

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 **APPLICATION**

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 Bourassa / James Reid
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File Ref.: 79294/16

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: November 29, 2022
Time: 10:00 a.m.
Where: Calgary Courts Center, via Webex
Before: Justice M.H. Hollins

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. FTI Consulting Canada Inc., in its capacity as the receiver (the "**Receiver**") over the assets, properties, and undertakings (the "**Property**") of RBee Aggregate Consulting Ltd. ("**RBee**" or the "**Company**") seeks an order substantially in the form attached hereto as Schedule "**A**":

- (a) declaring the Unpaid Invoices (defined below) are due, owing, and payable by RMC Construction Materials Inc. ("**RMC**");
- (b) directing RMC to pay to the Receiver the Outstanding Amounts (defined below) pursuant to the terms of the Supplier Agreement (defined below);
- (c) directing RMC Construction Materials Inc. to pay the Receiver the amount of \$4,485,480.64 plus interest with respect to unpaid amounts for services rendered to it prior to the date of the Receivership Order (defined below); and
- (d) costs of this application.

Grounds for making this application:

Background

2. RBee was in the business of the operation of gravel crushing plants in various pits and construction sites across Alberta and British Columbia. Gravel crushing is a seasonal industry with operations typically running from April to the onset of winter.

3. On March 11, 2022 (the "**Appointment Date**"), the Receiver was appointed over the Property pursuant to an Order of the Honourable Justice A.D. Grosse (the "**Receivership Order**").

4. At the Appointment Date, the Company's operations were shut down for the winter and the majority of RBee's employees had been laid off at the end of the 2021 season. The Company had not secured contracts for the 2022 construction season.

The Supplier Agreement

5. RBee and RMC are parties to a Supplier Agreement made effective May 7, 2018 (the "**Supplier Agreement**"), whereby RBee agreed to supply aggregate and other materials (the "**Product**") to RMC for a three-year minimum term for use on certain lands referred to as Site C (the "**Site C Lands**"), which is owned by the British Columbia Hydro and Power Authority ("**BC Hydro**").

6. The Product supplied was used to make concrete in a construction project (the "**Project**") owned by BC Hydro in which RMC is a subcontractor to the general contractor to the Project, Aecon-Flatiron-Dragados-EBC Partnership.

7. RBee agreed to supply the Product in accordance with the volumes and prices set out in Schedule B of the Supplier Agreement.

8. The Product supplied was subject to a right for RMC to verify the volume of Product delivered prior to payment, which had to be completed by RMC within 60 days of receiving an invoice from RBee for the Product delivery (the "**RMC Verification Rights**").

9. RBee delivered the Product pursuant to the Supplier Agreement from May 2018 to October 2021.

The Outstanding Amounts and Unpaid Invoices

10. In accordance with the Supplier Agreement, RBee invoiced RMC for each individual delivery to give RMC the ability to exercise its RMC Verification Rights over each such delivery.

11. RMC paid RBee for all invoices issued prior to September 2021, however RMC has failed, refused, or been unable to pay the invoices of RBee issued since September 2021.

12. As of the Appointment Date, there was an outstanding balance due under the Supplier Agreement by RMC to RBee of \$4,485,480.64 (the "**Outstanding Amounts**") pursuant to three invoices dated September 30, 2021, October 31, 2021, and December 31, 2021, respectively (the "**Unpaid Invoices**").

13. Prior to the Appointment Date, RBee sent RMC regular reminders and requests for status updates on RMC's anticipated timing for payment for the Unpaid Invoices, which RMC did not respond to.

14. On March 14, 2022, the Receiver wrote a demand letter to RMC requesting payment of the Outstanding Amounts.

RMC's alleged claim in these receivership proceedings

15. On March 22, 2022, the Receiver received an e-mail from counsel to RMC, which alleged that RMC had a claim against RBee in this receivership proceeding pertaining to RBee overbilling RMC.

16. Based on other correspondences between counsel to RMC and counsel to the Receiver, the Receiver understands that RMC now alleges that RBee undersupplied Product to the Project, to which RMC did not exercise its RMC Verification Rights over.

It is impossible to verify RMC's claim

17. The Product was incorporated into the Project to make cement.

18. There is a 60-day period following receipt of an invoice from RBee for RMC to verify the volumes of the Product delivered.

19. It is now impossible to determine whether RBee under supplied Product in any of its deliveries pursuant to the Supplier Agreement.

20. RMC failed to rely on the RMC Verification Rights and as a result, the Unpaid Invoices are validly due and owing, plus interest and costs.

21. Further, any of RMC's claims in respect of RBee under supplying Product from 2018 to at least October 2019 are statute barred by the *Limitations Act* (British Columbia).

Affidavit or other Evidence and Materials to be used in Support of this Application:

22. The Receiver intends to rely upon the following materials:

- (a) Receivership Order, filed;
- (b) Fifth Report of the Receiver dated October 28, 2022, filed;
- (c) Brief of Law of the Receiver, to be filed; and
- (d) such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

23. The Receiver intends to rely on the following Rules:

- (a) the *Alberta Rules of Court*, AR 124/2010, as amended; and
- (b) such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

24. The Receiver will rely upon and refer to the provisions of the

- (a) *Limitation Act*, SBC 2012, c 13; and
- (b) *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

Any Irregularity Complained of or Objection Relied On:

25. None.

How the Application is Proposed to be Heard or Considered:

26. By Webex video conference before the Honourable Justice M.H. Hollins at the Calgary Courts Centre, 601 – 5th Street SW, Calgary, Alberta, commencing at 10:00 a.m. on November 29, 2022, or so soon thereafter as counsel may be heard.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

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APPLICANT CROWN CAPITAL PARTNER FUNDING LP, by its manager,
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DOCUMENT **ORDER**

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File Ref.: 79294/16

DATE ON WHICH ORDER WAS PRONOUNCED: November 29, 2022

NAME OF JUDGE WHO MADE THIS ORDER: Honourable Justice M.H. Hollins

LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION by FTI Consulting Canada Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of RBee Aggregate Consulting Ltd. ("**RBee**"), for an order directing RMC Construction Materials Inc. ("**RMC**") to pay to the Receiver the amount owing by RMC to RBee pursuant to the Unpaid Invoices;

AND UPON having read the Fifth Report of the Receiver dated October 28, 2022 (the "**Fifth Report**");

AND UPON hearing the submissions of counsel for the Receiver, counsel for RMC, and any other interested parties in attendance at the Application,

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Fifth Report.
2. The Unpaid Invoices are due, owing, and payable by RMC.
3. RMC is directed to pay to the Receiver forthwith the amount of \$4,485,480.64 in respect of the Unpaid Invoices, plus interest on each Unpaid Invoice at a rate of 12% per annum pursuant to the terms of the Supplier Agreement.
4. The Receiver and RMC may speak to costs within 90 days if they cannot otherwise agree.

Justice of the Court of King's Bench of Alberta