

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D18159
C/hu

_____AD3d_____

Argued - January 7, 2008

REINALDO E. RIVERA, J.P.
FRED T. SANTUCCI
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2006-05434

DECISION & ORDER

Fiber Consultants, Inc., respondent, v Fiber
Optek Interconnect Corp., et al., defendants,
Michael S. Pascazi, appellant.

(Index No. 2697/02)

Michael S. Pascazi, Fishkill, N.Y., appellant pro se.

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, White Plains, N.Y. (Evan
Wiederkehr of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the defendant Michael S. Pascazi appeals, as limited by his brief, from so much of an order of the Supreme Court, Dutchess County (Brands, J.), dated February 28, 2006, as denied his motion pursuant to CPLR 5015 to vacate an order of the same court dated March 3, 2005, which directed the release to the plaintiff's attorneys of a certain undertaking, and granted those branches of the plaintiff's cross motion which were for an award of an attorney's fee incurred in defense of the motion as a sanction pursuant to 22 NYCRR § 130-1.1 to the extent of awarding the plaintiff an attorney's fee in the sum of \$1,500 and \$100 in motion costs.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied the appellant's motion to vacate the order dated March 3, 2005, inter alia, directing the release of an undertaking (*see Matthews v Castro*, 35 AD3d 403, 404; *Teachers Ins. & Annuity Assn. v Butler*, 803 F2d 61, 65; *see also Forte v Cities Serv. Oil Co.*, 195 AD2d 805, 807).

February 26, 2008

Page 1.

FIBER CONSULTANTS, INC. v FIBER OPTEK INTERCONNECT CORP.

The appellant's remaining contentions are without merit.

RIVERA, J.P., SANTUCCI, COVELLO and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court