

No. S-124409  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c.57, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LEMARE  
HOLDINGS LTD., LEMARE LAKE LOGGING LTD., LONE TREE LOGGING LTD.,  
C. & E. ROADBUILDERS LTD., COAST DRYLAND SERVICES LTD., DOMINION LOG  
SORT LTD. AND CENTRAL COAST INDUSTRIES LTD.

PETITIONERS

**APPLICATION RESPONSE**

**Application response of:** Her Majesty the Queen in right of the Province of British Columbia  
(the "application respondent")

THIS IS A RESPONSE TO the notice of application of the Petitioners filed 17/Jul/2012.

**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: *None*.

**Part 2: ORDERS OPPOSED**

The application respondent opposes the granting of the orders set out in paragraphs *1 and 2* of Part 1 of the notice of application.

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

The application respondent takes no position on the granting of the orders set out in paragraphs N/A of Part 1 of the notice of application.

### **Part 4: FACTUAL BASIS**

1. The application respondent is preparing an application (the "Comeback Application") to set aside or vary the Initial Order and by letter dated July 16, 2012 advised the Petitioners that it was doing so.
2. The application respondent will argue at the Comeback Application that the Petitioners are not "debtor companies" within the meaning of the CCAA and, as such, this Honourable Court did not have jurisdiction to make the Initial Order and does not have jurisdiction to make any further orders in these proceedings, including the orders now being sought by the Petitioners.
3. The application respondent will argue at the Comeback Application, in the alternative, that even if this Honourable Court has jurisdiction, this Honourable Court should exercise its discretion to not make any further orders in these proceedings, including the orders now being sought by the Petitioners.
4. There is no urgency for the making of the orders sought by the Petitioners in the notice of application except for an extension of the stay pending the hearing of the application respondent's application to set aside or vary the Initial Order. The application respondent consents to an extension of the stay on a "without prejudice" basis to the date to be set for the hearing of the Comeback Application, and seeks an adjournment of this notice of application to the date of the Comeback Application.
5. The payment of stumpage under the *Forest Act*, R.S.B.C. 1996, c. 157 (the "Forest Act") is based on a self reporting system that is subject to compliance reviews and enforcement through audits and assessments under Part 11.1 of the Forest Act.

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

1. The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") only applies in respect of a debtor company or affiliated debtor companies
  - CCAA, section 3 and section 2(1) as to definition of "debtor company"
2. If this Honourable Court does not either make an order at the Comeback Application setting aside the Initial Order or decline to make any further orders in these proceedings, the application respondent will argue in response to this notice of application:

- (a) that the liability (if any) of the Petitioners Lemare Lake Logging Ltd. and Lone Tree Logging Ltd. to the Crown for unpaid stumpage should be determined under Part 11.1 of the Forest Act;
  - CCAA, section 11.1
- (b) that the Crown's claim for unpaid stumpage involves an allegation of "wilful" contravention of the Forest Act; that such a claim is not subject to compromise and this is not the type of claim that should be determined summarily in CCAA proceedings
  - CCAA, section 19(2)
- (c) that the Petitioners Lemare Lake Logging Ltd. and Lone Tree Logging Ltd. are only two of eight parties that may be liable for payment of the Crown's claim for unpaid stumpage and the Crown's claims against those other parties are subject to being determined under the Forest Act. There should not be separate proceedings relating to the same subject matter;
- (d) that the "Claims Bar Date" does not provide sufficient time for the Crown to prepare a proof of claim and there is no need for a compressed time frame;
- (e) that the Crown should not be required to file a proof of claim unless and until the Petitioners Lemare Lake Logging Ltd. and Lone Tree Logging Ltd. make full disclosure to the Crown of information, records or other things that forest revenue officials have demanded of them for inspection or audit;
  - Forest Act, sections 142.21 and 142.31
- (f) that the proposed form of claims process order contains provisions that go beyond what is provided for in the CCAA, including:
  - (i) the definition of "Pre-Filing Claim"
    - CCAA, section 19(1) and section 2(1) as to definition of "claim"
  - (ii) the extinguishment or barring of claims
    - CCAA, section 12
  - (iii) the requirement for proof of claims against directors and/or officers
    - CCAA, sections 5.1, 19(1) and 20
  - (iv) the definition of "Directors/Officers Claim"
    - CCAA, section 5.1
  - (v) the conclusiveness for all purposes of claims as determined under the claims process order

(g) that the claims process order cannot be made as proposed without notice first being given to the Attorney General of Canada and the Attorney General of British Columbia

- *Constitutional Question Act*, R.S.B.C. 1996, c. 68, section 8

3. CCAA, including the sections referred to above.
4. Forest Act, including the sections referred to above.

**Part 6: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Hanjia Yu sworn July 18, 2012;
2. The pleadings and other materials filed and to be filed herein; and
3. Such further and other material as counsel may advise and this Honourable Court may allow.

The application respondent estimates that the application will take one (1) day.

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

[X] The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is: Ministry of Justice, Legal Services Branch, PO BOX 9289 STN PROV GOVT, 400 - 1675 Douglas Street, Victoria, BC V8W 9J7 Facsimile: (250) 387-0700; Email Address: [david.hatter@gov.bc.ca](mailto:david.hatter@gov.bc.ca)

Date: July 19, 2012



Signature of lawyer for application respondent

David J. Hatter

This **APPLICATION RESPONSE** is prepared by David J. Hatter, Barrister & Solicitor, of the Ministry of Justice, whose place of business and address for service is P.O. Box 9289, Stn Prov Govt, 400 - 1675 Douglas Street, Victoria, British Columbia, V8W 9J7; Telephone: (250) 387-1274; Facsimile: (250) 387-0700; Email Address: [david.hatter@gov.bc.ca](mailto:david.hatter@gov.bc.ca)