

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

D23002  
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Argued - March 24, 2009

STEVEN W. FISHER, J.P.  
HOWARD MILLER  
CHERYL E. CHAMBERS  
LEONARD B. AUSTIN, JJ.

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2008-01051

DECISION & ORDER

Town of Hempstead, appellant, v Joseph DeMasco,  
et al., respondents.

(Index No. 10170/05)

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Joseph J. Ra, Town Attorney, Hempstead, N.Y. (William J. Muller III of counsel),  
for appellant.

Richard L. Gumo, Delhi, N.Y., for respondents.

In an action to permanently enjoin the defendants from operating a junkyard or scrap metal business, the plaintiff appeals from a judgment of the Supreme Court, Nassau County (Galasso, J.), entered September 10, 2008, which, after a nonjury trial, is in favor of the defendants and against it denying a permanent injunction.

ORDERED that the judgment is affirmed, 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). We discern no basis to disturb the Supreme Court's determination.

The plaintiff's remaining contentions are without merit.

FISHER, J.P., MILLER, CHAMBERS and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

May 5, 2009

TOWN OF HEMPSTEAD v DeMASCO