

**BFAM Asian Opportunities Master Fund, LP v
Zhongrong Intl. Resources Co., Ltd.**

2025 NY Slip Op 30464(U)

February 3, 2025

Supreme Court, New York County

Docket Number: Index No. 654192/2022

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

-----X

BFAM ASIAN OPPORTUNITIES MASTER FUND, LP,

Plaintiff,

- v -

ZHONGRONG INTERNATIONAL RESOURCES CO.,
 LTD., ZHONGRONG XINDA GROUP CO., LTD.,
 LUCKYWAY CREATION LIMITED, CHOICE SUCCESS
 GLOBAL LIMITED, ERA NOVA DEVELOPMENT S.A.

Defendants.

-----X

INDEX NO. 654192/2022

MOTION DATE 12/27/2024

MOTION SEQ. NO. 010

**DECISION + ORDER ON
 MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215

were read on this motion for

DEFAULT JUDGMENT

Plaintiff BFAM Asian Opportunities Master Fund, LP (“Plaintiff”) moves for a Default Judgment Against Defendants Zhongrong Xinda Group Co., Ltd., and Era Nova Development S.A. (the “Non-Appearing Defendants”), pursuant to CPLR 3215, awarding money damages in the amount of (i) the unpaid principal of US \$139,806,000.00; (ii) two outstanding accrued interest payments, each in the amount of US \$5,067,967.50, owed on April 26, 2020, and October 26, 2020, under the Indenture and Accompanying Zhongrong International Resources Co., Ltd. Global Note (Oct. 26, 2017) (NYSCEF 152), which total US \$10,135,935.00; and (iii) prejudgment simple interest on the unpaid principal of US \$139,806,000.00, running from the October 26, 2020 maturity date at 9% per annum pursuant to CPLR 5001 and 5004. The Non-Appearing Defendants have not appeared or opposed this motion. For the following reasons, Plaintiff’s motion is granted.

Under CPLR 3215(f), “[a] party seeking a default judgment must submit proof of service of the summons and the complaint and ‘proof of the facts constituting the claim, the default and the amount due’” (*Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023], quoting CPLR 3215 [f]).

Zhongrong Xinda and Era Nova were served with the Summons and Complaint when Plaintiff served those papers on their designated agent for service of process, Law Debenture Corporate Services Inc. (“Law Debenture”), in November 2022.¹ Defendants agreed to maintain Law Debenture as their agent for any service related to the Notes “[a]s long as any of the Notes remain outstanding.” (NYSCEF 199 [“Indenture”] § 12.07(c)). The Notes remain “outstanding” to this day pursuant to the definition of that term at Section 1.01 of the Indenture because Defendants have failed to pay Plaintiff principal and interest due under the Notes. The Non-Appearing Defendants’ failure to maintain Law Debenture as their agent does not render service ineffectual (*see Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 41 AD3d 25, 33 [1st Dept 2007] [“In the indenture, the defendants agreed to accept service made on CT Corp. Although the defendants apparently terminated CT Corp. at some point before the plaintiffs served the

¹ The Court previously deferred deciding whether such service was effective (*see* NYSCEF 115 [Decision and Order dated August 8, 2023 (“MTD Decision”)] at 3) and instead granted Plaintiff several extensions of the service deadline to try to serve the Non-Appearing Defendants through the applicable international service treaties (*see, e.g.*, NYSCEF 185 [Decision and Order dated July 31, 2024 (“Fourth Extension Order”)]). Recently, however, in *Zhang Rui Kang v. Zhongrong International Resources Co., Ltd.*, No. 654526/2024 (“Zhang”)—a parallel action brought by a different noteholder of the same Notes as at issue in this case—this Court granted a motion for summary judgment in lieu of complaint against Zhongrong Xinda and Era Nova, finding that they had effectively been served through service on Law Debenture (*Kang v. Zhongrong Intern. Resources Co., Ltd.*, 2024 NY Slip Op 34294[U], 2 [Sup Ct, NY County 2024]). As the same holds true here, the Court likewise finds that Zhongrong Xinda and Era Nova were effectively served the Summons and Complaint in this action in November 2022.

turnover motion, the court below properly found that this termination was ineffective because the defendants neither gave prior written notice to the trustee that they were terminating CT Corp. nor appointed another agent for service of process in New York”]).

As to proof of the facts constituting the claim and the amount due, Plaintiff has satisfied its burden under CPLR 3215(f). First, the Court has already determined via its Decision and Order dated July 31, 2024 that the Indenture and Notes are an enforceable contract (*see* NYSCEF 183 [Decision and Order dated July 31, 2024 (“MSJ Decision”)] at 2-3). Second, this Court has likewise already determined via its MSJ Decision that Plaintiff has performed and complied with the Indenture and Notes (*see id.*). Third, Plaintiff has established that the Non-Appearing Defendants are in breach of their obligation to pay Plaintiff principal and interested due pursuant to the Indenture and Notes, and that this failure has damaged Plaintiff (*see* NYSCEF 204 [“Gilain-Huneus Aff.”] ¶¶ 40-44).

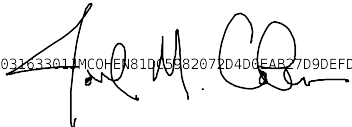
As to damages, Plaintiff has demonstrated that it has been damaged in the amount of (i) the unpaid principal of US \$139,806,000.00; (ii) two outstanding accrued interest payments, each in the amount of US \$5,067,967.50, owed on April 26, 2020, and October 26, 2020, under the Indenture and Accompanying Zhongrong International Resources Co., Ltd. Global Note (Oct. 26, 2017) (NYSCEF 199), which total US \$10,135,935.00; and (iii) prejudgment interest on the unpaid principal of US \$139,806,000.00 running from the October 26, 2020 maturity date at 9% per annum pursuant to CPLR 5001 and 5004 (*see* Gilain-Huneus Aff., ¶¶ 40-44).

The Non-Appearing Defendants may seek a vacatur of the instant default judgment if they can satisfy the requirements of CPLR § 5015, CPLR § 317, or any other relevant law.

Therefore, it is:

ORDERED that Plaintiff's Motion for a Default Judgment against the Non-Appearing Defendants is **GRANTED**, and upon submission of a judgment by Plaintiff in the appropriate form, the Clerk shall enter judgment in favor of Plaintiff against the Non-Appearing Defendants for (i) the unpaid principal of US \$139,806,000.00; (ii) two outstanding accrued interest payments, each in the amount of US \$5,067,967.50, owed on April 26, 2020, and October 26, 2020, under the Indenture and Accompanying Global Note, which total US \$10,135,935.00; and (iii) prejudgment interest on the unpaid principal of US \$139,806,000.00, running from the October 26, 2020 maturity date at 9% per annum pursuant to CPLR 5001 and 5004, along with costs and disbursements, as calculated by the County Clerk; it is further

ORDERED that Plaintiff's counsel shall serve a copy of this order with notice of entry on the Non-Appearing Defendants within five (5) days from the date of this Order.


202562032633011MCOHEN81005382072D4DCEAB27D9DEFD0C388D

JOEL M. COHEN, J.S.C.

2/3/2025
DATE

<p>CHECK ONE:</p> <p>APPLICATION:</p> <p>CHECK IF APPROPRIATE:</p>	<table border="0"> <tr><td><input checked="" type="checkbox"/></td><td>CASE DISPOSED</td><td></td></tr> <tr><td><input checked="" type="checkbox"/></td><td>GRANTED</td><td><input type="checkbox"/> DENIED</td></tr> <tr><td><input type="checkbox"/></td><td>SETTLE ORDER</td><td></td></tr> <tr><td><input type="checkbox"/></td><td>INCLUDES TRANSFER/REASSIGN</td><td></td></tr> </table>	<input checked="" type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<table border="0"> <tr><td><input type="checkbox"/></td><td>NON-FINAL DISPOSITION</td><td></td></tr> <tr><td><input type="checkbox"/></td><td>GRANTED IN PART</td><td><input type="checkbox"/> OTHER</td></tr> <tr><td><input type="checkbox"/></td><td>SUBMIT ORDER</td><td></td></tr> <tr><td><input type="checkbox"/></td><td>FIDUCIARY APPOINTMENT</td><td><input type="checkbox"/> REFERENCE</td></tr> </table>	<input type="checkbox"/>	NON-FINAL DISPOSITION		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER	<input type="checkbox"/>	SUBMIT ORDER		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
<input checked="" type="checkbox"/>	CASE DISPOSED																									
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED																								
<input type="checkbox"/>	SETTLE ORDER																									
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN																									
<input type="checkbox"/>	NON-FINAL DISPOSITION																									
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER																								
<input type="checkbox"/>	SUBMIT ORDER																									
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE																								