



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-23-00703933-00CL DATE: September 5, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: QUALITY RUGS OF CANADA LIMITED v. WAYGAR CAPITAL INC.,
AS AGENT FOR NINEPOINT CANADIAN SENIOR DEBT MASTER FUND L.P.

BEFORE: **Mr Justice PENNY**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

| Name of Person Appearing | Name of Party | Contact Info |
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For Defendant, Respondent, Responding Party:

| Name of Person Appearing | Name of Party | Contact Info |
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For Other, Self-Represented:

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ENDORSEMENT

Today was the “comeback” hearing for the initial order under the CCAA made by me on August 25, 2023. The agenda for today involved several requests by way of motion by the applicant and one motion from a project owner, Housing One, in Alberta affected by the initial order.

The first request is for an extension of the stay to October 31, 2023. The proposed transaction with Ironbridge will, if it closes, be done toward the end of October. It is prudent to have some time between the closing and the termination of the stay. The Monitor supports the extension. There was no opposition. The stay is extended to October 31, 2023.

The second request is to schedule a sale approval hearing for October 5, 2023. That request is approved, for one hour.

The third request is that the limit of the DIP financing advances be increased from the \$3.5 million to cover the initial period to the total of \$7 million contemplated in the LOI for the proposed transaction. This is in keeping with the prior evidence and the projected cash flows. It is supported by the Monitor. The increase to the DIP financing is approved.

The fourth request has to do with the form of the ARIO. There are several “housekeeping” issues which are not controversial. There is also a provision relating to lien claims to deal with the preservation of the claimants’ rights between now and the lien restructuring order that will be requested at a hearing on September 12, 2023, commencing at 9:30 AM. This provision has been

inserted following negotiations with parties with existing lien claims. The Monitor supports the form of the ARIO, including the lien provision. There is no opposition. The ARIO is approved.

The fifth issue is to confirm that a lien restructuring order will be sought on September 12, 2023. Further, any other stakeholder issues may be addressed at that time. I will return to one of them below. Two hours is reserved for that attendance.

Finally, the applicant requests that I make an order dismissing the Waygar application under the CCAA and adjourning without fixed day the Waygar application for the appointment of a receiver. The latter is in the event that the Ironbridge transaction does not close. That request too is supported by the Monitor and is not opposed.

Mr. Winton previously requested a small change to my endorsement of August 25, 2023 dealing with the Alvarez claim. Having confirmed that this change is on consent of affected parties, I shall reissue that endorsement with the agreed upon change.

Messrs. Leci and Fish made a motion on behalf of Housing One to lift the stay to the extent of permitting Housing One, the owner of a large residential condominium project in Alberta, to terminate its contract with QRCL (specifically with a QRCL entity), so that Housing One can enter into a new contract with another flooring contractor. This motion was opposed by the current supplier of tile/flooring to this project, Ames, and by the applicant, the Monitor and the proposed purchaser, Ironbridge.

Housing One is concerned that there is an existing lien on its property which will impair its ability to obtain its September 15 draw on its project financing. It is also concerned that the applicant has provided what it says are inaccurate statutory declarations in the past and that the applicant has not demonstrated an ability to get its commitments to Housing One's project back on track. The owner of this project is concerned there will be ongoing problems which will have knock-on effects, putting the entire project at risk.

The immediate problem with the lien has already been resolved. Housing One has already entered into a security arrangement with the lienholder, Ames. As well, under the proposed lien restructuring order, all existing liens not already "bonded out" will be removed from title in exchange for secured, court-approved charges against the assets of the applicant. As to the potential for ongoing problems, while I have sympathy with Housing One and its concerns, the DIP financing is being provided precisely to deal with problems of this kind. The Housing One project is on the applicant's/Monitor's/purchaser's "911" list. The applicant says it should, now that the financing is available, be permitted to show that it is able to bring its commitments into good standing and complete the project. This view is shared by the Monitor, Waygar and the proposed purchaser. Ames as well opposes the termination of the QRCL flooring contract because it still has over \$200,000 worth of work to perform, a good deal of which involves custom materials acquired specifically for this job and not easily redeployed for any other purpose.

Lifting the stay to permit the termination of Housing One's QRCL contract at this time is inconsistent with the overall purpose of the CCAA and of the plan being advanced in this case –

that is, to enable the applicant the opportunity to finish all of its outstanding projects, earn and collect its accounts receivable and carry on as a going concern. The DIP financing only became available a few days ago and it is only being increased today. Access to these funds should enable bottlenecks like this one to be cleared and for the supply of necessary materials to begin again. Finally, counsel for Ironbridge, whose client's money is now keeping the QRCL business going, was not served with the Housing One motion. Since Ironbridge is a significant stakeholder at this stage, it is entitled to have prior notice of and to make an informed response to an application of the kind brought by Housing One. I am therefore not acceding to the request of Housing One today. This is without prejudice to Housing One renewing its request at a future time if problems persist with QRCL's ongoing involvement.

Orders to issue in the form signed by me this day.

 Penny J.