

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

B E T W E E N :

**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")**

NOTICE OF MOTION

(Re: Holdback under the Collective Agreements)

LIUNA Local 183 will make a motion to the Honourable Justice Penny of the Ontario Superior Court of Justice Commercial List at 330 University Avenue, Toronto, Ontario on Friday, September 22, 2023 at 10:00 a.m. or as soon thereafter as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. **AN ORDER**, that the time for service of the Notice of Motion and the Motion Record is hereby abridged;
2. **DIRECTIONS** with respect to the below described Holdback;
3. **AN ORDER** requiring that the Applicants (collectively "**QSG**") and/or the Monitor confirm whether funds are being held separate and apart with respect to the Holdback and to provide particulars with respect to same;

4. **AN ORDER** that, if the Holdback funds are being held separate and apart, that they continue to be held separate and apart and do not form part of the assets of QSG's estate; and be distributed and used only as set out in the below described Collective Agreements, and that this Order survives the termination of these CCAA proceedings and/or any future insolvency;
5. **A DECLARATION** that the Holdback funds are being held in trust and pursuant to the terms of the Collective Agreements;
6. **Alternatively**, if the Holdback funds are not Ordered to be held separate and apart,
 - a) **AN ORDER** to lift the stay of proceedings against the directors and officers of QSG to proceed with a grievance or grievances and/or a labour arbitration and/or proceedings at the Ontario Labour Relations Board against them regarding the Holdback (the "**Grievances**"), including grievances and/or arbitrations relating breach of trust, breach of fiduciary duty, and breach of the Collective Agreements, including by way of fresh grievance and/or amendment to the current grievance dated April 29, 2022 relating to the Holdback, which was referred to arbitration around May 16, 2022;
 - b) **AN ORDER** that the amount of \$97,083.41 (the "**Reserve**") be set aside and held separate and apart from the assets of QSG pending the final disposition of the Grievances;
 - c) **A DECLARATION** that the Reserve does not form part of the assets of QSG's estate and is distributed upon further order of this Court after the conclusion of the Grievances;

- d) **AN ORDER** that the Reserve be funded from any and all accounts receivable collected during these proceedings and/or from any sales proceeds, and/or from the Deferred Purchase Price and the A/R Collections in excess of the Specified Amount (as those terms are defined at paragraph 17 of the Monitor's August 25, 2023 Second Supplemental Pre-Filing Report); and,
 - e) **AN ORDER** that any purchaser of QSG's assets not be absolved of the liability for the Holdback; and,
7. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. LIUNA Local 183 (the "**Union**" or "**Local 183**") represents about 40 of the employees of the Applicants (collectively "**QSG**"). These employees continue to work for QSG throughout the CCAA restructuring process with the reasonable expectation that they will be paid and that the portion of their compensation held back by QSG as security for post-filing deficiencies and back charges will be returned to them as per the terms of the Collective Agreements.
2. Without employees, there can be no CCAAs. If this Court does not protect the employees' money, their funds will effectively be taken by QSG and/or its creditors.
3. Local 183 seeks directions relating to the Holdback. The Union seeks to ensure that the Holdback funds, are held in trust, as is intended by the Collective Agreements, or paid into Court and do not form part of the estate of QSG, or *inter alia*, otherwise protected.

4. The Collective Agreements allow QSG to withhold an amount from the Pieceworkers from their earned compensation up to \$2,000 for payment of any back charges or deficiencies (the aforementioned "**Holdback**"). The Holdback that QSG has deducted and withheld from their workers' pay, is understood to be \$97,083.41.

5. The Collective Agreements require the Holdback to be held in trust in a Holdback Account. The Collective Agreements further oblige QSG to keep detailed accounting of the amounts owed for each Pieceworker and send monthly reports of the exact amount that is in the Holdback Account. QSG has been keeping these accounting records and sending the monthly reports regarding the Holdback Account to the Union.

6. The Collective Agreements provide that, if not applied to deficiencies or back charges, the Holdback is to be returned to the Pieceworker 3 months after the Pieceworker finishes work, and in one case 2 years.

7. QSG seeks to sell its assets in short order. Accordingly, once the assets are sold, without protection from this Court, QSG and/or its creditors will effectively take the Pieceworkers' money.

8. Repayment of the Holdback to the workers is a post-filing obligation. They are moneys earned by the Pieceworkers, for which they have paid taxes and withheld by QSG, and held by the Company with respect to security for deficiencies that arise for post-filing work. \$97,000 is relatively modest compared to the operations of QSG, and payment of these funds will not affect the ability of QSG to propose a plan of arrangement or compromise. It is fair and equitable for these workers to have their compensation returned to them.

9. Moreover, the Collective Agreement requires QSG to maintain these Holdback Accounts.

10. Failing to create a Reserve would be tantamount to allowing QSG and/or other creditors take their money. This is particularly troubling given that the Holdback belongs to the Pieceworkers, was deducted from their pay, and is being used as security by the company for post-filing work.

11. If a Reserve is not created, then the Union is very concerned that it will not have a remedy to pursue for its members if it succeeds in the Grievances. This would be tantamount to the Court deciding that there is no Trust created by the Holdback provisions of the Collective Agreements for these workers, which is something that is to be decided in the Grievances.

12. Further, \$2,000 to these workers is a significant sum to the Pieceworkers. In contrast, \$97,000 is not a large amount of money compared to the operations of QSG. Regardless, QSG seeks to sell itself quickly. Accordingly, there would be a minimal amount of prejudice to QSG and competing creditors if those funds are Reserved pending the disposition of the Grievances.

13. If a lift stay is granted regarding the directors and officers, then those claims would be heard together with the Grievances. This would avoid a multiplicity of proceedings, provide for an orderly and expeditious litigation of these issues, and avoid inconsistent results. Moreover, in this case, QSG seeks to sell its assets in short order and will no longer operate.

14. The Union has a meritorious proceeding with respect to whether a Trust is created by the Holdback provisions; and therefore, if the Holdback funds have not been held separate and apart as required by the Collective Agreements, the Union would also have a meritorious claim

against the directors and officers of QSG for breach trust, breach of fiduciary duty, and breach of the Collective Agreements.

15. The Pieceworkers claim the amounts earmarked by QSG every month for the Holdback. Alternatively, the Pieceworkers claim the accounts receivables, which are generated as a result of the employees' work and/or any sale proceeds and/or the Deferred Purchase Price and the A/R Collections in excess of the Specified Amount (as those terms are defined at paragraph 17 of the Monitor's August 25, 2023 Second Supplemental Pre-Filing Report). These amounts were contributed to and/or generated by the employees' work.

16. Additionally, or alternatively, the Pieceworkers claim a right to a specific fund, there is a serious issue to be tried regarding the Pieceworkers' claim to that fund, and the balance of convenience factors granting the relief sought by Local 138.

17. Additionally, or alternatively, the Pieceworkers would be significantly prejudiced by a refusal to lift the stay against the officers and directors, and there would be no or modest resulting prejudice to QSG or the position of the creditors; it is necessary to permit the Pieceworkers to take steps to protect their rights which could be lost;

18. Additionally, or alternatively, there are sound reasons for granting a lift stay consistent with the objectives of the CCAA, including a consideration of the balance of convenience, the relative prejudice to parties, and the merits of the proposed action;

19. Additionally, or alternatively, the Pieceworkers are employees for the purposes of these proceedings and/or insolvency legislation;

20. The balance of convenience favours the Pieceworkers and/or granting the requested relief;
21. It is fair and equitable and/or in the interests of Justice to order the requested relief;
22. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
23. Rules 1.02, 1.04, 1.05, 2.03, 3.02, 37, and 45.02 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194, as amended; and,
24. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be read in support of this motion:

- a) Affidavit of Maheen Merchant, sworn August 17, 2023;
- b) Affidavit of Graham Williamson, sworn September 19, 2023; and,
- c) Such further and other material as counsel may advise and this Court permit.

September 20, 2023

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900
Toronto ON M5H 3R3

Demetrios Yiokaris LS#: 45852L
dyiokaris@kmlaw.ca
Tel: 416-595-2130

Niki Manwani LS#: 72301O
nmanwani@kmlaw.ca
Tel: 416-595-2026

Lawyers for the LIUNA Local 183

TO: THE SERVICE LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
c. C-36, AS AMENDED

Court File No.: CV-23-00703292-00CL

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"

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

Proceeding commenced at TORONTO

**NOTICE OF MOTION
(RE: HOLDBACK)**

KOSKIE MINSKY LLP

20 Queen Street West, Suite 900
Toronto ON M5H 3R3

Demetrios Yiokaris LS#: 45852L

dyiokaris@kmlaw.ca

Tel: 416-595-2130

Niki Manwani LS#: 723010

nmanwani@kmlaw.ca

Tel: 416-595-2026

Lawyers for the LIUNA Local 183