

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

THE HONOURABLE MR.) TUESDAY, THE 27TH 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**

VESTING ORDER
(re Excess Lands)

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 vesting in One 55 Mady Limited ("**One 55**") the right, title and interest of 144 Park Ltd. (the "**Debtor**") in and to the property described in **Schedule "B"** hereto (the "**Excess Lands**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report of the Trustee dated September 25, 2015 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 September 28, 2015, filed

1. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to One 55 substantially in the form attached as **Schedule "A"** hereto (the "**Trustee's Certificate**"), all of the Debtor's right, title and interest in and to the Excess Lands shall vest absolutely in One 55, 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; (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; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Excess Lands are hereby expunged and discharged as against the Excess Lands.

2. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Kitchener (Waterloo) of an Application for Vesting Order in the form

prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter One 55 as the owner of the Excess Lands identified in Schedule "B" hereto in fee simple, and is hereby directed to delete and expunge from title to the Excess Lands all of the Claims listed in Schedule "C" hereto.

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 the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Excess Lands in One 55 pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, 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 transfer of the Excess Lands 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 À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

 OCT 28 2015

Schedule “A” – Form of Trustee’s Certificate

Court File No. CV15-10843-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,
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**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.
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TRUSTEE’S CERTIFICATE
(re Excess Lands)

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 Order of the Court dated October 27, 2015 (the “**Order**”), the Court provided for the vesting in One 55 Mady Ltd. (“**One 55**”) of the Debtor’s right, title and interest in and to the Excess Lands, which vesting is to be effective with respect to the Excess Lands upon the delivery by the Trustee to One 55 of a certificate confirming 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 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" – Purchased Assets

PIN 22417-0135 (LT)

Property Description: Part of Lots 217, 218, 219 & 267 Plan 385, being Part 1 on 58R-17836; T/W an easement over all of the common elements of Waterloo Standard Condominium Plan No. 591 for ingress and egress, maintenance repair, access, construction as in WR882241; subject to an easement as in WR666363; City of Waterloo

PIN 22417-0153 (LT)

Property Description: Lots 2 & 3, part of lots 1, 4, 5 & 6 Plan 186, being Part 2 on 58R-17836, save and except Waterloo Standard Condominium Plan No. 591; subject to an easement as in WR666363; City of Waterloo

Schedule "C" – Claims to be deleted and expunged from title to Purchased Assets

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
WR611290	May 2, 2011	Notice	\$5	Allen Street Holdings Inc.	Allen Street Holdings Inc., 2184038 Ontario Inc., 144 Park Ltd., COB GP Inc.
WR639367	September 1, 2011	Transfer	\$2,200,000	144 Park Ltd.	Allen Street Holdings Inc.
WR639368	September 1, 2011	Charge	\$8,500,000	144 Park Ltd.	Aviva Insurance Company of Canada
WR639369	September 1, 2011	Charge	\$3,000,000	144 Park Ltd.	Allen Street Holdings Inc.
WR660381	December 13, 2011	Charge	\$2,887,696	144 Park Ltd.	MarshallZehr Group Inc.
WR690395	May 25, 2012	Charge	\$40,000,000	144 Park Ltd.	Laurentian Bank of Canada
WR690396	May 25, 2012	No Assgn Rent Gen		144 Park Ltd.	Laurentian Bank of Canada
WR690416	May 25, 2012	Postponement		Allen Street Holdings Inc.	Laurentian Bank of Canada
WR690422	May 25, 2012	Postponement		Aviva Insurance Company of Canada	Laurentian Bank of Canada
WR690423	May 25, 2012	Postponement		MarshallZehr Group Inc.	Laurentian Bank of Canada
WR759234	June 13, 2013	APL Absolute Title		144 Park Ltd.	
WR847447	October 24, 2014	Construction Lien	\$301,592	Global Fire Protection Ltd.	
WR849030	October 31, 2014	Construction Lien	\$88,883	694643 Ontario Limited cob as O'Connor Electric	

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
WR854810	December 1, 2014	Construction Lien	\$537,286	J & I Gaweda Construction Ltd.	
WR854978	December 2, 2014	Construction Lien	\$26,889	Bast Home Comfort Inc.	
WR856621	December 10, 2014	Certificate of Action		Global Fire Protection Ltd.	144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., Laurentian Bank of Canada, MarshallZehr Group Inc.
WR856756	December 11, 2014	Construction Lien	\$328,260	Frendel Kitchens Limited	
WR857239	December 12, 2014	Construction Lien	\$436,314	T.I.C. Contracting Ltd.	
WR857322	December 15, 2014	Construction Lien	\$188,393	Global Precast Inc.	
WR857462	December 15, 2014	Construction Lien	\$110,716	2050491 Ontario Inc. o/a The Downsview Group	
WR857468	December 15, 2014	Construction Lien	\$104,009	Sam Tortola Enterprises Inc.	
WR857793	December 16, 2014	Construction Lien	\$15,870	CRS Contractors Rental Supply General Partner Inc.	
WR857850	December 16, 2014	Construction Lien	\$83,436	Adlers Main Tile & Carpet Co. Ltd.	
WR858473	December 19, 2014	Construction Lien	\$30,851	Turner Fleischer Architects Inc.	
WR858748	December 19, 2014	Construction Lien	\$46,043	Hammerschlag & Joffe Inc.	
WR858991	December 22, 2014	Construction Lien	\$345,952	Sreen Painting Ltd.	

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
WR859188	December 23, 2014	Construction Lien	\$176,771	Weston Flooring Limited	
WR859941	December 30, 2014	Construction Lien	\$32,381	Great Pyramid Aluminum Ltd.	
WR860525	January 5, 2015	Construction Lien	\$139,287	Adlers Main Tile & Carpet Co. Ltd.	
WR860757	January 6, 2015	Certificate of Action		Frendel Kitchens Limited	144 Park Ltd., Mady Development Corporation, Mady Contract Division (2009) Ltd., Mady Contract Division Ltd., D. Mady Investments Inc., MarshallZehr Group Inc., Allen Street Holdings Ltd., Aviva Insurance Company of Canada, Laurentian Bank of Canada
WR861891	January 13, 2015	Certificate of Action		Bast Home Comfort Inc.	
WR862054	January 14, 2015	Certificate of Action		J & I Gaweda Construction Ltd.	
WR862055	January 14, 2015	Certificate of Action		Global Fire Protection Ltd.	144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., Laurentian Bank of Canada, MarshallZehr Group Inc.
WR862500	January 16, 2015	Certificate of Action		694643 Ontario Limited	
WR863268	January 21, 2015	Certificate of Action		Turner Fleischer Architects Inc.	Mady Contract Division Ltd., Mady Contract Division (2009) Ltd., Mady

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
					Development Corporation, 144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Inc., MarshallZehr Group Inc., Laurentian Bank of Canada
WR863291	January 21, 2015	Construction Lien	\$113,328	Brody Wall System Ltd.	
WR863296	January 21, 2015	Certificate of Action		T.I.C. Contracting Ltd.	
WR863658	January 23, 2015	Construction Lien	\$4,258	Skyway Canada Limited	
WR863814	January 23, 2015	Construction Lien	\$210,190	DKS Stone Fabrication & Design Inc.	
WR863820	January 23, 2015	APL Court Order		Ontario Superior Court of Justice (Commercial List)	Collins Barrow Toronto Limited
WR864339	January 28, 2015	Construction Lien	\$752,632	Clonard Group Inc.	
WR864365	January 28, 2015	Certificate of Action		Hammerschlag & Joffe Inc.	
WR864655	January 29, 2015	Construction Lien	\$260,447	Aluminum Window Design Installations Inc.	
WR865440	February 2, 2015	Certificate of Action		Great Pyramid Aluminum Ltd.	144 Park Ltd.
WR865713	February 4, 2015	Certificate of Action		Global Precast Inc.	144 Park Ltd., Mady Contract Division (2009) Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., MarshallZehr Group

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
					Inc., Laurentian Bank of Canada
WR865936	February 5, 2015	Certificate of Action		Adlers Main Tile & Carpet Co. Ltd.	
WR866373	February 9, 2015	Certificate of Action		2050491 Ontario Inc.	144 Park Ltd., Mady Contract Division (2009) Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., MarshallZehr Group Inc., Laurentian Bank of Canada
WR867197	February 13, 2015	Certificate of Action		Weston Flooring Limited	
WR867757	February 19, 2015	Certificate of Action		Screen Painting Ltd.	
WR868712	February 26, 2015	Certificate of Action		Sam Tortola Enterprises Inc.	
WR870665	March 11, 2015	Certificate of Action		Aluminum Window Design Installations Inc.	
WR870768	March 12, 2015	Certificate of Action		CRS Contractors Rental Supply General Partner Inc.	
WR870844	March 12, 2015	Certificate of Action		Brody Wall System Ltd.	144 Park Ltd.
WR874856	April 8, 2015	Certificate of Action		DKS Stone Fabrication & Design Inc.	144 Park Ltd., Mady Development Corporation, Mady Contract Division (2009) Ltd., Mady Contract Division Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Inc., MarshallZehr Group

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
					Inc., Laurentian Bank of Canada
WR875305	April 10, 2015	Certificate of Action		Skyway Canada Limited	

**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Purchased Assets**

(unaffected by the Vesting Order)

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
WR625222	July 7, 2011	Notice	\$2	The Corporation of the City of Waterloo	Allen Street Holdings Inc.
WR655113	November 17, 2011	Notice		The Corporation of the City of Waterloo	144 Park Ltd.
WR666363	January 18, 2012	Transfer Easement	\$2	144 Park Ltd.	Rogers Cable Communications Inc.
58R17836	June 13, 2013	Plan Reference			
58R18116	February 7, 2014	Plan Reference			
58R18429	November 27, 2014	Plan Reference			
WR856168	December 8, 2014	Notice		The Corporation of the City of Waterloo	144 Park Ltd.
WR876062	April 16, 2015	Notice	\$2	144 Park Ltd.	One 55 Mady Ltd.
WR864508	January 29, 2015	Transfer Easement	\$2	144 Park Ltd.	Waterloo North Hydro Inc.
WR867313	February 17, 2015	Notice	\$2	The Regional Municipality of Waterloo	

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Court File No. CV15-10843-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

VESTING ORDER
(re Excess Lands)

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