

COURT FILE NO.: 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.

APPLICANT JMB CRUSHING SYSTEMS INC.

DOCUMENT **ORDER – LIEN CLAIMS – MD of BONNYVILLE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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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