

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE CRONK)
THE HONOURABLE JUSTICE BLAIR)
THE HONOURABLE JUSTICE)
MACFARLAND

TUESDAY THE 6TH DAY OF
DECEMBER, 2016

B E T W E E N:

EXCALIBUR SPECIAL OPPORTUNITIES LP

Plaintiff
(Appellant)

- and -

SCHWARTZ LEVITSKY FELDMAN LLP

Defendant
(Respondent)

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

ORDER

THIS APPEAL by the Plaintiff for an order setting aside the Order of the Divisional Court dated June 15, 2015 denying certification and certifying this action as a class proceeding was heard on June 15, 2016, at Osgoode Hall, Toronto, Ontario.

ON READING the Appeal Book and Compendium, the Factum and Book of Authorities of the Appellant, and the Factum, Compendium and Book of Authorities of the Respondent, and on hearing the oral submissions of counsel for the parties, and on

being advised that the parties have resolved the issue of costs of this appeal and the proceedings below, on consent *and this matter reserved to this date*

1. **THIS COURT ORDERS** that the Order of the Divisional Court dated June 15, 2015 is hereby set aside.
2. **THIS COURT ORDERS** that this action is certified as a class proceeding, pursuant to s. 5 of the *Class Proceedings Act, 1992*.
3. **THIS COURT ORDERS** that Excalibur Special Opportunities LP is appointed as the representative plaintiff for the class (the "Class").
4. **THIS COURT ORDERS** that the Class is defined as follows:

All persons or entities who purchased investment units ("Units") of Expedite 4, Inc. between March 29, 2010 and December 23, 2010, and who continued to hold any of the shares or warrants comprising the Units as of December 23, 2010, other than Excluded Parties, where the Excluded Parties are:

- (a) the Defendant, including its partners, employees, successors and assigns;
 - (b) the officers, directors, employees, agents, legal representatives, subsidiaries, affiliates, predecessors, successors and assigns of Expedite 4, Inc. (the "Company"), Southern China Livestock International Inc., or Southern China Livestock Inc., and any entity in which any of the foregoing have or had any legal or *de facto* controlling interest; and
 - (c) Rodman & Renshaw LLC and Newbridge Securities Corporation, including their officers, directors, senior management employees, predecessors, successors and assigns.
5. **THIS COURT DECLARES** that the claims asserted on behalf of the Class against the Defendant, in respect of which damages are sought, are negligence and negligent misrepresentation.

6. **THIS COURT ORDERS** that the following issues are certified as common issues:
- a. Did the Defendant meet applicable Generally Accepted Auditing Standards (“GAAS”) and PCAOB standards in the preparation of its auditor’s report for Southern China Livestock International Inc. in respect of the consolidated financial statements for 2008 and 2009 (the “Auditors’ Report”)?
 - b. Did the Defendant owe the members of the Class (the “Class Members”) a duty of care in respect of the preparation of the Auditors’ Report?
 - c. Did the Defendant owe the Class Members a duty of care in permitting the Auditors’ Report to be included as an exhibit to Expedite 4, Inc.’s Private Placement Memorandum?
 - d. What is the applicable standard of care owed by the Defendant to the Class Members?
 - e. Did the Defendant breach the applicable standard of care in the manner in which it prepared the Auditors’ Report?
 - f. Did the Defendant breach its duty of care owed to Class Members by issuing an unqualified, clean audit opinion in the Auditors’ Report that was included as an exhibit to the Private Placement Memorandum?
 - g. Was the information contained in the Auditors’ Report materially false, inaccurate or misleading?
 - h. Was it reasonably foreseeable that the Class Members would rely on the representations made in the Auditors’ Report in deciding whether or not to

invest in Expedite 4, Inc. through the private placement, or at any time up until December 23, 2010?

- i. Did the Defendant know or should it have known that the Class Members would be harmed if the information contained in the Auditors' Report was materially false, inaccurate or misleading?
 - j. Can the court infer on a class-wide basis that the Class Members relied on the Auditors' Report when deciding to invest in Southern China Livestock Inc. ("Southern China")? If so, is such inferred reliance reasonable?
 - k. Did the Class Members suffer the loss of their entire investment in Southern China, and if so, was the loss caused or contributed to by the negligence, including the negligent misrepresentations, of the Defendant?
 - l. Should the law of Ontario be applied by the trial judge in determining if the Defendant was negligent, or made a negligent misrepresentation in the Auditors' Report?
7. **THIS COURT ORDERS** that determination of the form, content and manner of providing notice of certification to the Class, which notice shall address the manner of opting out and the date after which Class Members may not opt out, shall be remitted to the case management judge.
8. **THIS COURT ORDERS** that the Defendant shall pay Excalibur Special Opportunities LP costs of this appeal and the motion for leave to appeal totaling \$60,000, inclusive of HST, as well as costs in the courts below as follows:

- a. costs of \$97,000, plus HST, and disbursements of \$40,292.10 for the certification motion;
- b. costs of \$25,000, inclusive of HST, for the appeal and leave to appeal to the Divisional Court.

This Order bears interest at the rate of 2 per cent per year commencing on December 6, 2016.



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ENTERED AT / INSCRIPT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 28 2017

PER / PAR: 

EXCALIBUR SPECIAL OPPORTUNITIES LP

-and- **SCHWARTZ LEVITSKY FELDMAN LLP**

Plaintiff (Appellant)

Defendant (Respondent)

COURT OF APPEAL FOR ONTARIO

Proceedings commenced in Toronto

Proceedings under the *Class Proceedings Act, 1992*

ORDER

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