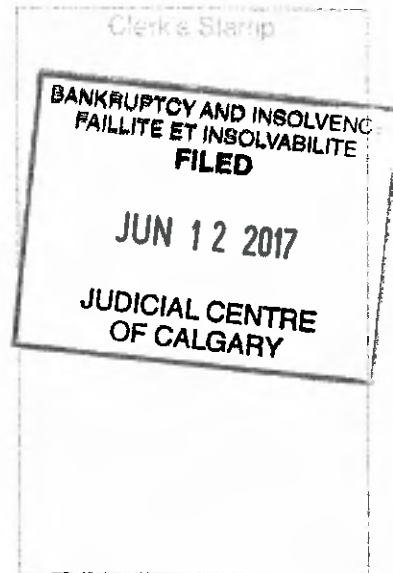


COURT FILE NUMBER 25-094212
COURT COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE CALGARY
IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED



AND IN THE MATTER OF ARRES CAPITAL INC.

APPLICANTS 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 **APPLICATION FOR A BANKRUPTCY ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Cassels Brock & Blackwell LLP
Suite 1250 Millennium Tower,
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Calgary, Alberta, T2P 5E9
Telephone 403-351-2921
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Attention: Jeffrey Oliver

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 judge.

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

Date: June 21, 2017
Time: 2:00 p.m.
Where: Calgary Courts Centre

Before Whom: The Honourable Justice K.D. Yamauchi

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

Remedy claimed or sought:

1. Access Mortgage Corporation (2004) Limited ("**Access**"), a corporation incorporated pursuant to the laws of the Province of Alberta, hereby applies to the Court for an order that Arres Capital Inc. ("**Arres**"), a corporation incorporated under the laws of the Province of Alberta, be adjudged bankrupt and that a bankruptcy order be made in respect of it.

Grounds for making this application:

2. 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.
3. 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**").
4. 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.
5. From April of 2008 to March of 2009 ("**2009 Fiscal Year**"), Access had advanced and Arres had received instalments totalling \$1,028,879.99.
6. 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.
7. 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.

8. 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's overpayment of brokerage and management service fees to Arres (the "**Debt Action**").
9. 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**").
10. Arres has reduced the \$1,028,879.99 it owes to Access pursuant to the Summary Judgment Order by only \$62,000 and has therefore failed to satisfy the Summary Judgment Order.
11. Accordingly, Arres is indebted to Access in the amount of at least \$1,000.
12. Further, Access is aware of at least nine other judgment creditors of Arres that are each owed at least \$1,000 by Arres.
13. Within six months preceding the date of the filing of this application for a bankruptcy order, Arres has ceased to meet its liabilities generally as they have become due in that it has failed to meet its obligations to Access, as well as its obligations to at least nine other judgment creditors, which is an act of bankruptcy.
14. 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 within proceeding.
15. On February 12, 2012, Arres filed a notice of dispute application denying any indebtedness to the Bankruptcy Applicants.
16. On April 10, 2012, this application was stayed on consent pending Access' motion for Summary Judgment in the Debt Action.
17. On December 23, 2013, Access amended its Application for Bankruptcy Order to add additional applicants.
18. To date, no further steps have been taken in the within proceeding.
19. The Applicant brings this Application in order to distribute Arres' assets on a *pro rata* basis to all proven creditors through a bankruptcy.
20. Alvarez & Marsal Canada Inc. ("**A&M**"), of the city of Calgary in the Province of Alberta is a corporation qualified to act as Trustee of Arres' property, has agreed to act as Trustee of Arres and is acceptable to Access.

Material or evidence to be relied on:

21. The materials upon which Access intends to rely include the following:
- a. Affidavit of Verification of Statements of David Murphy sworn on June 12, 2017;
 - b. Consent of A&M to act as Trustee; and
 - c. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

22. Access will rely upon and refer to the Alberta *Rules of Court* during the making of this application, including without limitation Rule 3.14.

Applicable Acts and regulations:

23. Access will rely upon and refer to:
- a. *Bankruptcy and Insolvency Act*, R.S.C. 1983, c. B-3, as amended, ss. 42, 43; and
 - b. *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368, as amended, r. 70.

Any irregularity complained of or objection relied on:

24. None.

How the application is proposed to be heard or considered:

25. In person.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and 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.