

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

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE

MR. JUSTICE WALKER

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)
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April 12, 2023

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 12th day of April, 2023, via MS Teams; 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. The Receiver will pay the balance outstanding for all leases between The Very Good Food Company and Modern Forklift Services Limited prior to the auction commencing.
6. 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.
7. 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.

8. 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.
9. 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.
10. 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.
11. 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.
12. 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,

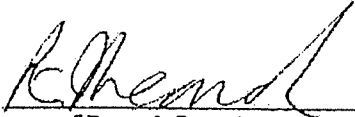
the approval of the Agreement and the Transactions, the vesting of the Purchased Assets in the Purchasers, and the granting and priority of the Agent's Charge pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Respondents, or any of them, and 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.

13. (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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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

**COUNSEL FOR THE RECEIVER /
MANAGER, BDO CANADA LIMITED**

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**COUNSEL FOR GORDON BROTHERS
CANADA ULC AND NEW MILL CAPITAL
HOLDINGS, LLC**

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Email: sbrotman@fasken.com

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

[There is no real property]

Schedule C – Receiver's Guarantee Certificate

No. S-2030255
Vancouver Registry

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BETWEEN:

**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

RECEIVER'S GUARANTEE CERTIFICATE

- A. Pursuant to the Order of the Court dated January 16, 2023, BDO Canada Limited was appointed as Receiver of the assets, undertakings and properties 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 "Respondents").
- B. Pursuant to an Order of the Court made April 12, 2023 (the "Approval and Vesting Order"), the Court approved 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") providing for the Sale and other transactions and for the conveyance to purchasers (the "Purchasers") of Assets purchased by them in the Sale (the "Purchased Assets") free and clear of and from all Claims and Encumbrances.
- C. Pursuant to the Approval and Vesting Order this Court granted in favour of the Agent a charge on all of the Property, which Agent's Charge is to be effective from and after receipt by the Receiver of payment of the Initial Guarantee Amount in accordance with the Agreement.

D. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Agent has paid and the Receiver has received the Initial Guarantee Amount pursuant to the Agreement.

This Certificate was delivered by the Receiver at _____ on _____, 2023.

**BDO CANADA LIMITED, in its
capacity as Receiver 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.**

Per: _____
Name:
Title:

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RESPONDENTS

ORDER MADE AFTER APPLICATION

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