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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	**REPLY 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 / Clinton Slogrove Telephone: 403-260-9697 / 403-260-9756 Facsimile: 403-260-9700 Email: kelly.bourassa@blakes.com clinton.slogrove@blakes.com File Ref.: 79294/16	

TABLE OF CONTENTS

Page

A. Introduction

2. This Reply Brief of Law is filed in support of an application (the "**Application**") by FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the receiver (the "**Receiver**") of RBee Aggregate Consulting Ltd. ("**RBee**"). Capitalized terms not defined herein have the meanings ascribed to them in the Receiver's Brief of Law dated February 26, 2026.

3. RMC characterizes the Alberta Court of Appeal's (the "**ABCA**") decision as overturning this Court's initial decision. The ABCA did not make any final determinations. Rather, the ABCA held that consideration of the evidence filed by RMC (which the chambers justice had excluded) *may* have resulted in a different interpretation of the Supplier Agreement and referred the matter back for a new hearing.

4. The core issue before this Court remains one of contractual interpretation. The overriding goal is properly establishing what the parties intended at the time they entered into the Supplier Agreement in 2018. Proper contractual interpretation is relevant for both defenses raised by RMC.

(a) RMC's first ground of opposition suggests the Receiver has the obligation to prove delivery of the aggregate. While generally in a claim for delivery of goods that may be accurate, this position ignores the express terms of the Supplier Agreement which placed the burden to dispute volume of aggregate delivered by RBee on RMC (by way of third party verification);

(b) RMC's second ground of opposition suggests that RMC always expected to perform an end-of-project verification and adjustment of the price paid during the life of the Project based on that verification. This position not only ignores various express provisions of the Supplier Agreement, it also requires this Court to read into the Supplier Agreement provisions which are not contained in the Supplier Agreement. Further, adopting this interpretation contradicts other commercial terms of the agreement rendering them nugatory.

5. On both grounds, RMC asks this Court to consider surrounding circumstances to override the express provisions of the Supplier Agreement. RMC asks this Court to do so because, in its own words, compliance with its contractual obligations during the contract was "a continuous

administrative burden."[1] On the other hand, the Receiver simply asks this Court to apply the plain meaning of the words of the Supplier Agreement.

B. The Task of Contractual Interpretation

6. Despite the ABCA's decision to remit this matter for a fresh hearing and its comments on the ambiguity of the verification provision in the Supplier Agreement, the Receiver remains of the view that, read as a whole, and giving the words contained therein their plain meaning, it is clear what the parties intended. RMC suggests that the ABCA made substantive findings in regard to ambiguity when, in fact, its conclusion was simply that the matter must be remitted for a rehearing on all of the available evidence (including that evidence excluded by the chambers justice). Either way, the parties agree that this Court must determine what the parties intended when entering into the Supplier Agreement in 2018. Even if the surrounding circumstances are considered, this does not aid RMC in its efforts to rewrite the terms of the Supplier Agreement.

7. In *Sattva Capital Corp. v Creston Moly Corp.* ("***Sattva***"), the Supreme Court of Canada made clear that:

> "[w]hile the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement. The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement."[2] [emphasis added]

8. The purpose of this exercise is to discover and give effect to the objective intention of the parties as recorded in their written agreement at the time. Contracting parties are presumed to have intended what they have said in their agreement.[3] RMC cannot "simply pick and choose clauses – or parts of clauses – without considering the contract as a whole."[4] The specific wording, selected by the parties (some with the assistance of counsel) must always take precedence over one party's allegations of what it suggests was its subjective expectation of what it thought to be

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[1] Brief of law of RMC Construction Materials Ltd. filed March 6, 2026 (the "**RMC Brief**") at paras 14 and 15.

[2] *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 ("***Sattva***") at para 57.

[3] *Paddon Hughes Development v Pancontinental Oil*, 1998 ABCA 333 at para 26 quoting Chitty on Contracts, 27th ed., vol. 1 (London: Sweet & Maxwell, 1994), at paras. 12-039 and 12-040.

[4] *ATCO Electric Ltd. v Alberta (Energy and Utilities Board)*, 2004 ABCA 215 at para 77.

the terms of the agreement. RMC's surrounding circumstances evidence all post-dates the entry into the Supplier Agreement and speaks only to RMC's alleged subjective understanding. The purpose of considering the surrounding circumstances is not to add to, contradict or vary the terms of the agreement but rather to use them as an interpretive aid to determine the meaning of the words in dispute. The British Columbia Court of Appeal (the "**BCCA**") has held that "[t]he words of the contract must not be overwhelmed by a contextual analysis, otherwise there is little point in writing things down. No certainty could be achieved in choosing words to express a bargain."[5]

9. When trying to ascertain the objective intention of the parties this Court should strive to give meaning to the agreement and "reject an interpretation that would render one of its terms ineffective."[6] In its Brief, RMC misunderstands the Receiver's position on the interplay of the Verification Rights and other material terms of the Supplier Agreement. RMC's interpretation asks this Court to simply ignore provisions of the Supplier Agreement and to render others redundant.

The Entire Agreement and Non-Variation Provisions have Meaning

10. RMC does not suggest that the Entire Agreement Provision (Section 26), or the non-variation provision (Section 27) are ambiguous or unenforceable. Yet RMC asks this Court to ignore these express terms.

11. RMC unequivocally declared that no "other terms and conditions, representations or understandings" were binding on the parties. To accept RMC's position that it always understood and expected to conduct an end-of-project verification requires this Court to ignore RMC's own express declaration that it had no other understandings regarding the subject matter.

12. RMC says that a contextual analysis demonstrates that it is industry practice to carry out end-of-project verifications; however, this Court should not adopt an interpretation of alleged industry practice where the alleged practice cannot be reconciled with the express language of the Supplier Agreement.

13. Any reasonable commercial party would expect that a term as fundamental as one affecting a party's obligation to make, or right to receive, payment for goods delivered would be contained in its agreement. Indeed, the very detailed and meticulously drafted "Payment Terms"

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[5] *Black Swan Gold Mines Ltd. v Goldbelt Resources Ltd.* 1996 CanLII 2287 (BC CA) at para 19.
[6] *National Trust Co v Mead,* 1990 CanLII 73 (SCC), at p 425.

found at Section 5 did just that. Any suggestion of an extra-contractual, end-of-project verification, that is not found in the Supplier Agreement and that actively conflicts with the express wording of the Supplier Agreement, cannot be accepted as reasonable, or within the contemplation of the parties at the time of contracting.

14. Likewise, the non-variation provision precludes amendments that are not reduced to writing. Despite this provision, RMC advocates that it communicated its "expectation through conversations held with RBee" and its expectation was consistent with the parties' conduct on subsequent projects.[7] RMC goes so far as to define the *subsequent* projects as "Previous Projects."[8] This is intentionally misleading. It is accepted by RMC that the Supplier Agreement was the *first* contract these parties ever entered into.[9] Subsequent conduct in *subsequent* projects is irrelevant to determining the intention of the parties at the time of entering into the Supplier Agreement, notwithstanding that these subsequent projects may have taken place during the term of the Supplier Agreement. Such subsequent conduct cannot vary or modify the terms of the Supplier Agreement unless done so in accordance with the non-variation provisions.

The Verification Provision was Exclusive

15. RMC suggests that, in addition to the Verification Provision, there is an ordinary right to perform an end-of-project verification. RMC's basis for this assertion is that the parties did not expressly say there would not be such a right. However, there is no such right. A party is entitled to verify delivery of goods. RMC and RBee agreed *how* and *when* that verification would transpire. To interpret the Verification Provision as being only one option, in addition to an end-of-project verification renders the Verification Provision meaningless. If that interpretation were accepted, the parties could ignore that provision and verify delivery in a way not provided for in the Supplier Agreement. That interpretation has also been expressly rejected by Alberta courts. The ABCA has held that, where the parties' contract contains a specified method of doing something, that method must prevail over any alleged industry practice of doing the same thing.[10]

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[7] RMC Brief at para 15

[8] RMC Brief at para 25.

[9] First Burak Questioning at page 14, lines 15-17.

[10] *Trico Developments Corporation v El Condor Developments Ltd*, 2020 ABCA 132 at para 59.

16. While it is not expressed as a bar to other verification options, or as a waiver of the right to otherwise challenge invoices, in assessing the parties' objective intention, the Verification Provision can bear no reasonable interpretation other than being an exclusive verification method.

The Risk of Loss Provision must not be Rendered Meaningless

17. RMC's understanding of the interplay between the risk of loss provision and its advocated reading-into the Supplier Agreement of an end-of-project verification right is incorrect. RMC says that the risk of loss provision is not relevant to how much aggregate is actually delivered.[11] The Receiver does not suggest that it is. What it is relevant to, however, is how a commercial party would agree to material adjustments to its entitlement to receive payment under a multi-year contract.

18. Objectively, if the risk of loss of product transfers upon delivery, and the delivering party has no sight, custody, or control over the product once delivered, the delivering party would not then, also agree to an end-of-project verification. If it did, the delivering party would have, in fact, retained the risk of loss of the delivered product until the end of project verification. That is a commercially unreasonable proposition.

19. Regardless of whether loss occurred or not, accepting RMC's position when interpreting the Supplier Agreement, and when deciding whether the parties intended that an end-of-project verification was to be conducted and a final adjustment made to the amount payable, conflicts with the transfer of risk of loss provision rendering it entirely illusory. RBee would retain the risk of loss until the end of the Project.

The Contra Proferentem Rule Applies

20. At paragraph 11 of its brief, RMC attempts to downplay its role in drafting the Supplier Agreement and goes so far as to erroneously suggest that both parties had counsel. There is nothing in the evidence that suggests that RBee was represented by counsel in the negotiations of the Supplier Agreement.

21. To the contrary, during questioning on his first affidavit, Mr. Burak conceded that, while RMC had their outside counsel draft the agreement, all negotiations were "primarily [with] Bernie Reed." Mr. Burak recalled that another individual named David Howells "was around" but that he

[11] RMC Brief at para 47 and 48.

did not know "to what extent [Reed] utilized him."[12] David Howells was Mr. Reed's step-son and the VP of operations at RBee.[13] Neither Mr. Reed, nor Mr. Howells are lawyers. In fact Mr. Reed's highest level of education is Grade 10.[14] When questioned on his second affidavit Mr. Burak again confirmed that "the details of the contract would have been done by our outside counsel" but then went on to assume that RBee "would have had an input from their legal counsel in the drafting of this."[15] Mr. Burak offered no evidence that RBee did in fact have any external counsel.

22. Section 25 of the Supplier Agreement includes RMC's counsel as recipients of any notices issued pursuant to the Supplier Agreement. What is noticeably absent is the inclusion of any counsel for RBee. Several other provisions of the Supplier Agreement evidence that RBee had little involvement in negotiating the terms, and likely did not have the assistance of counsel. These include the "Import/Export Controls" provisions at Section 10, and the patently inapplicable insurance provisions at Section 11(c) and (d).

23. Canadian Courts have held that the *contra proferentem* principle is used in connection with the construction of written documents to the effect that an ambiguous provision is construed most strongly against the person who selected the language.[16] If the Verification Rights, or indeed any portions of the Supplier Agreement, are ambiguous as RMC says it is, then the Supplier Agreement is to be construed *against* RMC as the author of the Supplier Agreement.

C. RMC's Shifting of the Burden to the Receiver

24. RMC seeks to reverse the onus onto the Receiver by suggesting that in order to be entitled to payment for the Unpaid Invoices, the Receiver must first prove delivery of the aggregate. This reverses the contractual obligation the parties agreed to. Prior to disputing the Unpaid Invoices, RBee had issued and RMC had paid 35 invoices. This accords with the terms of the Supplier Agreement that required RBee to do no more than deliver aggregate and invoice RMC separately. Pursuant to Section 5, the Verification Rights, the burden then shifted to RMC to dispute the volume of aggregate delivered. The cases cited by RMC do not support its position and are either misinterpreted, or distinguishable from the case at bar.

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[12] First Burak Questioning, page 34, line 10 to page 35, line 10.
[13] First Burak Affidavit, at Exhibit B.
[14] First Report of the Trustee, Appendix C, page 14, lines 6-7.
[15] Second Burak Questioning at page 5, line 23 to page 6, line 14.
[16] *Leigh Square Holdings Ltd. v The Corp. of Port Coquitlam*, 1992 CanLII 795 (BC SC) at p 9.

25. While possibly unclear because of the names of the parties to the dispute, the plaintiff in *Nor-West Building Supplies Limited v Arrowsmith* had no written agreement in place with the defendant by which to determine delivery obligations. This is not the case for the parties here. Under the Supplier Agreement, RBee had the obligation to deliver aggregate and invoice RMC. If RMC wished to dispute the quantum of aggregate delivered, it had the obligation to do so by way of a third party verification. According to RMC, this was an administrative burden so it chose not to do so.

26. The case of *Amtim Capital Inc. v Appliance Recycling Centers of America* ("***Amtim***") provides useful guidance for this Court and the case at bar, but not in the way advanced by RMC. In *Amtim*, the parties had two overarching agreements that governed their relationship. While dealing with a related, but distinct portion of the claims advanced, the court at first instance held that the parties had "*established <u>by contract</u> a system by which AMTIM was granted access to review all records of ARCA pertaining to the Canadian operations to determine for itself the accuracy of the compensation and payments payable to it under the Agreements*."[17] Like RMC, the party "*declined to avail himself of the right to review or audit ARCA's records,*"[18] and the court ultimately concluded that in its view "*this unjustifiably reverses the onus.*"[19] The Ontario Court of Appeal agreed.[20]

27. RMC's reliance on *Mera Software v Intelligent Mechatronic Systems* ("***Mera***"), is also misplaced. *Mera* involved an application for summary judgment by the plaintiff for payment of unpaid invoices, and a request by the defendant for an adjournment to mediation. The statement of defence filed by the defendant presented "only a generic denial of breach and liability" and did not dispute that services had been rendered or that the invoices were due. It sought only to have the matter referred to mediation. The court held that while "[i]*n general terms, deference is owed to the agreement of the parties* [to refer the matter to mediation],"[21] because the defence contained no details demonstrating a true dispute, the was nothing to refer to mediation and the court granted summary judgment on the unpaid invoices.

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[17] *Amtim Capital Inc. v Appliance Recycling Centers of America*, 2022 ONSC 6877 ("***Amtim***") at paras 92.
[18] *Amtim* at para 93
[19] *Amtim* at para 94
[20] *Amtim Capital Inc. v Appliance Recycling Centers of America*, 2024 ONCA 225 at paras 19-23.
[21] *Mera Software v Intelligent Mechatronic Systems,* 2018 ONSC 5208 at paras 17 and 23.

28. Finally, in the case of *606346 Alberta Ltd. v Abugov* ("***Abugov***"), the plaintiff submitted that the invoices should be accepted for their amount and as business documents, and should be excepted from the hearsay rule. The court disagreed, but it did so because no verifications could have been performed in the circumstances under which the invoices were created.[22] Further, the nature of the invoices at issue in *Abugov* is distinguishable from the facts in the case at bar. Those invoices included work performed by a variety of sub-trades that could not be verified. Where the only thing at issue in the present case is whether RMC utilized its right to verify volume in accordance with its obligations under the Supplier Agreement. RMC has never denied delivery of aggregate under each invoice. *Abugov* is entirely at odds with the agreed verification rights contained in the Supplier Agreement. By virtue of the verification rights, the parties have agreed that the Unpaid Invoices *would* be accepted as evidence for their amount unless challenged in accordance with the Verification Rights, whereafter RBee would be bound by the verification as conducted by the third party.

29. RMC and RBee agreed that RMC would have the onus of disputing quantum. The "Payment Terms" and the "Conditions to Payment" provisions of the Supplier Agreement contain a detailed list of deliverables for payment to be authorised. Noticeably absent from the list is anything that RMC claims it "expected"[23] to receive to support proof of delivery of the aggregate or the hauling charges. The Receiver has no obligation to now, many years after the fact and outside of RBee's contractual obligations, prove delivery of aggregate for the entire period of the Project.

D. The Bankruptcy Proceedings

30. Finally, RMC has sought to include various materials from RBee's ongoing bankruptcy proceedings (the "**Bankruptcy Proceedings**"). The Receiver is of the view that these materials are irrelevant to the task of contractual interpretation. This is little more than an attempt to muddy the waters. Nevertheless, out of an abundance of caution and in order to ensure full disclosure, the Receiver has consented to their inclusion in these proceedings.

31. RMC relies on the First Trustee's Report (the "**First Trustee's Report**"), the Trustee's Preferences Application (the "**Preferences Application**") and the brief of law and argument (the

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[22] *606346 Alberta Ltd. v Abugov,* 2000 ABQB 122 at para 151.

[23] RMC Brief at para 79.

"**Trustee's Brief**") filed by the Trustee's Counsel in support of the Preferences Application (collectively the "**Bankruptcy Documents**").

32. The first notable flaw in RMC's position with regards to the Bankruptcy Documents is its failure to i) properly characterize those proceedings, ii) to reference the defences advanced by the Respondents to the Preferences Application, and iii) to refer this Court to the ultimate conclusion of the Preferences Application.

33. The second notable failure is RMC confusion of evidence versus argument. In essence, RMC asks this Court to consider as "admissions" the allegations and argument made in the Preferences Application and the Trustee's Brief. RMC is at pains to equate allegations made by the Trustee's Counsel in the Trustee's Brief filed in support of the Preferences Application, to "admissions" of fact by the Trustee. The First Trustee's Report may be read as evidence, but the Preferences Application and Trustee's Brief of law and argument are just that – law and argument.

34. To ask this Court to interpret the arguments made by the Trustee's counsel as "admissions" materially misrepresents the nature of the documents RMC relies on. The Preferences Application was brought with the intention of recovering any transfers which, subject to the express provision of the applicable legislation, could be clawed back from related parties, for the benefit of arms-length creditors. The Trustee did so to ensure an equitable, orderly distribution of RBee's assets among all creditors, rather than allowing a few to benefit at the expense of others.

35. The First Trustee's Report seeks only to highlight certain transactions which may be susceptible to statutory claw-backs under the *Bankruptcy and Insolvency Act*, the *Fraudulent Preferences Act* and/or the *Statute of Elizabeth*. Nowhere in the Receiver's First Report is an allegation of fraud made. Rather, the First Trustee's Report notes that "[i]t is the Trustee's view that the payments made to the Related Parties throughout the look-back period directly preferred the Related Parties over other creditors of RBee who were not paid."

36. The Trustee's Counsel argued, using the statutory language, that RBee carried out transactions which had the effect of preferring one creditor over another "with the intent to defraud, hinder, or delay RBee's creditors." It cannot be construed, as RMC advocates, as evidence that RBee, or its principals had conducted fraud or that the Trustee *admitted* that as a fact.

37. Even if the Trustee was of the view that those transactions were fraudulent, which it was not, the Respondents denied all the allegations in the Preferences Application. Ultimately the matter settled and a consent dismissal was filed.[24] No findings of fact or law were made concerning the matters raised in the Preferences Application. The Trustee's allegations were, in effect, dismissed as if the consent dismissal had been pronounced as a decision of this Honourable Court.[25]

38. RMC asks this Court to infer fraud on the part of RBee, or more accurately its principals, based on denied, untested, and ultimately consensually dismissed, allegations made based on distinguishable statutory language.

E. Conclusion

39. Pursuant to the terms of the Supplier Agreement, the Receiver does not have the burden to prove it delivered the aggregate. Delivery itself has never been denied by RMC. The Supplier Agreement creates the presumption that the invoiced amounts were accurate and places the burden on RMC, if it so chose, to exercise its Verification Rights in accordance with the terms of the Supplier Agreement (i.e. within 60 days, and by a third-party). RMC failed to do that.

40. To interpret the Supplier Agreement, even considering surrounding circumstances, in the manner proposed by RMC, to include an end-of-project verification, requires this Court to not only ignore express provisions of the Supplier Agreement, but to also read-in provisions which directly conflict with the terms of Supplier Agreement. This simply cannot be what the parties intended at the time of contracting.

41. Accordingly, the Receiver seeks an order of this Court declaring that the Outstanding Amounts are due and payable to the Receiver for the benefit of RBee's creditors, together with interest at the contractually agreed rate, and costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of March, 2026.

BLAKE, CASSELS & GRAYDON LLP

By: ______________________

Kelly J. Bourassa/Clinton Slogrove
Counsel for the Applicant

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[24] Consent Dismissal filed February 10, 2026 in Case No B25-2831494.

[25] Consent Dismissal filed February 10, 2026 in Case No. B25-2831494 at para 2.

Table of Authorities

TAB Document

1. *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53
2. *Paddon Hughes Development v Pancontinental Oil*, 1998 ABCA 333
3. *ATCO Electric Ltd. v Alberta (Energy and Utilities Board)*, 2004 ABCA 215
4. *Black Swan Gold Mines Ltd. v Goldbelt Resources Ltd.*, 1996 CanLII 2287 (BC AB)
5. *National Trust Co v Mead*, 1990 SCC 73
6. *Trico Developments Corporation v El Condor Developments Ltd*, 2020 ABCA 132
7. *Leigh Square Holdings Ltd. v The Corp. of port Coquitlam*, 1992 CanLII 795
8. *Amtim Capital Inc. v Appliance Recycling Centers of America*, 2022 ONSC 6877
9. *Amtim Capital Inc. v Appliance Recycling Centers of America*, 2024 ONCA 225
10. *Mera Software v Intelligent Mechatronic Systems*, 2018 ONSC 5208
11. *606346 Alberta Ltd. v Abugov*, 2000 ABQB 122

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