

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

M93828
E/sl

MARK C. DILLON, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2009-09000

DECISION & ORDER ON MOTION

King Kullen Grocery Co., Inc., appellant,
v Village Greens Shopping Center, Inc.,
respondent.

(Index No. 104749/08)

Motion by the appellant to stay enforcement of an order of the Supreme Court, Richmond County, dated June 30, 2009, pending hearing and determination of an appeal therefrom.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is granted to the extent that enforcement of so much of the order as conditioned a Yellowstone injunction upon the appellant's curing a breach of the parties' lease within 60 days is stayed pending hearing and determination of the appeal on condition that (1) the appeal is perfected on or before November 30, 2009, and (2) the appellant post an undertaking with corporate surety in the office of the Clerk of the Supreme Court, Richmond County, in a sum to be fixed by the Supreme Court, Richmond County, in terms that if the order appealed from, or any part of it, is affirmed, the surety will indemnify the respondent if it is ultimately determined that the respondent sustained a loss due to the conduct of the appellant during the period that the stay was in effect, and the motion is otherwise denied; and it is further,

ORDERED that the matter is remitted to the Supreme Court, Richmond County, to fix the amount of the undertaking in accordance herewith; the appellant shall file the undertaking within 15 days after service upon it of a copy of the order of the Supreme Court, Richmond County, fixing the amount thereof; and it is further,

October 29, 2009

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KING KULLEN GROCERY CO., INC. v VILLAGE GREENS SHOPPING CENTER, INC.

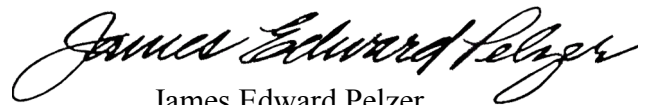
ORDERED that in the event that the appellant fails to post the undertaking within 15 days after service upon them of a copy of the order of the Supreme Court, Richmond County, fixing the amount thereof or fails to perfect the appeal by November 30, 2009, the court, on its own motion, may vacate the stay, or the respondent may move to vacate the stay, on three days notice; and it is further,

ORDERED that the respondent shall serve and file a brief, if any, on or before December 30, 2009; and it is further,

ORDERED that the appellant shall serve and file a reply brief, if any, on or before January 11, 2010.

DILLON, J.P., FLORIO, BALKIN and LEVENTHAL, 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