

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

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_____AD3d_____

Argued - January 17, 2008

PETER B. SKELOS, J.P.
STEVEN W. FISHER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2007-05054

DECISION & ORDER

Dana Distributors, Inc., et al., respondents,
v Crown Imports, LLC, et al., appellants.

(Index No. 2643/07)

McDermott Will & Emery LLP, New York, N.Y. (Robert A. Weiner, Andrew B. Kratenstein, and Marc E. Sorini of counsel), for appellants Crown Imports, LLC, and Barton Beers, Ltd., and Tannenbaum Helpert Syracuse & Hirschtritt LLP, New York, N.Y. (Andre R. Jaglom, Andrew Berger, John E. Greene, and Jamie B. W. Stecher of counsel), for appellant Manhattan Beer Distributors, LLC (one brief filed).

McCarter & English, LLP, New York, N.Y. (Peter D. Stergios of counsel), for respondents.

In an action, inter alia, pursuant to Alcoholic Beverage Control Law § 55-c challenging the termination of a beer distribution agreement, the defendants appeal from an order of the Supreme Court, Orange County (Horowitz, J.), dated May 4, 2007, which, after a hearing, granted the plaintiffs' motion for a preliminary injunction.

ORDERED that the order is reversed, on the law, with costs, and the plaintiffs' motion for a preliminary injunction is denied.

To obtain a preliminary injunction, a movant must demonstrate a likelihood of success on the merits, danger of irreparable harm unless the injunction is granted, and a balance of the equities in its favor (*see Skaggs-Walsh, Inc. v Chmiel*, 224 AD2d 680; *Family Affair Haircutters v Detling*, 110 AD2d 745). Here, the plaintiffs failed to submit sufficient proof to show that they would suffer

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irreparable harm absent the granting of a preliminary injunction (*see Skaggs-Walsh, Inc. v Chmiel*, 224 AD2d 680; *Family Affair Haircutters v Detling*, 110 AD2d 745; *Golden v Steam Heat*, 216 AD2d 440). Where, as here, a litigant can fully be recompensed by a monetary award, a preliminary injunction will not issue (*see Price Paper & Twine Co. v Miller*, 182 AD2d 748, 750). Accordingly, the Supreme Court should have denied the plaintiffs' motion for a preliminary injunction.

SKELOS, J.P., FISHER, DILLON and McCARTHY, 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