

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Canzona v. Atanasio

Canzona, 2026 NY Slip Op 02243 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2021-03873 · Decided April 15, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the defendants' motion for summary judgment on counterclaims for unjust enrichment, money had and received, and conversion. The court held that the defendants failed to establish prima facie entitlement to judgment, including because they provided insufficient evidence of extortion and failed to show unauthorized dominion over funds.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Barry E. Warhit, J.; Carl J. Landicino, J.; Laurence L. Love, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	April 15, 2026
DOCKET	2021-03873
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendants appealed from an order denying their motion for summary judgment on counterclaims for unjust enrichment, money had and received, and conversion.
STANDARD OF REVIEW	Whether the defendants established their prima facie entitlement to judgment as a matter of law on their counterclaims; summary judgment must be denied when the movant fails to make the required prima facie showing, without regard to the sufficiency of the opposition papers.
PRECEDENTIAL VALUE	Published New York intermediate appellate decision
PARTIES	Charles Atanasio, Mary Atanasio v. Christopher Canzona

TOPICS

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QUESTIONS PRESENTED

1. Whether the defendants established prima facie entitlement to summary judgment on their unjust-enrichment and money-had-and-received counterclaims based on alleged extortion of \$500,000.
2. Whether the defendants established prima facie entitlement to summary judgment on their conversion counterclaim based on alleged misappropriation of funds intended for loan payments and nonpayment of a share of a loan.

HOLDINGS

1. The defendants were not entitled to summary judgment because their submissions failed to establish prima facie that an extortion occurred or that Canzona was enriched at the defendants' expense under circumstances making retention of the money inequitable.
2. The defendants were not entitled to summary judgment on their conversion counterclaim because their own submissions failed to establish that Canzona exercised unauthorized dominion over the funds.
3. Because the defendants failed to establish their prima facie entitlement to judgment as a matter of law, the motion was properly denied without regard to the sufficiency of Canzona's opposition papers.

KEY QUOTATIONS

“To establish an unjust enrichment cause of action, a plaintiff must allege that (1) the other party was enriched, (2) at that party's expense, and (3) it is against equity and good conscience to permit the other party to retain what is sought to be recovered” (at *1)

“The essential elements of a cause of action for money had and received are (1) the defendant received money belonging to the plaintiff, (2) the defendant benefitted from receipt of the money, and (3) under principles of equity and good conscience, the defendant should not be permitted to keep the money” (at *1)

“To establish a cause of action to recover damages for conversion, a plaintiff must show legal ownership or an immediate superior right of possession to a specific identifiable thing and must show that the defendant exercised an unauthorized dominion over the thing in question to the exclusion of the plaintiff's rights” (at *2)

“Moreover, the mere right to payment cannot be the basis for a cause of action alleging conversion since the essence of a conversion cause of action is the unauthorized dominion over the thing in question” (at *2)

FACTUAL BACKGROUND

The parties jointly owned a boat and had previously jointly owned a beach house. The defendants alleged that Christopher Canzona extorted \$500,000 from Charles Atanasio, misappropriated funds intended for boat-loan payments, and failed to repay his share of a loan relating to a shared asset. In support of summary judgment, the

defendants submitted photocopies of checks, Charles Atanasio's affidavit, and payment receipts, but the evidence did not establish extortion or unauthorized dominion over the funds.

PROCEDURAL HISTORY

The plaintiff commenced the action in 2011 concerning expenses related to a jointly owned boat and a beach house previously jointly owned by the parties. The defendants asserted counterclaims, and the Supreme Court later dismissed the complaint as a sanction for the plaintiff's false deposition testimony and litigation misconduct. The Supreme Court denied the defendants' subsequent motion for summary judgment on their counterclaims, and the defendants appealed.

DISPOSITION

affirmed

CASES CITED

- Clarke v. Clarke, 237 AD3d 1039, 1041
- Dee v. Rakower, 112 AD3d 204, 213
- Auquilla v. Villa, 240 AD3d 48, 56-57
- B & H Flooring, LLC v. Folger, 228 AD3d 809, 813
- MISE, LLC v. Sohayegh, 239 AD3d 732, 733
- Amid v. Del Col, 223 AD3d 698, 700
- Barker v. Amorini, 121 AD3d 823, 825
- City of Long Beach v. Agostisi, 221 AD3d 776, 779
- Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851, 853

OPINION

Canzona v. Atanasio 2026 NY Slip Op 02243

PER CURIAM.

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Christopher Canzona, respondent, v. Charles Atanasio, et al., appellants.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 15, 2026

2021-03873, (Index No. 22425/11)

Betsy Barros, J.P.

Barry E. Warhit

Carl J. Landicino

Laurence L. Love, JJ.

Morvillo Abramowitz Grand Iason & Anello P.C., New York, NY (Robert J. Anello and Christopher B. Harwood of counsel), for appellants.

Andrew Lavooott Bluestone, New York, NY, for respondent.

DECISION & ORDER

In an action, inter alia, to recover damages for unjust enrichment, the defendants appeal from an order of the Supreme Court, Suffolk County (James Hudson, J.), dated April 7, 2021. The order, insofar as appealed from, denied those branches of the defendants' motion which were for summary judgment on their counterclaims alleging unjust enrichment, money had and received, and conversion.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In 2011, the plaintiff commenced this action against the defendants, Charles Atanasio (hereinafter Charles), the plaintiff's former brother-in-law, and Mary Atanasio, to recover monies allegedly owed to him for expenses related to a boat jointly owned by the plaintiff and the defendants and a beach house previously jointly owned by the plaintiff and the defendants. The defendants interposed an answer asserting counterclaims alleging, inter alia, unjust enrichment, money had and received, and conversion. In an order dated April 3, 2018, the Supreme Court granted the defendants' motion to dismiss the complaint as a sanction for the plaintiff's false deposition testimony and litigation misconduct. Thereafter, the defendants moved, among other things, for summary judgment on their counterclaims alleging unjust enrichment, money had and received, and conversion. In an order dated April 7, 2021, the court, inter alia, denied those branches of the defendants' motion. The defendants appeal.

"To establish an unjust enrichment cause of action, a plaintiff must allege that (1) the other party was enriched, (2) at that party's expense, and (3) it is against equity and good conscience to permit the other party to retain what is sought to be recovered" (*Clarke v Clarke*, 237 AD3d 1039, 1041, quoting *Dee v Rakower*, 112 AD3d 204, 213; *see* *Auquilla v Villa*, 240 AD3d 48, 56-57). "The essential elements of a cause of action for money had and received are (1) the defendant received money belonging to the plaintiff, (2) the defendant benefitted from receipt of the money, and (3) under principles of equity and good conscience, the defendant should not be permitted to keep the money" (*B & H Flooring, LLC v Folger*, 228 AD3d 809, 813 [internal quotation marks omitted]).

Here, the defendants failed to establish their prima facie entitlement to judgment as a matter of law on their counterclaims alleging unjust enrichment and money had and received, which were premised on Charles's assertion that the plaintiff extorted \$500,000 from him. In support of their motion, the defendants submitted photocopies of checks from Charles to the plaintiff totaling \$500,000 and an affidavit from Charles alleging that the plaintiff extorted the money from him. However, the defendants submitted no other evidence supporting their extortion claim. Viewing

the evidence in the light most favorable to the plaintiff, the defendants' submissions failed to establish that any extortion had occurred and that the plaintiff was thus enriched at the defendants' expense such that it would be against equity and good conscience to permit the plaintiff to retain what was sought to be recovered.

The defendants also failed to establish their prima facie entitlement to judgment as a matter of law on their counterclaim for conversion, alleging that the plaintiff misappropriated funds intended for loan payments and failed to repay his half of a loan with respect to a shared asset.

"To establish a cause of action to recover damages for conversion, a plaintiff must show legal ownership or an immediate superior right of possession to a specific identifiable thing and must show that the defendant exercised an unauthorized dominion over the thing in question to the exclusion of the plaintiff's rights" (*MISF, LLC v Sohayegh*, 239 AD3d 732, 733 [internal quotation marks omitted]; *see* *Amid v Del Col*, 223 AD3d 698, 700). "Moreover, the mere right to payment cannot be the basis for a cause of action alleging conversion since the essence of a conversion cause of action is the unauthorized dominion over the thing in question" (*Barker v Amorini*, 121 AD3d 823, 825 [internal quotation marks omitted]; *see* *City of Long Beach v Agostisi*, 221 AD3d 776, 779). Here, the defendants asserted that the plaintiff misappropriated funds they sent to the plaintiff to make payments on the boat loan. However, in support of their motion, the defendants submitted an affidavit in which Charles admitted to transferring the money to the plaintiff, as well as receipts demonstrating that the defendants had authorized the payments. The defendants thus failed to establish that the plaintiff had "unauthorized dominion" over the funds (*MISF, LLC v Sohayegh*, 239 AD3d at 733 [internal quotation marks omitted]).

Accordingly, the Supreme Court properly denied those branches of the defendants' motion which were for summary judgment on their counterclaims alleging unjust enrichment, money had and received, and conversion without regard to the sufficiency of the plaintiff's opposition papers (*see* *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

BARROS, J.P., WARHIT, LANDICINO and LOVE, JJ., concur.

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