



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**

**FILED BY** United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 1-1937 (the “**Application Respondent**” or the “**Union**”).

**THIS IS A RESPONSE TO** the Notice of Application of Alvarez & Marsal Canada Inc. as receiver (the “**Applicant**” or the “**Receiver**”) seeking orders including a reverse vesting order and filed February 29, 2024.

**Part 1: ORDERS CONSENTED TO**

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms: Nil.

**Part 2: ORDERS OPPOSED**

The Application Respondent opposes the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1. Paragraph 1 (f), subject to the reverse vesting order sought by the Applicant being amended to:

- a) exclude the four Union members who elected to have their termination rescinded/nullified, and retained their collective agreement rights to seniority and recall pursuant to a Memorandum of Agreement dated September 25, 2023 between the Union and the Receiver, and
- b) confirm that the current collective agreement between Skeena Sawmills Ltd. and the Union (with a term of January 1, 2020 to June 30, 2024) binds Skeena Sawmills Ltd. and will continue to bind Skeena Sawmills Ltd. after the closing date of the proposed sale.

**Part 3:        ORDERS ON WHICH NO POSITION IS TAKEN**

The Application Respondent takes no position on the granting of the orders set out in paragraph 1 (a) to (e) and (g) to (j), and paragraph 2 of Part 1 of the Notice of Application.

**Part 4:        FACTUAL BASIS**

1. The Union negotiated a collective agreement with Skeena Sawmills Ltd. with respect to bargaining unit employees that has a term of January 1, 2020 to June 30, 2024 (the "Collective Agreement").

Affidavit #1 of J. Bromley at para. 4, Ex. A

2. That Collective Agreement remains in effect.

Affidavit #1 of J. Bromley at para. 4

3. On or around September 22, 2023, the Receiver notified all bargaining unit employees, excluding six employees who the Receiver intended to engage as contractors, that their employment had been terminated.

Affidavit #1 of J. Bromley at para. 5

4. Pursuant to a Memorandum of Agreement executed September 25, 2023 between the Union and the Receiver:

- a) The six bargaining unit employees retained by the Receiver as contractors would not be governed by the terms of the Collective Agreement.
- b) The Receiver would provide written notice on or before September 29, 2023 to remaining bargaining unit employees of the option to elect to have their termination of employment rescinded/nullified.
- c) Each bargaining unit employee who elected to have their termination rescinded/nullified would have their rights to seniority and recall under Article 15.3 of the Collective Agreement reinstated as if their employment had not been terminated.

Affidavit #1 of J. Bromley at paras. 6 to 9, Exs. A and B

5. The Receiver delivered the notice identified above at paragraph 4(a), and four bargaining unit employees elected to have their termination rescinded/nullified (the "Four Bargaining Unit Employees").

Affidavit #1 of J. Bromley at para. 10

6. Pursuant to the MOA, the Four Bargaining Unit Employees retain their rights to seniority and recall under Article 15.3 of the Collective Agreement.

#### **Part 5: LEGAL BASIS**

1. Two of the factors that should guide a court in its analysis of whether to approve a sale of assets in a receivership are the interests of all parties, and whether there has been unfairness in the working out of the process.

*Royal Bank v. Soundair Corp.*, [1991] O.J. No. 1137 at para. 16 (C.A.); *Quest University Canada (Re)*, 2020 BCSC 1883 at para. 176, leave to appeal refused 2020 BCCA 364.

2. In addition, in analyzing whether a transaction should be approved, a court should consider the transaction as a whole and decide whether or not the sale is appropriate, fair and reasonable.



*Veris Gold Corp. (Re)*, 2015 BCSC 1204 at para. 23.

3. The Receiver's requested approval at Part 1, paragraph 1(f) of its Notice of Application for an order "terminating the employment of all Employees (both Union and non-Union) as of the Closing Date [...]" is unfair to the Four Bargaining Unit Members who elected to have their termination rescinded/nullified pursuant to the MOA, to which the Receiver was a party.
4. Having agreed to the MOA, the Receiver ought to have valid and reasonable justification to now seek to terminate those Four Bargaining Unit Members, thereby terminating their contractual rights to seniority and recall under the Collective Agreement and the MOA.
5. The Receiver has provided neither fair nor reasonable justification for terminating the Four Bargaining Unit Members as part of the proposed sale, nor identified any prejudice to any party were the Four Bargaining Unit Members able to retain the existing employment relationship.
6. In addition, the terms of the proposed reverse vesting order do not make it clear that the Collective Agreement continues to bind Skeena Sawmills Ltd. This lack of clarity risks harming the interests of not only the individuals who elected to retain their seniority and right of recall under the terms of the Collective Agreement, but also the Union and any employees who may be hired into the bargaining unit or reinstated.
7. If the reverse vesting order were to be interpreted as causing the Collective Agreement to cease to apply to Skeena Sawmills Ltd., that would effectively end the Collective Agreement and would be contrary to the terms of the Collective Agreement and the exclusive bargaining rights retained by the Union.
8. This would also be contrary to the *Labour Relations Code*, [R.S.B.C. 1996], c. 244 (the "Code"), which applies and continues to govern the collective bargaining relationship between Skeena Sawmills Ltd. and the Union. The Code provides that the Labour

Relations Board, under the Code, has the exclusive jurisdiction to decide "what persons are parties to a collective agreement" (s. 139).

9. It would violate the Board's exclusive jurisdiction, and in any event is entirely unnecessary and improper, if the reverse vesting order were to end the application of the Collective Agreement to Skeena Sawmills Ltd. going forward.
10. Further, the Code at section 35 provides as follows:
  - (1) If a business or a part of it is sold, leased, transferred or otherwise disposed of, the purchaser, lessee or transferee is bound by all proceedings under this Code before the date of the disposition and the proceedings must continue as if no change had occurred.
  - (2) If a collective agreement is in force, it continues to bind the purchaser, lessee or transferee to the same extent as if it had been signed by the purchaser, lessee or transferee, as the case may be.
11. The successorship obligations under the Code are statutory obligations separate from those arising in a bankruptcy proceeding and are not affected by the termination of the employment relationship by reason of bankruptcy or insolvency. The Code's protections of employees from the loss of their rights under a collective agreement on the sale of an employer's business are not rendered inoperative by reason of bankruptcy or insolvency.

*Saan Stores Ltd. v. Nova Scotia (Labour Relations Board)*, 1999 NSCA 26 at paras. 54 and 55, and 64 and 65.
12. Contrasted to the real risk of harm to the Union and its members if the requested order were granted in its present form, there is no prejudice that would result to any party were the terms of the proposed reverse vesting order amended to confirm that the Collective Agreement will continue to bind Skeena Sawmills Ltd. after the sale closes.
13. As a result, in the interests of fairness to the Union and its members, Part 1, paragraph 1 (f) of the Receiver's Notice of Application ought to be amended to:
  - a. exclude the Four Bargaining Unit Employees from terminated employees; and

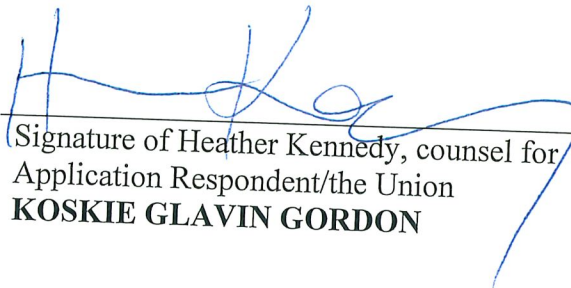
- b. confirm that the Collective Agreement binds Skeena Sawmills Ltd. and will continue to do so after the closing date of the sale proposed by the Receiver.

**Part 6: MATERIAL RELIED ON**

1. Affidavit No. 1 of Jeffrey Bromley made March 6, 2024.

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

Dated: March 7, 2024

  
Signature of Heather Kennedy, counsel for  
Application Respondent/the Union  
**KOSKIE GLAVIN GORDON**

This application response is prepared by Heather Kennedy of the firm Koskie Glavin Gordon, whose place of business is 1650-409 Granville Street, Vancouver, BC, V6C 1T2 (Tel: 604-734-8001, Email: [hkennedy@koskieglavin.com](mailto:hkennedy@koskieglavin.com)).