

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

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

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

THE HONOURABLE MR.)
JUSTICE PENNY)
)
)

FRIDAY, THE 4TH
DAY OF AUGUST, 2023

B E T W E E N:

**WAYGAR CAPITAL INC., as agent for NINEPOINT CANADIAN SENIOR DEBT
MASTER FUND L.P.**

Applicant

- and -

**QUALITY RUGS OF CANADA LIMITED, MALVERN CONTRACT INTERIORS
LIMITED, WESTON HARDWOOD DESIGN CENTRE INC., ONTARIO FLOORING
LTD., TIMELINE FLOORS INC., AND QUALITY COMMERCIAL CARPET
CORPORATION**

Respondents

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

ORDER

THIS APPLICATION, made by the Applicant, in its capacity as lender to and secured creditor of the Respondents, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the application materials delivered by the Applicant and the application materials delivered by the Respondents, both as respondents to this Application and as Applicants in respect of the Application commenced under Court File No. CV-23-00703933-00CL (the “**Debtor-Led Application**”), and on hearing the submissions of counsel for the Applicant, counsel for the Respondents, and such other parties listed on the Counsel Slip,

ADJOURNMENT

1. **THIS COURT ORDERS AND DECLARES** that both this application and the Debtor-Led Application be and they are hereby adjourned until August 18, 2023 (the “**Hearing**”), without prejudice to the ability of any party to make submissions and take positions in respect of the substantive relief sought at the Hearing, or in respect of the relief sought in the application of the Applicant seeking to appoint a receiver over the Respondents, commenced under court file number CV-23-00703874-00CL.

DUTY TO PROVIDE ACCESS AND CO-OPERATION

2. **THIS COURT ORDERS** that the Debtors and all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or on their behalf shall fully co-operate with each of the Applicant, The Fuller Landau Group Inc., and RSM Canada Limited (collectively, the “**Advisors**”), including by responding to reasonable requests for information or documentation.

(a)

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that each of the Debtors shall remain in possession and control of its Property.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

4. **THIS COURT ORDERS** that until and including August 18, 2023, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of any of the Debtors or affecting the Business or the Property, and any and all Proceedings currently

under way against or in respect of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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.

CONTINUATION OF SERVICES

7. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by any of the Debtors, and that the Debtors shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

8. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Debtors. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

CASH MANAGEMENT

9. **THIS COURT ORDERS** that the Debtors shall be entitled to continue to utilize the central cash management system currently in place as described in the Affidavit of Don Rogers sworn July 24, 2023 (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by or on behalf of the Debtors of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Debtors, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

10. **THIS COURT ORDERS** that any disbursement from the funds that accrue in the Blocked Account (as that term is defined in the Affidavit of Don Rogers sworn July 24, 2023) shall be disbursed only on the consent of the Advisors, who shall approve only those obligations that, in the opinion of the Advisors, are critical to the uninterrupted, continued operations of the business of the Debtors, which critical obligations the Advisors agree shall include (a) Debtors' payroll obligations; (b) all HST liabilities accrued up to the date of this Order not to exceed the amount of \$426,000, (c) the reasonable fees of Gardiner Roberts LLP, as counsel for the Respondents, incurred or to be incurred in dealing with these proceedings, (d) additional retainers of \$25,000 for each of RSM Canada Limited and its counsel, Goodmans LLP, and (e)

the amounts from time to time owing to the Debtors' installers, and any other suppliers deemed critical to the uninterrupted, continued operations of the business of the Debtors, up to the date of the Hearing.

INTERIM FINANCING

11. **THIS COURT ORDERS** that the Debtors are hereby authorized and empowered to obtain and borrow under a credit facility from Waygar Capital Inc. (the "**Interim Lender**") strictly for the purpose of financing the Debtors' payroll obligations and the amounts from time to time owing to the Debtors' installers during the Stay Period, or any other suppliers which all Advisors deem critical to the uninterrupted, continued operations of the business of the Debtors, provided that borrowings under such credit facility shall not exceed \$1,500,000.00 unless permitted by further Order of this Court.

12. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between Fuller and the Interim Lender substantially in the form attached as an exhibit to the Supplementary Affidavit of Don Rogers sworn August 3, 2023 (the "**Commitment Letter**").

13. **THIS COURT ORDERS** that the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

14. **THIS COURT ORDERS** that the Interim Lender shall be entitled to the benefit of and is hereby granted a first-ranking charge (the "**Interim Lender's Charge**") on the Property, which Interim Lender's Charge shall not secure an obligation that exists before this Order is made.

15. **THIS COURT ORDERS AND DECLARES** that the Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or

any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

16. **THIS COURT ORDERS** that the filing, registration or perfection of the Interim Lender's Charge shall not be required, and that the Interim Lender's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Interim Lender's Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

17. **THIS COURT ORDERS** that the Interim Lender's Charge shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

18. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Interim Lender's Charge.

19. **THIS COURT ORDERS** that, notwithstanding anything in this Order, including any language granting priority charges over the Property of the Debtors, the issue as to priority as among the Charges, including the Interim Lender's Charge, and the security held by Mohawk Carpet Distribution, Inc. ("Mohawk"), including any purchase money security interest shall be deferred to the Hearing, or as may be otherwise agreed to by the parties. The Debtors shall identify and segregate any proceeds received in respect of goods presently in the possession of the Debtors as supplied by Mohawk in a separate bank account.

SERVICE AND NOTICE

20. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to

Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

SEALING

21. **THIS COURT ORDERS** that the Supplementary Affidavit of Don Rogers, sworn July 31, 2023, inclusive of the Confidential Exhibits “A” and “B” appended thereto, and the confidential appendices appended to the Pre-Filing Report of RSM Canada Limited dated August 3, 2023, be and are hereby sealed pending the earlier of court approval of a sale transaction or other arrangement in respect of the Debtors or further Order of the Court.

GENERAL

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order.

23. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



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 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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