

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.

CLAIMANT RBEE AGGREGATE CONSULTING LTD.

DOCUMENT **APPLICATION BY RBEE AGGREGATE
CONSULTING LTD. TO CONTEST LIEN
DETERMINATION NOTICE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Bishop & McKenzie LLP
2300, 10180 – 101 Street
Edmonton, AB, T5J 1V3
Telephone: 780-426-5550
Facsimile: 780-426-1305
Attention: Jerritt R. Pawlyk
File No. 110151-003 JRP/GWS

NOTICE TO THE RESPONDENT: JMB Crushing Systems Inc.

This Application is made against you. You are the 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	TBD
Time	TBD
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 you can do and when you must do it.

Remedy claimed or sought:

1. An Order, in the form attached hereto as Schedule "A", or such other form as may be approved by this Honourable Court:

- (a) reversing the determination notice dated July 27, 2020 by FTI Consulting Canada Inc. (the "Monitor") with respect to the claim of the Applicant, RBEE Aggregate Consulting Ltd. ("RBEE");
- (b) declaring the Builder's Lien registered by RBEE on May 15, 2020 as instrument number 202 106 447 is valid;
- (c) declaring that the Builder's Lien registered by RBEE on May 15, 2020 as instrument number 202 106 449 is valid;
- (d) declaring that the Builder's Lien claim of RBEE against JMB Crushing System's Inc.'s ("JMB") registered interest in the Havener Land (defined herein), as evidenced by a caveat registered as 002 170 374 on June 20, 2000 is valid;
- (e) declaring that the Builder's Lien registered by RBEE on May 15, 2020 as instrument number 202 106 439 is valid;
- (f) declaring that the Builder's Lien claim of RBEE against the Municipality Quarter Section (defined herein) is valid;
- (g) awarding costs of this Application to the Applicant RBEE on a solicitor and own client basis, or on such a basis as this Honourable Court may deem just and appropriate;
- (h) directing the sum of \$1,270,791.71, plus interest thereon in accordance with the *Judgment Interest Act*, RSA 2000 c J-1, and costs, be released by the Monitor to RBEE through its counsel, Bishop & McKenzie LLP; and
- (i) such further and other relief as this Honourable Court may deem just and appropriate.

Grounds for making this application:

- 2. JMB was party to an agreement with the Municipality to perform certain services for the Municipality, including crushing rock and gravel (the "Prime Contract"). On February 25, 2020, RBEE entered into a subcontractor services agreement with JMB to perform services on behalf of JMB under the Prime Contract, including crushing rock and gravel (the "Subcontract").
- 3. JMB performed work on the following lands:
 - (a) FIRST
 - MERIDIAN 4 RANGE 7 TOWNSHIP 56
 - SECTION 21
 - QUARTER NORTH WEST
 - CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
 - EXCEPTING THEREOUT: 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

SECOND

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER SOUTH WEST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT: 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”)

- (b) 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 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

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the “Havener Land”)

- (c) PLAN 0928625
BLOCK 1
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 20.22 HECTARES (49.96 ACRES) MORE OR LESS

(the “Plan 0928625 Land”)

- (d) MERIDIAN 4 RANGE 5 TOWNSHIP 61
SECTION 19

QUARTER NORTH EAST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
A) PLAN 8622670 ROAD 0.416 1.03
B) PLAN 0023231 DESCRIPTIVE 2.02 4.99
C) PLAN 0928625 SUBDIVISION 20.22 49.96
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Municipality Quarter Section")

4. RBEE performed its Services pursuant to the Subcontractor Agreement and rendered invoices for its Services to JMB. The amount of \$1,270,791.71, inclusive of GST, remains outstanding from JMB.
5. On May 15, 2020, RBEE registered the following liens at the Alberta Land Titles Office:
 - (a) registration No. 202 106 447 against the Shankowski Land;
 - (b) registration No. 202 106 449 against the Havener Land; and
 - (c) registration No. 202 106 439 against the Plan 0928625 Land.
6. RBEE also claims a builders' lien against and seeks to enforce all rights and remedies ordinarily available to it under the Builders' Lien Act with respect to:
 - (a) JMB's registered interest in the Havener Land, as evidenced by a caveat filed on June 20, 2000 as registration number 002 170 374; and
 - (b) the Municipality Quarter Section.
7. The liens and claims described in paragraph 5 and 6 of this Application shall together be defined as the "RBEE Claim".
8. The Monitor was appointed pursuant to an order granted on May 1, 2020, and subsequently amended and restated on May 11, 2020.
9. Pursuant to an order setting out the lien determination process for the Municipality dated May 20, 2020 (the "Lien Determination Order"), RBEE submitted a lien notice to the Monitor on June 1, 2020 with respect to the RBEE Claim.
10. Pursuant to the Lien Determination Order, the Monitor is holding back \$1,850,000.00 in security pursuant to section 18 of the *Builders Lien Act*.
11. On July 27, 2020, the Monitor issued a determination notice with respect to the RBEE Claim indicating that the RBEE Claim is not valid (the "Determination Notice").
12. Pursuant to the Lien Determination Order, RBEE is applying to this Honourable Court for a determination of the RBEE Claim and a reversal of the Determination Notice.
13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

14. Amended and Restated CCAA Initial Order, dated May 11, 2020;
15. Order – Lien Claims Process for MD of Bonnyville, dated March 20, 2020;
16. Determination Notice of the Monitor, dated July 27, 2020;
17. The record of the Court proceedings of the within action; and
18. Such further and other materials as counsel may advise and this Honorable Court may permit.

Applicable Rules:

19. None.

Applicable Acts and Regulations:

20. *Builders' Lien Act*, RSA 2000, c B-7, as amended.
21. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.

Any irregularity complained of or objection relied on:

22. None.

How the Application is proposed to be heard or considered:

23. 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 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 a reasonable time before the application is to be heard or considered.

SCHEDULE "A"

COURT FILE NUMBER 2001 05482

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IN THE MATTER OF THE *COMPANIES'*
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Facsimile: 780-426-1305
Attention: Jerritt R. Pawlyk
File No. 110151-003 JRP/GWS

DATE ON WHICH ORDER WAS PRONOUNCED: _____

LOCATION WHERE ORDER WAS PRONOUNCED: CALGARY, ALBERTA

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

UPON the application of RBEE AGGREGATE CONSULTING LTD. ("RBEE"); AND UPON reading the Affidavit of [*]; AND UPON hearing representations from counsel for RBEE; AND UPON hearing representations from counsel for FTI Consulting Canada Inc. in its capacity as the Court-Appointed Monitor under the *Companies Creditors Arrangement Act* of JMB Crushing Systems Inc.;

IT IS HEREBY ORDERED THAT:

1. the determination notice dated July 27, 2020 by FTI Consulting Canada Inc. (the "Monitor") with respect to the claim of the Applicant, RBEE Aggregate Consulting Ltd. ("RBEE") is reversed;
2. the Builder's Lien registered by RBEE on May 15, 2020 as instrument number 202 106 447 is valid;

3. the Builder's Lien registered by RBEE on May 15, 2020 as instrument number 202 106 449 is valid;
4. the Builder's Lien claim of RBEE against JMB Crushing System's Inc.'s ("JMB") registered interest in the following land is valid:

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 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	1.21	3.00
C)	PLAN 1722948 – ROAD	0.360	0.89

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Havener Land");

5. the Builder's Lien registered by RBEE on May 15, 2020 as instrument number 202 106 439 is valid;
6. the Builder's Lien claim of RBEE against the following land is valid:

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SECTION 19
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C)	PLAN 0928625 SUBDIVISION	20.22	49.96

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Municipality Quarter Section");

7. awarding costs of this Application to the Applicant RBEE on a _____ basis;
8. directing the sum of \$1,270,791.71, plus interest thereon in accordance with the *Judgment Interest Act*, RSA 2000 c J-1 in the amount of _____, and costs, be released by the Monitor to RBEE through its counsel, Bishop & McKenzie LLP.

Madam Justice K.M. Eidsvik