

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Weiwei Gao - Applicant

AND:

WG Vineyard Niagara Inc. and WG Domaine Niagara Inc. - Respondents

COUNSEL: Greg Murdoch - Counsel for the Applicant

Christopher Stanek - Counsel for the Respondent

BEFORE: James W. Sloan

HEARD: March 27, 2018

ENDORSEMENT

[1] The parties agree on most of the facts that pertain to this case.

[2] The applicant and one Zhendong Wang (now deceased) purchased two vineyards on the Niagara Peninsula where grapes were grown and sold to wineries.

[3] The parties had the two respondent companies incorporated and pursuant to their September 15, 2015 agreement, the applicant owns 51% of the shares, while 49% of the shares are now owned by the Wang estate. The only assets of the two corporations are the two farms upon which grapes are grown.

[4] Pursuant to the parties' agreement, the applicant was to be solely responsible for all of the necessary costs and expenses for the operation of the two farms and Wang was specifically not required to invest any money towards the said purchase or any cost for operating the two farms after the purchase.

[5] After Wang's death in December 2015, the applicant took several unilateral steps, including, claiming to be the sole director of both corporations, refusing to talk to Wang's estate trustee and refusing to attend at a special shareholders meeting.

[6] In March 2016, the applicant purported to install her son as a second director and issued him 100 shares, so that between them they would then have 75.5% of the voting shares. Enough to give them absolute control.

[7] In addition, the applicant purported to pass a resolution purchasing all of the shares from the Wang estate in both corporations for one dollar each.

[8] In response, the Wang estate brought an oppression remedy before Justice Hainey, who on November 29, 2016, made an order that the shareholders' register should be revised to show Wang's share of the corporation at 49% and cancelling the newly issued shares given to the applicant's son.

[9] In addition, he ordered the applicant to pay the Wang estate \$40,000 in costs, which for some unexplained reason as of today's date have not been paid, essentially leaving the applicant in contempt of the 2016 Superior Court Order.

[10] On April 21, 2017, the applicant called a shareholders meeting to discuss the dissolution of the parties relationship. The Wang estate questioned the veracity of the financial statements and also the amount claimed by the applicant for her shareholder loan, which they felt was not documented.

[11] Unfortunately, the meeting failed to resolve anything and without further notice to the Wang estate, the applicant listed the properties for sale.

[12] The applicant received offers on November 3, 2017, and gave notice of a special meeting of shareholders for December 10, 2017. The issues before the meeting were to approve the sales, amalgamate the two corporations and to discuss options for one shareholder to buy out the other.

[13] The Wang estate was interested in buying out the applicant, until she insisted that she be paid her alleged shareholder's loan. Therefore, the Wang estate voted against the sale and the amalgamation.

[14] On February 4, 2018, the applicant, without advising the Wang estate, entered into an agreement of purchase and sale.

[15] The applicant brings this motion seeking to have the court order the corporations to accept the current offers and essentially to direct a reference of what should be done with the net proceeds, after the payment of the mortgage and real estate and legal fees.

[16] The two offers currently on the table are for the gross purchase price of \$3,830,000, and in general terms after deducting the mortgage of \$2,408,775, real estate fees of \$191,500 and legal fees of \$6,000 there would be approximately \$1,223,725 left to be paid into court.

[17] The applicant's claim for her shareholder's loan is well in excess of the above amount.

[18] She states that the farms have always operated at a loss and that the cumulative amount since inception has been \$962,000. In addition, she states that she paid \$827,000 to purchase the properties in the first place, and she is therefore claiming a shareholder's loan in the neighbourhood of \$1,789,000.

[19] The plaintiff obtained two appraisals in February 2017, (over one year ago) valuing both farms together at \$3.2 million, making the current offers \$630,000 greater than the appraised value. No evidence by either party was presented to the court to show what the current market value of the properties might be.

[20] The plaintiff submits:

- (a) The properties were marketed on the MLS system by an experienced RE/MAX agent and a letter setting out her experience and how the properties were marketed is attached to the affidavit of Di Mu dated March 19, 2018, as exhibit B.

- (b) The Wang estate has not produced any appraisals of the properties contrary to hers or the current offers.
- (c) The properties operate at a loss which she alone is funding and the Wang estate has not paid any expenses towards the purchase or running of the farms.
- (d) The mortgage is currently in arrears and the mortgagee has been willing not to proceed with a Power of Sale or Foreclosure while the offers to purchase are still valid.
- (e) Based on the current mortgage principal of \$2,408,775, simple interest at 10% per annum would require monthly mortgage payments of \$20,073.
- (f) She has produced affidavits from both of the purchasers, who have sworn that the transactions are at arm's-length and the Wang estate has not produced any evidence to the contrary.
- (g) Although the Wang estate wants to have a liquidator appointed, they have not advised the court what the probable expense of hiring a liquidator would be.
- (h) By selling the property now there will be a maximum recovery and by paying the net proceeds into court the Wang estate's interest will be protected.

[21] The plaintiff submits that this court has jurisdiction to wind up the corporations and order the corporations to accept the agreements of purchase and sale, pursuant to ss. 207 & 209 of the BCA. In particular, the plaintiff points to s. 207(2) which authorizes the court to make such order under this section or the oppression section, s. 248 of the BCA.

Position of the Wang Estate

[22] The plaintiff wants to have control of winding up of the corporations and the sale of the properties.

[23] While the Wang estate consents to the winding up, it would be totally inappropriate to have the applicant in control of that process. A "liquidator" should be

completely independent of either of the parties and should be in control of the marketing and sale of the farms in question.

[24] The applicant is not such a person because:

- (a) She is one of the parties.
- (b) The parties do not get along in the extreme, and only communicate with each other through legal counsel.
- (c) There has been a complete breakdown of trust between the parties.
- (d) She has not paid court costs to the Wang estate which were ordered over a year ago.
- (e) She used the corporations to pay her legal fees incurred in the Oppression Application.
- (f) Her material does not say why the subject offers were selected or what other offers may have been made.

[25] The applicant had not provided any cases as a guide to the court for when it should override a minority shareholder's right to force a liquidation. In essence, the plaintiff is asking the court to give her something indirectly that she cannot get directly, i.e. for the court to approve the sale, as if the plaintiff has already been approved as a liquidator.

[26] With respect to what a court should consider when choosing a liquidator, the Wang estate relies on the cases of *Royal Bank of Canada v. Soundair Corp.* [1991] O.J. No. 1137, *Re The Central Bank of Canada* [Chancery Division] *The Ontario Reports*, 1888, *Re Men's Wear Limited* 1915 *CarswellQue* 437 and *Smith v. Hillier* 2016 *CarswellNfld* 192.

[27] In the *Royal Bank* case the court stated At paragraph 16:

As did Rosenberg J., I adopt as correct the statement made by Anderson J. in *Crown Trust Co. v. Rosenberg* (1986), 60 O.R. 87 ... at pp. 92–94 O.R. ... of the duties which a court must perform when deciding whether a receiver who has sold property acted properly. When he set out the

court's duties, he did not put them in any order of priority, nor do I. I summarize those duties as follows:

1. It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently.
2. It should consider the interests of all parties.
3. It should consider the efficacy and integrity of the process by which the offers are obtained.
4. It should consider whether there has been unfairness in the working out of the process.

[28] In the Central Bank case the court stated:

... That it is desirable that liquidators should all be disinterested persons, and for this reason neither creditors nor shareholders should be appointed. Where several are to be appointed, and opposition is being made, as here, the court will endeavor to secure an independent majority and in this case ...

[29] The Wang estate submits that the applicant's claim to recover all of her money paid to the corporations are clearly a conflict of interest.

[30] In the *Smith* case, which was decided under Québec law which has different wording the court stated:

69 The evidence, however, revealed that the individual in question was by reason of her status as beneficiary and executor of her father's estate, in a potential conflict of interest. This is because there was an issue as to whether the company should have paid rent to her father for having a company warehouse on his land and the fact that the estate and the company were competing judgment creditors in relation to a third party judgment debtor.

70 Boudreault, J. accordingly determined that it was preferable to appoint a liquidator who would operate at "arm's length". The applicant provided the court with the name of an experienced liquidator who was prepared to act. The court appointed the liquidator and gave him time to study the situation and determine the steps necessary to dissolve the corporation.

71 ... The company was in a deadlock due to the dysfunctional relationship between the shareholders. One of the shareholders asked the court to wind up the Company, appoint him as liquidator of assets and liabilities and then distribute the net proceeds to the shareholders. This appointment was contested by the other shareholder.

73 The court was not prepared to appoint the shareholder as liquidator. His independence was compromised by his personal interest in rental payments to the company and the fact that he had invoiced company for various personal expenses that could be disputed.

76 The law requires independence and impartiality in the carrying out of these duties which a liquidator fulfils as an officer of the court. The parties are engaged in litigation relating to corporate bonuses, and Mr. Hillier will be leaving SMART! to establish his own storage solutions business. I am satisfied that this disqualifies Mr. Hillier from assuming the role of liquidator given the potential for his interests and duties to conflict.

[31] With respect to the applicant's claim that she has lost and continues to lose money that is exactly what she signed on for in the September 15, 2015 agreement at paragraph 3. Now she claims all money she has put into the corporation is a shareholder's loan.

[32] The Wang estate submits that the plaintiff contributed money for which she got shares, i.e. equity.

[33] The estate further submits that there is nothing in the application that corresponds with the orders that the applicant has requested at paragraphs 48 (e) and (f) of the applicant's Factum.

[34] The estate submits that the corporations should be wound up by liquidation in this proceeding, which will alleviate any need for a reference.

[35] Mr. Stanek has produced a consent from the national accounting firm of MNP Ltd. that they are prepared to act as liquidators and he has filed a draft order with the court for its consideration.

[36] The draft order is comprehensive and deals with the potential of any court action being taken by the current mortgagee.

Findings

[37] The inability of the parties in this case to discuss resolving their differences in a mature fashion is akin to unfortunate situations more often seen in extremely emotionally charged matrimonial litigation.

[38] Notwithstanding the able arguments of Mr. Murdoch, the applicant is, to put it mildly, the author of her own misfortune.

[39] In light of the unfortunate and acrimonious impasse between the shareholders, the estate seeks to have an independent liquidator market the properties, so it can be sure that the process has been fair.

[40] The applicant has a track record for oppressive dealings against the minority shareholder. In addition, for some reason, she does not feel that she has to follow the court order of Justice Hainey with respect to the payment of costs, which have now been overdue for more than a year.

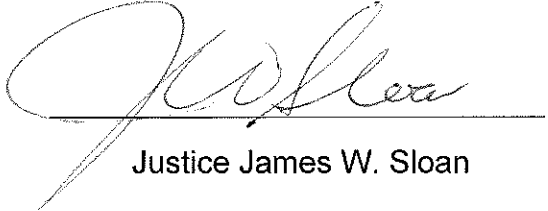
[41] After Justice Hainey's order of November 29, 2016, the applicant appears to have continued with her oppressive "my way or the highway" tactics by listing and accepting offers to sell the property, without so much as advising the estate, or more appropriately bringing a court application to deal with the impasse.

[42] The estate has every reason to be suspicious of what has essentially gone on behind its back.

[43] Therefore, an independent liquidator shall be appointed to wind up the two subject corporations.

[44] I am therefore prepared to sign the draft order attached to this endorsement as Schedule "A". Before doing so, I would request that both parties confer with each other and email the court at Kitchener.Superior.Court@ontario.ca to confirm whether or not the order requires any minor amendments.

[45] If the parties are unable to agree on costs, Mr. Stanek shall forward his **brief** submissions on costs to me by April 5, 2018. Mr. Murdock shall forward his **brief** response to me by April 10, 2018. Mr. Stanek shall then forward his reply, if any, to me by April 13, 2018. Cost submissions may be sent to my attention by email, care of Kitchener.Superior.Court@ontario.ca.



Justice James W. Sloan

Date: March 27, 2018

Schedule "A"

To the endorsement of Justice Sloan dated March 27, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE) **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 the validity of any claims by shareholders of Vineyard and Domaine, including any alleged shareholder loans;
- (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 or any further Order 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 the Commercial List of the Ontario Superior Court of Justice.
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.
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BETWEEN:

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– Applicant –

AND

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

ONTARIO
SUPERIOR COURT OF JUSTICE

(PROCEEDING COMMENCED AT KITCHENER)

ORDER

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LAWYERS FOR YUZHUI SHI, TRUSTEE OF THE
ESTATE OF ZHENDONG WANG