

Sigmund Sommer, Appellant-Respondent, v. General Bronze Corporation, Respondent-Appellant, et al., Respondents; Hays, Algase, Feuer, Porter & Spanier, Respondent, v. Sigmund Sommer, Appellant-Respondent, and General Bronze Corporation, Respondent-Appellant, et al., Respondents

[NO NUMBER IN ORIGINAL]

Court of Appeals of New York

20 N.Y.2d 879; 232 N.E.2d 653; 285 N.Y.S.2d 622; 1967 N.Y. LEXIS 1142

November 1, 1967, Submitted

November 2, 1967, Decided

PRIOR HISTORY: [***1] Reported below, *28 A D 2d 981*.

Cross appeals from orders of the Appellate Division of the Supreme Court in the First Judicial Department, entered October 10, 1967, which modified, on the law and the facts, and, as modified, affirmed (1) an order of the Supreme Court at Special Term (Mitchell D. Schweitzer, J.), entered in New York County in both of the above-entitled actions, (2) the judgment entered thereon in the first above-entitled action (a) dismissing the complaint of Sigmund Sommer, (b) awarding judgment in the amount of \$ 400,000, with interest and costs and disbursements in favor of General Bronze Corporation against Sigmund Sommer, and (c) authorizing, empowering and directing Hays, Algase, Feuer, Porter & Spanier (Hays) to present or negotiate a letter of credit, currently held by it as escrowee, to collect the proceeds thereof and deliver them to General Bronze Corporation and, upon such delivery, releasing said Hays from all liability to any party with respect to said letter of credit, and (3) the judgment entered thereon in the second above-entitled action, which contained the same provisions as paragraphs (b) and (c) above and, in addition, dismissed the counterclaim [***2] of Sigmund Sommer against Hays and his cross claim against General Bronze Corporation and Franklin National Bank. The modification consisted of deleting, from each of said judgments, the provisions of the above paragraph (b) except that with respect to costs and disbursements. Motion by Sigmund Sommer for an order staying, pending the hearing and determination of the appeals, all proceedings to enforce the orders appealed from and specifically staying the escrow agent from presenting and negotiating the letter of credit and delivering the proceeds as directed by said orders.

HEADNOTES

Appeal -- Court of Appeals -- stay -- cross appeals from orders which, among other things, directed escrow agent to present or negotiate letter of credit, to collect proceeds thereof and deliver them to specified defendant -- motion for order staying, pending hearing and determination of appeals, all proceedings to enforce orders appealed from and specifically staying escrow agent from presenting and negotiating letter of credit and delivering proceeds as directed by said orders -- motion granted on condition.

COUNSEL: *Sylvan D. Freeman* and *Samuel Kirschenbaum* for appellant-respondent.

*Edward [***3] N. Costikyan* for respondent-appellant.

Abraham Porter for Hays, Algase, Feuer, Porter & Spanier, respondent.

OPINION

[*880] [**623] Motion for stay granted on condition (1) that movant forthwith extend the existing letter of credit to July 1, 1968, (2) that the amount be increased to \$ 402,000 or that movant provide additional security in the amount of \$ 2,000 to cover costs in the Court of Appeals and in the Appellate Division and (3) that the letter of credit, as is the case with the present one, bear interest at 6% from October 10, 1966. Case set down for argument during the January, 1968 session.