



FORCE FILED

No. S236214
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

NOTICE OF APPLICATION

Name of applicant: Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as court-appointed receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and property, including real property (collectively, the “**Property**”), of Skeena Sawmills Ltd. (“**Sawmills**”), Skeena Bioenergy Ltd. (“**Bioenergy**”) and ROC Holdings Ltd. (“**ROC**” and together with Sawmills and Bioenergy, the “**Debtors**” or the “**Skeena Entities**”)

To: On notice to the Service List, a copy of which is attached hereto as Schedule “A”.

TAKE NOTICE that an application will be made by the applicant to Honourable Madam Justice Blake at the courthouse at 800 Smithe Street, Vancouver on October 30 at 9:45 a.m. for the orders set out in **Part 1** below.

10:00 am

Part 1 ORDERS SOUGHT

1. An Order, substantially in the form attached hereto as Schedule “B” authorizing the Receiver to make all monthly instalment payments required to be made under the premium financing agreement entered into by Bioenergy with Imperial PFS Payments Canada, ULC

(“**Imperial**”) dated April 4, 2022 and renewed by renewal agreement dated April 20, 2023 (together, the “**Premium Financing Agreement**”).

Part 2 FACTUAL BASIS

Background

1. ROC and Bioenergy are wholly-owned subsidiaries of Cui Family Holdings Ltd., which is owned by Shenwei (Sandra) Wu and certain family trusts that are ultimately controlled by Xiao Peng (Teddy) Cui (together, the “**Shareholders**”). Sawmills is a wholly owned subsidiary of ROC. The Petitioner and the Skeena Entities are related parties.

Receiver’s First Report to Court dated October 25, 2023 (the “**First Report**”) at para. 3.1.

2. The Shareholders acquired the sawmill (via Sawmills) and the related real estate (via ROC) from West Fraser Timber Co. Ltd. in or around 2011. In November 2018, the Shareholders, via ROC, acquired the land where Bioenergy’s pellet plant was subsequently constructed. The pellet plant became operational in 2019.

First Report at para. 3.3.

3. The Property is comprised of, among other things:
 - (a) five parcels of real property located in Terrace, BC (the “**Skeena Lands**”), owned by ROC;
 - (b) the sawmill operation, which includes an industrial sawmill, a certified weight log scale, a natural gas kiln, two bay garage mobile shop, a millwright shop, and various tools and equipment (the “**Sawmill Operation**”);
 - (c) the bioenergy operation, which includes the pellet plant and various tools and serial numbered equipment (the “**Bioenergy Operation**”); and
 - (d) various forest tenures and licences, including Tree Farm Licence 41, two forest licences (the “**Licences**”) and various cutting permits.

First Report at para. 3.5

4. Due to weak international lumber markets, the Sawmill Operation ceased operating on or around the beginning of July 2023 and, as the Bioenergy Operation relied on fiber from the

Sawmill Operation which was no longer available, the Bioenergy Operation also ceased operations in July 2023.

First Report at paras. 3.7 and 3.8.

5. On September 20, 2023, upon the application of the Petitioner, this court granted an order (the “**Receivership Order**”) appointing A&M as Receiver of the Property.

First Report at para. 1.1

6. At the time the Receivership Order was granted, Sawmills employed 102 people, of which 76 were bound by a collective bargaining agreement (the “**CBA**”) between the United Steelworkers Local 1-1937 (the “**Union**”) and Sawmills, and Bioenergy employed 27 people.

First Report at paras. 3.7 and 3.8.

7. As of September 27, 2023, the Receiver terminated the employment of all Sawmills and Bioenergy employees and subsequently hired 15 former employees and managerial personnel as contractors to assist the Receiver with various tasks, namely securing and winterizing the Sawmill Operation.

First Report at paras. 4.1(m) and (o).

Premium Financing Agreement

8. Under the Premium Financing Agreement, Bioenergy borrowed \$445,833.41 which it was required to pay back in eleven equal instalments of \$40,530.31 starting on May 5, 2023 and then on the first of each of the next ten months. As of the date of this First Report, the payment due to Imperial on October 1, 2023 has not been made.

First Report at para. 7.2(c).

9. Pursuant to the Premium Financing Agreement, Imperial has the right to terminate the insurance policy and obtain a refund of any unearned premiums in the event of default.

First Report at para. 7.3.

Part 3 LEGAL BASIS

Premium Financing Agreement

1. As detailed above, the Receiver is of the view that the monthly instalment payments should continue to be made under the Premium Financing Agreement and seeks authorization from this court to do so.
2. Pursuant to the Premium Financing Agreement, Bioenergy assigned by way of security to Imperial its rights to unearned premiums, all dividends and loss payments under the insurance policy. Thus, as a result of the missed payment on October 1, 2023, and subject to the stay of proceedings imposed by the Receivership Order, Imperial has the right to terminate the insurance policy and obtain a refund of any unearned premiums. Imperial could bring an application to lift the stay of proceedings to effect its rights, and if it were to bring such an application there are strong grounds for this court to grant such relief.
3. When evaluating similar insurance premium financing agreements, Canadian courts have held that the nature of the security granted thereunder requires special attention and protection as the value of an insurance financier's right to unearned premiums decreases in value daily as unearned premiums to which it is entitled on default decreases in the hands of the insurer.

Arclin Canada Ltd. (Re), 2009 CanLII 45308 (ON SC) at paras. 4 and 5, citing *Stelco Inc.*, 2005 CarswellOnt. 1537
4. The Receiver notes that the alternative is that Imperial would, in effect, be paying to insure assets comprising the collateral of other secured creditors.
5. Accordingly, the Receiver seeks authorization from this court to continue to make all payments due under the Premium Financing Agreement, including that which became due and owing on October 1, 2023.

Part 4 MATERIAL TO BE RELIED ON

1. The Receivership Order of Madam Justice Blake made in these proceedings on September 20, 2023;
2. The Receiver's First Report to Court dated October 25, 2023; and
3. The other pleadings and materials filed in these proceedings and such further and other material as counsel may advise and this Honourable Court may permit.

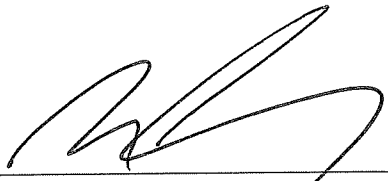
The applicant estimates that the application will take 4 hours.

- ☐ This matter is within the jurisdiction of a master
- ☒ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 25-Oct-2023

For: 
Signature of Kibben Jackson
Lawyer for Applicant, Alvarez & Marsal
Canada Inc. in its capacity as court-
appointed Receiver

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of
this Notice of Application

☐ with the following variations and additional terms:

.....
.....
.....

Date:

.....
Signature of ☐ Judge ☐ Master

The Solicitors for the Applicant are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/285937.00017)

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

SCHEDULE "A"

SERVICE LIST

No. S236214
Vancouver Registry

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BETWEEN:

1392752 B.C. LTD.

PETITIONER

AND:

SKEENA SAWMILLS LTD.
SKEENA BIOENERGY LTD. and
ROC HOLDINGS LTD.

RESPONDENTS

SERVICE LIST

(Last Updated: October 20, 2023)

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<i>Counsel for the Receiver, Alvarez & Marsal Canada Inc.</i>	<i>The Receiver</i>

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<p>McLean & Armstrong LLP</p> <p>Attention: Vince Aldridge</p> <p>Email: valdridge@mcleanarmstrong.com</p> <p><i>Counsel for Daudet Creek Contracting Ltd.</i></p>	<p>Duncan Craig LLP</p> <p>Attention: Ryan Quinlan</p> <p>Email: rquinlan@dcllp.com</p> <p><i>Counsel for Dynamic Capital Equipment Finance Inc.</i></p>

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SCHEDULE "B"

DRAFT ORDER

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

ORDER MADE AFTER APPLICATION

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))	
BEFORE))	October 30, 2023
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The Honourable
Madam Justice Blake

ON THE APPLICATION OF Alvarez & Marsal Canada Inc. in its capacity as court-appointed receiver (in such capacity, the “**Receiver**”) of Skeena Sawmills Ltd., Skeena Bioenergy Ltd. and ROC Holdings Ltd. (together, the “**Debtors**”), coming on for hearing at Vancouver, British Columbia on October 30, 2023, and on hearing Kibben Jackson and Mishaal Gill, those other counsel listed in Schedule “A” hereto, and no one else appearing, although duly served.

THIS COURT ORDERS that:

1. The Receiver is hereby authorized to make all monthly instalment payments under the premium financing agreement dated April 4, 2022 and renewed by renewal agreement dated April 20, 2023, entered into by Skeena Bioenergy Ltd. with Imperial PFS Payments Canada, ULC, including that payment that became due and owing on October 1, 2023.

2. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Kibben Jackson
Lawyer for the Receiver, Alvarez & Marsal
Canada Inc.

BY THE COURT

REGISTRAR

No. S236214
Vancouver Registry

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COLUMBIA**

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ORDER MADE AFTER APPLICATION

FASKEN MARTINEAU DuMOULIN LLP

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Matter No: 285937.00017