

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

21

CA 21-01043

PRESENT: WHALEN, P.J., NEMOYER, CURRAN, WINSLOW, AND BANNISTER, JJ.

RONALD BENDERSON 1995 TRUST,
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ERIE COUNTY MEDICAL CENTER CORPORATION,
DEFENDANT-APPELLANT.

RUPP BAASE PFALZGRAF CUNNINGHAM LLC, BUFFALO (R. ANTHONY RUPP, III, OF
COUNSEL), FOR DEFENDANT-APPELLANT.

PHILLIPS LYTLE LLP, BUFFALO (DAVID J. MCNAMARA OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Timothy J. Walker, A.J.), entered April 2, 2021. The order, among other things, granted plaintiff's motion insofar as it sought a preliminary injunction.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages and declaratory and injunctive relief following the alleged breach of a commercial lease between the parties. Thereafter, plaintiff moved for various forms of injunctive relief. Defendant appeals from an order that, inter alia, granted plaintiff's motion insofar as it sought a preliminary injunction.

In reviewing an order deciding a motion for a preliminary injunction, "we should not determine finally the merits of the action and should not interfere with the exercise of discretion by [the motion court] but should review only the determination of whether that discretion has been abused" (*Esi-Data Connections v Proulx*, 185 AD2d 705, 705 [4th Dept 1992] [internal quotation marks omitted]; see *Delphi Hospitalist Servs. LLC v Patrick*, 163 AD3d 1441, 1441-1442 [4th Dept 2018]). We conclude, on the record before us, that Supreme Court did not abuse its discretion in granting plaintiff's motion insofar as it sought a preliminary injunction.

Entered: March 11, 2022

Ann Dillon Flynn
Clerk of the Court