



No. S-236214  
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:** Delta Cedar Specialties Ltd. (the “**Application Respondent**”)

THIS IS A RESPONSE TO the Notice of Application of 1392752 B.C. Ltd. (the “**Petitioner**”), filed on 14 December 2023.

**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:

1. 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. All.

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

The Application Respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1. Nil.

## Part 4: FACTUAL BASIS

### A. Overview

1. The Application Respondent does not oppose the granting of a case plan order or that a case planning conference be held. However, the Application Respondent seeks three revisions to the case plan order, as follows.
2. First, any hearings about the validity, enforceability, and/or priority of security interests possessed by the Petitioner or members of the Service List should be heard after the court approval of the sales process, so that the parties can assess whether it is economical to pursue their security interests, in the event that little to no assets remain in the Receivership (which, in this case, is a very real concern).
3. Second, the expenses incurred by the Receiver will have to be allocated as between various categories of assets over which there will be priority disputes. For example, should the insurance expense (incurred to protect real estate assets) reduce proceeds of the sale of inventory or recovery from accounts receivable? How much of the Receiver's fees and disbursements should be allocated to each of the three entities covered by the Receivership?
4. The proposed hearing of the validity, enforceability, and/or priority of any security interests should be held at the same time as the hearing over the allocation of the expenses incurred by the Receiver. It seems clear that there should only be a minimal number of hearings in order to reduce the cost of this insolvency matter to creditors who have already been asked to pay Receivership fees that can only be described as excessive and unreasonable (a matter to be dealt with later at a taxation of their accounts).
5. As it stands, the proposed case plan order does not include a hearing on the allocation of the remaining assets of the Skeena Entities. The Application Respondent submits that two separate hearings on these issues will be wasteful.
6. Third, the Application Respondent opposes any notion that the Receiver should investigate the validity, enforceability, and/or priority of the security interest held by the Petitioner. Not only will such an endeavour be unnecessary and profligate, but the Application Respondent maintains its position from its Petition Response that the Petitioner's security interest is a fraudulent preference and that more than sufficient evidence of this proposition can be found in the Affidavit #1 of Xiao Peng Cui.

### B. Brief Factual Background

7. On 18 September 2023, the Application Respondent filed a Response to Petition, wherein it, *inter alia*, claimed a security interest over the accounts receivable and inventory of Sawmills, which is currently reported to have generated approximately \$126,000 in proceeds.

Response to Petition, filed 18 September 2023 at para. 6

Second Report of the Receiver, filed  
13 December 2023 (the “Second Report”) at para. 4.1

8. At the 30 October 2023 hearing of this matter, certain counsel proposed that the Receiver should investigate the claims against the owners of the Skeena Entities, in order to begin to determine priorities. This proposition was opposed by the Application Respondent and other counsel at that hearing, and continues to be opposed now because it is obvious on the existing evidence (including the Petitioner’s own evidence) that the Petitioner’s security is a fraudulent preference, and there is no need for any further investigation.
9. The Receiver released its Second Report to the Court on 13 December 2023 (the “**Second Report**”) that sets out, *inter alia*:
  - a) the activities undertaken by the Receiver since its first report on 25 October 2023 (the “**First Report**”);
  - b) an interim statement of cash receipts and disbursements;
  - c) the status of the sales process in respect of the assets of the Skeena Entities; and
  - d) the Receiver’s proposed next steps.

Second Report

10. In its Second Report, the Receiver indicates that it has spent \$119,000 on professional fees in this iteration, in addition to the \$243,500 on professional fees spent to prepare the First Report. The Receiver has only gained \$158,000 in total receipts in the time between 14 October 2023 and 8 December 2023.

First Report of the Receiver, filed  
25 October 2023 (the “First Report”) at para. 6.6

Second Report at para. 4.1

11. The Second Report also contains a cash flow forecast that shows that only \$108,000 will remain to be distributed to creditors by 8 March 2024, assuming that the Receivership will even be completed by that time. At this rate, the Application Respondent remains concerned about whether any money will remain for allocation after the Receiver is paid its fees.

Second Report at para. 5.1

12. The Receiver has now initiated the sales process and is currently considering nine expressions of interests for the assets, property, and undertaking of the Skeena Entities (incl. from the Petitioner). The Receiver intends to conclude the sales process in the first quarter of 2024 and anticipates that the court approval of the sales process will take place on or about 16 February 2024.

Second Report at paras. 6.3 to 6.10

## **Part 5: LEGAL BASIS**

### **A. The Sales Process Should Be Completed Before Priorities Are Determined**

1. Court approval of the sales process should occur before priorities are determined, for three main reasons.
2. For one, before any parties begin to claim priority of security interests, the parties should be aware of the assets available for distribution. This sequence will allow creditors to properly assess whether battling over priorities is a worthwhile endeavour. At this time, the creditors do not know how much money they may be fighting over, and there is a very real concern in this case that there may be little to no remaining funds after the Receiver is paid. The creditors should not be forced to reverse the natural order of these proceedings to their own detriment, in order to uniquely accommodate the Petitioner.
3. Based on the First Report and Second Report, the Receiver has been spending funds on various different endeavours, for different amounts, relating to different Skeena Entities. As a consequence, several issues have arisen relating to: (1) how much money will remain to be allocated between the creditors; and (2) against which assets will the Receiver register its charges. The parties should have access to this key financial information before they begin the priority determination process.
4. Secondly, the costs of this proposed hearing outweighs the benefits to the Receivership. The hearing is proposed solely for the benefit of the Petitioner – a bidder who may not even be successful in the sales process. The Petitioner is merely one of nine bidders who have submitted expressions of interest, and it is not necessary to accommodate the Petitioner while causing great expense to the creditors and the Receiver to simply determine whether the Petitioner can utilize its Credit Bid. Especially if the Petitioner is not successful in the sales process, this hearing will be completely unnecessary and result in a great waste of resources, which are already dwindling. Notably, the Skeena Entities are only projected to have \$108,000 in remaining assets to be allocated, and so the parties simply cannot afford to engage in any unnecessary work at this time.
5. Moreover, there is sufficient evidence already in the record to establish that the Petitioner does not have a valid security interest, and therefore this hearing is further unnecessary. Specifically, the Affidavit #1 of Xiao Peng Cui establishes that the Petitioner's security interests are based on a fraudulent preference.
6. Thirdly, the key parts of the sales process (*i.e.*, the selection of the successful bidder and the court approval of any transaction) is scheduled to take place between 15 January 2024 and 16 February 2024. As a practical matter, holding a hearing on the security interest of the Petitioner prior to this timeline will create substantial difficulties for the other creditors. Especially in light of the upcoming holiday season, the creditors will be required to marshal evidence and prepare their cases on a key issue before 15 January 2024 when they and/or their clients

are on holiday. Simply put, there is not enough time for the other creditors to prepare and this will cause a substantial prejudice to the other creditors.

**B. The Determination of Security Interests Should be Adjudicated Simultaneously with the Allocation of the Remaining Assets**

7. Separate hearings for the determination of security interests and the allocation of the remaining interests will only result in unnecessary costs. They should instead be heard at the same time to create cost-savings and efficiencies for the Receivership and the various creditors. Given the dwindling amount of funds, the case plan order should provide that the hearing on the allocation of the remaining assets of the Skeena Entities be heard at the same time that security interests are determined.
8. Importantly, with respect to the fees charged by the Receiver, any of the Receiver's expenses incurred solely for the purposes of Bioenergy and/or ROC should not be charged against the assets of Sawmills. As stated in *D'Amore v. Banwell Development Corporation*, 2021 ONSC 2665 at paras. 10-11, despite that two entities under the same receivership order may be *related*, to the extent that they are separate legal entities with separate creditors and assets, the creditors of one entity should not be "saddle[d]...with the debts" of the other entity or otherwise prejudiced by an order relating to the other entity. Therefore, to the extent that the Receiver has borrowed money or incurred expenses to pay a debt owing by Bioenergy and/or ROC, the Receiver's charge in relation to that expense should only constitute a charge against the assets of Bioenergy and/or ROC, and not Sawmills (e.g., insurance payments for the land held by ROC).

**C. There is No Need for the Receiver to Investigate the Petitioner's Security Interest**

9. The Receiver should not be involved in the process of investigating the Petitioner's security interests, given the already-tight budget of the Receiver and the fact that on the existing evidence, the Petitioner's security interest is a fraudulent preference.
10. The Receiver and its counsel have already spent \$362,500 in professional fees to date. Given the excessive amount of professional fees spent, the Receiver should not be spending any more of the otherwise rapidly-dwindling assets of the Skeena Entities on such a process. At this juncture, such an investigation is not necessary and can be left to the creditors when the time is appropriate.
11. On a final note, the Application Respondent's claim is currently secured by \$126,000 in assets and it asserts that it has priority over the Petitioner to any value of the accounts receivable and inventory of Sawmills. It is essential to ensure that the process of adjudicating issues in this insolvency proceeding be as streamlined as possible.

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

1. The Receivership Orders of Madam Justice Blake, made in these proceedings on 20 September 2023 and 30 October 2023.
2. The Receiver's First Report to Court, dated 25 October 2023.
3. The Receiver's Second Report to Court, dated 13 December 2023.
4. Affidavit #1 of Xiao Peng Cui, dated 8 September 2023.
5. Response to Petition of Delta Cedar Specialties Ltd., dated 18 September 2023.
6. The other pleadings and materials filed in these proceedings and such further and other materials as counsel may advise and this Honourable Court may permit.


The Application Respondent estimates that the application will take 90 minutes.

This matter is not within the jurisdiction of a master.

The Application Respondent's ADDRESS FOR SERVICE is:

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Dated: 19 December 2023

  
 Signature of Francis Lamer  
 Lawyer for the Application Respondent,  
 Delta Cedar Specialties Ltd.

This APPLICATION RESPONSE is prepared by Francis Lamer of the law firm of Kornfeld LLP whose place of business is 1100 – 505 Burrard Street, Vancouver, BC, V7X 1M5, Telephone: 604-331-8300, Email: [flamer@kornfeldllp.com](mailto:flamer@kornfeldllp.com).