



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: The City of Terrace (the “City”)

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

The application respondent, the City, consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1. None

Part 2: ORDERS OPPOSED

The application respondent, the City, opposes the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1. Paragraph 5 – subject to that paragraph of the order confirming that the “Security” (as this term is defined in the Notice of Application) ranks behind property taxes and municipal fees for services to land, including the City’s statutory charges for unpaid property taxes and utility fees that apply to those four parcels comprising the “ROC Terrace Lands” as defined at paragraph 4 of Part 3 of this Application Response.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent, the City, takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1. Paragraphs 1 – 4, 6 and 7.

Part 4: FACTUAL BASIS

1. The City is a municipality under the *Community Charter*, S.B.C. 2003, c. 26 that has its city hall at 3215 Eby Street, Terrace, BC V8G 2X8.
2. The City is a secured creditor of the petition respondent ROC Holdings Ltd. (“**ROC**”). Furthermore, the City’s claim in debt against ROC is secured against four parcels of land, which security ranks above the claims of the Petitioner and all other creditors other than the Crown and the receiver claiming under the Order of this Honourable Court made on September 20, 2023 in this proceeding.
3. The City benefits from statutory charges for unpaid property taxes and unpaid utility fees against four parcels of land owned by ROC.
4. ROC is the assessed owner of the following four parcels that are within the taxation jurisdiction of the City:
 - a) PID: 011-691-042; Legal Description: Lot A District Lot 616 Range 5 Coast District Plan 3986, Except Plan PRP47978 (“**Lot A**”);
 - b) PID: 011-691-051; Legal Description: Lot B District Lot 616 Range 5 Coast District Plan 3986 (“**Lot B**”);
 - c) PID: 011-768-398; Legal Description: Lot 3 District Lot 616 Range 5 Coast District Plan 3700 (“**Lot 3**”); and
 - d) PID: 030-631-700; Legal Description: Lot A District Lots 616 and 1745 Range 5 Coast District Plan EPP78423 (“**Lot A West**”);(collectively, the “**ROC Terrace Lands**”)
5. The ROC Terrace Lands also receive water and sewer services from the City for which ROC is invoiced fees.
6. In addition to the ROC Terrace Lands, the receiver lists a fifth parcel located at 863 Kalum Lake Road among ROC’s assets. This parcel is not within the City’s taxation jurisdiction.
7. As at January 16, 2024, the following property taxes for the following parcels are owed to the City for the ROC Terrace Lands:
 - a) Lot A and Lot B - \$1,397,741.31;
 - b) Lot 3 - \$13,134.17; and
 - c) Lot A West - \$415,533.56.

8. In 2023, property taxes on the ROC Terrace Lands were delinquent and the ROC Terrace Lands became liable for tax sale under section 645 of the *Local Government Act*, R.S.B.C. 2015, c. 1. The ROC Terrace Lands were ultimately withheld from sale at the annual tax sale on September 25, 2023 because of the stay issued in this proceeding.
9. The unpaid property taxes for the ROC Terrace Lands continue to accrue interest. ROC, being the assessed owner of the ROC Terrace Lands in 2024, is also liable to pay to the City all property taxes imposed in 2024.
10. ROC also failed to pay utility invoices issued by the City in 2023. These unpaid amounts have been added to the taxes for the ROC Terrace Lands and are included in the amounts set out in paragraph 7 of Part 3 of this Application Response.
11. The City seeks payment of all property taxes and utility fees owing in respect to the ROC Terrace Lands as of the date of the sale of the ROC Terrace Lands contemplated by this receivership proceeding upon the completion of the sale transaction.

Part 5: LEGAL BASIS

1. Pursuant to Part 7 of the *Community Charter*, the City is statutorily authorized to collect those property taxes imposed by it and by other government authorities.
2. The amount of property taxes that an assessed owner is liable to pay the City is set out in the annual tax notice issued by the City for the assessed property (*Community Charter*, s. 237).
3. The assessed owner's liability in debt includes all taxes imposed in the current year for the property as well as all unpaid taxes in previous years (*Community Charter*, s. 251(1)). A certified copy of a tax notice is evidence of that debt (*Community Charter*, s. 251(2)).
4. Annual property taxes are deemed to be imposed on January 1 of the year in which the bylaw imposing such property taxes is adopted (*Community Charter*, s. 197(7)). A municipal council must adopt every year, and before May 15, a bylaw imposing property taxes (*Community Charter*, s. 197(1)). Although the Council of the City of Terrace has not yet imposed property taxes for 2024, ROC, as the assessed owner, has already been deemed liable for such anticipated taxes as at January 1, 2024.
5. Property taxes that are not paid by July 2 in the year in which they are imposed are subject to a penalty (*Community Charter*, s. 234). If not paid by the end of the year, the taxes are then subject to interest charges (*Community Charter*, ss. 244-245). Penalties and interest form part of the property taxes owing.

6. The City has both a statutory claim in debt against ROC (*Community Charter*, s. 251(1)) and a statutory charge against the ROC Terrace Lands in relation to property taxes.
7. Taxes accruing on land and its improvements are a statutory charge that: (a) is a special charge on the land and improvements, (b) has priority over any claim, lien, privilege or encumbrance of any person except the Crown, and (c) does not require registration to preserve it (*Community Charter*, s. 250(1)).
8. The City's statutory charge against the ROC Terrace Lands for unpaid property taxes ranks in priority to all other claims except those of the Crown (*Toronto Dominion Bank v Ursaco Ltd.* (2001), 196 D.L.R. (4th) 448 (Ont. CA)).
9. The City also has a statutory charge against the ROC Terrace Lands for unpaid fees for utility services to those lands (*Community Charter*, s. 259).
10. Once unpaid property taxes imposed against a parcel become delinquent, a municipality must recover unpaid property taxes, including any interest and penalties accruing, by selling that parcel and the improvements thereon at the annual tax sale (*Community Charter*, ss. 246, 254; *Local Government Act*, s. 645). Any stay issued in the within proceeding delays or displaces this statutory collection mechanism.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit No. 1 of Lori Greenlaw made January 16, 2024.

The application respondent estimates that the application will take two (2) days.

The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Date: January 17, 2024



Signature of lawyer for application respondent City
of Terrace

MICHAEL MOLL, Civic Legal LLP