

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

D19093  
X/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 25, 2008

DAVID S. RITTER, J.P.  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO  
WILLIAM E. McCARTHY, JJ.

2006-10778

DECISION & ORDER

Automated Waste Disposal, Inc., et al., appellants,  
v Mid-Hudson Waste, Inc., et al., respondents.

(Index No. 2028/06)

Keane & Beane, P.C., White Plains, N.Y. (Edward F. Beane of counsel), for appellants.

Law Office of Thomas M. Gambino & Associates, P.C., Poughkeepsie, N.Y., for respondents.

In an action, inter alia, to permanently enjoin the defendants from improperly soliciting the plaintiffs' customers and inducing them to breach unexpired contracts with the plaintiffs, the plaintiffs appeal from an order of the Supreme Court, Putnam County (O'Rourke, J.), dated October 19, 2006, which denied their motion for a preliminary injunction.

ORDERED that the order is affirmed, with costs.

“In order to obtain a preliminary injunction (*see* CPLR 6301), the moving party must demonstrate (1) a likelihood of success on the merits, (2) an irreparable injury absent the granting of injunctive relief, and (3) a balancing of the equities in its favor” (*Wiener v Life Style Futon*, 48 AD3d 458; *see Aetna Ins. Co. v Capasso*, 75 NY2d 860, 862; *Iron Mtn. Info. Mgt., Inc. v Pullman*, 41 AD3d 656, 657). “The purpose of a preliminary injunction is to maintain the status quo pending determination of the action” (*City of Long Beach v Sterling Am. Capital, LLC*, 40 AD3d 902, 903, quoting *Kelley v Garuda*, 36 AD3d 593, 596). “The decision to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court” (*Ruiz v Meloney*, 26 AD3d 485, 486; *see Doe v Axelrod*, 73 NY2d 748, 750; *Ying Fung Moy v Hohi Umeki*, 10 AD3d 604, 604). Here,

April 29, 2008

Page 1.

AUTOMATED WASTE DISPOSAL, INC. v MID-HUDSON WASTE, INC.

the plaintiffs failed to meet their burden of demonstrating that they would suffer irreparable harm if the preliminary injunction were not granted (*see EdCia Corp. v McCormack*, 44 AD3d 991, 994; *Matos v City of New York*, 21 AD3d 936, 937; *1659 Ralph Ave. Laundromat Corp. v Ben David Enters.*, 307 AD2d 288, 289; *Marders the Landscape Store v Barylski*, 303 AD2d 465, 465; *Neos v Lacey*, 291 AD2d 434, 435). The plaintiffs' contention that the Supreme Court was required to hold a hearing on its motion is without merit (*see CPLR 6312[c]; Marders the Landscape Store v Barylski*, 303 AD2d at 466). Accordingly, the Supreme Court properly denied the plaintiffs' motion for a preliminary injunction.

RITTER, J.P., COVELLO, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court