

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

April 8, 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**").
2. Pursuant to the Order of The Honourable Justice Hainey of the Ontario Court of Justice made on December 5, 2017, the name of the Trustee was changed to RSM Canada Limited.
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-we-do/services/consulting/financial-advisory/restructuring-recovery/current-restructuring-recovery-engagements/jade-kennedy-development-corporation.html>

PURPOSE OF TWENTY-FOURTH REPORT

5. The purpose of this Twenty-Fourth Report of the Trustee (the “**Twenty-Fourth Report**”) is to request that the Court grant a Vesting Order to convey parcels of land Plan 65R-31952, parts 11, 13 and 14 owned by JKDC to the Corporation of the City of Markham (the “**City**”) free and clear of all claims and encumbrances.

TERMS OF REFERENCE

6. In preparing this Twenty-Fourth 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-Fourth 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.

JKDC AND LETTERS OF CREDIT

7. JKDC is an Ontario corporation incorporated on January 30, 2008 and had its registered office located in Markham, Ontario. JKDC was incorporated for the

purpose of being the registered owner of the Property and the developer of the South Unionville Square condominium project to be constructed on certain portions of the Property, which is located in Markham, Ontario.

8. Prior to commencing construction, JKDC entered into various agreements with the Regional Municipality of York ("**York**") and the City related to the completion of certain works required pursuant to the site plan. These agreements included the Site Plan Control, Construction and other ancillary agreements. JKDC was required to post letters of credit ("**LCs**") in favour of York and the City relating to its obligations under these agreements. These LCs in turn were supported by cash collateral, originally held at Laurentian Bank ("**Laurentian**"), the LC provider. TD Bank ("**TD**") replaced Laurentian as the LC provider on March 11, 2016.
9. At the date of the appointment of the Trustee, there were four LCs outstanding with York and seven LCs outstanding with the City with a total value of \$3,038,273.54. The Trustee retained Masongsong Engineering Associates Limited ("**Masongsong**") as its engineering consultant to coordinate completion of the works required by York and the City. To date, the Trustee has received gross proceeds (before fees) of \$2,071,567.60 in underlying cash collateral. This amount has been distributed to the creditors.
10. As of the date of this report, there are four LCs with the City remaining to be fully released. The underlying works have recently been completed and certified by Masongsong. The underlying cash collateral currently held at TD related to these

obligations is \$942,504.67 (before fees). Once these LCs are released the cash collateral, net of fees, will be turned over to the Trustee.

Request by the City

11. Masongsong recently met with representatives from the City in order to obtain the final approvals to release all remaining letters of credit. During this meeting, the City noted that Clause 6.10 of the Construction Agreement dated March 10, 2010 (attached as **Appendix "A"**) referred to a .3-meter land reserve that was to be retained by JKDC for 10 years from the date of the Construction Agreement after which it is to be conveyed to the City (ie. on March 10, 2020). Masongsong advises that this clause enabled JKDC to collect from the owner of the land adjacent to Unity Gardens South in the event this owner decided to acquire the reserve land in order to access the road (to build a new entrance from the road). The City referred to the R- plan (attached as **Appendix "B"**) noting that they would not release the remaining LCs, even though the required works had been completed, until the 10-year period noted in clause 6.10 had expired (ie. March 2020).
12. The Trustee advised that it wanted the remaining LCs to be released as soon as possible in order to receive the remaining cash collateral for distribution to the creditors, however it wanted to preserve the right to collect any monies related to the .3-meter land reserve. The City responded that if the Trustee conveyed the .3-meter parcels of land reserve referred to in Clause 6.10: Plan 65R- 31952, parts 11, 13 and 14 to the City free and clear, they would defer dedicating this land to "roadworks" until March 10, 2020 and allow the remaining LCs to be fully released.

If in the intervening period (between conveyance and dedication), the adjacent owner decided they want access to this reserve land, they would apply to the City and be required to pay the Trustee in accordance with Clause 6.10 of the Construction Agreement.

13. A copy of PIN 02963-3464, which is the parcel for Parts 11, 13 and 14, Plan 65R-31952 (the "**Parcel**"), is attached hereto and marked as **Appendix "C"**. A copy of a ServiceOntario property index map for the area that shows the Parcel is attached hereto and marked as **Appendix "D"**.

Charges against the subject parcels

14. The Parcel is subject to the following encumbrances:
 - (a) a \$30.0 million charge and a \$16.5 million charge in favour of Aviva Insurance Company of Canada ("**AVIVA**"), along with certain postponements;
 - (b) a \$45.0 million charge in favour of Laurentian Bank of Canada ("**Laurentian**"); and
 - (c) a construction lien and certificate in favour of Draglam Waste & Recycling Inc.¹
15. The AVIVA charge related to deposit facilities and a Tarion Bond required to satisfy and secure obligations JKDC had under the ONHWP Act, administered by Tarion

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

Warranty Corporation (“**Tarion**”). JKDC granted security to AVIVA with respect to its obligations and this included a \$30 million charge and a \$16.5 million charge registered over certain of the Property, and a security interest over all deposits held by the Escrow Agent. Westmount Guarantee (“**Westmount**”) was the General Agent for AVIVA regarding Tarion. Harris Sheaffer LLP, the Escrow Agent held \$873,734.62 as security for JKDC’s outstanding obligations to AVIVA.

16. The Trustee has coordinated the completion or settlement of all warranty issues and on November 23, 2018, Westmount advised that the Tarion bond was being fully eliminated as all warranty obligations had been satisfied by the Trustee (refer to **Appendix “E”** attached hereto).
17. With respect to Laurentian, it has been repaid in full in connection with the charge registered against the Parcel.
18. The Trustee is of the view that, as transferring the Parcel is necessary to obtain a release of the LCs from the City and a release of the cash collateral being held to secure the LCs, the relief sought is appropriate in the circumstances.

TRUSTEES REQUEST TO THE COURT

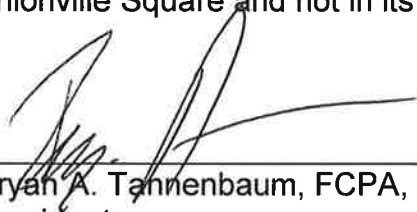
19. The Trustee requests that the Court grant the order described in paragraph 5. Above.

All of which is respectfully submitted to this Court as of this 8th day of April, 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