

This is the 1st affidavit of James Bruce in this case and was made on January 13, 2023

No.
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

AFFIDAVIT

I, **JAMES BRUCE**, businessperson, of 25 King Street West, Suite 1700, Toronto, Ontario, **AFFIRM THAT:**

1. I am a Vice President, Portfolio of Waygar Capital Inc. ("**Waygar**"). Waygar, as Agent for Ninepoint Canadian Senior Debt Master Fund L.P., is a secured creditor of each of The Very Good Food Company Inc. (the "**Borrower**") and 1218158 B.C. Ltd. ("**158**"), 1218169 B.C. Ltd. ("**169**"), The Cultured Nut Inc. ("**CNI**"), The Very Good Butchers Inc. ("**VGB**"), Lloyd-James Marketing Group Inc. ("**LJMG**"), and VGFC Holdings LLC ("**VGFC**", and together with 158, 169, CNI, VGB,

and LJMG, the “**Corporate Guarantors**”, and together with the Borrower, the “**Debtors**”), the respondents herein, and I am responsible for management of the Debtors’ accounts and credit facilities. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

PURPOSE

2. The Debtors entered into a loan arrangement (as amended and restated) with Waygar, as more particularly described below, pursuant to which Waygar extended certain loans and other accommodations to the Borrower.

3. The Debtors have defaulted under the terms of this loan arrangement, and Waygar now wishes to enforce on its security as described below and the contractual consents to do so executed by the Debtors in favour of Waygar, as described below.

4. I am swearing this Affidavit in support of an application by Waygar for an order (the “**Receivership Order**”), amongst other things,

- (a) appointing BDO Canada Limited (“**BDO**”) as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of the each of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the “**Property**”); and
- (b) approving the sales and investment solicitation process as more particularly described in the pre-filing report of BDO, dated January 12, 2023 (the “**Pre-Filing Report**”) and below.

DESCRIPTION OF THE DEBTORS AND THEIR BUSINESS

5. The Borrower is a duly incorporated company that is publicly traded on the TSXV, NASDAQ and FSE:OSI. The Borrower is a plant-based food technology company that produces plant-based food products sold wholesale to retailers across Canada and the United States, and has approximately 71 employees. Each of the Corporate Guarantors, with the exception of VGFC, is a duly incorporated private corporation based in Vancouver, British Columbia. VGFC is a duly incorporated limited liability company based in Delaware, USA. VGFC employs approximately 10 people. The Debtors' corporate profile reports are collectively attached and marked as **Exhibits "A1 - A7"** to this Affidavit.

6. The Borrower operates business under the following brands: The Very Good Food Co., The Very Good Butchers, and The Very Good Cheese Co.

7. Each of the Corporate Guarantors is a direct or indirect subsidiary of the Borrower. The Borrower directly or indirectly owns all of the shares of each of the Corporate Guarantors. The Debtors' organizational chart is attached and marked as **Exhibit "B"** to this Affidavit.

8. Waygar has limited visibility at this time into the operations of the Corporate Guarantors. However, it is believed that the Corporate Guarantors may provide one or more of sales and marketing services, hold specific equipment, hold intellectual property, or may be simply holding companies with no operations. Given that each of the Corporate Guarantors could have marketable assets and operate collectively, I believe that a receivership over all of the Debtors would be the most prudent course of action; particularly given that the intention is to market these assets as a going concern operation.

WAYGAR'S LOANS TO THE BORROWER AND RELATED SECURITY

9. The Borrower is indebted directly to Waygar in connection with certain credit loans made available by Waygar to the Borrower pursuant to and under the terms of a credit agreement dated June 7, 2021, as amended by a first amendment agreement on July 6, 2022 (and as may be further amended, replaced, restated or supplemented from time to time, the “**Credit Agreement**”), a copy of which is attached and marked as **Exhibit “C”** to this Affidavit.

10. As security for its obligations to Waygar, including, without limitation, its obligations under the Credit Agreement, the Borrower provided certain security in favour of Waygar (the “**Borrower’s Security**”), including, without limitation, the general security agreement dated June 7, 2021 (the “**Borrower GSA**”), attached and marked as **Exhibit “D”** to this Affidavit, registration in respect of which was duly made pursuant to the *Personal Property Security Act* (British Columbia) (the “**PPSA**”). The Borrower GSA includes, *inter alia*,

- (a) a pledge of the shares the Borrower holds in 169, 158, VGB, CNI, LJMG and VGFC; and
- (b) security over the intellectual property of the Borrower.

11. A Notice of Security Interest in Intellectual Property, provided to Waygar by the Borrower, dated June 7, 2021, is attached and marked as **Exhibit “E”** to this Affidavit.

12. The Borrower and Waygar, together with Royal Bank of Canada (“**RBC**”), are also parties to a springing blocked account agreement dated September 12, 2022 (the “**Blocked Account Agreement**”), pursuant to which the Borrower has granted a security interest in its accounts maintained at RBC in favour of Waygar as security. Under the terms of the Blocked Account Agreement, in order to establish full dominion on the accounts, Waygar must first issue an

activation notice to RBC, which notice would be delivered upon the occurrence of an event of default under the Credit Agreement (the “**Activation Notice**”). Waygar delivered the Activation Notice on September 23, 2022. The Blocked Account Agreement, including the Activation Notice, is attached and marked as **Exhibit “F”** in this Affidavit

13. The Borrower’s obligations to Waygar have been guaranteed by each of the Corporate Guarantors pursuant to and under the terms of unlimited guarantee agreements, each dated June 7, 2021 (the “**Corporate Guarantees**”), a copy of each is collectively attached and marked as **Exhibits “G1 - G6”** to this Affidavit.

14. As security for their obligations to Waygar under the Corporate Guarantees, the Corporate Guarantors provided security in favour of Waygar (the “**Corporate Guarantors’ Security**” and together with the Borrower’s Security, the “**Security**”), including, without limitation, the general security agreements, each dated June 7, 2021, collectively attached and marked as **Exhibits “H1 - H6”** to this Affidavit, registration in respect of each was duly made pursuant to the PPSA.

THE OTHER SECURED CREDITORS

15. A copy of the PPSA search results for the Borrower with currency to January 10, 2023, is attached and marked as **Exhibit “I”** to this Affidavit. These search results show that, in addition to Waygar’s registration, each of Reiser (Canada) Co. (“**Reiser**”), RBC, Modern Forklift Services Ltd. (“**MFS**”), Ford Credit Canada Leasing (Division of Canadian Road Leasing Company) (“**Ford**”) and C.T. Control Temp Ltd. (“**CT**”) has made one or more registration under the PPSA against the Borrower.

16. The PPSA registrations made in favour of Reiser, MFS, Ford and CT all pertain to specific pieces of equipment or vehicles. Additionally, RBC’s registrations are, to my knowledge, solely

with respect to a cash collateral confirmation agreement to the extent of \$100,000.00 for credit cards.

17. Copies of the Uniform Commercial Code (the “UCC”) search results for the Borrower in Delaware, the District of Columbia and California, each with currency to December 1, 2022 are collectively attached and marked as **Exhibits “J1-J3”**. These search results show that, other than Waygar’s registration, no other party has made any registrations under the UCC against the Borrower.

18. Copies of the PPSA search results for each of the Corporate Guarantors with currency to January 11, 2023, are collectively attached and marked as **Exhibits “K1 - K6”** to this Affidavit. Waygar is the only party to have a PPSA registration against 169, 158, VGB and LJMG.

19. Waygar is one of two parties with PPSA registrations against CNI and VGFC. With respect to CNI, Bodkin (a Division of Bennington Financial Corp.) has a PPSA registration dated prior to Waygar’s, however, this registration only pertains to certain leased equipment. With respect to VGFC, Reiser has a PPSA registration pertaining to specific equipment, and which was made subsequent to Waygar’s registration.

20. A copy of the UCC search results for VGFC in Delaware with currency to December 1, 2022 is attached and marked as **Exhibit “L”**. This search result shows that, in addition to Waygar’s registration, Robert Reiser and Company has made multiple registrations under the UCC against VGFC.

DEFAULT, DEMAND AND DIFFICULTIES

21. Multiple defaults occurred under the Credit Agreement.

22. On November 29, 2022, Waygar sent to the Borrower a letter of default and reservation of rights (the “**Default Letter**”), noting that the Borrower had breached the terms of the Credit Agreement by

- (a) failing to submit the projection used to determine compliance with the financial covenants for the third quarter reporting; and
- (b) failing to maintain the required Cash Coverage Ratio (as defined in the Credit Agreement).

23. The Default Letter also stated that notwithstanding Waygar’s right to enforce its rights and remedies against the Debtors, including, without limitation, the right to enforce on its security, Waygar had chosen not to enforce such rights and remedies at that time so as to give the Debtors an opportunity to remedy the defaults. A copy of the Default Letter is attached and marked as **Exhibit “M”** to this Affidavit.

24. The Debtors failed to remedy the defaults and, as at January 6, 2023, the following amounts were owing for principal, interest and fees pursuant to the Credit Agreement, totalling \$8,113,003.68 (the “**Indebtedness**”):

- (a) \$4,359,042.79 in respect of principal and interest for a revolver facility;
- (b) \$3,001,057.56 in respect of principal and interest for a term facility;
- (c) \$735,105.00 in respect of facility fees; and
- (d) \$17,798.33 in respect of legal fees and expenses.

25. Following the various defaults under the Credit Agreement, Waygar made formal written demand on each of the Debtors for payment of the Indebtedness to Waygar by letters dated January

6, 2023 (the “**Demand Letters**”). A Notice of Intention to Enforce Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), accompanied each of the Demand Letters (each a “**BIA Notice**” and collectively, the “**BIA Notices**”). Copies of the Demand Letters and the BIA Notices are collectively attached and marked as **Exhibits “N1 - N7”** to this Affidavit.

26. In addition to the BIA Notices, a waiver and consent (the “**Waivers**”) also accompanied each of the Demand Letters, copies of which are collectively attached and marked as **Exhibits “O1 – O7”** to this Affidavit. The Waivers, dated and executed by the Debtors on January 9, 2023, confirmed that each of the Debtors:

- (a) acknowledges, confirms and agrees to and in favour of Waygar, that they are in default of their obligations owing to Waygar and that they have received the respective BIA Notice;
- (b) expressly, voluntarily and unconditionally waives the ten day notice period referred to in the respective BIA Notice; and
- (c) consents to the immediate enforcement of any and all of the security executed and delivered to them in favour of Waygar, without further notice.

27. The ten day notice required under the BIA Notices has been waived and each of the Debtors has consented to the immediate enforcement of security in favour of Waygar. Accordingly, Waygar is now entitled to appoint a receiver.

28. In addition, I am advised by the Borrower that financial performance has degraded and the business is not able to continue without a liquidity event or significant restructuring of the

Borrower's affairs. I also understand that in the months leading up to the Demand Letters being delivered, the Borrower took steps to run a sale and investment process in order to find additional capital, or a willing buyer, and that those efforts have not been successful. In discussions with BDO, it is likely some of the parties the Borrower was in discussions with are awaiting the appointment of a receiver and they are expected to re-engage with BDO once the SISP is underway.

29. Lastly, the Borrower issued a press release on January 11, 2023 (the "**Press Release**") in respect of, *inter alia*, Waygar issuing a BIA Notice to the Borrower, Waygar's intention to appoint a receiver over the Borrower, the trading of the Borrower's common shares on the TSXV has halted as the Borrower no longer meets the TSXV's board of director requirements, and that the Borrower has received confirmation from The Nasdaq Stock Market LLC that the Borrower's common shares will not be delisted on the NASDAQ if the Borrower is able to meet certain conditions. A download of the Press Release obtained from the website www.newsfilecorp.com on January 11, 2023 is attached and marked as **Exhibit "P"** to this Affidavit.

APPOINTMENT OF A RECEIVER

30. As of the time of swearing this Affidavit, the Debtors have continued to fail to make payment in accordance with the Demand Letters, make alternative arrangements acceptable to Waygar or initiate any filings under the BIA.

31. At this stage, Waygar wishes to take any and all steps necessary to enforce its Security and realize on same.

32. Waygar considers it reasonable and prudent to begin enforcing on the Security in an effort to recover the Indebtedness owed by the Debtors to Waygar, and it is within Waygar's rights under

the Credit Agreement and the Security to do so. Further, the Debtors have contractually consented to the enforcement of the Security pursuant to the Waivers.

33. In the circumstances set out above, I believe that it is just and equitable that a receiver be appointed. A receiver is necessary for the protection of the estates of each of the Debtors, the interests of Waygar and, perhaps, other stakeholders. Waygar believes that the appointment of a receiver would enhance the prospect of recovery by Waygar and protect all stakeholders.

34. Additionally, as more fully described in the Pre-Filing Report, Waygar intends to fund the receivership process by extending the existing loan facilities under the Credit Agreement. All advances to BDO from Waygar will be documented through the receiver's certificates appended as Schedule "A" to the Receivership Order. In accordance with the Receivership Order, all advances to BDO from Waygar will be part of the principal sum of money from which BDO will be authorized to borrow (the Receiver's Borrowing Charge, as defined in the Receivership Order).

35. Waygar proposes that BDO be appointed as the Receiver.

36. BDO is a licensed insolvency trustee and was previously engaged by Waygar by way of an engagement letter dated November 29, 2022 (the "**Engagement Letter**") to act as Waygar's financial advisor in respect of the Borrower. In this role, BDO reviewed, *inter alia*, the Borrower's financial position, budget, financial projections, cash flow requirements and strategic business plans. In light of the foregoing, BDO has significant institutional knowledge of the Debtors, their business and operations, and is well-positioned to act as the Receiver. A copy of the Engagement Letter is attached and marked as **Exhibit "Q"** to this Affidavit.

37. BDO has consented to act as receiver should the Court so appoint it.

APPROVAL OF THE SISP

38. Waygar seeks approval of the SISP, as more fully described in the Pre-Filing Report, in order to begin the process of marketing the Debtors as a going concern. This will reduce costs because, *inter alia*,

- (a) the key details concerning the underlying structure, including the target dates, of the SISP have already been formulated by BDO; and
- (b) the need to return to court to approve the SISP, or a similar process, would be eliminated.

39. Moreover, the status quo of court-monitored sales processes would be upheld. Given that the market could react negatively to the receivership if proceedings were carried on for an extended amount of time, more value would likely be attributed to the Property with the expeditious approval of the SISP.

40. Given the recent Press Release which highlighted, *inter alia*, the Borrower's defaults under the Credit Agreement, approval of the proposed SISP would also avoid any possibility that suppliers and other stakeholders would attempt to repudiate their contracts or dealings with the Debtors, which would likely result in a significant decrease to the going concern value of the Property.

41. This Affidavit is made in support of the within application, and for no other or improper purpose whatsoever.

50. I am swearing this affidavit using video technology, outside the commissioner’s physical presence, in accordance with the process outlined in the Supreme Court of British Columbia’s March 27, 2020 Notice to the Profession, the Public and Media entitled “Affidavits for Use in Court Proceedings” (COVID-19 Notice No. 2).

SWORN before me at the City of)
 Toronto, in the Province of Ontario, this)
 13th day of January, 2023.)

The deponent was not physically present)
 before me but was linked with me using)
 video technology. I followed the process)
 described in the Supreme Court of British)
 Columbia’s March 27, 2020 Notice to the)
 Profession, the Public and the Media)
 entitled “Affidavits for Use in Court)
 Proceedings” (COVID-19 Notice No. 2))
 and complied with the Law Society of)
 British Columbia best practices for using)
 videoconferencing when providing legal)
 advice or services.)

_____)
 A Commissioner for Oaths in and for the)
 Province of British Columbia)

_____) **JAMES BRUCE**