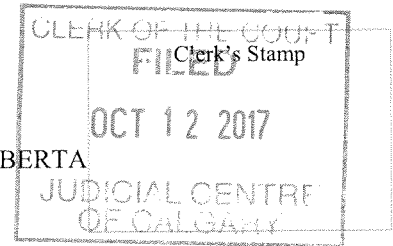


COURT FILE NUMBER 1401 - 12431  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF ACCESS MORTGAGE CORPORATION (2004) LIMITED  
DEFENDANT ARRES CAPITAL INC.  
DOCUMENT **FIRST REPORT OF THE RECEIVER**



ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**October 11, 2017**

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## INTRODUCTION

1. On July 26, 2017, the Court of Queen's Bench of Alberta (the "**Court**") entered an Order (the "**Receivership Order**") whereby Alvarez & Marsal Canada Inc. ("**A&M**") was appointed receiver (the "**Receiver**") of Arres Capital Inc. ("Arres", the "**Company**" or the "**Debtor**") pursuant to Part 9 of *Civil Enforcement Act* ("**CEA**"), R.S.A. 2000, c. C-15. The effective date of the Receivership Order (date of pronouncement) was February 13, 2015 (the "**Receivership Proceedings**").
2. Pursuant to paragraph 2 of the Receivership Order, the Receiver is appointed, without security, of all the Company's current and future Exigible Property, as defined in the Receivership Order, wherever situated, including all proceeds thereof. For purposes of the Receivership Order, "Debtor's Property" shall mean all of the property of the Company, of every nature or kind whatsoever, including without limitation, real property and personal property, interests in mortgages, debt instruments, security agreements, negotiable instruments, accounts receivable, and cash, whether held legally by or beneficially for the Company and whether or not such property has been assigned or purposed to have been assigned by the Company property of the Company to any third party since May 1, 2009.
3. Subject to the Receiver's determinations in paragraph 4 of this Order (as discussed in greater detail in this report), the Company shall have sole authority to operate and conduct its business including the administration of trust agreements and mortgage administration agreements that may currently be in force and to prosecute actions as a plaintiff or defend actions brought against the Company. In the event of a disagreement as to whether or not a trust agreement or mortgage administration agreement may currently be in force, the Receiver shall be at liberty to apply to the Court for advice and directions.
4. Pursuant to paragraph 3 of the Receivership Order, "Exigible Property" shall mean any of the Company's Property that the Receiver has determined is not

exempt from writ proceedings or distress proceedings (collectively, the “**Property**”).

5. The Receiver, with the assistance of its counsel, has now determined that for purposes of the Receivership Order, all of Arres Property is considered “Exigible Property” and as such, the Receivership Proceedings are an “all asset” receivership. This determination of the Receiver is supported by the Applicants (Access Mortgage Capital (2004) Inc. (“**Access**”), but is not supported by Arres.
6. On July 26, 2017, the Court also granted an Order (the “**Bankruptcy Order**”) to adjudge Arres into Bankruptcy and A&M was appointed as trustee (the “**Trustee**”) of the estate of the Arres, without security. On August 4, 2017, counsel to Arres filed a civil notice of appeal to the Court of Appeal of Alberta to have the Bankruptcy Order set aside and otherwise dismissed. Accordingly the Bankruptcy Order is stayed and A&M is taking no steps in the bankruptcy. A copy of the Bankruptcy Order and Civil Notice of Appeal is attached as Appendix A to this Report.
7. The purpose of this first report of the Receiver (the “**First Report**” or “**this Report**”) is to provide this Honourable Court with information in respect of the following:
  - a) a brief overview and update of Arres since July 26, 2017;
  - b) the activities, generally, of the Receiver since July 26, 2017;
  - c) the cash flow for the period from July 26, 2017 to October 6, 2017 (the “**Reporting Period**”) and forecast fees and costs of the Receiver;
  - d) the Receiver’s determination of Exigible Property;
  - e) the Receiver’s request for advice and direction from this Honourable Court with respect to amending the current Receivership Order to the Alberta Model Order based on its determination of Exigible Property;

- f) the Receiver's recommendations with respect amending to amending the current Receivership Order to the Alberta Model Order; and
  - g) the Receiver's next steps.
8. Capitalized words or terms not defined or ascribed a meaning in the First Report are as defined or ascribed a meaning in the Receivership Order.
9. All references to dollars are in Canadian currency unless otherwise noted.

### **TERMS OF REFERENCE**

10. In preparing this First Report, the Receiver has relied primarily upon the representations of Arres' management, stakeholders involved in various Arres' projects, as well as certain financial information contained in Arres' books and records. The Receiver has not performed an audit, review or other verification of such information.

### **BACKGROUND**

11. Arres is a corporation registered to carry on business in the Province of Alberta and is owned 100% by Mr. Wesley Serra. Arres is also registered to carry on business in the Province of British Columbia and operates under the name Western Arres Capital Inc. (collectively referred to as "Arres"). Western Arres Capital Inc. is an assumed name of Arres Capital Inc. for the purposes of section 26 of the Business Corporations Act (British Columbia) and is not a separate legal entity.
12. Arres is a full service mortgage brokerage firm specializing in unconventional financing solutions, which would include but not limited to all types of residential and commercial, first and second mortgages, builders mortgages, debt consolidations and interim financing. As part of its business, Arres arranges mortgage loans with borrowers, raises the mortgage funds through a group of private investors and then administers the mortgages (trustee) on behalf of the investors.

13. Arres acts as a trustee and is a registered mortgage broker for certain projects in British Columbia and also has interests in various other projects in Alberta, but is currently not registered as a mortgage broker in Alberta.
14. Further background to Arres and its operations is contained in the materials filed in support of and relating to the Receivership Order. These documents and other relevant information has been posted by the Receiver on its website at: [www.alvarezandmarsal.com/arrescapital](http://www.alvarezandmarsal.com/arrescapital) (the “Receiver’s Website”).

## **OVERVIEW OF ARRES**

### **Location**

15. Arres’ head office is located in Alberta at 126 Spring Valley Way S.W., Calgary, Alberta at the personal residence of Mr. Wes Serra. The Receiver met with Mr. Serra and gained access to Arres’ head office on August 1, 2017. Mr. Serra and his associate assisted the Receiver in identifying and securing all of the books and records of the Company from August 1 to 4, 2017. The Receiver was unable to gain access to Arres’ office on July 26, 2017, as Mr. Serra was not available to allow the Receiver access to his personal residence until this point due to personal family matters.

### **Books and Records**

16. The physical files collected by the Receiver from Arres were stored in various banker boxes and filing cabinets located in Mr. Serra’s garage (personal residence) and were in no particular filing order. The files that were collected mainly included various trust agreements, loan administrative agreements, banking records and limited financial statements and other information.
17. The electronic files of Arres were stored on one computer hard drive, which was a “shared” hard drive that contained certain personal information of Mr. Serra and books and records of his other companies. The Receiver engaged the services of an accredited IT forensic specialist to obtain a forensic and/or logical image of all

the electronically stored information from the computer hard drive and Mr. Serra's smart phone. In addition, the Receiver obtained a working copy of the Company's electronic data that related solely to Arres, which included a copy of the Company's accounting information.

18. It was agreed with the Company and its counsel that the Receiver's IT specialist contractor would be allowed to download all of the information from the Arres hard drive and smart phone, but access to this information could only be retrieved once a protocol was established between the parties on how and what type of information can be extracted (i.e. only Arres relate information could be extracted). The Receiver anticipates establishing such a protocol with Company's counsel in the coming weeks.

### **Projects**

19. The Receiver understands that there are several "projects" where Arres raised mortgage funds for borrowers from a group of investors and then (in certain cases) administered these mortgages (as a trustee) on behalf of the various investors over the years.
20. The following is a list of projects that Mr. Serra believes Arres still has an interest in. In particular, Mr. Serra believes he is still owed monies with respect to outstanding brokerage fees, renewal fees, interests and other costs, in Arres' capacity as the administrator of these loans and/or trustee:
  - a) Graybriar Greens Inc. ("**Graybriar**")
  - b) Jervis Inlet Resort ("**Jervis**")
  - c) Coppertree Meadows - Millet ("**CT Millet**")
  - d) Copper Oaks – Millet ("**CO Millet**")
  - e) Copperhorn Chateau ("**Chateau**")

- f) Copperhorn Chalets Koeller-Holms (“**Koeller**”)
- g) Timber Creek Mobile Home (“**Timber Creek**”)
- h) Chestermere - Dockman & Associate (“**Dockman**”)
- i) Strathmore (“**Strathmore**”); and
- j) Okanagan Hills Corporation Ltd. (the “**Rise**”)

(collectively referred to as the “**Projects**”)

- 21. The Receiver understands that the majority of these Projects have either been sold and/or Arres is no longer the trustee or broker on these projects, with the exception of a few of the Projects.
- 22. The Receiver is currently reviewing in greater detail Arres’ interest in the Projects. Based on the Receiver’s preliminary review, and for the reasons further explained below, the Receiver believes that any interest Arres has with respect to the Projects is considered Exigible Property for purposes of the Receivership Order.

### **Purported Project Receivables**

- 23. Since the date of the Receivership, the Receiver has met with Mr. Serra and his associate on several occasions and enquired about the operations of the Company to obtain an understanding of the relationship between Arres, the Projects and the investors involved on these Projects. Arres provided the Receiver with multiple files and documents to review, which included several, Microsoft excel files that identified and calculated what Mr. Serra believes is owing to Arres with respect to various brokerage fees, interest and costs from the above-mentioned Projects (the “**Purported Project Receivables**”).
- 24. The total outstanding obligations Mr. Serra believes is owing to Arres with respect to the Purported Project Receivables total approximately \$21.2 million.



As discussed further below, the Receiver has not been able trace the Purported Project Receivables to the Company's accounting records and/or to any of physical back-up (invoices), other than certain of the trust agreements that outline specific fees, costs and interest % rates Arres may be permitted to charge investors. The various fees, interest and costs calculated on the excel files with respect to the Purported Project Receivables dates back largely to July 2008 and is calculated to May 2017.

25. The Receiver provided a copy of the various excel files that calculate the Purported Project Receivables to Access for their comment. Access and certain of its investors advise that they strongly disagree as to the accuracy of Mr. Serra's position that the Purported Project Receivables are valid and collectible. Access and various other investors advised the Receiver that they were never provided invoices, accounting information, etc. from Arres to substantiate these claims that are alleged to have occurred several years ago. Access is currently an investor on various projects Arres (among other independent investors) has or had an interest in and/or when Arres was the trustee and/or loan administrator on certain of the Projects. The Purported Project Receivables are amounts Mr. Serra is claiming to be owed by its investors on the various Projects, which include Access as an investor.
26. The Receiver continues to review the Purported Project Receivables identified on the excel files provided by Mr. Arres to determine their validity and collectability. In particular, the Receiver is attempting to locate physical documents (i.e. invoices, etc.) that should have been sent to its investors to substantiate the receivables outstanding, but has not been able to locate these documents to date. The Receiver cautions that it currently has no authority to recover on these assets because it does not have the power under the Receivership Order, to initiate, prosecute or defend proceedings involving the Company or to enforce any rights (by way of example, security or set-off rights) that the Company may have in respect of such assets.

## Accounting Records

27. As discussed above, the Receiver continues to review the accounting records of Arres. Based on the Receiver's preliminary review, the books and records are incomplete and are not up to date.
28. The last set of financial statements prepared by Arres, which the Receiver has in its possession, was for year-ending July 31, 2013. A copy of these financial statements is attached as Appendix B to this Report.
29. The Receiver further reviewed the electronic accounting records of Arres and based on its preliminary review of these records, the last accounting entries recorded by Arres in the accounting system were on July 31, 2014. The Receiver was able to generate Arres' balance sheet as at July 31, 2014 from its electronic accounting records and this statement is attached as Appendix C to this Report. The Receiver is not confident that the financial figures identified in the July 31, 2014 balance are accurate and complete. Notwithstanding, the following are highlights of Arres' internal July 31, 2014 balance sheet:
  - a) Assets: no cash, no Purported Project Receivables or other accounts receivables, approximately \$13,300 net book value in fixed assets (computers); and a large significant "due from" Arres Holdings (a related company owned by Mr. Serra) of approximately \$337,000; and
  - b) Liabilities: approximately \$309,000 and \$99,400 "due to" Arres Holdings Inc. and Arres Management Inc. (related entities), respectively, and certain miscellaneous liabilities totaling approximately \$14,000.
30. Based on July 31, 2014 balance sheet, it would appear that the Purported Project Receivables, which includes certain assigned account receivables as discussed below, is not recorded in the Company's accounting records. In addition, the outstanding obligation (judgement creditor) of Access for approximately \$1

million (as discussed below) is also not recorded in the Company's books and records.

31. The Receiver will continue its review the accounting records of Arres to determine the validity and collectability of the Purported Project Receivables and/or any other receivables or assets of Arres.

## **Access Judgement and Assignments**

### Overview

32. Access obtained summary judgment order against the Debtor on May 24, 2013, in the amount of approximately \$1.028 million, less any amounts that had been paid by the Debtor to the Plaintiff. The Debtor's appeal of the summary judgement order was dismissed on September 29, 2014. A copy of the summary judgement order, appeal of the summary judgement order and the memorandum of judgement issued by the Court of Appeal of Alberta are attached as Appendix D to this Report.
33. On November 8, 2013, the Receiver understands that Arres prepared written communication to Access and/or its investors advising that the Company did not have enough equity to satisfy the "summary judgement" of ~\$1 million and that based on historical information, the Company does not anticipate having cash flow that will satisfy the judgement after operating costs. A copy of the Arres communication is attached as Appendix E to this Report.
34. On October 20, 2014, Mr. Serra (a representative of the Debtor) reported on a statutory declaration, pursuant to section 35.10 of the CEA, indicating that Arres has a significant asset of outstanding accounts receivables owed to the Company of approximately \$9.7 million from the various Projects. A copy of the statutory declaration is attached at Appendix F to this Report. The Receiver understands that there is currently a dispute between the Plaintiff and the Debtor relating to the \$9.7 million in accounts receivables. In particular, the \$9.7 million listed on the statutory declaration form was purportedly assigned either to Mr. Serra's spouse,

a corporation controlled by Mr. Serra's spouse or a third party, as discussed further below. The dates of these "assignments" were made in the period March 2010 to July 2012, which was prior to the statutory declaration being made by Mr. Serra (the "**Assigned AR**"). The statutory declaration makes no mention that these receivables were assigned to a third party and therefore are not assets of the estate. The Receiver is advised by Mr. Serra that the Assigned AR forms part of the Purported Project Receivables.

### Assignments

35. As discussed above, the Receiver is in possession of various assignments made by Arres to his wife and/or a company owned and controlled by her (875892 Alberta Ltd.) and another party since March 2010 to July 2012 with respect to the various project receivables, which largely relate to the Purported Project Receivables and Assigned AR (the "**Assignments**"). A copy of the Assignments are attached as Appendix G to this Report. Based on the Receiver's initial review of the attached Assignments, any or all monies that are owed on certain project receivables were assigned to Ms. Serra, 875892 Alberta Ltd. and/or another third party. The Assignments would suggest that the total payment and/or consideration given by Ms. Serra or her Company totalled approximately \$776,000, but the Receiver has not been able to confirm if payment was actually received by Arres.
36. Pursuant to paragraph 4 of the Receivership Order, the Receiver is to inquire and determine the extent to which any property owned by Arres or in which property that Arres as an interest in has been assigned to any third party and the validity and priority of these Assignments.
37. The Receiver requested Mr. Serra and his associate to assist in providing the Receiver with specific supporting information to determine whether the consideration paid regarding the Assignments (if any) was paid by Ms. Stacia Serra (who the Receiver understands is Mr. Wes Serra's spouse), 875892 Alberta Ltd. or the other third party for these Assignments. The Receiver was advised by of Mr. Serra that Ms. Serra and/or her 875892 Alberta Ltd. provided significant

funding and/or advances of cash to Arres over the years for its operations and the Assignments were appropriate for the consideration received by these parties. The Receiver has not yet been provided with this information or documentation from Mr. Serra showing that these advances were made to determine the validity and total quantum of these considerations made by Mr. Serra's wife, her company or the third party. Further, the Receiver has not yet been able to identify independently by reviewing the books and records of the Company if these advances/payments were made by Ms. Serra, 875892 Alberta Ltd. or the third party. The Receiver will continue to review the books and records in this regard and as required pursuant to paragraph 4 of the Receivership Order. If the Assignments are valid and enforceable and proper consideration is due to Arres, pursuant to the Assignments the estate will be entitled to collect any amounts that remain due to Arres from the Assignments. Alternatively, if it is determined that the Assignments are not valid and enforceable and/or proper consideration was not paid to Arres in respect of the Assignments, the estate will be entitled to collect the Purported Project Receivables (which includes the Assigned AR) or advance a claim relating to the improper assignment of the Purported Project Receivables (and Assigned AR) through the Assignments. The Receiver again cautions that, in either scenario it may be necessary to initiate legal proceedings or compromise claims to secure recovery and the Receiver does not presently have any authority under the Receivership Order to pursue recovery (should it determine it is required for the general benefit of all stakeholders) on these assets.

38. On September 29, 2017, the Receiver was copied on communication between Mr. Serra and the Trustee on the Rise Project, further requesting clarification on purported amounts outstanding to Mr. and Ms. Serra and to also advise that an additional assignment of Arres' brokerage and other fees from Arres to both Wes Serra and Ms. Serra was executed. These assignments were made on September 27, 2017 and January 1, 2009 (the "Rise Assignments"). A copy of the Rise Assignments is attached as Appendix H to this Report. The Receiver has not reviewed the Rise Assignments in detail as to its validity and priority, but again, the Receiver cautions that it does not presently have any authority under the

Receivership Order to prevent Mr. Serra in further making assignments on behalf of Arres to himself, Ms. Serra or any other third party.

### **Corporate Minute Book**

39. On September 20, 2017, legal counsel to Arres delivered to the Receiver the corporate minute book of Arres. The Receiver continues to review the corporate minute book and other information provided by its counsel. Upon initial review of the corporate minute book, the Company filed, among other things, a ‘Resolution of the Sole Director of Arres Capital Inc.’ with respect to approving the corporations’ financial statements for multiple fiscal year ends, including fiscal year-end 2014 through to 2017. The fiscal year-end financial statements as at July 31, 2017 appear to have been approved by Arres Capital Inc. on September 20, 2017 (after the date the Receivership Order was granted on July 26, 2017). On September 22, 2017, the Receiver asked Mr. Serra and its counsel if they could provide a copy of the financial statement and accounting information (if it exists) relating to fiscal year ends 2014 through to 2017 to support the executed “resolutions”, as discussed above. The Receiver has not yet received a response specifically on this request.
  
40. The Receiver understands that another set of corporate minute books is located with Arres’ counsel in British Columbia. The Receiver has been in contact with Arres’ counsel and is attempting to make arrangements for the delivery of these records to the Receiver. Due to the amount of information requested and required to be delivered by the Receiver, counsel to Arres indicated that although he was willing to assist the Receiver in its request, counsel to Arres would require confirmation that the Receiver would pay for the time spent by counsel in retrieving this information. The Receiver cautions that it currently does not have sufficient funds available to fulfil this request, nor does it presently have the power to borrow funds to pay such costs (and other costs) pursuant to the Receivership Order.

## INITIAL ACTIVITIES OF THE RECEIVER

41. Since the July 26, 2017, the Receiver's activities have included the following, but are not limited to:

- a) attending the head office location of Arres located at Mr. Serra's personal residence and taking possession and control of the books and records, as well as obtaining a copy of all known electronic copies of accounting software and other electronic information from Arres computer hard drive;
- b) confirming all known corporate bank accounts of Arres and providing the respective bank representatives to determine if any funds were available to be forwarded to the Receiver's trust account. The Company current has two bank accounts that are both in minor overdraft positions. The accounts have been frozen for "deposit only";
- c) reviewing Arres' various trust agreements with respect to the Projects and organizing the books and records of Arres;
- d) engaging the services of an IT forensic accountant to "ghost image" Arres' computer hard drive and smart phone;
- e) attending multiple meetings with representatives of Arres, Access and other Project investors with respect to Arres' operations;
- f) attending a meeting with the board of the Rise to gain a better understanding of Arres' involvement on this project and obtain information that refutes the Purported Project Receivable with respect to the Rise;
- g) multiple calls with the borrower, Mr. Serra, Access and other investors and interested parties with respect to the Jervis Property. The Receiver is advised that a potential offer(s) is coming on the

Jervis Property and given Arres' role as trustee on the file, the borrower is seeking advisement as to the Receiver's ability to accept an offer on the Property. Currently, the Receiver does not have the authority to sell or convey the Jervis Property or to apply for vesting orders in respect of any such transactions pursuant to the Receivership Order. Obtaining such authority to sell, convey and/or apply for a vesting order may bring significant realizations into the estate with respect to the collections of outstanding fees and costs of Arres as trustee of the Jervis Property for the general benefit of all stakeholders;

- h) entertaining multiple calls from Access, Arres and the Township of Radium Hot Springs (the "**Township**") with respect to delinquent property taxes outstanding on the Timber Creek property. The Receiver understands that the only interest Arres has in this property is for unpaid trust agreements fees and costs and if the delinquent taxes were not paid by September 25, 2017 at 10am PT, the Timber Creek property would be placed up for immediate tax sale. The delinquent tax outstanding was approximately \$3,600. The owner of the property (the borrower) is 0731543 BC Ltd., which the Receiver is advised by Mr. Serra is owned by Ms. Stacia Serra; however, the Receiver has not been able to confirm this yet in reviewing the BC corporate minute books. Mr. Wes Serra did advise that he will arrange to pay these taxes prior to the tax sale deadline; however, out of abundance of caution and to preserve the value on the Timer Creek Property, the Receiver decided to pay these delinquent taxes by close of Friday, September 22, 2017. This payment was supported by the Applicant (Access). As at October 11, 2017, the Township advised that no other payment was received for outstanding taxes, other than the payment made by the Receiver.



- i) organizing, analyzing, and evaluating the books and records as well as information pertaining to the various Arres projects;
- j) retaining and providing instructions to the Receiver's independent legal counsel, McCarthy Tetrault LLP ("**McCarthy**"), in respect of the Receivership Proceedings, generally; and
- k) attending numerous and on-going meetings and discussions with the Debtor, Access and their respective legal counsels regarding the Receivership Proceedings, generally, and discussion on the Receiver's interpretation of Exigible Property.

### **Employees and Consultants**

42. The Receiver understands that there are no employees of Arres, but only one contractor on a part-time basis. Pursuant to the Receivership Order, Arres continues to "operate" the Company and the Receiver has not retained nor terminated any contractors of Arres at this time.

### **Canada Revenue Agency (Priority Claims)**

43. The Receiver is advised by the Canada Revenue Agency ("**CRA**") that Arres has a GST account but does not have any GST remittances outstanding. In addition, the Receiver confirmed that there is no payroll account opened with CRA and the last filed corporate tax return filed is year-ending July 31, 2015. The Receiver is currently in possession and will be reviewing a copy of this tax return and certain prior year tax returns for the inclusion of any or all accounts receivables and other financial information.

### **Statutory Mailing by Receiver**

44. The Receiver has completed and delivered the notice required by sections 245 and 246 of the BIA (the "**Receiver's Statement**") to Arres' known creditor and the Trustee in Bankruptcy (A&M) on August 4, 2017. The Receiver understands that although the Receiver is not appointed pursuant to the BIA, the Receiver is

subject to the requirements of Part XI of the BIA by operation of section 243(2)(b)(ii) of the BIA, including the requirement to file a statement for the purposes of section 246 of the BIA. Section 125(b) of the Bankruptcy and Insolvency General Rules requires that this statement include the book value of each item of the Exigible Property that is possessed or controlled by the Receiver.

45. A copy of the Receiver's Statement can be found on the Receiver's Website and is attached as Appendix I to this Report.

### **Corporate Insurance**

46. The Receiver is advised by Mr. Serra that the Company does not have, nor requires corporate insurance with respect to its operations.

## **RECEIPTS AND DISBURSMENTS – JULY 26, 2017 TO OCTOBER 6, 2017**

### **Overview**

47. The following is a statement of the Receiver's receipts and disbursements during the Reporting Period:

Arres Capital Inc. - In Receivership		
Statement of Receipts & Disbursements		
CAD\$, unaudited		
July 26, 2017 - October 6, 2017		
	Notes	Total
<b>Opening Cash Balance</b>		\$ -
<b>Receipts</b>		\$ 65,000
		<b>\$ 65,000</b>
<b>Disbursements</b>		
Storage costs		\$ 252
Contractor services		\$ 260
Municipal property taxes		\$ 3,576
General & Administrative		\$ -
Professional Fees		\$ -
GST Paid		\$ 26
		<b>\$ 4,113</b>
<b>Remaining Balance</b>		<b>\$ 60,887</b>

48. There was no opening cash available as at July 26, 2017. Mr. Serra advised that its two bank accounts did not contain any cash balance. The Receiver verified this with the bank, froze Arres' operating bank account effective on the July 26, 2017 (for "deposit only") and opened a new Receiver's trust bank account.
49. The Receiver collected \$65,000 in receipts owing to Arres with respect to a settlement agreement between Arres and another party prior to the Receivership Proceedings. Arres and its counsel, Access and its counsel did not object that these funds could be delivered to and used by the Receiver for its purposes and pursuant to the Receivership Order. The Receivership Order does allow for the Receiver to collect upon any or all receipts due to Arres.
50. The Receiver disbursed approximately \$4,100, as follows:
- a) Approximately \$250 in storage costs to store the books and records of Arres at a secure storage facility;

- b) \$260 in contractor service fees with respect to the moving of the books and records to the storage facility;
- c) Approximately \$3,600 in delinquent property taxes outstanding with respect to the Timber Creek Project, as discussed above. The Receiver understands that there remains a further \$7,539.00 in outstanding property taxes (not delinquent taxes) relating to 2016 and 2017. The Township advises that if the 2016 property taxes of approximately \$3,800 are not paid by January 2018, these arrears will move to “delinquent status” and the property will be subject to tax sale again in September 2018 (while accruing interest and penalties); and
- d) There were no professional fees and costs and general administrative expenses paid during the Reporting Period; however, amounts were incurred during the Reporting Period and are expected to be paid in the coming weeks, as discussed further below.

51. Total cash on hand held by the Receiver as at October 6, 2017 is \$60,877.

#### **Forecast Costs and Funding Requirements**

52. The Receiver has incurred certain fees and costs throughout the administration of the estate that remain unpaid. The fees and costs incurred, but not paid, total approximately \$86,500 (before GST), which largely relate to the following:

- a) Storage, transportation and accounting software fees of approximately \$1,100;
- b) IT specialist fees and costs of approximately \$3,500; and
- c) Outstanding professional fees and costs of the Receiver and its legal counsel for the period July 26, 2017 to September 30, 2017 of approximately \$82,000, broken down as follows:

- i. Receiver's fees and costs of approximately \$52,000, which relates to fees and costs incurred during the period of September 1 to 30, 2017. After the Reporting Period, the Receiver received payment directly from the Applicant for its first invoice for covering the period July 26 to August 31, 2017 of approximately \$52,279.
  - ii. McCarthy fees and costs of approximately \$30,000, which comprises of its first invoice for August 2017 of approximately \$9,000 and another invoice for September 2017 of approximately \$21,000.
53. As previously discussed, the Receiver currently does not have adequate funds available to cover the current and future costs to administer this estate in the Receivership Proceedings.
54. The Receivership Order currently does not provide the authority for the Receiver to borrow funds to operate the business, pursue recovery on the Exigible Property or otherwise fund the ongoing administration of the estate of the Debtor.
55. If the Receiver is unable to borrow or secure funding to administer the estate and seek to maximize realizations for the stakeholders, the Receiver may have no alternative but to terminate its review of its continued review of the Exigible Property pursuant to the Receivership Order and apply for its immediate discharge.

#### **EXIGIBLE PROPERTY DETERMINATION**

56. Paragraph 4 of the Order requires the Receiver to determine and calculate which of the Debtor's Property is Exigible Property.
57. The Receiver, in consultation with its legal counsel, has determined that the Exigible Property consists of all the assets, properties and undertakings that the Debtor has an interest in. In particular, the Exigible Property includes any (a) debts payable to Arres and (b) causes of action. A memorandum prepared by the

Receiver's legal counsel, which concludes that the Exigible Property consists of all the Debtor's assets, properties and undertakings, including, without limitation, all rights that the Debtor has arising under trust agreements and loan administrative agreements, is attached as Appendix J to this Report.

58. As previously discussed above, the Receiver has calculated the book value of the Exigible Property based on the information available in the books and records of the Debtor and as required by the Bankruptcy and Insolvency Act and is included in this Report (Appendix I).

59. The Receiver has also made inquiries in respect of the specific factors enumerated in paragraph 4 of the Order in the time period May 1, 2009 and following. The Receiver reports to this Honourable Court on those inquiries as follows:

a) an initial listing of all the property that the Receiver has been able to identify as being owned by the Debtor or which the Debtor has a potential interest in is listed above and defined as Property. In addition, the Receiver identified the receivable collected as identified in the statement of receipts and disbursements. Lastly, the Receiver may also have a property interest in the form of either a right to be paid amounts due on the Purported Project Receivables (including the Assigned AR) or a cause of action on the Assignments, depending on the results of the continuing investigation regarding the Purported Project Receivables and Assignments;

b) the Receiver is in possession of records that evidence an assignment of accounts receivable due to the Debtor in certain mortgage investments to third-parties (i.e. the "Assignments" and the "Rise Assignments"). The Assignments occurred in the period March 2010 to July 2012, whereas the Rise Assignments occurred largely on January 1, 2009 and September 27, 2017. As discussed above, it is unclear as to whether consideration was exchanged in respect of the Assignments or whether the Debtor has collected any consideration

that was due to it pursuant to the Assignments. The Receiver understands the assignee is the spouse of Mr. Serra, who is the sole director and officer of the Debtor, and a numbered company (875892 Alberta Ltd.) that is controlled by Ms. Serra and a third party. A copy of the 875892 Alberta Ltd. corporate search is attached as Appendix K to this Report;

- c) the Receiver has not yet been able to determine the validity or priority of any assignment of the assigned Property that may have been completed, including the Assigned AR with respect to the amounts identified in Mr. Serra's statutory declaration sworn on October 20, 2014;
- d) the Debtor operates as a mortgage brokerage firm and acts as a manager, administrator or trustee for persons who have an interest in mortgages issued by the Debtor. As noted above, the Receiver has not yet been able to determine the validity or priority of any assignment of the assigned Property that may have been completed. The Receiver does note that, on the information presently known to it, an assignment made to a related party would not appear to be a transaction made in the ordinary course of the Debtor's business; and
- e) the Receiver has no ability to enforce any rights of the Debtor on valid accounts receivable owed to the Debtor on the current terms of the Order (and regardless of same arise through ordinary course business transactions or transactions giving rise to litigation claims).

60. The Receiver notes that, on the current terms of the Order, it is unable to secure funding to undertake further investigation on these or related issues relating to the Exigible Property or to pursue recoveries on any litigation claims that may comprise part of the Exigible Property.

## ADVICE AND DIRECTION ON MODEL ORDER

61. The Receiver is seeking advice and direction with respect to its application to amend the Receivership Order to a form of order based on the Alberta Model Order (the “**Model Order**”).
62. The Receiver has the following concerns in respect of the current version of Receivership Order:
  - a) As required by the Receivership Order, the Receiver has determined, based on advice from its legal counsel, that all of Debtor’s Property constitutes the Exigible Property. The Receiver therefore is in a situation where it is or should be administering all the assets of the estate but does not have the standard powers provided to it under the Receivership Order;
  - b) the Debtor’s right to operate and conduct its business under the Order is “...*subject to the Receiver’s determinations in paragraph 4 of this Order.*” The Receiver is of the view that it has made such determination as explained in this Report. The Receiver therefore has a duty to consider whether it is in the interests of stakeholders to operate the business, but it does not have the authority to do so under the Receivership Order. By extension, the Receiver does not have the express authority to take basic steps that may be required to operate the business, such as entering into agreements or incurring ordinary course obligations. As discussed above, Mr. Serra continues to act on behalf of the Company, communicate to various stakeholders directly and execute documents (i.e. “Resolutions” and the “Rise Assignments”) on behalf of Arres. Finally, and while the Receivership Order suggests that the Receiver is to operate the business after making the Exigible Property determination, the Receiver does not have the express authority to cease to operate the



business even though the Receiver may determine that same is an advisable course of action;

- c) it is evident that at least a portion of the Exigible Property, and potentially a significant and valuable portion of the Exigible Property, consist of intangibles in the form of either accounts receivable or litigation claims. The Receiver currently has no ability to recover on these assets because it does not have the power to initiate, prosecute or defend proceedings involving the Debtor or to enforce any rights (by way of example, security or set-off rights) that the Debtor may have in respect of such assets. For clarity, the Receiver does not seek the authority to settle or compromise claims between the plaintiff and the defendant unless further authorized by order of this Honourable Court;
- d) the Receiver does not have the authority to sell, convey, lease or assign the Exigible Property or to apply for vesting orders in respect of any such transactions. In the course of administering the Exigible Property, the Receiver may determine that certain of the Exigible Property should be sold, transferred or conveyed if it will maximize value for stakeholders but the Receiver is unable to complete such transactions on the current terms of the Receivership Order;
- e) the Receiver does not have the authority to borrow funds to operate the business, pursue recovery on the Exigible Property or otherwise fund the ongoing administration of the estate of the Debtor;
- f) there is only a limited stay of proceedings imposed on three Alberta Court of Queen's Bench actions and there is no stay of any type in respect of the Exigible Property. The Receiver therefore faces the circumstance where an action or proceeding may be commenced against the Debtor or involving the Exigible Property and the Receiver will have neither:

- i. the authority to respond to such proceedings; or
  - ii. funding to protect the Debtor and the Exigible Property in such proceedings;
63. Due to the foregoing issues, the Receiver does not believe that it can properly administer the estate of the Debtor on the current terms of the Receivership Order. In particular, the Receiver is concerned that the Exigible Property is at risk of a material and irreparable loss of value if the relief sought by the Receiver amending the Receivership Order to a form based on the Model Order is not granted. Any uncertainty on either the scope of the Exigible Property or the Receiver's authority to act in respect thereof will result in significant and unnecessary increased cost in the administration of the estate of the Debtor.

## **RECOMMENDATIONS**


64. The Receiver's recommendation to amend the Receivership Order to the Model Order is, in addition to the concerns expressed above, either based upon or following:
  - a) receiving advice from its legal counsel;
  - b) consulting with representatives of both the plaintiff and the Debtor;
  - c) its past expertise in administering estates of debtor companies as a licensed trustee in bankruptcy under the BIA;
  - d) its review and identification of the Exigible Property and the steps it anticipates will be required to preserve and protect the Exigible Property as it continues the administration of the estate of the Debtor; and
  - e) its view that an amendment to the Order to a form of order based on the Model Order will maximize recoveries for creditors and is in the best interests of the Debtor and its various stakeholders.

## RECEIVER'S NEXT STEPS

65. The Receiver will continue to complete the remaining reporting requirements pursuant to paragraph 4 of the Receivership Order, in particular, reviewing the validity, priority and existence of the Assigned AR, Purported Project Receivables and the various assignments.
66. The Receiver will require the continued funding from the Applicants to pay for administration of the estate pursuant to paragraph 24 of the Receivership Order. It is the Receiver's respectful preference for this Honourable Court grant a Borrowing Charge to allow the Receiver to borrow monies pursuant to a Receiver's Certificate to ensure it has the available funds to pay ongoing costs to administer the estate and to also provide an appropriate charge over the Company's assets to protect the Applicants interests while it continue to funds the administration of the estate.

All of which is respectfully submitted this 11<sup>th</sup> day of October, 2017.

**ALVAREZ & MARSAL CANADA INC.,  
in its capacity as Receiver of Arres Capital Inc. and not in  
its personal or corporate capacity**



Tim Reid, CPA, CA, CIRP, LIT  
Senior Vice-President



Orest Konowalchuk, CPA, CA, CIRP, LIT  
Vice-President

## APPENDIX A

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

I hereby certify this to be a true copy of the original order of which it purports to be a copy.  
Dated this 26 day of July 2017  
for Registrar at Calgary  
Registrar at Calgary  
Bankruptcy Division of the  
Court of Queen's Bench of Alberta

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

**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

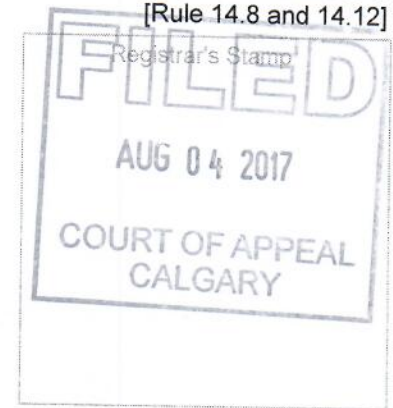
"K.M. Eldsvik"

# 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:

PELLETIER LITIGATION  
Bow Valley Square II  
#3300, 205 - 5th Avenue SW  
Calgary, AB T2P2V7  
T. 403.407.2600  
F. 403.407.2601

Ryan P. Pelletier  
D. 403.407.2630  
E. [rpelletier@pelletierlitigation.ca](mailto:rpelletier@pelletierlitigation.ca)  
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  
F. 403.648.1151

Jeffrey Oliver  
D. 403.351.2921  
E. joliver@casselsbrock.com  
File. 50107-1

*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

**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"

## **APPENDIX B**

**ARRES CAPITAL INC**  
**Financial Statements**  
**Year Ended July 31, 2013**  
*(Unaudited - See Notice To Reader)*

**ARRES CAPITAL INC**  
**Index to Financial Statements**  
**Year Ended July 31, 2013**  
*(Unaudited - See Notice To Reader)*

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	Page
NOTICE TO READER	1
FINANCIAL STATEMENTS	
Balance Sheet	2
Statement of Income and Deficit	3
Notes to Financial Statements	4

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**NOTICE TO READER**

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On the basis of information provided by management, I have compiled the balance sheet of Arres Capital Inc as at July 31, 2013 and the statement of income and deficit for the year then ended.

I have not performed an audit or a review engagement in respect of these financial statements and, accordingly, I express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

Calgary, Alberta  
January 8, 2014

CHARTERED ACCOUNTANT



## ARRES CAPITAL INC

## Balance Sheet

July 31, 2013

(Unaudited - See Notice To Reader)

	2013	2012
<b>ASSETS</b>		
<b>CURRENT</b>		
Funds held in trust	\$ 584,994	\$ 775,214
Prepaid expenses	756	584
	<b>585,750</b>	<b>775,798</b>
<b>CAPITAL ASSETS (Note 1)</b>	<b>14,759</b>	<b>15,365</b>
	<b>\$ 600,509</b>	<b>\$ 791,163</b>
<b>LIABILITIES AND SHAREHOLDER'S DEFICIENCY</b>		
<b>CURRENT</b>		
Bank indebtedness	\$ 698	\$ 13,669
Accounts payable	25,748	42,379
Income taxes payable	21,024	-
Due to related parties	17,379	40,970
Funds held in trust	584,994	775,214
	<b>649,843</b>	<b>872,232</b>
<b>LONG TERM DEBT</b>	<b>-</b>	<b>96,584</b>
	<b>649,843</b>	<b>968,816</b>
<b>SHAREHOLDER'S DEFICIENCY</b>		
Share capital	3,000	3,000
Deficit	(52,334)	(180,653)
	<b>(49,334)</b>	<b>(177,653)</b>
	<b>\$ 600,509</b>	<b>\$ 791,163</b>

The accompanying notes are an integral part of these financial statements

**ARRES CAPITAL INC**  
**Statement of Income and Deficit**  
**Year Ended July 31, 2013**  
*(Unaudited - See Notice To Reader)*

	2013	2012
<b>REVENUE</b>	<b>\$ 307,076</b>	<b>\$ 215,130</b>
<b>EXPENSES</b>		
Salaries and wages	62,593	112,111
Professional fees	45,584	27,316
Rental	20,815	11,045
Office	8,703	11,168
Interest and bank charges	5,260	12,457
Insurance	4,541	14,994
Memberships	2,009	1,464
Referral fee (recovered)	1,465	(9,991)
Telephone	1,239	1,293
Meals and entertainment	207	-
Management salaries	-	34,000
Amortization	6,515	10,321
	<b>158,931</b>	<b>226,178</b>
INCOME (LOSS) BEFORE INCOME TAXES	<b>148,145</b>	<b>(11,048)</b>
INCOME TAXES (RECOVERED)	<b>19,826</b>	<b>(28,595)</b>
<b>NET INCOME</b>	<b>128,319</b>	<b>17,547</b>
DEFICIT - BEGINNING OF YEAR	<b>(180,653)</b>	<b>(198,200)</b>
<b>DEFICIT - END OF YEAR</b>	<b>\$ (52,334)</b>	<b>\$ (180,653)</b>

The accompanying notes are an integral part of these financial statements

**ARRES CAPITAL INC**  
**Notes to Financial Statements**  
**Year Ended July 31, 2013**  
*(Unaudited - See Notice To Reader)*

**1. CAPITAL ASSETS**

	Cost	Accumulated amortization	2013 Net book value	2012 Net book value
Equipment	\$ 41,630	\$ 33,143	\$ 8,487	\$ 3,961
Computer equipment	121,946	115,674	6,272	11,404
	<b>\$ 163,576</b>	<b>\$ 148,817</b>	<b>\$ 14,759</b>	<b>\$ 15,365</b>

## APPENDIX C

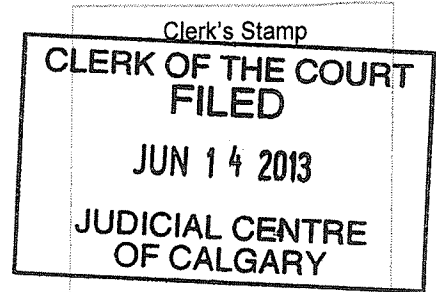
**ARRES CAPITAL INC.**  
**Balance Sheet**  
As of July 31, 2014

11:52 AM  
09/15/2017  
Accrual Basis  
July 31, 14

<b>ASSETS</b>	
Fixed Assets	
Assets	
Computers - 45%	126,246.13
OFFICE FURNITURE & EQUIPMENT	41,630.36
Accum Deprec Computers 45%	-119,678.84
ACCUM DEPRECIATION - OFFICE	-34,840.79
Total Assets	<u>13,356.86</u>
Total Fixed Assets	<u>13,356.86</u>
Other Assets	
Due from Arres Holdings-ASSETS	337,731.85
Total Other Assets	<u>337,731.85</u>
<b>TOTAL ASSETS</b>	<b><u><u>351,088.71</u></u></b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Due from Arres Management Inc	99,416.73
Accrued Liabilities	3,000.00
Referral fee payable	4,320.00
Due to Arres Holding Inc	309,784.69
Promissory Note Payable	100.00
TAX PAYABLE - Federal	5,204.80
TAX PAYABLE - Provincial	1,440.12
Total Other Current Liabilities	<u>423,266.34</u>
Total Current Liabilities	<u>423,266.34</u>
Total Liabilities	<u>423,266.34</u>
Equity	
Retained Earnings	-75,177.63
SHARE CAPITAL Class A & C	3,000.00
Total Equity	<u>-72,177.63</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u><u>351,088.71</u></u></b>

## APPENDIX D

COURT FILE NUMBER 1101-03481  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF(S)/ ACCESS MORTGAGE CORPORATION  
APPLICANT(S) (2004) LIMITED  
DEFENDANT(S)/ ARRES CAPITAL INC.  
RESPONDENT(S)  
DOCUMENT ORDER  
ADDRESS FOR SERVICE BRIAN N. CLARK of CLARK & ASSOCIATES,  
AND CONTACT Solicitor for the Plaintiff  
INFORMATION OF #203, 136--17th Avenue N.E.  
PARTY FILING THIS Calgary, Alberta T2E 1L6  
DOCUMENT Telephone: (403) 520-2011  
Facsimile: (403) 230-3509  
File No.: 3150-1



I hereby certify this to be a true copy of  
the original order  
Dated this 14 day of June 2013  
H. Clark  
for Clerk of the Court

---

DATE ON WHICH ORDER WAS PRONOUNCED: May 24, 2013  
NAME OF MASTER/JUDGE WHO MADE THIS ORDER: Madam Justice S.L. Hunt McDonald  
LOCATION OF HEARING: **Calgary, Alberta**

---

UPON THE APPLICATION of the Plaintiff; AND UPON hearing submissions from Counsel for the Plaintiff and from Counsel for the Defendant;

**IT IS HEREBY ORDERED THAT:**


1. The Plaintiff, Access Mortgage Corporation (2004) Limited, shall have summary judgment as against the Defendant in the sum of \$1,028,879.99, less any amounts that have already been paid and applied by the Plaintiff to reduce the said indebtedness of \$1,028,879.99.
2. In the event the parties are unable to agree on the amount already paid and applied by the Plaintiff to the said indebtedness of \$1,028,879.99, this aspect of the matter shall be set down for an accounting to be done before this Honourable Court.
3. In the event the parties encounter any matters that require clarification or further direction the matter may be brought back to this Honourable Court for determination.
4. The Plaintiff shall be entitled to interest on the judgment amount pursuant to the *Judgment Interest Act*, from and after June 30, 2009.

5. The Plaintiff is entitled to its costs of this action calculated under Column 4 of Schedule "C" of the Rules of Court.

  
Justice of the Court of Queen's Bench of Alberta

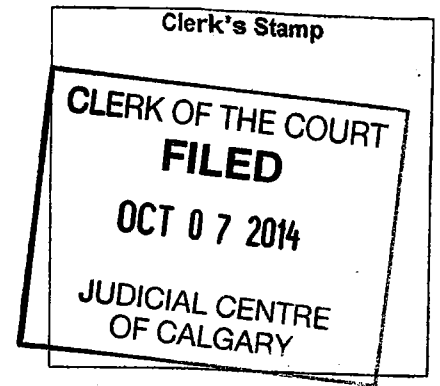
Approved as the Order granted:

BLAKE, CASSELS & GRAYDON LLP

 SEAN FRASER  
for CHRIS PETRUCCI  
Solicitors for the Defendant



COURT FILE NUMBER 1101 - 03481  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF(S) ACCESS MORTGAGE CORPORATION  
(2004) LTD.  
DEFENDANT(S) ARRES CAPITAL INC.



DOCUMENT **Order**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT

Warren Benson Amantea LLP  
Attention: Brian E. Silver  
1413 - 2<sup>nd</sup> Street S.W.  
Calgary, Alberta T2R 0W7  
Tel: 403-228-7007 Fax: 403-244-1948  
File No. 14-0295

I hereby certify this to be a true copy of  
the original order  
Dated this 7 day of Oct 2014  
Kenay B  
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: **September 25, 2014**

NAME OF MASTER WHO MADE THIS ORDER: **Master Andrew Robertson Q.C.**

LOCATION OF HEARING: **Calgary, Alberta**

UPON THE APPLICATION of the Applicant, Arres Capital Inc. ("Arres"); AND UPON having heard representations of the Applicant and the Respondent;

AND UPON hearing read the Application of Arres;

AND UPON hearing read the Order granted by Madam Justice S. L. Hunt McDonald in this action on May 24, 2013 (the "said Order") which granted Summary Judgment to Access Mortgage Corporation (2004) Limited ("Access") against Arres in the sum of \$1,028,879.99 less any amounts that have already been paid and applied by Access to reduce the set indebtedness;

AND UPON hearing read the Consent Order granted by Master J. T. Prowse Q.C., on January 17, 2014;

AND UPON hearing read the Affidavits of Wes Serra, Jim Brander, David Murphy, and Kim Robinson, filed;

AND UPON hearing read the Transcripts from the Oral Questioning of Jim Brander, filed;

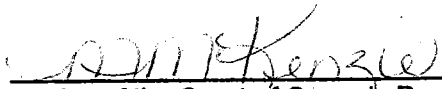
AND UPON hearing read the Briefs filed on behalf of each of Access and Arres with respect to this Application;

AND UPON hearing representation from Counsel for Access and from Counsel for Arres;

AND UPON determining that the Court is functus officio as a result of the said Order having been granted and entered;

**IT IS HEREBY ORDERED THAT:**

1. Arres' Application to permit and direct the Counterclaim attached as Schedule "A" to its Application filed in this Action on May 29, 2014 is denied;
2. Arres' Application permitting the amendment of the Amended Statement of Defence filed in this Action is denied;
3. Access and Arres are directed to apply before the Honourable Madam Justice S. L. Hunt McDonald for advice and directions with respect to the accounting contemplated in the said Order.
4. Access is awarded costs against Arres in the sum of \$1,500.00 plus disbursements payable forthwith.
5. A facsimile or electronic signature of Counsel hereon is deemed good and sufficient.

  
Justice of the Court of Queen's Bench of Alberta

JUR CLERK

Consented to by the Solicitor for the  
Defendant Arres Capital Inc.:

PELLETIER LAW

  
Ryan P. Pelletier

**In the Court of Appeal of Alberta**

**Citation: Access Mortgage Corporation (2004) Limited v Arres Capital Inc., 2014 ABCA 280**

**Date:** 20140923  
**Docket:** 1301-0190-AC  
**Registry:** Calgary

2014 ABCA 280 (CanLII)

**Between:**

**Access Mortgage Corporation (2004) Limited**

Respondent  
(Plaintiff)

- and -

**Arres Capital Inc.**

Appellant  
(Defendant)

**The Court:**

---

**The Honourable Mr. Justice Peter Martin  
The Honourable Mr. Justice Thomas W. Wakeling  
The Honourable Madam Justice Rosemary Nation**

---

**Memorandum of Judgment**

Appeal from the Order by  
The Honourable Madam Justice S.L. Hunt McDonald  
Dated the 24th day of May, 2013  
Filed on the 14th day of June, 2013  
(Docket: 1101-03481)

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## Memorandum of Judgment

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### The Court:

#### I. Introduction

[1] The appellant<sup>1</sup> contests the validity of a summary judgment order made against it in a debt action and an order granting the respondent<sup>2</sup> leave to file a writ of enforcement.

#### II. Questions Presented

[2] Was the respondent entitled to summary judgment for the amount of the unpaid debt – \$1,028,879.99 – under r. 7.3(1) of the *Alberta Rules of Court*, Alta. Reg. 124/2010?

[3] Should the motions judge have declined to grant the respondent leave to file a writ of enforcement before the accounting, which was a feature of the summary judgment order, was completed on the condition that any funds recovered as a result of the enforcement of the writ must be held in an interest bearing trust account pending the hearing of the appeal?

#### III. Brief Answers

[4] Rule 7.3(1)(a) of the *Alberta Rules of Court* states that summary judgment may be granted if “there is no defence to a claim”. The appellant has no defence to the respondent’s claim. It follows that summary judgment was warranted.

[5] While the Court accepts that the motions judge’s decision to allow the respondent to file a writ of enforcement before the accounting was finalized is unusual, it will not interfere. The motions judge’s order was subject to a condition which adequately protected the appellant’s interests.

#### IV. Applicable Provisions of the *Alberta Rules of Court*

[6] Rule 7.3 of the *Alberta Rules of Court* is as follows:

7.3(1) A party may apply to the Court for summary judgment in respect of all or part of a claim on one or more of the following grounds:

(a) there is no defence to a claim or part of it;

...

---

<sup>1</sup> The appellant, Arres Capital Inc., is the defendant in a debt action commenced by the respondent, Access Mortgage Corporation (2004) Limited. This judgment will refer to Arres Capital Inc. as the “appellant” or “Arres Capital”.

<sup>2</sup> This judgment will refer to Access Mortgage Corporation (2004) Limited as the “respondent” or “Access Mortgage”.

(2) The application must be supported by an affidavit swearing positively that one or more of the grounds described in subrule (1) have been met or by other evidence to the effect that the grounds have been met.

(3) If the application is successful the Court may, with respect to all or part of a claim, and whether or not the claim is for a single and undivided debt, do one or more of the following:

...

(b) if the only real issue to be tried is the amount of the award, determine the amount or refer the amount for determination by a referee.

## V. Statement of Facts

[7] In an August 1, 2004 agreement Arres Capital promised to provide Access Mortgage with brokerage and management services for the respondent's mortgage investment business.<sup>3</sup> In return, the respondent promised to pay the appellant a fee calculated in accordance with a formula for the services provided. The formula, in effect, gave the appellant a portion of the respondent's profits.

[8] The respondent had to pay a stipulated sum each month during the respondent's fiscal year with a year-end reconciliation to deal with over or under payment.

[9] This arrangement worked well for several years. Access Mortgage made a profit from its mortgage business and Arres Capital earned a handsome fee. But in 2008 the world economy faltered. Severe problems in the American subprime mortgage market contributed to this dilemma. Canada and Alberta were adversely affected. Many of the mortgagors under mortgages brokered by the appellant were unable to meet their obligations under their mortgages with the respondent and the demand for mortgages diminished greatly.<sup>4</sup>

[10] This new business climate destroyed the efficacy of the fee formula under the August 1, 2004 agreement. The year-end reconciliation for the respondent's fiscal year ending March 31, 2009 revealed that the appellant was entitled to no fee for the April 1, 2008 to March 31, 2009 period and that the respondent had overpaid the appellant by \$1,028,879.99. This is not in dispute.<sup>5</sup>

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<sup>3</sup> This judgment will refer to this agreement as the "August 1, 2004 agreement".

<sup>4</sup> Ronald R. Engel, a former director and officer of Access Mortgage, in paragraph 12 of his affidavit sworn October 31, 2012, stated that "[b]y October 2008 mortgages totalling \$17 million of the \$42 million in mortgage loans were impaired".

<sup>5</sup> Paragraph 6 of the appellant's factum "confirms that for the Respondent's fiscal year of April 1, 2008 to March 31, 2009, the amount that was paid to [the appellant] was \$1,028,879.99 and the corrected amount to be paid for Arres [Capital] for the same time period, pursuant to the calculation set out in the Management Agreement was \$0.00 ... ."

[11] Both sides wanted to continue their relationship. But it had to be restructured. The appellant would not continue to provide mortgage services for no fee.

[12] On May 5, 2009 the parties entered into an interim management agreement.<sup>6</sup> The recitals acknowledged that the August 1, 2004 agreement was “no longer a viable contract”; that the appellant was indebted to the respondent “in the amount of \$1,028,879.99 ... in respect of amounts advanced under ... [the August 1, 2004 agreement] in advance of fees to be earned ... [and that] the debt was incurred as a result of the change in the real estate market that was not anticipated or contemplated at the time of the original negotiation and drafting of the management contract”; and that “the Parties ... desire to create a new contract that provides for management services and will provide for the elimination of the debt”.

[13] Operative provisions in the May 5, 2009 agreement stated that the August 1, 2004 agreement was terminated; that the respondent would pay the appellant \$70,000 for services the appellant provided in April 2009; and that the appellant would provide a senior officer of the respondent with office space so that he could work with the appellant’s employees on the respondent’s files; and that there are no collateral agreements. Of particular interest is the following term:

The Board of Directors for Access [Mortgage] agree to make its best efforts to provide Arres [Capital] with a comprehensive proposal with respect to its services prior to the end of May, 2009. This will include among other things: a proposal for the future services to be rendered by Arres [Capital] to Access [Mortgage] ... and a basis for eliminating the Debt, to be ratified by the Board and its shareholders at the Annual General Meeting.

[14] On May 26, 2009 the appellant and the respondent entered into a management agreement terminable by either party upon “giving the party notice in writing one month in advance of such termination”.<sup>7</sup> The recital part of the May 26, 2009 agreement acknowledged that the respondent “requires the necessary management of its files some of which are in good standing and many of which are impaired” and that the appellant “has the resources to assist Access [Mortgage] in the management of its investments”. The May 26, 2009 agreement obligated the respondent to pay the appellant “the sum of \$70,000 for managerial services provided for the month of May”. Another provision stipulated that “[t]here are no representations, warranties, conditions, terms or collateral agreements affecting the transaction contemplated in this Agreement except as set out in this Agreement.”

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<sup>6</sup> This judgment will refer to this agreement as the “May 5, 2009 agreement” or the “May 5, 2009 interim management agreement”.

<sup>7</sup> This judgment will refer to this agreement as the “May 26, 2009 agreement” or the “May 26, 2009 management agreement”. The May 26, 2009 agreement appears in the respondent’s extracts of key evidence with a different handwritten date.

[15] The respondent continued to pay the appellant after May 2009 a monthly fee of \$70,000 until a new arrangement was agreed upon. This may have happened around September 2009.<sup>8</sup>

[16] The respondent's board of directors never ratified a proposal for the delivery of future services by the appellant as "a basis for eliminating the debt".

[17] The respondent's board of directors did discuss the appellant's indebtedness after May 5 2009.<sup>9</sup> At issue was not whether to forgive the debt, but when would the respondent take action to enforce collection of the outstanding debt. An example is the following extract from a May 19, 2010 board meeting:

13. Arres Capital Outstanding Debts

Up to now, Access [Mortgage] has held off filing a statement of claim to recover the \$1.028 million in receivable, to avoid "rocking the boat" as it may push Arres [Capital] into bankruptcy. The two year statute of limitation for this claim amount would expire March 31, 2011. Currently there is no advantage to take this action. Access [Mortgage] will reserve its position to file to a time when it is advantageous to do so.

[18] The August 18, 2009 minutes also dealt with the subject: "There was a discussion about the receivable of approximately \$1 million due from Arres [Capital]. It was concluded that now was not the time to settle considering that the Board has not yet seen how Arres [Capital] will invoice Access [Mortgage] or how the working relationship will proceed from this point in time forward". Board minutes indicate that Mr. Serra, Arres Capital's president, attended the August 18, 2009 meeting.

[19] Mr. Serra claimed that he was surprised to hear Access Mortgage take the position at the August 18, 2009 board meeting that the appellant still owed the respondent over \$1 million. This prompted Mr. Serra, on August 20, 2009, to write Mr. Engel and other Access Mortgage board members. Part of his letter dealt with the debt issue:

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<sup>8</sup> Paragraph 29 of Wesley Serra's affidavit sworn December 7, 2012 and filed December 10, 2012 reads as follows: "August, 2009 was the last month that Access [Mortgage] paid Arres [Capital] for the services [under the May 26, 2009 agreement]. I don't remember exactly when, but I believe it was sometime in the summer of 2009 that Ron Engal told me that Access [Mortgage] was terminating the ... [May 26, 2009 agreement]". Mr. Serra is the president of Arres Capital.

<sup>9</sup> The minutes of the July 10, 2009 board meeting report that "[n]o decision was made on the collection or settlement of the amount due by Arres [Capital] to Access [Mortgage] (\$1,028,000). This will be considered once the initial reaction of Arres [Capital] to the motion is understood". Mr. Serra did not attend the July 10, 2009 meeting. So did the August 11, 2010 minutes: "Moved ... that Access [Mortgage] commence an action for the recovery of the \$1.028M owned by Arres [Capital]. Motion defeated ... Moved that the Board ... revisit before March 2011 to determine when Access [Mortgage] should commence action."

We confirm your agreement to waive and release Arres [Capital] from all previous fees paid in respect of management activities undertaken by Arres [Capital] in the amount of \$1,028,879.99. In that regard, we would like Access [Mortgage] to provide a written proposal to Arres [Capital] in order to finalize the particulars of the release in a manner that is suitable to both parties.

[20] The respondent never replied to this letter. Instead, it terminated the relationship regulated by the May 26, 2009 management agreement. A new fee formula was negotiated.<sup>10</sup>

[21] At an August 23, 2010 meeting of the respondent's board of directors the respondent decided to commence an action against the appellant for the recovery of the debt.

[22] On August 27, 2010 the respondent presented a formal demand to the appellant for repayment of the debt of \$1,028, 879.99. The appellant made no payment.

[23] On March 11, 2011 the respondent commenced an action in the Court of Queen's Bench of Alberta against the appellant for the "sum of \$1,028,879.99 being the amount by which Access [Mortgage] overpaid Arres [Capital] in respect of Arres [Capital] management services together with interest pursuant to the *Judgment Interest Act* ... ."

[24] The appellant filed a statement of defence and an amended statement of defence. While the appellant admitted entering into the August 1, 2004 agreement, it asserted that it was entitled to the fees the respondent paid it in the period April 1, 2008 to March 31, 2009. It also maintained that the respondent promised to waive the debt if the appellant would continue to provide management services to the respondent in April 2009 for \$70,000. This, it alleges, was the effect of the May 5, 2009 interim management agreement. The appellant took the position that the respondent "released Arres [Capital] from the Alleged Debt pursuant to the terms of the ... [May 5, 2009 agreement]".

[25] The defence also contained other features. It maintained that the May 26, 2009 management agreement represented the "comprehensive proposal" that the respondent had promised to present before the end of May 2009 in the May 5, 2009 interim management agreement. According to the appellant, the "resolution that was reached was that Arres [Capital] agreed to continue providing the services to the Plaintiff [respondent] in exchange for eliminating the Alleged Debt and for payment of \$70,000 monthly ... . As a result, the Alleged Debt was no longer a debt owing by Arres [Capital] to the Plaintiff [respondent]".

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<sup>10</sup> Paragraphs 44 and 45 of Mr. Engel's affidavit are as follows: "44. The invoices of Arres [Capital] were to be based on the time each employee of Arres [Capital] spent on a loan file in respect of which ... [Access Mortgage] had an interest ... . 45. ... [T]he average monthly management fee for the 7 months from May to November in 2010 was \$3,426.71 per month as submitted by Arres [Capital]. ..."



[26] There was a second alternative argument. The appellant asserted that the respondent failed to provide a comprehensive proposal to the appellant to eliminate the debt before the end of May, 2009. This failure leads to the following consequence:

11. Had Arres [Capital] known that the Plaintiff [the respondent] would continue to demand payment for the Alleged Debt, it would not have entered into the Interim Management Agreement and would not have continued to provide the services to the Plaintiff [respondent].

12. As a result ..., the Plaintiff [respondent] has released Arres [Capital] from the Alleged Debt.

[27] Additional alternative arguments incorporate waiver, estoppel and frustration.

[28] On May 28, 2012 the respondent filed for summary judgment. It relied on affidavits of David Murphy filed May 28, 2012 and Ronald R. Engel sworn on October 31, 2012.

[29] On December 10, 2012 the appellant filed an affidavit of Wesley Serra sworn on December 7, 2012.

[30] Justice Hunt McDonald heard the summary judgment application on May 21, 2013 and gave oral reasons on May 24, 2013. She granted summary judgment.

[31] Justice Hunt McDonald noted that the appellant produced nothing in writing which supported Mr. Serra's affidavit evidence that the respondent forgave the debt as part of the consideration for the appellant continuing to provide services to the appellant after March 31, 2009. The May 5, 2009 interim management agreement expressly acknowledged that the appellant owed the respondent \$1,028,879.99 on account of advances the respondent paid the appellant under the August 1, 2004 agreement.

[32] The motions judge determined that the respondent never did forgive the appellant's debt:

Mr. Serra of Arres [Capital] takes the adamant position that the parties had agreed to release Arres [Capital] from the debt.<sup>11</sup> Arres [Capital] has produced no evidence of such an agreement. Many discussions took place about the debt elimination, but an agreement was never reached. In fact, relations between the parties deteriorated to the point that Mr. Serra of Arres [Capital] refused to participate in any discussions. Arres [Capital] employees Wendy McKenna and

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<sup>11</sup> The basis for this viewpoint is grounded in events which occurred before May 5, 2009 and some after. For example, paragraph 16 of the appellant's factum reads as follow: "Shortly after the May 5 agreement, Serra confirmed his understanding that the Alleged Debt had been forgiven, and was to be written off as forgiven by the Respondent, with Kim Robinson, an employee of the Respondent who reported to the Respondent's Corporate Secretary, Chris Saunders".

Albert Snook told Ron Engel of Access [Mortgage] that, if he wished to discuss ... Arres [Capital] indebtedness, it should be with them and not with Mr. Serra.<sup>12</sup>

[33] Justice Hunt McDonald also rejected the appellant's argument that the respondent breached the following provision in the May 5, 2009 interim management agreement:

3. The Board of Directors for Access [Mortgage] ... agree to make its best efforts to provide Arres [Capital] with a comprehensive proposal with respect to its services prior to the end of May, 2009. This will include among other things: a proposal for future services to be rendered by Arres [Capital] to Access [Mortgage] ... and a basis for eliminating the Debt, to be ratified by the Board and the shareholders at the Annual General Meeting.

She came to the conclusion

that the phrase "use best efforts" is not an obligation. If the principal of Arres [Capital] refuses to discuss the issue, then the parties are at an impasse. In his affidavit, Wes Serra points to the Executive Committee Meeting Minutes dated March 8, 2009 ... . Mr. Serra says that the minutes prove that the parties had agreed to elimination of the debt. The Minutes provided that the executive committee would propose to the next meeting of the board of directors that Arres [Capital] be paid a flat fee of 3 percent for management services starting April 1, 2009. A comment followed that:

This should allow Arres [Capital] to manage our fund and retire some of the advance that has delivered.

The board of directors of Access [Mortgage] never followed through on the executive committee's proposal. I also point out that the word "elimination" is not synonymous with forgiveness.

[34] The motions judge also dismissed the appellant's argument that it agreed to provide brokerage services to the respondent after March 31, 2009 for a monthly fee of \$70,000 and provide office space for Mr. Engel because the respondent had promised to forgive the debt. She noted that "[t]here is no mention of forgiveness or an agreement to eliminate the debt in either of the May, 2009 agreements signed by the parties." According to the terms of the May 5 interim management and the May 26, 2009 management agreements, "[t]here are no representations, warranties, conditions, terms or collateral agreements affecting the transaction".

[35] As the appellant had asserted that it had made some payments to the respondent to reduce the debt, the order pronounced May 24, 2013 and entered June 11, 2013<sup>13</sup> stated that the

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<sup>12</sup> The evidence does not indicate when this conversation occurred.

<sup>13</sup> This judgment will refer to this order as the "June 11, 2013 order".

respondent “shall have summary judgment as against the ... [appellant] in the sum of \$1,028,879.99 less any amounts that have already been paid and applied by the ... [respondent] to reduce the ... indebtedness of \$1,028,879.99”. Another provision in the June 11, 2013 order stipulated that an accounting will be undertaken if the parties “are unable to agree on the amount already paid and applied by the ... [respondent] to the ... indebtedness”.

[36] In a subsequent order pronounced on October 24, 2013<sup>14</sup> Justice Hunt McDonald agreed to hear on November 6, 2013 applications by the appellant for a stay of any enforcement proceedings until the appellant’s appeal against the June 11, 2013 order could be heard and by the respondent for leave to file a writ of enforcement. The October 24, 2013 order also set out the terms governing the accounting aspect of the June 11, 2013 order.<sup>15</sup>

[37] At the hearing on November 6, 2013 the respondent conceded that the appellant had already paid \$12,158.08 to reduce the debt owed to the respondent. The appellant challenged this calculation. It asserted that the proper setoff number is not less than \$1,842,986.31.

[38] Both counsel agreed at the November 6, 2013 hearing that the *Civil Enforcement Act*, R.S.A. 2000, c. C-15 requires a writ of enforcement to be for a sum certain.

[39] On November 6, 2013, at the conclusion of argument, the motions judge dismissed the appellant’s stay application and granted the respondent’s application to file a writ of enforcement and press ahead with enforcement before the accounting contemplated by the June 11, 2013 order was completed.<sup>16</sup> The key paragraph of the order pronounced November 6, 2013 provided that if the respondent “recover[s] any funds from ... [the appellant] as a result of enforcement proceedings related to the Writ, such funds shall be retained in an interest bearing trust account pending hearing of ... [the appellant’s] appeal of the [June 11, 2013] order in the Court of Appeal.”

[40] Counsel informed us at the hearing of this appeal that Master Prowse gave an order on January 17, 2014 which was entered on January 20, 2014.<sup>17</sup> The recitals indicated that some but not all of the steps set out in an October 24, 2013 order had been completed. With the consent of the parties, the master relieved the parties of their obligations to comply with uncompleted steps in

---

<sup>14</sup> This judgment will refer to this order as the October 24, 2013 order.

<sup>15</sup> The October 24, 2013 order directed Arres Capital to “file and serve an affidavit providing all of the details, accounting and supporting documentation pertaining to its assertion that it has paid monies to Access [Mortgage] which reduces the amount of indebtedness of Arres [Capital] to Access [Mortgage] by November 14, 2013”. Access Mortgage, if it wished to question the affiant, must do so before November 30, 2013. Any undertaking arising from questioning must be answered by January 3, 2014. Access Mortgage had to file any affidavit it relied on by January 10, 2014. Questioning on this affidavit had to be completed by January 17, 2014 and any undertakings arising had to be provided before January 25, 2014. The order stipulated that the accounting application would be heard either by Justice Hunt McDonald or a master on a date to be determined before January 31, 2014.

<sup>16</sup> This judgment will refer to this order as the November 6, 2013 order.

<sup>17</sup> This judgment will refer to this order as the January 17, 2014 order.

the October 24, 2013 order and adjourned the accounting application *sine die*. Master Prowse also directed that the parties may apply to the Master for direction and advice if they were unable to agree on a new schedule and other issues.

[41] On November 27, 2013 a single judge of the Court of Appeal stayed the summary judgment orders pending the disposition of the appeal. 2013 ABCA 400, ¶6.

## VI. Analysis

### A. Standard of Review

[42] To succeed on its challenge to the grant of summary judgment – the parties were agreed on the test for summary judgment – the appellant must convince the Court that the motions judge’s decision was unreasonable. *Dingwall v. Dornan*, 2014 ABCA 89, ¶19; *P. Burns Resources Ltd. v. Locke, Stock & Barrel Co.*, 2014 ABCA 40, ¶11 & *Magellan Morada Investment Limited Partnership v. Miller*, 2009 ABCA 124, ¶12. The appellant alleges that the motions judge erred in failing to find that the May 5 and May 26, 2009 agreements demonstrate that the respondent promised to forgive the loan in return for the appellant’s promise to continue to provide brokerage services and to give an officer of the respondent office space. To successfully challenge the legal effect given to contract language, the appellant must convince this Court that the contested decision is incorrect. *Alberta Giftwares Ltd. v. The Queen*, [1974] S.C.R. 584, 588; *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 261; *Reid Crowther Ltd. v. Simcoe & Erie Insurance Co.*, [1993] 1 S.C.R. 252, 272; *Scott v. Wawanesa Mutual Insurance Co.*, [1989] 1 S.C.R. 1445, 1465; *Liverpool & London & Globe Insurance Co. v. Canadian General Electric Co.*, [1981] 1 S.C.R. 600, 615; *Doerner v. Bliss & Laughlin Industries Ltd.*, [1980] 2 S.C.R. 865, 872 & *Dreco Energy Services Ltd. v. Wenzel*, [2008] 10 W.W.R. 445, 450 (Alta. C.A. 2008). Contra R. Kerans & K. Willey, *Standards of Review Employed by Appellate Courts* 142 (2d ed. 2006). To successfully challenge a factual determination, the appellant must establish that the determination is the product of palpable and overriding error. *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 248.

### B. An Alberta Court May Grant Summary Judgment to a Plaintiff if There Is No Defence to a Claim

[43] Rule 7.3 of the *Alberta Rules of Court*, in force as of November 11, 2010, sets out the test which a court must use to measure the merits of an application for summary judgment. A court may grant a plaintiff summary judgment against the defendant if “there is no defence to a claim or part of it”. It may grant summary judgment for the defendant if “there is no merit to a claim or part of it”.

[44] The old summary judgment rule, r. 159(3) of the *Alberta Rules of Court*, Alta. Reg. 390/68, incorporated different language: “On hearing the motion, if the court is satisfied that there is no genuine issue for trial with respect to any claim, the court may give summary judgment against ... a defendant”.

[45] The principles which govern summary judgment in Alberta after November 1, 2010 are distilled in *Beier v. Proper Cat Construction*, 564 A.R. 357, 373-78 (Q.B. 2013):

[56] Most legal systems recognize that there is no reason to accord every party to an action full access to all stages of the litigation spectrum. The common law principle that a person has a right to be heard ... is not more important than speedy resolution of meritless claims or defences the continuation of which drive up the cost of litigation ... .

...

[61] Rule 7.3 of the new *Alberta Rules of Court* allows a court to grant summary judgment to a moving party if the nonmoving party's position is without merit. A party's position is without merit if the facts and law make the moving party's position unassailable and entitle it to the relief it seeks. A party's position is unassailable if it is so compelling that the likelihood of success is very high.

[62] This may exist in a number of scenarios.

[63] First, the moving party is entitled to summary judgment if, as a plaintiff, it presents uncontroverted facts and law which entitle it to judgment against the nonmoving party. The court must be satisfied that the plaintiff has presented uncontested facts which establish all the essential elements of the action. ...

...

[65] There are a number of relevant principles which underly the fundamental norm that claims or defences that are so compelling the likelihood they will succeed is very high should be dealt with summarily.

[66] First, the legal or persuasive burden rests on the moving party. ... The moving party must present the facts which, in combination with the applicable law, make its position unassailable if the nonmoving party does not contest the facts and the law.

...

[68] Third, the motions court may not make findings of credibility and resolve contested fact issues. ... If a fact on which the moving party relies to support summary judgment is the subject of a credibility contest, the motions court must dismiss the summary judgment application. ... That a controversy over nonmaterial facts exists is irrelevant.

...

[70] Fifth, a nonmoving party's argument that questioning or trial may produce evidence which assists the nonmoving party is without merit.

[46] *O'Hanlon Paving Ltd. v. Serengetti Developments Ltd.*, 91 Alta. L.R. 5<sup>th</sup> 1, 16 (Q.B. 2013) explains why summary judgment is a valuable option in the dispute resolution process:

A summary judgment protocol recognizes that it is not unjust to deny a plaintiff with a meritless claim or a defendant with a meritless defence access to all stages of the litigation process. A litigant whose claim or defence is so weak that its chance of succeeding is very low, cannot reasonably expect the state to make available all parts of a publicly funded judicial process. ...

Legislators in the United Kingdom, Canada and United States have introduced summary judgment into their litigation model to ensure that dispute resolution takes place at the earliest point in the litigation continuum where it is just to do so. A summary judgment protocol promotes expeditious dispute resolution and efficient use of private and public legal resources.

[47] *Orr v. Fort McKay First Nation*, 2014 ABQB 111, ¶29 also extolls the virtues of summary judgment:

By its terms, the formulation of the test for summary judgment in *Beier v. Proper Cat Construction Ltd.* keeps ... the judge's attention focussed upon resolving litigation in a timely and cost-effective manner by imposing a proportionate remedy where it can be said that a claim or defence ought to succeed or fail without further process. In doing so, it promotes robust application of Alberta's summary judgment rule despite its preclusion of factual determinations.

### **C. The Motions Judge's Decision To Grant Summary Judgment Is Reasonable**

[48] The facts which caused the motions judge to grant summary judgment are not in dispute.

[49] There are four of them.

[50] First, under the August 1, 2004 agreement, the appellant was entitled to no fee for the brokerage services it provided in the period commencing April 1, 2008 and ending March 31, 2009. Second, the respondent paid the appellant \$1,028,879.99 for brokerage fees in this time frame. Third, the respondent made a formal demand for repayment on August 27, 2010. Fourth, the appellant has not repaid the debt.

[51] There are no facts which support the appellant's allegation that in a subsequent agreement the respondent forgave the appellant's debt. Neither the May 5, 2009 nor the May 26, 2009 agreement is to this effect.

[52] The May 5, 2009 interim management agreement records the appellant's indebtedness to the respondent for \$1,028,974.99. An objective reading of this agreement, which is the proper

methodology for reading a bilateral commercial instrument,<sup>18</sup> clearly leads to the conclusion that as of May 5, 2009 the appellant acknowledged that it owed the respondent \$1,028,879.99 and that the respondent had not forgiven this debt.<sup>19</sup> Nothing in the May 5, 2009 agreement remotely supports the appellant's argument that the respondent, for consideration, had forgiven the appellant's debt. There is no express or implicit statement which plausibly supports such an interpretation. A reasonable person would expect nothing less.<sup>20</sup>

[53] The May 5, 2009 agreement also contains aspirational elements. It reveals the parties "desire to create a new contract that provides for management services and will provide for the elimination of the debt". The agreement also contained a commitment by the respondent to "make its best efforts" to provide the appellant with a proposal before June 1, 2009 for a new management services contract that would have the effect of eliminating the debt. As of May 5, 2009 this was an unrealized aspiration.

[54] The appellant and the respondent did enter into the May 26, 2009 management services agreement. But, again, nothing in this agreement, objectively read, supports the appellant's claim

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<sup>18</sup> *Sattva Capital Corp. v. Creston Molly Corp.*, 2014 SCC 53, ¶49 ("in contractual interpretation, the goal of the exercise is to ascertain the objective intent of the parties - a fact specific goal - through the application of legal principles of interpretation"); *Re Lubberts Estate*, 2014 ABCA 216, n. 21 ("An objective analysis ... is adopted when attributing meaning to contractual terms which are the product of conscious choices made by more than one person"); *Ko v. Hillview Homes Ltd.*, 2012 ABCA 245, ¶27 ("The test for interpretation ... is objective; one party's subjective views about the agreement ... are irrelevant"); *ATCO Electric Ltd. v. Energy & Utilities Board*, [2004] 11 W.W.R. 220, 248-49 (Alta. C.A.) ("the search for the parties' intention is conducted on an objective basis, meaning that the focus is on what a reasonable person would infer from the words used"); S. Waddams, *The Law of Contracts* 105 (6<sup>th</sup> ed. 2010) ("The principal function of the law of contracts is to protect reasonable expectations engendered by promises. It follows that the law is not so much concerned to carry out the will of the promisor as to protect the expectation of the promisee"); A. Swan, *Canadian Contract Law* §8.2 (2d ed. 2009) ("courts ... have regard to the reasonable expectations created in one party by what the other said or did"); K. Lewison, *The Interpretation of Contracts* 19 (2004) ("the court is concerned to ascertain, not what is the intention of the actual parties to a contract, but what would have been the intention of the hypothetical reasonable parties, placed in the same position as the actual parties, and contracting in the words used by the actual parties"); Holmes, "The Theory of Legal Interpretation", 12 Harv. L. Rev. 417, 417-18 (1899) ("we ask not what this man meant, but what those words would mean in the mouth of a normal speaker of English using them in the circumstances in which they were used"); *Hobbs v. Esquimalt and Nanaimo Railway*, 29 S.C.R. 450, 468-69 (1889) ("it appears incredible that a ... land company ... would reasonably suppose that in dealings with third persons for the sale of land, the word 'land' means land with the reservation of minerals"); *Hallmark Pool Corp. v. Storey*, 144 D.L.R. 3d 56, 65 (N.B.C.A. 1983) ("we are not concerned [in contract interpretation] with the real intention or mental state of Hallmark") & *Toll (FGCT) Pty Ltd. v. Alphapharm Pty Ltd.*, 211 A.L.R. 342, ¶40 (H.C. 2004) ("It is not the subjective beliefs or understandings of the parties about their rights and liabilities that govern their contractual relations. What matters is what each party by words and conduct would have led a reasonable person in the position of each party to believe").

<sup>19</sup> Evidence before the motions judge reveals that the directors of the respondent never intended the May 5, 2009 agreement to relieve the appellant of the obligation to pay back \$1,028,879.99.

<sup>20</sup> See *E.P.A. Ultimate Concepts Inc. v. Innovative Insurance Corp.*, 2007 ABCA 358, ¶7 ("had the parties intended to impose a requirement on EPA to consult with IIC prior to settling claims, they could easily have specified that in the contract").

that the respondent has forgiven the appellant's debt.<sup>21</sup> There is no statement to that effect anywhere in the May 26, 2009 agreement. A reasonable observer would expect this to be in the agreement if this was the intention of both parties. In this case, silence is not golden.

[55] Nor is it open to the appellant to assert that a collateral agreement to this effect exists. A provision in the May 26, 2009 agreement states that “[t]here are no representations, warranties, conditions, terms or collateral agreements affecting the transaction contemplated in this Agreement ...”<sup>22</sup>

[56] In any event, there was no evidence before the motions judge – no factual basis – which would serve as the foundation for a legal finding that the respondent, at any time, promised, measured objectively, to forgive the debt if the appellant delivered management services for a monthly fee of \$70,000 and provided Mr. Engel with office space. The motions judge dealt with the issue this way:

Mr. Serra of Arres [Capital] takes the adamant position that the parties had agreed to release Arres [Capital] from the debt. Arres [Capital] has produced no evidence of such an agreement. Many discussions took place about the debt elimination, but an agreement was never reached. *In fact, relations between the parties deteriorated to the point that Mr. Serra ... refused to participate in any discussions.* Arres' employees Wendy McKenna and Albert Snook told Ron Engel of Access [Mortgage] that, if he wished to discuss ... Arres' indebtedness, it should be with them and not with Mr. Serra (emphasis added).

[57] There is no basis whatsoever to characterize this fact determination – Mr. Serra refused to discuss the debt elimination issue – as palpably wrong.

[58] Mr. Serra may have honestly believed that the respondent forgave the appellant's debt. His August 20, 2009 letter to directors of the respondent supports such a claim. But, as noted above, a subjective approach is not warranted in attaching meaning to words intended to record promises made in contracts. The conduct of a contracting party is evaluated on an objective basis. Because more than one party is involved in this transaction a common and enforceable meaning must be given to the words which the parties have adopted to express their consensus. This is the role an objective assessment plays. Words cannot be given a legal effect that depends on the unique

<sup>21</sup> Evidence before the motions judge reveals that the directors of the respondent never intended the May 26, 2009 agreement to relieve the appellant of the obligations to pay back \$1,028,879.99.

<sup>22</sup> A. Swan, *Canadian Contract Law* § 8.60 (2d ed. 2009) (“The likelihood that a document will be held to be the final, integrated expression of the parties’ agreement will be increased if the document contains an ‘integration clause’ or an ‘entire agreement’ clause. Such a clause typically states that the agreement represented by the document containing the clause supersedes all other agreements that the parties may have made and that the parties are not relying on any other representations ... that may have been made before the document was executed”). This is a rule of substantive law. See also *Bhasin v. Hrynew*, 2013 ABCA 98, ¶27; *Ko v. Hillview Homes Ltd.*, 2012 ABCA 245, ¶26 & *Gainers Inc. v. Pocklington Holdings Inc.*, 255 A.R. 373, 377 (C.A. 2000).



interpretation adopted by a party. The burden a promise represents to the promisor must be assessed objectively.

[59] In the end, the appellant asked the motions judge to dismiss the respondent's application for summary judgment because the appellant's director believed that the respondent had forgiven the debt owed by the appellant. This is not a sufficient basis to justify dismissal of the summary judgment application. *Papachase Indian Band No. 136 v. Canada*, [2008] 1 S.C.R. 372, ¶11 ("The defendant ... cannot rely on mere allegations"). As the motions judge correctly observed, "The allegations made by Arres are ... in the nature of wishful thinking..." See *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, 436-37 ("a self-serving affidavit is not sufficient in itself to create a triable issue in the absence of detailed facts and supporting evidence"); *Rogers Cable TV Ltd. v. 373041 Ontario Ltd.*, 22 O.R. 3d 25, 28 (Gen. Div. 1994) (in the absence of any evidence to corroborate the respondent's claim that the applicant forgave an admitted debt the Court granted summary judgment); *O'Hanlon Paving Ltd. v. Serengetti Developments Ltd.*, 91 Alta. L.R. 5<sup>th</sup> 1, 25-26 (Q.B. 2013) ("There is no evidence whatsoever that there was a collateral agreement that the 'Plaintiff was not entitled to negotiate the same or to demand payment until its recourse against the fund held by the City of Edmonton had been exhausted'") & *Pizza Pizza Ltd. v. Gillespie*, 75 O.R. 2d 225, 253 (Ont. Ct. (Gen. Div.) 1990) ("[the nonmoving party's] evidence consists of bold allegations or speculation and demonstrates a failure to respond specifically and cogently to the evidence tendered on behalf of Gillespie").

[60] This finding brings into play the observation in *Beier v. Proper Cat Construction*, 564 A.R. 357, 377 (Q.B. 2013) "[t]hat a controversy over nonmaterial facts ... is irrelevant".

[61] We are aware that the motions judge concluded that paragraph 3 of the May 5, 2009 agreement – the respondent's board agrees "to make its best efforts to provide ... [the appellant] with a comprehensive proposal" – is "not an obligation". With respect, we do not believe that this was an issue that the motions judge needed to explore.<sup>23</sup> It was not before her. The respondent's action is based on the August 1, 2004 agreement, not the May 5 or 26, 2009 agreements. The appellant's assertion that the respondent has breached a term of the May 5, 2009 agreement raises a separate issue. The appellant has not alleged in a counterclaim that the respondent has breached this provision in the May 5, 2009 agreement and claimed damages for this breach. If it had, a number of issues would arise. First, what is the nature of the obligation paragraph 3 imposes on the respondent? Second, did the respondent comply with the obligation? Third, if the respondent did not comply with any obligation paragraph 3 imposed on it, what would the damages be? If the respondent had complied with any obligation paragraph 3 represents and presented a comprehensive proposal, would it not be for nought if the appellant rejected it?

<sup>23</sup> It has been elsewhere. See *CSRS v. Embley*, 2008 BCCA 533, ¶115; *Wentworth Developments Inc. v. City of Calgary*, 1998 ABQB 158, ¶32 & *Amonson v. Martin Goldstein Professional Corp.*, 27 Alta. L.R. 3d 78, 89 (Q.B. 1994).

[62] The Court notes that the motions judge was alive to this issue. She found as a fact that “relations between the parties deteriorated to the point that Mr. Serra of Arres refused to participate in any discussions”.

[63] The appellant’s promissory estoppel argument fails because the motions judge concluded that the respondent never promised to forgive the appellant’s debt.

[64] To summarize, the motions judge concluded that the respondent presented uncontradicted evidence that the appellant owed the respondent \$1,028,879.99 under the August 1, 2004 agreement, that the respondent made a formal demand of the appellant for payment of this sum and that the appellant did not pay the debt – and that the governing law obliged the appellant to pay the appellant \$1,028,879.99. Summary judgment was the appropriate disposition. As stated in *O’Hanlon Paving Ltd. v. Serengetti Developments Ltd.*, 91 Alta. L.R. 5<sup>th</sup> 1, 16 (Q.B. 2013), “it is not unjust to deny ... a defendant with a meritless defence access to all stages of the litigation process”.

[65] We agree with the statement in *Beier v. Proper Cat Construction Ltd.*, 564 A.R. 357, 378 (Q.B. 2013) that “summary judgment is an important procedure which could be invoked more often than it is”. See also *Hryniak v. Mauldin*, 2014 SCC 7, ¶34 (“The summary judgment motion is an important tool for enhancing access to justice”).

**D. The Court Will Not Interfere With the Motions Judge’s Exercise of Discretion To Allow the Respondent To File a Writ of Enforcement**

[66] The motions judge issued her decision on November 6, 2013 granting the respondent leave to file a writ of enforcement for \$1,028,879.99 before the accounting process delineated in the June 11, 2013 order was completed, well aware that the *Civil Enforcement Act*, R.S.A. 2000, c. C-15, s. 25.1 and the *Civil Enforcement Regulation*, Alta. Reg. 276/95 required the writ be for a sum certain. She also directed that any funds recovered as a result of the existence of a writ of enforcement be held in trust pending the hearing of the appeal.

[67] While the Court accepts the appellant’s point that the motions judge’s decision to allow the respondent to file a writ of enforcement before the accounting process she created by her June 11, 2013 order is completed is unusual, she protected the appellant’s interest by requiring the respondent to hold any funds recovered in trust.

[68] We also note that both parties consented to the January 17, 2014 order which effectively eliminated the accounting protocol contained in the October 24, 2013 order.

[69] The Court affirms the motions judge’s decision granting Access Mortgage leave to file a writ of enforcement. The parties may return to Justice Hunt McDonald or, if she is not available, any other judge of the Court of Queen’s Bench, to address any residual accounting matters.

**VII. Conclusion**

[70] This appeal is dismissed.

Appeal heard on June 13, 2014

Memorandum filed at Calgary, Alberta  
this 23rd day of September, 2014

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Martin J.A.

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Authorized to sign for: Wakeling J.A.

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Nation J.

**Appearances:**

B.E. Silver and T.F. A. Derksen  
for the Respondent

R.P. Pelletier  
for the Appellant

## APPENDIX E



Arres Capital Inc.  
Suite 204, 1324-11<sup>th</sup> Avenue SW  
Calgary, AB T3C 0M6 Canada  
Tel: 403-261-9955 Fax: 403-264-9954

November 8, 2013

To Whom It May Concern,

As the Senior Analyst of Arres Capital Inc. ("Arres" or the "Company"), I have access to financial information of the Company that allows me to state, to the best of my knowledge, the following:

- That Arres does not have enough equity in the Company to satisfy a judgment of \$1.0 million;
- That based on historical information for the past five years, the Company does not anticipate to have a cash flow that will satisfy the aforementioned judgment after operating costs.
- The priority of any available cash flow is to be allocated to operating costs of the Company, which is estimated to be approximately \$30,000 per month.
- Whereas if there is a shortfall of cash to pay operating costs, such costs are to be paid via the way of shareholder loan.

Sincerely,

Conan Leung, CFA  
Senior Analyst  
Arres Capital Inc.

## APPENDIX F

David Murphy

Sworn before me this 14th

day of November A.D. 2014

Form 14  
Statutory Declaration

Financial Statement of Debtor  
(Corporate Debtor)

1101-09481  
COMMISSIONER FOR OATHS

File Number

In accordance with section 35.10 of the *Civil Enforcement Regulation*, the Corporation must, within 15 days of being served with this form, provide the completed form to the enforcement creditor.

**BRIAN E. SILVER**  
Barrister and Solicitor

A. Debtor Information (Please Print)

I, ARRES CAPITAL INC  
Full Name of Deponent

of 204 1324 11 AVE SW 403 261 9955  
Address of Deponent Telephone Number of Deponent

am the President of ARRES CAPITAL INC  
Position with Corporate Debtor Name of Corporate Debtor

of 204 1324 11 AVE S.W. 403 261 9955  
Address of Corporate Debtor Telephone Number of Corporate Debtor

and I solemnly declare that the contents of this document are true and accurate.

B. Assets

Real Estate

List all real estate (homes, rental properties, cottages, condominiums, etc.) both within and outside the Province of Alberta in which the corporation owns an interest, including municipal address, legal description, purchase price, balance owing and current market value.

	Municipal Address	Legal Description	Purchase Price	Balance Owing	Current Market Value
1.	<u>NA.</u>				
2.					
3.					

List the name and address of any mortgagee for each property described above, as well as the date the mortgage was granted and the amount outstanding on the mortgage.

	Name of Mortgagee	Address of Mortgagee	Date of Mortgage Granted	Amount Outstanding on Mortgage
1.	<u>NA</u>			
2.				
3.				



**Motor Vehicles**

List all motor vehicles, including cars, trucks, farm machinery, construction equipment, recreational vehicles, aircraft, etc. in which the Corporation owns an interest.

	Type - Make - Model - Year	Serial No.	Purchase Price	Current Market Value
1.	NA			
2.				
3.				

If any of the above vehicles are subject to any liens or encumbrance, specify.

	Holder of Lien or Encumbrance	Date of Lien or Encumbrance	Balance Owning on Lien or Encumbrance
1.	NA		
2.			
3.			

List all fixtures, equipment and inventory.

	Type - Make - Model - Year	Serial Number, if Applicable	Purchase Price	Current Market Value
1.	NA			
2.				
3.				

**Bank Accounts**

List all deposit accounts, term deposits, annuities, etc., specifying the following:

	Type of Deposit	Name of Institution	Account No.	Branch Address	Amount
1.	Checking	BoFM	25159-1068898	OXY branch	Ø
2.					
3.					

Also, specify whether there are any conditions attached to redemption of the account, and, if applicable, any expiry dates.

	Conditions Attached to Redemption	Expiry Date, if Applicable
1.	N/A	
2.		
3.		

**Receivables and Ongoing Contracts**

List all receivables and ongoing contracts.

SEE ATTACHED Schedule "A"

	Name	Address	Amount Owning
1.			
2.			
3.			

**Shares and Securities**

If the corporation has holdings in a corporation, complete the following:

List all shares, options, warrants, etc., and their current market value.

	Name of Corporation	Type	Number	Current Market Value	Dividends Payable (if any)	Date Payable
1.	NA					
2.						
3.						

List all bonds and debentures held and their current market value.

	Name of Issuer	Class or Series	Quantity Held	Total Market Value
1.	N/A			
2.				
3.				

List location of all certificates for all corporate holdings and their respective name(s) and address(es).

	Location of Security Certificates or Other Evidence of Ownership of Securities	Name and Address of Broker(s)
1.	N/A	
2.		
3.		

**Trust Properties**

List all properties or interests held by a Trustee on the Corporation's behalf.

	Description of Assets Held	Location of Assets	Name and Address of Trustee
1.	NA		
2.			
3.			

**Other Assets**

List all other assets, specifying kind, value and location, and whether solely or jointly owned.

Type of Asset	Description	Sole Owner		Location	Value
		Yes	No		
Interest in other businesses	NA				
Promissory notes, judgment debts	NA				
Loans and mortgages receivable	NA				

List all other assets, specifying kind, value and location, and whether solely or jointly owned (e.g. art, jewellery, bullion).

Description of Asset	Sole Owner		Location	Value
	Yes	No		
NA				

**C. Transfer of Property**

Has the corporation given away, sold, assigned or otherwise transferred any property (land, buildings, vehicles, money, equipment, inventory, etc.) outside the ordinary course of business within the past year? Specify details below.

Description of Property	To Whom Transferred	Date of Transfer	How Much Money, if Any, Was Recovered By the Corporation?
NA			

**D. Insurance**


List all insurance policies in which the corporation is named beneficiary, including the insurance company granting the policy, the policy number, the amount, the person insured, the premium and its cash surrender value.

Insurance Company	Policy No.	Amount	Person Insured	Premium	Cash Surrender Value
WA					

**E. Additional Income and Assets**

List all income and assets not itemized above (legal action claims under insurance policies, etc.).

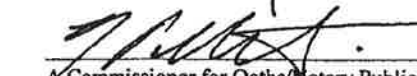
NA

 Wes Serra - Director

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at Calgary

Alberta, on Monday, October 20, 2014

  
 \_\_\_\_\_  
 A Commissioner for Oaths/Notary Public  
 in and for the Province of Alberta

**Ryan P. Pelletier**  
 \_\_\_\_\_  
 Print Name and Expiry Date

**SCHEDULE "A"**

**FORM 14 – STATUTORY DECLARATION – FINANCIAL STATEMENT OF DEBTOR (CORPORATE DEBTOR)**

<b><u>Project</u></b>	<b><u>Total Receivable</u></b>
Chateau:	\$1,021,497.45
CM Millet:	\$260,036.44
Copper Oaks Millet:	\$209,830.24
Dockman:	\$997,397.65
Graybriar Greens 2:	\$1,027,057.95
Jervis:	\$980,171.38
Koeller:	\$1,371,883.69
Strathmore:	\$3,407,606.98
Timbercreek:	\$425,235.22
<b>TOTAL:</b>	<b>\$9,700,717.00</b>

*Note 1: All amounts calculated with interest to September 30, 2014*

*Note 2: All amounts due pursuant and subject to Trust Agreements/Mortgage Administration Agreements between Arres Capital Inc. and each of the various Investors in each project.*

## APPENDIX G

Project	Party assigned to	Date	Consideration
Jervis	875892 Alberta Ltd.	11-Oct-11	\$ 96,000
Dockman	875892 Alberta Ltd.	11-Jul-12	\$ 105,360
Strathmore \$2 mil	875892 Alberta Ltd.	15-Mar-10	\$ 228,000
Burns Mortgage	875892 Alberta Ltd.	11-May-11	\$ 50,214
Timber Creek	875892 Alberta Ltd.	18-Oct-10	\$ 12,500
Koeller	875892 Alberta Ltd.	29-Jun-10	\$ 31,000
Chateau	875892 Alberta Ltd.	29-Jun-10	\$ 31,000
Graybriar Greens	875892 Alberta Ltd.	30-Sep-10	\$ 97,500
Copper Oaks Millet	Gordon & Mona Snyder	29-Feb-12	\$ 62,500
CTM Millet	Gordon & Mona Snyder	29-Feb-12	\$ 62,500

THIS IS EXHIBIT " D "  
referred to in the Affidavit of

David Murphy

Sworn before me this 6<sup>th</sup>

day of January A.D. 2015

B. E. M.

A COMMISSIONER FOR OATHS

**BRIAN E. SILVER**  
Barrister and Solicitor

This agreement made the 11h day of October 2011

**Assignment of account receivable with Arres capital  
(Herein after called "Arres")**

**Between: Arres Capital**

And

Staci Serra and /or 875892 Alberta ltd  
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable/ investment with respect to the Jervis Mortgage and its receivables derived from the loan administration agreement for the amount of \$96,000.

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Jervis Mortgage and all of Arres' rights , title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the

Parcel identifier 024-248-703 Parcel A, District Lot 4055 Group 1,  
New Westminster District Imp39216  
(As per loan administration agreement)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to:

205 707 10 Ave SW T2R 0B3 (Arres)  
126 Spring Valley Way (Serra)

Arres Capital



Per:

875892 Alberta ltd

Per: 

Staci Serra



This agreement made the 11h day of July 2012

**Assignment of account receivable with Arres capital  
(Herein after called "Arres")**

**Between: Arres Capital**

And

Staci Serra and /or 875892 Alberta Ltd  
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable/ investment with respect to the Dockman Mortgage and its receivables derived from the loan administration agreement for the amount of \$105,359.59.

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Dockman Mortgage and all of Arres' rights , title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the

Plan 8210992 Block 2  
(As per loan administration agreement)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to:

205 707 10 Ave sw T2R 0B3 (Arres)  
126 Spring Valley Way (Serra)

Arres Capital

Per: 

875892 Alberta Ltd 

PER: 

Staci Serra



**Assignment of Mortgage with Arres Capital & Arres Holdings  
(Herein after called "Arres")**

**This agreement made the day of March 15 2010**

**Between: Arres Capital / Arres holdings**

A corporation with head office located in the city of Calgary  
(Hereinafter "Arres") and  
875892 Alberta Ltd / Staci Serra

WHEREAS Arres has agreed to assign \$330,000 of its mortgage investment with respect to the Strathmore lands Two million mortgage for an amount of \$228,000 as of February 2010. These amounts will be paid over time by request of Arres to Serra. No interest will be charged on the purchase price. In the event of partial payment proportionate amounts of the mortgage will swapped as the mortgage is paid until paid in full.

Whereas Serra will receive of all amounts owing under that portion of the mortgage loan administration agreement and of the principal investment and all of Arres' rights, title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the project lands as follows:

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Staci Serra/ 875892 Alberta Ltd all of the original principal investment and all of Arres rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement if any.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to

205 707 10 Ave SW t2r 0b3 (Arres)  
126 Spring Valley Way Sw (Serra)

Arres Capital

Per: 

Arres Holdings

Per: 

Staci Serra 

875892 Alberta ltd

Per: 

**This agreement made the 11 th day of May 2011  
Assignment of account receivable with Arres capital  
(Herein after called "Arres")**

**Between: Arres Capital A corporation with head office located in the city of  
Calgary (Hereinafter "Arres")**

**And  
Staci Serra and /or 875892 Alberta ltd  
(Hereinafter "Serra")**

WHEREAS Arres has agreed to assign it accounts receivable/ investment with respect to the Burns Mortgage and its receivables derived from the loan administration agreement in the amount of \$50,213.56.

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Burns Building mortgage and of the principal investment and all of Arres' rights, title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the Burns Building

Lots 17,18,19,20 Blk 61 Plan A Calgary  
(As per loan administration agreement)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights , title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it administration receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to

205 707 10 Ave SW (Arres)  
126 Spring Valley Way SW (Serra)

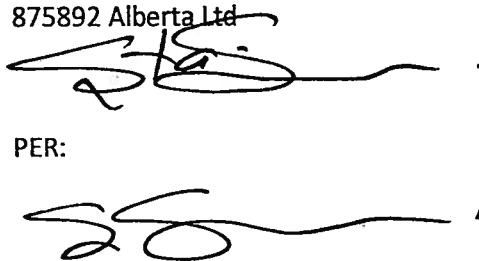
Arres Capital

Per:



875892 Alberta Ltd

PER:



**This agreement made the 18<sup>th</sup> day of October 2010**

**Assignment of account receivable with Arres capital  
(Herein after called "Arres")**

**Between: Arres Capital A corporation with head office located in the city of  
Calgary (Hereinafter "Arres")  
And  
Staci Serra and /or 875892 Alberta ltd  
(Hereinafter "Serra")**

WHEREAS Arres has agreed to assign it accounts receivable and investment with respect to the Timber Creek Mobile and its receivables derived from the loan administration agreement in the amount of \$12,500.00

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Timber Creek and of the principal investment and all of Arres' rights , title and ongoing and accrued interest in and to that portion of the loan.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights , title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to

205 707 10 Ave SW (Arres)  
126 Spring Valley Way (Serra)

Arres Capital

875892 Alberta Ltd

Per:

PER:

**This agreement made the 29 th day of June 2010**

**Assignment of account receivable with Arres capital  
(Herein after called "Arres")**

**Between: Arres Capital**

And

Staci Serra and /or 875892 Alberta ltd  
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable/ investment with respect to the Kollar and Chateau Mortgage and its receivables derived from the loan administration agreement for the amount of \$31,000

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Kollar and Chateau Mortgage and of the principal investment and all of Arres' rights , title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the

- A) land mortgage registered to Kollar. Lot 4 & 5 Plan 3010, Dist 486 Kootenay District
- B) Chateau PID 008-349-843Dist Lot 486 Kootenay District Plan 5563  
PID 011-254-963Lot 1 District 486 Kootenay District Plan  
(As per loan administration agreement)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights , title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to:

205 707 10 Ave sw T2R 0B3 (Arres)  
126 Spring Valley Way (Serra)

Arres Capital

Per: 

875892 Alberta Ltd

PER: 

Staci Serra  


May 11 2011

RE: Chateau Fees

By signing below , 875892 Alberta ltd and Staci Serra agree to swap the Burns building receivable with the funds that are now received and paid for the Chateau Assignment. The Chateau funds will be used by Arres for its ongoing operations.

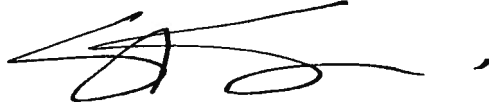
The amount of \$50,213.56 will be for the assignment price to be exchanged for the Burns Building Mortgage outstanding fees.

I authorize Arres Capital to utilize the amount of this assignment for their ongoing operations.

Staci Serra



875892 Alberta Ltd.



Agreed to by



Arres Capital Inc

This agreement made the 30<sup>th</sup> day of September 2010

**Assignment of account receivable with Arres capital  
(Herein after called "Arres")**

**Between: Arres Capital** A corporation with head office located in the city of Calgary (Hereinafter "Arres")

And

Staci Serra and /or 875892 Alberta Ltd  
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable/ investment with respect to the GRAYBRIAR 2 Mortgage and its receivables derived from the loan administration agreement in the amount of \$97,500.00

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Graybriar 2 and of the principal investment and all of Arres' rights , title and ongoing and accrued interest in and to that portion of the loan and related loan security over the lands with respect to the

land mortgage registered to plan 052-0941 block 1 lot c  
(As per loan administration agreement)

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights, title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to

205 707 10 ave sw t2r 0b3 (Arres)  
126 Spring Valley Way (Serra)

Arres Capital

Per: 

875892 Alberta Ltd

PER: 

**Wes Serra**

---

**From:** Albert Snook  
**Sent:** Thursday, February 25, 2010 12:54 PM  
**To:** 'Ron'  
**Subject:** Assignment of Accounts receivable...  
**Attachments:** ASSIGNMENT OF ACCOUNTS RECEIVABLES .doc

Attached is the assignment of accounts receivable agreement.

Please review and we will complete the agreement for each project where we can keep them separate. The following is a list of the projects that funds have been lent on.

1. Graywood Mews Phase 2 Project
2. Prospector Phase 1 Project
3. Prospector Phase 2 Project
4. Calibaba Vernon Project
5. Copper Oaks Millet Project
6. Coppertree Meadows Millet Project
7. Copperhorn Chalets (Koeller Holms) Project
8. Copperhorn Chateau
9. Jervis Bay Resort Mortgage
10. Graybriar Greens Phase 1 Project
11. Graybriar Greens Phase 2 Project
12. Strathmore Project
13. Timber Creek Mobile Homes Project

Please let me know if you have any comments or if this is good. If this is good I will get the 13 completed and send them over to your for signing.

Thanks

**Albert Snook, CA**  
Controller

Arres Capital Inc.  
#205, 707 - 10th Avenue SW  
Calgary, Alberta,  
Canada T2R 0B3

Phone: 403.261.9955  
Fax: 403.264.9954

*Confidentiality Warning: This message and any attachments are intended only for the use of the intended recipient(s), are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, and delete this message and any attachments from your system. Thank you.*

Assignment of accounts receivable

This assignment dated the day of 29 February 2012

Whereas Arres capital is owed approximately \$ 62,500 for legal costs advanced to date and including time associated with legal matters related to mortgage registered in Copper Tree Meadows Inc. instrument no 072 239 832.

And whereas Gordon and Mona Snyder have agreed to advance funds to purchase \$62,500 of the receivable by payment of \$62,500 to Arres Capital Inc;

Now therefore, Arres Capital Inc., of the city of Calgary, in the Province of Alberta, hereinafter call the "assignor", in consideration of the sum of \$62,500 now paid by Gordon and Mona Snyder, hereinafter called the "assignee" (the receipt whereof is hereby acknowledged) do hereby grant, transfer, assign and set over unto the assignee, the interest in and to the accounts receivable together with the rate of interest of 15% per annum.

In witness whereof the parties have hereunto set their hand and seals this 29 February 2012.

Signed, sealed and delivered

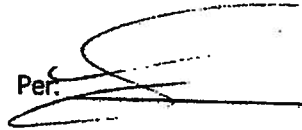
Arres Capital Inc

In the presence of:



Witness to the signature of Arres Capital Inc

Per:



Witness to the signature of Gordon and Mona Snyder



Gordon and Mona Snyder



This agreement made the 18<sup>th</sup> day of October 2010

**Assignment of account receivable with Arres capital  
(Herein after called "Arres")**

**Between: Arres Capital** A corporation with head office located in the city of Calgary (Hereinafter "Arres")

And

Staci Serra and /or 875892 Alberta Ltd  
(Hereinafter "Serra")

WHEREAS Arres has agreed to assign it accounts receivable and investment with respect to the Timber Creek Mobile and its receivables derived from the loan administration agreement in the amount of \$12,500.00

Whereas Staci Serra and 875892 Alberta Ltd will receive all amounts owing under the loan administration agreement of Timber Creek and of the principal investment and all of Arres' rights , title and ongoing and accrued interest in and to that portion of the loan.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of mutual covenants and agreements set out below, the parties hereby agree as follows:

1. Arres hereby assigns to Serra all of original principal investment and all of Arres rights , title and ongoing accrued interest in and to that portion of the loan and related security over the lands and premises.
2. Arres hereby assigns to Serra all of it receivables with respect to the loan administration agreement on the project.
3. All notices to be given pursuant to this agreement shall be delivered personally or by mail to

205 707 10 Ave SW (Arres)  
126 Spring Valley Way (Serra)

Arres Capital

Per:

875892 Alberta Ltd

PER:

## APPENDIX H

**ASSIGNMENT AND ASSUMPTION**

**TO: Kelly Carins trustee for the Rise**

**RE: Assignment of amounts owing to Arres Capital due from the trust agreements. (As affirmed by court order of the plan of arrangement.)**

---

1. Arres Capital assigned the administrative charges of the trust agreement with respect to the Rise mortgages to as attached to Wes Serra as of January 31 2009 for payments made to Arres Capital and Management fees by Wes Serra.
2. A total of up to \$95,000 (including the Wes Serra investment assignment attached) are hereby assigned by Wes Serra to Bishop Mc Kensie in trust for Terrapin Mortgage.

**Dated this 27nd day of September, 2017.**

  
\_\_\_\_\_  
Wes Serra

## ASSIGNMENT

THIS NOTICE OF ASSIGNMENT is given the 31<sup>st</sup> day of January 2009

TO: S136 Ventures Ltd and /or Arres Capital Inc.  
(the "Trustee")

FROM: Arres Capital Inc.

AND FROM: Stacia and/or Wes Serra

Re: Assignment of the entire administrative fees accruing and due from the trust agreements and commitment letters related to the Rise project on the First mortgage, Second Mortgage, Winery lands, Showhome, Discovery Center, Watermark (All of the mortgages under administration by Arres Capital Inc and it's related BC parties on the Rise. )

The administrative charges assigned are the accruing interest rate differentials on each mortgage and the monthly administrative fees of \$3500 per month on the first mortgage. These are the ongoing costs that have been paid to date by agreement by the Rise in their entirety but are currently in arrears. This assignment may not cover the day to day work that Arres Capital will be charging for its ongoing operations that is expected over the course of any late or delinquent payments, that Staci or Wes Serra may elect to waive or forgo at their sole discretion for the use of Arres Capital Inc. It does include any and all legal expenses that are required to enforce on the security or amounts that paid for legal fees by Arres on the Rise for legal work directly related to the project on solicitor and his own client basis.

**Take notice that Arres Capital Inc.** has agreed to assign to Staci and or Wes Serra all of its rights, title and ongoing and accrued interest in and to the loan and related loan security over the lands and premises for amounts paid and currently owing to Staci and Wes Serra from shareholder loans and from management bonuses deemed owed and paid from before and including 2007 and 2008. The assignment relates to all amounts that are accruing under the trust agreements and commitments in the rise project:

YK first mortgage, 2<sup>nd</sup> mortgage , equity mortgage , winery (Belago), Watermark mortgage, Show home and Discovery center trust agreements and commitments letters that have been paid to date. As well as all future amounts of new loans or amounts owed for administrative charges what so ever are assigned until all payments of share holders loan and management fees due are paid in full by Arres Capital. The amounts owing will accrue until the project is sold or the borrower makes payments. This receivable is secured by way of assignment of trust agreements and commitment letters and all rights that are derived under the terms of the agreement. Arres Capital will not withhold a

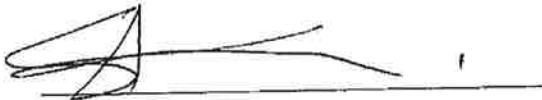
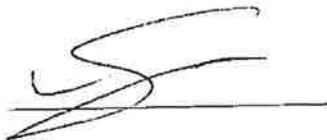
further assignment unreasonably to a party that will make these payments to Staci or Wes Serra.

This assignments and assumptions will be binding upon the assignee and its successors.

Arres Capital does hereby agree to assign and acknowledges that the amounts owed and due are hereby reduced. Arres agrees to collect these funds for Staci and Wes Serra at its sole cost.

**Arres Capital Inc.**

Per:



Stacia Serra




Wes Serra

**Acknowledgement**

Receipt and consent of this notice is hereby acknowledged by the trustee this 31 day of January 2009.

**S136 Ventures Ltd.**

Per:

  
Authorized signatory

**ASSIGNMENT AND ASSUMPTION**

**TO: ARRES CAPITAL INC. ("Arres")**

**RE: Amended Declaration of Bare Trust and Agency Agreement, dated January 7, 2006 and October 27, 2006 between S 136 Ventures Ltd. and Kurt and Friedlinde Fuss, and any amendments thereto (the "Trust Agreement")**

Unless otherwise indicated, terms defined in the Trust Agreement have the same meanings when used herein.

1. Arres acknowledges that its proper officers have received and reviewed a copy of the Trust Agreement.
2. Kurt Fuss and Friedlinde Fuss (the "Assignors") have agreed to and do hereby sell, assign and transfer to the undersigned (the "Assignee") their entire interest in the Trust Agreement including 100% of their Proportionate Share, and accordingly, the undersigned has agreed to execute this Assignment and Assumption and deliver an original of it to the Trustee.
3. The Assignee agrees to assume all liabilities and obligations of the Assignors to the extent of the Assignee's commitment as proposed for in the Trust Agreement and herein and the Assignors are hereby released and discharged completely from all such obligations and liabilities flowing under or relative to the Trust Agreement.

[The rest of this page is left intentionally blank]

This Assignment and Assumption will be binding upon the Assignee and its successors and permitted assigns and may be executed in counterpart and by facsimile.

Dated this 1 day of Decem, 2012. 2013

Assignee: ARRES HOLDINGS INC.

Per: 

Name: WES SERRA

Title: PRESIDENT

The Assignors hereby acknowledge the above Assignment and Assumption and agree that their commitment is reduced by an amount equal to the commitment assigned to the Assignee hereby.

Dated this 2 day of Nov., 2012. 2013 H.F.

Per: 

Name: Kurt Fuss

Per: 

Name: Friedlinde Fuss

Consented to and acknowledged this 1 day of Decem, 2012 by: 2013

ARRES CAPITAL INC.

Per: 

Name: WES SERRA

Title: PRESIDENT

ASSIGNMENT AND ASSUMPTION

**TO: Kelly Carins trustee for the Rise**

**RE: Assigned amounts owing to Arres Capital due from the trust agreements as affirmed by court order of the plan of arrangement.**

---

1. Arres Capital has assigned the administrative charges of the trust agreement to Wes Serra as of January 31 2009 for payments made to Arres Capital and Management fees. These charges were voted on by investors and accepted by the court in the plan of arrangement.
2. A total of up to \$95,000 (including the Wes Serra investment assignment attached) are hereby assigned by Wes Serra.
3. The balance of the amounts due with interest at the rate of the existing terms of the mortgage as per court order shall be paid to Wes Serra.

**Dated this 27nd day of September, 2017.**

  
Wes Serra

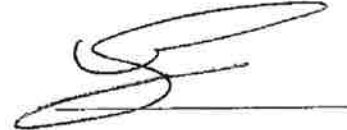


This Assignment and Assumption will be binding upon the Assignee and its successors and permitted assigns and may be executed in counterpart and by facsimile.

**Dated this 27nd day of September, 2017.**

**Assignee:**

Per:

A handwritten signature in black ink, consisting of several loops and a horizontal line at the bottom.

The Assignor hereby acknowledge the above Assignment and Assumption and agree that their commitment is reduced by an amount equal to the commitment assigned to the Assignee hereby.

**Dated this 27nd day of September, 2017.**

**Assignor:**

Per:

**NOTICE OF ASSIGNMENT**

THIS NOTICE OF ASSIGNMENT is given the 9<sup>th</sup> day of September, 2009

TO: S136 Ventures Ltd and /or Arres Capital Inc.  
(the "Trustee")

FROM: Arres Capital Inc.

AND FROM: Stacia Serra

**Take notice that Arres Capital Inc.** has assigned to Staci Serra all of its rights, title and ongoing and accrued interest in and to the loan and related loan security over the lands and premises:

YK Discovery Centre(as per the Trust agreement)

Lot 2, Plan KAP78953, Section 31, Township 9, ODYD, PID-026-773-660

**(As per the original trust agreement)**

This is assigned for the original principle value of \$10,188.00 as described in the trust agreement attached hereto in consideration.

**Arres Capital Inc.**

Per: \_\_\_\_\_  


\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Stacia Serra

**Acknowledgement**

Receipt of this notice is hereby acknowledged by the trustee this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

**S136 Ventures Ltd.**

Per: \_\_\_\_\_  


\_\_\_\_\_  
Authorized signatory

**NOTICE OF ASSIGNMENT**

THIS NOTICE OF ASSIGNMENT is given the 9<sup>th</sup> day of September, 2009

TO: S136 Ventures Ltd and /or Arres Capital Inc.  
(the "Trustee")

FROM: Arres Capital Inc.

AND FROM: Stacia Serra

**Take notice that Arres Capital Inc.** has assigned to Staci Serra all of its rights, title and ongoing and accrued interest in and to the loan and related loan security over the lands and premises:

YK Show Home (as per the Trust agreement)

Lot 20, Plan KAP78952, Section 31, Township 9, ODYD, PID-026-472-414

**(As per the original trust agreement)**

This is assigned for the original principle value of \$15,750.00 as described in the trust agreement attached hereto in consideration.

**Arres Capital Inc.**

Per: \_\_\_\_\_

Witness \_\_\_\_\_

\_\_\_\_\_  
Stacia Serra

**Acknowledgement**

Receipt of this notice is hereby acknowledged by the trustee this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

**S136 Ventures Ltd.**

Per: \_\_\_\_\_

Authorized signatory

**IRREVOCABLE ASSIGNMENT, AUTHORIZATION AND DIRECTION**

I, Staci Serra, currently of the City of Calgary, in the Province of Alberta, HEREBY IRREVOCABLY ASSIGN unto Bishop & McKenzie LLP in trust for Terrapin Mortgage Investment Corp., any and all funds payable to me by Kelly Cairns trustee for The Rise.

THIS ASSIGNMENT IS IRREVOCABLE. Once all payments of all funds owing to me are made this Irrevocable Assignment of Proceeds becomes null and void.


DATED at the City of Calgary, in the Province of Alberta, this 28 day of September, 2017.

SIGNED in the presence of: )

)  
)  
 )

Witness ) Staci Serra



I agree Staci Serra  


**IRREVOCABLE ASSIGNMENT, AUTHORIZATION AND DIRECTION**

I, Wes Serra, currently of the City of Calgary, in the Province of Alberta, HEREBY IRREVOCABLY ASSIGN unto Bishop & McKenzie LLP in trust for Terrapin Mortgage Investment Corp. Funds up to the amount of \$95,000.00 payable to me by Kelly Cairns trustee for The Rise.

THIS ASSIGNMENT IS IRREVOCABLE. Upon payment of the above noted sum, this Irrevocable Assignment of Proceeds becomes null and void.

DATED at the City of Calgary, in the Province of Alberta, this 28 day of September, 2017.

SIGNED in the presence of: )

)  
)  
\_\_\_\_\_ )

Witness ) Wes Serra

Staci Serra.



## APPENDIX I



**NOTICE OF STATEMENT OF RECEIVER**  
 (Subsections 245(1) and 246(1) of the Act)

**IN THE MATTER OF THE RECEIVERSHIP OF  
 ARRES CAPITAL INC.  
 (the “Company” or “Arres”)**

The receiver gives notice and declares that:

1. On Wednesday, July 26, 2017, pursuant to Part 9 of the *Civil Enforcement Act*, R.S.A. 2000, c. C-15 of Alberta, Alvarez & Marsal Canada Inc. became the Court-appointed receiver (the “**Receiver**”), without security, in respect of all the property of the Company, an insolvent person, including all Exigible Property that the Receiver has determined is not exempt from writ proceedings or distress proceedings (collectively, the “**Property**”), as including but not limited to the following property:

	Estimated Book Value
Accounts receivable	Unknown
Other	Unknown
<hr/>	
Total net book value of assets	\$ Unknown

2. Alvarez & Marsal Canada Inc. became the Receiver in respect of the Property described above by virtue of an Order of the Court of Queen’s Bench of Alberta (the “**Court**”) dated July 26, 2017 (the “**Receivership Order**”). The effective date of the Receivership Order (date of pronouncement) is February 13, 2015. For a copy of the Receivership Order, it may be found on the Receiver website at: [www.alvarezandmarsal.com/arrescapital](http://www.alvarezandmarsal.com/arrescapital).
3. Upon receiving the Receivership Order, the Receiver made arrangements with the Debtor and took possession and control of the Property described above between August 1 to 4, 2017. The books and records of the Debtor were located at the Debtor’s personal residence and the Receiver was unable to gain access by the Debtor to his personal residence until August 1, 2017.
4. The following information relates to the receivership:
  - a) Civic Address: 126 Spring Valley Way S.W.
  - b) Principal line of business: Mortgage Broker / Trustee
  - c) Location of business: Calgary, Alberta



d) Amounts owed by the Company to each creditor, according to books and records as at July 26, 2017 are shown below:

<u>Name</u>	<u>Claim Amount</u>
Secured creditors (see attached listing)	\$ 0
Unsecured creditors (see attached listing)	\$ 1,028,879.99
Total	\$ 1,028,879.99

e) The Receiver's contact is:

Alvarez & Marsal Canada Inc.  
Bow Valley Square 4  
Suite 1110, 250 6<sup>th</sup> Ave SW  
Calgary, AB T2P 3H7

Attention: Mr. Bryan Krol  
Telephone: (403) 538-7523  
Facsimile: (403) 538-7551

5. At the time of preparing this Notice of Statement of Receiver, the Company's books and records were incomplete and the Receiver did not have enough information to verify the book value of the Company's assets and liabilities. The Receiver continues to review the books and records of the Company pursuant to the Receivership Order.
6. On July 26, 2017, the Court also granted an Order (the "Bankruptcy Order") to adjudge Arres into Bankruptcy and A&M was appointed as trustee of the estate of the Arres, without security. On August 4, 2017, counsel to Arres filed a civil notice of appeal to the Court of Appeal of Alberta to have the Bankruptcy Order set aside and otherwise dismissed.

Dated at Calgary, Alberta this 4th day of August, 2017.

**Alvarez & Marsal Canada Inc., in its capacity as  
the Court Appointed Receiver of  
Arres Capital Inc., and not in its  
personal or corporate capacity**

Orest Konowalchuk, CPA, CA, CIRP, LIT  
Vice President



**IN THE MATTER OF THE RECEIVERSHIP OF  
ARRES CAPITAL INC.**

*Preliminary List of Creditors as at July 16, 2017, as submitted by the Debtor without Admission as to any Liabilities or Privilege Herein Shown*

<b>Secured Creditors</b>	<b>Address</b>	<b>City</b>	<b>Province/State</b>	<b>Postal Code/Zip Code</b>	<b>Country</b>	<b>Amount Outstanding</b>
						\$ -
<b>Total Secured creditors</b>						<b>\$0.00</b>
<b>Unsecured Creditors</b>	<b>Address</b>	<b>City</b>	<b>Province/State</b>	<b>Postal Code/Zip Code</b>	<b>Country</b>	<b>Amount Outstanding</b>
Access Mortgage Corp.	Suite 230, 6125 11th Street S.E.	Calgary	AB	T2H 2L6	Canada	\$ 1,028,879.99
<b>Total Unsecured Creditors</b>						<b>\$ 1,028,879.99</b>
<b>Total Creditors</b>						<b>\$1,028,879.99</b>

## **APPENDIX J**



## Memorandum

September 24, 2017

**To:** Alvarez & Marsal Canada Inc.

**From:** McCarthy Tétrault LLP

**Re:** Exigible Property of Arres Capital Inc.

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**\*PRIVILEGED & CONFIDENTIAL\*:** This document is created for the purpose of providing legal advice to the Receiver and for the dominant purpose of advising and obtaining instructions from the Receiver. Privilege is claimed over the content of this memorandum on the grounds of solicitor-client privilege, litigation privilege and solicitors' brief privilege. To minimize the risk of inadvertently waiving privilege, circulation of this document should be restricted to the Receiver. This document should not be disclosed to third parties without the prior consent of McCarthy Tétrault LLP or the Receiver. We anticipate this memorandum being filed on the court record and, to the extent that it is so filed, such filing will not constitute or be deemed to constitute a waiver of privilege by the Receiver other than over the express contents of this memorandum including, without limitation, any previous drafts or advice relating thereto.

### Introduction

Upon the application of Access Mortgage Corporation (2004) Limited (the "**Creditor**"), Alvarez & Marsal Canada Inc. was appointed under the *Civil Enforcement Act* (the "**CEA**")<sup>1</sup> to act as a receiver (the "**Receiver**") of Arres Capital Inc. (the "**Debtor**") pursuant to an order pronounced by Honourable Madam Justice Strekas on February 13, 2015 and entered on July 26, 2017 (the "**Order**"). The Order appointed the Receiver, without security, over all of the Debtor's current and future Exigible Property, as defined the Order, wherever situated, including all proceeds thereof. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Order.

You have requested our advice on the scope of the Exigible Property in order to assist you in complying with the obligation contained in paragraph 30 of the Order that requires the Receiver to report on the determination and calculation of the Exigible Property. Accordingly, this memorandum will address the scope of the Exigible Property for the purposes of the Order.

As you are aware, the court-appointed Receiver represents neither the interests of the Creditor nor the Debtor. Rather the Receiver is an officer of the Court and is entrusted to discharge its powers granted by the Order. The Receiver has a duty to comply with such powers and to act honestly and in the best interest of all stakeholders. You have requested that we address this issue because of a dispute between the Creditor and the Debtor

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<sup>1</sup> RSA 2000, c C-15, s 1(1)(u).

regarding the Exigible Property and for the express purposes of assisting you in fulfilling your duties and obligations under the Order.

### **Conclusion**

Our conclusion is that the Exigible Property consists of all the Debtor's assets, properties and undertakings including, without limitation, (a) debts due to the Debtor either now or in the future and (b) causes of action.

The Order provides that the Exigible Property is all property that is not exempt from writ proceedings or distress proceedings. The Order has been issued pursuant to the CEA and both writ proceedings and distress proceedings are proceedings that are authorized and governed by the CEA. Under the CEA, only an individual can take the benefit of exemptions available from writ proceedings or distress proceedings. As the Debtor has no property of any type that is exempt from writ proceedings or distress proceedings, it necessarily follows that the Exigible Property consists of all of the assets, properties and undertakings of the Debtor.

### **The Exigible Property**

#### **1. The CEA**

- Where exigible property of a debtor cannot be conveniently realized, Part 9 of the CEA enables the Court to appoint a receiver of the property on application of an enforcement creditor.<sup>2</sup> Unless otherwise ordered by the Court, a receiver may take into its custody and control the property over which it is appointed.<sup>3</sup>
- “Property” is defined under section 1(1)(II) of the CEA to include (and is not limited to):
  - (i) things, as well as rights or interests in things,
  - (ii) anything regarded in law or equity as property or as an interest in property,
  - (iii) any right or interest that can be transferred for value from one person to another,
  - (iv) any right, including a contingent or future right, to be paid money or receive any other kind of property, and
  - (v) any cause of action.
- With respect to exigible property, “exigible” is defined under section 1(1)(u) of the CEA as property that is “not exempt from writ proceedings or distress proceedings.” Section 1(1)(t) of the CEA states that property may be:
  - exempt from writ proceedings in accordance with Part 10; or

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<sup>2</sup> Ibid, s 85(1)(a).

<sup>3</sup> Ibid, s 87(c).

- exempt from distress proceedings in accordance with sections 104(d) and 105(1)(b).
- With respect to exemptions under Part 10 of the CEA, section 93(a) of the CEA states that the exemptions set out in Part 10 do not apply to an enforcement debtor that is not an individual.
- With respect to exemptions under sections 104(d) and 105(1)(b) of the CEA, each of these sections pertains to exemptions for the benefit of spouses, adult interdependent partners and children under the age of majority in landlord or mortgagee distress proceedings.

## 2. The Order

- “**Debtor’s Property**” is defined at paragraph 2 of the Order as, “all of the property of the Debtor, of every nature or kind whatsoever, including without limitation, real property and personal property, interests in mortgages, debt instruments, security agreements, negotiable instruments, accounts receivable, and cash, whether held legally by or beneficially for the Debtor and whether or not such property has been assigned or purported to have been assigned by the Debtor to any third party since May 1, 2009.”
- “**Exigible Property**” is defined at paragraph 3 of the Order as, “any of the Debtor’s Property that the Receiver has determined is not exempt from writ proceedings or distress proceedings.”

## 3. Analysis

The terms “**Debtor’s Property**” and “**Exigible Property**” in the Order are consistent with the definitions of “property” and “exigible” in the CEA, respectively. Thus, the terms of the Order should be applied in a similar manner to the way the CEA is interpreted.

*Stout & Company LLP v Chez Outdoors Ltd* (“**Stout**”)<sup>4</sup> provides guidance on the interpretation of terms in the CEA and determining what constitutes exigible assets under the CEA. In this case, the Honourable Madam Justice Moreau adopted the Supreme Court of Canada’s analytical approach in *Saulnier v Royal Bank of Canada*, (“**Saulnier**”)<sup>5</sup> to find that “the definition of ‘property’ should be interpreted in a purposeful way having regard to its entire context, in its grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature.”<sup>6</sup> Although *Saulnier* involves the interpretation of the term “property” under the BIA and *Personal Property Security Act* (Nova Scotia), and not the CEA, these statutes have basic policy objectives of non-exempt assets being made available to creditors. Furthermore, in *Stout*, Justice Moreau rejected the defendant’s argument that *Saulnier* was distinguishable because it involved other statutes and proceeded to apply *Saulnier* in the context of the CEA.<sup>7</sup>

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<sup>4</sup> 2009 ABQB 444 [Stout].

<sup>5</sup> 2008 SCC 58 at para 16.

<sup>6</sup> Stout, supra note 6 at para 35.

<sup>7</sup> Ibid at paras 33, 35.

Justice Moreau considered the Alberta Court of Appeal's decision in *Phan v Lee*<sup>8</sup> where the Court identified the purpose of the CEA as providing creditors workable remedies against debtors.<sup>9</sup> She went on to consider the report and recommendations issued by the Alberta Law Reform Institute in March 1991, *Enforcement of Money Judgments*, Report #61 ("**Report #61**"), which guided the Legislature in enacting the CEA. Justice Moreau held that the concepts of universal exigibility and just exemptions identified in Report #61, when considered together:

...signify that all the property of a judgement debtor should be subject to enforcement regardless of its form or character, excepting only property that has been excluded deliberately from enforcement that is sufficient to permit debtors to maintain themselves and their dependents at a reasonable standard.<sup>10</sup>

Justice Moreau went on to confirm that, in view of section 93(a) of the CEA, which states that the exemptions set out in Part 10 do not apply to a debtor that is not an individual, it was clear that these exemptions did not apply to the defendant corporation.<sup>11</sup>

Justice Moreau provided a broad definition of "property" that was to be interpreted purposefully and according to the scheme of the CEA. The definitions of "property" in the CEA and "Debtor's Property" in the Order both include non-exhaustive lists through the use of the term "includes". This also used in the definition of the term "property" in the BIA as interpreted in *Saulnier*. Given the similarities between the terms and the Supreme Court of Canada interpretation, the term Exigible Property should be interpreted broadly as well.

Pursuant to section 93(a) of the CEA and the Court's application in *Stout*, the property exemptions listed in Part 10 of the CEA are inapplicable to this case as they do not apply to an enforcement debtor that is a corporation. We are therefore of the view that the Exigible Property consists of all the assets, properties and undertakings of the Debtor. In particular, we are of the view that the Exigible Property includes (a) debts due to the Debtor either now or in the future and (b) causes of action.

### **The Debtor's Authorities**

The Debtor has provided the Receiver with two case authorities that purport to support its interpretation of the Order. We have assessed these authorities below.

The Debtor relies on *Cobalt Construction Inc v Kluane First Nation* (2013) ("**Cobalt Construction**"),<sup>12</sup> where the Court states at paragraph 14 that "...land which is encumbered by debts exceeding its value would not be considered exigible, since the secured creditors would be paid in priority to any unsecured judgment creditors". The CEA does contain various provisions that deal with secured creditors and secured obligations. It is trite law that if property is subject to a valid lien, charge or other encumbrance the proceeds from the disposition of such property must be used to pay the beneficiary of such security in full

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<sup>8</sup> 2005 ABCA 142 at para 44.

<sup>9</sup> *Stout*, supra note 6 at para 36.

<sup>10</sup> *Ibid* at para 38.

<sup>11</sup> *Ibid*.

<sup>12</sup> 2013 YKSC 124.

before being used to satisfy the claims of the Creditor or other unsecured creditors. However, we are unaware of there being any secured creditors of this estate. Therefore, even in *Cobalt* is applicable, it is irrelevant to the current fact situation.

The Debtor also relies on the decision in *Frueh v Mair* ("**Frueh**")<sup>13</sup> that stands for the proposition that a court cannot appoint a receiver under the *Judicature Act* for a money judgment. Given the broad scope of section 85 and 86 of the CEA, in the event that the Receiver is desirous of amending or varying the Order there is no need to invoke section 13(2) of the *Judicature Act*. In addition, *Frueh* involves a personal enforcement debtor where exemptions were applicable and a receiver was appointed over a specifically identified asset (benefits payable by Air Canada to enforcement debtor). Conversely, our case involves a corporate debtor and a receiver who has been appointed over all Exigible Property, which as previously concluded, is all of the Debtor's Property.

Neither of the authorities provided by the Debtor change our conclusion on the Exigible Property issue.

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<sup>13</sup> 1998 ABQB 738.

## APPENDIX K



# Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2017/09/22  
Time of Search: 09:22 AM  
Search provided by: THE LICENSING COMPANY (CALGARY) INC.

Service Request Number: 27717223  
Customer Reference Number:

**Corporate Access Number:** 208758920  
**Legal Entity Name:** 875892 ALBERTA LTD.

**Legal Entity Status:** Active  
**Alberta Corporation Type:** Numbered Alberta Corporation  
**Registration Date:** 2000/04/17 YYYY/MM/DD

## Registered Office:

**Street:** C/O PELLETIER LAW, #3300, 205 - 5 AVENUE S.W.  
**City:** CALGARY  
**Province:** ALBERTA  
**Postal Code:** T2P 2V7

## Records Address:

**Street:** C/O PELLETIER LAW, #3300, 205 - 5 AVENUE S.W.  
**City:** CALGARY  
**Province:** ALBERTA  
**Postal Code:** T2P 2V7

## Directors:

**Last Name:** SERRA  
**First Name:** STACIA  
**Street/Box Number:** 1324 - 11 AVENUE SW, SUITE 204  
**City:** CALGARY  
**Province:** ALBERTA

**Postal Code:** T3C 0M6

**Voting Shareholders:**

**Last Name:** SERRA  
**First Name:** STACIA  
**Street:** 1324 - 11 AVENUE SW, SUITE 204  
**City:** CALGARY  
**Province:** ALBERTA  
**Postal Code:** T3C 0M6  
**Percent Of Voting Shares:** 100

**Details From Current Articles:**

**The information in this legal entity table supersedes equivalent electronic attachments**

**Share Structure:** SEE SCHEDULE "A" ATTACHED HERETO AND FORMING PART  
HEREOF.

**Share Transfers** NO SHARES OF THE CAPITAL OF THE CORPORATION SHALL BE  
**Restrictions:** TRANSFERRED WITHOUT THE SANCTION OF A MAJORITY OF THE  
DIRECTORS OF THE CORPORATION, AS EVIDENCED BY A  
RESOLUTION IN WRITING OF THE DIRECTORS.

**Min Number Of** 1  
**Directors:**

**Max Number Of** 10  
**Directors:**

**Business**  
**Restricted To:** NO RESTRICTIONS

**Business**  
**Restricted** NO RESTRICTIONS  
**From:**

**Other** SEE SCHEDULE "B" ATTACHED HERETO AND FORMING PART  
**Provisions:** HEREOF.

**Holding Shares In:**

<b>Legal Entity Name</b>
GRAYWOOD TERRACE DEVELOPMENT INC.
COPPERTREE MORTGAGE INC.
1740247 ALBERTA LTD.

1798582 ALBERTA LTD.

**Other Information:**

**Last Annual Return Filed:**

File Year	Date Filed (YYYY/MM/DD)
2017	2017/04/26

**Filing History:**

List Date (YYYY/MM/DD)	Type of Filing
2000/04/17	Incorporate Alberta Corporation
2011/11/15	Change Director / Shareholder
2015/03/30	Change Address
2017/04/26	Enter Annual Returns for Alberta and Extra-Provincial Corp.

**Attachments:**

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
<a href="#">Share Structure</a>	ELECTRONIC	2000/04/17
<a href="#">Other Rules or Provisions</a>	ELECTRONIC	2000/04/17

This is to certify that, as of this date, the above information is an accurate reproduction of data contained within the official records of the Corporate Registry.

