

Order
Rule 9.1

Clerk's Stamp

COURT FILE NO. 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.

AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and MANTLE MATERIALS GROUP, LTD. UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, as amended, and the *BUSINESS CORPORATIONS ACT*, SBC 2002, c 57, as amended

APPLICANTS JMB CRUSHING SYSTEMS INC., 2161889 ALBERTA LTD. AND MANTLE MATERIALS GROUP, LTD.

DOCUMENT **AMENDED ASSIGNMENT ORDER**
(pursuant to section 11.3 of the CCAA)

ADDRESS FOR SERVICE AND CONTACT **Gowling WLG (Canada) LLP**
1600, 421 – 7th Avenue SW
Calgary, AB T2P 4K9

INFORMATION OF PARTY FILING THIS DOCUMENT
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

DATE ON WHICH ORDER WAS PRONOUNCED: **March 31, 2021**

LOCATION AT WHICH ORDER WAS MADE: **Calgary Court House**

NAME OF JUSTICE WHO MADE THIS ORDER: **Honourable Justice K.M. Eidsvik**

UPON THE APPLICATION (the “**Application**”) of JMB Crushing Systems Inc. (“**JMB**”), 2161889 Alberta Ltd. (“**216**”, and with JMB, the “**CCAA Applicants**”) and Mantle Materials Group, Ltd. (“**Mantle**”, and collectively with JMB and 216, the “**Plan Parties**”, and individually, a “**Plan Party**”) for an Order amending and restating the assignment Order pronounced on October 16, 2020 (the “**Original Assignment Order**”) assigning certain agreements to which JMB or 216 were party under section 11.3 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), which is being

-2-

applied for pursuant to the amended and restated purchase agreement dated March 3, 2021 (the “**Amended Purchase Agreement**”) between JMB, 216 and Mantle, attached as Exhibit “A” to the Confidential Affidavit of Blake M. Elyea sworn March 24, 2021 (the “**Confidential Affidavit**”);

AND UPON HAVING READ (a) the Application, filed; (b) the Affidavits of Byron Levkulich sworn March 4 and March 23, 2021, both filed; (c) the Affidavit of Tyler Pell sworn March 22, 2021, filed; (d) the Confidential Affidavit, filed; (e) the fourteenth report dated March 4, 2021 of FTI Consulting Canada Inc., in its capacity as Court-appointed monitor of JMB and 216 (the “**Monitor**”), filed; (f) the pleadings and proceedings in this Action, including: (i) the initial Order pronounced on May 1, 2020, the Order pronounced on May 11, 2020 amending and restating the initial Order (the initial order as amended and restated, the “**Initial Order**”), filed; (ii) the Order (amended and restated Mantle sale approval Order) pronounced on October 16, 2020 (the “**Original SAVO**”) approving the original amended and restated asset purchase agreement dated September 28, 2020 between the CCAA Applicants and Mantle, which agreement was amended and restated by the Amended Purchase Agreement, filed; (iii) the reverse vesting Order pronounced on October 16, 2020, as amended by an Order pronounced on December 7, 2020 (the reverse vesting order, as amended, the “**Original RVO**”), filed, (iv) the Original Assignment Order, filed; and (v) the plan sanction Order pronounced on October 16, 2020 (the “**Original Sanction Order**”), sanctioning the joint plan of arrangement of Mantle and JMB under the CCAA and the *Business Corporations Act*, SBC 2002, c 57, as amended (the “**BCA**”, and such plan of arrangement, the “**Original Plan**”), filed; and (g) the Affidavit of Service of • (the “**Service Affidavit**”), to be filed;

AND UPON HAVING READ the following Orders applied for contemporaneously in this Application: (a) an Order amending and restating the Original SAVO and approving the Amended Purchase Agreement and the transactions contemplated thereby, and vesting certain assets in Mantle (the “**Amended SAVO**”); (ii) an Order amending and restating the Original RVO; and (iii) an Order amending and restating the Original Sanction Order and sanctioning an amended and restated joint plan of arrangement of the Plan Parties under the CCAA and BCA, which amends and restates the Original Plan;

AND UPON HEARING the submissions of counsel for JMB, 216, the Monitor, Mantle, and any other parties who may be present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

Service

1. The time for notice is hereby abridged to the time provided, this Application is properly returnable today, service of the Application on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list

attached as an exhibit to the Service Affidavit, are required to service of the Application.

Defined Terms

2. Capitalized terms used but not otherwise defined in this Order shall have the meaning given to such terms in the Amended Purchase Agreement.

Assignment of Restricted Agreements

3. Upon the delivery by the Monitor to the Plan Parties of the Monitor's Certificate (as defined in the Amended SAVO), all of the rights and obligations of the CCAA Applicants under and to the Restricted Agreements, which are listed in **Schedule "A"** to this Order, shall be assigned, conveyed and transferred to, and assumed by, Mantle pursuant to section 11.3 of the CCAA.
4. The assignment of the Restricted Agreements is hereby declared valid and binding upon all of the counterparties to the Restricted Agreements notwithstanding any restriction, condition or prohibition contained in any such Restricted Agreements relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.
5. The assignment and transfer of the Restricted Agreements shall be subject to the provisions herein directing that the CCAA Applicants' rights, title and interests in the Acquired Assets shall vest absolutely in Mantle free and clear of all encumbrances other than the Permitted Encumbrances in accordance with the provisions of this Order.
6. No counterparty under any Restricted Agreement, nor any other person, upon the assignment and transfer to, and assumption by, Mantle of any Restricted Agreement hereunder shall make or pursue any demand, claim, action or suit or exercise any right or remedy under such Restricted Agreement against Mantle relating to:
 - (a) the CCAA Applicants having sought or obtained relief under the CCAA;
 - (b) the insolvency of the CCAA Applicants; or
 - (c) any failure by the CCAA Applicants to perform a non-monetary obligation under any Restricted Agreement;

and all such counterparties and persons shall be forever barred and estopped from taking such action. For greater certainty:

-4-

- (i) nothing herein shall limit or exempt Mantle in respect of obligations accruing, arising or continuing after the Closing under the Restricted Agreements other than in respect of items (a) to (c), above; and
 - (ii) any Permitted Encumbrances shall continue to have the priority and entitlement attaching thereto notwithstanding this Order.
7. All monetary defaults in relation to the Restricted Agreements existing prior to the Closing, if any, other than those arising by reason only of the insolvency of the CCAA Applicants, the commencement of these CCAA proceedings or the failure to perform a non-monetary obligation under any Restricted Agreement, shall be paid to the Monitor on Closing as part of the Purchase Price and in accordance with the Amended Purchase Agreement. Provided the Cure Costs are paid to the Monitor, then the Monitor shall make payment of Cure Costs to the Counterparties to the Restricted Agreements within 20 days of Closing.
8. Immediately following the assignment and transfer of the Restricted Agreements no counterparty under any Restricted Agreement shall have any Claim whatsoever against the CCAA Applicants or the Monitor.

Additional Restricted Agreements

9. Following the date of this Order, including, for greater certainty, following the Closing, the CCAA Applicants are authorized to provide to the Counterparty or Counterparties to any additional Restricted Agreements not listed on **Schedule "A"** to this Order that are to be assigned to Mantle pursuant to the Amended Purchase Agreement and in respect of which Counterparty consent is required thereunder but not obtained (each an "**Additional Restricted Agreement**") a notice of the assignment to and assumption by Mantle of such Additional Restricted Agreement (each an "**Additional Assignment Notice**").
10. Any counterparty to an Additional Restricted Agreement who receives an Additional Assignment Notice shall have seven (7) Business Days from the date of such Additional Assignment Notice (the "**Objection Deadline**") to provide notice to the Monitor and the CCAA Applicants of any objection it has to such assignment to and assumption by Mantle of the applicable Additional Restricted Agreement.

11. If the Monitor and the CCAA Applicants do not receive any notice of objection to the assignment to and assumption by Mantle of an Additional Restricted Agreement by the Objection Deadline, the CCAA Applicants shall be authorized to assign such Additional Restricted Agreement to Mantle subject to paragraphs 3 to 8, inclusive, of this Order, which shall apply *mutatis mutandis* to the assignment and assumption of any Additional Restricted Agreements without any further Court order.
12. The applicable date of assignment and assumption of any Additional Restricted Agreements shall be the later of the date of service of the Additional Assignment Notice or delivery of the Monitor's Certificate.
13. If notice of an objection to the assignment to and assumption by Mantle of an Additional Assigned Contract is received by the Monitor and CCAA Applicants from the Counterparty to such Additional Assigned Contract by the Objection Deadline, the CCAA Applicants are authorized to schedule an application with this Court for the resolution of such objection.

Pendency of Bankruptcy Proceedings

14. For greater certainty, notwithstanding:
 - (a) the pendency of these proceedings and any declaration of insolvency made herein;
 - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "BIA"), in respect of the CCAA Applicants, and any bankruptcy order issued pursuant to any such applications;
 - (c) any assignment in bankruptcy made in respect of the CCAA Applicants; and
 - (d) the provisions of any federal or provincial statute,

the assignment of the Restricted Agreements, and any Additional Restricted Agreements, to Mantle in accordance with this Order and the Amended Purchase Agreement shall be binding on any trustee in bankruptcy that may be appointed in respect of the CCAA Applicants and shall not be void or voidable by creditors of the CCAA Applicants, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor

-6-

shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. Notwithstanding any other provisions of this Order, the CCAA Applicants shall continue to be entitled to exercise all of their rights to set-off (or any other contractual rights) and apply any and all post-filing amounts that the CCAA Applicants owes or may come to owe to any party, as the case may be, as against any amounts that are owed by such party to the CCAA Applicants.

Advice and Directions

16. The CCAA Applicants, Mantle and the Monitor shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order, including without limitation, as necessary, to effect the transfer of the Restricted Agreements and any Additional Restricted Agreements (including any transfer of title registrations in respect of such Restricted Agreements and any Additional Restricted Agreements), the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.

Aid and Recognition

17. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the CCAA Applicants, Mantle, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CCAA Applicants, Mantle and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the CCAA Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

Service

18. Service of this Order shall be deemed good and sufficient by:

- (a) serving this Order upon those interested parties attending or represented at the within Application;
- (b) posting a copy of this Order on the Monitor's website at <http://cfcanada.fticonsulting.com/jmb/>; and
- (c) posting a copy of the Order to CaseLines in accordance with the CaseLines Order granted on May 29, 2020;

and service of this Order on any other person is hereby dispensed with.

J.C.C.Q.B.A.

-8-

SCHEDULE "A"
RESTRICTED AGREEMENTS

Counterparties	Agreement
Canadian Western Bank	Commitment Letter dated January 8, 2018
	Letter of credit issued in connection with SML 080085
	Letter of credit issued in connection with SML 100085
	Letter of credit issued in connection with SML 110025
	Letter of credit issued in connection with SML 110026
	Letter of credit issued in connection with SML 110045
	Letter of credit issued in connection with SML 110046
	Letter of credit issued in connection with SML 120006
	Letter of credit issued in connection with SML 120100
	Letter of credit issued in connection with SML 110047
Letter of credit issued in connection with SML 060060	
Lafarge Canada Inc.	Moose River Royalty Agreement
Lafarge Canada Inc.	Oberg Royalty Agreement
Enterprise Fleet Management Canada, Inc.	Master Equity Vehicle Lease Agreement dated August 23, 2019, together with Open – End (Equity) Lease Schedule in respect of 2019 Ford, Model F-150, Series XLT 4x4 SuperCrew Cab Styleside 6.5, 1FTFW1E52KFC66669
541466 Alberta Ltd., Lisa Ball and Gordon Ball	Non-competition agreement dated March 22, 2019