

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

NOTICE OF MOTION FOR LEAVE TO APPEAL

BDO Limited ("BDO") will make a motion to the Court of Appeal as soon as possible and, in any event, within 36 days after service of BDO's motion record and factum or the filing of BDO's reply factum, if any, whichever is earlier (unless this Honourable Court orders otherwise, as is requested).

PROPOSED METHOD OF HEARING: The motion is to be heard: in writing unless ordered otherwise under Rule 61.03.1(14)(b), as is requested.

THE MOTION IS FOR:

- (a) An Order granting leave to appeal to the Court of Appeal from the order of Morawetz J., dated July 27, 2012 (the "Order"), which, *inter alia*, declared that any indemnification claims against Sino-Forest Corporation ("Sino") related to or arising from shareholder claims (as listed within Schedule A to the Order) including those asserted by BDO are "equity claims" as defined in the *Companies' Creditors Arrangement Act*, RSC 1985, c.C-36, as amended ("CCAA");

- (b) An interim Order staying the Order, pending the disposition of this leave motion and the appeal;
- (c) Costs of this motion; and,
- (d) Such further and other relief as counsel may advise and to this Honourable Court seems just.

THE GROUNDS FOR THE MOTION ARE:

- (a) On March 30, 2012 Sino sought and was granted an order of the Ontario Superior Court of Justice which provided protection from its creditors pursuant to the provisions of the CCAA;
- (b) Sino and various other parties, including BDO, have been named as defendants in a class action currently pending before the Ontario Courts (“Class Action”);
- (c) BDO was the auditor of Sino from and including the years 2005 to August 2007, when it was replaced by Ernst & Young LLP and issued audit reports in respect of the 2005 and 2006 annual financial statements for Sino;
- (d) The Class Action seeks damages from Sino, BDO and various other defendants in connection with certain alleged misrepresentations in the public disclosure of Sino;
- (e) On April 14, 2012, Sino sought and was granted a claims procedure order from the From the Ontario Superior Court of Justice (“Claims Procedure Order”);
- (f) The Claims Procedure Order expressly provided mechanisms and procedures for the identifying and determining all claims against Sino, its subsidiaries and its officers and directors;
- (g) Further, the Claims Procedure Order purported to establish a procedure for the identification of - and any dispute in relation to such determination - “equity claims” as defined in the CCAA;

- (h) BDO, along with a number of other creditors, filed proofs of claim in accordance with the Claims Procedure Order on June 20, 2012, the claims bar date (“Proofs of Claim”) which included claims for contribution and indemnity (such claims grounded in contract and the common law) from Sino and its officers and directors in respect of the Class Action;
- (i) Well in advance of the bar date for filing Proofs of Claim pursuant to the Claims Procedure Order, Sino made a motion (by way of Notice of Motion dated June 8, 2012) seeking a pre-determination of the nature of the very claims that were to be identified and determined pursuant to the mechanisms in the Claims Procedure Order, namely, whether shareholder claims and certain claims for contribution and indemnity were “equity claims” as defined in the CCAA;
- (j) There has been no determination of the nature, character or quantity of any claims pursuant to the Claims Procedure Order or otherwise;
- (k) The Order appealed from was therefore premature;
- (l) There is good reason to doubt the correctness of the Order;
- (m) The motions Judge erred in declaring that “Related Indemnity Claims” (as defined in the Order) are “equity claims” (as defined in section 2 of the CCAA);
- (n) The motions Judge erred in concluding the BDO’s claim was “in respect of an equity interest”. BDO was not, and has never been, an equity holder in Sino;
- (o) The motions Judge erred in concluding that the actual and anticipated losses in respect of which BDO asserts a claim are claims that arise from a claim being made by equity holders;
- (p) The motions Judge erred in failing to recognize that a substantial portion on the claims advanced by BDO are claims for breach of contract and misrepresentation;

- (q) The motions Judge erred in failing to conclude the BDO's claims against Sino are general unsecured claims;
- (r) The issues raised on the proposed appeal are of substantive importance in the development of the law regarding insolvency generally and warrant review by a higher judicial authority;
- (s) The proposed appeal will not unduly hinder the progress of the CCAA proceeding;
- (t) The appeal is *prima facie* meritorious and is not frivolous;
- (u) The CCAA and, specifically sections 2, 13 and 14 thereof;
- (v) Rules 2, 3, 37, 61 and 63 of the *Rules of Civil Procedure, RRO 1990, Reg.194*;
- (w) Sections 6, 7, 106 and 134 of the *Courts of Justice Act, RSO 1990, c.C-43*;
- (x) BDO is requesting an expedited hearing date in that Sino is requesting from the Court a meeting date for the end of September or early October, 2012 to approve its recommended Plan of Arrangement at which equity claimants will not have the same rights of approval or non-approval as normal unsecured creditors; and,
- (y) Such further and other grounds as counsel may advise and the Honourable Court permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION is:

- (a) Section 13 of the CCAA.

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

- (a) The Order and Reasons for Judgment of Justice Morawetz, dated July 27, 2012;

- (b) The motion materials submitted on the motion appealed from;
- (c) The Reports of the Monitor filed in the CCAA proceedings; and,
- (d) Such further and other materials as counsel may advise and the Honourable Court permit.

August 16, 2012

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TO: SERVICE LIST

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Proceeding commenced at Toronto

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