

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

D24703  
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Argued - September 22, 2009

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
JOHN M. LEVENTHAL, JJ.

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2009-00802

DECISION & ORDER

Wize Eyes of Syosset, Inc., plaintiff/counterclaim  
defendant-respondent, v Turnpike Corp., et al.,  
defendants/counterclaim plaintiffs-appellants;  
Vincent Crifasi, additional counterclaim defendant-  
respondent.

(Index No. 11804/07)

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Sawyer, Halpern & Demetri, Garden City, N.Y. (James Sawyer of counsel), for  
defendants/counterclaim plaintiffs-appellants.

John E. Lander, Babylon, N.Y., for plaintiff/counterclaim defendant-respondent and  
additional counterclaim defendant-respondent (one brief filed).

In an action to recover damages for breach of a commercial lease, the  
defendants/counterclaim plaintiffs appeal from an order of the Supreme Court, Nassau County  
(Galasso, J.), entered December 18, 2008, which denied their motion for summary judgment  
dismissing the complaint and on the issue of liability on the counterclaim, and granted the cross  
motion of the plaintiff/counterclaim defendant and the additional counterclaim defendant for summary  
judgment dismissing the counterclaim and on the issue of liability on the complaint.

ORDERED that the order is reversed, on the law, with costs, the appellants' motion  
for summary judgment dismissing the complaint and on the issue of liability on the counterclaim is  
granted, the respondents' cross motion for summary judgment dismissing the counterclaim and on  
the issue of liability on the complaint is denied, and the matter is remitted to the Supreme Court,  
Nassau County, for a determination of the damages to be awarded to the appellants on the  
counterclaim.

October 20, 2009

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WIZE EYES OF SYOSSET, INC. v TURNPIKE CORP.

Contrary to the contention of the plaintiff/counterclaim defendant and the additional counterclaim defendant (hereinafter together the tenant), the defendants/counterclaim plaintiffs (hereinafter collectively the landlord) did not breach the subject lease by withholding approval of the signage which the tenant proposed to affix to the front of its store building. The tenant's right under the lease to install signage was not absolute, but was subject to the landlord's approval, which was not to be unreasonably withheld. The landlord's withholding of approval here was supported by legitimate, objective business considerations related to the leasehold premises, including that the large and brightly-colored proposed sign affixed to the building facade would be inconsistent with the signage used by other mall tenants, would interfere with lighting at the location, would detract from the overall appearance of the mall, and could lead to a decrease in mall rental values (*see generally Kenney v Eddygate Park Assoc.*, 34 AD3d 1017; *Commack Roller Rink v Commack Arena Mktg.*, 154 AD2d 327; *F.H.R. Auto Sales v Scutti*, 144 AD2d 956). The landlord could properly consider whether the proposed signage would detract from the appearance of the property (*see generally Lyon v Bethlehem Eng'g Corp.*, 253 NY 111) and could validly seek to foster a sophisticated image for the property (*see generally Forty-Seventh-Fifth Co. v Nektalov*, 225 AD2d 343). Under the circumstances, the landlord's withholding of consent was not unreasonable as a matter of law, and the tenant, therefore, breached the parties' agreement in disavowing the lease and refusing to make payments thereunder. Accordingly, there being no issue of fact as to liability, we remit the matter to the Supreme Court, Nassau County, for a determination of the damages to which the landlord is entitled on the counterclaim for the tenant's breach.

RIVERA, J.P., FLORIO, ENG and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court