

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

January 16, 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 ("**Collins Barrow**") 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**").
2. Pursuant to the Order of The Mr. Honourable Justice Hainey dated December 5, 2017 ("**December 5, 2017 Order**"), RSM Canada Limited has been appointed by the Court to substitute Collins Barrow as Trustee of JKDC. A copy of the December 5, 2017 Order is attached as **Appendix "A"**.
3. 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.
4. 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-wedo/services/consulting/financialadvisory/restructuring-recovery/current-restructuring-recovery-engagements/jade-kennedy-development-corporation.html>

PURPOSE OF TWENTY-FIRST REPORT

5. The purpose of this Twenty-First Report of the Trustee (the “**Twenty-First Report**”) is to request that the Court grant an order approving the sale by the Trustee of Phase II Unit 360 to Carman’s Dining Club Inc. (the “**Purchaser**”) and vesting such property 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.

TERMS OF REFERENCE

6. In preparing this Twenty-First 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-First 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 360

Phase II Commercial Units at the SUSQ Project

7. 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.
8. 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.
9. The second stage of the Phase II development and construction was the twenty-one commercial units (collectively, the "**Phase II Commercial Units**").
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.

Real Estate Agents

13. 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.
14. 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.
15. After several extensions, the Trustee allowed this agreement to expire on January 15, 2017.

16. During its retainer period, TradeWorld had listed Phase II Commercial Units 360 and 361 together, which are adjacent units, for a combined price of \$668,900.
17. In its over 20 month period as real estate listing agent for Unit 360, 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 includes: 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. A festival event was held on site on February 25th and 26th to coincide with Chinese New Year celebrations. Further marketing campaigns have been held resulting in thirteen offers being approved to date, the offer described herein, and interest in other units.

Unit 360

20. Unit 360 is 710 gross square feet and is located on the ground level beside the residential tower and is the former construction office for the SUSQ Project.

21. Century 21's position was that Units 360 and 361 would be more marketable if listed separately. Century 21 initially listed Unit 360 for sale at a price of \$290,600 and this was reduced to \$261,500 on October 19, 2017.
22. The Purchaser submitted an offer of \$230,000 on January 2, 2018 and after some negotiation by the Trustee an offer of \$245,000 was accepted as set out in the agreement of purchase and sale executed by the Purchaser on December 30, 2017 attached hereto and marked as **Appendix "B"**. This price is 6% below the listing price. A copy of the parcel register for Unit 360 is attached hereto and marked as **Appendix "C"**.
23. Unit 360 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 \$45.0 million charge in favour of Laurentian Bank of Canada;
 - (d) a \$10.0 million charge in favour of Am-Stat Corporation;
 - (e) a condominium lien in favour of York Region Standard Condominium Corporation No. 1228 ("**YRSCC 1228**") in the amount of \$1,993; and
 - (f) construction liens.
24. The Trustee believes that Unit 360 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) this is the only offer the Trustee has received for this unit;
- (b) the offer is recommended by Century 21 based on current market conditions;
- (c) the owner will operate a retail business in a highly visible area; and
- (d) 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 Unit 360 is scheduled to close on February 15, 2018.

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 priority amount it is entitled to in connection with its registered condominium lien, as to be confirmed by the Trustee, and distribute the remaining net sale proceeds in accordance with Court orders issued in this proceeding.

All of which is respectfully submitted to this Court as of this 16th day of January, 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