

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C. 30*

**AND IN THE MATTER OF THE 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***

**EIGHTH REPORT TO THE COURT
OF COLLINS BARROW TORONTO LIMITED AS CONSTRUCTION LIEN TRUSTEE
OF SOUTH UNIONVILLE SQUARE**

JULY 22, 2016

INTRODUCTION AND PURPOSE OF THE EIGHTH REPORT

1. By Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 11, 2015 the "**Appointment Order**"), Collins Barrow Toronto Limited was appointed trustee (the "**Trustee**") pursuant to section 68(1) of the *Construction Lien Act* (Ontario) (the "**CLA**"), of the lands and premises legally described in Schedule "A" of the Appointment Order comprised of commercial and residential condominium units, parking and locker units, and vacant lands owned by Jade-Kennedy Development Corporation ("**JKDC**") (the "**Property**"). A copy of the Appointment Order is attached hereto as **Appendix "A"**.
2. The Appointment Order authorized the Trustee to, among other things, act as receiver and manager of the Property, take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, market any or all of the Property, and sell, convey, transfer, lease or assign the Property or any part or parts thereof with the approval of the Court.
3. Publicly available information relating to this proceeding has been posted on the Trustee's website, which can be found at:

<http://www.collinsbarrow.com/en/cbn/jade-kennedy-development-corporation>

PURPOSE OF THE EIGHTH REPORT

4. The purpose of this Eighth Report of the Trustee (the "**Eighth Report**") is to:

- (a) provide the Court with an update with respect to the status of the claims of certain construction lien claimants to amounts being held in reserve by the Trustee pursuant to Court order;
- (b) request that the Court grant orders:
 - (i) approving this Eighth Report and the Second Supplement to the Sixth Report of the Trustee dated June 28, 2016 (the “**Second Supplementary Report**”), and the conduct and activities of the Trustee described therein;
 - (ii) approving the sale by the Trustee of residential condominium suite 1216, along with parking unit 125, level B, and locker unit 373, level B, to Kwai-Sum Yuen and Siu-Chin Liao (collectively, the “**Purchaser**”), and vesting such property in the Purchaser free and clear of all claims and encumbrances; and
 - (iii) authorizing the Trustee to release from reserve and distribute \$17,444.11 to Imperial Trim Supply Ltd. (“**Imperial Trim**”).

TERMS OF REFERENCE

5. In preparing this Eighth Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of JKDC, discussions with management and employees of JKDC and other companies within the MADY group of companies, and information received from other third-party sources (collectively, the “**Information**”). Certain of the information

contained in this Eighth Report may refer to, or is based on, the Information. As the Information has been provided by JKDC or other parties, the Trustee has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information.

THE RESIDENCES AT SOUTH UNIONVILLE SQUARE

Background

6. JKDC is an Ontario corporation that was incorporated on January 30, 2008 and has its registered office located in Markham, Ontario. JKDC was incorporated for the purpose of being the registered owner of the Property and developer of the South Unionville Square condominium project (the "**SUSQ Project**") to be constructed on certain portions of the Property, which is located in Markham, Ontario.
7. Phase II of the SUSQ Project involved the development and construction of a 12-storey condominium-apartment tower, which contains 253 residential units and 312 parking units.
8. Construction was substantially completed on June 10, 2014 and the condominium declaration was registered on September 11, 2014, which established York Region Standard Condominium Corporation No. 1265 ("**YRSCC**").

1265"). The residential tower is now managed by DUKA Property Management and was previously managed by First Service Residential until January 18, 2016.

9. The residential tower is known as "The Residences at South Unionville Square" and is located at 8323 Kennedy Road, Markham, Ontario.

Remaining Units

10. As at the Trustee's appointment, there were six residential units (suites 117, 218, 827, 1216, 1521 and 1527), eight parking units and six locker units that were still owned by JKDC.
11. Jade-Kennedy Residential Corporation ("JKRC"), a party related to JKDC, had entered into sale agreements with respect to suites 827, 1216, 1521 and 1527 for no cash consideration with parties who had provided construction services in respect of some of the Property. The parties had agreed to acquire the suites by setting off amounts due to them by JKDC.
12. Pursuant to the Order of Justice Pattillo dated May 1, 2015, the Trustee was authorized by the Court to terminate such sale agreements, which the Trustee did on May 4, 2015.
13. JKRC had also entered into sale agreements with respect to suites 117 and 218 just prior to the commencement of this proceeding with a purchase price of \$200,000 for each suite. The Trustee brought a motion before the Court seeking the authority to terminate these sale agreements, as in the Trustee's view they represented sales at below market value.

14. Pursuant to the Order of Justice Pattillo dated June 4, 2015, the Trustee was authorized by the Court to terminate such sale agreements, which the Trustee did on June 16, 2015. The Trustee returned the deposits received from these prospective purchasers.
15. The Trustee sought and obtained Court approval for the sale of suite 1521 on April 26, 2016, and the sale transaction closed on April 28, 2016. The Trustee received net sale proceeds, following payment of real property tax arrears and common expense arrears, and remittance of collected HST, of \$271,353.
16. The Trustee sought and obtained Court approval for the sale of suite 827 on June 8, 2016, and the sale transaction closed on June 10, 2016. The Trustee received net sale proceeds, following payment of real property tax arrears and common expense arrears, and remittance of collected HST, of \$263,333.77.
17. The Trustee sought and obtained Court approval for the sale of suite 218 on June 8, 2016, and the sale transaction closed on June 16, 2016. The Trustee received net sale proceeds, following payment of real property tax arrears and common expense arrears, and remittance of collected HST, of \$252,892.96.
18. As a result, there are three residential units remaining, suites 117, 1216 and 1527. Attached hereto and collectively marked as **Appendix "B"** are the parcel registers for residential condominium suite 1216, parking unit 125, level B, and locker unit 373, level B.

TradeWorld

19. Pursuant to paragraph 3(d) of the Appointment Order, the Trustee was authorized by the Court to engage agents to assist with the exercise of the Trustee's powers and duties.
20. As previously reported to the Court, the Trustee has retained TradeWorld Realty Inc. ("**TradeWorld**") to list unsold Property for sale, pursuant to a listing agreement dated May 4, 2015.

Sale of Suite 1216

21. Pursuant to paragraphs 3(k) through (m) of the Appointment Order, the Trustee was authorized by the Court to market the Property, sell the Property with the approval of the Court, and to apply for vesting orders necessary to convey the Property free and clear of all claims and encumbrances affecting the Property.
22. Based on the advice and recommendation of TradeWorld, suite 1216 was included in the listing agreement at an initial price of \$305,900, which was reduced to \$300,900 in January, 2016. Suite 1216 is a one-bedroom unit with den, approximately 590 square feet in size.
23. The Trustee had accepted a previous offer on June 6, 2016 for suite 1216. However, that purchaser rescinded this offer on June 16, 2016. The offer received from the Purchaser is for a purchase price of \$301,900, as set out in the agreement of purchase and sale executed by the Purchaser and accepted by the Trustee on June 16, 2016. A copy of the suite 1216 agreement of purchase and sale is attached hereto and marked as **Appendix "C"**.

24. Suite 1216 is subject to the following encumbrances:
- (a) a condominium lien in favour of YRSCC 1265;
 - (b) a \$16.5 million charge in favour of Aviva Insurance Company of Canada;
 - (c) a \$45.0 million charge in favour of Laurentian Bank of Canada;
 - (d) a \$10.0 million charge in favour Am-Stat Corporation; and
 - (e) certain construction liens.
25. In the event that the sale transaction with the Purchaser is approved by the Court and close, the Trustee will hold the net sale proceeds subject to further Order of the Court.
26. The Trustee believes that suite 1216 has been fairly and sufficiently exposed to the market through the listing by TradeWorld, that all reasonable steps have been taken to obtain the best price possible, and recommends that the sale transaction with the Purchaser be approved by the Court, as:
- (a) the purchase price for suite 1216 is higher than the current listing price;
and
 - (b) the suite 1216 offer is unconditional other than with respect to the Trustee obtaining Court approval.
27. If the Court approves the sale transaction, the suite 1216 transaction is scheduled to close on August 3, 2016.

CONSTRUCTION LIEN CLAIMS PROCESS

28. As set out in greater detail in the Second Supplementary Report, a copy of which, without appendices, is attached hereto as **Appendix “D”**:

- (a) eighteen (18) construction lien claimants (collectively, the “**Construction Lien Claimants**”) registered nineteen (19) construction liens against the Property;
- (b) the Trustee was authorized by the Court to implement and administer a construction lien claims process;
- (c) there was no general contractor for the SUSQ Project and each of the Construction Lien Claimants contracted directly with JKDC as owner of the Property;
- (d) as at the date of the Trustee’s appointment, no funds were being held by JKDC with respect to the ten per cent (10%) basic holdback established under section 22 of the *CLA*; and
- (e) a properly perfected construction lien has priority over mortgagees of the Property to the extent of any deficiency in the holdbacks that JKDC was required to retain under the *CLA*.

29. As set out in the Second Supplementary Report, the Trustee proposed to distribute amounts to certain Construction Lien Claimants with respect to deficiencies in the holdback amounts, which distribution was approved by the Court pursuant to the Order of The Honourable Mr. Justice Wilton-Siegel dated

June 30, 2016 (the "**June 30 Order**"), a copy of which is attached hereto as **Appendix "E"**.

30. As set out in paragraph 2 of the June 30 Order, the Trustee was required to maintain the following reserves with respect to the holdback claims of the following Construction Lien Claimants, pending further Order of the Court:

- (a) CRS Contractors Rental Supply General Partner Inc. - \$12,774.42;
- (b) Dircam Electric Limited - \$35,171.56;
- (c) Imperial Trim Supply Ltd. - \$17,444.11;
- (d) 2050491 Ontario Inc. o/a The Downsview Group - \$199,756.53;
- (e) Sereen Painting Ltd. - \$200,000; and
- (f) Skyway Canada Limited - \$10,446.86.

31. Pursuant to paragraph 3 of the June 30 Order, the Trustee and these Construction Lien Claimants are to attempt to consensually resolve matters with respect to the amounts being held in reserve. The Court also ordered the Trustee to serve a report by July 22, 2016 that provides an update with respect to the resolution attempts and proposes a process to deal with any holdback claims that remain unresolved.

32. In accordance with the June 30 Order, the Trustee reports that through its legal counsel, Chaitons LLP ("**Chaitons**"), it has reached out to counsel to each of the Construction Lien Claimants listed above, and the parties, with one exception,

have scheduled times to discuss the outstanding matters in the next few weeks. The Trustee is of the view that at this time, it is appropriate for the discussions to continue with these Construction Lien Claimants with respect to potential resolution of the outstanding matters. The Trustee will report to the Court on the status of the discussions in its next report to the Court.

33. The one exception is with respect to the claim of Imperial Trim to the amount of \$17,444.11 being held in reserve by the Trustee pursuant to the June 30 Order. The Trustee and Chaitons have reviewed the books and records of JKDC with respect to Imperial Trim's claim, and based on such review, and the information provided to the Trustee by the former controller of the MADY group retained by the Trustee to review Construction Lien Claims, the Trustee has determined that Imperial Trim is entitled to payment of the \$17,444.11 currently being held in reserve.
34. As a result, the Trustee requests that the Court authorize it to distribute the amount of \$17,444.11 currently being held in reserve by the Trustee to Imperial Trim on account of Imperial Trim's entitlement to such amount as part of the deficiency in the holdback required to be retained pursuant to the *CLA*.

TRUSTEE'S REQUEST TO THE COURT

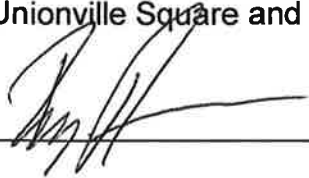
35. Based on the foregoing, the Trustee respectfully requests that the Court grant the relief set out in paragraph 4 above.

All of which is respectfully submitted to this Court as of this 22nd day of July, 2016.

COLLINS BARROW TORONTO LIMITED

In its capacity as Trustee under the *Construction Lien Act*
of Jade-Kennedy Development Corporation as owner of
South Unionville Square and not in its personal capacity

Per: _____



Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President