

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, R.S.C.
1985, c. C-36, AS AMENDED**
**AND IN THE MATTER OF A PLAN OF
ARRANGEMENT OF JMB CRUSING SYSTEMS
INC. AND 2161889 ALBERTA LTD.**

541466 Alberta Ltd.

APPLICANT:

RESPONDENT: JMB Crushing Systems Inc.

DOCUMENT: **APPLICATION**

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: Robert A. Farmer
File No: 15370-112

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 Judge

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

Date October 1, 2020
Time 2:00 pm
Where Calgary Courts Centre via Webex. Videoconference details are enclosed as Appendix "A" to this Application
Before The Honorable Justice K.M. Eidsvik – Commercial List

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. An Order:
 - a. Declaring that the five options granted by 541466 Alberta Ltd. operating as JLG Ball Enterprises ("JLG") to JMB Crushing Systems Inc. ("JMB") to purchase from JLG certain Surface Material Rights are expressly excluded from the sale of JMB's assets to a potential purchaser;

- b. Declaring that the Non-Competition Agreement entered into between JLG and 541466 and any rights and obligations thereunder is expressly excluded from the sale of JMB's assets to a potential purchaser, or alternatively is not assignable to a potential purchaser of JMB's assets;
- c. Granting such further and other relief as this Honorable Court considers just and appropriate.

Grounds for making this application:

2. On or about March 15, 2019 JLG and JMB entered into a Purchase and Sale Agreement (the "JLG Sale Agreement") pursuant to which JMB purchased certain Surface Material Rights, Miscellaneous interests and Goodwill from JLG;
3. JMB is indebted to JLG in the amount of \$3,000,000 plus accrued interest pursuant to the JLG Sale Agreement;
4. The sum of \$600,000 together with accrued interest was due and payable to JLG on March 22, 2020 and to date, despite demand, has not been paid;
5. The JLG Sale Agreement granted a series of five options to JMB to purchase from JLG certain Surface Material Rights for a period of 180 days from the date upon which JLG received notification from the relevant Governmental Authority that formal approval has been granted for Surface Material Rights in relation to each of five parcels of land (the "Options");
6. JMB has breached the JLG Sale Agreement by failing to make payments to JLG when and as required thereby repudiating the JLG Sale Agreement. As a consequence of JMB's breach of the JLG Sale Agreement and consequent repudiation of the JLG Sale Agreement, the Options are no longer capable of being exercised;
7. Pursuant to the JLG Sale Agreement JLG entered into a Non-Competition Agreement with JMB;
8. As a consequence of JMB's breach of the JLG Sale Agreement and consequent repudiation of the JLG Sale Agreement, the Non-Competition Agreement is terminated;
9. Alternatively, the Non-Competition Agreement and any rights and obligations thereunder are not capable of being assigned to a potential purchaser of JMB's assets;
10. Such further and other grounds as counsel may advise.

Material or evidence to be relied on:

11. September 28, 2020 Affidavit of Lisa Ball.

Applicable rules:

12. Part 6 of the *Alberta Rules of Court*, Alta Reg 124/2010, as amended;
13. Such further and other Rules as Counsel may advise.

Applicable Acts and regulations:

14. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended;
15. Such further and other acts and regulations as counsel may advise;

Any irregularity complained of or objection relied on:

16. None.

How the application is proposed to be heard or considered:

17. Via Webex Videoconference

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 this 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.