

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

D25031
Y/nl

_____AD3d_____

Argued - October 22, 2009

A. GAIL PRUDENTI, P.J.
PETER B. SKELOS
JOSEPH COVELLO
LEONARD B. AUSTIN, JJ.

2008-06595

DECISION & ORDER

MJAC Realty Corp., appellant, v Robert Boccio, et al.,
respondents, et al., defendant.

(Index No. 1429/07)

Rita Stein, Mineola, N.Y. , for appellant.

Anthony C. Casamassima, Commack, N.Y., for respondents.

In an action, inter alia, to recover damages for breach of a commercial lease, the plaintiff appeals from a judgment of the Supreme Court, Nassau County (Cozzens, J.), entered June 13, 2008, which, after a nonjury trial, is in favor of the defendants Robert Boccio and Beacon Security Systems, Inc., and against it, dismissing the complaint insofar as asserted against those defendants.

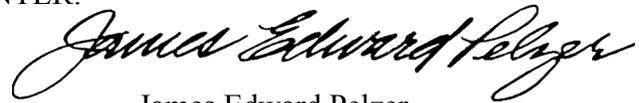
ORDERED that the judgment is affirmed, with costs.

Where, as here, a case is tried without a jury, 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 [internal quotation marks omitted]). The Supreme Court's implicit finding that the defendants Robert Boccio and Beacon Security Systems, Inc., did not breach the commercial lease at issue was warranted by the facts (*see Health 'N Sports v 1020 WW Food Corp.*, 191 AD2d 534, 534-535; *cf. Tarantola v La Squisita Foods, Inc.*, 40 AD3d 1071; *A-Tech Concrete Co., Inc. v Tilcon N.Y., Inc.*, 60 AD3d

603, 604). Accordingly, the complaint was properly dismissed insofar as asserted against those defendants.

PRUDENTI, P.J., SKELOS, COVELLO and AUSTIN, 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