

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY
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 APPLICANTS LISTED IN SCHEDULE "A" (the
"Applicants")

SUPPLEMENTARY AFFIDAVIT OF JOHN A. PACIONE
(Affirmed October 4th, 2023)

I, John Pacione, of the City of Vaughan, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Co-Chief Executive Officer of the Quality Sterling Group of Companies (which group for purposes of these proceedings consists of the 10 Applicants, and is variously referred to in these proceedings as "QSG", the "QSG Group", the "Group" or the "Companies"). As such, I have knowledge of the matters to which I depose in this affidavit, save and except for such facts or matters which are stated to be based on information and belief, and where so stated, I believe same to be true. Defined terms herein have the same meaning as in my previous affidavits except where specified herein.

2. This affidavit is sworn in support of the Companies' motion for the following orders:
 - (a) Dismissing the motions of LiUNA Local 183's ("LiUNA") and the Carpenters Union Local 27 concerning holdbacks, including
 - (i) dismissing the request in each motion that the stay against QSG's directors be lifted be dismissed or, in the alternative, that any claims against QSG's directors should be limited to any reserves created; and,
 - (ii) dismissing the Union's request that a reserve be created be dismissed.

OFFER TO UNIONS MADE WITH PREJUDICE TO SETTLE HOLDBACKS MOTION

3. Attached herewith and marked as Exhibit "A" is an offer sent to counsel to both unions to settle both union motions. The text of the offer reads as follows:

"The CCAA Applicants propose that the LiUNA and CU-27 motions over installer holdbacks be settled on the basis of the offer to each union set out below. This communication is made on a with prejudice basis.

OFFER TO SETTLE LIUNA HOLDBACK MOTION

The CCAA Applicants propose that the LIUNA motion over the holdbacks be settled on the following terms:

- a. The \$2,000 holdback refund claimed by MRAD (Radisa Zlatahnac operating as MRAD) will be paid forthwith by the Applicants.
- b. The hearing in respect of certain holdback issues ("**Holdback Motion**") brought by LiUNA and scheduled for September 28, 2023 shall be adjourned *sine die*. The Holdback Motion shall be determined subsequently in the CCAA proceedings, subject to the exceptions in this paragraph b or in paragraph e herein.

The issue of whether the holdback provision in the Residential Tile Contractors Association and the Union, dated May 1, 2022 to April 30, 2025 (the "**Tile Collective Agreement**") 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 (the "**Interpretation Issue**"); and such grievance arbitration shall be allowed to proceed (the "**Grievance Arbitration**"). For greater clarification, the pending grievance is dated April 29, 2022 and was referred to arbitration around May 16, 2022.

If jurisdiction over the Interpretation Issue is declined and/or otherwise not allowed in the Grievance Arbitration and/or by the OLRB, then the Interpretation Issue will be dealt with by way of motion in the CCAA proceedings or any subsequent insolvency proceedings which may be established, provided that if the transaction with the Purchaser closes and the Purchaser delivers the Undertaking (as herein defined), the LiUNA Reserve (as herein defined) shall be returned to the Purchaser as provided for in paragraph e and any CCAA or other claims process will be inapplicable.

After the Interpretation Issue has been finally adjudicated negatively and/or otherwise declined or not allowed to be decided by the Grievance Arbitration and/or by the OLRB, and if the sale transaction with the Purchaser does not close, then the Holdback Motion shall be determined subsequently by way of motion in the CCAA proceedings or any subsequent insolvency proceedings.

The Grievance Arbitration shall not be asserted against the directors and officers of the Applicants nor against the Purchaser or its directors or officers.

c. No grievance relating to the Holdback Motion shall be filed against the directors and officers of the Applicants or against the Purchaser or its directors or officers. Further, any claim made against the Applicant's directors and officers in respect of breach of trust regarding the holdbacks shall only be made if the sale transaction does not close or if the Purchaser closes the transaction but does not deliver the Undertaking, and recourse shall be limited only to the LiUNA Reserve, and the Applicant's directors and officers shall not be required to participate in any proceeding concerning same. For greater clarity, if the sale transaction does not close or if the Purchaser closes the transaction but does not deliver the Undertaking, and the Union can establish a breach of trust relating to the holdbacks on the part of the Applicant's directors and/or officers, then the Union's recourse is limited to only the LIUNA Reserve. Further, for greater clarity, if the sale transaction does not close or if the Purchaser closes the transaction but does not deliver the Undertaking, nothing in this agreement is meant to preclude claims against the Applicant's directors and officers with respect to other forms of director and officer liability relating to the holdback, including but not limited to, claims under section 131 of the OBCA, and the Union's recourse shall be limited only to the LiUNA Reserve.

d. The sum of \$95,083.41 (i.e. "**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 (the "**LiUNA Reserve**") in accordance with the terms of this agreement.

e. The LiUNA Reserve 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. However, if the sale transaction does not close or if the Purchaser closes the transaction but does not deliver the Undertaking, and the Interpretation Issue is finally determined that an obligation to hold the holdback amounts in trust exists, the LiUNA Reserve shall be forthwith released back to the Applicants' estate to be dealt with in accordance with any distribution order concerning the Applicants' assets. Provided further that if the transaction with the Purchaser closes, and the Purchaser undertakes to comply with the Settlement Agreement ("**Settlement Agreement**") dated July 31, 2023 and continue to deal with any LiUNA Holdback Amount outstanding at April 30, 2024 in accordance with the Tile Collective Agreement even if the term of the Settlement Agreement has expired (the "**Undertaking**"), the LiUNA Reserve will be released to the Purchaser and all matters relating to any LiUNA Holdback Amount in the CCAA proceedings or any subsequent insolvency proceedings shall be terminated and withdrawn.

f. The creation of the LiUNA Reserve is not meant to create any trust rights, nor is it meant to affirm that a trust is created.

g. The terms of this settlement and the creation of the LiUNA Reserve shall be endorsed by the CCAA Court.

OFFER TO SETTLE CU-27 HOLDBACK MOTION


The CCAA Applicants propose that the Carpenters Union Local 27 motion over the holdbacks be settled on the same basis as the offer re the LiUNA Holdbacks Motion above, *mutatis mutandis*. Eg


- paragraph a is inapplicable,
- Paragraph b – As there is no pending CU-27 grievance, CU-27 would be entitled to initiate a fresh grievance to seek to determine the Interpretation Issue regarding its collective agreement and pursue its own grievance arbitration re same.
- The reserve amount would be the CU-27 Holdback amount (\$95,028.00), and the definitions “LiUNA Holdback Amount” and “LiUNA Reserve” would become “CU-27 Holdback Amount” and “CU-27 Reserve”.
- In e, as there is no Settlement Agreement with CU-27, the “Undertaking” would be that the purchaser would undertake to continue to deal with any CU-27 Holdback Amount after closing in accordance with the CU-27 Collective Agreement.”

RELIEF SOUGHT

4. Accordingly QSG is requesting that this Honourable Court dismiss LiUNA’s September Motion, for the creation of holdback reserves and for leave to initiate or continue or amend grievances against QSG or its directors and officers, be dismissed.
5. In the alternative, QSG requests an order in the form of the offer made as set out above.

AFFIRMED by John Pacione at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 4, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

DocuSigned by:

 10/4/2023
 302296CEB41D419...
 Commissioner for Taking Affidavits
 (or as may be)
 Mryam Sarkis

DocuSigned by:

 10/4/2023
 D59AF63ECDD04EA...
JOHN PACIONE



This is Exhibit "A" referred to in the Affidavit of John Pacione
sworn at the City of Toronto, in the Province of Ontario, before me
on October 4th, 2023, in Accordance with O. Reg. 431/20 Administering
Oath or Declaration Remotely

DocuSigned by:
Mryam Sarkis 10/4/2023
392295CEB41D419...

Commissioner for Taking Affidavits (or as may be)

Mryam Sarkis

Archived: Wednesday, October 4, 2023 10:55:46 AM

From: [Besant, Chris](#)

Sent: Tuesday, October 3, 2023 6:09:57 PM

To: [Daniel Wright](#); [James Harnum](#); [Latham, Joe](#); [Demetrios Yiokaris](#); [Axell, Erik](#); [Michael Mazzuca](#)

Cc: arif.dhanani@rsmcanada.com

Subject: Union Holdback Motions - Offer to Settle by QSG - WITH PREJUDICE

Sensitivity: Normal

Counsel:

The CCAA Applicants propose that the LIUNA and CU-27 motions over installer holdbacks be settled on the basis of the offer to each union set out below. This communication is made on a with prejudice basis.

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- The reserve amount would be the CU-27 Holdback amount (\$95,028.00), and the definitions "LiUNA Holdback Amount" and "LiUNA Reserve" would become "CU-27 Holdback Amount" and "CU-27 Reserve".
- In e, as there is no Settlement Agreement with CU-27, the "Undertaking" would be that the purchaser would undertake to continue to deal with any CU-27 Holdback Amount after closing in accordance with the CU-27 Collective Agreement.

With regards

Chris Besant • Partner

Gardiner Roberts LLP

Bay Adelaide Centre - East Tower, 22 Adelaide St W, Ste. 3600, Toronto, ON M5H 4E3

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