

\$50.

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, R.S.C.  
 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF  
 ARRANGEMENT OF JMB CRUSHING SYSTEMS  
 INC. AND 2161889 ALBERTA LTD.**

COM  
 Oct 1 2020

541466 Alberta Ltd.

APPLICANT:

RESPONDENT: JMB Crushing Systems Inc.

DOCUMENT: **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
 Bishop & McKenzie LLP  
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 Attention: Robert A. Farmer  
 File No: 15370-112

**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 Judge

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

Date October 1, 2020  
 Time 2:00 pm  
 Where Calgary Courts Centre via Webex. Videoconference details are enclosed as Appendix "A" to this Application  
 Before The Honorable Justice K.M. Eidsvik – Commercial List

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 the five options granted by 541466 Alberta Ltd. operating as JLG Ball Enterprises ("JLG") to JMB Crushing Systems Inc. ("JMB") to purchase from JLG certain Surface Material Rights are expressly excluded from the sale of JMB's assets to a potential purchaser;

- b. Declaring that the Non-Competition Agreement entered into between JLG and 541466 and any rights and obligations thereunder is expressly excluded from the sale of JMB's assets to a potential purchaser, or alternatively is not assignable to a potential purchaser of JMB's assets;
- c. Granting such further and other relief as this Honorable Court considers just and appropriate.

**Grounds for making this application:**

2. On or about March 15, 2019 JLG and JMB entered into a Purchase and Sale Agreement (the "JLG Sale Agreement") pursuant to which JMB purchased certain Surface Material Rights, Miscellaneous interests and Goodwill from JLG;
3. JMB is indebted to JLG in the amount of \$3,000,000 plus accrued interest pursuant to the JLG Sale Agreement;
4. The sum of \$600,000 together with accrued interest was due and payable to JLG on March 22, 2020 and to date, despite demand, has not been paid;
5. The JLG Sale Agreement granted a series of five options to JMB to purchase from JLG certain Surface Material Rights for a period of 180 days from the date upon which JLG received notification from the relevant Governmental Authority that formal approval has been granted for Surface Material Rights in relation to each of five parcels of land (the "Options");
6. JMB has breached the JLG Sale Agreement by failing to make payments to JLG when and as required thereby repudiating the JLG Sale Agreement. As a consequence of JMB's breach of the JLG Sale Agreement and consequent repudiation of the JLG Sale Agreement, the Options are no longer capable of being exercised;
7. Pursuant to the JLG Sale Agreement JLG entered into a Non-Competition Agreement with JMB;
8. As a consequence of JMB's breach of the JLG Sale Agreement and consequent repudiation of the JLG Sale Agreement, the Non-Competition Agreement is terminated;
9. Alternatively, the Non-Competition Agreement and any rights and obligations thereunder are not capable of being assigned to a potential purchaser of JMB's assets;
10. Such further and other grounds as counsel may advise.

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

11. September 28, 2020 Affidavit of Lisa Ball.

**Applicable rules:**

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

**Applicable Acts and regulations:**

14. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended;
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. Via Webex Videoconference

**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 this form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

## Appendix "A"

**Counsel: Please ensure that all relevant parties have received Webex information.**

**Virtual Courtroom 04** has been assigned for the following matter:

Date: Oct 01, 2020 02:00 PM

Style of Cause: JMB CRUSHING SYSTEMS INC v. COMPANIES CREDITORS ARRANGEMENT ACT, 2001  
05482

Presiding Justice: EIDSVIK, J

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom04>

### Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, **you must** complete the undertaking located here: <https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>