

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

D28895
W/prt

_____AD3d_____

Argued - September 20, 2010

JOSEPH COVELLO, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2009-07703

DECISION & ORDER

Thomas Watkins, appellant, v
Albert Martin, respondent.

(Index No. 4886/06)

Rawlins & Gibbs, LLP, New York, N.Y. (Earle A. Rawlins of counsel), for appellant.

Michael B. Heckman, Pine Bush, N.Y., for respondent.

In an action, inter alia, for a permanent injunction, the plaintiff appeals from a judgment of the Supreme Court, Orange County (McGuirk, J.), dated June 23, 2009, which, upon a decision of the same court dated October 17, 2008, made after a nonjury trial, is in favor of the defendant and against him in the principal sum of \$53,750 on the first counterclaim.

ORDERED that the judgment is affirmed, with costs.

On an appeal from a judgment entered after a nonjury trial, 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, quoting *York Mtge. Corp. v Clotar Constr. Corp.*, 254 NY 128, 134). Upon our review of the record, we find no basis to disturb the Supreme Court’s determination (*see Trump Vil. Section 3 v New York State Hous. Fin. Agency*, 292 AD2d 156, 159; *see also Ross v Ross*, 233 App Div 626, 635, *affd* 262 NY 381; *see generally Furia v Furia*, 116 AD2d 694, 695).

The defendant’s remaining contentions are not properly before us (*see generally*

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Centurion Taxi v Happy Go Lucky Cab Corp., 230 AD2d 817, 818; *see also Cholowsky v Civiletti*, 69 AD3d 110, 116).

The plaintiff's remaining contentions are without merit.

COVELLO, J.P., LEVENTHAL, BELEN and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court