

Form 27
[Rules 6.3 and 10.52(1)]

Clerk's stamp:

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COURT FILE NUMBER

1903 04121

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

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

PLAINTIFF

WESTPOINT INVESTMENT TRUST BY ITS
TRUSTEE MUNIR VIRANI AND MARNIE KIEL

DEFENDANTS

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

**APPLICATION BY BDO CANADA LIMITED IN
ITS CAPACITY AS RECEIVER OF
WESTPOINT CAPITAL CORPORATION *et al***

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP
Barristers and Solicitors
2700, Commerce Place
10155-102 Street
Edmonton, AB, Canada T5J 4G8
Phone: 780.429.1751 Fax: 780.424.5866

Lawyer's

Name: Terrence M. Warner

Lawyer's

Email: twarner@millerthomson.com

File No.: 240413.1

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date	<u>February 21, 2024</u>
Time	<u>10:00 a.m.</u>
Where	<u>Edmonton Law Courts Virtual Courtroom 86</u>
Before Whom	<u>The Honourable Justice J. Gill</u>

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. BDO Canada Limited, in its capacity as the Court-appointed receiver (the “**Receiver**” or “**BDO**”) of Westpoint Capital Corporation *et al*, seeks an Order substantially in the form of order attached to this application as Schedule “A”:
 - (a) Abridging, if necessary, the time required for service of notice of this application and all materials in support, and declaring service of the same to be good and sufficient;
 - (b) Approving the actions, conduct and activities of the Receiver as described in the Ninth Report to the Court of the Receiver, dated February 7, 2024 (the “**Ninth Report**”);
 - (c) Approving the accounts for the fees and disbursements of the Receiver and its independent legal counsel Miller Thomson LLP, as set out in the Ninth Report; and
 - (d) Discharging the Receiver upon the Receiver filing a Discharge Certificate confirming that the administration of the estate is complete.
2. Such further and other relief as the Receiver may advise.

Grounds for making this application:

3. On March 8, 2019, the Court of Queen’s Bench of Alberta (now the Alberta Court of King’s Bench) (the “**Court**”) granted an Order appointing BDO as a Judicial Trustee in respect of Westpoint Investment Trust (“**WIT**”), pursuant to an application made on behalf of WIT by its former trustees, Murin Virani and Marnie Kiel.
4. On March 8, 2019, the Court also granted an Order (the “**Interim Receiver Order**”) appointing BDO as Interim Receiver in respect of 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.
5. On April 10, 2019, the Court granted an Order (the “**Receivership Order**”) appointing BDO as Receiver of the corporations referred to in paragraph 4 of this Order.
6. On May 30, 2019, the Court granted an Order (the “**Consent Amending and Receivership Order**”), consented to by the sole director of The Village at Paldi Ent. Ltd. (“**Paldi**”),

amending the Receivership Order to add Paldi as a party Respondent in these proceedings and to extend the terms of the Receivership Order to include Paldi as a party in receivership.

7. The corporations in receivership are collectively referred to as the “**Corporations**”.
8. The Interim Receiver Order, the Receivership Order and the Consent Amending and Receivership Order are collectively referred to as the “**Receivership Orders**”.

Approval of the Receiver’s Activities

9. The Receiver seeks the approval of the Court for the activities set out in the Ninth Report.
10. The Ninth Report sets out the activities of the Receiver since the Eighth Report, and sets out the Receiver’s administration of the receivership estate.
11. All of the activities of the Receiver and its legal counsel in the course of the administration of the receivership of the Corporations as described in the Ninth Report are commercially reasonable, were made in good faith and are appropriate in the circumstances.

Approval of Accounts

12. The Receiver seeks the approval of the Court of its fees and disbursements as well as those of its legal counsel.
13. Pursuant to the Receivership Orders, the Receiver was granted a first charge over the property of the Corporations as security for its fees and disbursements, including legal fees.
14. A summary of the Receiver’s fees and disbursements and those of its legal counsel is provided in the Ninth Report.
15. The fees and disbursements of the Receiver and its legal counsel are reasonable and necessary for the administration of the Receivership.

Discharge of the Receiver and Destruction of Records

16. As set out in the Ninth Report, where economically viable, the Receiver has successfully realized on all assets of the Corporations.
17. Following the payment of outstanding professional fees and the distribution of the remaining proceeds to WIT, the administration of this receivership will be completed, and it is appropriate to grant the Receiver’s request for discharge and to provide for the destruction of the Corporations’ records.

Material or evidence to be relied on:

18. The Ninth Report to the Court of the Receiver, dated February 7, 2024.
19. The Affidavit of David Lewis, sworn January 22, 2024 and attached as Exhibit 6 to the Ninth Report to the Court of the Receiver, dated February 7, 2024.
20. Such further and other material or evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

21. *Alberta Rules of Court*, Alta Reg 124/2010, including Rules 1.3, 6.1, 6.3, 11.27, and 13.5.
22. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

23. *Judicature Act*, RSA 2000 c J-2, as amended.
24. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.
25. The *Personal Property Security Act*, RSA 2000, c P-7, as amended.
26. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

27. None.

How the application is proposed to be heard or considered:

28. In Commercial Chambers, Virtual Courtroom 86.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

SCHEDULE "A"

Clerk's stamp:

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ORDER

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MILLER THOMSON LLP
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Edmonton, AB, Canada T5J 4G8
Phone: 780.429.1751 Fax: 780.424.5866

Lawyer's

Name: Terrence M. Warner

Lawyer's

Email: twarner@millerthomson.com

File No.: 240413.1

DATE ON WHICH ORDER WAS PRONOUNCED: February 21, 2024

PLACE WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice J. Gill

ORDER

UPON the application of BDO Canada Limited in its capacity as the Court-appointed receiver (the “**Receiver**”) of the Defendants Westpoint Capital Corporation *et al* (collectively the “**Corporations**”); AND UPON reviewing the Interim Receivership Order granted March 8, 2019 and filed March 13, 2019, the Receivership Order granted April 10, 2019 and filed April 11, 2019, the Consent Amending and Receivership Order granted and filed May 30, 2019, and the Order granted July 22, 2019 and filed July 23, 2019; AND UPON being advised that parties on the service list with an interest in these proceedings were served with notice of the Application in this matter; AND UPON reviewing the Ninth Report to the Court of the Receiver, dated February 7, 2024 (the “**Ninth Report**”); AND UPON reviewing the Affidavit of David Lewis, sworn [January 22, 2024](#) and attached as Exhibit 6 to the Ninth Report; AND UPON hearing the submissions of counsel for the Receiver and any other counsel or interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this application and all materials in support is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.
2. The actions, conduct and activities of the Receiver as described in the Ninth Report are hereby approved.
3. The accounts for the fees and disbursements of the Receiver and of its independent legal counsel, Miller Thomson LLP, as set out in the Ninth Report and the Affidavit of David Lewis, are hereby approved without the necessity of a formal passing of accounts.
4. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties in its capacity as Receiver are hereby stayed, extinguished and forever barred.
5. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
6. The Receiver is authorized to destroy the books and records of the Corporations without further notice, and at such time and in such manner as the Receiver deems advisable.
7. Upon the Receiver filing with the Clerk of the Court a Discharge Certificate signed by a licensed Trustee employed by the Receiver confirming that all matters for the administration of the Corporations’ estate have been completed then the Receiver shall be discharged as Receiver of the Corporations, provided however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.

8. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by Facsimile, electronic mail, personal delivery or courier, and by posting a copy of this Order on the Receiver's website, and service on any other person is hereby dispensed with. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta