COURT FILE NUMBER	2201-02948	Clerk's Stamp
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 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	

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A. Introduction

1. This Supplemental Brief of Law is filed pursuant to this Court's directions at the hearing which occurred on March 18, 2026. At the hearing, this Honourable Court directed the parties to provide supplemental written submissions on four discrete issues which may impact the Court's interpretation of the Supplier Agreement, or alternatively, which may impact RMC's equitable set-off defence.

2. Capitalized terms used but not defined herein shall have the meanings given to them in the prior briefs filed by the Receiver.

B. The Time is of the Essence provisions in the Supplier Agreement

3. As is discussed below, the initial presumption, and indeed directive under the British Columbia *Sale of Goods Act, RSBC 1996, c 410* ("***SGA***") in a commercial contract is that time is **not** of the essence unless expressly stated to be so. If time is made to be of the essence, a party's failure to perform punctually enables the party not in breach to treat that failure to perform as a repudiation of the contract. The party not in breach may elect to terminate the contract and sue for damages, or it can reject the repudiation and treat the contract as ongoing and sue for specific performance or damages.[1] In order to rely on a "time of the essence" provision when seeking a remedy, the party not in breach must itself be ready, willing and able to perform on the agreed time.

4. Canadian courts have found that where parties have relied on the provisions of their agreements that make time of the essence, and have terminated those agreements for failure to comply within specified times, it has been found not to be unfair, unconscionable, or in bad faith.[2] In a recent case, the parties included an express provision that time was of the essence in their agreement. The Ontario Court of Appeal held that, based on that clause, the respondent was entitled to terminate the agreement based on the appellant's 9-minute delay in making a payment.[3]

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[1] *Domicile Developments Inc. v MacTavish*, 1999 CanLII 3738 (ON CA), [1999] O.J. No. 1998 at para 10.

[2] See *Redstone Enterprises Ltd. v. Simple Technology Inc.*, 2017 ONCA 282; and *1473587 Ontario Inc. v. Jackson*, 2005 CanLII 4578 (ON SC) at para 23 (confirmed on appeal).

[3] *Correa v Valstar Homes (Oakville Sixth Line) Inc.*, 2025 ONCA 156 at paras 4 and 21 to 22.

5. Paragraph 32 of the Supplier Agreement provides:

> "TIME OF THE ESSENSE. Time is considered of the essence under this Agreement."[4]

6. RBee and RMC voluntarily elected to make time of the essence in the Supplier Agreement. The effect of this is to elevate specified time periods to material terms of the agreement, warranting termination for a failure to comply. Much of the case law on these clauses focuses on a party's failure to deliver/perform on time, and the subsequent termination of the agreement based on that material breach. In the present case, RMC is in breach of the Supplier Agreement for failing to comply with the time periods expressly elected by the parties for the verification of aggregate and the payment of invoices. RMC now argues that imposing the consequences of its own failure to abide by the terms of the Supplier Agreement would be unfair where it can allegedly show an under-supply of aggregate using an extra-contractual verification method. The Receiver's position remains that RBee delivered the aggregate and RMC, having failed to exercise the Verification Rights within the 60 days permitted, must be interpreted to have effectively waived that entitlement.

7. Over the course of four crushing seasons and for all prior invoices (35 in total), RMC had been accepting delivery of the aggregate and paying invoices rendered and RMC. RBee had no reason to believe that RMC disputed the volume of delivery. RMC did not exercise its Verification Rights. At no point would RBee have had reason to query RMC's decision not to exercise the Verification Rights. There is no evidence that RBee made representations to RMC that it was extending those Verification Rights beyond the agreed 60-day period.

8. RBee's entitlement to payment was either based on the stated volume and consequent value in each of the invoices rendered or, if disputed, the verification and subsequent value as determined by the third party carrying out the Verification.

9. RMC ought to be held strictly to the time agreed for verification of the volume of aggregate delivered by RBee.

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[4] Supplier Agreement paragraph 32 Joint Compendium of Evidence ("**COE**") page 58.

C. The British Columbia *Sale of Goods Act*

10. The *SGA* contains a number of provisions that may influence this Court's reasoning and interpretation of the Supplier Agreement.[5]

11. Section 1 of the *SGA* defines "delivery" as the voluntary transfer of possession from one person to another. Pursuant to the terms of the Supplier Agreement, RBee delivered the aggregate to the Stockpile, after which it was in the possession of RMC.[6] Section 14(1) stipulates that "[u]nless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale."[7] The parties expressly stipulated time to be of the essence. As discussed above, this elevates the stipulated time periods to material terms of the Supplier Agreement.

12. Section 31 of the *SGA* states "[i]t 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."[8] Section 32 states that "[u]nless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions."[9] These sections are to be read and applied jointly, such that delivery of the goods by the seller, and acceptance of the goods by the purchaser, correlate to the obligation to pay. The parties agreed that invoices had to be paid within 60 days and, if RMC so elected, delivery verified within 60 days.

13. Section 38 of the SGA provides that the buyer is "not deemed to have accepted [the goods] unless and until the buyer has had a *reasonable opportunity* of examining them for the purpose of ascertaining whether they are in conformity with the contract"[10] [emphasis added]. RBee and RMC agreed what a reasonable, and indeed practical, opportunity was – 60 days.

14. After a reasonable time has elapsed, section 39(c) of the SGA deems that the buyer, RMC, has accepted the goods. Specifically, S. 39 of the SGA provides:

> "The buyer is deemed to have accepted the goods when:
> (a) the buyer intimates to the seller that the buyer has accepted them;

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[5] *Sale of Goods Act*, RSBC 1996, c 410 ["***SGA***"].
[6] SGA s. 14(1).
[7] SGA s. 14(1).
[8] SGA s. 31.
[9] SGA s. 32.
[10] SGA s. 38.

(b) the goods have been delivered to the buyer, and the buyer does any act in relation to them which is inconsistent with the ownership of the seller; or

(c) after the lapse of a reasonable time, the buyer retains the goods without intimating to the seller that the buyer has rejected them."[11]

15. Clause 5 of the Supplier Agreement related not only to quantity of the aggregate, but also the quality.[12] By failing to reject the quantity or quality of the aggregate, and by using the aggregate to make concrete, charging AFDE for the concrete, and failing to exercise the Verification Rights within the agreed reasonable time, RMC can only be deemed to have accepted delivery of the aggregate both in terms of quality and quantity.

16. The British Columbia Superior Court has held that Sections 38 and 39 of the SGA "simply provide that, even where the buyer has a right to inspect and reject the goods after delivery, the buyer cannot rely on such right indefinitely so as to avoid its duty of acceptance."[13] The general principle of section 39 is that a "buyer may not use goods received or keep them for a longer time than is reasonable to inspect them without intimating to the seller that they are rejected and then attempt to repudiate the contract."[14]

D. The *Limitations Acts* of British Columbia and Alberta and their impact on the interpretation of the Supplier Agreement, and RMC's set-off defence.

17. RMC argues that the Receiver's interpretation of the Verification Rights would abridge the two-year statutory limitations period provided for in Alberta[15] to 60 days. RMC says that this is expressly forbidden by section 7(2) of the Alberta *Limitations Act.*[16] This analysis of the law and RMC's resulting conclusion is incorrect.

18. The parties agreed that the Verification Rights provided RMC with a method (third party verification) and a reasonable time, to determine whether RBee delivered the volume of aggregate invoiced to the Stockpile. If the Verification Rights amount to an abridgement of the two-year

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[11] SGA s. 39.

[12] Clause 5, final sub-paragraph regarding right to reject aggregate that contained a surface saturation in excess of what was permitted under Schedule "D".

[13] *Redfern Resources Ltd. (Re)*, 2011 BCSC 771 at para 55.

[14] *Lee v Shao Hsiung Enterprises Ltd.*, 2009 BCSC 728 at para 31.

[15] *Alberta Limitations Act*, RSA 2000, c L-12 at s. 3(1) [**Alberta *Limitations Act***].

[16] Brief of Law of RMC Construction Materials Ltd. filed March 6, 2026 (the "**RMC Brief**") at paras 83-84; and Alberta *Limitations Act* at s. 7(2).

limitation period, then RMC's argument that such an abridgement would be expressly forbidden by the Alberta *Limitations Act* ignores both the governing law provisions in the Supplier Agreement, and the conflict of laws provisions in the Alberta *Limitations Act*.

19. The Supplier Agreement provides that it shall be interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.[17] When interpreting the Supplier Agreement and the intentions of the parties at the time of contracting, reference cannot be had to the Alberta *Limitations Act* as the parties were clearly envisaging the law of British Columbia to govern their relationship. The British Columbia *Limitations Act* does not contain a prohibition on the reduction of a limitations period.[18] If the effect of the Supplier Agreement was to reduce the limitation period to 60 days, this would be permissible pursuant to the British Columbia *Limitations Act*.

20. In addition, Section 12(2) of the Alberta *Limitations Act* provides that where a proceeding 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.[19]

21. Accordingly, there is no prohibition under the governing law of the Supplier Agreement that prevents the shortening of the period and, pursuant to the Alberta *Limitations Act* conflicts provision, the shorter limitations period of 60 days applies.

E. Equitable Set-off

22. As noted above, the Supplier Agreement contains a "time is of the essence" clause.[20] Where the parties have stipulated that time is of the essence, the court will generally not assist the party that has failed to perform on time. A party seeking to rely on equitable relief must have clean hands. RMC, having failed to exercise the Verification Rights within 60 days, cannot be said to have clean hands, and equity "should not come to [its] aid."[21] Specifically, a court of equity will

[17] Supplier Agreement Section 33 COE page 58.

[18] *Limitations Act*, RSBC 1996, c 266 [**British Columbia *Limitations Act***].

[19] Alberta *Limitations Act* at s. 12(2).

[20] Section 33 of the Supplier Agreement, at Appendix "A" to of the Fifth Report.

[21] *Graem Nelson Associates Ltd. v. Cherries Kokanee Enterprises Ltd.,* 2011 BCSC 810 at para 9 and 14

not intervene if the parties have expressly indicated that time is to be of the essence and the stipulation as to time has not been observed.[22]

23. RBee delivered the aggregate it was required to deliver promptly, was not the cause of any delay, and had no continuing obligations in respect of each delivery once it was completed. After the delivery of aggregate RMC was required to exercise the Verification Rights within 60 days and failed to do so. In these circumstances, a "a court of equity will not intervene" and RMC is barred from relying on any equitable relief, including its defence of equitable set-off.

24. Even if a court of equity were to intervene, RMC has failed to satisfy the test for equitable set-off. RMC cites the test for the application of equitable set-off at paragraph 83 of its brief and claims it satisfies all steps of the test as laid out in *Telford v Holt* ("***Telford***").[23] It specifically argues it would be "manifestly unfair to force RMC to satisfy the Unpaid Invoices when RBee breached the Supplier Agreement by substantially overcharging RMC over the course of the Project, including with respect to the periods to which the Unpaid Invoices pertain." However, this ignores the unfairness RMC advocates be exercised against the Receiver.

25. RMC asks this Court to accept their extra-contractual verification method and force RBee to carry the risk of any loss after delivery, despite the parties having expressly contracted otherwise.[24] Additionally, it is impossible to determine a number of factors which may have a material impact on RMC's case. First, assuming there was an under-delivery, it is impossible to ascertain which particular delivery was affected by a shortage. Second, it is impossible for the Receiver to demonstrate that any other factor could explain a possible short-fall in RMC's new verification, because it had no reason to monitor the Stockpile after delivery. Third, RMC is unduly benefitting from its own neglect in that, while raising a purported defence, it would otherwise be time barred from making a claim for this alleged under-delivery.

F. Conclusion

26. Time was expressly and voluntarily made to be of the essence in the Supplier Agreement. Accordingly, RMC's voluntarily elected failure to comply with the specific time periods within which to verify the quantum of aggregate cannot be ignored, and RMC should not be permitted to attempt to verify the volume now, years after the fact. RMC is, by virtue of its own failure to verify

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[22] *Ro/Lin Holdings Ltd. v. Mustard Seed Street Church* ("***Ro/Lin***") 2007 ABCA 259 at para 20

[23] *Telford v Holt,* 1987 SCR 193 at para 34.

[24] Supplier Agreement Section 9 COE page 52.

the volume of aggregate delivered within the contractually agreed reasonable time, and by operation of s. 39 of the *SGA*, deemed to have accepted delivery of each load both in quality and in quantity.

27. Further, RMC's argument that clause 5 of the Supplier Agreement abridges the two-year limitation period to 60 days is incorrect. However, if the Verification Rights did abridge the limitation period, this would not be in conflict with the British Columbia *Limitations Act,* which is the applicable statute for this inquiry and which places no prohibition on the shortening of limitation periods.

28. Finally, even if the invoices from the commencement of the Project in 2018 are deemed to be sufficiently connected to the Unpaid Invoices to enable equitable set-off to apply, RMC cannot rely on the equitable relief it seeks since equity cannot come to the aid of a party that has failed to comply with its obligations under the Supplier Agreement. When answering the "ultimate question" of "whether it would be manifestly unjust to allow the plaintiff to recover, without taking into consideration the defendant's cross claim"[25] this Court should answer "no". In considering all of the circumstances of the case, it is unfair and unjust that RMC's set-off claim be taken into consideration. Reliance on equity is not only precluded, but it is also not made out.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of April, 2026.

BLAKE, CASSELS & GRAYDON LLP

By: ______________________________

Kelly J. Bourassa/Clinton Slogrove
Counsel for the Applicant

[25] *Monsanto Canada v. Victor Carpet Distributors Ltd*., 1994 CanLii 509 (BC SC).

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5. *Sale of Goods Act*, RSBC 1996, c 410

6. *Redfern Resources Ltd. (Re)*, 2011 BCSC 771

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