

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

NYGARD HOLDINGS (USA) LIMITED, et al.,¹

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 20-10828 (SMB)

Jointly Administered

**ORDER RECOGNIZING FOREIGN MAIN PROCEEDING
AND RELATED RELIEF**

Upon the *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief* [Dkt 2] (together with the Forms of Voluntary Petition [Dkt 1], collectively, the “Petition”)² of Richter Advisory Group Inc. (“Richter”), solely in its capacity as court-appointed receiver (and not in its personal or corporate capacity) (the “Receiver”) and authorized foreign representative (the “Foreign Representative”) of:

(a) Nygard Holdings (USA) Limited (“Holdings”); Nygard Inc. (“Inc.”); Nygard NY Retail, LLC (“NY Retail”); and Fashion Ventures, Inc. (“Fashion”), and

(b) Nygard International Partnership (“International”); Nygard Properties Ltd. (“Properties”); Nygard Enterprises Ltd. (“Enterprises”); 4093887 Canada Ltd. (“4093887”); and 4093879 Canada Ltd. (“4093879”) (collectively, the “Debtors”), each of which was placed in a receivership on March 18, 2020 by order (the “Receivership Order”) of the Court of Queen’s Bench Manitoba (the “Canadian Court”), Court File No. CI 20-01-26627 (the “Canadian

¹ The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor’s U.S. Federal Employer Identification Number (“FEIN”) or Canada Revenue Agency Business Registration Number (“CRA”) , are: Nygard Holdings (USA) Limited (FEIN 3048), Nygard Inc. (FEIN 0509), Nygard NY Retail, LLC (FEIN 1672), Fashion Ventures, Inc. (FEIN 0956), Nygard International Partnership (FEIN 1535), Nygard Properties Ltd. (CRA 0003), Nygard Enterprises Ltd. (FEIN 7127), 4093887 Canada Ltd. (FEIN 1534), 4093879 Canada Ltd. (FEIN 1533).

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Petition. References to sections and chapters are references to sections and chapters of the Bankruptcy Code unless otherwise stated.

Proceeding”), seeking entry of an order pursuant to sections 105(a), 1504, 1507, 1509, 1515, 1517, 1520, and 1521 of Title 11 of the United States Code (the “Bankruptcy Code”), granting recognition of the Foreign Proceeding as a foreign main proceeding, and granting related relief;³ and

Upon the record of this case and the hearing held on April 14, 2020 (the “Hearing”) to consider (i) the Petition and (ii) the relief requested in the *Motion of the Receiver as Authorized Foreign Representative for Entry of an Order Granting Provisional Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* [Dkt 3]; and

Upon the Court’s review and consideration of the Petition and the Benchaya Declaration, any objections and responses thereto, and the Court having found and determined that the relief sought in the Petition is consistent with the purposes of Chapter 15 and is in the best interests of the Debtors and their creditors; and after due deliberation and sufficient cause appearing therefor; and for the reasons stated on the record at the Hearing:

IT IS HEREBY FOUND AND DETERMINED:⁴

A. This Court has jurisdiction to consider the Petition and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York dated as of January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11*, 12 Misc. 00032 (S.D.N.Y. Feb. 1, 2012) (Preska, C.J.).

³ References to sections and chapter are references to sections and chapters of the Bankruptcy Code unless otherwise stated.

⁴ The findings and conclusions set forth herein and on the record of the Hearing constitute this Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). To the extent any of the findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Petition and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P), and this Court may enter a final order consistent with Article III of the United States Constitution.

C. Venue is proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3).

D. Good, sufficient, appropriate, and timely notice of the filing of the Petition and the Hearing has been given by the Foreign Representative, pursuant to Bankruptcy Rules 1011(b) and 2002(q) and the *Order Scheduling Hearing on Chapter 15 Petition and Related Relief and Specifying Form and Manner of Service of Notice* [Dkt 12] to: (i) the United States Trustee for the Southern District of New York (Attn: Paul K. Schwartzberg, Esq.); (ii) the Debtors; (iii) Peter J. Nygard; (iv) all persons or bodies authorized to administer foreign proceedings of the Debtors, including the Canadian Proceeding; (v) all entities against whom provisional relief was sought under section 1519 of the Bankruptcy Code; (vi) all known parties to litigation pending in the United States to which any of the Debtors is a party at the time of the filing of the Petition; and (vii) all parties that have filed a notice of appearance in these chapter 15 cases. In light of the nature of the relief requested and prior orders of this Court, no other or further notice is required.

E. No objections or responses were filed that have not been overruled, withdrawn, or otherwise resolved.

F. Each of the Debtors has property located in this District, and therefore, each of the Debtors is “eligible” to be a debtor in these chapter 15 cases pursuant to sections 109 and 1501.

G. The Canadian Proceeding is a “foreign proceeding” as such term is defined in section 101(23).

H. The Canadian Proceeding is pending in Canada, which is where the Debtors have their “center of main interests” as referred to in section 1517(b)(1). As such, the Canadian

Proceeding is a “foreign main proceeding” pursuant to section 1502(4), is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) and is entitled to all relief afforded to foreign main proceedings under section 1520. The Foreign Representative is a “person” as such term is defined in section 101(41) and has been duly appointed and designated as the “foreign representative” of the Debtors as such term is defined in section 101(24).

I. These chapter 15 cases were properly commenced pursuant to sections 1504 and 1509, and the Petition satisfies the requirements of section 1515.

J. The Foreign Representative and each of the Debtors, as applicable, is entitled to the additional assistance and discretionary relief under sections 1507 and 1521 (including application of section 365) requested in the Petition.

K. The Foreign Representative has demonstrated that application of section 365, as made applicable by sections 105(a), 1507 and 1521(a)(7), is necessary to enable the Foreign Representative or any of the Debtors to assume or reject a contract or compel a contract counterparty to perform under a contract. Absent application of section 365, there is a material risk that one or more of the Debtors’ contract counterparties may terminate agreements or discontinue performance, which could impose severe economic consequences on the Debtors’ estates and interfere with liquidation efforts.

L. The relief granted herein is necessary and appropriate, in the interests of the public and of international comity, not inconsistent with the public policy of the United States, warranted pursuant to sections 105(a), 1504, 1507, 1509, 1515, 1517, 1520 and 1521 and will not cause hardship to any party in interest. To the extent that any hardship or inconvenience may result to such parties, it is outweighed by the benefits of the requested relief to the Foreign Representative, the Debtors, their creditors and other parties in interest.

M. In accordance with section 1507(b), the relief granted will reasonably assure: (i) the just treatment of all holders of claims against or interests in the Debtors' property; (ii) the protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the Canadian Proceeding; (iii) the prevention of preferential or fraudulent dispositions of property of the Debtors; and (iv) the distribution of proceeds of the Debtors' property substantially in accordance with the order prescribed in the Bankruptcy Code.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED:

1. The Petition and the relief requested are granted, and any objections or responses thereto that have not been withdrawn or resolved are overruled.

2. The Canadian Proceeding is recognized as a "foreign main proceeding" under sections 1517(a) and 1517(b)(1).

3. The Receivership Order, including any extensions or amendments thereto authorized by the Canadian Court **as of the date of this order**, is hereby enforced on a final basis and given full force and effect in the United States (except as otherwise expressly provided herein).

[SMB: 4/23/20]

4. The Foreign Representative is recognized as the "foreign representative" as defined in section 101(24).

5. All relief and protection afforded to a foreign main proceeding under section 1520 is hereby granted to the Canadian Proceeding, the Foreign Representative, the Debtors, and their assets located in the United States.

6. Sections 362 and 365 shall hereby apply with respect to the Debtors and the property of the Debtors that is located within the territorial jurisdiction of the United States. All entities (as defined in section 101(15)) other than the Foreign Representative and its authorized representatives and agents are hereby permanently enjoined with respect to each of the Debtors and the property of each of the Debtors from:

- (a) executing against any asset of any of the Debtors;
- (b) commencing or continuing, including issuing or employing process, of a judicial, quasi-judicial, administrative, regulatory, arbitral, or other action or proceeding **that could have been commenced before the commencement of these Chapter 15 cases**, or to recover a claim, **against the Debtors that arose before the commencement of these Chapter 15 cases** ~~including, without limitation, any and all unpaid judgments, settlements or otherwise against any of the Debtors, its property, or any direct or indirect transferee of or successor to any property of any Debtor, or any property of such transferee or successor, or the seeking of any discovery related to any of the foregoing, which in each case is in any way inconsistent with, relates to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceeding or Canadian law~~ (except that, the plaintiffs in the Class Action Lawsuit, as defined in the Verified Petition, may file and serve an amended complaint, though the Class Action Lawsuit otherwise shall be stayed as to the Debtors and the Foreign Representative shall have no obligation to respond to any amended complaint while the stay is pending, which stay may be modified by further order of the Court); **[SMB: 4/23/20]**

- (c) taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against any of the Debtors or any of its property or proceeds thereof, ~~which in each case is in any way inconsistent with, relates to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceeding or Canadian law;~~ [SMB: 4/23/20]
- (d) transferring, relinquishing or disposing of any property of any of the Debtors to any entity other than the Foreign Representative and its authorized representatives and agents or taking or continuing any act to obtain possession of, commingle, or exercise control over, such property, ~~which in each case is in any way inconsistent with, relates to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceeding or Canadian law;~~ [SMB: 4/23/20]
- (e) ~~commencing or continuing in any manner, directly or indirectly, an individual action or proceeding as it relates to any of the Debtors' assets, rights, obligations or liabilities, or to resolve any dispute arising out of or relating to the Canadian Proceeding or Canadian law;~~ [SMB: 4/23/20]
- (f) ~~declaring or considering the filing of the Canadian Proceeding, the Receivership Order or any of these chapter 15 cases a default or event of default under any agreement, contract or arrangement; and~~ [SMB: 4/23/20]
- (g) terminating, modifying, refusing to perform, **declaring a default** or otherwise accelerating obligations or exercising remedies under any contract with any of the Debtors on the basis of (i) the insolvency or financial condition of the Debtors at any time before the closing of these cases; (ii) the commencement of the Canadian Proceeding, the entry of the Receivership Order or the commencement of these

chapter 15 cases; or (iii) the appointment of, and taking possession by, the Foreign Representative of any asset or contract of any of the Debtors. **[SMB: 4/23/20]**

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States.

7. Sections 1521(a)(1)-(3) and (5)-~~(7)~~ shall apply with respect to the Debtors and the property of the Debtors that is located within the territorial jurisdiction of the United States. **[SMB: 4/23/20]**

8. Pursuant to section 1520(a)(3), the Foreign Representative is entitled to operate the Debtors' businesses and administer their assets, including without limitation, all bank accounts and accounts receivable including, specifically and without limitation, that certain account ending in 4993 maintained by Bank of America, N.A. ("BANA") in the name of Nygard International Partnership (the "BANA Account") in which White Oak Commercial Finance, LLC ("White Oak") claimed an interest superior to that of such Debtor pursuant to a Deposit and Control Agreement entered into prior to commencement of this matter. All banks and financial institutions at which the Debtors maintain such bank accounts or other accounts are authorized and directed to: (i) honor the Foreign Representative's instructions with respect to accessing any such accounts including, specifically and without limitation, the BANA Account; and (ii) accept, hold, or permit withdrawal, transfer, or other disposition of funds in accordance with the Foreign Representative's instructions, all without liability to White Oak for taking such direction from the Foreign Representative rather than from the Debtors, but otherwise without prejudice to the terms of any prepetition agreements between or among the Debtors, White Oak, and such banks and financial institutions.

9. ~~Subject to sections 1520 and 1521, the Canadian Proceeding and the Receivership Order, and the transactions consummated or to be consummated thereunder, shall be granted comity and given full force and effect in the United States to the same extent that they are given effect in Canada, and each is binding on all creditors of the Debtors and their successors and assigns. [SMB: 4/23/20]~~

10. Under section 1521(a)(6), all prior relief granted to the Debtors or the Foreign Representative by this Court under section 1519(a) shall be extended and the *Order Granting Motion of the Foreign Representative for Provisional Relief Pursuant to Sections 105(a) and 1519* [Dkt 21] shall remain in full force and effect, ~~notwithstanding anything to the contrary contained therein.~~ **except to the extent inconsistent with this order. [SMB: 4/23/20]**

11. The banks and financial institutions with which the Debtors maintain bank accounts or on which checks are drawn or electronic payment requests made in payment of prepetition or postpetition obligations are authorized and directed to continue to service and administer the Debtors' bank accounts without interruption and in the ordinary course and to receive, process, honor and pay any and all such checks, drafts, wires and automatic clearing house transfers issued, whether before or after the petition date and drawn on the Debtors' bank accounts by respective holders and makers thereof, solely at the direction of the Foreign Representative. To the extent of any inconsistency between this Order and any deposit account control (or related) agreement by which White Oak may claim an interest in the BANA account, this Order shall control.

12. ~~No action taken by the Foreign Representative, any of the Debtors or their respective agents, representatives, advisors, or counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Canadian Proceeding, the documents contemplated thereunder, this Order, the chapter 15 cases, any further order for additional relief in~~

~~the chapter 15 cases, or any adversary proceedings in connection therewith, will be deemed to constitute a waiver of the limit on jurisdiction afforded such persons under sections 306 of The Foreign Representative shall be entitled to the protection afforded by Bankruptcy Code section 1510. [SMB: 4/23/20]~~

~~13. No party shall incur any liability for following, in good faith, the terms of this Order (whether by acting or refraining from acting). [SMB: 4/23/20]~~

14. In the case of *Blueprint Clothing Corporation (“Blueprint”) v. Nygard International Partnership, et. al.*, Case No. 18-9687, pending in the United States District Court for the Central District of California (“Blueprint Action”), Blueprint shall not seek to modify or terminate the automatic stay, or seek judgment, against any of the Debtors so long as the captioned Chapter 15 cases remain open. Blueprint shall not seek to enforce against the Debtors any judgment Blueprint may obtain in the Blueprint Action against co-defendant Dillard’s Inc. (“Dillard’s”). The Foreign Representative will not seek to extend, or support the extension of, the automatic stay to Dillard’s so long the captioned Chapter 15 cases remain open. If Blueprint obtains a judgment against Dillard’s in the Blueprint Action, Blueprint ~~shall be permitted to~~ **may** submit claims in the Canadian Proceeding against each Debtor defendant in the amount of such judgment, **and the Foreign Representative shall not object to the claims being** ~~which claims shall be deemed~~ allowed in the Canadian Proceeding as general unsecured claims. Nothing herein shall stay or otherwise enjoin Blueprint’s continued prosecution of the Blueprint Action against Dillard’s. [SMB: 4/23/20]

15. Notwithstanding anything to the contrary contained herein, this Order shall not, and shall not be construed as: (i) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed under section 362; (ii) staying the exercise of any rights that section 362(o) does not allow to be stayed; or (iii) extending to, protecting or

granting rights or remedies to non-Debtor Peter J. Nygard personally, or staying as against him personally the commencement or continuation of any action or proceeding notwithstanding that such action or proceeding is stayed as to each of the Debtors pursuant to Paragraph 6 of this Order.

16. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court.

17. ~~Notwithstanding any provision in the Bankruptcy Code or the Bankruptcy Rules to the contrary, (i)~~ This Order shall be effective and enforceable immediately upon its entry, ~~(ii)~~ the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order and ~~(iii)~~ this Order shall constitute a final order within the meaning of 28 U.S.C. § 158(a). **[SMB: 4/23/20]**

18. The Foreign Representative and its agents are authorized and empowered to take all actions necessary to effectuate the relief granted under this Order.

19. This Court shall retain jurisdiction with respect to the implementation, enforcement, amendment or modification of this Order.

Dated: April 23, 2020
New York, New York

/s/ *Stuart M. Bernstein*
STUART M. BERNSTEIN
United States Bankruptcy Judge

Issued at 3:52 p.m.