



Court File No.  
CV-15-10882-00CL

**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  
JADE-KENNEDY DEVELOPMENT CORPORATION  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**NOTICE OF APPLICATION**

**TO THE RESPONDENT(S)**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The Claim made by the Applicant appears on the following pages.

**THIS APPLICATION** will come on for a hearing before a Judge presiding over the Commercial List on Wednesday February 11, 2015 at 10:00 a.m., at 330 University Avenue, Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38C prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than two days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.** If you wish to

oppose this Application but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

Date: February 11, 2015

Issued by: \_\_\_\_\_



**Natasha Brown**  
**Registrar**

Local Registrar

Address of Court Office:  
330 University Avenue, 7<sup>th</sup> Floor  
Toronto, Ontario M5G 1R7

**TO: THE PARTIES SET OUT IN SCHEDULE "A"  
ATTACHED HERETO**

## APPLICATION

1. The Applicant makes an application for, *inter alia*:
  - (a) an order, if necessary, granting leave to have the within application listed and heard on the Commercial List;
  - (b) an order validating service of this Notice of Application and the Application Record in the manner effected, abridging the time for service thereof, and dispensing with service thereof on any party other than the parties served;
  - (c) an order appointing Collins Barrow Toronto Limited (“**Collins Barrow**”) as trustee pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C-30, as amended (the “**CLA**”); and
  - (d) such further and other relief as this Honourable Court may deem just.
  
2. The grounds for the application are:

## BACKGROUND

- (a) Jade-Kennedy Development Corporation (“**JKDC**”) is a corporation incorporated pursuant to the Ontario *Business Corporations Act*, having its head office located in Markham, Ontario.
  
- (b) JKDC was the developer of the South Unionville Square project, a mixed-use condominium development located in Markham, Ontario.
  
- (c) JKDC is the registered owner of:

- (i) 23 commercial/retail units and 4 parking units located in Phase I of the project (collectively, the “**Phase I Commercial Units**”);
  - (ii) 21 commercial/retail units located in Phase II of the project (collectively, the “**Phase II Commercial Units**”);
  - (iii) 6 residential units, 8 parking units, and 6 locker units located in Phase II of the project (collectively, the “**Unsold Residential Units**”); and
  - (iv) vacant lands originally intended to be used for the construction of 13 freehold townhomes and 2 single detached homes in Phase III of the project (the “**Vacant Lands**”).
- (d) JKDC is insolvent. It is in default of its loan obligations to its mortgagees, which are currently owed in excess of \$5.0 million. There are 18 construction liens totaling approximately \$3.92 million registered against title to all or parts of the project.
- (e) Sales of 18 of the Phase II Commercial Units are scheduled to close on February 17, 2015, and are expected to generate net sale proceeds of approximately \$4.65 million.
- (f) The remaining Phase II Commercial Units, the Phase I Commercial Units, the Unsold Residential Units and the Vacant Lands have yet to be sold.

## **MORTGAGEES**

- (g) JKDC is indebted, or may have obligations outstanding, to the following parties, each of which has registered a charge/mortgage against all or part of the project:

- (i) Am-Stat Corporation (“Am-Stat”);
- (ii) Laurentian Bank of Canada;
- (iii) MarshallZehr Group Inc.; and
- (iv) Aviva Insurance Company of Canada.

### **FINANCIAL DIFFICULTIES**

- (h) In 2014, JKDC began to experience financial difficulties in connection with the South Unionville Square as a result of, among other things, significant delays and cost overruns.
- (i) As a result of such financial difficulties, JKDC is in default of its payment obligations owed to Am-Stat.
- (j) Am-Stat has demanded immediate payment of JKDC’s indebtedness and has delivered a notice of its intention to enforce its security.
- (k) The only source of revenue to repay the Am-Stat loan and other amounts owing by JKDC is the sale proceeds of the remaining South Unionville Square project commercial and residential units and the Vacant Lands.

### **CONSTRUCTION LIENS**

- (l) Since November 17, 2014, 18 construction liens, in a total amount of approximately \$3.92 million, have been registered against title to all or parts of the project with respect to services and/or materials supplied in connection with the project.

### **URGENT NEED FOR THE APPOINTMENT OF A TRUSTEE**

- (m) JKDC is insolvent.
  - (n) As a result of the registration of the construction liens, JKDC cannot complete the sale transactions that are scheduled to close on February 17, 2015 and will generate net sale proceeds of approximately \$4.65 million.
  - (o) The appointment of a trustee under the CLA will be for the benefit of all parties that have an interest in the South Unionville Square project.
  - (p) Collins Barrow has agreed to act as trustee.
  - (q) Section 68(1) and 78(7) of the CLA.
  - (r) Rules 1.04(1), 1.05, 2.01, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*.
  - (s) Section 1(m) of the Consolidated Practice Direction for the Commercial List effective as of July 1, 2014.
  - (t) The inherent and equitable jurisdiction of the Court.
  - (u) Such further and other grounds as counsel may advise and this Honourable Court permits.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The Affidavit of Charles Mady sworn February 5, 2015 and the exhibits attached thereto; and
  - (b) Such further and other evidence as counsel may advise and this Honourable Court

permits.

Date: February 11, 2015

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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 KADE-KENNEDY DEVELOPMENT CORPORATION  
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.

*CY-15-10882-00CL*

**ONTARIO**

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

Proceedings commenced at Toronto

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**NOTICE OF APPLICATION**

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