

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., C. B-3 AS AMENDED, AND
SECTION 55 OF THE COURT OF QUEEN'S
BENCH ACT, C.C.S.M., C. C280, AS
AMENDED**

B E T W E E N:

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

AFFIDAVIT OF JAMI JACYK
Affirmed March 12, 2020

TAYLOR McCaffrey LLP
Barristers and Solicitors
2200 – 201 Portage Avenue
Winnipeg, Manitoba R3B 3L3

DAVID R.M. JACKSON

Direct Line: 204.988.0375
Direct Fax: 204.953.7178

Client File No. 91454-2

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

B E T W E E N:

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

AFFIDAVIT

I, Jami Jacyk, of the Rural Municipality of East St. Paul, in the
Province of Manitoba,

AFFIRM AND SAY THAT:


1. I am a Litigation Paralegal employed with the law firm of Taylor
McCaffrey LLP, Manitoba counsel for A. Farber & Partners Inc., the Proposal
Trustee ("Proposal Trustee") of Nygard Enterprises Ltd., Nygard Properties
Ltd. 4093879 Canada Ltd., 4093887 Canada Ltd. and Nygard International
Partnership (collectively the "Nygard Canadian Entities") with respect to the
Notices of Intention to Make a Proposal the Nygard Canadian Entities filed

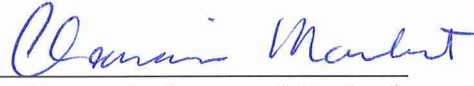
with the Office of the Superintendent of Bankruptcy Canada in Estate Numbers 31-2627758, 31-2627760, 31-2627764, 31-2627767 and 31-458926 (collectively "BIA Proceedings"). I therefore have personal knowledge of the following statements unless I indicate that they are based on information and belief in which case I believe them to be true.

2. Now shown to me and marked as **Exhibit "A"** to this my affidavit is a true copy of the First Report of the Proposal Trustee in the BIA Proceedings dated March 11, 2020.

3. I make this affidavit bona fide.

AFFIRMED before me at the City)
of Winnipeg, in the Province of)
Manitoba, this 12th day of March,)
2020.)



JAMI JACYK


A Commissioner of Oaths in and)
for the Province of Manitoba.)

My Commission expires: *August 12, 2021*

This is **Exhibit "A"** referred to in the Affidavit of Jami Jacyk before me at the City of Winnipeg, in the Province of Manitoba, this 12th day of March, 2020.

Cherrie Mankert

A Commissioner for Oaths in and for the Province of Manitoba.

My Commission Expires: *August 12, 2021*

Court File No. 31-2627758
31-2627760
31-2627764
31-2627767
31-458926
Estate No. 31-2627758
31-2627760
31-2627764
31-2627767
31-458926

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

**A. FARBER & PARTNERS INC.
FIRST REPORT OF THE PROPOSAL TRUSTEE**

March 11, 2020

TABLE OF CONTENTS

INTRODUCTION.....1

PURPOSE OF THIS REPORT3

DISCLAIMER.....3

REPORTING REQUESTED BY COURT3

LIST OF EXHIBITS

“A” NOI Certificates of Appointment dated March 9, 2020

Court File No. 31-2627758
31-2627760
31-2627764
31-2627767
31-458926
Estate No. 31-2627758
31-2627760
31-2627764
31-2627767
31-458926

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

**A. FARBER & PARTNERS INC.
FIRST REPORT OF THE PROPOSAL TRUSTEE**

March 11, 2020

INTRODUCTION

1. On March 9, 2020, Nygard Enterprises Ltd., Nygard Properties Ltd., 4093879 Canada Ltd., 4093887 Canada Ltd. and Nygard International Partnership (collectively, the “**Nygard Group**”) each filed Notices of Intention to Make a Proposal (“**NOI**”s) under Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, as amended (the “**BIA**”) in the District of Ontario, Toronto Division. A. Farber & Partners Inc. (“**Farber**”) was appointed as proposal trustee (the “**Proposal Trustee**”) in the NOI proceedings. A

copy of the NOI Certificates of Appointment dated March 9, 2020 from the Superintendent of Bankruptcy are attached as **Exhibit “A”**.

2. The Nygard Group collectively operates as a clothing designer, manufacturer, supplier and retailer with approximately 1,450 employees working from offices in Winnipeg and Toronto and approximately 169 retail outlets of which 167 are located in Canada. Its product lines and fashion brands include Peter Nygard Collections, Bianca Nygard, Nygard SLIMS, ALIA, ADX and TanJay. The Nygard Group also historically has supplied other retailers such as Dillard’s Inc. (**“Dillard’s”**), Costco Wholesale Canada Ltd. and Walmart Canada.
3. The Nygard Group’s primary secured creditors are White Oak Commercial Finance, LLC (**“White Oak”**) and Second Avenue Capital Partners, LLC (collectively, the **“Lenders”**) pursuant to a credit agreement entered into in early January 2020. The relationship amongst the Lenders and the Nygard Group has deteriorated. The Lenders demanded repayment and delivered a Notice of Intent to Enforce Security (the **“NITES”**) on February 26, 2020. White Oak’s counsel, Osler, Hosking & Harcourt LLP (**“Oslers”**) filed an application to seek a Court-appointed receiver over the assets of the Nygard Group and certain of its US subsidiaries to be heard in The Queen’s Bench Winnipeg Centre (the **“Winnipeg Court”**) on March 10, 2020. The background and concerns raised by the Lenders are set out in more detail in the brief filed by White Oak in that proceeding.
4. White Oak also filed an additional Notice of Motion dated March 10, 2020 with the Court seeking, amongst other relief, an order terminating the thirty-day period for making a proposal and/or lifting the stay of proceedings to proceed with the application for the appointment of a receiver. The grounds for the relief sought are set out in more detail in the Notice of Motion dated March 10, 2020.
5. Winnipeg counsel for the Nygard Group, Levene Tadman Golub Corporation (**“Levene Tadman”**) attended the March 10, 2020 hearing to argue that the stay of proceedings should remain in place and the relief sought by White Oak should not be granted.

6. The Proposal Trustee is advised that at the hearing, the Honourable Mr. Justice J.G. Edmond adjourned the hearing to March 12, 2020 and ordered that any responding material be delivered by 4:00 PM on Wednesday, March 11, 2020.

PURPOSE OF THIS REPORT

7. The purpose of this first report of the Proposal Trustee (the “**First Report**”) is to provide the Winnipeg Court with information related to the status of the NOI Proceedings.

DISCLAIMER

8. Farber has relied upon the available financial records, information and advice provided by the Company, as well as other information supplied by management, and advisors, and Farber has not independently reviewed or verified such information. Farber assumes no responsibility or liability for any loss or damage incurred by or caused to any person or entity as a result of the circulation, publication, re-production or use of or reliance upon this First Report. Any use which any person or entity, other than the Court, makes of this First Report, or any reliance on or a decision made based upon this First Report is at such person’s or entity’s own risk.

REPORTING REQUESTED BY COURT

9. The Proposal Trustee notes that the NOI’s were filed late in the day on Monday, March 9, 2020; accordingly, Tuesday March 10, 2020 was the first complete day that the Proposal Trustee was appointed. On March 10, 2020:
 - a. the Proposal Trustee had a number of discussions with management of the Nygard Group including Abe Rubinfeld (General Counsel), Greg Fenske (Director of Systems and Scheduling), Kevin Carkner (Director of Finance) and Projjwal Pramanik (Director Financial Corporate Services) as well as the principal shareholder, Mr. Peter Nygard, regarding the status of the business and urgent funding requirements;

- b. the Proposal Trustee retained counsel who had discussions with the Nygard Group's counsel and White Oak's counsel regarding the status of the proceedings before the Winnipeg Court;
- c. the Proposal Trustee was advised that cash deposits from the stores were 'swept' by the Lenders and therefore the Nygard Group did not have access to operating cash. The Nygard Group advises that approximately \$240,000 and \$228,000 was swept in the mornings of March 10 and March 11, respectively;
- d. the Proposal Trustee received assurances from the Nygard Group that monies would be made available by way of capital infusion on March 11, 2020 to satisfy the payroll funding required by March 12, 2020. On March 11, 2020, management provided an email from Stifel Investments confirming that \$1,000,000 was available to be transferred to Nygard Group from an outside source. Management advised that this was to be used for payroll. Levene Tadman also advised that this email was sent to the Applicant's Manitoba agent, Pitblado LLP.; and
- e. the Proposal Trustee submitted to the Nygard Group standard information requests to enable the Proposal Trustee to fulfil its statutory mandate under the BIA during the NOI proceedings.

10. As well, on March 11, 2020:

- a. the Proposal Trustee attended on a call with representatives of the Nygard Group where the Proposal Trustee was advised that (i) funds sufficient to satisfy the payroll obligation had been deposited with the Nygard Group and evidence of such funding had been provided to Osler as required by the Winnipeg Court; (ii) the short term primary focus of the Nygard Group was to obtain funds to repay the Lenders in full so as to permit the Nygard Group to focus on a restructuring and rationalization of its business.

- b. with respect to the Nygard Group's focus on repayment of the Lenders in full, the Proposal Trustee attended on a conference call with representatives of the Nygard Group and Great American Capital ("**GA Capital**"). From those discussions, the Nygard Group is seeking funding to repay the Lenders in full as well as sufficient working capital to allow a controlled marketing and sale of the different business segments for the benefit of all stakeholders. The Nygard Group further advised GA Capital that there have been ongoing sale discussions with a number of parties and the Nygard Group were concerned that a distressed sale by a receiver would result in a deterioration of the recoveries for the stakeholders. The Proposal Trustee understands that information has been exchanged between the Nygard Group and GA Capital and the parties are working towards a refinancing as quickly as possible.
 - c. the Proposal Trustee retained local Manitoba Counsel to attend on March 12, 2020 at the Winnipeg Court in respect of the pending motions by White Oak;
 - d. the Proposal Trustee has continued to work with representatives of the Nygard Group to obtain information, however, given the ongoing proceedings in the Winnipeg Court and limited time available since the Proposal Trustee was appointed, progress on these information requests is still premature. Notwithstanding the limited time, the Nygard Group has prepared its 13-week cash-flow which it delivered to the Proposal Trustee at the end of the day on March 11, 2020. The Proposal Trustee is starting its review of the 13-week cash-flow.
 - e. the Proposal Trustee has continued to work with its counsel to prepare this First Report of the Proposal Trustee
11. Over the last two days, it is the Proposal Trustee's view that the Nygard Group has been trying to respond to the Proposal Trustee's information requests as well as operating the business and seeking financing for immediate needs such as payroll.

12. The Proposal Trustee notes that as the BIA requires that the Nygard Group is required to prepare and file a cash flow statement within 10 days of the NOI filing date. The Proposal Trustee has advised the Nygard Group representatives of this requirement. Once the cash flows are received from the Nygard Group entities, the Proposal Trustee would, as contemplated by the BIA review the statements for reasonableness. As noted above, a 13-week cash-flow was submitted to the Proposal Trustee at the end of the day, March 11, 2020, and the Proposal Trustee is starting its review of same. The cash flow statements have not yet been reviewed, finalized and filed, so the Proposal Trustee is not yet in a position to monitor variances from same. The Proposal Trustee, however, is in the process of establishing reporting structures so that it will be in a position to do so once the cash flow statements are finalized.

13. The NOI process is a debtor-in-possession process and, as such, the Proposal Trustee does not have a statutory capacity to control operational issues.

All of which is respectfully submitted this 11th day of March, 2020.

**A. FARBER & PARTNERS INC.,
solely in its capacity as the Proposal Trustee of
Nygard Enterprises Ltd., Nygard Properties Ltd.,
4093879 Canada Ltd., 4093887 Canada Ltd. and
Nygard International Partnership, and not in its
personal or corporate capacity(s)**

Per:  _____

Name: John Hendriks CPA, CA. CIRP, LIT

Title: Managing Director



Industry Canada

Office of the Superintendent
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant
des faillites Canada

Exhibit " A "
Page 1 of 5

District of Ontario
Division No. 09 - Toronto
Court No. 31-2627758
Estate No. 31-2627758

In the Matter of the Notice of Intention to make a
proposal of:

4093879 CANADA LTD.

Insolvent Person

A. FARBER & PARTNERS INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: March 09, 2020

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: March 10, 2020, 08:17

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

Original Court Copy



Industry Canada

Office of the Superintendent
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant
des faillites Canada

Exhibit " A "

Page 2 of 5

District of Ontario
Division No. 09 - Toronto
Court No. 31-2627760
Estate No. 31-2627760

In the Matter of the Notice of Intention to make a
proposal of:

4093887 CANADA LTD.

Insolvent Person

A. FARBER & PARTNERS INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: March 09, 2020

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: March 10, 2020, 08:30

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

Original Court Copy



Industry Canada

Office of the Superintendent
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant
des faillites Canada

Exhibit "A"
Page 3 of 5

District of Ontario
Division No. 09 - Toronto
Court No. 31-2627764
Estate No. 31-2627764

In the Matter of the Notice of Intention to make a
proposal of:

NYGARD ENTERPRISES LTD.

Insolvent Person

A. FARBER & PARTNERS INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: March 09, 2020

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

-- AMENDED --

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: March 10, 2020, 14:42

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

Original Court Copy



Industry Canada

Office of the Superintendent
of Bankruptcy Canada

District of ONTARIO
Division No. 09 - Toronto
Court No. 31-458926
Estate No. 31-458926

Industrie Canada

Bureau du surintendant
des faillites Canada

Exhibit "A"

Page 4 of 5

In the Matter of the Notice of Intention
to make a proposal of:

NYGARD INTERNATIONAL PARTNERSHIP

Insolvent Person

A. FARBER & PARTNERS INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: March 9, 2020

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4(1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

NEHA VOHRA

Official Receiver

151 Yonge Street, 4th Floor, Toronto, ONTARIO, M5C 2W7, 877/376-9902

Canada

Original Court Copy



Industry Canada

Office of the Superintendent
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2627767
Estate No. 31-2627767

In the Matter of the Notice of Intention to make a
proposal of:

NYGARD PROPERTIES LTD.

Insolvent Person

A. FARBER & PARTNERS INC.

Licensed Insolvency Trustee

Date of the Notice of Intention: March 09, 2020

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

-- AMENDED --

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: March 10, 2020, 14:42

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

Original Court Copy