

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF AN 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, AS AMENDED**

**SUPPLEMENTARY MOTION RECORD OF THE TRUSTEE  
(motion returnable November 14, 2016)**

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(as of October 10, 2016)

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

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# **TAB 1**

**ONTARIO  
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*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**FRESH AS AMENDED NOTICE OF MOTION**  
(returnable November 14, 2016)

**COLLINS BARROW TORONTO LIMITED** (“CBTL”), in its capacity as Court-appointed *Construction Lien Act* (Ontario) (the “*CLA*”) trustee in this proceeding (the “**Trustee**”) will make a motion to a Judge of the Commercial List on November 14, 2016 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

(a) orders:

- (i) abridging and validating the time for service of the Trustee's notices of motion and motion records such that the motion is properly returnable on November 14, 2016, and dispensing with further service thereof;
- (ii) approving the sale by the Trustee of residential condominium suite 117, along with parking unit 26, level B, and locker unit 335, level B, to Harold Richard Kersey, and vesting such property in Harold Richard Kersey and Janice Lee Kersey free and clear of all claims and encumbrances (other than permitted encumbrances);
- (iii) authorizing the Trustee to release from reserve and distribute to:
  - (A) Skyway Canada Limited ("**Skyway**") the amount of \$9,399.15 with respect to Skyway's holdback claim;
  - (B) Dircam Electric Limited ("**Dircam**") the amount of \$16,384.53 with respect to Dircam's holdback claim;
  - (C) CRS Contractors Rental Supply General Partner Inc. ("**CRS**") the amount of \$9,345.80 with respect to CRS' holdback claim;
- (iv) authorizing the Trustee to release from reserve to the Trustee's trust account, for use in the administration of this proceeding, the remaining amounts of:
  - (A) \$1,047.71, which was being held in connection with Skyway's holdback claim;

- (B) \$18,787.03, which was being held in connection with Dircam's holdback claim;
  - (C) \$3,428.62, which was being held in connection with CRS' holdback claim;
  - (D) \$150,555, which was being held in connection with the holdback claim of Screen Painting Ltd. ("**Screen**"); and
- (b) such further and other relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

1. On February 11, 2015, CBTL was appointed as Trustee under the *CLA* with respect to lands and premises owned by Jade-Kennedy Development Corporation ("**JKDC**"), and legally described in Schedule "A" to the Appointment Order (the "**Property**"), pursuant to the Order of The Honourable Mr. Justice Pattillo dated February 11, 2015 (the "**Appointment Order**").
2. Pursuant to the Appointment Order, the Trustee was authorized to, among other things:
  - (a) act as receiver and manager of the Property;
  - (b) market any or all of the Property;

- (c) sell, convey, transfer, lease or assign the Property or any part or parts thereof with the approval of the Court; and
- (d) apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property.

### **Suite 117 Sale Transaction**

3. The Property includes a residential tower known as “The Residences at South Unionville Square” and located at 8323 Kennedy Road, Markham, Ontario. Suite 117 is a one-bedroom unit, approximately 598 square feet in size.
4. Pursuant to the Order of the Court dated June 4, 2015, the Trustee was authorized to terminate an agreement entered into by JKDC just prior to the commencement of the proceeding with a purchase price of \$200,000.
5. The Trustee retained TradeWorld Realty Inc. (“TradeWorld”) to list all unsold residential units, including suite 117.
6. Based on the advice and recommendation of TradeWorld, suite 117 was listed at a price of \$270,900 and subsequently reduced to \$265,900.
7. The Trustee has entered into the agreement of purchase and sale with Harold Richard Kersey (the “APS”) with a purchase price of \$255,000.
8. Mr. Kersey is a former employee of a company related to JKDC, and was retained by the Trustee for periodic consulting work in 2015.

9. The Trustee negotiated the terms of the APS, including obtaining a price increase from the original offer, and accepted the APS through TradeWorld and was not aware of the identity of Mr. Kersey as the purchaser until after the Trustee had accepted the APS.
10. The Trustee believes that suite 117 has been fairly and properly 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 the APS represents the only offer received by the Trustee in over 17 months, the purchase price is only 4% lower than the current listing price, and the offer is unconditional other than with respect to Court approval.

**Construction Lien Holdback Claims**

11. Pursuant to the Order of The Honourable Mr. Justice Wilton-Siegel dated June 30, 2016 (the “**June 30 Order**”), the Trustee was authorized by the Court to retain the amounts of \$10,446.86, \$200,000, \$35,171.56 and \$12,774.42 with respect to the respective holdback claims of Skyway, Sereen, Dircam and CRS.
12. The Trustee has agreed with the applicable lien claimant to payment of the following amounts in full and final satisfaction of their holdback claims against JKDC:
  - (a) \$9,399.15 to Skyway;
  - (b) \$16,384.53 to Dircam; and
  - (c) \$9,345.80 to CRS.

13. As a result, the Trustee requests that the Court authorize it to distribute these amounts to Skyway, Dircam and CRS from the reserve, and to release from reserve to the Trustee the remaining amounts of \$1,047.71, \$18,787.03 and \$3,428.62 which were being held with respect to the respective holdback claims of Skyway, Dircam and CRS, for use in the administration of this proceeding.
14. With respect to Sreen, the June 30 Order provides that the Trustee would hold \$200,000 in reserve, which is the face value of Sreen's construction lien claim against JKDC.
15. Sreen has confirmed that its holdback claim is \$49,445.
16. As a result, the Trustee requests that the Court authorize it to release from reserve the amount of \$150,555 for use in the administration of this proceeding.

**General**

17. The Eleventh Report of the Trustee dated October 27, 2016 (the "**Eleventh Report**") and the appendices thereto.
18. The Supplement to the Eleventh Report of the Trustee dated November 9, 2016 (the "**Supplementary Report**").
19. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
20. Section 68 of the *Construction Lien Act* (Ontario).
21. The equitable and inherent jurisdiction of the Court.
22. Such other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Eleventh Report and the appendices thereto;
2. The Supplementary Report; and
3. such further and other material as counsel may advise and this Honourable Court may permit.

November 9, 2016

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**TO: THE SERVICE LIST**

**Lawyers for the Trustee**



**IN THE MATTER OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**  
**AND IN THE MATTER OF AN APPLICATION MADE BY JADE-KENNED DEVELOPMENT CORPORATION**  
**FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1)**  
**OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

Court File No. CV15-10882-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**FRESH AS AMENDED**  
**NOTICE OF MOTION**  
(returnable November 14, 2016)

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# TAB 2

**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**

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

**November 9, 2016**

## INTRODUCTION

1. By Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) dated February 11, 2015, Collins Barrow Toronto Limited was appointed trustee pursuant to section 68(1) of the *Construction Lien Act* (Ontario) ("**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.
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 SUPPLEMENTARY REPORT

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

- (a) provide the Court with an update with respect to the status of the claims of Dircam and CRS to amounts being held in reserve by the Trustee pursuant to Court order; and
- (b) request that the Court grant an order authorizing the Trustee to release from reserve and distribute \$16,384.53 to Dircam and \$9,345.80 to CRS, and to release from reserve the amounts of \$18,787.03 and \$3,428.62 that were respectively being held in connection with Dircam's and CRS' holdback claims, for use in the administration of this proceeding.

#### **TERMS OF REFERENCE**

5. In preparing this Supplementary Report and making the comments herein, the Trustee has relied upon the Information. Certain of the information contained in this Supplementary 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.
6. This Supplementary Report should be read together with the Eleventh Report of the Trustee dated October 27, 2016. Capitalized terms used and not otherwise

defined herein shall have the meanings ascribed to such terms in the Eleventh Report.

#### **DIRCAM**

7. Dircam submitted a construction lien claim to the Trustee in accordance with the Court-approved construction lien claims process.
8. In connection with its claim, Dircam claimed entitlement to a distribution from the net sales proceeds of the Property in the amount of \$384,710.69 on account of the deficiency in the holdback, in priority to the interests of mortgagees.
9. Dircam received payment from the Trustee of a holdback amount of \$349,539.13 pursuant to the June 30 Order.
10. Dircam claimed an additional holdback amount of \$35,171.56. The Trustee is currently holding this amount in reserve in connection with the additional claim of Dircam, in accordance with the June 30 Order.
11. The Trustee and Dircam have agreed that Dircam's holdback amount for distribution purposes will be \$16,384.53. As a result, the Trustee requests that the Court grant an order authorizing the Trustee to distribute \$16,384.53 from the reserve to Dircam on account of its entitlement to the deficiency in the holdback required to be retained pursuant to the *CLA*, in priority to the interests of mortgagees.
12. As noted above, the Trustee is holding \$35,171.56 in reserve with respect to Dircam's holdback claim. In the event the Court grants the Trustee's request set

out in paragraph 11 above, the Trustee will request that the Court authorize it to release \$18,787.03 from the reserve, being the difference between the reserve amount of \$35,171.56 and the payment amount of \$16,384.53, for use by the Trustee in the administration of this proceeding.

**CRS**

13. CRS submitted a construction lien claim to the Trustee in accordance with the Court-approved construction lien claims process.
14. In connection with its claim, CRS claimed entitlement to a distribution from the net sales proceeds of the Property in the amount of \$37,523.34 on account of the deficiency in the holdback, in priority to the interests of mortgagees.
15. CRS received payment from the Trustee of a holdback amount of \$24,748.92 pursuant to the June 30 Order.
16. CRS claimed an additional holdback amount of \$12,774.42. The Trustee is currently holding this amount in reserve in connection with the additional claim of CRS, in accordance with the June 30 Order.
17. The Trustee and CRS have agreed that CRS' holdback amount for distribution purposes will be \$9,345.80. As a result, the Trustee requests that the Court grant an order authorizing the Trustee to distribute \$9,345.80 from the reserve to CRS on account of its entitlement to the deficiency in the holdback required to be retained pursuant to the *CLA*, in priority to the interests of mortgagees.

18. As noted above, the Trustee is holding \$12,774.42 in reserve with respect to CRS' holdback claim. In the event the Court grants the Trustee's request set out in paragraph 17 above, the Trustee will request that the Court authorize it to release \$3,428.62 from the reserve, being the difference between the reserve amount of \$12,774.42 and the payment amount of \$9,345.80, for use by the Trustee in the administration of this proceeding.

**TRUSTEE'S REQUEST TO THE COURT**

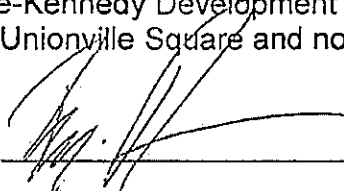
19. Based on the foregoing, the Trustee respectfully requests that the Court grant the relief set out in paragraph 4 above.

All of which is respectfully submitted to this Court as of this 9<sup>th</sup> day of November, 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



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

Court File No. CV15-10882-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**SUPPLEMENTARY  
MOTION RECORD  
OF THE TRUSTEE**  
(motion returnable November 14, 2016)

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