

COURT FILE NO.: 1401-12431

COURT COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

APPLICANTS ACCESS MORTGAGE CORPORATION (2004)  
LIMITED, BRUCE MCRITCHIE and ANN KURTZ

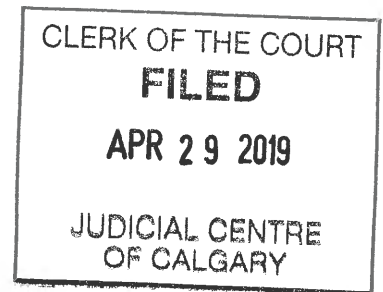
RESPONDENT ARRES CAPITAL INC.

DOCUMENT **APPROVAL AND VESTING ORDER**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY  
FILING THIS  
DOCUMENT

Cassels Brock & Blackwell LLP  
Bankers Hall West Tower  
888 – 3<sup>rd</sup> Street SW  
Calgary, Alberta T2P 5C5  
Telephone: (403) 351-2921  
Facsimile: (403) 648-1151  
File No.: 52840-1

**Attention: Jeffrey L. Oliver**



COURT FILE NO.: 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

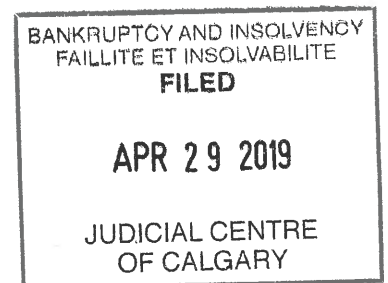
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**Attention: Jeffrey L. Oliver**

**DATE ON WHICH ORDER WAS PRONOUNCED: April 29, 2019**

**LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta**

**NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice C.M. Jones**

**UPON THE APPLICATION** by Access Mortgage Corporation (2004) Limited ("**Access**"), Bruce McRitchie and Ann Kurtz (collectively, the "**Applicants**" or the "**Assignees**") for an order approving the assignment of, *inter alia*, the interests of Arres Capital Inc. (the "**Debtor**") in and to an action commenced in the Supreme Court of British Columbia as Action No. 106479 (the "**Transaction**") contemplated by an assignment agreement (the "**Assignment Agreement**") between Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertakings, property and assets of the Debtor and in its capacity as trustee in bankruptcy (the "**Trustee**") of the Debtor and the Applicants dated April 12, 2019 and appended to the Affidavit of David Murphy, sworn April 12, 2019 (the "**Murphy Affidavit**"), and vesting in the Assignees (or their nominee) the Debtor's right, title and interest in and to the assets described in the Assignment Agreement (the "**Assigned Assets**");

**AND UPON HAVING READ** the Bankruptcy Order granted July 26, 2017 (the "**Bankruptcy Order**"), Amended and Restated Receivership Order dated October 23, 2017 (the "**Receivership Order**"), the Murphy Affidavit and the Affidavit of Service; **AND UPON HEARING** the submissions of counsel for the Trustee/Receiver, the Assignees, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service, filed;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

#### **SERVICE**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

#### **APPROVAL OF TRANSACTION**

2. The Transaction is hereby approved and execution of the Assignment Agreement by the Trustee/Receiver is hereby authorized and approved, with such minor amendments as the

Trustee/Receiver may deem necessary. The Trustee/Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Assigned Assets to the Assignees (or their nominee(s)).

### VESTING OF PROPERTY

3. Upon the granting of this Order all of the Debtor's right, title and interest in and to the Assigned Assets shall vest absolutely in the name of the Assignees (or their nominee(s)), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Bankruptcy Order or the Receivership Order;
- (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; and
- (c) any liens or claims of lien under the *Builders' Lien Act* (Alberta) or *Builders' Lien Act* (British Columbia);

and for greater certainty, this Court orders that all Claims affecting or relating to the Assigned Assets are hereby expunged, discharged and terminated as against the Assigned Assets.

4. Upon completion of the Transaction, the Debtor and all persons who claim by, through or under the Debtor in respect of the Assigned Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Assigned Assets shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Assigned Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Assigned Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Assigned Assets, they shall forthwith deliver possession thereof to the Assignees (or its nominee).

5. The Assignees (or their nominee(s)) shall be entitled to enter into and upon, hold and enjoy the Assigned Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by, through or against the Debtor.

#### **LIFTING OF STAY**

6. The stay of proceedings pursuant to Section 69.3 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 and paragraphs 8 and 9 of the Receivership Order shall no longer operate in respect of the action commenced by Access Mortgage Investment Corporation (2004) Limited, Bruce McRitchie, Ann Kurtz and Alex McLean (collectively with the Applicants, the "**Plaintiffs**") against Western Arres Capital Inc. (an assumed name of the Debtor), 731543 B.C. Ltd. and Timber Creek Developments (2005) Inc. and the Plaintiffs are authorized to continue to prosecute action no. 106479 commence in the Supreme Court of British Columbia, Kelowna Registry.

#### **MISCELLANEOUS MATTERS**

7. Notwithstanding:
  - (a) the pendency of these proceedings and any declaration of insolvency made herein;
  - (b) any assignment in bankruptcy made in respect of the Debtor; and
  - (c) the provisions of any federal or provincial statute:

the vesting of the Assigned Assets in the Assignees (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. The Trustee/Receiver, the Assignees (or their nominee(s)) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
9. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Trustee/Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies

are hereby respectfully requested to make such order and to provide such assistance to the Trustee/Receiver, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee/Receiver and its agents in carrying out the terms of this Order.

10. Service of this Order shall be deemed good and sufficient by:

(a) Serving the same on:

- (i) the persons listed on the service list created in these proceedings;
- (ii) any other person served with notice of the application for this Order;
- (iii) any other parties attending or represented at the application for this Order;
- (iv) the Assignees or the Assignees' solicitors; and

(b) Posting a copy of this Order on the Trustee/Receiver's website at:  
<https://www.alvarezandmarsal.com/arrescapital>

and service on any other person is hereby dispensed with.

11. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



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Justice of the Court of Queen's Bench of Alberta