Court of King's Bench of Alberta

Citation: Crown Capital Partner Funding LP v RBee Aggregate Consulting Ltd, 2026 ABKB 561

Date:
Docket: 2201 02948
Registry: Calgary

Between:

Crown Capital Partner Funding LP, by its manager, Crown Private Credit Partners Inc.

Applicant

\- and -

RBee Aggregate Consulting Ltd.

Respondent

> **Corrected judgment:** A corrigendum was issued on August 10, 2026; the corrections have been made to the text and the corrigendum is appended to this judgment.

Reasons for Decision
of the
Honourable Justice C.D. Simard

I. Introduction

A. Overview

[1] RBee Aggregate Consulting Ltd. (**RBee**) operated a gravel crushing business at various locations, including constructions sites, in Alberta and British Columbia. On May 7, 2018, RBee

entered into a Supplier Agreement with RMC Construction Materials Inc. (the **Supplier Agreement** and **RMC**). Under the Supplier Agreement, RBee provided washed and crushed aggregate (as defined in the Supplier Agreement, **Product**) to RMC. RMC in turn utilized that Product to produce concrete that was used to construct part of the Site C hydroelectric dam project located near Fort St. John, British Columbia (the **Project**). RBee's business was seasonal, and it supplied Product to RMC under the Supplier Agreement from approximately April until the start of winter for four seasons, from 2018 to 2021.

[2] On March 11, 2022, FTI Consulting Canada Inc. was appointed as the receiver of RBee (the **Receiver**). The Receiver sought to collect payment of $4,485,480.64 (including GST) plus interest (the **Claimed Amount**) from RMC, pursuant to the final three invoices that RBee issued to RMC under the Supplier Agreement in September, October and December 2021 (the **Final Three Invoices**). The details of the Final Three Invoices are:

<table>
<tr><th>Date</th><th>Invoice Number</th><th>Quantity of Product</th><th>Charge for Goods or Services</th><th>GST</th><th>Total</th></tr>
<tr><td>Sept. 30, 2021</td><td>23219</td><td>66,618 tonnes</td><td>$930,447.00</td><td>$46,522.36</td><td>$976,969.36</td></tr>
<tr><td rowspan="3">Oct. 31, 2021</td><td rowspan="3">23256</td><td>448,132 tonnes</td><td>$2,733,049.50</td><td rowspan="3">$158,416.85</td><td rowspan="3">$3,326,753.63</td></tr>
<tr><td>September hauling of 58,016 tonnes (at $1.72/tonne)</td><td>$99,787.52</td></tr>
<tr><td>October hauling of 195,058 tonnes (at $1.72/tonne)</td><td>$335,499.76</td></tr>
<tr><td>Dec. 31, 2021</td><td>23311</td><td>Hauling of 100,641 tonnes (at $1.72/tonne)</td><td>$173,102.52</td><td>$8,655.13</td><td>$181,757.65</td></tr>
<tr><td colspan="5">Total Claimed Amount</td><td>$4,485,480.64</td></tr>
</table>

[3] RMC refused to pay the Final Three Invoices, claiming that RBee had charged for more Product than it had delivered, both in the Final Three Invoices and also in prior invoices under the Supplier Agreement. RMC asserts that the doctrine of equitable set-off applies, allowing it to set-off its earlier overpayments against the Claimed Amount, reducing it to (less than) zero.

[4] On November 29, 2022, the Receiver applied to this Court seeking an order requiring RMC to pay the Claimed Amount.

[5] For the reasons that follow, I grant the Receiver's application, in part. I find that RMC must pay the Receiver $3,663,496.50 plus GST and interest for the quantities of supplied Product set out in the Final Three Invoices, and $469,687.28 plus GST and interest, for the hauling charges set out in the Final Three Invoices.

B. Procedural Background

1. The First Decision

[6] Romaine J heard the Receiver's application in November 2022, and she issued her decision on December 18, 2023: ***Crown Capital Partner Funding LP v RBee Aggregate Consulting Ltd*, 2023 ABKB 724** (the **First Decision**). In the First Decision, Romaine J focused on the interpretation of the following portion of article 5 in the Supplier Agreement (the **Verification Provision**):

> **5. <u>PAYMENT TERMS</u>**
>
> ...
>
> Each provision of Products shall be invoiced separately. Subject to the terms of this Agreement, [RMC] shall pay each invoice no later than sixty (60) days from the date of the invoice at the address set forth in such invoice. The invoice date shall be no earlier than the date of provision to [RMC's] delivery point ...
>
> ...
>
> All payments from [RMC] to [RBee] will be subject to third-party verification (the "**Verifications**") of volume of Products, and a certification will emanate from [RMC] or its designates within sixty (60) days of delivery. [RBee]'s entitlement to payment will be based on such Verifications, and subject to the terms of this Agreement.
>
> ...

[7] Romaine J concluded that the Verification Provision was unambiguous. She rejected RMC's argument that its right to conduct Verifications was merely an option. Instead, she found that it was the only manner in which the parties had agreed that RMC could challenge the quantities of Product that RBee claimed to have delivered. Therefore, if RMC chose not to conduct a Verification within 60 days following a delivery (as was the case for all of RBee's deliveries, including those described in the Final Three Invoices), RMC had lost the right to challenge the quantity of Product that RBee claimed to have delivered.

[8] Romaine J found that article 9 of the Supplier Agreement supported this interpretation of the Verification Provision:

> **9. <u>PRODUCT PROVISION AND RISK OF LOSS</u>**
>
> Unless otherwise agreed upon by the Parties in writing and in advance, all Products provided pursuant to this Agreement will be provided to [RMC] in stockpiles in the area east of the batch plant, as depicted on the map of the operational area attached hereto as Schedule "C" (the "Delivery Point"), at which time risk of loss shall pass to [RMC]. ...

[9] Romaine J also found that the second affidavit of Nicholas Burak, RMC's Vice President and Chief Financial Officer, was inadmissible, because: (a) it contained opinion evidence regarding "industry standards" about how industry participants verified volumes of delivered aggregate product; (b) Mr. Burak was insufficiently qualified to give that evidence; (c) it was inadmissible parol evidence, given Romaine J's finding that the Verification Provision was unambiguous; and (d) it was filed late contrary to a procedural order, and therefore in a manner that constituted improper case-splitting by RMC.

[10] Romaine J concluded that RMC was obligated to pay the Receiver the entire Claimed Amount.

2. The Appeal Decision

[11] RMC appealed the First Decision. The Court of Appeal issued its decision on April 4, 2025: ***Crown Capital Partner Funding LP v RBee Aggregate Consulting Ltd***, **2025 ABCA 117** (the **Appeal Decision**). In the Appeal Decision, the Court of Appeal concluded that Romaine J erred by finding that article 5 and article 9 of the Supplier Agreement were unambiguous. The Court of Appeal did not itself interpret those provisions, but concluded that they were ambiguous, because they were open to different interpretations. It also concluded that Romaine J should have admitted the extrinsic evidence submitted by RMC, including Mr. Burak's second affidavit. Because a consideration of the improperly-excluded extrinsic evidence might have resulted in a different conclusion, the Court of Appeal sent the Receiver's application back to this Court for re-hearing.

3. The Re-Hearing

[12] I presided over the re-hearing of the Receiver's application on March 17, 2026. At the conclusion of their submissions on that day, I requested additional written submissions from the parties, which they provided on April 1 and 8, 2026. This is my decision on the re-hearing of the Receiver's application.

II. Issues

[13] I must decide the following issues:

(a) what is the proper interpretation of the Verification Provision;

(b) has the Receiver established its claim against RMC for the Claimed Amount;

(c) has RMC established its cross-claim against RBee; and

(d) has RMC established that equitable set-off applies to reduce the Claimed Amount by the amount of RMC's cross-claim?

III. Analysis

A. Issue One: What is the Proper Interpretation of the Verification Provision?

1. The Applicable Law

[14] The parties agree on the law that governs my interpretation of the Supplier Agreement. I summarize the applicable principles as follows:

- the purpose of my contractual interpretation exercise is to determine the objective intention of the parties;
- I am to read the Supplier Agreement as a whole and give the words used in it their ordinary and grammatical meanings, consistent with the surrounding circumstances;
- the surrounding circumstances only comprise objective evidence of the background facts known to the parties at the time they entered into the Supplier Agreement;
- the surrounding circumstances must never be allowed to overwhelm the words the parties used in the Supplier Agreement, or deviate from the text in a way that effectively creates a new agreement;
- if the words in the Supplier Agreement bear more than one reasonable interpretation, I can consider extrinsic evidence, to help me determine the mutual intention of the parties; and
- as a commercial contract, I must interpret the Supplier Agreement in accordance with sound commercial principles and good business sense

***Sattva Capital v Creston Moly*, 2014 SCC 53** at paras 42 – 61; ***IFP Technologies (Canada) Inc. v EnCana Midstream and Marketing*, 2017 ABCA 157** at paras 86 – 88.

2. The Parties' Positions

[15] The Receiver says that the Verification Provision is clear and unambiguous. It points out that in the entire agreement clause in article 26, RBee and RMC agreed that entirety of their agreement was contained in writing in the Supplier Agreement. Because the 60-day verification process in the Verification Provision was the only such process described in the Supplier Agreement, it says that the parties therefore agreed that was the only way that RMC could challenge the quantities RBee claimed to have delivered. The "mandatory" Verification Provision therefore placed the onus on RMC to verify the quantities of Product that RBee had delivered within the time period permitted, and if it chose not to do so, it could not do so later.

[16] RMC argues that the Verification Provision only provided it with an option, but not an obligation, to undertake the 60-day verification process. It says that nothing in the Supplier Agreement precluded it from seeking to later challenge the quantities RBee claimed to have delivered, or to dispute the amounts claimed by RBee in its invoices.

3. Applying the Law to the Facts

[17] Considering the Supplier Agreement as a whole, the surrounding circumstances and the admissible extrinsic evidence, I have concluded that in the Verification Provision, the parties agreed to a mechanism whereby RMC could, but did not have to, engage a third party to verify the quantities of Product that RBee claimed in its invoices to have delivered. If RMC chose not to exercise its option to conduct a Verification of any delivery claimed by RBee in an invoice, it was agreeing on a *prima facie* basis that RBee had delivered the claimed quantity, and it would then become obligated to pay that invoice. However, by failing to commission a Verification by the stated 60-day deadline, RMC would not lose its right to later dispute the quantities of Product delivered by RBee, or to claim a refund or reduction of what it had paid under an invoice.

[18] I have concluded that this is the proper interpretation of the Verification Provision for the following reasons.

[19] The parties agreed to the following milestones for delivery, invoicing, Verification and payment in article 5 of the Supplier Agreement:

- RBee was obligated to issue a separate invoice for each delivery of Product, but it could issue that invoice no earlier than the date on which it delivered the Product;
- within 60 days from the date of delivery of Product by RBee, a certification was required to "emanate" from RMC or its designate, with respect to a Verification of the volume delivered; and
- within 60 days from the date an invoice was issued by RBee, RMC was required to pay that invoice "subject to the terms of [the Supplier Agreement]."

[20] To properly interpret the parties' intention in article 5, I must consider all the other provisions the in Supplier Agreement. There are a number of articles that I find to be of assistance, and I will now summarize them.

[21] The combined effect of article 1, article 18 and Schedule "B" is to make clear that the parties' fundamental obligations under the Supplier Agreement were for RBee to deliver quantities of Products, and for RMC to pay for the quantities actually delivered, based on different prices per tonne of different categories of Product.[1] The Supplier Agreement was intended to operate for a minimum of three years, and the anticipated required quantities of Product were very large: 1,383,000 tonnes.

[22] RMC's obligation to pay each individual invoice issued by RBee was subject to a number of conditions listed in article 6, including different deliverables from RBee: statutory declarations about previous payments, evidence of discharges of liens and evidence of satisfaction of workers' compensation obligations.

[23] In article 9, the parties agreed that when RBee delivered Product to the designated stockpile area, the risk of loss of the Product passed to RMC.

[24] In article 22, the parties agreed to a dispute resolution process, first requiring discussion between their respective management. If those discussions did not resolve the dispute in 30 days, the parties were permitted, but not required, to seek mediation. If they did not agree on a mediation process or if mediation did not resolve the dispute, either party could commence arbitration. There is no wording in article 22 that would prevent it from applying to disputes about the quantity of Product delivered and invoiced for by RBee. It is worded broadly enough to include those kinds of disputes. Given the nature of mediation and arbitration proceedings, it is clear that the parties' respective rights to pursue the resolution of a dispute that their management were not able to resolve would almost certainly play out over a period much longer than the 60 day deadline in the Verification Provision.

[25] I turn next to the extrinsic evidence relevant to the Verification Provision. That evidence came from Mr. Burak's two affidavits. He explained that RMC conducted no Verifications

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[1] It is worth nothing that, although the parties' obligations in the Supplier Agreement describe the weight of delivered Products (in tonnes), the parties, in their evidence and submissions, and even in the Verification Provision itself, often speak in terms of volume. This inconsistency is not important to the contract interpretation issue, but it is central to the question of whether RMC has proved its counterclaim, which I discuss in detail below. The Products were categorized in the Supplier Agreement as follows: 40 – 20 mm rock; 20 mm – 10 mm rock; 10 mm – 5 mm rock; fine aggregate; road crush.

pursuant to article 5, because until the fall of 2021 it had no reason to suspect that the quantities of Product that RBee claimed to have delivered were inaccurate. He said that RMC had always anticipated performing a final quantity reconciliation upon the completion of RBee's performance under the Supplier Agreement, and that this was a common practice in the aggregate and concrete industries. He said that he believed RBee had the same understanding because that practice (only one final reconciliation at the end of the project, rather than ongoing verifications) had been done on "prior" projects in which RBee supplied RMC with aggregate. The Supplier Agreement was the first contract between RMC and RBee, so Mr. Burak explained (in his second affidavit, after his assertion about the parties' past practices together was challenged) that his description of "prior" projects was a reference to projects that were started after the Supplier Agreement was signed, but finished before October 2021.

[26] When the entirety of the Supplier Agreement is considered, including the additional provisions I have mentioned above, it becomes clear that the Receiver's proposed interpretation of the Verification Provision is unreasonable and commercially impractical. If RMC was finally and unconditionally obligated to pay RBee for an invoice any time it chose not to obtain a Verification, that would arguably render meaningless the other conditions the parties chose to specifically list as conditions of payment in article 6. It would also unreasonably read an exclusion into the dispute resolution provision in article 22, to exclude disputes about quantities of delivered Product. Given the central importance of the parties delivering and paying for the correct quantity of Product under the Supplier Agreement, it would be commercially absurd to read such an exception into article 22. It would be equally absurd to interpret RMC's ability to obtain a Verification as a precondition to it being able to dispute the quantity of Product that RBee claimed to have delivered. The Supplier Agreement contains no words that would justify such a reading.

[27] However, RMC's proposed interpretation, that the Verification Provision is a mere "option" that it could choose to exercise or not, with no contractual consequences, and that RBee agreed that RMC could conduct a final reconciliation, is also untenable. While Mr. Burak's evidence about how RMC always intended that there would be a final reconciliation is admissible, the probative value of that evidence is very low. Given the central importance to their entire commercial arrangement of RBee delivering the right quantity of Product, and RMC paying for the right quantity of Product, it is not reasonable to conclude that the parties agreed there would be a final reconciliation at the end of the relationship, but simply chose not to include such a term in the Supplier Agreement. They included a term permitting RMC to conduct invoice-by-invoice Verifications. They also, in article 6(c), turned their mind specifically to the conditions that had to be satisfied for RBee to receive payment on its final invoice. The fact that they did not list there, or anywhere else in the Supplier Agreement, the requirement for a final reconciliation leads to the inevitable conclusion that they did not agree on such a term.

[28] I also give no weight to Mr. Burak's evidence that the parties mutually understood that there would be a final verification because of their "prior" dealings. If they ever shared such an understanding, it could only have been after the Supplier Agreement was signed, because the Supplier Agreement was the first contract between these two parties. Accepting at face value this evidence of an oral understanding would improperly overwhelm the clear written wording in the Supplier Agreement. It would also circumvent the entire agreement clause in article 25 and article 26, which prohibited any amendments not in writing signed by both parties. To accept

that the parties somehow agreed that RMC would have a final reconciliation right but agreed not to include such a provision in the Supplier Agreement is not borne out by the evidence.

[29] Having considered the entirety of the Supplier Agreement and the extrinsic evidence, I conclude that the parties intended the Verification Provision to be part of a commercially reasonable and practical delivery, invoicing and payment methodology (as outlined in paragraph 19 of this Decision). RBee had to deliver and then invoice. Risk of loss of the Product passed to RMC immediately. RMC had 60 days after the delivery to conduct a Verification, and 60 days from the issuance of the invoice to pay it. The invoice could not precede the delivery. This scheme makes practical good sense in the context of a large-scale and very active ongoing construction project. If RMC chose to conduct a Verification, it had time to do so before it had to pay an invoice. If it did so and the Verification provided evidence of a quantity discrepancy, RMC would have time to engage with RBee before its payment deadline arrived. However, if it chose not to conduct a Verification, the parties agreed to treat RBee's invoices as *prima facie* evidence of the quantities delivered, with the result that RMC would become obligated to pay RBee for the quantities stated in the invoice. This result follows logically from the very essence of the parties' arrangement: RMC was only to pay for quantities it actually received.

[30] However, the obligation to make the payment and the actual making of the payment did not irrevocably or finally preclude RMC from later challenging the quantity of Product for which RBee had invoiced. This remained something that RMC could do later under article 22, subject to the other provisions of the Supplier Agreement and subject to any limitations in law (pursuant to article 33).

[31] This interpretation is consistent with the evidence about the realities on the ground at the Project. RMC knew that RBee needed cashflow to keep providing the very large quantities of Product, which was essential to RMC providing the very large quantities of concrete that AFDE, the prime contractor on the Project, needed. The parties agreed on a practical working arrangement, while reserving the right to resolve disputes later.

[32] This case is distinguishable from the bank account verification cases cited by the Receiver, such as ***Arrow Transfer Co v Royal Bank of Canada***, [1972] SCR 845. There, the contract clearly stipulated that if the customer did not notify the bank of discrepancies in its account statements by a certain deadline, the bank's records would be considered to be "conclusive evidence" of that all account entries were correct. There is no equivalent wording in the Supplier Agreement.

B. Issue Two: Has the Receiver Established its Claim Against RMC for the Claimed Amount?

1. The Applicable Law

[33] The standard of proof in this case, as in all civil cases, is proof on a balance of probabilities. The Receiver must prove on a balance of probabilities that RBee delivered the quantities of Product set out in the Final Three Invoices.

2. Analysis

a. Charges for Products

[34] Invoice 23219 dated September 30, 2021 and Invoice 23256 dated October 31, 2021 both contained a line by line breakdown of the quantity and corresponding price of each category of

Product that RBee claimed to have delivered. The invoices were both also accompanied by a daily log on separate pages, showing the quantity of each category of Product delivered each day in the preceding calendar month. It is clear that RBee issued these invoices at the end of the month, for all the Products delivered that month. RMC does not deny that RBee delivered Products on each of the days listed in the two invoices. It also has tendered no evidence to prove that the quantities listed in the two invoices were not accurate. Rather, as I will discuss in greater detail in the next section of this Decision, RMC relies on a one-time "snapshot" quantity survey conducted by AFDE, to argue that RBee delivered less Product than it invoiced for, over the entire life of the Supplier Agreement.

[35] I have already concluded that the correct interpretation of the Verification Provision is that the parties agreed that RBee's invoices would be *prima facie* evidence of delivery, sufficient to trigger RMC's payment obligation, subject to a Verification by RMC. RMC concedes that it could have, but chose not to, conduct a Verification of the Product deliveries in September and October 2021. In these circumstances, I find that the Receiver has proven on a balance of probabilities that RBee delivered the quantities of product listed in Invoices 23219 and 23256, and that (subject to RMC's counterclaim and set-off argument) RMC is obligated to pay the Receiver for those Products.

b. Charges for Hauling

[36] The Receiver has also proven that RBee provided the majority of the hauling services that it invoiced for in Invoice 23256 and Invoice 23311. In those Invoices, RBee claimed to have hauled 58,016 tonnes of Product in September, 195,058 tonnes of Product in October and 100,641 tonnes of Product in some unspecified period. For all these hauling services, it has claimed payment at a unit rate of $1.72 per tonne, for a total of $617,044.93 plus GST.

[37] RMC does not deny that RBee was the party who hauled the Product to the stockpile site in September and October 2021. The parties also agree that RMC did pay RBee for hauling services from time to time, but that these services and payments occurred outside the Supplier Agreement.

[38] Mr. Burak swore in his first affidavit that RBee never sent the December 31, 2021 hauling Invoice 23311 to RMC, and that RMC only received that Final Invoice much later, from the Receiver. RMC says it is not liable to pay for the claimed hauling charges, because RBee provided no weigh tickets or load slips, which Mr. Burak said RMC would have expected to receive, and which would be necessary supporting documentation. He said that RMC only paid hauling charges to RBee prior to September and October 2021, if such supporting documentation was provided.

[39] These objections by RMC lack merit, in light of the evidence that the Receiver subsequently obtained in Mr. Burak's questioning. In his undertaking responses after his first questioning, Mr. Burak produced correspondence between RMC and AFDE in November 2021 and also a signed March 2022 change order, demonstrating that:

- by September 2021, RBee had fully depleted the area designated by AFDE from which it had been obtaining aggregate to supply the Product to RMC (Area 51);
- sometime after September 21, 2021, AFDE gave RMC and RBee access to another area from which RBee could obtain more aggregate (**Area 24**);

- obtaining aggregate from Area 24 added an additional haul distance of 3.5 km for RBee;
- in September and October, RBee had obtained 273,074 tonnes of aggregate from Area 24;
- RMC and AFDE had agreed on a charge of $1.72 per tonne for this lengthier hauling, which included "haul road construction, the mobilization of additional equipment and the rental of additional rock trucks as well as additional labour";
- RBee had been required to run double shifts and incur standby charges as part of this shift to Area 24;
- RMC sought additional compensation from AFDE, based on 273,074 tonnes of aggregate at the agreed rate of $1.72 per tonne, plus a markup of 2.5% (for a total of $475,558); and
- on March 31, 2022, AFDE and RMC agreed to a change order which approved the following increases to RMC's subcontract price:
    - $475,558, for the additional hauling distance for 273,074 tonnes at the agreed rate of $1.72 per tonne, plus a markup of 2.5%;
    - $263,880, for the double shift that RBee implemented; and
    - $20,400, for the standby charges RBee incurred.

[40] This evidence conclusively establishes that there was an agreement between RMC and RBee, outside the Supplier Agreement, pursuant to which RMC would pay RBee for additional hauling costs that RBee incurred in September and October, 2021, at a unit rate of $1.72 per tonne. There is no evidence that RMC made this agreement conditional on the receipt of weigh tickets or load slips from RBee. RBee had already done the work and invoiced RMC for the work by the time AFDE approved the change order.

[41] This evidence shows that the amount that AFDE paid RMC (based on the $1.72 unit rate but excluding RMC's 2.5% markup) for RBee's additional hauling costs in September and October 2021 was $469,687.28. That amount does not exactly match the amount that RBee invoiced RMC for hauling in the same two months. In Invoices 23219 and 23256, RBee used the agreed unit rate of $1.72 per tonne, but billed RMC a total of $617,044.93. There is no evidence that explains this discrepancy. I cannot speculate why RBee charged RMC more for hauling costs in these two months than was approved by AFDE in the change order. As a result, I find that the Receiver has only proven that RMC is obligated to pay the additional hauling charges that AFDE approved in the March 2022 change order, namely $469,687.28, plus GST. As with my finding of liability for the Product charges in the Final Three Invoices, RMC's obligation to pay this amount is subject to its counterclaim and set-off argument.

[42] The Receiver has failed to prove on a balance of probabilities that RMC is obligated to pay the balance of the hauling charges that RBee claimed in the Final Three Invoices, namely $138,702.52.

[43] It also appears that RMC may have received a windfall of approximately $284,280.00 as a result of the change order (the amount AFDE paid RMC, less its 2.5% markup and GST, for the double shifts and standby charges that RBee incurred). RBee apparently never invoiced RMC for these amounts. I cannot speculate why that may be the case. I simply note that there is

no evidence that RBee formally claimed these amounts from RMC, so RMC is not liable to pay them.

C. Issue Three: Has RMC Established Its Cross-Claim Against RBee?

1. RMC's Position

[44] RMC claims that RBee overcharged it by $7,634,939.43 (including GST) over the life of the Supplier Agreement. RMC has determined this alleged overcharge by way of a reconciliation process that I will describe in greater detail below (which he defined as the "**Product Reconciliation**", a definition I will adopt).

[45] RMC also asked me to make a finding that RBee "had a history of overstating its assets and the value of the same", based on the fact that the Receiver, in its capacity as Trustee in Bankruptcy of RBee, made an application seeking to have this Court characterize as fraudulent preferences a number of transactions that RBee had carried out for the benefit of related parties. I have considered that evidence, and find that it has no probative value with respect to this dispute. Essentially, RMC is asking me to make a propensity finding against RBee or its principals: in other words, if RBee carried out some transactions that were intended to or had the effect of benefitting related parties over its creditors, then it was more likely to have overbilled RMC for delivered Product under the Supplier Agreement. For me to draw that inference would require speculation that goes well beyond anything contained in the evidence. RMC's propensity argument has no merit.

[46] In the remainder of this section of my Decision, I will address RMC's counter-claim and explain why I have concluded that RMC has failed to prove it, on a balance of probabilities.

2. Analysis

[47] In his evidence, Mr. Burak explained the circumstances of RBee's delivery of Product under the Supplier Agreement, and I summarize that evidence as follows:

- RMC's subcontract with AFDE required it to produce concrete at batch plants that RMC had constructed on the Project site;
- to produce that concrete, RMC needed aggregate Products of various sizes;
- RBee's task under the Supplier Agreement was to obtain Product, crush it and place it in stockpiles at a designated stockpile site on the Project site;
- RMC recorded the amount of Product it took from the stockpiles and used to make concrete at its batch plants;
- RMC did not monitor the quantities of Product at the stockpile site; and
- RMC never exercised its right under the Verification Provision to commission a Verification of the Product that RBee delivered to the stockpile site, because it always understood there would be a final reconciliation and because it says it had no reason to question RBee's claimed delivered quantities of Product until it received the Final Three Invoices. RMC also says that it would have been too administratively burdensome to carry out Verifications.

[48] I summarize Mr. Burak's explanation of his Product Reconciliation process as follows:

- RMC relied on its batch records, in which it had measured the quantities of Product it consumed in its batch plants;
- it also relied on a single laser scan survey of the Product stockpiles that AFDE had carried out on October 31, 2021, at the end of the 2021 aggregate crushing season (the **2021 AFDE Survey**);
- the batch plant records measured the weight of the Products in tonnes and the 2021 AFDE Survey measured the volumes of Product in the stockpiles, in cubic metres;
- the basic formula Mr. Burak used in his Product Reconciliation was:

(quantity of Product in tonnes consumed in RMC's batch plants)

+

(quantity of Product left in stockpile area after RBee's last delivery in October 2021 – after converting the 2021 AFDE Survey results from cubic metres to tonnes)

=

(total quantity of Product in tonnes delivered by RBee)

- RMC asserts that its weighing of the Product it consumed in the batch plants was accurate. Its batch plants were regulated by Concrete BC. Its weighing of Product was required by AFDE and its calibration of the scales at the batch plants was regulated and certified by Concrete BC;
- the stockpile site was empty and flat before RBee began its deliveries. RBee was the only party that delivered aggregate to the stockpile site;
- the stockpile site was secure, and no Product was diverted from the stockpile site for purposes other than RMC's concrete production (besides some fine aggregate that was used to sand Project roadways in the winter);
- no Product was lost via spillage during transport from the stockpiles to the nearby batch plants; and
- to convert the volumes of Product measured in the 2021 AFDE Survey to weights, Mr. Burak made calculations using "density factors" for each size of Product that were provided by AFDE. These density factors were confirmed to be accurate by various third parties, including through laboratory tests. Some of the density factors AFDE used were for aggregate products from locations in Alberta. After the Receiver criticized this approach, Mr. Burak carried out further testing that he says confirmed the accuracy of the density factors he used.

[49] The final conclusion of Mr. Burak's Product Reconciliation was that RBee had only delivered 1,250,044.02 tonnes of Product, but in its invoices it claimed to have delivered 1,716,480 tonnes. RMC therefore says that RBee claimed to have delivered 515,605.98 tonnes, or 41.25%, more Product than it actually delivered.

[50] Scott Marshall also swore an affidavit and was questioned. He is a civil engineer who was the Project Director for AFDE. He echoed Mr. Burak's evidence that the stockpile site was

flat and very secure, and that to his knowledge no one removed Product from there other than RMC, for concrete production. Mr. Marshall also provided the following context for and explanation of the 2021 AFDE Survey:

- AFDE commissioned a number of topographic laser surveys of the stockpile site (**AFDE Surveys**) throughout the life of the Project, of which the 2021 AFDE Survey was one. The AFDE Surveys were conducted, at a minimum, at the end of each crushing season;
- the purpose of the AFDE Surveys was not to verify quantities of Product for billing purposes. Rather, their purposes were:
    - to ensure there was sufficient aggregate present for future scheduled construction activities;
    - to support AFDE's advance billings to BC Hydro, the Project owner; and
    - to ensure that the types of Product present met BC Hydro's specifications for the Project;
- the 2021 AFDE Survey was created using a topographic laser scan survey instrument mounted on a tripod next to the Product stockpiles;
- the laser reflected infrared beams off the surface of the piles to record their topography;
- the data from the laser was downloaded into a specialized computer program, which created a 3D rendering of the stockpiles and calculated the volumes of the stockpiles; and
- AFDE converted the volumes measured by the laser instrument into weights, using density factors. Mr. Marshall provided no evidence about the specific density factors that AFDE used.

[51] In Mr. Marshall's opinion, the 2021 AFDE Survey was "very accurate," because the manufacturer of the laser instrument warrants tolerances of only +/- 3 mm and because the same instrument is used to survey the permanently constructed structures on the Project, which requires a very high degree of accuracy. He also testified that using these types of laser topographic surveys to measure the volume of aggregate stockpiles is common in the construction industry.

[52] Two "Constructions Solutions" professionals employed by the Receiver reported the following critiques of RMC's position, among others:

- because even a slight grade in a stockpile site could lead to a large discrepancy in volume measurements, a "pre-survey" of such a site is usually conducted before stockpiling commences, but AFDE and RMC did not do so here;
- using density factors to convert aggregate volume to weight should be done by a qualified geotechnical expert; and
- given the scope and duration of the Project, product loss or wastage would have to be considered to determine accurate quantities of aggregate.

[53] RMC bears the burden of proving that RBee under-delivered Product, on a balance of probabilities. I have concluded that it has failed to do so, for the following reasons.

[54] RMC's counter-claim hinges entirely on its Product Reconciliation being accurate, which in turn relies on the accuracy 2021 AFDE Survey. I find that the evidence it has presented to establish the accuracy of the 2021 AFDE Survey is not reliable. It is fraught with frailties and lacks sufficient rigour.

[55] While Mr. Marshall testified about the manufacturer's warranted error tolerance for the laser topographic survey instrument, there is no evidence about that instrument's specifications, whether it had been calibrated when it was used to create the 2021 AFDE Survey, whether it was functioning correctly at that time or whether it was operated properly. Mr. Marshall was not the person who operated it, and that operator is not even identified, nor is their expertise and experience in using that instrument described. That is the type of evidence that presumably could have been procured from the operator of the instrument.

[56] Mr. Marshall's statement of his opinion that the 2021 AFDE Survey was accurate was not based on his knowledge about the types of facts regarding the laser instrument I have just described. Rather, he based his opinion on his understanding of the manufacturer's error tolerance, the fact that the same instrument or the same type of instrument is used to make other measurements on the Project that require accuracy, and his experience that when the same technique has been used on other projects (presumably with other instruments, by other operators), the surveys have been shown to be accurate. That is general evidence about expectations, and about how other instruments on other projects have performed. Mr. Marshall's opinion about the accuracy of 2021 AFDE Survey therefore carries little weight.

[57] The parties agree that the accuracy of the 2021 AFDE Survey depends on the stockpile area being flat. This is because, as Mr. Marshall described, no survey method could detect surface features underneath stockpiles of aggregate. Mr. Marshall's only evidence about the flatness of the stockpile area is that AFDE "ensured" that it was flat. Mr. Burak's evidence about the flatness of the site was similarly anecdotal. He said he and others attended the site in person numerous times, and their visual inspections and walking over the area confirmed it was flat. Whether a large surface area is flat is something that can be measured by precise survey methods, and is also a question on which reasonable people can differ, in the absence of such precise information. The lack of any precise evidence about the flatness of the stockpile area detracts from the reliability of the evidence about the 2021 AFDE Survey.

[58] A very significant problem with RMC's evidence about its Product Reconciliation has to do with the evidence about aggregate density and conversion calculations. Correctly converting the scanned volumes of the Products in the stockpiles to weights by using density factors was an essential part of RMC proving that its Product Reconciliation was accurate. Determining the proper density factors and correctly using them is a highly technical area of knowledge, about which a trier of fact is unable to make inferences without expert opinion evidence. RMC tendered no such evidence. Its evidence about density factors came only from Mr. Burak, who is a chartered accountant. He is not qualified to give expert opinion evidence about this issue. In addition to his own statements of opinion, he also offered hearsay information that he received from Arun Aggarwal, whom he described as a lab supervisor with CRJ Civil Ltd. As with Mr. Burak, there is no evidence that would allow me to infer that Mr. Aggarwal is properly qualified to give expert opinion evidence on this topic. Mr. Burak also cited work that was done for RMC on the density factor issue by two firms, Tetra Tech and Englobe Corp. No individuals from those entities were identified, nor were their qualifications described.

[59] RMC's lack of expert evidence on this highly technical issue cannot be overcome by Mr. Burak's statement that the manner in which he converted volume measurements into weight to carry out the Product Reconciliation is "common industry practice" because it would be too economically and administratively unreasonable to weigh stockpiles of material. This Court can only make inferences about matters like these based on properly admissible and reliable evidence. The fact that some industry participants may choose to make inferences about these matters based on information that does not meet that standard is beside the point.

[60] There is another, even more fundamental, reason why RMC's counter-claim cannot succeed: the fact that the 2021 AFDE Survey provides only a "point-in-time" or "snapshot" of the volumes of Product on the stockpile site, at the very end of RBee's performance under the Supplier Agreement, following its final deliveries in October 2021.[2] As a result, RMC's Product Reconciliation could only present the single conclusion that, over the four year duration of RBee's performance under the Supplier Agreement, it supplied less Product than it invoiced for. RMC's Product Reconciliation says nothing about when RBee allegedly made these under-deliveries. If there was a shortfall, what percentage of the alleged shortfall occurred in 2018, 2019, 2020 and 2021? It is impossible to make any inferences about this from the evidence.

[61] This is a fatal flaw in RMC's counter-claim, because the applicable limitations law prevents RMC from advancing a claim for any delivery shortfalls that occurred any time during the 2018 season, and during almost all of the 2019 season.

[62] The parties both made limitations arguments during the application, and at the end of the hearing on March 18, 2026, I asked them to provide supplemental submissions on the BC ***Limitation Act***, SBC 2012, c. 13 (the **BC *LA***). They both did so.

[63] Because this action was commenced and joined in Alberta, the parties agree that the remedial orders RMC can seek in this proceeding are governed by the Alberta ***Limitations Act***, RSA 2000, c. L-12, section 12 (the **AB *LA***). Section 3(1) of the AB *LA* precludes RMC from seeking a remedial order for a claim more than two years after the claim became discoverable.[3] Given RMC's rights under the Verification Provision, I have no hesitation in concluding that any claim by RMC based on an alleged under-delivery of Products by RBee was discoverable within 60 days of the date of delivery, or perhaps even sooner.

[64] RMC says it first asserted its counter-claim informally in mid-November 2021. It then did so formally in this Action at least by December 23, 2022, when Mr. Burak swore his first affidavit. As a result, RMC is statute-barred from pursuing any claim that RBee under-delivered Product in the 2018 and 2019 seasons (perhaps with the exception of some of the deliveries in September 2019 and all the deliveries in October 2019, giving RMC the benefit of the doubt and using "mid-November 2021" as the date for the two-year discoverability "lookback," by assuming that was when RMC first sought a remedial order). By mid-November 2021, all of

[2] RMC did not tender any of the other AFDE Surveys from the end of the crushing seasons in 2018, 2019 or 2020, despite their existence and RMC's knowledge of them. It also did not commission any Verifications of its own.

[3] Because the parties chose British Columbia law to apply to the interpretation of the Supplier Agreement in article 33, the BC *LA* probably applies to the proper interpretation of what types of disputes RMC could advance under article 22 of the Supplier Agreement. The BC *LA* has the same general prohibition as the AB *LA* on bringing claims more than two years after they become discoverable. Therefore, the proper interpretation of article 22 of the Supplier Agreement is likely that the parties agreed that neither could pursue a dispute more than two years after it became discoverable. Given the parties' agreement that the AB LA applies to the claims that can be pursued in this application, I do not have to definitively decide how the BC *LA* applies in this case.

RMC's claims for under-deliveries in 2018 and most of the 2019 season had been discoverable for more than two years.

[65] This is not a case of the alleged under-deliveries "resulting from a continuing course of conduct or a series of related acts or omissions", so as to extend the limitation period. The mechanism the parties agreed to in the Supplier Agreement made it clear that each time RBee issued a new invoice, the deliveries referenced in that invoice were a discrete performance event, triggering RMC's Verification rights and payment obligations. A separate limitation period arose each time RBee issued an invoice in which it allegedly over-charged and under-delivered: ***James H. Meek Trust v San Juan Resources Inc***, 2005 ABCA 448 at paras 44 – 49.

[66] Because of this fundamental flaw, even if I accepted the assertion that RMC's Product Reconciliation was accurate (which I do not), RMC's counter-claim would fail because RMC has not proven that RBee made any under-deliveries, or the quantity of those under-deliveries, in the only two seasons for which RMC can seek a remedial order, 2020 and 2021.

D. Issue Four: Has RMC established that Equitable Set-off Applies to Reduce the Claimed Amount by the Amount of RMC's Cross-claim?

[67] Given my finding that RMC has failed to prove its counterclaim, I need not answer this question.

IV. Conclusion

[68] RMC must pay the following amounts to the Receiver:

(a) $3,663,496.50 plus GST and interest for delivered Product; and

(b) $469,687.28, plus GST and interest, for hauling charges.

[69] If the parties cannot agree on the costs of this application, they may provide me with written submissions 45 days from today's date, limited to five pages each, excluding attachments.

Heard on March 18, 2026 with additional written submissions received on April 8, 2026.
Dated at the City of Calgary, Alberta this 7th day of August, 2026.

C.D. Simard
J.C.K.B.A.

Appearances:

Kelly Bourassa KC
Clinton Slogrove
for the Applicant and Cross-Respondent, FTI Consulting Canada Inc., in its capacity as the receiver of RBee Aggregate Consulting Ltd.

Chris Zelyas
for the Respondent and Cross-Applicant, RMC Construction Materials Inc.

Corrigendum of the Reasons for Decision
of
The Honourable Justice C.D. Simard

References to submissions having been made on the Receivership Application on April 10, 2026, have been removed throughout this Decision.