

COURT FILE NUMBER 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, R.S.C. 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 JMB CRUSHING SYSTEMS INC.

DOCUMENT **APPLICATION FOR ORDERS IN RESPECT OF
BUILDERS' LIENS**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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

Date: October 16, 2020
Time: 9:45 am
Where: Calgary Courts Centre
 Via WebEx in Virtual Courtroom 61
Before: The Honourable Justice K. M. Eidsvik

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

Remedy Sought:

1. The Applicant JMB Crushing Systems Inc. ("**JMB**") seeks an Order:

(a) Abridging time for service of this Application and deeming service good and sufficient;

(b) Declaring the following Builders' Lien claims invalid:

i. by RBEE Aggregate Consulting Ltd. ("**RBEE**"):

1. The lien registered as Instrument No. 202 106 449 on May 15, 2020; and
2. The lien claim asserted against JMB's registered interest in the Havener Land (defined herein), which interest is evidenced by a caveat registered as Instrument No. 002 170 374 on June 20, 2000, against the lands legally described as:

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 16
QUARTER NORTH WEST
CONTAINING 64.7 HECTARES (160 ACRES) MORE
OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES)
MORE OR LESS
A) PLAN 4286BM – ROAD 0.0004 0.001
B) ALL THAT PORTION COMMENCING AT THE
SOUTH WEST CORNER OF THE SAID QUARTER
SECTION; THENCE EASTERLY ALONG THE SOUTH
BOUNDARY
110 METRES; THENCE NORTHERLY AND
PARALLEL TO THE WEST BOUNDARY
OF THE SAID QUARTER 110 METRES; THENCE
WESTERLY AND PARALLEL TO THE SAID SOUTH
BOUNDARY TO A POINT ON THE WEST
BOUNDARY; THENCE SOUTHERLY ALONG THE
SAID WEST BOUNDARY TO THE POINT OF
COMMENCEMENT
CONTAINING 1.21 3.00
C) PLAN 1722948 – ROAD 0.360 0.89

(the "**Havener Land**")

3. The lien registered as Instrument No. 202 106 447 on May 15, 2020 against the land legally described as:

FIRST
MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER NORTH WEST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
A) PLAN 1722948 – ROAD 0.417 1.03
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK SAME

SECOND
MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER SOUTH WEST
CONTAINING 64.7 HECTARES (ACRES) MORE OR LESS
A) PLAN 1722948 – ROAD 0.417 1.03
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

(the "**Shankowski Land**")

ii. by J.R. Paine & Associates Ltd. ("**J.R. Paine**"):

1. The Lien registered as Instrument No. 202 104 972 on May 13, 2020 against the Havener Land; and
2. The Lien registered as Instrument No. 202 104 972 on May 13, 2020 against the Shankowski Land;

(the "**Lien Claims**")

(c) Discharging the Builders' Liens filed by RBEE and J.R. Paine registered as Instrument No. 202 106 449 and Instrument No. 202 104 972 against the Havener Land and Instrument No. 202 106 447 and Instrument No. 202 104 972 against the Shankowski Land (the "**Liens**");

2. Directing the Registrar of Land Titles for the Northern Alberta Registration District to, upon receipt of a certified copy of the Order, forthwith remove and discharge the registration of the Liens from title for the Havener Land and Shankowski Land pursuant to s. 191(3)(a) of the *Land Titles Act*, RSA 2000, c L-4;
3. Costs of this Application to JMB; and
4. Such further and other relief as this Honourable Court may deem just and reasonable.

Basis for this claim:

1. JMB engaged RBEE and J.R. Paine to perform certain services pursuant to a November 1, 2013 contract between JMB and the Municipal District of Bonnyville No. 87 ("**MD of Bonnyville**") for the production, hauling and stockpiling of crushed aggregate materials for use in road construction (the "**Bonnyville Contract**").
2. Pursuant to a Subcontractor Services Agreement dated February 25, 2020, RBEE provided crushing services of rock and gravel to JMB under the Bonnyville Contract. In April 2020, RBEE provided \$7,500 worth of excavating services for the Bonnyville Contract on the Shankowski Land. No excavation was done by RBEE on the Havener Land.
3. Between approximately February 25 and April 8, 2020, RBEE crushed rock and gravel extracted from the Shankowski Land. After the aggregate was crushed to contract specifications, it would be stockpiled on the Shankowski Land until transported to the MD of Bonnyville yard, where it was stored until needed.
4. J.R. Paine was engaged by JMB to perform aggregate testing services in respect of the Bonnyville Contract. As part of the aggregate testing services provided, J.R. Paine tested the crushed aggregate to ensure it complied with the specifications in the Bonnyville Contract. J.R. Paine's testing services were completed by April 8, 2020. J.R. Paine did not perform any testing services on the Havener Land or of aggregate from the Havener Land in respect of the Bonnyville Contract.
5. No aggregate extracted from the Havener Land was crushed by RBEE and testing was done by J.R. Paine on aggregate from the Havener Land with respect to the Bonnyville Contract.
7. JMB seeks to have the Liens discharged as they are not valid liens under the *Builders Lien Act*, as neither the Haveners, Shankowski, nor JMB are an "owner" within the meaning of the *Builders Lien Act*, and no work or services were provided by RBEE and J.R. Paine in respect to an improvement to the Havener Land, the JMB Caveat or the Shankowski Land.

Affidavit or other evidence to be used in support of this application:

8. Affidavit of Jason Panter, sworn October 9, 2020;
9. Seventh Report of the Monitor; and

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

Applicable Acts and regulations:

11. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended.
12. *Builders' Lien Act*, RSA 2000, c B-7, as amended.
13. *Judicature Act*, RSA 2000, c J-2, as amended.
14. *Alberta Rules of Court*, Alta Reg 124/2010.
15. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

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 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.