

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

**437**

**CA 15-01584**

PRESENT: WHALEN, P.J., LINDLEY, NEMOYER, AND TROUTMAN, JJ.

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SHMUEL SHMUELI, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

WHITESTAR DEVELOPMENT CORP.,  
DEFENDANT-RESPONDENT.

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OFECK & HEINZE, LLP, HACKENSACK (MARK F. HEINZE OF COUNSEL), FOR  
PLAINTIFF-APPELLANT.

LAW OFFICE OF RALPH C. LORIGO, WEST SENECA (FRANK JACOBSON OF  
COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Niagara County  
(Timothy J. Walker, A.J.), entered June 12, 2015. The order granted  
the motion of defendant for a directed verdict.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: Plaintiff appeals from an order granting defendant's  
motion for a directed verdict at the close of plaintiff's proof  
pursuant to CPLR 4401 and dismissing plaintiff's sole cause of action  
alleging a breach of the implied covenant of good faith and fair  
dealing. We affirm. A plaintiff seeking to prevail on a cause of  
action for breach of the implied covenant of good faith and fair  
dealing must prove that he or she sustained actual damages as a  
natural and probable consequence of the breach (*see RXR WWP Owner LLC  
v WWP Sponsor, LLC*, 132 AD3d 467, 468; *see generally Kenford Co. v  
County of Erie*, 73 NY2d 312, 319; *Village of Kiryas Joel v County of  
Orange*, 144 AD3d 895, 896). Contrary to plaintiff's contention, he  
failed at trial to present nonspeculative evidence of his alleged  
damages (*see Friedman v Miale*, 69 AD3d 789, 791, *lv denied* 16 NY3d  
706; *see generally Lloyd v Town of Wheatfield*, 67 NY2d 809, 810). We  
thus conclude that the court properly granted defendant's motion for a  
directed verdict because, upon the evidence presented, there was no  
rational process by which the trier of fact could find in plaintiff's  
favor (*cf. Family Operating Corp. v Young Cab Corp.*, 129 AD3d 1016,  
1017-1018; *see generally Szczerbiak v Pilat*, 90 NY2d 553, 556).

Entered: March 31, 2017

Frances E. Cafarell  
Clerk of the Court