

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1013

CA 20-01190

PRESENT: CENTRA, J.P., PERADOTTO, TROUTMAN, WINSLOW, AND DEJOSEPH, JJ.

FIELDS ENTERPRISES INC., AND BRISTOL HARBOUR
MARINA, LLC, PLAINTIFFS-APPELLANTS-RESPONDENTS,

V

MEMORANDUM AND ORDER

BRISTOL HARBOUR VILLAGE ASSOCIATION, INC.,
DEFENDANT-RESPONDENT-APPELLANT.

KNAUF SHAW LLP, ROCHESTER (ALAN J. KNAUF OF COUNSEL), NIXON PEABODY
LLP, AND GOLDBERG SEGALLA LLP, BUFFALO, FOR
PLAINTIFFS-APPELLANTS-RESPONDENTS.

RUPP BAASE PFALZGRAF CUNNINGHAM LLC, ROCHESTER (R. ANTHONY RUPP, III,
OF COUNSEL), FOR DEFENDANT-RESPONDENT-APPELLANT.

Appeal and cross appeal from an order of the Supreme Court,
Ontario County (J. Scott Odorisi, J.), entered August 26, 2020. The
order denied in part the motion of plaintiffs for a preliminary
injunction and denied the cross motion of defendant for sanctions.

It is hereby ORDERED that said cross appeal is dismissed and the
order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiffs own and operate the Bristol Harbour
Marina on Canandaigua Lake. The marina is lakeside at the bottom of a
steep cliff and is accessible only by an elevator or staircase, both
of which are on real property owned by defendant. Plaintiffs
commenced this action seeking, inter alia, a permanent injunction
preventing defendant from limiting access to the elevator and
staircase. Plaintiffs also moved for a preliminary injunction and
temporary restraining order enjoining defendant from, inter alia,
limiting such access. Defendant opposed the motion and cross-moved
for sanctions. Plaintiffs now appeal and defendant cross-appeals from
an order that, inter alia, denied in part plaintiffs' motion and
denied defendant's cross motion.

Initially, defendant's notice of cross appeal recites that
defendant is cross-appealing only to the extent that the order denied
the cross motion. We dismiss the cross appeal inasmuch as defendant
in its brief has not raised any contentions concerning the denial of
the cross motion (*see generally Loveless Family Trust v Koenig*, 77
AD3d 1447, 1448 [4th Dept 2010]).

With respect to plaintiffs' appeal, it is well settled that,

"[u]pon a motion for a preliminary injunction, the party seeking the injunctive relief must demonstrate by clear and convincing evidence: (1) 'a probability of success on the merits;' (2) 'danger of irreparable injury in the absence of an injunction;' and (3) 'a balance of equities in its favor' " (*Cangemi v Yeager*, 185 AD3d 1397, 1398 [4th Dept 2020], quoting *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]). Plaintiffs contend that Supreme Court abused its discretion to the extent that it denied the motion. We reject that contention inasmuch as plaintiffs failed to demonstrate a danger of irreparable injury in the absence of the injunction (see generally *id.* at 1400; *Eastview Mall, LLC v Grace Holmes, Inc.*, 182 AD3d 1057, 1058 [4th Dept 2020]). We conclude that plaintiffs failed to show that they would sustain any harm other than economic loss, "which is compensable by money damages" and "does not constitute irreparable harm" (*Mangovski v DiMarco*, 175 AD3d 947, 949 [4th Dept 2019] [internal quotation marks omitted]). To the extent that plaintiffs alleged that they would suffer a loss of goodwill, we conclude that plaintiffs' allegations are conclusory and are insufficient to establish irreparable harm (see *John G. Ullman & Assoc., Inc. v BCK Partners, Inc.*, 139 AD3d 1358, 1359 [4th Dept 2016], *lv dismissed* 28 NY3d 943 [2016]). In light of our determination, plaintiffs' remaining contentions are academic.