

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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MARLBOROUGH REAL ESTATE, LLC, and
MARLBOROUGH GALLERY, LLC,

Plaintiffs,

-against-

Index No. 113049/07

BASS ASSOCIATES, LLC, THE CHELSEA ARTS
TOWER CONDOMINIUM and FLINTLOCK
CONSTRUCTION SERVICES, LLC,

Defendants.

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DeGrasse, J.:

Plaintiffs move for an order preliminarily enjoining defendants from entering upon “the premises” which plaintiffs define as units one and two plus a second floor terrace of a commercial condominium sponsored by defendant Bass Associates, LLC. Plaintiff Marlborough Real Estate, LLC owns and uses the two units as an art gallery. It intended to use the terrace for the occasional display of sculptures. This action stems from defendants’ use of the terrace as a staging area for construction work being performed by Bass. Plaintiffs claim that they will not be able to install three bronze sculptures if defendants continue to “trespass on the terrace.”

Defendants have demonstrated that the terrace is not a part of either of Marlborough’s units but a limited common element as defined by section 7.1 of the condominium’s declaration. Section 15.6 of the declaration as well of section 6.17.2 of the condominium’s by-laws vest the sponsor with access to the common elements for the purpose of completing construction of the building and making necessary repairs. Defendants have made a sufficient showing that the use

of the terrace is necessary for waterproofing and other repairs.

Plaintiffs have not demonstrated that a successful prosecution of this action on the merits is likely, that they will suffer irreparable harm absent the granting of the relief requested or that a balancing of the equities favors their position. Accordingly, the motion is denied and the undertaking given on the temporary restraining order discharged. Defendants' request for an order granting them attorneys' fees is denied without prejudice to a plenary motion for same. Because the instant motion was brought by order to show cause plaintiffs had no opportunity to respond to the request. A preliminary conference shall be conducted on December 10, 2007 at 2:00 p. m.

Dated: October 3, 2007

J. S. C.