

**Bari v Corallo**

2025 NY Slip Op 34860(U)

December 12, 2025

Supreme Court, New York County

Docket Number: Index No. 150233/2024

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. LESLIE A. STROTH PART 12M**

*Justice*

-----X

JAMES BARI, MARYANN BRUNO,  
Plaintiff,

- v -

JOHN CORALLO, EXECUTOR TO THE ESTATE OF  
NICHOLAS BARI,

Defendant.

-----X

INDEX NO. 150233/2024

MOTION DATE 01/09/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for DISMISSAL.

**Background**

This action concerns a dispute among three siblings over proceeds obtained by their deceased brother, Nicholas Bari, from the surrender of their childhood apartment. Plaintiffs, James Bari and Maryann Bruno, sue Defendant, John Corallo, Nicholas Bari’s stepson and Executor of his Estate. (NYSCEF Doc No. 1.)

The siblings moved into 47 Mulberry Street, Apt. 15, in 1945. The unit is rent controlled and has no lease. Their father died in 1950, and their mother remained in the apartment until her death in 2011. Maryann moved out in 1968; James lived there intermittently until 1993. Plaintiffs allege Nicholas Bari moved out in 1970, then returned in 2009 to live with their mother until his death in 2022. They further claim Nicholas Bari’s primary residence was with his family in Staten Island. Nicholas Bari’s son, disputes this and asserts Nicholas Bari was a tenant and primary resident of the Mulberry apartment since the 1970s.

Plaintiffs contend that after their mother's death in 2011, the siblings agreed to retain the apartment because Nicholas Bari and Defendant Corallo had opened a nearby restaurant. According to Plaintiffs, the siblings agreed to divide any future surrender proceeds equally. Such agreement was never memorialized in writing nor have Plaintiffs provided any proof of when such agreements were made. They allege numerous family conversations to that effect, though they identify only one specific landlord offer in 2019 for \$75,000. No written agreement was ever executed.

Plaintiffs also allege Nicholas Bari told Defendant Corallo that any future proceeds would be divided among Nicholas Bari's wife, Plaintiff James Bari, and Plaintiff Maryann Bruno. Defendant Corallo denies this; Maryann asserts Defendant Corallo was aware of the siblings' discussions.

Nicholas Bari was diagnosed with cancer in 2020 and moved out in June 2022. On July 19, 2022, he signed a Surrender Agreement identifying him as the sole tenant and received \$100,000. He died three days later. His will distributes the funds to his wife and his children.

Plaintiffs seek \$66,666.66, claiming the siblings collectively "shared" the apartment and agreed to split surrender proceeds. Their complaint asserts (1) breach of an oral agreement, (2) breach of an implied-in-fact agreement, and (3) unjust enrichment. Defendant moves to dismiss under CPLR 3211(a)(1), (5), and (7). Plaintiffs cross-move for default judgment.

### LEGAL STANDARD

Pursuant to CPLR 3211 (a)(7), a party may move to dismiss a claim on the ground that the pleading fails to state a cause of action. Upon such a motion, the Court must accept the facts alleged as true and determine simply whether plaintiff's facts fit within any cognizable legal theory. (*See* CPLR 3026; *Morone v Morone*, 50 NY2d 481 (1980)). The complaint shall be

liberally construed, and the allegations are given the benefit of every possible favorable inference. (See *Leon v Martinez*, 84 NY2d 83, 87 (1994)).

## DISCUSSION

### 1. Plaintiffs fail to plead an oral agreement.

To plead breach of contract, a plaintiff must allege a contract, performance, breach, and damages. (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425 [1st Dept 2010].) Essential terms must be sufficiently definite. (*Hymowitz v Nguyen*, 209 AD3d 997 [2d Dept 2022].)

Here, Plaintiffs allege no definite terms including the date, duration, consideration, or concrete obligations within the contract. They concede they were not tenants, paid no rent, performed no services, and had no relationship with the landlord. Vague references to years of informal family discussions do not establish a meeting of the minds or the material terms of a contract.

Plaintiffs' references to their parents' tenancy do not support any property interest in Plaintiffs. Succession rights require co-residency as a primary residence, which Plaintiffs concede they lacked. (*WRG Acquisition, LLC v Strasser*, 45 Misc 3d 1010 [NY Dist Ct 2014], *affd sub nom. WRG Acquisition XIII, LLC v Strasser*, 55 Misc 3d 129(A) [App Term 2017]).

The Surrender Agreement, identifying Nicholas Bari as the sole tenant, controls over any inconsistent oral understanding. (*D & N Boening, Inc. v Kirsch Beverages, Inc.*, 63 NY2d 449 [1984].) Even if an oral agreement existed, it would fall within the Statute of Frauds as one not performable within one year.

### 2. Plaintiffs fail to plead an implied-in-fact agreement.

An implied-in-fact agreement requires conduct evincing mutual assent. (*Coca-Cola Refreshments, USA, Inc. v Binghamton Giant Mkts., Inc.*, 127 AD3d 1319 [3d Dept 2015].)

Plaintiffs allege no such conduct. They acknowledge Nicholas Bari alone lived in the apartment since at least 2011. Their only identified “conduct” is alleged rejections of unspecified landlord offers “over the years” is vague and unsupported. Plaintiffs allege no facts from which the Court could infer mutual intent to form a binding agreement or joint venture.

**3. Plaintiffs do not state a claim for unjust enrichment.**

Plaintiffs fail to allege that they conferred any benefit or performed any service for Nicholas Bari or the landlord. (*Villnave Constr. Servs., Inc. v Crossgate’s Mall Gen. Co. Newco, LLC*, 201 AD3d 1183 [3d Dept 2022].) They also fail to allege facts showing that equity and good conscience require Defendant to disgorge the \$100,000. (*Torrance Constr., Inc. v Jaques*, 127 AD3d 1261 [3d Dept 2015].) Plaintiffs admit that Nicholas Bari was the sole resident and signatory to the Surrender Agreement.

**4. Plaintiffs’ cross-motion for default judgment is denied.**

Defendant demonstrated a reasonable excuse for delay—its answer time was tolled while a motion to intervene remained pending. Defendant filed a pre-answer motion to dismiss shortly after that motion was resolved and has asserted a meritorious defense.

Plaintiffs do not address the Hon. Louis L. Nock’s prior denial of their initial default motion, which found they failed to provide the Surrender Agreement or facts supporting any of their contract-based claims. Although Plaintiffs have now submitted the Surrender Agreement, it identifies Nicholas Bari alone as the tenant and does not cure the deficiencies in their pleadings. Plaintiffs offer no additional facts addressing the concerns previously identified by the Court.

The Court has considered the remaining arguments of the parties and finds such unavailing.


Accordingly, it is hereby

ORDERED that Defendant's motion to dismiss the complaint for failure to state a cause of action is granted; and it is further

ORDERED that Plaintiffs' cross-motion for default judgment is denied.

The foregoing constitutes the decision and order of the Court.

12/12/2025  
DATE

  
LESLIE A. STROTH, J.S.C.

|                       |                                     |                            |                          |                          |                       |                          |
|-----------------------|-------------------------------------|----------------------------|--------------------------|--------------------------|-----------------------|--------------------------|
| CHECK ONE:            | <input checked="" type="checkbox"/> | CASE DISPOSED              |                          | <input type="checkbox"/> | NON-FINAL DISPOSITION |                          |
|                       | <input checked="" type="checkbox"/> | GRANTED                    | <input type="checkbox"/> | DENIED                   |                       | <input type="checkbox"/> |
| APPLICATION:          | <input type="checkbox"/>            | SETTLE ORDER               |                          |                          | SUBMIT ORDER          | <input type="checkbox"/> |
| CHECK IF APPROPRIATE: | <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN |                          |                          | FIDUCIARY APPOINTMENT | <input type="checkbox"/> |
|                       |                                     |                            |                          |                          |                       | REFERENCE                |