



Court File No.: CV-24\_\_\_\_\_ -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

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicants. The claim made by the Applicants appears on the following pages.

**THIS APPLICATION** will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference, the details of which will be made available in CaseLines,

before the Honourable Justice Cavanagh presiding over the Ontario Superior Court of Justice (Commercial List) on February 6, 2024 at 10:00 a.m. EST, or as soon after that time as the application may be heard via video conference, at 330 University Avenue, Toronto, Ontario. Please advise if you intend to join the hearing by emailing Rudrakshi (Rushi) Chakrabarti at [rchakrabarti@tgf.ca](mailto:rchakrabarti@tgf.ca).

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicants' lawyer or, where the Applicants does not have a

lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants does not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: January \_\_\_\_, 2024

Issued by:

\_\_\_\_\_  
Local Registrar

Address of court  
office:

330 University Avenue, 9th Floor  
Toronto, ON M5G 1R7

**TO:**

**THIS HONOURABLE COURT**

**AND TO THE  
RESPONDENTS:**

**VANDYK-BACKYARD QUEENSVIEW LIMITED and  
VANDYK-BACKYARD HUMBERSIDE LIMITED**  
1944 Fowler Drive  
Mississauga, ON L5K 0A1

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Lawyers for the Respondents

## APPLICATION

1. **THE APPLICANTS**, Peoples Trust Company (“**Peoples**”) and Firm Capital Mortgage Fund Inc. (“**Firm**”, and together with Peoples, the “**Lenders**”), make an application for an Order (the “**Proposed Receivership Order**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), among other things:
  - (a) abridging the time for service of this Notice of Application and the Application Record, if required;
  - (b) authorizing service via electronic mail, and dispensing with further service thereof;
  - (c) appointing RSM Canada Limited (“**RSM**”) as receiver (in such capacity, the “**Receiver**”), without security, of the unsold condominium units, parking units and storage lockers legally described in Schedule “A” to the Proposed Receivership Order (collectively, the “**Unsold Units**”) constituting property of Vandyk-Backyard Queensview Limited (the “**Borrower**”) and Vandyk-Backyard Humberside Limited (the “**Beneficial Owner**” and together with the Borrower, the “**Respondents**”) and all proceeds thereof; and
  - (d) such other relief as counsel may request and this Honourable Court may deem just.

## THE GROUNDS FOR THE APPLICATION ARE:

### *Background*

#### **Parties and the Subject Property**

2. Peoples is a federally regulated trust company incorporated on October 3, 1978, pursuant to the *Trust and Loan Companies Act*, SC 1991, c 45. Peoples operates from an office at 95 Wellington Street West, Toronto, Ontario.
3. Peoples holds a Mortgage (as defined below) over the Unsold Units, and Firm is a lender and participant in the Mortgage.
4. The Borrower was incorporated on March 16, 2016, pursuant to the laws of the Province of Ontario under the *Business Corporations Act*, RSO 1990, c B16 (the “**OBCA**”).
5. The Beneficial Owner was formed by amalgamation with 2384903 Ontario Inc. on April 12, 2016 pursuant to the laws of the Province of Ontario under the OBCA.
6. The subject property of these receivership proceedings are the Unsold Units in a fully-constructed condominium building situated at 25 Neighbourhood Lane, Toronto, Ontario (the “**Condominium Building**”).

#### **The Vandyk Group’s Financial Troubles**

7. The Borrower and the Beneficial Owner are special-purpose entities that were incorporated and operated solely with respect to the development of the Condominium Building.
8. The Borrower and the Beneficial Owner are members of the Vandyk group of companies (the “**Vandyk Group**”), a privately-owned real estate development and investment

management company with multiple projects in various stages of development and construction in the Toronto area.

9. Various Vandyk Group entities were placed into receivership with Orders granted by the Ontario Superior Court of Justice (Commercial List) in Toronto between the fall of 2023 and January 2024, on application by their respective secured lenders as a result of, among other things, construction liens being registered against the underlying real estate projects.<sup>1</sup>

### **The Condominium Project and the Unsold Units**

10. The Borrower has constructed the Condominium Building, which consists of 134 residential units, five underground parking levels and storage lockers. The Condominium Building is fully constructed and occupied, other than the Unsold Units.
11. Of the Unsold Units, there are two units pending sale involving two separate Condominium Building units, “Unit 302” and “Unit 211”, each with an accompany parking stall and locker (collectively, the “**Units Pending Sale**”) pursuant to separate agreements of purchase and sale between the Borrower and the individual purchasers. The sale of such units could not be completed by the Borrower due to the registration of the construction liens described further below. Unit 302 contemplates a February 21, 2024, transaction completion date.
12. Unit 211 is also subject to ongoing legal proceedings initiated by the purchaser against the

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<sup>1</sup> See *Fiera FP Real Estate Financing Fund L.P. v Vandyk - 41 Wabash Limited, et al*, Court File No. CV-23-00711612-00CL; *MCAP Financial Corporation v Vandyk-Backyard Kings Mill Limited*, Court File No. CV-23-00710267-00CL; *KingSett Mortgage Corporation v Dorr Capital Corporation V Vandyk – Uptowns Limited et al*, , Court File No.: CV-23-00709180-00CL.

Borrower before the Ontario Superior Court of Justice (Toronto Region), which proceedings have been adjourned by the Court to permit a review of any transaction relating to Unit 211 to be addressed by the Receiver, if appointed.

### **The Borrower's Loan with the Lenders**

13. The Lenders made available to the Borrower a condominium inventory term loan in the principal amount of \$12,700,000 (the "**Loan**").
14. On August 24, 2023, the Loan was fully advanced to the Borrower by way of a one-time advance. The Loan is secured by the Mortgage (defined below) and certain other security.
15. As at January 23, 2024, the Borrower is indebted to the Lenders under the Loan in the amount of \$12,000,201.89 (which includes principal, accrued interest, costs and other amounts payable in accordance with the terms of the Loan other than legal fees), together with accruing interest thereon and all costs and fees, including legal fees and disbursements incurred by the Lenders until the indebtedness is paid in full.

### **Security Documents**

16. As security for the Loan, the Borrower granted, *inter alia*:
  - (a) a first-ranking mortgage in the principal amount of \$12,700,000 registered against title to each of the Unsold Units on August 24, 2023, in the Land Registry Office for the Land Titles Division of Metro Toronto (LRO #80) as Instrument No. AT6405972 (the "**Mortgage**");
  - (b) a first-ranking General Assignment of Rents registered against title to the Unsold Units on August 24, 2023, as Instrument No. AT6405973; and

- (c) a General Security Agreement dated August 10, 2023 (the “**GSA**”),  
  
(collectively, the “**Security**”).

### **Defaults and Notices of Enforcement**

17. The registration of any lien against the Unsold Units constitutes an “Event of Default” pursuant to the Security.
18. Various construction liens have been registered against the Unsold Units in an aggregate amount exceeding \$8 million, constituting multiple Events of Default, commencing after the Loan was advanced by the Lenders.
19. By letter dated October 24, 2023, the law firm of Goldman Sloan Nash & Haber LLP (“**GSNH**”), on behalf of the Lenders: (a) advised the Borrower that the registration of several construction liens constituted a default under the Loan; and (b) demanded re-payment of the Loan (the “**Demand Letter**”). Together therewith, GSNH delivered to the Borrower a Notice of Intention to Enforce Security pursuant to section 244(1) of the BIA (the “**BIA Notice**”).
20. The 10-day statutory period for the repayment of the indebtedness under the BIA Notice has passed and there has been no repayment.

### ***Necessity for the Appointment of the Receiver***

21. The registration of the construction liens against the Unsold Units means that they cannot be sold by the Borrower to purchasers on a free and clear basis, as required by purchasers on closing, in order to satisfy the Borrower’s obligations to the Lenders under the Mortgage, and to other stakeholders.

22. Given the Vandyk Group's financial position, the sale of the Unsold Units is the sole opportunity for recovery for the Lenders and other stakeholders.
23. The appointment of a receiver is required in order to preserve, protect and facilitate the sale of the Unsold Units for the benefit of the Borrower's stakeholders.
24. Receivership orders have been granted by this Court in respect of several other debtors that are related to the Respondents and form part of the Vandyk Group of companies.
25. The appointment of a receiver is necessary and appropriate in the circumstances as a result of the following:
  - (a) the registration of the construction liens constitutes Events of Default pursuant to the terms governing the Loan and the Security;
  - (b) the relevant notice periods under the Demand Letter and BIA Notice have expired;
  - (c) the GSA provides for the appointment of a receiver upon an Event of Default having occurred;
  - (d) the Lenders' security position is deteriorating as interest and other costs accrue and the Unsold Units cannot be transferred to purchasers due to the existence of the construction liens;
  - (e) without the appointment of a receiver, the Unsold Units are at risk of remaining unsold, which is detrimental to all of the Borrower's stakeholders;
  - (f) it is beneficial for the Lenders and all other stakeholders for the Unsold Units to be sold through a receivership proceeding wherein vesting orders can be sought to



transfer title to purchasers, with the proceeds of sale then available to repay the Mortgage and other stakeholders, pursuant to court Order; and

(g) it is just and convenient to appoint a receiver.

26. RSM has consented to act as the Receiver.

27. The Respondents have advised, through counsel, that they do not oppose the receivership application.

***The Receiver's Proposed Mandate***

28. Following RSM's appointment, should it be appointed, the Receiver will attend to facilitating the sale of the Unsold Units. The sale of each such Unsold Unit is expected to proceed on a piecemeal basis, and each will involve a corresponding vesting order to be sought from this Court.

29. If appointed, the Receiver will obtain a legal opinion from its independent counsel on the validity and enforceability of the Mortgage, the construction liens and other charges and encumbrances in respect of the Unsold Units. The Applicants expect that the respective priority interests of the parties will be addressed at a subsequent motion, which will also provide an opportunity for interested parties to make submissions regarding the relative priority of their interests.

30. The Receiver will hold any sale proceeds from the sale of any of the Unsold Units pending its review of the various charges and liens and a resolution of any validity and priority issues among the Lenders and the construction lien claimants, or subject to further Order of the Court.

31. The Proposed Receivership Order was developed in consultation with the proposed Receiver, who supports its terms and the Receiver's mandate contemplated thereby.

***Rules and Statutes***

32. Rules 1.04, 2.03, 3.02, 14.05(2), 16, 41 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
33. the provisions of the BIA, including s. 243(1) thereof, and the CJA, including s.101 thereof, and the inherent and equitable jurisdiction of this Court; and
34. such other grounds as counsel may advise and this Honourable Court may deem just.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this application:

1. the Affidavit of Michael Lombard, to be filed;
2. the Consent of RSM to act as the Court-appointed receiver; and
3. such further and other evidence as counsel may advise and this Honourable Court may permit.

January 30, 2024

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**ONTARIO  
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Proceedings commenced at Toronto, Ontario

**NOTICE OF APPLICATION**

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