Ontario Court defers to Singapore Court in Class Action Dispute

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For some time, the ongoing litigation involving Sino Forest Corporation has illustrated how convoluted and complex class actions can be. Most recently, the Ontario Superior Court, in Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. *Sino Forest*, has rejected an attempt on the part of Sino Forest's former management consulting firm to put an end to related litigation in Singapore.

Sino Forest was a forest plantation operator which was publicly traded on the TSX. From 2003-2011, Sino Forest retained Pöyry to prepare valuations of Sino Forest's various forest assets relied upon during three prospectus offerings. In June 2011, a report was published alleging that Sino Forest committed a fraud by claiming to own forestry assets that it did not own. Later that year, a class proceeding was commenced in Ontario by Sino Forest's noteholders and shareholders, and a parallel action was brought in Quebec. A management consulting company engaged by Sino Forest, Pöyry, was one of the many defendants in the actions.

In 2012, Pöyry entered into a Settlement Agreement (the "Settlement Agreement"), and as the 'first settlor', agreed to various documentary disclosure and overall cooperation to assist the Class Members in their pursuit against the non-settling defendants. The Settlement Agreement also contained a release provision and a bar order provision, which effectively precluded any future claims against Pöyry.

Later that year, Sino Forest obtained creditor protection, and a stay of proceedings. The stay was subsequently lifted to allow for the approval of the Settlement Agreement. The Settlement Approval Order also contained bar order language similar to the Settlement Agreement, and essentially barred "any and all manner of claims that Settlement Class members had against Pöyry … or its affiliates".

Thereafter, under the creditor protection plan, Sino Forest and its subsidiaries were released from all class action claims and a Litigation Trust was established. The protection plan was explicit that the "claims transferred to the Litigation Trust were Sino Forest's independent causes of action against third parties; not claims for contribution or indemnity that Sino Forest might have in the class actions".

Subsequently, the Litigation Trustee commenced four proceedings against Pöyry, including ones in Ontario and Singapore. Pöyry brought an unsuccessful motion to enforce the bar order in the Ontario action. As a result, that claim was allowed to proceed until the Litigation Trustee and Pöyry entered into a Standstill Agreement. Pursuant to the Standstill Agreement, the parties agreed to litigate the Singapore action first, and stayed or tolled the other proceedings until the outcome of the Singapore action.

Motion before the Ontario Superior Court

On its motion before the Ontario Superior Court, Pöyry argued that the "release and bar order provisions of the Pöyry Settlement Agreement cover the Litigation Trust's action against Pöyry in Singapore". It should also be noted that Pöyry relied on these alleged breaches of the Pöyry Settlement Agreement in its Defence to the Singapore action. In sum, "Pöyry is asking [the] court in Ontario to bless or condemn its defences in the Singapore Action and provide an opinion for the Singapore Court". Conversely, the crux of the Litigation Trust's opposition to the motion is that of *forum non conveniens*, or rather that Singapore is the appropriate jurisdiction in the circumstances.

In the result, the Ontario Court accepted the *forum non conveniens* argument advanced by the Litigation Trust. In coming to this conclusion, the Court likened the motion to one brought under *Rule* 21.03(c) of Ontario's *Rules of Civil Procedure*, which states the Court may dismiss an action on the grounds that "another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter".

While the Court found that it had jurisdiction over the subject matter of the motion, the Court elected to dismiss the motion under *Rule* 21.03(c). Further, the Court held that its decision was also consistent with the plain reading of the Standstill Agreement, which is similar to an "exclusive jurisdiction clause". In the end, the Ontario Court held that "it is not appropriate for this court to decide how another court, the Singapore Court, should interpret, apply, and enforce what is for the Singapore Court a foreign judgment". As a result, at least for the time-being, the Sino Forest litigation saga will continue, with a further chapter to be written in Singapore.

By

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