| **Cho v White Noise Coffee I Corp.** |
| --- |
| 2026 NY Slip Op 31913(U) |
| April 23, 2026 |
| Supreme Court, Kings County |
| Docket Number: Index No. 531388/2025 |
| Judge: Cenceria P. Edwards |
| 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. |

At an IAS Term, Comm 2 off the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 23rd day of April 2026.

**P R E S E N T:**
HON. CENCERIA P. EDWARDS, CPA,
Justice.

----------X

MICHELLE MJ CHO,
Plaintiff(s),

-against-

WHITE NOISE COFFEE I CORP.,
Defendant(s).

----------X

**ORDER**

Calendar Date: 1/28/2026
Calendar #(s): 1

Index #: 531388/2025

Mot. Seq. #(s): 1

| The following e-filed papers read herein: | NYSCEF Doc. Nos.: |
|---|---|
| Notice of Motion/Order to Show Cause/Petition/Cross-Motion and Affidavits (Affirmations) and Exhibits | 1–3, 10–14, 16, 21, 27 |
| Opposing Affidavits (Affirmations) and Exhibits | 24, 26 |
| Reply Affidavits (Affirmations) and Exhibits | |

Plaintiff Michelle MJ Cho ("Plaintiff") commenced this Commercial Division action on or about September 10, 2025, by entering an affidavit of judgment by confession against Defendants White Noise Coffee I Corp. ("WNC1"), White Noise Coffee 2 Corp., and Hyun Jae Park-Kim (collectively, "Defendants") (NYSCEF Doc. # 1).

White Noise Group Inc. ("WNG"), an allegedly separate party to this action, moves by order to show cause for a preliminary injunction and temporary restraining order under CPLR 5240 to enjoin enforcement of the judgment against WNG's personal property, including enjoining the sale of WNG's personal property at a public auction (NYSCEF Doc. # 21, at 4; *see also* NYSCEF Doc. # 27).

**BACKGROUND**

On October 1, 2025, this Court entered a judgment by confession in favor of Plaintiff and only against Defendant WNC1 in the amount of $187,595.82 (NYSCEF Doc. # 6). The judgment stems from an alleged default of a $165,000 loan agreement between Plaintiff (as creditor) and Defendants (as debtors) (NYSCEF Doc. # 21, at 2). On October 28, 2025, a New York City Marshal served a Marshal's Notice of Levy and Sale upon WNG, which is not a defendant to that action (NYSCEF Doc. # 10). The Noice of Levy scheduled the sale of WNG's assets for November

14, 2025, at 9:00 A.M. (*id.*). Ultimately, the Marshal rescheduled the sale to December 23, 2025, at 9:00 A.M. because WNG requested cancelation of the sale on the grounds that (1) WNG is the legal owner of the levied upon assets, (2) Defendants have no right to the assets, and (3) WNG is a separate legal entity than the named Defendants (NYSCEF Doc. # 11; NYSCEF Doc. # 13 ¶ 5). The assets sought to be sold include "tables, chairs, refrigerators, computers, coffee machines, and any property not exempt by law" (NYSCEF Doc. # 11). WNG filed an order to show cause on December 19, 2025, requesting a preliminary injunction to enjoin enforcement of the judgment in this action against WNG's property (NYSCEF Doc. # 27). Plaintiff opposes WNG's request for a preliminary injunction (NYSCEF Doc. # 26).

**DISCUSSION**

WNG moves by order to show cause pursuant to CPLR 5240 to preliminarily enjoin enforcement of the judgment against its personal property (NYSCEF Doc. # 27). WNG argues that under the discretionary power afforded to the Court under CPLR 5240, a preliminary judgment may be granted under CPLR 6301 because WNG establishes that WNG is not a party to the action and the assets Plaintiff seeks to sell belong to WNG and not the Defendants (NYSCEF Doc. # 21, at 4–9).

Plaintiff poses several arguments for why WNG cannot satisfy the elements required for entitlement to a preliminary injunction. First, Plaintiff argues that piercing the corporate veil is warranted as WNG and WNC1 have together improperly insulated the assets from the judgment (NYSCEF Doc. # 26, at 3). Second, Plaintiff argues that under the de facto merger doctrine, successor liability is appropriate because WNG merely continued WNC1's operations (*id.* at 4). Third, Plaintiff argues that WNC1 transferred the assets to WNG for no consideration and therefore the transfer is presumptively fraudulent and voidable (*id.* at 4–5). Fourth, Plaintiff argues that the balance of the equities favors Plaintiff because Defendants internally transferred assets to WNG to evade judgment (*id.* at 5). For the reasons set forth, WNG has not established entitlement to injunctive relief.

## I. PLAINTIFF'S OPPOSITION TO WNG'S MOTION FOR A PRELIMINARY INJUNCTION

### A. PIERCING THE CORPORATE VEIL

Plaintiff first argues that the Court should disregard WNC1's corporate form and "pierce the corporate veil" to permit Plaintiff to satisfy the judgment by reaching WNG's assets. Courts may generally pierce the corporate veil only when "necessary to prevent fraud or achieve equity" (*KSZ Bldg. Materials v Stognin*, 241 AD3d 1445, 1446 [2d Dept 2025]). A plaintiff seeking veil piercing must show that "(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury" (*id.*, quoting *Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018]). Bare conclusions that an owner or "alter ego" has

completely dominated or controlled the corporation is insufficient to permit veil piercing (*see id.*; *see also Anderson v ML Real Estate Holdings, LLC*, 242 AD3d 1160, 1162 [2d Dept 2025]); *Americore Drilling & Cutting, Inc. v EMB Contr. Corp.*, 198 AD3d 941, 944 [2d Dept 2021]). Moreover, in determining whether to pierce the corporate veil, courts additionally consider "whether there was a 'failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds for personal use" (*Anderson*, 242 AD3d at 1162, quoting *East Hampton Union Free Sch. Dist. v Sandpebble Bldrs., Inc.*, 66 AD3d 122, 127 [2d Dept 2009]).

Plaintiff asserts that WNG and WNC1 share the same President, Su Hyung Kim, who stood on both sides of the asset transfer transaction (NYSCEF Doc. # 26, at 3; NYSCEF Doc. # 24 ¶ 9; *see also* NYSCEF Doc. # 16). Plaintiff further argues that the transaction had no consideration, required no physical movement of the assets, and was executed for the improper purpose of insulating WNC1's assets from the judgment (NYSCEF Doc. # 26, at 3; *see also* NYSCEF Doc. # 24 ¶ 9). The only substantiating piece of evidence submitted is an April 22, 2025 transfer agreement between WNC1 (as transferor) and WNG (as transferee) that indicates Su Hyung Kim acts as President of both entities (*see* NYSCEF Doc. # 16). This agreement purports to transfer "coffee-making equipment, furniture, and fixtures," worth $188,488, to WNG as a capital contribution from Su Hyun Kim as WCN1's shareholder (*id.* §§ 2–3).

Aside from showing that WCN1 transferred these assets to WNG, under the authority of the same person, and for no consideration, Plaintiff has not shown that piercing the corporate veil to reach WNG's assets would be an appropriate measure. Under the totality of the circumstances, Plaintiff has not demonstrated that WGN "completely dominates" WCN1 based on one asset transfer agreement. Plaintiff has not submitted evidence showing that WCN1 has no other assets to satisfy the judgment with or that Su Hyun Kim has intentionally undercapitalized it otherwise. Moreover, Plaintiff has not established that the asset transfer constitutes improper commingling of the corporations' assets, that Su Hyun Kim has used WCN1's funds for personal use, or that any corporate formalities were ignored. In fact, several pieces of evidence show that WNC1 is based in Brooklyn while WNG is based in Manhattan, which indicates that the two entities are separate (*see e.g.* NYSCEF Docs. # 6–7, 11, 13–14). Plaintiff argues that the assets were transferred with the intent to evade the judgment because the transfer occurred after the default and before enforcement (NYSCEF Doc. # 26). Here, the default occurred on or about December 22, 2023, and the asset transfer occurred before Defendants sought the judgment on April 22, 2025 (*see* NYSCEF Docs. # 2, 16). However, the timing of the asset transfer does not, without more, justify veil piercing (*KSZ Bldg. Materials v Stognin*, 241 AD3d 1445, 1446 [2d Dept 2025], quoting *Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018]). Accordingly, Plaintiff has

not sufficiently demonstrated that WNG has disrespected the corporate form to an extent that warrants veil piercing.

**B. SUCCESSOR LIABILITY UNDER THE DE FACTO MERGER DOCTRINE**

Plaintiff next argues that the Court should impose successor liability against WNG under the de facto merger doctrine because WNG is a mere continuation of WCN1 and thus should assume WCN1's liabilities (NYSCEF Doc. # 26, at 4). Generally, a corporation that acquires the assets of another is not responsible for its predecessor's legal liabilities (*Menche v CDx Diagnostics, Inc.*, 199 AD3d 678, 678 [2d Dept 2021]; *Bonanni v Horizons Investors Corp.*, 179 AD3d 995, 998 [2d Dept 2020]). However, an exception applies if "(1) [the corporation] expressly or impliedly assumed the predecessor's tort liability, (2) there was a consolidation or merger of seller and purchaser, (3) the purchasing corporation was a mere continuation of the selling corporation, or (4) the transaction [was] entered into fraudulently to escape such obligations" (*Menche*, 199 AD3d at 678, quoting *Schumacher v Richards Shear Co.*, 59 NY3d 239, 245 [1983]). Importantly, a transaction that is structured as an asset transfer agreement may fall into this exception if a de facto merger is found between the transacting corporations (*id.*; *see also Bonanni*, 179 AD3d at 998, quoting *Matter of AT & S Transp., LLC v Odyssey Logistics & Tech. Corp.*, 22 AD3d 750, 752 [2d Dept 2005]). "The hallmarks of a de facto merger, which are to be considered in determining whether it was the intent of the successor to absorb and continue the operation of the predecessor, are 'continuity of ownership; cessation of ordinary business and dissolution of the predecessor as soon as possible; assumption by the successor of the liabilities ordinarily necessary for the uninterrupted continuation of the business of the acquired corporation; and, a continuity of management, personnel, physical location, assets, and general business operation' (*Menche*, 199 AD3d at 678, quoting *Matter of AT & S Transp., LLC v. Odyssey Logistics & Tech. Corp.*, 22 AD3d 750, 752, [2d Dept 2005]).

Plaintiff has not substantiated it claims that a de facto merger exists between WNC1 and WNG. Plaintiff's only evidence in support of finding a de facto merger is a bare allegation that WNC1 ceased operating once WNG acquired the transferred assets (*see* NYSCEF Docs. # 26, at 4; 24 ¶ 20). Moreover, Plaintiff has also not substantiated its allegations that WNC1 has dissolved or that WNG acquired anything from WNC1 beyond the equipment listed in the asset transfer agreement. Accordingly, Plaintiff has not sufficiently demonstrated that a de facto merger exists between WNG and WNC1.

**C. VOIDABLE FRAUDULENT CONVEYANCE**

Plaintiff argues that because the asset transfer was made without consideration after a debt was incurred, the transfer is presumptively fraudulent and voidable (NYSCEF Docs. # 26, at 4; 24 ¶ 21). A transfer is voidable if a (1) debtor made that transfer with the intent to "hinder, delay or defraud" any creditor; or (2) without receiving a "reasonably equivalent value in exchange for the transfer" and the debtor "believed or reasonably should have believed" that the debtor would incur debts beyond their ability to pay (Debtor and Creditor Law § 273 [a]). Intent to "hinder, delay or

defraud" can be presumed by considering if any "badges of fraud" exist around the circumstances of the transfer, including whether the transfer was to an insider, whether the debtor retained possession of the transferred property after the transaction, whether the debtor had been sued or threatened with suit before the transfer, whether the debtor received fair consideration for the transferred assets (*id.* [b] [1]–[11]; *see also 245 E. 19 Realty LLC v 245 E. 19th Street Parking LLC*, 223 AD3d 604, 606 [1st Dept 2024]; *Louis Monteleone Fibres, Ltd. v Hudson Baylor Brookhaven, LLC*, 228 AD3d 641, 646 [2d Dept 2024]).

WNG's own transfer agreement and affirmation demonstrate several badges of fraud that may render the transaction voidable under Debtor and Creditor Law § 273 (*see* NYSCEF Doc. # 16; 21). The transfer was between two companies that have the same President, the transfer occurred after WNC1 defaulted on its contract but before Plaintiff sought judgment, the assets were valued at nearly the same amount as the judgment, and WNC1 received no consideration for the transfer. The totality of the circumstances establish badges of fraud that indicate WNC1 carried out the asset transfer with the intent to "hinder, delay or defraud" Plaintiff (Debtor and Creditor Law § 273 [a]–[b]). Moreover, WNC1 transferred the assets without receiving a "reasonably equivalent value in exchange" because the assets were essentially gifted to WNG as a "capital contribution" from the President of both entities (*id.*; *see also* NYSCEF Doc. # 16). Further, WNC1 should have reasonably expected that it would incur debt to Plaintiff after defaulting on the underlying contract that resulted in the judgment. Accordingly, Plaintiff sufficiently demonstrates that the transfer is likely voidable under Debtor and Creditor Law § 273.

## II. DEFENDANT'S MOTION FOR A PRELIMINARY INJUNCTION

WNG moves by order to show cause pursuant to CPLR 5240 to preliminarily enjoin enforcement of the judgment against its personal property (NYSCEF Doc. # 27). Under CPLR 5240, the Court may "craft flexible and equitable responses to claims that arise with respect to enforcement of valid money judgments" (*Plymouth Venture Partners, II, L.P. v GTR Source, LLC*, 37 NY3d 591, 600 [2021]; *see also GTR Source, LLC v Zomongo.TV USA, Inc.*, 242 AD3d 714, 717 [2d Dept 2025]). To this end, WNG requests that the Court grant a preliminary judgment pursuant to CPLR 6301.

The Court has discretion in granting or denying a preliminary injunction (*Sobiech v Dillon*, 245 AD3d 862, 863 [2d Dept 2026]). "Although the purpose of a preliminary injunction is to preserve the status quo pending a trial, the remedy is considered a drastic one, which should be used sparingly" (*Walsh v Ocwen Loan Servicing, LLC*, 217 AD3d 802, 803–04 [2d Dept 2023], quoting *Soundview Cinemas, Inc. v AC I Soundview, LLC*, 149 AD3d 1121, 1123 [2d Dept 2017]). "To obtain a preliminary injunction, the movant must establish (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balancing of the equities in the movant's favor" (*Walsh*, 217 AD3d at 803, quoting *XXXX, L.P. v 363 Prospect Place, LLC*, 153 AD3d 588, 590–91 [2d Dept 2017]; *see also* CPLR 6301). The moving party does not need to provide "conclusive" evidence in support of the preliminary injunction but must provide evidence

establishing a "clear right" to injunctive relief (*see Sarker v Das*, 203 AD3d 973, 973 [2d Dept 2022]; *Corp. Coffee Sys., LLC v R.U.G. Consulting, LLC*, 235 AD3d 829, 830 [2d Dept 2025]; *R&G Brenner Income Tax Consultants v Fonts*, 206 AD3d 943, 944 [2d Dept 2022]).

First, WNG must show a likelihood of success on the merits. WNG argues that it is a separate and distinct entity from the Defendants and is the sole owner of the assets (NYSCEF Doc. # 21, at 3–4). However, as established above, Plaintiff has shown that the asset transfer agreement is likely voidable under Debtor and Creditor Law § 273 because several "badges of fraud" accompanied the transaction. In contrast, WNG has not shown that it is the lawful owner of the assets beyond claiming that WNC1 and WNG entered into a valid agreement (*id.* at 6). In fact, although both parties discuss that the asset transfer has occurred, the asset transfer agreement itself is not signed by either party (*see* NYSCEF Doc. # 16). WNG has not established that the agreement was ever properly executed. Accordingly, WNG has not demonstrated likelihood of success on the merits because the asset transfer agreement is likely either voidable or invalid in the first place. WNG has fell short of establishing a "clear right" to injunctive relief. Because WNG must satisfy all three elements for entitlement to a preliminary injunction, the Court need not consider whether the remaining two elements have been met.

Accordingly, it is hereby:

**ORDERED** that WNG's motion for a preliminary injunction is **DENIED**.

The Foregoing Constitutes the Decision and Order of this Court.

**E N T E R,**

**Dated**: April 23, 2026

**Hon. Cenceria P. Edwards, JSC, CPA**