

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**EXCALIBUR SPECIAL OPPORTUNITIES LP**

Plaintiff

- and -

**SCHWARTZ LEVITSKY FELDMAN LLP**

Defendant

Proceeding Under the *Class Proceedings Act, 1992*

**STATEMENT OF DEFENCE**

1. The Defendant Schwartz Levitsky Feldman LLP ("SLF") admits the allegations contained in paragraph 8, the first sentence of paragraph 9, paragraph 10, the first sentence of paragraph 27, the first sentence of paragraph 77 (but not the headings which precede it, and not with respect to GAAS), the second sentence of paragraph 85 (except that one of the figures contains a typographical error), and the first sentence of paragraph 88 of the Statement of Claim.

2. SLF has no knowledge or insufficient knowledge to properly plead to the allegations contained in paragraphs 2, 3, 5, 6, 7, the second sentence of paragraph 9, paragraphs 14 - 21, the second sentence of paragraph 24, paragraph 26, the first sentence of paragraph 44, paragraphs 46 - 50, the first sentence of paragraph 51, paragraphs 78, 79, the first two sentences of paragraph 85, paragraphs 90, 91, 94, 98, and the first sentence of paragraph 99 of the Statement of Claim.

3. Except where specifically indicated otherwise herein, SLF denies all other allegations contained in the Statement of Claim.
4. SLF further denies the characterizations and/or allegations set out in the headings contained between paragraphs 25 and 26, 52 and 53, 56 and 57, 62 and 63, 71 and 72, 76 and 77, 89 and 90, and 96 and 97 of the Statement of Claim.
5. SLF states that this Court has no jurisdiction over the subject matter of this proceeding, as the Plaintiff and the proposed class members agreed to litigate such matters in the State of New York exclusively.
6. SLF further states that this action is barred pursuant sections 4 and 5 of the **Limitations Act, 2002**, S.O. 2002 c. 24, Schedule B. In particular, SLF states that the action was not commenced within two years of the Plaintiff's and the proposed class members' discovery of their alleged claim or the date their claims ought to have been discovered through reasonable diligence.
7. To the extent that the limitation period of another jurisdiction applies, SLF pleads and relies on that period to state that this action is barred.
8. In any event, SLF denies any liability to the Plaintiff and the proposed class members.
9. SLF denies that a class proceeding is an appropriate or preferred manner of prosecuting this litigation.
10. SLF opposes the request for Certification, and further requests that the action be dismissed against it, with costs.
11. SLF states that on or about November 25, 2009, SLF was engaged by Southern China Livestock International Inc. ("International") to perform an independent audit of International's consolidated financial statements for its fiscal years ending September 30, 2008 and September 30, 2009.

12. With respect to paragraph 11 of the Statement of Claim, SLF acknowledges that it was the auditor of International and, later, Southern China Livestock Inc. (the "Company") at the times indicated, until its resignation. However, SLF states that it was, at all times, independent of International and the Company and that, before, between and subsequent to its auditing and review functions, SLF did not have ongoing involvement with the operation of International or the Company or monitoring of their financial activities or reporting.

13. SLF was not engaged by the Plaintiff or any of the proposed class members, and had no knowledge or contemplation of the Plaintiff or the proposed class members when it conducted its audits and issued its audit reports.

14. SLF denies that it was in a "special relationship" with the Plaintiff or any of the proposed class members, and denies that it owed them a duty of care.

15. SLF completed its audit of International's consolidated financial statements for its fiscal years ending September 30, 2008 and September 30, 2009, on January 28, 2010, and issued an audit report on that date (the "First Audit Report").

16. With respect to paragraph 41 of the Statement of Claim, SLF acknowledges the statements attributed to it, but states that the Plaintiff's recitation of the auditing opinion is incomplete.

17. SLF subsequently performed an audit of the Company's consolidated financial statements for the fiscal year ending September 30, 2010. SLF issued an audit report (the "Second Audit Report") on November 26, 2010. As the Plaintiff and the proposed class members allege that they made their investments prior to November 26, 2010, the Second Audit Report could not have been relied upon by them and is therefore irrelevant to these proceedings. Accordingly, no further reference is made to the Second Audit Report in this pleading.

18. Contrary to the heading included between paragraphs 25 and 26 of the Statement of Claim (and implied in numerous other places in the Statement of Claim),

SLF did not prepare International's consolidated financial statements. SLF was engaged to independently audit the consolidated financial statements provided to SLF by International.

19. SLF states that it planned, performed and completed its audits appropriately and in compliance with the applicable industry standards, including those established by the PCAOB.

20. SLF states that it took all necessary steps to obtain sufficient and appropriate audit evidence in performing its audit of International's consolidated financial statements. SLF did not detect and is currently unaware of there being any material errors or misstatements in International's consolidated financial statements for the years ending September 2008 or 2009.

21. SLF states that it properly supervised all staff engaged to assist SLF in gathering and verifying information for its audits of International. SLF did not rely on opinions of others in issuing its First Audit Report.

22. SLF states that it performed the appropriate audit procedures and had no reason to believe at the time of issuing its First Audit Report, that International was not a viable going concern.

23. SLF denies that it made any representation to the Plaintiff or to any of the proposed class members.

24. Further, SLF states that it did not make any misrepresentation or material misstatement in its First Audit Report. Alternatively, if any misrepresentation or material misstatements were made, these were not made knowingly or negligently.

25. SLF denies that it prepared the First Audit Report with the intention that it be disseminated to potential investors. Rather, it prepared the First Audit Report because it was engaged to do so.

26. SLF denies that the Plaintiff or any member of the proposed class:
  - (a) received the First Audit Report before deciding to make an investment;
  - (b) reviewed the First Audit Report before deciding to invest; or
  - (c) relied on the First Audit Report in deciding to invest in International.
27. SLF denies that the Plaintiff or any of the proposed class members made any investment in International or the Company.
28. In the alternative, SLF denies that the Plaintiff or any of the proposed class members have lost their investment.
29. In the alternative, if the Plaintiff's investment or any of it was lost, SLF denies that this had anything to do with what is stated in the First Audit Report or anything which was or ought to have been stated in the First Audit Report.
30. SLF has no knowledge as to whether the Shares (as described in paragraph 16 of the Statement of Claim) were ever registered.
31. SLF states that if the Company did not proceed with the registration of its Shares, this was due to market conditions or other factors, but had nothing to do with any of the allegations made as against SLF in the Statement of Claim.
32. In the alternative, SLF has no knowledge as to why the Shares were not registered, as pleaded.
33. SLF states that the Private Placement Memorandum (the "PPM") and other documents filed with the U.S. regulatory authorities indicated a high degree of risk associated with this investment, and, further, that the investments should be considered illiquid for a long period of time.

34. Specifically, the PPM (incorporated into the Statement of Claim at paragraph 9), contained the following statements regarding risks on its first page [emphasis added]:

THESE ARE SPECULATIVE SECURITIES WHICH INVOLVE A **HIGH DEGREE OF RISK**. ONLY THOSE INVESTORS WHO CAN BEAR THE LOSS OF THEIR ENTIRE INVESTMENT SHOULD INVEST IN THESE UNITS. SEE "RISK FACTORS".

AN INVESTOR MUST RELY ON ITS OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE RISKS INVOLVED. ... **THERE IS NO MARKET FOR THE SECURITIES BEING OFFERED, AND THERE COULD BE NO ASSURANCE THAT ANY MARKET WILL DEVELOP**. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISK OF AN INVESTMENT AND THE SECURITIES FOR AN INDEFINITE PERIOD OF TIME.

35. Similarly, on page iv, the PPM indicates in bold setting that:

The offered Securities are restricted from transfer, and an investment in them is speculative and involves a substantial degree of risk. See "Risk Factors".

36. On page v, potential investors are warned that they are:

not to construe the contents of this Memorandum as legal or investment advice. Each prospective investor must consult with his own legal counsel, accountant, and financial advisor as to legal, tax, financial and related matters concerning the Company or an investment therein.

37. On page vii, the PPM cautions:

Offerees should not make an investment decision based solely on the Company's projections, estimates or expectations.

38. The PPM contains an entire section of "Risk Factors" which goes on for 11 pages. These included that:

(a) the Company's operations are cyclical and could be adversely affected by fluctuations in the commodity prices for hogs and feeds; and

(b) the Company's revenue is dependent in large part on significant orders from a limited number of customers.

39. On page 25, the PPM specifically indicates that:

If less than \$10 million is raised [through the private placement], the Company may not have sufficient funds to move forward with its expansion and acquisition strategy.

40. On page 41, the PPM indicates:

In China, it is customary to settle live hog sales with cash ....

41. Further, the Subscription Agreement (incorporated into the Statement of Claim at paragraph 46 and purportedly executed by the Plaintiff and the proposed class members) required potential investors to specifically acknowledge and agree that:

2.6 Investment Purpose. [Their] investment is not a liquid investment ....

2.10 Information. ... [they and their] advisors, if any, have been ... afforded the opportunity to ask questions of the Company.

2.11 Acknowledgment of Risk. The [proposed investor] agrees, acknowledges and understands that its investment in the Units involves a significant degree of risk, including, without limitation that (a) the Company is a development stage business with limited operating history and requires substantial funds in addition to the proceeds from the sale of the Units; (b) an investment in the Company is highly speculative and only subscribers who can afford the loss of their entire investment should consider investing in the Company and the Units; (c) the Subscriber may not be able to liquidate its investment; (d) transferability of the Securities (including the underlying Common Stock) is extremely limited; and (e) in the event of a disposition of the Securities (including the underlying Common Stock), the Subscriber can sustain the loss of its entire investment. The Subscriber agrees, acknowledges and understands that such risks are set forth in greater detail in the Memorandum, and further that Subscriber has carefully reviewed and considered the risk factors discussed in the "Risk Factors" section of the Memorandum.

...

2.11.2 Acknowledgments of Risk Associated with Investing in a PRC Entity. The [proposed investor] has been apprised that the Company conducts all of its business in the PRC. Accordingly, the Company is subject to laws and regulations applicable to foreign investments in China and, in particular, laws applicable to foreign-invested enterprises....

2.13 Transfer or Resale. The [proposed investor] may have to bear the risk of holding the securities for an indefinite period of time ....

42. As such, SLF states that the Plaintiff and the proposed class members were made aware of specific and general risks of the proposed investment and chose to proceed nonetheless.

43. SLF expressly denies that it made any representation regarding International's internal controls and, further, states that it was not required to do so. Further, and, in any event, SLF specifically disclaimed any such opinion in the First Audit Report.

44. SLF states that any reliance placed by the Plaintiff or any member of the proposed class on the First Audit Report in relation to internal controls could not have been a reasonable one at law.

45. SLF pleads and relies upon the **Negligence Act**, RSO 1990, c N-8.

46. SLF states that if the Plaintiff or any member of the proposed class lost its investment, then they are themselves wholly to blame for this. Particulars of such negligence include that they:

- (a) failed to conduct any or appropriate due diligence prior to investing;
- (b) failed to investigate and appreciate the nature of business transactions in the PRC;
- (c) failed to engage professionals to review the PPM and other available materials;

- (d) ignored facts and risk factors identified to them and/or were content to accept the risk that their investments could be lost;
- (e) placed undue reliance on representations made in the PPM;
- (f) placed undue reliance on the First Auditor Report in view of the inherent limitations of audit activities, including that:
  - (i) audits reflect a current and past state of affairs, they are not predictive of future performance or operation of the business being audited;
  - (ii) audits are based on information provided to and gathered by an auditor, and are therefore subject to the possibility of error and other frailties of second-hand information;
  - (iii) ultimately, much of the evidence available to an auditor is persuasive rather than conclusive in nature;
  - (iv) audits purport to provide reasonable assurance that financial statements, taken as a whole, are free from material misstatement, but they are not and cannot be guarantees;
  - (v) audits are conducted on a “sampling” and “test basis”;
  - (vi) audits involve the use of, and the assessment of, judgment; and
  - (vii) there are inherent limitations of internal control.
- (g) such further and other acts or omissions as currently known only to the Plaintiff and/or the proposed class members.

47. In the alternative, if the Plaintiff or any member of the proposed class is not wholly to blame for its own loss of its investment, the following entities bear responsibility:

- (a) International and related entities – if there is a material error, misstatement or omission contained in the consolidated financial statements, then International (and the Company) are in breach of the representations they provided to SLF as part of the foundational evidence for the audit;
- (b) officers of International and the Company – if there is a material error or misstatement or omission contained in the financial statements, then the officers of International and the Company provided misrepresentations to SLF as part of the foundational evidence for the audit. Further, the Plaintiff essentially alleges embezzlement in paragraph 98 of the Statement of Claim;
- (c) the placement agents who promoted the deal to the Plaintiff and proposed class members;
- (d) the U.S. law firm which drafted the Private Placement Memo containing the representations and risk factors, as well as other documents filed with the Securities and Exchange Commission (U.S.);
- (e) the promoters who sourced the deal;
- (f) legal representatives in the PRC; and
- (g) field staff contractors in the PRC.

48. SLF states that the Plaintiffs' claims are exaggerated, too remote, not recoverable at law, and the Plaintiffs have failed to mitigate their damages.

49. SLF requests that this action be dismissed, with costs.

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