

Clerk's Stamp

COURT FILE NUMBER

2201-02948

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANT

CROWN CAPITAL PARTNER FUNDING LP, by its manager
CROWN PRIVATE CREDIT PARTNERS INC.

RESPONDENT

RBEE AGGREGATE CONSULTING LTD.

DOCUMENT

**SUPPLEMENTAL REPLY BRIEF OF LAW OF RMC
CONSTRUCTION MATERIALS LTD.**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

RMC CONSTRUCTION MATERIALS LTD.

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
Dentons file: 573989-3

Counsel for RMC Construction Materials Ltd.

Counsel for FTI Consulting Canada Inc.

Chris Zelyas

Dentons Canada LLP
2500, 10220 - 103 Avenue NW
Edmonton, AB T5J 0K4
Ph: 780-423-7387
Fax: 780-423-7276
Email: chris.zelyas@dentons.com
File: 573989-3

Kelly J. Bourassa / Clinton Slogrove

Blake, Cassels & Graydon LLP
3500, 855 – 2nd Street SW
Calgary, Alberta T2P 4J8
Ph: 403-260-9697 / 403-260-9756
Fax: 403-260-9700
Email: kelly.bourassa@blakes.com
clinton.slogrove@blakes.com
File: 79294/16



TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE TIME IS OF THE ESSENCE CLAUSE HAS NO APPLICATION	1
III.	THE BC <i>SALE OF GOODS ACT</i> DOES NOT support the receiver's interpretation	1
IV.	THE ALBERTA <i>LIMITATIONS ACT</i> APPLIES.....	2
V.	RMC'S DEFENCE OF EQUITABLE SET-OFF IS VALID	2

I. INTRODUCTION

1. RMC provides this brief in response to the Receiver's Supplemental Brief of Law, filed April 1, 2026 (the "**Receiver's Supplemental Brief**"). The capitalized terms used herein have the same meanings accorded thereto in RMC's earlier written submissions, except where otherwise indicated.

II. THE TIME IS OF THE ESSENCE CLAUSE HAS NO APPLICATION

2. Contrary to the Receiver's assertions at paragraph 6 of its Supplemental Brief, there was no breach of the Agreement by RMC. The mere choice by RMC to not exercise an optional third party verification right under the Agreement does not amount to a breach. To this point, the Receiver again recognizes at paragraphs 7 and 12 of its Supplemental Brief that the verification clause represented a right that RMC had the sole choice of whether to exercise, describing the same as exercisable "Verification Rights" and an election in the purview of RMC. The Receiver's characterization of the Verification Option in this manner affirms that RMC's choice to refrain from third party verification was a choice open to RMC. With no third party verification engaged, the 60 day timeframe for same did not apply and the TOE Clause is therefore inoperative and inapplicable in the circumstances.
3. We further note that case law cited by the Receiver itself disentitles it from relying on the TOE Clause in any event. In *Ro/Lin Holdings Ltd. v. Mustard Seed Street Church*, the ABCA quoted authority as to the three requirements that must be met to allow a party to rely on a TOE Clause, including that such party must have "not subsequently recognized the agreement as still subsisting".¹ RBee treated the Agreement as still subsisting despite RMC not exercising the Verification Option. Indeed, the Receiver itself has recognized that "the Supplier Agreement was never terminated by either Party".²

III. THE BC SALE OF GOODS ACT DOES NOT SUPPORT THE RECEIVER'S INTERPRETATION

4. At paragraph 12 of its Supplemental Brief, the Receiver relies on s. 31 of the SGA in support of its interpretation of the Agreement. To the contrary, this section suggests that RMC was to pay only for the aggregate *actually delivered* by RBee. Section 31 explicitly states that "It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale."³ This section contemplates that the buyer only has to pay for what is delivered.
5. The Receiver's reliance on ss. 38 and 39 of the SGA is also misplaced. These sections only speak to circumstances where the buyer is deemed to have accepted *goods actually delivered* by the seller. They say nothing whatsoever as to whether the buyer has accepted the specific quantities claimed in invoices. The SGA does not support, as suggested at paragraph 15 of the Receiver's Supplemental

¹ *Ro/Lin Holdings Ltd. v. Mustard Seed Street Church*, [2007 ABCA 259](#) at paras [20-21](#).

² Brief of Law of the Receiver, filed February 26, 2026, para 84.

³ *Sale of Goods Act*, [RSBC 1996, c 410](#) ("**BC SGA**") at s. [31](#).

Brief, that acceptance of aggregate by RMC means acceptance of the amount of aggregate claimed in the invoices subsequently provided by RBee.⁴

IV. THE ALBERTA LIMITATIONS ACT APPLIES

6. The Receiver's assertion that the BC *Limitation Act* applies is in error. The Receiver fails to recognize that the term "law" as used in s. 12(2) of the Alberta *Limitations Act* is defined under s. 1(f), which states that the term includes statutes, judicial precedents, and regulations.⁵ As such, s. 12(2) only considers legislation and jurisprudence in determining the shorter limitation period, and does not consider agreements between parties. Accordingly, the 60-day timeframe for third party certification of the volume of aggregate is not of relevance in determining the law of limitations in BC.
7. Rather, the "law" of BC is properly construed as the BC *Limitation Act* and the jurisprudence in relation to the same. The BC legislation provides a basic limitation period of two years under s. 6(1).⁶ The BC jurisprudence, as described in footnote 17 of RMC's Supplemental Brief, requires clear language to shorten a limitation period. The Receiver itself has previously recognized that the Alberta *Limitations Act* applies to this matter, stating in its prior Brief of Law: "Although section 33 of the Supplier Agreement states that the contract is governed by British Columbia law, section 12(1) of the *Limitations Act*, RSA 2000, c L-12 (the "**Act**") displaces the words of the contract", such that Alberta limitations law applies.⁷

V. RMC'S DEFENCE OF EQUITABLE SET-OFF IS VALID

8. The clean hands doctrine raised by the Receiver does not bar RMC's equitable set-off defence. As described above, RMC did not breach the Agreement or miss any of its deadlines. The Receiver's reliance on any purported breach of the TOE Clause is therefore misplaced. RMC simply chose not to exercise the Verification Option. This does not rise to the level of unclean hands established in the case law, which the ABCA has stated "often gravitates toward dishonesty, fraud, deceit, unconscionability, and bad faith", such that it is unjust to grant equitable relief.⁸ Even where a breach of contract has occurred—which is not the case here—the courts have held that equitable set-off remains available.⁹

⁴ The case law under the SGA is clear that acceptance of goods does not imply acceptance of the invoices with respect to same. The BCSC in *Teldon* at paras [42](#), [53-54](#) considered an invoice issued for a total of \$56,940.00 with respect to a claimed 45,000 catalogues. The BCSC subsequently held that only 13,000 catalogues were actually delivered and the defendant was therefore responsible to pay only \$7,200 for the catalogues actually delivered. Further, even where a payment is made by a party, this does not amount to acceptance that the amount paid is correct and cannot be claimed back. In the *Chevron* decision at paras [1](#), [11-12](#), [61](#), [72-73](#), [211](#), the plaintiff was awarded compensation for royalty overpayments it made to the defendants over the course of six years, despite the fact that the plaintiff had itself been grossly negligent in making the overpayments.

⁵ *Limitations Act*, [RSA 2000, c L-12](#) at ss. [1\(f\)](#) and [12\(2\)](#).

⁶ *Limitation Act*, [SBC 2012, c 13](#) at s. [6\(1\)](#).

⁷ Brief of Law of the Receiver, filed January 23, 2023, an excerpt of which is provided as Appendix "A" to this Brief.

⁸ *Tempo Alberta Electrical Contractors Co Ltd v Man-Shield (Alta) Construction Inc*, [2025 ABCA 310](#) ("**Tempo**") at paras [43](#), [45](#), [49](#), [51](#).

⁹ *Ekum-Sekum Incorporated (Brantco Construction) v. Lanca Contracting Limited*, [2024 ONCA 189](#) at paras [1-4](#).

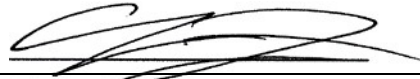
Of particular relevance to this case, the ABCA has held that “withholding payments, on its own, does not clearly establish iniquitous conduct”, especially where the payments are withheld as an exercise of a party’s entitlement to set-off its damages claim against the payments owed to the plaintiff.¹⁰ The Receiver’s claim that RMC somehow lacks clean hands, raised for the very first time in its supplemental submissions, should be rejected given that the breach of contract it alleges never occurred. Nor is RMC guilty of any conduct approaching the culpability required for the doctrine to apply.

9. Lastly, the Receiver’s assertion that allowing RMC to dispute the amount of aggregate delivered through a final reconciliation would “force RBee to carry the risk of any loss after delivery” is erroneous. This has already been addressed at paragraphs 47-48 of RMC’s first Brief and paragraph 13 of RMC’s Supplemental Brief. RMC fully accepts that it bears the burden of proving its set-off defence. The evidence adduced by RMC as to its practices in transporting the aggregate, the absence of any material loss of same, and the fact that none of the aggregate at issue was used for purposes other than concrete production, establishes on a balance of probabilities that no aggregate was lost after delivery. The Receiver’s speculation that loss remained possible is irrelevant and does not impact the validity of RMC’s set-off defence.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of April, 2026.

DENTONS CANADA LLP

Per:



**Chris Zelyas, Counsel for RMC Construction
Materials Ltd.**

¹⁰ *Tempo* at para [54](#).

Table of Authorities and Documents Cited

Legislation

1. *Sale of Goods Act*, [RSBC 1996, c 410](#)
2. *Limitations Act*, [RSA 2000, c L-12](#)
3. *Limitation Act*, [SBC 2012, c 13](#)

Case Law

1. *Ro/Lin Holdings Ltd. v. Mustard Seed Street Church*, [2007 ABCA 259](#)
2. *Teldon International Inc. v. Black & Lee Formal Wear Rentals Ltd.*, [2008 BCSC 830](#)
3. *Chevron Canada Resources v Canada*, [2019 ABQB 418](#)
4. *Tempo Alberta Electrical Contractors Co Ltd v Man-Shield (Alta) Construction Inc.*, [2025 ABCA 310](#)
5. *Ekum-Sekum Incorporated (Brantco Construction) v. Lanca Contracting Limited*, [2024 ONCA 189](#)

APPENDIX “A”

COURT FILE NUMBER 2201-02948

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANT

CROWN CAPITAL PARTNER FUNDING LP, by its manager,
CROWN PRIVATE CREDIT PARTNERS INC.

RESPONDENT

RBEE AGGREGATE CONSULTING LTD.

DOCUMENT

BRIEF OF LAW OF THE RECEIVER

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
3500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4J8

Attention: Kelly J. Bourassa / Jessica MacKinnon
Telephone: 403-260-9697 / 403-260-9657
Facsimile: 403-260-9700
Email: kelly.bourassa@blakes.com
jessica.mackinnon@blakes.com

File Ref.: 79294/16

ENTERED



COM
Feb 15 2023

C. Even if RMC is able to assert its Set-Off Claim, such a claim is at least partially barred by the Limitations Act

85. Claims in respect of certain invoices issued by RBee are statute-barred by a limitation defence. Although section 33 of the Supplier Agreement states that the contract is governed by British Columbia law, section 12(1) of the *Limitations Act*, RSA 2000, c L-12 (the "**Act**") displaces the words of the contract.

86. Section 12 of the *Act* states:

- (1) the limitations law of Alberta applies to any proceeding commenced or sought to be commenced in Alberta in which a claimant seeks a remedial order;
- (2) notwithstanding subsection (1), where a proceeding referred to in subsection (1) would be determined in accordance with the law of another jurisdiction if it were to proceed, and the limitations law of that jurisdiction provides a shorter limitation period than the limitation period provided by the law of Alberta, the shorter limitation period applies [**Emphasis added**].¹¹³

87. These proceedings were commenced by Crown Capital Partner Funding LP in the Court of Queen's Bench of Alberta (as it then was) at Calgary on March 7, 2022. Section 8 of British Columbia's *Limitation Act*, SBC 2012, c 13, prescribes a 3-year limitation period which is longer than the 2-year limitation period in section 3(1)(a) of the *Act*.¹¹⁴ Therefore, the adjudication of disputes arising from RBee's receivership are subject to the *Act*.

88. Section 3(1)(a) of the *Act* states that "...a claimant must seek a remedial order within 2 years after the date on which the claimant first knew, or in the circumstances ought to have known:

- (i) that the injury for which the claimant seeks a remedial order had occurred;
- (ii) that the injury was attributable to conduct of the defendant; and
- (iii) that the injury, assessing liability on the part of the defendant, warrants bringing a proceeding."¹¹⁵

89. In *Grant Thornton LLP v New Brunswick*, the Supreme Court of Canada held that a claim is discovered when a plaintiff has actual or constructive knowledge of the material facts upon which a

¹¹³ *Limitations Act*, RSA 2000, c L-12 at s 12(1) (the "**Act**").

¹¹⁴ *Limitation Act*, SBC 2012, c 13 at s 8.

¹¹⁵ *Act* at s 3(1)(a). See also *Sun Gro Horticulture Canada Ltd v Abe's Door Service Ltd*, 2006 ABCA 243 at para 11, which distinguishes between an injury and a cause of action.