



FORCE FILED

No. S236214
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1392752 B.C. LTD.

AND:

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

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver (the “**Receiver**”) of all of the assets, undertakings and property, including real property (collectively, the “**Property**”), of Skeena Sawmills Ltd., Skeena Bioenergy Ltd., and ROC Holdings Ltd. (together, 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 Mr. Justice Walker at the courthouse at 800 Smithe Street, Vancouver, B.C. on May 17, 2024 at 9:45 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 1 hour.

X This matter is not within the jurisdiction of an associate judge.

Part 1 ORDER SOUGHT

1. An order (the “**Fee Approval Order**”), substantially in the form attached hereto as Schedule “B”, among other things, seeking interim approval of:

- (a) the activities of the Receiver, as set forth in the Receiver's Reports (as defined herein); and
- (b) the fees and disbursements of the Receiver and its counsel, Fasken Martineau DuMoulin LLP ("**Fasken**"), to April 30, 2024 (the "**Fee Period**").

Part 2 FACTUAL BASIS

Background

1. On September 20, 2023, upon the application of 1392752 B.C. Ltd. (the "**Petitioner**"), the Supreme Court of British Columbia (the "**Court**") granted an order (the "**Receivership Order**") pursuant to section 243 of the *Bankruptcy and Insolvency Act (Canada)*, R.S.C. 1985, c. B-3 (the "**BIA**") and section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, appointing A&M as receiver of the Property.
2. On April 16, 2024, the Court granted a sale approval and vesting order, among other things approving the purchase and sale (the "**Transaction**") of substantially all of the Company's assets as contemplated by the Purchase and Sale Agreement (the "**PSA**") dated April 16, 2024, entered into by the Receiver, as vendor, and Kitsumkalum First Nation, 1355392 B.C. Ltd., 1355390 B.C. Ltd. and 1355387 B.C. Ltd. (together, "**Kitsumkalum**"), collectively, as purchaser.
3. On May 8, 2024, the Court granted a distribution order (the "**Distribution Order**"), among other things, approving the payment of certain priority claims, final distributions to the Company's secured creditors and an interim distribution to Cui Family Holdings Ltd. ("**Cui**"), the Company's senior secured creditor.

Receiver's Activities

4. The details of the work carried out by the Receiver in these proceedings, and for which the Court's approval is sought at this time, are set forth in the Reports of the Receiver to the Court (collectively, the "**Receiver's Reports**") prepared and filed by the Receiver in these proceedings, namely, the: (a) First Report of the Receiver to the Court dated October 25,

2023; (b) Second Report of the Receiver to the Court dated December 13, 2023; (c) Fourth Report of the Receiver to the Court dated February 29, 2024; and (d) Fifth Report of the Receiver to the Court dated May 2, 2024.

5. The Receiver's Reports collectively detail the activities of the Receiver, which include, but are not limited to, the following:
- (a) taking possession of the Property and ensuring adequate insurance coverage was in place;
 - (b) conducting a review and forensic accounting of the Petitioner's debt and security for the benefit of the Court and the stakeholders;
 - (c) undertaking an extensive marketing and sale process in respect the Property;
 - (d) reviewing definitive bids received for sale of the Property and negotiating and finalizing the terms of a payment and retention agreement with Cui;
 - (e) negotiating and finalizing the terms of the PSA with Kitsumkalum;
 - (f) attending to completion of the PSA and delivery of the Purchased Assets (as defined in the PSA) to Kitsumkalum;
 - (g) gathering and reviewing the Company's records and books to resolve potential statutory claims;
 - (h) preparing and responding to various applications heard during the course of these proceedings;
 - (i) responding to various creditor inquiries throughout these receivership proceedings; and
 - (j) preparing the Receiver's Reports for use by this Court.

Receiver's and Fasken's Fees

6. Pursuant to the Receivership Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements, in each case at their standard rates and charges. The Receivership Order further provides that the Receiver and its counsel will pass their accounts from time to time, with such accounts referred to a judge of this Court for determination (which may be by hearing before the judge on a summary basis).

7. The particulars of the fees for the Receiver and its counsel, Fasken (collectively, the “**Fees**”), are summarized in Affidavit #4 of Anthony Tillman made May 13, 2024 (the “**Tillman Affidavit**”) and Affidavit #1 of Kibben Jackson made May 13, 2024 (the “**Jackson Affidavit**”).
8. During the Fee Period, inclusive of applicable taxes, the Receiver’s fees and disbursements total \$835,559.46 (the “**Receiver’s Fees**”) and Fasken’s fees and disbursements total \$530,783.13 (“**Fasken’s Fees**”).
9. The Receiver’s Fees are summarized in the table below and further detailed in the Tillman Affidavit:

Invoice #	Invoice Date	Fees (\$)	Disbursements (\$)	GST (\$)	Total (\$)
1A	15-Jan-24	\$ 798.00	\$ -	\$ 39.90	\$ 837.90
1B	15-Jan-24	3,379.50	-	168.98	3,548.48
1C	15-Jan-24	293.00	-	14.65	307.65
1D	15-Jan-24	253.00	-	12.65	265.65
1E	15-Jan-24	790.50	-	39.53	830.03
2	17-Oct-23	108,920.00	4,712.95	5,681.65	119,314.60
2A	16-Jan-24	432.00	-	21.60	453.60
2B	15-Jan-24	799.00	-	39.95	838.95
2C	15-Jan-24	199.50	-	9.98	209.48
3	18-Dec-23	150,613.50	684.35	7,564.89	158,862.74
3B	16-Jan-24	279.50	-	13.98	293.48
3C	19-Apr-24	199.50	-	9.98	209.48
4	15-Jan-24	75,281.00	7,148.52	4,121.48	86,551.00
4B	19-Apr-24	4,178.50	-	208.93	4,387.43
5	16-Jan-24	61,212.50	-	3,060.63	64,273.13
6	20-Feb-24	80,081.50	439.91	4,026.07	84,547.48
7	25-Mar-24	53,564.50	176.84	2,687.07	56,428.41
8	22-Apr-24	74,127.50	5,494.73	3,981.11	83,603.34

Invoice #	Invoice Date	Fees (\$)	Disbursements (\$)	GST (\$)	Total (\$)
9	10-May-24	161,344.00	367.08	8,085.55	169,796.63
TOTAL		\$776,746.50	\$19,024.38	\$39,788.58	\$835,559.46

10. Fasken's Fees are summarized in the table below and further detailed in the Jackson Affidavit:

Invoice #	Invoice Date	Fees (\$)	Disbursements (\$)	GST (\$)	PST (\$)	Total (\$)
1912272	2023-10-31	31,661.50	268.60	1,595.92	2,216.29	35,742.31
1914642	2023-11-10	32,954.00	501.16	1,671.99	2,306.77	37,433.92
1928122	2023-12-12	8,960.50	303.93	458.13	627.23	10,349.79
1939401	2023-12-31	20,858.50	370.60	1,060.51	1,460.09	23,749.70
1949691	2024-02-07	31,933.00	1,769.70	1,678.22	2,235.30	37,616.22
1968436	2024-03-25	47,574.00	640.00	2,404.70	3,330.18	53,948.88
1974769	2024-04-08	103,035.00	2,865.72	5,281.59	7,212.45	118,394.76
1988231	2024-05-09	187,627.50	3,280.40	9,505.72	13,133.93	213,547.55
TOTAL		464,604.00	10,000.11	23,656.78	32,522.24	530,783.13

11. The Receiver has reviewed Fasken's invoices in respect of the above and concluded that they are reasonable and appropriate in the circumstances.
12. The Receiver submits that its fees and the fees of its counsel are fair and reasonable in the circumstances, and that the time spent was necessary and the work was delegated to the appropriate professionals within each firm. Accordingly, the Receiver seeks the Fee Approval Order approving its activities, the Receiver's Fees and Fasken's Fees.

Part 3 LEGAL BASIS

1. The Receiver relies on:

- (a) *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “BIA”);
 - (b) Rules 8-1 and 10-2 of the *Supreme Court Civil Rules*;
 - (c) the Receivership Order;
 - (d) the inherent and equitable jurisdiction of this Court; and
 - (e) such further and other legal basis as counsel may advise and this Honourable Court may allow.
2. The work performed by the Receiver and Fasken was done pursuant to, and in accordance with, the terms of the Receivership Order, the other orders of the Court made in these proceedings and the provisions of the BIA.
3. Aside from completion of the transfer of the Company’s timber licences, the Receiver’s mandate is largely complete. Accordingly, the Receiver is of the view that interim approval of its activities, the Receiver’s Fees and Fasken’s Fees is warranted at this time.

Approval of the Receiver’s Activities

4. The Court has inherent jurisdiction to review the activities of a court-appointed receiver and, if satisfied that the receiver has acted reasonably, prudently and not arbitrarily, to approve the activities set out in the receiver’s reports. The assessment of whether the receiver has acted “reasonably, prudent and not arbitrarily” is made on an objective basis.¹
5. There are good policy and practice reasons for the Court to provide a level of protection for the receiver by approving its activities, provided the benefit of the approval is limited to the receiver itself.²
6. The activities of the Receiver are summarized in Part 2 and are detailed in the Receiver’s Reports. The Receiver has reported to the Court, all interested parties and stakeholders throughout these proceedings. The Receiver carried out a transparent, orderly and timely

¹ *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855, para. 54.

² *Hanfeng Evergreen Inc. (Re)*, 2017 ONSC 7161 at para. 17.

sale process for the Property, and acted reasonably to preserve and capture as much value as possible for the Company's stakeholders. The activities of the Receiver have all been necessary and were conducted in accordance with its powers under the relevant orders.

7. The Receiver respectfully submits that its activities, as described in the Receiver's Reports, have been carried out in a reasonable, prudent and not arbitrary manner and, accordingly, seeks approval of its activities.

Approval of the Fees

8. The Receivership Order expressly provides that the Receiver's accounts be referred to a judge of this Honourable Court and that the passage of those accounts be heard on a summary basis.³
9. There is no fixed rate or settled scale for determining a receiver's compensation. A receiver may either be allowed a percentage payment based on receipts, or a lump sum based on "the time, trouble and degree of responsibility involved". The governing principle is that a receiver's compensation should be measured by the "fair and reasonable" value of its services.⁴
10. This principle was adopted by the British Columbia Court of Appeal in *Bank of Montreal v. Nican Trading Co.*, [1990] B.C.J. No. 340 (B.C. C.A.) ["*Nican*"]. The Court of Appeal went on to list "relevant considerations" in determining whether a receiver's compensation was fair and reasonable, including:
 - (a) the value of the assets;
 - (b) complications and difficulties encountered by the receiver;
 - (c) the degree of assistance provided by the debtor;
 - (d) time spent by the receiver;

³ Receivership Order, para. 23.

⁴ *Belyea v. Federal Business Development Bank*, [1983] N.B.J. No. 41 (N.B. C.A.) ["*Belyea*"], para. 3; see also: *Confectionately Yours Inc., Re*, [2002] O.J. No. 3569, para. 44.

- (e) receiver's knowledge, experience and skill;
- (f) diligence and thoroughness;
- (g) responsibilities assumed;
- (h) results; and
- (i) cost of comparable services.⁵

11. Similar factors as considered on the assessment of a receiver's fees are also considered on the assessment of the accounts of legal counsel to a receiver, including, the:

- (a) time expended;
- (b) complexity of the proceedings;
- (c) degree of responsibility assumed by the lawyers;
- (d) amount of money involved, including reference to the debt, amount of proceeds after realization and payments to the creditors;
- (e) degree and skill of the lawyers involved;
- (f) results achieved; and
- (g) client's expectations as to the fee.⁶

12. In respect of the Receiver's Fees, the Receiver submits that:

- (a) the fees were properly incurred, and commensurate with fees charged by other insolvency firms of a similar size for work of a similar nature and complexity in British Columbia;

⁵ *Bank of Montreal v. Nican Trading Co.*, [1990] B.C.J. No. 340 (B.C. C.A.) [*"Nican"*], paras. 23 – 32.

⁶ *Redcorp Ventures Ltd., Re*, 2016 BCSC 188, para. 33.

- (b) the work completed by the Receiver was delegated to the appropriate professionals with the appropriate seniority and hourly rates; and
 - (c) the Receiver's services were performed in a prudent and economical manner.
13. Similarly, the Receiver submits that Fasken's Fees are fair and reasonable in the circumstances as:
- (a) Fasken's professional fees and disbursements were properly incurred, and commensurate with fees charged by similar firms with the expertise and capacity to serve a matter of comparable size and complexity;
 - (b) the work performed by Fasken involved considerable complexity, including protracted hearings and considerations of the jurisdictional foundations for orders sought in the face of significant opposition;
 - (c) the work completed by Fasken was delegated to the appropriate professionals with the appropriate seniority and hourly rates;
 - (d) Fasken's services were performed in a prudent and economical manner; and
 - (e) Fasken's invoices were provided to the Receiver when rendered, and all have been approved by the Receiver.
14. Most importantly, the result of these receivership proceedings was very good, as evidenced by the recoveries to the Company's secured creditors which range from 83% to 99.8%, with the majority recovering at least 94% of the amount of their respective secured claims.
15. In light of the foregoing, the Receiver submits that the Receiver's Fees and Fasken's Fees are reasonable in the circumstances and seeks interim approval of same as the Receiver has substantially completed its mandate, aside from transfer of the timber licences.

Part 4 MATERIAL TO BE RELIED ON

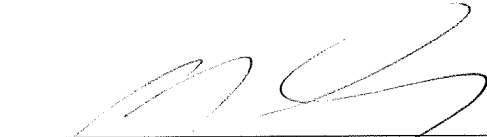
1. The Receivership Order, made by Madame Justice Blake in these proceedings on September 20, 2023;

2. The Receiver's First Report to the Court, dated October 25, 2023;
3. The Receiver's Second Report to the Court, dated December 13, 2023;
4. The Receiver's Fourth Report to the Court, dated February 29, 2024;
5. The Receiver's Fifth Report to the Court, dated May 2, 2024; and
6. 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: 13-May-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. (Reference: Kibben Jackson/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

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: May 6, 2024)

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<i>Counsel for the Receiver, Alvarez & Marsal Canada Inc.</i>	<i>The Receiver</i>

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SCHEDULE "B"
DRAFT FEE APPROVAL ORDER

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

ORDER MADE AFTER APPLICATION
(INTERIM FEE AND ACTIVITY APPROVAL)

BEFORE) THE HONOURABLE MR. JUSTICE WALKER)
)) May 17, 2024
))

ON THE APPLICATION OF Alvarez & Marsal Canada Inc., Licensed Insolvency Trustees (“**A&M**”), receiver (in such capacity, the “**Receiver**”) of the properties, assets and undertakings of Skeena Sawmills Ltd., Skeena Bioenergy Ltd., and ROC Holdings Ltd. (together, the “**Company**”) coming on for hearing at Vancouver, British Columbia, on this day, AND ON HEARING Glen Nesbitt, counsel for the Receiver, those counsel listed in Schedule “A” hereto, and no one else despite being served; AND UPON READING the materials filed, including the Reports of the Receiver to the Court (collectively, the “**Receiver’s Reports**”) prepared and filed by the Receiver in these proceedings, namely, the: (a) First Report of the Receiver to the Court dated October 25, 2023; (b) Second Report of the Receiver to the Court dated December 13, 2023; (c) Fourth Report of the Receiver to the Court dated February 29, 2024; and (d) Fifth Report of the Receiver to the Court dated May 2, 2024.

THIS COURT ORDERS that:

1. The time for service of the Notice of Application filed May 13, 2024 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service thereof upon any interested party other than those parties on the service list maintained by the Receiver in this proceeding be and is hereby dispensed with.
2. The activities of the Receiver as described in the Receiver's Reports are hereby approved, provided however that only Alvarez & Marsal Canada Inc. in its personal capacity and only with respect to its own personal liability shall be entitled to rely upon such approval.
3. The Receiver's accounts for professional fees and disbursements to April 30, 2024, in the amount of \$835,559.46, inclusive of applicable taxes, are hereby approved.
4. The accounts for professional fees and disbursements of the Receiver's legal counsel, Fasken Martineau DuMoulin LLP ("**Fasken**"), to April 30, 2024, in the amount of \$530,783.13, inclusive of applicable taxes, are hereby approved.
5. Endorsement of this Order by counsel appearing, 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 Glen Nesbitt
Lawyer for the Receiver

BY THE COURT

REGISTRAR

SCHEDULE "A"

List of Counsel

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

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AND

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ORDER MADE AFTER APPLICATION

(INTERIM FEE & ACTIVITY APPROVAL)

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