

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

**IN THE MATTER OF THE *GROUP' 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 GROUP LISTED IN
SCHEDULE "A" HERETO (THE "APPLICANTS")**

FACTUM OF THE APPLICANTS

(RE STAY EXTENSION TO NOVEMBER 6, 2023)

October 30, 2023

GARDINER ROBERTS LLP
Bay Adelaide Centre, East Tower
22 Adelaide St. W., Suite 3600
Toronto, ON M5H 4E3

Chris Besant (#248820)
cbesant@grllp.com

Tel: 416-865-4022

Lawyers for the Applicants

TO: THE SERVICE LIST

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PART I – OVERVIEW

1. The QSG Group (variously referred to below as the “**Group**” and “**QSG**”) seeks an extension of the CCAA stay in these proceedings until November 6, 2023. The existing stay granted by the amended and restated initial CCAA order (the “**ARIO**”) made under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) expires October 31, 2023.

2. The defined terms in the affidavits of John Pacione filed in support of the Application and the Notice of Motion will be used herein except as otherwise noted.

3. When this application was originally returnable August 4, 2023, competing CCAA applications had been filed by the QSG Group and by Waygar, its senior lender. Waygar also launched a back-up receivership application. On that date, both applications were adjourned for 2 weeks to August 18, 2023. On August 18, the matter was further adjourned to August 23 and then adjourned further to August, 25, 2023, at which time an Initial CCAA Order was made in this application granting a 10 day stay of proceedings and a DIP financing authorization capped at \$3.5 Million. On September 5, an Amended and Restated Initial Order (“**ARIO**”) was made granting a stay to October 31, 2022 and increasing the DIP borrowing authorization to \$7 million.

4. The context of this proceeding is that the Applicants ran a SISF pre-filing and selected a successful bidder, Ironbridge, with which they signed an LOI dated August 25, 2023. Ironbridge also committed to provide up to \$7 million in DIP Financing, of which up to \$5 million was available until the APA is signed, upon which event the remaining \$2 million also becomes available. The purpose of extending the stay to October 31, 2023 was to provide runway to

complete the transaction, and the DIP as authorized was to provide funding support in addition to collections.

5. Waygar agreed to support the completion of the transaction and to that end consented not to bring forward its receivership application until after the expiry of 60 days from the making of the Initial Order, or in other words not before October 25, 2023.
6. It was originally contemplated that the transaction would be closed before the end of October. However the APA has not yet been finalized owing to outstanding commercial issues between the proposed Purchaser, the senior lender (Waygar) and the suppliers.
7. Accordingly the stay extension is sought until to November 6, 2023 to permit time to resolve the commercial issues and complete definitive documentation re that sale transaction.
8. Further thereto, it is requested that a case conference be scheduled in this matter on or before November 6, 2023. If the APA is signed before that date, the case conference would be used to schedule the implementing sale approval and related motions, as well as a motion for a Lien regularization order (“LRO”).
9. If the APA is not signed before that case conference, it is proposed the further appointment be used instead to seek directions as to the future of the proceeding.

PART II – FACTS

10. The Facts are as stated in the affidavit of John Pacione affirmed October 30, 2023 in connection with this motion (as well as in his affidavits dated August 3, 17, and 25, and Sept 2, 2023 filed in connection with the Initial Order and the ARIO).

PART III – ISSUES

11. There principal issues before the Court today are:
 - (a) Should an extension of the CCAA Stay be granted to November 6, 2023?
 - (b) Should a Case Conference be set on or before November 6, 2023 for the purpose of either scheduling the deal implementation motions, or providing directions as to the future of the proceeding in the event the transaction is not signed by then?

PART IV: LAW AND ANALYSIS

- A. The stay of proceedings should be further extended to November 6, 2023*

The Legal Test for a Stay Extension

12. Pursuant to section 11.02(2) of the CCAA, a Court may extend the initial 10 day stay for any period that the court considers necessary.¹ Further to s. 11.02(3), in order to exercise this discretion, a Court must be satisfied that:
- (i) that the circumstances exist that make such an order appropriate;
 - (ii) that the Applicants have acted and continue to act in good faith and with due diligence.

The Extension Requested is Appropriate in the Circumstances

13. In the present case, the Applicants have signed an LOI dated August 25, 2023 with Ironbridge (the “Sale LOI”) that contemplates that QSG will sell its business and assets to Ironbridge pursuant to a sale and vesting order to be obtained. An asset purchase agreement (“APA”) further to same has been prepared and ancillary documentation to close is largely ready. The APA is ready to be signed once the remaining commercial issues are settled between Ironbridge Waygar and the Suppliers.
14. In order to implement the APA transaction:
- (a) a sale approval order, together with as a Contracts Assignment Order and sale proceeds Distribution Order, will be sought; and
 - (b) a Lien Regularization and Claims Process Order will be sought.
15. Accordingly, it is requested that a Case Conference be scheduled on or before November 6, 2023 be set to schedule the obtaining of those orders if the APA is signed by that date.
16. As part of the arrangements for the QSG CCAA filing to proceed, QSG committed to Waygar that it could return its receivership application at any time after October 23, 2023 (60 days after the August 25 Initial Order) if the sale is not closed by then. As the sale was not closed by October 23, Waygar has requested that a date be set for directions as to the future course of the proceedings if the transactional issues are not settled.

¹ CCAA, s. [11.02\(2\)](#).

17. If the transaction is not signed before the date fixed for the Case Conference, it is proposed that the Case Conference be converted into a hearing to provide directions to address the future of the proceedings.
18. The company has sufficient cash flow to operate on a critical payments basis until November 6 without drawing on the DIP Loan.²
19. Accordingly, the further stay and relief requested is appropriate³:
- (i) the completion of the sale transaction contemplated by the Sale LOI with Ironbridge continues to be in the interests of the stakeholders;
 - (ii) the extension of the CCAA Stay to November 6, 2023 is right sized in the circumstances and allows for:
 - (A) a period of protection which is the minimum reasonably necessary to determine if the deal is going to be signed; and
 - (B) a court date to be set (respectfully requested to be November 6, 2023) to (i) establish a schedule for the court hearings to implement the deal if a deal is reached, (ii) which if a deal is not reached, would also serve as a date to set a future course for the proceedings.

The Applicants Continue to Act in Good Faith and with Due Diligence

20. The factum in support of the ARIO described the actions of the Company between August 25 and Sept 5, 2023 which satisfied the court that the Applicants were acting in good faith and with due diligence during the Comeback period prior to making the ARIO.
21. Since the ARIO was made on September 5, 2023, the Applicants have acted in good faith and with due diligence, including doing the following⁴:

Funding and Payment of Post-Filing Obligations

- (a) Completed the implementation of the DIP borrowing process and made regular draws on the DIP as needed to the extent permitted;
- (b) Ensured regular payment of post-filing amounts due to employees, installers, suppliers and governments;

Builder Relationships – Fulfillment and Collections

² Affidavit of John Pacione Affirmed October 30, 2023 par 10.

³ Affidavit of John Pacione Affirmed October 30, 2023 pas. 8-9

⁴ Affidavit of John Pacione Affirmed October 30, 2023 par 11.

- (c) Arranged the continuing collection of Builder accounts receivable;
- (d) Arranged for accelerated fulfillment of flooring installations which were most critical to builders in order to protect customer relationships and AR and to minimize cure issues on the assignment of builder contracts in connection with the sale;
- (e) Dealt with two lift stay motions by builders and arranged for accelerated installations to defuse those requests;
- (f) Successfully negotiated certain other requests by builders to terminate despite the stay and resolved all of those issues without the need for motions;
- (g) Dealt with various builder collection issues where objections to payment were raised and sought payment in accordance with the ARIO;
- (h) Removed liens from title to builder properties registered before August 25, 2023 ensuring that there are no liens impairing receivables collection;
- (i) Successfully brought a motion to successfully address potential issues in collecting receivables from over 60 builders affecting up to \$ 7 million in collections, arising from default letters sent by one of the unions to builders before the Initial Order was made;
- (j) Arranged communications with the affected builders following the motion to arrange the collection of their receivables;
- (k) Reviewed statutory declaration issues raised by builders and developed proposed solutions to same;

Supplier Relationships

- (l) Arranged for stability of supply by funding suppliers on a COD basis;
- (m) Successfully negotiated with various resistant suppliers to supply on COD basis;
- (n) Arranged for critical payment of a small amount (\$60,000) to one supplier in the US outside the reach of the stay, in order to ensure supply of a critical product needed for critical installations;
- (o) Processed and recorded 90 Notices of Liens from suppliers delivered to QSG and the Monitor under the ARIO;

Unions

- (p) in addition to the Union default letters motion noted above, successfully dealt with two motions by unions concerning installer holdbacks and related issues;
- (q) Assisted the purchaser with planning for union relationships post-closing;

Other Creditor Issues

- (r) Dealt with various other creditor issues including a proposed CRA reassessment of QSG's HST liability; Dartmouth landlord issues, the PMSI rights of Mohawk in inventory, and A&M's claims under its Engagement Letter;

LRO

- (s) prepared a draft motion for an LRO, and circulated drafts to the Service List of the draft LRO, and obtained input from and negotiated over the terms of same with the informal suppliers group, obtained briefings from Ironbridge over their discussions with suppliers, and obtained input from builders;

Sale

- (t) Completed the negotiation of the draft APA and related documentation and schedules, subject to the two business issues to be resolved between the purchaser, Waygar and the Suppliers;
- (u) Worked with the purchaser on preparing for closing and post transaction integration;
- (v) Prepared a draft motion for a Sale Approval and Vesting Order, a Contracts Assignments Order and a Distribution Order;
- (w) Engaged in communications with Waygar over the Distribution Order and related transaction issues;
- (x) Engaged in communications with the informal Suppliers group over their claims as they impacted sale completion;
- (y) Conducted consultations with the Monitor and Purchaser over the remaining business issues to be resolved with Waygar and the Suppliers so that the transaction could proceed;

Court Appearances

- (z) Appeared in court in connections with motions and case conferences on September 12, 22, and 28, and October 5, 13 and 27;

Process Coordination

- (aa) Held regular consultations with the Monitor and Ironbridge to address all pressing issues regarding operations and the transaction, to ensure the restructuring was moving forward.

PART V – ORDER SOUGHT

22. For all of the foregoing reasons, the QSG Group requests an Order be made in the form appended as Tab 3 to the Motion Record, subject to such amendments as may be further submitted to the court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of October, 2023.

CBesant

**Chris Besant
Gardiner Roberts LLP
Lawyers to the Applicants**

Schedule “A” – List of Authorities

1. *Sherman Estate v. Donovan*, [2021 SCC 25 \(CanLII\)](#)

Schedule “B” – Text of Statutes

Companies’ Creditors Arrangement Act, R.S.C., 1985, c. C-36

Jurisdiction of Courts

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

- (4)** In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;
 - (b) how the company's business and financial affairs are to be managed during the proceedings;
 - (c) whether the company's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g) the monitor's report referred to in paragraph 23(1)(b), if any

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

General

Duty of Good Faith

Good faith

18.6 (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

Monitors

Duties and functions

23 (1) The monitor shall

[...]

(k) carry out any other functions in relation to the company that the court may direct.

Obligations and Prohibitions

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Factors to be considered

- (3)** In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

**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"**

Court File No.: CV-23-00703933-00CL

***ONTARIO*
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COMMERCIAL LIST**

PROCEEDING COMMENCED AT
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FACTUM OF THE APPLICANTS

GARDINER ROBERTS LLP

Lawyers

Bay Adelaide Centre, East Tower

22 Adelaide Street West, Suite 3600

Toronto ON M5H 4E3

Chris Besant (248820)

Tel: (416) 865-6600

Fax: (416) 865-6636

Lawyers for the Applicant

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