

Albini v. Solork Associates

Supreme Court of New York, Appellate Division, Second Department

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LOUIS V. ALBINI et al., Appellants, v. SOLORK ASSOCIATES et al., Respondents.

Opinion

[**1] [*150] In an action to enjoin the sale of a certain purchase money mortgage, plaintiffs appeal from an order of the Supreme Court, Nassau County, dated August 16, 1971, which denied their motion for a preliminary injunction enjoining such sale. Order reversed, with \$10 costs and disbursements, and motion granted on condition that plaintiffs (1) move this case for trial at the November Term and pay the requisite fees therefor and (2) procure the \$54,000 bond heretofore given by them (pursuant to the order of this court, dated August 23, 1971, which bond was amended in [*151] accordance with the further order of this court dated September 10, 1971) to be amended to cover only all the operating deficits on the subject real property. Defendants are hereby directed to continue to make the necessary payments upon the first mortgage on the subject property. In our opinion, the learned Special Term correctly noted that on a motion for a preliminary injunction the movant must prove three things: (1) likelihood of his ultimate success on the merits; (2) irreparable injury to him absent granting of the preliminary injunction; and (3) a balancing of equities (*Park Terrace Caterers* [**2] v. *McDonough*, 9 A D 2d 113; *Barricini, Inc. v. Barricini Shoes*, 1 A D 2d 905; *Gilbert v. Burnside*, 6 A D 2d 834). In our view, on the record herein, plaintiffs have arguably met the three requirements for the issuance of a preliminary injunction and the Special Term was in error in refusing to grant the requested relief. Under the circumstances, however, a speedy trial of the issues should be had at the November Term. Rabin, P. J., Hopkins, Munder, Martuscello and Shapiro, JJ., concur.

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