

**Chan v Shew Foo Chin**

2009 NY Slip Op 31858(U)

August 19, 2009

Supreme Court, New York County

Docket Number: 106692/05

Judge: Walter B. Tolub

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: TOLUB  
Justice

PART 15

MIRIAM CHAN  
- v -  
SHAW FO CHAN

INDEX NO. 106692/08  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 5  
MOTION CAL. NO. \_\_\_\_\_

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

	PAPERS NUMBERED
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

IS DECIDED

**IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION**

**FILED**  
AUG 19 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 8/19/09

[Signature]  
**WALTER B. TOLUB** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

-----x  
MIRIAM CHAN, PLATINUM QUEENS, LLC and 79  
TOWER, LLC

Plaintiffs,

-against-  
SHEW FOO CHIN, SUSAN CHIN and RAYMOND  
W.M. CHIN a/k/a RAYMOND CHIN,  
Defendants.

Index No.106692/05  
Mtn Seq.005

**FILED**

AUG 19 2009

COUNTY CLERK'S OFFICE  
NEW YORK

-----  
WALTER B. TOLUB, J.:

This Defendants motion for an order permitting the deposit of \$706,759.04 in satisfaction of a money judgment, discharging Defendants from all further liability(CPLR 2601).

On August 7, 2009, the parties entered into a stipulation stating:

- The motion relating to the payment of judgment is resolved to the following extent:
1. Defendants shall pay Hofheimer Gartlir and Gross the sum of \$73,607.86 in partial satisfaction of the judgment in this action entered on October 2, 2008.
  2. Interest on the amount of \$73,607.86 shall be deemed to have stopped running as of July 17, 2009 as per the nunc pro tunc language in the partial satisfaction dated August 7, 2009.
  3. The remaining issues on the motion shall be submitted to the Court.

(Stipulation dates August 7, 2009).

As such, the only remaining issue for this Court to decide is whether and how much interests runs on the October 2, 2008 Judgment (Judgment).

Background

This matter was tried before the court on April 30, 2008, May 1, 2008, May 5, 2008 and May 6, 2008.

By decision dated July 31, 2008, this Court found that, based on the evidence at trial, there was no valid and enforceable contract between the parties. This Court further found that Plaintiff is entitled to the return of \$450,000 with the appropriate rate of interest from August 1, 2002.

The Appellate Division First Department affirmed this Courts decision on May 12, 2009. By this motion, Defendant seeks to "fully satisfy this judgment by paying Plaintiffs the amount of \$706,759.04, which includes the principal sum of \$450,000 and interest calculated at 9% per annum from August 1, 2002 through July 15, 2009, excluding the period from October 1, 2008 to May 12, 2009, which totals \$256,759.04 in interest owed (\$40,500 in interest per year/\$110.96 interest per day)." (Defendants' Aff. ¶7). Moreover, Defendants argue that they were ready to pay all amounts owed, but could not because Plaintiff initiated a special proceeding for a charging lien [which was granted without opposition on June 22, 2009]. Therefore, Defendants argue, that interest ceased to accrue once Defendants were willing and able to pay the judgment.

Plaintiffs argue that the amount Defendants have offered to pay into court is less than the amount required by statute to

satisfy the Judgment. Plaintiffs argue that Defendants have not correctly calculated interest on the judgment and that interest should run until the day the Defendants actually pay the money into court.

#### Discussion

Interest is the cost of the use of money (New York Practice, Fourth Edition, David Siegel, p. 695, §411). The CPLR provides for interest on litigated obligations. There are three distinct periods to be considered, governed respectively by CPLR 5001, 5002 and 5003: (1) Interest on the cause of action from its accrual until the decision; (2) Interest on the decision until judgment is entered; and (3) Interest on the judgment from entry until payment (Id.).

Interest on categories 2 and 3 attaches uniformly to all money obligations once reduced to a judgment (Id.).

The Judgment against the Defendants was entered in the amount of \$700,101.37 on October 2, 2008 (Defendants Ex. A). CPLR §5003 provides that every money judgment shall bear interest from the date of its entry (CPLR §5003). Post-Judgment interest, pursuant to CPLR §5003, would be (\$700,101.37 [the Judgment] X 9%) \$63,009.12 annually and \$172.63 daily. Therefore, as of July 17, 2009 (the date Defendants' order to show cause was signed and the date upon which Defendants' calculations were based), post-

judgment interest from May 12, 2009<sup>1</sup> (66 days) is (66 X \$172.63) \$11,393.58. Therefore, the amount owed as of July 17, 2009 is \$711,494.95.

Defendants argue that interest should stop running from July 17, 2009 because they were willing and able to pay on the Judgment as of that date. Plaintiff argues that Defendant was only going to pay \$706,759.04, less than the amount owed to Plaintiff and that, once a money claim has been reduced to judgment, it carries interest until it is paid.

The CPLR does not compel the payment of post-judgment interest in every case; post-judgment interest is awarded as a penalty for the delayed payment of a judgment, and where the delay was caused solely by the plaintiff, the defendant should not suffer the penalty of paying interest (ERHAL Holding Corp. v. Rusin, 252 AD2d 473 [2<sup>nd</sup> Dept 1998]).

Here, Defendants were unable to pay on the Judgment because Plaintiffs counsel commenced an action for attorneys' fees. The action was granted on default and Plaintiffs' attorney was directed to settle a Judgment on Notice. Defendants' could not pay the Judgment without exposing themselves to potential liability. As such, Defendants were not the cause of the delay in satisfying the Judgment.

---

<sup>1</sup>Interest from October 2, 2009 to May 12, 2009 is not included since the matter was before the Appellate Division, First Department.

Accordingly it is

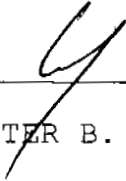
ORDERED that Defendants pay to the Court \$711,494.95 within 10 days of service of a copy of this order with notice of entry. If Defendants do not timely pay on the Judgment, post-judgment interest will begin to accrue; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This memorandum opinion constitutes the decision and order of the Court.

Dated:

8/18/09

  
HON. WALTER B. TOLUB, J.S.C.

**FILED**  
AUG 19 2009  
COUNTY CLERK'S OFFICE  
NEW YORK