

**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***

**FIFTH REPORT TO THE COURT OF COLLINS BARROW TORONTO LIMITED  
IN ITS CAPACITY AS COURT-APPOINTED TRUSTEE**

**DECEMBER 18, 2015**

## INTRODUCTION

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" to the Appointment Order comprised of, among other things, commercial/retail and residential condominium units, and vacant land owned by Jade-Kennedy Development Corporation ("**JKDC**") and commonly known as South Unionville Square ("**SUSQ**") (the "**Property**"). A copy of the Appointment Order is attached hereto and marked 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 FIFTH REPORT

4. The purpose of this Fifth Report of the Trustee (the “**Fifth Report**”) is to:
- (a) provide the Court with a summary of the sale transactions that have been completed by the Trustee to date;
  - (b) request that the Court grant an order:
    - (i) approving the Fifth Report and the conduct and activities of the Trustee described herein;
    - (ii) approving the Trustee’s interim Statement of Receipts and Disbursements dated December 14, 2015 (the “**Interim R&D**”);
    - (iii) approving a claims process for the submission, review and determination of secured and proprietary claims (including statutory deemed trust claims in favour of the Crown) with respect to the Property and the proceeds thereof;
  - (c) request that the Court grant an order approving the sale by the Trustee of residential condominium suite 1521, along with parking unit 4, level B, and locker unit 330, level B, to Hong Wen Yan and Po-Lam Chiu (collectively, the “**Purchaser**”), and vesting such property in the Purchaser free and clear of all claims and encumbrances; and
  - (d) request that the Court grant an order approving the sale by the Trustee of residential condominium suite 1527, along with parking unit 50, level B,

and locker unit 333, level B, to the Purchaser, and vesting the property in the Purchaser free and clear of all claims and encumbrances.

## **TERMS OF REFERENCE**

5. In preparing this Fifth 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 Fifth 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.

## **BACKGROUND**

6. JKDC was the registered owner and developer of the Property. The Property was developed and constructed in three phases:
- (a) Phase I - development and construction of twenty-eight (28) townhomes, a T&T Supermarket, and a commercial condominium project with units for retail, restaurant, office and medical services located above the

supermarket. The mall is known as "The Mall at Langham Square" and is located at 8339 Kennedy Road, Markham, Ontario;

- (b) Phase II - development and construction of a 12-storey condominium-apartment tower, which contains, among other things, 253 residential units, and 21 commercial units located on the ground level below the residential tower. The residential tower is known as "The Residences at South Unionville Square" and is located at 8323 Kennedy Road, Markham, Ontario. The commercial units are municipally known as 8321 Kennedy Road, Markham, Ontario; and
- (c) Phase III – planned development and construction of thirteen (13) freehold townhomes and two (2) single detached homes on vacant lands owned by JKDC that was located south of the SUSQ project.

- 7. JKDC sought the appointment of the Trustee as it was insolvent, contractors had registered construction lien claims against title to the Property, and the appointment was necessary to complete the closing of certain pre-sold commercial/retail units, market and sell the unsold Property, and distribute the sale proceeds pursuant to a Court order.
- 8. As at the time of the Trustee's appointment, the following Property remained unsold, or sale transactions for the units had not been closed by JKDC:

- (a) twenty-three (23) commercial/retail units ("**Phase I Commercial Units**"), and four parking units that are only accessible to the residents of the 28 townhomes;
- (b) six residential units, eight parking units and six locker units located in the Phase II residential condominium tower;
- (c) twenty-one (21) commercial/retail units located below the Phase II residential condominium tower ("**Phase II Commercial Units**"), of which eighteen (18) were subject to existing agreements of purchase and sale and were scheduled to close on February 17, 2015; and
- (d) the Phase III vacant lands.

9. Pursuant to the Appointment Order, the Trustee was authorized to:

- (a) complete the existing agreements of purchase and sale for the 18 pre-sold Phase II Commercial Units; and
- (b) market the remaining Property for sale.

## **SALE TRANSACTIONS**

### **Phase I**

10. As noted above, there are 23 Phase I Commercial Units. There are also four parking units that are only accessible to the residents of the 28 townhomes in Phase I. One of the 23 Phase I Commercial Units is a corridor unit that, due to its configuration, is likely not saleable. The remaining 22 Phase I Commercial

Units are commercial/retail, kiosk and mall units located in or connected to The Mall at Langham Square.

11. Pursuant to the Approval and Vesting Order of Justice Pattillo dated October 16, 2015, as amended, the Trustee was authorized to complete the sale of three kiosk Phase I Commercial Units. A copy of the Order is attached hereto and marked as **Appendix "B"**.
12. The sale of the kiosk Phase I Commercial Units closed on October 21, 2015. The sale proceeds received by the Trustee for these units were \$89,504.70.
13. Pursuant to the Approval and Vesting Order of Justice Pattillo dated October 16, 2015, the Trustee was authorized to complete the sale of a commercial/retail Phase I Commercial Unit, known as unit 60. A copy of the Order is attached hereto and marked as **Appendix "C"**.
14. The sale of unit 60 closed on October 30, 2015. The sale proceeds received by the Trustee for unit 60 were \$800,000.
15. As a result, there remains 18 Phase I Commercial Units to be sold by the Trustee.
16. As previously reported to the Court, the Trustee has retained TradeWorld Realty Inc. ("**TradeWorld**") to list all unsold Property for sale, pursuant to a listing agreement dated May 4, 2015. The Trustee is also attempting to find purchasers for the four parking units referenced above.

**Phase II Commercial Units**

17. In accordance with the provisions of the Appointment Order, the Trustee took steps to complete the existing sale transactions for the 18 Phase II Commercial units.
18. The Trustee was able to close the sale transactions for 16 of the 18 Phase II Commercial Units. The remaining two sale transactions did not close due to the purchasers default, and accordingly the sale transactions were terminated by the Trustee.
19. The sale proceeds received by the Trustee for the 16 Phase II Commercial Units were \$3,717,421.84.

**Phase II Residential Units**

20. As noted above, 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.
21. 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 the Property. The parties had agreed to acquire the suites by setting off amounts due to them by JKDC.
22. 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. A copy of the Order is attached hereto and marked as **Appendix "D"**.

23. JKRC had also entered into sale agreements with respect to suites 117 and 218 just prior to the commencement of this proceeding. 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.
24. 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. A copy of the Order is attached hereto and marked as **Appendix "E"**.

### **Phase III Vacant Lands**

25. Pursuant to the Approval and Vesting Order of Justice Pattillo dated May 29, 2015, the Trustee was authorized to complete the sale of the Phase III vacant lands to Primont Homes (Harmony) Inc. ("**Primont**"). A copy of the Order is attached hereto and marked as **Appendix "F"**.
26. The sale to Primont closed on June 12, 2015. The sale proceeds received by the Trustee for the sale of the vacant lands were \$1,750,488.73.

### **Interim R&D**

27. Attached hereto and marked as **Appendix "G"** is a copy of the Trustee's Interim R&D from February 11 to December 14, 2015.

28. As indicated therein, the Trustee has funded operations and expenses to date with the net proceeds from the sale transactions described above.

**SUITES 1521 AND 1527**

29. Based on the advice and recommendation of TradeWorld, suites 1521 and 1527 were each listed at a price of \$289,900, based on the value of comparable units in the marketplace. Suite 1521 is a one-bedroom unit, 565 square feet in size. Suite 1527 is a one-bedroom unit, 563 square feet in size. Attached respectively as **Appendices "H"** and **"I"** are the parcel registers for (i) suite 1521, along with parking unit 4, level B, and locker unit 330, level B; and (ii) suite 1527, along with parking unit 50, level B, and locker unit 333, level B.
30. Since May 2015, the Trustee received four offers for suite 1521. The Trustee was unable to complete a sale in connection with the first three offers. The fourth offer received by the Trustee is from the Purchaser with a purchase price of \$277,500, as set out in the agreement of purchase and sale executed by the Purchaser on December 5, 2015 and accepted by the Trustee on December 11, 2015. A copy of the agreement of purchase and sale is attached hereto and marked as **Appendix "J"**.
31. With respect to suite 1527, the only offer received by the Trustee to date is the offer received from the Purchaser with a purchase price of \$277,500, as set out in the agreement of purchase and sale executed by the Purchaser on December 5, 2015 and accepted by the Trustee on December 11, 2015. A copy of the

agreement of purchase and sale is attached hereto and marked as **Appendix "K"**.

32. The purchase prices are comparable to other similar units that have been sold, and represent approximately 96% of the listing prices.
33. The sale transactions are scheduled to close on January 29, 2016, and are subject to Court approval. Suite 1521 is subject to the following encumbrances:
  - (a) a condominium lien in favour of York Region Standard Condominium Corporation 1265;
  - (b) a \$16.5 million charge in favour of Aviva Insurance Company of Canada ("**Aviva**");
  - (c) a \$10.0 million charge in favour of Am-Stat Corporation ("**Am-Stat**"); and
  - (d) construction liens in favour of certain claimants.
34. Suite 1527 is subject to the following encumbrances:
  - (a) a condominium lien in favour of York Region Standard Condominium Corporation 1265;
  - (b) a \$45.0 million charge in favour of Laurentian Bank of Canada ("**Laurentian**");
  - (c) a \$16.5 million charge in favour of Aviva;
  - (d) a \$10.0 million charge in favour of Am-Stat; and

(e) construction liens in favour of certain claimants.

35. In the event that the sale transactions are approved by the Court and close, the Trustee will hold the net sale proceeds subject to further Order of the Court.
36. The Trustee believes that suites 1521 and 1527 have been fairly and properly exposed to the market through the listing by TradeWorld and recommends that the sale transactions with the Purchaser be approved by the Court.

### **CLAIMS PROCESS**

37. As has previously been reported to the Court, as at March 31, 2015, 19 construction liens, totalling approximately \$3.77 million had been registered across the Property with respect to services and materials supplied to the Property.
38. As a result of the competing priority claims of the lien claimants, the mortgagees and potentially the Crown, it was necessary to establish a claims process for the submission, review and determination of all lien claims under the *CLA* and the *Condominium Act (Ontario)* (the "***Condominium Act***").
39. Pursuant to the Order (re Lien Claims Process) dated May 1, 2015 (the "**Lien Claims Process Order**"), the Court established a process for the submission, review and determination of lien claims under the *CLA* and the *Condominium Act*, and authorized the Trustee to implement and administer the lien claims process. A copy of the Lien Claims Process Order is attached hereto and marked as **Appendix "L"**.

40. The Trustee has reviewed the claims received by lien claimants. Pursuant to paragraph 5 of the Lien Claims Process Order, the Trustee has been authorized and directed by the Court to make recommendations to the Court regarding the determination of holdbacks and priorities with respect to claims against the Property and any proceeds of the sale of the Property.
41. The Trustee expects to be in a position to file a report in January 2016 to seek the Court's approval to make interim distributions to lien claimants on account of the deficiency in holdbacks in priority to the claims of the mortgagees of the Property.
42. However, for the Trustee to be in a position to make recommendations as to the priority of claims to the balance of the sale proceeds of the Property, it is necessary for the Trustee to conduct a claims process with respect to secured and proprietary claims (including statutory deemed trust claims of the Crown) to the Property (other than those claims already covered by the Lien Claims Process Order).
43. As previously reported to the Court, Laurentian, Aviva, MarshallZehr Group Inc. and Am-Stat registered mortgages over certain portions of the Property. The claims process being proposed by the Trustee will require these mortgagees, along with any other party that claims a proprietary interest in the Property, to submit a claim to the Trustee by the claims bar date.
44. The Trustee is proposing the following claim process be approved by the Court:

- (a) a claims bar date of January 31, 2016 be established, by which date all claimants must provide to the Trustee specified documentation with respect to their claims, otherwise their claims are forever barred and extinguished;
- (b) the Trustee shall administer the claim process, including the review, determination, acceptance, revision, disallowance and/or settlement of any claim;
- (c) the Trustee shall accept, revise and/or disallow a claim by delivering a notice of determination to the claimant including the reasons for such determination;
- (d) a claimant may appeal the revision and/or disallowance of its claim as set out in a notice of determination by delivering a dispute notice to the Trustee within 10 days of delivery of the notice of determination from the Trustee. Any claimant who does not deliver a dispute notice within 10 days of delivery of the notice of determination with respect to its claim shall be deemed to have accepted the determination as set out in the notice of determination, which shall be final and binding; and
- (e) any appeal of a notice of determination as set out in a dispute notice for which the Trustee cannot resolve with the claimant, shall either be referred to a claims officer to be appointed by further order of the Court in recommendation by the Trustee, or be heard by the Court.

45. The Trustee is of the view that the claim process will allow for a timely and cost effective adjudication of all secured and proprietary claims against the Property that were not covered by the Lien Claims Process Order. The process, once completed, will also allow the Trustee to make recommendations to the Court regarding the priorities among lien claimants, mortgagees and other parties claiming an interest in the Property.

#### **TRUSTEE'S REQUEST TO THE COURT**

46. The Trustee requests that the Court grant orders:
- (a) approving the Fifth Report and the conduct and activities of the Trustee described herein;
  - (b) approving the Interim R&D;
  - (c) approving the claims process for the submission, review and determination of secured and proprietary claims (including statutory deemed trust claims of the Crown) with respect to the Property; and
  - (d) approving the sale by the Trustee of suites 1521 and 1527 to the Purchaser and vesting such properties in the Purchaser free and clear of all claims and encumbrances.

All of which is respectfully submitted to this Court as of this 18<sup>th</sup> day of December, 2015.

**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  
President