

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE Mr. Justice J. Sloan)

**TUESDAY, THE 27th DAY
OF MARCH 2018**

BETWEEN:

WEIWEI GAO

Applicants

– and –

WG VINEYARD NIAGARA INC. and WG DOMAINE NIAGARA INC.

Respondents

APPLICATION UNDER sections 207 of the *Business Corporations Act*, R.S.O. 1990, c. B.16.

ORDER

(Winding-up WG Vineyard Niagara Inc. and WG Domaine Niagara Inc.)

THIS MOTION made by the Applicants for an Order pursuant to section 207 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the “**OBCA**”) winding-up WG Vineyard Niagara Inc. (“**Vineyard**”) and WG Domaine Niagara Inc. (“**Domaine**”) was heard this day at 85 Frederick Street, Kitchener, Ontario.

ON READING the Affidavits of Di Mu sworn 26 January 2018 and 19 March 2018, Yan Wang sworn 6 March 2018, Anthony Guidoccio and Judy Guidoccio sworn 20 March 2018 and Xiaoxiong (Frank) Liu sworn 22 March 2018, and on hearing the submissions of counsel for the Applicant and the minority shareholder of Vineyard and Domaine, Yuzhi Shi, as Trustee of the Estate of Zhendong Wang, no one appearing for Vineyard or Domaine,

WINDING-UP OF VINEYARD AND DOMAINE

1. **THIS COURT ORDERS** that Vineyard and Domaine be wound-up and for that purpose MNP Ltd. (“**MNP**”) be and is hereby appointed as liquidator of the effects and estate of Vineyard and Domaine effective from 26 March 2018 with the powers obligations set forth in Part XVI of the OBCA and this Order. Where there is any inconsistency between the powers provided to MNP under the OBCA and this Order, the terms of this Order shall govern to the extent that they restrict or limit the powers of MNP.

MNP’S POWERS

2. **THIS COURT ORDERS** that MNP is hereby empowered and authorized, but not obligated, to act at once in respect of the assets property and undertaking of Vineyard and Domaine (the “**Property**”) and, without in any way limiting the generality of the foregoing, MNP is hereby expressly empowered and authorized to do any of the following where MNP considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (c) to manage, operate, and carry on the business of Vineyard and Domaine, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of Vineyard and Domaine;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, forensic experts, managers, counsel and such other persons from time to time and on

whatever basis, including on a temporary basis, to assist with the exercise of MNP's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of Vineyard and Domaine or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to Vineyard and Domaine and to exercise all remedies of Vineyard and Domaine in collecting such monies, including, without limitation, to enforce any security held by Vineyard and Domaine;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in MNP's name or in the name and on behalf of Vineyard and Domaine, for any purpose pursuant to this Order;
- (h) conduct a review of all claims by shareholders of Vineyard and Domaine, including those shareholders asserting shareholder loans and report to the Court for a final determination;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to Vineyard and Domaine, the Property or MNP and the authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding and subject to consent of the shareholders of Vineyard and Domaine or an Order of the Court to settle or compromise any such proceeding;
- (j) to market the Property for sale and, subject to approval of the Court, negotiate such terms and conditions of sale as MNP in its discretion may deem appropriate;
- (k) to apply to the Court for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (l) to report to, meet with and discuss with such affected Persons (as defined below) as MNP deems appropriate on all matters relating to the Property and to share information, subject to such terms as to confidentiality as MNP deems advisable;
- (m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and in the name of Vineyard and Domaine;
- (n) to exercise any shareholder, partnership, joint venture or other rights which Vineyard and Domaine may have;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property; and
- (p) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where MNP takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including Vineyard and Domaine, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO MNP

3. **THIS COURT ORDERS** that (i) Vineyard and Domaine, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise MNP of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to MNP, and shall deliver all such Property to MNP upon MNP's request.
4. **THIS COURT ORDERS** that all Persons shall forthwith advise MNP of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and

any other papers, records and information of any kind related to the business or affairs of Vineyard and Domaine, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to MNP or permit MNP to make, retain and take away copies thereof and grant to MNP unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to MNP due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to MNP for the purpose of allowing MNP to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as MNP in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of MNP. Further, for the purposes of this paragraph, all Persons shall provide MNP with all such assistance in gaining immediate access to the information in the Records as MNP may in its discretion require including providing MNP with instructions on the use of any computer or other system and providing MNP with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST MNP

6. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against MNP except with the written consent of MNP or with leave of this Court.

NO PROCEEDINGS AGAINST VINEYARD AND DOMAINE OR THE PROPERTY

7. **THIS COURT ORDERS** that no Proceeding against or in respect of Vineyard and Domaine or the Property shall be commenced or continued except with the written consent of MNP or with leave of this Court and any and all Proceedings currently under way against or in respect of Vineyard and Domaine or the Property are hereby stayed and suspended pending further Order of this Court.

NO INTERFERENCE WITH MNP

8. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by Vineyard and Domaine, without written consent of MNP or leave of this Court.

CONTINUATION OF SERVICES

9. **THIS COURT ORDERS** that all Persons having oral or written agreements with Vineyard and Domaine or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to Vineyard and Domaine are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by MNP, and that MNP shall be entitled to the continued use of Vineyard and Domaine's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by MNP in accordance with normal payment practices of Vineyard and Domaine or such other practices as may be agreed upon by the supplier or service provider and MNP, or as may be ordered by this Court.

MNP TO HOLD FUNDS

10. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by MNP from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by MNP (the "**Liquidator's Accounts**") as required by section 227 of the OBCA and the monies standing to the credit of the Liquidator's Accounts from time to time, net of any disbursements provided for herein, shall be held by MNP to be paid in accordance with the terms of this Order and subject to the final approval of this Court.

EMPLOYEES

11. **THIS COURT ORDERS** that all employees of Vineyard and Domaine shall remain the employees of Vineyard and Domaine until such time as MNP, on Vineyard and Domaine's behalf, may terminate the employment of such employees. MNP shall not be liable for any employee-related liabilities, including any successor employer liabilities other than such amounts as MNP may specifically agree in writing to pay. Vineyard and Domaine shall make all employee-related remittance from and after the date of this Order.

PIPEDA

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, MNP shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to MNP, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to

continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by Vineyard and Domaine, and shall return all other personal information to MNP, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. **THIS COURT ORDERS** that nothing herein contained shall require MNP to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt MNP from any duty to report or make disclosure imposed by applicable Environmental Legislation. MNP shall not, as a result of this Order or anything done in pursuance of MNP's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE MNP'S LIABILITY

14. **THIS COURT ORDERS** that MNP shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on the part of MNP.

LIQUIDATOR'S ACCOUNTS

15. **THIS COURT ORDERS** that MNP and counsel to MNP shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise

ordered by the Court on the passing of accounts, and that MNP and counsel to MNP shall be entitled to and are hereby granted a charge (the "**Liquidator's Charge**") on the Property as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Liquidator's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to any valid and enforceable security interests registered against the Property in favour of Persons not related to, or not dealing at arm's length with, Vineyard and Domaine as of the date of this Order.

16. **THIS COURT ORDERS** that MNP and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of MNP and its legal counsel are hereby referred to a judge of this Court.
17. **THIS COURT ORDERS** that prior to the passing of its accounts MNP shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of MNP or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF MNP

18. **THIS COURT ORDERS** that MNP be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon MNP by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority

to: (i) any valid and enforceable security interests registered against the Property in favour of Persons not related to, or not dealing at arm's length with, Vineyard and Domaine as of the date of this Order; and (ii) the Liquidator's Charge.

19. **THIS COURT ORDERS** that neither the Borrowings Charge nor any other security granted by MNP in connection with its borrowings under this Order shall be enforced without leave of this Court.

SERVICE AND NOTICE

20. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol.
21. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, MNP is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to interested parties and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

22. **THIS COURT ORDERS** that MNP may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
23. **THIS COURT ORDERS** that the Applicants shall have its costs as either agreed upon by the parties or ordered by the Court.
24. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to MNP and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

J. Sloan per

Mr. Justice J. Sloan

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| ENTERED AT KITCHENER |
| in Book No. 30 |
| As Document No. 638 |
| on APR 05 2019 |
| by Ingrid Peters |

BETWEEN:

WEIWEI GAO
– Applicant –

AND

WG VINEYARD NIAGARA INC. *et al*
– Respondents –

ONTARIO
SUPERIOR COURT OF JUSTICE

(PROCEEDING COMMENCED AT KITCHENER)

ORDER

GOWLING WLG (CANADA) LLP
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario M5X 1G5

Christopher Stanek (LSUC No. 45127K)
Telephone: (416) 862-4369
Facsimile: (416) 862-7661

LAWYERS FOR YUZHONG SHI, TRUSTEE OF THE
ESTATE OF ZHENGDONG WANG