

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

THE HONOURABLE MR.) WEDNESDAY, THE 23rd DAY
)
JUSTICE P. Attilio) 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
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**

PROPERTY CLAIMS PROCEDURE ORDER

THIS MOTION made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises owned by Jade-Kennedy Development Corporation, appointed 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 Fifth Report of the Trustee dated December 18, 2015 (the "**Fifth Report Report**") and the Appendices thereto, and on hearing the submissions of counsel for the Trustee, and those other parties listed on the Counsel Slip, no one else appearing for any other

person on the service list, although properly served as appears from the affidavit of service of Lynn Lee sworn December 18, 2015, filed,

DEFINITIONS

1. **THIS COURT ORDERS** that the following terms shall have the following meanings ascribed thereto:

- (a) "**Appointment Order**" means the Order of this Court dated February 11, 2015, by which the Trustee was appointed, as such Order may be supplemented, amended or varied from time to time;
- (b) "**Business Day**" means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;
- (c) "**Court**" means the Ontario Superior Court of Justice (Commercial List);
- (d) "**Claimant**" means any Person having a Property Claim;
- (e) "**Debtor**" means Jade-Kennedy Development Corporation;
- (f) "**Dispute Notice**" means a written notice to the Trustee, in substantially the form attached as **Schedule "C"** hereto, delivered to the Trustee by a Claimant who has received a Notice of Disallowance, of its intention to dispute such Notice of Disallowance;
- (g) "**Excluded Claim**" means:
 - A. claims secured by any of the charges created in the Appointment Order;

- B. claims that are subject to the Order (re Lien Claims Process) of this Court dated May 1, 2015;
 - C. claims of Tarion Warranty Corporation in respect of any and all surety bonds under which the Debtor or any of its affiliates is principal; and
 - D. any unsecured claim that is a claim provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, against the Debtor;
- (h) **"Notice of Disallowance"** means a notice, in substantially the form attached as **Schedule "B"** hereto, advising a Claimant that the Trustee has revised or disallowed all or part of the Property Claim set out in the Claimant's Proof of Property Claim;
- (a) **"Person"** includes any individual, partnership, joint venture, trust, corporation, unlimited liability company, unincorporated organization, government body or agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted;
- (i) **"Proof of Property Claim"** means the form of Proof of Property Claim in substantially the form attached as **Schedule "A"** hereto;
- (j) **"Property"** means: (i) the lands and premises legally described in Schedule "A" to the Appointment Order, municipally known as, among other things, 8321, 8323, and 8339 Kennedy Road, Markham, Ontario, and commonly known as South Unionville Square, and any and all proceeds arising out of or from such

lands and premises; and (ii) all personal property of the Debtor and any and all proceeds arising therefrom.

(k) **"Property Claim"** means ~~any right or interest of any Person in connection with,~~ ~~arising out of, or in relation to Property, including, without limiting the generality~~ ~~of the foregoing.~~ R.P.

A. a proprietary claim of any Person to Property, including, without limitation, any statutory deemed trust claims in favour of the Crown, or

B. a Secured Claim of any Person to Property,

provided, however, that "Property Claim" shall not include an Excluded Claim;

(l) **"Property Claims Bar Date"** means 4:00 p.m. (Eastern Standard Time) on January 29, 2016, or such later date as may be ordered by the Court;

(m) **"Property Claims Officer"** means the person or persons so designated by the Trustee and approved by the Court, or designated by the Court, as the case may be; and

(n) **"Secured Claim"** means any claim or portion thereof that is secured by a security interest, pledge, mortgage, lien, or charge.

NOTICE TO CLAIMANTS

2. **THIS COURT ORDERS** that the Trustee shall, no later than December 24, 2015, serve a copy of this Order on the parties listed on the E-Service List maintained for this proceeding and

post a copy of this Order and the forms of Proof of Property Claim and Dispute Notice on its website at <http://www.collinsbarrow.com/en/cbn/jade-kennedy-development-corporation>.

PROPERTY CLAIMS

3. **THIS COURT ORDERS** that Proofs of Property Claim shall be filed in accordance with this Order with the Trustee and that any Claimant:

- (a) that does not file a Proof of Property Claim as provided for herein such that such Proof of Property Claim is received by the Trustee on or before the Property Claims Bar Date, or
- (b) having filed a Property Proof of Claim has that Property Proof of Claim finally disallowed after exhausting all the dispute and appeal rights pursuant to this Order,

shall be and is hereby forever barred from making or enforcing any Property Claim against the Debtor and its Property.

PROOFS OF PROPERTY CLAIM

4. **THIS COURT ORDERS** that the Trustee may, where it is satisfied that a Property Claim has been adequately filed, waive strict compliance with the requirements of this Order as to completion and execution of Proofs of Property Claim.

REVIEW OF PROOFS OF PROPERTY CLAIM

5. **THIS COURT ORDERS** that the Trustee shall review all Proofs of Property Claims that are filed on or before the Property Claims Bar Date and shall accept or disallow (in whole or in

part) such Property Claim. At any time, the Trustee may (i) request additional information from a Claimant with respect to a Property Claim, (ii) request that the Claimant file a revised Proof of Property Claim, or (iii) attempt to resolve and settle any issue arising in respect of a Property Claim.

6. **THIS COURT ORDERS** that where a Property Claim as filed in a Proof of Property Claim is disallowed (in whole or in part) by the Trustee, the Trustee shall deliver to the Claimant a Notice of Disallowance, attaching the form of Dispute Notice.

7. **THIS COURT ORDERS** that where a Property Claim as filed in a Proof of Property Claim has been disallowed (in whole or in part), the disallowed Property Claim (or disallowed portion thereof) shall not be a proven Property Claim unless the Claimant has disputed the disallowance and proven the disallowed Property Claim (or disallowed portion thereof) in accordance with paragraphs 11 to 13 of this Order.

DISPUTE NOTICE

8. **THIS COURT ORDERS** that any Claimant who intends to dispute a Notice of Disallowance shall file a Dispute Notice with the Trustee as soon as reasonably possible but in any event such Dispute Notice shall be received by the Trustee on or before 4:00 p.m. (Eastern Standard Time) on the day that is ten (10) days after the Claimant is deemed to have received the Notice of Disallowance in accordance with paragraph 15 of this Order. The filing of a Dispute Notice with the Trustee within the ten (10) day period specified in this paragraph shall constitute an application to have such Property Claim determined as set out in paragraphs 11 to 13 hereof.

9. **THIS COURT ORDERS** that where a Claimant that receives a Notice of Disallowance fails to file a Dispute Notice with the Trustee within the period provided therefor in paragraph 8

above, such Property Claim shall be deemed to be as set out in the Notice of Disallowance and shall constitute such Claimant's proven Property Claim.

RESOLUTION OF PROPERTY CLAIMS

10. **THIS COURT ORDERS** that as soon as practicable after the delivery of the Dispute Notice to the Trustee, the Trustee, in consultation with any Person affected by the Claimant's Property Claim, shall attempt to resolve and settle the Claimant's Property Claim.

11. **THIS COURT ORDERS** that in the event that a dispute raised in the Claimant's Dispute Notice is not settled within a time period or in a manner satisfactory to the Trustee, the Trustee may refer the dispute to a Property Claims Officer, if chosen by the Trustee and approved by this Court, for determination, or in the alternative may bring the dispute before the Court by way of Notice of Motion for determination. If the Trustee refers the dispute to a Property Claims Officer for determination, then (i) the Property Claims Officer shall determine the manner, if any, in which evidence may be brought before the Property Claims Officer by the parties and any Person affected by the Property Claim as well as any other matters, procedural or substantive, which may arise in respect of the Property Claim Officer's determination of a Claimant's Property Claim, and (ii) the provisions of paragraphs 11 to 13 of this Order shall apply to the determination of the Property Claims Officer. For greater certainty, the Property Claims Officer may require written submissions, and may limit submissions to written submissions, at the Property Claims Officer's discretion.

12. **THIS COURT ORDERS** that the Property Claims Officer shall as soon as is practicable, and in any event by no later than (i) thirty (30) days from the closing of submissions (whether written or oral or both), or (ii) such other date as the Property Claims Officer and the

* parties *

~~Trustee~~ may agree, notify the Claimant, the Trustee and any Persons affected by the Property Claim in writing of the Property Claims Officer's determination of the amount and status of such Property Claim.

13. **THIS COURT ORDERS** that the Property Claims Officer's determination of any Claimant's Proven Property Claim shall be final and binding, unless within ten (10) days of the delivery of the Property Claims Officer's determination, the Trustee, the Claimant or any Person affected by the Claimant's Property Claim has filed with this Court an appeal, by way of Notice of Motion, of the Property Claims Officer's determination.

DIRECTIONS

14. **THIS COURT ORDERS** that the Trustee may, at any time, and with such notice as this Court may require, seek directions from the Court with respect to this Order and the Property Claims process set out herein, including the forms attached as Schedules hereto.

SERVICE AND NOTICE

15. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by the Trustee to a Claimant or other interested Persons, shall be in writing and may be given by sending true copies thereof by courier, personal delivery or electronic or digital transmission to such Persons (i) at the address shown on the Proof of Property Claim filed by that Person, or (ii) if a Proof of Property Claim has not been filed by that Person or does not contain a valid address, then at the address as last shown on the records of the Debtor, and that any such service or shall be deemed to be received on the next Business Day following the date of forwarding thereof.

16. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by a Claimant to the Trustee shall be in writing and will be sufficiently given only if sent by courier, personal delivery or electronic or digital transmission addressed to:

Collins Barrow Toronto Limited
Court-appointed Trustee of Jade-Kennedy Development Corporation

Address: 11 King Street West, Suite 700, Box 27
Toronto, Ontario M5H 4C7

Attention: Colleen Delaney
Telephone: (647) 309-8735
E-mail: chdelaney@collinsbarrow.com
Fax: (416) 480-2646

with a copy to:

Chaitons LLP

Address: 5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

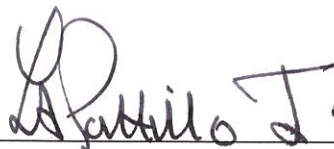
Attention: Sam Rappos
Telephone: (416) 218-1137
E-mail: samr@chaitons.com
Fax: (416) 218-1837

Any such notice or other communication by a Claimant shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day. Where the communication is to be by way of a form attached as a Schedule to this Order, such communication shall be in substantially the form of the attached Schedule.

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



DEC 23 2015



SCHEDULE "A"

PROOF OF PROPERTY CLAIM RELATING TO JADE-KENNEDY DEVELOPMENT CORPORATION (hereinafter referred to as the "Debtor")

A. PARTICULARS OF CLAIMANT:

Full Legal Name of Claimant:

(the "Claimant").

Full Mailing Address of the Claimant:

Telephone Number: _____

E-Mail Address: _____

Facsimile Number: _____

Attention (Contact Person): _____

B. PROOF OF PROPERTY CLAIM:

I, _____
[name of Claimant or Representative of the Claimant], of

_____ do hereby certify:
(city and province)

that I [check (✓) one]

am the Claimant of the Debtor; **OR**

am _____ (state position or title) of _____;
(name of claimant)

that I have knowledge of all the circumstances connected with the Property Claim referred to below.

C. NATURE OF PROPERTY CLAIM

Details of the basis for the Property Claim (attach a separate sheet if more space is required):

D. PARTICULARS OF PROPERTY CLAIM:

Other than as already set out herein, the particulars of the undersigned's total Property Claim are attached.

(Provide all particulars of the Property Claim and supporting documentation, including description of transaction(s) or agreement(s) giving rise to the Property Claim, description of the security, if any, granted by the Debtor to the Claimant and estimated value of such security.)

This Proof of Property Claim must be received by the Trustee by no later than 4:00 p.m. (Eastern Standard Time) on January 29, 2016 by courier, personal delivery or electronic or digital transmission to the following address:

Collins Barrow Toronto Limited
Court-appointed Trustee of Jade-Kennedy Development Corporation

Address: 11 King Street West, Suite 700, Box 27
Toronto, Ontario M5H 4C7

Attention: Colleen Delaney
Telephone: (647) 309-8735

E-mail chdelaney@collinsbarrow.com
Fax: (416) 480-2646

with a copy to:

Chaitons LLP

Address: 5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Attention: Sam Rappos
Telephone: (416) 218-1137
E-mail samr@chaitons.com
Fax: (416) 218-1837

E. FILING OF PROPERTY CLAIM

Failure to file your proof of Property Claim as directed by 4:00 p.m. (Eastern Standard time), on January 29, 2016 will result in your Property Claim being barred and in you being prevented from making or enforcing a Property Claim against the Debtor.

Dated at _____ this _____ day of _____, 201_.

Signature of Claimant

SCHEDULE "B"

NOTICE OF DISALLOWANCE

RE: In the matter of the Property Claim dated [DATE] filed by you against Jade-Kennedy Development Corporation (the "**Debtor**")

TO: _____

(Name of Claimant)

Capitalized terms not defined in this Notice of Disallowance have the meanings ascribed to those terms in the Order of the Ontario Superior Court of Justice dated December 23, 2015 (the "**Property Claims Procedure Order**").

Pursuant to paragraph 8 of the Property Claims Procedure Order, Collins Barrow Toronto Limited, in its capacity as Court-appointed Trustee of the Debtor, hereby gives you notice that it has reviewed your Proof of Property Claim and has disallowed all or part of your Property Claim.

Reasons for Disallowance:

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Disallowance, you must, no later than 4:00 pm (Eastern Standard Time) on the day that is ten (10) days after this Notice of Disallowance is deemed to have been received by you (in accordance with paragraph 15 of the Property Claims Procedure Order), deliver a Notice of Dispute to the Trustee by courier, personal delivery or electronic or digital transmission to the address below. In accordance with the Property Claims Procedure Order, notices shall be deemed to be received upon actual receipt thereof by the Trustee during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

SCHEDULE "C"

DISPUTE NOTICE

RE: In the matter of the Property Claim dated _____ filed by _____ against Jade-Kennedy Development Corporation

1. Particulars of Claimant:

Full Legal Name of Claimant (include trade name, if different):

(the "Claimant").

Full Mailing Address of the Claimant:

Other Contact Information of the Claimant:

Telephone Number: _____
Email Address: _____
Facsimile Number: _____
Attention (Contact Person): _____

2. Dispute of Disallowance of Property Claim:

The Claimant hereby disagrees with the disallowance of its Property Claim as set out in the Notice of Disallowance on the following basis:

[You must include a list of reasons as to why you are disputing your Property Claim as set out in the Notice of Disallowance. Reasons must be provided.]

SERVICE OF DISPUTE NOTICES

If you intend to dispute the Notice of Disallowance, you must by no later than the date that is ten (10) days after the Notice of Disallowance is deemed to have been received by you (in accordance with paragraph 15 of the Property Claims Procedure Order) deliver to the Trustee this Dispute Notice by courier, personal delivery or electronic or digital transmission to the address below. In accordance with the Property Claims Procedure Order, notices shall be deemed to be received upon actual receipt thereof by the Trustee during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

Collins Barrow Toronto Limited
Court-appointed Trustee of Jade-Kennedy Development Corporation

Address: 11 King Street West, Suite 700, Box 27
Toronto, Ontario M5H 4C7

Attention: Colleen Delaney
Telephone: (647) 309-8735
E-mail chdelaney@collinsbarrow.com
Fax: (416) 480-2646

with a copy to:

Chaitons LLP

Address: 5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Attention: Sam Rappos
Telephone: (416) 218-1137
E-mail samr@chaitons.com
Fax: (416) 218-1837

DATED this _____ day of _____, 201_.

Name of Claimant: _____

Witness

Per: _____
Name:
Title:

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**

Court File No. CV15-10882-00CL

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

Proceedings commenced at Toronto

**PROPERTY CLAIMS
PROCEDURE ORDER**

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