



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.
DOCUMENT	<u>APPLICATION</u>
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

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:	August 13, 2019
Time:	10:00 a.m.
Where:	Calgary Courts Centre
Before Whom:	The Honourable Justice Eidsvik

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

Remedy claimed or sought: 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**”), applies for two (2) Orders, substantially in the forms attached as Schedules “**A**” and “**B**”:

1. Declaring that this application (the “**Application**”) is properly returnable on August 13, 2019, service of this Application and the Fourth Report of the Receiver, dated August 8, 2019 (the “**Fourth Receiver’s Report**”) is validated and declared to be good and sufficient, that service of the Application and Fourth Receiver’s Report on the persons listed on the service list is validated, good, and sufficient, and that no persons, other than those listed on the service list, are entitled to service of the Application or the Fourth Receiver’s Report.
2. Approving, authorizing, and empowering the Receiver to make distributions to certain of the Debtor’s creditors who hold valid proven claims to the Graybriar Funds (as defined herein).
3. Declaring that, as of the date of the Fourth Receiver’s Report and based on the evidence that is currently before the Court:
 - (a) the Receiver has acted honestly and in good faith, and has dealt with all of the Debtor’s property, assets, and undertakings in a commercially reasonable manner; and,
 - (b) the actions and conduct of the Receiver are approved.
4. Approving the interim accounts of the Receiver and its legal counsel to date in respect of the Debtor.
5. Approving the allocation of the interim accounts of the Receiver and its legal counsel to date in respect of the Debtor.
6. Approving the Receiver’s proposed cost allocation of professional fees from the date of appointment to June 30, 2019.
7. Such further and other relief as counsel for the Receiver may advise and this Honourable Court considers to be just and appropriate in the circumstances.

Grounds for making this application:

8. The Receiver was appointed as receiver and manager of the assets, properties, and undertakings of the Debtor pursuant to the Receivership Order.

9. Pursuant to and in accordance with the terms and conditions set out in the Order (Graybriar Funds Claims Process Order) concerning the Debtor, as granted by the Honourable Justice B.E.C. Romaine on June 4, 2018 (the “**Graybriar Funds Claims Process Order**”), the Receiver undertook and completed a review of all of the claims filed in respect of the Graybriar Funds (as defined in the Graybriar Funds Claims Process Order) against the Debtor (the “**Claims Process**”).

2. As a result of the Claims Process, the Receiver has accepted, revised and or disallowed various claims and, subject to the resolution of the Priority Fee Claim (as defined herein), is prepared to make distributions.

10. A total of 44 investors are represented by Sugimoto & Company (the “**Represented Investors**”). Sugimoto & Company has filed a proof of claim on behalf of the Represented Investors and the claim has been revised and allowed by the Receiver. The Represented Investors dispute the revision to the claim and allege that the legal fees and disbursements charged to them by Sugimoto & Company are entitled to a priority status (the “**Priority Fee Claim**”). The Priority Fee Claim is the last remaining claim to the Graybriar Funds and will be resolved in accordance with a litigation schedule agreed to by the Receiver and the Represented Investors.

11. In the course of the administration of the estate, the Receiver has allocated fees and costs to ensure that they are fairly and equitably borne amongst creditors. As the Receiver now seeks to make a distribution, it is appropriate for that allocation to be approved.

12. Subject to the Receiver establishing an appropriate holdback, in connection with finalizing the administration of the Debtor’s estate, the Receiver presently holds fund that are available for distribution, on a *pro rata* basis, to the various creditors of the Debtor on account of the Proven Claims to the Graybriar Funds.

13. Such further and other grounds as counsel for the Receiver may advise.

Material or evidence to be relied on:

14. The Fourth Report of the Receiver, dated August 6, 2019.
15. Such further and other material as counsel for the Receiver may advise and this Honourable Court may permit.

Applicable rules:

16. Rule 6.3, 6.9, and 11.27 of the Alberta Rules Of Court, Alta. Reg. 124/2010.
17. Such further and other rules as counsel for the Receiver may advise and this Honourable Court may permit.

Applicable acts and regulations:

18. The *Civil Enforcement Act*, RSA 2000, c C-15, as amended.
19. The *Judicature Act*, RSA 2000, c J-2, as amended.
20. Such further and other acts and regulations as counsel for the Receiver may advise or this Honourable Court may permit.

Any irregularity complained of or objection relied on:

21. There are no irregularities complained of or objections relied on.

How the application is proposed to be heard or considered:

22. The Receiver proposes that the Application be heard in person with one, some or 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.

SCHEDULE "A"
FORM OF ORDER (DISTRIBUTION OF GRAYBRIAR FUNDS)

Clerk's Stamp

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.
DOCUMENT	<u>ORDER (Distribution of Graybriar Funds)</u>
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:	August 13, 2019
LOCATION OF HEARING:	Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER:	Justice Eidsvik

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 Fourth Report of the Receiver, dated August 8, 2019 (the "**Fourth Receiver's Report**"), and the Affidavit of Service of Katie Doran, sworn on August •, 2019, all filed (the "**Service Affidavit**"); **AND UPON** having read the Order (Graybriar Funds Claims Process Order) (the "**Graybriar Funds Claims**

Process Order”), granted on June 4, 2018 by the Honourable Justice B.E.C. Romaine; **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 Fourth 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 Fourth 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 Fourth Receiver’s Report or the Graybriar Funds Claims Process Order, as applicable.

DISTRIBUTION

3. Each of the Persons listed in Schedule “**A**” hereto (collectively, the “**Trust Creditors**”) be are hereby declared to have a Proven Claim to the Graybriar Funds in the amount identified in Schedule “**A**” hereto. The Receiver be and is hereby expressly authorized and empowered, immediately and from time to time hereafter as the Receiver determines appropriate, to make *pro rata* distributions from the Graybriar Funds to the Trust Creditors up to the amount of each Trust Creditors Proven Claim. In making such distributions, the Receiver is further authorized and empowered to holdback amounts on account of amounts due, accruing due or estimated to accrue due the Receiver’s Charge or the Receiver’s Borrowing Charge.

MISCELLANEOUS MATTERS

4. The Receiver and any other interested Person shall be at liberty to apply for further advice, assistance, and directions, as may be necessary, in order to give full force and effect to the terms of this Order.

5. Service of this Order on the Persons in attendance at the application for this Order shall be by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no other persons are entitled to be served with a copy of this Order.

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

**SCHEDULE "A" TO THE FORM OF ORDER (DISTRIBUTION OF GRAYRBRIAR FUNDS)
LIST OF PROVEN CLAIMS**

SCHEDULE "B"
FORM OF ORDER (FEE AND CONDUCT APPROVAL)

Clerk's Stamp

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.
DOCUMENT	<u>ORDER (Fee and Conduct Approval)</u>
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:	August 13, 2019
LOCATION OF HEARING:	Calgary, Alberta
NAME OF JUDGE WHO MADE THIS ORDER:	Justice Eidsvik

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 Fourth Report of the Receiver, dated August 8, 2018 (the "**Fourth Receiver's Report**"), and the Affidavit of Service of Katie Doran, sworn on August •, 2019, 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 Fourth 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 Fourth Receiver's Report.

APPROVAL OF RECEIVER'S ACTIONS

2. The actions and conduct of the Receiver, as reported in the Fourth Receiver's Report are hereby approved and ratified as of and up to the date of the Fourth Receiver's Report.

FEE APPROVAL (GENERAL)

3. The Receiver's interim accounts for fees and disbursements in respect of the Debtor (General) in the period May 1, 2018 to June 30, 2019 (in the amount of \$18,445) are hereby approved without the necessity of a formal passing of accounts.

4. The interim accounts of the Receiver's legal counsel, McCarthy Tétrault LLP, for its fees and disbursements in respect of the Debtor (General) in the period May 1, 2018 to June 30, 2019 (in the amount of \$24,231) are hereby approved without the necessity of a formal assessment of its accounts.

FEE APPROVAL (GRAYBRIAR - INCURRED)

5. The Receiver's interim accounts for fees and disbursements in respect of the Debtor (Graybriar - Incurred) in the period May 1, 2018 to June 30, 2019 (in the amount of \$135,915) are hereby approved without the necessity of a formal passing of accounts.

6. The interim accounts of the Receiver's legal counsel, McCarthy Tétrault LLP, for its fees and disbursements in respect of the Debtor (Graybriar - Incurred) in the period May 1, 2018 to June 30, 2019 (in the amount of \$159,697) are hereby approved without the necessity of a formal assessment of its accounts.

FEE APPROVAL (GRAYBRIAR - COMPLETION)

7. The Receiver's estimated accounts for fees and disbursements in respect of the Debtor (Graybriar – Completion) in the period July 1, 2019 to completion (in the estimated amount of \$40,000) are hereby approved without the necessity of a formal passing of accounts.

8. The estimated accounts of the Receiver's legal counsel, McCarthy Tétrault LLP, for its fees and disbursements in respect of the Debtor (Graybriar – Completion) in the period July 1, 2019 to completion (in the estimated amount of \$40,000) are hereby approved without the necessity of a formal assessment of its accounts.

9. The Receiver be and is hereby granted leave to apply to amend or vary paragraphs 7 and 8 of this Order in the event that the estimated fees for completion exceed the amounts provided for herein.

COST ALLOCATION APPROVAL

10. The allocation of accounts issued by the Receiver and its legal counsel, McCarthy Tétrault LLP, for their fees and disbursements in respect of the Debtor in the period July 26, 2017, to June 30, 2019 (in the total amount of \$606,320) are hereby approved as follows:

- (a) General matters: \$310,708;
- (b) Graybriar Funds matters: \$295,612.

MISCELLANEOUS MATTERS

11. Service of this Order on the Persons in attendance at the application for this Order shall be by any of email, facsimile, courier, registered mail, regular mail, or personal delivery, and no other persons are entitled to be served with a copy of this Order.

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