

RICHTER

File No. CI 20-01-26627

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

**IN THE MATTER OF THE RECEIVERSHIP 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**

**RICHTER ADVISORY GROUP INC.
SUPPLEMENTARY SEVENTH REPORT OF THE RECEIVER**

SEPTEMBER 14, 2020

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**RICHTER ADVISORY GROUP INC.
SUPPLEMENTARY SEVENTH REPORT OF THE RECEIVER**

SEPTEMBER 14, 2020

I. INTRODUCTION

1. On March 18, 2020 (the “**Appointment Date**”), pursuant to an order (the “**Receivership Order**”) of the Court of Queen’s Bench (Winnipeg Centre) (the “**Manitoba Court**”) made in Court File No. CI 20-01-26627 (the “**Canadian Proceedings**”), Richter Advisory Group Inc. (“**Richter**”) was appointed as receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Nygård Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc., Nygard NY Retail, LLC (collectively, the “**US Debtors**”), Nygard Enterprises Ltd. (“**NEL**”), Nygard International Partnership (“**NIP**”), Nygard Properties Ltd. (“**NPL**”), 4093879 Canada Ltd., and 4093887 Canada Ltd. (collectively, the “**Canadian Debtors**”) (the US Debtors and the Canadian Debtors together, the “**Nygard Group**” or the “**Debtors**”) to exercise the powers and duties set out in the Receivership Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the “**BIA**”) and section 55 of *The Court of Queen’s Bench Act*, C.C.S.M. c.C280.
2. The Receivership Order was granted pursuant to an application made by White Oak Commercial Finance, LLC, (the “**Agent**”) as administrative agent and collateral agent for and on behalf of White Oak and Second Avenue Capital Partners, LLC (collectively, the “**Lenders**”) pursuant to security held by the Lenders in the Property of the Debtors provided in connection with a certain loan transaction and a revolving credit facility (the “**Credit Facility**”) provided thereunder.
3. The Credit Facility was provided to the Debtors pursuant to a Credit Agreement dated December 30, 2019 (the “**Credit Agreement**” and together with other associated documents, the “**Lenders’ Security**”) as defined in, and attached as Exhibit “D” to, the Affidavit of Robert Dean affirmed March 9, 2020 and filed in these proceedings.
4. Also on March 18, 2020, the Receiver, as the duly appointed foreign representative of the Debtors, commenced proceedings in the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”) by filing, among other things, petitions on behalf of the Receiver in relation to the Debtors pursuant to sections 1504 and 1515 of the US Bankruptcy Code seeking recognition by the US Court of the Canadian proceedings as a foreign main proceeding (the “**Chapter 15 Proceedings**”). On March 26, 2020, the US Court entered, among other things, a provisional recognition order and, on April 23, 2020, the US Court granted a final order recognizing, among other things, the Canadian Proceedings as the foreign main proceeding. The Canadian Proceedings and the Chapter 15 Proceedings are together hereinafter referred to as the “**Receivership Proceedings**”.
5. On April 29, 2020, the Manitoba Court made various Orders, including an Order (the “**Sale Approval Order**”) which, among other things, approved an agreement (the “**Consulting and Marketing Services Agreement**”) between the Receiver and a contractual joint venture comprised of Merchant Retail Solutions, ULC, Hilco Merchant Resources, LLC, Hilco IP Services, LLP dba Hilco Streambank, and Hilco Receivables, LLC (collectively, “**Hilco**” or the

“**Consultant**”), and White Oak Commercial Finance, LLC, pursuant to which the Consultant will provide certain consulting, marketing and related asset disposition services. In addition, as it appeared that a going concern or “en-bloc” sale of the Nygard Group’s assets was not likely, the Sale Approval Order authorized the Receiver to liquidate the Nygard Group’s retail inventory and owned furniture, fixtures and equipment through temporarily re-opened stores (the “**Liquidation Sale**”), as soon as circumstances permit. As certain details regarding the Liquidation Sale of particular importance to landlords of the Nygard Group’s retail stores (the “**Landlords**”) were not capable of being known with any precision or certainty at that time (given COVID-19 restrictions on non-essential business activities), the Sale Approval Order set out a process that required the Receiver to obtain a further order of the Manitoba Court addressing certain specified matters prior to commencement of the Liquidation Sale.

6. On April 29, 2020, the Manitoba Court made two (2) further Orders: (i) an Order (the “**General Order**”) addressing, among other things, various general matters, including certain amendments to the Receivership Order (limiting the scope of the Receivership Order in relation to the property, assets and undertakings of NEL and NPL) and the procedure for landlord access to properties leased to Nygard Inc. by certain non-Debtor members of the Nygard organization, and (ii) an Order (the “**DEFA Order**”) establishing the protocol for requesting access to and / or production of documents and electronic files purported to be in the possession or control (or subject to the possession or control) of the Receiver by certain non-Debtor members of the Nygard organization or directors, officers and employees of the Nygard Group.
7. On May 13, 2020, Edson’s Investments Inc. (“**Edson’s**”) and Brause Investments Inc. (“**Brause**” and collectively, the “**Gardena Landlords**”) filed a notice of motion (the “**Gardena Motion**”) with the Manitoba Court for an order requiring the Receiver to (i) pay occupancy rent and maintain the California Properties (as hereinafter defined) in accordance with the California Properties Leases (as hereinafter defined) and (ii) to advise the Gardena Landlords of its intentions regarding the occupancy of the California Properties by no later than May 31, 2020, or in the alternative, an order lifting of the stay of proceedings granted by the Manitoba Court in these proceedings so that the Gardena Landlords may terminate the California Properties Leases for failure of the Receiver to pay occupancy rent and retake possession of the California Properties. The Gardena Motion, which was originally scheduled to be heard by the Manitoba Court on August 10, 2020, had been rescheduled to be heard on September 14, 2020, however the Gardena Motion will not be proceeding as a result of the E/B Settlement Agreement described below.
8. On June 2, 2020, as required by the Sale Approval Order and in anticipation of commencing the Liquidation Sale where permitted to do so (taking into consideration local public health orders and related COVID-19 restrictions), the Manitoba Court made an Order (the “**Landlord Terms Order**”) addressing certain Landlord matters in relation to the conduct of the Liquidation Sale.

9. On June 30, 2020, the Manitoba Court made an Order (the “**Notre Dame Approval and Vesting Order**”) approving, among other things, the sale of certain NPL real property located at 1300, 1302 and 1340 Notre Dame Avenue and 1440 Clifton Street (the “**Notre Dame Property**”) in Winnipeg, Manitoba.
10. On June 30, 2020, the Manitoba Court also made an Order (the “**Dillard’s Settlement Approval Order**”) approving, among other things, the terms of an agreed Settlement Agreement and Release of Claims between the Receiver and Dillard’s Inc.
11. On August 10, 2020, the Manitoba Court made an Order (the “**Niagara Approval and Vesting Order**”) approving, among other things, the sale of certain NPL real property located at 1 Niagara Street in Toronto, Ontario (the “**Toronto Property**”).
12. On September 10, 2020, the Receiver filed its seventh report (the “**Seventh Report**”) in support of the Receiver’s motion (the “**September 10 Motion**”) returnable on September 14, and now adjourned to September 15, 2020, for, among other things, an Order from the Manitoba Court approving a settlement agreement (the “**E/B Settlement Agreement**”) with Edson’s Investments Inc. (“**Edson’s**”) and Brause Investments Inc. (“**Brause**” and collectively, the “**Gardena Landlords**”);
13. In accordance with the Receivership Order, the Receiver has established a website (the “**Receiver’s Website**”) for the purposes of these proceedings at <https://www.richter.ca/insolvencycase/nygard-group>.
14. Copies of the pleadings and other materials filed in the Receivership Proceedings, other than affidavits and appendices sealed by Order of the Manitoba Court, and the various Orders issued by the Manitoba Court are posted to and available for review at the Receiver’s Website.
15. Copies of the pleadings and other materials filed in the Chapter 15 Proceedings, and the various Orders issued by the US Court are also posted to and available for review at the Receiver’s Website.
16. The Receiver has engaged Thompson Dorfman Sweatman LLP (Winnipeg) (“**TDS**”) as its Canadian counsel, and Katten Muchin Rosenman LLP (New York) (“**Katten**”) as its U.S. counsel.

II. PURPOSE OF REPORT

17. This report (the “**Supplementary Seventh Report**”) is filed by the Receiver to respond to certain matters raised by the Manitoba Court at the hearing for the September 10 Motion in connection with the realizable value of certain unsold inventory (the “**Purchased Inventory**”) which shall be sold to the Gardena Landlords pursuant to the E/B Settlement Agreement.

III. TERMS OF REFERENCE

18. In preparing this Supplementary Seventh Report, the Receiver has relied upon information and documents prepared by the Debtors and their advisors, including unaudited, draft and/or internal financial information, the Debtors' books and records, discussions with representatives of the Debtors, including current and former employees, executives and / or directors, legal counsel to Mr. Peter Nygard and certain related but non-Debtor entities, the Lenders and their legal counsel, and information from third-party sources (collectively, the "**Information**"). In accordance with industry practice, except as otherwise described in the Supplementary Seventh Report, Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Richter has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, Richter expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
19. The Receiver has prepared this Supplementary Seventh Report in its capacity as a Court-appointed officer to support the relief being sought by the Receiver at the September 15 Motion. Parties using this Supplementary Seventh Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
20. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Seventh Report.
21. Unless otherwise noted, all monetary amounts contained in this Supplementary Seventh Report are expressed in Canadian dollars.

IV. ASSESSMENT OF THE PURCHASED INVENTORY

22. On the Appointment Date, the Receiver understands the Debtors had approximately 2 million units of wholesale inventory stored at the California Properties. The Debtors historically used the California Properties to fulfill wholesale orders to large US retailers such as Dillard's Inc. ("**Dillard's**").
23. To date, the Consultant, as agent for the Receiver, has negotiated agreements to sell approximately 1.9 million units of inventory stored at the California Properties, including those units sold to Dillard's pursuant to the Dillard's Settlement Approval Order.
24. As part of the E/B Settlement Agreement, the Gardena Landlords shall purchase from the Consultant, as agent for the Receiver, the Purchased Inventory, which represents unsold inventory remaining at the California Properties on the Exit Date, up to a maximum aggregate cap. The Purchased Inventory is being sold to the Gardena Landlords (i)

pursuant to the Sale Approval Order, which order was made by the Manitoba Court on April 29, 2020, and (ii) on an “as is, where is” basis without any representation or warranty of any kind from the Receiver.

25. The Receiver notes that the Purchased Inventory included in the E/B Settlement Agreement represents goods that are not currently subject to a sale agreement with a prospective purchaser. The Receiver is of the view that selling the Purchased Inventory to the Gardena Landlords will produce the highest net potential realizations for the Purchased Inventory as this sale will avoid the need for the Receiver to incur additional rent and other operating costs at the California Properties in hopes of identifying a third-party purchaser for the Purchased Inventory.
26. The Receiver understands that, since the Appointment Date, the Consultant has contacted over 300 prospective purchasers in connection with the Nygard Group’s wholesale inventories located in the U.S., including major retailers, off-price channels and smaller privately-owned businesses. The Consultant has previously noted that interest in the Debtors’ branded and private label inventory was limited and there remains an oversupply of branded apparel inventory in the market currently available at discounted pricing. The Receiver considers that the price being paid by the Gardena Landlords for the Purchased Inventory, which was negotiated at arm’s length between the parties, is reasonable in the circumstances and in line with the average per unit selling price achieved by the Consultant for similar goods at the California Properties.
27. In order to further assist and advise the Manitoba Court on the E/B Settlement Agreement and the sale of the Purchased Inventory contemplated therein, the Receiver has prepared a schedule (the “**Transaction Comparison Schedule**”) comparing the realizations for the Purchased Inventory that would be generated from the E/B Settlement Agreement as compared to the average per unit selling price achieved by the Consultant in other transactions with third party purchasers. As detailed in the Transaction Comparison Schedule, the realizations generated from the E/B Settlement Agreement for the Purchased Inventory are reasonable in the circumstances as compared to other transactions completed by the Consultant for the Debtors’ wholesale inventory located at the California Properties.
28. The Transaction Comparison Schedule has been filed separately with the Manitoba Court as **Confidential Appendix “1”**. The Receiver considers that the disclosure of the pricing and other commercially sensitive information detailed in the Transaction Comparison Schedule would be detrimental to the interests of the Receiver in remarketing the Purchased Inventory in the event that the Manitoba Court approves the E/B Settlement Agreement but the transactions contemplated therein do not close. Accordingly, the Receiver requests that the Transaction Comparison Schedule be sealed until further order of the Manitoba Court.
29. Based on the foregoing, the Receiver considers the sale of the Purchased Inventory pursuant to the E/B Settlement Agreement to be reasonable in the circumstances and provides the greatest potential recovery for the Purchased Inventory.

All of which is respectfully submitted on this 14th day of September, 2020.

Richter Advisory Group Inc.
in its capacity as Receiver of
Nygard Holdings (USA) Limited, Nygard Inc., Fashion Ventures, Inc.,
Nygard NY Retail, LLC, Nygard Enterprises Ltd., Nygard Properties Ltd.,
4093879 Canada Ltd., 4093887 Canada Ltd., any Nygard International Partnership
and not in its personal capacity



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