

File No. CI20-01-26627

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., C.B-3, AS AMENDED, AN 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 -

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

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A PROPOSAL OF NYGARD PROPERTIES LTD., NYGARD ENTERPRISES LTD., NYGARD INTERNATIONAL PARTNERSHIP, 4093879 CANADA LTD., AND 4093887 CANADA LTD.

Estate Nos: 31-2627758, 31-2627760, 31-2627764, 31-2627767, and 31-458926, Ontario as Estate Numbers 31-2627758, 31-2627760, 31-2627764, 31-2627767 and 31-458926 and subsequently transferred to Manitoba as Estate Nos. 21-2630777, 21-2630789, 21-2630793, 21-2630799 and 21-081548 and Manitoba Court of Queen's Bench file numbers BK 20-01-05441, BK 20-01-05443, BK 20-01-05440, BK 20-01-05442 and BK 20-01-05444

ORDER

LEVENE TADMAN GOLUB LAW CORPORATION

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File No. 113885/WMO

THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE)
MR. JUSTICE EDMOND) Tuesday, the 15th day of September, 2020
)

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

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ORDER

THIS MOTION, made by the Respondents, was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING, the affidavit of Greg Fenske, sworn September 13, 2020, and exhibits thereto (the “**Fenske Affidavit**”), the Settlement Agreement, dated September 8, 2020 (the “**Settlement Agreement**”), and the Confidential Brief dated September 13, 2020 (the “**Confidential Brief**”), and on hearing submissions from counsel to the Applicant, Respondents, Receiver, Edson’s Investments Inc., Brause Investments Inc. and the Proposal Trustee (as hereinafter defined).

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized terms, not otherwise defined herein shall have the meaning ascribed to it in Order appointing the Receiver dated March 18, 2020 (the “**Appointment Order**”)
3. **THIS COURT ORDERS** that the proposal proceedings commenced by Nygard Enterprises Ltd. (“**NEL**”), Nygard Properties Ltd. (“**NPL**”), 4093879 Canada Ltd. (“**3879**”), 4093387 Canada Ltd. (“**3887**”), and Nygard International Partnership (“**NIP**”, and together with NEL, NPL, 2879, and 3887 are the “**Canadian Debtors**”) under the *Bankruptcy and Insolvency Act* (the “**BIA**”) in Estate Nos. 31-2627758, 31-2627760, 31-2627764, 31-2627767 and 31-458926 and subsequently transferred to Manitoba as Estate Nos. 21-2630777, 21-2630789, 21-2630793, 21-2630799 and 21-081548 and Manitoba Court of Queen's Bench file numbers BK 20-01-05441, BK 20-01-05443, BK 20-01-05440, BK 20-01-05442 and BK 20-01-05444 (the “**NOI Proceedings**”), are hereby withdrawn and a true copy of this Order shall be filed in each of the NOI Proceedings.

4. **THIS COURT ORDERS** that the withdrawal of the NOI Proceedings is without prejudice to the ability of the Canadian Debtors, or any one of them, to seek commencement of any future fresh proposal proceedings under the BIA.
5. **THIS COURT ORDERS** that the withdrawal of the NOI Proceedings does not constitute or result in a deemed assignment into bankruptcy under the BIA.
6. **THIS COURT ORDERS** that A. Farber & Partners Inc., as Proposal Trustee (the “**Proposal Trustee**”) in the NOI Proceedings, is hereby discharged without further obligation or liability in respect thereof.
7. **THIS COURT ORDERS** that the First Report of the Proposal Trustee dated March 11, 2020 and the Second Report of the Proposal Trustee dated March 17, 2020 and the activities of the Proposal Trustee therein are hereby approved.
8. **THIS COURT ORDERS AND DECLARES** that subject to the payment of certain Retainer Funds (as defined in the Settlement Agreement) as contemplated in paragraph 9, the Proposal Trustee is hereby released and discharged from any and all liability that Proposal Trustee now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Proposal Trustee while acting in its capacity as Proposal Trustee herein up to and including the date hereof, save and except for any gross negligence or wilful misconduct on the Proposal Trustee's part. Without limiting the generality of the foregoing, there is no obligation to have the accounts of the Proposal Trustee or its legal counsel taxed in respect of the withdrawn NOI Proceedings and all claims in respect thereof are released.

9. **THIS COURT ORDERS** that the Proposal Trustee will pay Retainer Funds to Thompson Dorfman Sweatman LLP (“**TDS**”) in accordance with the provisions of the Settlement Agreement. For greater certainty the Retainer Funds to be paid by the Proposal Trustee to Thompson Dorfman Sweatman LLP shall be those Retainer Funds held by the Proposal Trustee constituting the Bankruptcy Retainer (Bankruptcy Retainer) described in that certain engagement letter from the Proposal Trustee to Canadian Debtors dated March 8, 2020.
10. **THIS COURT ORDERS** that the Shareholders Meetings (as defined in the Fenske Affidavit) were not in violation of the Appointment Order.
11. **THIS COURT ORDERS** that Greg Fenske is authorized to execute the Settlement Agreement, and any ancillary documents, as required, on behalf of the Canadian Debtors (or any one or more of them).
12. **THIS COURT ORDERS** that the Confidential Exhibits to the Confidential Brief are hereby sealed until the Closing Date (as defined in the Settlement Agreement).

J.G.
Edmond, J
Digitally signed by J.G. Edmond, J
Date: 2020.09.16 17:28:01 -05'00'

J.

I, WAYNE M. ONCHULENKO, OF THE FIRM OF LEVENE TADMAN GOLUB LAW CORPORATION HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES: THE APPLICANT, THE RECEIVER, EDSON'S INVESTMENTS INC., BRAUSE INVESTMENTS INC., and A FARBER & PARTNERS INC. AS DIRECTED BY THE HONOURABLE MR. JUSTICE EDMOND.