



COURT FILE NUMBER 2001 05482

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

\$50
JS
Nov. 27 2020

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.**

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

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	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 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) declaring that the Holdback Amount (defined herein), to the extent of \$1,270,791.71 plus interest and costs, are funds held by JMB Crushing Systems Inc. ("JMB") in trust for RBEE Aggregate Consulting Ltd. ("RBEE");

- (b) 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;
- (c) 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
- (d) such further and other relief as this Honourable Court may deem just and appropriate.

Grounds for making this application:

2. On November 1, 2013, JMB entered into an agreement with the Municipal District of Bonnyville No. 87 (the "Municipality") to perform services, including the crushing of rock and gravel for the Municipality (the "Prime Contract").
3. Paragraph 26 of the Prime Contract provides:

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, Workers' 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. "Product" is defined in the Prime Contract as:

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 useable crushed aggregate for the [Municipality] in accordance with the required specifications set out in this Agreement.
5. On February 25, 2020, RBEE entered into a subcontractor services agreement with JMB (the "Subcontractor Agreement") to crush rock and gravel to the required specifications on behalf of JMB under the Prime Contract (the "Product Services").
6. RBEE performed the Product Services pursuant to the Subcontractor Agreement and rendered invoices for the Product Services to JMB. The amount of \$1,270,791.71, inclusive of GST, remains outstanding from JMB.
7. The Municipality paid JMB for the Product Services provided by RBEE pursuant to the Prime Contract.
8. FTI Consulting Canada Inc. (the "Monitor") was appointed as Monitor of JMB pursuant to an order granted on May 1, 2020, which was subsequently amended and restated May 11, 2020.

9. On May 20, 2020, Justice K. M. Eidsvik granted an order setting out the lien determination process for the Municipality, including the amount to be held by the Monitor (the "Holdback Amount") from those amounts invoiced by JMB to the Municipality but not yet paid by the Municipality for the period up to and including April 30, 2020.
10. Pursuant to the trust created by the Prime Contract, RBEE is applying to this Honourable Court for a determination that the Holdback Amount, to the extent of \$1,270,791.71 plus interest and costs, constitutes a trust in favour of RBEE and a direction to the Monitor to pay that amount to RBEE.
11. Such further and other grounds as counsel may advise and this Honorable Court may permit.

Material or evidence to be relied on:

12. Amended and Restated CCAA Initial Order, dated May 11, 2020;
13. Order – Lien Claims Process for MD of Bonnyville, dated May 20, 2020;
14. Affidavit of David Howells, sworn November 5, 2020;
15. Affidavit of David Howells, sworn May 29, 2020;
16. Supplemental Affidavit of David Howells, sworn October 9, 2020;
17. Affidavit of Jason Panter, sworn October 9, 2020;
18. The record of the Court proceedings of the within action; and
19. Such further and other materials as counsel may advise and this Honorable Court may permit.

Applicable Rules:

20. None.

Applicable Acts and Regulations:

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"

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DOCUMENT **ORDER**

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Attention: Jerritt R. Pawlyk
File No. 110151-003 JRP

DATE ON WHICH ORDER WAS PRONOUNCED: November 27, 2020

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 David Howells; 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 funds held by FTI Consulting Canada Inc. on behalf of JMB Crushing Systems Inc., to the extent of \$1,270,791.71 plus interest and costs, are held in trust for RBEE Aggregate Consulting Ltd. ("RBEE");
2. costs of this Application to the Applicant RBEE shall be awarded on a _____ basis, to be assessed; and

3. the sum of \$1,270,791.71, plus interest thereon in accordance with the *Judgment Interest Act*, RSA 2000, c J-1, and costs, shall be released by the Monitor to RBEE through its counsel, Bishop & McKenzie LLP.

The Honourable Madam Justice K.M. Eidsvik