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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*

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

**FOURTH REPORT OF THE RECEIVER
June 25, 2024**

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1.0 INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on February 6, 2024 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**”, now known as TDB Restructuring Limited) was appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the unsold condominium units, parking units, and storage lockers (collectively, the “**Unsold Units**”) constituting property of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (collectively, the “**Debtors**”).
2. On February 1, 2024, RSM rebranded and legally changed its name to TDB Restructuring Limited (“**TDB**”). Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) dated March 1, 2024 (the “**Substitution Order**”), TDB replaced RSM on all active engagements set out in the Substitution Order, including this proceeding.
3. On March 6, 2024, the Court granted the following three Orders:
 - (a) an Approval and Vesting Order in respect of Unit 302;
 - (b) an Ancillary Order, among other things, approving the Receiver’s First Report dated February 29, 2024; and
 - (c) an Order establishing a lien claims process (the “**Lien Claims Process Order**”), among other things, (i) requiring any lien claimant who has registered a lien against the Unsold Units as of the date of the Appointment Order (each, a “**Lien Claimant**”) to deliver to the Receiver a completed

proof of lien claim and support documentation by May 1, 2024 (the “**Claims Bar Date**”), and (ii) directing the Receiver to make a recommendation to the Court at a future date and on notice to all interested parties, as to the most efficient and cost-effective process for having the claims determined.

4. On April 30, 2024, the Court granted:
 - (a) an approval and vesting order in respect of the sale of Unit 311; and
 - (b) an ancillary relief order (the “**April Ancillary Order**”), among other things (i) approving the Receiver’s Second Report dated April 22, 2024 (the “**Second Report**”) (and the activities of the Receiver as defined therein), and (ii) authorizing the Receiver to lease certain of the Unsold Units for such durations and on such terms as the Receiver determines in its sole discretion.
5. On June 6, 2024, the Court granted an approval and vesting order in respect of the sale of Unit 312.
6. Copies of all Orders granted in this proceeding, together with all other pertinent documents relating to the proceeding can be found on the Receiver’s website at: <https://tdbadvisory.ca/insolvency-case/vandyk-backyard-queensview-limited-vandyk-backyard-humberside-limited/>

1.1 **Purpose of the Fourth Report**

7. The purpose of this report (the “**Fourth Report**”) is to report to the Court on:

- (a) the status of sales and leasing of the Unsold Units since the date of the Third Report of the Receiver dated June 2, 2024 (the “**Third Report**”);
- (b) the Lien Claims filed with the Receiver prior to the Claims Bar Date; and
- (c) the relief being sought by Robins Appleby LLP as the defence lawyers appointed by the title insurer for the Applicants in respect of priority issues for certain relief (the “**Lien Holdback and Distribution Order**”):
 - (i) declaring that the maximum aggregate potential priority of the claims that could be asserted against the Unsold Units in priority to the Applicants’ first-ranking mortgage (the “**First Mortgage**”) is limited to the maximum statutory holdback amount of \$1,979,540.34 (the “**Maximum Lien Holdback**”) set out in paragraph 5 of the Order of Justice Cavanagh dated March 6, 2024; and
 - (ii) subject to the relief at (i) above being granted, authorizing and directing the Receiver to distribute the proceeds from the sale of any of the Unsold Units to the Applicants, net of commissions, amounts payable on closing and related closing costs (the “**Net Proceeds**”) together with any amounts previously held back by the Receiver from earlier unit sales, subject to the Receiver holding back certain Unsold Units from sale with an aggregate value sufficient to secure, at all times, the Maximum Lien Holdback amount (the “**Unsold Unit Holdback Reserve**”) to stand as security for the benefit of lien and trust claims asserted in priority to the First Mortgage, pending

resolution or determination of the entitlement of any lien claim or further Order of the Court.

1.2 **Terms of Reference**

8. In preparing this Fourth Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Fourth Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent practicable or necessary, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
9. Unless otherwise stated, all monetary amounts contained in the Fourth Report are expressed in Canadian Dollars.

2.0 STATUS OF THE REMAINING UNSOLD UNITS

2.1 Marketing of the Units

10. Since the date of the Second Report, several of the Unsold Units have been actively listed for sale on MLS. Since the Third Report, there have been no offers that have resulted in concluded sale agreements in respect of any of the Unsold Units.
11. In accordance with the April Ancillary Order, the Receiver has made arrangements for ten of the Unsold Units to be listed for lease on MLS by VKP Real Estate Limited (“**VKP**”), the same qualified broker assisting the Receiver with listing the Unsold Units for sale.
12. The Receiver has entered into one-year lease agreements in respect of four of the Unsold Units, with monthly rents as follows: Units 205 (\$2,600: June 10, 2024), 604 (\$4,100: June 10, 2024), 1003 (\$3,900: June 28, 2024), and 1012 (\$3,200; June 1, 2024).

2.2 Update on Lien Claims Filed by Claims Bar Date

13. For the purpose of this section, any capitalized terms not defined herein have the meanings given to them in the Lien Claims Process Order.
14. Pursuant to the Lien Claims Process Order, each Lien Claimant was required to provide its completed proof of lien claim to the Receiver prior to the Claims Bar Date, failing which the Lien Claimant would be forever barred from asserting a Claim against the Debtors, the Receiver, the Property and its proceeds, and any “owner” (as defined in the *Construction Act*) of the Unsold Units.

15. As of the Claims Bar Date, the Receiver had received ten proofs of lien claim from Lien Claimants totaling \$7,459,191.03 in aggregate (the “**Filed Claims**”). 21 days after the Claims Bar Date, one proof of lien claim was received on May 22, 2024 from Torre D.C.C. Carpentry Ltd. A summary of the proofs of claims provided to the Receiver is below:

Lien Claimant	Lien Claim Amount per First Report	Lien Claim Filed?	Amount of Lien Claim Filed
2164705 Ontariuo Inc.	127,350.04	Yes	127,350.04
Classic tile Contractors Limited	1,142,744.43	Yes	1,144,718.94
Dircam Electric Limited	384,182.90	Yes	384,182.90
Foremont Drywall Highrise	1,845,369.24	Yes	1,845,369.24
KC Structural Ltd.	462,217.91	Yes	462,217.90
Next Plumbing & Hydronics Supply Inc.	213,401.51	Yes	213,401.51
Permacorp Group of Companies	323,750.00	Yes	323,750.00
Summit Concrete & Drain Ltd.	16,952.26	Yes	16,952.26
Urban Mechanical Contracting Ltd.	2,282,408.34	Yes	2,282,408.34
Urban Mechanical Contracting Ltd.	658,839.90	Yes	658,839.90
Brunco Insulation Ltd.	30,203.77	No	N/A
Live Patrol Inc.	1,130.00	No	N/A
Torre D.C.C. Carpentry Ltd.	702,998.75	No	N/A
Venice Construction Inc.	122,337.11	No	N/A
Total	8,313,886.16		7,459,191.03

16. As of the date of this Fourth Report, no additional proofs of lien claim have been received.

17. The Receiver has not received a proof of claim from three of the Lien Claimants that received notice of the Lien Claims Process Order. Those Lien Claimants are Brunco Insulation Ltd., Venice Construction Inc. and Live Patrol Inc.

18. The Receiver has not assessed the validity or accuracy of the Filed Claims at this time. In accordance with the Lien Claims Process Order, the Receiver shall, after consulting with counsel for the interested parties, make a recommendation to the

Court as to the most efficient and cost-effective process for having the Claims determined at a future date.

2.3 The Priority of Lien Claims Motion

19. The *status quo* of holding the Net Proceeds of sale of the Unsold Units in trust pending resolution of the Filed Claims would not appear to be in the best interest of the creditors, including the Lien Claimants, because, among other reasons, holding funds in trust pending determination of the Claims will cause significant interest to accrue on the First Mortgage, reducing the available potential recoveries to the pool of creditors.
20. The Receiver's input was sought in respect of the Priority of Lien Claims Motion, and specifically, the proposed Order to permit greater interim distributions to be made to the Applicants in respect of the indebtedness owing. Subject to the relief requested in subparagraph 7(c)(i) herein being granted, in the Receiver's view, the proposed Order is fair and reasonable in the circumstances, and the Receiver supports the granting of the proposed Order.
21. The proposed relief incorporates three critical elements, each of which is addressed in turn.
22. First, the proposed relief recognizes the Maximum Lien Holdback at \$1,979,540.34. This is the amount confirmed by this Court as the Maximum Lien Holdback in its Order granted on March 6, 2024 in these proceedings. However, in setting such amount previously, the Court did so without addressing the arguments of certain Lien Claimants to complete priority over the First Mortgage

(above and beyond the deficiency in the holdback), which issue was specifically deferred for determination at a future date.

23. Second, for the reasons set out in Priority of Lien Claims Motion, and in order to resolve the deferred issue referred to above, the proposed relief reflects a determination that no Lien Claimant has complete priority over the First Mortgage. The relief, if granted, will eliminate any uncertainty as to whether the quantum of the Maximum Lien Holdback set out above is the full and final statement of such amount.
24. Third, the proposed relief provides that the Receiver is authorized and directed to make distributions from the Net Proceeds of sale of the Unsold Units (including Net Proceeds already held by the Receiver) to the Applicants, subject to the Receiver holding back from sale certain Unsold Units with an aggregate valuation of not less than Maximum Lien Holdback as security for the benefit of the Lien Claimants' Claims to be subsequently determined.
25. The Receiver has been advised by VKP that the current market value of the Unsold Units is between approximately \$900 and \$950 per square foot. This is consistent with the prices with respect to those units that have sold during this proceeding - the average price per square foot obtained in such sales from 3 units being \$905.50 per square foot with gross sales totaling approximately \$1,596,400.00.
26. There are currently 18 (dwelling) Unsold Units in the Receiver's possession of varying size and value, including the four leased units noted in paragraph 12. In order to ensure that there is sufficient security available for the benefit of the Lien

Claimants, the Receiver intends to conduct an analysis upon the sale of each additional Unsold Unit of the approximate aggregate value of the remaining Unsold Units comprising the security at that time.

27. The Receiver intends to report to Court with an estimated aggregate value of the Unsold Units at each subsequent motion for approval of a sale of the Unsold Units in this proceeding, or otherwise from time to time. Once the estimated value of the Unsold Unit Holdback Reserve is calculated to be less than \$2,500,000, the Net Proceeds of sale will no longer be paid out in full by the Receiver to the Applicants. Instead, the Net Proceeds will be held by the Receiver pending a final determination by the Court with respect to the priority of the Claims.
28. The \$2,500,000 amount set above incorporates an approximately \$600,000 excess to the Maximum Lien Holdback and is intended as a safeguard against an unforeseen future drop in the value of the Unsold Units.

3.0 Conclusions and Recommendations

29. The Receiver respectfully requests that the Court issue the proposed Order.

All of which is respectfully submitted this 25th day of June, 2024.

TDB RESTRUCTURING LIMITED, solely in its capacity as
Court-Appointed Receiver of the Unsold Units,
and not in its personal or corporate capacity.



Per:

Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
Managing Director

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

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Proceedings commenced at Toronto, Ontario

FOURTH REPORT OF THE RECEIVER

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