Rule 6312. Motion papers; undertaking; issues of fact. (a) Affidavit; other evidence. On a motion for a preliminary injunction the plaintiff shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action, and either that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual; or that the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

(b) Undertaking. Except as provided in section 2512 and in actions brought under section two hundred sixty-five-a of the real property law, prior to the granting of a preliminary injunction, the plaintiff shall give an undertaking in an amount to be fixed by the court, that the plaintiff, if it is finally determined that he or she was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of the injunction, including:

1. if the injunction is to stay proceedings in another action, on any ground other than that a report, verdict or decision was obtained by actual fraud, all damages and costs which may be, or which have been, awarded in the other action to the defendant as well as all damages and costs which may be awarded him or her in the action in which the injunction was granted; or,

2. if the injunction is to stay proceedings in an action to recover real property, or for dower, on any ground other than that a verdict, report or decision was obtained by actual fraud, all damages and costs which may be, or which have been, awarded to the defendant in the action in which the injunction was granted, including the reasonable rents and profits of, and any wastes committed upon, the real property which is sought to be recovered or which is the subject of the action for dower, after the granting of the injunction; or,

3. if the injunction is to stay proceedings upon a judgment for a sum of money on any ground other than that the judgment was obtained by

actual fraud, the full amount of the judgment as well as all damages and costs which may be awarded to the defendant in the action in which the injunction was granted.

(c) Issues of fact. Provided that the elements required for the issuance of a preliminary injunction are demonstrated in the plaintiff's papers, the presentation by the defendant of evidence sufficient to raise an issue of fact as to any of such elements shall not in itself be grounds for denial of the motion. In such event the court shall make a determination by hearing or otherwise whether each of the elements required for issuance of a preliminary injunction exists.