Court File No.: CV-23-00703933-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicants

WRITTEN SUBMISSIONS OF RSM CANADA LIMITED, IN ITS CAPACITY AS MONITOR OF THE APPLICANTS

JANUARY 4, 2024

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1. On December 7, 2023, a hearing was conducted in these proceedings to determine a priority dispute principally between Ironbridge Equity Partners Management Limited ("**Ironbridge**"), in its capacity as the DIP Lender these proceedings, and a group of suppliers to the Applicants (collectively, the "**Suppliers**"). The essence of the hearing was whether the trust claims which the Suppliers wish to assert under the *Construction Act* (or similar legislation in other provinces) would take priority over the DIP Lender's Charge.

2. On December 11, 2023, Justice Penny issued an endorsement noting, among other things, that the Suppliers had in their reply factum and in oral argument relied on an argument that the Initial Order and the ARIO did not include "trusts" in the list of QSG's property to which the DIP Lender's Charge and the other charges would apply. Justice Penny also noted that there was no evidence about why that word was not included in the charging provisions of paragraph 47 of the Initial Order or the ARIO.

3. Accordingly, Justice Penny specifically sought input from the Monitor and its counsel on this issue because of their involvement. In particular, Justice Penny was interested to understand the intentions of the parties and how that word was removed from the form of the Model Order.

4. In response, the Monitor issued its Fifth Report dated December 15, 2023 (the "**Fifth Report**"), recounting the history of what became paragraph 47 of the Initial Order and the ARIO, in light of the manner in which the case unfolded. Thereafter, further evidence was submitted on behalf of Ironbridge, the former directors and officers of the Applicants, Alvarez & Marsal Canada, and the Suppliers.

5. In essence, the removal of the word "trusts" from paragraph 47 of the Initial Order and the ARIO was an oversight due to the manner in which these proceedings evolved between August 4, 2023 and August 25, 2023 and the incredible time pressures faced by all of the stakeholders in trying to respond in real time.

6. The removal of that word was never negotiated with Ironbridge or any other party, and was initially done as what might be considered a temporary measure in reliance on the cash expected to be in the Applicants' bank accounts, with the issue to be dealt with later on any motion to approve DIP funding.[1] That it was not picked up for the August 25, 2023 hearing is the result of the deal to move forward with Ironbridge developing late, the ensuing rush to finalize documents, and the real time, evolving nature of that hearing.

7. Notably, no blackline to the Model Order was ever provided to the Service List ahead of or during the August 25, 2023 hearing, and the removal of the word "trusts" from paragraph 47 was not brought to the attention of Justice Penny at the hearing.[2]

8. At no point in any discussions or negotiations which the Monitor or its counsel had with either Ironbridge or QSG was there ever a discussion or agreement that the DIP loan would not have priority over all manner of contractual or statutory security, liens or trusts. Frankly, those discussions were

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[1] Fifth Report of the Monitor dated December 15, 2023 [*Fifth Report*], Paragraph 23 [E1254:E205].

[2] Fifth Report, Paragraph 40 [E1258:E209].

premised on the basis that all of the Charges would seek to have priority over those types of interests.[3] At that time, all of the beneficiaries of the Charges were aware that the principal source of recovery for them under any Charge would be collections from accounts receivable. The word "trusts" should have been re-inserted.[4]

9. Very few comments on the Initial Order were received from any parties prior to the Comeback Hearing. Limited comments were made by Ironbridge and all but one (1) were effected. There were also requests for comments from the Suppliers. None of those comments involved the fact that the word "trusts" was missing from the charging language of paragraph 47.[5]

10. As noted in paragraph 45 of the Fifth Report, most of the comments from the supplier community related to their concerns about the lien regularization process and the deficiencies with it in the Initial Order. One of those emails was sent on September 4, 2023 by counsel to the Suppliers to counsel for the Monitor. That email string, including the exchange of emails amongst counsel, is fully set out in Exhibit "A" to the affidavit of John Pacione sworn on December 20, 2023, on behalf of the former officers and directors of the Applicants. The original email from counsel to the Suppliers is also excerpted in the affidavit of Pierre Champagne affirmed on December 20, 2023 (the "**Champagne Affidavit**").

11. The September 4 email referred to in the Champagne Affidavit specifically addressed 2 paragraphs of the Initial Order relating to lien regularization issues and the approach to liens. The third item in that email referenced the Court of Appeal decisions in *The Guarantee Company of North America v Royal Bank of Canada* and in *Urbancorp Cumberland 2 GP Inc*., noted that those decisions confirmed that *Construction Act* trusts could survive an insolvency filing, and then asked for confirmation that the

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[3] Fifth Report, Paragraph 42 [E1259:E210].

[4] Fifth Report, Paragraph 43 [E1259:E210].

[5] Fifth Report, Paragraphs 45 – 47 [E1259:E210 to E160:E211].

Applicants were not seeking to frustrate *Construction Act* trusts in the CCAA proceedings. Specifically, the email says "I would like to confirm that nobody is suggesting that the Initial Order does away with *Construction Act* trusts, and that if anyone wants to take the position that a *Construction Act* trust is not applicable they are not going to rely on the ARIO to say that the question is *res judicata*".

12. The Monitor's counsel responded to that request in the September 4 email by confirming that there was no intention to do anything to adversely affect the ability of suppliers to assert trust claims, such as they may be. That confirmation was not intended to address priorities as the Champagne Affidavit suggests, but rather was only intended to confirm that trusts could be asserted in the CCAA proceedings

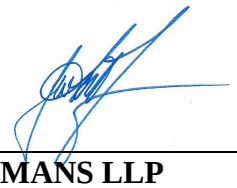
13. The final point raised in the above-referenced September 4 email from counsel for the Suppliers was to acknowledge that the Monitor had advised that it was working on a draft Lien Regularization Order ("**LRO**") following the Carillion precedent, to ask for a draft thereof and to ask that the process to seek same be expedited. In fact, all of the emails between counsel for the Suppliers and for the Monitor in the chain leading up to the above-referenced September 4 email from the Suppliers' counsel were directed exclusively at the LRO and how it would be formulated.

14. The response from the Monitor's counsel to that email in fact clarified that a draft LRO would be circulated as soon as possible. Consistent with the Carillion precedent, any such LRO would ascribe lien or other charge rights in favour of the suppliers, and ascribe a priority thereto. Accordingly, the Monitor's focus in terms of the priorities of claims was on the drafting of the LRO, and not this email exchange with counsel for the Suppliers.

15. In that regard, it is the Monitor's position that, since the suppliers to the Applicants have had their lien rights affected by these CCAA proceedings, they should receive the benefit of a charge which provides for the possibility of a tangible recovery to them (subject to them proving their claims). However,

the Monitor is of the view that such a charge should not be in priority to the existing Charges in the Initial Order or the ARIO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4th DAY OF JANUARY, 2024.



GOODMANS LLP

Schedule "A" – Other Applicants

A.1 QSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

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Proceeding commenced at Toronto

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