

CANADA / JUDGMENT

Teal Jones Holdings Ltd. (Re)

2025 BCSC 2291

COURT

Supreme Court of British Columbia

DECIDED

18 November 2025

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2025 BCSC 2291 Teal Jones Holdings Ltd. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Teal Jones Holdings Ltd. (Re),

2025 BCSC 2291

Date: 20251118

Docket: S242700

Registry: Vancouver

In the Matter of the Companies' Creditors Arrangement Act,

R.S.C. 1985, c. C-36, as amended

And

In the Matter of a Plan of Compromise and Arrangement of

Teal Jones Holdings Ltd., Teal Cedar Products Ltd., Columbia River

Shake & Shingle, Teal Jones Aviation GP Ltd., Teal-Jones Group,

Teal Jones Aviation Limited Partnership, Teal Jones Holdings USA Inc.,

Teal Jones Lumber Services Inc., Teal Jones Dry Kilns, LLC, Teal Jones

Lumber Sales, LLC, Pine Products, LLC, Potomac Supply, LLC,

Teal Jones Lumber, LLC, Teal Jones Louisiana Holdings, LLC,

and Greentree Lumber Company LLC

Before: The Honourable Mr. Justice Milman

Oral Reasons for Judgment

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(November 10, 2025)

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Place and Date of Hearing:

Vancouver, B.C.

November 10, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 18, 2025

I. Introduction

[1] This is an application for security for costs.

- [2] In these proceedings commenced under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 [CCAA], this court has approved a sales and investment solicitation process ("SISP") that contemplates the monitor arranging for the sale of numerous of the debtors' assets. The history of the proceeding in general, and the SISP in particular, is summarised in the decision of Fitzpatrick J. of May 8, 2025 (indexed as Teal-Jones Group (Re), 2025 BCSC 861), explaining the reasons for her earlier approval of one such sale under the SISP. I will not repeat that background here.
- [3] Suffice it to say that the proceedings are now being financed entirely by the debtors' interim lenders. The amount owing to them far exceeds the value of their collateral. This means that every dollar spent by the petitioners, the monitor and their respective counsel in carrying on these proceedings reduces the interim lenders' ultimate recovery commensurately.
- [4] The proceeding is now nearing its completion, and there are only a few items of business left outstanding. The application now before me, in which the interim lenders seek security for costs, arises from one of those outstanding items of business.
- [5] On September 12, 2025, G.C. Weatherill J. approved a sale of one of the petitioners' mills located in the State of Virginia, USA, known as the Pine Mill, and a distribution of the proceeds of sale to the interim lenders, subject to one condition, which brings the parties to court today.
- [6] That condition was imposed because the petitioners' application seeking approval of the sale and the proposed distribution was opposed by an earlier bidder for the Pine Mill, a company known as Mercury Merchant LLC ("Mercury").
- [7] Mercury had previously made an offer to purchase both the Pine Mill and a second mill, also located in Virginia, known as the Potomac Mill. Mercury's offer was initially accepted by the monitor, on behalf of the petitioners, and on April 25, 2025, the parties entered into an asset purchase agreement ("APA") to that end. However, before the transaction was due to complete, Mercury's financing fell through, and Mercury advised the petitioners and the monitor that it would not be in a position to complete the purchase by the deadline set out in the APA. This news caused the monitor to terminate the APA, which it did by letter dated July 22, 2025, resulting in the forfeiture of Mercury's deposit of US\$850,000.
- [8] The APA included a choice of law clause stipulating that:
- a) the APA was to be governed by the laws of the State of Delaware;
 - b) this court was to have exclusive jurisdiction over any disputes arising under or in connection with the APA prior to the final order terminating the CCAA proceedings; and
 - c) thereafter, such jurisdiction was to be transferred to the courts of the state of Delaware.

- [9] Following the termination of the APA, the monitor returned to the market, and, on August 20, 2025, entered into a new APA with the eventual purchasers of the Pine Mill, namely, Pine Products LLC and Giving Tree Lumber LLC. I will refer to the resulting transaction as the "Giving Tree Sale." Soon after that, the petitioners brought an application seeking, with the support of the monitor, the court's approval of the Giving Tree Sale and an order to distribute the proceeds, including Mercury's forfeited deposit, to the interim lenders.
- [10] On September 5, 2025, Mercury filed an application seeking, among other things, an order that the Giving Tree Sale not be approved and the SISP be reopened. One week later, on September 12, 2025, Mercury filed a second application seeking to adjourn the hearing of the petitioners' application for approval of the Giving Tree Sale and proposed distribution. That hearing was scheduled to take place before Weatherill J. that same day.
- [11] In refusing Mercury's applications and granting the petitioners' applications to approve the sale and distribution, Weatherill J. made the distribution conditional on the resolution of Mercury's forthcoming application seeking return of its deposit, provided Mercury filed such an application by October 3, 2025. His order of that date (September 12, 2025) also left it open to the monitor to seek special costs against Mercury in the event Mercury's application proceeded and was unsuccessful.
- [12] Mercury filed both an appeal (on September 19) and an application for leave to appeal (on October 1) from the order of Weatherill J. Following a hearing in chambers before her that lasted a full day, the application for leave was dismissed by Fenlon J.A. on October 10, 2025, with costs payable to the respondents. Those costs remain unpaid.
- [13] Mercury also unsuccessfully opposed the monitor's subsequent application in the United States under chapter 15 of the US Bankruptcy Code, seeking recognition of the order of Weatherill J.
- [14] On October 3, 2025 (the deadline set by Weatherill J.), Mercury filed its application seeking to have the forfeited deposit:
- a) paid into court pending the final determination of the matter; and
 - b) returned to Mercury or, in the alternative, directing that the matter be determined by the courts of the State of Delaware.
- [15] I will refer to that application as the "Deposit Application". It is now scheduled to be heard by Weatherill J. on December 9 or 12, 2025.
- [16] On October 22, 2025, the interim lenders filed the application now before the Court, seeking an order:
- a) requiring Mercury to post security for costs in the amount of \$250,000;
 - b) staying the Deposit Application until such security is posted; and

- c) dismissing the Deposit Application altogether if such security is not posted within 14 days of the order being made.

[17] The interim lenders' application is supported by the monitor.

[18] Mercury opposes the application, arguing that the interim lenders have no standing to seek such relief, and, in any event, that the relief sought would, if granted, be unfair to Mercury, insofar as it would effectively deprive Mercury of its only chance to seek relief from forfeiture, as both Weatherill J. and Fenlon J.A. intended. Mercury argues further that the recent monitor's reports have no evidentiary value, in view of the monitor's demonstrated bias against it.

II. The Legal Test

[19] The parties agree on the legal principles that are to be applied in resolving this application. They were conveniently summarised by Goepel J.A., writing for the Court in *Ocean Pastures Corporation v. Old Masset Economic Development Corporation*, 2016 BCCA 12, as follows:

[17] The legal principles governing an application for security for costs against an impecunious corporate plaintiff were summarized in *Kropp v. Swanese Bay Golf Course Ltd.*, 1997 CanLII 4037, 29 B.C.L.R. (3d) 252 (C.A.) at para. 17:

1. The court has a complete discretion whether to order security, and will act in light of all the relevant circumstances;
2. The possibility or probability that the plaintiff company will be deterred from pursuing its claim is not without more sufficient reason for not ordering security;
3. The court must attempt to balance injustices arising from use of security as an instrument of oppression to stifle a legitimate claim on the one hand, and use of impecuniosity as a means of putting unfair pressure on a defendant on the other;
4. The court may have regard to the merits of the action, but should avoid going into detail on the merits unless success or failure appears obvious;
5. The court can order any amount of security up to the full amount claimed, as long as the amount is more than nominal;
6. Before the court refuses to order security on the ground that it would unfairly stifle a valid claim, the court must be satisfied that, in all the circumstances, it is probable that the claim would be stifled; and
7. The lateness of the application for security is a circumstance which can properly be taken into account.

- [18] Once an applicant for security for costs has shown that a corporate plaintiff will not be able to pay costs should its claim fail, security is generally ordered unless the court is satisfied that there is no arguable defence: *Fat Mel's* at 235.
- [20] It has been held that the court's jurisdiction to require a litigant to post security for costs extends to interlocutory applications in CCAA proceedings: *In the Matter of a Plan of Compromise or Arrangement of BZAM Ltd.*, 2024 ONSC 3902.

III. Discussion

A. Do the interim lenders have standing to bring this application?

- [21] Mercury's first line of defence is that the interim lenders have no standing to bring this application. I see no merit in that argument. As I mentioned earlier, the interim lenders are funding this litigation on their own. They are therefore the only parties with a financial interest in this dispute, other than Mercury itself. I therefore have no hesitation in finding that, in these circumstances, they have the requisite standing to bring this application.

B. Is Mercury able to pay costs if its application fails?

- [22] Mercury does not dispute that it is an empty shell with no ability to pay costs on its own. This element of the test is therefore satisfied.

C. Has Mercury shown that there is no arguable defence to the Deposit Application?

- [23] In entering into the APA, Mercury represented that it had the means to complete the purchase and promised to do so on the prescribed date. Accordingly, it faced forfeiture of its deposit once that representation proved to be untrue and its promise to complete on schedule could, by its own admission, no longer be fulfilled.
- [24] However, Mercury argues that it was at the mercy of its own lender, who was in breach of an earlier commitment it had made to fund the purchase. Mercury argues further that the monitor was partly at fault for the lender's breach, and on that basis, that Mercury has a strong case for relief from forfeiture under Delaware law.
- [25] In support of that argument, Mercury cites the decision of the Supreme Court of Delaware in *Thompson St. Cap. Partners IV LP v. Sonova United States Hearing Instruments, LLC*, (2024) 340 A. 3d 1151. That decision appears to suggest that the courts of Delaware will be reluctant to allow a forfeiture to stand where the breach was not material and the forfeiture disproportionate. It is less than entirely clear how that principle, assuming it forms part of the law of Delaware (Mercury has yet to adduce any expert evidence on the law of Delaware), would assist Mercury on the facts of this case.
- [26] In any event, what matters for present purposes is that the respondents appear to have a strong defence to the Deposit Application, whether on that test or any other that might be applied.

[27] First, it is difficult to see how Mercury's breach in signalling its inability to complete (contrary to its earlier representation) could be found to be an immaterial one. Second, the cost to the debtors and their creditors flowing from that breach appears to have been significant, even when measured against the size of the forfeiture. Finally, Mercury has adduced no convincing evidence on this application to support its allegation that the monitor somehow undermined Mercury's financing.

D. Should the Court exercise its residual discretion to refuse the application for security, even if the interim lenders have satisfied the other branches of the test?

[28] Having concluded that Mercury has no ability to pay costs if the Deposit Application fails, and that the respondents have a strong defence to the Deposit Application, I am satisfied that the interim lenders are entitled to the relief they seek unless there is some other reason to refuse that relief in the circumstances of this case.

[29] One concern that I raised with counsel during the hearing is that Weatherill J., in granting the order approving the Giving Tree Sale and the associated distribution, intended to preserve Mercury's right to seek relief from forfeiture before that distribution occurs. Moreover, Fenlon J.A. refused Mercury's application for leave to appeal from that order on the same basis. If the relief sought here will in fact stifle the Deposit Application, then Mercury will have effectively been deprived of that right without a hearing.

[30] However, the evidence before me falls short of establishing that the Deposit Application will in fact be stifled if that relief is granted. Although Mercury is an empty shell, its principals had sufficient means available to them only a few months ago to pay the substantial deposit they now seek to have returned. There is no evidence before me to suggest that anything has changed in that regard. To the extent those principals believe that Mercury's case for relief from forfeiture is as strong as Mercury has argued it to be in response to this application, they will have sufficient incentive to put forward the requisite security on Mercury's behalf, so that the Deposit Application can proceed.

[31] In summary, I have concluded that an order requiring Mercury to post security for costs is justified in the circumstances of this case. I turn now to the terms on which that security should be required.

E. What is the appropriate amount of security to be posted?

[32] The interim lenders seek an order requiring Mercury to post security in the amount of \$250,000. They have not prepared a draft bill of costs, which is the usual way in which an applicant seeking an order of this kind establishes the amount of security that is needed. Rather, they say that \$250,000 is needed here because they intend to seek, and expect to be awarded, full indemnity costs for:

- a) the hearing that took place before Weatherill J. on September 12, 2025; and
- b) the cost of responding to the Deposit Application.

[33] They say that Mercury has needlessly run up the cost of this litigation by:

- a) bringing a series of meritless applications while unsuccessfully opposing the relief sought and obtained by the petitioners and the monitor, relying in each case on similar grounds previously rejected by the court; and
- b) misstating the facts in its court filings, making it necessary for the monitor, in each such case, to correct the record in its responding materials.

[34] For example, the monitor argues that Mercury attempted to mislead Weatherill J. when it urged him to withhold his approval of the Giving Tree Sale on the basis that Mercury had secured new financing of its own to complete the purchase. According to the monitor, it was only when pressed by the court on this point that Mercury revealed that its new financing term sheet was merely conditional and not firm.

[35] Mercury argues in response that the amount of security sought is excessive. In particular, Mercury says that the Deposit Application is not complicated and is scheduled to be heard by Weatherill J. in one day or less. Further, Mercury disputes that its conduct has been deserving of rebuke so as to justify an award of full indemnity costs. In particular, Mercury disputes that any of the facts previously asserted in its materials were false, or that it has otherwise attempted to mislead the court. In any event, Mercury specifically disputes the need to have three different sets of lawyers responding to the Deposit Application.

[36] I agree with Mercury that requiring it to post security in the amount of \$250,000 would overshoot the mark.

[37] First, the tariff costs for an unsuccessful one-day hearing would be nowhere near that level. Having said that, I accept there may be a need for expensive disbursements. For example, if Mercury chooses to adduce, at the last minute, expert evidence on Delaware law (evidence which may be necessary for the application to succeed), then the other parties may be required to respond, in short order, with expert evidence of their own.

[38] Second, although there may be a basis for an award of full indemnity costs if the Deposit Application fails, I am not in a position to decide that question on this application. Regardless, I agree with Mercury that it ought not to have to post security in an amount sufficient to cover full indemnity costs for all three of the responding parties when one of them, presumably the monitor, can and should be taking the lead.

[39] Balancing the parties' respective interests in view of those considerations, I have concluded that the appropriate amount of security to be posted is \$75,000.

F. Should there be a "guillotine" order?

[40] It is common for orders requiring a litigant to post security for costs to stipulate as well that the posting party's claim is to be stayed pending the posting of the security as ordered. The interim lenders seek such an order here, but in addition, they also seek a so-called "guillotine" order, which would operate to dismiss the Deposit Application, as if adjudicated

on the merits, if the security I am ordering is not posted by the specified deadline. They cite the following authorities in which this court's jurisdiction to grant such an order has been recognised: *A B & A Matthews v. Dixon*, 1999 BCCA 333; *1600 Davie Limited Partnership v. Metal Yapi Holding A.S.*, 2025 BCSC 979.

[41] I agree with the interim lenders that it is necessary to include such a term in my order in this case. The effect of merely staying, but not disposing of, the Deposit Application should the security not be posted as ordered would be to leave the matter in limbo indefinitely. The distribution of the proceeds of sale from the Giving Tree Sale has previously been ordered to be contingent on the resolution of the Deposit Application. If the security is not posted as ordered, then the petitioners and the monitor ought to be free to proceed to distribute the remaining proceeds of the SISP to the interim lenders and otherwise take the steps needed to conclude this proceeding altogether.

[42] I am therefore granting that order as well.

IV. Summary and Conclusion

[43] The application is allowed in part.

[44] I am granting the interim lenders the relief they seek in para. 1 of Part 1 of the Notice of Application filed October 22, 2025, with the following changes:

- a) the amount of security to be posted will be \$75,000 rather than \$250,000;
- b) the deadline for posting that security will be the close of business on November 28, 2025, rather than 14 days from the date of this order; and
- c) the costs of this application will not be payable to the interim lenders forthwith, but rather as follows:
 - i. if the security is not posted by the deadline I have set, and the Deposit Application is therefore automatically dismissed pursuant to my order, then the costs of this application are to be payable by Mercury to the interim lenders forthwith thereafter, at Scale B; and
 - ii. if the security is posted on time and in full pursuant to my order, then the costs of this application will be in the discretion of the judge who hears the Deposit Application.

"Milman J."

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