

**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***

**TWENTY-SIXTH REPORT TO THE COURT OF RSM CANADA LIMITED AS
CONSTRUCTION LIEN TRUSTEE OF SOUTH UNIONVILLE SQUARE**

August 25, 2020

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**”). Pursuant to the Order of The Honourable Mr. Justice Hainey of the Ontario Court of Justice made on December 5, 2017, the name of the Trustee was changed to RSM Canada Limited.
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://rsmcanada.com/what-we-do/services/consulting/financial-advisory/restructuring-recovery/current-restructuring-recovery-engagements/jade-kennedy-development-corporation.html>

PURPOSE OF TWENTY-SIXTH REPORT

4. The purpose of this Twenty-Sixth Report of the Trustee (the “**Twenty-Sixth Report**”) is to request that the Court grant an order approving the sale by the Trustee of:
 - (a) Parking Unit to Puishan S. Au and Hwa. A. Hsu (collectively, the “**Parking Unit Purchaser**”) and vesting such property in the Parking Unit Purchaser free and clear of all claims and encumbrances (other than permitted encumbrances) upon delivery of a certificate by the Trustee to the Parking Unit Purchaser; and
 - (b) Kiosk Unit to ATBPS Inc. (the “**Kiosk Purchaser**”) and vesting such property in the Kiosk Purchaser free and clear of all claims and encumbrances (other than permitted encumbrances) upon delivery of a certificate by the Trustee to the Kiosk Purchaser.

TERMS OF REFERENCE

5. In preparing this Twenty-Sixth 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 Twenty-Sixth 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

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. JKDC is still the registered owner of a 106 square foot kiosk unit located on level 2C of The Mall at Langham Square (previously known as The Mall at South Unionville Square), which is referred to herein as the “**Kiosk Unit**”.

10. 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.
11. 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 (the “**Declaration**”), which established York Region Standard Condominium Corporation No. 1265 (“**YRSCC 1265**”).
12. JKDC is still the registered owner of parking unit 179 on level B in the underground, which is referred to herein as the “**Parking Unit**”. JKDC did not allocate the Parking Unit to be sold with any specific residential condominium unit.
13. In accordance with the condominium declaration for YRSCC 1265, the Parking Unit can only be sold to JKDC, YRSCC1265, YRSCC 1228, a resident in the residential condominium tower, or an owner of a commercial/retail unit in YRSCC 1228.

SALE TRANSACTIONS

14. As noted above, 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.

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.
16. 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. This Property included the Parking Unit and the Kiosk Unit.
17. After several extensions, the Trustee allowed this agreement to expire on January 15, 2017.
18. During its retainer period, TradeWorld had listed the Parking Unit for \$30,000 and the Kiosk Unit for \$99,000.
19. In its over 20-month period as real estate listing agent, TradeWorld did not receive any offers to purchase these units.
20. The Trustee retained Century 21 as its real estate listing agent for all unsold Property in January 2017, with the exception of certain parking units, including the Parking Unit.
21. Based on this and discussions with Century 21, the Trustee determined it was more cost effective to directly sell the Parking Unit. The realtor advised that the parking unit be made available for sale at a price of \$30,000, based on comparable parking units available in the area.

Parking Unit

22. The Trustee contacted the property managers for YRSCC 1265 and YRSCC 1228 on numerous occasions to determine if the condominium corporations were interested in purchasing these units and was advised that they were not.
23. The Trustee posted Notices For Sale at strategic locations throughout the condominium tower in English and Chinese in 2016 and 2017.
24. In January 2019 the Trustee listed the Parking Unit with Century 21 at a price of \$30,000.
25. On September 25, 2019 YRSCC 1228 submitted an offer to purchase the Parking Unit for \$1,000. The Trustee signed back the offer at a price of \$15,000 on October 2, 2019. After numerous discussions, YRSCC 1228 refused to increase the price above \$1,000.
26. In January 2020, Century 21 recommended that the listing price be lowered to \$5,000 and the listing advertise that offers be submitted by June 15, 2020, however the Trustee had the ability to accept any offer before this deadline.
27. The Parking Unit Purchaser, who is an owner of a condominium unit in the residential tower, submitted an offer of \$6,000 on January 31, 2020. The Trustee signed back the offer at \$10,000 and this was accepted by the Parking Unit Purchaser as set out in the agreement of purchase dated February 14, 2020, a copy of which is attached hereto and marked as **Appendix "A"**. A copy of the

parcel register for the Parking Unit is attached hereto and marked as **Appendix “B”**.

28. The Parking Unit is subject to the following encumbrances:
- (a) a \$16.5 million charge in favour of Aviva Insurance Company of Canada (“**Aviva**”);
 - (b) a \$45.0 million charge in favour of Laurentian Bank of Canada (“**LBC**”);
 - (c) a \$10.0 million charge in favour of Am-Stat Corporation;
 - (d) a condominium lien in favour of YRSCC No. 1265 in the registered amount of \$1,672 as of December 31, 2014; and
 - (e) a construction lien in favour of Draglam Waste & Recycling Inc. (“**Draglam**”).¹
29. The Trustee is in discussions with YRSCC 1265 regarding the amount that is outstanding and secured by its condominium lien.
30. The Trustee recommends that the sale transaction be approved by the Court, as:
- (a) the Parking Unit has been fairly and sufficiently exposed to the market;
 - (b) all reasonable steps have been taken to obtain the best price possible for the unit;

¹ This construction lien claimant has received payment of its claim in full in this proceeding.

(c) the offer is the highest offer the Trustee has received for the Parking Unit;
and

(d) the offer is unconditional other than with respect to the Trustee obtaining
Court approval of the sale transaction and a vesting order.

31. If the Court approves the sale transaction, it is scheduled to close on September 8, 2020.

32. In the event that this transaction is approved by the Court and closes, the Trustee will take steps to distribute to YRSCC 1265 the amount it is entitled to in connection with its registered condominium lien, to be confirmed by the Trustee.

Kiosk Unit

33. In January 2017 the Trustee listed the Kiosk Unit with Century 21 at a price of \$48,000.

34. An offer for \$32,500 was received on January 27, 2018 and signed back by the Trustee at \$45,000, which was not accepted.

35. A second offer was received from YRSCC 1228 on September 25, 2019 for \$1,000 and signed back by the Trustee at \$25,000, which was also not accepted.

36. In January 2020, Century 21 recommended that the listing price be lowered to \$15,000 and the listing advertise that offers be submitted by June 15, 2020, however the Trustee had the ability to accept any offer before this deadline.

37. The Kiosk Unit Purchaser submitted an offer of \$13,500 on July 22, 2020. The Trustee signed back the offer at \$15,000, which was accepted by the Kiosk Unit Purchaser as set out in the agreement of purchase dated August 4, 2020 a copy of which is attached hereto and marked as **Appendix “C”**. A copy of the parcel register for the Kiosk Unit is attached hereto and marked as **Appendix “D”**.
38. The Kiosk Unit is subject to the following encumbrances:
- (a) a \$30.0 million charge in favour of Aviva;
 - (b) a condominium lien in favour of YRSCC No. 1228 in the registered amount of \$1,499 as of November 20, 2013;
 - (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 Group Inc.; and
 - (f) construction liens in favour of Draglam.
39. The Trustee is in discussions with YRSCC 1228 regarding the amount that is outstanding and secured by its condominium lien.
40. The Trustee recommends that the sale transaction be approved by the Court, as:
- (a) the Kiosk Unit 388 has been fairly and sufficiently exposed to the market;
 - (b) all reasonable steps have been taken to obtain the best price possible for the unit;

(c) this is the highest offer the Trustee has received at the current listing price;
and

(d) the offer is unconditional other than with respect to the Trustee obtaining
Court approval of the sale transaction and a vesting order.

41. If the Court approves the sale transaction, the transaction is scheduled to close on
September 8, 2020.

42. In the event that this transaction is approved by the Court and closes, the Trustee
will take steps to distribute to YRSCC 1228 the amount it is entitled to in connection
with its registered condominium lien, to be confirmed by the Trustee.

All of which is respectfully submitted to this Court as of this 25th day of August, 2020.

RSM CANADA 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