



No. S236214  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

1392752 B.C. LTD.

PETITIONER

AND:

SKEENA SAWMILLS LTD.  
SKEENA BIOENERGY LTD.  
ROC HOLDINGS LTD.

RESPONDENTS

**APPLICATION RESPONSE**

**Application Response of:** The Petitioner and Cui Family Holdings Ltd. ("**Cui Holdings**")

THIS IS A RESPONSE TO the Notice of Application of Alvarez & Marsal Canada Inc., as receiver (the "**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**") and together with Sawmills and Bioenergy, the "**Skeena Entities**"), filed February 29, 2024.

The Petitioner and Cui Holdings estimate that the application will take 3 days.

**Part 1: ORDERS CONSENTED TO**

The Petitioner and Cui Holdings consent to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms: **ALL**

**Part 2: ORDERS OPPOSED**

The Petitioner and Cui Holdings oppose the granting of the orders set out in paragraphs of Part 1 of the Notice of Application: **NIL**

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The Petitioner and Cui Holdings take no position on the granting of the orders set out in paragraphs of Part 1 of the Notice of Application: **NIL**

## Part 4: FACTUAL BASIS

### *The Parties*

1. The Skeena Entities are related entities. Sawmills and Bioenergy respectively operated a sawmill and pellet plant in Terrace, British Columbia. ROC is the owner of the real property on which Sawmills and Bioenergy operated.
2. Cui Holdings is related to the Skeena Entities and the Petitioner, 1392752 B.C. Ltd. (the “**Lender**”). Specifically, Cui Holdings, the Skeena Entities and the Lender are controlled by Xiao Peng Cui (“**Mr. Cui**”) and Shenwei (Sandra) Wu (“**Ms. Wu**”) and together with Mr. Cui, the “**Shareholders**”) who acquired the Skeena Entities approximately 12 years ago.
3. Since the Shareholders’ acquisition, the Skeena Entities have suffered consistent financial losses, which were historically funded by unsecured loans provided by the Shareholders (the “**Shareholder Loans**”). The indebtedness owing under the Shareholder Loans was ultimately assigned to the Lender.
4. The Skeena Entities’ cumulative deficit for years ending 2015 through June 30, 2021 was \$69,288,114. The Shareholders advanced approximately \$143 million in Shareholder Loans to the Skeena Entities since 2011 to fund, among other things, operating losses, capital expenditures and other working capital needs.
5. In January 2023, the Shareholders decided they could no longer continue to make these unsecured advances. As a result, the Lender determined that it was unable to maintain the status quo and issued demand upon the Skeena Entities in January 2023.
6. Later in 2023, it became clear that the Skeena Entities would need to initiate restructuring proceedings to salvage its business. Ultimately, the Lender commenced these Receivership Proceedings on September 8, 2023.
7. By order granted September 20, 2023 (filed September 21, 2023), Alvarez & Marsal Canada Inc. was appointed the receiver (the “**Receiver**”) of all the assets, undertakings and property of the Skeena Entities.

8. Beginning on October 31, 2023, the Receiver commenced a sales process for the Skeena Entities. Following the consideration of a number of bids, the Receiver entered into negotiations with and signed a Payment and Retention Agreement dated February 29, 2024 with Cui Holdings (the “**Retention Agreement**”).

***The Licenses and the Retention Agreement***

9. Sawmills holds Forest License A16882 (“**A16882**”) and Tree Farm License 41 (“**TFL-41**” and together with A16882, the “**Licenses**”) issued by the Province. Pursuant to the *Timber Harvesting Contract and Subcontract Regulation*, BC Reg. 22/96 (the “**Regulations**”), Sawmills, as holder of the Licenses, is obligated to harvest a proportion of timber using replaceable timber harvesting contracts (the “**Bill-13 Contracts**”).
10. Sawmills is also the holder of Forest License A16885 which has no Bill-13 Contracts associated with it.
11. Cui Holdings and the Receiver entered into the Retention Agreement, whereby they entered into an agreement (the “**Agreement**”) to facilitate, via a reverse vesting order (an “**RVO**”), the retention of Cui Holdings’ shares in ROC and Bioenergy, as well as to vest off all Excluded Liabilities (as defined in the Retention Agreement) including, among other things, the two Bill 13 Contracts.
12. In addition to the \$7.614 million of further advances under the Shareholder Loans that Cui Holdings used as a credit bid, the Cui Holdings’ offer leading to the Agreement is significant, and includes:
  - (a) approximately \$4.5 million to repay claims against the Skeena Entities ranking in priority to the claims of the Lender;
  - (b) approximately \$1 million to fund these Receivership Proceedings;
  - (c) interest earned on the Promissory Notes to the end of February 2024 in the aggregate amount of \$431,255.96; and
  - (d) \$400,000 on account of the Skeena Entities’ inventory.

13. Cui Holdings is also planning to invest in excess of \$26 million into the Business over the next three years to improve and modernize production capacity. These funds will come from Cui Holdings and other investors.

Wu #1, para. 28.

14. Cui Holdings is committing to this significant investment with the intent of restarting Sawmills and Bioenergy's sawmill and pellet plant business (the "**Business**") upon closing the Agreement.

Wu #1, para. 68.

15. When fully operational, the Business previously employed approximately 150 individuals. Historically, the Business also purchased products and services from over 200 businesses or individuals, many of which are located in Terrace or the surrounding areas.

Wu #1, para. 18.

16. Cui Holdings is proposing to make the above-noted investment and re-start the Business with a view to returning it to full operational and economic viability. Once operating, Cui Holdings expects the Business will employ approximately the same number of people and will require the provision of services and products from local businesses at roughly the same levels as it has in the past.

#### ***The Impact of Retaining the Bill 13 Contracts***

17. Given the losses over the last 12 years and the working capital requirements needed to make the Business economically viable, Cui Holdings must ensure that:
  - (a) the Business's debt load is manageable; and
  - (b) the above-market costs of the Bill 13 Contracts do not continue.
18. Historically, the cost of the Bill 13 Contracts materially contributed to the losses suffered by the Skeena Entities. If the Business is to have any realistic chance of surviving as a viable entity, it is imperative that it not be burdened by the current Bill 13 Contracts, including the significant time and expense that will otherwise be taken up dealing with the

current protracted rate disputes and litigation with the two Bill 13 Contractors: Terrace Timber Ltd. (“**Terrace Timber**”) and Timber Baron Contracting Ltd. (“**Timber Baron**”).

19. For example, as a result of the rate disputes with Timber Baron and Terrace Timber, Sawmills incurred legal fees in excess of \$380,000 from the period of June 2020 to September 2023. That type of expense, and others like it, are not ones the Business can continue to incur if it is to survive.

Wu #1, para. 37.

20. As a result, and based on the Skeena Entities’ past experiences, retaining the Bill 13 Contracts is unsustainable for the Business and detrimental to its long-term economic viability. Accordingly, the Agreement is conditional on Cui Holdings’ ability to exclude the Bill 13 Contracts.

#### **Disputes Arising from the Bill 13 Contracts**

##### ***a. The Timber Baron Bill 13 Contract***

21. Sawmills and Timber Baron were parties to a Replaceable Interior Timber Harvesting Subcontract (the “**Timber Baron Bill 13 Contract**”) dated January 1, 2016, for harvesting services on the lands covered by A16882. The Timber Baron Bill 13 Contract expired on December 31, 2020. By operation of the Regulations, the Timber Baron Bill 13 Contract remained in force.
22. As of September 2023, Sawmills and Timber Baron had not agreed on the terms of a replacement contract, primarily as a result of a series of long-standing disputes, including rate disputes (the “**Timber Baron Rate Disputes**”), and allegations by Timber Baron that Skeena had failed to allocate sufficient work to it pursuant to the Timber Baron Bill 13 Contract.
23. No work has been performed by Timber Baron on the lands covered by A16882 since July 2022.

*b. The Timber Baron Rate Disputes*

[REDACTED]

## Rate Dispute with Terrace Timber

### *a. The Terrace Timber Bill 13 Contract*

28. Sawmills and Terrace Timber were parties to a Replaceable Coast Stump to Dump Timber Harvesting Contract (the “**Terrace Timber Bill 13 Contract**”) dated January 1, 2015, for harvesting services on the lands covered by TFL-41. The Terrace Timber Bill 13 Contract expired on December 31, 2019. By operation of the Regulations, the Terrace Timber Bill 13 Contract remained in force pending a further agreement or resolution between the parties.
29. As of September 2023, Sawmills and Terrace Timber were unable to agree on the terms of a replacement contract as a result of, primarily, rate disputes (the “**Terrace Timber Rate Dispute**”) for 12 disputed cutblocks (the “**Disputed Cutblocks**”).
30. In 2022, Terrace Timber proposed various rates, formally and informally, to Sawmills, all of which were well above the fair market value for the harvesting services. Sawmills did not accept any of these rates because they were too expensive but agreed, pending a final resolution, to pay Terrace Timber a provisional rate for harvesting work completed on the Disputed Cutblocks in accordance with the Regulations.

### *b. Attempted Resolution of Terrace Timber Rate Dispute*

31. In July 2022, Sawmills and Terrace Timber engaged Timber Tracks Inc. (“**TTI**”), a third-party service logging expert, to provide an opinion on the appropriate rates to resolve the Terrace Timber Rate Dispute.

32. On December 21, 2022, TTI issued a preliminary report (the “**Preliminary Report**”) opining that the rate applicable to the Disputed Cutblocks was \$49.29/m<sup>3</sup> on 144,664 cubic meters of timber, for a total amount of \$7,127,531 (the “**TTI Rate**”). Sawmills rejected the methodology used by TTI in coming up with this rate because it was inconsistent with the framework established by the Regulations. As a result of this, in January 2023, Sawmills terminated the engagement with TTI before a final report was issued.
33. Despite the ongoing Terrace Timber Rate Dispute, Sawmills continued to pay the Provisional Rates to Terrace Timber until, at least, late January 2023.
34. As of January 2023, Sawmills had paid Provisional Rates to Terrace Timber totaling \$5,783,109.95. This represented over 80% of the TTI Rate and a difference of \$1,344,421.05 annually from the TTI rates (the “**Terrace Timber Delta**”).

Wu #1, para. 54.

35. No work has been performed by Terrace timber on the lands covered by TFL-41 since at least May 2023.

Wu#1, para. 49.

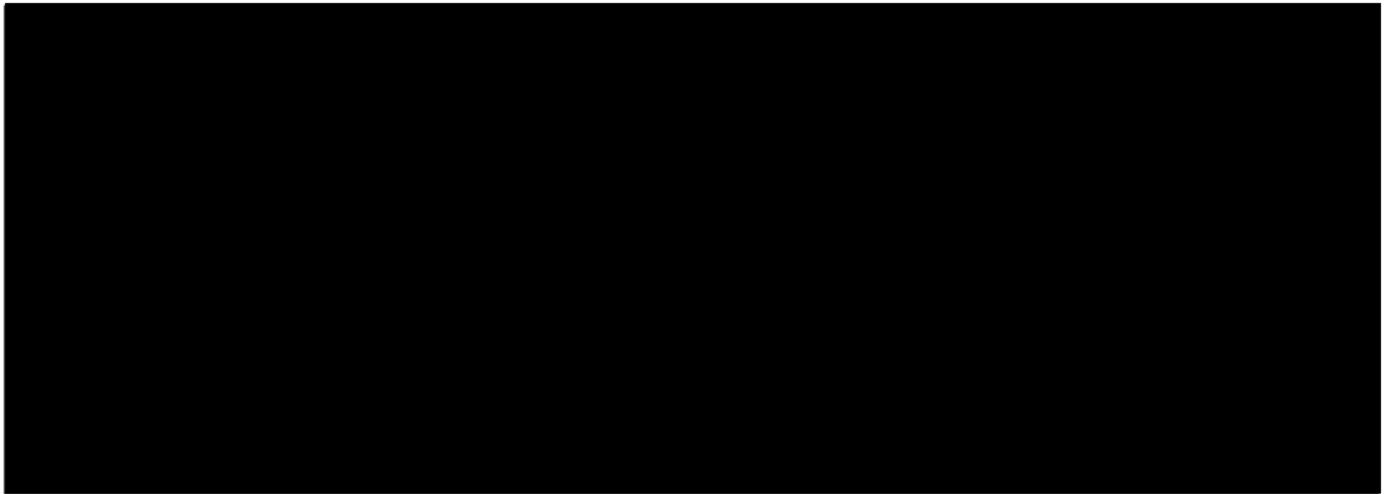
#### ***Registration of Contractor Charges and Filing of Petition***

36. In January 2023, Terrace Timber registered a contractor lien and charge in the British Columbia Personal Property Registry against Sawmills asserting that it was owed the Terrace Timber Delta (the “**Terrace Timber Charges**”).
37. On January 25, 2023, Sawmills filed a petition with the court seeking, among other things, a declaration that the Terrace Timber Charges were invalid and an order that they be discharged.
38. In reasons for judgment indexed as *Skeena Sawmills Ltd. v. Terrace Timber Ltd.*, 2023 BCSC 550 (the “**Reasons**”), Justice Chan held, among other things, that the Terrace Timber Charges were invalid and ordered that they be discharged.



### **Sustainability of the Bill 13 Contracts**

39. The rate disputes with Timber Baron and Terrace Timber illustrate that these contractors sought to have Sawmills to pay higher than market rates, despite the fact that Sawmills was unprofitable and losing money year-over-year.



41. In the event the Bill 13 Contracts are not excluded from the Agreement, the Business will also inherit the on-going and unresolved rate disputes with Timber Baron and Terrace Timber. Sawmills incurred in excess of \$380,000 in legal fees over a three year period without achieving any meaningful progress in resolving them. As a result, if the Bill 13 Contracts are part of the Agreement, the Business will continue to incur legal fees in the coming years to defend these rate disputes. The ongoing rate disputes will also take up the time of management.
42. Based on the foregoing, retaining the Bill 13 Contracts will be materially detrimental to Cui Holdings' ability to restart the Business in an economically-viable manner. For this reason, the Agreement is conditional on excluding the Bill 13 Contracts, failing which, Cui Holdings will not complete the Agreement.

### **Negotiations with First Nations**

43. Until the summer of 2023, Sawmills was in advanced discussions and negotiations with various First Nations, to enter joint ventures for the sharing of the Licenses and the volume associated with the forest licenses of the First Nations. The negotiations with the First Nations for these joint ventures were intended to provide this additional timber to

Sawmills. The Business will also require this additional timber to run economically, and once properly capitalized, Sawmills' intention is to pick up and conclude these negotiations with the local First Nations to secure this additional timber supply.

Wu #1, para. 67.

### **Other Factors**

44. There are no prohibitions in the *Forest Act* or the Regulations that expressly prohibit the handling of Bill 13 Contracts by way of an RVO.
45. Had the Province wished to preclude the ability of a receiver (or a monitor or a bankruptcy trustee) from dealing with Bill-13 Contracts by way of an RVO, then it could (and can) amend the legislation to do so. For undisclosed reasons, the Province chose not to do this.

### **Part 5: LEGAL BASIS**

46. There are effectively two scenarios for the conclusion of this receivership. The first is the court approval and subsequent implementation of the Agreement, including the granting of the RVO. In this scenario, the Business will continue.
47. The second scenario occurs if the Agreement is not approved. If this occurs, the Receiver will conduct a piecemeal liquidation of the assets of the Skeena Entities, the Licenses will either be sold to a third party(ies), likely without the Bill 13 Contracts attached or otherwise cancelled by the Province, and the Business will cease as a going concern. The amounts generated from the piecemeal sale of the assets of the Skeena Entities will be for less than the value of the Agreement. The Skeena Entities may or may not become bankrupt as part of this process. The receivership costs will go up, leaving less for distribution to creditors.

### **Jurisdiction to Grant an RVO**

48. The scope of the jurisdiction to use RVOs has been the subject of continuing judicial refinement. What can confidently be established is that the evolving jurisprudence on RVOs includes findings that this Court has the jurisdiction to use an RVO to vest off contracts and liabilities, including those liabilities imposed by legislation. Bill 13 Contracts are treated as contracts that can be disclaimed in a receivership.

49. As a result, this court has the required jurisdiction to approve the Agreement and grant the RVO.

50. The starting point on this issue is the 2005 decision in *New Skeena Forest Products Inc., Re v. Don Hull & Sons Contracting Ltd.* The Court of Appeal held that a court-appointed receiver had the authority to disclaim contracts, including Bill 13 Contracts, subject to the usual equitable considerations.

*New Skeena Forest Products Inc., Re v. Don Hull & Sons Contracting Ltd.*,  
2005 BCCA 154, paras. 14 - 33.

51. The powers of the receiver in *New Skeena* are effectively identical to the Receiver's powers in this proceeding: both have the authority to disclaim contracts. *New Skeena* confirms this common law authority in receivers.

*New Skeena*, paras. 7 and 20;  
Receivership Order, paras. 3(b) and (m).

52. More recently in *PaySlate #1*, this Court surveyed the relevant judicial authorities and noted the authorities confirming the existence of the jurisdiction to grant an RVO in receivership and other insolvency proceedings.

*PaySlate Inc. (Re)*, 2023 BCSC 608,  
paras. 84 - 86 [*PaySlate #1*].

53. In *PaySlate #1* the court noted that "RVOs are often thought to be appropriate in situations where the debtor's licenses cannot be vested on an asset sale." The Licenses are an asset of Sawmills that cannot be vested in a third party as part of a sale without incurring the time, expense and risk of the consultation process and Provincial oversight that would otherwise be required. While the application for an RVO in *PaySlate #1* was dismissed, the RVO was subsequently approved following the provision of additional evidence noted as lacking in *PaySlate #1*.

*PaySlate #1*, para. 80;  
*PaySlate Inc. (Re)*, 2023 BCSC 977 [*PaySlate #2*].

54. Further, in *PaySlate#1*, the court canvassed judicial authorities respecting the appropriateness of RVOs, including *Just Energy Group Inc. et al. v Morgan Stanley Group*

*Inc. et al.*, 2022 ONSC 6354, which also noted previous authority that RVOs are appropriate in circumstances where:

- (a) The debtor operates in a highly-regulated environment in which its existing permits, licenses or other rights are difficult or impossible to reassign to a purchaser.
- (b) The debtor is a party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser.
- (c) Where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.

*PaySlate #1, para. 88*

55. More recently, this court affirmed the jurisdiction found in *PaySlate #1* to use an RVO in a receivership context. In *Peakhill*, a receiver sought an RVO to divest a debtor of the requirement to pay property purchase tax. The Province vigorously opposed this outcome as it does in the present receivership. In *Peakhill*, Justice Loo noted:

[19] The receivership order in this case was sought pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [*BIA*] and s. 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [*LEA*]

[20] In *PaySlate #1*, Justice Walker found that an RVO may be granted under this Court's general jurisdiction under s. 183(1)(c) of the *BIA* which provides:

183(1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers ...

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;

[21] In *PaySlate #1*, Justice Walker held:

[84] Although many of the case authorities discussing the circumstances in which RVOs may be issued are in the context of the *CCAA*, RVOs are available tools in other insolvency cases as well. Similar considerations apply in the context of the *BIA*.

[...]

[86] In addition to *Blackrock Metals*, *Harte Gold*, and *Quest*, there are other case authorities finding jurisdiction to order RVOs, including a notice of intention to make a proposal under the *BIA* (case name is underlined), and receivership proceedings, such as: *Plasco Energy* (July 17, 2015), Toronto CV-15-10869-00 (Ont. S.C.J. [Comm. List]); *Stornoway Diamond Corporation* (October 7, 2019), Montreal 500-11-057094-191 (Q.C.S.C. [Comm. Div.]); *Wayland Group Corp.* (April 21, 2020), Toronto CV-19-00632079-00CL (Ont. S.C.J. [Comm. List]); *Comark Holdings Inc.* (July 13, 2020) [...] [emphasis added]

[22] In my view, the issue of whether this Court has jurisdiction to grant RVOs in proceedings under the *BIA* was raised squarely and decided in *PaySlate #1*. In my respectful view, the decision of Justice Walker was both correct and determinative of the issue.

***Peakhill Capital Inc. v. Southview Gardens Limited Partnership*, 2023 BCSC 1476, paras 19 - 22 [*Peakhill*].**

56. As in *Peakhill*, this receivership was brought pursuant to s. 243 of the *BIA* and s. 39 of the *Law and Equity Act*.

*Peakhill*, para. 19;  
Petition, paras. 41 and 42.

57. Further, the court in *Peakhill* used the jurisdiction to grant an RVO in circumstances where the sole purpose was “tax-related objectives” that effectively defeated a legislated tax liability: specifically, the avoidance of paying property transfer tax.

*Peakhill*, paras. 30-35 and 51.

58. *Peakhill* also provides a judicial response to the arguments made in this proceeding by the Province and the two Bill-13 Contractors. For example, the Province argues that “the effect of the Skeena RVO is to usurp valid provincial legislation” (the *Forest Act*, RSBC 1996, c. 157 (the “*Forest Act*”)) and that “a receiver’s powers do not enable it to contravene laws of general application.”

HMTQ Application Response, paras. 48 and 50.

59. In *Peakhill*, the court noted that the Province could legislate a prohibition on the use of RVOs as a means to avoid payment of property purchase tax by way of a share transfer but “it has not done so”. Similarly, the Province can legislate a prohibition on vesting off Bill 13 Contracts in insolvency proceedings but “it has not done so”.

*Peakhill*, para. 67.

60. The Province also raises various objections to the “Skeena RVO” on the grounds that it involves a “disposition” of the Licences and, as such, avoids legislated obligations. Respectfully, the Province conflates a disposition of the License with the use of an RVO which leaves the Licenses in the name of the original holder, Sawmills, and transfers only the certain liabilities, the Bill 13 Contracts, to ResidualCo. The Licenses are not being “disposed of” or transferred. Therefore, any process that would otherwise be triggered by a “disposition” or transfer of the Licenses is not engaged. Moreover, there is no change to the ownership structure that would otherwise trigger a consultation process.

HMTK Application Response, paras. 51 to 53.

61. A corollary to this is that because the use of an RVO is not a “disposition” of the Licenses, the RVO does not trigger or “usurp” the various requirements or policies created by the *Forest Act* as argued by the Province. The use of an RVO is not contrary to anything in the *Forest Act*. Because the RVO is not a “disposition” of the Licenses, the RVO does not trigger: a) the need for “the Minister’s approval” under the *Forest Act*, b) any obligation to make “payment of all money due”; c) compel the assumption of the Bill 13 Contracts; or d) the need for a lengthy consultation process with First Nations. After the RVO is granted, the Licenses will remain with the original holder: Sawmills.

HMTK Application Response, paras. 52 and 53.

62. Based on *New Skeena*, *PaySlate #1* and *Peakhill*, this Court has jurisdiction to grant an RVO in the circumstances of this receivership to “vest off” the Bill 13 Contracts from the Licenses. The use of an RVO does not contradict or “usurp” provincial legislation.
63. The only real question is whether the circumstances of the present application justify invoking the jurisdiction of the court to grant an RVO and approve the Agreement.

### **The RVO is Appropriate in these Circumstances**

64. Courts in British Columbia have authorized RVOs in the appropriate circumstances. This Court has endorsed what is commonly known in the insolvency bar as the “*Harte Gold* factors” which are to be considered in determining whether an RVO is appropriate:

- (a) why is the RVO necessary?;
- (b) does the RVO structure produce an economic result at least as favourable as any other viable alternative?;
- (c) is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?; and
- (d) does the consideration being paid for the debtor’s business reflect the importance and value of the licenses and permits (or other intangible assets) being preserved under the RVO structure?

*Peakhill*, para. 76,  
citing *Harte Gold Corp. (Re)*, 2022 ONSC 653 [*Harte Golde*].

#### **a. The RVO is Necessary**

65. The RVO is necessary to allow Cui Holdings to restart the Business in an economically-viable manner while retaining its most valuable assets, the Licenses, without inheriting the Bill 13 Contracts. The Bill 13 Contracts are more costly than current market rates for log harvesting. The Bill 13 Contracts also bring along the ongoing, expensive and unresolved rate disputes.

66. Timber Baron and Terrace Timber both argue that losing the Bill 13 Contracts will represent a significant financial loss. Using the “Bill 28 Valuation”, Timber Baron estimates the value of its Bill 13 Contract to be \$1.5 million along with \$300,000 “for the Road Building Operation.” Timber Terrace values its Bill 13 Contract at about \$3 million.

Timber Baron Application Response, Part 4, para. 17;  
Terrace Timber Application Response, para. 31.

67. Two important points can be made based on the evidence before the court on this application. First, none of the *en bloc* bids submitted to the Receiver include assuming the Bill 13 Contracts. This means the market, in a receivership or a bankruptcy, is not willing

to purchase the Licenses with the Bill 13 Contracts. Second, the one party who bid on the TFL 41 License (Timber Terrace) proposed a purchase price that had an effective value of “nil” “after deducting the non-assumed liabilities”. In other words, even Timber Terrace did not value its Bill 13 Contract to have a value equivalent to its claimed loss would represent.

Receiver’s Supplemental Report dated March 6, 2024, para. 3.3.

68. In any event, and as would be the case under the CCAA or in a bankruptcy of the Skeena Entities, Timber Baron and Terrace Timber will have unsecured debt claims against ResidualCo. Both Terrace Timber and Timber Baron will be in the same place whether the RVO is granted or the Skeena Entities are liquidated piecemeal by the Receiver. In a piecemeal liquidation, that may include a bankruptcy, the Business will not be preserved as a going concern and the sale of the Skeena Entities’ assets are unlikely to maximize recovery.
69. By retaining the Licenses and excluding the Bill 13 Contracts, an RVO preserves and maximizes the value of the Business, which is a factor courts have considered in determining whether to grant an RVO. The alternative is the piecemeal liquidation of the Skeena Entities’ assets and either the cancellation of one or more of the Licenses by the Province or the sale of the Licenses to a third party(ies) who will almost certainly seek to disclaim the Bill 13 Contracts.

*Harte Golde, para. 77.*

***b. The RVO Produces a Favourable Economic Result***

70. Granting the RVO and ensuring that Sawmills is not burdened by the Bill 13 Contracts produces favourable economic results that extend beyond profitability of the Business.
71. Cui Holdings is investing in the Agreement with a view to returning the Business to a fully operational status. Once operating, it is expected that the Business will employ approximately 150 individuals as it had in the past and purchase products and services from over 200 business, many of which are located in Terrace or the surrounding areas.



72. The prospect of this future employment and the purchase of products and services overwhelms the prospect of the employees of Timber Baron and Terrace Timber losing their employment. Terrace Timber “employs 15 hourly USW employees”. Timber Baron “employs 15-20 hourly employees”.

Timber Baron Application Response, Part 4, para. 11;  
Terrace Timber Application Response, para. 34.

73. In a balancing of interests, Timber Baron and Terrace Timber neglect to consider the economic benefit of the Agreement to a larger group of people and businesses in the “local Terrace community”.
74. Further, the Bill 13 Contracts have not provided employment for Timber Baron since 2022 or Terrace Timber since early to mid-2023. Both are still in business. Indeed, Timber Baron appears to have a robust business and is involved in many other projects and industries. Terrace Timber had the financial wherewithal to submit a bid to the Receiver. The spectre of either enterprise being put out of business or forced to “liquidate its equipment” is an overstatement of the consequences to them of the Agreement.
75. Further, if the RVO is not granted, it is probable the Skeena Entities assets will be liquidated piecemeal, either with or without the cancellation of one or more of the Licenses by the Province. In either case, the Bill 13 Contracts will be lost. In this scenario, Timber Baron, Terrace Timber and their employees are going to be in the same position as they will be if the Agreement is approved.
76. A piecemeal liquidation will put other stakeholders in a worse position. For example, unlike with the Agreement, the equipment lessors will need to reclaim their equipment, may not get paid in full or will have the Receiver selling that equipment, all at greater cost to the receivership and the corresponding lower net realization.

***c. No Stakeholders are Worse-Off under the RVO than the Alternatives***

**(i) Stakeholders Generally**

77. As previously noted, no other *en bloc* offer submitted to the Receiver included retaining the Bill 13 Contracts. If the Agreement is not approved and the RVO is not granted, then, in all probability, the Business will be liquidated, and any liquidation of the Licenses will

likely see the purchaser disclaiming the Bill 13 Contracts, or, alternatively, the Licenses will not be capable of sale because of the Bill 13 Contracts and will be lost entirely.

78. Under the Agreement, Cui Holdings will pay the Receiver approximately \$4.5 million to repay claims against the Skeena Entities ranking in priority to the claims of the Lender. The Receiver summarized the payment estimate as follows:

<b>Skeena Entities</b>		
<b>Offer from Cui Holdings - Payment Estimate</b>		
<b>C-102-0000</b>		
<b>Components</b>		<b>\$</b>
<b>Credit bid</b>		
Promissory Notes		
- Principal	\$ 7,494	
- Interest (up to April 19, 2024)	507	\$ 8,000
Receiver's Certificates		
- Principal as at March 11, 2024	500	
- Interest (up to April 19, 2024)	27	
- Forecast advances to closing	400	
- Forecast interest for additional advances (up to April 19, 2024)	5	931
Total Credit bid amount		\$ 8,931
<b>Priority claims - estimate</b>		
- Property taxes	1,800	
- Stumpage	1,177	
- Source deduction remittances	82	
- Equipment leases - Sawmills (exclude Canter Line)	961	
- Equipment leases - Bioenergy	79	4,098
Work-in-progress inventory (Sawmills)		400
Fees to bankrupt ResidualCo.		30
<b>Total Payment Estimate</b>		<b>\$ 13,460</b>

79. Cui Holdings will also be investing approximately a further \$26 million in capital improvements for the Business. This investment will benefit the local economy and create employment in the Business for on the order of 150 people.

80. In *PaySlate#1*, the mischief that the court considered when refusing to grant an RVO occurred in a *Companies' Creditors Arrangement Act* proceeding where the creditors' ability to vote on a plan was bypassed.

***PaySlate#1*, para. 99.**

81. No such mischief exists in this receivership. Unlike the CCAA or BIA proposal, there is no statutorily mandate process to gauge or seek creditor approval. Receivers frequently disclaim contracts with a particular creditor and sell assets that are valuable without having

to undergo a creditor approval process. In a receivership, the forum in which to gauge creditor approval (or disapproval) is the court proceedings establishing a sales process and seeking approval of any resulting sale. The various creditors of the Skeena Entities are not, as Timber Baron and Terrace Timber argue, being deprived of a voice or process they would otherwise benefit from in a receivership. Instead, they are voicing their opposition and the equity of their position to the court as part of the Receiver's sale approval application. As part of the equitable circumstances the court will consider, the positions of Timber Baron and Terrace Timber will be taken into account.

82. The Receiver conducted a fair and reasonable sales process which resulted in a recommendation that the Agreement and the RVO be approved by the court. No viable alternative to the *en bloc* sale of the Skeena Entities assets has emerged. No stakeholder has criticized the sale process itself. No party suggests a piecemeal liquidation of the Skeena Entities will achieve better financial outcomes than the proposed *en bloc* sale of the Agreement. Rather, the opponents focus almost entirely on the adverse consequences to themselves specifically of the Agreement.
83. The court must balance these equities in considering whether to approve the Agreement. Not every stakeholder will be happy with the outcome and many will suffer financial loss. The only probable alternative to the Agreement is a piecemeal liquidation in which these stakeholders will suffer an identical or worse financial outcome. None of them will suffer any greater prejudice if the Agreement proceeds. In fact, many stakeholders will be better off as a result of the Agreement, such as the secured creditors, the Skeena entity employees and suppliers and the local economy.

**(i) The Province**

84. The Province argues that it will be worse off if the RVO is granted, as a result of there being a disposition of the Licenses without Ministry of Forests approval or consultation. The Province states this defeats the intentions of the legislature. Notwithstanding these concerns, the RVO should still be approved for reasons similar to *Peakhill*, where an RVO was granted despite an argument from the Province that it would be worse off.

*Peakhill*, para. 77.

85. As articulated earlier, the RVO is not a disposition of the Licenses that would trigger the requirement for Ministry approval under the *Forest Act* or the Regulations. The Licenses will remain with Sawmills. Provincial legislation is not “usurped” or defeated.
86. One purpose of this RVO is that it creates an “alternative arrangement” in which the value of the Licenses can be preserved for continuing use by the Business without imposing statutorily created liabilities and obligations.

*Peakhill*, para. 66.

87. Similarly, as noted in *Peakhill*, the Province has the legislative ability to impose the requirements of the *Forest Act*, including in relation to Bill 13 Contracts, on any Licenses being dealt with in a receivership or other insolvency proceeding. The Province has not done this.

*Peakhill*, paras. 66-69.

**d. The Consideration Paid Reflects Value**

88. The Agreement before this Court contains sufficient consideration and was the result of a sales-process overseen by the Receiver as this Court’s officer. The Receiver has brought the Agreement for court approval. The Agreement represents fair market value for the *en bloc* sale of the Skeena Entities assets. No viable alternative has emerged despite this 5 month sales process.
89. In summary, the equitable factors that favour the approval of the Agreement and the granting of the RVO include:
- (a) the RVO allows for Sawmills’ most lucrative asset, the Licenses, to be maintained for continuing use in the Business as a going concern;
  - (b) priority claims will be paid in full;
  - (c) the Bill 13 Contractors will likely end up in the same position in the event of a piecemeal liquidation of the Business;
  - (d) a piecemeal liquidation may see the loss of the Licenses entirely;
  - (e) all other *en bloc* offers submitted to the Receiver contemplate vesting off the Bill 13 Contracts;
  - (f) the Receiver supports of the Agreement and the RVO;

- (g) Sawmills will continue in business and provide employment of up to 150 people and support over 200 local businesses;
- (h) all stakeholders are treated as advantageously and as fairly as these circumstances allow;
- (i) stakeholders such as Sawmills' employees and suppliers, the City of Terrace and secured creditors will be paid;
- (j) the Bill 13 Contractors have had the opportunity to participate and make their own offers;
- (k) the unresolved rate disputes with the Bill 13 Contractors creates financial and business risk and uncertainty to the ability of the Business to re-start and operate viably;
- (l) The Agreement comes after 5 months of complex bidding and negotiation among many parties; and
- (m) The sale process was reasonable and all parties had access to professional advice, including the Bill 13 Contractors;

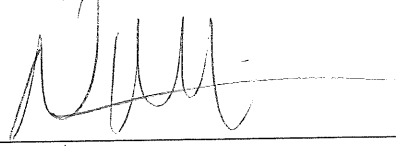
For all these reasons, this Court should approve the Agreement and grant an RVO.

**Part 6: MATERIAL TO BE RELIED ON:**

- 90. Affidavit 1 of Shenwei (Sandra) Wu made on March 15, 2024.
- 91. Affidavit #1 of N. Vikhrova made on March 15, 2024.
- 92. The materials filed herein.

The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.

Dated at the City of Vancouver, in the Province of British Columbia, this 15 day of March 2024.

  
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Lawson Lundell LLP  
Solicitors for the Application Respondent

This Application Response is filed by Bryan C. Gibbons/Peter J. Roberts, K.C./Noor Mann, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2, e-mail address: bgibbons@lawsonlundell.com; telephone number: 604-685-3456.