



No. S-230255
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**WAYGAR CAPITAL INC., as agent for
NINEPOINT CANADIAN SENIOR DEBT MASTER FUND L.P.**

PETITIONER

AND:

**THE VERY GOOD FOOD COMPANY INC., 1218158 B.C. LTD., 1218169 B.C. LTD.,
THE CULTURED NUT INC., THE VERY GOOD BUTCHERS INC., LLOYD-JAMES
MARKETING GROUP INC., and VGFC HOLDINGS LLC**

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: BDO Canada Limited, Receiver/Manager of the Respondents (the
"Receiver")

To: The Service List attached hereto as Schedule "A";

TAKE NOTICE that an application will be made by the applicant to the Honourable Justice Walker at the courthouse at 800 Smithe Street, Vancouver, BC, on a date to be set by Justice Walker, for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An order substantially in the form attached hereto as Schedule "B" including;
 - (a) Abridging the time for service of this Notice of Application such that the Notice of Application is properly returnable on the date set forth above and service hereof upon any interested party other than those parties on the Service List maintained by the Receiver in the proceeding is dispensed with;
 - (b) Approving the Agency Agreement between the Receiver and Gordon Brothers Canada ULC and New Mill Capital Holdings, LLC (together, the "Agent");

- (c) Authorizing the Agent to conduct the Sale and to deliver title free and clear of all Claims and Encumbrances; and
 - (d) Creating a charge in favour of the Agent (the “Agent’s Charge”) on all of the Property (as defined in the Receivership Order) as security for the payment and performance by the Receiver of its obligations under the Agreement. The Agent’s Charge will rank in priority over all other Encumbrances except for the Receiver’s Charge (as defined in the Receivership Order;
2. The necessity of counsel other than counsel for the Receiver approving the form of order be dispensed with.
 3. Such further and other relief as this Honourable Court deems just and equitable.

Part 2: FACTUAL BASIS

1. Capitalized terms used but not otherwise defined in this Notice of Application shall have the meanings given to them in the Receiver’s Third Report to the Court dated April 6, 2023.
2. BDO Canada Limited was appointed as Receiver-Manager (the “**Receiver**”) of the assets, undertakings and properties of The Very Good Food Company Inc., 1218158 B.C. Ltd., 1218169 B.C. Ltd., The Cultured Nut Inc., The Very Good Butchers Inc., Lloyd-James Marketing Group Inc. and VGFC Holdings LLC. (the “**Companies**”) pursuant to an Order made by the Supreme Court of British Columbia on January 16, 2023 (the “**Receivership Order**”). As part of the Receivership Order, the Receiver was directed to commence a sales and solicitation process (the “**SISP**”). The terms of the SISP formed part of the Receivership Order.
3. In its Second Report to the Court dated March 9, 2023, the Receiver outlined to the Court that the SISP process did not result in a “going concern” sale of the business or attract an outright purchase offer for the assets of the Companies. Accordingly, the only way to realize on the assets for the benefit of creditors would be to proceed with a liquidation.
4. The Receiver has prepared a report to provide the Court with an update on the liquidation process it has undertaken and the proposals received and to request the Court’s approval of an offer from Gordon Brothers Canada ULC and New Mill Capital Holdings, LLC

(together, the “**Agent**”).

II. LIQUIDATION PROPOSALS

5. The Receiver requested proposals from four auctioneers to liquidate the assets owned by the Companies.
6. In addition to auctioneers, four additional parties who had expressed interest in purchasing the assets also toured the premises.
7. The Receiver obtained three auctioneer proposals, in addition to one other offer for select pieces of equipment.
8. All amounts are expressed in Canadian Dollars, unless stated otherwise.
9. The offers included:
 - i. An offer from the Agent (the “**Agent’s Offer**”) for all of the equipment, which provided three different options:
 - A net minimum guarantee of \$1,255,000 USD, equivalent to approximately \$1,730,000; or
 - Charge a 10% commission.
 - ii. An offer for all of the equipment (“**Offer B**”), which provided three different options:
 - A cash offer of \$1,425,000;
 - A net minimum guarantee of \$1,397,000, plus 90% of auction proceeds in excess of \$1,597,000; or,
 - Charge a 5% commission plus \$75,000 to cover costs.
 - iii. An offer of \$507,000 for substantially all of the equipment (“**Offer C**”);
 - iv. An offer of \$105,000 for certain pieces of equipment (“**Offer D**”);

10. Neither Offer C nor Offer D were considered reasonable by the Receiver given that the selected pieces of equipment were considered to be valuable in an auction.
11. The Receiver, in consultation with the first secured creditor, Waygar Capital Inc. (“**Waygar**”), has accepted the Agent’s Offer for a net minimum guarantee of \$1,275,000 USD. This acceptance was subject to Court’s approval of the Agent’s Offer. A copy of the Agent’s Offer is attached as **Appendix A**.
12. The acceptance of the Agent’s Offer will result in a significant shortfall to Waygar. There is not expected to be any recovery to any of the unsecured creditors.

Part 3: LEGAL BASIS

1. The factors governing the court’s determination of whether a receiver who has sold a property acted properly are as follows:
 - (a) Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - (b) The interests of all parties;
 - (c) The efficacy and integrity of the process by which offers are obtained; and
 - (d) Whether there has been unfairness in the working out of the process.

Royal Bank v. Soundair Corp. [1991] O.J. No. 1137 at para. 16 (C.A.) per Galligan J.A.

2. Pursuant to the Receivership Order and as desired by the Petitioner, the major secured creditor, the Receiver pursued a sale of the assets of the Respondents on a going concern basis through the sales and investments solicitation process (“SIS”) provided for in the Receivership Order. As reported by the Receiver in its Second Report, the SISP failed and no purchaser of the business as a going concern was obtained.
3. Following the failure of the SISP, the Receiver proceeded with the only available option, liquidation.
4. The Receiver requested proposals from various auctioneers and had other parties who expressed interest in purchasing the assets. Three proposals were received from the auctioneers as well as one for select pieces of equipment.

5. The Receiver selected the offer of Gordon Brothers Canada ULC and New Mill Capital Holdings LLC (together the “Agent”).
6. Acceptance of the Agent’s Offer was in consultation with the Petitioner.
7. The minimum guarantee of \$1,275,000 USD to be paid to the Receiver would be insufficient to satisfy the Receiver’s Borrowing Charge for funds borrowed from Waygar as provided for in the Receivership Order. Waygar’s secured debt in excess of \$8,000,000 will likely remain entirely unpaid.
8. Equipment lessors have either been allowed to repossess their equipment if there was no value for the Sale or the leases have been paid in full and the equipment included in the assets which are the subject of the agreement with the Agent.
9. In these circumstances, the Receiver has acted reasonably, prudently and fairly. The Agent’s Offer is provident for all interested parties in the circumstances.
10. The Receiver will rely on: Rules 8-1 and 13-5 of the *Supreme Court Civil Rules*; the *Law and Equity Act*, RSBC 1996, c.253, including section 37; and the inherent jurisdiction of this court.

Part 4: MATERIAL TO BE RELIED ON

1. Second Report of the Receiver, dated March 9, 2023.
2. Third Report of the Receiver, dated April 6, 2023.
3. Receivership Order, made by the Honourable Justice Walker on January 16, 2023.
4. Unentered Order made by the Honourable Justice Walker on March 22, 2023.

The applicant estimates that the application will take thirty (35) minutes.

- This matter is within the jurisdiction of the master.
- X This matter is not within the jurisdiction of a master as Justice Walker is seized of the matter.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under 9-7(9).

Date: April 6, 2023



Signature of counsel for applicant,
Peter J. Reardon

THIS NOTICE OF APPLICATION is prepared by Peter J. Reardon, of the firm of Nathanson, Schachter & Thompson LLP whose place of business and address for service is 750 – 900 Howe Street, Vancouver, BC V6Z 2M4, telephone (604) 662-8840, and whose email address for service is preardon@nst.ca with a copy to rpearson@nst.ca.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Dated: _____

Signature of _____

Judge

Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments

- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE "A"

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**WAYGAR CAPITAL INC., as agent for
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PETITIONER

AND

**THE VERY GOOD FOOD COMPANY INC., 1218158 B.C. LTD., 1218169 B.C. LTD., THE
CULTURED NUT INC., THE VERY GOOD BUTCHERS INC., LLOYD-JAMES MARKETING
GROUP INC., and VGFC HOLDINGS LLC**

RESPONDENTS

SERVICE LIST

As at April 3, 2023

PARTIES	COUNSEL
<p>The Very Good Food Company Inc., 1218158 B.C. Ltd., 1218169 B.C. Ltd., The Cultured Nut Inc., The Very Good Butchers Inc., Lloyd-James Marketing Group Inc., and VGFC Holdings LLC</p> <p><i>The Respondents</i></p>	<p>Fasken Martineau DuMoulin LLP 2900 - 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Kibben Jackson Tel.: 604-634-4789 Email: kjackson@fasken.com</p> <p><i>Counsel for the Respondents</i></p>
<p>BDO Canada Limited Royal Centre 1100 - 1055 West Georgia Street PO Box 11101 Vancouver, BC V6E 3P3</p> <p>Jervis C. Rodrigues Tel.: 604-443-4724 Email: jrodrigues@bdo.ca</p> <p>Chris Bowra Email: cbowra@bdo.ca</p> <p><i>Receiver of the Respondents</i></p>	<p>Nathanson, Schachter & Thompson LLP 750 – 900 Howe Street Vancouver, BC V6Z 2M4</p> <p>Peter Reardon Tel.: 778-328-8940 Email: preardon@nst.ca</p> <p><i>Counsel for the Receiver</i></p>

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<p>Justice, Health and Revenue Legal Services Branch, Ministry of Attorney General</p>	<p>Ministry of Attorney General PO Box 9280, Stn. Prov. Govt. Victoria, BC V8W 9J7</p> <p>Email for Service List: AGLSBRevTaxInsolvency@gov.bc.ca</p> <p>Aaron Welch Tel.: 250-356-8589 Email: Aaron.Welch@gov.bc.ca</p> <p>Cindy Cheuk Tel.: 236-478-3782 Email: Cindy.Cheuk@gov.bc.ca</p> <p>Carmen Saldivia Legal Assistant to Aaron Welch and Cindy Cheuk Tel.: 778-974-4578 Fax: 250-387-0700 Email: Carmen.Saldivia@gov.bc.ca</p>
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<p>Chef's Choice Foods Manufacturer Co., Ltd.</p> <p>99/9 Mu5 Banggruay – Jongtanom Road Mahasawad, Banggruay, Nonthaburi 11130 Thailand</p> <p>Tip Jiratchaya D. Tel.: 66-2422-5406, ext. 42 Email: export@chefschoicefoods.com / export.m@chefschoicefoods.com</p>	
<p>Bunzl Industrial</p>	

CREDITORS	COUNSEL
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As at April 3, 2023

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SCHEDULE "B"

No. S-230255
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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**WAYGAR CAPITAL INC., as agent for
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MARKETING GROUP INC., and VGFC HOLDINGS LLC**

RESPONDENTS

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE

)
)
)

_____ dd/mm/yyyy

THE APPLICATION of BDO Canada Limited, in its capacity as Court-appointed Receiver and Manager (the "Receiver") of the assets, undertakings and properties of the Respondents coming on for hearing at 800 Smithe Street, Vancouver, British Columbia, on the _____ day of April, 2023; AND ON HEARING Peter J. Reardon, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto, and no one appearing for any other party on the Service List, although duly served; AND UPON READING the material filed, including the 3rd Report of the Receiver dated April 3, 2023 (the "Report");

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of this Notice of Application is abridged such that the Notice of Application is properly returnable on the date set forth above and service hereof upon any interested party other than those parties on the Service List maintained by the Receiver in the proceeding is dispensed with.

2. Capitalized terms used and not defined herein shall have the meaning ascribed to them in the Agreement (as defined below)
3. The Agency Agreement dated April 6, 2023 (the “**Agreement**”) between the Receiver and Gordon Brothers Canada ULC and New Mill Capital Holdings, LLC (together, the “**Agent**”), a copy of which is attached as Appendix “A” to the Report, and the Sale and other transactions contemplated therein (the “**Transaction**”) are hereby approved, and the Agreement is commercially reasonable. The execution of the Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the purchasers (the “**Purchasers**”) of Assets purchased by them in the Sale (the “**Purchased Assets**”).
4. The Agent, as agent for the Receiver, is authorized to conduct the Sale in accordance with this Order and the Agreement and to advertise, market and sell the Assets in accordance with the Agreement, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order of this Court dated January 16, 2023 (the “**Receivership Order**”) and this Order and any further Order which may be made by this Court in these proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Schedule “B” hereto (all of which are collectively referred to as the “**Encumbrances**”).
5. Effective from and after receipt by the Receiver of payment of the Initial Guarantee Amount in accordance with the Agreement (which receipt shall be confirmed by the delivery of a certificate (the “**Receiver’s Guarantee Certificate**”) by the Receiver to the Agent in substantially the form attached as Schedule “C” hereto), the Agent is granted a charge (the “**Agent’s Charge**”) on all of the Property (as defined in the Receivership Order) as security for the payment and performance by the Receiver of its obligations under the Agreement. The Agent’s Charge shall form a first charge on the Property in priority to all Claims and Encumbrances in favour of any person, but subordinate in priority only to the Receiver’s Charge (as defined in the Receivership Order) and to Sections 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act*. For certainty, the Agent’s Charge shall be senior in priority to the Receiver’s Borrowings Charge (as defined in the Receivership Order). The Receiver is to file with the Court a copy of the Receiver’s Guarantee Certificate forthwith after delivery thereof.
6. Subject to the terms of this Order, the Receivership Order or any greater restrictions in the Agreement, the Agent shall have the right as agent for the Receiver to enter and use the Premises on the terms set out in the Agreement for the purpose of conducting the

Sale, and for such purposes, the Agent shall be entitled to the benefit of the stay of proceedings provided under the Receivership Order.

7. During the Sale Term the Agent shall have access to the Premises as agent for the Receiver in accordance with the leases and other instruments and orders of this Court (each, an “**Occupancy Document**”) governing the Receiver’s occupation thereof on the basis that the Agent is assisting the Receiver as agent and the Receiver has granted the right of access to the Premises to the Agent. To the extent that the terms of an applicable Occupancy Document are in conflict with any term of this Order, the terms of this Order shall govern.
8. Nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of any Occupancy Document. Nothing contained in this Order shall be construed to create or impose upon the Receiver or the Agent any additional restrictions not contained in any Occupancy Document.
9. For the purposes of determining the nature and priority of Claims, the net proceeds from the Guarantee and any other amounts payable to the Receiver under the Agreement (the “**Agreement Proceeds**”) shall stand in the place and stead of the Purchased Assets, and from and after the payment of Agreement Proceeds to the Receiver all Claims shall attach to the Agreement Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale thereof to the Purchaser as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
10. The Receiver and the Agent shall be at liberty to extend the date for completion of the Sale from June 23, 2023 to such later date as those parties may agree without the necessity of a further Order of this Court.
11. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Respondents, or any of them, now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Respondents, or any of them,

the approval of the Agreement and the Transactions, the vesting of the Purchased Assets in the Purchasers, and the granting and priority of the Agent’s Charge pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Respondents, or any of them, and shall not be void or voidable by creditors of the Respondents, or any of them, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable

federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. (i) The Agreement (including any agreements, contracts or arrangements entered into with the Agent in relation thereto) shall not be repudiated, resiliated or disclaimed by the Receiver, (ii) the Agent shall not be affected by the stay of proceedings in the Receivership Order or any further Order made in these proceedings and shall be entitled to exercise its rights and remedies under the Agreement including in respect of claims of the Agent pursuant to the Agreement (collectively, “**Agent Claims**”), and (iii) the Agent Claims shall not be compromised or arranged pursuant to any plan of arrangement or compromise among the Respondents or the Receiver and the Respondents’ creditors (a “**Plan**”) or any other compromise or impairment of claims against the Respondents or the Receiver and, for greater certainty, the Agent shall be treated as an unaffected creditor in these proceedings and any other insolvency proceedings that may be initiated by or in respect of the Receiver or the Respondents, and under any Plan.
13. Each of the Receiver and the Agent is hereby authorized and directed, in accordance with the Agreement, to remit all amounts that become due to the Agent or the Receiver, as applicable, thereunder.
14. No Encumbrances, save and except for the Receiver’s Charge (as defined in the Receivership Order) shall attach to any amounts payable or to be credited or reimbursed to, or retained by the Agent pursuant to the Agreement, including, without limitation, any amounts to be reimbursed by the Receiver to the Agent pursuant to the Agreement, and at all times after such amounts have been paid, credited or reimbursed to, or retained by the Agent, such amounts shall be the property of the Agent free and clear of all Encumbrances (including the Receiver’s Charge), notwithstanding any enforcement or other process or Claims, all in accordance with the Agreement.
15. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
16. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
17. The necessity of counsel other than counsel for the Receiver approving the form of this order is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Peter J. Reardon
Lawyer for the Receiver

BY THE COURT

REGISTRAR

Schedule A – Counsel Appearing

Schedule B – Claims to be deleted/expunged from title to Real Property

[note: as there is no real property, this schedule is unnecessary]

Schedule C – Receiver’s Guarantee Certificate

No. S-2030255
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**WAYGAR CAPITAL INC., as agent for
NINEPOINT CANADIAN SENIOR DEBT MASTER FUND L.P.**

PETITIONER

AND:

**THE VERY GOOD FOOD COMPANY INC., 1218158 B.C. LTD., 1218169 B.C. LTD.,
THE CULTURED NUT INC., THE VERY GOOD BUTCHERS INC., LLOYD-JAMES
MARKETING GROUP INC., and VGFC HOLDINGS LLC**

RESPONDENTS

ORDER MADE AFTER APPLICATION

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