

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

IN THE MATTER OF THE PROPOSAL OF NYGARD GROUP OF COMPANIES

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.

NOTICE OF MOTION
HEARING: MONDAY NOVEMBER 9, 2020 AT 9:00 a.m.
BEFORE THE HONOURABLE MR. JUSTICE J. G. EDMOND

LEVENE TADMAN GOLUB LAW CORPORATION

Barristers and Solicitors
700 - 330 St. Mary Avenue
Winnipeg, Manitoba
R3C 3Z5

WAYNE M. ONCHUENKO

QB Box no. 105
Telephone No. (204) 957-6402
Facsimile No. (204) 957-1696
File No. 113885/WMO

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

IN THE MATTER OF THE PROPOSAL OF NYGARD GROUP OF COMPANIES

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.

NOTICE OF MOTION

The Respondents will make a Motion before The Honourable Justice J. G. Edmond, on Monday November 9, 2020, at 9:00 a.m., or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THIS MOTION IS FOR:

1. An Order pursuant to the Queen's Bench Rules and the *Queen's Bench Act* and the inherent jurisdiction of this Honourable Court abridging the time for service of the Notice of Motion and materials filed in support of this Motion and dispensing with further service thereof;

2. An Order directing that the Receiver and its counsel attach their statements of account to a sworn affidavit for the purposes of being cross examined on their accounts;
3. An Order directing that the Receiver's Ninth Report not be approved as it relates to the Receiver's activities and Fees, including counsel and third-party fees; and
4. Such further and other relief as this Honorable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

5. See Grounds set out in previous Notice of Motion;
6. See previous Motion Briefs filed herein;
7. The Fees, to satisfy the original secured creditor of US 25 million dollars, are not appropriate. It is of utmost importance that the monies of the estate be preserved and the Receiver be limited in its ability to continue to spend these monies. The Receiver and its Counsel should attach their statements of accounts to an Affidavit so they can be cross-examined on these fees as set out in the Ontario Court of appeal case *Confectionately Yours Inc.* 2002 CanLII 45059.
8. Such further and other grounds as counsel may advise and this Honorable Court may permit.

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

10. Affidavit of Greg Fenske, sworn September 29,2020 and

11. Such further and other grounds as counsel may advise and this Honorable Court may permit.

Date: November 5, 2020

**LEVENE TADMAN GOLUB
LAW CORPORATION**

Barristers and Solicitors
700 – 330 St. Mary Avenue
Winnipeg, MB. R3C 3Z5

WAYNE M. ONCHULENKO

Phone: (204) 957-6402

Fax: (204) 957-1696