

Larosa v Perez

2026 NY Slip Op 30112(U)

January 8, 2026

Supreme Court, New York County

Docket Number: Index No. 161270/2025

Judge: Lyle E. Frank

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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:	<u>HON. LYLE E. FRANK</u>	PART	11M
	<i>Justice</i>		
-----X		INDEX NO.	<u>161270/2025</u>
CHRISTIAN LAROSA,			08/22/2025,
	Plaintiff,	MOTION DATE	<u>09/28/2025,</u>
	- v -		11/21/2025
APRIL JURADO PEREZ,		MOTION SEQ. NO.	<u>001 002 003</u>
	Defendant.	DECISION + ORDER ON MOTION	
-----X			

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 31, 37, 41, 46, 47

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 35, 36, 38, 39, 40, 42, 43, 44, 45, 48

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 62

were read on this motion to/for LEAVE TO FILE.

Plaintiff commenced this action alleging damages sustained based on, plaintiff’s inability to reside at an apartment where he alleges he paid rent and utilities. Plaintiff made two motions, one seeking a preliminary injunction, motion sequence 001, and the other seeking to amend the complaint to name an additional defendant, motion sequence 003. Defendant opposed those motions and moved separately to dismiss the complaint, motion sequence 002. For the reasons set forth below, plaintiff’s motions are denied in their entirety and defendant’s motion is granted in part. The Court will address each motion in turn.

Motion Sequence 001

“A movant's burden of proof on a motion for a preliminary injunction is particularly high” *Council of the City of NY v Giuliani*, 248 AD2d 1, 4 [1st Dept 1998]. A party seeking a preliminary injunction must clearly demonstrate (1) the likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the injunction is not issued; and (3) a balance of the equities in the movant's favor. (*Doe v Axelrod*, 73 NY2d 748 [NY 1988]; *Housing Works, Inc. v City of New York*, 255 AD2d 209 [1st Dept 1998]).

If the movant fails to meet its burden to establish each and every element, the request for injunctive relief must be denied. *See, e.g., Doe v Axelrod*, 73 NY2d 748, 750-51 [1988].

Here, the Court finds that plaintiff has failed to establish entitlement to an injunction as a matter of law. Specifically, the Court is not persuaded, that plaintiff will suffer irreparable harm, especially where as here, plaintiff now says that defendant no longer resides at the location in question, nor has plaintiff established a likelihood of success on the merits. As will be discussed in the portion of this decision addressing the motion to dismiss, plaintiff seeks relief based on allegations that do not provide a basis for cognizable causes of action. Accordingly, plaintiff's motion initiated by order to show cause seeking a preliminary injunction is denied.

Motion Sequence 002

Defendant seeks an order, pursuant to CPLR § 3211(a)(7), to dismiss the complaint in its entirety, plaintiff opposes the motion. For the reasons set forth below, the motion to dismiss is granted in part.

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303

AD2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. "The complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory." *Id.*

"Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

Here, a thorough and liberal review of the complaint establishes that, and defendant conceded at the oral argument, that the only viable cause of action contained in the complaint is plaintiff's cause of action for unjust enrichment. Plaintiff factual allegations regarding the remaining causes of action in the complaint fail to state a claim upon which relief can be granted.

Unjust enrichment is a quasi-contract cause of action, that creates an obligation absent an agreement, however when a contract controls the subject matter, a quasi-contract claim cannot be maintained (*see Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 572 [2005], quoting *Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987] [the "existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter"]).

Assuming all the allegations in the complaint are true, as is required, the allegation that the parties had a "mutual understanding" that plaintiff's payments of rent and utilities would result in the shared residence and joint occupancy and that plaintiff paid the money and was denied that benefit is sufficient to state a claim for unjust enrichment.

To be clear, the repeated contentions of “commercial exploitation” of the residence at issue, references to social media accounts of defendant and non-parties who may or may not visit and or stay at the residence, and all allegations regarding defendant or other parties from receiving financial benefits while in the residence do not give rise to any cognizable causes of action, thus there shall be no discovery allowed by this Court those allegations in addition to the causes of action that are now dismissed. The second, third, fourth, fifth and sixth causes of action are dismissed for failure to state a cognizable claim.

Motion Sequence 003

Plaintiff seeks an order permitting amendment of the complaint to include Maya Spangler as an additional named defendant.

In support of the motion plaintiff contends that Spangler is a necessary party to the action however does not provide any factual or legal basis to support that assertion. Further, the proposed amended complaint does nothing more than add Spangler to the caption. There are no factual allegations asserted against the proposed new defendant and as stated above the purported basis for seeking to include Spangler are not cognizable claims. Accordingly, it is hereby

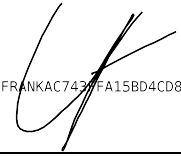
ADJUDGED that plaintiff’s motion seeking a preliminary injunction, motion sequence 001, is denied in its entirety; and it is further

ORDERED that defendant’s motion seeking dismissal of the complaint, motion sequence 002, is granted in part in that the second, third, fourth, fifth and sixth causes of action are hereby dismissed; and it is further

ADJUDGED that plaintiff’s motion seeking to amend the complaint, motion sequence 003, is denied in its entirety; and it is further

ORDERED that any relief sought not specifically addressed herein is denied.

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1/8/2026
DATE

LYLE E. FRANK, J.S.C.

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