

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

D56258  
T/htr

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 4, 2018

REINALDO E. RIVERA, J.P.  
SANDRA L. SGROI  
COLLEEN D. DUFFY  
ANGELA G. IANNACCI, JJ.

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2016-11113

DECISION & ORDER

Colonial Surety Company, respondent, v Advanced  
Conservation Systems, Inc., et al., appellants.

(Index No. 607446/16)

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Ernstrom & Dreste, LLP, Rochester, NY (Timothy D. Boldt of counsel), for  
appellants.

McElroy, Deutsch, Mulvaney & Carpenter, LLP, New York, NY (Michael C.  
Delaney of counsel), for respondent.


In an action, inter alia, for specific performance, the defendants appeal from an order  
of the Supreme Court, Suffolk County (Elizabeth H. Emerson, J.), dated September 22, 2016. The  
order, insofar as appealed from, granted that branch of the plaintiff's motion which was for a  
preliminary injunction, inter alia, directing the defendants to deposit collateral security with the  
plaintiff pursuant to an indemnity agreement between the parties.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendants' contentions are raised for the first time on appeal and do not involve  
a pure question of law that appears on the face of the record and could not have been avoided by the  
plaintiff if brought to the attention of the Supreme Court (*see Matter of 148 S. Emerson Partners,  
LLC v 148 S. Emerson Assoc., LLC*, 157 AD3d 887; *Vargas v Crown Container Co., Inc.*, 114 AD3d  
762, 764-765; *Guy v Hatsis*, 107 AD3d 671, 671-672; *KPSD Mineola, Inc. v Jahn*, 57 AD3d 853,  
854; *Triantafillopoulos v Sala Corp.*, 39 AD3d 740; *Block v Magee*, 146 AD2d 730, 732).  
Therefore, they are not properly before this Court.

RIVERA, J.P., SGROI, DUFFY and IANNACCI, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court

August 1, 2018

COLONIAL SURETY COMPANY v ADVANCED CONSERVATION SYSTEMS, INC.