

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**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 SINO-FOREST CORPORATION**

**AFFIDAVIT OF JONATHAN BIDA**

I, Jonathan Bida, of the City of Toronto, Province of Ontario, AFFIRM AS FOLLOWS:

1. I am a lawyer at Koskie Minsky LLP, co-counsel for the plaintiffs in the pending Ontario Superior Court of Justice class action proceeding bearing file no. CV-11-431153-00CP ("Ontario Class Action") and as such have knowledge of the matters deposed to below. Where I make statements in this affidavit that are not within my personal knowledge, I have indicated the source of my information and I believe such information to be true.
2. Mr. Dimitri Lascaris and Siskinds LLP are co-counsel for the plaintiffs in the Ontario Class Action. I have attached to my affidavit as **Exhibit "A"** a letter sent by Mr. Lascaris of Siskinds LLP to Mr. Robert Staley and Mr. Derek Bell at Bennett Jones LLP, dated July 22, 2012. This letter was sent via e-mail on July 22, 2012 at approximately 2:30 p.m. I have omitted from Exhibit "A" the jurisprudential authorities referred to in the letter.
3. The factual assertions made in Mr. Lascaris' letter are within my knowledge and true.

AFFIRMED BEFORE ME, at the City of )  
Toronto, in the Province of Ontario, this )  
23 22nd day of July, 2012 )

  
A Commissioner, etc. )

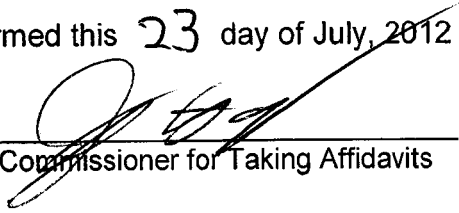
**Jody Brown**



Jonathan Bida

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This is **Exhibit "A"** referred to in  
the Affidavit of Jonathan Bida  
affirmed this **23** day of July, 2012

  
A Commissioner for Taking Affidavits

EMAIL dimitri.lascaris@siskinds.com

OUR FILE NO.: 832700

**Delivered By Email**

July 22, 2012

Robert Staley  
Derek Bell  
Bennett Jones LLP  
3400 One First Canadian Place  
Toronto, Ontario M5X 1A4

Dear Sirs:

**Re: Sino-Forest Corporation (“Sino”) (File Number: CV-12-9667-OOCL)**

I write in regard to our attempts to schedule the cross-examination of Judson Martin on his affidavit sworn on July 20, 2012.

By way of background, we initially made our motion returnable on July 16, 2012. You complained that this left you insufficient time to respond. Our motion was then scheduled to be heard on July 25, 2012, and you advised that we would be served with your responding motion record, including Mr. Martin’s affidavit, by July 19, 2012.

On July 17, 2012, I advised you that we would likely want to cross-examine Mr. Martin on his affidavit, and I explained to you that, were you to serve his affidavit on July 19, 2012, the cross-examination would need to be held on July 20, 2012.

On July 18, 2012, I confirmed to you by email that we anticipated that we would want to cross-examine Mr. Martin, and that the cross-examination would have to occur on July 20. I further advised you that I would not be able to travel to Hong Kong to conduct the cross-examination there on that date, that we were prepared to conduct the cross-examination electronically, and that I might wish to put documents to Mr. Martin in the course of cross-examining him.

On the morning of July 19, by which time we had not yet received Mr. Martin’s affidavit, you advised me by email that, prior to the commencement of the CCAA application, you had explained to Justice Morawetz that Mr. Martin has a chronic lung condition that severely limits his ability to travel, and that you had indicated that this might become an

issue in respect of possible requests to examine Mr. Martin. You further stated that, given time zone differences, you 'expected' that any examination of Mr. Martin would take place on Friday evening ET, which is Saturday morning Hong Kong time. Before sending this email, you did not consult me as to my availability on Friday evening. You also stated in that email that it would be necessary for me to arrange to have documents available for Mr. Martin when he is examined, "presumably by email."

Later that day, at 4:48 pm, we received Mr. Martin's unsworn affidavit by email.

On July 20, shortly before 9 am, I advised you by email that I was unavailable that evening due to prior commitments, but that I might be available on the morning of July 21. I asked you to confirm Mr. Martin's availability at that time and also asked you when we would receive his sworn affidavit.

We received Mr. Martin's sworn affidavit by email later that morning.

At 3:43 pm on July 20, I emailed you again to inquire whether Mr. Martin would be available on the morning of July 21, and I stated that we needed to work out the logistics of his cross-examination immediately. I further advised you that I would need no more than two hours with Mr. Martin, that I was available to cross-examine Mr. Martin on July 21 between 9:30 am and 2 pm, and that we wanted to conduct the cross-examination by Webex.

At 8:08 pm on July 20, your colleague, Amanda McLachlan, advised us by email that Mr. Martin would not be available until July 23 at 7 am ET, and that we would have to conduct the cross-examination by telephone. Before sending this email, you did not consult me as to my availability on the morning of July 23.

At 1:22 am on July 21, I advised Ms. McLachlan that, although we considered this proposal unreasonable in light of the fact that our factum was due on July 23, we would proceed with the cross-examination of Mr. Martin at 7 am ET on July 23. I also asked Ms. McLachlan to advise us asap where Mr. Martin would be on the morning of July 20 because we might wish to have our Hong Kong counsel attend the cross-examination.

At 10:23 am on July 21, I emailed you to advise that our Hong Kong counsel, Mr. Colin Cohen of the Hong Kong firm, Boase Cohen & Collins, would attend at the cross-examination on the morning of July 23, and I again requested that we be advised asap where Mr. Martin would be at that time so that Mr. Cohen could make arrangements to attend.

A few minutes later, you replied by email and simply stated “Mr. Martin may be in transit or outside of Hong Kong at the time of the examination, and joining the examination by telephone.” You offered no explanation as to how Mr. Martin was able to be “in transit or outside of Hong Kong” despite the health issues which apparently prevent him from travelling to Ontario.

Later on the morning of July 21, I sent you another email reiterating our desire to have Mr. Cohen present at the cross-examination and requesting that you advise us as to where Mr. Martin would be for the cross-examination on the morning of July 23, but you again declined to disclose his location to us.

In light of all of the above, we advise as follows.

An affiant from outside of Ontario is not entitled to be cross-examined in the city of his residence. Nonetheless, we have not sought to compel Mr. Martin to travel to Ontario due to his health issues. Rather than seek to compel him to travel, we offered to do the examination by Webex. You refused to cooperate in that regard, and offered us only a telephonic cross-examination. We then made arrangements for our Hong Kong counsel to be present. You refused even that accomodation.

However, we are entitled to be able to observe Mr. Martin’s demeanour during the course of the cross-examination. Moreover, we are under no obligation to provide to him, in advance of his cross-examination, all of the documents that we may wish to put to him in the course of it.

Accordingly, enclosed herewith please find a Notice of Examination directing Mr. Martin to appear at the Hong Kong offices of Boase, Cohen & Collins at 7 am ET tomorrow. Mr. Cohen will be present at his offices at that time and will attend during the cross-examination. Should Mr. Martin appear at Mr. Cohen’s offices at that time, I will proceed to cross-examine Mr. Martin by means of the bridge you previously offered to employ. If for any reason Mr. Martin cannot attend at Mr. Cohen’s offices at 7 am ET tomorrow, then we remain prepared to conduct this cross-examination by webex, or to have Mr. Cohen attend at another location in Hong Kong that is convenient for Mr. Martin. In the latter case, however, Mr. Cohen will need sufficient notice of Mr. Martin’s location so that he can appear at that location on time.

In the event that Mr. Martin refuses to appear at Mr. Cohen’s offices at 7 am ET tomorrow, refuses to permit us to conduct a cross-examination by webex, and refuses to disclose his location with sufficient notice to us so that Mr. Cohen can attend at the cross-examination tomorrow, then we will not proceed with the cross-examination at 7 am ET

tomorrow. Rather, we will adjourn the cross-examination and will seek the Court's direction. For that purpose, we will appear at Court at 9:30 am on Monday morning. At that time, we may ask the Court to strike Mr. Martin's affidavit. Alternatively, we will ask that Mr. Martin be ordered to appear for a cross-examination by video conference and/or that he disclose to us his location for the cross-examination so that our Hong Kong counsel can attend the cross-examination.

In the event that our motion cannot be heard on July 25 due to the above events, we do not agree that we must wait until August 27 for it to be heard. Rather, we will take whatever steps we deem appropriate in order to have our motion heard earlier and in a timely manner.

Finally, for the convenience of all the parties, we request that you advise us as soon as possible whether Mr. Martin intends to appear at the offices of Mr. Cohen at 7 am ET tomorrow, or is prepared to accept one of the other two alternatives we have offered above. If Mr. Martin advises that he does not accept any of these alternatives, we ask that the Monitor advise the Court in advance, if possible, of our attention to appear at 9:30 am tomorrow for the purpose of speaking to these matters.

In order to facilitate your reconsideration of your position, I have taken the liberty of enclosing several relevant authorities:

*Campeau v. Robert Campeau Foundation*, [2005] O.J. No. 1091, paras. 7-10;

*Somers (Litigation guardian of) v. Berger*, [2009] O.J. No. 1656 (Sup Ct), para. 12; and

*Midland Resources Holding Ltd v Shtauf* (2009), 99 OR (3d) 550 (Sup Ct Comm. List) Paras. 9-10 and 20-32.

Yours very truly,

Siskinds LLP

Per:

A. Dimitri Lascaris

(Enclosures)

cc: The Service List; Colin Cohen

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**NOTICE OF EXAMINATION**

**TO: W. Judson Martin**

YOU ARE REQUIRED TO ATTEND, on Monday, July 23, 2012, at 7:00 a.m. Eastern Time, at the offices of Boase Cohen & Collins, Solicitors & Notaries, 2303-7 Dominion Centre, 43-59 Queen's Road East, Hong Kong, PRC, Telephone # (852) 3416 1955 for

- Cross-examination on your affidavit dated July 20, 2012
- Examination for discovery
- Examination for discovery on behalf of or in place of
- Examination in aid of execution
- Examination in aid of execution on behalf of or in place of

YOU ARE REQUIRED TO BRING WITH YOU and produce at the examination the following documents and things: All books, contracts, letters, telegrams, statements, records, bills, notes, securities, vouchers, reports, memoranda, notes, computer diskettes, CDs, DVDs, USB keys, any material contained on the hard drive of a computer, email material, facsimile transmissions, tape recordings, video recordings, photographs and copies of same in your custody, possession or power in any way relevant to the matters which are within the scope of this proceeding or have any reference thereto.



July 22, 2012

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including the Representative Plaintiffs in the  
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Lawyers for the Applicant

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**NOTICE OF EXAMINATION**

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Plaintiffs in the Ontario Class Action

Court File No. CV-12-9667-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
PROCEEDING COMMENCED AT TORONTO**

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**AFFIDAVIT OF JONATHAN BIDA**

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