

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, JAMES P. DOLLARD IAS PART 13
Justice

-----x
SNAPPER REALTY LLC,

Index No.: 2869/03

Plaintiff,
2003

Motion Date: Feb. 19,

Motion Cal.No.: 42

-against-

DUANE READE and THE DOROTHY
BASSON MARTIN TRUST,

Defendants.

-----x

The following papers numbered 1 to 12 read on this motion by plaintiff Snapper Realty LLC ("Snapper") for an Order enjoining defendants Duane Reade and The Dorothy Basson Martin Trust ("Martin Trust") from taking any measures or actions to obstruct or interfere with plaintiff's means of ingress over the southeast corner of Lot 10 and owned by respective defendants and plaintiff's use and enjoyment of its Property known as 115-20 Beach Channel Drive, Rockaway Park, New York.

	<u>PAPERS NUMBERED</u>
Order to Show Cause-Affidavit-Exhibit.....	1 - 6
Answering Affidavits-Exhibits.....	7 - 9
Memorandum of Law.....	10
Memorandum of Law.....	11
Memorandum of Law.....	12

Additional affidavits and exhibits as set forth in plaintiff's motion returnable on March 26, 2003.

Upon the foregoing papers it is ordered that this motion is denied.

Plaintiff Snapper is the owner of land and a convenience store and gas station business, located at 115-20 Beach Channel Drive, Rockaway Park, New York. Plaintiff's property is located on the westbound side of Beach Channel Drive just northeast of the intersection with Beach 116th Street. Snapper has operated the gas station since it acquired the property in July 2000.

Duane Reade is the lessee on the adjoining lot west of plaintiff's property known as Lot 10 and is in the process of constructing a new building to operate a drug store. Lot 10 is owned by defendant the Martin Trust.

Plaintiff Snapper claims that Duane Reade intends to construct a new building with adjoining landscape such that the building and landscape will extent south alongside plaintiff's property toward Beach Channel Drive and completely block off a longstanding right of way that has allowed plaintiff and its predecessor's customers' cars to enter and exit the station and property for at least 10 years. Plaintiff now moves for an Order granting a preliminary injunction enjoining the defendants Duane Reade and the Martin Trust from taking any measures or actions to obstruct or interfere with plaintiff's means of ingress over the southeast corner of Lot 10 and owned by the respective defendants, and plaintiff's use and enjoyment of its property known as 115-20 Beach Channel Drive, Rockaway Park, NY.

On a motion for a preliminary injunction the movant must prove (1) the likelihood of ultimate success on the merits, (2) irreparable injury absent the grant of the injunction, and (3) a balance of the equities in its favor (See, CPLR 6301; Koursiaris v. Astoria North Development, Inc., 143 AD2d 639). In the instant action, plaintiff has failed to show irreparable harm since customers can still enter the plaintiff's property from the westbound lanes of Beach Channel Drive although it is less convenient for those cars traveling in the eastbound lanes or traveling on 116th Street.

Dated: April ,2003

J.S.C.