

**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 JAMES HARNUM
(Sworn OCTOBER 4, 2023)**

I, James Harnum of the City of Toronto, in the Province of Ontario, **MAKE
OATH AND SWEAR:**

1. I am a lawyer at Koskie Minsky LLP, counsel to LiUNA Local 183 in this matter. As such, I have knowledge of the matters to which I depose in this affidavit, save and except for such facts or matters which are stated to be based on information and belief, and where so stated, I believe same to be true.
2. This affidavit is sworn in support of LiUNA Local 183's motion concerning holdbacks, the lifting of the stay to pursue claims against the directors of QSG, and for the creation of a reserve to be held separate and apart from the estate of QSG.
3. Attached herewith and marked as **Exhibit "A"** is an offer to settle this matter with QSG and the other interested parties. The text of the offer reads as follows:

LiUNA Local 183 proposes that the LiUNA motion over holdbacks be settled on the basis of the following offer. This communication is made on a with prejudice basis:

1. The \$2,000 holdback refund claimed by MRAD (Radisa Zlatahnic operating as MRAD) will be paid forthwith by the Applicants.

2. The hearing in respect of certain holdback issues (“**Holdback Motion**”) brought by LiUNA and scheduled for September 28, 2023 shall be adjourned *sine die*. The Holdback Motion shall be determined subsequently in the CCAA proceedings or any subsequent insolvency proceedings which may be established, as set out below.

3. The sum of \$95,083.41 (i.e. "**LiUNA Holdback Amount**") shall be paid forthwith by the Applicants to the Monitor, and held segregated and separate from other funds held by the Monitor (the "**LiUNA Reserve**") in accordance with the terms of this agreement. The LiUNA Holdback Amount shall not form part of the assets of the Applicants' estate while being held as a reserve, and the reserve shall be maintained pending a payment under Paragraph 4, or a payment under Paragraph 5 following (i) a determination of whether any portion of the funds should be paid to any installers, (ii) the mutual agreement of the parties, or (iii) a court order.

4. If the transaction with the Purchaser closes, and if the Union and the Purchaser advise the Court within 30 days of the closing that they are bound to a Collective Agreement which provides that the Purchaser may maintain a holdback account, then the LiUNA Holdback Amount shall be paid to the Purchaser who shall then hold such monies and pay them out to the Pieceworkers in accordance with the terms of such Collective Agreement;

5. If the condition in paragraph 4 does not occur, then::

a) The issue of whether the holdback provision in the Residential Tile Contractors Association and the Union, dated May 1, 2022 to April 30, 2025 (the "**Tile Collective Agreement**") creates an obligation to hold the holdback amounts in trust shall be dealt with in the pending grievance arbitrations relating to the holdback provision and/or by way of fresh or amended grievance (the "**Interpretation Issue**"); and such grievance arbitration shall be allowed to proceed (the "**Grievance Arbitration**"). For greater clarification, the pending grievance is dated April 29, 2022 and was referred to arbitration around May 16, 2022.

If jurisdiction over the Interpretation Issue is declined and/or otherwise not allowed in the Grievance Arbitration and/or by the OLRB, then the Interpretation Issue will be dealt with as part of the Holdback Motion.

(b) The Grievance referred to in (a) shall not be asserted against the directors and officers of the Applicants.

c) The Union may bring a claim against the Applicant's directors and officers in respect of breach of trust regarding the holdbacks, but it is understood that recourse shall be limited only to the LiUNA Reserve and/or any insurance proceeds, and the Applicant's directors and officers shall not be required to participate in any proceeding concerning same.

d) However, if the Interpretation Issue is finally determined that there is no obligation to hold the holdback amounts in trust, then the LiUNA Reserve shall be forthwith released back to the Applicants' estate to be dealt with in accordance with any distribution order concerning the Applicants' assets. .

e) Nothing in this agreement is meant to preclude claims and/or proceeding against the Applicant's directors and officers with respect to other forms of director and officer liability relating to the holdback, including but not limited to, claims under section 131 of the OBCA. For clarity, such claims and/or proceeding may still be made even if the Reserve is released back to the Applicants' estate and even if the Interpretation Issue is finally determined that there is no obligation to hold the holdback amounts in trust.

6. Nothing in this agreement shall be meant to be interpreted as the Union agreeing that the Settlement Agreement may or will continue to apply to the purchaser; nor shall the purchaser be allowed to rely on the within terms in any argument that the Union is bound to the Settlement Agreement or the Tile Collective Agreement with them.

7. The creation of the LiUNA Reserve is not meant to create any trust rights, nor is it meant to affirm that a trust is created.

8. The terms of this settlement and the creation of the LiUNA Reserve shall be endorsed by the CCAA Court.

4. Accordingly, LiUNA Local 183 requests that this Honourable Court grant its motion.

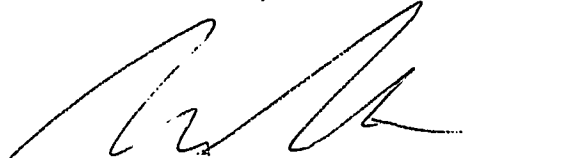
5. In the alternative, LiUNA Local 183 requests an order in the form of the offer made as set out above.

SWORN BEFORE ME:

in person

by video conference

at the City of Toronto, in the Province of Ontario on October 4, 2023.



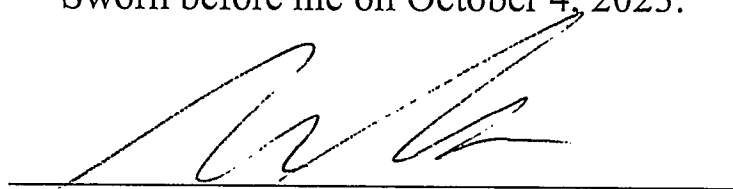
A Commissioner for taking Affidavits (or as may be)

Matt Masters LSO # 660021



JAMES HARNUM

This is **Exhibit "A"** referred to in the
Affidavit of James Harnum
Sworn before me on October 4, 2023.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner for taking affidavits, etc.

Robert Mascarenhas

From: James Harnum
Sent: October 4, 2023 1:34 PM
To: Besant, Chris; Daniel Wright; Latham, Joe; Demetrios Yiokaris; Axell, Erik; Michael Mazzuca
Cc: arif.dhanani@rsmcanada.com
Subject: RE: Union Holdback Motions - Offer to Settle by QSG - WITH PREJUDICE

Counsel,

LiUNA Local 183 proposes that the LiUNA motion over holdbacks be settled on the basis of the following offer. This communication is made on a with prejudice basis:

1. The \$2,000 holdback refund claimed by MRAD (Radisa Zlatahnic operating as MRAD) will be paid forthwith by the Applicants.
2. The hearing in respect of certain holdback issues ("**Holdback Motion**") brought by LiUNA and scheduled for September 28, 2023 shall be adjourned *sine die*. The Holdback Motion shall be determined subsequently in the CCAA proceedings or any subsequent insolvency proceedings which may be established, as set out below.
3. The sum of \$95,083.41 (i.e. "**LiUNA Holdback Amount**") shall be paid forthwith by the Applicants to the Monitor, and held segregated and separate from other funds held by the Monitor (the "**LiUNA Reserve**") in accordance with the terms of this agreement. The LiUNA Holdback Amount shall not form part of the assets of the Applicants' estate while being held as a reserve, and the reserve shall be maintained pending a payment under Paragraph 4, or a payment under Paragraph 5 following (i) a determination of whether any portion of the funds should be paid to any installers, (ii) the mutual agreement of the parties, or (iii) a court order.
4. If the transaction with the Purchaser closes, and if the Union and the Purchaser advise the Court within 30 days of the closing that they are bound to a Collective Agreement which provides that the Purchaser may maintain a holdback account, then the LiUNA Holdback Amount shall be paid to the Purchaser who shall then hold such monies and pay them out to the Pieceworkers in accordance with the terms of such Collective Agreement;
5. If the condition in paragraph 4 does not occur, then:
 - a) The issue of whether the holdback provision in the Residential Tile Contractors Association and the Union, dated May 1, 2022 to April 30, 2025 (the "**Tile Collective Agreement**") creates an obligation to hold the holdback amounts in trust shall be dealt with in the pending grievance arbitrations relating to the holdback provision and/or by way of fresh or amended grievance (the "**Interpretation Issue**"); and such grievance arbitration shall be allowed to proceed (the "**Grievance Arbitration**"). For greater clarification, the pending grievance is dated April 29, 2022 and was referred to arbitration around May 16, 2022.
If jurisdiction over the Interpretation Issue is declined and/or otherwise not allowed in the Grievance Arbitration and/or by the OLRB, then the Interpretation Issue will be dealt with as part of the Holdback Motion.
 - b) The Grievance referred to in (a) shall not be asserted against the directors and officers of the Applicants.
 - c) The Union may bring a claim against the Applicant's directors and officers in respect of breach of trust regarding the holdbacks, but it is understood that recourse shall be limited only to the LiUNA Reserve and/or any insurance proceeds, and the Applicant's directors and officers shall not be required to participate in any proceeding concerning same.
 - d) However, if the Interpretation Issue is finally determined that there is no obligation to hold the holdback amounts in trust, then the LiUNA Reserve shall be forthwith released back to the Applicants' estate to be dealt with in accordance with any distribution order concerning the Applicants' assets. .

e) Nothing in this agreement is meant to preclude claims and/or proceeding against the Applicant's directors and officers with respect to other forms of director and officer liability relating to the holdback, including but not limited to, claims under section 131 of the OBCA. For clarity, such claims and/or proceeding may still be made even if the Reserve is released back to the Applicants' estate and even if the Interpretation Issue is finally determined that there is no obligation to hold the holdback amounts in trust.

6. Nothing in this agreement shall be meant to be interpreted as the Union agreeing that the Settlement Agreement may or will continue to apply to the purchaser; nor shall the purchaser be allowed to rely on the within terms in any argument that the Union is bound to the Settlement Agreement or the Tile Collective Agreement with them.

7. The creation of the LiUNA Reserve is not meant to create any trust rights, nor is it meant to affirm that a trust is created.

8. The terms of this settlement and the creation of the LiUNA Reserve shall be endorsed by the CCAA Court.



James Harnum (he/him)

Partner

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From: Besant, Chris <cbesant@grllp.com>

Sent: Tuesday, October 3, 2023 6:10 PM

To: Daniel Wright <Dwright@RousseauMazzuca.com>; James Harnum <jharnum@kmlaw.ca>; Latham, Joe <jlatham@goodmans.ca>; Demetrios Yiokaris <dyiokaris@kmlaw.ca>; Axell, Erik <eaxell@goodmans.ca>; Michael Mazzuca <Michael@RousseauMazzuca.com>

Cc: arif.dhanani@rsmcanada.com

Subject: Union Holdback Motions - Offer to Settle by QSG - WITH PREJUDICE

Counsel:

The CCAA Applicants propose that the LiUNA and CU-27 motions over installer holdbacks be settled on the basis of the offer to each union set out below. This communication is made on a with prejudice basis.

OFFER TO SETTLE LIUNA HOLDBACK MOTION

The CCAA Applicants propose that the LIUNA motion over the holdbacks be settled on the following terms:

- a. The \$2,000 holdback refund claimed by MRAD (Radisa Zlatahnic operating as MRAD) will be paid forthwith by the Applicants.
- b. The hearing in respect of certain holdback issues ("**Holdback Motion**") brought by LiUNA and scheduled for September 28, 2023 shall be adjourned *sine die*. The Holdback Motion shall be determined subsequently in the CCAA proceedings, subject to the exceptions in this paragraph b or in paragraph e herein.

The issue of whether the holdback provision in the Residential Tile Contractors Association and the Union, dated May 1, 2022 to April 30, 2025 (the "**Tile Collective Agreement**") creates an obligation to hold the holdback amounts in trust shall be dealt with in the pending grievance arbitrations relating to the holdback provision and/or by way of fresh or amended grievance (the "**Interpretation Issue**"); and such grievance arbitration shall be allowed to proceed (the "**Grievance Arbitration**"). For greater clarification, the pending grievance is dated April 29, 2022 and was referred to arbitration around May 16, 2022.

If jurisdiction over the Interpretation Issue is declined and/or otherwise not allowed in the Grievance Arbitration and/or by the OLRB, then the Interpretation Issue will be dealt with by way of motion in the CCAA proceedings or any subsequent insolvency proceedings which may be established, provided that if the transaction with the Purchaser closes and the Purchaser delivers the Undertaking (as herein defined), the LiUNA Reserve (as herein defined) shall be returned to the Purchaser as provided for in paragraph e and any CCAA or other claims process will be inapplicable.

After the Interpretation Issue has been finally adjudicated negatively and/or otherwise declined or not allowed to be decided by the Grievance Arbitration and/or by the OLRB, and if the sale transaction with the Purchaser does not close, then the Holdback Motion shall be determined subsequently by way of motion in the CCAA proceedings or any subsequent insolvency proceedings.

The Grievance Arbitration shall not be asserted against the directors and officers of the Applicants nor against the Purchaser or its directors or officers.

c. No grievance relating to the Holdback Motion shall be filed against the directors and officers of the Applicants or against the Purchaser or its directors or officers. Further, any claim made against the Applicant's directors and officers in respect of breach of trust regarding the holdbacks shall only be made if the sale transaction does not close or if the Purchaser closes the transaction but does not deliver the Undertaking, and recourse shall be limited only to the LiUNA Reserve, and the Applicant's directors and officers shall not be required to participate in any proceeding concerning same. For greater clarity, if the sale transaction does not close or if the Purchaser closes the transaction but does not deliver the Undertaking, and the Union can establish a breach of trust relating to the holdbacks on the part of the Applicant's directors and/or officers, then the Union's recourse is limited to only the LiUNA Reserve. Further, for greater clarity, if the sale transaction does not close or if the Purchaser closes the transaction but does not deliver the Undertaking, nothing in this agreement is meant to preclude claims against the Applicant's directors and officers with respect to other forms of director and officer liability relating to the holdback, including but not limited to, claims under section 131 of the OBCA, and the Union's recourse shall be limited only to the LiUNA Reserve.

d. The sum of \$95,083.41 (i.e. "**LiUNA Holdback Amount**") shall be paid forthwith by the Applicants to the Monitor, and held segregated and separate from other funds held by the Monitor (the "**LiUNA Reserve**") in accordance with the terms of this agreement.

e. The LiUNA Reserve shall not form part of the assets of the Applicants' estate while being held as a reserve, and the reserve shall be maintained pending either (i) a determination of whether any portion of the funds should be paid to any installers, (ii) the mutual agreement of the parties, or (iii) a court order. However, if the sale transaction does not close or if the Purchaser closes the transaction but does not deliver the Undertaking, and the Interpretation Issue is finally determined that an obligation to hold the holdback amounts in trust exists, the LiUNA Reserve shall be forthwith released back to the Applicants' estate to be dealt with in accordance with any distribution order concerning the Applicants' assets. Provided further that if the transaction with the Purchaser closes, and the Purchaser undertakes to comply with the Settlement Agreement ("**Settlement Agreement**") dated July 31, 2023 and continue to deal with any LiUNA Holdback Amount outstanding at April 30, 2024 in accordance with the Tile Collective Agreement even if the term of the Settlement Agreement has expired (the "**Undertaking**"), the LiUNA Reserve will be released to the Purchaser and all matters relating to any LiUNA Holdback Amount in the CCAA proceedings or any subsequent insolvency proceedings shall be terminated and withdrawn.

- f. The creation of the LiUNA Reserve is not meant to create any trust rights, nor is it meant to affirm that a trust is created.
- g. The terms of this settlement and the creation of the LiUNA Reserve shall be endorsed by the CCAA Court.

OFFER TO SETTLE CU-27 HOLDBACK MOTION

The CCAA Applicants propose that the Carpenters Union Local 27 motion over the holdbacks be settled on the same basis as the offer re the LiUNA Holdbacks Motion above, *mutatis mutandis*. Eg

- paragraph a is inapplicable,
- Paragraph b – As there is no pending CU-27 grievance, CU-27 would be entitled to initiate a fresh grievance to seek to determine the Interpretation Issue regarding its collective agreement and pursue its own grievance arbitration re same.
- The reserve amount would be the CU-27 Holdback amount (\$95,028.00), and the definitions “LiUNA Holdback Amount” and “LiUNA Reserve” would become “CU-27 Holdback Amount” and “CU-27 Reserve”.
- In e, as there is no Settlement Agreement with CU-27, the “Undertaking” would be that the purchaser would undertake to continue to deal with any CU-27 Holdback Amount after closing in accordance with the CU-27 Collective Agreement.

With regards

Chris Besant • Partner

Gardiner Roberts LLP

Bay Adelaide Centre - East Tower, 22 Adelaide St W, Ste. 3600, Toronto, ON M5H 4E3

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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 JAMES HARNUM
(SWORN OCTOBER 4, 2023)**

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Toronto ON M5H 3R3

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