

Court of Appeal File No.: C56961

COURT OF APPEAL FOR ONTARIO

**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 SINO-FOREST CORPORATION**

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B E T W E E N :

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND
EASTERN CANADA, THE TRUSTEES OF THE INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 793 PENSION PLAN FOR OPERATING
ENGINEERS IN ONTARIO, SJUNDE AP-FONDEN, DAVID GRANT and ROBERT
WONG

Plaintiffs

- and -

SINO-FOREST CORPORATION, ERNST & YOUNG LLP, BDO LIMITED (formerly
known as BDO MCCABE LO LIMITED), ALLEN T.Y. CHAN, W. JUDSON
MARTIN, KAI KIT POON, DAVID J. HORSLEY, WILLIAM E. ARDELL, JAMES
P. BOWLAND, JAMES M.E. HYDE, EDMUND MAK, SIMON MURRAY, PETER
WANG, GARRY J. WEST, PÖYRY (BEIJING) CONSULTING COMPANY
LIMITED, CREDIT SUISSE SECURITIES (CANADA), INC., TD SECURITIES
INC., DUNDEE SECURITIES CORPORATION, RBC DOMINION SECURITIES
INC., SCOTIA CAPITAL INC., CIBC WORLD MARKETS INC., MERRILL LYNCH
CANADA INC., CANACCORD FINANCIAL LTD., MAISON PLACEMENTS
CANADA INC. CREDIT SUISSE SECURITIES (USA) LLC, and BANC OF
AMERICA SECURITIES LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF MOTION

The Ad Hoc Committee of Purchasers of the Applicant's Securities (the "Class Action Plaintiffs") will make a motion to a panel of the Court of Appeal on a date to be fixed by the Registrar at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THIS MOTION IS FOR:

- a) an Order quashing the appeal herein commenced by Notice of Appeal dated April 18, 2013 served by the Objectors (as defined below);
- b) costs of this motion; and
- c) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The Objectors (Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical de Retraite Bâtirente Inc., Matrix Asset Management Inc., Gestion Férique and Montrusco Bolton Investments) served a Notice of Appeal on April 19, 2013 seeking to appeal:

- (a) the order dated March 20, 2013 of the Honourable Justice Morawetz approving the settlement between Ernst & Young LLP ("Ernst & Young") and the Ad Hoc Committee of Purchasers of Sino-Forest Corporation's Securities (the "Settlement Approval Order"); and
- (b) the order dated March 20, 2013 of the Honourable Justice Morawetz dismissing the Objectors motion for a representation order (the "Dismissal Order").

2. The Settlement Approval Order and the Dismissal Order were entered pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the

“CCAA”) and as contemplated in Sino-Forest Corporation’s plan of arrangement and compromise dated December 3, 2012;

3. On December 13, 2012, Regional Senior Justice Then appointed the Honourable Justice Morawetz to hear the motion to approve the Ernst & Young settlement under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “CPA”) and the CCAA;

4. The Honourable Justice Morawetz approved the settlement presiding in his dual capacity as both CCAA judge and judge under the CPA;

5. In granting the Settlement Approval Order and dismissing the motions brought by the Objectors for representative status and other relief, the Honourable Justice Morawetz held that the Ernst & Young Settlement was fair and reasonable in all the circumstances;

6. The sole and proper route of appeal of the Settlement Approval Order and the Dismissal Order is with leave to appeal from this court;

7. The Objectors may only appeal the Settlement Approval Order and the Dismissal Order if leave to appeal is granted;

8. The Objectors arguably have no standing to appeal from the Settlement Approval Order and the Dismissal Order at all, but in any event, they have no such right without leave of this court;

9. The Objectors are attempting to circumvent the appropriate legal test, as provided under the *Rules of Civil Procedure*, the *Courts of Justice Act*, R.S.O. 1990, c. C-4 (the “*CJA*”), the *CPA* and the *CCAA*;

10. Contrary to what the Objectors maintain, the Settlement Approval Order did not enter judgment on the common issues pursuant to s. 30(3) of the *CPA*;

11. Contrary to what the Objectors maintain, the Settlement Approval Order did not enter an aggregate assessment of monetary relief pursuant to s. 24 of the *CPA*;

12. The Objectors have concurrently brought a motion for leave to appeal from the Settlement Approval Order pursuant to the *CCAA*;

13. The Objectors have concurrently brought a motion for leave to appeal from the Dismissal Order pursuant to the *CCAA*;

14. The Objectors have concurrently brought a motion for leave to act as a representative party for their motions for leave to appeal the Settlement Approval Order and the Dismissal Order;

15. Facta have been filed addressing the Objector’s inability to act as a representative party for their motions for leave to appeal the Settlement Approval Order and the Dismissal Order;

16. The oral hearing addressing the inability of the Objectors to act as a representative party for their motions for leave to appeal the Settlement Approval Order and the Dismissal Order is scheduled for May 1, 2013;

17. Section 6(1)(b) of the *CJA*;
18. Rule 61 of the *Rules of Civil procedure*, R.R.O. 1990 reg. 194;
19. Section 30 of the *CPA*;
20. Section 14 of the *CCAA*; and
21. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) The affidavit of Tanya T. Jemec sworn April 22, 2013; and
- b) Such further and other material as counsel may advise and this Honourable Court may permit.

April 30, 2013

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Purchasers of the Applicant's Securities,
including the Representative Plaintiffs in
the Ontario Class Action

TO:

ATTACHED SERVICE LIST

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1985, c.C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION TO QUASH

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