



No. S-236214
Vancouver Registry

Between:

1392752 B.C. Ltd.

Petitioner

And:

Skeena Sawmills Ltd.
Skeena Bioenergy Ltd.
ROC Holdings Ltd.

Respondents

APPLICATION RESPONSE

Application Response of: Delta Cedar Specialties Ltd. (the “**Application Respondent**”)

THIS IS A RESPONSE TO the Notice of Application of Alvarez & Marsal Canada Inc. (the “**Receiver**”) in its capacity as court-appointed receiver of all of the assets, undertakings and property, including real property, of Skeena Sawmills Ltd. (“**Sawmills**”), Skeena Bioenergy Ltd. (“**Bioenergy**”), and ROC Holdings Ltd. (“**ROC**”), filed on 25 October 2023.

Part 1: ORDERS CONSENTED TO

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1. Nil.

Part 2: ORDERS OPPOSED

The Application Respondent opposes the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1. All.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1. Nil.

Part 4: FACTUAL BASIS

1. The Receiver released its First Report to the Court on 25 October 2023 (the “**First Report**”) that sets out, *inter alia*:

- (i) the activities undertaken by the Receiver since its appointment by the court;
- (ii) an interim statement of cash receipts and disbursements;
- (iii) its correspondence with stakeholders; and
- (iv) its proposed next steps.

First Report of the Receiver, filed
25 October 2023 (the “**First Report**”)

2. In its First Report, the Receiver seeks authorization to fulfill its financing obligations to the tune of \$445,833.41 under an agreement between Bioenergy and Imperial PFS Payments Canada, ULC (“**Imperial**”) dated 4 April 2023 and renewed on 20 April 2023 (the “**Premium Financing Agreement**”). Sawmills was not a party to the Premium Financing Agreement.

First Report at paras. 7.2(c) and 10.1 and Appendix “A”

3. While Bioenergy and Sawmills are related through their ownership by Cui Family Holdings Ltd., the two companies are legally separate and each have their own assets, liabilities, and creditors.

First Report at paras. 3.1 to 3.23

4. No justification for the payment of these expenses has been provided. No details of the insurance policy or the nature of the policy have been provided, such that it is impossible to determine whether the monthly payments are warranted or not given that the installments will have to be made as priority advances pursuant to borrowings by the Receiver. If, on the other hand, the policy is allowed to go into default, the claims of the

insurer will only have limited, if any, priority over the claims of the existing secured creditors.

5. The benefit to be obtained from maintaining the policy in good standing must outweigh their cost to the body of creditors. No demonstration has been made that this is the case. The Receiver has not even sought to obtain confirmation that, if installments are made, the policy will be maintained in good standing despite other defaults (such as the fact that operations have been discontinued and the insured are insolvent).

6. Finally, this is an agreement between Bioenergy and Imperial and payments made under the subject policy should not be charged to the body of creditors of Sawmills. Ultimately, the expenses to be incurred by the Receiver and its counsel (not just their fees, but also the disbursements) will have to be allocated in a fair manner as between the three companies (ROC, Sawmills, and Bioenergy).

7. If an order is made by this Court allowing the Receiver to make payments to Imperial, this order should only be made on the basis that this disbursement will only constitute a charge against the assets of Bioenergy.

8. The First Report fails to provide a proper and fair budget for the continuation of this Receivership and instead announces that the Receiver and its counsel have charged \$195,000¹ and \$48,500² respectively for what can only be best described as a limited amount of services any reasonable observer can detect. These are unreasonable fees given the circumstances, the small amount of work actually completed, and the insignificant recovery (if any) the Receiver now projects and another \$450,000 in professional fees is forecasted between October 14, 2023 and January 14, 2024.

First Report at para. 6.6

9. The First Report contains a cash flow forecast that shows (inclusive of some \$469,000 in insurance payments) that only \$375,000 will remain to be distributed to creditors by 12 January 2024, even assuming that the Receivership will be completed by

¹ 325 hours of work at \$600 per hour.

² 80 hours of work at \$600 per hour.

that time. This budget is the polar opposite of the exercise expected by this Court at the original hearing on 20 September 2023, after considering the submissions of the parties on the hearing of the Petition. This Court indicated that the budget then presented was unreasonable and the Receiver has now presented a budget that will ensure one thing and one thing only, namely that professionals will be paid a large fee for achieving nothing for the body of Sawmills' and Bioenergy's creditors whose interests ought to be paramount in these circumstances.

First Report at para. 7.1

Part 5: LEGAL BASIS

1. Despite that two entities under the same receivership order may be *related*, to the extent that they are separate legal entities with separate creditors and assets, the creditors of one entity should not be "saddle[d]...with the debts" of the other entity or otherwise prejudiced by an order relating to the other entity.

D'Amore v. Banwell Development Corporation,
2021 ONSC 2665 at paras. 10-11

2. Here, no proper justification has been advanced for the continuation of the insurance payments for the reasons set out above. These are excessive and unwarranted given the projection that there will be nothing for the creditors at the end of the day.

3. In any event, the rights of the creditors of Sawmills should not be affected by an order that the Receiver pay debts owing by Bioenergy. To the extent that the Receiver borrows money to pay a debt owing by Bioenergy, the Receiver's charge in relation to that disbursement should only constitute a charge against the assets of Bioenergy.

Part 6: MATERIAL TO BE RELIED ON

1. The Receivership Order of Madam Justice Blake, made in these proceedings on 20 September 2023.
2. The Receiver's First Report to Court, dated 25 October 2023.

3. The other pleadings and materials filed in these proceedings and such further and other materials as counsel may advise and this Honourable Court may permit.


The Application Respondent estimates that the application will take 4 hours.

This matter is not within the jurisdiction of a master.

The Application Respondent's ADDRESS FOR SERVICE is:

Attention: Francis Lamer
1100 – 505 Burrard Street
Vancouver, BC, V7X 1M5
Telephone: 604-331-8300
Email: flamer@kornfeldllp.com

Dated: 27 October 2023

for 
Signature of Francis Lamer
Lawyer for the Application Respondent,
Delta Cedar Specialties Ltd.

This **APPLICATION RESPONSE** is prepared by Francis Lamer of the law firm of Kornfeld LLP whose place of business is 1100 – 505 Burrard Street, Vancouver, BC, V7X 1M5, Telephone: 604-331-8300, Email: flamer@kornfeldllp.com.