

Court of Appeal File No.: C56961
Court File No. CV-12-9667-00-CL

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**

Court of Appeal File No.:
Court File No.: CV-11-431153-00CP

COURT OF APPEAL FOR ONTARIO

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 MERRILL LYNCH,
PIERCE, FENNER & SMITH INCORPORATED (successor by merger to Banc of
America Securities LLC)**

Defendants

AMENDED NOTICE OF MOTION

Ernst & Young LLP ("Ernst & Young") 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.

THE MOTION IS FOR:

- (a) an Order quashing the 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. An appeal has purportedly been brought by the Objectors (Invesco Canada Ltd., Northwest & Ethical Investments L.P., Comité Syndical National de Retraite Bâtirente Inc., Matrix Asset Management Inc, Gestion Férique and Montrusco Bolton Investments) pursuant to subsection 30(3) of the *Class Proceedings Act, 1992*, S.O. 1992, c C-6 (the “CPA”);
2. The Objectors also seek leave under subsection 30(5) of the CPA to act as a representative party for the purposes of their purported appeal;
3. The Objectors purport to appeal from the Order of The Honourable Justice Morawetz dated March 20, 2013 approving a settlement between Ernst & Young and the Plaintiffs and dismissing the motions brought by the Objectors for representative status and other relief (the “Settlement Approval Order” and the “Representation Dismissal Order”);

4. The settlement was entered into in the context of *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") proceedings of the Applicant, Sino-Forest Corporation, as specifically contemplated in Sino-Forest Corporation's plan of arrangement and compromise dated December 3, 2012 (the "Plan");
5. The Honourable Justice Morawetz approved the settlement presiding in his dual capacity as both *CPA* judge (appointed by the Regional Senior Justice) and CCAA judge;
6. The Objectors participated fully in the Plan sanction hearing and the settlement approval hearing;
7. The settlement approved by The Honourable Justice Morawetz included a release for Ernst & Young under the CCAA;
8. The Objectors have no standing to appeal from the Settlement Approval Order or the Representation Dismissal Order;
9. The Settlement Approval Order and the Representation Dismissal Order are not and cannot be equated with a judgment on common issues (under subsection 30(3) of the *CPA*) or an order with respect to awards of damages (under section 24 of the *CPA*);
10. The Objectors' proposed appeal is ill-conceived and improper;
11. In addition to their purported appeal, the Objectors have brought a motion for leave to appeal from the Settlement Approval Order and the Representation Dismissal Order, pursuant to the provisions of the CCAA;
12. They seek the same relief in both their purported appeal under subsection 30(3) of the *CPA* and in their proposed appeal for which they seek leave;

13. The proper procedural route for the Objectors' appeal (if any), is with leave of this Honourable Court;
14. If (and only if) the Objectors' meet the test for leave to appeal will the Objectors have a right of appeal;
15. The Objectors should not be permitted to circumvent the appropriate legal test, as provided under the *Rules of Civil Procedure*, the *Court of Justice Act*, R.S.O. 1990, c. C-4 (the "*CJA*"), the *CPA* and the *CCAA*;
16. Sections 6(1)(b) and 134(3) of the *CJA*;
17. Rule 61 of the *Rules of Civil Procedure*, R.R.O. 1990, reg. 194;
18. Section 30 of the *CPA*;
19. Sections 13 and 14 of the *CCAA*; and
20. 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 Responding Motion Record of Ernst & Young dated February 22, 2013 filed in Court of Appeal File No. M42068;
- (b) Motion Record Ernst & Young dated May 10, 2013;
- (c) The affidavit of Tanya T. Jemec sworn April 22, 2013; and,

- (d) Such further and other material as counsel may advise and this Honourable Court may permit.

~~April 25~~ May 10, 2013

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Lawyers for the Respondent, Ernst & Young LLP

TO: **ATTACHED SERVICE LIST**

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PROCEEDING COMMENCED AT TORONTO

AMENDED NOTICE OF MOTION TO QUASH

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