

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

D17536  
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Argued - November 29, 2007

PETER B. SKELOS, J.P.  
FRED T. SANTUCCI  
ROBERT A. LIFSON  
EDWARD D. CARNI, JJ.

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2007-01926

DECISION & ORDER

David Griffin, et al., respondents,  
v 70 Portman Road Realty, Inc., appellant.

(Index No. 10514/06)

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DelBello Donnellan Weingarten Tartaglia Wise & Wiederkehr, LLP, White Plains,  
N.Y. (Jacob E. Amir of counsel), for appellant.

Vincent R. Rippa, Rye Brook, N.Y., for respondents.

In an action pursuant to RPAPL article 15, the defendant appeals from so much of an order of the Supreme Court, Westchester County (Donovan, J.), entered January 30, 2007, as denied its cross motion pursuant to CPLR 3211(a)(7) to dismiss the complaint and granted that branch of the plaintiffs' motion which was to preliminarily enjoin it from interfering with their use and possession of the disputed real property.

ORDERED that the order is modified, on the law, by deleting the provision thereof granting that branch of the plaintiffs' motion which was to preliminarily enjoin the defendant from interfering with their use and possession of the disputed real property and substituting therefor a provision granting that branch of the motion on condition that the plaintiffs give an undertaking pursuant to CPLR 6312(b) in an amount to be fixed by the Supreme Court, Westchester County; as so modified, the order is affirmed insofar as appealed from, with costs to the plaintiffs, and the matter is remitted to the Supreme Court, Westchester County, for further proceedings consistent herewith.

The record is devoid of any evidence that the plaintiffs submitted an undertaking with

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their motion for a preliminary injunction. While fixing the amount of an undertaking when granting a motion for a preliminary injunction is a matter within the sound discretion of the court, CPLR 6312(b) clearly and unequivocally requires the party seeking an injunction to give an undertaking (*see Livas v Mitzner*, 303 AD2d 381, 383).

Upon remittal, the plaintiffs must give the required undertaking in an amount fixed by the court in order to preserve the injunction (*see Livas v Mitzner*, 303 AD2d at 383).

The defendant's remaining contentions are without merit.

SKELOS, J.P., SANTUCCI, LIFSON and CARNI, 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