

COURT OF APPEAL OF ALBERTA

Form AP-3
[Rules 14.53]

COURT OF APPEAL FILE NUMBER:

KING'S BENCH COURT FILE
NUMBER:

2103 - 08305

Registrar's Stamp

REGISTRY OFFICE:

CALGARY

APPLICANT:

A&M ENTERPRISE LTD.

STATUS ON APPEAL:

APPELLANT

STATUS ON APPLICATION:

APPLICANT

RESPONDENT:

IN THE MATTER OF THE
*COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC*
1985 c C-36, as amended

AND IN THE MATTER OF
THE COMPROMISE OR
ARRANGEMENT OF
WALLACE & CAREY INC.,
LOUDON BROS LIMITED,
and CAREY MANAGEMENT
INC.

STATUS ON APPEAL:

RESPONDENT

STATUS ON APPLICATION:

RESPONDENT

DOCUMENT:

APPLICATION FOR PERMISSION TO APPEAL

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
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WARNING

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

NOTICE TO RESPONDENT(S):

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

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

Date: December 13, 2023

Time: 9:30 AM

Where: Court of Appeal in Calgary, AB

Before: Single judge of the court (Rule 14.37)

Nature of Application and Relief Sought:

1. Granting permission to appeal under section 13 of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended ("**CCAA**"), from the Order of

the Honourable Justice Sidnell pronounced November 9, 2023, which directed that AME refund \$497,521.26 to Wallace within two business days.

2. Abridging the time for service of this Application, extending the time for bringing the within Application and such other relief as may be required; and
3. Such further and other related relief as counsel may request and this Honourable Court may grant.

Grounds for making this application:

Overview

4. The appeal has a reasonable chance of success if allowed to proceed.
5. The point on appeal is of significance to the practice.
6. The point raised is of significance to the action itself.
7. The appeal is prima facie meritorious.
8. The appeal will not unduly hinder the progress of the action, particularly if it is heard on an expedited basis.

Significance to the practice

9. Suppliers of perishable items are treated differently in the CCAA, signalling Parliament's intention in accordance with proposed amendments under Bill C-280 to ensure payment to suppliers who provide perishable goods to companies subject to CCAA and bankruptcy proceedings. The Decision fails to take into account the effect, to the practice as a whole, of forcing the Applicant to refund monies paid to it in exchange for perishable goods which it may be unable to sell prior to their expiry date.

Significance to the action

10. The Applicant is also a creditor of the Respondents.
11. The Decision has the effect of forcing the Respondents to purchase the very goods which the Applicant is forced to provide a refund for, and therefore imposes an unreasonable burden on the Applicant in the event that the goods expire before the Respondents ultimately opt to continue with delivery.
12. A reasonable resolution of the claims was to require the Respondents to forthwith pickup the goods which are the subject of the refund they are demanding, thereby satisfying the needs of various stakeholders.

Prima facie merit

13. The Decision introduced and relied on late filed materials of the Respondent and failed to allow an adjournment for the Applicant to address the newly raised evidence and arguments. The Decision in turn failed to consider the Applicant's response, including the disclosure of the impugned invoices which were integral to the ultimate conclusion in the Decision, and such consideration could have materially impacted the Decision.
14. The Decision discloses errors of facts which materially impacted the Decision, and such misapprehension would have been avoided.
15. The Decision discloses errors of law which materially impacted the Decision, and such misapprehension would have been avoided.

No undue hindrance of the action

16. An Appeal of the Decision would likely satisfy multiple stakeholders, and therefore furthers, rather than hinders, the action as a whole.

Material or evidence to be relied on:

17. Certain application materials of Wallace & Carey Inc., Loudon Bros Limited, and Carey Management Inc., together with evidence that was before the Honourable Justice E.J Sidnell at the hearing of the Application on November 9, 2023, including but not limited to:
 - a. Application of Wallace & Carey Inc., Loudon Bros Limited, and Carey Management Inc., filed October 2, 2023;
 - b. Affidavit of Frank Alexander, sworn October 2, 2023;
 - c. Affidavit of Hamid Abbaspour, sworn October 2, 2023;
 - d. Affidavit of Hamid Abbaspour, sworn November 2, 2023.
18. Order of the Honourable Justice E.J. Sidnell granted November 9, 2023;
19. Affidavit of Frank Alexander, affirmed;
20. Transcript of Proceedings before the Honourable E.J. Sidnell dated November 9, 2023, ordered and to be settled and filed;
21. Such further and other materials or evidence as counsel may advise and as the Honourable Court may permit.

Applicable Acts, regulations and rules:

22. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, section 13.