



Court File No. CV-24-00713783-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

THE HONOURABLE) WEDNESDAY, THE 6TH
)
JUSTICE CAVANAGH) DAY OF MARCH, 2024

B E T W E E N:

**PEOPLES TRUST COMPANY and
FIRM CAPITAL MORTGAGE FUND INC.**

Applicants

- and -

**VANDYK-BACKYARD QUEENSVIEW LIMITED and
VANDYK-BACKYARD HUMBERSIDE LIMITED**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited (now known as TDB Restructuring Limited) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the unsold condominium units, parking units, and storage lockers (the “**Unsold Units**”) legally described in the Order appointing the Receiver granted by this Court on February 6, 2024 constituting property of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the “**Debtors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between Paul Michael Foggia and Simona Moschillo, as joint tenants, (together, the “**Purchasers**”) and Vandyk-Backyard Queensview Limited dated January 7, 2024, as amended and accepted by the Receiver on February 26, 2024 a copy of which is appended to the First Report of the Receiver dated February 27, 2024 (the “**First Report**”) as Appendix “C”, and vesting in the Purchasers the Debtors’ and the Receiver’s right, title and interest in and to the property described in the Sale Agreement (the

“**Purchased Assets**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver and such other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as it appears from Affidavits of Service of Rudrakshi Chakrabarti sworn February 28, 2024 and Puya Fesharaki sworn March 5, 2024, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record herein is hereby validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings ascribed thereto in the First Report.

APPROVAL AND VESTING

3. **THIS COURT ORDERS** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor and non-material amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.
4. **THIS COURT ORDERS** that, upon the delivery of a Receiver’s certificate to the Purchasers substantially in the form attached as **Schedule “A”** hereto (the “**Receiver’s Certificate**”), all of the Receiver’s and the Debtors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule “B”** hereto shall vest absolutely in the Purchasers free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice

Cavanagh dated February 6, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the encumbrances listed on **Schedule “D”** hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that, upon the registration in the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchasers as the owners, as joint tenants, of the subject property identified in **Schedule “B”** hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “C”** hereto.

6. **THIS COURT ORDERS** that the Receiver pay to Toronto Standard Condominium Corporation No. 2983 (the “**Condo Corp**”) from the sale proceeds of the Transaction any amounts owing in respect of the notices and other instruments registered by the Condo Corp against title to the Unsold Units.

7. **THIS COURT ORDERS AND DIRECTS** that the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) shall delete and expunge Instrument No. AT6510972, being an Application to Register Court Order registered on February 6, 2024, in favour of RSM Canada Limited, from title to the Real Property identified on **Schedule “B”** hereto.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, as soon as practicable after delivery thereof.

10. **THIS COURT ORDERS** that, notwithstanding:


- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

 Digitally signed by
Mr. Justice
Cavanagh

Schedule “A” – Form of Receiver’s Certificate

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Applicants

- and -

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Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to the Order of Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 6, 2024 (the “**Appointment Order**”), RSM Canada Limited (now known as TDB Restructuring Limited) was appointed as the receiver (the “**Receiver**”) of the Unsold Units, including all proceeds thereof (the “**Property**”) of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the “**Debtors**”) located at 25 Neighbourhood Lane, Toronto, Ontario.

B. Pursuant to an Approval and Vesting Order of the Court dated March 6, 2024, the Court approved the agreement of purchase and sale made as of January 7, 2024 between Vandyk-Backyard Queensview Limited (the “**Seller**”) and Paul Michael Foggia and Simona Moschillo (together, the “**Purchasers**”), which agreement was subsequently amended and entered into by the Receiver pursuant to its powers under the Appointment Order (the “**Sale Agreement**”) and provided for the vesting in the Purchasers of the Receiver’s and the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Appointment Order and the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid, and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**RSM Canada Limited (now known as TDB
Restructuring Limited), solely in its capacity as
Receiver of the Property, and not in its personal
capacity**

Per: _____

Name:

Title:

Schedule “B” – Purchased Assets

UNIT 302

PIN 76983 – 0026 (LT)

Description: UNIT 2, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0336 (LT)

Description: UNIT 27, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

PIN 76983 – 0387 (LT)

Description: UNIT 78, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2983
AND ITS APPURTENANT INTEREST; CITY OF TORONTO

Municipally known as Unit 302, 25 Neighbourhood Lane, Toronto, and all other property governed by the Sale Agreement and all amendments thereto.

Schedule “C” – Claims to be Deleted and Expunged from Title to The Real Property

	Registration Number	Date	Instrument Type	Amount	Parties To
1.	AT5030525	2018/12/12	Charge	\$18,750,000	Trisura Guarantee Insurance Co.
2.	AT5175582 Remarks: AT5030525	2019/07/02	Notice		Trisura Guarantee Insurance Co.
3.	AT6405972	2023/08/24	Charge	\$12,700,000	Peoples Trust Company
4.	AT6405973 Remarks: AT6405972	2023/08/24	No Assgn Rent Gen		Peoples Trust Company
5.	AT6406080	2023/08/24	Postponement		Peoples Trust Company
6.	AT6407058	2023/08/25	Construction Lien	\$384,182	
7.	AT6407909	2023/08/28	Construction Lien	\$1,845,369	
8.	AT6436267	2023/10/06	Construction Lien	\$213,401	
9.	AT6439785 Remarks: AT6407058	2023/10/12	Certificate		
10.	AT6445432 Remarks: AT6407909	2023/10/23	Certificate		Vandyk-Backyard Queensview Limited Peoples Trust Company Trisura Guarantee Insurance Company
11.	AT6450100	2023/10/30	Construction Lien	\$1,142,744	
12.	AT6452324	2023/11/01	Construction Lien	\$702,998	
13.	AT6457807	2023/11/10	Construction Lien	\$16,952	
14.	AT6458231	2023/11/10	Construction Lien	\$2,282,408	
15.	AT6458352	2023/11/10	Construction Lien	\$658,839	
16.	AT6459779	2023/11/15	Construction Lien	\$127,350	
17.	AT6460827	2023/11/15	Construction Lien	\$122,337	
18.	AT6460839	2023/11/15	Certificate		

	Remarks: AT6457807				
19.	AT6464044	2023/11/22	Construction Lien	\$1,130	
20.	AT6469954 Remarks: AT6458231	2023/11/30	Certificate Certificate of Action		
21.	AT6469955 Remarks: AT6458352	2023/11/30	Certificate Certificate of Action		
22.	AT6471094	2023/12/01	Condo Lien/98	\$3,295	
23.	AT6470896	2023/12/01	Condo Lien/98	\$87	
24.	AT6470584	2023/12/01	Condo Lien/98	\$417	
25.	AT6472516	2023/12/04	Construction Lien	\$462,217	
26.	AT6480459 Remarks: AT6459779	2023/12/14	Certificate		
27.	AT6481040 Remarks: AT6452324	2023/12/15	Certificate		
28.	AT6481578	2023/12/15	Construction Lien	\$323,750	
29.	AT6495103 Remarks: AT6481578	2024/01/12	Certificate		
30.	AT6496982 Remarks: AT6450100	2024/01/16	Certificate		
31.	AT6508018 Remarks: AT6472516	2024/02/02	Certificate		
32.	AT6510972 Remarks: Appointing RSM Canada Limited as Receiver	2024/02/08	Apl Court Order		RSM Canada Limited
33.	AT6513372 Remarks:	2024/02/13	Certificate		

	AT6460827				
34.	24-0000442 Creditor: TA Appliance Inc.	2024/01/26	Toronto	\$499,709.91 @ 7% interest starting 2024/01/19 \$4,876.56 @ 7% interest starting 2021/01/19	

Schedule “D” – Permitted Encumbrances Related to the Real Property
(unaffected by the Vesting Order)

	REG. NUM.	Date	Instrument Type	Parties From	Parties To	Cert/CHKD
1.	EB160013	1955/10/24	Agreement		The Corporation of the Township of Etobicoke	C
2.	EB163037	1956/01/03	Certificate			C
3.	EB177163	1956/11/19	Agreement		The Corporation of the Township of Etobicoke	C
4.	EB181933	1957/04/04	Agreement		The Corporation of the Township of Etobicoke	C
5.	EB186721	1957/07/29	Bylaw			C
6.	EB188451	1957/09/06	Agreement		Township of Etobicoke	C
7.	AT5347788	2020/01/22	Notice		City of Toronto	C
8.	AT5367386	2020/02/19	Transfer of Easement	Vandyk-Backyard Queensview Limited	Rogers Communications Inc.	C
9.	AT5531340	2020/09/29	Notice	Vandyk – Backyard Humberside Limited Vandyk – Backyard Queensview Limited Vandyk-Backyard Kingsmill Limited	Rogers Communications	C
10.	AT5713886	2021/04/23	Certificate	Her Majesty the Queen in right of Ontario as represented		C

				by The Minister of Environment, Conservation and Parks		
11.	TCP2983	2023/07/07	Standard Condo Plan			C
12.	AT6370359	2023/07/07	Condo Declaration	Vandyk – Backyard Queensview Limited		C
13.	AT6373564	2023/07/12	Condo Bylaw – No. 1	Toronto Standard Condominium Corporation No. 2983		C
14.	AT6373568	2023/07/12	Condo Bylaw – No. 2	Toronto Standard Condominium Corporation No. 2983		C
15.	AT6373569	2023/07/12	Condo Bylaw – No. 3	Toronto Standard Condominium Corporation No. 2983		C
16.	AT6373573	2023/07/12	Condo Bylaw – No. 4	Toronto Standard Condominium Corporation No. 2983		C
17.	AT6373575	2023/07/12	Condo Bylaw – No. 5	Toronto Standard Condominium Corporation No. 2983		C
18.	AT6373578	2023/07/12	Condo Bylaw – No. 6	Toronto Standard Condominium Corporation No. 2983		C

19.	AT6373584	2023/07/12	Notice	Vandyk Backyard Queensview Limited –	Toronto Standard Condominium Corporation No. 2983	C
20.	AT6373595	2023/07/12	Notice	Vandyk Backyard Queensview Limited –	Toronto Standard Condominium Corporation No. 2983	C
21.	AT6373604	2023/07/12	Notice	Vandyk-Backyard Queensview Limited	Toronto Standard Condominium Corporation No. 2983	C

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceedings commenced at Toronto, Ontario

**ORDER
(Approval and Vesting Order)**

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