

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

1392752 B.C. LTD.

PETITIONER

AND:

SKEENA SAWMILLS LTD.  
SKEENA BIOENERGY LTD.  
ROC HOLDINGS LTD.

RESPONDENTS

**Written Submissions - City of Terrace**

THESE ARE THE WRITTEN SUBMISSIONS of the City of Terrace (the “**City**”) regarding the Notice of Application of the receiver Alvarez & Marsal Canada Inc. (the “**Receiver**”) seeking a reverse vesting order and filed February 29, 2024.

**SUMMARY OF POSITION**

1. The City is agreeable to a transaction involving the assets under the receivership that:
  - a) results in the payment of all back taxes and City fees owing by ROC Holdings Ltd. (“**ROC**”) at the time of closing;
  - b) does not affect the City’s continuing claims and charges for current year property taxes; and
  - c) furthers the community’s interest in seeing the assets used productively.
2. For the purpose of responding to the application, the City assumes that the Receiver is advancing Cui Family Holdings Ltd.’s bid as being the bid that is most advantageous to creditors. The City also assumes that the Receiver is proposing an order that this Honourable Court has the jurisdiction to make.
3. Since the filing of the Notice of Application, Cui Family Holdings Ltd. has signed an amendment to the Payment and Retention Agreement to include liability for property taxes payable for 2024 as an expressly retained liability.

4. Paragraph 14 and Schedule D in the draft form of reverse vesting order prepared by the Receiver's counsel are acceptable to the City. Those provisions:

- a) exclude the subject property taxes from those taxes and other liabilities transferred away from ROC pursuant to the Order and the Retention Agreement attached to the order;

("Notwithstanding any other term of this Order, or in a schedule attached to this Order")

- b) define the subject property taxes imposed in the current year that are payable to the City. Property taxes payable to the City include property taxes imposed by other government authorities;

("property taxes imposed in 2024 and payable to the City of Terrace")

- c) preserve the current year property taxes as a charge and a liability of ROC;

("shall expressly remain an encumbrance that is not subject to transfer, release, expungement or discharge from the Retained Assets and shall remain a liability of ROC.")

- d) confirm that the City's rights and remedies regarding the current year property taxes are unaffected;

("Further, the City of Terrace's entitlement to collect, and its remedies for the collection of, such property taxes shall be unaffected by the terms of this Order.")

- e) expresses the current year property taxes payable to the City as a Permitted Encumbrance listed on Schedule "D" of the Order given that such taxes accrued and to accrue are secured by an unregistered statutory charge.

## **BACKGROUND FACTS**

- 5. 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.
- 6. The City is a secured creditor of the petition respondent ROC.

7. The City's claim in debt against ROC is secured against four of the five parcels of land owned by ROC.

8. Those four parcels within the taxation jurisdiction of the City for which ROC is the assessed owner are:

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 Lori Greenlaw at para. 5, Ex. A

9. ROC owns a fifth parcel that is outside the boundaries of the City.

Affidavit #3 of A. Kumar, Ex. D

10. The City's 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.

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

Affidavit #1 of Lori Greenlaw at para. 6

12. 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**").

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

13. 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.
14. 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 Lori Greenlaw at para. 13

15. 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 Lori Greenlaw at para. 12

16. 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.
17. If no payments are made and the interest rate imposed by [sections 245 and 246 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 Lori Greenlaw at paras. 12, Ex. E

18. 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 Lori Greenlaw at paras. 7 and 11, Ex. B

19. 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 Lori Greenlaw at para. 10

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

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

21. 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 Lori Greenlaw at paras 3, 15

### **CITY'S CLAIM FOR TAXES**

22. 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.
23. On the date of the proposed "Transaction", 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".
24. The amount of Current Year Taxes likely will not be known at the time of the Transaction. 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."
25. 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.

## LEGAL BASIS

26. 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.
27. 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](#)).
28. 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\(2\)](#)).
29. 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.
30. 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. 245-246](#)). Penalties and interest form part of the property taxes owing.
31. 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.
32. [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.
33. 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. \(4<sup>th</sup>\) 448 \(Ont. CA\)](#)).

34. 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.
35. 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](#)).
36. If unpaid property taxes imposed against a parcel become delinquent and remain so by the date of the annual tax sale, a municipality must recover unpaid property taxes, including any interest and penalties accruing, by selling that parcel and the improvements thereon at the 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.
37. The Receiver submits in its application that “the Transaction contemplates payment, in full, of the Priority Claims”. Because such a payment will not include 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. This is because such a claim ranks in priority to mortgages and other surviving claims and encumbrances held by, or to be held by, the bidder.
38. 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 will be in a worse position than if it was allowed to sell the ROC Terrace Lands at tax sale.

Date: March 27, 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](mailto:michael@civiclegal.ca))