

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

THE HONOURABLE MR.)

)

FRIDAY, THE 16TH DAY

)

JUSTICE NEWBOULD)

)

OF OCTOBER, 2015



**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

**APPROVAL AND VESTING ORDER
(HVAC System)**

THIS MOTION made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Trustee**") for an order approving the sale leaseback transaction (the "**Transaction**") entered into between the Trustee, for and on behalf of 144 Park Ltd. ("**144**"), and 81 Capital Inc. ("**81 Capital**"), with respect to the property described in **Schedule "B"** hereto (the "**HVAC System**"), and vesting in 81 Capital the right, title and

interest of 144 in and to the HVAC System, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report of the Trustee dated October 13, 2015 (the "**Fifth Report**") and the Appendices thereto, and on hearing the submissions of counsel for the Trustee and other counsel listed on the Counsel Slip, no one else from the service list appearing although duly served as appears from the affidavit of service of Lynn Lee sworn October 14, 2015, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the 81 Capital Documents (as such term is defined in the Fifth Report, and such documents are collectively appended as Appendix "E" to the Fifth Report) by the Trustee is hereby authorized and approved *nunc pro tunc*, with such minor amendments as the Trustee may deem necessary. The Trustee 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 HVAC System to 81 Capital.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to 81 Capital substantially in the form attached as **Schedule "A"** hereto (the "**Trustee's Certificate**"), all of 144's right, title and interest in and to the HVAC System shall vest absolutely in 81 Capital, 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, construction liens, certificates of action, 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 Penny dated January 22, 2015; and (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 (all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to HVAC System are hereby expunged and discharged as against the HVAC System.

3. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, forthwith after delivery thereof.

4. **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 144 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 144;

the vesting of the HVAC System in 81 Capital pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 144 and shall not be void or voidable by creditors of 144, 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.

5. **THIS COURT ORDERS AND DECLARES** that the sale leaseback of the HVAC System is exempt from the application of the *Bulk Sales Act* (Ontario).

6. **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 Trustee 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 Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 15 2015

Schedule “A” – Form of Trustee’s Certificate

Court File No. CV15-10843-00CL

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

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

**TRUSTEE’S CERTIFICATE
(HVAC System)**

RECITALS

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice dated January 22, 2015, Collins Barrow Toronto Limited was appointed as trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended.

B. Pursuant to an Approval and Vesting Order of the Court dated October 16, 2015 (the “**Approval and Vesting Order**”), the Court approved the sale leaseback transaction (the “**Transaction**”) entered into between the Trustee, for and on behalf of 144 Park Ltd. (“**144**”), and 81 Capital Inc. (“**81 Capital**”), and provided for the vesting in 81 Capital all of 144’s right, title and interest in and to the HVAC System, which vesting is to be effective with respect to the HVAC System upon the delivery by the Trustee to 81 Capital of a certificate confirming that the Transaction has been completed to the satisfaction of the Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Approval and Vesting Order.

THE TRUSTEE CERTIFIES the following:

1. The Transaction has been completed to the satisfaction of the Trustee.
2. This Certificate was delivered by the Trustee at _____ [TIME] on _____ [DATE].

**COLLINS BARROW TORONTO LIMITED,
in its capacity as Trustee of the Property, and
not in its personal capacity**

Per: _____
Name:
Title:

Schedule "B" - HVAC SYSTEM

EQUIPMENT
The primary boiler, rooftop heating and air conditioning unit for the common areas, domestic water heaters, and heating and air conditioning units contained in the Residential Units.

IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED
AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE
UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED

Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER
(HVAC System)

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC #21592F)
Tel: (416) 218-1129
Fax: (416) 218-1849
E-mail: harvey@chaitons.com

Sam Rappos (LSUC #51399S)
Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: samr@chaitons.com

Lawyers for the Trustee