



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. and
ROC HOLDINGS LTD.

RESPONDENTS

APPLICATION RESPONSE

Application response of: Timber Baron Contracting Ltd. (the "**application respondent**")

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

The application respondent estimates that the application will take full day.

PART 1 ORDERS CONSENTED TO

The application respondent consents to the granting of the orders set out in paragraphs NIL of Part 1 of the notice of application.

PART 2 ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraphs ALL of Part 1 of the notice of application.

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 of Part 1 of the notice of application.

PART 4 FACTUAL BASIS

1. Timber Baron Contracting Ltd. ("**Timber Baron**") is a company that is incorporated under the laws of British Columbia and has an address for service in these proceedings of Suite 2700, The Stack, 1133 Melville St, Vancouver BC V6E 4E5.
2. The Vesting Order Application applies for a sale approval (the "**Proposed Sale**") of Skeena Sawmills Ltd. ("**Skeena Sawmills**"), Skeena Bioenergy Ltd., and Roc Holdings Ltd. (collectively, "**Skeena**") to Cui Family Holdings Ltd. (the "**Purchaser**").
3. The Proposed Sale is intended to be effected by way of a reverse vesting order transaction (the "**RVO**").
4. Timber Baron and Skeena Sawmills Ltd. ("**Skeena Sawmills**") are parties to a replaceable timber harvesting contract (the "**Bill 13 Contract**") made under the *Timber Harvesting Contract and Subcontract Regulation*, B.C. Reg. 22/96 (the "**Regulation**") in respect of Forest Licence A16882 (the "**Licence**").
5. Timber Baron's Bill 13 Contract is worth approximately \$1.8 million and employs 15-20 hourly employees from the local Terrace community. Many of these individuals have worked on Forest License A16882 since 1999 and prior with original Bill 13 owner. Under the RVO, these individuals would lose their jobs and over the next five years Timber Baron will lose approximately \$20-25 million in net revenue.
6. Timber Baron is also a holder of a *Forestry Service Providers Protection Act*, SBC 2010, c. 16 (the "**FSPPA**") lien (the "**Lien**"). The Lien attaches to Skeena Sawmills' inventory and accounts.
7. The total amount of the Timber Baron secured claim under the FSPPA Lien is \$3,957,686.59.
8. Under the provisions of the RVO as submitted and based upon communications with the Receiver:

- (a) None of the Lien liability will be paid to Timber Baron; and
- (b) the Bill 13 Contract is proposed to be separated from the Licence and effectively terminated.

The Bill 13 Contract

- 9. The Bill 13 Contract has been in place since 1999, and work under the Bill 13 Contract comprises approximately half of Timber Baron Contracting's business.
- 10. The Bill 13 Contract's scope of work is as follows:
 - (a) stump to dump timber harvesting (the "**Harvest Operation**");
 - (b) road building services to construct roads, including the installation or construction of culverts and, but excluding the supply, installation or construction of bridges (the "**Road Building Operation**"); and
 - (c) all related services and obligations as described in, or allocated by Skeena Sawmills under the contract on lands subject to the Licence.
- 11. Timber Baron employs 15-20 hourly employees from the local Terrace community to support the Bill 13 Contract operations. Many of these individuals have worked on the Licence with Timber Baron since 1999. Under the proposed purchase agreement, all hourly employees of Timber Baron dedicated to the Bill 13 Contract would be terminated and would be unlikely to secure similarly paying jobs elsewhere.
- 12. Since the beginning of the Bill 13 Contract, Timber Baron has made significant investments in its operations, including, among other things, investments for:
 - (a) equipment;
 - (b) safety and training;
 - (c) office space and other facilities;
 - (d) camps for workers;
 - (e) preventative maintenance; and

(f) laydown facilities

(collectively, the "**Bill 13 Investments**").

13. The value of Timber Baron's Bill 13 Investments to continue operations on the Licence since 1999 exceeds \$10 million.
14. If the Bill 13 Contract is terminated, Timber Baron's operations would likely be forced to liquidate its equipment and assets with no work to perform. In addition to the loss of the value of the Bill 13 Investments, Timber Baron would lose the estimated value of the Bill 13 Contract.
15. The estimated value of the Bill 13 Contract to Timber Baron over the next five (5) years is approximately \$20 to \$25 million in total revenue, comprised of:
 - (a) \$4 million in annual revenues from the Harvest Operation, based on a value of \$10-14 per cubic meter and a total of 50,395 cubic meters; and
 - (b) \$500,000 to \$1 million in annual revenues from the Road Building Operation, based on a value of \$70-150 per linear meter and an average of 5 to 10 kilometers of road built per year.
16. In 2021, the government of British Columbia valued various Bill 13 contracts as a result of a payout under Bill 28 – 2021: Forest Amendment Act, 2021, using a calculation of 10% of the average stump to dump cubic meter rate with a multiplier of four (the "**Bill 28 Valuation**").
17. Using the Bill 28 Valuation, the Bill 13 Contract would be valued at \$1,510,500.00 for the Harvest Operation and an additional \$300,000.00 for the Road Building Operation.

PART 5 LEGAL BASIS

A Reverse Vesting Order is not Appropriate in the Circumstances

1. Generally, in analyzing whether a transaction should be approved, a court is to consider the transaction as a whole and decide whether or not the sale is appropriate, fair and reasonable.

Veris Gold Corp. (Re), 2015 BCSC 1204 at para. 23.

2. A reverse vesting order transaction ("**RVO**") is neither routine nor in the ordinary course. It is an extraordinary remedy, and approval of the use of an RVO structure should involve close scrutiny.

Harte Gold Corp. (Re), 2022 ONSC 653 ("**Harte Gold**") at para. 38;
Payslate Inc. (Re), 2023 BCSC 608 at paras. 1, 38, 87.

3. Courts must scrutinize RVO transactions carefully because RVOs may be used to circumvent processes in insolvency proceedings that are intended to protect creditors, or otherwise prejudice creditors.

Peakhill Capital Inc. v Southview Gardens Limited Partnership, 2023
BCSC 1476 at para. 45.

4. The questions for a court to consider when presented with an RVO are:
 - (a) Why is the RVO necessary in this case?
 - (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 licences and permits (or other intangible assets) being preserved under the RVO structure?

(collectively, the "**Harte Gold Factors**")

Harte Gold at para. 38.

5. Preserving the rights of the contractors in insolvency proceedings was the express intent of the Province when s. 54(2)(d.1) was added to the *Forest Act* in 2010, as stated by the then Attorney General:

"Amendments to the *Forest Act* increase the protection for logging contractors when licensees are transferred in insolvency proceedings by requiring the transfer of associated replaceable logging contracts when a licence is transferred. That is a measure

that is here in response to repeated requests for additional protection from those involved, particularly in the logging and harvesting sectors of the forest industry.”

British Columbia, Official Report of Debates of the Legislative Assembly
(Hansard), 39th Parliament, 2nd Session, Volume 19, No. 1, at 1010

6. The Fourth Report of the Receiver, filed February 29, 2024 (the “**Receiver’s Fourth Report**”) makes it explicitly clear that one reason for using an RVO in this case is to avoid regulatory consultations required under the *Forest Act* when a forest agreement is transferred.
7. Timber Baron is undoubtedly worse off under the RVO structure than they would be under any other structure, but there is no mention of this in the Receiver’s Fourth Report.
8. In a non-RVO transaction in which the Licence were transferred to a purchaser, the *Forest Act* would require the Bill 13 Contract to be transferred with the Licence to the purchaser.

Forest Act, RSBC 1996, c. 157, s. 54(2)(d.1).

9. A significant reason for the protection of forestry contractors under the Regulation is to provide a “security of tenure” to forestry contractors that is similar to that provided to licensees under the *Forest Act*.

Hayes Forest Services Ltd. v. Pacific Forest Products Ltd., 2000 BCCA
66, at para. 26.

10. Under the RVO structure, the Bill 13 Contract is proposed to be decoupled from the Licence and moved to a residual company, which would then be bankrupted and would effectively terminate the Bill 13 Contract. This deprives Timber Baron of its security of tenure that was intended under the Regulation and the *Forest Act*.
11. The Receiver’s Fourth Report makes a few summary statements in support of the Transaction advising the Transaction “offers a favourable outcome for many stakeholders” because:
 - (a) “closing the Transaction increases the likelihood of the Skeena Entities operating in the near term, which will (or can) provide economic and other benefits to stakeholders...”;

- (b) the RVO structure allows the Transaction to close "without potential regulatory delay";
 - (c) The Transaction has a quick close "limiting additional costs to fund the Receivership Proceeding"; and
 - (d) pays out Priority Claims and the obligations under the Approved Contracts and Permits and Licenses would continue after closing.
12. None of these statements are sufficient to prove that the RVO is necessary in this case, provides an economic result at least as favourable as any viable alternative, or that any of the Harte Gold Factors would be met.
13. Further, there is absolutely no doubt that the Bill 13 Contractors and many employees of Timber Baron and Terrace Timber Ltd. would be far worse off under the RVO structure than they would be under any other alternative structure such as an asset vesting order where the *Forest Act* would require the Bill 13 Contracts to be transferred together with the Licenses. The statement in the Vesting Order Application at paragraph 10 of Part 3 is entirely unsupported by any evidence.

The FSPPA Lien is a Priority Payable

14. The FSPPA gives priority to a contractor's lien over any other interest in forest products, including timber, whether limbed, bucked or peeled (the "**Inventory**") and places a contractor's charge on all accounts due to a forest products owner securing an amount due (the "**Accounts**").

Forestry Service Providers Protection Act, SBC 2010, c 16, s. 5 and 6.

15. Under the FSPPA, the Timber Baron Lien is a priority payable ranking ahead of the majority of the Petitioner's security interest over Skeena Sawmills' Inventory and Accounts.

FSPPA, ss. 5 and 9.

16. The monies advanced by the Petitioner under Receiver's Borrowing Certificates (currently \$300,000) rank in priority to Timber Baron's Lien. However, the balance of the Petitioner's assigned security sits behind Timber Baron's security interest in the Accounts and behind

the secured priority claims of both Delta Cedar Specialties Ltd. ("**Delta Cedar**") and Timber Baron in the Inventory.

17. Under the terms and definitions in the Payment and Retention Agreement, it appears that the Purchaser has obtained a Loan Assignment from the Petitioner and wishes to use as a Credit Bid Amount the security interests of the Petitioner.
18. Neither the Receiver's Fourth Report nor the proposed Payment and Retention Agreement (the "**PRA**") propose any allocation of the purchase price for the Accounts and the PRA allocates only \$400,000 toward Inventory. It does not properly address the priority of Timber Baron's or Delta Cedar's secured claims.

The Valuation of the Inventory is Incorrect

19. The Receiver's Fourth Report lists log inventory at Schedule "D". The Receiver's Fourth Report substantially undervalues the inventory of decked wood in cut blocks PAW001, PAW003, and NIS002.
20. The actual inventory of decked wood should be 25% to 32% higher than reported in the Receiver's Fourth Report, using either Timber Baron's or Skeena Sawmills' own calculations.

PART 6 MATERIAL TO BE RELIED ON


1. Affidavit #1 of Matthew Thomson, made March 7, 2024.

☒ 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:

DLA Piper (Canada) LLP
Suite 2700, The Stack
1133 Melville St
Vancouver, BC V6E 4E5

Email: colin.brousson@ca.dlapiper.com

March 7, 2024
Dated


For Signature of ☒ lawyer for application respondent
DLA Piper (Canada) LLP (Colin D. Brousson)

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APPLICATION RESPONSE

DLA Piper (Canada) LLP
Barristers & Solicitors
Suite 2700
1133 Melville Street
Vancouver, BC V6E 4E5

Tel. No. 604.687.9444
Fax No. 604.687.1612

File No.: 050676-00005

CDB/saa