



Court File No. CV-23-00711612-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 15TH
JUSTICE CONWAY) DAY OF AUGUST, 2024

B E T W E E N:

FIERA FP REAL ESTATE FINANCING FUND, L.P.

Applicant

- and -

**VANDYK – 41 WABASH LIMITED, 1000318652 ONTARIO INC.,
VANDYK PROPERTIES INCORPORATED and JOHN VANDYK**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS
AMENDED**

**APPROVAL AND VESTING ORDER
(WABASH)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Vandyk – 41 Wabash Limited (the “**Debtor**”), including the real property owned by the Debtor legally described as Part Lot 5-6, Plan 1256, Toronto as in CA291324; City of Toronto, being all of PIN 21335-0047 (LT) in LRO #66 (the “**Real Property**”), acquired for or used in relation to a business carried on by the Debtor, including the proceeds therefrom for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and THMR

Development Inc. (the “**Original Purchaser**”) dated July 14, 2024, which Sale Agreement was subsequently assigned by the Original Purchaser, as assignor, to Telon Land Group Inc. (the “**Purchaser**”), as assignee, by way of an assignment and assumption agreement dated August 1, 2024, and vesting in the Purchaser the Debtors’ right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the First Report of the Receiver dated August 9, 2024, the Appendices and Confidential Appendix thereto, and on hearing the submissions of counsel for the Receiver, and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Marleigh Dick affirmed sworn August 14, 2024, filed,

1. **THIS COURT ORDERS** that unless otherwise indicated herein, capitalized words and terms have the meanings given to them in the Sale Agreement or the First Report, as applicable.

APPROVAL AND VESTING

2. **THIS COURT ORDERS** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Receiver’s Certificate**”), all of the Purchased Assets, including, without limitation, all of the Debtor's right, title and interest in and to the Real Property, shall vest absolutely in Telon Land Group Inc., 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, 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 Wilton-Siegel made on January 23, 2024; (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; (iii) all rights any person had, has, or may in the future have in connection with or arising from the Unit Sales Agreements; and (iv) those Claims listed on Schedule “B” 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 “C”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets shall be expunged and discharged as against the Purchased Assets upon the delivery of the Receiver’s Certificate.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division 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 Telon Land Group Inc. as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule “B” hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed, on or prior to Closing, to terminate and disclaim the Unit Sales Agreement (as defined in the Sale Agreement) and following delivery of the Receiver’s Certificate in accordance with this Order, such Unit Sales Agreement shall cease to be a continuing obligation effective against the Real Property or binding on the Purchaser.

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

8. **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 the Debtor and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, 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.

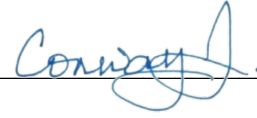
SEALING PROVISION

9. **THIS COURT ORDERS** that Confidential Appendix “1” to the First Report shall be sealed, kept confidential and not form part of the public record until closing of the Transaction contemplated under the Sale Agreement.

GENERAL

10. **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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.



Justice Conway

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-23-00711612-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

B E T W E E N:

FIERA FP REAL ESTATE FINANCING FUND, L.P.

Applicant

- and –

**VANDYK – 41 WABASH LIMITED, 1000318652 ONTARIO INC.,
VANDYK PROPERTIES INCORPORATED and JOHN VANDYK**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on January 23, 2024, KSV Restructuring Inc. was appointed as the receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Vandyk – 41 Wabash Limited (the “**Debtor**”), including the real property owned by the Debtor legally described as Part Lot 5-6, Plan 1256, Toronto as in CA291324; City of Toronto, being all of PIN 21335-0047 (LT) in LRO #66 (the “**Real Property**”), acquired for or used in relation to a business carried on by the Debtor, including the proceeds therefrom.
- B. Pursuant to an Order of the Court dated August ●, 2024, the Court approved the agreement of purchase and sale made as of July 14, 2024 (the “**Sale Agreement**”) between the Receiver and THMR Development Inc. (the “**Original Purchaser**”), which Sale

Agreement was subsequently assigned by the Original Purchaser, as assignor, to Telon Land Group Inc. (the “**Purchaser**”), as assignee, by way of an assignment and assumption agreement dated August 1, 2024, and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets (as defined in the Sale Agreement) upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV RESTRUCTURING INC., in its
capacity as Receiver, and not in its personal
or corporate capacity**

Per: _____

Name:

Title:

Schedule “B” – Instruments to be Deleted from Title

1. Instrument No. AT6223544 being a Charge registered on November 15, 2022.
2. Instrument No. AT6223545 being a Notice of Assignment of Rents – General registered on November 15, 2022.
3. Instrument No. AT6393137 being a Charge registered on August 9, 2023.
4. Instrument No. AT6393138 being a Notice of Assignment of Rents – General registered on August 9, 2023.
5. Instrument No. AT6504605 being an Application to Register Court Order registered on January 30, 2024.

Schedule “C” – Permitted Encumbrances

(unaffected by the Vesting Order)

1. The exceptions and qualifications set out in the Section 44(1) of the *Land Titles Act* (Ontario), save and excepts paragraph 3, 4, 5, 6, 11 and 14 thereof;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. Any easements, servitudes, rights-of-way, licences, restrictions registered against the Vandyk Real Property as of the date of this agreement and other encumbrances and/or agreements with respect thereto (including, without limiting the generality of the foregoing, easements, rights-of-way and agreements for sewers, drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables);
4. Any unregistered easements for sewer drains, gas and water mains or electric light and power or telephone, telecommunications or cable conduits, poles, wires and cables;
5. Inchoate liens for taxes, assessments, public utility charges, which are due but the validity of which are being contested in good faith by the Vendor provided that the Vendor has provided security which in the opinion of the Vendor, acting reasonably, is necessary to avoid any lien, charge or encumbrance arising with respect thereto;
6. Any encroachments, minor defects or irregularities indicated on the Survey of the Property prepared by Helmut Piller, Ontario Land Surveyor, dated February 14, 2023;
7. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
8. Any subdivision agreements, site plan agreements, development agreements and any other agreements registered against the Vandyk Real Property as of the date of the Agreement with the municipality, region, publicly regulated utilities or other governmental authorities having jurisdiction;
9. Plans, by-laws or transfers registered on title to the Vandyk Real Property as of the date of the Agreement.
10. The following instruments registered on title to the Vandyk Real Property:
 - (a) Instrument No. 63R2139 being a Reference Plan, registered on September 30, 1980.
 - (b) Instrument No. AT5553142 being a Notice of Heritage Easement Agreement dated September 28, 2020 between 41 Wabash Avenue Incorporated and the City of Toronto, registered on October 23, 2020.

- (c) Instrument No. AT5641865 being a City of Toronto By-Law to designate the Vandyk Real Property as being of cultural heritage value or interest, registered on February 3, 2021.
- (d) Instrument No. 66R33178 being a Reference Plan, registered on March 6, 2023.

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

**FIERA FP REAL ESTATE FINANCING FUND,
L.P.**

and

**VANDYK – 41 WABASH LIMITED, 1000318652 ONTARIO INC.,
VANDYK PROPERTIES INCORPORATED et al.**

Applicant

Respondent

Court File No. CV-23-00711612-00CL

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

Proceedings commenced in Toronto

**APPROVAL AND VESTING ORDER
(WABASH)**

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place, Suite 6200
P.O. Box 50
Toronto, ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: 416.862.4908

Email: mwasserman@osler.com

Dave Rosenblat (LSO# 64586K)

Tel: 416.862.5673

Email: drosenblat@osler.com

Chloe Duggal (LSO# 88142K)

Tel: (416) 862-6518

Email: cduggal@osler.com

Lawyers for KSV Restructuring Inc., in its capacity as Receiver