

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

THE HONOURABLE MADAM ) THURSDAY, THE 3<sup>rd</sup> DAY  
)  
MEER )  
JUSTICE CONWAY ) OF DECEMBER, 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**

**ORDER**

(re Distributions and Other Matters)

**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 (the "**Property**") pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Trustee**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Sixth Report of the Trustee dated November 30, 2015 (the "**Sixth Report**"), 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 December 1, 2015, filed,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **REMAINING UNITS**

2. **THIS COURT ORDERS** that the Trustee is authorized to retain and engage Mint Realty Inc. Brokerage to market the Remaining Units (as defined in the Sixth Report) on the terms of the Mint Realty Proposal (as defined in the Sixth Report).

3. **THIS COURT ORDERS** that the Trustee is authorized to sell, convey or transfer the Remaining Units without approval of the Court if:

- (a) the purchase price of the sale transaction is at least 95% of the listing price for the applicable residential unit; or
- (b) the Trustee has obtained the written consent of the first mortgagee of the Property or its assignee to the sale price,

otherwise with approval of the Court.

### **DISTRIBUTION TO CONSTRUCTION LIEN CLAIMANTS**

4. **THIS COURT ORDERS** that the Trustee is authorized to make distributions in the aggregate sum of \$305,237.54 to those construction lien claimants, and in the amounts referenced, listed in **Schedule "A"** hereto, on account of the entitlements of such construction

lien claimants for the deficiency in the holdbacks required to be retained pursuant to the *Construction Lien Act* (Ontario).

5. **THIS COURT ORDERS** that the funds to be distributed by the Trustee pursuant to paragraph 4 hereof shall be withdrawn from the funds being held by the Trustee in an interest bearing account pursuant to paragraph 8 of the Order of Mr. Justice Newbould dated August 5, 2015 (the “**Reserve**”).

**DISTRIBUTIONS TO LAURENTIAN BANK OF CANADA**

6. **THIS COURTS ORDERS** that the Trustee is hereby authorized and directed to distribute the net sale proceeds of the Property (other than the Reserve) to Laurentian Bank of Canada (the “**Bank**”) or its assignee up to the amount of the Bank’s secured indebtedness without further Order of this Court.

**PRIORITY MATTERS**

7. **THIS COURT ORDERS** that matters related to the Reserve and any priority dispute between the mortgagees of the Property and construction lien claimants shall be determined pursuant to the terms of an Order to be obtained either on consent of the parties at a 9:30 am chambers appointment or, if necessary, at the hearing of a motion to be brought by the Trustee on at least seven (7) days’ notice to the parties on the service list.

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



DEC 03 2015

**SCHEDULE "A"**

<b>CONSTRUCTION LIEN CLAIMANT</b>	<b>AGREED TO OUTSTANDING HOLDBACK AMOUNT</b>
Bast Home Comfort Inc.	\$ 10,182.84
Frendel Kitchens Limited	24,471.54
CRS Contractors Rental Supply General Partner Inc.	15,869.50
Hammerschlag & Joffe Inc.	13,721.79
Adlers Main Tile & Carpet Co. Ltd.	86,000.00
Brody Wall System Ltd.	26,000.00
Skyway Canada Ltd.	4,857.84
Clonard Group Inc.	124,134.03

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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

**ORDER**  
(re Distributions and  
Other Matters)

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**Lawyers for the Trustee**