



Court File No. CV15-10882-00CL

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

THE HONOURABLE)

FRIDAY, THE 1ST DAY

JUSTICE *Rathko*)

OF MAY, 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
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**

ORDER

(re Lien Claims Process)

THIS MOTION made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee (the "**Trustee**") over the lands and premises owned by Jade-Kennedy Development Corporation ("**JKDC**") and subject to this proceeding (the "**Property**"), appointed pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Trustee dated April 23, 2015 and the Appendices thereto, and on hearing the submissions of counsel for the Trustee and counsel for those other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the affidavit of service of Lynn Lee sworn April 27, 2015, filed,

CLAIMS PROCESS

1. **THIS COURT ORDERS AND DECLARES** that the process set out in this Order (the "**Lien Claims Process**") for the submission, review and determination of all lien claims (each, a "**Claim**") pursuant to:

- (a) the *Construction Lien Act* (Ontario) (the "**CLA**") for the provision of services and materials prior to February 11, 2015 with respect to the improvement located on the Property; and
- (b) the *Condominium Act* (Ontario) (the "**CA**") for unpaid common expenses that accrued prior to February 11, 2015 with respect to the Property,

is hereby approved and is the exclusive process by which all Claims shall be determined, and all Lien Claimants (as defined below) shall attorn to the Lien Claims Process.

2. **THIS COURT ORDERS** that the Trustee shall implement and administer the Lien Claims Process, including the review, determination (including, but not limited to, the determination of the quantum and timeliness of all liens), acceptance, revision, disallowance and/or settlement of any Claims by any party filing a Claim pursuant to the provisions of this Order (each, a "**Lien Claimant**" and collectively, the "**Lien Claimants**"), and may take any steps which the Trustee believes are incidental or necessary for the implementation of the Lien Claims Process.

3. **THIS COURT ORDERS AND DIRECTS** that all Claims shall be administered pursuant to the Claims Process by the Trustee, under the supervision of this Court, and any determination or disposition of any Claim by the Trustee shall have the same force and effect as

if made by a court of competent jurisdiction pursuant to the *CLA* or the *CA*. The Trustee shall, as necessary, consult with JKDC with respect to all Claims. The Trustee may retain such assistance as it may require in connection with its review and determination of the Claims.

4. **THIS COURT ORDERS AND DIRECTS** that in order to file a Claim pursuant to the Lien Claims Process, a Lien Claimant shall provide, if it has not done so to date, the following to the Trustee on or before 5:00 p.m. Toronto time on May 29, 2015 (the "**Claims Bar Date**"), as applicable:

- (a) copies of the Lien Claimant's Statement of Claim and Certificate of Action;
- (b) copies of the applicable Land Registry Lien and Certificate instruments;
- (c) a copy of any contract or subcontract including the names of the parties to any contract or subcontract, any change orders, amendments, purchase orders, documentation evidencing the last date on which the Lien Claimant provided services or materials to the improvement or other related documents on which such Claim is asserted;
- (d) the contract price and a statement of account, including the dates and amounts of payments received; and
- (e) any other documents or information as the Trustee may reasonably request for the purpose of assessing and determining any Claims in accordance with this Order.

5. **THIS COURT ORDERS** that the Trustee is hereby authorized and directed to make recommendations to the Court regarding the determination of holdback(s) and priorities with

respect to the Claims against the Property and any proceeds of the sale of the Property. The Trustee shall serve its report to the Court setting out such recommendations on the Service List in this proceeding no less than 10 days prior to the return date of any motion where the Court will be asked to approve the Trustee's determination as to the holdbacks and priorities.

DETERMINATION OF CLAIMS

6. **THIS COURT ORDERS** that the Trustee shall accept, revise and/or disallow a Claim as set out in a Lien Claimant's Statement of Claim or Land Registry Lien by delivering a notice of determination including the reasons for such determination (a "**Notice of Determination**").

DISPUTE NOTICE AND APPEALS

7. **THIS COURT ORDERS** that a Lien Claimant may appeal the revision and/or disallowance (as the case may be) of its Claim as set out in a Notice of Determination by delivering a Dispute Notice to the Trustee substantially in the form attached to this Order as **Schedule "A"** (a "**Dispute Notice**") within 10 days of the sending of such Notice of Determination by the Trustee. Any Lien Claimant who does not deliver a Dispute Notice within such 10 day period shall be deemed to have accepted the Trustee's determination as set out in the Notice of Determination, which shall be final and binding, and any portion, or the whole, of the Claim (as the case may be) which is disallowed in the Notice of Determination shall be forever barred and extinguished pursuant to this Order.

8. **THIS COURT ORDERS AND DIRECTS** that any appeal or dispute of a Notice of Determination as set out in a Dispute Notice, shall be referred to a claims officer to be appointed by further order of this Court on recommendation by the Trustee (the "**Claims Officer**") or brought before this Court for adjudication. Any appeal or dispute of a Notice of Determination

as set out in a Dispute Notice shall be conducted as a hearing *de novo* and any appeal of any decision of the Claims Officer shall be heard by this Court on a timetable approved by this Court and shall be final and binding on all parties with no further appeal thereof.

CLAIMS BAR PROVISIONS

9. **THIS COURT ORDERS** that any Claim:

- (a) the particulars of which are not delivered to the Trustee by the Claims Bar Date in accordance with paragraph 4 above; or
- (b) for which a Dispute Notice is not delivered within 10 days of the sending of a Notice of Determination by the Trustee but only with respect to any portion, or the whole (as the case may be) of any such Claim which is disallowed,

shall be forever barred and extinguished and such Lien Claimant submitting the Claim shall be forever estopped and enjoined from asserting or enforcing any further Claims against the Property and JKDC except that nothing in this Order shall bar or extinguish any Claim in its entirety or any part thereof which has been accepted by the Trustee, or approved by the Claims Officer or this Court, as applicable.

10. **THIS COURT ORDERS** that the Trustee shall incur no liability or obligations as a result of the carrying out of the terms of this Order and the implementation and administration of the Lien Claims Process.

NOTICES AND COMMUNICATION

11. **THIS COURT ORDERS** that, except as otherwise provided herein, the Trustee may deliver any notice or other communication to be given under this Order to Lien Claimants by forwarding true copies thereof by e-mail to such Lien Claimants or parties at the address on the Service List, and that any such service or notice by e-mail shall be deemed to be received on the day the e-mail is sent by the Trustee.

12. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by a Lien Claimant to the Trustee shall be in writing in substantially the form, if any, provided for in this Order and will be effective only if delivered by e-mail addressed to:

COLLINS BARROW TORONTO LIMITED

11 King St. West Suite 700, Box 27

Toronto, ON M5H 4C7

Attention: Colleen H. Delaney

Email: chdelaney@collinsbarrow.com

- with a copy to -

CHAITONS LLP

5000 Yonge Street, 10th Floor

Toronto, ON M2N 7E9

Attention: Sam Rappos

Email: samr@chaitons.com

13. **THIS COURT ORDERS** that, notwithstanding the terms of this Order, any party may apply to this Court from time to time for direction with respect to the Lien Claims Process and/or such further order or orders as this Court may consider necessary or desirable to amend or supplement this Order.

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



MAY - 1 2015

NB

SCHEDULE "A"

Dispute Notice Re: Jade-Kennedy Development Corporation

Defined terms not defined within this Dispute Notice form have the meaning ascribed thereto in the Lien Claims Process Order dated May 1, 2015. Pursuant to paragraph 7 of the Lien Claims Process Order, we hereby give you notice of our intention to dispute the Notice of Determination dated _____ issued by Collins Barrow Toronto Limited as Trustee of the Property in respect of our Claim.

Name of Creditor: _____

Reasons for Dispute (attach additional sheets and copies of all supporting documentation, if necessary):

Signature of Authorized Signing Officer: _____

Date: _____

(Please print name) _____

Telephone Number: () _____ Facsimile Number: () _____

Full Mailing Address: _____

E-mail Address: _____

THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY E-MAIL, TO THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED NO LATER THAN 10 DAYS AFTER SENDING OF THE NOTICE OF DETERMINATION BY THE TRUSTEE TO:

COLLINS BARROW TORONTO LIMITED

11 King St. West Suite 700, Box 27

Toronto, ON M5H 4C7

Attention: Colleen H. Delaney

Email: chdelaney@collinsbarrow.com

- with a copy to -

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9
Attention: Sam Rappos
Email: samr@chaitons.com

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(re Lien Claims Process)

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