

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

WAYGAR CAPITAL INC., as agent for NINEPOINT CANADIAN SENIOR
DEBT MASTER FUND L.P.

Applicant

and

QUALITY RUGS OF CANADA LIMITED, MALVERN CONTRACT
INTERIORS LIMITED, WESTON HARDWOOD DESIGN CENTRE INC.,
ONTARIO FLOORING LTD., TIMELINE FLOORS INC. and QUALITY
COMMERCIAL CARPET CORPORATION

Respondents

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF QUALITY RUGS OF CANADA LIMITED AND
OTHER COMPANIES LISTED IN SCHEDULE "A" HERETO

**FACTUM OF ALVAREZ & MARSAL CANADA SECURITIES ULC
(Motion for Payment of Fees and Expenses Returnable October 15, 2024)**

October 11, 2024

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Lawyers for Alvarez & Marsal Canada Securities
ULC

TO: **Service List**

PART I - INTRODUCTION

1. Alvarez & Marsal Canada Securities ULC (“**Alvarez**”) brings this motion for payment of its work fee for September and October 2023, and for its reasonable expenses, as provided for in the Engagement Letter dated February 1, 2024. Alvarez’s fees and expenses are protected under an Administration Charge that the Monitor is seeking to terminate on a motion to be heard together with this motion, so it is appropriate for Alvarez to be paid the amounts owed before that relief is granted.

PART II - SUMMARY OF FACTS

A. QSG Engages Alvarez to Act as Its Financial Advisor in February 2023

2. In February 2023, the Applicants (“**QSG**”) entered into an engagement letter with Alvarez to retain Alvarez to act as its financial advisor with respect to evaluating and pursuing a potential financial transaction, restructuring transaction, or sale transaction (the “**Engagement Letter**”).¹

3. Among other things, the Engagement Letter provided for compensation to Alvarez in the form of a monthly work fee in the amount of \$50,000 per month for the first three months and \$40,000 per month thereafter.²

4. In addition to the work fee, the Engagement Letter provided for payment of Alvarez’s out-of-pocket expenses reasonably incurred in connection with the matters contemplated by the agreement, including, without limitation, reasonable fees of counsel. QSG is obligated to pay

¹ Engagement Letter dated February 1, 2023 (“**Engagement Letter**”); Alvarez Motion Record (“**MR**”), Tab 2-A, p. 17.

² Engagement Letter, section 2(a); MR, Tab 2-A, p. 22.

expenses regardless of whether or not any transaction contemplated by the Engagement Letter was proposed or consummated.³

5. The Engagement Letter also included indemnity provisions that confirm, among other things, that QSG indemnified Alvarez for its legal fees incurred to enforce the Engagement Letter:

QSG agrees to indemnify and hold harmless each of A&M, its affiliates and their respective shareholders, managers, members, employees, agents, representatives and subcontractors (each, an "Indemnified Party" and collectively, the "Indemnified Parties") against any and all losses, claims, damages, liabilities, penalties, obligations, disbursements and expenses, including the costs (fees and disbursements) for counsel or others (including employees of A&M, based on their then current hourly billing rates) in investigating, preparing or defending any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing the Agreement (including these indemnity provisions), as and when incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Indemnified Parties' acceptance of or the performance or nonperformance of their obligations under the Agreement; provided, however, such indemnity shall not apply to any such loss, claim, damage, liability or expense to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from such Indemnified Party's gross negligence or willful misconduct.⁴

B. Alvarez's Work Fee and Disbursements Protected by Administration Charge

6. In August 2025, this Court granted an Initial Order placing QSG under the protection of the CCAA. The Initial Order was granted on August 25, 2024, and an amended and restated Initial Order ("ARIO") was granted on September 5, 2024.

³ Engagement Letter, s. 2(b); MR, Tab 2-A, p. 23.

⁴ Engagement Letter, Exhibit A; MR, Tab 2-A, p. 30.

7. Under paragraph 29 of the Initial Order and the ARIO, Alvarez was appointed as the “Financial Advisor” to the Applicants to continue to act in accordance with the terms of the Engagement Letter, and the retention of Alvarez under the terms of the Engagement Letter were approved by the Court without limitation.

8. Paragraph 38 of the Initial Order and the ARIO provides:

THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicants’ counsel **and the Financial Advisor (in respect of their monthly fees and expenses as set out in the A&M Engagement Letter)** shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, other than the Borrower’s Account, which charge shall not exceed an aggregate amount of \$750,000, **as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter**, for the period from and after August 18, 2023 in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof. [Emphasis added.]

C. Alvarez’s September and October Work Fees Invoices but Not Paid

9. In accordance with the terms of the Initial Order and ARIO, Alvarez continued to provide financial advisor services to the Applicants in September and October 2023. It delivered two invoices to the Applicants on account of its \$40,000 work fee for those months.⁵

10. The Applicants have not paid the invoices, which remain due and owing to Alvarez.

⁵ MR, Tab 2-B, p. 34.

D. Alvarez Incurs Legal Expenses in Connection with its Engagement

11. In addition to the unpaid work fees, from August to October 2023, Alvarez incurred approximately \$60,000 in legal expenses in connection with its engagement. It seeks compensation for a reasonable amount of these expenses on this motion.⁶

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

12. Alvarez is seeking payment of amounts owing to it pursuant to this Court's Orders. It accepted the appointment as Financial Advisor pursuant to an Order that included protection of its work fees and expenses, as provided for in the Engagement Letter, which was approved by this Court without limitation.

13. The amounts owed to Alvarez are protected by the Administration Charge, but the Monitor's motion proposes to terminate that charge. If the charge is terminated before Alvarez is paid its fees and reasonable expenses, it will be deprived of the security that was granted to it at the outset of this proceeding as a condition of its appointment.

14. No party can claim to be prejudiced by a Court Order requiring the Receiver to pay amounts owed to Alvarez pursuant to earlier Orders of this Court in the same proceeding. The work fees and expenses were incurred in good faith and should be paid before the Administration Charge is terminated.

PART IV - ORDER REQUESTED

15. For the foregoing reasons, Alvarez respectfully asks this Court to grant an Order:

⁶ The invoices supporting these expenses are at MR, Tab 2-C, p. 37.

- (a) Abridging the time for service and filing of its motion record;
- (b) Directing the Receiver to pay Alvarez its September and October 2023 accounts in the amount of \$90,400; and
- (c) Directing the Receiver to pay Alvarez its reasonable expenses incurred, in an amount determined by this Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of October, 2024.



Andrew Winton

October 11, 2024

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Court File No. CV-23-0703933-00CL

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PROCEEDING COMMENCED AT TORONTO

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