

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

Clerk's Stamp

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 N.P.A. LTD.  
RESPONDENT JMB CRUSHING SYSTEMS INC.

DOCUMENT **APPLICATION or CROSS-APPLICATION of N.P.A. LTD.**

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**NOTICE TO RESPONDENT: JMB CRUSHING SYSTEMS INC.**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date	August 26, 2020
Time	9:45 a.m.
Where	Calgary Law Courts, 601, 5 <sup>th</sup> Street SW, Via Webex
Before Whom	The Honourable Justice K.M. Eidsvik

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. With leave or direction of the Honourable Justice of this Court, N.P.A. Ltd. ("NPA") seeks the following relief:
  - a. An Order declaring NPA the legal and clear title owner of the Subject Aggregate, being stored on lands formerly subject to Surface Materials Lease No. 020038 (the

“Precambrian Site”), free and clear of any other claims, including any claims of Kalinko Enterprises Ltd. (“Kalinko”), and only subject to any possessory lien interest claim of 848875 Alberta Ltd., operating under the name Al’s Contracting (“Al’s Contracting”), if of merit and still applicable;

- b. A declaration that Kalinko is not the clear title owner of the Subject Aggregate;
- c. A declaration that the Kalinko registered security interest has no merit and shall be discharged, or alternatively, a declaration that NPA purchased the Subject Aggregate and owns it, free and clear, of any registered Kalinko security interest or interest registered in the Personal Property Registry;
- d. Costs of this application as this Honourable Court may direct; and
- e. Such further or other relief as this Honourable Court deems just and appropriate in the circumstances.

**Grounds for making this application:**

2. NPA is the amalgamation successor of E Construction Ltd. (“E Construction”).
3. JMB Crushing Systems Inc. (“JMB”) was in the business of supplying materials, including aggregate sources, out of remote surface material leases. NPA has done business with JMB a number of times over the past decades.
4. In January of 2020, NPA and JMB entered into an aggregate purchase and removal agreement whereby NPA purchased the Subject Aggregate from JMB for a price of \$1,396,500.00. Part of the purchase transaction included provisions dealing with access for NPA to the Subject Aggregate at the Precambrian Site. JMB had the authority to sell the Subject Aggregate as owner of the Subject Aggregate, or otherwise, and as such, NPA became owner of the Subject Aggregate it purchased from JMB, free and clear of any claims or encumbrances in January 2020.
5. In or around May/June of 2020, NPA became aware of a dispute regarding ownership of the Subject Aggregate between JMB and Kalinko—however, NPA submits that it is the owner of the Subject Aggregate, not Kalinko.
6. JMB and Kalinko entered into an Operating Agreement in 2012, which term was extended pursuant to an Amending Agreement, which provided JMB the right to mine, remove and sell aggregates on and from various surface materials leases, including from SML 120004 (the “Kalinko SML”).
7. Pursuant to the Operating Agreement, JMB was the owner of such aggregates, consistent with profit a prendre rights, and Kalinko had a contractual right to royalty payments from JMB based on tonnage of aggregates sold by JMB to JMB’s customers. The royalty payments is not a proprietary interest and Kalinko’s rights to royalties is an unsecured contractual claim between it and JMB.
8. In the alternative, if the Operating Agreement did not provide JMB ownership of the Subject Aggregate, JMB as agent of Kalinko, had the authority to extract, remove and sell the Subject Aggregate, which JMB did in removing the Subject Aggregate to the Precambrian Site and then by selling the Subject Aggregate to NPA.
9. Kalinko registered a security interest against JMB in April of 2019; however, as the Operating Agreement by its terms creates no security agreement or interest in aggregates extracted and

sold by JMB, this alleged security interest does not attach to the Subject Aggregates purchased by NPA. The security interest registered has no merit and should be discharged.

10. In the alternative, if Kalinko had a valid security at the time it was registered, any alleged security agreement or security interest cannot apply to or affect the Subject Aggregate, or be enforced against NPA, as the Subject Aggregate was, and is, removed from the Kalinko SML, Kalinko authorized the sale of the Subject Aggregate, and the sale of the Subject Aggregate by JMB to NPA was a sale in the ordinary course of JMB's business.
11. Such further and other grounds as counsel may advise and this Honourable Court may permit, or as already set out in the Written Brief of NPA submitted August 4, 2020.

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

12. The Affidavit of Bill Turner sworn on July 30, 2020.
13. The Supplemental Affidavit of Bill Turner sworn in July 31, 2020.
14. Portions of the Examination Transcript of Bill Turner, NPA representative, examined on July 31, 2020.
15. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

16. Part 5 of the Alberta Rules of Court, including Rule 5.5, Part 6 of the Alberta Rules of Court, Rule 11.27, and Rule 13.5.
17. Such further and other applicable rules as may be referenced by counsel for NPA.

**Applicable Acts and regulations:**

18. N/A.

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

19. N/A.

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

20. Via Webex.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.