

**Form 49**  
[Rule 3.68, 3.74, 7.2 and 7.3]

Clerk's Stamp:

COURT FILE NUMBER	2201-02948
COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
APPLICANT	<b>CROWN CAPITAL PARTNER FUNDING LP, by its manager, CROWN PRIVATE CREDIT PARTNERS INC</b>
RESPONDENT	<b>RBEE AGGREGATE CONSULTING LTD.</b>
DOCUMENT	<b><u>SECOND AFFIDAVIT OF NICHOLAS BURAK</u></b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>RMC CONSTRUCTION MATERIALS LTD.</b>  Attention: Chris Zelyas  Dentons Canada LLP 2500 Stantec Tower 10220 - 103 Avenue NW Edmonton, AB T5J 0K4 Phone: (780) 423-7387 Facsimile: (780) 423-7276 <b>Dentons file: 573989-3</b>

**Affidavit of Nicholas Burak**

**Sworn (or Affirmed) on January 28, 2023**

I, Nicholas Burak, of Edmonton, Alberta, SWEAR AND SAY THAT:

1. I have personal knowledge of the matters deposed to in this Affidavit, except where stated to be based upon information and belief, and where so stated, I verily believe the same to be true.
2. I previously swore an Affidavit in these proceedings on December 23, 2022 (my "**First Affidavit**"). I was then questioned on my First Affidavit by legal counsel for FTI Consulting Canada Ltd. (the "**Receiver**") on January 11, 2023 (my "**Questioning**"). Except as otherwise noted herein, all capitalized terms have the same meaning as specified in my First Affidavit.

3. Following my Questioning, I reviewed the January 20, 2023 Supplemental Report to the Fifth Report of the Receiver (the "**Supplemental Receiver's Report**"), as well as the Brief of Law of the Receiver (the "**Receiver's Brief**") dated January 20, 2023, both of which I understand were provided for the purposes of advancing the Receiver's application to force RMC to pay \$4,485,480.64 plus interest to the Receiver.
4. I am swearing this Affidavit in response to allegations and assertions made in the Supplemental Receiver's Report and the Receiver's Brief which I believe are inaccurate or which I believe require clarification in order for the Court to have a full and fair understanding of the facts relevant to this matter.

#### **The Ground Where the Stockpiles were Placed was Flat**

5. I understand, as per paragraph 24(a) of the Supplemental Receiver's Report, that the Receiver is challenging the accuracy of the stockpile survey data provided by AFDE on the basis that stripping, clearing and grubbing do not make an area flat, that visual inspections are not sufficient to determine the initial surface of the stockpiles, and that for large areas, even minor slopes can potentially generate a large discrepancy in volume measurements.
6. First, the site preparation work completed by third parties included not only stripping, clearing and grubbing, but also levelling and elimination of any slopes to ensure flatness of the site.
7. Second, our "visual" inspection of the stockpile area prior to commencement of the work on the Project involved walking over the entirety of the area, which would have revealed any slopes or other irregularities, and none were revealed. This method of confirming that areas for stockpiles are flat is standard industry practice which I have observed on multiple aggregate production projects.
8. Third, parties other than RMC confirmed the flatness of the stockpile site, including AFDE and RBee. They completed thorough inspections, as they were highly motivated to do so, given that stockpiling aggregate on a sloping area would have been operationally difficult, would have led to problems with stockpiling on the Project and in verifying how much aggregate was in the stockpiles, and would have likely resulted in disputes between the parties involved in the Project over these issues. None of the parties raised any issues over the flatness of the stockpile site, and none of the difficulties just described arose, providing further confirmation that the stockpile area was in fact flat.

9. I repeatedly attended the Project site, including the stockpile area, multiple times during all phases of the Project, and can personally attest that the area was flat and without slopes, minor or otherwise.

#### **The Accuracy of the Density Factors**

10. As per paragraph 24(b) of the Supplemental Receiver's Report, I understand that the Receiver is taking issue with the evidence submitted through my First Affidavit with respect to density factors. I agree that density factors can vary between geographic locations, due to the nature and physical characteristics of the rock, and that the density factors used in my calculations of volume for the October 2021 stockpiles were based, for three categories of aggregate (the 20-14 mm product, 14-5 mm product and sand), on testing unrelated to this dispute with respect to aggregate crushed during the 2021 season by RBee on the Vogel Pit project near Drayton Valley, Alberta.
11. However, I believe that the testing on the Vogel Pit aggregate would accurately reflect the density factors for the same type of aggregate also produced by RBee on the Project because the nature and physical characteristics of the rock at the Vogel Pit were the same as that on the Project—in both cases, the rock was of the same kind and nature: river deposit gravel. As stated by Arun Aggarwal, who has direct expertise and experience in aggregate quality testing, as a result of the materials for both products being sourced from river deposits gravel, their densities will be very similar, with differences being negligible.
12. I had thought that we were acting reasonably by providing the most recent density factor measurements in our possession as determined through independent lab testing. However, given the Receiver's expressed concerns over the accuracy of the density factors obtained based on the Vogel Pit aggregate, I searched our records and discovered laboratory testing results provided by Wood Environment & Infrastructure Solutions ("**Wood**") dating back to 2019 with respect to aggregate crushed by RBee on the Project for the 20-10 mm and 14-5 mm products. The results confirm that the density factors obtained from the Vogel Pit and from the Project are highly similar, with negligible differences. For the 20-10 mm product sampled from the Project and tested in 2019, the average compacted bulk density for the Project was measured at 1,667 kg/m<sup>3</sup> in 2019, while for the 14-5 mm product sample from the Project, the test result in 2019 reveals a compacted bulk density of 1,676 kg/m<sup>3</sup>. Attached hereto and marked as **Exhibit "I"** are true copies of the Wood laboratory testing reports conducted in 2019.
13. These tests confirm the negligible differences between the densities of the aggregate produced from the Vogel Pit and on the Project. If I apply the density factors obtained from the 2019 Wood

tests to the volume of 20-10 mm and 14-5 mm products as measured by the AFDE October 31, 2021 survey, this would only reduce the overbilling by RBee by \$164,513.39, and would still result in RBee overbilling RMC for in excess of 500,000 tonnes of aggregate and over \$7,000,000. In particular, RBee would have still overbilled RMC by 504,336 tonnes of aggregate, which translates to overbilling in the amount of \$7,106,857.50 before GST when applying the prices for aggregate set out in Supplier Agreement. The differences in density factors obtained from the Vogel Pit and the Project samples are accordingly immaterial in the context of the overall product amounts and the amount of overbilling.

14. The calculations underlying my conclusions set out in paragraph 13 of this Affidavit are summarized in the tables below:

**Total Aggregate Actually Produced**

	40-20 mm (MT)	20-10 mm (MT)	14-5 mm (MT)	Sand (MT)	Abrasive (MT)	Total (MT)
Stockpile (m3) from AFDE Survey	68,070	63,961	69,324	53,219		
Compact Bulk Density (Based on Project- Sourced Aggregate)	1.67	1.667	1.676	1.59		
Stockpile (MT)	113,745	106,623	116,187	84,618		421,173
Aggregate consumption (from Batch Record Data Summary)	151,609	171,427	176,380	336,555		
Total Actual Aggregate Production	265,354	278,050	292,567	421,173	4,170	1,261,314

**Difference Between Amounts Invoiced for and Actually Produced**

	40-20 mm (MT)  (Supplier Agreement Price: \$13.25)	20-10 mm (MT)  (Supplier Agreement Price: \$14.00)	14-5 mm (MT)  (Supplier Agreement Price: \$15.25)	Sand (MT)  (Supplier Agreement Price: \$12.75)	Abrasive (MT)	Total (MT)
Amount of Aggregate Invoiced for by RBee	392,321	302,258	525,699	541,202	4,170	1,781,460
Amount Actually Produced	265,354	278,050	292,567	421,173	4,170	1,261,314
Difference	126,967	24,208	233,132	120,029	Nil	504,336
Difference in dollar values under Supplier Agreement (not including GST)	\$1,682,312.75	\$338,912	\$3,555,263	\$1,530,369.75	Nil	\$7,106,857.50

**Verifying Aggregate Amounts**

15. The Supplemental Receiver's Report states at paragraph 24(c) that relying on visual inspections as the only means of verifying aggregate volumes would not provide reasonable assurance that the quantities in stockpiles would be sufficient for a project. This is correct. However, what occurred on the Project was accurate measurement of stockpiles via laser survey and accurate measurement of all aggregate delivered to our batch plants, which was all automatically weighed by regularly calibrated scales for the purposes of concrete production. All aggregate at any time

was either in the stockpile or at the batch plants. Surveys and weighing are accurate measurements of the amount of aggregate and go well beyond mere "visual inspection."

#### **There Were No Material Amounts of Wasted or Lost Product**

16. The Supplemental Receiver's Report states at paragraph 24(d) that "consideration of wasted or lost product over the period of the Supplier Agreement should be considered." To clarify on this point, there was no material "wastage or lost product". The Batch Plants were located immediately adjacent to the stockpiles, with the closest stockpiles being approximately 50 meters away, and the furthest being approximately 330 meters away. As part of normal operating practice, RMC rock trucks would be loaded with aggregate from the stockpiles at levels well below overflowing, and they were not driven in such a fashion that there would be spillage of aggregate. Given that RMC had an obligation to pay RBee for the aggregate it delivered, we had a strong incentive to avoid any such wastage.
17. Further, other than the 4,170 tonnes of abrasive that were provided by RBee, the delivery and payment for which RMC does not dispute, no aggregate was used on the Project for any purpose other than concrete production. RMC staff have constantly been on site during the Project, which is a highly secure site, and if anyone had started loading a truck from the stockpile for purposes other than concrete production, we would have intervened and stopped it from occurring. This did not arise on the Project.

#### **The Performance Bond**

18. The Supplemental Receiver's Report states at paragraph 24(e) that it would be typical practice for a contractor to call on a performance bond in the event of a contract default, and states that RMC has not provided an explanation for why we did not call on the Performance Bond with RBee. The Supplemental Receiver's Report also states that the Performance Bond was produced by RMC in response to an undertaking taken under advisement.
19. First, I understand that RMC's legal counsel did not produce the Performance Bond in response to any undertaking, and that RMC's legal counsel in fact objected that the Performance Bond was not relevant to the dispute. Ultimately, the Performance Bond was provided to the Receiver because the Receiver's legal counsel insisted that it be produced pursuant to the Receivership Order regardless of its relevance. Attached hereto and marked as **Exhibit "J"** is a true copy of correspondence between the parties' legal counsel on this topic, as well as a copy of my

undertaking responses, which is clear that the Performance Bond is provided pursuant to the Receivership Order notwithstanding its lack of relevance to the issues in dispute.

20. RMC did not call on the Performance Bond for several reasons:

- (a) We were concerned that if the Performance Bond were called on, the insurer would take a significant amount of time to explore coverage and options for completion of the work still to be completed under the Supplier Agreement, when we needed to get started on aggregate production quickly so as to avoid delays on the Project and a potentially significant claim against RMC by AFDE for delayed concrete production.
- (b) We were hopeful that whatever entity purchased the aggregate production equipment through the Receiver's expedited sale process would be willing to contract with RMC to complete the concrete production process without the insurer's involvement, given that the equipment was located in a remote location at the Project site, and that the Receiver was in fact marketing the equipment as an attractive purchase due to its potential use on the Project. Attached hereto and marked as **Exhibit "K"** is a true copy of the Receiver's Invitation for Offers to Purchase which stated that RBee's equipment was strategically located to take advantage of the 2022 construction season and was ready to be deployed on the Project.
- (c) We anticipated that the insurer under the Performance Bond would delay and dispute any response to a call on the Performance Bond because the Receiver had taken the position that RMC was in default of its obligations under the Supplier Agreement. I understand that if RMC had defaulted, then the insurer could opt not to respond under the Performance Bond.
- (d) If legal proceedings became necessary against the insurer under the Performance Bond, significant expense and additional delay would be incurred.
- (e) Our understanding is that the Performance Bond would not compensate RMC for RBee's significant past overbilling, but was only present to ensure completion of the Supplier Agreement at no extra cost to RMC. Accordingly, if RMC or the insurer were able to find a replacement contractor who would complete aggregate production on the Project at the same rates as had been negotiated under the Supplier Agreement, there would be no compensation offered under the Performance Bond. Given our industry knowledge that the prices in the Supplier Agreement remained at fair market value in 2022, we did not see the point in incurring expense on attempting to call on the Performance Bond.

#### **The Prior Work Completed with RBee**

21. I understand that the Receiver is taking the position that my evidence is not reliable because I referred to "prior" and "previous" projects where RMC had contracted with RBee for the supply of aggregate, but also stated at my questioning that the Supplier Agreement was the first contract between RMC and RBee and there was no relationship between them prior to 2018.
22. To clarify on this point, my references to "prior" and "previous" projects with RBee in my First Affidavit relate to projects that started after the Site C Project at issue in this matter commenced, but which were completed before the subject Project was finished. They were "prior" or "previous" in that they were completed before the Site C work.
23. During the course of those earlier completed projects, all of which related to RBee crushing and washing aggregate during a period of time, RMC adopted a practice with RBee of always verifying the amounts of aggregate produced by RBee at the end of each project, as opposed to conducting ongoing verifications. Based on this established practice, and the fact that this is normal industry practice, it is my understanding that both RMC and RBee understood that verification of the amounts of aggregate produced would be performed only at the end of the Project.

#### **A-1 and Paragon Custom Crushing**

24. I understand that the Receiver is taking issue with my evidence with respect to whether RMC contracted with A-1 or Paragon Custom Crushing with respect to taking over aggregate production after RBee went into receivership and could no longer perform under the Supplier Agreement. To clarify on this point, I had understood that A-1 had purchased all of RBee's aggregate crushing and washing equipment on the Project site through the Receivership, and that an agreement was reached whereby A-1 would allow Paragon Custom Crushing ("**Paragon**") to perform the production of aggregate on the Project going forward. Bernie Reed was the principal of both A-1 and Paragon, and I did not carefully distinguish between the two entities in my First Affidavit as I viewed them as part of the same group of companies involved in the continuing aggregate production for the Project.

25. I make this Affidavit in response to the Receiver's Application for an order directing RMC to pay the Receiver the amounts pertaining to the unsatisfied RBee invoices and for no further or improper purpose.

SWORN BEFORE ME at Edmonton, Alberta, this  
28<sup>th</sup> day of January, 2023.



A Commissioner for Oaths in and for the Province of  
Alberta

SHANE ULMER

Appointed 0763342

Expiry June 8 ~~2023~~ 2024



NICHOLAS BURAK

EXHIBIT "I"

This is Exhibit I referred to in the Affidavit of

NICHOLAS BURAK

Sworn (or affirmed) before me this 28th day of January, 2023



.....  
A Commissioner for Oaths in and for the Province of Alberta

SHANE ULMER

Appointee 0763342

Expiry June 8, 2024

Wood Environment & Infrastructure Solutions  
A Division of Wood Canada Limited



Project: Site C GSS  
Client: AFDE Partnership  
Project #: VA06779

Report Date: March 28, 2019

***Bulk Density of Aggregate (CSA A23.2-10A)***

Sample ID: AFDE-20-10-0048-CA10A  
Sampled by: Scott Forsyth  
Tested by: Jessie Agbayani

Date: March 26, 2019  
Date: March 27, 2019

Compacted Aggregate Bulk Density by Rodding: 1667 kg/m<sup>3</sup>

Loose Aggregate Bulk Density: 1514 kg/m<sup>3</sup>

Comments: Average of two tests reported, Sample oven dried before testing.  
Sampled from NE Corner of Stockpile (Working face)

Wood Environment & Infrastructure Solutions  
a Division of Wood Canada Limited

Scott Forsyth, P.Eng.  
Site C Laboratory Supervisor

*Reporting of these test results constitutes a testing service only. Engineering interpretation or evaluation of the test results is provided only on written request.*

Wood Environment & Infrastructure Solutions  
A Division of Wood Canada Limited



Project: Site C GSS Report Date: March 28, 2019  
Client: AFDE Partnership  
Project #: VA06779

***Bulk Density of Aggregate (CSA A23.2-10A)***

Sample ID: AFDE-14-5-0055-CA10A  
Sampled by: Scott Forsyth Date: March 26, 2019  
Tested by: Jessie Agbayani Date: March 27, 2019

Compacted Aggregate Bulk Density by Rodding: 1676 kg/m<sup>3</sup>

Loose Aggregate Bulk Density: 1529 kg/m<sup>3</sup>

Comments: Average of two tests reported, Sample oven dried before testing.  
Sampled from NE Corner of Stockpile (Working face)

Wood Environment & Infrastructure Solutions  
a Division of Wood Canada Limited

Scott Forsyth, P.Eng.  
Site C Laboratory Supervisor

*Reporting of these test results constitutes a testing service only. Engineering interpretation or evaluation of the test results is provided only on written request.*

EXHIBIT "J"

This is Exhibit J referred to in the Affidavit of  
NICHOLAS BURAK

Sworn (or affirmed) before me this 28th day of January, 2023



.....  
A Commissioner for Oaths in and for the Province of Alberta

SHANE ULMER

Appointee 0763342

Expiry June 8, 2024

**From:** Zelyas, Chris  
**Sent:** Sunday, January 15, 2023 8:58 PM  
**To:** Bourassa, Kelly  
**Cc:** MacKinnon, Jessica; Gilroy, Robert  
**Subject:** RE: Crown Capital Partner Funding LP, by its manager Crown Private Credit Partners Inc v RBeE Aggregate Consulting Ltd - Court Action Number 2201-02948

Thanks Kelly.

I confess that I don't see the relevance of the requested undertakings as they relate to the defence of set off in any event. There is no basis for an adverse inference as we're simply taking issue with requests that don't appear to relate to the matter in issue.

Having said this, I appreciate you sharing your position and will seek instructions from my client.

Best,



**Chris B. Zelyas**  
Partner

What's Next? The answer is Talent. With more than 20,000 people, 12,000 lawyers and 200 locations, Dentons has the talent for what you need, where you need it.

D +1 780 423 7387  
[chris.zelyas@dentons.com](mailto:chris.zelyas@dentons.com)  
[Bio](#) | [Website](#)

Dentons Canada LLP  
2500 Stantec Tower, 10220 - 103 Avenue NW Edmonton, AB T5J 0K4 Canada

LuatViet > Fernanda Lopes & Associados > Guevara & Gutierrez > Paz Horowitz Abogados > Sirote > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > Eric Silwamba, Jalasi and Linyama > Durham Jones & Pinegar > LEAD Advogados > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this email from your systems. To update your commercial electronic message preferences email [dentonsinsightsca@dentons.com](mailto:dentonsinsightsca@dentons.com) or visit our website. Please see [dentons.com](https://www.dentons.com) for Legal Notices.

**From:** Bourassa, Kelly <[kelly.bourassa@blakes.com](mailto:kelly.bourassa@blakes.com)>  
**Sent:** Sunday, January 15, 2023 4:09 PM  
**To:** Zelyas, Chris <[chris.zelyas@dentons.com](mailto:chris.zelyas@dentons.com)>  
**Cc:** MacKinnon, Jessica <[Jessica.MacKinnon@blakes.com](mailto:Jessica.MacKinnon@blakes.com)>  
**Subject:** Re: Crown Capital Partner Funding LP, by its manager Crown Private Credit Partners Inc v RBeE Aggregate Consulting Ltd - Court Action Number 2201-02948

[WARNING: EXTERNAL SENDER]

Chris,

It appears that we are in disagreement. We view the matter as relating to amounts outstanding under three invoices, but our understanding of your position is that it is broader and relates to historic actions by the parties, which are relevant to your client's entitlement to make a set-off claim.

As noted in our email yesterday, regardless of your view on the relevance of the undertaking relating to provision of the bond, we are of the view that the receivership order mandates your client to provide the same to the Receiver, on request.

Should you fail to respond to the undertakings taken under advisement, we may refer to that information in our argument (and your client's refusal to provide the same) and ask the Court to make adverse inferences resulting from your client's refusal to provide the information.

As noted, to the extent helpful, we are happy to arrange a call with you early this week. In the interim, we look forward to answers to the other undertakings that are not in dispute.

Kind regards,

**Kelly J. Bourassa** (she, her, hers)  
Partner  
[kelly.bourassa@blakes.com](mailto:kelly.bourassa@blakes.com)  
Calgary +1-403-260-9697  
Toronto +1-416-863-2421  
C. +1-403-629-9597

On Jan 14, 2023, at 10:29 PM, Zelyas, Chris <[chris.zelyas@dentons.com](mailto:chris.zelyas@dentons.com)> wrote:

External Email | Courriel électronique externe

Thanks for this, Kelly.

I don't agree that any of the undertakings taken under advisement are relevant to this matter. Again, the issue is whether Rbee is entitled to over \$4,000,000 with respect to the aggregate it provided up through the end of the 2021 production season. None of what you've requested is probative on this point.

With respect to undertaking 7, what AFDE paid RMC under their separate contract isn't relevant to what Rbee is entitled to under its contract with RMC. I might agree with you that there would be some tenuous relevance if there was any suggestion in the evidence that AFDE had somehow paid RMC for concrete that wasn't actually delivered, but there was nothing of the sort in the evidence adduced.

As to undertaking 8, a performance bond is put in place to ensure completion of scope where a contractor fails to do so—it does not compensate for damages already suffered, such as for past overbilling. As such, again, this is irrelevant to the issues at hand.

For undertakings 9-11, the pricing and amount of aggregate produced by the replacement contractor for the 2022 season and the name of the replacement contractor have nothing to do with whether Rbee provided the amount of aggregate it claimed up through 2021.

We are working with our client to get the answers to the undisputed undertakings to you early next week.

Best,



**Chris B. Zelyas**  
Partner

What's Next? The answer is Talent. With more than 20,000 people, 12,000 lawyers and 200 locations, Dentons has the talent for what you need, where you need it.

D +1 780 423 7387  
[chris.zelyas@dentons.com](mailto:chris.zelyas@dentons.com)  
[Bio](#) | [Website](#)

Dentons Canada LLP  
2500 Starec Tower, 10220 - 103 Avenue NW Edmonton, AB T5J 0K4 Canada

Zaouni Law Firm & Associates > LuatViet > Fernanda Lopes & Associados > Guevara & Gutierrez > Paz Horowitz Abogados > Sirote > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this email from your systems. To update your commercial electronic message preferences email [dentonsinsights@dentons.com](mailto:dentonsinsights@dentons.com) or visit our website. Please see [dentons.com](https://www.dentons.com) for Legal Notices.

**From:** Bourassa, Kelly <[kelly.bourassa@blakes.com](mailto:kelly.bourassa@blakes.com)>

**Sent:** Saturday, January 14, 2023 1:22 PM

**To:** Zelyas, Chris <[chris.zelyas@dentons.com](mailto:chris.zelyas@dentons.com)>

**Cc:** MacKinnon, Jessica <[Jessica.MacKinnon@blakes.com](mailto:Jessica.MacKinnon@blakes.com)>

**Subject:** Re: Crown Capital Partner Funding LP, by its manager Crown Private Credit Partners Inc v RBee Aggregate Consulting Ltd - Court Action Number 2201-02948

[WARNING: EXTERNAL SENDER]

Chris,

Undertakings 7 and 8 are directly relevant to the claim, including RMC's alleged entitlement to set-off. Mr. Burak indicated that there is a portion of RMC's contract with AFDE that was paid based on RBee's aggregate production. If RMC received payment for the amounts invoiced by RBee, it would be inappropriate to now claim that RBee does not deserve payment for those amounts. Further, RBee's performance of the Supplier Contract was guaranteed by the performance bond. As a result, RMC may have recourse to the bond in respect of any alleged damages it has suffered.

Also in relation to undertaking 8, pursuant to section 5 of the Receivership Order granted March 14, 2022 (attached), RMC has an obligation to advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the RBee (collectively, the "Records") in RMC's possession or control, and to provide said records to the Receiver or permit the Receiver to make copies thereof. A performance bond relating to RBee's performance of a contract is a record relating to RBee's business and affairs. As such, RMC is required to provide such documents to the Receiver regardless of the Questioning or any relevance to the dispute.

Undertakings 9 through 11 are directly related to whether RMC has a valid claim to set off against the invoices owing, so are relevant to the dispute. RMC has provided prospective evidence as to the amount of aggregate that was required in relation to the Project as a basis to support its claim that RBee overbilled RMC in relation to the Supplier Agreement. Evidence that relates to the actual supply of aggregate in 2022 is directly relevant to RMC's allegations relating to RBee.

We are happy to have a call with you over the weekend or first thing on Monday morning, if that would be helpful in resolving these issues. In the interim, please advise as to when we may expect answers to the undertakings that were not taken under advisement.

Kind regards,

**Kelly J. Bourassa** (she, her, hers)  
Partner  
[kelly.bourassa@blakes.com](mailto:kelly.bourassa@blakes.com)  
Calgary +1-403-260-9697  
Toronto +1-416-863-2421  
C. +1-403-629-9597

On Jan 13, 2023, at 3:43 PM, Zelyas, Chris <[chris.zelyas@dentons.com](mailto:chris.zelyas@dentons.com)> wrote:

External Email | Courrier électronique externe

Thanks for this, Lindsay.

Kelly, as I expressed during Mr. Burak's cross-examination, I was not satisfied as to the relevance of undertakings 7-11 (all taken under advisement). The main issue is whether Rbee in fact supplied the aggregate for which it invoiced, and it's not clear to me how any of these undertakings relate to this point. Can you advise? I'd be happy to get on a call to discuss if that would be easier.

Have a good weekend.



Chris B. Zelyas  
Partner

What's Next? The answer is Talent. With more than 20,000 people, 12,000 lawyers and 200 locations, Dentons has the talent for what you need, where you need it.

D +1 780 423 7387  
[chris.zelyas@dentons.com](mailto:chris.zelyas@dentons.com)  
[Bio](#) | [Website](#)

Dentons Canada LLP  
2500 Stantec Tower, 10220 - 103 Avenue NW Edmonton, AB T5J 0K4  
Canada

LuatViet > Fernanda Lopes & Associados > Guevara & Gutierrez > Paz Horowitz Abogados > Sirote > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > Eric Silwamba, Jalasi and Linyama > Durham Jones & Pinegar > LEAD Advogados > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this email from your systems. To update your commercial electronic message preferences email [dentonsinsightsca@dentons.com](mailto:dentonsinsightsca@dentons.com) or visit our website. Please see [dentons.com](https://www.dentons.com) for Legal Notices.

**From:** Farr, Lindsay <[lindsay.farr@blakes.com](mailto:lindsay.farr@blakes.com)>

**Sent:** Friday, January 13, 2023 3:32 PM

**To:** Zelyas, Chris <[chris.zelyas@dentons.com](mailto:chris.zelyas@dentons.com)>

**Cc:** Bourassa, Kelly <[kelly.bourassa@blakes.com](mailto:kelly.bourassa@blakes.com)>; MacKinnon, Jessica <[Jessica.MacKinnon@blakes.com](mailto:Jessica.MacKinnon@blakes.com)>

**Subject:** Crown Capital Partner Funding LP, by its manager Crown Private Credit Partners Inc v Rbee Aggregate Consulting Ltd - Court Action Number 2201-02948

[WARNING: EXTERNAL SENDER]

Good Afternoon,

Further to the Questioning of N. Burak on January 11, 2023 in the above-noted matter, please see attached correspondence.

Thank you,

**Lindsay Farr** (she, her, hers)  
Legal Assistant to Kelly Bourassa,  
Aaron Zambonin, Alexa Rudakoff,  
and Brandon Cave (*Student-at-Law*)  
[lindsay.farr@blakes.com](mailto:lindsay.farr@blakes.com)  
T. +1-403-663-2887

Blake, Cassels & Graydon LLP  
855 - 2 St. S.W., Suite 3500, Calgary AB T2P 4J8 ([Map](#))  
[blakes.com](https://www.blakes.com) | [LinkedIn](#)

 **Blakes Means Business**

This email communication is CONFIDENTIAL AND LEGALLY PRIVILEGED. If you are not the intended recipient, please notify me at the telephone number shown above or by return email and delete this communication and any copy immediately. Thank you. L'information paraissant dans ce message électronique est CONFIDENTIELLE. Si ce message vous est parvenu par erreur, veuillez immédiatement m'en aviser par téléphone ou par courriel et en détruire toute copie. Merci.

COURT FILE NUMBER	2201-02948
COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
APPLICANT	<b>CROWN CAPITAL PARTNER FUNDING LP, by its manager, CROWN PRIVATE CREDIT PARTNERS INC</b>
RESPONDENT	<b>RBEE AGGREGATE CONSULTING LTD.</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<p>Attention: Chris Zelyas</p> <p>Dentons Canada LLP 2500 Stantec Tower 10220 – 103 Avenue NW Edmonton, AB T5J 0K4 Phone: (780) 423-7387 Facsimile: (780) 423-7276 <b>Dentons file: 573989-3</b></p>

**UNDERTAKINGS OF NICHOLAS BURAK  
GIVEN AT CROSS EXAMINATION ON AFFIDAVIT  
JANUARY 11, 2023**

<b>#/PG</b>	<b>UNDERTAKING</b>	<b>RESPONSE</b>
#1 p. 14-15	Produce copies of the change orders issued by AFDE to RMC in respect of the Site C Project.	The change orders are enclosed herein.
#2 p. 19-20	Verify that the aggregate material shown as light blue in Exhibit "C" to the Affidavit of N. Burak is 20-10 mm.	Confirmed – the aggregate material in question is 20-10 mm.
#3 p.23	Review RMC's records for any pre-site assessment report that RMC received prior to the commencement of RBee's work on the Project (if any) and produce copy if found.	Mr. Burak has reviewed RMC's records and cannot locate a copy of any pre-site assessment report.
#4 p. 39-40	Produce any formal documentation between AFDE and RMC relating to hauling completed by RBee (if not covered by Undertaking No. 1).	Beyond the change orders enclosed with respect to Undertaking No. 1, there is no further formal documentation.

#/PG	UNDERTAKING	RESPONSE
#5 p. 56	Determine whether the Concrete BC inspection reports dated September 15, 2021 appended as Exhibit "F" of the Affidavit of N. Burak are the final reports and, if not, produce final reports.	The final reports with respect to the September 15, 2021 inspections are enclosed. There are no changes in the final reports relative to the reports found at Exhibit "D" with respect to the inspection items described in paragraph 26 of the Affidavit of N. Burak (scale calibrations and scale minimum tolerances).  We note that the correct Exhibit relating to the inspection reports is Exhibit "D".
#8 p. 41	Produce a copy of the performance bond issued in respect of RBee's performance on the Project.  UNDER ADVISEMENT	While RMC maintains that the performance bond is not relevant to the issues in dispute, it produces the performance bond pursuant to the Receivership Order.
#9 p. 71-72	Provide confirmation of whether the pricing of aggregate in the contract with A-1 (and/or Paragon, as applicable) is the same as under the Supplier Agreement.  UNDER ADVISEMENT	Confirmed – the pricing is the same. Although the pricing of aggregate in RMC's contract with Paragon is based on cubic meters, as opposed to tonnage under the Supplier Agreement, the prices per each unit of measurement are the same when tonnes are converted to cubic meters using density factors supplied by AFDE.
#10 p. 72	Advise approximately how much aggregate was supplied by A-1 (or Paragon, as applicable) during the 2022 season.  UNDER ADVISEMENT	Approximately 480,000 metric tonnes of material was supplied.
#11 p. 73	Provide full name of "Paragon" company.  UNDER ADVISEMENT	The full name of the "Paragon" company is "2128222 Alberta Ltd., operating as Paragon Custom Crushing".

EXHIBIT "K"

This is Exhibit K referred to in the Affidavit of

NICHOLAS BURAK

Sworn (or affirmed) before me this 28th day of January, 2023



.....  
A Commissioner for Oaths in and for the Province of Alberta

SHANE ULMER

Appointee 0763342

Expiry June 8, 2024

## RBee Aggregate Invitation for Offers to Purchase



### Background

On March 11, 2022, the Court of Queen's Bench of Alberta (the "Court") granted an Order (the "Receivership Order") appointing FTI Consulting Canada Inc. ("FTI") as receiver and manager of all of the current and future assets, undertakings and properties of RBee Aggregate Consulting Ltd. ("RBee" or the "Company").

FTI, in its capacity as receiver (the "Receiver") of RBee is seeking offers to purchase the Receiver's right, title and interest in certain of the Company's assets which include aggregate processing and handling equipment located throughout Western Canada.

### Assets Available for Sale

RBee's equipment fleet includes 380 pieces of heavy equipment which are summarized below:

Assets by Location (units)	Parcel	Aggregate Handling	Crushing	Articulated Dump Trucks	Wheel Loaders	Other	Total
Gibbons, Alberta	Shop / Home Office Yard	9	7	8	4	79	107
Whitecourt, Alberta	Windfall Pit	51	5	6	3	30	95
Fort St. John, British Columbia	Site C Pit	24	5	2	2	19	52
Rocky Rapids & Drayton Valley, Alberta	Vogel Pit	28	3	-	3	18	52
Other (3 locations)	Various	23	2	7	3	39	74
<b>Total</b>		<b>135</b>	<b>22</b>	<b>23</b>	<b>15</b>	<b>185</b>	<b>380</b>

The equipment is divided into five parcels which are further set out in the Receiver's offer document.

### Strategic Locations

The equipment is strategically located to take advantage of the 2022 construction season and is situated in a manner ready to be deployed on key projects including:

- Site C Dam in Fort St. John, British Columbia
- Windfall Plant 3 in Whitecourt, Alberta
- Vogel Plant in Rocky Rapids, Alberta



## **Contract Opportunities**

---

Certain of the equipment parcels available for sale have historically been deployed on contracts undertaken by RBee. The Receiver's interest in an applicable contract may be available for purchase and/or assignment in conjunction with an asset purchase. Details of current and/or historic contracts in respect of the equipment may be made available to qualified bidders at the sole discretion of the Receiver and upon execution of a non-disclosure agreement.

## **Offer Process**

---

Qualified potential purchasers may be granted access to an electronic data room including due diligence materials and the Receiver's prescribed form of offer.

The timeline for the process is as follows:

- March 14 to April 6, 2022 – access to the electronic data room and appointments to inspect the equipment
- **April 6, 2022 – deadline for submitting offers (4 o'clock pm Mountain Standard Time)**
- April 6 to April 20, 2022 – Receiver will negotiate with one or more parties and seek Court approval of preferred offer(s)

Parties may bid on the prescribed parcels of equipment or make an en bloc offer for all of the equipment.

FTI reserves the right to amend or modify the solicitation process at any time at its sole discretion.

## **Contact Details**

---

Inquiries or requests for information should be directed to FTI only and at the contact details below.

FTI Consulting Canada Inc.  
Suite 1610, 520 5th Avenue SW, Calgary, AB T2P 3R7

**Lindsay Shierman**  
**Managing Director**  
lindsay.shierman@fticonsulting.com  
+1.587.581.0361

**Hailey Liu**  
**Senior Consultant**  
hailey.liu@fticonsulting.com  
+1.587.890.6270