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Form 27  
[Rules 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, 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/CLAIMANT SHAMROCK VALLEY ENTERPRISES LTD.

DOCUMENT **APPLICATION BY SHAMROCK VALLEY  
ENTERPRISES LTD.**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY  
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JS Nov 27 2020  
J. Eidsvik  
1103666

**NOTICE TO RESPONDENT(S): 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: **November 27, 2020**  
Time: **10:00 a.m.**  
Where: **Calgary Law Courts, via telephone or WebEx**  
Before Whom: **The Honourable Madam Justice K. M. Eidsvik**

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. declaring that a trust was created pursuant to the Prime Contract (as defined herein);

- b. declaring that the Holdback Amount (as defined below) includes funds held in trust for Shamrock Valley Enterprises Ltd. ("**Shamrock**");
- c. awarding costs of this Application to the Applicant, Shamrock, on a solicitor and own client basis, or on such basis as this Honourable Court may deem just and appropriate;
- d. directing the sum of \$18,969.59, plus interest in accordance with the *Judgment Interest Act*, RSA 2000 c J-1, plus costs, be paid from the Holdback Amount (as defined below) by the Monitor to Shamrock or Shamrock's counsel (being Morrow Tchir LLP); and
- e. such further and other relief as this Honourable Court may deem just and appropriate.

**Grounds for making this application:**

- 2. On or about November 1<sup>st</sup>, 2013, JMB Crushing Systems Inc. ("**JMB**") and the Municipal District of Bonnyville No. 87 (the "**MD**") entered into an agreement (the "**Prime Contract**") wherein the MD retained JMB to supply gravel/aggregate to the MD and transport gravel/aggregate for stockpiling at the lands legally described as NE 19-61-5-W4 (the "**MD Stockpile Lands**").

- 3. The Prime Contract includes the following express term:

*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.*

- 4. The Prime Contract defines "**Services**" as:

*... the hauling and stockpiling of crushed aggregate by JMB as set out in this Agreement and anything else which is required to be done to give effect to this Agreement.*

- 5. JMB, as prime contractor in respect of the Prime Contract, retained Shamrock (as subcontractor) to transport gravel/aggregate to and stockpile gravel/aggregate at the MD's Stockpile Lands.
- 6. Between approximately December 2019 to March 2020, in accordance with the terms agreed between Shamrock and JMB, Shamrock did transport gravel/aggregate to and stockpile gravel/aggregate at the MD's Stockpile Lands (referred to as the "**Shamrock Services**"). The last day Shamrock supplied the Shamrock Services was March 21<sup>st</sup>, 2020.
- 7. The MD used, or intends to use, the gravel/aggregate transported by Shamrock to and stockpiled at the MD Stockpile Lands, in the maintenance and construction of roads within the MD, including but not limited surfacing work on Highway 660 and Range Road 55.
- 8. On or about April 24<sup>th</sup>, 2020, Shamrock served upon JMB and the MD, written notice of Shamrock's demand for payment of the amounts owing from JMB to Shamrock for the Shamrock Services, as well as written notice of Shamrock's claim pursuant to section 14 of the *Public Works Act*, RSA 2000 c. P-46 [*Public Works Act*].
- 9. Shamrock asserts a claim pursuant to Section 14 of the *Public Works Act* as follows:
  - a. Shamrock provided labour, equipment, materials and services which were used in the performance of a contract with the MD.

- b. In this context, the MD is acting as an agent of the Crown, Her Majesty the Queen in right of Alberta (ie: the Province of Alberta);
  - c. The MD used the labour, equipment, materials and services provided by Shamrock for road work on highways and roads within the MD of Bonnyville, including but not limited to surfacing work on Highway 660 and Range Road 55.
  - d. All provincial highways and municipal roads within the Municipal District of Bonnyville are “public works” within the meaning of the *Public Works Act*, and are also “highways and roads” within the meaning of section 10 of Schedule 14 of the *Government Organization Act*, RSA 2000, c. G-10.
  - e. Pursuant to section 15 of the *Public Works Act*, the MD may pay Shamrock the amount owing to Shamrock in respect of the Shamrock Services provided to JMB, and deduct the amount so paid from any money due and payable to JMB.
  - f. The MD did not acknowledge or respond to Shamrock’s notice of its claim pursuant to the *Public Works Act*.
10. On May 1<sup>st</sup>, 2020, The Honourable Madam Justice K.M. Eidsvik granted the CCAA Initial Order (the “**Initial Order**”) in the within proceedings. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed to act as Monitor of JMB in the initial proceedings. The Initial Order was subsequently amended and restated on May 11<sup>th</sup>, 2020.
11. On May 20<sup>th</sup>, 2020, the Honourable Madam Justice K.M. Eidsvik granted an order (the “**Bonnyville Lien Claims Order**”). Pursuant to the Bonnyville Lien Claims Order:
  - a. The MD was ordered to pay the sum of \$3,563,768.40 (the “**Funds**”) to the Monitor. The Funds represented the amount invoiced by JMB to the MD under the Prime Contract, but which the MD had not yet paid to JMB, for the period up to and including April 30<sup>th</sup>, 2020.
  - b. The Monitor was ordered to holdback from the Funds the sum of \$1,850,000.00 (the “**Holdback Amount**”) in trust. The Holdback Amount was deemed to be the amount the MD was required to hold back pursuant to section 18 of the *Builders’ Lien Act* from payments it made or makes to JMB for those amounts invoiced up to and including April 30<sup>th</sup>, 2020.
  - c. A lien determination procedure for the MD of Bonnyville Lien Claimants (as defined in the Bonnyville Lien Claims Order) was established.
12. On or about May 26<sup>th</sup>, 2020, Shamrock served its Lien Notice on counsel for the Monitor in the form prescribed by the Bonnyville Lien Claims Order. On or about July 27<sup>th</sup>, 2020, the Monitor served its Lien Determination Notice on Shamrock, wherein the Monitor determined that Shamrock’s Lien Claim is not a valid Lien or Lien Claim.
13. Absent the Bonnyville Lien Claims Order, the MD would have been entitled to pay Shamrock the amount owing by JMB to Shamrock for the Shamrock Services pursuant to section 15 of the *Public Works Act*. As a result of the Bonnyville Lien Claims Order, Shamrock was deprived of its remedy pursuant to the *Public Works Act*.
14. JMB is deemed to hold the amount received by the MD, including but not limited to the Holdback Amount, in trust pursuant to the express terms of the Prime Contract. The Funds paid by the MD to the Monitor, including but not limited to the Holdback Funds, are subject to the said trust in favour of Shamrock. As such, JMB and the Monitor are required to pay the amount owing by JMB to Shamrock for the Shamrock Services, being \$18,969.56, to Shamrock from such funds held in trust.

15. Shamrock is applying to this Honourable Court for a determination that the Holdback Amount, to the extent of \$18,969.56 plus interest and costs, are held subject to a trust in favour of Shamrock, and a direction that the Monitor pay the said amounts to Shamrock.

**Material or evidence to be relied on:**

16. Amended and Restated CCAA Initial Order, dated May 11<sup>th</sup>, 2020;
17. Order – Liens Claim Process for the MD of Bonnyville, dated May 20<sup>th</sup>, 2020;
18. The record of the Court proceedings of the within action;
19. Affidavit of Murry Nielsen, sworn November 6<sup>th</sup>, 2020; and
20. Such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

21. None.

**Applicable Acts and regulations:**

22. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended;
23. *Builders' Lien Act*, RSA 2000, c B-7;
24. *Public Works Act*, RSA 2000, c P-46;
25. *Government Organization Act*, RSA 2000, c. G-1.

**Any irregularity complained of or objection relied on:**

26. None.

**How the application is proposed to be heard or considered:**

27. In Chambers by way of telephone appearance or WebEx, with reliance upon Affidavit evidence and oral argument.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) 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 at the 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 applicant(s) a reasonable time before the application is to be heard or considered.