

**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**

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

October 27, 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 ELEVENTH REPORT

4. The purpose of this Eleventh Report of the Trustee (the “**Eleventh Report**”) is to:
- (a) provide the Court with an update with respect to the status of the claims of certain construction lien claimants to amounts being held in reserve by the Trustee pursuant to Court order;
 - (b) request that the Court grant orders:
 - (i) 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 (the “**117 Purchaser**”) and vesting such property in the 117 Purchaser free and clear of all claims and encumbrances (other than permitted encumbrances); and
 - (ii) authorizing the Trustee to release from reserve and distribute \$9,399.15 to Skyway Canada Limited (“**Skyway**”), and to release from reserve \$1,047.71 that was being held in connection with Skyway’s holdback claim; and
 - (iii) authorizing the Trustee to release from reserve \$150,555 in connection with the holdback claim of Sereen Painting Ltd. (“**Sereen**”).

TERMS OF REFERENCE

5. In preparing this Eleventh 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 Eleventh 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, common expense arrears, remittance of collected HST and realtor commissions, of \$248,048.02.
16. The Trustee sought and obtained Court approval for the sale of suite 827 on June 8, 2016, and the sale transaction closed on June 10, 2016. The Trustee received net sale proceeds, following payment of real property tax arrears and common expense arrears, remittance of collected HST and realtor commissions of \$239,008.90.
17. The Trustee sought and obtained Court approval for the sale of suite 218 on June 8, 2016, and the sale transaction closed on June 16, 2016. The Trustee received net sale proceeds, following payment of real property tax arrears and

common expense arrears, remittance of collected HST and realtor commissions, of \$229,462.35.

18. The Trustee sought and obtained Court approval for the sale of suite 1216 on August 2, 2016, and the sale transaction closed on August 3, 2016. The Trustee received net sale proceeds, following payment of real property tax arrears and common expense arrears, remittance of collected HST and realtor commissions, of \$266,918.50.
19. The Trustee sought and obtained Court approval for the sale of suite 1527 on October 17, 2016, and the sale transaction closed on October 17, 2016. The Trustee received net sale proceeds, following payment of realty tax arrears, common expense arrears, remittance of collected HST and realtor commissions of \$245,169.86.
20. As a result, suite 117 is the only residential condominium unit remaining. Attached hereto and collectively marked as **Appendix "B"** are the parcel registers for residential condominium suite 117, parking unit 26, level B, and locker unit 335, level B.
21. There are also two parking units, units 178 and 179 on level B, which are available for sale.

TradeWorld

22. 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.
23. 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 SUITE 117

24. 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.
25. Based on the advice and recommendation of TradeWorld, suite 117 was included in the listing agreement at an initial price of \$270,900, which was reduced to \$265,900 in January, 2016. Suite 117 is a one-bedroom unit, 598 square feet in size.
26. The 117 Purchaser is Mr. Harold Kersey, a former employee of Mady Development Corporation. Mr. Kersey was retained by the Trustee for periodic consulting work in 2015, which ended in fall 2015.
27. The Trustee negotiated the terms (including obtaining a price increase of \$5,000 over the initial offer) of the Agreement of Purchase and Sale dated October 18,

2016 and accepted by the Trustee on October 19, 2016 (the “**APS**”) through TradeWorld and was not aware of the identity of the 117 Purchaser until the executed APS was received and agreed to by the Trustee.

28. The offer received by the Trustee from the 117 Purchaser is for a purchase price of \$255,000 as set out in the APS, a copy of which is attached hereto and marked as **Appendix “C”**.
29. Suite 117 is subject to the following encumbrances:
 - (a) a condominium lien in favour of YRSCC 1265;
 - (b) a \$45 million charge in favour of Laurentian Bank of Canada;
 - (c) a \$16.5 million charge in favour of Aviva Insurance Company of Canada;
 - (d) a \$10.0 million charge in favour of Am-Stat Corporation; and
 - (e) construction liens.
30. In the event that the sale transaction is approved by the Court and closes, the Trustee will hold the net sale proceeds subject to further Order of the Court.
31. The Trustee believes that suite 117 has 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 117 represents a 4% discount from the current listing price;
- (b) the net proceeds are higher than the gross proceeds in the offer negotiated by JKRC that the court authorized the Trustee to terminate on June 4, 2015 as noted in paragraphs 13 and 14 above;
- (c) it is the only offer the Trustee has received for suite 117; and
- (d) the suite 117 offer is unconditional other than with respect to the Trustee obtaining Court approval.

32. If the Court approves the sale transaction, it is scheduled to close on November 15, 2016.

CONSTRUCTION LIEN CLAIMS PROCESS

33. As previously has been reported to the Court:

- (a) eighteen (18) construction lien claimants (collectively, the “**Construction Lien Claimants**”) registered nineteen (19) construction liens against the Property;
- (b) the Trustee was authorized by the Court to implement and administer a construction lien claims process;
- (c) there was no general contractor for the SUSQ Project and each of the Construction Lien Claimants contracted directly with JKDC as owner of the Property;

- (d) as at the date of the Trustee's appointment, no funds were being held by JKDC with respect to the ten per cent (10%) basic holdback established under section 22 of the *CLA*; and
 - (e) a properly perfected construction lien has priority over mortgagees of the Property to the extent of any deficiency in the holdbacks that JKDC was required to retain under the *CLA*.
34. The Trustee proposed to distribute amounts to certain Construction Lien Claimants with respect to deficiencies in the holdback amounts, which distribution was approved by the Court pursuant to the Order of The Honourable Mr. Justice Wilton-Siegel dated June 30, 2016 (the "**June 30 Order**"), a copy of which is attached hereto as **Appendix "D"**.
35. As set out in paragraph 2 of the June 30 Order, the Trustee was required to maintain the following reserves with respect to the holdback claims of the following Construction Lien Claimants, pending further Order of the Court:
- (a) CRS Contractors Rental Supply General Partner Inc. ("**CRS**") - \$12,774.42;
 - (b) Dircam Electric Limited ("**Dircam**") - \$35,171.56;
 - (c) Imperial Trim Supply Ltd. ("**Imperial Trim**") - \$17,444.11;
 - (d) 2050491 Ontario Inc. o/a The Downsview Group ("**Downsview**") - \$199,756.53;

(e) Sereen - \$200,000; and

(f) Skyway - \$10,446.86.

36. Pursuant to paragraph 3 of the June 30 Order, the Trustee and these Construction Lien Claimants are to attempt to consensually resolve matters with respect to the amounts being held in reserve. The Court also ordered the Trustee to serve a report by July 22, 2016 that provides an update with respect to the resolution attempts and proposes a process to deal with any holdback claims that remain unresolved.

37. In its Eighth Report to the Court dated July 22, 2016 (the "**Eighth Report**"), the Trustee reported that through its legal counsel, Chaitons LLP ("**Chaitons**"), it had reached out to counsel to each of the Construction Lien Claimants listed above, and that it was appropriate for the discussions to continue with these Construction Lien Claimants with respect to potential resolution of the outstanding matters. A copy of the Eighth Report, without appendices, is attached hereto and marked as **Appendix "E"**.

38. As set out in its Eighth Report, the Trustee had determined that Imperial Trim was entitled to payment of the \$17,444.11 that was being held in reserve.

39. Pursuant to the Order of The Honourable Mr. Justice Newbould dated August 2, 2016, the Court authorized the Trustee to distribute \$17,444.11 to Imperial Trim, which was completed by the Trustee on August 4, 2016.

40. As a result, as of October 26, 2016, the Trustee is holding \$458,149.37 with respect to the holdback claims of the parties listed in paragraph 35 above, other than Imperial Trim, which has been paid all claimed holdback amounts.

Skyway

41. With respect to the holdback claim of Skyway, following numerous discussions, the Trustee and Skyway have agreed that the Trustee will, subject to obtaining Court authorization, pay to Skyway the amount of \$9,399.15 in full and final satisfaction of Skyway's holdback claim against JKDC. The Trustee requests that that Court authorize it to distribute the amount of \$9,399.15 to Skyway from the funds currently being held in reserve on account of Skyway's holdback claim.

42. As noted above, the Trustee is holding \$10,446.86 in reserve with respect to Skyway's holdback claim. In the event the Court grants the Trustee's request set out in paragraph 41 above, the Trustee will request that the Court authorize it to release \$1,047.71 from the reserve, being the difference between the reserve amount of \$10,446.86 and the payment amount of \$9,399.15, for use in the administration of this proceeding.

Sereen

43. With respect to the holdback claim of Sereen, the Trustee issued a notice of disallowance to Sereen on September 27, 2016. Sereen's counsel informed Chaitons that Sereen was appealing the disallowance. The appeal is currently being held in abeyance pending the resolution of the priority dispute motions heard by Justice Wilton-Siegel in this proceeding on October 7, 2016.

44. The Trustee is currently holding \$200,000 in reserve with respect to Sereen's holdback claim, which is the face amount of Sereen's construction lien claim. Sereen's counsel subsequently confirmed in writing that Sereen's holdback claim is \$49,445.
45. As a result, the Trustee is seeking an order of the Court authorizing it release from reserve the amount of \$150,555, which is the difference between the \$200,000 claim amount and the \$49,445 holdback amount, for use in the administration of this proceeding.

Remaining Claimants

46. With respect to the remaining holdback claims of CRS, Dircam and Downsview, Chaitons has been in communication with counsel to each of these parties, and the Trustee will provide an update to this Court with respect to the status of discussions with respect to these holdback claims prior to the hearing of its motion scheduled for November 14, 2016.

TRUSTEE'S REQUEST TO THE COURT


47. 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 27th day of October, 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