

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
TDB ADVISORY LIMITED, IN ITS CAPACITY AS
MONITOR OF THE APPLICANTS**

MARCH 22, 2024

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(formerly RSM Canada Limited), in its capacity
as Monitor of Quality Rugs of Canada and the
other companies listed in Schedule A attached
hereto, and not in its personal or corporate
capacity

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TDB RESTRUCTURING LIMITED, IN ITS CAPACITY AS
MONITOR OF THE APPLICANTS**

Name of Monitor

1. Pursuant to the August 25, 2023 Initial Order in these proceedings and the CCAA, RSM Canada Limited was appointed as monitor (the “**Monitor**”) of the Applicants. On February 1, 2024, the name RSM Canada Limited (“**RCL**”) was changed to TDB Restructuring Limited (“**TDB**”). On March 1, 2024, the Court granted an order (the “**Omnibus Order**”) substituting the name TDB for RCL. A copy of the Omnibus Order is attached as **Appendix “A”** to these submissions. Accordingly, references herein to the Monitor shall mean references to TDB, in its capacity as the Court-appointed Monitor of the Applicants.

Submissions

2. 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.

3. Justice Penny issued an endorsement dated December 7, 2023 noting, among other things, that the Suppliers had in their reply factum and in oral submissions 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.

4. 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.

5. 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 ("**A&M**"), and the Suppliers.

6. Following the delivery of those materials, Justice Penny released an endorsement on January 16, 2024, summarizing the additional materials filed, and noting that "the issues raised by the Monitor and the charge beneficiaries are really more about rectification than interpretation" of the Initial Order and the ARIO.¹ Justice Penny then invited those parties to bring motion to that effect within 10 Business Days if they wished to pursue that relief.²

¹ [Paragraph 6, January 16, 2024 endorsement of Justice Penny.](#)

² [Paragraph 8, January 16, 2024 endorsement of Justice Penny.](#)

7. Thereafter, on January 30, 2024, each of Ironbridge, the former directors and A&M served and filed motions seeking rectification to read the word “trusts” into paragraph 47 of the Initial Order and the ARIO (among other relief).

8. On February 14, 2024, the Suppliers filed materials responding to those motions, effectively stating that the Suppliers relied on the lack of the word “trusts” in paragraph 47 of the Initial Order and the ARIO. One of the affidavits so circulated was the Affidavit of Pierre Champagne sworn on December 20, 2023 (the “**Champagne Affidavit**”), to say that the lack of that word together with an email exchange on September 4, 2023 left him to believe that “*Construction Act* trusts would not be subordinated to the court ordered charges”.³

9. The Monitor repeats and relies upon the Fifth Report and its written submissions dated January 4, 2024 (the “**Prior Submissions**”), which are collectively to the effect that the removal of the word “trusts” from paragraph 47 of the Initial Order and the ARIO was an error and was not the result of an intentional decision or a negotiation with Ironbridge or others. Rather, it was the result of circumstances and time pressures identified in the Fifth Report and the Prior Submissions.

10. The Monitor is troubled by the statements made and the positions taken by certain of the Suppliers in connection with this issue.

11. In the Champagne Affidavit, Mr. Champagne relies on an email string from September 4, 2023 to reach a conclusion which the Monitor has previously debunked in both its Fifth Report and the Prior Submissions. In that regard, perhaps the most telling point is the contrast between Mr. Champagne’s statement in paragraph 11 of the Champagne Affidavit (that he took that email and the lack of the word

³ Paragraph 11, Champagne Affidavit [[F1756:F1127](#)].

“trusts” in paragraph 47 of the Initial Order and the ARIO to mean that the Suppliers’ trust claims had priority over the court ordered charges) and two simple, undisputed facts.

12. First, in the Suppliers’ initial motion for the December 7 hearing seeking priority over the DIP lender and other charges, they did not rely on this stated position as the basis for the relief. In fact, the Suppliers did not take this position until they had to respond to a constitutional question regarding the priority of their claims and the DIP. If the Suppliers had, in fact, believed from the outset that their trust claims were not subordinated to the Court ordered charges, they would have clearly relied on that position, and presumably would have sought a declaration that their trust claims were not subordinated to the charges. Instead, the relief they sought was the creation of a Lien and Trust Charge in priority to all charges other than those protecting the Monitor and the Court appointed Receiver.⁴

13. Second, despite literally weeks of negotiations and discussions between counsel for the Company, the Monitor, Ironbridge and the Suppliers over a proposed form of Lien Regularization Order (“**LRO**”), the Suppliers never once raised this position. While the specific content of those discussions was without prejudice and is not being disclosed here, we know this to be true because, had they at any point made that position known to the Company, Ironbridge or the Monitor, a rectification motion would have been immediately brought. The Monitor would have supported any such motion for rectification for the reasons set out in the Fifth Report and the Prior Submissions.

14. In that regard, the Monitor wishes to remind the Court of its comments in paragraph 18(d) of the Monitor’s Third Report dated October 30, 2023 (the “**Third Report**”). In outlining at a high level what the LRO proposed to do, the Monitor notes that one of the purposes of the proposed LRO was to “create a court ordered charge which would *provide for the possibility of a tangible recovery to be available for lien and trust claimants*, subject to the determination of their claims in the claims process”. Furthermore,

⁴ Amended Notice of Motion of Suppliers dated November 22, 2023[F636:F7].

paragraph 19 of the Third Report stated that negotiations failed over the quantum of the amount to be made available to lien and trust claimants. The combined effect of these statements is that all parties recognized that a charge in favour of the Suppliers' lien and trust claims would have been required in order to provide for tangible recoveries on those claims.

15. In the Monitor's view, had the Suppliers truly believed the positions set forth in the Champagne Affidavit and in their other recent materials, there would have been no need for a charge to secure payment of trust claims. As well, given the Company's clarity with the Court and with stakeholders throughout the CCAA proceedings that it was using cash as and when received to pay for ongoing supplies and services, if the Suppliers truly believed that their trust claims were outside of the Court ordered charges, they would undoubtedly have sought the Court's assistance to prevent incoming funds from being so used.

16. Put another way, had the Suppliers truly believed this position from September 4, 2023 as they suggest, and made that position clear to the Court and all parties from the beginning, the issue would have been raised and dealt with at the outset of the case, not after the DIP loan had been fully advanced by Ironbridge and spent by the Company in an effort to conclude a transaction to assist all parties, including the Suppliers.

17. In conclusion, the Monitor submits that this is a case in which a rectification of the Initial Order and the ARIO is entirely appropriate. For all of the foregoing reasons, the Monitor respectfully supports the motions brought by each of Ironbridge, the former directors and A&M.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22nd DAY OF MARCH, 2024.



GOODMANS LLP

APPENDIX "A"
(see attached)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM) FRIDAY, THE 1ST
JUSTICE CONWAY) DAY OF MARCH, 2024

B E T W E E N:

TDB RESTRUCTURING LIMITED

Applicant

and

RSM CANADA OPERATIONS ULC

Respondent

APPLICATION UNDER Rule 14.05(3)(h) of the *Rules of Civil Procedure*

SUBSTITUTION ORDER

THIS APPLICATION made by TDB Restructuring Limited (“**TDB**”) for an order, among other things, substituting the name of RSM Canada Limited with the name TDB Restructuring Limited on the Substituted Mandates (as defined below), was heard this day by way of judicial video conference in Toronto, Ontario by Zoom videoconference

ON READING the Application Record of TDB, including the Affidavit of Bryan A. Tannenbaum sworn February 27, 2024, together with the exhibits attached thereto (the “**Affidavit**”), and on hearing the submissions of counsel for TDB, no one else appearing, although served as evidenced by the Affidavit of Service of Lynda Christodoulou sworn February 28, 2024

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

BIA MANDATES

2. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Trustee in Bankruptcy (the “**Bankruptcy Trustee**”) of the estate files listed as bankruptcies on Schedule “A” hereto (the “**BIA Estates**”) and as Proposal Trustee (the “**Proposal Trustee**”) of the estate files listed as proposals on Schedule “A” hereto (collectively with the BIA Estates, the “**BIA Mandates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such BIA Mandates or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

3. **THIS COURT ORDERS** that, for greater certainty all, real and personal property wherever situate of the BIA Estates shall be, remain and is hereby vested in TDB Restructuring Limited in its capacity as Bankruptcy Trustee, to be dealt with by TDB Restructuring Limited in accordance with the provisions of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), pursuant to its powers and obligations as Bankruptcy Trustee of the BIA Estates.

4. **THIS COURT ORDERS** that TDB Restructuring Limited is authorized and directed to continue and to complete the administration of the BIA Mandates, to deal with the property in the BIA Mandates in accordance with its duties and functions as Bankruptcy Trustee or Proposal Trustee, as the case may be, as set out in the BIA and to receive all remuneration of the Bankruptcy Trustee or Proposal Trustee in the BIA Mandates for services performed from the commencement of each of the BIA Mandates until the discharge of the Bankruptcy Trustee or Proposal Trustee, as applicable.

5. **THIS COURT ORDERS** that that the requirement and responsibility for taxation of the Bankruptcy Trustee’s or Proposal Trustee’s accounts in respect of the BIA Mandates with respect to all work performed in respect of such BIA Mandate from the initial appointment of RSM Canada Limited or any other party, through to the completion of the administration of such BIA Mandates and discharge of TDB Restructuring Limited as Bankruptcy Trustee or Proposal Trustee, as applicable, shall be completed using the name TDB Restructuring Limited.

6. **THIS COURT ORDERS AND DIRECTS** that to the extent that security has been given in the name of RSM Canada Limited in cash or by bond of a guarantee company pursuant to section 16(1) of the BIA (the “**Security**”), such Security shall be transferred from the name RSM Canada Limited to the name TDB Restructuring Limited and any party holding such Security be and is hereby directed to take all steps necessary to effect such transfer. TDB Restructuring Limited shall retain all obligations respecting the Security.

RECEIVERSHIP PROCEEDINGS

7. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as the Receiver, Receiver and Manager, or Interim Receiver (collectively, “**Receiver**”) in respect of the mandates listed in Schedule “B” hereto (the “**Receivership Proceedings**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such Receivership Proceedings or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

CCAA PROCEEDINGS

8. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Monitor of the estate files listed as CCAA restructuring proceedings on Schedule “C” hereto (the “**CCAA Estates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such mandates (the “**CCAA Mandates**”) or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

ESTATE TRUSTEE DURING LITIGATION PROCEEDINGS

9. **THIS COURT ORDERS** that: (i) the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” hereto; and (ii) the name Bryan A. Tannenbaum of TDB Restructuring Limited be and is hereby substituted in place of the name Bryan A. Tannenbaum of RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” (collectively, the “**Estate Mandates**”), and any reference to the name RSM Canada Limited in any Court Order in respect of such Estate Mandates or any

schedule to such Court Order shall be replaced by the name TDB Restructuring Limited. Collectively, the BIA Mandates, the Receivership Proceedings, the CCAA Mandates and the Estate Mandates are referred to herein as the “**Substituted Matters**”).

SUBSTITUTED MANDATES

10. **THIS COURT ORDERS** that TDB Restructuring Limited (and its directors, officers, employees, agents, legal counsel and other representatives, as applicable) will continue to have all rights, benefits, protections and obligations granted to RSM Canada Limited (and its legal counsel and representatives, as applicable) under any order made in the Substituted Mandates or any statute applicable to the Substituted Mandates or any contract or agreement to which TDB Restructuring Limited is party under the name RSM Canada Limited in the Substituted Mandates. For greater certainty and without limitation, this includes the benefit of any indemnity, charge or priority granted in the Substituted Mandates and relief from the application of any statute including the Personal Information Protection and Electronic Documents Act (Canada) (“**PIPEDA**”).

11. **THIS COURT ORDERS** that to the extent required by the applicable Orders in the Substituted Mandates, the accounts of RSM Canada Limited and its legal counsel in respect of the Substituted Mandates shall be passed in accordance with the applicable Orders in the Substituted Mandates in the name and on the application of TDB Restructuring Limited.

ACCOUNTS

12. **THIS COURT ORDERS** that TDB Restructuring Limited be and is hereby authorized to transfer any and all accounts from the name RSM Canada Limited to the name TDB Restructuring Limited and, if the name on such accounts cannot be changed, to transfer all funds that remain in its trust bank accounts that belong or relate to the Substituted Mandates, or otherwise, to accounts in the name TDB Restructuring Limited, and TDB Restructuring Limited be and is hereby authorized to take all steps and to execute any instrument required for such purpose. Any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of

this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

13. **THIS COURT ORDERS AND DIRECTS** that TDB Restructuring Limited be and is hereby authorized to endorse for deposit, deposit, transfer, sign, accept or otherwise deal with all cheques, bank drafts, money orders, cash or other remittances received in relation to any of the Substituted Mandates where such cheques, bank drafts, money orders, cash or other remittances are made payable or delivered to the name TDB Restructuring Limited, in relation to the same, and any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

GENERAL

14. **THIS COURT ORDERS** that this Order shall be effective in all judicial districts in Ontario which govern any of the Substituted Mandates.

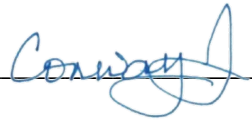
15. **THIS COURT ORDERS** that the requirement for a separate Notice of Motion and supporting Affidavit to be filed in the Court file of each of the Substituted Mandates be and is hereby waived.

16. **THIS COURT ORDERS** that TDB Restructuring Limited shall notify the parties on the Service Lists of the Substituted Mandates (if applicable) of the new website established for such Substituted Mandate and shall post a copy of this Order to the website of each Substituted Mandate and that such notice shall satisfy all requirements for service or notification of this motion and this Order on any interested party in the Substituted Mandates including, without limitation, proven creditors within the BIA Mandates, parties on the Service Lists of the Substituted Mandates (if applicable), the applicable bankrupts or debtors within the Substituted Mandates, and any other person, and any other requirements of service or notification of this motion be and is hereby waived.

17. **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 TDB Restructuring Limited 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 TDB Restructuring Limited as may be necessary or desirable to give effect to this Order, or to assist TDB Restructuring Limited and its agents in carrying out the terms of this Order.

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



Schedule "A": BIA Mandates

Bankruptcies

	Name	Estate Number
1.	Carrington Homes Limited	31-457618
2.	Fernicola, George	31-457619
3.	D. Mady Investments Inc.	31-2281994
4.	Eco Energy Home Services Inc.	31-2502463
5.	Ontario HVAC & Water Inc.	31-2613545
6.	2305992 Ontario Inc.	31-2655918
7.	Fernwood Developments (Ontario) Corporation	31-2661061
8.	Legal Print and Copy Incorporated	31-2884436
9.	Commerce Copy Incorporated	31-2884438
10.	TDI-Dynamic Canada, ULC	31-2903815
11.	Limestone Labs Limited	31-2907613
12.	2465409 Ontario Inc.	31-2939766
13.	Creative Wealth Media Finance Corp.	31-3003083
14.	Knight-Pro Inc.	31-3013900
15.	Ulmer, Blair	32-159136

Division 1 Proposals

	Name	Estate Number
1.	Vaughn Mills Packaging Ltd.	31-2895096
2.	RLogistics Limited Partnership	31-3040679
3.	RLogistics Inc.	31-3042209
4.	1696308 Ontario Inc.	31-3042213

Schedule "B": Receivership Proceedings

Name	Court / OSB Number
1. Z. Desjardins Holdings Inc.	CV-23-00706607-00CL
2. 485, 501 and 511 Ontario Street South, Milton, ON	CV-23-00696349-00CL
3. Eco Energy Home Services Inc.	CV-19-614122-00CL
4. 3070 Ellesmere Developments Inc.	CV-19-00627187-00CL
5. Fernwood Developments Ontario Corporation	CV-20-00635523-00CL
6. Utilecredit Corp.	CV-20-00636417
7. 134, 148, 152, 184/188, 214, 224 and 226 Harwood Avenue, Ajax, ON	CV-20-00651299-00CL
8. Greenvilla (Sutton) Investment Limited (private receivership)	31-459273
9. 2088556 Ontario Inc. (private receivership)	31-459274
10. 935860 Ontario Limited (private receivership)	31-459275
11. Areacor Inc.	CV-22-00674747-00CL
12. Limestone Labs Limited and CleanSlate Technologies Incorporated (private receivership)	31-459498
13. 12252856 Canada Inc.	CV-22-00691528-00CL
14. Harry Sherman Crowe Housing Co-operative Inc.	CV-22-00688248-00CL
15. Richmond Hill Re-Dev Corporation	CV-23-00695238-00CL
16. Stateview Homes (Hampton Heights) Inc.	CV-23-00700356-00CL
17. 142 Queenston Street, St. Catharines, ON	CV-23-00705617-00CL
18. 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, ON	CV-23-00701672-00CL
19. 311 Conacher Drive, Kingston, ON	CV-23-00701672-00CL
20. Real Property owned by King David Inc.	CV-23-00710411-00CL
21. CBJ Developments Inc. et al.	CV-23-00707989-00CL
22. 25 Neighbourhood Lane, Etobicoke, ON M8Y 0C4	31-459784

Schedule "C": CCAA Proceedings

Name	Court Number
1. Quality Sterling Group, comprising Quality Rugs of Canada Ltd., Timeline Floors Inc., Ontario Flooring Ltd., Weston Hardwood Design Centre Inc., Malvern Contact Interiors Ltd., Timeline Floor Inc. Ontario Flooring Ltd. Weston Hardwood Design Centre Inc. Malvern Contract Interior Limited Quality Commercial Carpet Corporation Joseph Douglas Pacione Holding Ltd. John Anthony Pacione Holding Ltd. Jopac Enterprises Limited, and Patjo Holding Inc.	CV-23-00703933-00CL

Schedule "D": Estate Trustee During Litigation Proceedings

Name	Court Number
1. The Estate of Sarah (Sue) Turk *	01-3188/14
2. The Estate of Sarah (Sue) Turk *	05-35/14
3. The Estate of Lev Alexandr Karp – <i>discharge</i> <i>pending</i>	05-100/17 05-265/17
4. The Estate of Peter Trezzi	01-4647/16
5. The Estate of Florence Maud Anderson *	05-159/19
6. Estate of Murray Burke	2988/19
7. Estate of Robert James Cornish	CV- 23-00693852-00ES
8. Estate of Anne Takaki *	CV-22-00011105-00ES
9. Estate of John Takaki *	CV-22-00011105-00ES
10. Estate of James Frederick Kay **	06-006/14
11. Klaczkowski Family Trust **	CV-21-00659498-00ES
12. Estate of Ethel Ailene Cork **	CV-23-00710309-00ES
13. Estate of Justin Milton Cork **	CV-23-00710291-00ES

* In the name of Bryan A. Tannenbaum of RSM Canada Limited.

** In the name of Bryan A. Tannenbaum only.

TDB RESTRUCTURING LIMITED

and

RSM CANADA OPERATIONS ULC

Court File No. CV-24-00715515-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

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Lawyers for the Applicant

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.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**WRITTEN SUBMISSIONS OF THE
MONITOR**

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Lawyers for TDB Restructuring Limited, in
its capacity as Monitor of the Applicants