



No. S236214
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

NOTICE OF APPLICATION

Name of applicant: Alvarez & Marsal Canada Inc. (the “**Receiver**”) in its capacity as Receiver of the properties, assets and undertakings (collectively, the “**Property**”) of Skeena Sawmills Ltd. (“**Sawmills**”), Skeena Bioenergy Ltd., and ROC Holdings Ltd. (collectively, the “**Skeena Entities**” or the “**Company**”)

To: The Service List attached hereto as Schedule “A”.

TAKE NOTICE that an application will be made by the applicant to the Honourable Madam Justice Blake at the courthouse at 800 Smithe Street, Vancouver on March 8, 2024 at 10:00 a.m. for the order set out in Part 1 below.

The applicant estimates that the application will take 5 minutes.

- ☐ This matter is within the jurisdiction of an associate judge
- ☒ This matter is not within the jurisdiction of an associate judge.

Part 1: ORDER SOUGHT

- 1) An order substantially in the form attached hereto as Schedule “B”, among other things, directing that the Garnished Funds (as defined herein) be paid to Fasken Martineau DuMoulin LLP, in trust for the Receiver.

Part 2: FACTUAL BASIS

- 1) On August 1, 2023, Timber Baron Contracting Ltd. ("**Timber Baron**") filed a notice of civil claim in Supreme Court of British Columbia (the "**Court**") Action No. 21858 (Terrace Registry) (the "**Action**") in respect of monies alleged to be owed to it by Sawmills under a mediation agreement entered into by Timber Baron and Sawmills.
- 2) On August 3, 2023, Timber Baron obtained the following three garnishing orders before judgment against Sawmills in the Action:
 - (a) garnishing order before judgment naming Nanaimo Forest Products Ltd. as garnishee;
 - (b) garnishing order before judgment (the "**Trans-Pacific Garnishing Order**") naming Trans-Pacific Trading Ltd. ("**Trans-Pacific**") as garnishee; and
 - (c) garnishing order before judgment (the "**BNS Garnishing Order**") naming The Bank of Nova Scotia ("**BNS**"), as garnishee.
- 3) On or about August 23, 2023, BNS filed a letter of dispute from garnishee dated August 15, 2023, advising that Sawmills did not have any accounts at the BNS branch at which the BNS Garnishing Order was served.
- 4) On or about August 15, 2023, \$23,185.60 was paid into Court to the credit of the Action. The notice of payment into court in respect of this payment, however, mistakenly lists Sawmills as the garnishee, so it is unclear which garnishee paid these funds into Court.
- 5) On or about August 21, 2023, \$66,592.88 was paid into Court to the credit of the Action by Trans-Pacific pursuant to the Trans-Pacific Garnishing Order.
- 6) On or about August 31, 2023, \$32,046.15 was paid into Court to the credit of the Action by Trans-Pacific. The notice of payment into court in respect of this payment states that the payment was made pursuant to a garnishing order made in the Action on August 28, 2023, however there is no garnishing order made in the Action on that day or any day other than August 3, 2023. The Court registry in Terrace has confirmed that this was an error and the funds were paid in pursuant to the Trans-Pacific Garnishing Order.

- 7) On or about September 7, 2023, \$59,732.45 was paid into Court to the credit of the Action by Trans-Pacific pursuant to the Trans-Pacific Garnishing Order.
- 8) In total, \$181,557.08 (the “**Garnished Funds**”) have been paid into Court to the credit of the Action.
- 9) On September 20, 2023, the Court made an order (the “**Receivership Order**”), among other things, appointing Alvarez & Marsal Canada Inc. as Receiver of the Property and granting a stay of proceedings (the “**Stay**”) in favour of the Skeena Entities.
- 10) The Garnished Funds remain the property of Sawmills and the Receiver seeks direction from the Court to have the funds paid out, in trust, to its counsel Fasken Martineau DuMoulin LLP, to be used to advance these receivership proceedings.

Part 3: LEGAL BASIS

- 1) The Applicant relies on:
 - (a) the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3;
 - (b) the provisions of the *Court Order Enforcement Act*, R.S.B.C., 1996, c. 78 (the “**COEA**”); and
 - (c) the inherent jurisdiction of this Honourable Court.
- 2) Pursuant to the Receivership Order, the Receiver is empowered and authorized, among other things, to take possession and exercise control over the Property. Paragraph 3 of the Receivership Order reads, in part, as follows:

Receiver’s Powers

3. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limited the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve and protect the Property...;

- 3) This Court has been clear that funds paid into court pursuant to a garnishing order before judgment remains the property of the debtor, as a garnishing order before judgment is one of the few times in law where a party may have property of an opposite party placed in safe keeping prior to judgment as it deprives a defendant of the use of its property prior to judgment being rendered.

Ohman v Synq Access + Security Technology Limited, 2018 BCSC 1001 at para. 12;

Mackay & Company Ltd. et al. v. Nesbitt, 2006 BCSC 1283 at para. 16.

- 4) Pursuant to the Stay, Timber Baron is stayed from taking any further steps in the Action and, accordingly, the Garnished Funds, forming part of the Property, are funds that the Receiver is entitled to take possession of for the advancement of these receivership proceedings.
- 5) Section 12 of the COEA requires that notice of an application for payment out of court be provided to the defendant and reads, in part, as follows:

Payment out of court

12(1) An order must not be made for payment out of court of money paid in by the garnishee or for payment by the garnishee to the person entitled, without notice to the defendant, judgment debtor, or person liable on the principal judgment or order, unless a judge, under special circumstances, dispenses with notice.

- 6) Notice of the Receiver's application has been provided to counsel to Sawmill's ultimate parent company, Cui Family Holdings Ltd., who have advised they are supportive of the order sought.
- 7) The Garnished Funds remain the property of Sawmills and the Receiver seeks to collect the funds for the benefit of its stakeholders, including its creditors.

Part 4: MATERIAL TO BE RELIED ON

- 1) Receivership Order of Madam Justice Blake made September 20, 2023;
- 2) Affidavit #2 of Ashley Kumar made February 28, 2024; and
- 3) The other pleadings and materials filed in these proceedings and such further and other material as counsel may advise and this Honourable Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of

Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 29-Feb-2024



Signature of Mishaal Gill
Lawyer for Alvarez & Marsal Canada Inc.,
in its capacity as Receiver

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of
this Notice of Application

☐ with the following variations and additional terms:

.....
.....
.....

Date:

.....
Signature of ☐ Judge ☐ Associate
Judge

The Solicitors for the Applicant are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: mgill@fasken.com (Reference: Mishaal Gill/285937.00017)

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

Schedule "A"

Service List

No. S236214
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

SERVICE LIST

(Last Updated: February 29, 2024)

Fasken Martineau DuMoulin LLP Attention: Kibben Jackson Mishaal Gill Suzanne Volkow Email: kjackson@fasken.com mgilll@fasken.com svolkow@fasken.com <i>Counsel for the Receiver, Alvarez & Marsal Canada Inc.</i>	Alvarez & Marsal Canada Inc. Attention: Anthony Tillman Pinky Law Taylor Poirier Email: atillman@alvarezandmarsal.com pinky.law@alvarezandmarsal.co tpoirier@alvarezandmarsal.com <i>The Receiver</i>
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<p>Lawson Lundell LLP</p> <p>Attention: Bryan Gibbons Noor Mann Kimia Jalilvand Peter Roberts</p> <p>Email: bgibbons@lawsonlundell.com nmann@lawsonlundell.com kjalilvand@lawsonlundell.com proberts@lawsonlundell.com</p> <p><i>Counsel for 1392752 B.C. Ltd.</i></p>	<p>Kornfeld LLP</p> <p>Attention: Francis Lamer Nikhil Pandey</p> <p>Email: flamer@kornfeldllp.com npandey@kornfeldllp.com rkrishan@kornfeldllp.com</p> <p><i>Counsel for Delta Cedar Specialties Ltd.</i></p>
<p>Blake, Cassels & Graydon LLP</p> <p>Attention: Claire Hildebrand</p> <p>Email: claire.hildebrand@blakes.com</p> <p><i>Counsel for Caterpillar Financial Services Ltd.</i></p>	<p>DLA Piper (Canada) LLP</p> <p>Attention: Colin Brousson</p> <p>Email: colin.brousson@dlapiper.com</p> <p><i>Counsel for Timber Baron Contracting Ltd.</i></p>
<p>IWA–Forest Industry Pension & LTD Plan Office</p> <p>Attention: Raashi Ahluwalia</p> <p>Email: raashi.ahluwalia@iwafibp.ca</p> <p><i>Counsel for Trustees of the IWA - Forest Industry Pension Plan and Trustees of the IWA - Forest Industry LTD Plan</i></p>	<p>McCarthy Tétrault LLP</p> <p>Attention: Lance Williams Nathan Stewart</p> <p>Email: lwilliams@mccarthy.ca nstewart@mccarthy.ca sdanielisz@mccarthy.ca</p> <p><i>Counsel for Antler Creek Contracting Ltd., Deuce Creek Contracting Ltd., L&J Logging Ltd., Kitselas Forestry LP, Terrace Timber Ltd., Silvicon Services Inc., Little Trees Reforestation Inc., Timber Tracks Inc., K' Alii Aks Timber Corporation ; Timbertramp Contracting Ltd. And Cypress Forest Consultations Ltd.</i></p>
<p>McLean & Armstrong LLP</p> <p>Attention: Vince Aldridge</p> <p>Email: valdridge@mcleanarmstrong.com</p> <p><i>Counsel for Daudet Creek Contracting Ltd.</i></p>	<p>Duncan Craig LLP</p> <p>Attention: Ryan Quinlan</p> <p>Email: rquinlan@dcllp.com</p> <p><i>Counsel for Dynamic Capital Equipment Finance Inc.</i></p>

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Schedule "B"

Draft Order

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1392752 B.C. LTD.

AND:

SKEENA SAWMILLS LTD.
SKEENA BIOENERGY LTD. and
ROC HOLDINGS LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE)	THE HONOURABLE MADAM JUSTICE)	March 8, 2024
)	BLAKE)	
))	
))	

ON THE APPLICATION of Alvarez & Marsal Canada Inc. in its capacity as court-appointed receiver (in such capacity, the “**Receiver**”) of Skeena Sawmills Ltd. (“**Sawmills**”), Skeena Bioenergy Ltd. and ROC Holdings Ltd. coming on for hearing at Vancouver, British Columbia on March 8, 2024, AND ON HEARING Kibben Jackson and Mishaal Gill, and those other counsel listed in Schedule “A” hereto, AND NO ONE ELSE APPEARING, although duly served

THIS COURT ORDERS that:

1. The time for service of the materials filed in support of the application for this order (collectively, the “**Application**”) is hereby abridged such that service of the Application is deemed to be timely and sufficient and the Application is properly returnable today.
2. The following funds which have been paid into the Supreme Court of British Columbia (the “**Court**”) in Court Action No. 21858 (Terrace Registry) (the “**Action**”), pursuant to

garnishing orders before judgment made in the Action, together with all interest that has accrued thereon, be paid out to Fasken Martineau DuMoulin LLP, in trust for the Receiver:

- (a) \$23,185.60 paid into Court on August 15, 2023 pursuant to a garnishing order made before judgment dated August 3, 2023;
 - (b) \$66,592.88 paid into Court on August 21, 2023 pursuant to a garnishing order made before judgment dated August 3, 2023;
 - (c) \$32,046.15 paid into Court on August 31, 2023 pursuant to a garnishing order made before judgment dated August 3, 2023; and
 - (d) \$59,732.45 paid into Court on September 7, 2023 pursuant to a garnishing order made before judgment dated August 3, 2023.
3. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Kibben Jackson
Lawyer for ALVAREZ & MARSAL CANADA
INC., in its capacity as Receiver of Skeena
Sawmills Ltd., Skeena Bioenergy Ltd. and ROC
Holdings Ltd.

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	Party represented