

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

July 10, 2018

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 Justice Hainey of the Ontario Court of Justice made on December 5, 2017 (“**December 5, 2017 Order**”), the name of the Trustee was changed to RSM Canada Limited. A copy of the December 5, 2017 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. 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-THIRD REPORT

4. The purpose of this Twenty-Third Report of the Trustee (the “**Twenty-Third Report**”) is to request that the Court grant an order:
 - (a) approving the sale by the Trustee of Phase II Parking Unit 178 to Sam S. Luk (the “**Purchaser**”);
 - (b) vesting Phase II Parking Unit 178 in the Purchaser free and clear of all claims and encumbrances (other than permitted encumbrances) upon delivery of a certificate by the Trustee to the Purchaser; and
 - (c) authorizing the Trustee to distribute \$3,800 from the net sale proceeds of Phase II Parking Unit 178 to YRSCC 1265 (as defined below), on account of its registered condominium lien.

TERMS OF REFERENCE

5. In preparing this Twenty-Third 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-Third 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. 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.

10. 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**"). A copy of the Declaration is attached hereto as **Appendix "B"**.

11. As at the Trustee's appointment, JKDC was still the registered owner of, among other properties, parking units 178 and 179 on level B (the "**Remaining Parking Units**").

SALE OF PARKING UNIT 178

12. In accordance with section 4.3(c) of the Declaration, the Remaining Parking Units can only be sold to:
 - (a) JKDC;
 - (b) YRSCC1265;
 - (c) YRSCC 1228;
 - (d) an owner of a residential unit in the Phase II condominium tower; or
 - (e) an owner of a commercial/retail unit in YRSCC 1228.

13. Based on this and discussions with its realtor, the Trustee determined it was more cost effective to sell these units directly. The realtor advised that the Remaining

Parking Units be made available for sale at a price of \$30,000 each, based on comparable parking units available in the area.

Trustee's Efforts to Sell Phase II Parking Units 178 and 179

14. 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 were advised that they were not.
15. The Trustee posted "Notices For Sale" at strategic locations throughout the Phase II condominium tower in English and Chinese in 2016 and 2017.

Phase II Parking Unit 178

16. Phase II Parking Unit 178 is located on level B in the underground. This unit has been advertised as available for sale at \$30,000 based on ongoing input from the Trustee's realtor.
17. Several parties expressed an interest in either of the Remaining Parking Units, including the Purchaser. After negotiations with the Trustee, the Purchaser submitted an offer of \$14,888 on June 27, 2018 that was accepted by the Trustee, as set out in the agreement of purchase and sale dated June 27, 2018 (the "**APS**"), a copy of which is attached hereto as **Appendix "C"**. A copy of the parcel register for Phase II Parking Unit 178 is attached hereto as **Appendix "D"**.
18. Phase II Parking Unit 178 is subject to the following encumbrances:
 - (a) a \$16.5 million charge in favour of Aviva Insurance Company of Canada;

- (b) a \$10.0 million charge in favour of Am-Stat Corporation;
 - (c) a condominium lien in favour of YRSCC No. 1265 in the amount of \$144.00; and
 - (d) a construction lien in favour of Draglam Waste & Recycling Inc.¹
19. The Trustee believes that Phase II Parking Unit 178 has been fairly and sufficiently exposed to the market, given the limited pool of buyers and the targeted advertisements, and that all reasonable steps have been taken to obtain the best price possible for the unit.
20. On this basis, the Trustee recommends that the sale transaction be approved by the Court, as:
- (a) the APS is the only written offer the Trustee has received for Phase II Parking Unit 178;
 - (b) condominium fee arrears are outstanding on Phase II Parking Unit 178, and the lawyer for YRSCC 1265 has requested that the Trustee resolve the outstanding amounts as they have priority over all other parties with registrations against the unit; and
 - (c) the offer is unconditional, other than with respect to the Trustee obtaining Court approval of the sale transaction and a vesting order.

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


21. If the Court approves the sale transaction, Phase II Parking Unit 178 is scheduled to close on July 16, 2018.
22. In the event that this transaction is approved by the Court and closes, the Trustee will take steps to distribute to YRSCC 1265 the agreed upon amount in connection with its registered condominium lien.

All of which is respectfully submitted to this Court as of this 10th day of July, 2018.

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