

**COURT OF APPEAL OF ALBERTA**

**Form AP-3**  
[Rule 14.53]

COURT OF APPEAL FILE NUMBER: 2101-0117AC

TRIAL COURT FILE NUMBER: 1401-12431

REGISTRY OFFICE: CALGARY

APPLICANT: ACCESS MORTGAGE  
INVESTMENT CORPORATION  
(2004) LIMITED

STATUS ON APPEAL: NOT A PARTY TO THE APPEAL  
STATUS ON APPLICATION: NOT A PARTY TO THE  
APPLICATION

RESPONDENT: ARRES CAPITAL INC.

STATUS ON APPEAL: RESPONDENT  
STATUS ON APPLICATION: APPLICANT

NONPARTY APPLICANTS 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

STATUS ON APPEAL: APPELLANTS  
STATUS ON APPLICATION: RESPONDENTS

DOCUMENT: **APPLICATION TO DISMISS APPEAL**



ADDRESS FOR SERVICE AND  
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**NOTICE TO RESPONDENTS: 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**

**WARNING**

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules (Rule 14.41 and 14.43)

**NOTICE TO RESPONDENTS:**

You have the right to state your side of this matter before the Court.

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

Date: September 23, 2021

Time: 10:00 a.m.

Where: Alberta Court of Appeal – Calgary  
TransCanada Pipelines Tower  
450 – 1<sup>st</sup> Street S.W.  
Calgary, Alberta, T2P 5H1

Before: Panel of judges of the Court (Rule 14.38)

**Nature of Application and Relief Sought:**

1. Alvarez & Marsal Canada Inc. (the “**Receiver**”), in its capacity as court-appointed receiver of the Respondent, Arres Capital Inc. (“**Arres**”), seeks:
  - (a) Dismissal of the within appeal (the “**Appeal**”) on the basis of mootness; and
  - (b) costs of this application.

**Grounds for making this application:**

2. The Receiver was appointed as receiver and manager of the Exigible Property of Arres pursuant to an order issued on February 13, 2015, and subsequently amended on October 23, 2017 (the “**Amended Receivership Order**”). The Amended Receivership Order contained, *inter alia*, standard language that created priority charges for the fees and disbursements of the Receiver and its legal counsel, and for amounts borrowed by the Receiver (collectively, the “**Priority Charges**”).
3. On June 4, 2018, an order granted by Madame Justice B.E.C. Romaine (the “**Romaine Order**”) directed the Clerk of the Court to payout to the Receiver of approximately \$235,000 and all accumulated interest thereon (the “**Court Funds**”) that was 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. The Romaine Order confirmed that the Court Funds were subject to the Priority Charges and has not been appealed.
4. On August 13, 2019, an order was granted by Justice K.M. Eidsvik (the “**Eidsvik Order**”), which approved the professional fees incurred by the Receiver and its legal counsel, the

cost allocation proposed by the Receiver and the conduct of the Receiver and its legal counsel. The Eidsvik Order has not been appealed.

5. On August 13, 2019, an order was granted to Justice K.M. Eidsvik (the "**Graybriar Distribution Order**"), which authorized the Receiver to make distribution of the Graybriar Funds to certain identified persons. The Graybriar Distribution Order has not been appealed.
6. On April 19, 2021, two orders were granted by Madame Justice B.E.C. Romaine which: (i) discharged the Receiver (the "**Discharge Order**"); and (ii) dismissed an application brought by the persons who are the Appellants in the within Appeal (the "**Dismissal Order**"). The Receiver has not completed its discharge due to the Appeal that has been filed by the Appellants.
7. The result of the Priority Charges created by the Amended Receivership Order and the Romaine Order, and the cost allocation approved by the Eidsvik Order, and the distribution authorized by the Graybriar Distribution Order, and the forecast fees and costs to address the appeal, is that there will be no distributions made to the Appellants in the receivership proceedings. As a result, the Appeal is moot.

**Material or evidence to be relied on:**

8. The Memorandum of Argument of the Receiver.
9. The Sixth Report of the Receiver.
10. Such other materials as Counsel to the Receiver may advise and this Honourable Court may permit.

**Applicable Acts, regulations and rules:**

11. *Alberta Rules of Court*, Alta Reg 124/2010, r 14.42 and 14.74(b).
12. Such other applicable Acts, regulations, and rules, as Counsel to the Receiver may advise and this Honourable Court may permit.