

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

November 24, 2020

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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 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 (the “**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-SEVENTH REPORT

4. The purpose of this Twenty-Seventh Report of the Trustee (the “**Twenty-Seventh Report**”) is to:
 - (a) report to the Court on the Trustee’s activities since September 25, 2017, being the date of the Trustee’s Seventeenth Report to the Court (the “**Seventeenth Report**”);
 - (b) provide the Court with an overview with respect to the realizations achieved by the Trustee from the SUSQ Project and other property of JKDC since the Seventeenth Report, and to update the Court on the claims of mortgagees, construction lien claimants, secured creditors and condominium corporations to such proceeds and the distributions to be made by the Trustee;
 - (c) provide an interim statement of the Trustee’s receipts and disbursements for the period from February 11, 2015 to October 31, 2020;
 - (d) request that the Court grant orders:
 - (i) approving the Eighteenth Report of the Trustee dated October 12, 2017, the Nineteenth Report of the Trustee dated October 27, 2017, the Twentieth Report of the Trustee dated December 20, 2017, the Supplement to the Twentieth Report dated January 5, 2018, the Twenty-First Report of the Trustee dated January 18, 2018, the Twenty-Second Report dated March 14, 2018, the Twenty-Third

Report of the Trustee dated July 10, 2018, the Twenty-Fourth Report of the Trustee dated April 8, 2019, the Twenty-Fifth Report of the Trustee dated August 26, 2019, the Twenty-Sixth Report of the Trustee dated August 25, 2020, and this Twenty-Seventh Report (collectively, the “**Reports**”);

- (ii) approving the sale by the Trustee of Kiosk Unit 390 (the “**Kiosk Unit**”) to Lap Ki Yim and Winnie Ching Ching Lau (collectively, 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; and
- (iii) approving the fees and disbursements of the Trustee and its counsel Chaitons LLP (“**Chaitons**”) as set out in herein and the fee affidavits attached as appendices hereto.

TERMS OF REFERENCE

5. In preparing this Twenty-Seventh 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-Seventh 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.

REPORTS PREVIOUSLY FILED

6. As noted above, on February 11, 2015, the Court appointed Collins Barrow Toronto Limited (name subsequently changed to RSM Canada Limited) as the Trustee. Since its appointment, the Trustee has filed twenty-six reports with the Court, along with certain supplemental reports. Copies of all of these reports (with appendices included), can be found on the Trustee's Website.
7. The Court previously approved the First Report dated April 23, 2015 through to and including the Seventeenth Report, and all supplemental reports. Copies of the Court orders approving such reports can be found on the Trustee's Website.
8. As a result, at this time the Trustee is seeking approval of the Reports, and the conduct and activities of the Trustee as set out therein and herein.

BACKGROUND

9. 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 in phases on certain portions of the Property, which is located in Markham, Ontario.

10. JKDC sought the appointment of the Trustee as it was insolvent. Contractors had registered construction lien claims against title to the Property and the appointment was necessary to complete the closing of pre-sold units, market and sell the unsold units and distribute the sale proceeds pursuant to Court orders.

SUSQ PROPERTY AT THE DATE OF THE TRUSTEE’S APPOINTMENT

11. A summary of the SUSQ Project and the Property, together with the realizations achieved to September 25, 2017, are set out in paragraphs 12 to 29 of the Seventeenth Report, a copy of which is attached hereto and marked as **Appendix “A”**.

REALIZATIONS FROM SUSQ PROJECT

12. As reported in paragraph 29 of the Seventeenth Report, the Trustee had completed sales of all remaining units in Phases I and II of the SUSQ Project with the exception of:
 - (a) five Phase I Commercial Units (three mall units and two kiosk units);
 - (b) four Phase I Parking Units;
 - (c) three Phase II Commercial Units; and
 - (d) two Phase II Parking Units.

13. As of the date of this Twenty-Seventh Report, the status of these remaining units is as follows:
- (a) four of the five Phase I Commercial Units have been sold pursuant to Court approval orders, and the Trustee is seeking Court approval of the sale of the fifth unit herein;
 - (b) the Trustee has been unable to date sell the Phase I Parking Units;
 - (c) the three Phase II Commercial Units have been sold pursuant to Court approval orders; and
 - (d) the two Phase II Parking Units have been sold pursuant to Court approval orders.
14. As a result, if the Court approves the Trustee's request to sell the Kiosk Unit to the Purchaser, the only real property remaining will be the Phase I Parking Units, which are discussed below.

REALIZATIONS FROM NON-SUSQ PROJECT PROPERTY

Letters of Credit Funds

15. A summary of the letters of credit that had been issued in connection with the SUSQ Project is contained in paragraphs 30 to 39 of the Seventeenth Report.
16. As reported in the Seventeenth Report, as of September 25, 2017, there were seven letters of credit ("**LCs**") still outstanding having a face value of \$957,479.08

17. As of the date of this Twenty-Seventh Report, the Trustee has arranged for the completion of all required works related to these LCs, received confirmation of the full release of all LCs from the beneficiaries, and received the balance of the cash collateral held of \$1,038,363.95 (after fees and interest).

Deposit Funds

18. As reported previously, JKDC obtained residential and commercial deposit insurance facilities, and Tarion Warranty Corporation ("**Tarion**") bonds totaling \$5.3 million from Aviva Insurance Company of Canada ("**Aviva**") in connection with its obligations under the *Ontario New Home Warranties Act*. JKDC granted Aviva a security interest in all deposits being held by its lawyers, Harris, Sheaffer LLP, as escrow agent ("**Escrow Agent**").
19. The Escrow Agent advised the Trustee that as at September 20, 2017, it held \$873,734.62 in escrow representing deposits JKDC received from purchasers (plus accrued interest), which was held as security for JKDC's obligations to Aviva.
20. The Trustee has spent considerable time and effort to arrange for the necessary steps to be completed in order to eliminate the outstanding Tarion bonds and receive a full release of the security from Aviva.
21. Since the Seventeenth Report, the bonds have been fully released and the Trustee received payment of the balance of \$872,260.28 (after accrued interests and costs) in deposits that were released by the Escrow Agent.

SALE PROCEEDS AND DISTRIBUTIONS TO DATE

22. A summary of the mortgagees, secured creditors, and constructions lien claimants with respect to the SUSQ Project is contained in paragraphs 48 through 88 of the Seventeenth Report.
23. As of the date of this Twenty-Seventh Report, the Trustee has distributed all of the Court-approved payments to the construction lien claimants and there have been no further claims filed.
24. On July 4, 2017, the Trustee received Court approval to distribute \$1,200,000 to Am-Stat Corporation ("**Am-Stat Corporation**") based on the its mortgage over vacant lands owned by JKDC.
25. On September 29, 2017, the Trustee received Court approval to make interim distributions to Am-Stat of \$3,000,000 to and MarshallZehr Group Inc. ("**MarshallZehr**"), a mortgagee, of \$800,000 and to make further distributions to both creditors without approval of the Court when property subject to their respective security had been realized by the Trustee. The distributions are based on the calculation of net sale proceeds to date (taking into account direct unit costs) and an allocation of administrative costs as approved in the Seventeenth Report.
26. Since the date of the Seventeenth Report, the Trustee distributed an additional \$5,050,000 to Am-Stat for total distributions to date of \$6,250,000. As set out in **Appendix "B"** hereto, distributions are based on sales of \$13,395,333.20 after taking into account: direct unit costs of \$362,127.88 (including condominium fees, condominium arrears subject to valid liens, realty taxes and realtors'

commissions), third party consultant/repair costs of \$1,930,171.84, delayed occupancy payments required by Tarion of \$188,712.56, an allocation of administrative costs of \$2,464,604.42 as approved in the Seventeenth Report and court approved lien claimants payment of \$1,513,172.82 and a distribution to Laurentian for reimbursement of legal fees of \$92,131.59. The Trustee currently holds \$594,412.50 before reserves that is subject to Am-Stat's security.

27. Since the date of the Seventeenth Report, the Trustee has distributed an additional \$290,000 to MarshallZehr for total distributions to date of \$1,090,000. As set out in **Appendix "C"**, distributions are based on sales to date of \$1,881,065.89 less direct unit costs (including condominium fees, condominium arrears subject to valid liens, realty taxes and realtor's commissions) of \$522,369.87, an allocation of administrative costs of \$152,126.97 as approved in the Seventeenth Report and the Court approved lien claim payment of \$107,820.88. The Trustee currently holds \$8,748.18 before the closing proceeds of Kiosk 390 are received and reserves are taken into account.

REMAINING PROPERTY

Phase I Parking Units

28. As noted in paragraphs 12 and 13 of the Seventeenth Report:
- (a) Phase I of the SUSQ Project was the development and construction of 28 residential townhomes, a T&T Supermarket, and a commercial condominium project;

(b) The condominium declaration was registered on April 17, 2013 (the “**Condominium Declaration**”), and York Region Standard Condominium Corporation No. 1228 (“**YRSCC 1228**”) was established.

29. As noted above, there are four unsold Phase I Parking Units, which are parking units that are only accessible to the residents of the Phase I townhomes. Clause 4.4 of the Condominium Declaration provides that the Phase I Parking Units can only be sold to either a townhome owner or YRSCC 1228 as the condominium corporation.
30. The Trustee directly contacted YRSCC 1228 on numerous occasions to determine if they were interested in purchasing these parking units and was advised that they were not.
31. The Trustee posted Notices For Sale at strategic locations throughout the complex in English and Chinese in 2016 and 2017. The Trustee did not receive any interest from prospective purchasers.
32. In January 2017, the Trustee listed the Phase I Parking Units with Century 21 at the recommended price of \$25,000 each.
33. On September 25, 2019, YRSCC 1228 submitted an offer to purchase the Phase I Parking Units for \$1,000 each. The Trustee signed back each of these offers at a price of \$15,000 on October 2, 2019. After numerous discussions, YRSCC 1228 refused to increase the prices above \$1,000 each.

34. In January 2020, Century 21 recommended that the listing prices be lowered to \$5,000 each 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.
35. During 2020, Century 21 has continued to market the Phase I Parking Units to the townhome owners and to YRSCC 1228 through its property manager PH Property Mgmt. & Consulting Inc.
36. The monthly condominium fees on each of the four units is \$22.83 (including HST) and the annual property taxes on each of the four units is \$87.95.
37. In addition, the Trustee has confirmed that YRSCC 1228 has registered condominium liens against the Phase I Parking Units and has received and verified schedules indicating that YRSCC 1228 is entitled to \$1,281.23 per unit relating to condominium fee arrears subject to valid liens. The Phase I Parking Units are not subject to any mortgages.
38. The Trustee believes it has sufficiently marketed the Phase I Parking Units to the limited pool of buyers resulting in no viable offers to purchase them. The Trustee intends to offer that these units be transferred to YRSCC 1228 in exchange for the extinguishment of the related condominium arrears subject to a valid lien.
39. The Trustee will report to the Court regarding such discussions in its final report to the Court.

Approval of the sale of the Kiosk Unit

40. 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.
41. 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.
42. 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 Kiosk Unit.
43. After several extensions, the Trustee allowed this agreement to expire on January 15, 2017.
44. During its retainer period, TradeWorld had listed the Kiosk Unit for \$99,000.
45. In its over 20-month period as real estate listing agent, TradeWorld did not receive any offers to purchase this unit.
46. The Trustee retained Century 21 as its real estate listing agent for all unsold Property on February 3, 2017. The Kiosk Unit was listed at a price of \$48,000 by Century 21.

47. An offer for \$1,000 was received from YRSCC 1228 on September 25, 2019 and signed back by the Trustee at \$25,000, which was not accepted.
48. 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.
49. The Purchaser submitted an offer of \$12,000 on October 15, 2020. The Trustee signed back the offer at \$17,000 on October 20, 2020. The Purchaser signed back the offer at \$15,000 which was accepted by the Trustee as set out in the agreement of purchase dated October 21, 2020, a copy of which is attached hereto and marked as **Appendix "D"**. A copy of the parcel register for the Kiosk Unit is attached hereto and marked as **Appendix "E"**.
50. The Kiosk Unit is subject to the following encumbrances:
 - (a) a \$30.0 million charge in favour of Aviva, who has been repaid;
 - (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 Laurentian Bank of Canada ("**LBC**"), who has been repaid;
 - (d) a \$2.4 million charge in favour of LBC;
 - (e) an \$8.0 million charge in favour of MarshallZehr; and
 - (f) construction lien in favour of Draglam, who has been repaid.

51. The Trustee is in discussions with YRSCC 1228 regarding the amount that is outstanding and secured by its condominium lien.
52. The Trustee recommends that the sale transaction be approved by the Court, as:
 - (a) the Kiosk 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;
 - (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.
53. If the Court approves the sale transaction, the transaction is scheduled to close on December 15, 2020.
54. 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.

Landowners' Agreement Refund

55. As owner of the Property, JKDC was party to a South Unionville Planning District Landowners' Agreement (the "**Agreement**"). Under the Agreement, the owners/developers of certain lands in Markham, Ontario contributed certain of their lands for community use. The Agreement provides that if an owner's contribution

of lands for community use exceeds its proportion of the total developable area of the lands owned by all of the owners, the owner would be entitled to a reimbursement.

56. Since its appointment, the Trustee, through its counsel, has been in contact with the trustee of the owners under the Agreement, to receive information concerning whether JKDC would be entitled to a reimbursement under the Agreement.
57. As of the date of this Twenty-Seventh Report, it is unclear whether there will be any funds that will be distributed to JKDC in the future in connection with the Agreement. The Trustee intends to report to the Court on this issue in its final report.

Funds in Trust

58. As noted in the Seventeenth Report, by Order of Justice Wilton-Siegel, the professional fees of LBC associated with its \$45 million charge had priority over the construction lien claimants with respect to the net sale proceeds of the SUSQ property subject to such charge.
59. Am-Stat agreed to an interim distribution of legal fees on account of the legal fees claimed by LBC. \$92,131.59 was paid to LBC on July 5, 2018.
60. The Trustee has continued to hold a reserve of \$10,000 for any additional fees that are agreed upon by Am-Stat and Laurentian. The Trustee's counsel has reached out to counsel to see if a resolution has been reached regarding the outstanding amount, but the parties have not reached an agreement to date.

RECEIPTS AND DISBURSEMENTS

61. Attached hereto as **Appendix “F”** is the Trustee’s Statement of Receipts and Disbursements for the period from February 11, 2015 to November 15, 2020 (the **“R&D Statement”**).
62. As indicated in the R&D Statement, the Trustee has an excess of Receipts over Disbursements of \$603,160.68 as of November 15, 2020.

FEES AND DISBURSEMENTS OF THE TRUSTEE AND ITS COUNSEL

63. Pursuant to paragraph 18 of the Appointment Order, the Trustee and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 19 of the Appointment Order, the Trustee and its counsel shall pass their accounts.
64. The Trustee’s fees and disbursements for the period February 11, 2015 to July 31, 2017 were previously approved by the court pursuant to the Court Order dated September 29, 2017.
65. The total fees of the Trustee from August 1, 2017 to October 31, 2020 were \$264,164.00 plus disbursements of \$864.70 plus HST of \$34,453.77 for a total of \$299,482.47, as set out in the Affidavit of Bryan Tannenbaum sworn November 12, 2020, a copy of which is attached hereto as **Appendix “G”**.

66. Chaitons fees and disbursements, as insolvency counsel to the Trustee, for the period January 5, 2015 to August 31, 2017 were previously approved by the Court pursuant to the Court Order dated September 29, 2017.
67. The total fees of Chaitons, as insolvency counsel to the Trustee, for the period from September 1, 2017 to October 31, 2020 were \$52,356.50 plus disbursements of \$6,084.18 and HST of \$7,212.34 for a total of \$65,653.02, as set out in the Affidavit of Maya Poliak sworn November 24, 2020, a copy of which is attached hereto and marked as **Appendix "H"**.

TRUSTEE'S REQUEST TO THE COURT

68. The Trustee requests that the Court grant the orders described in paragraph 4 above.

All of which is respectfully submitted to this Court as of this 24th day of November, 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