

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Nicholas Industries & Construction Services, Inc. v. NASDI, LLC, et al.

Nicholas Indus. & Constr. Servs., Inc. v. NASDI, LLC, et al., 2026 N.Y. Slip Op. 00620 · No. Index No. 157677/18; Appeal No. 5156; Case No. 2025-00520 · Decided February 10, 2026

SUMMARY

The New York Supreme Court, Appellate Division, First Department held that a subcontractor waived its breach-of-contract claim for extra excavation work by failing to comply with strict contractual notice-of-claim requirements. The court also directed dismissal of the related mechanic’s lien foreclosure claim, while affirming the order in all other respects.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kern, J.P.; Friedman, J.; Kapnick, J.; Shulman, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	February 10, 2026
DOCKET	Index No. 157677/18; Appeal No. 5156; Case No. 2025-00520
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, New York County, granting defendants' summary judgment motion insofar as it sought to void plaintiff's mechanic's lien as willfully exaggerated and denying the motion insofar as it sought dismissal of plaintiff's breach-of-contract cause of action.
STANDARD OF REVIEW	Summary judgment is appropriate where the moving party establishes prima facie entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact.
PRECEDENTIAL VALUE	Published New York Appellate Division decision; binding precedent in the First Department subject to higher-court authority.
PARTIES	Nicholas Industries & Construction Services, Inc. v. NASDI, LLC, et al.

TOPICS

construction law

breach of contract

conditions precedent

commercial litigation

remedies

PRACTICE AREAS

construction law

contracts

commercial litigation

mechanic's liens

summary judgment

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment dismissing plaintiff's breach-of-contract claim because plaintiff failed to comply with the subcontract's strict notice-of-claim requirements.
2. Whether plaintiff raised a triable issue that NASDI was equitably estopped from enforcing the notice-of-claim requirements because NASDI hindered or prevented compliance through bad faith, negligence, or misconduct.
3. Whether dismissal of the breach-of-contract claim required dismissal of plaintiff's cause of action to foreclose on its mechanic's lien.

HOLDINGS

1. Plaintiff's failure to comply with the subcontract's strict notice-of-claim requirements waived its right to assert a claim for extra excavation work, requiring dismissal of the breach-of-contract cause of action.
2. Plaintiff failed to raise a triable issue that NASDI prevented or hindered compliance with the notice-of-claim requirements through bad faith, negligence, or misconduct; equitable estoppel therefore did not excuse plaintiff's noncompliance.
3. Because plaintiff's breach-of-contract cause of action was dismissed for failure to satisfy the subcontract's notice-of-claim requirements, plaintiff's cause of action to foreclose on its mechanic's lien also had to be dismissed.

KEY QUOTATIONS

"By failing to comply with the strict notice provisions of the public contract, plaintiff waived its claims"
(2026 NY Slip Op 00620)

"hindered or prevented" (2026 NY Slip Op 00620)

"bad faith, negligence or misconduct" (2026 NY Slip Op 00620)

"no showing that the Housing Authority's alleged misconduct impaired respondent's ability to fulfill these contractual undertakings" (2026 NY Slip Op 00620)

FACTUAL BACKGROUND

Plaintiff performed extra excavation work under a subcontract with NASDI and sought to recover for that work. The subcontract contained strict notice-of-claim requirements, but plaintiff failed to comply with them. Plaintiff argued that NASDI's allegedly disorganized and misleading accounting and communications equitably estopped

NASDI from relying on the notice provisions, but the submitted documents did not show that NASDI prevented or hindered compliance.

PROCEDURAL HISTORY

Plaintiff commenced an action involving extra excavation work, breach of contract, and foreclosure of a mechanic's lien. Supreme Court granted defendants summary judgment on the willful-exaggeration issue but denied summary judgment dismissing the breach-of-contract claim. The Appellate Division modified the order to grant defendants summary judgment dismissing the breach-of-contract cause of action and held that the mechanic's-lien foreclosure claim also had to be dismissed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order was modified to grant defendants' motion to dismiss the breach-of-contract cause of action; the order was otherwise affirmed, and the Clerk was directed to enter judgment accordingly.

CASES CITED

- APS Contrs., Inc. v. New York City Hous. Auth., 193 A.D.3d 628, 629 (1st Dep't 2021)
- Northgate Elec. Corp. v. Barr & Barr, Inc., 61 A.D.3d 467, 468-469 (1st Dep't 2009)
- Trocom Constr. Corp. v. City of New York, 238 A.D.3d 433, 434 (1st Dep't 2025)
- A.H.A. Gen. Constr. v. New York City Hous. Auth., 92 N.Y.2d 20, 34 (1998)
- Five Star Contr. Cos., Inc. v. Fashion Inst. of Tech., 194 A.D.3d 405, 405-406 (1st Dep't 2021)
- MCC Dev. Corp. v. Perla, 81 A.D.3d 474, 474 (1st Dep't 2011), lv. denied, 17 N.Y.3d 715 (2011)
- Windjammer Homes v. Lieberman, 278 A.D.2d 411, 411-412 (2d Dep't 2000)

OPINION

Nicholas Indus. & Constr. Servs., Inc. v. NASDI, LLC 2026 NY Slip Op 00620

PER CURIAM.

Nicholas Indus. & Constr. Servs., Inc. v NASDI, LLC (2026 NY Slip Op 00620) Nicholas Indus. & Constr. Servs., Inc. v NASDI, LLC 2026 NY Slip Op 00620 Decided on February 10, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: February 10, 2026 Before: Kern, J.P., Friedman, Kapnick, Shulman, Hagler, JJ. Index No. 157677/18|Appeal No. 5156|Case No. 2025-00520| [*1]Nicholas Industries & Construction Services, Inc., Plaintiff-Appellant-Respondent, v NASDI, LLC, et al., Defendants-Respondents-Appellants. Muchmore & Associates PLLC, Brooklyn (Andrew Muchmore of counsel), for appellant-respondent. Chipman

Brown Cicero & Cole, LLP, New York (Adam D. Cole of counsel), for respondents-appellants. Order, Supreme Court, New York County (James E. d'Auguste, J.), entered on or about January 7, 2025, which, to the extent appealed from as limited by the briefs, granted defendants' motion for summary judgment insofar as it sought to void plaintiff's mechanic's lien as willfully exaggerated, and denied the motion insofar as it sought to dismiss the cause of action for breach of contract (first cause of action), unanimously modified, on the law, to grant defendants' motion insofar as it sought to dismiss the cause of action for breach of contract, and otherwise affirmed, without costs. The Clerk is directed to enter judgment accordingly. Defendants established prima facie entitlement to summary judgment on the cause of action for breach of contract by submitting evidence that plaintiff failed to comply with the strict notice of claim requirements of the subcontract and therefore waived its right to assert a claim for the extra excavation work it performed (see *APS Contrs., Inc. v New York City Hous. Auth.* , 193 AD3d 628, 629 [1st Dept 2021] ["By failing to comply with the strict notice provisions of the public contract, plaintiff waived its claims"]; *Northgate Elec. Corp. v Barr & Barr, Inc.* , 61 AD3d 467, 468-469 [1st Dept 2009]). Plaintiff's opposition failed to raise an issue of fact as to whether it was equitably estopped from complying with the notice of claim provisions because NASDI "hindered or prevented" it from doing so through its "bad faith, negligence or misconduct" (*Trocom Constr. Corp. v City of New York* , 238 AD3d 433 , 434 [1st Dept 2025]). Plaintiff relies on emails and documents supposedly demonstrating that NASDI's disorganized and misleading accounting and communication lulled plaintiff into believing that it did not need to satisfy the subcontract's notice of claim requirements. However, none of those documents demonstrates that NASDI prevented or hindered plaintiff's compliance with the subcontract's notice of claim requirements (see *A.H.A. Gen. Constr. , v New York City Hous. Auth.* , 92 NY2d 20, 34 [1998] [there was "no showing that the Housing Authority's alleged misconduct impaired respondent's ability to fulfill these contractual undertakings"]). Plaintiff's claim for extra work pursuant to section 6.2 of the subcontract must also be dismissed because plaintiff failed to comply with the subcontract's notice of claim provisions (see *Five Star Contr. Cos., Inc. v Fashion Inst. of Tech.* , 194 AD3d 405, 405-406 [1st Dept 2021]). Because the breach of contract cause of action is being dismissed, plaintiff's cause of action to foreclose on its mechanic's lien must also be dismissed (see *MCC Dev. Corp. v Perla* , 81 AD3d 474, 474 [1st Dept 2011] [holding that "Supreme Court correctly dismissed the complaint, discharged the mechanic's lien and cancelled the notice of pendency on the ground that plaintiff failed to satisfy the contract's conditions precedent to commencing litigation"], lv denied 17 NY3d 715 [2011]; *Windjammer Homes v Lieberman* , 278 AD2d 411 , 411—412 [2d Dept 2000] ["As the breach of contract cause of action must be dismissed because of [plaintiff's] failure to substantially perform, [plaintiff's] cause of action to foreclose its mechanic's lien must also be dismissed"]). We have considered plaintiff's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 10, 2026

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-supreme-court-appellate-division-first-department-supreme-court-of-the-state-of-new-york-ap/2026/nicholas-industries-and-construction-services-inc-v-nasdi-7f85bew0>