

COURT OF APPEAL OF ALBERTA

Form AP-1

[Rules 14.8 and 14.12]

COURT OF APPEAL FILE NUMBER: 2601-0241AC
TRIAL COURT FILE NUMBER: 2201 02948
REGISTRY OFFICE: CALGARY
APPLICANT: CROWN CAPITAL PARTNER
FUNDING LP by its manager
CROWN PRIVATE CREDIT PARTNERS INC.

Registrar's Stamp



STATUS ON APPEAL: NOT A PARTY TO THE APPEAL
APPLICANT: FTI CONSULTING CANADA INC.
STATUS ON APPEAL: RESPONDENT
DEFENDANT/RESPONDENT: RBEE AGGREGATE CONSULTING LTD.
STATUS ON APPEAL: NOT A PARTY TO THE APPEAL
RESPONDENT: RMC CONSTRUCTION MATERIALS LTD.
STATUS ON APPEAL: APPELLANT
DOCUMENT: **CIVIL NOTICE OF APPEAL**

APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION:
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WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. Particulars of Judgment, Order or Decision Appealed From:

Date pronounced: August 7, 2026

Date entered: August 7, 2026

Date served: n/a

Official neutral citation of reasons for decision, if any: (do not attach copy)

2026 ABKB 561

(Attach a copy of order or judgment: Rule 14.12(3). If a copy is not attached, indicate under item 14 and file a copy as soon as possible: Rule 14.18(2).)

2. Indicate where the matter originated:

Alberta Court of King's Bench

Judicial Centre: Calgary

Justice: The Honourable Justice C.D. Simard

On appeal from a King's Bench Master or Provincial Court Judge?: No

Official neutral citation of reasons for decision, if any, of the Master or Provincial Court Judge: (do not attach copy) n/a

(If originating from an order of a King's Bench Master or Justice of the Court of Justice, a copy of that order is also required: Rule 14.18(1)(c).)

3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).

X Permission not required

4. Portion being appealed (Rule 14.12(2)(c)):

Whole

(Where parts only of a family law order are appealed, describe the issues being appealed, e.g. property, child support, parenting, etc.)

5. Provide a brief description of the issues:

On March 11, 2022, Crown Capital Partner Funding LP, by its manager Crown Private Credit Partners Inc. ("**Crown Capital**"), obtained an Order appointing the Respondent, FTI Consulting Canada Inc. (the "**Receiver**"), as the receiver over all of RBee Aggregate Consulting Ltd.'s ("**RBee**") assets, undertakings, and properties, under the Bankruptcy and Insolvency Act, RSC 1985, c B-3. On May 18, 2022, Crown Capital obtained a Bankruptcy Order adjudging RBee bankrupt. On February 15, 2023, the Receiver brought an Application (the "**Initial Application**") for an order directing that the Appellant, RMC Construction Materials Inc. ("**RMC**"), pay to the Receiver amounts allegedly owing by RMC to RBee pursuant to unpaid invoices which RMC disputes (the

“Disputed Invoices”). The Disputed Invoices arise out of a May 7, 2018 agreement between RMC and RBee (the **“Supplier Agreement”**), in which RBee agreed to provide RMC with concrete aggregate (the **“Product”**). The Supplier Agreement related to the Site C hydroelectric dam project located near Fort St. John in British Columbia (the **“Project”**). RMC used all Product supplied by RBee under the Supplier Agreement to produce concrete for construction of the dam, which it supplied to the prime contractor for the Project, the Aecon-Flatiron-Dragados-EBC Partnership (**“AFDE”**).

The Initial Application culminated in a December 18, 2023 written decision issued by the Court of King’s Bench of Alberta, which was ultimately successfully appealed by RMC to this Honourable Court of Appeal (heard on March 13, 2025, with a written decision rendered April 3, 2025 (the **“Prior Appeal Decision”**)). The Prior Appeal Decision ordered a rehearing of the Initial Application.

On March 18, 2026, the rehearing occurred before the Honourable Justice C.D. Simard. On August 7, 2026, the Honourable Justice C.D. Simard issued a written decision (the **“Subject Decision”**) directing that the Disputed Invoices were due and payable in part by RMC to RBee, directing RMC to pay the amount of \$3,663,496.50 plus GST and interest for delivered product and \$469,687.28 plus GST and interest for hauling charges to RBee. The Subject Decision further rejected RMC’s defence of equitable set-off against RBee, which the Court described as a “counterclaim”.

RMC appeals on the basis that the Honourable Justice C.D. Simard:

- a. Misapplied, or failed to apply at all, the law relating to the standards of proof and burdens of proof applicable to the issues before the Court, including, without limiting the generality of the foregoing, by:
 - i. holding that the Receiver met its burden to prove that the aggregate Products and hauling services claimed in RBee’s invoices were actually delivered or provided in the amounts claimed in the absence of any evidence establishing same;
 - ii. applying a standard of proof or burden of proof to RMC’s set-off defence that was higher than the balance of probabilities;
 - iii. failing to apply the proper burden or standard of proof by relying on speculation for which there was no evidentiary support before the Court to reject RMC’s evidence in relation to RMC’s set-off defence, including a speculative possibility that the topographic survey instrument used to conduct a 2021 survey of the aggregate stockpile on the site for the Project (the **“AFDE Survey”**) may not have been correctly calibrated or functioning, and a speculative possibility that the site of the aggregate

stockpile may not have been flat, when all admissible evidence before the Court was to the contrary;

- iv. as further particularized below, failing to consider key evidence proffered by RMC in relation to the under-delivery of and overcharging for aggregate Products by RBee to RMC pursuant to the Supplier Agreement;
 - v. holding that the issuance of invoices itself was sufficient evidence to satisfy the burden of proof on the Receiver to establish RMC's liability to pay the invoices despite the applicable legal principle that proof of delivery of the goods and services claimed in invoices is required, and that the mere issuance of invoices is insufficient to meet the burden of proof;
 - vi. applying an uneven standard of proof by improperly accepting opinion evidence presented by the Receiver from individuals who did not provide sworn evidence, who were not made available for cross-examination, and who were not properly qualified as expert witnesses, while rejecting and according no weight to sworn evidence adduced by witnesses presented by RMC, and who were presented for cross-examination, including on the basis that they were not qualified as expert witnesses;
 - vii. holding that the Receiver had met its burden to prove that the aggregate products and hauling services claimed in RBee's invoices were actually delivered in the quantities claimed by the Receiver because RMC "has tendered no evidence to prove that the quantities listed in the two invoices were not accurate" and because "RMC does not deny that RBee was the party who hauled the Product to the stockpile site in September and October 2021" (neither of which statement is accurate), all of which effectively and improperly reversed the Receiver's burden of proof and placed the same on RMC.
- b. Misapplied, or failed to apply at all, the law relating to the principles of contractual interpretation when interpreting the Supplier Agreement, RMC's and RBee's rights and obligations thereunder and RMC's right to a set-of defence thereunder;
 - c. Misapplied, or failed to apply at all, the law for determining the intention of the parties to the Supplier Agreement;
 - d. Misapplied, or failed to apply at all, the law relating to interpreting the Supplier Agreement by failing to read the agreement as a whole, according its words their ordinary and grammatical meaning and in a manner consistent with the mutual and objective intentions of the parties as expressed in the words of the Supplier Agreement, including, without limiting the generality of the foregoing:
 - i. holding that the parties agreed under the Supplier Agreement that RBee's invoices were *prima facie* evidence that RBee delivered the quantities of

product listed in those invoices when there was no evidence before the Court of such an agreement within the Supplier Agreement or otherwise. Such a holding is directly at odds with the plain language of the Supplier's Agreement, which provided, as per the Court's own finding, 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 . . .";

- ii. holding that to establish RMC's liability for RBee's invoices, all RBee had to do was present evidence that it had provided invoices to RMC, when section 6 of the Supplier Agreement clearly states that RMC could make payment of any invoice conditional on the provision by RBee of any other documentation by RMC reasonably requested; and
 - iii. holding that RMC could not deny payment of invoices issued by RBee for hauling services on the basis that supporting documentation demonstrating the provision and quantity of such services, such as weigh tickets and load slips, had not been provided by RBee—such a conclusion completely ignores section 6 of the Supply Agreement, which made payment of any invoice submitted by RBee conditional upon RBee providing any documents that RMC reasonably requests;
- e. Misapplied, or failed to apply at all, the law relating to consideration of the surrounding circumstances or factual matrix relating to the Supplier Agreement;
 - f. Misapplied, or failed to apply at all, the law relating to the interpretation of commercial contracts, including, without limiting the generality of the foregoing, interpreting the Supplier Agreement contrary to sound commercial principles, good business sense, and connection to economic reality;
 - g. Misapplied, or failed to apply at all, the law relating to the consideration of the nature or custom of the market or industry in which the Supplier Agreement was made, the reasonable expectations of the participants in that industry, the commercial purpose of the Supplier Agreement, and the market in which the parties were operating;
 - h. Misapplied, or failed to apply at all, the law for interpreting the contractual verification clause at section 5 of the Supplier Agreement, including, without limiting the generality of the foregoing, by:
 - i. Correctly finding that the verification clause contained no wording that the invoices would be considered "conclusive evidence" that entries in the invoices would be correct, but then inconsistently holding that the parties had agreed that RBee's issuance of invoices itself, in the absence of any

other evidence, was sufficient to establish RMC's liability to pay the invoices if RMC did not engage in verifications under section 5 of the Supplier Agreement; and

- ii. ignoring the principle that verification clauses should be strictly construed and interpreting the contractual verification clause at section 5 of the Supplier Agreement in a manner that included language that was not present in the verification clause or in any other provision of the Supplier Agreement; namely, that if RMC did not conduct a verification of a delivery claimed in an RBee invoice, then the RBee invoices were *prima facie* evidence that RBee had delivered the quantities of product listed in those invoices, and RMC would be obligated to pay any such invoice without RBee adducing any evidence other than the invoice.
- i. Misapplied, or failed to apply at all, the law relating to RMC's defence of equitable set-off against the amounts allegedly owing under the Disputed Invoices, including, without limiting the generality of the foregoing, by:
 - i. continuously holding that RMC was advancing a counterclaim, as well as characterizing and analyzing the issue of whether "has RMC established its cross-claim against RBee", when RMC was not advancing and had never advanced a counterclaim or cross-claim against RBee;
 - ii. erroneously conflating a counterclaim or cross-claim with RMC's defence of equitable set-off; and
 - iii. failing to even consider RMC's defence of equitable set-off despite this being a central issue before the Court.
 - j. Misapplied, or failed to apply at all, the law of limitations applicable to the dispute by holding that RMC's alleged "counterclaim" (in actuality, RMC's defence of equitable set-off) was limitation barred, which ignores the legal principle that limitation periods do not apply to bar defences of equitable set-off.
 - k. Misapplied, or failed to apply at all, the law in relation to the admissibility of opinion evidence, by improperly accepting opinion evidence presented by the Receiver from individuals who did not provide sworn evidence, who were not made available for cross-examination, and who were not properly qualified as experts;
 - l. In relation to evidence regarding the alleged liability of RMC to pay the Disputed Invoices and in relation to RMC's set-off defence under the Supplier Agreement:

- i. Inappropriately made factual conclusions for which there was no evidentiary support or inadequate support in the evidence, and engaged in improper speculation, including but not limited to:
 1. That “RMC does not deny that RBee delivered Products on each of the days listed in the two invoices”, when RMC repetitively denied the same;
 2. That “RMC concedes that it could have, but chose not to, conduct a Verification of the Product deliveries in September and October 2021” when no such concession was made, and when RMC could not have done so given that RBee failed to issue invoices for each delivery when they were allegedly made;
 3. That RMC agreed that if it chose not to exercise its option to conduct a verification of any delivery claimed by RBee in an invoice, then RMC was agreeing on a *prima facie* basis that RBee had delivered the claimed quantity, and RMC would then become obligated to pay that invoice;
 4. 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, which was not conditional on the receipt of weigh tickets or load slips from RBee;
 5. That RMC’s conversion of aggregate found in the site stockpiles on the Project was made based on density factors provided by AFDE when in fact RMC’s calculations were based on density factors obtained from aggregate tested by third party engineering firms, with the aggregate tested being from the relevant project site or from a site with similar aggregate;
 6. That the AFDE Survey was not reliable despite the fact that the only evidence of relevance from those with knowledge of the matter (namely, Scott Marshall) attested to its reliability;
 7. That there were issues with the proper measurement and conversion of aggregate density factors, flatness of the stockpile area, and topographical survey equipment calibration, usage and function; and
 8. That any claim by RMC on an alleged under-delivery of aggregate by RBee was discoverable within 60 days of the date of each delivery of aggregate by RBee when RBee did not issue invoices with each delivery of aggregate;

- ii. Inappropriately gave improper weight to speculative or irrelevant evidence, including but not limited to:
 - 1. That RMC had previously paid RBee for haulage services;
 - 2. That RMC had invoiced AFDE for hauling on the project;
 - 3. That risk of loss of the aggregate passed to RMC upon delivery;
and
 - 4. That the flatness of the land below the aggregate stockpile site on the Project had not been measured by precise survey methods;
- iii. Inappropriately failed to consider relevant evidence and facts in the Court's analysis, including without limitation, failing to consider sworn evidence which was undisputed, with no contrary evidence on the record before the Court, including but not limited to:
 - 1. That the Supplier Agreement provided in sections 1 and 18 and Schedule "B", that the parties' fundamental obligations under the agreement were for RBee to deliver aggregate to RMC, and for RMC to pay only for the quantities that were actually delivered;
 - 2. That RBee had consistently breached its obligation under the Supplier Agreement to issue a separate invoice for each and every delivery of aggregate they made under the Supplier Agreement, when the verification process under section 5 of the Supplier Agreement depended upon such timely and separate invoicing;
 - 3. That any payment of any invoice submitted by RBee was conditional upon RBee providing any documents that RMC reasonably requested as per section 6 of the Supplier Agreement;
 - 4. That RMC had discovered RBee's overbilling only because RBee had improperly invoiced RMC on a different project;
 - 5. That the volume of aggregate that RBee invoiced for in October 2021 was significantly higher than the average amount previously invoiced for;
 - 6. That RMC only paid hauling charges to RBee prior to September and October 2021 if necessary supporting documentation, including weigh tickets and load slips, were provided by RBee to RMC;
 - 7. That no substantiation, such as weigh tickets or load slips, had been provided which supported that RBee had actually performed the invoiced-for hauling services in the amounts claimed;

8. That the December 2021 invoice issued by RBee for hauling did not indicate when and where the alleged hauling services were provided;
9. That RBee had a history known to the Receiver of overstating its assets and the value of its assets;
10. Nicholas Burak's evidence of industry practice;
11. Scott Marshall's evidence that AFDE inspected the site upon which the aggregate stockpile was to be located to ensure that it was levelled to be flat;
12. Nicholas Burak's evidence that he personally inspected and walked over the site where the aggregate stockpile was to be located and confirmed that the site was flat, and without slopes, minor or otherwise;
13. Nicholas Burak's and Scott Marshall's evidence that stockpiling aggregate on a sloping (non-flat) area would have caused operational difficulties which never arose on the project;
14. That there were significant reasons to trust the accuracy of the 2021 AFDE Survey given that its accuracy was important to ensure that there was sufficient aggregate present for future scheduled construction activities; and
15. That all aggregate tested for density was produced by RBee and was either taken directly from the Project site or was the exact same kind as produced on the site by RBee: river deposit gravel, which would have very similar density factors as the aggregate produced by RBee for the relevant project.

6. Provide a brief description of the relief claimed:

The relief sought is to overturn the decision of the Honourable Justice C.D. Simard and to grant the relief sought by RMC in its defence to the Application, including a declaration that the Disputed Invoices are not due and payable by RMC to RBee or, in the alternative, a declaration that RMC has a valid set-off defence against any and all amounts owing by RMC to RBee pursuant to the Disputed Invoices. Costs will also be sought with respect to the Appeal and proceedings below.

7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)

No

- 8. Does this appeal involve the custody, access, guardianship, parenting time, decision-making responsibility, contact or support in respect of a child? (Rule 14.14(2)(b))**

No

- 9. Will an application be made to expedite this appeal?**

No

- 10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)**

No

- 11. Could this matter be decided without oral argument? (Rule 14.32(2))**

No

- 12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e), 14.83)**

Yes

If yes, provide details: There are Orders of the Court directing that certain materials be sealed, namely Sealing Order pronounced by Justice A. D. Grosse on March 11, 2022, filed on March 14, 2022, and Sealing Order pronounced by Justice S.D. Hillier on May 6, 2022, filed on May 6, 2022.

(Attach a copy of any order.)

- 13. List respondent(s) or counsel for the respondent(s), with contact information:**

The respondents are: FTI CONSULTING CANADA INC.
with the contact information of their counsel being:

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File No.: 79294/16

If specified constitutional issues are raised, service on the Attorney General is required under s. 24 of the Judicature Act: Rule 14.18(1)(c)(viii).

14. Attachments (check as applicable)

Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

Earlier order of Master, etc. (Rule 14.18(1)(c))

Order granting permission to appeal (Rule 14.12(3)(a))

X Copy of any restricted access order (Rule 14.12(2)(e))

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.