Court File No.: CV16-11325-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N :

ERNST & YOUNG INC.
in its capacity as Court Appointed Receiver
of HANFENG EVERGREEN INC.

Plaintiff

-and-

YU XINDUO and LEI LI

Defendants

STATEMENT OF DEFENCE

A. INTRODUCTION

The nature of the claims being advanced in this case

1. This Statement of Defence is being filed in response to the Statement of Claim herein dated March 22, 2016 (hereinafter referred to as the "**SOC**") , as supplemented by the Plaintiff's Response to Demand for particulars dated June 15, 2016 ("**First Response**") and the Plaintiff's further Response to Demand for Particulars dated September 6, 2016 ("**Second Response**"). Cumulatively, the SOC, the First Response and the Second Response are referred to hereinafter as the "**Plaintiff's Pleadings**".

2. The Plaintiff's Pleadings seek to recover, among other things, damages equivalent to the cost required to purchase, in Canadian dollars, 235,000,000 and 630,000,000 Chinese Yuan Renmindi ("**RMB**"). At today's exchange rate these claims amount to $44,650,000 and $119,700,000 respectively. In addition, the Plaintiff seeks to recover punitive damages of $500,000 and unspecified special damages.

3. The above claims are based upon various causes of action advanced in different ways against the Defendants Xinduo Yu ("**Yu**") and Lei Li ("**Li**").

4. In substance, leaving aside the claims for punitive and special damages, the Plaintiff's claims fall into the following categories:

(1) **Damages against Yu and Li jointly**: These claims are based upon alleged fraudulent misrepresentations which the Plaintiff contends were made by Yu and Li in and before August 2014 regarding the identity of the purchaser in a Share Transfer Agreement ("**Share Transfer Agreement**") for the sale of the Plaintiff's shares in its wholly owned Chinese subsidiary, Hanfeng Slow-Release Fertilizer Co. ("**Hanfeng China**"). Said claims seek recovery of Canadian dollars in an amount sufficient to purchase 235,000,000 RMB, being the approximate difference between the purchase price in the Share Transfer Agreement and the deposit received to date by the Plaintiff under that agreement. These claims are advanced in paragraphs 10-29 and 45-48 of the SOC, as supplemented by the First and Second Responses.

(2) **Damages solely against Yu**: These claims are based upon the following causes of action alleged by the Plaintiff:

(a) breaches of fiduciary duty, conversion, unjust enrichment and restitution, for which the Plaintiff seeks recovery of Canadian dollars in an amount sufficient to purchase 635,000,000 RMB. These claims are advanced in paragraphs 30-36, 44 (b) and 49-52 of the SOC. In substance these claims are all based upon two basic assumptions, namely that according to the Plaintiff (i) Yu improperly caused Hanfeng China to dissipate "at least" 27,000,000 RMB for improper expenses and enter into 4 loans aggregating 600,000,000 RMB and (ii) Yu subsequently "absconded" with these funds.

(b) a further alleged breach of fiduciary duty seeking recovery in respect of the same 235,000,000 RMB referred to in paragraph 4(1) herein. This overlapping claim is based upon a contention in paragraph 44(a) of the SOC that the alleged misrepresentations by Yu also constituted a breach of his fiduciary duties to the Plaintiff.

(3) **Damages solely against Li**: This claim seeks recovery in respect of the same 635,000,000 RMB referred to in paragraph 4 (2) (a) above, based upon allegations that Li "knowingly assisted" Yu in the wrongful taking and/or "knowingly received" these funds. These claims are advanced in paragraphs 53-54 of the SOC.

5. As detailed hereinafter, the Plaintiff's claims are totally without merit.

The Defendants' position regarding the Plaintiff's Pleadings

6. The Defendants admit the allegations contained in paragraphs 2, 3, the first two sentences of paragraph 4, paragraphs 5, 6, 11, 12, 15, 16, 17, 19, the first sentence of paragraph 37, paragraphs 40, 57 and 58 of the SOC.

7. The Defendants deny the allegations contained in paragraph 1, the last sentence of paragraph 4, paragraphs 7-10, 13, 14, 18, 20-36, the last sentence of paragraph 37, and paragraphs 30-56 of the SOC.

The Parties

8. Hanfeng Evergreen Inc. ("**Hanfeng**") is incorporated under the laws of Ontario and has its head office in Toronto, Ontario. At all material times (a) Hanfeng had no independent operations and existed solely as a holding company for wholly-owned operating entities located in China, and (b) the business of Hanfeng was directed, managed and supervised by a Board of Directors ("**Board**") acting with the assistance, and on the advice of its external legal counsel (the Stikeman Elliot law firm) and the Receiver (after August 20, 2014) and numerous other professional advisors.

9. Hanfeng Slow-Release Fertilizer Co. Ltd. (**"Hanfeng China"**) is a wholly-owned subsidiary of Hanfeng, incorporated and operating in China in accordance with the laws, regulations, customs and practices of the People's Republic of China ("**PRC**"). Hanfeng appointed and supervised the Board of Directors and management team of Hanfeng

China. By August 20, 2014, Hanfeng China was the sole operating entity owned by Hanfeng.

10. On August 20, 2014, Ernst & Young Inc. was appointed receiver and manager of Hanfeng (the "**Receiver**") on application by Hanfeng, in part, to direct and oversee the sale by Hanfeng of its ownership interest in Hanfeng China to Heilongjiang Harbin Pengcheng Fertilizer Co. Ltd. ("**Harbin Pengcheng**").

11. Heilongjiang Pengcheng Fertilizer Co Ltd ("**Heilongjiang Pengcheng**") is the name of another entity which had been identified in earlier documentation, including the Letter of Intent referred to in paragraph 23 below.

12. One of the Plaintiff's contentions in this case is that this name was fraudulently changed in the Share Transfer Agreement by the Defendants prior to the above referenced Court Application (without the knowledge of the Plaintiff) to Harbin Pengcheng.

13. The Defendant Yu is a resident of Ontario and is a founder and director of Hanfeng. Yu owns and controls approximately 20.4% of Hanfeng shares. Although Yu was a member of the Board in 2014, from and after June 19, 2014, Yu did not participate in the due diligence and negotiations leading to Hanfeng's agreement to sell Hanfeng China to Harbin Pengcheng or the steps taken to implement the sale transaction as described below. The management and operation of Hanfeng China was not conducted by Yu but by local management, which was appointed by, and under the supervision and direction of, Hanfeng ("**Local Management**"). During the times material to the allegations in the SOC, Local Management was in possession of and controlled among other things the business and financial records and the chops and bank tokens of Hanfeng China.

14. The Defendant Li is the spouse of Yu and is a resident of Ontario. During the times material to the allegations in the SOC, Li was not a director, officer, or employee of, or advisor to, Hanfeng or Hanfeng China and did not participate in the decision-making or operations of either company. Li's sole connection with and involvement in the events which are the subject of this lawsuit was that from time to time, Li provided translation assistance on request to the only member of the Board who does not speak Chinese, Jonathan Pollack ("**Pollack**"). Occasionally, Li also transmitted documents to Hanfeng.

In addition, from time to time, Li provided translation assistance to her spouse, Yu, who does not speak or read English. In providing this assistance Li never made any misrepresentations to anyone. Throughout, her assistance was provided on an informal, ad hoc, and totally gratuitous basis.

Overview

15. Yu and Li made no representations regarding the identity and/or corporate history of the potential purchaser as alleged or at all, and to the extent they referred at all to the purchaser, they did so based upon their honest understandings and beliefs. In addition, contrary to what is alleged by the Plaintiff, the Defendants were not party to any scheme or trick to deceive Hanfeng or the Receiver by changing the name of the purchaser at the last minute.

16. Hanfeng entered into the Share Transfer Agreement with Harbin Pengcheng on or about August 8, 2014. This agreement was negotiated, accepted, and submitted for Court approval by the Independent Directors (as defined below) on the Board, acting with the assistance and on the advice of Hanfeng's Canadian and Chinese legal counsel, and other professional advisors.

17. The Independent Directors of Hanfeng and their professional advisors made such investigations and conducted such due diligence in regards to the potential purchaser as they deemed appropriate and necessary before entering into the Share Transfer Agreement with Hanfeng Pengcheng. Hanfeng then sought Ontario Court approval of the Share Transfer Agreement on August 20, 2016. By that time Hanfeng and its counsel were in fact aware that the party who had signed the Share Transfer Agreement was *Harbin* Pengcheng. Subsequently, Hanfeng affirmed the transactions and continued to deal with Harbin Pengcheng without objection. Ultimately, any alleged losses associated with this transaction were caused by decisions made and actions taken by Hanfeng itself for which the Defendants have no responsibility.

18. The claims and allegations made solely against Yu in paragraphs 1 (b) and (c) 30-36, 44(b), and 49-52 of the SOC are false. Yu denies any and all allegations made against him in respect of these matters. Moreover, these claims are unsupported by any pleading

of material facts and constitute bare, conclusory allegations. Said allegations are, by the Plaintiff's admission, purely speculation. Moreover, as pleaded, these paragraphs constitute an abuse of process, fail to disclose any cause of action, and should be struck out.

19. The claims and allegations made solely against Li in paragraphs 1(b) and (c), 53 and 54 of the SOC are false and are denied by Li in their entirety. Moreover, as pleaded these paragraphs disclose no reasonable cause of action, are frivolous, vexatious and an abuse of process. As such these claims and allegations should be struck out.

20. At all material times, Yu fulfilled any and all duties owed to Hanfeng and he cooperated with the Receiver as requested and complied with the Orders of the Court to the best of his ability.

B. THE JOINT CLAIMS OF FRAUDULENT MISREPRESENTATION AGAINST YU AND LI

The Share Transfer Agreement

21. With respect to the allegations contained in paragraphs 10-29, and 45-48 of the SOC, Yu and Li deny that they misrepresented or concealed the true identity of the purchaser as alleged or at all and put the Plaintiff to the strictest proof thereof. Yu and Li specifically deny that they made any misrepresentations regarding the identity and/or corporate history of the potential purchaser as alleged in the SOC and the particulars provided in the First Response and Second Response.

22. The Defendants plead that in early June 2014, a potential purchaser contacted Local Management of Hanfeng China regarding its interest in acquiring Hanfeng China. Local Management reported this contact to Yu who in turn notified Pollack of the expression of interest. Subsequently, a Letter of Intent for Acquisition dated June 16, 2014 addressed to Hanfeng China ("**Letter of Intent**") was forwarded without any representations from either Li or Yu to Hanfeng's Board of Directors ("**Board**"), together with a copy of the business license which had been provided by the potential purchaser ("**Business Licence**"). The Business License and the Letter of Intent identified the name of the potential purchaser as Heilongjiang Pengcheng.

23. The Defendants further plead that at all material times, neither Yu nor Li had any reason to question or doubt the identity and/or corporate history of the potential purchaser as indicated in the Letter of Intent and/or Business Licence.

24. At the time the Board received the Letter of Intent, Hanfeng and Hanfeng China's financial situation and business future were grim. Hanfeng China had lost its most significant customer which accounted for approximately 85% of Hanfeng's annual sales. Hanfeng China was under investigation by a regulatory authority in the PRC (the State Administration of Foreign Exchange, hereinafter "**SAFE**"), regarding a transfer of funds which had been made from Hanfeng China at Hanfeng's request and the company was subject to a risk warning letter from SAFE about this issue. Hanfeng's shares had been delisted by the TSX, permanent cease-trade orders had been issued by the securities commissions of British Columbia, Quebec, Manitoba, Alberta and Ontario, and its auditor had resigned. The Board had concluded it was unlikely to be able to appoint a new auditor and comply with public reporting requirements. In addition, the Board recognized that Hanfeng China's internal financial systems, controls and reporting procedures were weak. In this context, the Board had extensively explored options to sell Hanfeng China with potentially interested parties in China, concluded there was little serious interest in a purchase of Hanfeng China and abandoned such efforts.

25. Following his receipt of the Letter of Intent, on or about June 17, 2014, Pollack, the lead director of Hanfeng, conducted a conference call with Yanjia Ren ("**Ren**"), who identified himself to Pollack as the executive Vice President of the potential purchaser. At Pollack's request, Li provided translation assistance during the conference call and accurately translated the statements made by them to each other. At the time of this call, neither Li (nor Yu) made any representations regarding the identity and/or position of Ren as alleged in the SOC, First Response or Second Response or at all, and if any such representations were made, they were made by Ren himself. Further, and in any event, neither Yu nor Li had any reason to question statements made by Ren to Pollack.

26. On or about June 19, 2014, at a meeting of the Board, Pollack reported on the direct discussions he had had with Ren. In attendance were the members of the Hanfeng Board, namely: Pollack, Yu, Anthony Chang and Joanne Yan, all of whom were directors with

experience in conducting business in PRC. All of these directors, with the exception of Pollack, speak Chinese. Representatives of the Stikeman Elliot law firm were also in attendance and provided advice to the Board regarding the appropriate next steps in pursuing the expression of interest by the potential purchaser.

27. At the above meeting, Pollack advised the Board about some of the things Ren had told him. According to Pollack, Ren had advised him, among other things, that Ren was the Executive Vice-President of a potential purchaser which was serious about the opportunity to acquire Hanfeng China. The potential purchaser wanted to conduct initial due diligence and a valuation following which it would make a more definitive proposal and begin negotiations. In consideration of potential contingent liabilities, Ren wanted Yu to retain his 20% interest so that the potential purchaser could be assured of his continued involvement and assistance in maintaining relationships between Hanfeng China and local government in China. Pollack also reported that Ren had explained that while the Business Licence indicated that the purchaser had been incorporated in April 2013, the company had been in business for a long time and had gone through some form of restructuring the previous year.

28. The Board determined that it would be important for Hanfeng to confirm Ren's statements and to obtain the assistance of a financial advisory firm and a consulting firm to conduct a background check on the potential purchaser. Due to the potential for conflict of interest with Yu, the Board also decided that Pollack, Chang and Yan ("the **Independent Directors**") should take the lead role in negotiating terms of any transaction with the potential purchaser should a proposal be made. In addition, it was agreed that the General Manager of Hanfeng China would be the contact person on the due diligence and valuation work which was about to be undertaken. Following this meeting, and at the direction of the Board, Pollack called Ren and advised that the Board had approved the request from the potential purchaser to conduct due diligence on Hanfeng China.

29. Thereafter, all of the investigations, negotiations and preparation of documentation regarding the proposed sale were conducted by or on the instructions of the Independent Directors, with assistance and advice from Hanfeng's Canadian and Chinese legal

counsel and other professional advisors. During this period, the Independent Directors had direct and ongoing contact with representatives of the potential purchaser and its legal counsel and took such steps as they deemed necessary and reasonable to investigating the identity and corporate history of the potential purchaser.

30. The steps taken by or on behalf of the Independent Directors also included the following:

(1) On June 25, 2014, the Independent Directors and Hanfeng's Canadian legal counsel met to discuss the progress of the due diligence work and Pollack's conversation with the managing director of the potential purchaser regarding a forthcoming proposal, and to consider local advisors in China and the engagement of an advisor to conduct a background check on the potential purchaser;

(2) On June 29, 2014, the Independent Directors, Hanfeng's Canadian legal counsel and Yu, met to discuss, among other things, the status of the potential purchaser's proposal. Pollack again reported on his discussions with senior executives of the potential purchaser and their continuing interest in an acquisition and their insistence on Yu's continuing involvement. The Board decided that upon receipt of a formal proposal from the potential purchaser, Pollack and Yan would travel to China and negotiate the final deal. The Board received a report on the status of proposals from financial advisory and investigation firms and a local Chinese law firm with respect to conducting a background check on the potential purchaser. Yu advised the Board about certain demands the potential purchaser had made about Yu's continued involvement in Hanfeng China and on retaining 20% of Yu's indirect equity interest as a guarantee to mitigate any risks and potential liabilities which Hanfeng China might have. Yu felt there was no choice but to agree as there were no other likely buyers of Hanfeng China and

it would take too long and be more expensive to negotiate the liquidation of Hanfeng China under Chinese law;

(3) On July 11, 2014, the Independent Directors retained Deloitte LLP to conduct due diligence on the proposed transaction and prepare a fairness opinion;

(4) On July 16, 2014, Pollack, Yan, Hanfeng's Chinese counsel and Yu met with Lin Lin Wang, an official of the potential purchaser (and its legal counsel) to finalize the terms and conditions of the acquisition of Hanfeng China;

(5) On July 21, 2014, Pollack, Chang, Yan, Hanfeng's Canadian legal counsel and Yu met to, among other things, discuss the status of the negotiations (Yu's involvement was necessary because of the guarantee that he was being asked to sign in connection with the proposed transaction).

Between July 21 and August 6 there were additional meetings and conversations with and between the Independent Directors, counsel to Hanfeng, and representatives of the potential purchaser. The Defendants were not and are not privy to the details of all of the meetings, conversations and decisions during this period.

31. On August 8, 2014, at the request of Hanfeng, Yu executed the Share Transfer Agreement with Harbin Pengcheng, together with certain related agreements. These other agreements included a guarantee agreement pursuant to which Yu personally guaranteed (in favour of Harbin Pengcheng) all the potential risks up to the amount of RMB 49.6 million (approximately CAN$8.6 million) and agreed to remain with Hanfeng China for a transition period of twelve months, act as legal representative but not Board Chairman, make all commercial reasonable efforts during the transaction to safeguard the interest of Hanfeng China and protect it from risks, including employee severance, tax, environmental and accounts receivable risks.

32. Early on August 8, 2014 Hanfeng China emailed scanned copies of the signature pages of the Share Transfer Agreement and related agreements to Hanfeng and its legal counsel.

Shortly thereafter on the same day, a complete scanned copy of these documents was forwarded by Li to Hanfeng's Canadian legal counsel and the Board. These documents name and identify Harbin Pengcheng as the purchaser.

33. Contrary to the allegations stated or implied in the SOC and the Second Response, the addition of the word Harbin to the name of the purchaser who signed the Share Transfer Agreement was not secretly added or hidden by the Defendants. In fact, the name of the purchaser was not hidden or unknown at all. Rather, as detailed below, the name of Harbin Pengcheng was intentionally added by the Plaintiff to the Court materials filed by and on behalf of Hanfeng for the Court approval application which proceeded on August 20, 2014.

The Court Application for the Appointment of Ernst & Young

34. With respect to the allegations in paragraphs 15 to 17 and 26 to 29 of the SOC, on or about August 14, 2014, six days following the execution and return of the share transfer documentation, Hanfeng initiated an application to the Court for the appointment of Ernst & Young as Receiver and approval of the sale transfer transaction and Share Transfer Agreement between *Harbin* Pengcheng and Hanfeng ("**Application**").

35. This Application was specifically contemplated in the Share Transfer Agreement: this contract was expressly conditional upon Hanfeng obtaining either shareholder approval or court approval for its terms, as set out below:

> "3.4.1 Within 45-60 days of signing this agreement, Party A shall be responsible for convening Party A's shareholders' meeting to seek the approval of its shareholders for this transaction or Party A shall seek court approval in Canada for this transaction. Party B acknowledges that Party A intends to seek court approval for the completion of this transaction within two weeks after the execution of this Agreement.
>
> 3.4.2 <u>In the event that</u> the resolution of shareholders of Party A to approve this transaction fails to obtain the requisite approval at the shareholders meeting called to approve such resolution or <u>the court fails to approve the completion of this transaction, then this agreement becomes invalid immediately</u> and Party A shall return the 5% Performance Guarantee Bond paid by Party B in equal amounts within 3 business days." (Underlining added.)

36. In light of this provision, Hanfeng, its Independent Directors, its legal counsel, and other professional advisors, had a full opportunity between August 8 and August 20 to carefully review the Share Transfer Agreement. They did exactly that.

37. As a result of their review of the Share Transfer Agreement during the 12 day period between the receipt of the signed Share Transfer Agreement and August 20, 2014, the Board and its legal advisors, became fully aware that Heilongjiang Pengcheng had not signed the Share Transfer Agreement, and that the name of the contracting party was Heilongjiang **<u>Harbin</u>** Pengcheng Fertilizer Company Ltd. (the entity previously defined herein as "Harbin Pengcheng").

38. In this regard, the approval application submitted to the Court on August 20 was based upon the affidavit of Jonathon Pollock, the lead Independent Director. Yu had nothing to do with the preparation of this affidavit. Rather, it was the product of legal advice, assistance and support from the Stikeman Elliot law firm. Pollock's affidavit contained (for, example, in paragraph 61 and Exhibit Q thereto) **express** reference to ***Harbin*** Pengcheng (the entity who the Plaintiff now contends it was unaware of at the time).

39. The Pollack affidavit makes it clear that both Pollack and Hanfeng's legal counsel were fully aware of the identity of the purchaser prior to August 20, 2014, notwithstanding allegations to the contrary in the SOC.

40. Pollack's affidavit also described the dire situation of Hanfeng and Hanfeng China and the history of the share transfer transaction and the Share Transfer Agreement for which Hanfeng sought Court approval. Among other things, Pollack's affidavit stated as follows:

> "58. In light of the complexity of the issues presently facing Hanfeng and the Heilongjiang WFOE [**Hanfeng China**], I believe that Hanfeng will be unable to continue as a going concern, particularly in the long-term. With the termination of the Beidahuang business relationship and the lack, for the foreseeable future, of any other meaningful sales to other customers, I have serious concerns about whether the Heilongjiang WFOE will resume operations and achieve positive cash flow. As shown in the Draft FY2014 Statements, Hanfeng experienced negative cash flow of $38,794,000 in the year ending June 30, 2014.
>
> 59. Hanfeng has never generated revenue (other than indirectly through its subsidiaries). It now relies on the Heilongjiang WFOE to defray its expenses,

although transferring available cash to Hanfeng from China has proven challenging. Over the last few months, Mr. Yu has loaned money to Hanfeng to assist Hanfeng in paying expenses incurred in Canada given the difficulties in obtaining funds from the Heilongjiang WFOE. If Hanfeng's circumstances do not materially improve in the near term (which I believe is very unlikely), the cash resources of Heilongjiang WFOE will eventually be exhausted and the solvency of Hanfeng, on a consolidated basis, will inexorably and inevitably be eroded so that there will be no prospect of any return for Hanfeng's shareholders through a distribution.

60. As a result, the Board has entered into a share purchase agreement with respect to its shares in the Heilongjiang WFOE (described below) and commenced this application to appoint a receiver to implement the sale, run a claims process and distribute the proceeds of sale and any other assets to Hanfeng's stakeholders.

61. In early June 2014, Heilongjiang Harbin Pengcheng Fertilizer Co., Ltd. (as previously defined, the "Purchaser") contacted local management of the Heilongjiang WFOE to express interest in potentially acquiring the Heilongjiang WFOE from Hanfeng. Management of the Heilongjiang WFOE reported this contact to Mr. Yu, who notified me of the Purchaser's potential interest on or about June 16, 2014. Following preliminary discussion with the Purchaser, the Purchaser's proposal for acquiring the Heilongjiang WFOE was delivered to the Board on June 18, 2014.

62. On August 8, 2014, following negotiations between the parties, Hanfeng and the Purchaser entered into a share transfer agreement (the "Share Transfer Agreement") and certain related agreements (collectively, the "Transaction Documents")." (Underlining added.)

41. Court approval was obtained on the strength of these materials and on or about August 28, 2014, Harbin Pengcheng made the first payment of the purchase price under the Share Transfer Agreement in the amount of $2.2 million to Hanfeng.

42. With respect to paragraphs 20 to 25 of the SOC, the Receiver, together with its legal and professional advisors, communicated directly with Harbin Pengcheng and its counsel regarding additional interim payments under the Share Transfer Agreement, and the required banking and regulatory approvals. From time to time, and as requested by the Receiver, Yu provided assistance to facilitate communications with Harbin Pengcheng.

43. Despite the knowledge of the identity of the purchaser who signed the Share Transfer Agreement, in so far as the Defendants are aware, prior to August 20, 2014 no complaint was made, no questions were asked and no due diligence was undertaken. Rather, the Plaintiff was content to proceed and did proceed knowing the identity of the purchaser

was Harbin Pengcheng and that this name was different than the name which had been referred to in the Letter of Intent.

44. After to August 20, 2014 the Plaintiff did not allege that it had been tricked into signing the Share Transfer Agreement with a previously unknown party, nor did it take any steps to resile from or repudiate the Share Transfer Agreement on the basis of the alleged clandestine switch of names now alleged in this lawsuit. Rather, following the court approval on August 20, 2014, the Plaintiff continued to knowingly deal with Harbin Pengcheng for another 8 months before raising any such issue.

45. Several additional provisions of the Share Transfer Agreement are relevant to what happened during this period:

(1) The definition of "**Chinese law and regulations**" contained in Clause 1.5 of the Share Transfer Agreement:

> 1.5 Chinese Law and Regulations
>
> Existing laws, regulations, and legally binding rules, measures, and other forms of normative documents promulgated by the government of the People's Republic of China and its various departments before this agreement comes into effect (including the date of signing this agreement), including but not limited to Company Law of the People's Republic of China, Contract Law of the People's Republic of China, and Foreign Investment Enterprise Law of the People's Republic of China.

(2) The definition of "**Completion of Transaction**" contained in Clause 1.6 of the Share Transfer Agreement:

> 1.6 Completion of Transaction
>
> The transaction will be deemed completed when the shares of the Target Company originally registered under the name of Party A in Harbin Administration for Industry and Commerce are legally transferred to Party B or its designated subsidiary.

(3) The following representations and warranties by Hanfeng under Clause 2 of the Share Transfer Agreement:

> 2.1.4 Party A guarantees that it will be the sole shareholder of the Target Company until the completion of the share transfer. No other person enjoys right of first refusal to the Agreement Object. After this agreement comes into effect, Party A will use its commercially reasonable efforts to assist Party B to deal with all the procedures involved in the transfer of the

> Agreement Object, including but not limited to amending the Articles of Association of the Target Company, restructuring the Board of Directors, and filing documents related to equity change with relevant authorities.
>
> 2.1.5 Party A guarantees that, before the formal transfer of shares of the Target Company between Party A and Party B, the Target Company has acquired the important government permits, approvals, and authorizations for its normal production operation, which are all currently in force. Party A shall ensure that none of such government permits, approvals or authorizations is invalid prior to the completion of the transaction.

(4) The following positive obligations of Hanfeng:

> 3.4.3 Within 30 days following the date that Party A's shareholders approve the completion of this transaction or the court approves the completion of this transaction, Party A shall use its commercially reasonable efforts to assist Party B to complete the reorganization of the Board of Directors of the Target Company, and complete all legal documents for the purpose of share transfer.
>
> 3.4.4 In accordance with Clause 3.4.3 of this agreement, within 3 days of completion of all legal documents for the share transfer, Party A shall file the application to the approval authority, and assist Party B to comply with <u>Chinese law and regulations</u> in registering the share transfer with the relevant authorities in a timely manner. [Underlining added.]

(5) The parties' agreement to "conform to Chinese Law" contained Clause 8 of the Share Transfer Agreement:

> "... Both parties agree to conform to the laws of the People's Republic of China."

46. The Defendants are not privy to all of the communications which passed between Hanfeng and Harbin Pengcheng and their respective representatives between October 2014 and July 2015.

47. However, between October 2014 and May 2015 numerous issues were raised and disputes arose between Hanfeng and Harbin Pengcheng regarding the above provisions and whether Hanfeng China had fulfilled its obligations to enable further payments to be made, including making commercially reasonable efforts to satisfy all of the Chinese regulatory and other requirements to necessary for the lawful completion of the share transfer and other steps provided for in the Share Transfer Agreement.

48. The state of affairs with respect to the regulatory and other issues under Chinese law were described by the Receiver in its Second Report to the Ontario Superior Court dated July 22, 2015 in the following manner:

> "18. The regulatory framework in China governing a share transfer transaction in connection with a WFOE is complex. Further, the Receiver understands there is uncertainty in how laws and regulations in China may be applied in a particular instance, which leads to a lack of certainty in the documentation requirements and review criteria of the local authorities.
>
> 19. It is the Receiver's understanding the Share Transfer Transaction is subject to multiple regulatory approvals in China, which include the two following milestones:
>
> (a) approval by Harbin Economic Cooperation Promotion Bureau ("HECPB") (the "HECPB Approval"); and
>
> (b) updating of the business license of the Chinese Subsidiary by HAIC upon registration of the purchaser as the shareholder of the Chinese subsidiary (the "Business License Registration"). Under Chinese law, the registration of a new business license marks the completion of transfer of ownership and in this case also represents the closing of the Share Transfer Transaction (the "Closing").
>
> 20. The Receiver further understands HECPB Approval is a prerequisite of the review by China's other regulatory bodies, which are generally expected to follow the decision of HECPB. While it is difficult to estimate the time required to clear all necessary regulatory approvals, after the HECPB Approval is issued, it is possible to complete the other regulatory approvals in relatively short order (as quick as approximately 2 to 3 weeks), assuming all required documentation is in order.
>
> 21. Further, remittance of the purchase price proceeds from China to Canada is subject to regulatory clearance by China's State Administration of Foreign Exchange ("SAFE")."

As at date of the above Report, despite these unresolved issues, Harbin Pengcheng had made further interim payments of 10,000,000 RMB (in escrow), but was unwilling to pay additional funds unless and until Hanfeng complied with all of its obligations under the Share Transfer Agreement.

49. For its part, through its Receiver, Hanfeng intentionally decided not to comply with all of the steps required under Chinese law as mandated by the Share Transfer Agreement, including the delivery of a Board resolution of Hanfeng China, and it was in this context that the Receiver first raised any issue about the identity of the purchaser.

50. The transactions set out in the Share Transfer Agreement never closed, and Harbin Pengcheng sued the Receiver and Yu in China. As a result, so far as the Defendants are aware, Hanfeng has retained Harbin Pengcheng's initial deposit and has not been paid the balance of the purchase price under the Share Transfer Agreement.

51. As a result of the position taken by the Receiver, Hanfeng's failure to comply with its obligations under the Share Transfer Agreement, and the non-completion of the share transfer and other transactions provided for therein, on August 5, 2015 Harbin Pengcheng commenced a civil complaint in the Harbin Intermediate People's Court ("**People's Court**").

52. This proceeding was accepted by the People's Court on October 10, 2015, and assigned Court File No. (2015) HSWSCZ No 7. In this case, Harbin Pengcheng seeks the cancelation of the Share Transfer Agreement, return of the deposit of $12,400,000 RMB, and costs from Hanfeng, Ernst & Young, Hanfeng China, and Yu. In Yu's case, the claim was based upon his guarantee signed by him in connection with the Share Transfer Agreement.

53. The Defendants plead that this outcome has nothing whatsoever to do with any misrepresentations alleged in this lawsuit. Rather, it is a result of the positions taken by the Receiver, its decision not to comply with Hanfeng's obligations under the Share Transfer Agreement, and its attempts to force Harbin Pengcheng to proceed without regard to the applicable Chinese law and regulations, contrary to the Share Purchase Agreement.

54. In the alternative, if the alleged or any representations were made, which is not admitted but is denied, at the time of making the alleged representations, the Defendants honestly believed the same to be true and did not make them knowingly or fraudulently or with any intention to deceive or defraud or to induce Hanfeng to enter into an agreement or to rely upon them.

55. In the further alternative, if the alleged or any representatives were made, which is not admitted but is denied, the Defendants deny that Hanfeng was induced by, or relied on, the said representations to enter into the Share Transfer Agreement. At all material times

Hanfeng was represented by independent and experienced directors and retained professional advisors to conduct such due diligence and investigations regarding the potential purchaser as it deemed necessary, including confirmation of the identity and corporate history of the potential purchaser or such other representations the potential purchaser may have made. Hanfeng entered into the Share Transfer Agreement in reliance on its own judgment and upon its own inquiries and upon the reports of the advisors employed by it and not upon any statement or representation made by the Defendants.

56. Further, the Defendants deny that Hanfeng suffered the alleged or any damage or that if damage was suffered by Hanfeng, which is not admitted and is denied, it was caused by the representations as alleged in the SOC. If Hanfeng has sustained damage, such damage was caused solely as a result of the acts and omissions of Hanfeng and their legal and professional advisors, including but not limited to negligence in conducting due diligence and negotiations with Harbin Pengcheng. The Defendants further state that if Hanfeng and its legal and professional advisors formed conclusions or assumptions regarding the potential purchaser, they did so without taking appropriate steps to verify those conclusions or assumptions.

57. In summary, the Defendants plead that they never made any misrepresentations, that the Plaintiff sought and obtained court approval for the Share Transfer Agreement with full knowledge of the identity of the purchaser, that Hanfeng and the Receiver subsequently affirmed the Share Transfer Agreement with this knowledge, and that the failure of the Plaintiff to realize the purchase price under the Share Transfer Agreement (on which the claim for damages for misrepresentation is based) resulted from decisions taken by the Receiver and the Plaintiff, for which the Defendants have no responsibility.

C. CLAIMS AND CAUSES OF ACTION ADVANCED SOLELY AGAINST YU

58. The Plaintiff seeks damages of 630,000,000 RMB based upon a series of causes of action, advanced without pleading material facts, alleging that Yu is guilty of unlawfully dissipating assets belonging to Hanfeng China, and that Yu has "absconded" with these assets.

59. These claims are all based upon two common assumptions, namely (i) that the assets of Hanfeng China have been improperly dissipated and (ii) that Yu has misappropriated the assets in question.

60. The Plaintiff makes these allegations in paragraphs 30-36 of the SOC, under the heading "Yu Dissipates Hanfeng China's Assets." In these paragraphs, the Plaintiff alleges two types of improper dissipation of Hanfeng China's assets.

61. First, according to the Plaintiff "at least 27 million" RMB was dissipated from Hanfeng China during the period August 2014 – June 2015 in connection with unspecified expenses (defined as "Dissipated Funds" in the SOC).

62. Unless this figure has been plucked out of the air, it must be comprised of specific disbursements which the Plaintiff alleges (i) were actually made and (ii) were improper. However, no facts are pleaded in the SOC to show the date, amounts, purpose or anything else about any of the expenses and related disbursement of funds which presumably comprise this lump sum claim.

63. Similarly, the Plaintiff has not pleaded any material facts supporting the conclusion that Yu had any involvement in the disbursement of any part of the 27,000,000 RMB claimed on this account.

64. Finally, the Plaintiff has not pleaded any material facts to support the allegations that Yu received any of the so-called "Dissipated Funds" comprising the 27,000,000 RMD. Rather, the Plaintiff has acknowledged that <u>it has been unable to ascertain what happened</u> to the "Dissipated Funds". In the result, the Plaintiff's claim that Yu has stolen these funds is based upon speculation, without any supporting material facts: according to the SOC, the Plaintiff simply states that "**it appears** that Yu has absconded" with the Dissipated Funds.

65. As pleaded, these claims constitute bald, conclusory allegations without any supporting material facts, constitute an abuse of process, and fail to disclose any cause of action.

66. Without prejudice to the above, Yu states and the fact is that, so far as he is aware any and all expenses incurred by Hanfeng China during whatever period is in issue were incurred by Local Management for proper purposes. Further, to the extent funds were

disbursed by Hanfeng China for such expenses, this was done properly by Local Management. Yu denies any involvement in any improper expenses or disbursements by Hanfeng China.

67. Yu further denies that he has improperly benefited from any disbursements on account of expenses incurred by Hanfeng China, and he denies that he has "absconded" with any such funds, contrary to the speculative assumption contained in paragraph 31 of the SOC.

68. The second element of the Plaintiff's allegations under this heading relates to certain "Loans" which are referred to, but not properly identified, in paragraphs 33-36 of the SOC.

69. According to paragraph 33 of the SOC, during an unspecified period of time, Hanfeng China obtained "approximately RMB 600,000,000" through "various loans and other agreements." Paragraph 33 then lists 4 loans with 4 separate banks ("Loans", as defined in the SOC). However the SOC does not provide any facts relating to the dates or terms of the Loans nor does it plead any material facts relating to any alleged involvement by Yu in negotiating, arranging, accepting or otherwise participating in the Loans.

70. As in the case of the so-called "Dissipated Funds" referred to in the SOC, the Plaintiff also pleads no material facts to support any receipt, use, or other benefit of any kind obtained by Yu in connection with the "Loans". Rather, as in the case of the "Dissipated Funds", the Plaintiff states that it has been unable to ascertain precisely what happened to any proceeds derived from the Loans, but once again simply asserts that it "**appears**" that "Yu has absconded with them."

71. The above claims are based on bald conclusions without any supporting facts, are an abuse of process, and fail to disclose any causes of action.

72. Without prejudice to the above, Yu denies that any of the Loans were improper, in the alternative denies that that he was involved in any improper Loans, and in any event denies having received any benefit, payment or use of funds as a result of any of the Loans.

73. The Plaintiff's claims against Yu for breach of fiduciary duty, conversion, unjust enrichment, and restitution are contained, respectively, in paragraphs 44, 49-50, 51 and 52 of the SOC.

74. None of these paragraphs contain any material facts to support the causes of action advanced, and all of them are based upon the same bald allegations and speculative assumptions referred to above. As such, the paragraphs of the SOC asserting these claims do not disclose any causes of action and are an abuse of process.

75. Without prejudice to the above, Yu denies that he has dissipated any of Hanfeng China's assets for his personal gain. Contrary to the SOC, Yu did not cause Hanfeng China to dissipate the unspecified "Dissipated Funds", nor did he cause Hanfeng China to enter into any improper Loans. Yu further denies that he transferred, used, or obtained any funds or benefits of any kind whatsoever with respect to the Dissipated Funds or Loans alluded to in paragraph 49 of the SOC. Yu also pleads that he did not obtain any of the funds in issue, and was not enriched (unjustly or otherwise) to the detriment of Hanfeng China or Hanfeng.

76. Yu further denies that Hanfeng has suffered damages as a result of any breach of duty alleged against him, which breaches are not admitted but denied, and states that if Hanfeng suffered damages, they were the result of, or in the alternative were contributed to by, the acts and omissions and/or negligence of the Independent Directors, and their legal and professional advisors and by the Receiver.

77. Yu states and the fact is that all of these claims are without any factual basis and should be dismissed.

D. ADDITIONAL ALLEGATIONS AGAINST YU: PARAGRAPHS 37-43 OF THE SOC

78. With respect to paragraph 37 of the SOC, Yu acknowledges that he was a director of Hanfeng from time to time and that as a consequence he had a duty to act in good faith and a duty to cooperate with the Receiver. Yu states and the fact is that he has complied with these duties.

79. Paragraph 37 of the SOC also alleges that Yu had certain responsibilities under Chinese Law with respect to Hanfeng China. While at all material times Yu complied with his obligations to Hanfeng China, any issues, claims, or allegations about any alleged breaches of duty to Hanfeng China arise under Chinese Law and are not properly before the Court.

80. Paragraphs 38-43 of the SOC allege, in substance, that Yu failed to cooperate with the Receiver. These claims are false. Contrary to the allegations contained in these paragraphs, Yu did cooperate with and assist the Receiver, to the best of his ability.

81. In this regard, from and after the appointment of the Receiver on August 20, 2014, Yu attended numerous meetings, participated in countless telephone calls and conferences and had extensive liaison from time to time with the Receiver and/or its counsel, in the interests of Hanfeng and in furtherance of, among other things, (i) implementing the Share Transfer Agreement, (ii) attempting to ensure that Hanfeng complied with its obligations under the Share Transfer Agreement, and (iii) facilitating appropriate communications with Harbin Pengcheng.

82. The above steps and efforts included, for example, numerous attempts by Yu during the month of March 2015 to cause Harbin Pengcheng to make further equity payments under the Share Transfer Agreement.

83. On or about May 4, 2015, Yu attended a meeting with the Receiver to provide information and answer questions about the Share Transfer Agreement and related matters. Yu fully cooperated with the Receiver at this meeting.

84. Yu pleads that the decisions made and conclusions reached by the Receiver on May 4, 2015 were inaccurate and unwarranted. Nonetheless, at all material times subsequent to May 4, 2015, Yu fully cooperated with the Receiver, acted on instructions from the Receiver, gave directives to Local Management of Hanfeng China in accordance with the Receiver's requests, and adhered to his obligations under the court orders.

85. Yu pleads that, to the knowledge of the Receiver, at all material times after May 4, 2015, Yu acted as summarized in paragraph 84 herein. Yu further pleads that, to the knowledge of the Receiver, this occurred during extensive periods when he was (at the request of the

Receiver) back in China, as well as on other occasions while he was hospitalized in China for treatment for a serious medical condition which had been diagnosed in November 2014.

86. In particular, to the knowledge of the Receiver:

(1) On or about **May 5, 2015**, Yu assisted the Receiver in ongoing strategy discussions and communications with Harbin Pengcheng, including recognition of and cooperation with the Receiver's decision to designate Ye Ying as the new point of contact with Harbin Pengcheng;

(2) On or about **June 5, 2015**, Yu returned to China at the Receiver's request to facilitate the appointment of a new director of Hanfeng China to replace a deceased director, in order to comply with certain regulatory requirements under the Share Transfer Agreement;

(3) Yu continued to instruct Local Management of Hanfeng China to comply with the Receiver's ongoing requests, including for monthly financial statements, bank vouchers, expense details and related information. These requests were in fact complied with from time to time, including, for example on or about **June 15 and 24, 2015**;

(4) On or about **June 18, 2015**, Yu confirmed the Receiver's instructions and request to Local Management of Hanfeng China (General Manager Zhida Qi) to make retainer payments to new local counsel Guan Liu;

(5) On or about **June 23, 2015**, while in hospital in China, Yu arranged for documentation necessary for the appointment of the replacement director to be provided to Local Management (Hong Yong Li) for sealing;

(6) On or about **June 30, 2015**, Yu assisted Local Management (Hong Ying Li) in the completion of further business documentation regarding the appointment of the replacement director;

(7) On or about **July 13, 2015**, Yu followed the direction of the Receiver to make written demand to Harbin Pengcheng for the payment of further funds to Hanfeng and to confirm to Harbin Pengcheng that Ronghai Hong was being appointed the new legal representative of Hanfeng China;

(8) As of **July 22, 2015**, Yu remained involved (together with the Receiver) in ongoing contacts and discussions with Harbin Pengcheng regarding the payment of additional funds under the Share Transfer Agreement;

(9) On or about **August 3, 2015**, Yu directed Local Management to provide full support to the Receiver regarding several steps and decisions taken and made by the Receiver in July, 2015, and in relation to the order of this Court dated July, 30, 2015, and,

(10) On or about **August 12, 2015**, while in hospital in China recovering from an operation, Yu directed Local Management (General Manager Zhida Qi) to provide information and other materials then in the possession and control of Local Management (stamps, seals, and other corporate property) to the Receiver or its representatives.

87. Yu states and the fact is that although the above facts were known to the Receiver, they were not contained in the Court materials filed in relation to the Court orders referred to in paragraphs 40 and 41 of the SOC, and have never been communicated to the Court. In this regard, Yu pleads that at the time of these court attendances he was, to the knowledge of the Receiver, in China and undergoing medical treatment. Yu further pleads that on and after the commencement of proceedings against him (and the Receiver and Hanfeng) in China by Harbin Pengcheng, on his guarantee as a result of the alleged breach of the

Share Transfer Agreement by the Receiver, referred to herein, he was not permitted to leave China for an extended period of time and this further impaired his ability to assemble the above facts, instruct counsel, and file materials regarding these issues with the Ontario Superior Court.

88. Yu pleads that the allegations in the SOC that he failed to cooperate with the Receiver or otherwise disobeyed any Court orders are inaccurate, that the description of the Court orders and proceedings in the SOC are incomplete and inaccurate, and that at all material times he attempted to cooperate and did cooperate with the Receiver to the best of his ability, despite the difficulties caused by some of the circumstances referred to above.

E. CLAIMS AND CAUSES OF ACTION ADVANCED SOLELY AGAINST LI

89. As noted above, the Plaintiff's claims of wrongful dissipation of Hanfeng China's assets, conversion, unjust enrichment, and restitution have not been advanced against Li.

90. Instead, the Plaintiff contends that Li is guilty of "knowing receipt" and "knowing assistance" in respect of the allegedly Dissipated Funds and Loans. The sum total of the Plaintiff's sparse pleading of these causes of action against Li is set out in paragraphs 53 and 54 of the SOC:

> "53. Li knowingly received and retained the benefits of the Loans and Dissipated Funds, which Yu wrongfully obtained.
>
> 54. In addition, or in the alternative, Li knowingly assisted Yu to wrongfully obtain the benefits of the Loans and the Dissipated Funds. Hanfeng has suffered harm as a result of Li's knowing assistance and knowing receipt and is entitled to damages and/or restitution."

91. This pleading is fatally flawed for three reasons;

(1) first, it is predicated upon an assumption that Li's co-defendant Yu misappropriated 635,000,000 RMB. As set out above, the Plaintiff has failed to plead the material facts required to substantiate any such causes of action against Yu and has admitted that its allegations that Yu took the money amount to speculative assumptions;

(2) second, the Plaintiff has failed to plead the any of the constituent elements of the torts of "knowing assistance" and "knowing receipt"; and,

(3) third, the Plaintiff has failed to plead any material facts in support of any conclusion that Li is culpable of or participated in any of the (unpleaded) constituent elements of these torts.

92. In these circumstances, the claims against Li in the SOC alleging "knowing receipt" and "knowing assistance" are nothing more that bald, conclusory allegations which disclose no cause of action, and are an abuse of process.

93. Without prejudice to the above, Li states and the fact is that she has no knowledge of nor did she have any involvement in any of the alleged actions of Yu in any dissipation or wrongful taking of funds belonging to Hanfeng China. Li further pleads that both of the underlying assumptions and the allegations implicit in these claims are totally without any factual basis and should be dismissed in their entirety.

94. The Defendant Li denies that she obtained Loans or Funds fraudulently or in breach of any fiduciary duty or otherwise and/or that Li has received or retained, knowingly or at all, the benefits of the Loans or Funds as alleged in paragraph 53 of the SOC. Li puts the Plaintiff to the strictest proof thereof of these allegations. In the alternative, if Li received and retained such Loans or Funds, which is not admitted but is denied, Li had no knowledge that the Loans or Funds were obtained by Yu fraudulently or in breach of any fiduciary duty.

95. The Defendant Li denies that Yu obtained Loans or Funds fraudulently or in breach of fiduciary duty and/or that Li assisted, knowingly or otherwise, in the breach of any such duty, which is not admitted but is denied. Li further states that she had no knowledge of any fraudulent conduct or any breach of any fiduciary duty by Yu, which breach is not admitted but is denied.

F. ADDITIONAL PLEADINGS

96. The decisions made and positions taken by Ernst & Young and Hanfeng, the failure of Hanfeng to honor its obligations under the Share Transfer Agreement, the collapse of the

transactions provided for in the Share Transfer Agreement and the Chinese legal proceedings referred to herein have caused damages to Yu.

97. Yu and Li have also been harmed by the Receiver's actions, including damages resulting from the publication of the unfounded allegations of fraud contained in the SOC.

98. Normally Yu and Li would institute a counterclaim and/or third party proceedings by reason of the above matters. However, paragraphs 8 and 9 of the August 20, 2014 Court Order prevent the commencement of such proceedings unless consent or Court Approval is obtained.

99. Accordingly, this Statement of Defence is being delivered without prejudice to the ability of Yu and Li to commence such proceedings upon fulfillment of the conditions contained in paragraphs 8 and 9 of the August 20, 2014 order.

100. Yu and Li further plead that if the Plaintiff has suffered any damages for which the Defendants are liable, which is not admitted but denied, they are entitled to a set off in respect of any such claims by reason of the damages caused by Hanfeng to them.

101. The Defendants further plead that the Plaintiff has failed to take any steps to mitigate any alleged damages suffered by the Plaintiff, which damages are not admitted but denied. In this regard, no steps have been taken to liquidate Hanfeng China. According to the fairness report filed on the return of the August 20, 2014 approval motion, the liquidation of Hanfeng China would have yielded net proceeds of 204,944,172 RMB. The Defendants plead that the Receiver and Hanfeng had a duty to take reasonable steps to implement such a liquidation. The Defendants plead that the failure to take any steps to do so over the past two years (a) constitutes a breach of the Plaintiff's duty to mitigate its alleged damages and (b) has harmed Yu and caused damages to Yu for which Yu would normally seek recovery, but for the provisions of the August 20, 2014 Order referred to above.

102. The Defendants further plead and rely on the Negligence Act, R.S.O. 1990 c.N.1.

103. In the event the claims pleaded in the Statement of Claim pertain to alleged acts or omissions which occurred prior to March 21, 2014, Hanfeng discovered or ought reasonably to have discovered the cause of action by March 21, 2014, more than two

years prior to the commencement of this action on March 22, 2016. The Defendants plead that those claims are statute barred by the provisions of the Limitations Act, 2002, S.O. 2002, c. 24, Sched. B.

104. The Defendants therefore submit that this action should be dismissed as against them with costs on a full indemnity basis.

January 5, 2017

MOORE BARRISTERS
Professional Corporation
393 University Avenue
Suite 1600
Toronto, Ontario
M5G 1E6

David C. Moore (LSUC #16996U)
(416) 581-1818 ext. 222
david@bellmore.ca

Karen M. Mitchell (LSUC #23816G)
(416) 581-1818 ext. 223
kmmitchell@bellmore.ca
Fax: (416) 581-1279

Lawyers for the Defendants

TO **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Maria Konyukhova (LSUC #52880V)
(416) 869-5230

Mel Hogg (LSUC #48076E)
(416) 869-6826
Fax: (416) 360-2646

Lawyers for the Plaintiff

Ernst & Young Inc., in its capacity as Court Appointed Receiver of Hanfeng Evergreen Inc.

Plaintiff

- and -

Yu Xinduo and Lei Li

Defendants

Court File No. CV16-11325-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings Commenced at Toronto

STATEMENT OF DEFENCE

MOORE BARRISTERS
Professional Corporation
393 University Avenue, Suite 1600
Toronto, ON M5G 1E6

David C. Moore (LSUC #16996U)
(416) 581-1818 ext. 222
david@bellmore.ca

Karen M. Mitchell (LSUC #23816G)
(416) 581-1818 ext. 223
kmmitchell@bellmore.ca
Fax: (416) 581-1279

Lawyers for the Defendants