

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
HEARING: THURSDAY APRIL 29th, 2020 AT 10:00 A.M.
BEFORE THE HONOURABLE MR. JUSTICE J. G. EDMOND

LEVENE TADMAN GOLUB LAW CORPORATION

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NOTICE OF MOTION

Peter Nygard and the Respondents will make a Motion before The Honourable Justice J. G. Edmond, on Wednesday the 29th day of April, 2020 at 10:00 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 29, 2020, and dispensing with further service thereof;

2. An Order amending the Appointment Order to remove paragraph 13 which states as follows:

13. THIS COURT ORDERS that notwithstanding paragraph 12 of this Order, nothing contained in this Order shall prevent or stay the continuation of the proceeding of *Jane Does Nos. 1-10 v. Nygard et al.*, No. 20-cv-01288 (ER) against certain Debtors in the United States District Court for the Southern District of New York (the "Jane Doe Proceeding") through and including the entry of final judgment therein, provided that this Order shall prevent and stay in all respects the enforcements of any judgment therein against any of the Debtors. For the avoidance of doubt, (i) the Receiver shall be under no obligation whatsoever to take any actions or steps with respect to the Jane Doe Proceeding, including but not limited to defending against such proceeding, and (ii) the Receiver shall have no liability whatsoever in respect of the Jane Doe Proceeding.

2. An Order directing the Receiver to advise both HUB Insurance and AIG Insurance Company of Canada that it approves the purchase of tailing coverage for the Debtors' Directors and Officers as provided for in the Insurance Policy purchased by Nygard Enterprises Ltd. (the "Policy"), on the understanding that the Directors and Officers shall pay the Addition Premium Amount (as that term is defined in the Policy) and provide copies of any other insurance to which the Directors and officers would benefit.

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

THE GROUNDS FOR THE MOTION ARE:

1. On March 18th, 2020 the Honorable Court granted an Appointment Order which gives control over certain assets of Nygard Enterprises Ltd. and Nygard Properties Ltd which are subject to the Securities Pledge.

2. The Class Action has been stayed, at the request of the receiver, in the United States, pursuant to the Chapter 15 application and should be stayed in Canada. There ought to be consistency throughout the jurisdictions in the treatment of the Class Action.


3. The Directors and Officers of the companies in receivership have asked the Receiver about the status of the Directors and Officers insurance policies purchased by some, or all, of the Debtor Companies. The Directors and Officers' understanding is that it is a claims made policy that expires in June or July of this year. The Directors and Officers understand that there is an ability to purchase tailing coverage of either three years or six years.

4. 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. Affidavit of Greg Fenske, to be affirmed
10. First Report of the Receiver
11. Such other material to be filed and allowed

Date: April 23, 2020



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