

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D35536  
C/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 1, 2012

ANITA R. FLORIO, J.P.  
RUTH C. BALKIN  
L. PRISCILLA HALL  
ROBERT J. MILLER, JJ.

---

2011-07234

DECISION & ORDER

Anna Chang, et al., plaintiffs, David Doo, appellant,  
v John Chen, respondent, et al., defendants.

(Index No. 5268/08)

---

David Doo, New York, N.Y., appellant pro se.

In a shareholders' derivative action, inter alia, to recover damages for breach of fiduciary duty, the plaintiff David Doo appeals, as limited by his brief and an order on application of this Court dated February 17, 2012, from so much of an order of the Supreme Court, Queens County (Lane, J.), dated May 3, 2011, as, sua sponte, in effect, directed the dismissal of the amended complaint insofar as asserted against the defendant John Chen.

ORDERED that the appeal is dismissed, without costs or disbursements.

The portion of the order appealed from sua sponte, in effect, directed the dismissal of the amended complaint insofar as asserted against the defendant John Chen. As no appeal lies as of right from that part of an order which does not decide a motion made on notice (*see* CPLR 5701[a][2]; *Mohler v Nardone*, 53 AD3d 600; *Young v Young*, 49 AD3d 720), and since, under the circumstances of this case, we decline to grant leave to appeal (*see* CPLR 5701[c]), the appeal must be dismissed.

FLORIO, J.P., BALKIN, HALL and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court

December 12, 2012

CHANG v CHEN