

**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
POPE & TALBOT LTD. AND THE PETITIONERS LISTED IN SCHEDULE "A".**

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

Petitioners

Oral Reasons for Judgment (February 8, 2008)

Document #1

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20080208
Docket: S077839
Registry: Vancouver

Between:

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

Before: The Honourable Chief Justice Brenner

Oral Reasons for Judgment

In Chambers
February 8, 2008

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Pope & Talbot Ltd. (re)***Page 2***

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Place of Trial/Hearing:

Vancouver, B.C.

[1] THE COURT: The application today is to set aside or reconsider an order made by the court on January 7, 2008, following a joint hearing with the United States Bankruptcy Court. The order approved the sale of the respondent Pope & Talbot's principal wood products assets to Interfor pursuant to an agreement entered into November 19, 2007. The applicant Zellstoff Celgar Limited Partnership operates a pulp mill in Castlegar and is virtually co-located with one of the sawmills in the group of mills purchased by Interfor.

[2] The question is whether the existing contractual arrangement in place between Pope & Talbot and Celgar will continue after the Interfor transaction. It is an asset purchase agreement. Interfor reserved the right in the agreement to consider and assess which of the ongoing contracts Pope & Talbot may have had that it wished to continue.

[3] Celgar says that it is potentially affected by the January 7 order but because it was not given notice it did not appear at the January 7 hearing to make its submissions. However it is clear on the material that the applicant Celgar was aware of the insolvency proceedings. In the material in at least one exchange of e-mails, dated November 23 and November 24, between Celgar and Interfor relating to this proceeding. However, Celgar says that relying on that exchange it did not consider it necessary to appear on January 7.

[4] Celgar did have notice of the January 7 hearing and could certainly have participated and made its submissions had it chosen to. The order of this court made on January the 7th has been entered and the court is accordingly *functus*. The

scope of this court to reopen an entered order is extremely limited: See **Breyfogle v. Schmidt**, [2005] B.C.J. No. 1337, and another decision of our Court of Appeal in **Bau und Forschungsgesellschaft Thermoform AG v. Paszner**, Vancouver Docket No. CA011163. In the latter case Mr. Justice Lambert of the Court of Appeal set a very high bar for the reopening of a case following the entry of an order. He limited the circumstances to only two: an invocation of the slip rule or a case of a grave and manifest injustice. He went on to characterize cases of grave and manifest injustice being "almost invariably criminal in nature." That is not the case here.

[5] I would therefore dismiss the application to set aside or reconsider the asset purchase agreement approved by the court on January 7th, 2008. This decision is without prejudice to the rights of Celgar to pursue whatever claim or remedy it may choose to seek against Interfor arising from the communications that may have taken place between the parties.



The Honourable Chief Justice Brenner