

Clerk's Stamp

COURT FILE NO. 2001-05482
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

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 JMB CRUSHING SYSTEMS INC. and 2161889
ALBERTA LTD.

APPLICANTS JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT **AFFIDAVIT OF BYRON LEVKULICH**

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CONTACT
INFORMATION OF
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AFFIDAVIT OF BYRON LEVKULICH
sworn July 24, 2020

I, **BYRON LEVKULICH**, of the City of Denver, in the State of Colorado, **MAKE OATH AND SAY THAT:**

1. I am a Director of the Applicants JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216**", and with JMB, the "**Applicants**"), as well as a Director of Canadian Aggregate Resources Corp. ("**CARC**"). As such, I have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.

2. I have reviewed the business records of the Applicants and CARC relevant to the within proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.
3. I am authorized to swear this Affidavit as corporate representative of the Applicants.
4. I swear this Affidavit in support of an Application for an Order extending the Stay Period (as defined in the Initial Order) up to and including September 4, 2020.

Background

5. My involvement with JMB began in November 2018 after CARC acquired a majority interest in JMB. CARC is wholly owned by Resource Land Fund V, LP, a US private equity fund based in Denver, Colorado (“**RLF**”). CARC’s investment in JMB was predicated on the assets owned by JMB, including the inventory reported on its financial statements. On the basis of the information provided in the due diligence process and the value of the assets held by JMB, CARC closed the transaction. The purchase price was \$40,150,000 for the majority interest, less assumed liabilities, resulting in a payment of \$17,966,988.50 to the shareholder vendors. The book value of the inventory at the time of closing was \$15.7 million.
6. Since the acquisition, CARC has been working with JMB to streamline and stabilize its operations. As described in the Affidavit of Jeff Buck sworn April 16, 2020, the Applicants determined it was necessary to make an application pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended, to maximize their value to stakeholders by: (a) implementing a business reorganization plan; (b) continuing operations to permit the completion of ongoing contracts; and (c) carrying out through the Monitor a sale and investment solicitation process (“**SISP**”) to permit the sale, recapitalization or restructuring of the Applicants’ business.
7. On May 1, 2020, the Honourable Justice K.M. Eidsvik granted the Initial Order in favour of JMB and its wholly owned subsidiary 2161889 Alberta Ltd. (collectively with JMB, the “**Applicants**”) which, among other things:

- (a) granted the Applicants protection from their creditors under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, up to and including May 11, 2020 (the “**Stay Period**”);
 - (b) appointed FTI Consulting Canada Inc. (the “**Monitor**”) as Monitor of the Applicants in these proceedings;
 - (c) approved a debtor-in-possession interim revolving credit facility (the “**ATB Facility**”) to be provided by ATB Financial and an alternate interim revolving credit facility (together with the ATB Facility, the “**Interim Credit Facilities**”) to be provided by CARC; and
 - (d) approved the SISP.
8. On May 4, 2020, the Applicants retained Blake Elyea as Chief Restructuring Advisor, having recognized that additional expertise and support would be required to assist the Applicants with the CCAA process. In that role, Mr. Elyea assists the Applicants' management and Boards with managing their business affairs. He also leads the Applicants' financial reporting and other financial functions, and has assisted the Monitor and Sale Advisor with the SISP.
9. On May 11, 2020, the Honourable Justice K.M. Eidsvik granted the Amended and Restated Initial Order, which, among other things, extended the Stay Period to July 31, 2020 and appointed Sequeira Partners (the “**Sale Advisor**”) as Sale Advisor for the SISP.
10. Early in the proceedings, CARC declared its interest in submitting a bid through the SISP and subsequently did so. CARC has been invited by the Monitor and Sale Advisor to participate in Phase 2 as Qualified Phase 1 Bidder (as those terms are defined in the SISP). Given CARC's equity holding in JMB, measures were taken to ensure the integrity of the SISP. Those measures were described by the Monitor in its Second Report filed July 6, 2020.

11. On June 23, 2020, Jeff Buck resigned as officer and director of the Applicants. With Mr. Elyea and Jeff Ryks, the Chief Financial Officer of JMB, the Applicants continue to have sufficient support to continue for the duration of these proceedings.

Extension of Stay Period

12. Since the granting of the Amended and Restated Initial Order, the Applicants have been acting diligently and in good faith in these proceedings by:
 - (a) Continuing to collect outstanding receivables owed to JMB;
 - (b) Working with stakeholders and the Monitor to develop and obtain court approval of two lien claims process orders, which will facilitate the determination of a number of lien claims;
 - (c) Applying for various subsidies from the Government of Canada to support the financial stability of the Applicants;
 - (d) Reducing overhead costs to the minimum level required to complete the SISP, including reducing the number of employees as contracts were completed;
 - (e) Cooperating with the Monitor and the Sale Advisor in their efforts to conduct the SISP; and
 - (f) Advising the Monitor and their two primary secured creditors of changes that may have a material effect on the Applicants' business and the SISP, as further described below.
13. Upon my review of the Monitor's Second Report filed July 6, 2020, I have been advised that the Sale Advisor has evaluated the non-binding letters of intent received pursuant to Phase 1 of the SISP and invited eight parties, including CARC, to participate in Phase 2 and submit final binding offers.

14. The deadline for the submission of final binding offers in Phase 2 of the SISP was July 20, 2020. RLF incorporated a new BC corporation, which corporation submitted a Phase 2 bid on July 2020.
15. I understand from my discussions with the Monitor that extending the Stay Period until September 4, 2020 will allow the Monitor and the Sale Advisor sufficient time to evaluate the final binding offers received in Phase 2 of the SISP, identify the highest or otherwise best bid or bids, and bring the successful offer or offers to this Honourable Court for approval.
16. Based on my discussions with the Monitor and my review of the Applicants' 13-week cash flow statement, the Applicants have sufficient funds through to September 4, 2020 to allow for the completion of the SISP.

Inventory Restatement

17. I am advised by Mr. Elyea and believe that the SISP data room was populated using information from JMB's books and records, including the borrowing base submission provided to ATB Financial just prior to the Initial Order being granted. Those books and records showed a book value of \$23.3 million for 5.7 million tonnes of sand and gravel inventory, and to the best of my knowledge at the time, were accurate. In fact, those values had previously been relied upon by RLF to support in part the purchase price paid by it in the RLF acquisition.
18. Once the SISP data room had been and opened to potential Phase 1 bidders, Mr. Elyea worked with the Sale Advisor to facilitate access for potential Phase 1 bidders to the Applicants' assets for their review and inspection prior to submitting a Phase 1 Bid. I am advised by Mr. Elyea and believe that:
 - (a) During the course of that process, he became aware of concerns regarding the gravel inventory levels reported by the Applicants, and subsequently instructed pit operations personnel to review a sample of the sites where gravel inventory was stockpiled to determine the level of inventory at those sites;

(b) The information collected during the site visits did not support the reported level of inventory for those sites, leading him to conclude on a preliminary basis that the gravel inventory in the Applicants' books and records was significantly overstated; and

(c) Accordingly, during the week of June 22, 2020, he discussed his concerns with counsel for the Applicants and the Monitor and provided a draft preliminary restatement of the gravel inventory levels held by the Applicants.

19. I am advised by counsel for the Applicants and believe that shortly after this issue was discovered, it was disclosed to counsel for the Applicants' two senior secured creditors, ATB Financial and Fiera Private Debt Fund IV LP.

20. I was not physically present before the Commissioner for Oaths, but was connected to him by video technology and followed the process for remote commissioning.

SWORN (OR AFFIRMED) BEFORE ME)
at Denver, Colorado, this 24th day of July,)
2020.)

_____)
Notary Public in and for the State of)
Colorado)

_____) **BYRON LEVKULICH**