



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

**Order
(LIEN CLAIMS PROCESS)**

THIS MOTION, made by RSM Canada Limited (now known as TDB Restructuring Limited) in its capacity as Court-appointed receiver (the “**Receiver**”) of the unsold condominium units, parking units, and storage lockers legally described in the Order appointing the Receiver granted by this Court on February 6, 2024 (the “**Unsold Units**”), including all proceeds thereof (together with the Unsold Units, the “**Property**”) of Vandyk-Backyard Queensview Limited and Vandyk-Backyard Humberside Limited (together, the “**Debtors**”) for an order requiring the delivery of information that would allow an assessment to be made as to the validity and priority of any construction lien claims that may be in priority to the First Mortgage (the “**Claims**”, and the holders thereof, the “**Lien Claimants**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the First Report of the Receiver dated February 27, 2024, the Supplementary Report of the Receiver dated March 4, 2024 and the Appendices thereto, 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 the Affidavits of Service of Rudrakshi Chakrabarti sworn February 28, 2024 and Puya Fesharaki sworn March 5, 2024, filed:

SERVICE

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 and the Supplementary Report.

PROVING CLAIMS

3. **THIS COURT ORDERS** that forthwith after the granting of this Order, the Receiver shall provide to each Lien Claimant who has registered a lien against the Unsold Units as of the date of the Appointment Order granted in these proceedings, or counsel for such Lien Claimants as set out in the Service List in these proceedings, the form of proof of lien claim attached as **Schedule "A"** hereto, for the purpose of requesting that each Lien Claimant prove its Claim.
4. **THIS COURT ORDERS** that the completed proof of lien claim and all supporting documents shall be provided by each Lien Claimant to the Receiver on or before May 1, 2024 (the "**Claims Bar Date**"). The Claims Bar Date may only be extended by the Receiver in its sole discretion, or by further Order of the Court.
5. **THIS COURT ORDERS** that any Lien Claimant who receives the proof of lien claim from the Receiver and does not deliver a completed proof of lien claim to the Receiver by the Claims Bar Date shall be forever barred from asserting such Claim against the Debtors, the Receiver, the Property and its proceeds, and any "owner" (as defined in the *Construction Act*) of the Unsold Units comprising the Property, such Claim shall be forever discharged and extinguished.

6. **THIS COURT ORDERS** that, following repayment of the First Mortgage from the Net Proceeds of sale, and subject at all times to the Lien Holdback being maintained by the Receiver, the Receiver shall, after consulting with counsel for the interested parties on the Service List, make a recommendation to the Court as to the most efficient and cost-effective process for having the Claims determined.

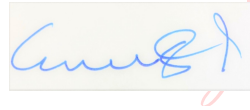
7. **THIS COURT ORDERS** that the Receiver's recommendation to the Court as described in para 6 herein shall be on notice to all interested parties, who will have an opportunity to make submissions on any aspect of the Receiver's recommendation.

8. **THIS COURT ORDERS** that any lien claims process described herein, and participation in it, is without prejudice to the right(s) of any Lien Claimant to commence or continue any claim or proceeding against any person save and except for the Receiver, and the First Mortgagee (for payments received pursuant to Orders issued in this proceeding) with respect to the issues of the Lien Claimants' priority over any other party on any legal basis ("**Lien Proceedings**"), and does not affect, truncate or waive any substantive or procedural rights and/or remedies that a Lien Claimant may have in any such Lien Proceedings. For greater certainty, any lien claims process also does not affect any substantive or procedural rights that any defendant may have to defend Lien Proceedings, save and except that the defendant may not assert in the Lien Proceedings that the Claim of any Lien Claimant ought to be dismissed or stayed on grounds of *res judicata* (issue estoppel, and/or cause of action estoppel) and/or abuse of process, by virtue of the Lien Claimant asserting a Claim in the lien claims process described herein.

9. **THIS COURT ORDERS** that there shall be no requirement for any defendant in any Lien Proceeding brought by any of the Lien Claimants in respect of the Claims to deliver a Statement of Defence in that action pending further Order of this Court as to the process to be implemented for the determination of the Claims of Lien Claimants, as contemplated in paragraph 6 above.

10. **THIS COURT ORDERS** that any references to a "Lien Claimant" herein shall equally apply to any party asserting a trust claim over any proceeds from any sale of the Unsold Units.

11. **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"
PROOF OF LIEN CLAIM

**FOR THE LIEN CLAIMS IN RESPECT OF
the Unsold Units constituting property of Vandyk-Backyard Queensview Limited and Vandyk-
Backyard Humberside Limited and located at 25 Neighbourhood Lane, Toronto, Ontario
(the "Property")**

A. PARTICULARS OF LIEN CLAIMANT

1. Full legal name of the lien claimant _____ (the "Lien Claimant")
2. Full Mailing address of the Lien Claimant:
3. Telephone Number:

Email address:

Attention (Contact Person):

B. PROOF OF LIEN CLAIM

I _____ (state name, position and title) of the City of _____ in the Province of _____, do solemnly declare and say as follows.

That I am the authorized representative of the Lien Claimant and have knowledge of all the circumstances connected with the Lien Claim.

That at the date hereof, _____ [*insert name of Owner or Contractor*] was, and still is, indebted to the Lien Claimant for materials and services supplied on the following contract or contracts in the amounts noted herein.

(specify the particular contract or contracts on which materials and services were supplied, the amounts owing and, in detail, the amount of material and services supplied to the improvement).

C. DOCUMENTS IN SUPPORT OF LIEN CLAIM

I attach the following documents in support of the Lien Claim:

- Copy of full, executed Contract, Subcontract or Purchase Order (as applicable)
- If applicable, a copy of the agreed Schedule of Values for the work to be performed under the Contract, Subcontract or Purchase Order
- Copies of all change orders, change directives, pending, unapproved or disputed changes and any other claims for a change in the price of the Contract, Subcontract or Purchase Order.
- Copies of all invoices submitted to the Owner or Contractor (as applicable), including all supporting documentation (i.e., Schedule of Values, CCDC9 Statutory Declarations, WSIB Certificates)
- Copies of all payments from the Owner or Contractor (as applicable)
- Summary reconciliation of all invoices issued under the Contract, Subcontract or Purchase Order and all payments received by the Owner or Contractor
- Evidence of the date of last supply under the Contract, Subcontract or Purchase Order
- Evidence of the nature of the unfinished work (if any) and its value in respect of the Contract, Subcontract or Purchase Order as of the date of last supply
- Notices and/or correspondence to and from the Lien Claimant and the Owner or Contractor relevant to the Lien Claim
- Any written notice(s) of lien provided by the Lien Claimant to anyone having a mortgage over the Property, with proof of service
- Copy of the Claim for Lien and the Statement of Claim, if applicable
- Any other documents the Lien Claimant considers relevant to the Lien Claim

D. FILING PROOF OF LIEN CLAIM

A Proof of Lien Claim must be received by the Receiver by 5:00 p.m. (Eastern Standard Time) on April 1, 2024 (the "Claims Bar Date"), or such later date as the Receiver may consent to in writing, or as ordered by the Court.

Failure to file your Proof of Lien Claim as directed by the relevant Claims Bar Date will, among other things, result in your lien claim being barred and you will be prohibited from making or enforcing a lien claim against the Property.

This Proof of Lien Claim must be delivered by electronic communication to:

TDB Advisory Limited
11 King St. W, Suite 700
Toronto, Ontario M5H 4C7

Attention: Jeff Berger,
email: jberger@tdbadvisory.ca
tel: 647-726-0496

Any such notice or other communication delivered by a lien claimant shall be deemed to be received upon actual receipt by the Receiver thereof prior to 5:00 p.m. (Eastern Standard Time) on a day that is not a holiday (as defined in the *Rules of Civil Procedure*) or, if delivered after 5:00 p.m. (Eastern Standard Time), on the next day that is not a holiday.

...

I acknowledge that the information contained in this declaration, and the documents included herein, are being provided to assist the Court-appointed Receiver of the Property (the "**Receiver**") in connection with its review and evaluation of the Lien Claims and pursuant to paragraph 6 of the Receivership Order dated February 6, 2024. I further acknowledge that the provision of the information and documentation provided herein does not constitute an acknowledgement by the Receiver of the accuracy of such information or the admissibility such documentation.

I make this declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Dated at the [City/Town] of _____ in the Province of _____ this ____ day of _____, 2024.

Name

Title

Signature

(A Commissioner for Oaths, Notary Public, Justice of the Peace, etc.)

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
(Lien Claims Process)**

THORNTON GROUT FINNIGAN LLP
3200 – 100 Wellington Street West
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Tel: (416) 304-1616 / Fax: (416) 304-1313

D.J. Miller (LSO# 34393P)

Email: djmiller@tgf.ca

Puya Fesharaki (LSO# 70588L)

Email: pfesharaki@tgf.ca

Rudrakshi Chakrabarti (LSO# 86868U)

Email: rchakrabarti@tgf.ca

Lawyers for the Court-appointed Receiver, RSM Canada
Limited (now known as TDB Restructuring Limited)