

25-1915-cv

Amaro Food Enters. Inc. v. Liberty Mut. Ins.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of May, two thousand twenty-six.

PRESENT: RAYMOND J. LOHIER, JR.,
BETH ROBINSON,
ALISON J. NATHAN,
Circuit Judges.

AMARO FOOD ENTERPRISES INC.,

Plaintiff-Appellant,

v.

No. 25-1915-cv

LIBERTY MUTUAL INSURANCE,

Defendant-Appellee.

FOR PLAINTIFF-APPELLANT: Jeffrey A. Bronster, Esq.,
Fairview, NJ

FOR DEFENDANT-APPELLEE: Val E. Wamser, Nicoletti
Hornig Namazi Eckert &
Sheehan, New York, NY

Appeal from a judgment of the United States District Court for the
Southern District of New York (J. Paul Oetken, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
AND DECREED that the judgment of the District Court is AFFIRMED.

Plaintiff-Appellant Amaro Food Enterprises Inc. (“Amaro”) appeals from
the March 25, 2025 judgment of the United States District Court for the Southern
District of New York (Oetken, *J.*) granting the motion of Defendant-Appellee
Liberty Mutual Insurance (“Liberty Mutual”) for judgment on the pleadings.¹
Amaro brought this breach-of-contract suit against Liberty Mutual after Liberty
Mutual denied coverage for a loss Amaro incurred relating to spoiled food. The
sole issue on appeal is whether the District Court correctly concluded that
Amaro’s suit is time barred by the one-year limitations period contained in

¹ When filing its notice of appeal, Amaro “neglected to manually select the order[] it
was appealing on ECF, triggering a ‘filing error’ in the [District Court’s] docket entry.”
Harrison v. Republic of Sudan, 802 F.3d 399, 402 n.4 (2d Cir. 2015), *rev’d on other grounds*,
587 U.S. 1 (2019). The “appeal is timely,” however, because “the notice of appeal was
accessible on the docket, the notice itself stated in plain language the . . . order[] at issue,
and [Amaro subsequently] corrected the electronic error[.]” *Id.*

Amaro's insurance contract. We assume the parties' familiarity with the underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to affirm.

We review *de novo* the District Court's grant of Liberty Mutual's motion for judgment on the pleadings, "accepting the material facts alleged in the complaint as true and drawing all reasonable inferences in favor of" Amaro, the nonmoving party. *Matzell v. Annucci*, 64 F.4th 425, 433 (2d Cir. 2023). On review, we affirm the District Court's judgment for substantially the reasons set forth in its March 25, 2025 opinion and order.²

On appeal, Amaro argues that, under the doctrine of substantial performance, it satisfied the one-year contractual limitations period by timely filing the suit in New Jersey State court, even if that suit was later dismissed on the basis of a forum selection clause in Amaro's insurance contract. But Amaro does not cite to a single decision of the New York State courts, nor have we found any, that applies the doctrine of substantial performance to a contractual time bar to suit or concludes that timely filing a prior suit that is dismissed

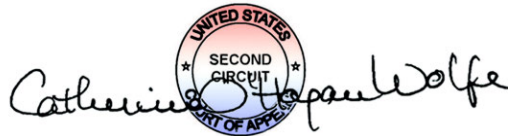
² Amaro does not challenge, and we thus need not address, the District Court's conclusion that even if the one-year contractual limitations period was tolled during the pendency of the New Jersey State action, it still filed this suit well beyond that one-year period. See *Schneiderman v. Am. Chem. Soc'y*, 172 F.4th 158, 166 & n.5 (2d Cir. 2026).

constitutes substantial performance. Instead, New York courts generally enforce one-year contractual limitations periods as written. *See, e.g., Blitman Constr. Corp. v. Ins. Co. of N. Am.*, 66 N.Y.2d 820, 823 (1985).

For the foregoing reasons, the judgment of the District Court is

AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

A handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". The signature is written in a cursive style. A circular seal of the United States Court of Appeals for the Second Circuit is stamped over the middle of the signature. The seal is blue and red, with the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom. There are two small stars on either side of the center text.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: May 15, 2026
Docket #: 25-1915
Short Title: Amaro Food Enterprises Inc. v. Liberty Mutual
Insurance

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 1:24-cv-7784
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Trial Judge - James Paul
Oetken

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed electronically or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
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VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to
prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature