

VANCOUVER
APR 10 2012
COURT OF APPEAL
REGISTRY

COURT OF APPEAL FILE NO. CA39754

COURT OF APPEAL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985,
c. C-44

AND

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57

AND

IN THE MATTER OF CATALYST PAPER CORPORATION
AND THE PETITIONERS LISTED IN SCHEDULE "A"

REPLY BOOK FOR LEAVE TO APPEAL OF THE RESPONDENTS
WESTERN FOREST PRODUCTS INC., INTERNATIONAL
FOREST PRODUCTS LIMITED and SEASPACE MARINE CORPORATION

Appellants:

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Pensioners Group**

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Schedule "A"
List of Additional Petitioners

Catalyst Pulp Operations Limited
Catalyst Pulp Sales Inc.
Pacifica Poplars Ltd.
Catalyst Pulp and Paper Sales Inc.
Elk Falls Pulp and Paper Limited
Catalyst Paper Energy Holdings nc.
0606890 B.C. Ltd.
Catalyst Paper Recycling Inc.
Catalyst Paper (Snowflake) Inc.
Catalyst Paper Holdings Inc.
Pacifica Papers U.S. Inc.
Pacifica Poplars Inc.
Pacifica Papers Sales Inc.
Catalyst Paper (USA) Inc.
The Apache Railway Company

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IN THE MATTER OF CATALYST PAPER CORPORATION
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**MEMORANDUM OF ARGUMENT OF WESTERN FOREST PRODUCTS INC.,
INTERNATIONAL FOREST PRODUCTS LIMITED and SEASPAK MARINE
CORPORATION ON AN APPLICATION FOR LEAVE TO APPEAL**

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Schedule "A"
List of Additional Petitioners

Catalyst Pulp Operations Limited
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Catalyst Pulp and Paper Sales Inc.
Elk Falls Pulp and Paper Limited
Catalyst Paper Energy Holdings nc.
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Catalyst Paper Holdings Inc.
Pacifica Papers U.S. Inc.
Pacifica Poplars Inc.
Pacifica Papers Sales Inc.
Catalyst Paper (USA) Inc.
The Apache Railway Company

MEMORANDUM OF ARGUMENT

PART I STATEMENT OF FACTS

1. For the purposes of the Appellants' application for leave to appeal, the Respondents, Western Forest Products Inc. ("WFP"), International Forest Products Limited ("Interfor") and Seaspan Marine Corporation ("Seaspan") accept the accuracy of the statement of facts set out in the Appellants' Memorandum of Argument.
2. WFP, Interfor and Seaspan wish to bring the following additional facts to the attention of this Honourable Court.
3. WFP, Interfor and Seaspan are each suppliers to the Petitioners.
4. By order dated February 6, 2012, WFP, Interfor and Seaspan were, against their objections, declared Critical Suppliers to the Petitioners and, together with other Critical Suppliers, granted a charge on certain assets of the Petitioners (the "Critical Suppliers' Charge").
5. In this proposed appeal, the Appellants' seek to set aside the priority of the Critical Suppliers' Charge, in addition to the priority of other charges.

PART II POINTS IN ISSUE

6. Two points in issue are raised by the Appellants' application:
 - (a) should the Appellants' application for leave to appeal be dismissed as out of time; and
 - (b) if not, whether leave to appeal should be granted in the circumstances.

PART III ARGUMENT

Timeliness of Leave to Appeal Application

7. The *Companies' Creditors Arrangement Act* ("CCAA") provides at Section 13 that leave is required in order to appeal an order made under the CCAA. Section 14(12) of the CCAA requires that an appeal be perfected within 21 days. The Critical Suppliers' Charge was granted on February 6, 2012. The Applicants applied for leave to appeal on March 6, 2012. The Applicants are out of time, and given the nature of these proceedings, an extension ought not be given.

Merits of Leave to Appeal Application

8. It has been recognized in this Court that, in the context of a CCAA proceeding, the application of the usual criteria for leave will rarely result in leave to appeal being granted.

Edgewater Casino, Re, 265 B.C.A.C. 274, 2009 BCCA 40 (Applicants' Book of Authorities, TAB 5, paras. 18 to 24), *Doman Industries Ltd., Re*, 2004 BCCA 253, 50 C.B.R. (4th) 194 (Book of Authorities of Catalyst Paper et al, Tab 4, para. 13.)

9. Two considerations unique to CCAA proceeding contribute to this consequence: firstly, the discretionary nature of most orders made in the context of the CCAA; and secondly, the potential for appeal to upset the balance between competing stakeholders that the supervisory judge has endeavoured to achieve in the context of dynamic, "real time" litigation.

Edgewater, *supra*, para. 18 to 24.

10. In this complex CCAA case, because the order sought to be appealed involved the exercise of discretion, the order should not be disturbed.
11. If leave to appeal were to be granted, the delicate balancing of interests achieved by the supervising judge would be upset to the detriment of the restructuring process.

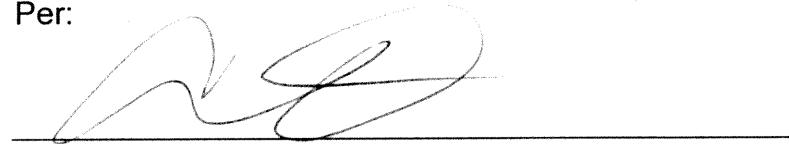
PART IV NATURE OF THE ORDER SOUGHT

12. The application for leave to appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Bull, Housser & Tupper LLP

Per:



E. Jane Milton, Q.C.
Counsel for the Respondents, Western Forest
Products Inc., International Forest Products Limited
and Seaspan Marine Corporation

April 13, 2012
Vancouver, BC

LIST OF AUTHORITIES

Cases

Edgewater Casino, Re, 265 B.C.A.C. 274, 2009 BCCA 40

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5
(Applicant Book)

Doman Industries Ltd., Re, 2004 BCCA 253, 50 C.B.R. (4th) 194

4
(Catalyst Book)

Statutes

Companies' Creditors Arrangement Act, R.S.C.
1985, ss. 13, 14(12)

2,3 & 4
(Catalyst Book)