



COM
Sept 1 2020
Justice Romaine

COURT FILE NUMBER	1401-12431
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ACCESS MORTGAGE INVESTMENT CORPORATION (2004) LIMITED
DEFENDANT	ARRES CAPITAL INC.
DOCUMENT	AFFIDAVIT OF GAYE SARUWATARI
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	SUGIMOTO & COMPANY Barristers & Solicitors 204, 2635 – 37 th 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

AFFIDAVIT OF GAYE SARUWATARI

Sworn on August 25, 2020

I, Gaye Saruwatari, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am a paralegal assistant to Mr. Loran V. Halyn of Sugimoto & Company, Barristers & Solicitors, counsel of record for the Applicants, who are Plaintiffs in the matter of *Kenzie Financial Investments Ltd. v. Arres Capital Inc.*, Court File Number 1201-16440 in the Court of Queen's Bench of Alberta (the "Kenzie Action"), and as such have personal knowledge of the facts and matters herein deposed to except where stated to be based upon information and belief and where so stated, verily believe the same to be true.

2. Partial summary judgment in the Kenzie Action was granted in favour of the Applicants by Amended Order granted on July 17, 2013 disallowing certain deductions

made by Arres from the Applicants' trust funds, and directing Arres to repay these deductions. Attached hereto and marked as Exhibit "A" is a true copy of the filed Amended Order.

3. Under a Consent Order granted February 11, 2014, Arres Capital Ltd. ("Arres") paid \$235,000 (the "Secured Funds") into court to the credit of the Kenzie Action to effect a stay of enforcement of the Applicants' judgment under the Amended Order, which funds were to be held pending the final determination of an appeal of that judgment taken out by Arres. The Secured Funds were thereafter to be released in accordance with the final judicial determination of the appeal. Attached hereto and marked as Exhibit "B" is a true copy of the filed Consent Order.

4. On February 14, 2014, Arres paid the Secured Funds into Court. Attached hereto and marked as Exhibit "C" is a true copy of the filed Money Paid Into Court.

5. By Order of The Honourable Madam Justice C.L. Kenny pronounced on April 16, 2014, Arres' appeal was dismissed with costs awarded to the Applicants. However, this Order did not direct the release of the Secured Funds to the Applicants at that time. Attached hereto and marked as Exhibit "D" is a true copy of Kenny J.'s Order filed.

6. No further appeal was taken out by Arres contesting the Applicants' judgment against it, and the time for any further appeal has long passed. Attached hereto and marked as Exhibit "E" is a true copy of the Certificate of No Appeal filed August 12, 2014.

7. As of July 23, 2015, post-judgment interest on the Applicants' judgment against Arres totalled \$2,791.90 and costs that had been determined in the amount of \$5,196.63. Further post-judgment interest continues to accrue from that date.

8. Prior to the filing of the Certificate of No Appeal, applications were taken out by Terrapin Mortgage Investment Corp. ("Terrapin") and the Applicants regarding the Secured Funds. Terrapin applied for intervenor status in the Kenzie Action and in the matters of *Arres Capital Inc. v. Graybriar Land Company Ltd. and Graybriar Greens Inc.*, court file numbers 0903-17684 and 0903-17685 (the "Graybriar Foreclosure

Actions”). The Applicants applied to have the Secured Funds paid out of court to them. Terrapin opposed the Applicants’ application and applied to have the Secured Funds remain held in Court until the Graybriar Foreclosure Actions were resolved with the determination of issues regarding the entitlement to 4 Graybriar condominium units and the registration of Terrapin’s mortgage against those units. Attached hereto and marked respectively as Exhibit “F” and “G” are the applications of Terrapin and the Applicants.

9. The applications of Terrapin and the Applicants were heard together on July 23, 2014, resulting in an Order of the Honourable Justice J.J. Strekaf granting Terrapin intervenor status in the Kenzie Action with respect to the issue of the \$235,000 held in Court, and adjourned the Applicants’ application sine die pending the determination of issues in the Graybriar Foreclosure Actions. Attached hereto and marked as Exhibit “H” is a true copy of the filed Strekaf Order.

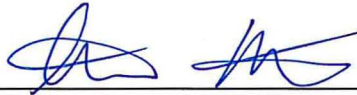
10. While the Graybriar Foreclosure Actions were unfolding on a number of fronts, by Order of The Honourable Madam Justice Eidsvik pronounced July 26, 2017, Arres was adjudged bankrupt with Alvarez & Marshal Canada Inc. appointed as trustee and receiver of the estate of Arres (hereinafter the “Receiver”).

11. By Order of The Honourable Madam Justice B.E.C. Romaine pronounced June 4, 2018 the Secured Funds were paid to the Receiver. Attached hereto and marked as Exhibit “I” is a true copy of the filed Romaine Order.

12. Madam Justice Romaine ordered that the Secured Funds be held by the Receiver and made the following direction in connection with granting her Order:

And I am going to allow the order, but on the understanding that the funds are to be used to determine the priority of claims against the Graybriar funds and the Kenzie funds only, and not with respect to the other projects that might be in the receivership. If the receiver determines that it wishes to proceed with those other projects, it must give notice to the parties here today so that there can be some determination of whether that is appropriate.

THIS IS EXHIBIT "A"
referred to in the Affidavit of
GAYE SARUWATARI
Sworn before me this
25th day of August, 2020



OLIVIA HTOON

A Commissioner for Oaths
In and For the Province of Alberta
My Commission Expires June 13, 2022

COURT FILE NUMBER 1201-16440
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY



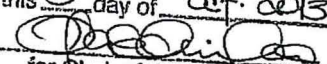
APPLICANTS (PLAINTIFFS) KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, THERESE F. DALEY, LINDA JAEGER, ANDREW LITTLE, LAURIE LITTLE, AGNES M. OBERG, STEVEN OGG, LESTER S. IKUTA PROFESSIONAL CORPORATION, LESTER IKUTA, MICKEY IKUTA, BRIAN SEKIYA, HOLLY SEKIYA, SANDRA SOMMER, MARION SOMMER, ALLAN SOMMER, 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

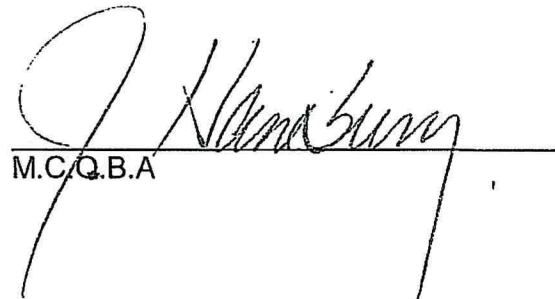
AMENDED ORDER

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.

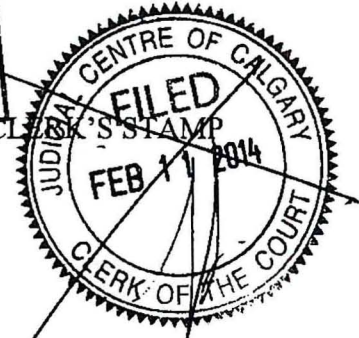
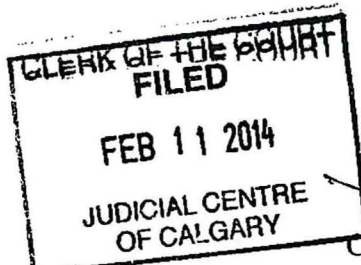
5. The parties may apply to the court for further directions regarding the implementation of this Order and the further prosecution of this action.
6. Costs of this application are reserved to be spoken to upon the determination of the entirety of the Plaintiff's application.
7. This Order may be endorsed in counterpart and by facsimile or other electronic means.


M.C.Q.B.A.

THIS IS EXHIBIT "B"
referred to in the Affidavit of
GAYE SARUWATARI
Sworn before me this
25th day of August, 2020



OLIVIA HTOON
A Commissioner for Oaths
In and For the Province of Alberta
My Commission Expires June 13, 2022



COURT FILE NUMBER 1201-16440

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 CONSENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT PELLETIER LAW 350, 444 – 5th Avenue SW Calgary, Alberta T2P 2T8 Main: 403.407.2600 Fax: 403.407.2601 Ryan P. Pelletier Direct: 403.407.2630 File: 13002.008

I hereby certify this to be a true and correct copy of the original
Dated this 11 day of Feb 2014
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: February 11, 2014

NAME OF JUSTICE WHO MADE THIS ORDER: Justice Wilkins

LOCATION WHERE THIS ORDER WAS MADE: Calgary

UPON noting the defendant, Arres Capital Inc. ("Arres"), has appealed the Amended Order of the Learned Master L. Laycock pronounced July 17, 2013 and filed October 3, 2013 (the "Amended Order") by Notice of Appeal of Master's Order filed October 4, 2013 (the

"Appeal"); AND UPON noting the consent of counsel for the Plaintiffs and Third Party Defendants, who are collectively the Respondents on the Appeal of Master's Order (together the **"Respondents")**;

IT IS HEREBY ORDERED THAT:

1. Arres shall forthwith pay the amount of \$235,000 into Court to the credit of this Action (the **"Secured Funds"**).
2. Upon payment into Court of the Secured Funds, the Amended Order is stayed pending a final judicial determination of the Appeal.
3. Upon a final judicial determination of the Appeal, including any further appeal by either party, the Secured Funds shall be released in accordance with such final judicial determination.
4. This Consent Order may be consented to in counterpart and by facsimile or electronic mail.

"Justice Wilkins"
J.C.C.Q.B.A

CONSENTED TO:

Suginoto & Company

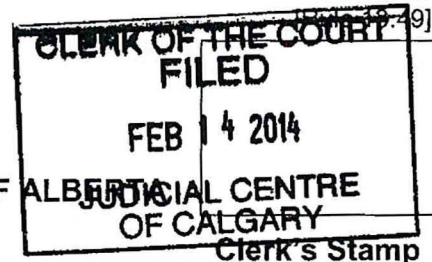
Per: 

Loran V. Halyn
Counsel for the Respondents on the
Appeal, being both the within Plaintiffs
and the Third Party Defendants

THIS IS EXHIBIT "C"
referred to in the Affidavit of
GAYE SARUWATARI
Sworn before me this
25th day of August, 2020



OLIVIA HTOON
A Commissioner for Oaths
In and For the Province of Alberta
My Commission Expires June 13, 2022



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, 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
(DEFENDENTS)

ARRES CAPITAL INC. and WESLEY SERRA

APPLICANTS(THIRD
PARTY DEFENDENTS)

Y-K PROJECTS LTD., ALLAN BECK and
SHELLY BECK

DOCUMENT:

MONEY PAID INTO COURT

ADDRESS FOR SERVICE and
CONTACT INFORMATION of
PARTY FILING THIS
DOCUMENT:

Pelletier Law
Ryan P. Pelletier
350, 444 – 5 Avenue SW
Calgary, Alberta T2P 2T8
Main: 403.407.2600
Fax: 403.407.2601

File No. 13002.008

NOTICE TO COURT CLERK

You have received money paid into Court.

Go to the end of this document to see what you must do.

\$235,000 is paid into Court in accordance with the Order of Justice Wilkins granted on February 11, 2014 in respect to the within action.

NOTICE TO COURT CLERK

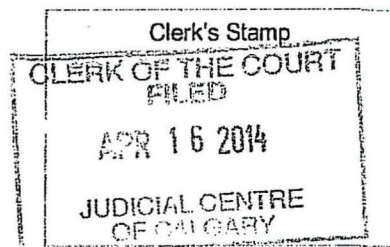
You must give a receipt for the money paid into Court and, unless otherwise ordered, deposit the money into an account in a bank or treasury branch.

THIS IS EXHIBIT "D"
referred to in the Affidavit of
GAYE SARUWATARI
Sworn before me this
25th day of August, 2020



OLIVIA HTOON
A Commissioner for Oaths
In and For the Province of Alberta
My Commission Expires June 13, 2022

COURT FILE NUMBER 1201-16440
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY



RESPONDENTS
(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

APPELLANTS
(DEFENDANTS)

ARRES CAPITAL INC. and WESLEY SERRA

RESPONDENTS (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 16 day of April 2014
[Signature]
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: April 16, 2014

NAME OF JUSTICE WHO MADE THIS ORDER:

C.L. Kenny

LOCATION WHERE THIS ORDER WAS MADE:

Calgary

ORDER

UPON THE Defendant, Arres Capital Inc. ("Arres"), appealing the Amended Order of the Learned Master L. Laycock pronounced July 17, 2013 and filed October 3, 2013 in this action (the "Amended Order"); 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, responses to undertakings deriving therefrom and the proceedings before Learned Master L. Laycock; AND UPON CONSIDERING the submissions of Counsel for the Defendants and Counsel for the Plaintiffs / Third Party Defendants;

IT IS HEREBY ORDERED THAT:

1. The appeal of the Amended Order is dismissed.
2. The funds paid into court by Arres to the credit of this action in the amount of \$235,000.00 pursuant to the Consent Order of The Honourable Mr. Justice Wilkins pronounced and filed on February 11, 2014, shall be paid out forthwith by the Clerk of the Court to the lawyers representing the Plaintiffs / Third Party Defendants at the following address:



SUGIMOTO & COMPANY
Barristers & Solicitors
204, 2635 – 37th Avenue NE
Calgary, Alberta, T1Y 5Z6
Attention: Loran V. Halyn

3. The Plaintiffs and Third Party Defendants are awarded costs of this application in accordance with Column 3 of Schedule C of the Alberta Rules of Court payable forthwith in any event of the cause.

J.C.Q.B.A



THIS IS EXHIBIT "E"
referred to in the Affidavit of
GAYE SARUWATARI
Sworn before me this
25th day of August, 2020



OLIVIA HTOON
A Commissioner for Oaths
In and For the Province of Alberta
My Commission Expires June 13, 2022

COURT FILE NUMBER 1201-16440

COURT COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE CALGARY

RESPONDENTS
(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**

APPELLANTS
(DEFENDANTS) **ARRES CAPITAL INC. and WESLEY SERRA**

RESPONDENTS (THIRD
PARTY DEFENDANTS) **Y-K PROJECTS LTD., ALLAN BECK and SHELLY
BECK**

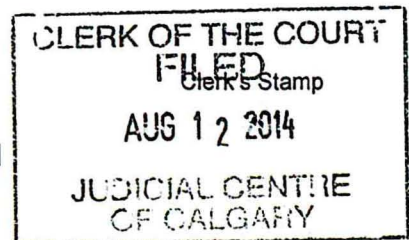
DOCUMENT **CERTIFICATE OF NO APPEAL**

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**

This is to certify that on this date, no Notice of Appeal has been filed with respect to the Order of Justice C.L. Kenny made in the above action dated the 16th day of April, 2014 and filed on the 16th day of April, 2014 and that the time for appeal from the said Order has expired.

DATED at Calgary, Alberta this 8 day of August, 2014.

L. J. Wellmott
for CLERK OF THE COURT



THIS IS EXHIBIT "F"
referred to in the Affidavit of
GAYE SARUWATARI
Sworn before me this
25th day of August, 2020



OLIVIA HTOON
A Commissioner for Oaths
In and For the Province of Alberta
My Commission Expires June 13, 2022

Form 27

[Rules 6.3 and 10.52(1)]

COURT FILE NUMBER	1201-16440
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, MICHKEY 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
THIRD PARTY DEFENDANTS	Y-K PROJECTS LTD., ALLAN BECK AND SHELLY BECK
APPLICANT (NON-PARTY TO THE ACTION)	TERRAPIN MORTGAGE INVESTMENT CORP.
DOCUMENT	APPLICATION



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BISHOP & MCKENZIE LLP Barristers & Solicitors 1700, 530 – 8 Avenue SW Calgary, AB T2P 3S8 Attention: Kerry Lynn Okita Telephone: 403-237-5550 Fax: 403-263-3423 File No.: 100672-003 (KLO/pw)
---------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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	Wednesday, July 23, 2014
Time	2:00 p.m.
Where	Calgary Courts Centre, 601 – 5 th Street SW, Calgary, Alberta
Before Whom	Commercial List

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

Remedy claimed or sought:

1. An Order that Terrapin Mortgage Investment Corp. ("Terrapin") is granted intervenor status in the within action with the following parameters of participation:
 - a. The ability to Question or Cross Examine any party to this action;
 - b. The ability to present new evidence to the Court;
 - c. The ability to bring Applications in the within action; and
 - d. The ability to advance arguments and issues not advanced by other parties to the litigation.
2. The Courts permission to submit evidence filed in Action Number 0903-17684 and 0903-17685, particularly the Affidavit of Gregory Forrest, sworn on May 2, 2014.
3. Order prohibiting the release of the funds of \$235,000.00 paid into Court to any party, other than Terrapin, until the matter in Action Number 0903-17684 and 0903-17685 has been resolved.
4. Costs of the within Application.
5. Such further Order or directions as this Honourable Court may see just.

Grounds for making this application:

6. In Action Numbers 0903-17684 and 0903-17685 the Plaintiff, Arres Capital Inc ("Arres"), obtained an Order for Sale to Plaintiff on February 3, 2014 (the "February 3 Order") with respect to four condominium units.
7. In reliance on the February 3 Order, as well as the purchase of four condominium units by 1798582 Alberta Ltd., Terrapin financed the purchase and advanced mortgage funds in the amount of \$425,000.00.
8. According to the purchaser's Direction to Pay, Mortgage funds in the amount of \$235,000.00 were advanced to the benefit of Arres in this action by Consent Order, February 11, 2014 (the "Consent Order").
9. On February 14, 2014 without notice to 1798582 Alberta Ltd. or Terrapin, an emergency application was heard and an Order was granted staying the February 3, 2014 Order (the "Stay Order").
10. Based on the Stay Order and subsequent orders extending the stay, the transfer of the four condominium units to 1798582 Alberta Ltd. and the Terrapin mortgage have not been registered on title to the four condominium units.

Material or evidence to be relied on:

11. Affidavit of G. Forrest, sworn May 2, 2014, in Action Number 0909-17684 and 0903-17685.

Applicable rules:

12. *Alberta Rules of Court*, Rule 2.10, 6.11(1)(f), and 6.27.

Applicable Acts and regulations:

13. *Business Corporations Act*, R.S.A. 2000, c. B-9

14. *Judicature Act*, R.S.A. 2000, c. J-2

Any irregularity complained of or objection relied on:

15. None

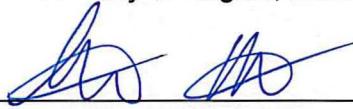
How the application is proposed to be heard or considered:

16. In person, with all of the parties present.

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 at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

THIS IS EXHIBIT "G"
referred to in the Affidavit of
GAYE SARUWATARI
Sworn before me this
25th day of August, 2020



OLIVIA HTOON
A Commissioner for Oaths
In and For the Province of Alberta
My Commission Expires June 13, 2022

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**

NON-PARTIES (THIRD PARTY DEFENDANTS) **Y-K PROJECTS LTD., ALLAN BECK and SHELLY BECK**

DOCUMENT **APPLICATION**

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**

NOTICE TO RESPONDENTS, ARRES CAPITAL INC. and WESLEY SERRA:

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: Wednesday, July 23, 2014
Time: 2:00 pm
Where: Calgary Courts Centre, 601 - 5 Street S.W., Calgary,
Alberta, T2P 5P7
Before Whom: Commercial List Justice

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

Remedy claimed or sought:

1. An Order directing that from funds paid into court to the credit of this action in the amount of \$235,000 pursuant to a Consent Order granted February 11, 2014, the amount of \$231,757.32 be paid out to the lawyers representing the Plaintiffs;
2. Costs of this application; and
3. Such further and other relief as this Honourable Court deems just.

Grounds for making this application:

4. A valid and enforceable Order of the Court granting judgement in favour of the Plaintiffs remains unpaid.
5. As of July 23, 2014, the Plaintiffs are owed \$231,757.32 comprised of the original judgment amount of \$223,768.79 plus post-judgment interest of \$2,791.90 and costs that have been determined in the amount of \$5,196.63.
6. Under a Consent Order granted February 11, 2014, the Defendant, Arres Capital Inc., paid \$235,000 into court to effect a stay of enforcement of the Plaintiffs' judgment, pending the final determination of an appeal of that judgment taken out by Arres Capital Inc.
7. The appeal of Arres Capital inc. was dismissed, no further appeal has been taken out Arres Capital Inc. and the time for any further appeal has passed.
8. Arres Capital Inc. does not oppose payment to the Plaintiffs of the amount to which they are owed under their judgment from the funds paid into court.

Material or evidence to be relied on:

9. Affidavits of Allan Beck previously filed with this Application in this matter.

10. Affidavit of Gregory J. Forrest, filed in the matter of *Arres Capital Inc. v. Graybriar Land Company Ltd. and Graybriar Greens Inc.*, court file numbers 0903-17684 and 0903-17685.

Applicable rules:

11. Rules 6.2 of the Alberta *Rules of Court*.

Applicable Acts and regulations:

12. None applicable.

Any irregularity complained of or objection relied on:

13. None applicable.

How the application is proposed to be heard or considered:

14. Oral submissions before the presiding Justice on the Commercial List.

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 at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

THIS IS EXHIBIT "H"
referred to in the Affidavit of
GAYE SARUWATARI
Sworn before me this
25th day of August, 2020



OLIVIA HTOON
A Commissioner for Oaths
In and For the Province of Alberta
My Commission Expires June 13, 2022

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

NON-PARTIES
(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

Bishop & McKenzie LLP
Barristers & Solicitors
1700, 530 – 8th Avenue SW
Calgary, Alberta, T2P 3S8
Attention: Kerry Lynn Okita
Phone: 403-237-5550
Fax: 403-263-3423
File No. 100672-003 (KLO/pw)

I hereby certify this to be a true copy of
the original _____
Dated this _____ day of _____ 2014
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED:

WEDNESDAY, JULY 23, 2014

LOCATION WHERE ORDER WAS PRONOUNCED:

CALGARY, ALBERTA

NAME OF JUSTICE WHO MADE THIS ORDER:

J.J. STREKAF

UPON the application of the Terrapin Mortgage Investment Corp.; UPON noting the cross application of the Plaintiffs; AND UPON hearing counsel for the Plaintiff, Defendant, and Terrapin Mortgage Investment Corp.:

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The Affidavit of G. Forrest, filed May 2, 2014, in action Nos. 0903-17685 and 09103-17684, is admitted within this action.
2. Terrapin Mortgage Investment Corp. is hereby granted intervenor status in the within action with respect to the issue of the \$235,000.00 held in Court.

3. Terrapin Mortgage Investment Corp. is granted the following parameters of participation in the above noted matter:

- a. The ability to present new evidence to the Court;
- b. The ability to advance arguments and issues not advanced by other parties; and
- c. The ability to bring Applications in the within action.

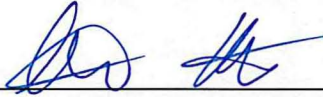
4. The cross application of the Plaintiffs ~~for release of funds is dismissed.~~ *is adjourned sine die pending the determination of the Stay Order in Action Numbers 0903-17684 and 0903-17685.*

✓ 5. Terrapin shall be awarded \$1,000.00 in costs.

6. Other costs claims arising out of today's application can be dealt with at a later date. ✓

JUSTICE IN CHAMBERS

THIS IS EXHIBIT "I"
referred to in the Affidavit of
GAYE SARUWATARI
Sworn before me this
25th day of August, 2020



OLIVIA HTOON
A Commissioner for Oaths
In and For the Province of Alberta
My Commission Expires June 13, 2022

COURT FILE NUMBER 1401-12431
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT ACCESS MORTGAGE CORPORATION
(2004) LIMITED



RESPONDENT ARRES CAPITAL INC.
- and -

COURT FILE NUMBER 0903-17684 and 0903-17685
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

I hereby certify this to be a true copy of
the original Order
Dated this 05 day of June 2018
for Clerk of the Court

RESPONDENT (PLAINTIFF) ARRES CAPITAL INC.

NON-PARTICIPANTS (DEFENDANTS) GRAYBRIAR LAND COMPANY LTD. and GRAYBRIAR GREENS INC.

RESPONDENTS (NON-PARTIES) 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, CHRISTOPHER SCHULTZ CONSULTING INC., CURLEW FINANCE, PAUL KORYLO, 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, KEVEN R. PEDERSEN, SUSAN FINE, CAROL KIMIYO SEKIYA, HOLLY SEKIYA and STEVEN OGG

RESPONDENT (INTERVENOR) TERRAPIN MORTGAGE INVESTMENT CORP.

RESPONDENT (INTERESTED PARTY) 1798583 ALBERTA LTD.

- and -

COURT FILE NUMBER 1201-16440

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
THIRD PARTY DEFENDANTS	Y-K PROJECTS LTD., ALLEN BECK and SHELLY BECK
DOCUMENT	ORDER (Directing Release of the Graybriar Funds and the Court Funds and Confirming the Receivership Charges)
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCARTHY TÉTRAULT LLP 4000, 421 – 7 th Avenue SW Calgary, AB T2P 4K9 Attention: Walker W. MacLeod / Pantelis Kyriakakis Telephone: 403-260-3710 / 3536 Facsimile: 403-260-3501 Email: wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca
DATE ON WHICH ORDER WAS PRONOUNCED:	June 4, 2018
LOCATION OF HEARING:	Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER:	Justice B.E.C. Romaine

UPON the application of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed receiver (the "**Receiver**") of Arres Capital Inc. (the "**Debtor**"), pursuant to the order issued by the Honourable Madam Justice Strekaf under the *Civil Enforcement Act* (Alberta) (the "**CEA**") on February 13, 2015, as subsequently amended and restated pursuant to the Order issued by the Honourable Madam Justice B.E.C. Romaine on October 23, 2017 (the "**Receivership Order**"), in the proceedings under Court File Number 1401-12431 (the "**Receivership Proceedings**"); **AND UPON** having read the Application, the Second Report of the Receiver, dated May 29, 2018 (the "**Second Receiver's Report**"), and the

Affidavit of Service of Katie Doran, sworn on June 1, 2018, all filed (the "**Service Affidavit**");
AND UPON hearing counsel for the Receiver and counsel for any other persons present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of the Application and the Second Receiver's Report in the manner described in the Service Affidavit is good and sufficient and no persons other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit are entitled to receive notice of the Application or service of the Second Receiver's Report.
2. Any and all capitalized terms used herein and not otherwise defined are hereby given the meaning that such terms have under and pursuant to the Receivership Order.

RELEASE OF GRAYBRIAR FUNDS

3. The Clerk of the Court is hereby directed to pay out to the Receiver all funds and all interest accrued thereon (collectively, the "**Graybriar Court Funds**") held under Court File Numbers 0903-17684 and 0903-17685 (the "**Graybriar Actions**"), derived from the sale of the units (individually, a "**Unit**", collectively, the "**Units**") under Condominium Plan 0827766 (the "**Condo Plan**"), which Graybriar Court Funds are comprised of:
 - (a) all funds held by this Court and derived from the sale of Unit 48 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master K. Laycock granted on February 1, 2016;
 - (b) all funds held by this Court and derived from the sale of Unit 63 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master A. Robertson granted on March 10, 2016;
 - (c) all funds held by this Court and derived from the sale of Unit 65 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master J. Farrington granted on June 14, 2016;
 - (d) all funds held by this Court and derived from the sale of Unit 69 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master A. Robertson granted on August 25, 2017;

- (e) all funds held by this Court and derived from the sale of Unit 67 and paid into Court, under the Graybriar Actions, pursuant to the Order of Master A. Robertson granted on November 1, 2017 and subsequently amended pursuant to an Amended Order of Master J.L. Mason granted on December 15, 2017; and,
- (f) all funds held by this Court and derived from the sale of Unit 68 and paid into Court, under the Graybriar Actions, pursuant to the Consent Order of Master J.L. Mason granted on December 15, 2017,

(collectively, the "**Graybriar Sale Approval Orders**").

- 4. Bishop & McKenzie LLP is hereby directed to pay to the Receiver all funds and all interest accrued thereon derived from the sale of Unit 55 of the Condo Plan (collectively, along with the Graybriar Court Funds, referred to as, the "**Graybriar Funds**").

RELEASE OF COURT FUNDS

- 5. The Clerk of the Court is hereby authorized, empowered, and directed to pay out to the Receiver the \$235,000 and all accumulated interest thereon (the "**Court Funds**") currently held under Court File Number 1201-16440 and paid into Court on February 14, 2014, pursuant to and in accordance with the Order of the Honourable Justice Wilkins issued on February 11, 2014.

CONFIRMATION OF RECEIVERSHIP CHARGES

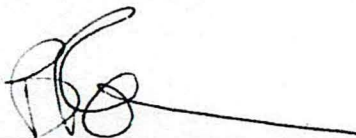
- 6. The Graybriar Funds and the Court Funds (collectively, the "**Funds**") are subject to each of the Receiver's Charge and the Receiver's Borrowings Charge. Each of the Receiver's Charge and the Receiver's Borrowing Charge shall form a first charge on the Funds in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the *Bankruptcy and Insolvency Act* (Canada), and the Receiver is authorized and empowered to apply the Funds against current or future indebtedness owing on either the Receiver's Charge or the Receiver's Borrowing Charge, as applicable.

APPROVAL OF CONDUCT, FEES AND DISBURSEMENTS

7. The actions and conduct of the Receiver, as of the date of the Second Receiver's Report and based upon the evidence contained in the Second Receiver's Report, be and are hereby approved.
8. The interim accounts of the Receiver and its legal counsel, as summarized at paragraphs 65 and 66 of the Second Receiver's Report, be and are hereby approved.

GENERAL

9. Service of this Order on the persons comprising the Service List shall be by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no other persons, other than those on the Service List, are entitled to be served with a copy of this Order.



J.C.C.Q.B.A.

THIS IS EXHIBIT "J"
referred to in the Affidavit of
GAYE SARUWATARI
Sworn before me this
25th day of August, 2020



OLIVIA HTOON

A Commissioner for Oaths
In and For the Province of Alberta
My Commission Expires June 13, 2022

Loran Halyn

From: Kerry Lynn Okita <KOkita@bmlp.ca>
Sent: Tuesday, September 24, 2019 10:25 AM
To: Loran Halyn
Cc: MacLeod, Walker W. (wmacleod@mccarthy.ca)
Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Morning Loran,
Apologies for the delay. I confirm that Terrapin will not be taking a position on your application.
Best,

Kerry Lynn Okita
Barrister & Solicitor

T 403.750.2244

E KOkita@bmlp.ca

W <http://www.bmlp.ca/profile/okita-kerry-lynn>

#2200, 555 - 4th Ave. SW,
Calgary, Alberta T2P 3E7



This message and any attachments are intended only for the addressee and may contain privileged or confidential information. Any unauthorized disclosure, review, dissemination, copying, printing or other use of this email is strictly prohibited. If you have received this message in error, please notify us immediately so that we may correct our internal records. Please then permanently delete the original message and any attachments and destroy any copies. Thank you.

From: Loran Halyn <lhallyn@sugimotolaw.com>
Sent: Wednesday, September 18, 2019 2:59 PM
To: Kerry Lynn Okita <KOkita@bmlp.ca>
Cc: MacLeod, Walker W. (wmacleod@mccarthy.ca) <wmacleod@mccarthy.ca>
Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Good afternoon Kerry Lynn,

As you know, I represent the investors involved in an Arres Capital Ltd. syndicated loan to Y-K Projects Ltd. from several years ago. The Y-K investors successfully sued and secured a summary judgment award against Arres for about \$235,000, which amount was paid into court by Arres from funds derived from the failed attempt to transfer 4 Graybriar condominium units to 1798583 Alberta Ltd. to be mortgaged to Terrapin Mortgage Investment Corp.

You may recall that previously before Madam Justice Strekaf you had advanced an argument that Terrapin had an interest in and a claim over those funds, which had prevented the release of the funds to my clients following the dismissal of Arres appeal against the summary judgment award. The funds were ordered to remain in court pending the determination of issues regarding the entitlement to the 4 Graybriar condominium units and the registration of Terrapin's mortgage against those units.

With the decision of Justice Jones in the Arres bankruptcy and receivership proceedings dismissing 1798583's assignment claim and Terrapin's claim of an equitable mortgage regarding the 4 Graybriar condo units, the issue of entitlement to those 4 units has been resolved. Thereafter, I understand a settlement agreement was recently reached between you and Walker Macleod as counsel for Arres' Trustee/Receiver regarding Terrapin's liability for costs in that application. I further understand from Walker that he takes the position such settlement resolved all claims Terrapin might conceivably advance in the bankruptcy and receivership proceedings, including any claim Terrapin had previously advanced vis-à-vis the \$235,000 paid into court for my client's summary judgment award.

My clients wish to advance an application in the Arres' bankruptcy and receivership proceedings to determine entitlement to the \$235,000 paid into court to the credit of my clients in satisfaction of their summary judgment against Arres. I request confirmation of your position regarding whether Terrapin intends to maintain any claim against those funds, in which case Terrapin would need to be included in my clients' application as a respondent.

May I kindly request your timely reply to my inquiry so I can prepare appropriate application materials.

Thank you in advance for your attention to my request.

Regards,

Loran V. Halyn

Sugimoto and Company

#204, 2635 - 37 Avenue NE

Calgary, Alberta T1Y 5Z6

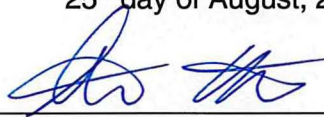
Telephone: 403-291-4650

Direct: 403-219-4213

Fax: 403-291-4099

E-Mail: lhaly@lhalyn@sugimotolaw.com

THIS IS EXHIBIT "K"
referred to in the Affidavit of
GAYE SARUWATARI
Sworn before me this
25th day of August, 2020



OLIVIA HTOON
A Commissioner for Oaths
In and For the Province of Alberta
My Commission Expires June 13, 2022

Loran Halyn

From: David N. Murphy <dmurphy@foxbridgegroup.com>
Sent: Wednesday, October 23, 2019 12:13 PM
To: Allan Beck
Cc: Loran Halyn
Subject: Re: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Thanks Allan,

- I already indicated my position on the \$235K, in a September 25th email to the receiver (with a cc to Loran).
 - It clearly detailed my position that the \$235 should not be construed as part of the Arres estate.
 - They responded to me, indicating that they disagreed.
- On Oct 2nd I did receive a further email from the receiver wanting to know if I had "any comments on the below re: our position, your position and/or a possible settlement."
 - I did not have any further commentary to offer.
- I see that the below noted cc of the Receiver's October 2 email to Loran indicates that they were "awaiting instructions from the inspector of the estate".
 - Sadly, I was not made aware of that fact as I thought they were just looking to see if I had anything further to offer.

DNM

From: Allan Beck <allanbeck@telus.net>
Date: Wednesday, October 23, 2019 at 11:37 AM
To: "David N. Murphy" <dmurphy@foxbridgegroup.com>
Subject: FW: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Dave please see the email from the trustee advising us that they are awaiting instructions from the inspector. I am assuming that is you. Let me know.

Thanks

Allan

Assured Mortgage Investments Corp.
Allan Beck, Director

#1-2707-58 Avenue S.E.
Calgary Alberta
T2C 0B4
Tel. 403-276-1800
Fax 403-276-1888
Cell 403-861-9256

-----Original Message-----

From: Loran Halyn <lhallyn@sugimotolaw.com>

To: 'Harvey Beck (harveybeck@telus.net)' <harveybeck@telus.net>; 'Allan Beck (allanbeck@telus.net)' <allanbeck@telus.net>

Subject: FW: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Gentlemen,

Below is the up-to-date email exchange with counsel for the Arres' Trustee / Receiver. I am hopeful (but not terribly optimistic) that they will change their position and concede the \$235K held to the Y-K investors without a fight. I will advise when I hear back from Mr. MacLeod – hopefully soon.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Best regards,

Loran V. Halyn
Sugimoto and Company
#204, 2635 - 37 Avenue NE
Calgary, Alberta T1Y 5Z6
Telephone: 403-291-4650
Direct: 403-219-4213
Fax: 403-291-4099
E-Mail: lhalyn@sugimotolaw.com <<mailto:lhalyn@sugimotolaw.com>>

From: Loran Halyn
Sent: Thursday, October 3, 2019 10:32 AM
To: 'MacLeod, Walker W.'; Orest Konowalchuk (okonowalchuk@alvarezandmarsal.com) (okonowalchuk@alvarezandmarsal.com); bkrol@alvarezandmarsal.com
Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Walker,

I am attaching the transcript of our appearance before Madam Justice Romaine, in case you don't have a copy. I believe the inspector of the estate should be apprised of what transpired during that June 4th appearance before formulating instructions.

To recap, during the proceedings relating to the \$235,000 paid into court in the Kenzie Financial et al. matter, counsel presented to the Court their respective positions, where I pressed the application of the Stone Sapphire decision (attached) that indicated "A judgment creditor may trump a trustee's priority to funds paid into court if

decision (attached) that indicated "A judgment creditor may trump a trustee's priority to funds paid into court if the funds are sufficiently 'earmarked' and the creditor has 'done all that it could' to access the funds". Meanwhile, Kerry Lynn Okita indicated Terrapin was claiming entitlement to those funds as well – and so there evidently was a contest as to entitlement to the funds. Accordingly, Justice Romaine directed that the \$235K was to be segregated from the other funds of Arres Capital collected by the Trustee/Receiver and only those costs and expenses of the Trustee/Receiver related to dealing with the issue of entitlement to those funds were to constitute a first charge against those funds so segregated.

Therefore, it is clear (in my opinion) that Justice Romaine did not consider the \$235K as comprising the unsecured and general funds of Arres Capital available to creditors other than either my Kenzie Financial et al. clients or Terrapin or otherwise available to cover the general administration costs and expenses of the Trustee/Receiver, because that position is inconsistent with the direction to segregate the funds in the first place. Now that Terrapin has disavowed any claim over those funds, it is my position that the only parties still standing that have a claim to those funds are my clients who have their unsatisfied partial summary judgment that those funds were paid into court to satisfy.

I remain hopeful that the position that will be taken on this issue is that a judicial determination as to entitlement will not be required.

Thanks and regards,

Loran V. Halyn
Sugimoto and Company
#204, 2635 - 37 Avenue NE
Calgary, Alberta T1Y 5Z6
Telephone: 403-291-4650
Direct: 403-219-4213
Fax: 403-291-4099
E-Mail: lhaly@lhalyn@sugimotolaw.com<<mailto:lhaly@lhalyn@sugimotolaw.com>>

From: MacLeod, Walker W. [<mailto:wmacleod@mccarthy.ca>]
Sent: Wednesday, October 2, 2019 4:20 PM
To: Loran Halyn; Orest Konowalchuk
(okonowalchuk@alvarezandmarsal.com<<mailto:okonowalchuk@alvarezandmarsal.com>>)
(okonowalchuk@alvarezandmarsal.com<<mailto:okonowalchuk@alvarezandmarsal.com>>);
bkrol@alvarezandmarsal.com<<mailto:bkrol@alvarezandmarsal.com>>
Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Loran, thanks, we are awaiting instructions from the inspector of the estate and will revert with our position after that.

[McT Logo]

Walker MacLeod

Partner | Associé

Bankruptcy and Restructuring | Faillite et restructuration

T: 403-260-3710

C: 403-463-1207

F: 403-260-3501

E: wmacleod@mccarthy.ca<<mailto:wmacleod@mccarthy.ca>>

McCarthy Tétrault LLP

Suite 4000

421 - 7th Avenue SW

Calgary AB T2P 4K9

Please, think of the environment before printing this message.

[https://www.mccarthy.ca/sites/default/files/2018-10/TOP100_Employer_2019_english_70X70.png]

[https://www.mccarthy.ca/sites/default/files/2019-02/diversity-2019-english_signature.jpg]

From: Loran Halyn <lhallyn@sugimotolaw.com<<mailto:lhallyn@sugimotolaw.com>>>

Sent: Wednesday, October 02, 2019 1:49 PM

To: MacLeod, Walker W. <wmacleod@mccarthy.ca<<mailto:wmacleod@mccarthy.ca>>>; Orest Konowalchuk

(okonowalchuk@alvarezandmarsal.com<<mailto:okonowalchuk@alvarezandmarsal.com>>)

(okonowalchuk@alvarezandmarsal.com<<mailto:okonowalchuk@alvarezandmarsal.com>>)

<okonowalchuk@alvarezandmarsal.com<<mailto:okonowalchuk@alvarezandmarsal.com>>>;

bkrol@alvarezandmarsal.com<<mailto:bkrol@alvarezandmarsal.com>>

Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Walker,

With Terrapin definitively not making a play for the \$235K, would you agree the best approach is that we proceed with a Commercial List application (much like we did for the Graybriar matter) to determine entitlement to those funds as between the Kenzie Financial et al. plaintiffs, who secured the partial summary judgment that resulted in those funds being paid into court to satisfy that judgment, and Arres' Trustee/Receiver?

If not, what approach would you propose to resolve that issue?

I look forward to your reply and thank you in advance for your attention to my inquiries.

Regards,

Loran V. Halyn
Sugimoto and Company
#204, 2635 - 37 Avenue NE
Calgary, Alberta T1Y 5Z6
Telephone: 403-291-4650
Direct: 403-219-4213
Fax: 403-291-4099
E-Mail: lhalyn@sugimotolaw.com<<mailto:lhalyn@sugimotolaw.com>>

From: Kerry Lynn Okita [<mailto:KOkita@bmlp.ca>]
Sent: Tuesday, September 24, 2019 10:25 AM
To: Loran Halyn
Cc: MacLeod, Walker W. (wmacleod@mccarthy.ca<<mailto:wmacleod@mccarthy.ca>>)
Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Morning Loran,
Apologies for the delay. I confirm that Terrapin will not be taking a position on your application.
Best,

Kerry Lynn Okita
Barrister & Solicitor
T 403.750.2244
E KOkita@bmlp.ca<<mailto:KOkita@bmlp.ca>>
W <http://www.bmlp.ca/profile/okita-kerry-lynn>
#2200, 555 - 4th Ave. SW,
Calgary, Alberta T2P 3E7
[cid:image004.png@01D579CA.97229B80]<<http://www.bishopmckenzie.com>>[cid:image005.png@01D579CA.97229B80]<<https://bmlp.ca/news/bishop-mckenzie-joins-interlaw-ltd>>

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From: Loran Halyn <lhalyn@sugimotolaw.com<<mailto:lhalyn@sugimotolaw.com>>>
Sent: Wednesday, September 18, 2019 2:59 PM
To: Kerry Lynn Okita <KOkita@bmlp.ca<<mailto:KOkita@bmlp.ca>>>
Cc: MacLeod, Walker W. (wmacleod@mccarthy.ca<<mailto:wmacleod@mccarthy.ca>>)
<wmacleod@mccarthy.ca<<mailto:wmacleod@mccarthy.ca>>>

Subject: RE: Arres Capital Inc., Terrapin Mortgage Investment Corp. & \$235,000 summary judgment funds paid into court

Good afternoon Kerry Lynn,

As you know, I represent the investors involved in an Arres Capital Ltd. syndicated loan to Y-K Projects Ltd. from several years ago. The Y-K investors successfully sued and secured a summary judgment award against Arres for about \$235,000, which amount was paid into court by Arres from funds derived from the failed attempt to transfer 4 Graybriar condominium units to 1798583 Alberta Ltd. to be mortgaged to Terrapin Mortgage Investment Corp.

You may recall that previously before Madam Justice Strekaf you had advanced an argument that Terrapin had an interest in and a claim over those funds, which had prevented the release of the funds to my clients following the dismissal of Arres appeal against the summary judgment award. The funds were ordered to remain in court pending the determination of issues regarding the entitlement to the 4 Graybriar condominium units and the registration of Terrapin's mortgage against those units.

With the decision of Justice Jones in the Arres bankruptcy and receivership proceedings dismissing 1798583's assignment claim and Terrapin's claim of an equitable mortgage regarding the 4 Graybriar condo units, the issue of entitlement to those 4 units has been resolved. Thereafter, I understand a settlement agreement was recently reached between you and Walker Macleod as counsel for Arres' Trustee/Receiver regarding Terrapin's liability for costs in that application. I further understand from Walker that he takes the position such settlement resolved all claims Terrapin might conceivably advance in the bankruptcy and receivership proceedings, including any claim Terrapin had previously advanced vis-à-vis the \$235,000 paid into court for my client's summary judgment award.

My clients wish to advance an application in the Arres' bankruptcy and receivership proceedings to determine entitlement to the \$235,000 paid into court to the credit of my clients in satisfaction of their summary judgment against Arres. I request confirmation of your position regarding whether Terrapin intends to maintain any claim against those funds, in which case Terrapin would need to be included in my clients' application as a respondent.

May I kindly request your timely reply to my inquiry so I can prepare appropriate application materials.

Thank you in advance for your attention to my request.

Regards,

Loran V. Halyn
Sugimoto and Company
#204, 2635 - 37 Avenue NE
Calgary, Alberta T1Y 5Z6
Telephone: 403-291-4650
Direct: 403-219-4213
Fax: 403-291-4099
E-Mail: lhilyn@sugimotolaw.com <<mailto:lhilyn@sugimotolaw.com>>

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