

ENTERED

FORM 27

[Rule 6.3 and 10.52(1)]

COURT FILE NUMBER 2001-05482
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended JS Dec 07 2020
J. Eidsvik
1201640
AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and
2161889 ALBERTA LTD.

AND IN THE MATTER OF A PLAN OF ARRANGEMENT
OF JMB CRUSHING SYSTEMS INC. and MANTLE
MATERIALS GROUP, LTD.

APPLICANTS JMB CRUSHING SYSTEMS INC., 2161889 ALBERTA LTD.
and MANTLE MATERIALS GROUP, LTD.

DOCUMENT **APPLICATION TO EXTEND STAY OF PROCEEDINGS
AND AMEND REVERSE VESTING ORDER – EASTSIDE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attn: **Tom Cumming/Caireen E. Hanert/Stephen Kroeger**
Phone: 403.298.1938/403.298.1992/403.298.1018
Fax: 403.263.9193
File No: A163514

NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent.

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

To do so, you must attend Court by videoconference or phone when the application is heard as shown below:

Date: December 7, 2020
Time: 2:30 pm
Where: Calgary Courts Centre – via Webex. Videoconference details are enclosed as **Appendix “A”** to this Application
Before: The Honourable Justice K.M. Eidsvik – Commercial List

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

Remedy claimed or sought:

1. The Applicants, JMB Crushing Systems Inc. (“**JMB**”), 2161889 Alberta Ltd. (“**216**”, and together with JMB Crushing, the “**Applicants**”), seek relief pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended, (the “**CCAA**”), as follows:
 - (a) An Order, substantially in the form attached as **Schedule “A”** hereto, extending the Stay Period, as defined in the Initial Order granted in these proceedings by Justice K.M. Eidsvik on May 1, 2020 (the “**Initial Order**”), up to and including January 8, 2020, or such further date as this Honourable Court may deem appropriate;
 - (b) An Order, substantially in the form attached as **Schedule “B”** hereto, amending paragraph 13 of the Reverse Vesting Order granted by Justice K.M. Eidsvik on October 16, 2020 (the “**RVO**”) to permit the immediate vesting of the Eastside Equipment (as defined in paragraph 2(a) of the RVO) in Eastside Rock Products, Inc. (“**Eastside**”) and to add a Monitor’s certificate with respect to Eastside as Schedule “F” to the RVO (the “**Eastside Monitor’s Certificate**”) in the form attached as Appendix “A” to the draft Order;
 - (c) With respect to both Orders, an abridgement of the time for service of notice of this Application and supporting materials, an abridgement of the time for service to the time provided, a provision deeming service good and sufficient, and a declaration that no other person is required to have been served with notice; and
 - (d) Such further and other relief as counsel requests and this Honourable Court may grant.

Grounds for making this application:

Stay Extension Order

2. The stay of proceedings granted by the Initial Order and subsequently extended currently expires on December 11, 2020 (the “**Stay Period**”).
3. The Applicants are seeking a further extension of the Stay Period pursuant to the Stay Extension Order to and including January 8, 2020, or such further date as this Honourable Court may deem appropriate.

4. This Honourable Court approved the Amended and Restated Asset Purchase Agreement dated September 28, 2020 between the Applicants and Mantle Materials Group, Ltd. (the “**APA**”, and the transactions contemplated thereby, the “**Mantle Transaction**”) pursuant to the Amended and Restated Sale Approval and Vesting Order pronounced October 16, 2020 (the “**SAVO**”).
5. There are two impediments to the Mantle Transaction being completed. First, the approval of Alberta Environment and Parks (“**AEP**”) is required for the transfers to Mantle Materials Group, Ltd. (“**Mantle**”) of surface material leases, registrations and other dispositions included in the Mantle Transaction, and the transfers to 216 of certain surface material leases, registrations and other dispositions excluded from the Mantle Transaction. Although discussions are being held between JMB, Mantle and the AEP, this condition precedent has not been satisfied and the AEP has provided no timeline for the approval process.
6. Second, Jerry Shankowski and 945411 Alberta Ltd. (collectively, “**Shankowski**”), parties to an aggregate royalty agreement with JMB, have applied to this Honourable Court, *inter alia*, to set aside the SAVO and RVO, to set aside an agreement between Mantle and Shankowski under which Shankowski consented to the transfer of the royalty agreement to Mantle, to add counsel for the Monitor and the Applicants as respondents, and for a declaration that certain funds paid by the Municipal District of Bonnyville. Shankowski has also applied to the Court of Appeal for leave to appeal the SAVO and RVO and to stay the SAVO and RVO (collectively, the “**Shankowski Applications**”).
7. The Applicants require an extension of the Stay Period in order to continue discussions with the AEP with a view to completing the Mantle Transaction and to address the Shankowski Applications. In addition, there are other matters not related to the Mantle Transaction that must be addressed by the Applicants during an extended stay period, including the implications of a claim being pursued by the Canada Revenue Agency, and upcoming applications in relation to aggregate ownership, declarations of trust, and lien determination appeals.
8. The Applicants believe that the stakeholders will not be prejudiced by the proposed extension of the Stay Period. Fiera Private Debt Fund VI LP and Fiera Private Debt Fund V LP (collectively, “**Fiera**”), ATB Financial and the Monitor support the extension of the Stay Period to and including January 8, 2020.

RVO Amending Order – Eastside

9. Paragraph 13 of the RVO vests in Eastside certain equipment owned by JMB that is located at an aggregate pit operated by Eastside in the State of Washington (which equipment was defined in paragraph 2(a) of the RVO as the “**Eastside Equipment**”). Fiera has prior ranking security in the Eastside Equipment. Fiera had requested that ownership of the Eastside Equipment be transferred from JMB to Eastside in order to permit the more efficient and expeditious realization of the Eastside Equipment in proceedings it intends to commence in the State of Washington, and JMB and the Monitor agreed to this.
10. Under paragraph 13 of the RVO, the vesting was effective upon the Monitor delivering a certificate attached to the SAVO confirming that the purchase price under the APA had been paid, conditions precedent to the Mantle Transaction had been satisfied or waived, and the Mantle Transaction had been completed to the Monitor’s satisfaction. At the time the SAVO and RVO were granted, it was anticipated that the Mantle Transaction could be completed expeditiously.
11. However, given the delays in completing the Mantle Transaction, the Applicants seek an amendment to paragraph 13 of the RVO in order to permit the immediate vesting of the Eastside Equipment in Eastside. There is no reason to delay the vesting of the Eastside Equipment pending the completion of the Mantle Transaction, and JMB may not be able to extend the insurance coverage in respect of the Eastside Equipment beyond December 31, 2020.
12. Pursuant to the proposed amendment, the Monitor would deliver the Eastside Monitor’s Certificate as soon as it receives the consent of Fiera.
13. Fiera supports this application and appears to be the only stakeholder affected by such Order. The Monitor also supports this application.
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

15. The pleadings and materials filed in the within proceedings;
16. Affidavit of Byron Levkulich sworn December 4, 2020, filed concurrently with the within Application; and

17. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

18. Rules 1.3, 1.4 and Division 4 of Part 6 of the *Alberta Rules of Court*, Alta Reg 124/2010.

Applicable Acts and regulations:

19. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and this Honourable Court's equitable and statutory jurisdiction thereunder; and
20. Such further and other authority as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

21. None.

How this application is proposed to be heard or considered:

22. By Webex.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicants 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 time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicants a reasonable time before the application is to be heard or considered.

APPENDIX "A"
(Webex instructions)

Virtual Courtroom 61 has been assigned for the following matter:

Date: Dec 07, 2020 02:30 PM AND Dec 08, 2020 09:30 AM

Style of Cause: JMB CRUSHING SYSTEMS INC v. COMPANIES CREDITORS ARRANGEMENT ACT, 2001 05482

Presiding Justice: EIDSVIK, J

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom61>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, you must complete the undertaking located here:

<https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

SCHEDULE "A"
[Stay Extension Order]

Order
Rule 9.1

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 **STAY EXTENSION ORDER**

ADDRESS FOR **Gowling WLG (Canada) LLP**
 SERVICE AND 1600, 421 – 7th Avenue SW
 CONTACT Calgary, AB T2P 4K9
 INFORMATION OF Attn: **Tom Cumming/Caireen E. Hanert/Stephen Kroeger**
 PARTY FILING
 THIS DOCUMENT Phone: 403.298.1938/403.298.1992/403.298.1018
 Fax: 403.263.9193
 File No.: A163514

DATE ON WHICH ORDER WAS PRONOUNCED: December 7, 2020

LOCATION AT WHICH ORDER WAS MADE: Calgary Court House

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice K.M. Eidsvik

UPON THE APPLICATION of JMB Crushing Systems Inc. and 2161889 Alberta Ltd. (collectively, the “**Applicants**”); **AND UPON** reading the Application, the Affidavit of Byron Levkulich sworn December 3, 2020, the Ninth Report and the Tenth Report of FTI Consulting Canada Inc., the Court-appointed Monitor of the Applicants (the “**Monitor**”), and the pleadings and proceedings in this Action, including the Initial Order granted in the within proceedings on May 1, 2020, all filed; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for those parties present; **IT IS HEREBY ORDERED THAT:**

-2-

1. Service of this Application and supporting materials is hereby deemed to be good and sufficient, the time for notice is hereby abridged to the time provided, this application is properly returnable today, and no other person is required to have been served with notice of this Application.
2. The Stay Period as ordered and defined in paragraph 13 of the Initial Order, is hereby extended until and including January 29, 2021.

J.C.C.Q.B.A.

SCHEDULE "B"
[Amending Order]

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 **ORDER AMENDING REVERSE VESTING ORDER – EASTSIDE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Gowling WLG (Canada) LLP**
1600, 421 – 7th Avenue SW
Calgary, AB T2P 4K9

Attn: Tom Cumming/Caireen E. Hanert/Stephen Kroeger

Phone: 403.298.1938/403.298.1992/403.298.1018
Fax: 403.263.9193
File No.: A163514

DATE ON WHICH ORDER WAS PRONOUNCED: December 7, 2020

LOCATION AT WHICH ORDER WAS MADE: Calgary Court House

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice K.M. Eidsvik

UPON THE APPLICATION of JMB Crushing Systems Inc. and 2161889 Alberta Ltd. (collectively, the “**Applicants**”); **AND UPON** reading the Application, the Affidavit of Byron Levkulich sworn December 4, 2020, the Ninth Report and the Tenth Report of FTI Consulting Canada Inc., the Court-appointed Monitor of the Applicants (the “**Monitor**”), and the pleadings and proceedings in this Action, including the Initial Order granted in the within proceedings on May 1, 2020, and the Reverse Vesting Order granted in the within proceedings on October 16, 2020, all filed; **AND UPON** hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for those parties present;

IT IS HEREBY ORDERED THAT:

1. Service of this Application and supporting materials is hereby deemed to be good and sufficient, the time for notice is hereby abridged to the time provided, this application is properly returnable today, and no other person is required to have been served with notice of this Application.
2. Paragraph 13 of the Reverse Vesting Order granted by the Honourable Justice K.M. Eidsvik on October 16, 2020, in the within action (the “**RVO**”), is hereby amended to read as follows:

Vesting in Eastside

13. Upon the Monitor receiving the written consent of Fiera (as defined in the Mantle APA) to the transfer and vesting of the Eastside Equipment, and delivery by the Monitor to JMB and Fiera of a certificate substantially in the form set out in Schedule “F” hereto, all of JMB’s right, title and interest in and to the Eastside Equipment shall vest absolutely in the name of Eastside, but subject to any and all Remaining JMB Encumbrances which specifically affect and attach to the Eastside Equipment, all of which shall continue to attach to the Eastside Equipment and to any and all proceeds of the Eastside Equipment (any such proceeds being the “**Eastside Proceeds**”) and to secure the payment and performance of any Liabilities secured thereby, with such Remaining JMB Encumbrances and Liabilities having the same nature and priority as against the Eastside Equipment and the Eastside Proceeds as they had immediately prior to the transfer and vesting.
3. Schedule “F” to the RVO is hereby replaced with the form of Monitor’s Certificate attached to this Order as Appendix “A”.

J.C.C.Q.B.A.

APPENDIX "A"

[please attach the Certificate]

**SCHEDULE "F" TO THE REVERSE VESTING ORDER
MONITOR'S CERTIFICATE**

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

Clerk's Stamp

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.

DOCUMENT **MONITOR'S CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 McCarthy Tétrault LLP
 4000, 421 – 7th Avenue SW
 Calgary, Alberta T2P 4K9
 Attn: Sean Collins/Pantelis Kyriakakis
 Tel: 403-260-3531 / 3536
 Fax: 403-260-3501
 Email: scollins@mccarthy.ca / pkiriakakis@mccarthy.ca

RECITALS

- A. Pursuant to an Order of the Honourable Justice K.M. Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**"), dated May 1, 2020, as subsequently amended and restated on May 11, 2020, FTI Consulting Canada Inc., was appointed as the monitor (the "**Monitor**") of JMB Crushing Systems Inc. and 2161889 Alberta Ltd. (collectively, the "**Applicants**").
- B. Pursuant to an Order of the Court, dated October 1, 2020, the Court approved the Amended and Restated Asset Purchase Agreement, dated September 28, 2020 (the "**APA**"), between the Applicants, as vendors, and Mantle Materials Group Ltd. (the "**Purchaser**"), as purchaser, and provided for an Order (the "**Reverse Vesting Order**") (i) transferring and vesting in 2161889 Alberta Ltd. all of the right, title and interest of JMB Crushing Systems Inc. in and to the Remaining JMB Assets and the Remaining JMB Liabilities (each as defined in the APA) and (ii) transferring and vesting in and to Eastside Rock Products, Inc.

(“**Eastside**”) all of the right, title and interest in and to the Eastside Equipment (as defined in the Reverse Vesting Order, and such transferring and vesting in and to Eastside, the “**Eastside Vesting**”).

- C. The Court pronounced the Reverse Vesting Order on October 16, 2020 and a further Order on December 7, 2020 amending paragraph 13 of the Reverse Vesting Order to permit the Eastside Vesting to be effective immediately upon the Monitor delivering this certificate to JMB and Fiera (as defined in the APA).
- D. Unless otherwise indicated herein, all capitalized terms have the meanings set out in the Sale Approval Order.

THE MONITOR CERTIFIES that Fiera has consented in writing to the Eastside Vesting. This Certificate was delivered by the Monitor at **[Time]** on December **[Date]**, 2020.

FTI CONSULTING CANADA INC., in its capacity as the monitor of **JMB CRUSHING SYSTEMS INC.** and **2161889 ALBERTA LTD.**, and not in its personal or corporate capacity.

Per: _____
Name:
Title: