



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

APPLICATION RESPONSE

Application Response of: Haisla Nation

THIS IS A RESPONSE TO the Notice of Application of Alvarez & Marsal Canada Inc., in its capacity as court-appointed receiver and manager (in such capacity, the “Receiver”) filed February 29, 2024.

Haisla Nation estimates that the application will take one day.

PART 1: ORDERS CONSENTED TO

Nil.

PART 2: ORDERS OPPOSED

Haisla Nation opposes the order sought in paragraph 1 of Part 1 of the Notice of Application.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

Haisla Nation takes no position on the order sought in paragraph 2 of Part 1 of the Notice of Application.

PART 4: FACTUAL BASIS

Overview

1. The Receiver's Notice of Application seeks a reverse vesting order (the "**Reverse Vesting Order**").
2. Haisla Nation opposes the Reverse Vesting Order on the basis that the Reverse Vesting Order would have an adverse effect on the Haisla Nation by:
 - a) eliminating the opportunity for the Haisla Nation's interest in the timber in its Territory to be considered as part of a provincial disposition approval or change in control consideration and the consultation triggered by such process; and
 - b) eliminating the debt owed to Haisla NorthPac Forestry Joint Venture.

Haisla Nation

3. Haisla Nation is an Indigenous Nation with a Territory which encompasses the head of Douglas Channel and Kitimat Arm and which includes approximately 95% of TFL 41¹ as well as timber land base subject to Forest Licence A16885 (the "**Licences**"), two of the proposed "Retained Assets" under the Reverse Vesting Order.
4. Haisla Nation asserts Aboriginal title to the timber resources in its Territory, including the timber subject to the Licences.
5. By letter dated November 17, 2023, Haisla Nation advised the Receiver of its Aboriginal title interest in the timber subject to the Licences and the expectation that the disposition of the Licences would trigger deep consultation between the Province and Haisla Nation about the effects of the disposition on Haisla Nation's Aboriginal title and rights.²

¹ Affidavit # 1 of Maria Newton Mason at para 3, Ex. B.

² Affidavit # 1 of Maria Newton Mason at para 2, Ex. A.

Haisla NorthPac Forestry Joint Venture

6. Haisla Nation is the majority shareholder of Haisla NorthPac Forestry Joint Venture. Haisla NorthPac Joint Venture is an unsecured creditor of the Skeena Entities.

7. By letter dated November 17, 2023, Haisla Nation requested the Receiver to add Haisla NorthPac Forestry Joint Venture to the Service List.³ The Receiver has not added Haisla NorthPac Forestry Joint Venture to the Service List.

The Reverse Vesting Order

8. The Receiver describes the benefits of the Reverse Vesting Order, including that the transaction maintains the Licences without any transfer or change in control, allowing for the avoidance of “potential regulatory delay”.⁴

9. The Receiver further explains that the “[T]ransaction ... does not require any regulatory consultation under the *Forest Act* ... as there would be no change in control.”⁵

10. Under the *Forest Act*, a disposition of an agreement, such as the Licences, requires the approval of the Minister of Forests.⁶ Similarly, under the *Forest Act*, a change of control or amalgamation triggers a requirement to consider the effect of that change on the public interest.⁷

11. Under the Reverse Vesting Order, these provisions of the *Forest Act* would not be engaged. This is the relief from “potential regulatory delay” and “regulatory consultation” the Receiver has identified as a key benefit of the Reverse Vesting Order.

PART 5: LEGAL BASIS

12. Haisla Nation is an Indigenous Nation and asserts Aboriginal title to the timber in its Territory. Haisla Nation is a stakeholder not merely because of being an unsecured creditor, but Haisla Nation is also an Indigenous Nation with a direct interest in what happens with the timber

³ Affidavit # 1 of Maria Newton Mason at para 2, Ex. A.

⁴ Receiver’s Notice of Application, Part 3, para 9 (b).

⁵ Receiver’s Notice of Application, Part 2, para 12.

⁶ *Forest Act*, RSBC 1996 c 157 s 54.

⁷ *Forest Act*, RSBC 1996 c 157 s 54.62 ff.

in its Territory.

13. The Supreme Court of Canada has recognized that the broader public interest may be engaged by a proposed reorganization:

In addition, courts must recognize that on occasion the broader public interest will be engaged by aspects of the reorganization and may be a factor against which the decision of whether to allow a particular action will be weighed (see, e.g., *Canadian Red Cross Society/Société Canadienne de la Croix Rouge, Re* (2000), 19 C.B.R. (4th) 158 (Ont. S.C.J.), at para. 2, *per* Blair J. (as he then was); Sarra, *Creditor Rights*, at pp. 195-214).⁸

14. This Court has also recognized that the interests of other persons, described as “social stakeholders”, may be considered in insolvency situations.⁹ In *Bloom Lake*, the court recognized the standing of several First Nations on the basis of their concerns related to their Aboriginal and treaty rights guaranteed by the Constitution, interests the court likened to those of “social stakeholders”.¹⁰

15. In 2019, the Province announced a Forest Policy Modernization process. One pillar of that modernization is to increase the role of Indigenous people in the forest sector.¹¹ Haisla Nation has been pushing for an increased role in the forest sector in its Territory for over 100 years.

16. Haisla Nation expressly advised the Receiver of its interest in the timber in its Territory and of its expectation that the Province would consult with the Haisla Nation at the deepest level in relation to a disposition of the Licences.¹²

17. The Reverse Vesting Order is an exceptional remedy.¹³

18. One of the factors to be considered in deciding whether to grant the Reverse Vesting Order is whether any stakeholder would be worse off under the Reverse Vesting Order structure than it

⁸ *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 (CanLII), [2010] 3 SCR 379 at para 60.

⁹ *Vancouver Coastal Health Authority v Seymour Health Centre Inc.*, 2023 BCSC 1158 at paras 68-72.

¹⁰ *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 1920 at paras 80-89.

¹¹ Affidavit # 1 of Maria Newton Mason at para 5, Ex. D.

¹² Affidavit # 1 of Maria Newton Mason at para 2, Ex. A.

¹³ Receiver’s Notice of Application, Part 3, para 6.

would be under any viable alternative.¹⁴

19. The Receiver's Notice of Application states it is "not aware of any stakeholder that is worse off under a reverse vesting order structure in this case".¹⁵

20. Through its legislation governing timber rights, the Province has deliberately retained jurisdiction to determine whether a disposition of a licence or a change in control of a licence holder is in the public interest.

21. Haisla Nation will be worse off under the Reverse Vesting Order structure. But for the Reverse Vesting Order, the *Forest Act* provisions requiring the Minister's approval of a disposition or consideration of the public interest in a change of control will be engaged, which will, in turn, trigger an obligation to consult with the Haisla Nation.¹⁶

22. The "regulatory consultation" and part of the "potential regulatory delay" referred to in the Receiver's Notice of Application in support of the Reverse Vesting Order are the Crown's meaningful engagement with Haisla Nation as required by the honour of the Crown, the Crown's Constitutional obligations and the Crown's adherence to the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*.

23. The Reverse Vesting Order would circumvent the anticipated consultation between Haisla Nation and the Province with respect to the disposition of the Licences.

24. Haisla Nation will be worse off under the Reverse Vesting Order structure than it would be under a structure where the Province must consult with Haisla Nation in respect of a disposition of or change in control in respect of the Licences.

PART 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Maria Newton Mason made March 11, 2024.

¹⁴ Receiver's Notice of Application, Part 3, para 8; *Harte Gold Corp. (Re)*, 2022 ONSC 653 at para 38.

¹⁵ Receiver's Notice of Application, Part 3, para 10.

¹⁶ *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 35, 64-67; *Gitksan v British Columbia (Minister of Forests)*, 2002 BCSC 1701 at para 82.

2. The pleadings and proceedings filed herein.
3. Such further and other material as counsel may advise.

Haisla Nation has not filed in this proceeding a document that contains an address for service.

Haisla Nation's address for service in this proceeding is:

First Peoples Law LLP
6th Floor, 73 Waters Street
Vancouver, BC V6B 1A1

Attention: Jennifer Griffith

Email: jgriffith@firstpeopleslaw.com

Dated: March 11, 2024



Counsel for Haisla Nation
Jennifer Griffith
First Peoples Law LLP

THIS APPLICATION RESPONSE is prepared and delivered by Jennifer Griffith of the firm First Peoples Law LLP, whose place of business and address for service is 6th Floor, 73 Water Street, Vancouver, BC, V6B 1A1. Telephone: 604-688-4272. Email: jgriffith@firstpeopleslaw.com.