

**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***

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

April 17, 2017

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), 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 FOURTEENTH REPORT

4. The purpose of this Fourteenth Report of the Trustee (the "**Fourteenth Report**") is to request that the Court grant orders approving the sale by the Trustee of:
 - (a) Phase I commercial units 389 and 391 on level 2 (collectively, "**Units 389/391**"), to Wai-Chi Jeffrey Lee (the "**Units 389/391 Purchaser**") and vesting such property in the Units 389/391 Purchaser free and clear of all claims and encumbrances (other than permitted encumbrances) upon delivery of a certificate by the Trustee to the Units 389/391 Purchaser; and
 - (b) Phase I commercial unit 361 on level 2 ("**Unit 361**"), to 10185370 Canada Inc. (the "**Unit 361 Purchaser**") and vesting such property in the Unit 361 Purchaser free and clear of all claims encumbrances (other than permitted encumbrances) upon delivery of a certificate by the Trustee to the Unit 361 Purchaser.

TERMS OF REFERENCE

5. In preparing this Fourteenth 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 Fourteenth 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

Phase I Commercial Units at the SUSQ Project

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 I of the SUSQ Project involved the development and construction of a T&T Supermarket and a commercial condominium project with units for retail, restaurant, office and medical services. In addition, there are more than 1,250 parking spaces.
8. As of the date of the Trustee's appointment, there were twenty-two (22) Phase I commercial units available for sale.

9. Construction was substantially completed on March 5, 2013 and the condominium declaration was registered on April 17, 2013, which established York Region Standard Condominium Corporation No. 1228 ("**YRSCC No. 1228**"). YRSCC 1228 is managed by PH Property Management & Consulting Inc.

REAL ESTATE AGENT

TradeWorld

10. 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.
11. As previously reported to the Court, the Trustee had retained TradeWorld Realty Inc. ("**TradeWorld**") to list certain unsold Property for sale, pursuant to a listing agreement dated May 4, 2015.
12. After several extensions, the Trustee allowed this agreement to expire on January 15, 2017.
13. During its over 20 month retainer as real estate listing agent, TradeWorld was able to sell four (4) of the twenty-two Phase I units, being unit 60 and three kiosk units.
14. Additionally, during its retainer period, TradeWorld listed Units 389/391 for \$99,000 each and Unit 361 for \$138,900.
15. In its over 20 month period as real estate listing agent for Units 389/391 and Unit 361, TradeWorld did not receive any offers to purchase these units.

Century 21

16. Given the number of units still available for sale and the ongoing carrying costs for these units, the Trustee requested a proposal from Century 21, who had recently sold similar units in the same market. Century 21 proposed a targeted, comprehensive three phase marketing campaign with supportable price reductions in order to profile and sell the remaining units. This campaign includes: a full time sales representative on site seven days a week, two sales events, three festival events, targeted radio/magazine advertising and detailed monthly reports, all at Century 21's expense.
17. The Trustee retained Century 21 as its real estate listing agent for all unsold Property (excluding certain parking units) on February 3, 2017. A festival event was held on site on February 25th and 26th to coincide with Chinese New Year celebrations. The marketing campaign has led to six offers approved by the Court on March 23, 2017, the offers described herein, and interest in other units.

SALES

Background

18. 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.

Units 389/91

19. These larger kiosk units are 106 gross square feet each and are located on level 2 of The Mall at Langham Square (previously known as The Mall at South Unionville Square). Century 21 listed these units for sale at a price of \$48,000 each.

20. The offers received from the Units 389/391 Purchaser is for a total purchase price of \$96,000, which is the combined amount of the listing prices for these units, as set out in the agreements of purchase and sale executed by Blossom Management & Services and accepted by the Trustee on March 20 and 21, 2017 respectively, copies of which are collectively attached hereto as **Appendix "B"**.¹ Copies of the parcel registers for Units 389/391 are collectively attached hereto as **Appendix "C"**.

21. Units 389/391 are subject to the following encumbrances:
 - (a) a condominium lien in favour of YRSCC No. 1228;
 - (b) a \$30 million charge in favour of Aviva Insurance Company of Canada;
 - (c) a \$3.6 million charge in favour of Laurentian Bank of Canada ("**LBC**");
 - (d) a \$2.4 million charge in favour of LBC;
 - (e) an \$8.0 million charge in favour of MarshallZehr Group Inc.; and

¹ The Trustee has been informed that title to these units will be taken in the name of the Units 389/391 Purchaser.

- (f) construction liens in favour of Guest Tile and Draglam.²
22. The Trustee believes that Units 389/391 have been fairly and sufficiently exposed to the market through the listing with TradeWorld and the recent targeted marketing campaign completed by Century 21, and that all reasonable steps have been taken to obtain the best price possible for the units.
23. On this basis, the Trustee recommends that the sale transaction be approved by the Court, as:
- (a) it is the only offer the Trustee has received for these units;
 - (b) the purchase price for Units 389/391 is at the current listing price and is recommended by Century 21 based on current market conditions;
 - (c) the two units are being sold to one purchaser to operate a business in a highly visible area; and
 - (d) the offers for Units 389/391 are unconditional other than with respect to the Trustee obtaining Court approval.
24. If the Court approves the sale transaction, the sale of Units 389/391 is scheduled to close on April 26, 2017.
25. In the event that this transaction is approved by the Court and closes, the Trustee will hold the net sale proceeds subject to further order of the Court.

² Draglam has been repaid in full with respect to its construction lien.

Unit 361

26. This unit is 230 gross square feet and is located on level 2 of The Mall at Langham Square. Century 21 listed this unit for sale at a price of \$92,000.
27. The offer received from the Unit 361 Purchaser is at the \$92,000 list price, as set out in the agreement of purchase and sale executed by the Unit 361 Purchaser and accepted by the Trustee on April 7, 2017, a copy of which is attached hereto as **Appendix "D"**. A copy of the parcel register for Unit 361 is attached hereto as **Appendix "E"**.
28. Unit 361 is subject to the same encumbrances as those registered against Units 389/391, which are described above.
29. The Trustee believes that Unit 361 has been fairly and sufficiently exposed to the market through the listing with TradeWorld and the recent targeted marketing campaign completed by Century 21, and that all reasonable steps have been taken to obtain the best price possible for the unit.
30. On this basis, the Trustee recommends that the sale transaction be approved by the Court, as:
 - (a) it is the only offer the Trustee has received for this unit;
 - (b) the purchase price for Unit 361 is at the current listing price and is recommended by Century 21 based on current market conditions;
 - (c) the purchaser intends to operate a business; and

(d) the offer for Unit 361 is unconditional other than with respect to the Trustee obtaining Court approval.

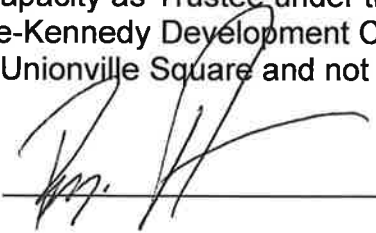
31. If the Court approves the sale transaction, the sale of Unit 361 is scheduled to close on May 30, 2017.
32. In the event that this transaction is approved by the Court and closes, the Trustee will hold the net sale proceeds subject to further order of the Court.
33. The Trustee requests that the Court grant the orders detailed in paragraph 4 above.

All of which is respectfully submitted to this Court as of this 17th day of April, 2017.

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