

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

D24038  
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Argued - May 1, 2009

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL, JJ.

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2008-01606

DECISION & ORDER

Long Island Auto Consultants, Inc., appellants, v  
Hubbard Sand & Gravel Corp., respondent.

(Index No. 157/02)

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Rosenberg Calica & Birney LLP, Garden City, N.Y. (Robert M. Calica and Megan F. Carroll of counsel), for appellants.

Glynn Mercep & Purcell, LLP, Setauket, N.Y. (Timothy B. Glynn of counsel), for respondent.

In an action, inter alia, for specific performance of an option to purchase real property pursuant to a commercial lease, the plaintiffs appeal from a judgment of the Supreme Court, Suffolk County (Blydenberg, J.), entered January 31, 2008, which, upon a decision of the same court dated October 17, 2007, made after a nonjury trial, is in favor of the defendant and against them, dismissing the complaint and awarding the defendant the principal sum of \$260,689 on its counterclaim.

ORDERED that the judgment is affirmed, with costs.

Where, as here, a nonjury trial is involved, this Court's power to review the evidence is as broad as that of the trial court, bearing in mind that due regard must be given to “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, quoting *York Mtge. Corp. v Clotar Constr. Corp.*, 254 NY 128, 133-134; see *Totonelly v Enos*, 49 AD3d 710, 711). Contrary to the plaintiffs’ contention, the trial court's determination dismissing the complaint and awarding judgment in favor of the

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defendant in the principal sum of \$260,689 on the counterclaim was warranted by the facts.

The plaintiffs' remaining contentions are without merit.

RIVERA, J.P., ENG, CHAMBERS and HALL, 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