

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

THE HONOURABLE MR. )  
 )  
JUSTICE PENNY )  
 )  
 ) FRIDAY, THE 24th  
 ) DAY OF NOVEMBER, 2023

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

Applicant

- and -

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

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**AMENDED AND RESTATED ORDER  
(Amending Receivership Order, dated October 31, 2023)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing The Fuller Landau Group Inc. ("**Fuller**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of each of Quality Rugs of Canada Limited, Malvern Contract Interiors Limited, Weston Hardwood Design Centre Inc., Ontario Flooring Ltd., Timeline Floors Inc., and Quality Commercial Carpet Corporation, (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavits of Don Rogers sworn July 24, 2023 and October 31, 2023, and the respective exhibits thereto, and the First Report of the Receiver, dated November 17, 2023 (the “**First Report**”), and on hearing the submissions of counsel for Applicant, counsel for the Respondents, counsel for Ironbridge Equity Partners IV LP and Ironbridge Equity Partners (International) IV, LP (together, the “**DIP Lender**”) and such other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the affidavit of service of Matilda Lici sworn October 31, 2023, the affidavit of service of Amanda Campbell, sworn November 17, 2023, and the affidavit of service of Hanqiong (Joan) Xu, affirmed November 20, 2023, and on reading the consent of Fuller to act as the Receiver,

### **SERVICE**

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.

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Fuller is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of each of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the “**Property**”).

### **RECEIVER’S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to

safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of any of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

(p) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

(q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including each of the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court other than as provided for in the Endorsement of the Court, dated October 5, 2023, issued in the CCAA Proceedings, a copy of which is attached hereto as Schedule "A".

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the

Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

13. **THIS COURT ORDERS** that the DIP Lender shall only be permitted to enforce its rights and remedies against the Debtors or the Property with further Order of the Court and that seeking such Order will not require a lifting of the stay contemplated in paragraphs 9-12 of this Order.

#### **RECEIVER TO HOLD FUNDS**

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of further Order of this Court.

#### **EMPLOYEES**

15. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.



## **PIPEDA**

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

19. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and the provisions of this Order.

20. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

22. **THIS COURT ORDERS** that, subject to the consent of the Applicant and the DIP Lender, the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving

credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge, the Administration Charge (as defined in the ARIO), and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **PRIORITY OF CHARGES**

26. **THIS COURT ORDERS** that the priority charges granted pursuant to the Amended and Restated Initial Order dated September 5, 2023 (the "**ARIO**") issued in the proceedings commenced by the Debtors and certain related entities under the *Companies' Creditors Arrangement Act* (Canada) under court file no. CV-23-00703933-00CL (the "**CCAA Proceedings**") shall be continued and apply *mutatis mutandis* in the within receivership

proceedings and the priorities of the Administration Charge, the Director's Charge, the DIP Lender's Charge, and the Financial Advisor's Charge (each as defined in the ARIO), and the Receiver's Charge and the Receiver's Borrowings Charge, as among them, shall be as follows:

First - the Administration Charge and the Receiver's Charge (to a combined maximum of \$750,000), which charges shall rank *pari passu* with each other;

Second – the Receiver's Borrowings Charge (to a maximum of \$750,000);

Third - the Director's Charge (to a maximum of \$600,000);

Fourth - the DIP Lender's Charge (to a maximum of \$7,000,000); and

Fifth – the Financial Advisor's Charge (to a maximum of \$950,000).

27. **THIS COURT ORDERS** that paragraph 26 of this Order is without prejudice to the beneficiaries of the Lien Charge (as defined in the ARIO).

28. **THIS COURT ORDERS** that, notwithstanding anything in this Order, including any language granting priority charges over the Property of the Debtors, the issue as to priority as among the Charges and the security held by Mohawk Carpet Distribution, Inc. (“**Mohawk**”), including any purchase money security interest shall be deferred to a hearing on terms to be agreed to by the parties, or as may be otherwise agreed to by the parties. The Receiver shall identify and segregate any proceeds received in respect of goods presently in the possession of the Receiver as supplied by Mohawk in a separate bank account.

#### **SERVICE AND NOTICE**

29. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol,

service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol and shall be accessible by selecting the Debtors' name from the engagement list at the following URL [‘https://fullerllp.com/services/corporate-restructuring-and-insolvency/selected-active-engagements/’](https://fullerllp.com/services/corporate-restructuring-and-insolvency/selected-active-engagements/).

30. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

31. **THIS COURT ORDERS** that the Receiver be and it is hereby directed to communicate and cooperate with RSM Canada Limited, in its capacity as the Monitor of the Debtors in the CCAA Proceedings, with a view to making the transition from the CCAA Proceedings to the receivership herein as efficient as possible.

32. **THIS COURT ORDERS** that the ARIO, as amended as of October 31, 2023, shall continue in full force and effect until the CCAA Proceedings are terminated by order of this Court, provided that, to the extent that there is any inconsistency between any provision(s) of the ARIO and the provisions of this Order, the provisions of this Order shall prevail.

33. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay the sum of \$2,000.00 to Koskie Minsky LLP in trust for Radisa Zlatahnic o/a MRAD.

34. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

35. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

36. **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 the Receiver and its agents 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 the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

37. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

38. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

39. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

40. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order, and enforceable without any need for entry or filing.

**RECEIVER'S ACTIVITIES AND R&D**

41. **THIS COURT ORDERS** that the First Report and the activities and conduct of the Receiver described therein be and are hereby approved, provided, however that the Receiver in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

42. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements, to November 10, 2023, be and is hereby approved.

  
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**SCHEDULE "A"**

**ENDORSEMENT OF THE COURT, DATED OCTOBER 5, 2023  
ISSUED IN THE CCAA PROCEEDINGS**





SUPERIOR COURT OF JUSTICE

**COUNSEL SLIP**

COURT FILE NO.: CV-23-00703933-00CL

DATE: October 5, 2023

REGISTRAR: Teodoro Olaso

NO. ON LIST: 1

TITLE OF PROCEEDING: **Quality Rugs of Canada Ltd. Vs. Waygar Capital Inc. et al**

BEFORE JUSTICE: **Justice Penny**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Christopher Besant	Quality Rugs of Canada Ltd.	CBesant@GRLLP.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
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Michael Farace	GG Eight Cumberland	michael.farace@devrylaw.ca

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info

**ENDORSEMENT OF JUSTICE PENNY (Released on October 10, 2023):**

On September 28 three matters were put over to be dealt with today: 1) the lien regularization order; 2) the motions of GG Eight and Housing One; and, 3) the Unions’ holdback motions.

As matters have evolved, useful negotiations are still ongoing regarding the LRO issue and the work is proceeding on the GG Eight and Housing One sites. Accordingly, it is proposed, and I accept, that these matters be adjourned as follows. The LRO motion shall be heard by me on Friday October 13, 2023 at 10:00 AM by video conference. The builders’ motions are adjourned to October 18, which is a date already reserved for the sale approval motion (also at 10:00 AM by videoconference).

The Unions’ Holdback Issue

Both LIUNA Local 183 and the Carpenters’ Union brought motions concerning the preservation of certain holdback funds. I encouraged the parties to make every effort to find a commercially practical solution to this issue in a prior hearing and endorsement. The motion was adjourned on September 28 because, I was advised, the parties were still exchanging proposals and were close to an agreement on many items. As it turned out, the parties agreed on most issues (the interim holdback resolution) but were still apart on several implementation and related issues. All parties filed *with prejudice* offers to resolve the holdback issue. All parties agreed that, in the circumstances, argument would be restricted to a general overview of the areas of agreement and the applicable law but that the focus would be on the disputed items and the arguments for against the competing proposals, such that the court could accept, reject or vary the disputed terms of the proposed resolution in order to conclude the interim holdback resolution.

Background

Under the terms of the respective collective agreements, an amount not to exceed \$2,000 may be withheld by QSG to cover any back charges or deficiencies arising out of work performed by each installer hired to perform flooring services on QSG projects. The withheld funds must be recorded and accounted for on a monthly basis. These funds may be withheld for a period not to exceed six months from the date of commencement of the work or three months from the time that the installer no longer works for QSG.

The Unions both maintain that on a proper interpretation of the language of the relevant collective agreement, the holdback funds are subject to a trust for the benefit of the installers and do not form part of the estate of QSG. The Unions have brought, or wish to bring, grievances against QSG, the purpose of which is to seek an interpretation of the language of the collective agreements and a determination of whether the holdback amounts are funds held in trust or not. In aid of these arbitration proceedings, the Unions moved for a court order in these CCAA proceedings for the interim preservation of the holdback funds pending arbitral resolution of this dispute and for an order lifting the stay for the purpose of bringing, or proceeding with, the necessary grievances before an arbitrator under the collective agreements. The pre-filing holdback amounts are not in material dispute: LIUNA, \$97,083.41; and Carpenters’ Union, \$95,028.

There is a complicating factor involving LIUNA which becomes relevant to one of the disputed items discussed below. While QSG was bound to a collective agreement with LIUNA from May 1, 2022 to April 30, 2025, LIUNA abandon these bargaining rights in May 2023. In response, QSG brought an application to the OLRB, which was resolved in minutes of settlement. Under this Settlement Agreement, QSG is permitted to complete tile work on “existing projects” until April 30, 2024 without LIUNA seeking to enforce subcontracting out provisions. In exchange, QSG agreed to continue to apply the terms and conditions of the collective agreement, including the holdback provisions. The parties agreed in the Settlement Agreement that Vice-Chair Kugler of the OLRB “remains seized [of] any issues arising from the settlement.” LIUNA has raised an issue about whether a successor to QSG (e.g., the purchaser in these CCAA proceedings) is entitled to the benefit of the Settlement Agreement with LIUNA.

I will also add that important context for the holdback and other, collateral issues raised on these motions, concerns the current status of all employee compensation payments. The evidence is not disputed that, with the benefit of DIP financing provided by the purchaser and ongoing collection of accounts receivable owed to the applicants, there is no unpaid employee compensation which is due and owing. The applicants are current with all employee payments. In addition, funds sufficient to pay all holdback refunds are available. Further, as pointed out by counsel for the purchaser, it is a term of the purchaser’s offer that all employee compensation be kept current pending closing of the sale transaction. It is also the purchaser’s stated intention to continue payment of compensation for installers on all ongoing projects. As I have noted before in a prior endorsement, the applicants’ most significant asset is their ongoing projects and the accounts receivable from ongoing work done on those projects. To complete those projects, the applicants need to have installers working; the installers naturally will not be working if they are not being paid. It is also the stated intention of the applicants and the purchaser, and the objective of this proposed interim resolution of the holdback issue, that all holdback refunds will be paid in accordance with the terms of the relevant collective agreement as they become due and owing. It is entirely possible that there may never be any priority dispute concerning the status of the holdback amounts in these proceedings because, if the sale closes, the intention would be that the amounts will ultimately be paid in full.

### The Core Agreed Provisions

The parties have agreed on the core features of preserving the holdback funds and the payment of these funds as they become due and owing. QSG, the purchaser and the Unions have agreed that:

- a. a \$2,000 holdback refund claimed by one pieceworker (designated MRAD) will be paid forthwith by the applicants.
- b. the Unions’ holdback motions will be adjourned without fixed day.
- c. The issue of whether the holdback provision in the Residential Tile Contractors Association and LIUNA collective agreement dated May 1, 2022 to April 30, 2025 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 as required.

Similarly, the issue of whether the Residential Carpet, Hardwood, Laminate and Floor Coverings Collective Agreement, dated May 1, 2019 to April 30, 2022 creates an obligation to hold the holdback amounts in trust and whether that trust obligation continues under the Residential Floorlayers Collective Agreement, dated May 1, 2022 to April 30, 2025 shall be dealt with by way of fresh grievance by the Carpenters.

In both cases, the stay shall be lifted and the grievance arbitrations shall be allowed to proceed. If jurisdiction over the holdback issue is declined and/or otherwise not allowed in the arbitration and/or by the OLRB, then the holdback issue may be dealt with by way of motion in the CCAA proceedings or any subsequent insolvency proceedings which may be established.

- d. The sum of \$95,083.41 regarding the 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 as the LIUNA reserve in accordance with the terms of the agreement.  
The sum of \$95,028.00 regarding the Carpenters holdback amount shall be paid forthwith by the applicants to the Monitor and held segregated and separate from other funds held by the Monitor as the Carpenters reserve in accordance with the terms of the holdback resolution.  
The LIUNA holdback amount and the Carpenters' 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 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.
- e. It also appears to be agreed in concept that the reserve shall be transferred to the purchaser if the sale transaction closes and that holdback refunds from the reserve shall be paid by the purchaser post-closing to installers as refunds become due and owing under the terms of the collective agreements. However, some of the terms and conditions dealing with implementation and certain contingencies are in dispute. I will address the three most significant disputed issues below.

I will say at the outset that I accept, and approve, these features of the parties' proposed resolution (which I will refer to as the holdback resolution). I find it is appropriate in the circumstances for the stay to be lifted to permit the prosecution of the holdback trust issue before the appropriate arbitral tribunal.

### Resolution of the Disputed Issues

#### *1. The Transition to the Purchaser*

Much of the concern of the Unions, particularly LIUNA, is focused on the transition, if the sale transaction is approved and closes, from the applicants (and Monitor) to the purchaser and how that will affect the ongoing existence of the two reserves and their availability to pay holdback refunds to the installers.

As noted earlier, the purchaser's stated intention is to step into the shoes of the applicants and to honour all ongoing obligations to the installers. This specifically includes honouring the status of the reserve and using the reserve to pay holdback refunds as they come due.

Under the applicants' proposal, supported by the purchaser and the Monitor, on the closing of the sale transaction, the purchaser will give a unilateral undertaking to the applicants, LIUNA and the Court, that it will comply with the Settlement Agreement and continued to deal with the LIUNA reserved in accordance with the terms of the collective agreement. Upon giving this undertaking, the LIUNA reserve will be released to the purchaser.

The situation with the Carpenters holdback and reserve is not complicated by a prior abandonment or a settlement agreement. Regarding the Carpenters reserve, the purchaser's undertaking to the applicants, Carpenters and the Court will be that the purchaser will continue to deal with the Carpenters holdback and reserve post-closing in accordance with the Carpenters collective agreement, and to pay holdback refunds from the Carpenters reserve as they come due.

As I understand it, LIUNA objects to this formulation of the transfer if the sale closes on two grounds: 1) it questions the reliability and enforceability of the purchaser's undertaking; and, 2) it is not prepared to concede that the purchaser will, post-closing, enjoy any of the benefits of the Settlement Agreement since the purchaser is not a party to that agreement.

As to the first point, the sale requires court approval. If a term of the Court approval of the sale is that the purchaser will take over and maintain the reserve, and give an undertaking to the parties and the Court that it will continue to maintain the reserve and to deal with the reserve in accordance with the relevant collective agreements, that is, in my view, a powerful commitment, the breach of which would attract appropriate remedial action by the Court.

The second point, concerning a possible dispute over the status of the Settlement Agreement vis-à-vis the purchaser, involves a potentially complex application of the law of successor rights for which recourse to the Vice Chair of the OLRB, in accordance with the terms of the Settlement Agreement, seems likely to be the most appropriate path to resolution. The law is clear that CCAA proceedings do not abrogate collective agreements or collective bargaining rights – at most CCAA proceedings may temporarily suspend certain specific actions pending further court order. In a scenario in which there is a dispute about the ongoing status of the Settlement Agreement post-sale, paragraphs 14 to 17 of the ARIO would come into play. In order to ensure an orderly resolution of such a dispute, if in fact it actually arises, this issue will have to return to the CCAA court to clear the path to a resolution, in much the same way as the parties propose to deal with the question of whether the holdback provisions of the collective agreements create a trust.

As I understand it, LIUNA's real complaint arises from its view that the language of the applicants' proposal would somehow preclude LIUNA for making the argument that the purchaser is not a party to, and cannot derived benefit from, the Settlement Agreement such that LIUNA could somehow be "held hostage" by the purchaser threatening to withhold payment of otherwise due and owing holdback rebates. I find that the proposed language cannot reasonably be interpreted in that way. The contemplated undertaking is unilateral. It is for the benefit of the installers. LIUNA is not giving up anything. It is simply receiving the unilateral commitment of the purchaser to hold the LIUNA reserve and to pay it out as rebates come due, as contemplated by the terms of the collective agreement. LIUNA cannot reasonably complain about that.

LIUNA also proposes language in its version of the proposed holdback resolution that would preserve its right to argue that the Settlement Agreement does not survive the sale of the business by the applicants. While I agree that this concept can usefully be reflected in the holdback resolution, I find that LIUNA's specific drafting creates ambiguity and is weighted, in what is effectively an advocacy piece, overtly in favour of LIUNA's position. It is sufficient, in my view, that the holdback resolution simply state that its terms are without prejudice to parties' positions in any subsequent challenge to the applicability of the Settlement Agreement following the closing of the sale transaction.

On the basis of this analysis, if the sale closes and the purchaser gives the undertaking, the reserve will have been preserved; the reserve may be transferred to the purchaser. The Unions' argument that the holdback amounts constitute a trust will not be prejudiced by other priority claims because the holdback amounts will have effectively been isolated, pending final resolution, from the applicants' estate.

Also related to this question of the transition from the applicants to the purchaser if the sale transaction closes, is a proposal by both Unions to include a provision by which both the Unions and the purchaser must "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". Following that "advice", the reserve "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".

The purpose and need for this provision, or indeed even what it means, were not explained or justified to my satisfaction. The provision seems to once again enter the realm of successor rights which, subject to the temporary limit on certain collective bargaining rights arising out of the ARIO pending the applicants' attempt to restructure their business and/or further court order, is the exclusive preserve of the OLRB. On its face, s.

69(2) of the *Labour Relations Act* dealing with successor rights on the sale of a business appear to be declaratory and self-determining. The existence of successor rights, for example, does not appear to require any “advice” by the purchaser or by the Unions.

From the perspective of the applicants, the purchaser and the Monitor, this *proviso* merely sets up an unknown or ambiguous condition subsequent which introduces an unacceptable level of transaction risk into the proposed sale. The purchaser in particular was as clear as a bell on this: this provision is unnecessary and its meaning and purpose are highly ambiguous; the inclusion of this provision is a “dealbreaker”.

As noted earlier, it is the purchaser’s stated intention to step into the shoes of the applicants, including compensation obligations under the collective agreements. It is in the economic interests of the purchaser and the installers that the installers receive ongoing compensation, including holdback refunds as they come due.

The Unions have not satisfied me as to the purpose of, much less the need for, this *proviso*. I agree with the applicants, the purchaser and the Monitor that the Union *proviso* need not and should not be included in the interim holdback resolution. To the extent the Unions have successor rights concerns, subject to paragraphs 14 to 17 of the ARIO these can be taken up with the OLRB. This would appear to be, in principle at least, a situation where an order lifting the stay in order to seek direction from the OLRB could easily be sought if it became necessary to do so (again, along the same lines as has been done in the holdback resolution itself).

## *2. If the Transaction Does Not Close*

Another issue around which the parties did not entirely agree is what happens to the reserve if the sale transaction does not close. In my view, this issue is best addressed if and when that happens.

The parties agree that the holdback funds will be held as a reserve by the Monitor pending closing. If the sale does not close, the Monitor will continue to hold the reserve until further order of the Court. Whatever ultimately happens, or whatever comes next, will be on notice to all stakeholders. The status of the reserve in the hands of the Monitor can be addressed at that time. Even in the event of a liquidation, the Unions will have the opportunity to address the question of priorities if the funds have not yet been paid out to the installers as holdback refunds. If they have, of course, the issue becomes moot.

### 3. *Potential Claims Against Directors*

The Unions object to a provision in the applicants' proposal for the interim holdback resolution which, they say, purports to limit the Unions' right to make common law trust or other statutory claims against the applicants' directors on account of potential unpaid wages. I do not read the provision as limiting the installers right to seek indemnity from the applicants' directors for unpaid compensation in appropriate circumstances.

What the proposed language is meant to do is to acknowledge that claims against directors for unpaid pre-filing holdback amounts are going to be limited to the amount of the reserve, provided the reserve remains in place. Counsel for the Unions accept that the reserve contains the pre-filing holdback amounts and that the number is known and materially accurate; there is no "other" pre-filing holdback amount. Counsel for the applicants clarified that the premise for the proposed language is that, as long as the holdback reserve is available, any claims against directors for holdback refunds could not, by definition, exceed the reserve. The applicants accept that if, for some unforeseen reason, the reserve ceased to be available, claims for unpaid holdback refunds could not, logically, be limited to the amount of the reserve since the reserve, in that scenario, would not exist. With that concession (that the reserve must continue to subsist and be available for the payment of holdback refunds), the language proposed by the applicants makes sense and is in accord with the underlying intent of the interim holdback resolution.

Any other issues related to potential claims against directors are, in my view, premature. All parties agree that there are no known employee claims against directors for unpaid compensation at this time. Installers are being paid. If and when the potential for such claims arises, the matter can be addressed by motion to the court on a proper record. There is no need, or justification, at this time to make pronouncements about when and in what circumstances the stay might be lifted to permit pursuit of claims against directors for statutory or other compensation claims.

### Conclusion

In conclusion, I find that the motions shall be determined by the interim holdback resolution on the basis of the agreed provisions and the determinations made in these reasons on the disputed items. This shall be generally in accordance with the form of the applicants' proposed holdback resolution, subject to the qualifications and clarifications set out earlier in this endorsement. I am confident the parties can, with the benefit of these reasons, prepare the appropriate form of interim holdback resolution and order. I may be spoken to if there are any outstanding matters.<sup>1</sup>



Penny J.

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<sup>1</sup> The Monitor, at the end of oral submissions, pointed out that the holdback amount is a rolling number because work has continued on many of the applicants' projects post-filing. No one else commented on this issue explicitly. The principal focus of the motions and during oral submissions was on the pre-filing amounts, the calculation of which was not subject to any material controversy. The parties have proposed language in the holdback resolution which applies to post-filing holdbacks as well. If there are any unique issues about the post-filing holdbacks, I sure they will be addressed in future attendances.

## SCHEDULE "B"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that The Fuller Landau Group Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of each of Quality Rugs of Canada Limited, Malvern Contract Interiors Limited, Weston Hardwood Design Centre Inc., Ontario Flooring Ltd., Timeline Floors Inc., and Quality Commercial Carpet Corporation (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 31<sup>st</sup> day of October, 2023, as amended and restated by Order of the Court dated November 24, 2023 (the "**Order**") made in an action having Court file number CV-23-00703874-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.



5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

The Fuller Landau Group Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

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

**- and -  
QUALITY RUGS OF CANADA LIMITED, et al.  
Respondents**

<p><b>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</b></p> <p><b>PROCEEDING COMMENCED AT TORONTO</b></p> <p><b>AMENDED AND RESTATED ORDER (Amending Receivership Order, dated October 31, 2023)</b></p>	<p><b>DENTONS CANADA LLP</b> 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p><b>Kenneth Kraft</b> (LSO # 31919P) Tel: 416-863-4374 Fax: 416 863-4592 <a href="mailto:kenneth.kraft@dentons.com">kenneth.kraft@dentons.com</a></p> <p><b>Sara-Ann Wilson</b> (LSO # 56016C) Tel: 416-863-4402 <a href="mailto:sara.wilson@dentons.com">sara.wilson@dentons.com</a></p> <p><i>Lawyers for The Fuller Landau Group Inc. in its capacity court-appointed receiver and manager of Quality Rugs of Canada Limited, et al.</i></p>
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