

Court File No. CV-15-10882-00CL

**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***

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

JUNE 6, 2016

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 SEVENTH REPORT

4. The purpose of this Seventh Report of the Trustee (the "**Seventh Report**") is to request that the Court grant orders:
 - (a) approving the sale by the Trustee of residential condominium suite 827, along with parking unit 188, level B, and locker unit 282, level B, to Kwan Tai Lee (the "**827 Purchaser**"), and vesting such property in the 827 Purchaser free and clear of all claims and encumbrances; and
 - (b) approving the sale by the Trustee of residential condominium suite 218, along with parking unit 80, level B, and locker unit 327, level B, to Christina and Richard Ming Chow (collectively, the "**218 Purchaser**"), and vesting such property in the 218 Purchaser free and clear of all claims and encumbrances.

TERMS OF REFERENCE

5. In preparing this Seventh 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 Seventh 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

The Residences at South Unionville Square

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 No. 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. As a result, there are five residential units remaining, suites 117, 218, 827 and 1527. Attached hereto and collectively marked as **Appendix "B"** are the parcel registers for residential condominium suite 827, parking unit 188, level B, and locker unit 282, level B. Attached hereto and collectively marked as **Appendix "C"** are the parcel registers for residential condominium suite 218, parking unit 80, level B, and locker unit 327, level B.

TradeWorld

17. 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.
18. 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.

SALE OF SUITES 827 AND 218

19. 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.
20. Based on the advice and recommendation of TradeWorld:
 - (a) suite 827 was included in the listing agreement at an initial price of \$279,900 that was reduced to \$274,900 in January, 2016. Suite 827 is a one-bedroom unit, 563 square feet in size; and
 - (b) suite 218 was included in the listing agreement at an initial price of \$271,900 that was reduced to \$266,900 in January, 2016. Suite 218 is a one-bedroom unit with a den, 598 square feet in size.
21. Since May 2015, the Trustee has received three offers for suite 827 and was unable to complete a sale in connection with the first two offers. The third offer received by the Trustee is from the 827 Purchaser with a purchase price of \$272,000, as set out in the agreement of purchase and sale executed by the 827 Purchaser on May 24, 2016 and accepted by the Trustee on May 26, 2016. A copy of the suite 827 agreement of purchase and sale is attached hereto and marked as **Appendix "D"**.
22. Since May 2015, the only offer received by the Trustee for suite 218 is from the 218 Purchaser with a purchase price of \$262,000, as set out in the agreement of

purchase and sale executed by the 218 Purchaser on May 25, 2016 and accepted by the Trustee on May 30, 2016. A copy of the suite 218 agreement of purchase and sale is attached hereto and marked as **Appendix "E"**.

23. Suites 827 and 218 are 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 of Am-Stat Corporation; and
 - (e) construction liens.
24. 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.
25. The Trustee believes that suites 827 and 218 have 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 be approved by the Court, as:
- (a) the purchase price for suite 827 is higher than the previous offers received;
 - (b) the suite 827 offer is unconditional other than with respect to Court approval;

- (c) the purchase price for suite 218 represents a 1.8% discount from the current listing price; and
- (d) the suite 218 offer is unconditional other than with respect to the 218 Purchaser obtaining a status certificate and the Trustee obtaining Court approval.

26. If the Court approves the sale transactions, the sale of suites 827 and 218 are respectively scheduled to close on June 10 and 16, 2016.

TRUSTEE'S REQUEST TO THE COURT

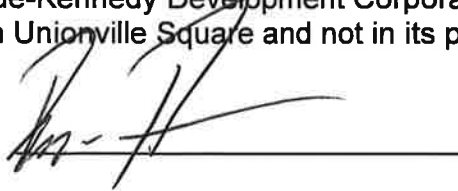
27. The Trustee requests that the Court grant orders:
- (a) approving the sale by the Trustee of residential condominium suite 827, along with parking unit 188, level B, and locker unit 282, level B, to the 827 Purchaser, and vesting such property in the 827 Purchaser free and clear of all claims and encumbrances; and
 - (b) approving the sale by the Trustee of residential condominium suite 218, along with parking unit 80, level B, and locker unit 327, level B, to the 218 Purchaser, and vesting such property in the 218 Purchaser free and clear of all claims and encumbrances.

All of which is respectfully submitted to this Court as of this 6th day of June, 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:

A handwritten signature in black ink, appearing to read 'Bryan A. Tannenbaum', is written over a horizontal line.

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