



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: The City of Terrace (the “City”)

THIS IS A RESPONSE TO the Notice of Application of Alvarez & Marsal Canada Inc. as receiver (the “Receiver”) seeking a reverse vesting order and filed February 29, 2024.

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

Part 1: ORDERS CONSENTED TO

The application respondent, the City, consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1. None

Part 2: ORDERS OPPOSED

The application respondent, the City, opposes the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1. Paragraph 1 – subject to the reverse vesting order sought by the applicant being amended to provide that property taxes payable to the City for the current year by the Respondent ROC Holdings Ltd. (“ROC”) be:
 - a. excluded from the Excluded Liabilities to be transferred to ResidualCo;
 - b. included among the Retained Liabilities of ROC; and
 - c. recorded as secured among the Permitted Encumbrances on all of those lands located within the City’s taxation jurisdiction.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent, the City, takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application:

1. Paragraph 2

Part 4: FACTUAL BASIS

1. The City is a municipality under the *Community Charter*, SBC 2003, c 26 that has its city hall at 3215 Eby Street, Terrace, BC V8G 2X8.
2. The City is a secured creditor of the petition respondent ROC. Furthermore, the City's claim in debt against ROC is secured against four parcels of land, which security ranks above the claims of the Petitioner and all other creditors other than the Crown and the Receiver claiming under the Order of this Honourable Court made on September 20, 2023, in this proceeding.
3. The Receiver's proposal provides for the full payment of back taxes, which is appropriate given the amount of taxes owing compared to the assessed value of the lands at issue.
4. The City also seeks to ensure that current year taxes, being taxes that cannot in practice be paid at the time of the proposed reverse vesting transaction, remain payable by ROC and secured against land owned by ROC.

The Affected Lands

5. ROC is the assessed owner of the following four parcels that are within the taxation jurisdiction of the City:
 - a) PID: 011-691-042; Legal Description: Lot A District Lot 616 Range 5 Coast District Plan 3986, Except Plan PRP47978 ("**Lot A**");
 - b) PID: 011-691-051; Legal Description: Lot B District Lot 616 Range 5 Coast District Plan 3986 ("**Lot B**");
 - c) PID: 011-768-398; Legal Description: Lot 3 District Lot 616 Range 5 Coast District Plan 3700 ("**Lot 3**"); and
 - d) PID: 030-631-700; Legal Description: Lot A District Lots 616 and 1745 Range 5 Coast District Plan EPP78423 ("**Lot A West**");(collectively, the "**ROC Terrace Lands**")

Affidavit #1 of L. Greenlaw at para. 5, Ex. A

6. The ROC Terrace Lands also receive water and sewer services from the City for which ROC is invoiced fees.

Affidavit #1 of L. Greenlaw at para. 6

The Timing Issue

7. The City's statutory claim in debt against ROC consists of the following amounts:
 - a) Unpaid property taxes in previous years (2021, 2022, 2023) plus penalties and interest accruing thereon (the "**Back Taxes**");
 - b) Property taxes imposed for the current year (the "**Current Year Taxes**"); and
 - c) Fees for services to land imposed and unpaid in the current year, if any (the "**Current Year Fees**").
8. The Back Taxes, Current Year Taxes and Current Year Fees are all claims secured by statutory charges with high priority.

Affidavit #1 of L. Greenlaw at paras. 7 and 8

9. On the date(s) of the "Transaction" proposed by the Receiver, the amount of Back Taxes and Current Year Fees owing at that time will be known and can be paid from the proceeds tendered to pay "Priority Claims".
10. On the date(s) of the proposed Transaction, the amount of the Current Year Taxes payable by ROC will not be known and cannot be included with precision within the "Price" as defined in the proposed Payment and Retention Agreement (the "**Retention Agreement**").
11. This is because the City is not expected to issue a 2024 tax notice until late May 2024. The notice is only issued after supplementary adjustments to assessed values under the *Assessment Act*, RSBC 1996 c 20 and the City Council adopts a bylaw imposing property taxes before May 15, 2024.

Affidavit #1 of L. Greenlaw at para. 15

12. Despite the amount being undetermined, statute will operate to deem those Current Year Taxes as being owed from January 1, 2024. Furthermore, the Current Year Taxes are also presently secured by a statutory charge as taxes "both accrued and to be accrued."

Proposed Revisions

13. The City understands that it is the Receiver's proposal to pay all the Back Taxes as the "outstanding property taxes owing on the Lands" and to leave the Current Year Taxes to be paid by ROC later.
14. The City says that any order of this Honourable Court must affirm ROC's liability for the Current Year Taxes until they are paid. The City proposes the below amendments as necessary if the Reverse Vesting Order is to be approved.
15. In the absence of such amendments, the City says that the Court should refuse to grant the order sought to enable the City to apply to lift the stay that presently prevents the City from selling the ROC Terrace Lands at its annual municipal tax sale.

Excluded Liabilities

16. The proposed defined term "Excluded Liabilities" in the Retention Agreement and, by incorporation by reference, in the proposed Reverse Vesting Order, describes liabilities to be transferred to ResidualCo that include, "without limitation":
 - (i) any taxes of or relating to the Business or the Retained Assets or payable by the Companies, including statutory deductions and remittances, GST, and sales taxes in respect of any period up to and including the Closing Date (including penalties, fines and interest):
17. The Current Year Taxes are taxes that will be deemed to be imposed as of January 1, 2024, which is prior to the Closing Date. Section 197(7) of the *Community Charter* provides that property value taxes "are deemed to be imposed on January 1 of the year in which the bylaw [imposing the property value taxes] is adopted.
18. Because the Current Year Taxes will be deemed owing by, but will not have been paid (and cannot practically be paid) by the Closing Date, the City says that the definition (i) within the definition for "Excluded Liabilities" should be amended to add the following words at the end: ", but does not include property taxes imposed in 2024".

Retained Liabilities

19. Regarding the proposed defined term "Retained Liabilities" in the Retention Agreement and, by incorporation by reference, in the proposed Reverse Vesting Order, that definition should be amended to add the following:

(iv) property taxes imposed in 2024

20. The City says that ROC's statutory liability to pay the Current Year Taxes under *Community Charter*, s. 251(1)(a) is separate and concurrent to the charge securing that claim in debt against land and improvements. Since the Current Year Taxes will be paid later, they should be acknowledged as a liability of ROC that will be retained by ROC after the reverse vesting.

Permitted Encumbrances

21. The City says that Part 2 of Schedule D of the proposed Reverse Vesting Order should be amended to add the following charge to the "Charges, Liens and Interests" for each and every one of the ROC Terrace Lands:

- Property taxes imposed in 2024

Schedule A of the Retention Agreement should be similarly amended for consistency.

22. The above text additions reflect the fact that the statutory charge under section 250 of the *Community Charter* secures the Current Year Taxes as "Taxes accrued and to accrue on land and its improvements" [emphasis added]. This charge should survive the reverse vesting order. This charge does not require registration to preserve it, but like the Receiver's charge, must be recognized as an encumbrance that will continue to apply to the ROC Terrace Lands following the reverse vesting.

Background of Taxes and Fees owed to the City

23. Since 2019 ROC has repeatedly failed to pay property taxes in the year in which they were imposed and has repeatedly allowed property taxes to go into arrears or become delinquent.
24. On January 16, 2024, the following Back Taxes for the following parcels were owed to the City for the ROC Terrace Lands:
- a) Lot A and Lot B - \$1,397,741.31;
 - b) Lot 3 - \$13,134.17; and
 - c) Lot A West - \$415,533.56.

Affidavit #1 of L. Greenlaw at para. 13

25. ROC also failed to pay utility invoices issued by the City in 2023. These unpaid amounts have been added to the taxes for the ROC Terrace Lands and are included in the amounts set out in paragraph 19 of Part 4 of this Application Response.

Affidavit #1 of L. Greenlaw at para. 12

26. The amount owed by ROC for Back Taxes has increased since January 16, 2024 and continues to increase through the accumulation of statutorily imposed interest.

27. If no payments are made and the interest rate imposed by sections 244 and 245 of the *Community Charter* remains unchanged on April 1, 2024, then the amount of Back Taxes owing to the City on April 8, 2024 will be \$1,868,480.11. If similar to previous invoices, the Current Year Fees owing on that date will be approximately \$500.00.

Affidavit #1 of L. Greenlaw at paras. 12, Ex. E

28. The amount of Back Taxes owed to the City represents only a fraction of the assessed value of the ROC Terrace Lands.

Affidavit #1 of L. Greenlaw at paras. 7 and 11, Ex. B

29. In 2023, property taxes on the ROC Terrace Lands were delinquent and the ROC Terrace Lands became liable for tax sale under section 645 of the *Local Government Act*, RSBC 2015, c 1. The ROC Terrace Lands were ultimately withheld from sale at the annual tax sale on September 25, 2023 because of the stay issued in this proceeding.

Affidavit #1 of L. Greenlaw at para. 10

30. ROC is the assessed owner of the ROC Terrace Lands in 2024. Consequently, ROC is liable to pay the Current Year Taxes.

Affidavit #1 of L. Greenlaw at para. 7, Ex. B

31. The City's financial officer and collector expects the tax notices for the ROC Terrace Lands to be issued in late May 2024. Those tax notices must be issued to ROC as the assessed owner for 2024 and regardless of whether ROC is the registered owner of the ROC Terrace Lands at the time.

Affidavit #1 of L. Greenlaw at paras 3, 15

32. The City says that, until paid in full, the Current Year Taxes as set out on the 2024 tax notices must remain a liability of ROC and must remain secured by a charge against the ROC Terrace Lands. No reverse vesting order should provide or be interpreted as providing that:

- a. The liability for the Current Year Taxes and any associated encumbrance was transferred to ResidualCo, an entity destined for bankruptcy; and

- b. ROC is only liable to pay a portion of the Current Year Taxes that is pro-rated to cover that period in 2024 following the Transaction.
33. With the appropriate revisions, the Transaction and the reverse vesting order proposed by the Receiver will be one that sees the Back Taxes paid in full and leaves ROC's requirement to pay Current Year Taxes undisturbed. Given the priority of the City's claim and the fact the total property tax liability is a fraction of the assessed value of the ROC Terrace Lands, the Court should only approve a sale or equivalent transaction that results in full payment of taxes.

Part 5: LEGAL BASIS

34. Pursuant to Part 7 of the *Community Charter*, the City is statutorily authorized to collect those property taxes imposed by it and by other government authorities.
35. The amount of property taxes that an assessed owner is liable to pay the City is set out in the annual tax notice issued by the City for the assessed property (*Community Charter*, s. 237).
36. The assessed owner's liability in debt includes all taxes imposed in the current year for the property as well as all unpaid taxes in previous years (*Community Charter*, s. 251(1)). A certified copy of a tax notice is evidence of that debt (*Community Charter*, s. 251(2)).
37. Annual property taxes are deemed to be imposed on January 1 of the year in which the bylaw imposing such property taxes is adopted (*Community Charter*, s. 197(7)). A municipal council must adopt every year, and before May 15, a bylaw imposing property taxes (*Community Charter*, s. 197(1)). Although the Council of the City of Terrace has not yet imposed property taxes for 2024, ROC, as the assessed owner, will be deemed liable for such anticipated taxes as at January 1, 2024.
38. Property taxes that are not paid by July 2 in the year in which they are imposed are subject to a penalty (*Community Charter*, s. 234). If not paid by the end of the year, the taxes are then subject to interest charges (*Community Charter*, ss. 244-245). Penalties and interest form part of the property taxes owing.
39. The City has both a statutory claim in debt against ROC (*Community Charter*, s. 251(1)) and a statutory charge against the ROC Terrace Lands in relation to property taxes.
40. Section 250(1) of the *Community Charter* provides that:

250 (1) Taxes accrued and to accrue on land and its improvements, and a judgment under section 231 [*recovery of taxes and fees*] for the taxes, are a charge that

- (a) is a special charge on the land and improvements,
- (b) has priority over any claim, lien, privilege or encumbrance of any person except the Crown, and
- (c) does not require registration to preserve it.

41. The City's statutory charge against the ROC Terrace Lands for unpaid property taxes ranks in priority to all other claims except those of the Crown (*Toronto Dominion Bank v Ursaco Ltd.* (2001), 196 D.L.R. (4th) 448 (Ont. CA)).
42. The statutory charge secures "[t]axes accrued and to accrue". This charge secures the Current Year Taxes and there is no basis for disturbing such an encumbrance if the Current Year Taxes remain unpaid.
43. The City also has a statutory charge against the ROC Terrace Lands for unpaid fees for utility services to those lands (*Community Charter*, s. 259).
44. Once unpaid property taxes imposed against a parcel become delinquent, a municipality must recover unpaid property taxes, including any interest and penalties accruing, by selling that parcel and the improvements thereon at the annual tax sale (*Community Charter*, ss. 246, 254; *Local Government Act*, s. 645). Any stay issued in the within proceeding delays or displaces this statutory collection mechanism.
45. The Receiver submits in its application that "the Transaction contemplates payment, in full, of the Priority Claims". Because such a payment will not cover to-be-determined Current Year Taxes, the City submits that this Honourable Court should only approve a sale that preserves such taxes as a secured liability claim against ROC given that such a claim ranks in priority to mortgages and other surviving claims and encumbrances held by, or to be held by, the bidder and its related entities.
46. If the City does not receive full payment of the Back Taxes and Current Year Fees and the preservation of the City's claim and associated charge for the Current Year Taxes, the City, as property tax collector for it and other government authorities, will be in a worse position than if the City was allowed to sell the ROC Terrace Lands at tax sale. Given the value of the bid, this Honourable Courts should not allow a transaction that causes such a result.

Part 6: MATERIAL TO BE RELIED ON

47. Affidavit No. 1 of Lori Greenlaw made January 16, 2024.

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

Date: March 5, 2024



Signature of lawyer for application respondent
City of Terrace

MICHAEL MOLL, Civic Legal LLP

This application response is prepared by **Michael Moll** of the firm **Civic Legal LLP**, whose place of business is 710 – 900 West Hastings Street, Vancouver, BC V6C 1E5 (Tel: 604-358-1933, Email: michael@civiclegal.ca)