



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

APPLICATION RESPONSE

Application Response of: The Trustees of the IWA – Forest Industry Pension Plan and the Trustees of the IWA – Forest Industry LTD Plan (collectively, the “Application Respondent”).

THIS IS A RESPONSE TO the Notice of Application of the Petitioner, 1392752 B.C. Ltd., filed on December 14, 2023.

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 Notice of Application:

1. Nil

Part 2: ORDERS OPPOSED

The Application Respondent opposes the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

2. All

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

3. Nil

Part 4: FACTUAL BASIS

4. The Application Respondent seeks to add the following paragraphs to the Case Plan Order:

- a) Notwithstanding anything contained in the forgoing paragraphs, the Trustees of the IWA – Forest Industry Pension Plan and the Trustees of the IWA – Forest Industry LTD Plan (collectively, the “Plans”) shall have the right to bring an application (the “Contributions Application”) seeking orders that: (i) the outstanding contributions owed by Skeena Sawmills Ltd. and its directors to the Plans are trust funds, and are excluded from the estate of Skeena Sawmills Ltd, Skeena Bioenergy Ltd. and ROC Holdings Ltd. in the receivership proceedings; and (b) an amount equal to outstanding contributions along with interest and legal fees be paid out to the Plans from the funds held by the Receiver in a segregated trust account pursuant to the Court Order pronounced October 30, 2023.
- b) The scheduling and hearing of the Contributions Application shall be before the hearing of the application of the Petitioner, 1392752 B.C. Ltd., for determining the validity, enforceability, and priority of the security held by them.
- c) At least 21 days before the hearing of the Contributions Application, the Receiver shall make available to the Plans all documents in the categories of reports, payroll records, time sheets, accounting information, business records and other data required for inspection by an auditor and/or authorized agent appointed by the Plans to trace unpaid contributions.

5. Outstanding contributions totaling \$83,748.21 are owed by Skeena Sawmills Ltd. to the IWA – Forest Industry Pension Plan and the IWA – Forest Industry LTD Plan (collectively, the “Plans”).

Affidavit #2 of G. Luddu at Exhibit A
Affidavit #3 of G. Luddu at Exhibit A

6. On October 30, 2023, the Application Respondent filed a Notice of Application claiming, *inter alia*, the following:

- a) Skeena Sawmills Ltd. was obligated by the collective agreement with the United Steelworkers Local 1-1937 to participate in the Plans. Xiaopeng Cui, who was the

authorized signatory and director of Skeena Sawmills Ltd. and is the controlling shareholder of the Petitioner, 1392752 B.C. Ltd., agreed in the Pension and LTD Plan Participation Agreements (collectively, the “Participation Agreements”) to be bound by the terms of the Pension and LTD Trust Agreements (collectively, the “Trust Agreements”).

Affidavit #1 of G. Luddu at Exhibit B, C, D

- b) Pursuant to the Trust Agreements, unpaid pension and long-term disability benefits contributions are deemed to be held in trust by the participating employer and its directors for members of the Plans.

Affidavit #1 of G. Luddu at Exhibit E and G

- 7. Under the Participation Agreements and Trust Agreements, interest accrues on any unpaid contributions on the due date at a rate of 1.5 times the prime interest rate as set by HSBC on the first business day of the calendar quarter in which the due date falls. Further, the Plans are entitled to be indemnified for legal and other costs incurred to collect unpaid contributions.

Affidavit #1 of G. Luddu at B, C, E and G

- 8. Skeen Sawmills Ltd.’s obligation to provide all documents in the categories of reports, payroll records, time sheets, accounting information, business records and other data to the Plans arises from the Participation Agreements.

Affidavit #1 of G. Luddu at B and C

- 9. Pursuant to the Order of the Court, \$101,966.30 has been notionally segregated by the Receiver as trust funds towards the unpaid contributions owed to the Plans (the “Segregated Funds”).

Court Order pronounced October 30, 2023
Second Report of the Receiver

- 10. The Second Cash Flow Forecast by the Receiver shows that without paying out or factoring in the Segregated Funds, only \$108,000 shall remain for distribution by March 8, 2024.

Second Report of the Receiver

- 11. Through the Notice of Application, the Petitioner, 1392752 B.C. Ltd., seeks to set out a schedule for hearing its application to determine the validity, enforceability and priority of

the security held by it by calling upon other creditors claiming equal or higher priority to its own (the “Petitioner’s Enforceability Application”).

Notice of Application filed December 14, 2023

12. The \$83,748.21 of trust funds owed to the Plans are accruing interest and costs until they are paid out. These trust funds are excluded from the estate of Skeena Sawmills Ltd., Skeena Bioenergy Ltd. and ROC Holdings Ltd. (collectively, the “Skeena Group”) available for distribution in the receivership proceedings. The delay in paying out these funds to the Plans that is likely to be exacerbated by the Petitioner’s Enforceability Application is prejudicial to the Plans’ members, former members, and any other persons entitled to the benefits under the Plans.

Part 5: LEGAL BASIS

13. The Participation Agreements and the Trust Agreements create contractual trust obligations on Skeena Sawmills Ltd., Mr. Cui and other directors over unpaid contributions.
14. In the following instances, the Court has accepted that contributions to the Plans are held in trust by participating employers and their directors, and in the event of bankruptcy of the participating employer the directors are personally liable for knowingly assisting in a breach of trust by failing to remit the contributions:
 - a) *Trustees of the IWA v. Wade*, 2019 BCSC 1085
 - b) *Trustees of the IWA - Forest Industry Pension Plan v. Leroy*, 2017 BCSC 158
15. Under the *Pension Benefits Standards Act*, SBC 2012, c 30, the contributions to pension plans are deemed trusts, and specifically do not form a part of the estate of the participating employer whether kept separate from other assets of the estate.
16. In addition, under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, the pension contributions are protected by statutory trust and fall outside the estate in distribution and/or enjoy super-priority status ranking above secured creditors.
17. The Application Respondent relies on the terms of the Trust Agreements, the Participation Agreements, the Pension Benefits Standards Act, SBC 2012, c 30, the Pension Benefits Standards Regulation, BC Reg 71/2015, the Bankruptcy and Insolvency Act, RSC 1985, c B-3, and the Supreme Court Civil Rules.

Part 6: MATERIAL TO BE RELIED ON

18. Affidavit #1 of G. Luddu affirmed September 19, 2023;
19. Affidavit #2 of G. Luddu affirmed October 24, 2023;
20. Affidavit #3 of G. Luddu affirmed December 20, 2023;

21. Notice of Application by the Application Respondent filed October 30, 2023;
22. Court Order pronounced October 30, 2023;
23. Second Report of the Receiver filed December 13, 2023;
24. Other materials filed in this proceeding; and
25. Such further and other material as counsel may advise.

The applicant estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of a Master.

The Application Respondent's Address for Service is:

Attention: Raashi Ahluwalia
2100 – 3777 Kingsway
Burnaby, BC, V5H 3Z7
Fax number: 604-433-7897
Email: Raashi.Ahluwalia@iwafibp.ca



Date: December 21, 2023

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Signature of lawyer for the Trustees of the IWA –
Forest Industry Pension Plan and the Trustees of the
IWA – Forest Industry LTD Plan,
Raashi Ahluwalia