



No. VLC-S-S-196066
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
CANADIAN IMPERIAL BANK OF COMMERCE**

Plaintiff

– and –

VINCO HOLDINGS LTD. AND WATERWAY HOUSEBOATS LTD.

Defendants

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE RECEIVERSHIP OF
VINCO HOLDINGS LTD. AND WATERWAY HOUSEBOATS LTD.**

**THIRD REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA INC.**

AUGUST 4, 2020



ALVAREZ & MARSAL

TABLE OF CONTENTS

	<u>Page</u>
1.0 INTRODUCTION.....	- 2 -
2.0 PURPOSE OF REPORT	- 3 -
3.0 RECEIVER'S ACTIVITIES.....	- 3 -
4.0 UPDATE ON THE SALES PROCESS	- 4 -
5.0 RESIDUAL PROPERTIES AND POTENTIAL RECOVERIES	- 6 -
6.0 STATUS OF PRIORITY CLAIMS	- 7 -
7.0 RECEIVER'S INTERIM STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS	- 7 -
8.0 PROFESSIONAL FEES	- 9 -
9.0 INTERIM DISTRIBUTION	- 10 -
10.0 RECEIVER'S RECOMMENDATION	- 11 -

APPENDICES

Appendix A – Receiver's Fees and Hours by Staff Classification and Statement of Account

Appendix B – Statements of Account for the Receiver's Legal Counsel

1.0 INTRODUCTION

- 1.1 On June 11, 2019 (the **"Receivership Date"**), upon application of the Canadian Imperial Bank of Commerce (**"CIBC"**), Alvarez & Marsal Canada Inc. was appointed as Receiver (the **"Receiver"**) pursuant to an order (the **"Receivership Order"**) granted by the Honourable Justice Bundrett in respect of all the assets, undertakings and property of Vinco Holdings Ltd. (**"VHL"**) and Waterway Houseboats Ltd. (**"WHL"**) (collectively, **"Vinco"** or the **"Company"**). This matter is hereinafter referred to more generally as, the **"Receivership Proceedings"**.
- 1.2 On December 5, 2019, the Receiver filed an application for an order approving the sale of the movable property of the Company including the houseboats, pleasure and service crafts, equipment, vehicles and portable buildings (collectively, the **"Chattels"**) to Able Solutions Inc., which was to be heard on December 16, 2019 (the **"December 16 Hearing"**). Subsequently, on December 16, 2019, Checkpoint Developments Ltd. (**"Checkpoint"**) submitted an offer totaling \$2.6 million for the 16-acre waterfront property (the **"Mervyn Road Property"**) and Chattels (the **"Checkpoint Offer"**), and the December 16 Hearing was adjourned to December 20, 2019.
- 1.3 On December 20, 2019, this Honourable Court granted an order approving the sale of the Chattels and the Mervyn Road Property to Checkpoint (the **"Checkpoint SAVO"**) for a purchase price totaling \$2.6 million. Of the \$2.6 million purchase price, \$600,000 was allocated to the purchase of the Chattels and \$2.0 million was allocated to the purchase of the Mervyn Road Property.
- 1.4 Concurrent with this third report of the Receiver (the **"Third Report"**), the Receiver is filing an application for an order (the **"Interim Distribution Order"**) seeking the following:
- a) approval of the Receiver's activities since the first report of the Receiver dated December 4, 2019 (the **"First Report"**);
 - b) approval of the Receiver's fees and disbursements and those of its legal counsel; and
 - c) approval and authorization for the Receiver to make an interim distribution to CIBC (the **"Interim Distribution"**).

- 1.5 Further information regarding the Receivership Proceedings including a copy of the Receivership Order, is posted on the Receiver's website www.alvarezandmarsal.com/waterway (the "Receiver's Website").
- 1.6 Capitalized terms not defined in this Third Report are as defined in the Receivership Order.
- 1.7 All references to dollars in this Third Report are in Canadian currency unless otherwise noted.

2.0 PURPOSE OF REPORT

- 2.1 The purpose of this Third Report is to provide this Honourable Court with information with respect to the following:
- a) an update on the activities of the Receiver since the First Report;
 - b) an update on the sales process;
 - c) an update on the residual properties and potential recoveries;
 - d) an update on the Court of Appeal proceedings;
 - e) an update on the status of priority claims;
 - f) the Receiver's interim statement of receipts and disbursements for the period June 11, 2019 to June 19, 2020;
 - g) the Receiver and its legal counsel's fees and disbursements; and
 - h) the Receiver's proposed interim distribution to CIBC.

3.0 RECEIVER'S ACTIVITIES

- 3.1 Since the First Report, the Monitor's activities have included, but have not been limited to, the following:
- a) conducting ongoing discussions, meetings and communications with CIBC, other key stakeholders and creditors;
 - b) maintaining ongoing communications with the litigation counsel, Rush Ihas Hardwick LLP ("Rush"), regarding the status of the Court of Appeal proceedings further described in the First Report, and consulting with the Receiver's legal counsel, Gowling WLG (Canada) LLP ("Gowlings"), and updating CIBC of same;
 - c) attending to various communications with Checkpoint and its counsel, CIBC and Gowlings, among others to advance and close the sale transaction approved in the Checkpoint SAVO;

- d) coordinating activities to transfer assets to Checkpoint including, but not limited to, closing and/or transferring utilities accounts, arranging transportation and storage of books and records; and providing documentation to ensure timely transfer of right, title and interest in the assets of the Company to Checkpoint;
- e) providing direction to Colliers International ("**Colliers**") on the continued marketing of the residual assets of the Company located at 1272 Titus Road, Sicamous, B.C. (the "**Titus Property**") and 1265 Monashee Frontage Road, Sicamous, B.C. (the "**Monashee Property**") (together, the "**Residual Properties**");
- f) collecting rent and communicating with the tenant, 1937 Enterprises Inc. ("**1937**"), who continues to lease the building located on the Monashee Property;
- g) communicating with the Receiver's independent contractor on various site matters and receiving site monitoring updates on the Residual Properties;
- h) responding to enquiries from the former third-party houseboat owners (the "**Boat Owners**") that had contracted with Vinco to rent and maintain a fleet of 49 houseboats owned by the Boat Owners, which were subsequently released to the Boat Owners during the Receivership Proceedings;
- i) reviewing invoices, making necessary payments and maintaining a ledger of cash receipts and disbursements;
- j) repaying the Receiver's borrowing of \$100,000 plus interest to CIBC; and
- k) communicating with the Canada Revenue Agency, Minister of Finance and other regulatory bodies and fulfilling various statutory regulatory requirements.

4.0 UPDATE ON THE SALES PROCESS

- 4.1 In July 2019, the Receiver commenced marketing of the assets of the Company and undertook a sales process to solicit offers for the Mervyn Road Property and Chattels of the Company, which is further described in the First Report and second report of the Receiver dated December 19, 2019. On or before the bid deadline on November 20, 2019, the Receiver received twenty offers for the various assets and subsequently filed an application to be heard on December 16, 2019 (the "**December 16 Hearing**") to seek Court approval of two offers totalling \$2.575 million and comprised of the following:

- a) a \$2.0 million conditional offer for the Mervyn Road Property that was submitted by the District of Sicamous Development Corporation and subject to a number of conditions being lifted by January 9, 2020; and
- b) a \$575,000 net minimum guarantee offer on the Chattels from Able Solutions Inc.

4.2 On December 13, 2019, prior to the December 16 Hearing, Checkpoint submitted to the Receiver a verbal offer of \$2.6 million for the Mervyn Road Property and Chattels. Given the timing of the Checkpoint Offer, the Receiver, in consultation with its legal counsel and CIBC, sought an adjournment of the December 16 Hearing to allow the Receiver to evaluate and negotiate the offers with the various bidders. Following discussion with the various stakeholders, the sales process resulted in the Checkpoint SAVO being granted by this Honourable Court pursuant to which, the Receiver closed the sale transaction of the Mervyn Road Property and Chattels on March 11, 2020 (the “Closing Date”). Subsequent to the Checkpoint SAVO being granted, the Receiver undertook the following activities to advance and conclude the transaction by the Closing Date:

- a) attend to correspondence and meetings with the Receiver’s legal counsel, CIBC, and Checkpoint and its legal counsel to discuss various matters relating to the sale;
- b) provide access to site for consultants retained by Checkpoint;
- c) inform the insurance provider, utilities vendors and other stakeholders of the sale of the Mervyn Road Property and coordinate closure and/or transfer of accounts to Checkpoint;
- d) attend to correspondence with the District of Sicamous and other regulators to coordinate payment of applicable taxes;
- e) arrange, by and through the Receiver’s legal counsel, transfer of the right, title and interest in the Mervyn Road Property and Chattels to Checkpoint; and
- f) coordinate the transfer of certain of the books and records to Checkpoint while ensuring alignment to the requirements of the Personal Information Protection and Documents Act and Personal Information Protection Act.

5.0 RESIDUAL PROPERTIES AND POTENTIAL RECOVERIES

Residual Properties

- 5.1 Colliers, under the direction of the Receiver and in consultation with CIBC, commenced marketing of the Titus Property, Monashee Property and Mervyn Road Property in July 2019. Solicitation of offers included direct marketing to Colliers' database of customers as well as posting the Residual Properties on the Multiple Listing Service ("MLS"). To date, there has not been an acceptable offer for the Residual Properties.
- 5.2 The Residual Properties were initially listed on the MLS for a combined sale price of \$995,000. Since then, there have been several separate offers on the Titus Property and Monashee Property and an offer on the combined Residual Properties, none of which were consistent with appraisal values nor acceptable to CIBC. Subsequently, in January 2020, the Receiver, in consultation with CIBC and Colliers, reduced the MLS listing for the Residual Properties to \$895,000.
- 5.3 The Residual Properties are currently being monitored several times a week by an independent contractor and reports are provided to the Receiver on a weekly basis.

Litigation Proceedings

- 5.4 As described in the First Report, the Receiver, in consultation with CIBC and the Receiver's legal counsel, had retained the Company's former litigation counsel, Rush, to appeal the Judgment (as defined in the First Report) (the "Appeal") which had awarded \$2.3 million to the Company and Boat Owners for damages resulting from a flood in 2012.
- 5.5 In preparation for the Court of Appeal hearing held via teleconference from June 17 to 19, 2020, Rush had prepared appellant and respondent factums, which were subject to review and comment by the Receiver and the Receiver's legal counsel, among other things. A decision to the Appeal is expected in the coming months.

6.0 STATUS OF PRIORITY CLAIMS

- 6.1 As at May 26, 2020, outstanding pre-receivership provincial sales taxes (“PST”) totaled approximately \$6,561.28 of which \$3,521.90 relates to VHL and \$3,039.38 relates to WHL. Additionally, of the total \$6,561.28 PST owing to the Minister of Finance (the “**Minister**”), \$3,856.09 relates to penalties and interest. The Receiver has been in contact with the Minister to discuss reducing and/or waiving the penalties and interest; however, it does not appear likely that the penalties or interest will be reduced and/or waived. The Minister confirmed that interest and penalties will not accrue during the period March 23, 2020 to October 23, 2020 in order to provide relief to companies during the pandemic.

7.0 RECEIVER’S INTERIM STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

- 7.1 Since the date of the First Report, the Receiver has been primarily focused on marketing the assets of the Company and completing a sales transaction pursuant to the Checkpoint SAVO, as well as preserving the Residual Properties and managing the Appeal matters.
- 7.2 The Receiver’s interim statement of cash receipts and disbursements for the period June 11, 2019 to June 19, 2020 (the “**June 19 R&D**”) is summarized below:

Vinco Holdings Ltd. and Waterway Houseboats Ltd. - in Receivership
Receiver's Interim Statement of Cash Receipts and Disbursements
For the period June 11, 2019 to June 19, 2020

Receipts

Cash on hand	\$ 22,859
Receiver borrowings	100,000
Collections of accounts receivable	840
Rent	26,000
Sale of chattels	579,940
Sale of real property	1,821,062
Recovery of extension costs related to sale of real property	13,086
Litigation proceeds	297,754
GST/PST collected on sales	3,200
GST refunds	9,952
PST refunds	41
Total receipts	2,874,733

Disbursements

Contractor fees and contract labor	204,838
Insurance	40,645
Utilities and services	35,096
Appraisals	25,845
Property taxes	15,797
Retainer - Rush Ihas	26,178
Receiver borrowings repayment	100,528
Receiver borrowings interest and fees	5,489
Receiver fees and expenses	201,038
Legal fees and expenses - Gowlings	95,024
Legal fees and expenses - Rush Ihas	206,499
GST paid on disbursements	34,316
PST remitted	700
Other disbursements	689
Total disbursements	992,682

Net cash flow **1,882,051**

Closing cash balance **\$ 1,882,051**

7.3 Significant receipts include approximately:

- \$100,000 of Receiver's borrowings that have been subsequently repaid to CIBC;
- \$579,940 of net proceeds from the sale of the Chattels;
- \$1,821,062 of net proceeds from the sale of the Mervyn Road Property; and
- \$297,754 of litigation proceeds awarded to the Company, net of certain legal fees, as a result of the Judgment (as defined in the First Report).

7.4 Disbursements include approximately:

- a) \$204,838 of contractor fees and contract labor to maintain and secure the sites as well as satisfy conditions of the insurance policy;
- b) \$100,528 of repayment of the Receiver's borrowings;
- c) \$201,038 of Receiver fees and disbursements incurred to take possession of, preserve and market the assets;
- d) \$95,024 of legal fees and expenses incurred by the Receiver's legal counsel to consult on matters relating to the preservation and marketing of assets, lease issues and collection of rent, and Court of Appeal factums and those proceedings generally, among other things and attending to a number of Court applications; and
- e) \$206,499 of legal fees and expenses incurred by the litigation counsel to prepare for the Appeal.

7.5 The closing cash balance as at June 19, 2020 was approximately \$1.88 million and excludes potential recoveries that may be expected from the decision to the Appeal and sale of the Residual Properties.

8.0 PROFESSIONAL FEES

8.1 The Receiver previously sought and received Court approval of the Receiver's fees and its legal counsel fees for the period September 30, 2019 for the Receiver, and the period ended August 31, 2019, for the Receiver's legal counsel. The professional fees and disbursements of the Receiver and its legal counsel for which approval is being sought are set out in the table below:

Vinco Holdings Ltd. and Waterway Houseboats Ltd. - in Receivership Summary of Professional Fees for the Receiver and its Legal Counsel						
Firm	Fees	Disbursements	GST	PST	Total	
Alvarez & Marsal Canada Inc.	\$ 76,070	\$ 2,816	\$ 3,944	\$ -	\$ 82,830	
Gowling WLG (Canada) LLP	53,297	1,203	2,714	3,731	60,945	
Rush Hhas Hardwick LLP	156,808	15,299	7,985	10,907	190,998	
Total	\$ 286,175	\$ 19,318	\$ 14,643	\$ 14,638	\$ 334,774	

- 8.2 Attached as **Appendix "A"** is a summary of the Receiver's professional fees by staff classification, hourly rates and total fees for the period October 1, 2019 to April 30, 2020. Total Receiver fees, disbursements and taxes paid as at the date of this Third Report total \$82,830 and include out of pocket disbursements of \$2,816 and taxes of \$3,944. Approximately \$2,590 of Receiver fees and disbursements for the period May 1 to 31, 2020 have been billed but not yet paid.
- 8.3 Attached as **Appendix "B"** is a summary of the legal invoices paid to date. Total fees, disbursements and taxes of the Receiver's legal counsel, Gowlings, that were billed and paid for the period September 1, 2019 to April 30, 2020 total \$60,945 and include \$1,203 of out of pocket disbursements and \$6,445 of taxes. Total fees, disbursements and taxes of the litigation counsel, Rush, billed and paid for the period November 1, 2019 to May 31, 2020 total approximately \$190,998 and include \$15,299 of out of pocket expenses and \$18,891.52 of taxes. A retainer of \$26,178 has been paid to Rush.
- 9.0 INTERIM DISTRIBUTION**
- 9.1 Pursuant to paragraph 12 of the Receivership Order, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of the Receivership Order shall be held by the Receiver to be paid in accordance with the terms of the Receivership Order. Accordingly, the Receiver is seeking an order authorizing the Receiver to make an interim distribution to CIBC in the amount of \$1.5 million as partial payment of the indebtedness owing to CIBC by the Company (the "**Interim Distribution**").
- 9.2 As reflected in the June 19 R&D, the Receiver is holding approximately \$1.88 million in its trust account and expects to recover further proceeds from the following assets:
- a) sale of the Titus Road Property and Monashee Property; and
 - b) award for damages pending a decision on the Appeal anticipated in the coming months.

- 9.3 Should this Honourable Court approve the Interim Distribution, the Receiver will have approximately \$382,051 remaining in its trust account to fund the administration of the estate to its conclusion. The Receiver anticipates that costs to complete the administration of the estate will largely be comprised of professional fees of the Receiver and its legal counsel and the litigation counsel in respect of the litigation proceedings.
- 9.4 Given the uncertainty surrounding the timing and quantum of expected recoveries from the Appeal and the impact of Covid-19 on parties' appetites for purchasing real properties, the Receiver has not provided an estimated total recovery for the residual assets. However, it is expected that following the Interim Distribution, the anticipated recoveries realized on the remaining assets will be sufficient to administer the estate to its conclusion.
- 9.5 Accordingly, the Receiver is respectfully of the view that it should be authorized to make a distribution to CIBC in the amount of \$1.5 million.

10.0 RECEIVER'S RECOMMENDATION

- 10.1 The Receiver respectfully recommends that this Honourable Court approve the following:
- a) the activities of the Receiver;
 - b) the fees and disbursements of the Receiver and its legal counsel; and
 - c) an order granting the Receiver the authority to distribute \$1.5 million to CIBC.

All of which is respectfully submitted to this Honourable Court this 4th day of August 2020.

**Alvarez & Marsal Canada Inc.,
in its capacity as Receiver and Manager
of Waterway Houseboats Ltd. and Vinco Holdings Ltd.**



Per: Anthony Tillman
Senior Vice President

Appendix A

Receiver's Fees and Hours by Staff Classification and Statement of Account

Vinco Holdings Ltd. and Waterway Houseboats Ltd. - in Receivership
Summary of the Receiver's Professional Fees and Disbursements
For the period October 1, 2019 to April 30, 2020

Name	Position	Hourly Rate	Hours	Total Fees
Anthony Tillman	Managing Director	\$ 675	66.20	\$ 44,685.00
Marianna Lee	Senior Associate	325	102.35	33,263.75
Nishant Virmani	Analyst	275	6.80	1,870.00
Monica Cheung	Executive Assistant	175	26.75	4,681.25
			<u>202.10</u>	<u>84,500.00</u>
Discount				(8,430.00)
Disbursements				
Courier and postage				400.57
Creditor hotline				77.58
Advertisements				2,263.00
Website maintenance				<u>75.00</u>
				2,816.15
GST				<u>3,944.30</u>
Total fees, out of pocket expenses and tax				<u><u>\$ 82,830.45</u></u>

VincoHoldings Ltd. and Waterway Houseboats Ltd. - in Receivership
Summary of the Receiver's Statements of Account
For the period October 1, 2019 to April 30, 2020

Invoice Number	Invoice Date	For the Period Ending	Fees	Disbursements	GST	PST	Total
Alvarez & Marsal Canada Inc.							
4	19-Nov-19	October 31, 2019	18,068.75	2,393.13	1,023.09	-	21,484.97
5	13-Jan-20	December 31, 2019	37,793.75	36.71	1,891.52	-	39,721.98
6	18-Feb-20	January 31, 2020	4,780.00	280.06	253.00	-	5,313.06
7	11-Mar-20	February 29, 2020	5,478.75	22.62	275.07	-	5,776.44
8	7-Apr-20	March 31, 2020	7,766.25	83.63	392.49	-	8,242.37
9	7-May-20	April 30, 2020	2,182.50	-	109.13	-	2,291.63
			\$ 76,070.00	\$ 2,816.15	\$ 3,944.30	\$ -	\$ 82,830.45

Appendix B

Statements of Account of the Receiver's Legal Counsel

Vinco Holdings Ltd. and Waterway Houseboats Ltd. - in Receivership
Summary of the Receiver's Legal Counsel's Statement of Account
For the period September 1, 2019 to April 30, 2020

Invoice Number	Invoice Date	For the Period Ending	Fees	Disbursements	GST	PST	Total
Gowling WLG (Canada) LLP							
19248821	30-Sep-19	September 30, 2019	2,642.50	65.37	135.40	184.97	3,028.24
19267328	31-Oct-19	October 31, 2019	2,994.50	1.62	149.81	209.61	3,355.54
19287704	29-Nov-19	November 29, 2019	1,912.50	25.99	96.93	133.87	2,169.29
19317844	31-Dec-19	December 31, 2019	19,648.50	739.83	1,015.42	1,375.39	22,779.14
19345560	19-Feb-20	January 31, 2020	7,840.02	203.71	396.89	548.80	8,989.42
19351946	28-Feb-20	February 28, 2020	6,779.00	0.25	338.96	474.53	7,592.74
19371185	1-Apr-20	March 31, 2020	8,728.00	147.75	441.84	610.96	9,928.55
19386772	29-Apr-20	April 30, 2020	2,752.00	18.72	138.54	192.64	3,101.90
			\$ 53,297.02	\$ 1,203.24	\$ 2,713.79	\$ 3,730.77	\$ 60,944.82

Vinco & Waterway - in Receivership
Summary of the Receiver's Legal Counsel's Statement of Account
For the period November 1, 2019 to May 31, 2020

Invoice Number	Invoice Date	For the Period Ending	Fees	Disbursements	GST	PST	Total
Rush Ihas Hardwick LLP							
	4-Nov-19	November 29, 2019	-	12,393.93	-	-	12,393.93
25913	30-Nov-19	November 29, 2019	22,080.00	835.20	1,145.70	1,545.60	25,606.50
26178	31-Dec-19	December 31, 2019	6,640.00	289.20	346.46	464.80	7,740.46
26421	31-Jan-20	January 31, 2020	10,192.00	885.75	553.89	713.44	12,345.08
26636	29-Feb-20	February 1-29, 2020	14,108.60		705.43	918.05	15,732.08
26857	31-Mar-20	March 1-31, 2020	35,862.50	275.20	1,806.89	2,510.38	40,454.97
26987	30-Apr-20	April 1-30, 2020	45,075.00	386.80	2,271.99	3,155.25	50,889.04
27285	31-May-20	May 31, 2020	22,850.00	232.70	1,154.14	1,599.50	25,836.34
			\$ 156,808.10	\$ 15,298.78	\$ 7,984.50	\$ 10,907.02	\$ 190,998.40