

be rendered ineffectual without such provisional relief" (CPLR 7502[c]). Moreover, applying the traditional three-pronged analysis, petitioner showed a likelihood of success on the merits by showing that his claims have prima facie merit (see e.g. *Trimboli v Irwin*, 18 AD3d 866 [2005]), including a claim of fraud based on alleged misrepresentation of facts beyond mere intention not to perform on a contract (see *First Bank of Ams. v Motor Car Funding*, 257 AD2d 287, 291-292 [1999]). We also find that the motion court soundly exercised its discretion in concluding that petitioner faced irreparable harm and that the balance of the equities was in his favor. The undertaking, as effectively amended by petitioner's stipulation and the second order, was rationally related to the potential damages recoverable if the preliminary injunction is later determined to have been unwarranted (*Kazdin v Putter*, 177 AD2d 456 [1991]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 24, 2008


CLERK