

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

D33004
G/kmb

_____AD3d_____

Argued - November 4, 2011

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-12133

DECISION & ORDER

Dover Gourmet Corporation, appellant, v Nassau
Health Care Corporation, etc., respondent.

(Index No. 20706/10)

Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana, LLP, Uniondale, N.Y.
(Daniel P. Deegan and Richard C. Goldberg of counsel), for appellant.

Garfunkel Wild, P.C., Great Neck, N.Y. (Michael J. Keane, Kevin G. Donoghue, and
Jason Hsi of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, and for declaratory and injunctive relief, the plaintiff appeals from an order of the Supreme Court, Nassau County (Driscoll, J.), entered November 29, 2010, which denied its motion for a preliminary injunction.

ORDERED that the order is affirmed, with costs.

To obtain a preliminary injunction, a movant must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balancing of the equities in the movant's favor (*see* CPLR 6301; *Aetna Ins. Co. v Capasso*, 75 NY2d 860, 862; *Arcamone-Makinano v Britton Prop., Inc.*, 83 AD3d 623; *S.J.J.K. Tennis, Inc. v Confer Bethpage, LLC*, 81 AD3d 629; *Volunteer Fire Assn. of Tappan, Inc. v County of Rockland*, 60 AD3d 666, 667). The decision whether to grant or deny a preliminary injunction rests in the sound discretion of the Supreme Court (*see Doe v Axelrod*, 73 NY2d 748, 750; *Rowland v Dushin*, 82 AD3d 738; *Trump on the Ocean, LLC v Ash*, 81 AD3d 713, 715; *City of Long Beach v Sterling Am. Capital, LLC*, 40 AD3d 902). Under the circumstances of this case, the

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Supreme Court providently exercised its discretion in denying the plaintiff's motion for a preliminary injunction.

MASTRO, J.P., FLORIO, LOTT and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court