

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.

NOTICE OF MOTION OF THE RECEIVER
(DILLARD'S SETTLEMENT APPROVAL ORDER)
HEARING DATE: TUESDAY, JUNE 30, 2020 at 2:00 p.m.
BEFORE THE HONOURABLE MR. JUSTICE EDMOND

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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

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Respondents.

NOTICE OF MOTION OF THE RECEIVER –
DILLARD'S SETTLEMENT APPROVAL ORDER

Richter Advisory Group Inc. in its capacity as court-appointed receiver (in such capacity, the "**Receiver**") 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**", and any one of them, a "**Debtor**"), will make a motion before The Honourable Mr. Justice Edmond on Tuesday, the 30th day of June, 2020 at 2:00 p.m., or as soon after that time as the motion can be heard, at the Winnipeg Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. An Order under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) and pursuant to the inherent jurisdiction of this Honourable Court, substantially in the form attached hereto as Schedule “A” (the “**Dillard’s Settlement Approval Order**”), *inter alia*:
 - (a) Abridging the time for service of this Notice of Motion and the materials filed in support of this motion, such that this motion is properly returnable on the stated hearing date, and dispensing with further service thereof;
 - (b) Approving the transactions (the “**Transactions**”), including the mutual settlement and release of claims, as contemplated by the Settlement Agreement and Release of Claims (the “**Settlement Agreement**”) made between the Receiver, on behalf of the Debtors, and Dillard’s, Inc. (“**Dillard’s**”), entered into and effective June 25, 2020, entered into by the Receiver and Dillard’s pursuant to the Receiver’s powers under paragraph 6(j) of the Order made herein on March 18, 2020, as amended (the “**Receivership Order**”) and the Order made herein on April 29, 2020 (the “**Sale Approval Order**”), including paragraph 4 thereof;
 - (c) Sealing the Confidential Appendices to the Fourth Report of the Receiver, to be filed (the “**Fourth Report**”); and
 - (d) Approving the Fourth Report of the Receiver and the conduct and activities of the Receiver and its counsel described therein.

2. If necessary, such further and other relief as the circumstances of this case may require, and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On March 18, 2020, this Honourable Court made the Receivership Order appointing the Receiver over all the assets, undertakings and properties of the Debtors (including the assets dealt with the Settlement Agreement), which appointment was subsequently amended (by that certain General Order made April 29, 2020 in these proceedings) in relation to assets, undertakings and properties of the Debtors Nygard Enterprises Ltd. and NPL. The assets, undertakings and properties of the Debtors subject to the Receivership Order are hereinafter referred to as the “**Property**”.
2. Pursuant to the Receivership Order, this Honourable Court empowered and authorized the Receiver to, *inter alia*: (ii) settle, extend or compromise any indebtedness owing to or by the Debtors..
3. As reflected in the reports of the Receiver filed with the Court, including the Fourth Report, to be filed, the Receiver has, since being appointed by the Court, engaged in efforts to sell the Property, including certain inventory held in warehouses which had been ordered by Dillard’s prior to the Receivership Order. In addition, the Receiver has also made efforts to resolve certain claims arising as between Dillard’s and the Debtors relating to their ongoing business relationship, which had been in existence for several years prior to the issuance of the Receivership Order.

4. Pursuant to the Sale Approval Order, this Honourable Court authorized, *inter alia*, the sale of the assets described in the Consulting Agreement (as defined in the Sale Approval Order), which assets include the Subject Assets (as defined below).
5. With the assistance of the Consultant (as defined in the Sale Approval Order), acting in accordance with and pursuant to the Sale Approval Order and the Consulting Agreement, the Receiver and Dillard's have entered into the Settlement Agreement, which provides for, *inter alia*:
 - (a) the sale of certain Inventory (as defined in the Settlement Agreement) by the Receiver to Dillard's;
 - (b) the sale of a Trademark (as defined in the Settlement Agreement) by the Receiver to Dillard's (together with the Inventory, the "**Subject Assets**");
 - (c) the payment of certain amounts by Dillard's to the Receiver in respect of accounts receivable alleged to be owing by Dillard's; and
 - (d) the mutual full and final settlement, release and conclusion of all claims back and forth as between Dillard's and the Receiver (on behalf of the Debtors) which arise out of, or are in any way connected with any transactions, events, occurrences, acts or omissions alleged to have occurred as a result of the past business relationship or dealings between Dillard's and any one or more of the Debtors, including any agents or employees thereof.
6. The Settlement Agreement and the Transactions contemplated therein are subject to and conditional upon obtaining the approval of this Honourable Court as to the

Settlement Agreement by on or before June 30, 2020. Approval by this date is critical to the Settlement Agreement and Transactions contemplated therein as Dillard's will purchase such Inventory as is ready for pick up not later than July 3, 2020.

7. The sale of the Subject Assets has been authorized by the Sale Approval Order and pursuant to paragraph 4 of the Sale Approval Order, upon the implementation of the Settlement Agreement, Dillard's will purchase the Subject Assets free and clear of any Encumbrances (as defined in the Sale Approval Order), which Encumbrances will attach instead to the proceeds of the sale in the same order and priority as they existed immediately prior to such sale.
8. The Receiver has determined that the Settlement Agreement and the Transactions contemplated therein are commercially fair and reasonable, and the Receiver and Consultant have not acted improvidently in entering into the Settlement Agreement with Dillard's.
9. The Applicant, as the primary secured creditor with an interest in the Property that is the subject of the Settlement Agreement, is supportive of the Settlement Agreement.
10. The information contained in the Confidential Appendices to the Fourth Report is sensitive commercial information, and a sealing order is necessary as there is a real and substantial risk of harm to the interests of stakeholders in this proceeding in the event such information is disclosed to the public in advance of the completion of the Transactions contemplated by the Settlement Agreement.

11. The salutary effects of a sealing order with respect to the Confidential Appendices outweighs any considerations relating to the public interest in open and accessible court proceedings.
12. Paragraph 6(j) of the Receivership Order and paragraph 4 of the Sale Approval Order.
13. Section 95 of *The Corporations Act*, C.C.S.M. c. C225.
14. The BIA, including sections 243 and 249.
15. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368.
16. Rules 2.03, 3.02, 16.04, 37 and 41.05 of the *Queen's Bench Rules*, M.R. 553/88, as amended.
17. Such further and other grounds as counsel for the Receiver may advise and as this Honourable Court may permit.

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

1. The First Report of the Receiver, dated April 20, 2020
2. The Second Report of the Receiver dated May 27, 2020;
3. The Third Report of the Receiver dated June 22, 2020;
4. The Fourth Report of the Receiver, to be filed, including the Confidential Appendices thereto; and

5. Such further and other evidence as counsel for the Receiver may advise and this Honourable Court may permit.

June 26, 2020

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TO: THE ATTACHED SERVICE LIST

**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, AND SECTION 55 OF *THE COURT OF QUEEN'S BENCH ACT*, C.C.S.M., C. C280, AS AMENDED

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

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(as at June 19, 2020)

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SCHEDULE "A"

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.

DILLARD'S SETTLEMENT APPROVAL ORDER

Thompson Dorfman Sweatman LLP
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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE)
MR. JUSTICE EDMOND) Tuesday, the 30th day of June, 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

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.

DILLARD'S SETTLEMENT APPROVAL ORDER

THIS MOTION, made by Richter Advisory Group Inc. in its capacity as court-appointed Receiver (in such capacity, the "Receiver") without security, 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**”) as provided for in the Order of this Court pronounced on March 18, 2020 (the “**Receivership Order**”) (and as further amended by the General Order of this Court pronounced April 29, 2020), for, *inter alia*, an Order approving the transactions (the “**Transactions**”), including the mutual settlement and release of claims, as contemplated by that certain Settlement Agreement and Release of Claims (the “**Settlement Agreement**”) made between the Receiver, on behalf of the Debtors, and Dillard’s, Inc. (“**Dillard’s**”) entered into and effective as at June 25, 2020, as referenced in the Fourth Report of the Receiver dated June •, 2020 (the “**Fourth Report**”), was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion of the Receiver, the First Report of the Receiver dated April 20, 2020, the Second Report of the Receiver dated May 27, 2020, the Third Report of the Receiver dated June 22, 2020 and the Fourth Report, including the Confidential Appendices thereto, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for Dillard’s and counsel for Peter Nygard and the Respondents, no one appearing for any other person, although properly served as appears from the Affidavit of Service of Barbara Allan sworn June •, 2020, filed herein:

1. THIS COURT ORDERS that the time for service of the Notice of Motion of the Receiver and the Fourth Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL

2. THIS COURT ORDERS that the Settlement Agreement and the Transactions contemplated thereunder, including the mutual settlement and release of claims, are hereby approved, and the completion of the Settlement Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions contemplated by the Settlement Agreement.

3. THIS COURT ORDERS AND DECLARES THAT paragraph 4 of the Sale Approval Order issued by this Court on April 29, 2020 applies to the sale of the Inventory and the Trademark (as said terms are defined in the Settlement Agreement), such that upon the implementation of the Transactions, Dillard's shall acquire the Inventory and Trademark free and clear of any Encumbrances (as such term is defined in the Sale Approval Order).

4. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Debtors, and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors,

the Transactions contemplated by the Settlement Agreement approved pursuant to this

Order shall be binding on any licensed insolvency trustee of the bankruptcy estate that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall any of the Transactions constitute nor be deemed a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

SEALING

5. THIS COURT ORDERS that the Confidential Appendices to the Fourth 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.

FOURTH REPORT AND ACTIVITIES OF RECEIVER

6. THIS COURT APPROVES the Fourth Report and the activities of the Receiver and its counsel as described therein.

GENERAL

7. 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.

June 30, 2020

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. NYGARD, AND DILLARD'S, INC.