

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 SECITON 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

Nygard Group of Companies ("NGC") will make a Motion before The Honourable Mr. Justice J. G. Edmond, on Wednesday the 18th day of March, 2020 at 11:00 o'clock in the forenoon 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 under *The Bankruptcy and Insolvency Act*, R.S.C.1985, c. B-3, as amended ("BIA") and pursuant to Section 77 of the *Queen's Bench Act* and the inherent jurisdiction of this Honourable Court:
 - a. Abridging the time for service of the Notice of Motion and materials filed in support of this Motion, such that this Motion is properly returnable on

March 18th, 2020, at 11:00 a.m., and dispensing with further service thereof;

2. Sealing the confidential affidavit of Greg Fenske affirmed March 18, 2020.

2. Such further and other relief as this Honorable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. On March 9th The Nygard Group of Companies filed a Notice of Intension to make a Proposal with the Superintendent of Bankruptcy.

2. On March 13th, 2020 the Honorable Court granted an Order which affords the Respondents time to make a proposal.

3. The Confidential Affidavit of Greg Fenske containing the Offer to Purchaser with the purchase price unredacted, a summary of other potential offers respecting the sale process should be sealed since it contained commercially sensitive information. Production of such information is unnecessary as all material elements have been disclosed, and production may cause a negative impact on the Sale Process (if the terms of other bids were closed) in the event that the Transaction does not close requiring the Vendors, The Proposal Trustee to pursue an alternate bid.

4. The Vendors have acted and are acting in good faith and with due diligence.

5. The Vendors may be able to make a viable proposal if the extension being applied for is granted.
6. No creditor will be materially prejudiced if the extension being applied for it granted.
7. The Vendor also rely on the following:
 - a. Sections 50.4(9), 64.2, 65.13, 84.1 of the BIA;
 - b. General Rules 3, 4, 6, 11, 13 or the BIA, Can. Reg. 368;
 - c. Section 77 of the *Manitoba Court of Queen's Bench Act*;
 - d. Rules 2.03, 3.02, 16.04 and 37 of the *Queen's Bench Rules, Man. Reg. 553/88* as amended.
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:

1. Notice of Application
2. Affidavit of Robert L. Dean sworn Mar 9, 2020
3. Notice of Motion
4. Motion Brief of the Applicant
5. Consent of LF Richter Advisory Group Inc.

6. Motion Brief of the Respondents
7. Affidavit of Debbie Mackie affirmed March 10, 2020
8. Affidavit of Greg Fenske affirmed March 11, 2020
9. Affidavit of Jami Jayk affirmed March 12, 2020
10. Affidavit of Greg Fenske affirmed March 12, 2020
11. Order of Mr. Justice J. Edmond March 12, 2020
12. Supplemental Affidavit of Robert L Dean affirmed March 17, 2020

Date: March 18, 2020

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NOTICE OF MOTION
HEARING: WEDNESDAY, MARCH 18, 2020 AT 11:00 A.M.
BEFORE THE HONOURABLE MR. JUSTICE J. G. EDMOND

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