSOLIDATION OF ESTATES

2. **THIS COURT ORDERS** that with respect to:

(a) The matter of the notice of intention to make a proposal of YG LP, Estate number 31-459200, and

(b) The matter of the notice of intention to make a proposal of YSL Inc., Estate number 31-2734090, (collectively, the "**Proposal Proceedings**")

the Proposal Proceedings shall be procedurally and substantively consolidated and the Proposal Trustee shall be directed to administer the Proposal Proceedings on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as trustee under the *BIA*.

3. **THIS COURT ORDERS** that the single court file number 31-2734090 (the "Consolidated Court File") and the following title of proceeding shall be assigned to the Proposal Proceedings:

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

4. **THIS COURT ORDERS** that a copy of this Order shall be filed by YSL in the court file for each of the Proposal Proceedings, but that any other document required to be filed in any of the Proposal Proceedings shall hereafter only be required to be filed in Court file number 31-2734090.

5. **THIS COURT ORDERS** that the substantive consolidation of the Proposal Proceedings shall not: (i) affect the separate legal status and corporate structures of YG LP or YSL Residences Inc.; (ii) cause YG LP or YSL Inc. to be liable for any claim for which it is not otherwise liable; and (iii) affect the Proposal Trustee's right to disallow any claim, in whole or in part, including on the basis that such claim is a duplicative claim.

GENERAL

6. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada against all persons, firms, corporations, partnerships, governmental, municipal and regulatory authorities against whom it may be enforceable.

____

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP ESTABLISHED UNDER THE LAWS OF MANITOBA CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO
AND
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YSL RESIDENCES INC., A CORPORATION FORMED UNDER THE LAWS OF ONTARIO CARRYING ON BUSINESS IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Estate/Court File Nos.: 31-459200, 31-2734090

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

Proceedings commenced in Toronto

ORDER
(Consolidation)

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Lawyers for the Applicants

TAB 8

ksv advisory inc.

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

May 11, 2022

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COURT FILE NO.: BK-21-02734090-0031

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

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

MAY 11, 2022

1.0 Introduction

1. This report ("Report") 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 ("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 NOI proceedings of the Partnership and Residences (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 this proceeding was to create a stabilized environment to allow the Companies to present a proposal that provides creditors with a recovery greater than they would receive 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"). A Certificate of Filing a Proposal (the "Certificate") was issued by the Office of the Superintendent of Bankruptcy (Canada) ("OSB") on May 28, 2021. On June 3, 2021, the Companies filed an amended proposal to include Conditional Claims (as defined therein) and make other clarifications to the Proposal (the "First Amended Proposal"). On June 15, 2021, the Companies filed another amendment to the First Amended Proposal, which narrowed the scope of the releases in the First Amended Proposal (the "Second Amended Proposal").

5. Pursuant to a meeting of creditors held on June 15, 2021 (the “Creditors’ Meeting”), the creditors voted to accept the Second Amended Proposal. No inspectors were appointed in the 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. 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 findings in the Interim Decision and, should they wish, to present a further amended proposal for the Court’s consideration. A copy of the Interim Decision is provided in Appendix “A”.

7. Early in the day 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 (the “Equity Offer”) of distributions to be made outside of the Third Amended Proposal by the Sponsor to any equityholders[1] of the Partnership (the “Equityholders”) willing to accept such Offer.

8. 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. The Proposal Trustee did not have the time it required to review the Third Amended Proposal prior to the July 9, 2021 hearing. Accordingly, the Court granted a further adjournment to July 16, 2021 to provide time for the Proposal Trustee to consider the Third Amended Proposal and for the Proposal Trustee to present a recommendation to the Court.

9. The Proposal Trustee’s Fourth Report to Court dated July 15, 2021 summarized, among other things, the material changes between the Second Amended Proposal and the Third Amended Proposal, as well as further changes to the Third Amended Proposal (the “Final Proposal”) and provided the Proposal Trustee’s recommendation to the Court that it approve the Final Proposal.

10. 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”.

1.1 Purposes of this Report

1. The purposes of this Report are to:

   a) provide background information about the Companies;

[1] 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.

b) summarize the Proposal Trustee's settlements with five former employees (the "Former Employees") of Cresford (as defined below), which are subject to Court approval (the "Settlement Agreements");

c) summarize the status of certain unresolved claims; and

d) recommend that the Court approve the Settlement Agreements.

1.2 Currency

1. All currency references 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.

1.4 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Companies' representatives, the Companies' books and records and discussions with representatives of the Companies, the Sponsor and Concord Adex Inc. ("Concord"), an entity related to the Sponsor.

2. The Proposal Trustee has not performed an audit or other verification of the financial and other information provided to it. An examination of the Companies' financial forecasts as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based on the Companies' and Concord's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Proposal Trustee expresses no opinion or other form of assurance with respect to the accuracy of any financial information relied upon by the Proposal Trustee in its preparation of this Report.

2.0 Background

1. Information regarding, among other things, 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 this proceeding, applications by certain of the Partnership's limited partners (the "Limited Partners") 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 and is therefore not repeated herein.

2. Court materials filed in this proceeding are available on the Proposal Trustee's website at https://www.ksvadvisory.com/insolvency-cases/case/yg-limited-partnership.

3.0 Final Proposal

1. The Final Proposal provides for distributions to the Affected Creditors to the maximum of the Affected Creditor Cash Pool, being a cash pool 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 as Appendix "C".

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.

3. Sections 10.01 and 11.01 of the Final Proposal require the Proposal Sponsor to fund the costs of the Proposal Trustee, including the costs to assess all claims filed in these proceedings. As discussed herein, three of the claims are being litigated.

4.0 Creditors

1. The status of the claims filed with the Proposal Trustee as of the date of this Report is summarized below.

Creditor	Amount ($000)
Affected Creditor Claims	
Proven Claims at allowed amounts	13,044[2]
Former Employees at proposed settlement amounts	1,710[3]
Maria Athanasoulis (disputed)	19,000
CBRE Limited ("CBRE") (disputed)	1,239
Henry Zhang (settled by the Proposal Trustee, disputed by the LPs)	1,130[4]
Total Affected Creditor Claims	36,123

4.1 Proven Claims

1. Other than the amounts discussed below, proofs of claim totalling $17.9 million were filed against the Companies. Of this total, claims of approximately $9.7 million were filed by real estate brokers in respect of unpaid commissions on condominium sales. Pursuant to Section 135 of the BIA, the Proposal Trustee reviewed each of these claims and either accepted them or issued Notices of Revision or Disallowance pursuant to Section 135(2) of the BIA[5]. These claims are included in the Proven Claims referenced in the table above.

[2] Includes a claim of approximately $16,000 filed on May 5, 2022. This claim was not included in the interim distribution referenced in Section 4.1(2) of this Report.

[3] Represents the aggregate of the claims, as filed. These are discussed further in Section 4.2 of this Report.

[4] Includes HST.

[5] Notices of Revision or Disallowance were issued to three creditors, resulting in a reduction of approximately $4.9 million to the total claims.

2. On March 24, 2022, the Proposal Trustee paid an interim distribution of 70¢ on the dollar to the creditors with Proven Claims. The Proposal Trustee has reserved the balance of the Affected Creditor Cash Pool until the unresolved claims can be determined.

4.2 Former Employees

1. Ryan Millar, Louie Giannakopoulos, Ryan Mancuso, Sarven Cicekian and Mike Catsiliras, being five former employees or contractors of the Cresford Group of Companies ("Cresford"), affiliates of the Companies, filed claims totalling approximately $3.058 million, which included a credit adjustment for estimated distributions to be received in other Cresford proceedings. These individuals advanced claims alleging that the Companies are a common employer with other Cresford entities in respect of, among other things, wrongful dismissal, unpaid bonuses and commissions. Copies of the proofs of claim are provided in Appendix "D".

2. The Companies did not employ any individuals. Similar to other real estate developers, the Cresford group has one entity, East Downtown Redevelopment Partnership ("EDRP"), which acts as the main employer for the purpose of providing administrative and other services to the various development companies in the Cresford group. In assessing the Former Employee claims, the Proposal Trustee and Davies Ward Phillips & Vineberg LLP ("Davies"), the Proposal Trustee's legal counsel, considered common employer arguments advanced by the Former Employees, the Proposal Trustee's understanding of Cresford's corporate structure, as well as common employer case law.

3. The Proposal Trustee and Davies reviewed the Former Employee claims and discussed them with representatives of Cresford, Cresford's counsel and counsel to the Former Employees, Naymark Law ("Naymark"). The Proposal Trustee also reviewed support provided by the Former Employees and Cresford, including:

   a) the employment agreements between each of Messrs. Millar, Giannakopoulos and Mancuso with Cresford Developments, an affiliate of Cresford. Notwithstanding their employment agreements, these employees were paid by EDRP;

   b) the independent contractor agreements between each of Messrs. Cicekian and Catsiliras and Cresford (Rosedale) Developments Inc., another Cresford entity. The Proposal Trustee understands that Messrs. Cicekian and Catsiliras worked exclusively for Cresford;

   c) materials filed with the Court in the proceedings bearing Court File No. CV-20-00637543-0000 in which Messrs. Cicekian and Catsiliras filed a statement of claim against Cresford, Daniel Casey, Cresford's founder, and David Mann, Cresford's CFO;

   d) historical payroll registers and general ledger accounts;

   e) email correspondence between the Former Employees and representatives of Cresford;

f) prior settlement agreements between Cresford and each of Messrs. Mancuso and Giannakopoulos; and

g) the treatment of similar claims of Messrs. Millar and Catsiliras filed in the insolvency proceedings of other Cresford entities, being 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership and 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership, including discussions with PricewaterhouseCoopers Inc., the court-officer appointed in those proceedings, and its counsel, McCarthy Tetrault LLP.

4. Based on its review of the claims, the Proposal Trustee and Davies assigned probability ratings to each aspect of each of the Former Employee claims, taking into consideration the evidence provided by each Former Employee. The probability ratings were then used as the basis to make settlement offers to each of the Former Employees.

5. The table below provides a summary of the final settlement amount of each Former Employee claim, which is the result of numerous discussions and rounds of negotiations with their counsel, Naymark.

Former Employee	Proof of Claim, as Filed ($)[6]	Settlement ($)
Millar	734,997	450,000
Giannakopoulos	444,615	308,067
Mancuso	430,000	300,281
Cicekian	767,399	383,118
Catsiliras	681,190	268,641
Total	3,058,201	1,710,107

6. Each settlement agreement is subject to Court approval for the following reasons:

a) two of the Former Employees were litigating against Cresford, and therefore Cresford has not participated in the settlement discussions, except to provide background information related to each claim;

b) the Limited Partners may be entitled to distributions in these proceedings. Any amounts that are distributed to the Former Employees reduce the amount available for distribution to the Limited Partners;

c) other Affected Creditors may be impacted by distributions to the Former Employees;

d) no inspectors have been appointed in this proceeding;

[6] These amounts include an estimated credit adjustment of $167,750 and $68,750 for Messrs. Millar and Catsiliras, respectively, resulting from distributions to be received in other Cresford proceedings. Naymark subsequently advised the Proposal Trustee that the actual credits received were higher than estimated, resulting in a credit adjustment of $254,000 and $97,000 to the claims filed by Messrs. Millar and Catsiliras, respectively. The actual credits are reflected in the settlement amounts.

e) this proceeding has been extensively contested, and accordingly, the Proposal Trustee considers it appropriate that the Settlement Agreements be approved by the Court prior to distributions being made to the Former Employees; and

f) the Settlement Agreements provide that they are "entirely without prejudice to the Creditor's rights to argue any position regarding the validity and quantum of its claim on the motion seeking the Approval Order (or on any appeal thereof) if any party objects to the approval of these Minutes of Settlement. If the Approval Order is not granted, then the Creditor shall be entitled to argue any position regarding the validity and quantum of its claim as if these Minutes of Settlement had not been entered into and nothing herein shall be used in any way in adjudicating or negotiating a resolution of the Creditor's claim".

7. Copies of the Settlement Agreements with each of the Former Employees are provided in Appendix "E".

4.2.1 Recommendation

1. The Proposal Trustee recommends that the Court approve the Settlement Agreements for the following reasons:

a) the settlements are the result of extensive negotiations between the Proposal Trustee and counsel to the Former Employees;

b) the BIA authorizes the Proposal Trustee to compromise any claim made against the estate;

c) the settlements avoid the continued cost, time and uncertainty of litigating the claims;

d) in the Proposal Trustee's view, the settlements are fair and commercially reasonable in the circumstances; and

e) no further funding will be required from the Sponsor to have these claims determined. In the Proposal Trustee's view, the Sponsor should not be required to fund litigation costs where extensive efforts have been undertaken to settle claims on a basis considered fair and commercially reasonable by the Proposal Trustee. If other stakeholders believe that the claims should be contested, the Proposal Trustee believes that they should be required to fund those costs.

5.0 Status of Other 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. The claim is related to a Statement of Claim she filed on January 21, 2020 against the Companies, other Cresford affiliates and Mr. Casey (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. The Proposal Trustee and Ms. Athanasoulis agreed to arbitrate the determination of liability (i.e., did a contract exist that was breached?) and quantum (i.e., what is the quantum of damages flowing from such breach?) in respect of her claim before William G. Horton, an experienced commercial litigator and arbitrator. The arbitration proceeding is ongoing.

3. The Proposal Trustee will bring a motion to the Court to approve the Proposal Trustee's recommended treatment of this claim in this proceeding after a final decision has been rendered in the arbitration or a settlement has been reached between the parties.

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 in connection with serving as the exclusive listing brokerage 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 "F".

3. CBRE appealed the CBRE Notice. The appeal is scheduled to be heard on September 26, 2022.

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 $1.7 million. For reasons that will be provided in a further report to Court, the Proposal Trustee ultimately accepted the claim for $1 million (plus HST) filed by Harbour International Investment Group Inc. ("Harbour International"), a company owned by Mr. Zhang, and not by Mr. Zhang personally.

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

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

4. Neither Mr. Zhang nor Harbour International received an interim distribution in respect of this claim.

5. The issue raised in paragraph 4.2.1(e) above is a consideration in the context of this and all other remaining claims.

6.0 Conclusion

1. Based on the foregoing, the Proposal Trustee recommends that the Court make an order approving the Settlement Agreements.

* * *

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.

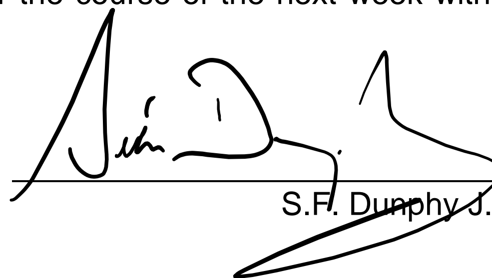
d. This last-in-line class of creditors did not have available to it the range of information produced in connection with this approval motion.

<u>Disposition</u>

[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.



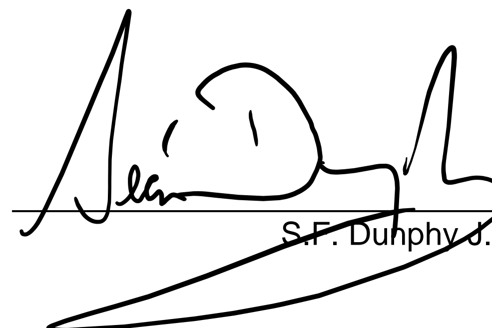
S.F. Dunphy J.

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.

<u>Analysis and discussion</u>

[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.

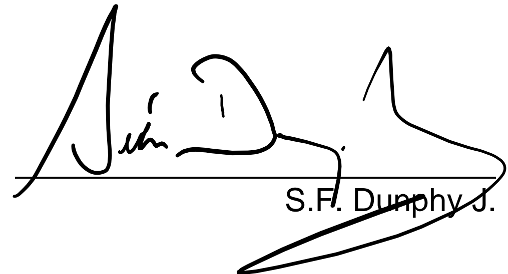
[37] Any party seeking an order of costs in their favour shall have ten days from today to file written submissions and an outline of costs. Submissions should not exceed ten pages excluding the outline of costs. Cases need not be included beyond a hyperlinked table of cases. The Debtors and the Proposal 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”

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

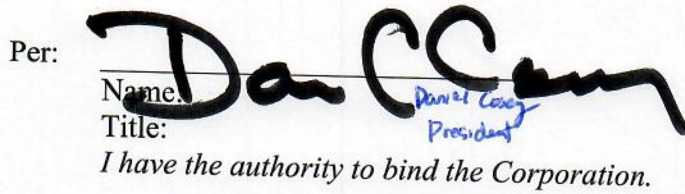
The Proposal shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. Any disputes as to the interpretation or application of the Proposal and all proceedings taken in connection with the Proposal shall be subject to the exclusive jurisdiction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

[*remainder of page left intentionally blank*]

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

YSL RESIDENCES INC.

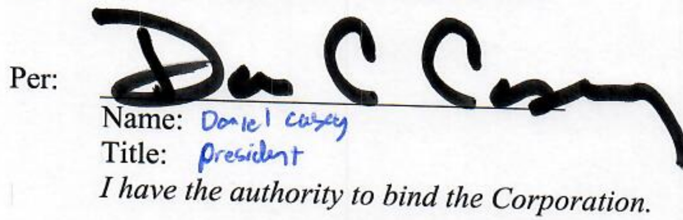
Per:



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)

TAB 9

ksv advisory inc.

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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COURT FILE NO.: BK-21-02734090-0031

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.

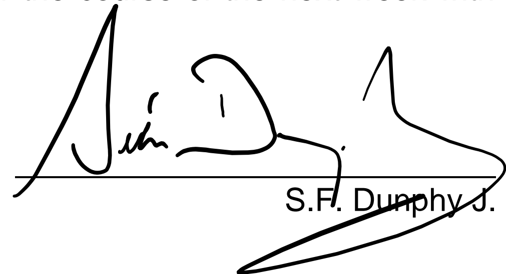
d. This last-in-line class of creditors did not have available to it the range of information produced in connection with this approval motion.

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.



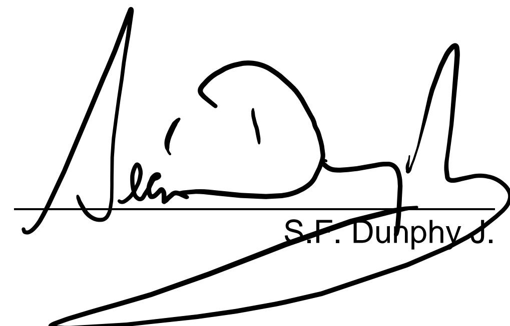
S.F. Dunphy J.

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.

<u>Analysis and discussion</u>

[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 class 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 Cloud 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 Cloud 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 Cloud on Yonge project was forecast to generate a loss of $61 Million. As a

(4)

result because I accept that the proper date to value Maria's claim is when the Receiver was appointed on March 27, 2020. There was no profit from the Cloud 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 those contracts can only

be disclaimed if the Plan is approved.

(6) As the Monitor points out in the Supplementary Report to its 14th Report any forecast profit is entirely dependent on the restructuring of the revenues of the Clover on Yongl 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 to argue that the relevant date to calculate her profit-sharing claim is later than the Receivership appointment date and that profit will be derived from the closed on Yonge Project is far 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
Moria's claim, which is a
contingent claim, is to be
included in the
insolvency process is
whether the event that has

not yet occurred is too remote or speculative. In 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 Nalcor Energy v. Grant Thornton, 2015 NBQB 20 at para 35 where he

affirmed 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 Maria's claim is too speculative and remote in the amount of $48 million to be allowed for voting purposes. I will therefore not have to consider whether Maria'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 CLAA; 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.

(13) An order shall go to this effect.

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

Haines 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 <u>Intent of Proposal</u>

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.

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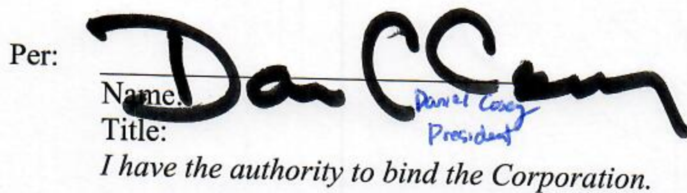
Dated at Toronto, this 15th day of July, 2021.

YSL RESIDENCES INC.

Per:

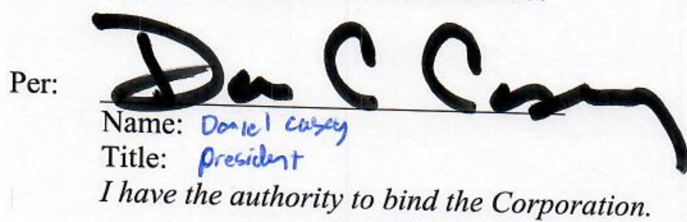


Name: Daniel Casey
Title: President

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
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Toronto, Ontario, M5H 1J9
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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.

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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.

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.

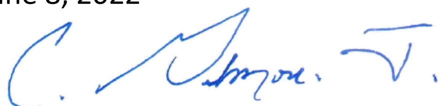
However, balancing the efficiency of a slightly more costly consolidated arbitration against the cost and timing of various motions, the arbitration must prevail. I urge counsel to immediately contact Mr. Horton such that a date can be secured hopefully in October or November 2022.

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]

External Email / Courriel externe

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

DAVIES WARD PHILLIPS & VINEBERG LLP
This email may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply email or by telephone. Delete this email and destroy any copies.

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
T 416.932.6228
M 647.282.6228
E bkofman@ksvadvisory.com

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T: 416.863.1200
F: 416.863.1716

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”

Bobby Kofman
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bkofman@ksvadvisory.com

ksvadvisory.com

July 6, 2022

DELIVERED BY E-MAIL

Bennett Jones LLP
666 Burrard Street
Suite 2500
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 <u>and Concord</u> 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.

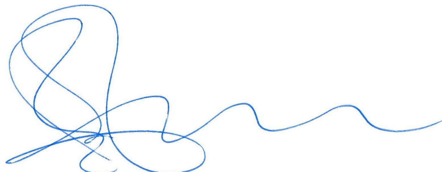
As we have said to Mr. Mighton on many occasions, we agree that we had hoped that practicality would prevail and that compromise could be reached. We have also suggested that your firm bring a motion before the Court to address the source of funding for the litigation of claims commenced by the LPs (and 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

TAB 10

ksv advisory inc.

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

December 30, 2022

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COURT FILE NO.: BK-21-02734090-0031

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

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

DECEMBER 30, 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 receive 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. The creditors voted to accept the Second Amended Proposal at a meeting of creditors held on June 15, 2021.

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 motion to approve the Second Amended Proposal was scheduled to be heard on 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 willing to accept such 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 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 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.

13. Of the sixty-six (66) proofs of claim filed against the Companies, three claims remain unresolved (the "Disputed Claims"), being the claims of Maria Athanasoulis ($19 million), CBRE Limited ("CBRE") (approximately $1.2 million) and Henry Zhang (approximately $1.1 million).

[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.

14. The Proposal Trustee and the Sponsor had differing views on the approach to determine Ms. Athanasoulis' claim (the "Athanasoulis Claim") and the Sponsor's obligation to fund the fees and costs of the Proposal Trustee to complete these proceedings as set out in Sections 10.01 and 11.01 of the Final Proposal.

15. On October 17, 2022, Justice Kimmel heard a motion by the Proposal Trustee (the "Funding Motion") for an Order, among other things, 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 and 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. The basis for this motion was provided in the Proposal Trustee's Sixth Report to Court dated August 19, 2022 and in other Court materials filed by the Proposal Trustee. A copy of the Sixth Report is provided in Appendix "C", without attachments.

16. On September 26, 2022, Justice Osborne heard CBRE's appeal of the Proposal Trustee's Notice of Disallowance of Claim dated February 10, 2022 (the "CBRE Appeal"). Background related to this motion was provided in the Proposal Trustee's Seventh Report to Court dated September 12, 2022 (the "Seventh Report") and in other Court materials filed by the Proposal Trustee. A copy of the Seventh Report is provided as Appendix "D", without attachments. Pursuant to the Seventh Report, the Proposal Trustee recommended that CBRE's claim in the amount of approximately $1.2 million be allowed and the appeal allowed, without costs. Certain of the Partnership's limited partners objected to the allowance of this claim and took the position that they had standing to do so as "aggrieved persons", as defined in Section 37 of the BIA.

17. On November 1, 2022, Justice Kimmel released her decision (the "November 1st Decision") requiring the Sponsor to fund the costs of the Proposal Trustee incurred to that date and in respect of the process to determine the claim filed by Ms. Athanasoulis, but that it was not in the Proposal Trustee's powers to have an arbitrator determine the value of Ms. Athanasoulis' claim. The November 1st Decision is discussed further in Section 5 of this Report. A copy of the November 1st Decision is provided as Appendix "E".

18. On November 22, 2022, Justice Osborne released his decision regarding the CBRE Appeal[3] (the "CBRE Decision"). Justice Osborne's decision states that "the limited partners do not have standing to oppose or *[sic]* the relief sought on this motion by the creditor [CBRE] supported by the Proposal Trustee and the Debtors" and that "the disallowance of CBRE's claim by the Proposal Trustee is set aside and the claim is allowed". A copy of the CBRE Decision is provided as Appendix "F". The limited partners represented by Thornton Grout Finnigan LLP ("TGF") opposed the Proposal Trustee's allowance of CBRE's claim and have appealed Justice Osborne's decision. A date has not been set to hear the appeal.

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[3] The decision is dated November 16, 2022 but was sent by the Court on November 22, 2022.

1.1 Purposes of this Report

1. The purposes of this Report are to:

   a) provide background information about the Companies;

   b) summarize the Proposal Trustee's discussions with counsel representing Ms. Athanasoulis and counsel representing the Limited Partners (the "LPs")[4] regarding the Proposal Trustee's recommended approach to determine the Athanasoulis Claim and the manner each of the parties will be entitled to participate in the process (the "Athanasoulis Claim Process"); and

   c) seek advice and directions from the Court on the Athanasoulis Claim Process as set out in Section 5.1 below, or as may be modified following submissions from counsel for each of Ms. Athanasoulis and the LPs.

1.2 Currency

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

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 Timbercreek Mortgage Servicing Inc., the first mortgagee of the YSL Project, in advance of these proceedings, applications by certain of the LPs and the prior proposals filed in this proceeding is included in the Proposal Trustee's previous reports to Court and other materials filed with the Court.

2. Copies of the publicly available information filed in these proceedings can be found on the Proposal Trustee's case website at https://www.ksvadvisory.com/insolvency-cases/case/yg-limited-partnership.

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 "G".

[4] There are two groups of LPs. One is represented by TGF and the other by Lax O'Sullivan Lisus Gottlieb LLP.

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.

4.0 Creditors

1. As noted, sixty-six (66) claims have been filed against the Companies, including claims from trade creditors, real estate brokerages, professional advisors and former employees. The status of the claims filed in this proceeding is summarized in the table below.

	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.	1,855	1,541	314
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	4,140	3,721	419
Total Proven Claims	22,490	14,933	7,557
Disputed Claims:			
Maria Athanasoulis (disputed)	19,000	TBD	TBD
CBRE	1,239	1,239[5]	0
Henry Zhang (disputed by the LPs)	1,520	1,130	390
Total Unresolved Claims	21,759	2,369	19,390
Total Claims	44,249	17,302	26,947

2. The Sponsor took an assignment of 28 of 66 Affected Creditor claims, totalling approximately $12.1 million. As assignee, the Sponsor participated in the interim distribution and has received approximately $8.4 million of the total amounts distributed.

3. Of the claims in the table, the following claims are the Disputed Claims:

   a) Ms. Athanasoulis;

   b) CBRE; and

   c) Mr. Zhang.

[5] Pursuant to the CBRE Decision, this claim has been accepted. As referenced above, the CBRE Decision has been appealed.

4. The status of the Athanasoulis Claim is discussed in Section 5 below. The status of CBRE's and Mr. Zhang's claims is not relevant to the present motion other than any issues related to the LPs' standing resulting from the CBRE Decision, which has been appealed by the LPs represented by TGF.

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

6. Since the interim distribution, the Proposal Trustee has resolved various claims, including complex claims filed by four former employees of Cresford (the "Former Employees"). The Proposal Trustee negotiated settlements of these claims, which were approved by the Court on May 24, 2022.

7. 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 several others whose claims were recently resolved.

8. The Proposal Trustee has reserved the balance of the Affected Creditor Cash Pool until the Disputed Claims can be determined. The balance of the Affected Creditor Cash Pool is presently approximately $20.5 million, excluding any interest, which accrues to the Sponsor pursuant to Section 5.01(a) of the Final Proposal.

9. The table below illustrates that resolution of the Disputed Claims will determine whether there will be any distributions to the LPs.

	Amount ($000)	
Estimated Distributions	High	Low
Affected Creditor Cash Pool	30,900	30,900
Claims		
Proven Claims	14,933	14,933
Ms. Athanasoulis	-	19,000
CBRE	1,239	1,239
Mr. Zhang	-	1,130
Total Claims	16,172	36,302
Dividend rate	100%	85.1%
Residual for LPs[6]	14,728	-

5.0 Ms. Athanasoulis' Claim

1. Ms. Athanasoulis, Cresford's former President and Chief Operating Officer, filed a proof of 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 is in respect of, *inter alia*, allegations of:

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

[6] If the CBRE, Zhang and Athanasoulis claims are disallowed in full, the estimated distributions to the LPs would be approximately $16 million.

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. The YSL Project is the only Cresford project that Ms. Athanasoulis alleges to have earned a profit.

2. Cresford denied the existence of an oral agreement entitling Ms. Athanasoulis to 20% of the profits earned on each project.

3. 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.

4. 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").

5. 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 entitling her to 20% of the profits earned on each project.

6. After Ms. Athanasoulis prevailed in Phase 1, both the Sponsor and the LPs took 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 then took the position that the Proposal Trustee improperly delegated its authority to determine the Athanasoulis Claim to the Arbitrator. As detailed in Section 5.1 below, Justice Kimmel agreed with this position, in part.

7. The scheduling of Phase 2 of the arbitration was deferred pending the outcome of the Funding Motion.

5.1 Athanasoulis Claim Process

1. As referenced above, Justice Kimmel heard the Funding Motion. She decided, among other things, that:

   - "The continuation of phase 2 of the Arbitration provided for in the Agreement to Arbitrate the Athanasoulis Claim is not a valid exercise of the authority granted to the Proposal Trustee under the Proposal or s. 135 of the BIA. Therefore, the court no order [sic] requiring the Sponsor to fund (and/or indemnify the Proposal Trustee for) the budgeted Administrative Fees and Expenses associated with phase 2 of the Arbitration (of approximately $700,000)[7]." [paragraph 96 a)]

   - "The Sponsor is required to indemnify the Proposal Trustee for all of the reasonably incurred Administrative Fees and Expenses in relation to the determination and valuation of the Athanasoulis Claim, including for phase 1 of the Arbitration and for whatever procedure the Proposal Trustee, in its discretion, determines appropriate to receive the further evidence and positions of Ms. Athanasoulis and other interested stakeholders and any expert inputs deemed necessary." [paragraph 96 c)]

   - "The Proposal Trustee should first determine how it intends to proceed in light of the court's decision on this motion, and may prepare a budget for the anticipated Administrative Fees and Expenses associated with this exercise, or seek indemnification after the fact, as it deems appropriate." [paragraph 96 d)]

2. Since the date of the November 1st Decision, the Proposal Trustee has considered the process to determine the Athanasoulis Claim and has sought input from Ms. Athanasoulis, the LPs, the Companies and the Sponsor regarding this process. Based on the feedback received, the Proposal Trustee summarized its proposed approach which it presented to Ms. Athanasoulis, the LPs, the Companies and the Sponsor for comments.

3. On December 7, 2022, the Proposal Trustee's counsel sent the following recommended process by email to counsel representing Ms. Athanasoulis, the LPs, the Companies and the Sponsor:

[7] This represented the Proposal Trustee's estimated professional costs associated with Phase 2 of the arbitration.

All,

Here is a revised process proposal based on feedback received.

Steps Prior to Process Motion

1. LPs, Athanasoulis and Trustee to issue briefs "with prejudice" (whether based on their mediation briefs or otherwise as they see fit) as basis for Trustee's determination. LPs and Athanasoulis may issue responding briefs at their discretion on an expedited schedule to be agreed between the parties. Please advise when you can deliver such briefs.

The Trustee would then bring a motion for directions before Justice Kimmel to determine the process. The Trustee will propose the following and the parties will have the opportunity to contest any portion of the Trustee's recommendation. As per my previous email, please advise if you believe such a motion should be booked for more or less than two hours. We would like to book it as soon as possible.

Process Motion Proposed Steps/Process

1. Trustee to issue Notice of Determination on Athanasoulis Claim (a draft may be provided in advance of the motion so that parties may take it into consideration on the motion). The Notice of Determination will not be shared with any party prior to issuance but a copy will be provided to counsel to the LPs and Concord when issued.
2. Notice of Determination to be based on full record to date in these proceedings, including the "with prejudice" briefs noted above, the materials filed and evidence given at the Phase One arbitration the decision of Mr. Horton, and any responses to direct information requests from the Trustee. It will address both the wrongful dismissal and profit share claims.
3. The Notice of Determination shall set out all of the grounds supporting the Trustee's determination in sufficient detail to appropriately frame the issues for any appeal.
4. Notwithstanding the position of the LPs, the Trustee considers Mr. Horton's decision to be binding in this proceeding, consistent with Justice Kimmel's direction that it be the "factual predicate upon which the determination of [Ms Athanasoulis'] claim will proceed". The LPs will have an opportunity to argue before Justice Kimmel that Mr. Horton's decision is merely non-binding "inputs" to the extent it is germane to the process.
5. Athanasoulis to file any appeal pursuant to Section 135 of the BIA.
6. Athanasoulis appeal shall not be required at this time to adduce detailed evidence valuing and quantifying her profit share claim but may address any issues raised in Notice of Determination.
7. Justice Kimmel to decide appeal procedure (e.g., de novo vs true appeal) based on submissions from the parties.
8. LPs shall be entitled only to raise issues in the appeal that pertain directly: (a) to whether the LPs must be repaid in full prior to any payments being made on the Athanasoulis Claim; and (b) the enforceability of any element of the Athanasoulis Claim given the terms of the Limited Partnership Agreement.
9. Athanasoulis entitled to full response to any materials filed by LPs in this regard.
10. The LPs shall not be entitled to raise issues relating to any counterclaim or set-off they may assert against Ms. Athanasoulis.

4. As Ms. Athanasoulis and the LPs disagree with certain aspects of the process summarized above, the Proposal Trustee scheduled a case conference on December 21, 2022 with Justice Kimmel. The purpose of the case conference was to schedule a motion for advice and directions regarding the Athanasoulis Claim Process.

5. Pursuant to an endorsement dated December 21, 2022, Justice Kimmel scheduled a motion to be heard on January 16, 2023 to address the Athanasoulis Claim Process.

6. The Proposal Trustee has prepared a Notice of Disallowance regarding the Athanasoulis Claim (the "Notice"), a draft of which is provided as Appendix "H". The Notice has not yet been issued in order to avoid commencement of the 30-day appeal period but a draft is being filed with this Report in order to provide context to the Athanasoulis Claim and issues that may be raised at the hearing of the Proposal Trustee's motion.

6.0 Conclusion

1. In the Proposal Trustee's view, the Athanasoulis Claim Process fairly balances the interests of the stakeholders while also providing them an opportunity to make submissions regarding the procedure for an appeal of the Athanasoulis Claim to be heard.

* * *

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.

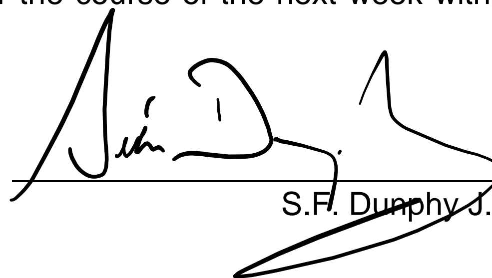
d. This last-in-line class of creditors did not have available to it the range of information produced in connection with this approval motion.

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.



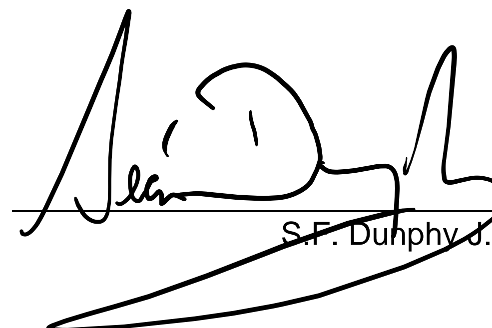
S.F. Dunphy J.

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”

ksv advisory inc.

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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COURT FILE NO.: BK-21-02734090-0031

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 “D”

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

September 12, 2022

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COURT FILE NO.: BK-21-02734090-0031

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

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

SEPTEMBER 12, 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.

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 claim of CBRE Limited (“CBRE”) in these proceedings, including the open and transparent manner in which it has been determined by the Proposal Trustee; and

   c) recommend that the Court issue an order allowing the CBRE claim as filed in the amount of $1,239,377.40.

1.2 Currency

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

1.3 Definitions

1. Capitalized terms not defined in this 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. As a result, the Proposal Trustee has been involved in addressing the various disputed claims filed in the NOI Proceedings, where in most proposal proceedings the debtor company takes a more active role in the claims process.

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) the General Partner, 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 that 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 "C".

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.

4.0 Creditors

1. Sixty-five (65) claims have been filed against the Companies, including claims from trade creditors, real estate brokerages, professional advisors and former employees[3]. The status of the claims filed in this proceeding is summarized in the table below.

	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	4,142	3,679	463
Total Proven Claims	22,476	14,874	7,602
Disputed Claims:			
Maria Athanasoulis (disputed)	19,000	TBD	TBD
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	44,235	16,004	28,231

[3] Since the Proposal Trustee's last report, there has been one additional unsecured claim filed by a real estate broker.

2. Of the claims in the table, the following claims remain unresolved, as more fully discussed below (the "Disputed Claims"):

    a) Ms. Athanasoulis;

    b) CBRE; and

    c) Mr. Zhang.

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

4. 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.

5. 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 four creditors whose claims were recently resolved.

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

7. The Sponsor took an assignment of 28 of 65 Affected Creditor claims, totalling approximately $12 million. As assignee, the Sponsor participated in the interim distribution and has received approximately $8.4 million of the total amounts distributed.

8. 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 whether there will be any distributions to the LPs.

	Amount ($000)	
Estimated Distributions	High	Low
Affected Creditor Cash Pool	30,900	30,900
Claims		
Proven Claims	14,874	14,874
Ms. Athanasoulis	-	19,000
CBRE	1,239	1,239
Mr. Zhang	-	1,130
Total Claims	16,113	36,243
Dividend rate	100%	85.3%
Residual for LPs	14,787	-

5.0 Status of the CBRE Claim

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 as the exclusive listing broker for the YSL Project pursuant to an unsigned listing agreement between CBRE and Residences (the "Listing Agreement").

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 "D".

3. One of the key issues in respect of CBRE's claim is the applicability of the "holdover clause" in the Listing Agreement, which reads as follows:

   HOLDOVER
   4.1
   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 Brokerage is authorized to continue negotiations with such persons or entities. The Brokerage agrees to submit a list of such persons or entities to the Owner within 10 business days following the expiration of the Term, provided, however, that if a written offer has been submitted, then it shall not be necessary to include the offeror's name on the list.

4. The Term expired on August 20, 2020, and the Final Proposal was approved on July 16, 2021, well outside the 90-day period. Accordingly, the holdover provision would only be applicable if "*negotiations continue, resume or commence*" with the Sponsor within such 90-day period and the Sponsor was someone "*to whom the Property was introduced or submitted, …, or to whom the Owner was introduced … prior to the expiration of the Term*".

5. The CBRE Notice was issued based on, among other things, 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.

6. Requiring CBRE to respond to the Sponsor's representations would have involved the Proposal Trustee receiving affidavit evidence from CBRE and, in light of that, possibly responding to affidavit evidence from the Sponsor.

7. Given the nature of these proceedings with the history of other stakeholders claiming to have information relevant to the Proposal Trustee's assessments, 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 to permit CBRE to file a full evidentiary response by way of an appeal on notice to all. In this way, all parties would be able to review and respond to the evidence as they saw fit once on one complete record.

8. On February 11, 2022, following the issuance of the CBRE Notice, counsel for the Sponsor copied the Proposal Trustee on email correspondence with counsel for CBRE. 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*".

9. On March 10, 2022, CBRE served its notice of motion to appeal the CBRE Notice on the service list in these proceedings with scheduling to be dealt with at a case conference on March 16, 2022. Parties intending on taking a position on CBRE's motion were invited to attend at the case conference.

10. The case conference was held before Mr. Justice Cavanagh, at which the LPs' counsel attended. Mr. Justice Cavanagh scheduled the appeal to be heard on September 26, 2022.

11. The Proposal Trustee then canvassed with CBRE's counsel whether the dispute could be dealt with earlier by means of an arbitration, but no agreement could be reached on the terms for doing so.

12. On July 25, 2022, CBRE served its complete motion record containing its affidavit 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, after such introduction, that resulted in the transaction implemented through the Final Proposal. CBRE also provided evidence from Mr. Dowbiggin that Cresford dealt with CBRE on the basis that the listing agreement was in force, notwithstanding that it was never signed. In the Proposal Trustee's view, the ongoing dialogue between Cresford and the Sponsor, as well as Cresford's and CBRE's conduct related to the listing agreement, suggests that the holdover provisions apply and therefore entitle CBRE to its fee.

13. Based on the evidence provided by CBRE, the Proposal Trustee advised the service list that the Proposal Trustee would not be filing any responding material. Rather, at the hearing scheduled for September 26, 2022, the Proposal Trustee will seek the Court's approval of a settlement of the appeal with CBRE by admitting CBRE's claim, as filed, and the withdrawal of the appeal on a without costs basis. The Proposal Trustee informed the service list that, should any party wish to file their own responding material, the current schedule proposed this be done on or before August 18, 2022, and that the Proposal Trustee reserves the right to file reply materials to any responding materials.

14. On August 18, 2022, counsel to the LPs sent a letter to counsel to the Proposal Trustee, among other things, informing the Proposal Trustee that they had instructions to challenge CBRE's appeal and requesting a copy of CBRE's proof of claim and the CBRE Notice. The Proposal Trustee subsequently provided these documents to the LPs' counsel on a without prejudice basis to the Proposal Trustee's and CBRE's rights to contest the LPs' standing on CBRE's motion. A copy of the August 18, 2022 letter is attached as Appendix "E".

15. As of the date of this Report, no parties in these proceedings other than the LPs have contested the Proposal Trustee's allowance of CBRE's claim, including the Proposal Sponsor, which is the largest creditor in these proceedings by way of assignment of the claims discussed in paragraph 4.7 above.

16. The LPs served their responding motion record on August 19, 2022. Their motion record contained no evidence contesting or challenging any of the evidence submitted by CBRE.

17. The LPs then requested to cross-examine Mr. Dowbiggin and Mr. Gallagher, CBRE's other affiant and an Executive Vice President on the National Investment Team at CBRE. The Proposal Trustee understands that CBRE consented to the cross-examinations being conducted without prejudice to contesting the LPs rights to cross-examine CBRE's affiants.

18. The Proposal Trustee notes that the Final Proposal provides that all of the reasonable administrative fees and expenses of the Proposal Trustee must be funded by the Sponsor. Accordingly, all of the Proposal Trustee's costs and expenses, including those of its legal counsel, incurred in dealing with the LPs' opposition to this motion are ultimately payable by the Sponsor and, therefore, do not erode any of the potential recoveries of the LPs.

6.0 Conclusion

1. It is the Proposal Trustee's view that CBRE's claim in the amount of $1,239,377.40 should be allowed and the appeal dispensed, without costs.

* * *

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 “E”

CITATION: YG Limited Partnership (Re), 2022 ONSC 6138
COURT FILE NO.: BK-21-02734090-0031
DATE: 20221101

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

RE: IN THE MATTER OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED
IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.

BEFORE: Kimmel J.

COUNSEL: *Robin Schwill and Chenyang Li*, for the Proposal Trustee, KSV Restructuring Inc.

Jason Berall, for the Proposal Sponsor, Concord Properties Developments Corp.

Alexander Soutter, for Yonge SL LPs

Shaun Laubman, for Chi Long LPs

Mark Dunn and Sarah Stothart, for Maria Athanasoulis

HEARD: October 17, 2022

ENDORSEMENT
(FUNDING MOTION)

Overview

[1] YG Limited Partnership and YSL Residences Inc. (together, "YSL" or the "Debtor") filed Notices of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "*BIA*"), which were procedurally consolidated pursuant to an Order dated May 14, 2021. The Debtor companies are special purpose entities established to hold the assets for a large real estate development in downtown Toronto known as the "YSL Project".

[2] This court approved an Amended Third Proposal dated July 15, 2021 (the "Proposal") on July 16, 2021. Under the Proposal, the moving party, KSV Restructuring Inc. (the "Proposal Trustee"), was authorized to deal with various claims against the Debtor, some of which were disputed.

[3] In the Proposal, Concord Properties Developments Corp. (the "Sponsor") covenanted in sections 10.2 and 11.1 to indemnify the Proposal Trustee for "all Administrative Fees and Expenses (defined below) *reasonably incurred* [and not covered by the reserve established on the

Proposal Implementation Date by the Sponsor 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 … and the Proposal Trustee's discharge]". [emphasis added]

[4] "Administrative Fees and Expenses" are defined in the 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."

[5] The Proposal Trustee brings this motion to compel the Sponsor to provide funding for the Proposal Trustee's continuing work towards the determination and/or resolution of the outstanding proofs of claim against the Debtor.[1] Jurisdictional questions have been raised within the motion.

[6] For reasons given orally at the hearing, I declined to grant the contested adjournment of this motion that the Sponsor asked for at the outset.

[7] For the reasons that follow, I have concluded that the Sponsor is not obligated to fund phase 2 of the Arbitration that was intended to determine the Athanasoulis Claim (as those terms are later defined herein). The Sponsor is obligated to indemnify the Proposal Trustee for its Administrative Fees and Expenses reasonably incurred to determine that claim itself, with the benefit of the Award from phase 1 of the Arbitration. The specific orders and directions arising from this ruling are detailed in this endorsement.

Background to the Motion

[8] As of October 2022, most of the claims filed against the Debtor had been settled or accepted by the Proposal Trustee. The largest claim, by far, filed against the Debtor is made by Maria Athanasoulis. This claim is comprised of $1 million for wrongful dismissal damages and $18 million in damages for alleged breaches of an oral profit-sharing agreement by which she alleges YSL must pay her 20% of the profits earned on the YSL Project (the "Athanasoulis Claim").

[9] The Athanasoulis Claim is one of three disputed claims by various stakeholders that the Proposal Trustee says have increased the professional costs associated with the Proposal and prevented the Proposal Trustee from completing the administration of these proceedings.

[10] As of the end of July 2022, the Proposal Trustee's Administrative Fees and Expenses totalled just under $1.2 million, excluding Harmonized Sales Tax. Included in that total were the costs of phase 1 of an arbitration held from February 22-25, 2022 (the "Arbitration") before William G. Horton ("the Arbitrator"). The Proposal Trustee and Ms. Athanasoulis both

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[1] The motion originally sought the determination of the Sponsor's obligation to fund certain past expenses incurred by the Proposal Trustee; however, these expenses have been funded through previous advances from the Sponsor and the Sponsor advised that it is not seeking to "claw-back" monies previously advanced nor challenge the use of funds by the Proposal Trustee to date. Thus, the practical implication of this motion is only to deal with future funding obligations of the Sponsor.

participated in the Arbitration. It resulted in a partial award dated March 28, 2022 (the "Arbitration Award") that included findings that:

a. The Debtor had entered into an oral profit sharing agreement with Ms. Athanasoulis;

b. Ms. Athanasoulis was an employee of YSL; and

c. Ms. Athanasoulis was constructively dismissed by YSL in December 2019.

[11] The Proposal Trustee says that it agreed to arbitrate the Athanasoulis Claim because the existence of the oral profit sharing agreement upon which it was based, as well as Ms. Athanasoulis' status with the Debtors (and other entities within the same corporate group referred to as the Cresford Group), were disputed by the Debtor's representative(s) and the determination of those questions would turn on credibility assessments. In these circumstances, the Proposal Trustee believed that the determination of whether Ms. Athanasoulis had a profit sharing agreement, what its terms were and whether she was an employee who was constructively dismissed, could be best determined through a hearing with *viva voce* evidence.

[12] The Sponsor was told on December 1, 2021 "that arrangements are being made with [Mr.] Horton to arbitrate the claim in late February, which is the earliest available date."

[13] The terms of appointment of the arbitrator were signed by the Proposal Trustee and Ms. Athanasoulis on December 9, 2021 (the "Agreement to Arbitrate"). By its terms, the parties agreed to:

a. appoint Mr. Horton to serve as sole arbitrator of their dispute relating to the Athanasoulis Claim; and

b. bifurcate the Athanasoulis Claim such that the Arbitration shall initially resolve only the liability of YSL (in phase 1). In the event the Arbitrator finds that YSL is liable to Ms. Athanasoulis, the parties agreed to schedule an additional hearing before the Arbitrator to determine the quantum of YSL's liability (in phase 2).

[14] The Sponsor did not receiver a copy of the Agreement to Arbitrate at that time and was not privy to its specific terms.

[15] The Proposal Trustee was advised on March 31, 2022 that "[w]e received the decision in the fact finding phase just the other day or so. Arbitrator Horton found an enforceable 20% profit sharing agreement to exist."

[16] A few weeks later, the Proposal Trustee provided the Sponsor an updated budget. With only approximately $210,000 remaining from the original reserve established under s. 10.1 of the Proposal, the Proposal Trustee requested additional net funds of approximately $1.485 million in respect of Administrative Fees and Expenses anticipated to be incurred in connection with the resolution of the remaining three claims and to administer the distributions.

[17] Some limited partners of YSL (the Yonge SL LPs and Chi Long LPs, collectively the "LPs") questioned the Proposal Trustee's handling of certain disputed claims, including the Athanasoulis Claim. The LPs are entitled to any remaining cash in the $30.9 million "Affected Creditors Cash Pool" established by the Sponsor, after proven claims are paid out. That cash pool is only to be used by the Proposal Trustee to satisfy proven claims. Therefore, the determination of the Athanasoulis Claim could impact the LPs' recovery from the Affected Creditors Cash Pool.

[18] At a case conference on May 24, 2022, the LPs asked the court to schedule motions they proposed to bring. Their motions were described at that time to be directed to the Proposal Trustee's authority to arbitrate the Athanasoulis Claim and to determine whether the Athanasoulis' Claim is subordinate to the LPs' entitlements. They also requested that the court order a stay of phase 2 of the Arbitration of the Athanasoulis Claim. At that time, the authority of the Proposal Trustee to enter into the Agreement to Arbitrate was being challenged by at least one of the LPs.

[19] Instead of scheduling that motion, the court urged the parties to work out an arrangement that would allow the LPs' priority claims to be added to, and determined in, the existing Arbitration under an expanded comprehensive arbitration process (the "consolidated arbitration process").[2]

[20] At a further case conference on June 8, 2022, the parties updated the court about their ongoing discussions since the last case conference. The LPs indicated that they would be prepared to have their priority issues determined in a consolidated arbitration process. The Sponsor expressed concerns about the added cost of adding the LPs priority issues into the existing Arbitration process. The Sponsor asked for two conditions: i) that there be an attempt to settle through mediation before embarking upon stage 2 of the Arbitration and/or any consolidated arbitration process, and ii) that the LPs undertake to pay the Proposal Trustee's expenses associated with the next phase of the consolidated arbitration process. The LPs did not agree to either of these conditions.

[21] The court once again urged the parties to continue collaborating and refining the issues for a potential consolidated arbitration process and to try to reach an agreement about the additional cost of this expanded arbitration of all issues, in the face of the alternative of parallel proceedings and the added cost and delay that would ensue if the LPs' proposed motion was scheduled. The court summarized the outstanding issues to be addressed (or not to be addressed) in the context of a potential consolidated arbitration process and some of the terms that were under consideration, as had been identified by the parties at that time, in an endorsement dated June 8, 2022 as follows:

a. The enforceability of the contract as found by Mr. Horton regarding Ms. Athanasoulis' claim and the quantum of any damages she may have suffered.

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[2] This reference to a "potential consolidated arbitration process" is not intended to resolve the dispute between Ms. Athanasoulis (and the Proposal Trustee), on the one hand, and the LPs on the other, about whether they did in fact reach an agreement to consolidate all issues into an arbitration. That issue was not squarely put before the court on this motion.

b. Whether any claim for damages by Ms. Athanasoulis is in the nature of debt or equity.

c. Any claim for damages that the LPs may assert against Ms. Athanasoulis.

d. The Arbitration will not consider any claims between Ms. Athanasoulis and Cresford Capital/Dan Casey.

e. The LPs will reserve their rights with respect to whether Mr. Horton's decision at phase 1 of the Arbitration regarding enforceability is rendered *res judicata*.

f. At the conclusion of the Arbitration the Proposal Trustee will make a determination as to whether Ms. Athanasoulis' claim is provable, will value it and determine its priority.

g. The parties' rights to appeal are preserved under the *BIA*.

The court directed counsel to return for a further case conference on July 29, 2022.

[22] On July 4, 2022 the Sponsor advised that it would be withdrawing funding from the Proposal Trustee. It objected to funding the estimated $1.485 million in additional funding that the Proposal Trustee and indicated would be needed by it and its external counsel to complete the administration of these proceedings.[3]

[23] By the July 29, 2022 case conference, the Sponsor had been provided with a copy of the Arbitration Award and the Agreement to Arbitrate. The parties continued to have differing views on whether the Proposal Sponsor was obligated to fund the Proposal Trustee's fees and expenses for phase 2 of the Arbitration. Accordingly, the Proposal Trustee's funding motion was scheduled.

[24] Although no formal stay was ordered, phase 2 of the Arbitration has not been rescheduled, pending the outcome of this motion, since the Proposal Trustee requires funds to participate in it. The Proposal Trustee and Ms. Athanasoulis anticipate that the phase 2 proceeding contemplated by the Agreement to Arbitrate will require additional fact and expert evidence. The original schedule had set aside two weeks in September, 2022 for phase 2 of the Arbitration, before any consideration of including the LPs' claims.

[25] In the intervening timeframe, the Proposal Trustee and Ms. Athanasoulis did attend a mediation to try to come to a resolution of the Athanasoulis Claim, but that mediation was not successful.

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[3] This estimate assumed that the three remaining disputed claims would be adjudicated in the manner indicated by the Proposal Trustee, with no further procedural motions. Also included in this budget were estimated Administrative Fees and Expenses associated with the phase 2 of the Arbitration. The amount for this portion of the future fees was initially estimated to be approximately $500,000, but that estimate is now approximately $700,000. However, other disputed claims have been resolved such that the overall estimate for future funding that the Proposal Trustee anticipates remains at an estimated $1.485 million.

[26] On October 13, 2022, shortly before the return of this funding motion, the LPs provided a draft notice of motion indicating their intention to bring a motion for declarations that: (a) any claim by Ms. Athanasoulis to the proceeds of the YSL Project under any profit-sharing arrangement is subordinate to their entitlement to such proceeds; and (b) Ms. Athanasoulis' profit-sharing claim is unenforceable against the Debtors. The LPs' assertions are based primarily on alleged representations and promises made to them by Ms. Athanasoulis.

[27] The Proposal Trustee's Notice of Motion on this motion seeks an order declaring that:

a. The Proposal Trustee's Administrative Fees and Expenses have been reasonably incurred.

b. The Sponsor remains bound by the Proposal.

c. The Sponsor is required to fund the Administrative Fees and Expenses of the Proposal Trustee pursuant to the Proposal.

d. The commencement and continuation of Arbitration to determine the Athanasoulis Claim was a valid exercise of the Proposal Trustee's power under the Proposal or the *BIA*.

[28] The Sponsor does not dispute that it remains bound by the Proposal to fund Administrative Fees and Expenses reasonably incurred. It disagrees on whether the Proposal requires it to fund the Proposal Trustee's fees and expenses that will be incurred in respect of phase 2 of the Arbitration.

[29] The court does not technically need to deal with the Proposal Trustee's request for a declaration that its Administrative Fees and Expenses have been reasonably incurred up until now. The Sponsor is no longer seeking to claw-back prior expenses that the Proposal Trustee has already been paid from the initial funding reserve. This includes fees and expenses associated with phase 1 of the Arbitration.

[30] During the hearing, and considering the most up to date positions, the Proposal Trustee re-stated the issues to be decided on this motion:

a. Whether the commencement and continuation of Arbitration to determine the Athanasoulis Claim was a valid exercise of the authority granted to the Proposal Trustee under the Proposal or the *BIA* (the "Jurisdiction Question" below), and therefore are any Administrative Fees and Expenses associated with it reasonably incurred?

b. If not, and in the alternative, is the question of whether the Sponsor is obligated to fund the Administrative Fees and Expenses of the Proposal Trustee and its counsel associated with phase 2 of the Arbitration *res judicata* and has this court already ruled that phase 2 of the Arbitration should proceed in some fashion, either with or without the added issues raised by the LPs?

c. Should there be any other order made at this time regarding the approval of the fees of the Proposal Trustee and its counsel?

d. Should the Sponsor pay the Proposal Trustee's costs of this motion, which are rolled up in its defence of the reasonableness and appropriateness of the Arbitration process?

Analysis

The Positions of the Parties

[31] The focus of the analysis is on the question of whether any Administrative Fees and Expenses associated with completing phase 2 of the Arbitration would be "reasonably incurred," such that the Sponsor is obligated to indemnify the Proposal Trustee for them under s. 11.01 of the Proposal.

[32] The Sponsor argues that the Proposal Trustee should have either allowed or disallowed the Athanasoulis Claim without resorting to arbitration. The Sponsor says the Proposal Trustee should determine and value that claim on its own, with such input from Ms. Athanasoulis and others as it deems appropriate. This process, the Sponsor postulates, could be completed more efficiently and at a significantly lesser cost than through the Arbitration.

[33] The Proposal Trustee argues that, even with the benefit of hindsight, a process outside of the Arbitration resulting in an allowance or disallowance of the Athanasoulis Claim would not necessarily have been more cost effective or timely. It postulates that both parties would have inevitably challenged the Proposal Trustee's decision regarding the determination of the Athanasoulis Claim under s. 37 of the *BIA*. Either Ms. Athanasoulis would appeal a decision against her to the court, or the LPs would further challenge a ruling that favoured Ms. Athanasoulis. The Proposal Trustee believes that these appeals or challenges to the court under s. 37 of the *BIA* would have the potential to involve the same evidentiary input, time and expense as the Arbitration.

[34] The Proposal Trustee likens the Arbitration to the appointment of a claims officer to adjudicate the Athanasoulis Claim and urges the court to permit that process to now run its course through phase 2 of the Arbitration.

[35] The Proposal Trustee also maintains that it was reasonable to have entered into the Agreement to Arbitrate and that it cannot now renege and disallow the Athanasoulis Claim simply because the Sponsor does not like the outcome of phase 1. The Sponsor counters that if the Agreement to Arbitrate, the terms of which it only had full disclosure of in July 2022, improperly delegates to the Arbitrator the Proposal Trustee's responsibility for determining and valuing the Athanasoulis Claim and was entered into without authorization or jurisdiction, then it is invalid *ab initio* and unenforceable.

[36] Ms. Athanasoulis supports the Proposal Trustee's position and adds that she is an innocent third party. Having contracted with the Proposal Trustee for an arbitration in two phases and having herself invested significant time and expense on phase 1, it would be unfair to her to now return to square one for the determination and valuation of her claim.

[37] Ms. Athanasoulis further argues that there is no principled distinction between the jurisdiction to arbitrate phase 1 vs. phase 2 of the Arbitration. She contends that the Sponsor's withdrawal of its objection to paying the fees and expenses for phase 1 is a concession that arbitrating in phase 1 was authorized and within the jurisdiction of the Proposal Trustee, and thus phase 2 must be as well.

[38] The LPs still intend to argue that they are not bound by any findings in the Arbitration or its outcome, and that the Athanasoulis Claim is subordinate to theirs. Neither of those arguments are before the court now. However, should the court find that the Proposal Trustee lacked the authority or jurisdiction to arbitrate the Athanasoulis Claim, that would make their intended motion less complicated and possibly moot, depending on the Proposal Trustee's timing and ultimate determination of the Athanasoulis Claim.

The Issues

A) The Jurisdiction Question

i) Contractual and Statutory Framework

[39] Section 3.02 of the Proposal provides that the Proposal Trustee will assess claims in accordance with s. 135 of the *BIA*.

[40] Section 135 of the *BIA* provides that:

> (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.
>
> (1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

ii) Relevant Jurisprudence Relied Upon by the Parties

[41] The Sponsor objects to providing additional funding for phase 2 of the Arbitration on the grounds that the Arbitration falls outside the Proposal Trustee's mandate under the Proposal, which is to determine and resolve disputed claims in accordance with s.135 of the *BIA*. The Sponsor maintains that because the Proposal Trustee improperly delegated that decision-making function to the Arbitrator and assumed the role of adversary, rather than the decision-maker, any Administrative Fees and Expenses associated with phase 2 of the Arbitration will not be reasonably incurred.

[42] The Sponsor relies upon the recent decision of this court *In the Matter of the Proposal to Creditors of Conforti Holdings Limited*, 2022 ONSC 3264, leave to appeal refused, 2022 ONCA 651. In *Conforti*, the court declined to relieve a trustee of its responsibility under s. 135 of the *BIA* to determine a particular claim through a single claims process under the supervision of the

Bankruptcy Court and declined to approve the trustee's suggestion that it be determined, instead, by a foreign court.

[43] This court held in *Conforti* that s. 135(1.1) of the *BIA* contains mandatory language that "unambiguously" requires the Proposal Trustee itself to determine and value claims. *Conforti* confirms, at para. 42, 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. [...] Insolvency proceedings under the *BIA* are subject to court supervision, and the court is able to give directions for the timely and efficient determination of claims.

[44] This is not the first time a trustee's "mandatory statutory duty to review claims and value unliquidated or contingent claims" has been recognized: see *Asian Concepts Franchising Corporation (Re)*, 2018 BCSC 1022, 62 C.B.R. (6th) 123, at para. 99.

[45] Unlike in *Conforti*, the Proposal Trustee says it is not seeking to dispense with any obligation to determine the Athanasoulis Claim. It says it still intends to go through the motions of that determination but wishes to do so with the benefit of the Arbitrator's decision in phases 1 and 2.

[46] The Proposal Trustee also seeks to distinguish *Conforti* on the grounds that it has a very broad discretion under s. 135 of the *BIA* to obtain or require further evidence in support of a claim and has the power under s. 30 to bring, institute or defend any action or legal proceeding relating to the property of the bankrupt and to compromise any claim made by or against the estate. The Proposal Trustee argues that this permits a trustee to arbitrate a claim; or, at the very least, that this permits the Proposal Trustee to use an arbitration process to assist in the development of the evidence and facts that will be needed to determine and value a claim.

[47] The Proposal Trustee defends the Arbitration process as fair, reasonable and transparent. It emphasizes the importance of its role in ensuring all stakeholder interests are protected (as was envisioned in *Asian Concepts*, at paras. 55-56, 98, for example). The Proposal Trustee's contends that its decision to gather facts in respect of the Athanasoulis Claim by way of Arbitration was a reasonable decision and that it was an appropriate process to achieve a fair determination of the merits of the Athanasoulis Claim because it tested the potentially relevant evidence. It maintains that there is no single correct way to value a claim and that a trustee's decision should be afforded deference: see *Galaxy Sports Inc. (Re)*, 2004 BCCA 284, 29 B.C.L.R. (4th) 362, at paras. 39-43.

iii) The Agreement to Arbitrate – is it Beyond the Scope of s. 135 of the *BIA*?

[48] In theory, the Proposal Trustee does have a broad discretion under s. 135 of the *BIA* that might justify its participation in adversarial proceedings that could inform the eventual determination of claims. The Proposal Trustee seeks to characterize what the Arbitrator was asked to do as a fact finding exercise: to determine whether Ms. Athanasoulis was an employee who was constructively dismissed and whether she had an oral profit sharing agreement. The issue here is whether the Agreement to Arbitrate in this case—which was not before the court and had not been

disclosed to the Sponsor or the LPs until sometime in July, 2022—went beyond a fact finding exercise.

[49] Although no determination need be made on this point, the Proposal Trustee's participation in phase 1 of the Arbitration may have been sound in the sense that the necessary parties and information were before the Arbitrator to enable him to make determinations about the existence of the oral profit sharing agreement and a finding of constructive dismissal. The Proposal Trustee can consider and take into account these inputs from the Arbitration in its determination and valuation of the Athanasoulis Claim.

[50] Since the Sponsor is no longer challenging the right of the Proposal Trustee to be indemnified for the Administrative Fees and Expenses incurred in respect of phase 1 of the Arbitration, the issue now before the court is whether the Proposal Trustee is acting within the scope of s. 135 of the *BIA* by engaging in phase 2 of the Arbitration to determine whether to allow the Athanasoulis Claim, and if so in what amount.

[51] The Proposal Trustee concedes that the Arbitrator's determination of the damages question in phase 2 of the Arbitration would be both informative and probative, and that the Proposal Trustee's determination of the Athanasoulis Claim would be heavily influenced by the Arbitrator's decision. The suggestion that the Proposal Trustee could, after the Arbitration, still determine and value the Athanasoulis Claim in a manner inconsistent with the decision of the Arbitrator on liability and damages is difficult to reconcile with the words of the Agreement to Arbitrate and the intended binding nature of arbitrations under s. 37 of the *Arbitration Act 1991*, S.O. 1991, c. 17.

[52] I find that phase 2 of the Agreement to Arbitrate goes beyond a fact finding exercise. By its very terms, the Agreement to Arbitrate contemplates an eventual ruling from the Arbitrator on "damages" (the quantum of the Debtors' liability) at the end of phase 2. On their face, the terms of the Agreement to Arbitrate contemplate a final adjudication by the Arbitrator. That amounts to an improper delegation to the Arbitrator by the Proposal Trustee of its ultimate responsibility to determine and value the Athanasoulis Claim.

[53] It was suggested that the court would be effectively ordering, or approving, the Proposal Trustee to breach the Agreement to Arbitrate if the Sponsor's position with respect to the funding of phase 2 of the Arbitration is accepted. I do not see it that way. If the Proposal Trustee did not have the authority to agree to phase 2 of the Arbitration as was provided for in the Agreement to Arbitrate because it amounted to an improper delegation of its responsibility to the Arbitrator, then that aspect of the Agreement to Arbitrate is unenforceable as against the Proposal Trustee. Further, as a practical matter, if the Sponsor is not required to fund the Administrative Fees and Expenses associated with phase 2 of the Arbitration, it cannot proceed.

[54] I also do not accept the assertion that just because the Sponsor is no longer challenging its obligation to fund the Proposal Trustee's Administrative Fees and Expenses incurred in connection with phase 1 of the Arbitration, that the court is bound to accept that entering into the Agreement to Arbitrate was a valid exercise of the Proposal Trustee's discretion and a valid delegation of its responsibility to the Arbitrator in all respects, or that the Sponsor is estopped from asserting that any aspect of the Agreement to Arbitrate exceeded the Proposal Trustee's authority under s. 135 of the *BIA*.

iv) Would the Cost of this Arbitration be a Reasonably Incurred Expense?

[55] One of the other grounds upon which the Sponsor argued that the anticipated Administrative Fees and Expenses for phase 2 of the Arbitration would not be reasonably incurred was because they would be the product of a complex, lengthy and expensive process that is not in keeping with the summary and efficient adjudication of claims envisioned by the *BIA*, especially one that might not have resulted in a final resolution of the Athanasoulis Claim without the willing participation of the LPs,[4] leaving the LPs' priorities and other enforceability issues to be determined through some other process.

[56] Section 135 of the *BIA* is intended to be a summary procedure for the determination of claims, animated by the objectives of speed, economy and informality: see *Conforti*, at para. 43 and *Asian Concepts*, at para. 53.

[57] The decision on the Jurisdiction Question renders it unnecessary to decide whether the anticipated budgeted cost of phase 2 of the Arbitration represents anticipated reasonably incurred Administrative Fees and Expenses that the Sponsor should be required to fund. The court will not order the Sponsor to fund this aspect of the Arbitration that involves the ultimate determination of this claim by someone other than the Proposal Trustee as that would not be a determination of the Athanasoulis Claim in accordance with s. 135 of the *BIA*.

v) Section 135 *BIA* Determination of the Athanasoulis Claim

[58] The Proposal Trustee has identified various aspects of what had been expected to be resolved through the anticipated phase 2 Arbitration that will still require factual inputs and findings for the Proposal Trustee to make its determination of the Athanasoulis Claim. For example, to determine the meaning of "profits" under the oral profit sharing agreement, and when and how they should be calculated, expert valuation evidence may be required. This was part of the justification for the Arbitration process envisioned, and has not been resolved by the court's finding that the process agreed to went too far by improperly delegating the ultimate issue to be decided by the Proposal Trustee to the Arbitrator.

[59] Further, whether the Athanasoulis Claim is a provable claim under s. 135 of the *BIA* depends on whether the claim is in debt or equity, which in turn may require further evidence and inputs from other stakeholders, like the LPs. Not only would the LPs potentially have relevant information, but they also have a direct interest in these determinations.

[60] The Proposal Trustee has the power under s. 135 of the *BIA* to seek additional information and documents from the claimant: see *Urbancorp Cumberland 2 GP Inc.*, 2022 ONSC 2430, at paras. 23, 26. It remains open to the Proposal Trustee under s. 135 of the *BIA* to receive and consider expert input from Ms. Athanasoulis and other stakeholders.

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[4] As previously indicated, there is a dispute about whether the LPs agreed to arbitrate their priority and enforceability challenges to the Athanasoulis Claim. The court was not asked to determine whether the LPs had in fact agreed to arbitrate their issues in the expanded phase 2 of the Arbitration. I do not need to decide this question to decide the funding motion.

[61] The broad discretion afforded to the Proposal Trustee also allows it to seek out its own expert input, as well as information and input from the LPs and other stakeholders in respect of the issues it must decide.

[62] In these circumstances, the Proposal Trustee will need to carry out its responsibilities under s. 135 of the *BIA*, get the factual and other inputs it requires from witnesses, other stakeholders, experts and the like and determine whether the Athanasoulis Claim has been proven and, if so, at what amount it should be valued.

[63] The Proposal Trustee complains that the Sponsor has not spelled out an alternative process to the Arbitration for doing this.

[64] In the absence of any proposed alternative, the Proposal Trustee is entirely unencumbered and may determine its own process for how it wishes to do this, which will be afforded significant deference. According to the Court of Appeal in *Galaxy*, at paras. 39 and 44,

a. the Proposal Trustee is entitled to evaluate the Athanasoulis Claim in accordance with s. 135(1.1) with significant discretion, taking into account factors that may appear in the *BIA*;

b. there is no one "correct" answer to the valuation of the Athanasoulis Claim;

c. the Proposal Trustee's valuation of the Athanasoulis Claim will be scrutinized on a "reasonableness" standard; and

d. the Proposal Trustee can use its knowledge and expertise to consider whether, as a factual matter, the valuation as to the full amount of the Athanasoulis Claim is appropriate.

[65] The Proposal Trustee is concerned that this may lead to *de novo* appeals or challenges (by either Ms. Athanasoulis or the LPs) and could end up being as much or more expensive than the anticipated cost of phase 2 of the Arbitration. There is no crystal ball that can foretell this.

[66] The Sponsor says that it will not micromanage this aspect of the Proposal Trustee's determination of the Athanasoulis Claim. While the Sponsor does not expect that this alternative process will end up costing as much as the current estimate for phase 2 of the Arbitration, it is prepared to accept the possibility that it does. The Sponsor has said it will pay for the Proposal Trustee to develop and follow a process to determine and value the Athanasoulis Claim in accordance with s. 135 of the *BIA*.

[67] The Proposal Trustee must determine how to reasonably determine and value the Athanasoulis Claim in a timely and principled manner. It will be afforded significant deference. All parties agree that it can use the Arbitration Award from phase 1 of the Arbitration and build on it so that time and effort is not wasted. The goal is not the gold standard of coming up with a process that cannot be challenged.

[68] The Proposal Trustee may choose to invite expert evidence and inputs from Ms. Athanasoulis and then determine if it needs its own expert to review and comment upon what is

provided. It may choose to share that plan with the other stakeholders participating in this motion and seek their input. If it chooses to share its plan with the Sponsor and/or other stakeholders, and if the parties require some further direction and assistance from the court, they may arrange a case conference before me.

[69] In any event, the parties will eventually need to come back on a scheduling appointment to determine the sequencing and timing of the LPs' priorities and enforceability motion, but only after that motion (with supporting evidence) has been served and the parties have met and conferred amongst themselves to consider the appropriate timing and sequencing of all that needs to occur.

[70] Whatever process the Proposal Trustee may adopt, the Sponsor remains obligated under the Proposal to indemnify the Proposal Trustee for the Administrative Fees and Expenses reasonably incurred going forward to the final determination of the Athanasoulis Claim.

B) The *Res Judicata* and Estoppel Argument(s)

i) Res Judicata

[71] There can be no finding of *res judicata* with respect to the issues raised on this funding motion regarding the Sponsor's obligation to fund phase 2 of the Arbitration.

[72] The Proposal Trustee and Ms. Athanasoulis argue that Gilmore J. held, at two separate case conferences in May and June 2022, that arbitration was an appropriate way to proceed, and that issue estoppel prevents the court from revisiting this in the context of this funding motion. I disagree.

[73] There are three requirements for invoking issue estoppel: (i) the same question has or could have been decided in a prior proceeding; (ii) the decision giving rise to estoppel is final; and (iii) the parties to the decision giving rise to estoppel are the same as the parties to the subsequent proceeding in which estoppel is claimed: see *The Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2019 ONCA 354, 145 O.R. (3d) 759, at para. 25. It is the first requirement upon which the *res judicata* argument fails in this case.

[74] The Proposal Trustee argues that the endorsement of Gilmore J. arising out of the June 8, 2022 case conference requires an arbitration of the Athanasoulis Claim because it was stated in the endorsement that the "arbitration must prevail" and the Sponsor never sought to appeal that declaration.

[75] I do not read the June 8, 2022 endorsement as ordering an arbitration. Rather, it was the court's strong preference that the parties agree to expand the Arbitration to address the issues raised by the LPs and avoid a parallel, costly and time consuming motion process to determine the priority and enforceability issues. I am not aware of any authority upon which the court can order unwilling parties to arbitrate a dispute; that is a matter of private agreement. The court was simply strongly encouraging the parties to make such an agreement, building upon the arbitration process already in place.

[76] Nor do I agree with the implicit suggestion that the same question about the authority of the Proposal Trustee to enter into the Agreement to Arbitrate and to delegate its responsibility for determining and valuing the Athanasoulis Claim to the Arbitrator has been or could have been previously decided by Gilmore J. at the earlier case conferences. Leaving aside the nature of those case conferences and the typical procedural scope of directions from the court, it is clear that is not what Gilmore J. understood to be happening. To the contrary, her June 8, 2022 endorsement records that:

> At the conclusion of the arbitration the Proposal Trustee will make a determination as to whether Ms. Anathasoulis' [*sic*] claim is provable and will value it and determine its priority.

[77] At that time, the court did not have the Agreement to Arbitrate with the full description of the issues being submitted to arbitration and cannot be taken to have made any meaningful assessment as to whether the statement that there was still something left for the Proposal Trustee to determine at the end of the Arbitration was a fair characterization of what had been agreed to. The court did not previously order the parties to arbitrate, nor did it make any finding that phase 2 of the Arbitration could be conducted in a manner consistent with s. 135 of the *BIA*. There is no *res judicata*.

ii) Other Estoppel Considerations

[78] That said, it was prudent of the Sponsor to drop its opposition to the Proposal Trustee's request for approval of the expenses associated with phase 1 of the Arbitration, already incurred and paid. Regardless of the court's determination of the threshold Jurisdiction Question in relation specifically and only to phase 2 of the Arbitration, the Sponsor would have faced other obstacles in attempting to claw back from the Proposal Trustee Administrative Fees and Expenses incurred and paid for out of the initial reserve, including for phase 1 of the Arbitration.

[79] These obstacles would include the Sponsor's inaction and failure to ask any questions or raise any complaint about, or object to phase 1 of the Arbitration proceeding while it was ongoing. However, the Sponsor's concession obviates the need for any ruling on this.

iii) The Timing of Objections and Related Considerations

[80] Ms. Athanasoulis is understandably concerned about having engaged in phase 1 of a two phase arbitration process in good faith and now facing objections to the jurisdiction or authority of the Proposal Trustee to have entered into the Agreement to Arbitrate.

[81] Unfortunately, the Sponsor and the LPs did not have a copy of the Agreement to Arbitrate until July, 2022. Their concerns were raised in a timely manner upon learning more about the scope of the Arbitration and its anticipated cost. The fact that this discovery also coincided with their learning that the phase 1 outcome favoured Ms. Athanasoulis does not automatically lead to the inference that their objections are disingenuous.

[82] In any event, no one is suggesting that the work done in phase 1 of the Arbitration is lost. It will be one of the inputs that the Proposal Trustee will use to determine and value the Athanasoulis Claim. All parties agree on this.

[83] While I do not go so far as to accept the suggestion by the Sponsor and LPs that Ms. Athanasoulis knowingly took on the risk of this challenge and outcome, the Sponsor and LPs were left out of the process and cannot be precluded from raising the legal objections that have ultimately dictated the outcome of this motion on the Jurisdiction Question, as it relates to phase 2 of the Arbitration.

C) Fee Approvals

[84] Gilmore J.'s endorsement scheduled this funding motion to determine the Proposal Trustee's entitlement to be indemnified for the costs of the Arbitration. The indemnity reimbursements taken up until now from the reserve fund are no longer at issue. The relief sought by the Proposal Trustee for the approval of its past activities and fees might have been warranted if the challenge to entitlement to indemnification for expenses incurred in phase 1 of the Arbitration was still at issue.

[85] However, this is no longer at issue. There is no immediate reason or need to attempt to deal with the broader requests for general approval of the activities and fees of the Proposal Trustee and its counsel.

[86] The Sponsor is right that, in general, such requests should be supported by fee affidavits: see *Jethwani v. Damji*, 2017 ONSC 1702, 46 C.B.R. (6th) 96, at paras. 8-11.

[87] For the same reason, it is also inappropriate to grant the requested charge over all past and future distributions to the Sponsor. This issue was not fully argued and I was not taken to the evidence or authority that I would need to consider to make such an order.

[88] Instead, the Proposal Trustee may now wish to prepare a new budget and request additional reserve funding for the indemnity obligations of the Sponsor. If the Sponsor does not agree to supplement the reserve, the parties can arrange to come back for a case conference for further consideration of the questions of up front funding and/or security for future funding to be provided by the Sponsor.

D) Costs

[89] Despite having found that the contemplated phase 2 of the Arbitration goes beyond the scope of what the Proposal Trustee was authorized to agree to, given the original position of the Sponsor that it was also challenging its obligation to fund expenses for phase 1 and given the added complications introduced by the LPs, I consider it to have been reasonable for the Proposal Trustee to have brought this motion for directions.

[90] The Proposal Trustee's and its counsel's costs of this motion were reasonably incurred as part of the administration of distributions and the resolution of unresolved claims such that those costs should be indemnified by the Sponsor under the s. 11.1 of the Proposal on the basis that they were reasonably incurred Administrative Fees and Expenses.

[91] Ms. Athanasoulis has asked to be awarded some reasonable costs thrown away in the event the Arbitration is not proceeding to phase 2. She spent $300,000 on phase 1 (in line with the Proposal Trustee's disclosed legal costs for phase 1) and had started working with her expert on

phase 2. I understand that there was an agreement that each side would bear their own costs of the Arbitration.

[92] I agree that if Ms. Athanasoulis had actually incurred costs thrown away of the Arbitration, that are now wasted, she might be entitled to an award for her trouble: see *Caldwell v. Caldwell*, 2015 ONSC 7715, 70 R.F.L. (7th) 397, at paras. 10-12.

[93] However, given that the phase 1 Arbitration findings will be the factual predicate upon which the determination of her claim will proceed and that it is reasonable to expect that Ms. Athanasoulis will require expert input, regardless of the procedure, to have her claim determined by the Proposal Trustee, I am not convinced that she has suffered any costs thrown away.

[94] The parties are just now pivoting to a different process for the final determination of the Athanasoulis Claim, but the onus is still on her to prove it. It is difficult to see how she has wasted the cost of whatever work she did in furtherance of her quest to persuade the Arbitrator to decide in her favour the same issue that the Proposal Trustee will now take into consideration when determining her claim. All the work should be usable to support the proof of her claim to the Proposal Trustee.

[95] As such, no costs thrown away are awarded to Ms. Athanasoulis.

Final Disposition

[96] The court's decision on each of the issues on this funding motion, as re-stated by the Proposal Trustee, is as follows:

a. The continuation of phase 2 of the Arbitration provided for in the Agreement to Arbitrate the Athanasoulis Claim is not a valid exercise of the authority granted to the Proposal Trustee under the Proposal or s. 135 of the *BIA*. Therefore, the court no order requiring the Sponsor to fund (and/or indemnify the Proposal Trustee for) the budgeted Administrative Fees and Expenses associated with phase 2 of the Arbitration (of approximately $700,000).

b. The questions of whether phase 2 of the Arbitration was a procedure that the Proposal Trustee had the jurisdiction to engage in, and the Sponsor's obligation to fund the Administrative Fees and Expenses of the Proposal Trustee associated therewith, are not barred by *res judicata* or any other estoppel or laches.

c. The Sponsor is required to indemnify the Proposal Trustee for all of the reasonably incurred Administrative Fees and Expenses in relation to the determination and valuation of the Athanasoulis Claim, including for phase 1 of the Arbitration and for whatever procedure the Proposal Trustee, in its discretion, determines appropriate to receive the further evidence and positions of Ms. Athanasoulis and other interested stakeholders and any expert inputs deemed necessary.

d. The Proposal Trustee should first determine how it intends to proceed in light of the court's decision on this motion, and may prepare a budget for the anticipated

Administrative Fees and Expenses associated with this exercise, or seek indemnification after the fact, as it deems appropriate.

e. If asked to do so and the Sponsor is not prepared to top up the reserve for the funding of the Proposal Trustee's anticipated Administrative Fees and Expenses to complete the determination and valuation of the Athanasoulis Claim, the parties may request a case conference before me so that the court can provide further directions in this regard and any related issues. The parties are directed to confer about these issues before scheduling a case conference so that the appropriate amount of court time is reserved.

f. If the LPs are proceeding with their proposed motion, they shall serve their motion record(s) with supporting evidence and, after that, the parties shall confer about the timetabling and sequencing of those motions and then seek a scheduling appointment (if all agree) or a longer case conference (if all do not agree) for directions, timetabling and a motion hearing date if determined appropriate.

g. There have been no costs demonstrated to have been thrown away as a result of the court's ruling on this motion, and none are awarded.

h. The costs of the Proposal Trustee and its counsel for this motion were reasonably incurred and may be paid out of the remaining reserve fund and/or a claim for reimbursement by the Sponsor for those costs may be made under the Proposal.

[97] This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of the formal issuance and entry of an order.

KIMMEL J.

Date: November 1, 2022

Appendix “F”

CITATION: YG Limited Partnership and YSL Residences Inc., 2022 ONSC 6548
COURT FILE NO.: BK-22-02734090-0031
DATE: 20221116

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

IN THE MATTER of the *Bankruptcy and Insolvency Act*, R.SC. 1985, c.B-3 as amended

AND:

IN THE MATTER of the Notices of Intention to Make a Proposal of YG Limited Partnership and YSL Residences Inc.

BEFORE: Osborne J.

COUNSEL: *C. Haddon Murray and Elie Laskin*, CBRE Limited
A. Soutter, Yonge Street LPs
Robin Schwill, KSV, Proposal Trustee
Jesse Mighton, Concord Properties
Sarah Stothart, Maria Athanasoulis
Conner Sipa, Harbour International Investment Group and Yulei Zhang

HEARD: November 7, 2022

ENDORSEMENT

[1] This motion raises three questions that can arise where a Proposal Trustee has disallowed a Proof of Claim pursuant to section 135 of the *Bankruptcy and Insolvency Act* [”BIA”], and the claimant has appealed from that disallowance pursuant to section 135(4):

a. should the appeal proceed before this Court as a hearing *de novo*, or should the record be limited to those materials considered by the Proposal Trustee at the time [i.e., the materials filed in support of the claim];

b. do limited partners of a limited partnership that has filed an NOI have standing on such an appeal; and

c. should the appeal be allowed in this case?

[2] CBRE Limited [“CBRE”] moves for an order setting aside the disallowance of its claim by the Proposal Trustee in the Proposal of YSL Limited Partnership and YSL Residences Inc. [together, the “Debtors”], and allowing the claim.

[3] CBRE also seeks an order that this motion, which is effectively the appeal of the disallowance of its claim, be heard by way of hearing *de novo*.

[4] For the reasons that follow, the motion is granted.

Background and Context

[5] On April 30, 2021, YG Limited Partnership and YSL Residences Inc. [collectively, "YSL"] filed Notices of Intention to Make a Proposal pursuant to section 50.4(1) of the BIA. On May 14, 2021, this Court granted a consolidation order consolidating the NOI Proceedings for the purpose of simplifying the administration of the estates and facilitating the filing of a joint proposal and single meeting of creditors, among other things.

[6] YSL is part of the Cresford Group of Companies, a developer of real estate in the Toronto area. YSL Residences Inc. was a registered owner of the YSL Property defined below. It acted as bare trustee for, and nominee of, the limited partnership.

[7] This motion arises out of a dispute over a commission related to the acquisition of property at 363-391 Yonge St., Toronto and 3 Gerrard Street East, Toronto, [together, the "YSL Property"] by Concord Properties Developments Corp. ["Concord"].

[8] More than a year prior to the filing of the NOIs, in January 2020, CBRE had entered into an oral agreement with YSL for the listing of the YSL Property. For the purposes of this motion, the agreement was a relatively typical arrangement pursuant to which CBRE was to be paid a commission equal to 0.65% of the purchase price in the event that the property was sold and the purchaser was one of the parties introduced by CBRE.

[9] On February 21, 2020, as CBRE was already performing the oral agreement, it provided YSL with a proposed written agreement which further clarified and defined the terms of the bargain. In particular, it provided that the term of the contract expired on August 20, 2020 but also included a holdover clause pursuant to which the commission was payable if a binding agreement of purchase and sale was executed within 90 days after the expiry of the term and the transaction subsequently closed.

[10] The evidence on this motion is that the written agreement was never executed through inadvertence, although both parties performed the agreement and acted in all respects as if it had been formally executed.

[11] As noted above, YSL subsequently encountered financial difficulties and filed the NOIs. CBRE filed a claim with the Proposal Trustee in respect of the commission owing on the sale of the YSL Property.

[12] The Proposal Trustee initially disallowed the claim of CBRE as it was not satisfied, on the information initially filed in support of the claim, that it ought to be allowed. However, upon further review and particularly upon reviewing the Motion Record filed by CBRE, the Proposal Trustee and CBRE entered into a settlement agreement pursuant to which the claim would be allowed in exchange for the agreement of CBRE not to seek its costs on this motion.

[13] As a result of that settlement agreement, the Proposal Trustee supports CBRE and the relief sought on this motion.

[14] Indeed, the only parties opposing the relief sought are certain limited partners in the YG Limited Partnership.

[15] CBRE, supported by the Proposal Trustee, submits that the disallowance should be set aside and its claim should be allowed pursuant to the settlement agreement. It argues that, for the purposes of this motion, the Court should in any event consider the matter *de novo*.

[16] The limited partners submit that CBRE has failed to prove its claim with the requisite cogent evidence originally before the Proposal Trustee [i.e., the material originally filed in support of the CBRE claim], or at all.

ANALYSIS

Do the Limited Partners Have Standing?

[17] Section 135 of the BIA sets out the regime pursuant to which proofs of claim are admitted or disallowed.

[18] Pursuant to subsection (2), a trustee may disallow, in whole or in part, any claim.

[19] That disallowance is final and conclusive unless, pursuant to subsection (4), the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the *General Rules*.

[20] Pursuant to subsection (5), the court may expunge or reduce a proof of claim on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

[21] Here, the limited partners are limited partners in one of the Debtors, YG Limited Partnership. In my view, they lack the standing in this case to challenge the disallowance by the Proposal Trustee.

[22] For the purposes of this motion, the creditor is CBRE and the Debtor [or one of them] is YG Limited Partnership. As submitted by the Proposal Trustee, the whole bankruptcy regime is based upon all parties dealing with the debtor entity and/or the proposal trustee to address, determine and/or resolve claims.

[23] I agree with the submission of the Proposal Trustee that pursuant to subsection 135(5), the court may grant relief only where either one of two parties requests it: the creditor applies, or the debtor applies in circumstances where the trustee will not interfere.

[24] The limited partners are not creditors, but rather are exactly that - limited partners - in one of the Debtors. They hold limited partnership units in that entity. That is insufficient to make them debtors [within the meaning of this subsection or generally within the structure of the BIA], any more than shareholders of a debtor corporation would themselves automatically be debtors.

[25] Moreover, the particular contractual entitlements of the limited partners applicable to their units do not assist them here. The partnership agreement sets out the rights and obligations of the general partner to act on behalf of the limited partnership, and of the limited partners themselves.

[26] The contractual right in the partnership agreement to bind the partnership with respect to things such as claims is granted to the general partner. The general partner, on behalf of the limited partnership, consents to the relief sought on this motion.

[27] Finally, the Proposal Trustee has in fact "interfered" here, as contemplated in section 135(5). This is not a case where a trustee simply refuses to take a position or will not engage on the issue.

[28] I also observe that section 37 of the BIA provides that, where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

[29] I have already concluded that the limited partners are not creditors. Are they "persons aggrieved"? In my view they are not. Their grievance, or complaint, boils down to the fact that their ultimate potential recovery will presumably be reduced if the claim is allowed. That is not sufficient to make them aggrieved within the meaning of section 37. To conclude otherwise would mean that every creditor would have standing pursuant to section 37 to challenge the claim of every other creditor in a bankruptcy proceeding and I reject this notion.

[30] As observed in Holden & Morawetz, *The 2022 Annotated Bankruptcy and Insolvency Act*, Thomson Reuters, Toronto, 2022 at p. 102-103,

> "the words "any other person is aggrieved" must be broadly interpreted. They do not mean a person who is disappointed of a benefit that he or she might have received if some other order had been made. A "person aggrieved" is a person who has suffered a legal grievance, a person against whom a decision has been pronounced by the trustee that has wrongfully deprived him or her of something, or wrongfully refused him or her something, or wrongfully affected his or her title to something: *Re Sidebotham*, (1880), 14 Ch.D. 458 at 465; *Liu v. Sung*, (1989), 72. C.B.R. (N.S.) 224 (BCSC)."

[31] This Court reached the same conclusion in *Global Royalties Ltd. v. Brook*, 2016 ONSC 6277 at para. 13.

[32] I conclude that in this case, the limited partners lack the requisite standing to oppose the motion.

Should the Appeal Proceed *de Novo*?

[33] As stated above, the authority of the court to expunge or reduce a proof of claim is found in section 135(5) of the BIA.

[34] I am satisfied that this Court may direct that an appeal from a disallowance of a claim by a trustee proceed by way of hearing *de novo* where it determines that to proceed otherwise would result in an injustice to the creditor. (see *Credifinance Securities Limited v DSLC Capital Corp*, 2011 ONCA 160 at para. 24, citing *Charlestown Residential School, Re*, 2010 ONSC 4099 at paras. 1, 18, and *Re: Poreba*, 2014 ONSC 277 at para. 32).

[35] I recognize, as did the Court of Appeal in *Credifinance*, that this practice is not uniform across the country. I also recognize that a major legislative objective of the bankruptcy regime is to maximize efficiency and the expeditious determination of claims between and among the stakeholders, and that this, in turn, could support the exercise of deference in the review of a decision of a trustee. In my view, that is why appeals of this nature should generally proceed as true appeals, based on a record consisting of the materials relied upon by the trustee in its decision to disallow the claim.

[36] However, it seems to me that the present case is an example of precisely the type of case where to proceed otherwise than *de novo*, and limit the record to that material originally filed in support of the claim, would result in an injustice to the creditor. That is exactly what section 135(5) is designed to correct or avoid, and in circumstances such as this, the appeal can and should proceed *de novo* in the sense that materials not originally before the trustee can and should be considered by the court.

[37] The *Poreba* case is such an example, where the Master [now Associate Judge] concluded that a hearing *de novo* was appropriate because there were significant issues of credibility such that fairness required that the claimant be given an opportunity to provide *viva voce* evidence and to explain certain issues.

[38] The evidence that, in my view, is relevant both to a determination of the claim and to my conclusion that to exclude it would work an injustice on the creditor, is described below. The creditor and the Proposal Trustee acted openly and transparently and entering into the settlement agreement, in the context of the appeal by the creditor. They did not act in an underhanded or unfair manner.

Should the Appeal be Allowed?

[39] Notwithstanding my conclusion above that the limited partners lacked the requisite standing to oppose this motion, I have considered their evidence and arguments with respect to the merits of the appeal, in case I am wrong. Moreover, CBRE seeks an order allowing the appeal, in any event of opposition.

[40] In this case, what occurred was rather straightforward. Based on the information and material originally available to it, the Proposal Trustee disallowed the claim. This seems reasonable when one considers the summary nature of claims evaluation by a trustee, in the somewhat unique circumstances of this case where the listing agreement giving rise to the claim for the commission on the sale of the property was first oral and then reduced to writing but through inadvertence the written agreement was never executed.

[41] However, and as stated above, when additional material was filed with the Proposal Trustee, it was of the view that the claim ought properly to be allowed. The Proposal Trustee did not, however, purport to allow an appeal from its own decision. Rather, it agreed, pursuant to the provisions of the settlement agreement, to support and not oppose the appeal by the creditor, properly brought pursuant to section 135(5), in exchange for the agreement of the creditor not to seek costs against the Proposal Trustee.

[42] I point this out in part due to the argument advanced by the limited partners to the effect that the disallowance of a claim by the Proposal Trustee is final and conclusive with the result that the Proposal Trustee has no residual power to reconsider its own decision or reverse itself. Again, that is not what has occurred here. Rather, the settlement agreement was entered into in the context of the appeal properly brought by the creditor.

[43] There is no dispute on this motion as to several relevant facts:

a. CBRE entered into a listing agreement with YSL for the YSL Property;

b. CBRE introduced YSL to Concord for the purposes of acquiring the YSL Property;

c. Concord in fact did acquire the YSL Property; and

d. the commission claimed by CBRE is equal to 0.65% of the total consideration paid for the YSL Property.

[44] For its part, Concord agrees and acknowledges that CBRE introduced it to YSL, although it has no knowledge of the agreement with CBRE. The evidence on this motion is that the Proposal Trustee in making its decision relied on information provided by Concord to the effect that it dealt with the Debtors at all times and did not have dealings with CBRE.

[45] However, that information was not provided to the creditor that had advanced the claim, CBRE. CBRE accordingly did not have any opportunity to make submissions with respect to, or file evidence to challenge, that statement from Concord.

[46] The evidence of Concord as subsequently provided to the Proposal Trustee and filed on this motion is to the effect that CBRE in fact introduced it to YSL for the purposes of acquiring the YSL Property.

[47] Indeed, the clear and unequivocal evidence of both counterparties to the agreement [CBRE and YSL] is consistent and clear: there was an agreement, CBRE performed the agreement and indeed was involved in negotiations right up until the conveyance of the YSL Property pursuant to the amended Proposal, and the commission is payable according to its terms.

[48] I am satisfied that this is clear from the evidence, and in particular the affidavit of Mr. Ted Dowbiggin, the former president of Cresford, and the affidavit of Mr. Casey Gallagher, VP of CBRE, relied upon by CBRE.

[49] I referred above in these reasons to the oral agreement of January, 2020 and the subsequent written agreement of February 21, 2020 and the fact that the latter had never been formally signed. As noted, the written agreement provided that the term of the contract ended on August 20, 2020, and the holdover clause [section 4.1] essentially extended the entitlement to a commission for an additional 90 days.

[50] The limited partners submit that even if the YSL Property was conveyed pursuant to the [amended] Proposal, that occurred outside the 90-day period with the result that the commission ought not to be payable.

[51] I am satisfied based on the evidence described above and particularly the evidence of Messrs. Dowbiggin and Gallagher, and in the absence of any contrary evidence put forward by any party, that the negotiations between YSL and Concord commenced with their introduction and continued until the acquisition of the YSL Property by Concord through the proposal, and specifically during the holdover period. The limited partners did not cross-examine either of those witnesses on their evidence with respect to these points. CBRE continued to act as listing broker and responded to questions from YSL during the negotiations.

[52] In addition, the Debtors themselves support the claim and have confirmed such to the Proposal Trustee. This is consistent also with the conduct of both the Debtors on the one hand and CBRE on the other, prior to the claim being advanced, as the parties to the agreement performed it according to its terms and acted in all respects as if the written agreement had been executed.

[53] Finally, I observe that Concord itself supports the claim being allowed and it, very arguably, has the most to gain if the claim were denied.

[54] The limited partners oppose the relief sought but were not parties to the impugned agreement nor, obviously, were they present for any of the discussions leading to the oral agreement.

[55] The limited partners argue that the terms of the agreement did not entitle CBRE to the payment of the commission since the sale of the YSL Property was not a sale by agreement of purchase and sale within the meaning the commission agreement.

[56] CBRE, one of the parties to that agreement, supported by both the Debtors [the counterparty to the agreement] and the Proposal Trustee, submits that this includes an agreement pursuant to which consideration is given for the conveyance of title to the YSL Property. I agree. I also agree that a proposal is a form of contract [between the debtor and its creditors].[See *Jones v. Ontario*, (2003), 66 O.R.(3d) 674 (ONCA)].

[57] In the result, I am therefore satisfied that to exclude this clear and cogent evidence would result in the disallowance of the claim and that would be an unjust result in the circumstances of this case.

[58] For all of the above reasons,

a. the limited partners do not have standing to oppose or the relief sought on this motion by the creditor [CBRE] supported by the Proposal Trustee and the Debtors;

b. in this case, the appeal from the decision of the Proposal Trustee should be considered, and has been considered by me, as a hearing *de novo*, since to do otherwise would result in an injustice to the creditor [CBRE]; and

c. the appeal should be allowed and the motion granted.

[59] Accordingly, the disallowance of CBRE's claim by the Proposal Trustee is set aside and the claim is allowed.

[60] CBRE, the Proposal Trustee and the limited partners have all submitted costs outlines. CBRE seeks partial indemnity costs, inclusive of fees, disbursements and HST, of $64,896.07. The Proposal Trustee seeks costs on the same basis of $58,948.48. The costs outline of the limited partners supports a claim for costs on the same basis of $21,725.48.

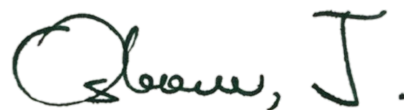
[61] Exercising my discretion pursuant to section 131 of the *Courts of Justice Act*, and considering the factors in Rule 57.01, I have determined that costs should follow the event, and that CBRE and the Proposal Trustee have succeeded on the merits and should be entitled to costs.

[62] However, I am conscious of the fact that the Proposal Trustee supported the motion of CBRE and I am conscious of avoiding any duplication in work and fees. I am also cognizant of the somewhat unique nature of the circumstances and chronology in this case.

[63] The validity of the claim flows from the entitlement to the commission under the listing agreement, and the facts that support the fact of that agreement, as they do, are not readily apparent at first blush from a review of the facts given the initial oral agreement and the terms of the holdover clause in the written agreement [i.e., the 90-day period]. The fact that it is not immediately straightforward is illustrated perhaps by the original concerns of the Proposal Trustee.

[64] I also observe, as submitted by the limited partners, that given the manner in which the events unfolded, this appeal would have been necessary even if it had been unopposed. However, it would have been a much more straightforward and less expensive proceeding.

[65] Accordingly, in considering the facts and Rule 57 factors, in my view CBRE is entitled to partial indemnity costs from the limited partners in the amount of $25,000 and the Proposal Trustee is entitled to costs on the same basis in the amount of $18,000. All amounts are inclusive of fees, disbursements and HST. Costs payable within 60 days.



Osborne, J.

Date: November 16, 2022

Appendix “G”

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.

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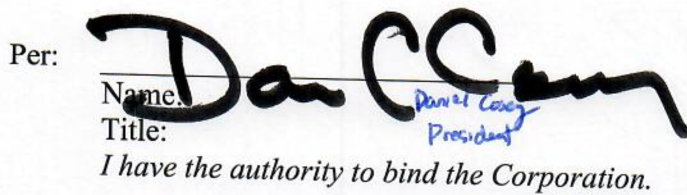
Dated at Toronto, this 15th day of July, 2021.

YSL RESIDENCES INC.

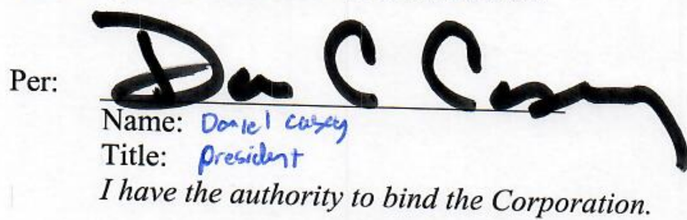
Per:



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 “H”

FORM 77

Notice of Disallowance of Claim, Right to Priority or Security *or* Notice of Valuation of Claim
(Subsection 135(3) of the *Bankruptcy and Insolvency Act*)

TAKE NOTICE THAT:

As Licensed Insolvency Trustee acting IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. (collectively, "**YSL**"), KSV Restructuring Inc. (the "**Trustee**") has disallowed the unsecured claim of Maria Athanasoulis, in part, pursuant to subsection 135(2) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), for the reasons set out below.

Your Proof of Claim, as filed with the Trustee, claims:

1. $1 million in respect of damages for wrongful dismissal (the "**Wrongful Dismissal Claim**"); and

2. $18 million in respect of damages for breach of an oral agreement that YSL would pay Ms. Athanasoulis 20% of the profits earned on the YSL project (the "**Profit Share Claim**").

In determining your claims, the Trustee has reviewed and is relying on the following, which represents the support and record for your claim:

1. the Proof of Clam, as filed;

2. all material on the record in these proposal proceedings to date, together with all material on the record in the proceedings by the limited partners of YG Limited Partnership (the "**LPs**") against YSL Residences Inc. et al. in Court file numbers CV-21-00661386-00CL and CV-21-00661530-00CL;

3. the partial arbitration award of Mr. William G. Horton (the "**Arbitrator**") dated March 28, 2022 (the "**Partial Award**");

4. all material filed and produced, and all testimony given, in the "Phase 1" arbitration (the "**Arbitration**") before the Arbitrator; and

5. all responses received by the Trustee from counsel to the LPs and counsel to Ms. Athanasoulis in respect of any information requests of the Trustee.

Wrongful Dismissal Claim

Pursuant to the Partial Award, the Arbitrator held that: (i) YSL was a common employer of Ms. Athanasoulis; and (ii) Ms. Athanasoulis was constructively dismissed from her employment in December 2019. The Trustee accepts the findings of fact of the Arbitrator.

The records of the relevant Cresford entity reflect that Ms. Athanasoulis' employment income was $889,400 in each of 2017 and 2018.

The Trustee has confirmed that Ms. Athanasoulis received $120,000 as a combined, aggregate settlement in respect of both her similar wrongful dismissal and profit share claims in: (a) the 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership proceedings; and (b) The Clover on Yonge Inc. and The Clover on Yonge Limited Partnership proceedings. The Trustee has confirmed with PricewaterhouseCoopers Inc., the court officer in those other proceedings, that such settlement did not incorporate any value in respect of the profit share claim. The Trustee has also determined that Ms. Athanasoulis has not received any other payments in respect of her claims in any other Cresford entity insolvency proceedings.

The Trustee has also taken into account Ms. Athanasoulis' mitigation efforts subsequent to the wrongful termination of her employment and the advice of its counsel on the amount of damages generally awarded by Ontario courts given similar facts and circumstances.

Given the foregoing, the Trustee has determined to allow the Wrongful Dismissal Claim in the amount of $880,000 as an unsecured claim.

The Trustee received objections from certain of the LPs to any allowance of the Wrongful Dismissal Claim and it has considered these objections in making its determination. The Trustee is of the view that the LPs have no standing to object to the Trustee's determination of the Wrongful Dismissal Claim for the reasons set out in the decision of Mr. Justice Osborne in respect of another claim in the proceedings in *YG Limited Partnership and YSL Residences Inc.*, 2022 ONSC 6548. The Trustee is aware that certain of the LPs have appealed this decision.

Profit Share Claim

The Trustee has determined to disallow the Profit Share Claim in full for several, independent reasons that follow.

Equity Not Debt

Pursuant to the Partial Award, the Arbitrator found that Ms. Athanasoulis had a profit share agreement (the "**PSA**") that entitled her to 20% of the profits earned on any of Cresford's current and future projects. The Arbitrator also found that: (a) profits were to be calculated, on a good faith basis, based on the *pro forma* budgets prepared by Cresford in respect of each project; (b) Ms. Athanasoulis' share of the profits was to be paid by the relevant owner that earned the profit; and (c) profits were to be shared when earned, usually at the completion of a project. The Trustee accepts the findings of fact of the Arbitrator.

Section 121 of the BIA provides as follows:

> 121 (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

An entitlement to a share of the profits earned by YSL (*i.e.*, the relevant owner) is not a "provable claim" pursuant to the BIA. It is not a debt obligation of YSL but rather, in substance, an equity entitlement. Profits are, by definition, the difference between the amount earned and the amount spent in buying, operating, or producing something. It is the amount remaining for distribution to

the owners of the enterprise. This is also reflected on YSL's *pro forma* budgets. As such, the Trustee has determined that the PSA, which is an agreement to share in the profits earned by the owner of the YSL project is, in substance, not a debt or liability to which YSL was subject on the day on which these proposal proceedings were commenced.

A claim based on a breach of the PSA that has not been reduced to a judgment debt is also not a "provable claim". The Partial Award also makes no finding as to whether or not the PSA has in fact been breached or the damages associated with such breach assuming one exists.

No Profits Earned by YSL

The Arbitrator held that Ms. Athanasoulis' share of profits resulting from the YSL project was to be paid by the relevant owner that earned the profit, meaning a profit must be earned by the owner of the YSL project for there to be any profit in which to share.

As of the date that these proposal proceedings were initiated, YSL had not completed the YSL project. Indeed, the initial excavation phase of the YSL project was not complete at that time and the construction schedule for the YSL project as of October 2019 contemplated that the YSL project would not be completed until 2025 at the earliest. Accordingly, as of the date of the proceedings, no profit had been earned by the YSL project and, therefore, there was no profit in which to share.

Without prejudice to the Trustee's determination that any claim based on the PSA is not a provable claim, to the extent that Ms. Athanasoulis relies upon the projected profitability of the YSL project as a contingent claim for a lost profit share, the Trustee values such a contingent and unliquidated claim at zero. The assumptions required to determine such a possible amount over such a long time horizon are far too speculative and the alleged damages far too remote to be capable of being considered a provable claim or the subject of any meaningful and reasonable computation.

In addition to the foregoing, the Trustee notes that an affiliate of Concord Properties Developments Corp. ("**Concord**"), the sponsor of the proposal filed and sanctioned by the Court in these proposal proceedings (the "**Proposal**"), became the owner of the YSL project upon implementation of the Proposal. Accordingly, even if the YSL project is successfully brought to completion, despite all of the intervening events challenging such an outcome, any profits earned on the YSL project will not accrue to the relevant owner, *i.e.*, YSL. Ms. Athanasoulis is not entitled to claim a profit-share under the PSA for amounts earned by Concord's affiliate who is not a party to the PSA.

Moreover, the LPs made a total capital contribution of $14.8 million to the YG Limited Partnership in exchange for Class A Preferred Units. Pursuant to the limited partnership agreement in respect of the YG Limited Partnership, the LPs are entitled to a preferred return from the proceeds of the YSL project. Once the LPs are repaid their capital contribution plus their preferred return, any remaining proceeds from the YSL project would be paid to the Class B unit holder, being Cresford (Yonge) Limited Partnership, a Cresford entity. Depending on the resolution of the remaining disputed claims in these proposal proceedings, the most that would be available for distribution to the LPs is approximately $16 million[1] which is less than the amount of their capital contribution

[1] Assuming that the CBRE, Zhang and Athanasoulis claims are all disallowed.

plus their preferred return. Accordingly, the disposition of the YSL project in these proceedings also has not resulted in any profit earned by Cresford (Yonge) Limited Partnership.

Ms. Athanasoulis provided evidence in the Arbitration that "profit" pursuant to her PSA is determined by taking revenue, minus costs, minus the amount returned to the LPs, "and the balance is your net profit".[2] Again, on this basis, there is no profit earned by YSL.

Lastly, to the extent that Ms. Athanasoulis claims that she is entitled to a share of unrealized hypothetical gains on the YSL project as of the date of her dismissal, the Trustee notes that this is contrary to an essential term of the PSA established by the Arbitrator. The Arbitrator found that profits were to calculated based on *pro formas*, but only payable when earned at the completion of the YSL project. There is no dispute that the *pro formas* would be revised continuously throughout the life of the YSL project in order to take into account actual events that transpired. Ms. Athanasoulis cannot claim a share in profits based on an unrealized vision of the YSL project that, as we now know, will never materialize. Such profits are not "earned" until the project is completed. Profits are not "earned" during the life of project because the paper value of the project may increase at a particular point in time. The earning of a profit and asset appreciation are two very different concepts. Furthermore, given that an essential term of the PSA requires profits to be calculated at project completion, any claim for damages for a breach of the PSA must take into account the actual profits earned by YSL upon completion of the project, which as noted above is zero.

<u>Profit Share Claim is Subordinated</u>

In connection with the Arbitration, Ms. Athanasoulis admitted three times under oath – in discovery, in direct examination, and on cross-examination – that any entitlement to a profit-share she may have would arise only after the LPs are repaid their original investment.

On examination for discovery on January 13, 2022, Ms. Athanasoulis stated:

> Q. Did you discuss anything about how profit would be calculated?
>
> A. It was going to be calculated -- you know, in my conversations with Dan, it would be calculated after paying the costs and any... and after paying the equity to... and specific to YSL and 33 Yorkville, it would be paid after the equity was repaid to the LP investors.
>
> Q. You said specific to YSL and 33 Yorkville that you discussed with Dan that profit would be after equity paid to limited partners. So is it right if I understand that Clover and Halo, that was not the definition of profit that you discussed?
>
> A. Clover and Halo didn't have limited partners. So it was after the equity was... like, the equity of -- Dan's equity was repaid.[3]

---

[2] Transcript of Direct Examination of Ms. Athanasoulis on February 22, 2022, page 153, lines 13-23.

[3] Transcript of Discovery of Ms. Athanasoulis on January 13, 2022, qq. 211-212.

Ms. Athanasoulis confirmed the same understanding in her evidence in-chief during Phase 1 of the Arbitration:

> Q. Okay. And turning down to the profit listed here on the, on the pro forma, in general terms, how was this calculated on the pro forma?
>
> A. How is the profit calculated? So, basically, it takes your revenue, minuses your costs, minuses the amount returned on equity, and the balance is your net profit.
>
> Q. And was Cresford consistent in how it assessed and how it calculated profits?
>
> A. Yes.[4]

She also confirmed the same evidence on cross-examination at Phase 1 of the Arbitration:

> Q. Once construction of a condominium is complete, you register the condominium with the Condominium Authority of Ontario. Do I have that right?
>
> A. Correct. I mean, you register it with -- yes. You register it with the authorities that -- the city.
>
> Q. Right. And we talked about registration before. I'm just trying to make sure we have it clear what that means. And then, once it's registered, you turn the building over to the condominium corporation for that particular property, right?
>
> A. Yes.
>
> Q. And you collect the balances due from purchasers, and you sell any remaining units that might be in the building?
>
> A. Yes.
>
> Q. And then you pay the trades and any fees that might be owing to the kind of management companies that you've described?
>
> A. Sure. You would, you would be paying them along the way, yeah.
>
> Q. And you repay the loans and return equity to investors?
>
> A. Yes.
>
> Q. And it's at this point that you can calculate the actual profits earned by the project, correct?
>
> A. Okay, yes.[5]

---

[4] Transcript of Direct Examination of Ms. Athanasoulis on February 22, 2022, page 153, lines 13-23.

[5] Transcript of Cross-Examination of Ms. Athanasoulis on February 23, 2022, page 232, line 24 to page 234, line 3.

As the LPs will not be receiving a full return of their equity investment in the YSL project, it is unclear to the Trustee how Ms. Athanasoulis can make a successful claim for a share in profits amount when she has admitted repeatedly that her Profit Share Claim would be calculated after a full return of equity to the LPs.

AND FURTHER TAKE NOTICE that if you are dissatisfied with our decision in disallowing your claim in whole or in part (or a right to rank or your security or valuation of your claim), you may appeal to the court within the 30-day period after the day on which this notice is served, or within any other period that the court may, on application made within the same 30-day period, allow.

Dated at Toronto, this ___ day of December, 2022.

KSV RESTRUCTURING INC.,
in its capacity as the proposal trustee
for YG LIMITED PARTNERSHIP AND
YSL RESIDENCES INC.

by ______________________________
Name: Robert Kofman
Title: President

TAB 11

Consolidated Court File No. 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c. B-3, as amended
IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
Claim of Maria Athanasoulis against
YG Limited Partnership and YSL Residences Inc.

EXAMINATION FOR DISCOVERY OF MARIA ATHANASOULIS
held via Arbitration Place Virtual
on Thursday, January 13, 2022, at 9:03 a.m.

CONDENSED TRANSCRIPT WITH INDEX

APPEARANCES:

Mark Dunn
Sarah Stothart
for the Claimants

Chenyang Li
for the Respondents

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

Also Present:

Murtaza Tallat

Arbitration Place © 2022
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UNDER ADVISEMENTS

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Refusals (REF) found at pages: 98

Under Advisements (U/A) found at pages: 11, 17

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1 Arbitration Place Virtual
2 --- Upon commencing on Thursday, January 13, 2022,
3 at 9:03 a.m.
4 AFFIRMED: MARIA ATHANASOULIS
5 EXAMINATION BY MR. LI:
6 1 Q. Good morning,
7 Ms. Athanasoulis. I hope I am pronouncing your
8 name correctly, but please correct me if I'm
9 wrong.
10 A. You said it --
11 2 Q. Am I --
12 MR. DUNN: Yes, you are
13 actually not. It's Athanasoulis.
14 MR. LI: Athanasoulis, okay.
15 3 Q. I would like to start with
16 a couple questions about some biographical
17 information. First off, I would like to
18 understand a bit about your educational
19 background. So could you just let me know where
20 you went to university and when you graduated?
21 A. I did not go to
22 university. I went to Seneca College, and I did
23 not graduate.
24 4 Q. What program did you go to
25 Seneca for?

Page 4

1 A. Business administration.
2 5 Q. Approximately when did you
3 attend Seneca?
4 A. After high school, so I
5 would have to go back and calculate the exact
6 year.
7 6 Q. Okay, that's no problem.
8 Am I correct in understanding that you don't
9 really have any other professional certifications?
10 And what I mean by professional certifications are
11 things like an accounting certification, certified
12 financial analyst designation, that sort of stuff.
13 A. Correct.
14 7 Q. You started at Cresford in
15 2004; is that right?
16 A. Correct.
17 8 Q. Did you have any
18 professional jobs before Cresford?
19 A. I worked at TD Bank before
20 joining Cresford if...
21 9 Q. Okay. Do you recall what
22 years you worked at TD Bank?
23 A. Not off the top of my
24 head. But they would have been from when I was
25 17, so I would have to go back and figure out that

Page 5

1 year, up until the weeks before joining Cresford.
2 When I first joined, it was Canada Trust, and then
3 I merged into TD, TD Canada Trust?
4 10 Q. Understood. What did you
5 do at TD Bank?
6 A. Had various roles, I
7 started off as a teller and progressed my way up
8 through various roles at the bank.
9 11 Q. Do you recall what your
10 role was at the end when you left TD?
11 A. I don't remember the
12 specific title, but I do remember the level. I
13 believe it was a level 10, which is a senior role
14 at the bank.
15 12 Q. What was the job
16 responsibility at -- as the level 10 role? Were
17 you in marketing? Finance? Retail?
18 A. I was in small business
19 credit, in a division of small business credit.
20 13 Q. In your work in the small
21 business credit division at TD, correct me if I'm
22 wrong, but would I be correct in understanding
23 what you would be doing is reviewing credit
24 applications from small businesses, looking at
25 potentially financial statements those small

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1 businesses are putting forward, and corresponding
2 with internal bank staff as to whether the
3 business is creditworthy essentially?
4 A. I was doing that, and at
5 the end I was also dealing with distressed
6 businesses.
7 14 Q. Okay, distressed
8 businesses.
9 All right. I think you had
10 mentioned before that within weeks after you left
11 TD Bank you started at Cresford in 2004; is that
12 right?
13 A. Correct.
14 15 Q. What was the... your
15 original job title or position when you joined
16 Cresford?
17 A. Manager, special projects.
18 16 Q. Do you recall in that role
19 what your remuneration was?
20 A. Not specifically. It
21 would have been in the hundred-thousand-plus
22 range.
23 17 Q. Do you recall if there
24 were any bonus entitlements in that role?
25 A. I don't recall the

Page 7

1 arrangements of my original engagement.
2 18 Q. Do you recall who hired
3 you into that role?
4 A. Ted Dowbiggin and Ian
5 Scott.
6 19 Q. Am I correct that Ted
7 Dowbiggin by the time... or he left -- he left
8 Cresford before... I am going to use a neutral
9 term. I understand the parties have different
10 perspectives on the characterization of the end of
11 your employment at Cresford. For the purpose of
12 this examination, I don't want to characterize it
13 in a way. I am just going to say when you left
14 Cresford. Is that all right?
15 But I'm -- I am not going to
16 say you resigned. I am not going to say you were
17 terminated. I am just going to say -- when I
18 refer to the January 2, 2020 date, I am just going
19 to say you left Cresford at that date. Is that
20 fair?
21 A. It... Mark, is... I would
22 like to seek the guidance of my --
23 MR. DUNN: I guess what you're
24 saying is we are just using a neutral term.
25 MR. LI: Yes.

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1 MR. DUNN: It doesn't carry
2 any --
3 MR. LI: I just don't want to
4 get on a fight --
5 MR. DUNN: -- weight, which
6 makes --
7 MR. LI: Yes.
8 MR. DUNN: Which makes sense
9 that as of January 2nd she was no longer employed
10 and if you want to use that she left in a
11 colloquial sense without attaching any meaning to
12 it, that -- that's fine with us.
13 MR. LI: Okay, thank you.
14 20 Q. Am I correct in
15 understanding that by January 2, 2020 you left
16 Cresford, Tow -- Ted Dowbiggin was -- had also
17 left Cresford by that time? He was no longer
18 employed at Cresford?
19 A. He was no longer employed.
20 But in -- I believe he was somewhat back without
21 my knowledge.
22 21 Q. At the time that you were
23 hired in 2004, he would not have been in a
24 position as senior as he ultimately was by 2020.
25 Is that fair to say?

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1 A. That he was the same
2 position -- he was Dan's right-hand man in terms
3 of acquisitions and financings. So he had the
4 same... I don't see -- I mean at various times --
5 like, I don't know what his roles were prior to me
6 joining because I heard he used to take care of
7 customer service and other things. But in terms
8 of financing and acquisitions, that is consistent
9 throughout his tenure.
10 22 Q. When you were hired by Ted
11 Dowbiggin then in 2004, did you negotiate with him
12 regarding compensation? And do you know who
13 ultimately approved the compensation back then?
14 A. I negotiated, I believe,
15 with Ian and Ted, and so Ian was always part of it
16 as well, and Dan would have ultimately approved
17 whether or not I joined Cresford is my
18 understanding.
19 23 Q. What was Ian's role at the
20 time?
21 A. He was vice president of
22 finance.
23 24 Q. In your first position as
24 manager, special projects, were you in the
25 "finance department," so to speak? Or were you in

Page 10

1 a different --
2 A. Yes.
3 25 Q. Could you just give me a
4 bit of explanation or context about what your job
5 responsibilities were as manager, special
6 projects?
7 A. I was helping gather data
8 to create the financing, to create the financing
9 background that Ian was preparing. I was helping
10 him with the numbers, basically their support for
11 them to submit the credit applications to the
12 bank.
13 26 Q. So fair to say fairly... I
14 mean not a -- not identical but fairly similar to
15 what your final responsibilities were at TD Bank,
16 just from the other side maybe?
17 A. A little different only
18 because I -- it wasn't -- like, I was specifically
19 focused on real estate. The businesses that I was
20 working on were not necessarily real estate. They
21 were all types of businesses. But this one, it
22 was -- it was definitely something slightly new in
23 terms of the... the scope of it.
24 27 Q. When you first joined in
25 2004 then, were the terms of your employment

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1 memorialized in any written agreement?
2 A. I believe they would have
3 been. I... I don't have a copy but...
4 28 Q. Okay.
5 A. I -- I'm...
6 29 Q. Have you performed a
7 search of your records for a written copy of that
8 agreement?
9 A. I don't have a copy of it.
10 30 Q. Okay. Mr. Dunn, could I
11 have an undertaking for you to just confirm that
12 no written copy exists in Ms. Athanasoulis'
13 records?
14 U/A MR. DUNN: I will take that
15 under advisement.
16 MR. LI: Thank you.
17 31 Q. Okay. Shortly after you
18 joined Cresford in 2004, your job responsibilities
19 changed, or you got a promotion; is that right?
20 A. Correct.
21 32 Q. Do you remember when you
22 received your first promotion or job title change?
23 A. The timing I wouldn't
24 remember, but it was shortly after, within a --
25 within six months to a year.

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1 33 Q. What was the next job
2 position that you assumed?
3 A. The next job was primarily
4 focused on market data and supporting Dan in the
5 role of marketing and sales.
6 34 Q. You just described in this
7 role then you were working with Dan. In your
8 prior role as manager, special projects, was your
9 day-to-day work with Ian and Ted rather than with
10 Dan?
11 A. Correct.
12 35 Q. Do you recall what your
13 remuneration was in this new role?
14 A. I don't have the specific
15 details. But it would be in the... in the
16 information that Cresford would be able to access.
17 36 Q. Fair to say it was higher
18 than... I think you gave a $100,000-plus range for
19 your original role. So fair to say that --
20 A. It kept going north.
21 37 Q. Your recollection would be
22 it would be higher?
23 A. Correct.
24 38 Q. Do you recall any terms of
25 any bonus arrangements in this role?

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1 A. I don't recall the
2 specifics. It was a role that grew very quickly.
3 So I don't recall at what specific point from
4 manager to then taking on the specific role
5 marketing and sales. It's... you know, it's... it
6 is not dates that I firmly remember changes to my
7 employment or --
8 39 Q. Sorry, I was just -- not
9 about changes to your employment. I just meant do
10 you recall in this role if you had any discussions
11 about what potential bonuses you would be paid?
12 Or was there an agreement about what bonuses you
13 might be paid?
14 A. Not in the manager of
15 special projects.
16 40 Q. The next role though --
17 and I don't -- I don't want to... I want to be
18 fair to you. In your statement of claim, I think
19 you described that in your next role you were vice
20 president of sales and marketing. Does that ring
21 a bell?
22 A. Yes, that is correct.
23 41 Q. So then as the vice
24 president, sales and marketing, was there any
25 discussion about any bonus entitlements?

Page 14

1 A. Yes.
2 42 Q. Do you recall what they
3 were?
4 A. They changed at again
5 various times because my role -- my role was
6 growing, and in 2007, where we brought in-house
7 the various projects, I had a successful sale
8 in-house of a project called NXT. At that time,
9 Dan owed me a bonus for completing the successful
10 sale of that project, which was $200,000.
11 43 Q. So there was a... at least
12 to your recollection, there was a one-time bonus
13 of $200,000 for the successful bringing in-house
14 of a project called NXT?
15 A. Correct.
16 44 Q. And NXT is an acronym?
17 A. Yes. It's -- it's -- it
18 is a project. I don't know the legal name off the
19 top of my head. But it was a project that I sold
20 in-house, and there was a bonus negotiated for the
21 successful sale.
22 45 Q. Do you recall when that
23 bonus was negotiated, when it was initially
24 discussed?
25 A. It was at the time of

Page 15

1 selling the product so 2007.
2 46 Q. And the terms of the bonus
3 you recall you re -- do you -- you recall
4 receiving the bonus at least? Like, it was --
5 A. Correct.
6 47 Q. And you recall being paid
7 the bonus when the project was successfully
8 brought in-house?
9 A. I... I would have to go
10 back and sort of time when the payment was. But
11 it was an agreed to amount that was non-refundable
12 and paid because of my initiatives of selling the
13 agreed product to... to make the project
14 successful.
15 48 Q. What is NXT then? I think
16 we have discussed NXT a bit, but I don't know what
17 it is. So could you please just describe it for
18 me?
19 A. NXT was a two-phased tower
20 project out in the west end, had... it was in --
21 at the foot of High Park.
22 49 Q. I see, okay. When you say
23 you got the bonus after you sold the project,
24 you... you mean you were marketing, and you
25 achieved a certain level of sales of the units I

Page 16

1 assume, and then the bonus was paid. Is that fair
2 to say?
3 A. The bonus was confirmed.
4 When it was paid I would have to go back and sort
5 of understand the timing of it. But it was
6 confirmed that that money was going to be paid to
7 me.
8 50 Q. Got it. A sales-based
9 bonus? Is it fair to say that?
10 A. I would call it more of a
11 marketing bonus.
12 51 Q. Okay, okay, sure.
13 A. Or a promotional bonus.
14 52 Q. Okay, okay. Do you recall
15 if any of the terms of your remuneration or this
16 bonus when you were vice president, sales and
17 marketing were memorialized in writing?
18 A. They may have been. I
19 don't have any records of that specific period of
20 my employment with Cresford. But at the time
21 there were other projects coming. My remuneration
22 was changing on a constant review basis because my
23 role was growing, and my business experience and
24 what I was taking on was changing rapidly.
25 53 Q. Okay. Mr. Dunn, I would

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1 like an undertaking for you to conduct a search of
2 the records and to produce if it exists any
3 employment agreements or bonus agreements relating
4 to Ms. Athanasoulis' role as vice president, sales
5 and marketing.
6 MR. DUNN: Atha -- so I
7 apologize for correcting you, but it's -- it's
8 Athanasoulis.
9 MR. LI: Sorry, Athanasoulis.
10 MR. DUNN: It will just make it
11 easier for the record if we... if we are
12 consistent.
13 I will take that under
14 advisement just for -- and I'm sure you already
15 know this, but there are a couple of documents
16 from the 20 -- I assume you are talking about the
17 whole period that she was vice president, sales
18 and marketing?
19 MR. LI: Yes, any employment
20 agreements that existed in that time when she was
21 vice president, sales and marketing.
22 U/A MR. DUNN: Okay. I will take
23 that under advisement. There are a couple of
24 documents that I'm... I'm sure you have looked at
25 from the 2013 time period that deal with her

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1 compensation.
2 MR. LI: I understand, yes.
3 MR. DUNN: Okay.
4 MR. LI: My concern is just
5 that I think that draft employment agreement that
6 was produced is dated as of November 2014, and by
7 that time she was not vice president, sales and
8 marketing anymore.
9 MR. DUNN: No, so the first two
10 docu -- I'm -- I am referring to the first two
11 documents on our list, which is C001 and C002 --
12 MR. LI: Okay.
13 MR. DUNN: -- do relate to her
14 role as vice president.
15 MR. LI: Okay, thank you.
16 54 Q. All right. I think in
17 your statement of claim you state that by 2012 you
18 were promoted to president, sales of marketing; is
19 that correct?
20 A. Yes.
21 55 Q. Is that accurate to your
22 recollection?
23 A. The timings of my
24 promotions were very... and the use of different
25 titles were very... they weren't very formalized

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1 with the time that... my role was progressing in
2 the world of each project that I was launching
3 because my remuneration was with all the specific
4 projects in terms of the bonuses and of such. So
5 it was -- it -- there wasn't really a specific
6 hard date of when my title changed except for it
7 was, okay, let's use this title to launch this
8 project.
9 56 Q. So it is your recollection
10 though you became more senior in the organization
11 over time?
12 A. Yes.
13 57 Q. I am just going by your
14 statement of claim. Can we say it is fair to say
15 that in or around 2012 you became sufficiently
16 more senior that to your recollection you were
17 given the title of president, sales and marketing?
18 A. Yes.
19 58 Q. Was there any remuneration
20 change that accompanied this new title?
21 A. Any remuneration change?
22 The remuneration change went hand in hand as the
23 projects grew. So the revenue obviously -- and
24 our city kept growing, and I would receive bonuses
25 based on the revenue of specific projects. So my

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1 income was going up based on the size of the
2 projects, which just kept growing and growing as
3 the revenues kept also increasing and increasing.
4 59 Q. Okay, I understand. At
5 this time, in or around 2012, do you recall any
6 terms of any bonus remuneration that you might
7 have had?
8 A. Yes. My bonus
9 remuneration, I was getting paid per project of
10 the .15 per cent of the revenue. But it was
11 always ongoing in negotiations as my role was
12 growing.
13 In 2013, early 2013, Dan had
14 hired an external management company that was
15 facilitating reviews of past performance and
16 documenting pay -- what everybody was paid because
17 it -- nothing was in order, and we were -- we
18 memorialized sort of at that point in time what I
19 was getting paid on the various -- from the
20 various entities.
21 60 Q. Do you have a record of
22 that written document that recorded what you were
23 being paid from various entities?
24 A. Yes. It is in the record.
25 61 Q. Could you just... I mean,

Page 21

1 Mr. Dunn, do you know what document that is being
2 referred to?
3 MR. DUNN: I believe she is
4 talking about C001 and the attachment.
5 MR. LI: Okay. I am going to
6 put up C001 --
7 THE WITNESS: Perfect.
8 MR. LI: -- for
9 Ms. Athanasoulis.
10 62 Q. Okay. Let me know if you
11 see that.
12 A. Yes, I can see it.
13 63 Q. This is the attachment to
14 a lead email dated February 6, 2013; is that
15 right?
16 A. Correct.
17 64 Q. It is from someone named
18 Jessica Harrison. Do you know who Jessica
19 Harrison is?
20 A. Yes. So she worked for
21 the consulting company that Dan had hired to help
22 with organizing various organizational issues
23 within the cor -- within the company.
24 65 Q. The email is sent to Ken
25 Marshall. Who is Ken Marshall?

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1 A. Ken Marshall at the time
2 was the president and COO of Cresford.
3 66 Q. Did you report to Ken
4 Marshall at the time?
5 A. Yes. And... that was very
6 grey as well, but I could say yes. But it was
7 grey.
8 67 Q. This is the attachment
9 that is attached to this email. So is this the
10 document you were referring to earlier that
11 memorialized what bonuses you would be paid on
12 different projects?
13 A. Yes, for that period of
14 time. NXT was a completed project by that point,
15 so it wasn't on this paper.
16 68 Q. Got it.
17 A. But for projects that were
18 in the... in the launch phase and construction
19 phase, they were memorialized as to what they were
20 going to pay me.
21 69 Q. I just want to walk
22 through a couple of these bullet points then to
23 better understand it. Do you see under the
24 heading "2012 Bonus," Ms. Athanasoulis?
25 A. Yes.

Page 23

1 70 Q. There is a first bullet
2 that says:
3 "Bonus to be paid in
4 recognition of Casa II and
5 1000 Bay launches." (As
6 read)
7 Do you recall the terms of that
8 bonus?
9 A. Yes. So I mean I... I...
10 with that specific... at that specific time, I had
11 sold Casa II and 1000 Bay and was paid .15 of the
12 sales of all those projects.
13 71 Q. I see. So how I'm
14 supposed to interpret this document is that this
15 first bullet is not a separate bonus from the
16 second bullet. Is that fair to say? Like, the...
17 the... under the heading "2012 Bonus," there are
18 four bullets, and all four bullets refer to the
19 terms of one bonus and not separate bonuses. Is
20 that how you would understand it?
21 A. Yes and no. Like, it was
22 -- it was changing. In terms of Casa II and 1000
23 Bay, I was -- my role was changing, and for that
24 period of time when it was with Ken, yes, it would
25 be for the sales. So, yes, you can interpret it

Page 24

1 all as one.
2 72 Q. For the 2012 bonus at
3 least, the bonus term -- one of the terms of the
4 bonus is 0.15 per cent of total sales of Casa II
5 and 1000 Bay. Is that fair to say?
6 A. Yes.
7 73 Q. It is not a 0.15 per cent
8 bonus of total sales of any Cresford project?
9 A. That was my arrangements
10 on any Cresford project though. I mean just, at
11 that specific time, those were the two projects
12 that were going.
13 74 Q. Got it. So, under the
14 heading "2013 Compensation Structure," there is a
15 bullet that says:
16 "$200,000 base salary for
17 fulfillment of
18 responsibilities
19 associated with the vice
20 president, marketing and
21 sales role." (As read)
22 And the second bullet says:
23 "Eligible for up to
24 $100,000 as a bonus for
25 achievement of the

Page 25

1 following." (As read)
2 If you just bear with me, I am
3 just going to read them:
4 "75 per cent based on the
5 sale of units at 399
6 Adelaide, Casa II, and
7 1000 Bay, both through
8 mini launches and working
9 with VIP agents to drive
10 sales; 25 per cent
11 discretionary bonus based
12 on input to the strategic
13 advisory committee,
14 organizational fit and
15 positive contributions to
16 the success of the
17 organization as an
18 executive." (As read)
19 Are you following along with
20 what I'm reading?
21 A. Yes, yes.
22 75 Q. There is no 0.15 per cent
23 total sales bonus referred to under the heading
24 "2013 Compensation Structure." Is that fair to
25 say?

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1 A. Yes, it is fair to say
2 that that's what this -- that... that you could
3 interpret it that way. But the sales bonus was
4 for sales and marketing. The compensation of my
5 role was to be the vice president of marketing and
6 sales.
7 76 Q. So the 0.15 per cent sales
8 bonus that you described in the statement of
9 claim, that would be a bonus that, at least based
10 on my review of this document, is not memorialized
11 in this document? And I mean in the statement of
12 claim you describe it as a 0.5 -- 0.15 per cent
13 bonus on total sales of any Cresford project, and
14 that is what I --
15 A. Correct.
16 77 Q. At least on my review of
17 this document, it is not described in this
18 document?
19 A. It does describe it
20 because the next project that was coming into the
21 pipeline was Casa III, which then memorializes the
22 .15, which is we just went in the middle, and that
23 was what I received on that specific project on
24 top of other compensations.
25 78 Q. I think what you are

Page 27

1 referring to in the answer just now is the third
2 heading in this chart; is that right?
3 A. Yes.
4 79 Q. Okay. It's... it states
5 "New Launch/Casa III Compensation Structure." So
6 it is referring to Casa III. But you would agree
7 with me at least in that bullet under that heading
8 it does not say 0.15 per cent of total sales of
9 any Cresford project?
10 MR. DUNN: Sorry, I --
11 THE WITNESS: That was the only
12 Cresford -- yes.
13 MR. DUNN: Counsel, if you
14 could... there were a couple propositions baked
15 into your question, if you could split them out
16 into separate questions. I am talking if you want
17 -- if you meant to ask all of those questions, I
18 think it will be a bit more clear on the record.
19 In particular, baked into the question was the
20 assumption that this refers only to the Casa III
21 compensation structure, which is one way to read
22 the document, not the only way to read the
23 document. So if that's... if that's what you're
24 asking, perhaps we could separate the question
25 out.

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1 MR. LI: Sure.
2 80 Q. What is your understanding
3 of what this third bullet says, Ms. Athanasoulis?
4 A. That I was going to
5 receive a sales commission on the next launch that
6 was coming with Cresford for --
7 81 Q. And the next -- sorry,
8 finish your thought there. I didn't mean to cut
9 you off. Please finish.
10 A. It's okay. Go ahead.
11 82 Q. The next launch was Casa
12 III; is that right?
13 A. Correct.
14 83 Q. Okay, so -- okay, thanks
15 for that. I am just going to stop the share now
16 because I don't think we need the document
17 anymore.
18 All right. I will just pull up
19 the statement of claim again.
20 Okay. I am following along
21 with your statement of claim, and I completely
22 understand all the other answers you gave about
23 how your job responsibilities grew in sort of an
24 amorphous manner, and they weren't totally formula
25 -- formally written down at every single juncture.

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1 But at least in the statement of claim, the next
2 role that you describe is in 2018 you were
3 promoted to president and chief operating officer;
4 is that correct?
5 A. There is a role though
6 that happens or a change in my overall
7 responsibility that happens in 2013, in '12-'13,
8 that morphs into a bigger role before the
9 president role.
10 84 Q. Can you describe what that
11 role was and what you recall of it?
12 A. Yes. Basically, Ken
13 Marshall departs from Cresford, and his reporting
14 leads into myself, which is why that document in
15 2014 is drafted that is also in the record.
16 85 Q. Got it, and so let me just
17 put it up. I think you are talking about the
18 draft employment agreement; is that right?
19 A. Yes.
20 86 Q. Let me just share so we
21 all can see.
22 So, you know, I mean I only
23 have the first page up. But at least based on the
24 first page, is this the draft -- is this the
25 document you were referring to just now?

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1 A. Yes.
2 87 Q. And it... you know, the
3 draft employment agreement, you would agree with
4 me this document was never signed?
5 A. It was never signed. But
6 was... payments were fulfilled based on it.
7 88 Q. Got it. The document says
8 it is made as of the 1st day of November 2014; is
9 that right?
10 A. Yes, yes.
11 89 Q. In the... there is a
12 heading halfway down the first paged called
13 "Title," and it says:
14 "The employer is employing
15 the employee as the
16 president of marketing and
17 sales." (As read)
18 A. Yes.
19 90 Q. That is the interceding
20 job you said -- you were describing earlier that
21 you got before you were promoted to COO?
22 A. Yes.
23 91 Q. In this document it says
24 the salary of the employee will be $500,000 per
25 year. Do you see that?

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1 A. Yes.
2 92 Q. Were you paid that amount
3 in the period from 2014 to 2018 then?
4 A. No.
5 93 Q. What amount were you paid
6 then?
7 A. I was paid 300,000. And
8 that started well before this document was
9 drafted. It was started in 2013. So this
10 document of November 1st isn't -- this specific
11 date, it is the date to memorialize our long
12 ongoing or to confirm our long going arrangement.
13 94 Q. Understood. You will also
14 see that -- I mean it is closer to the bottom of
15 the page, but do you see that there is a paragraph
16 that says:
17 "The employee will be
18 eligible for bonus
19 payments earned at the
20 registration of the
21 condominium declaration of
22 each development as well
23 as bonus on gross revenue
24 sold. The specific
25 process for allocation of

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1 the bonus will be
2 determined and agreed upon
3 by the employer and the
4 employee and outlined in
5 Schedule B of this
6 agreement." (As read)
7 You see --
8 A. Yes.
9 95 Q. -- that? Okay.
10 Other than the schedule to the
11 agreement, do you recall any discussions about how
12 the allocation of the bonus would be determined
13 and agreed between you and Cresford?
14 A. Each project was
15 different.
16 96 Q. The bonus for each project
17 would be different. Is it -- is it fair to say
18 that... you know, your answer just now you said
19 each project would be different. So I just want
20 to unpack that a little bit. Would it be fair to
21 say that when you say that you mean that each
22 project would be different in terms of the dollar
23 value of the bonus you may earn from it and
24 perhaps even how the bonus will be calculated or
25 structured from project to project?

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1 A. In terms of... in terms of
2 the remuneration number, it could change. It
3 could go up, and that was... that was what that
4 sort of covered.
5 In terms of payment of any
6 bonuses, it was -- it was agreed to that it was
7 non-refundable. I was doing the work, and like
8 hiring a third party consultant, when the work is
9 completed, regardless of if the person leaves or
10 is let go, they still get paid, and those are the
11 agreements that exist in the industry.
12 97 Q. Okay, understood. When I
13 was reading this document, one thing that I wanted
14 to clarify was you see in the last sentence of the
15 paragraph that I just read, the very last phrase
16 if you want to call it, it says "and outlined in
17 Schedule B of this agreement." Do you see that?
18 A. Yes.
19 98 Q. When I read this agreement
20 -- and I -- I'll go to the end of the agreement
21 for you. I only see a Schedule A. Are you aware
22 of a version of this agreement that -- draft
23 agreement that contains a Schedule B?
24 A. No. This is the -- this
25 is the agreement. That should have said Schedule

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1 A.
2 99 Q. Okay. Mr. Dunn, could I
3 have an undertaking, please, to conduct a search
4 of your records for any other versions of this
5 draft agreement?
6 MR. DUNN: There aren't any.
7 We have looked.
8 MR. LI: So that is your answer
9 to the undertaking?
10 MR. DUNN: Yes.
11 MR. LI:
12 100 Q. Okay. Ms. Athanasoulis, I
13 think you said earlier that the schedule labelled
14 Schedule A attached to this draft agreement should
15 have been labelled Schedule B?
16 A. Yes. So, basically, this
17 was an internal document to... to memorialize our
18 conversations, and the intent was for Dan to have
19 always formalized it through his legal counsels or
20 whatever process he wanted to. But this was an
21 in... an informal internal document that was used
22 to put to paper what the agreement was at that
23 specific time.
24 101 Q. Okay, understood. I just
25 want to look at the terms of Schedule A of the

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1 draft agreement. There are six bullet points. Do
2 you see that?
3 A. Yes.
4 102 Q. The first bullet point
5 says:
6 "A $500,000 bonus will be
7 paid upon the final
8 registration of 1000 Bay
9 Condominiums."
10 Do you agree with me that
11 that's not a profit-based bonuses? It is purely a
12 dollar-based bonus?
13 A. That was in addition to
14 the .15 for the sale. So that was -- so in my...
15 in my employment with Cresford, it was -- I was
16 running various entities within the corpora --
17 within the company. So that was for the role of
18 running construction, running customer service,
19 creating a property management company. That was
20 at the time for completing specific roles that
21 were outside of the marketing and sales of my
22 role.
23 103 Q. Got it. But -- okay, so
24 can I under... can you just clarify something for
25 me? Was your role generally the same for all of

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1 Cresford's projects? Or was the role -- was your
2 role or involvement materially different from
3 project to project?
4 A. It was... at this point in
5 time in 2014, it started to become... it started
6 to materialize into every -- every project was the
7 same.
8 104 Q. Okay, okay. One term --
9 one phrase that I am interested in in this
10 Schedule A is "final registration." So it says
11 "will be paid upon the final registration of 1000
12 Bay Condominiums," and it refers to other
13 buildings or projects in other bullet points too.
14 Am I correct in understanding
15 that what they mean by "final registration" is
16 when the building is all completed and the
17 developer... you know, I don't know who
18 incorporates the condominium corporation. Someone
19 incorporates the condominium corporation, and the
20 building is given to the condominium corporation.
21 Is that what they mean by that?
22 A. It was the time that was
23 chosen because Dan... for Dan to be able to cash
24 flow my bonus because that is when he would re --
25 get all the profits from that project.

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1 105 Q. But was my description of
2 what final registration is generally accord --
3 does that generally accord with your understanding
4 of what final registration is?
5 A. Yes. It is when the
6 profits are obtained on a project.
7 106 Q. And that occurs when the
8 building is given over to the condominium
9 corporation at the end?
10 A. Yes.
11 107 Q. Okay, okay, all right. I
12 think you mentioned earlier that this document was
13 dated -- I understand you said it was created
14 before November 2014, but it is dated November
15 2014. I think you said that notwithstanding the
16 document says that you will be paid $500,000 per
17 year, at the time you were actually being paid
18 $300,000 per year?
19 A. Correct.
20 108 Q. You were paid $300,000 per
21 year up until you were promoted to COO; is that
22 right?
23 A. Correct.
24 109 Q. When you were promoted to
25 COO, I think it is in your statement of claim your

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1 salary or your base salary grew?
2 A. My base salary was
3 $500,000, same as -- so my base salary was
4 supposed to be 5,000 -- 500,000 from 2014. The
5 change in 2018 is to increase the profit on
6 existing projects to 20 per cent.
7 110 Q. Understood. But... okay,
8 so it was supposed to be $500,000. But I think
9 you agreed with me earlier that you weren't paid
10 $500,000 from 2014. You were paid $300,000.
11 A. I was paid 300,000, but I
12 was supposed to be making 500,000.
13 111 Q. Was there a point in time
14 in which you actually started getting paid
15 $500,000? Or did that --
16 A. No.
17 112 Q. -- ever happen?
18 A. No.
19 113 Q. In 2018 when you were
20 promoted to COO, that was the last job title that
21 you had before leaving, colloquially, the
22 organization in January 2020; is that right?
23 A. Yes.
24 114 Q. Through your various job
25 positions at Cresford, I think you said earlier

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1 that you were involved heavily in the development
2 of projects, planning of projects, things like
3 that. Would one of your job responsibilities have
4 been to help to contribute to budgets for projects
5 or at least review of budgets for projects?
6 A. I would... I would... I
7 would be presented with budgets of projects, yes.
8 115 Q. Did you contribute to
9 them? Did you provide any forecast sales figures
10 and things like that?
11 A. Yes.
12 116 Q. Did you have a general
13 understanding of what costs go into building a
14 condo development?
15 A. I understand the various
16 scale of costs, yes.
17 117 Q. Do you recall how many
18 projects you worked on at Cresford from 2004 to
19 when you left?
20 A. Various projects, several
21 projects.
22 118 Q. Can you give a range?
23 Like, a dozen? Is it 20? Or...
24 A. It could be a dozen. It
25 depends on how you want to quantify them, days,

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1 projects being one or not. Like, it depends on
2 how you want to quantify it.
3 119 Q. Yes. For various projects
4 is it fair to say that when you -- when you first
5 think about a project and you first go out and
6 think about how am I going to get financing for
7 this project or whether I should buy and pay value
8 for the land that this project might be sited on,
9 you would create a budget or a forecast of what
10 you think you can make on the project?
11 A. Can you repeat your
12 question?
13 120 Q. Yes. So when... I
14 understand that you weren't involved in project
15 financing. But at least towards the end of your
16 employment at Cresford, were you sufficiently
17 senior enough to maybe be consulted on potential
18 future projects? Like --
19 A. I was always consulted on
20 projects.
21 121 Q. When Cresford goes and
22 starts thinking about a project, is it fair to say
23 that they would think about what projected profits
24 they could make on the project?
25 A. Yes. That is normal in

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1 your decision-making on how you decide whether or
2 not you are going to buy it.
3 122 Q. I assume they would put
4 together spreadsheets or models or budgets about
5 here are our estimated costs and here are our
6 estimate revenues on a project?
7 A. Yes.
8 123 Q. Tell me if you have no
9 knowledge of this but I assume one of the purposes
10 for putting together these projects is to --
11 budgets is to secure financing?
12 A. What type of financing?
13 There are various financings at different stages.
14 124 Q. Like bank financing from
15 the beginning or something like that.
16 A. So a land loan?
17 125 Q. Sure, yes.
18 A. Yes, from my
19 understanding, that is very different than a...
20 the different stages of loans that you get.
21 126 Q. So... but you would agree
22 with me you put together budgets or financials,
23 projected financial statements to secure financing
24 generally I say -- I'd say.
25 A. For revenue at that -- so

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1 it depends on what stage of financing you are
2 asking me about.
3 127 Q. Okay. No, that's --
4 that's fine but... so would a -- would a budget
5 change over time or change the type of budget you
6 would put together change depending on what type
7 of financing you're -- you are trying to get?
8 A. Not necessarily. I don't
9 understand your question. It doesn't necessarily
10 correlate with how the business works.
11 128 Q. Can you just describe from
12 your recollection about how budgets were put
13 together then?
14 A. When you buy a project and
15 you are getting a land loan, the project is... is
16 -- looks completely different than when you are
17 getting a financing loan, and the information that
18 you are giving at that point in time is different
19 than the information that you are giving -- a
20 project has changed throughout the development
21 cycle. But at the time that you are getting your
22 financing, it's... it shouldn't necessarily
23 change. So --
24 129 Q. What sort of things would
25 go into the budget you would put together for a

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1 financing loan?
2 A. The financing loan, at
3 that point in time, you have already sold the
4 project. So your revenue is pretty solidified.
5 Your future revenue is... it needs to be justified
6 and provide sufficient sort of information to back
7 up the numbers that you are providing as your
8 projections for the future.
9 Many banks didn't provide price
10 increase provisions. So that is different than
11 when you are first acquiring the site because at
12 that point in time you are just guessing that you
13 are going to get "x" amount of revenue.
14 130 Q. So the budget would look
15 different when you are applying for a land loan
16 and you are first acquiring the site versus the
17 financing loan budget that you just described now
18 at the end of the project?
19 A. Correct.
20 131 Q. Okay.
21 MR. DUNN: Sorry, can we just
22 be a little more clear on our terms? When you say
23 financing at the end, are you referring to
24 construction financing, which happens sort of not
25 at the end of the project but later than the --

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1 than a land loan?
2 MR. LI: I didn't bring up this
3 term first. I am just asking the witness. She is
4 using the term "financing loan" --
5 THE WITNESS: Well --
6 MR. LI: -- that --
7 THE WITNESS: I -- I'm just
8 trying to clarify what your question is because I
9 am not clear I guess what your original question
10 was in terms of...
11 MR. LI:
12 132 Q. Yes, my original question
13 was fair to say you put together a budget for the
14 purposes of obtaining financing for a project.
15 A. Yes. We put together
16 various budgets.
17 133 Q. Yes. The budget would be
18 revised during the life of a project; is that
19 right?
20 A. Again, your question is
21 confusing because the financing changes throughout
22 the life of a project.
23 134 Q. Okay, just... so describe
24 to me how the financing changes.
25 A. Your original financing

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1 for the loan and the land -- for the land loan is
2 replaced by a financing facility to finance the
3 project to construction.
4 135 Q. Got it. The costs for a
5 project could change over time. Is that fair to
6 say?
7 A. Not when you get to
8 construction. They should -- they shouldn't...
9 they shouldn't -- you should know what you're
10 building.
11 136 Q. In your experience then,
12 when -- you know, when you start construction, the
13 costs are fixed, and would there be ever cases of
14 any costs overruns on a project?
15 A. There are always cost
16 overruns. But you have contingencies.
17 137 Q. Would contingencies ever
18 be exceeded?
19 A. Again, it's -- it is how
20 you manage your project.
21 138 Q. Okay, I see. Just do --
22 you know, if a project is planned, for example, to
23 be constructed in five years -- I don't know if
24 you can build a condo in five years, okay? It is
25 hypothetical. Hypothetically, it could take

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1 longer than five years. It could be... you know,
2 there could be issues that come up; is that right?
3 I think you described in your statement of claim
4 that they are complex projects and require many
5 steps. That's what I'm trying to get at.
6 A. Yes, they are complex
7 projects and require many steps.
8 139 Q. In your experience when
9 you were at Cresford, were the projects all
10 completed on time? Or did some of them drag on
11 longer than expected?
12 A. Various projects had the
13 -- each project had a life of its own.
14 140 Q. You wrote in the statement
15 of claim that you started engaging in discussions
16 with Cresford or Mr. Casey about changing the way
17 you were compensated or your bonus structure after
18 the Vox project was completed. Do you recall
19 that?
20 A. Yes.
21 141 Q. I assume the fact that --
22 why it is in your statement of claim is that this
23 is -- this is one of the more important junctures
24 of when your -- in which you say that your bonus
25 compensation is changing, or do you recall having

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1 discussions with him previously where you would be
2 changing materially your bonus structure?
3 MR. DUNN: Can we just --
4 sorry, can... can we slice off the beginning part
5 of that question about why it is in the statement
6 of claim? And she can answer only the latter part
7 about her recollection.
8 MR. LI: Sure.
9 142 Q. Is this one of the more
10 important junctures where you say the bonus
11 structure was changing, and that is why you
12 included it in the statement of claim?
13 A. Yes.
14 MR. DUNN: No, that -- that's
15 -- sorry, you... you... you asked the one I was
16 objecting to. I mean I guess she answered it, so
17 it doesn't really matter. But why it is in the
18 statement of claim isn't really material. But go
19 ahead.
20 MR. LI: Okay, sure.
21 143 Q. Do you recall having any
22 other discussions with Mr. Casey before that time
23 about changing your bonus structure to the profit
24 sharing structure as you described?
25 A. The reason I answered yes

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1 for the 2014, to be clear, is because that is also
2 the time that that document that you raised
3 earlier, that is the year that that's memorialized
4 in terms of my profit.
5 The conversations around
6 creating a profit structure for me is because at
7 that point in time it became obvious, and I
8 recognized that just the role of selling condos
9 hiring a third party, which was past history prior
10 to me bringing it in-house, and is very typical in
11 the industry. It is a... it's... it is done by a
12 third party.
13 With Vox specifically, I
14 managed to design and sell the project in a very
15 quick manner. Hiring a third party, again that
16 third party would have earned approximately
17 $3 million in a very short period of time that was
18 non-refundable, and that didn't really equate to
19 the remuneration that I was making in terms of
20 just my role of vice president of marketing and
21 sales or president of marketing and sales.
22 144 Q. I just want to understand
23 one thing. You referred to a third party
24 potentially doing the marketing and sales for a
25 project.

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1 A. Yes.
2 145 Q. Prior to Vox was a -- did
3 Cresford retain a third party to do marketing and
4 sales of projects?
5 A. Various times Cresford had
6 third parties that --
7 146 Q. And sometimes you did the
8 pro -- you sold previous projects, like Vox,
9 without third parties? Or am I misunderstanding?
10 A. Correct.
11 147 Q. The $3 million you
12 referred to, what do you base that cost upon?
13 A. Basically, a third party
14 marketing company makes approximately one and a
15 half per cent on the revenue of a project --
16 148 Q. Okay. And that is from
17 your --
18 A. -- to promote the project.
19 149 Q. Got it. That is from your
20 experience? Or is it from written agreements that
21 Cresford had in the past?
22 A. Written agreements that
23 Cresford has and also just industry practice and
24 would be in the industry as a standard.
25 150 Q. When was the Vox project

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1 completed?
2 A. I would have to get back
3 to you but in and around 2018 or 2019.
4 151 Q. Got it. No, that --
5 that's fine. I just wanted --
6 A. 2018.
7 152 Q. I was just looking for an
8 approximate time frame.
9 Okay. Am I right in
10 understanding then in or around 2018, which was
11 when the Vox project was completed, you had a
12 discussion with Mr. Casey about your bonus
13 entitlements and -- is that right?
14 A. Bonus entitlements or
15 profit sharing?
16 153 Q. Sure, bon -- profit share
17 or bonus entitlements or profit share. Is that --
18 A. They are different.
19 They're... they are different.
20 154 Q. Okay, okay. So how -- can
21 you describe to me how you would describe what
22 your bonus entitlements were versus what the
23 profit sharing was?
24 A. I would describe it as
25 three entitlements, so my... my marketing and

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1 sales fee, right? the .15 of selling units, which
2 was the role of a promoter. The bonuses that we
3 had... the bonuses were specific to those on that
4 other document that you showed earlier, and there
5 was profit that was confirmed in 2014 going
6 forward on all projects.
7 155 Q. Got it. So the bonus you
8 are referring to was... you know, one of the
9 documents we looked at earlier said something like
10 $500,000 on the final registration of 1000 Bay.
11 That's what you're saying the bonus entitlement
12 is, or there were many more projects, but that is
13 the type of statement that you say is the bonus
14 entitlement?
15 A. The bonus entitlements are
16 on projects prior to 2014 that were in the
17 marketing and construction phase.
18 156 Q. Okay. So --
19 A. Anything going forward
20 from 2014, my entitlement to the promotional .15
21 still existed but on the project that turned into
22 a profit on all the entities of Cresford.
23 157 Q. Got it.
24 A. Or on -- yes.
25 158 Q. Let me rephrase my

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1 question then. In 2018 when the Vox project was
2 completed, that is when you had your discussion
3 with Mr. Casey about a potential profit sharing
4 agreement?
5 A. No. The profit sharing
6 agreement happened in 2014.
7 159 Q. What were the discussions
8 like when you -- that you had with Mr. Casey?
9 Tell me when they approximately began. Let's
10 start with that.
11 A. They began in 2014 because
12 Dan was aware of my talent of marketing and sales
13 and was aware that I understood that my value was
14 greater than my salary, and we had the opportunity
15 to -- as we were doing bringing in-house the sales
16 piece, and there was substantial profit from my...
17 from my sales that... and, you know, at the end of
18 the day, hiring me just as a third party alone, I
19 could just provide that service to Cresford, and I
20 didn't have to do all of my other responsibilities
21 and make more than what I was making.
22 160 Q. From 2014 then, were you
23 ever paid a profit share?
24 A. There was no project that
25 was completed that went into the pipeline after

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1 2014 with my profit entitlement that completed.
2 161 Q. Has Cresford ever
3 abandoned any projects or sold off any projects
4 before completing them in your time at the
5 organization?
6 A. Can you broaden your
7 question about "abandoned"?
8 162 Q. I am just wondering, like,
9 Cresford thinks about a project and acquire --
10 goes and acquires a piece of land let's say,
11 right? I am going to build this project. But
12 maybe before I get into construction or during
13 construction, I decide it is not economically
14 worth it to me. So I am going to sell this
15 project off to someone else, let someone else do
16 that.
17 Has -- did that ever happen
18 when you were at Cresford? Or... or is it the
19 case that when Cresford brought a prop -- a piece
20 of land, it is putting up the tower and always
21 went up?
22 A. In my... in my employment
23 it's the second; every project that went into
24 construction always went up.
25 163 Q. By Cresford, not sold off

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1 to someone else?
2 A. Right.
3 164 Q. Then in 2018, you revisit
4 the profit sharing agreement that you initially
5 discussed in 2014. Is that a fair
6 characterization?
7 A. We revisited it several
8 times because I know that in 2014 it was 10 per
9 cent.
10 But when I launched Clover,
11 again, the numbers -- you know, it was a
12 400-million-dollar-plus project, closer to 500
13 million. Again, the point... the 1.5 per cent
14 times $500 million, again, I always had hesitation
15 that I was doing the work upfront from the
16 marketing and sales position that again was a...
17 was a role that needed to be hired externally for
18 most developers, and I was... I was being asked to
19 continue, you know, and to... and to inject that
20 money into... into the company.
21 So at some point after Vox and
22 we launched Clover and Halo, we discussed changing
23 it to 15 per cent.
24 165 Q. After Vox?
25 A. After Vox, which was 10

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1 per cent. But it was... the projects were growing
2 in size from a revenue perspective and also from a
3 scale perspective. By the time we get to 2018, we
4 are talking about launching a -- we've... we have
5 launched a north of billion-dollar project, which
6 was a successful sale launch, and... and that is
7 where we start talking and confirmed by YSL that
8 it is 20 per cent.
9 166 Q. I see. So I just --
10 sorry, one thing you said earlier I want to
11 confirm because I think I said... you discussed
12 the profit sharing agreement. At least you said
13 you discussed it initially in 2014, in or around
14 when that first draft agreement appears, and then
15 I asked you if the next time you revisited the
16 profit sharing agreement with Mr. Casey was after
17 Vox was completed in or around 2018.
18 But I think if I heard you
19 correctly, you said that you had actually
20 discussed it many times in the interceding period.
21 Did I understand you correctly? Or did I
22 misunderstand that?
23 A. We were always discussing
24 my pay, my pay. It was always top of my mind for
25 me, and it was always top of mind for Dan because

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1 I was a valuable employee.
2 167 Q. And, you know... and that
3 occurred between 2014 and 2018?
4 A. We were always discussing
5 my employment remuneration throughout the years.
6 168 Q. Okay. And --
7 A. It is not like I go from
8 2014 and then discuss it again one day in 2018.
9 169 Q. What were your discussions
10 like about the profit sharing agreement then
11 between 2014 and 2018? Do you have any
12 recollection of that?
13 A. No, so basically it was 15
14 per cent that then changed because Dan understood
15 that the projects and the revenue were growing,
16 and my capabilities were growing and all of that
17 that 20 per cent was a fair remuneration for the
18 amount of effort from beginning to end that I was
19 investing into this company. I was the face of
20 the brand. I was the face of the success of the
21 sales launches, and the sales launches alone were
22 driving a substantial amount of profit in the
23 marketing and sales area.
24 170 Q. No, I... I completely
25 understand that. I am just wondering the timing

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1 of the conversations. That's all. Because in the
2 twenty thou -- 2014 document, as I understand it,
3 the profit sharing figure in that document is 10
4 per cent, right?
5 A. Correct.
6 171 Q. So, at some point, there
7 is a discussion that you say occurs that increased
8 it to 15 per cent. Is that --
9 A. Yes. There were various
10 projects that launched between 2014 and 2018.
11 172 Q. Do you recall when that
12 discussion about increasing it from 10 per cent to
13 15 per cent occurred?
14 A. They would always be
15 around the time when we were launching a new
16 project.
17 173 Q. Okay, okay. Do you --
18 like, you know, just --
19 A. I don't have a specific --
20 174 Q. -- approximately -- okay.
21 A. I don't have specific...
22 you know, I trusted Dan. I trusted that he was
23 a... a trustworthy businessman. Again, you asked
24 me about if any projects had never completed.
25 They had always completed. We had a great track

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1 record. I had a great track record. He always
2 reassured me that he would never put me in any
3 harm, and I trusted him.
4 175 Q. Fair... would it be fair
5 to say that you and Dan never went to a lawyer to
6 memorialize the profit sharing agreement between
7 2014 and 2018?
8 A. Yes, it's -- it is fair to
9 say that we never went to a lawyer before that
10 time.
11 176 Q. Am I correct in
12 understanding that the discussion about the profit
13 sharing agreement that occurs after the Vox
14 project is completed is about increasing the
15 percentage from 15 to 20 per cent, right?
16 A. Correct.
17 177 Q. Do you recall when that...
18 that initial conversation about increasing it from
19 15 to 20 per cent happened or the circumstances
20 around it?
21 A. Dan recognized that I was
22 an asset, and it would have been in and around
23 2017 when we had successfully sold over a billion
24 dollars in again 48 hours and understanding that a
25 fee on a billion dollars of revenue would have

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1 been substantial. We had another billion-dollar
2 project coming, which was YSL, and he needed to
3 ensure that I was properly remunerated for all my
4 efforts.
5 178 Q. And it... well, the Vox
6 project was completed in 2018, and I understand
7 that you and Dan met with Mr. Papadakis in
8 February of 2019. Is that your recollection as
9 well?
10 A. We met with -- yes, in
11 February 2019.
12 179 Q. What were the discussions
13 like between you and Dan that led to the meeting
14 with Mr. Papadakis? Do you recall anything about
15 those?
16 A. Yes. So I was very
17 concerned with... at this point in time, with
18 memorializing a proper agreement that ensured that
19 I got my profit on all the various Cresford
20 companies. I had invested a lot of my energy, my
21 time, had made a huge success out of YSL.
22 At that time, we had already
23 negotiated various of the construction contracts
24 and also achieved the sales. So the profits of
25 YSL were at a stage where they were very...

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1 leading to the point where they were crystallized
2 or pretty complete, and I wanted to ensure that
3 all my efforts were memorialized to ensure that,
4 like, Dan... if something happened to Dan or if
5 something happened even to us that all my effort
6 in creating the profit in that project and also
7 the profit that I had injected into the all -- all
8 the other companies was safeguarded for me.
9 Dan was in agreement and very
10 happy to do that and... and provided no objections
11 and would always even call me my -- his partner
12 and made me feel very comfortable that he was
13 going to live up to the agreement, and so 2019 was
14 a moment where, you know, I... I kept pushing and
15 wanted to get a proper document to ensure that Dan
16 would pay me my entitlements.
17 180 Q. Did you raise the... the
18 prospect or idea of going to a lawyer to get this
19 written down? Or did Dan raise it?
20 A. It was --
21 181 Q. Or who --
22 A. It was -- it was mutual.
23 182 Q. Who selected John
24 Papadakis?
25 A. Mutual. John was doing

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1 all of our corporate work and...
2 183 Q. One thing that you said
3 earlier is I think you said that you wanted to get
4 it all written down around the February 2019 time
5 period because you were viewing that the YSL
6 profits were pretty close to being crystallized;
7 is that right?
8 A. Yes.
9 184 Q. Am I right in
10 understanding though that at around the February
11 2019 time period, construction on the YSL project
12 could not yet be done?
13 A. It was beginning.
14 185 Q. I just want to understand
15 the timing of the start of construction a little
16 bit.
17 As part of the documents that
18 you sent over, do you recall sending an Excel
19 spreadsheet? Or maybe your counsel knows this if
20 you don't. But you -- let me just show you what
21 it is.
22 Does this spreadsheet ring a
23 bell? Or...
24 A. Yes.
25 186 Q. Okay. So --

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1 MR. DUNN: Sorry, counsel, can
2 we just identify for the record what you are
3 showing the witness?
4 MR. LI: Sure. It is document
5 C005 entitled "20191020 - YSL Proforma."
6 187 Q. This is the one -- and
7 this is one of the documents produced by you or
8 your counsel in this arbitration, correct?
9 A. Correct.
10 188 Q. One of the groups of cells
11 here is a group of cells called "Major Schedule
12 Dates." I am just going to highlight it here just
13 so everyone can see it more clearly. Do you see
14 those cells?
15 A. Yes.
16 189 Q. In one of the rows in
17 these cells, it says "Excavation October 2019."
18 Do you see that?
19 A. Yes.
20 190 Q. Am I correct in
21 understanding that at least in this spreadsheet
22 excavation for the YSL project is supposed to
23 start in October 2019?
24 A. It starts in and around
25 that time. I can't remember the exact time that

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1 it starts, but it is roughly around the time that
2 it started.
3 191 Q. Okay, thanks. One of the
4 largest groups of -- groups of cells -- and the
5 document is titled itself "Proforma," and am I
6 correct in understanding the proforma is a
7 future-looking -- a term used to denote a
8 future-looking projection? Is that your
9 understanding of the term?
10 A. I... not that it's future.
11 It is just a working document of what the project
12 is projected to profit.
13 192 Q. One of the other tabs in
14 this Excel spreadsheet is a tab -- a worksheet
15 called "Cash Flow." I just put it up now. Do you
16 see that?
17 A. Yes.
18 193 Q. There are columns in this
19 worksheet that extend beyond October 2019. Do you
20 see that?
21 A. Yes.
22 194 Q. I just want to confirm
23 that the cash flow for the periods after October
24 2019, those are estimates or projections?
25 A. They are numbers to manage

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1 a project through the lifecycle of building it to
2 ensure that you can achieve your... your numbers.
3 195 Q. But am I correct in
4 understanding that, for example, if I look at
5 column "I," which is a column labelled December 20
6 -- December 2019 and I go to a row 12, which is
7 labelled "Construction Contract," there is a
8 number in there that is 1.7-odd million. Do you
9 see that?
10 A. Yes.
11 196 Q. That number or cash flow
12 has not actually been received by YSL yet. It is
13 YSL's estimate as to what it is going to get in
14 December 2019; is that right?
15 A. No. So this is just
16 payments.
17 197 Q. So they are YSL's estimate
18 as to payments that it is going to make for that
19 item in December 2019? YSL hasn't made that
20 payment yet?
21 A. This is a financing tool
22 so that you can properly project your interest.
23 But it is not your accounting -- anything to do
24 with accounting.
25 198 Q. Back to the summary tab,

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1 if I go down close to the very bottom of this
2 worksheet and I go to row 95, do you see that? It
3 is entitled "Net Project Costs."
4 A. Yes.
5 199 Q. Am I correct in
6 understanding that the net project costs of
7 approximately $1 billion, that has not all been
8 paid yet by YSL? That is an estimate as to what
9 YSL is going to pay for this project --
10 A. Correct.
11 200 Q. -- over time?
12 A. Correct.
13 201 Q. I want to go back to the
14 February 2019 discussion that you and Mr. Casey
15 had with Mr. Papadakis. Can you describe for me
16 what you discussed at that meeting? And let me
17 just first start with this: I understand it was
18 in person at Cresford's office. Do you -- do you
19 agree with that?
20 A. Yes.
21 202 Q. Just take me through your
22 recollection of what you discussed with
23 Mr. Papadakis and Mr. Casey at that meeting.
24 A. My recollection is we
25 discussed memorializing or properly documenting my

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1 remuneration for the various Cresford entities and
2 to ensure that my profit was properly documented
3 as I had already put in a lot of work within all
4 the various companies to ensure that I would be
5 paid my profit regardless going forward on the
6 projects that were already in construction for the
7 work that I had already done for them.
8 203 Q. Okay, understood. So you
9 recall that the profit sharing would apply to
10 projects already in construction?
11 A. The profit would apply to
12 those specific projects. It would apply to the --
13 to any other Cresford entity, for instance, the
14 marketing company that was... was being... that
15 was taking the fees and injecting or using that
16 money to... to operate Cresford. So it would --
17 it would -- it would apply to any Cresford entity
18 that I was... was working for or with or -- again,
19 I am not familiar with legal terms, but I wanted
20 to ensure that I was protect... protected and --
21 204 Q. Yes.
22 A. -- trusted that Dan, you
23 know, would not... Dan would agree that I had...
24 and he would agree that I had completed the
25 various sales items and brought the projects to

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1 where they are so that we had an agreement that we
2 -- on the active projects that I would get my 15
3 -- 20 per cent.
4 205 Q. But one thing you said
5 earl -- just now in the answer sort of confused me
6 a little because I had understood that the profit
7 sharing agreement, at least as you described it in
8 the statement of claim, applied to a project, like
9 when the condo building goes up and we look at how
10 much were -- we earned from it vers -- less how
11 much we spent on it. There is a profit, and I get
12 a percentage of the profit on that building. But
13 I think you said that it applied to other Cresford
14 entities as well like sales and marketing work.
15 A. That was -- you know, and,
16 again, it was -- it was a conversation. I knew
17 that I was getting my profit on the projects.
18 John and Dan -- and in their discussions, John, we
19 all raised -- like, I was doing all this work, and
20 my main concerns were (a) that nothing could
21 happen to my employment that would prevent me from
22 getting my profit because I had already provided
23 Cresford with my talent, my time, my energy to
24 create profitable projects. So I wanted to ensure
25 that my profit on the active projects was

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1 safeguarded.
2 The discussions also arised on
3 the fact around the fees were so large, and I was
4 the contributing factor to those fees, and there
5 was the conversation of even how those would play
6 in.
7 But I mean the main piece was
8 YSL was very profitable. We had created a very
9 profitable asset, and I wanted to ensure that my
10 profit in that specific project and everything
11 else were safeguarded.
12 206 Q. You sort of said profits
13 -- the profit sharing agreement encompassed
14 projects -- profits on active projects, or one
15 time you used the term "projects in construction."
16 It doesn't entirely matter to me at this point
17 which one term you use. But do you recall the
18 specific projects that were either actively being
19 worked on or in construction at the time?
20 A. The active projects were
21 Clover, Halo, 33 Yorkville, and YSL.
22 207 Q. Is this the same list of
23 projects that you would consider to have been in
24 construction at that time?
25 A. Yes.

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1 208 Q. Okay, okay. Was a profit
2 being projected on any of the other projects other
3 than YSL? because I think you already said you
4 were projecting a big profit on YSL. Was a profit
5 being projected on the other three, on any of
6 Clover, Halo, or 33 Yorkville?
7 A. Halo and Clover were at a
8 break-even situation and, again, given future,
9 could have potentially if they had continued
10 because revenue is something that can change and
11 did change in... in the last several years.
12 They --
13 209 Q. I am house-hunting right
14 now. Trust me, I know.
15 A. Yes. It's -- they were at
16 a break-even situation. 33 Yorkville was
17 projecting a profit and so was YSL.
18 210 Q. I think you confirmed this
19 earlier that, at least to your recollection, what
20 was being discussed was 20 per cent profit on any
21 project. It is not like the profit percentage
22 changed vers -- like, project to project.
23 A. Right.
24 211 Q. Did you discuss anything
25 about how profit would be calculated?

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1 A. It was going to be
2 calculated -- you know, in my conversations with
3 Dan, it would be calculated after paying the costs
4 and any... and after paying the equity to... and
5 specific to YSL and 33 Yorkville, it would be paid
6 after the equity was repaid to the LP investors.
7 212 Q. You said specific to YSL
8 and 33 Yorkville that you discussed with Dan that
9 profit would be after equity paid to limited
10 partners. So is it right if I understand that
11 Clover and Halo, that was not the definition of
12 profit that you discussed?
13 A. Clover and Halo didn't
14 have limited partners. So it was after the equity
15 was... like, the equity of -- Dan's equity was
16 repaid.
17 213 Q. What were the elements of
18 costs -- I think we said after costs were taken
19 out, but what were the elements of costs that
20 would be taken out that you discussed with Dan?
21 A. They would be what would
22 -- you know, similar to the Altus budget, the cost
23 consultant's budget, so after paying off specific
24 project costs.
25 214 Q. Specific project costs,

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1 would that include... I think you said that
2 Cresford is organized in a way that all the
3 employees work for sort of a management company,
4 and then the services for the employees are given
5 to different projects, right? Is that your
6 understanding of how the organization is
7 structured?
8 A. Can you repeat how you
9 phrased it?
10 215 Q. You weren't employed by
11 any of the specific projects. You weren't
12 employed by YSL.
13 A. Right.
14 216 Q. And I don't want to --
15 MR. DUNN: Sorry --
16 MR. LI:
17 217 Q. I don't want to get into a
18 legal argument. I just want to... I just want to
19 say you weren't paid by YSL, were you?
20 MR. DUNN: I just want to be
21 clear it is our position that they were... all the
22 various entities were common employers. But that
23 is a legal question that we don't have to debate.
24 MR. LI: Yes.
25 MR. DUNN: She can answer the

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1 question about whether... about who paid her.
2 MR. LI:
3 218 Q. Yes, so you weren't paid
4 by YSL?
5 A. I wasn't paid by YSL. I
6 wasn't paid my salary by YSL.
7 219 Q. Right. Is that right?
8 A. Yes, I wasn't paid my
9 salary by YSL.
10 220 Q. Other employees of
11 Cresford... I don't know... tell me if you don't
12 know this or if you have any knowledge of this,
13 but other employees of Cresford were also not paid
14 by YSL or an individual project. They were paid
15 by a Cresford entity that did not own the project;
16 is that right?
17 A. The majority of Cresford
18 employees were paid by East Downtown
19 Redevelopment.
20 221 Q. Okay. And East
21 Downtown --
22 A. There --
23 222 Q. -- Redevelopment -- sorry.
24 A. There could be employees
25 that were paid directly from the

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1 project-specific --
2 223 Q. Right. That makes sense.
3 A. -- company.
4 224 Q. Yes. So for the Cresford
5 employees that were paid by East Downtown... you
6 still did work for different projects, right?
7 A. I did work for the various
8 projects.
9 225 Q. Did you scu -- discuss --
10 dis -- excuse me. Discuss with Mr. Casey how, for
11 example, your salary or the salary of other
12 Cresford employees who work for East Downtown
13 would be allocated to different projects in
14 calculating the profit?
15 A. That wasn't part of the
16 profit of that specific project --
17 226 Q. Okay, so --
18 A. -- because East Downtown
19 earned fees and that -- so those were already
20 taken out of that specific project.
21 227 Q. What are some of the other
22 elements that the cost -- because you said
23 project-specific costs and I just want to
24 understand what are the elements of these costs.
25 A. They are all outlined in

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1 the Altus budget, so anything construction
2 related, marketing related, finance related
3 specific to that project.
4 228 Q. Were things like
5 depreciation or amortization supposed to be
6 deducted from profit?
7 A. Depreciation... and can
8 you give me an example?
9 229 Q. Right, okay, so... I am
10 going to phrase it a different way. Did you have
11 any discussion with Dan about what accounting
12 principles might apply to how profit would be
13 calculated?
14 A. We had discussions about
15 the proforma that we would use to -- as a tool to
16 see what the project profit was projected or...
17 you know, that would be the tool that would be
18 used, which you have shown me on your screen.
19 230 Q. Was something like accrued
20 interest or something like that supposed to be
21 deducted from profit?
22 A. What accrued interest?
23 231 Q. Like on the project, like
24 what --
25 MR. DUNN: Could we take out

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1 the "something like that," please?
2 MR. LI: Sure
3 232 Q. Was accrued interest
4 supposed to be deducted from the project?
5 A. Accrued interest of what?
6 233 Q. Of financing on the
7 project.
8 A. Of construction financing?
9 234 Q. Of all financing.
10 A. The financing that I knew,
11 which was on that proforma, that proforma created
12 the numbers.
13 235 Q. Who developed the
14 proforma?
15 A. It was a combination of
16 the finance team and the accounting team.
17 236 Q. Did you have any input
18 into the proforma? Or is that other people's
19 responsibility?
20 A. I always had input into
21 proformas. The revenue was my input to a
22 proforma.
23 237 Q. Okay, understood. When
24 was the pro -- did you discuss any terms about
25 when and how the profit would be paid? And I am

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1 still talking about the discussion that you had
2 with Mr. Papadakis and Mr. Casey in February 2019.
3 A. When the profit would be
4 paid or would be due?
5 238 Q. Profit sharing.
6 A. Like...
7 239 Q. When your profit sharing
8 amount would be paid and how it will be paid.
9 A. The whole discussion in
10 February was that I had earned it, and the money
11 doesn't come in until the end. So I would be paid
12 at the end of... of completing a project, which we
13 had always completed projects.
14 240 Q. When was the estimated
15 completion of YSL?
16 A. If you could bring up that
17 financial document, we could see the date on that
18 proforma.
19 241 Q. Okay. This one?
20 A. Yes. So the major
21 schedule dates.
22 242 Q. Okay.
23 A. So June '25.
24 243 Q. So YSL was estimated to be
25 completed in June 2025?

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1 A. Correct.
2 244 Q. I assume that when you say
3 completion, this -- this... that row on this
4 spreadsheet is entitled "Phase 2 Registration."
5 Would I be safe in assuming that when you say that
6 the profit sharing would be paid at the completion
7 of the project, you are talking about phase 2
8 registration of project -- of the project, whether
9 it be Clover, Halo, 33 Yorkville, or YSL?
10 A. With YSL specific there
11 were two registration dates, and so had we gotten
12 to a final document -- if Dan was to take out
13 money after the phase 1 registration, then I would
14 get my share of my 20 per cent. But if we were
15 rolling it in -- into the financing until the end,
16 into June '25, 2025, then I would take it then.
17 But the final -- so phase 2 registration is June
18 2025.
19 But if there was any money
20 coming out in 2024, I would take my money then as
21 well. So any time that Dan or any... like,
22 Cresford or... and I refer to Dan as all of
23 Cresford entities were to get money, I would also
24 get my portion of what is owed to me.
25 245 Q. Okay, I see.

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1 All right. Any discussion
2 about how it would be paid? Like, would it be
3 paid... just any discussion about how it would be
4 paid?
5 A. I would assume I would get
6 a cheque, right? I would register a numbered
7 company we talked about, and I would get... I
8 would get... we needed to formalize what
9 arrangement was going to be made because it... to
10 pay me because there was no formal arrangement
11 made.
12 It was a substantial amount of
13 money, and I needed to talk to accountants and
14 structure myself, and we talked about that because
15 YSL and 33 Yorkville was a substantial amount of
16 money that was going to be paid to me.
17 246 Q. Okay, understood.
18 You know, it might be -- make
19 sense to take a 10- or 15-minute break at this
20 point, then pick up at 10:45. Does that work for
21 you, Madam Court Reporter or Mr. Dunn?
22 THE REPORTER: Yes, that's
23 fine.
24 MR. DUNN: Yes, that's fine
25 with me.

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1 MR. LI: Okay. So 10:45?
2 THE REPORTER: Yes.
3 --- Recess taken at 10:35 a.m.
4 --- Upon resuming at 10:47 a.m.
5 MR. LI:
6 247 Q. Ms. Athanasoulis, I just
7 want to pick up on the topic of questioning before
8 we took the break. We were discussing what you
9 had discussed with Mr. Papadakis and Mr. Casey
10 during the meeting that took place in person in
11 February in 2019 regarding the profit sharing
12 agreement. Do you recall that quest -- those
13 questions?
14 A. Yes.
15 248 Q. Was there any discussion
16 during that meeting about who was to pay the
17 profit, the amount of profit to you? Was it to
18 come from, for example, another Cresford entity or
19 YSL?
20 A. It was to be come from the
21 individual projects that owed me the profit.
22 249 Q. In your statement of
23 claim, I believe you described that the draft 2014
24 employment agreement that you provided was sort of
25 based on a template that other employment

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1 agreements had -- that other employment agreements
2 followed as well. Is that fair to say?
3 A. Can you show me where I
4 say that in my statement of claim?
5 250 Q. Sure. Just one second, I
6 closed the file.
7 Sorry, I think this is in the
8 statement of claim that is originally filed before
9 the court and not this one. Put it this way: You
10 produced an employment agreement from Sean
11 Fleming, correct?
12 A. Correct.
13 251 Q. I am going to put up that
14 employment agreement now.
15 Okay. I think it is one of
16 your productions labelled "C004." Do you see
17 that?
18 A. Yes.
19 252 Q. Was this one of the
20 employment agreements that was used for other
21 employees of the organization?
22 A. It was a standard template
23 that... it was a starting template.
24 253 Q. Do you see the heading
25 about middle of the first page labelled "Duties

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1 and Responsibilities"? And it says that:
2 "The duties and
3 responsibilities of the
4 position have been
5 determined and agreed upon
6 by the employer and the
7 employee which form
8 Schedule A of this
9 agreement." (As read)
10 Do you see that?
11 A. Yes.
12 254 Q. Then at the end of this
13 page, it says "Salary." The heading is "Salary,"
14 but the second paragraph of it says:
15 "The employee will receive
16 a bonus based on the
17 performance of the
18 specific duties and/or
19 milestones dates as
20 outlined in Schedule B of
21 this agreement." (As read)
22 Is that right?
23 A. That's what it reads.
24 255 Q. Then if I go to the end of
25 this agreement, there is a Schedule B which sets

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1 out the bonuses in the Sean Fleming employment
2 agreement, but there is no Schedule A. I am
3 wondering if you have a copy of this agreement
4 that contains Schedule A.
5 A. I can look.
6 256 Q. Perhaps I will ask for an
7 undertaking from Mr. Dunn to take diligent means
8 to search your records to find a version of this
9 agreement with Schedule A if one exists and to
10 perhaps --
11 MR. DUNN: We have searched and
12 have not found another version of this agreement.
13 MR. LI: That is the answer to
14 the undertaking?
15 MR. DUNN: Sure.
16 MR. LI:
17 257 Q. Okay. I want to take you
18 back to your employ -- the... the draft employment
19 agreement dated November 2014. It's here, and
20 this is Schedule A. We looked at it before. Do
21 you see that?
22 A. Yes.
23 258 Q. All right. I think we had
24 a discussion before about how -- I don't want to
25 trick you -- the top -- the body of the agreement

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1 says Schedule B, but the schedule is Schedule A.
2 But you said that... either way, it's re -- it was
3 supposed to refer to the contents of this
4 schedule. Do you remember that discussion?
5 A. Yes.
6 259 Q. Point 4 on this schedule
7 says that... in this draft agreement says that you
8 will be paid a bonus of 10 per cent of final
9 profits will be paid upon the final registration
10 of Vox Condominiums. Do you see that?
11 A. Yes.
12 260 Q. Was a bonus of 10 per cent
13 on the final profits on the final registration of
14 Vox Condominiums paid to you?
15 A. That was... it was never
16 crystallized, no.
17 261 Q. Sorry, I want to confirm
18 what was never crystallized. The profits never
19 crystallized? Or this point 4 term never
20 crystallized?
21 A. The point of 10 per cent
22 profits that is in the document, I never received
23 any money.
24 262 Q. Did you raise the fact
25 that you never received any money with Mr. Casey?

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1 A. It was in and around the
2 whole time of sitting down and talking about my
3 remuneration with Dan and John and to finalize all
4 of my con -- like, my whole contract with all the
5 various entities.
6 263 Q. Will you agree that the
7 final registration of Vox Condominiums or the
8 completion of Vox Condominiums occurred in or
9 around 2018? I think you said --
10 A. It did. And it was -- it
11 was roughly a break-even project. So I... I
12 didn't make it a big issue.
13 264 Q. Okay, okay. Can you give
14 me a sense of how many people work at Cresford?
15 Like... yes.
16 A. Your question is current
17 tense. Like at -- so at various times?
18 265 Q. At the time that you were
19 promoted to COO in 2018, how -- approximately how
20 many people worked at Cresford?
21 A. There was head office
22 staff that was put -- and there was also on-site
23 staff. So it could be anywhere from 50 people at
24 head office, and then there were various on-site
25 staff as well because we were running a

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1 construction company or arm that also had
2 employees that weren't necessarily paid by East
3 Downtown.
4 266 Q. Okay. And --
5 A. So I don't know if
6 those...
7 267 Q. Do you have a ballpark
8 figure, like, in total? Like, a hundred? Two
9 hundred?
10 A. It would be less than a
11 hundred approximately.
12 268 Q. Who was in charge of HR
13 and payroll at Cresford? During the time that you
14 were there, I'm sure it changed. But let's say in
15 2018, who was in charge of HR and payroll?
16 A. HR there was... there was
17 no specific person who had the title of HR.
18 Payroll, at some point in time, it was always
19 Dan's secretary, and then it changed to the vice
20 president of accounting.
21 269 Q. The vice president of
22 accounting did not report to you. The vice
23 president of accounting would have reported up
24 through Ted Dowbiggin or later Dave Mann as I
25 understand it.

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1 A. Dave -- Ted leaves. So,
2 at that point in time, it was Rosemary, which was
3 Dan's assistant, so never reported to Ted like
4 payroll.
5 270 Q. Never reported to you
6 either? Is that fair to say?
7 A. No. I mean it was -- it's
8 -- it is a grey area because I negotiated various
9 people to... to come to Cresford. So it was a...
10 like, I... I am just not comfortable answering
11 that question. It is very grey.
12 271 Q. No worries. I was just
13 wondering, and maybe you can help me out with it,
14 is was there anyone looking at the paycheques that
15 are going out on a biweekly basis or making sure
16 that people's pay is correct? I just want to know
17 who that would be.
18 A. It would have been -- so
19 at the -- it would have been Rosemary, and then
20 from Rosemary it would have been the vice
21 president of accounting --
22 272 Q. Who was the --
23 A. -- after --
24 273 Q. -- VP of accounting?
25 A. At that time, it was

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1 Vivien Creary.
2 274 Q. Was Vivien Creary the vice
3 president of accounting up until the time of
4 January 2020?
5 A. Yes.
6 275 Q. Did you ever raise with
7 Vivien the concerns you had regarding being only
8 paid $300,000 a year and not $500,000?
9 A. I may have had
10 conversations. Everybody was aware that my -- Dan
11 and accounting, I would express that my salary was
12 500,000. At the time though, there was cash flow
13 needs, and I was willing to, because I trusted
14 Dan, not collect the balance, and I trusted that
15 he would pay me at a future date.
16 276 Q. After the February 2019
17 meeting between you, John -- Mr. Papadakis, and
18 Mr. Casey, when is the next time you recall having
19 a discussion with either Mr. Papa -- Mr. Papadakis
20 or Mr. Casey about the terms of the profit sharing
21 arrangement -- agreement.
22 A. I followed up a couple
23 weeks later, or Dan followed up with... Dave was
24 going to be sending Papadakis a... an org chart to
25 understand the company so that he could structure

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1 an agreement.
2 Moving forward from February, I
3 was very focused on running the business and
4 trying to understand what the business was because
5 after Ted's departure in 2018, I had a -- even
6 a... an even bigger responsibility and role. So I
7 was very focused on my role, and it didn't really
8 come up again until later on in that year.
9 You know, I was always... I was
10 always anxious to get my document memorialized or
11 -- you know, or a proper document to ensure that I
12 would -- ensure that I would get my money.
13 277 Q. Right.
14 A. So I was always... it was
15 always top of mind.
16 278 Q. Right. As I understand
17 it, in the fall of 2019 there was a potential
18 third party who came in to be interested to
19 potentially acquire YSL; is that right?
20 A. There was an interested
21 party that came in to acquire YSL and all of the
22 Cresford business.
23 279 Q. All of the Cresford
24 business, okay. Was that third party someone by
25 the name of Patrick Dovigi? Is that -- I don't

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1 know if that is how you pronounce it.
2 A. Yes.
3 280 Q. Dovigi is spelled
4 D-o-v-i-g-y just for the Madam Court Reporter.
5 A. G-i.
6 281 Q. G-i, okay. Is it right
7 that under the potential framework of Patrick
8 Dovigi's acquisition of Cresford, you might have
9 some equity role or equity participation in that
10 transaction?
11 A. It is correct, yes.
12 282 Q. What were some of the
13 terms of that potential equity participation?
14 A. Those were never finalized
15 I mean in terms of the -- in term -- you know, I
16 again trusted the process and understood that
17 Cresford as an ongoing concern needed my
18 management and involvement in order to proceed and
19 trusted the process and the individuals to ensure
20 that I would be properly compensated.
21 283 Q. Did you discuss with Dan
22 or Mr. Dovigi your profit sharing agreement and
23 how that might be folded in into the transaction?
24 A. I discussed with both,
25 yes. I discussed with Dan and was very cognizant

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1 that I didn't want Dan to be... I wanted Dan to be
2 comfortable with the arrangements, and he was --
3 reassured me that he was. It was his time to exit
4 the business, and he was very comfortable and
5 understood that anybody who would look at buying
6 the business would require that I would become...
7 would go with the business and would be properly
8 compensated to ensure that it was run --
9 284 Q. Okay. Did --
10 A. -- to its full potential.
11 285 Q. Did you discuss it with
12 Mr. Dovigi?
13 A. Yes, I did.
14 286 Q. What were those
15 discussions like?
16 A. We agreed that we were...
17 we would be partners, and we agreed and agreed
18 that it was -- it was 50-50 per cent. I
19 understood that I would continue with my salary
20 and my marketing and sales incentives, and in
21 terms of the profits going forward, whatever terms
22 were to come, he had the means to properly
23 capitalize the business, and I was comfortable
24 that whatever would evolve through the transaction
25 would -- I would be able to properly negotiate and

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1 be happy with the outcome.
2 287 Q. Did you ever discuss with
3 him the prospect of him paying you the profit
4 sharing amount --
5 A. Absolutely --
6 288 Q. -- for --
7 A. For Patrick or for Dan?
8 289 Q. For Patrick because if he
9 was now acquiring the business, I just want to
10 know what the terms -- if you discussed what was
11 going to happen with the profit sharing
12 arrangement.
13 A. In terms of YSL, it was
14 going to be an ongoing project. So I would ensure
15 that it would continue, and I would -- you know,
16 it was still -- you know, it was acknowledged by
17 Dan that he owed me 10 -- 20 per cent of the prof
18 -- profit, and it was an ongoing discussion.
19 290 Q. Right. Do you recall what
20 either Patrick Dovigi was prepared to con -- if
21 Patrick Dovigi acquired Cresford, do you recall
22 any discussions about whether he was prepared to
23 continue the profit sharing agreement?
24 A. We discussed that we would
25 be partners 50-50. So I mean that would cover off

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1 the profit sharing because I would get a piece of
2 each of the active deals.
3 291 Q. I am going to put up one
4 of your emails right now.
5 Okay. I have put up a document
6 titled "C011 - 20191213 Email from S. Fleming re
7 Confidential Meeting Follow Up." Do you see that?
8 A. Yes.
9 292 Q. It contains a... you know,
10 the document contains an email from Mr. Fleming
11 dated December 13, 2019 to Mr. Casey. In the
12 email Mr. Fleming discusses a meeting on
13 Wednesday, December 11, 2019. Were you present at
14 that meeting?
15 A. I did not --
16 293 Q. Did you know --
17 A. I was not present, no.
18 294 Q. And you learned about that
19 meeting, I assume, from what Sean Fleming told
20 you?
21 A. Correct.
22 295 Q. Were you copied on
23 correspondence between mister -- or did... were --
24 did you take place in meetings between Mr. Casey
25 and Mr. Fleming or others of your direct reports

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1 where Mr. Casey directed them to stop reporting to
2 you? Or did that take place outside of your
3 presence?
4 A. It took place outside of
5 my presence.
6 296 Q. And you learned of them
7 presumably from the direct report of yours who
8 attended the meetings?
9 A. I learnt of that specific
10 meeting from a -- the direct reports, yes.
11 297 Q. Now, after you left
12 Cresford in January 2020, I take it is
13 uncontroversial that the various Cresford projects
14 went into insolvency shortly thereafter?
15 A. Yes.
16 298 Q. Okay.
17 MR. DUNN: It is all -- let's
18 leave aside the characterization of "shortly"
19 because I --
20 MR. LI: Okay.
21 MR. DUNN: I think --
22 MR. LI: In or after.
23 MR. DUNN: From what I saw,
24 that is probably not right, but it's -- it is not
25 controversial. They're -- it is all... it is all

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1 sort of in the various court records. So we know
2 the timing if --
3 MR. LI: Okay.
4 MR. DUNN: If it's important.
5 MR. LI:
6 299 Q. My question is did you
7 make a claim as a creditor in each of the
8 proceedings for each of the projects?
9 A. I made a claim to each of
10 the projects.
11 300 Q. What was the nature of the
12 claim you made in each of the proceedings for each
13 of the projects? What did you claim for?
14 A. Each project was
15 different. With Clover it was a CCAA, so they
16 were going to continue the business and
17 restructure it. I made a claim for the profits
18 and also my wrongful dismissal of a million
19 dollars.
20 301 Q. And then for Halo?
21 A. For Halo... again, you
22 know, I made a... Mark, if you can help me on this
23 one, I don't remember how Halo... because it was
24 basically a break-even project.
25 MR. DUNN: Do you want us to

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1 just produce the claims that were filed?
2 MR. LI:
3 302 Q. Sure, yes, the notice of
4 the claim that describes the quantum and the
5 nature of the claim.
6 U/T MR. DUNN: That's fine. I
7 believe -- just for the record, I don't believe
8 that any claim was filed in respect of 33
9 Yorkville --
10 MR. LI: Okay.
11 MR. DUNN: -- because that
12 receivership didn't yield any payments for
13 unsecured creditors.
14 MR. LI: Okay. Well, if you
15 could --
16 MR. DUNN: I can tell you --
17 and we will produce the records. But the claims
18 filed with -- in Clover and Halo were
19 substantially the same as the -- as the claim
20 filed in YSL in terms of the... the entitlements
21 that were claimed, obviously accounting for the...
22 the different projects.
23 MR. LI: Understood. So that
24 would be appreciated if you could produce those
25 documents, and that will short circuit some of the

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1 questions.
2 303 Q. That leads me to my next
3 question, I guess, was in any of your... in any of
4 the insolvency proceedings for any of these
5 projects, have you been paid out any amount as a
6 creditor making a claim?
7 A. Again, Mark, can you
8 answer that properly? I don't understand the
9 process.
10 MR. DUNN: Sure. The Halo and
11 Clover claims were settled. I don't believe the
12 payment has yet been made on either of those
13 projects.
14 THE WITNESS: The payments have
15 been made.
16 MR. DUNN: The payments have
17 been made.
18 MR. LI:
19 304 Q. What were the quantum of
20 the payments?
21 A. So, on Clover, it's... I
22 mean, Mark, I don't know, if you can speak to
23 this.
24 MR. DUNN: Sure. I can tell
25 you that the Clover payment and the Halo payment

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1 collectively, I believe, were approximately
2 $120,000.
3 MR. LI: Was the settlement on
4 account of wrongful dismiss -- the claim for
5 wrongful dismissal or on the... on account of the
6 profit?
7 MR. DUNN: The claim was on
8 account of -- the settlement was with respect to
9 the wrongful termination claim.
10 MR. LI: Okay.
11 MR. DUNN: There are important
12 differences between those projects and this one
13 that drove those settlements as being distinct
14 from... from what is being pursued in -- as it --
15 as it relates to YSL.
16 MR. LI: Maybe this is another
17 question to you: Just to confirm, at least in
18 Clover, Halo, 33 Yorkville, there has been no
19 payment made on account of the profit sharing
20 claim?
21 MR. DUNN: Correct.
22 MR. LI:
23 305 Q. Okay. Next question is so
24 since January 2020 after you left Cresford, you
25 know, what... have you been employed since then?

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1 A. I have not been employed.
2 306 Q. What have you been doing
3 to earn income, if anything, since January 2020?
4 MR. DUNN: Objection on the
5 basis of relevance.
6 MR. LI: There is a claim for
7 wrongful dismissal.
8 MR. DUNN: That is not the
9 subject of this phase of the hearing.
10 MR. LI: The arbitration terms
11 of reference say wrongful dismissal.
12 MR. DUNN: Right. It says --
13 but this is a liability hearing.
14 MR. LI: Right. And I am just
15 questioning whether or not there has been
16 mitigation, if any.
17 MR. DUNN: Right. Mitigation
18 is a -- is a damages issue.
19 MR. LI: So you are objecting
20 on the basis of the question about whether she has
21 been employed subsequent to January 2020 is
22 irrelevant?
23 REF MR. DUNN: Correct.
24 MR. LI:
25 307 Q. Okay. Prior to January 2,

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1 2020 when you left Cresford, did you have any
2 discussions with Mr. Casey about the change in
3 your role that you say took place in December
4 2019?
5 A. Yes. We had various
6 discussions.
7 308 Q. What did you say during
8 those discussions? Or what was discussed?
9 A. Which -- you want to
10 reference a specific discussion? Like...
11 309 Q. When --
12 A. You want to point me to a
13 specific date? Or...
14 310 Q. I am asking for your
15 recollection if you spoke with him.
16 A. Yes, so there's -- there
17 is a meeting that might be of relevance that
18 occurs on the date that Dan, his advisor Joe
19 Bolla, and... and Patrick and his advisor have a
20 meeting. They finalize the terms of a sale, and I
21 am asked to attend a meeting to... to discuss the
22 next steps on selling the business in December.
23 311 Q. Did you raise your
24 concerns with what Mr. Case -- Mr. Casey had said
25 to Mr. Fleming, for example, on the meeting on

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1 December 11th?
2 A. Did I raise my concerns?
3 So that meeting hadn't occurred yet. That meeting
4 occurs four or five days after that meeting that I
5 have about discussing putting the... the memo that
6 had been created to sell the business into an LOI
7 form for Dan and Patrick to continue negotiations
8 on the business.
9 312 Q. My question is did you
10 discuss with Mr. Casey your impression that your
11 responsibilities or authority was being removed in
12 that time period?
13 A. Yes. So on that specific
14 date, I discussed Dan's actions and didn't
15 understand what was happening with his excluding
16 me from the day to day of the business and also --
17 at that specific meeting, also expressed my
18 concerns about him putting me in a position where
19 he would... that I would have personal liability.
20 My main concerns were that
21 Dan... I had information that was coming to me
22 that Dan could be potentially putting me in
23 personal liability by doing things that were not
24 in line with each project and the financings that
25 were in place or the equity that was in place

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1 specifically on YSL.
2 313 Q. You referred to that
3 meeting. I just want to clarify what meeting it
4 was. Is that during the meeting that you had with
5 Joe Bolla or the -- the... that --
6 A. I had a meeting with Joe
7 Bolla, and Sean Fleming was present. I proceeded
8 to have a meeting with Dan, who refused to allow
9 anybody else in the room, even though I insisted
10 to have others in the room, because at that point
11 in time I didn't really trust what Dan was saying
12 or doing, and I questioned him on his actions and
13 why he was excluding me and what he was hiding or
14 if he was hiding anything and what he wasn't
15 telling me.
16 I also specifically raised the
17 fact that we had obligations to LP investors,
18 which was my major concern, and breaching any
19 agreements and also discussed a specific
20 arrangement that was with one of the investors
21 which was to have their investment secured against
22 the property, which Dan denied, and then proceeded
23 to explode and call me crazy and was yelling and
24 uncontrollably yelling.
25 After he left Joe Bolla

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1 apologized for his behaviour, insisted that a sale
2 must proceed and to proceed with preparing the LOI
3 to complete the sale of the business.
4 314 Q. So this meeting occurred
5 before December 11th or after December 11th?
6 A. This meeting occurred in
7 and around the same time. I can get you a
8 timeline.
9 315 Q. Okay. Can I ask for an
10 undertaking then to, to the best of
11 Ms. Athanasoulis' recollection, set out the date
12 that the meeting between Mr. Casey, Mr. Bolla, and
13 Ms. Athanasoulis occurred in which the discussions
14 that she just described happened?
15 U/T MR. DUNN: Sure.
16 MR. LI:
17 316 Q. When was the first time
18 that you learned that people were being told to
19 not speak to you or alleged removal of your
20 responsibilities? When did that first occur?
21 A. In November it started to
22 occur when Dan was doing... when Dan was
23 inadvertently no longer -- you know, we no longer
24 were having our daily meetings, or he wasn't
25 engaging with me in the same manner, was making

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1 phone calls directly to people that reported to
2 me, which I'm okay with, but was... was behaving
3 in a manner that was not usual.
4 317 Q. Then the... I guess the
5 December 11, 2019 email is the -- the December
6 13th email that discusses a December 11, 2019
7 meeting between Mr. Casey and Mr. Fleming, is that
8 the first time you are aware of a formal
9 communication that Mr. Fleming is no long to -- no
10 longer to report to you? Is that your
11 understanding when a for -- the formal direction
12 occurred?
13 A. That would be a formal...
14 that would be a key-changing moment.
15 318 Q. In the potential
16 acquisition of Cresford by Mr. Dovigi, were there
17 any other Cresford employees that in the
18 negotiations might have taken part in the
19 acquisition?
20 A. In the acquisition in
21 October, we prepared a binder to sell the
22 business, and the accounting and finance team and
23 also somebody from market -- several people from
24 marketing and sales all helped pull together the
25 information to prepare the file. So they were

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1 involved.
2 Sean was involved with dealing
3 with... with it in terms of communicating directly
4 with individuals that were part of the
5 acquisition.
6 319 Q. Was there anyone else at
7 Cresford though who would plan or was anticipated
8 to participate in some sort of equity or profit or
9 commission or success fee on the acquisition of
10 Cresford by Mr. Dovigi?
11 A. So there -- so in my --
12 like, I -- can you rephrase that? Like, I -- or
13 re-ask your question.
14 320 Q. Sure. In your
15 negotiations with Mr. Dovigi about the potential
16 -- his potential acquisition of Cresford, were you
17 the only employee of Cresford who would
18 potentially participate by way of equity or profit
19 sharing?
20 A. To me profit sharing, it
21 would just be a continuation of the agreement that
22 I had renegotiated percentage-wise. But it was
23 continuing my employment with all of the various
24 entities in Cresford.
25 321 Q. Was there any other

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1 Cresford employee that was planned to participate
2 as an equity partner to the acquisition?
3 A. Yes, when you say equity
4 partner, like, I...
5 322 Q. You --
6 A. I -- yes.
7 323 Q. Let me go back then. You
8 described earlier that the acquisition was going
9 to make you a 50-50 partner with Mr. Dovigi,
10 right?
11 A. Correct.
12 324 Q. Was anyone else going to
13 participate in that acquisition?
14 A. We didn't -- not that I'm
15 aware of.
16 325 Q. Were there any discussions
17 with any other Cresford employees about a
18 potential bonus to them if Mr. Dovigi's
19 acquisition was completed?
20 A. No, not with the
21 acquisition. But they would continue the bonuses
22 they earn on -- as per their employment
23 agreements.
24 326 Q. To your knowledge, did any
25 other employee at Cresford have a profit sharing

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1 agreement with the company?
2 A. To my knowledge, it wasn't
3 -- nobody had a profit sharing. There was... no,
4 not profit sharing.
5 327 Q. If no one else had a
6 profit sharing agreement with Cresford, I take it
7 that the natural answer is no one else was paid a
8 profit sharing amount from Cresford?
9 A. Not to my knowledge.
10 MR. LI: Okay. Those are my
11 questions. Thank you, Mrs. -- Ms. Athanasoulis
12 and -- Athanasoulis and Mr. Dunn.
13 --- Whereupon the examination adjourned at
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TAB 12

Consolidated Court File No. 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c. B-3, as amended
IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
Claim of Maria Athanasoulis against
YG Limited Partnership and YSL Residences Inc.

EXAMINATION FOR DISCOVERY OF JOHN PAPADAKIS
held via Arbitration Place Virtual
on Thursday, January 13, 2022, at 4:13 p.m.

APPEARANCES:

Mark Dunn
Sarah Stothart — for the Claimants

Hannah Johnson — student-at-law

Chenyang Li — for the Respondents

Stephen Moore — for John Papadakis

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

Also Present:

Maria Athanasoulis

Arbitration Place © 2022
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LIST OF UNDER ADVISEMENTS

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1 Arbitration Place Virtual
2 --- Upon commencing on Thursday, January 13, 2022,
3 at 4:13 p.m.
4 AFFIRMED: JOHN PAPADAKIS
5 MR. MOORE: Before we --
6 MR. DUNN: Good afternoon,
7 mis -- sorry.
8 MR. MOORE: Sorry, before we
9 start, I just want to make it clear that I gather
10 there is no party to this particular piece of
11 litigation or any of the other companies that
12 might be involved in the other litigation that is
13 objecting on the grounds of privilege?
14 MR. DUNN: I don't believe so,
15 although Mr. Rosenbluth, looking now, we seem to
16 have --
17 MR. LI: He has dropped off.
18 MR. DUNN: -- lost him.
19 MR. LI: Yes.
20 MR. DUNN: I don't --
21 MR. LI: Put it this way:
22 Counsel for Mr. Casey did not object to the
23 examination on the grounds that I think by the
24 email correspondence we described that concerned
25 discussions on the alleged profit sharing

1 agreement. Is that sufficient --
2 MR. MOORE: I was actually --
3 MR. LI: -- for you?
4 MR. MOORE: But the -- but I
5 think Mr. Casey technically wasn't the client,
6 although I guess he was the directing mind of the
7 client at the time.
8 MR. DUNN: And they are counsel
9 for everyone. They are counsel for all the
10 Cresford Companies as well --
11 MR. MOORE: And, sorry, I --
12 MR. DUNN: -- at Paliare.
13 MR. MOORE: I am not that well
14 involved in this. Does the trustee object?
15 MR. DUNN: No.
16 MR. MOORE: Okay.
17 MR. LI: Just --
18 MR. MOORE: Then go ahead.
19 MR. DUNN: Okay.
20 MR. MOORE: That's all I wanted
21 on the record.
22 MR. DUNN: No problem.
23 EXAMINATION BY MR. DUNN:
24 1 Q. Mr. Papadakis, you are the
25 lawyer for... sorry, you're -- you are a partner

1 at Blaney McMurtry?
2 A. Correct.
3 2 Q. And you practise
4 corporate/commercial law?
5 A. Correct.
6 3 Q. And real estate?
7 A. Correct.
8 4 Q. And you were the corporate
9 lawyer for the Cresford Group of Companies --
10 A. I was one of the lawyers.
11 5 Q. -- in and around 2019?
12 A. I'm sure they had many
13 others, but, yes, I was one of the lawyers.
14 6 Q. You did much of the
15 corporate structuring kind of work. Is that fair?
16 A. At some point in time but
17 not historically, no. They had many lawyers and
18 used many firms in Downtown Toronto.
19 7 Q. Right, okay. And you had
20 a meeting with Mr. Casey and Ms. Athanasoulis in
21 February of 2019?
22 A. Correct.
23 8 Q. At the... and I understand
24 that the... the purpose of the meeting was to
25 formalize an agreement between Mr. Atha --

1 Mr. Casey on behalf of the Cresford companies and
2 Ms. Athanasoulis?
3 A. The meeting I think you
4 are talking about, yes, that is correct.
5 9 Q. And the terms of that
6 agreement were discussed at the meeting?
7 A. Correct.
8 10 Q. And I understand that one
9 of the terms was that -- was that Ms. Athanasoulis
10 was to receive 20 per cent of the profits from the
11 Cresford projects that were ongoing at that time?
12 A. That is correct.
13 11 Q. And Mr. Casey agreed to
14 that at the meeting?
15 A. Yes, he did.
16 12 Q. And I take it from a
17 corporate law perspective -- and you probably
18 haven't looked at this in a while, but the YSL
19 project was owned by a limited partnership and a
20 company called YSL Residences Inc. But you
21 probably recall that Cresford's projects were
22 owned -- each project was owned by its own
23 company?
24 A. Can you explain that
25 again?

1 13 Q. Sorry, that was a poor
2 question. It has been a rather long day. I
3 apologize. Each project was owned by its own
4 company, correct?
5 A. Cresford's interest in the
6 project would have been -- yes, each project would
7 have had a different layer of ownership, a
8 different corporation. But I think at the end
9 they all kind of flowed into the same group.
10 14 Q. Right.
11 A. Yes.
12 15 Q. But each -- and I am going
13 to call them the project companies, the --
14 A. Sure.
15 16 Q. -- companies that actually
16 owned the land and built --
17 A. Yes.
18 17 Q. -- the projects.
19 A. Yes.
20 18 Q. Right?
21 A. Yes, yes, yes, that's
22 correct.
23 19 Q. And those were the
24 companies that earned the profits?
25 A. I don't know what their

1 accounting was like, but I assume that is where
2 the profits would have been held or... again, I
3 never did any of their accounting.
4 20 Q. Right.
5 A. So I really can't answer
6 that question to be honest with you.
7 21 Q. So your understanding
8 though was that since those were the entities that
9 would receive the profits, those were the entities
10 that were going to have to pay the profits to
11 Ms. Athanasoulis?
12 A. Correct.
13 22 Q. If we think about this
14 from a contract law perspective, this is an
15 agreement between Ms. Athanasoulis and each of the
16 project companies, fair?
17 A. I think it may have been
18 more encompassing than that. More entities may
19 have been involved. We didn't drill down to that
20 level at that point in time, but it was least
21 those companies, if not more.
22 23 Q. Did Ms. Athanasoulis agree
23 that if she was terminated her entitlement to
24 profits would end?
25 A. No.

1 24 Q. Did she agree that if she
2 resigned her entitlement to profits would end?
3 A. No.
4 25 Q. Did she agree that if the
5 project was sold as opposed to being built, if it
6 was sold sort of... not sold in pieces to
7 purchasers but sold altogether that she would have
8 no right to any profits earned on that kind of
9 sale?
10 A. No.
11 26 Q. Did you prepare a formal
12 agreement?
13 A. No, I did not.
14 27 Q. I am going to take... I --
15 don't answer the question I am about to ask
16 because I think somebody is going to take it under
17 advisement on the basis of privilege, okay? So
18 why did you not draft a formal agreement?
19 MR. LI: You know,
20 Mr. Rosenbluth is not here, but I guess that is
21 the -- likely privileged.
22 MR. DUNN: Okay, thank you. So
23 you will take that under advisement?
24 U/A MR. MOORE: We will take it
25 under advisement, and when somebody tells us that

1 the privilege has been waived or that we have been
2 ordered to answer the question, then we will
3 answer it.
4 MR. DUNN: That's... that's
5 fine. We can deal offline with who's... who's
6 responsible for deciding if it gets answered, but
7 I just want it on the... on the record.
8 28 Q. Did you prepare other
9 employment agreements for Cresford?
10 A. Me personally, no.
11 29 Q. Do you recall a meeting
12 that you attended... or, sorry, did you keep any
13 -- let's stay with the February meeting. Did you
14 take notes of the meeting?
15 A. I had a scratchpad with
16 me, but for the life of me I can't find those,
17 those notes.
18 30 Q. We've all been there.
19 And... okay.
20 Do you recall Ms. Athanasoulis
21 expressing at the meeting a concern that if
22 Mr. Casey was no longer around to honour the
23 agreement that they had orally that she needed
24 something more formal and that being the rationale
25 for the meeting?

1 A. Correct, she said that.
2 31 Q. Just to be clear, it is
3 your recollection that this was... or, actually,
4 sorry, I... sorry, that this was an existing
5 agreement that was being documented, correct?
6 A. Correct.
7 32 Q. Did the entitlement to
8 profits -- was it discussed whether the
9 entitlement to profits would extend to management
10 fees?
11 A. I don't recall that.
12 33 Q. So it... it could have
13 been. You just don't recall one way or the other?
14 A. Right.
15 34 Q. Okay. Just give me one
16 second to check my notes.
17 Okay. Thank you,
18 Mr. Papadakis. Those are my questions. Mr. Li
19 may have --
20 MR. LI: I have --
21 MR. DUNN: -- one or two
22 additional questions for you.
23 MR. LI: I have some follow-up
24 questions, yes.
25 EXAMINATION BY MR. LI:

1 35 Q. I would just like to go
2 back to the February 2019 meeting. Is it in or
3 around that time that you first learned from be it
4 Mr. Casey or Ms. Athanasoulis, yes, that there was
5 this potential agreement or understanding in
6 place?
7 A. That is when I learned the
8 details, at that --
9 36 Q. And --
10 A. -- meeting.
11 37 Q. I see.
12 A. Is that what you're
13 asking?
14 38 Q. When did you first learn
15 that there was this potential profit sharing
16 scheme in existence?
17 A. I... I always was under
18 the understanding that there was some sort of
19 profit sharing scheme.
20 39 Q. Who told you that?
21 A. Probably Maria
22 Athanasoulis.
23 40 Q. All right. Do you recall
24 in or around what time she would have told you
25 that?

1 A. No.
2 41 Q. To the very first
3 instance?
4 A. I don't.
5 42 Q. Leading up to the February
6 2019 meeting... sorry, going back, did she ever
7 tell you the terms of what the profit sharing
8 arrangement would be prior to 2019?
9 A. Prior to that meeting?
10 43 Q. Yes.
11 A. She may have mentioned it
12 leading up to the meeting.
13 44 Q. But I think you said that
14 you learned about the existence of the profit
15 sharing arrangement -- well, I mean --
16 A. The detail that day --
17 45 Q. -- when --
18 A. Dan confirmed during the
19 -- what the arrangement was.
20 46 Q. Did you know any of the
21 terms of the arrangement before February 2019?
22 A. I don't recall. I don't
23 think so. But I knew there was some sort of
24 profit sharing arrangement in place.
25 47 Q. Did you ever discuss with

1 Mr. Casey the profit sharing arrangement prior to
2 February 2019?
3 A. No.
4 48 Q. Do you recall who arranged
5 the meeting, as in who reached out to you and said
6 we want to have a meeting in February 2019?
7 A. Maria would have arranged
8 the meeting.
9 49 Q. Right.
10 A. Can you hold on one
11 second? I just got to authorize something.
12 50 Q. Sure.
13 --- (Off-record discussion)
14 MR. LI:
15 51 Q. Okay. The meeting was in
16 person at Cresford's offices?
17 A. It was.
18 52 Q. And it was between you,
19 Ms. Atha --
20 A. Athanasoulis.
21 53 Q. Athanasoulis and
22 Mr. Casey, correct?
23 A. Correct.
24 54 Q. Can you give me your
25 recollection of how that meeting began? What

1 topics were discussed?
2 A. It was on a Saturday. So
3 it was just the three of us at the office. We
4 would have exchanged pleasantries, and then Dan
5 would -- said to me that the purpose of the
6 meeting was to sit down and discuss Maria's
7 arrangement and that he wanted to put it down in
8 writing for a number of reasons. One was to keep
9 Maria comfortable. But, more importantly, he
10 wanted to make sure -- and these were his words --
11 that if he got hit by a bus that his estate would
12 not interfere with the operation of the projects.
13 He was very concerned that
14 Maria would be able to continue with the projects,
15 with the four that were ongoing and any new ones
16 that would have come up, that she would have been
17 left in place and not been pushed out by the
18 estate and allow her to finish any projects that
19 were currently in progress, and she would agree to
20 stay on till the end of the -- the end of the last
21 project we would say.
22 55 Q. What was the sort of
23 atmosphere of the meeting? Was it very formal?
24 Serious? Or...
25 A. No, it was very friendly.

1 You know, it was... it was -- I don't even think
2 we sat at a boardroom table. We sat on lounge
3 chairs and chatted and talked about what the
4 agreement would look like, the entities that would
5 be involved, what Dan's concerns were and things
6 like that.
7 56 Q. Were you in a position to
8 begin to put pen to paper on a rough draft of the
9 agreement that day or immediately thereafter?
10 A. No, I was not.
11 57 Q. Why is that?
12 A. First of all, we needed to
13 figure out all of the entities involved. Dan did
14 instruct... I forget his name. Is it Mark Dunn?
15 I can't recall. No, you're Mark Dunn, sorry.
16 MR. DUNN: I am certain it
17 wasn't Mark Dunn.
18 THE WITNESS: No, no. What was
19 his name?
20 MR. DUNN: Could I suggest
21 it --
22 MR. LI: Is it Pat Dunn?
23 MR. DUNN: -- might be Dave
24 Mann?
25 THE WITNESS: Dave Mann, thank

1 you.
2 MR. LI: Okay, Dave Mann, okay.
3 THE WITNESS: I was trying
4 to... it was two syllables. I remember that.
5 MR. DUNN: I apologize --
6 MR. MOORE: They almost sound
7 the same.
8 MR. DUNN: I apologize, Mr. Li,
9 for suggesting the answer. But I think having
10 been accused of involvement, it's okay.
11 MR. LI: That's all right.
12 Your assistance in this matter has been very
13 helpful.
14 THE WITNESS: Dan had Dave Mann
15 send me a... like, a flowchart or a corporate org
16 chart showing all the entities. Probably a week
17 later I got it, and that is what we needed to at
18 least start looking at to see how we are going to
19 draft it and what entities will be involved and at
20 what level and whatnot.
21 MR. LI:
22 58 Q. Okay. To the extent you
23 do recall, can you just provide a description of
24 what terms of the arrangement were discussed that
25 day?

1 A. Terms?
2 59 Q. Yes. You know --
3 A. Maria would continue to
4 run the operations of Cresford. She would be
5 entitled to the profit distribution. We didn't
6 talk about timing. We didn't talk about... you
7 know, timing as far as when the payments would be
8 made.
9 60 Q. Sorry, excuse me, you
10 didn't talk about timing? I just didn't hear
11 clearly. You didn't talk about --
12 A. We did not talk about
13 timing as to when the payments would be made.
14 That was going to flesh itself out in the
15 agreement. It was more of a high level kind of --
16 you know, kind of what we are looking for and this
17 is what we want to get started on.
18 61 Q. I am just going to suggest
19 -- I think you answered my friend earlier that
20 Maria -- my friend asked you did Maria agree that
21 the profit sharing would not be paid if she was
22 terminated. I don't recall the exact words of his
23 question, but it was something to that effect, and
24 I think you said no.
25 A. No.

1 62 Q. My question is were those
2 terms discussed in the meeting?
3 A. The whole purpose of the
4 contract was to ensure that Maria would continue
5 on and that she would be compensated for all the
6 work that she was doing. There -- you know, Maria
7 did suggest that it was a savings to Cresford of
8 about 40 million or 42 million -- I can't remember
9 the exact number or how she came up with it --
10 that they would have paid to other... commissions
11 or consulting fees or things like that, that she
12 feels that she should have been entitled to
13 because she did all that work.
14 You know, Maria did work a lot
15 and put a lot of work into those projects.
16 63 Q. And... but did
17 Mr. Papadakis or did Ms. Athanasoulis ever raise
18 the issue of what the agreement would say, for
19 example, if she was terminated?
20 A. I don't recall that coming
21 up.
22 64 Q. Did either Mr. Ca... did
23 either Mr. Casey or Ms. Athanasoulis raise the
24 issue of what the agreement should provide if
25 Ms. Athanasoulis resigned from Cresford?

1 A. I can't say that those --
2 we used any of those exact words. The words that
3 were being used were Maria needs to make sure that
4 she gets compensated for all this work that she is
5 doing.
6 Dan wanted to make sure that he
7 puts that in writing. He said, you know, like,
8 Maria trusts me. He goes I understand that. This
9 isn't a trust issue. He was very clear about
10 that. He said I just want to put it in writing so
11 that she has it and she is comfortable in her
12 arrangement here, and, more importantly, if
13 something should happen to me, if I get hit a
14 buss, that Maria will be able to finish these
15 projects and be properly compensated for them.
16 65 Q. I take it that the reason
17 why I guess I am going to characterize it as
18 succession planning came up was Maria had a
19 concern that perhaps if the Cresford Group of
20 Companies became or went under the control of
21 another third party, stranger to the company, she
22 might be terminated or lose control or lose her
23 position?
24 A. Correct. Or more --
25 66 Q. Okay, so --

1 A. It was more of an... it
2 was more of an estate concern. I don't think she
3 was worried about the projects being sold -- like,
4 being sold to a third party if that's what you're
5 referring to.
6 67 Q. Yes, I just mean if a new
7 owner comes in and says --
8 A. Yes.
9 68 Q. -- I have a different COO
10 I want, so you're out.
11 A. Right.
12 69 Q. So she wanted to protect
13 herself from that sort of a thing?
14 A. Correct.
15 70 Q. Okay. But --
16 A. And so did Dan.
17 71 Q. And so did Dan.
18 A. Yes.
19 72 Q. Was there any discussion
20 about what would happen in that eventuality?
21 A. They wanted to make sure
22 that she -- there was no way that anybody can
23 remove her from her position.
24 73 Q. Okay. And did they
25 discuss --

1 A. That is what they were
2 looking to --
3 74 Q. Sorry, finish your answer.
4 A. -- that is what they were
5 looking to accomplish.
6 75 Q. Did they discuss what
7 provisions they wanted in the agreement in order
8 to accomplish that objective?
9 A. No.
10 76 Q. I think you confirmed
11 earlier that you understood that one of the terms
12 was that Maria would be paid a 20 per cent profit
13 sharing amount --
14 A. Correct.
15 77 Q. -- on projects?
16 A. Correct.
17 78 Q. Which projects were those?
18 A. The projects that were on
19 the go at the time and any future projects.
20 79 Q. You also answered earlier,
21 I think, that you did not really have a discussion
22 about what timing that payment would be made.
23 A. Correct.
24 80 Q. Was there any discussion
25 -- sorry, you know, did you understand there to be

1 any agreement about when the profit sharing amount
2 would be paid?
3 A. My understanding coming
4 away from it was the profit sharing would be paid
5 at the completion of these projects. That's --
6 when a project -- when the project is actually
7 realized, right?
8 81 Q. Right. Was there any
9 discussion between you, Mr. Casey, and
10 Ms. Athanasoulis regarding how profit would be
11 defined in the agreement?
12 A. We touched briefly on it.
13 Obviously, we were concerned that any loans would
14 be bona fide loans. But to put it kind of
15 generally, that any line items would all be kind
16 of bona fide. There won't be things in there that
17 wouldn't normally be seen in a... in an enterprise
18 such as this but... and one of them was for sure
19 that any loans would be bona fide loans and that
20 the profit wouldn't be stripped out through
21 another means.
22 82 Q. Was there a discussion
23 about whether the profit would be calculated
24 pretax or after tax?
25 A. No.

1 83 Q. Was there a discussion
2 about whether the profit would be calculated based
3 on one accounting standard or set of rules --
4 A. No.
5 84 Q. -- versus another?
6 A. No.
7 85 Q. Was there a discussion
8 about whether the profit would be calculated on
9 net of equity withdrawals or before equity
10 withdrawals?
11 A. I... I'm trying to
12 understand the question. I would think that the
13 initial capital that was put into the project
14 would be -- because, you know, that is not profit.
15 That is return of capital.
16 86 Q. Right.
17 A. So that would be not part
18 of the profit. It wouldn't form part of the
19 profit.
20 87 Q. But did you discuss that
21 during that meeting?
22 A. I would say yes. I don't
23 remember the exact wording, but the concept is one
24 that I think I walked away with.
25 88 Q. Okay, one second.

1 Did you discuss what would
2 happen to the profit sharing agreement if a
3 project -- what would happen under the profit
4 sharing agreement if a project was sold or
5 assigned to a third party?
6 A. If there was profit, that
7 that would be shared then.
8 89 Q. How would that profit be
9 calculated?
10 A. The same way because it
11 all has to do with Maria's work in putting the
12 project together.
13 90 Q. How was her work valued
14 then?
15 A. Pardon me?
16 91 Q. I think you just said it
17 would be calculated because it all has to do with
18 Maria's work in putting the project together.
19 A. Right. Maria is the one
20 who usually find the projects, and Maria is the
21 one that usually puts them together, and Maria is
22 the one that usually did everything. So it wasn't
23 some -- it didn't work the other way around where
24 a project was presented to her. She's -- she is
25 the one that put everything together from

1 inception.
2 92 Q. Right. I just want to
3 understand that. If a project was sold halfway
4 through before completion, how would profit be
5 calculated? Did you have that discussion?
6 A. I don't think we had that
7 exact discussion. But the whole concept of our --
8 the whole concept of a -- of our conversation was
9 that she would be entitled to 20 per cent of the
10 profits of each project. Whether they got sold or
11 not or were -- or were seen to their full
12 completion where the end units get sold, she would
13 be entitled to that 20 per cent.
14 93 Q. Did you discuss as part of
15 the profit sharing arrangement any security that
16 Mar -- any security that Maria would take in the
17 project?
18 A. No.
19 94 Q. Did you discuss as part of
20 the meeting any terms of what would occur in the
21 event of default or the insolvency of a project?
22 A. No.
23 95 Q. Did you have any other
24 meeting concerning this topic after February 2019?
25 A. It... well, it depends

1 what you mean by "meeting."
2 96 Q. Did you discuss with
3 Ms. Athanasoulis this topic after February 2019?
4 A. Certainly.
5 97 Q. When did those discussions
6 occur?
7 A. I... she... Maria and I
8 would communicate regularly, and she would bring
9 it up every once in a while and...
10 98 Q. Did she ever communicate
11 to you that Mr. Casey... that you were to proceed
12 and draft the agreement?
13 A. Pardon me?
14 99 Q. Did she ever communicate
15 to you that you were to proceed and draft the
16 agreement?
17 A. It was always on the
18 understanding that we would get to the agreement.
19 100 Q. But in the period after
20 February 2019, she didn't tell you please go and
21 draft the agreement?
22 A. I can't say she didn't
23 because the agreement would come up that we need
24 to get it done so...
25 101 Q. What were the terms that

1 she asked you to draft into the agreement?
2 A. We didn't have a
3 conversation again about the terms. We just... it
4 was, like, get the -- we need to get the agreement
5 done.
6 102 Q. Okay, I understand. Do
7 you recall a discussion on November 1, 2019
8 between you and Mr. Casey at Maria's house on this
9 topic?
10 A. It came up.
11 103 Q. What, if anything, was
12 discussed at Maria's house between you and
13 Mr. Casey?
14 A. Maria was upset that the
15 arrangement -- the agreement had not been actually
16 formalized yet.
17 104 Q. Was there any discussion
18 regarding the terms of the arrangement --
19 A. No.
20 105 Q. -- on November 1st? No?
21 A. No.
22 MR. LI: Okay. Those are my
23 questions. Thank you.
24 MR. MOORE: So are we finished?
25 MR. DUNN: Thank you very much,

1 Mr. Papadakis and Mr. Moore.
2 MR. LI: Thanks.
3 MR. MOORE: You're welcome.
4 THE WITNESS: You're welcome.
5 --- Whereupon the examination adjourned at
6 4:42 p.m.
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TAB 13

Consolidated Court File No. 31-2734090

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IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,
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YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
Claim of Maria Athanasoulis against
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ARBITRATION PROCEEDINGS HEARD BEFORE
ARBITRATOR WILLIAM G. HORTON
held via Arbitration Place Virtual
on Tuesday, February 22, 2022, at 9:32 a.m.

VOLUME 1

APPEARANCES:

Mark Dunn
Sarah Stothart
on behalf of the Claimant

Matthew Milne-Smith
Chenyang Li
Robin Schwill
on behalf of the Respondent for KSV Restructuring Inc. in its capacity as the proposal trustee

ALSO PRESENT:

Angela Yu
Hannah Johnson

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1 Arbitration Place Virtual
2 --- Upon commencing on Tuesday, February 22, 2022,
3 at 9:32 a.m.
4 ARBITRATOR HORTON: Good morning
5 everyone.
6 MR. DUNN: Good morning, Mr.
7 Horton.
8 MS. STOTHART: Good morning.
9 ARBITRATOR HORTON: I'm waiting to
10 see if we have everyone. We have ten participants.
11 So let me just check the participants list for a
12 moment. All right. Have counsel checked the
13 participants list and just ensured everyone is
14 present who needs to be present and no one is present
15 who shouldn't be present? Will you just do that,
16 please.
17 MR. DUNN: From our side, we have
18 everyone here who is expected to be here.
19 MR. MILNE-SMITH: Same from our
20 side.
21 ARBITRATOR HORTON: All right.
22 Okay. So we have an arbitration in which the
23 claimant is Maria Athanasoulis. And am I pronouncing
24 that correctly?
25 THE WITNESS: Yes, you are.

1 MR. DUNN: I believe so, yes.
2 ARBITRATOR HORTON: To an
3 acceptable level, anyway. All right. And Ms.
4 Athanasoulis is represented by Mark Dunn, Mr. Mark
5 Dunn and by Ms. Sarah Stothart. And is there anyone
6 else on your team, Mr. Dunn?
7 MR. DUNN: Our articling student,
8 Hannah Johnson is here. And it's pronounced
9 Stothart.
10 ARBITRATOR HORTON: Ah.
11 MR. DUNN: Ms. Stothart's name.
12 ARBITRATOR HORTON: Actually, I
13 think I misspelled it in my note here. Okay. And
14 Ms. Johnson is also present. All right. And then
15 the respondent is KSV Restructuring as trustee,
16 proposal trustee for YG Limited Partnership, and YGL
17 Residences Inc., who we're collectively referring to
18 as YSL, and represented by Mr. Matthew Milne-Smith,
19 Mr. or Ms. Robin Schwill.
20 MR. MILNE-SMITH: Mr. Robin
21 Schwill.
22 ARBITRATOR HORTON: Mr. Robin
23 Schwill, and Mr. Chenyang Li. All right. So I hope
24 those are all the appearances. The hearing is being
25 transcribed with the assistance of Arbitration Place,

1 and the court reporter is Ms. Crystal Deisting. So
2 we can call on her as needed throughout the
3 proceeding. And the representative for Arbitration
4 Place is Angela Yu, and Ms. Yu will be recording --
5 also doing a video recording of the hearing as we
6 agreed in procedural order number 2 and providing us
7 with a copy shortly thereafter. Of course, the
8 transcript will be the official record of the
9 arbitration, subject to correction, as may be
10 necessary.
11 All right. So I think that's the
12 preliminaries. I will just mention now, although it
13 won't come up for a little while, that my plan is
14 just to affirm the witnesses, and I will do that
15 myself, rather than having the reporter do it. So if
16 that's acceptable, that's how we'll proceed on that.
17 And otherwise, I think we had agreed that there would
18 be roughly 30 minutes or so or less of opening, and
19 we'll proceed directly to that. Mr. Dunn.
20 MR. DUNN: Thank you. Mr. Horton,
21 before I launch into this, just one small point of
22 form.
23 ARBITRATOR HORTON: Sure.
24 MR. DUNN: I notice my friend, Mr.
25 Milne-Smith, stood when he was called on. His camera

1 is set up a little bit differently than mine. My
2 intention will be to stay seated, and I just trust
3 that that's okay with you.
4 ARBITRATOR HORTON: Absolutely.
5 It's entirely a matter of personal preference. Some
6 people actually feel more comfortable standing; some
7 people feel more comfortable sitting. And it makes
8 absolutely no difference to me as long as I can hear
9 you.
10 MR. DUNN: Okay.
11 ARBITRATOR HORTON: I will let you
12 know if I'm having a problem in that regard.
13 MR. DUNN: Thank you. Thank you.
14 OPENING STATEMENT BY MR. DUNN:
15 So I'll start Ms. Athanasoulis'
16 opening. And it is not my intention to repeat. Both
17 sides filed fairly detailed written opening
18 statements and our position is spelled out in some
19 detail in the written opening.
20 It's not my intention here to
21 repeat that, although, obviously, there may be a
22 little bit of overlap. But the focus and the reason
23 why I wanted to give this opening, notwithstanding
24 the detailed written opening that's already been
25 provided, is that some of the positions that we're

1 facing, some of the case to meet, shifted from what
2 we thought it was in the opening, to what we saw in
3 the opening, and even since the opening.
4 And so the intention here is to
5 frame the issues, at the outset of the hearing, based
6 on the landscape as it exists today. So the starting
7 point is, of course, and I believe this to be agreed
8 upon, although my friend can correct me in his
9 opening if that's wrong, that there are two questions
10 and only two questions that are in front of you:
11 What were the terms of Ms. Athanasoulis' agreement
12 with Cresford, and was Ms. Athanasoulis
13 constructively dismissed.
14 And there is a lot of extraneous
15 background, and some relevant background, that may
16 come into the evidence. But at the outset I want to
17 focus on the fact that those are the questions to be
18 determined. Issues of damages, issues of what the
19 claim is worth, if it's valid, are not before you.
20 And issues about whether Ms.
21 Athanasoulis was terminated for cause are not before
22 you, and that's the result of the case conference
23 that we had last week, where YSL was put to an
24 election of adjourning the proceeding so that it
25 could investigate and potentially pursue the

1 allegation that Ms. Athanasoulis was terminated for
2 cause, or it could proceed without that allegation.
3 And it elected to proceed without that allegation.
4 So there is no -- there is nothing before you about
5 whether Ms. Athanasoulis was terminated for cause.
6 And that is important, as the
7 evidence is presented, because there's quite a bit of
8 negative allegations about Ms. Athanasoulis. And
9 those are purely put forward to undermine her
10 credibility. They don't tie into or affect any of
11 the legal issues that are actually before you.
12 The second point I want to
13 emphasize, and that is worth keeping in mind as we
14 progress through the evidence, is that on the two key
15 questions, what are the terms of the agreement, and
16 was Ms. Athanasoulis constructively dismissed, YSL's
17 position has fundamentally changed since the
18 discoveries occurred in this matter.
19 And that is a position held since
20 2020 by way of procedural background, which is
21 referenced. There's a claim, a Superior Court action
22 commenced against a number of Cresford entities,
23 including YSL, in January of 2020. It was defended
24 in February of 2020 by YSL. And those allegations
25 remain outstanding in the Superior Court action. And

1 what YSL chose to do in this proceeding was to adopt
2 a slice of them. Not all of them, but some of them.
3 And the first allegation was what
4 were the terms of this agreement. And here I should
5 note there's a bit of a nuance between what my -- how
6 my friends have characterized this and how I have
7 characterized it, in that there is a profit sharing
8 agreement, we say, that is part and parcel of Ms.
9 Athanasoulis' employment agreement. It's all one
10 agreement and it's an oral agreement, and the terms
11 evolved and changed over time. And as I understand
12 YSL's position, they're framing it as a separate
13 standalone kind of agreement. It's a small
14 difference, but it does play into the terminology.
15 But the initial position was that
16 Ms. Athanasoulis was entitled to 10 percent of net
17 profits realized on the successful completion of all
18 the projects, including YSL. And I'm just going to
19 bring this up on the screen. Ms. Stothart, I
20 believe, circulated our compendium. I don't know if
21 it's more convenient to look at the electronic copy
22 or -- I'll bring up the documents on the screen that
23 I'm taking you to. In any event, this is Tab 4 of
24 the compendium.
25 And what we see here, paragraph

1 51:
2 "After the Vox Project,
3 Casey agreed to pay
4 Athanasoulis 10 percent of
5 the net profits realized on
6 the successful completion of
7 future projects."
8 And you'll hear the evidence that
9 the launch of the Vox project, this time period, was
10 2014, okay. So this is several years that the
11 parties are operating under this agreement, according
12 to YSL's pleading, to pay.
13 And the same admission, yeah, I
14 should say, in fairness to YSL in this proceeding, it
15 is represented by the trustee, who is a stranger to
16 these facts. But the same admission was made -- oh,
17 I apologize, what I was just showing you was
18 Cresford's defence from 2020, which was adopted by
19 YSL at paragraph 12 of its own proceeding.
20 And then at paragraph 14, it says,
21 while there is a discussion of increasing the share
22 from 10 percent to 15 percent, the increase was never
23 agreed to between the parties, right? So there's an
24 admission that there's an agreement in place, but lo
25 and behold the condition -- or sorry, the percentage

1 was disagreed -- was the subject of disagreement.
2 And what's being shown now, the
3 allegation now is that, in fact, there was no
4 agreement at all, ever. And I'm showing you
5 paragraph 55 of the opening. That all that happened
6 were preliminary discussions concerning the potential
7 profit sharing agreement. Keep in mind, these
8 allegedly preliminary discussions - and I'm at Tab 7
9 of my compendium, for what it's worth - took from
10 2014 to 2020. That's the allegation that's being
11 put. So there were these preliminary discussions; no
12 agreement for five or six years.
13 So we want to outline what the
14 response is to that allegation, because that seems to
15 now be the respondent's primary answer or only answer
16 to the first question, what are the terms of the
17 agreement? There were no terms, because there were
18 no agreement.
19 There are two responses. The
20 first, I'll touch on fairly briefly, is the legal
21 response, which is that -- and this isn't a
22 contentious principle, but there is a specific
23 admission in the pleading to a key element of Ms.
24 Athanasoulis' claim, which is the existence of an
25 enforceable agreement. That is, of course, important

1 in a breach of contract claim. And a party that
2 makes such an admission cannot simply withdraw it
3 without leave, and leave requires a reasonable
4 explanation.
5 So we will see -- and I've given
6 at Tab 8, the test for a -- and it's not highlighted,
7 but at paragraph 8 of the University Plumbing case,
8 which we'll go through more in argument, gives the
9 test for withdrawing an admission.
10 So the first step, the threshold
11 step, is in order to succeed in its current position,
12 YSL needs to properly withdraw its prior admission.
13 And we'll see if that test is made out in the
14 evidence.
15 The next point, which I also
16 believe to not be contentious, is that a contract
17 need not account for every conceivable possibility in
18 order to be binding.
19 What a contract needs to account
20 for in order to be binding, in order to be
21 enforceable, is the essential terms. And essential
22 terms -- and, again, we'll go into a lot more detail
23 on this in closing. Essential terms vary by the
24 case.
25 But in this case, our position is

1 that the essential terms of the agreement, as it
2 related to profit sharing, are what was to be paid.
3 And the evidence will be, it was 20 percent of the
4 profits generated by each project that Cresford
5 completed. There was four projects at the time,
6 Clover, Halo, Yorkville and YSL. Everybody involved
7 in this discussion knew what they were.
8 And the second question, how was
9 payment to be calculated. There's some suggestion in
10 the opening argument that calculating profits is this
11 complex and difficult to understand that requires,
12 you know, detailed negotiations that never happened.
13 But in this case, what Mr. Casey and what Ms.
14 Athanasoulis agreed to was that the profits were to
15 be revenue less expenses, calculated on the detailed
16 budgets that Cresford prepared for every project.
17 These are two people, remember,
18 who had been running a business together for years.
19 And when they said "profit," they knew what it meant,
20 and that's what Ms. Athanasoulis was entitled to a
21 share of. Who had to pay? The project owners had to
22 pay. That's where the profits were earned, and it's
23 only sensible, and it was agreed to, that that's
24 where the obligation had to rest.
25 When were the payments to be made?

1 The payments were to be made to Ms. Athanasoulis when
2 they were made to Cresford. Again, this is both
3 something that was agreed to, but also something that
4 makes simple common sense.
5 Finally, we say that there was an
6 implied term that the projects would be managed
7 honestly and in good faith to maximize profits.
8 Now, we don't say that this was an
9 issue that was specifically discussed, because it
10 would never occur to anyone to discuss it, because it
11 is so obvious.
12 And in closing, we'll outline how
13 that fits into the law of implied terms.
14 And so you have the basic
15 questions, right? What, when, who and how. And
16 that, in our submission, is all that was required.
17 And I've included in the
18 compendium the Canada Square case, which we say
19 simply stands for - and this is Tab 9 - the
20 proposition that it is -- and this is quoted at
21 paragraph 32 from a House of Lords case, but it is --
22 and this is about halfway through the paragraph:
23 "It is accordingly the duty
24 of the Court to construe
25 such documents fairly and

1 broadly, without being too
2 astute or subtle in finding
3 defects; but on the
4 contrary, the court should
5 seek to apply the old maxim
6 of English law..."
7 And I won't quote the Latin:
8 "Words are to be understood
9 that the object may be
10 carried out and not fail."
11 And so it is not the correct
12 approach, with respect, to say what about this
13 eventuality and what about that eventuality. The
14 parties are free to agree to what they have agreed
15 to, and to determine for themselves what are the
16 essential terms. And to the extent that something is
17 alleged to be an essential term, the question to be
18 answered is why, as we go through the evidence, why
19 is it that for the six years that this was discussed,
20 this allegedly essential term wasn't agreed to.
21 So turning -- and with respect,
22 there is at paragraph 38 a long, long list of things
23 that were allegedly required and not agreed to. Some
24 of those things were agreed to, we say, and we also
25 say the balance did not need to be agreed to.

1 And I'll just highlight, by way of
2 example, this is paragraph 38 of the YSL opening, and
3 that's at Tab 17 of our compendium. And I just want
4 to highlight two, just for illustration purposes.
5 First (i):
6 "The parties never agreed
7 upon how the alleged PSA
8 would be treated in the
9 event of a default of an
10 entity within the Cresford
11 organization."
12 And the point is, this is an
13 eventuality. It's possible that an entity within the
14 Cresford organization would default on something.
15 And it was completely open to the parties to agree
16 about how that default would affect their respective
17 contractual obligation. That's a thing people can
18 agree to. It is also a thing that people cannot
19 agree to. And the default is, that doesn't have any
20 effect on the contractual obligations. That's the
21 result of not agreeing on that point. The same is
22 true:
23 "The parties never agreed
24 upon how the alleged PSA
25 would be treated in the

1 event of an acquisition of
2 the Cresford organization."
3 That is something the parties
4 could say, in the event of an acquisition, here's how
5 our respective obligations changed. But it is also
6 perfectly -- the parties are perfectly entitled to
7 not enter into an agreement on that point, in which
8 case an acquisition of the Cresford organization, had
9 one occurred, would have left their respective
10 contractual obligations untouched.
11 And so as these points are raised
12 in the evidence, the question is, is this essential,
13 and did the parties think that it was essential.
14 I want to turn -- and if, as I
15 understand the point, as I understand the case
16 currently, that is the response on, on the profit
17 sharing. That is the response in terms of the terms
18 of the agreement, that there was no agreement.
19 There was a prior position, which
20 is how -- what would happen on -- what would happen
21 in the event of Ms. Athanasoulis being terminated or
22 resigning. And that, just returning to the trustee's
23 defence at paragraph 12, there's a specific term
24 alleged here:
25 "However, Athanasoulis would

1 only be entitled to this
2 benefit if she contributed
3 to the successful completion
4 of the project and remained
5 an employee of Cresford at
6 the date of the project
7 completion."
8 So it's the last paragraph here,
9 the last sentence. What the prior position was, was
10 that there was a condition, right; she's entitled to
11 these things if and only if she remains an employee
12 on the date of project completion.
13 But now what we're seeing,
14 paragraph 38(k), the new opening, is that the parties
15 never discussed or agreed how the dismissal or
16 resignation from her employment would affect the
17 alleged PSA.
18 So it's not just different. What
19 was previously alleged to be a condition of the
20 agreement is now alleged to have not even have been
21 discussed, let alone agreed.
22 But there's another point, which
23 is that there has to be evidence that this is an
24 essential term; that without that you don't have an
25 agreement that works. And, again, this is something

1 that the parties could have agreed that, in the event
2 of termination, this is what happens. But in the
3 absence of an agreement, the parties' rights and the
4 parties' obligations under this part of the
5 agreement, simply remain untouched.
6 So I want to turn to the second
7 question now, which is, whether Ms. Athanasoulis was
8 constructively terminated. And the basic facts here
9 seem to -- or the facts that we say are relevant do
10 not seem to be contested.
11 Situating ourself at the end of
12 November 2019, Ms. Athanasoulis -- sorry, I'll start
13 a little bit earlier. Ms. Athanasoulis was
14 responsible for virtually all aspects of Cresford's
15 business. All the employees reported to her. She
16 was primarily responsible for dealing with trades,
17 for dealing with lenders. She was involved in all
18 major decisions. And in November 2019, Mr. Casey
19 took all of that away, stripped her of all of her
20 responsibilities, told her to stop coming to the
21 office, okay. That part is now, from what I can
22 tell, agreed upon.
23 But we now see a new allegation.
24 Well, yes, she was stripped of all her obligations,
25 but she was on leave. She was behind an ethical

1 wall, to use the language from YSL's opening. And
2 this is at Tab 18, because at this time there was a
3 sale being discussed involving a gentleman named
4 Patrick Dovigi, who is the CEO and founder of Green
5 For Life, or I believe it's now GFL Environmental.
6 And Ms. Athanasoulis was going to have an interest in
7 the theory -- or in the sale; and, therefore, an
8 ethical wall was erected between Ms. Athanasoulis and
9 Cresford's business, and she was, according to the
10 trustee, or according to YSL, tasked with negotiating
11 that transaction, and only negotiating that
12 transaction.
13 The difficulty is, no one told Ms.
14 Athanasoulis that she was on leave or behind an
15 ethical wall, ever.
16 And I'm going to take you to the
17 Potter case, just briefly which -- and it's paragraph
18 98. And this is a 2015 Supreme Court of Canada
19 decision dealing specifically with constructive
20 termination, specifically with an employee who was
21 put on leave.
22 So the first point, point -- and
23 this is a little bit earlier on at paragraph 39,
24 which is that the test is whether a reasonable person
25 in Ms. Athanasoulis' position would consider that the

1 essential terms of the employment contract had been
2 substantially changed.
3 So the test is not what Mr. Casey
4 thought he was doing. The test is what a reasonable
5 person in her position would understand. And the
6 evidence will be that he never told her that she was
7 on leave. He never told her that her position was
8 temporary.
9 And in the Potter case, one of the
10 things that the Court held -- and this is at
11 paragraph 99, this is the second sentence:
12 "It seems to me that, in
13 most cases [sic] an
14 administrative suspension
15 cannot be found to be
16 justified in the absence of
17 a basic level of
18 communication with the
19 employee. At a minimum,
20 acting in good faith in
21 relation to contractual
22 dealings means being honest,
23 reasonable, candid, and
24 forthright." [As read]
25 So it is not enough, in my

1 respectful submission for Mr. -- if Mr. Casey
2 testifies and is convincing that he thought he was
3 putting Ms. Athanasoulis on a temporary leave -- and
4 we don't accept that, but just assume for a moment
5 that it is. Consider not, in my respectful
6 submission, that the key analysis is not what Mr.
7 Casey thought; it's what a reasonable person in Ms.
8 Athanasoulis' shoes would think. And a reasonable
9 person who was called crazy or stupid, and sent home
10 from the office and told not to come back, told not
11 to communicate with any of Cresford's key
12 stakeholders, and not given one hint, or iota, or
13 inkling that anything was temporary, a reasonable
14 person in that position would believe themselves to
15 have been terminated.
16 I'm going to deal with two points,
17 and then I believe, I'll have exhausted my half an
18 hour. The first is, there's an issue about whether
19 Ms. Athanasoulis was employed by YSL. And this is
20 something of a surprising issue, because Ms.
21 Athanasoulis was an officer of YSL. So, much was
22 said in YSL's opening about an intention to create a
23 contractual relationship between YSL and Ms.
24 Athanasoulis.
25 And the facts are that she was an

1 officer of YSL, she was formally appointed its vice
2 president and its secretary. She negotiated
3 contracts on behalf of YSL. She signed or delegated
4 to others the opportunity to sign -- or the right to
5 sign, give or take, $650 million worth of contracts
6 with purchasers. She represented YSL in negotiations
7 and communications with lenders, at its marketing
8 launch. If YSL had a face, that face was Ms.
9 Athanasoulis.
10 And what YSL now says is that
11 because Ms. Athanasoulis was paid her salary by a
12 company named East Downtown Redevelopments
13 Partnership, that EDRP, and only EDRP was the
14 employer. And that fits us squarely into the leading
15 case on the common employer doctrine, which is a
16 case -- the case Downtown Eatery.
17 And at Tab 29, there's a quote
18 from it, which says:
19 "...the law should be
20 vigilant to ensure that
21 permissible complexity in
22 corporate arrangements does
23 not work an injustice in the
24 realm of employment law."
25 And in that case, there was an

1 integrated group of companies that operated a
2 nightclub business. And the company that paid the
3 plaintiff had no assets. And what the Court found is
4 that it's unjust, and that all of the entities,
5 including entities that came into existence after the
6 termination at issue in that case occurred, were on
7 the hook.
8 So the facts here, the evidence
9 will show, are very similar. It is true that EDRP
10 paid a salary to Ms. Athanasoulis. But what you will
11 hear is that salary was only one part, and, frankly,
12 a relatively small part of Ms. Athanasoulis' overall
13 compensation. And a very significant amount of
14 compensation was paid directly by the project owners,
15 companies like YSL, in the form of condominium
16 credits, sometimes in the form of cash.
17 Recall that Ms. Athanasoulis had
18 no written employment agreement, but you will see
19 that the template agreement used by Cresford to enter
20 into employment contracts didn't even mention EDRP.
21 It was entered into on behalf of Cresford
22 Developments - not Cresford Developments Inc., not
23 Cresford Development Corp. So the standard form
24 agreement referred to the group as a whole, not to
25 EDRP.

1 Finally, I'm going to touch very
2 briefly on, and encourage you, Mr. Horton, as I know
3 you will, to consider -- to put appropriate weight on
4 some facts that I believe my friend is going to spend
5 some time on in his opening, and that's this: After
6 she was terminated, about two weeks after, Ms.
7 Athanasoulis sent letters to Cresford's lenders by
8 Dave Mann. And they purported to be drafted by Dave
9 Mann.
10 And when that was raised in the
11 related litigation, Ms. Athanasoulis denied that.
12 And you'll hear from her with respect to why she sent
13 the letters, and why she denied sending the letters.
14 But what it comes down to is this, sending the
15 letters was a stupid thing to do. My friend will use
16 probably much harsher language than that. But it
17 touches not at all on the issues in this case. It
18 does not affect anything. It does not further any
19 allegation in this case, other than this: The
20 allegation by YSL will be that Ms. Athanasoulis did a
21 bad thing, she sent those letters; and, therefore,
22 she's going to do another bad thing here today, which
23 is lie under oath.
24 And you, Mr. Horton, will be in a
25 position to assess that argument and put it in

1 context, having heard from her.
2 I think we lost Mr. Horton.
3 MS. VU: My apologies, I think Mr.
4 Horton has disconnected. Just one moment.
5 ARBITRATOR HORTON: I'm afraid I
6 lost my signal there for a while. I think it was
7 probably me. Angela?
8 MS. VU: Yes, you dropped out for
9 just a moment, but Mr. Dunn stopped almost
10 immediately.
11 ARBITRATOR HORTON: Yes. Okay. I
12 was just at the point of you were just talking about
13 the Mann letters and you were arguing that they were
14 not relevant to the issues in the case. That's the
15 last note I have.
16 MR. DUNN: Correct. And that
17 is my essential point, is that this is a character
18 attack. The only argument that these letters serve,
19 and the only reason they're being brought up is to
20 say that Ms. Athanasoulis did a bad thing, she sent
21 the letters, and you should draw the inference that
22 she's going to do another bad thing, which is lie
23 under oath. I don't believe that's, at end to the
24 day, what will carry the day. You, Mr. Horton -- and
25 you will see some comments made by Justice Penny, who

1 did not see any, any of the witnesses or any
2 witnesses on a motion in an action that is related,
3 but that Ms. Athanasoulis is not even a party to.
4 But you, Mr. Horton, will be the
5 first person to make a finding with the benefit of
6 complete evidence on the issues that are being
7 raised.
8 This has been tangentially
9 relevant to various insolvency proceedings. But the
10 issue of what the terms of Ms. Athanasoulis'
11 agreement are, and the issue of whether she was
12 constructively terminated, neither of those issues
13 have been before any judicial decision maker at all
14 until this hearing. So no one has had the
15 opportunity to hear the evidence.
16 And at the end of this, what we
17 will argue is that the evidence shows that there was
18 an enforceable agreement; it did entitle Ms.
19 Athanasoulis to 20 percent of the profits; it did
20 provide for how those profits were to be calculated,
21 and when they were to be paid, and by who; and it was
22 repudiated when Ms. Athanasoulis was terminated.
23 And subject to any questions,
24 those are my opening submissions.
25 ARBITRATOR HORTON: All right.

1 Thank you. I don't have any questions at this time.
2 Mr. Milne-Smith.
3 OPENING STATEMENT BY MR. MILNE-SMITH:
4 Good morning, Mr. Horton. So
5 along with my colleague, Mr. Li, we act for KSV
6 Restructuring Inc., proposal trustee in respect of YG
7 Limited Partnership and YSL Residences Inc.
8 This case is principally about an
9 alleged oral agreement that my friend says entitles
10 his client, Ms. Athanasoulis, to profit on a
11 condominium development. Now, there are only three
12 problems with that argument. First, there is no
13 agreement, at least on the terms alleged. Second,
14 there is no development. And third, there are no
15 profits.
16 So she says there's an agreement
17 for profits on a development. There's no agreement
18 on the terms alleged, no profit and no development.
19 The proposal trustee asked the
20 arbitrator to make one of two alternative rulings.
21 Our primary position is that there was no meeting of
22 the minds on the essential terms of any profit
23 sharing agreement as alleged by Ms. Athanasoulis.
24 The parties certainly explored
25 various arrangements regarding Ms. Athanasoulis'

1 compensation from time to time; however, the
2 discussions were so vague that any alleged agreement
3 fails for want of particularity, or simply has no
4 bearing on the actual facts that have occurred in
5 this case.
6 The alternative, the proposal
7 trustee submits, that any profit sharing agreement
8 that might exist was conditional on Ms. Athanasoulis'
9 contribution to the successful and profitable
10 completion of the project. As this has not occurred,
11 and will not occur for Cresford, there can be no
12 profits to share.
13 It's important to understand that
14 this is not a case where Ms. Athanasoulis was
15 terminated in an attempt to deny her access to
16 expected profits. It's not like they had the ball at
17 the one yard line and suddenly yanked her out of the
18 game in order to deny her the profits to which she
19 says she was entitled. Rather, Ms. Athanasoulis
20 played a direct and integral role in derailing the
21 project, and ensuring that it would never be built by
22 Cresford. So to extend my goal line analogy, she
23 punted the ball off the field. The game could no
24 longer continue. There certainly was no touchdown.
25 Now, first of all, a very quick

1 word about the constructive dismissal claim. This is
2 very much the tail on the dog of this case. The
3 claim for constructive dismissal is one million; the
4 claim for profit sharing is almost 20 million.
5 We do not allege cause in this
6 proceeding. The trustee considered the evidence and
7 did not believe it had sufficient grounds to allege
8 cause. We do deny the claim for wrongful dismissal
9 on the basis that Ms. Athanasoulis resigned her
10 position.
11 The claim for wrongful dismissal
12 is principally based, as my friend explained, on the
13 fact that a number of her responsibilities and
14 reporting lines were withdrawn shortly before her
15 termination -- or resignation, I should say. This
16 was entirely understandable and appropriate in
17 context, and Ms. Athanasoulis knew exactly what was
18 going on. She was negotiating for a purchase of
19 Cresford's assets, on behalf of a third party named
20 Patrick Dovigi, who is the principal behind GFL.
21 She had an understanding, or at
22 least she asserts that she had an understanding with
23 Mr. Dovigi, that she would be a 50/50 partner with
24 Mr. Dovigi in that undertaking if they succeeded in
25 acquiring Cresford. In short, she had a substantial

1 economic interest in Mr. Dovigi's proposal in his
2 position at a time when Mr. Dovigi was negotiating
3 with Cresford.
4 Now, Mr. Casey, the principal of
5 Cresford, was aware that Ms. Athanasoulis was working
6 with Mr. Dovigi in this regard, and that alone was
7 not a problem. However, he will testify that he was
8 reasonably concerned that her economic interests were
9 more aligned with Mr. Dovigi than with Cresford. And
10 I'd ask -- it's not in my compendium, because it's in
11 direct response to my friend's opening, but it we
12 could call up document C14.
13 So these are the productions of
14 the claimant. The way we've organized the
15 productions in this case is C stands for "claimant"
16 and R stands for "respondent," so you may hear this
17 throughout the hearing. So we're looking for
18 document C14.
19 ARBITRATOR HORTON: Are you going
20 to screen share that, or do you want me to pull it
21 up?
22 MR. MILNE-SMITH: No, we are going
23 to screen share. Give us a moment here.
24 It should be coming up now.
25 There we go. So this is an email that was sent by

1 Cathy Alderson, who was at the Nelligan law firm, and
2 it was sent to Ms. Athanasoulis. This is from
3 Ms. Athanasoulis' productions. And if we just scroll
4 down near the bottom, right there, you see Ms.
5 Athanasoulis is advised in the second paragraph from
6 the bottom there that the LOI was a step that
7 "jeopardizes the sale of the business." So she's
8 referring to an issue concerning a letter of intent
9 to sell a part of the project, and negotiations that
10 were ongoing. You will see the evidence about this
11 during the trial.
12 The email continues:
13 "That sale is in reference
14 to a possible purchase of
15 four projects by Patrick
16 Dovigi."
17 So this is what we're talking
18 about.
19 "You owe a fiduciary duty to
20 Cresford. Your future
21 financial interest with
22 Patrick Dovigi should the
23 sale proceed, should not in
24 any way diminish your
25 fiduciary duty to Cresford.

1 You are placed..."
2 And then over to the next page of
3 the email. I'm sorry, I'm not sure quite why it was
4 produced in this manner, but it was Ms. Athanasoulis.
5 ARBITRATOR HORTON: Just excuse me
6 one moment, just logistically, I'm not seeing on your
7 screen share what you're reading. And I've just gone
8 to your compendium of documents for the opening
9 statement. Is that where I should find this?
10 MR. MILNE-SMITH: No, this is not
11 in the compendium of opening statement, because it is
12 in direct response to the opening of my friend.
13 ARBITRATOR HORTON: Oh, I see.
14 All right. Okay. Yeah, it does have a little label
15 at the top, C014, and your compendium doesn't have
16 14. So is this an addition? Is this going to be an
17 admission to your compendium?
18 MR. MILNE-SMITH: We can certainly
19 add it to the compendium, yes, and send it around.
20 ARBITRATOR HORTON: All right.
21 But right now it's not in the documents I have.
22 MR. MILNE-SMITH: No.
23 ARBITRATOR HORTON: Okay. Fine.
24 I'm with you then.
25 MR. MILNE-SMITH: Can you see it

1 on the screen now?
2 ARBITRATOR HORTON: I can, yes.
3 MR. MILNE-SMITH: Oh, okay. Good.
4 So the first full paragraph that's
5 visible on the screen right now says:
6 "You owe a fiduciary duty to
7 Cresford. Your future
8 financial interest with
9 Patrick Dovigi should the
10 sale proceed, should not in
11 any way diminish your
12 fiduciary duty ... You have
13 placed yourself in a
14 conflict of interest
15 position. You must resolve
16 this conflict in favour of
17 Cresford. Your threat to
18 take steps to interfere with
19 the completion of the YSL
20 financing is in breach of
21 your fiduciary duty to
22 Cresford. As Dan has told
23 you, verbally and in
24 writing, he will deal
25 directly with the financing

1 issues."
2 So he's telling you here, Dan is
3 going to take charge of this now. He will deal with
4 the bank. Do not interfere with this process.
5 So this notion that Ms.
6 Athanasoulis was somehow unaware that she was being
7 sidelined for the purposes of this transaction, I say
8 is contrary to this email, which came from her
9 productions, and which she obviously was aware of.
10 We say, in the circumstances, that it was entirely
11 reasonable for Cresford to restrict Ms. Athanasoulis'
12 responsibilities at Cresford while the negotiations
13 with Mr. Dovigi were ongoing. If she choose to
14 resign her position, it's entirely her choice.
15 So turning to the profit share
16 issue. At the highest, Ms. Athanasoulis' claim is to
17 20 percent of the profits earned on Cresford
18 projects. So if we turn up Tab 1 of the opening
19 compendium, this is the proof of claim that was filed
20 in this proceeding by Ms. Athanasoulis.
21 If we go over to page 6 of the
22 compendium, you will see paragraph 12(b), which I've
23 highlighted. It states that:
24 "The terms of the Profit
25 Sharing Agreement were

1 discussed and confirmed at a
2 meeting with Mr. Papadakis
3 on February 16, 2019.
4 Specifically, Mr. Casey and
5 Ms. Athanasoulis both
6 confirmed during the meeting
7 that: (b) Under the Profit
8 Sharing Agreement [she] was
9 entitled to 20 percent of
10 the profits earned on each
11 of the Projects..."
12 It doesn't plead a claim to
13 20 percent of the potential value of any Cresford
14 project at the time Ms. Athanasoulis' employment was
15 terminated. It doesn't plead a claim to 20 percent
16 of the value of the sale of the project. It's a
17 claim to 20 percent of profits earned.
18 Now, if we go to Tab 2 of the
19 compendium. We have an excerpt from the read-in
20 brief we have delivered in this matter from the
21 examination for discovery of Ms. Athanasoulis.
22 Question 237 -- this is my friend, Mr. Li,
23 examining -- it says:
24 "Okay, understood. When was
25 the -- did you discuss any

1 terms about when and how the
2 profit would be paid? And I
3 am still talking about the
4 discussion that you had with
5 Mr. Papadakis and Mr.
6 Casey...
7 "When the profit would be
8 paid or would be due?
9 "Profit sharing.
10 "Like....
11 "When your profit sharing
12 amount would be paid and how
13 it will be paid.
14 "The whole discussions in
15 February was that I had
16 earned it, and the money
17 doesn't come in until the
18 end. So I would be paid at
19 the end of... of completing
20 a project, which we have
21 always completed projects."
22 So, again, on Ms. Athanasoulis'
23 own words, you could only calculate the profits on a
24 project once it has been completed. That's when, to
25 use the language of the proof of claim, the profits

1 are earned. This isn't the sale of commodities.
2 It's an incredibly complex undertaking that takes
3 place over a series of years.
4 So taking the claim at face value,
5 based on the proof of claim and her discovery
6 evidence, it must fail.
7 The YSL Project is a hole in the
8 ground. It was transferred to Concord Developments
9 as the proponent of the proposal that has been
10 accepted, and is the foundation for these
11 proceedings.
12 We are now told or expect -- my
13 understanding is that we will be told that what Ms.
14 Athanasoulis really is asking for is the loss of a
15 chance to earn a profit. That's not what was
16 pleaded, and there's no evidence to support it.
17 It is common ground that there's
18 no written agreement between the parties. Ms.
19 Athanasoulis points to one document, and various
20 alleged oral discussions.
21 So let's just briefly look at the
22 one document that is relied on here. This is Tab 3
23 of the opening compendium. Now, this was prepared by
24 Ms. Athanasoulis according to her evidence. Mr.
25 Casey's evidence will be that he can't remember even

1 seeing this document; that he certainly didn't agree
2 to it. However, let's take it at its highest; it
3 simply doesn't get Ms. Athanasoulis anywhere.
4 So on page 11 of the compendium,
5 which we have up in front of us right here, you will
6 see that under the heading of Salary, it's referred
7 to as Salary of $500,000 per annum. Ms. Athanasoulis
8 admitted on discovery she was never paid a salary of
9 $500,000. So, obviously, inconsistent with this
10 document being agreed to and accepted by Cresford, as
11 Ms. Athanasoulis has alleged.
12 So over to the next page, clause
13 4. See, clause 4 just above the heading Confidential
14 Information. It says that:
15 "Bonus payments will be paid
16 in full at the completion of
17 any project in the
18 construction phase if
19 employee's employment is
20 terminated."
21 So, again, inconsistent with the
22 position that she takes now, which is that she should
23 be paid on termination of her employment. This says
24 she can only be paid at the completion of any
25 project. The project has not been completed, and it

1 will never be completed by Cresford.
2 Then if we go to the next page,
3 you see the document was never signed, or at least we
4 certainly have no production where it is signed, no
5 signature by Mr. Casey, no signature by Ms.
6 Athanasoulis.
7 Then if we go over to the last
8 page, there's the bonus structure that was laid out
9 in this document prepared by Ms. Athanasoulis. You
10 see there's a reference to a number of fixed sum
11 bonuses, and then a reference to -- items 4 and 5 are
12 for the 10 percent of final profits with respect to
13 final registration of Vox condominiums; that was a
14 project that closed in 2018. And 10 percent off
15 final closing of any future site Cresford acquires.
16 There has been no final closing, and there will be no
17 final closing by Cresford.
18 So that's the only document that
19 Ms. Athanasoulis relies upon to record the agreement
20 of this quite remarkable profit sharing agreement
21 that she alleges entitles her to $20 million.
22 Beyond this document, Ms.
23 Athanasoulis can only refer to various alleged oral
24 agreements. She can't say precisely how profits are
25 to be calculated, what accounting metric, before or

1 after taxes, how is interest to be accounted for.
2 None of that is explained.
3 She cannot say what the parties
4 agreed to in the event of her departure from the
5 company. She cannot say what would happen in the
6 event of the sale of the company's assets. She
7 cannot say what would happen if the project changed
8 after her departure for any reason. She cannot say
9 what would happen in the event of insolvency
10 proceedings.
11 The simple answer is that when you
12 actually examine the evidence that you're going to
13 hear - and on this I believe the evidence is going to
14 be consistent between Mr. Casey and Ms.
15 Athanasoulis - what they were concerned about when
16 they met with Mr. Papadakis in February of 2019 was
17 what would happen if Mr. Casey was, quote, "hit by a
18 bus." It was succession planning.
19 And they wanted to ensure that Ms.
20 Athanasoulis would be able to continue managing the
21 projects. But they never came to an agreement on any
22 specific terms. They never came to an agreement on a
23 20 percent profit share. And, indeed, the entire
24 purpose of the discussion was not to deal with the
25 situation we're in today, where Ms. Athanasoulis left

1 the company and the projects were never completed.
2 It was intended to deal with the situation where Mr.
3 Casey, for whatever reason, whether he's hit by a bus
4 or some other unfortunate circumstance, if Mr. Casey
5 left the company. That's not what happened.
6 That's why I say it's ultimately
7 irrelevant whether the position is that there was no
8 agreement, or that there was. You get to the same
9 result either way. The agreement -- any agreement
10 that may be found to exist clearly does not cover
11 this situation. And without such an agreement, Ms.
12 Athanasoulis cannot claim an entitlement to
13 20 percent of profits that were never earned on a
14 profit that was never completed.
15 Ms. Athanasoulis relies in this
16 case on the evidence of John Papadakis, a lawyer and
17 close friend of hers, who was at this February 2019
18 meeting. The evidence will support an inference that
19 Mr. Papadakis is certainly very sympathetic to Ms.
20 Athanasoulis. Among other things, he was the best
21 man at her wedding, godfather to her children.
22 However, his evidence simply does not support her
23 case.
24 Following the meeting in February
25 of 2019, Mr. Papadakis did exactly nothing. We say

1 that is because there had been no agreement on terms
2 that he was in a position to reduce to writing.
3 In the interest of time, I don't
4 think I'll take you through all of the evidence in
5 that regard. But at Tabs 5 through 9 of our opening
6 compendium, we include the relevant excerpts from
7 Mr. Papadakis' discovery transcript.
8 He hadn't had any discussions with
9 Mr. Casey before the meeting and didn't know the
10 terms of any agreement going into the meeting. He
11 didn't know the entities who were supposed to be
12 parties to the agreement. He didn't know what would
13 happen if Ms. Athanasoulis left the company. He
14 didn't discuss whether any profits that she was
15 supposedly to receive a share of were pre- or
16 post-tax. He didn't discuss and wasn't aware of what
17 parties intended if the projects were sold before
18 completion or became insolvent. He simply didn't
19 have instructions on the essential terms for the
20 alleged agreement, which is why he didn't proceed to
21 document the agreement. It was a very loose and
22 conceptual discussion that the parties had that did
23 not result an enforceable agreement.
24 I would just like to take you to
25 Tab 9 of my friend's opening compendium. My friend

1 took you to the Canada Square case, and specifically
2 paragraph 32 of that decision. He read you a passage
3 from paragraph 32, and I'm just going to read the
4 last sentence, which my friend didn't read to you.
5 So my friend read to you:
6 "The maxim of English law
7 ... [that] words are to be
8 understood that the object
9 may be carried out and not
10 fail."
11 But it goes on:
12 "That maxim, however, does
13 not mean that the court is
14 to make a contract for the
15 parties, or to go outside
16 the words they have used..."
17 And I say that is exactly what my
18 friend is asking you to do in this case.
19 "...except insofar as there
20 are appropriate implications
21 of law, as for instance, the
22 implication of what is just
23 and reasonable to be
24 ascertained by the court as
25 a matter of machinery where

1 the contractual intention is
2 clear but the contract is
3 silent on some detail."
4 There is simply no evidence -- you
5 will hear no evidence in this case that determining
6 Ms. Athanasoulis' alleged profit share was a matter
7 of machinery where the contractual intention was
8 clear. And in these circumstances, one cannot
9 complete a bargain that the parties themselves did
10 not make.
11 I say the parties' conduct was
12 also inconsistent with there being any agreement.
13 Ms. Athanasoulis was never paid a profit share on any
14 project. She was never paid the $500,000 salary she
15 claimed she was entitled to since 2014. Instead, she
16 was paid her existing $300,000 salary, plus
17 intermittent bonuses at the discretion of Mr. Casey.
18 She was very well compensated and received taxable
19 income close to a million dollars in her last two
20 years, but nothing in her salary or compensation ever
21 indicated an entitlement to a massive $20 million
22 profit sharing windfall that she now claims.
23 And there's a good reason for
24 that. She was not an owner. She didn't put equity
25 into the position. That's not to diminish her role.

1 She played a very important role in the company.
2 Nobody denies that. But she did not act as an owner.
3 She did not contribute as an owner. She did so as an
4 employee.
5 And even according to her own
6 position on the alleged agreement, she was required
7 to bring it to a successful profitable completion,
8 which simply did not happen.
9 So let's talk about the project
10 itself. That brings me to my second point, which is
11 that there is no building.
12 Just by way of background, a large
13 condominium project has a number of phases, first you
14 have to acquire the land, typically with borrowed
15 money. There are all kinds of regulatory and zoning
16 requirements which must be met. You have to design
17 the project, hire various consultants, enter in
18 agreements with all the trades. You then need to
19 demolish whatever is existing on the site and
20 excavate so you can build your new building. The YSL
21 Project hasn't gotten beyond that stage. I mean, if
22 you go by Yonge and Gerrard, you can see it. It's a
23 hole in the ground. It's apparently not even a fully
24 excavated hole.
25 Once you have completed all that,

1 you can then move on to actual construction, which
2 requires an entire other round of financing, which
3 Cresford was never able to close.
4 Once you have your financing in
5 place, you need to manage the various trades. You
6 need to ensure that the building is constructed
7 according to plan and that budget. That obviously
8 has never happened. Along the way, there can be
9 delays and cost overruns. And indeed, the evidence,
10 I think, is uncontroverted that the last four
11 projects that Cresford completed were not profitable.
12 They were, at best, break even. There's obviously no
13 guarantee that YSL would have been profitable.
14 Finally, at the end of the day,
15 you register the condominium, and you pay all the
16 taxes. You repay your debt, compensate your equity
17 investors, collect all the money from condo
18 purchasers, and the accountants calculate what the
19 profit is.
20 None of that has happened.
21 And the success of the YSL
22 project - I think it's important to note - turned on
23 an aggressive plan to split the project into two
24 parts. So there were actually to be two separate
25 condominium projects, condominium corporations in one

1 tower, one on top of the other. The first part would
2 be completed, sold, and registered and closed.
3 The important thing about
4 condominiums is you only get the revenue once you
5 actually register and close the project. Otherwise,
6 if there's a 20 percent deposit, or somewhere in that
7 range of 20 percent, and those funds are held in
8 trust, and then the balance on closing. So you only
9 get the revenues at the end. That's why you have to
10 financing all of this, either through equity or debt.
11 What YSL intended to do was they
12 were going to close that first part of the tower,
13 take all the revenue, and use that to help finance
14 the second part of the tower, the second condominium
15 corporation.
16 Now, that was, to say the least, a
17 highly unusual structure. You don't typically have
18 two condominium corporations within one building.
19 I'm not saying it was unique, but I'm saying it's
20 unusual. There's no guarantee that the city would
21 sign off on that. If it didn't, that would obviously
22 have a huge impact on financing costs, because you
23 would have to go out and borrow that money, instead
24 of using the revenue from all the people who bought
25 units in the first part of the tower. So that's just

1 one obvious example of the kind of contingencies that
2 profitability turned on, and they were far from a
3 sure thing.
4 Now, the Cresford Group, as it
5 turned out, was deeply troubled by Ms. Athanasoulis'
6 own account. You'll hear evidence that it was
7 suffering from significant cost overruns on various
8 projects that were more advanced than YSL. It lacked
9 liquidity, couldn't arrange financing, couldn't
10 service its debts or pay its trade, and ultimately
11 insolvency proceedings were brought in respect of all
12 the ongoing projects, including YSL.
13 A proposal in this case was
14 ultimately put forward by a developer named Concord,
15 and after various revisions, was accepted. And
16 Concord, not Cresford, was now the developer of YSL.
17 If it ever gets built, it will be because of the
18 efforts of Concord, not Ms. Athanasoulis or anyone at
19 Cresford.
20 And I say, as my second
21 submission, that Ms. Athanasoulis cannot earn profits
22 on a project that has not been built; and if it is
23 ever built, will not be by Cresford.
24 That brings me to my third and
25 final point in opening on the issue of the profit

1 share is that there are no profits. Perhaps, more
2 importantly, nor was there any reasonable prospect of
3 there being any profits when Ms. Athanasoulis
4 resigned. YSL was the least advanced project when
5 the music stopped in early 2020. At various stages
6 development ahead of it with the three projects my
7 friend referred to: Clover, Halo and 33 Yorkville.
8 They were all acknowledged at the time of Ms.
9 Athanasoulis' departure to be unprofitable.
10 So in other words, before COVID-19
11 imposed all kinds of delays and restrictions on
12 construction, before all the inflationary labour
13 shortage and material shortage that we've all read
14 about in the past two years, three consecutive
15 Cresford projects were projected not to turn a
16 profit.
17 Now, Ms. Athanasoulis relies on a
18 pro forma prepared for the bankers in 2019 that
19 projected profits of YSL. It was built on a host of
20 assumptions that we now know turned out not to be
21 true, starting with the fact that it assumed
22 construction starting in 2020. It assumes an ability
23 to close the construction financing agreements, which
24 never happened. It assumes an ability to
25 successfully manage the trades so that the project is

1 completed on budget and on time. Of course, none of
2 that happened, at least under the leadership of
3 Cresford.
4 And you don't have to believe me
5 in this; you just have to believe Ms. Athanasoulis
6 when it comes to the problems with the project.
7 I'm going to take you now to the
8 two forged letters on the letterhead -- on the name
9 of Dave Mann. My friend said this is nothing more
10 than an attack on credibility. It certainly is
11 relevant to credibility, but I say it's also directly
12 relevant to this issue of whether the YSL project
13 ever could have been profitable.
14 So in early January 2020, two
15 letters were sent to two of Cresford's most important
16 lenders. First you'll see here QuadReal Finance.
17 This was a lender to the Clover, Halo and
18 33 Yorkville projects, and a prospective lender for
19 YSL. At the bottom of the page, it purports to be
20 sent by Dave Mann, who was the acting CFO of Cresford
21 at the time.
22 These were explosive letters, and
23 they effectively brought the project to a halt, as
24 lenders weren't willing to advance funds in the face
25 of these allegations.

1 So if you just scroll up a bit on
2 the page, and let me give you a sense of what these
3 letters alleged.
4 Starting on the second paragraph:
5 "I have decided to give you insight" -- can you read
6 this, Mr. Horton?
7 ARBITRATOR HORTON: Yes.
8 MR. MILNE-SMITH: Okay.
9 "I have decided to give you
10 insight to the way Dan runs
11 Cresford in order to
12 ensure" --
13 ARBITRATOR HORTON: Yes. I can
14 read it. Thank you. Go ahead.
15 MR. MILNE-SMITH: "...ensure you
16 look closely at all
17 financial affairs within the
18 Cresford portfolio given
19 Dan's resistance to deal
20 with the severe cash
21 shortfalls that are being
22 hidden from you.
23 "Although Dan pretends to
24 have his own capital he has
25 yet to be able to display to

1 anyone at Cresford if this
2 is true. I am enclosing
3 documents that are
4 consistent with this
5 statement confirming that
6 Dan's equity to purchase
7 both Halo and Clover were
8 actually borrowed. He has
9 no vested interest in these
10 projects and has nothing to
11 lose if they do no complete.
12 Same applies to 33
13 Yorkville...
14 "All three projects that
15 your firm has financed are
16 substantially over budget
17 with no real plan to fund
18 the overruns. Dan continues
19 to diminish any profits from
20 these projects with offside
21 equity loan arranged by Ted
22 Dowbiggin to inject money
23 into the company and to live
24 his lifestyle."
25 Essentially, argument of

1 embezzlement.
2 "I have enclosed a copy of
3 the recent commitment
4 letter. This is not a way
5 to run a business.
6 "I am enclosing a snapshot
7 of the forming contract on
8 Halo to confirm that it is
9 over budget."
10 Cost overruns.
11 "Dan has asked us all to
12 hide the real number to
13 avoid a further equity
14 injection until more offside
15 equity loans can be
16 arranged."
17 So likely breach of the lending
18 covenant.
19 "CASA 3 [that's another
20 project for Cresford]
21 remains unfinished with many
22 trades and real estate
23 brokers unpaid because there
24 is no money."
25 Just jumping down to the bottom,

1 it says:
2 "There are many stakeholders
3 that will be affected if you
4 do not look closely at the
5 contracts and overruns and I
6 will not be able to live
7 with myself when a financial
8 disaster of this company
9 occurs. I will have to tell
10 the media that you knew
11 about this if asked when
12 something terrible happens."
13 Then there was another letter,
14 over a couple of pages. This one was sent to Otera
15 Capital. This was the principal construction
16 financing company for YSL. It repeats, essentially,
17 all these same allegations.
18 Now, yes, what we -- where we
19 found these documents was in a responding motion
20 record filed in Mareva injunction proceedings brought
21 by certain Cresford equity investors against
22 Mr. Casey.
23 My friend is certainly right that
24 Ms. Athanasoulis was not a party to this litigation,
25 but the plaintiffs in this proceeding relied on Ms.

1 Athanasoulis as their principal affiant.
2 The defendants filed a responding
3 affidavit from their acting CFO, Mr. Mann, the
4 supposed author of the letters, and he gave evidence
5 that he did not author or send the letters. In fact,
6 what he did -- you can read all this, I'm not going
7 to read it all to you, but you can certainly read it
8 on your own time. He investigated the postmark, he
9 obtained security footage from the Canada Post
10 location, and determined that Ms. Athanasoulis'
11 nephew was the one who had mailed the letter.
12 Ms. Athanasoulis was caught
13 red-handed, and ultimately confessed in
14 cross-examination that she had, in fact, sent the
15 letters.
16 And let me just take you back to
17 what she said before she was confronted with the
18 evidence, or what was said on her behalf.
19 If we go to Tab 12 of opening
20 compendium, this is the reply and defence to
21 counterclaim. So my friend referred to a Superior
22 Court action which was launched by Ms. Athanasoulis.
23 And this is the -- in the statement of defence,
24 Cresford alleged defamation by way of counterclaim,
25 relying on those two letters, and alleging that Ms.

1 Athanasoulis was the author.
2 So what does Ms. Athanasoulis say
3 before the evidence comes out and she's caught
4 red-handed, she says at paragraph 48:
5 "The Defendants' defamation
6 claim rests on the bald
7 allegation that Ms.
8 Athanasoulis sent two
9 letters; one to each of
10 Otera and QuadRealFinance,
11 which are both lenders to
12 Cresford. Ms. Athanasoulis
13 did not send these letters.
14 She has not even seen them.
15 She did not defame the
16 Defendants as alleged, or at
17 all."
18 Now, knowing what an honourable
19 and diligent lawyer my friend Mr. Dunn is, I have no
20 doubt he would not have pleaded this if his client
21 had not told him it was the truth. But it wasn't the
22 truth; it was a lie. And she only admitted it was a
23 lie when confronted with incontrovertible evidence.
24 So what do we have? We have a
25 project that hasn't been built and will never be

1 built by Cresford. You have a project that Ms.
2 Athanasoulis was telling the principal lenders, under
3 a false name, was financially troubled. We have a
4 project that did not proceed specifically because the
5 lenders refused to close the construction financing
6 loan in the face of these warnings by Ms.
7 Athanasoulis. And remarkably, she now claims an
8 entitlement to the profits from a project that she
9 brought to a crashing halt with her forged letters,
10 in circumstances where the limited partners of YSL
11 are not projected to make a full recovery on their
12 equity investment.
13 For all these reasons, we say it
14 would be pointless to move to the damages phase of
15 this proceeding, and the agreement that could have
16 existed could only entitle Ms. Athanasoulis to a
17 share of a project that was completed by her and
18 Cresford. That hasn't happened and it can't happen;
19 therefore, there can be no profits and no damages for
20 breach of any profit sharing agreement that might
21 exist.
22 Subject to any questions, those
23 are my opening submissions.
24 ARBITRATOR HORTON: Okay. Thank
25 you very much. We are due for a break, but I would

1 just like to raise with you one concern that I have,
2 based on the openings that I've heard, and it's of a
3 technical nature really. But it has to do with the
4 bifurcation of the issues as they've occurred.
5 And, you know, one concern that we
6 always have when we bifurcate issues is that the
7 parts add up to a whole. And I'm just concerned that
8 the parts, as we have them, may not add up to a
9 whole.
10 If you think of it conceptually, I
11 think we're in a liability phase, and then there's a
12 damages phase, and that's the sort of overall sort of
13 intention.
14 However, in the liability phase,
15 we're limiting ourselves to -- or you've limited me
16 to the two issues of the terms of the contract, and
17 the constructive dismissal. Now, let's leave aside
18 how broad those particular categories are.
19 It does seem to me that there are
20 other issues that you've both identified in the
21 course of your openings that may not fall into either
22 of those precise categories, but that may have an
23 impact on liability. And broadly speaking, I see
24 those as, perhaps, falling into a category of
25 causation relating to damages. For example, you

1 know, whether or not particular actions that Ms.
2 Athanasoulis took, perhaps, may relate somewhat to
3 the constructive dismissal issue, but since cause is
4 not in issue, maybe not, but may well relate to a
5 question of whether or not the damages would, in
6 fact, have been incurred. I'm not putting this very
7 eloquently.
8 But anyway, it seems to me that
9 there is a broad category. I might categorize it as
10 causation issues that don't fall either into the
11 question of what are the terms of the contract, which
12 is a static issue, right? I mean, normally you
13 determine what the terms of the contract are as of
14 the date on which the contract was entered into or
15 was allegedly entered into. So that's kind of a
16 static question. Then there's a question of
17 constructive dismissal, as opposed to resignation,
18 which is also somewhat static, especially since cause
19 isn't being alleged.
20 So are we -- how do we -- is that
21 a concern, first of all? Maybe I'm overthinking
22 this, but I've been in enough of these situations
23 that I tend to think I am not, that there is a
24 potential issue.
25 Is it simply solved by saying that

1 anything that bears on the availability of damages
2 that is not covered by the two questions that we're
3 addressing in this first phase of the arbitration,
4 can be addressed in the second phase of the
5 arbitration? Because that will be beyond simply --
6 potentially would go beyond simply a measurement of
7 damages, although -- it's very hard to disentangle
8 some of these concepts when you come right down to
9 it.
10 So maybe the fair thing to do is
11 to leave you with that, to just let you know that
12 that is a concern of mine. Perhaps you can discuss
13 that in the fullness of time and provide me with your
14 answers. But I thought it was fair to raise it now
15 before any evidence is led, in case that may
16 influence how you, how you frame your questions.
17 MR. DUNN: Thank you, Mr. Horton.
18 I had similar concerns listening to my friend's
19 opening that, perhaps, we do need more of a clear
20 delineation between what is damages and what is
21 liability. So we can discuss it amongst ourselves
22 and then determine what the best way is to proceed.
23 ARBITRATOR HORTON: All right.
24 Okay. It may be -- well, I won't say more. I think
25 you have an agreement. I will certainly do my best

1 to stay within the terms of that agreement, because
2 that's where I get my jurisdiction to do whatever I'm
3 going to do. But I would invite both of you to think
4 about this and, perhaps, anticipate any problems that
5 might arise if, in fact, we go to a second stage,
6 which I appreciate is not, is not a forgone
7 conclusion here.
8 All right. Okay. Let's take 15
9 minutes then, and we'll come back. And I think we
10 then have our first witness, Mr. Papadakis.
11 MR. DUNN: That's correct. Thank
12 you, Mr. Horton.
13 ARBITRATOR HORTON: Thank you.
14 --- Recess at 11:00 a.m.
15 --- Upon resuming at 11:17 a.m.
16 MS. STOTHART: I think we have Mr.
17 Papadakis potentially in a waiting room or a breakout
18 room.
19 ARBITRATOR HORTON: All right. If
20 he can be admitted.
21 MR. LI: Can I just confirm that
22 Ms. Athanasoulis will be excluded from the testimony
23 of Mr. Papadakis?
24 ARBITRATOR HORTON: Have counsel
25 agreed to that?

1 MS. STOTHART: No. Sorry, I will
2 let Mr. Dunn speak.
3 MR. DUNN: We haven't discussed
4 that. Perhaps if we could move Mr. Papadakis to the
5 breakout room for a second while the issue is raised.
6 ARBITRATOR HORTON: Yes. Right.
7 MR. DUNN: So I'll just put my
8 default position is, typically, that the party
9 witness is not usually excluded, and there's been no
10 discussion. So I'm happy to hear my friend's
11 submissions on it.
12 MR. MILNE-SMITH: Mr. Dunn, I
13 think the easiest way to put it is that if you want
14 your client to be in the room for Mr. Papadakis'
15 testimony, then that will simply go to her
16 credibility. I expected you to choose to exclude
17 her, but I'll leave it entirely at your discretion.
18 MR. DUNN: So I certainly don't
19 want to make an issue of it, so I'll just ask Ms.
20 Athanasoulis to excuse herself, and we'll go from
21 there.
22 ARBITRATOR HORTON: All right.
23 MS. VU: Then if -- oh, my
24 apologies.
25 ARBITRATOR HORTON: With agreement

1 of counsel, we'll leave Ms. Athanasoulis in the
2 waiting room, and we can admit Mr. Papadakis.
3 MR. DUNN: Yes. She will
4 probably, I expect, log off and log back in. But I
5 will make sure she's available as soon as Mr.
6 Papadakis is done.
7 ARBITRATOR HORTON: Did you need a
8 moment to explain to her why she's being excluded,
9 Mr. Dunn?
10 MR. DUNN: I think it's fine. I
11 can explain to her after.
12 ARBITRATOR HORTON: All right.
13 And I take it --
14 MS. VU: I have excluded -- oh, my
15 apologies. I have excluded Ms. Athanasoulis, and I
16 have brought in Mr. Papadakis.
17 ARBITRATOR HORTON: Okay. Now, is
18 Mr. Casey in the room or not?
19 MS. VU: He is not.
20 MR. LI: No, he's not.
21 ARBITRATOR HORTON: He's excluded
22 as well, is he? All right.
23 AFFIRMED: JOHN PAPADAKIS
24 ARBITRATOR HORTON: Mr. Li, I
25 think you're going to conduct a direct examination?

1 MS. STOTHART: That's me, in fact.
2 ARBITRATOR HORTON: I'm sorry.
3 Ms. Stothart is going to conduct a direct
4 examination.
5 EXAMINATION IN-CHIEF BY MS. STOTHART:
6 Q. Good morning, Mr. Papadakis.
7 A. Good morning.
8 Q. Can you just please state
9 your name for the record?
10 A. John Papadakis.
11 Q. Thank you. And is there
12 anyone else in the room with you today?
13 A. No.
14 Q. Do you have any notes or
15 documents in front of you?
16 A. Not pertaining to this file,
17 no.
18 Q. Thank you. And is it correct
19 that you're a lawyer, Mr. Papadakis?
20 A. Correct.
21 Q. How many years have you been
22 practicing law?
23 A. Good question. Probably 28,
24 I think.
25 Q. Twenty-eight years. And

1 where do you work?
2 A. I'm a partner at Blaney
3 McMurtry.
4 Q. Okay. And what sort of law
5 do you practice?
6 A. I do corporate, commercial
7 law, a lot of real estate lending.
8 Q. Okay. Corporate, commercial
9 real estate lending. So, perhaps, just high level,
10 could you give us a sense of the type of matters you
11 would be dealing with?
12 A. Most of them would be acting
13 on behalf of financial institutions, lending money
14 out with respect to secured credit facilities. I do
15 also act for borrowers as well. I do some land
16 acquisition or real estate acquisition and sales as
17 well, a little bit of M and A work.
18 Q. Okay. Thank you. And did
19 you ever do some work for any entities under the
20 Cresford umbrella, or Cresford?
21 A. I did.
22 Q. Okay. What sort of work did
23 you do with Cresford?
24 A. I did a lot of the financing
25 work dealing with their lenders, putting in the

1 credit facilities, putting them in place. I dealt
2 with preparing offers to acquire properties, dealing
3 with the sale of certain floors of their office
4 building that have their current -- or had their
5 current headquarters in, things like that.
6 Q. Okay. And how long around
7 have you been working with Cresford?
8 A. Prior to when?
9 Q. Well, to date, how many years
10 have you worked with Cresford?
11 A. I can't tell you exactly, but
12 it's got to be four or five.
13 Q. Okay. And who would your
14 primary contact have been there?
15 A. I would have dealt mainly
16 with Maria Athanasoulis and Sean Fleming.
17 Q. And Sean Fleming, okay. Did
18 you deal with Mr. Casey at all, Dan Casey?
19 A. On occasion.
20 Q. On occasion, okay.
21 Excellent. Do you recall meeting with Ms.
22 Athanasoulis and Mr. Casey in February of 2019?
23 A. I do.
24 Q. How did that meeting come
25 about?

1 A. Maria probably would have
2 called me and asked me to join her and Dan at a
3 meeting at their offices.
4 Q. Okay. And you did, in fact,
5 join for a meeting?
6 A. I did.
7 Q. And where was that meeting?
8 A. In their headquarters, in
9 their head offices.
10 Q. The Cresford offices?
11 A. Correct.
12 Q. Who was in attendance, was it
13 just Ms. Athanasoulis and Mr. Casey?
14 A. And myself. Just the three
15 of us.
16 Q. Okay. And what did you
17 understand to be the purpose of that meeting?
18 A. The purpose was to discuss
19 putting in place an agreement which would memorialize
20 the arrangement that Maria Athanasoulis had with
21 Cresford as, I guess, their president or CO -- I'm
22 not sure exactly what her title would have been --
23 but as the main person there.
24 Q. Okay. So you said to
25 memorialize an agreement and to put in place an

1 agreement. Was it your understanding that there was
2 an agreement in place that you were memorializing, or
3 were you, in fact, creating the agreement?
4 A. No, there was a verbal
5 arrangement in place.
6 Q. Okay. And you were being
7 asked to put that in writing; is that what your
8 testimony is?
9 A. I was asked to come to the
10 meeting to discuss creating a document or -- a
11 written document to set out the terms of Maria's
12 arrangement with Cresford, or the Cresford entities.
13 Q. When did you understand that
14 that arrangement between Ms. Athanasoulis and
15 Cresford had been made?
16 A. Pardon?
17 Q. When, at what time did you
18 understand that that arrangement you were being asked
19 to document had been made between Ms. Athanasoulis
20 and Cresford?
21 A. Prior to the meeting. I'm
22 not sure when -- how long prior to the meeting was in
23 place, but it was prior to the meeting.
24 Q. Okay. Did you have an
25 understanding or did they say why it was now of

1 concern to get that agreement in writing?
2 A. Yeah. Dan Casey said to me
3 that, you know, that he has this agreement with
4 Maria. He wants to make her feel comfortable, to
5 make sure that everything is in writing in case
6 something should happen to him. He used the term,
7 you know, "in case I get hit by a bus." Maria's and
8 Dan's other concern was that should, in fact,
9 something happen to Dan, that they wanted to ensure
10 that on a go-forward basis, Maria would be able to
11 stay in her position to complete any projects that
12 were currently ongoing with Cresford, whether they're
13 projects that were ongoing on the date that I was
14 there, or future projects that would have come
15 onboard.
16 Q. Okay. Thank you. So that
17 was the motivation for the meeting, and then you
18 were, essentially, doing two things, documenting the
19 agreement and discussing what would happen going
20 forward with her role, if something were to happen to
21 Mr. Casey?
22 A. In a nutshell, yes.
23 Q. Okay. So I just want to hone
24 in on specifically the terms of the agreement you,
25 you witnessed or that Ms. Athanasoulis and Mr. Casey

1 were there to document. Were the terms discussed at
2 the meeting?
3 A. In general terms, yes. You
4 know, it was my understanding that Maria is entitled
5 to 20 percent of the profits of the current projects
6 that were ongoing, and any future projects that
7 Cresford would undertake in the future.
8 Q. Okay.
9 A. And her title would be -- she
10 still maintained, I guess, day-to-day operational
11 control of everything.
12 Q. Thank you. So, so at a high
13 level, the terms were that there would be 20 percent
14 of profits and that those profits would come from
15 existing and future projects?
16 A. Correct.
17 Q. Did you discuss who were the
18 parties to the agreement?
19 A. Not specifically in the sense
20 that the parties was understood to be whatever
21 entities were involved with each specific project,
22 and any new entities that would be involved with any
23 future projects, because each project has its own
24 corporate structure.
25 Q. Okay. And who -- how was it

1 going to be determined which entities would pay those
2 profits?
3 A. Well, I guess after we
4 figured out which entities were involved in each
5 project, then you could figure out which entities
6 will be signing the documents, and trying to
7 encapsulate future entities as well.
8 Q. Okay. So you had an overall
9 understanding, I think I'm hearing, that there would
10 be certain entities that would become the parties to
11 the agreement. But did you have a sense of how those
12 parties would be determined?
13 A. By looking at the corporate
14 structure.
15 Q. Okay. Thank you. And who
16 were you understanding to be authorized to speak on
17 behalf of those entities?
18 A. Dan Casey.
19 Q. You mentioned 20 percent of
20 profits was the agreement. How would profits be
21 calculated on your understanding?
22 A. Well, we didn't drill down
23 exactly how they would be calculated. What we did
24 talk about was ensuring that there was -- profits
25 were not -- were bona fide profits, in the sense that

1 there wouldn't be any sort of non-bona fide loans
2 that would necessarily decrease the profits. You
3 know, Dan and Maria obviously were, you know, the
4 heads of all these entities. They knew how profits
5 were being calculated and not calculated and what
6 that meant.
7 Q. Okay. Thank you. Did they
8 discuss when profits would be paid?
9 A. No.
10 Q. Okay. I think we've
11 discussed, just to summarize, the subject matter of
12 the agreement it was for 20 percent of profits, they
13 didn't discuss when they would be paid. They did
14 discuss at a high level how the profits would be
15 calculated and what type of line items would be
16 removed. Are there any other terms to the agreement
17 that I haven't -- that you haven't discussed or that
18 I haven't asked about?
19 A. Not that I can think of at
20 the moment.
21 Q. Okay. Were there any
22 restrictions or conditions?
23 A. No.
24 Q. Okay. Were there any points
25 that you understood were still in dispute at the end

1 of the meeting?
2 A. No.
3 Q. And then what happened at the
4 conclusion of the meeting? How did it end?
5 A. We said that we would start
6 working on the agreement, and I would require some
7 additional information to begin identifying the
8 entities and the parties to the actual written
9 agreement.
10 Q. What additional information
11 did you require?
12 A. A corporate chart.
13 Q. A corporate chart. Okay.
14 And did you get that information?
15 A. I did receive one a few weeks
16 later.
17 Q. Okay. How did you receive
18 that?
19 A. Dan asked another gentleman
20 that worked at Cresford, Dave Mann - I think it was
21 Dave Mann was his name - to send it to me. And Dave
22 emailed it to me.
23 Q. Okay. And then once you
24 received that document, did you ever go on to prepare
25 the agreement?

1 A. No, we never did prepare the
2 agreement.
3 Q. Why did you not prepare the
4 agreement.
5 MR. LI: I have to object to this
6 question. It was taken as privileged on the
7 examination for discovery, and privilege was never
8 waived.
9 BY MS. STOTHART:
10 Q. Okay, if you can't answer
11 without revealing privileged information, obviously,
12 do not do so. If there's anything you can tell us
13 that's not privileged about why you didn't draft it?
14 A. Unfortunately, I'm a
15 corporate lawyer, not a litigator, so I really don't
16 know what is privileged and what's not privileged.
17 Q. Okay. Thank you.
18 A. So I will have to assume it
19 is privileged.
20 Q. Did Mr. Casey or Ms.
21 Athanasoulis ever follow-up on the status of the
22 agreement?
23 A. It came up over time. Yes.
24 Q. From which of those two
25 people?

1 A. Maria would bring it up once
2 in a while.
3 Q. Okay. And what would she say
4 when she would bring it up?
5 A. Don't forget we've got to get
6 to that agreement.
7 Q. But it never, in fact, was
8 drafted; is that right?
9 A. Correct.
10 MS. STOTHART: Okay. Thank you,
11 Mr. Papadakis. Those are my questions.
12 THE WITNESS: No problem.
13 ARBITRATOR HORTON: Mr. Li.
14 CROSS-EXAMINATION BY MR. LI:
15 Q. Good morning, Mr. Papadakis.
16 A. Good morning.
17 Q. I have a few follow-up
18 questions from my friend, Ms. Stothart. I think you
19 said you've been practicing law for about 28 years;
20 is that right?
21 A. Correct.
22 Q. You graduated from Osgoode
23 Law School in or around 1992?
24 A. Correct.
25 Q. And did you practice anywhere

1 else before joining Blaney McMurtry?
2 A. I did.
3 Q. And where was that?
4 A. I initially started off at a
5 law firm by the name of Lafleur Brown, which
6 eventually merged with Gowling's and became Gowling
7 Lafleur Henderson. After a few years at
8 Lafleur Brown, I left. I went to Fogler Rubinoff for
9 a couple of years. After Fogler Rubinoff, I went
10 back to Lafleur Brown. And then after Lafleur Brown,
11 I came to Blaney's and I've been here since.
12 Q. Thank you. I think you also
13 mentioned in your direct examination that you have
14 acted for the Cresford Group for about a four- or
15 five-year period?
16 A. Correct.
17 Q. That period would include, at
18 least, the period between 2018 and 2020?
19 A. I have to check my records,
20 but, yes. I'm not sure what the begin date was,
21 but...
22 Q. Sure. Does that approximate
23 time frame sound correct to you?
24 A. Sure.
25 Q. Fair to say you knew Ms.

1 Athanasoulis both personally and professionally?
2 A. Correct.
3 Q. And you're friends with Ms.
4 Athanasoulis in a personal capacity?
5 A. Correct.
6 Q. You were the best man at Ms.
7 Athanasoulis' wedding?
8 A. No.
9 Q. Were you part of the wedding
10 party?
11 A. No, I don't think so.
12 Q. Did you attend the wedding?
13 A. Yes.
14 Q. Are you a godparent to Ms.
15 Athanasoulis' children?
16 A. No.
17 Q. I take it you would agree
18 with me that as a lawyer you have a number of
19 professional responsibilities?
20 A. Correct.
21 Q. And you owe a number of
22 professional duties?
23 A. Correct.
24 Q. And one of those duties would
25 be a duty to carry on the practice of law and

1 discharge all responsibilities to clients, tribunals,
2 the public, and other members of the profession
3 honourably and with integrity?
4 A. Correct.
5 Q. Another would be a duty to
6 perform any legal services undertaken on a client's
7 behalf to the standard of a competent lawyer?
8 A. Correct.
9 Q. You have a duty of honesty
10 and candor towards your clients?
11 A. Correct.
12 Q. When your client is an
13 organization, your duties as a lawyer are owed
14 towards the organization, rather than to the
15 individuals who may be giving instructions on behalf
16 of the organization?
17 A. Correct.
18 Q. You have a duty to not assist
19 in or encourage the dishonesty of your client or
20 others?
21 A. Correct.
22 Q. You have a duty to withdraw
23 from acting in a matter if your client intends to act
24 dishonestly, despite your advice?
25 A. Correct.

1 Q. You have a duty to avoid
2 conflicts of interest?
3 A. Correct.
4 Q. You have a duty to not
5 represent opposing parties in a dispute?
6 A. Correct.
7 Q. Without consent, you cannot
8 act against a former client in the same or a related
9 matter?
10 A. Correct.
11 Q. You have a responsibility to
12 be courteous, civil and act in good faith with all
13 persons with whom you deal with in the course of your
14 practice?
15 A. Correct.
16 Q. And at all relevant times,
17 you applied all of those duties?
18 A. Correct.
19 Q. I want to take you back to
20 2019. At some point before February 16, 2019, Ms.
21 Athanasoulis contacted you, as counsel for the
22 Cresford Group, and asked that you attend a meeting
23 with her and Mr. Casey; is that right?
24 A. The meeting we were just
25 discussing, is that what you're talking about?

1 Q. Yes.
2 A. Yes.
3 Q. The meeting that Ms.
4 Athanasoulis arranged was ultimately held on February
5 16, 2019?
6 A. Correct.
7 Q. I think you confirmed earlier
8 that only three people were in attendance at that
9 meeting, and those were you, Mr. Casey and Ms.
10 Athanasoulis?
11 A. Correct.
12 Q. I take it you understand that
13 what was discussed during that meeting between the
14 three of you on February 16th, 2019, is disputed in
15 this arbitration?
16 A. I don't know the details, but
17 I assume it is.
18 Q. In fact, I take it that you
19 are aware that the subject of the discussions between
20 three of you on February 16, 2019, was the subject of
21 a dispute between Ms. Athanasoulis and the Cresford
22 Group as early as January 2020?
23 A. I don't know the dates, but
24 okay.
25 Q. You are aware that Ms.

1 Athanasoulis commenced a civil action against the
2 Cresford Group?
3 A. I am.
4 Q. You are aware that she filed
5 a statement of claim in the Ontario Superior Court of
6 Justice in January 2020?
7 A. I'm not sure what the date
8 was, but I know there's a statement of claim filed.
9 Q. Are you aware that the
10 Cresford Group filed a statement of defence to Ms.
11 Athanasoulis' claim?
12 A. I would assume so.
13 Q. Am I right that in late
14 January 2020 you were approached by the Cresford
15 Group's litigation counsel, Mr. Al O'Brien?
16 A. Al O'Brien did call me. I
17 don't remember exactly when, but yes.
18 Q. Okay. You're aware that
19 Mr. Al O'Brien has since passed away?
20 A. No.
21 Q. Do you recall that
22 Mr. O'Brien forwarded certain paragraphs from Ms.
23 Athanasoulis' statement of claim to you?
24 A. I recall that, yes.
25 Q. Okay. Do you recall that

1 Mr. O'Brien contacted you because he wanted to get
2 your recollection of the February 16, 2019 meeting?
3 A. Yes.
4 Q. Specifically, he wanted to
5 get your recollection about what was discussed
6 between you, Ms. Athanasoulis and Mr. Casey in
7 respect of an alleged profit sharing arrangement; is
8 that right?
9 A. Correct.
10 Q. And I think you confirmed
11 earlier that you had a telephone conversation with
12 him in late January 2020?
13 A. I don't remember the date,
14 but I know he did call me.
15 Q. I'm going to put up a
16 document.
17 MS. STOTHART: I'm sorry, I just
18 need to jump in here just to say that we have an
19 objection to this document. I'm not sure if you
20 would like me to get into it right now, or simply
21 register it on the record. But before Mr. Li gets
22 into it, I wanted to register that.
23 ARBITRATOR HORTON: I don't yet
24 know what the document is. I'm about to be told, so
25 why don't you tell me what the objection is, if you

1 are confident you know about the document.
2 MS. STOTHART: Sure. Yes. Yes.
3 I waited for it to come up on screen just to be sure,
4 but it is the document I expected. I'm not sure if
5 Mr. Papadakis can be here for it or...
6 ARBITRATOR HORTON: Well, it's
7 easy enough to exclude Mr. Papadakis. Mr. Papadakis,
8 just give us a few minutes while we discuss this
9 objection. You will be put into a separate room
10 until then.
11 THE WITNESS: Okay.
12 MS. STOTHART: Perhaps, Mr. Li,
13 would you mind sharing it again, just so we can have
14 it in front of us, or I can do so. And if you just
15 go up to the top, Mr. Li, and, Mr. Horton, you can
16 have a look. This is, essentially, as Mr. Li has
17 been alluding to. It appears to be a memorandum
18 prepared by Mr. O'Brien, who was Cresford's
19 litigator, to recap a conversation he had, and other
20 privileged material that is redacted here.
21 As you can see, it appears to be
22 dated February 4th, 2020, so this was after the time
23 that Ms. Athanasoulis had delivered her statement of
24 claim, and prior to the time that Mr. Casey and
25 Cresford delivered their statement of defence.

1 We have no one here to
2 authenticate this document. Mr. Li did mention that
3 Mr. O'Brien is deceased. That leaves us with a
4 document that we have no one to authenticate and no
5 real sense of what it is. Obviously, we have a
6 concern of the purpose for which this was prepared.
7 It appears to have been very much prepared in the
8 time in contemplation of litigation.
9 If you scroll down -- and the
10 sections that I believe Mr. Li was about to put to
11 Mr. Papadakis, these are, effectively, Mr. O'Brien's
12 recollection and characterization of certain comments
13 made by Mr. Papadakis. And so what we really have
14 here is, you know, hearsay on hearsay. It's both
15 Mr. O'Brien's words out of court attempting to
16 characterize Mr. Papadakis' words. And, you know, we
17 say that's improper. We have Mr. Papadakis in front
18 of the tribunal to give his evidence.
19 So if this document is being used
20 to suggest that this version of Mr. Papadakis'
21 alleged recollection should be preferred and should
22 be relied upon, then that is, you know, hearsay being
23 relied on for the truth of its contents and is
24 inappropriate.
25 I can get into it, if we need, the

1 reasons we say there can't be an exception to the
2 hearsay rule in this case. But suffice it to say
3 that our position is that it's hearsay and should not
4 be used.
5 ARBITRATOR HORTON: May I just see
6 the top of the document, please, Mr. Li? And is
7 there anything on record with respect to the
8 provenance of this document, how you came to have it,
9 Mr. Li?
10 MR. LI: It was forwarded to us by
11 Cresford's current counsel.
12 ARBITRATOR HORTON: I'm sorry, I
13 didn't hear that, Mr. Li.
14 MR. LI: Sorry. Can you hear me
15 now?
16 ARBITRATOR HORTON: Yes.
17 MR. LI: It was forwarded, it was
18 forwarded to us by Cresford's current counsel.
19 ARBITRATOR HORTON: Who is?
20 MR. LI: Well, they have separate
21 litigation and corporate counsel. Right now their
22 corporate counsel is Aird and Berlis, so it was sent
23 to us by the Aird and Berlis firm.
24 ARBITRATOR HORTON: I see. Okay.
25 All right. Well, we have an objection stated in very

1 general terms. Do you want to give me your general
2 position with respect to it, Mr. Li?
3 MR. LI: Sure. Our general
4 position is that this obviously contains notes of
5 Mr. Papadakis' recollection. We intend to use it to
6 establish whether or not Mr. Papadakis shares the
7 same recollection now as he did in February 2020.
8 In any event, our position is that
9 this falls into the principled exception to hearsay,
10 which requires two branches. The first is necessity.
11 And we say that you can look at any case law,
12 necessity will be established when the witness is
13 deceased. The second is reliability. And the
14 circumstances of this document show that it is
15 eminently reliable. It is a memo to file from a
16 senior member of the bar, at a time when there was no
17 waiver privilege to Mr. Papadakis testifying in any
18 of these related proceedings.
19 Mr. Papadakis obviously was
20 counsel to the Cresford Group. Mr. Papadakis and
21 Mr. O'Brien would have had a very open and frank
22 discussion about the strengths and merits of the
23 claim against their client, the Cresford Group. And
24 there would be no reason at all for Mr. O'Brien to
25 have obscured or misled about what the contents of

1 this document were, more than two years ago, when
2 there was no inkling or sense that this document
3 would ever become -- that privilege would be waived
4 over this document.
5 ARBITRATOR HORTON: Ms. Stothart,
6 you had mentioned that you would go more deeply into
7 the case law. I'm not sure that's really required.
8 I mean, my understanding is, as stated by Mr. Li, of
9 the general principle, to the extent that, you know,
10 the hearsay rule might be considered in an
11 arbitration -- of course, it's not binding on me,
12 because the Rules of Evidence don't apply in
13 arbitration, I accept, with respect to relevance and
14 privilege. But having regard to the hearsay rule,
15 there are the exceptions with respect to reliability
16 and necessity. And it strikes me that this is a
17 document that should be considered in that light.
18 Is there something else you wanted
19 to draw my attention to before I rule on it?
20 MS. STOTHART: Well, I would
21 simply say, first of all, Mr. Li mentioned that this
22 is being used to jog Mr. Papadakis' recollection and
23 to see if his current recollection accords with his
24 previous recollection. And my first point is,
25 essentially -- and we can scroll down, perhaps, to

1 the sections where he's being quoted. But this is
2 not even Mr. Papadakis' recollection; this is
3 Mr. O'Brien's recitation of a conversation he had.
4 So, you know, to the extent we're
5 bringing in a prior statement, it's not even
6 Mr. Papadakis' prior statement. So that would be my
7 first point.
8 If it's being used to jog his
9 memory and, you know, Mr. Papadakis will give his
10 response, and then there will be no further reliance
11 on it, then that's one thing. But if Mr. Li is going
12 to seek to use this version of the recollection,
13 instead of Mr. Papadakis' current recollection,
14 that's where we have a hearsay issue.
15 And on the two-prong test, you
16 know, I think we're all agreed on what are the two
17 elements of the exception, the principled exception
18 to hearsay. And I would simply say, on the necessary
19 branch, yes, Mr. O'Brien is deceased. However, it's
20 not Mr. O'Brien's evidence that is necessary here;
21 it's Mr. Papadakis'. And we have him before the
22 Court.
23 And then on the reliability
24 branch, I would simply say we don't know, again, what
25 this document is. We have no one before the Court to

1 authenticate it. We have no one to testify to the
2 circumstances in which it was prepared. And it's not
3 correct that we can simply presume this is reliable
4 and neutral recitation of facts. This was the
5 litigator acting on behalf of Mr. Casey and Cresford.
6 And in that circumstance, we have no reason to
7 believe this wasn't prepared with a certain angle or
8 intention to advance certain positions in litigation.
9 And for that reason, you know, I
10 would just say, again, Mr. Li's version of what this
11 is, and my version of what this is, frankly, because
12 we don't know what this document was for, and we
13 don't have anyone to testify to that. So all you
14 have is two sets of counsel attempting to interpret a
15 document that we have no firsthand knowledge of.
16 ARBITRATOR HORTON: Okay. Well,
17 subject to weight, I'm going to let it in. I will
18 offer the following comments with respect to it.
19 I've already mentioned that the Rules of Evidence
20 don't apply in arbitration. It doesn't mean that we
21 just let anything in that may not have any bearing
22 whatsoever on the subject.
23 However, this is a document, in
24 the circumstances in which it's being produced,
25 there's no reason to doubt the authenticity of it as

1 a record maintained by Mr. O'Brien of a conversation
2 that he had with Mr. Papadakis in the normal course
3 of preparing to defend a claim by Ms. Athanasoulis.
4 It's the type of conversation that would go on in any
5 such situation between a lawyer representing a client
6 and a witness.
7 And I would observe that
8 Mr. Papadakis here is not really just a witness in
9 the ordinary course. I mean, he is put forward as
10 the repository of the key objective evidence of the
11 existence of this agreement. And so, therefore, I
12 think the authenticity of Mr. Papadakis'
13 recollections and so on are quite important.
14 It isn't necessarily the case that
15 the relevance of this document is purely to help
16 Mr. Papadakis refresh his memory. It seems to me
17 that it might represent a challenge. I haven't seen
18 the document in full yet. It might represent a
19 challenge to his recollection. He may well take the
20 opportunity to deny or explain what it is that was
21 said to Mr. O'Brien.
22 And I fully understand the context
23 that Mr. O'Brien has a point of view in representing
24 one party, and may, therefore, not have exactly
25 understood Mr. Papadakis in the spirit in which Mr.

1 Papadakis was speaking. I do. I absolutely
2 understand that. And that there may be -- there may
3 have been a bit of an advocacy perspective on Mr.
4 O'Brien's part, so I'm not prepared to take this as
5 gospel.
6 But on the other hand, this is
7 part of the record that I think we need to look at
8 when we're trying to determine whether or not there
9 was an agreement of this nature in the absence of
10 anything in writing. I think we really need to
11 explore this very carefully. And I think as a tool
12 in that exploration process, this document may be
13 useful. And I think it does give Mr. Papadakis an
14 opportunity, if he disagrees with any of this, to put
15 that forward and explain why.
16 So for those reasons, I'm going to
17 allow the document in, as I say, subject entirely to
18 weight, and subject to the qualifications that are
19 inherent in my reasons for admitting the document in
20 the first place.
21 So you can proceed, Mr. Li. And
22 let's let Mr. Papadakis back into the room.
23 MR. LI: Thank you, Arbitrator
24 Horton.
25 ARBITRATOR HORTON: Mr. Papadakis,

1 I'll just inform you that there has been objection,
2 objection to the introduction of this document that
3 you're about to be shown. I want you to know that I
4 have allowed it in on the basis that it will give you
5 an opportunity either to agree with what's in the
6 document or to disagree with what's in the document,
7 and to the extent you disagree with what's in the
8 document, to explain or elaborate on your
9 disagreement, all right? That's the basis on which
10 you're being shown the document.
11 Please proceed, Mr. Li.
12 MR. LI: Thank you, Arbitrator
13 Horton.
14 BY MR. LI:
15 Q. Mr. Papadakis, you understood
16 that Mr. O'Brien was litigation counsel for the
17 Cresford Group, correct?
18 A. I believe so, yes.
19 Q. And as a fellow member of the
20 Bar, as a senior member of the Bar, you would have
21 dealt with him with regard to your client's common
22 interest in a fair and forthright manner?
23 A. Correct.
24 Q. In an open and transparent
25 manner?

1 A. Correct.
2 Q. All right. So I'm going to
3 take you to the top of this document. This is a memo
4 to file from Mr. Al O'Brien, dated February 4th,
5 2020. I appreciate that you may have not have seen
6 this document before. However, it recounts a
7 conversation that you had with Mr. O'Brien on or
8 around January 31st, 2020. I think you stated
9 earlier that you do recall that a telephone
10 conversation occurred in late January 2020, correct?
11 A. Correct.
12 Q. It could have been on January
13 31st, 2020; is that right?
14 A. It could have, but there was
15 a conversation.
16 Q. Good. You see here in one of
17 the highlighted sentences, it says:
18 "On January 31, 2020, I
19 forwarded a copy of
20 paragraphs 27-28."
21 A. Sure.
22 Q. Which are noted above of the
23 statement of claim of Ms. Athanasoulis to Mr.
24 Papadakis. Do you recall that?
25 A. I remember him sending me

1 something. I haven't gone back to my emails to see
2 exactly what he had sent me, but that could probably
3 be it.
4 Q. Let me just pull up a
5 separate document then. I don't want to take you by
6 surprise in any of the questions. All right. Do you
7 see my screen share now, Mr. Papadakis?
8 A. Yes.
9 Q. This is an email chain
10 between you and Mr. O'Brien, dated February 6th,
11 2020, correct?
12 A. Yes.
13 Let me just go to the very bottom.
14 So in the first email of this chain, Cathy Alderson,
15 who was legal assistant for Mr. O'Brien, sent you an
16 behalf on behalf of Mr. O'Brien, and she says that:
17 "This is further to our
18 telephone conversation on
19 January 31, 2020. You were
20 going to check your file and
21 provide me with copies of
22 any notes you may have with
23 respect to your meeting or
24 meetings with Dan Casey and
25 Maria Athanasoulis relevant

1 to paragraphs 27-28 of the
2 statement of claim."
3 Do you see that?
4 A. Yes.
5 Q. I take it you have no reason
6 to doubt the accuracy of the email on February 6th,
7 2020, that was sent on behalf of Mr. O'Brien?
8 A. No. My only comment would be
9 that the telephone conversation would have been with
10 me and Al O'Brien, not with Cathy Alderson.
11 Q. Understood. Thank you. I
12 think Cathy Alderson is sending this email on behalf
13 of Al O'Brien. I think she's his legal assistant.
14 Okay. And further up in this chain, you confirm that
15 you looked through your files and you do not have any
16 notes of the February 16, 2019 meeting; is that
17 right?
18 A. So where am I looking at?
19 Where it says, "Al, I have not been able to locate"?
20 Q. Yes.
21 A. Yes. That's correct.
22 Q. Thank you. So going back to
23 the memo, at least in as far as the January 31st,
24 2020 date, and the call on that date, you have no
25 reason to doubt the accuracy that paragraphs 27 and

1 28 were, indeed, forwarded to you by Mr. O'Brien?
2 A. I do not.
3 Q. And I take it you would agree
4 with me that that's, in fact, what occurred?
5 A. Correct.
6 Q. And after he forwarded those
7 paragraphs, I take it that it's undisputed that --
8 I'm not sure if you called him or he called you, but
9 the point is, there was a telephone discussion
10 between you and Mr. O'Brien; is that right?
11 A. Correct.
12 Q. Mr. O'Brien then summarizes
13 the content of your call with him. Mr. O'Brien says
14 that in your call with him, you repeated, on a number
15 of occasions, that it was an -- that the February
16 16th, 2019 was an informal meeting, a very
17 preliminary meeting, and that he, i.e. you, was not
18 to be drafting anything. Do you recall that?
19 A. That's not correct. The term
20 "informal meeting" just meant that we weren't in a
21 boardroom wearing suits and having, you know,
22 something, like, formal. We were just getting
23 together and talking about it.
24 Q. Mm-hmm.
25 A. And then -- and that the part

1 where it says I was not to be drafting anything,
2 that's not correct either.
3 Q. Okay. Did you receive
4 instructions to draft an agreement?
5 A. I was told to start drafting
6 an agreement at that point in time, yes.
7 Q. Did you draft an agreement?
8 A. No, I did not.
9 Q. And I think you said earlier
10 that at all material times you complied with your
11 duties as a lawyer?
12 A. Correct.
13 Q. And you were told to draft an
14 agreement, but you did not draft the agreement?
15 A. Correct.
16 Q. He also says that:
17 "Mr. Papadakis will state
18 that Maria and Dan never got
19 to a point of "meeting of
20 the minds" as to how to move
21 forward." [As read]
22 Do you see that?
23 A. I do.
24 Q. And is that accurate?
25 A. No, it is not.

1 Q. And is your evidence now that
2 there was a meeting of the minds?
3 A. I was -- to tell you the
4 meaning, it wasn't a negotiation. I was told that
5 this is the verbal arrangement that we have, and we
6 want to put it in writing. So that point of where he
7 says "meeting of the minds," that's a legal term. I
8 don't see how I would have said that to him.
9 Q. You're a lawyer,
10 Mr. Papadakis?
11 A. Of course.
12 Q. You know what the term
13 "meeting of the minds" means?
14 A. Of course.
15 Q. And in discussing the topic
16 of contract formation with another lawyer, would it
17 be outside the realm of possibility that you would
18 use those words?
19 A. Yes, because it's incorrect.
20 To me, it's a conclusion.
21 Q. So your evidence now is that
22 you told Mr. O'Brien on January 31st, 2020, that
23 there was a meeting of the minds between --
24 A. No, I would not have used
25 that term.

1 Q. Your evidence now is that on
2 January 31st, 2020, you told Mr. O'Brien that there
3 was a contract between Mr. Casey and
4 Ms. Athanasoulis?
5 A. That's exactly what I said to
6 you, that I was told that they have an agreement
7 already in place that's verbal. You're asking me a
8 different question.
9 Q. I think I asked you earlier,
10 you had been open and forthright with Mr. O'Brien at
11 the time?
12 A. Correct.
13 Q. You would have expected that
14 if the position of Cresford's counsel was that there
15 was an agreement, that that would be a material thing
16 to include in any pleading?
17 A. Sorry, can you say that
18 again?
19 Q. Your evidence now is that you
20 advised Mr. O'Brien that there was a contract between
21 Mr. Casey and Ms. Athanasoulis. You advised
22 Mr. O'Brien on January 31st, 2020, that there was a
23 contract between Mr. Casey and Ms. Athanasoulis?
24 A. As I stated earlier, I
25 advised that there was a verbal agreement that was in

1 place that I was asked to put in writing. Mr. Casey
2 himself told me, "Maria trusts me, we don't really
3 need this in writing, but I want to get this done for
4 her," and also for himself in case something should
5 happen to him in the long term. So we weren't
6 negotiating anything. It wasn't this is what we're
7 think of doing. It was, this is what our agreement
8 is, we just want to put it in writing. The term
9 "meeting of the minds" never came up in my
10 conversation with Al O'Brien.
11 Q. On January 31st, 2020, am I
12 right that no one had approached you to provide
13 testimony in any proceedings that might take place
14 between Ms. Athanasoulis and Cresford?
15 A. Correct. I knew nothing
16 about it.
17 Q. Okay. And certainly no one
18 had waived any privilege that would permit you to
19 testify on these topics?
20 A. Correct.
21 Q. I'm going to put it to you,
22 Mr. Papadakis, that what you did, in fact, say during
23 the meeting on January 31st, 2020, with Mr. O'Brien,
24 was that, in fact, there was no contract, formal,
25 formal contract between Mr. Casey and

1 Ms. Athanasoulis?
2 A. There was no written
3 contract. There was no written contract.
4 Q. There was no enforceable
5 contract?
6 A. If you're asking me about a
7 written agreement, there is no written agreement.
8 Q. Let me rephrase. I'm going
9 to put it to you, Mr. Papadakis, that on January
10 31st, 2020, you told Mr. O'Brien that there was no
11 enforceable contract between Mr. Casey and
12 Ms. Athanasoulis. Will you accept that?
13 A. No. No. I said exactly what
14 I've been saying this whole time. There was a verbal
15 agreement in place. You're talking about me using
16 the words "enforceable contract"; those terms did not
17 come up in my conversation. What he asked me is what
18 was asked of me earlier, what was said, what happened
19 at that meeting. He did not go into any, was there
20 an enforceable contract, was there a meeting of the
21 minds. It was what was said, you know -- going back
22 to what you had shown me earlier, those paragraphs,
23 that just talks about what happened at the meeting.
24 That's what we talked about.
25 Q. He also recalls that:

1 "John Papadakis was never in
2 a position to draft anything
3 and Dan never told him not
4 to proceed with drafting an
5 agreement."
6 Were you in a position to draft a
7 draft agreement?
8 A. I could have started drafting
9 an agreement, sure.
10 Q. I'm going to take you to --
11 do you recall attending an examination for discovery,
12 Mr. Papadakis, in this matter?
13 A. Yes.
14 Q. That occurred on January 13,
15 2020, correct?
16 A. Sure.
17 ARBITRATOR HORTON: Did you say
18 2020 or 2022?
19 MR. LI: Sorry. My apologies.
20 January 13, 2022.
21 BY MR. LI:
22 Q. And before that examination
23 commenced, you swore an oath to tell the truth and
24 nothing but the truth?
25 A. Correct.

1 Q. Do you recall I asked you the
2 question about whether or not you were in a position
3 to begin drafting an agreement after your February 16
4 meeting?
5 A. Well, yes, but then we did
6 get the -- I answered that question specifically
7 right after the meeting could I draft. And I said,
8 no, I needed the understanding of the corporate
9 structure.
10 Q. So you were not in a position
11 to draft a draft agreement after the meeting,
12 correct?
13 A. Immediately after the
14 meeting, no.
15 Q. My question to you earlier
16 with regard to the Al O'Brien memo was whether you
17 were in a position to draft anything after the
18 meeting?
19 A. Okay, I misunderstood that.
20 I thought -- because I had told you earlier that I
21 had received the -- eventually received the corporate
22 flowcharts, that I could at that point in time draft,
23 start commencing drafting the agreement.
24 Q. And did you draft an
25 agreement after you received the flowcharts?

1 A. I did not.
2 Q. You would agree with me that
3 recollections generally degrade over time,
4 Mr. Papadakis?
5 A. I understand that to be the
6 case.
7 Q. And your recollection would
8 likely be better about a topic in January 2020,
9 rather than two years later now?
10 A. I think that would be case
11 with everybody.
12 Q. Thank you. I want to go to
13 the meeting itself that occurred on February 16, 2020
14 [sic].
15 A. Okay.
16 Q. I think you agreed earlier
17 that you met with Ms. Athanasoulis and Mr. Casey in a
18 rather informal manner for the meeting at the offices
19 of the Cresford Group on that day?
20 A. Correct.
21 Q. And prior to that meeting,
22 you had never discussed with Mr. Casey any alleged
23 profit sharing arrangement, correct?
24 A. I don't think so, no.
25 Q. At the February 16th, 2019

1 meeting, am I right that you discussed high level
2 topics like what the agreement might look like?
3 A. Correct.
4 Q. You might have discussed some
5 topics like what entities might be involved in the
6 arrangement?
7 A. Correct.
8 Q. And you might have discussed
9 what some of Dan's concerns might be in respect to
10 the arrangement?
11 A. As to why he, he wanted the
12 arrangement put in place; is that what you're asking
13 me?
14 Q. His concerns with the
15 arrangement, any concerns with the arrangement --
16 A. Sure.
17 Q. -- for what he wanted. And
18 the discussion that took place on February 16th,
19 2019, was at a rather high level or conceptual level;
20 is that fair?
21 A. It was at a high level, yeah.
22 We didn't drill down into minute details, correct.
23 Q. You, Ms. Athanasoulis and
24 Mr. Casey did not at the February 16th, 2019, meeting
25 discuss the matter of timing as far as when potential

1 profit share payments would be made, correct?
2 A. Correct.
3 Q. You did not discuss whether
4 Ms. Athanasoulis would still be entitled to a
5 potential profit share payment if she was terminated
6 from her employment?
7 A. No, we did not specifically
8 talk about that detail. No.
9 Q. You did not discuss whether
10 Ms. Athanasoulis would still be entitled to a
11 potential profit share payment if she resigned?
12 A. No, we did not discuss that.
13 Q. The general purpose of the
14 meeting was to provide Ms. Athanasoulis some
15 protection or assurance that if Mr. Casey passed
16 away, or, to use your words, was "hit by a bus," his
17 estate would not be able to remove her from her
18 position at the Cresford Group; is that fair?
19 A. That's one of the points.
20 Q. But you did not discuss what
21 provisions Ms. Athanasoulis and Mr. Casey wanted in a
22 potential agreement to accomplish that objective?
23 A. We discussed it generally,
24 but not specifics.
25 Q. I asked you this question,

1 Mr. Papadakis, on examination for discovery on
2 January 13, 2022. I'm showing you the transcript
3 right now at Question 75:
4 "Did they discuss what
5 provisions they wanted in
6 the agreement in order to
7 accomplish that objective?"
8 That objective is referring to our
9 discussion above. In one of your answers, you said:
10 "It was more of an estate
11 concern. I don't think she
12 was worried about the
13 projects being sold -- like,
14 being sold to a third party,
15 if that's what you're
16 referring to."
17 And we continue on for a bit on
18 discussing.
19 "So she wanted to protect
20 herself from that sort of a
21 thing, correct?
22 "And so did Dan.
23 "Was there any discussion
24 about ... that eventuality?
25 "They wanted to make sure

1 that ... there was no way
2 anybody could remove her
3 from her position."
4 And I asked you:
5 "Did they discuss what
6 provisions they wanted in
7 the agreement in order to
8 accomplish that objective?"
9 Your answer is: "No."
10 Was your answer on January 13
11 correct, or the answer you gave in this arbitration
12 correct?
13 A. I think they're both correct.
14 I don't see much of a difference between the one or
15 the other. Things were discussed in general terms.
16 I think when you asked me about the Question 75, you
17 were going to more specifics, where I've already said
18 we did not talk about specifics.
19 Q. So your answer is no, but it
20 should have read no, it was not discussed in specific
21 terms, but it was discussed generally?
22 A. Correct, which is what I've
23 been saying the whole time.
24 Q. I put it to you,
25 Mr. Papadakis, that you, in fact, did not discuss the

1 terms that Mr. Casey or Ms. Athanasoulis wanted in
2 the potential agreement with regard to the was
3 hit-by-a-bus issue. Do you accept that?
4 A. I didn't understand it. Can
5 you say that again.
6 Q. I put it to you that you,
7 Ms. Athanasoulis and Mr. Casey --
8 A. Yes.
9 Q. -- on February 16th, 2019,
10 did not, in fact, discuss what terms they wanted in
11 the agreement to address the estate intrusion or
12 hit-by-a-bus issue?
13 A. Other than ensuring that
14 Ms. Athanasoulis would not be able to be removed from
15 her position.
16 Q. Other than that, there was no
17 other discussion?
18 A. And the profit sharing.
19 Q. Thank you. I think you
20 mentioned in your direct examination that on February
21 16th, 2019, you, Ms. Athanasoulis and Mr. Casey
22 touched briefly on the issue of the definition of
23 "profit"; is that right?
24 A. Correct.
25 Q. But you did not discuss

1 whether profit would be calculated on a pre-tax or
2 post-tax basis, for example?
3 A. Correct.
4 Q. You did not discuss what set
5 of accounting standards would be used to calculate
6 profit under the arrangement?
7 A. Correct.
8 Q. You did not have a discussion
9 about how profit allegedly owing to Ms. Athanasoulis
10 would be calculated if a project was sold halfway
11 before completion, correct?
12 A. I think, I think that the
13 answer to that question would be she would be
14 entitled to 20 percent of the profit.
15 Q. Not what you think the answer
16 to it is. Did you have that discussion on February
17 16, 2019?
18 A. I don't think that we
19 specifically discussed that. The discussion, though,
20 was -- the sense that I got from the discussion was
21 that Ms. Athanasoulis would be entitled to 20 percent
22 of the profit of any projects going forward,
23 including if a project was sold halfway through.
24 Q. You have no -- sorry, finish
25 your answer.

1 A. No, because that was the
2 whole purpose of our, our -- being called to the
3 meeting was to make sure that the profit sharing was
4 going to be put into some sort of a written
5 agreement, which would have included that, because of
6 everything that we discussed as to what Maria's
7 contributions were leading up to a project and
8 getting a project off the ground. I don't see how
9 that changed.
10 Q. Thank you. So you may have
11 had a general discussion about those topics that you
12 just enumerated. My question is, did you have a
13 specific discussion about how profit allegedly owing
14 to Ms. Athanasoulis would be calculated if a project
15 was sold halfway before completion?
16 A. No, we did not have a
17 specific conversation.
18 Q. Thank you. You did not
19 discuss whether Ms. Athanasoulis would be taking a
20 security interest in any project to secure her
21 alleged entitlement?
22 A. No.
23 Q. You did not discuss what
24 would happen to Ms. Athanasoulis' alleged entitlement
25 if an event of default occurred in respect of a

1 project?
2 A. No.
3 Q. You did not discuss what
4 would happened to Ms. Athanasoulis' alleged profit
5 share entitlement if a project went insolvent?
6 A. No.
7 Q. After February 16, 2019, you
8 did not have another conversation about the terms of
9 the alleged profit share agreement again with either
10 Ms. Athanasoulis or Mr. Casey?
11 A. No.
12 MR. LI: Can I just take five
13 seconds?
14 ARBITRATOR HORTON: Certainly.
15 MR. LI: Those are all my
16 questions. Thank you.
17 ARBITRATOR HORTON: Any
18 re-examination?
19 MR. DUNN: Before re-examination,
20 I want to commend Mr. Li. When he said he needed
21 five seconds, I didn't believe him, but that was very
22 close to five seconds.
23 ARBITRATOR HORTON: Very good. A
24 rare quality in counsel, making reliable predictions
25 as to time.

1 MS. STOTHART: Yes. May I also
2 just have, I suspect, quite literally as well five
3 seconds to double-check?
4 ARBITRATOR HORTON: Certainly.
5 MS. STOTHART: Thank you. Okay,
6 as promised, I also took five seconds and have no
7 re-exam. Thank you.
8 ARBITRATOR HORTON: Okay. Thank
9 you very much, Mr. Papadakis. You're free to leave
10 the meeting. And, counsel, I think it would make
11 sense for us to take a 45 minute lunch hour now and
12 come back at 1:00, and continue on. And I gather, at
13 that point, we'll be hearing Ms. Athanasoulis'
14 evidence. All right, one o'clock.
15 MR. DUNN: Yes.
16 ARBITRATOR HORTON: Thank you so
17 much.
18 --- Recess at 12:15 p.m.
19 --- Upon resuming at 1:02 p.m.
20 ARBITRATOR HORTON: Okay. Again,
21 could everyone confirm for me that everyone is here
22 who needs to be here, and can you just check the
23 participants' list quickly.
24 MR. DUNN: From our perspective,
25 we have everyone here.

1 ARBITRATOR HORTON: Okay.
2 MR. MILNE-SMITH: Same for us,
3 thank you.
4 ARBITRATOR HORTON: All right.
5 AFFIRMED: MARIA ATHANASOULIS
6 ARBITRATOR HORTON: Mr. Dunn.
7 EXAMINATION IN-CHIEF BY MR. DUNN:
8 Q. Good afternoon, Ms.
9 Athanasoulis.
10 A. Good afternoon.
11 Q. I want to start by asking you
12 a little bit about Cresford. So what business was
13 Cresford in?
14 A. Cresford was in the business
15 of building large condominium projects. We were in
16 the condominium development business.
17 Q. Okay. And when I say
18 Cresford, was Cresford a company?
19 A. Cresford was the marketing
20 name, and it was owned by various companies. All the
21 projects were owned by various companies.
22 Q. Okay. And were there other
23 companies apart from the project companies?
24 A. Yes. I mean, the way we ran
25 the business was there was the fee companies, but I

1 didn't -- other than each project owning its own
2 entity and the fee company, I mean, I didn't really
3 have much involvement in anything else.
4 Q. And were the entities
5 operated separately? Did each have their own
6 employees, or how did it work?
7 A. No, all the employees worked
8 for Cresford.
9 Q. Okay. And who owned the
10 various Cresford entities?
11 A. So the various entities --
12 what I knew that who owned the various entities was
13 Dan Casey, but I would have later learned that there
14 was family trusts that had the true ownership of the
15 company.
16 Q. Okay. And so who was the
17 ultimate decision maker for the various entities?
18 A. Dan Casey.
19 Q. And how would you
20 characterize Mr. Casey's style or his management
21 style in operating the Cresford companies?
22 A. He was very casual, didn't
23 really like -- didn't want you to send him emails.
24 We always had either telephone conversations,
25 in-person meetings. His style was very casual.

1 Q. And how often -- turning --
2 and we'll go through the history a little bit. But
3 turning to the period 2018/2019, how often did you
4 speak to Mr. Casey?
5 A. Daily.
6 Q. Okay. And let's talk about
7 the condominium business, just to get a sense of it
8 more generally. So what's the first step in a
9 condominium development?
10 A. The first step is finding the
11 land in order to build a condominium on.
12 Q. Okay. And tell me what's
13 involved at the acquisition stage?
14 A. So at the acquisition stage,
15 we would identify a piece of land, and make various
16 assumptions to see if whether or not we thought the
17 project was profitable, and also in line with our
18 brand and our marketing strategy.
19 Q. Okay. And would there be any
20 financing at the acquisition stage?
21 A. It depended. It really
22 depended on whether or not the project was zoned, or,
23 if it was, if it was zoned, there were cases where we
24 marketed, sold the project, and went right into a
25 construction loan.

1 Q. Okay. So you mentioned
2 zoned. What did you mean by zoned?
3 A. Zoned means you have all of
4 the municipal approvals in order to build the
5 condominium in the form that you're marketing.
6 Q. Okay. And in order to get
7 zoning, what had to be done, if anything, in terms of
8 the design of the project itself?
9 A. With respect to the zoning,
10 you would ideally zone a project that would be in
11 line with all of the marketing and all -- it would be
12 in line with what you wanted to sell, and have all
13 the attributes that would make it a successful
14 building.
15 Q. Okay. And what was
16 Cresford's sort of brand or its focus, if you could
17 sum it up for me?
18 A. Cresford's brand was a luxury
19 focused brand, mainly focusing in the last decade in
20 the downtown core.
21 Q. Okay. And how did Cresford
22 market its projects?
23 A. It marketed it by creating a
24 campaign that really helped explain to clientele why
25 they should be investing with Cresford. We had

1 developed a reputation that we had the best suite
2 layouts in the industry. The luxury aspect of it was
3 something that was priced into our condominiums,
4 because you did have to pay a premium to buy in a
5 Cresford brand. But over the years, we developed a
6 reputation that people understood the product,
7 understood that they were buying a premium product,
8 and that was all part of the brand and strategy to
9 achieve our financial goals.
10 Q. Okay. And what specific sort
11 of techniques would you use to get that message out?
12 A. So we used several. We -- my
13 style was I loved the big campaign where I could
14 introduce the project and explain the vision, the
15 suite layouts, the reasons why the product was
16 designed the way it was, and the long term growth
17 potential. And I would like -- I used to do that in
18 large events that brokers would attend. We would
19 also market to past customers.
20 But, basically, the message would
21 go through all of the broker community and friends,
22 family, and everybody who had touched Cresford, and
23 it would become a marketing tool that would help
24 create a big advantage for us, because everybody was
25 chasing our product.

1 Q. Okay. And so when -- at what
2 point in this whole process would construction
3 typically start?
4 A. So construction would start
5 as soon as we could achieve the pre-sale
6 requirements, which is typically 65 percent of the
7 project.
8 Q. And what do you mean when you
9 say a pre-sale requirement? When does -- whose
10 requirement is it?
11 A. So the construction lenders
12 would have a pre-sale requirement. So, I mean, in
13 the, in the phase where we were buying it pre-zoned,
14 we would, we would have an acquisition financing
15 tool. I wasn't involved in that, but, like, that
16 would carry us to the marketing phase. And then,
17 once we got the pre-sales, we would get a
18 construction loan. But in the cases that we bought
19 the sites that would go straight into a construction
20 financing, they needed a 65 percent roughly pre-sale
21 number in order to close on the land.
22 Q. Okay. And what exactly --
23 when you say "pre-sale" in this context, what does
24 that mean?
25 A. A pre-sale is, is engaging

1 and having firm deals with clients that have bought
2 your product, each condominium unit.
3 Q. Okay. And when did those
4 deals actually get completed?
5 A. When would they close?
6 Q. Yeah.
7 A. Okay, so they would close at
8 the end of -- at final registration.
9 Q. Okay. And would the
10 purchasers pay any deposits?
11 A. The purchases would pay
12 deposits, and that would vary from project to
13 project. And it would also vary -- you know, at one
14 point in time when I started in the industry, it was
15 15 percent. Later on in the years, the banks were
16 requiring 20 percent up front prior to occupancy, and
17 at occupancy another additional 5 percent in the
18 deal.
19 Q. Okay. And did Cresford have
20 access to those deposits to fund construction?
21 A. Yes, they did. We would get
22 an insurance bond against that, the purchaser
23 deposits, and that would be used in parallel with the
24 construction facility.
25 Q. Okay. And was it ever the

1 case that some construction started before the
2 construction loan was available?
3 A. Yeah. So in the case of YSL,
4 it actually worked a little bit different. It was
5 the first project that did this. We actually were in
6 a -- we went from a zoning acquisition loan, where
7 once we received the zoning, we were at a crossing
8 point where we needed to refinance the project.
9 However, we were able to, in a very short period of
10 time, market, sell it and sell over $650 million of
11 project in a very short period of time. And we then
12 used that money to do various things with.
13 So it was the purchaser deposits
14 that were then bonded into a facility with Aviva, and
15 we used those deposits towards the project, which
16 also started construction.
17 Q. Okay. And in terms of going
18 back to just the general life cycle of a project,
19 what happens once the project is built?
20 A. What happens once the project
21 is built? It -- people move in during the occupancy
22 phase. Then it goes through a final registration
23 phase.
24 Q. And at what point does
25 Cresford receive the bulk of its revenue?

1 A. At the final registration
2 phase.
3 Q. Okay. And in terms of -- I'm
4 jumping around a little -- but situating ourselves in
5 2018, what projects did Cresford have ongoing at that
6 time?
7 A. So at that time it had four
8 active projects in the construction phase: Halo was
9 one; Clover was the furthest along; 33 Yorkville;
10 and, YSL.
11 Q. Okay. So now I want to take
12 a step back and figure out -- or ask you some
13 questions about how you come into this picture. So
14 can you tell me about your educational background?
15 A. My educational background is
16 I went to Seneca College after graduating high
17 school, and I took business administration and did
18 not finish. In parallel to going to school, I also
19 had a part-time position with Canada Trust, which I
20 ended up focusing on and pursuing. And that -- so I
21 did not finish my college education.
22 Q. And approximately when did
23 you start working at Canada Trust?
24 A. When I was 17.
25 Q. Okay. I won't ask how old

1 you are now.
2 A. I'd have to do the math to
3 tell you the exact year, but...
4 Q. Okay. So when did you leave
5 Canada Trust, and what did you do next?
6 A. So Canada Trust merged into
7 TD Bank, and so I left what would have been known as
8 TD Canada Trust in 2004 to join Cresford.
9 Q. Okay. And what -- how did
10 that come about?
11 A. So two individuals that I had
12 worked with and for at both Canada Trust and TD,
13 Ted Dowbiggin and Ian Scott, were working for an
14 individual named Dan Casey and approached me about a
15 job opportunity that I thought sounded pretty
16 fantastic. And so I ended up joining them, and
17 joined them in 2004.
18 Q. Okay. And what was your job
19 when you joined Cresford in 2004?
20 A. My job was working in the
21 finance department with both Ted Dowbiggin and
22 Ian Scott, and I carried a role of manager special
23 projects.
24 Q. Okay. And what kind of
25 things did you do in your role as manager of special

1 projects?
2 A. I basically assisted Ted and
3 Ian in the background work for the financings. At
4 the time they had several projects underway. Also
5 part of the financings was also collecting marketing
6 data, so really had an interest in just the whole
7 market and the condominium business, and really
8 enjoyed sort of getting them their information for
9 the financing and helping them underwrite the deals,
10 but really enjoyed the marketing aspect the more I
11 was researching it in order to support the credit
12 applications for the banks.
13 Q. Okay. And what did you do
14 after being manager of special projects?
15 A. So manager of special
16 projects then evolved into the role of marketing and
17 sales. And shortly after I joined, there was a vice
18 president of sales and marketing who left the
19 company, and there was an opening for someone to take
20 carriage of marketing and sales. And over time -- I
21 immediately started assisting Dan, working for Dan
22 directly for Dan, assisting him with marketing and
23 sales, and that was the start of my role in marketing
24 and sales.
25 Q. Okay. And at that time, how

1 did Cresford market its projects?
2 A. So at the time, it was
3 marketed and promoted through various industry
4 leaders that had marketing and sales firms, so we
5 used various of the various companies for the various
6 projects. And I would help them with their strategy,
7 the marketing campaigns, and, you know, follow-up on
8 weekly meetings to ensure that we were meeting our
9 sales targets and assisting them with the marketing
10 materials required to achieve our financial goals.
11 Q. Okay. And how -- was there a
12 standard in terms of how these outside firms were
13 compensated?
14 A. Yeah. So the standard was
15 roughly one and a half percent, sometimes -- like,
16 you know, it kind of varied, but the typical standard
17 was one and a half percent, if not more, to the
18 marketing and sales companies in order to promote all
19 the individual condominiums.
20 Q. Okay. And did Cresford,
21 throughout your time working in marketing, continue
22 to use outside firms to market projects?
23 A. No. So in 2007, I really
24 took a liking to the whole marketing and sales and
25 the whole promoting it and having the control of the

1 product and the brand, and, and the message that was
2 being delivered to the broker community, and so we
3 started to evolve into bringing marketing and sales
4 in-house under my leadership.
5 Q. Before we go there, my
6 colleague pointed out I missed something. When you
7 say one and a half percent as a commission, one and a
8 half percent of what?
9 A. One and a half percent of the
10 total revenue of the project.
11 Q. Okay.
12 A. But as you sold a unit -- so
13 if it was a million dollars, you would make one and a
14 half percent on the million dollars that you sold.
15 But the idea is -- I mean, most -- in most cases, the
16 individual that you hired to promote your project
17 would have carriage of it from the beginning to the
18 end.
19 Q. Okay. So you mentioned
20 bringing, bringing some functions in-house.
21 Approximately when did that start?
22 A. So with sales and marketing,
23 we brought it in-house for the first project in 2007.
24 Q. And what -- do you recall
25 what project that was?

1 A. NXT.
2 Q. Okay. I'm going to show you
3 a joint document book, Tab 2. And I'm just showing
4 you the cover note, which seems to be from somebody
5 named Jessica Harrison?
6 A. Yes.
7 Q. Do you recall who
8 Jessica Harrison is?
9 A. So Jessica Harrison was an
10 outside consultant that Dan had hired to help, to
11 help organize the business.
12 Q. And this is to someone named
13 Ken Marshall? Who is Ken Marshall?
14 A. So Ken Marshall at the time
15 was the president of Cresford.
16 Q. Okay. And where is
17 Ken Marshall now?
18 A. Ken Marshall is working for
19 or owns, from my understanding, Finnegan Marshall.
20 Q. Okay. Sorry, just to tie it
21 off, what does Finnegan Marshall do?
22 A. They are one of the leading
23 cost consultants for condominium developments in our
24 city.
25 Q. Okay. And scrolling down,

1 there is a document titled Vice-President, Marketing
2 and Sales. Do you know what this document is?
3 A. Yeah, so this document was
4 created in order to formalize roles and
5 responsibilities in the organization. So Jessica was
6 helping Ken and Dan organize everybody's roles.
7 Because as we were growing, it was a process that we,
8 we determined was necessary. It was required from an
9 ownership standpoint, but also from an employee
10 standpoint. We all wanted our, our roles and
11 responsibilities memorialized. And so these were my
12 roles and responsibilities at the time.
13 Q. And do this reflect your
14 responsibilities as of February of 2013?
15 A. Yes, it does.
16 Q. Okay. And there are --
17 there's a reference to inventory sales, 399 Adelaide
18 CASA II and 1000 Bay. Were those -- who was
19 marketing those projects?
20 A. At that time, I was.
21 Q. Okay. And had any outside
22 consultants been involved?
23 A. The only project that an
24 outside consultant was involved in was 1000 Bay at
25 the beginning, and that's, that's a separate story or

1 situation. But, essentially, it became in-house and
2 was very successful, and marketed and sold by myself.
3 Q. Okay. And what about
4 CASA III, who was -- there's a launch of CASA III.
5 Can you tell me what CASA III is?
6 A. So CASA III is a piece of
7 land that's located on Charles Street just on the
8 southeast corner of Yonge and Bloor. It was a fourth
9 piece of land that was acquired by Cresford on the
10 same block over a period of many years. And so the
11 original one that was on the block was called CASA.
12 The second one that we acquired was CASA II. And
13 CASA III was later acquired and named CASA III. All
14 kind of marketed directly -- it was -- they were
15 three buildings that evolved over time that looked
16 similar, and it would have appeared that they were
17 all bought at the same time, and there was a natural
18 strategy to build all three towers.
19 Q. Okay. Were they bought at
20 the same time?
21 A. No.
22 Q. Okay. Was there a strategy
23 to build all three towers?
24 A. Well, each time we bought a
25 project and we named it CASA, the strategy was to

1 build each tower.
2 Q. Okay. And was the marketing
3 of CASA III being handled by an outside consultant or
4 was it being handled in-house?
5 A. When I say marketing, like
6 it's a duplicit role, right. Sales -- so they're
7 called -- it's called marketing and sales or
8 marketing, but really it's the sales, and the sales
9 were promoted by myself. Marketing, like, I would
10 hire a third party, like design firm that would help
11 me with the, with the brochure and all of that. So I
12 just wanted to distinguish the difference between all
13 of the different names.
14 Q. Okay. Sure. What were the
15 advantages of bringing the sales and marketing
16 function in-house, subject to the qualification you
17 just gave me?
18 A. So the advantages were huge.
19 I mean, normally if you hired an outside party, you
20 would be paying that outside party the one and a half
21 percent, and they would earn a profit on the sales
22 piece. But for us, because I was handling that
23 function, we would, we would sell it and we would
24 earn the fees.
25 Q. Okay. I'm showing you Tab 26

1 of the joint document book, or I will be showing you
2 momentarily. So this purports to be an email from
3 Robin Simpson to you. Who was Robin Simpson?
4 A. Robin Simpson was, at that
5 time, a marketing employee of Cresford.
6 Q. Okay. And turning -- so this
7 is -- can you tell me what this document shows me,
8 that I'm showing you now, which is the second page of
9 joint document book Tab 26?
10 A. So this was an organizational
11 chart of all of the individuals that worked for
12 Cresford and where they reported.
13 Q. Okay. And there is two --
14 there are two presidents here. There's
15 Ted Dowbiggin, president of land and finance, and
16 Maria Athanasoulis, president of marketing and sales.
17 Can you explain to me your role and Ted's role at
18 this time in 2013? Where is the point of
19 demarcation?
20 A. So, basically, Ted was
21 involved and responsible for acquiring the sites and
22 financing them, and I was in charge for all of the
23 operational aspects of the business from
24 construction, marketing, sales, customer service.
25 Q. Okay. At this period, did

1 you have any involvement at all at the acquisition
2 stage?
3 A. My involvement with the
4 acquisition stage is I would be the one that was
5 responsible for forecasting what the revenues would
6 be.
7 Q. Okay. And there's, off to
8 the far right of this document, there's a Vice
9 President of High Rise Construction, and a Director
10 of High Rise Construction. Can you tell me about who
11 those people were, and what your involved were at
12 this stage with construction?
13 A. So at this point in
14 construction, it was the next phase of bringing
15 another piece of the business in-house. We started
16 our own construction management company. And we were
17 building -- we started building the buildings, the
18 individual towers in-house, and they reported to me.
19 Q. Okay. And how did that --
20 and how did bringing that impact Cresford's business?
21 A. It was, it was a game
22 changer. We had control over our product. We were
23 able to manage our buildings, our product, and had
24 direct open lines of communication in order to
25 deliver the product that we had envisioned at the

1 beginning when the initial marketing and sales stage
2 had begun.
3 Q. Okay. And how about
4 financially?
5 A. There was another -- yeah,
6 sorry.
7 Q. Go ahead. Go ahead.
8 A. It was another fee generating
9 business for Cresford, which allowed us to earn a
10 substantial amount of further fees.
11 Q. Okay. And around this time,
12 what involvement did you have with the finance side
13 of the business?
14 A. So I wasn't involved with the
15 lenders or -- I wasn't involved with finance, to the
16 extent that I would give the input of the revenue,
17 and the costs of the product.
18 Q. Right. And did that change?
19 A. Did that change over time?
20 Q. Yes.
21 A. No. From this day forward, I
22 was involved in that aspect, if not, it grew. We
23 ended up bringing in another in-house fee generating
24 business that most hire a third party. I don't -- I
25 can't see the whole organizational chart, so I don't

1 think it's on this.
2 Q. Sorry --
3 A. That's okay.
4 Q. And what fee generating
5 business was that?
6 A. Property management.
7 Q. Okay. And what properties
8 did the property management arm manage?
9 A. So, I mean, from CASA II,
10 1000 Bay forward, we then engaged in our own property
11 managements of the individual condominiums. What
12 would happen is, once a building was registered, we
13 would automatically get that role for a year, but we
14 had to work hard to continue the relationship with
15 the condominium owners in order for that to continue
16 on and on.
17 Q. Okay.
18 A. Which happened in many of the
19 buildings.
20 Q. Okay. So the basic structure
21 of this organizational chart, where you have, you
22 know, sort of one branch reporting up to Ted, and one
23 branch reporting up to you, did that ever change?
24 A. It changes when Ted leaves in
25 2018.

1 Q. Okay. And how did it change?
2 A. I guess you could just
3 replace Ted's name with my name, and everybody
4 reported to me.
5 Q. Okay. So in practical terms,
6 what was added onto your plate at that stage?
7 A. So finance and accounting.
8 Q. Okay.
9 A. And acquisitions.
10 Q. Okay. And when you say
11 finance, what specific responsibilities did you take
12 on?
13 A. So in 2018, Dan, Ted, myself
14 and others from the finance group flew out to
15 Victoria B.C., which was our main lender who had
16 financed several of the projects, to announce sort of
17 Ted's departure and the changing hands of the
18 relationship from Ted to myself.
19 Q. Okay. And what about Otera,
20 the lender on YSL?
21 A. So Otera was a new
22 relationship. It wasn't a longstanding like VCI was.
23 VCI financed several projects. Otera financed half
24 of the loan on 33 Yorkville, and would be the mainly
25 syndicate partner on YSL.

1 Q. And who at Cresford was
2 primarily responsible for the relationship with
3 Otera?
4 A. I was.
5 Q. Okay. So I want to talk a
6 little bit about the various Cresford entities that
7 were in play. Who paid your salary while you were
8 employed at Cresford?
9 A. So my salary was paid by a
10 company that was known as EDRP, East Downtown
11 Redevelopment Partnership.
12 Q. Okay. And what did EDRP do?
13 A. EDRP collected the fees from
14 the individual projects. I originally thought that
15 maybe that money went into Rosedale, but EDRP was, in
16 fact, the collector of the fees of all the various
17 entities -- of all the various projects that had fees
18 generated based on our, on our in-house fee
19 generating businesses.
20 Q. Okay. And did Cresford enter
21 into employment agreements with some employees?
22 A. Trick question. Cresford is,
23 Cresford is who entered into --
24 Q. Well, let me ask you this.
25 A. Yeah.

1 Q. Let me reframe it. You
2 mentioned earlier working for Cresford. Did -- and
3 I'm using it in a general sense -- did some of the
4 employees of Cresford have employment agreements?
5 A. Yes, some employees did have
6 employment agreements.
7 Q. And did Cresford have a
8 standard form template for those employment
9 agreements?
10 A. Yes, it did.
11 Q. Okay. I'm showing you joint
12 document book number 4. And is this an example of
13 Cresford's employment agreement template?
14 A. Yes, it is.
15 Q. Okay. And this is entered
16 into by it just says "Cresford Developments"?
17 A. Yeah, so --
18 Q. Sorry, go ahead.
19 A. When we said "Cresford
20 Developments" in terms of this, this was guided, I
21 guess, by various -- various individuals had input
22 when creating this document, but it was to encompass
23 all of the various companies that were developing
24 projects.
25 Q. Okay. And as far as you

1 know, is there a legal entity called Cresford
2 Developments?
3 A. No.
4 Q. Okay. You mentioned that
5 EDRP received -- paid you salary. Did you ever
6 receive bonuses?
7 A. Yes, I received bonuses.
8 Q. And how were those bonuses
9 paid?
10 A. So the bonuses were paid
11 either by way of condominium credits or via bonuses
12 via my payroll.
13 Q. Okay. And what do you mean
14 by a "condominium credit"?
15 A. A condominium credit in terms
16 of the amount that was owed to me, if I was buying a
17 million dollar condo, I would get a credit on the
18 total value that was owed to me as a credit on that
19 condo.
20 Q. Okay. And who owned the
21 units that you were getting credits on?
22 A. The various entities that I
23 was working for --
24 Q. Can you be a little more
25 specific?

1 A. -- or working with.
2 Q. If you talk about the types
3 of entities within the Cresford Group, what entity or
4 what type of entity would own the condominium unit
5 that you were being credited?
6 A. So CASA III was owned by 50
7 Charles Street East, and so 50 Charles Street East
8 was the one that had that condominium. And that
9 condominium unit that I would buy was with that
10 project, and then I would get a credit on closing of
11 money that was owed to me.
12 Q. Okay. And when you were paid
13 in cash, do you know if all of those cash bonuses
14 were paid by EDRP?
15 A. So there's -- so most of
16 them, yes, and then there's one that I was also paid
17 from YSL as well.
18 Q. Okay. And I want to drill
19 down specifically on YSL. And I'm showing you joint
20 document book number 29. I'm going to direct you to
21 page 2 of that, just to refresh your memory. Did you
22 have any position with YSL or with YSL Residences
23 Inc., the entity that owned the YSL project?
24 A. Yes, I did. I had the role
25 of vice president and secretary.

1 Q. Okay. Now I want to talk to
2 you a little bit about your compensation, and how
3 that evolved. So when you first started at Cresford,
4 do you remember approximately what your compensation
5 was?
6 A. Approximately a hundred --
7 north of $100,000.
8 Q. Okay. And did you have a
9 written employment agreement?
10 A. I believe I would have had an
11 original written employment agreement that would
12 exist with Cresford.
13 Q. Okay. Do you have a copy of
14 it?
15 A. No.
16 Q. Okay. And did you -- you
17 mentioned that you received bonuses. Approximately
18 when did you start earning those bonuses?
19 A. I started earning bonuses
20 when we started to bring the projects in-house. And
21 the first substantial bonus that I received was with
22 NXT.
23 Q. Okay. And tell me a little
24 bit about that.
25 A. So basically the sales were a

1 huge success, all of that. And it was at that time,
2 you know, I was learning, I was growing, you know. I
3 understood that it could have been slightly under
4 value, but at the time we landed on paying me a bonus
5 of $200,000.
6 Q. When you say "we," who is
7 "we"?
8 A. Dan and myself, Dan Casey and
9 myself.
10 Q. Okay. I'm going to show you
11 now a joint document book Tab 1. And just to start,
12 we have an email from Jessica Harrison to you and Ken
13 Marshall on February 6th of 2013. And I'm just going
14 to scroll down for you. And this, again, says vice
15 president marketing and sales. Can you tell me what
16 this document is?
17 A. This document was
18 memorializing what was already in place in terms of
19 certain aspects of my compensation, and also
20 confirming other aspects of my compensation.
21 Q. Okay. So it says 2012 bonus,
22 and then it says:
23 "Bonus to be paid in
24 recognition of CASA II and
25 1000 Bay launches."

1 And it says 0.15 percent of total
2 sales to December 31, 2012. Can you tell me what
3 that means?
4 A. So basically, after NXT, I
5 was always making 0.15 percent of the total sales
6 with all the projects. So it was something that was
7 always paid going forward on all projects that were
8 being marketed, sold, promoted in-house.
9 Q. Okay.
10 A. So it was just confirming
11 something that was already an ongoing arrangement.
12 Q. Okay. And at the bottom
13 here, it says, New launch/CASA III Compensation
14 Structure, and then there's a range of total sales?
15 A. Yes.
16 Q. And did you receive a bonus
17 on CASA III?
18 A. Yes, I did.
19 Q. And how was the bonus
20 calculated?
21 A. So the bonus was calculated
22 on CASA III, on the sales I received 0.15 percent of
23 the total revenue. I also received an additional
24 bonus for all the other responsibilities, but that
25 comes further along. But on this specifically, I

1 received 0.15 percent of the total sales of the
2 project, which was an ongoing arrangement.
3 Q. Okay. You mentioned an
4 ongoing arrangement. How did that come about, and
5 who was the arrangement with?
6 A. So it came about because over
7 time, after NXT, we launched many more projects, and
8 in terms of properly compensating me for the
9 promoting of the sales, and not having to pay a third
10 party the 1.5 percent of the total revenue, it was
11 agreed upon that I would make 0.15 percent of the, of
12 the project revenue as a bonus.
13 Q. Okay. So we've heard a bit
14 this morning about profit sharing. Can you tell me
15 about your first discussions with Mr. Casey about the
16 responsibility of a profit share paid to you?
17 A. So profit sharing was a
18 conversation that, and a decision that was made at
19 the time when Vox was launched. So it's another --
20 it's a marketing name for another company, and a
21 project that we acquired in 2014, where it was a huge
22 success, promoted it, marketed it, sold. The
23 acquisition happened all within a very short period
24 of time. And the project was a huge success and went
25 right into the construction phase without, without

1 having to obtain the initial step of acquisition
2 financing.
3 Q. Okay. And what did you
4 discuss, specifically, with Mr. Casey about profit
5 sharing?
6 A. So at that point in time, Dan
7 committed to pay me 10 percent of profits going
8 forward on all projects, given my efforts, from the
9 marketing and sales perspective, and also my growing
10 role in managing both the construction and, at that
11 time, we would have also started the property
12 management company, and just managing all the
13 business, plus making the projects a success from a
14 marketing and sales standpoint. And it was huge
15 savings to the company.
16 You know, in order for me to sort
17 of be content with understanding my worth at the
18 time, you know, Dan agreed to, committed to 10
19 percent of profits on all projects going forward. At
20 that moment in 2014 with Vox, knowing that with Vox,
21 I was able to market, sell it quickly -- at a quick
22 time frame, and that project had brought in over
23 $3 million worth of marketing and sales fees. And
24 so, I mean, the economics and all of that, and to
25 make 10 percent, it was a good value for the

1 business, and it was good value for the business
2 going forward.
3 Q. And Ms. Athanasoulis, was
4 these -- were these discussions preliminary
5 discussions that were subject to executing a written
6 document?
7 A. Not as far as -- not from my
8 understanding. They were, they were a commitment,
9 and they were something that Dan committed to, and I
10 trusted that, you know, we had an agreement.
11 Q. Did he say that until you
12 sign something, you know, he didn't have -- you
13 didn't have an agreement?
14 A. No.
15 Q. Okay. I'm showing you Tab 3
16 of the joint document book -- or I'm going to show
17 you Tab 3 of the joint document book. Can you tell
18 me what this is?
19 A. So this is an agreement that
20 I typed after we had our conversation for Vox and
21 projects going forward to confirm our new agreement.
22 Q. Okay. And what was the
23 starting point for this document? Did you just sit
24 down with a blank Word document, or how did it come
25 about?

1 A. So I used the standard
2 Cresford template, and basically wanted to have the
3 arrangements of the new, the new financial
4 arrangements that were agreed to on paper.
5 Q. Okay. And did Mr. Casey ever
6 see this?
7 A. Yes.
8 Q. How did he receive it?
9 A. He would have received a copy
10 from me in 2014. It was also -- yeah.
11 Q. Sorry, go ahead.
12 A. It was also a document that I
13 carried in our meeting in 2019.
14 Q. Okay. And what happened
15 after you gave this to Mr. Casey?
16 A. He never, he never did
17 anything to formalize signing it or anything like
18 that. But on many occasions, he always gave me
19 my [sic] word that he was going to honour it.
20 Q. Okay. And did you press
21 forward to get everything down on paper and signed at
22 that point in 2014?
23 A. No. I, I trusted Dan. Like,
24 we had, we had a long relationship. He had always
25 paid the bonuses that were owed to me, and always was

1 fair on the, on the sales commission piece. And I
2 thought, naturally, it would evolve to the correct
3 document that I would need his help in order to, to
4 complete.
5 Q. Okay. And how concerned were
6 you about the fact that you didn't have a signed
7 agreement?
8 A. I trusted Dan.
9 Q. Okay. Is there a signed copy
10 of this?
11 A. I don't think so.
12 Q. Okay. This is an agreement
13 between you and Cresford Developments. What did you
14 mean by that?
15 A. So Cresford Developments was
16 the -- Cresford Developments was the marketing name,
17 so it was all the various companies that encompassed
18 Cresford Developments, all the various condominium
19 developments.
20 Q. Okay. Does Cresford -- and
21 this is signed by -- or the signature block seems to
22 have Cresford Developments Inc. as the signing party.
23 Do you know who Cresford Developments Inc. Is?
24 A. I'm not sure. Again, I used
25 a template that existed at the office.

1 Q. Okay. So I want to walk you
2 through the terms here. Starting with the salary, it
3 says there will be pay -- that the employee will earn
4 $500,000 per annum. Were you actually paid around
5 $500,000 per annum?
6 A. No. So in around 2013, we
7 agreed to increase my salary to 300,000, which we
8 did. And at the time, there was just cash flow
9 issues, et cetera. So, again, it was something that
10 I trusted he would take care of me over time.
11 Q. Okay. And I'm turning down
12 to Schedule A, which are the terms agreed to for the
13 bonus between the employer and the employee -- or
14 that's what it says here. Let me ask you, there's
15 the -- first, there's a $500,000 bonus on three
16 projects: 1000 Bay, CASA II and CASA III.
17 A. Yes.
18 Q. Did you receive those
19 bonuses?
20 A. I did.
21 Q. Okay. Number 4 is a bonus of
22 10 percent of final profits to be paid upon the final
23 registration of Vox Condominiums. Did you receive
24 that amount?
25 A. No, I did not, and I didn't

1 press on it, because Vox was a break even project.
2 Q. Okay. And then it says a
3 bonus of 10 percent of final profits will be paid on
4 final closing of any future site Cresford acquires.
5 Were you ever paid a bonus based
6 on a percentage of profits?
7 A. No project completed after
8 that happened.
9 Q. Okay. This -- when it says
10 10 percent of final profits, what did you mean by
11 "final profits" when you wrote this?
12 A. So final profits would have
13 been the revenue minus that specific project's
14 expenses.
15 Q. Okay. And was that something
16 that you had discussed with Mr. Casey, or was that
17 just your understanding?
18 A. That was something we
19 discussed, but also something that is, is reasonable.
20 Like, each project had its own pro forma, had its own
21 revenue and costs, and its own profit.
22 Q. Right. We're going to come
23 back to the issue of the pro formas. Well, let's
24 actually talk about that now. So what is a pro
25 forma?

1 A. So a pro forma is the
2 financial results of a specific project. It has all
3 of the revenue and all of the costs, and it gives you
4 the profit of the individual project.
5 Q. Okay. And was -- sorry, at
6 this stage, so at an early stage - so we're in 2014,
7 right, and we're talking about the Vox project - what
8 would the pro forma show in terms of Vox? Would it
9 be actual results?
10 A. Yes.
11 Q. Okay. And what about things
12 that were not yet known, how would that be reflected
13 on the pro forma?
14 A. Sorry, you're speaking about
15 Vox in particular?
16 Q. Or in general.
17 A. All right. So, basically,
18 you start off with a pro forma that has various
19 assumptions, revenue and your costs. And over time
20 as various stages of the development were completed,
21 most of your costs become more and more accurate.
22 From when you start selling, your revenue starts to
23 be known, with the unsold, with the unsold product
24 having the ability, potentially, to increase in
25 revenue, or vice versa, but we've always been on an

1 up trend. And the costs says that as we finalized
2 fix price contracts, those also crystallized, so your
3 costs were also known to the project.
4 Q. Okay. I'm going to show you
5 an example of a pro forma from the YSL project. And
6 you will see that this is dated October 20th, 2019.
7 So what kind of costs are considered -- or are listed
8 on the pro forma?
9 A. So the costs that are on the
10 pro forma are your land cost, your construction cost,
11 your design costs; it's all the various sub-headings
12 to the pro forma. Your legal and administration,
13 your marketing and advertising, your operating
14 expenses and customer service. It includes the land
15 transfer tax. It includes the various taxes that you
16 would pay from a municipal standpoint. It includes
17 your financing fees and costs.
18 Q. Okay. Are there any --
19 sorry, let me ask. How is this used in the course of
20 development?
21 A. It's used as your management
22 pro forma to achieve, to achieve the overall numbers
23 that you're forecasting. In terms of any overruns,
24 you know, we basically are guided based on industry
25 standards and have healthy contingencies that could

1 help manage any unforeseen expenses or costs.
2 Q. Okay. And is anyone, other
3 than Cresford's management -- or did anyone, other
4 than Cresford's management, review this pro forma,
5 the YSL pro forma?
6 A. Yes. It would have been
7 reviewed by the lenders, and it would have also been
8 reviewed by Altus, who would have confirmed all the
9 numbers.
10 Q. Okay.
11 A. Who did confirm all the
12 numbers.
13 Q. Okay. And turning down to
14 the profit listed here on the, on the pro forma, in
15 general terms, how was this calculated on the pro
16 forma?
17 A. How is the profit calculated?
18 So, basically, it takes your revenue, minuses your
19 costs, minuses the amount returned on equity, and the
20 balance is your net profit.
21 Q. And was Cresford consistent
22 in how it assessed and how it calculated profits?
23 A. Yes.
24 Q. Okay. And turning back to
25 the calculation of profits, how would the pro

1 formas -- in terms of the agreement, what's the
2 relationship, if any, between the pro formas and the
3 agreement to pay a percentage of profits?
4 A. So my agreement with Cresford
5 is that I would get, I would get a percentage of the
6 profit of each individual project.
7 Q. Okay. And how would the pro
8 forma play into that?
9 A. The pro forma has the profit
10 of each individual project.
11 Q. Okay. And just to make sure
12 that we've covered this off, how would the pro forma
13 evolve as the project progressed?
14 A. So as the project progressed,
15 each, each development, as it progressed, it just
16 became further and further real. So once your sales
17 were achieved, once your fixed contracts were
18 negotiated, any extras were, you know, would have a
19 contingency. So basically when you start
20 construction, you're closer to a very accurate pro
21 forma.
22 Q. Okay. And if you skip all
23 the way to the end of a project, what would the pro
24 forma look like then?
25 A. Hopefully very close to what

1 you're monitoring from the beginning.
2 Q. Let me ask -- I didn't phrase
3 that as well as I might have. What would the
4 breakdown be at the end of the project between actual
5 information and projections on the pro forma?
6 A. By the end of the project,
7 it's actual numbers.
8 Q. Okay.
9 A. At the end of a project.
10 Q. So we just saw from the draft
11 agreement, there's a reference to a 10 percent profit
12 share. Did that percentage ever change?
13 A. Yeah, so as the projects --
14 on an annual basis, we would acquire a new project
15 and sell a new project. And the revenue numbers kept
16 growing, the success kept growing. You know, our
17 brand was, was one of the most chosen in the pre-sale
18 condominium world. And every year our sales of new
19 projects was a huge success. And so the profit was
20 discussed at many times as something that would grow
21 because of the efforts of myself in growing the
22 company.
23 Q. Okay. And what specific
24 percentages were discussed and when?
25 A. So by 2017, what we agreed to

1 was 20 percent. And this was a big moment for
2 Cresford, because in 2017 we launched and sold a very
3 large project by the name of 33 Yorkville, and were
4 able to achieve a big revenue number in order to
5 bring the project from land acquisition right into
6 construction financing. The marketing fee alone
7 was -- the sales and marketing fee alone on day one
8 was north of $10 million.
9 So, you know, at the time we had
10 another project known as YSL that was in the zoning
11 phase, and that was also a large scale project, over
12 a billion dollars. And all my efforts were showing
13 at the front end stage, where we were selling large
14 projects, the volume and the fees. And so we had a
15 conversation where 20 percent was the new number to
16 ensure that I was properly compensated for all my
17 efforts.
18 Q. Okay. And we're going to get
19 to the 33 Yorkville and YSL piece in a second.
20 MR. MILNE-SMITH: Mr. Dunn, I
21 apologize for interrupting. Ms. Athanasoulis keeps
22 on looking down, and it looks like she's reading.
23 Can you just confirm you don't have nothing
24 distracting you?
25 THE WITNESS: No, I'm actually

1 playing with water bottle paper. Sorry. Do you want
2 me to stop? I'm sorry.
3 MR. MILNE-SMITH: It just -- I
4 know that Mr. Dunn would have confirmed with you in
5 advance that you don't have anything in front of you.
6 THE WITNESS: No, I don't have
7 anything.
8 MR. MILNE-SMITH: Thank you.
9 THE WITNESS: Yeah, I figured it
10 was less noisy than -- I sometimes do this to a pen,
11 and that would be more distracting.
12 MR. DUNN: Thank you for
13 clarifying that. I wouldn't want to have the wrong
14 impression.
15 BY MR. DUNN:
16 Q. Let me actually just --
17 Ms. Athanasoulis, do you have any documents in the
18 room with you?
19 A. Yes, I do.
20 Q. And what do you have in the
21 room with you?
22 A. I have all of the documents
23 that you're sharing on the screen in paper form, in
24 case I need to access them.
25 Q. Okay. Do you have anything

1 else?
2 A. A couple of water bottles and
3 this piece of paper that I've torn apart that was
4 part of the water bottle. Sorry.
5 Q. Okay. So we were just
6 backing up, and I think that the question that I last
7 asked you was: Did you have any discussions around
8 the launch of the Clover and Halo projects?
9 A. So Clover was another
10 successful project that we acquired, sold and went
11 straight into the construction phase and had huge
12 fees that were generated from it. And so, at that
13 time, we would have talked about 15 percent, but I
14 mean, neither here nor there, because in 2017 we
15 confirmed 20 percent was the profit that would be
16 owed to me.
17 Q. Okay. But just to make sure
18 that I understand, did you ever sort of land at 15
19 percent, or what were the nature of the discussions?
20 A. The nature of the discussions
21 were that, you know, I was comfortable with 15
22 percent, but by 2017, it was confirmed that it was 20
23 percent.
24 Q. Okay. So let's turn now to
25 2018. I just want to understand from your

1 perspective -- sorry, we're going to skip ahead to
2 after the launch of the YSL project in 2019. What --
3 and I'm going to ask you your understanding of the
4 profit sharing agreement or the agreement at that
5 time. Who were the parties to the agreement?
6 A. To the profit sharing
7 agreement?
8 Q. Correct.
9 A. All the individual
10 condominium owners of each project.
11 Q. Okay. And is that something
12 that you discussed with Mr. Casey?
13 A. Yes, we discussed that in, in
14 the meeting of 2019 with John Papadakis.
15 Q. Did you discuss it other than
16 in the meeting of 2019 with John Papadakis?
17 A. Well, I mean, I would assume
18 that one would understand that Cresford Developments
19 was not a company, and all the individual projects
20 filed into a corporate structure that I didn't
21 necessarily completely understand who owned what, et
22 cetera. So, I mean, each individual project was the
23 project that I had a deal with in making my profit.
24 Q. Okay. But just to come back
25 to my original question, what -- did you have a

1 discussion about that issue with Mr. Casey, apart
2 from the discussion that you had with Mr. Papadakis?
3 A. That each individual project?
4 Q. Right.
5 A. It was just something that
6 was known and assumed.
7 Q. Okay. And did you have --
8 what discussions, if any, did you have with Mr. Casey
9 about how profits were going to be calculated?
10 A. We would use the project pro
11 forma for each project.
12 Q. And is that something you
13 discussed with Mr. Casey?
14 A. Yes.
15 Q. Okay.
16 A. Like --
17 Q. Sorry, go ahead.
18 A. I mean, just like how else
19 would you know what the profits are of each project?
20 Like, we had a pro forma on each project that was
21 distributed on a monthly basis, and that was the
22 project -- profit for each project.
23 Q. Okay. And what was your
24 understanding of when the profit share was going to
25 be paid?

1 A. So the profit share would be
2 paid at the end of a project when it's complete.
3 Q. Okay. And did you have any
4 discussion about what would happen if you were
5 terminated or resigned from Cresford?
6 A. No. Because I didn't think
7 that that would be something we would need to
8 discuss.
9 Q. Okay. If Mr. Casey had asked
10 you to agree that if you were terminated by Cresford,
11 that your profit sharing entitlement would go away,
12 would you have been prepared to agree to that?
13 A. No.
14 Q. Why not?
15 A. Well, it wasn't something
16 that I agreed to in terms of the sales and marketing
17 fee that I would earn, and all of my work was -- the
18 amount of work that I put into a project, it was
19 something that a lot of it was front end. And you
20 know, in order for these projects to be a success, a
21 lot of it was front loaded. So, I mean, in terms of
22 getting the project marketed, sold, negotiating the
23 contracts to get it into construction, that would
24 have been an integral stage in the understanding what
25 the profit would be, generally, because you would

1 have the contingencies in place to take care of, of
2 any extras. But, I mean, I didn't -- I would never
3 agree to forgo my profit for all the work that I was
4 doing.
5 Q. Okay. And did you ultimately
6 take steps to document the agreement?
7 A. So we took steps together to
8 document the agreement in 2019 with John Papadakis,
9 who was our corporate lawyer at the time. We asked
10 for a meeting at our offices to put the existing
11 agreement in writing.
12 Q. Okay. I just want to pause
13 for a second. You mentioned Mr. Papadakis. Do you
14 have any relationship with Mr. Papadakis, other than
15 him being Cresford's lawyer?
16 A. Yes, he's a friend, and --
17 he's a friend, and I'm also the godparent to his
18 child by marriage.
19 Q. What does that mean, the
20 godparent by marriage?
21 A. My husband has a relationship
22 with John.
23 Q. Okay. And what's the nature
24 of that relationship?
25 A. So his -- John -- my

1 husband's parents were John's godparents. And so
2 Chris, my husband, then became the best man and
3 godparent to his child -- first child.
4 Q. Okay. And so what prompted
5 you in 2019 to decide to document this arrangement?
6 A. So, I mean, it had been -- it
7 had come up over the years several times. In 2019,
8 it was a moment in time where YSL had become very
9 profitable. And it was under construction, the sales
10 had been achieved. We were negotiating to get a
11 construction mortgage. And, you know, it was time
12 that Dan provide me with the paperwork to ensure that
13 I had my profit properly documented.
14 But it was also a time that for,
15 for succession planning, if something were to happen
16 to Dan, I was operating the business; I was the face
17 of Cresford; I was the one who created the brand and
18 the market knew me as Cresford. And it was something
19 that we thought was important, because if something
20 did happen to Dan health-wise, that the business
21 carry forward and completed, so that both his estate
22 and myself could finish the projects and, and nobody
23 could step in and have the ability to derail me from
24 earning my profits.
25 Q. Okay. So returning to this

1 meeting, what was your understanding with respect to
2 who Mr. Papadakis represented?
3 A. He represented Cresford.
4 Q. Okay. And did you have a
5 lawyer at the meeting?
6 A. I did not have a lawyer at
7 the meeting.
8 Q. And why not?
9 A. I didn't think I needed one.
10 I would have engage my own lawyers after I had
11 received formal paperwork.
12 Q. Okay. And when did the
13 meeting take place?
14 A. So the meeting took place on
15 a Saturday, because we were talking about my
16 employment and profit numbers, which, you know, it
17 just made sense to have it on a Saturday, where there
18 wouldn't be many people around. And so we had it,
19 you know, at the Cresford offices.
20 Q. Okay. So describe for me, as
21 best you can, what you recall being discussed at the
22 meeting?
23 A. So we went through all of the
24 various components to my employment contract. I
25 talked about just what I was owed, and in terms of

1 each project what the profit was, which was 20
2 percent. But also, my sales commission, how each
3 company owed me the profit, and my arrangements were
4 with all the individual companies, and talked about
5 just how it would work in terms of ensuring that both
6 my interests were protected, and so were Dan's.
7 Q. Okay. And did you discuss
8 what percentage of profit you were entitled to?
9 A. Yes. We discussed the
10 ongoing arrangement of 20 percent.
11 Q. Okay. And did you discuss at
12 the meeting who would pay you the profits?
13 A. All the individual entities,
14 all the project companies of each condominium.
15 Q. Okay. And did you have at
16 the meeting, to the best that you can recall, a list
17 of who those entities were?
18 A. No. We talked about each
19 project name and John wrote them down. And, and he
20 received all of those names after the meeting, all of
21 the various legal names.
22 Q. Okay. Did you have a
23 discussion about what would happen in the event that
24 any of the companies -- or any of the projects were
25 sold?

1 A. No.
2 Q. Okay. And did you discuss at
3 the meeting how profits were to be calculated?
4 A. Each project pro forma had
5 its own -- each project had its own pro forma. The
6 profits were based on the actual pro forma for each
7 project.
8 Q. Okay. And how many meetings
9 did you have on this topic?
10 A. We had one meeting at the
11 office.
12 Q. And so is that the meeting
13 that you just told me about?
14 A. Yes.
15 Q. Okay. Did you have a further
16 meeting at the office?
17 A. No.
18 Q. Or anywhere, sorry. Did you
19 follow-up with Mr. Casey or Mr. Papadakis to ask --
20 sorry, let me take a step back. Did you ever receive
21 a draft of the agreement?
22 A. No.
23 Q. Okay. Did you follow-up with
24 Mr. Casey or Mr. Papadakis about the draft of
25 agreement?

1 A. I mean, it was something
2 that -- it wasn't top of mind because I was so busy
3 running the business. There was a couple of times
4 that I asked what was going on in terms of, of
5 getting the contract. Dan said that -- at one point
6 he said he was handling it. But, you know, in
7 November, when -- I was a little stressed out. I
8 basically also said to Dan, like, what are we doing
9 with my contract, so that I can ensure that I am
10 safeguarded on your commitment to pay me 20 percent.
11 Q. Right. And did you -- during
12 this period, between February 2019 and January of
13 2020, which we'll come to in a little bit, was it
14 your understanding that until Mr. Papadakis did his
15 work, you didn't have an agreement about the profits?
16 A. No.
17 Q. Okay. If you had that
18 understanding, would it have changed how you
19 approached this issue?
20 A. Wow. Of course. I mean, I
21 would have -- I wouldn't have worked for Cresford. I
22 mean, my -- I was always working under the
23 commitments that Dan made to me.
24 MR. DUNN: Okay. So I wonder,
25 Mr. Horton, and Madam Reporter, if now is a

1 convenient time to take a break. We've been going
2 for about an hour and a half, and I'm about to take
3 Ms. Athanasoulis to a new topic. I do have to take a
4 break at about 3:15, which I've told my friend, just
5 like a 10 minute break. So I'm happy to go until
6 then, and we may, frankly, finish her testimony by
7 then, or I'm in your hands. I just didn't want to
8 keep going without giving you an opportunity to take
9 a break.
10 ARBITRATOR HORTON: It's good to
11 check. I don't think we want to go all the way to
12 3:15 without a break, but we know we're going to have
13 a break at 3:15. Why don't we take sort of 10
14 minutes now. I like to give the reporter a break,
15 and there may be others who appreciate it as well.
16 Yeah, let's come back just shortly after 2:30.
17 MR. DUNN: Sure. And Mr. Horton,
18 just for housekeeping, as my friend and I discussed,
19 and you may be interested in this, my friend -- we're
20 definitely going to finish Ms. Athanasoulis' chief
21 comfortably before 4:30. My friend has asked that we
22 start her cross-examination in the morning, because
23 Mr. Casey can't testify tomorrow whatever happens, so
24 tomorrow may be a shorter day. So I just wanted you
25 to sort of have that information.

1 ARBITRATOR HORTON: Sure.
2 MR. DUNN: Since my friend and I
3 have spoken about it.
4 ARBITRATOR HORTON: Okay.
5 Mr. Milne-Smith, you're just rising to confirm, are
6 you?
7 MR. MILNE-SMITH: Yes, I rose in
8 anticipation of. Mr. Dunn has stolen my thunder. We
9 have spoken of this. And subject to your input, I
10 thought it would make more sense, since there was no
11 shortage of time to -- if I can use the evening, I
12 will be able to condense my notes and prepare a
13 proper cross-examination, so everything takes less
14 time.
15 ARBITRATOR HORTON: Yeah. No,
16 that all makes sense to me. So why don't we come
17 back at 2:35.
18 --- Recess at 2:24 p.m.
19 --- Upon resuming at 2:40 p.m.
20 ARBITRATOR HORTON: Okay. Sorry
21 for the delay. I gather the witness is having some
22 problems with her Zoom connection, which we don't
23 know exactly how to resolve. But we'll carry on.
24 THE WITNESS: So just to be clear,
25 it's not a Zoom connection. It's just pop-ups keep

1 coming up while I'm being asked questions. One
2 various one that changes in the corner. But the
3 other one is gone that was distracting me; it was
4 asking me to play music.
5 ARBITRATOR HORTON: Oh, okay.
6 THE WITNESS: Which -- but it's
7 fine.
8 ARBITRATOR HORTON: It's always a
9 concern when we do have these kinds of intrusions
10 into our hearings and we're doing Zoom. And, you
11 know, it doesn't sound like it's anything too
12 menacing.
13 THE WITNESS: No, it just throws
14 you off when you're being asked a question and a
15 pop-up comes on.
16 ARBITRATOR HORTON: No, I
17 appreciate that, Ms. Athanasoulis. You know,
18 testifying is enough of an experience without having
19 those distractions. So let us know if it becomes too
20 much of a problem. I gather that Ms. Yu is going to
21 try to see if there's some sort of solution to it, or
22 maybe we can log back in with -- if anyone --
23 certainly if you continue to have it, or if anyone
24 else has the problem, maybe we can log back in with a
25 different code or something like that, and see if

1 that solves the problem for you. I don't believe
2 anyone else is having that issue. Is anyone else on
3 the --
4 MR. DUNN: I'm not.
5 ARBITRATOR HORTON: -- having that
6 issue? Okay. It might just be your own underlying
7 system. Maybe you have some other thing open in
8 Google, some other window open. Can you see whether
9 you have any other windows open?
10 THE WITNESS: I don't have any of
11 that. That's why it was throwing me off. And it
12 is -- I took the last -- I took a screenshot shot,
13 like, of the latest one. But right knew I'm clear,
14 so I'm fine.
15 ARBITRATOR HORTON: Let's carry
16 on. Do let us know if it's more of an issue.
17 THE WITNESS: I apologize.
18 ARBITRATOR HORTON: Okay. Thank
19 you very much. Don't feel that you have to keep it
20 to yourself if there's any kind of distraction like
21 that.
22 THE WITNESS: Thank you.
23 ARBITRATOR HORTON: Thank you.
24 BY MR. DUNN:
25 Q. Ms. Athanasoulis, before I

1 move on from these discussions, can you tell me, did
2 you have any understanding, if profits were going to
3 be derived from the YSL project, specifically, who
4 was going to earn them?
5 A. The profits?
6 Q. Yes.
7 A. That company would pay both
8 myself and whatever Dan did with his 80 percent.
9 Q. And what -- but where -- who
10 was going to earn them before they were paid to you
11 and to Dan?
12 A. The individual project.
13 Q. Okay. So I want to talk a
14 little bit more about the YSL project. Can you just
15 give me an overview of what it was?
16 A. So YSL was a piece of
17 property that was located in the center of the
18 downtown core. It was a parcel that we bought that
19 was initially bought that had a zoning application
20 that wasn't approved on it when we acquired it. And
21 we designed -- when we bought it, we changed gears
22 and designed a tower that was fitting for the
23 location, and also something that we worked on with
24 the city that we thought could get approved.
25 It was a large scale development,

1 85 storeys, encompassed 1106 suites. It was one of
2 the largest -- it was going to be -- it is going to
3 be one of the largest towers in Toronto. And it was,
4 it, it was a beautiful.
5 Q. Okay. And can you
6 describe -- well, first, was there ever consideration
7 of selling the YSL project rather than building the
8 project out to completion?
9 A. So in 2018, what we had
10 considered was potentially selling it for a
11 substantial profit. And at that time, we would have
12 distributed profits, but also, you know, at that time
13 there was discussions of whether or not Dan would
14 like to use those to, to properly capitalize other
15 projects or use that money as he saw fitting for the
16 organization or for himself.
17 Q. Okay. And had there been a
18 sale and profits were earned, did you have any
19 expectation about what would happen with your
20 agreement?
21 A. My expectation was that my
22 agreement would be honoured.
23 Q. Okay.
24 A. But it wasn't something that
25 eventually happened. There were no suitors to

1 purchase it, and it wasn't, it wasn't something I
2 thought about for very long.
3 Q. Okay. And so after the sales
4 process didn't go anywhere, what happened next?
5 A. So the sale process didn't go
6 anywhere at the time. In August of 2018, we had our
7 zoning meeting with -- it was under the new rules.
8 In the olden days, it would have been called ONB.
9 But basically, there were some challenges and we were
10 working with the city, and all of that, and we had a
11 trial. And the project was approved, zoned in August
12 of 2018. Given the fact that there was no solution
13 to quickly sell the project and realize its profits
14 from a zoning perspective, we moved very quickly into
15 a marketing and sales phase to ensure that it was a
16 very successful and profitable project.
17 Q. And what was your involvement
18 at the marketing and sales phase?
19 A. So I was involved from the
20 zoning. I'm ensuring that we were zoning a project
21 that was going to be properly designed so that I
22 could maximize its value. In August through to, to
23 September, October, I moved very quickly into the
24 design stage, and designed all of the small details
25 that needed to be designed from an exterior

1 standpoint in order to create the marketing material
2 of the image of the building, but really went into
3 the deep dive of designing all the suites, so that
4 they were designed to maximize the value of the
5 project.
6 Q. Okay. And did you work with
7 anyone in that effort?
8 A. In terms of the suite
9 layouts, we engaged with architectsAlliance, and I
10 worked with a architect there over a period of 48
11 hours, and we designed all the suites that could be
12 sold that I could actually achieve a revenue that we
13 could enter into the pre-sale -- sorry, the
14 construction phase very quickly. So we designed all
15 the suites up until the 68th floor.
16 Q. Okay. And what steps did you
17 take after that to market the project?
18 A. So shortly after that, I mean
19 and concurrent to designing the suites, I was
20 promoting that we were coming out with this fantastic
21 new site, getting the market excited about the
22 opportunity to, to be able to purchase one of the
23 units that would exist in this luxury limited time
24 edition building, and entered into, entered into the
25 marketing campaign, where we hosted -- invited

1 several of our past brokers that had engaged selling
2 all of the past Cresford projects, and all of the
3 ones that wanted an opportunity to sell the future
4 ones, and had a big marketing and sales event that
5 was a huge success. And thousands of people tried to
6 attend; 1500 people only could actually make it into
7 the venue, where they heard about the opportunity to
8 be able to purchase a unit in the building.
9 Q. Okay. And who spoke at that
10 event?
11 A. I spoke at the event and
12 promoted the product, the opportunity, introduced the
13 project, where the architect also spoke about the
14 project.
15 Q. Okay. And did Mr. Casey
16 speak?
17 A. No, Mr. Casey didn't speak,
18 nor did he attend.
19 Q. Okay. And what happened with
20 the launch? Was it successful?
21 A. Well, you know, it's so
22 biased of me to say. Yes, it was very successful.
23 In terms of the market, it achieved the highest price
24 per square foot that had ever been achieved in the
25 neighbourhood, in the area, and we successfully sold

1 enough condos that would satisfy a pre-sale, a
2 pre-sale condition to enter into the construction
3 phase of a loan.
4 Q. Okay. And in dollar terms,
5 approximately how much, how much products did
6 Cresford sell?
7 A. So we sold about, so we sold
8 about 600 million. And there was another event that
9 I did, like, three months later that sold another 80
10 units that was just a top-up to confirm that the
11 project had the pre-sales in order to satisfy a
12 lender to get a construction loan.
13 Q. Okay.
14 A. But, yeah, it was very
15 successful. In terms of condominiums in our city, to
16 achieve those pre-sale numbers in a very short period
17 of time, it was, it was a first.
18 Q. Okay. So YSL executed a
19 bunch of purchase agreements as a part of this. Who
20 signed them on behalf of YSL?
21 A. So I, I had signing
22 authority. But on a launch, I would also delegate my
23 signing authority to several individuals, because I
24 couldn't possibly sign all of those contracts in, in
25 such a short period of time. So we, we, we -- I

1 delegated my authority to a couple of trusted
2 individuals.
3 Q. Okay. And let's turn now to
4 the -- sorry, and what was happening around the same
5 time with Cresford's other projects, Clover, Halo and
6 33 Yorkville?
7 A. So they were -- they had
8 construction. They were under construction. There
9 were known overruns or increases in both Halo and
10 Clover. And so they were, they were in need of
11 equity contributions, or we knew that that would
12 be -- that would need to happen over time. And
13 prices in construction were escalating. It was a, it
14 was -- those two projects had some financial issues
15 that needed to be addressed.
16 Q. Okay. And did you discuss
17 those issues with Mr. Casey?
18 A. He was fully aware of all the
19 issues.
20 Q. Okay. What about YSL, was it
21 suffering from financial difficulties?
22 A. No, so YSL was the opposite.
23 It was very profitable. It, it had everything going
24 for it, especially with the sales now in place. We
25 were -- we had furthered along the design, so we were

1 able to ensure that the scope of all the construction
2 contracts covered the, the detailed building. All
3 the contracts were coming in line with what we had
4 projected in terms of our construction project. So
5 it was a very exciting time for YSL.
6 Q. Okay. And then fast
7 forwarding a little bit to the beginning of 2019, was
8 Mr. Casey ill during this period and unable to
9 participate in Cresford's business as he normally
10 would?
11 A. Not as far as I'm aware. He
12 took holidays. He traveled. He, he ensured that we
13 spoke every day. He liked off-site meetings. We met
14 at coffee shops, hotel lobby bars, and he even
15 attended Cresford offices several times. But it was
16 business as usual, as far as I knew.
17 Q. Okay. And you mentioned that
18 Clover and Halo were going to need additional equity.
19 Can you explain to me a little bit more about how you
20 knew that and when and why the equity was going to be
21 required?
22 A. Well, there was different
23 things happening. I mean, there were various --
24 every month we would prepare the pro formas, so we
25 were tracking sort of all the, the costs associated

1 with the project. It had delays in terms of its
2 schedule. It had section 37 increases because of the
3 parkland; things that weren't originally forecasted
4 in the original pro forma. It didn't have the
5 healthy contingencies that we had forecasted in a
6 project like, like YSL.
7 And so it was, it was part of
8 actively running a development. Like, it had its
9 issues in terms of getting to the end that required
10 some equity to be injected. That sometimes happens.
11 Q. Okay. And what did the
12 construction loans require in the event of a cost
13 overrun or a cost increase relative to the project
14 budget?
15 A. They required, they required
16 owner's equity.
17 Q. Okay. And what happened if
18 the equity didn't get -- sorry, how much equity was
19 required?
20 A. In, in each project or
21 specifically?
22 Q. Not in dollar terms, right,
23 but when you say they were -- if they're in the event
24 of a cost overrun, owner's equity is required is what
25 you said. What's the relationship between the cost

1 overrun and the equity?
2 A. What's the relationship
3 between the cost overrun and the equity? So,
4 basically, the lender has committed to a construction
5 value of the project, a construction loan, and so
6 they -- they were monitoring the costs. We have a
7 cost consultant that's monitoring the costs, and it
8 is our responsibility to reveal the cost overruns.
9 And it's a known thing that cost overruns, subject
10 to, to not being able to -- or use your contingency,
11 because you've used it up, you would have to write a
12 cheque.
13 Q. Okay. So who's Joe Bolla?
14 A. Joe Bolla is a friend of
15 Dan's. Their history goes back many decades. The
16 story I've been told is he worked for Price
17 Waterhouse, and Dan hired him many decades ago.
18 Q. Okay. Was he involved in
19 investigating these cost overruns?
20 A. Not as far as I was aware.
21 Q. Okay. What about
22 Mr. Dowbiggin? You mentioned -- sorry, what was his
23 role, as far as you knew, in 2019?
24 A. Ted Dowbiggin's role? He
25 didn't have one. He didn't work for Cresford. He

1 had left the company.
2 Q. Okay. Was there ever a time
3 when Mr. Dowbiggin started to investigate these cost
4 overruns?
5 A. Not that I was, not that I
6 was told.
7 Q. Okay.
8 A. That I'm aware of.
9 Q. And so during this period,
10 did you have any discussions with Mr. Casey about how
11 to address these cost overruns?
12 A. So in the summer of 2019, the
13 cost overruns were known. I pressed on Dan for a
14 resolution. You know, we talked about him injecting
15 the proper equity to ensure that these projects were
16 completed. And when I pressed for the equity, he
17 suggested that we sell the company, because he did
18 not have access or did not have the means to inject
19 the equity that was required for, for the projects.
20 Q. Okay. Did you know the
21 equity that had been invested in Clover and Halo and
22 Yorkville, did you gain any understanding about where
23 that money came from?
24 A. So I gained understanding
25 that it, it was borrowed. But the bigger issue for

1 me is that I also gained the understanding that it
2 was never disclosed to the lender.
3 Q. Okay. And who was the money
4 borrowed from?
5 A. It was borrowed from a
6 company by the name of OTB Capital, and it had
7 monthly interest obligations.
8 Q. And what was the impact of
9 those monthly interest obligations?
10 A. They were hurting the cash
11 flow of the business.
12 Q. And why was that?
13 A. Because the payments were
14 coming from Rosedale, and Dan's obligation. But, I
15 mean, he wanted those to be paid with the fees that
16 were being earned.
17 Q. Okay. So what happened once
18 Mr. Casey suggested that one solution to all this
19 might be selling Cresford's business?
20 A. So in and around the same
21 time, I had met, I had met with Patrick Dovigi, who
22 is the CEO and owner of Green For Life, GFL. Green
23 For Life was the original, but I think it's GFL --
24 GFL, it's a publicly traded company. He was the
25 shoring contractor on two of our projects, both 33

1 Yorkville and YSL. And I had met with him for, for
2 reasons of the construction schedule and ensuring
3 that we met the construction schedule, and if there
4 was anything he could do to help me speed up the
5 construction schedule, because there could be a
6 significant further savings on YSL. So we talked
7 about both 33 Yorkville and YSL.
8 And in discussions with Dan,
9 Dan -- we knew that Patrick was an active buyer of
10 businesses, and Dan suggested Patrick as a suitor to
11 see if we could approach him to purchase the
12 business.
13 Q. And did you approach him
14 about potentially purchasing the business?
15 A. I did, under Dan's
16 advisement.
17 Q. Mm-hmm.
18 A. And --
19 Q. Sorry, go ahead.
20 A. No, go ahead.
21 Q. And what happened after you
22 approached him?
23 A. So I met with Patrick. He
24 said he'd be interested, and put together all the
25 financial information that was required for him to,

1 to underwrite the business. And progressed pretty
2 quickly with Dan fully onboard, fully aware, fully
3 aware of all the information that had been given to
4 Patrick Dovigi. And didn't think there was, there
5 was any issues from Dan's part, because it was his
6 suggestion to sell the business.
7 Q. Right. And if the business
8 was sold, did you have any discussions with
9 Mr. Dovigi about what your own role might be after
10 the sale?
11 A. So Patrick wasn't a
12 condominium developer. He -- our arrangement was I
13 was going to continue to operate the business, run
14 the business, and, and I would make a 50 percent -- I
15 would have a 50 percent ownership in the new entity
16 going forward.
17 Q. Okay. And was Mr. Casey
18 aware of that potential interest?
19 A. Dan was fully aware, and also
20 understood that I was the value of Cresford. I was
21 running construction, was running sales. Needed
22 financial support, and Patrick had the ability to
23 provide Cresford with that.
24 Q. Okay. So I want to fast
25 forward to November of 2019. And I'm showing you a

1 text message -- well, why don't you tell me what this
2 document is.
3 A. So basically, at this time, I
4 was not dealing with the negotiations of purchase of
5 Cresford. Dan was dealing with them direct. At the
6 end of the day, you know, it was his, it was -- I
7 had -- I just wasn't part of the negotiations for
8 conflict of interest, potentially, but it was -- he
9 knew that I would have a stake in the business going
10 forward. But I mean it progressed that Dan was
11 negotiating directly with Patrick, and was keeping me
12 up to date on the negotiations with Patrick.
13 Q. Okay. Do you remember the
14 first line that I'm showing you here -- so, first of
15 all, whose number is 388-2783?
16 A. So that's Dan Casey's cell
17 number.
18 Q. Okay. And do you remember
19 this, first it says:
20 "Maria I'm very, very
21 fortunate to have you with
22 you -- with me. Thank you
23 and God bless us and our
24 families." [As read]
25 And this is, just for the record,

1 joint document book Tab 6. Do you recall what
2 prompted that comment?
3 A. Yeah. So, basically, he was
4 very happy that -- to sell the business, and he was
5 very happy that things -- that there was a solution
6 to the equity requirements, and that it was -- there
7 was this potential sale on the table that would
8 resolve the issues that were highlighted.
9 Q. Okay. And situating
10 ourselves at the date of the text that we're looking
11 at, November 22nd, 2019, by this point had you told
12 Mr. Casey that you were going to have an interest in
13 the post-acquisition company, if there was a sale?
14 A. Yes, he fully was aware. He
15 knew that. And he was providing me with an update on
16 his, on his meeting with Patrick and Dino.
17 Q. Okay. And at this point, had
18 your responsibilities, in terms of managing
19 Cresford's business, had they changed?
20 A. On this specific date, no.
21 Things were going well. I thought that Dan was
22 engaging in the sale in an ethical manner. I thought
23 that he was very keen to sell the business. And I
24 trusted that he was, he was doing as he said in this
25 text, and proceeding with talking to Patrick on

1 selling the business.
2 Q. Okay. There's, there's a
3 reference at the bottom to somebody named Kumer. Who
4 is that?
5 A. So that's Rob Kumer with
6 KingSett, and there was a pre-sale requirement --
7 sorry, the icon has just come up again asking me to
8 play music for all of us. Sorry.
9 Q. Don't do that.
10 A. Sorry.
11 Q. What was the issue with
12 KingSett at this point?
13 A. Sorry. Okay. So the issue
14 with KingSett was that there was a retail sale that
15 was part of the funding condition for the financing
16 of YSL, and Patrick would have been buying the retail
17 of YSL as part of the sale of the whole business.
18 And there was a broader deal to happen with the sale
19 of, of the company, which was one of the things that
20 we had talked about and knew.
21 And Dan writes to me that he's
22 talking to Kumer, because Kumer wanted an update. I
23 was withholding that we were having discussions on
24 selling the business. Dan decided to talk to Rob,
25 and intended to give him an update that he was

1 negotiating two credible parties.
2 Q. And sorry, what was
3 KingSett's involvement?
4 A. So KingSett would have been
5 the Mezzanine loan, which Mezzanine acts as equity as
6 part of the overall construction mortgage of YSL.
7 Q. Okay. And at the bottom, you
8 say:
9 "You are more than welcome
10 to take your time - but I
11 don't have the same schedule
12 as you. I need to make the
13 right decision today if I'm
14 ... continuing to give you
15 time and that includes a
16 full understanding of what
17 your plan is to ensure
18 brokers, trades, staff, and
19 investors are protected. I
20 would like to continue a
21 career in this business and
22 my reputation matters to
23 me."
24 Explain to me why you wrote that
25 and what you're talking about?

1 A. Yeah. So on this -- sorry, I
2 didn't have the full screenshot of the whole text
3 exchange. So I was starting to feel very
4 uncomfortable that Dan was doing things behind the
5 scenes. He wasn't telling me much. Our
6 relationship -- he was starting to act a little
7 strange, which had never happened. And I was very
8 concerned that Dan was doing things behind my back
9 that were going to put all the stakeholders at risk.
10 I don't know why he -- like, I
11 didn't understand why he wanted to tell Kumer that
12 there was more than one party on the retail. Like, I
13 just -- I was not happy with Dan's communication, and
14 I didn't understand what was happening. And I was
15 trying to express my discontent with it.
16 Q. Okay. You say:
17 "Dan, the numbers in the
18 book are accurate, and can
19 even be viewed as aggressive
20 if there is an operator
21 without experience."
22 What book are you talking about?
23 A. So Dan, at this point in
24 time, was trying to -- or at this point in time
25 involved Joe Bolla to come in to look at the white

1 book. So there was a book that was created that had
2 all of the financial data of all of the various
3 companies that were active, and the overall profit
4 that was for Patrick to assess the value of the
5 business, and also to discuss the terms of the
6 purchase and all of that. And Dan started to create
7 a narrative that I was, I was potentially misleading
8 him or the numbers potentially aren't accurate.
9 These are the things that I
10 started to feel that he was trying to, he was trying
11 to say, and he was saying through various sources
12 that were coming back to me. So I was, I was -- I
13 was very uncomfortable with what was happening.
14 Q. Okay. So what did you
15 understand him to mean when he says:
16 "The intention is to sell
17 the company with your
18 leadership living up to its
19 potential and a capital
20 structure that works."
21 A. So he was putting me back on
22 track to say that I am, I am dealing with the sale,
23 and I was led to believe --
24 Q. Sorry, when you say "I am
25 dealing with the sale," who was dealing with the

1 sale?
2 A. Dan was deal with the sale
3 directly with Patrick on selling the business.
4 Q. Okay. So I'm showing you
5 joint document book Tab 30 --
6 ARBITRATOR HORTON: Mr. Dunn, it's
7 almost 3:15.
8 MR. DUNN: Sure.
9 ARBITRATOR HORTON: And I think it
10 might be wise for us to take a couple of extra
11 minutes anyway to see whether we can figure out
12 what's going on with Ms. Athanasoulis' computer. And
13 I don't know -- perhaps, Angela, perhaps I can talk
14 to you in the breakout room, and we can just discuss
15 what potential advice we should give to the witness,
16 or what else we might do, including possibly
17 re-signing in with a different log in number, if we
18 think it has to do with the Zoom. I don't know what
19 your take on it is. So why don't we take a break
20 now. How long do you need? You said 10 minutes, Mr.
21 Dunn? So should we should return at 3:30?
22 MR. DUNN: Sure, 3:30 would be
23 perfect. And just for time-keeping purposes, I think
24 I'll be about half an hour after we resume.
25 ARBITRATOR HORTON: Okay. All

1 right. Well, we have until 4:30, so that's fine.
2 MR. DUNN: Okay.
3 ARBITRATOR HORTON: I think we're
4 okay for time based on what I hear. All right. So
5 let's break until 3:30. And Ms. Yu, I'll see you in
6 the breakout room.
7 --- Recess at 3:14 p.m.
8 --- Resuming at 3:33 p.m.
9 ARBITRATOR HORTON: Okay. All
10 right. We have 10 participants. I assume everyone
11 is here. So just before we start, I will just ask
12 Ms. Yu to give us a little report on her
13 investigation of the issue, just so we have something
14 that explains it.
15 MS. VU: So at a quick preliminary
16 glance, it looks like it is to do with the fact that
17 Ms. Athanasoulis has a basic account and, therefore,
18 ads are popping up to tell her to buy the, to buy the
19 Zoom app, and, therefore, there are ads. However,
20 there are -- there's only a couple of solutions: One
21 is if it pops up at the bottom telling her that, you
22 know, you should explore Zoom apps, so click the
23 little X button to close it. And the other one is
24 that she has noted that there was a musical
25 preference. That is probably because, again, it's

1 just a basic app, and it is popping up to try to get
2 you to buy the client.
3 So the solution, I think, that
4 will help -- I believe will help -- is that you click
5 around the screen. If you click around the screen,
6 you should be able to get rid of the notifications.
7 And if not, please do let me know and I'll keep
8 investigating.
9 THE WITNESS: Thank you.
10 ARBITRATOR HORTON: Okay. And if
11 you need to pause at any point to do that,
12 Ms. Athanasoulis, I would rather that you did that,
13 rather than continue with divided attention between
14 the questions you're being asked and the answers
15 you're giving. That may be more important in
16 cross-examination. So, you know, we have time.
17 Don't feel time pressure to do that. And if you have
18 to deal with it, then take a second or two to close a
19 window, you know, just take the time to do that
20 before turning your attention back to what we're
21 doing here. Okay?
22 THE WITNESS: Thank you.
23 ARBITRATOR HORTON: Thank you very
24 much. Okay. Let's continue.
25 BY MR. DUNN:

1 Q. Sure. So I'm going to move
2 forward in time a little bit, Ms. Athanasoulis, to
3 joint document book Tab 8, which I'll bring up on the
4 screen for you. And this is an email chain between
5 you and Mr. Casey that starts November 26th. Can you
6 see that?
7 A. Yes.
8 Q. So what prompted you to send
9 this email?
10 A. So what prompted me to send
11 this email was I was not getting any answers from Dan
12 on how we were going to deal with the cash flow
13 issues. He was, at this point, just not giving any
14 answers on cash flow. And I -- in the past, we would
15 always talk through our issues. And I just thought
16 it would be helpful to put everything in writing so
17 he fully understood what was going on, and all the
18 answers he needed to continue running the business
19 properly, and having the right communication with all
20 of the stakeholders.
21 Q. Okay. So turning to the
22 bottom, where it says YSL Financing Urgent, what was
23 your understanding about what had to happen in order
24 to close the YSL financing at that stage?
25 A. So the last condition of the

1 YSL financing was to have a purchase and sale
2 agreement executed for the retail component of YSL,
3 including deposits.
4 Q. Okay. And turning up to the
5 next in the chain, there's an email from Mr. Casey on
6 November 27th. And can you tell me -- sorry, turning
7 to 33 Yorkville, what did you understand Mr. Casey to
8 mean when he said "help from trade and extra at the
9 end of job"?
10 A. He wanted the trades to
11 forego payment, do side deals and/or bank -- like,
12 bank Cresford by doing the work and not getting paid.
13 Q. Okay. And in exchange for
14 what?
15 A. It's not quite clear. I
16 mean, the trades weren't going to do that. It was a
17 substantial amount of money.
18 Q. Right.
19 A. Like, he was going to do side
20 deals, and he would still have to come up with the
21 equity to pay them on the side. Like, I don't know
22 why -- what he was -- why he was saying what he was
23 saying.
24 Q. Okay.
25 A. And he full-on knew that they

1 were expecting -- that they wouldn't agree to those
2 numbers.
3 Q. Right. And what about 59
4 Hayden, can you tell me a little bit about this
5 issue?
6 A. Yeah, so 59 Hayden was three
7 office floors at CASA III that were unsold. And we,
8 we negotiated a lease or were in the process of
9 negotiating a lease with Humber, which, you know, I
10 was driving with Sean, and he, he -- his response
11 was, "I will meet with Sean tomorrow about Humber."
12 Q. And, sorry, I don't think
13 we've talked about Sean before. Who is Sean?
14 A. So Sean was the vice
15 president of finance and acquisitions.
16 Q. Okay. And who did Sean
17 report to?
18 A. Sean reported to me.
19 Q. And what was his last name?
20 A. Sean Fleming.
21 Q. Okay. And when you say:
22 I expect to be included --
23 "Given that I am driving the
24 lease and the fact that we
25 are negotiating a sale in

1 good faith, I expect to be
2 included in this decision as
3 has been the case for the
4 past decade."
5 Can you just help me understand
6 what you meant by that?
7 A. Yeah. So, basically, this
8 was the first time I'm hearing that Dan is going to
9 deal directly on a lease that he knows nothing about
10 with Sean, who reports directly to me. And Dan's
11 going to start dealing with Sean. Like, I, I, I
12 couldn't -- it wasn't -- it was clear to me that Dan
13 was trying to potentially change my role or sidebar
14 me.
15 Q. Okay. And on November 28th,
16 you emailed:
17 "Am I getting an answer to
18 these questions today? We
19 will be seeing people at the
20 Christmas party that have a
21 direct impact on many of
22 these questions and I would
23 like to know what the
24 direction is to be able to
25 appropriately answer."

1 First of all, what Christmas party
2 were you talking about?
3 A. So Cresford was having a
4 Christmas party with all the trades and brokers and
5 lenders. And you know, YSL was a hot topic, because
6 it was one of the largest buildings and a huge
7 success. And so the lenders that were financing YSL
8 were going to be present, you know, and we -- they
9 were anxiously awaiting for the APS on the retail
10 deal. And I couldn't talk about the sale of the
11 business, which, you know, in my -- what I knew was
12 that we were selling the business, and the retail was
13 going to be sold to Patrick, or we were -- so that
14 was -- I wanted answers to understand how to address
15 all of that, the shortfalls.
16 Trades were calling me. There
17 were, there were payments that needed to be made,
18 contracts to be awarded, because we had a condition
19 on 33 Yorkville. There was, there was, there was
20 Altus that was going to be present that was pressing
21 on a contract for Halo. There was just so many
22 issues. And all of this, all of these issues I just
23 wasn't getting an answer from Dan on.
24 Q. Okay. Sorry, just to make
25 sure, who was Altus? What was Altus' role in all of

1 this?
2 A. So Altus was the cost
3 consultant on all of the Cresford projects, who
4 monitored all the costs for the project.
5 Q. Okay. So I'm going to turn
6 up now joint document book Tab 30. And what is this
7 document?
8 A. So this document is a
9 document that I received -- sorry, I just want to, I
10 just want to find it as well, Mark.
11 Q. Sure. It's Tab 30.
12 A. Okay. So this is, this is
13 the LOI that was created for Patrick and Dan, based
14 on their negotiations to purchase the business, based
15 on a meeting they had and the terms -- roughly the
16 terms that they agreed to.
17 Q. Okay. What was your
18 involvement with this document?
19 A. So my involvement with the
20 document was Dan came back from a meeting with
21 Patrick, and had Joe Bolla with him, who was helping
22 him negotiate the sale. And my involvement was with
23 it that I gave the document that Joe Bolla had to
24 Patrick's lawyers, and they created this LOI based on
25 the terms that they agreed to. And it was, it was

1 the LOI that outlined the sale of the business.
2 Q. Okay. And you mentioned
3 taking something from Mr. Bolla. What specifically
4 did you get from Mr. Bolla?
5 A. So Joe Bolla had notes on the
6 discussion of the, of the, of the sale price, and all
7 of the items that were going with the sale.
8 Q. Okay. And did -- and then,
9 sorry, you mentioned you gave them to Mr. Dovigi's
10 lawyers. Who were they?
11 A. So Stikeman and Elliott was
12 representing PJD, and they prepared the LOI for
13 further meetings between Dan and Joe to -- like,
14 further -- like, further progress on the sale of the
15 business.
16 Q. Okay. And did Mr. Casey and
17 Mr. Bolla know that you were giving those notes to
18 Stikeman Elliott?
19 A. Yeah, it was based on their
20 instructions. And then this document was forwarded
21 to Joe Bolla.
22 Q. Okay. And what did this --
23 had this -- what did this transaction contemplate in
24 terms of the YSL retail?
25 A. Well, I don't -- so at this

1 point and time, I mean, Patrick was buying YSL. He,
2 he didn't -- like, he didn't need a financing to
3 close. He wanted to buy the business, and the retail
4 was in conjunction with buying the business. It
5 wasn't really that the retail was separate from the
6 purchase of Cresford.
7 Q. Right. Okay. And I want to
8 turn next to an email -- oh, I apologize -- to Tab 12
9 of the joint document book. I'll pull it up on
10 screen for you. This is an email on December 13th
11 from Michael DiCesare. Who was he?
12 A. So Michael was the account
13 manager on YSL for the financing with Otera -- from
14 Otera.
15 Q. Okay. And there is attached
16 a letter of intent to Hawalius Inc. Had you, before
17 receiving this email from Otera, had you seen this
18 document, this letter of intent?
19 A. No, I had not seen that
20 document, nor did I understand or know that Dan was
21 negotiating a letter of intent with someone else to
22 buy the YSL retail.
23 Q. Okay. Did you know who
24 Hawalius Inc. was?
25 A. I did not know who

1 Hawalius Inc. was.
2 Q. Okay.
3 A. But --
4 Q. Sorry, go ahead.
5 A. But at the bottom, it was
6 signed by an individual that I knew.
7 Q. And who is that?
8 A. Gary Stanoulis, who we had
9 done business with before.
10 Q. Okay. And did you have any
11 concerns about this document?
12 A. Other than -- I had many
13 concerns.
14 Q. And so what were your
15 concerns?
16 A. Well, firstly, the fact that
17 Dan had gone behind my back and was negotiating an
18 LOI to sell the retail, at the same time that we were
19 selling the business, at the same time that he had
20 told Patrick that he wasn't doing that, like, because
21 Patrick was insisting that he wanted the retail in
22 conjunction with the sale of the business. Like, I,
23 at this point, understood that Dan was not acting in
24 good faith or in the best interest of the business or
25 the stakeholders.

1 Q. And did you communicate at
2 all -- or sorry, let me take a step back. As far as
3 your understanding went, was this letter of intent
4 sufficient to satisfy the final condition on the YSL
5 financing?
6 A. Absolutely not. It wasn't --
7 it was not a purchase and sale agreement. And, in
8 fact, the letter of intent had language in it that
9 was -- obviously, Dan didn't even know what the
10 conditions of the financing were, because the
11 deposits needed to be used in the project.
12 Q. Okay. And did this letter of
13 intent allow that?
14 A. Not from my reading of it.
15 But, I mean, having said that, regardless, to send a
16 letter of intent to a lender I had no idea what he
17 was negotiating with, and to not even advise me
18 because, you know, I didn't know that I -- like, he
19 didn't advise the lenders that I was no longer
20 supposedly going to be dealing with this financing.
21 And it was just -- I just didn't really understand
22 what was going on.
23 Q. Okay. So we saw between --
24 sorry, had you had -- between the email that we sent
25 and the sending -- that we looked at a minute ago --

1 and the letter of intent that we just looked at on
2 December 13th, had you had any discussions with
3 Mr. Casey?
4 A. So between the letter of
5 intent -- so the letter of intent --
6 Q. Sorry, I mean between -- you
7 sent an email. We saw an email chain on November
8 28th?
9 A. Yeah.
10 Q. And then we saw the email
11 from Otera on December 13th, I believe. But in those
12 first couple of weeks of December, what discussions,
13 if any, did you have with Mr. Casey?
14 A. So we had a meeting at the
15 office. Basically, it was a meeting after he had a
16 meeting with Patrick Dovigi on the sale of the
17 business. And we, we had a meeting at the office to
18 go over what I thought was going to be to go over the
19 terms of the sale. Joe Bolla was present, and Sean
20 Fleming was present, and Dan was present.
21 I thought I was arriving for a
22 meeting to go over the terms, which I did after the
23 fact with Joe Bolla, or Joe Bolla gave me their
24 letter of intent to be formalized with Stikeman. But
25 Dan wanted to see me alone, which I didn't want.

1 Because at this point in time, I didn't necessarily
2 trust that Dan had the best intentions. So Dan
3 insisted that he have a meeting with me alone.
4 And it was a meeting where I was
5 questioning him as to why things were happening
6 behind my back. Like, I had learned that he had a
7 meeting with the Chelsea to purchase another
8 property. It was, it was a bizarre interaction,
9 where I asked Dan, is he dealing with the sale, you
10 know, with good intentions, with honesty and
11 integrity, and he proceeded to berate me and blow up
12 and call me crazy, to the point where the whole
13 office could hear because the wall were glass.
14 Q. Okay. And did he say
15 anything other than calling you crazy?
16 A. All I can remember is he had
17 real -- he had no answers. He said he was dealing
18 with the sale honestly and that I'm crazy, that I was
19 crazy.
20 Q. Okay. And during this
21 period, did Mr. Casey give you any instructions about
22 whether you should deal with the lenders?
23 A. No. No. I mean, he sent me
24 an email saying that he was going to take care of
25 the -- there's an email, I think, in one of the

1 productions. It was very vague. Like, he was, he
2 was doing things behind my back, but never did he say
3 to me specifically, 'You're no longer going to have
4 people reporting to you, you're no longer going to be
5 dealing with Cresford's issues, or business,' or
6 anything like that.
7 Q. Okay. Did anything change
8 in terms of -- well, let's talk about the reporting.
9 Did anything change in terms of who reported to you
10 during this period?
11 A. Well, so Dan has a meeting
12 with the finance team, which is in the productions.
13 He had -- he requests for a confidential meeting with
14 the finance team, which he never discussed with me,
15 nor did he tell me what he was going to discuss. But
16 in that meeting, he basically told the finance team
17 that they now report to him.
18 Q. And how did you learn about
19 that?
20 A. I learned through the team
21 that that meeting took place, and what he said.
22 Q. Okay. And what was your
23 understanding during this time about who was supposed
24 to be dealing with the lenders?
25 A. I was always dealing with the

1 lenders, you know, but Dan had started to take the
2 initiative to start to engage with the lenders as
3 well, which I have no problem with. I mean, he is
4 the owner of Cresford.
5 Q. Okay. And what about dealing
6 with the trades; whose responsibility was it to deal
7 with the trades?
8 A. So I was dealing -- I always
9 had the relationship with the trades. I always dealt
10 with the trades. And Dan started to assert himself
11 and wanted to deal directly with trades as well, but
12 never really communicated that with me.
13 Q. Okay. I want to show you an
14 email from Cathy Alderson. Who did you understand
15 Cathy Alderson to be?
16 A. Cathy Alderson was a
17 secretary to Al O'Brien, who's a litigator -- who was
18 a litigator - he's passed - but he was a litigator of
19 his own firm.
20 Q. Okay. This is Tab 14 of the
21 JDB -- or the joint document book. Did you -- in the
22 second paragraph, it says:
23 "In your telephone
24 conversation today with Joe
25 Bolla, you threatened to

1 take steps to interfere with
2 the closing of the YSL
3 financing. In a text
4 message to Dan this
5 afternoon you referred to
6 the sale of the retail as
7 'presenting a suspicious LOI
8 to the bank'."
9 Did you say that to Mr. Casey --
10 or sorry, I didn't -- did you say to Mr. Bolla that
11 you were going to interfere with the closing?
12 A. No. Joe and I had a call,
13 because I was following up to see what was happening
14 with the LOI and if he could give me an update. And
15 at the same time, the email came through -- or prior
16 to the call or -- and I questioned him and said --
17 and asked him, like, does he know anything about
18 this, because this was the first time I was hearing
19 about it.
20 Q. Okay. And did you threaten
21 to interfere with the YSL financing?
22 A. How could I -- like, did I
23 threaten to interfere? I, I basically told him that
24 wasn't the condition of the financing, to provide an
25 LOI, and I didn't know what was happening.

1 Q. Okay.
2 A. I did send a text message to
3 Dan.
4 Q. Okay.
5 A. And asked him, asked him is
6 he dealing with the sale, or is he -- like, I -- and
7 I, perhaps, said presenting a suspicious LOI to the
8 bank is not acceptable to it, to the bank.
9 Q. Okay. Did you say anything
10 to Otera, the lender, about the LOI?
11 A. No.
12 Q. Did you say anything to Otera
13 about the potential sale being suspicious?
14 A. No.
15 Q. Did you have any
16 communication with the lender during this period?
17 A. No.
18 Q. Okay. And at the last
19 sentence, it says:
20 "As Dan has told you,
21 verbally or in writing, he
22 will deal directly with the
23 financing issues. To be
24 clear, he will deal
25 [directly] with the bank."

1 [As read]
2 What did you understand
3 Mr. O'Brien to mean by this?
4 A. I understood that I was being
5 stripped of, of my responsibilities.
6 Q. Okay. And at this point, had
7 Mr. Casey said anything to you that you were being --
8 that any part of this was temporary?
9 A. Never.
10 Q. Did you have that discussion?
11 A. No.
12 Q. Did he ever tell you that you
13 were on leave?
14 A. No.
15 Q. Did you have any reason to
16 believe that there was any kind of an ethical wall
17 established between you and Cresford to deal with any
18 conflicts of interest relating to the sale?
19 A. No.
20 Q. Okay. I just want to take a
21 step back for a minute. You mentioned the Chelsea.
22 Can you tell me about the Chelsea and what that is?
23 A. So the Chelsea is, is a hotel
24 currently on the west corner of Yonge and Gerrard,
25 near YSL. It's a very large scale development that

1 was interest -- was of interest to us for many years.
2 From a marketing and sales perspective, in the
3 Cresford brand, it was a project that was well
4 aligned with, you know, what our capabilities were,
5 and in line with the Cresford brand and all of that.
6 So we had, we had spoken in the past to see if there
7 was a joint venture we could do.
8 Q. And had you personally been
9 involved in those discussions?
10 A. I had.
11 Q. Okay. And did you learn
12 anything during this period, the fall of 2019, about
13 the Chelsea?
14 A. So what I learned was on
15 night of the Christmas party, Dan had decided, from
16 my understanding, had taken others to a meeting with
17 the brokers that were trying to sell the Chelsea,
18 which we had passed on many months ago, over six
19 months prior. Dan decided to start negotiating the
20 purchase of this large scale development at the same
21 time that we had, what I considered, financial -- a
22 financial, a financial crisis.
23 Q. And how did you learn about
24 these negotiations relating to the Chelsea?
25 A. So I first learned of them on

1 the night of the Christmas party, where -- the
2 architect of the Chelsea is the same architect on
3 most of Cresford's projects, and he mentioned it in
4 passing, as if I should have known.
5 Q. Okay. And so dealing with
6 the aftermath of Mr. O'Brien's letter that we were
7 just looking at, what was your response to -- or what
8 was your reaction? We'll talk about the response in
9 a minute. What was your reaction to this email?
10 A. To the, to the Al O'Brien?
11 Like, firstly, I considered Al a friend. Like, I'd
12 known him for many years. I couldn't understand
13 where he was coming from in sending me this email. I
14 was only trying to ethically deal with all the
15 issues.
16 I was, I was disappointed. I was
17 sad. I was confused. I didn't understand why I
18 couldn't get the answers to a simple question as to
19 why or how an LOI is being negotiated without my
20 knowledge. And at the same time, a sale is
21 potentially being negotiated. I was, I was upset and
22 confused.
23 Q. Okay. So after this December
24 2019 email, just situating ourself at that time
25 period -- or December 16th, I believe it was -- what

1 were your responsibilities at that point as president
2 of Cresford?
3 A. After that email?
4 Q. Correct.
5 A. I didn't, I didn't really --
6 I, I still had a job, but I didn't have a job.
7 Q. What do you mean by that?
8 A. I was never formally told
9 that I don't have, I don't have a role at Cresford,
10 but at the same time, I understood that Dan was
11 stripping me of all my responsibilities.
12 Q. And during this period, were
13 Cresford employees reporting to you?
14 A. No. By this point, they were
15 all told that they no longer reported to me, not --
16 without my knowledge.
17 Q. Okay. And were you going
18 into the office at that point?
19 A. At this, at this stage, when
20 I received that letter, I stopped going into the
21 office.
22 Q. Okay. And did Mr. Casey ever
23 contact you and say, you know, come on back?
24 A. Never.
25 Q. Okay. So I'm going to turn

1 up Tab 15 of the joint document book. So this is a
2 letter that you wrote -- or that I wrote on your
3 behalf on January 2nd of 2020. And what was your
4 understanding of what you were doing by sending this
5 letter?
6 A. My understanding was that I
7 was --
8 Q. Oh, sorry. I apologize. I'm
9 told it's not actually sharing. Sorry, let me start
10 at the top, because you missed it. Sorry, go ahead.
11 A. It was, it was a letter that
12 confirmed that I was under the understanding that I
13 was constructively dismissed.
14 Q. Okay. Was it your intention,
15 when you sent this letter, to resign?
16 A. No. I mean, yes -- no, no
17 no. Like, no. Sorry, I didn't understand your
18 question. I would have never resigned.
19 Q. Okay. So what did you mean
20 when you said yes?
21 A. I just meant, like, resigning
22 meaning a constructive dismissal, in a fashion of a
23 constructive dismissal.
24 Q. Okay.
25 A. And can never go back to

1 my -- like, basically, I put them on notice that I
2 was not going back to the office.
3 Q. Okay. And in the period
4 between December 16th and January 2nd, were you
5 contacted by lenders or trades?
6 A. Sorry, which period, Mark?
7 Q. Between December 16th of 2019
8 and January 2nd of 2020.
9 A. Was I contacted by lenders?
10 Q. Correct. Did you --
11 A. No.
12 MR. DUNN: Okay. If I could,
13 Mr. Horton, have just a five minute break. I think
14 I'm done. I'm just going to consult my notes and my
15 colleagues and confirm that.
16 ARBITRATOR HORTON: Sorry. We'll
17 stand down for five minute.
18 --- Recess at 4:08 p.m.
19 --- Upon resuming at 4:12 p.m.
20 ARBITRATOR HORTON: Okay. I think
21 we're all back.
22 MR. DUNN: And that completes my
23 questioning, Mr. Horton. And, Ms. Athanasoulis,
24 thank you.
25 ARBITRATOR HORTON: Okay. So I

1 understand that we'll do the cross tomorrow, and that
2 will be the only item on the agenda for tomorrow. Is
3 there any need to start early tomorrow, or are we
4 comfortable we can finish in the normal time?
5 MR. MILNE-SMITH: I'm certainly
6 optimistic. One never knows, of course. It all
7 depends on the answers, but my expectation is that we
8 will be done by the lunch break.
9 ARBITRATOR HORTON: Okay. Now,
10 Mr. Casey is not available until Thursday, that would
11 make it. And that would -- since you had the opening
12 scheduled for Friday, that would mean that we would
13 need to do the direct and the cross of Mr. Casey
14 tomorrow [sic] to stay on schedule. Is that expected
15 to be a problem?
16 MR. MILNE-SMITH: Yeah, I expect
17 roughly the same timelines for Mr. Casey as we've had
18 for Ms. Athanasoulis. There would be a half day
19 in-chief and a half day in cross.
20 ARBITRATOR HORTON: Okay. Okay.
21 I am generally okay with running a bit later tomorrow
22 or Thursday. I cannot start early on Friday, so we
23 can't make up the time that way. And nobody likes to
24 stay late on Friday.
25 MR. DUNN: And I don't think my

1 friend or I, having finished in crosses on Thursday,
2 I don't think either of us will be rushing to start
3 the closing early Friday morning. We may need that
4 extra little bit of time.
5 ARBITRATOR HORTON: Okay.
6 MR. DUNN: So that the key is,
7 really, to get Mr. Casey done on Thursday. And as
8 long as that happens, we'll be fine.
9 ARBITRATOR HORTON: Okay. So just
10 bear in mind, and perhaps you can also talk to the
11 witnesses to make sure that there isn't an issue, or
12 to let me know if there is an issue, that any make-up
13 time will have to be either tomorrow -- by extension
14 tomorrow or Thursday, okay? All right. Thank you
15 very much. See you tomorrow at 9:30.
16 MR. MILNE-SMITH: Thank you.
17 MR. DUNN: Thank you.
18 --- Whereupon proceedings adjourned at 4:14 p.m.
19
20
21
22
23
24
25

TAB 14

Consolidated Court File No. 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c. B-3, as amended
IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
Claim of Maria Athanasoulis against
YG Limited Partnership and YSL Residences Inc.

ARBITRATION PROCEEDINGS HEARD BEFORE
ARBITRATOR WILLIAM G. HORTON
held via Arbitration Place Virtual
on Wednesday, February 23, 2022, at 9:45 a.m.

VOLUME 2

APPEARANCES:

Mark Dunn
Sarah Stothart
on behalf of the Claimant

Matthew Milne-Smith
Chenyang Li
Robin Schwill
on behalf of the Respondent for KSV Restructuring Inc. in its capacity as the proposal trustee

ALSO PRESENT:

Angela Yu
Hannah Johnson

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1 Arbitration Place Virtual
2 --- Upon resuming on Wednesday, February 23, 2022,
3 at 9:45 a.m.
4 ARBITRATOR HORTON: Good morning,
5 everyone. I'm terribly sorry. I seem to have had
6 multiple technical failures this morning. So I
7 finally connected on my laptop, and everything seems
8 to be working, except my stage set has been revealed,
9 so apologies for that. The illusion is spoiled now.
10 But everything else is working, I think, so we're
11 ready to proceed.
12 Was there anything else of a
13 preliminary nature that anyone else wanted to raise?
14 No? All right. Well, let's proceed then.
15 Mr. Milne-Smith.
16 MR. MILNE-SMITH: Thank you.
17 PREVIOUSLY AFFIRMED: MARIA ATHANASOULIS:
18 CROSS-EXAMINATION BY MR. MILNE-SMITH:
19 Q. Ms. Athanasoulis, you are, of
20 course, aware that YG Limited Partnership and YSL
21 Residences Inc. filed notices of intention to make a
22 proposal in this proceeding in April of 2021?
23 A. Yes, I am aware.
24 Q. And you understand that
25 Concord Developments made a proposal that followed a

1 number of amendments that was ultimately approved by
2 the Court in these proceedings?
3 A. Yes, I am.
4 Q. And what I would like to do
5 is show you the third amended proposal in this
6 proceeding, and ask that it be added to the joint
7 book of documents. I raised this with my friend,
8 Mr. Dunn, in advance. We would propose that this be
9 added to the joint document book as Tab 45.
10 ARBITRATOR HORTON: Thank you.
11 BY MR. MILNE-SMITH:
12 Q. Ms. Athanasoulis, I'm not
13 sure, are you familiar with this document? Have you
14 seen it before?
15 A. I have seen it before, yes.
16 Q. Okay. Thank you. So let's,
17 then, turn to Tab 22 of the joint book, which is your
18 proof of claim in these proceedings. If we can just
19 zoom in on the first page there so you can see it
20 better. So you're, of course, familiar with this
21 document, correct?
22 A. Yes, I am.
23 Q. And you would have reviewed
24 it before it was filed?
25 A. Yes, I would have reviewed

1 it.
2 Q. And feel -- I know you have
3 the joint document book there, so feel free to look
4 at any document that we're turning to, should you
5 wish to do so. And so if we scroll down a couple of
6 pages, you'll see that there's a Schedule A to the
7 proof of claim, which sets out in more detail the
8 nature of your claim. You would have, of course,
9 reviewed this document as well before it was filed by
10 your counsel?
11 A. Yes.
12 Q. And it is accurate to the
13 best of your knowledge?
14 A. Yes.
15 Q. You started working for the
16 Cresford Group of companies in 2004, correct?
17 A. Correct.
18 Q. And you described your
19 history with the company during your examination
20 in-chief, and I don't wish to repeat it here. I just
21 want to clarify a couple of points. First of all, do
22 I understand correctly that prior to 2018, when
23 Mr. Dowbiggin left the company and your
24 responsibilities expanded, prior to 2018 your
25 responsibilities did not include land acquisition and

1 financing; is that right?
2 A. Correct.
3 Q. But they did include sales
4 and marketing?
5 A. Yes.
6 Q. They did include consulting
7 on design features with your architects and other
8 consultants?
9 A. Yes.
10 Q. They did include dealing with
11 trades?
12 A. Yes.
13 Q. Anything else that I'm
14 missing from that list that you would consider your
15 area of responsibility?
16 A. Anything on a day-to-day
17 operational standpoint of Cresford. So there was a
18 property management company, but finance was not my
19 responsibility, acquisitions wasn't. But everything
20 else that fell in the day-to-day of development and
21 construction and sales was part of my
22 responsibilities.
23 Q. Would that have included sort
24 of the internal operations of the Cresford companies,
25 if I can call it that, so, for example, human

1 resource type matters. You would have had ultimate
2 authority for that below Mr. Casey?
3 A. For people that reported to
4 me, yes.
5 Q. And as I understand it,
6 everyone on that organization chart, other than the
7 group under Mr. Dowbiggin, reported to you?
8 A. Yes.
9 Q. Okay. Mr. Dowbiggin hired
10 you in 2004, correct?
11 A. Correct.
12 Q. And at all material times
13 until his departure in 2018, he was, if I can use a
14 colloquialism, he was Dan Casey's right hand man in
15 terms of acquisitions and financings during that time
16 period?
17 A. Yes.
18 Q. And am I correct in
19 understanding that during your tenure at Cresford,
20 you successfully launched a number of projects at the
21 company?
22 A. Successfully launched, yes.
23 Q. And that would have included,
24 at least, Vox, Halo, Clover and 33 Yorkville?
25 A. Yes.

1 Q. And those were the four most
2 recent projects before YSL?
3 A. Yes.
4 Q. And those were all successful
5 launches, from your perspective?
6 A. Yes.
7 Q. They met your sales targets?
8 A. Yes.
9 Q. Because that's what
10 constitutes a successful launch?
11 A. Well, yes. So you have a
12 proforma that you're, you're striving to achieve, the
13 numbers that have been discussed within the, within
14 the company.
15 Q. And YSL was also a successful
16 launch within those parameters?
17 A. Yes, it was.
18 Q. Let's talk briefly about the
19 business of building a condominium project. You
20 described in your evidence in-chief how a developer,
21 like Cresford, would pre-sell the majority of units
22 in a project like YSL in advance of construction. Do
23 you recall that?
24 A. Sorry, where are you
25 referring me saying that? Can you show me?

1 Q. Well, yesterday in your
2 evidence -- I didn't think this was a controversial
3 point. Just if you don't recall, let me ask the
4 question generally. My understanding is that a
5 developer like Cresford will pre-sell the majority of
6 units in a project in advance of construction. Do I
7 have that right?
8 A. No, it's not accurate.
9 It's -- so the pre-sale requirement varies from
10 project to project, and that would be something that
11 the finance and acquisition group would provide the
12 input on.
13 Q. Okay. So what you're saying
14 is that the number of units that you would pre-sell
15 will vary from project to project?
16 A. Yes.
17 Q. Okay. And there's a
18 trade-off between the certainty of revenue that you
19 get from a pre-sale; you have to trade that off
20 against the fact that pre-sale units are typically
21 sold at a lower price than the built units?
22 A. Not necessarily. I mean,
23 it's --
24 Q. But in some cases?
25 A. Not in our case. I mean, we

1 were always selling above the market.
2 Q. Okay. And in YSL, in
3 particular, do you accept that the majority of the
4 units were pre-sold in advance of construction,
5 correct?
6 A. Can you refer to where I said
7 that?
8 Q. There were 768 units out of
9 over a thousand units that were sold, correct?
10 A. Yeah, that's not the
11 majority. That's roughly 60 to 65 percent, which was
12 in line with what we believed we could get in terms
13 of a pre-sale number to satisfy a construction loan.
14 Q. Right. But I think most of
15 us would agree that 60 to 65 percent constitutes a
16 majority, more than half?
17 A. Okay.
18 Q. Okay. We're on the same
19 page; maybe we just have a different definition of
20 "majority". That's fine.
21 You took out an insurance bond,
22 you described this, an insurance bond against the
23 deposits on those pre-sold units to permit use of
24 deposit funds in construction. Do I have that right?
25 A. Yes, so it was for

1 construction, and it was used also for payment of a
2 VTB, which was part of a purchase of the land.
3 Q. Okay. And just so we have --
4 sorry, I didn't mean to speak over you.
5 A. It was -- so, I mean, YSL was
6 complicated. And just for the record, it's
7 basically -- at the beginning when we purchased the
8 land, it was a partnership with Quad -- well, with
9 BCI; that turned into QuadReal. And in 2007 we
10 bought back their shares, and it became owned by -- a
11 hundred percent owned by entities of Cresford.
12 Q. You said 2007?
13 A. I'm sorry, 2017.
14 Q. Okay.
15 A. Sorry.
16 Q. And just so we have it on the
17 record, when you referred to VTB, you're talking
18 about a vendor take back loan?
19 A. A vendor take back mortgage.
20 Q. Right. Right. And we were
21 speaking about the insurance bond; that was Westmount
22 that provided the insurance bond?
23 A. Correct.
24 Q. Okay. And the bond would be
25 secured by the deposits themselves?

1 A. It would be secured so that
2 basically there was a mortgage on the property that
3 was registered in second position after the, the land
4 loan, and it also insured the deposits.
5 Q. Right. And Westmount would
6 have had security against the deposits as well,
7 correct?
8 A. Correct.
9 Q. Right. So it still
10 effectively borrowed money. You would just get a
11 lower interest rate because you're securing it
12 against cash, right?
13 A. Correct.
14 Q. And the vast majority of
15 revenue in a condominium project like YSL is not
16 released to the developer until construction is
17 complete and the condominium is registered, right?
18 A. Correct.
19 Q. And to fund the balance of
20 construction costs for YSL, Cresford had arranged
21 third party financing, right?
22 A. Yes, it had arranged a
23 construction mortgage.
24 Q. Right. There was -- as I
25 understand it, there was a Mezzanine facility with

1 KingSett and a construction loan with Otera, correct?
2 A. Correct.
3 Q. And closing those facilities
4 depended on satisfying certain conditions?
5 A. Correct.
6 Q. And at the time of your
7 departure from Cresford, around the end of 2019,
8 beginning of 2020, those conditions -- the conditions
9 on the construction loan had not been satisfied and
10 the loan had not been funded?
11 A. Correct.
12 Q. Okay. And I just want to say
13 upfront here, I'm going to -- obviously an issue in
14 this case is around the nature of your departure.
15 And I just want you to know I'm not trying to -- when
16 I refer to your departure from the company, I'm not
17 trying to trick you, or trap you, or get you to admit
18 anything. I'm going to try to use neutral terms like
19 "departure," rather than "resignation" or
20 "termination," but I'm not trying to imply anything
21 by the terms I use. I understand that's in dispute
22 and we have our different views, so I respect that.
23 A. Okay.
24 Q. Once construction of a
25 condominium is complete, you register the condominium

1 with the Condominium Authority of Ontario. Do I have
2 that right?
3 A. Correct. I mean, you
4 register it with -- yes. You register it with the
5 authorities that -- the city.
6 Q. Right. And we talked about
7 registration before. I'm just trying to make sure we
8 have it clear what that means. And then, once it's
9 registered, you turn the building over to the
10 condominium corporation for that particular property,
11 right?
12 A. Yes.
13 Q. And you collect the balances
14 due from purchasers, and you sell any remaining units
15 that might be in the building?
16 A. Yes.
17 Q. And then you pay the trades
18 and any fees that might be owing to the kind of
19 management companies that you've described?
20 A. Sure. You would, you would
21 be paying them along the way, yeah.
22 Q. And you repay the loans and
23 return equity to investors?
24 A. Yes.
25 Q. And it's at this point that

1 you can calculate the actual profits earned by the
2 project, correct?
3 A. Okay, yes.
4 Q. And so post-registration is
5 when profits are actually obtained on a project,
6 correct?
7 A. You would think so, yes.
8 Q. Okay. You would think so,
9 but that actually is the case, as a practical matter,
10 correct? Registration is when profits are obtained
11 on a project?
12 A. Well, I mean, there's times
13 that, perhaps, there's profits earlier. So, like, I
14 don't want to get caught in saying the only time that
15 a project gets profits is at the end of a profit.
16 Q. So what would an example be
17 where profits are earned before registration?
18 A. Well, you know, if there's a
19 land lift. Again, in the case of YSL, I don't have
20 access to the records, to the GLs, or to the closing
21 documents of when we purchased it in 2017. But there
22 could be -- could have been, potentially, money that
23 was, was obtained in terms of a profit or some sort
24 of fashion of arrangement at that time. I'm just not
25 sure. So I just don't want to get caught in saying

1 the only time that there's profit is at the end.
2 Q. All right. You would agree
3 with me that, as a general matter, registration is
4 when profits are obtained on a project, while there
5 might be some exceptions?
6 A. No, I think there's
7 opportunities for profit from beginning of buying a
8 piece of land to the time that you start sales and
9 marketing, there's the opportunity for profit for
10 developers. I'm just not sure -- I don't want to get
11 caught in saying the only time that there's profit.
12 There's equity take-outs. I, you know, I don't know.
13 Q. Okay. That's fine. Let's
14 just see if we can find the common ground here and
15 identify the actual disagreement. So you recall you
16 were examined for discovery on January 13 in this
17 matter?
18 A. Yes.
19 Q. And you gave an affirmation
20 to tell the truth in answering the questions that you
21 were asked --
22 A. Yes.
23 Q. -- during that discovery?
24 Could we pull up the discovery transcript at page 36.
25 Unfortunately, I just have to read a little bit here

1 to get the proper context so that the answer that you
2 ultimately give is understandable. So in
3 Question 104, it says:
4 "Okay, okay. One term --
5 one phrase that I am
6 interested in in this
7 Schedule A is 'final
8 registration.' So it says
9 'will be paid upon the final
10 registration of 1000 Bay
11 Condominiums,' and it refers
12 to other buildings in other
13 bullet points too.
14 "Am I correct in
15 understanding that what they
16 mean by 'final registration'
17 is when the building is all
18 completed and the
19 developer... you know, I
20 don't know who incorporates
21 the condominium corporation.
22 Someone incorporates the
23 condominium corporations,
24 and the building is given to
25 the condominium corporation.

1 Is that what they mean by
2 that?
3 "ANSWER: It was the time
4 that was chosen because
5 Dan... for Dan to be able to
6 cash flow my bonus because
7 that is when he would re --
8 get all the profits from
9 that project."
10 Then over the page:
11 "But was my description of
12 what final registration is
13 generally accord -- does
14 that generally accord with
15 your understanding of what
16 final registration is?
17 "ANSWER: Yes. It is when
18 the profits are obtained on
19 a project."
20 Do you recall being asked those
21 questions and giving those answers?
22 A. Yes, so that would be
23 specific to the projects that we were talking about,
24 yes.
25 Q. Thank you. Now, the YSL

1 project, of course, has not yet been built?
2 A. Correct.
3 Q. Okay. I want to make sure --
4 we've got to make sure that we get all the evidence
5 in the record so we're all on the same page. As I
6 understand it --
7 A. Well, I could make a joke,
8 Matthew -- I mean, Mr. Milne-Smith. You know, it
9 could be built in a scale model, so it's built. I'm
10 joking. But yes, it's not built.
11 Q. Okay. And subject, I think,
12 perhaps, only to some -- when I look at the site,
13 there's a bit of a facade. So I don't want to ignore
14 the fact that an historical facade remains standing.
15 But other than that, as far as I can tell, there
16 isn't any above ground construction of the project,
17 correct?
18 A. No, but the construction that
19 exists is substantial to a construction schedule.
20 Demolition is a substantial period of time. You
21 know, even putting the retention system around the
22 heritage is a substantial period of time. We did
23 drill the holes for shoring, which was a substantial
24 period of time. So there was, there was, you know, a
25 degree of the schedule that was already invested in

1 the project.
2 Q. I understand. But I just
3 want to make sure we're all clear where the project
4 is.
5 A. Yes. Yes.
6 Q. It's at the excavation stage,
7 correct?
8 A. Correct. Correct.
9 Q. Okay.
10 A. But there are a lot of
11 efforts that go into getting it to the excavation
12 stage.
13 Q. And if it is ultimately
14 built, it will take a number of years to be build?
15 A. Correct, it has a schedule.
16 Q. Right. One would expect from
17 the excavation stage, it's going to take probably in
18 the nature of five years to actually build it and
19 complete it?
20 A. Again, I'd have to look at
21 the construction schedule to confirm whether or not
22 what you're saying is accurate.
23 Q. Fair enough. Let's pull up
24 the proforma, which is Tab 5 of the joint document
25 book. And there's a cash flow statement in this

1 document?
2 A. What tab? Can I look at it
3 on paper?
4 Q. So that's Tab 5.
5 A. Tab 5.
6 Q. And the cash flow statement,
7 if you're looking at it on paper, I think the cash
8 flow statement starts on page 4. Unfortunately, it's
9 a very large spreadsheet, and this is very small.
10 A. It is small. I can't even
11 see that. Okay.
12 Q. Yeah. So we can -- we've
13 blown it up on the screen here.
14 A. Yeah.
15 Q. So you can see that -- and,
16 again, this is the proforma as of October 2019. Do
17 you recall that?
18 A. Yes.
19 Q. And so you see at the top of
20 the page there it has sort of rows, it has milestone
21 dates and the month number?
22 A. Yes.
23 Q. There's a Month Number 1.
24 And then if you go over to the next page of the
25 spreadsheet, all the way over to the right-hand side

1 of the page --
2 A. Mm-hmm.
3 Q. -- it includes all the way
4 out to Month Number 76?
5 A. Right. So can we go to the
6 first registration of the building?
7 Q. So registration is in
8 Month 71.
9 A. There's also a registration
10 prior to that.
11 Q. I understand. We're going to
12 come to that. But I mean in terms of the final
13 second registration, it would be roughly 70 months
14 after that, correct?
15 A. Correct.
16 Q. Okay. So that's a six year
17 schedule, correct?
18 A. Correct.
19 Q. Okay. And as of -- if we go
20 back to the first page, you can see that Month Number
21 2 was listed as September of 2019. So you were only
22 at the very beginning of this in the fall of 2019 in
23 terms of the six year schedule, correct?
24 A. I have to review this in
25 detail. I don't want to say correct or not. We

1 might be arguing over a couple of months. So I mean,
2 if...
3 Q. In general? In ballpark?
4 A. In general.
5 Q. That's fine. And of course,
6 you're aware that construction halted as a result of
7 these proposal proceedings?
8 A. Yes.
9 Q. And didn't proceed for a
10 couple of years, correct?
11 A. What year are we in? Yes,
12 okay. It's not a couple years yet, but okay. It's a
13 year and a bit.
14 Q. Right.
15 A. I mean, I don't want to argue
16 about time. I just don't want to be agreeing to
17 something that's not a hundred percent correct.
18 Q. I appreciate that. We're now
19 in February of 2022, which is two years?
20 A. Almost two years.
21 Q. Almost two years after the
22 proposal proceedings began, correct?
23 A. Correct.
24 Q. And the project has been -- I
25 don't want to pin you down to a specific number,

1 because I can't expect you to know. But you
2 certainly are aware that the project has been
3 substantially delayed as a result of these
4 proceedings?
5 A. Okay.
6 Q. You're aware of that,
7 correct?
8 A. I'm aware.
9 Q. Okay.
10 A. But that's by -- you know,
11 and -- that's by choice.
12 Q. Yes. Look, I'm not blaming
13 you.
14 A. Yeah, no.
15 Q. I'm just trying to get the
16 basic facts.
17 A. Yes.
18 Q. Let's turn up Document 1 of
19 the joint book, please?
20 A. Document 1.
21 Q. Yes. So you looked at this
22 in your examination in-chief. This is the email by
23 Jessica Harrison --
24 A. Yes.
25 Q. -- who was the consultant

1 retained by Cresford, correct?
2 A. Yes.
3 Q. And then it contained the
4 recommendations of the consultant as I understood it?
5 A. No, it was not the
6 recommendations. I don't know where that word came
7 from.
8 Q. So it was setting out the
9 state of affairs as they existed?
10 A. Yes.
11 Q. Sorry, did you say yes?
12 A. No, I'm reading the -- where
13 are you looking where you're reading that? Okay, on
14 the email. Okay.
15 Q. I'm not reading the email
16 right now.
17 A. Okay.
18 Q. I want to get your
19 understanding of what the attachments to this email
20 were. Were they recommendations, were they
21 statements of the current status quo, or something
22 else?
23 A. So they were basically
24 documenting my roles and responsibilities with the
25 company. That's what Jessica's role was. And so she

1 was meeting with all the employees at Cresford and
2 documenting what their existing roles are. So it
3 wasn't a recommendation. It was something that I was
4 already, I was already doing for the company. It
5 was, it was already my role for the company.
6 Q. Okay.
7 A. This document wasn't
8 outlining changes to my role. You have the
9 compensation page up now.
10 Q. Yes. And the -- just so you
11 have it, and feel free to look at it, the second
12 attachment which sets out the responsibilities is
13 Tab 2 of the joint brief. But I don't see any need
14 to -- I don't have any questions about that.
15 A. Okay.
16 Q. The responsibilities that you
17 had as of this document in 2013, those
18 responsibilities continued right through to 2018 when
19 Mr. Dowbiggin departed, correct?
20 A. They kept growing from there.
21 They grew in -- you know, I don't think Tab 2 would
22 outline my role in construction. So they further
23 grew from there.
24 Q. Sorry, what was that?
25 A. They further grew from this

1 document.
2 Q. So looking at the
3 compensation page that's up in front of you, and we
4 should be on page -- yes, we're on the right page.
5 So I just want to look at some of these details.
6 Under your 2012 bonus, it refers to 0.15 percent of
7 total sales to December 31, 2012, correct?
8 A. Correct.
9 Q. And that's half the bonus
10 paid within 60 days, half upon reaching above grade
11 on the CASA project, correct?
12 A. Sorry, I don't know where
13 you're jumping to CASA. I see 50 percent of total
14 bonus to be paid within 60 days assuming financing is
15 available, 50 percent of bonus to be paid upon
16 reaching above grade.
17 Q. Right?
18 A. Yes.
19 Q. I assume that what has to
20 reach above grade is CASA and/or 1000 Bay, because
21 they're referred to in the first bullet?
22 A. Yes. I mean, because this is
23 an agreement that was already in place and ongoing.
24 Q. And that's a construction
25 threshold that has to be met?

1 A. That's a construction
2 threshold that has to be met, yes.
3 Q. Okay. And for 2013, then, it
4 sets out a different structure?
5 A. No. I mean, it was just an
6 additional bonus. So basically, you know, in the
7 meetings, there were -- at this point in time, we
8 had -- we were growing a construction group, and
9 everybody, everybody was entitled to a bonus
10 structure on top of their salary, and whatever other
11 compensation they had. So this was a bonus structure
12 that was created to motivate me to achieve the, the
13 further goals.
14 Q. Right. So it sets out a
15 $200,000 base, correct?
16 A. Correct.
17 Q. A hundred thousand dollar
18 cash bonus. Do you see that?
19 A. Yes.
20 Q. Seventy-five percent of that
21 cash bonus payable for the sale of certain units?
22 A. Yes.
23 Q. And then a 25 percent
24 discretionary bonus?
25 A. Yes.

1 Q. And then separately, it
2 refers to a New Launch/CASA III Compensation
3 Structure?
4 A. Yes.
5 Q. So CASA III was a new project
6 being launched in or around 2013?
7 A. Yes.
8 Q. And when was it completed?
9 A. 2018. But it's still not, in
10 my opinion -- like, it was registered in 2018. It's
11 still not, like, completed from a construction
12 standpoint. I think today there's still outstanding
13 items to be completed, so I don't want to say it was
14 completed.
15 Q. Okay. Fair enough. I
16 appreciate that clarification. And the CASA III
17 compensation structure refers to between 0.125 and
18 0.175 percent of total sales?
19 A. Yes.
20 Q. And so, if I can summarize on
21 this page, there are at least two kinds of bonuses,
22 one being tied to revenue; the other being tied to
23 certain milestones. I guess you can say there's a
24 third which is purely discretionary. But you would
25 agree with me that there's nothing on this page tying

1 your compensation, at the time of this document, to
2 profit specifically, correct?
3 A. No, because that happened
4 after the fact.
5 Q. Right. So let's turn to
6 that, then, Document 3 in the joint book, which is
7 the draft 2014 employment agreement.
8 A. Yes.
9 Q. So this was prepared by you
10 from the template that we looked at in your
11 examination in-chief, right?
12 A. Correct.
13 Q. And we're all on common
14 ground that neither you nor Mr. Casey, nor anyone
15 else for that matter, ever signed it?
16 A. I don't believe so.
17 Q. But your position is that
18 this document reflected your expectations and
19 understandings?
20 A. It was what was agreed to.
21 Q. On page 1 of the document, it
22 sets out your salary of $500,000?
23 A. Correct.
24 Q. But you were never actually
25 paid a base salary of $500,000, were you?

1 A. No.
2 Q. You drew an annual salary of
3 $300,000?
4 A. Correct.
5 Q. And also various bonuses that
6 we will come to, right?
7 A. Yes.
8 Q. Okay. So still on page 1 in
9 the second paragraph under Salary, it states that:
10 "The employee will be
11 eligible for bonus payments
12 earned at the registration
13 of the condominium
14 declaration of each
15 development as well as bonus
16 on gross revenue sold. The
17 specific process for
18 allocation of the bonus will
19 be determined and agreed
20 upon by the Employer and the
21 Employee and outlined in
22 Schedule B of this
23 agreement."
24 A. Right.
25 Q. So breaking it down, there's

1 one kind of bonus to be earned at registration of the
2 condominium. And am I correct that would be the
3 profit share bonus?
4 A. The profit share bonus would
5 be paid at the end, yes.
6 Q. Right.
7 A. And any other bonuses, yes --
8 sorry, go ahead.
9 Q. And, sorry. Again, I was
10 saying there's two kinds: There's one which is on
11 registration, which is the profit share; and then
12 there's the other type of bonus, which is on gross
13 revenue. That's a sales commission, not a profit
14 share. It would be paid ahead of registration when
15 the sales actually occur, correct?
16 A. Yeah, so there was three
17 bonuses, because there was also the additional
18 bonuses of 500,000 for just my efforts on
19 construction, property management and everything
20 else. I mean, this document, if I -- the schedule
21 outlines what the payments are.
22 Q. Right. So let's look at the
23 schedule then. I think we all agree that it refers
24 to Schedule B, but it should have referred to
25 Schedule A?

1 A. Yes.
2 Q. Okay. There are six parts to
3 this. The first four -- it might be fair to
4 summarize them to say the first four are tied to
5 final registration of four different projects?
6 A. Yes, of four different
7 projects -- three different projects.
8 Q. Depends whether you consider
9 CASA II and III different projects or not, right?
10 A. Oh, yes. Okay.
11 Q. So the fifth is on final
12 closing of any future site that Cresford acquires?
13 A. Yes.
14 Q. And the sixth is the sales
15 commission?
16 A. Yes.
17 Q. So just -- I sometimes find
18 it hard to grasp. Let me just make sure we're all on
19 the same page here. When you talk about 0.15
20 percent, what that means is on a million dollars of
21 sales, you would make a 1500 commission?
22 A. Sorry, can you repeat that?
23 Q. So if you are taking a
24 0.15 percent commission, what that means is on a
25 million dollars of sales, your commission would be

1 $1,500?
2 A. So on -- can we do it on
3 bigger numbers. Sorry, I don't have -- I don't want
4 to make a mistake.
5 Q. Okay. On a billion dollars.
6 A. Yeah.
7 Q. Your commission would be
8 1.5 million?
9 A. Yes.
10 Q. Okay.
11 A. Ah -- yes.
12 Q. Okay. So the two out of the
13 six, the two that are tied to profit, on their face
14 at least, are four and five, correct?
15 A. Can you repeat that question?
16 Q. So on the six bonuses listed
17 here --
18 A. Yes.
19 Q. -- there are two of them that
20 are tied to profits; those are four and five,
21 correct?
22 A. Yes.
23 Q. Okay. And they both say
24 "final profits." "Final" means at the end?
25 A. Yes.

1 Q. And that means payment would
2 be made when the project was completed and profits
3 were realized, correct?
4 A. Yes. I mean, I don't want to
5 get -- like, basically, at this point in time, we
6 were completing several buildings. We had already
7 done many before this. And they were always
8 completed. So at the end of a project, I would make
9 10 percent when it's finally completed, when it goes
10 through final registration.
11 Q. Right.
12 A. But it was never crafted with
13 any doubt that projects that Cresford would
14 acquire -- that is a reputable, longstanding
15 builder -- It was never crafted in a way that there
16 was doubt that projects would never be completed. We
17 had already completed several.
18 Q. And you also expected the
19 projects to be profitable, because if there's no
20 profit, then there's no profit share, fair?
21 A. If there's no profit, there's
22 no profit share.
23 Q. And for example, you expected
24 the Vox project to be profitable when this document
25 was prepared in 2014?

1 A. No, Vox was interesting,
2 because when we bought Vox, we knew that it was a
3 tight deal. But at the time we had a construction
4 team and we had everything in-house, and it was --
5 you know, at the time, if we made a bit of money, we
6 were going to be happy. But it was primarily put in
7 the pipeline for fees. So, I mean, it didn't lose
8 any money and it didn't make -- you know, I don't
9 have the final proforma in front of me, but I never
10 made a big deal about whether or not I was going to
11 get paid 10 percent of the profits.
12 But from the outset, from a
13 management perspective, when we took on that project,
14 we knew that it was a tight project, and, you know,
15 we knew that we needed to add a project for fees.
16 Q. Now, you were never
17 actually -- I think you just said this, but let me
18 make sure I have it right. During your time at
19 Cresford, you never actually received a profit share
20 on any project, correct?
21 A. No, I didn't, because no
22 project completed, other than Vox, that was part of
23 this future bonus structure.
24 Q. Right. And, of course, just
25 because you successfully launch a project like Vox,

1 doesn't mean it's going to be profitable?
2 A. I don't know how to answer
3 that. Every project is -- you know, has -- every
4 project -- you, you project for it to do what you
5 would like on your original projections.
6 Q. Right. But projections
7 aren't reality. There's no way you can guarantee
8 profitability of a project upfront?
9 A. Well, they start to become
10 reality the more the project's components are
11 completed. So once sales are completed, once
12 contracts -- fixed construction contracts are in
13 place, you know, when you've agreed to the fix
14 contract prices, you've also got a pretty reasonable
15 and targeted construction schedule. And all of this
16 is also being monitored by a cost consultant and, you
17 know, at the end of the day, it's monitored.
18 So it's not, it's not like you
19 take a project on and go, oh, I hope it makes money.
20 You're monitoring it along the way so that it can be
21 successful.
22 Q. I understand that, but stick
23 with my question, which is much smaller than what you
24 think I'm asking, so I apologize for not being clear.
25 When you launch a project, you of course have

1 expectations that it's going to be profitable.
2 That's why you're doing it, right?
3 A. Yes.
4 Q. And I understand what you
5 say, that you monitor along the way. And the closer
6 you get to the end, the closer, if all goes well,
7 that projection matches the reality. I understand
8 that, okay? All I'm asking you is that the fact that
9 you have launched a project doesn't mean that the
10 reality is going to turn out as you had projected in
11 a proforma at the outset. There's no guarantees in
12 this business, right?
13 A. Okay, yes.
14 Q. Okay. That's all I was
15 asking you.
16 A. I know, but it's -- we're all
17 doing this -- we're all investing our time and
18 efforts in a business to make money.
19 Q. Yes. Now, under the bonus
20 structure for earlier projects like 1000 Bay,
21 CASA II, CASA III, you were entitled to a bonus on
22 registration, regardless of whether there was a
23 profit or not, correct?
24 A. Correct.
25 Q. So even if the project failed

1 to make money, you got a bonus just because it was
2 completed?
3 A. I got a bonus for all the
4 efforts on getting it completed.
5 Q. Right.
6 A. Because everybody -- like,
7 you know, the responsibilities that I had worked
8 like -- they were a lot of work. Managing the
9 company and all the different groups was substantial.
10 And that $500,000 bonus reflected the management of
11 the various divisions that reported to me, outside of
12 marketing and sales.
13 Q. I understand. I'm not
14 denying that you earned that or deserved that. I'm
15 not denying any of that. The simple point I'm making
16 is that the nature of those bonuses is different than
17 a profit share, because it does not depend on, it is
18 not contingent on the projects being profitable?
19 A. Correct.
20 Q. Okay. So profit share is
21 different, because you have a potential upside which
22 is much higher, as compared to these $500,000
23 bonuses. The potential upside for profit share is
24 much higher, right?
25 A. Correct.

1 Q. But there's also a chance
2 you'd get zero, if the project isn't profitable?
3 A. Correct.
4 Q. Okay. And if accepted by
5 Cresford, and I understand you say it was, you would
6 certainly agree that a profit share bonus would
7 represent a significant increase in your potential
8 compensation?
9 A. Yes.
10 Q. Okay. If we could go back to
11 page 2 of this document, you will see under the
12 heading Termination of Employment.
13 A. Okay.
14 Q. And then Number 4 there talks
15 about the bonus payments. It says:
16 "Bonus payments will be paid
17 in full at the completion of
18 any project in the
19 construction phase if
20 employee's employment is
21 terminated."
22 Now, this, this is recognizing
23 that you may contribute to the success of a project,
24 even if you were terminated, correct?
25 A. Yes.

1 Q. And success in Cresford's
2 business meant building it and registering it,
3 correct?
4 A. Or -- it says what it says.
5 Q. Okay. And what it says is
6 that profits are calculated at the completion of any
7 project, correct?
8 A. Yes.
9 Q. Okay. It doesn't say that
10 profits are determined and paid based on a proforma
11 at the time of your termination, correct?
12 A. That's very technical what
13 you're asking me to agree to.
14 Q. Well, all I'm asking you is
15 the words to the page here, which were drafted by
16 you. So this is -- this section of the contract is
17 dealing with the termination of employment, correct?
18 A. Yes.
19 Q. And what it provides for --
20 what you provided for here, in a document you say was
21 accepted by Cresford, is that your bonus payments
22 would be paid at the completion of any project, not
23 based on a proforma at the time of termination?
24 A. It reads as it reads. It
25 doesn't have any wording about proforma.

1 Q. Okay. And if we go to page 3
2 of the document, the last provision says that:
3 "Any amendment to this
4 agreement must be in writing
5 and signed by both parties."
6 A. Yes.
7 Q. Okay. And of course, there
8 was no subsequent amendment in writing to this
9 document?
10 A. No.
11 Q. You say that payments, if I
12 understand it correctly, you said payments were made
13 based on this agreement during your time at Cresford
14 after 2014?
15 A. Yes.
16 Q. But you've produced no
17 documentation that would indicate or record the fact
18 that any bonuses you received were in accordance with
19 this document, correct?
20 A. So I have admitted that I've
21 been paid with condominium credits for all those
22 bonuses, and I also can confirm that both in Dan's
23 pleading back, I mean, he acknowledges that I took
24 condominium credits with -- on condos through the
25 various companies.

1 MR. MILNE-SMITH: Mr. Dunn, did
2 you have an objection? Okay. You came back on
3 screen. I wasn't sure if you were upset with me
4 somehow.
5 MR. DUNN: I didn't mean to.
6 MR. MILNE-SMITH: Oh, okay. Okay,
7 good.
8 MR. DUNN: It might be just my
9 setting.
10 MR. MILNE-SMITH: I didn't think I
11 was doing anything objectionable.
12 BY MR. MILNE-SMITH:
13 Q. Let me try and be more clear,
14 Ms. Athanasoulis. You haven't produced in this
15 litigation a document, for example, that says, you
16 know, this condominium discount is being provided to
17 Ms. Athanasoulis in accordance with her employment
18 agreement of 2014?
19 A. The business was run very
20 informal. All the meetings with Dan Casey were all
21 face to face or over telephone. We agreed. He never
22 objected. He had the ability to for many, many
23 years. He knew the bonuses. He knew the condo
24 credits. Like, there was never an objection for all
25 these years for the payments that were made to me for

1 the efforts that I put into the business.
2 Q. I totally understand. I just
3 want to clarify a very simple factual point now,
4 which is that -- and I understand why you're saying
5 these documents have not been produced. The simple
6 factual point I want to clarify is that the reason
7 that kind of document hasn't been produced isn't that
8 you've lost it or that you can't find it; it's that
9 it never existed?
10 A. Which never existed, the
11 document that said that I get this bonus for this
12 bonus, et cetera? No.
13 Q. What do you mean -- go ahead.
14 A. Go ahead.
15 Q. I'm saying that I understand
16 we've got this document that we're looking at from
17 2014. My point is, when these bonuses were actually
18 paid after 2014, no document was ever created, to
19 your knowledge, or given to you indicating that the
20 bonuses were being paid in accordance with this 2014
21 document?
22 A. No.
23 Q. And Mr. Casey, of course, was
24 permitted to pay you bonuses at any time within his
25 discretion, if he so chose, correct?

1 A. That's -- the agreement that
2 we had in place was what I was working towards. I
3 didn't know that he would pay my discretionary
4 bonuses after the fact. I mean, we had an
5 arrangement that was pretty easy to follow in terms
6 of the payments. There were no ad hoc bonuses.
7 Q. Let me just stick with my, my
8 very limited question. Mr. Casey, if he wanted to,
9 was free to pay you a bonus at any time that he
10 wanted?
11 A. He owned Cresford. He could
12 pay anyone a bonus whenever he wanted.
13 Q. Exactly. Perfect. And you
14 were free to quit at any time if you thought he
15 wasn't being fair?
16 A. I never really thought about
17 that. Like, my time that was invested with Cresford,
18 I treated the business as my own. Like, I invested
19 all my time. I was the face of the company, the
20 brand. So I mean, to consider myself leaving, I was
21 vested with the business because I grew up in the
22 business. So the thought of me leaving was never a
23 consideration.
24 Q. Okay. You've described in
25 your evidence in-chief the launch of each of Clover,

1 Halo and 33 Yorkville. Do you recall that?
2 A. Sorry, can you repeat that?
3 Q. You've already described in
4 your evidence in-chief the launch of each of Clover,
5 Halo and 33 Yorkville?
6 A. Yes.
7 Q. I would like to talk to you
8 about those now.
9 A. Okay.
10 Q. I believe you indicated
11 in-chief that each of them, that the launch of each
12 of those three projects was extremely successful,
13 correct?
14 A. Correct.
15 Q. And by the successful launch,
16 what you mean is that you were able to sell the
17 necessary number of units to satisfy your financing
18 condition, correct?
19 A. I mean, I mean a lot of
20 things when I say "successful." I mean, every time
21 we launched a project, we launched it for a premium
22 to the market. So by industry terms, every time we
23 came out with a project, our product was best,
24 better. So, I mean, I would also consider that part
25 of me also saying that it's successful. But in terms

1 of revenues that we needed to achieve that were
2 outlined by, by acquisitions by Ted Dowbiggin and Dan
3 were always achieved.
4 Q. And you'd certainly agree
5 with me that in order to be a successful project, not
6 just a successful launch, it's not enough to just
7 sell the units?
8 A. People describe what
9 successful is in different ways. Like, you know,
10 your -- I'm not sure where -- what you're trying to
11 say by saying that. Because people in this business,
12 some people -- the two projects, both Halo and
13 Clover, were launched in a period of time that prices
14 in construction were escalating faster than anybody
15 in this industry could have predicted. So, I mean,
16 would I take the fact that construction prices
17 escalated to something -- to a degree that nobody
18 could guess at that time. Every developer in the
19 city had similar issues. Would I take away
20 describing both those projects as successful? I
21 would still say they were successful, like.
22 Q. I think I'm just trying to
23 make a very limited point here, which is that --
24 A. Which is?
25 Q. -- a condominium developer

1 wants to make money on a project, right? We're on
2 the same page there?
3 A. Yes.
4 Q. And to make money on a
5 project, you have to do more than just have a
6 successful launch and sell a bunch of units to
7 satisfy your financing condition, right?
8 A. You need to run a successful
9 business.
10 Q. You need to --
11 A. So some projects make money
12 and some projects don't.
13 Q. Right.
14 A. If you talk to any developer
15 in the city.
16 Q. And for a project to be
17 successful, you have to get to the end of the story,
18 which we talked about earlier, with final
19 registration and all the payables get paid, and all
20 the receivables get received. And you have a profit
21 after all that's been done, right? That's what makes
22 a project successful?
23 A. I just feel like I'm being
24 asked to agree to something like -- that's your
25 narrative. It's not -- like, again, like I've said,

1 regardless -- in my opinion, like, you know, if a
2 project is a break even project, you could still
3 describe that as successful if that's -- if your
4 primary goal was to run it for fees. It depends on
5 what decisions your making at the onset.
6 Q. Okay. So let me understand
7 that, then. So I think the point you're making, and
8 let me make sure I understand it, is that Cresford
9 projects existed as components of the overall
10 Cresford Group, right?
11 A. Correct. Cresford was a
12 brand.
13 Q. Right. And you talked about
14 these fees that get paid. And so let's understand
15 that. The fees get paid by the project company to
16 the management company, correct?
17 A. They get paid by the project
18 company to what I understand -- originally I would
19 have thought it was Rosedale, but it was EDRP. The
20 fees would have gotten paid to EDRP.
21 Q. Right. And that's East
22 Downtown?
23 A. Yes.
24 Q. Okay. And that's the entity
25 that paid you?

1 A. Yes.
2 Q. And so you'd agree with me
3 that there's a difference between the profits of a
4 project and what the profits of the overall Cresford
5 Group might be, because what's a payable to the
6 project is a receivable for East Downtown?
7 A. Sorry, I don't know where
8 you're going. I don't, I don't -- if you want me to
9 agree that if a project makes zero, you could
10 determine that it's unsuccessful, then if that's what
11 you consider unsuccessful, then I'll say yes.
12 Q. I just want to get your
13 evidence. And you brought up a point, which is a
14 fair one, about the fees, and so I just want to
15 understand that. So let's talk about a project that
16 doesn't make money within the project. So you're
17 saying that could still be successful from the
18 perspective of the overall company, because it might
19 have generated fees that were paid to East Downtown.
20 Do I understand that?
21 A. And employed, employed
22 several people, right. So you had an engine, and you
23 had a company you needed to run.
24 Q. Yes. So what I take from
25 that is that there's a difference from looking at

1 profits at the project level, as opposed to profits
2 at the overall Cresford Group level; am I right?
3 A. There's a difference, yes.
4 Each project you would, you would hope that it would
5 be successful in terms of its profits and make money,
6 yes.
7 Q. Okay. And going back to the
8 issue of the launch, then, you would agree with me --
9 and let me be clear, I'm not implying anything about
10 a particular launch that you did right now. I'm
11 asking this as a pure general hypothetical question,
12 okay -- would you agree with me that there's a
13 tension, or at least there can be a tension between
14 selling all the units, on one hand, and making a
15 profit in doing so on the other?
16 A. It depends. I can't say yes
17 or no. Like, it depends. Have you negotiated all
18 your fixed price contracts before you sold. So if
19 you're asking me to talk about this business
20 hypothetically, there's so many variables.
21 Q. So let me break this down and
22 try to be more helpful to you. All things being
23 equal, if you have lower prices for your units, they
24 will be easier to sell, right? That's obvious.
25 A. Okay.

1 Q. You agree with me, though,
2 right?
3 A. Sure. But who is in the
4 business of just saying let's sell these units at
5 lower prices.
6 Q. No. Of course. I
7 understand. This is the tension I'm talking about.
8 So on the one hand, if the prices are lower, it's
9 going to be easier to sell the units; but on the
10 other hand, if you have lower prices, it's going to
11 reduce your revenue and your potential profit, right?
12 A. Not necessarily. It depends
13 what your proforma is from the beginning. I don't,
14 like -- you know, there's -- I'll give you examples.
15 But, you know, when we launched a specific building,
16 many years later projects in the neighbourhood could
17 still not achieve the numbers that we achieved.
18 Q. Okay.
19 A. So I mean, your marketing
20 campaign and your marketing efforts and your sales
21 techniques are very important in order to achieve the
22 prices that you've set at the onset, which, if
23 they're aggressive, takes a lot of work.
24 Q. I fully understand. But you
25 would agree with me also that when you're calculating

1 a profit, there's two sides; there's revenue and
2 there's costs, correct?
3 A. Correct.
4 Q. And you've been talking about
5 with the launch, that's all on the revenue side,
6 correct?
7 A. Correct.
8 Q. But it's equally important
9 that you control your costs when you're actually
10 building the business so that your revenues exceed
11 the cost when you're actually building the project,
12 so that revenues --
13 A. But you're doing those in
14 parallel.
15 Q. I understand. But you'd
16 agree with me that both are equally important in
17 order to have a profitable project?
18 A. Yes.
19 Q. Okay. Let's talk about the
20 state of affairs as at the end of 2018. You had a
21 position, obviously, of significant authority at
22 Cresford?
23 A. Yes.
24 Q. You were the president and
25 chief operating officer?

1 A. Yes.
2 Q. You earned a base salary of
3 $300,000, plus bonuses?
4 A. I, I -- the agreement,
5 though, was 500, but what I actually was paid through
6 East Downtown was 300.
7 Q. Plus bonuses?
8 A. Yes. And, and my profit, and
9 my profit agreement.
10 Q. I want to talk about what you
11 were actually being paid. So we agree that you never
12 actually received --
13 A. Okay.
14 Q. Profit never came to
15 fruition. So in terms of the bonuses you did
16 receive, sometimes they were cash and sometimes they
17 were discounts.
18 A. Yes.
19 Q. Okay. And you never invested
20 equity in the company; do I have that right?
21 A. I never invested equity, no.
22 Q. You were an employee, a very
23 senior employee, obviously, but you were an employee,
24 not a partner or an owner?
25 A. I was not -- I mean, Dan

1 would call me a partner at meetings, based on our
2 relationship. So if that, if that helps you
3 understand the relationship we had and sort of -- but
4 I didn't have anything in writing, no.
5 Q. Right. There was no limited
6 partnership agreement, for example?
7 A. No.
8 Q. So let's talk, then, about
9 the February 2019 meeting with Dan Casey and
10 John Papadakis.
11 A. Yes.
12 Q. John was external counsel to
13 Cresford at the Blaney McMurtry firm?
14 A. Yes.
15 Q. And the purpose of the
16 meeting, from your perspective, was memorializing or
17 properly documenting your compensation for the
18 various Cresford entities, right?
19 A. Yes.
20 Q. And Mr. Papadakis gave
21 evidence that he had no notes of that meeting. Is
22 that consistent with your recollection?
23 A. He did take notes at the
24 meeting.
25 Q. Okay. Are you aware that

1 Mr. Papadakis hasn't been able to locate any notes of
2 this meeting?
3 A. I am aware of that.
4 Q. And if we can turn up Tab 37
5 of the joint brief. This should be an email from
6 Mr. Papadakis to Al O'Brien of the Nelligan firm.
7 And on page 2 --
8 A. What tab should I look at,
9 sorry?
10 Q. Thirty-seven, 37.
11 A. Thirty-seven.
12 Q. So just scroll up a little
13 bit so you can see the header of that email. There
14 we go. So what we have here is a February 6th email
15 from Mr. Papadakis to Cathy Alderson, who we've
16 already discussed was the assistant to Mr. O'Brien.
17 And Mr. Papadakis says:
18 "I have not been able to
19 locate any notes at this
20 time."
21 So given this document and
22 Mr. Papadakis' evidence, I just want to confirm if
23 you are certain that he took notes during that
24 meeting. Is it possible --
25 A. He had a notepad. He had a

1 notepad, he had a pen, and he was writing, so those I
2 would consider as notes.
3 Q. Okay. With respect to the
4 profit share agreement that you assert in this case,
5 am I correct in understanding that profit was to be
6 calculated after equity was repaid to limited partner
7 investors?
8 A. Sorry, have I -- is there
9 somewhere that I should be looking at for that?
10 Like, have I said that before? I mean, yes, that's
11 my understanding, that the limited partners would get
12 paid first --
13 Q. Okay.
14 A. -- before any profits paid.
15 Q. You did say that in
16 discovery, but you agreed with it now, so there's no
17 need to go to it.
18 A. Yeah, I mean, listen, it
19 would only make sense.
20 Q. Okay. And do you know
21 whether or not limited partners are projected to
22 receive their full payment as part of the YSL
23 proposal?
24 A. I think they, they received
25 nothing. They were given an offer. From me reading

1 the, the trustee's reports and all of that, they --
2 there was no payment to the LPs.
3 Q. Okay.
4 A. I mean, unless you want to
5 show me something and I can say yes I read this, this
6 or that.
7 Q. No, that's fine.
8 A. I don't follow their
9 arrangement a hundred percent.
10 Q. Okay. I just wanted to know
11 what your understanding was. Can we just go off the
12 record for a moment and, perhaps, let Ms.
13 Athanasoulis out of the -- into a breakout room. I
14 just wanted to have a quick chat with Mr. Dunn and
15 Mr. Horton on this.
16 ARBITRATOR HORTON: Angela, could
17 you please put -- thank you.
18 MR. MILNE-SMITH: So this is --
19 MR. DUNN: I'm sorry. I think --
20 I can still see Ms. Athanasoulis in the -- on the
21 screen.
22 MR. MILNE-SMITH: Oh.
23 ARBITRATOR HORTON: Okay. Angela,
24 could you please put Ms. Athanasoulis in the breakout
25 room?

1 MR. MILNE-SMITH: The screen in
2 front of me only shows video participants, so I have
3 to look at Mr. Li's screen to see that she's still
4 there.
5 ARBITRATOR HORTON: We have
6 contact with Ms. Yu.
7 MR. DUNN: With your permission,
8 I'm happy to just -- I'm happy to proceed. I suspect
9 Ms. Athanasoulis is probably -- has probably stepped
10 away from her screen. I know what my friend is going
11 to say, and I don't think --
12 ARBITRATOR HORTON: Yeah, but she
13 should be --
14 MR. DUNN: If Ms. Athanasoulis was
15 to overhear it, I'm not all that troubled by it.
16 ARBITRATOR HORTON: Maybe your
17 friend is, or maybe it will help me, you know, to
18 keep things in compartments that they need to be kept
19 in. And, frankly, I don't know how the participant
20 list shows if someone is in a breakout room, if they
21 show as being a participant in the main meeting or
22 not.
23 So I'm just a little concerned,
24 also, that I don't have contact with Ms. Yu. Ms. Yu,
25 could you come on the screen, please.

1 --- OFF-THE-RECORD DISCUSSION RE TECHNICAL ISSUE.
2 ARBITRATOR HORTON: Ms. Yu, we
3 just need Ms. Athanasoulis put in a breakout room.
4 MS. VU: Yes. Of course. My
5 apologies. The icon next to my name is the recording
6 icon.
7 ARBITRATOR HORTON: That's what it
8 is. It's the recording. Yes. Of course.
9 MR. MILNE-SMITH: So the issue, as
10 Mr. Dunn said, I raised this with him previously, and
11 I think Ms. Athanasoulis actually gave evidence that
12 is more favourable to me than the truth is. I have
13 proposed to Mr. Dunn that there be an agreed fact
14 that -- and this is based on the position of the
15 proposal trustee as a court officer.
16 The position of the proposal
17 trustee is that the LPs, the limited partners, are
18 going to have some recovery, but they will not make
19 full recovery of their investment according to its
20 terms, even if Ms. Athanasoulis' claim is denied in
21 full.
22 So I only first raised that with
23 my friend yesterday. And I'm not insisting that he
24 agree to that right now. But I would ask that we
25 agree to this by end of day today. Because if he

1 doesn't, I'm going to have to call a representative
2 of KSV to give five minutes of testimony to say just
3 that.
4 MR. DUNN: The difficulty, and I
5 apologize, I should have explained this to my friend
6 this morning or yesterday evening. The difficulty is
7 I didn't want to take instructions on this point
8 without communicating -- or, sorry, while -- I can't
9 take instructions while Ms. Athanasoulis is under
10 cross-examination.
11 MR. MILNE-SMITH: Right.
12 MR. DUNN: And I'm not comfortable
13 agreeing to anything without taking instructions.
14 Certainly it's not my intention to -- as I understand
15 it, the trustee has projected certain things. We
16 don't have visibility because of confidentiality
17 concerns into exactly what's underlying the
18 projection. But I suspect we can come to an
19 arrangement that will -- we can agree to enough that
20 my friend will be satisfied.
21 Certainly I have no difficulty
22 that the trustee's projection is what it is. It's
23 not entirely clear how many contingencies sort of
24 underlie that, and how likely or unlikely the
25 projection is to be -- to prove out. But in any

1 event, I'm sure that I can speak with my friend and
2 find a path that obviates the need for the trustee to
3 testify.
4 MR. MILNE-SMITH: Okay. That's
5 fair. I will seek instructions as well on providing
6 you the projection on a confidential basis.
7 ARBITRATOR HORTON: Okay.
8 MR. MILNE-SMITH: And so what I
9 propose is that we take the morning break now. I
10 will speak to my client about that. Mr. Dunn, of
11 course, made a very good point about not speaking to
12 your client while under cross-examination. And I'm
13 hopeful we'll get this all resolved this afternoon.
14 ARBITRATOR HORTON: Okay. But I
15 have something I want to raise in relation to this
16 very point.
17 MR. MILNE-SMITH: Yes.
18 ARBITRATOR HORTON: And I think
19 it's in relation to this very point. I might be
20 mistaken in that. But it is something that has been
21 on my mind for some time, and I hesitated to raise it
22 before, because I really want -- in view of the types
23 of issues that are in play in this arbitration, I
24 really am looking to counsel to present the evidence,
25 and try not to interfere too much in it.

1 But since we're on this point,
2 you've opened the door for me to let you know
3 something that's been on my mind, and that is this:
4 That as I understand it, I've been asked to determine
5 whether or not there was an agreement with respect to
6 this profit share. I think in the course of making
7 that determination, the parties expect me to -- if
8 there was no agreement, then, of course, that ends
9 the matter. If there is an agreement, I think the
10 parties expect me to say what the terms of the
11 agreement were.
12 Then there is this issue as to
13 whether or not Ms. Athanasoulis was constructively
14 dismissed. I understand that I am to make that
15 determination. But there may be some arguments,
16 then, based on whether or not she was constructively
17 dismissed, as to whether that has some bearing as to
18 whether or not the profit share would still be
19 available in the circumstances of the insolvency.
20 And then there's a second part that we would only get
21 to if I determine there was a profit share, which has
22 to do with the calculation of damages.
23 Now, yesterday I raised the issue
24 about a potentially missing piece as to whether or
25 not questions of causation relating to the damages

1 are a part of phase one or a part of phase two, or
2 whether they're really to be determined by me at all.
3 And this then leads to the
4 question that I have, because I don't understand that
5 I have been given or will be given the job of
6 determining -- let's say, for example -- because none
7 of these issues arise if I find there's no agreement.
8 So let's just live in the world of an assumption that
9 there's a finding that there's an agreement. I don't
10 believe I've been given the job, nor do I expect to
11 be given the job of determining where that claim
12 would fit within the bankruptcy -- or within the
13 proposal, I should say.
14 That is still a matter to be
15 determined, I would imagine, and I'm just -- this is
16 just me in my thought process, you know, among the
17 trustee and whether the proposal gets revised, or get
18 renegotiated, or gets approved, or doesn't get
19 approved by the Court, or whatever, that's all for
20 someone else to decide. All I'm deciding is whether
21 or not there is a claim that can stand up on its feet
22 and that has some value.
23 So I'm aware -- and I want to be
24 quite explicit about this. I'm hoping Mr. Casey is
25 also -- Mr. Casey is not among us, I gather. All

1 right. So it's just among counsel. I wanted to
2 raise this with counsel in the first instance, and
3 with Ms. Athanasoulis not being here. I want to be
4 fair to the parties. I'm not doing this on a, you
5 know, counsel's eyes basis or whatever. Just for the
6 moment, we're on an equal playing field. And that is
7 this, you know, I am conscious of the fact that the
8 profit share -- and I don't think this is
9 contentious. The profit share only arises after
10 everyone who has some other claim to the funds has
11 been paid, you know, whether it's trades, whether
12 it's outstanding construction fees, whatever the case
13 may be.
14 And if we have people in that
15 category who have not been paid, and this claim,
16 which would normally have been a claim that only
17 applies to funds that are available after those
18 people have been paid, now ranks together with those
19 claims, such that it kind of inverts the payment
20 pyramid. That's not a function of anything, I think,
21 I'm being called upon to decide, as I understand it.
22 That's a function of whatever the insolvency process
23 is.
24 Okay. So I don't expect anyone to
25 be asking me to make a different determination on

1 whether or not there was an agreement, based on what
2 the impact of that agreement would be on other
3 creditors, as a result of the insolvency process.
4 Unless I'm mistaken, I don't think the one has
5 anything to do with the other. And I just want to
6 make sure that we're all on the same page there.
7 MR. MILNE-SMITH: I agree with
8 that. All I would say is that in terms of defining
9 the terms of any profit sharing agreement, I think
10 that would have to include a finding as to how
11 profits were to be calculated. And I don't think I'm
12 telegraphing things too much to say our position is
13 that if there is a profit share agreement, the profit
14 has to be calculated after payment to the LP
15 investors.
16 ARBITRATOR HORTON: Well,
17 that's -- I mean, that's, that's a matter of
18 contention, as I understand it, in the arbitration,
19 as to (a) whether or not that was a term either
20 expressed or implied in the notion of profit share;
21 and if, in fact, it was not a term, whether it was --
22 not something that was understood, whether that would
23 cause the agreement not to be effective because of
24 the lack of an essential term.
25 So there are a lot of different

1 moving pieces to this, which is what makes it, from a
2 professional point of view, a very, very interesting
3 problem to resolve. But usually one side or the
4 other doesn't like to hear me say that it's an
5 interesting problem. Maybe both sides won't like to
6 hear me say it's an interesting problem.
7 But anyway, I just want to have it
8 out there that I think this is an issue. And I
9 understand that the trustee is calling on me to make
10 some determinations, either, either to say that the
11 agreement is not effective because it doesn't provide
12 for that, or to suggest that it implies that. But it
13 is an open issue, in my mind, as to whether or not,
14 if the parties didn't apply their minds to it, but I
15 nevertheless find that the agreement itself is
16 effective, then what the impact of that within the
17 context of an insolvency might be.
18 I think if all of the dominos fall
19 in that way, it would be beyond my purview to say how
20 that claim should be or should not be recognized in
21 an insolvency proposal.
22 MR. MILNE-SMITH: I understand.
23 ARBITRATOR HORTON: Okay.
24 MR. DUNN: And just so that you
25 have our position, Mr. Horton, it is very much

1 aligned with the concerns that you have articulated,
2 which is that it is not before you right now, nor is
3 there a record that would allow you to make a
4 determination about whether there was a profit on
5 this project or not. And nor is it before you to
6 have the -- to make a determination about the effect,
7 and whether it properly belongs in the damages phase
8 or somewhere else, the effect of the proposal.
9 Because there was a very substantial payment to
10 Cresford as part of the proposal, or in parallel to
11 the proposal, before the LPs were paid in full.
12 So the argument about how things
13 were supposed to go does have to reflect the reality
14 that that's not how things went in the end. But in
15 my submission, and you will hear more from me at the
16 end, the task here is just to determine what the
17 terms were. How that then plays out at the damages
18 phase ought to be left for when we have the evidence
19 about what happened, what would have happened but for
20 the breach, and we're in a position to calculate it.
21 ARBITRATOR HORTON: Okay. I've
22 heard both of you, and I'm glad we had the
23 discussion, because it just clears the air on it a
24 little bit in terms of why I'm hearing certain
25 evidence and so on. I see the value of the evidence,

1 but I just want to be clear that we're not presuming
2 certain, you know, presuming that certain issues are
3 in play that may not be in play and may never be in
4 play because of -- well, frankly, the insolvency
5 jurisdiction of the Court, you know, is not one that
6 is likely, if ever, encroached upon by an arbitrator.
7 Okay. So let's take the morning break. We'll be
8 back in 15 minutes.
9 MR. DUNN: If I could just ask
10 Ms. Yu to make sure to let Ms. Athanasoulis know that
11 we're taking a break so that she's not left waiting.
12 MR. MILNE-SMITH: Yes.
13 ARBITRATOR HORTON: All right.
14 Thank you very much.
15 MR. MILNE-SMITH: Thank you,
16 everyone.
17 --- Recess at 11:03 a.m.
18 --- Upon resuming at 11:20 a.m.
19 ARBITRATOR HORTON: We can
20 proceed. Is everyone ready? I don't see Ms.
21 Athanasoulis yet.
22 MS. VU: I will admit her now.
23 ARBITRATOR HORTON: Okay.
24 BY MR. MILNE-SMITH:
25 Q. Welcome back, Ms.

1 Athanasoulis. You testified in your evidence
2 in-chief yesterday that profits were to be calculated
3 based on the proformas of each project company. Do
4 you recall that?
5 A. Yes.
6 Q. So it's calculated on an
7 entity-by-entity basis, correct?
8 A. Yes.
9 Q. Let's pull up your proof of
10 claim that we looked at before. That's Tab 22 of the
11 joint book.
12 A. Okay.
13 Q. I just want to take you to --
14 so we look before at the proof of form claim itself,
15 Schedule A. Also attached to that document, which we
16 haven't looked at until now, is the statement of
17 claim you filed with the Superior Court on January
18 21, and that's at page 19 of the overall PDF. So do
19 you see that?
20 A. Page 19?
21 Q. Don't worry, I'm giving my
22 colleague the PDF reference. This is on the screen
23 now.
24 A. Okay.
25 Q. The first page of the

1 statement of claim, which is at page 19 of the
2 overall proof of claim package, okay?
3 A. Yes.
4 Q. So obviously, I take it, you
5 would have reviewed and approved the content of this
6 statement of claim before it was filed?
7 A. Yes.
8 Q. And let's just see if we're
9 on the same page here. When I look at the list of
10 defendants, I see a number of what I would call
11 project companies; is that fair?
12 A. Yes.
13 Q. And then the three parties
14 that look to me like they're not project companies,
15 and tell me if I'm right or wrong in this, is
16 Cresford Rosedale Developments, East Downtown
17 Redevelopment Partnership, and then, of course,
18 Daniel Casey?
19 A. Yes.
20 Q. Okay. So Cresford Rosedale
21 and East Downtown, those are management companies,
22 rather than project companies?
23 A. Cresford Rosedale -- they're
24 not management companies. Like, in my opinion, like,
25 Cresford Rosedale is a clearing house, and East

1 Downtown Redevelopment is where the fees were
2 collected, and that's where my, my employment was
3 paid.
4 Q. Okay.
5 A. My salary was paid.
6 Q. And what do you mean by a
7 clearing house for Rosedale?
8 A. I don't know specifically
9 what Rosedale was for. Like, it injected money. It,
10 it -- I'm not a hundred percent sure what the purpose
11 and use of Rosedale was for.
12 Q. That's fair. All I think we
13 need to agree on for this point is that it wasn't a
14 project company, right?
15 A. Correct.
16 Q. Okay. So if we go to
17 paragraph 2 of this document, you'll see that it
18 defines the corporate defendants, so that would be
19 everyone except Casey as collectively the term
20 "Cresford." Do you see that?
21 A. Yes.
22 Q. So then let's go to paragraph
23 105 of the document, and this is at page 29 of the
24 statement of claim, or at page 49 of the PDF. And if
25 I look at the second sentence of this paragraph, it

1 states that:
2 "She [being you] is entitled
3 to 20 percent of all the
4 profits earned by Cresford
5 on the Projects. The
6 Projects are expected to
7 yield profits of
8 $242 million, with a
9 majority of this coming from
10 YSL, and Ms. Athanasoulis is
11 entitled to 20 percent of
12 those profits, which are
13 equal to $48 million."
14 Do you see that?
15 A. Yes.
16 Q. And you would agree with me
17 that in speaking of 20 percent of the profits earned
18 by Cresford, that's different from the profits of the
19 projects, correct, because it includes East Downtown
20 and Rosedale?
21 A. I consider Cresford as
22 Cresford, like all of the companies. Like, I -- yes.
23 Q. And all of the companies
24 includes more than just the project companies?
25 A. Okay.

1 Q. So you would agree with me
2 that -- well, let me ask you. I see an inconsistency
3 here between what you gave in your evidence
4 yesterday, which is that it was based on profits
5 earned on the projects at the project on
6 entity-by-entity basis. This seems to be telling me
7 that, in fact, the way you say the profits are
8 supposed to be calculated is based on the overall
9 profitability of the Cresford Group. So which is it?
10 A. Well, I considered -- so, you
11 know, at the time of drafting this and what I
12 approved in terms of my lawsuit and all that, at the
13 time Cresford was Cresford to me, and each individual
14 project was run each individual project. I knew
15 Cresford as Cresford, all of the different companies
16 then led up to another company, like -- but it
17 didn't -- like I didn't mean anything, but I would
18 earn a 20 percent profit on the Cresford properties.
19 It's later come to my attention potentially what
20 Rosedale was or is.
21 Q. So you just hadn't drilled
22 down on the precise manner in which the profit had to
23 be calculated, and what entities had to be considered
24 in --
25 A. Not necessarily. I always --

1 East Downtown only had the relationship with
2 collecting the fees, right.
3 Q. Yes.
4 A. Rosedale, as far as I know,
5 like, didn't have an involvement with the projects,
6 other than -- like, so but is it a Cresford company,
7 yes, it's a Cresford company.
8 Q. And you haven't considered
9 how the overall profitability or otherwise of East
10 Downtown or Rosedale might factor into the
11 calculation of the overall profits of the Cresford
12 Group on any particular project, fair?
13 A. Fair.
14 Q. You didn't know how to
15 account for the $60 million in fees that was budgeted
16 in the proforma to be paid by the YSL project
17 companies to East Downtown, correct?
18 A. I hadn't budgeted for that?
19 I mean, it was in each proforma what got advanced in
20 terms of fees.
21 Q. Right. But you hadn't given
22 any consideration to whether that $60 million figure
23 would be a revenue item or an expense item for the
24 purposes of calculating the profits on the project?
25 MR. DUNN: I apologize. I have an

1 objection, although I think it's just a wording
2 issue. I want to make sure the witness understands
3 when you say -- my friend is asking what had been
4 considered. I just want to make -- and we're looking
5 at the statement of claim. And I just want to make
6 sure that the witness is clear about what time period
7 we're talking about.
8 MR. MILNE-SMITH: Okay.
9 BY MR. MILNE-SMITH:
10 Q. At the time that you filed
11 this statement of claim, you had not given any
12 consideration as to whether or not the $60 million in
13 various management fees from the proforma would be
14 considered a revenue item or a cost item for purposes
15 of calculating the profits of the Cresford Group, as
16 you've pleaded here in paragraph 105?
17 A. Each project had its own
18 profits, and the fees were an expense.
19 Q. But you stated here in
20 paragraph 105 that what you were asking for is
21 20 percent of the profits earned by Cresford, and
22 Cresford includes East Downtown and Rosedale,
23 correct?
24 A. Yes.
25 Q. And so to look to East

1 Downtown, those fees were a revenue item, correct?
2 A. I would assume if there's a
3 profit on the fees at the end of the project,
4 potentially they would go back. I don't know how
5 they were operating East Downtown or Rosedale.
6 Q. And you were also asking for
7 a percentage of East Downtown's profits in this
8 proceeding, weren't you?
9 A. If that would be -- if they
10 earned a profit, then I would assume that I would get
11 a profit. I do assume I would get a profit.
12 Q. Okay. So you're asking for
13 more than just profits from the project companies.
14 You're asking for the profits from all of the
15 Cresford entities as a group, correct?
16 A. Well, I consider all the
17 projects Cresford. So when I say Cresford, I
18 consider all the entities that have a play within
19 this organization. If they're earning a profit, then
20 they owe me a profit.
21 Q. Again, just to wrap up this
22 point. As of this point in time, you hadn't given
23 any consideration as to how to calculate and account
24 for the fees in terms of calculating the overall
25 profit of the Cresford Group?

1 A. No.
2 Q. And you would agree with me
3 that what's in a proforma, that is obviously a
4 projection. We talked this morning about how it gets
5 closer to reality as it goes along, right?
6 A. Yes.
7 Q. And what's in a proforma may
8 wind up very different from, for example, what are
9 taxable profits that are reported on income tax
10 statements at the end of a project?
11 A. The taxes for that specific
12 project are in the proforma. How taxes are paid
13 afterwards, I mean, I would get my 20 percent and I
14 would decide what I want to do with my taxes, like,
15 what taxes the project has to pay afterwards. A
16 proforma is a proforma. The profit is the profit on
17 that specific project.
18 Q. My simple point is that when
19 Cresford, the various Cresford entities filed their
20 tax returns at the end of the day, the profits that
21 they report on any given project may be different
22 from what was in these proformas. Do you agree with
23 that?
24 A. They shouldn't be.
25 Q. All right. Are you aware of

1 how the tax accounting works on the Cresford Group?
2 A. No.
3 Q. And were you involved in the
4 preparation of financial statements for the Cresford
5 Group?
6 A. No.
7 Q. So you wouldn't know how, for
8 example, how the profits of the company was accounted
9 for in its financial statements?
10 A. That doesn't matter. Like,
11 it doesn't matter to me. I mean, a project profit is
12 a project profit. The proforma is the profit.
13 Q. And am I correct that you had
14 not made any formal arrangements with Mr. Casey or
15 Cresford about the manner in which you would be paid?
16 A. The manner in which I would
17 be paid, like in terms of would it go to a numbered
18 company or to my own name?
19 Q. Correct.
20 A. Correct. We had left that
21 open to how I, I wanted to deal with it with my own
22 accountants.
23 Q. Okay. So let's pull up the
24 proforma again. That's Tab 5 of the joint book.
25 Let's just talk about some of the specific items on

1 here. So just on the first page, and we'll zoom in
2 in a little bit so people can see it better.
3 Obviously, this sets out projections for both cost
4 and revenue, right?
5 A. Correct.
6 Q. And looking specifically at
7 the costs, the costs are contingent on certain
8 assumptions or expectations about the schedule of the
9 project, correct?
10 A. The schedule is a, is a piece
11 of it.
12 Q. Right. And if there are
13 delays in the schedule, that can affect the costs?
14 A. Correct. But in terms of
15 this proforma, it's not the major cost.
16 Q. So let's go over to page 3 of
17 this document, which shows a Cost Summary, including
18 Costs to Date, Cost to Complete and Total Cost. Do
19 you see that?
20 A. Yes.
21 Q. So on construction costs, it
22 shows that there are $400 million of construction
23 costs projected to complete the project. Do you see
24 that?
25 A. Yes.

1 Q. So while I agree that that is
2 less than half of the overall roughly billion dollars
3 in total costs, that certainly is a very significant
4 cost component, correct?
5 A. Schedule?
6 Q. No, construction costs,
7 $400 million, Cost to Complete?
8 A. Construction is a significant
9 budget item, yes.
10 Q. And schedule can have an
11 impact on construction cost?
12 A. Schedule can -- no, because
13 when you negotiate your contracts, they're fixed
14 price contracts.
15 Q. But costs -- notwithstanding
16 the fact that they are fixed price contracts, those
17 prices can change and increase over time as a result
18 of things like delays, correct?
19 A. Again, it depends on what
20 you've negotiated with your trade. And there are
21 some, some extras, potentially, because of time, but
22 your majority of the contract is locked in.
23 Q. Ms. Athanasoulis, you will
24 recall that -- and we'll come to this again later,
25 but let's just see if we can agree on what I thought

1 was a pretty basic fact -- on 33 Yorkville, Clover,
2 and Halo, Cresford suffered from significant cost
3 overruns on each of those projects, correct?
4 A. They were not managed like
5 YSL.
6 Q. Okay. Now, YSL actually
7 hadn't been built, it had just been excavated, so you
8 still had out of a total $412 million in
9 construction, you only had done $11 million of the
10 total $412 million budgeted construction cost. So
11 construction had barely begun?
12 A. It had a condition on the
13 financing that 65 percent of the contracts had to be
14 negotiated and delivered to the cost consultant for
15 confirming accuracy, so that they could confirm the
16 bulk of the -- or a big portion of the construction
17 budget.
18 Q. But that's not my question,
19 Ms. Athanasoulis. My question is, construction had
20 barely begun, correct?
21 A. Correct, construction had
22 begun, but you can say barely. It was 10 percent of
23 the construction schedule, so I mean it was -- it
24 wasn't zero percent or 2 percent.
25 Q. Well, no, it actually is much

1 closer to 2 percent than to 10 percent, because
2 11 million is less than 2 percent of 412 million.
3 A. Okay.
4 Q. And, obviously, as things
5 proceeded in the project, there can be unexpected
6 events that affect the schedule and the cost,
7 correct?
8 A. No. Again, when you're at
9 the financing stage and you've delivered the
10 contracts and you've started construction, your
11 unexpected changes could be a slight schedule, which
12 would result in an interest variance. But your
13 construction prices should be fairly in line with
14 what you've budgeted, and you have a contingency to
15 allow for any extras.
16 Q. Should be, but aren't always,
17 correct?
18 A. Like, that's for you to say.
19 Like, okay. Like, you're trying to use YSL as an
20 example, and if that's what you're doing, then YSL
21 had 65 percent of its construction contracts
22 negotiated and in place, and it had a very healthy
23 contingency to allow for any schedule delays.
24 Q. Okay. Let's look at Tab 22,
25 again, of the joint book, which is the statement of

1 claim that we were looking at.
2 A. Okay.
3 Q. And if we go to page 16 of
4 the statement of claim, paragraph 58. This is where
5 you talk about Clover. It says that, "Clover is
6 currently under construction"?
7 A. Paragraph 58. Yes.
8 Fifty-eight?
9 Q. Yes. It says:
10 "Clover is currently under
11 construction. The costs are
12 carefully monitored by
13 Altus..."
14 Who we've heard about. And then
15 at the bottom of the paragraph, it says:
16 "Clover Inc. is responsible
17 for cost overruns, and if
18 projected costs exceed the
19 original budget, then Clover
20 Inc. must fund the increased
21 costs before further funds
22 will be advanced."
23 And in fact, Clover did incur
24 significant cost overruns. That's part of why the
25 project was unprofitable, correct?

1 A. The project was a break-even.
2 Q. Right. It was not
3 profitable?
4 A. Sure.
5 Q. And it did incur cost
6 overruns, correct?
7 A. It did incur cost overruns.
8 Q. And you have no way of
9 knowing whether had the YSL project proceeded as
10 planned -- we know it didn't, but if it had proceeded
11 as planned through 2020 and 2021, it might also have
12 suffered delays in cost overruns, correct?
13 A. Clover did not have an
14 agreement with the lenders to have the, the pre --
15 the contracts pre-determined at 65 percent like YSL,
16 which was part of the reason for its failure, or its
17 lack -- but it wouldn't have happened, had a lender
18 contracted with the financing to have 65 percent of
19 the hard costs in place.
20 Q. That's not my question,
21 ma'am. My question is, you can't know what would
22 have happened had construction proceeded in 2020 and
23 2021, whether the proforma projected costs would have
24 actually been met. There's no way to know that,
25 because it never happened.

1 A. There was 65 percent of
2 contracts in place, and a contingency to use for any
3 overruns that you're talking about.
4 Q. So, Ms. Athanasoulis, are you
5 aware that as a result of the COVID 19 pandemic,
6 there was a moratorium imposed on the City of Toronto
7 for a period of months for any below grade
8 construction projects? Are you aware of that?
9 A. For any below grade
10 construction projects, okay. And so do you have --
11 you want me to read it? Do you want to put it up on
12 the screen? Did it cause two months of delays? Did
13 it cause three months?
14 Q. I'm asking you, were you
15 aware of that.
16 A. I'm aware that COVID had some
17 impacts, but I'm also aware that construction carried
18 on, and I'm also aware that certain sites also were
19 able to continue, et cetera.
20 Q. You're aware that some sites
21 were shut down and others were able to continue,
22 correct?
23 A. Okay. I'm aware that COVID
24 had an issue or an impact on schedule.
25 Q. Right. And it could have had

1 an impact on YSL also, correct?
2 A. Okay, but schedule and costs
3 are two different things. So if you want to talk
4 about schedule, then you can budget, you know, a
5 million dollars of interest delays, or it could be
6 less, it could be more, depending on what your
7 interest rates with the banks are. But that would
8 also be something that could be covered by
9 contingency. It's not a significant amount that
10 would cause, you know, a significant difference in
11 your, in your overall budgeting.
12 Q. So, Ms. Athanasoulis, let me
13 just make I have your evidence straight. Your
14 evidence is that YSL didn't make any -- sorry.
15 Cresford didn't make any money on Vox, and it was not
16 projected to make any money on any of Clover, Halo or
17 33 Yorkville. We're on the same page for all of
18 that, right?
19 A. Thirty-three Yorkville was
20 making a profit.
21 Q. Okay. We'll come to this.
22 But my -- let's see if we have this. My
23 understanding is that 33 Yorkville was not projected,
24 as of the end of 2019, was not projected to be
25 profitable. Do you agree with that?

1 A. It was projected to be
2 break-even. But it could have, it could have made
3 money if there was an increase in prices, which is
4 what happened through COVID.
5 Q. Okay. Projected to be
6 break-even, not to be profitable; do you accept that?
7 A. Again, but it might have made
8 some money because COVID actually made housing prices
9 increase.
10 Q. Okay.
11 A. But sure. Was it
12 break-even -- we can use the word "break-even".
13 Q. Okay. Thank you. So your
14 evidence is that even though none of the last four
15 projects that were actually either completed or
16 started by Cresford in the period from 2014 to 2020,
17 even though none of them as of the beginning of 2020
18 were projected to be better than break-even, that it
19 was guaranteed that YSL would have been profitable if
20 built? Is that your evidence?
21 A. So you're using three
22 projects that were under construction. One was
23 making a profit. And YSL was making an extreme
24 profit.
25 Q. Okay.

1 A. A substantial profit.
2 Q. Ms. Athanasoulis --
3 A. Yes.
4 Q. You're saying it was
5 projected to make a profit. It hadn't made a profit
6 because it hadn't been built.
7 A. Okay. But it potentially
8 did. Like, I need to look at the books. You know,
9 there could be money that Dan made an arrangement
10 with Concord Developments, and the money that he's
11 claiming is, in fact, profit. I don't know. There
12 could be that as well.
13 Q. I want to know if your
14 evidence under oath is that --
15 A. Yes.
16 Q. -- YSL was guaranteed to be
17 profitable if it proceeded as planned?
18 A. Guaranteed, guaranteed --
19 there's no guarantees in life, but it was projected
20 to make a substantial profit. Sales were in place,
21 contracts were in place.
22 Q. And that could have changed
23 if the events changed?
24 A. Which you're using COVID,
25 which would have a contingency for interest.

1 Q. Okay. Let's talk
2 specifically about interest. So as I understand, the
3 financing for YSL was contingent on a two-part
4 registration, which we've alluded to before, correct?
5 A. Correct.
6 Q. So the way this works, as I
7 understood it, is that there were actually to be two
8 condominium corporations, correct?
9 A. Correct.
10 Q. So the first condo
11 corporation was the bottom part of the tower?
12 A. Yes.
13 Q. And the second was the top
14 part, correct?
15 A. Correct.
16 Q. So the plan was that, after
17 you completed the first part of the tower, the first
18 condominium corporation, you would register it and
19 collect the purchase price and deposits from all the
20 purchasers in that first section of the tower,
21 correct?
22 A. Yes.
23 Q. And then you would use that
24 revenue to finance the second part, correct?
25 A. Potentially. Not --

1 potentially not all of it.
2 Q. And you would agree with me
3 that this was an unusual structure for a condominium
4 tower in Toronto?
5 A. We had actually done a
6 multiphase condominium tower with -- and successfully
7 registered it with CASA III.
8 Q. Okay. But those are three
9 separate towers; it's not one on top of the other?
10 A. Yes, but we had designed the
11 building for this to actually happen. It had its own
12 mechanical floors. It was, it was being managed
13 properly for this to occur.
14 Q. None of that is the actual
15 question I'm asking you. The simple question I'm
16 asking you is that this structure of one tower -- not
17 multiple towers in one development, but one tower
18 being split into two condominium corporations was a
19 highly unusual structure for a condominium
20 corporation or a condominium tower in the City of
21 Toronto?
22 A. Yes. It was --
23 Q. And there was no guarantee
24 that it would be approved by the City of Toronto?
25 A. We were working in parcel

1 with the City of Toronto to work towards this
2 happening. This is what you do with a development,
3 you work with all your parties, and you make things
4 happen.
5 Q. You were working towards it,
6 but you had no guarantee the City would approve it?
7 A. Okay. And regardless, if
8 this event didn't happen, this project was still
9 very, very profitable.
10 Q. And if you didn't get
11 approval from that, it would have an impact on the
12 financing costs, because then you would have to go
13 out and borrow the money that you had been counting
14 on for the registration of the first part of the
15 tower?
16 A. Again, you know, I can't
17 comment on that. I would have to look into it for
18 you.
19 Q. Okay.
20 A. Like, you're asking me to
21 agree to something that I can't, without looking
22 further into the issue.
23 Q. Now, turning from cost to
24 revenue, back on the proforma at Tab 5 of the joint
25 book, on the first page.

1 A. Sorry, we're back at the
2 proforma, right?
3 Q. Tab 5.
4 A. Yes.
5 Q. So on the revenue side of the
6 equation, there had been -- I think you had testified
7 before there had been something between seven and
8 eight hundred units that had been sold out of a total
9 of 1106; is that right?
10 A. Correct.
11 Q. And there, of course, is no
12 guarantee that you would be able to sell the
13 remaining units at the projected price?
14 A. We had tested the market and
15 were already achieving those prices.
16 Q. But there's no guarantee that
17 the market wouldn't change when it actually came time
18 to sell?
19 A. You know, it actually
20 improved, and it kept improving through COVID.
21 Q. Ms. Athanasoulis, you didn't
22 know in -- at the end of 2019, you had no guarantees.
23 It was a projection, not a guarantee, correct?
24 A. On the balance of the
25 revenue, yes.

1 Q. Yes. Now, the funding for
2 this project -- if you look at page 2, it refers to
3 Funding Sources?
4 A. Yes.
5 Q. So you'll see there's
6 $613 million in construction loan under Funding
7 Sources?
8 A. Sorry, what -- okay. It's
9 still page 1 for me. Sorry. I switched to page 2.
10 Okay.
11 Q. It's okay. So you see
12 $613 million of construction loan --
13 A. Yes.
14 Q. -- in this proforma. Then
15 the $75 million Mezzanine loan, and 112.5 million in
16 Cresford Equity?
17 A. Yes.
18 Q. And the profit calculations
19 in this proforma depend on the terms of those sources
20 of financing and the cost of funds, correct?
21 A. Correct.
22 Q. And the construction loan and
23 the Cresford equity were not, in fact, received in
24 part?
25 A. The Cresford equity for the

1 financing was received, because it was $75 million,
2 and it was confirmed by Altus. The balance was an
3 appraisal surplus.
4 Q. And striking --
5 A. Again, I have to look into
6 all of this stuff. But like, there's, there's --
7 it's formulated -- if you take a look at this
8 proforma, the land is in at 195 million.
9 Q. Yes.
10 A. So the difference, which I
11 believe could have been 230 or whatever Dan was
12 doing, the difference is an appraisal surplus.
13 Q. Okay. My simple -- I'm not
14 sure what question you're answering. My simple
15 question is: The construction that was taking part,
16 the construction loan, 613 million, that hadn't
17 actually been advanced, correct?
18 A. The 613 had not been advanced
19 yet, but there were Altus reports created that had
20 the first advance ready to go.
21 Q. The conditions precedent to
22 satisfying the terms of the construction loan were
23 never satisfied and the funds were never advanced,
24 correct?
25 A. There was one remaining

1 condition.
2 Q. Which was never satisfied?
3 A. Pardon me?
4 Q. Which was never satisfied and
5 the loan never funded, correct?
6 A. Yes. But just you used the
7 word plural "conditions," so I just wanted to be
8 clear that there was one condition that hadn't been
9 satisfied.
10 Q. Okay. And if the closing
11 conditions were not met and you had to renegotiate
12 financing with a different lender, then those
13 financing costs could be different?
14 A. Yes, they could be better.
15 They could be. I think this --
16 Q. They could be worse?
17 A. I don't know if it could be
18 worse, because this was a premium loan. It wasn't
19 with a tier one bank, and it had a lot of fees
20 attached to the loan.
21 Q. As of the end of 2019, the
22 YSL proforma projected profitability, but you knew
23 there was no guarantee of that, correct?
24 A. Again, I -- you're using this
25 word that I knew there was no guarantee. There was

1 no guarantee that it would make 196 million. It
2 might slide to 180. There was a guarantee that this
3 project was going to make a significant profit,
4 again, because there was a substantial amount of
5 sales in place and there was a substantial amount of
6 contracts in place.
7 Q. We already looked at your
8 statement of claim at paragraph 105 where you said
9 that as of January 2020, the projects, including YSL,
10 were expected to yield profits of 242 million, the
11 majority from YSL. Do you recall that?
12 A. Yes.
13 Q. So let's, then, look at
14 Schedule A to your proof of claim, which is also in
15 Tab 22. Go down to paragraph 18 of the Schedule A to
16 the proof of claim. You will see this now says --
17 look at the second sentence. It says:
18 "In fact, Cresford's
19 internal documents forecast
20 a profit of in excess of
21 $90 million as of February
22 2020."
23 So now this is referring just to
24 YSL. But you would agree with me that there is a
25 significant drop from a forecast of over half of

1 240 million, which means something above 120 million,
2 that was what you pleaded in January of 2020. Now,
3 you're saying as of February 2020, the forecast
4 profits were down to 90 million, correct?
5 MR. DUNN: I have an objection.
6 If we could exclude the witness, please?
7 MS. VU: One moment. The witness
8 has been excluded.
9 MR. DUNN: Thank you. I've
10 given -- my objection to this question, and, frankly,
11 to a large number of questions that preceded it,
12 these are all damages questions. There's been no
13 discovery on damages. There's been no, there's been
14 no exchange of documents on damages. It's not clear
15 how any of this bears on the questions that are
16 currently before the arbitrator.
17 If my client succeeds here, we
18 will move to a damage stage, and we will have to
19 investigate, with the benefit of complete disclosure
20 and discovery and evidence, on all of these points
21 about how revenues and profits and costs may change.
22 But these sort of -- there's a lot of questions that
23 are really, in my respectful submission, outside the
24 realm of what's even potentially relevant to a
25 damages claim.

1 MR. MILNE-SMITH: Okay. Perhaps,
2 I can reassure you, Mr. Dunn, I don't think I even
3 need an answer to the last question. It speaks for
4 itself. And I was -- in fact, that was my last
5 question on this area. I'm ready to move on to a
6 different subject.
7 Obviously, we think this is
8 relevant to the issue of uncertainty of terms and not
9 just damages. But as I said, I was already about to
10 move on. So shall we proceed?
11 MR. DUNN: Sure.
12 ARBITRATOR HORTON: Let me just
13 say, Mr. Dunn, that I had your comments in mind as
14 the questions were being asked. On the other hand, I
15 think what Mr. Milne-Smith is trying to do is to sort
16 of tease out the complexity around the issue of what
17 a profit share would involve. So I think in a sense
18 you're both right. So let's move on.
19 MR. DUNN: Thank you.
20 MR. MILNE-SMITH: The arbitrator
21 understands both sides.
22 ARBITRATOR HORTON: Okay.
23 MS. VU: Shall I admit the
24 witness?
25 ARBITRATOR HORTON: Yes. May we

1 have the witness, please?
2 MS. YU: Of course.
3 MR. MILNE-SMITH: We can take the
4 document down.
5 BY MR. MILNE-SMITH:
6 Q. Okay. Welcome back. In fall
7 of 2019, I understand there were discussions about
8 selling YSL and other Cresford projects to an
9 individual, to companies owned by an individual by
10 the name of Patrick Dovigi, correct? Sorry. You're
11 on mute, ma'am.
12 A. Sorry about that.
13 Q. We all do it. So if my lip
14 reading was accurate, your answer to that question
15 was "yes," correct?
16 A. Yes.
17 Q. Okay. And I understand from
18 your evidence in-chief that you and Mr. Dovigi had
19 discussed a possible equity participation for you in
20 the projects once they had been acquired by him,
21 correct?
22 A. We didn't really get to the
23 final terms of, of how it was structured or what
24 words were going to be used.
25 Q. Okay. But you believed that

1 you were to be something in the nature of 50/50
2 partners with Mr. Dovigi?
3 A. I would have been
4 compensated. I would have been compensated for
5 running the business.
6 Q. Okay. But the important
7 point I want to make is you would be compensated not
8 by a salary, but by a share of profits?
9 A. Yes.
10 Q. So your position is that he
11 was going to put up all the money, but you would
12 operate the business and get something in the nature
13 of 50 percent of the profits?
14 A. Yes.
15 Q. During your examination
16 in-chief -- sorry, let's bring up Tab 12 of the joint
17 documents brief. So this was referred to during your
18 examination in-chief. And it's an email from
19 Michael DiCesare of Otera Capital, the construction
20 lender, to you and Sean Fleming. Do you recall this?
21 A. Yes.
22 Q. And I believe you indicated
23 in your examination in-chief, but tell me if I've got
24 this wrong, that you had not been aware that these
25 negotiations were ongoing with Hawalius, correct?

1 A. Correct.
2 Q. And you were concerned that
3 Dan had gone behind the back of Mr. Dovigi to sell
4 the retail, when Mr. Dovigi wanted that as part of
5 the deal that he was putting together?
6 A. Correct.
7 Q. But you understood, of
8 course, that Mr. Casey had to do what was best for
9 himself and Cresford, not what was the best for
10 Mr. Dovigi?
11 A. Selling -- or presenting an
12 LOI to the bank was not (a) going to satisfy the
13 condition; didn't solve any of the problems. Again,
14 it was something that I would have assumed he would
15 have discussed with me prior to me receiving this
16 email from Michael DiCesare. Like, I -- this here
17 was not the only concern with solving all of
18 Cresford's problems.
19 Q. Okay. That's not -- you're
20 jumping ahead to the next question.
21 A. Yeah.
22 Q. Stick to the first question,
23 okay?
24 A. Yeah.
25 Q. You understood that Mr. Casey

1 had to do what was best for himself and Cresford, not
2 what was best for Mr. Dovigi, right?
3 A. For himself. So you say
4 what's best for himself. I think he had to do what
5 was best for all the stakeholders.
6 Q. Okay. So what's best for
7 Cresford?
8 A. Yes. Not what's best for
9 Dan Casey, no.
10 Q. Okay. So what's best for
11 Cresford?
12 A. Yes.
13 Q. Okay. And are you aware that
14 no agreement of purchase and sale was ultimately done
15 according to the terms set out in the letter of
16 intent?
17 A. Was I aware? I would assume
18 that nothing happened after the fact.
19 Q. Were you aware that an
20 agreement of purchase and sale for the retail
21 component ultimately was negotiated on different
22 terms and executed with Hawalius?
23 A. No.
24 Q. Okay. And so you wouldn't be
25 aware, then, that the terms changed when the

1 agreement of purchase and sale from the letter of
2 intent?
3 A. No, but you would think that
4 I should be aware.
5 Q. And even if you -- even if
6 Cresford ultimately had not done a deal with
7 Hawalius, would you agree with me, as a matter of
8 business tactics, that having alternative options can
9 increase leverage in negotiations?
10 A. Could increase -- the retail
11 was irrelevant to the negotiations of the business.
12 Q. Okay. Stick with me. Having
13 alternative options, having more than one bidder for
14 a piece of property can increase your leverage and
15 help you obtain a higher price, correct?
16 A. This was a presale
17 requirement. It had nothing to do with the sale --
18 it didn't change the value of the asset.
19 Q. Okay. Ms. Athanasoulis, you
20 needed to sell the retail as a precondition to the
21 construction loan, correct?
22 A. Yes.
23 Q. And Cresford wanted to get
24 the best possible deal it could in negotiating the
25 sale of the retail?

1 A. The construction mortgage for
2 YSL had nothing to do with whether or not an increase
3 in value would be obtained in a sale. In fact, it
4 could actually work the other way, where it would
5 hurt it, because somebody like Patrick Dovigi could
6 negotiate far better terms on a construction mortgage
7 than what was present.
8 Q. That's not my question,
9 ma'am. My question is -- let's go back to basics.
10 They had to sell the retail in order to get the
11 construction lending, correct?
12 A. Cresford had to. YSL had to,
13 yes.
14 Q. Yes. And in doing so, they
15 wanted to get the best possible deal they could in
16 selling the retail, correct?
17 A. Correct.
18 Q. And that means they wanted to
19 obtain the best possible terms and the highest
20 possible price?
21 A. Correct.
22 Q. And having more than one
23 interested bidder for that piece of property could
24 help them negotiate better terms, including
25 potentially a higher price?

1 A. I disagree with that.
2 Q. Okay.
3 A. The price that Dan Casey was
4 receiving for the purchase of the business was
5 already a generous price, and was taking care of all
6 stakeholders, finishing all projects. Nobody would
7 have been hurt along the way. And he was, he was
8 getting a healthy payout to remove himself from the
9 operations of the business.
10 Q. And to the extent that
11 Mr. Dovigi would have had to pay a higher price as a
12 result of Cresford's strengthened leverage, that
13 would reduce his potential profit on the projects?
14 A. Which, the YSL retail?
15 Q. Yes.
16 A. If Dan sold this for less --
17 maybe Patrick was going to pay more. Like, I don't,
18 I don't know where you're going with this.
19 Q. So --
20 A. This -- but negotiating a
21 letter of intent and bringing it to the lender, while
22 I am still employed with a company, and, like, I
23 don't know -- I don't -- I don't know, I don't know
24 if that's in good faith.
25 Q. Mr. Casey had to get the best

1 deal for Cresford, not for Mr. Dovigi, right?
2 A. Okay.
3 Q. And the better the deal for
4 Cresford -- it's a bit of a zero sum game. The
5 better the deal for Cresford, the worse the deal it
6 is for Mr. Dovigi?
7 A. This is the number that was
8 forecasted in the proforma. It wasn't a substantial
9 difference of what was being forecasted in the
10 proformas that were given to Dovigi.
11 Q. There are terms that have to
12 be negotiated in the agreement, correct?
13 A. There are terms in this
14 letter of intent that need to be negotiated, but a
15 letter of intent isn't a purchase. It's just a
16 letter of intent. Letter of intents go away all the
17 time.
18 Q. I understand that. But in
19 negotiating the sale of the retail, whoever entered
20 into any agreement to sell the retail would have to
21 negotiate terms for it, correct?
22 A. Correct.
23 Q. And the better the terms that
24 are negotiated for the vendor, the worse the terms
25 are for the purchaser?

1 A. But you have an agreement
2 with the person who you're selling the business to
3 that you're talking to in terms of purchasing this
4 retail at the same time, who is buying the business
5 and is solving other issues on the business. So it's
6 all related, in my opinion.
7 Q. Okay. That's one
8 possibility. Ms. Athanasoulis, you said there was an
9 agreement with Patrick. There was no agreement with
10 Patrick, correct?
11 A. There were ongoing
12 discussions and negotiations.
13 Q. Right. And Cresford should
14 responsibly, as a responsible corporate actor, should
15 negotiate for its particular advantage, not for the
16 advantage of Mr. Dovigi?
17 A. I think he needs to look at
18 its global problems. This did not solve any of
19 Cresford's issues.
20 Q. Okay. Let's look at some of
21 the other issues facing Cresford. If you go to
22 Tab 35 of the joint book, so this is an email that
23 you sent to Mr. Casey on November 27, 2019, correct?
24 A. Correct.
25 Q. And you set out a number of

1 payments that are due or overdue for various
2 projects?
3 A. Correct.
4 Q. And that included -- if we
5 look under the heading of YSL about halfway down, the
6 first line is 10 million trades 10 million; I'm not
7 sure if that's meant to be 10 million or 20 million.
8 Which is it?
9 A. I would have to go back, but
10 it was more like 20.
11 Q. Okay. So 20 and then another
12 5, so roughly 25 million in overdue bills just for
13 YSL?
14 A. Where do you see the five?
15 Q. Well, you said it's more like
16 20, and then there's 2 and 1.875 and 1.7, so the 2
17 and the 1.875 and the 1.7 roughly adds up to 5. Add
18 that to the 20 --
19 A. I'd have to check if the 10
20 was double or not.
21 Q. Okay. It doesn't matter.
22 A. I mean, but it does. Because
23 it is a substantial difference. Ten million dollars
24 is a substantial difference.
25 Q. Right. And the company did

1 not have, at this point in time, did not have the
2 funds to pay these overdue accounts, correct?
3 A. Yes, but YSL's financial
4 obligations were the least urgent.
5 Q. Okay. We're going to come to
6 some of the other problems facing the company. Go to
7 Tab 11 of the joint book. So this is an email from
8 Sean Fleming to Dan Casey, and then copied to
9 Sheri Cox and Taylor Fiore. I understood that Sean,
10 Sheri and Taylor were what you called the finance
11 group who worked under you?
12 A. Finance and accounting.
13 Finance and accounting.
14 Q. And you weren't copied on
15 this email, but I understand you were provided a copy
16 of it by your team after the fact, correct?
17 A. Yes.
18 Q. And this took place after the
19 meeting? This email was sent after the meeting
20 that's referred to in the first paragraph there,
21 where you say that Sean, Sheri and Taylor were
22 instructed to report to Dan on finance issues, rather
23 than you; is that right?
24 A. Sorry, can you repeat the
25 dates and the courses of events and which other

1 meeting you're referring to?
2 Q. I'm just trying to get the
3 chronology right. You recall that you testified
4 in-chief to a meeting that took place between Dan and
5 the finance team where he instructed them to report
6 directly to him, rather than to you. Do you recall
7 that?
8 A. Yes. So this meeting took
9 place after.
10 Q. Okay. So that's why I'm
11 asking. This email says:
12 "We were asked to join you
13 for a confidential meeting
14 on Wednesday December 11,
15 2019, that left us feeling
16 uncomfortable."
17 This email is on December 13th.
18 Is the meeting referred to here on the 11th the one
19 that you referred to in-chief where they were told to
20 report to Dan, or is that a different one?
21 A. Yes. Yes.
22 Q. Okay. And you understood, at
23 this point in time, in December of 2019, that
24 Mr. Casey had brought in Mr. Dowbiggin and Mr. Joe
25 Bolla to assist him on finance matters?

1 A. Mr. Dowbiggin, no. I did not
2 understand he was even close to the boardroom.
3 Mr. Bolla, yes, I understood was helping him
4 negotiate or prepare the LOI terms and continue with
5 the APS for the purchase of the business.
6 Q. If we go over the page in
7 this email. So Fleming is setting out, is it fair to
8 say, a number of challenges facing the business? So
9 in that first paragraph on the page where it says,
10 "We have avoided phone calls." And then if you look
11 halfway down on the right-hand side of the page, it
12 says:
13 "In addition, there has been
14 no solution provided for the
15 growing equity requirements,
16 which we feel is unfair as
17 your representatives, who
18 are the outward faces of the
19 company."
20 This was a true statement in your
21 understanding of the situation facing the company?
22 A. Yes.
23 Q. And if you look down to the
24 next paragraph, there's a reference to:
25 "Payables that continue to

1 go outstanding, some for
2 over a year."
3 Do you see that?
4 A. Yes.
5 Q. And that was true in respect
6 of all of the outstanding projects. We just looked
7 at an email a moment ago where we looked at some of
8 the YSL examples, correct?
9 A. Each project was different.
10 So, for instance, the big issue that was facing 33
11 Yorkville is we had already extended and Dan had
12 signed the documents, but it needed to have fixed
13 placed contracts in place that required a huge equity
14 requirement by December 31st, 2019. So that would
15 have been a separate issue, and it's not a payable
16 issue. And it was a substantial issue that he needed
17 to address. And the lenders kept following up on
18 both -- the lenders, Altus -- on the construction
19 contracts. And also, once we provided them with
20 them, also a cheque needed to go along with those
21 that was substantial. So that would be a different
22 issue than a payable issue.
23 Q. Well, let's look down to the
24 bottom of this page.
25 A. Yeah.

1 Q. So he sets out a number of
2 action items.
3 A. Yes.
4 Q. And he says Number 1 is:
5 "Funding the YSL, Halo,
6 CASA 3 and legacy payables
7 with equity immediately."
8 Do you see that?
9 A. Yes.
10 Q. So that was one of the
11 problems is that they needed equity injections into
12 YSL and those other projects to deal with legacy
13 payables immediately?
14 A. Yes.
15 Q. And you already testified to
16 this too this morning, but let's just remind us all.
17 Your responsibilities at this time, of course,
18 extended well beyond the finance and accounting team,
19 correct?
20 A. Can you describe what you
21 mean by "well beyond"?
22 Q. Well, we talked at the very
23 outset of this examination about your very broad
24 scope of responsibilities. So it included sales,
25 marketing and design?

1 A. That never changed. So it
2 just -- my responsibilities included finance and
3 accounting.
4 Q. Okay. And at the meeting
5 with the finance team, the only reporting obligations
6 or responsibilities that were taken away from you
7 related to finance and accounting, correct?
8 A. In this meeting, yeah, it was
9 directly related to finance and accounting.
10 Q. Right. And there weren't any
11 other meetings that we haven't heard about yet, where
12 your responsibilities over other subject matters were
13 taken away, were there?
14 A. Yes, there were. There were
15 meetings with the construction group. There was
16 meetings with, with many individuals in the company.
17 There was -- so, I mean, everybody was advised that
18 they no longer reported to me.
19 Q. Okay. You continued to have
20 authority over sales, marketing and design?
21 A. On December 13th?
22 Q. Yes.
23 A. To be honest, like, when,
24 when -- I don't consider -- when you're taking away
25 other roles, there's a problem when somebody is not

1 communicating with you and telling you what's going
2 on. So in my opinion, my whole job was at issue.
3 You can't just take one or two departments. We ran
4 the company after my -- with my leadership, it was
5 run with proper communication amongst all
6 departments.
7 Q. Four or five days -- I
8 believe you testified that four or five days after
9 the December 11th meeting, you had a meeting with
10 Mr. Casey where you expressed your concern about
11 Cresford's financial situation, correct?
12 A. Sorry, which day did you say?
13 Q. You said four or five days
14 after the December 11th meeting, you had a meeting
15 with Mr. Casey where you expressed your concern about
16 Cresford's financial situation?
17 A. Where did I say that?
18 Q. On discovery. I'm happy to
19 take you to it, if you want, but is that consistent
20 with your recollection?
21 A. Can you, can you just bring
22 that up so I can...
23 Q. Sure. If we look at page 99
24 of your discovery transcript.
25 A. Yeah.

1 Q. So if you look at the bottom
2 of the page, we're talking about this period of
3 December '19, or you and Mr. Li were:
4 "Did you raise your concerns
5 with what Mr. Case -- Mr.
6 Casey had said to
7 Mr. Fleming, for example, on
8 the meeting on December
9 11th?
10 "Did I raise my concerns?
11 So that meeting hadn't
12 occurred yet. That
13 meeting --"
14 A. Yes.
15 Q. "-- occurs four or five days
16 after that meeting that
17 I --"
18 A. Yes. Okay. I just wanted to
19 be clear, because I didn't say that. There was
20 another meeting prior to, which Joe Bolla came and
21 shared -- the only people invited to that meeting
22 were Sheri and Taylor, and Sean was excluded. And
23 so -- but this meeting happened as it's in my
24 discoveries.
25 Q. Okay. I'm asking you about

1 the meeting that you testified in-chief, where you
2 asked whether Mr. Casey was acting with honesty and
3 integrity, and you said that he wound up yelling at
4 you.
5 A. Yes. So it's in line with my
6 discoveries. It was before this email.
7 Q. Okay. That's what I want to
8 understand.
9 A. Yes.
10 Q. So in the discovery you
11 referred to a meeting that took place four or five
12 days after December the 11th. We just looked at that
13 transcript, right?
14 A. You can bring it up again,
15 because I think we're getting our days confused.
16 Q. I just want to get the
17 chronology straight.
18 A. Yeah.
19 Q. Let's bring up the discovery
20 transcript. And at the top of page 100, you say that
21 there was a meeting four or five days after the
22 meeting on December --
23 A. Sorry, it's not up here.
24 Where does -- I'm not following where I need to start
25 reading.

1 Q. Sorry. Can Mr. Horton and
2 Mr. Dunn see it? Because I certainly can on the
3 screen.
4 MR. DUNN: I can see it.
5 THE WITNESS: Where do I start,
6 Mark?
7 MR. DUNN: But in fairness, there
8 was an undertaking given about the date of, I
9 believe, the meeting that's being asked about that
10 should also be shown to the witness, if we're, if
11 we're showing her the discovery transcript.
12 MR. MILNE-SMITH: I don't
13 particularly care what the chronology is. I just
14 want to know what it is so that we can talk about it
15 intelligently going forward. Your discovery evidence
16 refers to a meeting on the 11th and four or five days
17 later, so the 15th or 16th.
18 MR. DUNN: So I don't, I don't
19 read it quite the same way in terms of the
20 transcript. I can advise we gave an answer to
21 undertaking about the meeting between
22 Ms. Athanasoulis, Mr. Bolla, Mr. Fleming and
23 Mr. Casey, and that the best recollection was that
24 that meeting occurred December 5th.
25 MR. MILNE-SMITH: That's not what

1 I'm asking about.
2 MR. DUNN: Okay. You're asking
3 about a separate meeting that happened after the
4 11th?
5 BY MR. MILNE-SMITH:
6 Q. I'm asking the meeting with
7 Mr. Casey where you questioned his honesty and
8 integrity and he yelled at you, according to your --
9 A. That's the December 5th
10 meeting.
11 Q. I thought Mr. Dunn just said
12 that the December 5th meeting was with Taylor and
13 Sheri and everybody else.
14 MR. DUNN: No, I said it was with
15 Mr. Bolla and Mr. Fleming.
16 BY MR. MILNE-SMITH:
17 Q. Okay. But was there a
18 meeting with just Mr. Casey, where you questioned his
19 honesty and integrity, and he yelled at you?
20 A. That was that, that day, the
21 December 5th date.
22 Q. Okay. You say that happened
23 on December 5th?
24 A. Yes.
25 Q. Okay.

1 A. And then we proceeded -- the
2 answer was we are selling the business, and the LOI
3 was prepared by Stikeman's.
4 Q. And --
5 A. After that meeting. So
6 everything was going to plan, and, and there was no
7 other, you know -- Joe Bolla kept insisting on
8 urgency to get this done quickly.
9 Q. The reason why you questioned
10 the honesty and integrity of Mr. Casey was because he
11 was negotiating with parties other than Mr. Dovigi,
12 correct?
13 A. No, I didn't know anything
14 about -- it wasn't more so -- maybe -- I didn't know
15 anything about the Hawalius, until I found out about
16 it through Michael DiCesare. Dan basically at one
17 point, a week prior to the December 5th, asked
18 Sean Fleming to call Otera and tell him that -- he
19 called Sean Fleming and asked for him to tell Otera
20 that he is now going to be 50/50 partners with
21 Patrick Dovigi.
22 So Dan, Dan wasn't consistent.
23 Dan was doing different things. Dan was not
24 recognizing the cash issues in the company. Dan
25 didn't want to address any of the problems at the

1 company. Dan was, essentially, avoiding or acting in
2 a manner that, that made no sense. And I wanted
3 clarity. I'm a person who speaks very clearly and
4 wants to understand what's going on and come up with
5 solutions, as opposed to avoiding conflict and not
6 dealing with what's in front of us.
7 Q. You had -- was this the last
8 discussion you had with Dan in 2019?
9 A. To be honest, I can't
10 remember a hundred percent. I would think the answer
11 is yes, but if something comes up where somebody says
12 that we talked again, then I would say yes, you know.
13 Because there was several times that I met with Dan
14 at Patrick's office, even in 2020 when Dan still
15 wanted to do a deal. There's times that I've met --
16 so if somebody says this is what happened, I would
17 say yes. I don't think that's the case, though, in
18 that two week period that I spoke to Dan again.
19 There was times when Dan called my husband, begging
20 to speak -- like, there's times that things have
21 happened, but --
22 Q. I'm not trying to trick you.
23 A. I know, I just...
24 Q. That's why I specifically
25 said in 2019.

1 A. But I feel like I'm --
2 understand that I'm trying to feel tricked, because
3 you're trying to raise something in my discovery
4 that's not accurate. The December 5th meeting is
5 what I've consistently said. And so the days are
6 actually, you know, documented by events that
7 occurred. And subsequent things happened after that
8 are, you know -- that would be in line with Dan's
9 actions in committing to sell the business.
10 Q. So there was no meeting four
11 or five days after December 11th that you can recall?
12 A. No.
13 Q. Okay. Good. If it was
14 referred to in discovery and it was a mistake, that's
15 fine.
16 A. What do you mean -- but can
17 you show me where it was referred to in discovery?
18 Because I'm not agreeing to that.
19 Q. Okay. Let's go back. Page
20 99 of the discovery transcript.
21 MR. DUNN: I think the discovery
22 transcript will say what it says. I'm not sure that
23 the witness -- I suppose -- I'll wait for my friend
24 to ask a question about it, and then we'll just
25 proceed.

1 BY MR. MILNE-SMITH:
2 Q. So Question 311 on the top of
3 the page talks about a meeting on December 11th, and
4 then your meeting says, "That meeting occurs four or
5 five days after that meeting..."
6 So that's why I interpreted it to
7 refer to a meeting that occurred four or five days
8 after December 11th. If you're telling me I misread
9 that, then that's fine. I just want to understand
10 the chronology.
11 ARBITRATOR HORTON: I think it may
12 help if we start a little higher in the transcript.
13 Because I must say, I'm not quite sure that I have
14 the thread of this where we are, and would have to
15 refer to the transcript for this part of the
16 evidence, because I've gotten turned around on it.
17 But can we just go and have a look earlier, and the
18 lead-up to this question that you're asking,
19 Mr. Milne-Smith.
20 BY MR. MILNE-SMITH:
21 Q. So you will see that in
22 paragraph [sic] 98, it starts by asking you about
23 prior to January 2, 2020, if there are any
24 discussions with Mr. Casey about the change in your
25 role that you say took place in December 2019. And

1 you say:
2 "We had various discussions.
3 "What did you say during
4 those discussions? Or what
5 was discussed?
6 "You want to reference a
7 specific discussion?
8 "You want to point me to a
9 specific date?
10 "I'm asking you for your
11 recollection if you spoke
12 with him.
13 "Yes, so there's a meeting
14 that might be of relevance
15 that occurs on the date that
16 Dan, his advisor Joe Bolla,
17 and Patrick and his advisor
18 have a meeting. They
19 finalize the terms of the
20 sale, and I am asked to
21 attend a meeting to discuss
22 the next steps on selling
23 the business in December."
24 [As read]
25 Pause there. That's the December

1 5th one you've referred to, correct?
2 A. Yes.
3 Q. Then it goes on:
4 "Did you raise your concerns
5 with Mr. Casey. Mr. Casey
6 had said to Mr. Fleming, for
7 example, on the meeting of
8 December 11th." [As read]
9 That's the meeting with the
10 finance team that you weren't at, correct?
11 A. Correct. But this is a
12 question from you -- well, from your other solicitor.
13 That's a question, right?
14 Q. That's a question.
15 A. "Did you raise your concerns
16 with Mr. Casey. Mr. Casey
17 had said to Mr. Fleming, for
18 example, on a meeting."
19 [As read]
20 That happened after.
21 Q. The meeting on December 11th?
22 A. Yes. I said that meeting
23 hadn't occurred yet.
24 Q. Right. As of December 5th,
25 the meeting on December 11th hadn't happened,

1 obviously?
2 A. Yes.
3 Q. Okay.
4 A. Because you were trying, you
5 were saying that this was after. And I'm saying, no,
6 I didn't say that.
7 Q. Okay. So it appears that
8 what happened is there was a confusion of pronouns.
9 It talks about "that" meeting. I thought you meant
10 that meeting on the 11th --
11 A. Yes.
12 Q. -- thinking there was a third
13 meeting. But what you're, in fact, telling me now --
14 and I'm happy to take this answer, I just want to get
15 the chronology straight. But when you say "that
16 meeting" that's four or five after, you're saying the
17 meeting on the 11th was four or five days after the
18 meeting with Bolla on the 5th, right?
19 A. Yes.
20 Q. Good. So there's only two
21 meetings, correct?
22 A. There's only two meetings?
23 There's lots of meetings. Sorry.
24 ARBITRATOR HORTON: There is two
25 meetings that your questions relate to. But as I

1 understand it, she was only at one meeting, which was
2 the December 5th. The December 11th meeting was not
3 a meeting that Ms. Athanasoulis was at. And I think
4 there's also some confusion about whether or not her
5 evidence is that she was at two meetings. But she
6 has made it clear she was only -- of the two
7 meetings, she was only at the one on the 5th.
8 MR. MILNE-SMITH: That's my
9 understanding.
10 BY MR. MILNE-SMITH:
11 Q. Is that your evidence, ma'am?
12 A. Yes.
13 Q. Good.
14 ARBITRATOR HORTON: Okay.
15 BY MR. MILNE-SMITH:
16 Q. And just so wrap it all up,
17 there were no other meetings in December of 2019 that
18 you're aware of or that you participated in,
19 concerning your role with the company?
20 A. No.
21 Q. Good. You said in your
22 evidence in-chief that, at the end of 2019, Dan
23 started to assert himself and wanted to deal directly
24 with the trades. Do you recall that?
25 A. I said by the end of December

1 30th or in December?
2 Q. At the end of 2019.
3 A. Yes, Dan had inserted himself
4 everywhere by the end, but he had already told the
5 staff that I'm never coming back. And so he was
6 already telling people, without me knowing, that I'm
7 not coming back. The last two weeks of December are
8 very bizarre at Cresford.
9 Q. And Dan is the owner of the
10 business, and there's nothing wrong with him engaging
11 with trades, correct?
12 A. No. But, you know, when you
13 have a good relationship, like, you're not talking
14 about the person behind their back. Like, it's --
15 you're operating a good business. Everybody is
16 allowed to talk to anybody. Like, that's the
17 business I run. Like, there's no walls where nobody
18 can talk to anybody. Everybody's allowed to talk to
19 everybody.
20 Q. In fact, costs were a major
21 problem with the business and the various projects?
22 A. Costs were -- no, the costs
23 were the costs.
24 Q. Yes. And there was a problem
25 with paying the costs. We just looked at the overdue

1 payables, right?
2 A. There was a problem with
3 paying the cost, or there was a problem with the
4 negotiated costs that were signed contracts that he
5 needed to hand over to the bank for 33 Yorkville.
6 Q. There was a problem --
7 A. That were agreed to and
8 signed. Like, there was, there was a known -- I'm
9 not trying to be difficult, but the costs -- like, it
10 really depends. Each project had its own story. So
11 to put a broad brush on a statement that covers all
12 the projects is, is hard. It's, it's hard for me to
13 say yes to.
14 Q. Just listen to my question,
15 because we've already looked at this evidence, and I
16 don't think it's controversial. There were problems
17 with unpaid payables for trades in the business, and
18 it was perfectly reasonable for Mr. Casey, as the
19 owner of Cresford, to get involved with discussions
20 around this issue?
21 A. He had never been involved
22 before.
23 Q. Not my question.
24 A. Yeah. But it's reasonable
25 for Dan to talk to whoever he wants.

1 MS. MILNE-SMITH: Okay. Good.
2 Let's go to -- let me just pause for a moment there.
3 I expect I'm going to be a half hour or less to
4 finish. So I'm happy to finish, or I'm happy to take
5 the lunch break, if people feel they need it. But
6 I'm moving to a new area now.
7 ARBITRATOR HORTON: Why don't we
8 give Ms. Athanasoulis the choice. Ms. Athanasoulis,
9 would you rather --
10 THE WITNESS: Let's keep going.
11 Let's get this --
12 ARBITRATOR HORTON: All right.
13 THE WITNESS: If you don't mind.
14 ARBITRATOR HORTON: All right.
15 Let's do that then.
16 MR. MILNE-SMITH: And Crystal, I
17 assume you're okay?
18 --- Court reporter confirms
19 ARBITRATOR HORTON: Perfect.
20 Thank you.
21 BY MR. MILNE-SMITH:
22 Q. Okay. Let's turn up Tab 24
23 of the joint book.
24 A. Tab 24.
25 Q. So this is a decision of

1 Justice Koehnen in an application to appoint a
2 receiver and manager over Clover, Halo, and 33
3 Yorkville, correct?
4 A. Correct.
5 Q. And you're familiar with and
6 have reviewed this decision?
7 A. Not recently.
8 Q. Okay.
9 A. Like not in detail recently.
10 But yes, I've read it before.
11 Q. Okay. And if you go over to
12 paragraph 28 of the judgment, it states:
13 "In January 2020, the
14 Receivership Applicants
15 became aware of a statement
16 of claim issued by Maria
17 Athanasoulis against the
18 Cresford Group. Ms.
19 Athanasoulis was a former
20 officer of Cresford who made
21 allegations of financial
22 irregularities within the
23 Debtors."
24 Would you accept that
25 characterization in Justice Koehnen's reasons, that

1 your statement of claim alleged financial
2 irregularities within the Cresford Group?
3 A. You know, subject to my
4 lawyer saying that, I think that that's accurate.
5 Q. Okay. And to be honest, I'm
6 just using this because it's a very useful summary.
7 Rather than having to wade through a 50 page
8 statement of claim, Justice Koehnen summarizes it
9 here in a few paragraphs. So I'm hoping we're all on
10 the same page here.
11 So if you look at paragraph 30, it
12 says:
13 "Instead of injecting its
14 own funds, Cresford borrowed
15 money at over 16% interest
16 from a third party and used
17 that loan as 'equity' in the
18 project. Cresford then used
19 advances from the
20 Receivership Applicants to
21 pay for the 16% interest on
22 its 'equity.'"
23 That was an issue or a concern
24 that you had raised in your statement of claim,
25 correct?

1 A. Correct.
2 Q. And in paragraph 31, it
3 states:
4 "The projects have
5 maintained two sets of
6 books. A first set of
7 accounting records shows
8 costs that were consistent
9 with the construction budget
10 which had been presented to
11 lenders. Those records were
12 used to obtain continued
13 advances on the lending
14 facilities. A second set of
15 books records increases over
16 the approved construction
17 budgets."
18 And the number is blacked out. I
19 assume it's confidentiality reasons, but it says:
20 "Approximately X million
21 dollars of increased costs
22 were hidden in this manner."
23 [As read]
24 That is also a fair
25 characterization of concerns you had raised?

1 A. Correct.
2 Q. And if we go over to
3 paragraph 36, if you look, the fifth line down,
4 right-hand side, it says, "All three Debtors." It
5 says:
6 "All three the Debtors agree
7 that their projects are
8 economically unviable."
9 And again, this is Clover, Halo,
10 and 33 Yorkville.
11 "The only way to make the
12 projects viable is to
13 disclaim all of the
14 agreements of purchase and
15 sale for the condominium
16 units and to sell the units
17 anew at prices higher than
18 those at which they were
19 originally sold."
20 You accept that that is a fair and
21 accurate statement of the state of affairs for those
22 three projects as of the time of this decision in
23 early 2020?
24 A. No, not necessarily. Because
25 at the same time, prior to this actually going into

1 receivership, Dan and Ted, but Ted was back at the
2 table trying to negotiate a purchase, and then days
3 before this happened, said Clover and Halo are off
4 the table, but you can still buy YSL -- sorry,
5 33 Yorkville.
6 Q. Okay. That negotiation that
7 you're referring to was the negotiation with
8 Mr. Dovigi?
9 A. Yes, but it's right -- it's
10 before this, this decision is granted.
11 Q. So let's turn to that then,
12 which is Tab 30 of the documents brief.
13 A. I think there's a comment
14 somewhere by Koehnen that says about PJD.
15 Q. So let's look at the letter
16 of intent with PJD.
17 A. So there's another letter of
18 intent after this.
19 Q. Well, this is --
20 A. There's many letter of
21 intents throughout the next years.
22 Q. This is what was produced by
23 your counsel, and this is what was referred to in
24 your examination in-chief, so this is what I have to
25 work with.

1 A. Okay.
2 Q. This is a draft letter of
3 intent for Mr. Dovigi or his companies to purchase
4 Cresford for $75 million, correct?
5 A. Yes. Yes.
6 Q. And it wasn't just YSL; it
7 was all of the projects, correct?
8 A. Yes. Yes.
9 Q. And if we go to page -- if we
10 go to section 6, under Definitive Agreement, it says:
11 "The parties will proceed in
12 good faith with the
13 negotiation of the terms and
14 conditions of a Definitive
15 Agreement and related
16 agreements."
17 So this document wasn't signed,
18 but even if it had been signed, it was intended to be
19 a non-binding letter of intent, subject to definitive
20 agreements, correct?
21 A. Correct.
22 Q. And if we go --
23 A. From what I understood there
24 was a handshake that Joe Bolla and Dan on the 5th
25 that prepared this document.

1 Q. And if we go back to page 2
2 of the document, you'll see there are various
3 conditions to closing, and those include, the first
4 two, due diligence, confidentiality agreements, and
5 the third one, regulatory and customer consents. Do
6 you see that?
7 A. Yes.
8 Q. And you're aware that
9 Cresford and Mr. Dovigi were ultimately not able to
10 reach an agreement on this LOI or any other?
11 A. No. But after, there was
12 further meetings -- like, there was a meeting prior
13 to this, this -- prior to this decision. There's
14 another meeting where there's a further negotiation,
15 where Ted then comes to the negotiation a week
16 before -- three or four days before and says Halo and
17 Clover are off the table; we've contracted with
18 another developer; you're still welcome to buy 33
19 Yorkville.
20 Q. The fact remains that no
21 agreement was ultimately able to be negotiated
22 between Cresford and Mr. Dovigi, correct?
23 A. No agreement was able to be
24 negotiated between Cresford and Dovigi, no, because
25 you need two interested parties to negotiate.

1 Q. Right. And Mr. Dovigi never
2 proceeded beyond preliminary diligence?
3 A. We did due diligence. We did
4 a lot of due diligence.
5 Q. No.
6 A. We provided him with due
7 diligence.
8 Q. I'm sorry, Mr. Dovigi never
9 completed due diligence on --
10 A. Mr. Dovigi, like --
11 ARBITRATOR HORTON: Hold on, hold
12 on, hold on.
13 THE WITNESS: Yeah.
14 ARBITRATOR HORTON: Ms.
15 Athanasoulis, you have to wait for the question,
16 okay.
17 THE WITNESS: Sorry. Yes.
18 ARBITRATOR HORTON: Believe it or
19 not, it will actually go faster if you do that.
20 THE WITNESS: Thank you. Sorry.
21 ARBITRATOR HORTON: Okay. Go
22 ahead, Mr. Milne-Smith.
23 BY MR. MILNE-SMITH:
24 Q. Mr. Dovigi was never able --
25 never completed due diligence on the projects?

1 A. I don't know what he would
2 classify as due diligence. He would have to comment
3 on that. He was given a lot of information on the
4 business.
5 Q. Let's go to Tab 42 of the
6 joint brief.
7 A. Forty-two.
8 Q. This is a document from KSV
9 titled Third Report to Court of KSV Restructuring
10 Inc. as Proposal Trustee of the YG Limited
11 Partnership and YSL Residences Inc. dated June 18 of
12 2021. Do you see that?
13 A. Yes.
14 Q. And have you seen this
15 document before?
16 A. Yes. I think so.
17 Q. And if we go to page 17 of
18 the document, page 17 of the PDF. It's page 14 and
19 15 in the bottom right-hand corner.
20 A. Okay.
21 Q. So you will see the trustee
22 is reporting here -- actually, scroll up a page, just
23 to show the heading. So you'll see this is under a
24 heading 5.3, Prospective Transactions. And it talks
25 about three prospective transactions. One is with

1 PJD Properties Inc.; that's Mr. Dovigi, correct?
2 A. Yes.
3 Q. And then the second one is
4 Empire, and the third one is Concord, correct?
5 A. Mm-hmm.
6 Q. You have to say "yes" for the
7 transcript.
8 A. Yes.
9 Q. Okay. So then going --
10 A. Sorry.
11 Q. -- to the next page.
12 A. Yes.
13 Q. It says, "The GFL LOI --" so
14 GFL is Mr. Dovigi, right?
15 A. Yes.
16 Q. "...did not proceed past the
17 preliminary diligence stage." Do you see that?
18 A. Yes.
19 Q. And you have no reason to
20 dispute that statement by the trustee, do you?
21 MR. DUNN: Sorry, I don't believe
22 that is a statement by the trustee.
23 BY MR. MILNE-SMITH:
24 Q. It states:
25 "The proposal trustee

1 understands that ... the GFL
2 LOI did not proceed past the
3 preliminary diligence
4 stage."
5 You have no reason to dispute the
6 proposal trustee's understanding in that regard?
7 MR. DUNN: I apologize for
8 interjecting, but if the witness is going to be
9 asked, she should know what she's disputing. And the
10 first part says, "Based on discussions with the
11 Companies' Counsel and management." So the statement
12 is not made by the proposal trustee. The proposal
13 trustee is simply repeating what it has been told by
14 the companies' counsel and management.
15 ARBITRATOR HORTON: I think the
16 fair way to deal with it, Mr. Milne-Smith, if you
17 want to pursue it, is whether the witness has any
18 further or different information, and then we'll
19 leave the question of what value to attach to this
20 document for argument.
21 MR. MILNE-SMITH: Yes, that's what
22 I was trying to ask, but you did it more artfully,
23 Mr. Horton.
24 BY MR. MILNE-SMITH:
25 Q. Do you have any further or

1 different information on this subject?
2 A. I do. So in October of 2020,
3 prior to Cresford engaging with Concord, Dan was -- I
4 met with Dan, with Patrick Dovigi and Ted Dowbiggin
5 and Dino Keyaso (ph.), which was a board member of
6 Patrick's. And Dan was requesting for us to do a
7 deal where he would get $20 million in his wife's
8 name, or against a house, or against -- in a way that
9 the LPs wouldn't find out about the purchase price.
10 Q. And, Ms. Athanasoulis, you
11 have identified numerous significant problems at
12 Cresford that were described in the decision of
13 Justice Koehnen that we just looked at?
14 A. I described numerous issues?
15 Q. Yes, about two set of books,
16 about --
17 A. Yes.
18 Q. Yes. And so there's no
19 reason to believe that due diligence, once completed,
20 would necessarily have been acceptable or
21 satisfactory to Mr. Dovigi, once he found out
22 everything that you had identified?
23 A. All of those -- all of that
24 information was disclosed in the, in the documents
25 that were prepared to sell the business.

1 Q. So --
2 A. All of the overruns, all of
3 the transfers between the different companies, all of
4 that was being corrected with the purchase of the
5 business.
6 Q. So let's go to Tab 38 of the
7 joint brief. This, I believe, will be the last issue
8 that we have to deal with today. So this is a -- I
9 just want to situate you here on what we're talking
10 about. So this is a responding motion record of the
11 Cresford defendants. And my understanding is that
12 this is in relation to a motion by the limited
13 partners of 33 Yorkville.
14 And if you could just scroll up a
15 little bit, you can see the parties there who are the
16 plaintiffs. So there was a motion by the limited
17 partners in 33 Yorkville seeking a Mareva injunction
18 against Dan Casey and various associated companies.
19 Do you recall that?
20 A. Yes. Do I recall it, yes.
21 Q. Okay If we go to page 27 of
22 this motion record, page 27 of the PDF.
23 A. Twenty-seven.
24 Q. So we've got this on screen
25 now.

1 A. Yes.
2 Q. So this is a letter to
3 QuadReal Finance. And just to remind everybody, this
4 was one of the lenders to Cresford on Halo, Clover
5 and 33 Yorkville. That's who QuadReal was?
6 A. Yes.
7 Q. And fair to say that this
8 letter alleges severe cash shortfalls that were being
9 hidden from lenders?
10 A. Yes.
11 Q. Correct?
12 A. Correct.
13 Q. And that's in the second
14 paragraph. The third paragraph states that:
15 "...Dan's equity to purchase
16 both Halo and Clover were
17 actually borrowed. He has
18 no vested interest in these
19 projects and has nothing to
20 lose if not complete. Same
21 applies to 33 Yorkville as
22 he has none of his own
23 equity injected."
24 That was a true statement of the
25 state of affairs in Cresford as you understood it?

1 A. Yes.
2 Q. And your position is that
3 Mr. Dovigi was aware of all of that?
4 A. My position is that
5 Mr. Dovigi was aware of everything, yes.
6 Q. And it goes on to say that:
7 "All three projects that
8 your firm has financed are
9 substantially over budget
10 with no real plan to fund
11 the overruns."
12 Do you see that?
13 A. Yes.
14 Q. And that was, to your
15 knowledge, a true state of the affairs of the three
16 projects, at this point in time, at the beginning of
17 January of 2020?
18 A. Well, so, listen, I just want
19 to say that I'm embarrassed about these letters.
20 This letter, specifically, because we're referring to
21 this one. I regret sending them, like. And you
22 know, at the time, I was in a terrible place. You
23 know, and Dan's actions were going to have major --
24 cause major problems for other stakeholders. He
25 wasn't willing to address the problems and he was, he

1 was acting in a, in a manner that I believed was
2 going to hurt very many people, including myself.
3 Q. And so you skipped to the
4 punchline. I don't know if there's any dispute about
5 this now. But this letter is -- purports to be
6 signed by Dave Mann, but you wrote it?
7 A. Yes, I wrote it. I've
8 acknowledged it in the cross-examinations. I lied
9 about it at the beginning. I'm embarrassed about
10 that. I regret it. But at the same time, like --
11 there's no buts. I should have never done this.
12 Because, at the end of the day, my statement of claim
13 accomplished the exact same thing. Dan's actions
14 were irresponsible, and, and I, you know, was at the
15 point where I thought many people were going to get
16 hurt, including myself.
17 Q. So I appreciate your
18 statement of regret, but the point I actually want to
19 make on this right now is a little bit different.
20 It's that aside from the fact that you signed or put
21 Dave Mann's name on it, rather than your own, this
22 letter represented a true statement of your
23 understanding of the state of affairs at this point
24 in time. You were telling the truth in the content
25 of the letter, just not the sender, correct?

1 A. It would be pretty accurate,
2 yes.
3 Q. Okay. And then if we go over
4 to the second letter, which is at Tab 30 of the PDF.
5 I don't think we have to read through it all, but the
6 same question. While the author of the letter was
7 misrepresented, the substance or the content of the
8 letter was accurate from your perspective?
9 A. Yes.
10 Q. And this one was to Otera
11 Capital, which was the construction lender for YSL?
12 A. Yes.
13 Q. And just so we complete the
14 record on this area, you're aware of -- so we looked
15 at your statement of claim in this matter, which was
16 filed in January of 2020. And you recall that
17 Cresford filed a statement of defence and
18 counterclaim?
19 A. Yes.
20 Q. And I'm happy to pull it up,
21 if you'd like me to, but I will ask you to remember
22 that in that statement of defence and counterclaim,
23 they made a counterclaim for defamation in which
24 Cresford alleged that you were the author of these
25 two letters that we were just looking at. Do you

1 recall that?
2 A. Yes.
3 Q. And then if we go to Tab 21
4 of the joint book, we have your reply and defence to
5 that counterclaim?
6 A. Yes, I'm not disputing any of
7 this.
8 Q. I understand, but I have to
9 put it on the record.
10 A. Yes.
11 Q. I can't rely on anything
12 that's out of the record, so it has to go into the
13 record. So I apologize for having to do this.
14 A. No worries.
15 Q. So I take it you gave your
16 counsel instructions in preparing this document?
17 A. Yeah. I misled him on this
18 specific point. I was embarrassed about it. And at
19 the end of the day, my -- like I said, my statement
20 of claim had the exact same accusation. So, I mean,
21 I did mislead my, my lawyer on this specific point.
22 It's something that I'm not proud of, and, you know,
23 I shouldn't have did it.
24 Q. Okay. And you understood
25 that any judge presiding over this case would rely on

1 your reply and defence to counterclaim as a fair and
2 accurate statement of the facts as you understood
3 them?
4 A. The statement of --
5 MR. DUNN: Sorry, I'm not sure
6 that that's an answer she's capable of -- that sounds
7 like a legal question to me, so I object to that.
8 BY MR. MILNE-SMITH:
9 Q. Let me put it more simply.
10 You understood the importance of being truthful in
11 what you told your counsel as part of instructing him
12 to prepare this document?
13 A. I understood it to be that --
14 what I'm telling him is the truth. Surrounding these
15 letters and the issues that were happening at
16 Cresford, I just want this, for the record. I was
17 being threatened. My house was being surveillanced
18 by Dan Casey, his family, his employees. You know,
19 I -- at the time, I was told that I could be severely
20 hurt for the issues that, that Dan was failing to
21 address.
22 You know, it's not -- it all goes
23 hand in hand for me as to why I'm very embarrassed,
24 but at the same time I wanted to live. And I have
25 two small children, and I was worried for their

1 lives. I was worried that there were serious
2 consequences when somebody is behaving in a manner
3 that's not going to see people paid back.
4 Q. Ms. Athanasoulis, Mr. Casey
5 is not my client. I have no information about these
6 allegations you're making now of him making physical
7 threats, but your counsel will certainly get an
8 opportunity to cross-examine him about that issue, if
9 he so desires. Let's just finish this up. As I
10 said --
11 A. Well, Mr. Casey, you know, if
12 he is cross-examined, he was fully aware that I was
13 very uncomfortable with people not getting paid. He
14 was very aware that I was concerned with my safety,
15 and he did nothing about it.
16 Q. Okay. Let's go to paragraph
17 143 of the statement of the reply and defence to
18 counterclaim. Paragraph 143 states that:
19 "The defendant's defamation
20 claim rests on the bald
21 allegation that Ms.
22 Athanasoulis sent two
23 letters, one to each of
24 Otera and QuadReal Finance,
25 which are both lenders to

1 Cresford. Ms. Athanasoulis
2 did not send these letters.
3 She has not even seen them.
4 She did not defame the
5 defendants as alleged or at
6 all." [As read]
7 That is in the reply and defence
8 to counterclaim, because you told it to your counsel,
9 notwithstanding the fact that it was false, correct?
10 A. Correct.
11 Q. And in fact, you only
12 admitted the truth after Dave Mann submitted an
13 affidavit in which he presented incontrovertible
14 proof that the letter had been posted at a Canada
15 Post location in First Canadian Place by your nephew,
16 correct?
17 A. I submitted the truth. So I
18 mean, Dan used that letter for the further
19 negotiations on trying to do a deal on YSL. So, you
20 know, it wasn't something that wasn't known between
21 him and I on future discussions.
22 MR. MILNE-SMITH: All right.
23 Thank you, Ms. Athanasoulis. Those are my questions.
24 My friend, Mr. Dunn, may have some questions for you
25 in re-examination.

1 MR. DUNN: Thank you. And with
2 everyone's permission, I don't expect to be more than
3 five or ten minutes in re-examination, and
4 Mr. Horton, if it's okay with you and
5 Ms. Athanasoulis and the reporter, I would just as
6 soon do it now, as opposed to after lunch.
7 ARBITRATOR HORTON: Now is fine.
8 Yes.
9 RE-EXAMINATION BY MR. DUNN:
10 Q. So Ms. Athanasoulis, I'm
11 going to start where my friend ended. You made a
12 reference to physical threats or being afraid. Can
13 you tell me how you came to be afraid and what you
14 were referring to.
15 MR. MILNE-SMITH: I'm just going
16 to object on the basis that I specifically did not
17 ask any questions about that, so I don't think it's
18 the proper subject of re-examination. But I'm not
19 sure it matters too much.
20 ARBITRATOR HORTON: I think that
21 information was volunteered non-responsively to a
22 question that was about something else. I don't
23 think she was asked why she lied. But if there's no
24 objection to it, I will receive her greater
25 explanation, for what it's worth.

1 THE WITNESS: So I became
2 growingly concerned that Dan wasn't dealing ethically
3 with the problems that were in front of us, and I
4 explained at various times. And, in fact, I had a
5 conversation with Joe Bolla on December 5th, where I
6 asked him about Dan's past history, because none of
7 this was ever knowledge to me, which he confirmed
8 that there were issues in the past of, of non-payment
9 and problems that happened in the business. I became
10 increasingly concerned.
11 At the same time, I caught Dan's
12 family driving by my house. I caught Dave Mann
13 driving by my house. It was constantly, you know --
14 so I had those issues, plus I also had the issues of
15 the LPs. I was told that I could get hurt if the LPs
16 weren't paid back. So I was concerned with Dan's
17 non-willingness to engage in a proper negotiation,
18 which there's further evidence in the spring from the
19 LPs on, on one of the projects that's filed in one of
20 the motions, where Dan tried to talk to the LPs and
21 he was trying to put more money in his pocket.
22 Negotiations were always about
23 Dan, and not the other stakeholders.
24 MR. DUNN: Okay.
25 ARBITRATOR HORTON: Are you

1 satisfied with that as an answer, Mr. Dunn?
2 MR. DUNN: Yes.
3 ARBITRATOR HORTON: And we can
4 move on?
5 MR. DUNN: Yes.
6 BY MR. DUNN:
7 Q. Earlier in your
8 cross-examination, you made reference to a land lift.
9 What is a land lift?
10 A. So a land lift is something
11 that happens through the, the zoning. It could
12 happen through the zoning. It could happen through
13 the selling. So if the, if the project receives an
14 increase in value, there's an amount that could be
15 considered an appraisal surplus, or at some point in
16 time, a developer can choose to refinance and take
17 equity out or profit out.
18 Q. Okay.
19 A. Profit out is more a better
20 word, but.
21 MR. DUNN: Okay. Sorry, just one
22 moment. I just want to make sure I haven't missed
23 anything. Thank you very much, Ms. Athanasoulis.
24 Those are my questions.
25 THE WITNESS: Thank you.

1 MR. MILNE-SMITH: All right. I
2 just have two questions in follow-up, the evidence
3 given in cross-examination, since it's been allowed.
4 ARBITRATOR HORTON: Yes.
5 MR. MILNE-SMITH: I just have to
6 close the loop on it.
7 ARBITRATOR HORTON: Certainly.
8 RE-CROSS-EXAMINATION BY MR. MILNE-SMITH:
9 Q. Ms. Athanasoulis, you said
10 that you saw Dan Casey and Dave Mann driving by your
11 house. Is it your evidence that you considered that
12 to be some form of improper harassment?
13 A. I don't know what I consider
14 it, to be honest. I haven't consulted a lawyer, or
15 what to call it or anything like that. But I'm just
16 telling you that when you have hundreds of millions
17 of dollars at stake and people -- and you're supposed
18 deal with your business honestly, fairly and all of
19 that, and as my evidence gives you, there was
20 questionable activity happening, it wasn't a
21 normal -- it's not a situation I've ever been in.
22 Q. You never filed a police
23 report, did you?
24 A. At one point I did call the
25 police to my house, but I didn't file the police

1 report. I sent them away.
2 Q. You said that you were told
3 that you could be hurt if the limited partners were
4 not paid. Who told you that?
5 A. Well, one of the individuals
6 from the Asian community that helped raise the money,
7 he, he said those words to me. An individual that
8 worked for Cresford was part of those communications,
9 and also confirmed that it is an issue to deal with
10 all these issues honestly and ethically, and I have
11 to convince Dan -- and they all understood, you know,
12 at the time that Dan was acting irrational. And it
13 was not -- the period of time was not very
14 comfortable.
15 Q. Sorry. I'm asking you a very
16 specific question. I want the name of the person who
17 told you this and when they told you this.
18 A. So it would have been in and
19 around the negotiations with Patrick, so it would
20 have been in November/December that these things were
21 discussed, and it was Henry Zhang.
22 Q. And who is Mr. Zhang?
23 A. He is a broker, an agent who
24 also represented LPs that brought the money into the
25 various projects.

1 Q. Which LP?
2 A. Which LP?
3 Q. Yes.
4 A. Thirty-three Yorkville and
5 YSL.
6 Q. No, which limited partners in
7 33 Yorkville and YSL?
8 A. He represented various ones,
9 substantial -- like, various partners.
10 Q. Okay. And what specifically
11 did he tell you?
12 A. He specifically told me that
13 if business goes wrong, if people lose money, people
14 can get hurt.
15 MR. MILNE-SMITH: Thank you.
16 Those are my questions.
17 ARBITRATOR HORTON: Anything
18 further?
19 MR. DUNN: No.
20 ARBITRATOR HORTON: Okay. Thank
21 you very much, Ms. Athanasoulis. So I believe, then,
22 we're finished for the day, are we? Is that the
23 understanding? And when we come back tomorrow, we'll
24 have Mr. Casey. And we're starting at 9:30.
25 MR. MILNE-SMITH: Yes.

1 ARBITRATOR HORTON: We can go a
2 little later, if need be, so you can just bear that
3 in mind. And let Mr. Casey know as well, so that he
4 can accommodate us if that need arises. It would be
5 good to stay on schedule here. All right. Thank you
6 very much, everyone. See you tomorrow.
7 --- Whereupon proceedings adjourned at 1:00 p.m.
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TAB 15

10390160 Canada LTD et al. v. Casey et al.

MARIA ATHANASOULIS
on Friday, November 5, 2021

77 King Street West, Suite 2020
Toronto, Ontario M5K 1A1

neesonsreporting.com | 416.413.7755

1 Court File No. CV-20-00654040-0000

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4

5 B E T W E E N:

6 10390160 CANADA LTD., 1139950 B.C. LTD., 2545142 ONTARIO INC., 2659154 ONTARIO INC., 2576725 ONTARIO

7 INC., 2593273 ONTARIO INC., 5001047 ONTARIO INC., AVONDA REALTY AND DEVELOPMENT INC., BEISTONE INC.,

8 CAN-SUCCEED INTERNATIONAL INVESTMENT CORP., LIZ INVESTMENT INC., LIQIN WANG, ZHZH HOLDING LTD., BV

9 TOWER INVESTMENT LIMITED PARTNERSHIP and BV TOWER INVESTMENT LIMITED PARTNERSHIP II

10

Plaintiffs

11 - and -

12 DANIEL CASEY, HOMELIFE NEW WORLD REALTY INC., SIMON YEUNG, SAM YEUNG, CRESFORD (YORKVILLE) GP INC.,

13 CRESFORD HOLDINGS LTD., CRESFORD DEVELOPMENTS, 2611029 ONTARIO INC., 154290 ONTARIO LTD.; CRESFORD

14 (ROSEDALE) DEVELOPMENTS INC., 9615334 CANADA INC., YSL RESIDENCE INC., CRESFORD CAPITAL CORPORATION,

15 YG LIMITED PARTNERSHIP, VOX (YONGE WELLESLEY LTD.), 50 CHARLES STREET LIMITED, 50 CHARLES STREET

16 LIMITED PARTNERSHIP, 42 CHARLES STREET LIMITED, 42 CHARLES STREET LIMITED PARTNERSHIP, 1000 BAY STREET

17 LIMITED, 1000 BAY STREET LIMITED PARTNERSHIP, ROSEDALE DEVELOPMENTS INC., 59 HAYDEN STREET

18 LIMITED, 62-64 CHARLES STREET LIMITED, CRESFORD EQUITIES LIMITED, CRESFORD FINANCIAL LIMITED,

19 CRESPO, EAST DOWNTOWN REDEVELOPMENT PARTNERSHIP, 48 YONGE STREET INC. CRESBUILD.CRESFORD REAL ESTATE

20 CORPORATION; OAKLEAF CONSULTING LTD., OAK BRANCH TRUST, LONG BRANCH TRUST, 2103546 ONTARIO LIMITED,

21 RED BIRCH PROPERTIES INC., WHITE BIRCH PROPERTIES INC., 2402193 ONTARIO LIMITED, 1594290 ONTARIO

22 LIMITED, and CRESFORD EQUITY INC.

23 Defendants

24

25

1 --------

2 --- This is the Cross-examination on Affidavit of

3 MARIA ATHANASOULIS, taken via Neesons, a Veritext

4 Company's virtual platform, on the 5th day of

5 November, 2021.

6 --------

7 A P P E A R A N C E S:

8 (All via virtual platform)

9 J. Adair, Esq.,

10 & M. Dunn, Esq., for the Plaintiffs.

11 J. Larry, Esq.,

12 & D. Rosenbluth, Esq., for the Cresford Defendants.

13

14 ALSO PRESENT: Dave Mann, Ted Dowbiggin, Benoit

15 Duchesne, Sahar Talebi

16 REPORTED BY: Joanne A. Lawrence, RPR, CSR

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1 I N D E X

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3 WITNESS: MARIA ATHANASOULIS

4 PAGE

5 CROSS-EXAMINATION BY MR. LARRY........ 5

6

7 **The following list of undertakings, advisements

8 and refusals is meant as a guide only for the

9 assistance of counsel and no other purpose**

10 INDEX OF UNDERTAKINGS

11

12 The questions/requests undertaken are noted by U/T

13 and appear on the following pages: None

14

15 INDEX OF ADVISEMENTS

16

17 The questions/requests taken under advisement are

18 noted by U/A and appear on the following pages:

19 None

20

21 INDEX OF REFUSALS

22

23 The questions/requests refused are noted by R/F

24 and appear on the following pages: None

25

1 INDEX OF EXHIBITS

2

3 NUMBER/DESCRIPTION PAGE/LINE NO.

4

5 A: (For identification) Form of 84:16

6 consent in relation to the Empire

7 transaction

8

9

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1 -- Upon commencing at 10:00 a.m.
2 COURT REPORTER: Counsel, as you all
3 know, because we are using a virtual connection,
4 everyone is going to have to be more conscious than
5 ever of not speaking over each other. If I cannot
6 hear the end of a question or the beginning of an
7 answer, you are going to have a very poor record.
8 If I have to consistently interrupt because I
9 cannot hear or understand something that is said,
10 you will not have a good examination flow. If
11 there is an objection, I must be able to hear it
12 and know who is objecting. If I do have to
13 interrupt, please be patient and understand my goal
14 is to provide you with a perfect record of these
15 proceedings. Please move your papers and/or legal
16 pads away from your device so there is no ambient
17 noise.
18 From time to time we've noticed the
19 audio can be affected, and if so, we may need to
20 stop the proceedings and wait a moment for the
21 audio to improve, either by reconnecting or asking
22 that everyone use the conference call number if
23 you're using computer audio.
24 Would the witness please identify
25 herself and spell your first and last name.

1 THE WITNESS: Maria Athanasoulis,
2 M-A-R-I-A, A-T-H-A-N-A-S-O-U-L-I-S.
3 COURT REPORTER: Our witness today is
4 Maria Athanasoulis. If there are any questions
5 about the witness' identity, would counsel please
6 advise on the record now?
7 Hearing no objection, counsel, are you
8 ready for me to affirm the witness?
9 MARIA ATHANASOULIS: AFFIRMED.
10 CROSS-EXAMINATION BY MR. LARRY:
11 1 Q. Good morning, Ms. Athanasoulis.
12 A. Good morning.
13 2 Q. You swore two affidavits on this
14 motion; correct?
15 A. Correct.
16 3 Q. The first one was dated April
17 28th, 2021; correct?
18 A. Correct. If that's the date that
19 you see on that -- I don't have it in front of me,
20 but I take your word for it.
21 4 Q. All right. Well, I was going to
22 ask, do you have that affidavit with you today?
23 A. I can have access to it.
24 5 Q. All right. And to the extent we
25 have questions about the affidavit, we can also put

1 it up and share the screen and ask you about that.
2 And then you swore a second affidavit as well;
3 correct?
4 A. Yes.
5 6 Q. And that affidavit is sworn
6 September 15th, 2021; is that correct?
7 A. Yes.
8 7 Q. All right. I'm going to refer to
9 these affidavits as your first and second affidavit
10 today, okay?
11 A. Okay.
12 8 Q. All right. And I take it you
13 don't have any corrections to make to either of
14 those affidavits before we begin?
15 A. No.
16 9 Q. I take it you've reviewed those
17 affidavits in preparation for today's attendance;
18 is that right?
19 A. I've looked at them, yes.
20 10 Q. At paragraph 10 of your first
21 affidavit -- and if it's easier for you, we can put
22 that up on the screen.
23 A. If you could put it up on the
24 screen.
25 11 Q. We will. And I'll give you a

1 chance to read it. All right. Have you had a
2 chance to read that, Ms. Athanasoulis?
3 A. Yes.
4 12 Q. I understood you joined Cresford
5 in 2004; correct?
6 A. Correct.
7 13 Q. And then in 2005, you became vice
8 president of sales and marketing; correct?
9 A. I'm not -- I'm not sure of what
10 date exactly I became vice president.
11 14 Q. All right. Was it approximately
12 2005? Is that fair?
13 A. Not vice president, no. I don't
14 think that's correct, but I'd have to go back, and
15 I could look at timelines.
16 15 Q. All right. And I don't think much
17 turns on the specific time, but is it fair to say
18 that you became vice president of sales and
19 marketing within the first couple of years that you
20 joined Cresford?
21 A. I had several titles. I was
22 manager of special projects, I believe, in and
23 around 2005, so -- I mean, I really don't know at
24 what specific stage, without going back, exactly.
25 I think it's closer to 2007, but again, I'd have to

1 go back and get back to you on that.
2 16 Q. That's fine. In any case, you say
3 in paragraph 10 that from at least the time that
4 you were appointed president of sales and marketing
5 in 2012 that you were focussed on sales and
6 marketing and not finance; correct?
7 A. Correct.
8 17 Q. All right. I'm going to suggest
9 to you that even before your -- you were appointed
10 as the president of sales and marketing in 2012,
11 you were not focussed on financing; correct?
12 A. Correct.
13 18 Q. Okay. So you weren't focussed on
14 financing from the time you joined Cresford in 2004
15 all the way, I'm going to suggest, until you
16 resigned from Cresford in January of 2020. Is that
17 fair?
18 A. To be correct, when I was hired, I
19 was hired by Ted Dowbiggin, so if the question is
20 was I working in finance, I mean, I came there to
21 Cresford in 2004 and within the first 6 months
22 immediately moved to sort of a focus in sales and
23 marketing.
24 19 Q. Right. And so when your focus was
25 sales and marketing, as you say here, it was not

1 finance; correct?
2 A. Correct.
3 20 Q. Right. I'm -- and I'm simply
4 suggesting to you that the focus of sales and
5 marketing continued all the way through your tenure
6 at Cresford; correct?
7 A. Correct.
8 21 Q. So at paragraph 13 of your
9 affidavit - and we'll just scroll down - you
10 describe how Mr. Dowbiggin resigned in August of
11 2018, and then you say you became more involved in
12 Cresford's finances; correct?
13 A. Correct.
14 22 Q. But even at this point in time,
15 you still didn't have any responsibility for
16 Cresford's accounting; correct?
17 A. Correct.
18 23 Q. And you didn't have any
19 responsibility for Cresford's financial management;
20 correct?
21 A. Correct.
22 24 Q. Okay. And there are individuals
23 at Cresford who did have responsibility for
24 accounting functions; correct?
25 A. Correct.

1 25 Q. And also other individuals who had
2 responsibility for financial recordkeeping;
3 correct?
4 A. Correct.
5 26 Q. And those individuals didn't
6 report to you; correct?
7 A. Reporting was very interesting at
8 Cresford. At times, you know, people reported to
9 various people, including Dan, including Ted, and
10 including myself, because I was trying to get an
11 understanding of the business.
12 27 Q. Right. If someone had a
13 particular question, a finance-related question,
14 they wouldn't come to you as --
15 A. No.
16 28 Q. Right. They would certainly go to
17 someone else.
18 A. Correct.
19 29 Q. And after Mr. Dowbiggin resigned
20 in August 2018, I'm going to suggest that that
21 person was Dave Mann; correct?
22 A. Dave Mann was always involved at
23 Cresford. He was always around, always held an
24 office, and was responsible for certain aspects of
25 this business.

1 30 Q. Right. But the certain aspects of
2 the business, I'm going to suggest, were accounting
3 and financial management; correct?
4 A. Correct.
5 31 Q. He was effectively the chief
6 financial officer; right?
7 A. As far as I know, Dave had various
8 titles and created them throughout his tenure, so
9 I'm not exactly sure what Dave's role or title is,
10 although I'm -- I understand that he's got a title
11 after 2020 of CFO.
12 32 Q. Okay. But even before 2020, and
13 putting aside what his formal title was, fair to
14 say that you understood that he was a senior person
15 who was responsible for overseeing the accounting
16 functions generally; correct?
17 A. I'm not sure if that's -- that's
18 true. I -- I'm not -- I'm not sure.
19 33 Q. And I think you told me you
20 certainly weren't responsible for overseeing the
21 financial and accounting functions of Cresford at
22 any time; correct?
23 A. I didn't have full access to
24 accounting. Never had.
25 34 Q. I know you didn't have full

1 access. I'm suggesting you were never responsible
2 for overseeing those functions either; correct?
3 A. You would need access in order to
4 oversee transactions, and I didn't have access
5 to --
6 35 Q. So I take it that the answer is
7 no, then; correct?
8 A. Correct.
9 36 Q. Okay. And I understand,
10 Ms. Athanasoulis, you don't have any education in
11 accounting; correct?
12 A. Correct.
13 37 Q. And you don't have any education
14 in finance?
15 A. Correct.
16 38 Q. And it was never your
17 responsibility to maintain the general ledgers for
18 any of the Cresford companies; correct?
19 A. Correct.
20 39 Q. In any event, I'm going to suggest
21 to you that you wouldn't have had any ability to do
22 so; correct?
23 A. Correct.
24 40 Q. And you didn't have any experience
25 in reviewing accounting general ledgers; correct?

1 A. I know how to add, but they
2 weren't my responsibility, no.
3 41 Q. I know they weren't your
4 responsibility, and putting aside your ability to
5 add, I'm suggesting to you that you weren't
6 experienced in reviewing detailed financial ledgers
7 for companies; correct?
8 A. Correct.
9 42 Q. Okay. And if we put back -- your
10 affidavit back up at paragraph 22, I'll give you a
11 moment to read that. You refer to discussions that
12 you had with people in the finance department at
13 Cresford. Do you see that?
14 A. Yes.
15 43 Q. All right. And you were never a
16 member of the finance department; correct?
17 A. Define "member." I was part of a
18 team. Like, we were all a team.
19 44 Q. Right. But you're referring in
20 paragraph 22 specifically to people in the finance
21 department.
22 A. Right. I was not part of the
23 finance department, no.
24 45 Q. Right. And Mr. Mann was part of
25 the finance department; correct?

1 A. Yes.
2 46 Q. Turning to paragraph -- and,
3 sorry, you understood that Mr. Mann was an
4 accountant; correct?
5 A. I don't understand what Dave's --
6 I answered yes to the finance department. I don't
7 understand what Dave's job title or role was or if
8 he was even part of the Cresford finance
9 department. I think he was part of Dan's finance
10 department.
11 47 Q. I'm not -- so are you telling me
12 now that you --
13 A. Dan --
14 48 Q. -- are correcting your prior
15 answer and suggesting that you don't think Mr. Mann
16 was part of the finance department?
17 A. I'm just not sure what Dave's role
18 was with Cresford.
19 49 Q. And are you telling me that even
20 if you aren't surely exactly what that role is that
21 you didn't even understand that it had something to
22 do with finance?
23 A. I do, I do, because he was on
24 several documents on -- on a monthly basis, so he
25 had a role in finance, yes.

1 50 Q. When you say "he was on several
2 documents," do I take it to mean that you're
3 referring to various finance documents that you saw
4 his name on?
5 A. I saw his name on Altus reports.
6 51 Q. Okay. And I take it you knew that
7 Mr. Mann was an accountant; correct?
8 A. Yes.
9 52 Q. So I want to turn to paragraph 24
10 of your affidavit and under the heading
11 "misrepresentations to lenders that Cresford had
12 satisfied its equity obligations." Do you see
13 that, Ms. Athanasoulis?
14 A. Yes.
15 53 Q. If you want, I can give you -- I'm
16 going to ask you some questions about the
17 paragraphs and statements that you made in this
18 section. If you want a moment to review it, you
19 can do that. Otherwise, I can just begin with my
20 questions. Do you want to take a second to review
21 those paragraphs, or are you --
22 A. Which paragraphs specifically?
23 54 Q. Well, it's paragraphs 24 to 32 in
24 your affidavit where you describe these alleged
25 misrepresentations.

1 A. Okay.
2 55 Q. All right. So you say at the
3 outset that you learned in the fall of 2019 about
4 these various alleged misrepresentations; correct?
5 A. Correct.
6 56 Q. And the misrepresentations that
7 you're talking about, I take it, occurred prior to
8 the fall of 2019; right?
9 A. Correct.
10 57 Q. They occurred in connection with
11 the obtaining financing for the various projects;
12 is that right?
13 A. Correct.
14 58 Q. So if I understand, so that
15 would -- the financings for these various projects
16 would have occurred, I understand, sometime around
17 2016 or 2017; is that right?
18 A. Which project? Because you're
19 saying financings plural.
20 59 Q. Sure. Well, you're referring to
21 financings plural in this section, and again, if
22 you've had a chance to look at it, you're referring
23 to the Clover financing.
24 A. So then it could be any time, not
25 specific to 2016, 2017.

1 60 Q. But what I'm suggesting, the
2 allegations that you are -- I think you told me
3 this, that you are referring to happened before the
4 fall of 2019; correct?
5 A. Correct.
6 61 Q. Okay. And I take it you're
7 referring to conversations that Mr. Casey had with
8 various lenders in this section; right?
9 A. I'm referring to facts. I'm
10 referring to documents that would have been
11 executed. I'm not referring to conversations.
12 62 Q. So when you say that -- well, I
13 think you are, because if we look down at... At
14 paragraph 29, you say that Mr. Casey, on behalf of
15 Clover Inc., told QuadReal that Clover Inc. had
16 made the required $20.6 million equity investment.
17 Do you see that?
18 A. Yes.
19 63 Q. So I take it that was a verbal
20 representation that you're referring to in this
21 paragraph; right?
22 A. I don't know -- I don't know how
23 Dan would have communicated it.
24 64 Q. So you don't know whether he told
25 QuadReal orally --

1 A. Dan -- he --
2 65 Q. -- or he told them in a written
3 document?
4 A. Dan told me that he misrepresented
5 to QuadReal and Clover that Clover had made the
6 equity investment.
7 66 Q. So Dan told you that he made these
8 misrepresentations.
9 A. Yes.
10 67 Q. Okay. But you don't say that in
11 your affidavit, do you?
12 A. Dan told me that he made
13 representations to QuadReal that it's his equity.
14 68 Q. Let's just unpack that for a
15 second. My question to you, Ms. Athanasoulis, was
16 you don't say in your affidavit that Dan told you
17 he made a misrepresentation to QuadReal, do you?
18 A. Mr. Casey, on behalf of Clover
19 Inc., told QuadReal. This -- this is what I
20 believe, correct.
21 69 Q. Okay. So you believe that
22 Mr. Casey made representations to QuadReal about
23 how Cresford satisfied the equity obligation.
24 That's what you're telling me?
25 A. Correct, based on what Mr. Casey

1 told me.
2 70 Q. Okay. And so it's not based on
3 anything you learned from QuadReal; correct?
4 A. No.
5 71 Q. And it's not based on anything
6 that you learned from anybody else who may be
7 involved in those discussions with QuadReal;
8 correct?
9 A. I'm not sure how to answer that.
10 I mean, I know that it's incorrect because Dan's --
11 Dan's -- basically, when all of this starts to get
12 uncovered in 2019, there's discussions that are had
13 that confirms all of this misrepresentation and
14 gets uncovered when we go through the process of
15 selling this business.
16 72 Q. Okay. So you told me there were
17 discussions that were had that confirmed the
18 misrepresentations. So you told me that one of
19 those discussions was that Mr. Casey directly told
20 you that he made misrepresentations to QuadReal;
21 correct?
22 A. Correct.
23 73 Q. You told me that. And I'm
24 suggesting to you that, other than that
25 representation that you say Mr. Casey made to you,

1 that there's no other representations or
2 information that you learned from anybody else
3 about what Mr. Casey did or didn't say to QuadReal;
4 correct?
5 A. I'm not sure.
6 74 Q. You're not sure. Okay.
7 A. The finance department would have
8 told me that misrepresentations have been made.
9 75 Q. They -- the finance department
10 would have told you? So you're not certain whether
11 they did or they didn't?
12 A. Well, they would have told me,
13 yes, because how else would I know?
14 76 Q. Well --
15 A. I would know this through the
16 finance department that a misrepresentation of
17 equity was made.
18 77 Q. And when you say "the finance
19 department," are you referring to a specific
20 individual?
21 A. Indiv -- individual?
22 78 Q. Right. And --
23 A. Very --
24 79 Q. -- you don't identify -- you don't
25 identify any of those individuals in your

1 affidavit, do you?
2 A. No.
3 80 Q. Okay. So fair to say that
4 everything that you may have learned and everything
5 that you now allege about these misrepresentations
6 that Mr. Casey made you learned from other people;
7 correct?
8 A. I also learned from Dan.
9 81 Q. That's what I mean. You
10 learned -- you did not have any personal knowledge
11 of any of these misrepresentations; correct?
12 A. No.
13 82 Q. You were not privy to any
14 conversations between Mr. Casey and QuadReal;
15 correct?
16 A. Correct.
17 83 Q. Similarly, you were not privy to
18 any conversations between Mr. Casey and any of the
19 lenders to which you say these alleged
20 misrepresentations were made; correct?
21 A. Correct.
22 84 Q. So because you were not personally
23 present for any of those conversations, I suggest
24 to you it follows that everything that you've
25 learned, you heard from others; correct?

1 A. There's documents that confirm
2 this.
3 85 Q. I've seen the documents,
4 Ms. Athanasoulis, and we'll get to those, but
5 you're talking about oral representations that you
6 say Mr. Casey made to QuadReal.
7 A. Yes. I've learned through others.
8 86 Q. In your second affidavit,
9 Ms. Athanasoulis -- and we'll just pull it up for
10 you. Just give us a second. So I want to direct
11 your attention to paragraph 6, and you address
12 there a statement that Mr. Casey made in his
13 affidavit regarding BCIMC's views on the limited
14 partners' investment in the 33 Yorkville project.
15 You see that?
16 A. Okay.
17 87 Q. And I take it you've had a chance
18 to review Mr. Casey's affidavit; correct?
19 A. Okay. I -- I -- I could use the
20 paragraphs 5 and 6 to review what he said.
21 88 Q. Sure. Let's do that. All right.
22 Have you had a chance to review those? Let --
23 A. Yes --
24 89 Q. -- me know when you have.
25 A. -- I have.

1 90 Q. All right. So we're going to put
2 your affidavit back up. So you say at paragraph 6,
3 when you're summarizing Mr. Casey's evidence, and
4 you say that Mr. Casey said that it was a
5 completely nonissue for Cresford lenders, or at
6 least BCIMC, that limited partners invested, you
7 know, the equity in these projects. That's what
8 you say; correct?
9 A. I say what's in my statement.
10 91 Q. Right. But Mr. Casey didn't say
11 that it was a complete nonissue for lenders
12 generally, did he?
13 A. Sorry, I don't understand your
14 question.
15 92 Q. I'm saying we looked at
16 Mr. Casey's affidavit at paragraphs 5 and 6, and I
17 can put those back up for you if you want. He was
18 only referring to BCIMC; correct?
19 A. In his affidavit?
20 93 Q. Yes.
21 A. Okay.
22 94 Q. Do you agree with that?
23 A. Okay. I wasn't there -- okay.
24 95 Q. Sorry. What were you saying? You
25 were not there?

1 A. If Dan says that in his affidavit,
2 then that's what he's saying.
3 96 Q. Okay. So when you say in your
4 affidavit that you're summarizing Mr. Casey's
5 testimony or his -- and you summarize that by
6 saying it was a complete -- that he said it was a
7 complete nonissue for Cresford lenders, or at least
8 BCIMC, I'm simply suggesting to you that Mr. Casey
9 was only speaking about BCIMC and not Cresford's
10 lenders generally; correct?
11 A. I don't know if that's correct or
12 not.
13 97 Q. All right. Well, I think
14 Mr. Casey's affidavit can speak if itself and we
15 can probably move on.
16 And I'm going to suggest to you,
17 Ms. Athanasoulis, in any case -- sorry, is there --
18 is there someone in the room with you?
19 A. My -- my lawyer is at the other
20 end of the dining room table.
21 98 Q. Okay. Sorry, is that ringing on
22 your end, Ms. Athanasoulis?
23 A. Yes, but that's okay.
24 99 Q. All right. Someone answered the
25 phone or turned it off?

1 A. Looks like it.
2 100 Q. So I'm going to suggest to you,
3 you don't know whether this was an issue for BCIMC
4 at all; correct?
5 A. I would think it would be an issue
6 for BCIMC.
7 101 Q. Right. You would think it would
8 be an issue, but you don't know; correct?
9 A. Well, I do know that Dan
10 acknowledged that he misrepresented to me, to
11 lenders, and needed to inject capital into this
12 business and didn't do that, and had he done that,
13 I don't think BCIMC would have proceeded with a
14 receivership application had he complied with
15 whatever requirements he needed to in order to
16 continue a relationship with them.
17 102 Q. All right. That wasn't my
18 question, Ms. Athanasoulis. I'm suggesting to you
19 that you just don't know whether or not it was an
20 issue for BCIMC whether Cresford injected its own
21 equity or whether Cresford borrowed the equity that
22 it injected into the project; correct?
23 A. I don't know.
24 103 Q. Right. You're speculating;
25 correct?

1 A. I don't -- I don't agree with
2 that.
3 104 Q. Well, all right. Maybe you don't
4 like the choice of the word "speculating," but...
5 Turning to paragraph 12 of the same
6 affidavit, after describing an apparent concern
7 that KingSett had with the fact that equity was
8 borrowed, you say this also appears to be the case
9 with BCIMC. Do you see that?
10 A. Okay.
11 105 Q. And again, you say it appears to
12 be the case with BCIMC in paragraph 12. You told
13 me earlier today and just now in answer to a
14 question that you would think that this would be a
15 problem for BCIMC. I'm simply suggesting to you
16 you just don't know one way or the other; correct?
17 A. I do know that banks would have to
18 confirm their equity through Altus, so I do think
19 that the questions that you are asking could be
20 confirmed via Altus report -- reporting.
21 106 Q. Well, I'm asking you specific
22 questions today based on allegations that you made
23 in your affidavit.
24 A. And I --
25 107 Q. You never -- Ms. Athanasoulis, you

1 never had any discussions with anyone at BCIMC
2 about this issue; correct?
3 A. No, correct.
4 108 Q. All right. So you just can't say
5 one way or the other whether BCIMC was concerned if
6 equity was borrowed for this project; correct?
7 A. The finance team told me that they
8 misrepresented based on Dan's instructions to
9 BCIMC. I --
10 109 Q. You just -- all right. You've
11 told me that, but you haven't answered my question,
12 Ms. Athanasoulis. You can't say one way or the
13 other whether BCIMC was troubled or concerned by
14 the fact that equity injected into the project was
15 borrowed.
16 A. I personally can't say it. I rely
17 on the answers from the team.
18 110 Q. Okay. And you don't state -- all
19 right. We can move on.
20 So just above paragraph 12 - and I've
21 dealt with BCIMC now in your affidavit - you
22 address similar concerns that you say KingSett had
23 about the fact that Cresford's equity in a project
24 that KingSett loaned on was borrowed; correct?
25 A. I attached the affidavit from

1 KingSett, correct.
2 111 Q. But you're attaching it,
3 Ms. Athanasoulis, and you make a point in your own
4 affidavit that KingSett was concerned by the fact
5 that the equity injection in the Yorkville project
6 was borrowed; correct?
7 A. I make the statement as it is in
8 my affidavit.
9 112 Q. Okay. And I'm suggesting to you
10 today that one of the main reasons you are
11 including an affidavit from Mr. Pollack at KingSett
12 is to reiterate what you say was a concern by
13 lenders about the source of Cresford's equity
14 injection; correct?
15 A. Correct.
16 113 Q. And are you aware,
17 Ms. Athanasoulis, first of all, that the affidavit
18 that you attach from Daniel Pollack at KingSett was
19 not sworn?
20 A. I don't know if it is or not.
21 114 Q. All right. I can show you if you
22 want, just to show you that it's not. We'll just
23 show you the last page of his affidavit. It's up
24 on the screen. It's page 16 of Exhibit A, I
25 believe, to your own second affidavit, and you see

1 that it's not sworn?
2 A. Okay.
3 115 Q. Just for the benefit of the court
4 reporter, I don't think you can answer "okay." You
5 have to answer yes or no so the record is clear.
6 So you'll agree with me that it's not sworn by
7 Mr. Pollack; correct?
8 A. Correct.
9 116 Q. And I take it you don't know
10 whether or not Mr. Pollack ever swore this
11 affidavit; correct?
12 A. I know that he was cross-examined
13 on that affidavit in the proceedings.
14 117 Q. Okay. And I take it you have no
15 personal knowledge of the contents of the Pollack
16 affidavit; correct?
17 A. I have no personal knowledge?
18 Sorry, can you reask the question?
19 118 Q. Sure. You don't have any personal
20 knowledge of the matter that Mr. Pollack swears to
21 in his affidavit; correct?
22 A. I only know what's public
23 information.
24 119 Q. You didn't speak with Mr. Pollack
25 in preparation for giving your -- swearing your own

1 affidavit; correct?
2 A. Correct.
3 120 Q. I take it you just found a copy of
4 Mr. Pollack's affidavit and attached it to your
5 own; is that right?
6 A. Yes.
7 121 Q. So you have no personal knowledge
8 about Mr. Pollack's involvement in the loan that
9 KingSett made to Cresford; correct?
10 A. Correct.
11 122 Q. Are you aware that Mr. Pollack's
12 title is the director of special loans?
13 A. No.
14 123 Q. All right. And again, I can --
15 A. If that's what's in his affidavit,
16 then that's his title. I take your word for it.
17 124 Q. And I take it -- are you familiar
18 with what a special loans department typically
19 does?
20 A. Yes.
21 125 Q. So I take it you're aware, then,
22 that special loans typically involves dealing with
23 loans that are in default or distress; correct?
24 A. Okay. Yes.
25 126 Q. And, typically, a special loans

1 department or special loans officer are not
2 involved in the origination of the loan itself;
3 correct?
4 A. Correct. They could have been if
5 they were part of that department when the loan was
6 actually advanced, but I don't know -- I've never
7 met Daniel Pollack, so I don't know -- I don't know
8 what his history is with his employment.
9 127 Q. So you have no information one way
10 or the other whether Mr. Pollack was involved at
11 all in the actual origination of the loan; correct?
12 A. Correct.
13 128 Q. And you'll agree with me that if
14 Mr. Pollack was -- always held a role in the
15 special loans department that it's unlikely that he
16 would have been involved in the negotiation of the
17 loan itself; correct?
18 A. I don't know.
19 129 Q. You don't know. And you will
20 agree with me that Mr. Pollack certainly doesn't
21 say that he was involved in any way in the
22 negotiation of the loan and the commitment letter;
23 correct?
24 A. If that's what his affidavit says,
25 then correct.

1 130 Q. And you certainly don't have any
2 information to the contrary to suggest that he was
3 so involved; right?
4 A. Yes.
5 131 Q. And Mr. Pollack certainly doesn't
6 say in his affidavit that he had any direct
7 personal discussions with Mr. Casey or anyone else
8 at Cresford about the source of Cresford's equity
9 in the project; correct?
10 A. I'm not sure what -- if there --
11 that would be up to Mr. Pollack to answer.
12 132 Q. Well, no. I mean, you attached
13 Mr. Pollack's affidavit to your own,
14 Ms. Athanasoulis; correct?
15 A. I did.
16 133 Q. And you're relying on it, I take
17 it, in connection with this proceeding. Isn't that
18 right?
19 A. Yes.
20 134 Q. So I take it you realized when you
21 reviewed his affidavit that any allegation that he
22 makes or that -- let me say it differently. That
23 in reviewing his affidavit, you appreciate that
24 he's not suggesting that he has any firsthand
25 knowledge of any representations that Mr. Casey or

1		anyone else at Cresford made at the time of the
2		origination of the loan; correct?
3		A. I can't speak for Mr. Pollack.
4		I -- I can only speak to what he's written in his
5		affidavit, so whatever's in his affidavit I take as
6		being accurate.
7	135	Q. All right. So you'll agree with
8		me that certainly in his affidavit he's not
9		suggesting that he had any firsthand knowledge of
10		any representations from Cresford or Mr. Casey in
11		particular about the source of the equity; correct?
12		A. I don't know. I don't know how to
13		answer that.
14	136	Q. Let's look at your summary of
15		Mr. Pollack's affidavit beginning at paragraph 8 of
16		your second affidavit, okay? So have you had a
17		chance to review that?
18		A. Yes.
19	137	Q. Okay. So if I understand, you're
20		summarizing that Mr. Pollack was confirming that
21		KingSett imposed a minimum project equity amount on
22		Cresford for the Yorkville project; correct?
23		A. Correct.
24	138	Q. And that that minimum project
25		equity amount was $75 million; correct?

1 A. Correct.
2 139 Q. And you're also summarizing that
3 Mr. Pollack is saying that there was a requirement
4 that Cresford maintain the $75 million that --
5 throughout the project; correct?
6 A. Correct.
7 140 Q. And do I understand you to say in
8 your affidavit that it was a term of KingSett's
9 commitment letter that the $75 million had to come
10 from Cresford's own funds as opposed to being
11 borrowed?
12 A. Can you repeat that?
13 141 Q. Sure. Do I understand that you're
14 saying in your affidavit here that -- we've
15 established there's a requirement that Cresford
16 inject $75 million; correct?
17 A. Correct.
18 142 Q. And we've established that there's
19 a requirement that that $75 million had to stay in
20 the project; correct?
21 A. Correct.
22 143 Q. But are you also saying that your
23 understanding of KingSett's commitment letter is
24 that the $75 million had to come from Cresford's
25 own funds as opposed to being borrowed?

1 A. I believe that Cresford told
2 KingSett that the 54 million was Cresford's, and
3 this would be confirmed via Altus reports.
4 144 Q. Okay.
5 A. Altus needs to check how much
6 equity is in projects and is a third party that
7 confirms for banks the equity that's in from a
8 developer and what terms the lenders have given to
9 the developer to meet those equity requirements.
10 145 Q. Okay. But I'm asking about your
11 understanding about KingSett's requirement, and is
12 it your understanding that the equity had to come
13 from Cresford's own funds, or was Cresford
14 permitted to borrow the equity that it injected
15 into the projects?
16 A. Based on what I understood after
17 understanding all of this, it is my understanding
18 that Cresford needed equity in these -- in this
19 project.
20 146 Q. Okay. So it is your understanding
21 that Cresford had to inject its own money into the
22 projects; correct?
23 A. Correct.
24 147 Q. And that's what you say in your
25 affidavit; correct?

1 A. I state in my affidavit that the
2 equity is required by companies and -- that are
3 controlled and owned by Mr. Casey, or however it's
4 written, funds raised by corporations controlled by
5 Mr. Casey and Mr. Casey's family trust.
6 148 Q. Right. But you say, I believe,
7 that it's a -- it was a term of the commitment
8 letter that the equity requirement had to come from
9 Cresford or Mr. Casey or related companies;
10 correct?
11 A. Yes. Developers need skin in the
12 game or --
13 149 Q. I understand that,
14 Ms. Athanasoulis.
15 A. Yes.
16 150 Q. I'm suggesting to you that it was
17 and remains your belief that this "skin in the
18 game" requirement meant -- or was set out in
19 KingSett's commitment letter; correct?
20 A. I think it's -- I'm not sure. I'm
21 not sure.
22 151 Q. All right.
23 A. I wasn't part of the commitment
24 letter, so I'm not sure.
25 152 Q. So you just don't know one way or

1 the other whether the commitment letter provided
2 that the equity had to come from Cresford's own
3 money. You don't know.
4 A. Not without looking into it. I
5 can't answer that question with certainty. But the
6 answers can be found.
7 153 Q. And then similarly, you just don't
8 know whether the commitment letter prohibited
9 Cresford from borrowing the equity that it would
10 inject into the projects; correct?
11 A. I don't know.
12 154 Q. All right. In your affidavit,
13 Ms. Athanasoulis, you seem to be pretty certain
14 that the borrowing of equity was a direct violation
15 of the terms of various commitment letters. Isn't
16 that right?
17 A. Correct.
18 155 Q. You say that expressly, don't you?
19 A. Can you show me where?
20 156 Q. Sure. All right. We're just
21 pulling it up, Ms. Athanasoulis.
22 All right. I'll draw your attention to
23 paragraph 28. And this is now referring to the
24 Clover project, but I'll give you a moment to
25 review that.

1 A. Okay.
2 157 Q. All right. You've had a chance to
3 review that?
4 A. Yes.
5 158 Q. So if I understand what you're
6 saying is that you -- based on your review of the
7 applicable Clover lending agreement, that you
8 concluded that the equity in the project couldn't
9 be borrowed but had to come from Cresford itself;
10 is that right?
11 A. I concluded that The Clover's
12 equity was -- was Cresford's. It was from a
13 Cresford entity. It was Cresford's money.
14 159 Q. Are you saying that that's what
15 you believed at the time?
16 A. I'm saying what's in my affidavit,
17 that the Clover loan agreement prohibited any
18 third-party financing without the lender's express
19 permission.
20 160 Q. Right. And in making that
21 statement, I understood you to be saying that you
22 thought that the equity couldn't be borrowed and
23 injected on behalf of Cresford. Isn't that right?
24 A. I believe in the case of Clover,
25 which you're referring to, that Dan represented

1		that that was his money through his companies. I
2		don't believe that Dan told the lenders that it was
3		coming from a third party and that he had no skin
4		in the game.
5	161	Q. All right. You've told me that
6		repeatedly, Ms. Athanasoulis, but I'm asking about
7		a different point. I'm suggesting to you in your
8		affidavit that you seem to have concluded that the
9		fact that the equity was borrowed was somehow a
10		breach of the lending agreements.
11		A. Yes.
12	162	Q. And you say that with respect to
13		Clover at paragraph 28; correct?
14		A. Correct.
15	163	Q. And then you say that with respect
16		to -- at paragraph 29 --
17		A. Correct.
18	164	Q. -- at the end --
19		A. You're correct.
20	165	Q. -- that this was specifically
21		prohibited by the loan agreement.
22		A. Correct.
23	166	Q. And then going back to KingSett, I
24		understood in your affidavit that you were also
25		saying that you thought it was permitted -- it was

1 prohibited by the KingSett commitment letter;
2 correct?
3 A. I believe that Cresford told
4 KingSett that they had a specific equity amount
5 that would be confirmed by Altus.
6 167 Q. Yeah. I know. You've told me --
7 A. Right.
8 168 Q. -- that repeatedly, and I'm
9 suggesting to you that you also believed that the
10 requirement for Cresford to inject equity in the
11 project meant that Cresford had to inject its own
12 equity, and that equity could not be borrowed;
13 correct?
14 A. Correct.
15 169 Q. All right. But Mr. Pollack, in
16 his affidavit, never says that it was a term of
17 the -- KingSett's commitment letter that the equity
18 couldn't be borrowed, does he?
19 A. I'll take your word for it.
20 170 Q. Okay. And Mr. Pollack is just
21 saying that KingSett believed that the equity was
22 coming from Cresford's own sources and wasn't being
23 borrowed. Isn't that right?
24 A. Again, I'll take your word for it.
25 171 Q. All right. When you say you'll

1 take my word for it, you don't have any differing
2 interpretation of the KingSett commitment letter
3 today; correct? And to be clear -- that wasn't a
4 fair question. You're not pointing or you can't
5 point to anything in the KingSett commitment letter
6 itself that sets out that Cresford couldn't borrow
7 the $75 million of project equity; correct?
8 A. I don't know.
9 172 Q. Now you don't know one way or the
10 other.
11 A. Well, you're asking me to refer to
12 a commitment letter that I don't have in front of
13 me. Like, I haven't read the commitment letter,
14 and I -- I don't -- like, you're asking me a
15 question that I'm just not comfortable confirming
16 on.
17 173 Q. All right. Well, do you want a
18 chance to review the commitment letter? We can
19 pull it up for you. You -- I believe you attach it
20 to your own affidavit.
21 So we're looking at the KingSett
22 commitment letter that I believe is attached as
23 Exhibit B to Mr. Pollack's affidavit.
24 A. Okay.
25 174 Q. And this is dated December 6th,

1 2017.
2 A. Okay.
3 175 Q. And I take it you've seen this
4 commitment letter before today; correct?
5 A. Correct.
6 176 Q. And if we turn to page 30 of the
7 PDF, it describes the minimum project equity
8 requirement. Do you see that under Number 10 at
9 the bottom, "minimum project equity"?
10 A. Okay.
11 177 Q. You see that, Ms. Athanasoulis?
12 A. Yeah.
13 178 Q. And I take it that that's what
14 you're relying on when you are describing in your
15 own affidavit the requirement that Cresford inject
16 $75 million of equity in the project as a condition
17 of getting the KingSett loan; correct?
18 A. Correct.
19 179 Q. Okay. And I'm going to suggest
20 that there's nothing here or anywhere in the
21 commitment letter that states that that equity
22 couldn't be borrowed; correct?
23 A. Well, again, I can't say yes or
24 no. I -- I haven't, like, looked at all the
25 documents, and so I'll take your word for it that

1 there's nothing in any document that I haven't
2 seen, if -- if that's what you'd like me to say.
3 Like, I -- I don't -- I -- I don't know.
4 180 Q. Okay. And you talked earlier
5 about the concept of Cresford or Mr. Casey having,
6 in your words, "skin in the game"; correct?
7 A. Correct.
8 181 Q. You're aware, of course, that
9 Mr. Casey has provided, at least in connection with
10 the Yorkville project, various personal guarantees;
11 correct?
12 A. I'm aware -- okay.
13 182 Q. Is that a yes, you are aware of
14 that fact, that Mr. Casey provided personal
15 guarantees to the limited partner investors in
16 Yorkville?
17 A. Oh, we're moving to the limited
18 partners. Yes.
19 183 Q. And you're aware that Mr. Casey's
20 potential exposure on those guarantees from the
21 time that they were given was in the tens of
22 millions of dollars; correct?
23 A. Yes.
24 184 Q. And you'll agree that in giving
25 those personal guarantees, Mr. Casey's funds are

1 clearly at risk; correct?
2 A. Mr. Casey's funds are at risk.
3 Okay.
4 185 Q. Is that a yes?
5 A. Okay. I -- I don't know -- sure.
6 Yes. You're signing a guarantee; you're putting
7 yourself -- you have an obligation.
8 186 Q. Right. Or to use your words, in
9 giving the guarantee, he's got skin in the game;
10 correct?
11 A. I don't know. I don't know.
12 Again, I'm not a finance person, so I don't know.
13 187 Q. You --
14 A. I don't know if a guarantee is the
15 same as injecting your own money or if that -- I
16 don't know.
17 188 Q. All right. So you're not even
18 familiar enough with the concept of a guarantee.
19 Is that what you're telling me today,
20 Ms. Athanasoulis?
21 A. I'm not familiar with what
22 you're -- I'm familiar with a guarantee. I think
23 if you're trying to say that a guarantee is the
24 same as an equity injection -- I don't understand
25 what your question is, so if you can ask it again,

1 I can say yes or no.
2 189 Q. I'm not suggesting a guarantee is
3 or isn't the same as an equity injection. I'm
4 simply suggesting that by the giving of a
5 guarantee, Mr. Casey has, in your words, skin in
6 the game. Is that fair?
7 A. I don't know. I don't know --
8 190 Q. So -- sorry, go ahead.
9 A. I don't know.
10 191 Q. Okay. He certainly has exposure.
11 You'll agree with that?
12 A. He has exposure. Yes, you have --
13 you have exposure when you sign a personal
14 guarantee.
15 192 Q. Right. If the project is
16 unsuccessful, it won't be a good thing for
17 Mr. Casey; correct?
18 A. Okay.
19 193 Q. Correct?
20 A. Correct.
21 194 Q. Okay. So turning back to your
22 first affidavit -- and we'll pull it up for you.
23 At paragraph 23 -- I'll wait until it's on the
24 screen. I'm just going to scroll down so you can
25 read the whole thing because I want to ask you

1 specifically about the allegation concerning the
2 $2 million transfer from 33 Yorkville to Rosedale,
3 okay?
4 A. Okay.
5 195 Q. Have you had a chance to review
6 paragraph 23 in your affidavit?
7 A. Yes.
8 196 Q. And do I understand that in
9 preparation for today's attendance, you've had a
10 chance to review Mr. Mann's affidavits filed in
11 connection with this motion?
12 A. Yes.
13 197 Q. And also Mr. Casey's affidavit
14 filed in connection with this motion?
15 A. Yes.
16 198 Q. I take it you're also aware that
17 Cresford retained an expert named Fuller Landau
18 LLP, and they filed a report in connection with
19 this motion; is that right?
20 A. Yes.
21 199 Q. And I take it you've had a chance
22 to review that report; correct?
23 A. Correct.
24 200 Q. So with respect to this $2 million
25 transfer from Yorkville to Rosedale that you speak

1 to, I take it you're aware that it's Mr. Mann's
2 evidence that, at the time, there was a balance
3 owing from Yorkville to Rosedale, at the time of
4 the transfer; correct?
5 A. Mr. Mann is saying there was money
6 owed from Yorkville to Rosedale.
7 201 Q. Right. And you're aware that
8 that's what he has --
9 A. Alleged.
10 202 Q. -- (indiscernible); correct?
11 A. Correct.
12 203 Q. Okay. And I take it you're also
13 aware that the plaintiffs on this motion retained
14 their own expert, MNP; correct?
15 A. Correct.
16 204 Q. And that MNP filed a report in
17 which they disagreed with Mr. Mann's conclusion.
18 Isn't that right?
19 A. Yes.
20 205 Q. And you've reviewed that report, I
21 take it?
22 A. Yes.
23 206 Q. And so you're aware that MNP
24 concluded that money was actually owed the other
25 way, from Rosedale to Yorkville, at the time of

1 this transfer; correct?
2 A. Correct.
3 207 Q. All right. And I take it you're
4 also aware, because you -- of Mr. Mann's reply
5 affidavit in which he provided further information
6 about various intercompany loans and transfers;
7 correct?
8 A. Yes.
9 208 Q. And you're also aware that the
10 expert report that the respondents tendered from
11 Fuller Landau LLP concluded that, based on
12 Mr. Mann's evidence, there was indeed a balance
13 owing from Yorkville to Rosedale at the time of the
14 $2 million transfer; correct?
15 A. Correct.
16 209 Q. I take it you're also aware that
17 MNP was subsequently examined on their report filed
18 in connection with this motion; right?
19 A. Okay.
20 210 Q. You're aware of that?
21 A. Yes.
22 211 Q. All right. And that during this
23 examination, Mr. Fowlie, on behalf of MNP, agreed
24 with Fuller Landau's conclusion that based on the
25 information that Fullers had before it, there was

1 indeed money owing from Yorkville to Rosedale at
2 the time of the transfer; correct?
3 A. I don't know. I don't know what
4 exactly was determined between their two reports or
5 what --
6 212 Q. Okay.
7 A. -- exactly was said in
8 cross-examinations to confirm what is what.
9 213 Q. All right. So what --
10 MR. ADAIR: I think, Mr. Larry, in
11 fairness, if you're going to ask her those
12 questions, you should put the portions of the
13 transcript to her. I mean, I'm not sure anything
14 turns on any of this, what her --
15 MR. LARRY: Yeah, no, but I'm just
16 establishing some background, and I agree with
17 that, and of course we're ready and will pull up
18 the excerpt from Mr. Fowlie's cross-examination so
19 the witness can see it, if she hasn't before.
20 THE WITNESS: So what would you like me
21 to read?
22 BY MR. LARRY:
23 214 Q. Question 93 and then Mr. Fowlie's
24 answer to Question 93.
25 A. Okay. I've read it.

1 215 Q. Okay. So I'm suggesting, based on
2 your review of Mr. Fowlie's answer, he certainly
3 didn't have any information to dispute Fuller
4 Landau's conclusion; correct?
5 A. Well, he's saying that they
6 reviewed information that I don't have access to.
7 MR. ADAIR: Mr. Larry, let me just
8 interrupt for a moment. I don't want to object
9 unduly, but I just want to understand something
10 here. And if you think that my question for you
11 here is one that necessitates Maria stepping out,
12 quote/unquote, you'll tell me. I just want to
13 understand: If the intention is to rely on
14 Ms. Athanasoulis's evidence as to what conclusions
15 Mr. Fowlie did or didn't draw or concessions he
16 made or didn't make, then, Number 1, I object to
17 that in its entirety, but given that it's cross,
18 you'll ask --
19 MR. LARRY: It's not at all. It's not
20 at all.
21 MR. ADAIR: If that's not the
22 intention, then what difference does it make what
23 her interpretation of Mr. Fowlie's evidence is?
24 And I don't say that to be difficult. I just don't
25 understand what we're doing.

1 MR. LARRY: Yeah, I don't disagree.
2 I'm not asking for her interpretation. I was
3 simply trying to be fair to the witness in
4 providing some background and context about the
5 sequence of events that resulted from, you know,
6 her statement at paragraph 23 of her affidavit
7 about a $2 million transfer. And let me just
8 conclude with this, because I don't disagree with
9 what you've said, Mr. Adair, and as I said, I'm not
10 looking for her interpretation of Mr. Fowlie or
11 anybody else's evidence.
12 BY MR. LARRY:
13 216 Q. So the question for you,
14 Ms. Athanasoulis, is simply this: You don't have
15 any evidence whatsoever to dispute Fuller Landeau's
16 conclusions; correct?
17 A. I don't have any evidence to
18 dispute Fuller's -- I mean, I'd like to know what
19 information they were given. Did they review the
20 Altus reports?
21 217 Q. I don't believe they reviewed the
22 Altus reports. I understand that Altus was a cost
23 consultant; is that correct?
24 A. They're -- yeah. Yes, they are.
25 218 Q. Right. And I'm -- I guess what

1 I'm asking you, though -- and we can look back for
2 a full summary in Fuller's report of what they did
3 or didn't review, but I'm simply putting to you
4 that you don't have any evidence as we sit here
5 today that would in any way challenge or could
6 challenge Fuller's conclusion that, at the time of
7 the $2 million transfer from Yorkville to Rosedale,
8 there was, in fact, money owed from Yorkville to
9 Rosedale; correct?
10 A. I think the evidence of an Altus
11 report and review of an Altus report would make me
12 feel more comfortable to understand the information
13 that's being given to make any analysis.
14 219 Q. Okay.
15 MR. ADAIR: Do you want me to --
16 MR. LARRY: So if I understand --
17 MR. ADAIR: -- answer by way of
18 undertaking?
19 MR. LARRY: Sorry?
20 MR. ADAIR: Like, rather than you two
21 fighting about it right now, I'm happy to give an
22 undertaking to follow up, to advise you if
23 Ms. Athanasoulis does have any evidence once she
24 gets a chance to review whatever she'd like to
25 review.

1 MR. LARRY: Well, I want to ask first
2 just so I can understand what this Altus report is
3 a little bit before I find out if -- before I
4 decide if I'm interested in that -- in her evidence
5 about it.
6 BY MR. LARRY:
7 220 Q. So do I understand,
8 Ms. Athanasoulis, Altus was a cost consultant;
9 correct?
10 A. Correct.
11 221 Q. They assisted Cresford in keeping
12 track of the project and construction costs from
13 time to time; correct?
14 A. On a monthly basis and costs and
15 equity.
16 222 Q. Right. They're not an accountant;
17 correct?
18 A. They're cost consultants.
19 223 Q. That's right.
20 A. They could have an accountant on
21 the roster. I'm not sure what their business is
22 about, but you could ask -- we could ask them to
23 give a review of what their scope of work is --
24 224 Q. Right, but you --
25 A. -- and what their qualifications

1 are.
2 225 Q. As far as you know, to the extent
3 that Altus was involved on these projects, they
4 weren't acting as accountants to keep track of
5 intercompany balances between the various Cresford
6 entities; correct?
7 A. No. They were in charge of
8 confirming equity and what companies are confirming
9 equity and how that all works and what draws were
10 made and all of that in order to support certain
11 things, and so I think they would be a good source
12 to confirm whether or not this information is even
13 close to accurate.
14 226 Q. And when you say "this
15 information," tell me specifically, what
16 information do you think Altus could shed light on
17 in terms of an intercompany balance between a
18 project company and Cresford/Rosedale?
19 A. Calculations of equity, et cetera.
20 227 Q. All right. But --
21 A. The confirmation of costs.
22 228 Q. Okay. And you'll agree -- so you
23 said calculation of equity and confirmation of
24 costs. You understand --
25 A. Confirmation of commitment

1 letters -- they would confirm everything.
2 229 Q. All right. So let's just deal
3 with each of what you said. So, of course, Altus
4 could deal with confirmation of various costs from
5 time to time. You told me that; correct?
6 A. They don't deal with costs time to
7 time. They deal with them on a monthly basis and
8 are the middleman between the developer and the
9 banks and confirm the accuracy and the efficacy of
10 everything.
11 230 Q. Okay. But you've reviewed the
12 Fuller Landau report. You've told me that;
13 correct?
14 A. I reviewed the report, yes.
15 231 Q. Right. And Fuller Landau's
16 conclusion, in concluding that money was owed from
17 Yorkville to Rosedale at the time of this $2
18 million transfer that you speak of, Fuller Landau
19 is not in any way relying on any project costs in
20 making that conclusion; correct?
21 A. I don't know. I don't know what
22 was given to Fuller Landau to make his report.
23 232 Q. I'm not asking what was given to
24 them. I'm suggesting that Fuller Landau
25 reviewed -- that they -- Fuller Landau's not

1 providing an opinion on any costs that were
2 outstanding on the project at any point in time;
3 correct?
4 A. I -- I don't know how to -- I
5 don't know.
6 233 Q. Okay. So, similarly, you said
7 Fuller Landau -- that Altus would be responsible
8 for calculating the equity in the project from time
9 to time?
10 A. They are the liaison to confirm
11 certain things. Again, I don't -- that was not my
12 responsibility, and others can explain it to you
13 better.
14 234 Q. Okay. But you can't even fully
15 explain to me, as we sit here today, what Altus's
16 role exactly was or wasn't. Is that fair?
17 A. Well, on a monthly basis, they
18 report to the banks that all the information that
19 they're being -- that they're giving to the bank is
20 accurate. They certify every draw; they certify
21 all the costs; they certify the equity.
22 235 Q. Right. But you have no idea
23 whether Altus would have any information on an
24 intercompany balance between 33 Yorkville and
25 Rosedale; correct?

1 A. No, but they could give light
2 on -- on whether or not certain claims are
3 accurate, true, or false.
4 236 Q. Yeah, they might be able to give
5 light on all sorts of things, but that wasn't my
6 question. You don't -- have no idea whether they
7 could give any light on the question that we're
8 facing, which is what was -- or the intercompany
9 balance between 33 Yorkville and Cresford/Rosedale
10 at the time of the $2 million transfer. You just
11 don't know one way or the other. Is that fair?
12 A. I don't know if the information is
13 accurate. That's fair. I don't know what
14 you're -- okay. Ask your question again.
15 237 Q. You don't know if the information
16 is accurate, but you also don't know whether Altus
17 could shed any light on the conclusion in the
18 report that Fuller Landau has tendered in this --
19 on this motion; correct?
20 A. I don't know.
21 238 Q. Okay. So when you swore your
22 first affidavit, again, at paragraph 23 that we
23 looked at, you say at the end of that paragraph,
24 which is up on the screen in front of you, that
25 there would be no legitimate business purpose for

1 that transfer of $2 million from 33 Yorkville to
2 YSL; correct?
3 A. Correct.
4 239 Q. And I'd -- and I take it your
5 conclusion would include that you say there would
6 be no legitimate business reason for the transfer
7 of initially $2 million from Yorkville to Rosedale
8 and then from Rosedale on to YSL; correct?
9 A. Right. If you're using Rosedale
10 as the middle -- middle company to transfer money
11 around, yeah, there's no legitimate business
12 purpose for those transfers.
13 240 Q. Okay. And I take it in making
14 that conclusion, you didn't take into account or
15 you didn't consider whether there was any money
16 owing from Yorkville to Rosedale at the time of
17 that transfer; correct?
18 A. I still don't know if there is.
19 241 Q. Exactly. You just wouldn't have
20 had access to that information; correct?
21 A. Correct.
22 242 Q. And I'm going to suggest to you
23 that if money was owing from Yorkville to
24 Cresford/Rosedale at the time of the transfer, then
25 the repayment of those funds would be a legitimate

1 business purpose. Isn't that fair?
2 A. If that was the case.
3 243 Q. Okay. And in any event, after
4 these funds were paid to Cresford/Rosedale, you
5 don't have any evidence that the funds were
6 dissipated in any way; correct?
7 A. I don't have any evidence.
8 MR. LARRY: Well, counsel, it's 11:15.
9 I'm wondering if we can just take a 10-minute
10 morning break?
11 MR. ADAIR: Fair enough. Jeff -- of
12 course, no problem at all. I recognize these
13 things are always difficult to know, but do you
14 have any sense at all of how far you are?
15 -- OFF THE RECORD DISCUSSION --
16 -- RECESS AT 11:17 --
17 -- UPON RESUMING AT 11:27 --
18 BY MR. LARRY:
19 244 Q. So, Ms. Athanasoulis, I'm going to
20 refer you to paragraph 7 of your first affidavit.
21 I'll pull it up for you in a moment. Have you had
22 a chance to read that paragraph?
23 A. Yes.
24 245 Q. So I understand you to say that
25 you first learned about details of the two trusts

1 in Mr. Casey's family through -- or at the time of
2 the Timbercreek financing; is that right?
3 A. Yes.
4 246 Q. And I understand the financing
5 happened sometime around 2016? Is that consistent
6 with your recollection?
7 A. No. This would have been in
8 relation to another Timbercreek loan.
9 247 Q. Sorry, another Timbercreek loan?
10 A. Yes.
11 248 Q. And when would that --
12 A. More --
13 249 Q. When would that --
14 A. -- in line with 2018, '19. '19.
15 250 Q. Okay. It wasn't the Timbercreek
16 loan in connection with the purchase of land of
17 YSL. Okay.
18 A. No.
19 251 Q. So you're saying sometime in 2018
20 or '19, you first became aware of some details
21 relating to the trust; correct?
22 A. I understood who the trustee and
23 beneficiaries were -- or the beneficiaries were.
24 Trustee I didn't really understand. I don't even
25 really understand much about trusts, but I learned

1 that Dan had a trust because it was discussed in
2 detail.
3 252 Q. In connection with this financing
4 in 2018 or 2019; correct?
5 A. Correct.
6 253 Q. Okay. And Mr. Mann gave evidence
7 earlier in connection with this motion that the Oak
8 Branch Trust was creating in the early 1990s. Are
9 you aware of that? Are you aware that he gave that
10 evidence?
11 A. I trust him. If that's what he
12 says, then I have no reason to dispute what he's
13 saying.
14 254 Q. Okay. And then, similarly,
15 Mr. Mann's evidence was the Long Branch Trust was
16 created sometime in the early 2000s.
17 A. Okay.
18 255 Q. And I take it you have no basis to
19 dispute Mr. Mann's evidence; correct?
20 A. Correct.
21 256 Q. So for the first roughly 14 or
22 maybe even 15 years that you were at Cresford, you
23 didn't even know about the existence of either of
24 these two trusts; correct?
25 A. I -- I didn't know specifics, no.

1 I mean, I heard --
2 257 Q. Not --
3 A. -- the word "trust" being thrown
4 around, but I didn't understand it.
5 258 Q. So are you suggesting you might
6 have known -- you heard the word "trusts," or are
7 you suggesting you were aware that there was --
8 that Mr. Casey's family had two family trusts?
9 A. I wasn't aware of how many family
10 trusts Dan had.
11 259 Q. And I'm going to suggest to you
12 you weren't even aware that Dan's family had any
13 family trusts until around 2018 or 2019; correct?
14 A. I knew there was trusts. I knew
15 there was a trust, or Dan referred to, sometimes, a
16 trust.
17 260 Q. Is it fair to say that you had
18 such little knowledge of the trust because the
19 trust had nothing to do whatsoever with the
20 operation of the business?
21 A. Yes.
22 261 Q. And certainly any of the investors
23 in any of the projects wouldn't have known about
24 the existence of the trust at the time that they
25 made an investment, to the best of your knowledge;

1 correct?
2 A. To the best of my knowledge,
3 correct.
4 262 Q. And I take it Mr. Casey never told
5 you why he created either of these trusts; correct?
6 A. I don't know. No. I don't know.
7 263 Q. You don't know or no? I'm
8 suggesting to you that he never did, and he -- is
9 that fair?
10 A. He never really explained it, no.
11 264 Q. And are you aware that there may
12 be lots of reasons why an individual may create a
13 trust?
14 A. I'm not familiar with this area.
15 265 Q. All right. Do you have any
16 familiarity that -- or knowledge that a trust may
17 be used sometimes for tax planning purposes --
18 A. I don't know.
19 266 Q. -- or you just don't know?
20 A. I don't know.
21 267 Q. And similarly, do you have any
22 knowledge or familiarity that a trust may be used
23 for estate planning reasons, or you just don't
24 know?
25 A. I don't know.

1 268 Q. So I take it you also don't know
2 whether a trust is even a vehicle that could be
3 used for judgment-proofing oneself. Is that fair?
4 A. Well, Dan made those statements.
5 Dan made those statements to me in 2019 that he
6 had -- he had left limited money in his name, and
7 he only had $10 million personal guarantee to
8 various financial institutions, and so he didn't --
9 he didn't care either way about his personal
10 guarantee.
11 269 Q. Okay. So you're saying that
12 Mr. Casey was describing to you the extent of his
13 potential personal exposure in connection with
14 claims that could be made against him; is that
15 right?
16 A. Correct.
17 270 Q. Okay. But Mr. Casey never said to
18 you that, Hey, Ms. Athanasoulis, I created these
19 trusts some 10 and 20 -- 15 years ago or so in
20 order to try to judgment-proof myself; right? He
21 never said that to you.
22 A. He said that he left limited money
23 in his name to judgment-proof himself.
24 271 Q. That wasn't my question. He never
25 said to you that he created the trusts in order to

1 judgment-proof himself; correct?
2 A. Two statements -- so if you put
3 back up my affidavit.
4 272 Q. Sure.
5 A. The way I read it, Dan created the
6 trusts to ensure he was judgment-proof. So the way
7 I see that first sentence is that he -- his -- his
8 comments to me about leaving limited money --
9 sorry, sorry. Sorry about the noise.
10 273 Q. No problem.
11 A. Okay. So in order for Dan to make
12 the statement to me that he didn't care about his
13 personal name, that he was judgment-proof, he had
14 these trusts that protected him, his -- his net
15 worth.
16 274 Q. Okay. But I'm suggesting he never
17 said to you that he created the trusts for the
18 purpose of trying to judgment-proof himself;
19 correct?
20 A. He may have said that. Yes, he
21 did say that in 2019.
22 275 Q. No, you -- what -- well, that
23 might be something different. What I thought you
24 told me was that in 2019, he told you that he
25 didn't have assets in his own name.

1 A. He did always say he had assets in
2 his name. He had to provide proof to the banks
3 that he had at minimum $10 million. So he did have
4 assets in his name, but he didn't want a
5 substantial amount of money in his name, and so he
6 created these family trusts to keep money away from
7 the company. Again, I don't know much about
8 trusts.
9 276 Q. Right. And I'm suggesting you
10 also -- that Mr. Casey never said to you that that
11 was the reason he created the trusts; correct?
12 A. No, he never said that that was
13 the reason why he created the trusts.
14 277 Q. So the statement in your
15 affidavit, this is just a conclusion that you drew
16 based on what you say Mr. Casey may have told you
17 in 2018 or '19; right?
18 A. Yes.
19 278 Q. And in any event, I take it you
20 don't have any evidence about the payment of any
21 funds - any funds at all - to the trusts since the
22 time that the limited partners made their
23 investment in Yorkville; correct?
24 A. I don't have any proof of any
25 payments to the trusts, no.

1 279 Q. You don't have any proof of
2 payments from the trust to any of the Cresford
3 entities either; correct?
4 A. No knowledge.
5 280 Q. And you don't have any knowledge
6 or evidence of the dissipation of any assets by the
7 trusts since the time of the LP's investments in
8 Yorkville; correct?
9 A. I don't know.
10 281 Q. Well, you --
11 A. Because I don't know what assets
12 he would have in the trust, so -- again, I don't
13 know what he's doing for tax planning. So I may
14 have sold stuff that I don't know what his -- he
15 was doing behind the scenes.
16 282 Q. Right, he may have. You're saying
17 you don't know what he's doing behind the scenes,
18 but you do not have any personal knowledge of any
19 dissipation of assets by either of the trusts since
20 the time that the investments --
21 A. No.
22 283 Q. -- by the limited partners in
23 Yorkville were made; correct?
24 A. Correct.
25 284 Q. All right. And if we extended

1 that out even from the day that you started at
2 Cresford in 2004, you don't have any evidence of
3 the dissipation of any assets in the trusts at any
4 time; correct?
5 A. Correct.
6 285 Q. So if we turn to paragraph 38 of
7 your first affidavit, you describe the YSL project,
8 and we'll give you a chance to review that.
9 A. M-hm, yes.
10 286 Q. You describe in that affidavit
11 that while you were still employed at Cresford,
12 Mr. Casey directed you to try to sell the YSL
13 project; correct?
14 A. Yes.
15 287 Q. And I understand that sometime in
16 late 2019, you were working with an investor to
17 potentially acquire the YSL project for yourself;
18 correct?
19 A. For myself? You mean --
20 288 Q. You -- let -- it was an inelegant
21 question. I understand you would have potentially
22 been involved with or part of a group that would
23 acquire the YSL project; is that correct?
24 A. Yes. There was a letter of
25 intent.

1 289 Q. And I understand that the
2 individual who was leading that effort, at least
3 from a financial perspective, was an individual
4 named Patrick Dovigi; is that correct?
5 A. Correct.
6 290 Q. And I understand that your
7 discussions with Mr. Dovigi about potentially
8 working with him on an acquisition of YSL occurred
9 in -- or began in late 2019; is that right?
10 A. The notion of working with
11 Mr. Dovigi, which was Dan's suggestion, started in
12 the summer of 2019.
13 291 Q. Okay.
14 A. The suggestion came from Dan.
15 292 Q. Right. But I'm talking about the
16 possibility that if Mr. Dovigi was the successful
17 purchaser of YSL that you would continue to work
18 with Mr. Dovigi in some capacity; correct?
19 A. I would continue to work for the
20 business, correct.
21 293 Q. But Mr. Dovigi would now own the
22 YSL project; correct?
23 A. Correct.
24 294 Q. And you would be working with
25 Mr. Dovigi; correct?

1 A. We never furthered along any
2 paperwork, but that was my understanding, that I
3 would be part of the business.
4 295 Q. Okay. And are you saying that
5 those discussions about potentially working with
6 Mr. Dovigi should he acquire the project began as
7 early as the summer of 2019?
8 A. No. Those began in the fall of
9 2019.
10 296 Q. Okay. And I think we discussed
11 earlier that you left Cresford on January 2nd,
12 2020; is that correct?
13 A. Correct.
14 297 Q. And after your departure, I
15 understand that there was further attempts and
16 further discussions with Mr. Dovigi about trying --
17 about him trying to acquire the YSL project;
18 correct?
19 A. Can you ask the question again?
20 298 Q. Sure. I'm suggesting even after
21 your departure in January of 2020, there was
22 further discussions between Cresford and Mr. Dovigi
23 about him leading a group to acquire the YSL
24 project; correct?
25 A. Correct. There was further

1 discussions.
2 299 Q. All right. And you were -- you
3 would have been, again, a part of that group or
4 team that was going to acquire YSL; correct?
5 A. Correct.
6 300 Q. And do I understand those sort of
7 took place continuously from the time you -- well,
8 you said they started before you left, but they
9 continued all the way through to October of 2020;
10 is that right?
11 A. Correct.
12 301 Q. And --
13 A. But in different capacities each
14 time, right? Like, in different -- different
15 projects at different times.
16 302 Q. Okay. And in addition to the
17 possibility of Mr. Dovigi acquiring YSL, I also
18 understand there was discussions about YSL being
19 sold to the Empire Group; correct?
20 A. Based on what I -- I read,
21 correct.
22 303 Q. Is it just based on what you read,
23 or -- I'm suggesting to you, Ms. Athanasoulis, you
24 were aware contemporaneously that the Empire Group
25 was engaged in discussions with Cresford about

1 acquiring the YSL project; correct?
2 A. Correct.
3 304 Q. Okay. And so it wasn't just based
4 on what you read. It was also based on what people
5 were telling you at that time; right?
6 A. It was based on Dan and Ted
7 confirming that they were in discussions with
8 Empire and confirming that they had discussions
9 with Empire.
10 305 Q. Okay. And I understand that
11 this -- the discussions with Empire continued, and
12 there was a conditional agreement reached sometime
13 in the summer of 2020? Is that consistent with
14 your recollection?
15 A. Based on what I see in these
16 documents, yes.
17 306 Q. But also based on your
18 understanding at that time. Isn't that right?
19 A. I had no understanding at the time
20 of what Dan was or was not doing.
21 307 Q. So you weren't aware in the summer
22 of 2020 that there were -- that Cresford and YSL
23 had reached at least a tentative agreement or
24 conditional agreement to sell the YSL project to
25 Empire?

1 A. At that -- like, so if you could
2 phrase your question properly so that I can answer
3 it. I was aware after, like, that there was an
4 agreement because Dan and Ted told us about it.
5 308 Q. And when you say Dan and Ted told
6 you about it, when did they tell you about it?
7 A. They told us about it in October.
8 309 Q. Okay. So before October 2020,
9 it's your evidence that you weren't -- you were not
10 aware that Empire and Cresford reached a
11 conditional agreement to sell the YSL project to
12 Empire. Is that your evidence?
13 A. I don't know what agreement they
14 reached or didn't reach.
15 310 Q. Are you aware that in the summer
16 of 2020, Cresford sought the limited partners'
17 consent to the sale of the project to Empire?
18 A. I've read that, yes.
19 311 Q. Where did you read that?
20 A. It's in documents, in motion
21 materials --
22 312 Q. So --
23 A. -- in other procedures --
24 pleadings or -- but I've seen -- I've seen -- I've
25 seen that that was the case.

1 313 Q. Okay. Did you know at the time,
2 in the summer of 2020, that the consent of the
3 limited partners was sought for -- in connection
4 with the Empire transaction?
5 A. I don't know.
6 314 Q. You don't know whether you knew or
7 you didn't know?
8 A. You know, you're asking a
9 question -- I mean, I'm assuming that that would be
10 the case, if they're trying to do a transaction, so
11 a lot of that is just based on my assumptions that
12 that would be a normal course of business.
13 315 Q. All right. Well, when you say you
14 assumed that that would be the case because they
15 were trying to do a transaction, is that because it
16 was your understanding that any sale of the asset
17 to Empire would require the consent of the limited
18 partners?
19 A. Sorry, so you're talking about the
20 limited partners of not this -- this case; you're
21 talking about the limited partners of -- you -- I
22 just need some more background. You're talking
23 about the YSL limited partners?
24 316 Q. That's right. I'm asking -- I've
25 been asking about YSL, and I -- because I'm asking

1 questions about the section in your affidavit
2 that's onscreen about -- where you give evidence
3 about YSL specifically. You see that?
4 A. Yeah.
5 317 Q. All right. And so I guess I'm --
6 so yes, I'm asking you whether you were aware in
7 the summer of 2020 that Cresford sought the consent
8 of the YSL limited partners in connection with a
9 potential sale to Empire.
10 A. I don't know when I was aware or
11 when I wasn't aware.
12 318 Q. So you might have been aware in
13 the summer of 2020 at the time that -- around the
14 time that the consent was actually sought --
15 A. My assumption would be, if they
16 were consuming a transaction, that they would need
17 to get their consent.
18 319 Q. I don't -- I don't want to ask you
19 about your assumptions. I'm trying to understand
20 what your knowledge was at that time.
21 A. I don't know. I -- no. I mean,
22 I -- I don't know what -- I've had various
23 conversations with different people at different
24 times for different reasons, and as you mentioned,
25 I've met with Dan and Ted at specific times

1 throughout my -- from January to the fall of 2020,
2 so it could be -- like, I -- I don't know when I
3 had certain meetings, and I'm not sure -- I'd have
4 to get back to you.
5 320 Q. Do you recall whether you had any
6 discussions with any of the YSL limited partners
7 about the fact that their consent was sought in
8 connection with the Empire transaction?
9 A. I don't recall.
10 321 Q. So at paragraph 39, in the
11 second -- or the third sentence, you describe now
12 about attending a meeting in October 2020 with five
13 people - you can read it as well as I can - okay?
14 And I take it one of the people that you attended
15 the meeting with was Mr. Dovigi; is that right?
16 A. Correct.
17 322 Q. And again, the purpose of this
18 meeting was to explore the possibility, as you say,
19 of acquiring YSL; correct?
20 A. Correct.
21 323 Q. And I'm going to suggest to you
22 that by this time, October 2020, you were aware
23 that the possible sale of YSL to Empire was not
24 going to be concluded. Is that fair?
25 A. Yes.

1 324 Q. And by this time, October 2020,
2 I'm going to suggest that you were also aware that,
3 in connection with the Empire transaction, the YSL
4 limited partners' consent was sought; correct?
5 A. Correct.
6 325 Q. And you also know that the limited
7 partners on YSL did not give their consent in
8 connection with the potential sale of the asset to
9 Empire; correct?
10 A. I would assume that would be the
11 case, based on the transaction --
12 326 Q. Okay. I'm not asking about --
13 A. I don't know what the LPs did or
14 did not do in connection with any Empire
15 transaction.
16 327 Q. Okay. So you know that the LPs'
17 consent was sought, but you don't know whether or
18 not they provided their consent; is that right?
19 A. I have no idea.
20 328 Q. Okay. Sorry, just to be clear,
21 when you say you have no idea, you have no idea
22 whether they provided their consent; correct?
23 A. Yeah, I have no -- correct. I
24 don't know what their conversations between them
25 and their lawyers were and what agreements or

1 nonagreements or -- I have no idea. Conversations
2 that were had, I have no idea.
3 329 Q. Right. But you told me that you
4 understood that their consent was sought by the
5 time you're meeting with Mr. Casey in October 2020;
6 correct?
7 A. Mr. Casey confirmed that in our
8 meeting, yes.
9 330 Q. Okay. And you're suggesting that
10 notwithstanding the fact that Cresford had sought
11 the consent of the limited partners for the
12 previously aborted Empire deal, Mr. Casey is now
13 suggesting that they try to structure a transaction
14 to circumvent this consent requirement; is that
15 right?
16 A. Sorry, repeat that?
17 331 Q. Sure. Paragraph 42 of your
18 affidavit, Ms. Athanasoulis, you say Mr. Casey told
19 you -- I'll give you a chance to read it. Just let
20 me know when you're done.
21 A. Can I read the rest of 42?
22 332 Q. Of course.
23 A. Correct.
24 333 Q. Okay. You've had a chance to read
25 all that?

1 A. Yes.
2 334 Q. So you're saying that Mr. Casey
3 suggested that you proceed by way of a -- or that
4 you don't proceed by way of a share purchase
5 agreement; correct?
6 A. He didn't -- he basically
7 didn't -- I -- I -- he basically said that he
8 couldn't -- he needed to do a transaction where he
9 could see money to himself off the books, and a
10 share transaction couldn't happen because, at the
11 end of the day, Aviva -- he had structured a deal
12 with Aviva that he would repay them on any losses
13 incurred on other projects.
14 335 Q. Okay. So just to be clear, so you
15 told me that by this time you were aware that
16 Cresford sought the consent from the limited
17 partners in connection with the aborted Empire deal
18 and that you're now telling me that Mr. Casey was
19 suggesting a type of transaction that would, as I
20 said before, circumvent or get rid of the
21 requirement to obtain the investors' consent. Is
22 that what you're telling me?
23 A. I'm telling you that he wanted
24 money on the side so that he could transact in a
25 fashion that creditors wouldn't have access to

1 those funds.
2 336 Q. All right. And I'm not asking
3 about creditors. I'm specifically asking about
4 your comment and statement in paragraph 42 about
5 the limited partners in YSL having the right to
6 consent to the transaction. You see that you said
7 that there?
8 A. Yes.
9 337 Q. So again, do I understand that
10 even though Cresford had just sought the consent
11 from the limited partners that Mr. Casey was now
12 proposing a transaction that would try to get
13 around this consent requirement? Was that your
14 understanding?
15 A. Well, it wasn't so much about the
16 consent -- like, it is about the consent, but they
17 would find out that he was getting money or the
18 value of the property -- they would have access to
19 getting their investment back with interest. He
20 wanted to structure a deal that --
21 338 Q. Okay.
22 A. -- yeah, that didn't have all the
23 money going back to the limited partners.
24 339 Q. Okay. So is it fair to say, then,
25 that that was more about what the -- what Mr. Casey

1 was concerned about, and this wasn't really about
2 the issue of going to the limited partners to get
3 their consent? Is that fair?
4 A. No, it's not fair.
5 340 Q. But he --
6 A. I think the LPs needed to approve
7 any transaction, and Mr. Casey told me that a share
8 transaction couldn't happen because Aviva needed to
9 approve it.
10 341 Q. Okay. And Mr. Casey, I'm
11 suggesting to you, he understood that the LPs had
12 to approve any transaction; correct?
13 A. Well, Mr. Casey, in that meeting,
14 didn't -- thought that he had legal advice that he
15 didn't need to care about the LP investors; that he
16 could hold up their money in court and they could
17 fight him on it.
18 342 Q. All right. So when you say
19 Mr. Casey told you he couldn't sell via a share
20 purchase agreement because that would require
21 consent -- correct? That's what you say?
22 A. Correct.
23 343 Q. So then are you suggesting that
24 Mr. Casey thought he could perhaps sell the asset
25 by way of an asset purchase agreement?

1 A. I -- I would think that that's the
2 way it would happen, at the right price, and then
3 with a side deal.
4 344 Q. Okay. And I take it you're aware
5 that the Empire transaction was indeed an asset
6 purchase transaction; correct?
7 A. I -- I -- I don't know. I haven't
8 reviewed the Empire transaction in detail.
9 345 Q. Okay. So you just don't know one
10 way or the other whether Empire was looking to
11 acquire the YSL asset from Cresford.
12 A. No. I just know what Dan and Ted
13 told me.
14 346 Q. All right. Let's just pull up a
15 document -- and maybe you haven't seen it. I don't
16 know, Ms. Athanasoulis. You'll tell me.
17 So this is a document that's marked at
18 the top Annex 1, and I'm suggesting to you that
19 this was the form of consent that Cresford was
20 asking the YSL limited partners to sign in
21 connection with the Empire transaction. Have you
22 seen this document before?
23 A. No. And maybe I have it in --
24 347 Q. Have you --
25 A. -- with any motion materials, but

1 no.
2 348 Q. And you told me at that time that
3 you don't recall whether any of the YSL limited
4 partners showed you this document.
5 A. They would never show me this
6 document.
7 349 Q. Okay. And there was no other way
8 that you would have -- this document would have
9 come into your hands. Is that what you're saying?
10 A. Correct.
11 MR. LARRY: All right. Counsel, I
12 wouldn't -- I'd like to mark this just for
13 identification purposes.
14 MR. ADAIR: That's fine, Mr. Larry.
15 MR. LARRY: So this will be Exhibit 1.
16 EXHIBIT A: (For identification) form
17 of consent in relation to the Empire
18 transaction
19 BY MR. LARRY:
20 350 Q. And if you look at the second
21 recital to this document, I'm going to suggest to
22 you, Ms. Athanasoulis, that it contemplates that
23 Empire was going to acquire the YSL project by way
24 of a purchase of the asset; is that right?
25 A. Okay. I take your word for it,

1 if -- again, I -- I -- I haven't read this
2 document, so I would like a lawyer to explain it to
3 me, but if that's what you're saying it is, then
4 I'll take your word for it.
5 351 Q. Well, I'm just pointing out the
6 words to you, that it contemplates that there was
7 an agreement of purchase and sale between YSL
8 Residences Inc. and Empire in connection with the
9 purchase of --
10 A. Okay.
11 352 Q. -- the various lands. That's what
12 it says; correct?
13 A. Correct.
14 353 Q. In other words, this isn't
15 contemplating a share purchase in any way; correct?
16 A. Again, without understanding and
17 being in the room, I don't know what this deal is.
18 I'm sorry, Jeff. Like, you know, I don't know if
19 Dan has ownership in Empire. I don't know what
20 this is, and I take your word for it. If it's a --
21 not a share transfer deal, then it's not a share
22 transfer deal.
23 354 Q. All right. And so I'm
24 suggesting -- pointing out to you that even though
25 this wasn't a share transfer deal, the consent of

1 the limited partners was sought in connection with
2 that transaction; correct?
3 A. Again, I'll take your word for it.
4 355 Q. All right. So going back to your
5 statement at paragraph 42 of your affidavit that
6 Mr. Casey couldn't sell by way of a share purchase
7 agreement, I think you suggested to me that maybe
8 he thought he could sell by -- pursuant to an asset
9 purchase agreement; right? You told me that?
10 A. Yes.
11 356 Q. And I'm pointing out to you that
12 even in connection with an asset purchase
13 agreement, that still doesn't get around the
14 requirement to get the consent of the limited
15 partners; correct?
16 A. Correct.
17 357 Q. But in any event,
18 Ms. Athanasoulis, nothing came of the discussions
19 that started in 2019 with Mr. Dovigi and then you
20 spoke about the meeting in October 2020; right?
21 Nothing ever came of that?
22 A. No.
23 358 Q. Right. No one at Cresford ever
24 tabled any transaction formally that tried to, in
25 your words, you know, divert or funnel some money

1 to Mr. Casey or any other Cresford entity; correct?
2 A. Not -- at the end of the day, no.
3 359 Q. Right. You can't point to any
4 document or term sheet or draft agreement or
5 anything that contemplates --
6 A. No.
7 360 Q. -- a diversion of any proceeds to
8 Mr. Casey personally or the trusts or any other of
9 the defendants in this action; correct?
10 A. No.
11 361 Q. Okay. Oh, sorry. I was speaking,
12 but I just realized I was on mute. I was asking,
13 Ms. Athanasoulis -- reminding you that you told me
14 earlier that you reviewed Dave Mann's affidavit
15 sworn in connection with this motion; correct?
16 A. Correct.
17 362 Q. I take it you're aware that, in
18 his first affidavit, he attaches at Exhibits B and
19 C two letters that were purportedly authored by him
20 to -- one was to QuadReal Finance, and one was to
21 Otera Capital; correct?
22 A. Yes.
23 363 Q. And you've seen those letters that
24 are attached at Exhibits B and C to Mr. Mann's
25 affidavit?

1 A. Yes.
2 364 Q. And the letter dated -- or the
3 letter to Otera Capital is dated January 2nd, 2020.
4 Do you see that? I can pull it up --
5 A. Yes.
6 365 Q. -- for you, if you wish.
7 A. Yes.
8 366 Q. All right. Are you aware that it
9 was dated January 20 -- sorry, January 2nd, 2020,
10 or do you want me to pull that up for you on the
11 screen?
12 A. No, I'll take your word for it.
13 367 Q. And you told me earlier that
14 January 2nd, 2020, that's the date that you
15 resigned from Cresford; correct?
16 A. Yes.
17 368 Q. All right. And, Ms. Athanasoulis,
18 you authored these two letters that are found at
19 Exhibits B and C of Mr. Mann's affidavit; correct?
20 A. Yes.
21 369 Q. And prior to today, you've always
22 denied that you were the author of these letters;
23 correct?
24 A. Yes.
25 370 Q. Okay. And you understood that in

1 sending these letters, they may have negative
2 repercussions to Cresford; correct?
3 A. I -- I didn't know what I
4 understood at the time.
5 371 Q. When you sent these letters, you
6 believed -- you didn't think that they were going
7 to be helpful to Cresford; correct?
8 A. I believed that they would help
9 Dan fulfill his obligations of injecting the proper
10 equity to continue a well-funded business.
11 372 Q. You didn't think that these were
12 going to be helpful to Cresford, did you,
13 Ms. Athanasoulis?
14 A. I didn't know what to think at the
15 time.
16 373 Q. Okay. And at this time, you told
17 me that you were contemplating -- or you were
18 working with Mr. Dovigi to potentially acquire at
19 least the YSL project from Cresford. Isn't that
20 true?
21 A. At different times, on and off.
22 374 Q. Right. Including on January 2nd,
23 2020, when you authored these letters in Mr. Mann's
24 name, and you resigned from Cresford; correct?
25 A. Ask the question again?

1 375 Q. I'm simply suggesting to you that
2 when you -- you told me that in the fall of 2019,
3 you were talking with Mr. Dovigi about potentially
4 acquiring the YSL project, at least suggesting that
5 that was -- you were also having discussions with
6 him about him acquiring the YSL project, at least
7 on January 2nd, 2020, or thereabouts. Is that
8 fair?
9 A. Okay. Yes.
10 376 Q. And I'm going to suggest --
11 A. The discussions on the fall
12 transaction were no longer happening at that time.
13 377 Q. Right. You told me there was
14 different iterations of potential transactions;
15 correct?
16 A. Right, all initiated by Dan.
17 378 Q. Okay. And so discussions were at
18 least ongoing in some form in January 2020;
19 correct?
20 A. Correct.
21 379 Q. And I'm going to suggest you were
22 hoping that through sending this letter, it was
23 going to negatively impact Cresford, and you would
24 be able to work with Mr. Dovigi to acquire the
25 assets at a depressed price. Isn't that fair?

1 A. No, it's not fair at all. That
2 was not the intention.
3 MR. LARRY: Okay. All right. Thank
4 you, Ms. Athanasoulis. I have no further questions
5 for you.
6 -- OFF THE RECORD DISCUSSION --
7 MR. ADAIR: Okay. Just for the
8 purposes of the record, I have no questions by way
9 of re-examination, so Ms. Athanasoulis, that's it
10 for your questioning, and I appreciate your time.
11 THE WITNESS: Thank you.
12 -- Whereupon the cross-examination concluded at
13 12:14 p.m.
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1 REPORTER'S CERTIFICATE
2
3 I, JOANNE A. LAWRENCE, Registered
4 Professional Reporter, certify;
5 That the foregoing proceedings were
6 taken before me at the time and place therein set
7 forth, at which time the witness was put under oath
8 by me;
9 That the testimony of the witness
10 and all objections made at the time of the
11 examination were recorded stenographically by me
12 and were thereafter transcribed;
13 That the foregoing is a true and
14 correct transcript of my shorthand notes so taken.
15
16 Dated this 11th day of November, 2021.
17
18

19 ______________________________
20 NEESONS, A VERITEXT COMPANY
21 PER: JOANNE LAWRENCE, RPR, CSR
22 COURT REPORTER
23
24
25

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TAB 16

1 Court File No. COA-22-CV-0451
2 COURT OF APPEAL FOR ONTARIO
3 B E T W E E N:
4 In the Matter of The Bankruptcy and Insolvency Act,
5 R.S.C. 1985, c. B-3 as Amended
6 -and-
7 In the Matter of the Notices of Intention to Make a
8 Proposal of YG Limited Partnership
9 and YSL Residences Inc.
10 --------
11 --- This is the Cross-Examination of MARIA
12 ATHANASOULIS, held via Veritext Virtual, with all
13 participants attending virtually, on the 14th of
14 June 2023.
15 --------
16 A P P E A R A N C E S:
17
18 Matthew Milne-Smith, Esq., for the Proposal
19 Trustee,
20 KSV Advisory
21
22 Mark Dunn, Esq.
23 & Brittni Tee, Esq., for Maria Athanasoulis
24
25

2

1 Alexander Soutter, Esq., for YongeSL Investment
2 Limited Partnership,
3 2124093 Ontario Inc.,
4 SixOne Investment
5 Ltd., E&B Investment
6 Corporation, and
7 TaiHe International
8 Group Inc.
9
10 Xin Lu (Crystal) Li, Esq., for Chi Long Inc.,
11 8451761 Canada Inc.,
12 and 2504670 Ontario
13 Inc.
14
15
16 ALSO PRESENT: Mitch Vininsky, KSV Advisory
17
18
19
20
21
22
23 REPORTED BY: Carissa Stabbler, RPR
24 Stenographic Court Reporter
25 Job No. ON5965714

3

1 I N D E X
2
3 WITNESS: MARIA ATHANASOULIS
4 PAGE
5 CROSS-EXAMINATION BY MR. MILNE-SMITH...... 4
6
7
8 **The following list of undertakings, advisements
9 and refusals is meant as a guide only for the
10 assistance of counsel and no other purpose**
11
12 INDEX OF UNDERTAKINGS
13 The questions/requests undertaken are noted by U/T
14 and appear on the following pages: 37:21, 46:20,
15 47:5, 49:25, 51:18, 54:6
16
17 INDEX OF ADVISEMENTS
18 (NONE MARKED)
19
20 INDEX OF REFUSALS
21 (NONE MARKED)
22
23 INDEX OF EXHIBITS
24 (NONE MARKED)
25

4

1 -- Upon commencing at 10:03 a.m. --
2 MARIA ATHANASOULIS: AFFIRMED.
3 CROSS-EXAMINATION BY MR. MILNE-SMITH:
4 1 Q. Ms. Athanasoulis, could you please
5 turn to your affidavit, and I'll just put on the
6 record that some correspondence has gone between
7 the parties. I've sent around a Brief of Documents
8 this morning, and I would propose to refer to it by
9 tab number for ease of everyone's reference.
10 So when I'm referring to the tab, it's
11 to the Brief of Documents I sent around this
12 morning. Tab 1 of that brief is the affidavit that
13 you've previously filed in this proceeding. Do you
14 have that?
15 MR. DUNN: Yes, we do.
16 MR. MILNE-SMITH: If you can turn to
17 page 4, paragraph 13.
18 MR. DUNN: Just give me one sec to get
19 it in front of her. Okay.
20 BY MR. MILNE-SMITH:
21 2 Q. So just to situate it, you are
22 describing here the Profit Share Agreement that you
23 entered into with Dan Casey on behalf of Cresford;
24 correct?
25 A. Correct.

5

1 3 Q. And you say that:
2 "Mr. Casey and I agreed that
3 profits would be calculated as
4 project revenues less project
5 expenses consistent with Cresford's
6 pro formas maintained for each
7 project."
8 Now, do I understand correctly that a
9 pro forma is a document that is intended to and
10 does, in fact, evolve over time?
11 A. For the purposes of these
12 projects, yes.
13 4 Q. Yes. In fact, you say that in the
14 very next sentence. You say it was an evolving
15 document that began with a series of assumptions
16 about what costs and revenues would be; correct?
17 A. Correct.
18 5 Q. And then you say:
19 "As the project progressed and
20 actual costs were incurred or
21 revenues earned, the pro forma would
22 be updated to include actual
23 information."
24 A. Correct.
25 6 Q. And the reason it has to be

6

1 updated is because sometimes expenses or revenues
2 can be higher or lower than anticipated; correct?
3 A. Correct.
4 7 Q. Jump forward to paragraph 19 of
5 your affidavit. That's just one page over. And
6 you'll see -- just take a moment to read it to
7 yourself if you want, but what this paragraph is
8 about, as I understand it, is when Cresford
9 purchased the interest of BCIMC in the YSL project
10 in 2017. Just let me know when you've had a chance
11 to read that.
12 A. Yes, I read it.
13 8 Q. Okay. And you point to a
14 difference between the valuation for purposes of
15 Cresford buying out BCIMC, 207.6 million, and you
16 draw a distinction between that and the original
17 purchase price of 157.5 million. Is that a fair
18 characterization?
19 A. Yes.
20 9 Q. Okay. Am I correct that the
21 157.5 million represented the amount paid to
22 acquire the land for the YSL project?
23 A. Yes. However, there was two other
24 properties that were purchased that would add to
25 that price.

7

1 10 Q. Yes, and we will come to that.
2 That's the 357 A and 357 ½ Yonge Street; correct?
3 A. Correct.
4 11 Q. We're going to come back to those,
5 but let's just stick with the principal block of
6 land, if I can call it that for now.
7 In terms of the difference between the
8 157.5 and the 207.6 in this paragraph 19 of your
9 affidavit, am I correct that 12.6 million of that
10 sum represented what's been called a redemption
11 premium associated with buying out BCIMC?
12 A. That's something -- like, I
13 understand it's in the numbers, but it wouldn't be
14 something that I would be aware of. I didn't
15 understand why that number is there, although it
16 could be categorized as a -- as something for
17 Cresford or Dan, in his mind. It wasn't something
18 that I was aware of.
19 12 Q. Okay. Well, this was done in
20 2017; correct?
21 A. Could have been. It could have
22 been done later. I'm not sure.
23 13 Q. Okay. The purchase --
24 (CROSS-TALK)
25 A. (Indiscernible) I was aware of.

8

1 14 Q. Sorry, go on. I interrupted you.
2 Just state your answer again.
3 A. It wasn't something I was aware
4 of.
5 15 Q. Ms. Athanasoulis, I apologize,
6 I've already examined you on your background as
7 part of the prior arbitration, and I didn't want to
8 go over that again because it's all in the record
9 already, but just remind me, in 2017 what was your
10 position at Cresford?
11 A. My position was president of
12 marketing and sales.
13 16 Q. Right. And as I recall from the
14 trial -- the evidence will obviously speak for
15 itself -- by 2017 you had taken on quite a
16 significant role in the company; is that right?
17 A. Yes, but not finances.
18 17 Q. You certainly would have been
19 aware, given your role as president, that the
20 company was buying out BCIMC's interest; correct?
21 A. Correct, for the price of what the
22 costs were.
23 18 Q. Okay. Well, let's go to Tab 10 of
24 my brief, which is a trial balance for YG Limited
25 Partnership.

9

1 MR. DUNN: We have it.
2 BY MR. MILNE-SMITH:
3 19 Q. And YG Limited Partnership was the
4 entity that held the YSL project; correct?
5 MR. DUNN: That's our understanding.
6 BY MR. MILNE-SMITH:
7 20 Q. Okay. So if I look at this trial
8 balance -- I'm on page 1 of it -- you will see at
9 the very bottom there's an account 6140. It states
10 redemption premium, and it lists an amount of
11 $12,673,906.04. Do you see that?
12 A. Yes.
13 21 Q. And given as you've said that you
14 didn't have any involvement in finance, you would
15 have no reason to say that this was inaccurately
16 presented?
17 A. I believe it's inaccurately
18 presented because it was never presented to me nor
19 to the LPs as part of what they were buying into.
20 22 Q. Sorry, I want to understand your
21 position. Is there any evidence you rely on to say
22 that the accounting presentation here in this trial
23 balance is inaccurate?
24 A. I've never seen that number
25 presented in any fashion to me in any meetings, so

10

1 in my opinion, it is inaccurate to see it on this
2 trial balance. It isn't something that was ever
3 presented to me.
4 23 Q. But that's just based on the fact
5 that you hadn't been apprised of the accounting
6 details of how this BCIMC transaction occurred;
7 correct?
8 MR. DUNN: Well, I think just -- I
9 apologize for interjecting, but is there evidence
10 somewhere about what this is said to represent?
11 When you talk about how it's presented here, we see
12 it as a number on this document. I haven't seen
13 any explanation from anyone about what this means
14 or how it plays into the --
15 MR. MILNE-SMITH: Well, the record is
16 what it is, and we will all be proceeding on that
17 basis. I'm just advising the witness what my
18 understanding is and offering her the opportunity
19 to present any evidence to the contrary.
20 So my understanding is that the
21 $12.6 million -- or approximately $12.6 million
22 redemption premium that I pointed her to relates to
23 an amount that was associated with paying out the
24 mortgage and buying out the debt of BCIMC. If she
25 has a different understanding, then please let me

11

1 know.
2 MR. DUNN: Is that said to be a project
3 cost?
4 MR. MILNE-SMITH: Yes.
5 THE WITNESS: So can we get evidence of
6 where that money went?
7 BY MR. MILNE-SMITH:
8 24 Q. This isn't the stage where I'm
9 presenting evidence to you, Ms. Athanasoulis. This
10 is where I'm gathering evidence from you.
11 MR. DUNN: Okay. So --
12 THE WITNESS: It was never something
13 that was disclosed.
14 BY MR. MILNE-SMITH:
15 25 Q. Okay. So you just -- you have no
16 information about this one way or another?
17 MR. DUNN: Well, hold on because that
18 may not be correct. We never looked at it. This
19 is the first we're hearing this.
20 BY MR. MILNE-SMITH:
21 26 Q. Sitting here today, you're not
22 aware of any evidence concerning what this
23 redemption premium is because, as you've said
24 before, it was never presented to you; correct?
25 A. I've never seen any evidence to

12

1 this redemption premium being a cost somewhere in
2 this project.
3 27 Q. Okay. If we can go back to --
4 MR. DUNN: It doesn't make sense as
5 project costs.
6 MR. MILNE-SMITH: Okay. Well, I'm
7 just --
8 MR. DUNN: Sorry, I apologize.
9 MR. MILNE-SMITH: I understand your
10 position. I don't want to debate sort of the
11 details of accounting treatments here. I just want
12 to make sure I have a complete picture of the
13 evidence.
14 BY MR. MILNE-SMITH:
15 28 Q. If you can go back to your
16 affidavit Tab 1 and go now to page 9, paragraph 36.
17 So feel free to read it. My understanding -- and
18 tell me if I'm wrong -- is that you are denying
19 that any representation was made to you that in any
20 way prohibited the Cresford Group from receiving --
21 sorry, any representation was made to the LPs that
22 would have prohibited the Cresford Group from
23 receiving any payments before the LPs were paid in
24 full; is that right?
25 A. The Cresford Group had companies

13

1 that were servicing YG. They received premiums.
2 So for me to make that statement, it's incorrect.
3 29 Q. Let me try this a slightly
4 different way. I just want to make sure I
5 understand correctly the point you're trying to
6 make in paragraph 36. So what I understand is that
7 Cresford was free to make payments to members of
8 the Cresford Group, such as yourself, before the
9 LPs were paid in full?
10 A. In terms of answering that
11 question, I'm not sure how or why you're trying to
12 word it the way you are. Any representation to the
13 LPs would have been on a pro forma and a project
14 that would have been completed, and that would see
15 it play out as in the pro forma portrayed, which
16 would be revenues minus expenses, and they would be
17 distributed. And YSL was a project that was on
18 good standing and would see returns to both the LPs
19 and to Cresford and would play out the way a
20 pro forma would project.
21 30 Q. Okay. That's -- I promise I'm not
22 trying to trick you here. I'm just trying to
23 understand your position. Your position is that
24 Cresford could make payments to members of the
25 Cresford Group, such as the marketing fees and

14

1 construction management fees and so on that you
2 refer to elsewhere in your affidavit. It was free
3 to make those kinds of payments to members of the
4 Cresford Group; right?
5 MR. DUNN: So our position is, I
6 believe, accurately stated here, and I believe that
7 it was set out accurately. There's no prohibition
8 in the agreement on Cresford making payments to
9 related parties. The terms of the agreement are
10 all in evidence.
11 MR. MILNE-SMITH: Right.
12 MR. DUNN: And our position is that
13 Ms. Athanasoulis made no representation as to --
14 BY MR. MILNE-SMITH:
15 31 Q. That was my next question. You
16 never made any representation to the LPs to the
17 contrary of the position that your counsel just
18 described; right?
19 A. I would have made representations
20 that their return would play out as the pro forma
21 shows, and it does not -- I would never say "my
22 payment." I never made any reference to a payment
23 to me would go -- would get -- go behind theirs.
24 That's clear.
25 32 Q. But you never made any

15

1 representation to the LPs about your payment at
2 all; correct?
3 A. My payment was with YG. It wasn't
4 with the LPs.
5 33 Q. Right. But just to be clear, you
6 never had any discussion with the LPs about your
7 profit share arrangement; correct?
8 A. At which point in time are you
9 talking about? Because at some point, my Statement
10 of Claim does get issued, and I did have
11 conversations with LPs.
12 34 Q. At any point prior to the issuance
13 of your Statement of Claim in 2020, so through to
14 the end of 2019 let's say, you never had any
15 discussion with the LPs about your Profit Share
16 Agreement?
17 A. I may or may not have, but I would
18 have never discussed at what point my money gets
19 paid.
20 35 Q. Okay. Well, this is some new
21 information, so let me make sure I understand it.
22 You're now saying there might -- you may or may not
23 have had such a discussion. Do you recall a
24 discussion with the LPs about your Profit Share
25 Agreement prior to the end of 2019?

16

1 A. I don't recall, but -- again, I
2 don't recall.
3 36 Q. Okay. And just jump forward to
4 page 11 in paragraph 45. We've alluded to this
5 already. So you provide three examples of payments
6 that were made to members of the Cresford Group,
7 and those are marketing fees totalling
8 11.6 million, construction management fees
9 totalling 2.89 million, and payments to various
10 Cresford employees. Do you see that?
11 A. Yes.
12 37 Q. And you'd agree with me that none
13 of these payments that you've given examples of
14 were shares of profits?
15 A. Sorry, I don't understand the
16 question. Shares in profits for who?
17 38 Q. So let's go one at a time.
18 Marketing fees totalling 11.6 million, that was not
19 calculated as a percentage of profits of the YSL
20 project, was it?
21 A. That's a cost.
22 39 Q. Right. It's a fee for service?
23 A. It's a cost.
24 40 Q. And it didn't require any
25 calculation of profit?

17

1 A. It would reduce the profit.
2 MR. DUNN: The question is how the
3 marketing fee of 11.6 is calculated. What is it
4 based on? Is it fixed fees or percentage of sales?
5 THE WITNESS: It's a percentage.
6 BY MR. MILNE-SMITH:
7 41 Q. Percentage of what?
8 A. That one there is a percentage --
9 I believe it's a percentage of sales, but I would
10 have to look at the Altus report more clearly.
11 42 Q. Okay. So let's proceed on that
12 basis; the marketing fees are a percentage of
13 sales. How is the construction management fee
14 calculated?
15 A. Same. It's a percentage.
16 43 Q. Of what?
17 A. Again, I'd have to go back and
18 look, but against the construction contract total,
19 budget total.
20 44 Q. So it's a percentage of some cost,
21 not a percentage of profit; correct?
22 A. Correct.
23 45 Q. Okay. And payments --
24 A. Sorry, ask that question again.
25 46 Q. The construction management fee

18

1 totalling 2.89 million, to the best of your
2 knowledge, was calculated as a percentage of
3 construction costs, not as a percentage of project
4 profits?
5 A. Correct.
6 47 Q. Okay. And payments to various
7 Cresford employees, I take it that was in the
8 nature of ordinary salaries?
9 A. No. I mean, some employees had
10 specific targets for individual projects. So I'd
11 have to go back and look at all of those contracts
12 in order to answer that question.
13 48 Q. But it would be salaries and
14 bonuses then; correct?
15 A. Correct.
16 49 Q. And none of those bonuses would
17 have been based on a percentage of YSL's profits;
18 correct?
19 A. Correct.
20 50 Q. So then having gone through those
21 three examples, you can agree with me that none of
22 the payments to the Cresford Group that you've
23 pointed to were calculated as a share of profits?
24 A. Correct.
25 51 Q. Okay. And, in fact, no investor

19

1 was ever told, by you at least or that you're aware
2 of, that any share of Cresford's profits would be
3 paid to any person or entity associated with the
4 Cresford Group in priority to the LPs?
5 MR. DUNN: Sorry, you referred to
6 Cresford's profits.
7 MR. MILNE-SMITH: Sorry, YSL's profits.
8 BY MR. MILNE-SMITH:
9 52 Q. Let me ask that again. No
10 investor was ever told that any share of YSL's
11 profits would be paid to any person or entity that
12 was a member of the Cresford Group in priority to
13 the LPs?
14 A. I really need to think about sort
15 of how and why you're asking these questions.
16 53 Q. No, I'm sorry, ma'am, you don't
17 need to think about how or why. You just need to
18 think about what the truthful answer is.
19 A. No, nobody needs to know how
20 things are calculated. The LPs don't need to
21 understand how marketing fees are calculated.
22 They're calculated on profits or sales or a number
23 out of the sky. It could be per unit. These are
24 decisions that get made on each individual project.
25 54 Q. That's not my question. My

20

1 question isn't what they're entitled to know. My
2 question is a simple factual question, and that
3 simple factual question -- look, you have very good
4 counsel. He's going to make all the arguments he
5 needs to make for you as to why something did or
6 didn't happen. All you need to do is answer the
7 factual question.
8 No investor in the YSL project,
9 including the LPs, was ever told that any share of
10 YSL's profits would be paid to any person or entity
11 that was a member of the Cresford Group, including
12 you, in priority to the LPs?
13 A. No.
14 55 Q. When you say no, are you --
15 A. Can I take a break? Can I take a
16 break?
17 MR. DUNN: She said no.
18 THE WITNESS: I said no, but can I also
19 take a break? I just need to go to the ladies'
20 room.
21 MR. MILNE-SMITH: Okay. Let's go off
22 record.
23 -- DISCUSSION OFF THE RECORD --
24 -- RECESSED AT 10:26 A.M. --
25 -- RESUMED AT 10:32 A.M. --

21

1 BY MR. MILNE-SMITH:
2 56 Q. Ms. Athanasoulis, approximately 15
3 or 20 minutes into this examination, you asked for
4 a break after a series of questions that seemed to
5 upset you. I have to say I'm not very happy about
6 having this examination interrupted in this manner.
7 I would ask that if you have any kind
8 of physical condition that prevents you from
9 sitting for a reasonable period of time during this
10 examination, that you tell me right now what that
11 is.
12 MR. DUNN: Okay, let's move on. She
13 asked for a break to go to the washroom, and she
14 did. So let's move on with your questions.
15 BY MR. MILNE-SMITH:
16 57 Q. And I'm going to let you know as
17 well, Ms. Athanasoulis, that if you continue
18 interrupting the examination in this way at moments
19 when it appears that you're not happy with how
20 things are going, then I'm going to end this
21 examination, and we're going to restart it in
22 person. Okay, so can we --
23 MR. DUNN: I'm not sure what you're
24 getting at. I mean, let's move on with the
25 examination. There was also an argument that the

22

1 ground that you're covering now is outside of the
2 scope of this examination, but I didn't object, so
3 let's move on.
4 BY MR. MILNE-SMITH:
5 58 Q. Okay. Well, let's start by
6 clarifying the answer to the last question I asked.
7 So I put a proposition to you. It's a factual
8 proposition. It's that to the best of your
9 knowledge, no investor in YSL, including the LPs,
10 was ever told that any share of the YSL profits
11 would be paid to any person or entity in the
12 Cresford Group, including you, in priority to the
13 LPs, and your answer was no.
14 I don't understand whether by that "no"
15 you were agreeing with me that no such
16 representation was ever made or disclosure was ever
17 made or whether you're simply disagreeing with my
18 proposition. Could you please clarify?
19 A. No such disclosure was made.
20 59 Q. Okay. Thank you. Let's go to
21 Tab 2 of my brief, which is your written
22 submissions that you made to the trustee. And I'd
23 like to start with page 13, paragraph 45.
24 MR. DUNN: We're just pulling it up.
25 BY MR. MILNE-SMITH:

23

1 60 Q. You've excerpted here, and as far
2 as I can tell from reviewing the record, you've
3 done it word for word here. It's a direct quote
4 from a slide deck that was presented to the LPs
5 showing what you've described as the waterfall;
6 correct?
7 A. Correct.
8 61 Q. Okay. So this says:
9 "Revenue proceeds, after
10 payment of project expenses, will be
11 distributed at the end of the
12 project in the following priority."
13 And then there's four bullets. So
14 first, repayment of all external lenders; second,
15 return of invested capital to the investor; third,
16 distribution of the agreed-upon return on
17 investment to the investor; and fourth,
18 distribution to Cresford.
19 So you certainly would agree that this
20 was a fair representation of the manner in which
21 project proceeds would be distributed; correct?
22 MR. DUNN: Stop for a second. We seem
23 to be talking an awful lot about representations.
24 My understanding is the misrepresentation claims
25 are outside the scope of this examination. Is that

24

1 a misunderstanding? Do we have a disagreement
2 about that?
3 MR. MILNE-SMITH: I think that I'm
4 entitled to ask questions about anything that Maria
5 put in her affidavit or put in her submission to
6 the trustee. So that's what I'm doing.
7 MR. DUNN: I'm reading from your email
8 of June 9th, 2023. This is your statement:
9 "It is also the trustee's
10 understanding that alternative
11 grounds raised by the LPs for
12 denying Ms. Athanasoulis' claim
13 beyond the grounds listed in the
14 draft Notice of Determination are
15 also not properly the subject of
16 examination at this time and are
17 also wholly reserved."
18 MR. MILNE-SMITH: And I don't believe
19 that I'm --
20 MR. DUNN: That is an explicit
21 statement that the scope of this examination is
22 defined by the draft Notice of Determination, which
23 does not make any allegation of misrepresentation.
24 MR. MILNE-SMITH: So where I disagree
25 with you is that you made submissions in response

25

1 to the draft Notice of Determination, and I think
2 that your response is fair game. I'm not raising
3 anything that the LPs are doing separately. I'm
4 just looking at what you submitted to the trustee.
5 And if I can get to my question, it's
6 going to be, I think, a pretty simple factual
7 question just so I can understand your client's
8 position. And you can refuse that or allow it or
9 do whatever you want, but I just want to get my
10 question on the record, which I haven't even done
11 yet.
12 MR. DUNN: Okay. I thought you had,
13 but go ahead.
14 BY MR. MILNE-SMITH:
15 62 Q. So of these four bullets that are
16 set out here, I just want to understand. Where do
17 you understand the LPs falling?
18 A. The second -- the second and the
19 third.
20 63 Q. Okay. So the second would be the
21 return of their initial investment, and the third
22 would be their return on the investment; correct?
23 A. Correct.
24 64 Q. Okay. How about -- there's
25 another investor by the name of Fei Han. Are you

26

1 familiar with that investor?
2 A. Yes.
3 65 Q. If we go to Tab 3 of my brief,
4 I've included here an Application Record, and as
5 part of that Application Record, there's an
6 affidavit of Fei Han sworn June 22 of 2020.
7 So if you go to that Tab 2 and then at
8 paragraph 9, it describes a loan of $20 million and
9 then a return on this loan of a further
10 $20 million. And if you want to, the loan
11 agreement is Exhibit A to the affidavit. Feel free
12 to turn it up if you believe you need to.
13 So with that by way of background, if
14 we go back to Tab 2 and paragraph 45 that we were
15 looking at, would Fei Han also fall under the
16 second and third bullets based on the initial
17 return of invested capital and then the return on
18 investment?
19 MR. DUNN: I don't believe we know the
20 answer to that question.
21 BY MR. MILNE-SMITH:
22 66 Q. And your profit share would be
23 part of the distribution to Cresford; correct?
24 MR. DUNN: No.
25 BY MR. MILNE-SMITH:

27

1 67 Q. Where would your Profit Share
2 Agreement payment fit on this waterfall that is
3 excerpted here?
4 MR. DUNN: So in what context?
5 MR. MILNE-SMITH: In the context of
6 when this slideshow was presented, and I'd like to
7 have the witness's answer.
8 THE WITNESS: Ultimately, my payment
9 would be an expense to the project. It was
10 calculated on profits, but it was my contribution
11 to the project as an employee and my bonus.
12 So I did not have equity in this
13 project, and I'm not -- I'm not Cresford. I was an
14 employee to YSL, who performed a service that would
15 get paid.
16 BY MR. MILNE-SMITH:
17 68 Q. Of the various line items on this
18 waterfall, where does your payment fall?
19 A. I think it would be considered
20 even before first repayment to lenders. It would
21 be an agreed-upon amount. Revenue minus expenses.
22 69 Q. And so I guess what you're saying
23 is that your profit share isn't listed on this
24 waterfall?
25 A. No.

28

1 70 Q. Okay. I said before we were going
2 to come back to it, so now is when I'd like to do
3 that. The two adjacent lands, 357 A and 357 ½
4 Yonge Street, if you go to page 123 of your
5 submissions.
6 MR. DUNN: You mean paragraph 123?
7 MR. MILNE-SMITH: Sorry, page 123, page
8 38.
9 MR. DUNN: Yeah.
10 BY MR. MILNE-SMITH:
11 71 Q. So if I understand it -- tell me
12 if I'm wrong or if you have any understanding to
13 the contrary or evidence to the contrary,
14 Ms. Athanasoulis -- these were lands that were
15 adjacent to the YSL property. They were not to be
16 used by the YSL property itself, but they were
17 acquired as what's been described to me as "blocker
18 lands" that would prevent adjoining properties from
19 being used for a competing project; is that fair?
20 A. Yes, that's correct.
21 72 Q. Okay. So they were paid for by YG
22 for the benefit of the YSL project, purchased by YG
23 LP for the benefit of the YSL project?
24 A. Correct.
25 73 Q. Okay. And I understand that they

29

1 were then purchased by Concord or a Concord company
2 for 7.6 million; correct?
3 A. Yes. Correct.
4 74 Q. And we have an Agreement of
5 Purchase and Sale I've included as Tab 4 of my
6 brief, just to make sure we're talking about the
7 same thing.
8 MR. DUNN: We have it.
9 BY MR. MILNE-SMITH:
10 75 Q. You'll see right on the first page
11 under the definitions, F is buildings, and it
12 refers to 357 A and 357 ½ Yonge Street. So that's
13 the land we're talking about; correct?
14 A. Correct.
15 76 Q. And over the page, page 2, it
16 defines the purchase price as 7.6 million Canadian
17 dollars?
18 MR. DUNN: We see that.
19 BY MR. MILNE-SMITH:
20 77 Q. Okay. And if you go to page 17,
21 it's the signature page. Because I understand
22 there were a number of offers. I just want to
23 confirm that this is the one that was accepted.
24 So this is signed by Daniel Casey for
25 YSL and by a Dennis Au-Yeung for a numbered company

30

1 that I understand is a Concord entity; is that
2 correct?
3 A. I would assume so.
4 78 Q. Okay. And you're not aware of any
5 offer for more than $7.6 million being received in
6 this time period of November 2020, are you?
7 A. I don't know. No, I'm not aware.
8 79 Q. My understanding is that the
9 property was marketed. The best offer that was
10 made was $7.6 million. You don't have any
11 information to the contrary, do you?
12 A. No. The only information I do
13 have is in around that time period, I met with Dan
14 Casey, and he wanted to offer those properties as
15 collateral for a $4 million payment to Timbercreek.
16 80 Q. Okay. And if we then go to Tab 5,
17 this is a letter dated October 19, 2020, from Jane
18 Dietrich at Cassels. Do you see that?
19 A. Yes.
20 81 Q. And this is what I will call a
21 demand letter by Ms. Dietrich, who is acting for
22 the lender associated with a mortgage on the
23 properties of 357 ½ and 357 A Yonge Street. Do you
24 see that?
25 A. Yes.

31

1 82 Q. And were you aware that these
2 properties were subject of a mortgage for
3 approximately 7.4 million?
4 A. Yes.
5 83 Q. And if you go over to page 2 of
6 the letter, you'll see that 7.4 million and change
7 number described as the outstanding amount?
8 A. Yes, I see it.
9 84 Q. And if you also just go down to
10 the second-last paragraph, it says that she is
11 enclosing and serving the borrower with a Notice of
12 Intention to enforce security pursuant to the
13 Bankruptcy and Insolvency Act. And the borrower
14 here is YSL. So you're aware of that?
15 A. That's what it says.
16 85 Q. Okay. So you'd agree with me,
17 then, that as of October of 2020, which is
18 approximately a month before the date on the
19 Agreement of Purchase and Sale that we just looked
20 at, the property was subject to a little over
21 7.4 million under a mortgage and was facing
22 enforcement of security on that mortgage, which
23 would mean presumably seizure and sale of the
24 property; correct?
25 MR. DUNN: That appears to be the case

32

1 from the documents.
2 BY MR. MILNE-SMITH:
3 86 Q. Okay. And then if we go to Tab 6
4 of the brief, this is a Statement of Funds from the
5 sale of the properties in question. I don't think
6 there's any need to belabour all the line items
7 unless you want me to take you through them, but
8 fair to say based on this that Cresford received
9 net proceeds of sale from those two adjacent
10 properties totalling $7,126.84? Do you accept that
11 as being true?
12 MR. DUNN: I think we can accept it as
13 that that's what the document says. You're asking
14 questions about a transaction that Ms. Athanasoulis
15 was not involved in.
16 BY MR. MILNE-SMITH:
17 87 Q. Let's put it differently then.
18 You have no evidence to contradict that this
19 represents the sum total received by Cresford from
20 the sale of those adjacent lands; correct?
21 MR. DUNN: I don't believe that we do.
22 BY MR. MILNE-SMITH:
23 88 Q. Okay. Back to this --
24 MR. DUNN: In terms of -- let me just
25 say, we're giving some leeway here because of the

33

1 unique nature of the procedures, but when we talk
2 about evidence, I mean, these documents aren't
3 proven in this proceeding in any meaningful sense.
4 There's no evidence one way or the other. We have
5 the document. We see what it says.
6 MR. MILNE-SMITH: Yeah, look, I'm not
7 here to dispute the evidence that is before the
8 trustee. I'm just here to get Ms. Athanasoulis's
9 evidence, if any, about these matters, so I think I
10 have that or at least you on her behalf.
11 BY MR. MILNE-SMITH:
12 89 Q. So let's go back to the
13 submissions then. That's Tab 2. I'm still on page
14 38 and paragraph 123. You say that the 7.6 million
15 undervalued the adjacent properties and that, as
16 part of the development process, YSL had agreed to
17 transfer the adjacent properties to the City of
18 Toronto for the value of 18 million.
19 I honestly don't understand that, and I
20 want you to help me walk through it,
21 Ms. Athanasoulis. At paragraph -- so the footnote
22 to that proposition is Footnote 97. Footnote 97
23 points to the Altus report, which we're going to go
24 to in a moment, which it says shows the $18 million
25 worth of parkland dedication fee that would

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1 otherwise need to be paid in connection with the
2 construction of the YSL project.
3 So that's what you say in your
4 submissions. Let's now go to the Altus Group
5 report, which is at Tab 7 of my brief, and go to
6 page 58, which is what your footnote pointed to.
7 And you just have to go by the PDF page
8 numbering. I think that's what you used in your
9 brief, and that's where I found the page that I'm
10 looking at. So I'm looking at a page that's titled
11 "Preliminary Report" --
12 MR. DUNN: Sorry, just give me one
13 second. We're not --
14 MR. MILNE-SMITH: Not there yet, okay.
15 MR. DUNN: Page 58; right?
16 MR. MILNE-SMITH: Yes.
17 MR. DUNN: Okay.
18 MR. MILNE-SMITH: And just to make sure
19 we're on the same page, the heading on this page
20 for me is "Preliminary Report and Report No. 1" at
21 August 31, 2019.
22 MR. DUNN: Yeah.
23 BY MR. MILNE-SMITH:
24 90 Q. Okay. And what I see here -- for
25 18 million, I see -- if you look at the numbered

35

1 items along the left, there's a number 3, parkland
2 dedication?
3 MR. DUNN: Mm-hm.
4 BY MR. MILNE-SMITH:
5 91 Q. And it indicates for both Cresford
6 current budget and Altus Group current budget an
7 $18 million figure, and the comment is:
8 "Allowance of 9% of land value
9 as per borrower subject to City of
10 Toronto appraisal."
11 So you'll have to forgive my ignorance.
12 I don't understand what this has to do with the
13 adjacent lands. How is this assigning a value of
14 $18 million to the adjacent lands?
15 A. So we were already in discussions
16 with the City of Toronto to provide adjacent lands
17 vacant with a design scheme for a contribution to
18 the land to have a gateway entrance into the
19 laneway for future development of Ryerson and all
20 of that. And it was something that the City -- we
21 were in discussions and negotiations to provide
22 those lands for the contribution amount of
23 18 million.
24 They take a piece of land, and they
25 calculate its density, and they come up with a

36

1 value. And those properties were the equivalent of
2 what needed to be contributed in terms of the value
3 of the parkland dedication.
4 92 Q. Okay. So let me walk through that
5 so I understand it. The $18 million is calculated
6 as 9 percent of the total land value? Is that
7 where that comes from?
8 A. Yeah. It's a City calculation.
9 93 Q. Okay. So the City comes to you
10 and says, "You need to give us $18 million for
11 parkland." Is that how it starts?
12 A. Correct, or provide us with an
13 appropriate piece of land.
14 94 Q. Okay. So you have a choice. You
15 can either give them $18 million, or you can give
16 them a piece of land that they will use for the
17 benefit of the neighbourhood; fair?
18 A. Correct.
19 95 Q. Okay. And if I heard your answer
20 correctly before, you said that there were
21 discussions. Were there discussions underway
22 between YSL and the City to give them the adjacent
23 lands instead of having to pay the $18 million?
24 A. Yes.
25 96 Q. Okay. And was any agreement ever

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1 reached in that regard?
2 A. It was a process. There was also
3 the idea to include public art in that area as
4 well. So there was a presentation that was
5 underway. And it's a process.
6 97 Q. You said that you had -- I believe
7 your answer indicated that you had presented a
8 design scheme and a gateway. So presumably you
9 would have to do some improvements to the land as
10 part of this process?
11 A. Well, this one was interesting
12 because it would also -- the improvements of the
13 land were also tied into the public art component
14 of this project, which had a separate line item.
15 It was in the budget. There's a report that exists
16 on the City of Toronto website that could help you
17 understand it further.
18 MR. MILNE-SMITH: Okay. If you
19 could -- Mr. Dunn, if you can point me to that
20 report by way of undertaking.
21 U/T MR. DUNN: Sure. I'm just showing
22 Ms. Athanasoulis what I believe the report to be.
23 THE WITNESS: It's the public art plan.
24 And that's why I say, like, it was a combination of
25 parkland dedication and also public art. And so a

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1 component of parkland dedication, you also have to
2 provide public art.
3 And Janet Rosenberg in conjunction with
4 Irene -- and I'm going to pronounce her last name
5 wrong, but she's on the report -- we were
6 canvassing, I guess, the neighbourhood and the
7 individuals that would benefit from this change,
8 including the BIA -- his name is Mark -- and also
9 Ryerson, who were in support of these changes.
10 MR. DUNN: So just for completeness,
11 I've sent you the report.
12 MR. MILNE-SMITH: Thank you.
13 MR. DUNN: Fastest undertaking answer.
14 BY MR. MILNE-SMITH:
15 98 Q. But I take it, Ms. Athanasoulis,
16 that to your knowledge, nobody ever conducted an
17 independent valuation or appraisal of the adjacent
18 lands unimproved and as they were that attributed
19 an $18 million value to them; correct?
20 A. I don't know.
21 99 Q. Okay. So staying with your
22 submissions, at -- if you go over the page to page
23 39, starting at paragraph 127 and going through
24 paragraph 133, your submissions criticize or find
25 fault with Altus for including various expenses

39

1 that you say had not been incurred or were not
2 paid. Do you recall that?
3 MR. DUNN: The question is about a
4 submission, so I can answer. The submissions don't
5 say that Altus should not have included any of
6 these costs for its own purposes.
7 Our submission is a little bit
8 different. It's that while Altus may or may not
9 have had -- it may or may not have been perfectly
10 appropriate to include these in Altus's report to
11 talk about its purpose. Our submission is merely
12 that these costs are not costs within the meaning
13 of the profit calculation described in the
14 arbitration.
15 MR. MILNE-SMITH: Okay. Thank you for
16 that clarification.
17 BY MR. MILNE-SMITH:
18 100 Q. Ms. Athanasoulis, I understand
19 you're not an accountant and were not directly
20 involved in the accounting of the YSL project, but
21 with that in mind, you were obviously involved in
22 these projects, and you do have some familiarity
23 with the expenses.
24 Can you agree with me that when you're
25 dealing with the costs of a project, an expense can

40

1 be accrued, meaning that an obligation has been
2 taken on, the expense has been accrued even if the
3 cost hasn't actually been paid or incurred? Do you
4 understand that distinction?
5 MR. DUNN: I think it would be helpful
6 if you could -- I think there was a couple of
7 different questions in there. Perhaps you could
8 rephrase to be -- there was one question whether
9 she agreed with you, and the other one is whether
10 she understood the distinction, so if you can just
11 be a bit more precise.
12 BY MR. MILNE-SMITH:
13 101 Q. Would you accept this proposition:
14 If you agree to pay for something in the future,
15 that expense may be accrued but not yet incurred?
16 A. Yes.
17 102 Q. Okay. It's still a debt that has
18 to be paid even if it hasn't yet been paid?
19 MR. DUNN: Are we talking in this
20 context, like about this project?
21 MR. MILNE-SMITH: I'm going to come to
22 the examples first, but I just want to make sure
23 that we're on common ground as to the basic
24 principles.
25 THE WITNESS: There's different kinds

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1 of accounting. There's accrual accounting, and
2 there's actual profit and loss and revenue minus
3 expenses. Like, you can look at accounting for
4 GAAP, you can look at it for not, but in the world
5 of reporting for financial statements and GAAP, you
6 would accrue expenses.
7 BY MR. MILNE-SMITH:
8 103 Q. So is it your position that for
9 your profit share accounting or calculation, that
10 expenses that were accrued but not yet incurred
11 should be excluded?
12 A. It depends.
13 MR. DUNN: Our position is that the
14 profit share is calculated based on actual revenue
15 less actual expenses.
16 BY MR. MILNE-SMITH:
17 104 Q. But that gets at my question. I'm
18 putting to you the proposition that an accrued
19 expense is an actual expense. Do you agree or
20 disagree?
21 MR. DUNN: Not for -- for these
22 purposes, not if it was not paid.
23 MR. MILNE-SMITH: Okay. So
24 Ms. Athanasoulis's position is that an expense that
25 is accrued but had not yet been paid is not an

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1 actual expense?
2 MR. DUNN: Correct.
3 BY MR. MILNE-SMITH:
4 105 Q. So paragraph 129, you state that
5 the Altus report contemplates an advance of
6 $20 million and change that was not made, and in
7 Footnote 101, you reference page 69 of the Altus
8 report.
9 Before we go there, I take it from the
10 previous answer then -- well, let me clarify. Are
11 you saying that this amount was not accrued or
12 simply that it was not incurred?
13 A. I'm saying that it wasn't paid.
14 MR. DUNN: It wasn't -- there was no
15 advance. I don't think this distinction is --
16 BY MR. MILNE-SMITH:
17 106 Q. Let's go to Tab 7, and page 69 is
18 what you referred to, I believe, in your
19 submission.
20 MR. DUNN: Yeah.
21 BY MR. MILNE-SMITH:
22 107 Q. So the $20 million figure that you
23 referred to, I see that listed under "Current
24 Funding" around the middle of the page. I assume
25 that's the same entry that you were referencing in

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1 the submissions?
2 MR. DUNN: Under "Current Draw"?
3 MR. MILNE-SMITH: I see it as a
4 bottom-line entry of sorts under the heading of
5 current -- oh, it's both under "Current Draw" and
6 "Current Funding," yes. You can see it in two
7 spots.
8 BY MR. MILNE-SMITH:
9 108 Q. And the way I understand it to
10 have been calculated here is the difference between
11 what's referred to as the previous period and the
12 cost-to-date; correct?
13 A. Correct.
14 109 Q. Right. So we see the previous
15 period shows a sum of some $309 million, and then
16 the cost-to-date is $329 million; correct?
17 A. Correct.
18 110 Q. So that shows, then, that the
19 current draw of $20 million is a part of
20 cost-to-date; correct?
21 A. So just to be clear, these numbers
22 were prepared in preparation for a first advance of
23 a mortgage and would have included costs that had
24 yet to be incurred. An example would be an Otera
25 financing commitment fee in the millions of

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1 dollars.
2 111 Q. But it would include costs that
3 had been accrued but not necessarily incurred.
4 That's why it's a cost-to-date is because it's been
5 accrued; correct?
6 A. No. So in this -- in this
7 specific example, it was a draw. So it says
8 "current draw." It was -- it was the beginning of
9 recorded costs that even hadn't been incurred yet
10 in preparation of paying them.
11 112 Q. Okay. But let's go back. You
12 keep on saying that it's a draw, it's a draw, it's
13 a draw, but we agreed that that $20 million figure
14 is a part of the cost-to-date figure of
15 329 million; correct?
16 A. The cost-to-date? Correct. I
17 mean, again, if I can just clarify, the current
18 draw and the cost-to-date included costs that had
19 not yet been incurred.
20 113 Q. But it included costs that had
21 been accrued but not necessarily incurred; correct?
22 That's why Altus included it as part of their
23 cost-to-date because it had been at least accrued?
24 A. Again, this is where I think -- I
25 think that potentially the accounting department

45

1 would have accrued it but incorrectly so in order
2 to obtain the money to pay it on the day one of
3 advance, which is the only way Otera would fund
4 their -- it included costs that hadn't yet been
5 incurred to pay future costs that they could
6 foresee using the example of Otera's fee.
7 114 Q. Sorry, are you saying that Altus
8 Group improperly included this or that Altus relied
9 on accruals improperly made by Cresford?
10 MR. DUNN: I think the term
11 "improperly" is getting us -- improperly for who?
12 For Altus's own purposes? This was drafted for a
13 specific purpose that is not the same as what we're
14 talking about here today. So I think there's a
15 judgment involved of improper that isn't warranted.
16 BY MR. MILNE-SMITH:
17 115 Q. Okay. Let's go back to basics.
18 My proposition to you, Ms. Athanasoulis, is that
19 the $329,373,744 that is listed by Altus Group as
20 cost-to-date, that includes the $20 million listed
21 under "Current Draw." That entire $329 million
22 represents costs that had, at a minimum, been
23 accrued even if they had not necessarily been
24 incurred in the sense of being paid. Do you have
25 any contrary evidence?

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1 MR. DUNN: By "accrued," do you mean
2 that the debt was owed?
3 MR. MILNE-SMITH: Yes.
4 MR. DUNN: Then the answer to that is
5 no.
6 MR. MILNE-SMITH: Based on what
7 evidence?
8 MR. DUNN: So I'll just -- for
9 convenience, Ms. Athanasoulis has referred to this
10 a couple of times. There's a very substantial
11 Otera financing fee. I believe -- I don't have it
12 in front of me, although it's referenced elsewhere.
13 I believe it's in the neighbourhood of $14 million
14 that was due on the first advance. The first
15 advance was in May.
16 MR. MILNE-SMITH: By way of
17 undertaking, if you could point me in the Altus
18 Group report to where that 14 million is included
19 in cost-to-date.
20 U/T MR. DUNN: I'm happy to give that
21 undertaking. I may be able to do it --
22 BY MR. MILNE-SMITH:
23 116 Q. Ms. Athanasoulis, is there any
24 other amount you say was included in cost-to-date
25 but had not actually been accrued?

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1 MR. DUNN: I think we'd have to do that
2 by way of undertaking as well.
3 MR. MILNE-SMITH: Okay. That's fine.
4 So you'll give that undertaking?
5 U/T MR. DUNN: Sure, yes, we'll give you
6 that undertaking and under the reservation, of
7 course, that in our view that's not the right
8 question, but I appreciate that that's --
9 MR. MILNE-SMITH: I understand.
10 MR. DUNN: -- not what we're talking
11 about here.
12 BY MR. MILNE-SMITH:
13 117 Q. So if we go back to your
14 submission, we were on page 39. We looked at the
15 $20 million advance. The next item you refer to is
16 the land value, which we've already talked about.
17 The next item in paragraph 131 is
18 $13,299,566, being fees in connection with the
19 construction loan. Do you see that? Sorry, you
20 have to speak up. I'm looking at paragraph 131.
21 A. You know, I guess -- usually when
22 we did cross and that stuff, you always used to put
23 stuff on the screen, right, and highlight it and
24 all that, so this is a little -- looking at you and
25 then...

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1 MR. DUNN: So the request is about the
2 13.2 million on the Altus report fees.
3 BY MR. MILNE-SMITH:
4 118 Q. Yeah, paragraph 131. It's just a
5 hair under 13.3 million. Do you see that?
6 A. Correct.
7 119 Q. Okay. And then, again, your
8 footnote there 104 refers us back to the Altus
9 report at page 69 again. So let's go back there.
10 And, again, I -- this may well just be
11 my ignorance, so I apologize for this. In your
12 submission, you describe that $13 million amount as
13 fees in respect of the construction loan.
14 When I see that number in the Altus
15 Group report, it shows up as -- where I see it is
16 the very bottom of the page, which appears to be
17 under the heading of "Accruals," and it's the net
18 between the current and the previous for various
19 items listed here. You see where that number is at
20 the bottom of the page?
21 MR. DUNN: We see that.
22 BY MR. MILNE-SMITH:
23 120 Q. And what I see it as is the sum of
24 the increase in accruals from the previous period,
25 not as some kind of construction loan fee; am I

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1 correct?
2 A. I don't know. I don't think so.
3 The project needed to maintain an appraisal surplus
4 of 37.5 million at all times for the Otera
5 commitment letter. So in terms of the payments
6 that are even on this -- tiebacks, I don't -- like,
7 you'd have to go back and look at the bank accounts
8 to see what was paid and what wasn't paid because a
9 lot of assumptions were made that were -- that were
10 going to get paid but never did get paid.
11 121 Q. Okay. But go back to the
12 submission, Tab 2. You say what --
13 MR. DUNN: Can I maybe cut through some
14 of this? Because I think we're going to have to do
15 it by way of undertaking.
16 MR. MILNE-SMITH: Right.
17 MR. DUNN: Your point is that the 13.2
18 or 13.3 doesn't appear to be the entirety of these.
19 It appears from the Altus report to include other
20 material as well. And so we'll get that and advise
21 you if that's correct.
22 MR. MILNE-SMITH: Okay. Yes, because,
23 you know, I see items like realty tax deposit
24 insurance, sales office construction which are --
25 U/T MR. DUNN: There's a fee of 8 and a

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1 half million, and then there's other materials, so
2 we'll have to look at -- we'll have to look, and
3 we'll let you know if there's any issue with it, or
4 we'll let you know what our position is on that
5 point and what evidence we have to support it.
6 BY MR. MILNE-SMITH:
7 122 Q. Okay. Just while we're on this
8 page, you've also said at various points that the
9 construction loan was never advanced, but I see
10 under "Current Draw" and "Current Funding" an item
11 of $44,171,977 as part of the construction loan.
12 MR. DUNN: Sorry, where are you?
13 MR. MILNE-SMITH: If you look at the
14 very top of the page, you'll see there's "Current
15 Draw." Continue down to where it says "Current
16 funding." There's a $100 million figure and then a
17 $44 million figure.
18 MR. DUNN: Mm-hm.
19 MR. MILNE-SMITH: And if I'm reading
20 across correctly, the $44 million figure is
21 construction loan.
22 MR. DUNN: Correct. That amount was
23 never advanced. No amount was advanced out of the
24 construction --
25 THE WITNESS: Incorrect, Mark.

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1 MR. DUNN: Sorry, go ahead.
2 THE WITNESS: It includes costs from
3 the past that were related to -- that could have
4 included the Timbercreek loan. But, I mean, you
5 could look at the GL and also the bank account
6 because it's important to cross-reference the bank
7 account to the GLs and see what numbers are input
8 in there.
9 BY MR. MILNE-SMITH:
10 123 Q. So just based on -- obviously
11 everybody can do that after the fact, but based on
12 your knowledge, was the Altus report inaccurate in
13 referring to $44 million of a construction loan
14 being advanced?
15 A. We'll have to undertake to give
16 you the answer.
17 124 Q. Okay. Thank you.
18 U/T MR. DUNN: But to be clear, I think
19 it's common ground. Otera never advanced any
20 money. I don't think anyone says that they did.
21 MR. MILNE-SMITH: Okay. Well, if
22 there's somebody else who advanced construction
23 loans, then -- I'm just trying to make sure I
24 understand everything that's listed here.
25 MR. DUNN: This item seems to refer to

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1 the Otera.
2 THE WITNESS: Correct.
3 BY MR. MILNE-SMITH:
4 125 Q. So back to your submissions, you
5 refer to -- paragraph 132 talks about a posted
6 collateral of 4.2 million, and you say there's no
7 evidence that YSL forfeited the collateral?
8 MR. DUNN: Yeah.
9 BY MR. MILNE-SMITH:
10 126 Q. And you say that Altus incorrectly
11 included this or at least for the purposes of
12 calculating the profit share --
13 MR. DUNN: I don't want to use the term
14 "incorrectly."
15 MR. MILNE-SMITH: You're saying that --
16 MR. DUNN: I'm having some trouble
17 bringing this up.
18 BY MR. MILNE-SMITH:
19 127 Q. So take away the characterization.
20 You say that Altus included in its gross costs of
21 329 million this $4.2 million figure; correct?
22 A. Yes.
23 128 Q. Okay. So, again, if I go back to
24 the Altus Group report -- and, again, maybe I'm
25 just reading this wrong, but I see that

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1 $4.23 million figure in two places. So you see
2 there's a grey bar in the middle of the page?
3 MR. DUNN: Sorry, which page?
4 MR. MILNE-SMITH: Same page we're on at
5 Altus Group, page 69. Tell me when you're there.
6 MR. DUNN: Yes. So where's the grey
7 bar?
8 BY MR. MILNE-SMITH:
9 129 Q. You see there's a grey bar across
10 the middle of the page on page 69?
11 MR. DUNN: Where it says "accruals"?
12 MR. MILNE-SMITH: Correct.
13 MR. DUNN: Yeah.
14 BY MR. MILNE-SMITH:
15 130 Q. Just above that you'll see the sum
16 of 4.23 million as "letter of credit loan"?
17 MR. DUNN: Mm-hm.
18 BY MR. MILNE-SMITH:
19 131 Q. And it's also below the grey bar
20 under what I think is "letter of credit cash
21 collateralized." Do you see that as well?
22 MR. DUNN: We see that.
23 BY MR. MILNE-SMITH:
24 132 Q. Where I don't see it is as part of
25 the 329 million.

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1 MR. DUNN: So your question is
2 whether -- so as I take it --
3 MR. MILNE-SMITH: I'm asking you to
4 agree with me that the 4.2 million is not part of
5 the 329 million.
6 U/T MR. DUNN: We'll answer that by way of
7 undertaking.
8 BY MR. MILNE-SMITH:
9 133 Q. Ms. Athanasoulis, in your role at
10 Cresford, would you have reviewed the balance
11 sheets for YG Limited Partnership from time to
12 time?
13 A. Yes.
14 134 Q. Okay. So go to Tab 8. So this
15 provides -- it's just a short three-page document
16 that provides balance sheets for 2017, '18, and
17 '19. Do you see that?
18 MR. DUNN: Yeah, we see it.
19 BY MR. MILNE-SMITH:
20 135 Q. So the first page shows real
21 estate inventory as an asset at close to
22 213 million. Do you see that?
23 A. Yes.
24 136 Q. Okay. And we then go to 2018 on
25 the next page. Instead of real estate inventory,

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1 it's described as property under development, but I
2 believe those are the same things. And it goes up
3 to 241 million; is that right?
4 A. Correct.
5 137 Q. Okay. And then if we go over to
6 2019, it's still described as property under
7 development, and it's gone up to just under
8 309 million; correct?
9 A. Correct.
10 138 Q. And the value is going up, as I
11 understand it, because it is being valued on the
12 balance sheet at cost; correct?
13 A. I don't know.
14 139 Q. So if I put it to you that the
15 cost of the project through the end of 2019,
16 according to the records of Cresford, was
17 $308,743,655, do you accept that, do you deny it,
18 or do you have any other position on it?
19 MR. DUNN: This is just a document. It
20 actually seems to be an excerpt from a document.
21 It says what it says.
22 BY MR. MILNE-SMITH:
23 140 Q. Do you have any evidence to the
24 contrary as to the cost value of the property under
25 development as maintained by the books and records

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1 of Cresford?
2 MR. DUNN: Books and records is a lot
3 broader than a piece of paper.
4 MR. MILNE-SMITH: I understand. That's
5 why I'm asking --
6 MR. DUNN: Yeah.
7 MR. MILNE-SMITH: Pardon me?
8 MR. DUNN: Yes, that's what's in our
9 submissions. We have no knowledge of how this
10 308 million was calculated.
11 BY MR. MILNE-SMITH:
12 141 Q. Can I take it that any evidence
13 you have as to why that number is wrong would
14 appear in your submissions, or do you want to give
15 an undertaking to advise as to what evidence you
16 rely on to say that the $309 million figure is
17 wrong?
18 MR. DUNN: No, that's -- I can't give
19 that undertaking. That's, with respect, backwards.
20 It's just a piece of paper. I can't give an
21 undertaking to disprove something that has not been
22 proven or even -- we don't have any insight into
23 how this is calculated.
24 MR. MILNE-SMITH: I just want to make
25 sure I give you the opportunity to present any

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1 evidence you have as to what the actual costs
2 incurred in respect of the project are by YSL.
3 I understand you've made submissions on
4 it. I wanted to bring this document to your
5 attention, and if you have any specific response to
6 make to it, but it sounds like your position is
7 that it's an unreliable document. You don't know
8 how it's calculated, and you have nothing to say
9 about it; is that fair?
10 MR. DUNN: Our position is we have --
11 there has been no evidence tendered. We have no
12 transparency to how this document was calculated
13 and whether or not it is correct. We don't know
14 what is included in that 308 million, and we would
15 expect, before anyone puts any weight on that
16 number, that that investigation occurs.
17 MR. MILNE-SMITH: Okay.
18 MR. DUNN: But we have not conducted
19 that investigation. We don't have any insight into
20 this.
21 BY MR. MILNE-SMITH:
22 142 Q. Okay. In terms of liabilities,
23 just on this same page that we're looking at here,
24 it lists liabilities of 284 million and then
25 partners' equity of just under 30 million. Do you

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1 see that?
2 MR. DUNN: Okay.
3 BY MR. MILNE-SMITH:
4 143 Q. And this amount does not, as far
5 as I can tell, include the $15 million of money
6 owed to the LPs before any return on investment is
7 given to them. So the original 14.8 million, that
8 doesn't appear to be included here among the
9 liabilities; is that right?
10 MR. DUNN: We don't see it.
11 BY MR. MILNE-SMITH:
12 144 Q. Okay. And it also refers to a
13 $20 million equity loan payable. Is that the Fei
14 Han loan, or do you have any information about
15 that?
16 A. It would appear to be the case.
17 145 Q. Okay. You were a signing officer
18 for YG Limited Partnership; is that right?
19 A. Yes.
20 146 Q. And if we pull up Tab 9 of my
21 brief and go to page 3, there's a partnership
22 resolution document for TD Canada Trust.
23 MR. DUNN: I do have some concerns
24 about this document, but it does exist. Feel free
25 to ask your question.

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1 BY MR. MILNE-SMITH:
2 147 Q. So my question is simply whether
3 that is, in fact, your signature and you did sign
4 this partnership resolution.
5 A. I'd have to see an original.
6 148 Q. Do you recall signing a document
7 of this nature?
8 A. I recall signing many documents,
9 and I was a signing officer.
10 149 Q. Okay. So what this document says,
11 if you look under the "Signing Officer
12 Requirements/Restrictions," you see that just above
13 your signature, and it says:
14 "1. President Daniel C. Casey
15 to sign a loan from Maria
16 Athanasoulis to sign a loan for any
17 amounts."
18 Do you see that?
19 MR. DUNN: That's what it says.
20 BY MR. MILNE-SMITH:
21 150 Q. Okay. So putting aside -- and
22 it's fair for you to say you've signed lots of
23 documents. You may not remember specific
24 documents. But you would agree that you had the
25 authority that is listed here to sign a loan for

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1 any amounts; correct?
2 A. Yes.
3 151 Q. Okay. Let's go back to your
4 submissions. So that's Tab 2, and I'm on paragraph
5 38 -- sorry, page 38, paragraph 124. And this is
6 about the $6.6 million payment to Cresford by a
7 company related to Concord. Do you recall that?
8 A. Yes.
9 152 Q. Okay. So my understanding is that
10 YG owed to each of -- to two separate companies
11 that were Cresford Group entities. One was called
12 Oakleaf and the other was Cresford (Rosedale), and
13 YG owed each of them approximately $19 million on a
14 promissory note; is that right?
15 A. That's, I think, in the Share
16 Purchase Agreement between Concord and Cresford. I
17 take your word for it if that's what -- if you want
18 to show us the document you're referring to.
19 MR. DUNN: Is the question whether
20 Ms. Athanasoulis knew this at some --
21 MR. MILNE-SMITH: Yes.
22 MR. DUNN: Like, during her tenure at
23 Cresford?
24 MR. MILNE-SMITH: Yes.
25 THE WITNESS: No.

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1 BY MR. MILNE-SMITH:
2 153 Q. So you were not aware of the debts
3 that were owed by YG Limited Partnership to these
4 two Cresford entities?
5 MR. DUNN: I think we should also say
6 that there are (indiscernible) not with debts, or
7 are we talking about a different amount?
8 MR. MILNE-SMITH: This is something
9 that just came up this morning, so I'm going to
10 have to share my screen. Well, maybe I don't have
11 to share my screen. Do you have accessible to you
12 the brief that you filed of documents?
13 MR. DUNN: Yes.
14 MR. MILNE-SMITH: Okay. Can you go to
15 document 15 of your brief?
16 MR. DUNN: Just give me a second to get
17 to it. Sorry, you said 15?
18 MR. MILNE-SMITH: 15, yes. This should
19 be a letter from Dale & Lessmann of June 10, 2022.
20 MR. DUNN: Okay.
21 BY MR. MILNE-SMITH:
22 154 Q. So, Ms. Athanasoulis, I have no
23 idea what you know or don't know about this and
24 maybe you don't know at all. I just want to show
25 you what my understanding is, and you can tell me

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1 if you've got any reason to disagree with.
2 So what I'm relying on here is if you
3 look near the bottom page of the first page of this
4 letter -- so this is a letter to Cresford from Dale
5 & Lessmann, and this is relating to the sale that
6 you talked about in your submissions, the
7 $6.6 million payment.
8 So if you look at the bottom of the
9 page, it refers to a promissory note of YG LP in
10 the amount of just under $19 million, which is
11 being transferred to 2502156 Ontario Limited for
12 3.3 million.
13 And then it talks about a similar
14 promissory note in respect of Cresford (Rosedale)
15 in the amount of 19.29 million being transferred to
16 250 for, again, 3.3 million.
17 So that's the 6.6 million that we're
18 talking about; correct?
19 A. Correct.
20 155 Q. And as I understand it, these
21 promissory notes totalling close to 38 million were
22 sold to 250 Ontario Limited, which is a Cresford
23 entity, and then was sold on to Concord as part of
24 a complicated tax-driven agreement. Is that also
25 your understanding?

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1 MR. DUNN: Save as to the tax-driven
2 part, that's our understanding.
3 BY MR. MILNE-SMITH:
4 156 Q. Okay. And I also understand that
5 these assets, if I can call it that, the promissory
6 notes were offered to anybody who wanted to buy
7 them, and Concord made the best bid. Do you have
8 any evidence to the contrary?
9 MR. DUNN: I don't think we'd ever
10 heard that before.
11 BY MR. MILNE-SMITH:
12 157 Q. Okay. So I'm putting that to you,
13 and I'm asking if you have any evidence to the
14 contrary.
15 MR. DUNN: Do you know anything about
16 that?
17 THE WITNESS: No.
18 MR. DUNN: Sorry, somebody offered
19 promissory notes to who?
20 MR. MILNE-SMITH: The promissory notes
21 were made available for sale, and the best price
22 that was available for them was 6.6 million.
23 MR. DUNN: Sorry, made available for
24 sale to who?
25 MR. MILNE-SMITH: Again, I'm not giving

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1 evidence here. I'm just asking if the witness has
2 any information about it.
3 MR. DUNN: No, but that -- I mean, I
4 trust that somebody will look into this. Sure, I
5 mean, we had no idea that any of that had happened.
6 BY MR. MILNE-SMITH:
7 158 Q. In your submissions, you
8 included -- do you recall that there was an issue
9 about costs incurred after August of 2019? So
10 we're back to your submissions. This is paragraph
11 134.
12 MR. DUNN: Okay.
13 BY MR. MILNE-SMITH:
14 159 Q. And you calculated the expenses
15 incurred after August 31, 2019, at 24 million,
16 correct, 24 million and change?
17 MR. DUNN: Well, that's not quite what
18 it says. It says according to YSL's general
19 ledger.
20 MR. MILNE-SMITH: Yes.
21 MR. DUNN: She's not making any
22 independent calculation. She's just --
23 BY MR. MILNE-SMITH:
24 160 Q. But that's the number you accept
25 for purposes of your submissions; correct?

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1 MR. DUNN: I don't know if it's
2 accepted or not. This is what the GL says, and
3 then our calculation flows.
4 BY MR. MILNE-SMITH:
5 161 Q. I guess I want to understand,
6 then, if you're saying the GL was -- are you saying
7 the GL was wrong?
8 MR. DUNN: I think this is set out in
9 our submissions. If you look at 135, that's our
10 position. And then at 136, even if these amounts
11 are accepted in their entirety, this is where you
12 get to in terms of costs.
13 BY MR. MILNE-SMITH:
14 162 Q. Okay. So you're not pointing to
15 anything to say that it's wrong. You're just
16 saying you're unable to independently verify it; is
17 that fair?
18 MR. DUNN: We are pointing to the fact
19 that creditors that Cresford says were paid in
20 September 2019 appear to have been unpaid at the
21 time of the bankruptcy. So that would indicate
22 that they may not have been paid.
23 BY MR. MILNE-SMITH:
24 163 Q. You've also referred in your
25 submissions about participating in an offer by

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1 Patrick Dovigi to purchase Cresford's assets;
2 correct?
3 MR. DUNN: Yes.
4 BY MR. MILNE-SMITH:
5 164 Q. So Tab 12 of my brief, is this the
6 offer that you're referring to? I appreciate it's
7 unsigned.
8 A. Yes.
9 165 Q. Is this the offer that was made
10 for $75 million?
11 MR. DUNN: It's for a cash payment of
12 75.
13 MR. MILNE-SMITH: Aggregate purchase
14 price of 75 million.
15 MR. DUNN: That's not disputed, no.
16 BY MR. MILNE-SMITH:
17 166 Q. Okay. So this document here is
18 not the ultimate offer that was made?
19 MR. DUNN: No, no, this is the offer.
20 This is the offer.
21 BY MR. MILNE-SMITH:
22 167 Q. Okay. So I'm just reading under
23 the heading of "Purchase Price." It says:
24 "The purchaser proposes to
25 purchase the purchased business for

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1 an aggregate purchase price of
2 $75 million."
3 Correct?
4 MR. DUNN: Correct.
5 BY MR. MILNE-SMITH:
6 168 Q. And if we then look at the assets
7 to be included, they are found at Exhibit A on
8 page 6. And did you participate in preparing this
9 offer, Ms. Athanasoulis?
10 A. Yes.
11 169 Q. Okay. So you'll see that it lists
12 the two -- what we've called the adjacent
13 properties at the top of Exhibit A?
14 A. Yes.
15 170 Q. And those are listed separately
16 from the YSL project, which is listed about
17 three-quarters of the way down the page. Do you
18 see that?
19 A. Yes.
20 171 Q. And if we then go over to
21 Exhibit C on page 8, it lists indebtedness. Do you
22 have that page?
23 MR. DUNN: Yes.
24 BY MR. MILNE-SMITH:
25 172 Q. And you'll see that again for YSL,

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1 it lists both under current and -- there's two
2 separate entries. One is for current; one is for
3 pending. So for both of them it lists an amount of
4 $34.8 million.
5 My understanding is that would
6 represent the 20 million to Fei Han, the
7 14.8 million to the LPs, and the reason it's listed
8 twice is because they're both entitled to a
9 100 percent return on investment.
10 So current is the amount they invested.
11 Pending is their return on investment; correct?
12 A. Incorrect.
13 173 Q. Okay. Then tell me what is
14 correct. What's your evidence on this?
15 A. We were going to assume the LPs --
16 MR. DUNN: No, go ahead.
17 BY MR. MILNE-SMITH:
18 174 Q. No, go ahead.
19 A. -- as part of the purchase. We
20 weren't changing the deal of what was in place.
21 175 Q. No, I'm not suggesting you were
22 changing them. What I'm saying is this Exhibit C
23 lists the current indebtedness of all the assets or
24 projects that you were proposing to acquire;
25 correct?

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1 A. Correct.
2 176 Q. Right. And for the YSL project,
3 which is all I'm interested in, it shows that there
4 was a current indebtedness of 34.8 million;
5 correct?
6 A. Mm-hm.
7 177 Q. And then there was an additional
8 pending indebtedness of 34.8 million which
9 represents their return on investment; correct?
10 A. Incorrect. Pending just meant
11 what debt would be outstanding as we closed the
12 deal because we were going to close the financing
13 with Otera and assume the obligations of the LP
14 investors.
15 178 Q. Okay. So you were assuming that
16 you would only have to pay back the 34.8, not their
17 return on investment?
18 A. Incorrect. It merely just states
19 what the value of the loan is without interest. If
20 you take a look, bank (ph) debt is 75 million. It
21 doesn't show 150 million. Like, it shows the face
22 value of the debt.
23 179 Q. Okay. And then if you go over to
24 the last page, which is Exhibit D, this lists
25 employment and consulting agreements. Do you see

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1 that?
2 A. Yes.
3 180 Q. And your name is -- it's
4 alphabetical. Your name is second from the top.
5 It lists your employment category as salary?
6 A. Correct.
7 181 Q. And so a simple point obviously.
8 This Exhibit D did not reference your Profit Share
9 Agreement?
10 A. Okay, yes.
11 MR. MILNE-SMITH: Let's stop there and
12 go off the record, Madam Reporter, please.
13 -- DISCUSSION OFF THE RECORD --
14 -- RECESSED AT 11:46 A.M. --
15 -- RESUMED AT 11:50 A.M. --
16 MR. MILNE-SMITH: Thank you,
17 Ms. Athanasoulis. Subject to the undertakings, any
18 questions taken under advisement, answers arising
19 from further answers, those are my questions.
20 MR. DUNN: Thank you.
21
22 -- Adjourned at 11:50 a.m.
23
24
25

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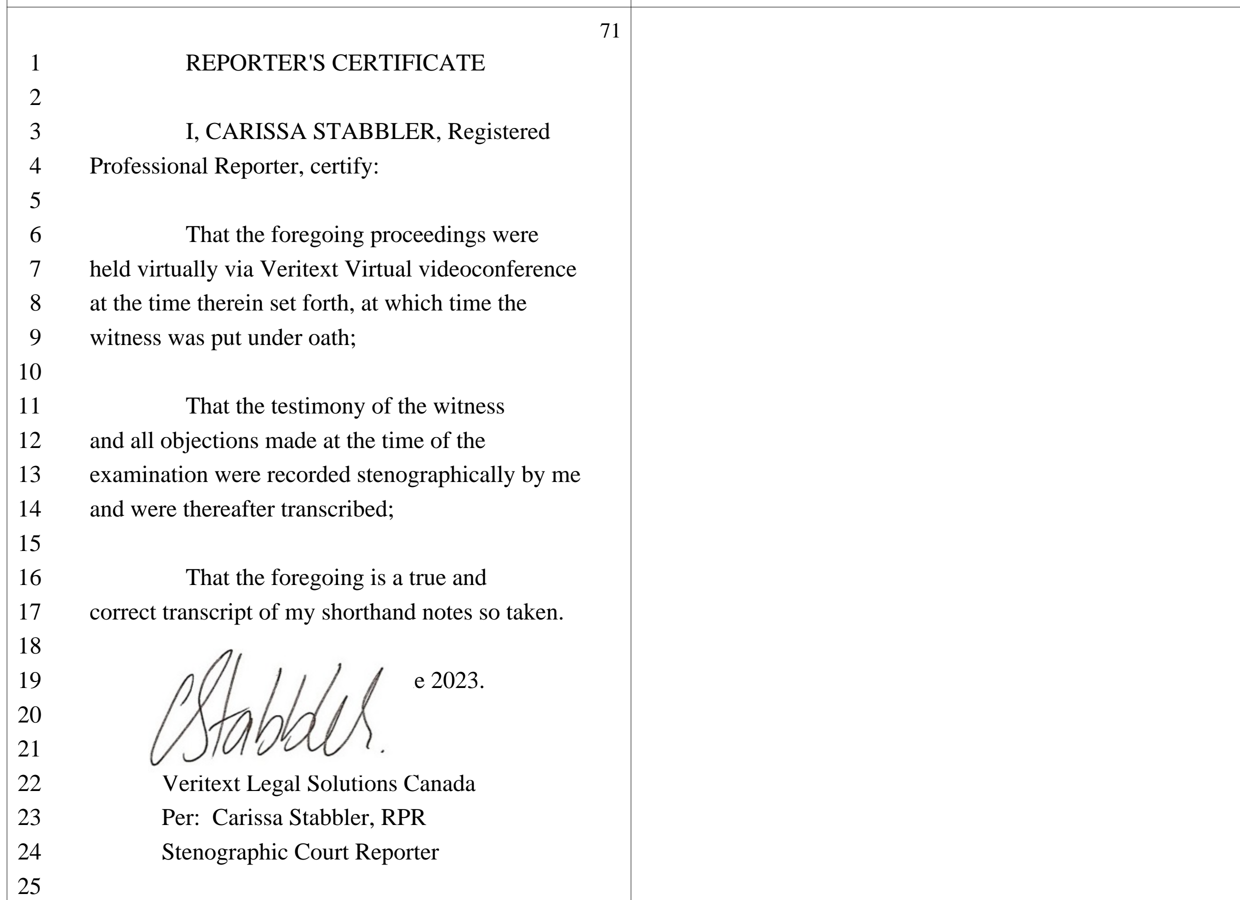
1 REPORTER'S CERTIFICATE
2
3 I, CARISSA STABBLER, Registered
4 Professional Reporter, certify:
5
6 That the foregoing proceedings were
7 held virtually via Veritext Virtual videoconference
8 at the time therein set forth, at which time the
9 witness was put under oath;
10
11 That the testimony of the witness
12 and all objections made at the time of the
13 examination were recorded stenographically by me
14 and were thereafter transcribed;
15
16 That the foregoing is a true and
17 correct transcript of my shorthand notes so taken.
18
19 e 2023.



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23 Per: Carissa Stabbler, RPR
24 Stenographic Court Reporter
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TAB 17

January 2, 2020

Otera Capital
55 University Avenue, Suite 1701
Toronto, Ontario
M5J 2H7

Attention: Leonard Damiani, Michael DiCesare, Paul Chin

I am writing this letter in confidentiality with the trust that you will take the enclosed information seriously and keep my name anonymous and information provided to yourselves as you investigate this serious matter.

I have worked personally for Dan Casey for several decades in a financial capacity. With hesitation, I recently helped Dan Casey arrange a cashflow financing with a former Cresford Executive Ted Dowbiggin because of his inability to inject his own capital to fund a small portion of the well overdue overruns and payables across the Cresford portfolio. With Ted's help, he has always decided to run the business this way, and I have had personal knowledge of it, with hope that he would change from these incorrect financial ways. He has leveraged his equity requirements with offside loans in other projects as well leaving no cashflow available to the business as he needs to pay these loans monthly. With all the equity loans Dan has accepted including this additional one, he was fully aware that this new loan immediately put him offside with several of his financings including this new construction loan from Otera that is about to fund, but still insisted on proceeding with arranging financing and accepting the funds. His recent desperate actions for cash has lead me to believe that Dan does not have the financial strength to operate the business and leaves me great concern given the growing size of the projects. He has always insisted that he has a personal net worth to fall back on but I have yet to see this be the case. There is also a sizeable loan on his principal residence along with other assets which supports my thoughts of his lack of financial strength. I will not be able to live with myself if there is a financial disaster in the future that will affect many stakeholders and knowing that I personally assisted with it and did not alarm anyone. I urge you to look into Dan's ability to cover overruns with his own sources or bank balances available in corporate accounts before funding the construction loan given this new information I have provided especially because of the length and size of your loan.

The loan arranged on December 17, 2019 was for $10,000,000 (and I have enclosed the front page of the commitment letter to verify this). It was only enough to cover some key payables to trades in an attempt to deflect the cash issues. Many real estate brokerages and construction trades are overdue millions of dollars across the Cresford portfolio and are continuously following up payments with no timelines being delivered. The corporate office and surrounding grounds remain unfinished as well because of Dan's inability to fund payables and future costs to complete them. Dan has been fully aware of the issues within the portfolio and always provided excuses to when he will be able to fund costs. Valid solutions to correct the problems have been disregarded by Dan as he does not want to accept the cashflow and overrun issues which could be resolved by Dan injecting his own capital (one that is not borrowed). Key Sr. Executives are no longer at the office leaving me and others to assume they have been terminated. There are also rumours of many other key employees leaving in the new year because of Dan's management. You should look into this as the company has been successful with the key management team that will no longer be with the company in the coming months. I believe his primary focus is to fund your loan because in our private conversations he has suggested he would like to leverage the balance sheet again to solve other project overruns once your loan advances (which will not be sustainable).

If something in the future does happen, I will have to tell the media or anyone else that looks into my position within the company that I warned you of this financial fraud and it could have been prevented by looking into Dan's personal financial situation.

Dave Mann,
Cresford Developments

TAB 18

QuadReal Finance
1515 Douglas Street, Suite 330
Victoria, BC
V8W 2G4

Attention: Dean Atkins, Kevin Weir, Lucy Edwards

Dear Dean, Kevin and Lucy,

I am writing this letter on a confidential basis and will deny sending this if asked. This letter and information provided has been sent without prejudice.

I have decided to give you insight to the way Dan runs Cresford in order to ensure you look closely at all financial affairs within the Cresford portfolio given Dan's resistance to deal with the severe cash shortfalls that are being hidden from you.

Although Dan pretends to have his own capital he has yet to be able to display to anyone at Cresford if this is true. I am enclosing documents that are consistent with this statement confirming that Dan's equity to purchase both Halo and Clover were actually borrowed. He has no vested interest in these projects and has nothing to lose if they do no complete. Same applies to 33 Yorkville as he has none of his own equity injected.

All three projects that your firm has financed are substantially over budget with no real plan to fund the overruns. Dan continues to diminish any profits from these projects with offside equity loan arranged by Ted Dowbiggin to inject money into the company and to live his lifestyle. I have enclosed a copy of the recent commitment letter. This is not the way to run a business.

I am also enclosing a snapshot of the forming contract on Halo to confirm that it is over budget. Dan has asked us all to hide the real number to avoid a further equity injection until more offside equity loans can be arranged.

CASA 3 remains unfinished with many trades and real estate brokers unpaid because there is no money.

The solution to overcome the cash crisis (that is in excess of $100M combined) was to sell the business to fund all shortfalls with proper owners equity and to replace all of these improper high interest loans with proper equity as Dan has an unwillingness or inability to do so as required. This was a solution that Dan supported until recently, when he decided to keep the business and continue to run it in a way that puts many stakeholders including yourselves at risk. As part of his decision not to sell, he terminated a number of key staff who aware of these issues and refused to go along with a fraudulent plan.

There are many stakeholders that will be affected if you do not look closely at the contracts and overruns and I will not be able to live with myself when a financial disaster of this company occurs. I will have to tell the media that you knew about this if asked when something terrible happens.

Sincerely,

Dave Mann

TAB 19

YG LIMITED PARTNERSHIP

AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT

Effective August 4, 2017

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AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT

THIS AGREEMENT is made and entered into effective as of the 4th day of August, 2017 (the "**Effective Date**")

B E T W E E N:

9615334 CANADA INC., a corporation incorporated under the laws of Canada, and extra-provincially registered in Ontario

(the "**General Partner**")

- and -

CRESFORD (YONGE) LIMITED PARTNERSHIP, a limited partnership formed under the laws of the Province of Ontario

("**Cresford**")

- and -

8451761 CANADA INC., a corporation incorporated under the laws of Canada

("**8451761**")

- and -

2504670 CANADA INC., a corporation incorporated under the laws of Canada

("**2504670**")

- and -

Each party who from time to time is listed on the attached Schedule "A" or executes this Agreement, a counterpart hereof or a subscription form which is accepted by the General Partner and accordingly becomes a Limited Partner in accordance with the terms hereof

(hereinafter collectively called the "**New Limited Partners**" and individually a "**New Limited Partner**")

WHEREAS a declaration was registered on February 3, 2016 as required under *The Business Names Registration Act* (Manitoba) in order to create the Partnership and to afford the Limited Partners the limited liability provided under the MPA, and a limited partnership agreement respecting the Partnership so created was entered into made as of the 16th day of February, 2016, between the General Partner, Cresford and another Person (the "**Original Limited Partnership Agreement**");

AND WHEREAS the General Partner and the other parties hereto (such other parties being herein referred to individually as a "**Limited Partner**" and collectively as the "**Limited Partners**") wish to amend and restate the Original Limited Partnership Agreement in the manner set out herein;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 Definitions

As used in this Agreement, the following terms shall have the following meanings:

"**Accountants**" means a firm of chartered professional accountants that is nationally recognized appointed from time to time as the accountants of the Partnership.

"**Affiliate**" means with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person.

"**Agreement**" means this Limited Partnership Agreement, as amended, modified, supplemented or restated from time to time.

"**Appraiser**" means an appraiser that is at arm's length (as defined in the *Tax Act*) to the Limited Partners and the General Partner and is qualified by education, experience, accreditation and training to value properties such as the Property and has been ordinarily engaged in the valuation of real property in the Province of Ontario for the immediately preceding five (5) years.

"**ASPE**" means accounting standards for private enterprises which are in effect from time to time in Canada applied on a consistent basis.

"**Business Day**" means any day other than a Saturday, Sunday or holiday (as that term is defined in the *Interpretation Act* (Canada)) in the Province of Ontario.

"**Capital Account**" means an account established in accordance with Section 5.3.

"**Capital Account Balance**" means the balance outstanding in a Capital Account from time to time.

"**Capital Contribution**" means with respect to any Partner at any time, the amount of capital actually contributed by such Partner to the Partnership.

"**Certificate**" means the form of certificate issued by the General Partner evidencing the number of Units owned by a Limited Partner.

"**Change in Control**" means, in respect of a corporation or entity that has Control over a Limited Partner, the occurrence of an event whereby such corporation or entity loses Control

over, or after which it no longer Controls, the Limited Partner, provided that, for greater certainty, transfer of ownership to Affiliates of such corporation or entity that has Control over a Limited Partner shall not be deemed a Change in Control for purposes of this Agreement, for so long as such transferee remains an Affiliate of such corporation or entity.

"Class A Preferred Units" means Units designated as Class A Preferred Units, the attributes of which are set forth in Subsection 4.2(a).

"Class B Units" means Units designated as Class B Units, the attributes of which are set forth in Subsection 4.2(b).

"Construction Management Agreement" means the agreement to be entered into pursuant to which the Construction Manager will be retained by the Partnership to manage construction of the Project.

"Construction Manager" means 2517516 Ontario Limited retained by the Partnership to undertake the construction of the Project pursuant to the provisions of the Construction Management Agreement.

"**Control**" or "**Controls**" means, in the context of the ownership or control of a corporation or entity:

(i) the right to exercise, directly or indirectly, more than 50% of the voting rights attaching to all the Ownership Interests of the corporation or entity;

(ii) possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the corporation or entity; or

(iii) the right to elect or appoint more than 50% of the directors or members of the governing body of the corporation or other entity;

and the words "**Controlling**", "**Controlled**" and "**Controlled by**" shall have corresponding meanings.

"**Debtor Relief Law**" has the meaning set forth in Section 7.1(c).

"Declaration" means the declaration made and registered with the Director on February 3, 2016 as required under *The Business Names Registration Act* (Manitoba) in order to create the Partnership and to afford the Limited Partners the limited liability provided under the MPA.

"**Defaulting Partner**" means a Limited Partner or General Partner in respect of which an Event of Default has occurred and is continuing.

"Development Management Agreement" means the agreement dated as of February 16, 2016 whereby the Development Manager was retained by the Partnership to manage development of the Project.

"Development Manager" means 2503425 Ontario Limited retained by the Partnership to manage development of the Project.

"Distributable Cash" means:

(a) all cash held by the Partnership relating to the Project available for distribution from time to time to the holders of the Class A Preferred Units and Class B Units; and

(b) the Net Income of the Partnership relating to the Project available for distribution from time to time to the holders of the Class A Preferred Units and Class B Units,

in each case as determined by the General Partner acting in accordance with ASPE and as evidenced by the financial statements of the Partnership.

"**Event of Default**" has the meaning set forth in Section 7.1.

"**Fiscal Year**" has the meaning set forth in Section 2.5.

"**General Partner**" means 9615334 Canada Inc. and any Person who succeeds it as the general partner of the Partnership pursuant to the terms of this Agreement.

"**Initial Capital Contribution**" means the initial Capital Contribution made by a Limited Partner as described in Schedule "A" or in the Subscription Agreement executed by it.

"**Initiating Notice**" has the meaning set forth in Section 7.2(c).

"**Initiating Notice Period**" has the meaning set forth in Section 7.2(c).

"**Limited Partners**" means the limited partners of the Partnership, being Cresford, 8451761, 2504670 and any New Limited Partners, and their respective permitted successors and assigns, but excluding any Person that ceases to be a Limited Partner in accordance with the terms hereof; and "**Limited Partner**" means any one of them.

"MPA" means *The Partnership Act* (Manitoba).

"**Net Income**" or "**Loss**" means for any fiscal period, the net income or loss of the Partnership during the period determined in accordance with ASPE.

"**Non-Defaulting Partner**" means a Limited Partner or General Partner in respect of which an Event of Default has not occurred and is continuing.

"**Ownership Interests**" means, as to any Person, the outstanding voting shares, membership interests, partnership interests or other legal or equitable ownership interests of any kind, however characterized, in such Person.

“**Partner**” means any Limited Partner or General Partner. In the event any Partner shall have withdrawn in whole from the Partnership as provided in this Agreement, such Person shall no longer be a Partner as defined herein after such withdrawal.

“**Partnership**” means YG Limited Partnership.

“**Person**” means an individual, a partnership, an association, a joint venture, a corporation, a business, a trust, an unincorporated organization, any other entity or a government or any department, agency, authority, instrumentality or political subdivision thereof.

“**Prime Rate**” means the annual rate of interest established and quoted by the Partnership's bank from time to time at its head office in Toronto, Ontario as its prime rate for purposes of calculating interest on commercial loans in Canadian dollars.

“**Project**” means the development of and construction on the Property of a mixed-use retail, office and residential condominium building containing approximately 958 residential units, 340 parking units, and approximately 220,832 square feet of retail or commercial space.

“**Property**” means the lands and premises described in Schedule “B”.

“**Purchaser**” has the meaning set forth in Section 7.2(c).

“**Related Party**” means any of the Affiliates of the General Partner or any of their respective directors, officers, employees and shareholders.

“**Reserves**” means amounts from time to time transferred or credited, in the discretion of the General Partner, to a reserve or contingent account on the books and records of the Partnership for operating expenses, working capital, capital expenditures or contingencies.

“Sales Manager” means 2503425 Ontario Limited retained by the Partnership to manage the sale of condominium units and other portions of the Project.

“Sales Management Agreement” means the agreement dated as of February 16, 2016 whereby the Sales Manager was retained by the Partnership to manage the marketing and sales of the Project.

“**Special Resolution**” means a resolution approved by all of the Limited Partners at a duly convened meeting of Limited Partners, or at any adjournment thereof, called in accordance with this Agreement or a written resolution in one or more counterparts, signed by all Limited Partners.

“**Subscription Agreement**” means the agreement whereby a Person has agreed to become a Partner and to subscribe for Units.

“**Subscription Amount**” means with respect to any Partner the amount payable by such Partner for Units in the Partnership pursuant to a Subscription Agreement entered into by such Partner.

*“**Tax Act**”* means the *Income Tax Act* (Canada).

“**Taxable Income**” or “**Tax Loss**”, in respect of any Fiscal Year means, respectively, the amount of income or loss of the Partnership for such period as determined by the General Partner in accordance with the provisions of the *Tax Act* (including the amount of the taxable gain or allowable loss from the disposition of each capital property of the Partnership as determined by the General Partner in accordance with the provisions of the *Tax Act*).

“**Term**” has the meaning set forth in Section 2.4.

“Unit” means a Class A Preferred Unit or a Class B Unit, and **“Units”** means the Class A Preferred Units and the Class B Units, collectively.

“**Vendor**” has the meaning set forth in Section 7.2(c).

1.2 **Statutory References**

Any references herein to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.

ARTICLE 2 - ORGANIZATION

2.1 **Formation**

(a) The parties hereto hereby agree to form a limited partnership under the provisions of the MPA pursuant to the registration of the Declaration. The rights and liabilities of the Partners shall be as provided in the MPA except as herein otherwise expressly provided.

(b) The General Partner shall be the general partner of the Partnership.

(c) The Partnership shall not have more than fifty (50) Persons as holders of Units or other interests in the Partnership.

2.2 **Name**

The name of the Partnership is “YG Limited Partnership”. The General Partner is authorized to make any variations in the Partnership's name from time to time by notice to the Limited Partners, provided that such name shall contain the words “Limited Partnership”, the abbreviation “L.P.” or the designation “LP”.

2.3 **Principal Place of Business**

The Partnership shall have its principal place of business at 170 Merton Street, Toronto, Ontario M4S 1A1, or at such other place as the General Partner may from time to time designate by notice to the Limited Partners.

2.4 **Term**

The term (the "**Term**") of the Partnership commenced on the Effective Date, and shall continue until the termination and dissolution in accordance with Article 12 .

2.5 **Fiscal Year**

The fiscal year (the "**Fiscal Year**") of the Partnership for accounting and income tax purposes shall be a year ending on December 31 of each year or, in the case of the first Fiscal Year, the portion of the calendar year commencing on the Effective Date and ending on December 31, 2017, and in the case of the Fiscal Year in which the Partnership is terminated and wound up, the portion of the calendar year ending on the date on which the Partnership is terminated.

ARTICLE 3 - THE PARTNERSHIP

3.1 **Purpose and Scope of Business**

(a) Subject to the restrictions contained herein, the objects, purposes and business of the Partnership shall be:

(i) to own, develop and sell the Project; and

(ii) to engage in any other lawful activities determined by the General Partner to be necessary, advisable, convenient or incidental to the foregoing.

(b) Subject to the restrictions set forth in this Agreement, the Partnership shall have the power to do any and all acts necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the objects and purposes described herein, and shall have, without limitation, any and all of the powers that may be exercised on behalf of the Partnership by the General Partner pursuant to Section 3.2.

3.2 **Powers of the General Partner**

(a) Subject to the other provisions of this Agreement, the General Partner shall have the exclusive authority and power to manage, control, administer and operate the business, policies and affairs of the Partnership and to make all decisions regarding the business, policies and affairs of the Partnership, and the General Partner is hereby authorized and empowered on behalf of and in the name of the Partnership to carry out any and all of the business, objects and purposes of the Partnership and to perform all acts and enter into and perform all contracts and other undertakings that it may in its discretion deem necessary or advisable in connection therewith or incidental thereto. Without limiting the generality of the foregoing, any action taken by the General Partner shall constitute the act of and serve to bind the Partnership. In dealing with the General Partner acting on behalf of the Partnership, no Person shall be required to inquire into the authority of the General Partner to bind the Partnership. Persons dealing with the Partnership are

entitled to rely conclusively on the power and authority of the General Partner as set out in this Agreement.

(b) Without limiting the generality of Section 3.2(a), it is acknowledged and agreed that the General Partner is authorized and has the right, on behalf of and without further authority from the Limited Partners:

(i) to acquire the Property and any other real or personal property from time to time related to the Project;

(ii) to acquire the interest of the limited partner of the Partnership (other than Cresford) under the Original Limited Partnership Agreement;

(iii) to sell condominium units and other portions of the Property or Project;

(iv) to engage such professional advisers as the General Partner considers advisable in order to perform or assist it in the performance of its duties hereunder;

(v) to open and operate in the name of the Partnership a separate bank account in order to deposit and distribute funds with respect to the Partnership;

(vi) to execute, deliver and carry out all other agreements which require execution by or on behalf of the Partnership;

(vii) to pay all taxes, fees and other expenses relating to the orderly maintenance and management of the assets owned by the Partnership;

(viii) to commence or defend on behalf of the Partnership any and all actions and other proceedings pertaining to the Partnership or the assets owned by the Partnership;

(ix) to determine the amount and type of insurance coverage to be maintained in order to protect the Partnership and the assets owned by the Partnership from all usual perils of the type covered in respect of comparable assets and in order to comply with the requirements of the lenders of funds to the Partnership;

(x) to determine the amount, if any, to be claimed by the Partnership in any year in respect of capital cost allowance and expenses incurred by the Partnership;

(xi) to hold the assets owned by the Partnership in the name of the General Partner or such other nominee as may be appointed by the General Partner;

(xii) to invest funds not immediately required for the business of the Partnership in such investments or securities as the General Partner determines;

(xiii) to make distributions of available funds in accordance with the provisions of this Agreement;

(xiv) to provide or arrange for the provision of such financial and other reporting functions as may be required by the provisions hereof;

(xv) to retain managers to manage the assets owned by the Partnership and the Project, including without limitation the Development Management Agreement, the Sales Management Agreement and the Construction Management Agreement;

(xvi) to borrow money, execute guarantees and give security in the name of the Partnership or the General Partner for any purposes, all on such terms as the General Partner shall deem fit in its sole, subjective and final discretion;

(xvii) to draw, make, execute and issue promissory notes and other negotiable or non-negotiable instruments and evidence of indebtedness;

(xviii) to create, by grant or otherwise, easements and rights of way, licences, restrictions and covenants;

(xix) at the expense of the Partnership, to employ, retain or appoint, at a cost equal to or less than the then prevailing competitive terms for such services, and dismiss or terminate any and all employees, agents, independent contractors, real estate managers, corporate or asset managers, brokers, solicitors and accountants;

(xx) to retain and/or deal with all engineers, architects, appraisers, contractors, utility companies, surveyors, municipal and governmental agencies and any and all other Persons in connection with and in pursuance of the Project, and in connection therewith to enter into contracts with such Persons;

(xxi) to grant such liens, charges, security interests and encumbrances and to execute such documents and instruments and to do all acts relating thereto as may be necessary in connection with the financing of the assets and business of the Partnership;

(xxii) to delegate any or all of its rights and duties herein, provided that the General Partner shall remain responsible for the supervision and performance of any Person to whom such rights and duties have been delegated; and

(xxiii) to execute any and all other deeds, documents and instruments and to do all acts as may be necessary or desirable to carry out the intent and purpose of this Agreement.

3.3 **Reimbursement of the General Partner**

The General Partner is entitled to reimbursement by the Partnership for all reasonable third party costs and expenses that are incurred by the General Partner on behalf of the Partnership in the ordinary course of business or other costs and expenses incidental to acting as general partner to the Partnership. All such expenses shall be otherwise paid by the Partnership.

3.4 **Management Fees**

The Partnership shall retain the Development Manager pursuant to the provisions of the Development Management Agreement to provide development management services to the Project, the Construction Manager pursuant to the provisions of the Construction Management Agreement to provide construction management services to the Project and the Sales Manager pursuant to the provisions of the Sales Management Agreement to provide marketing and sales services in respect of the sale of condominium units and other portions of the Project. The parties acknowledge that, under such agreements, the Partnership shall pay management fees and commissions to the Development Manager, the Construction Manager and the Sales Manager in connection with the management services performed by them in respect of the Project, plus any goods and services tax and/or harmonized sales tax payable thereon.

3.5 **Duty of the General Partner**

The General Partner covenants that:

(a) it shall exercise its powers and discharge its duties under this Agreement honestly, in good faith and in the best interests of the Limited Partners and that it shall exercise the care, diligence and skill that a reasonably prudent operator of a business similar to that of the Partnership would exercise in comparable circumstances; and

(b) it shall maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the Partnership, the disclosure of which may adversely affect the interests of the Partnership or a Limited Partner, except to the extent that disclosure is required by law or is in the best interests of the Partnership, and it shall utilize the information and data only for the business of the Partnership; and

(c) it shall not engage in any business, other than acting as a general partner of the Partnership.

3.6 **Restrictions upon the General Partner**

The General Partner covenants that it shall not:

(a) use the Capital Contributions of the Partners for any reason other than in connection with the Project and other purposes related thereto, including those listed in Subsection 3.2(b);

(b) purchase any property of, sell any property to, or enter into any contract with any Related Party, other than on market terms; or

(c) commingle funds of the Partnership with the funds of any other Person.

3.7 **Limitation on Authority of Limited Partner**

No Limited Partner shall:

(a) take part in the control or management of the business of the Partnership provided that each Limited Partner shall have the right from time to time to examine the state and progress of the business and affairs of the Partnership;

(b) execute any document which binds or purports to bind the Partnership or any Partner as such;

(c) hold itself out as having the power or authority to bind or sign on behalf of the Partnership or any Partner;

(d) have any authority to undertake any obligation or responsibility on behalf of the Partnership; or

(e) bring any action for partition or sale in connection with any property or asset of the Partnership.

3.8 **Liability of the Limited Partners**

Subject to the MPA and any specific assumption of liability, the liability of each Limited Partner for the debts, liabilities, losses and obligations of the Partnership is limited to the amount of the capital contributed or agreed to be contributed to the Partnership by it and its proportionate share of any undistributed income of the Partnership as is hereinafter provided.

3.9 **Indemnification by General Partner**

The General Partner shall indemnify and hold harmless each Limited Partner from any costs, damages, liabilities or expenses suffered or incurred by such Limited Partner in any case where the liability of such Limited Partner is not limited in the manner provided in Section 3.8, unless the liability of such Limited Partner is not so limited as a result of, or arising out of, any act or omission of such Limited Partner.

3.10 **Status of the General Partner**

The General Partner represents, warrants and covenants, as the case may be, to each Limited Partner that:

(a) it is and shall continue to be a corporation incorporated and validly subsisting under the laws of Canada;

(b) it has and shall continue to have the requisite capacity and corporate authority to act as the general partner of the Partnership and to perform its obligations under this Agreement, and such obligations do not and shall not conflict with or breach its articles of incorporation, by-laws or any agreement by which it is bound;

(c) it shall not nor shall any Affiliate of the General Partner borrow from the Partnership;

(d) it has contributed the sum of $1.00 as a capital contribution to the Partnership;

(e) it shall not carry on any business other than for the purposes set forth herein;

(f) this Agreement and all other agreements contemplated hereby have been duly authorized, executed and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally, and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; and

(g) any and all property and assets of the Partnership which are held in the name of the General Partner shall be held by it in trust as nominee for and on behalf of the Partnership.

3.11 **Status of each Limited Partner**

Each Limited Partner represents, warrants and covenants, as the case may be, to each other Limited Partner and to the General Partner that:

(a) it is not a “non-resident” of Canada within the meaning of the Tax Act;

(b) it is legally competent to execute this Agreement and all other agreements contemplated hereby and to take all actions required pursuant hereto, and it further certifies that all necessary approvals of its directors, shareholders, partners, members or otherwise have been given;

(c) it shall promptly provide such evidence of the foregoing representations and warranties as the General Partner may reasonably request;

(d) this Agreement and all other agreements contemplated hereby have been duly authorized, executed and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally, and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; and

(e) it will not transfer or purport to transfer its Units to any person who would be unable to make the representations and warranties above.

3.12 **Non-Residents**

If the Limited Partners propose to dissolve the Partnership, the General Partner may require those Limited Partners who are then non-residents of Canada for the purposes of the *Tax Act* to transfer their Units to residents of Canada. If a non-resident Limited Partner fails to transfer his Units to a resident of Canada who qualifies to hold Units under the terms of this Agreement within 30 days of the giving of a notice to such non-resident Limited Partner to so transfer his Units, the General Partner shall be entitled to sell such Units on behalf of such non-resident Limited Partner on such terms and conditions as it deems reasonable and may itself become the purchaser of such Units. On any such sale by the General Partner the price shall be the fair market value for such Units as determined by an independent Appraiser appointed by the General Partner, whose appraisal shall be final and binding on the Partnership, the General Partner, and the Limited Partners so affected. The cost of such appraisal shall be borne by the Limited Partner(s) whose Units are sold by the General Partner and may be deducted from the proceeds of such sale together with any other expenses incurred in connection therewith.

3.13 **Execution of Instruments**

All deeds, transfers, assignments, mortgages, leases or other documents or instruments which the Partnership is to execute or to which the Partnership is otherwise to become a party shall be executed by the proper signing officer or officers of the General Partner or by such other person or persons as the General Partner shall designate in writing from time to time.

ARTICLE 4 - THE UNITS

4.1 **Units**

The interests of the Partners in the Partnership are divided into the Class A Preferred Units and the Class B Units. The Class A Preferred Units and Class B Units under the Original Limited Partnership Agreement (of which there are none outstanding on the date hereof) are cancelled and terminated.

4.2 **Attributes of Units**

(a) Class A Preferred Units shall have equal voting, distribution, liquidation and other rights and shall have no conversion, exchange, pre-emptive or redemption rights, save and except that Class A Preferred Units in the aggregate shall entitle the Partner holding them solely to a preferred return of the profits and Distributable Cash of the Partnership to the extent needed to reimburse such Partner of all Capital Contributions made by it and to pay such Partner a preferred return equal to the greater of:

(i) an amount equal to the total Capital Contributions made by it, and

(ii) a compounded and cumulative preferred annual return of twelve and twenty-five one-hundredths percent (12.25%) calculated from the date of each Capital Contribution on account of such Class A Preferred Units from time to time,

and holders of Class A Preferred Units shall have no further entitlement to any remaining profits and Distributable Cash of the Partnership. Holders of Class A Preferred Units shall be entitled to such payments in priority to holders of Class B Units, as further detailed in this agreement. The rate of return of 12.25% per annum referred to in Paragraph 4.2(a)(ii) will be achieved when the total of the Capital Contributions made by the holder of Class A Preferred Units from time to time are returned to it with an annual return of 12.25% calculated on a cumulative basis and commencing on the date such Capital Contributions are made, and compounded annually at the rate of 12.25% taking into account the timing and amounts of all previous Capital Contributions of and all previous distributions to such holder. The total number of Class A Preferred Units owned by a Limited Partner from time to time shall be determined by dividing the total Capital Contributions by such Limited Partner in respect of such class (but excluding any returns, reimbursements or repayments of capital to the Limited Partner) by One Thousand Dollars ($1,000.00). The Partners acknowledge that a Limited Partner may hold a fraction of a Class A Preferred Unit in the event that such Limited Partner contributes an amount of capital on account of such class which is not an exact multiple of One Thousand Dollars ($1,000.00).

(b) Class B Units shall have equal voting, distribution, liquidation and other rights and shall have no conversion, exchange, pre-emptive or redemption rights, save and except that Class B Units in the aggregate shall entitle the Partners holding them to one hundred percent (100%) of the remaining profits and losses and Distributable Cash of the Partnership after the satisfaction of the preferred entitlements thereto of holders of Class A Preferred Units. The total number of Class B Units owned by a Limited Partner from time to time shall be determined by dividing the total Capital Contributions by such Limited Partner in respect of such class by One Thousand Dollars ($1,000.00). The Partners acknowledge that a Limited Partner may hold a fraction of a Class B Unit in the event that such Limited Partner contributes an amount of capital on account of such class which is not an exact multiple of One Thousand Dollars ($1,000.00). The Class C Units under the Original Limited Partnership Agreement that are outstanding on the date hereof are hereby reclassified and designated as Class B Units under this Agreement.

(c) Except as otherwise provided in this Agreement, no Unit shall have any preference or right in any circumstance over any other Unit. The holder of each Unit shall, subject to the other provisions hereof, have the right to exercise one vote for each Unit held in respect of all matters to be decided by the Partners, provided that there shall not be a vote for any fractional portion of a Unit.

4.3 **Certificates**

As Units are paid for, each Partner shall be entitled to receive a Certificate specifying the number of Units held by it. The Certificate shall be in such form as the General Partner may from time to time approve. The General Partner shall have the right to choose to dispense entirely with any requirement to issue certificates.

4.4 **Receipt by Partner**

The receipt of any money, security or other property from the Partnership by a Person in whose name any Unit is recorded, or if such Unit is recorded in the names of more than one Person, the receipt thereof by any one or more of such Persons, or by the duly authorized agent of any such Person in that regard, shall be a sufficient and proper discharge for that amount of money, security or other property payable, issuable or deliverable in respect of such Unit.

4.5 **Registrar and Transfer Agent**

The General Partner shall act as registrar and transfer agent for the Partnership and shall maintain such books as are necessary and appropriate to record the names and addresses of the Limited Partners, the number of Units held by each Limited Partner, the particulars of assignments of Units and such other information regarding each Limited Partner as is prescribed by the MPA and the regulations thereto. The General Partner shall perform all duties usually performed by transfer agents and registrars of certificates of shares in a corporation, except as the same may be modified by reason of the interests held being units rather than shares.

4.6 **Inspection of Records**

The General Partner shall permit any Limited Partner and/or its agent duly appointed in writing at the expense of the Limited Partner to inspect the register of Limited Partners at any reasonable time during normal business hours.

4.7 **Admission as Additional or Substituted Partner**

Where a transferee or a successor of a Partner is entitled to become a Partner pursuant to the provisions hereof:

(a) all Partners will be deemed to consent to the admission of the transferee or the successor as an additional or substituted Partner, as the case may be, without further act of the Partners;

(b) the General Partner shall, or shall cause, the transferee or substituted Partner to be entered on the register of the Partnership as the holder of record of the applicable number of Units and Capital Contributions; and

(c) the General Partner shall execute this Agreement on behalf of such transferee or successor.

Upon the completion of the foregoing matters, the transferee or successor, as the case may be, shall become a Partner.

4.8 **Prohibition on Dealings with Units**

(a) Subject to Subsection 4.8(b), no Partner may, directly or indirectly, transfer, sell, assign, mortgage, charge, pledge or grant a security interest in any Units or otherwise deal with its Units (individually and collectively, a "**Transfer**"), unless the General Partner, in its sole and absolute discretion (which may be exercised unreasonably), shall first have consented in writing thereto.

(b) A transfer of Units by a Limited Partner to an Affiliate of the Limited Partner shall be permitted without the approval of the General Partner, provided that:

(i) prior written notice of such transfer is given by the Limited Partner to the other Partners;

(ii) the provisions of Subsection 4.8(c) are complied with;

(iii) the transferor will acknowledge, covenant and agree in favour of the other Partners that the transferor will not be released from its obligations hereunder and will remain jointly and severally liable for the performance by the transferee of all of its obligations under this Agreement and the agreements mentioned under Subsection 4.8(c)(i);

(iv) the transferee and the transferor will agree in favour of the remaining Partners that the transferee will remain an Affiliate of the transferor; and

(v) the transferee agrees with the other Partners, in an agreement in form and substance acceptable to the parties thereto, acting reasonably, that:

(A) in all matters in which a Partner, by the terms of this Agreement, has a right or privilege, such right or privilege will be exercised by the transferor on behalf of itself and the transferee, and the other Partners will be entitled to rely on the actions of the transferor in that regard as binding upon the transferee, and the transferor will obtain a power of attorney from the transferee to such effect;

(B) in all matters in which a Partner, by the terms of this Agreement, is subject to an obligation, prohibition or restriction, such obligation, prohibition or restriction will be binding upon the transferee to the same extent as the transferor; and, as well, the transferor and the transferee shall be jointly and severally obligated to the other Partners for the fulfillment of any obligation hereunder by the transferee and provided that, in such case, recourse may be had to the transferor and the transferee for such obligations; and

(C) any notices required to be given hereunder to the transferee need only be given to the transferor and shall be effective and binding as though given to both the transferee and the transferor.

(c) No transfer, sale or assignment of a Unit consented to in writing by the General Partner pursuant to Subsection 4.8(a) shall be effective unless:

(i) a duly executed transfer and assumption of this Agreement, in such form as is approved by the General Partner, shall have been filed with the Partnership;

(ii) the Limited Partner and the transferee shall have executed and acknowledged such other instruments and taken such other action as the General Partner reasonably shall deem necessary or desirable to effect such transfer, sale or assignment;

(iii) the conditions set forth in Section 4.8(d) shall have been satisfied, and, if requested by the General Partner, the Limited Partner or the transferee shall have obtained an opinion of counsel satisfactory to the General Partner as to the legal matters set forth therein; and

(iv) the Limited Partner or the transferee shall have paid to the Partnership an amount sufficient to cover all expenses incurred by or on behalf of the Partnership in connection with such transfer, sale or assignment.

(d) Notwithstanding any other provision of this Agreement, no Transfer shall be made by any Limited Partner of all or any part of its Units if:

(i) in the opinion of counsel to the Partnership, such Transfer would result in a violation of any applicable securities laws; or

(ii) such Transfer would, in the judgment of the General Partner, cause a dissolution of the Partnership or would breach, or would cause the Partnership to breach, any applicable law or regulation or impose any additional materially burdensome registration or filing requirements on the Partnership or any Partner or otherwise subject the Partnership or any Partner to any additional materially burdensome regulation, including in each case under applicable securities laws.

(e) No attempted or purported Transfer of Units shall be effective or recognized by the Partnership unless effected in accordance with and permitted by this Agreement. A transferee who is not admitted as a Partner in accordance with the terms hereof shall have no right to any information or accounting of the affairs of the Partnership, shall not be entitled to inspect the books or records of the Partnership and shall not have any of the rights of a General Partner or a Limited Partner under the MPA or this Agreement.

4.9 **No Change of Control**

No transfer of any Ownership Interests of any Partner may be made, either directly or indirectly, that would result in any Change in Control of the Partner, unless the General Partner, in its sole and absolute discretion (which may be exercised unreasonably), shall first have consented in writing thereto.

4.10 **Allocations on Transfers**

If at any time during any fiscal period of the Partnership a Partner transfers its Units in accordance with this Agreement, no share of the Net Income or Losses of such fiscal period to the date of transfer with respect to such Unit shall be allocated to such Partner as at the date of transfer, but shall be allocated to the Partner being the registered owner of such Units as at the end of such fiscal period of the Partnership.

4.11 **Recording of Transfer**

The General Partner will record all transfers of Units which have been approved in accordance with the terms of the Agreement and amend or cause to be amended the register of Partners and will do all things and make such filings and recordings as are required by law to effect and record such transfers. The transferee of any Units shall be subject to and entitled to the obligations and benefits of all Capital Contributions of the transferor.

4.12 **Parties Not Bound to See to Trust or Equity**

Except where specific provision has been made therefor in this Agreement, no Partner shall be bound to see to the execution of any trust, express, implied or constructive, or to honour any charge, pledge or equity to which any Unit or any interest therein is subject, or to ascertain or inquire whether any sale or transfer of any Unit or interest therein by any Partner is authorized by such trust, charge, pledge or equity, or to recognize any Person having any interest therein except for the Person or Persons recorded as a Partner.

4.13 **Liability on Transfer**

Subject to the other terms hereof, when an assignment and transfer of any Units is completed and the transferee is registered as a Partner, the transferor of those Units will be thereupon relieved of all obligations and liabilities relating to its Units, including the obligations and liabilities under this Agreement to the extent permitted by law and the transferee will assume all such obligations and liabilities. The transferee of any Units shall be subject to and entitled to the obligations and benefits of all Capital Contributions of the transferor.

4.14 **Successors in Interest**

The Partnership shall continue notwithstanding the admission of any new general partner or limited partner or the withdrawal, death, insolvency, bankruptcy or other disability or incapacity of any Partner. The Partnership shall be dissolved only in the manner provided for in this Agreement.

4.15 **Incapacity, Death, Insolvency or Bankruptcy**

If a Person becomes entitled to a Unit on the incapacity, death, insolvency or bankruptcy of a Partner, or otherwise by operation of law, in addition to the requirements hereof, that Person will not be recorded as or become a Partner until such Person:

(a) produces evidence satisfactory to the General Partner of such entitlement;

(b) has agreed in writing to be bound by the terms of this Agreement and to assume the obligations of a Partner under this Agreement; and

(c) has delivered such other evidence, approvals and consents in respect of such entitlement as the General Partner may require and as may be required by law or by this Agreement.

4.16 **Lost Certificates**

Where a Limited Partner claims that the Certificate for its Units has been defaced, lost, apparently destroyed or wrongly taken, the General Partner shall cause a new Certificate to be issued, provided that the Limited Partner files with the General Partner an indemnity in a form and amount satisfactory to the General Partner to protect the Partnership from any loss, cost, damage or liability that it may incur or suffer by complying with the request to issue a new Certificate and provided further, that the Limited Partner satisfies all other reasonable requirements imposed by the General Partner, including delivery of a form of proof of loss in a form satisfactory to the General Partner. The Limited Partner shall reimburse the Partnership for all costs incurred by it in the issuance of a new Certificate.

ARTICLE 5 - CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

5.1 **Initial Capital Contributions**

The Initial Capital Contributions of the Limited Partners are set out in Schedule “A”. The Initial Capital Contribution of the General Partner is $1.00.

5.2 **Unit Issuance**

The Units will be issued to the Partners by the Partnership from time to time upon receipt of Capital Contributions from them.

5.3 **Capital Accounts**

(a) Each Partner shall have a capital account (a “**Capital Account**”) to which shall be credited the amount of any Capital Contributions made by each such Partner pursuant to the terms of this Agreement, including the Initial Capital Contribution.

(b) The Capital Account of a Partner shall be increased from time to time by the amount of:

(i) any additional Capital Contributions to the Partnership made by such Partner or received by the Partnership on behalf of such Partner pursuant to Section 5.6, and

(ii) any Net Income allocated to such Partner.

(c) The Capital Account of a Partner shall be decreased by the amount of:

(i) any Loss allocated to such Partner, and

(ii) any distributions made to such Partner.

5.4 No Interest Payable

No Partner shall be entitled to receive interest from the Partnership on the amount of any Capital Contribution or on its Capital Account Balance.

5.5 Return of Capital

No Partner has the right to withdraw any capital or other amount or receive any distribution from the Partnership except as provided in this Agreement and as permitted by law.

5.6 Additional Capital Contributions

Notwithstanding any other provision of this Agreement, no Limited Partner shall be obligated to make or advance any capital contributions to the Partnership in addition to its Initial Capital Contribution, unless it, in its sole discretion, elects to do so.

5.7 Compliance with Laws

The Limited Partners shall comply with the provisions of the MPA and any other applicable legislation in force from time to time and shall not take any action which will jeopardize or eliminate the status of the Partnership as a limited partnership. Without limiting the generality of the foregoing, each Limited Partner shall, on request by the General Partner, immediately execute all certificates, Declarations, instruments and documents necessary to comply with any law or regulation of any jurisdiction in Canada in regard to the formation, continuance, operation or dissolution of the Partnership.

ARTICLE 6 - DISTRIBUTIONS AND ALLOCATIONS

6.1 Calculation of Net Income and Losses

The Net Income or Loss of the Partnership shall be determined in accordance with ASPE and such determination shall be binding on the Partners.

6.2 Allocation of Net Income, Loss, Taxable Income and Tax Loss

The Net Income, Loss, Taxable Income and Tax Loss shall be allocated to the Partners in each Fiscal Year as follows:

(a) as to Net Income and Taxable Income:

(i) 0.00001% of such Net Income or Taxable Income to the General Partner; and

(i) the balance of such Net Income or Taxable Income to the Limited Partners in the same proportion as proportions of Distributable Cash are paid to Limited Partners under Section 6.3; and

(b) as to Losses and Tax Losses:

(i) firstly, an amount of such Loss or Tax Loss shall be allocated to the General Partner to the extent of its Capital Account until such Capital Account has a zero balance; and

(ii) secondly, the remainder of such Loss or Tax Loss shall be allocated to Cresford, except that a portion thereof shall be allocated to 8451761, 2504670 and any New Limited Partners to the extent that they do not receive back any of the Capital Contributions made by them to the Partnership.

6.3 **Distributions of Cash**

(a) The General Partner shall, from time to time, distribute all Distributable Cash that is not reasonably necessary for the conduct of the Partnership's business. The General Partner may retain or establish one or more Reserves in such amounts that it considers prudent with respect to contingent or unforeseen liabilities and obligations.

(b) The General Partner shall cause the Partnership to distribute Distributable Cash, if any, to the Partners throughout the course of the Project as soon as they are available, as follows:

(i) first, to the holders of Class A Preferred Units, pro rata, to the extent of Capital Contributions by them on account of Class A Preferred Units;

(ii) second, to the holders of Class A Preferred Units, pro rata, to the extent of the preferred return to which each of them is entitled pursuant to Section 4.2(a);

(iii) third, to holders of Class B Units on a pro rata basis by reference to the number of Class B Units they hold, to the extent of Capital Contributions by them on account of Class B Units; and

(iv) thereafter, to holders of Class B Units in each case in accordance with the ratio that the number of Class B Units held by such holder of Class B Units bears to the total number of Class B Units then issued and outstanding.

6.4 **Distributions Upon Dissolution**

Upon the dissolution of the Partnership, the assets of the Partnership shall be liquidated as promptly as is consistent with obtaining a reasonable value therefor, and the proceeds therefrom shall be applied and distributed in the following order of priority:

(a) to pay all costs involved in the sale of the assets of the Partnership and the dissolution of the Partnership and to pay all liabilities of the Partnership, all in the manner required by law;

(b) to establish such Reserves which General Partner may deem reasonably necessary for any contingent or unforeseen liabilities or obligations or debts or liabilities not yet payable by the Partnership or by the General Partner on behalf of the Partnership which have arisen out of or in connection with the Partnership. Such Reserves may be held for disbursement by the General Partner or delivered to an independent escrow agent, designated by the General Partner, to be held by such escrow agent for the purpose of disbursing such Reserves in payment of any of the aforementioned contingencies, debts or liabilities, and, at the expiration of such period and as the General Partner shall deem advisable, to distribute the balance thereafter remaining in the manner hereinafter provided for; and

(c) to the Partners in accordance with the provisions of Section 6.3, no later than the later of 90 days after the date of dissolution of the Partnership and the end of the Fiscal Year in which the dissolution of the Partnership occurs.

6.5 **Return of Distributions**

Except as otherwise provided in the MPA and Section 6.7, a Limited Partner shall not be obligated to return any distribution from the Partnership.

6.6 **Nature and Limitation on Distributions**

No Limited Partner shall be entitled to receive distributions from the Partnership other than as specifically provided by this Agreement.

6.7 **Repayments**

If, as determined by the Accountants, any Limited Partner has received an amount which is in excess of its entitlement, such Limited Partner shall forthwith reimburse the Partnership to the extent of such excess upon notice (accompanied by sufficient evidence) by the General Partner. The General Partner may set-off and apply any sums otherwise payable to a Limited Partner against such amount due from such Limited Partner. If the Limited Partner who is obligated to repay such excess does not do so within five (5) Business Days of notice from the General Partner, then such excess shall bear interest at the Prime Rate plus 5% per annum, calculated, compounded and payable monthly to the Partnership (for the benefit, pro rata, of the Limited Partners other than the Limited Partner who is obligated to pay such excess).

ARTICLE 7 - DEFAULT

7.1 Events of Default

Any of the following events or circumstances is a default under this Agreement (herein called an "**Event of Default**") with respect to a Partner:

(a) if a Limited Partner or the General Partner defaults in any material respect under any of the provisions of this Agreement, other than a default referred to in Subsection 7.1(g), and such default continues for a period of 30 days after notice thereof has been given by any other Partner, or such longer period not to exceed 60 days as may be required to cure such default provided that reasonable steps to cure such default are taken and diligently pursued; or

(b) if a Limited Partner or the General Partner commits an act of fraud, theft, gross negligence or wilful misconduct or intentionally breaches in any material respect any applicable laws; or

(c) if a Limited Partner or the General Partner becomes insolvent, fails to pay its debts generally as they become due, voluntarily seeks, consents to or acquiesces in the benefit of any of the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other applicable liquidation, bankruptcy, moratorium, rearrangement, receivership, administration, insolvency, reorganization, fraudulent transfer or conveyance, suspension of payments or similar laws from time to time in effect affecting the rights of creditors generally in any relevant jurisdiction (collectively, "**Debtor Relief Law**") other than as a creditor or claimant, or it becomes a party to or is made the subject of any proceeding provided for under any Debtor Relief Law, other than as a creditor or claimant, unless in the event such proceeding is involuntary, such proceeding or the petition instituting same is dismissed within 30 days after its filing; or

(d) if a liquidator, receiver, receiver and manager, or trustee in bankruptcy is appointed to a Limited Partner or of its Units or any part thereof with the consent or acquiescence of the Limited Partner; or

(e) if a liquidator, receiver, receiver and manager, or trustee in bankruptcy is appointed to the General Partner with the consent or acquiescence of the General Partner; or

(f) if an encumbrancer or secured creditor of the General Partner or Limited Partner takes possession of any assets of such Partner or any part thereof, or if a distress or execution or any similar process is levied or enforced upon or against such Partner's assets or any part thereof and the same remains unsatisfied for the shorter of a period of 30 days or such period as would permit the same to be sold; provided that such process is not in good faith disputed by such Partner and, in that event, provided that, if such Partner desires to contest the same, it also gives to the Non-Defaulting Partners security which, in the discretion of the Non-

Defaulting Partners, is sufficient to pay in full the amount claimed in the event it is held to be a valid claim; or

(g) if a Limited Partner Transfers or attempts to Transfer its Units (or any part thereof) contrary to the provisions of this Agreement; or

(h) a Limited Partner or the General Partner defaults under any financing facility and such default is not remedied within the period permitted under such financing facility.

7.2 **Rights Available to Non-Defaulting Partners**

If an Event of Default in respect of a Defaulting Partner has occurred and is continuing, each Non-Defaulting Partner will have remedies set out below in respect thereof:

(a) bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the Limited Partners that damages at law may be an inadequate remedy for a default or breach of this Agreement; and/or

(b) bring any action at law as may be necessary or desirable in order to recover damages; and/or

(c) the right (but not the obligation) to elect, by notice (in this Subsection 7.2(c), the "**Initiating Notice**") to the other Partners given within 30 days after the occurrence of such Event of Default (the "**Initiating Notice Period**"), to purchase the Defaulting Partner's Units, in which case the Defaulting Partner (the "**Vendor**") will sell and the Non-Defaulting Partner giving the Initiating Notice (or, if two or more Non-Defaulting Partners give an Initiating Notice within the Initiating Notice Period, the Non-Defaulting Partners giving Initiating Notices, in such respective proportions as are equal to the number of each such Non-Defaulting Partner's Units divided by the aggregate number of Units owned by all such Non-Defaulting Partners who gave an Initiating Notice within the Initiating Notice Period) (the "**Purchaser**") will purchase such Units on the following terms:

(i) the closing of the transaction contemplated in this Section 7.2(c) will take place on a date selected by the Non-Defaulting Partner or Non-Defaulting Partners who gave an Initiating Notice (as applicable), which date will be no later than 60 days after the giving of the Initiating Notice. Pursuant to this Section, the purchase price for the Defaulting Partner's Units will be equal to 50% of the amount of capital contributed to the Partnership by the Defaulting Partner;

(ii) at the closing, at the Purchaser's request, the Vendor will deliver to the Purchaser a transfer of its Units and all rights of the Vendor hereunder and under any instruments, agreements, orders and other documents relating to the Units being acquired (in each case, the **"Transferred Property"**)

(such transfer and all other agreements and other documents required by this Subsection 7.2(c) to be satisfactory to counsel for the Purchaser, acting reasonably, and hereinafter collectively called the **"Transfer Documents"**) and in the Transfer Documents shall warrant that the Vendor has good and marketable title to its Units, free from all claims and encumbrances and confirm the truth and accuracy at that time of the representations and warranties set forth in Section 3.11. The Transfer Documents will include all those which the Purchaser may deem necessary or desirable to effectuate the sale and transfer of the Vendor's Units and will be legally sufficient to transfer to the Purchaser the Vendor's Units. At the closing, the purchase price will be paid to the Vendor in cash in full and the Purchaser will assume all obligations of the Vendor in connection with the Units that have been transferred arising after the date of closing;

(iii) at the closing, all amounts due by the Purchaser to the Vendor, and vice versa, will be settled and paid in full, either by way of set-off against the purchase price (if not already reflected in such purchase price) if the amount is owing by the Vendor or by payment if the amount is owing to the Vendor;

(iv) if the Vendor is not represented at closing or is represented but fails for any reason whatsoever to produce and deliver the Transfer Documents to the Purchaser, then the purchase price may be deposited by the Purchaser into a trust account of the solicitors for the Purchaser, with interest earned thereon to accrue to the benefit of the Vendor. Such deposit will constitute valid and effective payment of the purchase price to the Vendor even though the Vendor has, in breach of this Agreement, voluntarily encumbered or disposed of any of its Units and notwithstanding the fact that a Transfer of any of the Vendor's Units may have been delivered in breach of this Agreement to any alleged pledgee, transferee or other Person. If the purchase price is deposited as aforesaid, and the Purchaser has complied with the other requirements of this Section 7.2(c), then from and after the date of such deposit, and even though the Transfer Documents have not been delivered to the Purchaser, the purchase of the Vendor's Units will be deemed to have been fully completed and all right, title, benefit and interest, both at law and in equity, in and to such Units will be conclusively deemed to have been transferred and assigned to and become vested in the Purchaser and all right, title, benefit and interest, both in law and in equity, of the Vendor, or of any transferee, assignee or any other Person having any interest, legal or equitable, therein or thereto will cease and determine, provided, however, that the Vendor will be entitled to receive the purchase price so deposited, without interest, upon delivery to the purchaser of the Transfer Documents;

(v) as of the closing date, the Vendor's rights and obligations hereunder and under any other agreements with the other Partners entered into pursuant

hereto in the capacity as a Limited Partner with respect to the Property will terminate except as to items accrued as of such date and except for any indemnity obligations of the Vendor attributable to acts or events occurring prior to such date. Thereupon, except as limited by the preceding sentence, this Agreement will no longer be binding upon or enure to the benefit of the Vendor;

(vi) the Purchaser will co-operate (without having to make any payment) with the Vendor to obtain the release of the Vendor (and any other Person Affiliated with the Vendor who guaranteed any obligations or liabilities of the Partnership) from all liability to any lender to the Partnership or other Person to whom the Partnership is obligated, as the case may be, in connection with the Property and to obtain a release of any guarantees of the Vendor of any indebtedness in connection with the Property held by any lender or secured party. If such releases cannot be obtained, the Purchaser will indemnify the Vendor in writing from all liabilities and costs that may be sustained by the Vendor if it is called upon to honour any such obligations or guarantees;

(vii) the Vendor will pay all of the expenses incurred by the Purchaser in connection with such purchase;

(viii) the obligation of the Purchaser to complete the transaction of purchase and sale will be conditional upon the Vendor obtaining all approvals which it may be required to obtain, or the lapsing of any mandatory waiting periods which may apply without the making of any order or application or a request for information by any governmental authority, in each case, under any agreement binding the Partners, or any law, statute or regulation then in force under the laws of Canada or any Province or municipality thereof, provided that the Vendor uses its reasonable commercial efforts to obtain any required approval or to commence promptly the running of any applicable mandatory waiting period, and provided further that such condition may be waived by the Purchaser; and

(ix) the Purchaser will either provide evidence satisfactory to the Vendor, acting reasonably, that the Purchaser is registered under the provisions of the *Excise Tax Act* relating to HST, that the Vendor has no obligation under the *Excise Tax Act* to collect HST in connection with the purchase and sale or the Purchaser will pay any applicable HST to the Vendor; and/or

(d) if the Defaulting Partner is the General Partner, replace the General Partner.

7.3 **Additional Rights**

In addition to the rights listed in Section 7.2, if an Event of Default has occurred, until such Event of Default is cured, any Non-Defaulting Partner will have the right to remedy such default

and any other default under this Agreement or under any other agreement entered into by or on behalf of the Partnership and will be entitled on demand to be reimbursed by the Defaulting Partner for any monies expended by it to remedy any such default and any other expenses (including legal fees on a substantial indemnity basis) incurred by the Non-Defaulting Partner, together with interest at a rate equal to the at the Prime Rate plus 5% per annum calculated and payable monthly, and to bring any legal proceedings for the recovery thereof.

7.4 Distributions and Voting Rights

After the occurrence and during the continuance of an Event of Default in respect of a Partner, (i) whenever the vote, consent or decision of a Limited Partner is required or permitted pursuant to this Agreement or under the MPA, a Defaulting Partner who is a Limited Partner shall not be entitled to participate in such vote or consent, or to make such decision, and such vote, consent or decision shall be tabulated or made as if such Defaulting Partner were not a Partner, and (ii) the Defaulting Partner will cease to be entitled to any distributions under Section 6.3 and all such distributions will be distributed to the Non-Defaulting Partners only.

ARTICLE 8 - ATTORNEY

8.1 Power of Attorney

Each Limited Partner hereby irrevocably nominates, constitutes and appoints the General Partner, with full power of substitution, as its true and lawful attorney and agent, with full power and authority in its name, place and stead and for its use and benefit to do the following, namely:

(a) execute, swear to, acknowledge, deliver and file as and where required any and all of the following:

  (i) all documents and instruments necessary or appropriate to form, qualify or continue and keep the Partnership in good standing as a limited partnership and to comply with applicable laws;

  (ii) all documents, instruments and certificates necessary to reflect any amendment to this Agreement made pursuant to the provisions hereof; and

  (iii) all conveyances, agreements and other instruments necessary or desirable to facilitate and implement the dissolution and termination of the Partnership pursuant to the provisions hereof including cancellation of any certificates or Declarations and the execution of any elections under the *Tax Act,* as amended or re-enacted from time to time, and any analogous provincial legislation;

(b) execute and file with any governmental body or instrumentality thereof any documents necessary to be filed in connection with the business, property, assets and undertaking of the Partnership;

(c) execute and deliver all such other documents or instruments on behalf of and in the name of the Partnership and for the Limited Partners or any Limited Partner as

may be deemed reasonably necessary or desirable by the General Partner to carry out fully the provisions of this Agreement or any other agreement approved by the General Partner;

(d) execute any instrument which may be necessary or requested to effect the continuation of the Partnership or the admission of any Person as a Limited Partner; or

(e) execute any instrument or document necessary or required to sell a Limited Partner's Units in circumstances if it is or becomes a "non-resident" of Canada as that expression is defined in the *Tax Act*.

8.2 Irrevocable

The power of attorney granted herein is irrevocable, is a power coupled with an interest, shall survive the death, disability or other legal incapacity of a Limited Partner and will survive the assignment (to the extent of the Limited Partner's obligations hereunder) by the Limited Partner of the whole or any part of its Units and extends to the administrators, successors and permitted assigns of such Limited Partner. Such power of attorney may be exercised by the General Partner executing on behalf of each Limited Partner any instrument by listing all of the Limited Partners to be bound by such instrument with a single signature as attorney and agent for all of them. Each Limited Partner agrees to be bound by any representation or action made or taken in good faith by the General Partner pursuant to such power of attorney in accordance with the terms thereof and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under such power of attorney.

ARTICLE 9 - ACCOUNTING AND REPORTING; BANKING

9.1 Books and Records

The General Partner shall keep or cause to be kept on behalf of the Partnership books and records reflecting the assets, liabilities, income and expenditures of the Partnership and a register listing all Limited Partners, Capital Contributions and their Units. Such books, records and register shall be kept available for inspection by any Limited Partner or its duly authorized representative (at the expense of such Limited Partner) during business hours at the offices of the General Partner.

9.2 Appointment of Accountants

The General Partner shall from time to time appoint the Accountants of the Partnership to review and report to the Partners on the financial statements of the Partnership for, and as at the end of, each Fiscal Year.

9.3 Annual Report

Within 120 days after the end of each Fiscal Year, the General Partner shall deliver to each Limited Partner who was a Limited Partner at the end of such Fiscal Year:

(a) an annual report for such Fiscal Year consisting of:

(i) financial statements of the Partnership, reviewed by the Accountants;

(ii) a report on allocations and distributions to the Partners; and

(iii) such other information as, in the opinion of the General Partner, is material to the business of the Partnership;

(b) information concerning the income tax allowances available to Limited Partners, the amount of Net Income or Losses and credits and charges to their Capital Accounts; and

(c) such other information and forms as are necessary to enable a Limited Partner to file returns under the *Tax Act* and the income tax legislation of the provinces and territories of Canada with respect to its income from, and expenses and deductions derived from, its participation in the Partnership in such Fiscal Year and shall file on behalf of all Limited Partners the partnership information return required by the *Tax Act* and the income tax legislation of the provinces and territories of Canada.

9.4 **Costs**

The cost of all such reporting shall be paid by the Partnership as a Partnership expense.

9.5 **Banking**

A separate bank account with a Canadian chartered bank shall be opened and maintained for the Partnership in the name of the Partnership at such bank as the General Partner may from time to time determine. All monies received from time to time on account of the Partnership's business shall be paid immediately into such bank account for the time being in operation in the same drafts, cheques, bills or cash in which they are received, and all disbursements on account of the Partnership shall be made by cheque on such bank. All cheques drawn on such bank account and other banking documents, including authorization and security documents in connection therewith required to be executed by the Partnership from time to time shall be executed by the proper signing officers of the General Partner. The funds of the Partnership shall not be commingled with other funds of the General Partner and shall be used only for the purposes of the Partnership.

ARTICLE 10 - MEETINGS

10.1 **Meetings**

The General Partner may convene a meeting of the Partners at any time upon the giving of notice as hereinafter provided. Every meeting, however convened, shall be conducted in accordance with this Agreement.

10.2 **Place of Meeting**

Every meeting of the Partners shall be held at the principal place of business of the Partnership or at some other location in Toronto, Ontario selected by the General Partner.

10.3 **Notice of Meeting**

Notice of any meeting of the Partners shall be given to each Partner by prepaid registered mail or by personal delivery not less than ten days prior to such meeting, and shall state:

(a) the time, date and place of such meeting; and

(b) in general terms, the nature of the business to be transacted at the meeting.

10.4 **Accidental Omissions**

Accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Limited Partner shall not invalidate the proceedings at that meeting.

10.5 **Proxies**

Any Partner entitled to vote at a meeting may vote by proxy if a proxy has been received by the General Partner or the chairman of the meeting for verification prior to the meeting.

10.6 **Validity of Proxies**

A proxy purporting to be executed by or on behalf of a Partner shall be considered to be valid unless challenged at the time of or prior to its exercise. The Person challenging shall have the burden of proving to the satisfaction of the chairman of the meeting that the proxy is invalid. Any decision of the chairman concerning the validity of a proxy will be final.

10.7 **Form of Proxy**

Every proxy shall be substantially in the form which follows or such other form as may be approved by the General Partner or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised:

"I
of the
in the Province of
being a Partner of YG Limited Partnership,
hereby appoint
of
in the Province of
as my proxy, with full power of substitution to vote for me and on my behalf at the meeting of Partners to be held on the day of , 20 , and every adjournment thereof and every poll that may take place in consequence thereof.
As witness my hand this day of , 20 ."

10.8 Corporations which are Partners

A Partner which is a corporation may appoint under seal, or otherwise an officer, director or other Person as its representative to attend, vote and act on its behalf at a meeting of Partners.

10.9 Attendance of Others

Any officer or director of the General Partner and representatives of the Accountants shall be entitled to attend any meeting of Partners.

10.10 Chairman

The General Partner may nominate an individual (who need not be a Partner) to be chairman of a meeting of Partners and the Person nominated by the General Partner shall be chairman of such meeting.

10.11 Quorum

A quorum at any meeting of Partners shall consist of two or more Persons present in person who collectively hold or represent by proxy more than 50% of all outstanding Units and who are entitled to vote on any resolution.

10.12 Voting

Every question submitted to a meeting shall be decided by a vote conducted in such fashion as the chairman of the meeting may decide. In the case of an equality of votes, the chairman shall not have a casting vote and the resolution shall be deemed to be defeated. The chairman shall be entitled to vote in respect of any Unit held by him or for which he may be proxy holder. On any vote at a meeting of Partners, a declaration of the chairman concerning the result of the vote shall be conclusive.

10.13 Resolutions Binding

Any resolution passed in accordance with this Agreement shall be binding on all the Partners and their respective heirs, executors, administrators, successors and assigns, whether or not any such Partner was present in person or voted against any resolution so passed.

10.14 Powers Exercisable by Special Resolution

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;

(b) changing the fiscal year end of the Partnership;

(c) amending, modifying, altering or repealing any Special Resolution previously passed by the Partners;

(d) any amendments to this Agreement or any decision to vary or amend the terms of any of the Units or to create a class of Units ranking superior to any other class of Units; and

(e) dissolving or terminating the Partnership with the concurrence of the General Partner.

10.15 **Minutes**

The General Partner shall cause minutes to be kept of all proceedings and resolutions at every meeting, and copies of any resolutions of the Partnership to be made and entered in books to be kept for that purpose, and any minutes, if signed by the chairman of the meeting, shall be deemed to be conclusive evidence of the matters stated in them and that the meeting was duly convened and held and all resolutions and proceedings shown in them shall be deemed to have been duly passed and taken.

10.16 **Additional Rules and Procedures**

To the extent that the rules and procedures for the conduct of a meeting of the Partners are not prescribed in this Agreement, the rules and procedures shall be determined by the chairman of the meeting.

10.17 **Authorized Attendance**

The General Partner has the right to authorize the presence of any Person at a meeting regardless of whether the Person is a Partner and, with the approval of the General Partner, such Person shall be entitled to address the meeting.

10.18 **Joint Holders**

Where two or more Partners hold the same Unit or Units jointly, one of those holders present, in person or by proxy, at a meeting of Partners may, in the absence of the other or others, vote the Unit or Units, but if two or more of those Persons are present, in person or by proxy, and vote, they shall only be entitled to vote jointly (and not severally) in respect of the Unit or Units jointly held by them.

10.19 **Record Date**

The General Partner may fix in advance a date, preceding the date of any meeting of Partners by not more than 20 days and not less than 7 days, as a record date for the determination of the Partners entitled to notice of the meeting. Any Partner who was a Partner as of the close of business on the record date specified above shall be considered a Partner for the purposes set out in this Section notwithstanding the fact that the Partner may have disposed of its Units subsequent to such record date and any Person acquiring Units after such record date shall not be

entitled to vote in respect of such Units at the meeting or be entitled to execute the resolution circulated in respect of which such record date was fixed.

ARTICLE 11 - RESIGNATION, REMOVAL, INCAPACITY OF THE GENERAL PARTNER

11.1 No Assignment

The General Partner shall not make any assignment of its obligations under this Agreement, except (a) to an Affiliate of the General Partner, in which event the General Partner shall be released from its obligations hereunder and (b) that the General Partner may substitute in its stead as General Partner any entity which has, by merger, amalgamation, consolidation or otherwise, acquired substantially all of its assets, without such consent.

11.2 Removal or Cessation of the General Partner

(a) The General Partner may be removed as General Partner without its consent only if a court of competent jurisdiction determines ultimately that the General Partner has engaged in fraud, wilful misconduct or gross negligence in the operations of the Partnership and that such fraud, wilful misconduct or gross negligence has a material adverse effect on the business or properties of the Partnership, provided that a successor General Partner is appointed to continue the business of the Partnership within 60 days of such removal.

(b) The General Partner shall cease to be the general partner of the Partnership if:

(i) the General Partner is dissolved,

(ii) an order for relief against the General Partner is entered under the *Bankruptcy and Insolvency Act* (Canada),

(iii) the General Partner makes a general assignment for the benefit of creditors,

(iv) the General Partner makes a voluntary application under the *Bankruptcy and Insolvency Act* (Canada),

(v) the General Partner files a petition or answer seeking for the General Partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation,

(vi) the General Partner files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in any proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation,

(vii) the General Partner seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the General Partner or of all or any substantial part of the General Partner's properties,

(viii) within 60 days after the commencement of any proceeding against the General Partner commenced by any third Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or

(ix) within 60 days after the appointment without the General Partner's consent or acquiescence of a trustee, receiver or liquidator of the General Partner or of all or any substantial part of the General Partner's properties, the appointment is not vacated or stayed, or within 60 days after the expiration of any such stay, the appointment is not vacated.

(c) The General Partner may resign as general partner by providing notice to the Limited Partners that it intends to resign, with an effective date no sooner than 90 days following such notice. Immediately prior to the effective date of such resignation, a successor General Partner shall be appointed by the General Partner to continue the business of the Partnership.

(d) If the General Partner is removed under Subsection 11.2(a) or ceases to be General Partner under Subsection 11.2(b), then the Limited Partners shall have the right to appoint a new general partner by Special Resolution.

(e) Any successor General Partner appointed to replace a General Partner pursuant to this Article 11 shall, beginning on the date of admission to the Partnership, have the same rights and obligations under this Agreement as the replaced General Partner would have had subsequent to such date if the replaced General Partner had continued to act as General Partner.

11.3 Admission of a Successor General Partner

(a) The admission of a successor General Partner pursuant to Section 11.2 shall be effective only if and after the following conditions are satisfied:

(i) the admission of such successor General Partner shall not adversely affect the classification of the Partnership as a limited partnership for income tax and corporate purposes; and

(ii) any Person designated as a successor General Partner pursuant to Section 11.2 shall have become a party to, and adopted all of the terms and conditions of, this Agreement.

(b) The appointment of any Person as a successor General Partner in accordance with the terms hereof shall occur, and for all purposes shall be deemed to have

occurred, prior to the effective date of the removal, resignation or other termination of the General Partner.

11.4 Liabilities and Rights of a Replaced General Partner

Any General Partner who shall be replaced as General Partner shall remain liable for its portion of any obligations and liabilities incurred by it as General Partner prior to the time such replacement shall have become effective, but it shall be free of any obligation or liability incurred on account of the activities of the Partnership from and after such time. Such replacement shall not affect any rights of such General Partner which shall mature prior to the effective date of such replacement.

ARTICLE 12 - DISSOLUTION AND TERMINATION OF THE PARTNERSHIP

12.1 Dissolution

(a) The Partnership shall continue notwithstanding the death, incompetency, bankruptcy, insolvency, dissolution, liquidation, winding-up or receivership of any Limited Partner or the admission, retirement or withdrawal of any Limited Partner or the General Partner or the transfer of any Unit. No Limited Partner may require dissolution of the Partnership. Each of the General Partner and the Limited Partners hereby covenants and agrees not to cause a dissolution of the Partnership by his or its individual acts and should any of the Limited Partners cause the Partnership to be dissolved or this Agreement to be terminated prior to the occurrence of any event of dissolution or termination otherwise provided for herein, such Limited Partner shall be liable to all the other Partners for all damage thereby occasioned.

(b) The Partnership will be dissolved on the earliest of:

(i) the effective date of the resignation or deemed resignation by the General Partner as the general partner of the Partnership unless within 90 days after such resignation or deemed resignation of the General Partner, the Limited Partners agree in writing to continue the business of the Partnership and to the appointment, effective as of the date of the resignation or deemed resignation of the General Partner, of one or more general partners; and

(ii) any date which is approved by the General Partner and by Special Resolution.

In the event of the termination and dissolution of the Partnership, upon satisfaction of all the rights of the Partners under the terms hereof, this Agreement shall terminate and be of no further force and effect.

12.2 **Administrator**

The General Partner shall serve as the administrator of the Partnership in the event that the Partnership is to be dissolved, unless such dissolution is as a result of the removal of the General Partner pursuant to Subsection 11.2(a) or the General Partner ceased to be the General Partner under Subsection 11.2(b) or if the General Partner is unable or unwilling to so act. If the General Partner is so disqualified or unable to act as administrator, then the Limited Partners by Special Resolution shall appoint some other appropriate Person to act as the administrator of the Partnership.

12.3 **Liquidation of Assets**

As soon as practicable after the authorization of the dissolution of the Partnership, the administrator of the Partnership shall prepare or cause to be prepared a statement of financial position of the Partnership which shall be reported upon by the Accountants and a copy of which shall be forwarded to each Limited Partner. The administrator of the Partnership shall proceed diligently to wind up the affairs of the Partnership and all assets of the Partnership shall be disposed of in an orderly fashion having regard to prevailing market conditions. In selling the Partnership's assets, the administrator shall take all reasonable steps to locate potential purchasers in order to accomplish the sale at the highest attainable price. A reasonable time shall be allowed for the orderly liquidation of the assets of the Partnership so as to minimize any losses. During the course of such liquidation, the administrator of the Partnership shall operate the undertakings of the Partnership and in so doing shall be vested with all the powers and authorities of the General Partner in relation to the business and affairs of the Partnership under the terms of this Agreement. The administrator of the Partnership shall be paid its reasonable fees and disbursements incurred in carrying out its duties as such.

12.4 **Distribution Upon Liquidation**

After the payment of all liabilities owing to the creditors and the General Partner, the administrator shall set up such Reserves as it deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership. Said Reserves may be paid over by the administrator to a bank, to be held in escrow for the purpose of paying any such contingent or unforeseen liabilities or obligations and, at the expiration of such period as the administrator may deem advisable, such Reserves shall be distributed to the Partners or their assigns as provided below. After provision has been made for the payment or other satisfaction of all liabilities of the Partnership, the net assets of the Partnership will be distributed on dissolution in the manner provided for in Section 6.3(b)(i).

12.5 **Events Not Causing Dissolution**

Notwithstanding any rule of law or equity to the contrary, the Partnership shall not be dissolved except in accordance with this Agreement. In particular, but without restricting the generality of the foregoing, the Partnership shall not be dissolved or terminated by the removal, actual or deemed resignation, death, incompetence, bankruptcy, insolvency, other disability or incapacity, dissolution, liquidation, winding-up or receivership, or the admission, resignation or withdrawal of the General Partner (except as provided for herein) or any Limited Partner.

ARTICLE 13 - DISPUTE RESOLUTION

13.1 Dispute Resolution

Any dispute among the Parties arising out of or in connection with this Agreement,

(a) will first be attempted to be resolved by the parties through good faith negotiations and in connection therewith, any party may request in writing that any other party meet and commence such negotiations within a reasonable period of time (in any event no later than seven days) after the request, and such negotiations will be between the most senior executive of each of the parties, or an individual for each of the parties of senior status designated by such senior executive;

(b) if within 20 days after commencement of the negotiations under Section 13.1(a), the dispute has not been resolved, any party may refer the matter to arbitration in accordance with the provisions set out below by giving notice to the other parties specifying the particulars of the matter(s) in dispute and proposing the name of the individual it wishes to be the single arbitrator. Within 15 days after receipt of such notice, the other parties to the dispute shall give notice to the first party advising whether such party accepts the arbitrator proposed by the first Party (a "responding notice"). If a responding notice is not given by such a party within such 15 day period, such party shall be deemed to have accepted the arbitrator proposed by the first party. If the parties do not agree upon a single arbitrator within 20 days of delivery of the responding notice, any party may apply to the Superior Court Justice of Ontario (on notice to the other parties to such dispute) for the appointment of the arbitrator;

(c) any dispute which cannot be resolved by negotiation will be determined by arbitration, by a single arbitrator, in accordance with the *Arbitration Act, 1991* (Ontario) and the National Arbitration Rules of the ADR Institute of Canada Inc.;

(d) there will be a single arbitrator who will have qualifications relevant and suitable to the issue in dispute, and will be disinterested in the dispute and will be independent and impartial with respect to all parties thereto;

(e) the determination of the arbitrator will be final and binding upon the parties and will not be subject to any appeal or review;

(f) unless otherwise specifically provided herein, each party will bear its own costs in connection with the arbitration, provided that, if the arbitrator finds that any party has acted unreasonably, the arbitrator may, in his discretion, award costs against such party;

(g) the arbitrator will have the discretionary authority to grant specific performance, rectification, injunctions and other equitable relief as may be requested by a party including interim preservation orders and notwithstanding Section 13.1(c), any party may, before or after an arbitration has commenced, apply to the Superior

Court of Justice of Ontario for interim relief as contemplated by the *Arbitration Act, 1991* (Ontario) including injunctive relief;

(h) any order of the arbitrator may be entered with a court of competent jurisdiction for the purposes of enforcement;

(i) the place of arbitration will be Toronto, Ontario;

(j) the arbitrator will resolve the dispute in accordance with the laws of Ontario;

(k) the parties will act in good faith and use commercially reasonable efforts to resolve disputes in a timely manner;

(l) all aspects of the arbitration will be kept confidential; and

(m) all awards for the payment of money will include prejudgement and postjudgement interest in accordance with sections 127 to 130 of the *Courts of Justice Act* (Ontario) with necessary modifications.

ARTICLE 14 - MISCELLANEOUS

14.1 Waiver of Partition

Except as may be otherwise required by law in connection with the winding up, liquidation and dissolution of the Partnership, each Partner hereby irrevocably waives any and all rights that it may have to maintain an action for partition of any of the assets of the Partnership.

14.2 Governing Law

Notwithstanding the place where this Agreement may be executed by any of the parties, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of the Province of Manitoba and the laws of Canada applicable therein and each of the Partners irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising out of this agreement.

14.3 Severability

If any provision of this Agreement or the application thereof to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such Person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law. Any default hereunder by a Limited Partner shall not excuse any obligation of any other Limited Partner.

14.4 **Notice**

Any notice or other communication to be given under this Agreement to the Partnership or to any Partner shall be in writing and may either be delivered personally or by email:

(a) if to the Partnership or the General Partner, by delivery only, addressed to it at its principal office, or

(b) if to any Limited Partner, at the address or email address of such Partner as shown on the records of the Partnership.

Such notice shall be deemed to have been given when so delivered or sent by email, as the case may be, provided that any notice to the Partnership or the General Partner shall be effective only if and when received.

14.5 **Declaration of Limited Partnership**

The General Partner shall provide a copy of the Declaration or any amendment or restatement relating thereto to each Limited Partner that makes a request therefor, but shall not otherwise be required to provide such copies.

14.6 **Headings**

The titles of the Articles and the headings of the Sections of this Agreement are for convenience of reference only and are not to be considered in construing the terms and provisions of this Agreement.

14.7 **Pronouns**

All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the Person or Persons, firm or corporation may require in the context thereof.

14.8 **Successors and Assigns**

This Agreement shall inure to the benefit of the Partners, and shall be binding upon them, and their respective successors and permitted assigns.

14.9 **Entire Agreement**

This Agreement and any Subscription Agreements constitute the entire agreement among the Partners with respect to the subject matter hereof, and supersede any prior agreement or understanding among them with respect to such matters. The representations and warranties of the General Partner and the Limited Partners in this Agreement and in any Subscription Agreements (and all other provisions of the Subscription Agreements) shall survive the execution and delivery of this Agreement.

14.10 **Confidentiality**

Each Limited Partner agrees that it shall not disclose without the prior consent of the General Partner (other than to such Limited Partner's officers, directors, shareholders, employees, accountants or counsel) any information with respect to the Partnership, provided that a Limited Partner may disclose any such information:

(a) as has become generally available to the public;

(b) as may be required or appropriate in any report, statement or testimony submitted to any municipal, provincial or federal regulatory body having jurisdiction over such Limited Partner;

(c) as may be required or appropriate in response to any summons or subpoena or in connection with any litigation;

(d) to the extent necessary in order to comply with any law, order, regulation, ruling or other governmental request applicable to such Limited Partner; and

(e) to its professional advisors.

14.11 **Counterparts**

This Agreement may be executed in any number of counterparts, and each of such counterparts shall constitute an original of this agreement and all such counterparts together shall constitute one and the same agreement. This Agreement or counterparts hereof may be executed by facsimile or electronic transmission, and the parties adopt any signatures provided or received by facsimile or electronic transmission as original signatures of the applicable party or parties, provided that any party providing its signature by facsimile or electronic transmission shall promptly forward to the other party or parties a copy of this agreement with an original signature.

14.12 **Amendment**

This Agreement may be amended only by written agreement signed by all of the Partners and, for greater certainty, the power of attorney granted to the General Partner pursuant to Article 8 shall not entitle the General Partner to execute any amendment to this Agreement on behalf of any Limited Partner without the express written consent of such Limited Partner.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

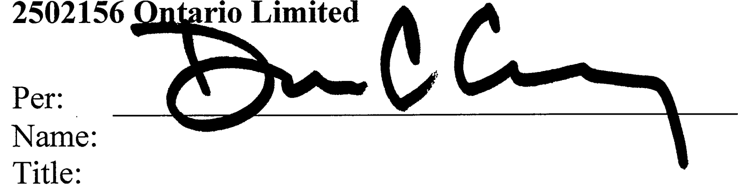
General Partner:

9615334 CANADA INC.

Per: ______________________________
Name:
Title

Limited Partners:

CRESFORD (YONGE) LIMITED PARTNERSHIP, by its general partner, 2502156 Ontario Limited



Per: ______________________________
Name:
Title:

8451761 CANADA INC.

Per: ______________________________
Name:
Title:

2504670 CANADA INC.

Per: ______________________________
Name:
Title:

SCHEDULE "A"

INITIAL CAPITAL CONTRIBUTIONS AND UNITS

Name	Initial Capital Contribution	Initial Units Held
CRESFORD (YONGE) LIMITED PARTNERSHIP	$15,000,000	15,000 Class B Units
8451761 CANADA INC.	$2,000,000	2,000 Class A Preferred Units
2504670 CANADA INC.	$2,000,000	2,000 Class A Preferred Units
TOTALS	$19,000,000	15,000 Class B Units and 4,000 Class A Preferred Units

SCHEDULE "B"

DESCRIPTION OF PROPERTY

363-365 Yonge St., Toronto, ON:

PIN: 21101−0049 (LT)

PT LT 31 E/S YONGE ST PL 22A TORONTO AS IN EP126440; TORONTO, CITY OF TORONTO

367 Yonge St., Toronto, ON:

PIN: 21101−0048 (LT)

PT LT 31 E/S YONGE ST, 32 E/S YONGE ST PL 22A TORONTO AS IN CA761626; TORONTO, CITY OF TORONTO

369-371 Yonge St., Toronto, ON:

PIN: 21101−0047 (LT)

PT LT 32 E/S YONGE ST PL 22A TORONTO AS IN CA472341; TORONTO, CITY OF TORONTO

373-375 Yonge St., Toronto, ON:

P.I.N.: 21101-0046 (LT)

PT LT 33 E/S YONGE ST PL 22A TORONTO AS IN CA540937; TORONTO, CITY OF TORONTO

377 Yonge St., Toronto, ON:

PIN: 21101−0045 (LT)

PT LT 33 E/S YONGE ST PL 22A TORONTO AS IN CA310343; TORONTO, CITY OF TORONTO

379 Yonge St., Toronto, ON:

PIN: 21101−0044 (LT)

PT LT 34 E/S YONGE ST PL 22A TORONTO AS IN CT497024; TORONTO, CITY OF TORONTO

381 Yonge St., Toronto, ON:

PIN: 21101-0043 (LT)

PT LT 34 E/S YONGE ST PL 22A TORONTO; AS IN OT46105; TORONTO, CITY OF TORONTO

385 Yonge St., Toronto, ON:

PIN: 21101−0042 (LT)

LT 35 E/S YONGE ST, 36 E/S YONGE ST PL 22A TORONTO; TORONTO, CITY OF TORONTO

TAB 20

Consolidated Court File No. 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

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

AFFIDAVIT OF MARIA ATHANASOULIS
Sworn June 21, 2021

I, Maria Athanasoulis, of the City of Toronto, in the Province of Ontario, make oath and say:

1. I am the former President and Chief Operating Officer of Cresford (Rosedale) Developments Inc. and its affiliates and subsidiaries (collectively, "**Cresford**"), including YG Limited Partnership and YSL Residences Inc. (together, "**YSL**"). As such, I have personal knowledge of the matters deposed to herein.

A. Overview

2. On January 21, 2020, I issued a claim bearing Court File No. CV-20-00634836-0000 (the "**Action**") against Cresford, including (among others) against:

   (a) the Clover on Yonge Inc. and the Clover On Yonge Limited Partnership (the "**Clover Defendants**");

   (b) 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership (the "**Halo Defendants**");

   (c) 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership (the "**Yorkville Defendants**");

(d) YSL Residences Inc. and YSL Residences Limited Partnership (the "**YSL Defendants**" and, collectively with the Clover Defendants, the Halo Defendants and the Yorkville Defendants, the "**Owners**"); and,

(e) Daniel Casey, Cresford's founder and principal.

3. A copy of my Statement of Claim is attached hereto as **Exhibit "A"**. The Action was transferred to the Commercial List by order of Justice Hainey dated January 23, 2020, a copy of which is attached as **Exhibit "B"**, and now bears Court File No. CV-20-00635914-00CL.

4. My Action seeks payment of damages for wrongful dismissal and damages for breach of an agreement that the Owner of each Cresford project (which are described below), including the YSL Defendants, would pay me 20% of the profits earned on its condominium development project (the "**Profit Sharing Agreement**").

5. When my employment with Cresford ended, the YSL Project was the crown jewel of Cresford's business. Cresford's internal projections showed that YSL would yield a substantial profit. Indeed, as described below, a projection prepared by Finnegan Marshall Inc. ("**FM**", the same firm retained by the Proposal Trustee in this proceeding) forecast a profit in excess of $90 million.[1]

6. I submitted a claim in this proceeding (which is described in detail below) for $19 million. My claim is attached as **Exhibit "C"**. The claim valued my damages for breach of the Profit Sharing Agreement at $18 million, and my claim for wrongful termination at $1 million.

[1] This profit figure includes interest on a mezzanine loan to be advanced to YSL, which was treated as an equity contribution.

7. The Proposal Trustee took the position that I was not entitled to vote at the meeting on the basis that my claim was "too speculative". Details about my claim are set out in this affidavit.

8. In addition, the Proposal Trustee recommended to creditors to vote in favour of the proposal made by the YSL Debtors (the "**Proposal**"). This recommendation was made based on a report prepared by Finnegan Marshall Inc. dated May 26, 2021 (the "**2021 FM Report**"), which concluded that the Proposal offered a price that is "higher than the land is worth". This means that, according to the 2021 FM Report, the Project would not generate enough revenue to pay secured creditors, unsecured creditors, equity investors and generate a profit.

9. FM previously completed a review of the Project in 2020, and concluded that it would generate sufficient revenue to pay creditors in full, and generate a profit of more than $90 million. I am concerned that critical parts of FM's opinion is based on information provided by the Proposal's sponsor ("**Concord**") that has not been independently verified. At least some of this information appears to be incorrect: the 2021 FM Report assumes that the retail component of the YSL Project will be approximately 60,914sf. The architectural drawings for the YSL Project show that the Retail Component will be more than 73,000. This is a very significant discrepancy, and Concord has not yet explained how it occurred.

10. The Proposal Trustee's recommendations to creditors is based on the 2021 FM Report. The 2021 FM Report seems to be based largely on information provided by Concord. For the reasons described below, I am concerned that Concord may have understated the expected revenue for the YSL Project and overstated the expected costs. If it did, then creditors may have voted based on incomplete or inaccurate information.

II. MY CLAIM

A. The YSL Defendants admit that the Profit Sharing Agreement existed

11. In their Statement of Defence and Counterclaim, which is attached as **Exhibit "D"**, the Defendants, including the YSL Defendants, admitted that they entered into the Profit Sharing Agreement, but they disputed the terms of it. The Defendants claim that I was entitled to only 10% of the profits earned on each development project, and that it was only payable if I remained employed by Cresford when each project was completed. Because of this, they denied that I am entitled to any damages either for wrongful dismissal or breach of the Profit Sharing Agreement.

12. The Defendants (including the YSL Defendants) also made various allegations against me in their Counterclaim.

13. The Defence and Counterclaim does not provide details about what exactly I am alleged to have done wrong. In order to understand the allegations against me, I served a Demand for Particulars and Request to Inspect Documents on March 10, 2020 (the "**Demand**"). The Demand is attached as **Exhibit "E"**.

14. The Defendants did not respond to my Demand. Accordingly, in an attempt to move the Action forward, I served a Reply and Defence to Counterclaim (the "**Reply**") on July 3, 2020 reserving my right to strike the allegations the Defendants refused to particularize. The Reply is attached as **Exhibit "F"**.

15. All of Cresford's projects are currently the subject of insolvency proceedings. As a result, I have not been able to move my claim forward.

B. Factual background to my Claim

(i) My Contributions to Cresford

16. I joined Cresford in 2004 as its Manager, Special Projects. I was quickly promoted to Vice President of Sales and Marketing in 2005. In 2012, I was promoted to President, Sales and Marketing, and in 2018, to President and Chief Operating Officer.

17. Over my time at Cresford, I developed a particular talent for designing and marketing residential condominium units to purchasers. I also helped build Cresford into a recognized luxury condominium brand, and helped build more than 20 Cresford projects. In many cases, satisfied customers bought units in multiple Cresford projects, and the real estate brokers that represented Cresford's target customers trusted Cresford to keep its promises.

18. Under my sales leadership, in the last five years prior to its insolvency, Cresford sold more than 3,000 condominium units and generated revenues in excess of $2.5 billion.

C. My Compensation

19. Over the tenure of my employment at Cresford, Mr. Casey offered me significant incentives to remain at Cresford. None of these incentives included equity in any Cresford entity. I have never held any shares, or warrants, options or other rights to acquire shares, in Cresford, YSL or any of the other Owners.

20. Following discussions, Mr. Casey agreed to increase my salary to $500,000 per annum in 2014 and to pay me 0.15% of Cresford's sales on every project going forward. We also agreed at that time that I would receive 10% of the profits earned on each Cresford project that I worked on (the "**Profit Sharing Agreement**").

21. I do not believe that there is any dispute about whether the Profit Sharing Agreement existed. In their Statement of Defence in my Action, the Defendants (including the YSL Defendants) admit that it did. My dispute with YSL relates to the terms of the Profit Sharing Agreement.

D. The Terms of the Profit Sharing Agreement

22. I initially discussed the terms of the Profit Sharing Agreement with Mr. Casey in 2014. We agreed that I would be paid 10% of the profits earned on each project undertaken by a Cresford entity (each, an "**Owner**") when the Project was completed and profits were realized.

23. In November 2014, I drafted an employment agreement based on a form of agreement that Cresford had used for another employee. The draft is attached as **Exhibit "G"**. The draft provided, among other things, that my entitlement under the Profit Sharing Agreement would not be extinguished if I left Cresford or was terminated by it.

24. The draft agreement is with "Cresford Developments". This was the Cresford entity that had signed the agreement I used as a precedent for my draft. I did not, at the time, consider what specific Cresford entity needed to sign the agreement for it to be effective. As described below, I later realized that "Cresford Developments" did not own any interest in any of the projects. It could not pay me a percentage of profits, because it was not entitled to those profits.

25. I provided the draft to Mr. Casey but I do not believe that Cresford Developments, or any other entity, ever executed it.

26. In 2015, I agreed with Mr. Casey that the Profit Sharing Agreement would be amended to provide that I would receive 15% of the profits earned on each project.

27. In October 2018, Mr. Casey, on behalf of the Owners (including the YSL Defendants), agreed that my entitlement under the Profit Sharing Agreement would increase to 20% of the profits earned on each Project. This included the project owned by YSL (the "**YSL Project**").

28. I did not press Mr. Casey to formalize the Profit Sharing Agreement in writing because, at the time, I trusted him. But Mr. Casey has had health issues in the past, and I became concerned that if he passed away or otherwise lost control of Cresford, then the Profit Sharing Agreement could be at risk. I wanted the Profit Sharing Agreement to be properly documented so that I would be protected against this risk.

29. Mr. Casey and I agreed that Cresford's corporate lawyer, John Papadakis of Blaney McMurtry LLP, would reduce the terms of the Profit Sharing Agreement into a formal agreement.

30. The terms of the Profit Sharing Agreement were discussed and confirmed at a meeting with Mr. Papadakis on February 16, 2019. Specifically, Mr. Casey and I both confirmed during the meeting that:

(a) Although it had never been reduced to writing, the Profit Sharing Agreement was an existing agreement that had been in place since 2014;

(b) Under the Profit Sharing Agreement, I was entitled to 20% of the profits earned on each of the projects, including the YSL project; and

(c) The Profit Sharing Agreement was an agreement between each Owner, including the YSL Defendants, and me.

31. The Defendants in my Action did not specifically deny that the Profit Sharing Agreement binds the Owners.

32. When I submitted my claim, I asked the Proposal Trustee to contact Mr. Papadakis to ask him for his recollection of our discussions about the Profit Sharing Agreement. Based on the Third Report, I do not believe that there have been any discussions with Mr. Papadakis or other investigation of my claim.

E. The Status of the YSL Project in February 2020

33. YSL was a viable—and highly profitable—project when I was terminated by Cresford.

34. As described in detail in my Statement of Claim, Cresford's management determined that the cost to complete the Clover Project, Halo Project and Yorkville Project had increased substantially as a result of various factors, including increased material prices.

35. This was not the case for YSL. YSL had sufficient equity contributed (including the amounts now claimed by Cresford as unsecured loans) and financing to complete the YSL Project. YSL's internal projections for the YSL Project forecast a profit in excess of $90 million. A copy of this projection is attached as **Exhibit "H"**.

36. I understand that YSL's *pro forma* was reviewed and analysed in February 2020 by Finnegan Marshall (the "**2020 FM Report**"). The 2020 FM Report was subsequently provided to me by Cresford in the course of negotiations relating to the potential purchase of YSL. I understand that the 2020 FM Report is sensitive and confidential, so I have appended it as **Confidential Exhibit "I"**.

F. Attempts to purchase YSL

37. In the fall of 2019, PJD Properties Inc. ("**PJD**") offered to buy most of Cresford's assets. After negotiations with Mr. Casey, the potential purchaser submitted a Letter of Intent (the

"**LOI**").[2] I would have had an interest in the potential purchaser if the sale had proceeded. Mr. Casey knew this, because I told him.

38. PJD did not expect to earn a profit on the Clover Project or the Halo Project. It essentially intended to complete all of Cresford's projects, and preserve Cresford's business as a going concern. The fundamental premise underlying the potential sale was that profits from the YSL Project (and, to a lesser extent, the Yorkville Project) would offset losses on the other projects.

39. Cresford did not agree to sell any assets to PJD. Nor did it take any other steps to shore up the financial position of the Applicants so that Clover and Halo could honour their contractual commitments.

40. Since I left Cresford, I have at times entered into discussions (together with other parties) with Cresford about the possibility of purchasing the YSL project. YSL and PJD executed a letter of intent on May 15, 2020 relating to the potential purchase of the YSL Project on May 15, 2020, a copy of which is attached as **Exhibit "J"**.

41. Discussions with Mr. Casey continued sporadically after the May 2020 meeting.

42. As part of those discussions, I attended a meeting in October 2020 with five people, including Mr. Casey, the third parties with whom I was exploring possibly buying YSL, and lawyers. The purpose of the meeting was to discuss a possible purchase of the YSL property.

[2] PJD is controlled by Patrick Dovigi, who is also the CEO of GFL Environmental Inc.. Some materials filed on this motion refer to offers from GFL. I believe all offers were made by PJD.

43. Mr. Casey stated at that meeting that the terms of any purchase of the YSL property would have to include a payment of some $20 million in a manner that would prevent the funds being known or exposed to his creditors.

44. Mr. Casey proposed various potential ways to funnel money to him without the knowledge of his creditors, including the possibility that funds would be disguised as sales proceeds for his family home. I understand that Mr. Casey's home is legally owned by his wife, so Mr. Casey's creditors might not be able to claim against amounts earned from the sale of the home.

45. Mr. Casey also made it clear at that meeting that he could not sell the YSL property via a share purchase agreement, because in that case the YSL limited partnership investors would have to approve the transaction, and they would learn the terms and have access to the proceeds. He said that the investors and creditors who suffered losses on the 33 Yorkville project (which Mr. Casey personally guaranteed) would seek to recover their losses through the equity in YSL, and he would get nothing. He therefore wanted to structure any transaction in a manner to prevent that from happening.

G. My termination by Cresford

(i) Mr. Casey constructively terminated by employment

46. During my employment, the corporate defendants in the Action (including the YSL) were all part of a group of companies engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario using the brand name Cresford.

47. Until 2014, I earned a salary of $300,000 plus benefits. As noted above, in 2014, Mr. Casey agreed to (among other things) increase my salary to $500,000 per annum and pay me 0.15% of Cresford's sales on every project going forward.

48. In the period prior to my termination, I discovered that Mr. Casey was unwilling or unable to provide the equity that Cresford required. Mr. Casey had previously told me that he had family assets worth approximately $150 million, and I urged him to invest the funds required or find stable funding for Cresford so it could complete its projects and comply with its lending agreements. I worked diligently to help him do so, but made it clear that I would not help him deceive lenders, contractors or anyone else. As more time passed, and the issues grew more serious, my efforts to convince Mr. Casey to address the issues became more urgent and forceful.

49. Despite these efforts, Mr. Casey took no steps to rectify the situation.

50. Together with other members of Cresford's management, I asked Mr. Casey to clarify these issues. Mr. Casey provided no meaningful response. Instead, he instructed his former litigation lawyer, Allan O'Brien, to write to me to accuse me of breaching fiduciary duties to Cresford. Mr. O'Brien provided no particulars to support this allegation because I had committed no such breach.

51. Mr. Casey then prohibited me from communicating with any of Cresford's lenders, and indicated that he alone would speak to these lenders.

52. Mr. Casey then went further still, and advised that he alone would deal with all of Cresford's key stakeholders, including contractors. He also told Cresford's staff, who previously reported to me, that they would now report to him directly.

53. Mr. Casey's actions stripped me of essentially all of my responsibilities as Cresford's president and chief operating officer. I had been terminated in all but name.

54. Mr. Casey refused to formalize this termination because he was concerned about how Cresford's key stakeholders, including contractors, lenders, investors and employees, would react.

55. All of this put me in an impossible situation. I was nominally an officer of Cresford but had no ability to understand or affect how Cresford conducted business. I had good reason to believe that Mr. Casey planned to take steps that would violate Cresford's legal obligations and potentially expose me to personal liability. All of this caused me significant emotional harm.

56. I was advised by my counsel that the conduct described above constituted repudiation of my employment contract and constructive termination of my employment by Cresford. By letter dated January 2, 2020, a copy of which is attached as **Exhibit "K"**, I wrote to accept this repudiation.

(ii) Cresford and the Owners operated as a single entity

57. I was simultaneously employed by each of the Cresford companies, including YSL.

58. Cresford functioned as a single, integrated unit under the ultimate control of Mr. Casey. Each Cresford company operated from the same premises, and all were marketed as being part of the same entity. Each Cresford company had the same director and shareholder, Mr. Casey.

59. One important aspect of Cresford's integrated business was Mr. Casey's practice of moving funds between companies to meet liabilities. Mr. Casey routinely directed Cresford's accounting personnel to use funds belonging to one company to satisfy debts owed by another.

60. Cresford was in the business of buying, developing, marketing and selling new condominiums. Each new condominium project was owned by one of the Owners, and I provided services directly to each of the Owners. Although the Owners sometimes paid fees to other

Cresford entities, I do not believe that there was any written management agreement setting out what fees would be paid and when. The timing and quantum of the fee payments were determined based on the needs of the various companies.

61. During my time at Cresford, my base salary was paid by East Downtown Redevelopment Partnership ("**EDRP**"). As noted above, my base salary was only part of my compensation. The Defendants recognize this in their Statement of Defence, and admit that I was paid significant amounts over and above what they claim my salary was.

62. The amounts represent partial payment of the 0.15% commission (the "**Commission**") I was owed on new sales and not all of these amounts were paid by EDRP. I believe that some of these amounts were paid directly by Owner entities, although I do not have the documents required to determine exactly which entities paid me.

63. The balance of the Commissions were paid in the form of discounts on condominium purchases, because Cresford did not have cash on hand to pay what it owed me. These discounts are also referenced in the Defendants' Defence and Counterclaim. Specifically, at paragraphs 41 to 43 of the Defence and Counterclaim, the Defendants allege that they paid me compensation totalling approximately $3.7 million in the form of discounts on condominium units. The condominium discounts were each extended by the Owner of the relevant project.

H. My claim in this proceeding

(i) This proceeding

64. In the spring of 2021, my lawyers contacted the lawyers for the Defendants (including the YSL Defendants) and tried to set up a schedule to move my action forward. The YSL Defendants did not agree to any schedule. E-mails relating to this issue are attached as **Exhibit "L"**.

65. On or around May 12, 2021, I learned that the YSL Defendants had filed a proposal. I was not given notice of the proceeding, or included on YSL's list of creditors. By e-mail dated May 12, 2021, and attached as **Exhibit "M"**, YSL's lawyer said that my omission was unintentional and agreed to add me to the service list.

66. This did not occur. I was not added to the service list, or served with materials, until June 18, 2021.

67. During the intervening period, I checked the Proposal Trustee's website periodically to see whether materials had been served that affected my interests.

(ii) My proof of claim was submitted

68. I submitted my proof of claim on June 11, 2021. A copy of my proof of claim (the "**Claim**") is attached as **Exhibit "C"**.

69. By e-mail dated June 14, 2021 and attached as **Exhibit "N"**, my lawyer, Mark Dunn of Goodmans LLP ("**Goodmans**"), wrote to counsel to the Proposal Trustee to provide further particulars of my claim. In particular, my lawyer wrote that:

(a) My claim under the Profit Sharing Agreement crystalized in February 2020, when YSL (and the other defendants) denied they owed me any profits from YSL;

(b) My claim in this proceeding is very different than the claim I submitted in respect of the Clover Project;

(c) Mr. Dunn also encouraged the Proposal Trustee to contact Mr. Papadakis to confirm the terms of the Profit Sharing Agreement.

70. I am advised by Mr. Dunn, and believe, that counsel for the Proposal Trustee, Robin Schwill of Davies, Ward, Phillips & Vineberg LLP ("**Davies**"), told him on June 14, 2021 that the Proposal Trustee took the position that I was not entitled to vote at the creditors meeting. The e-mail exchange between Mr. Schwill and Mr. Dunn on this issue is attached as **Exhibit "O"**.

(iii) The Clover Project

71. In his affidavit sworn June 18, 2021, David Mann deposes that my claim in this proceeding is similar to my claim relating to Cresford's "Clover Project", which was addressed in a CCAA application. In that case, Justice Hainey found that I was not entitled to vote. There are important differences between the facts relating to the Clover Project and the facts relating to this project.

72. When my claim began, Clover was projected to earn no profit. It was not a viable project in its current form, and could only be made viable (and profitable) through a restructuring because the existing agreements of purchase and sale had to be disclaimed so units could be resold at higher prices.

73. In the Clover proceeding, Cresford and Concord took the position that my claim was too speculative and remote because the Clover Project could not yield a profit without a restructuring and my opposition to the plan would prevent a successful restructuring. The Clover Defendants' factum is attached is attached as **Exhibit "P"**. I disagreed, because the project could be restructured without compromising unsecured claims. My factum is attached as **Exhibit "Q"**. Justice Hainey agreed with the Clover Defendants on this point, and I was not allowed to vote.

74. YSL presents the opposite situation. In February 2020, YSL was a very profitable project. There was no need for a restructuring to make the project profitable.

(iv) Other litigation claims were allowed to vote

75. The Proposal Trustee did not find that all disputed litigation claims are too speculative and remote to vote. For example, I am a defendant to a construction lien claim (the "**Priestly Claim**") commenced by Priestly Demolition Inc. ("**Priestly**"). YSL defended the Priestly Claim, and asserted that Priestly breached its contract with YSL and was not entitled to any payment. YSL's Statement of Defence is attached as **Exhibit "R"**. Priestly entered into an assignment agreement with Concord, its claim was accepted and it voted on the proposal.

III. THE 2021 FM REPORT

76. In its Second Report, the Proposal Trustee advised that it had retained FM to prepare the 2021 FM Report with respect to the value of the YSL Project. According to the Proposal Trustee, FM concluded that a sale of the YSL Project would not generate enough money to pay more than 58% of unsecured claims, and might generate no proceeds at all for unsecured creditors.

77. I was surprised by the conclusions in the 2021 FM Report, because I knew that FM had reached a very different conclusion in the 2020 FM Report, when FM forecast a $90 million profit. I did not understand how or why the estimate could change so much between February 2020 and May 2021.

78. I received a copy of the 2021 FM Report, which I undertook to keep confidential, on June 11, 2021. As described below, Goodmans engaged in several discussions with the Proposal Trustee in an attempt to resolve my concerns about the 2021 FM Report. Those discussions are ongoing but, at this stage, I am very concerned that the 2021 FM Report is based on a significant amount of information provided by Concord and not independently verified by with trades by Finnegan Marshall.

79. Goodmans wrote a letter to Davies dated June 20, 2021 seeking an answer to various questions relating to the FM Report. This letter is attached as **Exhibit "S"**.

(ii) The Retail Component

80. The 2021 FM Report assumes that the retail component will be 60,914 square feet. Cresford's internal projections, and the 2020 FM Report, assumed that the retail component would be more than 73,000 square feet.

81. The YSL Project had received all of the development approvals required to begin construction and obtain building permits. Architectural drawings are submitted as part of this process, and those drawings show what will be built. Significant square footage reductions after approval are very uncommon. The issue also appears to be significant, since the 2021 FM Report indicated that a combination of space reductions and reduced rents decreased the value of the Retail component by approximately $30 million.

82. I am advised by Mr. Dunn, and believe, that Goodmans asked the Receiver to explain the reduction in the square footage during a discussion held June 11, 2021. On June 16, 2021, the Proposal Trustee responded that Concord told it that the reduction reflected the exclusion of "non-leasable servicing areas, mechanical rooms and the like". This e-mail exchange is attached as **Exhibit "T"**.

83. I do not believe that the information provided by Concord is correct. The 73,000 figure already excluded the non-leasable areas. In fact, the leasable areas in the drawings is more than 79,000sf and the 73,000sf estimate is already conservative.

84. On June 16, 2021, Goodmans sent Davies copies of the following documents:

(a) Architectural drawings from November 15, 2018, in which the gross areas is 94,000+sf, not the 73,000sf gross area referenced in the Proposal Trustee's e-mail based on information from Concord;

(b) The LPAT decision for the project, which approves retail/office/institutional of 18,629sm, or 200,520sf.

85. A copy of this e-mail is attached as **Exhibit "U"**.

86. The Proposal Trustee did not provide an explanation with respect to the Retail Component discrepancy. Instead, it advised that FM valued the missing part of the Retail Component at $13 million and opined that building the missing part of the Retail Component would cost $1.5 million.

87. I was not able to determine how FM calculated this value, because the value of the Retail Component varies by location and it is not clear where the missing space is located. I prepared my own calculation, based on the values in the 2021 FM Report, and arrived at a value of $21 million. My calculations are attached at **Exhibit "V"**.

88. The 2021 FM Report also assumes that there will be a reduction in the size of the residential component of 6,413sf. This reduction, which FM values at $9.7 million, has also not been explained.

(iii) Construction costs

89. When I was terminated by Cresford, YSL had entered into contracts for approximately 60% of the construction budget. The 2021 FM Report says that the cost of all contractors will increase, even if those contractors have already signed fixed price contracts. I prepared a spreadsheet comparing the 2021 FM Report to the 2020 FM Report, which shows that costs have

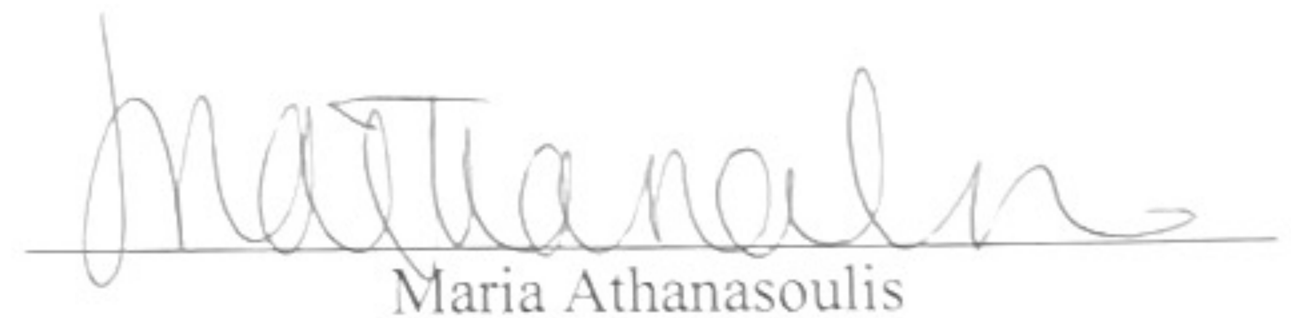
increased by approximately $45 million on signed contracts. Goodmans has asked the Proposal Trustee whether this increase has been verified by FM or whether it is an estimate provided by Concord.

(iv) Other issues

90. There are other issues with the budget presented in the 2021 FM Report. For example, the YSL Project was to include bike and storage rooms. YSL expected to earn $3.7 million selling the storage rooms and bike lockers. The cost of building these facilities are reflected in the 2021 FM Report, but the revenue associated with them is not included.

SWORN remotely by Maria Athanasoulis stated as being located in the City of North York, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario on June 21, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely.*

A Commissioner for taking affidavits, etc.
Name: Mark Dunn



Maria Athanasoulis

TAB 21

Consolidated Court File No. 31-2734090

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

AFFIDAVIT OF MARIA ATHANASOULIS
Sworn May 5, 2023

I, Maria Athanasoulis, of the City of Toronto, in the Province of Ontario, make oath and say:

1. I am the former President and Chief Operating Officer of a group of companies that operated using the brand name Cresford Developments (collectively, "**Cresford**"), including YG Limited Partnership and YSL Residences Inc. (together, "**YSL**"). As such, I have personal knowledge of the matters deposed to herein.

2. I swear this affidavit in order to provide information to the Proposal Trustee (the "**Trustee**") in support of my claim (the "**Claim**") in the above-captioned bankruptcy proposal proceedings (the "**Proposal**"). I have reviewed the Trustee's draft Notice of Disallowance of my Claim and the Joint Brief to the Trustee filed by the LPs (as defined below), and respond in this affidavit to various factual inaccuracies and characterizations contained within those documents.

3. The facts stated in this affidavit are based on my direct knowledge, unless I state otherwise. Where I do not have direct knowledge of the matters set out below, I have stated the source of my knowledge and believe it to be true.

A. My role at Cresford and the Agreement

4. I am providing only a brief overview of my role at Cresford and the agreement that is the subject of this claim. I provided a more detailed overview of these issues in my testimony at an arbitration (the **"Arbitration"**) held before William Horton (the **"Arbitrator"**) between February 22-25, 2022. The Arbitration determined certain issues regarding the terms of my employment with Cresford, including finding that YSL and I had entered into an agreement that entitled me to 20% of the profits earned by the 85-storey development project owned by YSL (the "**YSL Project**"). I understand that my testimony in the Arbitration is already considered part of the record before the Trustee and do not re-attach it to this affidavit, but I repeat and adopt those prior descriptions of my role at Cresford and the background circumstances leading to the agreement.

5. I joined Cresford in 2004 as its Manager, Special Projects. I was quickly promoted to Vice President of Sales and Marketing in 2005. In 2012, I was promoted again to President, Sales and Marketing, in which capacity I reported directly to Daniel Casey, the founder and Chief Executive Officer of Cresford. I was eventually promoted to President and COO of the company in 2018.

6. For most of my time at Cresford, the most significant aspect of my job was spearheading the company's sales and marketing efforts in respect of its various condominium projects. Each of Cresford's condominium projects were owned by a different corporate entity, including YSL in the case of the YSL Project.

7. Under my leadership, Cresford regularly reached its sales targets with ease, and enjoyed record-breaking sales launches. My success in the marketing realm allowed Cresford to eliminate its reliance on third-party marketing companies, saving the company and its projects millions in fees. Cresford used to pay sales and marketing consultants a fee of approximately 1.5% of each sale. These amounts were typically due, in whole or in part, shortly after the sales were made,

rather than on completion of the entire project. On the projected sales for the YSL Project alone, a third-party marketing company charging 1.5% of sales would have charged YSL $19 million. Further, Cresford was able to bill for these in-house services and make a profit, which could then be reinvested elsewhere.

8. Under my leadership, Cresford began to market projects itself. This was a complex process that I led successfully on several projects, including the YSL Project. Cresford also undertook a similar initiative to bring its construction management in-house and avoided the cost of external construction management firms.

9. Cresford charged fees to its projects for its sales and construction management services, which allowed it to earn fees as the project progressed rather than wait until the end of the project to earn revenue.

B. My Agreement with Cresford, including YSL

10. My employment at Cresford was governed by an oral agreement with certain Cresford entities including YSL. Prior to 2014, I was paid $200,000 per annum, plus eligibility for a bonus and a payment equal to 0.15% of Cresford's sales on every project, to market *all* of Cresford's projects and fulfill my other duties.

11. In 2014, Mr. Casey (on behalf of Cresford) and I came to an agreement to reward and incentivize my continued contributions to Cresford and its various development projects. The terms of this agreement were never reduced to writing and were the subject of the Arbitration. In the Arbitration, the Arbitrator found:

(a) The agreement was with the owner of each Cresford project, in this case, YSL;

(b) The agreement began in 2014, and automatically applied to each Cresford project that began after that date (including the YSL Project);

(c) Initially, the agreement was calculated based on 10% of a project's profits, but this was subsequently increased to 20%, including for the YSL Project;

(d) Profits are usually (but not always) earned at the end of a project;

(e) My entitlement to profits was not conditional on being employed by Cresford when the profits were earned.

12. I have, for convenience, called these terms the Profit Share Agreement, but they were actually a critical part of my employment agreement with Cresford.

13. Mr. Casey and I agreed that profits would be calculated as project revenues less project expenses, consistent with Cresford's *pro formas* maintained for each project. The *pro forma* on a project was an evolving document that began with a series of assumptions about what costs and revenues would be. As the project progressed, and actual costs were incurred or revenues earned, the *pro forma* would be updated to include actual information.

14. In the years following the creation of the Profit Share Agreement, my responsibilities at Cresford continued to grow until I managed the majority of Cresford's day-to-day operations. In addition to controlling Cresford's sales and marketing efforts, I was generally responsible for executing Cresford's projects successfully, including customer service and property management, supervising construction of Cresford's projects, and managing its relationships with trades.

C. I did not have an equity interest in YSL, or any other Cresford company

15. During my time at Cresford, I was an employee. I did not own an equity interest in the YSL Project or any other Cresford entity. The equity in YSL was owned by:

(a) Certain third-party limited partners, who held Class "A" Units (the **"LPs"**);

(b) Cresford Yonge LP, which held Class "B" Units (**"Cresford LP"**).

16. To be clear, I did not have any interest in Cresford LP. I also did not have any agreement with the LPs. Mr. Casey agreed that I would have an agreement with the owner of each project, in this case YSL.

17. As far as I know, no one involved with Cresford has ever alleged that I held shares or limited partnership units in YSL. Cresford operated informally, but the fact that I never received limited partnership units was not an oversight. I was never supposed to receive any shares or limited partnership agreements. I was an employee who had a contract with YSL and that contract is the basis of my current claim.

D. The YSL Project and Financing Efforts

18. YSL was established in 2016, as a joint venture between Cresford and the British Colubia Investment Management Corporation ("**BcIMC**"). It was captured within the scope of the Profit Share Agreement, since the Profit Share Agreement covered all of Cresford's projects. To be clear, the LPs were not involved in YSL when it was incorporated or when it became bound by the Profit Share Agreement.

19. The YSL Project was initially to be comprised of two towers: an apartment building to be owned by BcIMC; and, a condominium building to be built and sold by Cresford. YSL was,

however, unable to get approval for its original plan and decided to pursue a single-tower condominium. BcIMC did not want to participate in this modified project with a single tower, and accordingly sought to sell its interest in YSL. When Cresford purchased BcIMC's interest in 2017, the valuation of the YSL Project used for the purchase was $207.6 million. This was despite the original purchase price of $157.5M.

20. The YSL Project was Cresford's "crown jewel". It was Cresford's largest project and required an equity investment of approximately $75 million. To raise capital for the YSL Project, Mr. Casey decided to solicit outside investment from limited partners to fund the buyout of BcIMC's interest.

21. In my various roles leading sales and marketing for Cresford, I had cultivated relationships with a number of investors who bought condominium units in Cresford projects, as well as the real estate agents that represented those investors. Mr. Casey was aware of these relationships and requested that I reach out to my contacts to see if any of them might be interested in investing in the YSL Project.

22. I proceeded to reach out to potential investors and real estate agents who were familiar with Cresford. Among the investors and real estate agents I contacted were Paul Lam, Yuan (Michael) Chen, and Lue (Eric) Li (collectively, the **"LP Affiants"**).

23. I knew each of the LP Affiants in the context of our mutual business in the real estate and development industry. I met both Mr. Li and Mr. Chen in 2015, at separate industry conferences, and would occasionally connect with them socially and at various industry events.

24. My relationship with Mr. Lam was longer, and I considered him a friend. Mr. Lam had a long relationship with Cresford, having been involved in the purchase of many units in many Cresford projects in his capacity as a real estate agent.

25. Based on my interactions with the LP Affiants and the context in which we met, I understood each of them to be sophisticated and experienced participants in the real estate industry. I further understood that the LPs were themselves sophisticated and experienced real estate investors. Most or all of the LPs had purchased units in other Cresford projects before investing in YSL.

26. When I informed the LP Affiants about the investment opportunity offered by the YSL Project, each of them expressed interest and enthusiasm. After our initial conversations, the LP Affiants facilitated discussions with others whom they thought might also be interested in investing. I also understood that these clients with whom the LP Affiants were dealing were wealthy and sophisticated investors who were able to properly evaluate whether their investment in YSL met their objectives.

27. Collectively with the LP Affiants, these investors ultimately purchased the Class "A" Units in the YSL Project and became the LPs.

E. Meetings with the LPs

28. In their materials, the LP Affiants have described me as the "face" of Cresford. I agree that I introduced the LP Affiants to the YSL Project and participated in meetings about potential investments.

29. However, it was clear to all involved that Mr. Casey, and not me, was the sole principal of Cresford. Mr. Casey set the terms of the LPs' investment, and Mr. Casey personally guaranteed

that investment. When I communicated with the LP Affiants about the possibility of investing in YSL, I was communicating the terms set by Mr. Casey as I understood them. My meetings with the LP Affiants occurred in my capacity as Cresford's President of Sales & Marketing, and my role was accordingly limited to providing an overview of the YSL Project and my perspective on its expected sales performance.

30. Over the period from January to August 2017, I met with the LP Affiants about the YSL Project, including the meetings referenced in the LP Affiants' affidavits with Mr. Li at Second Cup and at the Cresford office; with Mr. Chen at the Cresford office; and with Mr. Lam and his existing clients where I introduced them to Mr. Casey.

31. Beyond these discussions, I also introduced the LPs to Mr. Casey and Cresford's then-VP of Accounting, Howard Ng. It was Mr. Casey and Mr. Ng who were primarily responsible for directing and drafting the terms of the LPs' investments and the preparation of the Limited Partnership Agreement ("**LPA**"), Subscription Agreement Form, Power of Attorney and Acknowledgement ("**Subscription**"), or other documents attached to the LP Affiants' affidavits.

F. The Investor Presentation

32. The Cresford Group put together a slide-deck presentation that summarized, at a high level, the investment opportunity in the YSL Project (the "**Investor Presentation**"). At my meetings with the LPs, I would sometimes use the Investor Presentation as a discussion prompt and summarize orally the same information contained within it.

33. The Investor Presentation emphasized Mr. Casey's role as the sole owner and directing mind of the Cresford Group. It touted his "leadership" and "vast business experience." My name did not appear anywhere in the Investor Presentation.

34. One of the slides provided an "Overview of Investment" and explained that Cresford was projecting that "the investor will receive its invested capital along with an investment return of 100% of the invested capital". I echoed that message in my discussions with the LPs.

35. Another slide provided a Pro Forma Income Statement for the YSL Project, which outlined several categories of project costs but did not go into detail about them. The LPs did not ask me for details of any of its contractual arrangements, its employee compensation arrangements, or anyone else who might be entitled to payment by YSL.

G. No representation that the "Cresford Group" would not be paid

36. At paragraph 8 of his affidavit, Mr. Li claims that he was assured that the LPs would be paid in full before the "Cresford Group" would receive any "return". As described below, Cresford LP agreed that it would not receive any return on its investment before the LPs received their return. This was described in the Investor Presentation and set out in the LP Agreement. The relevant terms of the LPA are summarized at paragraph 14 of Mr. Li's affidavit.

37. But to the extent that Mr. Li is suggesting that I (or anyone) told him that no member of the "Cresford Group" would receive any funds before the LPs were paid in full, he is not correct.

(i) The waterfall in the Investor Presentation and LP Agreement

38. Another of the slides in the Investor Presentation described the distribution of profits at the conclusion of the YSL Project (the **"Waterfall"**) as follows:

> Revenue proceeds (after payment of project expenses) will be distributed at the end of the project in the following priority:
>
> ➢ First, repayment of all external lenders;
> ➢ Second, return of invested capital to the investor;
> ➢ Third, distribution of the agreed upon return on investment to the

investor; and

➢ Fourth, distribution to Cresford.

39. The Waterfall provided by the Investor Presentation was intended to be a simplification of the terms of the draft Subscription which was also – either concurrently or shortly thereafter – provided to the LPs. Whenever I described the Waterfall, I informed the LPs that they would be investing in a class of units that would receive distributions in the amount of their investment and return from the YSL Project ahead of another class of units held by Cresford LP.

40. My explanation was consistent with the Subscription, which did not separate the distribution between "Investors" and "Cresford", but rather between Class "A" unit holders (which were held by the LPs) and Class "B" unit holders (which were held by Cresford LP).

41. The Investor Presentation and the LP Agreement are, as far as I know, consistent. They both grant the LPs priority over Cresford LP. However, neither the Investor Presentation nor the LP Agreement, as far as I know, prohibit payments to the "Cresford Group" as Mr. Li defines it.

(ii) Cresford paid itself significant sums from the YSL Project

42. I want to make two points clear in response to Mr. Li's affidavit. I did not say that *no* Cresford entity would or could ever be paid *any* amount in connection with the YSL Project before the LPs were repaid in full. Any such representation would have been inconsistent with both the LP Agreement and Cresford's business model.

43. During Cresford's meetings with the LPs, we described Cresford's business including the integrated nature of that business. This was a selling feature: Cresford's in-house resources allowed it to ensure that its quality standards were met. This was part of the value proposition that Cresford offered. As the Investor Presentation emphasized, one of the selling points of investing

with Cresford was its integrated approach to development, including its “ability to control its own construction management” and its “winning sales formula.”

44. Members of the “Cresford Group” received fees from the YSL Project throughout the course of the Project. In fact, the LP Agreement at section 3.4 specifically contemplates payments to entities within the “Cresford Group”, as that term is defined in Mr. Li’s affidavit, as each of them was owned and controlled by Mr. Casey.

45. During the course of the project, YSL made very significant payments to members of the Cresford Group. The LPs are fully aware of these payments, based on the material produced by YSL in the course of its bankruptcy proceeding. These fees include:

(a) Marketing fees totaling $11.6 million;

(b) Construction management fees totaling $2.89 million;

(c) Payments to various Cresford employees.

These fees are reflected on the general ledgers maintained by Cresford, which are being submitted within the Brief of Evidence supporting my submissions.

46. In addition to these payments, which appear to relate to services rendered by Cresford, YSL made a number of intercompany advances to other Cresford entities. The purpose and legitimacy of these payments are uncertain. These payments are also shown on Cresford’s general ledger and bank statements.

47. The LPs do not appear to take issue with any of these payments and have not taken any steps to address any of them. The LPs only seem to object to payments to me.

H. No misrepresentation to the LPs

48. In their submissions, the LPs accuse me of making misrepresentations to them about the Agreement. As I understand it, the LPs' complaint is that I should have told them about the Agreement. I did not tell the LPs the terms of my Agreement, because I did not at that time have any idea that it might one day be relevant to them.

49. I have no legal training. In fact, I do not hold any post-secondary degree. I gained some familiarity with legal and accounting issues during my time at Cresford, but this was never a key part of my job. I could never have known that events would unfold as they ultimately did, and that I would wind up in conflict with the LPs for a limited pool of money after YSL's insolvency.

50. First, I never expected that Mr. Casey would terminate me. I intended to stay with Cresford until long after the YSL Project was completed. I thought that Mr. Casey shared this intention, because he often told me that he wanted me to take over the Cresford Group;

51. Second, I always believed that YSL would act in the best interest of its stakeholders to maximize the value of the YSL Project. I believed that I would remain at YSL, and have the ability to ensure that it worked to maximize the value of the YSL Project. As importantly, I trusted Mr. Casey to act in the interest of the YSL Project.

52. When I was terminated, the YSL Project was worth far more than Cresford had invested in it. It could have been sold at a price that would have allowed the LPs to earn their full return and for me to earn a substantial amount on account of the Profit Share Agreement.

I. My termination from Cresford

53. For a period of time after the LPs' investment, things proceeded extremely well with the YSL Project. It was well capitalized and budgeted and did not suffer from cost issues. It had a

record launch, achieving the highest price per square foot that had ever been achieved in the neighbourhood, and pre-sold more than $650 million in condominiums under my oversight.

54. However, I began to discover certain concerns with the financial management of Cresford's various project companies over the course of 2019. I raised these concerns with Mr. Casey in the summer and culminating in December of 2019. In response, he took a series of actions to strip me of my responsibilities and made my ability to continue working at Cresford impossible.

55. Accordingly, on January 21, 2020, I commenced a lawsuit against Cresford, YSL, and Mr. Casey, among other defendants, relating to the breach of my Profit Sharing Agreement and wrongful termination.

J. YSL's Bankruptcy Proposal

56. The other Cresford projects, aside from YSL, suffered from substantial cost overruns and cash shortfalls. They all were the subject of insolvency proceedings in the spring of 2020.

57. YSL was different. As mentioned, the YSL Project was Cresford's most successful and profitable project. YSL did not face insolvency in the spring of 2020. YSL had secured a construction financing facility for more than $600 million, but the construction lender (Otera) terminated the loan. I understand that Otera terminated the loan because YSL breached its obligations by borrowing funds without Otera's consent. Despite my requests, Cresford has not produced any documents relating to this issue.

58. YSL therefore had to either secure alternative financing or sell the YSL Project. During the 2020-2021 period, PJD Properties Inc. (with my involvement) tried to negotiate a purchase of the YSL Project with external investment. Our intention was to purchase the YSL Project for its true value and to pay its various stakeholders everything they were entitled to. It ultimately became

clear, however, that Mr. Casey had no intention of selling to any ownership group that I was involved in, and that he was making ongoing efforts to enrich himself, which are summarized in Justice Dunphy's decision dated June 29, 2021 (the "**First Proposal Decision**").

59. As Justice Dunphy found in his decision dated July 16, 2021, by the time the Proposal came before the court for the second time on July 16, 2021, unsecured creditors had not been paid for more than one year and the first mortgagee's forbearance agreement on the YSL Property had expired.

60. In their submissions, the LPs criticize Cresford's *pro formas* because, as part of the Proposal process, a *pro forma* was submitted by Concord that showed a low value for the YSL Project. I agree that the Concord *pro forma* was unreliable, but I do not agree that this has any effect on the reliability of the *pro formas* prepared by YSL during my time there.

61. The *pro forma* submitted in support of the Proposal, and the related appraisal, were not reliable documents. By way of example and among other problems, the appraisal and *pro forma* assumed that the retail component of the YSL Project would be 60,914 square feet, when the approved architectural drawings for the project showed that the retail component would be more than 73,000 square feet.

62. It is exceedingly rare for a developer to willingly reduce the square footage on a project without good reason, because reductions in square footage will almost always result in a corresponding reduction to revenue. I have been following the development process, and have not seen any evidence suggesting that this occurred. My affidavit confirming these issues, sworn June 21, 2021 is attached as **Exhibit "A"**, omitting exhibits other than H, I, T, U and V. Justice Dunphy

ultimately concluded in the First Proposal Decision that Concord's appraisal and *pro forma* were not reliable.

K. The Arbitration

63. The Trustee and I, through my lawyers, initially agreed to arbitrate my Claim in two phases. The first phase of my Claim was determined in the previously-mentioned Arbitration. The purpose of the Arbitration was to address whether there was an enforceable Agreement, and what the terms of it were. A copy of the Arbitration Agreement is attached as **Exhibit "B"**.

64. The Trustee has previously reported to the Court that the LPs were aware of the arbitration, and the purpose of the arbitration. Neither the LPs nor the Proposal Trustee alleged in the arbitration that the Profit Share Agreement was prohibited by the terms of the LPA.

65. The Arbitrator found that the Profit Share Agreement was binding and had been breached by YSL upon my wrongful termination. Pursuant to my Arbitration Agreement with the Trustee, we were then supposed to proceed to a second phase of the arbitration to determine the value of my damages, but that procedure has now been replaced with the present determination by the Trustee.

L. I had no power to influence the YSL Project after I was terminated, but the LPs did

66. The LPs have challenged my entitlement to be paid anything on account of my Claim. I am sympathetic to the position that the LPs now find themselves in as a result of Mr. Casey's actions, because I too was harmed by them. However, I am not responsible for the LPs' unsuccessful investments or current situation. The fact that the LPs' anticipated returns were never realized lies entirely with Mr. Casey and his depreciation and deception of the value of the YSL Project, which I was powerless to prevent.

67. After I was terminated in December 2019 and until June 2021 (when the Proposal was filed), I had no meaningful ability to impact how the YSL Project was managed, or who it was sold to. I sued YSL and the other Cresford companies, but they denied owing me anything. YSL and Cresford ultimately denied that I had any contract at all.

68. My claim was based on an oral agreement and *viva voce* evidence was required to assess the terms of the Agreement. In these circumstances, I had no realistic chance of taking interim steps to interfere with the management of the YSL Project.

69. The LPs were not similarly powerless. Following my termination at the end of 2019, the YSL Project was properly capitalized and did not suffer from the cost overruns that Cresford's other projects did. The danger for the LPs, and other YSL stakeholders, was that Mr. Casey could not be trusted and Mr. Casey remained in control of YSL.

70. The LPs had the right to receive information about the YSL Project and to replace the General Partner (and effectively change the control of the Project) in certain circumstances.

71. I was in regular contact with Mr. Lam and the LPs that he represented after my termination, and I tried to give them advice about how they could protect their interests. I told Mr. Lam repeatedly that the LPs should not rely on Mr. Casey to protect their interests because Mr. Casey would prioritize his own interests.

72. Additionally, I alerted the LPs to fact the Mr. Casey had taken out a loan without their knowledge and a variety of other misconduct, which I described in detail in my lawsuit against Mr. Casey. The LPs were also aware of findings made against Cresford in its other insolvency proceedings, including Justice Koehnen's finding that Cresford kept two sets of books and made misrepresentations to its lenders.

73. Despite my warnings, the LPs did not take any steps to appoint a new general partner until May 2021, more than one year later. By then, it was too late, as described above. The LPs' lethargic response to Mr. Casey's misdeeds allowed him to spend the time between December 2019 (when I was terminated) and June 2021 (when YSL filed the Proposal) squandering the value of the YSL Project by pursuing his own interests.

74. Mr. Casey's efforts to maximize his own slice of the pie ultimately resulted in a much smaller pie for all other stakeholders – including both LPs and myself. Much of the harm suffered by the LPs could have been prevented if the LPs had acted swiftly to remove Mr. Casey instead of trusting him to market the YSL Project and allowing him to dissipate its value.

75. Another important difference between my position and the LPs' position is that the LPs obtained a personal guarantee from Mr. Casey. I did not have any such guarantee. The LPs have not, as far as I know, taken any steps to enforce the guarantee in the almost two years since the Proposal was approved and it became clear that they would suffer a loss. Mr. Casey has now filed a bankruptcy proposal, which is attached as **Exhibit "C"**.

76. In addition, Justice Dunphy made several damning findings about Mr. Casey and Cresford in the First Proposal Decision and specifically allowed the LPs to seek remedies in respect of that conduct. The LPs have not, as far as I know, taken any steps to seek these remedies. Even now, they state in paragraph 68 of their brief that any funds improperly taken by Cresford from the YSL Project are my concern and not theirs.

M. No subordination agreement

77. The LPs and the Proposal Trustee each assert that it was part of the Agreement that I would only be paid anything once the LPs had been paid in full. This is not what Mr. Casey and I agreed to.

78. As a preliminary matter, I note that I never entered into any oral or written agreement with the LPs. I never agreed that I would wait until they had been paid before I would take any payment for myself. I never agreed to put their interests ahead of my own.

79. That is not to say that I did not care about the LPs. I cared deeply. In fact, my concern for how Mr. Casey's actions (including borrowing funds that he was not allowed to borrow, in breach of YSL's obligations to its construction lender) might affect the LPs was a major cause of the ultimate breakdown of my relationship with Mr. Casey and termination from Cresford. If I did not care about Cresford's stakeholders, including the LPs, I could have gone along with Mr. Casey's schemes and reaped a very significant financial reward if they were successful.

80. Despite the importance of my relationships with Cresford's stakeholders, I always understood that my duty was to YSL and not to its individual stakeholders.

81. As the Arbitrator found, Mr. Casey and I agreed that I would be paid 20% of the profits and that profits would be based on *actual* revenues less *actual* expenses as measured by Cresford's *pro forma.* Cresford's *pro forma* treated payment to the LPs as an expense, and so I expected that my payment would be calculated *after* accounting for payment to the LPs.

82. To be clear, this was not an agreement with the LPs, and payment to the LPs was never a condition of payment to me. My belief that the LPs would be paid before my payment of a share of profits was based on two assumptions:

(a) YSL would seek to maximize the value of the YSL Project as a whole, and honour its obligations to all stakeholders; and,

(b) if YSL earned a profit (in the sense that revenues exceeded expenses) then those profits would be available to pay stakeholders including both the LPs and me.

83. This is not what ultimately happened. The Proposal (and its prior actions) allowed YSL to earn profits without paying all of its stakeholders, including me and the LPs.

84. As Justice Dunphy found in the First Proposal Decision, the sale process for the YSL Project was designed almost entirely to benefit Mr. Casey. Every single agreement that Mr. Casey negotiated (including the Proposal that was ultimately approved) allowed Mr. Casey or an entity connected with him to receive payments before the LPs and me.

85. Moreover, the documents produced by YSL appear to show that it earned a substantial profit. Its revenues exceeded its expenses by a considerable margin. But, for reasons that Cresford has not explained, those profits are not available for YSL to pay the LPs or me.

N. No contradictory positions taken on Arbitration

86. One of the positions taken by the Trustee (and echoed by the LPs) is that I "admitted" that my entitlement to my Profit Share Claim would only arise after, and if, the LPs were repaid.

87. The Trustee quotes three passages from my testimony in the first phase of the Arbitration. But I did not use the word "entitlement" in any of those passages, nor would I, since I am not a lawyer and do not purport to understand the mechanics of how my entitlement to my Claim is treated at law or ranked.

88. What I said in the quoted passages is the same thing I have said in this affidavit. The terms of the Profit Share Agreement provided that I would receive a payment equal to 20% of the profits of YSL. These profits were to be calculated as revenues less expenses, consistent with our YSL Project *pro formas*. Repayments to the LPs, were treated as expenses that would be repaid prior to the calculation of my payment.

89. I do not dispute any of my statements from the Arbitration. All of them were true characterizations of how my Profit Share would have been calculated, if YSL had not terminated me and then used the Proposal to secure funds for Cresford. But YSL *did* take those steps and so its revenues and expenses are much different from what was anticipated in the *pro forma*. Based on my review of the documents provided, it seems clear that the project still earned a profit, which Cresford denies.

SWORN remotely by Maria Athanasoulis stated as being located in the City of North York, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario on May 5, 2023 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

A Commissioner for taking affidavits, etc.
Name:

Brittni Tee

Maria Athanasoulis

TAB 22

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August 10, 2023

DELIVERED BY COURIER AND REGISTERED MAIL

Maria Athanasoulis
44 Glenallan Road
North York, ON M4N 1G8

Dear Ms. Athanasoulis:

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 your proof of claim filed in the amount of $19 million.

We have disallowed your 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: Bobby Kofman

BK:rk
Encl.
cc: Mark Dunn, Goodmans LLP

FORM 77

Notice of Disallowance of Claim, Right to Priority or Security *or* Notice of Valuation of Claim
(Subsection 135(3) of the *Bankruptcy and Insolvency Act*)

TAKE NOTICE THAT:

As Licensed Insolvency Trustee acting IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC. (collectively, "**YSL**"), KSV Restructuring Inc. (the "**Trustee**") has disallowed the unsecured claim of Maria Athanasoulis, in part, pursuant to subsection 135(2) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), for the reasons set out below.

Your Proof of Claim, as filed with the Trustee, claims:

1. $1 million in respect of damages for wrongful dismissal (the "**Wrongful Dismissal Claim**"); and

2. $18 million in respect of damages for breach of an oral agreement that YSL would pay Ms. Athanasoulis 20% of the profits earned on the YSL project (the "**Profit Share Claim**").

In determining your claims, the Trustee has reviewed and is relying on the following, which represents the support and record for your claim:

1. the Proof of Clam, as filed;

2. all material on the record in these proposal proceedings to date, together with all material on the record in the proceedings by the limited partners of YG Limited Partnership (the "**LPs**") against YSL Residences Inc. et al. in Court file numbers CV-21-00661386-00CL and CV-21-00661530-00CL;

3. the partial arbitration award of Mr. William G. Horton (the "**Arbitrator**") dated March 28, 2022 (the "**Partial Award**");

4. all material filed and produced, and all testimony given, in the "Phase 1" arbitration (the "**Arbitration**") before the Arbitrator; and

5. all submissions and evidence received by the Trustee from counsel to the LPs, counsel to Concord Properties Developments Corp., the sponsor of YSL's proposal (the "**Proposal Sponsor**"), counsel to YSL, and counsel to Ms. Athanasoulis in respect of any information requests of the Trustee and all related examination and cross-examination transcripts.

<u>Wrongful Dismissal Claim</u>

Pursuant to a Notice of Disallowance of Claim dated March 30, 2023, the Trustee determined to allow the Wrongful Dismissal Claim in the amount of $880,000 as an unsecured claim.

Profit Share Claim

The Trustee has determined to disallow the Profit Share Claim in full for several, independent reasons that follow.

Equity Not Debt

Pursuant to the Partial Award, the Arbitrator found that Ms. Athanasoulis had a profit share agreement (the "**PSA**") that entitled her to 20% of the profits earned on any current and future projects of the Cresford group of companies ("**Cresford**"), including YSL. The Arbitrator also found that: (a) profits were to be calculated, on a good faith basis, based on the *pro forma* budgets prepared by Cresford in respect of each project; (b) Ms. Athanasoulis' share of the profits was to be paid by the relevant owner that earned the profit; (c) profits were to be shared when earned, usually at the completion of a project; and (d) there was no requirement that Ms. Athanasoulis remain employed at the time that a profit was earned.[1] The Trustee accepts the findings of the Arbitrator.

Section 121 of the BIA provides as follows:

> All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

An entitlement to a share of the profits earned by YSL (*i.e.*, the relevant owner) is not a "provable claim" pursuant to the BIA. It is not a debt obligation of YSL but rather, in substance, an equity entitlement. Profits are, by definition, the difference between the amount earned and the amount incurred in buying, operating, or producing something. It is the amount remaining for distribution to the owners of the enterprise after the payment of all expenses and other costs. This is also reflected on YSL's *pro forma* budgets. As such, the Trustee has determined that the PSA, which is an agreement to share in the profits earned by the owner of the YSL project is, in substance, not a debt or liability of YSL.

Ms. Athanasoulis has taken the position that her claim under the PSA crystallized in December 2019 when her employment was terminated, and that YSL was subject to this debt when these proposal proceedings were commenced.

The Trustee disagrees. In the particular circumstances of this case, it is not just and reasonable to calculate profits on the date of Ms. Athanasoulis' termination in circumstances where the Project was in its pre-construction phase, no actual profit had been earned, and (as described in more detail below) the LPs had not received the full return of capital and profit to which they were entitled in preference to Cresford pursuant to the terms of the Limited Partnership Agreement for YG Limited Partnership, which sets out the scheme of distribution to stakeholders.

[1] Partial Award of Arbitrator Horton dated March 28, 2022, at para. 166.

Finally, as explained further below, and consistent with the "waterfall" set out in the Limited Partnership Agreement for YG Limited Partnership, Ms. Athanasoulis always understood that the LPs were entitled to receive the return of their capital and preferred equity return before she could earn a profit share, and that the LPs' investment was in the nature of equity. As debt always ranks before equity, the fact that Ms. Athanasoulis' claim ranked behind the equity claim of the LPs means that by definition her claim must also be in the nature of equity. Ms. Athanasoulis argues that she is not a partner of YSL and therefore cannot participate as a unitholder. This is not relevant to the analysis, as the PSA entitled her to be compensated based on any profits earned after the LPs were paid in full. To date, the LPs have not received any return of capital.

No Profits Earned by YSL

The Arbitrator held that Ms. Athanasoulis' share of profits resulting from the YSL project was "to be paid by the relevant Owner that earned the profit",[2] meaning a profit must have been earned for her to have a monetary claim.

As of the date that these proposal proceedings were initiated, YSL had not completed the YSL project. Indeed, the initial excavation phase of the YSL project was not yet complete and the construction schedule as of October 2019 contemplated that the YSL project would not be completed until 2025, at the earliest. Accordingly, as of the date of either the termination of Ms. Athanasoulis' employment or the date of the proceedings, the YSL project was in its early stages of development. No profit had been earned by the YSL project and, therefore, there was no profit earned by Cresford. Ms. Athanasoulis is only entitled to be compensated based on a share of Cresford's profit.

Without prejudice to the Trustee's determination that any claim based on the PSA is not a provable claim, to the extent that Ms. Athanasoulis relies upon the projected profitability of the YSL project as a contingent claim for a lost profit share, the Trustee values such a contingent and unliquidated claim at zero. The assumptions required to determine such a possible amount over such a long time horizon are far too speculative and the alleged damages far too remote to be capable of being considered a provable claim or the subject of any meaningful and reasonable computation. Indeed, the market conditions for real estate have changed materially since the outset of these proceedings, including as a result of a dramatic increase in interest rates, which affects, at least, financing costs, and the sale of condominiums.

In addition to the foregoing, the Trustee notes that an affiliate of the Proposal Sponsor became the owner of the YSL project upon implementation of the Proposal. Accordingly, even if the YSL project is successfully brought to completion, despite all of the intervening events challenging such an outcome, any profits earned on the YSL project will not accrue to the relevant owner, *i.e.*, YSL. Ms. Athanasoulis is not entitled to claim a profit-share under the PSA for amounts earned by the Proposal Sponsor's affiliate, which is not a party to the PSA.

Moreover, the LPs made a total capital contribution of $14.8 million to YG Limited Partnership in exchange for Class A Preferred Units. Pursuant to the Limited Partnership agreement for YG Limited Partnership, the LPs are entitled to a preferred return equal to 100% of their capital contribution from the proceeds of the YSL project. Once the LPs are repaid their capital contribution plus their preferred return, any remaining proceeds from the YSL project would be paid to the Class B unit holder, being Cresford (Yonge) Limited Partnership, a Cresford entity. Depending on the resolution of the remaining disputed claims in these proposal proceedings, the

[2] Partial Award of Arbitrator Horton dated March 28, 2022, at para. 166(c).

most that would be available for distribution to the LPs is approximately $16 million,[3] which is less than the amount of their capital contribution plus their preferred return. Accordingly, the disposition of the YSL project in these proceedings also will not result in any profit earned by Cresford.

Ms. Athanasoulis provided evidence in the Arbitration that "profit" pursuant to her PSA is determined by taking revenue, minus costs, minus the amount returned to the LPs, "and the balance is your net profit".[4] Again, on this basis, there is no profit earned by YSL.

To the extent that Ms. Athanasoulis claims that she is entitled to a share of unrealized hypothetical gains on the YSL project as of the date of her dismissal, the Trustee notes that this is contrary to an essential term of the PSA established by the Arbitrator. The Arbitrator found that profits were to be calculated based on certain *pro forma* financial statements prepared from time to time in connection with the YSL project, but only payable when earned at the completion of the YSL project. There is no dispute that the *pro formas* would be revised continuously throughout the life of the YSL project in order to take into account actual events that transpired. Ms. Athanasoulis cannot claim a share in profits based on an unrealized vision of the YSL project that, as we now know, will never materialize, because Cresford no longer owns the project and no profits had been earned at the date she was terminated.

Finally, the Trustee is aware that Ms. Athanasoulis advances, as an alternative theory of her claim, that Cresford actually earned profits as a result of the transactions with the Proposal Sponsor related to these proposal proceedings. Many of the factual bases of this claim are disputed by the LPs, the Proposal Sponsor, and YSL. The Trustee does not believe that it is necessary to resolve those factual disputes in order to determine Ms. Athanasoulis' claim because regardless of the disputed factual allegations made by Ms. Athanasoulis, the YSL project did not generate a profit for Cresford for the reasons set out elsewhere in this Notice. It is uncontested, and indeed admitted, that Ms. Athanasoulis was only to receive her share of the profits when Cresford did—after the LPs had been repaid their capital and earned their entire preferred return. It is also uncontested that the LPs have not, and due to lack of available funds will not, receive all such amounts. As a result, by definition Cresford cannot have earned a profit, and Ms. Athanasoulis cannot claim a share of a non-existent profit.

Profit Share Claim is Subordinated

In connection with the Arbitration, Ms. Athanasoulis admitted three times under oath – in discovery, in direct examination, and on cross-examination – that any entitlement to a profit-share she may have would arise only after the LPs are repaid their original investment.

---

[3] Assuming that claims filed by CBRE, Zhang and Athanasoulis claims are all disallowed. As of the date of this notice, the appeal by certain of the LPs regarding the claim of CBRE was dismissed by the Court of Appeal for Ontario and therefore that claim is likely to be accepted for approximately $1.2 million. It is unknown whether the LPs will seek leave to appeal in respect of this decision. If the claims of CBRE and Zhang are allowed, as now appears likely, the maximum amount that would be available for distribution to the LPs would be approximately $13.8 million.

[4] Transcript of Direct Examination of Ms. Athanasoulis on February 22, 2022, page 153, lines 13-23 (emphasis added).

On examination for discovery on January 13, 2022, Ms. Athanasoulis stated:

> Q. Did you discuss anything about how profit would be calculated?
>
> A. It was going to be calculated -- you know, in my conversations with Dan, it would be calculated after paying the costs and any... and after paying the equity to... and specific to YSL and 33 Yorkville, it would be paid after the equity was repaid to the LP investors.
>
> Q. You said specific to YSL and 33 Yorkville that you discussed with Dan that profit would be after equity paid to limited partners. So is it right if I understand that Clover and Halo, that was not the definition of profit that you discussed?
>
> A. Clover and Halo didn't have limited partners. So it was after the equity was... like, the equity of -- Dan's equity was repaid.[5]

Ms. Athanasoulis confirmed the same understanding in her evidence in-chief during Phase 1 of the Arbitration:

> Q. Okay. And turning down to the profit listed here on the, on the pro forma, in general terms, how was this calculated on the pro forma?
>
> A. How is the profit calculated? So, basically, it takes your revenue, minuses your costs, minuses the amount returned on equity, and the balance is your net profit.
>
> Q. And was Cresford consistent in how it assessed and how it calculated profits?
>
> A. Yes.[6]

She also confirmed the same evidence on cross-examination at Phase 1 of the Arbitration:

> Q. Once construction of a condominium is complete, you register the condominium with the Condominium Authority of Ontario. Do I have that right?
>
> A. Correct. I mean, you register it with -- yes. You register it with the authorities that -- the city.
>
> Q. Right. And we talked about registration before. I'm just trying to make sure we have it clear what that means. And then, once it's registered, you turn the building over to the condominium corporation for that particular property, right?
>
> A. Yes.

---

[5] Transcript of Discovery of Ms. Athanasoulis on January 13, 2022, qq. 211-212.

[6] Transcript of Direct Examination of Ms. Athanasoulis on February 22, 2022, page 153, lines 13-23.

Q. And you collect the balances due from purchasers, and you sell any remaining units that might be in the building?

A. Yes.

Q. And then you pay the trades and any fees that might be owing to the kind of management companies that you've described?

A. Sure. You would, you would be paying them along the way, yeah.

Q. And you repay the loans and return equity to investors?

A. Yes.

Q. And it's at this point that you can calculate the actual profits earned by the project, correct?

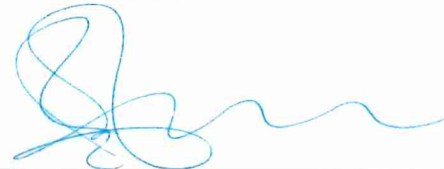
A. Okay, yes.[7]

As the LPs will not be receiving a full return of their equity investment in the YSL project, it is unclear to the Trustee how Ms. Athanasoulis can make a successful claim for a share in profits amount when she has admitted repeatedly that her Profit Share Claim would be calculated after a full return of equity to the LPs. Ms. Athanasoulis asserts that her claim is in the nature of debt for breach of contract, not equity, and that she held no equity in the YSL project. The Trustee does not consider it relevant that Ms. Athanasoulis did not hold equity in YSL, as her claim was contingent on profit being earned and then participating in a share of profits distributed to Cresford after full repayment to the LPs. In the Trustee's view, her claim is disguised as a debt claim while in substance it is an equity claim.

AND FURTHER TAKE NOTICE that if you are dissatisfied with our decision in disallowing your claim in whole or in part (or a right to rank or your security or valuation of your claim), you may appeal to the court within the 30-day period after the day on which this notice is served, or within any other period that the court may, on application made within the same 30-day period, allow.

Dated at Toronto, this 10th day of August, 2023.

KSV RESTRUCTURING INC.,
in its capacity as the proposal trustee for YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
by



Name: Robert Kofman
Title: President

[7] Transcript of Cross-Examination of Ms. Athanasoulis on February 23, 2022, page 232, line 24 to page 234, line 3.

TAB 23

Court File No. BK-21-02734090-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

RESPONDING FACTUM OF THE PROPOSAL TRUSTEE,
KSV RESTRUCTURING INC.
(Appeal of Disallowance of Claim)

November 10, 2023

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PART I - OVERVIEW

1. This proceeding concerns the insolvency of YG Limited Partnership and YSL Residences Inc. (together, "**YSL**"). YSL were single-purpose project entities. Their sole purpose was the development of an 85-plus storey, 300 metre tall condominium tower located at Yonge and Gerrard Streets in Toronto (the "**YSL Project**"). The forecasted costs to complete the YSL Project were enormous, and exceeded $1 billion. Ultimately the YSL Project failed.

2. By Spring 2021, YSL was insolvent. It commenced the instant proceeding on April 30, 2021 by filing a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act*[1] (the "***BIA***"). The YSL Project was still at the excavation stage at the time of insolvency, and even the most ambitious forecasts did not anticipate the Project being completed until 2025 at the earliest. Figuratively and literally, the YSL Project was just a hole in the ground when KSV Restructuring Inc. was appointed as the "**Proposal Trustee**" in this proceeding.

3. The Proposal Trustee has decades of experience administering dozens of insolvency proceedings as an officer of this Court. It takes its obligations seriously and has always acted in good faith. As an officer of this Court, the Proposal Trustee always considers fairly the positions taken and interests of all relevant stakeholders in a proceeding. Ms. Athanasoulis's claim in the instant proceeding is no exception. What is exceptional about Ms. Athanasoulis's claim, however, is that it asserts a claim for a share of profits from an insolvent debtor. *Profitable* businesses do not make *BIA* proposals, and YSL is no different.

4. YSL was owned by the Cresford group. It had raised $14.8 million in early-stage capital from a group of limited partners (the "**LPs**") who held Class A units in YSL, entitling them to the return of their capital and a 100% return on investment (for a total of $29.6 million) before the

---

1 *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

Cresford group, as the holders of Class B units, could earn a profit from the YSL Project. To date, neither the LPs nor the Cresford Group has received any distributions from YSL.

5. Given that the insolvent debtor has not earned – and will never earn – a profit, Ms. Athanasoulis's claim for a share of non-existent profits is properly valued at zero. Furthermore, she has no "provable claim" against the insolvent debtor under the *BIA*. Without a provable claim, Ms. Athanasoulis is not a "creditor" of the insolvent debtor under the *BIA* and has no entitlement to a distribution from the sale of the debtor's assets.

PART II - THE FACTS

A. THE PARTIES

6. The Proposal Trustee was appointed on April 30, 2021 when YSL commenced these proceedings under s. 50.4(1) of the *BIA*.[2]

7. Ms. Athanasoulis was a senior officer of Cresford. She made two claims in these proceedings that totalled $19 million:

(a) a $1 million claim for wrongful dismissal damages;[3] and

(b) an $18 million claim for breach of an oral profit-share agreement with Cresford entitling her to 20% of the profits of the YSL Project.[4]

8. As Ms. Athanasoulis states in her appeal factum, the Proposal Trustee has accepted her claim for wrongful dismissal damages in the amount of $880,000. Ms. Athanasoulis is not appealing the Proposal Trustee's determination of that claim.[5] Ms. Athanasoulis's remaining $18 million profit-share claim is by far the largest unsecured claim that was made against YSL.[6]

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[2] Sixth Report of the Proposal Trustee, at para. 1.0(1) [Supp. Responding Record, Tab 7, p. 1065].

[3] Proof of Claim, at Appendix B – Statement of Claim, at paras. 1 and 103 [Motion Record, Vol. 1, Tab 3, pp. 56 and 83].

[4] Sixth Report of the Proposal Trustee, at para. 5.1(1) [Supp. Responding Record, Tab 7, p. 1074].

[5] Factum of Maria Athanasoulis dated October 27, 2023, at footnote 1.

[6] See, *e.g.*, Eighth Report of the Proposal Trustee, at s. 4.0(9) [Supp. Responding Record, Tab 9, p. 1265].

9. The LPs are third party investors who are unrelated to Cresford. The Proposal Trustee has estimated that if Ms. Athanasoulis's profit-share claim is denied then the LPs will only recover approximately $13.8 million of their initial $14.8 million investment.[7] If Ms. Athanasoulis's profit-share claim were to be allowed in this proceeding, the LPs would recover nothing.

B. THE YSL PROJECT

10. YSL was established in 2016 for the sole purpose of developing the YSL Project. It was the sole owner of the land in downtown Toronto (3 Gerrard Street East) upon which the YSL Project was to be erected. The YSL Project was envisioned to be a mixed-use office, retail, and residential condominium development of more than 85 floors with 1,100 residential units, 190,000 square feet of commercial or retail space, and 242 parking spaces.[8]

11. YSL obtained zoning approval for the YSL Project in August 2018[9] and began marketing the Project in October 2018. Excavation at the site, however, did not start until October 2019. The construction schedule for the YSL Project as of October 2019 contemplated that the Project would not be completed until 2025 at the earliest.[10]

(i) The Insolvency of Cresford and YSL

12. In addition to the YSL Project, Cresford was in 2019 also developing three other condominium projects: The Residences of 33 Yorkville ("**33 Yorkville**"), Halo Residences on Yonge ("**Halo**"), and The Clover on Yonge ("**Clover**"). By late 2019, Cresford was in dire

---

[7] Eighth Report of the Proposal Trustee, at s. 4.0(9) [Supp. Responding Record, Tab 9, p. 1265]. As at December 2022, the Proposal Trustee had accepted approximately $16.2 million in proven claims. Since December 2022, the Proposal Trustee accepted Ms. Athanasoulis's $880,000 wrongful dismissal claim as a proven claim. This means that of the $30.9 million cash pool, only $13.8 million of the cash pool is available for distribution assuming that no other claims are proven.

[8] *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178, at paras. 3-5; and First Report of the Proposal Trustee, at s. 2.0(2) [Supp. Responding Record, Tab 1, p. 4].

[9] Direct Examination of Maria Athanasoulis, at p. 174, lines 5-16 [Motion Record, Vol. 3, Tab 6(3), p. 461].

[10] *Pro Forma* for YSL Project dated October 2019 [Motion Record, Vol. 7, Tab 14, p. 1428].

financial straits and required additional funding. During this financial crisis, Ms. Athanasoulis had a falling out with the principal of Cresford, Dan Casey. Ultimately, she was constructively dismissed by Cresford in December 2019.[11]

13. After the termination of her employment, in January 2020 Ms. Athanasoulis forged two letters in the name of Cresford's Chief Financial Officer to Cresford's principal lenders.[12] These letters alleged that Mr. Casey was misleading the lenders, Cresford's various projects were over-budget, and immediate additional financing was needed to avoid insolvency. Ms. Athanasoulis then issued a statement of claim against Cresford alleging extensive improprieties. Not surprisingly, Cresford's lenders immediately withdrew their support. As a result, in March 2020, the 33 Yorkville, Halo and Clover projects filed for insolvency and were ultimately sold to third parties through insolvency processes.[13] At the time they were sold, construction in respect of each of 33 Yorkville, Halo, and Clover was far more advanced than in respect of the YSL Project.[14]

14. With the advent of the COVID-19 pandemic and the collapse of the Cresford group's financing, the YSL Project eventually followed the same path as 33 Yorkville, Halo, and Clover. At the time that YSL filed a proposal under the *BIA* on April 30, 2021, the YSL Project was still in the excavation stage.[15] The YSL Project remains far from completion to this day.

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[11] Partial Award of Arbitrator Horton, at para. 191(d) [Motion Record, Vol. 3, Tab 6(2), p. 414].

[12] Ms. Athanasoulis initially denied forging the letters but eventually admitted to having done so when confronted with incontrovertible videotaped evidence of her involvement. *10390160 Canada Ltd. v. Casey*, 2022 ONSC 628, at paras. 17-20.

[13] Partial Award of Arbitrator Horton, at para. 38 [Motion Record, Vol. 3, Tab 6(2), pp. 376-377].

[14] Cross-Examination of Maria Athanasoulis, at p. 302, line 24 to p. 308, line 12 [Motion Record, Vol. 3, Tab 6(4), pp. 496-497].

[15] Second Report of the Proposal Trustee, at s. 2.0(6) [Supp. Responding Record, Tab 2, p. 30].

(ii) The Purchase of the YSL Project by Concord

15. The sponsor of YSL's proposal under the *BIA* was Concord Properties Developments Corp. (the "**Proposal Sponsor**").[16] The Proposal Sponsor is a significant, third party property developer that is unrelated to the Cresford group.

16. In Amended Reasons for Decision dated July 2, 2021, Justice Dunphy found as fact that YSL was burdened with at least $260 million in secured debt and approximately $20 to $25 million in unsecured debt (excluding the profit-share claim of Ms. Athanasoulis).[17] With regard to the claim of Ms. Athanasoulis, Justice Dunphy held as follows:

> 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.[18]

17. Importantly, Justice Dunphy held that the stakeholders with an interest in the purchase price proposed by the Proposal Sponsor were the unsecured creditors holding $20 to $25 million in unsecured debt (*i.e.*, excluding Ms. Athanasoulis) and the LPs.[19]

18. On July 9, 2021, YSL filed the Third Amended Proposal in respect of the proposed acquisition of the YSL Project.[20] The Third Amended Proposal addressed certain concerns raised by Justice Dunphy in his Amended Reasons for Decision dated July 2, 2021. The motion for this Court's approval of the Third Amended Proposal was heard by Justice Dunphy on July 16, 2021.

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16 Second Report of the Proposal Trustee, at s. 2.0(7) [Supp. Responding Record, Tab 2, p. 30].
17 *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178, at paras. 8-9 and 11.
18 *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178, at para. 9.
19 *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178, at para. 11.
20 *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206, at para. 2.

19. Justice Dunphy held that "there can be no question of the insolvency of the debtors",[21] and that "[t]his is a real bankruptcy. There is nothing artificial about it".[22] Justice Dunphy approved the Third Amended Proposal and found that "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".[23]

20. The Third Amended Proposal, which was supported by the unsecured creditors and approved by Justice Dunphy, provided that the Proposal Sponsor would acquire the YSL Project in exchange for three principal forms of consideration: (i) the Proposal Sponsor would assume 100% liability for of all secured creditor claims and construction lien claims; (ii) the Proposal Sponsor would pay to the Proposal Trustee a pool of cash of $30.9 million to be distributed to unsecured creditors with proven claims; and (iii) any residual amounts left unclaimed from the cash pool may be distributed to YSL (and then pursuant to the limited partnership agreement).[24] The unsecured creditors approved this proposal knowing that it was unlikely that their claims would be paid in full.

21. The Proposal Sponsor acquired the YSL Project shortly after the Third Amended Proposal was approved by Justice Dunphy. As a result, YSL no longer owns, and will never complete, the YSL Project. Moreover, no distributions will be made to Cresford entities holding Class B units of YSL from the sale of the YSL Project because the LPs will not, under any scenario, receive the full return that they are entitled to under their limited partnership agreement. As will be explained

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[21] *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206, at para. 17(a). As described above, under the LP agreement, the LPs were entitled to a 100% return on their investment before any funds flowed to Cresford.

[22] *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206, at para. 30.

[23] *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206, at para. 15.

[24] *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206, at para. 9.

in more detail below, Ms. Athanasoulis's profit-share interest falls behind the LPs and is derived from the interest held by Class B unitholders.

C. THE PROFIT-SHARE CLAIM OF MARIA ATHANASOULIS

22. The profit-share claim of Ms. Athanasoulis flows from the breach of an oral agreement between Ms. Athanasoulis and the Cresford group of companies. The Proposal Trustee understands that Ms. Athanasoulis's claim for $18 million in this proceeding is based on her assertion that if her employment had not been terminated in late 2019, it is more likely than not that YSL would have earned a profit of at least $90 million on the YSL Project and that she would have been entitled to 20% of that profit (*i.e.*, $18 million).[25]

23. In these proceedings, the Proposal Trustee originally took the position that: (i) there was no meeting of the minds on the material terms of the oral agreement necessary to establish an enforceable contract; and (ii) even if an enforceable contract did exist, no damages are owing. The Proposal Trustee and Ms. Athanasoulis agreed to arbitrate this disagreement in a bifurcated manner in which phase one of the arbitration would determine whether an enforceable contract existed and phase two of the arbitration would determine whether any damages are owing.

(i) Phase One of the Arbitration

24. Phase one of the arbitration was held before Arbitrator William Horton from February 22 to 24, 2022. The evidence adduced at the arbitration concerning the oral profit-share agreement (the "**Oral Agreement**") revealed just how undefined the alleged agreement was. Among other things, witnesses testified that:

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[25] Affidavit of Maria Athansoulis dated June 21, 2021, at para. 5 [Motion Record, Vol. 1, Tab 4(A), p. 112].

(a) there was no specific discussion as to who the parties to the Oral Agreement were, how profits would be calculated, or how the profit-share interest would be paid;[26] and

(b) there was no discussion as to how the profit-share interest would be treated if Cresford or YSL became insolvent, the YSL Project was sold to a third party before completion, or if Ms. Athanasoulis's employment with Cresford ended.[27]

25. Significantly, however, Ms. Athanasoulis conceded two essential points about the profit-share agreement. First, she acknowledged that her profit-share interest would be paid "at the end of a project when it's complete";[28] and second, she conceded that it was a term of the profit-share agreement that her entitlement would be calculated *after equity investments were returned from the YSL Project to the LPs*.[29] This is of course completely inconsistent with her current claim that she should be awarded all of the residual funds left from the sale of the YSL Project to the Proposal Sponsor, leaving nothing for the LPs.

26. Arbitrator Horton held that the Oral Agreement entitled Ms. Athanasoulis to 20% of the profits earned on all current and future Cresford projects, including the YSL Project.[30] He held that the key terms of the Oral Agreement as they pertain to the YSL Project were as follows:

(a) "Profits were to be calculated, on a good faith basis, based on the *pro forma* budgets prepared by Cresford with respect to each project",[31] and "would ultimately have to be accounted for with third party investors";[32]

(b) Ms. Athanasoulis's profit-share interest "was to be paid by [YSL]";[33]

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26 Direct Examination of John Papadakis, at p. 71, lines 17-24 [Motion Record, Vol. 3, Tab 6(3), p. 436]; Direct Examination of John Papadakis, at p. 72, line 19 to p. 73, line 9 [Motion Record, Vol. 3, Tab 6(3), p. 436]; and Cross-Examination of John Papadakis, at p. 110, line 19 to p. 113, line 11 [Motion Record, Vol. 3, Tab 6(3), pp. 445-446].

27 Cross-Examination of John Papadakis, at p. 107, lines 3-12, p. 111, line 8 to p. 112, line 17, and p. 112, line 23 to p. 113, line 6 [Motion Record, Vol. 3, Tab 6(3), pp. 445-446].

28 Direct Examination of Maria Athanasoulis, at p. 160, line 23 to p. 161, line 2 [Motion Record, Vol. 3, Tab 6(3), p. 458].

29 Cross-Examination of Maria Athanasoulis, at p. 276, lines 3 to 25 [Motion Record, Vol. 3, Tab 6(4), p. 489].

30 Partial Award of Arbitrator Horton, at para. 191(a) [Motion Record, Vol. 3, Tab 6(2), p. 414].

31 Partial Award of Arbitrator Horton, at para. 191(b)(ii) [Motion Record, Vol. 3, Tab 6(2), p. 414].

32 Partial Award of Arbitrator Horton, at para. 147 [Motion Record, Vol. 3, Tab 6(2), p. 400].

33 Partial Award of Arbitrator Horton, at para. 191(b)(iii) [Motion Record, Vol. 3, Tab 6(2), p. 401]. The Arbitrator did not specify which YSL entity was to pay Ms. Athanasoulis's claim.

(c) "Profits were to be shared when earned, usually at the completion of a project";[34] and

(d) "There was no requirement that [Ms.] Athanasoulis remain employed at the time that a profit was earned".[35]

27. Finally, Arbitrator Horton held that Ms. Athanasoulis was constructively dismissed by YSL in December 2019.[36] He made no finding as to whether YSL breached the Oral Agreement.[37]

(ii) Phase Two of the Arbitration

28. Phase two of the arbitration was intended to address damages. However, following the release of Arbitrator Horton's award in respect of phase one, as a consequence of opposition raised by the LPs and the Proposal Sponsor, this Court ordered that phase two of the arbitration shall not proceed. Instead, the Court directed that the Proposal Trustee was to determine whether Ms. Athanasoulis had a "provable claim" in this *BIA* proceeding.[38]

D. THE DETERMINATION OF THE CLAIMS OF MARIA ATHANASOULIS

29. On March 30, 2023, the Proposal Trustee delivered to Ms. Athanasoulis notice that it would accept her wrongful dismissal damages claim in the amount of $880,000.[39] As noted, Ms. Athanasoulis has not appealed the Proposal Trustee's determination in this regard.

30. With respect to the profit share claim, the Proposal Trustee considered the findings of Arbitrator Horton; the extensive record of evidence; additional evidence submitted by Ms. Athanasoulis; cross-examinations of Ms. Athanasoulis and a representative of Cresford; and the submissions of the various parties.[40] On August 10, 2023, the Proposal Trustee delivered to Ms.

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34 Partial Award of Arbitrator Horton, at para. 191(b)(iv) [Motion Record, Vol. 3, Tab 6(2), p. 414].
35 Partial Award of Arbitrator Horton, at para. 191(b)(v) [Motion Record, Vol. 3, Tab 6(2), p. 414].
36 Partial Award of Arbitrator Horton, at para. 191(d) [Motion Record, Vol. 3, Tab 6(2), p. 414].
37 Partial Award of Arbitrator Horton, at para. 164 [Motion Record, Vol. 3, Tab 6(2), p. 404].
38 *YG Limited Partnership (Re)*, 2022 ONSC 6138, at para. 7.
39 Notice of Disallowance, at p. 1 [Motion Record, Vol. 1, Tab 2, p. 29].
40 Notice of Disallowance [Motion Record, Vol. 1, Tab 2, pp. 29-34].

Athanasoulis a Notice of Disallowance of her $18 million profit-share claim. Contrary to the assertions of Ms. Athanasoulis, the Proposal Trustee was diligent in assessing and investigating the merits of her profit-share claim. Indeed, the record assembled in respect of the profit-share claim is voluminous and has been filed on this appeal motion.

(i) The Treatment of the Profit-Share Claim in Other Court Proceedings

31. As noted above, Justice Dunphy held that Ms. Athanasoulis's profit-share claim was "too contingent" for voting purposes in these proceedings. His Honour's assessment in this regard has been shared by other judges who presided over other Cresford-entity insolvency proceedings as well. For example, Ms. Athanasoulis advanced the same 20% profit-share claim in the insolvency proceeding pertaining to the Clover project. Justice Hainey dismissed her profit-share claim and held as follows:

> 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 from the Clover on Yonge Project that could be shared with Maria.[41]

32. Notably, Ms. Athanasoulis took exactly the opposite approach to her damages crystallization argument in proceedings before Justice Hainey in respect of the Clover project than she does in the instant case. Before Justice Hainey, Ms. Athanasoulis argued that her profit-share interest should be viewed as crystallized on the future date that the Clover project will be brought to completion by the third party who purchased it. Justice Hainey rejected Ms. Athanasoulis's theory of damages crystallization on the basis that it was "far too remote and speculative and lacks

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[41] *Re Clover on Yonge Inc.*, CV-20-00642928, Endorsement of Justice Hainey dated January 8, 2021 (unreported), at para. 4 [Responding Brief of Authorities, Tab 1].

an air of reality".[42] His Honour further "declare[d] that Maria's claim cannot be valued at more than $1 million (the wrongful dismissal portion of the claim)".[43]

PART III - ISSUES

33. Apart from the applicable standard of review, there are three issues for determination on this appeal motion:

(a) whether the profit-share claim of Ms. Athanasoulis is a "provable claim" as that term is used in the *BIA*;

(b) what is the appropriate date for the quantification of damages arising from Ms. Athanasoulis's profit-share claim; and

(c) whether the profit-share claim of Ms. Athanasoulis ranks ahead of the claims of the LPs.

PART IV - LAW AND ARGUMENT

A. THE STANDARD OF REVIEW

34. The standard of review applicable to the Proposal Trustee's identification of the applicable law to use to allow or disallow Ms. Athanasoulis's profit-share claim is correctness.[44] However, the Proposal Trustee's exercise of discretion in applying the applicable law to its assessment of the evidence is reviewable for reasonableness or palpable and overriding error.[45]

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42 *Re Clover on Yonge Inc.*, CV-20-00642928, Endorsement of Justice Hainey dated January 8, 2021 (unreported), at para. 7 [Responding Brief of Authorities, Tab 1].

43 *Re Clover on Yonge Inc.*, CV-20-00642928, Endorsement of Justice Hainey dated January 8, 2021 (unreported), at para. 12 [Responding Brief of Authorities, Tab 1].

44 *Re Casimir Capital*, 2015 ONSC 2819, at para. 33.

45 *Re Charlestown Residential School*, 2010 ONSC 4099, at para. 17. The standard of review on statutory appeals of claim disallowance decisions of trustees under the *BIA* appears to be unsettled in Ontario. There is case law from the British Columbia Court of Appeal holding that the standard of review should be identical to the appellate standard of correctness or palpable and overriding error (*8640025 Canada Inc. (Re)*, 2018 BCCA 93, at para. 41 and *Galaxy Sports Inc. (Re)*, 2004 BCCA 284, at para. 40). The Ontario Court of Appeal has discussed this review standard but has not explicitly adopted it (*Credifinance Securities Limited v. DSLC Capital Corp.*, 2011 ONCA 160, at paras. 24-27). The Supreme Court's decision in *Canada v. Vavilov*, 2019 SCC 65 supports the BC case law in that it held that appeals from administrative decision makers are subject to the ordinary appellate review standard.

B. THE PROFIT-SHARE CLAIM IS NOT A PROVABLE CLAIM

35. Ms. Athanasoulis is only entitled to a distribution from the $30.9 million cash pool established by the Proposal Sponsor under the Third Amended Proposal if she can prove that she is a creditor and can prove her claim.[46] Because the *BIA* defines a "creditor" as "a person having a claim provable as a claim under this Act",[47] the threshold inquiry is whether she has a "claim provable" under the *BIA*.

36. Section 121 of the *BIA* defines the scope of "claims provable" under the Act as follows:

> **Claims provable**
>
> (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.
>
> **Contingent and unliquidated claims**
>
> (2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135. [underlining added]

37. Section 135 of the BIA then provides in relevant part as follows:

> **Determination of provable claims**
>
> (1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation. [underlining added]

(i) The Profit-Share Claim is Too Remote and Speculative

38. On a straightforward textual analysis of the *BIA*, Ms. Athanasoulis has not asserted a claim provable in bankruptcy. On the date of bankruptcy, April 30, 2021, YSL owed no debt or liability to Ms. Athanasoulis under the Oral Agreement, nor will it become subject to any before its

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[46] *BIA*, s. 124.
[47] *BIA*, s. 2.

discharge. A debt or liability to Ms. Athanasoulis could only arise if YSL turned a profit, which it has not done and will never do. The YSL Project itself is now owned by the Proposal Sponsor Concord, which is the only party that can now generate a profit from the YSL Project.

39. Ms. Athanasoulis's profit-share claim is, if anything, a contingent and unliquidated claim. The Supreme Court held in *Newfoundland and Labrador v. AbitibiBowater Inc.* that the determination of whether such contingent claims are provable claims depends on "whether the event that has not yet occurred is too remote or speculative".[48]

40. If a contingent claim cannot reasonably be expected to be recovered then it is "too remote or speculative" and not a provable claim. For example, in *Schnier v. Canada (Attorney General)*, the Court of Appeal for Ontario was tasked with determining whether an assessed amount of tax owing that the taxpayer had appealed to the Tax Court of Canada was a provable claim within the taxpayer's bankruptcy proceeding under the *BIA*. The Court of Appeal held that the registrar in bankruptcy had appropriately determined that assessed tax owing was not a provable claim because it was contingent upon the Crown succeeding through trial at the Tax Court.[49]

41. The Court of Appeal explained that "a creditor's inability to enforce a claim bears directly on the creditor's ability to prove its claim under the *BIA*. In order to be a provable claim within the meaning of *BIA* s. 121, a claim must be one recoverable by legal process".[50] Because the alleged debt owing by the taxpayer was being disputed in Court, and no judgment ordering payment of the debt had been rendered, the Court of Appeal held that the trustee was entitled to find that the Crown's claim was not a provable claim and disallow the claim.[51]

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48 *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67, at para. 36. See also *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, at para. 138.
49 *Schnier v. Canada (Attorney General)*, 2016 ONCA 5, at paras. 26-50.
50 *Schnier v. Canada (Attorney General)*, 2016 ONCA 5, at para. 49.
51 *Schnier v. Canada (Attorney General)*, 2016 ONCA 5, at para. 50.

42. Ms. Athanasoulis's profit-share claim is analogous to the situation in *Schnier*. Like Schnier, Ms. Athanasoulis's profit-share claim was the subject of separate proceedings (in this case, litigation that she had commenced against various entities within the Cresford group). Arbitrator Horton held only that there was an oral agreement but explicitly declined to go further.

43. Ultimately, Ms. Athanasoulis seeks a share of profits from a failed project. It was reasonable for the Proposal Trustee to conclude that this was too "remote and speculative" to be a provable claim. Indeed, Justices Hainey and Dunphy as described above took a similar view of Ms. Athanasoulis's claim. These prior judicial determinations, coupled with the litigation uncertainty surrounding Ms. Athanasoulis's litigation against the Cresford group, entirely justify the Proposal Trustee's exercise of discretion to determine that her claim is not a provable claim.

(ii) The Profit-Share Claim is an Equity Claim

44. Even if the profit-share claim was not too remote or speculative, it would still not be a provable claim under the *BIA* because it is not a "debt or liability" as required under s. 121(1) of the *BIA*. In characterizing an investment as debt or equity, a court "must look to the surrounding circumstances to determine whether the true nature of the relationship is that of a shareholder who has equity in the company or whether it is that of a creditor owed a debt or liability by the company".[52] In this case, Ms. Athanasoulis's profit-share claim is akin to a partner who has equity in a business and is entirely unlike a creditor who has lent and is owed money by YSL.

45. Furthermore, even if her profit claim can be characterized as a liability of YSL, it then must be an "equity claim" as that term is defined under and has been interpreted in relation to the *BIA*.

46. Section 2 of the *BIA* defines an "equity claim" as follows:

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[52] *Re. Central Capital Corp.* (1996), 27 O.R. (3d) 494, at para. 67 (C.A.); and *Re. Canada Deposit Insurance Corp.*, [1992] 3 S.C.R. 558.

equity claim means a claim that is in respect of an equity interest, including a claim for, among others,

(a) a dividend or similar payment,

(b) a return of capital,

(c) a redemption or retraction obligation,

(d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or

(e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d)… [underlining added]

47. Ms. Athanasoulis's argument that the *BIA* prescribes a narrow definition of an "equity claim" is inconsistent with binding case law. The Court of Appeal for Ontario made clear in *Re Sino-Forest Corporation*[53] that the definition of "equity claim" in the *BIA* is expansive rather than restrictive. The Court stated as follows:

> Parliament also defined equity claim as "including a claim for, among others", the claims described in paragraphs (a) to (e). The Supreme Court has held that this phrase "including" indicates that the preceding words – "a claim that is in respect of an equity interest" – should be given an expansive interpretation, and include matters which might not otherwise be within the meaning of the term, as stated in *National Bank of Greece (Canada) c. Katsikonouris*, [1990] 2 S.C.R. 1029 (S.C.C.), at p. 1041:
>
> > [T]hese words are terms of extension, designed to enlarge the meaning of preceding words, and not to limit them.
> >
> > ... [T]he natural inference is that the drafter will provide a specific illustration of a subset of a given category of things in order to make it clear that that category extends to things that might otherwise be expected to fall outside it.
>
> […]
>
> "Equity claim" is not confined by its definition, or by the definition of "claim", to a claim advanced by the holder of an equity interest. Parliament could have, but did

53 *Re Sino-Forest Corporation*, 2012 ONCA 816.

not, include language in paragraph (e) restricting claims for contribution or indemnity to those made by shareholders.[54]

48. In *Sino-Forest*, the Court of Appeal held that claims made by auditors and underwriters against the debtor for contribution and indemnity related to liability arising in a securities misrepresentation class action were equity claims under the *BIA*. Those claims for contribution and indemnity were equity claims under the *BIA* because they arose from the underlying equity nature of the shareholders' claims against the debtor.[55] The fact that the cause of action of the auditors and underwriters was breach of contract did not transform their claims into debt or liability claims. The profit-share claim of Ms. Athanasoulis is no different.

49. Profit by its nature is a matter of equity, not debt. Ms. Athanasoulis's claim is a derivative of the profit in the project available to the Class B unitholders (Cresford). As the evidence in phase one of the arbitration demonstrated, all parties were *ad idem* that profit accrued to YSL's Class B unitholders after all expenses, including the amounts owing to the LPs, are paid.[56] The final profit held by YSL accrues exclusively to YSL's equity. In this proceeding, Ms. Athanasoulis claims a 20% interest in that equity. As in *Sino-Forest*, Ms. Athanasoulis's contractual claim is inextricably linked to the equity in the debtor. Regardless of the cause of action under which she chooses to style her claim, her claim is an equity claim because it is "clearly connected to or 'in respect of'"[57] an equity claim, namely the profits of or equity in YSL. Ms. Athanasoulis seeks to reclassify that

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[54] *Re Sino-Forest Corporation*, 2012 ONCA 816, at paras. 44-46. See also *Tudor Sales Ltd. (Re)*, 2017 BCSC 119, at para. 36, citing *US Steel Canada Inc. (Re)*, 2016 ONSC 569, at para. 183, aff'd 2016 ONCA 662 on the point of equity claims being characterized by an entitlement to a share of the company's profits and residual cash flows; *Bul River Mineral Corporation (Re)*, 2014 BCSC 1732, at paras. 68-71 and 85 on the point of looking at the true substance of an underlying transaction with regard to the economic reality of the surrounding circumstances when characterizing a claim as debt or equity; and *Return on Innovation v. Gandi Innovations*, 2011 ONSC 5018, at paras. 56-59.

[55] *Re Sino-Forest Corporation*, 2012 ONCA 816, at para. 43.

[56] Notably, the *pro formas* forecasted profits being calculated net of return of capital to the LPs. See *Pro Forma* for YSL Project dated October 2019 [Motion Record, Vol. 7, Tab 14, p. 1428].

[57] *Re Sino-Forest Corporation*, 2012 ONCA 816, at para. 43.

equity claim as a debt claim. She seeks to be in a better position as a result of the insolvency of YSL than if YSL had not become insolvent.

50. Because Ms. Athanasoulis does not hold a debt or liability, she is not a creditor with a provable claim in this proceeding. Furthermore, even if it is determined that she in fact has a provable claim, then she can only have an equity claim and cannot recover until all non-equity claims are paid in full.[58] In particular, and as explained in the last section of this factum, Ms. Athanasoulis by her own admission ranks behind the LPs and therefore cannot claim a debt in priority to them.

C. DAMAGES SHOULD BE QUANTIFIED AS OF THE DATE OF THIS HEARING

51. Although the strict legal issue raised on this appeal motion is solely the disallowance of Ms. Athanasoulis's profit-share claim and not the valuation of that claim, the Proposal Trustee has nonetheless considered potential damages associated with the profit-share claim because the damages assessment informs the legal test of whether the contingent claim is "too remote or speculative" to be a provable claim.

52. In this regard, Ms. Athanasoulis's statement of the law regarding the date for assessment of damages is incomplete. Contrary to her assertion, there is no requirement that this Court crystallize damages as of the date of the alleged breach of the Oral Agreement, which she argues is the date of her constructive dismissal. Although the assessment of damages as of the date of breach may be the default rule, courts may depart from that presumption in appropriate circumstances. The Court of Appeal for Ontario recently summarized these principles in *Maple Leaf Foods Inc. v. Ryanview Farms* as follows:

> The presumptive date for assessment of damages in contract law is the date of breach: *Rougemount Capital Inc. v. Computer Associates International Inc.*, 2016

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58 *BIA*, s. 60(1.7).

> ONCA 847, 410 D.L.R. (4th) 509, at para. 45. This presumptive rule can be displaced in appropriate circumstances, where an assessment of damages at the date of breach would not fairly reflect a party's loss: *Rougemount*, at paras. 46, 50; *Kinbauri Gold Corp. v. Iamgold International African Mining Gold Corp.* (2004), 2004 CanLII 36051 (ON CA), 246 D.L.R. (4th) 595 (Ont. C.A.), at paras. 65-68. As this court explained in *Rougemount*, at para. 52, only special circumstances will warrant a deviation from this presumption.[59] [underlining added]

53. In *Maple Leaf*, the Court of Appeal expressly affirmed the trial judge's decision to assess damages as of the date of trial rather than the date of breach. That case concerned a claim for consequential damages arising from the sale of pigs. The plaintiff by counterclaim claimed that it suffered economic damages flowing from the defendant by counterclaim's failure to deliver pigs under the parties' contract. The trial judge refused to award certain damages claimed for the failure to deliver pigs because, between the date of breach of contract and trial, there had been an outbreak of disease among pigs and a crash in the market value for pigs. The trial judge found that the outbreak of disease and crash in the pig market rendered the claimed damages too uncertain.

54. The Court of Appeal affirmed the trial judge's decision to crystallize damages as of the date of trial instead of the date of breach. The Court held that "**[t]he presence of significant intervening events**, which the trial judge found made the loss suffered more uncertain, **must be considered in determining what measure of damages fairly reflects the appellants' loss** as a direct and natural consequence of the breach. To do otherwise would not be just in all the circumstances and risks burdening the respondent with more than its fair share of liability" (emphasis added).[60]

55. Similar to *Maple Leaf*, there are significant intervening events that this Court "must" consider in quantifying Ms. Athanasoulis's claim.[61] These include the COVID-19 pandemic,

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59 *Maple Leaf Foods Inc. v. Ryanview Farms*, 2022 ONCA 532, at para. 35.

60 *Maple Leaf Foods Inc. v. Ryanview Farms*, 2022 ONCA 532, at para. 41.

61 Our law has long recognized that such external, intervening events should be taken into account when assessing damages in private law claims. For example, in *Athey v. Leonati*, [1996] 3 S.C.R. 458, at paras. 31-

record inflation, rapidly rising interest rates, the current state of the real estate markets, and most notably, the fact that YSL was insolvent and entered into proposal proceedings. All of these intervening exogenous events work in one direction: they all adversely or would have adversely affected the profitability of the YSL Project even if Ms. Athanasoulis had never been constructively dismissed.

56. It would be an error of law for a Court to ignore the material intervening events that have transpired through no fault of Cresford, Ms. Athanasoulis, or YSL.[62] The actual intervening events that transpired bear directly on the issue of whether YSL would have made a profit on the YSL Project, and must be taken into account by this Court in assessing the reasonableness of the Proposal Trustee's determination that Ms. Athanasoulis's claim was too remote or speculative. The law does not require the Proposal Trustee to allow a claim based on fiction, blind to reality.

57. None of the cases cited by Ms. Athanasoulis for the proposition that this Court must assess damages as of the date of the alleged breach of the Oral Agreement are analogous to this case. The principal case in this regard is *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*[63] In that case, the plaintiff had a right to purchase from the defendant a tract of land so that the plaintiff could build and profit from a residential development. The defendant breached the agreement by refusing to sell the tract of land to the plaintiff and was ordered to pay damages to the plaintiff in an amount representing the estimated profit the plaintiff would have earned from the development. Importantly, however, no alternative residential development was ever

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32, the Supreme Court held that an independent intervening event occurring after tortious conduct that causes the same injury caused by the tortious conduct will break the chain of causation and therefore operate to reduce the damages otherwise owed to a plaintiff.

62 As the Court of Appeal held in *Rougemont Capital Inc. v. Computer Associates International Inc.*, 2016 ONCA 847, at para. 54, it is an error of law to ignore factors pertaining to a party's "troubled financial history" and financial uncertainty when assessing damages.

63 *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19.

constructed on the tract of land at issue. As such, the only and best evidence before the Court were the estimated amounts of lost profits generated through damages models.

58. Unlike this case, in *Performance Industries* there was no significant intervening event between the date of breach of the contract and the date of trial to be taken into account in assessing damages for lost profits. Had the defendant developed the land itself and earned profits on an actual development, it is unlikely that the Court would have simply ignored what actual profits were earned in assessing damages. In this case, this Court does not need to rely upon estimates of damages because the YSL Project actually went insolvent and returned nothing to its owners.

59. Moreover, in *Performance Industries*, the trial judge found as fact that the plaintiff would have completed its residential development within the term of the governing contract.[64] Ms. Athanasoulis's claim is again distinguishable. Unlike the development in *Performance Industries*, the YSL Project would not have been completed until 2025 at the earliest in circumstances where Ms. Athanasoulis was constructively dismissed in December 2019.

(i) YSL Has Earned No Profit

60. The evidence concerning what profits YSL has or has not earned is clear in this case. In exchange for the YSL Project, the Proposal Sponsor paid approximately $290.9 million. Of that amount, $260 million was an assumption of secured and construction lien claims burdening the YSL Project and $30.9 million was the payment of a cash pool to the Proposal Trustee to settle proven claims of unsecured creditors of YSL, with any surplus flowing to the LPs. As the LPs cannot be paid the entire amount they are owed (return of twice their initial capital) out of the remaining funds, there can be no profit in which Ms. Athanasoulis could share.

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[64] *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 1999 ABQB 479, at para. 92.

61. Against this inescapable reality, Ms. Athanasoulis impugns an alleged transaction of $6.6 million between the Proposal Sponsor and Cresford and a transaction for $7.6 million between the Proposal Sponsor and YSL as ill-gotten profits. Neither of these assertions are true.

62. With regard to the $6.6 million transaction, the Proposal Trustee understands that Cresford (Rosedale) Developments Inc., East Downtown Redevelopment Partnership and Oakleaf Consulting Ltd. received the funds in question in connection with certain accounts receivable. Any recourse that Ms. Athanasoulis may have in respect of this transaction is against those entities, and indeed the first two were defendants in the Statement of Claim commenced by her in January 2020.

63. In respect of the $7.6 million transaction, the Proposal Trustee understands that the transaction concerned the sale of lands to the Proposal Sponsor that were not part of the YSL Project. As such, the profits generated on that transaction, if any, are not profits of the YSL Project. And in any event, the $7.6 million figure represents only the sale price of the land – not the profits. The Proposal Trustee understands that YSL incurred a loss on the sale of these lands.[65] As Arbitrator Horton found, the Oral Agreement entitles Ms. Athanasoulis to 20% of the profits earned on the YSL Project.[66] He did not find that Ms. Athanasoulis is entitled to a 20% tax on all sale transactions entered into by YSL.

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65 Letter from Counsel to Proposal Sponsor dated June 15, 2023, at pp. 4-5 [Responding Record, Tab 1(B), pp. 2063-2064].

66 Partial Award of Arbitrator Horton, at para. 191(a) [Motion Record, Vol. 3, Tab 6(2), p. 414].

(ii) YSL Would Not Have Earned a Profit if Maria Athanasoulis Remained Employed at Cresford

64. One of Ms. Athanasoulis's principal arguments on this appeal motion at least implicitly turns on her speculation as to what would have happened with the YSL Project had she not been constructively dismissed by Cresford. She alleges that her Oral Agreement was breached in December 2019 as a result of her constructive dismissal, and asserts that her profit-share claim is in essence a bonus to which she is entitled as part of her pay in lieu of reasonable notice. The argument that she would be entitled to a profit-share interest "bonus" fails for two reasons.

65. First, it is trite law that an employee's damages in respect of wrongful dismissal include only those amounts that the employee would have earned during the reasonable notice period had the employee not been wrongfully dismissed.[67] Ms. Athanasoulis claimed a reasonable notice period of 24 months,[68] which would have expired in December 2021 – four years before the YSL Project was originally scheduled to be completed in 2025.

66. Even if Ms. Athanasoulis were correct that her claim is akin to an employee bonus rather than an equity profit share, she is not entitled to damages for alleged breach of the profit share agreement when she could not have earned this amount had she remained employed during her reasonable notice period. Although Arbitrator Horton found that Ms. Athanasoulis did not need to be "employed" at the time that profits were earned to be entitled to a 20% profit-share, on Ms. Athanasoulis's own theory of the case his decision must be limited by the principles of damages assessment in employment law. If Ms. Athanasoulis's claim were in the nature of a bonus and not equity, then Arbitrator Horton's decision that Ms. Athanasoulis is entitled to "20% of the profits earned on any of Cresford's current and future projects"[69] results in absurdity.

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67 *Matthews v. Ocean Nutrition Canada Limited*, 2020 SCC 26, at para. 49.
68 Proof of Claim, at Appendix B – Statement of Claim, at para. 103 [Motion Record, Vol. 1, Tab 3, p. 83].
69 Partial Award of Arbitrator Horton, at para. 191(b)(i) [Motion Record, Vol. 3, Tab 6(2), p. 414].

67. Ms. Athanasoulis's own argument for a profit share entitlement that is unlimited in time just confirms the equity nature of her claim. If the Oral Agreement has no term length, and claims for damages are unbounded by any principles of certainty or remoteness, Ms. Athanasoulis would have been entitled to make claims on profits of Cresford accruing decades after she left Cresford. Such an entitlement is clearly in the nature of equity not debt. To hold otherwise would be to extend Ms. Athanasoulis's reasonable notice period indefinitely. The Proposal Trustee has received no evidence that would justify such an extraordinary and likely unprecedented result.

68. Second, Ms. Athanasoulis's argument fails because it rests on the false premise that the YSL Project would have been completed by YSL profitably if Ms. Athanasoulis had remained employed. There is no evidence to support that assertion beyond Ms. Athanasoulis's say-so.

69. The fundamental problem facing the YSL Project was a lack of liquidity. YSL did not have funds to continue the development of the YSL Project, let alone complete it. Ms. Athanasoulis worked diligently to bring forward a purchaser for the Project but was unable to do so, and there is no evidence that anything would have been different had she not been constructively dismissed.[70]

70. Moreover, the insolvency of YSL was inevitable. By Ms. Athanasoulis's own account in her forged letters, Mr. Casey obtained financing for various Cresford projects under false pretences. It is no surprise that no one else was willing to lend money to YSL: (i) after all of the other Cresford projects had gone bankrupt; (ii) after lenders had backed out; (iii) in circumstances where a former senior officer was alleging fraud against the principal of Cresford; and (iv) in light

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[70] Ms. Athanasoulis argues that there were attempts to sell Cresford and the YSL Project before she was constructively dismissed and that there would have been similar attempts after the date of her dismissal if she had remained employed. It should be noted, however, that consent of the LPs was required to sell the YSL Project to a third party, and that the LPs had rejected a proposed sale of the YSL Project: see Third Report of the Proposal Trustee dated June 18, 2021, at s. 5.3(4) [Supp. Responding Record, Tab 3, p. 74].

of the economic uncertainty prevailing during a raging global pandemic. As Justice Dunphy described, if the Notice of Intention to Make a Proposal process pursued by YSL was unsuccessful, the secured mortgage lender of the YSL Project – Timbercreek Mortgage Servicing Inc. – would have proceeded with its application (which had been adjourned) to impose a receiver to sell the business of YSL in any event.[71]

71. Simply put, Ms. Athanasoulis could not have prevented the downfall of Cresford and YSL. She cannot claim damages for the loss of a chance that never existed. Even if damages are measured as of the date of the alleged breach, it was reasonable for the Proposal Trustee to conclude that her unliquidated claim was too remote or speculative to be a provable claim. That conclusion of mixed fact and law is entitled to deference.

D. MS. ATHANASOULIS'S PROFIT-SHARE INTEREST RANKS BEHIND THE LPS

72. Even if Ms. Athanasoulis has a theoretical contingent claim for a theoretical lost opportunity to earn a profit-share, she still has no contingent claim that is provable because the necessary event that must occur to give rise to a debt owing to her is the recovery by the LPs of their full $14.8 million investment in the YSL Project. That is so because Ms. Athanasoulis has admitted multiple times under oath that any entitlement to a profit-share she may have arises only after the return of capital to the LPs. On examination for discovery on January 13, 2022, Ms. Athanasoulis stated:

> Q. Did you discuss anything about how profit would be calculated?
>
> A. It was going to be calculated – you know, in my conversations with Dan, it would be calculated after paying the costs and any […] and after paying the equity to... and specific to YSL and 33 Yorkville, it would be paid after the equity was repaid to the LP investors.[72]

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[71] *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206, at paras. 3-4.

[72] Discovery of Maria Athanasoulis, at q. 211 [Responding Record, Tab 1(A), p. 23].

73. Ms. Athanasoulis confirmed the same understanding in her evidence in-chief during phase one of the arbitration:

> Q. Okay. And turning down to the profit listed here on the, on the pro forma, in general terms, how was this calculated on the pro forma?
>
> A. How is the profit calculated? So, basically, it takes your revenue, minuses your costs, **minuses the amount returned on equity**, and the balance is your net profit.
>
> Q. And was Cresford consistent in how it assessed and how it calculated profits?
>
> A. Yes.[73] [emphasis added]

74. She also confirmed the evidence on cross-examination during phase one of the arbitration:

> Q. Once construction of a condominium is complete, you … pay the trades and any fees that might be owing to the kind of management companies that you've described?
>
> A. Sure. You would, you would be paying them along the way, yeah.
>
> Q. And you repay the loans and return equity to investors?
>
> A. Yes.
>
> Q. And it's at this point that you can calculate the actual profits earned by the project, correct?
>
> A. Okay, yes.[74] [emphasis added]

75. Ms. Athanasoulis' evidence concerning her understanding of when her profit-share would be calculated was corroborated by John Papadakis – Cresford's former corporate counsel and a family friend of Ms. Athanasoulis – during his examination for discovery in respect of phase one of the arbitration.[75]

76. Given the reality that the LPs will not be receiving a full return of their equity investment in the YSL Project in any circumstance, the condition precedent to Ms. Athanasoulis's contingent

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73 Direct Examination of Maria Athanasoulis, at p. 153, lines 13-23 [Motion Record, Vol. 3, Tab 6(3), p. 456].

74 Cross-Examination of Maria Athanasoulis, at p. 232, line 24 to p. 234, line 3 [Motion Record. Vol. 3, Tab 6(4), pp. 478-479].

75 Discovery of John Papadakis, at qq. 85-87 [Supp. Responding Record, Tab 10, p.1418].

claim will never come to pass. As such, no debt or liability will ever become owing to Cresford under the B units and accordingly, there is no profit in which Ms. Athanasoulis can participate under the Oral Agreement. It was therefore reasonable for the Proposal Trustee to conclude that Ms. Athanasoulis's profit-share claim is not a provable claim.

PART V - ORDER REQUESTED

77. The Proposal Trustee requests an order dismissing Ms. Athanasoulis's appeal of its Notice of Disallowance dated August 10, 2023 and awarding it costs of this appeal motion on a partial indemnity basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of November, 2023.

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Lawyers for the Proposal Trustee,
KSV Restructuring Inc.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *10390160 Canada Ltd. v. Casey*, 2022 ONSC 628

2. *8640025 Canada Inc. (Re)*, 2018 BCCA 93

3. *Athey v. Leonati*, [1996] 3 S.C.R. 458

4. *Bul River Mineral Corporation (Re)*, 2014 BCSC 1732

5. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65

6. *Credifinance Securities Limited v. DSLC Capital Corp.*, 2011 ONCA 160

7. *Galaxy Sports Inc. (Re)*, 2004 BCCA 284

8. *Maple Leaf Foods Inc. v. Ryanview Farms*, 2022 ONCA 532

9. *Matthews v. Ocean Nutrition Canada Limited*, 2020 SCC 26

10. *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67

11. *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5

12. *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 1999 ABQB 479

13. *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19

14. *Re Canada Deposit Insurance Corp.*, [1992] 3 S.C.R. 558

15. *Re Casimir Capital*, 2015 ONSC 2819

16. *Re Central Capital Corp.* (1996), 27 O.R. (3d) 494

17. *Re Charlestown Residential School*, 2010 ONSC 4099

18. *Return on Innovation v. Gandi Innovations*, 2011 ONSC 5018

19. *Re Sino-Forest Corporation*, 2012 ONCA 816

20. *Rougemont Capital Inc. v. Computer Associates International Inc.*, 2016 ONCA 847

21. *Schnier v. Canada (Attorney General)*, 2016 ONCA 5

22. *Tudor Sales Ltd. (Re)*, 2017 BCSC 119

23. *US Steel Canada Inc. (Re)*, 2016 ONSC 569, affirmed 2016 ONCA 662

24. *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178

25. *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206

26. *YG Limited Partnership (Re)*, 2022 ONSC 6138

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

Section 2

claim provable in bankruptcy, provable claim or **claim provable** includes any claim or liability provable in proceedings under this Act by a creditor…

creditor means a person having a claim provable as a claim under this Act…

equity claim means a claim that is in respect of an equity interest, including a claim for, among others,

(a) a dividend or similar payment,

(b) a return of capital,

(c) a redemption or retraction obligation,

(d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or

(e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d);

Section 121

Claims provable

(1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

Contingent and unliquidated claims

(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135. [underlining added]

Section 135

Determination of provable claims

(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

Court File No. BK-21-02734090-0031

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

RESPONDING FACTUM OF
THE PROPOSAL TRUSTEE,
KSV RESTRUCTURING INC.

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Lawyers for the Proposal Trustee,
KSV Restructuring Inc.

TAB 24

Cresford

YSL

Date: Sunday, October 20, 2019

PROFORMA SUMMARY

REVENUE	Amount	Per NSA	Per GFA
Residential Units/Parking/Lockers/Retail/Office			
Units	1,123,656,300	1551	1389
Profit on Upgrades	1,780,660		
Incentives	-11,210,151		
Residential Parking	19,920,000	28	25
Lockers	3,705,000	5	5
Retail (No HST)	97,764,364	1332	929
Commercial Parking			
Office Space (No HST)	46,866,757	484	492
Total	1,282,482,930	1434	1271
HST			
Less HST included on Res	-107,208,185	-148	-106
Recoverables			
Guest Suites	2,310,000		
Development / Education charge recovery	23,713,894	33	23
S37 and Parkland recovery	15,041,600	21	15
Tarion enrollment recovery	1,511,515	2	1
TOTAL REVENUE	**1,217,851,754**	**1361**	**1206**

COSTS	Amount	Per NSA	Per GFA
Land and levies			
Land at current value	195,000,000	218	193
Land transfer tax & redemption premium	19,146,664	21	19
Development levies & building permits	70,284,159	79	70
Total	284,430,823	318	282
Construction			
Construction contract	362,163,378	405	359
Contingency	23,813,719	27	24
TI Allowance - Retail/Office	4,841,607	5	5
Construction exclusions	21,226,760	24	21
Total	412,045,464	461	408
Design			
Architect & Interior Design	9,020,000	10	9
Structural engineer	1,173,698	1	1
Mechanical engineer	820,000	1	1
Planning consultant/legal	847,691	1	1
Secondary consultants	4,277,051	5	4
Total	16,138,440	18	16
Legal & Administration			
Legal Fees - Finance	600,000	1	1
Legal Fees - Misc	1,500,000	2	1
Legal Fees - Unit Closings	1,106,000	1	1
Administration fees/Development fees	29,725,000	33	29
Insurance-Liability & Builders Risk	3,110,449	3	3
Tarion Fees	1,614,600	2	2
Realty taxes	13,683,305	15	14
Total	51,339,354	57	51
Marketing/Advertising			
Advertising/Agency fees	24,577,815	27	24
Marketing-signage	250,000	0	0
Sales Commissions - Res&Com	49,687,009	56	49
Sales office - construction/model suite	1,700,000	2	2
Sales Office - operations	1,155,000	1	1
Total	77,369,823	86	77
Operating Expenses & Customer Service			
Operating expenses	2,583,113	3	3
Customer service	2,210,000	2	2
Total	4,793,113	5	5
Finance			
Financing fees	15,655,108	18	16
Marketing & ECDI bond fees	7,365,264	8	7
Miscellaneous	2,123,695	2	2
Interest due on purchasers deposits	2,630,840	3	3
Interest earned on purchasers deposits	-2,155,591	-2	-2
Interest on Land Loan	6,163,818	7	6
Interest on Construction loan	67,720,599	76	67
Mezzanine interest	61,252,252	68	61
Preconstruction VTB Interest	7,514,605	8	7
Preconstruction Loan Interest	22,074,805	25	22
		0	0
Total	190,345,396	213	189
Contingency			
Development Contingency	15,530,539	17.4	15.4
GROSS PROJECT COSTS	**1,051,992,951**	**1,176**	**1042**
Offsetting Income			
Occupancy Fees	-9,597,033	-11	-10
NET PROJECT COSTS	**1,042,395,918**	**1,165**	**1,033**

PROFIT	Amount	Per NSA	Per GFA
Add: Adjustment for current land value	37,500,000	42	37
Project Profit Before Accrued Interest	**274,208,088**	**307**	**272**
Profit (Before Accr Int) % of Revenue	**22.5%**		
Project Profit Net of Accrued Interest	**212,955,836**	**238**	**211**
Profit (Net of Accr Int) % of Revenue	**17.5%**		
Equity Loan Interest	**-59,214,572**		
Equity Return	**42,900,336**		
Net Profit (after Equity Interest)	**196,641,600**		
Profit Net of Acc Int & Eq Cost	**16.1%**		

FUNDING SOURCES	Amount	% of Funds
Construction Loan	613,217,774	62.5%
Deposits	153,609,495	15.7%
Deferred Costs	26,816,397	2.7%
	793,643,666	**80.9%**
Mezzanine Loan	75,000,000	7.6%
Cresford Equity	112,500,000	11.5%
	187,500,000	**19.1%**
TOTAL SOURCES OF FUNDS	**981,143,666**	**100%**
Mezzanine Accrued Interest	61,252,252	
TOTAL PROJECT FOR FINANCING	**1,042,395,918**	

**Includes Any Appraisal Surplus Equity if Applicable*

Model Check →	**'Model Works Correctly'**

Cross Check	
Category	**Amount**
Summary P/F'	1,042,395,918
Summary - Financing'	1,042,395,918
CF - "C"'	1,042,395,918
CF - END'	954,327,269

TEST	Amount	Check
CF - "C"' **SUBTRACT** 'CF - END'	88,068,649	OK
Summary P/F' **SUBTRACT** 'Summary	0	
CF - END' **ADDITION** 'CELL B174'	1,042,395,918	

PROJECT INFORMATION

Site Area:	40,522	sf
Floors Above Grade:	85	
Floors Below Grade:	4	
GFA Above - Residential:	808,908	sf
GFA - Office	95,228	sf
GFA - Retail:	105,293	sf
Total GFA:	**1,009,429**	**sf**
GFA Below:	241,876	sf
NSA - Residential:	724,283	sf
NSA - Office	96,832	sf
NSA - Retail:	73,378	sf
Total NSA:	**894,493**	**sf**
Efficiency:	90%	
Density Factor:	24.9	x
Res Condo Units:	1,106	
Total Number of Units:	**1,106**	
Average Unit Size:	655	sf
Saleable Parking Stalls:	166	
Saleable Lockers:	494	

MANAGEMENT FEES

Development Mgmt:	**$29,725,000**
Sales Mgmt:	**$16,699,371**
Construction Admin:	**$2,656,896**
Construction Mgmt:	**$10,381,350**
TOTAL:	**$59,462,617**

MAJOR SCHEDULE DATES

Excavation	Oct-19
Formwork Commences:	Apr-20
Formwork at Grade Commences:	Jan-21
Phase 1 Occupancy:	Sep-23
Phase 2 Registration:	Apr-24
Phase 2 Top Off:	Sep-24
Phase 2 Occupancy:	Apr-25
Phase 2 Registration:	Jun-25

SALES STATISTICS

	Units	$
Total Sold	786	661,289,300
Total Remaining	320	462,386,000
Total	**1,106**	**1,123,675,300**
Parking - Sold	76	9,120,000
Parking - Remaining	94	11,280,000
Total	**170**	**20,400,000**

YSL

COST SUMMARY

	Cost to Date	Cost to Complete	Total Cost
Land and levies			
Land at current value	195,000,000	0	195,000,000
Land transfer tax & redemption premium	19,146,664	0	19,146,664
Development levies & building permits	708,554	69,575,605	70,284,159
Total	214,855,218	69,575,605	284,430,823
Construction			
Construction contract	4,693,492	357,469,886	362,163,378
Contingency	0	23,813,719	23,813,719
TI Allowance - Retail/Office	0	4,841,607	4,841,607
Construction exclusions	6,568,322	14,658,438	21,226,760
Total	11,261,814	400,783,650	412,045,464
Design			
Architect & Interior Design	3,274,791	5,745,209	9,020,000
Structural engineer	393,398	780,300	1,173,698
Mechanical engineer	414,076	405,924	820,000
Planning consultant/legal	847,691	0	847,691
Secondary consultants	1,809,083	2,467,968	4,277,051
Total	6,739,039	9,399,401	16,138,440
Legal & Administration			
Legal Fees - Finance	526,697	73,303	600,000
Legal Fees - Misc	1,114,817	385,183	1,500,000
Legal Fees - Unit Closings	0	1,106,000	1,106,000
Administration fees/Development fees	7,650,001	22,074,999	29,725,000
Insurance-Liability & Builders Risk	2,870,343	240,106	3,110,449
Tarion Fees	1,600	1,613,000	1,614,600
Realty taxes	6,639,178	7,044,127	13,683,305
Total	18,802,636	32,536,718	51,339,354
Marketing/Advertising			
Advertising/Agency fees	16,255,896	8,321,919	24,577,815
Marketing-signage	0	250,000	250,000
Sales Commissions - Res&Com	6,400,000	43,287,009	49,687,009
Sales office - construction/model suite	1,690,000	10,000	1,700,000
Sales Office - operations	0	1,155,000	1,155,000
Total	24,345,896	53,023,927	77,369,823
Operating Expenses & Customer Service			
Operating expenses	0	2,583,113	2,583,113
Customer service	0	2,210,000	2,210,000
Total	0	4,793,113	4,793,113
Finance			
Financing fees	14,032,074	1,623,034	15,655,108
Marketing & ECDI bond fees	0	7,365,264	7,365,264
Miscellaneous	0	2,123,695	2,123,695
Interest due on purchasers deposits	0	2,630,840	2,630,840
Interest earned on purchasers deposits	0	-2,155,591	-2,155,591
Interest on Land Loan	4,955,485	1,208,333	6,163,818
Interest on Construction loan	0	67,720,599	67,720,599
Mezzanine interest	0	61,252,252	61,252,252
Preconstruction Loan Interest	29,589,410	0	29,589,410
Total	48,576,969	141,768,427	190,345,396
Contingency			
Development Contingency	0	15,530,539	15,530,539
GROSS PROJECT COSTS	**324,581,572**	**727,411,379**	**1,051,992,951**
Offsetting Income			
Occupancy Fees	-9,597,033	0	-9,597,033
NET PROJECT COSTS	**314,984,539**	**727,411,379**	**1,042,395,918**

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Costs	Milestone Dates / Month No. / Total	CTD 1	2 Sep-19	3 Oct-19	4 Nov-19	5 Dec-19	6 Jan-20	7 Feb-20	8 Mar-20	9 Apr-20	10 May-20	11 Jun-20	12 Jul-20	13 Aug-20	14 Sep-20	15 Oct-20	16 Nov-20	17 Dec-20	18 Jan-21	19 Feb-21	20 Mar-21	21 Apr-21	22 May-21	23 Jun-21
			Construction																					
Land and Development Levies																								
Land at Cost	**195,000,000**	195,000,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Land Transfer Tax & Closing Costs	**19,146,664**	19,146,664	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Development Levies and Building Permits	**70,284,159**	708,554	-	-	-	-	-	-	-	-	-	-	-	-	-	68,725,605	-	-	-	-	-	-	-	-
Total	**284,430,823**	214,855,218	-	-	-	-	-	-	-	-	-	-	-	-	-	68,725,605	-	-	-	-	-	-	-	-
Construction Hard Cost (including Appliance Costs)																								
Construction Contract	**367,004,985**	4,693,492	-	-	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	1,704,995	4,262,488	4,262,488	4,262,488
Construction Exclusion/Site Connect	**21,226,760**	6,568,322	-	-	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448
Contingency	**23,813,719**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	**412,045,464**	11,261,814	-	-	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	1,876,443	4,433,936	4,433,936	4,433,936
Design																								
Architect	**9,020,000**	3,274,791	617,605	617,605	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324
Structural Engineer	**1,173,698**	393,398	96,726	96,726	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630
Mechanical and Electrical Engineer	**820,000**	414,076	18,462	18,462	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426
Planning Consultant/Legal	**847,691**	847,691	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Secondary Consultants	**4,277,051**	1,809,083	164,721	164,721	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449
Total	**16,138,440**	6,739,039	897,513	897,513	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829
Legal and Administration																								
Legal Fees - Finance	**600,000**	526,697	73,303	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Legal Fees - Misc	**1,500,000**	1,114,817	42,592	42,592	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412
Legal Fees - Unit Closings	**1,106,000**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Administration fees/Development fees	**29,725,000**	7,650,001	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357
Insurance-Liability and Builders Risk	**3,110,449**	2,870,343	-	-	240,106	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tarion Fees	**1,614,600**	1,600	-	-	1,613,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Realty Taxes	**13,683,305**	6,639,178	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089
Total	**51,339,354**	18,802,636	533,340	460,037	2,274,964	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858
Marketing/Advertising																								
Advertising/Agency Fees	**24,577,815**	16,255,896	351,112	351,112	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054
Marketing - Presentation Materials	**0**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Marketing - Signage	**250,000**	-	62,500	62,500	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838
Residential Sales Commissions	**46,758,739**	6,400,000	-	-	-	-	372,102	8,502,699	372,102	-	-	-	-	4,261,437	-	-	-	-	-	-	-	-	-	-
Sales Office - Construction/Model Suite	**1,700,000**	1,690,000	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143
Sales Office - Operations	**1,155,000**	-	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500
Commercial Sales Commissions	**2,928,270**		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	**77,369,823**	24,345,896	430,254	430,254	130,535	130,535	502,638	8,633,234	502,638	130,535	130,535	130,535	130,535	4,391,972	130,535	130,535	130,535	130,535	130,535	130,535	130,535	130,535	130,535	130,535
Occupancy Costs																								
Customer Service	**2,210,000**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Occupancy Costs	**2,583,113**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	**4,793,113**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Finance Costs																								
Financing Fees	**15,655,108**	14,032,074	-	-	1,623,034	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tarion and ECDI Bond Fees	**7,365,264**	-	-	-	7,365,264	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Miscellaneous	**2,123,695**	-	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911
Interest due on Purchaser Deposits	**2,630,840**																							
Interest earned on Purchaser Deposits	**- 2,155,591**																							
Mezzanine Interest	**61,252,252**																							
1st Mortgage Interest on Land Loan	**6,163,818**	4,955,485	604,167	604,167	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Preconstruction Loan Interest	**29,589,410**	29,589,410	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest on Construction Loan	**67,720,599**		-	-	-	262,174	266,760	271,911	289,256	294,441	299,076	303,717	308,366	313,022	324,072	328,751	547,337	562,809	578,353	593,969	609,658	625,418	653,080	680,871
Total	**190,345,396**	48,576,969	634,078	634,078	9,018,209	292,085	296,671	301,822	319,167	324,352	328,987	333,629	338,277	342,933	353,983	358,662	577,248	592,720	608,265	623,881	639,569	655,330	682,992	710,782
Contingency																								
Development Contingency	**15,530,539**	-	20,000	20,000	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508
	15,530,539																							
Offsetting Income																								
Occupancy Income	**- 9,597,033**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	**- 9,597,033**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Project Costs	**1,042,395,918**	324,581,572	2,515,186	2,441,883	13,639,488	3,060,258	3,436,947	11,572,694	3,459,442	3,092,525	3,097,160	3,101,802	3,106,450	7,372,543	3,122,156	71,852,440	3,345,421	3,360,893	3,376,437	3,392,053	3,407,742	5,980,995	6,008,658	6,036,448
Appraisal Increase for Finance																								
Total Projects Costs per Bank	**1,042,395,918**	324,581,572	2,515,186	2,441,883	13,639,488	3,060,258	3,436,947	11,572,694	3,459,442	3,092,525	3,097,160	3,101,802	3,106,450	7,372,543	3,122,156	71,852,440	3,345,421	3,360,893	3,376,437	3,392,053	3,407,742	5,980,995	6,008,658	6,036,448
Cumulative Project Financing Required		324,581,572	327,096,758	329,538,641	343,178,129	346,238,386	349,675,333	361,248,027	364,707,469	367,799,994	370,897,154	373,998,956	377,105,406	384,477,949	387,600,105	459,452,545	462,797,966	466,158,859	469,535,296	472,927,350	476,335,092	482,316,087	488,324,745	494,361,192

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Costs	24 Jul-21	25 Aug-21	26 Sep-21	27 Oct-21	28 Nov-21	29 Dec-21	30 Jan-22	31 Feb-22	32 Mar-22	33 Apr-22	34 May-22	35 Jun-22
Land and Development Levies												
Land at Cost	-	-	-	-	-	-	-	-	-	-	-	-
Land Transfer Tax & Closing Costs	-	-	-	-	-	-	-	-	-	-	-	-
Development Levies and Building Permits	-	-	-	-	-	-	-	-	-	-	-	-
Total	-	-	-	-	-	-	-	-	-	-	-	-
Construction Hard Cost (including Appliance Costs)												
Construction Contract	4,262,488	4,262,488	4,262,488	4,262,488	4,262,488	4,262,488	4,262,488	4,262,488	4,262,488	4,262,488	4,262,488	4,262,488
Construction Exclusion/Site Connect	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448
Contingency	-	-	-	-	-	-	-	-	-	-	-	-
Total	4,433,936	4,433,936	4,433,936	4,433,936	4,433,936	4,433,936	4,433,936	4,433,936	4,433,936	4,433,936	4,433,936	4,433,936
Design												
Architect	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324
Structural Engineer	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630
Mechanical and Electrical Engineer	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426
Planning Consultant/Legal	-	-	-	-	-	-	-	-	-	-	-	-
Secondary Consultants	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449
Total	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829
Legal and Administration												
Legal Fees - Finance	-	-	-	-	-	-	-	-	-	-	-	-
Legal Fees - Misc	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412
Legal Fees - Unit Closings	-	-	-	-	-	-	-	-	-	-	-	-
Administration fees/Development fees	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357
Insurance-Liability and Builders Risk	-	-	-	-	-	-	-	-	-	-	-	-
Tarion Fees	-	-	-	-	-	-	-	-	-	-	-	-
Realty Taxes	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089
Total	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858
Marketing/Advertising												
Advertising/Agency Fees	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054
Marketing - Presentation Materials	-	-	-	-	-	-	-	-	-	-	-	-
Marketing - Signage	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838
Residential Sales Commissions	-	-	-	-	-	-	165,706	165,706	165,706	165,706	165,706	165,706
Sales Office - Construction/Model Suite	143	143	143	143	143	143	143	143	143	143	143	143
Sales Office - Operations	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500
Commercial Sales Commissions	-	-	-	-	-	-	-	-	-	-	-	1,171,308
Total	130,535	130,535	130,535	130,535	130,535	130,535	296,241	296,241	296,241	296,241	296,241	1,467,549
Occupancy Costs												
Customer Service	-	-	-	-	-	-	-	-	-	-	-	-
Occupancy Costs	-	-	-	-	-	-	-	-	-	-	-	-
Total	-	-	-	-	-	-	-	-	-	-	-	-
Finance Costs												
Financing Fees	-	-	-	-	-	-	-	-	-	-	-	-
Tarion and ECDI Bond Fees	-	-	-	-	-	-	-	-	-	-	-	-
Miscellaneous	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911
Interest due on Purchaser Deposits												
Interest earned on Purchaser Deposits												
Mezzanine Interest												
1st Mortgage Interest on Land Loan	-	-	-	-	-	-	-	-	-	-	-	-
Preconstruction Loan Interest	-	-	-	-	-	-	-	-	-	-	-	-
Interest on Construction Loan	708,789	736,837	765,014	793,322	836,567	865,722	895,014	925,224	955,576	986,071	1,016,710	1,047,493
Total	738,700	766,748	794,925	823,233	866,478	895,633	924,925	955,135	985,487	1,015,982	1,046,621	1,077,404
Contingency												
Development Contingency	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508
Offsetting Income												
Occupancy Income	-	-	-	-	-	-	-	-	-	-	-	-
Total	-	-	-	-	-	-	-	-	-	-	-	-
Total Project Costs	6,064,366	6,092,414	6,120,591	6,148,899	6,192,144	6,221,299	6,416,296	6,446,506	6,476,859	6,507,354	6,537,993	7,740,084
Appraisal Increase for Finance												
Total Projects Costs per Bank	6,064,366	6,092,414	6,120,591	6,148,899	6,192,144	6,221,299	6,416,296	6,446,506	6,476,859	6,507,354	6,537,993	7,740,084
Cumulative Project Financing Required	500,425,558	506,517,972	512,638,563	518,787,462	524,979,607	531,200,905	537,617,202	544,063,708	550,540,567	557,047,921	563,585,913	571,325,997

Costs	36 Jul-22	37 Aug-22	38 Sep-22	39 Oct-22	40 Nov-22	41 Dec-22	42 Jan-23	43 Feb-23	44 Mar-23	45 Apr-23	46 May-23	47 Jun-23
Land and Development Levies												
Land at Cost	-	-	-	-	-	-	-	-	-	-	-	-
Land Transfer Tax & Closing Costs	-	-	-	-	-	-	-	-	-	-	-	-
Development Levies and Building Permits	-	-	-	-	-	-	-	-	-	-	-	-
Total	-	-	-	-	-	-	-	-	-	-	-	-
Construction Hard Cost (including Appliance Costs)												
Construction Contract	4,262,488	4,262,488	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479
Construction Exclusion/Site Connect	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448
Contingency	-	-	-	-	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179
Total	4,433,936	4,433,936	7,843,926	7,843,926	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105
Design												
Architect	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324
Structural Engineer	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630
Mechanical and Electrical Engineer	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426
Planning Consultant/Legal	-	-	-	-	-	-	-	-	-	-	-	-
Secondary Consultants	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449
Total	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829
Legal and Administration												
Legal Fees - Finance	-	-	-	-	-	-	-	-	-	-	-	-
Legal Fees - Misc	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412
Legal Fees - Unit Closings	-	-	-	-	-	-	-	-	-	-	-	-
Administration fees/Development fees	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357
Insurance-Liability and Builders Risk	-	-	-	-	-	-	-	-	-	-	-	-
Tarion Fees	-	-	-	-	-	-	-	-	-	-	-	-
Realty Taxes	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089
Total	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858
Marketing/Advertising												
Advertising/Agency Fees	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054
Marketing - Presentation Materials	-	-	-	-	-	-	-	-	-	-	-	-
Marketing - Signage	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838
Residential Sales Commissions	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706
Sales Office - Construction/Model Suite	143	143	143	143	143	143	143	143	143	143	143	143
Sales Office - Operations	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500
Commercial Sales Commissions	-	-	-	-	-	-	-	-	-	-	-	-
Total	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241
Occupancy Costs												
Customer Service	-	-	-	-	-	-	-	-	-	-	-	-
Occupancy Costs	-	-	-	-	-	-	-	-	-	-	-	-
Total	-	-	-	-	-	-	-	-	-	-	-	-
Finance Costs												
Financing Fees	-	-	-	-	-	-	-	-	-	-	-	-
Tarion and ECDI Bond Fees	-	-	-	-	-	-	-	-	-	-	-	-
Miscellaneous	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911
Interest due on Purchaser Deposits												
Interest earned on Purchaser Deposits												
Mezzanine Interest												
1st Mortgage Interest on Land Loan	-	-	-	-	-	-	-	-	-	-	-	-
Preconstruction Loan Interest	-	-	-	-	-	-	-	-	-	-	-	-
Interest on Construction Loan	1,083,936	1,115,036	1,146,282	1,193,730	1,263,374	1,315,789	1,368,455	1,421,374	1,474,546	1,527,973	1,581,656	1,635,597
Total	1,113,847	1,144,947	1,176,193	1,223,641	1,293,285	1,345,700	1,398,366	1,451,285	1,504,457	1,557,885	1,611,568	1,665,508
Contingency												
Development Contingency	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508
Offsetting Income												
Occupancy Income	-	-	-	-	-	-	-	-	-	-	-	-
Total	-	-	-	-	-	-	-	-	-	-	-	-
Total Project Costs	6,605,219	6,636,318	10,077,555	10,125,003	10,938,826	10,991,241	11,043,907	11,096,826	11,149,998	11,203,425	11,257,108	11,311,049
Appraisal Increase for Finance												
Total Projects Costs per Bank	6,605,219	6,636,318	10,077,555	10,125,003	10,938,826	10,991,241	11,043,907	11,096,826	11,149,998	11,203,425	11,257,108	11,311,049
Cumulative Project Financing Required	577,931,216	584,567,534	594,645,089	604,770,092	615,708,918	626,700,158	637,744,065	648,840,891	659,990,889	671,194,315	682,451,423	693,762,472

YSL - CASHFLOW -				1st Occupancy							1st Closing										
				Occupancy																	
	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68
Costs	**Jul-23**	**Aug-23**	**Sep-23**	**Oct-23**	**Nov-23**	**Dec-23**	**Jan-24**	**Feb-24**	**Mar-24**	**Apr-24**	**May-24**	**Jun-24**	**Jul-24**	**Aug-24**	**Sep-24**	**Oct-24**	**Nov-24**	**Dec-24**	**Jan-25**	**Feb-25**	**Mar-25**
Land and Development Levies																					
Land at Cost	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Land Transfer Tax & Closing Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Development Levies and Building Permits	-	-	850,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	-	-	850,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Construction Hard Cost (including Appliance Costs)																					
Construction Contract	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479	7,672,479
Construction Exclusion/Site Connect	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448	171,448
Contingency	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179	744,179
Total	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105	8,588,105
Design																					
Architect	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324	66,324
Structural Engineer	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630	8,630
Mechanical and Electrical Engineer	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426	5,426
Planning Consultant/Legal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Secondary Consultants	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449	31,449
Total	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829	111,829
Legal and Administration																					
Legal Fees - Finance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Legal Fees - Misc	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412	4,412
Legal Fees - Unit Closings	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Administration fees/Development fees	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357	315,357
Insurance-Liability and Builders Risk	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tarion Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Realty Taxes	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089	102,089
Total	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858	421,858
Marketing/Advertising																					
Advertising/Agency Fees	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054	112,054
Marketing - Presentation Materials	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Marketing - Signage	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838	1,838
Residential Sales Commissions	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	165,706	142,033	-
Sales Office - Construction/Model Suite	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143	143
Sales Office - Operations	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500
Commercial Sales Commissions	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	296,241	272,569	130,535
Occupancy Costs																					
Customer Service	-	-	-	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310
Occupancy Costs	-	-	-	283,715	283,715	283,715	283,715	283,715	283,715	283,715	-	-	-	-	-	-	-	-	-	-	199,037
Total	-	-	-	310,024	310,024	310,024	310,024	310,024	310,024	310,024	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	26,310	225,346
Finance Costs																					
Financing Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tarion and ECDI Bond Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Miscellaneous	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911	29,911
Interest due on Purchaser Deposits																					
Interest earned on Purchaser Deposits																					
Mezzanine Interest																					
1st Mortgage Interest on Land Loan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Preconstruction Loan Interest	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest on Construction Loan	1,689,796	1,744,254	1,798,973	1,858,028	1,946,353	2,001,765	2,055,725	2,108,226	2,160,277	2,212,581	2,265,140	232,487	280,916	329,582	378,484	427,626	477,006	1,190,858	1,243,959	1,297,319	1,350,825
Total	1,719,707	1,774,165	1,828,885	1,887,939	1,976,264	2,031,676	2,085,636	2,138,137	2,190,188	2,242,492	2,295,051	262,398	310,827	359,493	408,396	457,537	506,918	1,220,769	1,273,870	1,327,231	1,380,736
Contingency																					
Development Contingency	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508	227,508
Offsetting Income																					
Occupancy Income	-	-	- -	353,900 -	565,353 -	918,556 -	1,271,760 -	1,416,527 -	1,416,745 -	1,416,745 -	708,372	-	-	-	-	-	-	-	-	-	-
Total	-	-	- -	353,900 -	565,353 -	918,556 -	1,271,760 -	1,416,527 -	1,416,745 -	1,416,745 -	708,372	-	-	-	-	-	-	-	-	-	-
Total Project Costs	11,365,247	11,419,706	12,324,425	11,489,604	11,366,477	11,068,685	10,769,441	10,677,175	10,729,008	10,781,312	11,258,529	9,934,248	9,982,677	10,031,343	10,080,246	10,129,387	10,178,768	10,892,619	10,945,720	10,975,409	11,085,917
Appraisal Increase for Finance																					
Total Projects Costs per Bank	11,365,247	11,419,706	12,324,425	11,489,604	11,366,477	11,068,685	10,769,441	10,677,175	10,729,008	10,781,312	11,258,529	9,934,248	9,982,677	10,031,343	10,080,246	10,129,387	10,178,768	10,892,619	10,945,720	10,975,409	11,085,917
Cumulative Project Financing Required	705,127,719	716,547,425	728,871,850	740,361,454	751,727,931	762,796,616	773,566,057	784,243,232	794,972,240	805,753,552	817,012,081	826,946,329	836,929,006	846,960,349	857,040,595	867,169,982	877,348,750	888,241,369	899,187,089	910,162,498	921,248,415

YSL	2nd Occ										
- CASHFLOW -			Registration	Final Closing							
	69	70	71	72	73	74	75	76	Financed	Deferred	Total
Costs	Apr-25	May-25	Jun-25	Jul-25	Aug-25	Sep-25	Oct-25	Nov-25			
Land and Development Levies											
Land at Cost	-	-	-	-	-	-	-	-	195,000,000	0	195,000,000
Land Transfer Tax & Closing Costs	-	-	-	-	-	-	-	-	19,146,664	0	19,146,664
Development Levies and Building Permits	-	-	-	-	-	-	-	-	70,284,159	0	70,284,159
Total	-	-	-	-	-	-	-	-	284,430,823	0	284,430,823
Construction Hard Cost (including Appliance Costs)											
Construction Contract	7,672,479	7,672,479	7,672,479	-	-	-	-	-	367,004,985	0	367,004,985
Construction Exclusion/Site Connect	171,448	171,448	171,448	-	-	-	-	-	18,226,760	3,000,000	21,226,760
Contingency	744,179	744,179	744,179	-	-	-	-	-	23,813,719	0	23,813,719
Total	8,588,105	8,588,105	8,588,105	-	-	-	-	-	409,045,464	3,000,000	412,045,464
Design											
Architect	66,324	66,324	66,324	-	-	-	-	-	9,020,000	0	9,020,000
Structural Engineer	8,630	8,630	8,630	-	-	-	-	-	1,173,698	0	1,173,698
Mechanical and Electrical Engineer	5,426	5,426	5,426	-	-	-	-	-	820,000	0	820,000
Planning Consultant/Legal	-	-	-	-	-	-	-	-	847,691	0	847,691
Secondary Consultants	31,449	31,449	31,449	-	-	-	-	-	4,277,051	0	4,277,051
Total	111,829	111,829	111,829	-	-	-	-	-	16,138,440	0	16,138,440
Legal and Administration											
Legal Fees - Finance	-	-	-	-	-	-	-	-	600,000	0	600,000
Legal Fees - Misc	4,412	4,412	4,412	-	-	-	-	-	1,500,000	0	1,500,000
Legal Fees - Unit Closings	16,507	16,507	16,507	-	-	-	-	-	49,522	1,056,478	1,106,000
Administration fees/Development fees	315,357	315,357	315,357	-	-	-	-	-	29,725,000	0	29,725,000
Insurance-Liability and Builders Risk	-	-	-	-	-	-	-	-	3,110,449	0	3,110,449
Tarion Fees	-	-	-	-	-	-	-	-	1,614,600	0	1,614,600
Realty Taxes	102,089	102,089	-	-	-	-	-	-	13,683,305	0	13,683,305
Total	438,365	438,365	336,276	-	-	-	-	-	50,282,876	1,056,478	51,339,354
Marketing/Advertising											
Advertising/Agency Fees	112,054	112,054	112,054	-	-	-	-	-	24,577,815	0	24,577,815
Marketing - Presentation Materials	-	-	-	-	-	-	-	-	0	0	0
Marketing - Signage	1,838	1,838	1,838	-	-	-	-	-	250,000	0	250,000
Residential Sales Commissions	-	-	-	-	20,577,259	-	-	-	26,181,480	20,577,259	46,758,739
Sales Office - Construction/Model Suite	143	143	143	-	-	-	-	-	1,700,000	0	1,700,000
Sales Office - Operations	16,500	16,500	16,500	-	-	-	-	-	1,155,000	0	1,155,000
Commercial Sales Commissions	-	-	1,756,962	-	-	-	-	-	2,928,270	0	2,928,270
Total	130,535	130,535	1,887,497	-	20,577,259	-	-	-	56,792,564	20,577,259	77,369,823
Occupancy Costs											
Customer Service	26,310	26,310	26,310	-	-	-	-	-	552,500	1,657,500	2,210,000
Occupancy Costs	199,037	199,037	-	-	-	-	-	-	2,583,113	0	2,583,113
Total	225,346	225,346	26,310	-	-	-	-	-	3,135,613	1,657,500	4,793,113
Finance Costs											
Financing Fees	-	-	-	-	-	-	-	-	15,655,108	0	15,655,108
Tarion and ECDI Bond Fees	-	-	-	-	-	-	-	-	7,365,264	0	7,365,264
Miscellaneous	29,911	29,911	29,911	-	-	-	-	-	2,093,784	29,911	2,123,695
Interest due on Purchaser Deposits									0	2,630,840	2,630,840
Interest earned on Purchaser Deposits									0	-2,155,591	-2,155,591
Mezzanine Interest									0	61,252,252	61,252,252
1st Mortgage Interest on Land Loan	-	-	-	-	-	-	-	-	6,163,818	0	6,163,818
Preconstruction Loan Interest	-	-	-	-	-	-	-	-	29,589,410	0	29,589,410
Interest on Construction Loan	1,404,868	1,458,429	1,033,996	-	-	-	-	-	67,720,599	0	67,720,599
Total	1,434,780	1,488,340	1,063,907	-	-	-	-	-	128,587,983	61,757,413	190,345,396
Contingency											
Development Contingency	227,508	227,508	227,508	-	-	-	-	-	15,510,539	20,000	15,530,539
Offsetting Income											
Occupancy Income	- 169,643	- 508,928	- 850,505	-	-	-	-	-	-9,597,033	0	-9,597,033
Total	- 169,643	- 508,928	- 850,505	-	-	-	-	-	-9,597,033	0	-9,597,033
Total Project Costs	10,986,826	10,701,101	11,390,927	-	20,577,259	-	-	-	954,327,269		
Appraisal Increase for Finance									0		
Total Projects Costs per Bank	10,986,826	10,701,101	11,390,927	-	20,577,259	-	-	-	954,327,269		
									0		
Cumulative Project Financing Required	932,235,241	942,936,342	954,327,269	954,327,269	974,904,528	974,904,528	974,904,528	974,904,528	0		
										26,816,397	Deferred Total

Gray Cells Should Have Deferred Amounts

YSL
- CASHFLOW -

Costs	Milestone Dates	CTD	Construction																					
	Month No.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
	Total		Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21
Sources of Project Funding																								
Cresford Equity	**112,500,000**	128,129,731	2,515,186	2,441,883	-20,586,800	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
First Land Mortgage	-	100,000,000	0	0	-100,000,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Second Land Mortgage	-		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mezzanine	**75,000,000**		0	0	75,000,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Purchaser Deposits	**153,609,495**	96,451,841	0	0	1,500,000	2,050,373	2,302,754	7,753,705	2,317,826	2,071,992	2,075,097	2,078,207	2,081,322	4,939,604	2,091,844	25,894,930	0	0	0	0	0	0	0	0
Construction	**613,217,774**		0	0	57,726,288	1,009,885	1,134,192	3,818,989	1,141,616	1,020,533	1,022,063	1,023,595	1,025,129	2,432,939	1,030,311	45,957,510	3,345,421	3,360,893	3,376,437	3,392,053	3,407,742	5,980,995	6,008,658	6,036,448
Total Project Funding Per Period		324,581,572	2,515,186	2,441,883	13,639,488	3,060,258	3,436,947	11,572,694	3,459,442	3,092,525	3,097,160	3,101,802	3,106,450	7,372,543	3,122,156	71,852,440	3,345,421	3,360,893	3,376,437	3,392,053	3,407,742	5,980,995	6,008,658	6,036,448
Check Funding Correct	**Yes**	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest Calculations on Mezzanine and Construction Finance																								
Mezzanine Financing																								
	136,252,252		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Period Beginning Balance			-	-	-	75,000,000	75,750,000	76,507,500	77,272,575	78,045,301	78,825,754	79,614,011	80,410,151	81,214,253	82,026,395	82,846,659	83,675,126	84,511,877	85,356,996	86,210,566	87,072,672	87,943,398	88,822,832	89,711,061
Advance in Period	75,000,000		-	-	75,000,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Accrued Interest	61,252,252		-	-	-	750,000	757,500	765,075	772,726	780,453	788,258	796,140	804,102	812,143	820,264	828,467	836,751	845,119	853,570	862,106	870,727	879,434	888,228	897,111
Period Ending Balance			-	-	75,000,000	75,750,000	76,507,500	77,272,575	78,045,301	78,825,754	79,614,011	80,410,151	81,214,253	82,026,395	82,846,659	83,675,126	84,511,877	85,356,996	86,210,566	87,072,672	87,943,398	88,822,832	89,711,061	90,608,171
Construction Financing																								
Paydown from First Condo Registration/Closing	389,725,148		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Period Beginning Balance			-	-	-	57,726,288	58,736,173	59,870,365	63,689,354	64,830,970	65,851,503	66,873,566	67,897,161	68,922,289	71,355,228	72,385,540	118,343,050	121,688,471	125,049,364	128,425,801	131,817,855	135,225,597	141,206,592	147,215,250
Interest	67,720,599		-	-	-	262,174	266,760	271,911	289,256	294,441	299,076	303,717	308,366	313,022	324,072	328,751	547,337	562,809	578,353	593,969	609,658	625,418	653,080	680,871
Advance in Period	613,217,774		-	-	57,726,288	1,009,885	1,134,192	3,818,989	1,141,616	1,020,533	1,022,063	1,023,595	1,025,129	2,432,939	1,030,311	45,957,510	3,345,421	3,360,893	3,376,437	3,392,053	3,407,742	5,980,995	6,008,658	6,036,448
Loan Carried Forwarad Amount			-	-	57,726,288	58,736,173	59,870,365	63,689,354	64,830,970	65,851,503	66,873,566	67,897,161	68,922,289	71,355,228	72,385,540	118,343,050	121,688,471	125,049,364	128,425,801	131,817,855	135,225,597	141,206,592	147,215,250	153,251,697
Purchaser Deposits Applied																								
Applied Current Month		96,451,841	-	-	1,500,000	2,050,373	2,302,754	7,753,705	2,317,826	2,071,992	2,075,097	2,078,207	2,081,322	4,939,604	2,091,844	25,894,930	-	-	-	-	-	-	-	-
Balance		96,451,841	96,451,841	96,451,841	97,951,841	100,002,214	102,304,968	110,058,673	112,376,499	114,448,491	116,523,588	118,601,795	120,683,117	125,622,721	127,714,565	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495
Maximum Amount	153,609,495																							
Release as Percentage of Costs	67%																							
Condominium Sales by Month																								
Launch			1																					
Per Month			780	20	20	20							-	-	-	-	-	-	-	-	-	-	-	-
No. of Sales																								
Aggregate Sales		-	781	801	821	841	841	841	841	841	841	841	841	841	841	841	841	841	841	841	841	841	841	841
Average Suite Price	1,037,325		810,150,719.08	20,746,497	20,746,497	20,746,497	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Aggregate			810,150,719	830,897,216	851,643,714	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211	872,390,211
Deposits - New Sales																								
Deposit - Due on Signing	35,000		27,335,000	700,000	700,000	700,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Deposit - Due on 60 days (to 10%)	10.0%				53,680,072	1,374,650	1,374,650	1,374,650	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Deposit - Due on 210 days	5%									40,507,536	1,037,325	1,037,325	1,037,325	-	-	-	-	-	-	-	-	-	-	-
Deposit - Due on 450 days	5%																	40,507,536	1,037,325	1,037,325	1,037,325	-	-	-
Deposits - Due on Occupancy	5%		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Month Total			27,335,000	700,000	54,380,072	2,074,650	1,374,650	1,374,650	-	40,507,536	1,037,325	1,037,325	1,037,325	-	-	-	-	40,507,536	1,037,325	1,037,325	1,037,325	-	-	-
Aggregate		0	27,335,000	28,035,000	82,415,072	84,489,722	85,864,371	87,239,021	87,239,021	127,746,557	128,783,882	129,821,207	130,858,532	130,858,532	130,858,532	130,858,532	130,858,532	171,366,068	172,403,392	173,440,717	174,478,042	174,478,042	174,478,042	174,478,042
Interest Due on Purchaser Deposits																								
Rate	0.25%																							
Total	2,630,840.30		5,695	5,841	17,170	17,602	17,888	18,175	18,175	26,614	26,830	27,046	27,262	27,262	27,262	27,262	27,262	35,701	35,917	36,133	36,350	36,350	36,350	36,350
Interest Earned on Purchaser Deposits																								
Deposits Held in Trust			- 69,116,841	- 68,416,841	- 15,536,769	- 15,512,492	- 16,440,597	- 22,819,652	- 25,137,478	13,298,066	12,260,294	11,219,412	10,175,415	5,235,811	3,143,967	- 22,750,963	- 22,750,963	17,756,573	18,793,897	19,831,222	20,868,547	20,868,547	20,868,547	20,868,547
Rate	1.00%		- 57,597	- 57,014	- 12,947	- 12,927	- 13,700	- 19,016	- 20,948	11,082	10,217	9,350	8,480	4,363	2,620	- 18,959	- 18,959	14,797	15,662	16,526	17,390	17,390	17,390	17,390
Total	2,155,591.30																							

YSL
- CASHFLOW -

Costs	24 Jul-21	25 Aug-21	26 Sep-21	27 Oct-21	28 Nov-21	29 Dec-21	30 Jan-22	31 Feb-22	32 Mar-22	33 Apr-22	34 May-22	35 Jun-22
Sources of Project Funding												
Cresford Equity	0	0	0	0	0	0	0	0	0	0	0	0
First Land Mortgage	0	0	0	0	0	0	0	0	0	0	0	0
Second Land Mortgage	0	0	0	0	0	0	0	0	0	0	0	0
Mezzanine	0	0	0	0	0	0	0	0	0	0	0	0
Purchaser Deposits	0	0	0	0	0	0	0	0	0	0	0	0
Construction	6,064,366	6,092,414	6,120,591	6,148,899	6,192,144	6,221,299	6,416,296	6,446,506	6,476,859	6,507,354	6,537,993	7,740,084
Total Project Funding Per Period	6,064,366	6,092,414	6,120,591	6,148,899	6,192,144	6,221,299	6,416,296	6,446,506	6,476,859	6,507,354	6,537,993	7,740,084
Check Funding Correct	-	-	-	-	-	-	-	-	-	-	-	-
Interest Calculations on Mezzanine and Construction Finan												
Mezzanine Financing												
	-	-	-	-	-	-	-	-	-	-	-	-
Period Beginning Balance	90,608,171	91,514,253	92,429,396	93,353,689	94,287,226	95,230,099	96,182,400	97,144,224	98,115,666	99,096,823	100,087,791	101,088,669
Advance in Period	-	-	-	-	-	-	-	-	-	-	-	-
Accrued Interest	906,082	915,143	924,294	933,537	942,872	952,301	961,824	971,442	981,157	990,968	1,000,878	1,010,887
Period Ending Balance	91,514,253	92,429,396	93,353,689	94,287,226	95,230,099	96,182,400	97,144,224	98,115,666	99,096,823	100,087,791	101,088,669	102,099,555
Construction Financing												
Paydown from First Condo Registration/Closing	-	-	-	-	-	-	-	-	-	-	-	-
Period Beginning Balance	153,251,697	159,316,063	165,408,477	171,529,068	177,677,967	183,870,112	190,091,410	196,507,707	202,954,213	209,431,072	215,938,426	222,476,418
Interest	708,789	736,837	765,014	793,322	836,567	865,722	895,014	925,224	955,576	986,071	1,016,710	1,047,493
Advance in Period	6,064,366	6,092,414	6,120,591	6,148,899	6,192,144	6,221,299	6,416,296	6,446,506	6,476,859	6,507,354	6,537,993	7,740,084
Loan Carried Forwarad Amount	159,316,063	165,408,477	171,529,068	177,677,967	183,870,112	190,091,410	196,507,707	202,954,213	209,431,072	215,938,426	222,476,418	230,216,502
Purchaser Deposits Applied												
Applied Current Month	-	-	-	-	-	-	-	-	-	-	-	-
Balance	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495
Maximum Amount												
Release as Percentage of Costs												
Condominium Sales by Month												
	-	-	-	7	7	7	7	7	7	7	7	7
	841	841	841	848	855	862	869	876	883	890	897	904
Average Suite Price	-	-	-	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274
Aggregate	872,390,211	872,390,211	872,390,211	879,651,485	886,912,759	894,174,033	901,435,307	908,696,581	915,957,855	923,219,129	930,480,403	937,741,677
Deposits - New Sales												
Deposit - Due on Signing	-	-	-	245,000	245,000	245,000	245,000	245,000	245,000	245,000	245,000	245,000
Deposit - Due on 60 days (to 10%)	-	-	-	-	-	481,127	481,127	481,127	481,127	481,127	481,127	481,127
Deposit - Due on 210 days	-	-	-	-	-	-	-	-	-	-	363,064	363,064
Deposit - Due on 450 days	-	-	-	-	-	-	-	-	-	-	-	-
Deposits - Due on Occupancy	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	245,000	245,000	726,127	726,127	726,127	726,127	726,127	1,089,191	1,089,191
	174,478,042	174,478,042	174,478,042	174,723,042	174,968,042	175,694,170	176,420,297	177,146,424	177,872,552	178,598,679	179,687,870	180,777,061
Interest Due on Purchaser Deposits												
Rate												
Total	36,350	36,350	36,350	36,401	36,452	36,603	36,754	36,906	37,057	37,208	37,435	37,662
Interest Earned on Purchaser Deposits												
Deposits Held in Trust	20,868,547	20,868,547	20,868,547	21,113,547	21,358,547	22,084,675	22,810,802	23,536,929	24,263,057	24,989,184	26,078,375	27,167,566
Rate	17,390	17,390	17,390	17,595	17,799	18,404	19,009	19,614	20,219	20,824	21,732	22,640
Total												

Costs	36 Jul-22	37 Aug-22	38 Sep-22	39 Oct-22	40 Nov-22	41 Dec-22	42 Jan-23	43 Feb-23	44 Mar-23	45 Apr-23	46 May-23	47 Jun-23
Sources of Project Funding												
Cresford Equity	0	0	0	0	0	0	0	0	0	0	0	0
First Land Mortgage	0	0	0	0	0	0	0	0	0	0	0	0
Second Land Mortgage	0	0	0	0	0	0	0	0	0	0	0	0
Mezzanine	0	0	0	0	0	0	0	0	0	0	0	0
Purchaser Deposits	0	0	0	0	0	0	0	0	0	0	0	0
Construction	6,605,219	6,636,318	10,077,555	10,125,003	10,938,826	10,991,241	11,043,907	11,096,826	11,149,998	11,203,425	11,257,108	11,311,049
Total Project Funding Per Period	6,605,219	6,636,318	10,077,555	10,125,003	10,938,826	10,991,241	11,043,907	11,096,826	11,149,998	11,203,425	11,257,108	11,311,049
Check Funding Correct	-	-	-	-	-	-	-	-	-	-	-	-
Interest Calculations on Mezzanine and Construction Finan												
Mezzanine Financing												
	-	-	-	-	-	-	-	-	-	-	-	-
Period Beginning Balance	102,099,555	103,120,551	104,151,756	105,193,274	106,245,207	107,307,659	108,380,735	109,464,543	110,559,188	111,664,780	112,781,428	113,909,242
Advance in Period	-	-	-	-	-	-	-	-	-	-	-	-
Accrued Interest	1,020,996	1,031,206	1,041,518	1,051,933	1,062,452	1,073,077	1,083,807	1,094,645	1,105,592	1,116,648	1,127,814	1,139,092
Period Ending Balance	103,120,551	104,151,756	105,193,274	106,245,207	107,307,659	108,380,735	109,464,543	110,559,188	111,664,780	112,781,428	113,909,242	115,048,335
Construction Financing												
Paydown from First Condo Registration/Closing	-	-	-	-	-	-	-	-	-	-	-	-
Period Beginning Balance	230,216,502	236,821,721	243,458,039	253,535,594	263,660,597	274,599,423	285,590,663	296,634,570	307,731,396	318,881,394	330,084,820	341,341,928
Interest	1,083,936	1,115,036	1,146,282	1,193,730	1,263,374	1,315,789	1,368,455	1,421,374	1,474,546	1,527,973	1,581,656	1,635,597
Advance in Period	6,605,219	6,636,318	10,077,555	10,125,003	10,938,826	10,991,241	11,043,907	11,096,826	11,149,998	11,203,425	11,257,108	11,311,049
Loan Carried Forwarad Amount	236,821,721	243,458,039	253,535,594	263,660,597	274,599,423	285,590,663	296,634,570	307,731,396	318,881,394	330,084,820	341,341,928	352,652,977
Purchaser Deposits Applied												
Applied Current Month	-	-	-	-	-	-	-	-	-	-	-	-
Balance	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495
Maximum Amount												
Release as Percentage of Costs												
Condominium Sales by Month												
	7	7	7	7	7	7	7	7	7	7	7	7
	911	918	925	932	939	946	953	960	967	974	981	988
Average Suite Price	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274
Aggregate	945,002,951	952,264,225	959,525,500	966,786,774	974,048,048	981,309,322	988,570,596	995,831,870	1,003,093,144	1,010,354,418	1,017,615,692	1,024,876,966
Deposits - New Sales												
Deposit - Due on Signing	245,000	245,000	245,000	245,000	245,000	245,000	245,000	245,000	245,000	245,000	245,000	245,000
Deposit - Due on 60 days (to 10%)	481,127	481,127	481,127	481,127	481,127	481,127	481,127	481,127	481,127	481,127	481,127	481,127
Deposit - Due on 210 days	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064
Deposit - Due on 450 days	-	-	-	-	-	-	363,064	363,064	363,064	363,064	363,064	363,064
Deposits - Due on Occupancy	-	-	-	-	-	-	-	-	-	-	-	-
	1,089,191	1,089,191	1,089,191	1,089,191	1,089,191	1,089,191	1,452,255	1,452,255	1,452,255	1,452,255	1,452,255	1,452,255
	181,866,253	182,955,444	184,044,635	185,133,826	186,223,017	187,312,208	188,764,463	190,216,718	191,668,973	193,121,227	194,573,482	196,025,737
Interest Due on Purchaser Deposits												
Rate												
Total	37,889	38,116	38,343	38,570	38,796	39,023	39,326	39,628	39,931	40,234	40,536	40,839
Interest Earned on Purchaser Deposits												
Deposits Held in Trust	28,256,758	29,345,949	30,435,140	31,524,331	32,613,522	33,702,713	35,154,968	36,607,223	38,059,478	39,511,732	40,963,987	42,416,242
Rate	23,547	24,455	25,363	26,270	27,178	28,086	29,296	30,506	31,716	32,926	34,137	35,347
Total												

YSL				1st Occupancy						
- CASHFLOW -				Occupancy						
	48	49	50	51	52	53	54	55	56	57
Costs	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24
Sources of Project Funding										
Cresford Equity	0	0	0	0	0	0	0	0	0	0
First Land Mortgage	0	0	0	0	0	0	0	0	0	0
Second Land Mortgage	0	0	0	0	0	0	0	0	0	0
Mezzanine	0	0	0	0	0	0	0	0	0	0
Purchaser Deposits	0	0	0	0	0	0	0	0	0	0
Construction	11,365,247	11,419,706	12,324,425	11,489,604	11,366,477	11,068,685	10,769,441	10,677,175	10,729,008	10,781,312
Total Project Funding Per Period	11,365,247	11,419,706	12,324,425	11,489,604	11,366,477	11,068,685	10,769,441	10,677,175	10,729,008	10,781,312
Check Funding Correct	-	-	-	-	-	-	-	-	-	-
Interest Calculations on Mezzanine and Construction Finan										
Mezzanine Financing										
	-	-	-	-	-	-	-	-	-	-
Period Beginning Balance	115,048,335	116,198,818	117,360,806	118,534,414	119,719,758	120,916,956	122,126,125	123,347,387	124,580,861	125,826,669
Advance in Period	-	-	-	-	-	-	-	-	-	-
Accrued Interest	1,150,483	1,161,988	1,173,608	1,185,344	1,197,198	1,209,170	1,221,261	1,233,474	1,245,809	1,258,267
Period Ending Balance	116,198,818	117,360,806	118,534,414	119,719,758	120,916,956	122,126,125	123,347,387	124,580,861	125,826,669	127,084,936
Construction Financing										
Paydown from First Condo Registration/Closing	-	-	-	-	-	-	-	-	-	-
Period Beginning Balance	352,652,977	364,018,224	375,437,930	387,762,355	399,251,959	410,618,436	421,687,121	432,456,562	443,133,737	453,862,745
Interest	1,689,796	1,744,254	1,798,973	1,858,028	1,946,353	2,001,765	2,055,725	2,108,226	2,160,277	2,212,581
Advance in Period	11,365,247	11,419,706	12,324,425	11,489,604	11,366,477	11,068,685	10,769,441	10,677,175	10,729,008	10,781,312
Loan Carried Forwarad Amount	364,018,224	375,437,930	387,762,355	399,251,959	410,618,436	421,687,121	432,456,562	443,133,737	453,862,745	464,644,057
Purchaser Deposits Applied										
Applied Current Month	-	-	-	-	-	-	-	-	-	-
Balance	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495
Maximum Amount										
Release as Percentage of Costs										
Condominium Sales by Month										
	7	7	7	7	7	7	7	7	7	7
	995	1,002	1,009	1,016	1,023	1,030	1,037	1,044	1,051	1,058
Average Suite Price	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274
Aggregate	1,032,138,240	1,039,399,514	1,046,660,788	1,053,922,062	1,061,183,336	1,068,444,610	1,075,705,884	1,082,967,158	1,090,228,432	1,097,489,707
Deposits - New Sales										
Deposit - Due on Signing	245,000	245,000	245,000	245,000	245,000	245,000	245,000	245,000	245,000	245,000
Deposit - Due on 60 days (to 10%)	481,127	481,127	481,127	481,127	481,127	481,127	481,127	481,127	481,127	481,127
Deposit - Due on 210 days	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064
Deposit - Due on 450 days	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064
Deposits - Due on Occupancy	-	-	-	7,928,616	7,928,616	7,928,616	7,928,616	-	-	-
	1,452,255	1,452,255	1,452,255	9,380,871	9,380,871	9,380,871	9,380,871	1,452,255	1,452,255	1,452,255
	197,477,992	198,930,247	200,382,501	209,763,372	219,144,243	228,525,113	237,905,984	239,358,239	240,810,494	242,262,749
Interest Due on Purchaser Deposits										
Rate										
Total	41,141	41,444	41,746	43,701	45,655	47,609	49,564	49,866	50,169	50,471
Interest Earned on Purchaser Deposits										
Deposits Held in Trust	43,868,497	45,320,752	46,773,006	56,153,877	65,534,748	74,915,618	84,296,489	85,748,744	87,200,999	88,653,254
Rate	36,557	37,767	38,978	46,795	54,612	62,430	70,247	71,457	72,667	73,878
Total										

	1st Closing										
	58	59	60	61	62	63	64	65	66	67	68
Costs	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	Mar-25
Cresford Equity	0	0	0	0	0	0	0	0	0	0	0
First Land Mortgage	0	0	0	0	0	0	0	0	0	0	0
Second Land Mortgage	0	0	0	0	0	0	0	0	0	0	0
Mezzanine	0	0	0	0	0	0	0	0	0	0	0
Purchaser Deposits	0	0	0	0	0	0	0	0	0	0	0
Construction	11,258,529	9,934,248	9,982,677	10,031,343	10,080,246	10,129,387	10,178,768	10,892,619	10,945,720	10,975,409	11,085,917
Total Project Funding Per Period	11,258,529	9,934,248	9,982,677	10,031,343	10,080,246	10,129,387	10,178,768	10,892,619	10,945,720	10,975,409	11,085,917
Check Funding Correct	-	-	-	-	-	-	-	-	-	-	-
	-		-	-	-	-		136,252,252	-	-	-
Period Beginning Balance	127,084,936	128,355,785	129,639,343	130,935,736	132,245,094	133,567,545	134,903,220	-	-	-	-
Advance in Period	-	-	-	-	-	-	-	-	-	-	-
Accrued Interest	1,270,849	1,283,558	1,296,393	1,309,357	1,322,451	1,335,675	1,349,032	-	-	-	-
Period Ending Balance	128,355,785	129,639,343	130,935,736	132,245,094	133,567,545	134,903,220	136,252,252	-	-	-	-
Paydown from First Condo Registration/Closing	-	428,213,036	-	-	-	-	- -	136,252,252	-	-	-
Period Beginning Balance	464,644,057	47,689,550	57,623,798	67,606,475	77,637,818	87,718,064	97,847,451	244,278,471	255,171,090	266,116,810	277,092,219
Interest	2,265,140	232,487	280,916	329,582	378,484	427,626	477,006	1,190,858	1,243,959	1,297,319	1,350,825
Advance in Period	11,258,529	9,934,248	9,982,677	10,031,343	10,080,246	10,129,387	10,178,768	10,892,619	10,945,720	10,975,409	11,085,917
Loan Carried Forwarad Amount	475,902,586	57,623,798	67,606,475	77,637,818	87,718,064	97,847,451	108,026,219	255,171,090	266,116,810	277,092,219	288,178,136
Applied Current Month	-	-	-	-	-	-	-	-	-	-	-
Balance	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495
	7	7	7	7	7	7	6	-	-	-	-
	1,065	1,072	1,079	1,086	1,093	1,100	1,106	1,106	1,106	1,106	1,106
Average Suite Price	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	7,261,274	6,223,949	-	-	-	-
Aggregate	1,104,750,981	1,112,012,255	1,119,273,529	1,126,534,803	1,133,796,077	1,141,057,351	1,147,281,300	1,147,281,300	1,147,281,300	1,147,281,300	1,147,281,300
Deposit - Due on Signing	245,000	245,000	245,000	245,000	245,000	245,000	210,000	-	-	-	-
Deposit - Due on 60 days (to 10%)	481,127	481,127	481,127	481,127	481,127	481,127	481,127	481,127	412,395	-	-
Deposit - Due on 210 days	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064
Deposit - Due on 450 days	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064
Deposits - Due on Occupancy	-	-	-	-	-	-	-	-	-	-	-
	1,452,255	1,452,255	1,452,255	1,452,255	1,452,255	1,452,255	1,417,255	1,207,255	1,138,522	726,127	726,127
	243,715,003	245,167,258	246,619,513	248,071,768	249,524,023	250,976,277	252,393,532	253,600,787	254,739,309	255,465,437	256,191,564
Total	50,774	51,077	51,379	51,682	51,984	52,287	52,582	52,833	53,071	53,222	53,373
Deposits Held in Trust	90,105,508	91,557,763	93,010,018	94,462,273	95,914,528	97,366,782	98,784,037	99,991,292	101,129,814	101,855,942	102,582,069
Rate	75,088	76,298	77,508	78,719	79,929	81,139	82,320	83,326	84,275	84,880	85,485

YSL - CASHFLOW -	2nd Occ		Registration	Final Closing							
	69	70	71	72	73	74	75	76	Financed	Deferred	Total
Costs	Apr-25	May-25	Jun-25	Jul-25	Aug-25	Sep-25	Oct-25	Nov-25			
Sources of Project Funding											
Cresford Equity	0	0	0	0	0	0	0	0	112,500,000		
First Land Mortgage	0	0	0	0	0	0	0	0	0		
Second Land Mortgage	0	0	0	0	0	0	0	0	0		
Mezzanine	0	0	0	0	0	0	0	0	75,000,000		
Purchaser Deposits	0	0	0	0	0	0	0	0	153,609,495		
Construction	10,986,826	10,701,101	11,390,927	0	0	0	0	0	613,217,774		
Total Project Funding Per Period	10,986,826	10,701,101	11,390,927	-	-	-	-	-	942,936,342		
Check Funding Correct	-	-	-	- -	20,577,259	-	-	-			
Interest Calculations on Mezzanine and Construction Finan											
Mezzanine Financing											
	-	-	-	-	-	-	-	-	136,252,252		
Period Beginning Balance	-	-	-	-	-	-	-	-			
Advance in Period	-	-	-	-	-	-	-	-	75,000,000		
Accrued Interest	-	-	-	-	-	-	-	-	61,252,252		
Period Ending Balance	-	-	-	-	-	-	-	-	6,261,477,492		
Construction Financing											
Paydown from First Condo Registration/Closing	-	-	97,764,364	-	-	-			389,725,148		
Period Beginning Balance	288,178,136	299,164,962	212,101,700	223,492,626	223,492,626	223,492,626	223,492,626	223,492,626			
Interest	1,404,868	1,458,429	1,033,996	-	-	-	-	-	67,720,599		
Advance in Period	10,986,826	10,701,101	11,390,927	-	-	-	-	-	613,217,774		
Loan Carried Forwarad Amount	299,164,962	309,866,064	223,492,626	223,492,626	223,492,626	223,492,626	223,492,626	223,492,626			
Purchaser Deposits Applied											
Applied Current Month	-	-	-	-	-	-	-	-	57,157,654		
Balance	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495	153,609,495			
Maximum Amount											
Release as Percentage of Costs											
Condominium Sales by Month											
	-	-	-	-	-	-	-	-			
	1,106	1,106	1,106	1,106	1,106	1,106	1,106	1,106			
Average Suite Price	-	-	-	-	-	-	-	-			
Aggregate	1,147,281,300	1,147,281,300	1,147,281,300	1,147,281,300	1,147,281,300	1,147,281,300	1,147,281,300	1,147,281,300			
Deposits - New Sales											
Deposit - Due on Signing	-	-	-	-	-	-	-	-	38,710,000		
Deposit - Due on 60 days (to 10%)	-	-	-	-	-	-	-	-	76,018,130		
Deposit - Due on 210 days	363,064	363,064	311,197	-	-	-	-	-	57,364,065		
Deposit - Due on 450 days	363,064	363,064	363,064	363,064	363,064	363,064	363,064	363,064	54,511,422		
Deposits - Due on Occupancy	7,611,471	7,611,471	7,611,471	-	-	-	-	-	54,548,877		
	8,337,599	8,337,599	8,285,732	363,064	363,064	363,064	363,064	363,064	281,152,494		
	264,529,163	272,866,762	281,152,494	281,515,558	281,878,621	282,241,685	282,604,749	282,967,813			
Interest Due on Purchaser Deposits											
Rate											
Total	55,110	56,847	-	-	-	-	-	-	2,630,840		
Interest Earned on Purchaser Deposits											
Deposits Held in Trust	110,919,668	119,257,267	127,542,999	127,906,063	128,269,126	128,632,190	128,995,254	129,358,318			
Rate	92,433	99,381	-	-	-	-	-	-	2,155,591		
Total											

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Date Cash Flow Starts	Sep-19	2

1. Project Timing

Timing	Month Start	Month End	Below Grade Factor	Above Grade Factor	Marketing/Occ. Factor
Pre-development	1	3			3
Construction Period to Occupancy	4	50	10	36	
Occupancy Period	51	70			19
Registration	71	71			
Total Project Timeline	**No. of Months**	**Notes**			
Project Period Remaining	70				
Full Construction Period	67				
Marketing to Construction End (Full Project Period)	71				
Pre-Development to Occupancy	51				
Number of Years of Project (Rounded Down)	6	The full Project term rounded down			
Marketing to Construction Start	-2				
Land Purchase Close	1	31-Oct-18			

2. Building Statistics

Site Area	3,764.7	40,522		
Building Statistics	**Sq. M.**	**Sq. Ft.**	**Conversion to Sq. M.**	**Factor**
Total GCA - Above Grade	103,915	1,118,532	10.763911	
Total GCA - Below Grade	25,280	272,112	10.763911	800
Total GFA - Above Grade	93,779	1,009,429	10.763911	
Total GFA - Below Grade	22,471	241,876	10.763911	711
Total NSA - Above Grade	83,101	894,493	10.763911	
Residential Component	**Sq. M.**	**Sq. Ft.**	**Conversion to Sq. M.**	
Total GFA - Residential Condo + Rental	75,150	808,908	10.763911	
Total GFA - Residential Condo	75,150	808,908	10.763911	
			10.763911	
Total NSA - Residential Condo + Rental	67,288	724,283	10.763911	
Total NSA - Residential Condo	67,288	724,283	10.763911	
	0	0	10.763911	
Commercial Component	**Sq. M.**	**Sq. Ft.**	**Conversion to Sq. M.**	
Total GFA A/G- Retail + Office	18,629	200,521	10.763911	
Total GFA A/G- Retail	9,782	105,293	10.763911	
Total GFA A/G - Ryerson	6,682	71,924	10.763911	
Total GFA A/G- Office	2,165	23,304	10.763911	
Total NSA - Retail + Office	15,813	170,210	10.763911	
NSA - Retail Below Grade	910	9,795	10.763911	
NSA - Retail At Grade	1,575	16,953	10.763911	
NSA - Retail 2nd Fl	2,950	31,754	10.763911	
NSA - Retail 3rd Fl	1,382	14,876	10.763911	
NSA - Ryerson	6,747	72,624	10.763911	
NSA - Office	2,249	24,208	10.763911	

Floors	Amount			
Floors Above Grade	85			
Floors Below Grade	4			
Units/Parking/Lockers	**Amount**	**Unit**	**Factor %**	**Notes**
Total Number of Res Condo Units	1,106			
No. of 1 Bed Res Condo Units	470		42%	
No. of 2 Bed Res Condo Units	636		58%	
Total Number of Condo + Rental Units	1,106			
Total No. of 1 Bedroom Units	470		42%	
Total No. of 2+ Bedroom Units	636		58%	
Average Unit Size	655	sq. ft.		
Efficiency - Condo Residential	89.538%	Percentage		
Number of Parking Spaces	340		30.7%	
Number of Residential Saleable Parking Stalls	236		27.4%	
Number of Lockers	494		44.70%	

3. Revenue Assumptions

Revenue (Before Incentives)	Price PSF	No. of Units at Launch or Per Month	Factor						
Residential Units									
Price PSF for Units at Launch	$1,551	830	75%						
No. of Units Needed to hit Pre-Sales by Construction Period Assumption	$1,551	7	70%						
Parking and Lockers	**Price per Unit**								
Price for Parking	$120,000								
Price for Lockers	$7,500								
Commercial Components	**Price PSF**	**Sq. Ft.**	**Revenue**	**Month - Sale**	**Month - Close**	**Net Rent PSF**	**Vacancy Allowance**	**Cap Rate**	**Value**
Retail Below Grade	$526	9,795	$5,155,347	71	71	$25	0%	4.75%	$5,155,347
Retail At Grade	$3,059	16,953	$51,856,724	71	71	$130	0%	4.25%	$51,856,724
Retail 2nd Fl	$889	31,754	$28,225,367	71	71	$40	0%	4.50%	$28,225,367
Retail 3rd Fl	$842	14,876	$12,526,926	71	71	$40	0%	4.75%	$12,526,926
Ryerson	$379	72,624	$27,500,329	59	59		0%	7.00%	$0
Office	$800	24,208	$19,366,429	59	59		2%	4.50%	$0
Total Commercial		170,210	$144,631,121						$97,764,364
									574.375901

Retail blended psf	$1,332.35
Office blended psf	484.00

4. Land and Appraisal Surplus

Base Land Price	Amount			Trial Balance No.	Cost To Date	Month Start	Month End
Price per GFA							
Base Land Value	$157,500,000			11000	195,000,000	1	1
Price of Development Lands	**Amount**	**Price PSF Amount**	**Base GFA**				
Base Price	$157,500,000	$156.03	1,009,429				
Add' Price	**Amount**	**Price PSF Amount**	**Extra Density**	**Appraisal Surplus**	**Month Start**		
Appraisal Surplus				$37,500,000	1		
	$157,500,000						

5. Marketing and Sales Assumptions

Marketing	Amount	Percentage				
Agency Rate		0.00%				
In-house sales staff to construction	1					
In-house sales staff during/post-construction	1					
Bonus per deal signed	0					
Sales to Construction		**Percentage**				
Percentage of Co-op Broker Sales		100.0%	**Month Start**	**Month End**		
Total Sales Commissions Owed		4.5%	1	3		
Sales Commissions due in 30 days		2.0%				
Sales Commissions due at construction		0.5%				
Sales Commissions due at Final Closing		2.0%				
Sales Post-Construction						
Percentage of Co-op Broker Sales		100.0%	**Month Start**	**Month End**		
Total Sales Commissions Owed		4.5%	4	70		
Sales Commissions due in 30 days		2.0%				
Sales Commissions due at construction		0.5%				
Sales Commissions due at Final Closing		2.0%				
Commercial Sales Commission	**Value Amount**	**Percentage at Sale**	**Month - Sale**	**Percentage at Close**	**Month - Close**	**Total Commission**
Retail	97,764,364	1.0%	35	1.5%	71	2.5%
Office	19,366,429	1.0%	35	1.5%	71	2.5%

Revenue, Price Increases, Incentives, and GST/HST

6. Revenue Achieved to-date

Revenue	as at	September 28, 2022
Residential Units		
Current Unit Sales	**Amount**	
No. of Units Sold		
Total Sq. Ft. Sold		
Total Revenue		
Price PSF Sold		
Remaining Unsold Units	**Amount**	
Unsold Units	1,106	
Total Sq. Ft. Unsold	724,283	
Total Revenue Unsold	$1,123,656,300	
Incentives	$0	
Profits on Upgrades	$1,780,660	

Parking	
Current Parking Space Sales	**Amount**
No. of Parking Spaces Sold	
Total Revenue	
Price Per Sold Parking Space	
Remaining Unsold Parking Spaces	**Amount**
Unsold Parking Spaces	166
Total Revenue Unsold	$19,920,000
Price per Unsold Parking Space	$120,000

Locker	
Current Locker Unit Sales	**Amount**
No. of Locker Units Sold	
Total Revenue	
Price per Sold Locker	
Remaining Unsold Locker Units	**Amount**
Unsold Locker Units	494
Total Revenue Unsold	$3,705,000
Price per Unsold Locker Unit	$7,500

7. Future Price Increases/Incentives

Future Price Increases	Amount	Percentage
Percentage of Unsold Units at Construction		
Total Sq. Ft. of Units which have a Future Price Increase	0	0.00%
Average Price PSF for Unsold Units at Construction	$1,551	
Percentage Increase for Future Prices	$1,551	0.00%
TOTAL Price Increase	$0	
Incentives	**Amount**	**Percentage**
Incentive Factor		0.0000%
Total Incentive on all Gross Revenue (Units/Parking/Unit Increases)	-11,210,151	

Revenue Figures	Amount	
Total Gross Revenue Excluding Price Increases/Incentives	$1,147,281,300	
Total Gross Revenue Including Price Increases	$1,147,281,300	
Total Gross Revenue Including Price Increases and Incentives	$1,136,071,149	
Average Unit Price	**Amount**	**$/PSF**
Average Unit Price (Includes Parking/Locker/Price Increase)	1,037,325	1,584
Average Unit Price (per above but nets out incentives)	1,027,189	1,569

8. GST/HST

GST/HST	Amount
Total GST/HST	$107,208,185

Cost Information

9. Land Transfer Tax and Closing Costs

Land Transfer Tax and Closing Costs			Total	Trial Balance No.	Cost To Date
Land Transfer Tax - Actual			6,472,758		6472758
Redemption Premium - Actual			12,673,906		12,673,906
Legal Fees and Acquisition Costs				11000	
			19,146,664		19146664

Payment Structure	Month Start	Month End	Monthly Amount
Payment 1	1	1	19,146,664
	0	0	0

10. Land - Development Levies and Building Permits Nov 2020 Rates 1.15

Land - Development Levies and Building Permits	Rate (per sq. m)	Quantity	Total	Trial Balance No.	Cost To Date	Notes
Inflation Rate	25%					
Building Permit Below Grade (sq. m)	9.36	25,280	236,684			
Building Permit Above Grade (sq. m)	21.45	103,915	2,228,977			
Building Permit per Unit	65.10	1,106	72,001			
Amenity (sq. m)	35.76	2,532	90,551			
Other Permits			1,500,000	11320	669,554	
Building Permit - Office Shell (sq. m)	22.49	8,847	198,947			
Building Permit - Retail Shell (sq. m)	18.21	9,782	178,155			
Development Charges - 1 bedroom (as at Nov 2020)	28,054	699	19,609,746	11260		
Development Charges - 2 bedroom (as at Nov 2020)	42,644	407	17,356,108	11220		
Education Charges - Residential - July 2018	1,866	1,106	2,064,073			
Education Charges - Commercial - July 2018	1.34	170,210	227,655			
Development Charges - Commercial (at grade space only, half of increase)	407	1,575	641,262			
Section-37 Agreement			7,030,000		39,000	
Public Art	0%		850,000			
Parkland Dedication - Residential & Commercial			$18,000,000			
			70,284,159		708,554	

Payment Structure	Month Start	Month End	Monthly Amount	Input Factor (Percentage)
Payment 1 (at construction)	15	15	68,725,605	100%
Payment 2 (5 Months After Construction)	11	11	0	0%
Payment 3 (Public Art)	50	50	850,000	

11. Hard Construction Cost

Construction	Rate	Total GFA	Total	Trial Balance No.	Cost To Date
Hard Construction Cost					
Hard Construction Cost - Office TI Allowance	50	24,208	1,210,402		
Hard Construction Cost - Ryerson TI Allowance	50	72,624	3,631,205		
Hard Construction Cost Total (including TI Allowance)	348	1,009,429	351,782,028		
Hard Construction Cost - Actual	348	1,009,429	351,782,028		1,462,700.0
CM Fee	3%		10,381,350		3,230,792.0
Total			**362,163,378**		4,693,492.0
Contingency	**Rate**	**Construction Cost**	**Total**	**Trial Balance No.**	**Cost To Date**
Contingency	7%	351,782,028	23,813,719		
Contingency	7%	351,782,028	23,813,719	19200	
Payment Structure	**Month Start**	**Month End**	**Monthly Amount**	**Split**	**%**
Contingency (Monthly)	40	71	744,179		
	4	20	1,704,995	$28,984,919	8%
	21	37	4,262,488	$72,462,299	20%
Hard Construction (Monthly)	38	71	7,672,479	$260,864,275	72%
				$362,311,493	100%

12. Site Connections/Exclusions

Site Connections/Exclusions			Total	Trial Balance No.	Cost To Date	NXT II Amount
Landscaping Costs						
Connections - Water			1,782,464		132,516	663,517
Connections - Hydro Permanent						
Connections - Hydro Temporary Service - Included in Construction			396,400			
FF&E			3,000,000		0	633,912
Heritage			6,350,000	12300	3,293,637	
Hoarding			800,000	12250/12010	0	
Soil Remediation			700,000		0	
Staging Permit (O'Keefe Lane)			3,016,000		0	
					0	
tiebacks			2,525,000		2,475,000	
Other - Predevelopment Fees Paid with Previous Partner						
Cresford Construction Management	**Hard Cost**	**Percentage of Cost**				
Construction Management Fee	351,782,028	0.8%	2,656,896	12500	667169	
			21,226,760		6,568,322	

Payment Structure	Month Start	Month End	Monthly Amount	
Payment 1	4	71	171,448	*FF&E deferred

13. Design Architect

Design Architect and Interior Design Consultant	Area (sf)	Per sf Factor	Total	Trial Balance No.	Cost To Date	NXT II Amount
Architect	1,009,429	8.12	8,200,000			1,658,500
Interior Design			820,000			46,300
			9,020,000		3,274,791	

Payment Structure	Month Start	Month End	Monthly Amount	Pre- or Construction Factor	Total Value
Payment 1 (Monthly - Pre-Development)	2	3	617,605	50%	4,510,000
Payment 2 (Monthly - During Construction)	4	71	66,324	50%	4,510,000

14. Structural Engineer

Structural Engineer		Total	Trial Balance No.	Cost To Date	NXT II Amount
Contract - Drawings/Specifications		1,173,698	13210	393,398	375,000
Detailing Rebar					
Site Service/Meetings					
Technical Audit of Garage					
Extras					
Disbursements			13219		
		1,173,698		393,398	

Payment Structure	Month Start	Month End	Monthly Amount	Pre- or Construction Factor	Total Value
Payment 1 (Monthly - Pre-Development)	2	3	96,726	50%	586,849
Payment 2 (Monthly - During Construction)	4	71	8,630	50%	586,849

15. Mechanical and Electrical Engineer

Mechanical and Electrical Engineer		Total	Trial Balance No.	Cost To Date	NXT II Amount
Contract - Drawings and Specifications		820,000	11730	414,076	398,340
Site Visits					
Shop and as Built					
Extras			13220		
Disbursements			13225		
MV Shore - Preliminary T&M basis			13226		
		820,000		414,076	

Payment Structure	Month Start	Month End	Monthly Amount	Pre- or Construction Factor	Total Value
Payment 1 (Monthly - Pre-Development)	2	3	18,462	55%	451,000
Payment 2 (Monthly - During Construction)	4	71	5,426	45%	369,000

16. Planning Consultant/Legal

Planning Consultant		Total	Trial Balance No.	Cost To Date	NXT II Amount
Contract		847,691	13400	847,691	125,000
Municipal/Civil			13270		
Other			1325		
OMB			13370		
		847,691		847,691	

Payment Structure	Month Start	Month End	Monthly Amount	Pre- or Construction Factor	Total Value
Payment 1 (Monthly - Pre-Development)	2	3	0	100%	847,691
Payment 2 (Monthly - During Construction)	4	71	0	0%	0

17. Secondary Consultants

Secondary Consultants	Rate	Units	Total	Trial Balance No.	Cost To Date	NXT II Amount
Interior Design (INCLUDED with ARCHITECT COSTS)						
Environmental				13240		12,500
Geotechnical				13330		2,500
Dewatering						
Soil and Fire						
Testing				13290		
Elevator				13320		
Code				13250		
Civil Engineering						43,661
SWM				13340		
Shoring				13750		69,600
Shoring Monitoring				13760		
Wind Study				13360		
Acoustical				13350		5,000
Transportation						5,781
Tieback				13380		
TTC Review				13380		
Surveyor				13520		115,000
Surveyor Condominium Registration				13540		
Surveyor Title				13560		
Landscape Architect				13610		20,000
Landscape Architect Disbursements				13615		
Printing				13900		25,000
Bulletin 19						143,600
OTHER (Inclusive of above)	3,867	1,106		133900/13275/13800		45,000
			4,277,051		1,809,083	

Payment Structure	Month Start	Month End	Monthly Amount	Pre- or Construction Factor	Total Value
Payment 1 (Monthly - Pre-Development)	2	3	164,721	50%	2,138,526
Payment 2 (Monthly - During Construction)	4	71	31,449	50%	2,138,526

18. Legal and Administration Costs

18a. Legal Fees - Finance

Legal and Administration			Total	Trial Balance No.	Cost To Date
Legal Fees - Finance					
1st Land Mortgage				14160	
2nd Land Mortgage					
Mezzanine			275,000	14170	
Construction Mortgage			275,000	14140	
(Deposit Insurer)			50,000		
			600,000		526,697

Payment Structure	Month Start	Month End	Monthly Amount
Payment 1 (Land)	1	1	0
Payment 2 (Mezz)	4	4	0
Payment 3 (Construction/Lombard/Other)	2	2	73,303

18b. Legal Fees - Misc

Legal Fees - Misc			Total	Trial Balance No.	Cost To Date
Legal Fees - Misc			1,500,000	14100/14250	1,114,817

Payment Structure	Month Start	Month End	Monthly Amount	Pre- or Construction Factor	Total Value
Payment 1 (Monthly - Pre-Development)	2	3	42,592	80%	1,200,000
Payment 2 (Monthly - During Construction	4	71	4,412	20%	300,000

18c. Legal Fees - Closing

Legal Fees - Closing	Per Unit	No. of Units	Total	Trial Balance No.	Cost To Date
Closing Legal Fees	1,000	1,106	1,106,000	19350	0

Payment Structure	Month Start	Month End	Monthly Amount
Payment 1	69	71	16,507

19. Administration Fees/Development Fees

Administration Fees/Development Fees	Per Unit Factor	No. of Units	Total	Trial Balance No.	Cost To Date
Admin/Development Fees	26,876	1,106	29,725,000	14500/14770	7,650,001

Payment Structure	Month Start	Month End	Monthly Amount	Pre- or Construction Factor	Total Value
Payment 1 (Three Month Accrual)					
Payment 2 (Monthly - Pre-Development)					
Payment 3 (Monthly - Construction)	2	71	315,357		22,074,999

20. Insurance

Insurance - General Liability			Total	Trial Balance No.	Cost To Date
General Liability				14410	2,870,343
Insurance - Builders Risk	**Hard Cost + Contingency**	**Design Cost**	**Rate/$1,000/Monthy**	**No. of Months**	**Total Value**
Builders Risk	375,595,747	16,138,440	0.12	66	3,110,449

Payment Structure	Month Start	Month End	Monthly Amount
Payment 1 (At Construction)	4	4	3,110,449

21. Tarion Fees

Tarion	Rate	No. of Units or Year	Total	Trial Balance No.	Cost To Date
Unit Enrolment Fee	1367	1,106	1,511,515	14460	1600
Provision for price increases etc & annual fees	1,000		103,085		0
					0
			1,614,600		1600
Payment Structure	**Month Start**	**Month End**	**Monthly Amount**		
Payment 1 (At Construction)	4	4	1,614,600		

22. Realty Taxes

Realty Taxes	Assessed Value	Rate	Total Annual Rate	No. of Months to Pay	Total	Trial Balance No.	Cost To Date
Realty Tax Assessment (Residential)	$180,439,184	1.3%	2,345,709	70	13,683,305	0	6639178
				70	0		
					13,683,305		6639178
Payment Structure	**Month Start**	**Month End**	**Monthly Amount**	**Pre- or Construction Factor**	**Total Value**	To occupancy rev tab	
Payment 1 (Monthly - Pre-Development)	2	70	102,089	N/A	13,683,305		
Payment 2 (Monthly - During Construction	4	71	0	N/A	0		
					13,683,305		

23. Marketing - Advertising/Agency Fees

Marketing						
Marketing - Advertising/Agency Fees	**No. of Months**	**Amount Per Month**	**Total**	**Trial Balance**	**Cost To Date**	**NXT II Amount**
Media Advertising	71	74,441	5,806,410		3,557,791	
Marketing & Advertising Predevelopment			2,072,034			
Magazines						
Ad Agency Fees						
Ad Agency Lump Payment						
Public Relations						
Marketing Fees		1.32%	16,699,371		12,698,105	
			24,577,815		16,255,896	1,060,062
Payment Structure	**Month Start**	**Month End**	**Monthly Amount**	**Pre- or Construction Factor**	**Total Value**	
Payment 1 (Monthly - Pre-Development)	2	3	351,112		702,223	
Payment 2 (Monthly - During Construction	4	71	112,054		7,619,695	

24. Marketing - Presentation Materials

Marketing - Presentation Materials		Total	Trial Balance No.	Cost To Date	NXT II Amount
Scale Models		0			
Renderings		0			
Presentation Materials		0			
Presentation - Floorplans					
Presentation - Stationary					
Presentation - Kiosk, View Photography					
Presentation - Website					
Extra Presentation Materials					
		0		0	552,669

Payment Structure	Month Start	Month End	Monthly Amount	Pre- or Construction Factor	Total Value
Payment 1 (Monthly - Pre-Development)	-1	3	0	50%	0
Payment 2 (Monthly - During Construction	4	71	0	50%	0

25. Marketing - Signage

Marketing - Signage		Total	Trial Balance No.	Cost To Date	NXT II Amount
Signage		250,000	15200	0	110,359
A Frames			15205	0	
		250,000		0	

28. Marketing - Sales Office/Model Suite Construction

Marketing - Sales Office Construction	Rent per Month	Total No. of Months		Total	Trial Balance No.	Cost To Date
Sales Office/Model Suite Construction				1,000,000		0
Landscaping and Hoarding						0
Sales Office Finishes - BG					15440	0
Sales Office Finishes - Misc.					15450	0
Sales Office Design Fee/Consultants					15460	0
Model Suite Finishes					15480	0
Sales Office Rent	10,000	70		700,000		
				1,700,000		1,690,000

Payment Structure	Month Start	Month End	Monthly Amount	Pre- or Construction Factor	Total Value
Month After first month	2	71	143	N/A	10,000
First Month	0	0	0		0

29. Marketing - Sales Office Operations

Marketing - Sales Office Operations	Number of Months	Per Month		Total	Trial Balance No.	Cost To Date
Salaries	70	12,000		840,000	15600/15470	
Lease				0	15610	
Communications					15620	
Cleaning					15630	
Utilities					15640	
General Administration	70	4,500		315,000	15650	
Land and Snow					15670	
				1,155,000		0

Payment Structure	Month Start	Month End	Monthly Amount	Pre- or Construction Factor	Total Value
Payment 1 (Monthly - Pre-Development)	2	3	16,500		33,000
Payment 2 (Monthly - During Construction	4	71	16,500		1,122,000

30. Operating Period Costs

Operating Costs		Factor Per SF	Total	Trial Balance No.	Cost To Date
Operating Costs Total	see occupancy tab for details	0.667	2,583,113	16100	0
			2,583,113		
			2,583,113		

31. Customer Service

Customer Service	Amount		Total	Trial Balance No.	Cost To Date
From 2 Months Prior to Occupancy to Registration					
No. of People	4				
No. of Months	6				
Rate per Person	6,600		158,400		
1 Year After Registration					
No. of People	2				
No. of Months	12				
Rate per Person	6,600		158,400		
Overall Budet					
Per Unit	1,998				
Total	1,106		2,210,000		
			2,210,000		

Payment Structure	Month Start	Month End	Monthly Amount	Occupancy to Reg Factor	Total Value
Payment 1 (Monthly - Pre-Development)	51	71	26,310	25%	552,500

32. Finance - Construction Debt

Financing						
Construction Debt	**Amount**	**Coupon**				
Coupon		5.45%				
Lending Benchmark Rate (Prime)		3.70%				
Spread Above Prime		1.75%				
Inflation of Rate Per Year		0.10%				
Date Construction Debt is Advanced	**Date**	**Month Start**	**Month End**			
Date Construction Debt is Advanced	5.45%	4	15			
	5.55%	16	27			
	5.65%	28	39			
	5.75%	40	51			
	5.85%	52	63			
	5.85%	64	71			
	6.05%					
Date Construction Debt is Advanced		1	71			
Construction Debt Fee	**Total Loan Value**	**Loan Value Rounded**	**Percentage**	**Total**	**Trial Balance No.**	**Cost To Date**
Actual - Current & Previous	623,545,136		0.75%	5,976,589		5976589
Cashflow Construction Debt Amount (Influx)	613,217,774					

33. Finance - Mezzanine Debt

Mezzanine Debt	Amount	Coupon				
Pre-Construction Coupon		12.0%				
During Construction Coupon		12.0%				
Date Mezzanine is Advanced	**Date**	**Month Start**	**Month End**	**Accrued Interest Month End**		
Date Mezzanine is Advanced		4	64	72		
Mezzanine Debt Fee	**Total Loan Value**	**Loan Value Rounded**	**Percentage**	**Total**	**Trial Balance No.**	**Cost To Date**
Commitment Fee	75,000,000	75,000,000	4.1%	3,100,000		3100000
Cashflow Mezzanine Debt Amount (Influx)	75,000,000					
Mezzanine Paydown/Recapture Structure	**Month Start**	**Month End**	**Max Amount**	**Amount Prior to Recapture**	**% of Mezz & Equity**	**Recapture Amount**
Mezz Recapture or Further Advance at Construction	4	64	75,000,000	75,000,000	19%	0

33a Finance - Paydown from Commercial Component Sale - Split Between Construction Debt and Mezzanine Debt

Debt	Percentage
Construction Debt	100%
Mezzanine Debt	0%

34. Finance - 1st Mortgage Land Debt

Land Debt			
1st Mortgage	**Amount**	**Coupon**	**LTV Percentage**
Principal and Coupon	100,000,000	7.25%	63.5%

Term	Date	Month No.	.			
1st Mortgage Date of Advance and Term	To-be Updated	To-be Updated	2			
Payment	**Month Start**	**Month End**	**Monthly Payment**	**Total Payment**		
Total Monthly Payment	1	3	604,167	6,163,818		
1st Mortgage Debt Fee	**Total Loan Value**	**Loan Value Rounded**	**Percentage**	**Total**	**Trial Balance**	**Cost To Date**
Fees & Interest Preconstruction Loans	100,000,000	N/A	0.0%	6,578,519		4,955,485

Payment Structure	Month Start	Month End	Monthly Amount	Total Value	Trial Balance	Cost To Date
Interest Payments	1	3	604,167	6,163,818		4,955,485
Pay down of 1st Mortgage	4	4	-100,000,000	- Paydown of 1st Mortgage		

35. Finance - Other

VTB & Construction Loan (Prior Financing)	Amount	Coupon	LTV Percentage			
VTB Actual	7,514,605					
Other Loan Actual	22,074,805					
Term	**Date**	**Month No.**	**Total Term**			
Payment	**Month Start**	**Month End**	**Monthly Payment**	**Total Payment**		
2nd Mortgage Debt Fee	**Total Loan Value**	**Loan Value Rounded**	**0**	**Total**	**Trial Balance**	**Cost To Date**
						0

Payment Structure	Month Start	Month End	Monthly Amount	Total Value	Trial Balance	Cost To Date
Interest Payments	4	3	0	0		
Paydown of 2nd Mortgage	4	4		- Paydown of 2nd Mortgage		

36. Finance - Equity

Equity Timing and Recapture Structure	Month Start	Month End	% of Profit		
Equity Timing	1	4	50%		
Equity Recapture Structure	**Month Start**	**Month End**	**Max Amount**	**Amount Prior to Recapture**	**Recapture Amount**
Equity Draw Down/Recapture	4	4	112,500,000	133,086,800	-20,586,800

37. Marketing and ECDI Bond Fees 0

Marketing and ECDI Bond Fees	Rate Per Unit	No. of Units	Amount	Rate		Total	Trial Balance No.	Cost To Date
ECDI Commitment Fee						25,000		
Tarion Bond	20,000	1,106	22,120,000	1.00%		1,327,200		
ECDI Bond			131,489,495	0.77%		6,038,064		
								0

Payment Structure (of Tarion/ECDI Bond Fees, Not Commitment Fee)	Month Start	Month End	Monthly Amount
Payment 1	4	4	7,365,264

38. Other Commitment Fees

Other Commitment Fees		Total	Trial Balance No.	Cost To Date
Misc. Commitment Fees		10,000		

39. Finance - Misc.

Finance - Misc.		Rate Per Month or Amount	No. of Months / Per Unit	Total	Trial Balance No.	Cost To Date
					17410	
Project Monitor		8,309	66	548,410	17420	
					14550	
Letter of Credit				562,500	17160/17250	
					17350	
					17790/17795	
Administration - Misc.		1,106	916	1,012,785	17280	
					14790	
				2,123,695		0

Payment Structure	Month Start	Month End	Monthly Amount		Total Value
Payment 1 (Monthly - Pre-Development)	1	71	29,911		2,123,695

40. Deposit Structure (BEING USED IN MODEL)

Deposits		Percentage		
Pre-Sales at Construction		80%	$898,925,040.00	153,609,495.00
First Deposit Draw During Construction		89,892,504		
Percentage of Deposits Due at Occupancy		25%		
Percentage of Deposits Released per Construction Advance		75%		
Deposits Received To-Date	**Amount**	**Date**		
Amount on Hand				

Purchaser Deposit Interest	Prime or BoC Rate	Less 2%	Coupon	Total Interest	Trial Balance No.	Cost To Date
Interest Earned on Deposits (Prime)	3.7%	2%	1%			
Interest Due to Purchaser (BoC)	1%	2%	0.25%	2630840.299		

41. Development Contingency

Development Contingency	Percentage of Soft Costs	Total Soft Costs		Total
Value of Development Contingency	11%	137,373,414		15,530,539

Payment Structure	Month Start	Month End	Monthly Amount	Total Value	Trial Balance	Cost To Date
Payment 1	1	3	20,000	60,000		0
Payment 2	4	71	227,508	15,470,539		

42. Occupancy Income

Occupancy Income		Total	Trial Balance No.	Cost To Date
Total	see occupancy tab for details	9,597,033		0
		9,597,033		0

43. Recoverables

Recoverables	No. of Units	Caps per Unit		Total	Trial Balance No.	Cost To Date
Development Charge - 1 Bedroom	470	10,800		5,076,000		
Development Charge - 2 Bedroom	636	12,800		8,140,800		
Section 37 Recovery	1,106	6,800		7,520,800		
Parkland Dedication Recovery	1,106	6,800		7,520,800		
Tarion Enrolment Recoverable	1,106	1366.65009		1,511,515		
Guest Suites	4	577,500		2,310,000		

44. For Cost Benchmarking

Building	GFA
NXT II	375,757
This project	1,009,429
Building Comparison as Percentage	**Percentage**
this project GFA / NXT II GFA	269%

YSL

Occupancy Costs and Fees

Phase #1

		Factor
Unit Net of GST/HST	667,672,918	
Units Net of 25% Deposit	-166,918,229	-25%
Total	500,754,688	

Phase #2

Unit Net of GST/HST	468,398,231	
Units Net of 25% Deposit	-117,099,558	-25%
Total	351,298,674	

Gross Avg. Unit Price	Net Avg. Unit Price	No. of Units
1,027,189	930,256	1,106

650 Phase #1
456 Phase #2

GFA	1,009,429

No. of Units	1,106
No. of Floors	85
No. of Units per Floor	13

CAM Annual Budget psf	0.666523213
Total Saleable Area	724,283
Total CAM Annual Budget	5,793,017

Realty Taxes	0	**Final Year**
	0	**Per Unit**

	No. of Units	Month	Aggregate	
Occupancy Rate	154	51	154	30-Jun-23
	154	52	309	31-Jul-23
	154	53	463	31-Aug-23
	154	54	618	30-Sep-23
		55	618	31-Oct-23 Close
		56	618	
		57	618	
	-618	58	0	
		59	0	
		60	0	
		61	0	
		62	0	
		63	0	
		64	0	
		65	0	31-Mar-25
		66	0	30-Apr-25
		67	0	31-May-25
		68	0	30-Jun-25 Final (Close)
	148	69	148	
	148	70	296	
	148	71	445	
	0	72	445	
	445			
	661			

Occupancy Deposit Amount

Month	Amount of Deposit
0	0
51	7,928,616
52	7,928,616
53	7,928,616
54	7,928,616
55	0
56	0
57	0
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
66	0
67	0
68	0
69	7,611,471
70	7,611,471
71	7,611,471
72	0
0	0

2,583,113	OPEX
-9,607,779	REV

Move-in Rate for Deposits	30%
1 year open Mortgage	4.92%

	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71			Total
	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67				68	
Month	**51**	**52**	**53**	**54**	**55**	**56**	**57**	**58**	**59**	**60**	**61**	**62**	**63**	**64**	**65**	**66**	**67**	**68**	**69**	**70**	**71**			
Move-in Statistics																								
No. of Units Moved-in In Month	154	154	154	154	0	0	0	-618	0	0	0	0	0	0	0	0	0	0	148	148	148			
No. of Units Occupied Start of Month	154	309	463	618	618	618	618	0	0	0	0	0	0	0	0	0	0	0	148	296	445			
Average Occupancy for Month	77	232	386	540	618	618	618	309	0	0	0	0	0	0	0	0	0	0	74	222	371			
Occupancy Costs	**51**	**52**	**53**	**54**	**55**	**56**	**57**	**58**	**59**	**60**	**61**	**62**	**63**	**64**	**65**	**66**	**67**	**68**	**69**	**70**	**71**			**Total**
CAM	283,715	283,715	283,715	283,715	283,715	283,715	283,715	0	0	0	0	0	0	0	0	0	0	0	199,037	199,037	199,037			2,583,113
Realty Tax (Expensed Separately)																								0
	283,715	283,715	283,715	283,715	283,715	283,715	283,715	0	0	0	0	0	0	0	0	0	0	0	199,037	199,037	199,037			2,583,113
Occupancy Income	**51**	**52**	**53**	**54**	**55**	**56**	**57**	**58**	**59**	**60**	**61**	**62**	**63**	**64**	**65**	**66**	**67**	**68**	**69**	**70**	**71**			**Total**
Occupancy Fee	286,517	430,588	716,410	1,002,231	1,146,998	1,146,998	1,146,998	573,499	0	0	0	0	0	0	0	0	0	0	137,343	412,028	688,570			7,688,179
CAM	67,382	134,764	202,147	269,529	269,529	269,747	269,747	134,874	0	0	0	0	0	0	0	0	0	0	32,300	96,899	161,936			1,908,854
Realty Tax	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			0
	353,900	565,353	918,556	1,271,760	1,416,527	1,416,745	1,416,745	708,372	0	0	0	0	0	0	0	0	0	0	169,643	508,928	850,505			9,597,033

Occupancy Costs Table

Month	Amount
0	0
51	283,715
52	283,715
53	283,715
54	283,715
55	283,715
56	283,715
57	283,715
58	0
59	0
60	0
61	0
62	0
63	0
64	0
65	0
66	0
67	0
68	199,037
69	199,037
70	199,037
71	0
72	0

Occupancy Income Table

Month	Amount
0	0
51	-353,900
52	-565,353
53	-918,556
54	-1,271,760
55	-1,416,527
56	-1,416,745
57	-1,416,745
58	-708,372
59	0
60	0
61	0
62	0
63	0
64	0
65	0
66	0
67	0
68	0
69	-169,643
70	-508,928
71	-850,505
72	0

YSL

Sales Commissions

For the Entire Project

Assumptions	Total								
Total Number of Units	1,106								
Average Unit Price	930,256								
Deposit Structure									
Percentage Broker Participation	100%								
For Sales to Construction		**For Sales Post Construction**		**Commercial Sales Commissions**					
Timing	**Percentage**	**Timing**	**Percentage**	**Component**	**Month-Sale**	**%-Sale**	**Month-Close**	**%-Close**	**Value**
90 Days	2.0%	90 Days	2.0%	Retail	35	1.0%	71	1.5%	97,764,364
Construction	0.5%	Construction	0.5%	Office	35	1.0%	71	1.5%	19,366,429
Closing	2.0%	Closing	2.0%						
Unit Sold	**Total**	Units Sold	**Total**						
How Many Units Sold at Constructio	841	Post Construction	265						
CTD	Total								
CTD	6400000								

Month	2	3	4	5	6	7	8	9	10	11	12
Units Sold per Month	781	20	20	20	-	-	-	-	-	-	-
At 90 Days				14,530,596	372,102	372,102	372,102	-	-	-	-
At Construction											
At Closing	-	-	-	-	-	-	-	-	-	-	-
Total Residential	**-**	**-**	**-**		**372,102**	**14,902,699**	**372,102**	**-**	**-**	**-**	**-**
Retail	-	-	-	-	-	-	-	-	-	-	-
Office	-	-	-	-	-	-	-	-	-	-	-
Total Commercial	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**

Month	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
Units Sold per Month	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7	7	7
At 90 Days	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
At Construction	4,261,437	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
At Closing	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Residential	**4,261,437**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Retail	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Office	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Commercial	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**

Month	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44
Units Sold per Month	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7
At 90 Days	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236
At Construction	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470
At Closing	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Residential	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**
Retail	-	-	-	-	-	977,644	-	-	-	-	-	-	-	-	-
Office	-	-	-	-	-	193,664	-	-	-	-	-	-	-	-	-
Total Commercial	**-**	**-**	**-**	**-**	**-**	**1,171,308**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**

YSL

Sales Commissions

For the Entire Project

Assumptions
Total Number of Units
Average Unit Price
Deposit Structure
Percentage Broker Participation
For Sales to Const
Timing
90 Days
Construction
Closing
Unit Sold
How Many Units Sold at Constructio
CTD
CTD

Month	45	46	47	48	49	50	51	52	53	54	55	56	57	58
Units Sold per Month	7	7	7	7	7	7	7	7	7	7	7	7	7	7
At 90 Days	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236
At Construction	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470
At Closing	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Residential	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**
Retail	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Office	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Commercial	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**

Month	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73		
Units Sold per Month	7	7	7	7	7	6	-	-	-	-	-	-	-	-	-	1106	
At 90 Days	130,236	130,236	130,236	130,236	130,236	130,236	130,236	130,236	111,631	-	-	-	-	-	-	20,577,259	2.0%
At Construction	35,470	35,470	35,470	35,470	35,470	35,470	35,470	35,470	30,403	-	-	-	-	-	-	5,604,220	0.5%
At Closing	-	-	-	-	-	-	-	-	-	-	-	-	-	-	20,577,259	20,577,259	2.0%
Total Residential	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**165,706**	**142,033**	**-**	**-**	**-**	**-**	**-**	**20,577,259**	**46,758,739**	4.5%
Retail	-	-	-	-	-	-	-	-	-	-	-	-	1,466,465	-	-	2,444,109	
Office	-	-	-	-	-	-	-	-	-	-	-	-	290,496	-	-	484,161	
Total Commercial	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**1,756,962**	**-**	**-**	**2,928,270**	

Initial Sales Launch									
Oct-18									
			Cap	Rate - May 1, 2018	Rate - November 1, 2020	Full Increase Recovery	Total DC Recovery	Total Recovery
1 Beds	71%	449	10,800	17,644	30,656	13,012	23,812	10,691,588
2 Beds	29%	182	12,800	25,366	46,963	21,597	34,397	6,260,254
		631						16,951,842

Subsequent Sales								
Between November 1, 2018 - October 31, 2019								
			Cap	Rate - November 1, 2018	Rate - November 1, 2020	Full Increase Recovery	Total DC Recovery	Total Recovery
1 Beds	70%	107	10,800	24,150	30,656	6,506	17,306	1,851,742
2 Beds	30%	45	12,800	36,165	46,963	10,798	23,598	1,061,910
		152						2,913,652

Between November 1, 2019-October 31, 2020								
			Cap	Rate - November 1, 2019	Rate - November 1, 2020	Full Increase Recovery	Total DC Recovery	Total Recovery
1 Beds		0	10,800	28,054	30,656	2,602	13,402	0
2 Beds			12,800	42,644	46,963	4,319	17,119	0
		0						0

After November 1, 2020								
			Cap	Rate - November 1, 2020	Rate - November 1, 2020	Full Increase Recovery	Total DC Recovery	Total Recovery
1 Beds	44%	143	10,800	30,656	30,656	-	10,800	1,544,400
2 Beds	56%	180	12,800	46,963	46,963	-	12,800	2,304,000
		323						3,848,400

Total - 1 bdrm	699	Consistent with Mandy	
Total - 2 bdrm	407	Consistent with Mandy	
Total Units	**1106**		
		Total Est DC Recovery	**23,713,894**

	Suites	Recovery	Total
Parkland Recovery	1,106	6,800	7,520,800
Section 37 Recovery	1,106	6,800	7,520,800
Total			**15,041,600**

1 Bdrm - Sold Prior to Nov'18 Rates	449
2+ Bdrm - Sold Prior to Nov'18 Rates	182
	631
1 Bdrm - Sold Prior to Nov'19 Rates	107
2+ Bdrm - Sold Prior to Nov'19 Rates	45
	152

YSL

HST Forecast Based on Average Price of Unit

			5%	8%		
Purchase Price	**HST**	**Consideration to builder**	**HST Federal Portion**	**HST Ontario Portion**	**HST Home Rebate Federal Portion**	**HST Home Rebate Ontario Portion**
1,027,189	13%	930,256	46,513	74,420	0	24,000

Total HST	**107,208,185**

	Conversion rate	10.763911					
Residential	**sq m (Saleable)**	**sq ft (Saleable)**	**No. of units**	**Hoist Suites**		**Sq Ft Saleable Less Hoist Suites**	**No. of Units Less Hoist Suites**
48	863	9,289.26	13	2	15.4%	7,860.14	11
47	863	9,289.26	13	2	15.4%	7,860.14	11
46	863	9,289.26	13	2	15.4%	7,860.14	11
45	863	9,289.26	13	2	15.4%	7,860.14	11
44	891	9,590.64	13	2	15.4%	8,115.16	11
43	891	9,590.64	13	2	15.4%	8,115.16	11
42	891	9,590.64	13	2	15.4%	8,115.16	11
41	891	9,590.64	13	2	15.4%	8,115.16	11
40	891	9,590.64	13	2	15.4%	8,115.16	11
39	947	10,193.42	15	2	13.3%	8,834.30	13
38	947	10,193.42	15	2	13.3%	8,834.30	13
37	947	10,193.42	15	2	13.3%	8,834.30	13
36	947	10,193.42	15	2	13.3%	8,834.30	13
35	947	10,193.42	15	2	13.3%	8,834.30	13
Mechanical - 34							0
33	947	10,193.42	15	2	13.3%	8,834.30	13
32	947	10,193.42	15	2	13.3%	8,834.30	13
31	947	10,193.42	15	2	13.3%	8,834.30	13
30	947	10,193.42	15	2	13.3%	8,834.30	13
29	947	10,193.42	15	2	13.3%	8,834.30	13
28	1035	11,140.65	17	2	11.8%	9,829.98	15
27	1035	11,140.65	17	2	11.8%	9,829.98	15
26	1035	11,140.65	17	2	11.8%	9,829.98	15
25	1035	11,140.65	17	2	11.8%	9,829.98	15
24	1035	11,140.65	17	2	11.8%	9,829.98	15
23	1035	11,140.65	17	2	11.8%	9,829.98	15
22	1035	11,140.65	17	2	11.8%	9,829.98	15
21	1132	12,184.75	17	2	11.8%	10,751.25	15
20	1132	12,184.75	17	2	11.8%	10,751.25	15
19	1132	12,184.75	17	2	11.8%	10,751.25	15
18	1,132	12,184.75	17	2	11.8%	10,751.25	15
17	1,132	12,184.75	17	2	11.8%	10,751.25	15
16	1,132	12,184.75	17	2	11.8%	10,751.25	15
15	1,132	12,184.75	17	2	11.8%	10,751.25	15
14	1,256	13,519.47	22	2	9.1%	12,290.43	20
13	1,256	13,519.47	22	2	9.1%	12,290.43	20
12	1,256	13,519.47	22	2	9.1%	12,290.43	20
11	1,256	13,519.47	22	2	9.1%	12,290.43	20
10	735	7,911.47	12	2	16.7%	6,592.90	10
Total	**38,305**	**412,312**	**605**	**76**		**360,182.60**	**529**

Total revenue		540,779,966
HST	-	51,277,694
Less Deposits	-	108,155,993
Total available for repayment		381,346,279
Paydown Month Close		59

Residential	**Number of units**
Residential - 17-48	409
Residential - 10-16	120
Total	529
HST	51,277,694

TAB 25

Court File No. B-21-02734090-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

Claim of Maria Athanasoulis against
YG Limited Partnership and YSL Residences Inc.

FACTUM OF MARIA ATHANASOULIS
(Appeal of Disallowance of Claim)

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I. OVERVIEW

1. Maria Athanasoulis brings this motion to appeal the Trustee's determination that $18 million of her claim (the "**Claim**") against the Debtors (collectively, "**YSL**") should be valued at $0.[1]

2. Ms. Athanasoulis has already proven, in binding arbitration, that she had the right to receive 20% of the profits earned by YSL as part of her oral employment agreement (the "**Agreement**"), that profits are equal to revenue less expenses and that YSL repudiated the Agreement. But the Trustee purported to value the Claim *without* calculating—or even investigating—revenue *or* expenses. Ms. Athanasoulis tendered evidence showing that YSL had, in fact, earned a profit of approximately $40 million. The Trustee did not, apparently, assess this evidence at all. This is a fundamental error.

3. The Trustee's conclusion (and almost its entire analysis) rests on a second error. The Trustee determined that the Claim is an "equity claim" within the meaning of the *Bankruptcy and Insolvency Act* (the "***BIA***") that is subordinate to other equity claims submitted by certain limited partners (the "**LPs**") that invested in YSL. This is simply wrong. The *BIA* defines what an "equity claim" is. The Claim does not meet that definition. But the Trustee seemed to acknowledge this but declared, in effect, that the statutory definition is "not relevant to the analysis" because Ms. Athanasoulis' claim is "in substance" an equity claim. This is not—and cannot be—correct. The Trustee is bound by the statutory definition. It erred by disregarding that definition.

4. Most fundamentally, the Trustee reached the wrong conclusion because it asked the wrong question. The Claim seeks damages for breach of contract. If the Trustee had applied the well-established principles that govern all damages for breach of contract to the largely undisputed facts of this case, then it would have concluded that Ms. Athanasoulis is entitled to an approved claim of $18 million or more.

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[1] The Trustee allowed Ms. Athanasoulis' related $1 million wrongful termination claim in the amount of $880,000. This aspect of the Trustee's determination is not being appealed..

5. Damages for breach of contract must put the injured party in the position she would occupy if the contract had been performed. Damages are therefore calculated based on the position that the Plaintiff would be but-for the breach. The Agreement required that YSL seek to maximize the profits earned on the development project that it owned (the "**YSL Project**"). Justice Dunphy has already found in this proceeding that YSL "squandered" its opportunity to sell or restructure the YSL Project (as defined below) by trying to enrich its principal. This was, necessarily, a breach of the Agreement.

6. Ms. Athanasoulis is therefore entitled to the amount she would have earned if YSL had honoured the Agreement (instead of repudiating it) *and* maximized the value of the YSL Project instead of destroying that value).

7. The Trustee failed to consider what position Ms. Athanasoulis would be in if the Agreement had been performed. It disregarded all of the principles that govern damages assessments and asked, instead, whether YSL had enough cash on hand to pay back all equity investments and then make a payment to Ms. Athanasoulis. This is not the calculation required by the Agreement, or the law.

8. In light of the foregoing, the Trustee's determination should be set aside. The Claim is a debt claim. It takes priority over all equity claims, including those asserted by the LPs. A reference should be ordered to assess the value of the Claim based on the position Ms. Athanasoulis would occupy but-for YSL's breach of the Agreement. In the alternative, Ms. Athanaouslis should be awarded 20% of YSL's actual profits.

II. FACTS

A. The key facts have been established

9. The core facts underlying Ms. Athanasoulis' claim are either undisputed, or have already been established in: the Partial Award of Arbitrator William Horton (the "**Arbitrator**") dated

March 28, 2022 (the "**Partial Award**");[2] and, the decision of Justice Dunphy in these Proposal Proceedings dated June 29, 2021 (the "**First Proposal Decision**")[3].

10. Specifically, the Arbitrator found that: YSL agreed to pay Ms. Athanasoulis 20% of its profits, calculated based on revenues less expenses;[4] YSL agreed to work "to the objective of making a profit" and could not reduce the profit through "bad faith transactions";[5] and YSL repudiated the Agreement by terminating Ms. Athanasoulis in December 2019.[6]

11. Justice Dunphy found, in the First Proposal Decision, that YSL *did not* work to maximize profits on the YSL Project. After Ms. Athanasoulis was terminated, "good faith took a back seat to self-interest"[7] at YSL. As a result, YSL "squandered" the opportunity to maximize the value of the YSL Project trying to find a transaction that benefitted its principal, Mr. Casey.[8]

12. The findings in the Partial Award and the First Proposal Decision framed (or should have framed) the Trustee's evaluation of the Claim. The Trustee was tasked with identifying the damages caused by Ms. Athanasoulis' termination *and* the subsequent value-destroying (and partially successful) attempt to enrich Mr. Casey.

13. A more detailed description of these breaches is set out in section B, below.

B. Ms. Athanasoulis' critical role at YSL and the Agreement

(i) YSL and Cresford

14. Ms. Athanasoulis was, until December 2019, the President and COO of a group of companies, using the brand name "**Cresford**," engaged in the development, construction,

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[2] Partial Award of Arbitrator William Horton dated March 28, 2022 (**"Partial Award"**), Motion Record of Maria Athanasoulis ("MR") Vol. 3, Tab 6(2), p. 370.

[3] YG Limited Partnership and YSL Residences (Re), 2021 ONSC 4178 (the **"First Proposal Decision"**), Book of Authorities of Maria Athanasoulis (**"BOA"**), Tab 32.

[4] Partial Award at paras. 146, 160 and 166, MR Vol 3, Tab 6(2), pp. 400, 404.

[5] Partial Award at para. 146, MR Vol 3, Tab 6(2), pp. 400.

[6] Partial Award at paras. 189-191, MR Vol 3, Tab 6(2), pp. 413-414.

[7] First Proposal Decision at para. 74, BOA, Tab 32.

[8] First Proposal Decision at para. 82, BOA, Tab 32.

marketing and sale of condominiums in Toronto. Cresford was founded by Daniel Casey, and owned by companies and trusts that he controlled.[9]

15. Each of Cresford's development and construction projects was owned by a separate legal entity. Ms. Athanasoulis' role extended to overseeing each of Cresford's individual project companies as well. YSL was created to own, develop, market and sell the YSL Project.

(ii) The Agreement

16. Ms. Athanasoulis never signed a written employment agreement. Her responsibilities and compensation were governed by an oral agreement negotiated with Mr. Casey on behalf of Cresford and all of its related entities.[10][11] Ms. Athanasoulis and Mr. Casey agreed to the Profit Share in 2014, before YSL was founded.[12]

17. Mr. Casey induced Ms. Athanasoulis to work for, and add substantial value to, Cresford's projects by agreeing that each project owner would pay her 20% of the profits that it earned (the "**Profit Share**"). The Agreement applied to YSL as soon as it was created in 2016. The relevant terms of the Agreement, as it applied to YSL, were:

(a) YSL, as the owner of the YSL Project, agreed to pay Ms. Athanasoulis the Profit Share;[13]

(b) There was no requirement that Ms. Athanasoulis remain employed by YSL to be entitled to the Profit Share;[14]

(c) Profits were to be calculated, on a good faith basis, based on the *pro forma* budgets prepared by Cresford using revenues less expenses;[15]

[9] Partial Award at paras. 22-23, MR Vol 3, Tab 6(2), pp. 374.

[10] Partial Award at paras. 41-42, 139, MR Vol 3, Tab 6(2), pp. 377, 378.

[11] Partial Award, paras. 41-42, 139, MR Vol 3, Tab 6(2), pp.377,378.

[12] Partial Award at paras. 49, 144, 148, MR Vol 3, Tab 6(2), pp. 379, 399, 401.

[13] Partial Award at para. 166(c), MR Vol 3, Tab 6(2), p. 405.

[14] Partial Award at para. 166(e), MR Vol 3, Tab 6(2), p. 405.

[15] Partial Award at paras. 166(b), 146, MR Vol 3, Tab 6(2), pp. 405, 400.

(d) Profits could not be artificially reduced by "bad faith" transactions;[16]

(e) YSL had an obligation to try and maximize the value of the YSL Project;[17] and,

(f) The Profit Share was to be paid to Ms. Athanasoulis when Profits were earned, usually at the completion of a project.[18]

18. The Trustee has confirmed that it is bound by the findings of the Arbitrator, including the above-noted terms.[19]

C. The YSL Project

(i) YSL

19. The Claim concerns Yonge Street Living Residences (the previously-defined "**YSL Project**"), which is an 85-story condominium tower located at the corner of Yonge and Gerrard in Toronto.[20] The YSL Project was owned by YSL. YSL was founded in 2016, and Ms. Athanasoulis worked for more than three years, before she was terminated, to make the YSL Project a success.[21]

20. The YSL Project was Cresford's largest project and its "crown jewel". Every single forecast or appraisal prepared before the commencement of these bankruptcy proceedings forecast profits of the YSL Project in excess of $100 million.[22]

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[16] Partial Award at paras. 166(b), 146, MR Vol 3, Tab 6(2), pp. 405, 400.

[17] Partial Award at para. 160, MR Vol 3, Tab 6(2), pp. 404.

[18] Partial Award at para. 166(d), MR Vol 3, Tab 6(2), pp. 405.

[19] Trustee's Notice of Disallowance of Claim (**"Trustee's Disallowance"**), MR Vol 1, Tab 2, p. 29.

[20] Partial Award at paras. 2, 24, MR Vol 3, Tab 6(2), pp. 371, 374.

[21] Affidavit of Maria Athanasoulis dated May 5, 2023 (**"Athanasoulis Affidavit"**) at paras. 5-9, 18, MR Vol 1, Tab 4, pp. 89-90, 92.

[22] See CBRE Appraisal Reports as of the Effective Dates of July 30, 2019 (**"July 2019 CBRE Report"**), November 1, 2018 (**"November 2018 CBRE Report"**), April 20, 2018 (**"April 2018 CBRE Report"**) and February 1, 2016 (**"February 2016 Appraisal Report"**), MR Vol 3-6, Tabs 6(7)-(10). See also First Proposal Decision at para. 75(a). BOA, Tab 32.

(ii) YSL's success

21. YSL had achieved significant progress on the YSL Project by December 2019. It had (among other things) obtained all of the approvals required to build the YSL Project[23] and pre-sold approximately $650 million worth of condominium units at record-setting prices under Ms. Athanasoulis' leadership.[24] It had negotiated fixed-price contracts for the majority of its expenses, so it had certainty about construction costs.[25]

22. This progress yielded tangible financial gains. By July 2019, the YSL Project was valued at $375.5 million[26], approximately $125 million more than YSL had invested into it.[27] YSL's internal projections, which had been vetted by leading external consultants, forecasted profits of close to $200 million.[28] This analysis was not mere speculation. YSL's construction lender relied on it to agree to advance a $600 million construction loan.[29]

D. The Limited Partners

(i) The Limited Partners invested in limited partnership units

23. Individuals and entities that invested in the YSL Project by purchasing limited partnership units in YSL LP (previsouly defined as the "**LPs**") have taken on an outsized role in this

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[23] November 2018 CBRE Report at p. 16, MR Vol 4, Tab 8, p. 725; Transcript of the Arbitration before William G. Horton Held February 22, 2022 (**"Arbitration Transcript – February 22"**), at 174:3-12, MR Vol 3, Tab 6(3), p. 461.

[24] YSL Pro Forma dated October 18, 2019 (**"October 2019 Pro Forma"**), MR Vol 7, Tab 6(14); Arbitration Transcript - February 22 at para. 122:9-11, MR Vol 3, Tab 6(3),p. 448.

[25] Arbitration Transcript - February 22 at 178:20-179:5, MR Vol 3, Tab 6(3), pp. 462-463: Mr. Casey agreed and testified that the YSL Project "didn't have cost issues or other issues", "the new numbers that went into the business were strong and correct numbers", and "it gave us strength as a company, that if we needed to put money into other projects, it gave us the option that we could use our position in that company to either borrow against the equity in some manner, or sell, or do a joint venture on that project that would create cash for the other parts, and/or it created a much stronger company." Transcription of the Arbitration before William G. Horton held February 24, 2022 (**"Arbitration Transcript - February 24"**), MR Vol 3, Tab 6(5), 421:4-22.

[26] July 2019 CBRE Report, MR Vol 3, Tab 6(7), p. 601.

[27] See the Preliminary Report on YSL prepared by Altus Group Cost Consulting & Project Management dated October 2, 2019 ("**Altus Report**"), MR Vol 6, Tab 6(12), which illustrates investment by YSL of approximately $247 million. See also the explanation at Submissions of Maria Athanasoulis dated May 5, 2023 (**"Athanasoulis Submissions"**) at paras. 133, MR Vol 2, Tab 5, p. 237.

[28] October 2019 Pro Forma, MR Vol 7, Tab 6(14), p. 1428.

[29] Altus Report, MR Vol 6, Tab 6(12), p. 1096. See also Arbitration Transcript - February 22 at 180:22-181:12.

proceeding, because the Trustee decided (before any evidence was tendered on damages or priority)[30] that the LPs ought to be paid in priority to Ms. Athanasoulis. A brief background of the LPs' relationship with YSL is, therefore, relevant to this appeal.

24. YSL was founded in 2016, as a joint venture between Cresford and British Columbia Investment Management Corporation ("**BcIMC**"), a major institutional investor. BcIMC decided to exit the YSL Project in 2017 because of changes to the YSL Project that were required by the City of Toronto.[31]

25. Cresford decided to raise funds from accredited investors in order to purchase BcIMC's interest in the YSL Project. Ms. Athanasoulis proceeded to contact various individuals, including Paul Lam, Yuan (Michael) Chen and Lue (Eric) Li, and met with them to discuss the YSL Project.[32] Each of these individuals was a sophisticated and experienced participant in the real estate industry.[33]

26. Cresford prepared a presentation to communicate information about the YSL Project to potential investors (the "**Investor Presentation**"), and Ms. Athanasoulis referenced that presentation in certain meetings with investors. The Investor Presentation included a slide that described, in simple terms, the distribution of profits at the conclusion of the YSL Project (the "**Waterfall**"):

> Revenue proceeds (after payment of project expenses) will be distributed at the end of the project in the following priority:
>
> ➢ First, repayment of all external lenders;
>
> ➢ Second, return of invested capital to the investor;

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[30] Arbitration Transcript – February 22, at Counsel for KSV's Opening Statement, 57:24-58:22, MR Vol 3, Tab 6(3), p. 432.

[31] YSL initially planned to build two towers on the YSL Property: an apartment building, which would have been owned and operated by BcIMC; and, a condominium building that would have been sold by YSL. The City of Toronot did not approve this plan, and YSL had to change its plan to include only one tower. Athanasoulis Affidavit at para. 19, MR Vol 1, Tab 4, p. 92.

[32] Athanasoulis Affidavit at para. 22, MR Vol 1, Tab 4, p. 93.

[33] Athanasoulis Affidavit at para. 25, MR Vol 1, Tab 4, p. 94.

> ➢ Third, distribution of the agreed upon return on investment to the investor; and

> ➢ Fourth, distribution to Cresford.[34]

27. The Investor Presentation also included a high level *pro forma* for the YSL Project, which listed revenue and cost categories such as "construction costs" and "design, marketing and administration."[35] The information provided to the LPs did not itemize any costs or other line items.

28. The Investor Presentation touted Mr. Casey's experience and leadership, and explained that Mr. Casey would personally guarantee the investment of each LP. It invited prospective investors to contact Mr. Casey personally and did not reference Ms. Athanasoulis at all.[36]

29. To be clear, and contrary to allegations made by the LPs in this proceeding, Ms. Athanasoulis never told anyone that no member of the "Cresford Group" would be paid until the LPs were paid in full.[37] She never made any agreement with, or representation to, the LPs with respect to her own relationship with YSL.

(ii) The LPs invested in YSL LP

30. The LPs purchased Class "A" Units in YG Limited Partnership ("**YSL LP**"). Cresford Yonge Limited Partnership ("**Cresford LP**"), an entity controlled by Mr. Casey and/or his family trusts, owned all of the Class "B" Units. YSL LP is the beneficial owner of the YSL Project.

31. Each of the LPs executed a Limited Partnership Agreement and a Subscription Agreement these documents (and not anything that Ms. Athanasoulis is alleged to have said) governed the terms of their investment. Each LP acknowledged and agreed in the Subscription "that it has

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[34] Athanasoulis Affidavit at paras. 32, 38, MR Vol 1, Tab 4, pp. 95-96.

[35] Investor Presentation Slide-deck, being Exhibit B to the Affidavit of Lue (Eric) Li sworn December 20, 2022 (**"Lue Affidavit"**), Responding Record of the Proposal Trustee date October 16, 2023 (**"RR"**), Tab 1(B), p. 162.

[36] Investor Presentation Slide-deck, being Exhibit B to the Lue Affidavit, RR, Tab 1(B), p. 162.

[37] Athanasoulis Affidavit at paras. 42-47, MR Vol 1, Tab 4, pp. 97-98.

obtained independent legal accounting, tax and financial advice in connection with its investment in Units **and has not relied on the advice of the General Partner or any of its affiliates**."[38]

32. Each LP was entitled to the greater of: an annual interest rate of 12.5% or double its original investment.[39] Cresford LP was entitled to receive all of the proceeds remaining after creditors and LPs had been paid in full. Mr. Casey personally guaranteed YSL's obligations to the LPs.[40]

33. Ms. Athanasoulis was not a party to the LP Agreement, the Subscriptions or any other agreements with the LPs.

(iii) The LPs' agreements with YSL did not affect Ms. Athanasoulis' Agreement with YSL

34. Ms. Athanasoulis and the LPs each contracted with YSL. They had (and have) no legal relationship with each other.

35. The Limited Partnership Agreement was a contract between the LPs and the General Partner, YSL Residence Inc. (the "General Partner"). It conferred broad and "exclusive" authority to act on behalf of the LPs.[41] The LP Agreement allowed the General Partner to contract with related parties at market rates.[42] The LPs claim that the Agreement contravened the LP Agreement, but the Trustee does not reference or rely on that argument in the Disallowance so it is not relevant to this appeal.

36. In any event, the LP Agreement did not affect Ms. Athanasoulis' entitlement under the Agreement. The Agreement was entered into in 2014, and YSL became bound by it in 2016 when it was founded. The LPs invested in YSL after Ms. Athanasoulis had worked on the YSL Project

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[38] YG Limited Partnership Subscription Form, Power of Attorney and Acknowledgement (**"Subscription Agreement"**) at s. 3.1, MR Vol 10, Tab 6(32), p. 2387. Note that while each LP executed a Subscription, Ms. Athanasoulis has included only a representative version in the MR.

[39] YG Limited Partnership Amended and Restated Limited Partnership Agreement dated August 4, 2017 (**"LP Agreement"**) at s. 4.2, MR Vol 10, Tab 6(31), p. 2350.

[40] Example of Guarantee of Dan Casey to LPs, RR, Tab 1(b), p. 584. See also Investor Presentation Slide-deck, being Exhibit B to the Lue Affidavit, RR, Tab 1(B), p. 170.

[41] LP Agreement s. 3.2, MR Vol 10, Tab 6(31), p. 2344.

[42] LP Agreement at s. 3.6(b), MR Vol 10, Tab 6(31), p. 2348.

in accordance with the terms of the Agreement. Ms. Athanasoulis was not a party to the LP Agreement, and it did not (and could not) change the terms of her agreement with YSL.

(iv) The LPs knew that Cresford would receive payments before them

37. The principal of one of the LPs, Lu (Eric) Li now claims that he believed that the LP Agreement included a "requirement that the limited partners be repaid first before the Cresford Group would receive anything from the proceeds of the YSL Project."[43] This is, demonstrably, false.

38. Cresford's involvement in all aspects of the YSL Project was a selling feature: Cresford's in-house resources allowed it to ensure that its quality standards were met. This was part of the value proposition that Cresford offered. YSL emphasized Cresford's involvement in the Investor Presentation, which touted Cresford's integrated approach to development, including its "ability to control its own construction management" and its "winning sales formula."[44]

39. Cresford received millions of dollars in fees relating to the development, marketing and construction of the YSL Project.[45]

40. In addition to these payments, which appear to relate to services rendered by Cresford, YSL made a number of intercompany advances to other Cresford entities. The purpose and legitimacy of these payments are uncertain. These payments are also shown on Cresford's general ledger and bank statements.[46]

41. The LPs have never challenged (or investigated) any of these payments to Cresford. But they oppose any payment to Ms. Athanasoulis.

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[43] Lue Affidavit at para. 15, RR, Tab 1(B), p. 157.

[44] Athanasoulis Affidavit, MR Vol 1, Tab 4, para. 43.

[45] Athanasoulis Affidavit at para. 45, MR Vol 1, Tab 4, p.98 ; YSL General Ledger dated April 2021 (**"YSL General Ledger"**) at pp. 58, 85, MR Vol 7, Tab 6(20), pp. 1571, 1598.

[46] Athanasoulis Affidavit at para. 46, MR Vol 1, Tab 4, p.98; See also YG General Ledger, MR Vol 7, Tab 6(20), starting at p. 1514. These appear throughout the YG General Ledger as "Transfer to Cresford", "Transfer to Oakleaf Cnstltng", etc.

(v) The LPs bargained for the right to be paid ahead of Cresford LP, not the "Cresford Group"

42. The LP Agreement required that revenue from the YSL Project would be paid in an order consistent with the Waterfall in the Slide Presentation, with payments of project expenses and external lenders ranking ahead of the LPs and with the LPs ranking ahead of Cresford LP.[47]

43. The LP Agreement provided that the LPs were to be paid before any distribution was made to Cresford LP on account of its Class "B" Units, but it did not otherwise subordinate *an*y payment to the LPs.

44. Thus, the LPs specifically bargained for the right to be paid before any proceeds went to Cresford LP. This has nothing to do with Ms. Athanasoulis. Ms. Athanasoulis had no interest in, or relationship with, Cresford LP. Cresford LP was a vehicle for Mr. Casey and his family to invest in YSL. Amounts paid to Ms. Athanasoulis (and other employees) were a project expense paid before any distribution was made to anyone.

E. YSL's repudiation of the Agreement

(i) Cresford's financial difficulties on other projects

45. Cresford's other major projects suffered significant cash flow problems in 2019, which culminated in insolvency proceedings in the spring of 2020. These proceedings, and the lender investigations that preceded them, uncovered serious financial wrongdoing at Cresford. This Court found, among other things, that Cresford entities kept two sets of books in order to hide information from lenders.[48]

46. YSL did not face similar financial issues. It was properly capitalized and, according to Mr. Casey, had "everything going for it."[49]

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[47] LP Agreement at s. 6.3, MR Vol 10, Tab 6(31), p. 2358.

[48] *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc*., 2020 ONSC 1953 at paras. 31-32, BOA, Tab 8.

[49] Arbitration Transcript - February 22 at 178:20-179:5, MR Vol 3, Tab 6(3) at p. 462-463; Mr. Casey agreed and testified that the YSL Project "didn't have cost issues or other issues", "the new numbers that went into the business were strong and correct numbers", and "it gave us strength as a company, that if we needed to put money into other projects, it gave us the option that we could use our position in that company to either borrow against the equity in

(ii) YSL repudiated the Agreement

47. Ms. Athanasoulis discovered Cresford's financial difficulties and pressed Mr. Casey to take concrete steps to address Cresford's funding issues and preserve value for all stakeholders. She even brought Mr. Casey an offer to purchase all of Cresford's projects, fund cost overruns and pay Mr. Casey a personal profit of $80 million.[50] Mr. Casey refused this offer and stripped Ms. Athanasoulis of all her duties, which amounted to a constructive termination of Ms. Athtanasoulis' employment. The Arbitrator found that YSL had repudiated the Agreement by constructively terminating Ms. Athanasoulis' employment in December 2019.[51]

48. Ms. Athanasoulis accepted YSL's repudiation of the Agreement, and, in Janaury 2020, sued for the damages caused by the repudiation. This fundamentally changed Ms. Athanasoulis' relationship with YSL. Once she accepted the repudiation, Ms. Athanasoulis was not entitled to (and did not seek) *performance* of the Agreement. She *is* entitled to the *damages* caused by YSL's breach of the Agreement. This is an important distinction, which will be discussed in more detail below.

(iii) YSL breached the Agreement by destroying the value of the YSL Project with efforts to enrich Mr. Casey

49. On a more practical level, YSL's termination of Ms. Athanasoulis—and a number of other Cresford staff—left Mr. Casey and a small group of loyalists free to pursue their own interests. Instead of maximizing and, if necessary, realizing the value of the YSL Project, Mr. Casey caused YSL to embark on a campaign to enrich him. YSL breached its construction loan agreement by borrowing $10 million without lender approval, which resulted in the termination of that loan.[52]

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some manner, or sell, or do a joint venture on that project that would create cash for the other parts, and/or it created a much stronger company." Arbitration Transcript - February 24 at 421:4-22, MR Vol 3, Tab 6(5), p. 528.

[50] Arbitration Transcript – February 22 at 183:17–187:8, MR Vol 3, Tab 6(3) p. 464-465.

[51] Partial Award at paras. 189-191, MR Vol 3, Tab 6(2), pp. 413-414.

[52] Athanasoulis Affidavit at para. 57, MR Vol 1, Tab 4, p. 100; Arbitration Transcript – February 24 at para. 541:13-543:2, MR Vol 3, Tab 6(5), pp. 558-559.

YSL had also breached its loan agreement with the same lender on another major project, 33 Yorkville, by hiding cost overruns.[53] In response, the lender terminated the construction loan.

(iv) YSL (and the Profit Share) had enormous value when Ms. Athanasoulis was terminated

50. The termination of its construction loan put YSL in a difficult position. But YSL still had options. It owned a valuable project that was projected to earn profits of nearly $200 million. Even if it could not develop the YSL Project itself, it could have sold the YSL Project and earned a significant profit.

51. Put differently, if YSL had worked to maximize profits (as the Agreement required), then it could—and would—have earned enough to pay Ms. Athanasoulis her profit share and still repay the LPs' investment.

52. A fair, open and transparent marketing process would have yielded a very substantial profit. YSL had invested approximately $241 million in the YSL Project and the YSL Project had an appraised value of $375 million.[54] Based on these figures, YSL could have earned a profit of $134 million and the Profit Share would thus have had a value of more than $25 million.

53. But YSL did not try to maximize the value of the YSL Project. Justice Dunphy found that YSL "squandered" the time between Ms. Athanasoulis' termination and its bankruptcy proposal and that efforts to sell or refinance the YSL Project in 2020 and 2021 were "indelibly tainted" by Mr. Casey's self-interest.[55]

(v) YSL's insolvency proceedings

54. Mr. Casey's efforts culminated in a Proposal Sponsor Agreement between YSL and an affiliate of Concord Developments (**"Concord"**). YSL served a Notice of Intention to Make a Proposal and then served a proposal (the **"First Proposal"**) that contemplated a 40% discount on

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[53] *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at para. 35, BOA, Tab 8

[54] July 2019 CBRE Report, MR Vol 3, Tab 6(7), p. 601.

[55] First Proposal Decision at paras. 76, 82.

payments to unsecured creditors, payments to Cresford totaling more than $20 million and no payment at all to either Ms. Athanasoulis or the LPs.[56]

55. The Trustee recommended approval of the First Proposal, but Justice Dunphy refused to so approve and found that the First Proposal was tainted by Mr. Casey's attempt to enrich himself, and that the Trustee's recommendation was supported by unreliable evidence.[57]

56. Justice Dunphy noted that all but one analysis of the YSL Project showed that it would earn a substantial profit, permitting payment to both the LPs and Ms. Athanasoulis.[58] The sole exception was an Appraisal by CBRE dated April 30, 2021, and prepared on Concord's instructions. Justice Dunphy held this Appraisal was entitled to "little weight" because when Concord instructed CBRE, Concord had a "clear and obvious interest in having appraisal evidence suggesting that the project was at least partly underwater."[59] The assumptions underlying CBRE's appraisal were "unexplained, untested and appear to be admitted as having been quite preliminary in all events."[60]

57. Justice Dunphy summed up his damning findings about YSL's failure to maximize the value of the YSL Project as follows:

> [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**

[56] Third Report to Court of KSV Restructuring Inc. as Proposal Trustee of YG Limited Partnership and YSL Residences Inc. dated June 1, 2021 (**"Trustee 3rd Report"**) at s. 4.1 and Schedule A (Draft Proposal), MR Vol 9, Tab 6(26) p. 1802 and p. 1857.

[57] First Proposal Decision at para. 76.

[58] First Proposal Decision at para. 75(a).

[59] First Proposal Decision at para. 26(a).

[60] First Proposal Decision at para. 26(b).

> **the Cresford group of companies rather than for the partnership itself.**[61]

58. It necessarily follows that YSL breached its obligation under the Agreement to maximize the value of the YSL Project.

(vi) The Second Proposal was approved

59. YSL and Concord tendered an amended proposal, which was approved on July 16, 2021 (the "**Second Proposal**").[62] The Trustee reported to the Court that the Second Proposal offered stakeholders an implied purchase price of $291 million for the YSL Project.[63]

60. Justice Dunphy *did not* find that the Second Proposal offered fair value for the YSL Project. The Proposal was approved because, by the time it came before the Court, creditors had not been paid for more than one year and Justice Dunphy found it would be unfair to force these creditors to wait through a prolonged sales process.[64]

61. As part of the Proposal, Concord acquired the YSL Project and set aside a pool of $30.9 million to satisfy creditor claims.[65] The Trustee was responsible for resolving disputed claims against YSL. By this appeal, Ms. Athanasoulis seeks her share of these funds.

(vii) YSL earned a profit on the Proposal

62. As noted, profit (within the meaning of the Agreement) is equal to revenue less expenses. According to the Trustee, the Proposal generated compensation of $291 million. In addition, YSL sold two properties adjacent to the YSL Project to Concord for approximately $7.5 million, and a

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[61] First Proposal Decision at para. 76.

[62] YG Limited Partnership and YSL Residences (Re), 2021 ONSC 5206 (the **"Second Proposal Decision"**), BOA, Tab 33.

[63] Fourth Report to Court of KSV Restructuring Inc. as Proposal Trustee of YG Limited Partnership and YSL Residences Inc. dated July 15, 2021 (**"Trustee 4th Report"**) at 5.1(5), MR Vol 10, Tab 6(27), p. 2174.

[64] Second Proposal Decision at paras. 24-30, BOA, Tab 33.

[65] Second Proposal Decision at para. 9(e), BOA, Tab 33.

company related to Concord paid Cresford LP approximately $6.6 million.[66] In all, YSL and Cresford received revenue of $305.4 million.

63. Based on YSL's bank records and general ledger, it appears that YSL spent approximately $265 million to advance the YSL Project, comprised of $157.5 million spent to purchase the YSL Property, and project costs of approximately $107.3 million.[67]

64. Thus, even after YSL squandered most of the value of the YSL Project trying to enrich Mr. Casey and Cresford, it *still* earned profits totaling approximately $40 million. No one knows what happened to these profits.

F. Procedural History

(i) Ms. Athanasoulis wins the first phase of a bifurcated arbitration

65. Ms. Athanasoulis' claim against YSL was stayed when YSL served its Notice of Intention to Make a Proposal. After the Second Proposal was approved, Ms. Athanasoulis submitted her claim to the Trustee for adjudication.

66. Ms. Athanasoulis' claim was, by its nature, difficult to assess in a traditional claims process. Accordingly, after the Proposal was approved, Ms. Athanasoulis and the Trustee agreed to a bifurcated arbitration process to determine her claim within the Proposal. The parties agreed to conduct a hearing to determine liability, and then to proceed to a damages hearing if Ms. Athanasoulis won on liability.

67. The LPs knew that the Arbitration was proceeding, but they did not take any steps to either participate in it or stop it from proceeding.

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[66] Statement of Adjustments for 357 ½ Yonge Street and 357A Yonge Street as of December 18, 2020 (**"Statement of Adjustment"**), MR Vol 7, Tab 6(18), p. 1483 and Reporting Letter from Dale & Lessman LLP to Cresford Holdings Limited dated June 10, 2022 (**"Dale & Lessman LLP Reporting Letter"**) at p. 2, MR Vol 7, Tab 6(15), p. 1454; see also Trustee 4th Report at p. 11, MR Vol 10, Tab 6(27), p. 2107: "pursuant to the Equity Offer, Cresford-related entities have the prospect of recovering up to $6.6 million from the Sponsor pursuant to the Equity Offer. This is calculated as follows: 12.5% ($15 million (re Cresford's capital) + $38.3 million (Related Party Claims))." .

[67] Letter to Proposal Trustee – Answers to Undertakings of Maria Athanasoulis dated July 5, 2023, MR Vol. 10, Tab 9, pp. 2468-2469, 2472-2489 (**"Athanasoulis Undertaking Answers"**). See also Athanasoulis Submissions at paras. 130 and 136, MR Vol 2, Tab 5, pp. 236, 238.

68. The first phase of the arbitration proceeded over four days in February 2022 (the "**Arbitration**"). As noted above, Ms. Athanasoulis proved that she was entitled to the Profit Share and that YSL repudiated the Agreement by constructively terminating her employment.[68]

(ii) The Trustee decides Ms. Athanasoulis suffered no damages before reviewing evidence or argument about it

69. Since the parties agreed to bifurcate the arbitration, Ms. Athanasoulis did not tender either evidence or detailed argument about her damages claim. Despite this, the Trustee declared at the outset of the Arbitration that there was "no profit" from the YSL Project and so Ms. Athanasoulis was entitled to nothing. The Arbitrator did not consider these arguments, because they were unrelated to liability.[69] But the Trustee has never deviated from its position.

(iii) Challenges to the Arbitration

70. Shortly after the Arbitrator's award was released, the LPs and Concord objected to the arbitration process on the basis that it was too expensive and that the Trustee did not have the jurisdiction to agree to it. The LPs claimed, for the first time, that they were entitled to be paid in priority to Ms. Athanasoulis and that the Agreement was not enforceable. No such claim was made before Ms. Athanasoulis spent substantial sums on the Arbitration.

71. By Endorsement dated November 1, 2022, the Honourable Justice Kimmel found that the second phase of the arbitration could not proceed. Her Honour ordered the Trustee to establish a new process for determining Ms. Athanasoulis' Claim (the "**Jurisdiction Decision**").[70]

72. By Endorsement dated February 10, 2023, Justice Kimmel established a procedure for determining Ms. Athanasoulis' claim, as well as a procedure for any appeal from the Trustee's determination of the claim (the "**Process Decision**").[71] Pursuant to the Process Decision,

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[68] Partial Award at paras. 146, 166, 189-191, MR Vol 3, Tab 6(2), pp. 400,404, 413-414.

[69] Partial Award at para. 164, MR Vol 3, Tab 6(2), p. 404.

[70] YG Limited Partnership (Re), 2022 ONSC 6138 (the **"Jurisdiction Decision"**), BOA, Tab 34.

[71] YG Limited Partnership (Re), 2023 ONSC 4638 (the **"Process Decision"**), BOA, Tab 35.

Ms. Athanasoulis' entitlement to damages was to be determined by the Trustee. The Trustee's determination is subject to appeal pursuant to the *BIA*.

73. The Jurisdiction Decision and the Process Decision dramatically altered the Trustee's relationship to the Claim. The Trustee participated in the Arbitration as Ms. Athanasoulis' adversary, and stated—clearly and repeatedly—that Ms. Athanasoulis had not suffered any damages. But the Jurisdiction Decision required that the Trustee change from advocate to adjudicator. In practice, the Trustee was called on to determine whether Ms. Athanasoulis' damages theory was correct or whether *its own* position on damages should be preferred.

(iv) The Draft Disallowance and Ms. Athanasoulis' submissions

74. Before the Process Decision was issued, and before Ms. Athanasoulis tendered evidence or detailed argument to support her damages claim, the Trustee issued a "Draft Notice of Disallowance" explaining why it believed that Ms. Athanasoulis was not entitled to any payment in respect of the Claim (the "**Draft Disallowance**").[72]

75. The Trustee invited Ms. Athanasoulis to submit evidence and argument responding to the positions in the Draft Disallowance.

76. Beginning in February 2023, Ms. Athanasoulis delivered to the Trustee close to one hundred pages of written argument supported by thousands of pages of supporting evidence.

77. Among other things, Ms. Athanasoulis demonstrated—based on YSL's own accounting records—that YSL had earned a substantial profit. YSL's records showed expenses totalling approximately $265 million, including payments of approximately $11 million to Cresford that have not been adequately explained and may not have been in respect of valid project costs.[73] YSL earned revenues of approximately $305.4 million[74], including the sale of the YSL Project to

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[72] Trustee's Draft Disallowance, Supplementary Motion Record of Maria Athanasoulis, Tab 1.

[73] Athanasoulis Answers to Undertakings, MR Vol. 10, Tab 9, pp. 2468-2469, 2472-2489. For a full breakdown of this calculation, see the Athanasoulis Submissions at para. 136, MR Vol 2, Tab 5, p. 238.

[74] This is the sum of the revenues earned by YSL: $291M + $7.8M + $6.6M.

Concord for an implied purchase price of $291[75] million.[76] Thus, YSL's records showed that it earned a profit of $40.4 million.[77]

78. Some aspects of Ms. Athanasoulis' costs and revenue analysis were disputed by Cresford and/or the LPs. But Cresford did not provide *any* evidence that YSL's *actual* expenses exceeded its revenue. In fact, Cresford's primary response to Ms. Athanasoulis was to argue that certain expenses had been properly accrued for accounting purposes even though they were never paid.[78] Unpaid expenses are not expenses at all, and they are not relevant to Ms. Athanasoulis' entitlement.

(v) The Trustee did not accept any of Ms. Athanasoulis' submissions, and did not consider most of them

79. In any event, the Proposal Trustee appears to have largely disregarded both Ms. Athanasoulis' submissions and the responses to those submissions.

80. The Trustee issued its Disallowance on August 10, 2023, the Trustee issued a Notice of Disallowance setting out its determination of the value of Ms. Athanasoulis' Claim (the "**Disallowance**"). The Trustee did not make any material change to the reasoning or conclusions articulated in the Draft Notice of Disallowance.

81. The Disallowance makes no reference at all to critical aspects of Ms. Athanasoulis' argument. The Proposal Trustee did not address Ms. Athanasoulis' primary legal argument, which is that her damages must be calculated based on what would have happened but-for YSL's breach of the Agreement. It did not reach any conclusion, or conduct any apparent analysis, about whether YSL had actually earned profits.

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[75] Trustee 3rd Report, MR Vol 9, Tab 6(26), p. 1809; Report of Finnegan Marshall Inc. re: Project Pro Forma Completion Report for YSL Residences dated May 16, 2021 (**"Finnegan Report"**) at p. 12, MR Vol 7, Tab 6(13), p. 1403.

[76] Athanasoulis Answers to Undertakings, MR Vol. 10, Tab 9, pp. 2468-2469, 2472-2489. For a full breakdown of this calculation, see the Athanasoulis Submissions at para. 137, MR Vol 2, Tab 5, p. 238.

[77] Athanasoulis Answers to Undertakings, MR Vol. 10, Tab 9, pp. 2468-2469, 2472-2489. For a full breakdown of this calculation, see the Athanasoulis Submissions at para. 137, MR Vol 2, Tab 5, p. 238.

[78] Cross-Examination Transcript of David Mann dated June 21, 2023 at qs. 35-40, MR Vol 10, Tab 7, pp. 2422-2423.

82. In light of the foregoing, Ms. Athanasoulis commenced this appeal to set aside the Trustee's Disallowance.

III. ISSUES

83. The Trustee denied that Ms. Athanasoulis is entitled to anything, apart from the previously approved wrongful dismissal damages, for three primary reasons:

(a) The Trustee asserted that the Claim is an "equity claim" that is not "provable" pursuant to the *BIA*, without regard for the *BIA* requirement that an "equity claim" be in "respect of" an "equity interest";

(b) The Trustee concluded that no profits were earned by YSL, without considering either YSL's revenue or its expenses; and

(c) The Trustee concluded that Ms. Athanasoulis' claim was "subordinated" to the LPs, without finding that there was any agreement between Ms. Athanasoulis and the LPs.

84. Most importantly, the Trust did not apply the law of damages in its determination of Ms. Athanasoulis' damages claim. The Disallowance is, with respect, deeply flawed. It should be set aside.

A. The standard of review is correctness

85. The Disallowance rests entirely on the Trustee's interpretation of the law. It can only stand if that interpretation is correct.[79]

86. Although factual determinations and the exercise of discretion by a trustee will sometimes warrant deference, that is not the case here. The Trustee did not, apparently, conduct any meaningful investigation into YSL's finances. No investigation or conclusions are referenced in

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[79] *Business Development Bank of Canada v Pinder Bueckert & Associates Inc*, 2009 SKQB 458 at para. 24.; *Casimir Capital Ltd, Re*, 2015 ONSC 2819 at para. 33; *Charlestown Residential School, Re*, 2010 ONSC 4099 at para 17, BOA, Tabs 10, 11 and 12.

the Disallowance. The only evidence cited are three passages from Ms. Athanasoulis' testimony at (and in preparation for) the Arbitration. The Disallowance rests on how the Trustee believes the Claim *should be* analyzed. This is a legal conclusion, and the Trustee's legal conclusions are not entitled to deference.

87. The Trustee has not tendered any report that sets out the steps it took to investigate the Claim or the factual conclusions that it reached—because it did not, apparently, investigate the facts alleged by Ms. Athanasoulis. The Trustee concluded, in effect, that those facts were not relevant because they did not fit with how the Trustee thinks the Claim should be evaluated.

88. Moreover, according deference to the Trustee would result in significant injustice to Ms. Athanasoulis. Since her claim began almost four years ago, in January 2020, Ms. Athanasoulis has sought a fair adjudication of her claim by a neutral decision-maker. Her attempt to proceed in court was stayed by the *BIA*. Her attempt to bring her case before the Arbitrator was halted when the Arbitration was partially complete.

89. By the time the Trustee received Ms. Athanasoulis' Submissions, which set out her damages position in detail, it had already advocated repeatedly *against* that position in the Arbitration. In these circumstances, deference to the Trustee's decision would result in a significant injustice to Ms. Athanasoulis. No deference is appropriate.

B. The Claim ought to have been assessed based on the law of contract damages and the *BIA*

90. The first step in understanding the Trustee's errors, and how they ought to be addressed, is to assess how the Claim *should have* been evaluated. The Trustee was faced with two questions:

(a) what is the value of the Claim?

(b) is the Claim subordinate to the equity claims advanced by the LPs?

91. These are separate questions, governed by separate legal and factual considerations. The Trustee's fundamental error is that it concluded—before considering any meaningful argument from Ms. Athanasoulis—that the LPs *should be* paid before Ms. Athanasoulis. The Trustee concluded that, since the LPs *have not* been paid, then Ms. Athanasoulis *cannot* be paid. Critically,

the Trustee *never* valued Ms. Athanasoulis' claim because it decided that no claim could exist unless and until the LPs receive payment in full. In order to justify this conclusion, the Trustee departed from the law of damages and the plain language of the *BIA*.

C. Valuing the Claim based on the Law: Placing Ms. Athanasoulis in the Position she would be in if the Contract had been Performed

92. The Arbitrator's award, together with the well-established principles that apply to all breach of contract claims, provided a clear path for the Trustee. The Trustee ought to have calculated damages that put Ms. Athanasoulis in the position that she would be in if YSL had performed the Agreement.

(i) Ms. Athanaosulis is entitled to the profits she would have earned if YSL had honoured the Agreement

93. The law for assessing contractual damages is established beyond any doubt. It is described in every leading text[80] and affirmed in all of the leading appellate decisions.[81] Professor Waddams articulated the applicable principles as follows:

> One of the most significant of all economic interests is the benefit of a favourable contract. **A person who has made a good bargain is treated by the law for many purposes as one who has a present right, the value of which is measured by the value of the promised performance.** The primary manifestation of this approach is reflected in the measure of damages for breach of contract; **the contract breaker is bound to make good the loss caused by the breach, a loss measured by the value of the performance promised.**

94. The value of the promised performance is measured by evaluating what *would have* happened if the contract had been performed. The correct approach is illustrated in *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd* ("*Sylvan*").[82] In that case, one party to an

[80] Waddams, *Law of Damages*, 6th ed. (Carswell, 2021) at. 5.1; Swan, Adamski and Na, *Canadian Contract Law*, 4th ed. (LexisNexus, 2018) at 6.2; Fridman, *The Law of Contract in Canada*, 6th ed. (Carswell, 2011) at 19.3, BOA, Tabs 37, 38 and 39.

[81] See for example *Bank of America Canada v Mutual Trust Co*, 2002 SCC 43 at para. 27; *Fidler v Sun Life Assurance Co of Canada*, 2006 SCC 30 at para. 27: *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para. 108; *Dasham Carriers Inc. v. Gerlach*, 2013 ONCA 707 at para. 17, BOA, Tabs 6, 5, and 14.

[82] *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 (CanLII), [2002] 1 SCR 678, BOA, Tab 36.

option agreement breached the contract and, as a result, the other party lots the opportunity to develop the land. The Supreme Court of Canada upheld the Trial Judge's award of the profits that the wronged party *would have* made.[83] In *Sylvan* no one *actually* earned profits. But that did not matter, the key question was what *would have* happened if the defendant had performed the contract instead of breaching it.

95. Applied to this case, *Sylvan* (and the many other cases articulating the same principles) teach that the key question is what Ms. Athanasoulis *would have* earned but-for the breach. The Trustee's approach, which explicitly focused on what profits Ms. Athanasoulis *actually* earned is, with respect, not supported by – or consistent with – the law of damages.

96. Ms. Athanasoulis is entitled to receive the damages *caused* by YSL's breaches of the Agreement, nothing more and nothing less. These damages must place Ms. Athanasoulis, so far as money can, in the position she would have occupied but-for the breach. In order to calculate damages for breach of contract, it is necessary to calculate the wronged party's financial position in the real world (the **"Actual Profit"**) and compare it to the position that the wronged party would occupy if the contract had been performed (the **"But-for Profit"**).

(ii) The Trustee wrongly rejected the test for assessing contractual damages

97. The Trustee held that "a profit must have been earned for [Ms. Athanasoulis] to have a monetary claim."[84] This is, with respect, not correct. It is also deeply unfair to Ms. Athanasoulis. As noted, the Profit Share had enormous value when Ms. Athanasoulis was terminated. YSL breached the Agreement by taking steps that reduced (but did not eliminate) that value. The Trustee now says, in effect, that YSL's breach of the Agreement (which reduced the value of the YSL Project) eliminated Ms. Athanasoulis' damages. This cannot be correct. What the wronged party *actually* earned is not relevant.

[83] *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 (CanLII), [2002] 1 SCR 678, BOA, Tab 36.

[84] Trustee's Disallowance at p. 3, MR Vol 1, Tab 2, p. 31.

(iii) Ms. Athanasoulis would have earned significant sums but-for the breach

98. Ms. Athanasoulis' Actual Profit is easy to calculate. YSL paid her nothing[85] and forced her to spend significant time and enormous sums to vindicate her rights.

99. The damages analysis must calculate what Ms. Athanasoulis would have earned if YSL had complied with the Agreement.[86] There are two critical differences between Ms. Athanasoulis' actual position and the position she would be in if YSL had performed the Agreement: YSL would not have terminated Ms. Athanasoulis; and, YSL would have worked to maximize the profits earned on the YSL Project.

100. Quantification of Ms. Athanasoulis' damages has been reserved to a subsequent hearing. The current state of the evidence is summarized below, to illustrate the correct damages analysis.

101. YSL could have realized profits in one of two primary ways. It could have completed the YSL Project, sold condominium units, and realized the profits projected on its *pro forma*; or it could have sold the YSL Project and immediately realized the profits it had already earned. As noted above, the value of the YSL Project significantly exceeded any investment by YSL therein.

102. If Ms. Athanasoulis had not been constructively terminated, there is no reason to believe that the YSL Project would have suffered the same fate as it ultimately did. Before her termination, she urged Mr. Casey to sell all of Cresford's projects to address its cash flow issues. She was working for a solution that benefitted all stakeholders, and that effort would likely have succeeded if Mr. Casey had not repudiated the Agreement and pursued his own interests. YSL cannot credibly claim that it would be fair to use Mr. Casey's wrongdoing, and any resulting decrease in the value of the YSL Project, as a basis to eliminate or reduce damages in respect of Ms. Athanasoulis' contractual entitlement under the Agreement.

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[85] The Receiver recognized and acknowledged that Ms. Athanasoulis is owed $880,000 in lost salary, after Ms. Athanasoulis established in the Arbitration that she was wrongfully terminated. See Trustee's Disallowance at p. 1, MR Vol 1, Tab 2, p, 29.

[86] *Bank of America Canada v Mutual Trust Co*, 2002 SCC 43 at para. 27; *Fidler v Sun Life Assurance Co of Canada*, 2006 SCC 30 at para. 27: *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para. 108; *Dasham Carriers Inc. v. Gerlach*, 2013 ONCA 707 at para. 17, BOA, Tabs 6, 17, 5 and 14.

103. The Trustee did not refer to the relevant legal principles in the Disallowance. It proceeded on the assumption that Ms. Athanasoulis' damages must be equal to 20% of the *actual* profits earned on the YSL Project.

(iv) The value of the Profit Share at the time of termination is critical

104. The value of the YSL Project in December 2019 was the result of many years of hard work by Ms. Athanasoulis and other employees working under her supervision. YSL had successfully completed (or partially completed) several important parts of the development process. This had created significant value, and YSL was obliged to protect and realize that value. If it had done this, Ms. Athanasoulis (and the LPs) would have been paid everything owed to them.

105. As a matter of both law and logic, the consequences of YSL's value destruction should not be imposed on Ms. Athanasoulis: as a matter of law, damages are presumptively calculated on the date of the breach; as a matter of logic, it would be deeply unfair for Ms. Athanasoulis' entitlement to be affected by Mr. Casey's wrongdoing after he terminated her.

106. It is a well-established legal principle that damages are presumptively to be calculated at the date of breach.[87] Displacing this presumption is rare and premised on fairness to the innocent harmed party.[88] The rationale for this rule was articulated by Laskin J.A. in his concurring opinion in *Kinbauri Gold Corp. v. Iamgold International African Mining Gold Corp*:

> . . . [D]amages for breach of contract are generally assessed at the date of breach. An early crystallization of the plaintiff's damages promotes efficient behaviour: the litigants become as free as possible to conduct their affairs as they see fit. Early crystallization also avoids speculation: the plaintiff is precluded from speculating at the defendant's expense by reaping the benefits of an increase in the value of the goods in question without bearing any risk of loss.[89]

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[87] *Kinbauri Gold Corp. v. Iamgold International African Mining Gold Corp.*, 2004 CanLII 36051 (Ont. C.A.) at para. 125; see also *Kipfinch Developments Ltd. v. Westwood Mall (Mississauga) Limited*, 2010 ONCA 45 at para. 15 ; *Baud Corp., N.V. v. Brook*, 1978 CanLII 16 301 (SCC) at p. 648, BOA at Tabs 22, 23, and 7.

[88] *642947 Ontario Ltd. v. Fleischer*, 2001 CanLII 8623 (ONCA) at paras. 41-42; *Rougemount Capital Inc. v. Computer Associates International Inc.*, 2016 ONCA 847at para. 50, citing *Dosanjh v. Liang*, 2015 BCCA 18 at para. 55, BOA at Tabs 1, 27 and 15.

[89] *Kinbauri Gold Corp. v. Iamgold International African Mining Gold Corp.*, 2004 CanLII 36051 (Ont. C.A.) at para. 125, BOA at Tab 22.

107. *Kinbauri* involved the calculation of damages where the value of the shares the Plaintiff was entitled to had increased. The plaintiff was not entitled to share in that increased value after the date of breach. This case presents the flip side of the same coin. Ms. Athanasoulis' entitlement should not decrease because Mr. Casey destroyed the value of the YSL Project after terminating her.

108. This principle is entirely consistent with the requirement that damages be equal to the profits that the plaintiff would have earned if the profit had been performed, but did not earn because of the breach. The Profit Share had enormous value on the date of the breach. The steps taken to reduce that value would not have occurred if YSL had performed the Agreement.

109. Thus, fairness here requires the application of the presumptive rule. Ms. Athanasoulis should not be forced to shoulder the impact of Mr. Casey's self-serving conduct over which she had no control.

110. The Trustee does not provide any meaningful analysis of these facts, nor of the relevant legal principles. The Trustee simply says that it is not "just and reasonable" to calculate profits on the repudiation date because "no profit had been earned" and the LPs had not been repaid.[90] But neither of these facts affects Ms. Athanasoulis' entitlement: the Arbitrator specifically held that Ms. Athanasoulis was entitled to the Profit Share even if she was terminated before profits were earned; and the LPs are strangers to Ms. Athanasoulis' Agreement.

D. In the alternative, Ms. Athanasoulis is entitled to 20% of YSL's actual profit

(i) The Trustee did not investigate revenue or expenses

111. As noted, the Trustee determined that a "profit must have been earned" for Ms. Athanasoulis to have a monetary claim. Even if this is correct (which Ms. Athanasoulis denies) then the Disallowance cannot stand, because the Trustee did not investigate YSL's revenue or its expenses. It did not make *any* determination about *any* part of the profit calculation required by the Arbitrator.

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[90] Trustee's Disallowance at p. 2, MR Vol 1, Tab 2, p. 30.

(ii) The meaning of "profits"

112. The YSL Project's profits are equal to project revenues less project expenses.[91] This is what Ms. Athanaoulis and Mr. Casey understood "in the context of Cresford's business".[92] And it was this definition of profits that was contemplated by the Agreement:

> **When they agreed to the 20% [profit share agreement], Athanasoulis and Casey had a common understanding of what "profits" meant. Broadly speaking they understood that profits are revenues less expenses.** It is reasonable to infer that they understood profits to be as calculated within the pro forma process that they used generally for all projects within their business. **As given in evidence by Papadakis, they agreed that profits would not be artificially reduced by "bad faith" transactions.**[93]

113. While the Arbitrator found that project profits are often earned at the completion of a project, he also held that profits can be earned earlier: "Profits can also be earned on projects prior to registration… For example, land may be sold after successful rezoning of the property or at a point where a partial development has occurred."[94]

114. That is what occurred when the YSL Project was sold to Concord in the context of this insolvency. YSL's sale of the YSL Project generated revenues that significantly exceeded its expenses, which constitute earned profits according to the meaning of the Agreement.

115. The Trustee's Disallowance, and its conclusion that no profits were earned on the YSL Project, does not engage with this calculation at all.

(iii) YSL's revenues

116. According to the Trustee, the implied purchase price for the YSL Project under the Proposal totalled approximately $291 million.[95]

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[91] Partial Award at para. 93, MR Vol 3, Tab 6(2), p. 388.

[92] Partial Award, para. 146, MR Vol 3, Tab 6(2), p. 400.

[93] Partial Award at para. 146, MR Vol 3, Tab 6(2), p. 400.

[94] Partial Award, at para. 97, MR Vol 3, Tab 6(2), p. 389.

[95] Trustee 3rd Report, MR Vol 9, Tab 6(26), p. 1809; Finnegan Report at p. 12, MR Vol 7, Tab 6(13), p. 1403.

117. In addition, as noted above, YSL sold two properties that it owned adjacent to the YSL Property to Concord for $7.6 million (the "**Adjacent Properties**").[96] This is revenue, within the meaning of the Agreement.

118. In addition to the amounts paid under the Proposal itself, a company related to Concord paid Cresford $6.6 million.[97] This amount is part of the price that Concord paid to acquire the YSL Project and, as such, these amounts are revenue within the meaning of the Agreement.

119. In light of the foregoing, Ms. Athanasoulis respectfully submits that YSL earned revenues of at least $305.4 million.

(iv) YSL's expenses on the YSL Project were less than $265 million

120. YSL's expenses were significantly less than its revenues. YSL paid $157.5 million to acquire the YSL Property.[98] Its general ledger summary of bank activity shows that it paid project expenses totalling approximately $107.3 million.[99] This supports the conclusion that YSL incurred costs of approximately $265 million.[100] A separate analysis of YSL's general ledger, and the cost report prepared on behalf of YSL's construction lender reached the same conclusion.[101]

(v) There were actual profits of at least $39.5 million

121. Based on the foregoing, the available documents establish an actual profit of approximately $39.5 million. Ms. Athanasoulis' share of this profit is $7.9 million under the Agreement. Ms. Athanasoulis specifically asked for the documents accounting for the gap between the revenues earned by YSL on the YSL Project and the costs reflected in a report prepared by a leading cost

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[96] Statement of Adjustments, MR Vol 7, Tab (6)18, p. 1483.

[97] Dale & Lessman Reporting Letter, MR Vol 7, Tab 6(15), p.1453; see also Trustee 4th Report at p. 11, MR Vol 10, Tab 6(27), 2107.

[98] Athanasoulis Answers to Undertakings, MR Vol. 10, Tab 9, pp. 2468-2469, 2472-2489. For a full breakdown of this calculation, see Athanasoulis Submissions at paras. 130 and 136, MR Vol 2, Tab 5, pp. 236, 238.

[99] Athanasoulis Answers to Undertakings, MR Vol. 10, Tab 9, pp. 2468-2469, 2472-2489. For a full breakdown of this calculation, see the Athanasoulis Submissions at paras. 130 and 136, MR Vol 2, Tab 5, pp. 236, 238.

[100] Athanasoulis Answers to Undertakings, MR Vol. 10, Tab 9, pp. 2468-2469, 2472-2489. For a full breakdown of this calculation, see Athanasoulis Submissions at paras. 130 and 136, MR Vol 2, Tab 5, pp. 236, 238.

[101] Athanasoulis Answers to Undertakings, MR Vol. 10, Tab 9, pp. 2468-2469, 2472-2489. For a full breakdown of this calculation, see the Athanasoulis Submissions at para. 137, MR Vol 2, Tab 5, p. 238.

consultant, the Altus Group in August 2019.[102] Cresford was unwilling or unable to provide a meaningful answer.[103]

(vi) Profits do not appear to have been available for distribution

122. The Trustee does not dispute Ms. Athanasoulis' analysis. But it also does not accept that analysis. Rather, the Trustee purports to determine that there was no profit *without* actually investigating YSL's revenue or expenses.

123. Even though YSL earned a profit as set out above, it did not have funds available for distribution after the Proposal was approved and completed. Ms. Athanasoulis does not bear the burden of explaining what happened to the funds that YSL brought in. She only bears the burden of proving that revenue exceeded expenses, or in other words, that profits were earned. She has met that burden. Although Ms. Athanasoulis supports an investigation into what happened to the funds that YSL brought in, she is not obliged to conduct that investigation in order to prove her Claim.

E. The Trustee's valuation errors

(i) The Trustee erred by not applying the law of damages

124. The Trustee did not conduct the analysis required by the law of damages. It did not consider what position Ms. Athanasoulis would be in if YSL had honoured the Agreement instead of breaching it. It did not assess YSL's actual revenue or expenses, or what its revenue or expenses would have been but-for the breach. This is a fatal flaw in the Trustee's analysis. It is also, without more, sufficient to set aside that analysis.

(ii) The Trustee erred by claiming that the valuation of the Claim is speculative

125. The Trustee claims that Ms. Athanasoulis' damages are too speculative or remote. This is improper, because the quantification of Ms. Athanasoulis' damages has been deferred to a subsequent hearing by the Process Decision. As a result, the Trustee has not *tried* to quantify

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[102] Email from Mark Dunn dated Feb 24 2024, MR Vol 10 , Tab 6(33), p. 2405.

[103] Email from Harry Fogul dated March 10, 2023, MR Vol 10, Tab 6(34), p. 2407.

Ms. Athanasoulis' damages. Ms. Athanasoulis' has not yet had an opportunity to tender any evidence relating to that quantification.

126. With respect, the Trustee is also wrong. Despite all this, the Trustee says that "the assumptions" required to calculate Ms. Athanasoulis' damages are "far too speculative" and the damages are "far too remote". This is simply incorrect.

127. Damages can be calculated with reasonable certainty in this case and based on sufficient proof. The Court can decide what would have happened if YSL had followed the contract, instead of repudiating it. The value of the YSL Project at the time of termination, together with the expenses incurred to build that value, can all be measured, and will be measured at the appropriate time with reference to the YSL Project *pro formas*, other relevant supporting documents and appropriate expert evidence.

128. The Trustee's position ignores the well established legal principle that a party should not be denied damages just because those damages are difficult to calculate.[104] The Alberta Court of Appeal has held that it is only where there is an *absence* of proof regarding a claim that it should not be valued. As the Court cautioned, "One must take care not to overstate the rule. It does not eliminate contingent or future claims. It merely subjects them to a valuation process."[105]

129. Even in cases where damages are difficult to calculate, damages must still be awarded. In such cases, damages are assessed with a broad axe and a sound imagination.[106] In this case, there is no evidence that the calculation is more difficult than other complex, high-stakes damages claims. Nothing in the *BIA* allows the Trustee to extinguish otherwise meritorious claims because they are alleged to be complicated. More importantly, there has been no attempt to calculate either but-for profits or actual profits. The Trustee does not even explain what assumptions were alleged to be too spectulative.

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[104] *General Mills Canada Ltd. v. Maple Leaf Mills Ltd.*, 52 C.P.R. (2d) 218 (Ont. H. Ct. Jus.) at para. 4; *Gould Outdoor Advertising Co. v. Clark*, [1994] O.J. No. 3094 (Ont. Ct. J) at para. 26, BOA at Tabs 19 and 20.

[105] *Abacus Cities Ltd. (Trustee of) v. AMIC Mortgage Investment Corp*., 1992 ABCA 57, paras. 37-38, BOA at Tab 2.

[106] *Colonial Fastener Co. Ltd. v. Lightning Fastener Co. Ltd*., [1937] SCR 36, pg. 44; *Apotex Inc. v. Eli Lilly and Company,* 2018 FCA 217*,* para. 142; *Janssen Inc. v. Teva Canada Limited*, 2016 FC 593, at para. 69, BOA at Tabs 13, 4 and 21.

130. Ms. Athanasoulis understands the computation of damages is a matter to be deferred to a future quantification hearing, with additional evidence and submissions. At this stage, it is sufficient to say that damages *can* be calculated (based on either actual profit or but-for profit) and that the Claim is not, therefore, speculative or remote.

F. Ms. Athanasoulis is entitled to priority over the LPs

131. Determining the relative priority of Ms. Athanasoulis and the LPs is also a straightforward exercise. The Trustee should have applied the clear language of the *BIA* to the facts of the case. But this is not what it did. Instead of applying the *BIA*, the Trustee essentially *ignored* the statutory language of the *BIA* and substituted its opinion about who *should* have priority. This was, with respect, a fundamental error.

(ii) The LPs hold equity claims, which are subordinate to debt claims

132. It is common ground that each LP holds an "equity claim" within the meaning of the *BIA*. The *BIA* provides that every creditor who *does not* hold an "equity claim" is entitled to be paid before any creditor that *has* an equity claim.[107] It follows that if the Claim is not an "equity claim" then Ms. Athanasoulis is entitled to priority over the LPs.

(iii) The Claim is not an "equity claim"

133. The *BIA* provides a clear and binding definition of an "equity claim". A claim can only be an "equity claim" if it is "**in respect of an equity interest**."[108] An equity interest "**means** … **a share in the corporation** – or warrant or option or another right to acquire a share."[109] The use of the word "means" dictates that this definition is intended to be exhaustive, in accordance with well-accepted principles of statutory interpretation.[110]

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[107] *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s. 140(1), BOA at Tab 40.

[108] *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s. 2, BOA at Tab 40.

[109] *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s. 2, BOA at Tab 40.

[110] *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 34 (S.C.C.) at para. 42; *Alexander College Corp. v. R.*, 2016 FCA 269 at para 14, BOA at Tabs16 and 3.

134. Ms. Athanasoulis' Claim has no connection to any "equity interest." She never held any shares, warrants, or options in YSL or any other Cresford project.[111] No one alleges that she did. More importantly, the Claim is not "in relation to" any such interest. This is a complete answer to the allegation that Ms. Athanasoulis has an "equity claim" that is not provable in this proceeding.

135. The Trustee appears to accept that Ms. Athanasoulis does not hold an "equity interest". It does not make any attempt to tie the Claim to an "equity interest". It says that "the Trustee does not consider it relevant that Ms. Athanasoulis does not hold equity in YSL."[112] This is an explicit, and rather astonishing, rejection of the language of the *BIA*.

(iv) The Claim is not "in substance" an equity claim

136. The Trustee seeks to side-step the statutory definition by saying that the Claim is "disguised as a debt claim while in substance it is an equity claim."[113]

137. The Trustee's *view* about the substance of an equity claim cannot trump the statutory language. Although Courts have read the term "equity claim" broadly, there is no support for the Trustee's decision to ignore the "equity interest" requirement. In each case where a claim has been found to be an equity claim, it is *related to* an equity interest within the meaning of the *BIA*.[114] While some cases suggest that the connection between an equity claim and an equity interest may be broad, they do not negate the requirement that such a connection must *exist*.

138. Existing jurisprudence further belies the suggestion that all claims calculated with reference to profits are inherently equity claims. Courts have been clear that wrongfully terminated

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[111] Athanasoulis Affidavit at para. 15, MR Vol 1, Tab 4, p. 92.

[112] Trustee's Disallowance at p. 6, MR Vol 1, Tab 2, p. 34.

[113] Trustee's Disallowance at p. 6, MR Vol 1, Tab 2, p. 34.

[114] *Sino-Forest Corporation (Re),* 2012 ONCA 816, concerned a claim for indemnity relating to a shareholder class action; *Bul River Mineral Corporation (Re)*, 2014 BCSC 1732 concerned a shareholder's claim against the debtor that had been reduced to a court judgment before the bankruptcy filing; in *Return on Innovation v Gandi Innovations*, 2011 ONSC 5018 concerned a claim relating to the recovery of a $50 million dollar equity investment through an arbitration; *US Steel Canada Inc (Re)*, 2016 ONSC 569, concerned a claim relating to the recovery of loans advanced by the parent company / sole shareholder of the debtor; *Tudor Sales Ltd (Re)*, 2017 BCSC 119 concerned a claim relating to advances made by a shareholder of the debtor and its sole officer and director; *YG Limited Partnership and YSL Residences (Re),* 2021 ONSC 4178 concerned claims brought by parties related to Cresford that had an equity interest in the YSL Project, BOA at Tabs 28, 9, 26, 31, 30, and 32.

employees may recover damages for incentive-based compensation in the bankruptcy context, including where such compensation is calculated with reference to sales or profitability.[115] This is true even where the employer's subsequent bankruptcy results in no actual profits being realized, since damages crystalize on the date of the employee's wrongful termination.[116]

139. The fact remains that Ms. Athanasoulis was not an investor in either YSL or the Cresford Group. She did not own shares, units or any other equity interest.[117] As the Trustee argued at the Arbitration, she was an employee.[118] A highly paid and highly skilled employee, but an employee nonetheless. YSL's wrongful repudiation of the Agreement created a legal debt, which Ms. Athanasoulis is entitled to recover. Her Claim seeks to do so and is accordingly provable in this proceeding.

140. As found by the Arbitrator, the compensation contemplated by the Agreement was intended to incentivize Ms. Athanasoulis' extraordinary contributions to the Cresford Group.[119] Like most other forms of recoverable incentive-based compensation, the parties chose to tie the quantification of this compensation to the company's performance. This tie does not transform a contractual obligation into an equity claim.

(v) The Trustee's circular logic

141. The Trustee even argues that because Ms. Athanasoulis is subordinate to the LPs (as it claims), and the LPs hold equity claims, Ms. Athanasoulis must also hold an equity claim "because debt always ranks behind equity." This begs the question. The equity claim analysis is meant to *determine* whether Ms. Athanasoulis ranks ahead of the LPs. The Trustee found that she holds an equity claim, *because* she ranks behind the LPs. It assumes the very thing to be proven.

142. The Trustee's assertion seems to rest on Ms. Athanasoulis' testimony at the Arbitration about how profits were to be calculated under the Agreement. None of the supposed admissions

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[115] *Noble v. Principal Consultants Ltd. (Trustee of)*, 2000 ABCA 133 at paras. 41-42, BOA at Tab 24.

[116] *Noble v. Principal Consultants Ltd. (Trustee of)*, 2000 ABCA 133 at para. 41-42, BOA at Tab 24.

[117] Athanasoulis Affidavit at para. 15, MR Vol 1, Tab 4, p. 92.

[118] Partial Award at paras. 128, 131, MR Vol 3, Tab 6(2), pp. 394-395.

[119] Partial Award at paras. 144 and 160, MR Vol 3, Tab 6(2), pp. 399, 403.

referenced by the Trustee have the legal effect apparently attributed to them by the Trustee. Ms. Athanasoulis testified at the Arbitration about the terms of the Agreement and specifically about how she expected profits to be calculated.[120] She testified that profits were to be calculated as revenues less expenses, consistent with the YSL Project *pro formas*.[121] Within that equation, repayment of investors, including the LPs, was among the expenses or project costs that would be deducted before profits were calculated .[122]

143. Ms. Athanasoulis "admitted" that this was the calculation mechanism for determination of her profits under the Agreement. But at no time did Ms. Athanasoulis ever agree or "admit" that her claim for damages for breach of the Agreement would be subordinated to recovery of the equity investment by the LPs. Nothing in her testimony changes the basic calculation at the heart of the Agreement. Her entitlement was based on *actual* revenue less *actual* expenses.

144. Ms. Athanasoulis never purported to characterize her *entitlement* in the Proposal proceedings.[123] Nor would she, since of course this is a question of law and was not within either her or Cresford's reasonable expectations at the time they entered into the Agreement.[124]

145. Similarly, the fact that the pro formas prepared by Cresford show repayment to the LPs does not affect priority. YSL *expected* that the LPs would be paid in full if any profits were earned. This would have been a reasonable projection if YSL had honoured its contractual obligations—then *both* Ms. Athanasoulis and the LPs would have been paid in full. But this is not what happened.

[120] Arbitration Transcript - February 22 at 153 :17-22, MR Vol 3, Tab 6(3), p. 456; Arbitration Transcript - February 23 at 233:22-25, 234:1-3, 276:3-14, MR Vol 3, Tab 6(4), pp. 478, 479, 489.

[121] Arbitration Transcript - February 22 at 153 :17-22, MR Vol 3, Tab 6(3), p. 456; Arbitration Transcript - February 23 at 233:22-25, 234:1-3, 276:3-14, MR Vol 3, Tab 6(4), pp. 478, 479, 489.

[122] Arbitration Transcript - February 22 at 153 :17-22, MR Vol 3, Tab 6(3), p. 456; Arbitration Transcript - February 23 at 233:22-25, 234:1-3, 276:3-14, MR Vol 3, Tab 6(4), pp. 478, 479, 489.

[123] Athanasoulis Affidavit at paras. 52, 54, MR Vol 1, Tab 4, 99, 100.

[124] Athanasoulis Affidavit at para. 87, MR Vol 1, Tab 4, p. 106.

146. Critically, Ms. Athanasoulis' damages are based on what would have happened but-for the breach. In this scenario, both Ms. Athanasoulis and the LPs would have recovered everything YSL owed them.

147. Thus, Ms. Athanasoulis' testimony is not the smoking gun the Trustee or the LPs allege it to be. The calculation mechanism for Ms. Athanasoulis' claim does not change the essential fact that Ms. Athanasoulis is a creditor of YSL and the LPs are not.

(vi) The Claim is in relation to a debt and is a "Provable Claim"

148. The Trustee also asserts that the Claim is not a provable claim. A "provable claim" is defined in section 121(1) of the *BIA* as "All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt … shall be deemed to be claims provable in proceedings under this Act."[125]

149. The bar for establishing a provable claim is low and only requires that a claimant proves that there is an "air of reality" to their claim.[126]

150. There is certainly such an air of reality here—the issue of liability is not remote or speculative since the Arbitrator has determined that: the Agreement existed; it was a key element of Ms. Athanasoulis' employment contract; and it was breached when Ms. Athanasoulis was constructively terminated. As described above in relation to the calculation of profits, the fact that a claim involves some complexity in quantification is not a bar to a provable claim.

151. Ms. Athanasoulis seeks to recover damages caused by the wrongful repudiation of the Agreement. The Agreement is a contract, and the breach of this contract created a legally recoverable debt. This debt is provable in this proceeding.

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[125] *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s. 121(1), BOA at Tab 40.

[126] *Oil Lift Technology Inc. v. Deloitte & Touche Inc*., 2012 ABQB 357 at para. 18, BOA at Tab 25.

(vii) The Trustee assumed, for an unknown reason, that profit is the same as cash on hand

152. In determining that YSL earned no profits, the Trustee has conflated *profits* with *cash on hand*. The Trustee assumes that because YSL did not have cash after the Proposal closed, it did not earn a profit. But profit is calculated based on revenue less expenses, not cash on hand. The Trustee has not conducted any apparent analysis with respect to *why* YSL did not have cash available to pay Ms. Athanasoulis and the LPs. The assumption underlying its analysis is not valid.

(viii) The Trustee ignored the effect of YSL's repudiation

153. Even if Ms. Athanasoulis would have been paid after the LPs if the YSL Project had been completed, this changed when Ms. Athanasoulis' damages crystalized upon repudiation of the Agreement by YSL.

154. YSL dramatically altered Ms. Athanasoulis' entitlement when it repudiated the Agreement. It converted a *future* right to receive *actual* profits into a *current* right to receive *damages* for breach of contract.

155. If this insolvency had not occurred, Ms. Athanasoulis would likely have been awarded (and paid) her damages before the YSL Project was complete and the LPs were paid under the Waterfall. Those damages would have been awarded in a lump sum, and payable after trial whether or not the LPs had been paid.

IV. CONCLUSION

156. Ms. Athanasoulis is entitled to a fair evaluation of her claim, in accordance with the governing legal principles. The Disallowance is, with respect, a rejection of those principles. It should be set aside, this Court should direct a reference to determine damages based on what *would have* happened if YSL had honoured the Agreement. In the alternative, this Court should assess damages based on the profits that YSL actually earned.

October 27, 2023

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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SCHEDULE "A"

LIST OF AUTHORITIES

Cases

1. *642947 Ontario Ltd. v. Fleischer*, 2001 CanLII 8623 (ONCA)
2. *Abacus Cities Ltd. (Trustee of) v. AMIC Mortgage Investment Corp*., 1992 ABCA 57
3. *Alexander College Corp. v. R.*, 2016 FCA 269
4. *Apotex Inc. v. Eli Lilly and Company,* 2018 FCA 217
5. *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19
6. *Bank of America Canada v Mutual Trust Co*, 2002 SCC 43
7. *Baud Corp., N.V. v. Brook*, 1978 CanLII 16 301 (SCC)
8. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953
9. *Bul River Mineral Corporation (Re)*, 2014 BCSC 1732
10. *Business Development Bank of Canada v Pinder Bueckert & Associates Inc*, 2009 SKQB 458
11. *Casimir Capital Ltd, Re*, 2015 ONSC 2819
12. *Charlestown Residential School, Re*, 2010 ONSC 4099
13. *Colonial Fastener Co. Ltd. v. Lightning Fastener Co. Ltd*., [1937] SCR 36
14. *Dasham Carriers Inc. v. Gerlach*, 2013 ONCA 707
15. *Dosanjh v. Liang*, 2015 BCCA 18
16. *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 34 (S.C.C.)
17. *Fidler v Sun Life Assurance Co of Canada*, 2006 SCC 30
18. *General Mills Canada Ltd. v. Maple Leaf Mills Ltd.*, 52 C.P.R. (2d) 218 (Ont. H. Ct. Jus.)
19. *Gould Outdoor Advertising Co. v. Clark*, [1994] O.J. No. 3094 (Ont. Ct. J)
20. *Janssen Inc. v. Teva Canada Limited*, 2016 FC 593

21. *Kinbauri Gold Corp. v. Iamgold International African Mining Gold Corp.*, 2004 CanLII 36051 (Ont. C.A.)

22. *Kipfinch Developments Ltd. v. Westwood Mall (Mississauga) Limited*, 2010 ONCA 45

23. *Noble v. Principal Consultants Ltd. (Trustee of)*, 2000 ABCA 133

24. *Oil Lift Technology Inc. v. Deloitte & Touche Inc.*, 2012 ABQB 357

25. *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 (CanLII)

26. *Return on Innovation v Gandi Innovations*, 2011 ONSC 5018

27. *Rougemount Capital Inc. v. Computer Associates International Inc.*, 2016 ONCA 847

28. *Sino-Forest Corporation (Re)*, 2012 ONCA 816

29. *Tudor Sales Ltd (Re)*, 2017 BCSC 119

30. *US Steel Canada Inc (Re)*, 2016 ONSC 569

31. *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 4178; 2021 ONSC 5206; 2022 ONSC 6138 ; 2023 ONSC 4638

Textbooks

32. Fridman, *The Law of Contract in Canada*, 6th ed. (Carswell, 2011) at 19.3

33. Swan, Adamski and Na, *Canadian Contract Law*, 4th ed. (LexisNexus, 2018)

34. Waddams, *Law of Damages*, 6th ed. (Carswell, 2021)

SCHEDULE "B"

LIST OF STATUTES

***Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3**

Definitions

2 In this Act,

[…]

> ***equity claim*** means a claim that is in respect of an equity interest, including a claim for, among others,
>
> > **(a)** a dividend or similar payment,
> >
> > **(b)** a return of capital,
> >
> > **(c)** a redemption or retraction obligation,
> >
> > **(d)** a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
> >
> > **(e)** contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (*réclamation relative à des capitaux propres*)
>
> ***equity interest*** means
>
> > **(a)** in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt, and
> >
> > **(b)** in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (*intérêt relatif à des capitaux propres*)

[…]

Claims provable

- **121 (1)** All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

[…]

140.1 A creditor is not entitled to a dividend in respect of an equity claim until all claims that are not equity claims have been satisfied.

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

Court File No. B-21-02734090-0031

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

ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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Court File No. BK-21-02734090-0031

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

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
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