

ENTERED

1202519

Rule 13.38: The exhibits are hereby struck from the within Affidavit. Let the within Affidavit be filed accordingly .

K.M. Eidsvik 

J.C.C.Q.B.A

ENTERED



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

JS
Jan. 12, 2021
Justice Eidsvik

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**

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

AFFIDAVIT OF BYRON LEVKULICH
sworn December 4, 2020

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

- I am a Director of Canadian Aggregate Resources Corporation (“**CARC**”), the direct and indirect parent of the Applicants JMB Crushing Systems Inc. (“**JMB**”) and 2161889 Alberta Ltd. (“**216**”, and with JMB, the “**Applicants**”). 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.
- I swear this Affidavit further to my Affidavits sworn July 24, August 21, September 9, September 23, September 30, October 13, and November 11, 2020 in these proceedings.

BSL

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3. In preparing this Affidavit, I have consulted with legal, financial and other advisors of the Applicants and members of the Applicants' management team. I have also reviewed the business records of the Applicants relevant to these proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.
4. I am authorized to swear this Affidavit as corporate representative of the Applicants.
5. The background to these proceedings is described in detail in the Affidavit of Jeff Buck sworn April 16, 2020.
6. On May 1, 2020, the Honourable Justice K.M. Eidsvik pronounced an Initial Order in favour of the Applicants, which Order was amended and restated by the Amended and Restated Initial Order pronounced on May 11, 2020, 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 (the "CCAA"), up to and including May 11, 2020 (the "Stay Period");
 - (b) appointed FTI Consulting Canada Inc. as monitor of the Applicants in these proceedings (in such capacity, the "Monitor");
 - (c) approved a debtor-in-possession interim revolving credit facility to be provided by ATB Financial and an alternate interim revolving credit facility to be provided by CARC; and
 - (d) approved a sale and investment solicitation process (the "SISP").
7. Mantle Materials Group, Ltd. ("Mantle") agreed to purchase the core assets of the Applicants (the "Core Assets") pursuant to the Amended and Restated Asset Purchase Agreement dated September 28, 2020 (the "Mantle APA") between the Applicants and Mantle (the purchase and sale transaction contemplated thereby being the "Mantle Transaction").

8. On October 1, 2020, the Honourable Justice K.M. Eidsvik granted an Order approving the Mantle APA and Mantle Transaction. On October 16, 2020, Her Ladyship granted the following Orders:
- (a) The Amended and Restated Sale Approval and Vesting Order (the “SAVO”), vesting all of the right, title and interest of the Applicants in the Core Assets in Mantle free and clear of all encumbrances other than permitted encumbrances;
 - (b) The Reverse Vesting Order (the “RVO”), vesting in 216 all of the right, title and interest of JMB in the assets of JMB that were excluded from the Core Assets, and vested in Eastside Rock Products, Inc. (“Eastside”) certain equipment owned by JMB located in the State of Washington;
 - (c) The Assignment Order (the “Assignment Order”), assigning certain contracts included in the Core Assets to Mantle; and
 - (d) The Sanction Order (the “Sanction Order”), sanctioning a plan of arrangement under the CCAA and the *Business Corporations Act* of British Columbia.
9. For the reasons summarized below, the Mantle Transaction has not been completed and the RVO, Assignment Order and Sanction Order have not been implemented.
10. Jerry Shankowski (“Shankowski”) and 945411 Alberta Ltd. (“945”) are parties to an aggregate royalty agreement with JMB (the “Royalty Agreement”) which is included in the Core Assets. Shankowski and 945 have applied:
- (a) To this Honourable Court, *inter alia*:
 - (i) 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 (the “Setting Aside Application”);
 - (ii) For a declaration that certain funds paid by the Municipal District of Bonnyville No. 87 (the “MD”) under an agreement between JMB and the MD dated November 1, 2013 (as amended from time to time, the

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“**Bonnyville Contract**”), are held in trust for Shankowski, 945 and certain other parties (the “**Trust Application**”); and

(iii) To add counsel for the Monitor and the Applicants as respondents (the “**Professionals Application**”); and

(b) To the Court of Appeal for leave to appeal the SAVO and RVO and to stay the SAVO and RVO (the “**Leave Applications**”),

(collectively, the “**Shankowski Applications**”).

11. Certain other parties have filed similar applications to have certain funds paid by the MD under the Bonnyville Contract declared to be trust funds (the “**Other Lien Trust Applications**”).

Stay Extension

12. Since May 11, 2020, the Stay Period has been extended by Orders of this Honourable Court pronounced July 28, August 26, September 11, September 24, October 1, October 16 and November 12 (the “**November 12th Order**”), which Stay Period currently terminates on December 11, 2020.

13. Since the November 12th Order, the Applicants have continued to act diligently and in good faith in these proceedings by:

(a) Continuing to maintain the Applicants’ property and assets;

(b) Working with the Monitor and the senior secured creditors to close the Mantle Transaction;

(c) Applying to Alberta Environment and Parks (“**AEP**”) to obtain their approval of for the transfers of surface material leases and registrations to Mantle pursuant to the SAVO and to 216 pursuant to the Reverse Vesting Order the RVO;

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- (d) Responding to the Shankowski Applications, the Other Lien Trust Applications and the appeals of the Monitor's lien determinations in respect of liens claimed against the MD's aggregate storage yard; and
 - (e) Working towards the hearing of the application brought by Kalinko Enterprises Ltd. in respect of certain aggregate (the "**Kalinko Application**").
14. JMB and 216 have taken the following steps in connection with the AEP approvals for the Mantle Transaction:
- (a) On Tuesday October 20, 2020, JMB submitted to the AEP applications to approve assignments in favour of Mantle of surface material leases included in the Core Assets;
 - (b) On Thursday October 22, 2020, JMB and Mantle confirmed with the AEP that it had received the assignments, and would be available for a call to discuss them on Monday October 22, 2020;
 - (c) On Thursday October 22, 2020, JMB and Mantle submitted additional information with respect to the assignments of the surface material leases to the AEP;
 - (d) On Friday October 23, 2020, JMB and Mantle requested a conference call with AEP to discuss the applications, which request was followed up on Monday October 26, 2020;
 - (e) On Monday October 26, 2020, JMB, Mantle and the AEP had a call to discuss the assignments;
 - (f) On Wednesday October 28, 2020, the AEP requested confirmation from JMB and Mantle's representative, Tyler Pell, was acting as an agent for both JMB and Mantle, which confirmation was provided;
 - (g) On Thursday October 29, 2020, JMB submitted to the AEP assignments to 216 of surface material leases and other dispositions which were not included in the Core Assets;

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- (h) Later on Thursday October 29, 2020, JMB and Mantle requested an update from the AEP and was advised that a letter had been prepared but was awaiting responses from field representatives;
- (i) On Friday October 30, 2020, JMB and Mantle requested a further update and were advised by AEP that they were still working on a response and hoped to provide it that day or on Monday November 2, 2020;
- (j) On Monday November 2, 2020, JMB and Mantle requested an update from the AEP with respect to the filed review;
- (k) On Tuesday November 3, 2020, the AEP responded to indicate that they hoped to have an answer soon;
- (l) On Tuesday November 3, 2020, counsel for JMB and Mantle called counsel for the AEP to request an update;
- (m) On Wednesday November 4, 2020, the AEP responded to counsel for JMB and Mantle to indicate that the matter was still subject to field review;
- (n) On Tuesday November 10, 2020, JMB and Mantle contacted the AEP requesting an update, and the AEP responded indicating that the matter was still being reviewed by the field and they hoped to have information on November 16, 2020;
- (o) On Monday November 16, 2020, the AEP wrote to JMB and 216 requiring that the lands subject to certain surface material leases and other dispositions that have expired (and are not included in the Core Assets) be reclaimed, did not address the applications to approve the assignments, and required a response by 4:30 pm on November 30, 2020 (the "**November 16th Letter**");
- (p) On Wednesday November 18, 2020, the AEP wrote to JMB requiring that, before the AEP would consider applications to approve the assignment of the registrations of aggregate royalty agreements to Mantle (for agreements included in the Core Assets) and 216 (for agreements excluded from the Core Assets), the following steps be taken:

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- (i) the security that the AEP permitted to expire without being drawn upon be replaced;
- (ii) JMB provide a plan for the operation or reclamation of the pits subject to aggregate royalty agreements excluded from the Core Assets; and
- (iii) the consent of counterparties to the royalty agreements included in the Core Assets be provided,

which letter the AEP required a response to by 4:30 pm on December 30, 2020 (the “**November 18th Letter**”);

- (q) On Thursday November 19, 2020, counsel for JMB and Mantle responded and advised that the Mantle Transaction was at risk and requested a meeting with the AEP (the “**November 19th Gowling Letter**”);
- (r) On Monday November 23, 2020, the AEP wrote requesting certain steps be taken before the AEP would proceed to make a decision on the application to assign certain surface material leases to Mantle, including, *inter alia*:
 - (i) the payment of outstanding 2019 royalties in respect of such surface material leases in the amount of \$163,934.71;
 - (ii) the filing of returns in respect of such surface material leases and the payment of any royalties;
 - (iii) the surrender by Fiera Private Debt Fund VI LP and Fiera Private Debt Fund V LP (collectively, “**Fiera**”) of the conditional surrender of leases granted to Fiera as security; and
 - (iv) the provision of replacement letters of credit to secure reclamation obligations in respect of the surface material leases (the “**November 23rd Letter**”);

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- (s) On Wednesday November 25, 2020, a conference call was held between JMB, Mantle, the AEP and counsel for the AEP, JMB, Mantle, the Monitor, Fiera and ATB Financial, during which JMB and Mantle advised the AEP that it would write to the AEP to provide a proposal with respect to the issues raised by the AEP in the November 16th Letter, November 18th Letter and November 23rd Letter; and
- (t) On Friday November 27, 2020, counsel for JMB and Mantle wrote to counsel for the AEP with the above proposal (the "**November 27th Gowling Letter**").

Copies of the November 16th Letter, November 18th Letter, November 23rd Letter, November 19th Gowling Letter and November 27th Gowling Letter are attached as **Exhibits "A" through "E"**.

- 15. I am advised by counsel for the Applicants and believe that Mantle and ATB Financial ("**ATB**") have negotiated an arrangement with respect to operating costs of the Applicants from October 23, 2020, however, given the developments described above and the implications of a claim being pursued by Canada Revenue Agency, further discussions are ongoing between Mantle, ATB and Fiera in respect thereof.
- 16. I am further advised by counsel for the Applicants and believe that 848875 Alberta Ltd. o/a Al's Contracting ("**Al's Contracting**") has not yet provided its Affidavit in support of its application for a possessory lien, currently proposed to be heard concurrently with the Kalinko Application in early 2021. Although the Affidavit was promised to be delivered early during the week of October 26th by counsel for Al's Contracting, it has not yet been provided.
- 17. I am further advised by counsel for the Applicants and believe that:
 - (a) On November 27, 2020, the Setting Aside Application was heard by this Honourable Court;
 - (b) A decision has not yet been rendered by this Honourable Court in respect of the Setting Aside Application; however, one is expected on December 7, 2020; and

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- (c) The Leave Applications are scheduled to be heard by the Court of Appeal on December 9, 2020.
18. Given the foregoing, additional time will be needed to deal with these outstanding matters.
19. Based on my discussions with the Monitor and my review of the Applicants' cash flow statement appended to the Monitor's Eleventh Report, the Applicants have sufficient funds through to January 8, 2021 to allow for the completion of the steps outlined above.
20. Having regard to the circumstances, I believe that the granting of an extension of the Stay Period to a date determined by this Honourable Court is necessary and in the best interests of the Applicants and their stakeholders.
21. The Monitor is supportive of the extension of the Stay Period sought by the Applicants.
22. The Applicants have acted, and continue to act, in good faith and with due diligence in respect of all matters relating to the CCAA proceedings, and no creditor will be prejudiced by the proposed extension of the Stay Period.

Amendment of the RVO to permit vesting of the Eastside Equipment

23. I am further advised by counsel for the Applicants and believe that:
- (a) 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**");
- (b) Fiera has prior ranking security in the Fiera Equipment and 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 were agreeable to the Eastside Equipment being vested in Eastside in order to accommodate this request;

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- (c) Under paragraph 13 of the RVO, the vesting of the Eastside Equipment in Eastside was to become effective upon the Monitor delivering a certificate attached to the SAVO confirming that the purchase price under the Mantle 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; and
 - (d) At the time the SAVO and RVO were granted, it was anticipated that the Mantle Transaction could be expeditiously completed.
24. As described above, there remain impediments to completing the Mantle Transaction. The Applicants therefore seek an Order (the "**RVO Amending Order**") amending paragraph 13 of the RVO to permit the immediate vesting of the Eastside Equipment once Fiera consents thereto, as:
- (a) There is no reason to delay the vesting of the Eastside Equipment pending the completion of the Mantle Transaction;
 - (b) JMB may not be able to extend the insurance coverage in respect of the Eastside Equipment beyond December 31, 2020; and
 - (c) The royalty agreement governing the pit operated by Eastside expires on December 31, 2020.
25. Under to RVO Amending Order, the Monitor would deliver a certificate in the form attached to such Order confirming that it has received the consent of Fiera, whereupon ownership of Eastside Equipment would vest in Eastside.
26. Fiera supports this application for the RVO Amending Order and appears to be the only stakeholder affected by such Order. The Monitor also supports this application.
27. I was not physically present before the Commissioner for Oaths, but was connected to her by video technology and followed the process for remote commissioning.

SWORN (OR AFFIRMED) BEFORE ME)
at Denver, Colorado, this 4th day of)
December, 2020.)

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


_____) **BYRON LEVKULICH**

Form 49
Rule 13.19

Clerk's Stamp

COURT FILE NO. 2001-05482

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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“**Bonnyville Contract**”), are held in trust for Shankowski, 945 and certain other parties (the “**Trust Application**”); and

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- (c) The Leave Applications are scheduled to be heard by the Court of Appeal on December 9, 2020.
18. Given the foregoing, additional time will be needed to deal with these outstanding matters.
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20. Having regard to the circumstances, I believe that the granting of an extension of the Stay Period to a date determined by this Honourable Court is necessary and in the best interests of the Applicants and their stakeholders.
21. The Monitor is supportive of the extension of the Stay Period sought by the Applicants.
22. The Applicants have acted, and continue to act, in good faith and with due diligence in respect of all matters relating to the CCAA proceedings, and no creditor will be prejudiced by the proposed extension of the Stay Period.

Amendment of the RVO to permit vesting of the Eastside Equipment

23. I am further advised by counsel for the Applicants and believe that:
- (a) 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**");
- (b) Fiera has prior ranking security in the Fiera Equipment and 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 were agreeable to the Eastside Equipment being vested in Eastside in order to accommodate this request;

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- (c) Under paragraph 13 of the RVO, the vesting of the Eastside Equipment in Eastside was to become effective upon the Monitor delivering a certificate attached to the SAVO confirming that the purchase price under the Mantle 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; and
 - (d) At the time the SAVO and RVO were granted, it was anticipated that the Mantle Transaction could be expeditiously completed.
24. As described above, there remain impediments to completing the Mantle Transaction. The Applicants therefore seek an Order (the "**RVO Amending Order**") amending paragraph 13 of the RVO to permit the immediate vesting of the Eastside Equipment once Fiera consents thereto, as:
- (a) There is no reason to delay the vesting of the Eastside Equipment pending the completion of the Mantle Transaction;
 - (b) JMB may not be able to extend the insurance coverage in respect of the Eastside Equipment beyond December 31, 2020; and
 - (c) The royalty agreement governing the pit operated by Eastside expires on December 31, 2020.
25. Under to RVO Amending Order, the Monitor would deliver a certificate in the form attached to such Order confirming that it has received the consent of Fiera, whereupon ownership of Eastside Equipment would vest in Eastside.
26. Fiera supports this application for the RVO Amending Order and appears to be the only stakeholder affected by such Order. The Monitor also supports this application.
27. I was not physically present before the Commissioner for Oaths, but was connected to her by video technology and followed the process for remote commissioning.

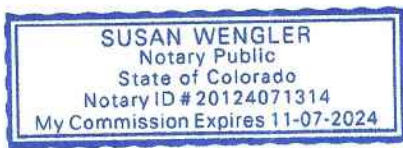
SW

SWORN (OR AFFIRMED) BEFORE ME)
at Denver, Colorado, this 4th day of)
December, 2020.)
)
)

Susan Wengler

Notary Public in and for the State of)
Colorado)

BYRON LEVKULICH



SW

COURT FILE NO.: 2001-05482

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

APPLICANTS JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT **CERTIFICATE OF REMOTE COMMISSIONING FOR THE AFFIDAVIT OF BYRON LEVKULICH**


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**
Phone: 403-298-1938 / 403-298-1992
Fax: 403-263-9193
File No.: A163514

I, Suzanne Berger Commissioner for Oaths in and for the State of Colorado, certify that the requirements outlined in the Court of Queen's Bench of Alberta, Notice to the Profession and Public, "Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During the COVID-19 Pandemic" dated March 25, 2020 (the "Notice"), has been complied with as follows:

1. I met with Byron Levkulich on December 4th, 2020, using video technology.
2. While connected to video technology, I undertook the following steps in accordance with the Notice:
 - (a) verified and retained "screenshot" copies of the front and back of Byron Levkulich's government issued photo identification;

- (b) verified that both parties had a paper copy of the Affidavit and all Exhibits before them during the video conference;
 - (c) reviewed every page of the Affidavit and Exhibits with Byron Levkulich, with both parties initialing the lower right corner of each page to verify the pages are identical; and
 - (d) administered the oath at the end of the review and observed Byron Levkulich sign his name to the Affidavit.
3. I received the signed Affidavit with Exhibits from Byron Levkulich electronically, and upon receipt, verified that this copy was identical to the one I initialed during the video conference, and signed the jurat. Both copies are attached to this Certificate.
4. I believe that remote commissioning is necessary because it is impossible or unsafe, for medical reasons, to physically meet with Byron Levkulich to commission the Affidavit.

SIGNED at the City of Denver, Colorado,
this 4th day of December, 2020.


Commissioner for Oaths in and for the State
of Colorado

