

Clerk's stamp:

COURT FILE NUMBER	1801-16548
COURT	COURT OF QUEEN'S BENCH
JUDICIAL CENTRE	CALGARY
APPLICANT	CANADIAN WESTERN BANK
RESPONDENTS	ARTE GROUP INC., ARTE HOLDINGS CORP., ARTE GROUP CORP., THE BOAZ AND DAVID SHILMOVER FAMILY TRUST, DAVID SHILMOVER and BOAZ SHILMOVER
DOCUMENT	<u>APPLICATION BY CANADIAN WESTERN BANK</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Carole Hunter / Ryan Algar DLA Piper (Canada) LLP 1000 - 250, 2nd Street SW Calgary, AB T2P 0C1 Phone: 403-698-8782 / 403-698-8744 Fax: 403-697-6600 / 403-776-8866 Email: carole.hunter@dlapiper.com / ryan.algar@dlapiper.com File No.: 030645-00186/CJH

NOTICE TO RESPONDENT(S)

This application is made against you. You are Respondents.

You have the right to state your side of this matter before the Master/Judge.

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

Date: Wednesday, February 6, 2019
Time: 11:30 AM
Where: Calgary Courts Centre, 601 5 St SW, Calgary, AB T2P 5P7
Before Whom: The Honourable Justice J. T. Eamon on the Commercial List

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

Remedy claimed or sought:

1. The Applicant, Canadian Western Bank ("**CWB**"), seeks the discharge of Hardie & Kelly Inc. in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the undertaking, property and assets of Arte Group Inc. operating as Arte Group, Arte Roofing & Construction, Arte Roofing & Exteriors and Arte Structures (collectively, the "**Debtor**"), and for an Order substantially in the form attached hereto as **Schedule "A"**, as follows:
 - (a) declaring that service of this Application is good and sufficient and service of the Order on any party other than those set forth in the service list is hereby dispensed with;
 - (b) approving the fees and disbursements of the Receiver and its legal counsel in respect of the administration of the receivership as set out in the First Report of the Receiver (the "**First Report**");
 - (c) approving the activities of the Receiver and the Statement of Receipts and Disbursements as set out in the First Report;
 - (d) authorizing and directing the Receiver to distribute the funds in its possession, or which may come into its possession, in the order and priority as set out in the First Report;
 - (e) declaring that the Receiver has duly and properly discharged its duties, responsibilities, and obligations as Receiver;
 - (f) discharging and releasing the Receiver from any and all further obligations as Receiver and any and all liability in respect of the discharge of the Receiver's duties as court-appointed receiver of the Property (as that term is defined in the Consent Receivership Order), granted by Justice C.M. Jones on November 23, 2018, save and except for any liability arising out of fraud or gross negligence or wilful misconduct on the part of the Receiver; and
 - (g) such further and other relief as Counsel may advise and this Honourable Court may permit.

Grounds for making this application:

2. On November 23, 2018, the Court of Queen's Bench of Alberta (the "**Court**") issued an order appointing the Receiver as the receiver of the property, assets and undertakings of the Debtor (the "**Receivership Order**").
3. The Debtor carried on business as a building envelope contractor specializing in the industrial, commercial and institutional ("**ICI**") markets throughout Western Canada. The Debtor designed, fabricated and installed standard and specialty rainscreen systems for the ICI construction markets and completed exterior façade products and single-ply roofing systems.
4. As at November 15, 2018, the Debtor was indebted to CWB in the principal amount of \$4,570,074.94, plus interest, associated costs, fees and disbursements, all of which continue to accrue.
5. On the basis of the information provided to CWB by the Receiver since its appointment, as and as is further detailed in the First Report, CWB has concluded that it is unable to continue to fund the costs of receivership proceedings, including the Receiver's costs and disbursements. More specifically, CWB understands that the realization of the Debtor's assets may be compromised, as a result of, among other things, the following:
 - (a) a deemed trust and GST claims likely to be advanced by Canada Revenue Agency in the approximate amount of \$249,000;
 - (b) priority claims in favour of former employees in the approximate amount of \$80,000;
 - (c) the uncertainty surrounding the Debtor's accounts receivable; and
 - (d) the costs relating to the litigation relating to a number of lien claims on the Debtor's construction projects.
6. CWB submits that the professional fees incurred in this matter are reasonable in the circumstances. However, as summarized in the First Report, the Receiver and its legal counsel have incurred professional fees in excess of \$150,000, the majority of which relate to addressing the accounts receivables, Outstanding Jobs (as that term is defined in the First Report) and related liens. The Receiver estimates that a further \$100,000-\$150,000 in combined professional fees would be incurred to continue to monitor, investigate and address the status of the Outstanding Jobs. Moreover, the Receiver states that, after

considering recovery costs, it anticipates the extent of final collections of accounts receivable will prove to be extremely low, in the range of 10% of \$360,000.

7. Accordingly, CWB is seeking the Court's approval for the Receiver's discharge. The Receiver has consented to CWB's application.

Material or evidence to be relied on:

8. The First Report of the Receiver dated January 28th, 2019;
9. All pleadings, orders and proceedings filed in the within action, including all prior reports filed by or on behalf of the Receiver; and
10. Such further and other materials as Counsel may advise and this Honourable Court permits.

Applicable rules:

11. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended

Applicable Acts and regulations:

12. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended

How the application is proposed to be heard or considered:

13. The Applicant proposes that this application be heard in the Chambers of the Honourable Justice J. T. Eamon.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE “A”

Clerk's stamp:

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JUDICIAL CENTRE	CALGARY
APPLICANT	CANADIAN WESTERN BANK
RESPONDENTS	ARTE GROUP INC., ARTE HOLDINGS CORP., ARTE GROUP CORP., THE BOAZ AND DAVID SHILMOVER FAMILY TRUST, DAVID SHILMOVER and BOAZ SHILMOVER
DOCUMENT	<u>ORDER FOR FINAL DISTRIBUTION, APPROVAL OF RECEIVER'S FEES AND DISBURSEMENTS, APPROVAL OF RECEIVER'S ACTIVITIES AND DISCHARGE OF RECEIVER</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Carole Hunter / Ryan Algar DLA Piper (Canada) LLP 1000 - 250, 2nd Street SW Calgary, AB T2P 0C1 Phone: 403-698-8782 / 403-698-8744 Fax: 403-697-6600 / 403-776-8866 Email: carole.hunter@dlapiper.com / ryan.algar@dlapiper.com File No.: 030645-00186/CJH

DATE ON WHICH ORDER WAS PRONOUNCED:	<u>February 6, 2019</u>
LOCATION WHERE ORDER WAS PRONOUNCED:	<u>Calgary, Alberta</u>
NAME OF JUSTICE WHO MADE THIS ORDER:	<u>The Honourable Justice J. T. Eamon</u>

UPON THE APPLICATION of Canadian Western Bank ("**CWB**") seeking the discharge of Hardie & Kelly Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Arte Group Inc. operating as Arte Group, Arte Roofing & Construction, Arte Roofing & Exteriors, and Arte Structures (collectively, the "**Debtor**"), and for an Order for the final distribution of proceeds, approval of the Receiver's fees and disbursements, and approval of the Receiver's activities; **AND UPON** hearing read the Receiver's First Report dated January 28th, 2019

(the "**First Report**"); **AND UPON** hearing counsel for CWB, counsel for the Receiver, and counsel for various other parties; **AND UPON** being satisfied that it is appropriate to do so, **IT IS ORDERED THAT:**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and 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;
2. The Receiver's accounts for fees and disbursements, as set out in the First Report are hereby approved without the necessity of a formal passing of its accounts.
3. The accounts of the Receiver's legal counsel Burnet, Duckworth & Palmer LLP, Rose LLP, and HMC Lawyers LLP, for their fees and disbursements, as set out in the First Report are hereby approved without the necessity of a formal assessment of their accounts.
4. The Receiver's activities as set out in the First Report, and the Statement of Receipts and Disbursements as attached to the First Report, are hereby ratified and approved.
5. The Receiver is authorized and directed to distribute the funds in its possession, or which may come into its possession, in the following order and priority:
 - (a) in satisfaction of any amounts secured by the charges described in sections 81.4(4) and 81.6(2) of the Bankruptcy and Insolvency Act RSC 1985 c. B3;
 - (b) in satisfaction of any costs of the administration of the receivership, including the accounts of the Receiver and its legal counsel;
 - (c) in satisfaction of any borrowings made by the Receiver pursuant to Receiver's Certificates as prescribed by the Receivership Order granted in these proceedings on November 23, 2018; and
 - (d) to Canada Revenue Agency on account of claims to be advanced on account of unremitted source deductions and GST owing by the Debtor.
6. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any in fraud, gross negligence

or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.

7. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
8. Upon the filing of this Order, the Receiver shall be discharged as Receiver of the Debtor and its property, provided however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.
9. The Receiver and its legal counsel are authorized and directed to file Notices of Ceasing to Act in any litigation involving the Debtor or the Receiver, and such Notices of Ceasing to Act shall designate the address for service upon the Debtor to be the Debtor's registered office at:

Arte Group Inc.
Third Floor, 14505 Bannister Road SE
Calgary, AB T2X 3J3

(the "**Arte Address**")
10. Both before and after its discharge, the Receiver is authorized and directed to redirect and/or send any correspondence or other documents addressed to the Debtor or the Receiver and received by the Receiver to the Arte Address. Thereafter the Receiver has no other obligation or responsibility in relation to any such correspondence or other documents, and for clarity has no obligation or responsibility to respond to or deal with any such correspondence or document.
11. The Receiver is authorized and directed, in its discretion, to surrender to the applicable landlords any leased premises of the Debtor in the state such premises exist on the date of surrender. The Receiver shall pay occupation rent for any leased premises occupied by the Receiver up to the date of surrender to the landlord but shall otherwise have no responsibility or liability in respect of any leased premises.

12. For clarity, upon the discharge of the Receiver, all of the property of the Debtor, including without limitation, leased property, the books, records, and other documents and information of the Debtor, shall revert to the Debtor, and the Receiver shall have no more right, entitlement, obligation or responsibility in respect of or relating to the property or information of the Debtor, including without limitation information to which the *Personal Information Protection and Electronic Documents Act* SA 2003 c P6.5 may apply, and the Receiver shall have no responsibility or obligation to maintain any insurance in respect of the property of the Debtor.

13. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by Facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

Justice of the Court of Queen's Bench of Alberta