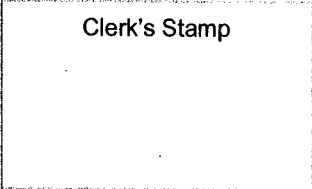


COURT FILE NUMBER 2001-05482  
COURT COURT OF QUEEN'S BENCH  
OF ALBERTA  
JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE  
*COMPANIES' CREDITORS*  
*ARRANGEMENT ACT, RSC*  
1985, c. C-36, as amended

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

APPLICANTS JMB CRUSHING SYSTEMS  
INC. and 2161889 ALBERTA  
LTD.

DOCUMENT **APPLICATION BY JERRY  
SHANKOWSKI and 945441  
ALBERTA LTD. TO CONTEST  
LIEN DETERMINATION  
NOTICE**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
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**File No.: 5448 RBH**

**NOTICE TO RESPONDENT(S)**

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	TBD
Time	TBD
Where	Calgary Courts Centre
Before Whom	The Honourable Madam Justice K.M. Eidsvik in Chambers

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 reversing the Determination Notice by the Monitor, FTI Consulting Canada Inc., declaring invalid the Lien Claim presented on or about May 25, 2020 by the Applicants, JERRY SHANKOWSKI and 945441 ALBERTA LTD. (the "945441 Lien Claim"), to the Monitor, pursuant to the Order – Lien Claims – MD of Bonnyville granted by the Honourable Madam Justice K.M. Eidsvik ("Eidsvik J.") in this Action on May 20, 2020 (the "Eidsvik May 20 Order"), in respect of the Lands defined in the Eidsvik May 20 Order;
2. An Order declaring valid the 945441 Lien Claim and directing payment thereof from the Funds, as defined in the Eidsvik May 20 Order;
3. Such other and further relief as may be required and as this Honourable Court deems appropriate and just; and
4. Costs of this Application in any event of the cause, payable forthwith, on a scale as between a solicitor and client or on such other scale or in such other amounts as this Honourable Court deems appropriate and just.

**Grounds for making this application:**

5. On May 20, 2020, in this Action, the Eidsvik May 20 Order was granted by Eidsvik J. establishing a protocol for any builders' liens registered or capable of being registered in respect of the Contract between JMB Crushing Systems Inc. ("JMB") and the Municipal District of Bonnyville No. 87 ("MD of Bonnyville"), and discharging any

builders' liens then registered against certain lands ("MD of Bonnyville Lands") stipulated in the Eidsvik May 20 Order and owned by the MD of Bonnyville.

6. The Eidsvik May 20 Order provides a separate protocol for builders' lien claims against the Lands in relation to the Contract between JMB and the MD of Bonnyville.
7. The Eidsvik May 20 Order set 5:00 p.m. (Calgary time) on June 1, 2020 as the "Claims Bar Date".
8. A considerable amount of the aggregate supplied by JMB to the MD of Bonnyville pursuant to the Contract (as defined in the Eidsvik May 20 Order) were extracted from the lands of the Applicants and JMB is owed monies by the MD of Bonnyville in respect of such aggregate supplied, and the Applicants are owed royalties in respect of the portion of the aggregate supplied which was extracted from the lands of the Applicants.
9. The Monitor erred in law or in fact or in mixed law and fact in rejecting the Lien Claim of the Applicants pursuant to the Eidsvik May 20 Order on the following grounds:
  - a. By finding that the Applicants' Lien Claim is not a valid Lien or Lien Claim for the reasons given, namely that:
    - i. "it does not relate to work done or materials supplied on or in respect of an improvement; and",
    - ii. "it was not registered against the Lands or any lands owned by the MD of Bonnyville;"
  - b. Neither of the stipulated reasons are correct in fact or in law, and are contrary to the spirit, intent and terms of the Eidsvik May 20 Order and the *Builders' Lien Act (Alberta)* ("BLA");
  - c. The Eidsvik May 20 Order does not require a Lien Claim to have been registered against the Lands or any lands owned by the MD of Bonnyville, and specifically contemplated and authorized Lien Claims that were not so registered;

- d. The Applicant's Lien Claim was provided to the Monitor prior to the Claims Bar Date, and specifically, on or about May 25, 2020;
- e. The Eidsvik May 20 Order specifically prohibited any further Lien Claims in respect of the Contract from being registered against the Lands or any lands of the MD of Bonnyville (Eidsvik May 20 Order, par. 4);
- f. The aggregate extracted from the lands of the Applicants were intended for and supplied to the MD of Bonnyville for the purposes of incorporation into an improvement on lands of the MD of Bonnyville, and support a valid builders' lien pursuant to the terms of the *BLA* and the Eidsvik May 20 Order;
- g. "improvement" as defined by the *BLA* and as interpreted by the Courts of Alberta does not necessarily have to be a structure or building and the materials supplied supporting or giving rise to a builders' lien do not have to be immediately incorporated into the Lands or any lands;
- h. The interpretation given by the Monitor would necessarily mean that JMB is or was also not entitled to a builders' lien in the Lands or any lands of the MD of Bonnyville, but the whole concept and scheme of the Eidsvik May 20 Order contemplates that JMB had a valid builders' lien in the Lands pursuant to the supply of aggregate ("Product" as defined by the Eidsvik May 20 Order) by JMB to the MD of Bonnyville for stockpiling on the Lands;
- i. The *BLA* defines "improvement" as: "improvement" means anything constructed, erected, built, placed, dug or drilled, or intended to be constructed, erected, built, placed, dug or drilled, on or in land except a thing that is neither affixed to the land nor intended to be or become part of the land; *[emphasis added]*
- j. The *BLA* defines "owner" as:
  - (j) "owner" means a person having an estate or interest in land at whose request, express or implied, and
    - (i) on whose credit,
    - (ii) on whose behalf,
    - (iii) with whose privity and consent, or
    - (iv) for whose direct benefit,

work is done on or material is furnished for an improvement to the land and includes all persons claiming under the owner whose rights are acquired after the commencement of the work or the furnishing of the material;

- k. The *BLA* defines “contractor” as “contractor” means a person contracting with or employed directly by an owner or the owner’s agent to do work on or to furnish materials for an improvement, but does not include a labourer;”
- l. The Applicants are either “contractors” or “subcontractors” with respect to the MD of Bonnyville and the Lands, as they contracted with JMB to furnish materials for an improvement on the Lands, and in that regard JMB was the agent of the MD of Bonnyville in obtaining the aggregate from the lands of the Applicants pursuant to JMB’s contract with the Applicants;
- m. The Applicants have a valid Lien in the Lands pursuant to s. 6 of the *BLA* as they “furnished materials to be used in or in respect of an improvement” for an “owner, contractor or subcontractor”;
- n. The Applicants had 45 days from the date the last materials were furnished to register a builders’ lien against the Lands, subject to the Eidsvik May 20 Order which imposed a different and separate process and a Claims Bar Date of June 1, 2020;
- o. Materials (aggregate or “Product” under the Eidsvik May 20 Order) have been furnished continuously for many months prior to and after the Eidsvik May 20 Order;
- p. Subject to the Claims Bar Date, the deadline for the Applicants to register a lien did not pass by the time the Applicants provided their Lien Claim to the Monitor.

10. Such further and other grounds as may appear from the evidence.

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

11. The Affidavit of Jerry Shankowski, sworn August 10, 2020, filed concurrently with this Application.

**Applicable rules:**

12. Rules 1.2, 1.3, 1.4 and 6.3 of the *Alberta Rules of Court* and generally all other applicable provisions of the *Alberta Rules of Court*.

**Applicable Acts and regulations:**

13. *Alberta Rules of Court*;

14. *Builders' Lien Act*;

15. *Companies' Creditors Arrangement Act* RSC 1985, c C-36

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

16. Not applicable.

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

17. Orally, in person or in such other manner as may be directed by the Court, before the presiding Justice in Chambers.

**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 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.