



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00703292-00CL/CV-23-00703933-00CL DATE: November 2, 2023

NO. ON LIST: _____

TITLE OF PROCEEDING: WAYGAR CAPITAL INC. v. QUALITY RUGS OF CANADA LTD
v WAYGARD CAPITAL INC et al

BEFORE JUSTICE: PENNY

PARTICIPANT INFORMATION

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CLARIFYING ENDORSEMENT OF JUSTICE PENNY of NOVEMBER 2, 2023:

In my endorsement of October 31, 2023, I appointed Fuller Landau as Receiver of the debtors. This occurred in the context of an existing CCAA proceeding. Given that the appointment was made on short notice and in peculiar circumstances, I ordered that the initial receivership order should be a “bare bones” order until a comeback hearing scheduled on November 24, 2023.

A dispute has arisen about the form of bare-bones receivership order that should issue. To expedite matters, I asked my two court appointees, the Monitor and the Receiver, to report on what paragraphs in the draft order are in dispute and what the nature of the dispute is.

I have been advised by my appointees that the principal dispute arises out of language in the draft order that provides for a first charge favour of the Receiver’s fees and borrowings.

I have been asked to clarify whether it was my intent, in the October 31 endorsement, to impose a priority charge for the benefit of the Receiver limited to priority over pre-filing or statutory claims, to be further reviewed on November 24, or a first charge in priority to all prior charges in these proceedings, which would also be reviewed on November 24.

Although I did not conceive of or articulate the matter quite this way, it was my intent that the Receiver have a priority charge for its fees and borrowings (and those of its counsel) but not a *first* charge which would necessarily “prime” all earlier charges granted in these proceedings. The relationship between the earlier

priority charges and the new priority charge relating to the appointment of the Receiver is a potentially complex one which will, if not resolved, likely require a full briefing, including practical and/or judicial precedents, to understand and appropriately resolve. The determination of where the Receiver's charge will rank vis-a-vis the existing, earlier charges under the CCAA ARIO must await the full hearing on November 24.

I trust this will be of assistance clarifying the intended scope of the bare-bones initial receivership order pending a full hearing of this matter on November 24, 2023.

A handwritten signature in blue ink, appearing to read "Penny J.", with a stylized flourish at the end.

Penny J.