

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

THE HONOURABLE *Madam*) MONDAY, THE 3rd DAY
)
JUSTICE *G. Innes*) OF FEBRUARY, 2020



**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

THIS MOTION made by RSM Canada 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**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Twenty-Third Report of the Trustee dated January 29, 2020 (the "**Twenty-Third Report**") and the Appendices thereto, and on hearing the submissions of counsel for the Trustee, and such 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 Lynda Christodoulou sworn January 30, 2020, 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.

RELEASE OF FUNDS AND DISTRIBUTION

2. **THIS COURT ORDERS** that Harris, Sheaffer LLP, in its capacity as escrow agent (the “Escrow Agent”) under the Deposit Trust Agreement dated July 18, 2011 attached as Appendix “B” to the Twenty-Third Report (the “Deposit Trust Agreement”), is hereby authorized and directed to release \$2,654,733 less its fee of \$500 plus HST (the “Funds”) to the Trustee from the funds currently held by the Escrow Agent pursuant to the Deposit Trust Agreement.

3. **THIS COURT ORDERS** that, upon receipt of the Funds, the Trustee is hereby authorized and directed to distribute:

- (a) \$439,419 to Westmount Guarantee as managing general agent for Aviva Insurance Company of Canada; and
- (b) \$2,202,746 to MarshallZehr Group Inc.

APPROVAL OF TWENTY-THIRD REPORT AND ACTIVITIES

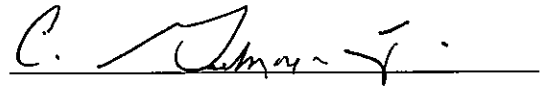
4. **THIS COURT ORDERS** that the Twenty-Third Report, and the conduct and activities of the Trustee as set out therein, be and are hereby approved.

APPROVAL OF INTERIM R&D STATEMENT

5. **THIS COURT ORDERS** that the Trustee's interim statement of receipts and disbursements for the period January 22, 2016 to December 31, 2019, attached as Appendix "I" to the Twenty-Third Report, be and is hereby approved.


APPROVAL OF FEES AND DISBURSEMENTS

6. **THIS COURT ORDERS** that the fees and disbursements of the Trustee for the period April 1, 2019 to December 31, 2019, as described in the Twenty-Third Report and the Affidavit of Arif Dhanani sworn January 29, 2020, be and are hereby approved.



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

FEB 03 2020

PER / PAR: 

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

ORDER

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

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

Lawyers for RSM Canada Limited,
Court-appointed Trustee