



**COURT FILE NUMBER** 1903-04121  
**COURT** COURT OF QUEEN'S BENCH OF ALBERTA  
**JUDICIAL CENTRE** EDMONTON

**IN THE MATTER OF THE TRUSTEE ACT, RSA 2000, C T-8 SECTIONS 43 AND 46**

**APPLICANTS** WESTPOINT INVESTMENT TRUST BY ITS TRUSTEE MUNIR VIRANI AND MARNIE KIEL

**RESPONDENTS** WESTPOINT CAPITAL CORPORATION, WESTPOINT CAPITAL MANAGEMENT CORPORATION, WESTPOINT CAPITAL SERVICES CORPORATION, WESTPOINT SYNDICATED MORTGAGE CORPORATION, CANADIAN PROPERTY DIRECT CORPORATION, WESTPOINT MASTER LIMITED PARTNERSHIP, RIVER'S CROSSING LTD., 1897869 ALBERTA LTD., 1780384 ALBERTA LTD., 1897837 ALBERTA LTD. and THE VILLAGE AT PALDI ENT. LTD.

**DOCUMENT** FIFTH REPORT TO THE COURT OF BDO CANADA LIMITED IN ITS CAPACITY AS RECEIVER OF WESTPOINT CAPITAL CORPORATION ET AL

**DATED August 6, 2020**

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**List of Exhibits**

1. Receiver's Statement of Receipts and Disbursements for the period  
March 8, 2019 to July 15, 2020

**Confidential Appendices**

- A. Drumheller Appraisal by Altus Group Limited, effective date June 6, 2019
- B. Wandering River Appraisal 4-17-71-13 NW by Glen Cowan and Associated  
Inc., dated August 27<sup>th</sup>, 2019
- C. Wandering River Appraisal Lot 1 Block 1 Plan 102 0781
- D. Wandering River Appraisal, residential lots by Altus Group Limited, effective  
date June 7, 2019

## Introduction

1. On March 8, 2019, the Court of Queen's Bench of Alberta (the "**Court**") granted an Order (the "**Order**") appointing BDO Canada Limited as an Interim Receiver in respect of Westpoint Capital Corporation ("**WCC**"), Westpoint Capital Management Corporation ("**WCMC**"), Westpoint Capital Services Corporation ("**WCSC**"), Westpoint Syndicated Mortgage Corporation ("**WSMC**"), Canadian Property Direct Corporation ("**CPDC**"), Westpoint Master Limited Partnership ("**WMLP**"), River's Crossing Ltd. ("**RCL**"), 1897869 Alberta, Ltd. ("**869**"), 1780384 Alberta Ltd. ("**178**"), 1897837 Alberta Ltd. ("**837**").
2. On April 10, 2019, the Court granted an Order (the "**Receivership Order**") appointing BDO Canada Limited as Receiver ("**BDO**" or the "**Receiver**") of the companies referred to in the previous paragraph. On May 30, 2019, the Court granted a further Order, amending the Receivership Order to add The Village at Paldi Ent. Ltd. ("**Paldi**") as a party in receivership (the companies in receivership are collectively referred to as the "**Companies**").
3. The purpose of this report (the "**Fifth Report**") is to provide this Honourable Court with:
  - a) A summary of the Receiver's activities to date;
  - b) A Statement of Receipts and Disbursements for the period March 8, 2019, to July 15, 2020;
  - c) An update on the assets of the Companies;
  - d) An update on ongoing Litigation matters; and
  - e) Supporting Information for the application filed concurrently herewith.
4. The Receiver is seeking this Court's approval for the sale of various lots in Wandering River and Drumheller.

### **Limitation of Report**

5. The information contained in the Receiver's Fifth Report has been obtained from the records of the Company, publicly available information, including an Affidavit sworn by Munir Virani on February 25, 2019, which was filed in these proceedings on February 26, 2019, (the "Munir Affidavit"), and/or based upon discussions with and representations made by the Company's management and other professional advisors retained in this matter. The information relied upon by the Receiver was not audited nor otherwise verified by the Receiver as to its accuracy or completeness, nor has any financial information referenced necessarily been prepared in accordance with generally accepted accounting principles, and the reader is cautioned that this report may not disclose all significant matters about the Company. Accordingly, we do not express an opinion or any other form of assurance on the information presented herein. The Receiver may refine or alter its observations as further information is obtained or is brought to its attention after the date of this Fifth Report.
6. The Receiver assumes no responsibility or liability for any loss or damage occasioned by any party because of circulation, publication, reproduction, or use of the Receiver's Fifth Report. Any use that any party makes of this Fifth Report or reliance on or decisions to be made based on its responsibility of such party.
7. A copy of the Receiver's Fifth Report and other relevant documents in the interim receivership proceedings are available on the Receiver's website at <http://www.extranets.bdo.ca/WCC ET. AL>.

### **Receiver's Activities since its Fourth Report**

8. On April 28, 2020, we received a claim from Stirling Capital Partners ("Stirling"). The claim has been filed as secured for \$750,000; however, no supporting documents have been provided.

9. On July 15, 2020, the Receiver received further information in regard to the Stirling claim, however the information provided is in regard to a mortgage registered on an asset in which neither WCC nor any of the other entities in this Receivership has any interest, nor does it pertain to any assets under the control of the Receiver.
10. The Receiver is requesting additional information from Stirling, as the information provided does not support a claim in these proceedings.
11. On July 6, 2020, the Receiver received a claim from Explore Survey Inc. ("Explore"). The claim is an unsecured claim for \$1,625. Based on the support provided, Explore's claim is in regard to an invoice related to assistance for a subdivision application, in 2018.
12. Both of the above claims were submitted long after the claims bar date established by this Honourable Court in the Claims Process Order issued November 13, 2019. The Receiver has not taken any further steps regarding these claims, as pursuant to paragraph 16 of the Claims Process Order:  
  

**"[a]ny Person that does not deliver a Proof of Claim in respect of a Claim in the manner required by this Claims Procedure Order such that it is actually received by the Receiver on or before the Claims Bar date shall be and is hereby forever barred from making or enforcing such Claim against the Debtor, or the Directors or Officers or any of them, and such Claim shall be and is hereby extinguished without any further act or notification."**
13. Of the four disallowed claims, only one party has notified the Receiver that it objects to the disallowance. The objecting party is Star Prebuilt Homes Ltd. ("Star"). The Receiver is preparing a separate report, relating to this matter, and anticipates further steps in regard to this matter which may include having legal counsel examine various parties before an application to determine the validity of the claim is brought before this Court.
14. The Receiver has closed the River's Crossing West Lot sale and anticipates closing the River's Crossing East Lot sale by the end of September.

15. The purchaser of the River's Crossing East Lots has waived closing conditions, but requested a delay in the originally scheduled closing date, which the Receiver agreed to, and the purchaser has been paying additional deposit amounts at the rate of \$100,000 per month.
16. In accordance with the direction of this Honourable Court in the Order approving the sale of the River's Crossing Lands issued April 1, 2020, the Receiver has paid a portion of the funds from the sale of the RCL lands to Conexus Credit Union.
17. The Receiver has sold various lots in Drumheller and Wandering River, which are discussed below in further detail.
18. On August 3, 2020, the Receiver entered into an extension of the loan agreement with Pillar Capital until December 31, 2020. The Receiver has paid back \$100,000 of the \$500,000 borrowed.

#### **Receiver's Statement of Receipts and Disbursements**

19. Attached as **Exhibit 1** is a copy of the Receiver's Statement of Receipts and Disbursements for the Companies. As of July 15, 2020, the Receiver has cash resources available to it totalling \$542,201.

#### **Assets of the Companies**

20. As set out in previous reports, the Companies have three main categories of assets. The majority of the assets are mortgages, and interests in various properties deriving from mortgage enforcement proceedings. A further category are not assets per se, being the numerous lawsuits that have been initiated by WCC. While they are not assets per se, they could result in generating proceeds if successful.
21. These assets were discussed in detail in previous reports, and the Receiver does not intend to repeat information set out in previous reports.

**River Crossing Land**

22. As outlined in previous reports, the River Crossing property can be divided into two (2) sides, east and west (the "East Side" and "West Side" respectively).
23. This Honourable Court approved the sale of the RCL Lands in an Order granted April 1, 2020.
24. As indicated above, the purchaser of the East Side, Cabin In The Woods Inc. ("CITW"), requested a delay in closing but the sale is unconditional, and CITW has agreed to pay additional deposit amounts totalling of \$100,000 per month until closing at the end of September 2020.
25. The West Side sale transaction has successfully closed. There is a holdback for \$77,100 due to pending arbitration regarding the Home Owner Association monthly fees and a dispute with Shadow Mountain Golf Course. This amount is to be held for a maximum of 24 months.
26. Following the Receivership of RCL, counsel for the Receiver received cheques totalling \$100,000 which, based on discussions with RCL's management, were deposits taken from lot purchasers to ensure that architectural guidelines were followed including completion of landscaping. Some of the deposits have been released at the request of the lot purchasers as a result of compliance with the landscaping requirements, but the receiver continues to hold \$80,000.
27. Recently counsel for the Receiver received a request from Val Ketel, who describes herself as the strata and HOA manager for the Shadow Mountain Home Owners Association seeking to be involved in the release of the deposits.
28. As the development has now been sold to two new parties, the Receiver is seeking the Court's direction regarding these deposits, as it does not make sense for the Receiver to continue to hold them and incur additional professional fees for a matter in which it has no further interest.



**Drumheller, AB**

29. The Receiver has sold all of the lots in Drumheller with the exception of Lot 1, Block 11, Plan: 1110970.
30. The table below summarizes the sale of various Drumheller lots that have not been previously approved by this Court.

Legal description	Listing Price	Sold Price	Within 10% of appraisal
Plan 1110970 Lot 11 Block 2	\$25,000	\$20,000	No
Plan 1110970 Lot 11 Block 3	29,000	20,000	No
Plan 1110970 Lot 11 Block 4	29,000	20,000	No
Plan 1110970 Lot 11 Block 7	25,000	22,500	No
Total		\$82,500	

31. On July 22, 2019, this Honourable Court granted an Order (the "Blanket Sale Approval Order") which authorized the Receiver (paragraph 2):

"... to enter into purchase and sale agreements without the approval of this Court for the sale of residential units and individual lots located in the Drumheller property, the Wandering River property, and the River's Crossing property, as such have been described in the Second Report, provided that the purchase and sale agreements are for an amount that is not more than 10% below the appraised market value of the residential units and individual lots, as set out in appraisals obtained or to be obtained by the Receiver."

32. On October 3, 2019, the lots above were listed at or near the forced sale value of the appraisal prepared by Altus Group Limited, attached as confidential **Appendix A**, based on the recommendation of the realtor retained to sell the properties.
33. On March 16, 2020, the listing price of these lots was reduced by \$5,000, after generating little interest during the six months following the initial listing.
34. On April 9, 2020, at the recommendation of the realtor, the listing price of these lots was reduced by a further \$5,000, after continuing to see no offers.
35. The Receivership Order issued by this Honourable Court on April 10, 2019 authorized the Receiver in paragraph 3(l):

"to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

(i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000;"

36. The three blocks (2, 3 and 4) were sold as a package for a total price of \$60,000 and are subject to court approval the sale is not within 10% of the appraised value and the Receiver is approaching the \$500,000 limit for sales as provided in paragraph 3(l) of the initial Receivership Order.
37. The sale of these properties reduce the ongoing holding costs of these properties, specifically property taxes.
38. The Receiver supports these sales for the following reasons:
  - a) The sale process was thorough, fair and transparent to all potential purchasers;
  - b) The purchase prices in the sales are fair and reasonable;
  - c) Closing these sales will eliminate go-forward holding costs such as property taxes.
  - d) There was virtually no interest in the lots at higher prices.
39. While the Receiver would have liked to have sold these lots for higher prices, that proved to be unachievable.
40. The Receiver is seeking approval for the sale of these properties, as these sales combined with the Wandering River sales, now exceeds or near the \$500,000 limit granted in the Initial Receivership Order.

#### **Bruderheim, AB**

41. 837 is the registered owner of real property located at 555051 Range Road 203, Lamont County, AB. (legally described as Lot 1, Block 1, Plan 0827309 containing 13 Hectares (32.12 Acres) more or less excepting there out Plan 1420761 Subdivision containing 2.65 Hectares (6.55 Acres) more or less).
42. The Receiver currently has a letter of intent to purchase the property. The interested party is engaged in their due diligence on the property to determine

the cost to remove the building and the potential cost of clean up due to the environmental issues.

**Wandering River, AB**

43. 869 is the registered owner of real property builders lots in Athabasca County, AB, which includes the following:

- a) Lots 2 through 8, Block 1, Plan 1021304;
- b) Lots 6 through 14, Block 2, Plan 1021304;
- c) Lot 16, Block 2, Plan 1021304; and
- d) Lots 18 through 23, Block 2, Plan 1021304.

44. 869 is the registered owner of real commercial property in Athabasca County, AB which includes the following:

- a) 4-17-71-13 NW – approximately 110 acres
- b) 4-17-71-36 NW– approximately 8.01 acres
- c) 4-17-71-36 NE – approximately 33 acres

45. The table below summarizes the sale of various Drumheller lots which have not been previously approved by this Court.

Legal description	Listing Price	Sold Price	Within 10% of appraisal
Plan 1021304 Block 1 Lot 4	\$39,900	\$35,000	Yes
Plan 1021304 Block 1 Lot 5	39,900	37,500	Yes
Plan 1021304 Block 1 Lot 6	39,900	37,500	Yes
Plan 1021304 Block 1 Lot 7	39,900	35,000	Yes
Plan 1021304 Block 1 Lot 8	39,900	35,000	Yes
Plan 1021304 Block 1 Lot 13	29,900	28,000	Yes
Plan 1021304 Block 1 Lot 16	29,900	28,000	Yes
Plan 1021304 Block 1 Lot 19	29,900	27,000	Yes
Plan 1021304 Block 1 Lot 22	29,900	27,000	Yes
Plan 1021304 Block 1 Lot 23	29,900	27,000	Yes
4-17-71-13 NW	110,000	99,900	No
Plan 102 0781 Block 1 Lot 1	39,900	36,000	No
Total		\$452,900	

46. On September 24, 2019 all three commercial lots were listed for sale at the forced sale value of the property. This was done at the recommendation of the realtor.
47. On January 21, 2020, the list price of all three commercial lots were reduced by 10%. Between September and January, only one party showed any interest in the commercial property. This was to purchase a small section of the smallest parcel. The Receiver did not pursue this opportunity.
48. On June 23, 2020, the list price of all three commercial lots were further reduced as recommended by the realtor.
49. On July 8, 2020, the Receiver received an offer on 4-17-71-13 NW and after negotiations agreed to the sale price of \$99,900.
50. On July 18, the Receiver received an offer on 4-17-71-36 NW for \$40,000. On July 24, 2020 after some due diligence by the potential buyer, the purchase price was amended to \$36,000. The drop in price was due to the cost of servicing the property, which the potential buyer thought was done.
51. Attached as Confidential **Appendix B** is a copy of the Glen Cowan and Associates Inc. appraisal report for 4-17-71-13. Attached as Confidential **Appendix C** is a copy of the Glen Cowan and Associates Inc. appraisal report for Plan 102 0781 Block 1 Lot 1.
52. On April 2, 2020, after confirmation with the farmer who was renting the property that he had harvested for the year, the Receiver listed the property based on the recommendation of the realtor, after review of the appraisal. Attached a Confidential **Appendix D** is a copy of the Altus Group Limited appraisal.
53. The Receiver reviewed the appraisal and makes the following comments:
  - a) On page 22 of the appraisal, Altus lists the value for each individual lot,

- b) On page 23 Altus states that it would be misleading to assume that all the available lots would sell to individual purchasers and that the absorption period for the available lots would be approximately 23 years estimating one lot sale per year for the next twenty three years at the appraised value;
  - c) Due to the above, on page 25, Altus provides a present value summary chart, which discounted the present value of cash flow by 15% to determine a value for the entire residential development sold *en bloc*.
54. The Receiver was concerned about the absorption rate as set out in the Altus appraisal, and concluded that it was unrealistic to list the lots for sale at those prices given the projected time to sell them.
55. As a result, the Receiver calculated an appropriate list price by using the present value from the Altus appraisal and calculating an average value per acre. This value was then applied to individual lots based on size, which range in size from 1.3 acres to 2.9 acres.
56. In May 2020, the Receiver surveyed the land for each of the twenty-three lots.
57. Starting in May 2020, the Receiver started to receive various offers on the lots. Similar to the commercial lot, the Receiver negotiated each offer until an agreement was reached.
58. Lot 5 & 6 were sold together for a total price of \$75,000.
59. Lot 13 and 16 were sold together for a total price of \$56,000.
60. The Receiver supports these sales for the following reasons:
- a) The sale process was thorough, fair and transparent to all potential purchasers;
  - b) The purchase prices in the sales are fair and reasonable;
  - c) Closing these sales with eliminate go-forward holding costs such as property taxes.

- d) It is unrealistic to sell the lots at issue for a higher price given the current economic conditions and in light of the projected absorption rate for these lots.

### **Litigation**

61. The below is an updated summary of WCC et al.'s ongoing litigation matters since the Receiver's fourth Report.

#### Berry Homes Ltd. and Performance Paving Services Inc.

62. On September 24, 2019, an application for summary judgement was heard. The results of this application are as follows:
  - a. The application for summary judgement was adjourned *sine die*;
  - b. Berry Homes and Performance Paving were to be added as parties;
  - c. Berry Homes and Performance Paving were to file Statements of Defences by no later than November 29, 2019; and
  - d. Each party was to bear its own costs.

63. The additional pleadings were filed, but despite requests on the part of the Receiver that this matter move forward, it has stalled. The Receiver is exploring its options to move this matter forward and bring it to a conclusion.

#### Paldi, Beach Grove and Lack et al

64. The Receiver has been in contact with WCC counsel, Martin Sennott of Boughton Law Corporation, and the progress on these files is discussed below.

#### Paldi

65. As set out in previous reports, this litigation involves allegations of negligence in regard to an appraisal obtained for the purposes of financing the Paldi development, which is alleged to have grossly overstated the value of the Paldi lands, and thereby inducing the lenders to lend funds greatly in excess of the realizable value of the lands.

66. The Receiver has, through counsel retained in this litigation, Mr. Martin Sennott, been engaged in settlement discussions with the insurer and has provided various instructions to its counsel, and multiple offers and counteroffers have been exchanged between the parties.
67. On July 15, 2020, the Receiver instructed Mr. Sennott to make a further offer of settlement to finalize the matter. The offer is currently pending reply from the insurer, however, a response is expected before the end of summer based on previous negotiations.

#### Beach Grove

68. This litigation as set out in previous reports involved a foreclosure proceeding on the property, a counterclaim by the principle of the debtor filed a counterclaim against WCC.
69. On June 26, 2020, counsel for the Receiver provided a settlement offer to counsel for Beach Grove, but on July 2, 2020 counsel for the debtor requested that the deadline be extended and requested four weeks to respond.
70. The Receiver expects to hear back from Beach Grove's legal counsel on August 4, 2020.
71. In the event there is no response, the Receiver will instruct counsel to proceed with the litigation.

#### Lack et al

72. Previously referred to as the Braun matter, Lack et al. is litigation between WCC and its former counsels for the alleged failure to register a mortgage in a timely fashion.
73. On or near July 3, 2020, counsels for both defendants were successful in obtaining an Order for Security for Costs requiring the Receiver to pay into court approximately \$68,000.

74. On July 8, 2020, the Receiver sent the funds to Mr. Sennott, its counsel engaged in this litigation matter.
75. As with other litigation matters initiated by WCC, this matter has stalled but the Receiver is seeking to bring these matters to a conclusion.
76. The Receiver is currently obtaining an appraisal on the property on which the mortgage was to be registered.

### **Recommendations**

77. The Receiver is seeking the following from this Honourable Court:
  - a) Approval of the Receiver's activities and conduct as outlined in this Fifth Report;
  - b) Approval of the sale of various lots in Drumheller and Wandering River;
  - c) Approval for the release of the deposit on the RCL's lands;
  - d) An increase in the limit provided for in section 3(l) of the Receivership Order; and,
  - e) Any further direction the Court wishes to provide to the Interim Receiver.



**Intended Course of Action**

78. If the Receiver's recommendations are approved, the Receiver's proposed course of actions are

- a) Complete the administration of the various realization of the assets;  
and
- b) To complete the administration of this Receivership, leading to an application for discharge.

Dated at Edmonton, Alberta, this 6<sup>th</sup> day of August, 2020.

BDO CANADA LIMITED, solely in its  
Capacity as Court Appointed Receiver Of  
Westpoint Capital Corporation et al. and  
not in its personal Capacity

Per:  \_\_\_\_\_

David Lewis, CPA, CIRP, LIT  
Vice-President

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**EXHIBIT 1**

**To the Receiver's Fifth Report to Court  
Dated August 7, 2020**

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**BDO Canada Limited**  
**Statement of Receipts and Disbursements For**  
**Westpoint Capital Corporation et al.**  
**For the period of March 8, 2019 to July 15, 2020**

**Receipts**

Sale of land	\$ 5,144,282
Loan	500,000
Funds from foreclosure	336,209
Cash on hand	113,562
Sewer Hauling contract	31,750
Rental income	47,670
Sale of vehicle	10,010
GST refund	3,011
GST collected	7,969
Insurance refund	3,486
Investments	5,354
Interest Income	2,968
Sale of office furniture	500
	<u>6,206,770</u>

**Disbursements**

Payment to secured creditor	2,791,196
Legal fees	1,000,421
Receiver fees	478,484
Real property taxes	387,730
Wages	172,039
Strata fees	146,396
Repayment of loan	100,000
Loan payments	94,802
GST paid	73,359
Appraisal fees	68,935
Funds paid into court per	67,804
Insurance	66,495
Construction	60,756
Consulting fees	45,997
Payroll deductions	20,193
Utilities	19,463
Repairs and maintenance	11,765
Office expenses	9,921
Stock taking and possession	9,804
Advertising	9,032
Commission	6,780
Settlement amount	6,685
Miscellaneous	5,754
Occupation rent	4,000
Deemed trust claim	3,055
Site clean up	1,665
Redirection of mail	1,300
Storage	475
Payroll services	134
Filing fees paid to the Official Receiver	70
Photocopies	34
Bank Fees	18
Search fee	10
	<u>5,664,569</u>

\$ 542,201