

Court File No. CV-15-10882-00CL

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

February 18, 2021

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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, 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-EIGHTH REPORT

4. The purpose of this Twenty-Eighth Report of the Trustee (the “**Twenty-Eighth Report**”) is to:
 - (a) provide the Court with an update as to the Trustee’s activities since the date of the Twenty-Seventh Report dated November 24, 2020 (“**Twenty-Seventh Report**”);
 - (b) provide a final statement of the Trustee’s receipts and disbursements for the period from February 11, 2015 to February 15, 2021;
 - (c) request that the Court grant orders:
 - (i) approving this Twenty-Eighth Report;
 - (ii) approving the transfer by the Trustee of Parking Units 25, 56, 57 and 65 (the “**Parking Units**”) to York Region Standard Condominium Corporation 1228 (“**YRSCC 1228**”) and vesting such property in YRSCC 1228 free and clear of all claims and encumbrances (other than permitted encumbrances) upon delivery of a certificate by the Trustee to YRSCC 1228;
 - (iii) approving the assignment of the Landowners’ refund, if any, to Am-Stat Corporation (“**Am-Stat**”);

- (iv) 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; and
- (v) approving the discharge and release of the Trustee upon the Trustee filing a certificate with the Court confirming that it has completed the administration of the JKDC estate.

TERMS OF REFERENCE

5. In preparing this Twenty-Eighth 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-Eighth 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.

TRUSTEES ACTIVITES SINCE THE TWENTY-SEVENTH REPORT

Transfer of Phase I Parking Units

6. As detailed in the Twenty-Seventh Report, a copy of which, without appendices, is attached hereto and marked as **Appendix "A"**, the Trustee has been unable to sell four Phase I Parking Units.
7. Further paragraph 38 of the Twenty-Seventh Report, the Trustee has now approached the management and two directors of YRSCC 1228 with a proposal to transfer the four Phase I Parking Units to YRSCC 1228 in exchange for extinguishment of the valid liens filed by YRSCC 1228 for unpaid condominium fees (incurred prior to the date of the Trustee's appointment). This proposal has been accepted and the Trustee requests Court approval to effect transfer of these Parking Units by way of an approval and vesting order. A copy of the parcel register for each of the Parking Units are collectively attached hereto and marked as **Appendix "B"**.
8. The Parking Units are each subject to a condominium lien in favour of YRSCC 1228 in the registered amount of \$1,281.23 as of January 31, 2021. This amount will be extinguished as part of the transfer as noted in paragraph 6 above;
9. The Trustee recommends that the transfer of these units be approved by the Court since, as detailed in the Twenty-Seventh Report, the Trustee has been unable to find a buyer for the Parking Units over the last 5 year period.

Assignment of the Landowners' Agreement Refund

10. As noted in paragraphs 55 to 57 of the Twenty-Seventh Report, 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.
11. Any refund that may become available to JKDC would be property that is covered by the general security agreement of Am-Stat. The Trustee understands that Am-Stat is still owed in excess of \$965,000 by JKDC. This amount likely exceeds any potential refund that JKDC may be entitled to under the Agreement, as in August 2017 the cost consultant retained in connection with the Agreement showed JKDC having a potential claim for approximately \$667,000.
12. Based on discussions with representatives of the trustee under the Agreement, it remains unclear when any refund will be available to JKDC.
13. As a result, the Trustee is requesting that the Court grant an order assigning any interest of JKDC under the Agreement to the benefit of Am-Stat.

Distribution of Remaining Net Proceeds

14. The JKDC HST return filed by the Receiver for the month of December 2020 claimed a refund of \$4,501.38, which was received on January 25, 2021. The JKDC HST return filed by the Receiver for the month of January 2021 claims a

refund of \$923.83, which is expected to be received by the end of February 2021. The Trustee expects to file one further HST return for activity that occurred during February, 2021.

15. The Receiver files JKDC's HST returns on a monthly basis. Once the final professional fees and other costs are paid, the final HST return will be submitted. These returns are filed on the first day of the month for the previous month and the refund is generally received in the following month.
16. Net proceeds remaining after any required payments are made and the final HST refund is received, will be paid to Am-Stat under its security.

RECEIPTS AND DISBURSEMENTS

17. Attached hereto as **Appendix "C"** is the Trustee's Statement of Receipts and Disbursements for the period from February 11, 2015 to February 15, 2021 (the **"R&D Statement"**).
18. As indicated in the R&D Statement, the Trustee has an excess of Receipts over Disbursements of \$ 100,808 as of February 15, 2021. As noted above, there will be several nominal additional receipts and disbursements including HST refunds and bank charges.

FEEES AND DISBURSEMENTS OF THE TRUSTEE AND ITS COUNSEL

19. 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.

20. The Trustee's fees and disbursements were previously approved by the Court as follows: i) for the period February 11, 2015 to July 31, 2017 on September 29, 2017 and ii) for the period August 1, 2017 to October 31, 2020 on December 2, 2020.
21. The total fees of the Trustee from November 1, 2020 to January 31, 2021 were \$36,586.50, plus HST of \$4,756.25 for a total of \$41,342.75, as set out in the Affidavit of Bryan Tannenbaum sworn February 3, 2021, a copy of which is attached hereto as **Appendix "D"**. The total estimated fees of the Trustee from February 1, 2021 to complete its administration are \$15,000.
22. Chaitons fees and disbursements, as insolvency counsel to the Trustee, were previously approved by the Court as follows: i) for the period January 5, 2015 to August 31, 2017 on September 29, 2017 and ii) for the period October 1, 2017 to October 31, 2020 on December 2, 2020.
23. The total fees of Chaitons, as insolvency counsel to the Trustee, for the period from November 1, 2020 to January 31, 2020 were \$4,611 plus disbursements of \$82.90 and HST of \$606.52 for a total of \$5,300.42, as set out in the Affidavit of Sam Rappos sworn February 17, 2021, a copy of which is attached hereto and marked as **Appendix "E"**. The total estimated fees of Chaitons from February 1, 2021 to the Trustee's discharge are \$5,000.

DISCHARGE OF TRUSTEE

24. The Trustee requests that once a certificate is filed by the Trustee indicating that it has completed its administration of the JKDC estate, it be granted its discharge as Trustee and be released from any and all liabilities.

TRUSTEE'S REQUEST TO THE COURT

25. 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 18th day of February, 2021.

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