

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE *Madana*)

FRIDAY, THE 12th

)

JUSTICE *Dietrich*)

DAY OF APRIL, 2019



**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN 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, AS AMENDED**

VESTING ORDER

THIS MOTION made by RSM Canada Limited, in its capacity as Court-appointed trustee over the lands and premises owned by Jade-Kennedy Development Corporation (“**JKDC**”), appointed pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the “**Trustee**”), for an order vesting in The Corporation of the City of Markham (the “**City**”) the right, title and interest of JKDC in and to the lands described in **Schedule “A”** hereto (the “**Lands**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Twenty-Fourth Report of the Trustee dated April 8, 2019 and the Appendices thereto, and on hearing the submissions of counsel for the

Trustee, no one else appearing for any other person on the service list, although properly served as appears from the affidavit of service of Lynda Christodoulou sworn April 10, 2019, filed,

1. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to the City substantially in the form attached as **Schedule "A"** hereto (the "**Trustee's Certificate**"), all of JKDC's right, title and interest in and to the Lands shall vest absolutely in the City, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, construction liens, condominium liens, certificates of action, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Justice Pattillo dated February 11, 2015; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Lands are hereby expunged and discharged as against the Lands.

2. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of York Region of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the City as the owner of the Lands more particularly identified in **Schedule "B"** hereto in fee simple, and is

hereby directed to delete and expunge from title to the Lands all of the Claims listed in Schedule "C" hereto.

3. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of Trustee's Certificate, forthwith after delivery thereof.

4. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of JKDC and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of JKDC;

the vesting of the Lands in the City pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of JKDC and shall not be void or voidable by creditors of JKDC, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to

make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

Dimitri J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 12 2019

PER / PAR: *M*

Schedule "A" – Form of Trustee's Certificate

Court File No. CV15-10882-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN 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, AS AMENDED**

TRUSTEE'S CERTIFICATE

RECITALS

A. Pursuant to an Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (the "**Court**") dated February 11, 2015 and an Order of The Honourable Mr. Justice Hailey dated December 5, 2017, RSM Canada Limited was appointed as trustee pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Trustee**") of certain property of Jade-Kennedy Development Corporation ("**JKDC**").

B. Pursuant to an Order of the Court dated April 12, 2019 (the "**Vesting Order**"), the Court provided for the vesting in The Corporation of the City of Markham of JKDC's right, title and interest in and to the Lands (as defined in the Vesting Order), which vesting is to be effective with respect to the Lands upon the delivery by the Trustee to the City of a certificate confirming that the transaction has been completed to the satisfaction of the Trustee.

THE TRUSTEE CERTIFIES the following:

1. The Transaction has been completed to the satisfaction of the Trustee.
2. This Certificate was delivered by the Trustee at _____ [TIME] on _____ [DATE].

**RSM CANADA LIMITED, in its capacity as
Court-appointed Trustee of the Property of
Jade-Kennedy Development Corporation and
not in its personal capacity**

Per: _____

Name:

Title:

Schedule "B" – Lands

PIN

Property Description

02963-3464 (LT) Part Lot 1 Plan 2196, PTS 11, 13 & 14 65R31952; Town of Markham

Schedule "C" – Claims to be deleted and expunged from title to the Lands

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
YR1444874	2010/02/24	Charge	\$30,000,000	Jade-Kennedy Development Corporation	Aviva Insurance Company of Canada
YR1445330	2010/02/25	Postponement		Aviva Insurance Company of Canada	Laurentian Bank of Canada
YR1495980	2010/06/15	Postponement		Aviva Insurance Company of Canada	The Corporation of The Town of Markham
YR1615474	2011/02/28	Postponement		Aviva Insurance Company of Canada	Laurentian Bank of Canada
YR1616918	2011/03/02	Postponement		Aviva Insurance Company of Canada	The Corporation of The Town of Markham
YR1721683	2011/10/03	Charge	\$16,500,000	Jade-Kennedy Development Corporation	Aviva Insurance Company of Canada
YR1763873	2011/12/23	Charge	\$45,000,000	Jade-Kennedy Development Corporation	Laurentian Bank of Canada
YR1763874	2011/12/23	No Assgn Rent Gen		Jade-Kennedy Development Corporation	Laurentian Bank of Canada
YR1763902	2011/12/23	No Assgn Rent Spec		Jade-Kennedy Development Corporation	Laurentian Bank of Canada

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
YR1764062	2011/12/23	Postponement		Aviva Insurance Company of Canada	Laurentian Bank of Canada
YR1832081	2012/06/01	Notice	\$2	Jade-Kennedy Development Corporation	Laurentian Bank of Canada
YR2238316	2014/12/31	Construction Lien	\$10,826	Draglam Waste & Recycling Inc.	
YR2254502	2015/02/10	Certificate		Draglam Waste & Recycling Inc.	

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Lands**

(unaffected by the Vesting Order)

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
YR686388	2005/08/18	Notice		Her Majesty the Queen in Right of Canada as Represented by the Minister of Transport	
YR1495979	2010/06/15	Notice	\$2	The Corporation of the Town of Markham	Jade-Kennedy Development Corporation
YR1616829	2011/03/02	Notice	\$2	The Corporation of The Town of Markham	Jade-Kennedy Development Corporation The Regional Municipality of York
YR1832111	2012/06/01	Application to Annex Restrictive Covenants		Jade-Kennedy Development Corporation Arsh Developments Inc. Iqbal, Kamran	

THE MATTER OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED
AND IN THE MATTER OF AN 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, AS AMENDED

Court File No. CV15-10882-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

VESTING ORDER

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Sam Rappos (LSO #51399S)
Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: samr@chaitons.com

Lawyers for RSM Canada Limited,
Court-appointed Trustee