

**File No. 113885/WMO**

File No. CI20-01-26627

**THE QUEEN'S BENCH  
Winnipeg Centre**

IN THE MATTER OF:      THE APPOINTMENT OF A RECEIVER PURSUANT TO  
SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C., C.B-3, AS AMENDED, AN SECTION 55 OF  
THE COURT OF QUEEN'S BENCH ACT, C.C.S.M., C.C280,  
AS AMENDED

IN THE MATTER OF THE PROPOSAL OF NYGARD GROUP OF COMPANIES

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES,  
INC., NYGARD NY RETAIL, LLC., 4093879 CANADA LTD., 4093887 CANADA  
LTD., NYGARD INTERNATIONAL PARTNERSHIP, NYGARD PROPERTIES  
LTD., and NYGARD ENTERPRISES LTD.,

Respondents.

**NOTICE OF MOTION**

Peter Nygard and the Respondents will make a Motion before The Honourable Justice J. G. Edmond, on Thursday the 9<sup>th</sup> day of April, 2020 at 9:00 A.M. or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THIS MOTION IS FOR:

1. An Order pursuant to the Queen's Bench Rules and the *Queen's Bench Act* and the inherent jurisdiction of this Honourable Court: Abridging the time for service of the Notice of Motion and materials filed in support of this Motion, such that this Motion is properly returnable on April 9, 2020, and dispensing with further service thereof;

2. An Order amending the Appointment Order to state that, notwithstanding paragraph 2 of said Appointment Order, or any other paragraph related thereto, the Receiver is only appointed over the following, property, assets and undertaking of Nygard Properties Ltd. and Nygard Enterprises Ltd.

- (a) real property municipally known as 1 Niagara Street, Toronto, Ontario;
- (b) real property municipally known as 1771 Inkster Blvd, Winnipeg, Manitoba;
- (c) real property municipally known as 1300, 1302, and 1340 Notre Dame Avenue, Winnipeg, Manitoba;
- (d) real property municipally known as 702/708 Broadway, Winnipeg, Manitoba
- (e) 200 common shares of 4093879 Canada Ltd., owned by Nygard Enterprises Ltd.; and
- (f) 200 common shares of 4093887 Canada Ltd. owned by Nygard Properties Ltd.

3. an Order requiring the Receiver to provide Edsons Investments Limited ("Edson's") and Brause Investments Limited ("Brause") with access to their owned premises with 24 hours advanced notice providing that said access does not offend any province or state's "shelter in place" directions instilled with respect to the COVID-19 pandemic (the "Access Order" and together with the Document Disclosure Order and the Amending Orders are the "Proposed Orders");

4. An Order from the Court that to the extent that any of the Debtors are tenants of any premises where Edson's Investments Ltd. and/or Brause Investments Ltd. are

landlords (the "Landlord"), the Receiver shall provide the Landlord with access to said premises upon the Landlord providing twenty-four (24) hours prior written notice.

5. Such further and other relief as this Honorable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On March 18<sup>th</sup>, 2020 the Honorable Court granted a Receiver Order which gives control over certain assets of Nygard Enterprises Ltd. and Nygard Properties Ltd which are subject to the Securities Pledge.
2. The Receiver has taken the position that it is appointed over assets which are not subject to the Securities Pledge.
3. Such further and other grounds as counsel may advise and this Honorable Court may permit.

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

1. Notice of Application
2. Affidavit of Robert L. Dean sworn Mar 9, 2020
3. Affidavit of Debbie Mackie affirmed March 10, 2020
4. Affidavit of Greg Fenske affirmed March 11, 2020

5. Affidavit of Jami Jayk affirmed March 12, 2020
6. Affidavit of Greg Fenske affirmed March 12, 2020
7. Receiver Order of Mr. Justice J. Edmond March 18, 2020
8. Affidavit of Greg Fenske, affirmed April 8, 2020
9. Such other material to be filed and allowed

Date: April 8, 2020



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