

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

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Submitted - November 3, 2008

DAVID S. RITTER, J.P.
ANITA R. FLORIO
HOWARD MILLER
MARK C. DILLON, JJ.

2007-10987

DECISION & ORDER

S.P.Q.R. Co., Inc., et al., respondents, v United Rockland
Stairs, Inc., appellant, et al., defendants.

(Index No. 5034/06)

Kantrowitz, Goldhamer & Graifman, P.C., Chestnut Ridge, N.Y. (Reginald H.
Rutishauser of counsel), for appellant.

Feerick Lynch MacCartney PLLC, Nyack, N.Y. (Phyllis A. Ingram of counsel), for
respondents.

In an action, inter alia, to permanently enjoin the defendant United Rockland Stairs, Inc., from trespassing on a certain disputed parcel of real property and to compel that defendant to remove a fence from that property, the defendant United Rockland Stairs, Inc., appeals from an order of the Supreme Court, Rockland County (Weiner, J.), dated October 18, 2007, which, upon an order of the same court dated May 21, 2007, inter alia, granting its motion for a preliminary injunction, directed it to post an undertaking in the amount of \$1,500,000.

ORDERED that the order is affirmed, with costs.

Contrary to the defendant's contention, "[w]e find no basis on this record to disturb the amount of the undertaking fixed by the Supreme Court to compensate the [plaintiffs] for damages incurred by reason of the injunction in the event of a final determination that the [defendant was] not entitled to injunctive relief. The fixing of the amount of an undertaking is a matter within the sound discretion of the Supreme Court, and its determination will not be disturbed absent an improvident exercise of that discretion" (*Ujueta v Euro-Quest Corp.*, 29 AD3d 895, 896 [internal citations and quotation marks omitted]). Here, at the time the amount of the undertaking was fixed, it was

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rationally related to the amount of potential damages that the plaintiffs established they might sustain (see CPLR 6312[b]; *Ujueta v Euro-Quest Corp.*, 29 AD3d at 896; *Blueberries Gourmet v Aris Realty Corp.*, 255 AD2d 348, 350; cf. *Access Med. Group, P.C., v Straus Family Capital Group, LLC*, 44 AD3d 975).

RITTER, J.P., FLORIO, MILLER and DILLON, 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