

Clerk's Stamp

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, RSC 1985, c C-36, as amended
AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF
JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

APPLICANT JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD
DOCUMENT **APPLICATION BY J. R. PAINE & ASSOCIATES LTD.**

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INFORMATION OF Edmonton, AB T6H 2J3
PARTY FILING THIS **Attention: Mark Alexander Smith**
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File No.: 50553-4

NOTICE TO THE RESPONDENT(S)

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 be in Court when the application is heard as shown below:

Date: November 27, 2020
Time: 10:00AM
Where: Calgary Courts Centre
Before: The Honourable Madam Justice K.M. Eidsvik in Chambers

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

Remedy claimed or sought:

1. An Order declaring a trust was created by the November 1, 2013 contract.
2. An Order to pay all outstanding amounts owed to J.R. Paine including interest and costs, forthwith.
3. Such other and further relief as may be required and as this Honourable Court deems appropriate and just; and
4. Costs of this Application in any event of the cause, payable forthwith, on a scale as between a solicitor and client or on such other scale or in such other amounts as this Honourable Court deems appropriate and just.

Grounds for making this Application:

5. On November 1, 2013, JMB Crushing Systems Inc. ("JMB") and the Municipal District of Bonnyville No. 87 (the "MD") signed a contract for the production and provision of aggregate (the "Contract").

6. The Contract contained a provision at paragraph 26 which stated:

"From the amounts paid to JMB by the MD, JMB is deemed to hold that part of them in trust which are required or needed to pay for any salaries, wages, compensation, overtime pay, statutory holiday pay, vacation pay, entitlements, employee and employer Canada Pension Plan contributions, employee and employer Employment Insurance contributions, Workers' Compensation premiums and assessments, income taxes, withholdings, GST and all costs directly or indirectly related to the Product and Services. JMB shall pay the foregoing from such trust funds."

7. The Contracted further defined Product and Services as paragraphs 1.e and 1.f:

"Product' means the production by JMB of the aggregate described in this Agreement which includes the crushing and cleaning of rock/gravel, and all related services whereby rock/gravel is made into usable crushed aggregate for the MD in accordance with the required specifications set out in this Agreement"

"Services' means the hauling and stockpiling of crushed aggregate of JMB as set out in this Agreement and anything else which is required to be done to give effect to this Agreement"

8. Any payment made for work done, pursuant to the Contract, that is defined as either a Product or a Service, shall be held in trust.
9. J.R. Paine & Associates Ltd. ("J.R. Paine") completed testing of the aggregate pursuant to the Contract as, as a result, is a beneficiary under the trust.
10. Such further and other grounds as may appear from the evidence.

Material or evidence to be relied on:

11. The Affidavit of John Schroder, sworn on November 5, 2020, filed concurrently with this application, reports of the Monitor, and filed Affidavits in the CCAA proceedings.

Applicable rules:

12. Rules 1.1, 1.2, 1.3, 1.4, 1.5, 6.3, 7.3 of the *Alberta Rules of Court* and generally all other applicable provision of the *Alberta Rules of Court*.

Applicable Acts and regulations:

13. *Alberta Rules of Court*;
14. *Companies' Creditors Arrangements Act* (Canada).

Any irregularity complained of or objection relied on:

15. Not applicable.

How the Application is proposed to be heard or considered:

16. Orally, in person or in such other manner as may be directed by the Court, before the presiding Justice in Chambers.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this 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 applicant(s) a reasonable time before the application is to be heard or considered.