



No. S-236214
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

AMENDED APPLICATION RESPONSE

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

THIS IS A RESPONSE TO the Notice of Application of Receiver Alvarez & Marsal Canada Inc. filed February 29, 2024 for approval of a reverse vesting order (the “**Vesting Order Application**”).

The Application Respondent estimates that the application will take 2 hours.

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 Vesting Order Application on the following terms: **None**

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraphs **ALL NONE** of Part 1 of the Vesting Order Application **subject to the comments below.**

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in paragraphs **NOT APPLICABLE ALL** of Part 1 of the Vesting Order Application.

Part 4: FACTUAL BASIS

1. All defined terms in the Vesting Order Application have the same meaning in this Response.

2. The Petitioner seeks approval of the Retention Agreement and, pursuant to the Retention Agreement, the purchaser Cui Holdings is to obtain clear title to the "Retained Assets", including the "Inventory".
3. The definition of "Inventory" includes a raw log inventory of over 10,000 cubic meters of various raw logs (described in Schedule D to the Retention Agreement) and covered by Delta Cedar's security interest.
4. Delta Cedar's security interest over Sawmill's Inventory was registered in the PPR before Cui Holdings' general security interest and ranks in priority to Cui Holdings' general security agreement. **Delta Cedar determined that** this raw log inventory has a value of approximately \$483,000.
5. Cui Holdings proposes to pay for the Retained Assets by way of debt offset an amount equal to the debt it is owed which is secured by a security interest ranking behind in priority to Delta Cedar's security interest plus the payment of certain amounts including \$400,000 on account of the "Inventory" which includes:
 - a) The raw log inventory owned by Sawmill;
 - b) The fibre inventory owned by Bioenergy.
6. There is no valuation supporting the allocation of \$400,000 to the totality of the "Inventory" nor is this value supported by the Fourth Receiver's Report.
7. The additional borrowing powers sought by the receiver are excessive and unsupported.
8. **In the receiver's second supplemental report dated 11 March 2024, the receiver has indicated that "the \$400,000 of work-in-progress inventory is allocated exclusively to raw log inventory held by Sawmills". No value was ascribed to the fibre inventory.**

Part 5: LEGAL BASIS

9. This Court does not have the inherent jurisdiction to make orders that are inconsistent with a duly enacted statute.

Standard Trust Co. (Liquidator of) v. Lindsay Holdings Ltd. (1994), 100 B.C.L.R. (2d) 378

10. The issue in this application is whether there are any aspects of the proposed reverse vesting order that are inconsistent with statutes. Otherwise, the concept of a reverse vesting order is not, *per se*, illegal, and can be granted upon, *inter alia*, considerations of the interests of the parties.

Harte Gold Corp. (Re), 2022 ONSC 653

11. Initially, Delta Cedar took issue with the proposed reverse vesting order because it was not clear that all the \$400,000 allocated to the purchase of inventory (comprised of raw log inventory charged by Delta Cedar's security and fibre charged by security against Skeena Bioenergy) would be allocated to the raw log inventory and, therefore, whether the purchaser (Cui Holdings) would be paying the Receiver fair market value for that inventory. If the Receiver is not paid fair market value for that raw log inventory, then the proposed reverse vesting order would be inconsistent with Delta Cedar's rights under the PPSA.

12. The Receiver has obtained the purchaser's agreement to an amendment of the Retention Agreement whereby the purchaser would pay \$400,000 for the raw log inventory, which Delta Cedar accepts as roughly the fair market value of the same. As such, assuming that the Receiver is proceeding with approval of the Reverse Vesting Order on the basis that the Retention Agreement is amended to provide that the purchaser will pay \$400,000, without any set-off, for the raw log inventory, there would be no illegality with respect to Delta Cedar's rights as secured creditor.

13. Delta Cedar has not been made aware of the content of alternative offers made, which have been made known to this Court but otherwise has not been made public. The creditors have been informed that the offer made is unfortunately the best offer.

14. In particular, Delta Cedar is conscious and concerned about the very high cost of this receivership, which appears to be the product, in part, of the complexity of the proposed transaction (as can be seen from the professional fees anticipated to be incurred in completing this receivership). If there is an offer of a similar amount (albeit slightly less) that will not encounter similar objection as to those made by other creditors, it may be more cost-effective for the Receiver to pursue another deal given the high costs associated with this one. If the purchaser's offer is clearly higher than any other offer received, and the order sought is not made, it is likely that recovery will be significantly reduced.

15. Delta Cedar takes no position on whether the Proposed Reverse Vesting Order is inconsistent with other statutes affecting other parties participating in this hearing.

~~16. The order sought cannot be granted because it deprives the Applicant Respondent's statutory priority over Sawmill's inventory by cancelling Delta Cedar's security interest without proper compensation for the fair market value of the raw log inventory that is part of the "Retained Assets" to be purchased by Cui Holdings. This Court therefore has no jurisdiction to grant the orders sought. A proper allocation of the purchase price to "Inventory" corresponding to the fair market value of all of the "Inventory" (including both the raw logs and the fiber) is necessary before approval of the Retention Agreement.~~

~~17. The additional borrowing powers sought by the receiver are excessive and unsupported. The Receiver proposes to borrow more for the end of the Receivership than all that was spent to date, which has been excessive from~~

~~the very beginning since this receivership has been, from the very beginning, nothing more than a debt restructuring with the pre-ordained objective of wiping out creditors and cleanse the debtor's balance sheet.~~

Part 6: MATERIAL TO BE RELIED ON

1. The affidavit of Rozina Krishan sworn March 5, 2024;
2. The affidavit of Cecilia Conto sworn January 3, 2024;
3. The affidavit of Glen Franke sworn September 18, 2023;
4. Second Supplemental Report of the Receiver, dated 11 March 2024.
5. Such other material as the Application Respondent may advise.

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

The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

Dated: March 15, 2024

For: 

 Signature of lawyer for application
 respondent
 Francis Lamer

This **AMENDED APPLICATION RESPONSE** was prepared by the law firm of Kornfeld LLP whose place of business is 1100-505 Burrard Street, Vancouver, BC, V7X 1M5 Tel: 604-331-8300.