

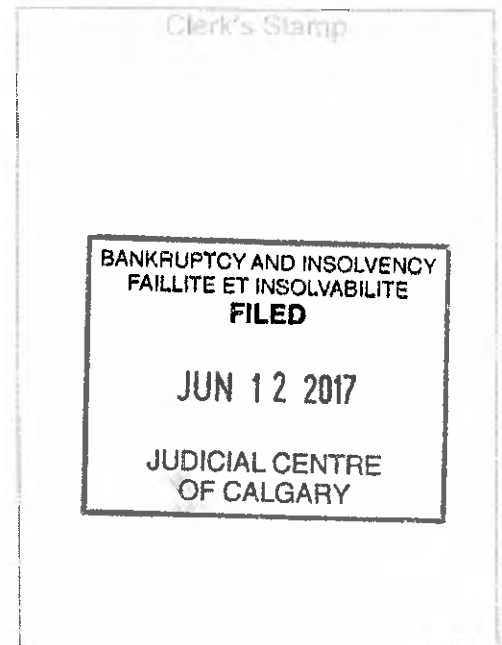
COURT FILE NUMBER 25-094212

COURT COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE
BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, c. B-3, AS
AMENDED

AND IN THE MATTER OF ARRES
CAPITAL INC.



APPLICANT KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, BRIAN
SEKIYA, HOLLY SEKIYA, LINDA JAEGER, STEVE REILLY, LESTER
IKUTA, MICKEY IKUTA, LESTER IKUTA PROFESSIONAL
CORPORATION, ACCESS MORTGAGE CORPORATION (2004) LIMITED,
RAYMOND SCRABA, PAULETTE SCRABA AND 1082144 ALBERTA LTD.

DOCUMENT **AFFIDAVIT OF VERIFICATION OF STATEMENTS IN APPLICATION FOR
BANKRUPTCY ORDER**

ADDRESS Cassels Brock & Blackwell LLP
FOR Suite 1250 Millennium Tower,
SERVICE 440 – 2nd Avenue SW,
AND Calgary, Alberta, T2P 5E9

CONTACT Telephone 403-351-2921
INFORMATIO Facsimile 403-648-1151
N

OF PARTY **Attention: Jeffrey Oliver**

FILING THIS

DOCUMENT

AFFIDAVIT OF DAVID MURPHY

Sworn June 12, 2017

I, DAVID MURPHY, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a director and officer of the Applicant, Access Mortgage Corporation (2004) Limited ("Access") and, as such, have personal knowledge of the matters hereinafter deposed to. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.
2. I am authorized by Access to make this Affidavit on its behalf.

Parties

3. Access is a mortgage investment corporation and is engaged in the business of mortgage lending.
4. Arres Capital Inc. ("**Arres**") was a mortgage brokerage firm and acted as a manager and trustee for investors in various mortgages issued by Arres. Access was an investor in numerous mortgages advanced by Arres to third party borrowers.

Management Agreement

5. On or about August 1, 2004, Access and Arres entered into an agreement (the "**Management Agreement**") whereby Arres would provide Access with brokerage and management services in respect of mortgage loans by Access to third parties (the "**Access Mortgage Loans**"). The Management Agreement provided that Arres would manage and administer the Access Mortgage Loans for and on behalf of Access. Attached hereto and marked as **Exhibit "A"** is a copy of the Management Agreement.
6. Pursuant to the Management Agreement, in exchange for Arres' management services, Arres would be paid a management fee ("**Management Fee**") equal to one third of the net income earned by Access in each fiscal year as calculated pursuant to a formula set out in the Management Agreement ("**Net Income**").
7. The Management Fee was advanced in monthly instalments, in such amounts as approved by Access' Board of Directors. At the end of each fiscal year, the actual Management Fee owing to or from Arres for the preceding fiscal year would be reconciled with the aggregate amount of advances actually paid to Arres by Access.

Access Overpays the Management Fees Owed to Arres

8. From April of 2008 to March of 2009 ("**2009 Fiscal Year**"), Access had advanced and Arres had received instalments totalling \$1,028,879.99.
9. A reconciliation of the Management Fee for the 2009 Fiscal Year revealed that Access had not earned any Net Income. Accordingly, pursuant to the Management Agreement, Arres was not entitled to a Management Fee for the 2009 Fiscal Year.
10. Although Access made a demand for repayment of the \$1,028,879.99 advanced to Arres for the 2009 Fiscal Year, Arres failed to repay that amount.

Summary Judgment Order

11. On March 11, 2011, Access filed a statement of claim in Court of Queen's Bench of Alberta Court File Number 1101-03481 against Arres seeking \$1,028,879.99 in damages for Access' overpayment of management service fees to Arres (the "**Debt Action**").

Attached hereto and marked as **Exhibit "B"** is a copy of the statement of claim in the Debt Action.

12. On May 24, 2013, Access was granted summary judgment against Arres in the sum of \$1,028,879.99, less any amounts that had been paid by Arres to Access ("**Summary Judgment Order**"). A copy of the Summary Judgment Order is attached hereto and marked as **Exhibit "C"**.
13. As of the date of the Summary Judgment Order, Arres had setoff approximately \$12,000 towards the amounts then outstanding. Access accepted this setoff by Arres.
14. On July 8, 2013, Arres appealed the Summary Judgment Order to the Court of Appeal of Alberta.
15. On September 29, 2014, the Court of Appeal of Alberta dismissed Arres' appeal of the Summary Judgment Order.

Arres' Meritless Counterclaim

16. On May 29, 2014, over a year after the Summary Judgment Order was granted, Arres sought leave to file a counterclaim against Access for \$4.7 million in unpaid fees under certain loan administration and trust agreements between Arres and Access. Arres' motion was denied by the Court of Queen's Bench of Alberta on September 25, 2014 by Master Robertson. Attached hereto and marked as **Exhibit "D"** is a copy of Arres' proposed counterclaim.
17. Despite the fact that Arres' motion for leave to file a counterclaim was denied, on December 23, 2014, Arres filed an action against Access for the relief sought in the counterclaim (the "**Arres Counterclaim Action**"). Arres also increased its damages claim to \$5.6 million, approximately \$900,000 more than the \$4.7 million it had claimed in its failed counterclaim in the Debt Action. It is also \$3.8 million more than the \$1.8 million Arres alleged was owed to it by Access in July 2013. Attached hereto and marked as **Exhibit "E"** is a copy of Arres' statement of claim in the Arres Counterclaim Action.
18. A former bookkeeper for Access, Kim Robinson, swore an affidavit on August 8, 2013 in connection with the Debt Action. In that affidavit, Kim Robinson stated that as of October 31, 2012, Arres' accounting records did not reflect any debt owed from Access to Arres. Attached hereto and marked as **Exhibit "F"** is a copy of the August 8, 2013 affidavit of Kim Robinson.
19. On January 16, 2015, Access brought a motion to dismiss the Arres Counterclaim Action.
20. As further discussed below, the parties contemplated staying the Arres Counterclaim Action in connection with an order appointing a receiver over Arres. However, no such

stay was ordered and Arres has failed to take any further steps in the Arres Counterclaim Action.

Arres Has Failed to Pay the Summary Judgment Order

21. Access attempted to enforce the Summary Judgment Order against Arres without success. Although Access seized property purportedly owned by Arres at Arres' office, Arres has filed a notice of objection to such seizure claiming that the seized property does not belong to Arres. The property remains under seizure on a bailee's undertaking. Attached hereto and marked as **Exhibit "G"** is a copy of the Personal Property Registry Search Results for Arres as of June 5, 2017.
22. Access also attempted to garnish Arres' bank account with the Bank of Montreal and the trust accounts of Arres' solicitors without any success.
23. On October 20, 2014, Arres served counsel for Access with a Form 14 - Statutory Declaration – Financial Statement of Debtor (the "**Statutory Declaration**") indicating that Arres has no assets other than approximately \$9.7 million in purported accounts receivable (the "**Purported Accounts Receivable**"). Attached hereto and marked as **Exhibit "H"** is a copy of the statutory declaration.
24. According to Arres, the Purported Accounts Receivable arise from amounts allegedly owed to Arres pursuant to trust agreements or mortgage administration agreements between Arres and various investors.
25. The Purported Accounts Receivable are in dispute because several of the receivables listed in the Statutory Declaration are the subject litigation in the Richcrooks Action, the Fraudulent Preference Action, and the Accounts Receivable Action described below.
26. Moreover, the Statutory Declaration was inaccurate: Arres did not disclose that it had assigned all but \$65,000 of the \$9.7 million in Purported Accounts Receivable to 875892 Alberta Limited and/or Staci Serra, the principal of 875892 Alberta Limited and the spouse of Wesley Serra ("**Serra**"), Arres' principal.
27. Arres also failed to disclose its claim against 1316405 Alberta Inc. for approximately \$100,000 of unpaid mortgage fees (discussed further below).
28. On October 28, 2014, Arres settled a lawsuit in Court of Queen's Bench of Court File Number 0901-12981 whereby approximately \$50,000 that was paid into court in that action was paid to Access and applied to reduce the amount awarded pursuant to the Summary Judgment Order.
29. Arres has otherwise failed to satisfy the Summary Judgment Order.
30. Accordingly, Arres is justly and truly indebted to Access in amount exceeding \$1,000.

Bankruptcy Application

31. On September 8, 2011, Access, along with three other applicants (collectively, the "**Bankruptcy Applicants**"), filed an application for a bankruptcy order as against Arres in the Court of Queen's Bench of Alberta in Bankruptcy and Insolvency Court File Number 25-094212 (the "**Prior Bankruptcy Application**"). Attached hereto and marked as **Exhibit "I"** is a copy of the Prior Bankruptcy Application.
32. On February 12, 2012, Arres filed a notice of dispute application denying any indebtedness to the Bankruptcy Applicants.
33. On April 10, 2012, the Prior Bankruptcy Application was stayed on consent pending Access' motion for Summary Judgment in the Debt Action. Attached hereto and marked as **Exhibit "J"** is a copy of the April 10, 2012 consent order.
34. On December 23, 2013, Access amended its Application for Bankruptcy Order to add additional applicants. Attached hereto and marked as **Exhibit "K"** is a copy of the amended application for bankruptcy order.
35. To date, no further steps have been taken with respect to the Prior Bankruptcy Application.

Receivership Application

36. As a result of Access' unsuccessful efforts to enforce the Summary Judgment Order against Arres, on November 18, 2014, Access brought an application for the appointment of a receiver over Arres' exigible property pursuant to the *Civil Enforcement Act*, R.S.A. 2000, c. C-15, as amended (the "**Receivership Application**"). Attached hereto and marked as **Exhibit "L"** is a copy of the Receivership Notice of Application.
37. On February 13, 2015, the Honourable Madam Justice Strekaf (as she then was) delivered the reasons of the Court on the Receivership Application (the "**Oral Receivership Order**"). Attached hereto and marked as **Exhibit "M"** is a copy of the February 13, 2015 transcript of Justice Strekaf's reasons for decision.
38. Justice Strekaf directed that a receiver be appointed over Arres' exigible property reasoning that "Arres' behaviour has ... raised some potential concerns about the feasibility and prospect of Access being able to realize on its judgment in the absence of a receiver being appointed."
39. Although Justice Strekaf directed the appointment of a receiver over Arres' exigible property, she directed that Access' counsel draft a form of order that would address the identification of Arres' exigible property and payment of the receiver's costs, and confer with counsel for Arres regarding the form of order. If the parties could not agree on the terms of the order, Justice Strekaf advised the parties they could reattend before Her Honour to address those matters.

40. On or about April 22, 2015, counsel for Access and Arres reattended before Justice Strekaf regarding the form of order. Justice Strekaf provided the parties with further directions with respect to the receivership order. Attached hereto and marked as **Exhibit "N"** is a copy of the April 22, 2015 transcript of Justice Strekaf's directions.
41. In the period following the Oral Receivership Order and Justice Strekaf's subsequent directions to the parties, the parties exchanged numerous draft forms of order. However, and despite Access' best efforts, the parties were unable to agree on a form of order.

Additional Actions Commenced by Access Against Arres

42. In addition to the Debt Action, Access has commenced, either on its own or in conjunction with other plaintiffs, three additional actions against Arres related to the malfeasance, oppressive conduct, and conflicts of interest of Arres and/or its principal Serra, in respect of investor funds managed by Arres. These actions are as follows:
 - a. *Richcrooks Enterprises (2000) Ltd. et al v. Arres Capital Inc. et. al.*, Court of Queen's Bench of Alberta Court File Number 1301-10892 (the "**Richcrooks Action**"). Attached hereto and marked as **Exhibit "O"** is a copy of the amended statement of claim in Court File Number 1301-10892;
 - b. *Access Mortgage Corporation (2004) Limited v. Arres Capital Inc. et. al.*, Court of Queen's Bench of Alberta Court File Number 1401-03476 (the "**Fraudulent Preference Action**"). Attached hereto and marked as **Exhibit "P"** is a copy of the statement of claim in Court File Number 1401-03476; and
 - c. *Access Mortgage Corporation (2004) Limited v. Arres Capital Inc. et. al.*, Court File Number 1501-01106 (the "**Account Receivable Action**"). Attached hereto and marked as **Exhibit "Q"** is a copy of the statement of claim in Court File Number 1501-01106.
43. In addition to the actions commenced by Access, Arres is a defendant to a further action by Harvey Beck and 26 other plaintiffs related to the malfeasance of the company and its principal Serra. Attached hereto and marked as **Exhibit "R"** is a copy of the statement of claim in the action by Harvey Beck.
44. In context of the parties' negotiations with respect to Justice Strekaf's receivership order, the parties considered staying the Arres Counterclaim Action, the Fraudulent Preference Action, and the Accounts Receivable Action. However, since the parties could not agree on a form of order in the Receivership Action, the actions were not stayed.
45. The plaintiffs in the Richcrook Action have brought a motion for partial summary judgment which was heard on May 24, 2017. The Court has reserved judgment on the motion.

Arres is Indebted to Numerous Other Parties


46. Arres is a judgment debtor in at least one other action. On December 28, 2012, Kenzie Financial Investments Ltd. along with eighteen other plaintiffs commenced an action in Alberta Court of Queen's Bench Court File Number 1201-16440 (the "**Y-K Action**") against Arres and Serra for, among other things, misappropriation and conversion of the plaintiffs' funds that were invested with Arres. Attached hereto and marked as **Exhibit "S"** is a copy of the statement of claim in the Y-K Action.
47. On or about July 17, 2013, the plaintiffs in the Y-K Action were granted partial summary judgment against Arres (the "**Y-K Summary Judgment Order**"). Pursuant to the Y-K Summary Judgment Order, Arres was directed to pay the plaintiffs \$223,768.79. Attached hereto and marked as **Exhibit "T"** is a copy of the Y-K Summary Judgment Order.
48. There are nineteen plaintiffs to the Y-K Action. As of December 12, 2013, nine of the Y-K Action plaintiffs were owed the following amounts from Arres as a result of the Y-K Summary Judgment Order (the "**Y-K Judgment Creditors**"):
 - a. Kenzie Financial Investments Ltd.: \$11,465.62. Attached hereto and marked as **Exhibit "U"** is a copy of the affidavit of Alan Beck, an officer and director of Kenzie Financial Investments Ltd., sworn December 16, 2013;
 - b. Shelly Beck: \$9,172.50. Attached hereto and marked as **Exhibit "V"** is a copy of the affidavit of Shelly Beck, sworn December 16, 2013;
 - c. Shelly Beck, for Marion Sommer: \$10,089.75. Attached hereto and marked as **Exhibit "W"** is the affidavit of Shelly Beck, sworn December 16, 2013;
 - d. Brian Sekiya \$16,051.87. Attached hereto and marked as **Exhibit "X"** is a copy of the affidavit of Brian Sekiya, sworn December 20, 2013;
 - e. Holly Sekiya: \$9,631.12. Attached hereto and marked as **Exhibit "Y"** is a copy of the affidavit of Holly Sekiya, sworn December 20, 2013;
 - f. Linda Jaeger: \$11,007.00. Attached hereto and marked as **Exhibit "Z"** is a copy of the affidavit of Linda Jaeger, sworn December 16, 2013;
 - g. Steve Reilly: \$32,103.75. Attached hereto and marked as **Exhibit "AA"** is a copy of the affidavit of Steve Reilly, sworn December 16, 2013;
 - h. Mickey Ikuta: \$1,373.76. Attached hereto and marked as **Exhibit "BB"** is a copy of the affidavit of Mickey Ikuta, sworn December 16, 2013;
 - i. Lester Ikuta: \$1,616.93. Attached hereto and marked as **Exhibit "CC"** is a copy of the affidavit of Lester Ikuta, sworn December 16, 2013; and

- j. Lester Ikuta Professional Corporation: \$16,510.50. Attached hereto and marked as **Exhibit "DD"** is a copy of the affidavit of Lester Ikuta, a director and officer of Lester Ikuta Professional Corporation, sworn December 16, 2013.
49. Arres takes the position that in February 2014 Arres satisfied the Y-K Summary Judgment Order.
50. To the best of my knowledge, the individual Y-K Judgment Creditors have not received payment on account of the Y-K Summary Judgment Order. Those funds have not been released since they continue to be subject to conflicting claims including claims related to the Richcrooks Action and an action by Terrapin Mortgage Investment Corp.
51. If these funds are released and either of the claims related to the Richcrooks Action or the action by Terrapin Mortgage Investment Corp. are accepted, the funds held in trust will not be sufficient to satisfy the Y-K Judgment Creditors and Arres will remain indebted to each Y-K Judgment Creditor in excess of \$1,000.
52. As a result, Arres remains justly and truly indebted to each of the nine Y-K Judgment Creditors in an amount exceeding \$1,000.


Arres' Assets

53. On May 2, 2017, I was advised by Access' counsel that Arres had reached a settlement in a claim it had made against 1316405 Alberta Inc. in connection with approximately \$100,000 of claimed outstanding mortgage fees. I am further advised by Access' counsel that 1316405 Alberta Inc. agreed to settle this claim and pay Arres \$65,000. I am also advised by Access' counsel that counsel for 1316405 Alberta Inc. is holding those funds in trust pending further order of the Court or agreement between Access and Arres.
54. I make this affidavit in support of an application for a bankruptcy order against Arres.

SWORN BEFORE ME at the City of Calgary, in)
the Province of Alberta, this 12 day of June 2017)



Commissioner for Oaths/Notary Public in and for)
Alberta)



DAVID MURPHY

Richard Comstock
Commission Expires September 21, 2018

This is **Exhibit "A"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017

R. Comstock

.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

Management Agreement

THIS AGREEMENT is made as of and effective this 1st day of August, 2004

BETWEEN:

ACCESS MORTGAGE CORPORATION (2004) LIMITED,
of 1610, 700 - 4th Avenue SW, Calgary, AB, T2P 3J4,
a body corporate, duly incorporated under the laws of the Province of Alberta

Hereinafter called "Access 2"

- and -

ARRES CAPITAL INC.,
of 150, 839 - 5th Avenue SW, Calgary, Alberta, T2P 3C8,
a body corporate, duly incorporated under the laws of the Province of Alberta

Hereinafter called "Arres"

WHEREAS Access 2 requires the services of a Broker/Manager;

AND WHEREAS Arres, a licensed broker, has agreed to provide brokerage and management services as set out herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual promises herein contained, Access 2 and Arres hereby covenant with one another as follows:

1. SERVICES

1.01 Arres agrees to provide the following services:

- a) Advertising for and soliciting mortgages in accordance with Access 2's lending policies as advised from time to time;
- b) Reviewing applications for mortgage loans, obtaining and completing application forms;
- c) Selecting mortgages suitable for funding, providing the borrowers with letters of intent, approval forms and statements of disclosure as appropriate; completing all necessary searches and credit checks; collecting and collating all information and forwarding it for approval to the appropriate Approval Committee;
- d) Upon approval, working with the borrower and the Corporate Solicitor to complete registration and funding of the mortgage as required.

e) Administration and management of mortgages after funding as required.

(the "Services")

1.02 In performing the Services Arres agrees with Access 2 to:

1.02.01 comply with all applicable laws and, where not contrary to law or this Agreement, to provide the Services in a manner consistent with such policies, advice and requests as may in good faith from time to time be advanced by Access 2;

1.02.02 exercise integrity, diligence, honesty, fidelity and good faith;

1.02.03 exercise such expertise, care and ability as may reasonably be expected having regard to Arres's business and management experience;

1.02.04 make full and prompt disclosure to all matters which do or may reasonably be expected to concern, affect or relate to the interests, business opportunities or properties of Access 2.

2. **TERM**

2.01 The term of this agreement shall take effect as and from the date above written.

2.02 This agreement shall continue until terminated by either party. Neither party shall terminate the agreement without cause prior to January 1, 2007.

2.03 After January 1, 2007, termination of this agreement may be done unilaterally by either party upon giving the other party 1 year's written notice as provided herein.

3. **REMUNERATION**

3.01 Access 2 agrees to pay Arres compensation for the Services in an amount equal to 1/3 of the Balance of Net Income (BNI).

3.02 The BNI shall mean:

The income of Access 2 from all sources net of any amount attributable to repayment of principal and net of all expenses

LESS

an amount calculated as "the weighted average CIBC Prime Rate for the fiscal year +2 %" times the share capital in accordance with the audited financial statements averaged over the four quarters of the relevant fiscal year.

3.03 The Remuneration shall be paid in monthly instalments in an amount to be approved by the Board of Directors from time to time having regard to the financial performance of the Corporation with a final adjustment upon receipt by Access 2 of the financial statements for the relevant fiscal year, and in any event no later than June 30th following the end of that fiscal year.

3.05 The terms or method of remuneration may be altered only by written agreement between the parties and shall become effective upon a resolution of the Directors of Access 2.

4. ASSIGNMENT

4.01 Arres shall not assign the benefit of this agreement, or subcontract its obligations under this agreement, without the consent in writing of Access 2.

5. NOTICES

5.01 Any notice, direction or other instrument required or permitted to be given hereunder shall be in writing and shall be delivered personally or sent by registered mail as follows:

ACCESS MORTGAGE CORPORATION (2004) LIMITED
1610, 700 - 4th Avenue SW
Calgary, AB, T2P 3J4

ARRES CAPITAL INC.
150, 839 - 5th Avenue SW
Calgary, AB, T2P 3C8

5.02 Any such notice shall be deemed to have been received on delivery if delivered personally.

5.03 Any notice sent by registered mail shall be deemed to have been received on the 7th business day exclusive of any business days during a postal disruption.

5.04 Either party to this agreement may change its address for notice by giving notice to the other as aforesaid.

6. MISCELLANEOUS

6.01 In this agreement the singular includes the plural and the masculine includes the feminine and the neuter and vice versa unless the context otherwise requires.

6.02 Headings in this Agreement are only for the convenience of reference and do not perform a part of or effect the interpretation of this agreement.

- Cancellation of share purchase

The Corporation had received \$325,000.00 from Rachel Enterprises Ltd. for a potential share purchase in mid-September, 2008. The potential investor had requested a refund and was threatening legal action. The Board decided that the cash should be refunded on the basis that the potential investor never actually became a shareholder.

- Management fee advances

The revised September 30, 2008 financial statements indicated that Arres Capital had been overpaid management fees by \$118,000.00 as these had been calculated using an earlier version of the September statements which did not include the adjustments for impaired loans. These adjustments had reduced earnings because of the elimination of accrued interest income on impaired loans and the creation of a doubtful loan reserve. This in turn resulted in a reduction of the fees payable.

The Board noted that income would likely continue at a lower level than normal for the next few months. And as a result the fees due to Arres would also be substantially below normal. The Board also acknowledged that maintaining the Management services of Arres through this challenging period would be critical to the Corporation's success. As a result it was agreed that it would be necessary to provide financial support to Arres in the event that fees earned in future months fell below \$70,000.00 per month.

It was proposed that the Corporation provide Arres Capital with advances each month equal to the difference between \$70,000 and the actual amount of Management fees payable that month, up to a maximum accumulation of \$100,000 (over and above the \$118,000.00 currently owing). Such advances would be non-interest bearing and unsecured. This issue would be further reviewed at the next Board Meeting. Michael Kurtz moved the motion, seconded by Susan O'Connor; carried unanimously.

- The next Directors' Meeting date would be:

December 11, 2008 - location to be Christopher Saunder's condo office unless otherwise advised.

8. MOTION TO ADJOURN

No further business coming before the meeting, Jack Levy moved, seconded by Susan O'Connor that the Meeting adjourn; carried unanimously.

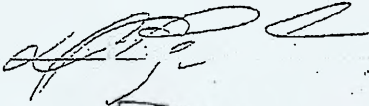
APPROVED THIS 11th DAY OF December, 2008.



- 6.03 If any provision or part of this agreement is void for any reason it shall be severed without effecting the validity of the balance of the agreement.
- 6.04 Time is of the essence of this agreement.
- 6.05 There are no representations, warranties, conditions, terms or collateral contracts affecting the transaction contemplated in this agreement except as set out in this agreement.
- 6.06 Nothing in this agreement is intended to constitute a partnership or agency between the parties.
- 6.07 This agreement is governed by the laws of the province of Alberta.
- 6.08 This agreement binds and benefits the parties and their respective heirs, executors, administrators, personal representatives, successors and assigns.

IN WITNESS WHEREOF the parties hereto have affixed their hands and seals the day and year first above written.

ACCESS MORTGAGE CORPORATION (2004) LIMITED

Per:  Director

Per:  (seal)
Director

ARRES CAPITAL INC.

Per: 
WESLEY SERRA President
(seal)

This is **Exhibit "B"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017

R. Comstock

.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 20~~17~~¹⁸

COURT FILE NUMBER

1101-03481

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF(S)

ACCESS MORTGAGE CORPORATION
(2004) LTD

DEFENDANT(S)

ARRES CAPITAL INC.

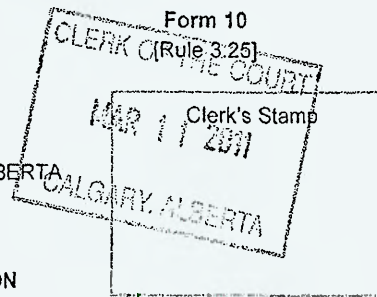
DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

CLARK AND ASSOCIATES
Barristers and Solicitors
#203, 136 - 17th Avenue N.E.
Calgary, Alberta T2E 1L6

Attention: Brian Clark
T: 403.520.2011
F: 403.230.3509
File: 3150-1



NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

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

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Plaintiff, Access Mortgage Corporation (2004) LTD. ("Access"), is a body corporate duly incorporated under the laws of Alberta, and carrying on business in the City of Calgary, in the Province of Alberta. Access is a mortgage investment corporation, as defined by the *Canadian Income Tax Act*, and carries on the business of mortgage lending secured by real property assets.
2. The Defendant, Arres Capital Inc. ("Arres"), as far as is known to the Plaintiff, is a body corporate duly incorporated under the laws of Alberta and carrying on business in the City of Calgary, in the Province of Alberta. The Defendant carries on the business of a mortgage brokerage firm and a trustee for investors in various mortgages.
3. On or about August 1st, 2004, Access and Arres entered into an agreement (the "Agreement"), whereby Arres would provide Access with brokerage and management services in respect of mortgage loans advanced by Access (the "Access Mortgage Loans"). The Agreement provided, *inter alia*, that:
 - (a) From and after August 1st, 2004, Arres would manage and administer the Access Mortgage Loans for, and on behalf of, Access;

- (b) In respect of the management services to be provided by Arres, Arres would be paid a management fee equal to one third of the Balance of Net Income achieved by Access in respect of the Access Mortgage Loans in each fiscal year ending March 31st. The calculation of the Balance of Net Income achieved by Access in respect of the Access Mortgage Loans was in accordance with a prescribed formula set out in the Agreement.
 - (c) The management fees paid to Arres would be advanced in monthly installments, in such amounts as approved by the Board of Directors of Access on a monthly basis. At the end of each fiscal year, the actual management fees owing to Arres in the foregoing fiscal year would be reconciled with the aggregate amount of advances actually paid to Arres in the foregoing fiscal year.
 - (d) In the event that the advances paid to Arres in any fiscal year exceeded the management fees actually earned by Arres in that fiscal year, Arres was required to repay Access this cumulative overpayment on demand. Such adjustment was to be made no later than June 30th of each fiscal year.
4. From April of 2008 to March of 2009 (the "2009 Fiscal Year"), Arres was paid the aggregate sum of \$1,028,879.99 in the form of monthly advances against the management fees owing to Arres for 2009 Fiscal Year. In the later part of 2008 and in 2009, it was anticipated by the parties that the advances made in the 2009 fiscal year would substantially exceed the actual management fee earned by Arres; however, the Board of Directors for Access made the advances to Arres based on representations from Arres that it required these advances in order to continue to operate.
 5. A reconciliation of the 2009 Fiscal Year revealed that Access failed to achieve a profit or a Balance of Net Income in the 2009 Fiscal Year in respect of the Access Mortgage Loans administered by Arres. In accordance with the terms of the Agreement, Arres was not entitled to management fees for the 2009 Fiscal Year in respect of its administration of the Access Mortgage Loans. A demand was made by Access to Arres for the \$1,028,879.99 advanced to Arres in the 2009 Fiscal Year. Despite demand, Arres has thus far refused or otherwise failed to pay the said sum of \$1,028,879.99 plus accrued interest, or any part thereof, and the same remains a just debt, wrongfully withheld.
 6. In the alternative, the Plaintiff states that the Defendants were unjustly enriched at the expense of the Plaintiff, in that the Defendants were paid the said sum of \$1,028,879.99 by the Plaintiffs in respect of management of the Access Mortgage Loans during the 2009 Fiscal Year that were in excess of the management fees earned by Arres for 2009 Fiscal Year pursuant to the Agreement or otherwise.
 7. The Plaintiffs state that by reason of the foregoing, the Defendants were overpaid by the Plaintiffs in an amount of at least \$1,028,879.99 and were unjustly enriched thereby.

Remedy sought:

WHEREFORE the Plaintiff claims from and against the Defendant:

- (a) The said sum of \$1,028,879.99 being the amount by which Access overpaid Arres in respect of Arres management services together with interest pursuant to the *Judgment Interest Act*, R.S.A. 2000 Chapter J-1;
- (b) In the alternative, restitution for unjust enrichment in the amount of \$1,028,879.99 or such further or other amount as this Honourable Court deems just and equitable;

(c) Costs;

(d) Such further or other relief as this Honourable Court deems to be just and equitable.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

This is **Exhibit "C"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

COURT FILE NUMBER 1101-03481

COURT COURT OF QUEEN'S BENCH OF
ALBERTA

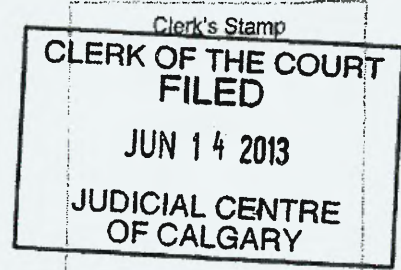
JUDICIAL CENTRE CALGARY

PLAINTIFF(S)/
APPLICANT(S) ACCESS MORTGAGE CORPORATION
(2004) LIMITED

DEFENDANT(S)/
RESPONDENT(S) ARRES CAPITAL INC.

DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT BRIAN N. CLARK of CLARK & ASSOCIATES,
Solicitor for the Plaintiff
#203, 136--17th Avenue N.E.
Calgary, Alberta T2E 1L6
Telephone: (403) 520-2011
Facsimile: (403) 230-3509
File No.: 3150-1



I hereby certify this to be a true copy of
the original order
Dated this 14 day of June 2013
[Signature]
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: May 24, 2013

NAME OF MASTER/JUDGE WHO MADE THIS ORDER: Madam Justice S.L. Hunt McDonald

LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION of the Plaintiff; AND UPON hearing submissions from Counsel for the Plaintiff and from Counsel for the Defendant;

IT IS HEREBY ORDERED THAT:

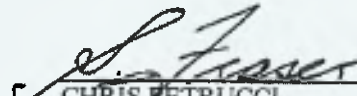
1. The Plaintiff, Access Mortgage Corporation (2004) Limited, shall have summary judgment as against the Defendant in the sum of \$1,028,879.99, less any amounts that have already been paid and applied by the Plaintiff to reduce the said indebtedness of \$1,028,879.99.
2. In the event the parties are unable to agree on the amount already paid and applied by the Plaintiff to the said indebtedness of \$1,028,879.99, this aspect of the matter shall be set down for an accounting to be done before this Honourable Court.
3. In the event the parties encounter any matters that require clarification or further direction the matter may be brought back to this Honourable Court for determination.
4. The Plaintiff shall be entitled to interest on the judgment amount pursuant to the *Judgment Interest Act*, from and after June 30, 2009.

5. The Plaintiff is entitled to its costs of this action calculated under Column 4 of Schedule "C" of the Rules of Court.


Justice of the Court of Queen's Bench of Alberta

Approved as the Order granted:

BLAKE, CASSELS & GRAYDON LLP

 SEAN FRASER
for CHRIS PETRUCCI
Solicitors for the Defendant

This is **Exhibit "D"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017

R CTE

.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

COURT FILE NUMBER 1101-03481

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

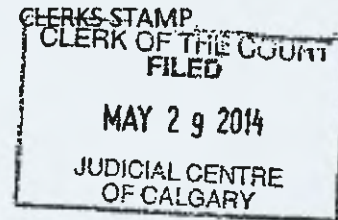
PLAINTIFF BY COUNTERCLAIM ARRES CAPITAL INC.

DEFENDANT BY COUNTERCLAIM ACCESS MORTGAGE CORPORATION (2004) LTD.

DOCUMENT COUNTERCLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
PELLETIER LAW
#350, 444 – 5th Avenue SW
Calgary, AB T2P 2T8
Main: 403.407.2600
Fax: 403.407.2601

Ryan P. Pelletier
Direct: 403.407.2630
File No. 13004.001



NOTICE TO DEFENDANT BY COUNTERCLAIM

You are being sued. You are a defendant by counterclaim.

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

Statement of facts relied on:

1. The Plaintiff by Counterclaim, Arres Capital Inc. ("Arres") repeats and adopts the allegations of fact and defined terms set out in the within Amended Statement of Defence as if set out separately herein.
2. Arres also adopts herein the contents of the within Affidavits of Jim Brander, filed November 14 and 20, 2013, respectively (together the "Brander Affidavits").
3. At various times throughout 2007 and 2008 Arres, as Trustee or Manager, and Access, as Co-Lender or Investor, entered into a number of Loan Administration Agreements and Trust Agreements (collectively the "Agreements") respecting mortgage loans and investments by Access in various properties located in Alberta and British Columbia.

4. Pursuant to the Agreements, including the further written agreements and materials which are related, ancillary and complimentary to the Agreements, Arres is entitled to receive from Access the total amount of \$4,682,829.52 as of October 31, 2013 (the "**Amounts Outstanding**").

5. The Amounts Outstanding represent Access' *pro rata* share with the other Co-Lenders and Investors of the amounts owing to Arres pursuant to the Agreements.

6. Further, the Amounts Outstanding are amounts; (i) previously paid by Arres to the credit of Access and the other Co-Lenders and Investors on account of the various Agreements and the mortgage loans and investments to which they relate, (ii) previously incurred by Access and the other Investors or Co-Lenders to the credit of Arres on account of the various Agreements and the mortgage loans and investments to which they relate, and (iii) outstanding to Arres in priority and from the principle amounts of and advances on the relevant loans and mortgages to which the Agreements relate.

7. Still further, Arres states that it is entitled to receive the Amounts Outstanding in priority to any amounts payable on the Agreements to Access and the other Investors or Co-Lenders. As such, all of the Outstanding Amounts should have been applied by Access to reduce any alleged indebtedness owed by Arres to Access, although any such alleged indebtedness is expressly denied by Arres.

8. Attached hereto as Schedule "1" is an itemized spreadsheet setting out the particulars of the Amounts Outstanding as of October 31, 2013, with the specific and detailed particulars of the Amounts Outstanding being set out in the Brander Affidavits.

9. Arres states and the fact is that the Agreements were managed by Arres as part of the Services provided by Arres pursuant to the Services Agreement and as such the Agreements are directly related to and are relevant to the allegations set out in the within Statement of Claim and Amended Statement of Defence.

10. However, for clarity, Arres states and the fact is that any amounts paid or owed to Arres from Access pursuant to the Services Agreement are entirely separate and otherwise in addition to Amounts Outstanding owed pursuant to the Agreements.

11. In other words, while the Services included management by Arres of the Agreements on Access behalf, the amounts outstanding to Arres from Access pursuant to the Services Agreement are entirely distinct from amounts that are owed to Arres from Access pursuant to the Agreements.

Remedy sought:

12. The Plaintiff by Counterclaim, Arres Capital Inc., seeks the following relief against the Defendant by Counterclaim, Access Mortgage Corporation (2004) Ltd:

- a. Judgment in the amount of the Amounts Outstanding with a direction as to payment terms for the Amounts Outstanding in accordance with the Agreements;
- b. Further, or in the alternative, set off of any and all amounts that this Honourable Court determines are payable by Arres to Access as alleged in the within Statement of Claim, up to the amount of the Amounts Outstanding;
- c. Interest on all amounts payable by Access to Arres pursuant to the interest provisions of the relevant Agreements, or alternatively, pursuant to the *Judgment Interest Act*;
- d. Costs of this Action;
- e. Such further and other relief as this Honourable Court determines is just and reasonable.

NOTICE TO THE DEFENDANT BY COUNTERCLAIM

You only have a short time to do something to respond to this counterclaim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice to counterclaim in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice to counterclaim on the plaintiff by counterclaim's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice to counterclaim within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff by counterclaim against you after notice of the application has been served on you.

This is **Exhibit "E"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

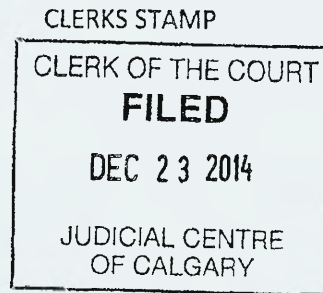
Richard Comstock
My Commission Expires September 21, 2018

COURT FILE NUMBER 1401 - 14106
COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ARRES CAPITAL INC.
DEFENDANT ACCESS MORTGAGE CORPORATION (2004) LTD.

DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT PELLETIER LAW
#350, 444 – 5th Avenue SW
Calgary, AB T2P 2T8
T. 403.407.2600
F. 403.407.2601

Ryan P. Pelletier
D. 403.407.2630
F. 13004.002



NOTICE TO DEFENDANT

You are being sued. You are a defendant.

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

Statement of facts relied on:

The Parties

1. The Plaintiff, Arres Capital Inc. ("Arres" or the "Plaintiff") is a corporation incorporated pursuant to the laws of the Province of Alberta and which has its head office in Calgary.
2. The Defendant, Access Mortgage Corporation (2004) Ltd. is a corporation incorporated pursuant to the laws of the Province of Alberta and which has its head office in Calgary.

The Claim

3. For the purposes of this Action, Arres incorporates, refers to and otherwise adopts herein the contents of the Affidavits of Jim Brander, filed November 14 and 20, 2013, respectively, in the related Action No. 1101-03481 (together the "Brander Affidavits").

4. At various times throughout 2007 and 2008 Arres, as Trustee or Manager, and Access, as Co-Lender or Investor, entered into a number of Loan Administration Agreements and Trust Agreements (collectively the "**Agreements**") respecting mortgage loans and investments by Access in various properties located in Alberta and British Columbia.
5. Pursuant to the Agreements, including the further written agreements and materials which are related, ancillary and complimentary to the Agreements, Arres is entitled to receive from Access the total amount of \$5,587,426.04 as of November 17, 2014 (the "**Amounts Outstanding**").
6. The Amounts Outstanding represent Access' *pro rata* share with the other Co-Lenders and Investors of the amounts owing to Arres pursuant to the Agreements.
7. Further, the Amounts Outstanding are amounts; (i) previously paid by Arres to the credit of Access and the other Co-Lenders and Investors on account of the various Agreements and the mortgage loans and investments to which they relate, (ii) previously incurred by Access and the other Investors or Co-Lenders to the credit of Arres on account of the various Agreements and the mortgage loans and investments to which they relate, and (iii) outstanding to Arres in priority and from the principle amounts of and advances on the relevant loans and mortgages to which the Agreements relate.
8. Still further, Arres states that it is entitled to receive the Amounts Outstanding in priority to any amounts payable on the Agreements to Access and the other Investors or Co-Lenders. As such, all of the Outstanding Amounts should be applied by this Honourable Court to reduce any indebtedness owed or allegedly owed by Arres to Access.
9. Still further, on various dates in November 2014, Arres served written demand upon Access on account of expenses and related amounts paid by Arres to the credit of Access in respect of five of the Agreements (the "**Demand Letters**" which included the "**Demands**").
10. The amounts owing from Access to Arres pursuant to the Demands totaled \$972,763.65 and such amounts became due and payable by Access either 5 days or 30 days after service of the relevant Demand Letter (the respective "**Waiting Period**").

11. The Waiting Period for all of the Demands has lapsed and Access has not made payment on account of any of the Demands.

12. For clarity, the total amount of the Amount Outstanding includes the amounts set out in the Demands, with the Demands being the amount of the Amount Outstanding payable immediately and the remainder of the Amount Outstanding being contingent upon a subsequent event such as the sale and realization of the underlying mortgage or real estate.

Remedy sought:

13. The Plaintiff, Arres Capital Inc., seeks the following relief against the Defendant, Access Mortgage Corporation (2004) Ltd:

- a. Judgment in the amount of the Amounts Outstanding in the amount of not less than \$5,587,426.04 with a direction as to payment terms for the Amounts Outstanding in accordance with the Agreements;
- b. Further, Judgment for the immediate payment by Access of the full amount of the Demands, in the amount of not less than \$927,763.65;
- c. Further, or in the alternative, set off of any and all amounts that this Honourable Court has determined, or subsequently determines, is owing from Arres to Access, whether in this Action or otherwise, up to the amount of the Amounts Outstanding;
- d. Interest on all amounts payable by Access to Arres pursuant to the interest provisions of the relevant Agreements, or alternatively, pursuant to the *Judgment Interest Act*;
- e. Costs of this Action;
- f. Such further and other relief as this Honourable Court determines is just and reasonable.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

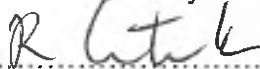
You can respond by filing a statement of defence or a demand for notice in the office of the clerk

of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

This is **Exhibit "F"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

COURT FILE NUMBER 1101-03481
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ACCESS MORTGAGE CORPORATION (2004) LTD.
DEFENDANT ARRES CAPITAL INC.
DOCUMENT AFFIDAVIT
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT BRIAN N. CLARK,
Solicitor for the Plaintiff
#203, 136-17th Avenue N.E.
Calgary, Alberta T2E 1L6
Telephone: (403) 520-2011
Facsimile: (403) 230-3509
File No.: 3150-1

Clerk's Stamp



THIS IS EXHIBIT "E" referred to in the Affidavit of

David Murphy

Sworn before me this 14th

day of November A.D. 2014

A COMMISSIONER FOR OATHS

BRIAN E. SILVER
Barrister and Solicitor

AFFIDAVIT OF KIM ROBINSON
Sworn on August 8, 2013

I, KIM ROBINSON, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the bookkeeper for the Plaintiff, Access Mortgage Corporation (2004) Ltd., and as such I have a personal knowledge of the matters hereinafter deposed to save and except where stated to be based on information and belief, in which case I do verily believe same to be true.
2. Up until November 6, 2012, I was also the bookkeeper for the Defendant, Arres Capital Inc. An important function of my job for both the Plaintiff and the Defendant was to ensure that offsetting payables and receivables were accurately reflected in each the Plaintiff's and Defendant's books to make certain that everything matched and was balanced between the financial records of each of these two corporations.
3. I have had the occasion to review my working papers and files and all balances and offsets as between the Plaintiff and the Defendant were matched and balanced on a monthly basis as of October, 2012.
4. I am advised that the Defendant alleges that there is \$1.8 Million dollars owing from the Plaintiff to the Defendant as of the end of October 2012. As of that date, neither the books of the Plaintiff nor the Defendant reference that there is any such debt owing from the Plaintiff to the Defendant - indeed there were no offset entries indicating any debt owing from Access Mortgage Corporation (2004) Ltd. to Arres Capital Inc. in any amount. The financial statements I prepared were derived from the financial information provided to me by both parties. There was no \$1.8 Million dollar setoff and there were no offsetting entries in any amount.

SWORN BEFORE ME at Calgary, Alberta, this
day of August, 2013.

(Commissioner for Oaths in and for the Province
of Alberta)

HARVEY G. BECK

MY COMMISSION EXPIRES APRIL 14, 2014

KIM ROBINSON

This is **Exhibit "G"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

Search ID#: Z09183712

Transmitting Party

Cassels Brock & Blackwell LLP
Suite 1250, 440-2nd Avenue SW
Calgary, AB T2P 5E9

Party Code: 60006325
Phone #: 403 351 2920
Reference #: 50107-1

Search ID #: Z09183712

Date of Search: 2017-Jun-05

Time of Search: 15:55:05

Business Debtor Search For:

ARRES CAPITAL INC.

Exact Result(s) Only Found

NOTE:

A complete Search may result in a Report of Exact and Inexact Matches.
Be sure to read the reports carefully.



Search ID#: Z09183712

Business Debtor Search For:

ARRES CAPITAL INC.

Search ID #: Z09183712

Date of Search: 2017-Jun-05

Time of Search: 15:55:05

Registration Number: 14092940054

Registration Type: WRIT OF ENFORCEMENT

Registration Date: 2014-Sep-29

Registration Status: Current

Expiry Date: 2018-Sep-08 23:59:59

Issued in Calgary Judicial Centre

Court File Number is 1101-03481

Judgment Date is 2013-May-24

This Writ was issued on 2013-Nov-29

Type of Judgment is Other

Original Judgment Amount: \$1,028,879.99

Costs Are: \$15,478.54

Post Judgment Interest: \$0.00

Current Amount Owing: \$1,044,358.53

Exact Match on: Debtor

No: 1

Amendments to Registration

14102809337

Amendment

2014-Oct-28

16090814564

Renewal

2016-Sep-08

Solicitor / Agent

BRIAN E. SILVER
#201, 10836-24TH STREET SE
CALGARY, AB T2Z 4C9

Phone #: 403 723 7300

Fax #: 403 236 3882

Reference #: 9652

Debtor(s)

Block

Status

1

Current

ARRES CAPITAL INC.
#204, 1324-11TH AVENUE SW
CALGARY, AB T3C 0M6

Creditor(s)

Block

Status

1 ACCESS MORTGAGE CORPORATION (2004) LTD.
#230, 6125-11TH STREET SE
CALGARY, AB T2H 2L6

Current

Particulars

Block **Additional Information**

Status

1 SCHEDULE "A"
FORM 14-STATUTORY DECLARATION-FINANCIAL STATEMENT
OF DEBTOR (CORPORATE DEBTOR)

Current By
14102809337

PROJECT	TOTAL RECEIVABLE
CHATEAU:	\$1,021,497.45
CM MILLET:	\$260,036.44
COPPER OAKS MILLET:	\$209,830.24
DOCKMAN:	\$997,397.65
GRAYBRIAR GREENS 2:	\$1,027,057.95
JERVIS:	\$980,171.38
KOELLER:	\$1,371,883.69
STRATHMORE:	\$3,407,606.98
TIMBERCREEK:	\$425,235.22
TOTAL:	\$9,700,717.00

NOTE 1: ALL AMOUNTS CALCULATED WITH INTEREST TO
SEPTEMBER 30, 2014

NOTE 2: ALL AMOUNTS DUE PURSUANT AND SUBJECT TO
TRUST AGREEMENTS/MORTGAGE ADMINISTRATION AGREEMENTS
BETWEEN ARRES CAPITAL INC. AND EACH OF THE VARIOUS
INVESTORS IN EACH PROJECT.

Search ID#: Z09183712

Business Debtor Search For:

ARRES CAPITAL INC.

Search ID #: Z09183712

Date of Search: 2017-Jun-05

Time of Search: 15:55:05

Registration Number: 14100310598

Registration Type: REPORT OF SEIZURE

Registration Date: 2014-Oct-03

Registration Status: Current

Registration Term: Infinity

Service Area 2

Property has been seized under Writ of Enforcement Registration Number 14092940054.

Property was seized on 2014-Oct-02

<u>Registration Type</u>	<u>Date</u>	<u>Registration #</u>	<u>Value</u>
Report of Seizure	2014-Oct-02	14100310598	\$0.00

Exact Match on: Debtor

No: 1

Solicitor / Agent

WARREN BENSON AMANTEA LLP
1413 - 2ND STREET SW
CALGARY, AB T2R 0W7

Phone #: 403 228 8392

Fax #: 403 244 1948

Reference #: 14-0295

Civil Enforcement Agent

CONSOLIDATED CIVIL ENFORCEMENT INC.
200, 807 MANNING ROAD NE
CALGARY, AB T2E 7M8

Phone #: 403 262 8800

Fax #: 403 262 8801

Debtor(s)

Block

1

Status

Current

ARRES CAPITAL INC.
#204, 1324-11TH AVENUE SW
CALGARY, AB T3C 0M6

Creditor(s)

<u>Block</u>		<u>Status</u>
1	ACCESS MORTGAGE CORPORATION (2004) LTD. #230, 6125-11TH STREET SE CALGARY, AB T2H 2L6	Current

Collateral: General

<u>Block</u>	<u>Description</u>	<u>Status</u>
1	1 - Circular board room table	Current
2	3 - Black high back leather chair	Current
3	1 - Black high back cloth chair	Current
4	1 - Black four door lateral cabinet	Current
5	1 - Small Open grey stand on wheels	Current
6	1 - artificial plant	Current
7	2 - pieces framed art work - Campbell (back)	Current
8	1 - Staples shredder black s/n T01211300165	Current
9	Additional items have been seized. Refer to Civil Enforcement Agency file for a complete listing.	Current

Particulars

<u>Block</u>	<u>Additional Information</u>	<u>Status</u>
1	For a complete listing of seized goods as contained in the Notice of Seizure of Personal Property, contact our offices. Seized goods were left on site. Our File: 77919-WE-2C	Current

Result Complete

This is **Exhibit "H"**
to the affidavit of **David Murphy** sworn
before me this **12th** day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

Form 14
Statutory Declaration

Financial Statement of Debtor
(Corporate Debtor)

In accordance with section 35.10 of the *Civil Enforcement Regulation*, the Corporation must, within 15 days of being served with this form, provide the completed form to the enforcement creditor.

THIS IS EXHIBIT " D " referred to in the Affidavit of

David Murphy

Sworn before me this 14th

day of November A.D. 2014

File Number
1101-08481

BRIAN E. SILVER
Barrister and Solicitor

A. Debtor Information (Please Print)

I, ARRES CAPITAL INC
Full Name of Deponent

of 204 1324 11 AVE SW 403 261 9955
Address of Deponent Telephone Number of Deponent

am the President of ARRES CAPITAL INC
Position with Corporate Debtor Name of Corporate Debtor

of 204 1324 11 AVE S.W. 403 261 9955
Address of Corporate Debtor Telephone Number of Corporate Debtor

and I solemnly declare that the contents of this document are true and accurate.

B. Assets

Real Estate

List all real estate (homes, rental properties, cottages, condominiums, etc.) both within and outside the Province of Alberta in which the corporation owns an interest, including municipal address, legal description, purchase price, balance owing and current market value.

	Municipal Address	Legal Description	Purchase Price	Balance Owing	Current Market Value
1.	<u>NA</u>				
2.					
3.					

List the name and address of any mortgagee for each property described above, as well as the date the mortgage was granted and the amount outstanding on the mortgage.

	Name of Mortgagee	Address of Mortgagee	Date of Mortgage Granted	Amount Outstanding on Mortgage
1.	<u>NA</u>			
2.				
3.				

Motor Vehicles

List all motor vehicles, including cars, trucks, farm machinery, construction equipment, recreational vehicles, aircraft, etc. in which the Corporation owns an interest.

	Type - Make - Model - Year	Serial No.	Purchase Price	Current Market Value
1.	NA			
2.				
3.				

If any of the above vehicles are subject to any liens or encumbrance, specify.

	Holder of Lien or Encumbrance	Date of Lien or Encumbrance	Balance Owing on Lien or Encumbrance
1.	NA		
2.			
3.			

List all fixtures, equipment and inventory.

	Type - Make - Model - Year	Serial Number, if Applicable	Purchase Price	Current Market Value
1.	NA			
2.				
3.				

Bank Accounts

List all deposit accounts, term deposits, annuities, etc., specifying the following:

	Type of Deposit	Name of Institution	Account No.	Branch Address	Amount
1.	Checking	BoF M	25159-1068898	OX4 branch	Ø
2.					
3.					

Also, specify whether there are any conditions attached to redemption of the account, and, if applicable, any expiry dates.

	Conditions Attached to Redemption	Expiry Date, if Applicable
1.	N/A	
2.		
3.		

Receivables and Ongoing Contracts

List all receivables and ongoing contracts.

	Name	Address	Amount Owing
1.			
2.			
3.			

SEE ATTACHED schedule "A"

Shares and Securities

If the corporation has holdings in a corporation, complete the following:

List all shares, options, warrants, etc., and their current market value.

	Name of Corporation	Type	Number	Current Market Value	Dividends Payable (if any)	Date Payable
1.	NA					
2.						
3.						

List all bonds and debentures held and their current market value.

	Name of Issuer	Class or Series	Quantity Held	Total Market Value
1.	N/A			
2.				
3.				

List location of all certificates for all corporate holdings and their respective name(s) and address(es).

	Location of Security Certificates or Other Evidence of Ownership of Securities	Name and Address of Broker(s)
1.	N/A	
2.		
3.		

Trust Properties

List all properties or interests held by a Trustee on the Corporation's behalf.

	Description of Assets Held	Location of Assets	Name and Address of Trustee
1.	NA		
2.			
3.			

Other Assets

List all other assets, specifying kind, value and location, and whether solely or jointly owned.

Type of Asset	Description	Sole Owner		Location	Value
		Yes	No		
Interest in other businesses	NA				
Promissory notes, judgment debts	NA				
Loans and mortgages receivable	NA				

List all other assets, specifying kind, value and location, and whether solely or jointly owned (e.g. art, jewellery, bullion).

Description of Asset	Sole Owner		Location	Value
	Yes	No		
NA				

C. Transfer of Property

Has the corporation given away, sold, assigned or otherwise transferred any property (land, buildings, vehicles, money, equipment, inventory, etc.) outside the ordinary course of business within the past year? Specify details below.

Description of Property	To Whom Transferred	Date of Transfer	How Much Money, if Any, Was Recovered By the Corporation?
NA			

D. Insurance

List all insurance policies in which the corporation is named beneficiary, including the insurance company granting the policy, the policy number, the amount, the person insured, the premium and its cash surrender value.

Insurance Company	Policy No.	Amount	Person Insured	Premium	Cash Surrender Value
WA					

E. Additional Income and Assets

List all income and assets not itemized above (legal action claims under insurance policies, etc.).

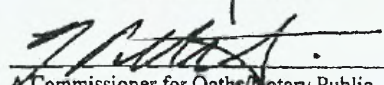
NA

 Wes Serra - Director

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at Calgary

Alberta, on Monday, October 20, 2014


A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Ryan P. Pelletier
Print Name and Surname
Barister & Solicitor

SCHEDULE "A"
FORM 14 – STATUTORY DECLARATION – FINANCIAL STATEMENT OF DEBTOR (CORPORATE DEBTOR)

<u>Project</u>	<u>Total Receivable</u>
Chateau:	\$1,021,497.45
CM Millet:	\$260,036.44
Copper Oaks Millet:	\$209,830.24
Dockman:	\$997,397.65
Graybriar Greens 2:	\$1,027,057.95
Jervis:	\$980,171.38
Koeller:	\$1,371,883.69
Strathmore:	\$3,407,606.98
Timbercreek:	\$425,235.22
TOTAL:	\$9,700,717.00

Note 1: All amounts calculated with interest to September 30, 2014

Note 2: All amounts due pursuant and subject to Trust Agreements/Mortgage Administration Agreements between Arres Capital Inc. and each of the various Investors in each project.

This is **Exhibit "I"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

BK COURT FILE NUMBER

25-094212

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY

JUDICIAL CENTRE

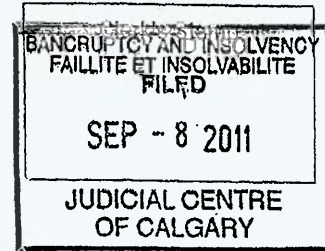
Calgary

DOCUMENT

ORIGINATING APPLICATION FOR
BANKRUPTCY ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Silver Law Firm
Brian E. Silver
Barrister and Solicitor
#201, 10836 - 24th Street S.E.
Calgary, AB T2Z 4C9
Phone: (403) 723-7300
Fax: (403) 236-3882
File #9011



APPLICATION FOR BANKRUPTCY ORDER BY ACCESS MORTGAGE CORPORATION (2004) LTD., RAYMOND
SCRABA, PAULETTE SCRABA AND 1082144 ALBERTA LTD., CREDITORS OF ARRES CAPITAL INC.

NOTICE TO RESPONDENT

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

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

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

Date	September 27 th , 2011
Time	2:00pm
Where	9 th Floor, Court House, Calgary, Alberta
Before MASTER	Presiding Registrar in Chambers

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

Basis for this claim/facts:

1. Arres Capital Inc. ("Arres") has at some time during the six months next preceding the filing of this Application, carried on business in Calgary, Alberta within the jurisdiction of this Court.
2. As of August 29, 2011, Arres is justly and truly indebted to Access Mortgage Corporation (2004) Ltd. ("Access") in the amount of \$1,028,879.99.

3. As of August 29, 2011, Arres is justly and truly indebted to Raymond and Paulette Scraba ("Scraba") in the amount of \$38,175.00, plus interest on such sum accruing at the rates and times agreed to between Arres and Scraba until such sum is repaid in full. Arres is further justly and truly indebted to Scraba for the amount representing Scraba's proportionate share of the proceeds realized from the transfer of property in a development project.
4. As of August 29, 2011, Arres is justly and truly indebted to 1082144 Alberta Ltd. ("1082144") in the amount of \$11,625.00, plus interest on such sum accruing at the rates and times agreed to between Arres and 1082144 until such sum is repaid in full. Arres is further justly and truly indebted to 1082144 for the amount representing 1082144's proportionate share of the proceeds realized from the transfer of property in a development project.
5. Arres, within the six months next preceding in the date of the filing of this Application, has committed an act of bankruptcy, namely, it has ceased to meet its liabilities generally as they become due.
6. That Grant Thornton Alger Inc., of the city of Calgary, in the Province of Alberta, a licensed trustee, is qualified to act as Trustee of the estate of Arres and has agreed to act as such, and is acceptable to Access, Scraba and 1082144.

Remedy Sought

7. Bankruptcy Order against Arres.

Affidavit and other evidence to be used in support of this application:

8. The pleadings filed in this action;
9. Affidavit of truth of David Murphy;
10. Affidavit of truth of Raymond Scraba;
11. Affidavit of truth of Cheryl Newman;
12. Consent to Appointment of Grant Thornton Alger Inc..

Applicable Acts and regulations:

13. Bankruptcy and Insolvency Act (Canada)

WARNING

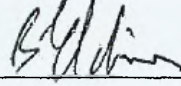
If notice of cause against this Application is not filed in Court and a copy thereof served on the solicitors for the applicant at least two days before the hearing and if you do not appear at the hearing the Court may make a Bankruptcy Order on such proof of the statements in the Application as the Court shall think sufficient.

You are named as respondents because you have made or are expected to make an adverse claim in respect of the personal property identified in this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you, and all persons claiming under you, to be barred from taking any further interpleading proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you

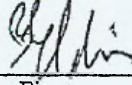
or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

DATED at the city of Calgary, in the Province of Alberta, this 1 day of September, 2011.

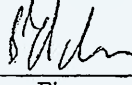
ACCESS MORTGAGE CORPORATION (2004) LTD.

Per: 
Silver Law Firm
Solicitors for Access Mortgage Corporation (2004) Ltd.

RAYMOND AND PAULETTE SCRABA

Per: 
Silver Law Firm
Solicitors for Raymond and Paulette Scraba

1082144 ALBERTA LTD.

Per: 
Silver Law Firm
Solicitors for 1082144 Alberta Ltd.

ISSUED at the City of Calgary, in the Province of Alberta, this th8 day of September, 2011.


REGISTRAR IN BANKRUPTCY

This is **Exhibit "J"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



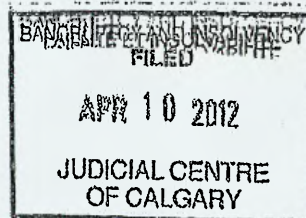
.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

I hereby certify this to be a true copy of the
original Order
of which it purports to be a copy.

Dated this 10th day of April, 2012
for J. Graydon
Registrar at Calgary
Bankruptcy Division of the
Court of Queen's Bench at Alberta

Clerk's stamp:



BK COURT FILE NUMBER 25-094212

COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

APPLICANTS ACCESS MORTGAGE CORPORATION (2004) LTD.,
RAYMOND SCRABA, PAULETTE SCRABA AND
1082144 ALBERTA LTD.

RESPONDENTS ARRES CAPITAL INC.

DOCUMENT CONSENT ORDER

THIS IS EXHIBIT "B"
referred to in the Affidavit of
DAVID MURPHY
Sworn before me this 3
Day of NOV, 2013

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
3500, 855 - 2nd Street S.W.
Calgary, AB T2P 4J8
Attn: Chris Petrucci
Telephone/Facsimile: 403-260-9668/403-260-9700
Email: chris.petrucci@blakes.com
File Ref.: 84968/9

A Commissioner for Oaths
in and for the Province of Alberta

BRIAN E. SILVER
Barrister and Solicitor

Date on which Order was Pronounced: April 10, 2012

Location where Order was Pronounced: Calgary

Name of Master who made this Order: K.R. Laycock

UPON THE APPLICATION of Access Mortgage Corporation (2004) Ltd, Raymond Scraba, Paulette Scraba, and 1082144 Alberta Ltd (the "Applicants") AND UPON noting the consent of the Respondent, Arres Capital Inc. ("Arres"); AND UPON HEARING from counsel for the Applicants; AND UPON it appearing that Access Mortgage Corporation (2004) Ltd. intends to apply for an order for summary judgment against the Respondent in QB Action No. 1101 - 03481 (the "Summary Judgment Application") IT IS HEREBY ORDERED THAT:

1. The Originating Application for Bankruptcy Order (the "Bankruptcy Application") against Arres filed September 8, 2011 is stayed pending the hearing of the Summary Judgment Application.
2. Either party may apply to the Court for costs in respect of this Consent Order.
3. This Order may be consented to in counterpart and by facsimile or other electronic means.

"KL" 4. Rule 6.13 is waived.

"K. Laycock"
M.C.Q.B.A.

CONSENTED TO this 5th day of
April, 2012:

CONSENTED TO this 4th day of
April, 2012:

SILVER LAW FIRM

BLAKE, CASSELS & GRAYDON LLP

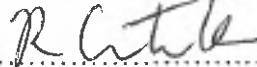
Per: Brian E. Silver
Brian E. Silver
Solicitors for the Applicants

Per: Chris Petrucci
Chris Petrucci
Solicitors for the Respondent

ENTERED this _____ day of April, 2012.

CLERK OF THE COURT

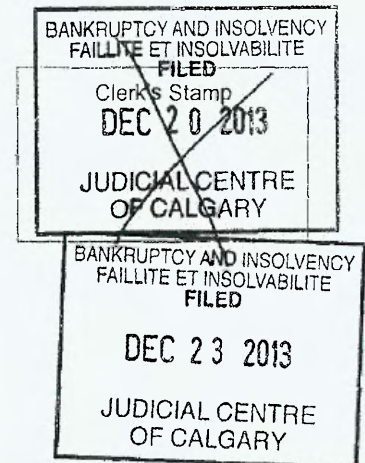
This is **Exhibit "K"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

BK COURT FILE NUMBER 25-094212
COURT COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE CALGARY
DOCUMENT **AMENDED ORIGINATING APPLICATION FOR BANKRUPTCY ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT *Silver Law Firm*
Brian E. Silver
Barrister and Solicitor
#201, 10836 – 24th Street S.E.
Calgary, AB T2Z 4C9
Phone: (403) 723-7300
Fax: (403) 236-3882
File #9011



AMENDED APPLICATION FOR BANKRUPTCY ORDER BY KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, BRIAN SEKIYA, HOLLY SEKIYA, LINDA JAEGER, STEVE REILLY, LESTER IKUTA, MICKEY IKUTA, LESTER IKUTA PROFESSIONAL CORPORATION, ACCESS MORTGAGE CORPORATION (2004) LTD., RAYMOND, SCRABA, PAULETTE SCRABA AND 1082144 ALBERTA LTD., CREDITORS OF ARRES CAPITAL INC.

NOTICE TO RESPONDENT

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

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

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

Date	January 7 th , 2014
Time	2:00pm
Where	9 th Floor, Court House, Calgary, Alberta
Before MASTER	Presiding Registrar in Chambers

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

Basis for this claim/facts:

1. Arres Capital Inc. ("Arres") has at some time during the six months next preceding the filing of this Application, carried on business in Calgary, Alberta within the jurisdiction of this Court.

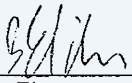
2. As of December 12, 2013, Arres is justly and truly indebted to Access Mortgage Corporation (2004) Ltd. ("Access") in the amount of \$1,028,879.99.
3. As of December 12, 2013, Arres is justly and truly indebted to Raymond and Paulette Scraba ("Scraba") in the amount of \$38,175.00, plus interest on such sum accruing at the rates and times agreed to between Arres and Scraba until such sum is repaid in full. Arres is further justly and truly indebted to Scraba for the amount representing Scraba's proportionate share of the proceeds realized from the transfer of property in a development project.
4. As of December 12, 2013, Arres is justly and truly indebted to 1082144 Alberta Ltd. ("1082144") in the amount of \$11,625.00, plus interest on such sum accruing at the rates and times agreed to between Arres and 1082144 until such sum is repaid in full. Arres is further justly and truly indebted to 1082144 for the amount representing 1082144's proportionate share of the proceeds realized from the transfer of property in a development project.
5. As of December 12, 2013, Arres is justly and truly indebted to Kenzie Financial Investments Ltd. ("Kenzie") in the sum of \$22,931.25.
6. As of December 12, 2013, Arres is justly and truly indebted to Shelly Beck ("Beck") in the sum of \$18,345.00.
7. As of December 12, 2013, Arres is justly and truly indebted to Shelly Beck for Marion Sommer in the sum of \$10,089.75.
8. As of December 12, 2013, Arres is justly and truly indebted to Brian Sekiya ("Brian") in the sum of \$32,103.75.
9. As of December 12, 2013, Arres is justly and truly indebted to Holly Sekiya ("Holly") in the sum of \$19,262.25.
10. As of December 12, 2013, Arres is justly and truly indebted to Linda Jaeger ("Jaeger") in the sum of \$22,014.00.
11. As of December 12, 2013, Arres is justly and truly indebted to Steve Reilly ("Reilly") in the sum of \$64,207.50.
12. As of December 12, 2013, Arres is justly and truly indebted to Mickey Ikuta ("Mickey") in the sum of \$2,747.53.
13. As of December 12, 2013, Arres is justly and truly indebted to Lester Ikuta ("Lester") in the sum of \$3,233.86.
14. As of December 12, 2013, Arres is justly and truly indebted to Lester Ikuta Professional Corporation (Ikuta PC) in the sum of \$33,021.00.
15. Arres, within the six months next preceding in the date of the filing of this Application, has committed an act of bankruptcy, namely, it has ceased to meet its liabilities generally as they become due.
16. That Grant Thornton Alger Inc., of the city of Calgary, in the Province of Alberta, a licensed trustee, is qualified to act as Trustee of the estate of Arres and has agreed to act as such, and is acceptable to Kenzie, Beck, Brian, Holly, Jaeger, Reilly, Mickey, Lester, Ikuta PC, Access, Scraba and 1082144.

Remedy Sought

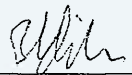
17. Bankruptcy Order against Arres.

DATED at the city of Calgary, in the Province of Alberta, this 20 day of December, 2013.


ACCESS MORTGAGE CORPORATION (2004) LTD.

Per: 
Silver Law Firm
Solicitors for Access Mortgage Corporation (2004) Ltd.

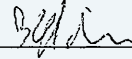
RAYMOND AND PAULETTE SCRABA

Per: 
Silver Law Firm
Solicitors for Raymond and Paulette Scraba

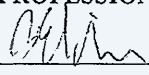
1082144 ALBERTA LTD.

Per: 
Silver Law Firm
Solicitors for 1082144 Alberta Ltd.


KENZIE FINANCIAL INVESTMENTS LTD.

Per: 
Silver Law Firm
Solicitors for Kenzie Financial Investments Ltd.

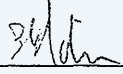
LESTER IKUTA PROFESSIONAL CORPORATION

Per: 
Silver Law Firm
Solicitors for Lester Ikuta Professional Corporation

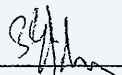
SHELLY BECK

Per: 
Silver Law Firm
Solicitors for Shelly Beck

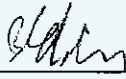
BRIAN SEKIYA

Per: 
Silver Law Firm
Solicitors for Brian Sekiya

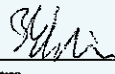
HOLLY SEKIYA

Per: 
Silver Law Firm
Solicitors for Holly Sekiya

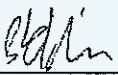
STEVE REILLY

Per: 
Silver Law Firm
Solicitors for Steve Reilly


LINDA JAEGER

Per: 
Silver Law Firm
Solicitors for Linda Jaeger

LESTER IKUTA

Per: 
Silver Law Firm
Solicitors for Lester Ikuta

MICKEY IKUTA

Per: 
Silver Law Firm
Solicitors for Mickey Ikuta

ISSUED at the City of Calgary, in the Province of Alberta, this 20 day of December, 2013.

"J. HANEBURY"

REGISTRAR IN BANKRUPTCY

This is **Exhibit "L"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017

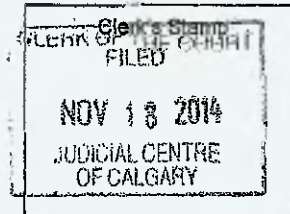


.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 20~~17~~¹⁸

Form 7
[Rule 3.8]

COURT FILE NUMBER 1401- 12431
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT(S) ACCESS MORTGAGE CORPORATION
(2004) LIMITED
RESPONDENT(S) ARRES CAPITAL INC.
DOCUMENT ORIGINATING APPLICATION
(on the Commercial List)



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Warren Benson Amanlea LLP
Attention: Brian E. Silver
1413 - 2nd Street S.W.
Calgary, Alberta T2R 0W7
Tel: 403-228-7007 Fax: 403-244-1948
File No. 14-3518

NOTICE TO THE RESPONDENT(S)

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

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

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

Date: January 15, 2015
Time: 10:00 am
Where: Calgary Court's Centre, 601 - 5th Street S.W., Calgary, Alberta
Before: Justice in Chambers

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

Basis for this claim:

1. Access Mortgage Corporation (2004) Limited ("Access") is a judgment creditor of the Respondent Arres Capital Inc. ("Arres");
2. The judgment against Arres is in excess of \$1,050,000.00;
3. Arres is insolvent and claims to have no assets other than accounts receivable listed in Schedule "A" to the Statutory Declaration of Arres Capital Inc. sworn on October 20, 2014 in QB Action No. 1101-03481 (the "Statutory Declaration");
4. Arres appears to have assigned some of these accounts receivable to related entities;
5. Arres has wrongfully attempted to realize funds for itself from the sale of assets which were either previously managed or administered by Arres for various investors;

6. Arres has transferred assets to other related entities or otherwise dealt with assets in order to hinder, delay and prejudice its creditors, and specifically Access, since the date that Arres' indebtedness to Access arose;
7. It is just and convenient to appoint a Receiver of Arres;
8. Arres has carried on business in a manner which is oppressive, unfairly prejudicial to and unfairly disregards the interests of Access and other creditors of Arres.

Remedy sought:

9. For an Order appointing Grant Thornton as Receiver of Arres;
10. An Order restraining Arres from sending demand letters to any party with respect to monies allegedly owing to Arres with respect to the projects listed in Schedule "A" to the Statutory Declaration;
11. An Order restraining Arres from commencing any legal proceedings to collect monies from any parties with respect to the Accounts Receivable listed in Schedule "A" of the Statutory Declaration;
12. An Order staying enforcement of any legal proceedings already commenced by Arres to collect monies allegedly owing to Arres with respect to the Receivables listed in Schedule "A" to the Statutory Declaration;
13. An Order removing Wes Serra as the director of Arres;
14. An Order requiring Arres to deliver financial statements for the fiscal years 2008 to 2014 inclusive in the form required by section 155 of the *Business Corporations Act* or an accounting in any other form as determined by the Court to the Applicant, Access Mortgage Corporation (2004) Limited ("Access") within a time specified by the Court;
15. An Order directing an investigation of Arres to be made under Part 18 of the *Business Corporations Act*;
16. Such further and other relief as this Honourable Court deems appropriate;
17. Costs of this action on a solicitor and his own client basis or on such scale as this Honourable Court determines is reasonable and appropriate;

Affidavit or other evidence to be used in support of this application:

18. Affidavit of David Murphy.

Applicable Acts and regulations:

19. Section 242 of the *Business Corporations Act*, RSA 2000, Chapter B-9, as amended and the regulations thereunder;
20. Section 85 of the *Civil Enforcement Act* RSA 2000, Chapter C-15, as amended and the regulations thereunder; and
21. Section 13 of the *Judicature Act* RSA 2000, Chapter J-2, as amended and the regulations thereunder.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

This is **Exhibit "M"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 20~~17~~¹⁸

Action No.: 1401-12431
E-File No.: CVQ15ACCESS2
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

ACCESS MORTGAGE CORP. 2004 LTD.

Plaintiff

and

ARRES CAPITAL INC.

Defendant

P R O C E E D I N G S

Calgary, Alberta
February 13, 2015

Transcript Management Services, Calgary
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1 Proceedings taken in the Court of Queen's Bench of Alberta, Calgary Courts Centre, Calgary,
2 Alberta

3

4 February 13, 2015

Morning Session

5

6 The Honourable

Court of Queen's Bench of Alberta

7 Madam Strekaf

8

9 B. Silver

For the Plaintiff

10 T. Derksen

For the Plaintiff

11 R. Pelletier

For the Defendant

12 R. Bales

Court Clerk

13

14

15 THE COURT CLERK:

Order in Court, all rise.

16

17 THE COURT:

Good morning.

18

19 MR. PELLETIER:

Good morning.

20

21 MR. SILVER:

Good morning, My Lady.

22

23 THE COURT:

Please be seated.

24

25 MR. SILVER:

Just to let you know before we start, in case
26 we're not finished by 9:30, my colleague, Mr. Derksen may have to leave the Court for
27 another Court appearance.

28

29 THE COURT:

Okay.

30

31 MR. SILVER:

So no offence taken.

32

33 THE COURT:

Okay.

34

35 MR. SILVER:

Thank you.

36

37 THE COURT:

I won't be concerned if he has to walk out mid
38 sentence. As well, I don't expect that it will be a problem. I should have the decision
39 dealt with, but I am waiting on a jury right now so if they come back and need
40 something, we may need to just interrupt this briefly to make sure that everybody can be
41 called together. So you are aware of that as well.

1
2 MR. SILVER: Thank you.

3
4 **Reasons for Judgment**

5
6 THE COURT: So we are here for delivery of my decision on
7 the application that I heard which had been brought by Access Mortgage Corporation
8 2004 Ltd. They were applying pursuant to sections 85 and 86 of the *Civil Enforcement*
9 *Act* and section 242 of the *Alberta Business Corporations Act* to appoint a Receiver of
10 Arres Capital. Now while other relief was outlined and sought in the originating notice,
11 the application was limited to those items as I understand. Correct, Mr. Silver?

12
13 MR. SILVER: Yes.

14
15 THE COURT: Access commenced a debt action against Arres
16 in March of 2011 and in the course of that action, on May 24th of 2013, Justice Hunt
17 McDonald granted Access summary judgment in the amount of \$1,028,879.99 less
18 amounts already paid and applied by Access. Those amounts were subsequently
19 determined by Justice Hunt McDonald to be in the neighborhood of \$12,000. A writ of
20 execution was filed on November 29th, 2013 and an appeal of that judgment was
21 dismissed by the Alberta Court of Appeal on September 29, 2014.

22
23 In September of 2011, Access and several other parties had filed an originating
24 application for a bankruptcy order against Arres. Arres filed a notice denying any
25 indebtedness to the bankruptcy applicants. A consent order staying the bankruptcy
26 application was granted on April 10th, 2012 pending Access's summary judgment
27 application. To date no further steps had been taken on the bankruptcy application.

28
29 Access has been unsuccessful in enforcing its judgment against Arres other than to the
30 extent of approximately \$53,000. Access attempted to enforce its judgment against Arres
31 by garnisheeing bank accounts at the Bank of Montreal where Arres had banked and trust
32 accounts of various law firms without any success. Access affected a seizure at Arres'
33 business premises which resulted in a notice of objection being filed by Arres who claim
34 that the seized assets belonged to a third party and which resulted in the assets being left
35 with Arres on a Bailey's undertaking.

36
37 Wes Serra, a director of Arres executed a Form 14 statutory declaration of debtor on
38 October 20th, 2014 which identified the only asset of Arres to be receivables totalling
39 \$9.7 million, all of which were described as pursuant and subject to trust agreements or
40 mortgage administration agreements between Arres Capital Inc. and various investors in
41 nine projects. I will refer to those amounts that are owing under the trust agreements and

1 mortgage administration agreements as receivables for a shorthand for purposes of this
2 judgment.

3
4 In the course of cross-examination of Mr. Serra that was conducted on November 6 of
5 2014 on the statutory declaration, he advised that some of the accounts receivable had
6 been assigned and undertook to provide details. The response to the undertakings
7 indicated that Arres' interest in the projects and its receivables with respect to the projects
8 had been assigned to a numbered company, 875892 Alberta Ltd. and/or Stacey Serra who
9 is Mr. Serra's wife or to Gordon and Mona Schneider pursuant to various agreements that
10 were dated between March 15th, 2010 and July 11, 2012. In his examination, Mr. Serra
11 indicated that Arres' monthly expenditures were between 26 and \$30,000 per month, the
12 difference relating to an employee who was on maternity leave who was not replaced. He
13 claimed that Arres received some funds from related companies to cover its expenses but
14 refused to provide any details. Based upon the evidence before me it does not appear that
15 Arres has any source of revenue from business operations or that it has any exigible
16 assets, if in fact those assignments are valid, other than any moneys it receives from
17 related companies in respect of which Arres refused to provide any further information.

18
19 Mr. Murphy, who is a director and officer of Access swore an affidavit in support of the
20 application for the appointment of a receiver in which he states that he believes that most
21 of the charges that Arres claims are owing as accounts receivable are not contemplated in
22 the administration agreements or fabricated, their financial disclosure is invalid or they are
23 statute barred. Now, I note that while Mr. Murphy makes these statements, if in fact
24 those receivables aren't valid, then that reduces the likelihood of Access being able to
25 realize on the judgment.

26
27 Access seeks to appoint a receiver to independently and impartially wade through the
28 books of Arres to get a true picture of the status and hold all cash flows intact to protect
29 all stakeholders, tax authorities, creditors and assignees. Access' application is brought
30 pursuant to sections 85 and 86 of the *Civil Enforcement Act* and section 242 of the
31 ABCA. These sections provide statutory remedies. The Court may only grant the remedy
32 sought if the specific requirements set out in each section have been established.

33
34 In the course of his submissions, Access' counsel specifically advised that the application
35 for the appointment of a receiver that was before me was not being brought pursuant to
36 the provisions of the *Judicature Act* nor at that point was it brought pursuant to the
37 provisions of the *Bankruptcy and Insolvency Act*. Sections 85 and 86 of the *Civil*
38 *Enforcement Act* state and I quote (as read)

39
40 Notwithstanding any rule of law or equity to the contrary where
41 certain exigible property of an enforcement debtor cannot

1 otherwise be conveniently realized. The Court on application of
2 an enforcement creditor may do one or more of the following:

3
4 (a) appoint a receiver of the property;

5
6 (b) order the enforcement debtor or any person in
7 possession or control of the property to deliver up the
8 property to an agency or to any other person named in the
9 order;

10
11 (c) enjoin the enforcement debtor or any other person from
12 disposing that or otherwise dealing with the property;

13
14 (d) make any other or additional order that the Court
15 considers necessary or appropriate to facilitate realization on
16 the property.

17
18 85(2), (as read)

19
20 Where the Court appoints a receiver under subsection 1, the Court
21 may in the order direct that the order apply to property acquired
22 by the enforcement debtor after the order is granted.

23
24 Section 86, (as read)

25
26 In determining whether to appoint a receiver under section 85 the
27 Court must consider at least the following:

28
29 (a) whether it would be more practical to realize on the
30 property through other proceedings authorized by the Act;

31
32 (b) whether the appointment of a receiver would be an
33 effective means of realizing on the property;

34
35 (c) the probable cost of the receivership in relation to the
36 probable benefits to be derived by the appointment of a
37 receiver;

38
39 (d) whether the appointment of a receiver would cause
40 undue hardship or prejudice to the enforcement debtor or a
41 third person;

1
2 (e) the likelihood of writs against the enforcement debtor
3 being satisfied without resorting to the property in question.
4

5 These sections permit the Court to appoint a receiver of the exigible property of a
6 judgment debtor and grant related relief where the property cannot otherwise be
7 conveniently realized, having regard to the considerations in section 86.
8

9 There are a number of questions or issues that arise in the context of this case. First of
10 all, number one, what exigible property is the subject of this application? Access is
11 seeking the appointment of a receiver of Arres, however, section 85 does not contemplate
12 the appointment of a receiver over a judgment debtor but, rather, the appointment of a
13 receiver over the exigible property of a judgment debtor. The Court could, under this
14 section, appoint a receiver over all of the exigible property of a judgment debtor but, in
15 my view, not over the judgment debtor. Now there is some real uncertainty in this case as
16 to whether Arres has any exigible property.
17

18 The evidence put forward in Mr. Murphy's affidavit, the financial statement of the debtor
19 statutory declaration provided by Wes Serra and the transcript of the examination of
20 Mr. Serra and the undertaking responses provided may suggest that Arres has no exigible
21 assets. I note that Mr. Serra nor any of the purported assignees did not put forward any
22 affidavit evidence on this matter. Access questions the validity of the receivables which
23 appear from the undertaking response information may have been assigned to related
24 parties, i.e., Mr. Serra's wife and a company controlled by her. I understand that Access
25 also questions the validity of the assignments. Am I correct on that, Mr. Silver?
26

27 MR. SILVER: Yes, Ma'am.
28

29 THE COURT: So in my view, it appears that Arres may have
30 exigible property. The only exigible property it would appear to have would be the
31 receivables and whether that property belongs to Arres or whether that property belongs to
32 the assignees is a question that would need to be determined.
33

34 Number two, would it be more practical to realize on the property through other
35 proceedings authorized by this Act? Access has unsuccessfully attempted to realize on the
36 judgment it obtained over a year ago through various other means. There are no apparent
37 other practical ways to determine what exigible property, if any, of Arres is available to
38 satisfy the judgment and to proceed to realize on same.
39

40 I note that Access, as I indicated, has questioned the validity of the receivables which
41 would appear to be the only available asset that could satisfy its judgment. Access, while

1 it is a judgment creditor is also an investor and so it wears numerous hats in its
2 relationship with Arres. It is involved in litigation with Arres and is, as I mentioned, one
3 of the investors who Arres is pursuing with respect to these receivables. While this may
4 demonstrate that there is a conflict between Access's interests as an investor and Access's
5 interests as a judgment creditor, a receiver would be in a position to evaluate the validity
6 of the receivables and the feasibility of realizing on the receivables as well as the extent
7 of the interest, if any, of Arres in those receivables.

8
9 I note that it appears that Arres may have purported to deal with some of the proceeds of
10 property that was subject to the assignments without regard to the assignments.

11
12 While the evidence is not completely clear, it does appear that Arres purported to take
13 title to certain units in the foreclosure action and then sell those interests to a numbered
14 company, 1798582 Alberta which was another company controlled by Mr. Serra's wife at
15 a value that may be less than fair market value. Rather than having title go to the
16 assignees, Arres also apparently settled a lawsuit involving another numbered company,
17 125, and again, there is no indication that the assignees were involved in that process.

18
19 So in my view there are some real issues raised as to the extent of Arres' exigible
20 property. Arres' behaviour has also raised some potential concerns about the feasibility
21 and prospect of Access being able to realize on his judgment in the absence of a receiver
22 being appointed. Some of these concerns include its failure to give notice to the Grey
23 Briar investors, including Access, before proceeding to obtain the second order in the
24 foreclosure action notwithstanding it was aware that the investors were taking the position
25 that they had terminated the Arres' right to proceed. In my view, a receiver would be
26 able to determine what exigible property is available to satisfy Arres' judgment and how
27 that could be realized.

28
29 So that I am satisfied that the appointment of a receiver could be an effective means of
30 realizing the property assuming that there is exigible property at the end of the day.

31
32 Number three, what would the probable cost of the receivership be in relation to the
33 probable benefits to be derived by the appointment of a receiver? There is no doubt that
34 receivers are an expensive remedy, however, here the benefits would be a potential ability
35 to satisfy a judgment creditor who has already obtained a judgment against Arres for in
36 excess of \$1 million.

37
38 Number four, what is the likelihood of the writs being satisfied without resorting to the
39 property in question? In my view, there appears to be no reasonable prospect of the writs
40 being satisfied unless a receiver is appointed.

41

1 A receiver is, in my view, an extreme remedy, however, it is a remedy that is available in
2 unusual situations and, in my view, this is an unusual situation. Section 85 is designed to
3 provide an exceptional remedy in circumstances where other remedies will not be
4 effective in enabling a judgment creditor who has obtained a judgment to realize on that
5 judgment.

6
7 I now turn to section 87 of the *Civil Enforcement Act* which states as follows, (as read)

8
9 With respect to receivers, the following applies:

10
11 (a) a person may not be appointed as a receiver unless that
12 person,

13
14 (i) has satisfied the qualifications, if any, set out in
15 the regulations and,

16
17 (ii) has agreed in writing to act as a receiver in
18 respect of the matter for which the appointment is to
19 be made.

20
21 (b) the Court may give a receiver those powers that the
22 Court considers necessary or appropriate for the realization
23 of the property including, without limiting, the generality of
24 the foregoing, the power to manage or sell the property or
25 bring any proceedings in relation to the property and,

26
27 (c) unless otherwise ordered by the Court, a receiver may
28 take into the receiver's custody and control the property
29 over which the receiver is being appointed.

30
31 I turn first to the identity of the receiver. Access originally proposed that Grant Thornton
32 be appointed as a receiver which was opposed by Arres. I make no comment on Grant
33 Thornton being in a conflict or in any way perhaps being inappropriate but, in my view, it
34 is not appropriate to appoint an entity as a receiver where there is some questions raised
35 and there are real questions raised by Arres. There are lots of good, qualified receivers.
36 In my view, where there are good, qualified other receivers available, it is not in anyone's
37 interest to appoint a receiver who would be controversial so I am not prepared to appoint
38 Grant Thornton as the receiver in this case. I understand that in correspondence, other
39 individuals have been proposed, those being Orest Konowalchuk at Alvarez and Marsal,
40 Deryck Helkaa at FTI Consulting, Kevin Meyler at Hardie & Kelly and Neil Narfason at
41 Ernst and Young. Now, no formal consents as yet have been obtained; is that correct,

1 Mr. Silver?

2

3 MR. SILVER:

That is correct.

4

5 THE COURT:

And Mr. Pelletier, does your client have any
6 specific objection to any of those individuals?

7

8 MR. PELLETIER:

Not that I'm aware of, no.

9

10 THE COURT:

Okay. So then any of those individuals upon
11 filing a consent could be appointed as the receiver. Now this is not a typical receivership
12 and this is not a situation where, in my view, a boilerplate receivership order is
13 appropriate. Obviously there are specific issues that will need to be addressed and the
14 receivership in this instance is going to need to address those circumstances so that the
15 receivership can be managed in an effective and efficient way. Mr. Silver, do you have a
16 proposed form of order?

17

18 MR. SILVER:

I haven't prepared one. Of course, we were
19 relying on the boilerplate receivership order but I'm sure with directions from Your
20 Ladyship that we can craft an appropriate form of order.

21

22 THE COURT:

Well, I guess what I would like to have you
23 propose is a form of receivership order that is not boilerplate that addresses the
24 circumstances in this case.

25

26 MR. SILVER:

Yes.

27

28 THE COURT:

What we have is a situation where the first
29 issue that needs to be determined is the nature of the exigible property that is available
30 and that seems to me, to involve at least a number of questions, obviously, between the
31 parties you would be able to determine what those other questions are. But I would
32 assume that that would be the first issue for the receiver to determine, what exigible
33 property is available and that would involve some kind of an assessment being done of
34 these receivables, the validity of the receivables and the practicality of enforcing them and
35 the validity of the assignments.

36

Now, if it turns out that the assignments are in fact valid, then that may be the first
37 question but I leave, in terms of the practicality, I would want there to be a receivership
38 order put forward that proposes how this matter can be dealt with in a practical manner.
39 That order will also need to deal with how the costs of the receivership are going to be
40 handled and who is going to be responsible for those costs. Receivership orders often
41

1 provide that the costs of the receiver come out of the estate but here there may well be, if
2 in fact the information that the assignments are valid is correct, no exigible property and
3 no assets to cover those receivership costs. If that's the case, then presumably Access
4 will need to make some arrangements so that it or somebody will be responsible for the
5 receiver's costs, at least in the first instance. Those issues will need to be addressed in
6 the context of the receivership order.

7
8 So if there is no proposed receivership order other than just the blanket order, then I am
9 going to suggest, Mr. Silver, that you put together a receivership order that be discussed
10 with Mr. Pelletier and that then the receivership order be provided to me in advance so
11 that I can look at the receivership order and that if there are some issues as to the parties
12 aren't able to agree on what the terms of that receivership order, then you can reattend
13 back before me so that we can deal with those matters in a reasonable fashion.

14
15 **Submissions by Mr. Silver (Other)**

16
17 MR. SILVER: Just a couple of things I would like the
18 receivership order to include which we might be able to get direction from yourself this
19 morning. One, is to go back to review the accounting of Arres Capital to May 1st, 2009,
20 I think it will be, which is the date that our debt arose which is the subject of a summary
21 judgment to see whether there has been any transactions that may result in finding
22 exigible assets that may have been transferred out of Arres to other parties.

23
24 The second thing is that there are, as you may recall, a number of funds, if I can refer to
25 them, that are being held in various party's hands that Arres has laid claim to that Access
26 may also have claimed to in other parties such as Y2K and Ridgebrook and Kenzy
27 Financial may have Access to but they're sort of up in the air pending some determination
28 through the judicial process in various actions. So I would like to include that and not
29 just limit it to the receivables per se, although technically those may fall within the
30 broader definition of receivables. I just don't know exactly what Arres' claim is. But the
31 receiver would have to determine whether they form part of Arres' claim, they
32 (INDISCERNIBLE) to Arres' claim and then whether or not there are residual assets for
33 the purposes of enforcement.

34
35 THE COURT: So what is it you are proposing?

36
37 MR. SILVER: Just that the receivables, well, include these
38 other funds that we're talking about.

39
40 THE COURT: Okay. Well, sorry, the receivables seem to be
41 the only assets that have been identified but, in my view, it is appropriate that the receiver

1 be appointed overall to determine the exigible property of Arres and over that exigible
2 property. And so if those funds, if Arres has an interest in those funds such that they
3 would constitute exigible property, then they would be caught by the receivership order.
4 It seems that there is no point having the receiver deal with those funds other than simply
5 there be an order that those funds, that they be specifically identified and that they not be
6 disbursed, so to speak, most of them have already been tied up in some fashion, I believe,
7 the funds that you are identifying, without further Court order. Would that address your
8 concerns, Mr. Silver?

9
10 MR. SILVER: You certainly would have the preservation
11 aspect that you refer to, yes. I mean, the receivership should be over all the assets,
12 property and undertakings of Arres with a view to determining which of those assets,
13 property and undertakings are exigible for the purposes of enforcing any judgment by any
14 judgment creditor it would seem to me. So what I'm looking at is in the wording, right,
15 that would say the receiver, whoever the receiver is going to be, is receiver over the
16 property and assets and undertakings of Arres as opposed to the words exigible assets.
17 That's something that the receiver would have to determine.

18
19 THE COURT: Well, how do you deal with that in the context
20 then of section 87? 87 says, (as read)

21
22 Notwithstanding any rule of law or equity to the contrary where
23 certain exigible property of an enforcement debtor cannot
24 otherwise be conveniently realized, the Court on application may
25 do one or more of the following:

26
27 (a) appoint a receiver of the property.

28
29 MR. SILVER: So to me if I'm understanding that provision
30 correctly, we would appoint a receiver over the property and then we determine whether
31 it's exigible.

32
33 THE COURT: Well, how do I do that under the section? I
34 mean, this is a situation where you have applied for statutory remedy.

35
36 MR. SILVER: Yes.

37
38 THE COURT: You could have gone under the *Bankruptcy*
39 *Act*. You could have proceeded under Section 13 of the *Judicature Act* but you didn't.
40 And so we are under a statutory remedy. Now, the statutory remedy is designed not to
41 deal with your client's interest as an investor but to deal with your client's interest as a

1 judgment creditor.

2

3 MR. SILVER: Yes.

4

5 **Ruling (Other)**

6

7 THE COURT: As a judgment creditor your client is only
8 entitled to the exigible property. You have satisfied me that Arres' behaviour has been
9 such that it raises some real questions as to whether it has exigible property and if
10 anybody other than a receiver is able to determine if it has exigible property.

11

12 So my order is going to direct that it is appointed over the exigible property. Now, I
13 appreciate that may be a bit of a chicken and egg.

14

15 MR. SILVER: Yes.

16

17 THE COURT: But there could be property that it has that
18 would not be exigible. For example, if you had property that was covered by an
19 exemption, that would not be exigible property.

20

21 MR. SILVER: Yes.

22

23 THE COURT: I have no jurisdiction under section 85 to
24 appoint a receiver over something other than exigible property.

25

26 MR. SILVER: Yes. Well, I don't know what exemption might
27 apply in this case so I'll just withdraw that --

28

29 THE COURT: Well, I'm just saying, Mr. Silver, when you
30 have chosen a statutory remedy, this is not a boilerplate receivership and so you are going
31 to need to draft your order in such a fashion that it addresses and responds to the limits
32 contained in the statute.

33

34 Now, if it turns out that assets are properly assigned then those assets may well not
35 constitute exigible property and even under your characterization they would not fall
36 within the undertaking of Arres because it's not Arres' undertaking.

37

38 MR. SILVER: Yes.

39

40 THE COURT: But I am satisfied that somebody needs to get
41 in there and determine what Arres owns and which assets of Arres should be made

1 available to your client. Because your client has a million dollar judgment --

2

3 MR. SILVER: Yes.

4

5 THE COURT: -- that they have had for over a year and that
6 they are entitled to realize upon. So this is not going to be a boilerplate order. You are
7 going to need to craft your order so that it addresses the concerns that I have identified.

8

9 I am prepared to give a receiver and I am satisfied that I have the authority to do that
10 under the section, in particular section D, I can give the Court any order that is necessary
11 or appropriate to facilitate realization of the exigible property. But you are going to need
12 to craft your order in accordance with the limits contained in the provision under which
13 you have applied.

14

15 MR. SILVER: I understand that. Thank you.

16

17 THE COURT: Okay. Mr. Pelletier, do you have any
18 comments with respect to anything that Mr. Silver was raising or anything that I have
19 raised?

20

21 **Submissions by Mr. Pelletier (Other)**

22

23 MR. PELLETIER: Yes, My Lady. First of all, I have had a little
24 bit of trouble just in my own mind conceptualizing how this receiver is to be appointed
25 without impacting all of the various actions that are outstanding between Access and
26 Arres. I think -- well, in 2014 there were, I think four actions filed by either Access or
27 Arres in order to address issues which, I believe, the receiver is now directed to address.
28 That's my first concern.

29

30 The second concern, of course, is the outstanding foreclosure actions as well as the
31 outstanding -- well, for example, the Greybriar matter obviously, how that is to -- how
32 exactly that will properly continue or not depended upon the powers granted to the
33 receiver from your order today.

34

35 And the third thing is, it seems to me that what is really being directed here in appointing
36 a receiver is as you have identified, it is not a typical receiver, it is not -- really what I
37 think the Court is trying to get at here is the issue of and as you have mentioned, I'm
38 sorry, is the issue of what are Arres assets and what is available. What is exigible
39 property that is available. Well that, to me strikes me as more of an accounting report. I
40 mean, we're within the *Civil Enforcement Act*, 85, 86, 87 which grants the availability of
41 a broad spectrum of remedies. I'm a little bit worried that we may be getting caught up

1 in the use of the word "receiver" when, in fact, we mean something collectively slightly
2 different than an actual receiver and in that way -- based on your direction that this
3 receiver appointed needs to identify the exigible property, needs to identify the validity of
4 the receivables, needs to address the practicality of enforcing and address the validity of
5 the assignments, my suggestion is that that -- it is really an accounting report. More of the
6 nature of sort of like a part 18 investigation to figure out what are the assets, what is
7 specific to the exigible property.

8
9 I don't really have a solution to all of these issues I have just raised. I'm just saying I'm
10 having a tough time conceptualizing how to make this work.

11
12 THE COURT:

Well, and I think that's why -- that's why I
13 think some of those points will need to be addressed in the receivership order. For
14 example -- and I don't think I am in a position to tell the parties here today how one
15 should address some of the facts that there appear to be certain, as you have identified
16 conflicts between Access's interests in certain aspects and what the best way to address
17 some of those issues would be, because the matter needs to be addressed in kind of a
18 practical way. And so the form of the order.

19
20 Now, with respect to a -- it is a different kind of receivership order because a lot of times
21 what you would do is you would appoint a receiver and, in fact, to carry on somebody's
22 business. And as I understand, Arres is not carrying on business other than proceeding
23 with enforcement of various actions. And unless I have got that wrong, that's my
24 understanding.

25
26 MR. PELLETIER:

Arres Capital was my understanding as well.

27
28 THE COURT:

Arres Capital. I think you want here more than
29 a simple accounting investigation because if there are exigible assets in Arres Capital, at
30 this point in time I am satisfied that Arres Capital should not be disposing of those assets
31 and in that context what a receiver would do is, in effect, hold those assets.

32
33 Now, the section 85 is a very flexible remedy so there may be more practical ways of
34 dealing with some of those issues but it seems that the receiver in this case is going to
35 need some quite different powers than somebody else might need.

36
37 And the receivership order is going to need to address the fact that this is not the usual
38 case. While I appreciate that Access is questioning the validity of the assets that it is
39 really seeking to enforce in order to get its million dollar judgment paid, it creates a
40 somewhat unusual circumstance and the receivership order is going to need to address
41 that. To the extent that these claims are, in fact, legitimate, that is not going to be

1 Access's call. That is going to be why a receiver needs to be involved where the receiver
2 is a Court-appointed receiver under this section who has statutory duties and to the extent
3 that there are circumstances where there is a conflict between Arres and Access, then that
4 is going to need to be addressed in such a way. Because Access is not the only person
5 who is going to be the beneficiary of this receivership order but it would certainly apply
6 to other judgment creditors as well. And there may be some.

7
8 MR. PELLETIER:

The other judgment creditor issue actually I
9 believe is a non-issue. I think my friend is a little bit -- he is not counsel on that matter.
10 The Kenzy money is paid into Court. Arres has absolutely no claim to that. So when
11 we're talking about other --

12
13 THE COURT:

No, no, but if there were other judgment
14 creditors who came forward so to the extent that Arres takes the position that Access
15 owes it a bunch of money as I understand which Access denies. That is potentially an
16 asset of Arres if it is, in fact, a valid claim. And if it is a valid claim, by the time things
17 get realized there may be other judgment creditors of Arres who come out of the
18 woodwork and those judgment creditors would be entitled to get their money from Access
19 if, in fact, Access properly owes money to Arres that hasn't been assigned to somebody
20 else.

21
22 The receivership order in this context is going to need to make sure that all of those
23 interests are, in fact, protected. This will be a very expensive exercise and I expect that
24 the receiver is going to be looking to make sure that its costs are going to be taken care
25 of. So all of those things are the nuts and bolts issues of the receivership order that are
26 going to need to be proposed.

27
28 And what I am, I indicated what I'm prepared to grant is an order within the scope of
29 section 85 and section 86 which has some fairly broad powers but it is going to need to
30 take into account all of the particular and somewhat unusual interests that are at play here.
31 And I don't think I can tell you today how to best handle those. Those are things that
32 you and Mr. Silver are going to have to either work out or if you can't work them out,
33 come back before me with each of your proposals as to how they would need to be
34 addressed in the context of a receivership order. And perhaps before you do that, once
35 the identity of the receiver has been determined, then it may be useful to sit down and
36 have some discussions. It may or may not, I don't know. It may be useful and I leave
37 that to counsel to figure out where you go.

38
39 MR. PELLETIER:

One more request for direction. There are
40 effectively, in my mind there are sort of two types of actions that Arres Capital is
41 involved in, correct. The one type of action relates to foreclosures, Arres taking steps as

1 trustee in certain projects to get them through a process and get the investors and itself
2 paid out. That's one group.

3
4 The other group are the number of actions between Access and Arres relating to
5 addressing the assets of Arres, the assignments, the transfers, those sorts of things
6 effectively following from the judgment. I guess I would just like a little bit of
7 confirmation that the actions which are between Access and Arres dealing with Arres'
8 assets are to be sort of lumped together and included in this receivership order and the
9 actions that Arres is undertaking as trustee are to be effectively left alone. Because the
10 typical order, of course, would state everything because it would be over everything that
11 Arres has but I can see this becoming a ridiculous, even more of a ridiculousness if the
12 asset actions are not lumped together. It's part of that whole consolidation application
13 that my client has brought. There has been a new action started since then.

14
15 So I guess what I'm asking for is confirmation that when Mr. Silver and I are dealing
16 with this we are to lump together the asset actions and try to include them some way
17 practically in the receiver order and meanwhile leave the, I will call them the foreclosure
18 actions, those sort of enforcement steps alone except to the extent that Arres may
19 receive --

20
21 THE COURT: May realize.

22
23 MR. PELLETIER: -- may realize (INDISCERNIBLE) some assets
24 in the future.

25
26 THE COURT: Okay. Mr. Silver?

27
28 **Submissions by Mr. Silver (Other)**

29
30 MR. SILVER: I have no difficulty with my friend's proposal
31 to isolate the foreclosure actions. It is the foreclosure actions that produce funds that are
32 potentially available to Arres as well as the investors, including Access and Access in its
33 capacity as judgment creditor or anybody else who may be now or later a judgment
34 creditor. And it's the foreclosure actions, for example, the Greybriar situation that
35 produces the fertile ground or the most mischief to be undertaken by Arres. If we don't
36 include --

37
38 THE COURT: What do you mean the most mischief to be
39 undertaken?

40
41 MR. SILVER: Well, an example, if you go to the Greybriar

1 matter where the attempt was made to get titles to these condominium units to sell them
2 to a non-assignee, third party company controlled by Mr. Serra's wife and then put those
3 funds out of the reach --

4
5 THE COURT:

Right. But that is all something that is
6 subsequent, as I understand it, to the realization. As I understand what Mr. Pelletier was
7 saying is he's saying that in order to be efficient to the extent that there is the foreclosure
8 aspect, that that foreclosure aspect should go ahead but any moneys that flow out of that
9 foreclosure action be held. So that the mischief that you are now talking about is
10 mischief that is post realization rather than pre-realization, is that --

11
12 MR. PELLETIER:

Yes, that's accurate.

13
14 MR. SILVER:

Well, post-realization or not post-realization. I
15 mean if you take a look at what transpired in the Greybriar matter, the titles hadn't even
16 been transferred yet but with the benefit of the Western Canadian protocol with the
17 mortgage being advanced by Terrapin to the purchaser before the titles were registered, I
18 think the funds came into 179's possession, I think there is still about \$138,000 sitting
19 around there somewhere. And then there is other titles that weren't subject of the sale
20 which have yet to be dealt with. So that's a problem. If we don't include -- especially
21 since it is the subject of the assignment in the first place so if we don't include Arres'
22 interest as it perceives it, whether it's a receivable now or becomes a fee claim which it
23 would then grab the funds and apply it against its fees, if we don't attach that and
24 preserve those funds that may come about or those titles that may be provided to Arres,
25 then we will have left a large hole for Arres to drive its truck through and create problems
26 which are going to result in more litigation and we will have lost the opportunity to
27 preserve those assets for the benefit of Access and all other creditors. We have to close
28 that hole.

29
30 **Ruling (Other)**

31
32 THE COURT:

Well, this is clearly in my view something that
33 you are going to have to give me actual wording. Because in terms of what is being
34 talked about, I need to understand what it is that is, in fact, being proposed specifically.
35 And so, you know, looking at the situation, the order is going to need to be crafted in
36 such a way that it is practical and that what is occurring is going to protect the various
37 interests at play. So how is it, Mr. Silver, that you are suggesting that we deal with the
38 claims that are being made against Access?

39
40 MR. SILVER:

Against Access by Arres, there is only the one
41 action which is the \$9.7 million claim which you may recall we had brought an

1 application to dismiss. That -- well in the context of the receivership, the receiver is
2 going to have ownership, so to speak, of the claim because they have to determine if that
3 claim which is part of the \$9.7 million -- I think you were claiming 5.6 million, sorry, but
4 as part of the receivables that Arres claims to have. The receiver is going to have to
5 determine if that is in fact a valid claim. But it wouldn't be -- it is an offsetting claim
6 against our judgment supposedly if it was real.

7
8 So one of the problems that my friend is implying, I guess, when he addresses this
9 question to the Court is, you know, what is his future role as counsel for Arres, and I
10 know he mentioned this in his representations when we were before you in the middle of
11 January, what is his future role as counsel for Arres in these various actions. And here
12 we have whatever assets that are exigible which would include this potential claim are
13 covered by the receivership. So it seems to me that the receiver would come to this Court
14 and say we need advice and directions as to what to do with this. We have looked at this
15 and we've said, one, we don't feel it is valid or, two, we do feel it is valid. Now what do
16 we do.

17
18 THE COURT: Okay, so you're saying -- let's just take that
19 forward. The receiver looks at the claim and let's say the receiver decides the claim is
20 valid.

21
22 MR. SILVER: Yes.

23
24 THE COURT: Then the receiver -- the receiver, what is it
25 you're suggesting? The receiver might go, hum, all this expensive litigation, Mr. Pelletier
26 knows all sorts of things about this, I'm going to continue to use Mr. Pelletier.

27
28 MR. SILVER: The receiver would have that option certainly.

29
30 THE COURT: But that -- you're suggesting that all of that will
31 need to be a decision to be made by the receiver.

32
33 MR. SILVER: By the receiver, yes.

34
35 THE COURT: Well, okay. And all I'm saying again, this is
36 why I think we get the detail that -- that will need to be determined in the order.

37
38 MR. SILVER: Yes, I appreciate there is going to be a lot of
39 discussion, I think, between Mr. Pelletier and myself as to what this order should look
40 like and then if we are unable to reach agreement, I suppose we will be presenting it to
41 yourself after you had a chance, of course, to look at it and then we can perhaps have that

1 discussion at that point in time. Because I think we are probably in the realm of
2 speculation at this point in time.

3
4 THE COURT:

Yeah, I think, let's be clear. There are definite
5 conflicting interests that need to be addressed in appropriate fashion. And I'm sure that
6 the two of you can put your minds to where those issues are and if you can't agree, then
7 the matter will be brought back. But the focus will need to be on being practical because
8 I am extremely mindful of the conflict that Access faces in the various position it has
9 taken. I mean it is trying to realize -- and so that will need to be addressed in a way that
10 this is all addressed in the context of the order. And that's I guess one of the reasons why
11 I suggest there be some real meaningful discussions with a receiver because this will be
12 an extremely expensive process, and I'm sure that the receiver will be looking for some
13 assurance from somebody where that money is going to be coming from, recognizing that
14 who ultimately pays that money at the end of the day may be somebody else, I don't
15 know, but also recognizing that the receiver's duties will be to the Court, and, therefore,
16 whoever is ultimately financially responsible for the receiver may turn to be paying for
17 things that turn to not necessarily be things that are in their best interests at this point in
18 time until it is determined where things shake out. So those, I think, are things that
19 everybody will have to take into account.

20
21 MR. SILVER:

Fair enough. Thank you.

22
23 THE COURT:

Okay. Thank you. Anything else?

24
25 **Submissions by Mr. Silver (Costs)**

26
27 MR. SILVER:

I don't know if it is a moot point but is there
28 any order with respect to costs with respect to our application?

29
30 THE COURT:

With respect to costs, what are you seeking?

31
32 MR. SILVER:

Whether Arres should be responsible for paying
33 costs of our application since we were successful in the appointment of the receiver.

34
35 THE COURT:

Mr. Pelletier?

36
37 **Submissions by Mr. Pelletier (Costs)**

38
39 MR. PELLETIER:

I suggest that we put that off until later today
40 depending upon what the order actually says. We won't be able to determine exactly how
41 successful they've been until we get the final determination as to what the order states and

1 there will be submissions to be made at that point in time in relation to without prejudice
2 communication. And to me it doesn't make sense, given your instructions this morning,
3 we won't know what that looks like.
4

5 **Ruling (Costs)**
6

7 THE COURT:

What I'm going to do is simply reserve on
8 costs at this point in time. If we need to get into issues like that this is not the time to
9 address and as you see we have just had some other people come into the courtroom to
10 deal with something that I need to deal with at 10:00.
11

12 At the outset of this application Arres had brought a cross application for consolidation
13 that was adjourned. Ultimately what I simply wanted to direct with respect to that
14 application is those kind of applications should properly be brought before a master rather
15 than on the commercial list. I appreciate it was a cross-application against a receivership
16 application. But I just wanted to direct that when that application or if that application
17 ultimately proceeds and by whom it is going to proceed, I think you need to deal with this
18 receivership issue first, it should be before the master, not on the commercial list.
19

20 MR. PELLETIER:

Yes, I honestly believe that that consolidation
21 issue will be addressed by the receivership order anyway.
22

23 THE COURT:

Okay. Thank you.
24

25 MR. SILVER:

Thank you very much.
26

27 MR. PELLETIER:

Thank you.
28

29 THE COURT CLERK:

Order in Court.
30

31 _____
32 PROCEEDINGS CONCLUDED
33 _____
34
35
36
37
38
39
40
41

1 Certificate of Record

2

3 I, R. Bales, certify that this recording is the record made of the evidence in the
4 proceedings in Court of Queen's Bench held in courtroom 1204 at Calgary, Alberta on the
5 13th day of February, 2015, and that I was the court official in charge of the
6 sound-recording machine during the proceedings.

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1 **Certificate of Transcript**

2

3 I, Lois Edelenbos, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best
6 of my skill and ability and the foregoing pages are a complete and accurate transcript of
7 the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and
10 is transcribed in this transcript.

11

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15

Order No. 2403-15-1

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35 Pages: 23
36 Lines: 936
37 Characters: 38064


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39 File Locator: afaa5cccbd1511e4a22c0017a4770810
40 Digital Fingerprint: c520b2ffc2396acae3273e91ee85ed3dd581a423470e16041fad4183bc005f6c

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ToC Pages:	1
Transcript Pages:	21
Total Pages:	23
Line Statistics	
Title Page Lines:	52
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Transcript Lines:	872
Total Lines:	936
Visible Character Count Statistics	
Title Page Characters:	530
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This is **Exhibit "N"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017


.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

Action No.: 1401-12431
E-File No.: CVQ17ACCESS
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

ACCESS MORTGAGE CORPORATION (2004) LIMITED

Plaintiff

and

ARRES CAPITAL INC.

Defendant

P R O C E E D I N G S

Calgary, Alberta
April 22, 2015

Transcript Management Services, Calgary
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1 Proceedings taken in the Court of Queen's Bench of Alberta, Calgary Courts Centre, Calgary,
2 Alberta

3

4 April 22, 2015

Morning Session

5

6 The Honourable Madam Justice Strekaf

Court of Queen's Bench of Alberta

7

8 B.E. Silver

For the Plaintiff

9 R. Pelletier

For the Defendant

10 S. Durant

Court Clerk

11

12

13 THE COURT CLERK:

Order in court.

14

15 THE COURT:

Good morning.

16

17 MR. SILVER:

Good morning.

18

19 MR. PELLETIER:

Good morning, My Lady.

20

21 THE COURT:

Please be seated. Are we ready to proceed?

22 Who would like to go first?

23

24 Submissions by Mr. Silver

25

26 MR. SILVER:

I guess I probably should go first, My Lady.

27 Again, Silver, initial B.E., for the record. I'm solicitor for the applicant Access. As

28 you're aware, we have been trying - that is, counsel for Arres and myself - have been

29 trying to come to terms as to what exactly the form of order should be as per your

30 directions on February 13th. And we have, as you are also aware, failed to come to

31 agreement to that effect, so each of us --

32

33 THE COURT:

You seem to have made some good progress,

34 though, so . . .

35

36 MR. SILVER:

Well, we've made some progress, and I believe

37 we're at the point, it's fair to say, perhaps we need some further guidance from Your

38 Ladyship as to what exactly the order should include, or exclude for that matter, so that

39 we could properly draft an order which both counsel would agree to, and you would be

40 prepared to sign, more importantly.

41

1 THE COURT: M-hm.

2
3 MR. SILVER: The first point I guess I should address is my
4 comment in my letter to you --
5

6 THE COURT: M-hm.

7
8 MR. SILVER: -- in regards to the *Judicature Act*, and I'm
9 referring, of course, to the case that I had put before you at our application and resent to
10 you yesterday, and this is *Frueh v. Mair*. From the comments of Master Laycock in this
11 particular decision, and based on the comments of Justice Perras at paragraph 11, and
12 again at paragraph 14, it appeared in 1998 -- and I don't have any authority subsequent to
13 that date otherwise but it appeared that an application for the appointment of a receiver
14 under section 13 of the *Judicature Act* was no longer available to a money judgment
15 creditor, which Access is a money judgment creditor in this particular case, and was
16 subsumed essentially by the provisions of section 85 through 87 of the *Civil Enforcement*
17 *Act*.
18

19 Now, if that is a correct statement, then the *Judicature Act* provision isn't available to a
20 money judgment creditor to make an application for the appointment of a receiver. And
21 I'm uncertain if that is the case because I don't know if the "just and convenient" test
22 under section 13 of the *Judicature Act* is in fact completely replaced for a money
23 judgment creditor --
24

25 THE COURT: But isn't this an issue, Mr. Silver, that could
26 have been and should have been argued before me? I mean, you made a -- you came
27 before me and very specifically but that authority and told me that that was the position
28 that you were taking. Now to come back and want to reargue the case, I'm not sure
29 why -- I mean, I -- I'm not bound by Justice Perras' decision or by Master Laycock's
30 decision but the time to have made that point was -- was back then, not -- not, it seems,
31 now.
32

33 MR. SILVER: Fair enough, My Lady, but the only point is, is
34 that, when -- when I made the comment to you at our original application, I believe that I
35 had stated, if I understand this decision to be correct, then we are not proceeding under
36 the *Judicature Act* because that's what this particular --
37

38 THE COURT: Well, do you have a transcript? I don't have
39 that. All I have is my notes --
40

41 MR. SILVER: Yes.

1

2 THE COURT: -- as I recall, that the representation was made
3 to me that you were not proceeding under the *Judicature Act*, and I proceeded and I'm
4 sure Mr. Pelletier proceeded with his submissions on that basis. In fact, as I recall, we
5 were running short of time, and it was quite -- quite clear that he didn't make those
6 submissions, I proceeded, so I'm now puzzled as to why we should be rearguing
7 something because you had second thoughts about something that you might have argued
8 then --

9

10 MR. SILVER: Well --

11

12 THE COURT: -- but chose not to.

13

14 MR. SILVER: -- I just raise it, My Lady, in case that is
15 something that you would be prepared to consider. If not, fair enough, we'll move
16 forward.

17

18 THE COURT: Well, I'll hear from Mr. Pelletier on that but let
19 me hear from you on some of these other matters first.

20

21 MR. SILVER: Thank you. So as per my letter to Your
22 Ladyship with respect to the *Civil Enforcement Act* and the order itself, we stated at the
23 beginning of our letter what the -- what the four intentions --

24

25 THE COURT: Yes.

26

27 MR. SILVER: -- of my client were to achieve. And first and
28 foremost is -- from my client's perspective, is to -- is to -- whatever the exigible assets
29 may be, is to hold them on high ground, and to make sure that whatever money may be
30 realized from any asset in which Arres may or profess to have an interest, that that money
31 is held on high ground and made not available to Arres. And that's the important thing
32 that we wanted to ensure that the appointment of a receiver would guarantee. So we
33 wanted to provide powers to the receiver in order to accomplish that fact.

34

35 And, as per your direction, the first thing we had to find out was what were the exigible
36 assets under section 85 of the *Civil Enforcement Act* because that's what the receiver has
37 power over. And we have an issue, of course, as to what those exigible assets are, so the
38 first thing I think the receiver has to do, as per your observation, is to determine what
39 those exigible assets are. Now, those exigible assets aren't necessarily only found in the
40 interests of Arres as per the assignment documents or in the statutory declaration because
41 that statutory declaration proves not to be very accurate when you have to take into

1 consideration that the assignments of those interests in the properties and the receivables
2 actually took place before the statutory declaration was sworn. We only found out about
3 it, as you're aware, as a result of the cross-examination in November of last year.

4
5 So, from our perspective, the information we're getting from Arres is not to be trusted,
6 and we should have investigative powers, inspection powers, provided to the receiver to
7 go into Arres -- not only into Arres' accounts but in all sources where Arres may have
8 funds. Now, I appreciate that this may cross a line with respect to solicitor-client
9 privilege because some of those assets may -- and I'm not suggesting, in any way,
10 anything improper or -- by my friend but they may exist in the trust accounts of any
11 lawyer acting or who has acted for Arres Capital. So I think that there should be some
12 provision for disclosure of that potential exigible asset and an investigation of the
13 exigibility of that asset if in such -- such funds are being used for the benefit of Arres
14 Capital and are in lawyers' trust accounts.

15
16 The other area -- one of the other areas is its potential that -- that one of the -- an
17 application may go forward for the appointment of a trustee in bankruptcy, and having
18 regard to the fact that the receiver will have spent a considerable amount of time and
19 energy, as well as my client's funds, if there's not funds available from the estate, then it
20 would only make sense that that particular receiver, whoever that is, would be appointed
21 as the trustee in bankruptcy, so we don't have a duplication of effort, time, and money if
22 that was to take place. My friend, of course, had objected to the inclusion of that
23 provision in the order.

24
25 THE COURT: Well, the provision -- you're not asking a
26 determination be made that whoever is the receiver would be the trustee?

27
28 MR. SILVER: No, I'm not, that's correct.

29
30 THE COURT: You're just asking that the -- that the Court
31 declare that the receiver could be the trustee?

32
33 MR. SILVER: That is correct.

34
35 THE COURT: And is that necessary? I mean, why is that a
36 necessary provision, at this point in time, or is it?

37
38 MR. SILVER: Well, I suppose you could take out the whole
39 provision altogether and leave the question open to argument when and if that application
40 for appointment of a trustee in bankruptcy is made but it would be nice to have that
41 particular argument removed from whoever is opposing that appointment, saying that,

1 well, the order could have said that they were precluded or not precluded but it didn't. So
2 I just wanted to have something in there to assure the court hearing that particular
3 application that the receiver is not precluded from --
4

5 THE COURT: Right, but why would there be any need for
6 that? I mean, we could put in a whole bunch of things that -- that would say that the
7 receiver is not precluded from being the trustee, and that in the event of a bankruptcy all
8 sorts of other things might not happen. I'm just wondering why there's any need for that
9 particular provision. And I believe there's a provision -- and unfortunately I didn't bring
10 my *Bankruptcy Act* down with me but isn't there a provision in the *Bankruptcy Act* that
11 deals with the circumstances when a receiver is appointed, and that the receiver can act as
12 trustee? What we're dealing with is a receiver appointed under the *Bankruptcy Act*.
13

14 MR. SILVER: Yes.
15

16 THE COURT: What are those provisions? I mean,
17 presumably -- I presume that that provision that you're talking about wanting to put into
18 this order is mindful of whatever that law is, which I don't have it at my fingertips.
19

20 MR. SILVER: And neither -- and neither do I, I'm afraid.
21 And I believe that's probably the reason why it's in there, is it has some reference to it,
22 but I don't -- I didn't want to have that argument raised against whoever the receiver is
23 from -- prevented from being the trustee, for any reason. And, again, it's a practical
24 consideration as opposed to anything else. It makes sense that, if there was an
25 appointment -- application for the appointment of a trustee, that the receiver would be a
26 likely appointment in that circumstance.
27

28 So we're looking at -- really, at two major areas, and that is the access to the books and
29 records of Arres, and the arrangement to identify, secure, and preserve the exigible assets
30 for the benefit of the stakeholders, including Access. And that, unfortunately, is where
31 my friend and I have disagreed, in terms of which powers the receiver should have.
32

33 THE COURT: Okay.
34

35 MR. SILVER: Thank you.
36

37 THE COURT: Okay. Well, perhaps, then, I'll hear just in
38 general from Mr. Pelletier, and then maybe we need to just go through this paragraph by
39 paragraph.
40

41 **Submissions by Mr. Pelletier**

1
 2 MR. PELLETIER: Thank you, My Lady. Just to comment briefly
 3 on the *Frueh v. Mair* issue, first of all, I don't believe -- sorry, I don't believe the
 4 application of the *Judicature Act* either way is really an issue at all. Of course, any
 5 injunctive relief proceeds under the *Judicature Act*, to one degree or another, and -- but,
 6 second of all, in putting the *Frueh v. Mair* case back before this Court, my friend is --
 7 must, at least indirectly, be referring to the finding in that case, that, where a party is
 8 seeking to enforce on a money judgment, and is seeking appointment of a receiver in
 9 respect of enforcing on that money judgment, they are -- the power to appoint a receiver
 10 only exists under the *Civil Enforcement Act*, sections 85 and 86, because they're an
 11 execution credit. So I don't believe that it adds in or takes anything away, whether to the
 12 parties' submissions prior or to this Court's decision, at the end of the --

13
 14 THE COURT: Well, I didn't make a decision on that issue.
 15 That decision --

16
 17 MR. PELLETIER: Right.

18
 19 THE COURT: -- wasn't argued before me.

20
 21 MR. PELLETIER: And --

22
 23 THE COURT: And he's just now asking that he wants to
 24 potentially raise that particular argument. That seems to be a very different question than
 25 whether or not Justice Perras' decision is correct or not. I haven't heard any submissions
 26 on that. I haven't made any decision on that. That's where we're at with respect to that
 27 particular issue right now.

28
 29 MR. PELLETIER: Fair enough, then, and I would actually agree
 30 with your comments a moment ago, that, if that was to be argued and put forward, that
 31 should have been put forward on the original application and now we're substantially too
 32 late to do that. And that's where I'd leave that, unless you require anything further.

33
 34 THE COURT: Yes.

35
 36 MR. PELLETIER: So, in respect of the order, of course you have
 37 the -- my letter of April 20th, (INDISCERNIBLE), my draft with the blacklined --

38
 39 THE COURT: One thing that I just -- sorry, I just flagged. It
 40 seemed to me when I was going through the two drafts, or maybe I wasn't being careful
 41 enough but it seemed to me that the most recent draft that Mr. Silver had provided is

1 slightly different than the draft which you blacklined; is that correct?

2

3 MR. PELLETIER: It should not be.

4

5 MR. SILVER: There was something minor.

6

7 THE COURT: And I don't recall exactly where it was but it
8 was . . .

9

10 MR. SILVER: I'll look for that, if there was a change, while
11 you --

12

13 THE COURT: Okay.

14

15 MR. SILVER: -- continue with my friend.

16

17 THE COURT: Okay.

18

19 MR. PELLETIER: Okay. So my friend and I appear in general in
20 agreement in respect of the four points he mentioned. It seems that the sort of principles
21 underlying the drafting of the order are an agreement between the two parties. Obviously
22 we can all read the transcript of your decision.

23

24 Where we differ is in the - where we primarily differ, excuse me - is in relation to the
25 authority to be granted to the receiver.

26

27 THE COURT: M-hm.

28

29 MR. PELLETIER: And given your fairly direct statements in your
30 decision that - and I'm going to obviously paraphrase because it's in my letter - that the
31 receiver is to identify and secure the exigible property of Arres Capital, giving the
32 receiver authority to deal with and take steps in relation to and make decisions on behalf
33 of Arres as receiver for something that is not the exigible property of Arres, or potentially
34 cannot ever be the exigible property of Arres, goes too far, and so what my edit has
35 attempted to do is pull out those parts where my friend, in my submission, has gone too
36 far in granting authority to the receiver --

37

38 THE COURT: And I guess the issue is that part of dealing
39 with the exigible property means that the receiver needs to determine what the exigible
40 property is, and, if it turns out that that's contested, then that issue will need to be
41 resolved. But what I think Mr. Silver is concerned about is that -- that the receiver needs

1 to be able to ensure that all of the property is secure, pending determination of what's
2 exigible and what's not exigible.

3
4 MR. PELLETIER: Yes, and the paragraph in my draft of the order
5 - I believe it's the fifth paragraph - first -- to start at, there's -- there's another but for the
6 fifth paragraph: (as read)

7
8 The receiver is expressly authorized to receive, take possession of,
9 preserve, and protect the exigible property, and to do all things
10 reasonably incidental to the exercise of these powers.

11
12 The -- and then, at paragraph 6 --

13
14 THE COURT: Right, but, Mr. Pelletier, let's just assume that
15 there is a piece of property that's clearly disputed as to -- as to its exigibility.

16
17 MR. PELLETIER: Yes.

18
19 THE COURT: Then how is it that your draft addresses that
20 property in a different way than Mr. Silver's draft, and how does -- how -- which -- I
21 want to understand which of those is the most workable on a -- on a preliminary basis,
22 pending determination of that property's exigibility.

23
24 MR. PELLETIER: Yes. And I don't believe it's a case of my
25 draft doing -- suggesting something different, it is that my draft includes -- includes
26 Mr. Silver's provisions which allow it to be secured, and I'd submit fully address the
27 issue of identifying, determining, and holding that potential exigible property until it can
28 be, you know, either determined to be exigible property or not. And particularly at
29 paragraph -- to start, at paragraph 6, anyone with notice of the order - and of course
30 anyone connected with the debtor - has an obligation to advise the receiver of the
31 existence of the exigible property and to hand it over. So that should, from the first point,
32 cover --

33
34 THE COURT: Well, except, no, it shouldn't. If you have
35 somebody who is contesting, who is claiming that property is not exigible, then that
36 paragraph is probably not going to catch them, from their point of view, because their
37 point of view is going to be, I don't have to tell the receiver anything because I don't
38 have any exigible property, I have non-exigible property. Now, that may not be the
39 cautious approach to do it but it is certainly a plausible interpretation of the order.

40
41 MR. PELLETIER: Okay. And then we go into the issue of

1 paragraph 7 in relation to disclosure of information, which I won't restate but 7 and 8
2 effectively say that everything needs to be handed over -- effectively, again, anyone with
3 notice needs to hand over all information. And then we get into paragraph 10. That's a
4 situation where -- or, excuse me, that's effectively sort of new in my draft but it takes a
5 concept that is in Mr. Silver's draft, in that the receiver can authorize a caveat -- excuse
6 me, register a caveat or encumbrance against title to any property which may constitute or
7 which may result in available exigible property. Now, that's specifically left open as to --
8 in my submission, is left open not limited just to real property. We're also dealing with
9 PPR registrations. And so that's why I'm using the words -- or, excuse me, my draft uses
10 the words: (as read)

11
12 . . . the title to any property, such that the receiver can step in and,
13 in exercising the authority granted to it under paragraphs 5 and 6,
14 register a caveat or encumbrance . . .

15
16 Perhaps maybe we add a statement there, or similar document: (as read)

17
18 . . . against the title to the property, thereby protecting the -- that
19 property while it is being determined to be exigible or not.
20

21 Now, possible, if the concern is that parties are going to -- third parties are going to take
22 the position that this doesn't apply to me and I'm going to pay the money out, well, of
23 course, they're then automatically taking the risk that a determination contrary to that
24 decision will be made by the court, and then they potentially will be on the hook
25 themselves as a third party.
26

27 THE COURT: If they have assets.

28
29 MR. PELLETIER: Yes. But I suppose, if what we wanted to do
30 was protect that property and direct that it be held, is in paragraph 10 we add a couple of
31 words - I'm not exactly -- I'm trying to do it off the top of my head, and that's why I'm
32 stuttering - a couple of words that direct that parties that are identified by the receiver to
33 hold potentially exigible property must hold that property until -- you know, subject to
34 application, consent, or a court order. That's perhaps a few words added to paragraph 10,
35 and would actually, in my submission, follow through on the intention of paragraph 10.
36

37 But then we get to the -- so they -- we then have a court order which tells these parties to
38 hold it. There's nothing that can be done if any party is going to simply act in contempt
39 of court, and I don't -- my friend is not suggesting -- and I -- he and I have had some
40 talks about this. He's not suggesting that there has been a contempt of court by any of
41 the parties but this Court can only go so far as granting an order which allows the

1 receiver to serve the order, provide the Court's direction to these third parties. If they're
2 going to misappropriate the assets behind everyone's back, there's really nothing that can
3 be done about that, other than a court application and, you know, judgment and
4 follow-through that way.

5
6 I tell my clients often, you know, I can give you -- you know, if they ask me, Am I going
7 to get sued on this, well, you may or may not get sued on this, I can't -- you know, I
8 can't do anything about that short of tackling a person on their way to the courthouse and
9 pulling them into my office but what I can give you -- do is give you advice as to
10 whether or not I think this is a valid claim, and give you direction and advice as to how
11 to address that.

12
13 We're in sort of a similar situation here. I mean, the order, in my -- my draft order,
14 perhaps subject to the few extra words for paragraph 10, deals with a situation of the
15 receiver identifying the exigible property, holding the exigible property, and giving notice
16 to the parties that the receiver is coming after property which may be exigible and as
17 such, you know, registering an encumbrance or giving them direction to hold it. If
18 they're going to act contrary to the court order, there's nothing we can do.

19
20 And giving -- I would submit that the wrong process would be to give the receiver a
21 broadly worded power to deal with the non-exigible property of Arres Capital --

22
23 THE COURT: Well, what are we talking about, really? I
24 mean, I guess that's the issue here --

25
26 MR. PELLETIER: Yes.

27
28 THE COURT: -- in the sense of -- of the -- there's -- there
29 may be a distinction but presumably this has been an issue that the two of you have been
30 focussed on, so there must be some property, I would think, that falls into the category of
31 potentially exigible or potentially non-exigible property, otherwise we wouldn't be having
32 this discussion.

33
34 MR. PELLETIER: Well, as I understand it, the -- I mean, the
35 positions of the parties are obvious but the dispute is quite honestly whether Arres has any
36 actual exigible property itself, now, or whether the property that Arres is entitled or
37 obligated to enforce on and collect and try and get to itself has actually been assigned,
38 and as such is not exigible property.

39
40 THE COURT: Right.

1 MR. PELLETIER:

And so, in the course of that, we also have these fairly complex investment structures which Arres and Access have all been participating in for the last decade in, and they involve quite a number of investors, and they include different versions -- several different versions of trust agreements, administration agreements, management agreements, et cetera. The obligation and authority upon Arres to act as trustee or manager or administrator in respect of those agreements is not something that is exigible property that would otherwise be addressed by the process we're dealing with today. The interest of the investors is not an exigible asset. In most cases, if there are exigible assets of Arres, they don't actually become exigible assets until the entitlement of Arres through the agreements becomes monetized. My friend has actually taken the position in a previously related case that effectively the *Limitations Act* doesn't begin to run because the asset of Arres doesn't exist until - in relation to these trust agreements - doesn't exist until it's effectively been monetized. Basically, until the property is sold, you do the calculation and figure out how much is coming out to Arres. But, in the course of that, you also have to figure out --

16
17 THE COURT:

How is anything coming out to Arres, on that theory, though?

19
20 MR. PELLETIER:

Because Arres has an entitlement to different things and different agreements but there's usually fees and interest -- Arres will have an interest in the security. They will have an interest in the -- you know, in -- even collecting back their expenses spent over the life of the investment. In a lot of these situations what happened is investors invested in property and --

25
26 THE COURT:

Right, so but I guess, Mr. Pelletier, just so that I'm clear, so that one of the issues is whether or not these assignments are valid.

28
29 MR. PELLETIER:

Yes.

30
31 THE COURT:

And, but even -- but assuming the assignments are valid, Arres' position is that the assignments don't catch everything, there's stuff that Arres would be entitled to from proceeds that isn't going to be caught by the assignments; is that correct?

35
36 MR. PELLETIER:

I understand that that is likely to be Access's position. I -- as I take my client's position, once the investments are monetized, Arres' interest as trustee is realized, and the -- anything that Arres collects back -- sorry, I'm stuttering because I -- I don't believe there's anything that any of these agreements -- any of these assignment agreements are projects that are outside of this, but any money that Arres collects back from its position as trustee or from its position as investor in a project

1 has been assigned out.

2

3 THE COURT: Right, so isn't -- just to back up, then, you told
4 me that Arres didn't have anything until it got monetized but aren't you now telling me
5 that Arres, in your client's theory, has nothing, ever, because whatever it has, whenever it
6 ultimately gets realized, it's gone over to somebody else?

7

8 MR. PELLETIER: Much of it would have been but it's in getting
9 to that point of monetizing it that really matters because --

10

11 THE COURT: But, if at some point -- is there something --
12 I'm just trying to make sure that I understand. Is there something that your client says it
13 is entitled to that might qualify as an exigible asset, or is it your client's position,
14 whatever it has, it's been assigned over pursuant to these assignment agreements? If
15 they're valid -- maybe they're not, maybe they are, I don't know but, assuming for a
16 moment that they are valid, if they're valid, is it Arres' position that it has nothing and
17 never will have anything because everything it gets is assigned, and the only way that it
18 can afford to continue to do all this stuff is for it to get cash flow from somebody else to
19 perform these activities, but whatever the -- whoever is going to benefit from these
20 activities is going to be somebody else.

21

22 MR. PELLETIER: Ultimately, yes, but the -- first of all, the cash
23 flow issue is not as -- is not as clear cut as that, and also there are other interests at play,
24 and also interest insofar as Arres -- excuse me, well, the investors, I suppose, accruing
25 costs to Arres on a month-over-month basis that would ultimately need to be paid out.
26 Just to give you an example of that, if the receiver is granted effectively receivership over
27 Arres -- over Arres' ability to make decisions under the trust agreements as opposed to
28 over Arres' exigible property, some of these agreements would be -- would be -- would --
29 some of the investors would be able to terminate these agreements. That would stop the
30 accrual of certain expenses to Arres' and their assignees' ultimate favour. That's one
31 example, and that's also one of the reasons why I believe Access is seeking to have a
32 broader power put into this order than just addressing the exigible property of Arres.
33 We -- the situation is that amounts are accruing to Arres' benefit, ultimately to their
34 assignees' benefit over time --

35

36 THE COURT: Yeah, or to the judgment creditor's benefit.

37

38 MR. PELLETIER: Well, yes. Dependent upon the decision about
39 the exigible property, yes. If that assignment isn't valid, then --

40

41 THE COURT: Right.

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41

MR. PELLETIER:

Right.

THE COURT:

if I'm correct --

But as I understand what you're saying, as I --

MR. PELLETIER:

Yes.

THE COURT:

-- one of the concerns that you are flagging is that, if the receiver comes in, the receiver is -- has an interest in -- in order to maximize Arres' estate and the exigible property, the receiver would be going after investors.

MR. PELLETIER:

That's also one of the concerns, yes. That is another issue that actually is a little bit separate but, yes, that would also end up being part of the concern.

THE COURT:

And then the first concern is that the act appointing the receiver would entitle some of those investors to not -- to walk away? Is that what you're trying to say? I'm just trying to --

MR. PELLETIER:

They could --

THE COURT:

-- understand --

MR. PELLETIER:

Yes, they could terminate -- they could terminate the agreement and --

THE COURT:

But why would that be any different if -- if -- the issue of whether the assets are exigible or not, which is the question that you are -- that we're talking about here, depends upon the validity of the assignments. I'm not clear how an assignment being valid or invalid can somehow change whether or not the -- somebody can walk away from the agreement.

MR. PELLETIER:

Well, it doesn't because, regardless of whether the assignments are valid or not, the agreements, just to use the trust agreements that Arres is acting as trustee for, in and of themselves can't be exigible property. They can't become -- because, at a basic level, the agreements and the investments are actually the assets of the investors --

THE COURT:

Right, but the --

1 MR. PELLETIER: -- and --

2
3 THE COURT: -- but the -- the Access -- as I understand, Arres
4 has a piece of some of those deals.

5
6 MR. PELLETIER: I believe that they have a piece of some of
7 them but they're --

8
9 THE COURT: And so --

10
11 MR. PELLETIER: But their piece - sorry, pardon me - their piece
12 of those deals comes from their position as trustee, from their entitlement to receive fees
13 which accrue on a monthly basis, as well as their expenses and whatnot back, and also to
14 make demand of the investors to pay money in order to meet expenses, to be, you know,
15 future expenses.

16
17 THE COURT: Right. So Arres -- the way those deals are
18 structured is that Arres is going to get something out of that process --

19
20 MR. PELLETIER: Yes. Yes.

21
22 THE COURT: -- unless it is assigned whatever it's going to
23 get to a third party.

24
25 MR. PELLETIER: Basically, yes.

26
27 THE COURT: Okay. So the concern that -- that -- as I
28 understand, that Mr. Silver has is he wants to make sure that, until it's determined
29 whether Arres is entitled to whatever Arres can get out of those deals or some third party
30 is entitled, that Arres is not going to dispose of those assets or get -- either dispose of
31 those assets on its own or provide the -- flow those assets through to the -- to the
32 assignees.

33
34 MR. PELLETIER: Right.

35
36 THE COURT: And I understand one of the concerns -- and
37 that seems to be a legitimate concern.

38
39 MR. PELLETIER: Yes, and that's why paragraph 10 of my draft is
40 there, because it will allow them to register an encumbrance which will prevent Arres
41 from doing anything with those assets.

1

2 THE COURT:

3 Well, registering an encumbrance is different
4 than allowing somebody to -- I'm not sure that registering -- all that registering an
5 encumbrance does is say you can't do something. It's just a stronger way of saying you
6 can't do something. But I'm just wondering where the other "you can't do something" --
7 you -- the registering of an encumbrance is telling third parties about something, but
8 where is that same provision in telling Arres what it can do or what it can't do, or the
9 receiver, because what I see as being an issue -- that is an issue that I think needs to be
10 covered off pending a determination being made, but by the same token I am mindful
11 that -- that the receiver that is appointed is appointed for the benefit of Access and any
12 other judgment creditors, and his -- that receiver's goal is to maximize the estate. The
13 receiver's goal is not to settle or compromise claims that might be advanced by Access or
14 other investors. Or, if it's going to do that, I think there needs to be some oversight or
15 some concern because, as I understand, that's one of the concerns that you have, or that
16 your client has, is that there's a lot of people that have several hats on here.

17 MR. PELLETIER:

18 Yes, My Lady, and that -- not to harp on it too
19 much but the encumbrance issue I believe addresses that because Arres, or whomever
20 owns the property, whether it's real property or whether it is personal property - a
21 registration for PPR can be made pursuant to the order - they can't transfer clear title to
22 it, they can't complete a foreclosure, they can't -- they -- they can't do anything with that
23 without giving notice to the receiver and dealing with the registration and dealing with the
24 power and authority of the receiver pursuant to this order, so having that encumbrance in
25 place, in my view, and maybe I'm -- I admit maybe I'm being naive but the -- in my
26 view, will prevent that property from moving; will prevent Arres or whomever owns the
27 property, whoever is the -- you know, if it's a bare trustee or something like that that's
28 handling it, because of something that's happened in relation to the property in the past, it
29 will require notice to the trustee, it will require that the encumbrance be dealt with, it will
30 require that this order be dealt with before that property can be transferred in any way.
31 And so, in my view, that handles this concern rather than trying to deal with some sort of
32 partial authority for the trustee to be involved in the trust agreements but not too far as to
33 overstep, you know, potential -- their conflict as between, you know, who some of the
34 investors are versus who the trustee is. It just -- it's cleaner, in my view, and that's
35 why -- the primary reason why I'm making that suggestion. If we need to add a couple
36 of words in order to clearly flesh that out in relation to land titles, personal property - I
37 mean, there's already provisions in here regarding the property in other provinces, of
38 which there is some in BC - we can do that. I don't think that will be very hard. What I
39 think will be very hard is trying to deal with this kind of partial authority and conflict
40 issue --

41 THE COURT:

But why -- again, the -- why would the receiver

1 be in a conflict? Like the receiver -- we're talking about appointing a credible receiver
2 who is going to be -- who knows what their mandate is and -- and should be. So I --
3 are -- what I'm trying to understand is what it is that you are envisaging, from a practical
4 perspective; that, from a practical perspective, Arres is going to keep on proceeding with a
5 bunch of these lawsuits, on its own. Is that -- or what are you envisaging, and how is
6 that role going to tie in with the receiver?
7

8 MR. PELLETIER: There's three actions, which were started
9 between Arres and Access primarily, which will be stayed, and basically the receiver's
10 report, I think we both understand, will more or less decide those three actions. So those
11 will be stayed, so that part of the litigation --
12

13 THE COURT: So that --
14

15 MR. PELLETIER: -- will be determined.
16

17 THE COURT: And that's the idea, I guess, to some extent
18 there, is at least get the receiver's report, and that will address -- sorry, I'm --
19

20 MR. PELLETIER: It will address some of these --
21

22 THE COURT: -- blanking a little bit on the -- one of the
23 principals between your clients is something about -- I'm trying to remember.
24

25 MR. PELLETIER: There's --
26

27 MR. SILVER: We have two fraudulent conveyance actions and
28 the action against Access by Arres for the payment of roughly 5.6 or \$4.7 million or
29 whatever.
30

31 MR. PELLETIER: Four six or something.
32

33 THE COURT: Okay.
34

35 MR. SILVER: Right?
36

37 THE COURT: And is --
38

39 MR. SILVER: And those are the three actions.
40

41 THE COURT: But, and is it anticipated that, out of something

1 that the receiver is -- some of their investigations, there should be some light shed on that,
2 and that may help?

3
4 MR. PELLETIER: I honestly believe that those three actions will
5 be decided by the receiver's report --
6

7 THE COURT: Okay.
8

9 MR. PELLETIER: -- for all intents and purposes.
10

11 THE COURT: Or at least -- at least, there's no point spending
12 any money by the parties, doing anything further on those actions, until you get the
13 receiver's report?
14

15 MR. SILVER: That's correct.
16

17 MR. PELLETIER: Effectively, yes.
18

19 THE COURT: Okay.
20

21 MR. PELLETIER: Now, the foreclosure matters, that's exactly
22 what we're dealing with in relation to -- sorry, in relation to the powers of the receiver,
23 which Mr. Silver put in his order which I pulled out. Effectively, yes, Arres or its -- or
24 the -- the numbered company, but effectively Arres, has an obligation to proceed to
25 effectively monetize the properties at issue, take that money, do the calculations, and pay
26 out to the investors. Part of the receiver's report is going to, I think - I expect, excuse me
27 - decide how much money the investors get versus how much money Arres would get.
28 Now, Arres' part --
29

30 THE COURT: Sorry, and Arres' part being the fees and stuff?
31

32 MR. PELLETIER: The fees, et cetera, yes.
33

34 THE COURT: Okay.
35

36 MR. PELLETIER: They'll be assigned out, with the -- there's a
37 couple of these projects that Arres is an investor in, as well, but that's another --
38

39 THE COURT: M-hm.
40

41 MR. PELLETIER: -- that still gets lumped into whether it's been

1 properly assigned or not. So, in the context of that, the -- registering an encum --
2 registering this order on title to those properties, we don't know -- we don't know what
3 those properties are, at least on counsel's side of the table --

4
5 THE COURT: Right. Okay. And how many properties are
6 you telling me about? Like . . .

7
8 MR. PELLETIER: It's all the -- excuse me, all of the receivable
9 projects. I think it was nine --

10
11 THE COURT: Right. Okay. So that --

12
13 MR. PELLETIER: -- in the financial statements.

14
15 THE COURT: The projects, okay.

16
17 MR. PELLETIER: Yeah. And so, in that way, everyone's interests
18 get handled. The receiver doesn't have to worry about, you know, dealing with the -- and
19 when I was speaking of conflict, I was speaking of conflict between -- in certain investors
20 being on both sides, the interests and the -- you know, allegations that have been made by
21 certain of the investors back against Arres. So the receiver doesn't have to get involved
22 in any of that. Those pieces of litigation, those foreclosures, ultimately the Graybriar
23 matter, can be determined such that eventually properties will be monetized or addressed
24 according to the trust agreements. We will ultimately get some sort of court order in
25 relation to what is proper and appropriate to finalize those projects and those foreclosure
26 actions, and the receiver will have their order registered on title, which effectively says,
27 Look, if any of the money that comes out of this to Arres is exigible properties of Arres, I
28 get it, which actually is pretty much exactly what the *Frueh v. Mair* decision was, was
29 that the receiver was to basically sit back until the pension was payable -- just give notice,
30 and sit back and wait, and once the pension is payable the receiver gets it. That's the
31 same thing we're doing here. We just have a bunch more that has to happen to
32 determine, you know, what the exigible property is, but on the back end the receiver is
33 supposed to sit back, give notice to the world that you don't pay out anything that is
34 exigible property or potential exigible property without running it past me first. Anything
35 that is determined to be exigible property, I get, as the receiver, to hold for the creditors.

36
37 Now, there's also one issue here and Mr. Silver touches on this whole problem. There is
38 a clause in Mr. Silver's order which would allow an encumbrance to be registered which
39 could not be removed but for subsequent court order. That, in my submission - and this
40 is what I was referring to in my letter - would have a direct impact on what is currently
41 going on in the Graybriar matter, first of all; also what is going on in the Jervis matter

1 and the Dockman matter. Jervis is a property in BC.

2
3 The Graybriar matter, first of all, as you are well aware, My Lady, deals with a stay of
4 enforcement, and whether that stay of enforcement should be continued. If an
5 encumbrance is allowed to be registered by way of this receivership order, which can only
6 be removed by subsequent court order, everything we've done in the Graybriar matter,
7 from February 2014 to now, is moot because we're currently waiting to put submissions
8 into the Court of Appeal --

9
10 THE COURT:

M-hm.

11
12 MR. PELLETIER:

-- and we'll get a subsequent decision from the
13 Court of Appeal. If the Court of Appeal decides in favour of the respondents to the
14 appeal, then we will all revert back to the -- for all intents and purposes, the February
15 2014 foreclosure order and that will proceed but, if an encumbrance is put on title that
16 can only be removed by subsequent court order according to this receivership order, it
17 doesn't matter what the Court of Appeal orders, we've still got to come back and deal
18 with this receivership order, so they effectively get an indirect stay of enforcement --

19
20 THE COURT:

Right, but --

21
22 MR. PELLETIER:

-- even further.

23
24 THE COURT:

But, if in fact -- if in fact everything -- I'm just
25 trying to understand why that is a problem, in the sense that, if in fact the appeal is
26 dismissed, which is what you would -- you are saying then -- then you revert back to the
27 previous order, but at that point in time, if it -- you still have the fact that that could still
28 be now exigible property. Like that -- why would -- why is that a problem, in the
29 sense -- it may be a problem with respect to -- it's -- because Access is -- a judgment
30 creditor has now just come along, so why is it -- why -- I'm just trying to understand why
31 that's a problem.

32
33 MR. PELLETIER:

Because what it would do is create the situation
34 where, even if the Court of Appeal dismisses the appeal, we have to -- we have to come
35 back to court to allow the foreclosure order for 2014 to be given effect because we can't
36 transfer -- sorry, the foreclosure order -- it becomes really confusing. The foreclosure
37 order can't be completed, despite the fact that it's a foreclosure order, because there is an
38 encumbrance on title which this Court will have now said can't be taken off but for
39 subsequent court order. The foreclosure order won't strike everything off. And part of --
40 if the foreclosure order of 2014 doesn't strike everything off, title can't be proceeded on
41 because of an encumbrance registered pursuant to this order, then it's effect -- it's an

1 effective stay of enforcement of the February 2014 order even further. And so --

2

3 THE COURT: But isn't the -- so let's say all of that happens.

4 Then, at that time, isn't -- isn't somebody at liberty to apply to vacate -- or have this
5 order not apply to that on the basis that there is no exigible property? Like, the only
6 reason why this order would apply is if someone is able to demonstrate that there's some
7 exigible property. If there's no exigible property caught by that, then shouldn't somebody
8 be able to go to court, and the court say, Get rid of the order? Like, I'm --

9

10 MR. PELLETIER: Right, but you have to go back to court.

11

12 THE COURT: Well, but --

13

14 MR. PELLETIER: And this is what --

15

16 THE COURT: -- what should --

17

18 MR. PELLETIER: This is the problem --

19

20 THE COURT: Why wouldn't you have to go back to court --
21 isn't part of that -- you only have to go back to court if there is some reasonable prospect
22 of it being exigible property that's affected. If there's no exigible property affected, then
23 maybe you have to go back to court but it should be a pretty quick application. If there is
24 exigible property affected, shouldn't it be caught by the receivership?

25

26 MR. PELLETIER: The -- no, I don't think so because what we're
27 dealing with here is a situation of a court order granted in February 2014 that has only
28 been - not only been, has been, excuse me - stayed for a lengthy period of time. We
29 revert to execution on that order, and we also would have the related claim by some of
30 the investors - that's Mr. Halyn's clients - against that -- against that situation, such that I
31 don't believe it would. We would -- we're in the situation here where the receiver was
32 applied for by a judgment creditor about a year after the original stay of enforcement
33 application was made. And so, if this receiver appointment is put in in such a way that it
34 creates an indirect stay of enforcement, what we have is Access Mortgage doing
35 indirectly --

36

37 THE COURT: But it's not --

38

39 MR. PELLETIER: -- what it can't do directly.

40

41 THE COURT: -- an indirect -- you've lost me on that

1 particular issue. The only time this is going to become relevant is in the event that the
2 appeal is dismissed, and at that time the order would -- would revert, or the foreclosure
3 order would revert. If it turns out, at that time, the way the foreclosure order -- and,
4 again, you are all way more -- I mean, even though I was involved with this, it's been a
5 little while.

6
7 MR. PELLETIER:

Of course.

8
9 THE COURT:

If there is some money spinning out of that to

10 Arres, as I recall there was, if that money is going to spin out to Arres and that is exigible
11 cash, then that should go to the receiver. If there is money spinning out to Arres and it's
12 not exigible property because it's assigned to somebody else, or for whatever reason it
13 shouldn't be going to Arres, it should be going to somebody else, then it shouldn't but --
14 so that's why I'm -- and, at that point in time, it's not being stayed, it's simply saying --
15 it doesn't stay that order, it simply says that -- that the -- before -- before the order --
16 before that can be discharged, somebody is going to need to make sure that, if there is
17 exigible property coming out of that, that it's going to the receiver. That seems to be all
18 that that does, isn't it?

19
20 MR. PELLETIER:

It does but the problem of requiring the
21 additional application is the -- is the problem.

22
23 THE COURT:

Well, but the -- well, we have to weigh the cost
24 of an additional application versus allowing Arres access to money that is exigible
25 property without it being caught by the receiver, and that would seem to kind of defeat
26 this whole exercise we're spending time on. And if the only cost that you're telling me is
27 having to come to court, that doesn't seem to be, in the balancing, all that expensive, so
28 to speak.

29
30 MR. PELLETIER:

Right. There wouldn't be any actual cash
31 coming out of that transaction. It was the transfer -- it was the transfer around of
32 property. There wouldn't be any -- there --

33
34 THE COURT:

Well, there's exigible interest. As I recall,
35 exigible -- Arres got the property, and then Arres transferred it immediately to somebody
36 else.

37
38 MR. PELLETIER:

Right. And then --

39
40 THE COURT:

And didn't somebody get some money?

41

1 MR. SILVER: Terrapin.

2
3 MR. PELLETIER: Terrapin. There's a lender -- mortgage
4 lender --

5
6 THE COURT: Terrapin funded it.

7
8 MR. PELLETIER: Yes. And that brings in then, if this order --
9 this order here is going to allow a registration on title to those properties that will require
10 a further court order, like that -- the approach suggested whereby this receivership order
11 takes some sort of super-priority in relation to foreclosure orders and prior or future orders
12 of the court, in the Graybriar matter I'd submit would require -- we're impacting, then,
13 the interests of Terrapin and 179, as well. We're not --

14
15 THE COURT: But isn't -- wouldn't that be -- wouldn't the
16 receiver be able to register a caveat -- oh, you're saying that the difference between this
17 paragraph - your paragraph - is that, if the receiver registered this as a caveat, it's going
18 to be subsequent, so it's going to be struck off; is that what your argument is?

19
20 MR. PELLETIER: I'm looking for the actual clause. Bear with me
21 for one moment, please.

22
23 THE COURT: Sorry, I'm just not sure which paragraph it is
24 you're concerned about.

25
26 MR. PELLETIER: It's the -- if you look at the blacklined that was
27 in my letter, it's on page 6 of the blacklined, paragraph 10 of the deleted parts.

28
29 THE COURT: Page 6.

30
31 MR. PELLETIER: Page 6 of the blacklined, paragraph 10. And
32 there's a strikeout of the last half of the last sentence, which says: (as read)

33
34 . . . and shall not be discharged by the court unless the discharge
35 of such caveat or encumbrance is specifically directed by the
36 court.

37
38 That's the offending section. Pretty much the rest of that my client agrees with --

39
40 THE COURT: Okay, but --

41

1 MR. PELLETIER: -- because that's --

2

3 THE COURT: -- I'm just looking at . . .

4

5 MR. PELLETIER: Sorry, I'm at schedule B of my April 20th
6 letter.

7

8 THE COURT: Okay. Okay.

9

10 MR. PELLETIER: And that's what I'm saying. Even in the other
11 two matters I mentioned in my letter, the Jervis and the Dockman matters, those are
12 proceeding through a foreclosure process.

13

14 THE COURT: Okay.

15

16 MR. PELLETIER: There's --

17

18 THE COURT: You're saying that -- that, if -- if the -- at this
19 point in time, the receiver has got notice -- everyone's got notice of what's happening
20 there, and, if somebody wants to get someone to knock that off, that they should be doing
21 that directly in that application? If -- or I'm just trying to understand what it is you're --

22

23 MR. PELLETIER: It's the giving of the -- giving the -- this order,
24 excuse me, some sort of super-priority, and effectively directing that, despite what may be
25 happening in relation to the foreclosures, the appeals, the -- you know, particularly with
26 reference to the three actions -- or three projects, excuse me, I mentioned in my letter,
27 that the super-priority will impact the interests of all of the parties, then that is well above
28 and beyond the interests of Access and Arres and the trustee. And it will also create a
29 situation in which Access and the group of investors that they are aligned with legally in
30 these different projects will effectively be given a stay of enforcement of whatever
31 happens in any of those projects, because the parties -- it doesn't matter what you do, the
32 parties are ultimately going to have to come to court. And Jervis is in BC, so we've got
33 to complete a foreclosure on a project in BC and then have to come back to this court to
34 get an order that specifically deals with this receivership order, which can then be
35 reciprocally enforced back in BC, and they've got a stay of enforcement regardless of
36 what actually happens in any of these actions. So they get -- they get --

37

38 THE COURT: Okay.

39

40 MR. PELLETIER: -- two kicks at the can of the argument and
41 their position. And all I'm saying is you strike that out and the receiver -- that last half

1 of that sentence as I've done in the -- the black line, and the receiver still has the same
2 powers, the same protections are there, the same ability to identify and hold and receive
3 exigible property is still there, you just -- excuse me, this Court would just do it without
4 granting a super priority and an indirect stay of enforcement. Because what has been
5 Access' and some of the investor's positions in several of these projects is, effectively, in
6 addition to whatever claims they may have against Arres, that these things should all be
7 proceeding differently than what Arres is doing, and so there is a fight at every step to get
8 through these foreclosures, to get through these transactions and get through these
9 projects. Adding this extra sentence about needing an order --

10

11 THE COURT: Okay.

12

13 MR. PELLETIER: -- specifically dealing with it adds to that --

14

15 THE COURT: Okay.

16

17 MR. PELLETIER: -- process in their favour.

18

19 THE COURT: Okay. Anything else, or should we just --
20 should I get Mr. Silver back up and we should start going through this on a line by line
21 basis -- or, a paragraph by paragraph basis?

22

23 MR. PELLETIER: Just one comment made by Mr. Silver. It's
24 paragraph 7 of my draft. It seems that that paragraph 7 would cover off any concern in
25 relation to gathering and obtaining information. I'm not sure what else could be added to
26 that and if I -- my note may be slightly wrong, but if I recall correctly, Mr. Silver --

27

28 THE COURT: Okay. Yes.

29

30 MR. PELLETIER: -- suggests --

31

32 THE COURT: I -- and I -- I guess this is addressing this
33 question about solicitor-client privilege that -- that he -- he raised.

34

35 MR. PELLETIER: Yes.

36

37 THE COURT: So perhaps you can tell me what your position
38 is with respect to --

39

40 MR. PELLETIER: Oh.

41

1 THE COURT: -- with respect to that.

2
3 MR. PELLETIER: Is that even a standard form receivership order
4 specifically includes a protection for solicitor-client privilege, and --

5
6 THE COURT: Right. And he's --

7
8 MR. PELLETIER: -- Mr. Silver's draft takes that out.

9
10 THE COURT: As I understood from his argument, while it's
11 worded more broadly, and maybe I'll hear differently from him, he says, well, he didn't
12 seem to be concerned about accessing solicitor-client privileged materials or having the
13 receiver access privileged materials, he seemed to just want to know how much cash a --
14 a -- is -- is on deposit with lawyers, seemed to be the issue that he had concern about.

15
16 And I guess, first of all, can you tell me whether that is an issue from Arres' point of
17 view of disclosing that information, and secondly, if Arres did have an issue about it, how
18 is that solicitor-client privileged? I mean I -- I understand solicitor-client privilege --

19
20 MR. PELLETIER: Yes.

21
22 THE COURT: -- applies to communications, but I'm not sure I
23 am holding \$100,000 or I am not holding anything on my -- in my trust account is -- is
24 privileged.

25
26 MR. PELLETIER: There is an issue in relation to enforcement
27 against funds that have been paid in trust for legal fees in a solicitor's trust account. In
28 the normal course under the *Civil Enforcement Act*, leaving aside a receiver or anything,
29 the normal course, that is not exigible property. When a receiver or a trustee is
30 appointed, that receiver or trustee, as I understand it, if they step into the shoes of the
31 party, in this case Arres, they get the authority to direct counsel, and thus get access to
32 the information that's in the trust accounts.

33
34 Here, it's a little bit weird because, on the one hand, enforcement against any money in
35 trust accounts is not exigible property, however the receiver has the obligation to do a
36 report and to receive all information, books and records, et cetera, from counsel to
37 determine whether there is anything --

38
39 THE COURT: M-hm.

40
41 MR. PELLETIER: -- held that -- in trust accounts, among other

1 things, that could be exigible property.

2
3 So Mr. Silver's -- I think the concern is with an exchange we previously had in relation
4 to, in the normal enforcement course, whether trust funds are exigible property. I had
5 taken the position that the -- I'm trying to remember exactly what my position was, the
6 position was that, you know, there was -- there wasn't anything available, first of all, and
7 second of all, in -- in relation to anything that was available, that was paid as trust for
8 reasonable legal fees to be incurred, but that cannot be exigible property. I produced a
9 case, we had a whole thing about that, we dropped it.

10
11 What Mr. Silver doesn't want to happen here, I think, is for any lawyers who are holding
12 money on behalf of Arres to say, well, that's just privileged. And I believe that -- that
13 concern is misplaced given that the receiver is given the full authority to get information
14 both from solicitors as well as from Arres, and then determine --

15
16 THE COURT: Okay. So --

17
18 MR. PELLETIER: -- what exigible property exists.

19
20 THE COURT: -- just -- if I can just cut through that and say
21 that you -- you would say that, under your draft, the receiver could come to your office,
22 or any other office that Arres has legal -- or, Arres has counsel, and obtain from them
23 information as to whether it's \$10 or \$100,000 that they're holding in trust. But your
24 position is and Arres' position is, once you have that piece of information, you -- you will
25 have our position that that money is not exigible because it's trust monies, and we've got
26 good authority on that and that's -- that's basically it. So the information is available to
27 the receiver, the money isn't.

28
29 MR. PELLETIER: Yes. And that -- exactly. And removing --
30 specifically removing the typical clause that, you know, the privilege attached to
31 solicitor-client communication and documents prepared in contemplation of litigation are
32 privileged is -- is inappropriate.

33
34 THE COURT: Yeah. No, I understand --

35
36 MR. PELLETIER: Yeah.

37
38 THE COURT: -- that argument. And -- I mean, but I --

39
40 MR. PELLETIER: Yeah.

41

1 THE COURT: -- I didn't understand that he was looking for
2 privileged materials, maybe he'll tell me he is, but the -- the issue that he seemed to be
3 looking for is something that, in principle, isn't an issue.

4
5 MR. PELLETIER: I don't believe it is --

6
7 THE COURT: Okay.

8
9 MR. PELLETIER: -- at all.

10
11 THE COURT: Okay. Is there anything else, or --

12
13 MR. PELLETIER: I believe that --

14
15 THE COURT: Well, let's start going --

16
17 MR. PELLETIER: -- covers it.

18
19 THE COURT: -- through it.

20
21 MR. PELLETIER: Yes.

22
23 THE COURT: Okay.

24
25 MR. SILVER: There -- there are a lot of things to respond to
26 and I appreciate we only have another half-hour or so booked, but --

27
28 THE COURT: Well, let's -- okay. Then -- respond quickly
29 and then we'll start going through it paragraph by paragraph. Okay?

30
31 MR. SILVER: The problem -- one of the problems we have,
32 and you focussed on most of these in your discussion here with my friend, but one of the
33 problems we have is the period of time that we have before it's determined which
34 property is exigible and which property is not. As you've correctly identified, that is a
35 potential problem for us. So we have to really attempt to secure all of that -- identify it
36 and secure it until it's determine whether or not it's exigible or not.

37
38 This concept of exigible property, which obviously is contemplated by the *Civil*
39 *Enforcement Act*, is a -- it's a word that can be played with here a lot. Arres could take
40 the position that the property that's being attempted to be secured or realized on is not
41 exigible. Then we have a -- perhaps a court application to determine whether or not

1 that's correct or not. But they would have potentially already have done something with
2 that money, saying we did that because it wasn't exigible property. Example, Graybriar.

3
4 So I don't want that to happen. I want this order to make sure that nothing can happen,
5 that everything is held on high ground pending a determination by the receiver of what is
6 exigible property.

7
8 THE COURT: Okay. Well, that's -- but I think then -- but
9 what -- I guess what I need to get you to -- to address me on, Mr. Silver, is how you see
10 these actions proceeding that Arres wants to pursue and is -- would appear to be entitled
11 to pursue, and a number of your clients want to shut those down. Because that was part
12 of your initial application.

13
14 MR. SILVER: Yes. The -- the big hole in all of this, again,
15 relates to the word exigibility and Arres' perception of itself with respect to its role in
16 connection with those receivables and interests that have been assigned. It doesn't even --
17 Arres does not even regard itself as being fully out of its responsibilities with respect to
18 the assignment. Arres sees itself as a collection agency on behalf of the assignees, Wes
19 Serra's wife Stacey (phonetic) or her company --

20
21 THE COURT: Right.

22
23 MR. SILVER: -- 875. So Arres is still in a position in that
24 role to be -- have its hand at the till. And when it's acting as agent for assignee, if the --
25 if the collection of those funds relates to assigned receivables or an interest that has been
26 assigned, then it'll say it's not exigible.

27
28 So if that happens before the determination of exigibility takes place, the funds will have
29 ended up in Arres hands and ostensibly off to --

30
31 THE COURT: Okay. But --

32
33 MR. SILVER: -- Wes Serra's wife --

34
35 THE COURT: -- that's -- that's a different issue than the issue,
36 which is who's going to be proceeding with those actions? That's the question, as I
37 understand, that -- that Mr. Pelletier is concerned about. His position is, Arres is entitled
38 to pursue the investors for a bunch of money that he says -- or, Arres says the investors
39 owe. In -- a judgement creditor you would think would probably want Arres to go
40 aggressively against those people, collect that money and get that pool in there.

41

1 It may be that that pool of money belongs to -- that the pool of money is either going to
2 end up going back to some other investors -- it's coming from some investors going to
3 other investors, as I understand it, right? Is that --

4
5 MR. SILVER: Well, the -- the issue of who owes money to
6 Arres, aside from its claim against Access, is something that I'm not even sure is going to
7 materialize, because that would involve numerous lawsuits being initiated by Arres against
8 those investors, which it has not yet undertaken, to my knowledge.

9
10 THE COURT: Right. But if -- if it wants to undertake those --

11
12 MR. SILVER: If it --

13
14 THE COURT: -- claims at its own expense --

15
16 MR. SILVER: It's fine.

17
18 THE COURT: -- it's entitled to do that. And it say --

19
20 MR. SILVER: Yeah.

21
22 THE COURT: -- we have to get money from somebody else to
23 do that, as I understand, because --

24
25 MR. SILVER: Because it doesn't have any cashflow --

26
27 THE COURT: -- it doesn't have any --

28
29 MR. SILVER: -- of its own.

30
31 THE COURT: -- cashflow. But --

32
33 MR. SILVER: Well, that's fine. Whatever -- whatever
34 proceeds are realized from that litigation, or the fruits of that litigation, would potentially
35 be exigible property, either assigned or unassigned, depending on the validity of the
36 assignments.

37
38 THE COURT: Right. Okay.

39
40 MR. SILVER: I'm not worried about -- about Arres initiating
41 lawsuits --

1
2 THE COURT: Okay. So what is it that you're worried about
3 then?
4
5 MR. SILVER: What I'm worried about is the actions of Arres
6 to have its hand in the till at the time that it determines when a -- an interest is about to
7 be monetized and no protection is put into place to prevent those funds from going into
8 Arres' hands. Arres will then, as it has done in the past, render an invoice for fees owing
9 pursuant to its understanding of the trust agreement, and then attach those funds, and then
10 out they go. And that's one of the things that we wish to prevent.
11
12 THE COURT: Okay. So --
13
14 MR. SILVER: Same thing with --
15
16 THE COURT: -- you don't --
17
18 MR. SILVER: -- respect --
19
20 THE COURT: -- you -- you're not looking for the receiver --
21 although your draft would appear to allow the receiver to compromise claims, bring
22 claims, all of those kind of things, you're not really looking for that, you're quite happy
23 to have Arres and Mr. Pelletier proceed against all of those investors, spend whatever
24 much money they want, proceed as -- as they wish, as long as the receiver has an ability
25 to step in when any money is realized. Am I correct about that?
26
27 MR. SILVER: With -- with respect to those collections --
28
29 THE COURT: Okay.
30
31 MR. SILVER: -- it is.
32
33 THE COURT: So there's, on those collections, that's -- that's
34 an issue. Okay. That's your position on that. If I can just ask Mr. Pelletier for a
35 moment. With respect to that, on that particular issue, are you on -- are you guys on the
36 same page on that?
37
38 MR. PELLETIER: I thought so, but the -- the problem is -- I
39 thought my order -- or, my edit to the order addressed that. We said, look --
40
41 THE COURT: Okay. Then --

1
2 MR. PELLETIER: But, yes.
3
4 THE COURT: -- then that's a wording thing. Okay.
5
6 MR. PELLETIER: Yeah. The receiver should be able to stand
7 there overseeing what's going on and have a -- have a protection there such that potential
8 exigible property gets identified --
9
10 THE COURT: Right.
11
12 MR. PELLETIER: -- and determined.
13
14 THE COURT: But so on this particular example, there's some
15 claims that -- that Arres wants to make that -- that Mr. Silver's clients thinks are frivolous
16 and ill-founded and shouldn't be brought, but nonetheless, Arres wants to go after these
17 people. And if it ultimately gets any money, your -- you -- Arres is quite happy to -- to
18 be at liberty to pursue those kinds of claims, but Arres will recognize that the receiver is
19 entitled to have sufficient information and be in a position to step in so that nothing that
20 gets realized out of those actions goes out to any third party -- anybody until either the
21 receiver agrees or the matter comes to court.
22
23 MR. SILVER: Yeah.
24
25 MR. PELLETIER: Yes.
26
27 THE COURT: Okay.
28
29 MR. PELLETIER: That makes sense.
30
31 MR. SILVER: The -- the only difficulty with this, My Lady, if
32 I may point it out, are two -- two things. One, it promotes litigation where a bunch of
33 defendants, who probably don't have any liability whatsoever to Arres, are going to be
34 forced to spend money on lawyers to defend the lawsuit. And secondly, the law --
35
36 THE COURT: But how can I determine that right --
37
38 MR. SILVER: Well, you --
39
40 THE COURT: -- now?
41

1 MR. SILVER: -- you cannot.

2
3 THE COURT: I'm mean you're just -- you're telling me --
4 Mr. Pelletier's telling me he's got a meritorious claim and you're telling me they don't.
5 If they don't, they'll have a costs remedy or they can do whatever.

6
7 MR. SILVER: Ah. Well --

8
9 THE COURT: I mean I -- I can't possibly decide that I'm
10 going to shut that down today because you're representing to me that it's a bogus claim
11 and that they shouldn't be wasting their time and money.

12
13 MR. SILVER: I'm -- I'm not suggesting that you make that
14 decision, obviously, because you're quite correct. But you do bring up the one other
15 factor, and that is the costs remedy. The costs remedy. All right. First of all, there's
16 going to be a security for costs application and it's going to stop that claim dead in its
17 tracks because Arres will not have the ability.

18
19 THE COURT: Well, maybe it will and maybe it won't.

20
21 MR. SILVER: Maybe it won't. Right. So that's something
22 that, you know, from the point of view of Arres conducting a collection proceedings on its
23 own, certainly it can -- it can incur its own costs --

24
25 THE COURT: But this is where --

26
27 MR. SILVER: -- if it wishes to do so.

28
29 THE COURT: -- this is where --

30
31 MR. SILVER: M-hm.

32
33 THE COURT: -- Mr. Silver --

34
35 MR. SILVER: Yes.

36
37 THE COURT: -- I must say I do get uncomfortable --

38
39 MR. SILVER: Yes.

40
41 THE COURT: -- because the concerns that you are articulating

1 now are directly contrary to the interests that your client, Access, supposedly has as a
2 judgment creditor. As a judgment creditor, you should want Arres to be spending as
3 much money as it can going after a bunch of investors, getting a bunch of money because
4 Mr. Pelletier has just told you that that money is going to be there so -- for the better . . .
5 So this is where I become concerned.

6
7 MR. SILVER: I --

8
9 THE COURT: I become concerned when I read the draft about
10 a number of these paragraphs that seem to relate to an interest that is not related to that of
11 a judgment creditor. So that's what I want to do, I want to start going through the draft --

12
13 MR. SILVER: M-hm.

14
15 THE COURT: -- to make sure that what we're doing is
16 protecting -- we're granting an order that addresses the concerns that -- that Access has,
17 as a judgment creditor, and -- but does not -- does not provide -- does not affect or
18 prejudice Arres' ability to go after people that may -- including Access, if they have a
19 claim.

20
21 MR. SILVER: Well, then why wouldn't we just simply put
22 that into the hands of the receiver to do if the receiver felt that it was worth pursuing the
23 accounts receivable against any investor.

24
25 THE COURT: Because -- because I'm not -- because with
26 respect to that particular issue, the receiver, first of all, is being paid out of exigible assets
27 and then being paid by your clients. Okay?

28
29 MR. SILVER: Yes.

30
31 THE COURT: And -- and if Arres wants to go and spend a
32 bunch of money doing something, they should be entitled to do that. I am not going to
33 shut that opportunity down. I am not going to use the receivership as an indirect way to
34 prevent someone from being sued by Arres. That is one thing I am not going to do.

35
36 MR. SILVER: Okay.

37
38 THE COURT: Okay. So let's go and start going through the
39 order.

40
41 MR. SILVER: All right.

1

2 **Decision**

3

4 THE COURT: Okay. So it looks like -- so you -- you look
5 like you've got somebody lined up, but they're not finalized yet; is that correct?

6

7 MR. SILVER: That is correct, My Lady.

8

9 THE COURT: And who is that? Sorry?

10

11 MR. SILVER: We're looking at Hardie & Kelly, but they have
12 not been formally engaged at this point in time.

13

14 THE COURT: Okay. Okay. So -- okay. So we've got -- in
15 the first paragraph we've got this -- this -- the only issue really is -- is the -- the term, do
16 we really use this exigible property or we talk about property. Okay. Okay. And so the
17 only thing is with respect to the paragraph -- sorry. Do either of you have anything to
18 add with respect to paragraph 2 beyond what's stated in your materials?

19

20 MR. PELLETIER: Sorry. Are you saying paragraph 2 of the
21 original drafted by Mr. Silver?

22

23 THE COURT: Sorry. I'm -- what I'm looking at, just so that
24 I'm clear, is paragraph 2, which is -- yeah, paragraph 2 of the original. Okay. I think --

25

26 MR. PELLETIER: So yeah --

27

28 THE COURT: -- I think I know what the issue is there. Okay.

29

30 Paragraph 3. Sorry, let me take a look at the black line here.

31

32 MR. PELLETIER: Sorry. It might be easier to go off of the black
33 line so we can see the --

34

35 THE COURT: Yeah.

36

37 MR. PELLETIER: -- where the dispute is.

38

39 THE COURT: Okay. Does that work for you, Mr. Silver?

40

41 MR. SILVER: That's fine, thank you.

1
2 THE COURT: Okay. Okay. I -- I didn't understand,
3 Mr. Pelletier, your preamble.
4
5 MR. PELLETIER: I -- I'm sorry. My preamble was the same as
6 Mr. Silver's.
7
8 MR. SILVER: Are we talking about --
9
10 MR. PELLETIER: Oh. Oh. I'm sorry.
11
12 THE COURT: Paragraph 3: (as read)
13
14 In . . .
15
16 MR. PELLETIER: Sorry.
17
18 THE COURT: (as read)
19
20 In exercising its powers, the receiver shall . . .
21
22 And then you've got: (as read)
23
24 First determine and calculate what exigible property is available
25 from the debtor and, in making this determination, the receiver
26 shall at least -- shall answer at least the following with relevant
27 time period commencing May 1st, 2009 and ending on the date of
28 such determination.
29
30 MR. PELLETIER: Yes. What I was attempting to do there is
31 make it clear that the receiver needs to produce a report. The report can go further as
32 they deem necessary, but it must include at least these things. And the time period to
33 cover is from May 1, 2009, because that's when the claim arose, up to the date of the
34 report.
35
36 THE COURT: Okay. So that seems to be -- in some ways it's
37 broader than what Mr. Silver had in his order, because it -- your order basically says
38 items A through whatever letter we're at are to be considered by the receiver over the
39 time period of May 1st, 2009 to the present, whereas -- so that would require the receiver
40 to make a determination about what property was owned in May 2009. And --
41

1 MR. PELLETIER: So does Mr. Silver's, My Lady. If you go a
2 little bit into his, I believe it was clause --
3
4 THE COURT: Okay. So --
5
6 MR. PELLETIER: -- 3(d).
7
8 THE COURT: Okay. So -- I -- I see. Okay. So, Mr. Silver,
9 do you have any -- any concern about the way Mr. Pelletier has just kind of broadened
10 that? I mean it seems to broaden the -- the scope of the -- of the order.
11
12 MR. SILVER: You know -- well, it -- I agree, My Lady, it
13 looks a little broader, but they're pretty close to resembling one another.
14
15 THE COURT: Okay. Is there any -- are we talking differences
16 without a distinction here, Mr. Pelletier? Is there anything important about the way
17 you've put that down there?
18
19 MR. PELLETIER: Yes, because it applies a time period of May 1,
20 2009 forward to the whole report, as opposed to --
21
22 THE COURT: Okay.
23
24 MR. PELLETIER: -- particular issues.
25
26 THE COURT: Okay. You don't have a problem with that, I
27 take it, Mr. Silver?
28
29 MR. SILVER: No. That would be the date our debt arose --
30
31 THE COURT: Okay.
32
33 MR. SILVER: -- in the first place.
34
35 THE COURT: Okay. So then you've got, essentially, (a), (b),
36 (c) and (d). Sorry. What's wrong with (d), Mr. Pelletier?
37
38 MR. PELLETIER: The -- I've added (e), which I believe is --
39 deals with the second half of the original (d), but clarifies it a little bit better, and also
40 complies to the (a) through (d) have been drafted from the transcripts. I've been -- I've
41 been trying to keep it specific to what you directed us to do in -- or, sorry --

1
2 THE COURT: Okay.
3
4 MR. PELLETIER: -- set down.
5
6 THE COURT: Well --
7
8 MR. PELLETIER: And also then, by doing it as two parts as
9 opposed to in one, I believe it's clearer. That's all.
10
11 THE COURT: Well, as I look at this, one of the specific
12 things in (d) was the receiver was to determine if any property was transferred to any
13 third party out of the ordinary course of business. And you've taken that out for some
14 reason, right?
15
16 MR. PELLETIER: Right. But if -- sorry. If you're going to be
17 doing a determination as to what property Arres had from May 1 to date, you're already
18 answering that question.
19
20 THE COURT: Okay. Well, you don't have a problem then, I
21 take it, in principle leaving that in, you're just saying it's redundant?
22
23 MR. PELLETIER: Yes.
24
25 THE COURT: Okay.
26
27 MR. SILVER: And then one of the other things, My Lady, if I
28 may. I don't think either order -- draft order includes this, but I believe we probably
29 should have a provision preventing Arres from dealing with any of its property at all
30 pending the determination of the exigible property by the receiver. That -- that preserves
31 everything in place without change until we have the determination of what's exigible.
32
33 THE COURT: Dealing with or disposing of, what are you
34 talking about?
35
36 MR. SILVER: Disposing of.
37
38 MR. PELLETIER: I guess that's the issue we've been talking
39 about for the last hour-and-a-half.
40
41 THE COURT: Well, yeah. I mean, but what's wrong with

1 preventing it from disposing of any property pending the determination of the exigible
2 property? Isn't -- I thought you said that was one of the principles in -- that you agreed
3 with at the beginning.

4

5 MR. PELLETIER: Yes. I --

6

7 THE COURT: The principles -- the four principles, that he has
8 to -- the receiver has to determine the property, and until that's been determined, Arres
9 can't be disposing of everything.

10

11 MR. PELLETIER: Right. We have to be very careful on the
12 wording, there's a very big distinction between dealing with and --

13

14 THE COURT: I -- I understand --

15

16 MR. PELLETIER: -- disposing of.

17

18 THE COURT: -- that.

19

20 MR. PELLETIER: Yes.

21

22 THE COURT: And disposing is what I'm talking about, I'm
23 not talking about dealing with. Okay.

24

25 MR. PELLETIER: Yeah. Because they can receive the property --
26 sorry -- potential exigible property should -- should be included. Sorry. And my issue, in
27 the power section then, if we want to make it clearer and we want to be careful in making
28 it: (as read)

29

30 Receive, take possession of, preserve, protect the exigible property.

31

32

33 We could add a couple of words to have that expand to potential exigible property --

34

35 THE COURT: Okay. Then --

36

37 MR. PELLETIER: -- or not to dispose of --

38

39 THE COURT: Yeah.

40

41 MR. PELLETIER: -- potential exigible property.

1
2 THE COURT: Okay. It seems that -- that the -- and the
3 definition of potential exigible property is the property of Arres that has -- that has --
4 well, it's basically Arres' property that has not been -- it's Arres' property that has not
5 been determined by the receiver to not be exigible. So you've got potential -- you've got
6 potential exigible property, which is basically all of -- all of Arres' property, and then
7 you've got exigible property, which is the property either that the receiver or a Court or
8 somebody has determined is Arres' exigible property.

9
10 So, basically, pending the determination of what Arres' exigible property is, Arres is not
11 to dispose of its property, but Arres is at liberty to deal with or, you know, to -- and by --
12 by "deal with", it seems to be the issue that we're talking about is pursue these actions, it
13 can do all of those sorts of things, enforce those kinds of things, but it simply can't
14 dispose of any of that property.

15
16 MR. SILVER: And -- and one of the things we wish to capture
17 in this regard are any of Arres' future invoices that may not constitute receivables at this
18 point in time, and therefore may not have been assigned, which is the method that they've
19 been using to scoop funds in the past. So I would like to address the --

20
21 THE COURT: But why do we need to address that if we're
22 addressing -- isn't that going to be caught by what we're talking about?

23
24 MR. SILVER: I'm not certain it will be.

25
26 THE COURT: Well, how could it not be caught, Mr. Silver?
27 How could a new invoice --

28
29 MR. SILVER: M-hm.

30
31 THE COURT: Is there some concern there?

32
33 MR. SILVER: Well --

34
35 THE COURT: I'm trying to understand what your concern is.

36
37 MR. SILVER: It -- it's -- it's a timing item. When the funds
38 become available from a -- in a foreclosure situation for example, and the new invoice is
39 generated, if the funds get into Arres' hands in payment of that invoice, whether or not
40 the invoice is proper, the funds disappear. So I want to prevent that from happening with
41 this order.

1
2 THE COURT: Well, I would have thought that the language
3 that you've talked about, current and future exigible property and what we're talking
4 about, should be able to address that particular issue. But if not, then I suggest you put
5 some language together. But I can't, frankly, understand what the concern is, Mr. Silver.
6 So in the absence of understanding what the concern is, I can't figure out how one would
7 draft something to address the concern.

8
9 Okay. With respect to determining the validity of the accounts receivable, you've got: (as
10 read)

11
12 In the extent to which the debtor is legally entitled to render
13 accounts for services rendered or to be rendered in the future with
14 respect to various loan administration management agreements and
15 trust agreements.

16
17 Why do you need that, Mr. Silver?

18
19 MR. SILVER: Sorry. Whereabouts are we?

20
21 THE COURT: I'm looking at your paragraph 3(e).

22
23 MR. SILVER: 3(e)? 3(d)? That's here. Your 3? Your 3?

24
25 MR. PELLETIER: It's the black line. Sorry.

26
27 THE COURT: Or is this Mr. Pelletier again? You just think
28 there's -- 3(e), the language that he's added is just redundant, in your view, but you don't
29 really have a problem with anything in there, do you?

30
31 MR. PELLETIER: Well, the --

32
33 MR. SILVER: Well --

34
35 MR. PELLETIER: Actually I would because that's -- part of the --

36
37 MR. SILVER: That's critical.

38
39 MR. PELLETIER: -- the -- of course the clause -- of course my
40 clause saying you're to determine the validity of the current accounts receivable, the
41 debtor, is something obviously that the receiver needs to do. That -- we have no -- I

1 don't think we have any dispute over it. The issue is in then limiting -- well, sorry. And
2 then it becomes redundant, yes. Sorry.

3

4 THE COURT: So, I mean, that's --

5

6 MR. PELLETIER: Yes.

7

8 THE COURT: -- that's okay.

9

10 MR. PELLETIER: Yes.

11

12 THE COURT: Okay.

13

14 MR. PELLETIER: Yes. It's not taking away --

15

16 THE COURT: Yeah.

17

18 MR. PELLETIER: -- any power, it's just saying --

19

20 THE COURT: Okay. Mr. Silver, what's wrong with saying,
21 the practicality of enforcing -- enforcing the valid accounts receivable?

22

23 MR. SILVER: Nothing.

24

25 THE COURT: Okay. So we'll add that in. Okay. And then:
26 (as read)

27

28 The receiver shall prepare a report.

29

30 Okay. And, now, with respect to -- okay. So then we're essentially -- okay. Now then,
31 the receiver is -- okay. Then, the receiver's powers. So then we go to (a). Okay.

32

33 MR. PELLETIER: I combined --

34

35 THE COURT: (a) and (b) seem to be just a drafting thing, is
36 that right?

37

38 MR. PELLETIER: Yeah. I was just about to say, I just
39 combined --

40

41 THE COURT: Okay.

1
2 MR. PELLETIER: -- his (a) and (b) into one.

3
4 THE COURT: Right. Okay. Okay. So now we've got -- now
5 we're getting more to the: (as read)

6
7 To receive and collect all monies and accounts now properly owed
8 or hereafter property owing to the debtor and exercising all
9 remedies of the debtor in collecting such monies, including to
10 enforce any security held by the debtor.

11
12 Okay. So what's the problem with that, Mr. Pelletier?

13
14 MR. PELLETIER: It goes far beyond what was ordered. It is the
15 issue that we've been addressing here in relation to the receiver stepping in and acting for
16 Arres in relation to all of these agreements. The -- the receiving and collecting all
17 monies, I mean that's covered by paragraph 3(a), it's the -- the rest of it, saying
18 exercising all remedies of a debtor, collecting, basically that's acting for Arres. That is
19 exactly the issue that I thought you already -- just identified you did not want to have in
20 this order.

21
22 THE COURT: Okay. And if Arres is not taking any steps,
23 Arres sits on its hands, presumably, then the receiver could -- could come back to court
24 and broaden its powers, seek to amend its powers. I mean part of the --

25
26 MR. PELLETIER: Yes.

27
28 THE COURT: -- idea is getting a receiver in there, and the
29 receiver can then figure out what makes sense to do.

30
31 MR. PELLETIER: Yes. That's true.

32
33 THE COURT: Okay.

34
35 MR. PELLETIER: Also, the assignees would have issue with Arres
36 for failing to collect on the receivables that they say that they're entitled to receive. So
37 there's other parties, third parties, that have an interest in that as well, that's why we --
38 that's why we still it in the order.

39
40 THE COURT: Well -- but you can't have a problem with to
41 receive and collect all monies and accounts now properly owed or properly owing to the

1 debtor, it's the exercising the remedies that you have a --

2

3 MR. PELLETIER: Well, it's --

4

5 THE COURT: -- concern with.

6

7 MR. PELLETIER: -- the -- that -- also the issue with that is,
8 hereinafter properly owing to the debtor. That goes beyond the exigible property, that's
9 why (a) is drafted the way it is.

10

11 THE COURT: But -- but the point is, all of this is going to
12 apply to exigible property. Let's say money is owing -- comes in tomorrow that you say
13 is assigned to ABC Company. The order is going to provide that, at this point in time,
14 that money is going to be held by the receiver until the receiver determines that it or ABC
15 Company are entitled to it. Because that's the only way we can deal with it and the order
16 needs to provide that, pending that determination, that asset has to go and be held by
17 Arres -- or by -- by the receiver. Right?

18

19 MR. PELLETIER: Understood.

20

21 THE COURT: Okay. So -- so that the -- the -- it's the -- the
22 collection of monies is fine, but the -- the remedies. And, Mr. -- Mr. Silver, any further
23 comments with respect to that?

24

25 MR. SILVER: No. I believe we've discussed that.

26

27 THE COURT: Okay. Settle and compromise, I don't think --
28 we don't need to give the receiver the ability to do that at this point in time.

29

30 To execute, issue -- okay. It seems to me that at this point in time, what I see this being
31 is -- is an order that is going to -- is really focussed on the receiver getting in there and
32 determining what's going on. And then if it turns out that there is a bunch of exigible
33 property in there, the receiver may well want to come back to court and say, look at, I
34 don't like the way Arres is trying to -- or -- or there's a more efficient way to deal with
35 this, or Arres is -- has determined that it's not interested in pursuing these things anymore,
36 or whatever, then -- then the receiver, at that point, is in a position to -- to come back --
37 come back in. Because at this point in time it seems to me that Arres probably has a
38 stronger incentive perhaps even than the receiver to pursue those claims. If it turns out
39 that -- that a Court or the -- or, that the receiver and then ultimately a Court determines
40 that in fact that property is exigible property, then Arres' incentive to pursue those claims
41 may be not as great, and at that point the receiver may need the power to proceed with

1 those claims.

2
3 So it seems that -- that -- that this -- that the order could be structured in such a way
4 that -- that right now all the receiver is going to do is collect any monies, Arres can
5 pursue those monies and there is -- there will be a catchall phrase that allows the receiver
6 or any party to come back and -- and seek to modify the order. So I don't think, on that
7 basis, Mr. Silver, that we really need (e), (f), (g) and (h) and (i) of your paragraph at this
8 present time.

9

10 MR. SILVER: Okay.

11
12 THE COURT: Is that -- I'm going through this and -- and I'm
13 asking that with a question, because I've given you sort of an idea of what I'm thinking,
14 but if there's something I'm missing, because obviously you guys are a lot more familiar
15 with this than I am. But in principle, is there anything in particular that --

16

17 MR. SILVER: Well --

18

19 THE COURT: -- you think the receiver should have?

20

21 MR. SILVER: -- really, the -- those particular paragraphs deal
22 more with realization than they deal with preservation --

23

24 THE COURT: Yeah.

25

26 MR. SILVER: -- in my mind. And if Your Ladyship is
27 thinking that our catchall clause for advice and directions certainly that the receiver may
28 have would be something that the receiver can do in the future if it needs to take some
29 further steps to broaden its powers, certainly that's available to it. But some of this is a
30 bit like chicken soup, it doesn't hurt to have it in already, if the -- if the receiver should
31 have these powers.

32

33 THE COURT: Yeah. Okay. Well, receivership, in my view,
34 is a very -- it's an intrusive remedy. And if -- if there's a -- a need -- a specific need, but
35 if there's no plan to sell assets tomorrow, I don't see a need to have those provisions in
36 there right now.

37

38 MR. PELLETIER: And there's one more provision that relates to
39 those, it's further down, it's originally (l), "starts to manage and administer all trust
40 agreements".

41

1 THE COURT: Right.

2

3 MR. PELLETIER: I believe that's included in that group.

4

5 MR. SILVER: Yeah.

6

7 THE COURT: Yeah. Okay. Okay. And then the other ones,
8 to report, register a property. Okay. Otherwise everything looks okay there.

9

10 With respect to paragraph 6 then. Paragraph -- so your old paragraph -- the old paragraph
11 5, now paragraph 6 in the black line, that -- that looks like it's pretty well -- fine.
12 Nobody seems to have any big issues with that.

13

14 With respect to 7, the -- you heard my exchange, Mr. Silver, with Mr. Pelletier about the
15 solicitor-client communications. Is there anything that you need beyond how much
16 money is in the trust account -- or, how much money is in the trust accounts?

17

18 MR. SILVER: That is all we're looking for at this point in
19 time, but I understand from my previous exchange with my friend that the funds may not
20 be held specifically in the name of Arres Capital Inc., there may be somebody called
21 Arres Group of Companies, it's a non-entity, it's just a name. So, I mean, whatever Arres
22 has potentially an interest in, either directly or indirectly, is really what we're looking for
23 disclosure --

24

25 THE COURT: M-hm.

26

27 MR. SILVER: -- about.

28

29 THE COURT: Okay.

30

31 MR. PELLETIER: Sorry. I -- I don't -- I don't understand that,
32 unless -- unless what's being sought is to prevent my accounts from being paid. If I'm to
33 render an account to Arres and a third party pays that account, or a third party puts
34 money into my trust account to continue to litigate for Arres Capital on specific trust
35 conditions, that can't be caught by this receivership order, bankruptcy, any sort of
36 situation. I don't -- so I -- I don't think that's --

37

38 THE COURT: Yeah.

39

40 MR. PELLETIER: -- actually in the original order, so that's why
41 I'm confused, that's why I'm kind of stuttering.

1

2 THE COURT: Okay.

3

4 MR. SILVER: You know, it --

5

6 THE COURT: Mr. Silver?

7

8 MR. SILVER: -- it's not that we're trying -- as you mentioned
9 already with your discussion with my friend, that we're trying at this point in time to
10 attach those funds, we just want to know what the funds are. If there's a source of the
11 funds other than Arres Capital, fine, he can identify it. The receiver will make a
12 determination as to whether or not those funds are potentially exigible or not.

13

14 THE COURT: But if -- if in fact what we're talking about is
15 funds that are funds over which Arres Capital has an interest, that's -- that's fine. I
16 thought that's what you wanted to know, whether Arres Capital has funds that are in a
17 lawyer's trust account. But if Arres Capital XYZ 2015 Ltd. is a new entity that is
18 paying -- funding the litigation, how, on a receivership order, is -- is that information that
19 you should be entitled to -- to get?

20

21 MR. SILVER: If it was truly arm's length, I wouldn't have a
22 problem with it. If it's potentially non-arm's length, potentially there's a problem. That's
23 all I can say, it's speculation at this point in time.

24

25 THE COURT: Okay. Okay. Well, I'm not going to order that
26 information be provided with respect to funds in -- that are -- are -- are not funds that -- it
27 seems to me that the receiver is entitled -- should be entitled to access any bills that Arres
28 has and any bills that Arres is paying, like Arres is -- is -- should be entitled to -- and --
29 and should be entitled to know where the money is coming from to pay those bills. But I
30 don't think it's entitled to know how much money is available that's coming from a third
31 party to pay those bills, it -- it seems to me.

32

33 MR. PELLETIER: And they wouldn't be able -- sorry. And part
34 of that too is, if we think it logically through, if the receiver is allowed to go after money
35 coming from a related third party that's paying accounts -- and bear in mind there's other
36 lawyers in other provinces, it's not just myself I'm --

37

38 THE COURT: Yeah.

39

40 MR. PELLETIER: -- looking out for here. The -- if those third
41 parties are paying money to fund Arres, Arres wouldn't ever have an interest in that

1 money, it would go toward -- and the receiver would be entitled to know what accounts
2 are being rendered to Arres, they would likely be entitled to know, you know, what the
3 source of the funds are to pay those accounts, but that's where it would have to end,
4 'cause --

5

6 THE COURT: Yeah.

7

8 MR. PELLETIER: -- otherwise we -- yeah.

9

10 THE COURT: I -- I'm certainly prepared to -- to go that far,
11 but not any further at this point in time.

12

13 Okay. So then we get to -- then you get to paragraph 9. Okay. You had: (as read)

14

15 No proceedings commenced against the debtor except with the
16 written consent of the receiver.

17

18 MR. PELLETIER: Oh.

19

20 THE COURT: And that was struck out. So I guess my -- my
21 question, first of all, is, why do we need that, Mr. Silver, and why would -- why do you
22 strike that out, Mr. Pelletier?

23

24 MR. PELLETIER: Against the receiver -- sorry, pardon me. Of
25 course the clause about no actions against the receiver. The no proceedings against the
26 debtor or the property goes along with what we've been talking about before, about the
27 receiver not, sort of, overstepping what it is that your direction is in relation to the
28 exigible property. Because what we have here -- the stay of enforcement is there because
29 the receiver is coming in and taking -- in -- in the normal course, is coming in and taking
30 control of the entirety of the debtors', you know --

31

32 THE COURT: Right.

33

34 MR. PELLETIER: -- business, assets, property, that's what the stay
35 relates to. If --

36

37 THE COURT: Right, but -- yeah. Okay. I -- I'm just -- what
38 I'm trying to understand is, I'm trying to understand why Mr. Silver is asking for that
39 stay --

40

41 MR. PELLETIER: Oh.

1
2 THE COURT: -- and I'm trying to understand --

3
4 MR. PELLETIER: Sorry.

5
6 THE COURT: -- to some extent why -- and -- and I -- as I
7 understand what your point is, is even though it might be beneficial for your client to
8 have a stay, you don't think that it's necessarily appropriate given the type of receivership
9 order that we've structured here.

10
11 MR. PELLETIER: Yes.

12
13 THE COURT: Am I correct --

14
15 MR. PELLETIER: Sorry.

16
17 THE COURT: -- about that? Okay. Mr. Silver, what -- why
18 should there be a stay? If -- if a landlord or somebody wants to sue Arres, why do your
19 clients care?

20
21 MR. SILVER: We don't -- we don't need the stay so much,
22 we just need to be notified of all proceedings.

23
24 THE COURT: Okay. Okay. So that's -- that shouldn't be a
25 problem then, if we just turn that into that notice of any proceedings brought against the
26 debtor or the property shall be provided to the receiver -- or, given to the receiver. Is
27 that --

28
29 MR. SILVER: I think that will do the trick.

30
31 THE COURT: -- that addresses your concern? Okay.
32 Mr. Pelletier, you don't have a problem with that?

33
34 MR. PELLETIER: That's fine. Thank you.

35
36 THE COURT: Okay. Now we get to the caveats. Okay. So
37 what do we have -- what's the difference we've got here? I've gotten lost in the draft
38 here, now where am I.

39
40 (as read)

41

1 The receiver (INDISCERNIBLE) to register a caveat.

2
3 Okay. So that's just a paragraph here, that's -- that was your number 2. Okay. And so I
4 guess as well, Mr. Silver, not only are you looking for a notice of any proceedings, but
5 you're looking for the receiver to be given notice of any applications, like notice -- notice
6 of any proceedings and notice of any applications so --

7
8 MR. SILVER: That's correct.

9
10 THE COURT: -- the receiver is kept up-to-date with respect to
11 what -- what's happening in -- in the litigation.

12
13 MR. SILVER: Exactly. And --

14
15 THE COURT: Okay.

16
17 MR. SILVER: -- then the receiver can determine what it wants
18 to do with respect to such action or --

19
20 THE COURT: Okay.

21
22 MR. SILVER: -- application.

23
24 THE COURT: Mr. Pelletier?

25
26 MR. PELLETIER: And I agree. I think that's fine and it makes
27 sense and it would be the effect of registering the encumbrance. And I don't -- I don't
28 mean to go over this again, it's just the part about having a -- requiring a specific
29 additional order to discharge any such encumbrance.

30
31 THE COURT: Okay. Right. And can I hear -- I didn't -- I
32 didn't hear from Mr. Silver yet on that.

33
34 MR. SILVER: We included that provision, it was obviously
35 with respect to foreclosure actions. When the foreclosure -- foreclosure order was
36 granted, everything after the mortgage falls off the title, so I put in a mechanism by which
37 the order would not -- or the caveat or encumbrance would not fall off the title as a result
38 of that foreclosure process. And as you --

39
40 THE COURT: But that's -- isn't that, Mr. Silver, going to
41 defeat the purpose if (INDISCERNIBLE) going all the way up to the Court of Appeal to

1 deal with that particular order, if your appeal -- or, Access' appeal is unsuccessful, then
2 why shouldn't that order go ahead at this point in time?

3
4 MR. SILVER: Well, I think it has to do again with the
5 exigibility issue. To go to the Graybriar situation, and, again, I'm not counsel, but as I
6 understand it, Arres was the registered owner of the property -- of the mortgage, rather,
7 they foreclosed. Title would normally have gone into Arres' name and to the *Rice* order.
8 It didn't. Arres arranged for title to be transferred to 179, notwithstanding the assignment
9 to Stacey or 875. It transferred the property to 179, 179 was supposedly buying this
10 property from Arres, but Arres wasn't receiving any money. The funding for the purchase
11 was provided by Terrapin and it was funded through protocol before registration could be
12 completed, and that was stopped by the order of Justice Hillier and the rest is history.

13
14 So --

15
16 THE COURT: Okay. I'm not going to grant that order right
17 now, I'm not going to say that that's going to stay on. The receiver will get in there and
18 the receiver can figure out whether there's something in there that it wants to do. But
19 that particular order was granted because of the circumstances that -- that -- the history
20 that -- that -- how that situation evolved and I am not -- I am not going to -- to grant an
21 order now that -- that is going to, as Mr. Pelletier says, defeat the whole purpose and
22 grant, in effect, a stay.

23
24 If in fact the receiver thinks at some point that there is something in there that it should
25 be entitled to get, then it can try and figure out why it should be able to do it, but I am
26 not going to grant that at this present time.

27
28 MR. SILVER: Thank you.

29
30 THE COURT: So that's -- that -- that is simply not -- not --
31 you know, the -- there were lots of opportunities for how that could have played out, but
32 . . .

33
34 So we then take it to the stayed action. So there's -- the parties are in general agreement
35 with respect to the stayed actions. And the paragraph dealing with the caveat, that's
36 paragraph 10. Okay. Okay.

37
38 So paragraph -- what -- what these paragraphs should be worded is they should talk about
39 potential exigible property. So when you re-draft this order, the order will be re-drafted
40 so that it initially catches all potential exigible property until what is exigible property is
41 determined, and then by the -- by the receiver.

1
2 MR. PELLETIER: Are you speaking of the new paragraph 10?
3
4 THE COURT: I'm talking about the new paragraph 10.
5
6 MR. PELLETIER: I -- I thought I had done that.
7
8 THE COURT: You have "available exigible property", I was
9 just using that as an example of -- of the drafting --
10
11 MR. PELLETIER: Oh. Okay.
12
13 THE COURT: -- the -- the comments there. Okay.
14
15 Everybody's in agreement with these actions being stayed pending -- pending delivery of
16 the receiver's report and further order of the court. And then you had the old paragraph,
17 paragraph 10, which was -- oh. That's the one we've just talked about. We're not going
18 to stay everybody else going after the debtor, but the notice is going to be required to be
19 given.
20
21 No interference with the debtor. Again, why -- why, Mr. Silver, is this paragraph needed?
22
23 MR. SILVER: In view of the removal of other provisions, this
24 isn't required any longer.
25
26 THE COURT: Okay. Receiver to hold all funds. Okay. So
27 this should clear -- so this should be that all potential exigible property received or
28 collected is to be held and deposited into this account and held pending further order of
29 the court.
30
31 Limitation on the receiver's liability. Why are we referring to paragraph -- section 14 --
32 provisions of the *Bankruptcy and Insolvency Act*?
33
34 MR. SILVER: That's just standard protection that the receiver
35 might require.
36
37 THE COURT: Well, but that -- doesn't -- don't those
38 provisions apply if you -- to a receiver appointed under the *Bankruptcy and Insolvency*
39 *Act*?
40
41 MR. SILVER: Well, we can end it at, any applicable law.

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THE COURT:

Okay.

MR. SILVER:

That's fine.

THE COURT:

Okay. I just -- unless there's some reason why those are needed, I'm not sure why they would apply. Same thing with respect to the receiver's accounts. Okay.

That -- that then takes us to the provision, the old 23, which is -- what was wrong with that -- what's wrong with the provision that says -- Mr. Pelletier, that says nothing in the order shall prevent the receiver from acting as a trustee in the bankruptcy?

MR. PELLETIER:

My understanding is that was a provision that was, you know, up until -- sorry, it's an old provision that was used back before there were standard form orders in Ontario and Alberta. When the committee or commission sat in both Ontario and Alberta to draft the template form of order they actually took that clause out. So, to be honest, I'm -- I don't see it as being part of the template order, if it was a standard receivership I'd be objecting to it being included because the committee removed it.

Here I don't see it adding anything and, quite honestly, it runs the risk of implying that this Court is somehow granting a -- a blessing to this ultimately ending up in a bankruptcy court and the trustee continuing through -- or, excuse me, receiver continuing through, which I'd obviously like to avoid for a number of reasons which I don't think I need to go into.

THE COURT:

Okay. So then your -- your provision -- your concern is that you think it's redundant and you're concerned about a potential prejudice. So presumably -- so what -- one could easily address that by saying, nothing in this order shall -- because, as I understand, Mr. Silver's concern the other way, that -- that in the absence of -- of a provision to that effect, there might be a concern that the receiver shouldn't be able to act as trustee.

In my view, whether or not -- that -- that's an issue for another court. So I think we could simply say nothing (INDISCERNIBLE) this order should prevent or -- and I don't know what the other -- the correct word is, but it's -- the -- the implication is that it shall give the -- shall either prevent or give the receiver precedence -- you know, it shall prevent him or -- or -- not --

MR. PELLETIER:

No prejudice or determination or create any

1 precedent.

2

3 THE COURT: Yeah. Or --

4

5 MR. PELLETIER: Something like that.

6

7 THE COURT: -- something like that, yeah. Okay?
8 Mr. Silver, that, I think, addresses your concern as well?

9

10 MR. SILVER: It does. Thank you.

11

12 THE COURT: Okay. Now, number 21. I'm all in favour of
13 some kind of a deadline, but is two months realistic?

14

15 MR. PELLETIER: I don't know.

16

17 THE COURT: Okay. Mr. Silver?

18

19 MR. SILVER: Also I don't know because we haven't even
20 have the consent --

21

22 THE COURT: Okay. Well, let's say that at least they shall
23 provide a preliminary report. And two months is -- is probably not going to be -- two
24 months will go by before you know it. How about we say either that they shall provide
25 a -- shall submit a report -- a receiver's report respecting the matters set out no later than,
26 let's say -- where -- where are we right now? We are at the end of --

27

28 MR. SILVER: April 22nd.

29

30 THE COURT: -- middle of April, so May, June, July. Okay.
31 Why don't we say four months, that will take us to the end of August, and they shall
32 provide a report -- so, complete and submit -- I -- I'm looking for -- I think we want --
33 okay. I'm looking to see what -- what counsel think. We can deal with this in one of
34 two ways. We can make it a shorter thing and say at least provide a preliminary report,
35 you know, in -- in three months or something like that, or we can say, you know, provide
36 a report in -- in four months.

37

38 And, again, the -- the issue that I see is, if the -- if the receiver is given the option of
39 providing a preliminary report, you're probably going to get something fairly preliminary,
40 we've started looking at this, blah, blah, blah. And whereas if it -- it at least directs that
41 they provide a report and we could say, yeah, provide a report respecting the matters set

1 out in paragraph 3, and then maybe just add the words "to the extent practicable" --

2

3 MR. SILVER: Yeah.

4

5 THE COURT: -- or something like that.

6

7 MR. SILVER: Well, what I anticipate happening, practically
8 speaking, is, once we finalize --

9

10 THE COURT: M-hm.

11

12 MR. SILVER: -- this order and, of course, you've signed it,
13 and we have a -- a receiver consenting to act and been retained, they will look at this
14 order and I believe they will -- they may want to make some modifications right off the
15 bat.

16

17 THE COURT: Yeah.

18

19 MR. SILVER: And so I'm going to leave that to them to --

20

21 THE COURT: Okay.

22

23 MR. SILVER: -- to determine. And we can put in whatever
24 date you want at this point, that may be something that they would then determine that
25 needs change.

26

27 THE COURT: Okay.

28

29 MR. SILVER: Does that make sense?

30

31 THE COURT: Mr. Pelletier, does that make sense?

32

33 MR. PELLETIER: Yes. And a -- a consent provision or something
34 would make sense. I -- I -- the reason I put it in there and I put it as two months is I was
35 hoping to get some sort of guideline so I could go back to my client and say, look, we're
36 going to -- we have some -- we have a good chance of having --

37

38 THE COURT: Yeah.

39

40 MR. PELLETIER: -- some certainty about all of these issues in a
41 two month timeframe. But taking into account the fact that, yeah, this is a big job --

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THE COURT:

Yeah.

MR. PELLETIER:

-- so setting a relatively short timeframe that it can be extended on consent or, you know, advice from the receiver of a reasonable time is just fine.

THE COURT:

Yeah. Okay. Okay. I think that that's -- that that sounds good. And I -- this -- this has been in play for a long time, so let's put in four months, which would take it to roughly probably towards the end of the summer.

MR. SILVER:

Yeah. And -- and maybe I'll just add, or such other time as either the parties may agree or the Court further directs.

THE COURT:

Yeah. Okay. That sounds good. And then I think that's largely everything. Okay?

So hopefully you will be able to re-draft something that -- that addresses all of those issues. If you can't, if you could each send me your letter with an explanation as to why you're apart on whatever small portions those will be, then hopefully we can get this finalized. Okay?

MR. SILVER:

Appreciate the help, My Lady.

THE COURT:

And thank you. I appreciate that -- that there were a number of issues getting, I'm sure, to this took a fair bit of work, and I commend you both on your efforts in that regard. Thank you.

MR. PELLETIER:

Thank you, My Lady.

MR. SILVER:

Thank you.

THE COURT CLERK:

Order in court. Court stands adjourned.

PROCEEDINGS ADJOURNED

1 Certificate of Record

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I, Susan Durant, certify that the recording herein is the record of oral evidence of proceedings held at the Court of Queen's Bench, in Calgary, Alberta, in courtroom 1602, on the 22nd day of April, 2015, and I was the court official in charge of the sound-recording machine during these proceedings.

1 **Certificate of Transcript**

2

3 I, Lee Bowers, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the
6 best of my skill and ability and the foregoing pages are a complete and accurate transcript
7 of the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record
10 and is transcribed in the transcript.

11

12

13 Digitally Certified: 2017-06-08 10:36:20

14 Lee Bowers, Transcriber

15 Order No. 60292-17-1

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35 Pages: 59

36 Lines: 2478

37 Characters: 89827

38

39 File Locator: c6bbe8864c6511e7a2d10017a4770810

40 Digital Fingerprint: 98f80b65cdcf79f02c725e9d494e2e5bb5e0f8079dcfcef99122926327c059c

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Detailed Transcript Statistics	
Order No. 60292-17-1	
Page Statistics	
Title Pages:	1
ToC Pages:	1
Transcript Pages:	57
Total Pages:	59
Line Statistics	
Title Page Lines:	52
ToC Lines:	6
Transcript Lines:	2420
Total Lines:	2478
Visible Character Count Statistics	
Title Page Characters:	537
ToC Characters:	125
Transcript Characters:	89165
Total Billable Characters:	89827
Multi-Take Adjustment: (-) Duplicated Title Page Characters	89290

This is **Exhibit "O"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock

My Commission Expires September 21, 2018

COURT FILE NUMBER

1301-10892

COURT

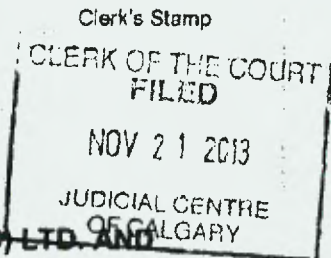
COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFFS

**RCHCROOKS ENTERPRISES (2000) LTD. AND
RCHCROOKS HOLDINGS LTD., 515476 ALBERTA
LTD., DEMEL FINANCIAL CORP, GREENMAR
HOLDINGS INC., ACCESS MORTGAGE INVESTMENT
CORPORATION (2004) LIMITED., 4-A PROFESSIONAL
SERVICES LTD., TEMPEST MANAGEMENT INC.,
HUDSON PRINCIPLE INVESTMENTS LTD., SWARTZ
BROS. LIMITED, CHRISTOPHER SCHULTZ
CONSULTING INC., CURLEW FINANCE, PAUL
KORNYLO, MAX FELDMAN, SONYA SMITH, NORMAN
MARTIN, BERNICE MARTIN, R. BRUCE CARSON,
DELORES CARSON, LEELA KRISHNOMOURTHY,
MARGUERITE MCRITCHIE, PRITI GAUR, MADHU
GAUR, WENDY MCKENNA, JANET LORRAINE
WATSON, JIM WATT, GASTON RAJAKARUNA,
SHIRLEY RAJAKARUNA, GARY DREFS, ROBERT
ARMSTRONG, MICHAEL KURTZ, MARLENE KURTZ,
KEVIN R. PEDERSEN, SUSAN FINE, CAROL KIMIYO
SEKIYA, HOLLY SEKIYA AND STEVEN OGG**



DEFENDANTS

ARRES CAPITAL INC. and WESLEY SERRA

DOCUMENT

**AMENDED STATEMENT OF
CLAIM**

ADDRESS FOR SERVICE
AND
CONTACT INFORMATION
OF
PARTY FILING THIS
DOCUMENT

SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 – 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Solicitor of Record: Loran V. Halyn
Direct: 403-219-4213
Fax: 403-291-4099
Email: lhalyn@sugimotolaw.com
File: 15,146 LVH

NOTICE TO DEFENDANT

You are being sued. You are a defendant.

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

Statement of facts relied on:

The Parties

1. The corporate plaintiffs, Richcrooks Enterprises (2000) Ltd., Richcrooks Holdings Ltd., 515476 Alberta Ltd., Demel Financial Corp, Greenmar Holdings Inc., Access Mortgage Investment Corporation (2004) Limited, 4-A Professional Services Ltd., Tempest Management Inc., Hudson Principle Investments Ltd., Swartz Bros. Limited and Christopher Schultz Consulting Inc. are corporations registered in the Province of Alberta.
2. The Plaintiff, Curlew Finance, is a registered partnership in the Province of Alberta.
3. The individual plaintiffs, Paul Kornylo, Max Feldman, Sonya Smith, Norman Martin, Bernice Martin, R. Bruce Carson, Delores Carson, Leela Krishnomourthy, Marquerite McRitchie, Priti Gaur, Madhu Gaur, Wendy McKenna, Janet Lorraine Watson, Jim Watt, Gaston Rajakaruna, Shirley Rajakaruna, Gary Drefs, Robert Armstrong, Michael Kurtz, Marlene Kurtz, Kevin R. Pedersen, Susan Fine, Carol Kimiyo Sekiya, and Holly Sekiya each reside in Calgary, Alberta. The Plaintiff, Steven Ogg, resides in the State of New York, USA
4. The defendant, Arres Capital Inc. ("Arres"), is a corporation registered in the Province of Alberta and carries on business in Calgary, Alberta as a mortgage broker and trustee, managing syndicated loans funded by investors, including the Plaintiffs, provided to third party borrowers; securing such loans through land mortgages and other security; and managing the collection of loan payments

from the third party borrowers and distributing those loan payments amongst the investors, less Arres' costs in administering the loans, all in accordance the terms and provisions of written trust agreements between Arres and the investors.

5. Arres arranged a syndicated loan to Graybriar Land Company Ltd. and Graybriar Greens Inc. (collectively "Graybriar") funded by multiple investors. The plaintiffs are investors in the syndicated loan to Graybriar administered and serviced by Arres pursuant to a written agreement dated July 30, 2008 and styled "Trust Agreement Graybriar Greens Inc. – Phase 2" (the "Trust Agreement"). ^ The Trust Agreements between each Plaintiff and Arres are identical or substantially similar in form and content such that they are not materially different in regard to the issues in this matter.
6. The Graybriar loan was secured through land mortgages and other security with Arres managing the collection of loan payments from Graybriar and distributed those loan payments amongst the investors, less Arres' costs in administering the loan, all in accordance the terms and provisions of the Trust Agreement.
7. The Graybriar loan was to fund the subdivision of lands and the construction and sale of condominium units on those lands located in or near the Town of Stony Plain.
8. The defendant, Wesley Serra ("Serra"), resides in Calgary, Alberta and at all material times was the sole director and controlling mind of Arres.
9. At all material times, one or both of the defendants were licensed, registered and authorized as a "mortgage broker" pursuant to the provisions of the *Real Estate Act*, R.S.A. 2000, c. R-5 and thereby subject to that Act and the rules and bylaws constituted thereunder applicable to mortgage brokers.

The Trust Agreement

10. The Trust Agreement imposes upon Arres the following material obligations:
 - a. Arres must exercise its powers and discharge its duties at all times honestly, in good faith and in the best collective interest of the plaintiffs and other Graybriar investors participating in the syndicated loan to Graybriar, exercising the care, diligence and skill that a reasonably prudent lender would exercise in comparable circumstances;
 - b. Arres must maintain proper records and accounts showing all receipts, payments and disbursements with respect to the Graybriar loan and to provide the plaintiffs with a periodic accounting of the loan, including interest earned and payments received from Graybriar; and
 - c. Arres must remit to the plaintiffs on a monthly basis each plaintiff investor's proportionate share (being each plaintiff investor's investment amount compared with the total syndicated loan to Graybriar) of all amounts received by Arres from Graybriar less any expenses or disbursements properly payable to Arres by each plaintiff investor with regard to the Graybriar loan.
11. Under the Trust Agreement, the plaintiffs are entitled to receive interest on its investment at the rate of 15% per annum. Graybriar was charged interest on the syndicated loan at the rate of 15% per annum. The consideration to Arres under the syndicated loan to Graybriar was limited to a lender fee of \$20,000 and reimbursement of Arres' actual expenses and disbursements in administering and servicing the loan.
12. Under the Trust Agreement, Arres is subject to contractual, equitable and fiduciary duties owed to the plaintiffs of fidelity, honesty and utmost good faith

with a requirement to avoid any conflicts of interests and at all times to act in the best interests of the plaintiffs and other Graybriar syndicated loan investors. All funds received by Arres from Graybriar must be received by Arres in trust for the benefit of the plaintiffs and other Graybriar investors with the right of Arres to make only such deductions as are provided for under the terms and provisions of the Trust Agreement.

Background to the Claim

13. Graybriar Land Company Ltd. owns property located in or near the Town of Stony Plain legally described as Plan 0520941, Block 1, Lot C (the "Graybriar Lands"). Arres arranged to syndicate a loan to Graybriar to be secured with a mortgage against the Graybriar Lands in the amount of \$9,700,000 (the "Graybriar Mortgage"). ^
14. The loan funds provided by Arres to Graybriar pursuant to the Graybriar Mortgage were obtained by Arres from various financial contributions received from investors (the "Graybriar Investors"), including the plaintiffs, pursuant to Trust Agreements which designated Arres as a bare trustee for each investor. Consequently, Arres is the bare trustee for the plaintiffs to the extent of their proportionate contributions towards the total funds loaned to Graybriar under the Graybriar Mortgage, rendering the plaintiffs beneficial owners of a portion of the Graybriar Mortgage.
15. The Graybriar Mortgage funds advanced to Graybriar by Arres were used for the purpose of subdividing the Graybriar Lands and constructing a condominium development. During the course of construction, Graybriar became insolvent, went into receivership and Arres commenced foreclosure proceedings to enforce the Graybriar Mortgage.
16. At no time during the course of Arres prosecuting the Graybriar foreclosure did

Arres ever claim or advise the Graybriar investors that there were any mortgage renewal fees owing by Graybriar that were payable to Arres. Affidavits of Default sworn and filed by Arres in the foreclosure did not claim any unpaid mortgage renewal fees as owing by Graybriar under or in connection with the Graybriar Mortgage.

17. The plaintiffs were advised by Arres that those foreclosure proceedings ultimately resulted in arrangements to incorporate a new company that would assume ownership of the Graybriar Lands and the Graybriar Investors would become shareholders in the new corporation in the same proportion to their proportionate share in the Graybriar Mortgage. The plaintiffs were advised by Arres that 1655801 Alberta Ltd. was the new corporation intended to take title to the Graybriar Lands.
18. The plaintiffs were advised by Arres that as the Graybriar condominium units were sold, the sale proceeds would be applied against the indebtedness owing under the Graybriar Mortgage, and the net sale proceeds, after Arres made deductions for its actual expenses and disbursements in administering and servicing the loan, would be distributed to the Graybriar Investors, with the plaintiffs receiving their respective proportionate share of those funds.
19. Despite Arres advising the plaintiffs repeatedly that the Graybriar Lands would be transferred to 1655801 Alberta Ltd., such transfer never occurred. Eventually the Graybriar Lands were "condominiumized" with Arres managing the sale of the individual condominium units, thereby resulting in Arres maintaining control over the receipt, disbursement and distribution of monies realized from the sale of Graybriar condominium units.
20. In or about October 2012 legal counsel for Arres sent \$998,079.69 to Arres in conjunction with the sale of several condominium units that were sold. Arres

reported to the plaintiffs that it had received \$988,079.69 and accounted for that amount to the Graybriar Investors. No explanation has been provided by Arres to the plaintiffs regarding the missing \$10,000.

21. Notwithstanding that Arres had deducted expenses and disbursements associated with administering and servicing the Graybriar Mortgage during the course of the mortgage being paid down and thereafter in connection with the sale of condominium units, by correspondence dated November 10, 2012, Arres disclosed to the plaintiffs that it had total expenses and disbursements of \$473,050.30 of which only \$183,420.54 had been paid to Arres, resulting in a balance claimed owing to Arres of \$289,629.76.
22. Moreover, by correspondence dated July 4, 2013, Arres informed the plaintiffs it was holding back from net sale proceeds associated with a condominium unit recently sold the amount of \$115,000 for "New Home Warranty Coverage" and \$10,000 for future progress payments. Such holdbacks are not provided for in the Trust Agreement.
23. By letter dated October 18, 2013 from Arres to the plaintiffs and other Graybriar investors, Arres advised that it had taken and retained \$481,829.23, comprising virtually all of the net sale proceeds from the recent sale of two Graybriar condominium units. Arres retained these funds claiming a mortgage renewal fee of \$738,181.26 relating to the renewal of the Graybriar mortgage back in 2008.
24. Additionally, approximately \$80,000 was taken by Arres from the trust account of legal counsel associated with the sale of the Graybriar condominium units that has not been accounted for to the Graybriar Investors.
25. The plaintiffs dispute:
 - a. Arres' deduction and retention, from the net sale proceeds derived from

Graybriar condominium units sold, of amounts totaling \$665,249.77 purportedly relating to Arres' expenses and disbursements associated with administering and servicing the Graybriar Mortgage and claimed 2008 mortgage renewal fee that was undisclosed until October 18, 2013;

- b. Arres' claim that additional monies are owing by the Graybriar investors, comprised of expenses and disbursements of \$289,629.76 associated with administering and servicing the Graybriar Mortgage;
 - c. Arres retaining \$90,000 associated with the sale of Graybriar condominium units, which amount has not been accounted for to the Graybriar Investors; and
 - d. Arres holding back from distribution to the Graybriar investors the amounts of \$115,000 for "New Home Warranty Coverage" and \$10,000 for future progress payments.
26. The plaintiffs dispute Arres' ability under the Trust Agreement to unilaterally hold back monies from distribution to the Graybriar investors.

The Claims

27. The plaintiffs seek a full accounting from Arres under the Trust Agreement regarding monies received and disbursed relating to the Graybriar Mortgage and sale of Graybriar condominium units. To the extent Arres has wrongfully taken monies that would otherwise be payable to the Graybriar Investors, the plaintiffs claim for reimbursement of their proportionate share of those monies wrongfully taken.
28. Arres has wrongfully misappropriated and converted the following improper

deductions taken from monies received under the Graybriar Mortgage or pursuant to the sale of Graybriar condominium units:

- a. Claimed expenses and disbursements totaling \$665,249.77 purportedly relating to an alleged 2008 mortgage renewal fee owing to Arres and Arres generally administering and servicing the Graybriar Mortgage;
- b. New Home Warranty Coverage holdback of \$115,000;
- c. Future progress payments holdback of \$10,000; and
- d. Funds in the amount of approximately \$80,000 taken by Arres from the trust account of legal counsel associated with the sale of the Graybriar condominium units that have not been accounted for to the Graybriar Investors.

29. The plaintiffs, Richcrooks Enterprises (2000) Ltd. and Richcrooks Holdings Ltd., through legal counsel have demanded in writing in September 2013 a full accounting from Arres as well as copies of all records, whether in paper or digital / computer form, in the possession of Arres related to that accounting. Arres has failed to comply with that demand, which constitutes a further breach of Arres' contractual, legal and equitable duties owed to the plaintiffs of fidelity, honesty and utmost good faith.

30. The plaintiffs assert that the conduct of Arres regarding its receipt, distribution, deduction and wrongful misappropriation and conversion of funds relating to the Graybriar Mortgage payments and sale of Graybriar condominium units is particularly egregious, was done with malice intent and in clear breach of the terms and provisions of the plaintiffs' Trust Agreement and Arres' contractual, equitable and fiduciary duties owed to the plaintiffs such that aggravated, exemplary and punitive damages are justified.

31. Additionally, Arres' conduct in connection with the receipt and disbursement of payments made under the Graybriar Mortgage and sale proceeds from the sale of Graybriar condominium units:

- a. Has been contrary to the terms in the plaintiffs' Trust Agreement;
- b. Has breached Arres' contractual, equitable and fiduciary duties owed to the plaintiffs;
- c. Has been contrary to the provisions of the *Real Estate Act*, R.S.A. 2000, c. R-5 and rules and bylaws constituted thereunder applicable to mortgage brokers; and
- d. Has benefitted the interests of the Defendants to the detriment and prejudice of the plaintiffs, thereby creating an irreconcilable conflict of interest.

In addition, Arres is subject to bankruptcy proceedings which gives rise to the right of the plaintiffs under the Trust Agreement to terminate Arres as trustee for their respective investments in the Graybriar condominium project and mortgage. Consequently, Arres can no longer continue to act as trustee for and on behalf of the plaintiffs pursuant to the Trust Agreement.

32. Serra had full knowledge of the plaintiffs' Trust Agreement and Arres' contractual, equitable and fiduciary duties and obligations owed to the plaintiffs and nevertheless, with malice intent and forethought, directed and caused Arres to breach those duties and obligations as described above, and as a result of such breaches Serra personally benefited by receiving some or all of the monies misappropriated and wrongfully converted by Arres from the Graybriar Mortgage payments and proceeds of sales of Graybriar condominium units. Consequently, Serra has:
- a. unlawfully induced Arres to breach the Trust Agreement and breach its contractual, equitable and fiduciary duties owed to the plaintiffs, and
 - b. unlawfully interfered with the legal and economic relations between Arres and the plaintiffs and other Graybriar Investors,

for which Serra is jointly and severally liable for all damages suffered by the plaintiffs as a result, including aggravated, exemplary and/or punitive damages.

33. The plaintiffs propose that the trial of this action be held before the Court of Queen's Bench at the Calgary Courts Centre at 601 - 5 Street S.W., Calgary, Alberta, T2P 5P7 and in the opinion of the plaintiffs the trial is not expected to exceed 25 days.

Remedy sought:

34. A temporary and permanent injunction enjoining Arres from continuing to act as trustee for the plaintiffs in connection with the Trust Agreement and requiring Arres to fully and properly account to the plaintiffs for all monies received and disbursed relating to the Graybriar Mortgage and sale of Graybriar condominium units.
35. Judgment against the Defendants jointly and severally for the total amount of funds misappropriated and wrongfully converted by Arres from the Graybriar Mortgage payments and sale of Graybriar condo units that would be otherwise payable to the plaintiffs pursuant to the Trust Agreement.
36. Judgment against the Defendants jointly and severally for aggravated, exemplary and/or punitive damages in the total amount of \$250,000 or such other amount as proven at the trial of this action.
37. Interest on the proven losses and damages suffered by the plaintiffs, both before and after trial, in accordance with the Trust Agreement or at such rate and for such period of time as this Honourable Court determines appropriate.

38. Costs to the plaintiffs on a solicitor-client, full indemnity basis or at such level as this Honourable Court determines appropriate.
39. Such further and other relief as counsel may advise and this Honourable Court may permit.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at CALGARY, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

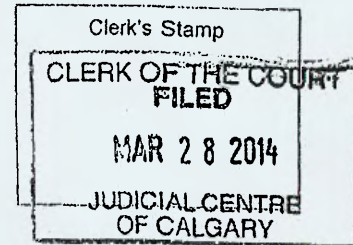
This is **Exhibit "P"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

COURT FILE NUMBER 1401-03476
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ACCESS MORTGAGE CORPORATION
(2004) LIMITED
DEFENDANT ARRES CAPITAL INC., ARRES HOLDINGS
INC., 875892 ALBERTA LTD., WESLEY
SERRA, and STACIA SERRA
DOCUMENT STATEMENT OF CLAIM



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Brian E. Silver / Tyler F.A. Derksen
Warren Benson Amantea LLP
1413 - 2nd Street SW
Calgary, Alberta T2R 0W7
Telephone: (403) 228-7007
Facsimile: (403) 228-1948
Our File No. 14-0552

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

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

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Plaintiff is a body corporate duly incorporated pursuant to the laws of the Province of Alberta and having offices at the City of Calgary, in the said Province.
2. The Defendant Arres Capital Inc. (herein referred to as "Arres Capital") is a body corporate duly incorporated pursuant to the laws of the Province of Alberta and having offices at the City of Calgary, in the said Province.
3. The Defendant Arres Holdings Inc. (herein referred to as "Arres Holdings") is a body corporate duly incorporated pursuant to the laws of the Province of Alberta and having offices at the City of Calgary, in the said Province.
4. The Defendant 875892 Alberta Ltd. (herein referred to as "875892") is a body corporate duly incorporated pursuant to the laws of the Province of Alberta and having offices at the City of Calgary, in the said Province.
5. The Defendant Wesley Serra (herein referred to as "Wesley"), to the best of the best of the Plaintiff's knowledge, resides at the City of Calgary, in the Province of Alberta.
6. The Defendant Stacia Serra (herein referred to as "Stacia"), to the best of the best of the Plaintiff's knowledge, resides at the City of Calgary, in the Province of Alberta.

7. At all material times hereto, Wesley was the sole shareholder, officer and director of Arres Holdings and Arres Capital.
8. At some point in time, Wesley transferred his shares in Arres Capital to Arres Holdings. Wesley remains the sole shareholder of Arres Holdings and sole director of Arres Capital and Arres Holdings.
9. At all material times hereto, Stacia was the sole shareholder, officer and director of 875892.

Arres' Indebtedness to the Plaintiff

10. To the best of the Plaintiff's knowledge, Wesley was the sole officer, director and shareholder of Arres Capital up to or about May 9, 2011.
11. As at June 30, 2009, Arres Capital was indebted to the Plaintiff in the sum of \$1,028,879.99 representing an overpayment of fees paid by the Plaintiff to Arres Capital for the period April 1, 2008 to March 31, 2009 pursuant to a Management Agreement dated August 1, 2004 by virtue of which Arres Capital was required to provide certain management services to the Plaintiff pertaining to the Plaintiff's mortgage portfolio (the "Debt").
12. Commencing in or about April, 2009 and throughout the remainder of 2009, 2010 and the first few months of 2011, Wesley and Arres Capital were aware of the obligation of Arres Capital to pay the Debt to the Plaintiff. In fact, Arres Capital acknowledged such obligation by signing an Interim Management Agreement on or about May 5, 2009.
13. On or about March 11, 2011, the Plaintiff filed a Statement of Claim against Arres Capital in Court of Queen's Bench of Alberta Action Number 1101-03481 in order to collect the Debt (the "Debt Action").
14. On or about May 24, 2013, Justice Hunt-McDonald granted summary judgment against Arres Capital in the Debt Action for \$1,028,879.99 subject to some adjustment, plus interest and costs (the "Judgment"), which Judgment has been appealed to the Court of Appeal by Arres (the "Appeal"). The Court of Appeal has stayed enforcement of the Judgment pending hearing of the Appeal.

1494166 Alberta Ltd

15. The Plaintiff, 875892 and Arres Capital were shareholders of 1494166 Alberta Ltd. (herein referred to as "1494166"). The Plaintiff holds 1,050,000 of the 2,000,000 shares issued in the capital stock of 1494166 and Arres Capital held 380,000 shares (the "Arres Shares"). 875892 held 70,000 shares in the capital stock of 1494166 (the "Stacia shares").
16. During 2010 and possibly on February 15, 2010, to the best of the Plaintiff's knowledge, Arres Capital purported to transfer 330,000 of the Arres Shares to Arres Holdings and 50,000 of the Arres Shares to Stacia. The latter transfer of 50,000 shares to Stacia may have occurred in September, 2011.
17. During 2010 and possibly on February 15, 2010, to the best of the Plaintiff's knowledge, 875892 purported to transfer the Stacia Shares to Stacia.
18. On or about February 14, 2013, Arres Capital, as well as 1516280 Alberta Ltd. and 1514462 Alberta Ltd., of which number companies Wesley was the sole director, issued a Direction for Payment of Mortgage

Proceeds and Release to counsel for 1494166 in which they requested certain amounts otherwise payable by 1494166 to Arres Capital to Arres Holdings and to Stacia, Wesley's spouse.

Sale Proceeds Realized by 1494166

19. During June, 2013, 1494166 received proceeds realized from the sale of property owned by 1494166 (the "Sale Proceeds"), which Sale Proceeds were to be distributed to the shareholders of 1494166.
20. The owner of the Arres Shares was entitled to receive an estimated payment of \$153,000.00 from the Sale Proceeds.
21. A dispute arose between the Plaintiff and the Defendants regarding entitlement of Arres Holdings and Stacia to payment of the share of the Sale Proceeds payable to the holder of the Arres Shares.
22. The sum of \$169,561.60 (the "Disputed Funds") were paid into Court by the solicitor for 1494166 pursuant to a Consent Order granted by Master Hanebury on July 2, 2013 in Court of Queen's Bench of Alberta Action No. 1301-07437.
23. Access states that the transfer of Arres Shares from Arres Capital to Arres Holdings and Stacia was not arms-length and was done for the sole purpose of shielding the amounts paid pursuant to the Arres Shares from Access, when Arres Capital knew that it was indebted to Access. Access states that such transfers are contrary to the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 as amended and Access also relies on the *Statute of Elizabeth*, 13 Eliz. 1, c. 5.
24. Access further states that as the sole director of Arres Capital and Arres Holdings, and as the effective sole shareholder of Arres Capital and Arres Holdings, Wesley was the directing mind behind, and had complete control over the actions of, Arres Capital and Arres Holdings. As a result, Access states that Wesley is liable for the actions of Arres Capital and Arres Holdings set out above.
25. Further and in the alternative, Wesley, as the sole director of Arres Capital and Arres Holdings owes a duty of care to act in the best interests of those corporations. Wesley breached his duty of care, the particulars of which include, but are not limited to:
 - a. Engaging in the transfer of the Arres Shares in contravention of the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 as amended and the Plaintiff also relies on the *Statute of Elizabeth*, 13 Eliz. 1, c. 5; and
 - b. Such further and other particulars as may be proven at the trial of this Action.

Access pleads and relies upon the provisions of the *Business Corporations Act*, R.S.A. 2000, c. B-9, as amended from time to time.

26. Access states that the transfer of the Stacia Shares from 875892 to Stacia was not arms-length and was done for the sole purpose of shielding the amounts paid pursuant to the Stacia Shares from the Plaintiff, when 875892 knew that it was indebted to the Access. Access states that such transfers are contrary to the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 as amended and Access also relies on the *Statute of Elizabeth*, 13 Eliz. 1, c. 5.

27. Access further states that as the sole director of 875892, and as the sole shareholder of 875892, Stacia was the directing mind behind, and had complete control over the actions of, 875892. As a result, Access states that Stacia is liable for the actions of 875892 as set out above.
28. Further and in the alternative, Stacia, as the sole director of 875892, owes a duty of care to act in the best interests of that corporation. Stacia breached her duty of care, the particulars of which include, but are not limited to:
 - a. Engaging in the transfer of the Stacia Shares in contravention of the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 as amended and the Plaintiff also relies on the *Statute of Elizabeth*, 13 Eliz. 1, c. 5; and
 - b. Such further and other particulars as may be proven at the trial of this Action.
29. Access pleads and relies upon the provisions of the *Business Corporations Act*, R.S.A. 2000, c. B-9, as amended from time to time.

Remedy sought:

30. A declaration that the transfer of the Arres Shares from Arres Capital to Arres Holdings contravened the provisions of the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 or the *Statute of Elizabeth*, 13 Eliz. 1, c. 5.
31. A declaration that the transfer of the Arres Shares from Arres Capital to Stacia contravened the provisions of the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 or the *Statute of Elizabeth*, 13 Eliz. 1, c. 5.
32. A declaration that the transfer of the Stacia Shares from 875892 to Stacia contravened the provisions of the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 or the *Statute of Elizabeth*, 13 Eliz. 1, c. 5.
33. An Order directing that the Arres Shares wrongfully transferred to Arres Holdings and Stacia be transferred back to Arres Capital.
34. An Order directing that the Stacia Shares wrongfully transferred to Stacia be transferred back to 875892.
35. Judgment against Arres Capital in an amount to be determined at trial, including but not limited to the proportionate share of the Disputed Funds owing from 1494166.
36. Judgment against Arres Holdings in an amount to be determined at trial, including but not limited to the proportionate share of the Disputed Funds owing from 1494166.
37. Judgment against Stacia in an amount to be determined at trial, including but not limited to the proportionate share of the Disputed Funds owing from 1494166.
38. Judgment against 875892 in an amount to be determined at trial, including but not limited to the proportionate share of the Disputed Funds owing from 1494166.
39. Judgment against Wesley in an amount to be determined at trial.
40. Interest pursuant to the *Judgment Interest Act*.

41. All legal costs and expenses incurred by the Plaintiff including those costs on a solicitor and his own client indemnity basis.
42. Such other relief as the case may require, and to this Honourable Court may seem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

This is **Exhibit "Q"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017

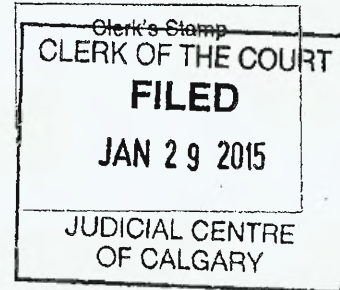
A handwritten signature in black ink, appearing to read 'R. Comstock', written over a dotted line.

.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 20~~17~~¹⁸

Form 10
[Rule 3.25]

COURT FILE NUMBER 1501- 01106
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF(S) ACCESS MORTGAGE CORPORATION
(2004) LIMITED
DEFENDANT(S) ARRES CAPITAL INC., 875892 ALBERTA
LTD., 1798582 ALBERTA LTD., WESLEY
SERRA, and STACIA SERRA
DOCUMENT STATEMENT OF CLAIM



ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Warren Benson Amantea LLP
1413 - 2nd Street S.W.
Calgary, Alberta T2R 0W7
Lawyer: Brian E. Silver / Tyler Derksen
Tel: 403-228-7007 Fax: 403-228-1948
bsilver@wbalaw.ca
File No. 15-0202

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

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

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Plaintiff (sometimes referred to herein as "Access") is a body corporate duly incorporated pursuant to the laws of the Province of Alberta and having offices at the City of Calgary, in the said Province.
2. The Defendant Arres Capital Inc. (herein referred to as "Arres Capital") is a body corporate duly incorporated pursuant to the laws of the Province of Alberta and having offices at the City of Calgary, in the said Province.
3. The Defendant 875892 Alberta Ltd. (herein referred to as "875 AB") is a body corporate duly incorporated pursuant to the laws of the Province of Alberta and having offices at the City of Calgary, in the said Province.

4. The Defendant 1798582 Alberta Ltd. (herein referred to as "1798582 AB") is a body corporate duly incorporated pursuant to the laws of the Province of Alberta and having offices at the City of Calgary, in the said Province.
5. The Defendant Wesley Serra (herein referred to as "Wesley"), to the best of the best of the Plaintiff's knowledge, resides at the City of Calgary, in the said Province.
6. The Defendant Stacia Serra (herein referred to as "Stacia"), to the best of the best of the Plaintiff's knowledge, resides at the City of Calgary, in the said Province.
7. At all material times hereto, Wesley was the sole shareholder, officer and director of Arres Holdings Inc. ("Arres Holdings"). At all material times hereto, Arres Holdings was the sole shareholder of Arres Capital.
8. At all material times hereto, Stacia was the sole shareholder, officer and director of 875 AB and 179 AB and was married to Wesley.

ARRES' INDEBTEDNESS TO THE PLAINTIFF

9. To the best of the Plaintiff's knowledge, Wesley was the sole officer, director and shareholder of Arres Capital up to or about May 9, 2011.
10. As at June 30, 2009, Arres Capital was indebted to the Plaintiff in the sum of \$1,028,879.99 representing an overpayment of fees paid by the Plaintiff to Arres Capital for the period April 1, 2008 to March 31, 2009 pursuant to a Management Agreement dated August 1, 2004 by virtue of which Arres Capital was required to provide certain management services to the Plaintiff pertaining to the Plaintiff's mortgage portfolio (the "Debt").
11. Commencing in or about April, 2009 and throughout the remainder of 2009, 2010 and the first few months of 2011, Wesley and Arres Capital were aware of the obligation of Arres Capital to pay the Debt to the Plaintiff. In fact, Arres Capital acknowledged such obligation by signing an Interim Management Agreement on or about May 5, 2009.
12. On or about March 11, 2011, the Plaintiff filed a Statement of Claim against Arres Capital in Court of Queen's Bench of Alberta Action Number 1101-03481 in order to collect the Debt (the "Debt Action").
13. On or about May 24, 2013, Justice Hunt-McDonald granted summary judgment against Arres Capital in the Debt Action for \$1,028,879.99 subject to some adjustment, plus interest and costs (the "Judgment"), which Judgment has been appealed to the Court of Appeal by Arres (the "Appeal"). The Court of Appeal has upheld the Judgment and dismissed the Appeal.

ASSIGNMENT OF ACCOUNTS RECEIVABLE and INVESTMENTS

STRATHMORE PROJECT

14. On or about March 15, 2010, pursuant to an Assignment of Mortgage agreement (the "Strathmore Assignment") Arres Capital and Arres Holdings purported to assign all of its original principal investment with respect to a mortgage securing repayment of \$2 million registered against lands located in Strathmore (the "Strathmore Mortgage") and all of their "rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises" to Stacia and/or 875892 AB in consideration of the payment of \$228,000 (the "Strathmore Payment").
15. Arres Capital and Arres Holdings purported to assign "all of its receivables with respect to the loan administration agreement" to Stacia and/or 875892 AB pursuant to the Strathmore Assignment.

TIMBER CREEK PROJECT

16. On or about October 18, 2010, pursuant to an Assignment of Account Receivable agreement (the "Timber Creek Assignment") Arres Capital purported to assign "all of its original principal investment and all of its rights, title and ongoing interest in and to that portion of the loan and related security over the lands and premises" with respect to the Timber Creek Mobile project to Stacia and/or 875892 AB in consideration of the payment of \$12,500 (the "Timber Creek Payment").
17. Arres Capital purported to assign "all of its receivables with respect to the loan administration agreement" on the Timber Creek Mobile project to Stacia and/or 875892 AB pursuant to the Timber Creek Assignment.

KOLLAR and CHATEAU PROJECT

18. On or about June 29, 2010, pursuant to an Assignment of Account Receivable agreement (the "Kollar/Chateau Assignment") Arres Capital purported to assign all of its original principal investment and all of their "rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises" with respect to the Kollar and Chateau project to Stacia and/or 875892 AB in consideration of the payment of \$31,000 (the "Kollar/Chateau Payment").
19. Arres Capital purported to assign "all of its receivables with respect to the loan administration agreement" on the Kollar/Chateau project to Stacia and/or 875892 AB pursuant to the Kollar/Chateau Assignment.

GRAYBRIAR 2 PROJECT

20. On or about September 30, 2010, pursuant to an Assignment of Account Receivable agreement (the "Graybriar 2 Assignment") Arres Capital purported to assign all of its original principal investment and all of their "rights, title and ongoing accrued interest in and to that portion of the loan and related security over the

lands and premises" with respect to the Graybriar 2 project to Stacia and/or 875892 AB in consideration of the payment of \$97,500 (the "Graybriar 2 Payment").

21. Arres Capital purported to assign "all of its receivables with respect to the loan administration agreement" on the Kollar/Chateau project to Stacia and/or 875892 AB pursuant to the Graybriar 2 Assignment.

BURNS BUILDING

22. On or about May 11, 2011, pursuant to an Assignment of Account Receivable agreement (the "Burns Assignment") Arres Capital purported to assign all of its original principal investment and all of their "rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises" with respect to the Burns Building to Stacia and/or 875892 AB in consideration of the payment of \$50,213.56 (the "Burns Payment").
23. Arres Capital purported to assign "all of its receivables with respect to the loan administration agreement" on the Burns Building to Stacia and/or 875892 AB pursuant to the Burns Assignment.
24. On or about May 11, 2011, Arres Capital agreed with Stacia and 875892 AB to "swap the Burns building receivable with the funds that are now received and paid for the Chateau assignment" in consideration of the payment of \$50,213.56.

JERVIS INLET RESORT

25. On or about October 11, 2011, pursuant to an Assignment of Account Receivable agreement (the "Jervis Assignment") Arres Capital purported to assign all of its original principal investment and all of their "rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises" with respect to the Jervis project to Stacia and/or 875892 AB in consideration of the payment of \$96,000 (the "Jervis Payment").
26. Arres Capital purported to assign "all of its receivables with respect to the loan administration agreement" on the Jervis project to Stacia and/or 875892 AB pursuant to the Jervis Assignment.

DOCKMAN MORTGAGE

27. On or about July 11, 2012, pursuant to an Assignment of Account Receivable agreement (the "Dockman Assignment") Arres Capital purported to assign all of its original principal investment and all of their "rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises" with respect to the Dockman project to Stacia and/or 875892 AB in consideration of the payment of \$105,359.59 (the "Dockman Payment").
28. Arres Capital purported to assign "all of its receivables with respect to the loan administration agreement" on the Dockman project to Stacia and/or 875892 AB pursuant to the Dockman Assignment.

COPPER TREE MEADOWS

29. On or about February 29, 2012, pursuant to an Assignment of Account Receivable agreement (the "Coppertree Assignment") Arres Capital purported to assign "the interest in and to the accounts receivable together with the rate of interest of 15% per annum" with respect to the Copper Tree Meadows project to Gordon and Mona Snyder (the "Snyders") in consideration of the payment of \$62,500 (the "Snyder Payment").
30. The Strathmore Assignment, the Timber Creek Assignment, the Kollar/Chateau Assignment, the Graybriar 2 Assignment, the Burns Assignment, the Jervis Assignment and the Dockman Assignment are herein collectively referred to as the "Arres Assignments".
31. The Plaintiff states that the Arres Assignments were not arms-length and the Arres Assignments and the Coppertree Assignment were done for the sole purpose of shielding the amounts paid or payable to Arres Capital from the Plaintiff, when Arres Capital and Serra knew that Arres Capital was indebted to the Plaintiff. The Plaintiff states that the Arres Assignments are contrary to the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 as amended and the Plaintiff also relies on the *Statute of Elizabeth*, 13 Eliz. 1, c. 5.

1798582 AB and the GRAYBRIAR UNITS

32. In February, 2014, Arres Capital obtained a foreclosure order in QB Action Number 0903-17685 (the "Foreclosure Action") vesting title to seven condominium units in the Graybriar 2 project into Arres Capital's name.
33. Arres Capital arranged for the sale of four of such units to 1798582 AB for the purported sale price of \$450,000 (the "Graybriar Transfer"). Arres Capital further arranged for mortgage financing from Terrapin Mortgage Investment Corp. to be registered against the title to these four units in order to provide purchase financing for 1798582 AB.
34. Arres Capital retained funds or has put itself into the position to retain funds in respect of the four condominium units located in the Graybriar 2 condominium project as payment for the alleged trustee and administration fees, notwithstanding that Arres Capital's investment in the mortgage registered against the title to such units and all accounts receivable had been assigned to 875892 AB pursuant to the Graybriar 2 Assignment.
35. The Plaintiff states that Arres Capital is not entitled to the payment of any funds with respect to the Graybriar 2 project and had no right or authority to sell or transfer title to the four units and is not entitled to the payment of any proceeds realized or realizable from the sale of such units or any of the Graybriar 2 units to be transferred to Arres Capital in the Foreclosure Action.
36. The Plaintiff states that the sale or transfer of the title to the four units by Arres Capital to 1798582 AB was not arm's length and was done for the sole purpose of shielding the amounts paid or payable to Arres

Capital from the Plaintiff, when Arres Capital and Serra knew that Arres Capital was indebted to the Plaintiff. The Plaintiff states that the Graybriar Transfer is contrary to the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 as amended and the Plaintiff also relies on the *Statute of Elizabeth*, 13 Eliz. 1, c. 5.

Remedy sought:

37. A declaration that the Arres Assignments and the Coppertree Assignment contravened the provisions of the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 or the *Statute of Elizabeth*, 13 Eliz. 1, c. 5.
38. A declaration that Arres Assignments and the Coppertree Assignment contravened the provisions of the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 or the *Statute of Elizabeth*, 13 Eliz. 1, c. 5.
39. A declaration that the Graybriar Transfer contravened the provisions of the *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24 or the *Statute of Elizabeth*, 13 Eliz. 1, c. 5.
40. An Order directing that the interest of Arres Capital and Arres Holdings in the investments, mortgages, account receivables which Arres Capital and Arres Holdings wrongfully transferred to Stacia, 875892 AB and the Snyders be transferred back to Arres Capital.
41. Interest pursuant to the *Judgment Interest Act*.
42. All legal costs and expenses incurred by the Plaintiff including those costs on a solicitor and his own client indemnity basis.
43. Such other relief as the case may require, and to this Honourable Court may seem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

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You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff(s)' address for service.

WARNING

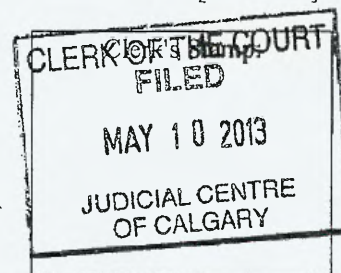
If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

This is **Exhibit "R"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018



COURT FILE NUMBER 1301- 05808
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

PLAINTIFF **HARVEY BECK, ALLAN BECK, CAROL GRAHAM, RAY SCRABA, DWAYNE SCRABA, CHERYL NEWMAN, SHELLY BECK, ALAN SOMMER, KENNETH SOMMER, DARLENE WOROSCHUK, HARVEY MOORE, STEVEN OGG, CAROLYN ALEXANDER, ROBERT ALEXANDER, WENDY MCKENNA, GLENDA POWER, ALBERT SNOOK, ALAN SNOOK, MURRAY SOWERBY, SYLVIA SOWERBY, STEVEN REILLY, TRACY HILDERBRAND, ROBERT KREBS, ASSURED MORTGAGE INVESTMENTS CORP., 515476 ALBERTA LTD., CME HOLDINGS LTD. and VERUS MORTGAGE INVESTMENT CORP.**

DEFENDANT **ARRES CAPITAL INC., 1469601 ALBERTA LTD. and WES SERRA**

DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Burnet, Duckworth & Palmer LLP
2400, 525 – 8 Avenue SW
Calgary, Alberta T2P 1G1
Lawyer: J. Kelly Hannan
Phone Number: (403) 260-0126
Fax Number: (403) 260-0332
Email Address: khannan@bdplaw.com
File No. 71272-1

NOTICE TO DEFENDANT

You are being sued. You are a defendant.

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

Statement of facts relied on:

Parties

1. The Plaintiffs, Harvey Beck, Allan Beck, Carol Graham, Ray Scraba, Dwayne Scraba, Cheryl Newman, Shelly Beck, Alan Sommer, Kenneth Sommer, Darlene Woroschuk, Harvey Moore, Steven Ogg, Carolyn Alexander, Robert Alexander, Wendy McKenna, Glenda Power, Albert Snook, Alan Snook, Murray Sowerby, Sylvia Sowerby, Steven Reilly, Tracy Hilderbrand and Robert Krebs, are individuals residing in Calgary, Alberta and elsewhere.

2. The Plaintiffs, Verus Mortgage Investment Corp., CME Holdings Ltd., Assured Mortgage Investments Corp. and 515476 Alberta Ltd., are Alberta companies with registered offices in Calgary.
3. The Defendant, Arres Captial Inc., is an Alberta company with its registered office in Calgary (**Arres**). Arres is a mortgage brokerage firm with purported expertise in residential, commercial first and second mortgages, builder's mortgages, debt consolidations and interim financing.
4. The Defendant, Wes Serra, is an individual residing in Calgary, Alberta. Serra is the sole director and guiding mind of Arres.
5. The Defendant, 1469601 Alberta Ltd., is an Alberta company with its registered office in Calgary (**1469**). Serra is the sole director and voting shareholder of 1469.

The Mortgage Investment

6. As part of its business, Arres arranges mortgage loans with borrowers, raises the mortgage funds through a group of private investors and then administers the mortgages (as trustee) on behalf of the investors (as co-lenders).
7. In or around the spring of 2009, the Plaintiffs and other investors (collectively the **Investors**) entered into Loan Administration Agreements with Arres (the **Trust Agreement**) in connection with a \$3,900,000 mortgage loan granted to 1399236 Alberta Ltd. (the **Mortgage**).
8. The Plaintiffs collectively funded approximately 90% of the \$3,900,000 Mortgage.
9. Under the Trust Agreement:
 - (a) The Investors advanced funds to Arres in exchange for undivided ownership interests in the Mortgage (pro-rata interests based on each Investor's loan amount and the principal amount of the Mortgage);
 - (b) Arres was appointed trustee of the Investors' ownership interests in the Mortgage and given authority to enter into all commitments, contracts and obligations for and on behalf of the Investors;
 - (c) The Mortgage was to be registered in Arres' name (or the name of an affiliate appointed by Arres) as nominee and bare trustee for and on behalf of the Investors.
 - (d) Arres was entrusted with full power and authority to hold, administer and manage the Investors' ownership interests in the Mortgage; and
 - (e) All rights, monies, payments, profits and advantages relating to the Investors' interests in the Mortgage were held in trust by Arres for the Investors' sole benefit and advantage.
10. The funds under the Mortgage were advanced to the borrower in June 2009. On June 16, 2009 the Mortgage was registered against real property owned by the borrower in or near Chestermere, Alberta. The Mortgage was held in the names of Olympia Trust Company, 1469 and B2B Trust as bare trustees on behalf of the Investors.

11. Interest payments on the Mortgage were paid by the borrower and collected by Arres until December 2010. During that period Arres retained a 1% administration fee from the interest owing to the Investors and distributed the balance to the Investors according to their pro rata ownership interests in the Mortgage.
12. In January 2011 the borrower defaulted under the Mortgage for non-payment and it has been in default since then. Arres commenced a foreclosure action in April 2012 (on behalf of the registered mortgage holders) but has failed or refused to proceed with that action, or towards an alternative resolution, with reasonable diligence or care.
13. Arres owed the Plaintiffs (and other Investors participating in the Mortgage) contractual duties, fiduciary duties, a duty of utmost good faith, confidence, fairness and honesty, and a duty to fully disclose all matters relating to the Mortgage.
14. Arres has repeatedly failed to act in the best interests of the Investors, breached its obligations under the Trust Agreement and breached its fiduciary duties to the Investors. Particulars include:
 - (a) Failing to take reasonable steps to enforce the Mortgage and protect the value and security of the Mortgage;
 - (b) Acting in a highhanded and callous manner, and contrary to the instructions of Investors with respect to the administration and enforcement of the Mortgage;
 - (c) Acting in conflict of interest and for the purpose of profiting or attempting to profit from fees and other charges paid by the borrower to the detriment of the Investors' interests in the Mortgage;
 - (d) Acting in conflict of interest by pursuing or entering into other business arrangements with the borrower;
 - (e) Refusing to keep timely, complete and accurate books of account and records relating to the Mortgage;
 - (f) Misappropriating trust funds including by wrongfully directing the payment of trust funds to itself, 1469, Serra or a company related to Serra; and
 - (g) Refusing to account for trust funds and denying the Plaintiffs a reasonable opportunity to inspect or audit books and records relating to the Mortgage and its administration.
15. As a result of Arres' breaches, the Plaintiffs have suffered financial loss and damage in the form of lost income, profit and opportunity. The Plaintiffs continue to suffer damage in relation to the value and security of the Mortgage.
16. Arres and 1469 are the alter egos of Serra. Serra is the guiding mind of both companies and he used (and continues to use) them as devices to wrongfully conceal his impropriety and shelter himself from personal liability.

Remedy sought:

17. An Order under the *Trustee Act* terminating Arres as trustee under the Trust Agreement and appointing a new trustee over the Mortgage;

18. An Order directing that any funds held, or any further payments received, by any of the Defendants in respect of the Mortgage be paid into Court;
19. An accounting and tracing of all funds received or disbursed by any of the Defendants in relation to the Mortgage;
20. A Declaration that Arres and 1469 are alter ego corporate vehicles of Serra.
21. Damages as against the Defendants, jointly and severally, in an amount to be proven at the trial of this Action;
22. Interest pursuant to the *Alberta Judgment Interest Act*;
23. Solicitor client costs against the Defendants on a joint and several basis; and
24. Such further or other relief as this honourable Court deems appropriate:

NOTICE TO THE DEFENDANT:

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or Demand for Notice in the office of the Clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your Statement of Defence or Demand for Notice on the Plaintiff's address for service.

WARNING

If you do not file your Statement of Defence or Demand for Notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff against you after a notice of the application has been served on you.

This is **Exhibit "S"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

COURT FILE NUMBER 1261-16440

COURT COURT OF QUEEN'S BENCH
OF ALBERTA

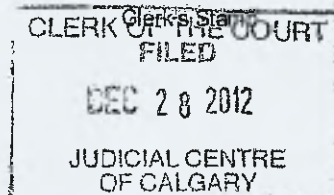
JUDICIAL CENTRE CALGARY

PLAINTIFFS KENZIE FINANCIAL INVESTMENTS LTD., SHELLY
BECK, THERESE F. DALEY, LINDA JAEGER,
ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG,
STEVEN OGG, LESTER S. IKUTA PROFESSIONAL
CORPORATION, LESTER IKUTA, MICKEY IKUTA,
BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER,
MARION SOMMER, ALLAN SOMMER, STEVEN
REILLY, SWARTS BROS LIMITED and CLARA MAE
WOROSCHUK

DEFENDANTS ARRES CAPITAL INC. and WESLEY SERRA

DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 - 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Solicitor of Record: Loran V. Halyn
Direct: 403-219-4213
Fax: 403-291-4099
Email: lhalyn@sugimotolaw.com
File: 15,004 LVH



NOTICE TO DEFENDANT

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Statement of facts relied on:

The Parties

1. The Plaintiffs each reside in Calgary, Alberta, save Steven Ogg who resides in the State of New York, USA, and are parties to separate written agreements

each styled as a "Loan Administration Agreement" between each Plaintiff and the Defendant, Arres Capital Inc. ("Arres"). All of the Loan Administration Agreements between each Plaintiff and Arres are identical or substantially similar in form and content such that they are not materially different in regard to the issues in this matter.

2. Arres is a corporation registered in the Province of Alberta and extraprovincially registered in the Province of British Columbia using the assumed name of Western Arres Capital Inc. Arres carries on business as a mortgage broker and trustee, managing syndicated loans funded by individual investors, including the Plaintiffs, provided to third party borrowers; securing such loans through land mortgages and other security; and managing the collection of loan payments from the third party borrowers and distributing those loan payments amongst the individual investors, less Arres' costs in administering the loans, all in accordance the terms and provisions of the Loan Administration Agreements.
3. Arres' conduct under the Plaintiffs' Loan Administration Agreements is subject to an overriding "Servicing Standard" that requires Arres to act at all times with complete honesty and in good faith in exercising the care, skill, prudence and diligence of a licensed mortgage broker and trustee
4. Consequently, Arres is subject to contractual, equitable and fiduciary duties owed to the Plaintiffs of fidelity, honesty and utmost good faith with a requirement to avoid any conflicts of interests and at all times to act in the best interests of the Plaintiffs and other syndicated loan investors. All funds received by Arres from third party borrowers relating to syndicated loans funded in whole or in part by the Plaintiffs must be received by Arres in trust for the benefit of the Plaintiffs and other investors with the right of Arres to make only such deductions as are provided for under the terms and provisions of the Loan Administration Agreements.

5. The Defendant, Wesley Serra ("Serra"), resides in Calgary, Alberta and at all material times was the sole director and controlling mind of Arres.
6. One or both of the Defendants are authorized as a "mortgage broker" pursuant to the provisions of the *Real Estate Act*, R.S.A. 2000, c. R-5 and thereby subject to that Act and the rules and bylaws constituted thereunder applicable to mortgage brokers.

Background to the Claim

7. Y-K Projects Inc. ("Y-K") owns property located in British Columbia (the "Y-K BC Lands"). Arres arranged to syndicate a loan to Y-K to be secured with a mortgage against the Y-K BC Lands in the face amount of \$3,500,000 (the "Y-K Mortgage"). The Plaintiffs each provided funds to Arres pursuant to Loan Administration Agreements in order to participate in the syndicated Y-K Mortgage. The total amount due and owing under the Y-K Mortgage as of August 31, 2012 was \$2,542,105.05. Arres, using the assumed name of Western Arres Capital Inc. in BC, is the mortgagee in respect of the Y-K Mortgage registered on title to the Y-K BC Lands.
8. The specific original amounts invested by and owing to each Plaintiff in respect of the Y-K Mortgage are as follows:
 - a. Kenzie Financial Investments Ltd. \$125,000.00
 - b. Shelly Beck \$100,000.00
 - c. Therese F. Daley \$250,000.00
 - d. Linda Jaeger \$120,000.00
 - e. Andrew and Laurie Little \$100,000.00
 - f. Agnes M. Oberg \$100,000.00
 - g. Steven Ogg \$200,000.00
 - h. Lester S. Ikuta Professional Corporation \$180,000.00

i.	Lester Ikuta (Olympia Trust - #80714)	\$17,628.00
j.	Mickey Ikuta (Olympia Trust - #80709)	\$14,977.00
k.	Sandra Sommer (Olympia Trust - #21957)	\$8,500.00
l.	Brian Sekiya (Olympia Trust - #78676)	\$175,000.00
m.	Holly Sekiya	\$105,000.00
n.	Marion Sommer (via Shelly Beck)	\$55,000.00
o.	Allan and Sandra Sommer	\$300,000.00
p.	Steven Reilly	\$350,000.00
q.	Swarts Bros. Limited	\$50,000.00
r.	Clara Mae Woroschuk	\$140,000.00

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TOTAL PLAINTIFFS' CONTRIBUTIONS \$2,391,105.00

9. The funds provided by Arres to Y-K pursuant to the Y-K Mortgage were obtained by Arres from various financial contributions received from individual investors (the "Y-K Mortgage Investors"), including the Plaintiffs, pursuant to Loan Administration Agreements which designated Arres as a trustee for each investor. Consequently, Arres is the trustee for the Plaintiffs to the extent of their respective proportionate contributions towards the total funds loaned to Y-K under the Y-K Mortgage, rendering each Plaintiff a beneficial owner of a portion of the Y-K Mortgage. Moreover, some of the Plaintiffs are also shareholders and directors of Y-K and so have an added interest in ensuring Arres acts reasonably, properly, honestly and in good faith regarding the administration by Arres of the Y-K Mortgage and Arres' receipt and disbursement of Y-K Mortgage payments in accordance with the Plaintiffs' respective Loan Administration Agreements.

10. The Y-K Mortgage matured and was due and owing in full on May 21, 2012 and from that point forward, Y-K was working towards making arrangements to fully payout the Y-K Mortgage.

11. With the intent to provide the Plaintiffs and other Y-K Mortgage Investors with the consideration agreed to by each of them pursuant to a plan of corporate debt restructuring and to thereby effect the discharge of the Y-K Mortgage from the Y-K BC Lands, Y-K delivered to Arres funds in the amount of \$1,787,526.05 (the "Y-K Mortgage Payout Funds") under cover of correspondence dated August 31, 2012; with Y-K purporting to impose an express trust condition upon Arres that these funds were to be used only to pay certain Y-K Mortgage Investors in accordance with an attached payout spreadsheet.
12. The full principal balance plus interest owing under the Y-K Mortgage to August 31, 2012, was \$2,542,105.05. Y-K had arranged with some of the Plaintiffs and other Y-K Mortgage Investors that these individual investors were prepared to accept, as an alternative to payment, a direct security interest in the Y-K BC Lands rather than receiving the return of their financial contribution initially provided to Arres and incorporated into the overall amount advanced to Y-K under the syndicated Y-K Mortgage (the "Y-K Direct Security Investors"), resulting in a total of \$780,000 payable to these Y-K Direct Security Investors to be rolled into and converted to a direct security interest over the Y-K BC Lands. With interest owing in the amount of \$25,421.05 for the month of August and the arrangements made between Y-K and the Y-K Direct Security Investors, this had the effect of reducing the amount of funds required to fully payout and retire the Y-K Mortgage down from \$2,542,105.05 to \$1,787,526.05, this reduced amount being equivalent to the Y-K Mortgage Payout Funds.
13. Consequently, the Y-K Mortgage Payout Funds were sufficient to fully reimburse those Plaintiffs and other Y-K Mortgage Investors seeking the return of their respective financial contributions to Arres included within the overall amount advanced to Y-K under the Y-K Mortgage. In the result, with the Y-K Direct Security Investors, whose financial contributions provided to Arres and incorporated into the Y-K Mortgage totaled \$780,000, willing to roll or convert their respective financial contributions into a direct security interest in the Y-K BC

Lands, the Y-K Mortgage Payout Funds provided to Arres were sufficient to effectively payout the entire principal balance plus interest owing under the Y-K Mortgage to the end of August 2012.

14. Following Y-K paying to Arres the Y-K Mortgage Payout Funds on August 31, 2012, Arres provided to Y-K on September 5, 2012 a Y-K Mortgage payout statement dated September 1, 2012 which indicated that the principal balance owing as of September 1, 2012 was \$2,542,105 plus additional interest of \$27,539.47 for the month of September as well as additional charges totaling \$269,296.55 (the "Y-K Mortgage Additional Charges").
15. The Y-K Mortgage Additional Charges asserted by Arres in its September 1, 2012 Y-K Mortgage payout statement include the following amounts:

a.	Outstanding Borrower Costs	\$15,510.08
b.	Renewal Fee as of May 21, 2012:	\$105,000.00
c.	Interest Outstanding on Renewal Fee:	\$3,786.47
d.	Legal Fees and Litigation Costs:	\$45,000.00
e.	Legal Holdback:	\$100,000.00
		=====
	TOTAL:	\$269,296.55
16. Prior to September 1, 2012, Y-K had never received any prior indication from Arres of the Y-K Mortgage Additional Charges or any additional charges whatsoever. The Y-K Mortgage had not been renewed in or about May 2012 so no renewal fee was owed and had never been the subject matter of any litigation prior to Arres claiming legal fees and litigation costs of \$45,000.
17. Y-K has disputed the Y-K Mortgage Additional Charges and has commenced a separate action against Arres seeking a determination and declaration regarding

what amounts, if any, remain due and owing by Y-K to Arres under the Y-K Mortgage as well as other consequential relief.

The Claims

18. Upon Arres receiving the Y-K Mortgage Payout Funds, it refused to comply with the trust condition purportedly imposed by Y-K on the permissible use of those funds by Arres. The courts determined on October 4, 2012 the trust condition Y-K attempted to impose upon Arres was not enforceable and thereafter Arres made substantial deductions from the Y-K Mortgage Payout Funds and retained those deducted funds contrary to and in breach of the terms and provisions of the Plaintiffs' Loan Administration Agreements with Arres. Therefore, Arres misappropriated from the Plaintiffs their respective proportionate shares of the deducted funds and thus wrongfully converted such deducted funds to Arres' sole use and benefit; with Arres thereby breaching its contractual, equitable and fiduciary duties owed to the Plaintiffs.
19. Specifically, Arres claimed and wrongfully misappropriated and converted the following improper deductions taken from the Y-K Mortgage Payout Funds:
 - a. Claimed litigation costs of \$52,000;
 - b. Claimed internal costs of Arres in the amount of \$150,000 purportedly associated with the administration of the Y-K Mortgage;
 - c. Claimed Y-K Mortgage renewal fee of \$108,000 when the Y-K Mortgage was not renewed by Y-K and for which the Plaintiffs are not liable in any event; and
 - d. Funds in the amount of \$100,000 purportedly associated with future legal and litigation matters and withheld by Arres from distribution to the Plaintiffs and other Y-K Mortgage Investors.

The total amount deducted and retained by Arres from the Y-K Mortgage Payout Funds comes to \$410,000.

20. The Plaintiffs' Loan Administration Agreements with Arres permit Arres to deduct and retain "Costs" that are defined as "all costs or expenses incurred by the Trustee [Arres] in enforcing or preserving or otherwise protecting the Security [Y-K Mortgage] or the Real Property the title of which is encumbered by the Security [Y-K BC Lands]".
21. The Plaintiffs assert the litigation costs of \$52,000 deducted by Arres from the Y-K Mortgage Payout Funds do not constitute "Costs" under the Plaintiffs' Loan Administration Agreements or litigation costs that can otherwise be legally deducted from the Y-K Mortgage Payout Funds and that this amount was thereby wrongfully misappropriated and converted by Arres. The Plaintiffs' proportionate share of this amount is \$46,867.83.
22. The Plaintiffs' Loan Administration Agreements define "Internal Costs" as either the "Spread Rate" (being 1%); or if the Spread Rate is not being used to determine Arres' fees, then 1%; "multiplied in either case by the face value of the Mortgage every 12 months from the date upon which a Loan goes into default or, if the default continues for a portion of a 12-month period, a pro rata portion of each 12-month period during which the default continues until such time as the Loan has been recovered or all enforcement proceeding have been concluded".
23. Considering the Y-K Mortgage went into default on or about May 21, 2012, the Internal Costs of Arres should be limited to no more than 1% of the Y-K Mortgage balance of \$2.5M more or less, prorated for the approximately 4 - 5 months that mortgage had been in default when the Y-K Mortgage Payout Funds were paid to Arres by Y-K, resulting in Internal Costs of no more than \$10,500.
24. Internal costs of \$150,000 claimed and deduced by Arres from the Y-K Mortgage Payout Funds greatly exceed the "Internal Costs" as provided for in the Plaintiffs' Loan Administration Agreements and the Plaintiffs claim Arres has wrongfully

misappropriated and converted approximately \$140,000 otherwise payable to the Plaintiffs and other Y-K Mortgage Investors. The Plaintiffs' proportionate share of this amount is \$126,182.61

25. As the Y-K Mortgage was not renewed by Y-K, the \$108,000 mortgage renewal fee deducted and retained by Arres from the Y-K Mortgage Payout Funds was wrongfully misappropriated and converted by Arres. The Plaintiffs' proportionate share of this amount is \$97,340.87.
26. The \$100,000 deducted and withheld by Arres from distribution to the Plaintiffs and other Y-K Mortgage Investors purportedly for future "legal and litigation matters" is contrary to and in breach of the terms and provision of the Plaintiffs' Loan Administration Agreement, such that Arres has wrongfully misappropriated and converted these funds. The Plaintiffs' proportionate share of this amount is \$90,130.44.
27. The Plaintiffs' Loan Administration Agreements clearly indicate that all rights, monies, payments, profits and advantages related to the Plaintiffs' participating interest in the Y-K Mortgage belong to and shall be held for the use, benefit and advantage of the Plaintiffs subject to the provisions of the agreement.
28. In addition to the Plaintiffs contesting Arres deducting the \$108,000 mortgage renewal fee and \$100,000 legal and litigation withholding, some of the Plaintiffs have demanded in writing in October 2012 a full accounting from Arres regarding the claimed, deducted and wrongfully misappropriated and converted litigation costs of \$52,000 and internal costs of \$150,000, including copies of substantiating legal invoices or bills and court records in connection with these claimed litigation costs as well as copies of all records, whether in paper or digital / computer form, in the possession of Arres related to these claimed internal costs. Arres has failed to comply with that demand, which constitutes a further

breach of Arres' contractual, legal and equitable duties owed to the Plaintiffs of fidelity, honesty and utmost good faith.

29. The Plaintiffs' assert that the conduct of Arres regarding its receipt, distribution, deduction and wrongful misappropriation and conversion of funds relating to the Y-K Mortgage Payout Funds is particularly egregious, was done with malice intent and in clear breach of the terms and provisions of the Plaintiffs' Loan Administration Agreements and Arres' contractual, equitable and fiduciary duties owed to the Plaintiffs such that aggravated, exemplary and punitive damages are justified.
30. Additionally, insofar as Arres' conduct in connection with the receipt and disbursement of the Y-K Mortgage Payout Funds has:
 - a. been contrary to the "Servicing Standard" set forth in the Plaintiffs' Loan Administration Agreements;
 - b. breached Arres' contractual, equitable and fiduciary duties owed to the Plaintiffs;
 - c. been contrary to the provisions of the *Real Estate Act*, R.S.A. 2000, c. R-5 and rules and bylaws constituted thereunder applicable to mortgage brokers; and
 - d. benefitted the interests of the Defendants to the detriment and prejudice of the Plaintiffs, thereby creating an irreconcilable conflict of interest;

Arres can no longer continue to act as trustee for and on behalf of the Plaintiffs regarding the Y-K Mortgage.

31. Serra had full knowledge of the Plaintiffs' Loan Administration Agreements and Arres' contractual, equitable and fiduciary duties and obligations owed to the Plaintiffs and nevertheless, with malice intent and forethought, directed and

caused Arres to breach those duties and obligations as described above, and as a result of such breaches Serra personally benefited by receiving some or all of the monies misappropriated and wrongfully converted by Arres from the Y-K Mortgage Payout Funds. Consequently, Serra has:

- a. unlawfully induced Arres to breach its respective Loan Administration Agreements with each Plaintiff and breach its contractual, equitable and fiduciary duties owed to the Plaintiffs, and
- b. unlawfully interfered with the legal and economic relations between Arres and Y-K and between Arres and each Plaintiff,

for which Serra is jointly and severally liable for all damages suffered by the Plaintiffs as a result, including aggravated, exemplary and/or punitive damages.

- 32. The Plaintiffs propose that the trial of this action be held before the Court of Queen's Bench at the Calgary Courts Centre at 601 - 5 Street S.W., Calgary, Alberta, T2P 5P7 and in the opinion of the Plaintiffs the trial is not expected to exceed 25 days.

Remedy sought:

- 33. A determination and declaration regarding what amounts, if any, may be properly deducted by Arres from the Y-K Mortgage Payout Funds.
- 34. A temporary and permanent injunction enjoining Arres from continuing to act as trustee for the Plaintiffs in connection with the Y-K Mortgage and requiring Arres to fully and properly account to the Plaintiffs for all monies deducted and withheld by Arres from distribution to the Plaintiffs with respect to the Y-K Mortgage Payout Funds.

35. Judgment against the Defendants jointly and severally for the total amount of funds misappropriated and wrongfully converted by Arres from the Y-K Mortgage Payout Funds that would be otherwise payable to the Plaintiffs pursuant to their respective Loan Administration Agreements.
36. Judgment against the Defendants jointly and severally for aggravated, exemplary and/or punitive damages in the total amount of \$250,000 or such other amount as proven at the trial of this action.
37. Interest on the proven losses and damages suffered by the Plaintiffs, both before and after trial, pursuant to the *Judgment Interest Act* (Alberta) or at such rate and for such period of time as this Honourable Court determines appropriate.
38. Costs to the Plaintiffs on a solicitor-client, full indemnity basis or at such level as this Honourable Court determines appropriate.
39. Such further and other relief as counsel may advise and this Honourable Court may permit.

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1 month if you are served outside Alberta but in Canada

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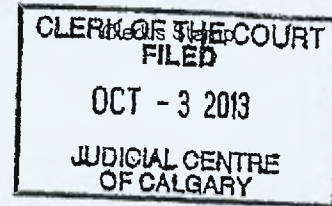
This is Exhibit "T"
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017

R Comstock

.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

COURT FILE NUMBER 1201-16440
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY



APPLICANTS (PLAINTIFFS) KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S. IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA, MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN REILLY, SWARTS BROS LIMITED and CLARA MAE WOROSCHUK

RESPONDENTS (DEFENDANTS) ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD PARTY DEFENDANTS) Y-K PROJECTS LTD., ALLAN BECK and SHELLY BECK

DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 - 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Solicitor of Record: Loran V. Halyn
Direct: 403-219-4213
Fax: 403-291-4099
Email: lhalyn@sugimotolaw.com
File: 15,054 LVH

I hereby certify this to be a true copy of the original ORDER

Dated this 3 day of Oct, 2013

for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: July 17, 2013

NAME OF MASTER WHO MADE THIS ORDER: Master L Laycock

LOCATION WHERE THIS ORDER WAS MADE: Calgary

THIS IS EXHIBIT 'A'
REFERRED TO IN THE
AFFIDAVIT OF SHELLY
BECK SWORN BEFORE
ME THIS 16 DAY OF
DECEMBER, 2013.

BRIAN SEKIYA
Barrister & Solicitor

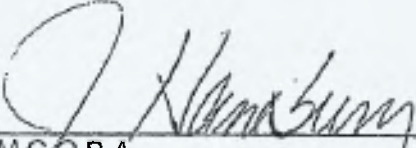
AMENDED ORDER

UPON THE APPLICATION of the Plaintiffs; AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra and responses to undertakings deriving therefrom; AND UPON HEARING the submissions of Counsel for the Plaintiff and Counsel for the Defendants;

IT IS HEREBY ORDERED THAT:

1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the "Y-K Mortgage Payout Funds") on August 31, 2012 in respect of the mortgage registered on July 13, 2010 against the lands of Y-K Projects Ltd. located in British Columbia under instrument number CA1651714 in the Kamloops Land Titles Office:
 - a. "Litigation Fees" of \$52,000,
 - b. "Mortgage Renewal Fee" of \$108,000, and
 - c. "Litigation Holdback" of \$63,768.79.
3. Arres shall forthwith pay to the Plaintiffs' lawyers the amounts identified in paragraph 2, above, for distribution by the Plaintiff's lawyers among the Plaintiffs in accordance with and proportionate to the amount of each Plaintiff's respective investment contribution towards the total amount advanced to Y-K Projects Ltd. under the Mortgage.
4. The application for summary judgment is dismissed as it relates to the claims of Arres for administration fees in the amount of \$150,000 and costs of \$36,231.21 relating to litigation costs incurred by Arres. These claims are directed to trial for determination.

5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C.Q.B.A.

This is **Exhibit "U"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017

A handwritten signature in cursive script, appearing to read 'R Comstock', written over a dotted line.

A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

Form 49
[Rule 13.19]

BANKRUPTCY AND INSOLVENCY
FAILLITE ET INSOLVABILITE
FILED

DEC 23 2013

JUDICIAL CENTRE
OF CALGARY

BK COURT FILE
NUMBER

25-094212

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY
OF ARRES CAPITAL INC.

JUDICIAL CENTRE

CALGARY

DOCUMENT

AFFIDAVIT OF TRUTH

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

SILVER LAW FIRM
Barristers & Solicitors
#201, 10836 – 24th Street S.E.
CALGARY, Alberta T2Z 4C9
Phone: 403-723-7300
Fax: 403-236-3882
File No. 9011

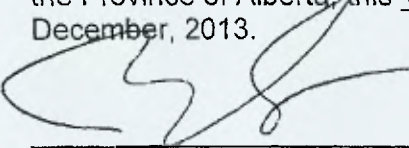
AFFIDAVIT OF TRUTH
Sworn on December 16, 2013

I, Allan Beck, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY
THAT:

1. I am an officer and director of Kenzie Financial Investments Ltd., ("Kenzie"), a creditor of Arres Capital Inc. ("Arres") and, as such, have personal knowledge of the facts herein deposed to.

2. I am authorized by Kenzie to swear this Affidavit in support of an application for Bankruptcy Order to be made against Arres.
3. Annexed hereto as **Exhibit "A"** to this my Affidavit is a copy of an Order granted by Master Laycock on July 17, 2013 wherein summary judgment was granted to the Plaintiffs in QB Action 1201-16440 against Arres in the sum of \$223,768.79 (the "**Order**").
4. A Writ of Enforcement pursuant to the Order was filed on October 3, 2013.
5. Arres has filed ^{4.8} ~~not filed~~ a Notice of Appeal in the Court of Appeal with respect to the Order nor has Arres applied for a stay of enforcement of the Order.
6. Kenzie has initiated enforcement proceedings against Arres with respect to the subject judgment, but to date, with the exception of a seizure of Arres' office assets to which Arres has filed a Notice of Objection, there has been no recovery of funds owing to Kenzie and the other judgment creditors pursuant to the Order.
7. The sum of \$22,931.25 is owed to Kenzie by Arres. As the Order only dealt with 50% of Kenzie's claim against Arres, the sum of \$11,465.62 represents the portion of the judgment owing to Kenzie in the Order.
8. The amount owed to Kenzie by Arres has not been paid in whole or in part as at the date of this Affidavit and the sum of \$22,931.25 remains due and owing to Kenzie by Arres.
9. The facts alleged in the Amended Application for Bankruptcy Order annexed hereto are, within my own knowledge, true.

SWORN BEFORE ME at the City of Calgary, in
the Province of Alberta, this 16 day of
December, 2013.



BRIAN SEKIYA
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA
Barrister & Solicitor



ALLAN BECK

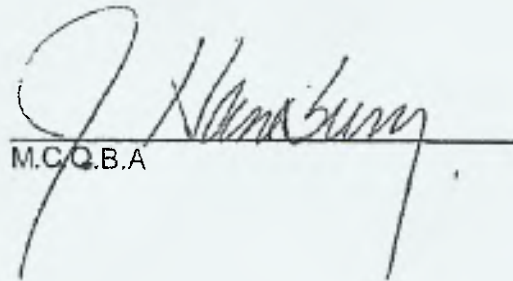
AMENDED ORDER

UPON THE APPLICATION of the Plaintiffs; AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra and responses to undertakings deriving therefrom; AND UPON HEARING the submissions of Counsel for the Plaintiff and Counsel for the Defendants;

IT IS HEREBY ORDERED THAT:

1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the "Y-K Mortgage Payout Funds") on August 31, 2012 in respect of the mortgage registered on July 13, 2010 against the lands of Y-K Projects Ltd. located in British Columbia under instrument number CA1651714 in the Kamloops Land Titles Office:
 - a. "Litigation Fees" of \$52,000,
 - b. "Mortgage Renewal Fee" of \$108,000, and
 - c. "Litigation Holdback" of \$63,768.79.
3. Arres shall forthwith pay to the Plaintiffs' lawyers the amounts identified in paragraph 2, above, for distribution by the Plaintiff's lawyers among the Plaintiffs in accordance with and proportionate to the amount of each Plaintiff's respective investment contribution towards the total amount advanced to Y-K Projects Ltd. under the Mortgage.
4. The application for summary judgment is dismissed as it relates to the claims of Arres for administration fees in the amount of \$150,000 and costs of \$36,231.21 relating to litigation costs incurred by Arres. These claims are directed to trial for determination.

5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C.Q.B.A.

This is **Exhibit "V"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



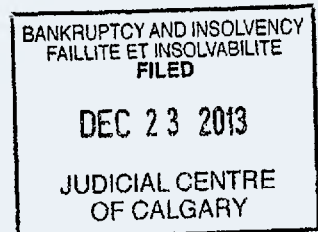
.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

BK COURT FILE
NUMBER 25-094212

COURT COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY
OF ARRES CAPITAL INC.



JUDICIAL CENTRE .CALGARY

DOCUMENT AFFIDAVIT OF TRUTH

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

SILVER LAW FIRM
Barristers & Solicitors
#201, 10836 – 24th Street S.E.
CALGARY, Alberta T2Z 4C9
Phone: 403-723-7300
Fax: 403-236-3882
File No. 9011

AFFIDAVIT OF TRUTH
Sworn on December 16, 2013

I, Shelly Beck, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY
THAT:

1. I am a creditor of Arres Capital Inc. ("Arres") and, as such, have personal knowledge of the facts herein deposed to.
2. Annexed hereto as **Exhibit "A"** to this my Affidavit is a copy of an Order granted by Master Laycock on July 17, 2013 wherein summary judgment was granted to the Plaintiffs in QB Action 1201-16440 against Arres in the sum of \$223,768.79 (the "**Order**").
3. A Writ of Enforcement pursuant to the Order was filed on October 3, 2013.

4. Arres has filed ~~not filed~~ a Notice of Appeal in the Court of Appeal with respect to the Order nor has Arres applied for a stay of enforcement of the Order.
5. I have initiated enforcement proceedings against Arres with respect to the subject judgment, but to date, with the exception of a seizure of Arres' office assets to which Arres has filed a Notice of Objection, there has been no recovery of funds owing to me and the other judgment creditors pursuant to the Order.
6. The sum of \$18,345.00 is owed to me by Arres. As the Order only dealt with 50% of my claim against Arres, the sum of \$9,172.50 represents the portion of the judgment owing to me in the Order.
7. The amount owed to me by Arres has not been paid in whole or in part as at the date of this Affidavit and the sum of \$18,345.00 remains due and owing to me by Arres.
8. The facts alleged in the Amended Application for Bankruptcy Order annexed hereto are, within my own knowledge, true.

SWORN BEFORE ME at the City of Calgary, in)
the Province of Alberta, this 6 day of)
December, 2013.)

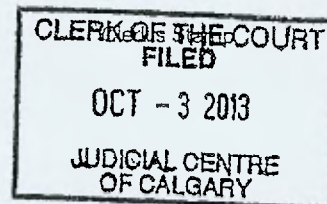


BRIAN SEKYTA
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

Barrister & Solicitor


SHELLY BECK

COURT FILE NUMBER 1201-16440
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY



APPLICANTS (PLAINTIFFS) KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S. IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA, MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN REILLY, SWARTS BROS LIMITED and CLARA MAE WOROSCHUK

RESPONDENTS (DEFENDANTS) ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD PARTY DEFENDANTS) Y-K PROJECTS LTD., ALLAN BECK and SHELLY BECK

DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT SUGIMOTO & COMPANY Barristers & Solicitors 204, 2635 - 37th Avenue NE Calgary, Alberta, T1Y 5Z6 Solicitor of Record: Loran V. Halyn Direct: 403-219-4213 Fax: 403-291-4099 Email: lhalyn@sugimotolaw.com File: 15,054 LVH

I hereby certify this to be a true copy of the original ORDER
Dated this 3 day of Oct, 2013

for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: July 17, 2013

NAME OF MASTER WHO MADE THIS ORDER: Master L Laycock

LOCATION WHERE THIS ORDER WAS MADE: Calgary

THIS IS EXHIBIT "A"
REFERRED TO IN THE
AFFIDAVIT of SHELLY
BECK SWORN before
ME THIS 16 DAY OF
DECEMBER, 2013.

BRIAN SEKIYA
Barrister & Solicitor

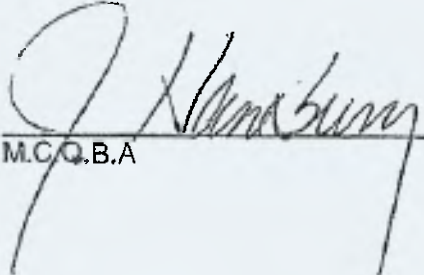
AMENDED ORDER

UPON THE APPLICATION of the Plaintiffs; AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra and responses to undertakings deriving therefrom; AND UPON HEARING the submissions of Counsel for the Plaintiff and Counsel for the Defendants;

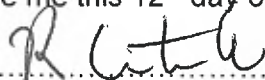
IT IS HEREBY ORDERED THAT:

1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the "Y-K Mortgage Payout Funds") on August 31, 2012 in respect of the mortgage registered on July 13, 2010 against the lands of Y-K Projects Ltd. located in British Columbia under instrument number CA1651714 in the Kamloops Land Titles Office:
 - a. "Litigation Fees" of \$52,000,
 - b. "Mortgage Renewal Fee" of \$108,000, and
 - c. "Litigation Holdback" of \$63,768.79.
3. Arres shall forthwith pay to the Plaintiffs' lawyers the amounts identified in paragraph 2, above, for distribution by the Plaintiff's lawyers among the Plaintiffs in accordance with and proportionate to the amount of each Plaintiff's respective investment contribution towards the total amount advanced to Y-K Projects Ltd. under the Mortgage.
4. The application for summary judgment is dismissed as it relates to the claims of Arres for administration fees in the amount of \$150,000 and costs of \$36,231.21 relating to litigation costs incurred by Arres. These claims are directed to trial for determination.

5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C.Q.B.A

This is **Exhibit "W"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



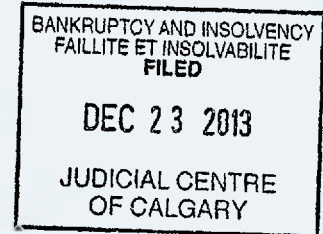
.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

BK COURT FILE NUMBER 25-094212

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF ARRES CAPITAL INC.



JUDICIAL CENTRE CALGARY

DOCUMENT AFFIDAVIT OF TRUTH

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
SILVER LAW FIRM
Barristers & Solicitors
#201, 10836 – 24th Street S.E.
CALGARY, Alberta T2Z 4C9
Phone: 403-723-7300
Fax: 403-236-3882
File No. 9011

AFFIDAVIT OF TRUTH
Sworn on December 16, 2013

I, Shelly Beck, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a creditor of Arres Capital Inc. ("Arres") and, as such, have personal knowledge of the facts herein deposed to.
2. Annexed hereto as **Exhibit "A"** to this my Affidavit is a copy of an Order granted by Master Laycock on July 17, 2013 wherein summary judgment was granted to the Plaintiffs in QB Action 1201-16440 against Arres in the sum of \$223,768.79 (the "**Order**").
3. A Writ of Enforcement pursuant to the Order was filed on October 3, 2013.

- SWORN BEFORE ME at the City of Calgary, in)
the Province of Alberta, this 16 day of)
December, 2013.)

Shelly Beck
SHELLY BECK

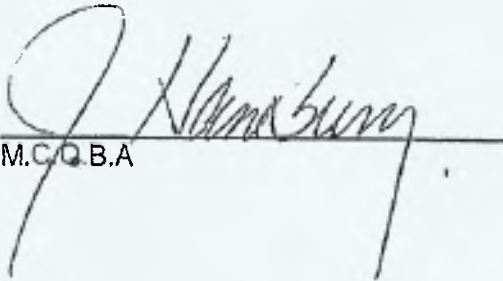
AMENDED ORDER

UPON THE APPLICATION of the Plaintiffs; AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra and responses to undertakings deriving therefrom; AND UPON HEARING the submissions of Counsel for the Plaintiff and Counsel for the Defendants;

IT IS HEREBY ORDERED THAT:

1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the "Y-K Mortgage Payout Funds") on August 31, 2012 in respect of the mortgage registered on July 13, 2010 against the lands of Y-K Projects Ltd. located in British Columbia under instrument number CA1651714 in the Kamloops Land Titles Office:
 - a. "Litigation Fees" of \$52,000,
 - b. "Mortgage Renewal Fee" of \$108,000, and
 - c. "Litigation Holdback" of \$63,768.79.
3. Arres shall forthwith pay to the Plaintiffs' lawyers the amounts identified in paragraph 2, above, for distribution by the Plaintiff's lawyers among the Plaintiffs in accordance with and proportionate to the amount of each Plaintiff's respective investment contribution towards the total amount advanced to Y-K Projects Ltd. under the Mortgage.
4. The application for summary judgment is dismissed as it relates to the claims of Arres for administration fees in the amount of \$150,000 and costs of \$36,231.21 relating to litigation costs incurred by Arres. These claims are directed to trial for determination.

5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C.B.A.

This is **Exhibit "X"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



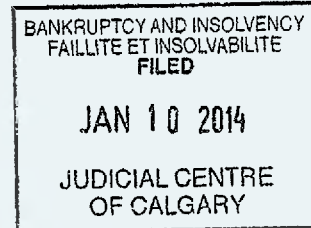
.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock

My Commission Expires September 21, 2018

BK COURT FILE
NUMBER 25-094212

COURT COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY



IN THE MATTER OF THE BANKRUPTCY
OF ARRES CAPITAL INC.

JUDICIAL CENTRE CALGARY

DOCUMENT AFFIDAVIT OF TRUTH

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SILVER LAW FIRM
Barristers & Solicitors
#201, 10836 – 24th Street S.E.
CALGARY, Alberta T2Z 4C9
Phone: 403-723-7300
Fax: 403-236-3882
File No. 9011

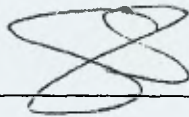
AFFIDAVIT OF TRUTH
Sworn on December 20, 2013

I, Brian Sekiya, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY
THAT:

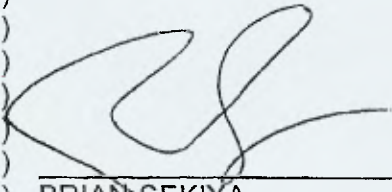
1. I am a creditor of Arres Capital Inc. ("Arres") and, as such, have personal knowledge of the facts herein deposed to.
2. Annexed hereto as **Exhibit "A"** to this my Affidavit is a copy of an Order granted by Master Laycock on July 17, 2013 wherein summary judgment was granted to the Plaintiffs in QB Action 1201-16440 against Arres in the sum of \$223,768.79 (the "**Order**").
3. A Writ of Enforcement pursuant to the Order was filed on October 3, 2013.

4. Arres has filed not filed a Notice of Appeal in the Court of Appeal with respect to the Order nor has Arres applied for a stay of enforcement of the Order.
5. I have initiated enforcement proceedings against Arres with respect to the subject judgment, but to date, with the exception of a seizure of Arres' office assets to which Arres has filed a Notice of Objection, there has been no recovery of funds owing to me and the other judgment creditors pursuant to the Order.
6. The sum of \$32,103.75 is owed to me by Arres. As the Order only dealt with 50% of my claim against Arres, the sum of \$16,051.87 represents the portion of the judgment owing to me in the Order.
7. The amount owed to me by Arres has not been paid in whole or in part as at the date of this Affidavit and the sum of \$32,103.75 remains due and owing to me by Arres.
8. The facts alleged in the Amended Application for Bankruptcy Order annexed hereto are, within my own knowledge, true.

SWORN BEFORE ME at the City of Calgary, in)
the Province of Alberta, this 00 day of)
December, 2013.)

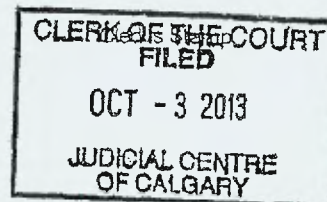


A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA)
)
)
)


BRIAN SEKIYA

M. GAYE SARUWATARI
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires December 1, 2014

COURT FILE NUMBER 1201-16440
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY



APPLICANTS (PLAINTIFFS) KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S. IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA, MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN REILLY, SWARTS BROS LIMITED and CLARA MAE WOROSCHUK

RESPONDENTS (DEFENDANTS) ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD PARTY DEFENDANTS) Y-K PROJECTS LTD., ALLAN BECK and SHELLY BECK

DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 - 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Solicitor of Record: Loran V. Halyn
Direct: 403-219-4213
Fax: 403-291-4099
Email: lhalyn@sugimotolaw.com
File: 15,054 LVH

I hereby certify this to be a true copy of the original ORDER
Dated this 3 day of Oct. 2013
[Signature]
for Clerk of the Court

THIS IS EXHIBIT " A " referred to in the Affidavit of Brian Sekiya
Sworn before me this 20 day of December 2013

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

DATE ON WHICH ORDER WAS PRONOUNCED: July 17, 2013

NAME OF MASTER WHO MADE THIS ORDER: Master L Laycock

LOCATION WHERE THIS ORDER WAS MADE: Calgary

M. GAYE SARUWATARI
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires December 1, 2014

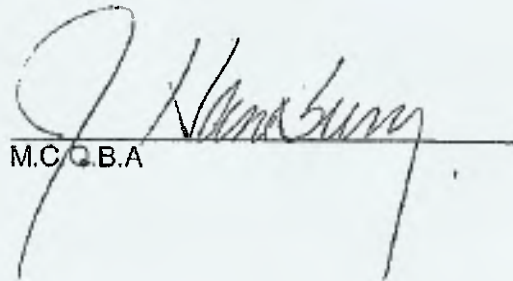
AMENDED ORDER

UPON THE APPLICATION of the Plaintiffs; AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra and responses to undertakings deriving therefrom; AND UPON HEARING the submissions of Counsel for the Plaintiff and Counsel for the Defendants;

IT IS HEREBY ORDERED THAT:

1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the "Y-K Mortgage Payout Funds") on August 31, 2012 in respect of the mortgage registered on July 13, 2010 against the lands of Y-K Projects Ltd. located in British Columbia under instrument number CA1651714 in the Kamloops Land Titles Office:
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 - b. "Mortgage Renewal Fee" of \$108,000, and
 - c. "Litigation Holdback" of \$63,768.79.
3. Arres shall forthwith pay to the Plaintiffs' lawyers the amounts identified in paragraph 2, above, for distribution by the Plaintiff's lawyers among the Plaintiffs in accordance with and proportionate to the amount of each Plaintiff's respective investment contribution towards the total amount advanced to Y-K Projects Ltd. under the Mortgage.
4. The application for summary judgment is dismissed as it relates to the claims of Arres for administration fees in the amount of \$150,000 and costs of \$36,231.21 relating to litigation costs incurred by Arres. These claims are directed to trial for determination.

5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C. B.A.

This is **Exhibit "Y"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

BK COURT FILE
NUMBER

25-094212

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY

BANKRUPTCY AND INSOLVENCY
FAILLITE ET INSOLVABILITE
FILED

JAN 10 2014

JUDICIAL CENTRE
OF CALGARY

IN THE MATTER OF THE BANKRUPTCY
OF ARRES CAPITAL INC.

JUDICIAL CENTRE

CALGARY

DOCUMENT

AFFIDAVIT OF TRUTH

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

SILVER LAW FIRM
Barristers & Solicitors
#201, 10836 - 24th Street S.E.
CALGARY, Alberta T2Z 4C9
Phone: 403-723-7300
Fax: 403-236-3882
File No. 9011

AFFIDAVIT OF TRUTH
Sworn on December 20, 2013

I, Holly Sekiya, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY
THAT:

1. I am a creditor of Arres Capital Inc. ("Arres") and, as such, have personal knowledge of the facts herein deposed to.
2. Annexed hereto as **Exhibit "A"** to this my Affidavit is a copy of an Order granted by Master Laycock on July 17, 2013 wherein summary judgment was granted to the Plaintiffs in QB Action 1201-16440 against Arres in the sum of \$223,768.79 (the "**Order**").
3. A Writ of Enforcement pursuant to the Order was filed on October 3, 2013.

4. Arres has filed not filed a Notice of Appeal in the Court of Appeal with respect to the Order nor has Arres applied for a stay of enforcement of the Order.
5. I have initiated enforcement proceedings against Arres with respect to the subject judgment, but to date, with the exception of a seizure of Arres' office assets to which Arres has filed a Notice of Objection, there has been no recovery of funds owing to me and the other judgment creditors pursuant to the Order.
6. The sum of \$19,262.25 is owed to me by Arres. As the Order only dealt with 50% of my claim against Arres, the sum of \$9,631.12 represents the portion of the judgment owing to me in the Order.
7. The amount owed to me by Arres has not been paid in whole or in part as at the date of this Affidavit and the sum of \$19,262.25 remains due and owing to me by Arres.
8. The facts alleged in the Amended Application for Bankruptcy Order annexed hereto are, within my own knowledge, true.

SWORN BEFORE ME at the City of Calgary, in)
the Province of Alberta, this 20 day of)
December, 2013.)



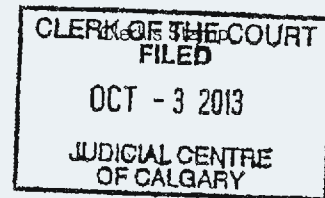
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA)



HOLLY SEKIYA)

M. GAYE SARUWATARI
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires December 1, 2014

COURT FILE NUMBER 1201-16440
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY



APPLICANTS (PLAINTIFFS) KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S. IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA, MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN REILLY, SWARTS BROS LIMITED and CLARA MAE WOROSCHUK

RESPONDENTS (DEFENDANTS) ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD PARTY DEFENDANTS) Y-K PROJECTS LTD., ALLAN BECK and SHELLY BECK

DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 - 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Solicitor of Record: Loran V. Halyn
Direct: 403-219-4213
Fax: 403-291-4099
Email: lhalyn@sugimotolaw.com
File: 15,054 LVH

I hereby certify this to be a true copy of the original ORDER

Dated this 3 day of Oct 2013

for Clerk of the Court

THIS IS EXHIBIT " A " referred to in the Affidavit of Holly Sekiya

Sworn before me this 30 day of December 2013

A COMMISSIONER FOR OATHS
AND FOR THE PROVINCE OF ALBERTA

DATE ON WHICH ORDER WAS PRONOUNCED: July 17, 2013

NAME OF MASTER WHO MADE THIS ORDER: Master L Laycock

M. GAYE SARUWATARI
A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires December 1, 2014

LOCATION WHERE THIS ORDER WAS MADE: Calgary

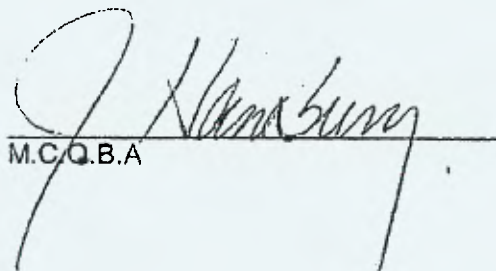
AMENDED ORDER

UPON THE APPLICATION of the Plaintiffs; AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra and responses to undertakings deriving therefrom; AND UPON HEARING the submissions of Counsel for the Plaintiff and Counsel for the Defendants;


IT IS HEREBY ORDERED THAT:

1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the "Y-K Mortgage Payout Funds") on August 31, 2012 in respect of the mortgage registered on July 13, 2010 against the lands of Y-K Projects Ltd. located in British Columbia under instrument number CA1651714 in the Kamloops Land Titles Office:
 - a. "Litigation Fees" of \$52,000,
 - b. "Mortgage Renewal Fee" of \$108,000, and
 - c. "Litigation Holdback" of \$63,768.79.
3. Arres shall forthwith pay to the Plaintiffs' lawyers the amounts identified in paragraph 2, above, for distribution by the Plaintiff's lawyers among the Plaintiffs in accordance with and proportionate to the amount of each Plaintiff's respective investment contribution towards the total amount advanced to Y-K Projects Ltd. under the Mortgage.
4. The application for summary judgment is dismissed as it relates to the claims of Arres for administration fees in the amount of \$150,000 and costs of \$36,231.21 relating to litigation costs incurred by Arres. These claims are directed to trial for determination.

5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C.Q.B.A.

This is **Exhibit "Z"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017


.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

BK COURT FILE
NUMBER

25-094212

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY

BANKRUPTCY AND INSOLVENCY
FAILLITE ET INSOLVABILITE
FILED

DEC 23 2013

JUDICIAL CENTRE
OF CALGARY

IN THE MATTER OF THE BANKRUPTCY
OF ARRES CAPITAL INC.

JUDICIAL CENTRE

CALGARY

DOCUMENT

AFFIDAVIT OF TRUTH

ADDRESS FOR SERVICE
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DOCUMENT

SILVER LAW FIRM
Barristers & Solicitors
#201, 10836 – 24th Street S.E.
CALGARY, Alberta T2Z 4C9
Phone: 403-723-7300
Fax: 403-236-3882
File No. 9011

AFFIDAVIT OF TRUTH
Sworn on December 16, 2013

I, Linda Jaeger, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY
THAT:

1. I am a creditor of Arres Capital Inc. ("Arres") and, as such, have personal knowledge of the facts herein deposed to.
2. Annexed hereto as **Exhibit "A"** to this my Affidavit is a copy of an Order granted by Master Laycock on July 17, 2013 wherein summary judgment was granted to the Plaintiffs in QB Action 1201-16440 against Arres in the sum of \$223,768.79 (the "**Order**").
3. A Writ of Enforcement pursuant to the Order was filed on October 3, 2013.

- L. 5.
4. Arres has filed ~~not filed~~ a Notice of Appeal in the Court of Appeal with respect to the Order nor has Arres applied for a stay of enforcement of the Order.
 5. I have initiated enforcement proceedings against Arres with respect to the subject judgment, but to date, with the exception of a seizure of Arres' office assets to which Arres has filed a Notice of Objection, there has been no recovery of funds owing to me and the other judgment creditors pursuant to the Order.
 6. The sum of \$22,014.00 is owed to me by Arres. As the Order only dealt with 50% of my claim against Arres, the sum of \$11,007.00 represents the portion of the judgment owing to me in the Order.
 7. The amount owed to me by Arres has not been paid in whole or in part as at the date of this Affidavit and the sum of \$22,014.00 remains due and owing to me by Arres.
 8. The facts alleged in the Amended Application for Bankruptcy Order annexed hereto are, within my own knowledge, true.


SWORN BEFORE ME at the City of Calgary, in
the Province of Alberta, this 16 day of
December, 2013.

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

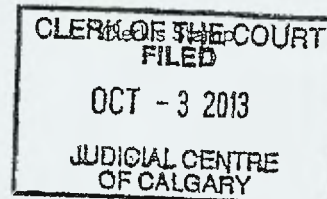
MY COMMISSION EXPIRES JULY 21, 2014

ALLAN BECK

ALLAN BECK
MY COMMISSION EXPIRES JULY 21, 2014


LINDA JAEGER

COURT FILE NUMBER 1201-16440
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY



APPLICANTS (PLAINTIFFS) KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S. IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA, MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN REILLY, SWARTS BROS LIMITED and CLARA MAE WOROSCHUK

RESPONDENTS (DEFENDANTS) ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD PARTY DEFENDANTS) Y-K PROJECTS LTD., ALLAN BECK and SHELLY BECK

DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 - 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Solicitor of Record: Loran V. Halyn
Direct: 403-219-4213
Fax: 403-291-4099
Email: lhalyn@sugimotolaw.com
File: 15,054 LVH

I hereby certify this to be a true copy of the original ORDER
Dated this 3 day of Oct. 2013
[Signature]
for Clerk of the Court

This is exhibit A
referred to in the (Affidavit)
(Declaration)
of Linda Jaeger
taken before me this 16

DATE ON WHICH ORDER WAS PRONOUNCED: July 17, 2013 day of December A.D. 2013
NAME OF MASTER WHO MADE THIS ORDER: Master L Laycock
LOCATION WHERE THIS ORDER WAS MADE: Calgary

ALLAN BECK
MY COMMISSION EXPIRES JULY 21, 2014

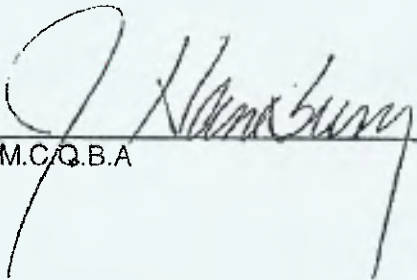
AMENDED ORDER

UPON THE APPLICATION of the Plaintiffs; AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra and responses to undertakings deriving therefrom; AND UPON HEARING the submissions of Counsel for the Plaintiff and Counsel for the Defendants;

IT IS HEREBY ORDERED THAT:

1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the "Y-K Mortgage Payout Funds") on August 31, 2012 in respect of the mortgage registered on July 13, 2010 against the lands of Y-K Projects Ltd. located in British Columbia under instrument number CA1651714 in the Kamloops Land Titles Office:
 - a. "Litigation Fees" of \$52,000,
 - b. "Mortgage Renewal Fee" of \$108,000, and
 - c. "Litigation Holdback" of \$63,768.79.
3. Arres shall forthwith pay to the Plaintiffs' lawyers the amounts identified in paragraph 2, above, for distribution by the Plaintiff's lawyers among the Plaintiffs in accordance with and proportionate to the amount of each Plaintiff's respective investment contribution towards the total amount advanced to Y-K Projects Ltd. under the Mortgage.
4. The application for summary judgment is dismissed as it relates to the claims of Arres for administration fees in the amount of \$150,000 and costs of \$36,231.21 relating to litigation costs incurred by Arres. These claims are directed to trial for determination.

5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C.Q.B.A.

This is **Exhibit "AA"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

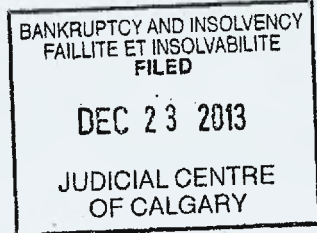
Richard Comstock
My Commission Expires September 21, 2018

BK COURT FILE
NUMBER

25-094212

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY



IN THE MATTER OF THE BANKRUPTCY
OF ARRES CAPITAL INC.

JUDICIAL CENTRE

CALGARY

DOCUMENT

AFFIDAVIT OF TRUTH

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

SILVER LAW FIRM
Barristers & Solicitors
#201, 10836 – 24th Street S.E.
CALGARY, Alberta T2Z 4C9
Phone: 403-723-7300
Fax: 403-236-3882
File No. 9011

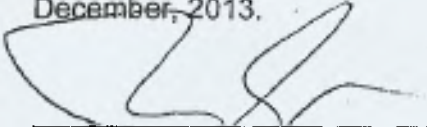
AFFIDAVIT OF TRUTH
Sworn on December 16, 2013

I, Steve Reilly, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY
THAT:

1. I am a creditor of Arres Capital Inc. ("Arres") and, as such, have personal knowledge of the facts herein deposed to.
2. Annexed hereto as **Exhibit "A"** to this my Affidavit is a copy of an Order granted by Master Laycock on July 17, 2013 wherein summary judgment was granted to the Plaintiffs in QB Action 1201-16440 against Arres in the sum of \$223,768.79 (the "**Order**").
3. A Writ of Enforcement pursuant to the Order was filed on October 3, 2013.

- SR*
4. Arres has ~~filed~~ ^{*not*} filed a Notice of Appeal in the Court of Appeal with respect to the Order nor has Arres applied for a stay of enforcement of the Order.
 5. I have initiated enforcement proceedings against Arres with respect to the subject judgment, but to date, with the exception of a seizure of Arres' office assets to which Arres has filed a Notice of Objection, there has been no recovery of funds owing to me and the other judgment creditors pursuant to the Order.
 6. The sum of \$64,207.50 is owed to me by Arres. As the Order only dealt with 50% of my claim against Arres, the sum of \$32,103.75 represents the portion of the judgment owing to me in the Order.
 7. The amount owed to me by Arres has not been paid in whole or in part as at the date of this Affidavit and the sum of \$64,207.50 remains due and owing to me by Arres.
 8. The facts alleged in the Amended Application for Bankruptcy Order annexed hereto are, within my own knowledge, true.

SWORN BEFORE ME at the City of Calgary, in)
the Province of Alberta, this 6 day of)
December, 2013.)



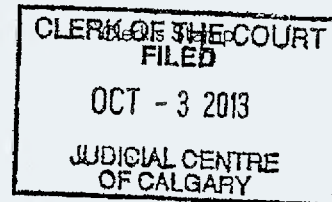
BRIAN SEKIYA
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA)

Barrister & Solicitor)



STEVE REILLY

COURT FILE NUMBER 1201-16440
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY



APPLICANTS
(PLAINTIFFS) KENZIE FINANCIAL INVESTMENTS LTD., SHELLY
BECK, THERESE F. DALEY, LINDA JAEGER,
ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG,
STEVEN OGG, LESTER S. IKUTA PROFESSIONAL
CORPORATION, LESTER IKUTA, MICKEY IKUTA,
BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER,
MARION SOMMER, ALLAN SOMMER, STEVEN
REILLY, SWARTS BROS LIMITED and CLARA MAE
WOROSCHUK

RESPONDENTS
(DEFENDANTS) ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD
PARTY DEFENDANTS) Y-K PROJECTS LTD., ALLAN BECK and SHELLY
BECK

DOCUMENT ORDER

ADDRESS FOR SERVICE
AND
CONTACT INFORMATION
OF
PARTY FILING THIS
DOCUMENT SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 - 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Solicitor of Record: Loran V. Halyn
Direct: 403-219-4213
Fax: 403-291-4099
Email: lhalyn@sugimotolaw.com
File: 15,054 LVH

I hereby certify this to be a true copy of
the original ORDER
Dated this 3 day of Oct, 2013

for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED:

July 17, 2013

NAME OF MASTER WHO MADE THIS ORDER:

Master L Laycock

LOCATION WHERE THIS ORDER WAS MADE:

Calgary

THIS IS EXHIBIT "A"
REFERRED TO IN THE
AFFIDAVIT OF
STEVEN REILLY
SWORN BEFORE ME
THIS 16 DAY OF
DECEMBER 2013

BRIAN SEKIYA
Barrister & Solicitor

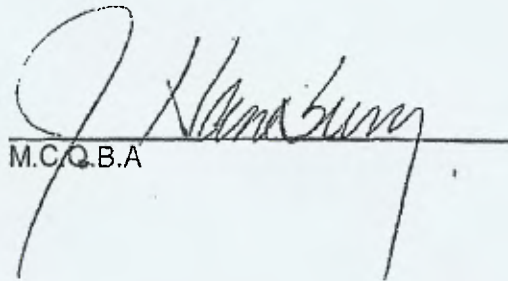
AMENDED ORDER

UPON THE APPLICATION of the Plaintiffs; AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra and responses to undertakings deriving therefrom; AND UPON HEARING the submissions of Counsel for the Plaintiff and Counsel for the Defendants;

IT IS HEREBY ORDERED THAT:

1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the "Y-K Mortgage Payout Funds") on August 31, 2012 in respect of the mortgage registered on July 13, 2010 against the lands of Y-K Projects Ltd. located in British Columbia under instrument number CA1651714 in the Kamloops Land Titles Office:
 - a. "Litigation Fees" of \$52,000,
 - b. "Mortgage Renewal Fee" of \$108,000, and
 - c. "Litigation Holdback" of \$63,768.79.
3. Arres shall forthwith pay to the Plaintiffs' lawyers the amounts identified in paragraph 2, above, for distribution by the Plaintiff's lawyers among the Plaintiffs in accordance with and proportionate to the amount of each Plaintiff's respective investment contribution towards the total amount advanced to Y-K Projects Ltd. under the Mortgage.
4. The application for summary judgment is dismissed as it relates to the claims of Arres for administration fees in the amount of \$150,000 and costs of \$36,231.21 relating to litigation costs incurred by Arres. These claims are directed to trial for determination.

5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C.Q.B.A.

This is **Exhibit "BB"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

BK COURT FILE
NUMBER

25-094212

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY
OF ARRES CAPITAL INC.

JUDICIAL CENTRE

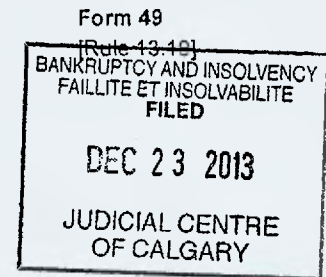
CALGARY

DOCUMENT

AFFIDAVIT OF TRUTH

ADDRESS FOR SERVICE
AND CONTACT
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DOCUMENT

SILVER LAW FIRM
Barristers & Solicitors
#201, 10836 – 24th Street S.E.
CALGARY, Alberta T2Z 4C9
Phone: 403-723-7300
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File No. 9011



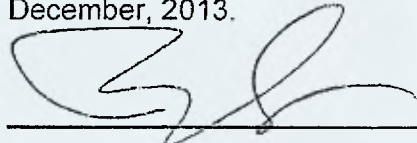
AFFIDAVIT OF TRUTH
Sworn on December 16, 2013

I, Mickey Ikuta, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY
THAT:

1. I am a creditor of Arres Capital Inc. ("Arres") and, as such, have personal knowledge of the facts herein deposed to.
2. Annexed hereto as **Exhibit "A"** to this my Affidavit is a copy of an Order granted by Master Laycock on July 17, 2013 wherein summary judgment was granted to the Plaintiffs in QB Action 1201-16440 against Arres in the sum of \$223,768.79 (the "**Order**").
3. A Writ of Enforcement pursuant to the Order was filed on October 3, 2013.

4. Arres has filed a Notice of Appeal in the Court of Appeal with respect to the Order nor has Arres applied for a stay of enforcement of the Order.
5. I have initiated enforcement proceedings against Arres with respect to the subject judgment, but to date, with the exception of a seizure of Arres' office assets to which Arres has filed a Notice of Objection, there has been no recovery of funds owing to me and the other judgment creditors pursuant to the Order.
6. The sum of \$2,747.53 is owed to me by Arres. As the Order only dealt with 50% of my claim against Arres, the sum of \$1,373.76 represents the portion of the judgment owing to me in the Order.
7. The amount owed to me by Arres has not been paid in whole or in part as at the date of this Affidavit and the sum of \$2,747.53 remains due and owing to me by Arres.
8. The facts alleged in the Amended Application for Bankruptcy Order annexed hereto are, within my own knowledge, true.

SWORN BEFORE ME at the City of Calgary, in)
the Province of Alberta, this 16 day of)
December, 2013.)



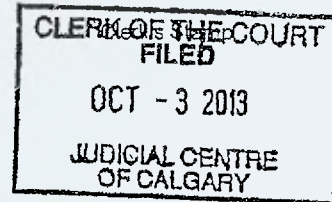
BRIAN SEXTON
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

Barrister & Solicitor



MICKEY IKUTA

COURT FILE NUMBER 1201-16440
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY



APPLICANTS (PLAINTIFFS) KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S. IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA, MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER, MARION SOMMER, ALLAN SOMMER, STEVEN REILLY, SWARTS BROS LIMITED and CLARA MAE WOROSCHUK

RESPONDENTS (DEFENDANTS) ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD PARTY DEFENDANTS) Y-K PROJECTS LTD., ALLAN BECK and SHELLY BECK

DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 - 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Solicitor of Record: Loran V. Halyn
Direct: 403-219-4213
Fax: 403-291-4099
Email: lhalyn@sugimotolaw.com
File: 15,054 LVH

I hereby certify this to be a true copy of the original ORDER.
Dated this 3 day of Oct. 2013
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: July 17, 2013

NAME OF MASTER WHO MADE THIS ORDER: Master L Laycock

LOCATION WHERE THIS ORDER WAS MADE: Calgary

THIS IS EXHIBIT "A"
REFERRED TO IN THE
AFFIDAVIT OF
MICKEY IKUTA
SWORN BEFORE ME
THIS 16 DAY OF
DECEMBER, 2013

BRIAN SEKIYA
Barrister & Solicitor

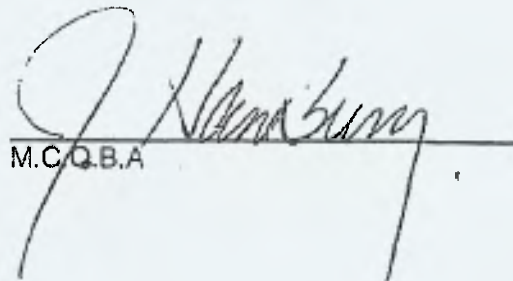
AMENDED ORDER

UPON THE APPLICATION of the Plaintiffs; AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra and responses to undertakings deriving therefrom; AND UPON HEARING the submissions of Counsel for the Plaintiff and Counsel for the Defendants;


IT IS HEREBY ORDERED THAT:

1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the "Y-K Mortgage Payout Funds") on August 31, 2012 in respect of the mortgage registered on July 13, 2010 against the lands of Y-K Projects Ltd. located in British Columbia under instrument number CA1651714 in the Kamloops Land Titles Office:
 - a. "Litigation Fees" of \$52,000,
 - b. "Mortgage Renewal Fee" of \$108,000, and
 - c. "Litigation Holdback" of \$63,768.79.
3. Arres shall forthwith pay to the Plaintiffs' lawyers the amounts identified in paragraph 2, above, for distribution by the Plaintiff's lawyers among the Plaintiffs in accordance with and proportionate to the amount of each Plaintiff's respective investment contribution towards the total amount advanced to Y-K Projects Ltd. under the Mortgage.
4. The application for summary judgment is dismissed as it relates to the claims of Arres for administration fees in the amount of \$150,000 and costs of \$36,231.21 relating to litigation costs incurred by Arres. These claims are directed to trial for determination.

5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C. Q.B.A.

This is **Exhibit "CC"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017


.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

BK COURT FILE
NUMBER 25-094212

COURT COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY

BANKRUPTCY AND INSOLVENCY
FAILLITE ET INSOLVABILITE
FILED

DEC 23 2013

JUDICIAL CENTRE
OF CALGARY

IN THE MATTER OF THE BANKRUPTCY
OF ARRES CAPITAL INC.

JUDICIAL CENTRE CALGARY

DOCUMENT AFFIDAVIT OF TRUTH

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

SILVER LAW FIRM
Barristers & Solicitors
#201, 10836 – 24th Street S.E.
CALGARY, Alberta T2Z 4C9
Phone: 403-723-7300
Fax: 403-236-3882
File No. 9011

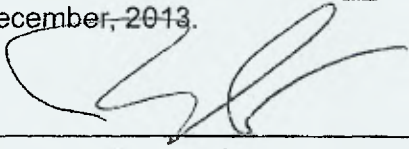
AFFIDAVIT OF TRUTH
Sworn on December 16, 2013

I, Lester Ikuta, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY
THAT:

1. I am a creditor of Arres Capital Inc. ("Arres") and, as such, have personal knowledge of the facts herein deposed to.
2. Annexed hereto as **Exhibit "A"** to this my Affidavit is a copy of an Order granted by Master Laycock on July 17, 2013 wherein summary judgment was granted to the Plaintiffs in QB Action 1201-16440 against Arres in the sum of \$223,768.79 (the "**Order**").
3. A Writ of Enforcement pursuant to the Order was filed on October 3, 2013.

4. Arres has filed a Notice of Appeal in the Court of Appeal with respect to the Order nor has Arres applied for a stay of enforcement of the Order.
5. I have initiated enforcement proceedings against Arres with respect to the subject judgment, but to date, with the exception of a seizure of Arres' office assets to which Arres has filed a Notice of Objection, there has been no recovery of funds owing to me and the other judgment creditors pursuant to the Order.
6. The sum of \$3,233.86 is owed to me by Arres. As the Order only dealt with 50% of my claim against Arres, the sum of \$1,616.93 represents the portion of the judgment owing to me in the Order.
7. The amount owed to me by Arres has not been paid in whole or in part as at the date of this Affidavit and the sum of \$3,233.86 remains due and owing to me by Arres.
8. The facts alleged in the Amended Application for Bankruptcy Order annexed hereto are, within my own knowledge, true.

SWORN BEFORE ME at the City of Calgary, in)
the Province of Alberta, this 11 day of)
December, 2013.)
)
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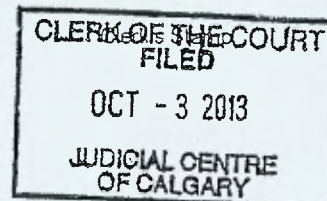


BRIAN SEKITYA
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA
Barrister & Solicitor



LESTER IKUTA

COURT FILE NUMBER 1201-16440
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY



APPLICANTS
(PLAINTIFFS)

KENZIE FINANCIAL INVESTMENTS LTD., SHELLY
BECK, THERESE F. DALEY, LINDA JAEGER,
ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG,
STEVEN OGG, LESTER S. IKUTA PROFESSIONAL
CORPORATION, LESTER IKUTA, MICKEY IKUTA,
BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER,
MARION SOMMER, ALLAN SOMMER, STEVEN
REILLY, SWARTS BROS LIMITED and CLARA MAE
WOROSCHUK

RESPONDENTS
(DEFENDANTS)

ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS (THIRD
PARTY DEFENDANTS)

Y-K PROJECTS LTD., ALLAN BECK and SHELLY
BECK

DOCUMENT

ORDER

ADDRESS FOR SERVICE
AND
CONTACT INFORMATION
OF
PARTY FILING THIS
DOCUMENT

SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 - 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Solicitor of Record: Loran V. Halyn
Direct: 403-219-4213
Fax: 403-291-4099
Email: lhalyn@sugimotolaw.com
File: 15,054 LVH

I hereby certify this to be a true copy of
the original ORDER
Dated this 3 day of Oct. 2013

for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: July 17, 2013

NAME OF MASTER WHO MADE THIS ORDER: Master L Laycock

LOCATION WHERE THIS ORDER WAS MADE: Calgary

THIS IS EXHIBIT
"A" REFERRED TO
IN THE AFFIDAVIT
OF LESTER IKUTA
SWORN BEFORE ME
THIS 16 DAY OF
DECEMBER, 2013

1
BRIAN SEKIYA
Barrister & Solicitor

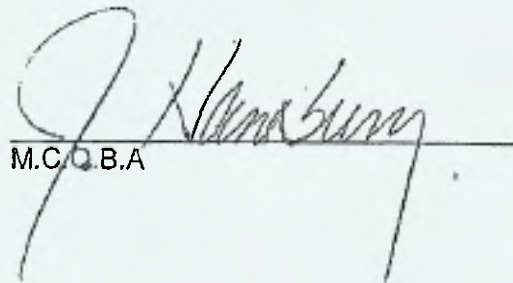
AMENDED ORDER

UPON THE APPLICATION of the Plaintiffs; AND UPON REVIEWING the pleadings and the Affidavits of Allan Beck and Wesley Serra, filed in this action and the consolidated action of *Y-K Projects Ltd. v. Arres Capital Inc. and Arres Capital Inc. carrying on business under the name of "Western Arres Capital Inc."*, Court File No. 1201-14748 in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary; AND UPON REVIEWING the transcripts of the questioning of Allan Beck and Wesley Serra and responses to undertakings deriving therefrom; AND UPON HEARING the submissions of Counsel for the Plaintiff and Counsel for the Defendants;

IT IS HEREBY ORDERED THAT:

1. The Plaintiff's application for summary judgment is granted in part against the Defendant, Arres Capital Inc. ("Arres").
2. The Court hereby disallows the following deductions made and retained by Arres from mortgage payout funds in the amount of \$1,787,526.05 paid to Arres by Y-K Projects Ltd. (the "Y-K Mortgage Payout Funds") on August 31, 2012 in respect of the mortgage registered on July 13, 2010 against the lands of Y-K Projects Ltd. located in British Columbia under instrument number CA1651714 in the Kamloops Land Titles Office:
 - a. "Litigation Fees" of \$52,000,
 - b. "Mortgage Renewal Fee" of \$108,000, and
 - c. "Litigation Holdback" of \$63,768.79.
3. Arres shall forthwith pay to the Plaintiffs' lawyers the amounts identified in paragraph 2, above, for distribution by the Plaintiff's lawyers among the Plaintiffs in accordance with and proportionate to the amount of each Plaintiff's respective investment contribution towards the total amount advanced to Y-K Projects Ltd. under the Mortgage.
4. The application for summary judgment is dismissed as it relates to the claims of Arres for administration fees in the amount of \$150,000 and costs of \$36,231.21 relating to litigation costs incurred by Arres. These claims are directed to trial for determination.

5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C. Q.B.A.

This is **Exhibit "DD"**
to the affidavit of **David Murphy** sworn
before me this 12th day of June, 2017



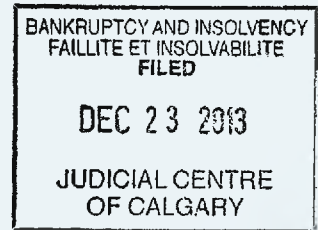
.....
A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

Richard Comstock
My Commission Expires September 21, 2018

BK COURT FILE NUMBER 25-094212

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF ARRES CAPITAL INC.



JUDICIAL CENTRE CALGARY

DOCUMENT AFFIDAVIT OF TRUTH

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT SILVER LAW FIRM
Barristers & Solicitors
#201, 10836 – 24th Street S.E.
CALGARY, Alberta T2Z 4C9
Phone: 403-723-7300
Fax: 403-236-3882
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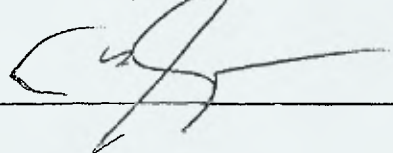
AFFIDAVIT OF TRUTH
Sworn on December 16, 2013

I, Lester Ikuta, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am an officer and director of Lester Ikuta Professional Corporation, ("Ikuta PC"), a creditor of Arres Capital Inc. ("Arres") and, as such, have personal knowledge of the facts herein deposed to.

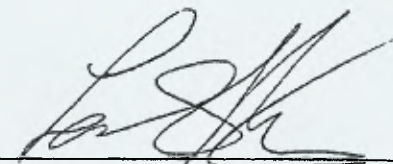
2. I am authorized by Ikuta PC to swear this Affidavit in support of an application for Bankruptcy Order to be made against Arres.
3. Annexed hereto as **Exhibit "A"** to this my Affidavit is a copy of an Order granted by Master Laycock on July 17, 2013 wherein summary judgment was granted to the Plaintiffs in QB Action 1201-16440 against Arres in the sum of \$223,768.79 (the "**Order**").
4. A Writ of Enforcement pursuant to the Order was filed on October 3, 2013.
5. Arres has filed a Notice of Appeal in the Court of Appeal with respect to the Order nor has Arres applied for a stay of enforcement of the Order.
6. Ikuta PC has initiated enforcement proceedings against Arres with respect to the subject judgment, but to date, with the exception of a seizure of Arres' office assets to which Arres has filed a Notice of Objection, there has been no recovery of funds owing to Ikuta PC and the other judgment creditors pursuant to the Order.
7. The sum of \$33,021.00 is owed to Ikuta PC by Arres. As the Order only dealt with 50% of Ikuta PC's claim against Arres, the sum of \$16,510.50 represents the portion of the judgment owing to Ikuta PC in the Order.
8. The amount owed to Ikuta PC by Arres has not been paid in whole or in part as at the date of this Affidavit and the sum of \$33,021.00 remains due and owing to Ikuta PC by Arres.
9. The facts alleged in the Amended Application for Bankruptcy Order annexed hereto are, within my own knowledge, true.

SWORN BEFORE ME at the City of Calgary, in)
the Province of Alberta, this 16 day of)
December, 2013.)


_____)

A COMMISSIONER FOR OATHS)
IN AND FOR THE PROVINCE OF ALBERTA)

BRIAN SEKLYA)
Barrister & Solicitor ²)



LESTER IKUTA

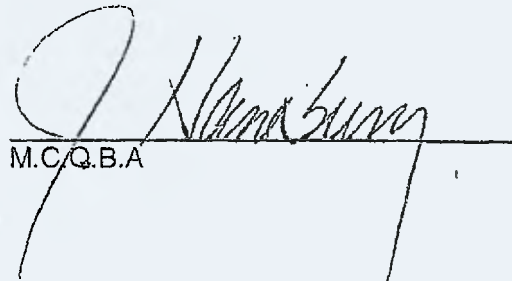
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M.C.Q.B.A.