

**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***

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

**August 3, 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 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. All Court documents referred to herein, and other 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 SIXTEENTH REPORT

4. The purpose of this Sixteenth Report of the Trustee (the “**Sixteenth Report**”) is to request that the Court grant orders approving the sale by the Trustee of:
  - (a) Phase I commercial units 174 and 181 on level 2 (collectively, “**Units 174/181**”), to Modesty Group Inc. (the “**Units 174/181 Purchaser**”) and vesting such property in the Units 174/181 Purchaser free and clear of all claims and encumbrances (other than permitted encumbrances) upon delivery of a certificate by the Trustee to the Units 174/181 Purchaser; and
  - (b) Phase I commercial unit 138 on level 2 (“**Unit 138**”), to 2587409 Ontario Inc. (the “**Unit 138 Purchaser**”) and vesting such property in the Unit 138 Purchaser free and clear of all claims encumbrances (other than permitted encumbrances) upon delivery of a certificate by the Trustee to the Unit 138 Purchaser.

## TERMS OF REFERENCE

5. In preparing this Sixteenth 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 Sixteenth 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 was the development and construction of 28 residential townhomes, a T&T Supermarket, and a commercial condominium project with units for retail, restaurant, office and medical services.
8. Construction of Phase I 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 1228**").
9. As of the date of the Appointment Order, JKDC was still the registered owner of the following Phase I properties:

- (a) one commercial/retail unit (legally known as unit 60, level 1) ("**Unit 60**");
- (b) eleven mall units (located on level 2);
- (c) ten kiosks units (three of which are located on level 1 and the remaining eight on level 2) (together with the property listed above in (a) and (b), the "**Phase I Commercial Units**"); and
- (d) four (4) unsold parking units that are only accessible to the residents of the Phase I townhomes.

## **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, among other things, the Phase I Commercial Units 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 Commercial Units, being Unit 60 and three kiosk units.

14. Additionally, during its retainer period, TradeWorld listed Units 174/181 for \$109,900 each and Unit 138 for \$169,900.
15. In its over 20 month period as real estate listing agent for Units 174/181 and Unit 138, TradeWorld did not receive any offers to purchase these units.

### **Century 21**

16. Given the number of Phase I Commercial 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 the Phase I parking units described above) on February 3, 2017. A festival event was held on site on February 25<sup>th</sup> and 26<sup>th</sup> to coincide with Chinese New Year celebrations. Further marketing campaigns have been held on site during March and May 2017. These events have resulted in previous offers approved by the court, the current offers 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 174/181

19. These units are 177 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 \$78,000.
20. After some negotiation, the offers received from the Units 174/181 Purchaser is for a total purchase price of \$136,000, as set out in the agreements of purchase and sale executed by the Units 174/181 Purchaser on July 10, 2017 and accepted by the Trustee on July 31, 2017, a copy of which is attached hereto and marked as **Appendix "B"**. As part of this transaction, the Trustee was also able to negotiate a total reduction of \$13,000 in the realtor's commission and as a result, the combined net offer price of \$109,000, a 6% reduction from the net listing price. Copies of the parcel registers for Units 174/181 are collectively attached hereto and marked as **Appendix "C"**.

21. Units 174/181 is subject to the following encumbrances:

- (a) a condominium lien in favour of YRSCC No. 1228;
- (b) a \$30.0 million charge in favour of Aviva Insurance Company of Canada (“**Aviva**”);
- (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. (“**MZG**”); and
- (f) construction liens in favour of Guest Tile and Draglam.<sup>1</sup>

22. The Trustee believes that Units 174/181 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 combined purchase price for Units 174/181 is \$20,000 below the current listing price, however the Trustee was able to negotiate a \$13,000 reduction

---

1. Draglam has been repaid in full with respect to its construction lien. Guest Tile has been repaid the full principal amount of its construction lien, and is in discussions with the Trustee regarding payment of costs.



in the total commission payable to the realtor with the result that it receives \$7,000 below the combined the net listing price;

- (c) the Trustee was able to move the closing date up by more than a month;
- (d) the offer is recommended by Century 21 based on current market conditions;
- (e) the units are being sold to one purchaser to operate a business in a visible area; and
- (f) the offer for Units 174/181 is unconditional other than with respect to the Trustee obtaining Court approval of the sale transaction and a vesting order.

24. If the Court approves the sale transaction, the sale of Units 174/181 is scheduled to close on August 17, 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.

### **Unit 138**

26. Unit 138 is 284 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 \$113,000.

27. The owner of the Units 174/181 Purchaser is the same party that owns the 138 Purchaser, and this party has advised Century 21 that the prices negotiated were on the basis that they were acquiring all three units.

28. After some negotiation, the offer received from the Unit 138 Purchaser is for \$95,000, as set out in the agreement of purchase and sale executed by the Unit 138 Purchaser on July 19, 2017 and accepted by the Trustee on July 31, 2017 a copy of which is attached hereto and marked as **Appendix "D"**. As part of this transaction, the Trustee was also able to negotiate a commission reduction of \$6,500 reduction in the realtor's commission and as a result, the net offer price of \$81,500, a 12% reduction from the net listing price. A copy of the parcel register for Unit 138 is attached hereto and marked as **Appendix "E"**.
29. Units 138 is subject to the following encumbrances:
- (a) a condominium lien in favour of YRSCC No. 1228;
  - (b) a \$30.0 million charge in favour of Aviva;
  - (c) a \$3.6 million charge in favour of LBC;
  - (d) a \$2.4 million charge in favour of LBC;
  - (e) an \$8.0 million charge in favour of MarshallZehr; and
  - (f) construction liens in favour of Guest Tile and Draglam.
30. The Trustee believes that Unit 138 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.


31. 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 138 is \$18,000 below the current listing price, however the Trustee was able to negotiate a \$6,500 reduction in the commission payable to the realtor with the result that it receives \$11,500 below the net listing price;
  - (c) the Trustee was able to move the closing date up by more than a month;
  - (d) the offer is recommended by Century 21 based on current market conditions;
  - (e) the unit is being sold a company to operate a business in a visible area; and
  - (f) the offer for Unit 138 is unconditional other than with respect to the Trustee obtaining Court approval of the sale transaction and a vesting order.
32. If the Court approves the sale transaction, the sale of Unit 138 is scheduled to close on August 17, 2017.
33. 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.

All of which is respectfully submitted to this Court as of this 3rd day of August, 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