



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

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**

DISTRIBUTION AND TERMINATION ORDER

THIS MOTION made by KSV Restructuring Inc. (“**KSV**”) in its capacity as receiver and manager (the “**Receiver**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 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, acquired for or used in relation to a business carried on by the Debtor, including the proceeds therefrom (collectively, the “**Property**”) for an order, among other things (a) approving the

Consolidated Report of the Receiver dated March 1, 2024 with respect to all matters relating to the Property (the “**Consolidated Report**”) and the First Report of the Receiver dated August 9, 2024 (the “**First Report**”) and the Receiver’s conduct and activities described therein; (b) approving the fees and disbursements of the Receiver and the Receiver’s counsel, Osler, Hoskin & Harcourt LLP (“**Osler**”), as set out in the Affidavit of David Sieradzki sworn August 9, 2024 attached at Appendix “C” to the First Report (the “**Sieradzki Affidavit**”) and the Affidavit of David Rosenblat sworn on August 9, 2024 attached at Appendix “D” to the First Report (the “**Rosenblat Affidavit**” and, together with the Sieradzki Affidavit, the “**Fee Affidavits**”); (c) authorizing and directing the Receiver to make certain payments and distributions as recommended and described in the First Report; and (d) discharging the Receiver as Receiver of the Property upon occurrence of the Receivership Termination Time (as hereinafter defined) was heard by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Receiver, the Consolidated Report, the First Report, the Fee Affidavits, and on hearing the submissions of counsel for the Receiver, Fiera FP Real Estate Financing Fund, L.P. (“**Fiera**”) and the other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavit of service of Marleigh Dick affirmed August 14, 2024,

SERVICE AND DEFINITIONS

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** that all terms not otherwise defined herein shall have the meaning ascribed to them in the First Report.

APPROVAL OF RECEIVER'S REPORTS AND ACTIVITIES

3. **THIS COURT ORDERS** that each of the Consolidated Report and the First Report, and the actions, conduct and activities of the Receiver referred to therein, be and are hereby approved; provided, however, that only KSV, in its capacity as Receiver and not in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver up until July 31, 2024, and the Remaining Fee Estimate of the Receiver, as set out in the First Report and the Sieradzki Affidavit, are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of Osler up until July 31, 2024, and the Remaining Fee Estimate of Osler, as set out in the First Report and the Rosenblat Affidavit, are hereby approved.

6. **THIS COURT ORDERS** that the Remaining Fee Estimate of the Receiver and Osler in connection with the completion by the Receiver of its remaining duties and administration of the receivership proceedings of the Debtor is hereby approved, and the Receiver and Osler shall not be required to pass their accounts in respect of any further activities in connection with the completion by the Receiver of its remaining duties and administration of the receivership proceedings of the Debtor.

DISTRIBUTIONS

7. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to make one or more distributions to Fiera from the proceeds of the sale transaction contemplated by the Sale Agreement as described in the First Report, subject to such holdbacks as the Receiver considers appropriate to fund the receivership, including its fees and the fees of its counsel.

8. **THIS COURT ORDERS** that the Receiver is hereby authorized to take all reasonably necessary steps and actions to effect the Distributions in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distributions.

TERMINATION AND DISCHARGE

9. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraph 7 hereof (the “**Distributions**”) and upon the filing by the Receiver of a certificate in form attached hereto as Schedule “A” (the “**Termination Certificate**”) certifying that it has made the Distributions, and to its knowledge all matters to be attended to in connection with the Debtor’s receivership proceedings, as determined by the Receiver, have been completed, the Receiver shall be discharged (the “**Receivership Termination Time**”) as Receiver of the Property, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership proceedings of the Debtor, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stay of proceedings in favour of KSV in its capacity as Receiver.

10. **THIS COURT ORDERS** that KSV is hereby released and discharged from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the

acts or omissions of KSV while acting in its capacity as Receiver of the Debtor, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, KSV 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 proceedings of the Debtor, save and except for any gross negligence or wilful misconduct on the Receiver's part.

11. **THIS COURT ORDERS** that, upon occurrence of the Receivership Termination Time, the style of cause in these proceedings shall be amended by removing the Debtor from list of Respondents.

GENERAL

12. **THIS COURT ORDERS** that notwithstanding anything else contained in this Order, each of the payments and distributions provided for in this Order shall be made free and clear of 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, including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by orders in the receivership proceedings of the Debtor; and (b) all charges, security interests, liens, trusts, or claims evidenced by registrations pursuant to the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended or any other personal property or real property registry system.

13. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and distributions pursuant to this Order shall be entitled to deduct and withhold from any such payment

or distribution such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

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

- (a) the pendency of these proceedings and receivership proceedings in respect of the Debtor;
- (b) any applications for a bankruptcy order issued pursuant to the BIA in respect of the Debtor and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

any payment or distributions made pursuant to this Order are final and irreversible and 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 BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any other foreign jurisdiction 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.

17. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are 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

TERMINATION 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. (“**KSV**”) 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, acquired for or used in relation to a business carried on by the Debtor, including the proceeds therefrom (the “**Property**”).
- B. Pursuant to an Order of this Court dated August ●, 2024 (the “**Distribution and Termination Order**”) among other things, KSV shall be discharged as the Receiver of the Property and the Debtor’s receivership proceedings shall be terminated upon the service of

this Termination Certificate on the service list in these receivership proceedings, all in accordance with the terms of the Distribution and Termination Order.

C. Unless otherwise indicated herein, defined terms have the meanings set out in Distribution Order and Termination Order.

THE RECEIVER CERTIFIES the following:

1. The Distributions contemplated at paragraph 7 of the Distribution and Termination Order have been made; and
2. To its knowledge all matters to be attended to in connection with the Debtor's receivership proceedings, as determined by the Receiver, have been completed.

ACCORDINGLY, the Receivership Termination Time as defined in the Distribution and Termination Order has occurred.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

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

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

Proceedings commenced in Toronto

DISTRIBUTION AND TERMINATION ORDER

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