

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

August 26, 2019

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 Hailey 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.
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-FIFTH REPORT

4. The purpose of this Twenty-Fifth Report of the Trustee (the “**Twenty-Fifth Report**”) is to request that the Court grant an order:
- (a) approving the sale by the Trustee of Phase II Unit 85 to 1289565 Ontario Inc. (the “**Unit 85 Purchaser**”);
 - (b) vesting Phase II Unit 85 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;
 - (c) authorizing the Trustee to distribute \$1,695.90 from the net sale proceeds of Phase II Unit 85 to YRSCC 1228 (as defined below), on account of its registered condominium lien.

TERMS OF REFERENCE

5. In preparing this Twenty-Fifth 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-Fifth 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.

SALE OF UNIT 85

Phase II 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.

Phase II

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 (including Unit 85).
8. The second stage of the Phase II development and construction was the twenty-one commercial units (collectively, the “**Phase II Commercial Units**”).
9. 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

Standard Condominium Corporation No. 1228 (“**YRSCC 1228**”). As a result, the Phase II Commercial Units now form part of YRSCC 1228.

10. 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.
11. 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. The Trustee was able to close the sale transactions for 16 of the 18 Phase II Commercial Units. The remaining two sale transactions did not close due to purchaser defaults, and accordingly the sale transactions were terminated by the Trustee and the deposits were not returned to the prospective purchasers. These two units were subsequently re-listed and sold by the Trustee on January 31, 2017.
12. 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.
13. Phase II Unit 85 is the only Phase II Commercial Unit that is still available for sale by the Trustee.

Real Estate Agents

14. 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.
15. 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. TradeWorld had listed Unit 85 for \$235,900.
16. After several extensions, the Trustee allowed this agreement to expire on January 15, 2017.
17. In its over 20-month period as real estate listing agent for Unit 85, TradeWorld did not receive any offers to purchase this unit.
18. 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 included: 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.
19. The Trustee retained Century 21 as its real estate listing agent for all unsold Property (excluding certain parking units) on February 3, 2017.

Phase II Unit 85

20. Phase II Unit 85 is 489 gross square feet and is an exterior unit located on the ground level facing South Unionville Avenue. Century 21 initially listed this unit for sale at a price of \$235,900 in February 2017. This price was reduced to \$212,300 on October 25, 2017 and \$199,500 on May 28, 2018.
21. One party submitted an offer of \$150,000 on September 13, 2018, however the Trustee was not able to complete a transaction with that offeror.
22. The Unit 85 Purchaser submitted an offer of \$150,000 on August 6, 2019 with no conditions and a September 27, 2019 closing. The Trustee signed back the offer at \$160,000 with a September 16, 2019 closing. After some discussions, an offer of \$150,000 with a September 16, 2019 was accepted as set out in the agreement of purchase and sale executed by the Unit 85 Purchaser on August 13, 2019, a copy of which is attached hereto and marked as **Appendix "A"**. A copy of the parcel register for Phase II Unit 85 is attached hereto and marked as **Appendix "B"**.
23. Unit 85 is subject to the following encumbrances:
 - (a) a \$30.0 million charge in favour of Aviva Insurance Company of Canada ("**Aviva**");
 - (b) a \$16.5 million charge in favour of Aviva;
 - (c) a \$45 million charge in favour of Laurentian Bank of Canada;

- (d) a \$10 million charge in favour of Am-Stat Corporation;
 - (e) construction liens; and
 - (f) a condominium lien in favour of YRSCC No. 1228.
24. The Trustee believes that Phase II Unit 85 has 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 unit.
25. On this basis, the Trustee recommends that the sale transaction be approved by the Court, as:
- (a) the Trustee has received one other offer for this unit for \$150,000 on September 13, 2018 and was not able to complete a transaction with that offeror;
 - (b) the subject offer is recommended by Century 21 based on current market conditions and the fact that it is the last commercial unit available for sale by the Trustee in Phase II;
 - (c) the Trustee will no longer be required to pay ongoing operating costs for Phase II Unit 85 including property taxes and condominium fees;
 - (d) the owner is an end-user who will operate a retail business; and
 - (e) the offer is unconditional other than with respect to the Trustee obtaining Court approval of the sale transaction and a vesting order.

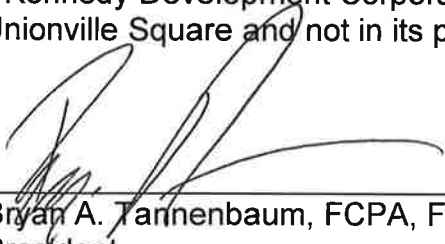
26. If the Court approves the sale transaction, the sale of Phase II Unit 85 is scheduled to close on September 16, 2019.
27. In the event that this transaction is approved by the Court and closes, the Trustee will take steps to distribute to YRSCC 1228 the amount of \$1,695.90, which it is entitled to in connection with its registered condominium lien for unpaid condominium fees for the period prior to the Trustee's appointment.

All of which is respectfully submitted to this Court as of this 26th day of August, 2019.

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