

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

Lazarus Constr. Corp. v. Skyline Centro, LLC

Lazarus Constr. Corp., 2026 NY Slip Op 01877 (Supreme Court of the State of New York Appellate Division
Fourth Judicial Department 2026) · No. 54 CA 25-00046 · Decided March 27, 2026

SUMMARY

The Appellate Division, Fourth Department modified a judgment arising from a construction-contract dispute. The court held that Lazarus Industries, LLC could not be held liable for damages because the jury found no damages resulting from its breach, and that joint and several liability was unsupported by the pleadings, jury instructions, and verdict.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Montour, J.P.; Smith, J.; Greenwood, J.; Nowak, J.; Hannah, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Department
DECIDED	March 27, 2026
DOCKET	54 CA 25-00046
DISPOSITION	other
PROCEDURAL POSTURE	Lazarus Industries, LLC appealed from a judgment entered after a jury trial that imposed joint and several liability on Lazarus Industries and Lazarus Construction Corp. for Skyline Centro, LLC's breach-of-contract damages.
STANDARD OF REVIEW	Review of questions of law and whether the judgment conformed to the jury's verdict; the court modified the judgment on the law.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Lazarus Industries, LLC v. Skyline Centro, LLC

TOPICS

- breach of contract
- construction law
- damages
- appellate procedure
- final judgment rule

PRACTICE AREAS

contract law

construction law

commercial litigation

appellate procedure

damages

QUESTIONS PRESENTED

1. Whether an appeal noticed from an order subsumed in a subsequently entered final judgment should be deemed an appeal from the judgment.
2. Whether Lazarus Industries, LLC could be held liable for breach of contract when the jury found that Skyline Centro, LLC failed to establish damages resulting from Lazarus Industries' breach.
3. Whether Lazarus Industries could be held jointly and severally liable with Lazarus Construction Corp. for damages based on an induced-breach theory that was neither pleaded nor submitted to the jury.

HOLDINGS

1. An appeal noticed from an order subsumed in a timely entered final judgment is deemed an appeal from the judgment when no prejudice resulted and the judgment was furnished to the appellate court.
2. Lazarus Industries could not be held liable for breach-of-contract damages because Skyline Centro failed to establish the damages element of its claim, as found by the jury.
3. The court could not impose joint and several liability on Lazarus Industries because Skyline Centro did not allege that Lazarus Industries induced Lazarus Construction Corp.'s breach, the court did not submit an induced-breach theory to the jury, and no other rationale supported joint and several liability.

KEY QUOTATIONS

“must be deemed taken from the judgment inasmuch as the appeal is timely, no prejudice has resulted, and the judgment has been furnished to us” (at 1563)

FACTUAL BACKGROUND

Skyline Centro, LLC asserted contractual claims against Lazarus Construction Corp. and Lazarus Industries, LLC arising from a construction contract. The jury found that Lazarus Construction Corp. breached the contract and caused damages, while finding that Lazarus Industries breached the contract but caused Skyline Centro no damages. Supreme Court nevertheless entered judgment against Lazarus Industries jointly and severally with Lazarus Construction Corp.

PROCEDURAL HISTORY

Lazarus Construction Corp. commenced a breach-of-contract action against Skyline Centro, LLC, which counterclaimed and asserted a breach-of-contract claim against third-party defendant Lazarus Industries, LLC. After trial, the jury found that both Lazarus Construction Corp. and Lazarus Industries breached contractual obligations, but found that Skyline Centro sustained no damages from Lazarus Industries' breach. Despite that verdict, Supreme Court entered judgment imposing joint and several liability on Lazarus Industries and Lazarus Construction Corp. The Appellate Division deemed the appeal from the subsumed order to be an appeal from the timely entered judgment, modified the judgment, and affirmed it as modified.

DISPOSITION

other

CASES CITED

- Counsel Fin. II LLC v. Bortnick (appeal No. 2), 214 AD3d 1388, 1389 (4th Dept. 2023)
- LPCiminelli, Inc. v. JPW Structural Contr., Inc., 217 AD3d 1380, 1380 (4th Dept. 2023)
- Matter of Aho, 39 NY2d 241, 248 (1976)
- Tomaselli v. Malagese, 242 AD3d 1562, 1563 (4th Dept. 2025)
- Marinaccio v. Town of Clarence, 215 AD3d 1289, 1290 (4th Dept. 2023)
- Howlett Farms, Inc. v. Fessner, 78 AD3d 1681, 1683 (4th Dept. 2010), lv denied 17 NY3d 710 (2011)
- On Time Constr., Inc. v. 329 E. 58, LLC, 216 AD3d 431, 433 (1st Dept. 2023)
- Hornstein v. Podwitz, 254 NY 443, 449 (1930)
- Perfectly Reliable Constr., Inc. v. 21 E. 26, LLC, 216 AD3d 580, 582 (1st Dept. 2023)

OPINION

PER CURIAM.

Lazarus Constr. Corp. v Skyline Centro, LLC (2026 NY Slip Op 01877) Lazarus Constr. Corp. v Skyline Centro, LLC 2026 NY Slip Op 01877 Decided on March 27, 2026 Appellate Division, Fourth 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 on March 27, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: MONTOUR, J.P., SMITH, GREENWOOD, NOWAK, AND HANNAH, JJ. 54 CA 25-00046 [*1]LAZARUS CONSTRUCTION CORP., PLAINTIFF, v SKYLINE CENTRO, LLC, DEFENDANT-RESPONDENT. SKYLINE CENTRO, LLC, THIRD-PARTY PLAINTIFF-RESPONDENT, LAZARUS INDUSTRIES, LLC, THIRD-PARTY DEFENDANT-APPELLANT.

THE SAGE LAW FIRM GROUP PLLC, BUFFALO (KATHRYN FRIEDMAN OF COUNSEL), FOR THIRD-PARTY DEFENDANT-APPELLANT. ROSSI & DEMARCO, PLLC, TONAWANDA (NICHOLAS P. DEMARCO OF COUNSEL), FOR DEFENDANT-RESPONDENT AND THIRD-PARTY PLAINTIFF-RESPONDENT. Appeal from a judgment of the Supreme Court, Erie County (Emilio Colaiacovo, J.), entered September 11, 2024, in a breach of contract action.

The judgment awarded defendant-third-party plaintiff money damages against plaintiff and third-party defendant, jointly and severally. It is hereby ORDERED that the judgment so appealed from

is unanimously modified on the law by striking from the decretal paragraph the phrase "and Counterclaim Defendant, Lazarus Industries, LLC, operating at 382 High Street, Buffalo, New York 14204, jointly and severally" and the phrase "and Lazarus Industries, LLC," and as modified the judgment is affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for, inter alia, breach of contract based on the failure of defendant-third-party plaintiff (defendant) to pay plaintiff amounts allegedly due under a construction contract. Defendant counterclaimed for, inter alia, breach of the contract against plaintiff and asserted, inter alia, a claim for breach of contract against third-party defendant Lazarus Industries, LLC (Lazarus Industries).

After trial, the jury found that plaintiff breached the contract and that defendant sustained damages as a result of that breach. The jury also found that Lazarus Industries breached the contract, but it determined that defendant sustained no damages as a result of that breach. Lazarus Industries now appeals from an order and judgment (order) that, inter alia, directs that a judgment be entered in favor of defendant and against plaintiff and Lazarus Industries, jointly and severally, for breach of the contract.

As a preliminary matter, we note that the order was subsumed in the final judgment (see *Counsel Fin. II LLC v Bortnick* [appeal No. 2], 214 AD3d 1388, 1389 [4th Dept 2023]) entered shortly after entry of the order, and thus the proper appealable paper is the judgment, not the order (see CPLR 5501 [a] [1]; 5512 [a]; *LPCiminelli, Inc. v JPW Structural Contr., Inc.*, 217 AD3d 1380, 1380 [4th Dept 2023]; see generally *Matter of Aho*, 39 NY2d 241, 248 [1976]).

Although Lazarus Industries, by notice of appeal served and filed after entry of the judgment, has taken an appeal from the order, the appeal "must be deemed taken from the judgment inasmuch as the appeal is timely, no prejudice has resulted, and the judgment has been furnished to us" (*Tomaselli v Malagese*, 242 AD3d 1562, 1563 [4th Dept 2025]). Lazarus Industries contends that the judgment erroneously states that Lazarus Industries is jointly and severally liable with plaintiff and that it should be modified to conform to the jury verdict.

We agree, and we therefore modify the judgment accordingly. To establish liability against Lazarus Industries for breach of contract, defendant had to establish the existence of a contract, defendant's performance pursuant to the contract, a breach by Lazarus Industries of its contractual obligations, and damages resulting from the breach (see *Marinaccio v Town of Clarence*, 215 AD3d 1289, 1290 [4th Dept 2023]; see generally *Howlett Farms, Inc. v Fessner*, 78 AD3d 1681, 1683 [4th Dept 2010], lv denied 17 NY3d 710 [2011]).

Here, the jury determined that Lazarus Industries was not liable for its breach of contractual obligations inasmuch as defendant failed to establish the damages element. We conclude therefore

that Supreme Court erred in entering the judgment against Lazarus Industries (see generally Howlett Farms, Inc., 78 AD3d at 1683).

Moreover, the court erred in holding Lazarus Industries jointly and severally liable with plaintiff for the damages due and owing to defendant (see generally On Time Constr., Inc. v 329 E. 58, LLC, 216 AD3d 431, 433 [1st Dept 2023]).

Although all parties who induce a breach of contract are jointly and severally liable for the breach (see Hornstein v Podwitz, 254 NY 443, 449 [1930]), defendant did not allege that Lazarus Industries induced plaintiff's breach of contract, the court did not instruct the jury on such a charge, the jury was never presented with that interrogatory, and the court did not offer any other rationale for imposing joint and several liability (see generally Perfectly Reliable Constr., Inc. v 21 E. 26, LLC, 216 AD3d 580, 582 [1st Dept 2023]).

In light of our determination, we do not address Lazarus Industries's remaining contentions.
Entered: March 27, 2026 Ann Dillon Flynn Clerk of the Court