



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

AMENDED 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**”), amending its Application Response dated March 7, 2024.

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.

The application respondent(s) estimate(s) that the application will take three days, as scheduled.

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 all.

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: nil.

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- ~~a) exclude the four Union members who elected to have their termination rescinded/nullified, and retained their collective agreement rights to seniority and recall pursuant to a Memorandum of Agreement dated September 25, 2023 between the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 the following paragraphs ~~1 (a) to (e) and (g) to (j), and paragraph 2 of Part 1 of the Notice of Application: nil.~~

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.
7. Since the Union's Application Response was filed, events have transpired which caused the Union to change its position with respect to the Receiver's application. These events are set out below.
8. Additional defined terms referred to below are terms defined in the Receiver's Notice of Application filed February 29, 2024.
9. Pursuant to an agreement between the Union, the Receiver, the Petitioner and Cui Family Holdings Ltd., the terms of the Reverse Vesting Order and Retention Agreement will be revised to reflect the following:

- a. The Four Bargaining Unit Employees are excluded from terminated employees.
 - b. The Collective Agreement is an Approved Contract (and therefore a Retained Asset).
10. The Application Response filed by the Petitioner and Cui Family Holdings Ltd. shows an intention to re-start and continue Skeena Sawmills Ltd. as a going concern.

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. Given the events set out at paragraphs 9 and 10 of Part 4 of this Amended Application Response, and provided the anticipated amendments to the Reverse Vesting Order and Retention Agreement occur, the Union is satisfied that the Reverse Vesting Order and Retention Agreement are no longer inappropriate, unfair, or unreasonable with respect to the interests of the Union or its members. Further, the Union supports the Receiver's application.
4. The Union reserves its right to take a different position with respect to the Receiver's application, and file a further response if necessary, if the Reverse Vesting Order and Retention Agreement are not revised to reflect paragraph 9 (a) and (b) of Part 4 of this

Amended Application Response, and/or if Cui Family Holdings Ltd. files an amended application response indicating that they no longer intend to restart and continue Skeena Sawmills Ltd..

- ~~5. 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.~~
- ~~6. 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.~~
- ~~7. 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.~~
- ~~8. 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., a lack of clarity that risks harming the interests of the Union and any bargaining unit members hired or reinstated.~~
- ~~9. 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.~~
- ~~10. 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. Application Response of the Union dated and filed March 7, 2024.
2. 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 19, 2024


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

This amended 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).