

Court of Appeal File No.:
S.C.J. Court File No.: CV-12-9667-00CL

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 OR ARRANGEMENT OF SINO-FOREST CORPORATION**

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

COURT OF APPEAL FOR ONTARIO

BETWEEN:

**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

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF APPEAL

THE OBJECTORS (APPELLANTS) APPEAL to the Court of Appeal from the
order dated March 20, 2013 ("Settlement Approval Order") of the Honourable Mr. Justice

Morawetz approving the Ernst & Young LLP Settlement (“E&Y Settlement”) and third party release of Ernst & Young LLP (“E&Y Release”).

The Appellants also appeal the order dated March 20, 2013 (“Representation Dismissal Order”) of Justice Morawetz dismissing the Appellants’ motion for a representation order and dismissing their request for relief from the binding effect of the representation order appointing certain other persons (the Ontario Plaintiffs) as representatives, as part of the restructuring proceedings of Sino-Forest Corporation (“Sino-Forest” or the “applicant”).

THE APPELLANTS ASK:

1. that an Order be granted setting aside the Settlement Approval Order;
2. that an Order be granted setting aside the Representation Dismissal Order;
3. such further and other relief as this Honourable Court may deem just.

THE GROUNDS OF APPEAL are as follows:

1. Justice Morawetz erred in entering the Settlement Approval Order approving the E&Y Settlement and E&Y Release under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“*CCAA*”) in connection with the Plan of Compromise and Reorganization of Sino-Forest Corporation (the “Plan”), particularly in that:

- (a) Justice Morawetz, the Supervising *CCAA* Judge in this proceeding, was designated on December 13, 2012, by Regional Senior Justice Then to hear the motion for approval of the E&Y Settlement pursuant to both the *CCAA* and the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“*CPA*”);

- (b) the Settlement Approval Order in effect avoided or rejected application of the *CPA* in determining whether to approve the E&Y Settlement;

(c) the Settlement Approval Order in effect refused to certify the class proceeding against E&Y under the *CPA*;

(d) the Settlement Approval Order in effect entered judgment on common issues or entered an aggregate assessment of monetary relief on the claims asserted under the *CPA* against E&Y, by fully and finally releasing E&Y from liability to class members upon satisfaction of the conditions of the settlement;

(e) the Ontario Plaintiffs did not appropriately and adequately represent the members of the class whose claims against E&Y are proposed to be settled and released;

(f) the *CPA* provides an adequate and appropriate alternative framework for the proposed settlement of the class action claims asserted against E&Y;

(g) the terms of the E&Y Settlement do not provide any assurance that settlement consideration would flow to the parties whose claims are proposed to be settled and released;

(h) the terms of the E&Y Settlement were construed by the Court not to provide opt out rights to the members of the class whose claims against E&Y are proposed to be settled and released;

(i) no-opt-out class action settlements are not permissible under the *CPA*; and,

(j) the Court did not address or decide whether the amount of consideration in the proposed E&Y Settlement was fair, reasonable, and adequate;

2. Justice Morawetz erred in entering the Representation Dismissal Order, particularly in that the Appellants would have more appropriately and adequately represented the interests of the members of the class who are equity claimants and/or the members who objected to the proposed E&Y Settlement, without any conflict of interest, and the interests

of justice would have been served thereby. The combined effect of the Representation Dismissal Order and Settlement Approval Order denied the Appellants their right to representation by counsel of their choice;

3. The Appellants have moved for leave to act as the representative party on this appeal;
4. Rules 10 and 61 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
5. Sections 6 and 134 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
6. Sections 5, 9, 17, 19, 24, 29, 30(3), 30(5) and 34 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and,
7. Such further and other grounds as counsel may advise.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. The orders appealed from are final orders of a Judge of the Superior Court of Justice disposing of the rights of class members. Accordingly, the appeal lies directly to the Court of Appeal;
2. Section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43; and,
3. Sections 30(3) and 30(5) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

The Appellants request that this appeal be heard at Toronto.

April 18, 2013

KIM ORR BARRISTERS P.C.
19 Mercer Street, 4th Floor
Toronto, Ontario
M5V 1H2

Michael C. Spencer (LSUC #59637F)
Won J. Kim (LSUC #32918H)
Megan B. McPhee (LSUC #48351G)

Tel: (416) 596-1414
Fax: (416) 598-0601

Lawyers for the Objectors (Appellants),
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 Inc.

TO: THE SERVICE LIST

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

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c. C-36, AS AMENDED,
AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF SINO-FOREST CORPORATION

Court of Appeal File No.:
Superior Court File No.: CV-10-414302CP

THE TRUSTEES OF THE LABOURERS' PENSION FUND OF CENTRAL AND
EASTERN CANADA, et al.
Plaintiffs

-and- SINO-FOREST CORPORATION, et al.

Defendants

COURT OF APPEAL FOR ONTARIO

(Proceeding Commenced at Toronto)

NOTICE OF APPEAL

KIM ORR BARRISTERS P.C.

19 Mercer Street, 4th Floor
Toronto, Ontario M5V 1H2

Michael C. Spencer (LSUC #59637F)

Won J. Kim (LSUC #32918H)

Megan B. McPhee (LSUC #48351G)

Tel: (416) 596-1414

Fax: (416) 598-0601

Lawyers for the Objectors (Appellants), Invesco Canada
Ltd., Northwest & Ethical Investments L.P., Comité
Syndical National de Rétraite Bâtirente Inc., Matrix Asset
Management Inc., Gestion Férique and Montrusco Bolton
Investments Inc.