



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: Truck Loggers Association (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 a 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. The Truck Loggers Association ("TLA") is an organization that represents members of the provincial forest community in British Columbia by promoting the viability and sustainability of the forest industry, in policy development, by fostering effective communication, and ensuring a dynamic organization that addresses the evolving needs of its members.
2. The *Timber Harvesting Contract and Subcontract Regulation*, B.C. Reg. 22/96 (the "**Regulation**") was enacted by the province of British Columbia to preserve forestry contractors' work in British Columbia.
3. Contracts regulated by the Regulation between holders of forestry licences under the *Forest Act*, RSBC 1996, c. 157 (the "**Forest Act**") and forestry contractors are known as "**Bill 13 Contracts**".
4. Skeena Sawmills Ltd. holds two forest licences: FLA 16882 and FLA 16885 (the "**Licences**"). Under the Licences, Skeena Sawmills Ltd. is a party to Bill 13 Contracts with Timber Baron Contracting Ltd. and Terrace Timber (collectively, the "**Bill 13 Contractors**").
5. The Receiver proposes a sale approval of Skeena Sawmills Ltd., Skeena Bioenergy Ltd., and Roc Holdings Ltd. to Cui Family Holdings Ltd. (the "**Proposed Sale**").
6. The Proposed Sale is intended to be effected by way of a reverse vesting order transaction (the "**RVO**").
7. Under the provisions of the RVO as submitted and based upon communications with the Receiver, the Bill 13 Contracts are proposed to be separated from the Licences and effectively terminated.

PART 5 LEGAL BASIS

Background

1. The majority of standing timber in British Columbia is located on Crown land and owned by the Province of British Columbia (the "**Province**").
2. In 1991, the Province first introduced a regime of statutorily-mandated logging contracts, which was revised in 1996 when the present Regulation pursuant to the *Forest Act* was enacted.
3. Two stated purposes of the Regulation and related legislation were to "address logging-contractor security in British Columbia", to "improve the balance in...contractual relationships [between contractors and licensees]".

British Columbia, Official Report of Debates of the Legislative Assembly
(Hansard), 34th Parliament, 5th Session, June 21, 1991

4. The security of tenure for logging contractors, who make large capital investments in logging equipment, under these amendments was compared to the similar security of tenure sought by long-term forest licence holders from the Crown.
5. The Bill 13 contracts are tied to the forest licences themselves:

... the statutorily-mandated terms of replaceable logging contracts "tie" them in a sense to Crown licences themselves. A licence holder must carry out a specified percentage of its logging through contractors under replaceable contracts. If the [Allowable Annual Cut] under the licence is reduced, the work committed to by the licence holder in its replaceable contracts may also be reduced. If the licence is cancelled or surrendered, any replaceable contract referable thereto also terminates.

Skeena Cellulose Inc. v. Clear Creek Contracting Ltd., 2003 BCCA 344 at
para. 32.

6. Effective June 21, 2004, the Regulation was amended to provide that new tree farm licences or other new forest tenures issued after that date do not require any portion of the harvesting to be performed under replaceable contracts. However, all existing forest tenures and the replaceable contracts associated with those tenures were grandfathered in the amending provisions.

Preserving the Rights of Bill 13 Contractors is Essential to the Regulation

7. The policy reasons for preserving contractors' work underlying the Regulation was discussed by Justice Finch in *Hayes Forest Services Ltd. v. Pacific Forest Products Ltd.*, 2000 BCCA 66 at para. 17:

[17] The policy underlying the regulation has been described in a paper by John Forstrom delivered to a Continuing Legal Education Conference in May, 1997 *Forestry Law - 1997 Update: Drafting Contracts to Comply with "Bill 13"* at pp. 2.1.01 - 2.1.02:

"The underlying policy of the regulation is to protect and promote the interests of the independent contract logging community. This community is generally comprised of small and medium sized businesses - anything from a single operator with a piece of equipment up to a relatively large outfit employing dozens of people and carrying on several integrated timber harvesting operations simultaneously. A common thread amongst these businesses is that they invest large amounts of money in supplies and equipment, and are extremely dependent upon license holders (i.e., forest companies with replaceable tenures under the Forest Act) for their work. In this context, the evolving policy behind the regulation has been directed at:

1. protecting the contract logging community generally by preserving its source of work;
2. redressing the imbalance of bargaining power experienced by individual contractors as a result of their dependent relationship upon license holders."

Hayes Forest Services Ltd. v. Pacific Forest Products Ltd., 2000 BCCA 66 at para. 17.

8. Arbitrator Pearlman reaffirmed the legislative object of security of tenure for contractors in his award in *Gormac Developments Ltd. v. J.S. Jones Holding Ltd. et. al.* (November 25, 2002), at para. 36. In doing so, he cited Arbitrator Johnston's award in *R.G. Daines Contracting Co. Ltd. v. Pacific Forest Products Ltd.* (November 23, 1994), as follows:

37. In *R.G. Daines Contracting Co. Ltd. v. Pacific Forest Products Ltd.* (November 23, 1994) Arbitrator Johnston, in considering the 1991 Regulation, stated, at p. 13 of his award:

... The general legislative intent of the Regulation, is, inter alia, to protect contractors in dealings with licensees from any inequities arising out of an inequality of bargaining power and to provide certain contractors, being those entitled to replaceable contracts, with "security of tenure" similar to that enjoyed by licensees.

[Emphasis added]

9. In this case, the RVO explicitly seeks to separate the Bill 13 Contracts from the Licences.
10. In any other transaction structure, where the Licences would be transferred to a purchaser, the Bill 13 Contracts would be preserved under section 54(2)(d.1) of the *Forest Act*:

54 (2) A disposition of an agreement is without effect unless all of the following conditions have been met:

...

(d.1) in the case of a disposition of an agreement in relation to which the holder of the agreement has a replaceable contract with a contractor, all obligations of the holder of the agreement under the replaceable contract are assumed by the recipient of the agreement;

11. 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

12. An RVO is an extraordinary equitable remedy, which is not to be considered the "norm" or something routine or in the ordinary course.

Harte Gold Corp. (Re), 2022 ONSC 653 ("**Harte Gold**") at para. 38.

Payslate Inc. (Re), 2023 BCSC 608 at paras. 1, 38, 87

13. The factors 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.

14. In this case, there is no evidence that any of the *Harte Gold* Factors are met under the Transaction.
15. 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.

16. 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.
17. Further, there is absolutely no doubt that the Bill 13 Contractors and many employees of the Bill 13 Contractors 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.
18. The *Forest Act* was expressly amended to protect the interests of the Bill 13 Contractors in just such a scenario. While the Licences would be preserved without requiring regulatory approvals, the purpose of the *Forest Act* and the Regulation would be thwarted.

PART 6 MATERIAL TO BE RELIED ON


1. Affidavit #1 of William Robert Brash, 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


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

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APPLICATION RESPONSE

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