

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)