

THE QUEEN'S BENCH
WINNIPEG CENTRE
in Bankruptcy and Insolvency

IN THE MATTER OF: **THE BANKRUPTCY OF K-STONE CONSTRUCTION INC.**

FILED MAR 14 2022

NOTICE OF MOTION
CIVIL UNCONTESTED LIST

HEARING DATE: Wednesday, April 6, 2022 at 10:00 a.m.

PITBLADO LLP
Barristers & Solicitors
2500 – 360 Main Street
Winnipeg, Manitoba
R3C 4H6

Catherine E. Howden / Eric N. Blouw

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(File No. 40452/4)

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TAKE NOTICE THAT Lazer Grant Inc., trustee of the estate of K-Stone Construction Inc., bankrupt, will make a motion before the presiding Judge on Wednesday, April 6, 2022, at 10:00 a.m. or so soon after that time as the motion can be heard, at the Law Courts, 408 York Avenue at Kennedy Street, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. an Order abridging the time for, and validating service of, this Notice of Motion and the materials filed in support thereof, and dispensing with further service thereof;

2. an Order directing that any materials, orders, notices or other correspondence related to this motion may be served on the interested parties by forwarding true copies thereof by electronic transmission or prepaid ordinary mail at their respective addresses as set out in the Service List that is attached hereto as Schedule "A", and that any such service or notice by electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing;

3. the advice and directions of this Honourable Court regarding the authority of Lazer Grant Inc., a Licensed Insolvency Trustee (the "**Trustee**"), to liquidate the strip mall known as "Oak's Plaza", located at 449 Main Street in the Town of Oakbank, Manitoba ("**Oak's Plaza**"), which property is an asset of the estate of The Oaks Limited Partnership, bankrupt (the "**Partnership**"), and, in particular, the advice and directions of this Honourable Court on the following issue:

Can the Trustee liquidate Oak's Plaza in accordance with the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), notwithstanding that the Trustee has not been nominated to act as liquidating trustee by two-thirds of the limited partners of the Partnership pursuant to Article V of the Partnership Agreement dated May 4, 1990 (the "**Partnership Agreement**")?

4. an Order directing that the Trustee and counsel to the Trustee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by this Honourable Court on the passing of accounts, out of the estate of K-Stone Construction Inc., bankrupt ("**K-Stone**"), or, in the alternative, out of the net sale proceeds arising from the sale of Oak's Plaza (the "**Sale Proceeds**");

5. should this Honourable Court order that the Trustee has authority to liquidate Oak's Plaza, an Order directing the Trustee to pay to the Office of the Superintendent in Bankruptcy, as an unpaid dividend, the share of the Sale Proceeds belonging to each of the Limited Partners (as defined below) who cannot be located by the Trustee using reasonable efforts;

6. costs of this motion; and

7. such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

8. sections 2, 34, 85, 136 and 192 of the *BIA*;

9. rules 6 and 11 of the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368;

10. K-Stone is the general partner of the Partnership;
11. in addition to K-Stone (as general partner), the Partnership consists of 25 limited partners (the "**Limited Partners**");
12. K-Stone filed an assignment in bankruptcy on February 4, 2022;
13. upon the bankruptcy of K-Stone, as general partner of the Partnership, the property of the Partnership vested in the Trustee;
14. the affairs of the Partnership are governed by the Partnership Agreement;
15. the estimated value of Oak's Plaza, as at December 31, 2020, was \$1,818,362;
16. as of February 4, 2022, the Partnership had liabilities in the total approximate amount of \$2,069,534.97, the largest of which liabilities is its indebtedness to the Limited Partners;
17. Article V of the Partnership Agreement sets out a procedure for the liquidation of the Partnership's assets upon the dissolution of the Partnership, and, in particular, provides that:
 - (a) the Partnership will automatically be dissolved upon the bankruptcy of K-Stone;
 - (b) on the dissolution of the Partnership, a liquidating trustee shall sell the properties of the Partnership and, after paying or making provision for the payment of the debts of the Partnership, the remaining proceeds shall be distributed to the Limited Partners in proportion to their respective capital contributions to the Partnership; and
 - (c) the liquidating trustee is to be nominated by two-thirds of the Limited Partners;

18. the Trustee is prepared to liquidate Oak's Plaza in a commercially reasonable manner and in accordance with the *BIA*, to maximize recovery for all creditors of the Partnership, including the Limited Partners;
19. the Trustee has provided notice and a request for liquidation approval to the Limited Partners, but has received only a few responses thereto;
20. the Trustee has not been nominated to act as liquidating trustee by two-thirds of the Limited Partners in accordance with Article V of the Partnership Agreement;
21. the Limited Partners will not suffer prejudice in the event that the relief sought herein is granted, and, in fact, will benefit from the proposed liquidation by the Trustee, under court supervision, of Oak's Plaza;
22. despite reasonable efforts, the whereabouts of several of the Limited Partners is unknown;
23. the Service List is lengthy and none of the Limited Partners live in the Province of Manitoba, making personal service and service by registered mail onerous and costly, and therefore to the detriment of the Partnership's stakeholders, including the Limited Partners, who constitute the largest group of the Partnership's creditors;
24. service by electronic transmission or prepaid ordinary mail is a just, fair, efficient and expeditious manner for effecting service; and
25. such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

26. the Affidavit of Cathie Gowryluk affirmed February 10, 2022;

27. the Affidavit of Collin LeGall affirmed February 10, 2022;
28. the Affidavit of Faye Monaghan sworn February 14, 2022;
29. the Supplementary Affidavit of Collin LeGall affirmed March 9, 2022; and
30. such further and other evidence as counsel may advise and this Honourable Court may permit.

March 14, 2022

PITBLADO LLP
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Catherine E. Howden / Eric N. Blouw
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TO: SERVICE LIST ATTACHED

Schedule "A"

File No. BK 22-01-05989

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SERVICE LIST AS OF MARCH 14, 2022

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SERVICE LIST

<u>PARTY AND LAST KNOWN ADDRESS</u>	<u>EMAIL ADDRESS</u>
K-Stone Construction Inc. 200 - 449 Main Street Oakbank, MB R0E 1J2 c/o Susan DeLuca	sdeluca@tgkauto.com
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