

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 THE FIRST SUPPLEMENTAL REPORT TO THE RECEIVER'S
SECOND REPORT TO THE COURT OF BDO CANADA
LIMITED IN ITS CAPACITY AS RECEIVER OF WESTPOINT
CAPITAL CORPORATION ET AL



DATED JUNE 28, 2019

RECEIVER:

BDO Canada Limited
616, 10216 124 Street
Edmonton, AB
David Lewis
Phone : 780.424.3434
Fax : 780.424.3222
dlewis@bdo.ca

COUNSEL:

Miller Thomson LLP
27 Commerce Place
10155 102 Street
Edmonton, AB T5J 4G8

Terrence M. Warner
Phone: 780.429.9727
Fax: 780.424.5866
twarner@millertomson.com

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Table of Contents

List of Exhibits	3
Introduction	4
Limitation of Report	5
Background	6
Litigation	6
Star Prebuilt Homes Ltd.	6
Barry Homes Ltd. and Performance Paving Services Inc.	10
Paldi and Jackson & Associates Litigation	10
Lack, Hatch, Lunny Atmore LLP and Integrum Law Corporation	12
Beach Grove	13
Harold Jahn	14

List of Exhibits

1. Application by Star Prebuilt Homes Ltd.
2. Notice of Civil Claim re: WM S. Jackson & Associates Ltd., filed May 29, 2015
3. Email from Mr. Warner to Mr. Sennott providing instructions regarding the WM S. Jackson & Associates Ltd. matter
4. Notice of Civil Claim re: Lack et al, filed September 3, 2015
5. Email from Mr. Warner to Mr. Sennott providing instructions regarding the Lack et al matter
6. Email from Mr. Warner to Mr. Sennott providing instructions regarding the Beach Grove matter

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 ("**BDO**" or the "**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**"), (collectively the "**Companies**").
2. On April 10, 2019, the Court of Queen's Bench of Alberta (the "**Court**") granted an Order (the "**Receivership Order**") appointing BDO Canada Limited as Receiver ("**BDO**" or the "**Receiver**") of the Companies.
3. On May 30, 2019, the Court of Queen's Bench of Alberta (the "**Court**") granted a further 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.
4. On June 20, 2019, the Star Prebuilt Homes Ltd.'s counsel made an application to this Honorable Court, to seek an Order:
 - a) Directing that further questions contained in the written interrogatories attached and forming part of Exhibit G to the affidavit of Sandra Gonzales, be put to Ms. Marnie Kiel for answering, (or such other questioning) as may be directed by this Honourable Court; and
 - b) An Order that the Summary Trail currently scheduled to be heard September 11 through 13th inclusive 2019, remain on the Civil List.

Attached as **Exhibit 1** is a copy of the filed application by Star Prebuilt Homes Ltd. The matter was adjourned to Friday, July 5, 2019, at 8:45 am.

5. The purpose of this report (the "**Supplemental Second Report**") is to provide this Honourable Court with a summary of the various ongoing litigation matters:
 - a) Star Prebuilt Homes Ltd.;
 - b) Barry Homes Ltd. and Performance Paving Services Inc.;
 - c) Paldi and Jackson & Associates;
 - d) Lack, Hatch, Lunny Atmore LLP and Integrum Law Corporation;
 - e) Beach Grove; and
 - f) Harold Jahn.

Limitation of Report

6. This report is supplemental to the Second Report to the Court of BDO Canada Limited in its Capacity as Receiver of Westpoint Capital Corporation et al dated June 11, 2019 (the "Second Report") and should therefore be read in conjunction with the Second Report, and subject to the same limitations and conditions as set out therein, which are incorporated by reference in this Supplemental Second Report.
7. A copy of the Supplemental Second Report and other relevant documents in the interim receivership and receivership proceedings are available on the Interim Receiver's website at http://www.extranets.bdo.ca/WCC_ET.AL.
8. The defined terms in the Second Report are incorporated by reference herein and unless otherwise noted, have the same meaning as specified in the Second Report.

Background

9. The background is set out in the Second Report, which will not be repeated in this Supplemental Report, but is incorporated by reference herein.

Litigation

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

Star Prebuilt Homes Ltd.

11. As previously reported, Star is seeking judgment from WCC in the aggregate amount of \$1.86 million.

12. The facts, as the Receiver understands them are as follows:

- a) On December 5, 2012, Tri-State Signature Homes Ltd. ("Signature") entered into a Builder Master Sales and Credit Agreement ("Master Agreement") with Igloo Prebuilt Homes Ltd. ("Igloo") to purchase new modular homes from Igloo and for the provision of site construction work on an ongoing basis subject to the terms and conditions of the Master Agreement.
- b) The principal behind Signature is an individual named Arash Vahdaty ("Vahdaty").
- c) Vahdaty is also the principal behind two related companies, Tri-State Community Homes Ltd. ("Community") and Trend Aurora Ltd. ("Aurora").
- d) There are no agreements similar to the Master Agreement between Igloo and Community or Aurora that were brought to the attention of the Receiver.
- e) WCC issued Letters of Credit ("LOCs") listing Signature as the "Customer" and Igloo as the "Beneficiary" to secure obligations owed by *Signature* (not Community or Aurora) to Igloo under the Master Agreement.
- f) On January 31, 2014, Signature, Igloo and Star entered into an Assignment, Assumption and Consent Agreement as part of the sale of Igloo's business to Star. As part of that agreement, Igloo assigned to Star all of its rights and obligations under the Master Agreement, and the terms of the Master Agreement were otherwise not modified.
- g) WCC amended the previously issued LOCs to reflect Star as the replacement beneficiary.

- h) All of the LOCs issued by WCC (after they were amended to show "Star" as the Beneficiary) had the following common characteristics:
 - i. The Customer is Signature;
 - ii. The Beneficiary is Star;
 - iii. Each LOC states: "This Letter of Credit is to be retained by the Beneficiary and used in respect of obligations owed by the Customer to the Beneficiary pursuant to the terms of the Star Prebuilt Homes Ltd. Master Agreement between the Customer and the Beneficiary" [emphasis added];
- i) It appears from the evidence that Signature, Community and Aurora each incurred obligations to Star, and at some point in 2015, the various accounts went into default.
- j) Signature, Community, Aurora, Star and Qualico Developments West Ltd. ("Qualico") entered into a Dispute Resolution Agreement (the "DRA") deemed to be effective May 31, 2016.
- k) Even though WCC was not a party to the DRA, the DRA is the foundation of the claim against WCC. This problematic for the following reasons:
 - i. Although the DRA is deemed to be effective May 31, 2016, it is not clear when it was actually signed as the preamble references events that took place as late as July 22, 2016;
 - ii. Signature, Community and Aurora are defined collectively as "Tri-State";
 - iii. The preamble of the DRA stipulates that Signature, Community and Aurora are directly indebted to Star pursuant to the Master Agreement, but the Master Agreement does not appear to have been amended to extend to include Community and Aurora;
 - iv. The preamble refers to the outstanding debt of "Tri-State" owing to Star pursuant to the Master Agreement, as set out in Schedule "C", which includes all of the outstanding amounts that Signature, Community and Aurora allegedly owed to Star, but again, the Master Agreement does not appear to have been amended to extend to include Community and Aurora;
 - v. The preamble refers to an agreement between "Tri-State" and Star to hold the LOCs on escrow as security for the debt, but there is no reference to the fact that the LOCs were issued by Signature for Signature's debt under the Master Agreement;
 - vi. There is under the heading "Acknowledgments" an acknowledgment and representation by "Tri-State" that the LOCs "secure the Debt, past present or future...including without limitation, any indebtedness arising pursuant to or in relation to

the Master Agreement;”, which ignores the specific terms of the LOCs, which expressly references the obligations owed by Signature pursuant to the terms of the Master Agreement;

- vii. There is a covenant by Tri-State to deliver to Star executed original replacement LOCs, presumably to expand the application LOCs to cover the indebtedness of Community and Aurora, which did not occur.
- l) The DRA effectively unilaterally purports to expand the potential liability of WCC beyond what was intended by the LOCs, *without the agreement of WCC*.
- m) Star's position appears to rest on certain exchanges of email correspondence, which appear to have occurred prior to the execution of the DRA. Star's position appears to be that WCC, through these exchanges of emails, agreed to expand its liability under the LOCs to that of all three entities:
- i. The first email provided to the Receiver is dated June 23, 2016, to Marnie Kiel from Jeff Fixsen at Duncan Craig, counsel for the three Tri-State entities, which advises of “some negotiations” between Signature and Star and advises of a request by Star for replacement or reissued LCOs. There is no reference in the email to Community or Aurora. The email attaches a Certificate in draft form to be issued to Westpoint by Star and to the three Tri-State companies, but there is no indication that the intent of the DRA to expand the scope of the LOCs was brought to the attention of Marnie Kiel.
 - ii. The second group of emails was initiated by Jeff Fixsen on June 28, 2016, to counsel for Star, and discusses “reviewing the DRA” with his client and raises WCC's concern regarding termination of the LOCs after conclusion of the obligations under the DRA.
 - iii. The third is a group of emails that was initiated by Jeff Fixsen on June 29, 2016, and asks Marnie Kiel to reissue the LOCs, which never occurred.
 - iv. There is another chain of emails involving current counsel for Star, Richard Cotter beginning July 4, 2016, in which he is asking Marnie Kiel *inter alia* to confirm the LOCs have been renewed. There is no evidence there was any response to this request.
 - v. There is an interesting exchange of emails beginning July 7, 2016, in which Richard Cotter is asking Jeff Fixsen whether Marnie Kiel was delivering “the letter” with the original LOCs, and Jeff Fixsen's response on July 8, 2016, is he has the original LOCs, but WCC did not want to prepare a cover letter because “they do not want anything to change the terms of the LOCs.”

13. There is nothing in the evidence to indicate that WCC knew what the terms of the DRA were, or knew that the DRA purported to expand the scope of the LOCs beyond what they were originally intended. There is no evidence that this was specifically brought to the attention of WCC or that WCC expressly agreed to expand the scope of the LOCs.
14. On February 16, 2017, WCC paid to Star, \$121,121.25 pursuant to LOC 920, relating to a debt owed by Signature and not the two related entities.
15. On September 29, 2017, Star, demanded payment from WCC in the sum of \$1.86 million, but WCC's position is that the remaining LOC's are not outstanding. The amounts claimed are debts owing to Starby Community and Aurora and are not debts of Signature.
16. The Receiver has spoken to WCC's former management and has reviewed the records and notes acquired from WCC, and can confirm that the Receiver was not able to locate any guarantees, indemnity agreements or promissory notes from Arash Vahdaty in favour of WCC.
17. Counsel for Star has examined Marnie Kiel on four separate occasions, being:
 - a) Feb 28, 2018;
 - b) May 23, 2018;
 - c) June 6, 2018; and
 - d) July 9, 2018.
18. It is the Receiver's opinion that the majority, if not all of the questions that Mr. Cotter is seeking to have addressed, have no benefit for the estate, and are an unwarranted expense of the WCC estate, negatively impacting potential recovery for the creditors of WCC.

Merits

19. Based upon a legal opinion provided to the Receiver, and based upon the facts as outlined above, the Receiver believes the action of Star has little merit.

Barry Homes Ltd. and Performance Paving Services Inc.

20. Based on the Receiver's understanding, there is approximately \$1.57 million, sitting in Court due to a dispute between Barry Homes Ltd., Performance Paving Services Inc. and WCC.

21. The two issues that need to be resolved in order for the funds to be released are as follows:

- a) Whether or not WCC was an equitable or beneficial owner of the subject property such that its interest as a mortgagee merged into its beneficial ownership; and
- b) Whether the GICs in WCC's name were advanced for the purpose of s. 11.4 of the Builders' Lien Act.

22. On June 11, 2019, the Receiver and its counsel received an email from Mr. Kevin Chapotelle of Bryan and Co LLP, who is WCC counsel on this file. Mr. Chapotelle provided an update regarding the merits of the Barry Homes litigation and the steps necessary to conclude the matter.

Merits

23. The Receiver has received a very preliminary opinion that suggests that the issues outlined above will be resolved in favour of WCC.

24. As Mr. Chapotelle, has significant background regarding the Barry Homes litigation, the Receiver agreed to pay Mr. Chapotelle's outstanding invoices of approximately \$36,000 regarding this matter and has retained Mr. Chapotelle to proceed with an application for summary judgement to seek a determination on the two issues outlined above.

Paldi and Jackson & Associates Litigation

25. The Jackson & Associates litigation involves a Civil Claim in the Supreme Court of British Columbia against the authors of the appraisals which WCC relied on for extending the Paldi mortgage.

26. The Receiver has had extensive discussions with counsel retained by WCC to prosecute this action and requested copies of documentation including court documents in regard to this litigation.
27. On June 18, 2019, an email was received from Mr. Martin Sennott, containing the pleadings and various filed court documents. Based on a review of the email and its contents, the Receiver makes the following comments.
- a) WCC is suing the WM. S Jackson & Associates Ltd. ("**Jackson**") and Dan Wilson for allegedly overstating the "as is" value of the property. Attached as **Exhibit 2** is a copy of the Notice of Civil Claim
 - b) In September 2011, the appraisal report prepared by Jackson stated an "as is" value of \$7,175,000. An updated appraisal report was prepared by Jackson in March of 2012, stating an "as is" value of \$7,735,000.
 - c) WCC relied upon the appraisals provided by Jackson when it entered into a mortgage agreement for \$4 million and advanced under that mortgage a total of \$3.5 million.
 - d) On June 24, 2019, the Receiver, its counsel and Mr. Sennott discussed the merits of the litigation, and on June 26, 2019, the Receiver's counsel sent an email to Mr. Sennott providing directions regarding this matter. Attached as **Exhibit 3** is a copy of that email.
 - e) Mr. Sennott was directed to take the following steps:
 - i. Provide a summary and a discussion of the merits of the claim;
 - ii. Provide to the Receiver additional documents, including a copy of the transcript of the examination of Munir Virani in these proceedings and a copy of the transmittal letter used by the appraiser;
 - iii. Determine if the expert report was finalized, if so, supply the Receiver a copy, if not, have it finalized as soon as possible;

- iv. Proceed with the examination of the appraiser; and
- v. Initiate discussions for a potential settlement.

Lack, Hatch, Lunny Atmore LLP and Integrum Law Corporation

- 28. This litigation involves an action against two law firms and counsel involved for failing to register a mortgage on title to the lands at issue, which resulted in WCC losing priority to a mortgage to a third party which went on title after the WCC mortgage was issued.
- 29. The Receiver has had extensive discussions with counsel retained by WCC to prosecute this action and requested copies of documentation including court documents in regard to this litigation.
- 30. On June 18, 2019, an email was received from Mr. Martin Sennott, containing the pleadings to date and various filed court documents. Based on a review of the email and its contents, the Receiver makes the following comments. Attached as **Exhibit 4** is a copy of the Notice of Civil Claim.
 - a) On or about September 8, 2011, WCC made a loan to two individuals secured by a mortgage on a residential property in Whistler BC.
 - b) The loan went into default and Westpoint sued the two individuals, and foreclosed on the Whistler property. The two individuals owned or controlled two companies that held legal title to two properties known as Lot 17 and Lot C in Scotch Creek, near Kamloops, BC ("Scotch Creek Property").
 - c) In July 2013, WCC negotiated a forbearance agreement, wherewith, WCC would be able to register a mortgage on the Scotch Creek Property.
 - d) WCC is suing Mr. Timothy J. Lack, Mr. Ronald A. Hatch, Lunny Atmore LLP ("Lunny") and Integrum Law Corporation ("Integrum") for allegedly failing to register a mortgage of \$500,000 on the Scotch Creek Property.
 - e) In October 2013, a Third Party mortgaged the Scotch Creek Property.

- f) In July 2014, WCC's mortgage was registered; however, there was now insufficient value in order for WCC to recover any of its debt.
- g) On June 24, 2019, the Receiver, its counsel and Mr. Sennott discussed the merits of the litigation, and on June 26, 2019, the Receiver's counsel sent an email to Mr. Sennott providing directions regarding this matter. Attached as **Exhibit 5** is a copy of that email.
- h) Mr. Sennott was directed to take the following steps:
 - i. Take steps as appear necessary to resolve the matter;
 - ii. Provide a memo regarding the merits of this defence by Lunny Atmore LLP; and
 - iii. Initiate discussions for a potential settlement.

Beach Grove

- 31. Very generally, this litigation involves foreclosure proceedings against the mortgagor and a counterclaim against WCC for, *inter alia*, failing to lend sufficient funds for the mortgagor to complete the project.
- 32. On June 18, 2019, an email was received from Mr. Martin Sennott containing the pleadings to date and various filed court documents. Based on a review of the email and its contents, the Receiver makes the following comments:
 - a) WCC has initiated foreclosure proceeding on the property, but House & Castle Construction Ltd., Beach Grove Properties Ltd. and Davied Nicholas Broderick filed a counterclaim against WCC.
 - b) The foreclosure proceedings are stayed until the merits of the counterclaim against WCC has been determined.
 - c) On June 24, 2019, the Receiver, its counsel and Mr. Sennott discussed the merits of the litigation, and Mr. Sennott indicated that in his view, the action against WCC had little merit.

- d) On June 26, 2019, the Receiver's counsel sent an email to Mr. Sennott providing directions regarding this matter. Attached as **Exhibit 6** is a copy of that email.
- e) Mr. Sennott was directed to take the following steps:
 - i. Initiate discussion for the purpose of the Receiver being able to obtain an appraisal; and
 - ii. Initiate discussions for a potential settlement.

Harold Jahn

- 33. Mr. Harold Jahn filed a lawsuit against WCC for \$50 million which arose following the conclusion of foreclosure proceedings in the Bruderheim Wandering River area. Mr. Jahn was a guarantor of the mortgage at issue.
- 34. This matter has not progressed for over three (3) years, and the Receiver has been advised that it should be dismissed for failure to proceed in a timely manner.
- 35. The Receiver has retained Mr. Chapotelle to take the necessary steps to have the Jahn action struck.
- 36. The other component of the litigation involves a company called Enrich Energy Inc. ("Enrich") which Mr. Harold Jahn owned. As part of the legal proceedings against Jahn and Enrich, WCC seized the shares of Enrich to get access to a \$1.3 million vendor take-back mortgage, which was granted to Revel Resources Inc.
- 37. Enrich assigned this mortgage to a third party as part of a settlement of debt of an unrelated transaction. WCC is taking the position that this was either an unjust enrichment or a preference, and it should be transferred back to Enrich.
- 38. The Interim Receiver is advised that on March 27, 2019, Mr. Jahn was scheduled to attend questioning regarding this matter. He failed to attend.

39. We have requested counsel for WCC in this litigation to prepare a legal opinion regarding the merits of this matter based on the known facts, but that has not yet been received.

40. Depending on the Legal Opinion, the Receiver may retain counsel for WCC to proceed with the litigation.

Dated at Edmonton, Alberta this 28th day of June 2019.

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

EXHIBIT “1”

**To the First Supplemental Report to the Receiver’s
Second Report to Court
Dated June 28, 2019**

Form 36
[Rule 7.5(2)]



COURT FILE NUMBER 1903 04121
COURT 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.

DOCUMENT APPLICATION BY STAR PREBUILT HOMES LTD.

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

Richard J. Cotter, Q.C.
Dentons Canada LLP
2900 Manulife Place
10180 – 101 Street
Edmonton Alberta T5J 3V5
Ph. (780) 423-7316 Fx. (780) 423-7276
File No.: 556138-6/RJC

NOTICE TO THE JUDICIAL TRUSTEE/RECEIVER ("RECEIVER") OF WESTPOINT INVESTMENT TRUST:

This Application is made against you. You are the Receiver.

You have the right to state your side of this matter before the Justice.

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

Date: Thursday, June 20, 2019
Time: 8:45 a.m.

Where: Law Courts
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2

Before Whom: The Honourable Associate Chief
Justice K.G. Nielsen

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

Remedy claimed or sought, including issue or issues to be determined (or indicate that the claim as a whole is to be determined):

1. An Order abridging and Validating the time and method of service of the Notice of Application upon counsel for the Receiver so that this Motion is properly returnable on the date of the Application and directing that further service is dispensed with.
2. An Order directing that the further Questions contained in the Written Interrogatories attached and forming part of Exhibit "G" to the Affidavit of Sandra Gonzales, be put to Ms. Marnie Kiel for answering, (or such other questioning) as may be directed by this Honourable Court.
3. An Order that the Summary Trial currently Scheduled to be heard September 11th through 13th inclusive, 2019, remain on the Civil List.
4. The Advice and Directions of this Honourable Court.
5. Such further and other relief as this Honourable Court finds appropriate.

Grounds for making this application:

6. On April 10, 2019, this Honourable Court directed that the Former Trustee of Westpoint Investment Trust, Ms. Marnie Kiel, be questioned.
7. On May 8, 2019, Ms. Kiel was questioned by counsel for the Receiver
8. Certain questions were not asked of Ms. Kiel during the May 8, 2019, Questioning which the Applicant, Star Pre-Built Homes Ltd. ("Star") feels should have been asked of Ms. Kiel. The Applicant Star believes that these further questions should be asked of Ms. Kiel by Written Interrogatories to be answered by her as the most efficient and cost effective method to obtain the necessary information.
9. It is just and equitable that further questions be asked of Ms. Kiel in order to determine if there is any form of security or evidence documenting an indebtedness of Arash Vahdaty, Tri-State Signature Homes Ltd. or anyone else to Westpoint Capital Corporation in the event the Letters of Credit were honoured on presentment by Westpoint Capital Corporation.
10. The Applicant Star believes that the most convenient way to have these questions answered efficiently and expeditiously is by way of answering Written Interrogatories.

11. Further Questions to be posed comprising the Written Interrogatories or such other questions as the Court might direct be appropriately asked by way of Written Interrogatories should be determined in order that the Summary Trial scheduled for September 11th through 13th inclusive, 2019, not be lost to the prejudice of the Applicant Star.
12. It is just and equitable that further questions be posed of Ms. Kiel.

Material or evidence to be relied on:

13. The Affidavit of Sandra Gonzales.
14. The April 10, 2019 Order of the Honourable Associate Chief Justice K.G. Nielsen.

Applicable Rules:

15. Rules 1.1, 1.2 and 1.3 and 5.22 and 5.28 of the *Alberta Rules of Court*.
16. Section 8 of the *Judicature Act* RSA 2000 Alberta, as amended.

Any Irregular Complained or Objection Relied Upon:

17. Not Applicable

Applicable Acts and Regulations:

18. None.

How the application is proposed to be heard or considered:

19. In person before the presiding Justice in Chambers.

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 this form. Notice of any objection to this Application and anything on which you intend to rely in relation to your objection must be filed and served on the Applicant 5 days or more before the objection is scheduled to be heard. If you intend to rely on an Affidavit or other evidence when the Application is heard or considered, you must reply by giving reasonable notice of the material to the Applicant.

EXHIBIT “2”

**To the First Supplemental Report to the Receiver’s
Second Report to Court
Dated June 28, 2019**

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

MAY 29 2015

FORM 1 (RULE 3-1 (1))

No. S-154444
Vancouver Registry



In the Supreme Court of British Columbia

Between

WESTPOINT CAPITAL CORPORATION and
BTB MORTGAGE INVESTMENT CORPORATION

Plaintiffs

and

WM. S. JACKSON & ASSOCIATES LTD. and DAN WILSON

Defendants

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (a) serve a copy of the filed response to civil claim on the plaintiff(s).

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (a) serve a copy of the filed response to civil claim and counterclaim on the plaintiff(s) and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Part I: STATEMENT OF FACTS

1. The plaintiff, Westpoint Capital Corporation ("**Westpoint**") is an extra-provincial company duly incorporated pursuant to the laws of the province of Alberta. Westpoint has an assumed name in British Columbia of WCC Westpoint Capital Corporation.
2. The plaintiff, BTB Mortgage Investment Corporation ("**BTB**") is an extra-provincial company duly incorporated pursuant to the laws of the province of Alberta. BTB has an assumed name in British Columbia of Vancouver BTB Mortgage Investment Corporation.
3. The defendant, Wm. S. Jackson & Associates Ltd. is a British Columbia company that does business as Jackson & Associates Ltd. ("**Jackson & Associates**").
4. The defendant, Dan Wilson, B.Comm., R.I. (BC), AACI, P.App., is a real estate appraiser and owner of Jackson & Associates.
5. At all material times in the course of his appraisal work, Mr. Wilson was acting under the trade name and on behalf of Jackson & Associates.
6. Westpoint and BTB are in the business of lending money to individuals and companies based on equity in real property owned by the applicant borrowers.

7. To ensure there is sufficient equity in a property to secure a loan, Westpoint and BTB require a current valuation of the real property owned by the applicant borrowers prepared by a professional real estate appraiser.
8. Westpoint and BTB will not lend money without first obtaining a written real estate valuation report on an "as is" basis upon which they are entitled to rely.
9. In or about August or early September 2011, Jackson & Associates and Mr. Wilson were retained to prepare an appraisal report of certain lands south of the Cowichan Valley Highway, in the Cowichan Valley of British Columbia (the "Property").
10. The Property is comprised of five legally defined parcels of land that are legally described as follows:
 - (a) PARCEL IDENTIFIER: 002-491-168
PART OF SECTION 10, RANGE 3, SAHTLAM DISTRICT, LYING TO THE NORTH OF THE RIGHT OF WAY OF THE ESQUIMALT AND NANAIMO RAILWAY COMPANY
 - (b) PARCEL IDENTIFIER: 002-491-281
THE EAST ½ OF SECTION 10, RANGE 2, SAHTLAM DISTRICT, LYING TO THE NORTH OF THE RIGHT OF WAY OF THE ESQUIMALT AND NANAIMO RAILWAY COMPANY
 - (c) PARCEL IDENTIFIER: 002-491-125
PART OF SECTION 10, RANGE 4, SAHTLAM DISTRICT, LYING TO THE NORTH OF THE RIGHT OF WAY OF THE ESQUIMALT AND NANAIMO RAILWAY COMPANY
 - (d) PARCEL IDENTIFIER: 013-819-071
ALL THAT PART OF LOT A, BLOCK 162, SEYMOUR DISTRICT, PLAN 19885, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEASTERLY CORNER OF SECTION 10, RANGE 4, SAHTLAM DISTRICT; THENCE NORTHERLY AND PERPENDICULAR TO THE NORTH BOUNDARY OF THE SAID SECTION 10, RANGE 4, A DISTANCE OF 48.118 METRES MORE OR LESS TO THE SOUTHEASTERLY BOUNDARY OF PLAN 635 R/W; THENCE SOUTHWESTERLY AND NORTHWESTERLY AND FOLLOWING THE SOUTHEASTERLY AND SOUTHWESTERLY BOUNDARY OF THE SAID PLAN 635 R/W A DISTANCE OF 816.989 METRES; THENCE SOUTHERLY AND PERPENDICULAR TO THE SAID NORTHERLY BOUNDARY OF SECTION

10, RANGE 4, A DISTANCE OF 132.249 METRES MORE OR LESS TO THE NORTHWESTERLY CORNER OF THE SAID SECTION 10, RANGE 4, THENCE EASTERLY AND FOLLOWING THE SAID NORTH BOUNDARY TO THE POINT OF COMMENCEMENT, SAVE AND EXCEPT THEREOUT AND THEREFROM THAT PART INCLUDED IN PLAN 2381 R/W TO WHICH THE REGISTRAR HEREBY ASSIGNS THE DISTINGUISHING LETTER "A"

(e) PARCEL IDENTIFIER: 002-488-795
BLOCK 168, SEYMOUR DISTRICT, CONTAINING 40 ACRES MORE OR LESS EXCEPT PART IN PLAN 2073 RW

11. The Property was, at all material times, owned by companies controlled by Mr. Anthony Kubica (collectively the "Borrower").
12. Before accepting the retainer to value the Property, the defendants knew, or ought to have known, the purpose of the valuation was to provide an expert valuation of the Property upon which lenders, such as Westpoint and BTB, would rely when deciding whether or not to lend money to the registered owner of the Property, and if so, how much money to lend and on what terms.
13. Mr. Wilson personally inspected the Property on September 12, 2011 and conducted various investigations and analyses before preparing a written real estate value appraisal report with respect to the Property (the "2011 Report") for the Borrower.
14. The 2011 Report expressly states that it is prepared in accordance with the Canadian Uniform Standards of Professional Appraisal Practice as provided by the Appraisal Institute of Canada (the "Standards").
15. The 2011 Report also expressly states "the current market value of the subject properties on an 'As Is' basis as of September 12, 2011 is about \$7,175,000.00" (the "2011 Value Representation"). The 2011 Value Representation was incorrect.
16. In fact, the 2011 Value Representation significantly overstated the value of the Property. The fair market value of the Property "as is" as at September 12, 2011 was substantially less than the 2011 Value Representation.

17. The defendants made the 2011 Value Representation recklessly, without knowledge of whether the statement was true or false.
18. The 2011 Report states that the intended use of the 2011 Report is to assist in obtaining first mortgage financing on the Property.
19. On or about March 12, 2012, the defendants authored and sent an updated appraisal report on the Property (the "2012 Report") to the Borrower.
20. The 2012 Report stated that the defendants had taken several steps while preparing the 2012 Report and that it had been developed and prepared in accordance with the Standards.
21. The 2012 Report specifically says it:
 - (a) "comprises an extension to the original report and cannot be properly understood without reference to our original report"; and
 - (b) "is completed... to update the original report for first mortgage financing purposes."
22. The conclusion in the 2012 Report is that the Property had a market value "as is" as at March 12, 2012 of \$7,735,000.00 (the "2012 Value Representation"). The 2012 Value Representation was incorrect.
23. In fact, the 2012 Value Representation significantly overstated the value of the Property. The fair market value of the Property "as is" as at March 12, 2012 was substantially less than the 2012 Value Representation.
24. The defendants made the 2012 Value Representation recklessly, without knowledge of whether the statement was true or false.
25. At all material times each of Mr. Wilson and Jackson & Associates owed a duty to the Borrower and any lender (including their associate lenders) that received a transmittal letter, and a copy of the 2011 Report and/or the 2012 Report, to exercise all reasonable

care, skill, diligence and competence of a reasonable real estate appraiser and to produce an appraisal that was accurate and prepared in accordance with the requisite standard of care, including the Standards.

26. On or about March 30, 2012 Jackson & Associates and Mr. Wilson specifically authorized Westpoint to rely on the 2011 Report and the 2012 Report, and thus the 2011 Valuation Representation and 2012 Value Representation, by way of a Letter of Transmittal (the "Transmittal Letter"). Therefore, the defendants, and each of them, owed a duty of care to Westpoint.
27. The defendants, and each of them, knew or ought to have known, that lenders such as Westpoint would act with and/or on behalf of investors such as BTB, and as such, the defendants knew or ought to have known that by issuing the Transmittal Letter to Westpoint they were also allowing those investors related to Westpoint, such as BTB, to rely on the 2011 Report and the 2012 Report. Therefore, the defendants, and each of them, owed a duty of care to BTB.
28. The Transmittal Letter specifically states "this letter is authorization for Westpoint Capital Corporation to rely on the appraisal report for mortgage lending purposes".
29. On or about March 21, 2012, the Borrower submitted an application to Westpoint for mortgage financing for the Property.
30. The defendants knew or ought to have known that Westpoint and BTB would rely on the 2011 Report and the 2012 Report in deciding whether to provide mortgage financing in relation to the Property, and if so, how much money to lend and on what terms.
31. On the strength of the 2011 Report and the 2012 Report, and after applying prudent underwriting criteria and procedures, Westpoint and BTB reasonably relied on the two reports from the defendants and granted a loan to the Borrower secured by a mortgage in favour of Westpoint and BTB registered against title to the Property on April 10, 2012 (the "Mortgage").

32. The face value of the Mortgage was \$4,000,000.00.
33. Westpoint advanced a total \$3,500,000.00 to the Borrower, including funds from BTB, under the Mortgage commencing on about April 10, 2012.
34. The Mortgage called for interest to be paid by the Borrower to Westpoint at a rate of 12.00% per annum, compounded monthly, not in advance, being 12.304% per annum calculated and compounded semi-annually, not in advance.
35. The Mortgage also called for bonus interest to accrue.
36. The face value of the Mortgage was approximately 56% and 52% of the "as is" value of the Property according to the 2011 Report and the 2012 Report respectively.
37. Westpoint and BTB would not have made the loan secured by the Mortgage, or any loan to the Borrower whatsoever, but for 2011 Valuation Representation and the 2012 Value Representation in the 2011 Report and the 2012 Report.
38. The Borrower defaulted on the Mortgage and the Property is in foreclosure.
39. If the Property is sold "as is" the proceeds from the sale of the Property will be insufficient to repay the Mortgage, resulting in a substantial loss to Westpoint and BTB of the original principal and other amounts owing under the Mortgage.
40. Westpoint and BTB have taken, and will take, all reasonable steps to secure repayment of the Mortgage and mitigate its damages.
41. At all material times, the defendants were under a duty to prepare the 2011 Report and the 2012 Report with the degree of care, knowledge, and skill of reasonably prudent and competent appraisal professionals, including but not limited to ensuring that they were prepared in accordance with the Standards.
42. The 2011 Report and the 2012 Report contained untrue, inaccurate, or misleading misrepresentations and statements. For example:

- (a) The true "as is" value of the Property as at September 12, 2011 was substantially below \$7,175,000.00.
 - (b) The true "as is" value of the Property as at March 12, 2012 was substantially below \$7,735,000.00.
 - (c) The 2011 Report and the 2012 Report were not prepared in accordance with the Standards.
43. Westpoint and BTB reasonably relied on the representations in the 2011 Report and the 2012 Report and were induced by them to loan money to the Borrower.
44. The defendants, and each of them, failed to take all necessary steps and failed to make all necessary investigations in order to ensure that the 2011 Report and the 2012 Report did not contain any untrue, inaccurate, or misleading misrepresentations or statements and to ensure that the defendants provided an accurate valuation of the Property. In failing to do so, the defendants, and each of them, breached the standard of care required of a real estate appraiser or real estate appraisal firm.
45. If Westpoint and/or BTB had known the true value of the Property as at September 12, 2011 or March 12, 2012 they would not have loaned the Borrower \$3,500,000.00 or any monies at all.
46. Westpoint and BTB have incurred costs and expenses in relation to the maintenance of the Property and legal fees, costs and disbursements in relation to the foreclosure (collectively the "**Foreclosure Damages**") that would not have been incurred but for the negligence, negligent misstatements and/or misrepresentations of the defendants herein.
47. The Foreclosure Damages were added to the principal of the Mortgage as they were incurred.
48. The damages Westpoint and BTB have incurred includes lost, compounding interest at a rate higher than set by regulation. Westpoint's and BTB's average interest rate earned on its portfolio at the material times has been substantially higher than the pre-judgment and

post-judgment interest rates under the *Court Order Interest Act*. In the alternative to their claim for contractual interest at a rate of 12.00% per annum, compounded monthly, not in advance, being 12.304% per annum calculated and compounded semi-annually, not in advance, Westpoint and BTB specifically pleads ss. 1 and 8 of the *Court Order Interest Act* (BC).

49. But for the defendants' breach of their duties and misrepresentations, Westpoint and BTB would have lent the \$3,500,000.00 to another borrower at an interest rate at least as high as that in the Mortgage.
50. At all material times Mr. Wilson was the actual or ostensible agent of Jackson & Associates and as such Jackson & Associates is vicariously liable for its negligence.
51. The defendants, and each of them, are jointly and severally liable for the loss and damages suffered by Westpoint and BTB.

Part 2: RELIEF SOUGHT

1. Damages;
2. Costs;
3. Interest at 12.00% per annum, compounded monthly, not in advance, being 12.304% per annum calculated and compounded semi-monthly not in advance in accordance with the Mortgage, or in the alternative some other rate that the Court considers appropriate in the circumstances pursuant to ss. 1 and 8 of the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, or in the further alternative, regular pre and post-judgment interest pursuant to the *Court Order Interest Act*; and
4. Such other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

1. Westpoint and BTB repeat paragraphs 1 to 51 of Part 1 herein.

2. The defendants owed a duty of care to Westpoint and BTB due to the fact the defendants knew or ought to have known that investors related to Westpoint such as BTB would also rely on the 2011 Report and the 2012 Report as a result of the Transmittal Letter being given to Westpoint.
3. The defendants specifically granted Westpoint permission to rely on the 2011 Report and the 2012 Report, which contained the 2011 Value Representation and the 2012 Value Representation, for mortgage financing purposes.
4. The defendants were negligent and the 2011 Report and the 2012 Report contained negligent misstatements or negligent misrepresentations and Westpoint and BTB reasonably relied on those misstatements/misrepresentations to their detriment.
5. The defendants, and each of them, failed to take all the necessary steps and failed to make all necessary investigations to ensure that the 2011 Report and the 2012 Report:
 - (a) Did not contain any untrue, inaccurate or misleading representations or statements.
 - (b) Provided an accurate valuation of the Property.
6. In failing to do so, the defendants, and each of them, breached the standard of care required of a reasonably prudent real estate appraiser and/or appraisal firm in the circumstances.
7. Westpoint and BTB have suffered, and continue to suffer, damages as result of the defendants' negligence.
8. Jackson & Associates is vicariously liable for Mr. Wilson's negligence.

9. The defendants are jointly and severally liable for the damages Westpoint and BTB have suffered.

Plaintiff's address for service: Owen Bird Law Corporation
P.O. Box 49130
Three Bentall Centre
2900-595 Burrard Street
Vancouver, BC V7X 1J5
(Attention: Michael F. Robson)

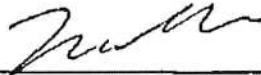
Fax number address for service (if any): (604) 632-4468

E-mail address for service (if any): n/a

Place of trial: Vancouver, BC

The address of the registry is: Law Courts,
800 Smithe Street,
Vancouver, BC V6Z 2E1

Date: May 29, 2015



Signature of lawyer for plaintiff
Michael F. Robson

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a professional negligence claim against an appraiser and appraisal company by a lender.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79

EXHIBIT “3”

**To the First Supplemental Report to the Receiver’s
Second Report to Court
Dated June 28, 2019**

Lewis, David

From: Warner, Terry <twarner@millerthomson.com>
Sent: June 26, 2019 9:51 AM
To: Martin Sennott
Cc: Lewis, David
Subject: [EXT] WestPoint Capital Corporation v. WM. S. Jackson & Associates Ltd. and Dan Wilson [MTDMS-Legal.FID8371618]

Further to our telephone discussion of June 24, 2019, please proceed with prosecution of the captioned matter on behalf of the receiver of WestPoint Capital corporation.

As discussed, we would appreciate a brief high level summary and discussion of the merits of the claim to assist the receiver in reporting to the court.

We understand that Munir Virani was examined on behalf of the Plaintiff WestPoint Capital Corporation, and you have a transcript you will be forwarding to us.

You advised in the discussion that you thought that the expert report in this matter was finalized, and that you were able to send us a copy. If the expert report was not finalized, we are authorizing you to communicate with the expert and have the expert report finalized as soon as possible.

We discussed doing an examination of the appraiser, and we are authorizing you as well to proceed with that examination.

We also discussed the transmittal letter and you were going to locate that and forward a copy for our review. If the document production is in electronic format, a copy of the respective parties' production would be appreciated.

We discussed approaching counsel for the Defendants insurer to discuss settlement but as discussed, that is likely not a viable alternative until the examinations have been completed. Regardless it would seem prudent to communicate the fact that the receiver is now providing instructions and prior to incurring significant expense it would seem prudent to discuss possible settlement.

TERRENCE M. WARNER

Providing services on behalf of a Professional Corporation
Partner

Miller Thomson LLP
2700 Commerce Place
10155 - 102 Street
Edmonton, Alberta T5J 4G8
Direct Line: +1 780.429.9727
Fax: +1 780.424.5866
Email: twarner@millerthomson.com
millerthomson.com

Connect with us on [LinkedIn](#)
View my [web page](#)



EXHIBIT “4”

**To the First Supplemental Report to the Receiver’s
Second Report to Court
Dated June 28, 2019**

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

SEP 03 2015

FORM 1 (RULE 3-1 (1))

S-157262
No.
Vancouver Registry



In the Supreme Court of British Columbia

Between

WESTPOINT CAPITAL CORPORATION

Plaintiff

and

TIMOTHY J. LACK, RONALD A. HATCH,
LUNNY ATMORE LLP, and
INTEGRUM LAW CORPORATION

Defendants

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (a) serve a copy of the filed response to civil claim on the plaintiff(s).

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (a) serve a copy of the filed response to civil claim and counterclaim on the plaintiff(s) and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

1. The plaintiff, Westpoint Capital Corporation ("**Westpoint**") is an extra-provincial company duly incorporated pursuant to the laws of the province of Alberta. Westpoint has an assumed name in British Columbia of WCC Westpoint Capital Corporation.
2. The defendant, Timothy J. Lack ("**Lack**") is a lawyer with an address of 900 – 900 West Hastings Street, Vancouver, B.C., V6C 1E5.
3. The defendant, Ronald A. Hatch ("**Hatch**") is a lawyer with an address of 1401 – 808 Nelson Street, Vancouver, B.C., V6Z 2H2.
4. The defendant, Lunny Atmore LLP is a law firm (the "**Law Firm**") with an address of 900 – 900 West Hastings Street, Vancouver, B.C., V6C 1E5.
5. The defendant, Integrum Law Corporation is a law corporation (the "**Law Corp**") with an address at 300 – 1275 West Sixth Ave., Vancouver, B.C., V6H 1A6.
6. At all materials Lack acted under the name of, and on behalf of, the Law Firm. Lack is one of the owners of the Law Firm.

7. At all material times Hatch acted under the name of, and on behalf of, the Law Corp. Hatch is one of the owners of the Law Corp.
8. Westpoint is in the business of lending money to individuals and companies based on equity in real property owned by the applicant borrowers.
9. On or about September 8, 2011, Westpoint made a loan to two individuals (the "**Debtors**") secured by a mortgage on a residential property in Whistler, B.C.
10. That loan went into default and Westpoint sued the Debtors and foreclosed on the Whistler property.
11. Westpoint obtained an order *nisi* on that Whistler property on June 27, 2013 and judgment against the Debtors in the amount of \$423,679.16 as of that date (the "**Judgment**").
12. Hatch was Westpoint's lawyer during that foreclosure proceeding and generally represented Westpoint on litigation matters in British Columbia commencing in or about December 2011.
13. At all material times the Debtors owned or controlled two companies (the "**Companies**"). The Companies held legal title to two properties known as Lot 17 and Lot C in Scotch Creek, near Kamloops, British Columbia (the "**Security Properties**").
14. Between approximately November 2010 and August 2014 Lack was Westpoint's counsel on all mortgage related matters in British Columbia, including but not limited to all mortgage origination business.
15. Lack and Hatch represented Westpoint jointly between at least January 2012 and February 2014 with respect to all legal matters involving Westpoint in British Columbia. Both Lack and Hatch continue to represent Westpoint on some legal matters.

16. At all material times:
- (a) Westpoint had a contract with each of Lack (and the Law Firm) and Hatch (and the Law Corp) with respect to the provision of legal services.
 - (b) Each of Lack and Hatch owed Westpoint a contractual duty and a duty of care to:
 - i) Act as Westpoint's solicitor competently;
 - ii) Adequately protect Westpoint's interests in the matters it was retained for; and
 - iii) To seek, and carry out, all of Westpoint's instructions diligently.
 - (c) Westpoint reasonably relied on Lack and Hatch to adequately protect Westpoint's interests on all legal matters they dealt with on behalf of Westpoint, including but not limited to relying on Lack and Hatch to diligently carry out instructions, obtain instructions from Westpoint when necessary, and to follow up with Westpoint to ensure they received the instructions Lack and Hatch believed they needed in order to protect Westpoint's interests.
17. In or about July 2013, Hatch and Lack were retained by Westpoint to negotiate and implement a forbearance agreement with the Debtors and the Companies (the "**Forbearance Agreement**").
18. Under the Forbearance Agreement Westpoint agreed to forebear the enforcement of the Judgment against the Debtors for a period of time on conditions.
19. On Lack's and Hatch's advice, in consideration for Westpoint agreeing to enter into the Forbearance Agreement, the Companies were to grant Westpoint a collateral mortgage (the "**Mortgage**") over the Security Properties securing at least \$500,000.00. However, the Mortgage itself defines the "Principal Amount" of the Mortgage as including all present and future indebtedness of the Debtors and the Companies to Westpoint.

20. The purpose of the Forbearance Agreement was to give Westpoint the opportunity to use the Security Properties in order to collect all amounts due to it from the Debtors and the Companies.
21. Westpoint reasonably relied on Lack and Hatch to do everything necessary so that Westpoint could receive the full benefit of the Forbearance Agreement and the Mortgage; Lack and Hatch knew or ought to have known that Westpoint was relying on them in that regard.
22. Lack and Hatch were responsible for the drafting of the Forbearance Agreement and the Mortgage documentation related thereto.
23. After they received the Forbearance Agreement and Mortgage documentation, the Debtors and the Companies purported to change parts of the Forbearance Agreement before signing it and returning it, along with the signed Mortgage to Lack on or about September 5, 2013.
24. Neither the Debtors nor the Companies delivered to Lack or Hatch a corporate solicitor's opinion with the Mortgage.
25. Neither Lack nor Hatch contacted the Debtors or the Companies after September 5, 2013 asking for the corporate solicitor's opinion that had originally been requested by Lack or the Law Firm.
26. The proposed changes to the Forbearance Agreement were accepted by Westpoint on September 9, 2013 by way of an email from Westpoint to Hatch with a copy to Lack.
27. At that time Lack and Hatch had express, or in the alternative implied, instructions to file the Mortgage on the Security Properties.
28. In the further alternative, if Lack and/or Hatch did not have express or implied instructions to file the Mortgage at that time, which is not admitted and is specifically denied, then Lack and Hatch had a positive duty to follow up with Westpoint in a timely way, and repeatedly, to obtain the instructions they believed they needed, or to otherwise

act to protect Westpoint's interests, including but not necessarily limited to filing the Mortgage on the Security Properties without delay.

29. Neither Lack nor Hatch filed the Mortgage at the Land Title Office on the Security Properties in September 2013.
30. As at September 2013 there was sufficient equity in the Security Properties to pay all amounts owed to Westpoint by the Debtors and the Companies.
31. On October 24, 2013 a third party filed a second mortgage on the Security Properties for \$4.5 Million (the "**Third Party Mortgage**").
32. Between September 9, 2013 and July 2014, neither Lack nor Hatch:
 - (a) Filed the Mortgage at the Land Title Office on the Security Properties;
 - (b) Communicated with Westpoint with respect to the Mortgage;
 - (c) Communicated with each other with respect to the Mortgage;
 - (d) Sought instructions from Westpoint to file the Mortgage; or
 - (e) Otherwise acted to protect Westpoint's interests with respect to the Mortgage or the Security Properties.
33. In or about July 2014 Westpoint became aware that the Mortgage had not been registered at the Land Title Office on the Security Properties and immediately directed Lack and Hatch to register the Mortgage.
34. The Mortgage was filed at the Land Title Office on the Security Properties in July 2014.
35. Since the Mortgage was filed at the Land Title Office after the Third Party Mortgage, it is behind the Third Party Mortgage in priority. As a result, there is not sufficient equity in the Security Properties for Westpoint to receive any money under the Mortgage.

36. If the Mortgage had been filed in September 2013, as it should have been by Lack or Hatch, the Mortgage would rank in priority to the Third Party Mortgage and Westpoint would have received already, or would in the future receive, all money owed to it under the Forbearance Agreement.
37. At all material times Lack and Hatch each owed Westpoint a duty to exercise all reasonable care, skill, diligence and competence as a solicitor while acting on behalf of Westpoint and to protect Westpoint's interests.
38. Alternatively, it was an implied term of Westpoint's contract with each of Lack (and the Law Firm) and Hatch (and the Law Corp) that they should each exercise all reasonable care, skill, diligence and competence as a solicitor while acting on behalf of Westpoint and to protect Westpoint's interests.
39. Lack breached his duties to Westpoint to exercise reasonable care, skill, diligence and competence. Particulars of those breaches include:
 - (a) Failing or refusing to adequately protect Westpoint's interests;
 - (b) Failing or refusing to file the Mortgage in September 2013 in accordance with the express or implied instructions he had received;
 - (c) Or in the alternative, failing to follow up with Westpoint to ensure that he received the instructions he believed he needed to file the Mortgage; and
 - (d) Such other particulars as become known and are identified before trial.
40. In the alternative, Hatch breached his duties to Westpoint to exercise reasonable care, skill, diligence and competence. Particulars of those breaches include:
 - (a) Failing or refusing to adequately protect Westpoint's interests;
 - (b) Failing or refusing file the Mortgage in September 2013 in accordance with the express or implied instructions he had received;

- (c) In the alternative, failing or refusing to ensure that the Mortgage was filed in September 2013, including but not limited to failing or refusing to follow up with Westpoint or Lack and ensure that Lack received the instructions Lack believed he needed to file the Mortgage; and
 - (d) Such other particulars as become known and are identified before trial.
41. By reason of Lack's, or in the alternative Hatch's, negligence and breach of contract Westpoint has suffered losses and damages including but not limited to the amount owed to Westpoint under the Mortgage, including all amounts owed to Westpoint under the Forbearance Agreement, and amounts related to the Third Party Mortgage.
 42. Westpoint has not recovered all or any portion of the Judgment or money owed to it under the Mortgage and has thereby lost the use of that money to lend to other borrowers.
 43. If Westpoint had received the amount owed under the Judgment or the Mortgage, it would have lent that money to another party and earned interest at a rate substantially higher than the interest rates under the *Court Order Interest Act* (BC). Westpoint specifically pleads ss.1 and 8 of the *Court Order Interest Act* (BC).
 44. The amount currently owed by the Debtors and Companies to Westpoint under the Forbearance Agreement, and therefore the Mortgage, is in excess of \$700,000.00.
 45. At all material times Lack and Hatch were the actual or ostensible agent of the Law Firm and Law Corp, respectively, and as such, the Law Firm and Law Corp are vicariously liable for their negligence.
 46. The Defendants, and each of them, are jointly and severally liable for the losses and damages suffered by Westpoint.

Part 2: RELIEF SOUGHT

1. The Plaintiff claims special and general damages for negligence, or in the alternative, breach of contract.

2. Interest pursuant ss. 1 and 8 of the *Court Order Interest Act* (BC), or in the alternative, regular pre and post judgment interest under the *Court Order Interest Act*.
3. Costs.
4. Such other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

1. Westpoint repeats paragraphs 1 to 46 of Part 1 herein.
2. Lack, Hatch, the Law Firm, and the Law Corp had contracts with Westpoint (the "Contracts").
3. Lack and Hatch each owed duties to Westpoint.
4. At all material times Westpoint reasonably relied on Lack and Hatch to fulfil their duties and the Contracts.
5. Lack, or in the alternative Hatch, or in the further alternative both, failed or refused to fulfil their duties to Westpoint and provided inadequate and negligent advice and service to Westpoint (the "Failures").
6. The Failures constituted breaches of the Contracts.
7. But for the Failures, Westpoint could have used the Mortgage to receive all, or in the alternative most, of the money due to it under the Forbearance Agreement.
8. As a result of the Failures, Westpoint has suffered, and continues to suffer, damages, including but not limited to those related to dealing with the Third Party Mortgage. All of the damages suffered by Westpoint were reasonably foreseeable by the defendants at all material times.
9. The Law Firm is vicariously liable for Lack's negligence and breach of contract.
10. The Law Corp is vicariously liable for Hatch's negligence and breach of contract.

11. The Defendants are jointly and severally liable for the damages Westpoint has suffered.

Plaintiff's address for service: Owen Bird Law Corporation
P.O. Box 49130
Three Bentall Centre
2900-595 Burrard Street
Vancouver, BC V7X 1J5
(Attention: Michael F. Robson)

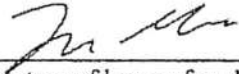
Fax number address for service (if any): (604) 632-4468

E-mail address for service (if any): n/a

Place of trial: Vancouver, BC

The address of the registry is: Law Courts,
800 Smithe Street,
Vancouver, BC V6Z 2E1

Date: September 3, 2015



Signature of lawyer for plaintiff
Michael F. Robson

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a professional negligence claim, or in the alternative a breach of contract claim, against lawyers and their law firms.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c.79

Legal Profession Act, S.B.C. 1998, c.9

Code of Professional Conduct for British Columbia (the BC Code)

EXHIBIT “5”

**To the First Supplemental Report to the Receiver’s
Second Report to Court
Dated June 28, 2019**

Lewis, David

From: Warner, Terry <twarner@millerthomson.com>
Sent: June 26, 2019 10:50 AM
To: Martin Sennott
Cc: Lewis, David
Subject: [EXT] Westpoint Capital Corporation v. Timothy J. Lack, Ronald A. Hatch, Lunny Atmore LLP and Integrum Law Corporation [MTDMS-Legal.FID8371618]

Further to our recent telephone discussion, you are authorized to take such steps as appear necessary to resolve the captioned matter. As indicated in our discussion, the Responses to the Civil Claim seem weak on their face. IN the Lunny Atmore LLP Response, there are two paragraphs that are of concern, as follows:

5. When the Plaintiff confirmed agreement to the Defendant Hatch as to the changed terms of the Forbearance Agreement on September 9, 2013, Lunny Atmore promptly and within ninety minutes sought by email to Matt Oberle, the relevant official and principal of the Plaintiff involved in the matter, instructions from the Plaintiff to register the Mortgage.
6. The Plaintiff, contrary to the thrust of the allegations contained in the notice of civil claim, never provided such instructions to Lunny Atmore to register the Mortgage at that time. It was not until July 2014 that Lunny Atmore was first instructed by the Plaintiff to register the Mortgage.

Please advise as to the merits of this defence.

As discussed, there is some indication that liability has been acknowledged, notwithstanding the Responses, and accordingly, we authorize you on behalf of BDO to approach insurer's counsel to see if there is a basis to resolve this matter by settlement. The quantum should be straightforward as that was set by the sale in the foreclosure proceedings.

TERRENCE M. WARNER

Providing services on behalf of a Professional Corporation
Partner

Miller Thomson LLP
2700 Commerce Place
10155 - 102 Street
Edmonton, Alberta T5J 4G8
Direct Line: +1 780.429.9727
Fax: +1 780.424.5866
Email: twarner@millerthomson.com
millerthomson.com

Connect with us on [LinkedIn](#)
View my [web page](#)



Please consider the environment before printing this email.

You can [subscribe](#) to Miller Thomson's free electronic communications, or [unsubscribe](#) at any time.

CONFIDENTIALITY: This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone

EXHIBIT “6”

**To the First Supplemental Report to the Receiver’s
Second Report to Court
Dated June 28, 2019**

Lewis, David

Subject: [EXT] House & Castle Construction Ltd. Beach Grove Properties Ltd. David Nicholas Broderick v. Westpoint Capital Corporation with an assumed name of WCC Westpoint Capital Corporation and Kevin Love [MTDMS-Legal.FID8079361]

From: Warner, Terry
Sent: Wednesday, June 26, 2019 10:27 AM
To: 'Martin Sennott' <msennott@boughtonlaw.com>
Subject: House & Castle Construction Ltd. Beach Grove Properties Ltd. David Nicholas Broderick v. Westpoint Capital Corporation with an assumed name of WCC Westpoint Capital Corporation and Kevin Love [MTDMS-Legal.FID8248665]

As discussed in our recent telephone discussion, you are authorized to proceed to resolve the captioned litigation matter.

As discussed, the Receiver is desirous of exploring settlement of the matter, and in that regard requires an appraisal of the house in which the Plaintiff is residing and the various lots at issue, some of which have structures on site in various stages of completion. There has been some suggestion that the Plaintiff may not be entirely cooperative, but perhaps the approach is to contact his current counsel and advise the Receiver is assessing its position, and is interested in engaging in settlement discussions to avoid the professional fees that would be incurred if the litigation were to proceed, but before any decisions can be made in that regard and as a result of the Receiver's duty to the court, the Receiver requires an appraisal to be completed, and the Plaintiff's cooperation would be appreciated.

On that note, the Receivership Order contains general language that requires the Plaintiff to cooperate, and it is possible to get a court order requiring the cooperation, if necessary, but we hope that will not be necessary.

If there is no interest in settling, you are authorized to proceed as required to get this matter resolved. If you are able, an brief overview of the litigation and its merits would be appreciated.

TERRENCE M. WARNER

Providing services on behalf of a Professional Corporation
Partner

Miller Thomson LLP
2700 Commerce Place
10155 - 102 Street
Edmonton, Alberta T5J 4G8
Direct Line: +1 780.429.9727
Fax: +1 780.424.5866
Email: twarner@millerthomson.com
millerthomson.com

Connect with us on [LinkedIn](#)
View my [web page](#)



Please consider the environment before printing this email.

You can [subscribe](#) to Miller Thomson's free electronic communications, or [unsubscribe](#) at any time.