

**Amber Assoc. of NY, LLC v DZH Import & Export,
Inc.**

2025 NY Slip Op 33740(U)

October 2, 2025

Supreme Court, Kings County

Docket Number: Index No. 512118/2018

Judge: Ingrid Joseph

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At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 2nd day of October 2025.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

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Amber Associates of NY, LLC,
Plaintiff(s)

Index No: 512118/2018
Motion Seq. 9

-against-

DZH Import & Export, Inc., H & C Food Inc., GW of Flushing
I, Inc., Lihui Zhang, Kuanhe Wu and Sailu Pan,
Defendant(s)

ORDER

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The following e-filed papers read herein:

- Notice of Motion/Affidavits Annexed
- Exhibits Annexed/Reply.....
- Affirmations in Opposition/Affidavits Annexed
- Exhibits Annexed.....

NYSCEF Nos.:

- 129-143; 159
- 144-150; 154-157

In this action, Amber Associates of NY, LLC, (“Plaintiff”) moves (Motion Seq. 9) for partial summary judgment pursuant to CPLR 3212 against Lihui Zhang (“Zhang”), on its First Cause of Action and against Kuanhe Wu (“Wu”) on its Eighth Cause of Action pursuant to former Debtor and Creditor Law (“DCL”) 273-a. Zhang and Wu have opposed the motion.

This matter arises from a judgment Plaintiff obtained in 2015 against Defendant DZH Import & Export Inc. (“DZH”) as a result of DZH’s default on a lease it entered into with Plaintiff for a warehouse in Glendale, New York. Plaintiff commenced an action against DZH to recover damages resulting from the default on November 24, 2010 (the “Lease Default Action”). A decision was entered on June 15, 2015, by Hon. Orin Kitzes, J.S.C., Supreme Court, Queens County in favor of Plaintiff and an order of Judgment was entered by the same court in favor of Plaintiff in the amount of \$465,117 on September 14, 2015. Plaintiff alleges that to date, DZH has failed to pay any portion of the judgment or interest therein which now totals over \$774,426.17.

In support of its motion, Plaintiff argues that DZH made fraudulent conveyances to Zhang and Wu without fair consideration and in violation of Debtor and Creditor Law. Plaintiff contends that instead of paying Plaintiff the debt owed under the lease, Zhang and Wu, as shareholders and Co-Presidents repaid themselves at DZH’s expense in order to provide DZH with capital. Plaintiff asserts that it prevails under Debtor and Creditor Law 273-a, which states in part that a plaintiff must show “that the transferor was a defendant in an action for money damages at the time of the transfer, the transferor has not satisfied the resulting judgment and the transfer was made without fair consideration.” Plaintiff claims that the first two elements of Debtor and Creditor Law 273-a, are not in dispute in that (1) DZH made the transfers at

issue while it was a defendant in the Lease Default Action brought by Amber Associates, and that (2) DZH has thereafter failed to satisfy the resulting judgment rendered in Plaintiff's favor. Thus, the remaining issue before the court is whether the three transfers were made for fair consideration.

Plaintiff asserts that under New York law, repayments of loans to corporate insiders, such as officers and shareholders of closely held corporations instead of to creditors, lack fair consideration as a matter of law for purposes of the Debtor and Creditor Law. In its supporting papers, Plaintiff alleges that after the Lease Default Action was commenced, that on or about April 15, 2011, DZH made two individual payments (the "First Transfer") to Wu and Zhang in the amount of \$150,000 each wherein both payments were made by checks drawn on DZH's bank account at EastWest Bank and signed by Zhang. Thereafter, on or about April 28, 2011, DZH made two individual payments (the "Second Transfer") to Wu and Zhang in the amount of \$200,000 each which were also made by checks drawn on DZH's bank account at EastWest Bank and signed by Zhang. Plaintiff cites Wu's EBT testimony wherein he testified that the entire \$350,000 paid to him in April 2011 represented repayment of loans Wu had previously made to DZH four years earlier in 2007, and is confirmed by DZH's CPA, Louis Miu, who prepared DZH's income tax returns.¹ Plaintiff also contends that of \$350,000 DZH paid to Zhang in April of 2011, \$284,000 represented repayment of loans he had previously made to DZH five years earlier in 2007 and that the additional \$66,000 DZH paid him represented a loan from DZH to Zhang.² Plaintiff cites Zhang's EBT testimony wherein he testified that he knew DZH was being sued by Plaintiff when he made these payments to himself and Wu.³ Plaintiff asserts that Zhang never repaid the loan but instead it was later reclassified in DZH's books and records as a return of capital.⁴ Finally, on or about April 9, 2012, DZH made two payments (the "Third Transfer") to Wu totaling \$115,167 by checks drawn on its bank account at EastWest Bank. Plaintiff cites Wu's sworn interrogatory where he stated that these payments from DZH were made in exchange for Wu transferring his entire 50% ownership interest to defendants Zhang and Sailu Pan ("Pan"), and that following the return of Wu's capital, Zhang and Pan separated their business interests from Wu and each became 50% owners of DZH.⁵ Additionally, Plaintiff also states that during the five-year period prior to Wu selling his interest in DZH to Zhang, Wu provided no work or services of any description to DZH, yet was paid compensation by DZH for the 2011 tax year in the total amount of \$104,903.⁶ Plaintiff states that the tax year ran from June 1, 2011 through May 31, 2012 and therefore began after DZH was a defendant in the Lease default Action.

¹ (Wu Dep. at pp 34-35; see also Miu Dep. At pp 10-13, 26-32).

² (Miu Dep. at pp. 26-32).

³ (Zhang Dep. at pp 94-95; 97).

⁴ (Miu Dep. at pp 45-54).

⁵ (See Wu Interrog. Response No. 12; Zhang Dep. at pp 17; Zhang/DZH Interrog. Response, No. 2).

⁶ (Wu Dep. at pp 23-24; 37; see also DZH 2011 Tax Return at pp 7).

In opposition, Wu argues that Plaintiff's motion must be denied because it failed to establish a lack of good faith consideration for any of the three transfers made. Wu asserts that DZH was in good financial health and not insolvent when it made the transfers, which contradicts Plaintiff's assumption that the transfers were made to avoid a future money judgment, and that Plaintiff erroneously claims that Wu did not perform any services for DZH in exchange for his salary payment despite Wu's EBT testimony stating otherwise. Wu contends the transfers at issue are as follows: (1) DZH's April 2011 repayment of a shareholder loan to Wu in the amount of \$350,000; (2) DZH's April 2012 payment of \$115,167 to Wu in exchange for transferring Wu's entire 50% ownership interest in the company; and (3) DZH's payment of compensation to Wu for the 2011 tax year in the amount of \$104,903. Wu states that he co-founded DZH with Zhang and Pan as part of the Great Wall Group a/k/a Great Wall Companies ("Great Wall"), which comprised of nine companies and that Wu provided personal funds as a loan to DZH in order to help establish the company's early operations. Wu contends that in April of 2011, he received a shareholder loan repayment in the combined amount of \$350,000 from DZH. With respect to Wu's loan repayment, Wu claims that according to DZH's 2010 U.S. Corporation Tax Return, which covered the period from June 1, 2010, to May 31, 2011, DZH's total assets were worth \$6,938,793, with DZH's gross sales totaling \$45,664,429 and total income totaling \$2,522,097. Thus, Wu states the \$350,000 loan repayment only constituted a fraction of DZH's total assets, gross sales, and total income for the year. With respect to DZH's April 2012 payment of \$115,167 to Wu, Wu states that it was for the transfer of his ownership interest in DZH, and that in April of 2012, Zhang, Pan, and Wu agrees that Zhang and Pan would take over ownership of six of the companies within Great Wall, including DZH, while Wu would take over ownership of the remaining three companies. Thus, the parties executed a Shareholder Buyout Umbrella Agreement on April 10, 2012, setting forth the specific terms and conditions for the transaction. Wu asserts that pursuant to the agreement, he transferred his entire 50% ownership interest in DZH to Zhang and Pan for consideration of \$115,167 and relinquished his title and position as Executive CEO of DZH.⁷ With respect to DZH's salary compensation of \$104,903 in April of 2011, Wu states that during his tenure at DZH, Wu, Zhang, and Pan, worked as a team overseeing Great Wall, where Zhang was responsible for buying and importing food, Pan was responsible for finances, and Wu managed the operations of eight of the supermarkets and his tasks consisted of supervising the supermarkets' food displays, implementing Great Wall's sales strategies, and reviewing business reports.⁸ Wu states that he was paid \$104,903 in the 2011 tax year and that he earned a salary of \$67,081 for the prior tax year, therefore the salary payments

⁷ Wu states that according to DZH's 2011 U.S. Corporation Tax Return during the 2011 tax year, which covered the period from June 1, 2011, to May 31, 2012, DZH's total assets were worth \$4,307,490, its gross sales increased to \$45,675,926 and its total income increased to \$3,477,050. Thus, the \$115,167 repayment to Wu represented only a fraction of DZH's total assets, gross sales, and total income for the 2011 tax year.

⁸ (Wu affidavit at 13; see also Wu Dep. at pp 23, 25-26).

were made during the normal course of business, as part of DZH's ordinary business practice and as compensation for Wu's management of the supermarkets.⁹

In opposition, Zhang argues that Debtor and Creditor Law 273-a does not apply to him because he was neither a transferor, a defendant in an action for money damages in the underlying lease action, and/or not a person against whom the judgment was entered. Zhang states that Plaintiff's motion shows the sole defendant in the underlying action was DZH, not Zhang, and that Plaintiff has not directed its motion at DZH or put Zhang on notice that it intended its motion to be directed at DZH. Zhang also argues that Plaintiff's cause of action against Zhang may be time barred because the former six-year statute of limitations is now "four years from the date of entry of the judgment, not extended by a period of discovery." Zhang contends that if the section 273-a cause of action accrued on the dates of the transfers, the rule when the six-year limitations period applied, then the dates of the transfers are relevant. Zhang asserts that the operative complaint, the Second Amended Complaint, alleges with respect to the section 273-a cause of action against defendant Zhang that the dates of the transfers were April 15, 2011 in the amount of \$150,000 to Zhang (the "First Zhang Transfer"), April 28, 2011 in the amount of \$200,000 to Zhang (the "Second Zhang Transfer"), and April 9, 2012 in the amount of \$66,000 (the "Third Zhang Transfer"). Therefore, Zhang argues that six years from the latest of these was April 9, 2018, before this action was commenced on June 13, 2018, and that the two-year discovery period does not apply to causes of action under section 273-a, however, if it did, there would be a dispute as to when the Plaintiff could reasonably have discovered these transfers. Finally, Zhang argues that there are questions of fact as to whether the transfers were made without consideration. Zhang states that Plaintiff has not shown that before the transfers to defendant Zhang, DZH was able to satisfy the judgment and that pursuant to Section 273-a of the Debtor and Creditor law that the preferential repayment of pre-existing debts to some creditors does not constitute a fraudulent conveyance.

Since the existence of an unsatisfied judgment is an essential element of a constructive fraud cause of action pursuant to Debtor and Creditor Law 273-a, the six year statute of limitations period for such a claim begins to run on the date of entry of the judgment (see CPLR 213[1]; *Coyle v Lefkowitz*, 89 AD3d 1054 [2d Dept. 2011]; *Frybergh v Weissman*, 145 AD2d 531 [2d Dept 1988]; *Grace v Rosenstock*, 228 F3d 40, 54 [2d Cir 2000]; *Carey v Crescenzi*, 923 F2d 18, 20 [2d Cir 1991]).

Here, the judgment against DZH in the Lease Default Action was entered on September 14, 2015, and the instant action was commenced on June 12, 2018. Accordingly, the court finds that Plaintiff's claim is timely for a constructive fraud claim under Business and Creditor Law 273-a.

⁹ (see DZH 2010 tax return and DZH 2011 Tax Return)

It is well established that “the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Ayotte v. Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zapata v. Buitriago*, 107 AD3d 977 [2d Dept 2013]). Once a prima facie demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

Summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable (*Elzer v. Nassau County*, 111 A.D.2d 212, [2d Dept. 1985]; *Steven v. Parker*, 99 AD2d 649, [2d Dept. 1984]; *Galeta v. New York News, Inc.*, 95 AD2d 325, [1st Dept. 1983]). When deciding a summary judgment motion, the Court must construe facts in the light most favorable to the non-moving party (*Marine Midland Bank N.A. v. Dino & Artie’s Automatic Transmission Co.*, 168 AD2d 610 [2d Dept. 1990]; *Rebecchi v. Whitemore*, 172 AD2d 600 [2d Dept. 1991]).

New York enacted the Uniform Voidable Transactions Act, which repealed and replaced certain provisions of the Debtor and Creditor Law relating to fraudulent conveyances and which became effective April 4, 2020 (see Uniform Voidable Transactions Act [L 2019, ch 580, § 2] [eff Apr. 4, 2020]; *L&M 353 Franklyn Avenue LLC v Steinman*, 202 AD 3d 440 [1st Dept. 2022]; see also *McCormack Family Charitable Found. V Fidelity Brokerage Servs., LLC*, 195 AD3d 420 [1st Dept. 2021]). Transfers made after April 4, 2020, inapplicable here, are governed by the current version of the statute (*Silber Investment Properties, Ltd. V BJJ Islandia Realty, LLC*, 236 AD3d 953 [2d Dept. 2025]). Pursuant to the former Debtor and Creditor Law 273-a, “every conveyance made without fair consideration when the person making it is a defendant in an action for money damages or a judgment in such an action has been docketed against him, is fraudulent as to the plaintiff in that action without regard to the actual intent of the defendant if, after final judgment for the plaintiff, the defendant fails to satisfy the judgment” (see *Coyle v Lefkowitz*, 89 AD3d 1054 [2d Dept. 2011]; *Farm Stores, Inc. v School Feedings Corp.*, 102 AD2d 249 [2d Dept. 1984]; *Sardis v Frankel*, 113 AD3d 135 [1st Dept 2014]).

Debtor and Creditor Law 273-a deems certain conveyances made “without fair consideration” to be fraudulent “irrespective of moral guilt and intent” because of the tendency of these transactions to deceive, violate a confidence or injure interests that the law deems worthy of special protection (*Southern Industries, Inc. v Jeremias*, 66 AD2d 178 [2d Dept. 1978]). Fair consideration encompasses two components: “whether the amount given for the transferred property was a ‘fair equivalent’ or not ‘disproportionately small’” and “whether the transaction was made in good faith” (Debtor and Creditor Law 272[a]; see also *Sardis* at 141-142). The good faith of both the transferor and transferee is an indispensable component of fair consideration (*Am. Panel Tec v Hyrise, Inc.*, 31 AD3d 586 [2d Dept. 2006]);

Julien J. Studley, Inc. v Lefrak, 66 AD2d 208 [2d Dept. 1979]; *Sardis v Frankel*, 113 AD3d 135 [1st Dept. 2014]; *Matter of Mega Personal Lines, Inc. v Halton*, 9 AD3d 553, 555 [3d Dept 2004]; *Cathay Bank v Bonilla*, 17-CV-3551 (NG) (SIL), 2023 WL 6812274, [EDNY Oct. 16, 2023]). The party challenging the conveyance bears the burden of proving an absence of fair consideration (*Joslin v Lopez*, 309 AD2d 837 [2d Dept. 2003]).

Generally, the transfer of corporate assets to an insider establishes a lack of good faith as a matter of law when the transfer of assets is made either directly to the insider or to an entity controlled by the insider (*American Panel Tec v Hyrise, Inc.*, 31 AD3d 586 [2d Dept. 2006]; *Farm Stores, Inc. v School Feeding Corp.*, 102 AD2d 249 [2d Dept. 1984]; see *Holme v Glob. Mins. & Metals Corp.*, 127 AD3d 540 [1st Corp. 2015]; *Matter of Mega Personal Lines, Inc. v Halton*, 9 AD3d 553, 555 [3d Dept 2004]; *P.A. Bldg. Co. v Silverman*, 298 AD2d 327, 328 [1st Dept 2002]). Thus, in instances where a corporate insider participates in both sides of the transfer and the insider controls the transferee, the transfer will be deemed to have been made in bad faith if made to a creditor's detriment because there can be no factual dispute that the purpose of the transfer was to confer on the insider a preference over other creditors (*Matter of Mega Personal Lines, Inc.* at 554; *Bernasconi v Aeon, LLC*, 105 AD3d 1167 [3d Dept. 2013]). An exception to that rule is when the transfer is to an insider who is legitimately a secured creditor, since under those circumstances, "no preference occurs ... [because the] satisfaction of a secured debt causes no improvement of position" (*Englander Capital Corp. v Zises*, 60 Misc 3d 659, 664 [Sup Ct 2018]; citing *In re Northstar Dev. Corp.*, 465 BR 6, 14 [Bankr WDNY 2012]; see also *Korea Trade Ins. Corp. v Neema Clothing, Ltd.*, 85 UCC Rep Serv 2d 664 [SDNY Jan. 28, 2015];). "Where a fraudulent conveyance has been established, each transferee. . . is liable to the creditor to the extent of the value of the money or property he or she wrongfully received" (*Farm Stores, Inc. v School Feeding Corp.*, 102 AD2d 249 [2d Dept. 1984]; see *Sardis* at 142 [1st Dept 2014]). As a general rule, the creditor's remedy in a fraudulent conveyance action is "limited to reaching the property which would have been available to satisfy the judgment had there been no conveyance" (*Schwartz v Boom Batta, Inc.*, 137 AD3d 512 [1st Dept. 2016]; *Manufacturers & Traders Trust Co. v Lauer's Furniture Acquisition*, 226 AD2d 1056, 1057 [4th Dept 1996], lv dismissed 88 NY2d 962 [1996]), a court of equity may award a personal judgment against a party in lieu of setting aside a transfer (*Schwartz*, 137 AD3d 512 at 213; *Constitution Realty v Oltarsh*, 309 AD2d 714 [1st Dept. 2003]).

Here, the court finds that questions of fact exist as to whether the subject conveyances at issue were made in bad faith without faith consideration.¹⁰ While there is no real dispute that DZH was a defendant in

¹⁰ Contrary to Defendant Wu's contentions, the requirement of insolvency is an element of constructive fraud pursuant to Debtor and Creditor Law 273, but not Debtor and Creditor Law 273-a (conveyances by a defendant), which is applicable here. Similarly, contrary to Defendant Zhang's contentions, proximate cause is not an element of a cause of action under Debtor and Creditor Law 273-a.


an action for money damages at the time the transfers to Wu and Zhang took place, and that the judgment entered against DZH in the principal sum of \$465,117 plus interest has not been satisfied, under the circumstances of this case, Plaintiff has not satisfied its prima facie burden establishing whether the subject conveyances at issue were made in bad faith without fair consideration. It is insufficient for Plaintiff to rely solely on the fact that Wu and Zhang were insiders to establish that the transfers from DZH were lacking in fair consideration. As stated above, transfers made to insiders who are legitimately secured creditors are deemed not to be made in bad faith since under those circumstances no preference occurs because the satisfaction of a secured debt causes no improvement of position. Similarly, good faith satisfaction of an antecedent debt constitutes fair consideration. Thus, questions of fact exist as to whether the circumstances of the transfers at issue indicate bad faith in that Wu and Zhang received a preference or improvement of position via the subject transfers, whether Wu and Zhang were entitled to payment as secured creditors because of the loans they made to DZH, and/or whether the subject transfers constituted satisfaction of an antecedent debt. Defendants' arguments that they were entitled to re-payment of their loans to DZH that the company had not yet repaid, and that the subject salary payments were made in the ordinary course of business, could support an inference that Wu and Zhang were secured creditors. However, the timing and circumstances of the transfers while the underlying Lease Default Action was pending and the failure to pay the underlying judgment even though DZH was profitable and had enough funds to pay the judgment could support an inference that that the Defendants did not act in good faith and that the transfers were not made with fair consideration but rather were made for the purpose of rendering Plaintiff unable to collect on its judgment. Additionally, the proffered documents including inter alia the tax forms and Shareholder Umbrella Buyout Agreement create a triable issue of fact as to whether Defendants had a valid security interest.

Accordingly, it is hereby,

ORDERED, that Plaintiff's motion for summary judgment is denied.

Issues not addressed herein are either without merit or moot.

This constitutes the decision and order of the court



Hon. Ingrid Joseph J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**