

No. S-120712
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**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"**

PETITIONERS

APPLICATION RESPONSE

Application response of: The Petitioners (the "**Application Respondents**")

THIS IS A RESPONSE TO the notice of application of the Catalyst Salaried Employees and Pensioners Steering Committee's (the "**CSEP**") filed September 20, 2012.

Part 1: ORDER CONSENTED TO

N/A

Part 2: ORDERS OPPOSED

The Application Respondents oppose the granting of the orders set out in paragraphs 1-2 of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

N/A

Part 4: FACTUAL BASIS

1. The amount of legal fee payments required to be made by the Company to counsel for the CSEP is prescribed by an agreement (the “**Settlement Agreement**”) approved by order of Court dated March 8, 2012 (the “**Settlement Order**”).
2. There is no evidence that counsel for the CSEP is entitled to any fees for legal services in excess of the amount already paid. The evidence indicates that their clients have no liability to pay any legal fees to Koskie Minsky or Ernst & Young LLP.
3. The authorized representative of the pension beneficiaries was the Catalyst TimberWest Retired Salaried Employees Association (“**RSEA**”). The Company has paid the legal fees of the RSEA pursuant to an order of the Court dated February 7, 2012.
4. While the CSEP had some involvement in the CCAA proceedings its application and supporting affidavit evidence grossly overstates its role.
5. There was no reasonable requirement for the CSEP to retain a financial advisor in this matter.

Part 5: LEGAL BASIS

1. The CSEP’s application ought to be dismissed in its entirety on the basis that CSEP is bound by the terms of the Settlement Order and the Settlement Agreement. The CSEP have not provided any evidence outlining that the members of the CSEP are liable for any legal fees not covered by the Settlement Order or the fees of Ernst & Young LLP.
2. Any amendment to the terms of the Settlement Order ought to have been done by way of an appeal. The CSEP did not appeal the terms of the Settlement Order within the timelines prescribed by the *Companies’ Creditors Arrangement Act*, or at all.

3. The CSEP's application seeks to alter the terms of the Settlement Agreement and Settlement Order and is barred pursuant to the doctrine of collateral attack.

See, e.g., *Danyluk v. Ainsworth Technologies Inc.*, [2001] S.C.R. 460

4. In the alternative, the CSEP has not provided any factual basis that justifies disregarding the express terms of the Settlement Agreement. The Settlement Agreement was negotiated by counsel with significant experience in CCAA proceedings. The fee payments prescribed in the Settlement Agreement were approved by the Settlement Order. As outlined by Mr. Justice Parrett:

When the parties take the extra step of presenting their agreement to the court and seeking to have the court formalize their agreement by recording it as a court order, it takes on even greater import. I do not suggest that it is impossible to set aside or challenge such an agreement; but absent fraud, deceit or some such assertion going to the root of the contract it is difficult to envision how that might occur. There must be some level of certainty and finality to the resolution of disputes and the court is entitled to presume when agreements are placed before them that this step is taken openly and with careful consideration of the consequences.

L.A.C. v. Koller & Others, 2004 BCSC 30, at para. 31

5. Absent exceptional circumstances, none of which have been alleged or established by the CSEP, settlement agreements should be enforced to uphold the principles of certainty and finality for parties in litigation, especially in the CCAA context.

6. The Company seeks special costs of this application.,

Part 6: MATERIAL TO BE RELIED ON

7. The pleadings filed herein;

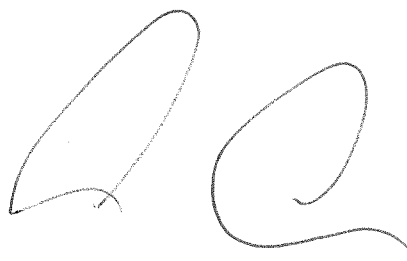
8. Affidavit #1 of David Adderley, made September 25, 2012;

9. Affidavit #1 of Kimberley Grierson, to be sworn; and

10. Affidavit of Andrew Hatnay filed February 20, 2012.

The application respondents estimate that the application will take 2.5 hours.

[X] The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

A handwritten signature in black ink, consisting of two large, stylized, overlapping loops.

Date: September 25, 2012

Signature of
 application respondent
 lawyer for application respondents
Bill Kaplan, Q.C. / Andrew Crabtree

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 Inc.
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