

Clerk's stamp:

COURT FILE NUMBER: 2001 05482

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.

APPLICANT: Kalinko Enterprises Ltd.

RESPONDENT: JMB Crushing Systems Inc.

DOCUMENT: **Application**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT: Scott Matheson
Field LLP
Barristers and Solicitors
2500, 10175 - 101 Street NW
Edmonton, AB T5J 0H3
Ph: (780) 423-3003 Fax: (780) 428-9329
File No. 55198-1
smatheson@fieldlaw.com

NOTICE TO RESPONDENT: JMB Crushing Systems Inc.

This application is made against you. You are a Respondent. You have the right to state your side of this matter before the master/judge.

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

Date: TBD
Time: 10:00 a.m.
Where: Calgary Law Courts
Before Whom: Presiding Commercial List Justice in Chambers

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

Remedy claimed or sought:

1. An Order:
 - a. Directing JMB to disclose to Kalinko all SISP data room materials which purport to market Kalinko's aggregate for sale.
 - b. Directing that JMB may not market Kalinko's aggregate in the SISP, including the Precambrian Pile, Kalinko Land Piles, Stoney Pile, and JMB Yard Pile (as those terms are defined in the Affidavit of Tim Kalinski).
 - c. Declaring that Kalinko has clear title to the sand and gravel pile located at SML020038 (the "Precambrian Pile"), subject only to further determination of an existing possessory lien claim by Al's Contracting.
 - d. Declaring that Kalinko has clear title to the sand and gravel stockpiled by JMB at the Kalinko SMLs (the "Kalinko Land Piles").
 - e. Declaring that Kalinko has clear title to the sand and gravel pile located at SML110069 (the "Stoney Pile").
 - f. Declaring that Kalinko has clear title to the sand and gravel located at JMB's yard (the "JMB Yard Pile").
 - g. If necessary, lifting the stay of proceedings against JMB to permit the hearing of this application and grant the relief Kalinko seeks.
 - h. Granting such further and other relief as this Honourable Court considers just and appropriate.

Grounds for making this application:

2. Kalinko owns or controls approximately twenty Surface Material Leases (SMLs) in northern and central Alberta, from which it extracts sand and gravel, which are mixed into aggregate for road building and infrastructure.
3. In 2012, Kalinko entered into a "Sand and Gravel Operating Agreement" with JMB, under which JMB could enter onto Kalinko's SMLs to extract and process aggregate. Under the express or implied terms of the Agreement, title to the aggregate did not pass to JMB. Rather, JMB could market the aggregate to its customers on Kalinko's behalf, and on sale, it would pay out Kalinko's royalty and keep the remainder of the proceeds.
4. Kalinko terminated the Operating Agreement in April 2019 for breach by JMB. It was a term of the agreement that 15 days after termination for breach, JMB lost any right to compensation for aggregate remaining on Kalinko's lands. Once the agreement was terminated, JMB had no subsisting contractual right of access to Kalinko's SMLs or right to market Kalinko's aggregate on its behalf.

5. JMB is now purporting to sell Kalinko's aggregate in the SISP process in this CCAA proceeding. JMB does not own the aggregate extracted from Kalinko's SMLs and has no right to sell it.
6. JMB's actions in purporting to sell aggregate which it does not own, and which in fact Kalinko owns, are causing urgent and ongoing harms to Kalinko's business. Kalinko cannot effectively market its own aggregate due to JMB's misfeasance.
7. Aggregate is a seasonal business, and the window for Kalinko to sell its gravel and stay afloat is closing very quickly. Without an order from this Court requiring JMB to cease marketing Kalinko's gravel, Kalinko's business is in immediate peril.
8. Because this application concerns the marketing to third-parties of Kalinko's assets in the ongoing court-monitored SISP process, and JMB's actions are causing immediate damages to Kalinko, if the stay of proceedings applies to this application, the Court ought to lift it to permit it to be heard.
9. Such further and other grounds as counsel may advise.

Material or evidence to be relied on:

10. Affidavit of Tim Kalinski.
11. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

12. Part 6 of the *Alberta Rules of Court*, Alta Reg 124/2010.
13. Such further and other rules as counsel may advise.

Applicable Acts and Regulations:

14. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36
15. Such further and other acts and regulations as counsel may advise.

Any irregularity complained of or objection relied on:

16. None.

How the application is proposed to be heard or considered:

17. In person before the presiding Justice in Chambers, with affidavit evidence.

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 Applicant 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 above. 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 a reasonable time before the application is to be heard or considered.