

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

D22570
C/kmg

_____AD3d_____

Submitted - February 19, 2009

MARK C. DILLON, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-04070

DECISION & ORDER

Seafood House, Inc., appellant,
v Anh Pham, et al., respondents.

(Index No. 24855/04)

Richard L. Koral, South Salem, N.Y., for appellant.

Thomas B. Pruzan, Brooklyn, N.Y. (Sheila J. Randolph of counsel), for respondents
Anh Pham and Lan Pham.

David Kong and Lup S. Kong, Brooklyn, N.Y., respondents pro se.

In an action, inter alia, for specific performance of a right of first refusal contained in a lease, the plaintiff appeals, as limited by its brief, from so much of a judgment of the Supreme Court, Kings County (Dabiri, J.), dated April 1, 2008, as, after a nonjury trial, dismissed the complaint.

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

Upon review of a determination rendered after a nonjury trial, this Court's authority "is as broad as that of the trial court," and this Court may "render the judgment it finds warranted by the facts, taking into account in a close case the fact that the trial judge had the advantage of seeing the witnesses" (*Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; see *Perfect Crown Vic, Inc. v Douce Hacking Corp.*, 56 AD3d 448).

We find no reason to disturb the Supreme Court's finding that the defendants David

April 7, 2009

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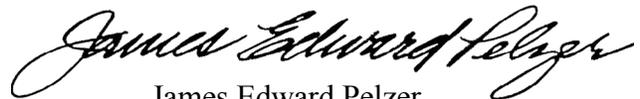
SEAFOOD HOUSE, INC. v PHAM

Kong and Lup S. Kong made a reasonable inquiry into the rights of the plaintiff under the commercial lease and, under the facts, reasonably relied on the purported waiver letter as evidence that the plaintiff had been afforded its contractual right of first refusal (*see Finlay v Huber*, 47 AD3d 883, 883; *cf. Ferdico v Zweig*, 55 AD3d 537, 538; *Fischer v Sadov Realty Corp.*, 34 AD3d 630, 631; *Yen-Te Hsueh Chen v Geranium Dev. Corp.*, 243 AD2d 708, 709; *see generally Nicastro v Park*, 113 AD2d 129, 134).

The plaintiff's remaining contention is without merit.

DILLON, J.P., BALKIN, BELEN and CHAMBERS, 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