

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
JUSTICE OSBORNE

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FRIDAY, THE 28TH
DAY OF NOVEMBER, 2024

BETWEEN:

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

Applicants

-and-

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

Respondents

ORDER
(Priority of Lien Claims)

THIS MOTION made by the Applicants, Peoples Trust Company and Firm Capital Mortgage Fund Inc. (collectively the “**First Mortgagee**”), for an order among other things: (i) declaring that the maximum aggregate potential priority of the Claims of the Lien Claimants in respect of the Unsold Units and all proceeds thereof, as those terms are defined in the Order of Justice Cavanagh, dated March 6, 2024 (the “**Lien Claims Process Order**”), ahead of the First Mortgagee’s first ranking mortgage (the “**First Mortgage**”) or as against the Receiver (the

“Priority Claims”), are limited to the maximum statutory holdbacks of \$1,979,540.34 (the **“Maximum Lien Holdback”**) as set out in paragraph 5 of the Order of Justice Cavanagh dated March 6, 2024 (the **“March 6 Ancillary Order”**); and (ii) subject to the relief being granted in (i) above, authorizing and directing TDB Restructuring Limited in its capacity as Court-appointed receiver (the **“Receiver”**) to distribute the Net Proceeds (as defined below) from the sale of any of the Unsold Units to the First Mortgagee, together with any amounts previously held back by the Receiver from earlier sales of Unsold Units, subject to the Receiver holding back the Net Proceeds of certain Unsold Units for sale with an aggregate valuation of not under an amount to be confirmed and agreed upon at the recommendation of the Receiver, and being not less than the Maximum Lien Holdback amount (the **“Unsold Unit Holdback Reserve”**), to stand as security for the benefit of lien claims that may subsequently be determined to be valid and in priority to the First Mortgage, was heard this day by videoconference via Zoom in Toronto, Ontario;

ON READING the Motion Record of the Applicants dated April 25, 2024, including the First Lombard Affidavit, the Responding Motion Records of the lien claimants, Classic Tile Contractors Limited and Urban Mechanical Contracting Ltd. (the **“Responding Lien Claimants”**), dated May 10, 2024 and May 17, 2024 respectively, including the affidavit of Ehab Shaheen sworn May 10, 2024 and the affidavit of Paul Di Lucia sworn May 17, 2024, the Supplementary Motion Record of the Applicants dated May 24, 2024, including the further Affidavit of Michael Lombard sworn May 24, 2024, the Supplementary Responding Motion Record of Urban Mechanical Contracting Ltd. dated June 25, 2024, the Second Supplementary Motion Record of the Applicants, dated June 27, 2024, the transcripts of cross-examinations contained in the records, the facts of the Applicants and the Responding Lien Claimants, and the Fourth Report of the Receiver dated June 25 2024 (the **“Fourth Report of the Receiver”**):

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record herein, and the Responding Motion Records is hereby validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.

MAXIMUM PRIORITY

2. **THIS COURT DECLARES** that the maximum aggregate potential priority of the Priority Claims against the Unsold Units or their Net Proceeds of sale that can be asserted in priority to the First Mortgage is limited to the maximum statutory holdback amount of \$1,979,540.34 (the “**Maximum Lien Holdback**”) as set out in paragraph 5 of the **March 6 Ancillary Order**.

DISTRIBUTION OF NET PROCEEDS AND UNSOLD UNIT HOLDBACK RESERVE

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized to distribute the net proceeds from the sale of any of the Unsold Units to the First Mortgagee, net of commissions, amounts payable to third parties on closing and related closing costs (the “**Net Proceeds**”) together with any amounts previously held back by the Receiver from earlier sales of the Unsold Units, subject to the Receiver holding back until further Order of this Court certain Unsold Units or the Net Proceeds thereof, with an aggregate valuation of not less than the Maximum Lien Holdback amount, to stand as security for the benefit of any Priority Claims that may subsequently be determined to be valid and in priority to the First Mortgage, in accordance with the procedure set out in the Fourth Report of the Receiver or such further Order of this Court.

GENERAL

4. **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.
5. **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.

COSTS

6. **THIS COURT ORDERS** that the Responding Lien Claimants shall pay the First Mortgagee its costs of the motion, in the amount of \$57,000 inclusive of fees, disbursements and HST ("**Costs**"), and each of the Responding Lien Claimants shall pay 50% of the Costs, being \$28,500, within 30 days.

OSBORNE, J.

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

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

Applicants

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

Respondents

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

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Priority of Lien Claims)**

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Defence Lawyers appointed for the Applicants, for
Construction Lien Priority Issues