

This is the 2nd affidavit
of Matthew Thomson in this case
and was made on March 26, 2024

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

AFFIDAVIT

I, Matthew Thomson, of Terrace, British Columbia, Businessperson, AFFIRM THAT:

1. I am the vice-president of Timber Baron Contracting Ltd. ("**Timber Baron**"), and as such I have personal knowledge of the facts deposed to in this affidavit, except where stated to be based on information and belief, and where so stated I verily believe them to be true.
2. Capitalized terms not otherwise defined in this Affidavit have the same meaning as in the Application Response of Timber Baron.
3. I make this affidavit in response to the 1st Affidavit of Shenwei (Sandra) Wu, sworn March 15, 2024 (the "**Wu Affidavit**") and the application response of the Petitioner and Cui Family Holdings ("**Cui Holdings**") filed March 18, 2024 (the "**Application Response**").

Timber Baron's Bill 13 Contract

Operationally

4. Timber Baron must first be allocated work from Skeena Sawmills under the Bill 13 Contract before conducting any logging operations in the field.
5. In allocating the work, Skeena Sawmills provides work specifications, which include:
 - (a) the services they require Timber Baron to complete;
 - (b) the estimated quantity of work Timber Baron is required to perform;
 - (c) the location of the area (the "**Cutblock**") where the work is to be performed; and
 - (d) the proposed start and end dates for the services.
6. When Skeena Sawmills allocates work to Timber Baron pursuant to the Bill 13 Contract, Timber Baron must perform the work as directed, in the area specified by Skeena Sawmills and in the time frame determined by Skeena Sawmills. Effectively Timber Baron cannot refuse to do the work, which is one of the advantages to licence holders attached to a Bill 13 Contract.
7. At the time the work is allocated, Timber Baron has 15 days to propose a rate for the allocated work, based on a number of factors detailed below. If Skeena Sawmills disagrees with the proposed rate, they can propose an alternate rate to Timber Baron.
8. If Skeena Sawmills and Timber Baron are unable to agree on a rate, the parties are in a rate dispute, which must be resolved according to the Regulation.

Bill 13 Rate Factors

9. Each block within a forest license's area is unique and has its own attributes which affect the fair market rates for harvesting, including, among other things:
 - (a) distance from the nearest scale yard;
 - (b) the quality of the roads to access the block;

- (c) whether the block is in a potential snow belt, as harvesting is more difficult and costly in the winter and while snow is present;
- (d) the terrain and slope;
- (e) piece size of timber;
- (f) the percentage of merchantable logs in the block; and
- (g) the gross timber volume in the block

(collectively, the "**Cutblock Factors**").

10. In addition to the Cutblock Factors, Bill 13 Contractors need to assess the rates related to the use of particular types of forestry equipment.
11. Timber Baron uses its actual costs to determine its rate offers, as required under the Regulation.
12. The public rates set by Timber Tracks Inc. ("**Timber Tracks**") are often used to inform the proposed rates for Bill 13 Contracts and Timber Baron used such rates to demonstrate that the rates proposed for work allocated by Skeena Sawmills are competitive by industry standards.
13. Timber Tracks is a third-party service provider which provides information on market rates and reasonable rates related to the use of particular types of forestry equipment and it is well respected in the British Columbia forestry industry. Timber Track rates are widely used and publicized. The Timber Tracks rates for the use of forestry equipment can be compared to a Kelly Blue Book value for the value of a vehicle; while there are always individual circumstances which might necessitate an increased or decreased rate, including the Cutblock Factors, the Timber Tracks rates are considered a good indication of competitive rates for the use of the equipment, to which a contractor's other costs must be added to determine a fair rate.
14. Timber Baron's rates to harvest timber under the Bill 13 Contract for specific Cutblocks were also based on operational factors specific to Skeena, including, among others:

- (a) Skeena Sawmills' repeated allocation of work to Timber Baron in areas that are known to be in snow belts, even though:
 - (i) Timber Baron informed Skeena Sawmills that the cost to harvest timber in those areas at that time of year would be higher than in other circumstances, and that Timber Baron would need to increase their rates to sustain the way in which Skeena Sawmills directed them to operate; and
 - (ii) road building costs in the fall and winter are significantly higher than in the summer due to weather conditions;
 - (iii) repeated closures and curtailments reducing Timber Baron's ability to be efficient; and
 - (iv) repeated non-payment for services provided.
 - (b) Skeena Sawmills' decision in or about June 2019 to pause saw log deliveries, which required Timber Baron to pause work in a Cutblock, and demobilize its equipment to be used elsewhere, and the corresponding additional costs incurred to remobilize the equipment and return to the Cutblock;
 - (c) Skeena Sawmills' direction to obtain as much saw log as possible within a Cutblock, while assigning work to Timber Baron in areas with a higher percentage of pulp logs, requiring additional work and cost to access the saw logs; and
 - (d) the volume of work assigned to Timber Baron Contracting being at or below the minimum amount required by the Bill 13 Contract resulting in operating costs being correspondingly higher as a result of being spread over a lower volume.
- (collectively, the "**Skeena Operational Decisions**").

15. Not surprisingly, the Skeena Operational Decisions necessitated increased rates for Timber Baron to harvest in the designated Cutblocks.

The Rate Dispute Arbitration

16. If Skeena Sawmills and Timber Baron are unable to agree on a rate for a particular Cutblock, there are required dispute mechanisms under the Bill 13 Contract. In my

experience with other tree farm licensees, these dispute mechanisms can usually expedite a resolution. However, with Skeena Sawmills this was not the case. Skeena's position was unreasonable and the dispute was forced to proceed to arbitration.

17. Timber Baron Contracting had invested significant time and money in preparing for the arbitration and it fully expected to be successful in the arbitration of the Timber Baron Rate Disputes (the "**Arbitration**") which was scheduled to take place in September 2023.
18. However, the Arbitration was adjourned when these Receivership Proceedings were commenced by the Petitioner.
19. At the time that these Receivership Proceedings began, significant steps in the Arbitration had already occurred.
20. A summary of the events of September 2023 includes:
 - (a) on September 1, 2023, Timber Baron Contracting and Skeena Sawmills each submitted their final rate offers, supporting evidence, and written submissions to the arbitrator, and subsequently exchanged them with each other;
 - (b) on September 12, 2023, Timber Baron Contracting was served with the receivership petition; and
 - (c) on September 20, 2023, the Receivership Order in these proceedings was pronounced and the Arbitration was stayed.
21. Had the Arbitration continued as originally planned it would have been conducted on September 25 to 29, 2023.

The Disclosure of Confidential Information

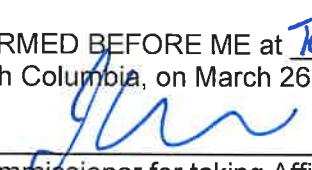
22. Timber Baron Contracting's final proposed rates for each Cutblock (the "**Timber Baron Final Rates**"), Timber Baron's written argument supporting the Timber Baron Final Rates and all supporting evidence (collectively, the "**Timber Baron Final Rate Submissions**") were submitted in confidence to the arbitrator and to Skeena Sawmills (the "**Confidential Information**") on September 1, 2023.

23. The Timber Baron Final Rates were submitted as part of a “final offer arbitration”. In a final offer arbitration, the arbitrator must choose one of the rates submitted by the parties; the arbitrator is not permitted to set a rate other than one that was submitted for consideration.
24. The Timber Baron Final Rates are supported by evidence submitted by Timber Baron in the Arbitration.
25. The Confidential Information includes information that can damage Timber Baron Contracting’s market position, and without further context demonstrating Timber Baron Contracting’s rationale for the Timber Baron Final Rates, disclosure can cause significant adverse effects on Timber Baron Contracting’s business, including making bids in matters unrelated to Skeena.
26. In particular, the Timber Baron Final Rates as presented in the Wu Affidavit are misleading and do not reflect the context in which they were made, nor do they present the lower original rates submitted by Timber Baron prior to the rate dispute and initiation of arbitration proceedings.
27. Paragraphs 43 and 44 of the Wu Affidavit, which was sent to the entire service list by the Petitioner and Cui Holdings, includes this Confidential Information.
28. On March 22, 2024, counsel for Timber Baron sent a letter to counsel for the Purchaser, Cui Holdings, demanding that the Confidential Information be redacted or removed from the Wu Affidavit (the “**Demand Letter**”).
29. Attached and marked as **Exhibit “A”** to this affidavit is a true copy of the Demand Letter.
30. Counsel for the Purchaser refused to redact or remove the Confidential Information from the Wu Affidavit and the Application Response.
31. In response, on March 25, 2024, counsel for Timber Baron reiterated Timber Baron’s demand that the Confidential Information be removed or redacted from the Wu Affidavit and the Application Response.
32. Attached and marked as **Exhibit “B”** to this affidavit is a true copy of an email chain between counsel for the Purchaser, dated March 23, 2024, and counsel for Timber Baron, dated March 25, 2024.

No Evidence of Impact of Bill 13 Contracts on Skeena's Business

33. Contrary to suggestions in paragraphs 35 and 36 and the Wu Affidavit generally, Timber Baron's rates for harvesting are entirely reasonable. The rates have been carefully established in consideration of the Cutblock Factors, the Skeena Operational Decisions and the information obtained from the credible third party Timber Tracks.
34. Other than bald assertions to that effect by employees of Skeena, Skeena Sawmills provides no evidence that the Bill 13 Contracts have negatively impacted Skeena Sawmills' business or that work on the Licence can be provided at lower rates than those proposed by Timber Baron.
35. Skeena's management is the cause of its own demise and insolvency. For example, the questionable Skeena Operational Decisions highlighted above in relation to the Bill 13 Contracts resulted in significant increased costs and challenges.

AFFIRMED BEFORE ME at Terrace,
British Columbia, on March 26, 2024.

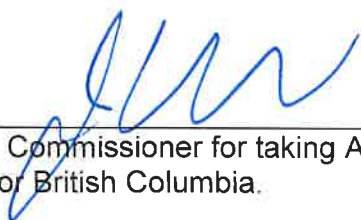

A Commissioner for taking Affidavits for
British Columbia.

JOHN BANDSTRA
Barrister & Solicitor
#200 - 4630 Lazelle Ave.
Terrace, BC V8G 1S6



MATTHEW THOMSON

This is **Exhibit "A"** referred to in the
Affidavit of Matthew Thomson affirmed before
me at Terrace, British Columbia
on this the 26th day of March, 2024.



A Commissioner for taking Affidavits
For British Columbia.



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F +1 604.605.4875

March 22, 2024

FILE NUMBER: 050676-00005

DELIVERED BY EMAIL

Lawson Lundell LLP
Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC V6C 3L2

Attention: Bryan Gibbons

Dear Mr. Gibbons:

**Re: 1392752 B.C. Ltd. v Skeena Sawmills Ltd. et al.
SCBC No. S-236214 Vancouver Registry**

We received the filed Affidavit 1 of S. Wu and filed Affidavit 1 of N. Vikhrova as well as a copy of the Petitioner and Cui Family Holdings Ltd.'s Response in this matter.

We confirm we will be filing affidavits on behalf of both the Truck Loggers Association and Timber Baron Contracting Ltd. which respond directly to this new evidence. We hope to have these documents served upon you early next week so you have them well prior to our hearing in this matter commencing on April 2, 2024.

However, before we can finalize these affidavits, we write to advise of a significant concern with the current evidence your clients have put forward. There is information included in paragraphs 43 and 44 of the Wu Affidavit, Exhibit "K" of the Wu Affidavit, and paragraphs 25 and 26 of the Response which is not only confidential under the *Arbitration Act*, but also extremely financially sensitive to our client's business. While you have already made this confidential information public having sent it to the service list and Timber Baron reserves all rights as a result of this breach, we ask that you immediately agree to:

1. redact the offending sections and exhibit in the Wu Affidavit and the Response;
2. circulate redacted versions of your material which would be included in the Application Record; and
3. agree that your written submissions will not refer to this evidence.

To assist in your analysis of this issue, we can advise that:



1. Under section 6(2) of the *Timber Harvesting Contract and Subcontract Regulation*, the *Arbitration Act* applies to the rate dispute arbitration as between our respective clients;
2. Section 63 of the *Arbitration Act* imposes confidentiality requirements;
3. The arbitration between our clients was a "final offer arbitration";
4. In a final offer arbitration, the arbitrator must choose one of the rates submitted by the parties and is not permitted to set a rate other than one that was submitted for consideration, thereby making decisions in this type of arbitration (for both parties) when issuing proposed final rate offers even more sensitive and strategic than ordinary arbitration;
5. Timber Baron Contracting's final proposed rates for each cutblock (the "**Timber Baron Final Rates**"), Timber Baron's written argument supporting the Timber Baron Final Rates and all supporting evidence (collectively, the "**Timber Baron Final Rate Submissions**") were all confidentially submitted for Arbitration on September 1, 2023;
6. Once the Timber Baron Final Rate Submissions were submitted to the arbitrator, they were also shared with Skeena Sawmills on September 1, 2023 (the "**Confidential Information**"); and
7. The Confidential Information includes information that can damage Timber Baron's market position, and without further context demonstrating Timber Baron's rationale for the Timber Baron Final Rates, can cause significant adverse effects on Timber Baron's business, including when it is bidding on other work unrelated to Skeena.

Please confirm if you will agree to deal with the offending evidence on the basis proposed above as soon as possible so we can finalize our responsive material.

Yours truly,

Sincerely,
DLA Piper (Canada) LLP
Per:

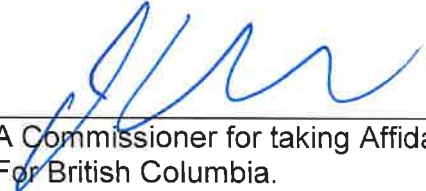
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028B7D84869A463...
Colin Brousson

CDB:day

cc: Fasken (Kibben Jackson and Mishaal Gill), counsel for the Receiver

This is **Exhibit "B"** referred to in the
Affidavit of Matthew Thomson affirmed before
me at Terrace, British Columbia
on this the 26th day of March, 2024.



A Commissioner for taking Affidavits
For British Columbia.

Arbor, Samantha

From: Brousson, Colin
Sent: Monday, March 25, 2024 6:10 PM
To: Peter Roberts
Cc: Noor Mann; Bryan Gibbons; Yang, Dannis; Arbor, Samantha; kjackson@fasken.com; Mishaal Gill
Subject: RE: [EXTERNAL] RE: 1392752 B.C. Ltd. v Skeena Sawmills Ltd. et al.; SCBC No. S-236214 Vancouver Registry

Peter,

The exceptions set out under section 63(3) in the *Arbitration Act* are not applicable here. For ease of reference the section which you are relying upon is reproduced below:

- 63** (1)Unless otherwise agreed by the parties, all hearings and meetings in arbitral proceedings must be held in private.
- (2)Unless otherwise agreed by the parties, the parties and the arbitral tribunal must not disclose any of the following:
- (a)proceedings, evidence, documents and information in connection with the arbitration that are not otherwise in the public domain;
 - (b)an arbitral award.
- (3)Subsection (2) does not apply if disclosure is
- (a)required by law,
 - (b)required to protect or pursue a legal right, including for the purposes of preparing and presenting a claim or defence in the arbitral proceedings or enforcing or challenging an arbitral award, or
 - (c)authorized by a competent court.

In our view, breaching confidentiality of our client to assist strangers to the arbitration to harm our client in proceedings entirely unrelated to the arbitration could never be the intention of section 63(3)(b). In this instance your client is not only harming our client by trying to push through an RVO to terminate the very contract that was being arbitrated while sitting as the secured lender (not a party to arbitration) and now as the buyer (also not a party to the arbitration), but it is also harming our client in the marketplace generally.

We hasten to add that you have put into evidence confidential rates which were part of the arbitration rather than the original proposed rates our client put forward in the Bill 13 process prior to the rate dispute. Thus, in addition to being an improper and unnecessary breach of confidentiality, it is also misleading evidence.

We don't accept the assertion that our client's proposed rates were higher than market and we cannot agree to any method to assist this type of evidence being put before the Court. It should simply be redacted. We are finalizing evidence which will make that clear, but will not breach confidentiality in doing so.

We will address this issue further in Court next week.

Yours truly,

Colin Brousson

Partner

T +1 604.643.6400

F +1 604.605.4875

E colin.brousson@dlapiper.com

From: Peter Roberts <proberts@lawsonlundell.com>

Sent: Saturday, March 23, 2024 3:06 PM

To: Brousson, Colin <colin.brousson@ca.dlapiper.com>

Cc: Noor Mann <nmann@lawsonlundell.com>; Bryan Gibbons <bgibbons@lawsonlundell.com>; Yang, Dannis <dannis.yang@ca.dlapiper.com>; Arbor, Samantha <samantha.arbor@ca.dlapiper.com>; kjackson@fasken.com; Mishaal Gill <mgill@fasken.com>

Subject: [EXTERNAL] RE: 1392752 B.C. Ltd. v Skeena Sawmills Ltd. et al.; SCBC No. S-236214 Vancouver Registry

DLA Piper (Canada) LLP ALERT: This is an external email. Do not click links or open attachments unless you recognize the sender's email address and know the content is safe.

Colin,

By including Ex K as evidence in Affidavit #1 of S. Wu, there was no intent to cause damage to Timber Baron or to breach any obligations of confidentiality, to the extent they exist. The evidence was included to establish the monetary gulf between the rates Timber Baron was and was proposing to charge, on the one hand, and the rates Skeena was able to pay on the other. As you doubtless recognize, the purpose was to put into evidence the roughly 25% greater cost of Timber Baron's harvesting costs over the market generally. If there is a way to have this evidence either agreed or otherwise put before the court, we are prepared to discuss it with you.

However, as a matter of legal application, it is our view that the impugned evidence falls within the disclosure exception that exists by virtue of section 63(2) of the *Arbitration Act*. Specifically, the evidence was adduced as part of the evidence necessary to obtain a court order in Skeena's receivership approving the transaction between Cui Holdings and the Receiver, including the RVO that would exclude the Bill 13 Contracts from the timber licenses. The evidence is required to "protect or pursue a legal right" relating to the effective disclaimer of the Bill 13 contracts.

Happy to chat on this Monday.

Regards,

Peter J. Roberts, K.C. (he/him) | Partner
Lawson Lundell LLP
D 604.631.9158 | F 604.641.4400

From: Yang, Dannis <dannis.yang@dlapiper.com>

Sent: Friday, March 22, 2024 2:10 PM

To: Bryan Gibbons (3152) - 14Flr <bgibbons@lawsonlundell.com>; Noor Mann (3161) - 14Flr <nmann@lawsonlundell.com>

Cc: kjackson@fasken.com; Mishaal Gill <mgill@fasken.com>; Brousson, Colin <colin.brousson@dlapiper.com>; Arbor, Samantha <samantha.arbor@dlapiper.com>

Subject: 1392752 B.C. Ltd. v Skeena Sawmills Ltd. et al.; SCBC No. S-236214 Vancouver Registry

[THIS MESSAGE ORIGINATED FROM OUTSIDE OUR FIRM]

Good afternoon Mr. Gibbons,

Please find enclosed a correspondence from Mr. Brousson of today's date.

Regards,

Dannis Yang

Legal Administrative Assistant to Colin Brousson,
Jeffrey Bradshaw and Samantha Arbor

T +1 604.443.2628

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No. S-236214
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IN THE SUPREME COURT OF BRITISH COLUMBIA

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RESPONDENTS

AFFIDAVIT

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File No.: 050676-00005

CDB/saa