

**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***

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

March 13, 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 THIRTEENTH REPORT

4. The purpose of this Thirteenth Report of the Trustee (the “**Thirteenth Report**”) is to request that the Court grant the following orders:
- (a) an order approving the sale by the Trustee of Phase I commercial units 392, 393 and 394 on level 2 (collectively, “**Units 392/393/394**”), to Fuk Yue Chan and Lai Ngar May Wong (collectively, the “**392/393/394 Purchaser**”) and vesting such property in the 392/393/394 Purchaser free and clear of all claims and encumbrances (other than permitted encumbrances);
 - (b) an order approving the sale by the Trustee of Phase I commercial units 209 and 250 on level 2 (collectively, “**Units 209/250**”), to Youhuan Huang (the “**209/250 Purchaser**”) and vesting such property in the 209/250 Purchaser free and clear of all claims and encumbrances (other than permitted encumbrances); and
 - (c) an order approving the sale by the Trustee of Phase I commercial unit 146 on level 2 (“**Unit 146**”), to Icon Products Inc. (the “**Unit 146 Purchaser**”) and vesting such property in the 146 Purchaser free and clear of all claims and encumbrances (other than permitted encumbrances).

TERMS OF REFERENCE

5. In preparing this Thirteenth 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 Thirteenth 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 of the twenty-two Phase I units, being unit 60 and three kiosk units.
14. Additionally, during its retainer period, TradeWorld listed Units 392/393/394 for \$29,000 each unit, Units 209/250 for \$229,900 for both units, and Unit 146 for \$154,900.
15. In its over 20 month period as real estate listing agent for Units 392/393/394, Units 209/250 and Unit 146, 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, which led to 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 392/393/394

19. These units are 31 gross square feet each and 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 \$18,000 each.
20. The offers received from the 392/393/394 Purchaser is for a total purchase price of \$54,000, which is the combined amount of the listing prices for these units, as set out in the agreements of purchase and sale executed by the 392/393/394 Purchaser and accepted by the Trustee on February 28, 2017, copies of which are collectively attached hereto as **Appendix "B"**. Copies of the parcel registers for Units 392/393/394 are collectively attached hereto as **Appendix "C"**.
21. Units 392/393/394 are subject to the following encumbrances:
- (a) a condominium lien;
 - (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
 - (f) construction liens in favour of Guest Tile and Draglam.¹
22. The Trustee believes that Units 392/393/394 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 392/393/394 is at the current listing price and is recommended by Century 21 based on current market conditions;
 - (c) the three units are being sold to one purchaser to operate a business in a highly visible area; and
 - (d) the offers for Units 392/393/394 are unconditional other than with respect to the Trustee obtaining Court approval.
24. If the Court approves the sale transaction, Units 392/393/394 are scheduled to close on March 31, 2017.

¹ Draglam has been repaid in full with respect to its construction lien.

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.

Units 209/250

26. These units are 176 gross square feet each, are back-to-back units and are located on level 2 of The Mall at Langham Square. Century 21 listed these units for sale at a price of \$78,000 each.
27. Century 21 recently received an offer for Unit 250 at a price of \$80,000. However, this offer was not signed back by the Trustee as it was only for Unit 250 and did not include the back-to-back Unit 209, the purchaser was "in trust for a company to be incorporated", the proposed closing date was May 1, 2017, and the deposit was nominal. When the Trustee asked the proposed purchaser to make changes to firm up the purchaser's name, move up the closing date and increase the deposit, the purchaser withdrew the offer.
28. The original offer received from the 209/250 Purchaser was approximately seven per cent (7%) below the combined listing prices for the units. After some negotiation, the 209/250 Purchaser accepted the Trustee's sign back at a total purchase price of \$156,000, which is the combined listing prices for the units, as set out in the agreements of purchase and sale executed by the 209/250 Purchaser and signed back by the Trustee on February 28, 2017 and accepted by the 209/250 Purchaser on March 1, 2017, copies of which are collectively attached hereto as **Appendix "D"**. Copies of the parcel registers for Units 209/250 are collectively attached hereto as **Appendix "E"**

29. Units 209/250 are subject to the same encumbrances listed above with respect to Units 392/393/394.
30. The Trustee believes that Units 209/250 have been fairly and sufficiently exposed to the market through the listing by 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 these units.
31. On this basis, the Trustee recommends that the sale transaction be approved by the Court, as:
 - (a) the Trustee recently received another offer for Unit 250, however the terms were vague and the proposed purchaser would not firm up details when asked to do so by the Trustee;
 - (b) the purchase price for Units 209/250 is at the current combined listing prices and is recommended by Century 21 based on current market conditions;
 - (c) the two back-to-back units are being sold to one purchaser to operate a business in a visible area; and
 - (d) the Units 209/250 offer is unconditional other than with respect to being able to purchase both units and the Trustee obtaining Court approval;
32. If the Court approves the sale transaction, Units 209/250 are scheduled to close on March 30, 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.

Sales – Unit 146

34. This unit is 257 gross square feet each and located on level 2 of The Mall at Langham Square. Century 21 listed this unit at a sale price of \$102,000.
35. The offer received from the 146 Purchaser is for the listing price as set out in the agreement of purchase and sale executed by the 146 Purchaser and accepted by the Trustee on March 8, 2017, a copy of which is attached hereto as **Appendix “F”**. A copy of the parcel register for Unit 146 is attached hereto as **Appendix “G”**.
36. Unit 146 is subject to the same encumbrances as Units 392/393/394 and Units 209/250.
37. The Trustee believes that Unit 146 has been fairly and sufficiently exposed to the market through the listing with TradeWorld and the recent targeted marketing campaign carried out by Century 21, and that all reasonable steps have been taken to obtain the best price possible for the unit.
38. 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 146 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 from the unit; and
- (d) the offer for Unit 146 is unconditional other than with respect to the Trustee obtaining Court approval;

39. If the Court approves the sale transaction, Unit 146 is scheduled to close on March 31, 2017.

40. 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.

TRUSTEE'S REQUEST TO THE COURT

41. 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 13th day of March, 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