

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

WRITTEN SUBMISSIONS OF TRUCK LOGGERS ASSOCIATION

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and Truck Loggers Association

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PART 1 OVERVIEW

1. These written submissions are in response to an application by the Receiver, Alvarez & Marsal Canada Inc. (the “**Receiver**”), for an order approving the transaction contemplated by the retention and payment agreement dated February 29, 2024 (the “**Proposed Sale**”), between Cui Family Holdings Ltd (“**Cui Holdings**”) and the Receiver, for substantially all of the assets of Skeena Sawmills Ltd. (“**Skeena Sawmills**”), Skeena Bioenergy Ltd. (“**Skeena Bioenergy**”), and Roc Holdings Ltd. (“**Roc Holdings**”, and collectively with Skeena Sawmills and Skeena Bioenergy, the “**Debtors**”).
2. The Proposed Sale is contemplated to be effected by a reverse vesting order (“**RVO**”) transaction.
3. Skeena Sawmills Ltd. holds two forest licences, FLA 16882 and FLA 16885, and Tree Farm Licence 41 (collectively, the “**Licences**”).

4th Report of the Receiver, para. 7.9(b)

4. The Truck Loggers Association (“**TLA**”) is an organization that represents members of the provincial forest community in British Columbia by promoting the viability and sustainability of the forest industry, in policy development, by fostering effective communication, and ensuring a dynamic organization that addresses the evolving needs of its members.

TLA Application Response, Part 4 para.1; Affidavit #1 of R. Brash, paras. 5-7

5. Under the provisions of the RVO as submitted, the Bill 13 Contracts are proposed to be separated from the Licences and effectively terminated.

Cui Application Response, para. 20

PART 2 FACTS

A. *Bill 13 Contracts*

6. The majority of standing timber in British Columbia is located on Crown land and owned by the Province of British Columbia (the “**Province**”). Forest Licenses are governed by the *Forest Act*, RSBC 1996, c. 157 (the “**Forest Act**”).
7. The *Timber Harvesting Contract and Subcontract Regulation*, B.C. Reg. 22/96 (the “**Regulation**”) was enacted by the province of British Columbia to preserve forestry contractors’ work in British Columbia.

TLA Application Response, Part 5, para. 3

8. Contracts regulated by the Regulation between holders of forestry licences and forestry contractors are known as “**Bill 13 Contracts**”, and the contractors themselves are known as “**Bill 13 Contractors**”.

TLA Application Response, Part 4, para. 3

9. There are currently over 320 Bill 13 Contracts existing in various forms in British Columbia.

Affidavit #2 of R. Brash, para. 4

10. The overwhelming majority of the existing Bill 13 Contracts are, and have been, working well for over twenty years.

Affidavit #2 of R. Brash, para.7

11. Bill 13 Contracts are advantageous to forest licensees because they provide:

- a) a guaranteed contractor base for log delivery;
- b) the ability to direct a Bill 13 Contractor to complete work when and where a licensee deems it necessary, including in areas which are less desirable, more difficult to access, and more difficult to harvest;
- c) a means to avoid lengthy delays caused by contract disputes as a result of the required dispute mechanisms of mediation and arbitration included in the Regulation, and the mechanisms by which Bill 13 Contractors can continue working at previous rates in the interim; and
- d) the availability of a local workforce.

Affidavit #2 of R. Brash, para. 8

12. Bill 13 Contracts are required to be renewed when their term expires. However, there are ways a Bill 13 Contract and its associated rights may be terminated by mutual consent. A licensee may buy out a Bill 13 Contract for fair market value, and then extinguish it.

13. Due to amendments to the Regulation that no longer require the creation of new Bill 13 Contracts, when one Bill 13 Contract is terminated, the licensee is no longer required to offer another Bill 13 Contract in its place.

Affidavit #2 of R. Brash, paras. 6 & 9;
TLA Application Response, Part 5, para 6

B. Rate Disputes Under the Regulation

14. Under a Bill 13 Contract and the Regulation, a licensee must allocate work to a Bill 13 Contractor. In allocating the work, they must specify:

- a) the services they require the Bill 13 Contractor to complete;
 - b) the estimated quantity of work;
 - c) the location of the area; and
 - d) the proposed start and end dates for the services.
15. There can be disagreements between a licensee and a Bill 13 Contractor as to the appropriate rate for services performed in a particular area (a “**Cutblock**”).
 16. Rates can be affected by various factors within a particular Cutblock, including its distance, type of terrain, difficulty of access and of harvesting, and the amount of timber in the Cutblock.

Affidavit #2 of R. Brash, para. 12

17. These factors are present and must be considered when proposing an appropriate rate for a Cutblock whether the contractor is a Bill 13 Contractor or a non-Bill 13 Contractor.
18. If the licensee and contractor cannot agree on a rate, there is a rate dispute (a “**Rate Dispute**”).
19. However, in the case of a Bill 13 Contractor, the Regulation provides a mechanism for the Bill 13 Contractor to continue working at a provisional rate while the Rate Dispute is being adjudicated.
20. This allows the licensee to have the required work performed in the time frame that they proposed when allocating the work.

C. The Importance of Security of Tenure for Bill 13 Contractors

21. While the requirement for licensees under the *Forest Act* to use a certain percentage of independent contractors to complete work has existed since the early 1950s, the Province has made significant changes to the regulatory regime in order to address logging contractor security in British Columbia, including changes to promote investments required by contractors.
22. The Regulation, introduced in 1991, was intended to address both security and to improve the balance in contractual relationships between Bill 13 Contractors and licensees.

TLA Application Response, Part 5, para 4

23. Licensees under the *Forest Act* are given a certain measure of security of tenure, as the majority of forest licenses issued by the Province are renewable. Because of the security of tenure, licensees are able to make significant investments in their forestry businesses.

24. Logging contractors are similarly required to make significant investments in order to operate their businesses, including, among other things:
- a) investments in new harvesting equipment;
 - b) investments in employees and contractors required to meet societal expectations for more innovative forest practices in the province;
 - c) investments to invest in wildfire risk mitigation measures; and
 - d) investments to meet social expectations for further partnerships with First Nations, safety, traceability, carbon consumption, and environmental statistics.

Affidavit #1 of R. Brash, paras. 8-10

25. For this reason, the Regulation and the Bill 13 Contracts tie the Bill 13 Contracts to the licenses themselves.

TLA Application Response, Part 5, para 5

D. Bill 13 Contracts and Insolvency

26. In the late 1990s and early 2000s, a series of cases were decided by the British Columbia Supreme Court which permitted a company under the *Bankruptcy and Insolvency Act*, the *Companies Creditors Arrangement Act*, or a receivership to use these statutes to remove the Bill 13 Contracts from the license to which they attach.
27. In response to concerns raised by Bill 13 Contractors, the Province amended the *Forest Act* to preserve the rights of Bill 13 Contractors in insolvency proceedings. This was the express intent of the amendments.

TLA Application Response, Part 5, para. 11

28. In any other context, a purchaser of a license under the *Forest Act* is required to assume the obligations of any Bill 13 Contracts which attach to that license.

TLA Application Response, Part 5, para. 10; *Forest Act*, s. 54(2)(d.1)

PART 3 ARGUMENT

A. Jurisdiction

29. This Court does not have the jurisdiction to grant relief that permits the Bill 13 Contract to be severed from the License. TLA adopts Terrace Timber's argument related to jurisdiction at paragraphs 45-50 of Terrace Timber's Application Response.

Terrace Timber Application Response, Part 5, paras. 46-50

B. The Harte Gold Factors Are Not Met

30. The factors for a court to consider when presented with an RVO are:

- a) Why is the RVO necessary in this case?
- b) Does the RVO structure produce an economic result at least as favourable as any other viable alternative?
- c) Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative? and
- d) Does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the RVO structure?

Harte Gold Corp. (Re), 2022 ONSC 653 ("**Harte Gold**") at para. 38

31. The *Harte Gold* factors are not met in this case.

32. Generally, in analyzing whether a transaction should be approved, a court is to 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

33. A reverse vesting order transaction ("**RVO**") is neither routine nor in the ordinary course. It is an extraordinary remedy, and approval of the use of an RVO structure should involve close scrutiny.

Harte Gold, at para. 38;
Payslate Inc. (Re), 2023 BCSC 608 at paras. 1 and 87

34. Preserving the rights of the contractors in insolvency proceedings was the express intent of the Province when s. 54(2)(d.1) was added to the Forest Act in 2010.

Timber Baron Application Response, Part 5, para. 5

35. The Fourth Report of the Receiver, filed February 29, 2024 (the "**Receiver's Fourth Report**") makes it explicitly clear that one reason for using an RVO in this case is to avoid regulatory consultations required under the *Forest Act* when a forest agreement is transferred.

(a) The RVO is Not Necessary

36. Cui Holdings argues that the RVO is necessary to “restart the business in an economically-viable manner” without retaining the Bill 13 Contracts which are “more costly than current market rates” and “bring along the ongoing, expensive and unresolved rate disputes.”

Cui Application Response, Part 5, para. 65

37. First, the assertion by Cui Holdings that work on the Licenses can likely be provided at lower competitive rates is not substantiated by evidence.

Affidavit #2 of R. Brash, para. 14

38. There is no evidence that Bill 13 Contracts are generally unable to generate profits for both the Bill 13 Contractor and the licensee. There is no evidence to the contrary provided by either the Receiver, or the Petitioner / Cui Holdings / Skeena Sawmills group.

39. The overwhelming majority of the 320 existing Bill 13 Contracts in British Columbia have worked well for over 20 years.

Affidavit #2 of R. Brash, para.7

40. The evidence demonstrates instead that the Bill 13 Contractors in this case have acted reasonably by, for example, engaging independent third party experts to assist with rate disputes.

Affidavit #2 of R. Brash, para. 15-16

41. Second, the need for Timber Baron and Terrace Timber to increase their rates is a result of Skeena Sawmills’ mismanagement and questionable operating decisions.

Affidavit #2 of M. Thomson, at para. 14

42. Third, the arbitration to resolve the Timber Baron rate dispute was scheduled to begin days after these receivership proceedings were begun by Skeena Sawmills’ creditor, which happened to be a related party to Skeena Sawmills, and was stayed as a result.

Affidavit #2 of M. Thomson, at paras. 20-21

43. The fact that the rate dispute with Timber Baron and Skeena Sawmills has not yet concluded is a direct result of the receivership proceedings.

(b) The Economic Result is Not More Favourable

44. The Purchaser claims that it will be investing in the business of the Debtors “with a view to returning the Business to a fully operational status.”

Cui Application Response, Part 5, para. 71

45. However, there is no evidence that Cui Holdings, a related entity to the Debtors, will not continue the pattern of mismanagement exhibited by the Debtors that resulted in these insolvency proceedings and have left numerous stakeholders unpaid and the Arbitration stayed pending the outcome of the receivership.
46. The speculation by Cui Holdings that there will be economic benefits as a result of the RVO are in no way as direct as the consequences that will occur to Timber Baron and other stakeholders if the Bill 13 Contracts are decoupled from the Licenses.

(c) The Bill 13 Contractors are Worse Off Under the RVO Structure

47. Logging contractors are an important pillar of the forestry industry in British Columbia.
48. The Regulation has been expressly drafted to protect the security of tenure of logging contractors in a manner similar to the protections enjoyed by licensees, and to improve the balance in contractual relationships between Bill 13 Contractors and licensees.

TLA Application Response, Part 5, para. 3

49. Security of tenure is important to protect logging contractors, who are required to make significant investments and need a measure of security of tenure to ensure ongoing viability in a very highly capital intensive business.

Affidavit #1 of R. Brash, para. 12;

Hayes Forest Services Ltd. v. Pacific Forest Products Ltd.,

2000 BCCA 66, at para. 26

50. These policy reasons for promoting security of tenure for Bill 13 Contractors have been expressly affirmed by both the courts and the legislature.

TLA Application Response, Part 5, paras. 3 & 7

51. In *New Skeena*, one issue was whether the receiver had the power to apply to the court to convey the assets free and clear of the interests of other parties. Specifically, the issue was whether the assets, including agreements under the *Forest Act*, could be disposed of without their respective Bill 13 Contracts. The Court held that the order appointing the receiver conveyed that power.

New Skeena Forest Products Inc., Re v. Don Hull & Sons Contracting Ltd.,

2005 BCCA 154, at para. 20

52. In response to *New Skeena* and other cases that permitted the decoupling of the Bill 13 Contracts from their respective forest licenses, the Province amended the *Forest Act* specifically to prevent it from continuing (the “**2010 Amendment**”).

TLA Application Response, Part 5, para. 11

53. Following the 2010 Amendment, the *Forest Act* now requires that in any disposition of an agreement in which the holder of the agreement is party to a Bill 13 Contract, the recipient of the agreement must assume the obligations of the Bill 13 Contract.

Forest Act, RSBC 1996, c 157, s. 54(2)(d.1)

54. In any non-insolvency context, the Bill 13 Contracts would be required to be assumed by the purchaser of the Licenses.
55. In any other insolvency context, the Bill 13 Contracts would also be required to be assumed by the purchaser of the Licences, as required under the 2010 Amendment.
56. The fact that a transaction structure using an RVO was not contemplated at the time of the 2010 Amendment should not be used as justification for sidestepping the express intent of the legislature, that the Bill 13 Contracts and the security of tenure they provide to Bill 13 Contractors should be preserved in the insolvency context.
57. In *Peakhill*, the court considered the case of an RVO that was expressly used to avoid the application of property transfer tax (“PTT”) in the context of a real estate transaction. One of the issues raised by the Province was that the Province would be worse off if the parties were permitted to avoid PTT by using an RVO.

Peakhill Capital Inc. v Southview Gardens Limited Partnership (“**Peakhill**”),
2023 BCSC 1476, para. 64-65

58. It is not the case here that the Bill 13 Contracts would be permitted to be decoupled from the Licenses in a non-insolvency context, unlike the treatment of tax liabilities in *Peakhill*.
59. Further, there is absolutely no doubt that the Bill 13 Contractors and many employees of Timber Baron and Terrace Timber Ltd. would be far worse off under the RVO structure than they would be under any other alternative structure such as an asset vesting order where the *Forest Act* would require the Bill 13 Contracts to be transferred together with the Licenses. The statement in the Vesting Order Application at paragraph 10 of Part 3 is entirely unsupported by any evidence.

(d) The Consideration Does Not Reflect the Value of the RVO

60. There is no evidence that the consideration to be paid reflects the value of the RVO.

61. Unlike in *Peakhill*, where the secured creditors would save approximately \$3.5 million under the RVO, there will not be any payment to secured or unsecured creditors as the Proposed Sale is a credit bid.

Peakhill, para. 58

62. There is no evidence submitted by Cui Holdings that the sale price reflects the RVO structure, other than a bald statement that it represents a fair market value for the sale.

Cui Application Response, Part 5, para. 88

C. Conclusion

63. There is no jurisdiction for this Court to grant relief that permits the Bill 13 Contracts to be severed from the Licences.

64. Even if the jurisdiction to grant an RVO in this case is extant, an RVO is extraordinary relief that is not to be granted without careful consideration of the interests of all the stakeholders.

65. The *Harte Gold* factors are simply not met here. Specifically:

- a. the RVO is not necessary, except as a result of the Debtors' mismanagement, which the Purchaser, as a related entity to the Debtors, is attempting to use to its advantage;
- b. the RVO structure does not produce an economic result at least as favourable as any other alternative;
- c. the Bill 13 Contractors are undoubtedly worse off that they would have been under any other viable alternative; and
- d. there is no evidence that the consideration being paid for the Debtors' business reflects the importance of the licenses and permits being preserved under the RVO structure.

66. Most importantly, the effect of the RVO on the Bill 13 Contractors and their employees undoubtedly leave these stakeholders worse off than they would be under any other alternative structure. The effect of the RVO and the decoupling of the Bill 13 Contracts from the Licences under the RVO would mean that:

- a. Timber Baron would lose:
 - i. approximately 50% of its business;

- ii. the value of the investments it has made over the last 25 years to work on the Licence, including investments in work camps and specific equipment; and
 - iii. the value of the Bill 13 Contract itself;
 - b. Timber Terrace, in addition to losing the value of its Bill 13 Contract, would be forced to liquidate all of its equipment and assets with no work to perform;
 - c. all employees of Timber Terrace and the Bill 13-related employees of Timber Baron would be terminated, and would be unlikely to find similarly paying employment elsewhere in the community; and
 - d. the security of tenure for logging contractors, which was expressly intended to be protected in an insolvency context, will be severely impacted.
67. TLA submits that the Proposed Sale, effected by means of an RVO, should not be approved by this Honourable Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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