

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

Clerk's Stamp



C31122

AND IN THE MATTER OF ARRES CAPITAL  
INC.

APPLICANTS ACCESS MORTGAGE CORPORATION  
(2004) LIMITED, TERESA REILLY,  
PAULETTE SCRABA, and RAY SCRABA

DOCUMENT **ASSIGNMENT – SECTION 38 OF THE BIA**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY FILING  
THIS DOCUMENT

Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3rd Street SW  
Calgary, Alberta, T2P 5C5

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[asurani@cassels.com](mailto:asurani@cassels.com)

**Attention: Jeffrey Oliver/Danielle Marechal/Alyshea Surani**

**PURSUANT** to an amended order of the Honorable Justice RA Neufeld pronounced on March 3, 2023 in the within action (the “**Order**”), a copy of which is attached hereto as Schedule “A”, and in accordance with Section 38(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, Alvarez & Marsal Canada Inc., in its capacity as trustee in bankruptcy of Arres Capital Inc. (in such capacity, the “**Trustee**”) hereby assigns all of its right, title and interest in and to the Foreclosure Action (as that term is defined in the Order) to the applicant Access Mortgage Corporation (2004) Limited to commence and prosecute all claims, suits, causes of action, demands, debts, rights, indemnities, rights of contribution, subrogation rights, guarantees and assurances, obligations and other liabilities arising from the appointment of the Trustee, or vesting in the Trustee as a result of its appointment pursuant to the terms under the Bankruptcy Order pronounced on July 26, 2017 in Court of Queen’s Bench of Alberta in Bankruptcy and Insolvency Action No. 25-094212.

DATED this 10th day of March, 2023.

**ALVAREZ & MARSAL CANADA INC.**, in its  
capacity as trustee in bankruptcy of Arres  
Capital Inc.

A handwritten signature in blue ink, consisting of a stylized 'O' followed by a long horizontal stroke that curves upwards at the end.

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Name: Orest Konowalchuk, LIT  
Title: Senior Vice President

**SCHEDULE "A"**  
**ORDER**

BK01 094212

COURT FILE NUMBER

25-094212

COURT

COURT OF KING'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

Clerk's Stamp



AND IN THE MATTER OF ARRES  
CAPITAL INC.

APPLICANTS

ACCESS MORTGAGE CORPORATION  
(2004) LIMITED, TERESA REILLY,  
PAULETTE SCRABA, and RAY  
SCRABA

DOCUMENT

**AMENDED ASSIGNMENT ORDER –  
SECTION 38 OF THE BIA  
LIFTING OF STAY OF PROCEEDINGS  
– SECTION 69.3 OF THE BIA**

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**Attention: Jeffrey Oliver/Danielle Marechal/Alyshea Surani**

COURT FILE NO.: 1401-12431

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ACCESS MORTGAGE CORPORATION (2004)  
LIMITED, TERESA REILLY, PAULETTE  
SCRABA, and RAY SCRABA

RESPONDENT ARRES CAPITAL INC.

DOCUMENT **AMENDED ASSIGNMENT ORDER – SECTION 38 OF THE BIA  
LIFTING OF STAY OF PROCEEDINGS – SECTION 69.3 OF THE  
BIA**

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File No.: 50107-1

**Attention: Jeffrey Oliver/Danielle Marechal/Alyshea Surani**

**DATE ON WHICH ORDER WAS PRONOUNCED:** March 3, 2023

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Justice RANeufeld JCKBA

**LOCATION OF HEARING:** Calgary, Alberta

**UPON THE APPLICATION** of Access Mortgage Corporation (2004) Limited (“**Access**”), Teresa Reilly, Paulette Scraba, and Ray Scraba (collectively, the “**Applicants**”) filed for an order approving the assignment of, *inter alia*, the interests of Alvarez & Marsal Canada Inc. in its capacity as trustee in bankruptcy (in such capacity, the “**Trustee**”) of Arres Capital Inc. (the

“Debtor”) in and to the foreclosure action brought by the Debtor in the British Columbia Supreme Court, action no. 101004, Vancouver Registry (the “**Foreclosure Action**”), and for a declaration lifting the stay of proceedings in relation to the Applicants’ pending action against the Debtor in the British Columbia Supreme Court action no. 159260, New Westminster Registry (the “**Trust Action**”);

**AND UPON HAVING READ** the Affidavit of David Murphy, sworn September 14, 2022, filed (the “**Murphy Affidavit**”), the Consent of Alvarez & Marsal Canada Inc. to the application pursuant to ss. 38 and 69.3 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“**BIA**”); and upon hearing the submissions of counsel for the applicants and any other interested party;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.
2. Any capitalized term not otherwise defined in this Order shall have the meaning ascribed to them in the Murphy Affidavit.

Section 38 order – Foreclosure Action

3. Access is hereby authorized to take and prosecute the Foreclosure Action in its own name and at its own risk and expense, together with such other relief as may be available from the Court.
4. Subject to paragraphs 4.1 and 4.2 of this Order, <sup>^</sup>all of the benefits to be derived from the Foreclosure Action that are available to the Trustee<sup>^</sup> in its capacity as trustee in bankruptcy of Arres, together with the full costs of the Foreclosure Action (collectively, the “Benefits”), including without limitation fees and disbursements on a full indemnity basis (the “Costs”) and the full amount of any punitive and exemplary damages as may be awarded herein (the “Damages”, and together with the Benefits and Costs, the “Benefits of the Foreclosure Action”), belong exclusively to Access and to such other creditors of the Debtor who may, within fourteen (14) days of service of this Order upon them as herein provided, agree to contribute *pro rata* according to the amount of their

respective claims to the expense and risk of the Foreclosure Action (a “Joining Creditor”), and who within the same time signify their agreement in writing directed to:

Cassels Brock & Blackwell LLP  
Suite 3810, Bankers Hall West  
888 3rd Street SW  
Calgary, Alberta T2P 5C5

Attention: Jeffrey Oliver  
Email: joliver@cassels.com

- 4.1 Notwithstanding paragraph 4, a Joining Creditor shall have no entitlement to the Benefits of the Foreclosure Action until such time as: (i) the costs and expenses of Access for this application, including the fees and disbursements of Access’ legal counsel incurred at their standard rates and charges have been paid in full; (ii) the Costs of Access and the Costs of any Joining Creditor have been paid in full; and (iii) the Applicants under the Trust Agreements and the Other Investors under their trust agreements with the Debtor (the “Other Agreement” and together with the Trust Agreements, the “Jervis Trust Agreements”) have been paid in full in accordance with the proportionate interests of the Applicants and Other Investors in the Jervis Loan (collectively, the “Beneficiaries”) as described in the Jervis Trust Agreements or further order of this Honourable Court.
- 4.2 For greater certainty, and without in any way limiting paragraph 4.1 above, any Benefits of the Foreclosure Action shall be paid as follows:
- (a) first to the payment of the full costs and expenses of Access for this application, including the fees and disbursements of Access’ legal counsel incurred at their standard rates and charges, which costs and expenses shall be secured by the charge described in paragraph 9 of this Order;
- (b) second to the payment of any Costs of Access and the Costs of any Joining Creditor, on a *pro rata* basis, until such time as the Costs have been paid in full, which Costs shall be secured by the charge described in paragraph 10 of this Order;
- (c) third to the payment of the Beneficiaries under the Jervis Trust Agreements, on a *pro rata* basis in accordance with each Beneficiaries proportionate interest under their respective Jervis Trust Agreement, until such time as the beneficiaries have been paid in full;

(d) fourth to the payment of any unsecured claim of a Joining Creditor, on a *pro rata* basis, until such time as the unsecured claims of any Joining Creditors have been paid in full; and

(e) fifth to the payment of any other unsecured creditors of the Debtor's estate in accordance with paragraph 11 hereto.

5. If any creditor or creditors shall fail to join the Foreclosure Action as provided for in paragraph 4 above, within the time hereby limited, they shall be thereafter excluded from participating in the benefits to be derived from the Foreclosure Action and shall be automatically deemed *not* to be Joining Creditor.
6. Within fourteen (14) days of service of this Order upon the Trustee, the Trustee shall provide Access with a list of the names and addresses of all creditors who have proven claims against the estate of the Debtor or are shown on the statement of affairs.
7. Within fourteen (14) days of service of this Order upon the Trustee, the Trustee shall execute an assignment (the "**Assignment**") assigning all of its right, title and interest in the Foreclosure Action, including any documents in support thereof, to Access and to the other creditors of the Bankrupt that may join in the Foreclosure Action in accordance with Paragraph 5 of this Order. The Assignment shall vest in Access all right, title and interest which the Trustee has, had, or shall have in the Foreclosure Action by virtue of its office as Trustee.
8. Access shall conduct and have complete control of the Foreclosure Action.
9. The full costs and expenses of Access for this application, including the fees and disbursements of Access' legal counsel incurred at their standard rates and charges, shall form a first charge against any benefit to be derived from the Foreclosure Action.
10. The full costs and expenses of Access and of such other <sup>^</sup>Joining Creditor(s), including the fees and disbursements of <sup>^</sup>such Joining Creditor's legal counsel incurred at their standard rates and charges, shall form a second charge against any benefit to be derived from the Foreclosure Action.

^



11. In the event that there is any surplus benefit derived from the Foreclosure Action after paying the amounts described in paragraphs 4.1, 4.2, 9, and 10, such surplus shall be paid to the Trustee and shall form part of the Bankrupt's estate.
12. Any interested party may apply to this Court to seek advice or direction of the Court with respect to any matters arising from or in relation to this Order on not less than seven (7) days' notice to Access and all other interested persons likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
13. Service of this Order shall be deemed good and sufficient by serving the same on:
- (a) the Trustee;
  - (b) the list of all creditors who have proven claims against the estate of the Debtor or are shown on the statement of affairs as provided by the Trustee; and
  - (c) any other parties attending or represented at the application for this Order.

Lifting of stay – Trust Action

14. The stay of proceedings pursuant to s. 69.3 of the BIA and paragraphs 8 and 9 of the Receivership Order shall no longer operate in respect of the Applicants' pending action against the Debtor or against Western Arres Capital Inc. (an assumed name of the Debtor) in the Trust Action and the Applicants are authorized to continue to prosecute the Trust Action in the Supreme Court of British Columbia, New Westminster Registry.



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Justice of the Court of King's  
Bench of Alberta

CONSENT TO THIS AMENDMENT THIS 3rd day of February, 2023

**ALVAREZ & MARSAL CANADA INC.**, in its capacity as trustee in bankruptcy of Arres Capital Inc. and in its capacity as receiver of the exigible property of Arres Capital Inc.

A handwritten signature in blue ink, appearing to be 'Orest Konowalchuk', written over a horizontal line.

Name: Orest Konowalchuk, LIT

Title: Senior Vice President