



No. S236214
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: His Majesty the King in right of the Province of British Columbia (the "Province")

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

None.

Part 2: ORDERS OPPOSED

The Province opposes the granting of ALL of the relief sought in the Part 1 of the notice of application.

In the event the Applicant is granted an order declaring its security to be valid and enforceable, the Province seeks that the order be amended to include declarations that the Province's *Forest Act* lien has priority over the Applicant's security:

- with respect to the full value of the timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by Skeena Sawmills Ltd.; and
- in the amount of the *Forest Act* debt that existed before the Applicant's security was registered, less payments made on that amount, plus applicable interest, with respect to other chattels or an interest in them owned by Skeena Sawmills Ltd.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

None.

Part 4: FACTUAL BASIS

1. As of December 28, 2023, Skeena Sawmills Ltd. (**Skeena Sawmills**) owed the Province \$1,186,433.92 for stumpage fees, annual rent, waste billings, and prescribed interest, payable pursuant to the *Forest Act*, RSBC 1996, c. 157, or an agreement entered into under the *Forest Act* (**Forest Act debt**).
2. Skeena Sawmills is responsible for paying *Forest Act* debts under forestry licences held by Skeena Sawmills, and forestry licences held by Amabilis Holdings Ltd. (**Amabilis**). The Province is not aware of the terms of the agreement between Skeena Sawmills and Amabilis.
3. In addition to paying Amabilis's *Forest Act* debt, Skeena Sawmills put up all security deposits on Amabilis's behalf required by the Ministry of Forests.
4. As of December 24, 2022, Skeena Sawmills owed a total of \$885,083.58 in *Forest Act* debt, with interest accruing at the prescribed rate.
5. On January 10, 2023, the Applicant registered a PPSA security agreement against Skeena Sawmills in the Personal Property Registry under base registration number 294187P (Affidavit #1 of C. Conto, Ex. "E", p. 58-59).
6. On March 23, 2022, Skeena Sawmills entered into a payment plan agreement with the Province. The payment plan included the amounts owing by Amabilis.
7. On January 20, 2023, the Province registered a Crown charge pursuant to the *Forest Act* in the Personal Property Registry against Skeena Sawmills Ltd., with base registration number 313007P: Affidavit #1 of C. Conto, Ex. "E", p. 060.

Part 5: LEGAL BASIS

8. Money that must be paid to the Province under the *Forest Act* or an agreement under the *Forest Act* (including forest tenures such as licences) constitute a statutory lien on timber, forest products, and chattels owned by the debtor (s. 130(1) & (1.1)).
9. There are two parts to the *Forest Act* lien, each subject to its own priority rules (s. 130(1)(d) & (2)):
 - a. That part of the lien on timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue (**Wood**

Products) owned by Skeena Sawmills has priority over all other claims; and

- b. That part of the lien on other chattels or an interest in them (**Other Chattels**) owned by Skeena Sawmills has priority as of the date the money was due and payable to the Province.
10. A *Forest Act* lien is not required to be registered (s. 130(3)).
11. In addition to the amounts the Province directly bills to a person under the *Forest Act*, a person who acquires or deals in timber on which stumpage has not been paid is required to pay all the money payable to the Province in respect of the timber (s. 131).
12. A *Forest Act* lien under s. 130 also arises for money payable under s. 131 (*HMTQ v. Foster Forest Products Ltd.*, 2008 BCSC 1514 (**Foster**), para. 39).
13. In the circumstances, it would be reasonable to infer that Skeena Sawmills acquired or dealt in the timber harvested under Amabilis's licences.
14. The total monetary value of the *Forest Act* debt is secured by the *Forest Act* lien over all of Skeena Sawmills' timber and chattels (*Foster*, para. 42(2)).
15. The Province's claim takes priority over the Applicant's (and all others) with respect to Wood Products.
16. With respect to Other Chattels, the Province's priority is determined by the issue date of each invoice, as the money owed to the Province becomes due and payable on receipt and the invoices are sent on their respective issue dates.
17. Accordingly, the Province's *Forest Act* lien with respect to Other Chattels has priority over the Applicant's for the amount owing before January 10, 2022, less payments on that amount, plus applicable interest.

Part 6: MATERIAL TO BE RELIED ON


1. Affidavit #1 of A. Philion, made January 19, 2024;
2. Affidavit #1 of C. Conto, made January 3, 2024;
3. The pleadings and materials filed in this proceeding; and

4. Such further materials as counsel may advise.

The Province estimates that the application will take 2 days.

[x] The Province has not filed in this proceeding a document that contains an address for service. The Province's ADDRESS FOR SERVICE is: P.O. Box 9280, Stn Prov Govt, 1001 Douglas Street, Victoria, British Columbia, V8W 9J7; Facsimile: (250) 387-0700; Email: AGLSBRevTaxInsolvency@gov.bc.ca

Date: January 19, 2024



Andrea K. Glen, counsel for His Majesty
the King in right of the Province of
British Columbia