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

D30241
O/kmb

_____AD3d_____ Argued - February 8, 2011

JOSEPH COVELLO, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2010-04928 DECISION & ORDER

Blinds and Carpet Gallery, Inc., et al., appellants,
v E.E.M. Realty, Inc., respondent.

(Index No. 2215/10)

John C. Lin, New York, N.Y., for appellants.

Marc Z. Newman, Brooklyn, N.Y. (Koss & Schonfeld [Simcha D. Schonfeld], of counsel), for respondent.

In an action, inter alia, in effect, for specific performance of a purported agreement to offer a lease of certain commercial premises, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated April 9, 2010, as denied their motion to preliminarily enjoin the defendant from transferring title of the subject premises to a nonparty.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In order to prevail on a motion for a preliminary injunction, the movant must demonstrate, by clear and convincing evidence, (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of the equities favors the movant's position (*see Tatum v Newell Funding, LLC*, 63 AD3d 911, 912; *Gluck v Hoary*, 55 AD3d 668; *Apa Sec., Inc. v Apa*, 37 AD3d 502, 503). The decision to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court (*see Automated Waste Disposal, Inc. v Mid-Hudson Waste, Inc.*, 50 AD3d 1072, 1073; *Ruiz v Meloney*, 26 AD3d 485, 486).

Here, the Supreme Court properly denied the plaintiffs' motion for a preliminary injunction because the plaintiffs failed to demonstrate, by clear and convincing evidence, a likelihood of success on the merits (*see Tatum v Newell Funding, LLC*, 63 AD3d at 912; *Gluck v Hoary*, 55 AD3d at 668) or that they would suffer irreparable injury if the preliminary injunction was not granted (*see Dixon v Malouf*, 61 AD3d 630; *Automated Waste Disposal, Inc. v Mid-Hudson Waste, Inc.*, 50 AD3d at 1073; *Matos v City of New York*, 21 AD3d 936, 937; 1659 *Ralph Ave. Laundromat Corp. v Ben David Enters.*, 307 AD2d 288, 289).

COVELLO, J.P., LOTT, ROMAN and MILLER, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court