

COURT OF APPEAL FOR ONTARIO

CITATION: Labourers' Pension Fund of Central and Eastern Canada v.  
Sino-Forest Corporation, 2013 ONCA 500

DATE: 20130729

DOCKET: C56961 M42453

MacFarland, Watt & Epstein JJ.A.

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

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 McCable 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

Kirk M. Baert, Joathan Ptak, and Massimo Starino, for the moving parties, class action plaintiffs

Peter H. Griffin and Peter J. Osborne, for Lawyers Ernst & Young LLP

Michael C. Spencer and Megan B. McPhee, Yonatan Rozenszajn, and Tanya T. Jemec, for responding parties, Invesco Canada Ltd., Northwest & Ethical Investments L.P., and Comité Syndical National de Retraite Bâtirente Inc.

Derek J. Bell, for respondent Sino-Forest Corporation

Brandon Barnes and Susan E. Friedman, for the respondent Kai Kit Poon

Joseph Marin, for the respondent Allen Chan

John Fabello and Adam Slavens, for the respondent Underwriters

Heard and released orally: June 28, 2013

Motion to quash.

#### ENDORSEMENT

[1] Earlier this week, this court denied the respondent objectors, represented by Mr. Spencer and Ms. McPhee, leave to appeal under the *CCAA* for reasons given at that time.

[2] In these motions to quash, we need only consider whether the appellants (the respondent objectors) have a right of appeal under s. 30 of the *Class Proceedings Act (CPA)*.

[3] The appellants rely on ss. 30(3) and (5) of the *CPA*. In our view, they do not come within either section.

[4] Under s. 30(3) only a party to a class proceeding has a direct appeal to the court from a judgment on common issues or an order under s. 24 of the *CPA* on an aggregate assessment of monetary relief. The appellants are not parties to

the class proceeding and therefore cannot appeal as of right under s. 30(3). It is only under s. 30(5) that a class member has any right to appeal and then only if that member first obtains leave of this court to act as a representative party for the purposes of subsection (3): the right of appeal from a judgment on common issues or under s. 24. These appeals are neither.

[5] Accordingly, for these reasons, the appeals are quashed and the motion to act as representative plaintiff is dismissed.

[6] Costs to each of the moving parties fixed in the sum of \$7500.00, inclusive of disbursements and HST.

*Mustuland J.*  
*David Ross J.A.*  
*Ghies Festeri J.A.*