



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:** Dynamic Capital Equipment Finance Inc. (the "Application Respondent" or "Dynamic").

THIS IS A RESPONSE TO the Notice of Application of the Petitioner 1392752 B.C. Ltd., filed January 5, 2024.

**PART 1 ORDERS CONSENTED TO**

Dynamic consents to the granting of the orders set out in the following paragraph of Part 1 of the Notice of Application:

1. Nil.

**PART 2 ORDERS OPPOSED**

Dynamic opposes the granting of the orders set out in the following paragraph of Part 1 of the Notice of Application:

2. Paragraph 5 of the Notice of Application as against Dynamic in respect of the Dynamic Collateral (as defined below).

### PART 3 ORDERS ON WHICH NO POSITION IS TAKEN

Dynamic takes no position on the granting of the orders set out in the following paragraph of Part 1 of the Notice of Application:

3. All except for paragraph 5 as against Dynamic.

### PART 4 FACTUAL BASIS

4. Prior to July 29, 2021, Skeena Sawmills Ltd. ("Skeena") through its officers, directors or agents approached Dynamic to provide working capital for the use in its business operations.

Affidavit of John Warran sworn on January 11, 2024 ("Warran Affidavit") at para. 3

5. On or about July 29, 2021, Skeena (as borrower) and Dynamic (as lender) entered into a Loan Agreement pursuant to which Dynamic loaned Skeena the sum of \$448,500.00 (the "Rolling Equipment Loan"), which Skeena agreed to repay with interest pursuant to certain terms and conditions in accordance with certain terms and conditions (the "Rolling Equipment Loan Agreement").

Warran Affidavit at para. 4 and Exhibit "A"

6. Concurrently, and as continuing security for Skeena's obligations and liabilities under the Rolling Equipment Loan Agreement, Skeena executed a Specific Security Agreement dated July 29, 2021 (the "Rolling Equipment SSA") pursuant to which Skeena pledged, mortgaged and granted to Dynamic a security interest in the following equipment:

2018 RAM 2500 TRADESMAN 4X4 CREWCAB PICKUP TRUCK	S/N 3C6TR5CT4JG273565
2018 RAM 2500 TRADESMAN 4X4 CREWCAB PICKUP TRUCK	S/N 3C6TR5CT6JG273566
2013 CATERPILLAR 980K LOG LOADER CAN WBMM33 LOG GRAPPLE S/N 1W45785-1	S/N CAT0980KCW7K01406
2012 CATERPILLAR 980K LOG LOADER C/W CWS LOG GRAPPLE	S/N CAT0980KCW7K01351
2011 CATERPILLAR 950H FORKLIFT	S/N CAT0950HTJAD01002
2004 CATERPILLAR 924G FORKLIFT C/W MAST S/N M2S15W160LV02-HD	S/N CAT0924GCRTA00221
2012 TAYLOR TX330M FORKLIFT	S/N S-GE-37856
2013 HYUNDAI H160D-7E FORKLIFT	S/N HHKHFT08HD0000955
2012 HYUNDAI 110D-7E FORKLIFT	S/N HHKHFT05KC0000188
2010 DOOSAN D90S-5 FORKLIFT	S/N PA-00818
2013 CHEVROLET 2500HD 4X4 REGCAB PICKUP TRUCK	S/N 1GT02ZCGXDZ140209
2013 GMC 2500HD 4X4 REGCAP PICKUP TRUCK	S/N 1GT02ZCG2DZ163547
2011 CHEVROLET SILVERADO 2500HD 4X4 CREWCAB PICKUP TRUCK	S/N 1GC1KVC5BF263802
2011 CHEVROLET SILVERADO 2500HD 4X4 CREWCAB PICKUP TRUCK	SIN 1GC1KVC5BF256025

(collectively the "Rolling Equipment").

Warran Affidavit at para. 8 and Exhibit "B"

7. The Rolling Equipment SSA secures all obligations and indebtedness of Skeena to Dynamic pursuant to the Rolling Equipment Loan Agreement.

Warran Affidavit at para. 9 and Exhibit "B"

8. On or about July 29, 2021, Skeena executed a Pledge of Cash Collateral Agreement in favour of Dynamic as further continuing security for Skeena's obligations and liabilities pursuant to the Rolling Equipment Loan Agreement (the "Rolling Equipment Pledge of Cash Collateral Agreement").

Warran Affidavit at para. 11 and Exhibit "C"

9. Dynamic registered its security interests pursuant to the Rolling Equipment SSA and Rolling Equipment Pledge of Cash Collateral Agreement in the Personal Property Registry on July 29 and August 4, 2021 respectively.

Warran Affidavit at para. 13 and Exhibit "H"

10. Thereafter, on or about August 17, 2021, Skeena (as borrower) and Dynamic (as lender) entered into a second Loan pursuant to which Dynamic loaned Skeena the sum of \$497,518.00, (the "Cantor Line Loan"), which Skeena agreed to repay with interest pursuant to certain terms and conditions (the "Cantor Line Loan Agreement").

Warran Affidavit at para. 15 and Exhibit "D"

11. Concurrently, and as continuing security for Skeena's obligation and liabilities under the Cantor Line Loan Agreement, Skeena executed a Specific Security Agreement dated August 17, 2021 (the "Cantor Line SSA") pursuant to which Skeena pledged, mortgaged and granted to Dynamic a security interest in a 1999 Optimil Cantor Line bearing serial number 63286, complete with a double length infeed, log turner, four sided cantor, spline remover and other stipulated attachments or parts (the "Cantor Line").

Warran Affidavit at para. 19 and Exhibit "E"

12. The Cantor Line SSA secures all obligations and indebtedness of Skeena to Dynamic pursuant to the Cantor Line Loan Agreement.

Warran Affidavit at para. 20 and Exhibit "E"

13. On or about August 17, 2021, Skeena executed a Pledge of Cash Collateral Agreement in favour of Dynamic as further continuing security for Skeena's obligations and liabilities pursuant to the Cantor Line Loan Agreement (the "Cantor Line Pledge of Cash Collateral Agreement").

Warran Affidavit at para. 21 and Exhibit "F"

14. Dynamic registered its security interests pursuant to the Cantor Line SSA and Cantor Line Pledge of Cash Collateral Agreement in the Personal Property Registry on August 4 and August 18, 2021 respectively.

Warran Affidavit at para. 23 and Exhibit "H"

15. On August 17, 2021, Skeena and Dynamic entered into a Cross Default and Collateral Security Agreement pursuant to which all of the Rolling Equipment and Cantor Line (collectively the "Dynamic Collateral") were cross collateralized such that the Dynamic Collateral is secured in favour of Dynamic for all or any obligations, indebtedness and liabilities of Skeena owing to Dynamic (the "Cross Collateralization Agreement").

Warran Affidavit at para. 25 and Exhibit "G"

16. Dynamic registered its security interest pursuant to the Cross Collateralization Agreement in the Personal Property Registry on August 18, 2021.

Warran Affidavit at para. 28 and Exhibit "H"

17. The Cross Collateralization Agreement secures all of the obligations and indebtedness of Skeena to Dynamic.

Warran Affidavit at para. 27 and Exhibit "G"

18. Dynamic did advance the Rolling Equipment Loan and the Cantor Line Loan, and such advances respectively occurred on or about the date that each Loan Agreement described herein was executed. Skeena already had rights in and possession of the Dynamic Collateral as at the dates of the agreements detailed herein.

Warran Affidavit at para. 41

19. On or about July 29, 2021, Skeena Bioenergy Ltd. ("Bioenergy") granted to Dynamic a Guarantee unconditionally guaranteeing to Dynamic all of the indebtedness, liabilities and obligations of Skeena to Dynamic, payable on demand plus interest and costs on a solicitor and own client full indemnity basis in accordance with its terms (the "Bioenergy Guarantee").

Warran Affidavit at para. 31 and Exhibit "I"

20. On or about July 29, 2021, ROC Holdings Ltd. ("ROC") granted to Dynamic a Guarantee unconditionally guaranteeing to Dynamic all of the indebtedness, liabilities and obligations of Skeena to Dynamic, payable on demand plus interest and costs on a solicitor and own client full indemnity basis in accordance with its terms (the "ROC Guarantee").

Warran Affidavit at para. 33 and Exhibit "J"

21. On or about July 27, 2021, Xiao Peng Cui ("Cui") executed a Subordination of Debt agreement in favour of Dynamic in respect of any amounts or security that may be due to or in favour of Cui from or by Skeena (the "Skeena Subordination").

Warran Affidavit at para. 35 and Exhibit "K"

22. On or about July 27, 2021, Cui executed a Subordination of Debt agreement in favour of Dynamic in respect of any amounts or security that may be due to or in favour of Cui from or by Bioenergy (the "Bioenergy Subordination").

Warran Affidavit at para. 37 and Exhibit "L"

23. On or about July 27, 2021, Cui executed a Subordination of Debt agreement in favour of Dynamic in respect of any amounts or security that may be due to or in favour of Cui from or by ROC (the "ROC Subordination").

Warran Affidavit at para. 39 and Exhibit "M"

24. After the granting of the Receivership Order in this action, Dynamic's legal counsel and the Receiver's legal counsel exchanged correspondence regarding the release of the Dynamic Collateral from this receivership. As a result of that, the Receiver agreed to release at least the Cantor Line for Dynamic to deal with directly pursuant to its security, and Dynamic has been dealing with it separate and apart from these receivership proceedings.

Warran Affidavit at para. 34 and Exhibit "O"

## **PART 5      LEGAL BASIS**

25. For the reasons set out in Part 4 herein, Dynamic has priority to and over 1392752 B.C Ltd. (the "Applicant") in respect of the Dynamic Collateral.
26. Attachment of Dynamic's security interest occurred in the Rolling Equipment on or about July 29, 2021 and in the Cantor Line on or about August 18, 2021.

*Personal Property Security Act*, RSBC 1996, c 359 ("PPSA") at s. 12(1)

27. Perfection by registration of Dynamic's security interests occurred in the Rolling Equipment on or about July 29, 2021 and in the Cantor Line on or about August 18, 2021.

*PPSA* at s. 19 and 25

28. The Rolling Equipment clearly constitute "serial number goods" within the meaning of the *PPSA*.

*Personal Property Security Regulation*, BC Reg 227/2002 ("*Regulation*") at s. 1

29. The Cantor Line may well be considered a trailer, and therefore, a serial number good within the meaning of the *PPSA*.

*Regulation* at s. 1

30. Dynamic has the first in time and only (as at January 9, 2024) serial number registrations against each of the Rolling Equipment and against the Cantor Line.
31. The Applicant has not registered by serial number against any serial number goods, and is therefore considered unperfected vis-à-vis Dynamic in the Dynamic Collateral for the purposes of the residual priority rule pursuant to section 35(4) of the *PPSA*. Therefore, Dynamic has priority over the Applicant in the Dynamic Collateral pursuant to combination of sections 35(1) and (4) of the *PPSA*.

*PPSA* at s. 35(1) and 35(4); *Gold Key Pontiac Buick (1984) Ltd. v. 464750 B.C. Ltd. (Trustee of)*, 2000 BCCA 435 at para. 8; 1. *Alda Wholesale Ltd. (Trustee of)*, 2001 BCSC 921 at paras 46, 50-54, 62

32. Still further, Dynamic generally has a first in time perfected security interest in each item of the Dynamic Collateral by registration. Dynamic's registrations are respectively dated July 29, August 4 and August 18, 2021. The Applicant's registration is dated January 10, 2023.
33. Therefore, Dynamic has priority over the Applicant to the Dynamic Collateral pursuant to the residual priority rule in section 35(1) of the *PPSA* in any event.

*PPSA* at s. 35(1)

34. There are no general security or all present and after acquired property registrations at the Personal Property Registry that pre-date any of Dynamic's registrations in the PPR. The only registrations that pre-date Dynamic's registrations in the PPR are Caterpillar's registration that relate to separate and distinct collateral that do not form part of the Dynamic Collateral.
35. Still Further, to the extent that any of the Applicant's claim relates to shareholder loans from Cui to any of Skeena, Bioenergy or ROC that were assigned to it, then those were subordinated to and in favour of Dynamic's claims and position. The Applicant stands in the shoes of Cui and has no better position to those aspects of its claim than Cui did prior to the assignment.

*Gifford v. Lax Kw' Alaams Indian Band*, 2000 BCSC 273 at paras. 20-24

## **PART 6 MATERIAL TO BE RELIED UPON**

36. The 1<sup>st</sup> Affidavit of John Warren sworn January 11, 2024.
37. The First Report of the Receiver dated October 25, 2023.
38. The other pleadings and materials filed in these proceedings and such further and other materials as counsel may advise and this Honourable Court may permit.

The Application Respondent estimates that the total Application will take 2 days.

The matter is not within the jurisdiction of a Master.

The Application Respondent's Address for Service is:

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Attention: Ryan Quinlan

**Dated: January 17, 2024**



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**Signature of Ryan Quinlan  
Lawyer for the Application Respondent  
Dynamic Capital Equipment Finance Inc.**

This Application Response is prepared by Ryan Quinlan of the law firm of Duncan Craig LLP whose place of business is 2800 Rice Howard Place, 10060 Jasper Ave, Edmonton, AB T5J 3V9, Telephone: 780.441.4336, Email: [rquinlan@dcllp.com](mailto:rquinlan@dcllp.com).