

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

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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

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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 27, 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, and counsel for Edson’s Investments Inc., Brause Investments Inc. 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 29, 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

J.G. Edmond, J Digitally signed by J.G. Edmond, J
Date: 2020.07.02 13:44:35 -05'00'
