

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

B E T W E E N :

**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 LIMITED AND THE OTHER COMPANIES
LISTED IN SCHEDULE "A" HERETO (THE "APPLICANTS")**

**AFFIDAVIT OF GRAHAM WILLIAMSON
(Sworn SEPTEMBER 22, 2023)**

I, Graham Williamson of the City of Toronto, in the Province of Ontario,
SOLEMNLY AFFIRM AND DECLARE:

1. I am General Counsel to LIUNA Local 183 and am employed on an in-house basis. In this position I am responsible for amongst other things retaining, supervising and instructing counsel and as such have knowledge of the matters to which I hereinafter depose. Where the facts set out in this Affidavit are based on information provided to me by others, I have set out the source of the information in my affidavit and verily believe it to be true.

2. I swear this affidavit further to my September 19, 2023 affidavit and continue all the abbreviations therein. This affidavit is sworn to response to the affidavit of John Paccione, sworn September 21, 2023 (the "**September 21 Paccione Affidavit**") and the Second Report to the Court of the Monitor, dated September 21, 2023 (the "**Second Report**"). I understand these were served at 6:22 pm and 7:15 pm on September 21, 2023, returnable the next morning.

3. This affidavit is prepared on short notice. Unless otherwise expressly admitted, the Union does not admit any of the allegations in the Paccione Affidavit or the Second Report.

4. I am concerned about the tone, misstatements and mischaracterizations throughout the September 21 Paccione Affidavit and the Second Report; and the self-admitted breach of without prejudice discussions by Mr. Paccione and the Monitor.

5. They appear to be done to strong-arm the Union into remaining silent, not pursue the \$97,000 Holdbacks owed to tradespeople (which were earned by the workers, held back from their pay by QSG, used by QSG to secure post-filing work, and supposed to be held in trust), and not pursue remedies for apparent breach of trust by QSG and its directors.

6. They also appear to be an attempt to manufacture arguments that the Union has not acted in good faith.

7. Worse yet, the Company literally seeks an Order allowing it to send a letter under the Union's letterhead. If granted, a court would be sanctioning an employer to speak as the Union. This is deeply troubling. This violates Charter Rights of freedom of association; and freedom of thought, belief, opinion and expression.

8. Simply put, if contractors are failing to pay QSG without valid reason, they should seek redress against those companies, not the Union.

9. At paragraphs 35 to 59 of my September 19, 2023 affidavit, I set out in detail the chronology of events, along with voluminous supporting documents. In contrast, in his affidavit, Mr. Paccione relies on pure speculation, and provides virtually nothing by way of corroborating documents. The Monitor seems to rely on this speculation.

Correction of Selected Misstatements and Mischaracterizations

a) QSG failed to respond to the Union

10. As set out in greater detail in my September 19, 2023 affidavit, the Union learned on August 14, 2023 that QSG had brought an application for CCAA protection and there was a competing Receivership Application by Waygar. This only occurred because a contractor association sent a copy of an order to us. QSG and the other parties did not

provide any notice to Local 183, despite now admitting that part of its workforce is represented by the Union.

11. There was a lot of confusion about the pending competing insolvency applications. It was not clear whether the CCAA proceeding would be granted or whether QSG was bankrupt. The Union was very concerned when QSG failed to pay the monthly benefits and pension benefits and remittances on August 15, 2023 as required under the Tile Collective Agreement. In that context, the Union sent out the Notice Letters.

12. At paragraph 14 of his affidavit, Mr. Paccione claims that the Union did not attempt to contact QSG to see if the benefit cheques were in fact being delivered. This is untrue and uncorroborated.

13. First, as set out in my September 19, 2021 affidavit, on August 15, I requested that the Union's Sector Coordinator for the Tile Sector (Janusz Argasinski) contact QSG and offer to pickup the remittance reports and cheques for the owing July contributions. He advised me that he left a message for Payroll Administrator Maria Baptista. Her voicemail did not indicate whether she was out of the office, and he did not receive a call back. Throughout the day, I directed various inquiries to the benefits, pension and other departments to determine whether QSG had made their remittances.

14. Second, my evidence is corroborated by the August 17 and 21, 2021 email exchanges between the Union and QSG (see **Exhibit O**)¹.

Union email dated August 17, 2023

"Tried calling your office but have had no luck. We are in receipt of payments but missing the payments for Sterling (Hourly) for Benefits and Pension."

QSQ responding email dated August 21, 2023

"Apologies for the delay response, I was away last week and have just returned today."

...

Regarding the missing payments for hourly benefits and pension, I will investigate, I will investigate as it was created and sent out. (Perhaps to the wrong address). ... [emphasis added]

¹ All exhibit references are to my Affidavit of September 19, 2023

15. Third, at paragraph 13 of his affidavit, Mr. Paccione concedes that QSG's "accounts payable clerk who normally handles this had gone on holiday" during that time.

16. Fourth, the Notice Letters were in fact all sent to QSG by way of registered mail and facsimile. At this point, the Monitor had not been appointed and there was no lien regularization process in place.

b) Cheques delivered August 17, 17, and 21, not August 16, 2023

17. At paragraph 13 of his affidavit, Mr. Paccione states that two of the three cheques for benefits and pension were delivered August 16 and the third one was mailed out August 16 (and presumably delivered the following week). While he admits they payments were received after August 15, 2023, which is the deadline in the Collective Agreement, his dates are untrue and uncorroborated. The Monitor seems to rely on this uncorroborated evidence at paragraphs 11 and 12 of his Second Report.

18. In contrast, as set out in my September 19, 2023 Affidavit (and supported by ordinary course business records), the payments were received on August 17, 17, and 21, 2023 (see **Exhibits L, M, and N**).

c) Benefits and Remittance's are due August 15, 2023

19. All throughout his affidavit, Mr. Paccione claims that QSG was never in arrears of benefits and remittances. He claims that, despite the clear wording of the Collective Agreement that requires benefits and remittances to be paid by August 15, 2023, that Letter of Understanding #4 (the "**LOU**") extends the time by which they are required to be due (see for example, paragraphs 25 and 27 of Mr. Paccione's affidavit). Frankly, it does no such thing.

20. The LOU imposes a penalty for late remittances (e.g. 2% interest per month, and costs of collection of such overdue payment). It does not preclude the Union from collecting on the late benefits for any period of time (see **Exhibit E**).

21. The LOU provides, in its entirety:

RE: Late Remittances

The parties agree that the following provisions will apply to late Union remittances under Article 19 and late remittance by the Union to the Association of Industry Fund Collections under Letter of Understanding No. 6.

1. The late remittance penalty shall be triggered where a party fails to make any remittance within the time frame specified in the Collective Agreement in either of the two following situations:

(a) The remittance is made more than two weeks after the date on which it is due; or

(b) A party has failed, over the duration of the Collective Agreement, to make remittances on or before the due date (but within two weeks of the due date) on more than two occasions.

2. Where the late remittance is triggered as set out in Article 1, the following shall apply thereafter for the duration of the Collective Agreement in question:

(a) In the event that the remittances are received after the due date, the party failing to make the remittance shall pay liquidated damages to the other party at the rate of two (2%) percent per month or a fraction

22. To his credit, at paragraph 11 of the Second Report, the Monitor agrees that the benefits and remittances are required to be paid by August 15, 2023; and makes no reference to the LOU altering that deadline.

11. The Monitor understands that, within 15 days of the end of each month, QSG is required to remit funds to LiUNA 183 in respect of, inter alia, union dues, pension benefits, and other amounts, calculated as a percentage of the total amount paid to installers for the month in question. These amounts are referred to as the monthly remittances for the prior month.

23. Regardless, the interpretation of a Collective Agreement is the jurisdiction of the grievance/arbitrator, and not of the Courts.

d) No Collective Agreement with NewCo.

24. Paragraph 18 of the Paccione affidavit and paragraph 37 of the Second Report state that if the sale transaction closes, the purchaser will operate under the collective

agreements that are applicable to the ongoing operations, including in respect of any holdback provisions.

25. These statements mislead the Court to believe that Ironbridge will cover the Holdbacks for the Local 183 works if the sale closes. That is simply not the case, nor has any such assurance been provided. The Holdback only arises under a collective agreement. Local 183 **has not signed** any collective agreement with any purchaser and therefore, there is no basis to assert that any such NewCo will or are entitled to maintain such a holdback, and without a collective agreement there would be no legal mechanism for the Union to be able to compel such NewCo to return the monies to the workers. If the other parties agree that the holdbacks are due and owing to the workers then it should be possible to set aside or segregate those funds so that they are paid out as part of this CCAA and/or sale process.

e) QSG has the Notice Letters

26. At paragraph 19 of his affidavit, Mr. Paccione accuses the Union of acting in bad faith and concealing who it sent the Notice Letters to. This is untrue. First, Mr. Paccione himself admits that QSG received over 60 letters. He then speculates, that perhaps the Union failed to send QSG some letters. Second, as set out in my September 19, 2023 affidavit, each of the Notice Letters were sent to QSG, including by way of facsimile and registered mail.

f) QSG Fails to Provide Particulars of Alleged stalled A/Rs

27. At paragraph 21 of his affidavit, Mr. Paccione claims that \$2 million is being withheld by 6 builders because of the Notice Letters and believes that another \$2 million is being withheld. At paragraph 24 of his Affidavit, Mr. Paccione claims that QSG received direct communications from builders indicating they cannot pay QSG until Local 183 confirms that QSG is in good standing. These are baseless and uncorroborated accusations.

28. Further, at paragraph 19 of the Second Report, the Monitor states that 2 builders specifically told the Monitor or its counsel that they had written to Local 183 and they

never received a response. Notably, the Second Report does not state that those 2 builders continue to not pay, nor does it provide particulars of the two builders or the amounts at issue (if anything currently). In addition, the Monitor reports that the company's collections are \$2.3 million lower than forecasted and "understands" that this as a result of the Notice Letters. Presumably, the Monitor "understands" this primarily based on the baseless accusations made by QSG.

29. First, there is no corroborating evidence nor any particulars of these accusation.

30. Second, the Union has, to date, responded to anyone that has contacted it that the July 2023 benefits were paid, and that the Union is not currently requesting that they freeze or hold funds.

31. Third, the allegation by QSG is suspect given QSG's conduct. Union's counsel made inquiries with QSG and the Monitor for particulars of any contractor or builder who is claiming that they are refusing to release funds because of the Notice Letters. Despite this repeated request, **QSG and the Monitor still have failed to provide this simple information**; including in the September 21, 2023 Paccione Affidavit and the Second Report. This is readily available and easy to provide information it if exists.

32. Attached at **Exhibit C** to the September 21, 2023 Paccione Affidavit is a copy of an email exchange between counsel for the Union, Mr. Yiokaris, to the lawyers for the Monitor and QSG, and copied to counsel for the Carpenters. Mr. Yiokaris' September 19, 2023 email *inter alia* provides:

With respect to the balance of your email, we disagree both with the facts and characterizations set out in your email.

Please **provide particulars of any contractor or builder who is claiming they are refusing to release funds due to the Notice Letters sent by Local 183**; and **please provide a copy of such correspondence, and particulars of the amounts that are being held up**. I have asked for this information in the past and have not been provided any such particulars.

I have previously, and repeatedly indicated to you the following: To date, the Union has responded to anyone that has contacted it that the July 2023 benefits were paid (and now the August 2023 benefits) and that the Union

is not currently requesting that they freeze or hold funds. **If you believe this is not the case, please immediately let us know and provide the particulars of same (i.e. what builder/contractor and when did they reach out to the Union, etc.).** [emphasis added]

33. Fourth, I have not received any indication from the builders or contractors that anyone is holding back those amounts, let alone that they are doing so at the request of the Union.

34. If builders are refusing to pay QSG, or are refusing to pay invoices that QSG believes are owing, it may be because QSG has abandoned the jobs, because QSG has not performed the work, because of deficiencies on their project, or for various other commercial reasons. The attempt to blame the Union for QSG's commercial failures is unfounded.

35. Fifth, in any event, only a fraction of contractors and/or builders have responded to the Notice Letters. Prior to August 15th we responded that the July 2023 benefits were paid, and we are not currently requesting that they freeze or hold funds. That being said, the Union is still very concerned about the Holdbacks. (see **Exhibit S**, being a copy of a recent email exchange with a builder regarding same).

36. Sixth, on September 16, 2023, after receiving confirmation that the August remittances had been paid, the Union provided written notice to the RTCA, the DRCLB, TRCLB and MTABA confirming that QSG had paid its July remittances, and that the August remittance reports and cheques had been received on time and that we were optimistic that they would clear (see **Exhibit T**). That email also indicated that they could advise their members of this fact, and directed that contractors or builders could contact me if they had any further inquiries.

37. Seventh, the Monitor and other parties are aware that the Union has advised contractors that the July remittances were paid. The Monitor has been sending letters to various builders in which they claim:

“We understand from QSG that amount is being withheld because of a letter sent by LiUNA Local 183 (the “Union”) on August 16, 2023 (copy attached), to various owners/builders who have contracts with QSG. The

letter asserted that QSG has failed to remit contributions and deductions relating to work performed by Union members at the owners'/builders' projects.

We are writing to you to confirm that those remittances have been paid as evidenced by the attached email sent from the Union to an owner/builder on September 5, 2023. We can also confirm that QSG is current with its monthly contribution and deductions to the Union as required under the collective agreement between the Union and the Residential Tile Contractors Association. Accordingly, there is no impediment to making the outstanding payment.”

38. Along with this, the Monitor is including an email from then Local 183 counsel Maheen Merchant.

g) Union validly sent Notice Letters regarding Freeze Funds

39. At paragraph 28 of his affidavit, Mr. Paccione erroneously suggests that the Union was not able to send out the Notice Letters under the TRCLB and DRCLB Collective Agreements. QSG is not and has never been a party to the TRCLB or DRCLB Collective Agreements and is a stranger to them.

40. First, any such interpretation issue is within the exclusive the jurisdiction of a grievance arbitrator. However, it is worth repeating the first line of the Builder Holdback Article in each of the TRCLB and DRCLB Agreements (which were filed along with my earlier affidavit), which state “The Union may, at any time, at its’s option, activate the Holdback Mechanism described herein”

41. Second, the TRCLB and DRCLB Collective Agreements sets out a 2 step process. First, the Union to provide two-day notice before it can require funds to be held back under the Builder's Freezing Mechanism. The Notice Letters provided such notice along with the request that information be provided about the state of accounts under the *Construction Act*. The August 16, 2023 Notice Letters sent to Unionized Builders/Contractors makes this abundantly clear. (see **Exhibit R**)

"Pursuant to Article 6 of the TRCLB and DRCLB Collective Agreements, the Union hereby gives **notice of its intention** to activate the Builder’s Holdback Mechanism. **Should the Defaulting Contractor fail to pay all outstanding amounts by August 18, 2023,** the Builder must freeze all

funds owing to Defaulting Contractor up to the amount of \$250,000.00."[emphasis added]

42. Mr. Paccione suggests that the Union was unable to enforce the Freeze Fund Mechanism because payments were made prior to August 16, 2023. As set out above, payments were not received until August 21, 2023 – the Pension payment had not been provided. While the Union may have had a right to exercise its right to then demand that builders Freeze Fund that were owing to QSG it did not do so because it had, received the late monthly contribution reports and in anticipation that the cheques would clear.

h) Union's primary interest is the workers

43. Paragraph 30 of the Paccione Affidavit and paragraphs 32 to 39 of the Second Report assert the Union has been behaving as if it has an ulterior motives in pursuing the Holdback, e.g.– that it is pursuing this issue to rewrite the holdback provisions industry wide in Collective Agreements. This is unfounded and baseless, and pure speculation.

44. I anticipate that if this Court does not protect the Holdback that it may have wider consequences. Indeed, it is a serious matter. That being said, the primary purpose of the Union's involvement in these proceedings is to protect those workers. This is completely consistent with its conduct to date. We are not asking the Court to rule upon the validity of, or to interpret the holdback provisions. Indeed, those things must be done by a grievance arbitrator. We seek to have the funds segregated and/or the ability to pursue claims against directors and officers for breach of their trust and fiduciary duties, so that there can be meaningful decisions of such arbitrators.

45. First, the Union advanced the Holdback issue immediately after learning of the insolvency proceedings. This is memorialized in the August 17, 2023 affidavit of Maheen Merchant. Since then, the Union has repeatedly attempted to resolve this issue, without success. The issue has been unresolved for a month, and I understand needs to be dealt with prior to the sale approval motion, failing which, this could prejudice the workers' rights.

46. Second, the Union, as the representative of the workers has a valid interest in protecting its members' Holdbacks in these insolvency proceedings. Section 74 of the *Labour Relations Act* imposes upon the Union a Duty of Fair Representation that it owes its members. The Union is discharging this duty by taking steps to ensure that the workers earned wages are preserved and paid out in this process.

k) Mrad/Radisa Zlatahnic's \$2,000 should be returned to him

47. At paragraph 37 f) and g) of his Affidavit, Mr. Paccione admits that the Hardwood Collective Agreement creates a trust for the Holdbacks, and applies to Pieceworkers that left QSG and chose to work with another contractor bound to Local 183.

48. However, at paragraph 43 of his affidavit, Mr. Paccione baselessly alleges that the request by MRAD/Radisha Zlatanovic to return his \$2,000 holdback under the Hardwood Collective Agreement may be fictitious.

49. As set out in my previous affidavit, the Union is aware of at least one Pieceworker that claims a return of his holdback under the Hardwood Collective Agreement. Despite my affidavit and corroborating evidence (Exhibit W), Mr. Pacione baselessly suggests that this may be a fabrication orchestrated by the Union.

50. To his credit, the Monitor, at paragraph 10 c) of his Second Report supports that this Pieceworker have his \$2,000 trust money returned now.

j) The Tile Agreement creates a trust for the \$2,000 Holdback

51. As set out in the Union's factum and my September 21, 2023 affidavit, the interpretation of whether the Holdback provisions creates a trust is already the subject of a pending grievance arbitration; and is properly the jurisdiction of grievance/arbitration and not this court.

52. At paragraphs 37 i) to l) and 39 to 40 of the Paccione Affidavit and paragraph 10 d) of the Second Report, Mr. Paccione and the Monitor state their interpretation of the Tile Collective Agreement and asserts that QSG is not obligated to hold the workers' funds in an account, and then admit that QSG has not done so. While we do not agree with their

interpretation, we note that Mr. Paccione has admitted, at the very least, that QSG has used the workers' money for QSG's own end. This is deeply troubling. As set out in detail in Local 183's factum, we maintain that the Tile Collective Agreement requires these funds to be held back in a separate account and in trust; and wish to pursue the claim that QSG and its officers and directors have committed a breach of trust.

53. At paragraph 10 d) of the Second Report, the Monitor admits that the Tile Collective Agreement creates a trust, but then takes the inconsistent position that the funds are to be held separate. The Monitor *inter alia* writes:

10 d) ... this agreement does not create an obligation on QSG to create a separate trust account. It creates an obligation on QSG to create a holdback summary report and **limits the amount of time for which a trust can be held** or, which is 6 months from the time the work is completed or 3 months after the employees stopped working for QSG.

54. Again, since NewCo and/or Ironbridge are not bound to a Tile Collective Agreement with the Union they have no legal basis for maintaining any holdback accounts for these workers. If the monitor acknowledges that the trust exists for these monies, this Court should ensure that the funds are segregated so that they can be paid out to the beneficiaries as part of this CCAA proceeding.

k) Without Prejudice Settlement Discussions are Inappropriate to Disclose

55. At paragraphs 48 to 50, Mr. Paccione admittedly purports to discuss without prejudice settlement discussions. The Monitor does the same at paragraphs 21 to 29, 37 and 42, of the Second Report. This is wholly inappropriate. I am concerned about addressing same in my affidavit, as I would be compounding that ethical breach. Suffice to say, the Union does not agree with the purported facts, characterization or description of the events relating to the without prejudice discussions.

56. While I am a lawyer, I would like to note that I was not a participant in the lawyers' call referred to by Mr Paccione and the Monitor.

57. At paragraph 23 of the Second Report, the Monitor erroneously states that paragraph 58 of my September 19, 2023 affidavit reveals aspects of the settlement discussions on September 15, 2023 and "specifically refers to that call".

58. **It does no such thing.** Paragraph 58 of my affidavit provides:

58. I am advised by Mr. Yiokaris and verily believe that Christ Besant, counsel for QSG alleged these Notice Letters have caused at least \$1.5 million holdback in accounts receivable. Mr. Yiokaris advises and I verily believe that he advised the Monitor's lawyer and Mr. Besant that the Union has, **to date, responded to anyone that has contacted it that the July 2023 benefits were paid, and that the Union is not currently requesting that they freeze or hold funds.** Mr. Yiokaris further made inquiries **with QSG and the Monitor for particulars of any contractor or builder who is claiming that they are refusing to release funds because of the Notice Letters; and that no such particulars have been provided.**

59. See for example **Exhibit C** to Mr. Paccione's September 21, 2023 affidavit.. This is a "with" prejudice email sent by Mr. Yiokaris on September 19, 2023 to the lawyers for the Monitor and QSG. It *inter alia* provides:

With respect to the balance of your email, we disagree both with the facts and characterizations set out in your email.

Please **provide particulars of any contractor or builder who is claiming they are refusing to release funds due to the Notice Letters sent by Local 183; and please provide a copy of such correspondence, and particulars of the amounts that are being held up.** I have asked for this information in the past and have not been provided any such particulars.

I have **previously, and repeatedly** indicated to you the following: **To date, the Union has responded to anyone that has contacted it that the July 2023 benefits were paid (and now the August 2023 benefits) and that the Union is not currently requesting that they freeze or hold funds. If you believe this is not the case, please immediately let us know and provide the particulars of same (i.e. what builder/contractor and when did they reach out to the Union, etc.).**
[emphasis added]

1) Email to the RTCA is appropriate

60. Paragraph 50 of the Paccione Affidavit and paragraph 20 of the Second Report assert that my email to the RTCA of September 16, 2023 and my summary of same is

inaccurate. I dispute same. As set out in our factum, if this Court does not protect the Holdbacks, the workers' money that has been inappropriately withheld by the Company is in jeopardy.

m) The Interest arbitration should be allowed to proceed

61. Paragraph 53 of Mr. Paccione's affidavit is misleading. This arbitration arose under s. 150.4 of the *Labour Relations Act* and the role of that arbitrator was to act as an interest arbitrator to settle the terms of the renewal Hardwood Collective Agreements for 3 companies, which included QSG, for the period of May 1, 2022 to April 30, 2025. These proceedings had been ongoing since 2022 and the arbitrator had addressed most issues, but remained seized to deal with 2 issues: holdbacks, and floor reducers, at this hearing. I am advised by Andrew Black, counsel with Local 183 represented the Union in this arbitration and verily believe that QSG argued that the arbitrator cannot proceed with the grievances because they are stayed by the CCAA. The arbitrator adjourned the matter to December 2023.

62. In any event, I understand QSG's position is inconstant with the representations they made at Court – i.e. that it was agreeable to allowing the grievances to proceed and interpreted the Amended and Restated order as allowing same.

63. In any event, QSG's assertion that the grievance is stayed is contrary to the Amended and Restated Order, which provides:

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) **affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA**, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. [emphasis added]

64. That section was recently interpreted to include grievances under the *LRA* – see *Labourers’ International Union of North America, Local 183 v Roniso Corporation*, 2022 CanLII 52332 (ON LRB), <https://canlii.ca/t/jpts3> (see paras. 42 to 47).

65. Moreover, as pointed out in that decision, section 11.1 of the CCAA prohibits the stay affecting grievances, unless an application is made by QSG and on notice to the regulatory body and to the persons who are likely to be affected by the Order to exempt various grievance. The CCAA provides:

Meaning of regulatory body

11.1 (1) In this section, regulatory body means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), **no order made under section 11.02 affects a regulatory body’s investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.**

Exception

(3) **On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order,** the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court’s opinion

(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

....

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the

period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

[emphasis added]

n) No Breach of the August 4 Order

66. Given the failure of QSG to pay the monthly benefits and pension benefits and remittances as required under the Tile Collective Agreement and the issues with respect to the Holdback, the Union took steps to try and protect the Unionized workers. The Union sent the Notice Letter to Builders requesting information under the *Construction Act* in order to assert and preserve rights to lien; and for builders bound to the TRCLB and DRCLB Collective Agreements, the letter also gave notice of the Union's intention to

activate the Builders Freeze Funds provisions should QSG not pay all outstanding amounts by August 18, 2023.

67. Paragraph 9 of Mr. Paccione's affidavit and paragraph 14 of the Second Report suggest that the Union breached the August 4 Order by sending out the Notice Letters and cites the stay provision. There was no such breach.

68. First, clause 5 of that August 18, 2023 Order specifically allows creditors to take steps to preserve or perfect a security interest and/or claims for lien.

5. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtors, or affecting the Business or the Property, are hereby stayed and suspended, **provided that nothing in this Order shall ... prevent the filing of any registration to preserve or perfect a security interest, or iii) prevent the registration of a claim for lien.** [emphasis added]

69. Secondly, some of those letters were also sent under the Union's TRCLB and DRCLB Collective Agreement and the Builder Freeze Fund provisions thereof. As set out in the Union's September 20 factum, the CCAA protects collective agreements and obligations arising thereunder. Section 33 of the CCAA provides that Collective Agreement are to remain in force. Further sections 11.3(2)(c) and 32(9)(b) of the CCAA expressly do not allow a Court to assign or disclaim a Collective Agreement.

70. Thirdly, regardless, any disputes about the interpretation of a collective agreement, including any claims which arise expressly or inferentially from the collective agreement, are within the exclusive jurisdiction of a labour arbitrator.

71. Each of the Notice Letters were sent to QSG, including by way of facsimile and registered mail. At this point the Monitor had not been appointed and there was no lien regularization process in place.

72. Each letter advised the builder that the Union estimated the total amount of QSG's liability to the Union and its members to be approximately \$250,000. That amount was

described as including monthly remittances and contributions, as well as Piecework Holdback amounts of \$95,083.41.

73. Fourth, the Union has not subsequently sent a letter to any Builder under the TRCLB or DRCLB demanding that the funds are to be frozen in relation to these matters. Further, the Union has not since filed or proceeded with a lien in respect of these matters. To the contrary, as admitted in the Paccione and Monitor’s materials the Union has been advising its contractor partners, and builders who make inquiries, that QSG paid its late July remittances, was on time with its August remittances, and that the Union is not requesting that builders freeze or holdback any funds.

74. I make this affidavit for the purpose of this proceeding and for no other or improper purpose.

AFFIRMED BEFORE ME: in person **by video conference**

at the **City of Kawartha Lakes, in the Province of Ontario** on September 22, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for taking Affidavits (*or as may be*)



GRAHAM WILLIAMSON

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.

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

Court File No.: CV-23-00703292-00CL

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

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF GRAHAM WILLIAMSON
(SWORN SEPTEMBER 22, 2023)**

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