

Colonial Sur. Co. v Advanced Conservation Sys., Inc.
2018 NY Slip Op 05570
Decided on August 1, 2018
Appellate Division, Second Department
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Decided on August 1, 2018 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department

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

2016-11113
(Index No. 607446/16)

[*1] Colonial Surety Company, respondent,

v

Advanced Conservation Systems, Inc., et al., appellants.

Ernstrom & Drete, 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.

DECISION & ORDER

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

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