

Ren Hoek Realty, Inc., Appellant, v. Fabricon Design Group, Inc., Respondent.

1999-10407

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

274 A.D.2d 384; 711 N.Y.S.2d 756; 2000 N.Y. App. Div. LEXIS 7565

**May 8, 2000, Submitted
July 3, 2000, Decided**

PRIOR HISTORY: [**1] In an action to recover damages for breach of a commercial lease, the plaintiff appeals from an order of the Supreme Court, Nassau County (Adams, J.), dated April 8, 1999, which denied its motion to direct the defendant to post an undertaking as security for enforcement of an order of the same court, dated July 21, 1998, which, upon reargument, adhered to an order of the same court dated April 3, 1998, granting the plaintiff partial summary judgment in the principal sum of \$ 16,592.24, but stayed the enforcement of that order pending entry of a final judgment.

COUNSEL: Kirschenbaum & Kirschenbaum, P.C., Garden City, N.Y. (Kenneth Kirschenbaum and Thomas Weiss of counsel), for appellant.

Sylvor & Richman, LLP, New York, N.Y. (Iris S. Richman of counsel), for respondent.

JUDGES: Joy, J. P., Friedmann, Krausman and H. Miller, JJ., concur.

OPINION

[*756] Ordered that the order is affirmed, with costs.

[*757] CPLR 3212 (e) affords the court "wide discretion in imposing conditions upon the grant of partial summary judgment" (*Stigwood Organisation v Devon Co.*, 44 NY2d 922, 923). Among the conditions which may be imposed is a requirement that [**2] an undertaking be posted as security for an order granting partial judgment where enforcement of that order has been stayed pending resolution of the remaining claims and counterclaims in the action (see, *Curry Rd. v Rotterdam Realties*, 195 AD2d 780, 781; *Dalminter, Inc. v Dalmine, S.p.A.*, 29 AD2d 852). Under the circumstances of this case, however, the Supreme Court providently exercised its discretion in denying the plaintiff's motion to require the defendant to post an undertaking (see, *Curry Rd. v Rotterdam Realties*, *supra*).

Joy, J. P., Friedmann, Krausman and H. Miller, JJ., concur.