

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE DIETRICH) MONDAY THE 30th DAY
OF NOVEMBER, 2020

B E T W E E N:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

168 OLD KENNEDY INC.

Respondent

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43

DISCHARGE ORDER

THIS MOTION, made by RSM Canada Limited (“**RSM**”), in its capacity as the Court-appointed receiver (the “**Receiver**”), without security, of the property municipally known as 168 Old Kennedy Road, Markham, Ontario (the “**Property**”) owned by 168 Old Kennedy Inc. (the “**Debtor**”), was heard this day by videoconference at 330 University Avenue, Toronto, Ontario due to the COVID-19 crisis.

ON READING the Fifth Report to the Court of the Receiver dated November 18, 2020 (the “**Fifth Report**”) and on hearing the submissions of counsel for the Receiver and the Applicant, and no one else appearing, although properly served as appears from the affidavit of Sarita Sanasie sworn November 19, 2020, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Fifth Report and the conduct and activities of the Receiver set out therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period October 1, 2020 to November 12, 2020 together with those fees estimated to completion, as set out in the Fifth Report, be and are hereby approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's counsel for the period October 1, 2020 to November 12, 2020, together with those fees estimated to completion, as set out in the Fifth Report be and are hereby approved.
5. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements for the period December 6, 2019 to November 12, 2020, as set out in the Fifth Report, be and is hereby approved.
6. **THIS COURT ORDERS** that the Receiver is authorized to pay the Final Distribution (as defined and described in the Fifth Report).
7. **THIS COURT ORDERS** that upon completion of the Remaining Duties (as defined and described in the Fifth Report), the Receiver is authorized to pay the Mortgagees (as defined in the Fifth Report) any additional funds that may be received by the Receiver, on a pro rata basis at the percentages set out in the Fifth Report, provided that any repayment to a Mortgagee does not exceed the Debtor's indebtedness to that Mortgagee.
8. **THIS COURTS ORDERS** that the motion in this proceeding brought by Alai Developments Inc. on August 10, 2020 seeking, among other things, leave to pursue certain claims against the Receiver, is hereby dismissed on a with prejudice and without costs basis.

RECEIVER'S DISCHARGE

9. **THIS COURT ORDERS that** upon the Receiver filing with this Court a certificate substantially in the form appended hereto as Schedule "A" certifying that it has completed the Remaining Duties, the Receiver shall be discharged as Receiver of the Property, provided however that notwithstanding its discharge as Receiver herein RSM shall

continue to have the benefit of the provisions of all Orders made in this proceeding, including all authorizations, approvals, protections and stays of proceedings in favour of RSM in its capacity as Receiver.

10. **THIS COURT FURTHER ORDERS AND DECLARES** that RSM is hereby released and discharged from any liability that RSM now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of RSM while acting in its capacity as Receiver including for, certainty, in carrying out the Remaining Duties, save and except for any gross negligence or willful misconduct on the Receiver's part. Without limiting the generality of the foregoing, RSM is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the receivership, save and except for any gross negligence or willful misconduct on the Receiver's part.

11. **THIS COURT FURTHER ORDERS AND DECLARES** that notwithstanding its discharge herein, RSM may perform such incidental duties as may be required by it as Receiver to complete its obligations pursuant to its appointment as Receiver including, for certainty, carrying out the Remaining Duties, and RSM shall be forever released and discharged from any and all liability related to such incidental duties, save and except for any gross negligence or willful misconduct on the Receiver's part.

A handwritten signature in cursive script, reading "Dietrich J.", is positioned above a horizontal line that spans the width of the signature.

Schedule "A"

Court File No: CV-19-00631363-00CL

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RECEIVER'S DISCHARGE CERTIFICATE

A. By Order of the Ontario Superior Court of Justice (Commercial List) dated December 6, 2019 (the "Receivership Order"), RSM Canada Limited was appointed receiver of the property municipally known as 168 Old Kennedy Rd., Markham, Ontario.

B. Pursuant to an Order of the Court dated November 30, 2020 (the "Discharge Order"), the Court provided for the discharge of the Receiver upon certification that it has completed the Remaining Duties, as defined in and approved by the Discharge Order.

THE RECEIVER CERTIFIES it has completed the Remaining Duties.

**RSM CANADA LIMITED, in its capacity as
Receiver of 168 Old Kennedy Road,
Markham, ON and not in its personal
capacity**

Per: _____

Name:

Title:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

-and-

Court File No. CV-19-00631363-00CL
168 OLD KENNEDY INC.

Respondent

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PROCEEDING COMMENCED AT
TORONTO

ORDER

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