

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

**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" HERETO (THE "APPLICANTS")**

**MOTION RECORD**

**(CCAA Applicants Motion for LRO and Stakeholder Issues returnable Sept 22, 2023)**

September 21, 2023

**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 Applicants

**TO: THE SERVICE LIST**

<p><b>AIRD &amp; BERLIS LLP</b> Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9</p> <p><b>Steven L. Graff (LSO #31871V)</b> <a href="mailto:sgraff@airdberlis.com">sgraff@airdberlis.com</a> 416-865-7726</p> <p><b>Matilda Lici (LSO #79621D)</b> <a href="mailto:mlici@airdberlis.com">mlici@airdberlis.com</a> 416-865-3428</p> <p>Lawyers for Waygar Capital Inc., as agent for Ninepoint Canadian Senior Debt Master Fund L.P.</p>	<p><b>GARDINER ROBERTS</b> Bay Adelaide Centre – East Tower 3600 – 22 Adelaide Street West Toronto ON M5H 4E3</p> <p><b>Christopher Besant (LSO #248820)</b> <a href="mailto:cbesant@grllp.com">cbesant@grllp.com</a> 416-865-4022</p> <p>Lawyers for Quality Rugs of Canada Limited</p>
<p><b>GOODMANS LLP</b></p> <p><b>Joe Latham (LSO #32326A)</b> 416-597-4211 <a href="mailto:jlatham@goodmans.ca">jlatham@goodmans.ca</a></p> <p><b>R. Chadwick</b> <a href="mailto:rchadwick@goodmans.ca">rchadwick@goodmans.ca</a></p> <p><b>Erik Axell</b> 416-840-2579 <a href="mailto:eaxell@goodmans.ca">eaxell@goodmans.ca</a></p> <p><b>Andrew Harmes</b> <a href="mailto:aharmes@goodmans.ca">aharmes@goodmans.ca</a></p> <p>Lawyers for RSM, the Proposed CCAA Monitor</p>	<p><b>RSM CANADA LIMITED</b> 11 King Street West, Suite 700, Box 27 Toronto, ON M5H 4C7</p> <p><b>Bryan Tannenbaum</b> <a href="mailto:bryan.tannenbaum@rsmcanada.com">bryan.tannenbaum@rsmcanada.com</a> 416-238-5055</p> <p><b>Arif Dhanani</b> <a href="mailto:arif.dhanani@rsmcanada.com">arif.dhanani@rsmcanada.com</a> 647-725-0183</p> <p>CCAA Monitor</p>
<p><b>LAX O’SULLIVAN LISUS GOTTLIEB LLP</b> Matt Gottlieb <a href="mailto:mgottlieb@lolg.ca">mgottlieb@lolg.ca</a></p>	<p><b>BUCKWOLD WESTERN LTD.</b> 70, 3239 Faithfull Avenue Saskatoon, SK S7K 8H4</p> <p><a href="mailto:ar@buckwold.com">ar@buckwold.com</a></p>

<p>Andrew Winton <a href="mailto:awinton@lolg.ca">awinton@lolg.ca</a> Melissa Calce <a href="mailto:mcalce@lolg.ca">mcalce@lolg.ca</a></p> <p>Lawyers for Alvarez &amp; Marsal Canada Securities ULC</p>	
<p><b>DRUDI ALEXIOU KUCHAR LLP</b></p> <p><b>Tushar Sabharwal</b> <a href="mailto:tsabharwal@dakllp.com">tsabharwal@dakllp.com</a> 416-569-8069</p> <p><b>Marco Drudi</b> <a href="mailto:mdrudi@dakllp.com">mdrudi@dakllp.com</a></p> <p>Lawyers for Olympia Tile International Inc.</p>	<p><b>DAVIES WARD PHILLIPS &amp; VINEBERG LLP</b></p> <p><b>Nathasha MacParland</b> <a href="mailto:nmacparland@dwpv.com">nmacparland@dwpv.com</a></p> <p><b>Natalie Renner</b> <a href="mailto:nrenner@dwpv.com">nrenner@dwpv.com</a></p> <p><b>Joshua Kuretzky</b> <a href="mailto:jkuretzky@dwpv.com">jkuretzky@dwpv.com</a></p> <p>Lawyers for Ironbridge Equity Partners Management Limited</p>
<p><b>LAWSON LUNDELL LLP</b></p> <p><b>Andrea Lutsch</b> <a href="mailto:alutsch@lawsonlundell.com">alutsch@lawsonlundell.com</a> 403-218-7574</p> <p><b>Kelly Hannan</b> <a href="mailto:khannan@lawsonlundell.com">khannan@lawsonlundell.com</a> 403-218-7541</p> <p>Lawyers for Taiga Building Products Ltd.</p>	<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b></p> <p><b>Kathryn Esaw</b> <a href="mailto:kesaw@osler.com">kesaw@osler.com</a></p> <p><b>Marc Wasserman</b> <a href="mailto:mwasserman@osler.com">mwasserman@osler.com</a></p> <p>Lawyers for Mohawk Carpet Distribution, Inc.</p>
<p><b>DEVRY SMITH FRANK LLP</b> 100 – 95 Barber Greene Road Toronto ON M3C 3E9</p> <p><b>Michael Farace LSO# 29852S</b> <a href="mailto:Michael.farace@devrylaw.ca">Michael.farace@devrylaw.ca</a> 416-446-5818</p> <p>Lawyers for GG Eight Cumberland</p>	<p><b>KOSKIE MINSKY LLP</b> 900 – 20 Queen Street West Toronto ON M5H 3R3</p> <p><b>Demetrios Yiokaris</b> <a href="mailto:dyiokaris@kmlaw.ca">dyiokaris@kmlaw.ca</a></p> <p>Lawyers for LIUNA Local 183</p>

<p><b>METROPOLITAN FLOORS</b></p> <p><b>Jim Combatti</b> jimc@metrofloors.com</p>	<p><b>SOTOS</b></p> <p><b>Peter Viitre</b> <a href="mailto:pviitre@sotos.ca">pviitre@sotos.ca</a></p> <p>Lawyers for Juliet Neely</p>
<p><b>LEE BOWDEN NIGHTINGALE LLP</b> 300 – 3700 Steeles Avenue West Vaughan ON L4L 8K8</p> <p><b>Gregory W. Bowden</b> <a href="mailto:gwb@lbnfirm.com">gwb@lbnfirm.com</a> 905-264-6678</p>	<p><b>DLA PIPER (CANADA) LLP</b> 1 First Canadian Place 100 King St W, Suite 6000 Toronto, ON M5X 1E2</p> <p><b>Danny Nunes</b> <a href="mailto:Danny.nunes@dlapiper.com">Danny.nunes@dlapiper.com</a> 416-365-3421</p> <p><b>Bruce Darlington</b> <a href="mailto:Bruce.darlington@dlapiper.com">Bruce.darlington@dlapiper.com</a> 416-365-3529</p> <p><b>Howard Krupat</b> <a href="mailto:Howard.krupat@dlapiper.com">Howard.krupat@dlapiper.com</a> 416-365-3510</p> <p>Lawyers for Macro-Universe Enterprises Ltd. dba Fuzio</p>
<p><b>OGILVIE LLP</b> 1400 Canadian Western Bank Place 10303 Jasper Avenue Edmonton AB T5J 3N6</p> <p><b>Matt Feehan</b> <a href="mailto:mfeehan@ogilvielaw.com">mfeehan@ogilvielaw.com</a> 780-429-6224</p> <p><b>Akhil Vohra</b> <a href="mailto:avohra@ogilvielaw.com">avohra@ogilvielaw.com</a> 780-429-6285</p> <p>Lawyers for Ames Tile and Stone Ltd.</p>	<p><b>WAYGAR CAPITAL INC., AS AGENT FOR NINEPOINT CANADIAN SENIOR DEBT MASTER FUND</b> 372 Bay Street, Suite 901 Toronto, ON M5H 2W9</p> <p><b>Don Rogers</b> <a href="mailto:drogers@waygarcapital.com">drogers@waygarcapital.com</a> 416-565-2738</p>

<p><b>MOHAWK CARPET DISTRIBUTION, INC.</b> 160 South Industrial Road Calhoun, Georgia 30701</p> <p><b>David Patton</b> General Counsel <a href="mailto:Dave_patton@mohawkind.com">Dave_patton@mohawkind.com</a> 706-629-7721</p>	<p><b>ATTORNEY GENERAL OF CANADA DEPARTMENT OF JUSTICE</b> Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p> <p><b>Diane Winters</b> General Counsel <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a> 647-256-7459</p>
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<p><b>MINISTRY OF FINANCE</b> Ministry of the Attorney General (Ontario) Collections Branch – Bankruptcy and Insolvency Unit 6-33 King Street West Oshawa, ON L1H 8H5</p> <p><b>Sherrise Carey</b> <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a> 1-866-668-8297</p>	<p><b>BORDEN LADNER GERVAIS LLP</b> Centennial Place, East Tower 520 – 3<sup>RD</sup> Ave. SW, Suite 1900 Calgary AB T2P 0R3</p> <p><b>Marin Leci</b> <a href="mailto:mleci@blg.com">mleci@blg.com</a> 403-232-9513</p> <p><b>Myles Fish</b> <a href="mailto:mfish@blg.com">mfish@blg.com</a> 403-23209764</p> <p>Lawyers for Housing One 10<sup>th</sup> Avenue</p>
<p><b>MILLER THOMSON LLP</b> One London Place 255 Queens Avenue, Suite 2010 London, ON Canada N6A 5R8</p> <p><b>Tony Van Klink (LSO#: 29008M)</b> 519 931 3500 <a href="mailto:tvanklink@millერთhompson.com">tvanklink@millერთhompson.com</a></p> <p><b>Manav Singhla (LSO# 66481Q)</b> 416.595.7947 <a href="mailto:msinghla@millერთhompson.com">msinghla@millერთhompson.com</a></p> <p>Lawyers for VIFLOOR CANADA LTD.</p>	<p><b>ROUSSEAU MAZZUCA LLP</b> 65 Queen Street West, Suite 600 Toronto, ON M5H 2M5 Tel: 416-304-9899 Fax: 437-800-1453</p> <p><b>Michael Mazzuca (LSO NO. 56283V)</b> <a href="mailto:michael@rousseau-mazzuca.com">michael@rousseau-mazzuca.com</a></p> <p><b>Daniel Wright (LSO NO. 87443L)</b> <a href="mailto:dwright@rousseau-mazzuca.com">dwright@rousseau-mazzuca.com</a></p> <p>Lawyers for United Brotherhood of Carpenters and Joiners of America</p>
<p><b>BURNSIDE LAW GROUP</b> 400 - 202 Brownlow Avenue Dartmouth NS B3B 1T5</p> <p><b>Derek B. Brett</b> <a href="mailto:dbb@burnsidelaw.net">dbb@burnsidelaw.net</a> 902-468-3066</p> <p>Lawyers for 4405967 Nova Scotia Limited</p>	<p><b>McINNES COOPER</b> 1300 – 1969 Upper Water Street McInnes Cooper Tower – Purdy’s Wharf Halifax NS B3J 3R7</p> <p><b>Ian Dunbar</b> <a href="mailto:ian.dunbar@mcinnescooper.com">ian.dunbar@mcinnescooper.com</a> 902-444-8421</p> <p>Lawyers for QSG in respect of Nova Scotia Leasing Matters</p>
<p><b>BRAZEAU SELLER LLP</b> 700 – 100 Queen Street Ottawa ON K1P 1J9</p>	<p><b>DELZOTTO, ZORZI LLP</b> 4810 Dufferin Street, Suite D Toronto ON M3H 5S8</p>

<p><b>Eric Dwyer</b> <a href="mailto:edwyer@brazeauseller.com">edwyer@brazeauseller.com</a> 613-690-6532</p> <p>Lawyers for CDS Distribution Inc.</p>	<p><b>Robert W. Calderwood</b> <a href="mailto:rcalderwood@dzlaw.com">rcalderwood@dzlaw.com</a> 416-665-5555</p> <p>Lawyers for Auberge on the Park Residences Inc.</p>
<p><b>GOWLING WLG</b> 1600 – 100 King Street West Toronto ON M5X 1G5</p> <p><b>Pierre Champagne</b> <a href="mailto:Pierre.champagne@gowlingwlg.com">Pierre.champagne@gowlingwlg.com</a> 613-783-8677</p> <p><b>Haddon Murray</b> <a href="mailto:Haddon.murray@gowlingwlg.com">Haddon.murray@gowlingwlg.com</a> 416-862-3604</p> <p>Lawyers for Torlys Inc.</p>	<p><b>PARENTE BOREAN LLP</b> 3883 Hwy 7 Woodbridge ON L4L 6C1</p> <p><b>Gerard Borean</b> <a href="mailto:gborean@parenteborean.com">gborean@parenteborean.com</a> 905-850-6068</p> <p><b>Devon Goyo</b> <a href="mailto:dgoyo@parenteborean.com">dgoyo@parenteborean.com</a></p> <p>Lawyers for Ciot Creditor</p>

### EMAIL SERVICE LIST:

[nmacparland@dpvp.com](mailto:nmacparland@dpvp.com); [nrenner@dpvp.com](mailto:nrenner@dpvp.com); [jkuretzky@dpvp.com](mailto:jkuretzky@dpvp.com); [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com); [mlici@airdberlis.com](mailto:mlici@airdberlis.com); [drogers@waygarcapital.com](mailto:drogers@waygarcapital.com); [bryan.tannenbaum@rsmcanada.com](mailto:bryan.tannenbaum@rsmcanada.com); [arif.dhanani@rsmcanada.com](mailto:arif.dhanani@rsmcanada.com); [jlatham@goodmans.ca](mailto:jlatham@goodmans.ca); [rhadwick@goodmans.ca](mailto:rhadwick@goodmans.ca); [eaxell@goodmans.ca](mailto:eaxell@goodmans.ca); [Dave\\_patton@mohawkind.com](mailto:Dave_patton@mohawkind.com); [kesaw@osler.com](mailto:kesaw@osler.com); [alutsch@lawsonlundell.com](mailto:alutsch@lawsonlundell.com); [khannan@lawsonlundell.com](mailto:khannan@lawsonlundell.com); [danny.nunes@dlapiper.com](mailto:danny.nunes@dlapiper.com); [bruce.darlington@dlapiper.com](mailto:bruce.darlington@dlapiper.com); [howard.krupat@dlapiper.com](mailto:howard.krupat@dlapiper.com); [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca); [mgttlieb@lolg.ca](mailto:mgttlieb@lolg.ca); [awinton@lolg.ca](mailto:awinton@lolg.ca); [dyiokaris@kmlaw.ca](mailto:dyiokaris@kmlaw.ca); [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca); [Michael.Farace@devrylaw.ca](mailto:Michael.Farace@devrylaw.ca); [mfeehan@ogilvielaw.com](mailto:mfeehan@ogilvielaw.com); [avohra@ogilvielaw.com](mailto:avohra@ogilvielaw.com); [mleci@blg.com](mailto:mleci@blg.com); [mfish@blg.com](mailto:mfish@blg.com); [ar@buckwold.com](mailto:ar@buckwold.com); [tsabharwal@dakllp.com](mailto:tsabharwal@dakllp.com); [mdrudi@dakllp.com](mailto:mdrudi@dakllp.com); [jimc@metrofloors.com](mailto:jimc@metrofloors.com); [pviitre@sotos.ca](mailto:pviitre@sotos.ca); [gwb@lbnfirm.com](mailto:gwb@lbnfirm.com); [mwasserman@osler.com](mailto:mwasserman@osler.com); [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com); [msinghla@millerthomson.com](mailto:msinghla@millerthomson.com); [michael@rousseauazzuca.com](mailto:michael@rousseauazzuca.com); [dwright@rousseauazzuca.com](mailto:dwright@rousseauazzuca.com); [dbb@burnsidelaw.net](mailto:dbb@burnsidelaw.net); [ian.dunbar@mcinnescooper.com](mailto:ian.dunbar@mcinnescooper.com); [edwyer@brazeauseller.com](mailto:edwyer@brazeauseller.com); [rcalderwood@dzlaw.com](mailto:rcalderwood@dzlaw.com); [Pierre.champagne@gowlingwlg.com](mailto:Pierre.champagne@gowlingwlg.com); [Haddon.murray@gowlingwlg.com](mailto:Haddon.murray@gowlingwlg.com); [gborean@parenteborean.com](mailto:gborean@parenteborean.com); [dgoyo@parenteborean.com](mailto:dgoyo@parenteborean.com); [aharmes@goodmans.ca](mailto:aharmes@goodmans.ca); [mcalce@lolg.ca](mailto:mcalce@lolg.ca); [cgaristo@lolg.ca](mailto:cgaristo@lolg.ca); [sophia.said@devrylaw.ca](mailto:sophia.said@devrylaw.ca); [ella@rousseauazzuca.com](mailto:ella@rousseauazzuca.com); [rmascarenhas@kmlaw.ca](mailto:rmascarenhas@kmlaw.ca); [cbesant@grllp.com](mailto:cbesant@grllp.com); [dristeska@grllp.com](mailto:dristeska@grllp.com); [smahil@grllp.com](mailto:smahil@grllp.com); [nbonischarancle@grllp.com](mailto:nbonischarancle@grllp.com); [msarkis@grllp.com](mailto:msarkis@grllp.com); [jly@grllp.com](mailto:jly@grllp.com); [iknight@grllp.com](mailto:iknight@grllp.com); [smayaki@grllp.com](mailto:smayaki@grllp.com);

**Schedule “A” – Other Applicants**

**A.1 Other Applicants - QSG Opcos (in addition to QRCL)**

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

**A.2 Holding Companies and Other Entities to be Protected by the CCAA Stay**

5. Quality Commercial Carpet Corporation
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.



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**MOTION RECORD INDEX**

<b>TAB</b>	<b>DESCRIPTION</b>
1.	Notice of Motion of the Applicants, dated September 21, 2023
2.	Affidavit of John A. Pacione, affirmed on September 21, 2023
	Exhibit "A" - Sample Union Default Letter Sent to Builder Dated August 16, 2023
	Exhibit "B" - Sample of LiUNA's Inadequate Retraction of its Aug 16 Default Allegation sent to a Builder
	Exhibit "C" - Emails between counsel for LiUNA and counsel for QSG from September 17 to 19, 2023

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**NOTICE OF MOTION  
(Sept 22 Hearing re Lien Regularization Order, Union Issues and Urgent Stakeholder Matters )**

Quality Rugs of Canada Limited and the applicants listed in Schedule "A" (collectively with the Company, variously herein the "**QSG Group**" and the "**Applicants**") will make a motion before the Honourable Justice Penny of the Ontario Superior Court of Justice (Commercial List) on Tuesday, September 12, 2023 at 9:30 a.m., or as soon after that time as the Motion can be heard, via Zoom videoconference.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard by video conference.

at the following location: Meeting ID: 654 0032 7305 Passcode: 082269  
<https://ca01web.zoom.us/j/65400327305?pwd=WC91RjNENjNnZlQ2NHpvbDlzaUNldz09#success>

**THE MOTION IS FOR:**

1. An Order adjourning the motion by the CCAA Applicants for a Lien Regularization Order ("LRO") and setting a new date for the hearing of that motion;
2. An Order directing LiUNA (one of the Unions) to deliver notices to all builders and project owners who received a written notice from LiUNA dated on or about August 16, 2023 alleging QSG defaulted in the payment of its installers,
  - a) retracting that August 16, 2023 notice of alleged default; and

- b) confirming to each recipient that QSG is in good standing with its payments to installers in accordance with the applicable collective agreement;
3. An Order adjourning consideration of the requests and motions of LiUNA Local 138 (LiUNA) and the Carpenters Union Local 27 for determination of the status of installer holdbacks for quality issues and other union related issues;
4. An Order adjourning the consideration of any other Stakeholder issues *sine die* or to a date to be fixed by this Honourable Court; and
5. Such further and other relief as this Honourable Court may deem appropriate, including costs if appropriate.

**THE GROUNDS FOR THE MOTION ARE:**

***Background***

1. On August 25, 2023, the Honourable Justice Penny granted an initial CCAA Order in this matter (variously herein, the “**Initial Order**” and the “**Initial CCAA Order**”), which, among other things:
  - a) declared that the Applicants are parties to which the CCAA applies;
  - b) granted the Stay of Proceedings until and including September 5, 2023;
  - c) appointed RSM Canada Limited (“**RSM**”) as the Monitor in these CCAA Proceedings; and
  - d) approved the DIP Facility Agreement, pursuant to which the QSG Group was permitted to draw an initial advance of up to \$3.5 million during the Initial Stay Period;
  - e) instituted a Lien Notice system that required lien registrants to deliver a notice to QSG and Monitor in lieu of registering against title to builder projects, in return for which they were granted a charge over the assets of QSG;

2. On September 5, 2023, the Honourable Justice Penny granted an Amended and restated Initial CCAA Order (the “ARIO”) at the comeback hearing a CCAA Order in this matter (variously herein, the “**Comeback Hearing**”), which, among other things:
  - a) extended the Stay of Proceedings until and including October 31, 2023;
  - b) approved an increase in the borrowing limited by the QSG Group under the DIP Facility Agreement from \$3.5 Million to \$7 Million;
  - c) continued the Lien Notice system from the Initial Order pending consideration of the request for the LRO;
  - d) dismissing the Waygar CCAA Application, on consent; and
  - e) adjourned other stakeholder requests;
3. By an endorsement released September 12, 2022, this Honourable Court fixed September 22 for the hearing of submissions on a proposed Lien Regularization Motion, a proposed motion by the Company concerning the LiUNA union, and other stakeholder matters;
4. Consultations over the LRO are still continuing and it would benefit the CCAA process to allow additional time for those consultations by setting a new date for the hearing of the LRO motion;
5. The QSG Group has acted, and continues to act, in good faith and with due diligence during the course of these CCAA Proceedings;

***Directing LiUNA to deliver a notice to builder recipients that QSG is in good standing with payments***

6. LiUNA sent letters to over 60 builders alleging QSG was in default of flooring installer related remittances required to be paid under the collective agreement governing the installers
7. QSG is current with all installer payments and remittances and is not in default
8. Certain builders require QSG to be in compliance with payments and remittances due under the collective agreements governing installers who work on their sites, and based on that certain builders are holding back account receivable payments owing to QSG totalling in aggregate around \$2 million. QSG believes up to a further \$2 million is potentially being withheld on this

basis. The accounts receivable owed by all known recipients of the 60+ default letters totals in excess of \$7.7 Million.

9. the letters were sent in breach of the stay of proceedings and non interference clauses in the August 4 interim Order of this Honourable Court, specifically paragraphs 5 and 6 thereof.
10. There is no reason why the Union has not already withdrawn those letters and confirmed QSG is in good standing;
11. Failure to do so is unnecessarily and unfairly interfering with QSG's cash flow.
12. The Union is not acting in good faith as an interested party in the CCAA proceedings, as required by s 18.6 of the CCAA;

***The Union Holdback Motions***

13. LiUNA served a 510 page motion record about the holdback issues which also responds to the LiUNA Arrears notice issues above.
14. The Affidavit was served after hours on September 19. A Notice of Motion and Factum were served on September 20 and the Notice of Motion was reserved on November 21.
15. The Holdback issues are not urgent. QSG requires time to consider and respond to the issues raised regarding holdbacks in that motion.
16. On September 21, 2023, the Carpenters Union local 27 indicated it would be bringing a similar motion about holdbacks.
17. Accordingly the CCAA Applicants request that those motions be adjourned sine die or to a new date to be fixed by this Honourable Court;

***Other Stakeholder Requests***

18. All other stakeholder requests should be adjourned as there is no urgency for them to be heard this day
19. QSG answered the three questions posed by counsel to GG Eight Cumberland concerning the installation schedule for their project as directed by the court on September 12, 2023 and continues a dialogue with that builder to address their concerns and resolving its lift stay motion.

20. QSG continues a dialogue with Housing One (which previously brought a lift stay motion) with a view to resolving its outstanding concerns;
21. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
22. Rules 1.04, 1.05, 1.08, 2.03, 3.02, 16, 16.04, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and Section 106 of the Courts of Justice Act, R.S.O 1990 c.C.43, as amended; and
23. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. The Affidavit of John Pacione, to be affirmed September 21, 2023, and the Exhibits attached thereto;
2. Such further and other documentary evidence as counsel may advise and this Court may permit.

September 21, 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](mailto:cbesant@grllp.com)

416-865-4022

Lawyers for the Applicants

**TO: THE SERVICE LIST**

**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"**

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

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

PROCEEDING COMMENCED AT  
TORONTO

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**NOTICE OF MOTION**

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**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 Applicantd

**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**")

**AFFIDAVIT OF JOHN A. PACIONE**  
**(Affirmed September 21, 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) Directing LiUNA Local 183 (a union, hereinafter "**LiUNA**") to deliver a notice to all builders and project owners who received a communication of any nature from LiUNA on or after August 16, 2023 alleging a default by QSG in the making of



installer remittances or payments required by a collective agreement with LiUNA pertaining to installers,

- (i) retracting that communication; and
  - (ii) confirming that QSG is in good standing with all required payments to installers in accordance with the applicable collective agreement;
- (b) Adjourning and/or dismissing the requests of LiUNA Local 138 (LiUNA) and Carpenters Union Local 27 for the establishment of dedicated funds in respect of installer holdbacks for quality issues deducted from payments to installers; and
- (c) Adjourning the consideration of any other Stakeholder issues *sine die* or to a date to be fixed by this Honourable Court.

This affidavit is also sworn in opposition to the motion brought by Lina concerning holdbacks.

**LIUNA’S REFUSAL TO CONFIRM THAT QSG IS NOT IN DEFAULT OF ITS PAYMENT AND REMITTANCE OBLIGATIONS UNDER THE LOW RISE TILE COLLECTIVE AGREEMENT.**

3. In 2022, there were two LiUNA collective agreement governing QSG installers – one governing hardwood and carpet flooring installers (LiUNA Hardwood and Carpet Agreement”), and one governing tile installers of tile in low rise projects (“LiUNA Low Rise Tile Agreement”). A copy of these two collective agreements are appended to the LiUNA Motion Record served after business hours on September 19, 2023 for its motion returnable September 22, 2023 (“LiUNA Motion Record”) at pages 71-149 (LiUNA Low Rise Tile Agreement) and pp 154-204 (LiUNA Hardwood and Carpet Agreement).
4. Earlier this year, by a vote of the hardwood and carpet flooring installers, LiUNA was replaced as bargaining agent for the hardwood and carpet flooring installers by the

Carpenters Union Local 27 (“CU-27”). Accordingly the LiUNA Hardwood and Carpet Agreement ceased to apply to QSG installers, and was replaced by the collective agreement between the Carpenters Union Local 27 (“CU-27”) in respect of the hardwood and carpet flooring installers (the “CU-27 Hardwood and Carpet Agreement”). A copy of this collective agreement is appended to the Responding Motion Record of CU-27 dated September 11, 2023 previously filed in this matter.

5. In reaction to this, LiUNA announced at the beginning of May 2023, that it would no longer serve as bargaining agent for the QSG low rise tile installers and was abandoning the Collective Agreement as it pertained to QSG.
6. As certain builders have a requirement that low rise flooring installations be performed by LiUNA labour, this had the effect of barring QSG from all building sites requiring low rise tile to be installed by LiUNA labour. Effectively LiUNA sought to punish QSG for the decision of the hardwood and carpet flooring installers to switch unions.
7. As a result QSG had to bring an emergency application to the Labour Relations Board of Ontario (the “Labour Board”) on the basis that LiUNA had engaged in an unfair labour practice. A settlement was reached which acknowledged that LiUNA ceased to be bargaining agent for the low rise tile workers, but provided that QSG could continue to access and do installations at specified builder sites requiring LiUNA labour until May 1, 2024. A copy of the Settlement Agreement is appended to the LiUNA Motion Record at pp 150-153.
8. On August 4, 2023, QSG brought an application for CCAA protection. As there was a competing CCAA application and receivership brought by its lender, Waygar Capital Inc.,

all three applications were adjourned to allow for additional materials to be filed and for discussions to try to reach consensus on which application would proceed.

9. The August 4 Order contained a provision providing for a stay of proceedings against the application which provided as follows:

**NO EXERCISE OF RIGHTS OR REMEDIES**

5. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtors, or affecting the Business or the Property, are hereby stayed and suspended, provided that nothing in this Order shall (i) empower the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) prevent the filing of any registration to preserve or perfect a security interest, or (iii) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

6. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the any of the Debtors.

10. Despite this, on August 16, 2023, LiUNA sent letters to over 60 builders with which QSG has contracts alleging that QSG was in default of remittances in respect of its installers pensions and related matters due to be remitted to the union on August 15. Attached herewith and marked as Exhibit "A" is sample copy of one of those letters. Two more samples of this letter are also appended to the LiUNA Motion Record at pp 471-473 and pp 474-475. As discused below, they differ in that one gives notice of the intent to lien, and the othr gives notice of the intent to lien and the intent to freeze builder payables to QSG.
11. The letter alleged a remittance default and claimed over \$250,000 was owing by QSG to Installers, and advised all of the builders that the LiUNA was giving notice to the builders

of the intent to freeze builder payments to QSG, and in some of the letters, also advised the builder of the intent to activate the builders Holdback mechanism which which freezes all payments by the builder to QSG up to the amount the Union claims is in default. For an example of the former letter, see Exhibit A to this affidavit and pages 74-475 of the LiUNA Motion Record. For an example of the letter that also contained the freeze notice, see page 471-473 of the LiUNA Motion Record.

12. The claim that \$250,000 was owing to installers was misleading. It was not in arrears. All amounts required to be paid were being paid as explained below, and QSG was within the grace period provided under Letter of Understanding # 4 to the LiUNA Low Rise Tile Agreement (discussed further below).
13. Two of the three remittance cheques were in fact hand delivered to LiUNA on August 16, and one remittance cheque was mailed (as was standard practice) on August 16. The one day delay was purely an administrative issue unrelated to QSG's financial capacity. The accounts payable clerk who normally handles this had gone on holiday. It was discovered on August 16 that the cheques had not been delivered and they were delivered immediately on August 16, 2023 except for the one that was mailed in accordance with standard practice. LiUNA cashed them forthwith after receipt. The largest amount was cashed on August 18.
14. LiUNA sent its 60+ August 16, 2023 letters to QSG builders without first contacting QSG to see if the remittance cheques were in fact being delivered, and why there was a one day delay.

15. Under the LiUNA Collective Agreement, QSG pays the installers weekly and pays the remittances in respect of pensions etc. directly to the union for the preceding month on the 15<sup>th</sup> day of the following month. Since applying for CCAA protection on August 4, QSG has in fact paid the installers weekly, and has paid the remittances due on the 15<sup>th</sup> of August and the 15<sup>th</sup> of September.
16. As such, QSG is presently in good standing with all payments to its installers, including remittances to be provided to LiUNA on their behalf.. Those amounts have been paid not only throughout the CCAA process, but throughout the entire year. QSG has never been in default of the weekly payments. LiUNA knows this. Other than being one day late on one remittance payment due August 15 by for purely administrative reasons, all of the remittance payments have been made as well. LiUNA knows this too.
17. QSG will continue to pay the installers weekly and make the remittance payments during the CCAA process through to the closing of the proposed transaction with Ironbridge.
18. Ironbridge has advised QSG that if the sale transaction closes, if the sale transaction closes, the purchaser will operate under the collective agreements that are applicable to the ongoing operations, including in respect of any holdback provisions.
19. Over 60 builders who deal with QSG received one of the two version noted above of the default letters sent by LiUNA. The exact number is not known because, despite being requested, LiUNA has not disclosed to whom the letters were sent. LiUNA claims that QSG was copied on the letters, but that presumes that every letter the Union sent actually reached QSG. LiUNA sent copies to QSG of over 60 letters which were sent to QSG customers, but there is no way for QSG to be certain that this represents the total population

of builders who have been contacted. Providing the list of the recipients of those letters would have been simple to do, and to conceal that information could be in bad faith, and potentially damaging to QSG's ability to collect its receivables and interferes in QSG's business, and its contractual relationships

20. For those builders who require QSG to be in good standing under the relevant collective agreements with payments to installers, the letter alleging QSG was in default and subject to a potential lien claim was obviously problematic, as was the specific notice in certain of the letters of LiUNA's intent to invoke the mechanism to freeze the ability of builders to pay QSG.
21. As a result, QSG has already been notified expressly that \$2 million is being withheld by 6 builders because of the letters, and QSG believes that up to another \$2 million is being withheld by other builders because of the letters. Of the over 60 builders which QSG knows have received letters, the total accounts receivable owing is over \$7.7 million, so this has a potentially serious impact on QSG's cash flow during the CCAA process.
22. LiUNA has been accordingly requested to withdraw its August 16, 2023 letters to QSG Builders, and to confirm to all builders they contacted that QSG is in good standing with its payments and remittances under its collective agreement. LiUNA has not done so. There is no reason not to do so, and its failure to do so is damaging the company's cash flow unnecessarily, and interfering in its business and contractual relations,, and may have consequences under the terms of its DIP Loan
23. In a couple of cases, LiUNA has provided a reluctant and incomplete confirmation directly to a builder who contacted them. Attached herewith and marked as Exhibit "B" is a copy

of one such inadequate response. At the very least, LiUNA appears to be indifferent to the damage it is causing to QSG's cash flow by allowing a false impression to persist in the market place as to QSG's compliance with its payment and remittance obligations under the LiUNA Low Rise Tile Agreement. Sending those letters was irresponsible conduct, and refusing to correct the false impression they create which is causing damage is even more irresponsible.

24. In addition to some builders contacting LiUNA, QSG has received direct communications from builders saying they can't pay QSG until LiUNA confirms that QSG is in good standing with its payments and remittances. LiUNA was requested to provide this confirmation, and continues to refuse to do so. That is hard to understand given that LiUNA's own affidavit admits the payments and remittances are not in default.
25. LiUNA's Collective Agreement includes a grace period for remittance payments. LiUNA intentionally ignored that grace period when it sent the 60 letters. "Letter of Understanding 4" in the Low Rise Tile Agreement contemplates situations where remittances are filed late. It speaks about a late remittance penalty and specifically if a party fails to make remittances within the time frame in the collective agreement. In fact, it actually gives an additional 2-week grace period in those circumstances before any action is taken. LiUNA has not explained why it did not follow that procedure. Understanding 4 to the Low Rise Tile Agreement is attached to the LiUNA Motion Record at p 140.
26. LiUNA refers to contracts it has with residential builder associations separate and apart from the LiUNA Low Rise Tile Agreement governing QSG low rise tile installers. but the only agreement with builder associations that applies to LiUNA Local 183 relationship

with QSG is the LiUNA Low Rise Tile Agreement. Within that agreement there are freeze provisions - but those provisions deal with a contractor putting a freeze on a subcontractor or pieceworker for not paying wages or remittances. (17.03) . They don't deal with the Union instituting a payment freeze with a builder.

27. The mechanism in that agreement for the Union to enforce late remittances as the penalty provisions outlined in Letter of Understanding No 4. This letter contemplates situations where remittances are filed late and places a penalty on the contractor with steps for liquidated damages for making late remittances. However, it is noted that the letter provides a contractor an additional 2-week grace period in those circumstances before any action is taken. This is the proper mechanism under the collective agreement for enforcement of late remittances.
28. The collective agreements that Mr. Williamson refers to in his affidavit filed in LiUNA's motion, are the Builder Agreements. QSG is not bound to the builder agreements. In both the high-rise (MTABA) and low-rise (Durham Residential), a provision exists that allows the union to invoke a holdback mechanism. This can be invoked by the union at any point and at its option. In order for the Union to invoke this clause they must give at least 2 working days notice (fax is acceptable) to the contractor and builder of its intention to activate the freeze provisions. After the two days, if the issue is not resolved, then the Union may provide a holdback notice to any builder. In our case, the due date was August 15<sup>th</sup>. Hence LiUNA was not entitled to give notice to any builders on August 16<sup>th</sup>, as the remittances were delivered to LiUNA within the 2 day period. (LiUNA's own materials prove they had them by August 17 as shown by p. 244 of the LiUNA motion record). In short, the issue was resolved by August 16 by delivery and mailing, one day after the due



date, and no intention to institute freeze provisions should have been issued. LiUNA knew that by no later than August 17 as its materials show.

29. As it relates to the other builders, those not bound to LiUNA Local 183, LiUNA Local 183 would not have the advantage of these collective agreement terms. Despite that and despite the language in the LiUNA Low Rise Tile Agreement that as noted above provides a mechanism with a grace period to deal with late remittances, they appear to have sent similar letters to some of these builders.
30. LiUNA appears to be behaving as if it has an ulterior motive. One of those may be that, as its materials reveal and is discussed further below, LiUNA wants to rewrite the holdback provisions industry wide in Collective Agreements (as discussed further below). Another may be that it wishes to negotiate various items with the proposed purchaser. Whatever its objectives, they are not valid reasons for disrupting the interim CCAA cash flow of a CCAA Applicant which is seeking to service the needs of ongoing projects, or impacting its rights under its DIP Facility, LiUNA's conduct is at odds with the interests of not just QSG but its stakeholders, including the QSG installers it purports to be representing.
31. Accordingly QSG is requesting that
  - (a) this Honourable Court to make a declaration that QSG is in good standing with its payments and remittances under LiUNA collective agreement with LiUNA;
  - (b) the union be directed to so advise all builders to which it sent letters advising of the alleged remittance default on August 16, 2023;
  - (c) other remedies against LiUNA for breach of the stay be adjourned to a subsequent hearing.

**DISMISSING THE UNION REQUESTS FOR THE ESTABLISHMENT OF AN INSTALLER HOLDBACK FUND**

32. Two unions, LiUNA and CU-27 have raised a question about the deductions from installer pay which QSG is permitted to make as a reserve to cover the cost of quality issues from inadequate installer work. Those deductions are permitted to be made by Collective Agreements with LiUNA and CU-27. The only issue is whether they are a debt to the installers or a fund that needs to be held in specie.
33. When an installer completes a QSG installation at a builder site, it submits an invoice for the work to QSG. Under its collective agreements with installers, QSG is entitled to deduct up to a maximum of \$2000 per installer to cover the cost of addressing installation deficiencies that may arise from the work.. If no claims have been made within a specified period after the installation is complete, the holdback amount is payable to the installer. QSG honours all requests by installers for repayment under the LiUNA Low Rise Tile Agreement, where the installer is eligible for repayment.
34. The holdback amounts deducted from payments to installers which are not yet due to be repaid to installers as at September 15, 2023 are as follows:

QSG Installer Holdbacks as At Sept 15, 2023	
<b>UNION LOCAL</b>	<b>AMOUNT</b>
L 27 Carpenters Carpet	30,248.00
L 27 Carpenters Hardwood	64,780.00
L31 BACU Tile	3,783.48
L183 LIUNA Low Rise Tile	95,009.83
	193,821.31

35. As holdback periods expire, and subject to QSG's rights to deduct further holdback amounts from installer payments in respect of additional work done, an amount equal to the amount withheld is paid to installers by QSG upon request. Accordingly some of the amounts in the chart may decline as the CCAA progresses through payments to installers

to QSG in the ordinary course in accordance with the collective agreements, and the amount may increase as QSG installation activity increases.

36. As a practical matter, a holdback for a given installer is taken when his/her relationship with the company begins (ie; first invoice) and is released on request after his/her relationship with the company ends (ie; last invoice) in accordance with the provisions of the relevant collective agreement. QSG nets against the holdback the amount required for deficiencies associated with the installers workmanship, if any, after he/she ceases to be active with the company; the balance is refundable.

### **Overview of the QSG Collective Agreements with Installers**

37. Below is a summary of QSG's collective agreements and their holdback provisions:

#### **Brick Union (BACU Agreement)**

- (a) The BACU collective agreement impacts QSG's high-rise tile. This agreement would typically only be used by QSG for high-rise condo buildings. This collective agreement does not have any substantial holdback provisions. It only suggests that back-charges and holdbacks be discussed by the parties.

#### **Carpenters Local 27 Agreement**

- (b) This is the Resilient Flooring Contractors Collective Agreement. QSG became bound to this collective agreement on May 2<sup>nd</sup>, 2023. It became bound to this agreement automatically, once the Carpenters were successful in their raid of the Labourers, on May 2<sup>nd</sup> 2023. It is an accredited collective agreement, meaning that it is standard agreement for all contractors that the Carpenters Union has bargaining rights for who perform carpet and wood flooring. This agreement is negotiated between the Carpenters union and an employer's association, the Resilient Flooring Contractors Association of Ontario. The terms of this collective agreement cannot be altered, and no other agreement can exist for this type of work. The work that QSG performs under this agreement is laminate flooring, wood flooring and carpet.
- (c) Most of QSG's pieceworkers likely work under this agreement.

- (d) The holdback provisions in this agreement are quite simple. The employer is permitted to do it. The hold back amount is \$2000. There are no obligations on the company for a trust or a separate account.

### **Labourers Union Local 183 – Wood and Carpet Agreement**

- (e) This agreement does not have any QSG employees working under it as it was replaced by the Carpenters Agreement above as of May 2, 2023. All QSG employees who perform this work have been working under the Carpenters agreement from May 2<sup>nd</sup>, 2023 onwards. Other than some outstanding grievances that exist, and the hold back issue (if any exists outlined below), there is no grounds or basis for any employee to have a claim under this agreement with QSG. This agreement has different schedules for different work. For example, Schedule “C” is for carpet pieceworkers and Schedule E applies to laminate and hardwood pieceworkers.
- (f) As mentioned, QSG should have no pieceworkers working under this agreement, but there may be employees who did not transfer over to the Carpenters and now work for another contractor who is bound to this agreement. If that is the case, QSG may still have a holdback amount for these employees, even if they are not employed under the agreement. The collective agreement allows the company to retain the holdback for period of 16 months in the case of carpet and 24 months in the case of wood/laminate.
- (g) This is the only collective agreement that makes any reference to holdbacks being in “trust” In both the wood and carpet schedules, (4.04 in Carpet Schedule and 7:04 in the wood agreement) the agreement contemplates QSG holding money in trust and designating a separate account for this money. However, as of May 2<sup>nd</sup>, 2023, this would only impact those pieceworkers who left QSG and chose to work with another contractor bound to LiUNA. All of the other pieceworkers who stayed with QSG and perform wood or carpet installation, would fall under the Carpenters Agreement- which does not obligate the creation of any trust or separate account.
- (h) When the pieceworkers transferred their bargaining agent from LiUNA 183 agreement to Carpenters Local 27, the obligations in the LiUNA agreement would not carry through to the Carpenters Agreement. If there was an obligation to create a trust or separate account under the LiUNA Carpet/Hardwood agreement- it would have ended for the majority of QSG installers as of May 2<sup>nd</sup>, 2023 when those workers became covered by the Carpenters Local 27 collective agreement. QSG treats the matter as it has refunded the holdbacks under the LiUNA hardwood and Carpet Agreement and re-deducted them under the CU-27 Agreement.

### **Labourers Union Local 183- Tile Agreement**

- (i) This agreement is for low-rise residential tile. Similar to the Carpenters agreement, this agreement is an accredited agreement that is negotiated between the Union and an Employers Association. While the agreement covers both high-rise and low-rise tile, due to the agreement with Brick, QSG only applied this agreement to low rise tile.
- (j) On May 3<sup>rd</sup>, 2023, LiUNA abandoned this agreement in respect of QSG installers. They did this following the transition of QSG's hardwood and carpet installers from the LiUNA hardwood and carpet collective agreement to the Carpenters Local 27 hardwood and carpet collective agreement..
- (k) As discussed further below, following various legal filings by QSG with the Labour Relations Board of Ontario, a settlement with LiUNA was reached that allowed the LiUNA low-rise tile agreement to stay in effect until May 1<sup>st</sup>, 2024. This allowed QSG to finish off some of their contracts with certain builders who are bound to Local 183 and can only sub-contract work to flooring contractors who are in a bargaining relationship with Local 183.
- (l) From the present until May 1<sup>st</sup> 2024, QSG will have some employees who perform work under this agreement. Similar to the Carpenters Agreement, this agreement does not create an obligation on QSG to create a separate trust account. It creates an obligation of the employer to create a holdback summary report and limits the amount of time that the holdback is outstanding. It can be held for 6 months for the time the work is completed or 3 months after the employees stopped working for the employer.

## **THE DETAILED HOLDBACK PROVISIONS IN EACH COLLECTIVE AGREEMENT**

38. The detailed provisions regarding holdbacks in:

- (a) the LiUNA Local 183 collective agreement re Low Rise Tile installers in place until May 1, 2024:
- (b) the LiUNA Local 183 collective agreement re Hardwood and Carpet installers that was displaced for QSG hardwood and carpet installers by the Carpenters Union collective agreement;
- (c) the Carpenters Union Local 27 collective agreement re Hardwood and Carpet Installers presently in force

are discussed below.

**Holdback Provisions in the LiUNA Low Rise Tile Agreement:**

## COLLECTIVE AGREEMENT

Between:

THE RESIDENTIAL TILE CONTRACTORS' ASSOCIATION

-and-

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183

**ARTICLE 17 – SUB-CONTRACTING OF WORK - BACK CHARGES – HOLDBACK ACCOUNT****Back Charges**

17.06 Any back charges received by the Company from the Builder as a result of the performance of work or the failure to perform work, shall be deducted by the Company from amounts owing to the Piecemaker/Subcontractor on that project or from the hold back referred to in this Agreement. Any disputes in relation to these back charges shall be resolved in accordance with the grievance and arbitration procedures contained herein. Copies of such back charges shall be provided to the Piecemaker/Subcontractor and the Union.

**17.08 Holdback Account**

(a) The Company may at its option withhold an amount from the Piecemaker/Subcontractor not to exceed the sum of two thousand (\$2,000.00) for payment of any back charges or deficiencies. The said amount may be withheld for a period not to exceed six (6) months from the date of commencement of work by the Piecemaker/Subcontractor for the Company or three (3) months from the time that the Piecemaker/Subcontractor no longer works for the Company, whichever is the greater.

(b) It is understood that any holdback referred to in subparagraph (a) above consists of amounts owing to the Piecemaker/Subcontractor, subject to the provisions of Article 17.06 or subparagraph (a) above. When, for the purpose of establishing a holdback, amounts are deducted from the invoiced totals owing to Piecemaekers/Subcontractors, written notice shall thereafter be given to the Piecemaker/Subcontractor and the Union of the amounts designated for holdback. When amounts are deducted from holdback as a result of back charges or deficiencies, written notice shall thereafter be given to the Piecemaker/Subcontractor and the Union of the amount of such deduction.

(c) By no later than the 15th day of each month each Company which maintains a holdback account for any Piecemaker/Subcontractor covered by this Collective Agreement shall provide a Holdback Summary Notice. The Holdback Summary Notice shall list the names of each Piecemaekers/Subcontractors for whom the Company has a holdback account; together with the balance of the holdback account as of the last day of the month. The Holdback Summary Notice shall stipulate a final total of the holdback amounts held back by the Company for all Piecemaekers/Subcontractors.

(d) There shall be no penalty for the first violation by a Company of subparagraphs (b) and (c) during the life of this Collective Agreement. If, during the life of this Collective Agreement, the

Company should breach subparagraph (b) or (c) a second time they shall pay damages to the Union of one hundred dollars (\$100.00), and five hundred dollars (\$500.00) for each violation thereafter.

**17.09** The Parties agree that where prior to the signing of this Collective Agreement, the Company has no practice of holding back monies to Piecworker/Subcontractor crews and/or has established a holdback policy which is more beneficial to the Piecworker/Subcontractor than those set out in Article 17.07 above, the provisions of Article 17.07 will only apply to new crews engaged for the first time after the signing of this Collective Agreement.

39. The issue re holdbacks regarding this agreement is whether the language creates a debt owed to the installers or requires funds to be set aside in bank account in trust for them. QSG interprets the language in the LiUNA Low Rise CA as requiring QSG to maintain accounts in the sense of ledgers recording what has been deducted. QSG does not interpret the clause as requiring funds to be held separate and apart in a bank account or in trust, and the collective agreement does not refer to funds being held separate and apart, nor in a bank account, nor in trust.
40. QSG accordingly has never held the amounts in specie in a separate bank account or in trust, as it accounts for them as a debt owed to installers. That is also in accordance with QSG's understanding of industry practice, and with QSG's established practices before this collective agreement became applicable to its installers.

**LiUNA Hardwood and Carpet Agreement – Holdback Provisions**

RESIDENTIAL CARPET, HARDWOOD, LAMINATE AND FLOOR COVERINGS  
 Between:  
**LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183**  
 -and-  
 QUALITY STERLING GROUP,  
 WESTON HARDWOOD DESIGN CENTRE INC. and  
 ONTARIO FLOORING LTD.

**ARTICLE 18 - BACK CHARGES**



**Schedule "C"**  
**Pieceworker/Subcontractor Schedule**  
**Carpet Installation**

**ARTICLE 4 - HOLDBACK ACCOUNTS**

4.01 This Article shall not apply to pieceworkers/subcontractors who had a relationship with the Company prior to the introduction of this Collective Agreement. If, however, the pieceworker/subcontractor ceases to have a relationship with the Company, this Article may apply if they subsequently return.

4.02 The Company is entitled to create a holdback fund, not to exceed \$2000, for each piecework/subcontractor crew engaged after the introduction of this Collective Agreement. The holdback account may be established by the Company as soon as pieceworker/subcontractor commences work for the Company. The Company shall be entitled to deduct money owing to the pieceworker/subcontractor to fund the holdback account and shall clearly indicate such deductions on the pieceworker invoice. However, in no circumstance shall the Company deduct more than fifteen percent (15%) of any invoice for holdback and/or back charges.

4.03 If a pieceworker/subcontractor is no longer performing work for the Company, the Company may deduct money from the holdback account to satisfy a back charge, provided that it has followed the procedure set out in Article 18 of the master portion of this collective agreement, and in which case the Deficiency Notice shall be hand delivered to pieceworker/subcontractor or sent to him by Registered Mail at the last address provided to the Company.

4.04 The Company acknowledges that the holdback accounts belong to the pieceworkers/subcontractors and that any such monies are held in trust by the Company. The Company will keep all holdback monies in a designated holdback account. By no later than the 15th day of each month each Company which maintains a holdback account for any pieceworker/subcontractor covered by this Collective Agreement shall provide a Holdback Summary Notice to the Union. The Holdback Summary Notice shall list the names of each pieceworkers/subcontractors for whom the Company has a holdback account; together with the balance of the holdback account as of the last day of the month. The Holdback Summary Notice shall stipulate a final total of the holdback amounts held back by the Company for all pieceworkers/subcontractors.

4.05 It is agreed that a pieceworker/subcontractor may request that some or all of the holdback account be returned to the pieceworker/subcontractor in situations of hardship or demonstrated need. The Company will consider all such requests and will not unreasonably withhold its agreement. It is understood, however, that the Company may thereafter take steps to replenish the holdback account, subject to the provisions of Article 4.02 above.

4.06 All holdback monies will be returned to the pieceworker/subcontractor sixteen (16) months after they last performed work for the Company. With respect to any deficiency notices issued under Article 18.02(a) of the master portion of the Collective Agreement which may lead to a deduction from a holdback account being held in trust, the Company shall provide a copy of that notice to the Union at the same time it is issued to the pieceworker/subcontractor.

4.07 On the signing of this agreement, and thereafter on January 15th of each year, the Company will advise each pieceworker for whom it maintains a holdback account of the amount being held in that holdback account. The notice shall be in writing and a copy shall be provided to the Union.

**Schedule "E"**  
**Pieceworker/Subcontractor Schedule**  
**Hardwood and Laminate**

**ARTICLE 7 - HOLDBACK ACCOUNTS**

7.01 This Article shall not apply to pieceworkers/subcontractors who had a relationship with the Company prior to the introduction of this Collective Agreement. If, however, the pieceworker/subcontractor ceases to have a relationship with the Company, this Article may apply if they subsequently return.

7.02 The Company is entitled to create a holdback fund, not to exceed \$2000, for each piecework/subcontractor crew. The holdback account may be established by the Company as soon as pieceworker/subcontractor commences work for the Company. The Company shall be entitled to deduct money owing to the pieceworker/subcontractor to fund the holdback account and shall clearly indicate such deductions on the pieceworker invoice. However, in no circumstance shall the Company deduct more than ten (10%) of any invoice for holdback and/or back charges.

7.03 If a pieceworker/subcontractor is no longer performing work for the Company, the Company may deduct money from the holdback account to satisfy a back charge, provided that it has followed the procedure set out in Article 18 of the master portion of this collective agreement, and in which case the Deficiency Notice shall be hand delivered to pieceworker/subcontractor or sent to him by Registered Mail at the last address provided to the Company.

7.04 The Company acknowledges that the holdback accounts belong to the pieceworkers/subcontractors and that any such monies are held in trust by the Company. The Company will keep all holdback monies in a designated holdback account. By no later than the 15th day of each month each Company which maintains a holdback account for any pieceworker/subcontractor covered by this Collective Agreement shall provide a Holdback Summary Notice to the Union. The Holdback Summary Notice shall list the names of each pieceworkers/subcontractors for whom the Company has a holdback account; together with the balance of the holdback account as of the last day of the month. The Holdback Summary Notice shall stipulate a final total of the holdback amounts held back by the Company for all pieceworkers/subcontractors.

7.05 It is agreed that a pieceworker/subcontractor may request that some or all of the holdback account be returned to the pieceworker/subcontractor in situations of hardship or demonstrated need. The Company will consider all such requests and will not unreasonably withhold its agreement. It is understood, however, that the Company may thereafter take steps to replenish the holdback account, subject to the provisions of Article 7.02 above.

7.06 All holdback monies will be returned to the pieceworker/subcontractor twenty four (24) months after they last performed work for the Company. With respect to any deficiency notices issued under Article 18.02(a) of the master portion of the Collective Agreement which may lead to a deduction from a holdback account being held in trust, the Company shall provide a copy of that notice to the Union at the same time it is issued to the pieceworker/subcontractor.

7.07 On the signing of this agreement, and thereafter on January 15th of each year, the Company will advise each pieceworker for whom it maintains a holdback account of the amount being held in that holdback account. The notice shall be in writing and a copy shall be provided to the Union.

41. As the installers used by QSG for hardwood and carpet installations voted to terminate LiUNA as their bargaining agent and to appoint CU-27 as their bargaining agent, they are not covered by this agreement. They are covered by the CU-27 Collective Agreement discussed later in this affidavit below.
42. While the LiUNA agreement pertaining to QSG Hardwood and Carpet installers is hence no longer applicable. LiUNA claims at least one QSG installer's holdback is still governed by that agreement and has filed a document indicating that this particular installer (identified variously as MRAD and Radisa Zlatanovic) has requested a refund of his \$2,000 holdback. The invoice is undated and lacks any detail. It appears as Exhibit W in the LiUNA Motion Record at pp 489-490.
43. On reviewing the LiUNA affidavit, it seems possible that LiUNA orchestrated this undated invoice from this installer as a litigation tactic. QSG has inquired into this refund request. MRAD/Radisha Zlatanovic's last invoice to company was on May 6, 2023 and based on L183 hardwood/laminate CA this will not become eligible for refund until 24 months from that date. QSG will pay the holdback on request when it comes due as it does with other installers. QSG continues to honour any holdback refund requests during the CCAA process as its collective agreements require.
44. Although this collective agreement is no longer applicable to QSG as its hardwood and carpet installers are governed instead by the CU-27 Collective Agreement, LiUNA asserts

that the provisions below still govern holdbacks deducted by QSG while the agreement was in force, if those amounts have not yet been refunded to installers. QSG does not agree with this interpretation as noted above.

45. The obligation to refund is now governed by the CU-27 Collective Agreement discussed below which contains no obligation to hold funds in specie or in trust. The Holdback is a debt under that agreement. It does not have any funds held separately for this purpose, as it has followed industry practice and its pre-existing practices before this Collective Agreement applied to its workers were treated the holdback as a debt not a fund. As noted any amounts due to installers covered by the LiUNA Hardwood and Carpet Agreement are treated by QSG as if they have been refunded and re-deducted under the CU-27 Hardwood and Carpet Collective Agreement and hence governed by its terms. The CU-127 installers are aware of this and have not filed any grievance re same.

**Carpenters Union Local 127 Hardwood and Carpet Installers Collective Agreement – Holdback Provisions**

<p>RESIDENTIAL FLOORLAYERS COLLECTIVE AGREEMENT                  Between                  RESILIENT FLOORING CONTRACTORS ASSOCIATION OF ONTARIO (“RFCO”)                  and  <b>CONTRACTORS AND ALLIED WORKERS LOCAL 27 UNITED BROTHERHOOD                  CARPENTERS AND JOINERS OF AMERICA</b></p>
<p><b>ARTICLE 23 HOLDBACK</b></p> <p>23.01 The parties agree that the Principal may holdback monies from each contractor on account of potential deficiencies. The holdback amount shall be \$2,000.00.</p> <p>23.02 Should the Principal receive notice of a deficiency on a project, the Principal shall notify the contractor who performed the work who shall correct the deficiency within twenty-four (24) hours of notice. Should the contractor not correct the deficiency within the time aforesaid, the Principal may correct the deficiency either with its own forces or with another contractor and deduct the cost of the deficiency repair plus a reasonable administration fee from any monies owing to the original contractor.</p>

46. There is no reference to holding funds in specie, putting them in a separate account, or in trust. QSG accordingly has never held the amounts in specie in a separate bank account or in trust, which is also in accordance with QSG's understanding of industry practice.
47. Under the collective agreements, the holdbacks are paid on request to the relevant installer either early on the basis of hardship or demonstrated need, or otherwise after the holdback period expires, assuming no amount has been claimed in respect of quality issues to offset that obligation. This has continued since QSG filed for CCAA protection on August 4, 2023..

#### **LIUNA/s Use of Holdback Issue in an Interest Arbitration this Week**

48. QSG and the Monitor counsel had without prejudice discussions with LiUNA on Friday September 15 with a view to a resolution of the union issues.
49. The Union indicated on September 16 that it would respond on September 17 to the matters discussed.
50. On September 16 it instead sent an email to the residential builders associations suggesting QSG is not in default of its payment and remittance obligations. That letter appears at p 483 of the LiUNA Motion Record. That letter was sent without copying QSG and is no substitute for confirming directly to the builders who owe QSG money. Moreover the description of the email at paragraph 55 of the Williamson affidavit inaccurately describes the contents of the email. The email goes on to allege to the builders association that QSG

is planning not to honour the holdbacks through the insolvency process, when the reverse is true and LiUNA was informed by counsel of same the day before that email was sent.

51. On September 17, it instead sent a set up letter for a motion it has since served (see pp. 507-510 of the LiUNA Motion Record). QSG counsel responded indicating that its position was under review on the holdbacks and alerting LiUNA to the fact that its conduct over the builder letters may violate the August 4 CCAA Order and the obligation to act in good faith. Attached hereto and marked as Exhibit “C” is a copy of that email and LiUNA counsel’s response.
52. On September 19, LiUNA served after hours a 510 page motion record about holdbacks in this proceeding, in support of its notice of motion served on September 20, 2023 to determine the holdback entitlements of installers.
53. On September 20, 2023, LiUNA introduced the same motion record into an interest arbitration before an arbitrator appointed under the *Labour Relations Act* to which QSG was a party. In the arbitration, LiUNA is seeking the industry wide revision of holdback provisions in collective agreements. QSG objected through its labour counsel yesterday that the issue over holdbacks had been put by the union before the CCAA Court, and as a result, and the issue over holdbacks in that arbitration was adjourned by the arbitrator to December, 2023 in the view of the fact that the matter was put before the Court in the CCAA proceedings.
54. In short it appears that the motion was brought in the CCAA proceedings, at the very least in part, for purposes unrelated to the CCAA proceedings.

55. LiUNA has not negotiated in good faith over the arrears letter issue, and its wider agenda in the arbitration may be part of the reason.

**Inaccurate Statements in the Union Motion/Adjournment**

56. The Union motion was only served after the close of business hours on September 19 and contains inaccurate allegations. Its issues are not urgent, and QSG should be afforded the full opportunity to respond. As such, QSG requests that LiUNA's motion be adjourned.

**CU-27 MOTION**

57. CU-27 has said it intends to bring a holdback motion. QSG needs an opportunity to respond to this motion and as such QSG requests that it be adjourned as well..

**NO OTHER STAKEHOLDER REQUESTS SCHEDULED FOR SEPTEMBER 22**

58. Some issues are still under discussions with particular stakeholders. QSG has not been advised of any other stakeholder requests sought to be heard on September 22, 2023. and hence QSG is requesting that any other stakeholder issues be adjourned sine die or to a new date to be fixed by this Honourable Court;
59. As directed by the court in its endorsement of September 12, 2023, QSG answered the three questions posed by counsel to GG Eight Cumberland LP ("GG8") concerning the installation schedule for their project, A fulsome scheduling and supply availability response was provided including site photographs, as well as details of the invoices overdue and owing in respect of the project (approximately \$280,000). On September 17, counsel GG8 relayed follow up questions and another fulsome response was provided

overnight on September 20<sup>th</sup>. On September 21<sup>st</sup>, GG8 indicated in response it has additional inquiry, and QSG is reviewing that and will be preparing its response.

60. QSG also proposes to continue a dialogue with Housing One (which previously brought a lift stay motion) with a view to resolving its one outstanding concern.



**AFFIRMED** by John Pacione of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on September 21, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Commissioner for Taking Affidavits  
(or as may be)

**STEPHANIE MAYAKI**

**Stephanie Isimisi Mayaki, a Commissioner, etc.,  
Province of Ontario, for Gardiner Roberts LLP,  
Lawyers.  
Expires November 21, 2025.**



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**JOHN PACIONE**

This is Exhibit "A" referred to in the Affidavit of John Pacione affirmed at the City of Toronto, in the Province of Ontario, before me on September 21st, 2023, in Accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely

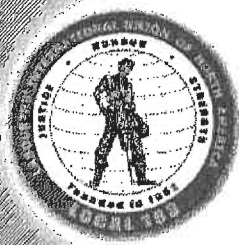


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*Commissioner for Taking Affidavits (or as may be)*

**STEPHANIE MAYAKI**

**Stephanie Isimisi Mayaki, a Commissioner, etc.,  
Province of Ontario, for Gardiner Roberts LLP,  
Lawyers.  
Expires November 21, 2025.**



# LIUNA!

## LOCAL 183

1263 Wilson Ave. Suite 200, Toronto ON M3M 3G3  
T: 416.241.1183 | F: 416.241.9845 | Toll Free: 1.877.834.1183

August 16, 2023

**Jack Oliveira**  
*Business Manager*

**Luis Camara**  
*Secretary/Treasurer*

**Nelson Melo**  
*President*

**Bernardino Ferreira**  
*Vice President*

**Marcello Di Giovanni**  
*Recording Secretary*

**Jaime Cortez**  
*E-Board Member*

**Pat Sheridan**  
*E-Board Member*

**Eastern Office**  
P.O. Box 156 560 Dodge St.  
Cobourg ON K9A 4K5  
T: 905.372.1183  
F: 905.372.7488  
1.866.261.1183

**Northern Office**  
64 Saunders Road  
Barnes ON L4N 9A8  
T: 705.735.9890  
F: 705.735.3479  
1.888.378.1183

**Kingston Office**  
145 Dalton Avenue, Unit 1  
Kingston ON K7K 6C2  
T: 613.542.5950  
F: 613.542.2781

[www.liunalocal183.ca](http://www.liunalocal183.ca)

Via Registered Mail and Fax:  
416-243-7192

Maramel Homes  
200 Ronson Drive, Suite 203  
Etobicoke, ON M9W 5Z9

Via Registered Mail and Fax:  
905-585-4801

Quality Sterling Group  
505 Cityview Boulevard  
Woodbridge, ON L4H 0LB

Lien Claimant:

Janusz Argasinski as agent for the Trustees of the Labourers' Pension Fund of Central and Eastern Canada, the Local 183's Members' Benefit Fund, Labourers' Local 183 Members' Vacation Pay Trust Fund, Labourers' Local 183 Members' Training and Rehabilitation Fund, Labourers' Local 183 Retiree Benefit Trust Fund, Labourers' Local 183 Prepaid Legal Benefits Fund, Labourers' Local 183 Promotional Benefits and for all effected members of Labourers' International Union of North America, Local 183

Defaulting Contractor:

Quality Sterling Group

Owner:

Maramel Homes

Project:

Shelburne Towns, Shelburne ON

I am Legal Counsel for Labourers' International Union of North America, Local 183 (the "Union") and represent the Lien Claimant with respect to the above-noted matter.

We understand that the Owner/Builder contracted the installation of tiles on the Projects to the Defaulting Contractor. The Defaulting Contractor is bound to a collective agreement between the Union and the Residential Tile Contractors Association (the "RTCA Collective Agreement") which requires, among other things, that they pay certain monthly contributions and deductions (including, but not limited to, pension and benefit contributions) for all work performed by members of the Union. The Defaulting Contractor has failed to remit contributions and deductions relating to work performed by the Union's members at the Projects. In addition, the Defaulting Contractor is maintaining holdbacks in the amount of \$95,083.41. The Union estimates that the total amount of QSG's liability to the Union and its members is approximately \$250,000.00.

*Feel the Power*

LIUNA, Local 183

Page | 2

It has come to our attention that the Defaulting Contractor has also defaulted on other creditors and owes approximately \$80 million to such creditors. The Defaulting Contractor has filed an application under the *Companies' Creditors Arrangement Act* (R.S.C., 1985, c. C-36) seeking to sell the business while its major creditor who is owed approximately \$50 million, has filed a competing application to install a monitor. The Union is seriously concerned about the Defaulting Contractor's ability to meet its obligations under the RTCA Collective Agreement.

The Union hereby gives notice of its intention to lien and requests the following information pursuant to section 39 of the *Construction Act* within a reasonable amount of time, not to exceed 21 days hereof.

From the Owner/Builder:

1. The names of the parties to the contract pursuant to which the Defaulting Contractor performed work at the Projects;
2. The contract price;
3. The state of accounts between the Builder and the Defaulting Contractor;
4. A copy of any labour and material bond in respect of the contract posted by the Defaulting Contractor;
5. Whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis; and
6. Whether the contract provides that payment under the contract shall be based on the completion of specified phases or the reaching of other milestones in its completion.

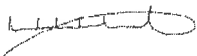
In addition, we ask for the following information from the Defaulting Contractor:

1. The state of accounts between the Defaulting Contractor and all subcontractors or pieceworkers that have performed work covered by the RTCA Collective Agreement at the Projects; and
2. To inspect the Defaulting Contractors' payroll records for all hourly employees performing work covered by the RTCA Collective Agreement at the Projects.

Please be advised that you may be liable for any damages sustained by the Lien Claim by reason of your failure to provide us with the foregoing information within the time period stipulated above.

We look forward to hearing from you at your earliest opportunity. Should you have any questions or concerns, please contact the undersigned at 416-241-1183 x 6514 or [mmerchant@liuna183.ca](mailto:mmerchant@liuna183.ca).

Yours truly,



Maheen Merchant

Legal Counsel

MM/mdm

cc: *Luis Camara, Secretary/Treasurer/Sector Coordinator*  
*Janusz Argasinski, Sector Coordinator*  
*Alex Camara, Sector Coordinator*

<b>FAX</b>	To:	Sir/Madam
	Fax No:	14162437192
	From:	Jacklyn Collins
	Contact No:	
	Date:	08-17-2023 10:35 AM
	Subject:	QSG
	No. of Pages (with cover):	3

Please see the attached.

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[end of cover page]

This fax was sent over the Concord network. To find out more visit [www.concordfax.com](http://www.concordfax.com)

This is Exhibit "B" referred to in the Affidavit of John Pacione affirmed at the City of Toronto, in the Province of Ontario, before me on September 21st, 2023, in Accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely



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*Commissioner for Taking Affidavits (or as may be)*

**STEPHANIE MAYAKI**

**Stephanie Isimisi Mayaki, a Commissioner, etc.,  
Province of Ontario, for Gardiner Roberts LLP,  
Lawyers.  
Expires November 21, 2025.**

[REDACTED]

---

**From:** Domenic Lavalle <[DLavalle@qsg.ca](mailto:DLavalle@qsg.ca)>  
**Sent:** Wednesday, September 6, 2023 12:15 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED] JD Pacione <[jdp@qsg.ca](mailto:jdp@qsg.ca)>  
**Subject:** RE: Local 183 payment

[REDACTED]

Hope this email finds you well. Please review the email below sent by Maheen Legal Counsel from Liuna 183.

**From:** Maheen Merchant <[mmerchant@liuna183.ca](mailto:mmerchant@liuna183.ca)>  
**Sent:** Tuesday, September 5, 2023 1:15 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED] Maheen Merchant <[mmerchant@liuna183.ca](mailto:mmerchant@liuna183.ca)>  
**Subject:** RE: liuna local 183 16 august 2023 letter concerning quality sterling group

[REDACTED]

We are in receipt of the remittances from QSG. Accordingly, we don't require any further information for now. I will reach back if we need anything more.

Thank you,  
  
Maheen

**Maheen Merchant**  
Legal Counsel | LIUNA Local 183  
T: 416.241.1183 x 6514 | C: 647.287.8729 | F: 416.241.7607  
1263 Wilson Ave., Suite 300 Toronto ON M3M 3G3 | [www.liuna183.ca](http://www.liuna183.ca)

**Domenic Lavalle**  
Vice President, Contracts  
P: 905-585-4800 Ext:362  
[dlavalle@qsg.ca](mailto:dlavalle@qsg.ca)



**From:** [REDACTED]  
**Sent:** Tuesday, September 5, 2023 4:23 PM  
**To:** Domenic Lavalle <[DLavalle@qsg.ca](mailto:DLavalle@qsg.ca)>  
**Cc:** [REDACTED]  
**Subject:** Local 183 payment

EXTERNAL SENDER

Dom,

What’s happening with union letter, Marvin needs to process if you don’t send out letter?

Please advise

[REDACTED]

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This communication may be solicitor/client privileged and contains confidential information intended only for the persons to whom it is addressed. Any other distribution, copying or disclosure is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message from your mail box without reading or copying it.

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This is Exhibit "C" referred to in the Affidavit of John Pacione affirmed at the City of Toronto, in the Province of Ontario, before me on September 21st, 2023, in Accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely



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*Commissioner for Taking Affidavits (or as may be)*

**STEPHANIE MAYAKI**

**Stephanie Isimisi Mayaki, a Commissioner, etc.,  
Province of Ontario, for Gardiner Roberts LLP,  
Lawyers.  
Expires November 21, 2025.**

**From:** Demetrios Yiokaris [mailto:dyiokaris@kmlaw.ca]

**Sent:** Tuesday, September 19, 2023 3:28 PM

**To:** Besant, Chris

**Cc:** Michael Mazzuca; James Harnum; Daniel Wright; Graham Williamson; L. Joseph Latham (jlatham@goodmans.ca)

**Subject:** RE: Holdback Provisions in Low Rise Tile Agreement & LiUNA Default Letters of August 16

Hi Chris,

We still have not received a substantive "with prejudice" response to our request for particulars about the Holdback. Notably:

- a. why these monies were not listed on the company's asset sheet, or in the list of creditors;
- b. what happened to this holdback money?;
- c. were the funds ever held back into a separate account?; and,
- d. does the company agree that the intent of the Collective Agreement and/or Article 17.08 is to set up a trust?

With respect to the balance of your email, we disagree both with the facts and characterizations set out in your email.

Please provide particulars of any contractor or builder who is claiming they are refusing to release funds due to the Notice Letters sent by Local 183; and please provide a copy of such correspondence, and particulars of the amounts that are being held up. I have asked for this information in the past and have not been provided any such particulars.

I have previously, and repeatedly indicated to you the following: To date, the Union has responded to anyone that has contacted it that the July 2023 benefits were paid (and now the August 2023 benefits) and that the Union is not currently requesting that they freeze or hold funds. If you believe this is not the case, please immediately let us know and provide the particulars of same (i.e. what builder/contractor and when did they reach out to the Union, etc.).

In addition, the Union recently wrote to the builders' associations on August 16 confirming that the August 2023 remittance reports and cheques were sent on time, and believe they will clear. The Union invited the builders' associations to let their members know same, and to contact the Union directly if they need further information.

Around August 14, 2023, the Union learned that QSG brought an Application for protection under the CCAA and that Waygar brought a completing application for a Receivership. Accordingly, the Union was very concerned about the payment of ongoing benefits and remittances.

On August 15,th Local 183 contacted QSG to offer to pickup the remittance reports and cheques for the owing July contributions. I understand messages were left for QSG's Payroll Administrator. Her voicemail did not indicate whether she was out of the office, and the Union did not receive a call back. Throughout the day, Local 183 directed various inquiries to the benefits, pension and other departments to determine whether QSG had made their remittances as required under the Collective Agreement.

Remittances reports and payment for dues, benefits, pension benefits and other remittances were not received on August 15th as required by the Collective Agreement.

QSG was in breach of the Tile Collective Agreement. There was a lot of confusion about the pending competing insolvency applications. It was not clear whether the CCAA proceeding would be granted or whether QSG was bankrupt. The Union was very concerned.

The Union exercised its rights under its Collective Agreements with the TRCLB and DRCLB to begin the process to protect the unionized workers. Those Collective Agreements expressly provide for a freezing mechanism and the Union *inter alia* gave notice of its intention to activate the Builder's Freeze Funds provisions. However, it did not send a follow up letter requiring the funds to be frozen. As you know, Collective Agreements remain in force throughout a CCAA. The Union also requested information under the Construction Act in order to assert and preserve its rights to lien.

Further, I understand that QSG was copied on all of these letters. You previously indicated that you do not know who were sent letters. I understand QSG was indeed sent copies on all these letters by facsimile and registered mail.

Regardless, this conduct is not prohibited by the August 4 court order. Clause 5 allows steps to preserve or perfect a security interest or registrations of claims for liens.

Contrary to your email, QSG did not remedy this breach until August 21, 2023. QSG is required to make three separate payments – i.e. send three separate cheques. The first cheque is to "LIUNA Local 183 Members Benefit Fund" regarding health and welfare benefit contributions, training fund and other various benefit contributions; the second cheque is to "LIUNA Local 183" regarding working dues and monthly dues; and the third cheque is to the Pension Fund.

QSG delivered payments of the three cheques on August 17, 17, and 21 respectively. This is confirmed by "received" stamps. These stamps are put in the usual and ordinary course of business on the day when the documents or payments are received. Moreover, I understand there are email exchanges between Local 183 and QSG confirming benefits were delinquent. QSG responded to an email inquiry of missing payments from the Union four days later on August 21, 2023. Apparently, the QSG contact individual was not at work the prior week, which was unknown to the Union.

The Union has not indicated to any builders, at this time, that it is requiring that they freeze or hold funds under their Collective Agreement.

The Union has not received any indication from the builders or contractors that anyone is holding back those amounts, let alone that they are doing so at the request of the Union. If builders are refusing to pay QSG, or are refusing to pay invoices that QSG believes are owing, it may be because QSG has abandoned the jobs, because QSG has not performed the work, because of deficiencies on their project, or for various other commercial reasons. The attempt to blame the Union for QSG's commercial failures is unfounded.

We are finalizing a supplementary affidavit regarding this issue.

Demetrios



**Demetrios Yiokaris (he/him)**

T: +1 416-595-2130 | F: +1 416-204-2810 | E: [dyiokaris@kmlaw.ca](mailto:dyiokaris@kmlaw.ca)

Koskie Minsky LLP, 20 Queen Street West, Suite 900, Toronto, ON. M5H 3R3

[kmlaw.ca](http://kmlaw.ca)

**From:** Besant, Chris <[cbesant@grllp.com](mailto:cbesant@grllp.com)>

**Sent:** Tuesday, September 19, 2023 1:39 PM

**To:** Demetrios Yiokaris <[dyiokaris@kmlaw.ca](mailto:dyiokaris@kmlaw.ca)>

**Cc:** Michael Mazzuca <[Michael@RousseauMazzuca.com](mailto:Michael@RousseauMazzuca.com)>; Daniel Wright

<[Dwright@RousseauMazzuca.com](mailto:Dwright@RousseauMazzuca.com)>; Graham Williamson <[gwilliamson@liuna183.ca](mailto:gwilliamson@liuna183.ca)>; L. Joseph Latham  
([jlatham@goodmans.ca](mailto:jlatham@goodmans.ca)) <[jlatham@goodmans.ca](mailto:jlatham@goodmans.ca)>

**Subject:** Holdback Provisions in Low Rise Tile Agreement & LiUNA Default Letters of August 16

Demetrios:

**Holdback Provisions of LiUNA Low Rise Tile Installers Collective Agreement**

You have been advised of QSG's position that there is no breach of the holdback provisions in the LiUNA Low Rise tile installers Collective Agreement. That will be addressed in the QSG motion materials being filed for the September 22, 2023 hearing.

**Union Default Letters of August 16, 2023**

We have alerted you to the damage being caused to QSG and all of its stakeholders by the letters your client sent to builder clients of QSG dated August 16, 2023.

Over \$7.7 million in builder receivables are potentially impacted as a result of those letters. Not only did those letters effectively threatened the filing of liens on the builders' projects on the basis that the monthly remittance of pension payments and related items was not made on August 15, but as you know various builders also require QSG to be in good standing under the Low Rise Tile Collective Agreement with LiUNA. A number of builders have accordingly advised that they will not make any further payments to QSG unless the Union confirms that the payments and remittances have been paid. QSG's current estimate, based on advice from builders and otherwise, is that almost \$4 million is being presently withheld on that basis, and the number continues to increase.

As your client is well aware, QSG is in compliance with all of its payment and remittance obligations under the Low-Rise Tile Collective Agreement with LiUNA. It pays the installers biweekly and union remittances for the prior month on the 15<sup>th</sup> of the succeeding month. It has continued paying the payments and remittances ever since it applied for CCAA protection on August 4, 2023. To make it crystal clear, LiUNA knows full well that:

1. All of the biweekly payments to installers have been made on time and are in good standing; and
2. All of the monthly remittances have all been paid to the union and are in good standing. Cheques for the remittances due August 15, 2023 were delivered to LiUNA on August

16, 2023, and the remittance cheques due September 15, 2023 were delivered to LiUNA on September 13.

On August 4, 2023, a stay of proceedings was granted to protect QSG from enforcement steps and interference with its contractual relations, absent court permission.

On August 16, 2023, without seeking the permission of the court, your client sent a form letter to over 60 builders alleging QSG was in default of its remittances and implied other amounts were in default when they were not. That letter was dated the very same day the remittances were paid to the union. After learning of this, your client did not retract this letter, nor otherwise correct the record with those builders. LiUNA then filed an affidavit in these proceedings sworn August 17, 2023 which did not disclose to the court that default letters had been sent to over 60 builders, nor refer to the fact that the August remittances were paid the day before the affidavit was sworn. QSG only learned of the letters when builders began to contact QSG about the letters in response.

QSG has since discovering this repeatedly requested that LiUNA issue a notice to all of the builders it contacted, to confirm that QSG is in good standing with all payments and remittances. To date, the LiUNA has not done so.

Various builders have asked specifically for confirmation from the union that QSG is in good standing with its payments and remittances as a condition of paying their accounts receivables. The union has only provided this in a couple of cases. That is completely unsatisfactory, and it is shocking that the LiUNA has not corrected the record in this matter when it has been warned that QSG is being damaged by the erroneous impression created by its letters.

The stay provisions of the August 4 court order provide as follows:

**NO EXERCISE OF RIGHTS OR REMEDIES**

5. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtors, or affecting the Business or the Property, are hereby stayed and suspended, provided that nothing in this Order shall (i) empower the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) prevent the filing of any registration to preserve or perfect a security interest, or (iii) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

6. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the any of the Debtors.

That provision was carried forward into the subsequent interim orders on August 18 and August 23, and a similar version appears in the Initial CCAA Order of August 25, 2023 and the ARIO of September 5,

2023. It appears that your client is in breach of this order. If you disagree, kindly explain forthwith why your client is not in breach of this order.

LiUNA lost a representation vote to Carpenters Union Local 27 earlier this year over the right to serve as bargaining agent for QSG's hardwood and carpet installers. LiUNA responded by trying to lock QSG out of low rise tile sites by abandoning the unrelated collective agreement with QSG in respect of the low rise tile installers. QSG had to bring an application to the Ontario Labour Relations Board alleging an unfair labour practice as a result, which was settled by an agreement that preserves QSG's entitlement to access building sites which require LiUNA labour until May 1, 2024.

LiUNA appears to continuing this pattern of behaviour with the default letters it sent to builders despite the CCAA stay, and its subsequent failure to correct the record despite the fact that it learned almost immediately that the remittances were paid the same day it sent the letter, and that it knows that QSG has made all of its payments and remittances. QSG is concerned that LiUNA may be trying to delay setting the record straight with builders on the payment and remittances point as negotiating leverage for other matters, including its request concerning the establishment of a holdback fund. Negotiating by interfering in QSG's accounts receivables collections is not an option open to LiUNA. LiUNA's conduct may not only be a breach of the stay but a breach of the obligation of good faith.

All rights and remedies in respect of same are hereby reserved.

With regards,

**Chris Besant** • Partner

Gardiner Roberts LLP

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

T 416.865.4022 | F 416.865.6636 | E [cbesant@grllp.com](mailto:cbesant@grllp.com) | [www.grllp.com/p/christopherbesant](http://www.grllp.com/p/christopherbesant)

**From:** Demetrios Yiokaris [<mailto:dyiokaris@kmlaw.ca>]

**Sent:** Sunday, September 17, 2023 5:28 PM

**To:** Besant, Chris; L. Joseph Latham ([jlatham@goodmans.ca](mailto:jlatham@goodmans.ca))

**Cc:** Michael Mazzuca; Daniel Wright; Graham Williamson

**Subject:** RE: QSG

Chris and Joe,

I write regarding the holdback obligations of the company; and seek responses to four questions below.

As indicated in our affidavit served a few weeks ago, Article 17.08 of the Collective Agreement allows QSG to withhold an amount from the Piecworker from their earned compensation of up to \$2,000 for payment of any back charges or deficiencies. These funds are owned by the Piecworker, not the company. Moreover, these funds are to be held in trust in a separate holdback account. Also, every month, QSG is to provide any accounting as to the holdback amounts they are currently holding in trust. Article 17.08 of the Collective Agreement provides:

**17.08 - Holdback Account**

(a) The Company may at its option **withhold an amount from the Pieceworker/Subcontractor** not to exceed the sum of two thousand (\$2,000.00) for payment of any back charges or deficiencies. The said amount may be withheld for a period not to exceed six (6) months from the date of commencement of work by the Pieceworker/Subcontractor for the Company or three (3) months from the time that the Pieceworker/Subcontractor no longer works for the Company, whichever is the greater.

(b) It is understood that any **holdback referred to in subparagraph (a) above consists of amounts owing to the Pieceworker/Subcontractor**, subject to the provisions of Article 17.06 or subparagraph (a) above. **When, for the purpose of establishing a holdback, amounts are deducted from the invoiced totals owing to Pieceworkers/Subcontractors**, written notice shall thereafter be given to the Pieceworker/Subcontractor and the Union of the amounts designated for holdback. When amounts are deducted from holdback as a result of back charges or deficiencies, written notice shall thereafter be given to the Pieceworker/Subcontractor and the Union of the amount of such deduction.

(c) By no later than the 15th day of each month each Company which **maintains a holdback account for any Pieceworker/Subcontractor** covered by this Collective Agreement **shall provide a Holdback Summary Notice. The Holdback Summary Notice shall list the names of each Pieceworkers/Subcontractors for whom the Company has a holdback account; together with the balance of the holdback account as of the last day of the month.** The Holdback Summary Notice shall stipulate a final total of the holdback amounts held back by the Company for all Pieceworkers/Subcontractors.

(d) There shall be no penalty for the first violation by a Company of subparagraphs (b) and (c) during the life of this Collective Agreement. If, during the life of this Collective Agreement, the Company should breach subparagraph (b) or (c) a second time they shall pay damages to the Union of one hundred dollars (\$100.00), and five hundred dollars (\$500.00) for each violation thereafter. [emphasis added]

Attached at Exhibit G to the affidavit we filed is the Holdback Summary Notice prepared by QSG with respect to the Local 183 Pieceworkers as of June 30, 2023, which was sent around July 15, 2023. The total amount as of the end of June 2023 was \$90,000. I anticipate the amount currently being held in trust is probably around that amount.

Please confirm:

- a. why these monies were not listed on the company's asset sheet, or in the list of creditors;
- b. what happened to this holdback money?;
- c. were the funds ever held back into a separate account?; and,
- d. does the company agree that the intent of the Collective Agreement and/or Article 17.08 is to set up a trust?

Regards,



JUSTICE MATTERS

**Demetrios Yiokaris (he/him)**

T: +1 416-595-2130 | F: +1 416-204-2810 | E: [dyiokaris@kmlaw.ca](mailto:dyiokaris@kmlaw.ca)

Koskie Minsky LLP, 20 Queen Street West, Suite 900, Toronto, ON. M5H 3R3

[kmlaw.ca](http://kmlaw.ca)



**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*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**MOTION RECORD**

**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 Applicants

RCP-E 4C (May 1, 2016)