

COURT OF APPEAL OF ALBERTA

Form AP-1

[Rule 14.8 and 14.12]

COURT OF APPEAL FILE NUMBER: 1701-0241AC
TRIAL COURT FILE NUMBER: 25-094212
REGISTRY OFFICE: Calgary
PLAINTIFF/APPLICANT: KENZIE FINANCIAL INVESTMENTS LTD., SHELLY BECK, BRIAN SEKIYA, HOLLY SEKIYA, LINDA JAEGER, STEVE REILLY, LESTER IKUTA, MICKEY IKUTA, LESTER IKUTA PROFESSIONAL CORPORATION, ACCESS MORTGAGE CORPORATION (2004) LIMITED, RAYMOND SCRABA, PAULETTE SCRABA and 1082144 ALBERTA LTD.



STATUS ON APPEAL: Respondent
DEFENDANT/RESPONDENT: ARRES CAPITAL INC.
STATUS ON APPEAL: Appellant

DOCUMENT: **CIVIL NOTICE OF APPEAL**

APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION:

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Bow Valley Square II
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File. 13002.002

WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. Particulars of Judgment, Order or Decision Appealed From:

Date pronounced: July 26, 2017

Date entered: July 26, 2017

Date served: July 26, 2017

Official neutral citation of reasons for decision, if any:
(do not attach copy) _____

(Attach a copy of order or judgment: Rule 14.12(3). If a copy is not attached, indicate under item 14 and file a copy as soon as possible: Rule 14.18(2).)

2. Indicate where the matter originated:

Court of Queen's Bench

Judicial Centre: Calgary

Justice: K.M. Eidsvik

On appeal from a Queen's Bench Master or Provincial Court Judge?: Yes No

Official neutral citation of reasons for decision, if any, of the Master or Provincial Court Judge:
(do not attach copy) _____

(If originating from an order of a Queen's Bench Master or Provincial Court Judge, a copy of that order is also required: Rule 14.18(1)(c).)

Board, Tribunal or Professional Discipline Body

Specify Body: _____

3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)):

Permission not required, or Granted

Date: _____

Justice: _____

(Attach a copy of order, but not reasons for decision.)

4. Portion being appealed (Rules 14.12(2)(c)):

Whole, or

Only specific parts (if specific part, indicate which part):

5. Provide a brief description of the issues:

The Honourable Justice committed manifest and obvious errors in fact and in law where she:

1. Misstated and misapplied the test for a bankruptcy Order;
2. Misstated the existence, quantum, and state of the debt(s) alleged to be owed by the Appellant;
3. Found "special circumstances" to exist allowing the bankruptcy Order;
4. Misstated and misapplied the test which otherwise permitted the dismissal of the bankruptcy Application;
5. Entirely ignored and otherwise dismissed the abuse of process and collateral attack of a previous Order of the Court inherent in the Respondent's bankruptcy Application; and
6. Directed that the February 13, 2015 Order of the Honourable Justice Streckfuss in Action No. 1401-12431 was to be stayed in favour of the bankruptcy Order under appeal.

6. Provide a brief description of the relief claimed:

To have the Order under appeal set aside and otherwise dismissed.

7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)

Yes No

8. Does this appeal involve the custody, access, parenting or support of a child? (Rule 14.14(2)(b))

Yes No

9. Will an application be made to expedite this appeal?

Yes No

10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)

Yes No

11. Could this matter be decided without oral argument? (Rule 14.32(2))

Yes No

12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rule 6.29, 14.12(2)(e), 14.83)

Yes No

If yes, provide details: _____

(Attach a copy of any order.)

13. List respondent(s) or counsel for the respondent(s), with contact information:

CASSELS BROCK & BLACKWELL LLP
Millennium Tower
#1250, 440 - 2nd Avenue SW
Calgary, AB T2P 5E9
T. 403.351.2920
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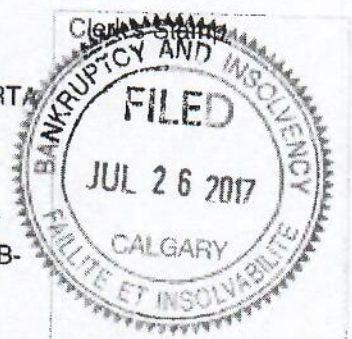
If specified constitutional issues are raised, service on the Attorney General is required under s. 24 of the Judicature Act: Rule 14.18(1)(c)(viii).

14. Attachments (as applicable):

- Order of judgment under appeal if available (not reasons for decision) (Rule 14.12(3))
- Earlier order of Master, etc. (Rule 14.18(1)(c))
- Order granting permission to appeal (Rule 14.12(3)(a))
- Copy of any restricted access order (Rule 14.12(2)(e))

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.

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 **BANKRUPTCY ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Cassels Brock & Blackwell LLP
Suite 1250 Millennium Tower,
440 – 2nd Avenue SW,
Calgary, Alberta, T2P 5E9
Telephone 403-351-2921
Facsimile 403-648-1151

Attention: Jeffrey Oliver

DATE ON WHICH ORDER WAS PRONOUNCED: July 26, 2017
NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice Eidsvik
LOCATION OF HEARING: Calgary, Alberta

I hereby certify this to be a true copy of the original Order of which it purports to be a copy.
Dated this 26th day of July 2017
[Signature]
Registrar of the
Bankruptcy and Insolvency
Division of the
Court of Queen's Bench of Alberta

UPON THE APPLICATION of Access Mortgage Corporation (2004) Limited (the "**Applicant**"), a creditor, of Arres Capital Inc. ("**Arres**"), filed on the 8th day of September, 2011; and upon having read the Affidavit of Truth of David Murphy, sworn August 29, 2011, filed, the Affidavit of Truth of Raymond Scraba, sworn August 29, 2011, filed, the Affidavit of Truth of Cheryl Newman, sworn August 29, 2011, filed, the Supplementary Affidavit of Truth of David Murphy, sworn December 16, 2011, filed, the Affidavit of Truth of Allan Beck, sworn December 16, 2013, filed, the Affidavits of Truth of Shelly Beck, sworn

December 16, 2013, filed, the Affidavit of Truth of Brian Sekiya, sworn December 20, 2013, filed, the Affidavit of Truth of Holly Sekiya, sworn December 20, 2013, filed, the Affidavit of Truth of Linda Jaeger, sworn December 16, 2013, filed, the Affidavit of Truth of Steve Reilly, sworn December 16, 2013, filed, the Affidavit of Truth of Mickey Ikuta, sworn December 16, 2013, filed, the Affidavits of Truth of Lester Ikuta, sworn December 16, 2013, filed, the Affidavit of Verification of Statements in application for Bankruptcy Order sworn by David Murphy, on the 12th day of June, 2017, filed, the Supplementary Affidavit of David Murphy, sworn July 13, 2017, filed, the Notice of Disputing Application, filed, the Consent of Alvarez & Marsal Canada Inc. to act as trustee, filed; and upon hearing the submissions of counsel for the Applicant and counsel for Arres;

And upon it appearing to the Court that the following acts of bankruptcy have been committed within 6 months preceding the filing of the Application:

- (a) Arres has ceased to meet its liabilities generally as they have become due;

And upon being satisfied that Arres has been duly served;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Arres, a company incorporated and registered under the laws of the Province of Alberta and having an office in Calgary, in the Province of Alberta, be and is hereby adjudged bankrupt and a bankruptcy order is hereby made against Arres.
2. Alvarez & Marsal Canada Inc. in the Province of Alberta, has been appointed as trustee of the estate of the bankrupt, without the requirement to give security under the *Bankruptcy and Insolvency Act*.
3. Service of the Notice of the Hearing of this Application upon Arres is deemed good and sufficient.
4. The costs of and incidental to the within application and bankruptcy order shall be paid to the Applicant out of the assets of the bankrupt's estate after taxation of the accounts.

Dated at Calgary, Alberta this 26th day of July, 2017

"K.M. Eldsvik"