

Clerk's Stamp

COURT FILE NUMBER 1201-13772
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE
RECEIVERSHIP OF
POYNT CORPORATION

DOCUMENT **FIRST REPORT OF THE RECEIVER,
HARDIE & KELLY INC.
JANUARY 4, 2013**

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**FIRST REPORT OF THE RECEIVER
HARDIE & KELLY INC.
JANUARY 4, 2013**

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INTRODUCTION

1. On July 5, 2012, Poynt Corporation (“Poynt” or the “Company”) filed a Notice of Intention to Make a Proposal (the “NOI Proceedings”) pursuant to the *Bankruptcy & Insolvency Act* (the “BIA”). Hardie & Kelly Inc. consented to act as trustee (the “Trustee”).
2. During the course of the NOI Proceedings, several extensions of the initial Stay of Proceedings (the “Stay”) were granted. On October 15, 2012, the Court of Queen’s Bench of Alberta (the “Court”) granted an Order:
 - a. Establishing a further extension of the Stay through to November 26, 2012; and
 - b. Approving a further \$1 Million of interim financing (the “O2O Financing”) to be funded by O2O Corporation (“O2O”).
3. O2O subsequently advised the Company that it was no longer prepared to advance funds for the O2O Financing under the terms and conditions that were previously approved by the Court.
4. Absent the O2O Financing, Poynt was effectively out of funds with a growing amount of unpaid post-filing obligations. The Trustee was of the opinion that this represented a material adverse change in the cash-flow and financial circumstances of the Company giving rise to a requirement for the Trustee to file a report with the Office of the Superintendent of Bankruptcy pursuant to S.50.4(7)(b)(i) of the BIA. The Trustee therefore filed its Material Adverse Change Report in the NOI Proceedings on October 25, 2012.
5. The Trustee was also of the opinion that the creditors as a whole would have been materially prejudiced had the Stay remained in place in these circumstances. Consequently, the Trustee made an application to Court to terminate the Stay pursuant to S.50.4(11)(d) of the BIA. On October 31, 2012, the Court terminated the Stay resulting in the Company being deemed to have made an assignment into bankruptcy.
6. On October 31, 2012 (the “Receivership Date”), Intertainment Media Inc. (“Intertainment”), the largest secured creditor, also made application to Court pursuant to their security (the “Intertainment Security”) and were granted an Order (the “Receivership Order”) appointing Hardie & Kelly Inc. (the “Receiver”) as Receiver over the property, assets and undertakings of Poynt.

7. The purpose of this report (the “First Report”) is to advise the Court of:
- a. The activities of the Receiver since the Receivership Date;
 - b. The results of the Sales Process Procedures (the “SSP”) undertaken by the Receiver as provided for by Paragraph 3(k) and Schedule “B” of the Receivership Order;
 - c. The extent of the creditors' claims against Poynt;
 - d. The receipts and disbursements of the Receiver since the Receivership Date; and
 - e. The Receiver’s recommendation in respect to the sale of substantially all of the Company’s assets.

TERMS OF REFERENCE

8. In preparing this First Report, the Receiver has relied upon unaudited financial information, records of the Company and discussions with the Company’s former management (“Management”) and former employees. The Receiver has not performed an audit, review or other verification of such information.

BUSINESS OPERATION

9. By way of background, Poynt’s principal line of business and its most significant asset is a location-aware mobile search tool and display advertising application (the “Poynt Application”). The Company’s GPS-enabled mobile local search and advertising platform connects consumers looking to buy or acquire products or services to local offers, businesses, events, restaurants, movie theatres, gas prices and weather information. The Poynt Application also displays advertising to users performing local queries. Its revenue model is based on user queries, page views and transactions within the platform. Each user query generates several page views, which are monetized through display advertising and sponsored listings paid for by advertisers.

ACTIVITIES OF THE RECEIVER

Security

10. The Receiver attended at the offices of Poynt, in Calgary, Alberta, (the “Premises”) immediately after the granting of the Receivership Order. With the cooperation of Management, the Receiver made arrangements to control access to the Premises.

11. The Receiver arranged for the continuation of Poynt's existing insurance coverage with the exception of the Directors and Officer Liability Insurance policy which was scheduled to lapse on December 14, 2012. The Receiver wrote to the known former Directors and Officers to advise that the Receiver did not propose to maintain this form of coverage but provided the contact information of the responsible insurance broker to those individuals that may be affected in the event they wished to attempt to make independent arrangements to maintain this form of coverage.

Employees

12. On the morning of November 1, 2012, the Receiver convened a meeting at the Premises attended by almost all of the 28 employees who were still employed by the Company as at the Receivership Date at which time the Receiver advised those individuals of the following:
 - a. That the employment of all employees was terminated as of October 31, 2012 with written confirmation of same to follow;
 - b. That over the next few days, the Receiver intended to approach certain former employees with offers to temporarily assist the Receiver on an as-needed basis to maintain the operation of the Poynt Application, invoice customers, collect accounts receivable, update certain accounting records including T4s and Records of Employment and support the Receiver's marketing of the Company's assets as necessary; and
 - c. That former employees were permitted to advance claims under the *Wage Earner Protection Program Act* and an initial explanation of the process involved was provided with advice that the written materials necessary to file a claim would be forwarded to employees in due course.
13. Based on discussions with Management, certain former employees and Intertainment (in its capacity as the largest creditor), the Receiver engaged ten former employees to initially assist the Receiver. However, this number was subsequently reduced to five after certain initial activities were attended to.

Bank Accounts

14. The Receiver identified several bank accounts held in the name of Poynt in both Canada and the United States and arrangements were made for the accounts to be frozen with the residual funds being paid to the Receiver.

Accounts Receivable

15. With the assistance of a former employee the Receiver continues to collect accounts receivable as well as issue new billings in respect of revenue generated from the use of the Poynt Application subsequent to the Receivership Date.

Office Furniture and Equipment

16. The Receiver arranged for an inventory of the computer equipment and office furniture located at the Premises to be prepared. Three auction companies were contacted and invited to submit offers for these assets. Given its quality and nature, none of the auction companies was prepared to submit an offer for the office furniture. All of the auction companies advised the Receiver that the cost of disassembling and moving the office furniture was prohibitive. However, two of the auction companies were still prepared to submit offers for the computer equipment.
17. A former employee of Poynt also submitted an unsolicited offer to purchase the computer equipment for a purchase price of \$40,020. The Receiver ultimately accepted this offer and closed this sale of the computer equipment based on the following considerations:
 - a. The offer from the former employee was the highest of those received;
 - b. As the continued operation of the Poynt Application could be maintained off-site, the Receiver wished to vacate the Premises by November 30, 2012 in order to avoid incurring the cost of rent. The former employee committed to remove the computer equipment from the Premises by that date;
 - c. Given the relatively nominal value of the offers received, the Receiver deemed it would not be cost effective to incur additional costs to undertake an independent marketing process for only the computer equipment;

- d. Paragraph 3(l) of the Receivership Order provides for the Receiver to sell assets without approval of the Court provided each transaction does not exceed \$100,000 and that the aggregate for such transactions does not exceed \$300,000; and
 - e. The two principal secured creditors, Gris Gris, LLC and Intertainment were advised of the Receiver's intention and in the circumstances neither was opposed to the Receiver accepting the offer from the former employee.
18. The Receiver ultimately had to pay a nominal amount to have the office furniture removed from the Premises.

Intangible Assets

19. The Receiver has been working with Poynt's patent lawyers in the United States, Sunstein Kann Murphy & Timbers LLP ("Sunstein"), to ensure that all necessary ongoing patent related applications and extensions are attended to with a view to ultimately preserving value in the Poynt Application.
20. The Receiver continues to retain certain former employees with a view to maintaining the ongoing operation of the Poynt Application through to the closing of a sales transaction.
21. The Receiver has made arrangements to maintain ongoing data feeds with most of Poynt's previous suppliers of data which is necessary to provide users of the Poynt Application with current information in response to their searches.
22. In accordance with the SSP, the Receiver published advertisements in each of the National Post and Globe and Mail advertising the sale of the Company's right, title and interest in the following assets (collectively referred to as the "Assets"):
- a. The Poynt Application including the necessary programs, source code user base and domains related thereto;
 - b. Intellectual property;
 - c. Trademarks;
 - d. Poynt China Joint Venture; and
 - e. Poynt/Times India Agreements.
23. The Receiver also posted notice of the opportunity on the Receiver's website.

24. The SSP specified that interested parties provide the Receiver with an executed Non-Disclosure Agreement (“NDA”) prior to being provided with additional detailed information in respect of the Assets.
25. Upon submitting an executed NDA, interested parties were provided with the details necessary to access an electronic data room established by the Receiver containing additional information including but not limited to:
 - a. Listings of all known agreements, intellectual property, domains, SSL certificates and material contracts;
 - b. Known legal proceedings;
 - c. Poynt/Times India documentation; and
 - d. Poynt China Joint Venture documentation.
26. The Receiver also made arrangements to have certain former employees available to speak with interested parties who were seeking additional technical information with respect to the operation of the Poynt Application.
27. The deadline for offers initially established by the SSP was November 27, 2012 (the “Initial Bid Deadline”). However, several interested parties located in the United States inquired as to the possibility of an extension of the Initial Bid Deadline in light of their observance of the United States Thanksgiving Day holiday weekend. The Receiver deemed a brief extension would be in the best of interest of all stakeholders. Consequently, the Receiver advised all interested parties that the SSP bid deadline was being extended to November 29, 2012 (the “Extended Bid Deadline”) and that pursuant to paragraph 13 of the SSP any bids received by the Extended Bid Deadline shall be deemed to be compliant with the terms of the SSP.
28. As a result of the marketing process undertaken by the Receiver pursuant to the SSP, 16 interested parties provided the Receiver with an executed NDA. All of these interested parties were then provided access to the electronic data room.
29. Four of these interested parties ultimately submitted offers to the Receiver by the Extended Bid Deadline. After seeking further clarification in respect of the terms of certain of the offers, the Receiver ultimately accepted the offer submitted by Intertainment (the “Intertainment Offer”) for all of the Assets subject to the approval of this Honourable Court.

30. The details of all four offers received and an overall analysis of same will be contained in the Receiver's Confidential Supplemental Report (the "First Confidential Report"). The Receiver is concerned that in the event the pending sale to Intertainment does not close for any reason, the disclosure of the respective details of the offers may affect the Receiver's efforts to remarket the Assets. The Receiver will be seeking the Court's approval to have the First Confidential Report sealed.

CREDITORS

31. As of the Receivership Date, the Company had in excess of \$10 Million of debt which is discussed in further detail below.
32. During the course of the NOI Proceedings the following priorities were established by way of Orders of the Court:
 - a. Administration Charge in the amount of \$200,000;
 - b. Second DIP Lender's Charge in favour of Gris Gris, LLC currently at an amount estimated to range between \$350,000 and \$400,000;
 - c. The Intertainment Security currently at an amount of approximately \$1.7 Million; and
 - d. The Initial Dip Lender's Charge, the Third Dip Lender's Charge and the Fourth DIP Lender's Charge advanced from multiple lenders totalling approximately \$450,000 ranking *pari passu* with one another.
33. In addition to the above, the following priority claims (which would all rank in priority to unsecured creditors) have been advanced since the commencement of the Receivership Proceedings:
 - a. Canada Revenue Agency has filed a deemed trust claim on account of unremitted employee withholdings in an amount of approximately \$129,000;
 - b. Employee claims for unpaid wages pursuant to S.81.4 of the BIA estimated at this time to total approximately \$57,000; and
 - c. Sunstein has advanced a secured claim in the amount of approximately \$147,000 claiming an attorney's lien in respect of Poynt's patents and patent applications.

34. In addition to the above, the statement of affairs prepared from the books and records of the Company as part of the bankruptcy proceedings listed 204 unsecured creditors totaling approximately \$7.5 Million.
35. The Receiver is in possession of an independent legal opinion confirming the validity and enforceability of the Intertainment Security.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

36. A copy of the Receiver's Statement of Receipts and Disbursements is attached as Appendix "A" indicating that the Receiver maintained approximately \$12,600 in its trust account as of December 31, 2012. It should be noted that this figure excludes the amount of the deposit paid by Intertainment towards the purchase price of the Assets.
37. Upon the closing of the sale to Intertainment, the Receiver intends to initially pay certain priority claims from the proceeds of the sale of the Assets identified as follows:
 - a. All amounts owing under the Administration Charge granted by this Court in the NOI Proceedings;
 - b. All amounts found owing under the Second DIP Lender's Charge in favour of Gris Gris, LLC granted by this Court in the NOI Proceedings;
 - c. The deemed trust claim advanced by Canada Revenue Agency on account of unremitted employee withholdings;
 - d. All statutory priority amounts owing to employees of Poynt;
 - e. The Receiver's Borrowing Charge granted by this Court in the within action;
 - f. All amounts owing under the Receiver's Charge in respect of accrued expenses and obligations incurred to date with respect to the administration of the receivership; and
 - g. Any and all other priority amounts owing by Poynt under any statute or for applicable taxes or levies.

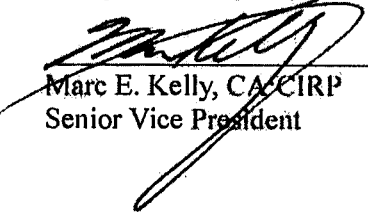
RECOMMENDATIONS

38. The Receiver is seeking approval of and recommends to this Honourable Court the approval of the Intertainment Offer for the reasons set out herein and in the First Confidential Report.
39. The Receiver recommends that the First Confidential Report be ordered sealed for purposes of maintaining the integrity of the sales process in the event the contemplated sale to Intertainment does not close for any reason.

All of which is respectfully submitted this 4th day of January 2013.

Hardie & Kelly Inc., in its capacity
as Receiver of Poynt Corporation
and not in its personal capacity

Per:



Marc E. Kelly, CA, CIRP
Senior Vice President

APPENDIX “A”

Poynt Corporation, in receivership
Statement of Receipts and Disbursements
as at December 31, 2012

Receipts

Accounts receivable	\$ 60,503.58
Interim financing	51,987.25
Sale of assets	40,020.00
Cash on hand	14,104.21
GST collected	2,592.50
Miscellaneous refunds	1,173.55
Interest	5.61

170,386.70

Disbursements

Data feed - West World	39,358.79
Consulting fees	33,167.00
Data feed - Gas Buddy	17,484.89
Post-receivership wages	16,419.04
Q9 hosting	11,745.00
Court directed advertisement - Globe and Mail	7,632.00
Moving and storage	6,197.83
Data feed - White Pages	5,102.50
Insurance	4,516.67
Court directed advertisement - National Post	3,506.40
Patent applications	3,269.34
GST paid	2,143.03
Electronic data room	2,000.00
Back-up systems	1,199.96
Web services	1,866.96
Utilities	1,274.00
Miscellaneous	888.27

157,771.68

\$ 12,615.02