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Form 27
[Rules 6.3 and 10.52(1)]

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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 QUEST DISPOSAL & RECYCLING INC.

DOCUMENT **APPLICATION BY QUEST DISPOSAL &
RECYCLING INC.**

ADDRESS FOR SERVICE Kuzyk & Mol Law Office
AND CONTACT Postal Drawer 929, 5038 50 Avenue
INFORMATION OF Vegreville, AB T9C 1S1
PARTY FILING THIS T: (780) 632-4552 F: (780) 632-4553
DOCUMENT Attn: Terence B. Arthur / Daniel J. Mol
 File No.: 15,388

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 AM**

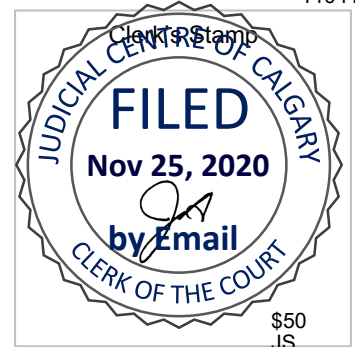
Where: **Calgary Law Courts, via telephone or WebEx**

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:



\$50
JS
Nov. 27 2020
Justice Eidsvik

- a. Directing that FTI Consulting Inc. (“**the Monitor**”) provide financial information to Quest Disposal & Recycling Inc. (“**Quest**”) regarding gravel and aggregate transported by JMB Crushing Systems Inc. (“**JMB**”) or its agents from outside of the MD of Bonnyville No. 87 (the “**MD**”) to the MD between August 1, 2019 and November 30, 2019;
- b. Declaring that a trust was created pursuant to a written agreement between the MD and JMB;
- c. Declaring that the Holdback Amount (as defined below) includes funds held in trust for Quest;
- d. Directing the sum of **\$165,844.71**, plus interest in accordance with the *Judgment Interest Act*, RSA 2000 c. J-1, plus costs, be paid from the Holdback Amount by the Monitor to Quest by way of its counsel Messrs. Kuzyk & Mol Law Office;
- e. In the alternative, directing the sum of **\$22,941.14**, plus interest in accordance with the Judgment Interest Act, RSA 2000 c. J-1, plus costs, be paid from the Holdback Amount by the Monitor to Quest by way of its counsel Messrs. Kuzyk & Mol Law Office;
- f. Awarding costs of this Application to the Applicant, Quest, on a solicitor and own client basis, or on such basis as the Honourable Court may deem just and appropriate in the circumstances; and
- g. Such further and other relief as this Honourable Court may deem just and appropriate and counsel may advise.

Grounds for making this application:

2. On or about November 1st, 2013, JMB and the MD entered into a written agreement (“**the Prime Contract**”) wherein the MD retained JMB as prime contractor for the purpose of supplying gravel and aggregate to the MD and transporting gravel and aggregate for stockpiling and use on public roadways in the MD (“**the Project**”).

3. The Prime Contract contained 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, Worker’s 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 “Product” and “Services” as:

“Product’ means the production by JMB of the aggregate described in this Agreement which includes the crushing and cleaning of rock / gravel, and all related services whereby rock / gravel is made into usable crushed aggregate for the MD in accordance with the required specifications set out in this Agreement”

“Services’ means the hauling and stockpiling of crushed aggregate of 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 Quest as a subcontractor to provide portable toilets and lidded garbage and recycling disposal bins at various earthworks sites in the MD (“**the Quest Services**”), including the MD Stockyard, Pit #19, the Shankowski Pit and the Reda Pit. Quest provided the Quest Services between August 1, 2019 and November 25, 2019 but had worked with JMB as a subcontractor since 2013.
6. The Quest Services were provided for the purposes of use by the MD in the maintenance and construction of roads within the MD, including but not limited to use of the Quest Services in the MD Stock Yard, Pit #19, the Shankowski Pit and Reda Pit.
7. Between August 1, 2019 and November 30, 2019, Quest rendered invoices to JMB for the Quest Services on a monthly basis. These invoices included invoices numbered 24297, 24953, 25368, 26123, 24298, 24954, 25369, 24299, 25370, 26124, 24960, 25375 and 25376. The total of these invoices rendered for the Quest Services performed in the MD and directly connected to the Project was **\$22,941.14**.
8. Quest also provided services outside of the MD in the amount of **\$142,903.57** to JMB for which it has rendered numerous invoices. Some of this amount, or all of it, may have been in connection with Products and Services being provided by JMB to the MD, as Quest regularly serviced pits outside of the MD that supplied gravel and aggregate directly to the MD, as is regular industry practice.
9. Both amounts remain due and owing, despite a demand for payment being made in writing by Quest to JMB on May 1, 2020.
10. 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 for which Quest is a beneficiary. 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 Quest. As such, JMB and the Monitor are required to pay the amount owing by JMB to Quest for the Quest Services, being at least **\$22,941.14**, from such funds that are held in trust.
11. Quest is applying to the Honourable Court for a determination that the Holdback Amount, to the extent of at least **\$22,941.19** plus interest and costs, are held in trust in favour of Quest, and a direction that the Monitor pay the said amounts to Quest. It is possible, if gravel and aggregate were transported from other sites in the Province of Alberta to the MD, that Quest is also a beneficiary for some or all of **\$142,903.57** for services it provided at other gravel and aggregate pits in Alberta that were used to service the MD.
12. Quest has retained counsel whom has requested details from the Monitor of any gravel and aggregate that have been transported outside of the MD to the MD for the purposes of the Project and if so, the location of those pits, to determine the extent of which Quest may be a beneficiary for the purposes of the trust.
13. On May 1st, 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 for JMB in the initial proceedings and a stay of proceedings was ordered to prevent Quest from enforcing against JMB.
14. On May 11th, 2020, the Initial Order was amended and restated.

15. On May 20th, 2020, the Honourable Madam Justice K.M. Eidsvik granted an order dealing with Builder's Liens in the MD ("**the Lien Claims Order**"). Pursuant to the 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 amounts 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 30th, 2020;
 - b. The Monitor was ordered to hold back 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 holdback per section 18 of the Builder's Lien Act from payments it made to JMB for those amounts invoiced up to and including April 30th, 2020; and
 - c. A lien determination procedure was established for the MD of Bonnyville lien claimants.
16. Quest did not apply for any determination of lien claims as it was not a lien claimant prior to the proceedings commencing. However, Quest did perform services that are compensable under the Prime Contract Trust provision which requires JMB to hold funds received by the MD in trust for products and services provided in the Project.

Material or evidence to be relied on:

17. Amended and Restated CCAA Initial Order, dated May 11th, 2020;
18. Order – Liens Claim Process for the MD of Bonnyville, dated May 20th, 2020;
19. The record of the Court proceedings of the within action;
20. The Affidavit of Keith Hayduk, sworn November 17th, 2020; and
21. Such further and other materials as counsel may advise and this Honourable Court may allow.

Applicable rules:

22. N/A

Applicable Acts and regulations:

23. *Companies Creditors Arrangement Act*, RSC 1985 c. C-36, as amended.

Any irregularity complained of or objection relied on:

24. N/A

How the application is proposed to be heard or considered:

25. 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.