

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

WEIWEI GAO

Applicants

– and –

WG VINEYARD NIAGARA INC. and WG DOMAINE NIAGARA INC.

Respondents

SECOND REPORT OF THE LIQUIDATOR
FEBRUARY 7, 2019

INTRODUCTION AND PURPOSE

1. On April 5, 2018, MNP Ltd. (the “**Liquidator**”) was appointed, pursuant to an order made by the Ontario Superior Court of Justice (the “**Appointment Order**”), as Liquidator of all of the assets, undertakings and properties of WG Vineyard Niagara Inc. (“**WG Vineyard**”) and WG Domaine Niagara Inc. (“**WG Domaine**” and together with WG Vineyard, collectively the “**Companies**”), carrying on business at 1123 Four Mile Creek Road, Niagara-on-the-Lake, Ontario (the “**Four Mile Creek Property**”) and 1100 Progressive Avenue, Niagara-on-the-Lake, Ontario. (the “**Progressive Property**”, and together with the Four Mile Creek Property, collectively the “**Properties**”). A copy of the Appointment Order, and related endorsement, dated March 27, 2018 (the “**Endorsement**”), are collectively attached as **Appendix “A”**.

2. The Appointment Order is dated March 27, 2018 and is effective from March 26, 2018 (the “**Effective Date**”). The Endorsement states “Therefore, an independent liquidator shall be appointed to wind up the two subject corporations. 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 to the Court at Kitchener.Superior.Court@ontario.ca to confirm whether or not the order requires any minor amendments.”
3. After the issuance of the Endorsement, the parties made minor revisions to the draft Appointment Order, which order was entered and issued on April 5, 2018. Notwithstanding the Effective Date, the Liquidator commenced its activities on April 5, 2018 after receiving the signed Appointment Order.
4. On June 15, 2018, the Liquidator filed its first report to the Court (the “**First Report**”). At the hearing held on June 27, 2018, the Court issued two (2) orders approving the following, *inter alia*:
 - a. The sale transaction (the “**Progressive Sales Transaction**”) contemplated by an agreement of purchase and sale between the Liquidator and 1074127 Ontario Limited;
 - b. The proposed realization strategy (the “**Marketing Process**”) for the Four Mile Creek Property;
 - c. Liquidator’s activities described in the First Report;
 - d. The interim fees and disbursements of the Liquidator and Goldman Sloan Nash & Haber LLP (“**GSNH**”), legal counsel of the Liquidator; and
 - e. The Liquidator entering into a listing agreement with Colliers International Niagara Ltd. (“**Colliers**”) in respect of the Four Mile Creek Property.

A copy of the June 27th Orders are collectively attached as **Appendix “B”**.

5. The Appointment Order together with other Court and statutory reports have been posted to the Liquidator's website (the "**WG Case Website**"), which can be found at: <http://mnpdebt.ca/en/corporate/engagements/wg-vineyard-niagara-inc-and-wg-domaine-niagara-inc>.
6. The purpose of this Report is to provide the Court with information in respect of:
 - a. the Liquidator's activities since the date of the First Report;
 - b. the results of the Marketing Process; and
 - c. the Liquidator's request that this Court issue the following orders:
 - i. authorizing and directing the Liquidator to enter into and carry out the terms of the APS (defined below), and vesting title in and to the Property in Jenkins Vineyards Niagara Inc. (the "**Purchaser**"), upon the closing of the transaction (the "**Four Mile Creek Transaction**") contemplated by the APS;
 - ii. sealing the confidential appendices described below until the Liquidator files a certificate confirming that the Four Mile Creek Transaction has been completed;
 - iii. approving the Liquidator's interim fees and disbursements since the First Report, including the fees and disbursements of GSNH;
 - iv. approving the conduct and activities of the Liquidator as described herein; and
 - v. such other relief as the Court deems just.

TERMS OF REFERENCE

7. In preparing the Report, the Liquidator has relied on information (the "**Information**") regarding the Properties:

- a. contained in the Application Record in this proceeding, dated January 24, 2018;
 - b. contained in the Responding Application Record in this proceeding, dated March 6, 2018;
 - c. provided by the Companies and their counsel;
 - d. provided by Di Mu, the son of the Applicant, who previously had been involved in the day to day management of the Companies;
 - e. provided by Grape Growers of Ontario;
 - f. provided by counsel for Sunnyways Investment Inc. (“**Sunnyways**”);
 - g. provided by Colliers; and
 - h. information otherwise made available or provided to the Liquidator and/or its counsel.
8. Except as described in this Report, the Liquidator has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.

BACKGROUND

9. WG Vineyard and WG Domaine were each incorporated pursuant to the laws of the Province of Ontario on January 20, 2015.
10. WG Vineyard and WG Domaine acquired the Properties on March 9, 2015. The Properties are adjacent to each other and separated by a road allowance.
11. The Applicant owns 51% of the shares of the Companies. The other 49% is held by the Estate of Zhendong Wang.

ACTIVITIES OF THE LIQUIDATOR

12. Since the First Report, the Liquidator has, *inter alia*:
- a. Closed the Progressive Sales Transaction;
 - b. As detailed below, overseen the Marketing Process;
 - c. Continued meeting with the residential tenants residing at the Four Mile Creek Property to collect rent and to negotiate the terms of a written lease;
 - d. As detailed below, continued meeting from time to time with the Farm Tenant;
 - e. Retained Custom Farming to monitor the Four Mile Creek Property following the expiry of the lease to the Farm Tenant and during the winter months;
 - f. Retained Lakeview Vineyard Equipment Inc. (“**Lakeview**”) to inspect the wind machines on the Four Mile Creek Property;
 - g. Together with counsel, continued dialogue and exchanged correspondence with legal counsel for Sunnyways in respect of its secured claim against the Properties; and
 - h. arranged for periodic inspections of the Properties to, among other things, monitor the condition of the Properties and to comply with insurance requirements.

The Four Mile Creek Property

13. The Four Mile Creek Property is owned by WG Vineyard, and is an income generating agricultural property situated on a 40.5-acre site located at 1123 Four Mile Creek Road, in the Town of Niagara-on-the-Lake, Ontario (“**NOTL**”). The Four Mile Creek Property includes:
- a. an income producing farm/vineyard;

- b. a detached bungalow with a single tenant paying storage costs of \$150 per month and has agreed to visit the Four Mile Creek Property weekly and landscape, as necessary;
- c. an equipment shed;
- d. a pole barn; and
- e. a two-storey converted fourplex, with three residential tenants occupying three of the of the four units in the fourplex, paying rent of \$650 and \$800 per month, depending on the size of the unit occupied.

Farm/Vineyards

- 14. At the date of appointment, the Four Mile Creek Property was subject to a two-paragraph lease (the “**Farm Lease**”) between WG Vineyard and 1340210 Ontario Ltd. (the “**Farm Tenant**”). The Farm Lease is dated March 9, 2018 and appeared to be in respect of the 2018 growing season only.
- 15. As noted in the First Report, upon reviewing the Farm Lease and meeting the parties to that lease, the Liquidator determined it advantageous to clarify the terms of the Farm Lease in an amended lease, particularly given there appeared to be a misunderstanding between the parties in respect of the original lease entered into. The Liquidator negotiated the terms of an amended lease, dated June 6, 2018 (the “**Amended Farm Lease**”), which agreement amends, and where inconsistent, supersedes the terms of the Farm Lease.
- 16. The salient terms of the Amended Farm Lease are as follows:
 - a. The Amended Farm Lease expires on the earlier of the (a) final regular harvesting of the grapes from the 2018 crop year by the Tenant and all applicable winter preparations for the vines on the Rented Lands; and (ii) December 15, 2018 (“**Amended Lease Expiry**”);
 - b. The Farm Tenant agreed and acknowledged that it does not contemplate any of the grapes are being grown for production of ice wine;

- c. The final rent payment (the “**Final Rent**”) in respect of the Amended Farm Lease was due on November 1, 2018; and
 - d. That Liquidator shall ensure that any sale or disposal of all or part of the Four Mile Creek Property or the Progressive Property is subject to the Amended Farm Lease and that the Farm Tenant agrees to the assignment of the Amended Farm Lease to any new purchaser(s).
17. Notwithstanding the terms of the Amended Farm Lease, the Farm Tenant: (i) has not paid the Final Rent; and (ii) did not vacate the Four Mile Creek Property by December 15, 2018. The Farm Tenant has advised the Liquidator that, prior to the Liquidator’s appointment, it incurred certain expenses that it believes are WG Vineyard’s responsibility and is asserting a right of set-off against the Final Rent. The Farm Tenant also claims to have been unaware of Amended Lease Expiry.
18. The Farm Tenant and Liquidator have had a series of discussions which culminated on December 20, 2018 with the understanding that: (i) the Farm Tenant acknowledges the Amended Lease Expiry; (ii) the Liquidator would not be renewing the Amended Farm Lease; and (iii) the Farm Tenant has agreed to vacate the Four Mile Creek Property upon receiving seven (7) days’ notice from the Liquidator. Subsequently, the Farm Tenant agreed to vacate the Four Mile Creek Property by January 31, 2019 and has since removed itself from the Four Mile Creek Property.

Marketing of the Four Mile Creek Property

19. WG Vineyard first listed the Four Mile Creek Property for sale with Remax Niagara on August 18, 2017, with an asking price of \$3,000,000. The listing expired on October 27, 2017, without WG Vineyard being presented with an offer.
20. The Four Mile Creek Property was relisted for sale with Remax on October 30, 2017 with an asking price of \$2,950,000. The listing was initially scheduled to expire on January 15, 2018 but was extended to April 27, 2018.

21. On February 4, 2018, WG Vineyard received an offer (the “**February 4th Offer**”) that was conditional on, *inter alia*:
 - a. shareholder approval;
 - b. financing;
 - c. inspection by a home inspector;
 - d. a qualified septic inspection;
 - e. satisfactory insurance being obtained; and
 - f. a favourable inspection report on the irrigation systems, wind machines, pumps, drainage, tiles, and weeping tiles.¹
22. The shareholders of WG Vineyard did not approve the acceptance of the February 4th Offer. The Liquidator reviewed the terms of the February 4th Offer and determined that it would not conclude that agreement but would entertain an offer from that same potential purchaser (the “**February 4th Offeror**”) through a sales process it conducts.
23. The Marketing Process conducted by the Liquidator, with Colliers retained as its agent to carry out a traditional “list and sell” approach, was launched on July 23, 2018 at a listing price of \$2,675,000 (the “**Original Listing Price**”).
24. In marketing the Four Mile Creek Property, Colliers used the following methods of canvassing the market:
 - a. MLS Listing

¹ The February 4th Offer also provided for WG Vineyard warranting that the irrigation systems, wind machines, pumps, drainage tiles and weeping tiles were in good operational condition as at the date of completion, and that there were no outstanding work orders, no notices of expropriation, and no liens against the property, but also provided for provision of training regarding farm management and required the Vendor to issue notices to terminate the current contracts and vacate the property.

- b. Marketing brochure – created to provide details of the Four Mile Creek Property for prospective purchasers during showings of the property, as well as being material used in a direct mail campaign.
 - c. Internet marketing (www.realtor.ca, Colliers.com, and gregchew.com) – to reach potential realtors and purchasers.
 - d. Social media – Facebook, LinkedIn and Twitter.
 - e. Direct mailings sent to Niagara region wineries.
 - f. Signage – installed on the property.
25. To expedite the Marketing Process and submission of offers, the Liquidator with the assistance of GSNH, prepared a form of offer agreement (“**Offer Agreement**”) to reflect the circumstances of the Liquidator’s appointment and the status of the Four Mile Creek Property, in particular that:
- a. the Four Mile Creek Property was being sold on an “as is, where is” basis with no representations or warranties by the Liquidator regarding the status or condition of the property; and
 - b. each offer was required to include a deposit by way of a certified cheque or bank draft for no less than \$100,000.
26. On August 19, 2018, September 13, 2018 and October 13, 2018 and January 31, 2019, Colliers reported to the Liquidator on its marketing activities related to the Four Mile Creek Property. Colliers received 20 requests for information packages and showed the property 15 times to 12 unique potential purchasers. A copy of the Colliers reporting letters is attached as **Confidential Appendices “A”, “B” “C” and “D”**, respectively.
27. A total of four (4) offers for the Four Mile Creek Property were submitted, including an offer submitted by the February 4th Offeror, as summarized in Colliers’ reporting letter dated January 31, 2019.

28. The Marketing Process culminated in the Liquidator negotiating and entering into an Agreement of Purchase and Sale with Quinton Jeronimo Jenkins, Gordon Ernest Jenkins and Ruth Anne Jenkins (collectively, the “**Original Purchaser**”) dated October 31, 2018, as amended (the “**APS**”), a copy of which is being filed with the Court as **Confidential Appendix “E”**, which was subject to various conditions (the “**Conditions**”) in favour of the Purchaser relating to finalizing financing and insurance to be satisfied or waived over a 25 business-day period. Given the holiday season, the period to satisfy the Conditions was extended until January 23, 2019.
29. On January 3, 2019, the Liquidator extended the Listing Agreement with Colliers through March 31, 2019.
30. On January 23, 2019, the Purchaser waived the Conditions and concurrently assigned the APS from the Original Purchaser to the Purchaser. A copy of the Assignment and Waiver Agreement is attached as **Appendix “C”**.

THE APS

31. The salient terms of the APS include:
 - a. A deposit equal to ten percent of the purchase price has been paid to the Liquidator;
 - b. the Purchaser is acquiring the Property on an ‘as is, where is’ basis;
 - c. The Purchaser’s agreement that the Lands, as defined in the APS, are subject to the Farm Lease and that no adjustment will be made on closing in respect of the Farm Lease;
 - d. the Four Mile Creek Transaction is conditional on obtaining Court approval of the sale and a vesting order to be in form and substance that of the Commercial List Model Form of Approval and Vesting Order;
 - e. the Four Mile Creek Transaction will close on the tenth day following the date on which the Approval and Vesting Order is granted, or such other date as agreed between the Vendor and Purchaser in writing. Should the Approval and Vesting

Order be obtained by February 15, 2019 and not be appealed and/or there is no proceeding commenced to restrain or prevent the completion of the Four Mile Creek Transaction, the Purchaser shall close the Four Mile Creek Transaction by no later than March 1, 2019; and

- f. The Liquidator was to retain the services of a third party to confirm the three (3) wind machines are in good working condition and operational and shall carry out any repair to the wind machines identified by the third party as being critical to their being in good working order.²

32. The Liquidator recommends the approval of the APS for the following reasons:

- a. as a result of conducting the Marketing Process, the Four Mile Creek Property has been fully exposed to the market;
- b. it is the Liquidator's view that the purchase price under the APS is commercially reasonable and represents the maximum possible price in these circumstances, having regard to the condition of the Four Mile Creek Property;
- c. the Four Mile Creek Property is a unique asset appealing to a limited number of purchasers. There is risk that rejecting this offer to find another suitable purchaser may result in considerable cost, both in professional fees and out-of-pocket expenses, related to the continued upkeep throughout the winter months and preparing for the 2019 growing season;
- d. The Original Listing Price was based on Colliers receiving information that the Four Mile Creek Property was zoned to permit an estate winery. Colliers investigated the zoning by consulting with NOTL, who confirmed to Colliers that the adjacent property was zoned to provide for an estate winery, and not the Four Mile Creek Property. The Four Mile Creek Property's zoning permit only a small

² The Liquidator has recently received an estimate from Lakeview, but Lakeview has yet to identify which repairs are critical to the wind machines being in good working order.

winery, classified as a farm winery, which zoning may have impacted the purchase price obtained³;

- e. the proposed purchase price is greater than the value of the Property as appraised by Ridley & Associates Appraisal Services Limited pursuant to a report dated January 27, 2017, a copy of which is being filed with the Court as **Confidential Appendix “F”**; and
- f. the Four Mile Creek Property had previously been marketed by Remax for more than eight (8) months prior to the date of appointment.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

- 33. The Interim Statement of Receipts and Disbursements as at February 4, 2019, attached as **Appendix “D”**, reflects receipts over disbursements of \$1,353,151⁴ (the “**Excess Funds**”).

SECURED CREDITORS

Mortgage

- 34. On November 6, 2015, Sunnyways, a private lender, and the Companies entered into a loan agreement, whereby Sunnyways lent the sum of \$2,250,000 (of which \$1,500,000 was advanced against the Four Mile Creek Property and \$750,000 against the Progressive Property) to the Companies to take out the Farm Credit Canada mortgages that were provided when the Companies acquired the Properties. The Sunnyways loan is secured by a first mortgage against each of the Properties. The original loan agreement was for a two-year term. On September 21, 2017, the parties entered into a Loan Extension Agreement by which the term was extended by three months.
- 35. On March 8, 2018, Sunnyways issued a notice of power of sale (“**Notice of Sale**”) under its mortgage and loan. After the Liquidator’s appointment, counsel for the Liquidator

³ This distinction only allows for a very small retail area to be used and restricts beneficial uses that are allowed under the Estate winery zoning such as a restaurant, event center, weddings etc.

⁴ The Excess Funds includes the \$230,000 received in respect of the Four Mile Creek Property.

communicated with counsel for Sunnyways and obtained confirmation that this sale proceeding is stayed by the terms of the Appointment Order.

36. The Liquidator’s counsel is of the opinion that the Sunnyways Charge is properly registered against title the Properties and forms a valid and enforceable mortgage against the Properties.
37. The Notice of Sale includes the following amounts:

Description	Amount Claimed
Principal	\$2,250,000.00
Interest (November 17, 2017 to February 16, 2018)	\$56,250.00
NSF Cheques (for 3 cheques)	\$450.00
Interest (February 17, 2017 to April 23, 2018)	\$40,685.04
Three months interest (compensation for non-payment on maturity)	\$56,250.00
Notice of Default Letter	\$250.00
Default proceeding fee	\$1,500.00
Legal fees (disbursement and HST)	\$3,390.00
Total	\$2,408,775.04

38. The Liquidator’s counsel reviewed Sunnyways’ claim and identified the following issues:
- a. Three Months Interest – notwithstanding that the Loan Agreement provided for collection of such an amount, case law and various statutes (Section 17 of the Mortgages Act (Ontario) and Section 8 of the Interest Act (Canada)) do not permit collection of three months interest over and above the contract interest accrued;
 - b. Interest Rate - The Loan Agreement provides for a higher interest rate after default and a higher rate cannot be charged after default because it would constitute a penalty;
 - c. Default Fee/Notice of Default Letter and NSF Charges – are not permitted under the Mortgages Act.

39. The Liquidator's counsel presented these issues to Sunnyways' counsel and awaits Sunnyways' response. The Liquidator intends to return to Court once the foregoing issues are resolved or it receives Sunnyways' response.

OTHER CREDITORS

40. As noted in the First Report, the Liquidator has been made aware of the following additional creditors:

Name/Description	Estimated Claim Against WG Domaine	Estimated Claim Against WG Vineyard	Comments
Shareholder Advances	\$395,315	\$1,332,816	The Estate of Zhendong Wang appears to object to the quantum of these claims
Canada Revenue Agency	\$0	\$0	Canada Revenue Agency has not conducted an audit/trust examination
Town of Niagara-on-the-Lake	\$0	\$13,249.19	Property taxes were paid, or will be paid from the proceeds of sale on the Progressive Property and the Four Mile Creek Property, respectively
WalterFedy	\$0	\$86,288	
Woerthle Vineyard	\$0	\$20,022	
Kestenberg Rabinowicz Partners LLP ("KRP")	\$1,130	\$4,294	Since the filing of the Liquidation, KRP has submitted additional invoices in the amount of \$904 and \$3,249.80 against WG Vineyard and WG Domaine, respectively
Farm Tenant	Unknown	Unknown	The Farm Tenant advised the Liquidator that prior to the Appointment Order, the Farm Tenant carried out some maintenance work on the Properties for which it may have a claim.

41. The Liquidator intends on returning to Court to seek permission to conduct a claims bar process after completing the Four Mile Creek Transaction in order to deal with these and any further additional creditor claims.

PROFESSIONAL FEES AND DISBURSEMENTS

Liquidator's Fees and Disbursements

42. The fees and disbursements for the Liquidator during the period from March 28, 2018 to June 12, 2018, were approved as part of the June 27th Order.
43. Attached as **Appendix "E"** is the Affidavit of Sheldon Title of MNP Ltd. in connection with the Liquidator's fees and disbursements that includes the Liquidator's statement of account for the period June 13, 2018 to January 31, 2019 in the amount of \$74,716.82 inclusive of HST.

Legal Fees and Disbursements


44. The fees and disbursements for GSNH covering its fees and disbursements for the period April 6, 2018 to June 10, 2018 were approved as part of the June 27th Order.
45. GSNH has issued four invoices covering its fees and disbursements for the period June 11, 2018 to January 31, 2019 totalling \$42,660.19, inclusive of HST. Attached as **Appendix "F"** is the affidavit of Brendan Bissell sworn February 7, 2019 describing the fees and disbursements of GSNH.
46. It is the Liquidator's opinion that the fees and disbursements of GSNH as described in the affidavit of Mr. Bissell are fair and reasonable and justified in the circumstances, and accurately reflect the work done on behalf of the Liquidator by GSNH.

CONCLUSION AND RECOMMENDATION

47. Based on the foregoing, the Liquidator respectfully recommends that the Court make an order granting the relief detailed in paragraph 6(c) of this Report.

All of which is respectfully submitted this 7th day of February, 2019.

MNP LTD.,
in its capacity as the
Liquidator of WG Vineyard Niagara Inc. and WG Domaine Niagara Inc.

Per: 

Sheldon Title
Senior Vice President