COURT FILE NUMBER	2001 05482	Clerk's Stamp
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	R BEE AGGREGATE CONSULTING LTD.	
DOCUMENT	**BENCH BRIEF OF THE APPLICANT, R BEE AGGREGATE CONSULTING LTD., IN SUPPORT OF AN APPLICATION 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	

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I. INTRODUCTION

1. The Applicant, R Bee Aggregate Consulting Ltd. ("RBEE") supplied work and materials at various locations around the Municipal District of Bonnyville No. 87 (the "Municipality") that directly contributed to the overall construction and maintenance of the roads in the Municipality.

2. RBEE supplied the work and materials on behalf of JMB Crushing Systems Inc. ("JMB"), ensuring the seamless continuation of the construction and maintenance of the roads around the Municipality.

3. To date, RBEE has not been paid in full for the services they performed and JMB is in insolvency proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "*CCAA*"). On May 15, 2020, RBEE filed several liens against relevant lands in accordance with the *Builders' Lien Act*, RSA 2000, c B-7 (the "*Act*").

4. RBEE submitted a lien notice to the court-appointed monitor of JMB, FTI Consulting Canada Inc. (the "Monitor") in accordance with the process outlined in the Honourable Madame Justice Eidsvik's May 20, 2020 Order – Lien Claims Process for MD of Bonnyville. However, the Monitor denied RBEE's lien claim on July 27, 2020 (the "Lien Determination Notice").[1]

5. RBEE therefore seeks to have the Lien Determination Notice reversed and its lien claim declared valid. RBEE also seeks a direction from this Honourable Court that 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.

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[1] Order – Lien Claims Process for MD of Bonnyville, dated May 20, 2020 [Tab 1] [Order]; Lien Determination Notice, dated July 27, 2020 [Tab 2] [Lien Determination].

II. FACTUAL BACKGROUND

A. The Agreement

6. On or about November 1, 2013, JMB entered into a contract (the “Prime Contract”) with the Municipality to perform services including the crushing of rock and gravel for the Municipality.[2]

7. On or about February 25, 2020, JMB entered into a Subcontractor Services Agreement (the “Subcontractor Agreement”) with RBEE whereby RBEE agreed to perform services on behalf of JMB under the Prime Contract.[3]

8. Pursuant to the Subcontractor Agreement, RBEE’s services consisted of crushing rock and gravel (the “Services”), at a site located within St. Paul County No. 19 approximately 10 km southwest of the Town of Elk Point, referred to in the Subcontractor Agreement as the “Shankowski Pit”. In the Subcontractor Agreement, JMB represented to RBEE that it was the owner of the Shankowski Pit, identified therein as being located at SW 21-56-7-4, being the SW Quarter of Section 21, Township 56, Range 7, West of the 4th Meridian.[4]

B. The Lands

9. RBEE’s Services in respect of the Shankowski Pit were conducted upon multiple titled parcels of land, with the following legal descriptions, which shall herein be referred to collectively as the Shankwoski Pit:

    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

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[2] Affidavit of David Howells, sworn May 29, 2020 [“First Howells Affidavit”] at para 2.
[3] First Howells Affidavit, *supra* note 2 at para 3, Exhibit “A”.
[4] *Ibid* at paras 4–5.

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"); and

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").[5]

10. The certificate of title to the Havener Land also evidences the registration of a caveat in respect of a royalty agreement by JMB as registration no. 002 170 374 on June 20, 2000 (the "Havener Caveat").[6]

[5] *Ibid* at paras 8–12, Exhibits "B"–"E".
[6] *Ibid* at para 13, Exhibit "F".

11. The aggregate rock and gravel that was crushed by RBEE was delivered to lands owned by the Municipality and located within the Municipality at the Northeast Quarter of Section 19, Township 61, Range 5, West of the 4th Meridian (the "Municipality Lands").[7]

12. Title to the quarter section of land that makes up the Municipality Lands consists of three registered plans (road, descriptive, and subdivision), and a title for the entire quarter section excepting those registered plans, with the following legal descriptions:

a. 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"); and

b. 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").[8]

13. Collectively, the Shankowski Land, the Havener Land, the Plan 0928625 Land and the Municipality Quarter Section shall be referred to herein as the "Lands".

C. The Project

14. The aggregate rock and gravel that was crushed by RBEE from the Shankowski Pit was deposited on the Municipality Lands at either, or both, of the Plan 0928625 Land and the Municipality Quarter Section.[9]

[7] *Ibid* at para 14.
[8] *Ibid* at paras 16–19, Exhibits "G" – "I".
[9] *Ibid* at para 19.

15. The aggregate rock and gravel that was crushed by RBEE was crushed into two different sizes:

    a. ½ inch base gravel with material number 112.5 (“112.5”); and

    b. 5/8-inch base gravel with material number 216 (“216”)

    (collectively, the “Materials”).[10]

16. The Materials that were crushed by RBEE were deposited onto the Municipality Lands. The ½ inch base gravel with material number 112.5 was deposited on the Municipality Lands in one pile (the “112.5 Pile”). The 5/8-inch base gravel with material number 216 was deposited on the Municipality Lands in another pile (the “216 Pile”).[11]

17. The Municipality entered into a contract with a third party at the end of February 2020 to mix a compound known as MC-250 for patching material using the 112.5 from the 112.5 Pile (the “Patching Material”). The Patching Material was mixed between May 15, 2020 and June 20, 2020 and it was added to the Municipality’s already-existing stockpile. The Patching Material is used on various Municipality roads on an as-needed basis.[12]

18. The Municipality entered into a contract with a third party at the end of February 2020 to mix a compound known as HF500 using the 216 from the 216 Pile (the “Cold Mix”). The Cold Mix was mixed between May 15, 2020 and June 20, 2020. The Cold Mix was then used in the following projects around the Municipality in order to repair soft spot sections on each of the following road locations:

    a. RR 443 from HWY 28 to TWP RD 614;
    b. RR 485 from HWY 28 to TWP RD 610;
    c. RR 483 from HWY 660 to TWP RD 611;
    d. RR 482 from TWP RD 594 to TWP RD 593A;
    e. RR 470 from TWP RD 630 to HWY 55;
    f. TWP RD 610 from RR 483 to RR 484;
    g. RR 411 from TWP RD 630 to CHERRY RIDGE; and

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[10] Supplemental Affidavit of David Howells, sworn October 9, 2020 [Supplemental Howells Affidavit], at para 2.
[11] Supplemental Howells Affidavit, *supra* note 10 at para 3.
[12] *Ibid* at para 4(a).

h. RR 484 from HWY 28 TWP RD 594.[13]

19. The 216 from the 216 Pile is also used by the Municipality on various Municipality roads on an as-needed basis to reduce dust. The 216 that was used in this manner will be referred to as the "Dust Reduction Material".[14]

20. The Municipality roads upon which the Patching Material, the Cold Mix and the Dust Reduction Material was used will be collectively referred to herein as the "Roads".

D. The Claim

21. RBEE faithfully performed its Services pursuant to the Subcontractor Agreement and rendered the following invoices for its Services to JMB:

Date	Invoice	Invoice Total	Invoice Total (w/ GST)
March 2, 2020	259	$236,196.00	$248,005.80
March 31, 2020	266	$663,804.00	$696,994.20
April 16, 2020	270	$474,428.00	$498,149.40
May 10, 2020	278	$72,045.82	$75,648.11
	Total	**$1,446,473.82**	**$1,518,797.51**

(collectively, the "Invoices")[15]

22. On or around April 3, 2020, RBEE received payment from JMB in respect of Invoice #259 in the full amount of $248,005.80, inclusive of GST.[16]

23. RBEE last provided its Services on April 6, 2020.[17]

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[13] *Ibid* at para 4(b).
[14] *Ibid* at para 4(c).
[15] First Howells Affidavit, *supra* note 2 at paras 20–21, Exhibit "J" and "K".
[16] *Ibid* at para 23, Exhibit "J".
[17] *Ibid* at para 26.

24. To date, RBEE has received no further payment for their Services completed on behalf of JMB. The remainder of the Invoices remain outstanding in the sum of $1,270,791.71, inclusive of GST.[18]

25. On or about May 1, 2020, JMB was granted an initial order under the *CCAA,* which was amended and restated on May 11, 2020.[19]

26. On May 15, 2020, RBEE registered the following builder's liens at the Alberta Land Titles Office:

    a. instrument no. 202 106 447 against the Shankowski Land;

    b. instrument no. 202 106 499 against the Havener Land; and

    c. instrument no. 202 106 439 against the Plan 0928625 Land.[20]

27. RBEE also claims a builders' lien against and seeks to enforce all rights and remedies ordinarily available to it under the Act with respect to:

    a. JMB's registered interest in the Havener Land, as evidenced by the Havener Caveat; and

    b. the Municipality Quarter Section.[21]

28. On May 20, 2020, the Honourable Madame Justice Eidsvik ordered the Monitor to hold back $1.8 million for lien claims under section 18 of the Act against the Municipality Quarter Section.[22]

29. On July 27, 2020, the Monitor issued a Lien Determination Notice, denying RBEE's lien claims.[23]

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[18] *Ibid* at para 24, Exhibit "J".
[19] Amended and Restated CCAA Initial Order, dated May 11, 2020 [Tab 3].
[20] First Howells Affidavit, *supra* note 2 at paras 28–31, 34–35, Exhibit "L"–"N".
[21] *Ibid*, at paras 32–33, 36.
[22] Order, *supra* note 1.
[23] Lien Determination, *supra* note 1.

30. RBEE brought this application to contest the Lien Determination Notice.

III. ISSUES

31. RBEE submits that this Application raises the issue of whether RBEE holds valid liens. In order to determine this issue, RBEE will address the following:

A. the statutory background of the Act;

B. interpretation of the Act;

C. whether a common purpose exists between the Lands and the Roads; and

D. whether the services performed and the materials furnished by RBEE are in respect of an improvement as contemplated by the Act.

IV. LAW AND ARGUMENT

A. Statutory Background

32. Section 6 of the Act states:

> 6(1) Subject to subsection (2), a person who
> (a) does or causes to be done any work on or in respect of an improvement, or
> (b) furnishes any material to be used in or in respect of an improvement,
> for an owner, contractor or subcontractor has, for so much of the price of the work or material as remains due to the person, a lien on the estate or interest of the owner in the land in respect of which the improvement is being made.[24]

33. Section 9 of the Act states:

> 9(1) Material is considered to be furnished to be used within the meaning of this Act when it is delivered either on the land on which it is to be used or on such land or in such place in the immediate vicinity of that land as is designated by the owner or the owner's agent or by the contractor or the subcontractor.

[24] *Act*, s 6(1) [Tab 4].

(2) Notwithstanding that material to be used in an improvement may not have been delivered in strict accordance with subsection (1), if the material is incorporated in the improvement the person furnishing the material has a lien as set out in section 6.[25]

34. The Act defines the following terms in section 1:

…

(d) "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;[26]

…

(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;[27]

…

(p) "work" includes the performance of services on the improvement.[28]

…

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[25] *Act*, s 9 [Tab 4].
[26] *Act*, s 1(d) [Tab 4].
[27] *Act*, s 1(j) [Tab 4]
[28] *Act*, s 1(p) [Tab 4].

B. Interpretation of the Act

35. Section 10 of Alberta's *Interpretation Act* states that:

> …[a]n enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.[29]

36. The above principal has been adopted by the Albert Court of Appeal. It has specifically indicated that the Act is a remedial act and as such should be interpreted broadly.[30]

37. The Alberta Court of Appeal has more recently stated that:

> …a liberal approach may be taken to determining the scope of the lien right.[31]

38. The Alberta Court of Appeal has also stated that the purpose of the *Act* is to:

> …secure the parties entitled to its benefits for the value of work done and material supplied.[32]

39. This liberal interpretive approach has been consistently followed by the Alberta courts in determining builders' lien claims.

C. Whether a common purpose exist between the Lands and the Roads

40. A builder's lien can be validly registered on land, even if the improvement was not made on that land, if there is a common purpose and some geographic proximity between the site where the work was completed and the land where the lien is registered.[33]

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[29] *Interpretation Act*, RSA 2000, c I-8, s 10 [Tab 5].
[30] *Maple Reinders Inc v Eagle Sheet Metal Inc*, 2007 ABCA 247, at para 31 [Tab 6] [*Maple Reinders*].
[31] *Tervita Corporation v ConCreate USL (GP) Inc*, 2015 ABCA 80, at para 5 [Tab 7].
[32] *Maple Reinders*, *supra* note 28 at para 31 [Tab 6].
[33] *MJ Limited (MJ Trucking) v Prairie Mountain Construction (2010) Inc,* 2016 ABQB 395, at para 53 [Tab 8]; *Northern Dynasty Ventures Inc v Japan Canada Oil Sands Limited,* 2020 ABQB 275, at para 11 [Tab 9] [*Northern Dynasty*].

41. For geographic proximity, the Court in *Northern Dynasty* found the distance of 89 kilometers between a project site and a gravel pit to be within the immediate vicinity of each other. Immediate vicinity is a higher bar to meet than geographic proximity.[34]

42. The Materials were required to construct and maintain the Roads. The Shankowski Pit was a site in the region that fulfilled the requirement for the Materials. The Prime Contract specified that the Materials were to be crushed at the Shankwoski Pit and deposited onto the Municipality Land. The gravel crushing performed by RBEE was an integral part of the work JMB provided pursuant to the Prime Contract.

43. The distance between the Shankowski Pit and the furthest liened land, the Plan 0928625 Land, is only 64 kilometers.[35] The Shankowski Pit is within geographic proximity to the Roads.

44. The test for whether a common purpose exists is:

> Is the [improvement], as an operation, sufficiently integrated so as to permit all of the Lienholders to claim a lien against the whole of the [improvement] so Lienholders who performed work outside of the titled land may also claim a lien against the titled land and vice versa?[36]

45. The criteria that must be shown for work or materials to be "in respect of" an improvement, and which demonstrate sufficient integration of the work between the lands, are:

  a. the contractors, subcontractors and owners contemplated that the services provided were necessary to expedite the construction of the improvement;
  b. the off-site services could not have been provided on the site;
  c. the improvement could not have been carried out absent such off-site services; and

[34] *Northern Dynasty, supra* note 33 at para 23-24 [Tab 9].
[35] First Howells Affidavit, *supra* note 3 at para 4 and 14, Exhibit "B" and "G".
[36] *Re Smoky River Coal Limited*, 1999 ABQB 492, at para 9 [Tab 10].

d. in all of the circumstances, the off-site services were so essential to the construction of the improvement and so directly connected with it, that it can be said that the services in question were “primary” in nature.[37]

46. RBEE, JMB and the Municipality contemplated that the Materials crushed by RBEE were necessary to expedite the construction of the improvement to the Roads.

47. RBEE’s Services could not have been provided on the Municipality Lands or the Roads. Gravel crushing can only occur at a site with an available gravel deposit, such as the Shankowski Pit.

48. The improvement to the Roads could not have been carried out absent the Materials provided by RBEE as a result of the Services performed at the Shankowski Pit.

49. The off-site Services provided by RBEE at the Shankowski Pit were essential and "primary" in nature, as the Materials RBEE crushed there were necessary for the improvement to the Roads.

50. As the improvement to the Roads in the Municipality required the Materials crushed by RBEE at the Shankowski Pit, and as those Materials could not be extracted on the Municipality Lands, RBEE submits that there was a common purpose between RBEE's crushing of rock and gravel and the balance of the work pursuant to the Prime Contract.

51. Therefore, RBEE's Services were sufficiently integrated so as to permit it to lien the Lands.

D. Whether the services performed and the materials furnished by RBEE are in respect of an improvement as contemplated by the Act

52. RBEE submits that the improvement to which RBEE’s liens attach is the overall project of constructing and improving the Roads, and not simply the Roads themselves.

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[37] *PTI Group Inc v ANG Gathering & Processing Ltd*, 2002 ABCA 89, at para 18 [Tab 11] [*PTI*].

53. The meaning of improvement, guided by the liberal interpretive approach to the Act, has continually been expanded by the Alberta Courts.

54. Central to this liberal approach in the context of improvements, is that they are to be considered "from the perspective of the 'overall project' involved." To put it plainly, the improvement is the overall project.[38]

55. Large scale projects, like the construction and maintenance of multiple roads, will have many components. These components should be viewed collectively: each is included in the improvement.

56. For a builders' lien to be valid, work done or materials furnished must be in respect of an improvement.[39]

57. The following services have been held to be work done in respect of an improvement:

    a. essential maintenance services;[40]

    b. plumbing services and supplying gas on chattels;[41] and

    c. catering and living accommodation services.[42]

58. The Services RBEE performed on the Lands, which allowed RBEE to furnish the Materials, were an essential component of the construction and maintenance of the Roads. The Roads could not be constructed and maintained without the Services and Materials.

59. The liberal approach to interpreting improvements by the Court leads to a wide spectrum of services that may be in respect of an improvement. RBEE submits that the construction and maintenance of the Roads is an improvement.

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[38] *Davidson Well Drilling Limited (Re)*, 2016 ABQB 416, at para 79 [Tab 12] [*Davidson*].
[39] *Act*, s 6(1) [Tab 4].
[40] *Davidson, supra* note 38 at para 83 [Tab 12].
[41] *Alberta Gas Ethylene v Noyle*, 1979 ABCA 334, at para 23 [Tab 13].
[42] *PTI*, *supra* note 37 at paras 16-17, 19 [Tab 11].

60. Furthermore, the Material furnished by RBEE was incorporated into the improvement, in accordance with section 9(2) of the Act.[43]

61. As this improvement required the Materials crushed by RBEE at the Shankowski Pit, and as those Materials could not be extracted on the Lands, RBEE submits that there was a common purpose between the Services and the rest of the work carried out pursuant to the Prime Contract. RBEE submits that the Services were sufficiently integrated with the rest of the work so as to permit it to lien the Lands.

V. CONCLUSION AND REMEDY SOUGHT

62. Alberta Courts have consistently applied a liberal approach to protecting builders' lien rights. This liberal approach is evidenced by connecting sites through the principle of common purpose, expanding what is considered an improvement and acknowledging a wide spectrum of work that meets the definition of an improvement.

63. RBEE submits that they hold valid liens to the Lands.

64. The Services performed by RBEE and the Materials furnished on the Lands were directly connected to the ongoing construction and maintenance of the Roads around the Municipality. There was evident dependence on the Services being performed on the Lands and the continued construction and maintenance of the Roads around the Municipality. As such, these sites held a common purpose.

65. Improvements under the Act are viewed from the overall perspective of the project. Many counterparts are capable of forming a single improvement. The overall construction and maintenance of the Roads, by necessity, occurred throughout the Municipality. The breadth of this project is inconsequential to it being defined as the improvement. The Material furnished by RBEE was incorporated into the improvement.

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[43] Act, s 9(2) [Tab 4]

66. Finally, the Services of RBEE were performed in respect of the overall construction and maintenance of the Roads around the Municipality. RBEE's Services were contracted to ensure that the proper and timely upkeep of the Roads was maintained.

67. RBEE respectfully submits that:

   a. RBEE holds valid liens to the Lands;

   b. a common purpose exists between the Services performed on the Lands, the Materials provided to the Municipality, and the Roads; and

   c. the Services completed and Materials furnished by RBEE are in respect of an improvement.

68. RBEE respectfully requests the following relief:

   a. reversing the Lien Determination Notice dated July 27, 2020 by the Monitor with respect to the claim of RBEE;

   b. declaring the Builder's Lien registered by RBEE on May 15, 2020 as instrument number 202 106 447 against the Shankowski Land is valid;

   c. declaring that the Builder's Lien registered by RBEE on May 15, 2020 as instrument number 202 106 449 against the Havener Land is valid;

   d. declaring that the Builder's Lien claim of RBEE against JMB's registered interest in the Havener Land, as evidenced by the Havener 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 against the Plan 0928625 Land is valid;

   f. declaring that the Builder's Lien claim of RBEE against the Municipality Quarter Section is valid;

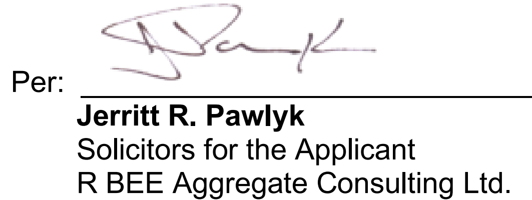
g. awarding costs of this Application to the Applicant RBEE on a solicitor and own client basis, or on such a basis as this Honrouable Court may deem just and appropriate;

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.

ALL OF WHICH IS RESPECTIFULLY SUBMITTED THIS 12th day of October, 2020.

BISHOP & McKENZIE LLP



Per: ______________________________
Jerritt R. Pawlyk
Solicitors for the Applicant
R BEE Aggregate Consulting Ltd.

VI. INDEX OF AUTHORITIES

A. Evidence

TAB 1. Order – Lien Claims Process for MD of Bonnyville, dated May 20, 2020.

TAB 2. Lien Determination Notice, dated July 27, 2020.

TAB 3. Amended and Restated CCAA Initial Order, dated May 11, 2020.

B. Legislation

TAB 4. *Builders' Lien Act*, RSA 2000, c B-7, ss. 1(d), 1(j), 1(p), 6(1) and 9.

TAB 5. *Interpretation Act*, RSA 2000, c I-8, s. 10.

C. Jurisprudence

TAB 6. *Maple Reinders Inc v Eagle Sheet Metal Inc*, 2007 ABCA 247.

TAB 7. *Tervita Corporation v ConCreate USL (GP) Inc*, 2015 ABCA 80.

TAB 8. *MJ Limited (MJ Trucking) v Prairie Mountain Construction (2010) Inc*, 2016 ABQB 395.

TAB 9. *Northern Dynasty Ventures Inc v Japan Canada Oil Sands Limited*, 2020 ABQB 275.

TAB 10. *Re Smoky River Coal Limited*, 1999 ABQB 492.

TAB 11. *PTI Group Inc v ANG Gathering & Processing Ltd*, 2002 ABCA 89.

TAB 12. *Davidson Well Drilling Limited (Re),* 2016 ABQB 416.

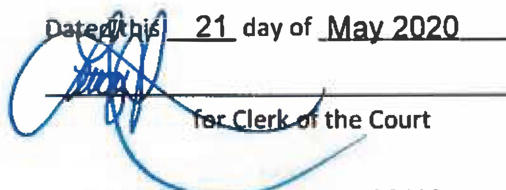
TAB 13. *Alberta Gas Ethylene v Noyle*, 1979 ABCA 334.

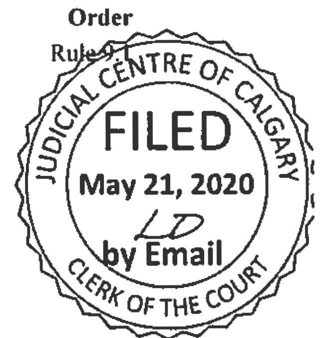
TAB 14. *PTI Group Inc v ANG Gathering & Processing Ltd*, 2002 ABCA 89.

TAB 15. *E Construction Ltd v Sprague-Rosser Contracting Co Ltd*, 2017 ABQB 99.

TAB 16. *Neptune Coring (Western) Ltd v Sprague-Rosser Contracting Co*, 2018 ABQB 883.

TAB 1





COURT FILE NO.:	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY

INV #501099

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	JMB CRUSHING SYSTEMS INC.
DOCUMENT	**ORDER – LIEN CLAIMS – MD of BONNYVILLE**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Gowling WLG (Canada) LLP** 1600, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attn: **Tom Cumming/Caireen E. Hanert/Alex Matthews** Phone: 403.298.1938/403.298.1992/403.298.1018 Fax: 403.263.9193 File No.: A163514

DATE ON WHICH ORDER WAS PRONOUNCED:	May 20, 2020
LOCATION AT WHICH ORDER WAS MADE:	Calgary Court House
NAME OF JUSTICE WHO MADE THIS ORDER:	Madam Justice K.M. Eidsvik

UPON THE APPLICATION of JMB Crushing Systems Inc. ("JMB"); **AND UPON HEARING** counsel for JMB; **AND UPON** reviewing the Affidavit of Jeff Buck sworn May 8, 2020 and the Affidavit of Jeff Buck sworn May 20, 2020; **AND UPON** hearing counsel for the Applicant and those parties present; **IT IS HEREBY ORDERED THAT:**

1. The time for service of notice of application for this Order is hereby abridged and deemed good and sufficient and this application is properly returnable today.

2. The Consent Order granted May 11, 2020 by the Honourable K.M. Eidsvik is hereby set aside and the process contemplated therein is replaced by the process set out herein.

Definitions

3. For the purpose of the within Order, the following terms shall have the following meanings:

   (a) "**BLA**" means the *Builders' Lien Act*, RSA 2000, c B-7;

   (b) "**Claims Bar Date**" means 5:00p.m. (Calgary time) on June 1, 2020, or such other date as may be ordered by the Court;

   (c) "**Contract**" means the agreement between MD of Bonnyville and JMB dated November 1, 2013, as amended, pursuant to which JMB provided Product to MD of Bonnyville and hauled the Product for stockpiling at the Lands;

   (d) "**CRA Amount**" means $236,000.00 to be paid to the CRA from the Funds less the Holdback Amount in accordance with this Order;

   (e) "**Determination Notice**" means written notice of a Lien Determination;

   (f) "**Disputed Amount**" means the amount disputed as owing by MD of Bonnyville to JMB, which is $131,237.60;

   (g) "**Funds**" means those amounts invoiced by JMB to MD of Bonnyville but not yet paid by MD of Bonnyville for the period up to and including April 30, 2020 in relation to the Contract, less the Disputed Amount, which is $3,563,768.40;

   (h) "**Holdback Amount**" means the amount to be held by the Monitor from the Funds, which is $1,850,000.00;

   (i) "**Interested Party**" means any party who gives notice in writing to the Monitor of its interest in a Lien Determination;

   (j) "**JMB**" is JMB Crushing Systems Inc.;

   (k) "**Lands**" means those lands legally described as:

LEGAL DESCRIPTION
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

(l) "**Lien**" means a lien registered under the BLA against the Lands in respect of the Work or the Contract;

(m) "**Lien Claim**" means a claim of any Lien Claimant to the extent of such Lien Claimant's entitlement to receive payment from the major lien fund, as defined in the BLA, as it relates to the Work performed by the Lien Claimant or a subrogated claim for such Work;

(n) "**Lien Claimant**" means a claimant who: (i) has registered a Lien for its Work against the Lands; or (ii) has a Lien Claim and has provided a Lien Notice to the Monitor as described herein;

(o) "**Lien Determination**" means a determination of the validity of a Lien, a Lien Claim and the quantum thereof, whether by the Monitor or this Court;

(p) "**Lien Notice**" means the form attached as Schedule "A" hereto;

(q) "**MD of Bonnyville**" is the Municipal District of Bonnyville No. 87;

(r) "**Monitor**" means FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor of JMB, and not in its personal capacity or corporate capacity;

(s) "**Product**" means the aggregate produced by JMB pursuant to the Contract; and

(t) "**Work**" means work done or materials furnished with respect to the Contract or the Lands.

Stay of Lien Claims

4. No person shall be permitted to commence or serve any Lien Claims, or to preserve or perfect any Lien Claim under the BLA, for Work done in respect of the Contract or the Lands for the period up to and including April 30, 2020. Any such Lien or Lien Claim is hereby stayed, and any person seeking to serve or enforce any Lien or Lien Claim shall be required to seek the rights and remedies set out in this Order.

Claims Process

5. Within one (1) Business Day of the within Order being granted by this Court, MD of Bonnyville shall remit to the Monitor the Funds, and shall thereafter be deemed to have been in the same position as if (a) no written notices of Lien had been received; (b) no Lien Claims had been made, asserted, delivered, preserved or perfected; and (c) no Lien Notice had been received, and MD of Bonnyville shall have no further liability for such Funds.

6. The Monitor shall hold the Holdback Amount in trust in an interest bearing account in accordance with the terms of this Order, which Holdback Amount shall be deemed to be the amount MD of Bonnyville was required to hold back pursuant to section 18 of the BLA from payments it made or makes to JMB for those amounts invoiced up to and including April 30, 2020.

7. Any person who wishes to assert a Lien Claim against the Lands and who has not yet registered a Lien against the Lands shall deliver a Lien Notice by email to the Monitor's attention within the time frame prescribed by the BLA in order to preserve and perfect their Lien Claim.

8. Pursuant to section 48(2) of the BLA, the Holdback Amount shall stand as security in place of the Lands to the extent of any security granted under the BLA for all Lien Claims registered by Lien or provided to the Monitor by Lien Notice prior to the expiry of the time frame prescribed by the BLA.

9. Lien Claimants who have registered a Lien against the Lands or provided a Lien Notice to the Monitor as set out in paragraph 7 hereof shall only be required to take the steps set out

in this Order to prove their Lien, and shall not be required to take any steps set out in the BLA, including, but not limited to, filing a statement of claim or a certificate of lis pendens.

10. Upon the Monitor providing a certificate to the Registrar of Land Titles confirming receipt of the Funds by the Monitor and that the Funds are sufficient to pay the Liens, the Registrar is hereby authorized and directed under section 191(3)(a) of the *Land Titles Act*, RSA 2000, c L-4 to discharge the registration of the Liens registered on or before the date of this Order against title to the Lands, whereupon the Lien Claimants shall have no further claim against MD of Bonnyville in accordance with paragraph 5 hereof.

11. The Lien Claimant, JMB, any Interested Party and MD of Bonnyville, at the request in writing of the Monitor, shall provide to the Monitor information reasonably necessary for the Monitor to make a Lien Determination.

12. Upon receipt of the information relating to a Lien and Lien Claim contemplated by paragraph 12 hereof, the Monitor shall make its Lien Determination in respect thereof and provide a Determination Notice to the Lien Claimant, JMB and any other Interested Party.

13. If a Lien Claimant, JMB or any Interested Party does not accept a Lien Determination, each of the Lien Claimant, JMB and Interested Party is hereby granted leave to file and serve an application with this Court within 15 days of being served with the Determination Notice by the Monitor at the email address of the Lien Claimant as shown on the Lien or Lien Notice, and on JMB and any Interested Party in the records of the Monitor.

14. Once the 15-day period provided for in paragraph 13 hereof has expired without an application being served and filed with this Court, the Lien Determination of the Monitor shall be final and the Lien Claimant, JMB, and any Interested Parties shall not have any recourse to remedies set out in the BLA with respect to such Liens or Lien Claims, or as and against any of the Funds or the Holdback Amount.

15. The Monitor shall make the following payments from the Funds pursuant to this Order:

    (a) Once the certificate has been provided to the Registrar by the Monitor pursuant to paragraph 10 herein, the Monitor shall pay: (i) to JMB, the total amount of the

Funds less the Holdback Amount and the CRA Amount; and (ii) to CRA, the CRA Amount;

(b) Following each Lien Determination becoming final, the Monitor shall pay to each Lien Claimant the amount of its Lien Claim as set out in the Lien Determination from the Holdback Amount; and

(c) The Monitor, provided that it reserves a sufficient amount of the Holdback Amount to pay the Lien Claims, may pay the amount in excess thereof, if any, to JMB after the Claims Bar Date has passed, and upon the Lien Determinations becoming final in respect of all of the Liens, the Monitor shall pay the remaining Holdback Amount to JMB.

Disputed Amount

16. The Disputed Amount is not subject to the terms of this Order and shall be dealt with by way of separate application to this Court if required.

17. Each party shall be responsible for their own costs regarding the within matter.

J.C.C.Q.B.A.

Schedule "A"
Lien Notice

Claimant: ______________________________

Address for Notices: ______________________________

Telephone: ______________________________

Fax: ______________________________

Email: ______________________________

I, ______________________ **residing in the** ______________________ **of**
(name) (city, town, etc.)

______________________ **in the Province of** ______________________
(name of city, town, etc.) (name of province)

do hereby certify that:

1. ☐ I am the Claimant

OR ☐ I am the ______________________ of the Claimant
(title/position)

2. I have knowledge of all the circumstances connected with the claim referred to in this Lien Notice form.

3. The Claimant has a valid

(a) **Builders' Lien Claim** in the amount of $________________ arising pursuant to work done or materials furnished on behalf of JMB Crushing Systems Inc.

(b) **Subrogated Claim** in the amount of $________________ arising pursuant to work done or materials furnished on behalf of JMB Crushing Systems Inc.

4. Attached hereto as Schedule "A" is an affidavit setting out the full particulars of the Claimant's builders' lien claim or subrogated claim, including all applicable contracts,

sub-contracts, the nature of the work completed or materials furnished, the last day on which any work was completed or materials were furnished, any payments received by the Claimant, all invoices issued by the Claimant, and all written notices of a lien served by the Claimant.

DATED at ______________________________, this _____ day of May, 2020.
(location)

______________________________ ______________________________

Witness

Name: Name:

Must be signed and witnessed

TAB 2

DETERMINATION NOTICE FOR LIEN CLAIMS AGAINST JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD. (COLLECTIVELY, "JMB")

DETERMINATION NOTICE

TO: **RBEE Aggregate Consulting Ltd. (the "Lien Claimant")**
c/o Bishop & McKenzie LLP
10180 – 101 Street NW
Edmonton, AB T5J 1V3
Attention: Jerritt Pawlyk

DATE: July 27, 2020

LIEN CLAIM:

Date of Lien Notice / Registration:	May 29, 2020
Quantum Originally Claimed:	$1,270,791.71
Affected Lands:	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
	AND
	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 0.0001
	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 Meters; 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
AND
Plan 0928625
Block 1
Lot 1
Excepting Thereout All Mines and Minerals
Area: 20.22 Hectares (49.96 Acres) More or Less
AND
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

Take notice that FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor (the "**Monitor**") of JMB, pursuant to the CCAA Initial Order granted on May 1, 2020, as subsequently amended and restated on May 11, 2020 (the "**Amended and Restated CCAA Initial Order**"), has reviewed the Lien Claim you submitted, as part of its Lien Determination pursuant to the Order – Lien Claims – MD of Bonnyville issued by the Court of Queen's Bench of Alberta on May 20, 2020 (the "**Bonnyville Lien Process Order**"). All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Bonnyville Lien Process Order.

The Monitor has made the following Lien Determination concerning your Lien Claim:

Quantum: $1,270,791.71

Lien Determination: The above referenced Lien Claim is not a valid Lien or Lien Claim as, with respect to those registrations made / Lien Notices provided within the 45 days prescribed under the *BLA*, such Liens or Lien Claims do not relate to work done or materials supplied on or in respect of an improvement.

IF YOU WISH TO DISPUTE THE LIEN DETERMINATION, AS SET FORTH HEREIN, YOU MUST TAKE THE STEPS OUTLINED BELOW.

The Bonnyville Lien Process Order provides that if you do not accept with the Monitor's Lien Determination, as set out in this Determination Notice, you must, within fifteen days of receipt of this Determination Notice from the Monitor, file an application before the Court of Queen's Bench of Alberta for the determination of your Lien and Lien Claim. If you fail to file an application before the Court of Queen's Bench of Alberta, in the timeframe specified herein, the Lien Determination of the Monitor shall be final and neither you nor JMB shall have any further recourse to any remedies set out in the BLA with respect to the Liens or Lien Claims referenced herein or as and against any of the Funds or the Holdback Amount, except as otherwise may be ordered by the Court.

If you have any questions regarding the claims process or the attached materials, please contact the Monitor's counsel, Pantelis Kyriakakis of McCarthy Tétrault LLP, at pkyriakakis@mccarthy.ca and the Monitor, Mike Clark of FTI Consulting Canada Inc., at mike.clark@fticonsulting.com.

Dated the 27th day of July, 2020 in Calgary, Alberta.

FTI CONSULTING CANADA INC., in its capacity as Monitor of JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

Per: ________________________________

Mike Clark, Director

TAB 3

Clerk's Stamp:

50383

COURT FILE NUMBER	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF	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 COMPROMISE OR ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.
APPLICANTS:	JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.
DOCUMENT:	**AMENDED AND RESTATED CCAA INITIAL ORDER**
CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	**Gowling WLG (Canada) LLP** 1600, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attn: **Tom Cumming/Caireen E. Hanert/Alex Matthews** Phone: 403.298.1938/403.298.1992/403.298.1018 Fax: 403.263.9193 File No.: A163514

DATE ON WHICH ORDER WAS PRONOUNCED: May 11, 2020

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

LOCATION OF HEARING: Calgary Court House

UPON the application of JMB Crushing Systems Inc. and 2161889 Alberta Ltd. (the "**Applicants**"); **AND UPON** having read the Application filed by the Applicants on May 8, 2020,

the Affidavit of Jeff Buck sworn April 16, 2020 (the "**First Buck Affidavit**"), the Supplemental Affidavit of Jeff Buck sworn April 29, 2020, and the Affidavit of Jeff Buck sworn May 8, 2020 (the "**Second Buck Affidavit**"); **AND UPON** reading the First Report of FTI Consulting Canada Inc., in its capacity as Monitor of the Applicants (the "**Monitor**"); **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided with notice of this Application; **AND UPON** hearing counsel for the Applicants, the Monitor, ATB Financial, Fiera Private Debt Fund VI LP and Fiera Private Debt Fund V LP, and those parties present; **AND UPON** reviewing the initial order granted in the within proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") by the Honourable Madam Justice K.M. Eidsvik on May 1, 2020 (the "**Initial Order**"); **IT IS HEREBY ORDERED AND DECLARED THAT**:

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPLICATION

2. The Applicants are companies to which the *Companies' Creditors Arrangement Act* of Canada (the "**CCAA**") applies.

PLAN OF ARRANGEMENT

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. The Applicants shall:

   (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");

   (b) subject to further order of this Court, continue to carry on business in a manner

consistent with the preservation of their business (the "**Business**") and Property; and

(c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. To the extent permitted by law, the Applicants shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order;

(c) with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants, including for the period prior to the date of this Order if, in the opinion of the Applicants following consultation with the Monitor, the supplier or vendor of such goods or services is critical for the operation or preservation of the Business or Property;

(d) in the case of goods or services supplied to the Applicants prior to the date of this Order, any amounts paid to the supplier or vendors shall be limited to those amounts secured by liens, where the Monitor is satisfied with respect to the claim and its lien protection, or amounts paid in connection with ongoing projects that the Monitor is satisfied is necessary in order to ensure the supplier or vendor continues to supply or perform work in respect of such project;

(e) repayment from the ATB Facility (as defined in paragraph 31 below) of amounts advanced by ATB Financial to JMB under a bulge facility created pursuant to an amending agreement dated April 17, 2020 between ATB Financial and the Applicants; and

(f) with consent of the Monitor, repayment of the $200,000 advanced by Canadian Aggregate Resource Corporation to JMB on or about April 10, 2020.

6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order, subject to the requirements in paragraph (c) hereof.

7. The Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:

(i) employment insurance;

(ii) Canada Pension Plan; and

(iii) income taxes,

but only where such statutory deemed trust amounts arise after the date of the Initial Order, or are not required to be remitted until after the date of the Initial Order, unless otherwise ordered by the Court;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of the Initial Order, or where such Sales Taxes were accrued or collected prior to the date of the Initial Order but not required to be remitted until on or after the date of the Initial Order; and

(c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicants.

8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of the Initial Order ("**Rent**"), but shall not pay any rent in arrears.

9. Except as specifically permitted in this Order or authorized in the Interim Financing Agreement or the Definitive Documents, the Applicants are hereby directed, until further order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of the Initial Order, subject to paragraphs (c)and (d) herein;

(b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property, subject to those as may be authorized or required under the Interim Financing Agreements or approved by the Interim Lenders in writing; and

(c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. The Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Interim Financing Agreements or the Definitive Documents (as hereinafter defined in paragraph 33), have the right to:

(a) permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding $100,000 in any one transaction or $500,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

(c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and

(d) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. The Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a

representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:

(a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and

(b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. Until and including July 31, 2020, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all

Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

    (a) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on;

    (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;

    (c) prevent the filing of any registration to preserve or perfect a security interest;

    (d) prevent the registration of a claim for lien; or

    (e) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment.

15. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. During the Stay Period, all persons having:

(a) statutory or regulatory mandates for the supply of goods and/or services; or

(b) oral or written agreements or arrangements with the Applicants (or either of them), including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of the Initial Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of the Initial Order, nor shall any person, other than the Interim Lenders where applicable, be under any obligation on or after the date of the Initial Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 13 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date of the Initial Order and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. The Applicants shall indemnify their current and future directors and officers against obligations and liabilities that they may incur in their capacity as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

21. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Directors' Charge**”) on the Property, which charge shall not exceed an aggregate amount of $250,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 to 40 herein.

22. Notwithstanding any language in any applicable insurance policy to the contrary:

    (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and

    (b) the Applicants’ directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination to the Interim Lenders and their counsel of financial and other information as agreed to between the Applicants and the Interim Lenders which may be used in these proceedings, including reporting on a basis as reasonably required by the Interim Lenders;

(d) monitor all expenditures of the Applicants and approve any material expenditures;

(e) advise the Applicants in its preparation of the Applicants' cash flow statements and reporting required by the Interim Lenders, which information shall be reviewed with the Monitor and delivered to the Interim Lenders and their counsel on a periodic basis, but not less than bi-weekly, or as otherwise agreed to by the Interim Lenders;

(f) direct and manage any sale and investment solicitation process and all bids made therein;

(g) seek input into various aspects of these CCAA proceedings directly from the Applicants' senior secured lenders, ATB Financial, Fiera Private Debt Fund VI LP and Fiera Private Debt Fund V LP;

(h) advise the Applicants in their development of the Plan and any amendments to the Plan;

(i) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(j) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicants or to perform its duties arising under this Order;

(k) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(l) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and

(m) perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any

federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

26. The Monitor shall provide any creditor of the Applicants and the Interim Lenders with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. The Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants, in each case on a bi-weekly basis.

29. The Monitor and its legal counsel shall pass their accounts from time to time.

30. The Monitor, counsel to the Monitor, and counsel to the Applicants, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the

Property, which charge shall not exceed an aggregate amount of $300,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 to 40 hereof.

INTERIM FINANCING

31. The Applicants are hereby authorized and empowered to obtain and borrow under an interim revolving credit facility in the maximum amount of $900,000 from ATB Financial ("**ATB Financial**", and such facility, the "**ATB Facility**") and an interim revolving credit facility in the maximum amount of $900,000 from Canadian Aggregate Resource Corporation ("**CARC**", such facility, the "**CARC Facility**", CARC and ATB Financial, collectively the "**Interim Lenders**", individually an "**Interim Lender**", and the ATB Facility and CARC Facility, collectively the "**Facilities**") during the Stay Period in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that (a) the Applicants shall not draw on the CARC Facility unless ATB Financial has terminated or is unwilling to permit advances under the ATB Facility; and (b) the maximum amount available under the CARC Facility shall be reduced by the amounts outstanding under the ATB Facility.

32. The ATB Facility shall be on the terms and subject to the conditions set forth in a commitment letter dated April 30, 2020 between ATB and the Applicants and the CARC Facility shall be on the terms and subject to the conditions set forth in a commitment letter dated April 30, 2020 between CARC and the Applicants (as may be amended from time to time by the parties thereto, with the consent of the Monitor, the "**Interim Financing Agreements**"), filed.

33. The Applicants are hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (which, together with the Interim Financing Agreements, are collectively referred to as the "**Definitive Documents**") as are contemplated by the Interim Financing Agreements or as may be reasonably required by the Interim Lenders pursuant to the terms

thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lenders under and pursuant to the Interim Financing Agreements and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. The Interim Lenders shall be entitled to the benefits of and are hereby granted a charge (the "**Interim Lenders' Charge**") on the Property to secure all obligations under the Definitive Documents incurred on or after the date of this Order, which charge shall not exceed the aggregate amount outstanding under the Interim Facility Agreements. The Interim Lenders' Charge shall have the priority set out in paragraphs 38 to 40 hereof.

35. Notwithstanding any other provision of this Order:

(a) the Interim Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Definitive Documents;

(b) upon the termination of the ATB Facility by ATB Financial, on notice in writing to JMB, CARC and the Monitor, if CARC does not make an advance under the CARC Facility that repays the amount outstanding under the ATB Facility in full within seven (7) business days, ATB Financial may without further notice exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Interim Financing Agreement and Definitive Documents in favour of ATB Financial and the Interim Lenders' Charge, including without limitation, to set off and/or consolidate any amounts owing by the Interim Lenders to the Applicants against the obligations of the Applicants to the Interim Lenders under such Definitive Documents or the Interim Lenders' Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants;

(c) upon the occurrence of an event of default under the Interim Financing Agreements, the Definitive Documents or the Interim Lenders' Charge, the Interim Lenders, upon seven (7) business days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Interim Financing Agreements, Definitive Documents, and the Interim Lenders' Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Interim Lenders to the Applicants against the obligations of the Applicants to the Interim Lenders under the Interim Financing Agreements, the Definitive Documents or the Interim Lenders' Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(d) the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

36. Any amounts realized or received by an Interim Lender after an Interim Lender enforces the Interim Lenders' Charge in the manner contemplated by paragraph 35(b) or 35(c) of this Order shall be applied first to the outstanding obligations owing to ATB under the ATB Facility and second to the outstanding obligations owing to CARC under the CARC Facility. For greater certainty, the obligations to CARC secured by the Interim Lenders' Charge are subordinated to the obligations to ATB Financial secured by the Interim Lenders' Charge.

37. The Interim Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), with respect to any advances made under the Interim Financing Agreements or the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES

38. The priorities of the Directors' Charge, the Administration Charge, and the Interim Lenders' Charge as among them, shall be as follows:

    First – Administration Charge (to the maximum amount of $300,000);

    Second – Interim Lenders' Charge, subject to, as between ATB Financial and CARC, paragraph 36 hereof; and

    Third – Directors' Charge (to the maximum amount of $250,000).

39. The filing, registration or perfection of the Administration Charge, the Interim Lenders' Charge and the Directors' Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. Each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person that has received notice of this Application.

41. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the persons entitled to the benefit of those Charges (collectively, the **Chargees**"), or as approved by further order of this Court.

42. Each of the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by:

    (a) the pendency of these proceedings and the declarations of insolvency made in this Order;

(b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;

(c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statutes; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(f) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof , including the Interim Financing Agreements or the Definitive Documents, shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which either is a party;

(g) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicants entering into the Interim Financing Agreements or the Definitive Documents, or the execution, delivery or performance of the Definitive Documents; and

(h) the payments made by the Applicants pursuant to this Order, including the Interim Financing Agreements or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

APPROVAL OF SISP

43. The SISP attached as Schedule "A" hereto is hereby approved, and the Monitor is hereby authorized to commence the SISP, in consultation with the Sale Advisor (as defined in the

SISP), the Applicants, the Interim Lenders and the Applicants' senior secured lenders pursuant to the terms of the SISP. The Applicants, the Monitor and the Sale Advisor are hereby authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations thereunder.

44. Sequeira Partners is hereby appointed pursuant to the CCAA as the Sale Advisor to carry out the SISP in cooperation with the Applicants and the Monitor.

45. Each of the Monitor and the Sale Advisor, and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Monitor or the Sale Advisor, as applicable, in performing its obligations under the SISP (as determined by this Court).

46. In connection with the SISP and pursuant to sections 20 and 22 of the *Personal Information Protection Act (Alberta)*, the Applicants, the Sale Advisor and the Monitor are authorized and permitted to disclose personal information of identifiable individuals to prospective bidders and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more potential transactions (each, a "**Transaction**"). Each prospective bidder to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the transaction, and if it does not complete a Transaction, shall: (a) return all such information to the Applicants, the Sale Advisor and the Monitor, as applicable; (b) destroy all such information; or (c) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser of the Business or any Property shall be entitled to continue to use the personal information provided to it, and related to the Business or Property purchased, in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, the Sale Advisor or the Monitor, as applicable, or ensure that other personal information is destroyed.

ALLOCATION

47. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge, the Interim Lenders' Charge and the Directors' Charge amongst the various assets comprising the Property.

SERVICE AND NOTICE

48. The Monitor shall (i) without delay, publish in the Edmonton Journal a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

49. The Applicants and, where applicable, the Monitor, are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up-to-date form of the Service List on its website at: [http://cfcanada.fticonsulting.com/jmb].

51. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to the email addresses of counsel

as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: [http://cfcanada.fticonsulting.com/jmb].

52. Subject to further order of this Court in respect of urgent motions, any interested party wishing to object to the relief sought in an application brought by the Applicants or the Monitor in these proceedings shall, subject to further order of this Court, provide the Service List with responding application materials or a written notice (including by email) stating its objection to the application and the grounds for such objection by no later than 5:00pm Mountain Standard Time on the date that is four (4) days prior to the date such application is returnable (the "**Objection Deadline**"). The Monitor shall have the ability to extend the Objection Deadline after consulting with the Applicants. This paragraph shall not apply to any application served less than 7 days prior to its hearing date.

53. Following the expiry of the Objection Deadline, counsel for the Monitor or counsel for the Applicants shall inform the Commercial Coordinator in writing (which may be by email) of the absence or the status of any objections to the application, and the judge having carriage of the application may determine the manner in which the application and any objections to the application, as applicable, will be dealt with.

GENERAL

54. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

55. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

56. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicants, the Business or the Property.

57. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

58. Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

59. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

60. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

SALE AND INVESTMENT SOLICITATION PROCESS

INTRODUCTION

On May 1, 2020, JMB Crushing Systems Inc. ("**JMB Crushing**") and 2161889 Alberta Ltd. ("**216**", and together with JMB Crushing, collectively, "**JMB**") applied for an Initial Order (the "**Initial Order**") from the Alberta Court of Queen's Bench (the "**Court**") in Court Action No. 2001–05482 pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), to, among other things, appoint FTI Consulting Canada Inc. ("**FTI**") as the monitor (the "**Monitor**") of JMB,

The principal secured creditors of JMB are ATB Financial ("**ATB**") and Fiera Private Debt Fund VI LP, by its general partner Integrated Private Debt Fund GP Inc. ("**Fund VI**"), and Fiera Private Debt Fund V LP, by its general partner Integrated Private Debt Fund GP Inc., acting in its capacity as collateral agent for and on behalf of and for the benefit of Fund VI (collectively, "**Fiera**", and together with ATB, the "**Secured Creditors**").

In connection with the CCAA proceedings, a sale, re-capitalization and investment solicitation process is being implemented in respect of JMB (the "**SISP**") in order to solicit interest in and opportunities for a sale of, or investment in, JMB or all or any part of JMB's property, assets and undertakings ("**Property**") and its business operations ("**Business**"). Such opportunities may include one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of one or more of JMB Crushing and/or 216 as a going concern, or a sale of all, substantially all or one or more components of JMB's Property and Business as a going concern or otherwise.

The SISP will be conducted by the Monitor with the assistance of a sale advisor to be retained by the Monitor after consultation with JMB, ATB and Fund VI (the "**Sale Advisor**") and subject to the overall approval of the Court pursuant to the Initial Order.

The Applicants anticipate that there may be a stalking horse bidder. If that is the case, the Applicants reserve their right to amend the SISP to include provisions applicable to a stalking horse bid.

Parties who wish to have their bids and/or proposals considered shall be expected to participate in this SISP as conducted by the Monitor and the Sale Advisor.

OPPORTUNITY

1. The SISP is intended to solicit interest in, and opportunities for a sale of, or investment in, all or part of JMB's Property or Business (the "**Opportunity**"), which primarily consists of aggregate inventory, equipment, surface material leases and royalty agreements. The inventory and lands to which the leases and royalty agreements apply are located in Alberta.

2. In order to maximize the number of participants that may have an interest in the Opportunity, the SISP will provide for the solicitation of interest for:

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(a) the sale of JMB's interest in the Property. In particular, interested parties may submit proposals to acquire all, substantially all or a portion of the Property of either JMB Crushing or 216 or both collectively (a "**Sale Proposal**"); and

(b) an investment in the Business as a going concern of JMB. Such proposals for the Business may take the form of an investment in the Business including by way of a plan of compromise or arrangement pursuant to the CCAA (an "**Investment Proposal**").

3. Except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder (as hereinafter defined), any Sale Proposal or any Investment Proposal will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Sale Advisor or JMB, or any of their respective affiliates, agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of JMB in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.

SOLICITATION OF INTEREST

4. As soon as reasonably practicable following the Initial Order, the Sale Advisor shall, in consultation with the Monitor:

(a) prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest in the Property or Business pursuant to the SISP; (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor (an "**NDA**"); and (iii) a confidential information memorandum ("**CIM**");

(b) gather and review all required due diligence material to be provided to interested parties and continue the secure, electronic data room (the "**Data Room**"), which will be maintained and administered by the Sale Advisor during the SISP;

(c) prepare a list of potential bidders, including: (i) parties that have approached JMB, the Sale Advisor or the Monitor indicating an interest in the Opportunity; and (ii) local and international strategic and financial parties who the Sale Advisor, in consultation with the Monitor and JMB, believes may be interested in purchasing all or part of the Business or Property or investing in JMB pursuant to the SISP (collectively, the "**Known Potential Bidders**");

(d) cause a notice of the SISP (the "**Notice**") to be posted on the Sale Advisor's website and published in the Calgary Herald, Edmonton Journal, Bonnyville Nouvelle and Insolvency Insider once approved by the Court; and

(e) send the Teaser Letter and NDA to all Known Potential Bidders and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the

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Sale Advisor, JMB or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

5. As soon as reasonably practicable following the Initial Order, the Monitor shall issue a press release setting out the information contained in the Notice and such other relevant information that the Monitor` considers appropriate.

PHASE 1: NON-BINDING LETTERS OF INTENT

Qualified Bidders

6. Any party who expresses a desire to participate in the SISP (a "**Potential Bidder**") must, prior to being given any additional information such as the CIM or access to the Data Room, provide to the Sale Advisor written confirmation of the identity of the Potential Bidder, the contact information for such Potential Bidder, and disclosure of the direct and indirect principals of the Potential Bidder.

7. If a Potential Bidder has delivered the NDA and the confirmation contemplated in paragraph 6 above with disclosure that is satisfactory to the Sale Advisor, acting reasonably and in consultation with the Monitor, then such Potential Bidder will be deemed to be a "**Phase 1 Qualified Bidder**".

8. At any time during Phase 1 of the SISP, the Monitor may, acting reasonably, eliminate a Phase 1 Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP and will no longer be a Phase 1 Qualified Bidder for the purposes of the SISP.

Due Diligence

9. The Sale Advisor, in consultation with the Monitor, subject to competitive and other business considerations, will afford each Phase 1 Qualified Bidder such access to due diligence materials through the Data Room and information relating to the Property and Business as it deems appropriate. Due diligence access may further include management presentations with the participation of the Monitor, and JMB where appropriate, on-site inspections, and other matters which a Phase 1 Qualified Bidder may reasonably request and to which the Sale Advisor, in its reasonable business judgment and in consultation with the Monitor, may agree. The Sale Advisor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 1 Qualified Bidders if the Monitor determines it is information that pertains to proprietary or commercially sensitive competitive information.

10. Phase 1 Qualified Bidders must rely solely on their own independent review, investigation and/or inspection of all information relating to the Property and Business in connection with their participation in the SISP and any transaction they enter into with JMB.

Submission of Non-Binding Letters of Intent

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11. A Phase 1 Qualified Bidder who wishes to pursue the Opportunity further must deliver an executed letter of intent ("**LOI**"), identifying such bidder's interest in each specific Property or Business, to the Monitor at the address specified in Schedule "A" hereto (including by email or fax transmission), so as to be received by them not later than 5:00 PM (Mountain Daylight Time) on or before **June 19, 2020** (the "**Phase 1 Bid Deadline**").

12. An LOI so submitted will be considered a qualified LOI (a "**Qualified LOI**") only if all of the following conditions are satisfied:

    (a) It is submitted to the Monitor on or before the Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;

    (b) It contains an indication of whether the Phase 1 Qualified Bidder is making a:

        (i) Sale Proposal; or

        (ii) an Investment Proposal;

    (c) In the case of a Sale Proposal, it identifies or contains the following:

        (i) the purchase price, in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation. If a Phase 1 Qualified Bidder wishes to acquire Property owned by both JMB Crushing and 216, a price must be allocated for such Property as between the relevant entities;

        (ii) a description of the Property that is expected to be subject to the transaction and any of the Property, obligations or liabilities for each Property expected to be excluded; and

        (iii) a specific indication of the financial capability (including analysis of the Phase 1 Qualified Bidder's current available cash liquidity, summary of key covenants and or restrictions on such liquidity), together with evidence of such capability, of the Phase 1 Qualified Bidder and the expected structure and financing of the transaction;

    (d) In the case of an Investment Proposal, it identifies or contains the following:

        (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment in the Business;

        (ii) the aggregate amount of the equity and/or debt investment to be made in the Business in Canadian dollars and key assumptions supporting the valuation;

        (iii) the underlying assumptions regarding the *pro forma* capital structure; and

        (iv) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the proposed transaction;

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(e) In the case of either a Sale Proposal or an Investment Proposal:

(i) it identifies or contains the following:

(A) a description of the conditions and approvals required for a final and binding offer;

(B) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer and expected timeline for same;

(C) an acknowledgement that any Sale Proposal or Investment Proposal, as applicable, is made on an "as-is, where-is" basis;

(D) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose; and

(E) any other terms or conditions of the Sale Proposal or Investment Proposal, as applicable, that the Phase 1 Qualified Bidder believes are material to the proposed transaction;

(ii) it does not contain any requirement or provision for exclusivity, a break fee or reimbursement of expenses associated with submitting the Sale Proposal or Investment Proposal, conducting the due diligence in respect thereof or otherwise; and

(iii) it contains such other information as reasonably requested by the Sale Advisor or the Monitor from time to time.

13. The Monitor, in consultation with the Sale Advisor, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Assessment of Phase 1 Bids

14. Following the Phase 1 Bid Deadline, the Monitor will assess the Qualified LOIs in consultation with, the Sale Advisor, JMB and the Secured Creditors, as appropriate. If it is determined that a Phase 1 Qualified Bidder that has submitted a Qualified LOI: (a) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (b) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will be deemed to be a "**Phase 2 Qualified Bidder**", provided that the Monitor, in consultation with the Sale Advisor, may limit the number of Phase 2 Qualified Bidders (and thereby eliminate some Phase 1 Qualified Bidders from the process). Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.

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15. The Sale Advisor, in consultation with the Monitor, will prepare a bid process letter for Phase 2 (the "**Bid Process Letter**"), which will include a draft purchase/investment agreement (the "**Draft Purchase/Investment Agreement**") which will be made available in the Data Room, and the Bid Process Letter will be sent to all Phase 2 Qualified Bidders who are invited to participate in Phase 2.

PHASE 2: FORMAL BINDING OFFERS

16. Paragraphs 18 to 26 below and the conduct of the Phase 2 bidding are subject to paragraphs 17, 18 and 35, any adjustments made to the Phase 2 process as defined in the Bid Process Letter, and any further order of the Court.

Formal Binding Offers

17. Phase 2 Qualified Bidders that wish to make a formal Sale Proposal or an Investment Proposal shall submit to the Monitor at the address specified in Schedule "A" hereto (including by email or fax transmission), a sealed binding offer that complies with all of the following requirements, so as to be received by them by 5:00 pm. (Mountain Daylight Time) on **July 20, 2020**, or such later date that is determined by the Monitor, in consultation with the Sale Advisor and the Secured Creditors, and communicated to the Phase 2 Qualified Bidders (the "**Phase 2 Bid Deadline**"):

    (a) Subject to paragraph 13, it complies with all of the requirements set forth in respect of the Phase 1 Qualified LOIs;

    (b) It contains: (i) duly executed binding transaction document(s) generally in the form of the Draft Purchase/Investment Agreement; and (ii) a blackline to the Draft Purchase/Investment Agreement;

    (c) It contains evidence of authorization and approval from the Phase 2 Qualified Bidder's board of directors (or comparable governing body);

    (d) It (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Property or Business on terms and conditions reasonably acceptable to the Monitor;

    (e) It includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the earlier of (i) the closing of the transaction with the Successful Bidder, and (ii) that number of days following the Sale Approval Application (as defined below) that the Monitor determines, acting reasonably, is appropriate in light of market conditions at the time, subject to further extensions as may be agreed to under the applicable transaction agreement(s);

    (f) It provides written evidence of a firm, irrevocable financial commitment for all required funding or financing;

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(g) It is not conditional upon the outcome of unperformed due diligence by the bidder, and/or obtaining financing;

(h) It specifies any regulatory or other third party approvals the party anticipates would be required to complete the transaction;

(i) It fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;

(j) It is accompanied by a cash deposit (the "**Deposit**") of 10%: (i) of the purchase price offered in respect of a Sale Proposal; (ii) of the total new investment contemplated in respect of an Investment Proposal; or (iii) of the total cash consideration, less the value of the consideration allocated to the credit portion, of a Credit Bid, which shall be paid to the Monitor by wire transfer (to a bank account specified by the Monitor) and held in trust by the Monitor in accordance with this SISP;

(k) It includes acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property, Business and JMB prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents, the Business and/or the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever made by the Sale Advisor, JMB or the Monitor, whether express, implied, statutory or otherwise, regarding the Business, Property, or JMB, or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Monitor for and on behalf of JMB; and

(l) It is received by the Phase 2 Bid Deadline.

18. Following the Phase 2 Bid Deadline, the Monitor, in consultation with JMB, the Sale Advisor and the Secured Creditors, will assess the Phase 2 Bids received with respect to the Property or Business. The Monitor, in consultation with and the Sale Advisor, will designate the most competitive bids that comply with the foregoing requirements to be "**Phase 2 Qualified Bids**". Only Phase 2 Qualified Bidders whose bids have been designated as Phase 2 Qualified Bids are eligible to become the Successful Bidder(s).

19. The Monitor may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Phase 2 Qualified Bid.

20. The Sale Advisor, upon receiving instructions from the Monitor, shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constitutes a Phase 2 Qualified Bid within five (5) business days of the Phase 2 Bid Deadline, or at such later time as the Monitor deems appropriate.

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21. If the Monitor is not satisfied with the number or terms of the Phase 2 Qualified Bids, it may, in consultation with the Sale Advisor and the Secured Creditors, extend the Phase 2 Bid Deadline without Court approval.

22. Without limiting anything else herein, the Monitor, in consultation with the Sale Advisor, may aggregate separate bids from unaffiliated Phase 2 Qualified Bidders to create one or more "Phase 2 Qualified Bid(s)".

Evaluation of Competing Bids

23. A Phase 2 Qualified Bid will be evaluated based upon several factors, including, without limitation, items such as the Purchase Price, the net value and form of consideration to be provided by such bid, the identity and circumstances of the Phase 2 Qualified Bidder, any conditions attached to the bid and the expected feasibility of such conditions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, the likelihood and timing of consummating such transactions, and the ability of the bidder to finance and ultimately consummate the proposed transaction, each as determined by the Monitor, in consultation with the Sale Advisor.

Selection of Successful Bid

24. The Monitor, in consultation with the Sale Advisor, JMB and the Secured Creditors: (a) will review and evaluate each Phase 2 Qualified Bid, and shall be permitted to negotiate the terms of any Phase 2 Qualified Bid with the applicable Phase 2 Qualified Bidder, and such Phase 2 Qualified Bid may be amended, modified or varied as a result of such negotiations, and (b) identify the highest or otherwise best bid or bids (the "**Successful Bid**"), and the Phase 2 Qualified Bidder making such Successful Bid (the "**Successful Bidder**") for any particular Property or the Business in whole or part. The determination of any Successful Bid by the Monitor shall be subject to consultation with the Secured Creditors and approval by the Court.

25. If the Monitor determines that: (a) no Phase 2 Qualified Bids were received other than the Sale Agreement; (b) at least one Phase 2 Qualified Bid was received, but it is not likely that the transaction contemplated in any such Phase 2 Qualified Bid will be consummated; (c) proceeding with the SISP is not in the best interests of JMB and its stakeholders, then the Monitor shall forthwith: (i) terminate this SISP; (ii) notify each Phase 2 Qualified Bidder that this SISP has been terminated; and (iii) consult with JMB, the Secured Creditors and the Sales Advisor regarding next steps, including concluding the Sale Agreement.

26. The Monitor shall have no obligation to select a Successful Bid, and JMB with the consent of the Monitor, in consultation with the Secured Creditors and the Sale Advisor, shall the right to reject any or all Phase 2 Qualified Bids.

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Sale Approval Hearing

27. At the hearing of the application to approve any transaction with a Successful Bidder (the "**Sale Approval Application**"), the Monitor shall seek, among other things, approval from the Court for the consummation of any Successful Bid. All the Phase 2 Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by JMB on and as of the date of approval of the Successful Bid by the Court.

28. Any Deposit delivered with a Phase 2 Qualified Bid that is not selected as a Successful Bid, will be returned to the applicable bidder within ten (10) business days of the date on which the Successful Bid is approved by the Court, or such earlier date as may be determined by the Monitor, in consultation with the Sale Advisor.

CONFIDENTIALITY, STAKEHOLDER/BIDDER COMMUNICATION AND ACCESS TO INFORMATION

29. Except as otherwise permitted herein, participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, LOIs, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Monitor and/or the Sale Advisor, and such other bidders or Potential Bidders in connection with the SISP.

30. All discussions regarding a Sale Proposal, Investment Proposal, LOI or Phase 2 Bid shall be directed through the Sale Advisor and/or the Monitor.

SUPERVISION OF THE SISP

31. The Monitor will oversee, in all respects, the conduct of the SISP by the Sale Advisor and will participate in the SISP in the manner set out herein, and is entitled to receive all information in relation to the SISP.

32. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between JMB or the Monitor and any Phase 1 Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as specifically set forth in any definitive agreement that may be signed by the Monitor for and on behalf of JMB.

33. Without limiting the preceding paragraph, neither the Monitor nor the Sale Advisor shall have any liability whatsoever to any person or party, including without limitation, any Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, the Successful Bidder, or any other creditor or other stakeholder of JMB, for any act or omission related to the process contemplated by this SISP procedure, except to the extent such act or omission is the result of gross negligence or willful misconduct by the Monitor or Sale Advisor. By submitting a bid, each Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor or Sale Advisor for any reason whatsoever, except to the extent such claim is the result of gross negligence or willful misconduct of the Monitor or Sale Advisor.

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34. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any LOI, bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

35. The Monitor shall have the right to modify the SISP if, in its reasonable business judgment in consultation with the Sale Advisor and the Secured Creditors, such modification will enhance the process or better achieve the objectives of the SISP; provided that the service list in these CCAA proceedings shall be advised of any substantive modification to the procedures set forth herein.

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Schedule "A"

<u>Sale Advisor</u>

520 5 Ave SW, #400
Calgary, AB T2P 3R7
Facsimile: 1-877-790-6172
Email: asequeira@sequeirapartners.com
Attention: Arron Sequeira

<u>Monitor</u>

FTI Consulting Canada Inc.
520 5 Ave SW, #400
Calgary, AB T2P 3R7
Facsimile: 1 403 232 6116
Email: Deryck.Helkaa@fticonsulting.com
Attention: Deryck Helkaa

<u>JMB</u>

JMB Crushing Systems Inc.
PO Box 6977
Bonnyville, AB T9N 2H4
Email: jeffb@jmbcrush.com
Attention: Jeff Buck

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TAB 4

Province of Alberta

BUILDERS' LIEN ACT

Revised Statutes of Alberta 2000
Chapter B-7

Current as of July 1, 2012

Office Consolidation

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

(a) "certificate of substantial performance" means a certificate of substantial performance issued under section 19;

(b) "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;

(c) "court" means the Court of Queen's Bench;

(d) "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;

(e) "labourer" means a person employed for wages in any kind of labour whether employed under a contract of service or not;

(f) "lienholder" means a person who has a lien arising under this Act;

(g) "lien fund" means, as the case may be, the major lien fund, the minor lien fund or both the major lien fund and the minor lien fund;

(h) "major lien fund" means

(i) where a certificate of substantial performance is not issued, the amount required to be retained under section 18(1) or (1.1) plus any amount payable under the contract

(A) that is over and above the 10% referred to in section 18(1) or (1.1), and

(B) that has not been paid by the owner in good faith while there is no lien registered;

(ii) where a certificate of substantial performance is issued, the amount required to be retained under

section 18(1) or (1.1) plus any amount payable under the contract

(A) that is over and above the 10% referred to in section 18(1) or (1.1), and

(B) that, with respect to any work done or materials furnished before the date of issue of the certificate of substantial performance, has not been paid by the owner in good faith while there is no lien registered;

(i) "minor lien fund" means the amount required to be retained under section 23(1) or (1.1) plus any amount payable under the contract

(i) that is over and above the 10% referred to in section 23(1) or (1.1), and

(ii) that, with respect to any work done or materials furnished on and after the date of issue of a certificate of substantial performance, has not been paid by the owner in good faith while there is no lien registered;

(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) "prescribed" means prescribed by the regulations;

(l) "registered lienholder" means a lienholder who has registered a statement of lien in the appropriate land titles office and includes a lienholder who has registered a statement of lien that has been removed pursuant to section 27 or 48(1);

(m) "Registrar" means the Registrar of Land Titles;

(n) "subcontractor" means a person other than

(i) a labourer,

(ii) a person engaged only in furnishing materials, or

(iii) a person engaged only in the performance of services,

who is not a contractor but is contracted with or employed under a contract;

(o) "wages" means money earned by a labourer for work done, whether by time or as piece-work or otherwise;

(p) "work" includes the performance of services on the improvement.

RSA 2000 cB-7 s1;2001 c20 s2;
2006 c21 s26

Substantial performance

2 For the purposes of this Act, a contract or a subcontract is substantially performed

(a) when the work under a contract or a subcontract or a substantial part of it is ready for use or is being used for the purpose intended, and

(b) when the work to be done under the contract or subcontract is capable of completion or correction at a cost of not more than

(i) 3% of the first $500 000 of the contract or subcontract price,

(ii) 2% of the next $500 000 of the contract or subcontract price, and

(iii) 1% of the balance of the contract or subcontract price.

RSA 1980 cB-12 s2;1985 c14 s3

Work not completed

3 For the purposes of this Act, if

(a) the work under a contract or a subcontract or a substantial part of it is ready for use or is being used for the purpose intended, and

(b) the work under a contract or a subcontract cannot be completed expeditiously for reasons beyond the control of the contractor or the subcontractor,

the value of the work to be completed or materials to be furnished is to be deducted from the contract price in determining substantial performance.

1985 c14 s3

Valuation of work done

4 For the purposes of this Act, the value of the work actually done and materials actually furnished shall be calculated on the basis of

(a) the contract price, or

(b) the actual value of the work done and materials furnished, if there is not a specific contract price.

1985 c14 s3

Creation and Extent of Lien

Waiver prohibited

5 An agreement by any person that this Act does not apply or that the remedies provided by it are not to be available for the person's benefit is against public policy and void.

RSA 1980 cB-12 s3

Creation of lien

6(1) Subject to subsection (2), a person who

(a) does or causes to be done any work on or in respect of an improvement, or

(b) furnishes any material to be used in or in respect of an improvement,

for an owner, contractor or subcontractor has, for so much of the price of the work or material as remains due to the person, a lien on the estate or interest of the owner in the land in respect of which the improvement is being made.

(2) When work is done or materials are furnished

(2) In this section, "lot" means a lot, block or parcel.

RSA 1980 cB-12 s6

Furnishing material

9(1) Material is considered to be furnished to be used within the meaning of this Act when it is delivered either on the land on which it is to be used or on such land or in such place in the immediate vicinity of that land as is designated by the owner or the owner's agent or by the contractor or the subcontractor.

(2) Notwithstanding that material to be used in an improvement may not have been delivered in strict accordance with subsection (1), if the material is incorporated in the improvement the person furnishing the material has a lien as set out in section 6.

RSA 1980 cB-12 s7

Date of lien

10 The lien created by this Act arises when the work is begun or the first material is furnished.

RSA 1980 cB-12 s8

Priorities

11(1) A lien has priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises.

(2) Notwithstanding subsection (1), a payment made pursuant to an assignment, attachment, garnishment or receiving order that is paid, before a lien is registered, to a person for whose benefit the assignment, attachment, garnishment or receiving order is made or issued, takes priority over the lien.

(3) Notwithstanding subsection (2), no judgment, execution, assignment, attachment, garnishment or receiving order shall affect the amount required to be retained under sections 18(1) or (1.1) and 23(1) or (1.1).

(4) A registered mortgage or a mortgage registered by way of a caveat has priority over a lien to the extent of the mortgage money in good faith secured or advanced in money prior to the registration of the statement of lien.

(5) Advances or payments made under a mortgage after a statement of lien has been registered rank after the lien, but a mortgagee who has applied mortgage money in payment of a statement of lien that has been registered is subrogated to the rights

Insurance money

16 If any improvement on land in respect of which a lien attaches is wholly or partly destroyed, any money received or receivable by the owner by reason of any insurance on the land is subject to all claims for liens to the same extent as if the money had been realized by a sale of the land in proceedings to enforce a lien.

RSA 1980 cB-12 s13

Removal of material

17(1) During the continuance of a lien no part of the material giving rise to the lien shall be removed to the prejudice of the lien.

(2) Material actually delivered and to be used for an improvement

(a) is subject to a charge in favour of the person furnishing the material until incorporated in the improvement, and

(b) is not subject to execution or other process to enforce a debt other than a debt for the purchase of the material due to the person furnishing the material.

RSA 1980 cB-12 s14

Major lien fund

18(1) Irrespective of whether a contract provides for instalment payments or payment on completion of the contract, an owner who is liable on a contract under which a lien may arise shall, when making payment on the contract, retain an amount equal to 10% of the value of the work actually done and materials actually furnished for a period of 45 days from

(a) the date of issue of a certificate of substantial performance of the contract, in a case where a certificate of substantial performance is issued, or

(b) the date of completion of the contract, in a case where a certificate of substantial performance is not issued.

(1.1) Notwithstanding subsection (1) and irrespective of whether a contract provides for instalment payments or payment on completion of the contract, an owner who is liable on a contract with respect to improvements to an oil or gas well or to an oil or gas well site under which a lien may arise shall, when making payment on the contract, retain an amount equal to 10% of the value of the work actually done and materials actually furnished for a period of 90 days from

TAB 5

Province of Alberta

INTERPRETATION ACT

Revised Statutes of Alberta 2000
Chapter I-8

Current as of July 23, 2020

Office Consolidation

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Enactments always speaking

9 An enactment shall be construed as always speaking and shall be applied to circumstances as they arise.

RSA 1980 cI-7 s9

Enactments remedial

10 An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

RSA 1980 cI-7 s10

Enacting clause

11 The words "HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:" indicate the authority by virtue of which an Act is passed.

RSA 1980 cI-7 s11

Preambles and reference aids

12(1) The preamble of an enactment is a part of the enactment intended to assist in explaining the enactment.

(2) In an enactment,

(a) tables of contents,

(b) marginal notes and section headers, and

(c) statutory citations after the end of a section or schedule

are not part of the enactment, but are inserted for convenience of reference only.

RSA 2000 cI-8 s12;2002 c17 s3

Definitions and interpretation provisions

13 Definitions and other interpretation provisions in an enactment

(a) are applicable to the whole enactment, including the section containing the definitions or interpretation provisions, except to the extent that a contrary intention appears in the enactment, and

(b) apply to regulations made under the enactment except to the extent that a contrary intention appears in the enactment or in the regulations.

RSA 1980 cI-7 s13

TAB 6

Maple Reinders Inc. v. W. Dalton Energy Corp., [2007] A.J. No. 846

Alberta Judgments

Alberta Court of Appeal

Calgary, Alberta

E. Picard, C. Hunt and P. Martin JJ.A.

Heard: June 14, 2007.

Judgment: July 25, 2007.

Docket: 0601-0144-AC

Registry: Calgary

[2007] A.J. No. 846 | 2007 ABCA 247 | 284 D.L.R. (4th) 249 | 76 Alta. L.R. (4th) 215 | 412 A.R. 133 | 62 C.L.R. (3d) 170 | 160 A.C.W.S. (3d) 219 | 2007 CarswellAlta 994

Between Maple Reinders Inc., Respondent (Applicant), and W. Dalton Energy Corp., Appellant (Respondent), and Eagle Sheet Metal Inc., Wolseley Canada Inc., Allied Projects Ltd., Westglas Insulation Ltd., Crane Canada Inc., Johnson Controls Inc., Emco Limited and E.H. Price Limited, Not Parties to the Appeal (Respondents)

(47 paras.)

Case Summary

Construction law — Liens — Lien or trust fund — Lienable claims — By contractor or owner — Appeal by subcontractor against Master's decision that a contractor had the right to establish a lien fund under the Alberta Builders' Lien Act — Appeal dismissed — The definition of "contractor" in section 1(b) of the Act included both an "owner" or an "owner's agent" — Accordingly, the owner was able to appoint the contractor to establish a lien fund — The subcontractor was only entitled to its pro rata share of the lien fund.

Appeal which raised issues about the operation of the Builders' Lien Act. The Calgary Health Region (CHR) leased property from Canadian Property Holdings in order to construct a Pharmacy Central Production Facility (PCPF). In April 2002, the CHR entered into a contract with Maple, a general contractor, for the construction of the PCPF. The CHR was the "owner" of the project, as defined in section 1(j) of the Act. The same month, Maple entered into a subcontract with Eagle Sheet Metal for mechanical work. Eagle entered into eight sub-subcontracts. One of the sub-subcontractors, Dalton, agreed to supply and install a humidification system for the sum of $66,340. Dalton supplied the labour, materials and equipment required. It received a payment from Eagle of $40,000, which left $26,340 outstanding. Maple posted a certificate of substantial completion on the project in September 2002. In November 2002, when Eagle failed to complete its subcontract, Maple terminated the subcontract. Eagle subsequently went out of business and had no assets. Throughout November and December of 2002, Dalton and seven other sub-subcontractors registered builders' liens against the PCPF title which totaled $198,376. Dalton's lien was for $26,340. On December 20, 2002, a Master ordered that Maple could pay security into court pursuant to section 48(1) of the Act and that, upon such payment, the liens would be discharged. Maple posted $228,132, which included the total of the eight lien claims plus 15 per cent for costs. In April 2003, Maple applied to establish a lien fund under section 27(3) and to pay the lien fund into court as a replacement for the section 48(1) security previously posted. Dalton cross-applied, and sought the full amount of its lien from the section 48(1) security. The Master adjourned both applications and ordered that all lienholders prove their claims in a Special Chambers hearing. On August 5, 2003, CHR wrote a letter to Maple in which it

authorized Maple to set the lien fund and act as its agent for the purpose of section 27(3) of the Act. In December 2003, Maple agreed with the seven other lienholders to establish a lien fund in the amount of $55,039, which was equivalent to the 10 per cent holdback required under the subcontract between Maple and Eagle. Dalton insisted it was entitled to full payment of its $26,340 lien claim rather than a pro rata share of the lien fund. On December 19, 2003, Maple applied to distribute $47,622 to the seven consenting lienholders on a pro rata basis. The Master authorized the distribution as satisfaction of all rights of those lienholders and authorized Maple to replace the original section 48(1) security with a lien bond in the amount of $30,291, which represented Dalton's unproven lien claim of $26,340 plus 15 per cent costs. When Maple paid the $30,291 lien bond into court, the court released the original $228,132 lien bond. The applications that had been adjourned in April 2003 were heard in May 2005. Dalton argued that Maple, as general contractor, had no right to apply to establish the lien fund. Dalton also asserted that once funds were paid into court and liens discharged pursuant to section 48, a lienholder whose lien had been removed had no access to the builders' lien fund but only to the posted security. According to Dalton, subsequent lienholders, on the other hand, can claim only against the lien fund and not against the security. The Master rejected Dalton's arguments, and fixed its entitlement to the pro rata share of the lien fund in the sum of $7,417. Dalton's appeal to the Court of Queen's Bench was dismissed. At issue on appeal was the question of whether an owner can appoint an agent to apply to establish a lien fund, and the relationship between the lien fund and a previously-posted security bond. It also put in issue the correct amount of this lien fund in this case, and whether the remaining lienholder's entitlement is its pro rata share of the fund when considered with those of lienholders who previously settled, or the full amount of its claim.

HELD: Appeal dismissed.

First, the definition of "contractor" in section 1(b) of the Act included both an "owner" or an "owner's agent". Accordingly, the owner was able to appoint Maple to establish the lien fund. Second, the Act was intended to provide a seamless web of remedies to lienholders, whether or not section 48(1) security was posted. The Act did not contemplate two separate litigation tracks. The purpose of posting section 48(1) security was to permit funds to continue to flow to a construction project notwithstanding that liens had been filed while construction was still ongoing. Dalton's attempt to bifurcate the section 48(1) security from the lien fund would undermine the general purpose of the Act. Finally, Dalton was only entitled to its pro rata share of the lien fund. To award it more than its pro rata share would increase the owner's liability beyond the major lien fund by the difference between Dalton's full claim and its pro rata share, which was contrary to the intention of the Act.

Statutes, Regulations and Rules Cited:

Builders' Lien Act, *R.S.A. 2000, c. B-7, s. 1*, s. 1(b), s. 18(1), s. 18(2), s. 18(3), s. 18(4), s. 18(6), s. 25(b), s. 27(3), s. 48(1), s. 61(5)

Appeal From:

On appeal from the whole of the Order by The Honourable Mr. Justice B.E. Mahoney. Dated the 17th day of February, 2006. (*2006 ABQB 150*, Docket: 0201-21214)

Counsel

underscores the efficacy of its appointment of Maple: their contract obliged Maple to remove any builders' liens. To do this, it was logical that Maple rather than the CHR would have carriage of litigation arising from the liens.

27 Agency has been defined as the relationship that exists between two persons, where one person, the agent, is considered in law to represent the other, the principal, in such a way as to be able to affect the principal's legal position in respect of third parties: G.H.L. Fridman, *The Law of Agency*, 7th ed. (London: Butterworths, 1996) at 11; *R. v. Kelly*, *[1992] 2 S.C.R. 170* at 183-4. In effect, the agent becomes its principal. Dalton's argument completely ignores the essential purpose of an agency arrangement: to have the agent stand in the shoes of the principal.

28 Dalton's reliance on *Ferro Corp., Re*, *[1982] A.J. No. 259* (Q.B.) (Q.L.) is ill-placed. *Ferro* dealt with whether a contractor or subcontractor can apply to establish a lien fund, holding that only an owner has this right. It did not deal with the agency issue. The logic underlying the decision (that the *BLA* imposes liability on the owner and not on contractors or subcontractors) does not apply here. The fact that the owner's agent is permitted to apply to establish a lien fund does not detract from the owner's overall liability. It merely permits someone authorized by the owner to act on its behalf in establishing the lien fund.

29 In summary, there is nothing in law or logic to support Dalton's position. Maple was entitled to act as the owner's agent under section 27(3).

2. ***Is a lienholder whose lien was removed from title following posting of section 48 security entitled to claim only against that security?***

30 Dalton makes a number of arguments to support its position that once security has been posted under section 48(1), any lienholders whose liens are discharged have recourse only to that security and not to any lien fund subsequently established. I agree generally with the reasons given by Master Waller and Mahoney J. for rejecting this argument.

31 The *BLA* is intended to provide a seamless web of remedies to lienholders, whether or not section 48(1) security is posted. Lien legislation is remedial in character; its purpose is to secure the parties entitled to its benefits for the value of work done and materials supplied: Bristow. In my view, the *BLA* does not contemplate two separate litigation tracks. The purpose of posting section 48(1) security is, as discussed in the courts below, to permit funds to continue to flow to a construction project notwithstanding that liens have been filed while construction is still ongoing. Dalton's interpretation would undermine the general purpose of the *BLA*.

32 There are many provisions in the *BLA* that support the conclusion that section 48(1) operates in concert with the lien fund. A good starting point is section 25, which limits an owner's liability "under this *Act*" to the amount of the major lien fund. Dalton's interpretation would potentially make the owner liable for amounts greater than the lien fund, the maximum amount of which is determined by the formulae in section 18. The words "in this *Act*" in section 25 signal that no provisions (including section 48(1)) should be interpreted in such a way as to increase the liability of an owner beyond that arising from the formulae for the major lien fund set out in section 18.

33 Next, section 48(1) gives the court a number of choices in deciding how much security should be paid into court. It does this primarily because an application for section 48(1) security is not time-limited. A lien can be filed whenever it arises according to section 10, which may be long before a certificate of substantial completion has been posted and at a time when the appropriate amount of the lien fund cannot yet be determined. If a lien is filed while the project is in mid-stream, section 48(1) provides a convenient method for securing the lienholder's claim without embroiling the owner and others in litigation when their energies should be focussed on completing the project. The court has the flexibility to take account of the particular circumstances and set the security at an amount that is enough, but not more than enough, to cover the claim.

34 The court's decision as to the amount of the section 48(1) security - and its posting - does not end the matter. Although it ensures the lienholder that there is money available to pay its claim (whatever its amount may ultimately

be), neither the validity of the claim nor its amount are determined at that point. Paragraphs 6 and 7 of Master Floyd's December 20, 2002 order (which authorized the discharge of the liens on posting of the security) recognized this, by noting that the security was not an admission as to the validity of the claims and that the parties were at liberty to make further applications to the Court. After an application has been made under section 48(1), a party can require the lienholder to prove its lien by filing an affidavit containing particulars of the lien (sections 48(3) and (4)). To put the matter simply, notwithstanding a section 48(1) application, parties still have recourse to other provisions of the *Act* (including sections 18 and 27) to sort out remaining matters. Section 48(1) does not stand in isolation from the rest of the *BLA*. Nor does it weaken it.

35 A further indication that the various enforcement mechanisms are intended to work in tandem and not isolation is section 18(6), which, by incorporating section 61(5), requires the distribution of a lien fund on a *pro rata* basis when a contractor or subcontractor has defaulted. Section 48(1) does not contain its own directions for paying money from the security posted while the project is ongoing. But there must be rules for resolving differences that may arise concerning claims that resulted in the posting of section 48(1) security. It is only logical that other parts of the *BLA* that are not specifically excluded (see eg section 44, which makes certain technical requirements in the *BLA* inapplicable once a lien is discharged under section 27 or 48(1)) will apply to liens discharged under section 48(1).

36 Another provision showing the interplay between the various parts of the *BLA* is the definition of "registered lienholder" in section 1(l). It includes a lienholder whose lien has been removed under section 48(1). This is a further indicator that sections 18 and 48(1) must be interpreted to work together.

37 The history of the *BLA* also supports the view that there are not two litigation or financial tracks for lienholders. The original legislation (the *Mechanics' Lien Act ,*S.A. 1906 c. 21 ("*MLA*")) did not provide for a lien fund. However, it contained two sections (25 and 26) permitting a lien to be discharged upon the posting of security. The notion of a lien fund did not appear until 64 years later: *Builders' Lien Act*, S.A. 1970 c. 14 ("1970 *BLA*"). Its section 15(1) set out a formula for calculating the amount of the lien fund. The provision for posting security remained (as section 35). The 1970 *BLA* followed on the heels of an inquiry to assess the effectiveness of the legislation: Report of the Commissioner, Public Inquiry under the *Public Inquiries Act* into the adequacy of the provisions of the *Mechanics' Lien Act*, 1960, dated November 1967. Its author opined at page 74:

> I think that there is merit in the view that the proper provision would be that the only holdback required by the Act would be the owner's holdback, and that the owner's holdback would constitute a fund to which all lienholders would look for satisfaction of their claims.
>
> [Emphasis added]

This history does not support Dalton's suggestion that lienholders whose liens are discharged after the posting of security are meant to be treated differently than other lienholders by being paid the full amount of their claim from the security.

38 Dalton's arguments to the opposite effect must be rejected. It relies on cases from other jurisdictions where the legislation is not necessarily the same or where the point at issue was different from the one raised in this case: *Blueline Stucco Ltd. v. Discovery Reach Developments Ltd. (1988), 40 C.L.R. (2d) 267*, [1998] B.C.J. No. 1883 (B.C.S.C.) (Q.L.); *Benny Haulage Ltd. v. Hamilton-Wentworth Roman Catholic Separate School Board (1996), 33 C.L.R. (2d) 44* (Ont. Ct. J. Gen. Div.). On the other hand, there is jurisprudence that supports the view I take on the interaction between sections 48(1) and 18: *Kappeler Masonry Corp. v. Winston Hall Nursing Homes Ltd. (2001), 12 C.L.R. (3d) 65* (Ont. S.C.); *Lloydminster Roman Catholic Separate School District No. 34 v. Border City Transit Mix* (1980) Ltd. *(1988), 87 A.R. 391*, *57 Alta. L.R. (2d) 146* (Q.B.).

39 Dalton also asserts that the history of recent amendments to section 48(2) supports its position. I do not agree. The wording was changed in 1985 to make reference to "the claims of the person whose lien has been removed". The previous language, found in section 35(2) of the 1970 *BLA*, referred to "the claim of all persons for liens".

Dalton argues that this wording was intended to respond to an inequity created by the decision in *Northern Electric Co. Ltd. v. Frank Warkentin Electric Ltd. et al.* (1972), 27 D.L.R. (3d) 519 (Man. C.A.). But that case concerned legislation that did not provide for a lien fund. It held that a claimant whose lien had been discharged after the posting of security had no further claim against the land or proceeds of its sale. The relationship between *Northern Electric* and the present language of section 48(2) is unclear. Dalton's factum, at para. 46, referred to the work of a committee that preceded the 1985 amendments. Its report, however, was not part of Dalton's authorities. Nor does the debate in Hansard at the time the 1985 amendments were introduced shed any light on what motivated the amendments to the then section 35(2): Alberta, Legislative Assembly, *Alberta Hansard* (31 May 1985) at 1266 *et seq.*

40 In summary, Dalton's attempt to bifurcate the section 48(1) security from the lien fund runs counter to the purpose and operation of the *BLA*.

3. ***If a lienholder has a claim against the lien fund after section 48(1) security has been posted, did the decisions below set the Eagle lien fund at the correct amount? Is Dalton entitled to its pro rata share or its full claim?***

41 Dalton's factum contains some suggestion that the Master used the wrong number in establishing the Eagle lien fund. Master Waller stated at F30 that the amount of the lien fund was agreed among the parties. Notwithstanding this comment in his reasons, Dalton's list of nine errors in its notice of motion appealing Master Waller's order does not mention the amount of the lien fund. At para. 67 Mahoney J. accepted the amount of the lien fund set by Master Waller. Dalton again took no issue with that amount in its Notice of Appeal which lists five specific errors. Given this, any issue about the amount of the lien fund will not be pursued further.

42 The remaining issue is whether Dalton is entitled to the full amount of its claim from the lien fund ($26,340) or only its *pro rata* share after taking account of the seven other liens previously discharged ($7,417.70). Section 18(6)(b) of the *BLA* provides that if a subcontractor defaults, the major lien fund is to be distributed in the manner prescribed by section 61. Section 61 generally describes how funds from a sale of the liened property are to be distributed. Of note is section 61(5), which essentially requires a *pro rata* distribution among "each class of lienholders". Should the distribution to Dalton be determined on a *pro rata* basis taking account of the previously settled lienholders claims, or should Dalton be treated as the only lienholder and thereby entitled to its full claim? There are three reasons for concluding that the former result should govern this case rather than the latter.

43 First, this approach finds support in cases where only one lienholder has proceeded to trial. In *Arctic Distributors Ltd. v. Nordine* (1984), 7 C.L.R. 21, 52 B.C.L.R. 110 (Co.Ct.), it was held that when the last lienholder goes to trial, he must share the holdback with all other successful lienholders on a *pro rata* basis. To similar effect are a number of other cases cited in *Nordine*. Similarly, in *West v. 620693 Alberta Ltd.*, (1995) 173 A.R. 103 (Q.B.), three out of nine lienholders contested the amount of the fund, but each was entitled to a *pro rata* share.

44 Second, the outcome sought by Dalton would undercut the policy objective of encouraging settlement. If the last lienholder received more than its *pro rata* share, it would be irrational for anyone to settle. This result would increase litigation and discourage the summary resolution of claims, which is one the *BLA*'s main objectives.

45 Third, any other result would potentially make the owner liable for greater amounts than the limit of liability found in section 25 of the *BLA*, namely, the amount of the major lien fund. The other lienholders settled on the basis of their *pro rata* share. To now award Dalton more than its *pro rata* share would increase the owner's liability beyond the major lien fund by the difference between Dalton's full claim and its *pro rata* share. This is obviously contrary to the thrust of the *BLA*.

46 To support its position, Dalton also makes various arguments about the scope of previous orders. None of these arguments has merit.

Conclusion

47 The appeal is dismissed. CHR was entitled to appoint Maple as its agent for the purposes of the *BLA*. Dalton is limited to its *pro rata* share of the lien fund, which is the amount set by Master Waller.

C. HUNT J.A.
E. PICARD J.A.:— I concur.
P. MARTIN J.A.:— I concur.

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TAB 7

In the Court of Appeal of Alberta

Citation: Tervita Corporation v ConCreate USL (GP) Inc., 2015 ABCA 80

Date: 20150225
Docket: 1401-0072-AC
Registry: Calgary

2015 ABCA 80 (CanLII)

Between:

Tervita Corporation

Appellant
(Plaintiff)

\- and -

ConCreate USL (GP) Inc. and the City of Calgary

Respondents
(Defendants)

Corrected judgment: A corrigendum was issued on March 2, 2015; the corrections have been made to the text and the corrigendum is appended to this judgment.

The Court:

The Honourable Mr. Justice Frans Slatter
The Honourable Madam Justice Patricia Rowbotham
The Honourable Madam Justice Myra Bielby

Reasons for Judgment Reserved of the Honourable Mr. Justice Slatter
Concurred in by the Honourable Madam Justice Rowbotham
Concurred in by the Honourable Madam Justice Bielby

Appeal from the Order by
The Honourable Judge G.H. Poelman
Dated the 13th day of February, 2014
Filed on the 6th day of March, 2014

October 24, 2012	City consultant recommends remaining testing not be done; trial judge holds contract abandoned.
November 1, 2012	*lis pendens* filed respecting second lien.
March 25, 2013	original Statement of Claim amended to now refer to second lien.

It is conceded that the first lien ceased to be valid on about October 3, 2012, because of the failure to file a *lis pendens* on the title, as required by the *Builders' Lien Act*, RSA 2000, c. B-7.

[3] At the time that ConCreate's receiver blocked access to the site, there were discussions between Tervita on the one hand, and the City of Calgary and its consultants on the other hand, on the prospects of Tervita completing the required testing. By then Tervita would have realized that there was a significant risk that ConCreate would not be fulfilling its obligations to Tervita. It was contemplated that a separate contract or purchase order would be issued from the City directly to Tervita, but in the end that never happened. In October, 2012 Tervita asked for access to the site so that it could complete the last of the testing, which it estimated would take one-half day. After further discussion, the City's consultant indicated that there was no need to do the final testing. At the end of the day, the last work that Tervita ever did on the contract was on February 23, 2012.

[4] The summary trial judge held that Tervita had filed its second lien in time, because the contract was not abandoned until October 23, 2012, when the City's consultant indicated that there was no need to do the final testing. When the parties returned to address costs, the respondents Simply Stone Landscapes Ltd. and A&B Excavating, who are competing lien claimants, raised a new issue. They argued that the statute did not permit the filing of two liens for the same work. The trial judge accepted this new argument, and declared the second lien invalid for that reason.

Timeliness of the Second Lien

[5] Section 6 of the *Builders' Lien Act* provides that a person who improves land has a lien on the land. Section 10 confirms that the lien arises when the work is first done. A lien holder has certain priorities over other creditors, and also has a direct claim against the owner notwithstanding that there may be no privity of contract with the owner. As a result, the *Act* provides some strict rules about the registration and enforcement of the lien. It is well established that a liberal approach may be taken to determining the scope of the lien right, but a strict interpretation is placed on the procedure that is required to enforce a lien: ***Clarkson Co. v Ace Lumber Ltd.***, [1963] SCR 110 at pp. 114, 36 DLR (2d) 554.

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[6] The key section is s. 41(4):

> 41(4) In cases not referred to in subsections (1) to (3), a lien in favour of a contractor or subcontractor may be registered at any time within the period commencing when the lien arises and
>
> (a) subject to clause (b), terminating 45 days from the day the contract or subcontract, as the case may be, is <u>completed or abandoned</u> . . .

The *Act* thus provides that the 45 days to file a lien starts running on the happening of either of two events: 1) the completion of the contract, or 2) the "abandonment" of the contract.

[7] It is immediately obvious that if a narrow interpretation is placed on the term "abandonment", the time for filing a lien will never expire in cases where a contractor is prevented from completing its work by the default of the party with whom it has contracted, such as happened here. It is not disputed that the work called for under the Tervita contract was never actually completed by Tervita; the actions of the receiver prevented that. Further, in a subjective sense Tervita never "abandoned" the contract, because it was always ready, willing and able to complete its obligations. If the contracted work was never completed by Tervita, and the contract was never abandoned (in this subjective sense) then the 45 day time period for filing a lien never started running.

[8] The *Builders' Lien Act* creates an extraordinary statutory remedy. The lien rights under the *Act* must be given a practical interpretation, so as not to unduly prejudice the rights of owners and third parties: ***Canbar West Projects Ltd. v Sure Shot Sandblasting & Painting Ltd.***, 2011 ABCA 107 at para. 14, 39 Alta LR (5th) 38, 502 AR 235. An interpretation which indefinitely delays the time limitation for filing a lien is unlikely to be in accordance with the intention of the legislature: ***Dieleman Planer Co. Ltd. v Elizabeth Townhouses Ltd.*** (1973), 38 DLR (3d) 595 at p. 600 (BCCA), affirmed [1975] 2 SCR 449.

[9] There are two interpretive approaches that accomplish a practical result. The first is with respect to "completion of the contract". Where a contract is objectively terminated by the repudiation or breach of one of the parties, there are a number of consequences, and various legal remedies then become available. One consequence of a termination from breach is that both parties are relieved from any further performance under the contract: ***Keneric Tractor Sales Ltd. v Langille***, [1987] 2 SCR 440 at p. 455; ***Vallieres v Vozniak***, 2014 ABCA 384 at paras. 9-10; ***Think Kitchen Cabinets Ltd. v Harbourvista Apartments Ltd.***, 2014 NSSC 28 at para. 40, 339 NSR (2d) 327. Thus, when the receiver for ConCreate effectively terminated the contract, Tervita's future performance obligations were at an end. While in a physical or functional sense there was still "undone work", in a contractual sense all of the work required by the (now terminated) contract had been exhausted. The contract was "completed" in the sense that no further work would be done under it: ***Think Kitchen Cabinets*** at paras. 45-6.

[10] To summarize, in early April, ConCreate's receiver blocked access to the site. Tervita commenced discussions with the City about doing the remaining testing directly for it. By July 23, 2012 Tervita acknowledged that the ConCreate contract had been terminated by breach, which, under this approach, would be the latest that the 45 day lien registration period would start running.

[11] The second interpretive approach relates to the term "abandonment". The term "abandonment" can have a narrow meaning, denoting conduct of the contractor that signifies a subjective intention to cease performing its obligations. This would include the contractor "walking off the job" or "no longer showing up". Abandonment may often be assumed upon the insolvency of the contractor, although in this case Tervita was never insolvent. Under the *Act*, however, a purely subjective test for abandonment as adopted in cases like ***W.M. Fares & Associates Inc. v 3035605 Nova Scotia Ltd.***, 2006 NSCA 120 at para. 23, 249 NSR (2d) 156 is inappropriate.

[12] In some cases a contract may be "abandoned" on an objective basis. The statute just requires abandonment, not necessarily abandonment by the lien claimant. Certainly a subjective abandonment by the lien claimant will be sufficient. However, when it becomes clear that the contract has been rendered un-performable by the conduct of either or both parties, by the actions of third parties, or as a result of external factors, the contract is essentially "abandoned". Once it becomes impractical or impossible to perform the contract, no reasonable party would persist in saying they are "ready, willing and able" to continue performing: ***Lake of the Woods Electric (Kenora) Ltd. v Kenora Prospectors & Miners Ltd.***, (1996), 27 CLR (2d) 184 at para. 49 (OCJ Gen Div). There comes a point in time when it is clear that the contract is at an end. That will also start the 45 days running. At some time between the date when ConCreate's receiver posted guards and blocked access to the site, and the email of July 23, this contract was essentially abandoned.

[13] The summary trial judge noted that in a physical sense the work was never completed, because the "anchor lift-off testing" was never done. He applied a primarily subjective test to "abandonment", noting that Tervita was always ready, willing and able to do the anchor lift-off testing. Tervita's statement on July 23 that the contract was terminated did not indicate that it had been terminated by Tervita, but rather that it had been terminated by others. There was always the possibility that ConCreate's receiver would affirm Tervita's contract, or that the City of Calgary would separately retain Tervita to do the same work. Notwithstanding Tervita's acknowledgment on July 23 that its contract had been terminated, he held that it was not until October 24, 2012 that the City conclusively told Tervita that it would not be allowed to complete performance.

[14] The trial judge relied on ***Dieleman Planer Co. Ltd. v Elizabeth Townhouses Ltd.***, [1975] 2 SCR 449. That decision does not, however, mandate a purely subjective approach to abandonment. It decides that a temporary cessation of work (for example, as a result of

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temporary financial problems of the owner) is not the same thing as a permanent abandonment of the contract. ***Dieleman Planer*** implies that there can be an "abandonment" even if the contractor is ready, willing and able to do more work, if the work or the contract is permanently terminated.

[15] A review on appeal discloses that the trial judge applied too narrow a legal test. The test is when the lien claimant knew or should have known that the other party would not complete the contract. Once it would have been obvious to a reasonable contractor that the cessation of work caused by the receivership was not merely temporary, but represented a termination of the contract, the contract was effectively "abandoned". An abandonment can occur without a formal communication from the other parties that the contract is terminated. Here the insolvency of ConCreate, the actions of its receiver in blocking access to the site, the discussion with the City about the possibility of doing the remaining work directly for the City, combined with the other surrounding factors, would cause a reasonable person to conclude that the contract was terminated. Tervita acknowledged that in its email of July 23. The fact that the City of Calgary might enter into a new contract for the same work was irrelevant to the ability to file a lien for the work done under the first contract.

[16] The time to file the lien starts running when the lien claimant knew or ought to have known that the other contracting party would not complete (i.e. had "abandoned") the contract. To resolve this appeal, it is not necessary to determine exactly when the 45 days started to run. The contract had been abandoned, at the very latest, by the time of Tervita's acknowledgment on July 23 that its contract had been terminated. In an objective sense, Tervita realized by that day that the cessation of work was not just temporary. The last day on which a lien could have been filed was approximately September 6, 2012, making the second lien ineffective.

Validity of a Second Lien

[17] As noted, s. 6 of the *Builders' Lien Act* provides that a person who improves land has a lien on the land. Section 10 confirms that the lien arises when the work is first done.

[18] Section 41 requires that the claim for a lien be registered at the Land Titles Office within 45 days from when the work is completed or the contract is abandoned. Section 42 provides that if the lien is not registered within that time "the lien ceases to exist":

> 42 If a lien is not registered within the time limited by section 41, the lien ceases to exist.

Section 43 also requires the filing of a *lis pendens* at the Land Titles Office within 180 days of when the lien has been registered:

[22] It can be noted that the trial judge's interpretation is not fully faithful to the wording of the statute. The *Act* does draw a distinction between what he called the "statement of lien" and the "lien right". As previously noted, s. 41 refers to the "lien", whereas s. 43 refers to a "lien that has been registered". Where s. 43 says that rights "ceased to exist", it refers to a "lien that has been registered", not strictly speaking to the underlying lien right.

[23] The *Act* describes the rights of the parties in different ways. The definitions in the *Act* distinguish between a "lienholder" and a "registered lienholder". Section 46 states that registration has the effect of "continuing" a lien. Section 48(5) provides that if a registered lienholder does not prove its lien after notice is given, it "loses the lienholder's lien". Section 50 provides that multiple liens can be enforced through the same statement of claim, and s. 43(2) confirms that any sheltered registered lienholder can file the necessary *lis pendens*. It seems logical that the failure of the lienholder who issued a statement of claim to file the necessary *lis pendens* would not prevent other "sheltered" lienholders from enforcing their claims independently, so long as they did so within the necessary timelines. For example, if the issuing lien holder settled its claim, and thus failed to file a *lis pendens* because it had lost interest in the action, that would not prejudice other lienholders. If the failure to file the *lis pendens* does end the "lien rights" of the issuing lienholder, it presumably does not have that effect on the "lien rights" of any other lienholder. These provisions all demonstrate a subtle difference between the "lien rights" and the "statement of lien" that is registered at the Land Titles Office.

[24] Thus, the *Act* does not appear to preclude the filing of multiple liens. Since the lien right arises when the work commences, a subcontractor might theoretically file a separate lien at the end of each month, for all the work done that month and in all the previous months. If a statement of claim was subsequently issued later than 180 days after some of the early liens were filed, those liens would undoubtedly "cease to exist". But it does not necessarily follow that all of the lien rights for early work that are also captured by later liens, or at the least those for work that is done later, would also "cease to exist".

[25] As noted, a liberal approach is to be taken in determining whether the claimant has lien rights. After that threshold is reached, a strict interpretation is required of the registration requirements. If it were not for the fact the second lien was filed after the passage of 45 days from the abandonment of the contract, that second lien would have been valid. The first "registered lien" had ceased to exist, but on a proper interpretation of the statute the underlying lien rights should not be taken to have been extinguished as well. If the lien claimant meets all of those requirements, a second lien that overlaps with the claims in a first lien is not *per se* invalid. On a proper interpretation, the expiry of the first lien does not undermine the fundamental validity of the second one.

[26] However, for any "second lien" to be valid, it must be filed in time. As previously noted, the second lien was not registered within 45 days of the abandonment of the contract. It is invalid for that reason.

2015 ABCA 80 (CanLII)

2015 ABCA 80 (CanLII)

Conclusion

[27] In conclusion, the appeal is dismissed.

Appeal heard on January 16, 2015

Reasons filed at Calgary, Alberta
this 25th day of February, 2015

Slatter J.A.

I concur: Rowbotham J.A.

I concur: (Authorized to sign for) Bielby J.A.

TAB 8

Court of Queen's Bench of Alberta

Citation: MJ Limited (MJ Trucking) v Prairie Mountain Construction (2010) Inc, 2016 ABQB 395

2016 ABQB 395 (CanLII)

Date: 20160713
Docket: 1401 12549
Registry: Calgary

Between:

MJ Limited operating as MJ Trucking

Plaintiff

- and -

Prairie Mountain Construction (2010) Inc.,
Govan Brown Ltd.,
The City of Calgary and Ken Almer

Defendants

Reasons for Judgment
of
J.T. Prowse, Master in Chambers

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[1] The issue in this case is the validity of a builders' lien mistakenly filed against the wrong parcel of land.

[2] MJ Trucking entered into a subcontract with Prairie Mountain Construction (2010) Inc.("Prairie Mountain") to provide earthmoving services and to supply gravel to a construction site at the East Calgary Landfill, on land owned by the City of Calgary. The project involved the construction of an administration building for the City.

[3] MJ Trucking was not paid by Prairie Mountain and it filed a builders' lien to collect what it was owed. The City land which MJ Trucking liened is evidenced by three certificates of title. Unfortunately for MJ Trucking, these three parcels are not the land upon which MJ Trucking provided services, but rather adjacent land.

[4] Prior case law indicates that a lien can be valid even if it is not registered against the land where the work was done, provided that the liened land and the land where the work was done are part of a project having a common purpose, the logic being that all components of a common project are improved when any portion of the common project is improved.

[5] For the reasons which follow, I have concluded that MJ Trucking has not provided sufficient evidence that the land liened and the land upon which the work was done formed part of a common project. Consequently MJ Trucking's lien is invalid.

The facts

[6] MJ Trucking provided trucking services (hauling of gravel and earthmoving) as a subcontractor of Prairie Mountain at the East Calgary Landfill.

[7] Prairie Mountain was itself a sub-contractor of the Defendant Govan Brown Ltd. ("Govan").

[8] Govan was under contract with the City of Calgary to construct an administration building known as the East Calgary Landfill Depot Project (the "project").

[9] When MJ Trucking was not fully paid by Prairie Mountain for the work it had done, it needed to ascertain the legal description of the land upon which it had worked in order to file a lien.

[10] The principal of MJ Trucking, Mohamed Jeha, attended at the East Calgary Landfill. He obtained a municipal address from an employee at the entranceway building to the East Calgary Landfill, a building (the only building) which was immediately adjacent to the place where the MJ Trucking work had been done. He confirmed the municipal address by a Google search.

[11] Mr. Jeha also contacted the City by telephone and obtained confirmation of the municipal address of the East Calgary Landfill. He was advised to obtain the legal description from the municipal tax office at City Hall.

[12] Mr. Jeha then attended at the Calgary City Hall municipal building and requested the legal description for the municipal address of the East Calgary Landfill. He was provided with the legal description of three certificates of title, which he then provided to his legal counsel, who then registered a builders' lien against those three titles.

[13] Govan has since determined that the liened land is reflected on a different certificate of title from the land upon which Govan was constructing the administration building.

[14] Accordingly Govan applies to have the MJ Trucking lien declared invalid on the basis that it was registered against the wrong land, and to obtain back the security which it posted in lieu of the lien.

[15] MJ Trucking now understands that the East Calgary Landfill encompasses a large un-demarcated tract of land involving many more than the four certificates of title in question (that is, more certificates than the three liened titles and the one "project" title).

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The position of the parties

[16] Govan submits that the MJ Trucking lien, formerly registered on only the three liened titles and not on the project title, is invalid. It submits that the security posted into Court by Govan for the lien should be ordered returned to Govan.

[17] MJ Trucking asks that Govan's application be dismissed and that the Court declare that the MJ Trucking lien is valid against the three liened titles, and therefore constitutes a valid claim against the security posted in Court by Govan.

Case law regarding the curative section of the Builders' Lien Act

[18] I will review in chronological order previous decisions where the Court has been asked to use section 37 of the *Builders' Lien Act* to correct the legal description contained in a lien.

[19] Section 37 states:

> (1) A substantial compliance with section 34 is sufficient and a lien shall not be invalidated by failure to comply with any requirements of section 34 unless, in the opinion of the court, the owner, contractor, subcontractor, mortgagee or some other person is prejudiced by the failure.
>
> (2) When, in the opinion of the court, a person is prejudiced by a failure to comply with section 34, the lien shall be invalidated only to the extent that the person is prejudiced by the default.
>
> (3) Nothing in this section dispenses with the requirement of registration of a lien.

[20] This review concludes that section 37 cannot be used to correct the registration of a lien against a wrong parcel.

[21] In ***Wayne's Electric Ltd. v. Carpathian Hotels Ltd.***, 1981 CarswellAlta 474 (Master) the Court declined to use the curative section of the *Builders' Lien Act* to validate a lien filed on land adjacent to land where a motel was being constructed.

[22] In ***304034 Alberta Ltd. (Tyro Contracting & Developments) v. Cox Brothers Contracting & Associates Ltd.***, 1987 CarswellAlta 61, 51 Alta. L.R. (2d) 82 (Master) the Court used the curative section of the *Builder's Lien Act*, now section 37, to validate a lien filed on land adjoining the land where the work was done, relying on the Ontario Court of Appeal decision of ***In Nor-Min Supplies Ltd. v. C.N.R.***,(1979), 27 O.R. (2d) 390, 106 D.L.R. (3d).

[23] In ***South Side Woodwork (1979) Ltd. v. R.C. Contracting Ltd. et al***, 1989 CarswellAlta 516 (Master) the Court declined to use the curative provision of the Builders' Lien Act to broaden the description of the land being liened to encompass the land on which the improvement was actually constructed.

[24] In ***Electric Furnace Products Co. v. Quality Rentals***, 1991 ABCA 130 the Court of Appeal declined to correct use the curative provision of the *Builders' Lien Act* to validate a lien registered against the wrong land, putting to rest the conflicting decisions on that point cited above.

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Case law regarding the ‘common purpose’ doctrine

[25] I will now review in chronological order previous decisions which lead up to the ‘common purpose’ doctrine.

[26] This review supports the conclusion that a builders’ lien under current Alberta legislation can be validly registered on land, even though the improvement was not made on that land, provided that there is a common purpose between the site where the work was done and the land upon which the lien was registered, and at least some geographic proximity.

[27] The previous wording of legislation in Alberta provided that a lien arising from the construction of an improvement extended to land “occupied thereby or enjoyed therewith”. This language was in force until 1960, at which time it was changed to say that the lien extended to “land in respect of which the improvement is being made”. The latter language was in force when the MJ Trucking lien was registered.

[28] In ***Jackson Water Supply Co. v. Bardeck***,1915 CarswellAlta 16 (Alberta Supreme Court, Appellate Division) the Court validated a lien even where no work was done on the liened land.

[29] The defendant in this case owned four contiguous quarter sections and had contracted for a water system to be constructed on the NE ¼. The plaintiff filed a lien arising from that construction on the other three quarter sections but not on the NE ¼.

[30] The Court noted that the plaintiff was entitled to a lien "upon such building ... and the land, premises, and appurtenances thereto, occupied thereby or enjoyed therewith." It noted that the plaintiff’s failure to file a lien on the NE ¼ resulted in the lien being lost against that quarter section, but held that the other three quarter sections were “enjoyed” with the NE ¼ and held the lien to be valid against those three quarter sections.

[31] In ***Crown Lumber Co. v. McTaggart Motors Ltd.***,1961 CarswellAlta 15 (Alta.S.C.) the Court validated a lien where no work was done directly on the liened land.

[32] The lienholder supplied building materials for construction of a large commercial garage on leasehold lands held by McTaggart Motors. McTaggart also owned freehold land immediately adjacent to the leasehold lands. When the lienholder was unpaid it mistakenly filed a builders’ lien against the freehold lands.

[33] The leasehold and freehold lands were separated by an unfenced lane which was leased by McTaggart Motors from the town of Stettler and used for the storage and sale of new and used cars.

[34] The relevant legislation at the time stated that the lien applied to land occupied by the improvement “and the land occupied thereby or enjoyed therewith”.

[35] The court upheld the validity of the lien on the following basis:

> As the signs on all of the properties indicated, McTaggart Motors was one business operated as a single unit. All of the lands, including the freehold lands, were operated together for a common purpose. The construction of the new building was calculated to facilitate that common purpose and was intended to benefit the whole business. Having regard to the facts and circumstances of the present case, I am satisfied that the freehold lands were an integral part of the main operations of the company of which the main building on the leasehold

> lands was its nerve centre. The freehold lands, in my opinion, were enjoyed with the improvement on the leasehold lands, and the claim registered against the freehold lands was valid and proper. The B.A. property and the freehold lands, in common with the leasehold lands, were all subject to the right of the plaintiff to have its lien enforced. Accordingly, although the building materials were supplied for the construction of a building on the leasehold lands, the plaintiff has a valid and subsisting lien on the freehold lands ...

[36] In ***Wayne's Electric Ltd. v. Carpathian Hotels Ltd.***, *supra*, the Court declined to validate a lien filed on land adjacent to land where a motel was being constructed.

[37] The Court specifically commented on the change in language to the lien legislation, as follows:

> Counsel for the plaintiff submits that lot D, against which the lien is filed, is land enjoyed with lot 3, and accordingly the lien should be valid as against lot D. There is an evidentiary dispute as to whether lot D is enjoyed with lot 3. Whether it is is irrelevant.
>
> The concept of land "enjoyed with" other land went out of vogue in this province with the coming into force of the *Mechanics' Lien Act*, S.A. 1960, c. 64. Prior to that time the Act gave a lien "in the improvement and the land occupied thereby *or enjoyed therewith*". That legislation is discussed by Greschuk, J., *Crown Lumber Co. v. Saulsberry*, [1961] 34 W.W.R. 370 (Alta.T.D.).
>
> Section 4 of the present Act gives the lien claimant "a lien upon the estate or interest of the owner in the land *in respect of which the improvement is being made*". It cannot be clearer. Only the land upon which the improvement is made is subject to the lien. No other land, even though owned by the same person, is subject to the lien. The lien is solely a creature of statute and extends only to that which the statute provides. The statute is unequivocal as to which land is subject to the lien.

[38] In my view, the passage quoted above is not consistent with subsequent case authority, outlined below.

[39] In ***Prairie Roadbuilders Ltd. v. Stettler***, 1983 CarswellAlta 147 (Master), the Court upheld a lien on a sewage lagoon, even though the work was physically done on adjoining streets, not on the lagoon itself.

[40] The headnote describes the situation as follows:

> A small village in the defendant county contracted with the defendant K. for the construction of a sewage system, consisting of a gathering system running under the village streets connected to a trunk sanitary line running along a public highway road allowance to a lagoon site. When the contractor abandoned the project, builders' liens were registered by the plaintiff and other creditors against the lagoon site alone, since the streets were not lienable. An application was brought to determine if the lagoon was lienable and if so, what lien claimants had a right to lien it.

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[41] It was held that the liens filed against the lagoon were valid, even for creditors who only did work on adjacent lands i.e. under the adjoining streets (which were not themselves lienable). The court commented at paragraphs 98 through 100:

> In my view the critical question is: What is the improvement for the purpose of the Act? If the collecting system can be regarded as an improvement, by itself, those persons who performed work or provided materials only in relation to the collecting system are not entitled to a lien on the lagoon land.
>
> In my view, in this case the improvement is the total project, which is the entire sewage disposal system. The collection system and the lagoon system cannot be regarded as separate improvements. They go together. Neither serves a purpose without the other. Neither is functional without the other.
>
> The lagoon land is "enjoyed with" the streets land in relation to the sewage system. At one time that alone would have been sufficient to allow those persons who did work or provided material for that part of the improvement situate under the streets land to claim a lien on the lagoon land.

[42] And further at paragraph 104:

> That being the case, is there any reason why work and material which physically go into a part of the improvement situate on one parcel of land cannot also be considered as work and material "in respect of" or "for" that part of the improvement situate on another parcel of the land? Conceptually, I see no difficulty. Why cannot work done on one side of a building be considered a work directly related to the total building, even though the building occupies two or more parcels of land. Why cannot windows supplied for one side of a building be considered as material directly related to the total building, even though the building occupies two or more parcels of land? Is there any logic in saying the lien claimants in those cases must be restricted to the parcel of land on which the particular side of the building stands?

[43] In ***Wyo-Ben Inc. v. Wilson Mud Canada Ltd.***, (1985) 41 Alta. L.R. (2d) 289, 1985 CarswellAlta 244 (C.A.) the Court decided that a supplier can claim a lien on a mineral interest in a parcel tapped by a well if the well-head is located on adjoining lands and the supplies were delivered to the adjoining lands.

[44] The Court cited favourably the following passage based on American authority:

> The labor for which a lien may properly be claimed must be directly, rather than indirectly or remotely, connected with the construction work. However, it is not essential that the work or labor for which a lien may properly be claimed should be performed on the premises where the building or structure is being erected or the improvement is being made, provided it is necessarily connected with the construction or improvement on the premises.

[45] In ***South Side Woodwork (1979) Ltd. v. R.C. Contracting Ltd. et al***, *supra*, the Court discussed the ***Wyo-Ben Inc.*** decision, supra, as follows:

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> 92 Counsel for the applicant also relies on *Wyo-Ben Inc. v. Wilson Mud Can. Ltd.*, (1985), 41 Alta. L.R. (2d) 289 (C.A.). That decision is not of assistance to the problem before me. *Wyo-Ben* has nothing to do with ss. 25, 27 or 31.
>
> 93 The issue in *Wyo-Ben* was whether the lien claimant had improved the land it had liened. That is a s.4 issue. Was the lien claimant able to bring itself within that charging section? The Court said yes.
>
> 94 *Wyo-Ben* merely stands for the proposition that it is not necessary for a lien claimant to actually do a "hands-on" job on the land liened to be able to fit himself within s.4.
>
> 95 Something which is physically done off the land liened may still constitute an improvement to the land liened. *Wyo-Ben* cites cases on that.
>
> 99 What tied the lien claimant into s.4, in *Wyo-Ben*, was the fact that there was a "common project" on the two parcels of land, the common project being the extraction of a pool of oil under both parcels of land. A lien on either parcel was sufficient.

[46] In ***Re: Smoky River Coal Ltd.***, 1999 ABQB 492, 1999 CarswellAlta 598 (Q.B.), the Court applied the common purpose test to uphold a lien filed on land adjacent to the land where the work was done. The question posed, and answered in the affirmative, was as follows:

> Is the mine site, as an operation, sufficiently integrated so as to permit all of the Lienholders to claim a lien against the whole of the mine site so Lienholders who performed work outside of the titled land may also claim a lien against the titled land and vice versa?

[47] After considering the decisions in ***Prairie Roadbuilders***, *supra*, and ***Wyo-Ben***, *supra*, the Court stated, at paragraphs 29 and 30:

> The evidence has satisfied me that the mine and the mine site is an integrated operation in which no part exists purely for its own sake. The operation exists as a whole and work done in one section of it is necessarily done to improve the effectiveness of the whole operation. Can it really be said, for instance, that a road through the mine site to a facility on a different part of the mine site did not improve that facility such that the corresponding Builder's Lien should be limited to the land under the road? Surely not, for the facility would be inaccessible without the road.
>
> In short, the mine site was an integrated operation in which work done on specific areas of the mine site was performed for the common purpose of improving the mine and the mine site as a whole. The Lienholders who performed work within the area of the surface leases comprising the mine site are entitled to assert their lien claim against all the areas of the mine site including the two quarter sections covered by the certificates of title and vice versa.

[48] In ***Re: Anvil Range Mining Corp.***, 1999 CarswellYukon 89, [1999] Y.J. No. 129, 1 C.L.R. (3d) 292 (S.C.), the Court ruled that, in order for a lien to be valid notwithstanding that mining work was done elsewhere “there must be some connection, either in purpose or

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geographical, which approaches a necessary connection" between the site where the mining work was done and the land upon which the lien was registered.

[49] This decision was based on the *Miners Lien Act*, R.S.Y. 1986, c. 116. The wording of that Act is similar to the wording of Alberta's builders' lien legislation prior to 1960, as follows:

> The lien shall attach upon the estate or interest of the owner and of all persons having any interest in the mine or mining claim and all appurtenances thereto, the minerals or ores produced therefrom, <u>the land occupied thereby or enjoyed therewith</u> and the chattels, equipment and machinery in, upon or used in connection with such mine, mining claim or land. (emphasis added)

[50] The question then was whether the lien in question, having arisen with respect to work done on the Anvil mine, also applied to:

> i) houses owned by the respondent Anvil Range in Faro, Yukon Territory, available for housing of management staff;
>
> ii) one house in Whitehorse, Yukon, 200 kilometres away from the mine, used by the Chief Executive Officer, and described in an affidavit filed June 16, 1999;
>
> iii) a truck service depot leased to Anvil Range on which buildings have been constructed and are owned by Anvil Range, which terminal was used by the transport contractor, Lomak North Corporation, which lands and premises are referred to as the "Lomak Terminal";
>
> iv) Skagway equipment situated in Skagway, Alaska, owned by Anvil Range and used and kept at the Skagway Terminal at the port of Skagway in Alaska.

[51] The Court noted that the Whitehorse house, the Lomak terminal, and the Skagway equipment were geographically well separated from the Faro mine and lacked a clear nexus with "mining". They were held not to be subject to the lien.

[52] The Court found that the houses located Faro were subject to the lien, based on the following factors, discussed at para 52 of the decision:

> With respect to the Faro housing, I consider the following circumstances:
>
> a) the houses on the evidence were used by management in the mining and milling processes;
>
> b) there is no way to distinguish which of any of the houses was occupied in mining, which in milling and which in both;
>
> c) I take judicial notice of the fact that the Town of Faro is in close proximity to the Anvil Mine and mill;
>
> d) I take judicial note of the relatively isolated nature of the Town of Faro and its necessary connection to the mine and mill; and
>
> e) the dependence of the mine on the existence of the mill and vice versa.
>
> I am, therefore, satisfied that there is a sufficient nexus for me to conclude that the Faro houses are enjoyed (therewith) with the mine and its appurtenance, the mill.

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Analysis

[53] In my view, the case law reviewed above supports the proposition that a builders' lien under current Alberta legislation can be validly registered on land, even though the improvement was not made on that land, provided that there is a common purpose, including at least some geographical proximity, between the site where the work was done and the land upon which the lien was registered.

[54] Applying that principle to the MJ Trucking lien, I find the evidence presented by MJ lacking as to whether there was a common purpose between the project site where the administration building was being constructed, and the nearby land upon which the lien was placed.

[55] The evidence before me does not show how the improvement being constructed was connected to the land which was liened. Is the present plan for the liened lane to be used eventually for landfill purposes (it is bare unused land at the present), or is it intended for other uses?

[56] Likewise, the evidence before me does not establish whether the workers operating out of the newly constructed administration building are doing work related to the operations of the East Calgary Landfill site, and specifically how?

[57] In my mind it is not sufficient for MJ Trucking to simply establish that both the administration building and the liened land are located in a geographical area which has been labelled as the "East Calgary Landfill Site" by its owner the City of Calgary.

[58] Consequently, I find that the MJ Trucking lien is invalid and I order the Clerk of the Court to return to Govan the security it posted with respect to the MJ Trucking lien.

Costs

[59] If the parties cannot agree on costs they may seek a ruling from me in that regard.

Heard on the 16th day of June, 2016.
Dated at the City of Calgary, Alberta this 13th day of July, 2016.

J.T. Prowse
M.C.C.Q.B.A.

2016 ABQB 395 (CanLII)

Appearances:

Clive O. Llewellyn
Llewelllyn Law
for the Plaintiff MJ Trucking

Andrew W. Wilkinson
Field LLP
for the Defendant Govan Brown Ltd.

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TAB 9

Court of Queen's Bench of Alberta

Citation: Northern Dynasty Ventures Inc v Japan Canada Oil Sands Limited, 2020 ABQB 275

2020 ABQB 275 (CanLII)

Date: 20200420
Docket: 1403 06762
Registry: Edmonton

Between:

Northern Dynasty Ventures Inc. and Tyalta Industries Inc.

Plaintiffs

\- and -

Japan Canada Oil Sands Limited formerly Japan Oil Sands Alberta Limited

Defendant

\- and -

Highway Rock Products Ltd.

Third Party Defendant

Reasons for Decision
of the
Honourable Madam Justice G.D.B. Kendell

Appeal from the Decision by
L.R. Birkett Q.C., Master in Chambers

Pronounced the 22nd day of May, 2019

2020 ABQB 275 (CanLII)

Background

[1] The Appellant, Northern Dynasty Ventures Inc. ("NDV"), appeals the order of Master Birkett granted on May 22, 2019, where she ordered and declared the validity of NDV's lien in the amount of $1,260,312.75, as well as the validity of lien of the Respondent, Tyalta Industries Inc. ("Tyalta"), in the sum of $721,830.68, and directed the payment of Tyalta's pro rata share out of the lien fund. Tyalta was awarded the sum of $244,493.23.

[2] The background facts as set out in NDV's Special Brief, which were not disputed, are as follows:

> Japan Canada Oil Sands Limited, ("JACOS"), is the operator of an oil sands project known as the Hangingstone Expansion Project near Fort McMurray, Alberta ("Hangingstone Project").
>
> On or about August 28, 2013, JACOS entered into a Master Purchase Agreement with Highway Rock Products Ltd. "HRP".
>
> NDV and Tyalta were subcontractors to HRP in respect of the Master Purchase Agreement.
>
> On or about September 16, 2013, NDV entered into a written agreement with HRP (the "Gravel Contract"), whereby NDV granted HRP an exclusive license to remove sand and gravel from a gravel pit which was located approximately 30 kilometers away from the Hangingstone Project site, accessible by road a driving distance of 89 kilometers. The consideration for the Gravel Contract was payments to be made by HRP to NDV.
>
> Tyalta rented to HRP equipment used to crush and screen sand and gravel at the gravel pit.
>
> All of the gravel was provided to JACOS for its use in connection with the Hangingstone Project.
>
> The Gravel Contract was terminated by NDV due to unpaid accounts owing by HRP to NDV.
>
> NDV and Tyalta filed liens against JACOS' lease for unpaid accounts rendered to HRP.
>
> The lien fund was set in the sum of $671,684.70.
>
> $403,010.02 has been paid to NDV. The entitlement to the balance of the lien fund was the subject of the Application before Master Birkett. At all relevant times, the Tyalta equipment was located at the gravel pit and not at the Hangingstone Project site.

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Standard of Review

[3] The standard of review from an appeal of a Master to a Justice is correctness, and the appeal is a hearing de novo: ***Bahcheli v Yorkton Securities Inc***, 2012 ABCA 166 at para 30.

Analysis

[4] This appeal involves the interpretation of Section 6(4) of the *Builders' Lien Act*, RSA 2000, c B-7, which provides:

> 6(4) For the purposes of this Act, a person who rents equipment to an owner, contractor or subcontractor is, while the equipment is on the contract site or in the immediate vicinity of the contract site, deemed to have performed a service and has a lien for reasonable and just rental of the equipment while it is used or is reasonably required to be available for the purpose of the work.

[5] NDV argues that Tyalta's lien is invalid because it cannot satisfy this provision. It submits that the "contract site" is the Hangingstone Project site, and argues that the gravel pit is not in the immediate vicinity of the Hangingstone Project site.

[6] Tyalta replies that: "having the rental equipment be used in the specific areas covered by a mineral lease is not required to establish lien rights. All that is necessary is a sufficient nexus to the use of the rental equipment and improvements to the estate or interest to which the lien attaches".

[7] Our Court of Appeal has set out the interpretive approach to be followed in respect of this Act, and explained that a liberal approach may be taken to determining the scope of a lien right, but a strict interpretation is placed on the procedure that is required to enforce a lien: ***Tervita Corporation v ConCreate USL (GP) Inc***, 2015 ABCA 80 at para 5; see also ***E Construction Ltd v Sprague-Rosser Contracting Co Ltd***, 2017 ABQB 99 at para 47; ***Davidson Well Drilling Limited (Re)***, 2016 ABQB 416 at para 22. Our Court of Appeal also explored the purpose of this Act in ***Maple Reinders Inc v Eagle Sheet Metal Inc***, 2007 ABCA 247 at para 22, aff'g 2006 ABQB 150.

A. Where is the Contract Site?

[8] The contract site was not defined in the Master Purchase Agreement or in the Gravel Contract.

[9] The reference to "contract site" only appears in s 6(4) of the *Builders' Lien Act*. Counsel advised that there has been no judicial consideration of "contract site" in the *Builders' Lien Act*.

[10] I find that the Hangingstone Project site is the "contract site". The Tyalta equipment was used to crush and screen gravel and sand for use in constructing the Hangingstone Project. Although NDV reaped the financial benefits, given the exclusive lease of the gravel pit granted to HRP, the gravel pit was not improved: nothing was constructed at the gravel pit. The off-site work performed using the rental equipment resulted in gravel and sand that was used in constructing the Hangingstone Project, and directly contributed to the actual physical construction of the improvement. As argued by counsel for Tyalta, the rental equipment was part of the overall project or common purpose in relation to the Hangingstone Project.

[11] As Master Prowse found in ***MJ Limited (MJ Trucking) v Prairie Mountain Construction (2010) Inc***, 2016 ABQB 395 at para 53: "… a builders' lien under current Alberta legislation can be validly registered on land, even though the improvement was not made on that land, provided that there is a common purpose, including at least some geographical proximity, between the site where the work was done and the land upon which the lien was registered".

[12] It is clear that the removal of gravel did not improve the gravel pit. The common purpose in this case is the construction of the Hangingstone Project.

[13] It is clear on the record before me that the Hangingstone Project required gravel, which was not available on the Hangingstone Project site, and thus had to be transported to the site.

[14] I find on the facts of this case that the gravel pit and the Hangingstone Project site had some geographical proximity as set out in MJ Trucking above. However, s 6(4) of the *Builders' Lien Act* requires more that geographic proximity: it requires the equipment to be in the immediate vicinity of the contract site.

B. What is the Meaning of Immediate Vicinity?

[15] No authority was provided to establish that the immediate vicinity means the closest gravel pit available. Both "immediate" and "vicinity" are synonymous with near.

[16] I must interpret "immediate vicinity" in the context of the factual matrix.

[17] In oral submissions, NDV argued that there was another gravel pit which was 49 kilometers away from the Hangingstone project, thus closer, by road, than the gravel pit chosen. No evidence was provided that this gravel pit was suitable for Hangingstone's purpose.

[18] NDV argued that immediate vicinity in the builders' lien context was canvassed in the Ontario case of ***1508270 Ontario Ltd v Laudervest Developments Ltd***, 2007 CanLII 79364, [2007] OJ No 5434, 2007 CarswellOnt 10017 (SCJ), in reference to the *Construction Lien Act*, RSO 1990, c 30, which states at s 1(2):

> 1 (2) For the purpose of this Act, materials are supplied to an improvement when they are,
>
> > b) placed upon land designated by the owner or an agent of the owner that is in the *immediate vicinity* of the premises, but placing materials on the land so designated does not, of itself, make the land subject to a lien;

[19] In ***Laudervest Developments***, the Court found that the producer of kitchen cabinets intended to be installed in a condominium project was not entitled to a lien for cabinets which had been directed to be stored at the contractor's warehouse. Storing the cabinets at an off-site warehouse did not meet this definition.

[20] ***Laudervest Developments*** is distinguishable on its facts. This is not a case of materials stored off-site, such as lumber placed on an adjacent property. Further, the Court explained the rationale of the *Act* (at para16):

> ... When a contractor or material supplier provides work and materials are incorporated into the owner's land or placed in the owner's control, the owner receives a benefit, whether it is paid for or not. The contractor is not in a position to takeback the materials and deprive the owner of the benefit because they have

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> become part of the owner's improvement to the property. The lien remedy stands in the place of the contractor's ability to retrieve his work product and gives him a higher priority than other creditors…

[21] In that case, the cabinets never became part of the owner's improvements and there was nothing for the contractor to takeback since it retained control of the cabinets.

[22] In this case, the renting of equipment is considered 'work' under s 6(1) of the *Builders' Lien Act*. The rental equipment was used to crush, screen and extract gravel, which was used in the constructions of the Hangingstone Project, resulting in an improvement. Tyalta cannot "takeback" the rental use of the equipment or the sand and gravel that has been used in the construction of the Hangingstone Project: it has become part of the owner's land. As submitted by Tyalta in its Brief before the Master, at para 17:

> Furthermore, the BLA [*Builders' Lien Act*] distinguishes between when materials are supplied and when work is supplied. The BLA recognizes that "work" is lienable when it supplied on or in respect to an improvement (Section 6(1)(a)), as opposed to materials, which are lienable when they are furnished in respect of an improvement Section 6(1)(b).

[23] I find on the facts of this specific case that the gravel pit and the Hangingstone Project site are in the immediate vicinity of each other. Thus, as the rental equipment was at all relevant times located at the gravel pit, the rental equipment was in the immediate vicinity of the contract site (the Hangingstone Project site). The gravel was not obtained out of country, out of province, or even in central or southern Alberta. Given the nature of gravel pits, immediate vicinity must be considered in context.

[24] Take, for example, Tim Hortons. If someone was located in the centre of the City of Edmonton and argued that a Tim Hortons restaurant 30 kilometers away, as the crow flies, or a driving distance of 89 kilometers was in their immediate vicinity, I would dispute that claim, because there are numerous Tim Hortons locations that are much closer than the distance described. The same cannot be said for a gravel pit. Immediate vicinity must be considered on the specific and unique facts of a particular case.

C. Is There a Common Purpose Between the Two Sites? Is This a Case of an Overall Purpose?

[25] Although I have found that the Hangingstone Project site is the "contract site", it is not necessary to determine same, as I am satisfied the two sites are in the immediate vicinity of each other. I accept Tyalta's argument that there is a common purpose in the work being done at the gravel pit and at the Hangingstone Project, as the work being done at the gravel pit is part of the "overall' Hangingstone Project.

[26] In ***Trotter and Morton Building Technologies Inc v Stealth Acoustical & Emission Control Inc (Stealth Energy Services)***, 2017 ABQB 262 Master Prowse stated at para 57:

> In other words, even where the lien is filed on the 'wrong' land it is the "overall project" (to use the language found in the D*avidson* decision) which is considered, and thus work may be considered to have been done on an improvement even where the work was done on another parcel of land and not the parcel that was liened."

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[27] Even if I am incorrect in finding that the Hangingstone Project site is the "contract site", ***Trotter and Morton*** stands for the proposition that a lien filed against the wrong parcel of land may still be valid, as long as the "work" performed at the wrong land (i.e. the gravel pit) is found to be part of the overall project.

[28] In her oral decision, the Learned Master referred to the Alberta Court of Appeal decision in ***PTI Group Inc v ANG Gathering & Processing Ltd***, 2002 ABCA 89, where Berger J.A. had stated at para 18:

> The remedy contemplated by the Act, as both Moir and Lieberman JJ.A. recognized *(in Hett et al. v. Samoth Realty Projects Ltd. (1977) 3 Alta. L.R. (2d) 97 at 105)*, must be subject to some limit. That limit will largely be determined by the factual matrix of each case that presents for adjudication. The relevant inquiries will include:
>
> a) whether the contractors, subcontractors and owners contemplated that the services provided were necessary to expedite the construction of the improvement.
>
> b) whether the off-site services could have been provided on the site.
>
> c) whether the improvement could have been carried out absent such off-site services.
>
> d) whether in all of the circumstances, the off-site services were so essential to the construction of the improvement and so directly connected with it, that it can be said that the services in question were "primary" in nature.

[29] It is not contested that the sand and gravel were necessary for the Hangingstone Project construction. It is not contested that the Hangingstone Project site did not have the sand and gravel necessary for the project. I heard no evidence the Hangingstone Project site could have been improved without the sand and gravel, thus I am I am prepared to find that the improvements could not have been carried out in the absence of the sand and gravel.

[30] The final question is, were the services of Tyalta so integral and essential to the construction of the project, that it can be said to be primary in nature? The Learned Master below stated at page 60 of the Proceedings Transcript:

> Now I understand Mr. Kirwin's [Counsel for NDV] argument that this case is not directly on point. They are talking about primary versus secondary services, but I think the analysis of off-site and the focus on the factual matrix of each case presented for adjudication is applicable to this situation where we have -- obviously the aggregate is necessary. We have got over a $6 million contract to provide aggregate to this Hangingstone Project. The off-site services could not have been provided on site. The evidence is there were other gravel pits around but certainly not on the Hangingstone site itself.

[31] I find that the test in ***PTI Group Inc*** is applicable in this case, and has been met. The two sites clearly have a common purpose: the construction of the Hangingstone Project site. The "work" performed is an integral part of the overall project.

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D. The Floodgates Argument

[32] NDV argued that in the event that Tyalta was entitled to a lien for its equipment not on the Hangingstone Project contract site, then the lessors of any vehicles used by HRP to transport gravel to the Hangingstone Project site would also be entitled to a lien; so too would be the lessors of equipment to any other subcontractors or material suppliers, not at the contract site, but whose equipment was used to produce products at the site.

[33] With respect, the leased equipment in this case is not the same as a truck which simply transports gravel from the gravel pit to the Hangingstone Project site. The rented crushing and screening equipment were a Cone Crusher, a Jaw Crusher, a Conveyor, a Telescoping Conveyor, a Screener and a Nor-Tech Feeder. While I do not profess to know what each of the pieces of equipment actually do, the equipment was used to extract, crush and screen the sand and gravel so that it was suitable for the Hangingstone Project.

[34] As per s 6(4) of the *Builders' Lien Act*, a person who rents equipment on the terms set out in the section is deemed to have performed a service and has a lien for reasonable and just rental of the equipment while it is used or is reasonably required to be available for the purpose of the work.

[35] Further, the key is that the equipment has to be at the contract site or in the immediate vicinity of the contract site.

[36] It would be speculative to discuss the potential rights of other persons under the *Builders' Lien Act* without a proper factual matrix. In considering NDV's argument, material suppliers who are not at the contract site would have to be in the immediate vicinity in order to claim a lien. Immediate vicinity would have to be assessed in the context of each material supplier, and each material supplier would have to establish that they fall under s 6(4) of the *Builders' Lien Act* as a person who rents equipment to an owner, contractor, or subcontractor, and that the rented equipment is being used or is reasonably required to be available for the purpose of the work. In my view, it would be unjust to use this argument to defeat Tyalta's legitimate claim for a lien under s 6(4).

Conclusion

[37] In my view, Tyalta has satisfied the requirements of s 6(4) of the *Builders' Lien Act* and its lien is therefore valid. The appeal is dismissed.

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[38] If the parties are unable to agree on costs, they may provide written submissions to me within 60 days after the release of this decision.

Heard on the 15th day of January, 2020.
Dated at the City of Edmonton, Alberta this 20th day of April, 2020.

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G.D.B. Kendell
J.C.Q.B.A.

Appearances:

Patrick D. Kirwin
Kirwin LLP
For the Appellant, Northern Dynasty Ventures Inc.

Bradley J. Smith
Verhaeghe Law Office
for the Respondent, Tyalta Industries Ltd.

TAB 10

Date: 19990622
Action No. 9801-10214

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. c-36

AND IN THE MATTER OF SMOKY RIVER COAL LIMITED

ALLSTATE INSURANCE COMPANY, ALLSTATE LIFE INSURANCE COMPANY, SECURITY LIFE OF DENVER INSURANCE COMPANY, INDIANA INSURANCE COMPANY, PEERLESS INSURANCE COMPANY, PACIFIC LIFE INSURANCE COMPANY, AH (MICHIGAN) LIFE INSURANCE COMPANY, NORTHERN LIFE INSURANCE COMPANY, RELIASTAR LIFE INSURANCE COMPANY, MODERN WOODMEN OF AMERICA, PHOENIX HOME LIFE MUTUAL INSURANCE COMPANY, AMERICAN INTERNATIONAL LIFE ASSURANCE COMPANY OF NEW YORK, and PHOENIX AMERICAN LIFE INSURANCE COMPANY;

Petitioners

[Note: An Erratum was filed on July 8, 1999; the correction has been made to the text and the Erratum is appended to this Judgment.]

REASONS FOR JUDGMENT
of the
HONOURABLE MR. JUSTICE S.J. LoVECCHIO

INTRODUCTION

[1] This is the second of two applications to determine the priority of certain charges and encumbrances against certain interests and assets of Smoky River Coal Limited. Being in the coal mining business, Smoky holds interests in various Crown coal leases and also in certain related surface leases. The first application related to Smoky's Crown coal leases and this application concerns the related surface leases and mining facilities.

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> given. Since the liens are to be registered in the same place as the mortgages are registered, the policy goals of the registration system were surely satisfied.

[9] The surface leases comprising the mine site are predominantly of unpatented Crown lands. If this was the case throughout, the decision would be quite simple. However, unbeknownst to Smoky and the Petitioners, a certificate of title had issued for one half section of the mine site which happens to contain a substantial part of the plant and mining facilities. This is the South half of 15-58-8-W6M. This is set out in certain paragraphs of the February 6th, 1999, affidavit of Barry T. Davies, the President and C.E.O. of Smoky. He stated:

> 25. I now understand that in 1987 a Certificate of Title (No. 872 253 775A) was issued for the Southwest quarter of section 15 ("S.W. 15 title"), township 58, range 8, west of the 6th meridian (comprising LSD's 3,4,5, and 6). Until the builders' lien issues arose in this action, Smoky was not aware a Certificate of Title had been issued for the Southwest quarter. Nor was Smoky aware a Certificate of Title (No. 872 253 775 B) was also issued in 1987 for the Southeast quarter (comprising LSD's 1,2,7, and 8) of section 15 ("S.E. 15 title"), township 58, range 8, west of the 6th meridian....
>
> 26. The S.W. 15 Title and S.E. 15 title were issued at the same time a Certificate of Title was issued to Alberta Power Limited (No. 872 253777) to its power plant site....
>
> 27. The above referenced Certificates of Title appear to have been issued in order to allow Alberta Power Limited to purchase from the Minister of FL&W the public land used by Alberta Power Limited for its power plant site....
>
> 31. None of Smoky's Surface interests are shown on either the SE 15 title or the SW 15 title....

Accordingly, that half section is no longer "unpatented." From these facts the following issues arise.

ISSUES

(1) Does the work done by the Lienholders at the mine site entitle them to a Builder's Lien on certain of the surface interests distinct from a lien on the mineral interests or only a lien against certain of the mineral interests?

(2) Is the mine site, as an operation, sufficiently integrated so as to permit all of the Lienholders to claim a lien against the whole of the mine site so Lienholders who performed work *outside* of the *titled land* may also claim a lien against the *titled land* and vice versa?

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TAB 11

P.T.I. Group Inc. v. ANG Gathering & Processing Ltd., 2002 ABCA 89

Date: 20020408
Docket: 0003-0404-AC

2002 ABCA 89 (CanLII)

IN THE COURT OF APPEAL OF ALBERTA

THE COURT:

THE HONOURABLE MADAM JUSTICE CONRAD
THE HONOURABLE MR. JUSTICE BERGER
THE HONOURABLE MR. JUSTICE WITTMANN

BETWEEN:

PTI GROUP INC.

Appellant
(Plaintiff)

- and -

ANG GATHERING & PROCESSING LTD., operating as TRANSCANADA MIDSTREAM, SERVAL ENTERPRISES INC., SERVAL CORPORATION and the said SERVAL ENTERPRISES INC. and SERVAL CORPORATION carrying on business under the firm name and style of SERVAL CONSTRUCTION SERVICES

Respondents
(Defendants)

Appeal from the Order of
THE HONOURABLE MR. JUSTICE T.W. GALLANT
Dated the 19th day of May, 2000
Filed the 11th day of September, 2000

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE BERGER
CONCURRED IN BY THE HONOURABLE MADAM JUSTICE CONRAD
CONCURRED IN BY THE HONOURABLE MR. JUSTICE WITTMANN

REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE BERGER

2002 ABCA 89 (CanLII)

[1] This appeal concerns the validity of a builder's lien filed against a gas pipeline right of way by a sub-contractor who furnished subsistence by way of catering services, sleeping trailers, kitchen facilities and the like to accommodate the workforce. The underlying facts are not seriously in dispute. The services in question were provided by PTI Group Inc. ("PTI") who subsequently registered a builder's lien under the provisions of the ***Builder's Lien Act***, R.S.A. 1980 (as amended), Chap. B-12 (the "Act").

[2] ANG Gathering & Processing Ltd. ("ANG") entered into a contract with Serval Corporation and Serval Enterprises Inc. ("Serval") whereby Serval was to construct a 48 km section of the gas pipeline extending from Smoky Junction to Berland Junction. It was anticipated that Serval would provide its workforce with lodging and catering services given the express requirement in the contract that ANG provide "all services, labour, supervision, travel, subsistence, equipment, fuel, tools, goods and materials **required to fully perform the work**." [emphasis added]. Although the contract did not specify the precise manner in which subsistence would be provided, it was open to Serval and, indeed, understood by ANG that Serval would be utilizing a camp caterer for this project. PTI was engaged by Serval to furnish such subsistence which included lodging, meal services, washroom facilities, recreational facilities, laundry and all trailers and equipment required for those purposes. Meals were prepared at the camp and breakfast and dinner were served there. Bag lunches were prepared for the work crews who took them to the work site.

[3] The pipeline right of way granted to ANG was 18 metres wide. It was understood and agreed that the subsistence camp was not to be located directly on the right of way. Indeed, given the width of the right of way and the nature of the work to be performed, one can reasonably infer that it would have been practically difficult, if not impossible, to erect the camp on the right of way. Accordingly, the camp was located approximately 115 metres from the right of way on a quarter-section through which the right of way passed. The builder's lien filed against the pipeline right of way is for the principal amount outstanding to PTI of $511,568.75. In compliance with an order of the Court of Queen's Bench dated December 9, 1999, the lien fund in the sum of $509,794.57 was paid into court.

[4] An application was brought before Master Floyd to pronounce upon the validity of the lien. Master Floyd declared the lien to be invalid upon holding that:

(a) PTI provided services to Serval.

(b) Such services were not provided or performed on the lands liened.

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> (c) Services, such as those provided by PTI, must be provided directly on the lands liened in order to maintain a valid builder's lien.

[5] An appeal was taken from that decision and heard by Gallant, J. on April 18, 2000. The appeal was dismissed. The learned chambers judge throughly canvassed the reported cases and concluded as follows:

> "[56] It is very difficult to formulate any general principles out of the reported cases. However, it is clear that 'work' and 'services' are not synonymous. By statutory definition, work includes the performance of services on the improvement. Work might not include the performance of services not on the improvement. Architectural services performed off site might be lienable, but the architects cases have been dealt with in a separate category as services that directly relate to the construction process, whether the construction of the improvement proceeds or not. Establishing principles in law sometimes requires the drawing of lines. The line was drawn by Lieberman J.A. in ***Hett*** and followed by our Courts since then. The drawn line is that work does not include secondary services not performed on the improvement unless the services are directly related to the process of construction of the improvement.
>
> [57] In my respectful view, subsistence services, although they undoubtedly contribute to the total project of installing the pipeline, are secondary services that are not so directly related to the construction process as to fall within 'services on the improvement' as used in the definition of 'work' in the *Act*. If subsistence services had been provided on the right-of-way for the pipeline, they would have constituted 'services on the improvement,' but they were not performed on any portion of the right-of-way. Therefore, I declare the lien registered against the right-of-way to be invalid."

STATUTORY PROVISIONS

[6] Section 4 of the Act provides:

> "4(1) Subject to subsection (2), a person who
>
> (a) does or causes to be done any **work** on or **in respect of an improvement**, or

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(b) furnishes any material to be used in or in respect of an improvement,

for an owner, contractor or subcontractor has, for so much of the price of the work or material as remains due to him, a lien on the estate or interest of the owner in the land in respect of which the improvement is being made.

. . . .

(4) For the purposes of this Act, a person who rents equipment to an owner, contractor or subcontractor shall, while the equipment is on the contract site or in the immediate vicinity of the contract site, be deemed to have performed a service and has a lien for reasonable and just rental of the equipment while it is used or is reasonably required to be available for the purpose of work." [Emphasis added]

[7] The term "work" is defined in s. 1(l) of the Act as follows:

"'**work' includes the performance of services on the improvement**." [Emphasis added]

ANALYSIS

[8] There is ample authority for the proposition that the statute must be strictly construed in determining whether any lien claimant is a person to whom a lien is given by it. ***The Clarkson Company Limited, Trustee in Bankruptcy of L. Di Cecco Company Limited, et al.* v. *Ace Lumber Limited, et al.,*** [1963] S.C.R. 110, 36 D.L.R. (2d) 554, 4 C.B.R. (NS) 116, ***Hett et al.* v. *Samoth Realty Projects Ltd.*** (1977), 3 Alta. L.R. (2d) 97 at 105, 1 R.P.R. 257, 76 D.L.R. (3d) 362, 4 A.R. 175 (C.A.) and ***Alberta Gas Ethylene Company Ltd. et al* v. *Noyle et al.***, [1980] 2 W.W.R. 507 (C.A.).

[9] In ***Hutchinson, et al.* v. *Berridge*, *et al.,*** [1922] 2 W.W.R. 710 (Alta. C.A.), a five person panel of the appellate division of the Supreme Court of Alberta was required to interpret the words used in the ***Mechanics' Lien Act***, 1906, ch. 21 (Alta.) and to decide whether the work of a "bull cook", employed by a mining company which was engaged in opening up a mine, constituted work "in connection with the excavating of the land" within the meaning of s. 4 of the legislation under consideration. The "bull cook" was held to be a "labourer" within the meaning of the Act and therefore entitled to a lien thereon. (Hyndman, J.A. dissented on this point). The Court reasoned that (at p. 715):

"... If it were intended to confine the benefit to those who do the

> actual work of excavating, etc., there was no object in adding these words 'in connection with.'"

[10] The Court in ***Alberta Gas Ethylene Co. Ltd.*** **v.** ***Noyle***, ***supra***, saw no difference between the words used in the ***Mechanics' Lien Act*** and the relevant words in the ***Builder's Lien Act***. The majority of the Court considered itself bound by the earlier decision in ***Hutchinson*** **v.** ***Berridge, supra.*** Moir, J.A., with whom Morrow, J.A. concurred, noted that the legislation under consideration in ***Alberta Gas Ethylene Co. Ltd.*** **v.** ***Noyle*** provided, *inter alia*, that a person has a lien upon the land in respect of which an improvement is being made if he "does or causes to be done any work upon or in respect of [the] improvement." Section 1(l) defined "work" to include "the performance of services on the improvement."

[11] In ***Alberta Gas Ethylene Co. Ltd.*** **v.** ***Noyle***, the improvement was the construction of a gas extraction plant. The relevant facts were described by Moir, J.A. in the following terms (at p. 509):

> "The facts are that Poole and Cana contracted with Alberta Gas Ethylene to construct a large ethylene extraction plant at or near Joffre, Alberta. There were no food services or sleeping accommodation nearby. As a result Pool and Cana entered into a contract with Parkland Industrial Catering Ltd. (called 'Parkland') to supply catering services and sleeping accommodation for the contractor's and sub-contractor's employees. Parkland rented portable kitchens, dining space and dormitories from Pre-built Industries Ltd. When the portables were moved on to the site they had to be connected to the water and sewer. Parkland hired Burmac [Plumbing & Heating Ltd.] to do this work. Further, fuel was needed to operate the stoves and heat the space. Parkland arranged with Cigas [Products Ltd.] to supply the storage tanks and the propane for this purpose."

[12] The question to be decided was whether the liens filed by Burmac and Cigas were valid. The Court held that they were. The narrow issue, the Court held, was whether the work done and the materials used were "in respect of" the improvement.

[13] Moir, J.A. relied upon the following reasoning of Lieberman, J.A. in ***Hett*** **v.** ***Samoth, supra,*** which, arguably, was also binding upon the Court. Lieberman, J.A. said (at p. 369):

> "Although it is clear that services need not be physically performed upon the improvement to fall within the meaning of the Act they must in my judgment be directly related to the process of construction. Surely inspiration, the development of concepts,

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> logistics, applications for zoning, legal services, or accounting services, do not fall within 'services upon the improvement' as those words are defined by the case law, and this is so even within the wide meaning attributed to that phrase in the *Inglewood* case. [*Inglewood Plumbing & Gasfitting Ltd.* v. *Northgate Development Ltd. et al.* (1965), 54 D.L.R. (2d) 509, 54 W.W.R. 225]."
>
> In my view the services of an architect are as they affect the construction process distinguishable from the services performed by the appellant. They are an integral and necessary part of the actual physical construction of the project. They are set out in the plans and specifications which are to be followed by those persons doing the actual construction and they are, therefore, related directly to it. The appellant's services, although they undoubtedly contribute to the total project are not, in my judgment, so directly related to the construction process as to fall within 'services upon the improvement' as those words are used in the Act.
>
> Unless some limit is put upon the meaning of 'services' in the Act it would be open to any person, such as a lawyer, an accountant, a sociologist or a statistician, whose work contributed in any way to the total project to file a lien under the Act. This result is certainly not the intent of the Act nor does it stand the test of strict interpretation."

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[14] Neither the Appellant nor the Respondent invited the Court to revisit or reconsider the decisions in ***Hutchinson* v. *Berridge*, *supra***; ***Alberta Gas Ethylene Co. Ltd.* v. *Noyle*, *supra***; and ***Hett* v. *Samoth*, *supra.***

[15] Mindful of the foregoing, the Respondent ANG properly conceded (paragraph 56 of the Respondents' factum) "that Alberta courts have found the services of cooks or caterers to be lienable where such services were performed upon the lands liened."

[16] The question to be decided here, accordingly, is whether the subsistence services furnished by the Appellant, which included catering and living accommodation located off-site, are also lienable. The decision of this Court in ***Hett* v. *Samoth*, *supra***, endorsed by this Court in ***Alberta Gas Ethylene Co. Ltd.* v. *Noyle*, *supra***, establishes clearly and unequivocally that services need not be physically performed upon the improvement to fall within the meaning of the Act. They must, however, be "directly related to the process of construction."

[17] Neither the Appellant nor the Respondents quarrel with the latter proposition. The Respondents, however, maintain that for such off-site services to be lienable, a second test must

be met: the services must be an integral and necessary part of the actual physical construction of the project. The latter test is said to derive from the language employed by Lieberman, J.A. in his assessment of the services of an architect in the ***Hett*** case. In fact, although Lieberman, J.A. did characterize the services of an architect as an integral and necessary part of the actual physical construction of the project, he did so to better explain how those services were "directly related to the process of construction." In my view, his choice of language is an attempt to describe the direct nexus with the improvement that the services of an architect enjoy along with other services that are similarly related to the construction process. It is an attempt to distinguish on a principled basis between primary services which have the attributes of proximity from those which are relatively remote and which, accordingly, are properly described as secondary. Mere contribution to the total project will not entitle the person who performed the "work" to file a lien. The examples offered by Lieberman, J.A. as too remote, are the services of a lawyer, accountant, sociologist or statistician. It is not, as counsel suggested, the "cerebral" nature of the contribution to the improvement that governs; it is the degree of proximate connection to the process of construction that must be evaluated.

[18] The remedy contemplated by the Act, as both Moir and Lieberman, JJ.A. recognized, must be subject to some limit. That limit will largely be determined by the factual matrix of each case that presents for adjudication. The relevant inquiries will include:

a) whether the contractors, sub-contractors and owners contemplated that the services provided were necessary to expedite the construction of the improvement.

b) whether the off-site services could have been provided on the site.

c) whether the improvement could have been carried out absent such off-site services.

d) whether in all of the circumstances, the off-site services were so essential to the construction of the improvement and so directly connected with it, that it can be said that the services in question were "primary" in nature.

[19] The indisputable and unique facts of this case make it abundantly clear that the test enunciated, *supra*, is satisfied. The appeal must be allowed and the lien declared valid.

[20] This judgment should not be taken as an endorsement of the proposition that all off-site services of the kind described here will invariably satisfy the articulated test. As the judgment makes clear, such a determination will be largely fact-driven.

2002 ABCA 89 (CanLII)

APPEAL HEARD on OCTOBER 30, 2001

REASONS FILED at EDMONTON, Alberta,
this 8th day of APRIL, 2002

2002 ABCA 89 (CanLII)

____
BERGER, J.A.

I concur: _______________________________
CONRAD, J.A.

I concur: _______________________________
WITTMANN, J.A.

COUNSEL:

P.D. Wilson
D.R. Bieganek
For the Appellant (Plaintiff)

D.I.D. McLean
For the Respondents (Defendants)

F.W.T. Somerville
For K.P.M.G. in its capacity as Receiver/Manager of Serval Corp.

2002 ABCA 89 (CanLII)

TAB 12

Court of Queen's Bench of Alberta

Citation: **Davidson Well Drilling Limited (Re), 2016 ABQB 416**

2016 ABQB 416 (CanLII)

Date: 20160725
Docket: 1303 08651
Registry: Edmonton

In Bankruptcy and Insolvency

In the matter of Davidson Well Drilling Limited

And in the Matter of Recognition of the Order of the Ontario Superior Court of Justice Dated April 16, 2013

Applicant Pricewaterhousecoopers Inc. in its Capacity as Court-Appointed Receiver of Davidson Well Drilling Limited

Respondent Bank of Montreal

Corrected judgment: A corrigendum was issued on July 26, 2016; the corrections have been made to the text and the corrigendum is appended to this judgment.

Reasons for Decision
of the
Honourable Madam Justice J.M. Ross

Introduction

[1] The Court-appointed Receiver of Davidson Well Drilling Limited [Davidson] seeks approval of its proposed distribution of lien funds. Lien claimants Century Wireline Services [Century], Clean Harbors Energy and Industrial Services Corp [Clean Harbors], 72619 Alberta Ltd (o/a Roughrider International) [Roughrider], Bruno's Trucking Ltd [Bruno's] and Acme

liens other than the issue of whether the lien period was 45 days (in which case the liens were filed out of time) or 90 days (in which case the liens were conceded to be valid).

[64] As I have found that the applicable lien period was 90 days, the Clean Harbors liens are declared valid in the claimed amounts.

Roughrider

[65] Roughrider provided site services related to repair and maintenance of Davidson's rigs and support equipment. Roughrider registered a lien in the amount of $38,525.55 on April 16, 2013. It last provided services on January 16, 2013. As the lien period is 90 days, Roughrider's lien was filed in time.

[66] The Receiver withdrew its objection to the Roughrider lien based on whether a prevenient arrangement had been established. The sole remaining issue regarding the Roughrider lien is whether its work was provided "in respect of an improvement".

[67] The equipment that Roughrider provided maintenance services to was not affixed to the lands or intended to become part of the lands. The Receiver relies on the case of ***Orban Industries Ltd v Gauntlet Energy Corporation***, 2004 ABCA 20, at paras 8 and 13 [***Orban***] for the proposition that labour and materials provided to structures that are not in themselves improvements, are not properly included in the lien.

[68] ***Orban*** is a decision of a single Justice of the Court of Appeal on a leave to appeal application. The chambers judge below held that the provision and installation of sour gas line heater/separator packages, used to extract natural gas, were not improvements. On the leave application, the issue was described as:

> …whether the chambers judge erred in determining that this equipment, its use, its method of installation and the method of affixation satisfied the definition of improvement under the *BLA*. In arriving at her conclusion that it did not, she considered the evidence before her, the purpose and use of the equipment and the specific method of affixation. She concluded, on the evidence before her, that the separator packages in this case were not intended to be or to become part of the land in question. She rejected what she called "the bald proposition" advanced by ***Orban*** that anything done to recover minerals is an improvement to the mineral interest under the *BLA*.

[69] The Appeal Justice held that the issue of whether ***Orban*** had a valid lien under the *BLA* was a question of mixed fact and law, and the standard of review was high. No sufficient error on the "fact specific" issue of whether there was an improvement was shown. The chambers justice had also not erred in law. The Appeal Justice held that the "proposition that a drilling well is an improvement and thus materials supplied or services render in connection with a well are, without more, entitled to a builder's lien" was not supported by the case law.

[70] There are important distinctions between ***Orban*** and this case. In this case it is clear that the Work constituted an improvement to the Syncrude lands. The existence of an improvement was conceded when the Receiver approved payment of liens registered within 45 days. The Receiver did not revoke this concession at the hearing. From the facts provided regarding the nature of the Work, there is no reason to question that it constituted an improvement, which includes "anything constructed, erected, built, placed, dug or drilled or intended to be

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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": *BLA* s 1(d).

[71] The connection, if any, between the separators and any improvement to the land is not clear from the decision in ***Orban***. In contrast, the connection between the equipment and rigs maintained by Roughrider, and the improvement constituted by the Work, is clear. "Roughrider supplied and rendered on-demand (continual) mechanical maintenance services for Davidson's oil and gas drilling and exploration rigs, loader and support equipment essential to exploration drilling (the "Services"). The Services supplied by Roughrider were absolutely essential to the exploration and drilling operations and improvements to the lands" (Affidavit of Laura Secord).

[72] The issue is whether this connection is sufficient to show that the Roughrider services were performed "on the improvement": *BLA* s 1(p).

[73] Roughrider relies on the Saskatchewan Court of Appeal decision in ***Grey Owl Engineering Ltd v Propak Systems Ltd***, 2015 SKCA 108, at paras 22-26:

> [22] …Cameron J.A. stated he [preferred] instead to consider whether the reconstruction of the rail line constituted an improvement to the land and then [ask] the question whether Brewster did any work upon that improvement or render any services for it…[citing *Clarkson Company v Hansen* (1983), 22 Sask R 126 (CA) (*Hansen*)]
>
> [23] This approach, which focuses on the main contract or contracts rather than its individual subcontracts and the work being done under them, has been consistently followed and applied in this jurisdiction. In *Pritchard Engineering Company v Coronach*, [1983] 30 Sask R 137 (QB), the main contract was between the owner, the town of Coronach, and Wes-Can Underground Ltd. and involved the construction of a water supply line and associated tasks within the water treatment plant. Wes-Can hired Ray's Transport Ltd. to transport equipment to the job site at Coronach and upon termination of the work to return the equipment to Saskatoon. Applying *Hansen*, Sirois J. found first that the construction work under the main contract was an "improvement" (para. 5) and second that Ray's Transport had provided services "in respect of" that improvement (para. 16). He concluded by saying, "The hauling of the equipment by Ray's Transport to a point on the improvement site was solely to enable Wes-Can Underground Ltd. to carry out its contract with the Town of Coronach."
>
> [24] Similarly, in *BWV Investments Ltd. v Saskferco Products Inc.* (1993), 114 Sask R 306 (QB), MacPherson C.J.Q.B. applied *Hansen* to uphold a claim of lien for the rental of 29 trailers located on the building site and used in the construction of the Saskferco fertilizer plant. As part of his reasoning, MacPherson C.J.Q.B. noted that neither the trailers, nor any part of them, were consumed by or integrated into the actual construction of the fertilizer plant, but that such a finding did not determine the validity of the lien (para. 14). He held that the supply of the trailers constituted a "service performed on or in respect of" the construction of the fertilizer plant (para. 24).
>
> [25] Finally, in *Royal Bank of Canada v Saskatchewan Power Corporation* (1990), 1990 CanLII 7611 (SK QB), 84 Sask R 277 (QB), counsel for the Bank

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> argued that steel poles modified and delivered by subcontractors, for use in Saskatchewan Power's transmission lines, could not be considered improvements because the poles were movable. MacLean J. rejected this argument, finding that the improvement in question was not the poles but the transmission line itself. This Court affirmed the decision in brief oral reasons (see (1990), 84 Sask R 275 (CA)). Neither the Court of Queen's Bench nor this Court referred to *Hansen*, but both Courts appear to have taken it as self-evident that the improvement was the work the owner was performing on the land and not the work performed by the various subcontractors and others contracting with them.
>
> [26] In [] *Hansen*, Cameron J.A. stated, "the principal object of this Act is to better ensure that those who contribute work and material to the improvement of real estate are paid for doing so" (para. 30). This approach to builders' lien legislation has a long provenance in this jurisdiction.

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[74] The Receiver submits that ***Grey Owl*** should be distinguished, as the Saskatchewan legislation defines "improvement" more broadly than the *BLA*.

[75] The *Builders' Lien Act*, SS 1984-85-86, c B-7.1, s 2(1)(h) provides:

> (h) "improvement" means a thing constructed, erected, built, placed, altered, repaired, improved, added to, dug or drilled or intended to be constructed, erected, built, placed, altered, repaired, improved, added to, dug or drilled on or into, land, except a thing that is not affixed to the land or intended to become part of the land and includes:
>
> > (i) landscaping, clearing, breaking, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under land;
> >
> > (ii) the demolition or removal of any building, structure or works or part thereof;
> >
> > (iii) services provided by an architect, engineer or land surveyor
> > ...

[76] I reject this proposed distinction. The *BLA* definition of "improvement" is virtually identical. The additional express inclusions under s 2(1)(h)(i) of the Saskatchewan Act do not detract from the breadth of the basic definition under both Acts. In any event, the issue is not whether the Work constituted an improvement, but whether Roughrider's services were "on the improvement" (s 1(p)). This language in the *BLA* is similar to s 22 of the Saskatchewan Act considered in ***Grey Owl***, which gave lien rights to those providing services "on or in respect of an improvement".

[77] Further, the approach in ***Grey Owl*** is fully in accord with the approach in a number of Alberta Court of Appeal cases, including ***Schlumberger***, discussed above, and ***PTI Group Inc v ANG Gathering & Processing Ltd***, 2002 ABCA 89 at para 11 [***PTI Group***], citing ***Alberta Gas Ethylene Co Ltd v Noyle***, 1979 ABCA 334, 20 AR 459 [***Alberta Gas***].

[78] In paragraphs 8-10 of ***Alberta Gas***, the Court of Appeal held:

> [8] It is apparent that the work done by Burmac was done directly upon the portable buildings and the propane supplied by Cigas was used in those buildings.

This in itself does not create the basis for a lien against the land, as there is no evidence that the portable buildings were improvements. Their description as "mobile" makes it apparent that they were "neither affixed to the land nor intended to be or become part of the land". Further, the respondents do not contend that the portables were improvements.

[9] The improvement involved in this case was the construction of a gas extraction plant. The issue is whether Burmac's work and Cigas' materials were work and materials done or used "upon or in respect of" that improvement. In essence this amounts to a determination of whether work done and materials used to provide sleeping accommodation and food services for persons who labour upon an improvement are work done and materials used "in respect of" an improvement.

[10] As I see the problem, the respondents' work and materials must be examined in relation to **the overall project**, rather than in relation to the rented chattels on which they were directly expended. This approach is in line with that taken by Darling, Co. Ct. J. in *Cigas Products Ltd. v. Tamarisk Developments Ltd. and Young* [1976] 6 W.W.R. 733. In that case the lien claimant had rented propane tanks and heaters to a general contractor for use in drying out concrete and for heating the building during construction. It also installed the equipment and supplied fuel for it. The plaintiff was not allowed a lien for the rental amount of the units, as the British Columbia Mechanics' Lien Act contains no equivalent to our s.4 (4). However, the liens in respect of the cost of the fuel and for the installation of the heating equipment were allowed. The learned County Court judge said at page 735:

> The evidence satisfies me that Cigas qualifies as a materialman suppling materials to or for the improvement, that is, the propane gas for the making of this improvement. Drying out cement and walls is a necessary part of the building procedure. Without getting technical, the chemical process, I understand on the evidence, is equivalent to its being consumed and incorporated in the course of construction. The same reasoning applies to the item of labour and materials to install the tanks, pipes and heaters. Cigas, as I find, is in the position of a subcontractor to do such work and, in a limited sense, to do such work upon and to furnish such materials as the pipes, the fittings and the blocks for the installation of the equipment. Cigas supplied its own workmen under its supervision and paid them for the installation labour. Next, the blocks, pipes and fittings are not recoverable or re-usable, but remain on the lands of the defendant Tamarisk."

[79] I conclude that both the Alberta Court of Appeal and the Saskatchewan Court of Appeal consider "improvement" from the perspective of the "overall project" involved. In other words:

(i) the "overall project" is the "improvement";

(ii) the "overall project" constitutes the "thing constructed, erected, built, placed, altered, repaired, improved, added to, dug or drilled or intended to be constructed,

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erected, built, placed, altered, repaired, improved, added to, dug or drilled on or into, land"; and

(iii) the "overall project" would also be the thing that is "affixed to the land or intended to become part of the land."

[80] To the extent that ***Orban*** is inconsistent with this approach, and I am not sure that it is inconsistent, it has less weight as the decision of a single Justice, while the other decisions cited were by full panels of the Court of Appeal.

[81] The focus is thus not whether the equipment serviced by Roughrider was an improvement affixed to the land, but whether the services provided by Roughrider were on the improvement constituted by the Work.

[82] ***PTI Group*** makes it clear that "services need not be physically performed upon the improvement to fall within the meaning of the Act. They must, however, be 'directly related to the process of construction'": para 16. "[I]t is the degree of proximate connection to the process of construction that must be evaluated": para 17. Relevant inquiries include (para 18):

a) whether the contractors, sub-contractors and owners contemplated that the services provided were necessary to expedite the construction of the improvement;

b) whether the off-site services could have been provided on the site;

c) whether the improvement could have been carried out absent such off-site services; and

d) whether in all of the circumstances, the off-site services were so essential to the construction of the improvement and so directly connected with it, that it can be said that the services in question were "primary" in nature.

[83] I am satisfied that the connection of Roughrider's services to the Work established by the evidence – essential on-demand maintenance services for equipment that was in turn essential to the drilling operations – demonstrates the required connection to the improvement. Some of the services were provided "out in the field where drilling and exploration operations were being performed". The services were requested by Davidson's field managers and site supervisors when a piece of equipment broke down. "Were it not for Roughrider's essential and timely services, Davidson's drilling and exploration work on the Sites simply would have stopped entirely" (Affidavit of Laura Secord).

[84] Roughrider's lien is declared valid in the claimed amount.

Bruno's

[85] Bruno's rented a gen set and a transformer to Davidson. Bruno's removed most of its equipment on March 8, 2013. Bruno's lien in the amount of $92,817.35 was registered on May 14, 2013. As the lien period is 90 days, Bruno's lien was filed in time.

[86] Again, the Receiver is not pursuing the argument that the lien was registered against the wrong Syncrude lease.

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[87] Bruno's lien claim included an amount to replace a missing transformer. The transformer was eventually located and returned to Bruno's. As a result, Bruno's has reduced its lien claim to $68,856.85, the amount which it claims is due and owing pursuant to the rental agreement.

[88] The sole remaining issue is whether Bruno's lien should be reduced in respect of charges for demobilization costs and repairs and replacement of missing parts after the rental period. The Receiver's position is that it should, and that the valid amount of the lien is $56,856.50.

[89] The Receiver's argument is based, in part, on ***Orban*** and ***Husky Oil***. I have declined to follow these decisions, for reasons already stated.

[90] The Receiver also claims that these costs are not included under *BLA* s 6(4), which provides that a renter of equipment has a lien "for reasonable and just rental of the equipment while it is used or is reasonably required to be available for the purpose of the work".

[91] As to demobilization costs, this cost was contemplated by the parties and included in the rental contract. The *BLA* s 6(1) provides that a person who works on or in respect of an improvement has a lien "for so much of the price of the work ...as remains due". A renter of equipment is deemed to have provided a service (s 6(4)), and services on an improvement are included in the definition of work (s 1(p)). In my view, the rental amount remaining due to Bruno's, including the agreed demobilization cost, is part of the "reasonable and just rental" that applies to the rental period (i.e., the period that the equipment was used or required to be available).

[92] Repair costs are potentially more problematic. If repair costs amount to a claim in damages, they would not be part of the lien claim. However, where repair costs are contemplated by the parties and included in the rental contract, they are, in my view, part of the reasonable and just rental. In ***Krupp Canada Inc. v JV Driver Projects Inc.***, [2014] A.J. No. 456 Master Robertson reviewed case law and concluded that, while damages claims in tort or for breach of contracts unrelated to an improvement are not properly part of a lien, <u>all</u> contract charges for work on or in respect of an improvement, including amounts assessed on a quantum meruit basis, are included in lien rights.

[93] In this case the charges for repair or replacement of missing items are due under the rental contract and therefore are included in the lien.

[94] Bruno's lien is declared valid in the amount of $68,856.85.

Acme

[95] Acme supplied light towers to Davidson. It was last on site on March 7, 2013, and filed a lien in the amount of $114,758.44 on April 12, 2013. The Receiver concedes that the Acme lien was filed in time.

[96] The Receiver claimed that Acme had not established a prevenient arrangement with Davidson, and that its lien should be valid only for the costs of reasonable rent within the lien period. The existence of a prevenient arrangement is an issue where there is a series of contracts. A lien claimant who files within the lien period running from when the last item was supplied or last service rendered, and who seeks to recover amounts due under several contracts; must establish that the parties contemplated a continuing contract: ***Re Blue Range Resource Corp***, 1999 CanLII 19047 at paras 3-7 (ABQB).

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[97] In this case, however, there was one contract between Acme and Davidson, regarding the rental of four 20KW light towers and three 6KW light towers, at agreed monthly and daily rates [the Rental Agreement]. The President of Acme deposed that all of the invoices rendered from Acme to Davidson were pursuant to the Rental Agreement (Affidavit of Howard Evans). The Rental Agreement did not specify which Syncrude leases the towers would be located on; but the Receiver has withdrawn its objection on this ground, acknowledging that work performed anywhere on the large tract covered by the Syncrude leases gave rise to lien rights. This is not a situation, as in ***Re Gauntlet Energy Corporation (Companies' Creditors Arrangement Act)***, 2003 ABQB 1014 where an oil and gas services contract was "very general in its terms", provided "no estimate" of the number of wells, and applied to lands that lacked common ownership.

[98] I conclude that the lien arises from one contract. The question of a prevenient arrangement does not arise.

[99] The Acme lien claim includes amounts due under the Rental Agreement for delivery and removal costs and for maintenance to the light towers. These amounts are properly included in the lien, for the reasons discussed in relation to the Bruno's lien.

[100] The Acme lien claim includes an invoice for $10,101 for a light tower that was not returned to Acme. The Rental Agreement provided that Davidson was responsible for return of units. However, the evidence is that Acme picked up most of the units on March 7, 2013, and arranged for Bruno's to pick up remaining units. They were unable to locate one light tower.

[101] Acme has not established, based on the terms of the Rental Agreement and the circumstances relating to the missing tower, that the charge for the missing tower is part of the reasonable and just rental under the Rental Agreement. That charge ($10,101) is deducted from Acme's lien.

[102] An issue was also raised by the Receiver relating to invoice AE78, in which Acme charged the daily rate rather than the monthly rate, resulting in a charge that was $7836.15 higher than the monthly rental, for a rental period of less than a month. The Rental Agreement does not specify when monthly or daily rates apply. In my view, it is not reasonable and just to charge the daily rate when the resulting charge is higher than the monthly rental, for a rental period of less than a month. The overcharge of $7836.15 is deducted from Acme's lien.

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[104] Acme's lien is declared valid in the amount of $96,821.29.

Costs

[105] The parties may speak to me regarding costs if they are unable to agree.

Heard on the 14th day of April, 2016.
Dated at the City of Edmonton, Alberta this 25th day of July, 2016.

J.M. Ross
J.C.Q.B.A.

Appearances:

Darren Bieganek, QC and Tara Matheson
Duncan Craign LLP
for the Applicant

Renn Moodley and Riley Snider
Witten LLP
for the Respondent

Martine H. Pettem
Walsh LLP
for Lienholder, 72619 Alberta Limited (o/a Roughrider International)

Casey A. Smith
Walsh LLP
for Lienholders, Gregory Oilfield Services Ltd. and Cordy Manufacturing Inc.

Benjamin J. Kormos
Walsh LLP
for Lienholders, Clean Harbors Energy and Industrial Services Corp.

G. Stephen Panunto
MJM Barristers
for Lienholder, Century Wireline Services

Philip R. Biggar
The Law firm of W. Donald Goodfellow, QC
for Lienholders, Acme Energy Services Inc. and Bruno's Trucking Ltd.

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Corrigendum of the Reasons for Judgment
of
The Honourable Madam Justice J.M. Ross

The Judgment has been amended by replacing the word Harbours with Harbors on pages 11 and 12 in the heading and paragraphs 62, 63 and 64.

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TAB 13

In the Court of Appeal of Alberta

Citation: Alberta Gas Ethylene Company Ltd. v. Noyle, 1979 ABCA 334

Date: 19791219
Docket: 12424
Registry: Edmonton

1979 ABCA 334 (CanLII)

Between:

The Alberta Gas Ethylene Company Ltd.,
Poole Construction Limited and Cana Engineering Ltd.

Respondents
(Applicants)
(Plaintiffs)

\- and -

Jim Noyle and Merv Dickie; and Jim Noyle and Merv Dickie carrying on business under the name and style of Parkland Ventures; and Parkland Ventures: Parkland Industrial Catering Ltd.; Prebuilt Industries Ltd.; Wilf Zohner Electric Ltd.; Burmac Plumbing & Heating Ltd.; Cigas Products Ltd.; Chain Lake Gas Co-op Ltd.; Dome Petroleum Limited; the Canadian Imperial Bank of Commerce; the Attorney General of Canada in respect of the claim of Her Majesty the Queen in Right of Canada; Speedy Storage and Cartage (1975) Ltd.; and Stewart Supplies (Penhold) Ltd.

Appellants
(Respondents)
(Defendants)

And Between:

Canadian Imperial Bank of Commerce

Appellant

\- and -

Burmac Plumbing & Heating Ltd. and Cigas Products Ltd.

Respondents

The Court:

The Honourable Mr. Justice McDermid
The Honourable Mr. Justice Moir
The Honourable Mr. Justice Morrow

Reasons for Judgment of The Honourable Mr. Justice Moir

Concurred in by The Honourable Mr. Justice Morrow

Concurring Reasons for Judgment of The Honourable Mr. Justice McDermid

COUNSEL:

R.G. Ferguson, Esq., for the appellants.

G.M. Advani, Esq., for Cigas Products Ltd.

D.P. MacNaughton, Esq., for Burmac Plumbing and Heating Ltd.

1979 ABCA 334 (CanLII)

REASONS FOR JUDGMENT OF
THE HONOURABLE MR. JUSTICE MOIR

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[1] This is an appeal from a Chambers judge wherein he upheld the validity of two liens filed pursuant to the provisions of *The Builders' Lien Act* by the respondents Burmac Plumbing & Heating Ltd. (called Burmac) and Cigas Products Ltd. (called Cigas) in respect of work done or material supplied on a site where Poole Construction Ltd. (called Poole) and Cana Engineering Ltd. (called Cana) were constructing an ethylene gas plant for the owner Alberta Gas Ethylene Company Ltd. That order is appealed by the Canadian Imperial Bank of Commerce.

[2] The facts are that Poole and Cana contracted with Alberta Gas Ethylene to construct a large ethylene extraction plant at or near Joffre, Alberta. There were no food services or sleeping accommodation nearby. As a result Poole and Cana entered into a contract with Parkland Industrial Catering Ltd. (called Parkland) to supply catering services and sleeping accommodation for the contractor's and sub-contractor's employees. Parkland rented portable kitchens, dining space and dormitories from Prebuilt Industries Ltd. When the portables were moved on to the site they had to be connected to the water and sewer. Parkland hired Burmac to do this work. Further, fuel was needed to operate the stoves and heat the space. Parkland arranged with Cigas to supply the storage tanks and the propane for this purpose.

[3] Parkland assigned its book debts to the appellant. Parkland then defaulted and numerous people filed liens. The owners and contractors paid money into Court and had the liens discharged. The validity of the respondents' liens, among others, were challenged. The learned trial judge upheld the validity of the liens, including the lien by Prebuilt Industries Ltd. for the rental of the portable buildings. No appeal was taken from this decision.

[4] Although no argument was addressed to us on the matter it appears that the appellant has status to bring this appeal. Authority for this may be found in *R. v. Demmings & Co.* (1955) 4 D.L.R. (2d) 465; *Darrell v. Campbell* (1916) 10 W.W.R. 492 and *Nobbs and Eastman v. C.P.R.* (1913) 6 W.W.R. 759. These cases fully support the statement contained in Macklem and Bristow, *Mechanics' Liens in Canada,* 1978, at page 348:

> "In many instances a contractor will have assigned the amounts due to him under a contract before the moneys are actually payable. It is therefore in the assignee's interest to become a party to the action, in order that he may appear and defend on behalf of the contractor and in this way strengthen his own position. In the Court's discretion the assignee may be added as a party defendant."

[5] Accordingly, the sole question to determine in this appeal is : Are the respondents' liens valid? To be valid it is necessary for the respondents to bring themselves within s.4(1) of *The Builders' Lien Act,* R.S.A. 1970, ch. 35. That section reads as follows:

> "4. (1) Subject to subsection (2), a person who
>
> (a) does or causes to be done any work upon or in respect of an improvement, or
>
> (b) furnishes any material to be used in or in respect of an improvement,
>
> for an owner, contractor or sub-contractor has, for so much of the price of the work or material as remains due to him a lien upon the estate or interest of the owner in the land in respect of which the improvement is being made."

[6] The following definitions from s. 2 (1) are also relevant:

> "(d) '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;"
>
> "(1) 'work' includes the performance of services upon the improvement."

[7] In approaching this problem it is necessary to bear in mind that in determining whether the work is lienable *The Builders' Lien Act* must be strictly interpreted. This in line with the decision of the Supreme Court of Canada in *Clarkson Co. Ltd. et al v. Ace Lumber Ltd. et al* [1963] S.C.R. 110, at 114 and *Hett et al v. Samoth Realty Projects Ltd.* (1977) 3 Alta. L.R. (2d) 97 at 101.

[8] It is apparent that the work done by Burmac was done directly upon the portable buildings and the propane supplied by Cigas was used in those buildings. This in itself does not create the basis for a lien against the land, as there is no evidence that the portable buildings were improvements. Their description as "mobile" makes it apparent

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that they were "neither affixed to the land nor intended to be or become part of the land". Further, the respondents do not contend that the portables were improvements.

[9] The improvement involved in this case was the construction of a gas extraction plant. The issue is whether Burmac's work and Cigas' materials were work and materials done or used "upon or in respect of" that improvement. In essence this amounts to a determination of whether work done and materials used to provide sleeping accommodation and food services for persons who labour upon an improvement are work done and materials used "in respect of" an improvement.

[10] As I see the problem, the respondents' work and materials must be examined in relation to the overall project, rather than in relation to the rented chattels on which they were directly expended. This approach is in line with that taken by Darling, Co. Ct. J. in *Cigas Products Ltd. v. Tamarisk Developments Ltd. and Young* [1976] 6 W.W.R. 733. In that case the lien claimant had rented propane tanks and heaters to a general contractor for use in drying out concrete and for heating the building during construction. It also installed the equipment and supplied fuel for it. The plaintiff was not allowed a lien for the rental amount of the units, as the British Columbia Mechanics' Lien Act contains no equivalent to our s.4 (4). However, the liens in respect of the cost of the fuel and for the installation of the heating equipment were allowed. The learned County Court judge said at page 735:

> "The evidence satisfies me that Cigas qualifies as a materialman suppling materials to or for the improvement, that is, the propane gas for the making of this improvement. Drying out cement and walls is a necessary part of the building procedure. Without getting technical, the chemical process, I understand on the evidence, is equivalent to its being consumed and incorporated in the course of construction. The same reasoning applies to the item of labour and materials to install the tanks, pipes and heaters. Cigas, as I find, is in the position of a subcontractor to do such work and, in a limited sense, to do such work upon and to furnish such materials as the pipes, the fittings and the blocks for the installation of the equipment. Cigas supplied its own workmen under its supervision and paid them for the installation labour. Next, the blocks, pipes and fittings are not recoverable or re-usable, but remain on the lands of the defendant Tamarisk."

[11] Counsel for the appellants, in submitting that Burmac and Cigas do not come within s.4(1) cite several cases, the general purport of which is that there must be a direct relationship between the performance of services or consumption of materials and the construction of an improvement. In reading these cases it appears to me that none of them included a discussion of words such as "in respect of". For the purpose of analysis I will deal with some of these cases.

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[12] The first is *Evergreen Irrigation Ltd. v. Belgium Farms Ltd.* (1976) 3 A.R. 238. This case dealt with the meaning of "improvement" in the Alberta Act and found that an irrigation system not attached to or buried in the ground was not an improvement. The case appears to me to be irrelevant because it is not contended that any of the portable buildings constitute an improvement or that the gas extraction plant was not an improvement. Accordingly the issue is not related to the meaning of improvement, but to whether the work was done and the materials were used "in respect of" the improvement, i.e. the gas extraction plant.

[13] This Division dealt with *The Builders' Lien Act* in *Hett et al v. Samoth Realty Projects Ltd.* (1977) 3 A.L.R. (2d) 97. The issue in this case was to determine the type of services included in the phrase "services upon the improvement". Lieberman, J.A. said at 105:

> "Although it is clear that services need not be physically performed upon the improvement to fall within the meaning of the Act they must in my judgment be directly related to the process of construction. Surely inspiration, the development of concepts, logistics, applications for zoning, legal services, or accounting services, do not fall within 'services upon the improvement' as those words are defined by the case law, and this is so even within the wide meaning attributed to that phrase in the *Inglewood* case.
>
> In my view the services of an architect are as they affect the construction process distinguishable from the services performed by the appellant. They are an integral and necessary part of the actual physical construction of the project. They are set out in the plans and specifications which are to be followed by those persons doing the actual construction and they are, therefore, related directly to it. The appellant's services, although they undoubtedly contribute to the total project, are not, in my judgment, so directly related to the construction process as to fall within 'services upon the improvement' as those words are used in the Act.
>
> Unless some limit is put upon the meaning of 'services' in the Act it would be open to any person, such as a lawyer, an accountant, a sociologist or a statistician, whose work contributed in any way to the total project to file a lien under the Act. This result is certainly not the intent of the Act, nor does it stand the test of strict interpretation."

[14] It appears to me that Lieberman, J.A.'s concern with placing a limit upon the meaning of "services" in order to give the Act its intended effect applies equally well to the concept of work done or materials furnished under s.4(1). However, the test which he applied in order to define this limit (i.e., a direct relation to the process of construction) may not be appropriate in this context. Services must be performed "upon the improvement". Work may be done "upon <u>or in respect of</u>" the improvement, and materials may be used "in <u>or in respect of</u>" the improvement. If any meaning is to be given to the words "in respect

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of" it may be that a more liberal test should be used in defining the limitations of work and materials than is applicable with regard to services.

[15] Next are cited two decisions dealing with the New Brunswick legislation. The first is a decision of the Appeal Division; *R.A. Corbett & Co. Ltd. v. Phillips* (1972) 5 N.B.R. (2d) 499. The legislation in this case allowed a lien for materials "used in an improvement". Bugold, J.A. held that plywood forms used during the process of pouring concrete and then removed were not materials used in an improvement because they were not attached to the realty nor intended to become part thereof. The legislation in question made no reference to materials used in respect of an improvement. Likewise, in *E.E. McCoy et al v. Venus Electric Ltd.* (1977) 19 N.B.R. (2d) 299, it was held that plastic vapour barrier used in connection with welding and then thrown away did not give rise to a lien. Again, of course, the legislation gave a lien only in respect of material used in an improvement.

[16] Next the appellant relies upon *Hubert v. Shinder et al* [1952] O.W.N. 147. In this case Hope, J.A. held that work and materials supplied for the installation of laundry machines, since the laundry machines were not part of an improvement to the building, did not give rise to a lien and thus "the materials supplied and the work in the installation of such materials were respectively moveables and work in the installation of the moveables and neither could be classed as 'used in the making, constructing, erecting, fitting, altering, improving or repairing of the erection of the building in question …" This case is not analagous to the case at bar since the moveables which were serviced (the laundry machines) were in no way related to the construction of the actual improvement (the building), while in the case at bar the moveables which were serviced, i.e. portable buildings, are at least arguably related to the construction of the actual improvement, namely the gas extraction plant.

[17] The decision of the Appellate Division of the Supreme Court of Alberta in *McFarland v. Greenbank* [1939] 1 W.W.R. 572, was also relied on. This case deals with the question of whether an oil well had to be annexed to the realty in order to be an improvement so that a lien might attach to it. In my opinion this case is irrelevant because the meaning of "improvement" is not an issue here, as I pointed out in discussing *Evergreen Irrigation Ltd., supra,* and further, because it is not submitted that the liens of Burmac and Cigas should attach to the portable units.

[18] The appellants also rely upon the case of *Re Bodner Road Construction Ltd.* (1963) 43 W.W.R. 641. In this case Nitikman, J. held at p. 654:

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> "Gasoline and oil supplied to, and consumed by, machines engaged in the construction of the work is surely a furnishing of materials used in the construction of such work. It is used in the course of construction and is entirely consumed in such course of construction. In that sense I can see no distinction between it and the dynamite used in the excavation of the ditch referred to in the *Turney* case *supra,* or the supplying of coal used partly for running the engine operating the hoist on which materials used in the construction of a building were elevated as in the *Wortman v. Frid Lewis* case, *supra.*
>
> The term 'construction or course of construction' in my opinion includes the work done by machines employed in such construction or course of construction, and gasoline and oil used by these machines during such work are, accordingly, covered by the term 'material used in the construction of the work.'
>
> I point out that in reference to machines used in construction or in the course of construction of the work I have in mind machines such as graders, rollers or excavators or other machines actually working on the road and drain and not: (a) Machines used in bringing workmen and the contractor's equipment to the site; or (b) Machines used in bringing gravel or other material to the site. Gasoline and oil supplied for these last two mentioned categories would not be lienable."

It appears to me that Nitikman, J. applied to a lien for materials the same type of test applied by Lieberman, J.A. with regard to a lien for services in *Rett et al, supra,* that is, there must be a direct relation to the process of construction. I must, however, point out that the legislative provision in question contained no words such as "in respect of". In Manitoba a lien was provided only in respect of materials "to be used in the making, constructing … of any erection, building …"

[19] There are, however, a number of cases that do deal with substantially similar legislation where there are words such as "in respect of" used. The first of these cases is *Davis et al v. The Crown Point Mining Co.* (1901) 3 O.L.R. 69. The legislation in question in that case provided as follows:

> "Section 4 of our Act, R.S.O. ch. 153, is *very* wide, as it gives to 'any person who performs any work or service upon, *or in respect of, …* any building, … mine, etc.,… shall by virtue thereof have a lien for the price of such work, service or materials upon the erection, building,… mine,' etc."

MacMahon, J. held that this wording meant that a blacksmith employed for sharpening and keeping tools in order for the work of mining was entitled to a lien for his wages, but that a cook who did the cooking for the men employed was not so entitled. He said at pp.70-71:

> "It was necessary that the workmen at the mine should be fed, but the cooking of food could not be regarded as 'any work or service upon or in respect of the mine.'
>
> In *McCormick v. Los Angeles City Hater Co.* (1870), 40 Cal. 185, the plaintiff was employed by the contractor or superintendent to cook for the men engaged in excavating the reservoir, and the cooking was done on the ground, as the work progressed. It was held that the plaintiff was not entitled to a lien. The Court said: 'If

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any lien exists, it arises not from the place where the cooking was done, but from the nature of the services and its relation to the work which was being constructed. If the plaintiff can assert a lien on the facts proved, he could as well have done so had the cooking been performed at any other place; and the mere fact that a person is employed to cook for labourers engaged in erecting a building entitled him to a lien the same result would follow if he had furnished the provisions also.': p. 187".

[20] Further, in *McLean v. McDonald* (1909) 11 W.L.R. 262, Craig, J. made the following comments at pp. 265-266 with regard to the meaning of the phrase "in respect to":

> "The meaning of the words 'in respect to' is, it seems to me, clear, meaning 'in reference to' or 'pertaining to': and such cases as the one I have cited bear upon those words, and mean that the work shall have direct relation to the claim or to the mine, the distinction in that case being that work done by a blacksmith in sharpening steels for work on the mine itself is work which would entitle the blacksmith to a lien, whereas a cook who boarded the men off the claim was not so held entitled. Of course, these are fine distinctions, but I think they are proper distinctions to make."

[21] However, there is an earlier decision of this Division which appears to me to be determinative of the matter. In *Hutchinson et al v. Berridge et al* [1922] 2 W.W.R. 710, the Appellate Division dealt with *The Mechanics' Lien Act* of Alberta in force at that time. The statute provided a lien to "every … labourer doing or causing work to be done upon … or in connection with" the excavating, etc. of land in respect of a mine. Clarke, J.A., speaking for the majority, considered the claim of a bull cook to a lien for work done. At p. 714 he stated:

> "This plaintiff is described in the evidence as a bull cook for the camp, taking care of the bunk houses, wash house, hauling coal around to the places and keeping things warm and clean. He was employed by the company, and it is to be assumed that the expense incurred for his services was necessary for the undertaking of opening up the mine. That being so it is difficult to see why there should be any distinction made between his right to a lien and that of a labourer who handles a spade in the tunnels or on the railway. Both are necessary and both devote their time and strength for the benefit of the undertaking."

Further he went on at p. 715:

> "I think the work of this bull cook was work in connection with the excavating, etc. If it were intended to confine the benefit to those who do the actual work of excavating, etc., there was no object in adding these words 'in connection with'. The only other condition is that the work should be done at the request of the owner which I have already dealt with."

[22] Although Mr. Justice Hyndman dissented on this point and would have followed *Davis v. Crown Point Mining Co., supra,* it appears to me that this decision is binding upon us.

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[23] It is true that the words of the earlier Alberta Act were "in connection with" the mine. However, the words "in respect of" an improvement must have some meaning. They clearly enlarge the area in which a lien may be claimed. It is true that it is necessary to cut the remedy off at some point. However, to cut it off here would enable the person who rented the buildings to Parkland to maintain a lien but the persons who made the buildings livable and useable would be unable to do so. In my respectful opinion that is an undesirable result. Here the whole of the work and the materials were supplied to Parkland to enable it to carry out its contract with respect to catering services and sleeping accommodation which the contractors and owners deemed necessary to enable them to expeditiously construct the plant. In my opinion these services and materials were supplied "in respect of" the improvement. I would dismiss the appeal with costs.

Dated at Edmonton, Alberta.
this 19th day of December, 1979.

REASONS FOR JUDGMENT
OF THE HONOURABLE MR. JUSTICE McDERMID

[24] I have had the privilege of reading the judgment of my brother Moir. I agree with him that the judgment in *Hutchinson et al v. Berridge et al* (1922) 2 W.W.R. 710 is binding on us. I can see no difference between the words used in the Mechanics' Lien Act which was the statute under consideration in that case and the relevant words in the Builders' Lien Act which is the statute in this case. If the majority decision was not binding on us, I would be more inclined to agree with the dissenting judgment of Hyndman J.A. The work in that case was being performed for workmen who in turn were performing work upon the improvement. Here the same situation prevails, the work was performed and materials supplied for workmen who in turn were performing work upon the improvement. I think in such a case such secondary work and the materials must be actually supplied on the land on which the improvement is being constructed. The materials must also be consumed in the construction process as stated in *clarkson Co. Ltd. et al v. Ace Lumber Ltd. et al* (1963) S.C.R. 110. So if the secondary work and materials had been performed off the land on which the improvement was being erected, they would not have supported a lien. For example if the workmen had been fed at a boarding house situated on lands other than the lands against which the lien was to be filed and their board was to be paid for by the subcontractor, the boarding house keeper could not file a lien. The Legislature must have intended that there be a cut off somewhere, and in respect of such secondary work and materials I would make the cut off when such work was done or materials were

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supplied off the land, as being too remote. Such cut off would not apply to services done off the land directly related to the improvement such as in *Hett et al v. Samoth Realty Projects Ltd.* (1977) 3 A.L.R. 97.

[25] I agree with the disposition of this appeal made by my brother Moir.

DATED at EDMONTON, Alberta,
the 19th day of December, 1979.

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SCHEDULE "A"
TO THE LIEN NOTICE OF RBEE AGGREGATE CONSULTING LTD.

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	**AFFIDAVIT**
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

AFFIDAVIT OF DAVID HOWELLS

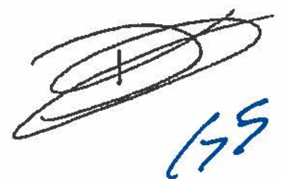
Sworn on May 29, 2020

I, David Howells, of the City of Fort Saskatchewan, in the Province of Alberta, SWEAR OATH AND SAY THAT:

1. I am a Director and Vice President of the Claimant, RBEE Aggregate Consulting Ltd. ("RBEE"), and as such I have personal knowledge of the facts and matters hereinafter deposed to, except where stated otherwise, in which case I believe the same to be true.

2. I understand from my review of the records herein, and I do believe, that JMB Crushing Systems Inc. ("JMB") was a party to an agreement with The Municipal District of Bonnyville No. 87 (the "Municipality") dated November 1, 2013 (the "Prime Contract"). Pursuant to the Prime Contract, JMB was to perform certain services for the Municipality, including crushing rock and gravel.

3. On around February 25, 2020, RBEE entered into a Subcontractor Services Agreement with JMB (the "Subcontractor Agreement"). Pursuant to the Subcontract Agreement, RBEE agreed to perform services on behalf of JMB under the Prime Contract. A copy of the Subcontractor Agreement is attached to this Affidavit as **Exhibit "A"**.



Lands

The Shankowski Pit

4. Pursuant to the Subcontractor Agreement, RBEE's services consisted of crushing rock and gravel (the "Services"), at a site located within St. Paul County No. 19 approximately 10 km southwest of the Town of Elk Point, referred to in the Subcontractor Agreement as the "Shankowski Pit".

5. In the Subcontractor Agreement, JMB represented to RBEE that it was the owner of the Shankowski Pit, identified therein as being located at SW 21-56-7-4, being the SW Quarter of Section 21, Township 56, Range 7, West of the 4th Meridian.

6. Attached to this Affidavit as **Exhibit "B"** is a satellite image of the Shankowski Pit captured from Google Maps.

7. Attached to this Affidavit as **Exhibit "C"** is a map evidencing the registered owners of the lands located at Sections 16, 17, 20, and 21 of Township 56, Range 7, West of the 4th Meridian.

8. Based on my review of Exhibits "B" and "C", I believe that RBEE's Services in respect of the Shankowski Pit were conducted upon multiple titled parcels of land, including:

   (a) The Northwest and Southwest Quarters of Section 21 (NW 21-56-7-4; SW 21-56-7-4), identified at Exhibit "C" as being owned by Shankowski, J (the "Shankowski Land"); and

   (b) The Northwest Quarter of Section 16 (NW 16-56-7-4), identified at Exhibit "C" as being owned by Havener, G&H (the "Havener Land").

9. The Shankowski Land is legally described as:

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

10. Attached to this Affidavit as **Exhibit "D"** is a copy of a certificate of title to the Shankowski Land.

11. The Havener Land is legally described as:

    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

12. Attached to this Affidavit as **Exhibit "E"** is a certificate of title to the Havener Land.

13. The Certificate of Title to the Havener Land also evidences the registration of a caveat in respect of a royalty agreement by JMB as registration no. 002 170 374 on June 20, 2000 (the "Caveat"). A copy of the Caveat is attached to this Affidavit as **Exhibit "F"**.

The Municipality Lands

14. The aggregate rock and gravel that was crushed by JBEE is being delivered to lands owned by the Municipality and located within the Municipality at the Northeast Quarter of Section 19, Township 61, Range 5, West of the 4th Meridian (the "Municipality Lands").

15. Title to the quarter section of land that makes up the Municipality Lands consists of three registered plans (road, descriptive, and subdivision), and a title for the entire quarter section excepting those registered plans.

16. Attached to this Affidavit as **Exhibit "G"** is a map of the Municipality Lands captured from the Alberta Land Titles and Surveys Spatial Information System.

17. Attached to this Affidavit as **Exhibit "H"** is a certificate of title to lands identified at Exhibit "G" and owned by the Municipality, legally described as:

    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")

18. Attached to this Affidavit as **Exhibit "I"** is a certificate of title to lands identified at Exhibit "G" and owned by the Municipality, legally described as:

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")

19. Based on my review of Exhibits "G", "H", and "I", I believe that the aggregate rock and gravel excavated by RBEE was deposited upon the Municipality Lands at either, or both, of the Plan 0928625 Land and the Municipality Quarter Section.

Invoices and Amounts Unpaid

20. RBEE performed its Services pursuant to the Subcontractor Agreement and rendered invoices for its Services to JMB.

21. In accordance with the Subcontractor Agreement, RBEE rendered the following invoices for its Services:

Date	Invoice	Invoice Total	Invoice Total (w/ GST)
March 2, 2020	259	$236,196.00	$248,005.80
March 31, 2020	266	$663,804.00	$696,994.20
April 16, 2020	270	$474,428.00	$498,149.40
May 10, 2020	278	$72,045.82	$75,648.11
	Total	**$1,446,473.82**	**$1,518,797.51**

(collectively, the "Invoices")

22. Attached to this Affidavit as **Exhibit "J"** are copies of the Invoices.

23. On or around April 3, 2020, RBEE received payment from JMB in respect of Invoice #259 in the full amount of **$248,005.80**, inclusive of GST.

24. No further payment has been received by RBEE, and the remainder of the Invoices remain outstanding in the sum of **$1,270,791.71**, inclusive of GST.

25. Attached to this Affidavit as **Exhibit "K"** is an Application for Progress Payment prepared by JMB and dated May 10, 2020, evidencing that RBEE had performed Services to date of $1,446,473.82 before GST, or $1,518,797.51 inclusive of GST.

26. RBEE last provided its Services to the Shankowski Pit on April 6, 2020.

27. I understand that, as of the date of this Affidavit, the aggregate rock and gravel crushed by JBEE continues to be transported from the Shankowski Pit to the Municipality Lands.

Liens

Shankowski Pit

28. On May 15, 2020, RBEE registered a builder's lien at the Alberta Land Titles Office as registration No. 202 106 447 against the Shankowski Land.

29. Attached to this Affidavit as **Exhibit "L"** is a copy of RBEE's builder's lien registered against the Shankowski Land.

30. On May 15, 2020, RBEE registered a builder's lien at the Alberta Land Titles Office as registration No. 202 106 449 against the Havener Land.

31. Attached to this Affidavit as **Exhibit "M"** is a copy of RBEE's lien registered against the Havener Land.

32. RBEE also claims a builders' lien against JMB's registered interest in the Havener Land.

33. Accordingly, in addition to the liens filed by RBEE, RBEE seeks to enforce all rights and remedies ordinarily available to it under the *Builders' Lien Act* in respect of JMB's interest in the Havener Land as evidenced by the Caveat.

Municipality Lands

34. On May 15, 2020, RBEE registered a builder's lien at the Alberta Land Titles Office as registration No. 202 106 439 against the Plan 0928625 Land.

35. Attached to this Affidavit as **Exhibit "N"** is a copy of RBEE's lien registered against the Plan 0928625 Land.

36. RBEE also claims a builder's lien against the Municipality Quarter Section.

37. I have reviewed certain materials filed in the within action, including the Order pronounced by Justice K.M. Eidsvik on May 20, 2020 and filed in the within action on May 21, 2020 (the "Lien Claims Order")

38. Paragraph 3(k) of the Lien Claims Order defines the "Lands" to which the Lien Claims Order applies to mean the Municipality Quarter Section.

39. Accordingly, in addition to the liens filed by RBEE to date, RBEE seeks to enforce all rights and remedies ordinarily available to it under the *Builders' Lien Act* with respect to the Municipality Quarter Section (defined in the Lien Claim Order as the "Lands").

40. I make this affidavit in support of the Notice of RBEE Aggregate Consulting Ltd. in response to the Lien Claim Order.

41. I swear this Affidavit despite not being physically present before the commissioner, but having been linked with the commissioner utilizing video technology and following the process described in the Notice to Profession NPP#2020-01: Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During the COVID-19 Pandemic.

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SWORN BEFORE ME at the City of Edmonton, in the Province of Alberta this 29th day of May, 2020	))))))))	
Commissioner for Oaths in and for the Province of Alberta		**DAVID HOWELLS**

Graham W. Sanson
Barrister & Solicitor

This is **Exhibit "A"** referred to in the
Affidavit of

DAVID HOWELLS

Sworn before me this 29th day
of May, 2020

A Commissioner for Oaths in and
for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor

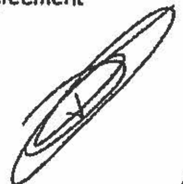
/

SUBCONTRACTOR SERVICES AGREEMENT

JMB CRUSHING SYSTEMS INC.

&

R BEE AGGREGATE CONSULTING LTD.



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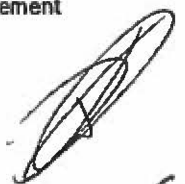

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SCHEDULE A SERVICES

SCHEDULE B FEES

SCHEDULE C FORM OF STATUTORY DECLARATION

SUBCONTRACTOR SERVICES AGREEMENT

(JMB Contract No. C397-001)

THIS AGREEMENT is effective the 25th day of February, 2020.

BETWEEN:

JMB CRUSHING SYSTEMS INC., a body corporate having an office in the Town of Bonnyville in the Province of Alberta

(the "**Company**")

AND:

R BEE AGGREGATE CONSULTING LTD., a body corporate having an office in the Town of Gibbons in the Province of Alberta

(the "**Subcontractor**")

WHEREAS:

A. the Company is a party to a terms and conditions agreement dated **November 1, 2013** with **The Municipal District of Bonnyville No. 87**, as amended from time to time thereafter, in respect of certain services (the "**Prime Contract**");

B. the Company wishes to engage the Subcontractor as subcontractor to provide certain services, being the Services, for the Company under the Prime Contract at the direction of the Company's designate; and

C. the Company and the Subcontractor have agreed to enter into this Agreement to provide for the terms and conditions of such engagement.

THEREFORE in consideration of the agreements and covenants set out in this Agreement, the Company and the Subcontractor agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

"**Agreement**" means this subcontractor services agreement, including all Schedules attached hereto;

"**Business Day**" means any day other than Saturday, Sunday or statutory holiday in the Province of Alberta;

"**COR**" has the meaning set out in Section 2.7(a);

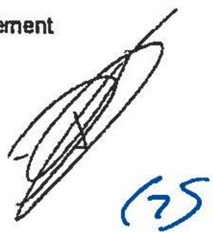
"**Des 1 Class 12.5**" has the meaning set out in Schedule A;

"**Des 2 Class 16**" has the meaning set out in Schedule A;

"**Fees**" has the meaning set out in Section 3.1;

"**Holdback Amount**" has the meaning set out in Section 3.2(b);

"**Notice**" has the meaning set out in Section 8.11;



"**Parties**" means the Company and the Subcontractor, and "**Party**" means any one of them;

"**Prime Contract**" has the meaning set out in recital A;

"**Product**" or "**Products**" means the products produced from the Subcontractor's performance of the Services, being Des 1 Class 12.5 and/or Des 2 Class 16, as context requires.

"**Services**" means the services to be performed by the Subcontractor pursuant to this Agreement in respect of the production of the Products, as described in Schedule A attached hereto together with all other services, functions and responsibilities described in this Agreement and all ancillary services required to provide such services;

"**Statutory Declaration**" means a statutory declaration materially in the form as set forth in Schedule C, confirming that in respect of the invoiced Services, the Subcontractor has carried out its obligations hereunder and with respect to any applicable third party creditors; and

"**Work Package**" has the meaning set out in Schedule A.

1.2 Construction and Interpretation

In this Agreement, including the recitals to this Agreement, except where expressly stated to the contrary or the context otherwise requires:

(a) the recitals and headings to Sections and Schedules are for convenience only and will not affect the interpretation of this Agreement;

(b) each reference in this Agreement to "**Section**" and "**Schedule**" is to a Section of, and a Schedule to, this Agreement;

(c) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to any regulations, rules, policies and criteria made under that statute and any successor statute, each as amended or re-enacted from time to time;

(d) words importing the singular include the plural and vice versa and words importing gender include all genders;

(e) all references to amounts of money mean lawful currency of Canada;

(f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with Canadian generally accepted accounting principles consistently applied;

(g) the word "written" includes printed, typewritten, faxed, e-mailed or otherwise capable of being visibly reproduced at the point of reception and "in writing" has a corresponding meaning;

(h) the words "include" and "including" are to be construed as meaning "including, without limitation"; and

(i) this Agreement shall be construed as though both Parties drafted it.

1.3 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable in therein.

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2. SERVICES

2.1 Appointment

The Company hereby appoints the Subcontractor, and the Subcontractor hereby accepts the appointment, to perform the Services set out in Schedule A at the direction of the Company's representative set forth in Section 8.11. For greater certainty, nothing in this Agreement will purport to: (a) grant any right, power or authority, on behalf of or in the name of the Company, to participate in the management, direction or control of the Company or to relieve the Company of its obligations; and (b) provide the Subcontractor with any rights or title to the property of the Company for which the Services are being provided.

2.2 Application of the Prime Contract

The Company confirms that all relevant information and terms and conditions applicable to the Services from the Prime Contract have been made available to the Subcontractor or incorporated into Schedule A attached hereto. The Subcontractor confirms that such information, terms and conditions from the Prime Contract shall apply to this Agreement and that the Subcontractor shall comply and discharge all such subcontracted obligations under the Prime Contract, including in accordance with Schedule A. In the event any amendments to the Prime Contract that are applicable to the Services are agreed by the Company and its counterparty under the Prime Contract, the Company shall provide a reasonably detailed Notice thereof to the Subcontractor, and such amendments to the Prime Contract shall apply hereto. In the event of any conflict between the Prime Contract and this Agreement, the terms and conditions of this Agreement shall prevail, but only as necessary to resolve such conflict.

2.3 Term

This Agreement will be effective from the effective date until the earlier of:

(a) the date on which each of the Subcontractor and the Company have fulfilled their obligations pursuant to this Agreement and any duties so subcontracted by Company to the Subcontractor under the Prime Contract, including the completion of the Services for both Work Packages, to the satisfaction of the Company, as confirmed by the Company by Notice; and

(b) the date this Agreement is terminated in accordance with Section 4.

2.4 Standard of Care

The Subcontractor shall, at its expense, use reasonable efforts to ensure that: (a) the Services are performed continuously and diligently and in a good and workmanlike manner with a level of effort and a degree of care, skill and diligence normally provided by a qualified and experienced industry participant performing services similar to the Services in relation to services similar to those described in the Prime Contract and this Agreement; (b) no person, property, right or privilege is injured, damaged or infringed by reason of the activities of the Subcontractor or any member of its personnel, whether it is an employee, director, officer, agent or other representative of the Subcontractor, in the performance of the Services or any part thereof; (c) the health and safety of all persons employed in the performance of the Services is not endangered; and (d) any liens registered in any way relating to the Services are promptly vacated and discharged therefrom and any litigation against the Company pertaining thereto is immediately released. The Company may direct the Subcontractor to do such things or to refrain from doing anything which the Company considers reasonable and necessary to promote the objectives of this Section 2.4 and the Subcontractor shall at its expense comply with all such directions.

2.5 Subcontractor's Representations

The Subcontractor represents and warrants to the Company that:

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(a) it has and will have over the entire term of this Agreement the necessary personnel, office, equipment, organization, professional qualifications, permits, licences and expertise in order to provide the Services according to generally prevailing industry standards;

(b) it shall act only in the best interests of the Company in carrying out its responsibilities, duties and obligations under this Agreement;

(c) it is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution and delivery of this Agreement and the performance of the Subcontractor's obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the Subcontractor; and

(d) it is not a party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, collective agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, licence, permit or law which would be violated, contravened or breached as a result of the execution and delivery of this Agreement or the performance by the Subcontractor of any of its obligations under this Agreement.

2.6 Compliance with Company Policies

The Subcontractor acknowledges and agrees that it will comply with all relevant policies and procedures of the Company, including with respect to health and safety practices, in its performance of the Services pursuant to this Agreement, and that it has had a chance to review same to its satisfaction prior to executing this Agreement.

2.7 Subcontractor's Certifications and Information

Prior to or concurrently with the execution of this Agreement, the Parties acknowledge and agree that the Subcontractor has provided reasonably satisfactory copies of the following to the Company:

(a) the Subcontractor's Certificate of Recognition ("COR") or Small Employer COR, issued by Alberta Labour and Alberta Association for Safety Partnerships;

(b) the Subcontractor's account number and coverage with the Workers' Compensation Board (Alberta); and

(c) proof of the Subcontractor's insurance coverage, which is in accordance with the requirements of Section 5.4.

2.8 Compliance with Laws

In performing the Services, the Subcontractor will comply with all applicable laws.

2.9 Qualified Personnel

The Subcontractor will provide professional personnel who have the qualifications, experience and capabilities to perform the Services.

2.10 Replace Personnel

If the Company reasonably objects to the performance, experience, qualifications or suitability of any of the Subcontractor's personnel then the Subcontractor will, on written request from the Company, replace such personnel, within 10 Business Days from the receipt of the written request from the Company.

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2.11 Independent Contractor

The Parties acknowledge that in entering into this Agreement and in performing the Services, the Subcontractor has and will have the status of an independent contractor and that nothing in this Agreement will contemplate or constitute the Subcontractor as a partner or employee of the Company for any purpose, and is exclusively a contract for service.

3. FEES AND PAYMENT

3.1 Fees

The Company will pay to the Subcontractor the fees and disbursements described in Schedule B (the "**Fees**") plus applicable taxes.

3.2 Payment Terms

(a) The Subcontractor will submit monthly invoices to the Company for Fees (plus all applicable taxes) related to Services provided in the previous month in respect of the Work Packages, along with a Statutory Declaration in each case. Subject to the Holdback Amount in accordance with Section 3.2(b), the Company will pay all invoices within the earlier of: (i) 45 days from the date of such invoice from the Subcontractor; and (ii) and 5 Business Days of the date of receipt by the Company of the corresponding payment from the counterparty under the Prime Contract. For certainty, the Company will have no obligation to pay the Subcontractor until Subcontractor has provided a Statutory Declaration in respect of any invoices for Fees.

(b) In the Company's payment of any Fee invoices issued by the Subcontractor hereunder for the provision of Services, the Company shall be entitled to withhold an amount equal to 10% of the invoiced Fees for both Work Packages (the "**Holdback Amount**"), which will be paid to the Subcontractor as follows:

(1) upon the completion of both Work Packages and in connection with the termination of this Agreement pursuant to Section 2.3(a), the Subcontractor will provide its final invoices for Fees of the Work Packages and a corresponding Statutory Declaration in accordance with Section 3.2(a);

(2) at any time, the Company shall be entitled to a reasonable period of time to conduct verification activities in respect of the Work Packages, including drone surveys and reviewing county scale tickets, with the Company acting in good faith to complete such verification to its reasonable satisfaction; provided that if the Company cannot verify the completion of the Work Packages to its reasonable satisfaction, the Subcontractor will cooperate, acting reasonably, to assist the Company in its verification; and

(3) upon the completion of Sections 3.2(b)(1) and 3.2(b)(2) to the Company's reasonable satisfaction, the Company shall pay the entire Holdback Amount to the Subcontractor in accordance with Section 4.4.

(c) If the Company disputes any portion of an invoice for Fees or cannot reasonably verify pursuant to Section 3.2(b)(2), then the Company shall notify the Subcontractor with details of the disputed amount and the Company may withhold the disputed amount, including, where applicable, portions of the Holdback Amount. For certainty, the Company is not

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required to pay Fees for Services that are not performed to the Product specifications and other requirements of this Agreement. Disputed amounts hereunder may be subject to adjustments, as agreed to in writing by the Parties from time to time. If the Company and Subcontractor cannot resolve such disputed amounts; then the issue shall be referred to dispute resolution in accordance with Section 6.

(d) The Subcontractor acknowledges that all costs and expenses directly and indirectly related to the performance of the Services are included within the applicable amounts paid by the Company through the Fees, which shall be the only amounts payable by the Company for the Services. From the Fees paid to the Subcontractor by the Company, the Subcontractor is deemed to hold the required amounts in trust that are required to pay for any salaries, wages, compensation, overtime pay, statutory holiday pay, vacation pay, entitlements, statutory withholdings and other required contributions and applicable taxes, and that the Subcontractor shall pay such foregoing amounts from such trust funds.

(e) The Company may set-off and deduct any amounts payable to the Subcontractor against any financial obligation that the Subcontractor owes to the Company.

3.3 Records

(a) If the Company reasonable requests, then the Subcontractor shall provide the Company daily, weekly, or monthly reports of labour hours by task, equipment hours and materials chargeable to the Company in accordance with Schedule B in connection with the Services. The Company shall approve or dispute in part or in whole such reports within 48 hours of receipt of the report otherwise it shall be deemed to be accepted.

(b) The Subcontractor will prepare and maintain proper records related to the Services, including records, receipts and invoices relating to disbursements. On request from the Company, the Subcontractor will make the records available open to audit examination by the Company at any time during regular business hours during the time the Subcontractor is providing the Services and for a period of 2 years after the expiry of this Agreement.

4. TERMINATION

4.1 Termination by Company

The Company may terminate this Agreement if the Subcontractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or if a receiver is appointed because of its insolvency, the Company may, without prejudice to any other right or remedy the Company may have, terminate this Agreement by giving the Subcontractor or receiver or trustee in bankruptcy Notice; or if the Subcontractor materially breaches its obligations under this Agreement and any such breach is not remedied to the reasonable satisfaction of the Company within 10 Business Days after delivery of Notice from the Company to the Subcontractor (or such longer period as may be agreed to by the Company), then the Company may, without prejudice to any other right or remedy the Company may have, terminate this Agreement by giving the Subcontractor further Notice.

4.2 Suspension of Services

At any time and without cause, the Company may suspend the Services or any portion thereof for a period of not more than ninety (90) days by Notice to the Subcontractor which will fix the date on which the Services will be resumed. The Subcontractor shall resume the Services on the date so fixed.

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4.3 Termination by Subcontractor

The Subcontractor may terminate this Agreement if the Company is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or if a receiver is appointed because of its insolvency, the Subcontractor may, without prejudice to any other right or remedy the Subcontractor may have, terminate this Agreement by giving the Company or receiver or trustee in bankruptcy Notice; or if the Company materially breaches its obligations under this Agreement and any such breach is not remedied to the reasonable satisfaction of the Subcontractor within 10 Business Days after delivery of Notice from the Subcontractor to the Company (or such longer period as may be agreed to by the Subcontractor), then the Subcontractor may, without prejudice to any other right or remedy the Subcontractor may have, terminate this Agreement by giving the Company further Notice.

4.4 Payment on Termination

Within sixty (60) days or in accordance with the invoicing process set forth in Section 3.2, termination of this Agreement in accordance with Sections 2.3(a), 4.1 or 4.3, the Company will pay the Subcontractor's outstanding and unpaid Fees for services rendered by the Subcontractor up to the effective date of termination, including the Holdback Amount; provided that if this Agreement is terminated by the Company pursuant Section 4.1, the Company shall be entitled to deduct reasonable costs incurred by the Company as a result of such termination from the amounts paid to the Subcontractor in connection with this Section 4.4.

5. INDEMNITY AND INSURANCE

5.1 Indemnification by Subcontractor

The Subcontractor will be liable to, and will as a separate and independent covenant, indemnify and save harmless the Company, its respective subsidiary and affiliated companies, and all of its directors, officers, employees, agents, representatives and indemnities, from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) which any of the Company's indemnified parties incur, suffer or are put to arising out of or in connection with:

(a) any failure, breach, misrepresentation, breach of representation or warranty or non-fulfillment of any covenant or obligation on the part of the Subcontractor under this Agreement or any wrongful or negligent act, error or omission of the Subcontractor or any official, director, employee, agent, sub-consultant or representative of the Subcontractor; and

(b) any and all claims, actions, suits, proceedings, demands, assessments, judgments, costs and legal and other expenses arising from third parties or incident to any of the matters in Section 5.1(a),

except to the extent caused or contributed by breach of any provision of this Agreement by the Company, its directors, officers, employees, agents or representatives or any negligent act, omission or willful misconduct of or by any of them.

5.2 Indemnification by Company

The Company will indemnify and save harmless the Subcontractor and all of its directors, officers, employees, agents, representatives and indemnities, from and against all claims, demands, causes of action, suits, losses, damages and costs, liabilities, expenses and judgments (including all actual legal costs) which the Subcontractor's indemnified parties incur, suffer or are put to arising out of or in connection with:

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(a) any wrongful or negligent act of the Company or any official, employee, agent of the Company (other than the Subcontractor); and

(b) any and all claims, actions, suits, proceedings, demands, assessments, judgments, costs and legal and other expenses arising from or incident to any of the matters in Section 5.2(a),

except to the extent caused or contributed by breach of any provision of this Agreement by or any negligent act, omission or willful misconduct of or by the Subcontractor, its directors, officers, employees, agents or representatives, indemnities or any of them.

5.3 Limitation of Liability

(a) The Subcontractor's maximum liability to the Company in connection with any claim made by the Company in respect of the Services or this Agreement will not exceed the total amount of Fees anticipated to be paid under this Agreement in connection with the Prime Contract.

(b) The Company's maximum liability to the Subcontractor in connection with any claim made by the Subcontractor in respect of this Agreement will not exceed the total amount of Fees anticipated to be paid under this Agreement in connection with the Prime Contract.

(c) Neither Party shall be obligated to indemnify the other Party or its respective representatives to the extent that any losses suffered by such indemnified Party are paid in settlement from any applicable insuance policy.

5.4 Insurance

The Subcontractor will at its own cost and expense at all times during the term of this Agreement and for twelve (12) months following the completion of this Agreement, maintain the following policies of insurance:

(a) comprehensive general liability insurance with a minimum of $5,000,000 each occurrence, covering personal injury (including death) and property loss or damage, which at a minimum cover liabilities associated with or arising from the Subcontractor's premises, property or operations, and broad form contractual liability;

(b) any applicable statutory workers' compensation insurance (as required in the jurisdiction where the Services are being performed or the employee is being employed) covering the Subcontractor's employees;

(c) Automobile liability insurance covering all licensed automotive equipment used in connection with the Services with a minimum amount per occurrence of not less than $5,000,000 covering the Subcontractor's automobiles; or as required by law, whichever is greater. Such insurance shall name the Company as Additional Insured; and

(d) "All Risk" insurance in respect of the Subcontractor's office, plant and construction equipment, including tools and mobile equipment owned, rented or leased by the Subcontractor and automobiles not forming part of the permanent project works. Such insurance shall contain an issuer's waiver of all rights of subrogation against the Company or Company's assigns. Any deductible that is taken by the Subcontractor shall be for the account of the Subcontractor and shall have no right to claim back or subrogate against the Company .

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5.5 No Consequential Damages

The liability of each Party with respect to a claim against the other under this Agreement is limited to direct damages only and neither Party will have any liability whatsoever for consequential or indirect loss or damage (such as, but not limited to, claims for loss of profit, revenue, production, business, contracts or opportunity and increased cost of capital, financing or overhead) incurred by the other Party except for third party damages of such other Party caused by the gross negligence or wilful misconduct of a Party.

6. DISPUTE RESOLUTION

Any disputes arising from this Agreement shall be settled through good faith negotiations between both Parties. In the case that no settlement can be reached through such negotiations, either Party may commence an action in respect of the dispute directly to the Courts of the Province of Alberta.

7. CONFIDENTIALITY

Confidential Information means all non-public information, whether disclosed before or after the effective date of this Agreement, that is conveyed from the one Party to the other, orally or in electronic or tangible form, or otherwise obtained by the receiving Party through observation or examination of the disclosing Party's operations or Confidential Information, and (i) is marked as "confidential," (ii) is orally designated by as "confidential" and confirmed in writing within thirty (30) days of disclosure, or (iii) due to the circumstances surrounding its disclosure would be reasonably construed as "confidential." Confidential Information does not include any information which (a) was rightfully in the possession of the Subcontractor prior to receiving it from the Company, (b) is independently developed by the Subcontractor without use of or reliance upon the Confidential Information from the Company, (c) was in the public domain at or subsequent to the time of disclosure (through no breach of the Subcontractor) or (d) is obtained in good faith from a third Party not under any obligation of confidentiality.

The Subcontractor acknowledges it has acquired and will acquire Confidential Information of the Company in connection with the performance of the Services. The Subcontractor shall:

(a) during the term of this Agreement and indefinitely thereafter, treat Confidential Information as strictly confidential and shall not disclose or permit the disclosure of Confidential Information except to those officers and employees of the Subcontractor with a need to know, and upon whom confidentiality obligations have been imposed, or except as required by law;

(b) during the term of this Agreement and for two years thereafter, not make use of Confidential Information other than as required for the sole and exclusive purpose of performing the Services; and

(c) promptly return to the Company, upon written request, or provide confirmation of destruction of, all Confidential Information.

8. GENERAL

8.1 Entire Agreement

This Agreement contains the entire agreement of the Parties regarding the performance of the Services and no understandings or agreements, oral or otherwise, exist between the Parties except as expressly set out in this Agreement.

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8.2 Amendment

This Agreement may be amended only by agreement in writing, signed by both Parties.

8.3 Changes

Changes to Schedule A – Services and Schedule B – Fees may occur from time to time. Such changes must be amended in writing and signed by both Parties.

8.4 Non-Exclusivity

The Parties acknowledge that this Agreement is non-exclusive and that either Party will be free, during and after the term of this Agreement, to engage or contract with third parties for the provision of services similar to the Services.

8.5 Independent Legal Counsel

The Parties acknowledge that they have each had the opportunity to obtain independent legal counsel with respect to the terms of this Agreement and that each Party has understood and accepted that advice and obtained such counsel or waived obtaining such counsel.

8.6 Assignment and Enurement

This Agreement shall not be assigned by either Party, without the prior consent of the other Party which shall not to be unreasonably withheld. This Agreement shall be binding upon the Parties respective administrators, trustees, receivers, successors and permitted assigns.

8.7 Unenforceability

If any provision of this Agreement is invalid or unenforceable, it will be severed from the Agreement and will not affect the enforceability or validity of the remaining provisions of the Agreement.

8.8 Waiver

No waiver by either Party of any breach by the other Party of any of its covenants, obligations and agreements will be a waiver of any subsequent breach or of any other covenant, obligation or agreement, nor will any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

8.9 Force Majeure

(a) In this Section 8.9, **"Event of Force Majeure"** means acts of God or public enemy, wars (declared or undeclared), revolution, riots, insurrections, civil commotions, fires, floods, slides, earthquakes, epidemics, quarantine restrictions, strikes or lockouts, including illegal work stoppages or slowdowns, or stop work orders issued by a court or statutory authorities (providing that such orders are not issued nor any such labour disputes occasioned as a result of an act or omission of either Party, or any one employed or retained by either Party), freight embargoes or power failures, or any event or circumstance which reasonably constitutes a material disabling event or circumstance, which is beyond the reasonable control of a Party, which does not arise from the neglect or default of a Party, and which results in material delay, interruption or failure by a Party in carrying out its duties, covenants or obligation under this Agreement, but which does not mean or include any delay caused by a Party's lack of funds or financial condition.

(b) If any Party is *bona fide* delayed or hindered in or prevented from the performance of any obligation, covenant or other act required under this Agreement, by reason of an Event of Force Majeure, the said Party will be relieved from the fulfillment of such obligation,

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covenant or act during the period of such interruption and the period for the performance of any such obligation, covenant or other act will be extended for a period equivalent to the period of such delay.

8.10 Language

All communication and documentation will be in English unless agreed otherwise.

8.11 Notices

Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Agreement (each, a "**Notice**") to a Party must be given in writing. A Notice may be given electronically by electronic mail, and will be validly given if transmitted on a Business Day by email addressed to the following Party:

<u>To the Company</u>:

JMB Crushing Systems Inc.

Attention: Jason Panter

Email: jasonpanter@jmbcrush.com

With a copy to: admin@jmbcrush.com

<u>To the Subcontractor</u>:

R Bee Aggregate Consulting Ltd.

Attention: David Howells

Email: david@rbcrushing.ca

or to any other e-mail address or individual that the Party designates in writing in accordance with this Section.

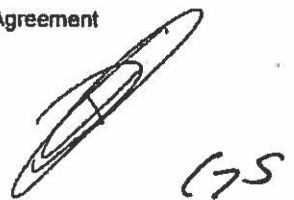
8.12 Time

Time is of the essence of this Agreement.

8.13 Counterparts

This Agreement may be executed in counterparts. Electronic signatures are binding and are considered to be original signatures.

(Signature page follows)



IN WITNESS WHEREOF the Parties have duly executed this Agreement effective as of the day and year first above written. March 4/20

COMPANY:	SUBCONTRACTOR
JMB CRUSHING SYSTEMS INC.	R BEE AGGREGATE CONSULTING LTD.
By ______ Authorized Representative	By ______ (PRES) Authorized Representative
By ______ Authorized Representative	By BERNIE REED. Authorized Representative
Jeff Buck President	

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SCHEDULE A

SERVICES

The Subcontractor shall provide the following services for and on behalf of the Company under the Prime Contract, which shall comprise the Services:

Products and Specifications

- The Subcontractor will perform crushing services of rock and gravel for the Company, with such rock and gravel sourced from the Company's properties and using only the Subcontractors equipment and tools, to produce the following aggregate Products in usable form, all as required by the Prime Contract:

  (1) Modified Designation 1 Class 12.5 mm in accordance with the following specifications in the table below from Alberta Transportation (**"Des 1 Class 12.5"**):

DESIGNATION		1
CLASS (MM)		12.5
PERCENT PASSING METRIC SIEVE (CGSB 8-GP-2M)	12 500	100
	10 000	83-92
	5000	55-70
	1250	26-45
	630	18-38
	315	12-30
	160	8-20
	80	4-20
% FRACTURE BY ALL WEIGHT (2 FACES) (All +5000)		60+
PLASITICITY INDEX (PI)		NP
L.A. ABRASION LOSS PERCENT MAXIMUM		40

  (2) Modified Designation 2 Class 16 mm in accordance with the following specifications in the table below from Alberta Transportation (**"Des 2 Class 16"**):

DESIGNATION		2
CLASS (MM)		16
PERCENT PASSING METRIC SIEVE (CGSB 8-GP-2M)	1600	100
	12 500	89-100
	10 000	78-94
	5000	55-70
	1250	26-45
	630	18-38
	315	12-30
	160	8-20
	80	4-10
% FRACTURE BY ALL WEIGHT (2 FACES) (All +5000)		60+
PLASITICITY INDEX (PI)		NP
L A ABRASION LOSS PERCENT MAXIMUM		50

- For certainty, the product specifications set out above, or otherwise agreed by the Parties in writing, shall be described generally as crushed gravel being Des 1 Class 12.5 and Des 2 Class 16.

- Upon completion of the crushing Services to the specifications as set forth above, the Subcontractor shall stockpile each of the Products separately on the Company's property, as directed by the Company from time to time and in accordance with good industry practices.

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Product Sourcing

- The Des 1 Class 12.5 Product will be sourced from the pit owned by the Company known as Shankowski and located at SW 21-56-7-4.
- The Des 2 Class 16 Product will be sourced from the pit owned by the Company known as Shankowski and located at SW 21-56-7-4.
- The Company will complete any required stripping work prior to the Subcontractor providing the Services.
- The Company will ensure reasonable access to the properties of the Company in relation to the provision of Services hereunder.

Product Quantity

- In completing the Services, the Subcontractor will crush and do any ancillary pit work (including gravel marshalling) to provide the following quantities of Products to the required specifications:

  (1) 50,000 tonnes of Des 1 Class 12.5; and

  (2) 150,000 tonnes of Des 2 Class 16

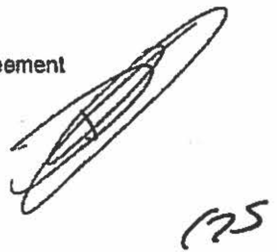
  For certainty, the completion of the Services by the Subcontractor for each Product in the quantities set forth in (1) and (2) above shall be each a "**Work Package**".

Timing of Services

- Prior to May 15, 2020, unless otherwise directed by the Company in writing from time to time, the Subcontractor shall complete both Work Packages to the Company's reasonable satisfaction, as required by this Agreement.

Quality Control

- The Subcontractor will ensure that the quality of the Products meet the specifications herein.
- The Subcontractor will ensure that the variances from the specifications for Products do not deviate more than two percent (2%) from the required specifications. If the variance from the Product specifications continues to deviate from the required specifications for more than two (2) samplings by the Company without satisfactory correction by the Subcontractor, until the required specifications are met to the satisfaction of the Company, the Company reserves the right to reject Products that do not meet the required specifications. Should such deviation occur the Company will notify the Subcontractor by Notice prior to any further action.
- The Subcontractor will cooperate reasonably with the Company to allow the Company to perform its required quality control activities pursuant to the Prime Contract.



SCHEDULE B

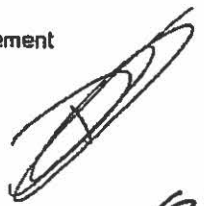
FEES

The Subcontractor shall be reimbursed on a cost basis for its Services at the following rates for each of the Products (always in accordance with the requirements of Schedule A):

(1) Des 1 Class 12.5: $11.00 per tonne

(2) Des 2 Class 16: $6.00 per tonne

For certainty, the Subcontractor shall not be entitled to any reimbursement or other disbursement aside from as set out above, unless the Company expressly agrees in writing prior to the date that such expenses are incurred by the Subcontractor.



SCHEDULE C

FORM OF STATUTORY DECLARATION

In respect of the Subcontractor Services Agreement (the "**Agreement**") dated _______________, 2020 between JMB Crushing Services Inc. (the "**Company**") and R Bee Aggregate Consulting Ltd. (the "**Subcontractor**")

TO WIT:

I, ____________________________________, in the ____________________________________, in the Province of Alberta, do solemny declare that:

1. I am an officer of the Subcontractor holding the office of ____________________________ and as such have personal knowledge of this Agreement and of the facts and matters stated herein;

2. the Subcontractor has discharged its obligations to date under the Agreement, subject to any listed exceptions below;

3. the Subcontractor has made full payment to all creditors for all labour, equipment, materials and services used in the performance of the Agreement to date, including to the Workers' Compensation Board and any applicable governmental authorities as required by law, subject to any listed exceptions below; and

4. there are no outstanding amounts or holdbacks retained from any such creditor, subject to any listed exceptions below.

Exceptions: **[No Exceptions]**

I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

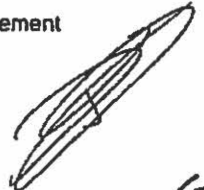
DATED ___________________

____
Signature of Declarant

DECLARED before me, ________________________, in the __________________________, in the Province of Alberta

DATED ___________________

____
A Commissioner for Oaths in and for the Province of Alberta



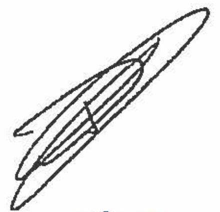
This is **Exhibit "B"** referred to in the
Affidavit of

DAVID HOWELLS

Sworn before me this 29th day
of May, 2020

A Commissioner for Oaths in and
for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor



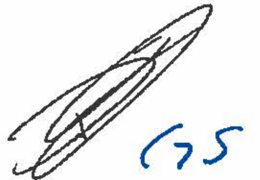
This is **Exhibit "C"** referred to in the
Affidavit of

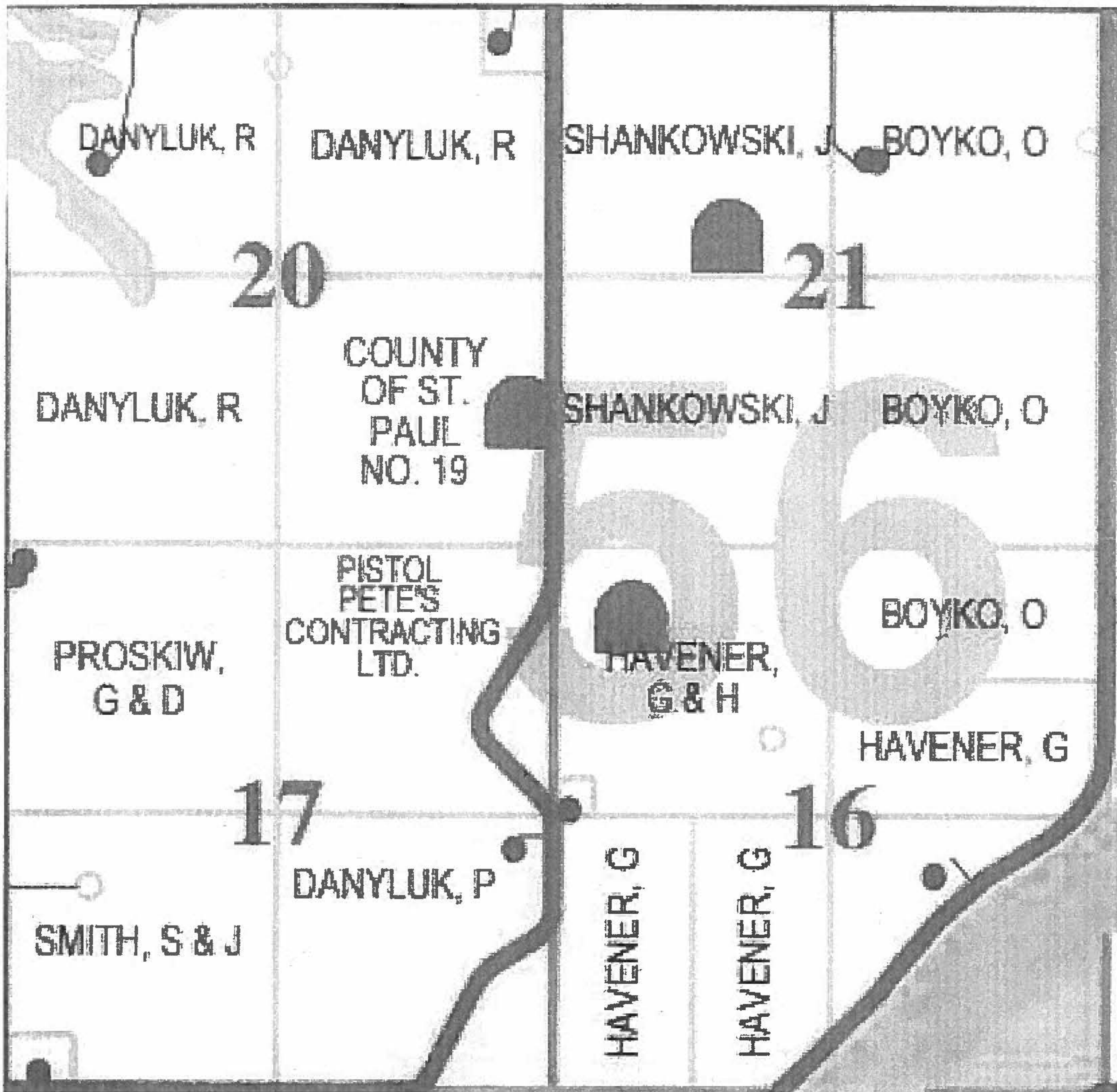
DAVID HOWELLS

Sworn before me this 29th day
of May, 2020

A Commissioner for Oaths in and
for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor




DANYLUK, R
DANYLUK, R
SHANKOWSKI, J
BOYKO, O
20
21
COUNTY OF ST. PAUL NO. 19
DANYLUK, R
SHANKOWSKI, J
BOYKO, O
PISTOL PETE'S CONTRACTING LTD.
PROSKIW, G & D
HAVENER, G & H
BOYKO, O
HAVENER, G
17
16
DANYLUK, P
SMITH, S & J
HAVENER, G
HAVENER, G
56

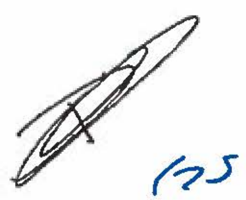
This is **Exhibit "D"** referred to in the
Affidavit of

DAVID HOWELLS

Sworn before me this 29th day
of May, 2020

A Commissioner for Oaths in and
for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor



CERTIFIED COPY OF

Certificate of Title

S

LINC	SHORT LEGAL
0037 711 520	4;7;56;21;NW
0037 711 538	4;7;56;21;SW

TITLE NUMBER: 172 269 783 +5
ROAD PLAN
DATE: 26/10/2017

AT THE TIME OF THIS CERTIFICATION

JERRY SHANKOWSKI
OF 7727-81 AVE NW
EDMONTON
ALBERTA T6C 0V4

IS THE OWNER OF AN ESTATE IN FEE SIMPLE
OF AND IN

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

SUBJECT TO THE ENCUMBRANCES,LIENS AND INTERESTS NOTIFIED BY MEMORANDUM UNDER-WRITTEN OR ENDORSED HEREON,OR WHICH MAY HEREAFTER BE MADE IN THE REGISTER.

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
862 021 825	30/01/1986	UTILITY RIGHT OF WAY GRANTEE - ALBERTA POWER LIMITED. AS TO PORTION OR PLAN:4286BM
972 235 435	08/08/1997	CAVEAT RE : RIGHT OF WAY AGREEMENT CAVEATOR - CANADIAN NATURAL RESOURCES LIMITED. BOX 6926, STATION "D" CALGARY

(CONTINUED)

CERTIFIED COPY OF

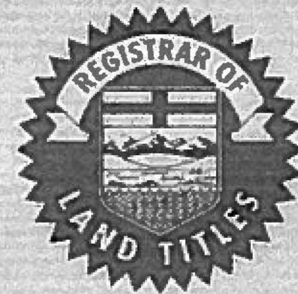
Certificate of Title

SHORT LEGAL 4;7;56;21;NW,SW
NAME JERRY SHANKOWSKI
NUMBER 172 269 783 +5

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		ALBERTA T2P3G1 AGENT - DONNA FELLOWS AFFECTED LAND: 4;7;56;21;SW (DATA UPDATED BY: CHANGE OF NAME 042462560)
202 104 972	13/05/2020	BUILDER'S LIEN LIENOR - J.R. PAINE & ASSOCIATES LTD. C/O SCOTT LAW 17505 106 AVE EDMONTON ALBERTA T5S1E7 AGENT - JOHN SCHRODER AMOUNT: $64,207
202 106 447	15/05/2020	BUILDER'S LIEN LIENOR - RBEE AGGREGATE CONSULTING LTD. C/O PUTNAM & LAWSON 9702-100 STREET MORINVILLE ALBERTA T8R1G3 AGENT - MAXWELL C PUTNAM AMOUNT: $1,270,791

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 15 DAY OF MAY ,2020



SUPPLEMENTARY INFORMATION

MUNICIPALITY: COUNTY OF ST. PAUL NO. 19
REFERENCE NUMBER:
152 341 245 +2
TOTAL INSTRUMENTS: 004

This is **Exhibit "E"** referred to in the Affidavit of

DAVID HOWELLS

Sworn before me this 29th day of May, 2020

A Commissioner for Oaths in and for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor

CERTIFIED COPY OF

Certificate of Title

S

LINC	SHORT LEGAL
0037 711 496	4;7;56;16;NW

TITLE NUMBER: 172 269 783 +2
ROAD PLAN
DATE: 16/10/2017

AT THE TIME OF THIS CERTIFICATION

HELEN HAVENER
OF BOX 598, ELK POINT
ALBERTA T0A 1A0
AS TO AN UNDIVIDED 1/2 INTEREST

GAIL CHARLENE HAVENER
OF BOX 608, ELK POINT
ALBERTA T0A 1A0
AS TO AN UNDIVIDED 1/2 INTEREST

ARE THE OWNERS OF AN ESTATE IN FEE SIMPLE
OF AND IN

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

SUBJECT TO THE ENCUMBRANCES, LIENS AND INTERESTS NOTIFIED BY MEMORANDUM UNDER-WRITTEN OR ENDORSED HEREON, OR WHICH MAY HEREAFTER BE MADE IN THE REGISTER.

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
882 162 859	19/07/1988	CAVEAT RE : EASEMENT CAVEATOR - JIMMY DAVID YARMUCH BOX 645 ELK POINT ALBERTA T0A1A0 (DATA UPDATED BY: TRANSFER OF CAVEAT 012383325)
972 003 876	06/01/1997	CAVEAT RE : SURFACE LEASE CAVEATOR - CANADIAN NATURAL RESOURCES LIMITED.

(CONTINUED)

C25

CERTIFIED COPY OF

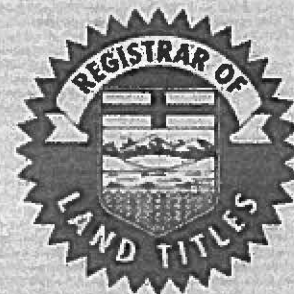
Certificate of Title

SHORT LEGAL 4;7;56;16;NW
NAME HELEN HAVENER ET AL
NUMBER 172 269 783 +2

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		BOX 6926, STATION "D" CALGARY ALBERTA T2P2G1 AGENT - DONNA FELLOWS (DATA UPDATED BY: CHANGE OF NAME 042462572)
972 229 534	05/08/1997	UTILITY RIGHT OF WAY GRANTEE - CANADIAN NATURAL RESOURCES LIMITED. BOX 6926, STATION "D" CALGARY ALBERTA T2P2G1 (DATA UPDATED BY: CHANGE OF NAME 042463878)
002 170 374	20/06/2000	CAVEAT RE : ROYALTY AGREEMENT CAVEATOR - JMB CRUSHING SYSTEMS LTD. P O BOX 478 ELK POINT ALBERTA T0A1A0
202 104 972	13/05/2020	BUILDER'S LIEN LIENOR - J.R. PAINE & ASSOCIATES LTD. C/O SCOTT LAW 17505 106 AVE EDMONTON ALBERTA T5S1E7 AGENT - JOHN SCHRODER AMOUNT: $64,207
202 106 449	15/05/2020	BUILDER'S LIEN LIENOR - REEE AGGREGATE CONSULTING LTD. C/O PUTNAM & LAWSON 9702-100 STREET MORINVILLE ALBERTA T8R1G3 AGENT - MAXWELL C PUTNAM AMOUNT: $1,270,791

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 15 DAY OF MAY ,2020



SUPPLEMENTARY INFORMATION

MUNICIPALITY: COUNTY OF ST. PAUL NO. 19
REFERENCE NUMBER:
072 148 823
TOTAL INSTRUMENTS: 005

175

This is **Exhibit "F"** referred to in the
Affidavit of

DAVID HOWELLS

Sworn before me this 29th day
of May, 2020

A Commissioner for Oaths in and
for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor

175

ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE

IMAGE OF DOCUMENT REGISTERED AS:

002170374

ORDER NUMBER: 39385587

ADVISORY

This electronic image is a reproduction of the original document registered at the Land Titles Office. Please compare the registration number on this coversheet with that on the attached document to ensure that you have received the correct document. Note that Land Titles Staff are not permitted to interpret the contents of this document.

Please contact the Land Titles Office at (780) 422-7874 if the image of the document is not legible.

002-A/2047-200

CAVEAT

TO THE REGISTRAR OF THE NORTH ALBERTA LAND REGISTRATION DISTRICT

TAKE NOTICE THAT JMB CRUSHING SYSTEMS LTD., of Box 478, Elk Point, Alberta, T0A 1A0 (the "Caveator"), claims an interest in the hereinafter described lands pursuant to an Aggregates Royalty Agreement, in writing, dated the 2nd day of March, A.D., 1999, between Roland Havener, also known as Roland John Havener, Helen Havener, Christopher Havener, also known as Christopher John Havener and Gail Havener, also known as Gail Charlene Havener as Vendors and the Caveator as Purchaser, in:

THE NORTH WEST QUARTER OF SECTION SIXTEEN (16)
TOWNSHIP FIFTY SIX (56)
RANGE SEVEN (7)
WEST OF THE FOURTH MERIDIAN
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT: A) 0.0004 HECTARES (0.001 ACRE) MORE OR LESS AS SHOWN ON ROAD PLAN 4286BM
B) ALL THAT PORTION OF THE SAID QUARTER SECTION DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTH WEST CORNER OF THE SAID QUARTER, THENCE EASTERLY ALONG THE SOUTH BOUNDARY ONE HUNDRED AND TEN (110) METRES, THENCE NORTHERLY AND PARALLEL TO THE WEST BOUNDARY TO THE SAID QUARTER ONE HUNDRED AND TEN (110) METRES, THENCE WESTERLY AND PARALLEL TO THE SAID SOUTH BOUNDARY TO THE POINT ON THE WEST BOUNDARY, THENCE SOUTHERLY ALONG THE SAID WEST BOUNDARY TO THE POINT OF COMMENCEMENT, CONTAINING 1.21 HECTARES (3 ACRES) MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS

Being lands described in Certificate of Title Number 952 082 260, standing in the register in the name of Roland John Havener, also known as Roland Havener, Helen Havener, Christopher John Havener, also known as Christopher Havener and Gail Charlene Havener, also known as Gail Havener and I forbid the registration of any person as transferee or owner of, or of any instrument affecting the said estate or interest, unless the instrument or Certificate of Title, as the case may be, is expressed to be subject to my claim.

I designate the following address as the place at which notices and proceedings relating hereto may be served: JMB Crushing Systems Ltd., P.O. Box 478, Elk Point, Alberta T0A 1A0.

002-1170374.001

In witness whereof I have hereunto subscribed my name this 13 day of June, A.D., 2000.

JMB CRUSHING SYSTEMS LTD.

Per:

Eugene Buck

002-1702474.002

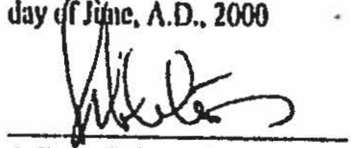
AFFIDAVIT IN SUPPORT OF CAVEAT

CANADA	) I, Eugene Buck
PROVINCE OF ALBERTA	) of the Town of Elk Point,
TO WIT:	) in the Province of Alberta
	MAKE OATH AND SAY AS FOLLOWS:

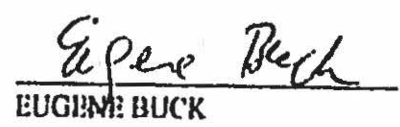
1. I am agent of the within-named Caveator.

2. I believe that the Caveator has a good and valid claim upon the said land and I say that this Caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal therewith.

SWORN BEFORE ME at the town of Elk Point, in the Province of Alberta, this 13 day of June, A.D., 2000)



A Commissioner for Oaths in and for the Province of Alberta



EUGENE BUCK

RICHARD R. HOLETON
BARRISTER & SOLICITOR

175

CAVI

Richard R. Holeton Profe
Box 14
ST. PAUL, /
TOA 3A
Phone: (780) 6
Fax: (780) 6

File: 23,48.

(75

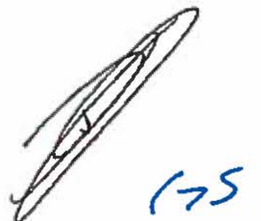
This is **Exhibit "G"** referred to in the Affidavit of

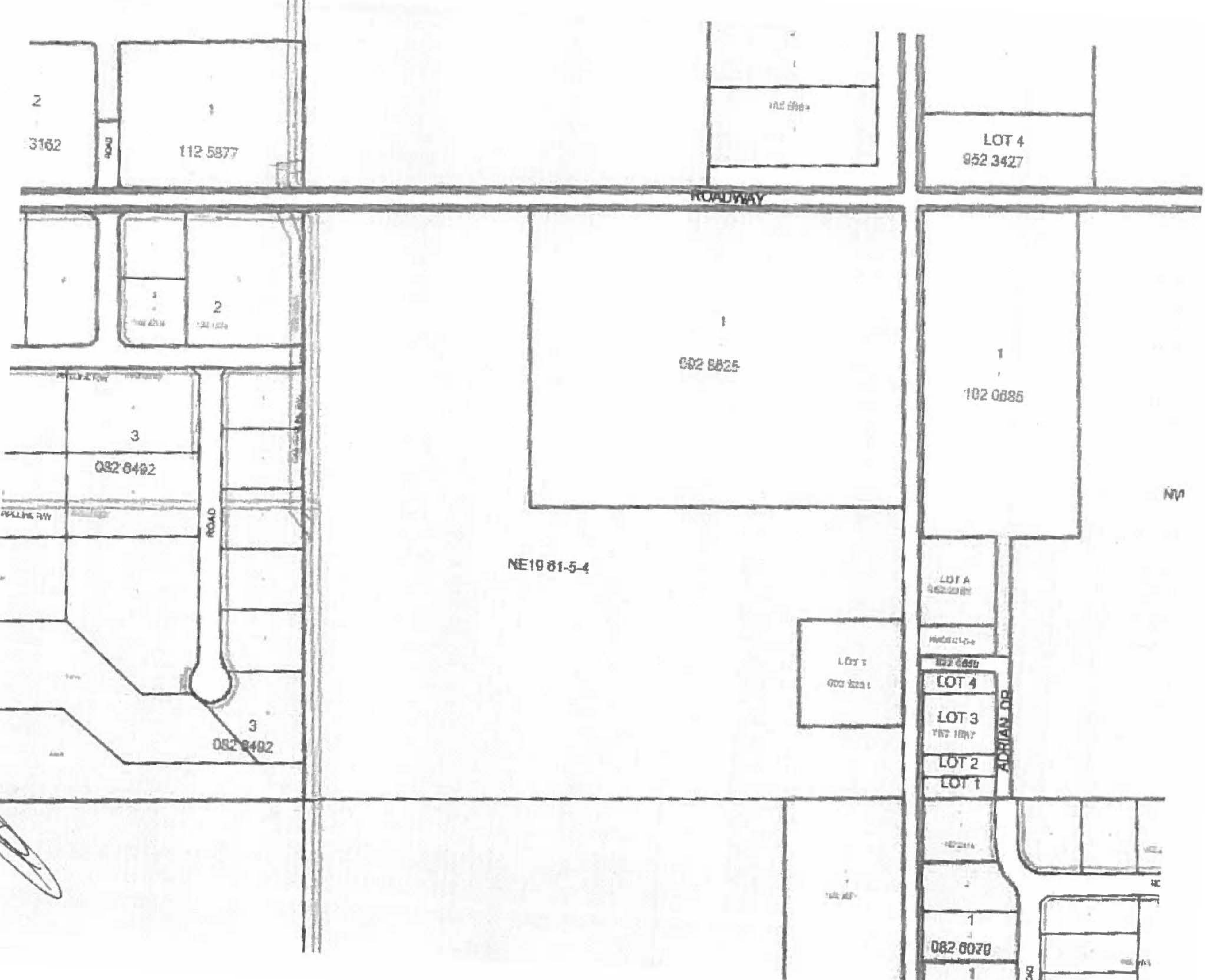
DAVID HOWELLS

Sworn before me this 29th day of May, 2020

A Commissioner for Oaths in and for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor





2
3162
1
112 5877
ROADWAY
LOT 4
952 3427
1
082 8825
1
102 0885
3
082 6492
ROAD
NE19 81-5-4
LOT A
LOT 4
LOT 3
LOT 2
LOT 1
ADRIAN DR
3
082 6492
1
082 6070

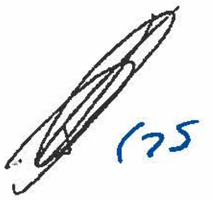
This is **Exhibit "H"** referred to in the Affidavit of

DAVID HOWELLS

Sworn before me this 29th day of May, 2020

A Commissioner for Oaths in and for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor



CERTIFIED COPY OF

Certificate of Title

S

LINC 0034 014 183

SHORT LEGAL 0928625;1;1

TITLE NUMBER: 102 054 177
TRANSFER OF LAND
DATE: 17/02/2010

AT THE TIME OF THIS CERTIFICATION

THE MUNICIPAL DISTRICT OF BONNYVILLE NO. 87.
OF 4905-50 AVE,BAG 1010
BONNYVILLE
ALBERTA T9N 2J7

IS THE OWNER OF AN ESTATE IN FEE SIMPLE
OF AND IN

PLAN 0928625
BLOCK 1
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS

SUBJECT TO THE ENCUMBRANCES,LIENS AND INTERESTS NOTIFIED BY MEMORANDUM UNDER-WRITTEN OR ENDORSED HEREON,OR WHICH MAY HEREAFTER BE MADE IN THE REGISTER.

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
002 241 364	21/08/2000	CAVEAT RE : ROAD WIDENING CAVEATOR - THE MUNICIPAL DISTRICT OF BONNYVILLE NO. 87, BAG 1010 BONNYVILLE ALBERTA T9N2J7 AGENT - ROBERT A DOONANCO
092 310 470	01/09/2009	CAVEAT RE : ROADWAY CAVEATOR - HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA AS REPRESENTED BY MINISTER OF TRANSPORTATION 2ND FLOOR, TWIN ATRIA BUILDING 4999 - 98 AVENUE NW EDMONTON ALBERTA T6B2X3
202 104 972	13/05/2020	BUILDER'S LIEN LIENOR - J.R. PAINE & ASSOCIATES LTD. C/O SCOTT LAW 17505 106 AVE EDMONTON ALBERTA T5S1E7 AGENT - JOHN SCHRODER AMOUNT: $64,207
202 106 439	15/05/2020	BUILDER'S LIEN

(CONTINUED)

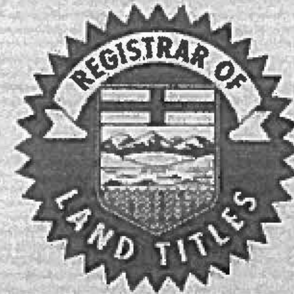
CERTIFIED COPY OF
Certificate of Title

SHORT LEGAL 0928625;1;1
NAME THE MUNICIPAL DISTRICT OF BONNYVILLE NO. 87
NUMBER 102 054 177

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		LIENOR - RBEE AGGREGATE CONSULTING LTD. C/O PUTNAM & LAWSON 9702-100 STREET MORINVILLE ALBERTA T8R1G3 AGENT - MAXWELL C PUTNAM AMOUNT: $1,270,791

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 15 DAY OF MAY ,2020



SUPPLEMENTARY INFORMATION
VALUE: $600,000
CONSIDERATION: SEE INSTRUMENT
MUNICIPALITY: MUNICIPAL DISTRICT OF BONNYVILLE NO. 87
REFERENCE NUMBER:
092 310 481
AREA:
20.22 HECTARES (49.96 ACRES) MORE OR LESS
ATS REFERENCE:
4;5;61;19;NE
TOTAL INSTRUMENTS: 004

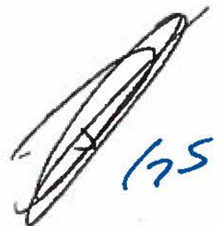
This is **Exhibit "I"** referred to in the Affidavit of

DAVID HOWELLS

Sworn before me this 29th day of May, 2020

A Commissioner for Oaths in and for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor



LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0034 014 175	4;5;61;19;NE	122 412 899

LEGAL DESCRIPTION

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

ESTATE: FEE SIMPLE

MUNICIPALITY: MUNICIPAL DISTRICT OF BONNYVILLE NO. 87

REFERENCE NUMBER: 092 310 481 +1

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
122 412 899	14/12/2012	TRANSFER OF LAND	$1,100,000	$1,100,000

OWNERS

THE MUNICIPAL DISTRICT OF BONNYVILLE NO. 87.
OF 4905-50 AVE,BAG 1010
BONNYVILLE
ALBERTA T9N 2J7

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
912 156 474	24/06/1991	UTILITY RIGHT OF WAY GRANTEE - BONNYVILLE GAS COMPANY LIMITED.
912 340 529	11/12/1991	DISCHARGE OF UTILITY RIGHT OF WAY 912156474

(CONTINUED)

175

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		PARTIAL EXCEPT PLAN/PORTION: 9121747
972 184 590	25/06/1997	CAVEAT RE : UTILITY RIGHT OF WAY CAVEATOR - BONNYVILLE GAS COMPANY LIMITED. 5509 - 45 ST LEDUC ALBERTA T9E6T6 AGENT - MYRNA KING
982 036 883	05/02/1998	DISCHARGE OF CAVEAT 972184590 PARTIAL EXCEPT PLAN/PORTION: 9722851
002 241 364	21/08/2000	CAVEAT RE : ROAD WIDENING CAVEATOR - THE MUNICIPAL DISTRICT OF BONNYVILLE NO. 87. BAG 1010 BONNYVILLE ALBERTA T9N2J7 AGENT - ROBERT A DOONANCO
092 310 470	01/09/2009	CAVEAT RE : ROADWAY CAVEATOR - HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA AS REPRESENTED BY MINISTER OF TRANSPORTATION 2ND FLOOR, TWIN ATRIA BUILDING 4999 - 98 AVENUE NW EDMONTON ALBERTA T6B2X3
202 088 861	23/04/2020	BUILDER'S LIEN LIENOR - MATT SILVER TRUCKING LTD. PO BOX 4844 BONNYVILLE ALBERTA T9N0H2 AGENT - PRIORITY CREDIT MANAGEMENT CORP. AMOUNT: $15,569

TOTAL INSTRUMENTS: 007

(CONTINUED)

(?5

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 26 DAY OF MAY, 2020 AT 04:09 P.M.

ORDER NUMBER: 39374969

CUSTOMER FILE NUMBER: 110151-003

END OF CERTIFICATE

THIS ELECTRONICALLY TRANSMITTED LAND TITLES PRODUCT IS INTENDED FOR THE SOLE USE OF THE ORIGINAL PURCHASER, AND NONE OTHER, SUBJECT TO WHAT IS SET OUT IN THE PARAGRAPH BELOW.

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This is **Exhibit "J"** referred to in the
Affidavit of

DAVID HOWELLS

Sworn before me this 29th day
of May, 2020

A Commissioner for Oaths in and
for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor

RBEE Aggregate Consulting Ltd.

Box 1110
Gibbons, AB T0A 1N0

INVOICE

Invoice No.: 259
Date: Feb 01, 2020
Ship Date:
Page: 1
Re: Order No. RBJ 951 - Elk Point

Sold to:

JMB Crushing Systems Ltd.
PO Box 6977
Bonnyville, AB T9N 2H4

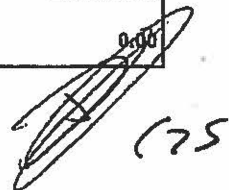
Ship to:

JMB Crushing Systems Ltd.
PO Box 6977
Bonnyville, AB T9N 2H4

Business No.: 788842680RT0001

Item No.	Unit	Quantity	Description	Tax	Unit Price	Amount
			RBJ 951 - Elk Point February 2020			
	Cubic Meter	39,366	2-16	G	6.00	236,196.00
			Subtotal:			236,196.00
			G - GST 5% GST/HST			11,809.80

Shipped By:	Tracking Number:	Total Amount	248,005.80
Comment:		Amount Paid	248,005.80
Sold By:		Amount Owing	0.00



175

RBEE Aggregate Consulting Ltd.

Box 1110
Gibbons, AB T0A 1N0

INVOICE

Invoice No.: 266
Date: Mar 31, 2020
Ship Date:
Page: 1
Re: Order No. RBJ951 - Elk Point

Sold to:

JMB Crushing Systems Ltd.
PO Box 6977
Bonnyville, AB T9N 2H4

Ship to:

JMB Crushing Systems Ltd.
PO Box 6977
Bonnyville, AB T9N 2H4

Business No.: 788842680RT0001

Item No.	Unit	Quantity	Description	Tax	Base Price	Disc %	Unit Price	Amount
			RBJ951 - Elk Point					
	Cubic Meter	110,634	2-16	G	6.00		6.00	663,804.00
			Subtotal:					663,804.00
			G - GST 5% GST/HST					33,190.20

Shipped By:	Tracking Number:	Total Amount	696,994.20
Comment:		Amount Paid	0.00
Sold By:		Amount Owing	696,994.20

GS

RBEE Aggregate Consulting Ltd.
Box 1110
Gibbons, AB T0A 1N0

INVOICE

Invoice No.: 270
Date: Apr 16, 2020
Ship Date:
Page: 1
Re: Order No. RBJ951

Sold to:

JMB Crushing Systems Ltd.
PO Box 6977
Bonnyville, AB T9N 2H4

Ship to:

JMB Crushing Systems Ltd.
PO Box 6977
Bonnyville, AB T9N 2H4

Business No.: 788842680RT0001

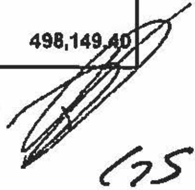
Item No.	Unit	Quantity	Description	Tax	Base Price	Disc %	Unit Price	Amount
			RBJ 951 - Elk Point					
	Lumpsum	1	Stripping	G	7,500.00		7,500.00	7,500.00
	Tonne	42,448	12.5 MM	G	11.00		11.00	466,928.00
			Subtotal:					474,428.00
			G - GST 5% GST/HST					23,721.40

Shipped By: Tracking Number:

Comment:

Sold By:

Total Amount	498,149.40
Amount Paid	0.00
Amount Owing	498,149.40



RBEE Aggregate Consulting Ltd.

Box 1110
Gibbons, AB T0A 1N0

INVOICE

Invoice No.: 278
Date: May 10, 2020
Ship Date:
Page: 1
Re: Order No. PO #950158

Sold to:

JMB Crushing Systems Ltd.
PO Box 6977
Bonnyville, AB T9N 2H4

Ship to:

JMB Crushing Systems Ltd.
PO Box 6977
Bonnyville, AB T9N 2H4

Business No.: 788842680RT0001

Item No.	Unit	Quantity	Description	Tax	Base Price	Disc %	Unit Price	Amount
			RBJ 951 - Elk Point					
	Cubic Meters	6,549.62	2-16	G	11.00		11.00	72,045.82
			Subtotal:					72,045.82
			G - GST 5% GST/HST					3,602.29

Shipped By:	Tracking Number:	Total Amount	75,648.11
Comment:		Amount Paid	0.00
Sold By:		Amount Owing	75,648.11

GS

This is **Exhibit "K"** referred to in the Affidavit of

DAVID HOWELLS

Sworn before me this 29th day of May, 2020

A Commissioner for Oaths in and for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor

From : JMB Crushing Systems Inc.
Box 6977
Bonnyville, AB T9N 2H4

Tel : 780-826-3272
Fax : 780- 826-6280

Application for Progress Payment

(Base Contract)

Contractor: R Bee Aggregate Consulting Ltd.

Contractor Signature:

GST Number 788842680RT0001

Project: MD of Bonnyville-2020 Crush and Haul   Project No.:

Progress Claim No.: 4

Date: May 10, 2020

Phone #:

Subcontract No.: C393-001

PO# 950158

	Base Contract Breakdown Description	Unit Price Per Contract	Total of Contract Units	Total Contract Value	% to date	Units Completed To Date	Amount Completed To Date	Units Completed Previous To Date	Amount Completed Previous To Date	This Claim Units	This Claim Total Dollars
1	Crush and Stock Pile Des 2-16 material in the Shankowski pit	$6.00	150000	$ 900,000.00	100%	150,000	$ 900,000.00	150,000	$ 900,000.00	-	$ -
				$ -			$ -		$ -	-	$ -
2	Crush and Stock Pile Des 2-16 material in the Shankowski pit	$11.00	42448	$ 466,928.00	115%	48,997.62	$ 538,973.82	42,448.00	$ 466,928.00	6,549.62	$ 72,045.82
				$ -			$ -		$ -	-	$ -
3	Stripping	$7,500.00	1	$ 7,500.00	100%	1.00	$ 7,500.00	1.00	$ 7,500.00	-	$ -
				$ -			$ -		$ -	-	$ -
				$ -			$ -		$ -	-	$ -
				$ -			$ -		$ -	-	$ -
				$ -			$ -		$ -	-	$ -
				$ -			$ -		$ -	-	$ -
				$ -			$ -		$ -	-	$ -
				$ -			$ -		$ -	-	$ -
				$ -			$ -		$ -	-	$ -
				$1,374,428.00	105%		$1,446,473.82		$1,374,428.00		$72,045.82
				$1,374,428.00	105%		$1,446,473.82		$1,374,428.00		$72,045.82

Summary	
Total Completed to Date	$1,446,473.82
Less: Previous Billing(s)	$1,374,428.00
Total This Billing	$72,045.82
Less: Holdback	$7,204.58
Net Total	$64,841.24
G.S.T.	$3,242.06
Total Payable	$68,083.30

GS

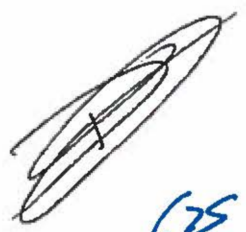
This is **Exhibit "L"** referred to in the
Affidavit of

DAVID HOWELLS

Sworn before me this 29th day
of May, 2020

A Commissioner for Oaths in and
for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor



ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE

IMAGE OF DOCUMENT REGISTERED AS:

202106447

ORDER NUMBER: 39384611

ADVISORY

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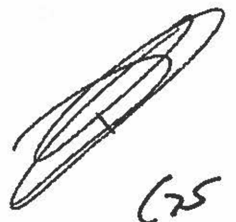
Please contact the Land Titles Office at (780) 422-7874 if the image of the document is not legible.



Government of Alberta
Land Titles

FORM A
Statement of Lien

Lienholder RBEE Aggregate Consulting Ltd.

Address
2100, 222 - 3 Avenue SW
Calgary
Alberta T2P 0B4

claims a Lien under the Builders' Lien Act in the fee simple estate OR (specify if some other type of estate or interest applies) ______

Name Jerry Shankowski

Address
7727 - 81 Ave NW
Edmonton
Alberta T6C 0V4

In the following land:
See attached Schedule "A".

The Lien is claimed in respect of the following work or materials:
Aggregate (gravel) crushing work

which work or materials were or are to be provided for:
Name of Person or Corporation: JMB Crushing Systems Inc.

Address
Suite 2600, 595 Burrard Street, PO Box 49314
Vancouver
British Columbia V7X 1L3

☐ This lien is in respect of an improvement to an oil or gas well, or to an oil or gas well site, for which the lien may be registered in the Land Titles Office not later than 90 days from the last day that the work was completed or the materials were last furnished.

☒ a) The work was completed or the materials were last furnished:

on April 6, 2020

- OR -

☐ b) The work is not yet completed or all the materials have not yet been furnished.

The sum claimed as due or to become due is $ 1,270,791.71

The address for service of the Lienholder in the Province of Alberta is
Putnam & Lawson
9702 - 100 Street
Morinville, Alberta T8R 1G3

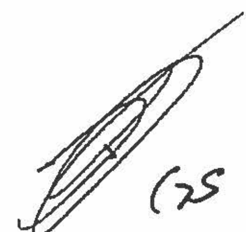
this 14 day of May, 2020

(Signature of Lienholder or Agent)

at Morinville, Alberta.

MAXWELL C. PUTNAM
BARRISTER & SOLICITOR

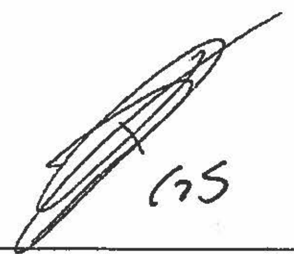
REG 3020 (Rev. 2004/04)



(25

SCHEUDLE "A"
Fee Simple Interest

Title #	Title Number	Legal Description
2	172 269 783 +5	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



Government of Alberta
Land Titles

FORM B
Affidavit Verifying Claim by Lienholder

I, ____________________, ____________________.
of ____, Alberta
named in the above (or annexed) statement make oath and say that the said claim is true.

Sworn before me at ____________________, Alberta
on the ____ day of ____________, ________.

____
(Signature of Applicant)

(Commissioner for Oaths in and for the Province of Alberta) | *(Print Name)* | *(Expiry Date of Commission)*

- OR -

Government of Alberta
Land Titles

FORM B
Affidavit Verifying Claim by Other Than Lienholder

I, Maxwell C. Putnam, Barrister & Solicitor,
of Morinville, Alberta
make oath and say:

1. That I am the agent ~~(or assignee)~~ of
RBEE Aggregate Consulting Ltd.
~~named in the above (or annexed) statement and have full knowledge of the facts set forth in the above (or annexed) statement.~~
~~-OR-~~
I am informed by David Howells of RBEE Aggregate Consulting Ltd.
and believe that the facts are as set forth in the above (or annexed) statement.

2. That the said claim is true (or when deponent has been informed, that I believe that the said claim is true).

Sworn before me at Morinville, Alberta
on the 14 day of May, 2020.

[signature]
(Signature of Applicant)

N. VanBrabant
(Commissioner for Oaths in and for the Province of Alberta)

Naomi D. VanBrabant
My Commission Expires November 23, 20 20
(Print Name)

(Expiry Date of Commission)

This information is being collected for the purposes of land titles records in accordance with the Builders' Lien Act and the Land Titles Act. Questions about the collection of this information can be directed to the Freedom of Information and Protection of Privacy Coordinator for Alberta Registries, Research and Program Support, Box 3140, Edmonton, Alberta T5J 2G7, (780) 427-2742.

REG 3020 (Rev. 2004/04)

625

202106447   REGISTERED 2020 05 15
BUIL - BUILDER'S LIEN
DOC 1 OF 1 DRR#: B1546CE ADR/TTAYLOR
LINC/S: 0037711520 +

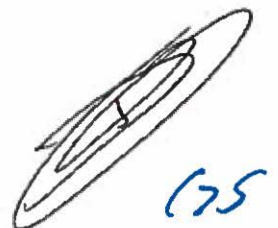
This is **Exhibit "M"** referred to in the
Affidavit of

DAVID HOWELLS

Sworn before me this 29th day
of May, 2020

A Commissioner for Oaths in and
for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor



ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE

IMAGE OF DOCUMENT REGISTERED AS:

202106449

ORDER NUMBER: 39384611

ADVISORY

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Please contact the Land Titles Office at (780) 422-7874 if the image of the document is not legible.

Government of Alberta
Land Titles

FORM A
Statement of Lien

Lienholder RBEE Aggregate Consulting Ltd.

Address 2100, 222 - 3 Avenue
Calgary, AB T2P 0B4

claims a Lien under the Builders' Lien Act in the fee simple estate OR (specify if some other type of estate or interest applies) ______

Name Helen Havener and Gail Charlene Havener

Address Helen Havener of Box 598, Elk Point, AB T0A 1A0
and
Gail Charlene Havener of Box 608, Elk Point, AB, T0A 1A0

In the following land:
See Attached Schedule A

The Lien is claimed in respect of the following work or materials:
Aggregate (gravel) crushing work

which work or materials were or are to be provided for:
Name of Person or Corporation: JMB Crushing Systems Inc.

Address Suite 2600
595 Burrard Street, PO Box 49314
Vancouver, BC V7X 1L3

☐ This lien is in respect of an improvement to an oil or gas well, or to an oil or gas well site, for which the lien may be registered in the Land Titles Office not later than 90 days from the last day that the work was completed or the materials were last furnished.

☒ a) The work was completed or the materials were last furnished:

on April 6, 2020

- OR -

☐ b) The work is not yet completed or all the materials have not yet been furnished.

The sum claimed as due or to become due is $ 1,270,791.71

The address for service of the Lienholder in the Province of Alberta is
Putnam & Lawson
9702 - 100 Street
Morinville, AB T8R 1G3

this 14 day of May, 2020

(Signature of Lienholder or Agent)

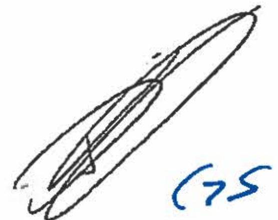
at Morinville, Alberta.

MAXWELL C. PUTNAM
BARRISTER & SOLICITOR

REG 3020 (Rev. 2004/04)

SCHEUDLE "A"
Fee Simple Interest

Title #	Title Number	Legal Description
3	172 269 783 +2	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 OUARTER 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



Government of Alberta
Land Titles

FORM B
Affidavit Verifying Claim by Lienholder

I, ______________, ______________,

of ______________, Alberta

named in the above (or annexed) statement make oath and say that the said claim is true.

Sworn before me at ______________, Alberta

on the ___ day of ______________, ______.

(Signature of Applicant)

(Commissioner for Oaths in and for the Province of Alberta) | (Print Name) | (Expiry Date of Commission)

- OR -

Government of Alberta
Land Titles

FORM B
Affidavit Verifying Claim by Other Than Lienholder

I, Maxwell C. Putnam, Barrister & Solicitor,

of Morinville, Alberta

make oath and say:

1. That I am the agent ~~(or assignee)~~ of

RBEE Aggregate Consulting Ltd.

~~named in the above (or annexed) statement and have full knowledge of the facts set forth in the above (or annexed) statement.~~

~~- OR -~~

I am informed by David Howells of RBEE Aggregate Consulting Ltd.

and believe that the facts are as set forth in the above (or annexed) statement.

2. That the said claim is true (or when deponent has been informed, that I believe that the said claim is true).

Sworn before me at Morinville, Alberta

on the 14 day of May, 2020.

(Signature of Applicant)

N. VanBrabant

Naomi D. VanBrabant
My Commission Expires
November 23, 2020

(Commissioner for Oaths in and for the Province of Alberta) | (Print Name) | (Expiry Date of Commission)

This information is being collected for the purposes of land titles records in accordance with the Builders' Lien Act and the Land Titles Act. Questions about the collection of this information can be directed to the Freedom of Information and Protection of Privacy Coordinator for Alberta Registries, Research and Program Support, Box 3140, Edmonton, Alberta T5J 2G7, (780) 427-2742.

REG 3020 (Rev. 2004/04)

C75

202106449 REGISTERED 2020 05 15
BUIL - BUILDER'S LIEN
DOC 1 OF 1 DRR#: B1546CF ADR/TTAYLOR
LINC/S: 0037711496

This is **Exhibit "N"** referred to in the Affidavit of

DAVID HOWELLS

Sworn before me this 29th day of May, 2020

A Commissioner for Oaths in and for the Province of Alberta

Graham W. Sanson
Barrister & Solicitor

ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE

IMAGE OF DOCUMENT REGISTERED AS:

202106439

ORDER NUMBER: 39384611

ADVISORY

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Please contact the Land Titles Office at (780) 422-7874 if the image of the document is not legible.

Government of Alberta ■
Land Titles

FORM A
Statement of Lien

Lienholder RBEE Aggregate Consulting Ltd.

Address
2100, 222 - 3 Avenue SW
Calgary
Alberta T2P 0B4

claims a Lien under the Builders' Lien Act in the fee simple estate OR (specify if some other type of estate or interest applies) ______

Name The Municipal District of Bonnyville No. 87

Address
4905-50 Ave, Bag 1010
Bonnyville
Alberta T9N 2J7

In the following land:
See attached Schedule "A".

The Lien is claimed in respect of the following work or materials:
Aggregate (gravel) crushing work

which work or materials were or are to be provided for:
Name of Person or Corporation: JMB Crushing Systems Inc.

Address
Suite 2600, 595 Burrard Street, PO Box 49314
Vancouver
British Columbia V7X 1L3

☐ This lien is in respect of an improvement to an oil or gas well, or to an oil or gas well site, for which the lien may be registered in the Land Titles Office not later than 90 days from the last day that the work was completed or the materials were last furnished.

■ a) The work was completed or the materials were last furnished:

on April 6, 2020

- OR -

☐ b) The work is not yet completed or all the materials have not yet been furnished.

The sum claimed as due or to become due is $ 1,270,791.71

The address for service of the Lienholder in the Province of Alberta is
Putnam & Lawson
9702 - 100 Street
Morinville, Alberta T8R 1G3

this 14 day of May, 2020

(Signature of ~~Lienholder or~~ Agent)

at Morinville, Alberta.

MAXWELL C. PUTNAM
BARRISTER & SOLICITOR

REG 3020 (Rev. 2004/04)

SCHEUDLE "A"
Fee Simple Interest

Title #	Title Number	Legal Description
1	102 054 177	PLAN 0928625 BLOCK 1 LOT 1 EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 20.22 HECTARES (49.96 ACRES) MORE OR LESS

Government of Alberta ■
Land Titles

FORM B
Affidavit Verifying Claim by Lienholder

I, ______________________ , ______________________ ,

of ______________________ , Alberta

named in the above (or annexed) statement make oath and say that the said claim is true.

Sworn before me at ______________ , Alberta

on the ___ day of ______________ , ________ .

____
(Signature of Applicant)

M.P.

(Commissioner for Oaths in and for the Province of Alberta) *(Print Name)* *(Expiry Date of Commission)*

- OR -

Government of Alberta ■
Land Titles

FORM B
Affidavit Verifying Claim by Other Than Lienholder

I, Maxwell C. Putnam , Barrister & Solicitor ,

of Morinville , Alberta

make oath and say:

M.P.

1. That I am the agent ~~(or assignee)~~ of

RBEE Aggregate Consulting Ltd.

~~named in the above (or annexed) statement and have full knowledge of the facts set forth in the above (or annexed) statement.~~ M.P.

~~- OR -~~

I am informed by David Howells of RBEE Aggregate Consulting Ltd.

and believe that the facts are as set forth in the above (or annexed) statement.

2. That the said claim is true (or when deponent has been informed, that I believe that the said claim is true).

Sworn before me at Morinville , Alberta

on the 14 day of May , 2020 .

[signature]
(Signature of Applicant)

[signature] N. VanBrabant

(Commissioner for Oaths in and for the Province of Alberta)

Naomi D. VanBrabant
My Commission Expires November 23, 2021
(Print Name)

(Expiry Date of Commission)

This information is being collected for the purposes of land titles records in accordance with the Builders' Lien Act and the Land Titles Act. Questions about the collection of this information can be directed to the Freedom of Information and Protection of Privacy Coordinator for Alberta Registries, Research and Program Support, Box 3140, Edmonton, Alberta T5J 2G7, (780) 427-2742.

REG 3020 (Rev. 2004/04)

GS

202106439 REGISTERED 2020 06 15
BUIL - BUILDER'S LIEN
DOC 1 OF 1 DRR#: B1546CB ADR/TTAYLOR
LINC/S: 0034014183

COMMISSIONER'S CERTIFICATE

I, Graham W. Sanson, certify that:

1. I am the Commissioner for Oaths named in the attached Affidavit of David Howells, sworn May 29, 2020 utilizing video technology; and

2. I am satisfied that the process for the remote commissioning of the Affidavit utilizing video technology was necessary because it was impossible or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together

(Commissioner for Oaths in and for the Province of Alberta)

Graham W. Sanson
Barrister & Solicitor

GS

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	**SUPPLEMENTAL AFFIDAVIT OF DAVID HOWELLS**
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

SUPPLEMENTAL AFFIDAVIT OF DAVID HOWELLS

Sworn on October 9, 2020

I, David Howells, of the City of Fort Saskatchewan, in the Province of Alberta, SWEAR OATH AND SAY THAT:

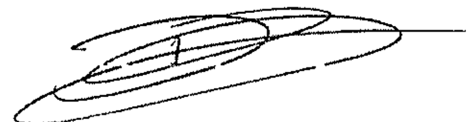
1. I am a Director and Vice President of the Claimant, RBEE Aggregate Consulting Ltd. ("RBEE"), and as such I have personal knowledge of the facts and matters hereinafter deposed to, except where stated otherwise, in which case I believe the same to be true.

2. The aggregate rock and gravel that was crushed by RBEE was crushed into two different sizes:

   a. ½ inch base gravel with material number 112.5 ("112.5"); and

   b. 5/8 inch base gravel with material number 216 ("216").

3. The aggregate rock and gravel that was crushed by RBEE was deposited onto the Municipality Lands, as defined in my affidavit sworn May 29, 2020. The ½ inch base



gravel with material number 112.5 was deposited on the Municipality Lands in one pile (the "112.5 Pile"). The 5/8 inch base gravel with material number 216 was deposited on the Municipality Lands in another pile (the "216 Pile").

4. I am advised by my counsel, who have spoken with counsel for The Municipal District of Bonnyville No. 87 (the "Municipality"), and believe the following:

   a. the Municipality entered into a contract with a third party at the end of February 2020 to mix a compound known as MC-250 for patching material using the 112.5 from the 112.5 Pile (the "Patching Material"). The Patching Material was mixed between May 15, 2020 and June 20, 2020 and it was added to the Municipality's already-existing stockpile. The Patching Material is used on various Municipality roads on an as-needed basis;

   b. the Municipality entered into a contract with a third party at the end of February 2020 to mix a compound known as HF500 using the 216 from the 216 Pile ("Cold Mix"). The Cold Mix was mixed between May 15, 2020 and June 20, 2020. The Cold Mix was then used for the following projects around the Municipality for repairs of soft spot sections on each road with various lengths:

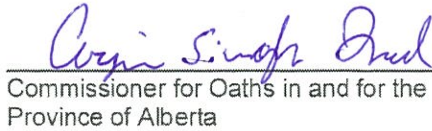
      i. RR 443 from HWY 28 to TWP RD 614;
      ii. RR 485 from HWY 28 to TWP RD 610;
      iii. RR 483 from HWY 660 to TWP RD 611;
      iv. RR 482 from TWP RD 594 to TWP RD 593A;
      v. RR 470 from TWP RD 630 to HWY 55;
      vi. TWP RD 610 from RR 483 to RR 484;
      vii. RR 411 from TWP RD 630 to CHERRY RIDGE; and
      viii. RR 484 from HWY 28 TWP RD 594; and

   c. the 216 from the 216 Pile is also used by the Municipality on various Municipality roads on an as-needed basis to reduce dust.

5. I make this affidavit in support of the Application of RBEE to reverse the July 27, 2020 determination notice of the Monitor, FTI Consulting Canada Inc. with respect to the claim of RBEE.

[Remainder of page intentionally blank]

6. I swear this Affidavit despite not being physically present before the commissioner, but having been linked with the commissioner utilizing video technology and following the process described in the Notice to Profession NPP#2020-01: Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During the COVID-19 Pandemic.

SWORN BEFORE ME at the City of Edmonton, in the Province of Alberta this 9 day of October, 2020	)))	
	)))	
Commissioner for Oaths in and for the Province of Alberta	))	**DAVID HOWELLS**

Arjun Deol
Student at Law

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	**SUPPLEMENTAL AFFIDAVIT OF DAVID HOWELLS**
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

SUPPLEMENTAL AFFIDAVIT OF DAVID HOWELLS

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A.D.

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SWORN BEFORE ME at the City of Edmonton, in the Province of Alberta this 9 day of October, 2020	))))))	
Commissioner for Oaths in and for the Province of Alberta	))	**DAVID HOWELLS**

A.D.

COMMISSIONER'S CERTIFICATE

I, Arjun S. Deol, certify that:

1. I am the Commissioner for Oaths names in the attached Affidavit of David Howells, sworn October 9, 2020 utilizing video technology; and

2. I am satisfied that the process for remote commissioning of the Affidavit using video technology was necessary because it was impossible or unsafe, for medical reasons, for the deponent and the commissioner to be physically present together.

Arjun Singh Deol

(Commissioner for Oaths in and for the Province of Alberta)

October 9, 2020

Date

Arjun Deol
Student-at-Law