

**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**

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

December 15, 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 TWELFTH REPORT

4. The purpose of this Twelfth Report of the Trustee (the "**Twelfth Report**") is to request that the Court grant an order approving the sale by the Trustee of Phase II Commercial Units 92 and 93 ("**Units 92 and 93**"), to Balwant Singh Rathore (in trust for a company to be incorporated) (the "**Purchaser**") and vesting such property in the Purchaser free and clear of all claims and encumbrances (other than permitted encumbrances).

TERMS OF REFERENCE

5. In preparing this Twelfth 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 Twelfth 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 II Commercial Units 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 two-stage development and construction of a 12-storey condominium-apartment tower, which contains residential, parking and locker units in the tower, and twenty-one (21) commercial/retail units located in, adjacent to and/or underneath the tower.
8. The first stage was the development and construction of the residential tower. Construction was substantially completed on June 10, 2014 and the residential condominium declaration was registered on September 11, 2014, which established York Region Standard Condominium Corporation No. 1265.
9. The second stage of the Phase II development and construction was the twenty-one commercial units (collectively, the "**Phase II Commercial Units**").¹
10. On January 16, 2015, the registered owner of the land where the Phase II Commercial Units were located was transferred from JKDC to York Region

¹ The Phase II Commercial Units are units 85 through 98 on level A and units 355 through 361 on level 1.

Standard Condominium Corporation No. 1228 (“YRSCC 1228”), the condominium corporation established with respect to the Phase I commercial units. As a result, the Phase II Commercial Units now form part of YRSCC 1228.

11. As of the date of the Appointment Order, eighteen (18) of the 21 Phase II Commercial Units were subject to existing agreements of purchase and sale and were scheduled to close on February 17, 2015, including Units 92 and 93.²
12. Pursuant to the Appointment Order, the Trustee was authorized to complete the existing agreements of purchase and sale for the 18 pre-sold Phase II Commercial Units.
13. The Appointment Order authorized the Trustee to complete the existing sale agreements for 18 pre-sold Phase II Commercial Units that were scheduled to close February 17, 2015.
14. The Trustee closed 16 of the 18 pre-sold Phase II commercial units. Units 92 and 93 were scheduled to close at prices of \$322,164 and \$315,324 respectively, however these two purchasers were unable to close and the agreements of purchase and sale were terminated by the Trustee.

TradeWorld

15. 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.

² The three unsold Phase II Commercial Units were units 85 on level A and 360 and 361 on level 1.

16. 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 Units 92/93

17. 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.
18. Based on the advice and recommendation of TradeWorld, Units 92 and 93 were each included in the listing agreement at listing price of \$328,900. Each unit is a concrete shell, 616 square feet in size.
19. On November 14, 2016, the Trustee received an offer from the Purchaser to purchase Units 92 and 93 for \$567,900, which is the only offer that the Trustee has received to date with respect to these units.
20. On December 9, 2016, the Purchaser requested a \$118,000 price reduction on the basis of items disclosed in the Status Certificate prepared by YRSCC 1228. The Trustee subsequently negotiated a price reduction of \$8,000 to \$559,900, and this was accepted by both parties on December 13, 2016.
21. A copy of the agreement of purchase and sale and amending agreement executed by the 92/93 Purchaser and accepted by the Trustee on December 13,

2016 is attached hereto as **Appendix “B”**. Copies of the parcel registers for Units 92 and 93 are collectively attached hereto as **Appendix “C”**.

22. Units 92 and 93 are subject to the following registered encumbrances:
- (a) \$30 million charge in favour of Aviva Insurance Company of Canada (“**Aviva**”);
 - (b) \$16.5 million charge in favour of Aviva;
 - (c) \$45 million charge in favour of Laurentian Bank of Canada;
 - (d) \$10 million charge in favour of Am-Stat Corporation; and
 - (e) Construction liens; and
 - (f) Condominium lien registered by YRSCC 1228.
23. In the event that the sale transaction is approved by the Court and close, the Trustee will hold the net sale proceeds subject to further Order of the Court.
24. The Trustee believes that Units 92 and 93 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) it is the only offer the Trustee has received after almost 18 months on the market;

- (b) the purchase price for Units 92 and 93 represents a 14.9% discount from the current listing price and is recommended by TradeWorld based on current market conditions;
- (c) the purchase price for Units 92 and 93 represents a 12.2% discount from the sale price negotiated by JKDC that did not close;
- (d) these units face Kennedy Rd. and are highly visible; and
- (e) the sale agreement is unconditional other than with respect to the Trustee obtaining Court approval and a vesting order.

25. In the event that the Court approves the sale transaction and grants the requested vesting, the sale of Units 92 and 93 to the Purchaser is scheduled to close on January 9, 2017.

TRUSTEE'S REQUEST TO THE COURT


26. The Trustee requests that the Court grant an order approving the sale by the Trustee of Units 92 and 93 to the Purchaser, and vesting such property in the Purchaser free and clear of all claims and encumbrances (other than permitted encumbrances).

All of which is respectfully submitted to this Court as of this 15th day of December, 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