



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

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

DATE: September 12, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: QUALITY RUGS CANADA LIMITED V WAYGAR CAPITAL INC  
BEFORE: JUSTICE PENNY

**PARTICIPANT INFORMATION**

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

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**ENDORSEMENT OF JUSTICE PENNY:**

- [1] Today was to have been the return date for the “lien regularization” issue and to hear from parties on “other” stakeholder issues. The consensus is that the parties need more time to resolve the lien regularization issue. With one exception, there is also a consensus that the “other” stakeholder issues (most of which relate to union/collective bargaining matters) can be adjourned to another date. The exception is a motion by one of the applicants’ contractual counterparties, a builder of a project in Toronto, GG Eight. GG Eight has brought a motion to lift the stay to permit it, under the terms of its contract with the applicants, to terminate the applicants’ involvement in the supply of flooring to the GG Eight project and permit GG Eight to deal directly with the flooring subcontractors supplying material and services to the project.
- [2] The lien regularization issue is adjourned to Friday, September 22, at 10:00 AM. The “other” stakeholder issues are also adjourned to that date. Two hours has been reserved. The hearing shall proceed by videoconference.
- [3] I heard submissions on the GG Eight motion. At the close of oral arguments, I also adjourned the GG Eight motion to September 22, 2023 with reasons to follow. These are my reasons.
- [4] GG Eight is building a 400 unit residential condominium in the Yorkville area. The applicants are the flooring contractor for the supply, installation and completion of flooring for the project. The agreement contains scheduling, timetabling and performance metrics. Flooring has been completed to the 38<sup>th</sup> of 51 floors. On August 25, 2023, a lien was

registered on the project by one of the applicant's subcontractors. That lien has since been removed, however.

- [5] In essence, as a result of the applicants' cash shortfall in August 2023, their obligations to the project fell somewhat behind schedule. Although work has continued to be performed, GG Eight has concerns that there will be more delays and that its project, and the closings of hundreds of units, may be delayed if the applicants' financial troubles continue to be a bottleneck.
- [6] In determining whether a stay should be lifted, the court must balance the interests of all affected parties. This includes not only the interests of GG Eight and the applicants, but all stakeholders, including, in this case, the potential purchaser, Ironbridge, and the potential benefits to all stakeholders of a successful transaction. Circumstances in which the court has granted lift stay orders include: when the plan is likely to fail, irremedial hardship to the moving party, protection of a right that may be lost due to the passage of time, where the relative prejudice to the moving party outweighs the prejudice to other stakeholders, where the applicant, over time, has made insufficient progress toward a viable plan or other resolution and where it is "in the interests of justice" to do so.
- [7] Here, GG Eight says it is a small project in the overall scheme of the applicants' business and that allowing it to cut the applicants loose will create no prejudice for anyone else. It says the applicants have demonstrated insufficient ability to get their obligations to GG Eight back on track, and that GG Eight ought not to have to bear the burden of further risk of non or inadequate performance into the future.
- [8] In my view, the evidence supports the conclusion that the applicants have recently devoted time and attention to getting this project back on track. Since the DIP financing has become available, it is clear that funds have been directed to the purchase, delivery and installation of flooring material to the project. This is precisely what is contemplated by the Ironbridge commitment of DIP financing to the applicants. Indeed, it is a condition of the LOI that the applicants pay the ongoing expenses necessary to fulfill their project commitments in the ordinary course and to maintain all existing relationships.
- [9] While I understand GG Eight's concerns, the balance of risk to GG Eight is outweighed, on the available facts, by the risk to the applicants and a multitude of other stakeholders who will benefit from a successful transaction, if the potential transaction with Ironbridge is scuppered by the withdrawal of beneficial contracts from the applicants' portfolio.
- [10] It is, in essence, simply too early to tell whether GG Eights concerns are material and well founded. The applicants are entitled to the opportunity to show, now that DIP financing has become available, that they are committed to, and can, get this project back on track for the benefit, not only of themselves, but of all stakeholders.

[11] To this end, I order that the applicants, assisted by the Monitor, provide more detailed information to GG Eight about their plans and timetable for this project in the form, at the very least, of answering the questions posed by Mr. Weinstock in his September 8, 2023 email: a schedule for the completion of all units; a schedule for the installation of the corridor carpets; and, current information regarding the applicants' suppliers and the flow of the necessary materials for installation to this project.

[12] I encourage the parties to continue open discussion and flow of information that will alleviate the builder's concerns. If, by September 22, 2023, GG Eight is of the view that it has hard evidence of a material failure to meet commitments and material, non-speculative risk to its project, it is at liberty to renew its motion. It is my hope and expectation that this will not be necessary.

A handwritten signature in blue ink, appearing to read "Penny J.", followed by a period.

Penny J.