

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

D12674
E/mv

_____AD3d_____

Argued - October 12, 2006

ANITA R. FLORIO, J.P.
GABRIEL M. KRAUSMAN
ROBERT J. LUNN
JOSEPH COVELLO, JJ.

2005-02092
2005-08891

DECISION & ORDER

Hal R. Ginsburg, et al., appellants, v
Ock-A-Bock Community Association, Inc.,
et al., respondents.

(Index No. 17663/04)

Ginsburg & Misk, Queens Village, N.Y. (Gerard N. Misk of counsel), for appellants.

Esseks, Hefter & Angel, LLP, Riverhead, N.Y. (Stephen R. Angel and Lisa J. Ross
of counsel), for respondents.

In an action, inter alia, to compel the determination of claims to certain real property pursuant to RPAPL article 15, the plaintiffs appeal (1) from so much of an order of the Supreme Court, Suffolk County (Henry, J.), dated February 7, 2005, as denied their motion for a preliminary injunction and (2), as limited by their brief, from so much of an order of the same court dated August 18, 2005, as, upon renewal, adhered to the original determination.

ORDERED that the appeal from the order dated February 7, 2005, is dismissed as that order was superseded by the order dated August 18, 2005, made upon renewal; and it is further,

ORDERED that the order dated August 18, 2005, is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the defendants payable by the plaintiffs.

November 21, 2006

GINSBURG v OCK-A-BOCK COMMUNITY ASSOCIATION, INC.

Page 1.

On a motion for a preliminary injunction, the movant has the burden of demonstrating, by clear and convincing evidence, that (1) the movant will likely succeed on the merits of the action, (2) the movant will suffer irreparable injury absent the issuance of a preliminary injunction, and (3) the balance of equities is in favor of the movant (*see* CPLR 6301; *Aetna Ins. Co. v Capasso*, 75 NY2d 860; *W. T. Grant Co. v Srogi*, 52 NY2d 496; *Price Paper and Twine Co. v Miller*, 182 AD2d 748; *Albini v Solork Assocs.*, 37 AD2d 835). The determination to grant or deny a preliminary injunction rests in the sound discretion of the court (*see Ying Fung Moy v Hohi Umeki*, 10 AD3d 604).

In the instant action, regarding the rights of access to a beach, the Supreme Court providently exercised its discretion in denying the plaintiffs' motion for a preliminary injunction, as well as, upon renewal, adhering to that determination, on the ground that they failed to demonstrate they would suffer irreparable injury absent the grant of the injunction (*see Schweizer v Town of Smithtown*, 19 AD3d 682).

FLORIO, J.P., KRAUSMAN, LUNN and COVELLO, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court