

**Shanghai Commercial Bank Ltd., N.Y. Branch v  
Chen Found., Inc.**

2025 NY Slip Op 31521(U)

April 26, 2025

Supreme Court, New York County

Docket Number: Index No. 850013/2024

Judge: Andrea Masley

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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 48

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SHANGHAI COMMERCIAL BANK LTD., NEW YORK  
BRANCH, and THE SHANGHAI COMMERCIAL AND  
SAVINGS, BANK LTD,

Plaintiffs,

- v -

CHEN FOUNDATION, INC., TLT & J ENTERPRISES,  
LLC, NEW WORLD ART CENTER, INC., TSING FANG  
CHEN, LUCIA CHEN, TED CHEN, JULIE CHEN, A&H  
INSTALLATION INC., NEW YORK CITY DEPARTMENT  
OF FINANCE, NEW YORK STATE DEPARTMENT OF  
TAXATION AND FINANCE, and JOHN DOE,

Defendants.

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INDEX NO. 850013/2024

MOTION DATE --

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 228, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243

were read on this motion to/for JUDGMENT - SUMMARY.

In motion sequence number 003, plaintiffs Shanghai Commercial Bank Ltd., New York Branch, and The Shanghai Commercial and Savings Bank, Ltd. (together, Banks) move (i) pursuant to CPLR 3212, for summary judgment of foreclosure of the mortgaged property, 250 Lafayette Street, New York County, New York (designated as block 496, lot 27), (ii) pursuant to CPLR 3212, for summary judgment against defendants TLT & J Enterprises, LLC (TLT & J), New World Art Center, Inc., Tsing Fang Chen, Lucia Chen, Ted Chen, and Julie Chen (collectively, Guarantors) pursuant to the guaranties identified in the complaint (with respect to liability only, with damages as deficiency judgments, if any), (iii) pursuant to CPLR 3218, to strike the answer of the

Chen Foundation and Guarantors (NYSCEF Doc. No. [NYSCEF] 95), or, in the alternative, to deem the allegations identified in the accompanying memorandum of law as admitted, (iv) pursuant to CPLR 3215, for default judgment against defendants A&H Installation, Inc. (A&H), the New York City Department of Finance (Department of Finance), and the New York Department of Taxation and Finance (Department of Taxation and Finance) which have not appeared in this action, and (v) pursuant to CPLR 3217, to dismiss the John Doe defendants from the action and to amend the caption accordingly.

The Chen Foundation, TLT & J, Tsing Fang Chen, Lucia Chen, Ted Chen, and Julie Chen cross-move pursuant to CPLR 602 (a) to consolidate this action with *Shanghai Commercial Bank Ltd. v New Tent LLC*, Index No. 850240/2024 (Masley, J.) and *New Tent LLC v Shanghai Commercial Bank Ltd.*, Index No Forthcoming.

The Banks allege four claims: (1) mortgage foreclosure against the Chen Foundation; (2) foreclosure of personal property against the Chen Foundation; (3) breach of guaranty/deficiency judgment against the Chen Foundation and the Guarantors; and (4) breach of the Forbearance Agreement against the Chen Foundation and the Guarantors. (NYSCEF 2, Complaint ¶¶ 40-101.) As previously stated, the Banks seek summary judgment of foreclosure of both real and personal property (first and second causes of action) and on liability against the Guarantors as to the guaranties.

## Discussion

### Cross-Motion

For the reasons stated on the record on March 21, 2025, the cross-motion is denied. Additionally, the parties are reminded that “[c]ross-motions to motions for summary judgment are not permitted;” motions for summary judgment are to be made by the deadline and the time cannot be extended by filing a cross motion after seeing the adversary’s motion. (Part 48 Procedures ¶ 10[A].)

### Items (i), (ii), and (iii)

For the reasons stated on the record on March 21, 2025, the motion is granted as to item (i) and as to item (ii) on liability only. The damages, if any, due from the Guarantors shall be determined after the foreclosure sale. In light of the court’s decision, relief sought in item (iii) is moot.

### Item (iv)

The Banks seek default judgment against A&H, Department of Finance, and Department of Taxation and Finance for failure to answer the complaint. The Banks named A&H as a defendant because it “doctored a mechanic’s lien in the sum of \$400,000” (NYSCEF 2, Complaint ¶ 16) and the Departments are named because “of any claim, title, or lien [the Departments] may have or come to have against the Properties.” (*Id.* ¶¶ 18, 20.) The Banks, however, allege no causes of action against these defendants and seek no relief from them in the complaint. Thus, the motion for default judgment against A&H, Department of Finance, and Department of Taxation and Finance is denied. (See *Medina v Sheng Hui Realty LLC*, 2018 NY Misc LEXIS 1789, \*6-7, 2018 WL 2136441, \*6-7 [Sup Ct, NY County 2018] [“On a motion for a default

judgment under CPLR 3215 based upon a failure to answer the complaint, a plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing" (citations omitted)]; *Bd. of Mgrs. of 255 Hudson Condominium v Esen*, 2018 NY Misc LEXIS 11105, \*3 n 3 [Sup Ct, NY County] ["Although plaintiff alleges that defendants New York City Department of Finance, New York City Water Board, and John Does 1-10 may have liens on plaintiff's recovery, no default can be taken against these entities since no claims were asserted against them in the complaint".]

Item (v)

The Banks allege that defendants "John Doe No. 1 to John Doe No. 100" are "fictitious and unknown to [the Banks] and are named herein to designate any and all non-party tenants, occupants, persons, corporations, or other entities, if any, having or claiming an interest in or lien upon the Properties or any part thereof, which is subject to the liens of [the Banks] discussed herein." (NYSCEF 2, Complaint ¶ 21.) Upon application to the court, it is within the court's discretion to permit plaintiff to voluntarily discontinue the action. (See CPLR 3217 [b].) "While the determination upon such an application is generally within the sound discretion of the court, a party ordinarily cannot be compelled to litigate and absent special circumstances, such as prejudice to adverse parties, a discontinuance should be granted." (*Bank of America, National Association v Douglas*, 110 AD3d 452, 452 [1st Dept 2013] [citations omitted].) No special

circumstance has been shown here, and thus, the court grants the portion of the motion seeking to discontinue this action against “John Doe No. 1 to John Doe No. 100.”

This decision supplements the decision made on the record on March 21, 2025.

Accordingly, it is

ORDERED that the cross-motion is denied; and it is further

ORDERED that the Shanghai Commercial Bank Ltd., New York Branch and The Shanghai Commercial and Savings Bank, Ltd.’s motion is granted as to items (i), (ii) and (v), and the balance of the motion is denied; and it is further

ORDERED that the parties shall submit via NYSCEF end email (sfc-part48@nycourts.gov) a proposed order appointing referee to compute the amounts due under the mortgage and to examine whether the property identified in the notice of pendency can be sold in parcels; and it is further

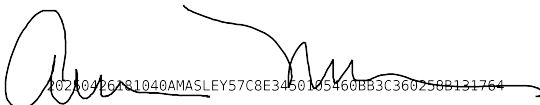
ORDERED that the issue of any damages owed shall be determined after the foreclosure sale; and it is further

ORDERED that the action is discontinued as against “John Doe No. 1 to John Doe No. 100;” and it is further

ORDERED that caption be amended to reflect the discontinuance and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for movants shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).



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4/26/2025  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: