

File No. CI 20-01-26627

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. 1985 c. B-3, AS AMENDED, AND SECTION 55 OF *THE COURT OF QUEEN'S BENCH ACT*, C.C.S.M., c. C280**

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC,

Applicant,

- and -

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

Respondents.

GENERAL ORDER

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) Wednesday, the 29th day of April, 2020
)

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED, AND SECTION 55 OF *THE COURT OF QUEEN'S BENCH ACT*, C.C.S.M., c. C280

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Respondents.

GENERAL ORDER

THIS MOTION, made by Richter Advisory Group Inc. in its capacity as court-appointed Receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd., and Nygard International Partnership (collectively, the “**Debtors**”, or any one of them, a “**Debtor**”) for an Order, among other things, providing for the sealing of certain Confidential Appendices filed by

the Receiver, and certain other relief, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the Notices of Motion of Peter Nygard and the Respondents filed April 8 and 24, 2020, the Affidavits of Greg Fenske affirmed April 8 and 23, 2020, the First Report of the Receiver dated April 20, 2020 (the "**First Report**"), the Supplementary First Report of the Receiver dated April 27, 2020 (the "**Supplementary First Report**"), including the Confidential Appendices referenced in the First Report and the Supplementary First Report, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Respondents and Peter Nygard, counsel for Overseas Express Consolidators Inc. and CRSA Global Logistics Inc., counsel for Tiina Tulikorpi, counsel for Doral Holdings Limited, KCAP Kingston Inc. and 2023011 Ontario Limited, counsel for Kingsway Garden Holdings Inc., Upper Canada Mall Limited and Crombie Developments Limited, and counsel for the interested retail landlord entities of Cushman & Wakefield Asset Services ULC, Morguard Investments Limited, Ivanhoe Cambridge Inc., SmartCentres Management Services Inc., RioCan REIT, Cominar REIT, Blackwood Partners Management Corporation, Choice Properties Limited Partnership and Springwood Land Corporation, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Barbara Allan sworn April 27, 2020, and the Supplementary Affidavit of Service of Barbara Allan sworn April 28, 2020, filed herein:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the First

Report and the Supplementary First Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

AMENDMENTS TO RECEIVERSHIP ORDER

2. THIS COURT ORDERS that in relation to the Respondents Nygard Enterprises Ltd. (“**NEL**”) and Nygard Properties Ltd. (“**NPL**”) as Limited Recourse Guarantors, for the purposes of the Receivership Order dated March 18, 2020 (the “**Receivership Order**”) made in these proceedings, “Property” shall include only such property, undertakings, and assets of NEL and NPL in which the Applicants have an interest pursuant to the Credit Agreement made among the Applicant, Second Avenue Capital Partners LLC and the Respondents dated as of December 30, 2019 (as defined in the Affidavit of Robert Dean affirmed March 9, 2020 in this proceeding) and the Loan Documents (as defined in the Credit Agreement) executed and delivered in connection therewith.

3. THIS COURT ORDERS that, for greater certainty, for the purposes of the Receivership Order, “Property” shall exclude any of NEL’s right and interest in the directors’ and officers’ insurance policies bearing policy numbers 01-173-52-10 and TDO1007769 provided by AIG Insurance Company of Canada and Trisura Guarantee Insurance Company, respectively, (the “**D&O Policies**”). Further, the Receiver and representatives of NEL shall cooperate reasonably to extend runoff coverages on the D&O Policies, it being expressly understood that such cooperation does not require the Receiver to pay any portion of the premium or additional premium payable to extend said coverage(s).

GARDENA ACCESS

4. THIS COURT ORDERS that, as to access by landlords to properties leased to the Respondent Nygard, Inc. located in Gardena, California:

“**Gardena Properties**” shall mean the properties in Gardena, California, the municipal addresses of which are:

- (a) 14702 South Maple Ave.,
- (b) 14421 S. San Pedro Street,
- (c) 14401 S. San Pedro Street;

each of which is leased by Edson’s Investments Inc. (“**Edson’s**”) to Nygard, Inc., and

- (d) 332 E. Rosecrans Ave., and
- (e) 312 E. Rosecrans Ave.

both of which are leased by Brause Investments Inc. (“**Brause**”) to Nygard, Inc. (Edson’s and Brause are each a “**Landlord**”).

5. Access to the Gardena Properties will be arranged on 48 hours prior written notice, from legal counsel representing Edson’s or Brause, as the case may be, to legal counsel representing the Receiver, which request will describe the general purpose of the access and the names of the persons who will attend on behalf of the Landlord.

6. No property is to be removed from the Gardena Properties at such attendances, provided that this provision is without prejudice to Edson's or Brause asserting a property claim over assets at the Gardena Properties and, if such property claim is either admitted by the Receiver, or alternatively, adjudicated by the Court to be property of Edson's or Brause's, as the case may be, Edson's or Brause is entitled to pick up such property from the Gardena Properties on the same basis for access to do so as is set out in this Order.

7. Access to the Gardena Properties for Landlord purposes hereunder is not intended as access to review, copy or remove documents or to access correspondence, files or other data from the electronic system, which matters are to be conducted in accordance with the Documents and Electronic Files Access Order made April 29, 2020 in these proceedings.

8. A representative of the Receiver will be present during each attendance at the Gardena Properties pursuant to this Order, and the Receiver and the Landlord reserve the right to record (including by video) the attendance.

9. Any attendance at the Gardena Properties pursuant to this Order must not violate "COVID-related" sheltering/business closure/social distancing orders and guidelines applicable in Gardena at the time of the attendance, including those of the State of California and/or the City of Gardena, and all social distancing protocols must be maintained.

FIRST REPORT AND ACTIVITIES OF RECEIVER

10. THIS COURT APPROVES the First Report and the Supplementary First Report and the activities of the Receiver and its counsel as described therein, including the Receiver's Interim Statement of Receipts and Disbursements and the interim accounts of the Receiver and its counsel as reflected in the First Report.

SEALING

11. THIS COURT ORDERS that the Confidential Appendices to the First Report and Supplementary First Report shall be sealed, kept confidential and not form part of the public record and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Court and the presiding Judge and shall only be made accessible or form part of the public record upon further Order of this Court.

12. THIS COURT ORDERS that the Receiver shall attach to a subsequent report a copy of Confidential Appendix 3 to the First Report, edited so as to redact privileged information contained therein.

GENERAL

13. THIS COURT ORDERS that the Respondents shall immediately comply with the previous Order issued by this Court requiring the Respondents to pay to the Applicant (or as the Applicant may direct) the full amount advanced by the Applicant to the Respondents on March 12, 2020 for the Respondents' payroll.

14. THIS COURT HEREBY REQUESTS the aid and recognition of any Court,

tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Consultant, the Receiver and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Consultant and the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Consultant and the Receiver and their respective agents in carrying out the terms of this Order.

April 29, 2020

J.G. Edmond, J.

Digitally signed by J.G. Edmond, J.
Date: 2020.05.15 09:35:39 -05'00'

I, G. BRUCE TAYLOR OF THE FIRM THOMPSON DORFMAN SWEATMAN LLP, HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES: THE APPLICANT, THE RESPONDENTS AND MR. PETER NYGARD, OVERSEAS EXPRESS CONSOLIDATORS INC., CRSA GLOBAL LOGISTICS INC., TIINA TULIKORPI, DORAL HOLDINGS LIMITED, KCAP KINGSTON INC., 2023011 ONTARIO LIMITED, KINGSWAY GARDEN HOLDINGS INC., UPPER CANADA MALL LIMITED, CROMBIE DEVELOPMENTS LIMITED, AND THE INTERESTED RETAIL LANDLORD ENTITIES OF CUSHMAN & WAKEFIELD ASSET SERVICES ULC, MORGUARD INVESTMENTS LIMITED, IVANHOE CAMBRIDGE INC., SMARTCENTRES MANAGEMENT SERVICES INC., RIOCAN REIT, COMINAR REIT, BLACKWOOD PARTNERS MANAGEMENT CORPORATION, CHOICE PROPERTIES LIMITED PARTNERSHIP AND SPRINGWOOD LAND CORPORATION

AS DIRECTED BY THE HONOURABLE MR. JUSTICE J.G. EDMOND