

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

S&S Machinery Corp.,

Plaintiff,

v.

Wuhan Heavy Duty Machine Tool  
Group Co., Ltd.,

Defendant.

**07-CV-04909 (BMC)(VVP)**

**SECOND  
SUPPLEMENTAL  
DECLARATION**

FRANK L. SHERNOFF, an attorney duly admitted to practice law in the State of New York, makes the following declaration, pursuant to 28 U.S.C. § 1746, under penalty of perjury:

1. I am a member of Shernoff Law Office, former attorneys for plaintiff S&S Machinery Corp. (“S&S”). As such I am fully conversant with the facts and circumstances set forth herein.

2. This declaration is submitted in further support of the plaintiff’s motion for a judgment by default. More specifically, this declaration is submitted at the request of the Court, for the purpose of demonstrating that the plaintiff did all that it reasonably could, as required by the Hague Conventions, to obtain an affidavit or statement, from the Chinese Ministry of Justice, that it effected service of process upon the defendant in China.

3. For the purpose of serving the defendant in China, the plaintiff retained Rick Hamilton of Process Forwarding International, the State Department’s officially designated agent for international service of process. Mr. Hamilton has extensive experience serving process in China under the Hague Conventions. This fact is evident from an email dated January 14, 2008, in which Mr. Hamilton wrote that “I’ve completed 197 cases recently to China.” Since he is this

country's designated agent for service of process abroad, and since he has significant experience in China in particular, I have deferred to Mr. Hamilton's advice and guidance in assuring that service of process was made in the manner required by law, and that there are no further steps that can be taken to assure that the Chinese Ministry of Justice did, in fact, effect service upon the defendant.

4. By Order extending the plaintiff's time to effect service of process (ECF Document #7 filed on September 18, 2008), District Judge Cogan wrote that "There is no reason to presume that the Chinese Ministry of Justice will ever effect service." In response, I relayed a copy of the Order to Mr. Hamilton with the following message:

Rick,

Please review the court order annexed hereto, and advise if there's any way to ask for a status report from the Chinese Ministry of Justice.

Thanks,  
Frank

5. By email dated September 18, 2008, Mr. Hamilton replied as follows:

Hi Frank,

I can ask for confirmation of service from the Chinese authorities. That part is easy. The hard part is getting the Chinese authorities to respond. I sent the confirmation request today.

Rick

6. As predicted by Mr. Hamilton, the Chinese Ministry of Justice did not respond.

Accordingly, I later sent a second inquiry to Mr. Hamilton, as follows:

Rick,

Has the Chinese Ministry of Justice ever responded to your request for proof of service upon Wuhan? If not, is there any way to compel them to do so?

Many thanks,  
Frank

7. By email dated March 16, 2009, Mr. Hamilton replied, in relevant part, as follows:

Frank,

I haven't received a response since October when they indicated they could confirm service. There is no protocol to compel the Chinese to really do anything, all we can do is request it.

Rick

8. There is nothing further that the plaintiff is able to do to obtain a statement (let alone an affidavit), from the Chinese Ministry of Justice. Since Mr. Hamilton has indicated that the Chinese Ministry of Justice is uncooperative in providing such proofs, and since there exists substantial documentary evidence that the Ministry did, in fact, effect service upon the defendant, I have not asked Mr. Hamilton to make further inquiries that experience demonstrates will be ignored by the Ministry.

9. I am simultaneously sending a copy of this declaration upon Lovells LLP, which has heretofore represented the defendant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 30, 2009 in Short Hills, New Jersey.



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Frank L. Shernoff