

**Chungly Dev. Corp. v Tai Cheung Kitchen  
Equip. Supply, Inc.**

2007 NY Slip Op 30327(U)

March 16, 2007

Supreme Court, New York County

Docket Number: 0600820

Judge: Bernard J. Fried

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BERNARD J. FRIED  
*Justice*

PART 60

CHUNGLY DEVELOPMENT CORP Plaintiff,

- v -

TAI CHEUNG KITCHEN EQUIPMENT Defendants,  
SUPPLY, INC., PING CHEUNG AND  
CHUN WAI NG

INDEX NO. 600820-2006

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 003

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

By order dated July 25, 2006, and filed on August 1, 2006, Plaintiff's motion for a default judgment, (Motion Seq. # 001) was granted, pursuant to C.P.L.R. §3215, on default as to liability. In accordance with C.P.L.R. §4317, the issue of damages was referred to a Special Referee to hear and report with recommendations. The matter was assigned to Special Referee Hon. Howard G. Leventhal, who held an inquest on October 19, 2006. Plaintiff, Chungly Development Corporation ("Chungly") appeared but Defendants failed to appear by counsel and are deemed in default. Plaintiff now moves unopposed, pursuant to C.P.L.R. § 4403, to confirm the October 19, 2006 decision and report on the record of Special Referee Howard G. Leventhal.

At the inquest, Defendant Tai Cheung Kitchen Equipment Supply, Inc. ("Tai Cheung") did not appear by counsel. Defendant Chun Wai Ng did not appear. Defendant Ping Cheung attended a portion of the proceedings but appeared neither pro se or through counsel.

A Mr. Jacky Wan ("Wan") was present for the defendants. He identified himself as a

PAPERS NUMBERED

**FILED**  
MAR 26 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

“worker” at Tai Cheung and brought with him an official notification form from the Motion Support Office, Special Referee Assignment Calendar, addressed to Tai Cheung and advising the corporation of the hearing date before Special Referee Leventhal. Special Referee Leventhal explained that the court rules require that a corporation must appear by an attorney. (C.P.L.R. 321[a]; *See also, Pere v. 1470-1488 U&R Inc.* 247 AD2d 477, 477 [2d Dept. 1998], *citing Mineola Mack Distributors, Inc. v. Huntington Fleet Service, Inc.* 132 Misc. 2d 18, 19 [N.Y. Dist. Ct. 1986]). He further noted that Mr. Wan was not permitted to examine any witnesses or offer any evidence and could remain as an observer only.

Next, Mr. Dean Fong, attorney for Chungly gave testimony in a narrative manner as to the following facts: (1) On or about May 18, 1994, the plaintiff net leased a building at 303 Grand Street for a term of seven years to Tai Cheung; (2) At some point in October, 1999, Chungly and Tai Cheung extended the lease term until and including April 17, 2006 pursuant to an extension and modification agreement; (3) Commencing approximately in July of 2005, Tai Cheung stopped paying rent; (4) Chungly commenced a commercial nonpayment proceeding against Tai Cheung in the Civil Court of the City and State of New York, index number 93673-2005, requesting an award of final judgment for possession of the premises and judgment for rent in arrears; (5) Tai Cheung defaulted and Chungly was awarded judgment of possession and warrant of eviction; (6) Tai Cheung abandoned the premises prior to the execution of the eviction warrant on January 6, 2006.

Mr. Fong also testified that the rent owed on the premises totaled \$64,552.31 with an additional rent of \$2,785.17 to cover fuel oil, water and sewage charges for a total amount in rent due of \$67,337.48. Additionally, Mr. Fong testified that property damage had occurred to the building and that a construction estimate received by Chungly indicated that it would cost \$33,635.00 to remove illegal or unauthorized alterations to the premises. He further testified that Chungly spent \$900.00 repair a rolldown gate to the building so that the marshal could enter and give legal possession to the landlord.

Mr. Fong calculated Chungly’s total damages as \$101,872.48 and further testified that the

lease also permitted recovery of attorneys fees, which his client was seeking in the amount of \$6,673.00 as of June 1, 2006. He also requested that Chungly's legal fees be amended to include the time for his appearance at the Special Referee's inquest. Special Referee Leventhal inquired as to Mr. Fong's hourly rate and the amount of time he estimated billing in connection with the inquest, including making a motion to confirm the Referee's Report. Mr. Fong estimated an additional \$1,500.00 on top of the \$6,673.00.

Mr. Fong next called Mr. Peter Yan, president of Chungly as a witness for the plaintiff. Mr. Yan testified that Tai Cheung was a tenant of Chungly, occupying the entire building, at 303 Grand Street. Mr. Yan identified business records which were entered into the record, including the original lease, which was guaranteed by Ping Cheung and Chun Wai Ng.

Mr. Yan also identified, a copy of Ping Cheung's driver's license. This document was entered into the record, and Mr. Fong requested that the Court take judicial notice that papers were served both on the corporate defendants and on the individual defendant, pursuant to the address given to the landlord.

Finally, Mr. Yan identified the decision and judgment from the previously mentioned nonpayment proceeding before Judge Barbara Jaffee, dated November 28, 2005.

At this point in the proceeding, Ping Cheung a/k/a Penny Cheung appeared, and Special Referee Levanthal noted for the record that Ms. Penny Cheung arrived at approximately five minutes past eleven. Noting that "the defendant corporation is required to appear by an attorney", the Special Referee inquired if she was "an attorney", to which she responded "No. I have a lawyer. Today I am too rushed." Thereafter, the Special Referee stated "Since this is a public trial, you have the right to attend, but you may not participate because you are not an attorney. You may not examine or cross-examine witnesses or submit any evidence but you may attend." Ms. Cheung did not indicate that she wanted to appear as an individual defendant pro se. Indeed, a few moments later, when asked if she was "one of the defendants in this case", she replied "I am going to have my lawyer do it." Under the circumstances, it was not unreasonable for the Special Referee to proceed as he did,

with the clear statement that Ms. Cheung was represented by counsel who was not present.

Mr. Fong then stated that Ms. Cheung goes by more than one name. Special Referee Leventhal granted Mr. Fong permission to inquire about this, and Ms. Cheung goes by the name Penny Cheung, which is the legal name she uses on her passport, as well as by the name Ping Cheung. Mr. Fong, attorney for Plaintiff, Chungly, then made an application to amend the caption, which Special Referee Leventhal recommended granting, so that the name of one of the individual guarantors be Ping Cheung a/k/a Penny Cheung.

Mr. Yan then gave further testimony, and introduced an invoice from Lucky Window and Door Manufacturing in the amount of \$900.00 as proof of payment for repair of the gate to the building. He also testified that the building's legal occupancy was strictly commercial, but that items which he found on the premises suggested that the building had been used residentially. Mr. Yan stated that he hired a contractor "to remove and fix it to meet the city requirement" and introduced the contractor's proposed bill and an invoice of payment from Soon Woh Construction, totaling \$33,635.00 Mr. Yan also testified to having paid \$6,673.00 in attorney's fees and to having received no payments from the defendants since July, 2005.

Special Referee Leventhal approved Mr. Fong's application to amend the caption to add the name Ping Cheung a/k/a Penny Chung as one of the defendants.

Special Referee Leventhal also reported and recommended that, as of October 19, 2006, based on the testimony and Plaintiff's business records, judgment be granted against Defendants Tai Chung and the guarantors Ping Cheung a/k/a Penny Cheung, and Chun Wai Ng in the sum of \$101,872.48, with prejudgment interest at the statutory rate of nine percent per annum from July 18, 2005, as well as attorney's fees in the sum of \$8,173.00 and that plaintiff shall have execution thereon.

The report of a referee should be confirmed if its findings are supported by the record. *Baker v. Kohler*, 28 A.D.3d 375, 375-76 (1st Dep't 2006).

I confirm the October 19, 2006 report of Special Referee Leventhal.

Accordingly, it is

ORDERED that Plaintiff's motion, pursuant to C.P.L.R. § 4403, to confirm the October 19, 2006 report of Special Referee Leventhal is granted on default; and it is further

ORDERED that in accordance with the recommendations of Special Referee Leventhal, the Clerk of the Court is directed to enter judgment in favor of Plaintiff and against the corporate and individual Defendant, jointly and severally, in the sum of \$101,872.48, with interest at the rate of prime plus 9% which is to recapitalize to principal, from July 18, 2005, until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate; plus an award of reasonable attorneys' fees in the sum of \$8,173.00; together with costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs.

Dated: 3/16/07

  
**BERNARD J. FRIED**

J.S.C.

Check one:  FINAL DISPOSITION       NON-FINAL DISPOSITION

Check if appropriate:       DO NOT POST       REFERENCE

**FILED**  
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