

Gritsay v Brooklyn Comprehensive Care Ctr., Inc.

2026 NY Slip Op 32006(U)

May 7, 2026

Supreme Court, Kings County

Docket Number: Index No. 510092/2019

Judge: Reginald A. Boddie

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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 7th day of May 2026.

PRESENT:
Honorable Reginald A. Boddie
Justice, Supreme Court

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ZEORYA GRITSAY,

Plaintiff,

-against-

Index No. 510092/2019

Cal. Nos. 6-7 MS 4-5

BROOKLYN COMPREHENSIVE CARE CENTER,
INC., LUCY JANE GAMBARIAN in her capacity as
administrator to ARMEN GAMBARIAN'S ESTATE,
and ARKADY STAROVOYT, in his capacity as
administrator to MARIA STAROVOYT'S ESTATE,

Decision and Order

Defendants.

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The following e-filed papers read herein:

MS 4

MS 5

NYSCEF Doc Nos.

124-146; 162; 188-190;

193-200

147-156; 163-187; 192

Plaintiff's motion seeking summary judgment against defendants and the motion by defendant, the Estate of Marya Starovoyt ("Starovoyt Estate"), seeking summary judgment dismissing the Amended Complaint are decided as follows:

Background

According to plaintiff Zeorya Gritsay ("plaintiff" or "Gritsay"), she became acquainted with defendant Brooklyn Comprehensive Care Center, Inc. ("BCCCI" or "Company") through its

owners, Maria Starovoyt (“Maria”) and Armen Gambarian (“Armen”). Plaintiff avers that Maria was a close friend, and through Maria, she became acquainted with Armen, who was introduced to her as Maria’s business partner. Plaintiff further avers, that, sometime in 2015-2016, Maria and Armen proposed that plaintiff invest in BCCCI and become a shareholder to expand BCCCI’s profit-making capability. Maria and Armen purportedly requested that plaintiff invest \$750,000 in return for a one-third share in the Company. Plaintiff avers that she paid \$750,000 in installments over a period of about one year, as agreed to, via checks to Maria, Armen, and BCCCI in exchange for an ownership interest in the Company.

On or around March 1, 2016, Maria, Armen, Arkady Starovoyt (“Arkady”), who is Maria’s son, and plaintiff entered into a Stock Transfer Agreement (“STA”) concerning shares of BCCCI. The STA reflects that plaintiff is the owner of 70 shares representing 35% shareholding in the Company.¹ Plaintiff was also issued a stock certificate declaring her the owner of 70 shares of the Company. Plaintiff avers that Maria and Armen represented that she would be repaid her investment in BCCCI within approximately six months from entering the STA.

On or around December 21, 2018, Maria passed away. Maria’s son, Arkady, took over BCCCI’s affairs. Shortly thereafter, on or around August 6, 2019, Armen passed away. Lucy Gambarian (“Lucy”), Armen’s daughter, took over his estate. Before Maria’s passing, in the fall of 2018, plaintiff claims that she discovered that Armen, Maria and Arkady were negotiating the sale of BCCCI to nonparty, C Care Mgmt. LLC (“C Care”), and that she was left out of the negotiations. On or around November 18, 2018, Armen forwarded plaintiff the draft sale documents of the proposed transfer, and in such documents, plaintiff states that her holding of shares in BCCCI was not mentioned at all.

¹ Relatedly, the STA also reflects that Maria transferred 19.98 of the 110 shares owned by her to her son, Arkady Starovoyt, resulting in Arkady owning a 9.99% interest in the Company.

On May 6, 2019, plaintiff filed the instant action, initially solely against BCCCI, Armen, and Arkady. After Armen's death, the complaint was amended on September 18, 2023. The Amended Verified Complaint asserts claims for breach of contract, unjust enrichment, corporate waste, among other causes of action, against BCCCI and the respective estates for Armen and Maria.

Plaintiff's Motion for Summary Judgment

In her motion for summary judgment, plaintiff argues there are no material issues of fact concerning defendants' breach of the STA. Plaintiff submits that she invested \$750,000 in BCCCI but that defendants ignored her ownership by attempting to sell BCCCI to C Care without obtaining her consent and by submitting a letter to the New York State Department of Health ("DOH"), dated September 5, 2019, that failed to mention her ownership in the Company.

Even if the court declines to enforce the STA and stock certificate, plaintiff argues that she is still entitled to recover damages under a theory of unjust enrichment as the facts establish that defendants have been enriched at plaintiff's expense. Specifically, that plaintiff relied on Maria and Armen's written promise to transfer seventy shares and 35% ownership in BCCCI to plaintiff, that plaintiff paid defendants' a total amount of \$750,000, but in return, that defendants have not upheld their end of the promise. Based on either a breach of contract or unjust enrichment theory, plaintiff contends that she is entitled to damages in the amount of \$750,000 plus statutory interest and attorneys' fees.

Defendants oppose. Defendant, Armen Gambarian's Estate ("Gambarian Estate"), argues that plaintiff's entire prima facie case rests on her own interested testimony about personal transactions with Armen and Maria, which is barred under the Dead Man's Statute when offered against the estate of a deceased individual. Aside from the barred testimony, the Gambarian Estate

contends that plaintiff is left with documents that have not been authenticated through admissible proof independent of plaintiff's testimony. In addition, that plaintiff cannot establish breach of any agreement by Armen where DOH approval for the ownership transfer was never obtained and thus legal ownership of plaintiff's shares never vested. The Gambarian Estate argues that plaintiff's premise of a breach depends on the legal effectiveness of an unapproved ownership change in a regulated healthcare entity.

In addition, the Gambarian Estate contends summary judgment is precluded because plaintiff's own submission creates triable issues by alternately characterizing the subject transaction as an equity purchase and a repayable loan, which are competing inferences. Further, that plaintiff fails to establish a claim for unjust enrichment against the Gambarian Estate since plaintiff's proffered checks reflect purported payments to multiple payees, including Maria, Armen, and BCCCI. Additionally, that plaintiff's unjust enrichment theory depends on her narrative of what Armen allegedly promised, which is testimony that is barred under the Dead Man's Statute when offered against the Gambarian Estate. The Gambarian Estate also points out that plaintiff has not reconciled the inconsistency in her proffer of proof regarding damages since the claimed amount of \$750,000 rests entirely on her self-serving characterization of check payments made over multiple years to multiple payees, while the alleged email from Armen in January 2019 references only \$700,000. Separately, the Gambarian Estate points out that plaintiff claims an interest accrual date of June 2017, which is the alleged date of her purported final installment payment, however, that the appropriate accrual date for any interest award depends on the legal theory upon which liability is found. In this regard, the Gambarian Estate contends that if plaintiff prevails on breach of contract, interest would run from the date of breach, which is not the same as the date of the last payment and remains an open factual question. If plaintiff recovers

on unjust enrichment, that interest would typically run from the date demand was made or the date of commencement of the action.

Lastly, the Gambarian Estate argues that plaintiff's request for attorneys' fees is without legal basis and must be denied since neither the STA nor any applicable statute authorizes fee-shifting under the circumstances.

The Starovoyt Estate submits separate opposition papers.² It similarly contends that plaintiff's submission reveals contradictions precluding summary judgment including: (i) if and/or when payments pursuant to the STA were actually made, and by whom (Gritsay or one of several corporate entities which are not parties in this action); (ii) whether Gritsay made those alleged payments as consideration for the STA; (iii) whether the STA itself states a purchase price or some other consideration; and (iv) whether Gritsay's alleged payments were actually received by BCCCI. The Starovoyt Estate contends the STA is facially deficient because it does not require plaintiff to pay any money or other consideration in exchange for shares in BCCCI. Further, that plaintiff's testimony that she commenced payments prior to entering the STA is fatal because, under New York law, past consideration is no consideration. Because the STA is silent as to any payment obligation by Gritsay or some other form of consideration to be exchanged, the Starovoyt Estate contends plaintiff has not met her prima facie burden.

In addition, the Starovoyt Estate argues plaintiff has not established that the proffered checks were ever deposited or received by BCCCI since copies of checks, standing alone, do not establish that they were negotiated (i.e. deposited) nor do they establish an actual transfer of funds. For the same reason, the Starovoyt Estate contends plaintiff's unjust enrichment theory fails

² Any overlapping arguments with Armen's Estate were omitted.

because plaintiff has not proven, through admissible evidence or otherwise, that BCCCI or the Starovoyt Estate ever received from Gritsay any of the funds reflected on the proffered checks.

BCCCI also opposes plaintiff's motion. For the sake of efficiency and economy, BCCCI relies on the reasons set forth in the opposition by the Starovoyt Estate.

In reply, plaintiff asserts that the execution of the STA is undisputed and independently authenticated by defendants themselves. As such, that plaintiff need not rely on her own testimony to establish its validity or the validity of the stock certificate. In support, plaintiff points out that none of the defendants have challenged the documents' authenticity. To the contrary, that Lucy acknowledged her father's signature on the STA and has previously relied on that same signature in separate litigation to dispute the authenticity of a different document which was determined to contain a forgery. Moreover, that Arkady executed the STA himself, identified and confirmed the signatures of Maria, Armen, and his own on the agreement, and raised no issue as to the STA's authenticity.

Regarding defendants' contention that plaintiff seeks inconsistent relief, plaintiff emphasizes that her position has always been that she purchased a 35% interest in BCCCI for \$750,000 but that defendants failed to recognize her ownership and took no steps to obtain the required Public Health Council's approval required under Article 28 of New York Public Health Law. As a result of defendants' breach of the STA and the stock certificate, plaintiff now seeks the return of the funds that she advanced. If the court does not enforce the STA and the stock certificate, plaintiff asserts that she is still entitled to recover damages under a theory of unjust enrichment.

Regarding proof, plaintiff argues that the checks submitted by her constitute prima facie evidence of payment, and coupled with her affidavit, satisfies her burden of demonstrating

entitlement to judgment as a matter of law. In contrast, plaintiff argues that defendants have offered no admissible proof that these checks were not negotiated or that the funds were not received. Instead, plaintiff points out that defendants merely assert that that they did not retain any benefit, which is insufficient to defeat the claim.

As for the claim by the Starovoyt Estate that the STA lacks consideration, plaintiff argues that the undisputed stock certificate evidences plaintiff's ownership interest in BCCCI. Moreover, that the STA expressly acknowledges receipt of "good and valuable consideration."

Starovoyt Estate's Motion for Summary Judgment

In support of its motion seeking summary judgment dismissing plaintiff's Amended Verified Complaint, the Starovoyt Estate puts forth many of the same arguments it raised in opposition to plaintiff's motion for summary judgment. Namely, the Starovoyt Estate contends that plaintiff cannot demonstrate that she performed under the STA because the agreement does not provide for any exchange of consideration and past consideration is insufficient; plaintiff's proffer of checks does not demonstrate that she made any payments to BCCCI since there is no proof that the checks were deposited and several checks were not from Gritsay herself but from corporate entities; and plaintiff cannot authenticate the stock certificate.

The Starovoyt Estate also argues that plaintiff cannot demonstrate that she suffered any damages because, given her testimony that she still holds the shares that she received under the STA, she cannot identify any breach of the STA. Regarding plaintiff's claims for fraud, constructive trust, corporate waste, fraudulent conveyance, the Starovoyt Estate argues plaintiff fails to state a claim. Regarding plaintiff's claims for unjust enrichment and breach of the covenant of good faith and fair dealing, the Starovoyt Estate argues the foregoing are duplicative of plaintiff's breach of contract claim. Lastly, the Starovoyt Estate asserts that it does not owe

plaintiff a fiduciary duty, thereby precluding a breach of fiduciary duty claim, and there is no justiciable controversy between the parties supporting a declaratory judgment claim.

In opposition, plaintiff argues that the Starovoyt Estate fails to provide any affidavit in support, relying exclusively upon the attorney's affirmation which is without evidentiary value. In any event, plaintiff emphasizes that she has established that a contract existed between the parties, in the form of the STA pursuant to which plaintiff was conferred seventy shares of BCCCI, by Maria and Armen in return for \$750,000. Further, that plaintiff performed under the agreement as evidenced by the checks on the record, and despite this transfer, that defendants have consistently failed to acknowledge or recognize plaintiff's shareholding in BCCCI. Plaintiff states that she has produced checks reflecting at least \$645,000 in payments and that she has been unable to locate the remainder due to the passage of more than ten years.

Plaintiff also argues that her claims for fraud, constructive trust, corporate waste, and breach of fiduciary duty are sufficiently plead and supported with admissible evidence. Plaintiff additionally claims that she has demonstrated an attempt of fraudulent conveyance by the defendants when they tried selling BCCCI's shares without including plaintiff. Plaintiff also submits there is a live controversy between the parties supporting a declaratory judgment claim because defendants, including Arkady, repeatedly acted contrary to the STA to defeat plaintiff's rights as a shareholder and failed to repay plaintiff as a creditor.

In reply, the Starovoyt Estate contends it does not need an affidavit in support of its motion for summary judgment since a movant may establish its prima facie entitlement through documentary evidence and deposition testimony alone. It also re-emphasizes, among other things, that the STA is unsupported by consideration.

Discussion

It is well established that summary judgment is granted when “the proponent makes 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, and the opponent fails to rebut that showing” (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010] [*quoting Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]]). Once the proponent has made a prima facie showing, the burden then shifts to the motion’s opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Morejon v New York City Tr. Auth.*, 216 AD3d 134, 136 [2d Dept 2023] [citations omitted]).

“The essential elements of a cause of action to recover damages for breach of contract are (1) the existence of a contract, (2) the plaintiff’s performance pursuant to the contract, (3) the defendant’s breach of its contractual obligations, and (4) damages resulting from the breach” (*Junger v John V Dinan Assoc., Inc.*, 164 AD3d 1428, 1430 [2d Dept 2018] [citations omitted]).

“To prevail on a claim of unjust enrichment, a plaintiff must establish that the defendant benefitted at the plaintiff’s expense and that equity and good conscience require restitution” (*Whitman Realty Group, Inc. v Galano*, 41 AD3d 590, 592-593 585 [2d Dept 2007]). “An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim” (*Hersko v Hersko*, 245 AD3d 685, 690 [2d Dept 2026] [citation omitted]). “[U]njust enrichment is not a catchall cause of action to be used when others fail. It is available only in unusual situations when, though the defendant has not breached a contract nor committed a

recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff' (*id.*).

Here, plaintiff established the existence of an agreement with Maria and Armen, specifically, that Maria and Armen would give plaintiff a 35% interest in BCCCI for her \$750,000 investment, which was to be paid in installments. Plaintiff also established her substantial performance under the contract, as evidenced by, among other things (1) the proffered checks, which indicate substantial payment; (2) the STA and stock certificate, which demonstrate the transfer of BCCCI shares from Maria and Armen to plaintiff after their having received substantial payments from plaintiff; and (3) Armen's email dated January 29, 2019, which confirms plaintiff's payment of \$700,000.

In opposition, defendants' claim that the STA lacks consideration is not explained or supported, and is, in any event, belied by the record. Defendants equate plaintiff's installment payments as "past consideration" that cannot constitute consideration in support of the transfer of shares from Maria/Armen to plaintiff. There is no dispute, however, that plaintiff's installment payments were "bargained for" in exchange for the "promise" of becoming a BCCCI shareholder. Defendants do not otherwise support their argument that installment payments over time cannot constitute consideration for the purchase of shares in a corporation. In addition, defendants similarly fail to explain why the mere fact that plaintiff's checks were written from her business account rather than her personal account raises an issue of fact, even if plaintiff believed, during her deposition testimony, that she paid the funds from her personal account. Defendants also fail to provide legal support for their contention that the failure to obtain DOH approval precludes the relief that plaintiff seeks herein against defendants.

Plaintiff also established Maria and Armen's breach of their contractual obligations. Plaintiff was never treated as a BCCCI shareholder by defendants as evidenced by their attempt to sell BCCCI without plaintiff's consent.

As for damages however, an inquest is warranted. Plaintiff fails to establish the \$750,000 in damages that she seeks. The record evidence, at best, demonstrates a \$700,000 investment. In addition, plaintiff's Amended Verified Complaint seeks competing damages. Recovery of the initial investment is inconsistent with plaintiff's causes of action for corporate waste, breach of fiduciary duty, accounting, declaratory judgment, and breach of contract stemming from defendants' failure to pay plaintiff distributions. It is unclear if plaintiff intends to abandon these claims.

Given the existence of an agreement between plaintiff and Maria/Armen, plaintiff's claim for unjust enrichment against their estates are untenable (*see Hersko v Hersko, supra*). However, since BCCCI is not technically a party to the agreement, plaintiff's claim for unjust enrichment against BCCCI remains (*see Slocum Realty Corp., etc. v Schlesinger*, 162 AD3d 939, 945 [2d Dept 2018] [citations omitted]), where plaintiff seeks to recover her initial investment.

As for the remainder of plaintiff's causes of action alleged in her Amended Verified Complaint, the court finds that, in light of the foregoing, the claims for breach of the implied duty of good faith and fair dealing, fraud, and constructive trust are duplicative and, therefore, dismissed. To the extent plaintiff seeks attorneys' fees or punitive damages, the facts herein do not support an award of either and same is dismissed. A claim for fraudulent conveyance is also not apparent as there is no indication that defendants transferred ownership of BCCCI, only that they have attempted to do so.

Conclusion

Based on the foregoing, the movants' motions are granted to the extent indicated herein. The motions are otherwise denied. Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address in light of the court's determination. The parties are reminded that a virtual pretrial conference is scheduled for November 30, 2026, at 10:00 AM.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.