

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 24-01616

PRESENT: WHALEN, P.J., SMITH, NOWAK, AND HANNAH, JJ.

GSMS 2015-GC34 COMMERCE COURT, LLC,
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

CALAMAR CONSTRUCTION MANAGEMENT, INC.,
DEFENDANT-APPELLANT.

MCCARTER & ENGLISH, LLP, NEW YORK CITY (PHILLIP S. PAVLICK OF
COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Niagara County (Edward Pace, J.), entered March 11, 2024. The order, inter alia, granted the motion of plaintiff insofar as it sought leave to conform the pleadings to the evidence.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Defendant appeals from an order that, inter alia, granted plaintiff's motion insofar as it sought leave to conform the pleadings to the evidence. "The right to appeal from an intermediate order terminates with the entry of a final judgment" (*City of Syracuse v COR Dev. Co., LLC*, 147 AD3d 1510, 1510 [4th Dept 2017] [internal quotation marks omitted]; see *Matter of Aho*, 39 NY2d 241, 248 [1976]). Because the record of this case in the New York State Courts Electronic Filing System establishes that a final judgment was entered on August 26, 2025, of which we take judicial notice (see *1591 Second Ave. LLC v Metropolitan Transp. Auth.*, 202 AD3d 582, 583 [1st Dept 2022]), defendant's appeal from the intermediate order must be dismissed (see *McDonough v Transit Rd. Apts., LLC*, 164 AD3d 1603, 1603 [4th Dept 2018]; see generally *Chase Manhattan Bank, N.A. v Roberts & Roberts*, 63 AD2d 566, 567 [1st Dept 1978]).

Entered: November 21, 2025

Ann Dillon Flynn
Clerk of the Court