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At an IAS Term, Part 41 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 8th day of July 2013

P R E S E N T:

HON. LARRY D. MARTIN,
Justice.

-----X
MIKHAIL FAIDA and TATYANA FAIDA,

Plaintiffs,

- against -

Index No. 23741/12

THE BOARD OF MANAGERS OF THE OCEANVIEW
TOWERS CONDOMINIUM ASSOCIATION.,

Defendant.

-----X

The following papers numbered 1 to 4 read on this motion:

| | <u>Papers Numbered</u> |
|--|------------------------|
| Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed_____ | 1-2_____ |
| Opposing Affidavits (Affirmations)_____ | 3_____ |
| Reply Affidavits (Affirmations)_____ | _____ |
| Affidavit (Affirmation)_____ | _____ |
| Other Papers_____ | 4_____ |

Upon the foregoing papers, plaintiffs Mikhail Faida and Tatyana Faida (plaintiffs), move, by order to show cause, for an order: (1) granting a preliminary injunction enjoining and restraining defendant The Board of Managers of the Oceanview Towers Condominium Association (The Board), its agents, employees, representatives, servants and any other persons or entities acting by or on its behalf, or under its direction or supervision, jointly or

severally, from interfering with the exclusive license of plaintiffs to use parking space PS11 at the Oceanview Tower Condominium Association [the Condominium], including but not limited to selling either another license or the subject license to another or conducting the already announced auction to do so .

On October 15, 2009, plaintiffs purchased condominium Unit 5A at the Condominium located at 2964 Brighton 6 Street in Brooklyn, New York. On April 10, 2008, the Board entered into a license agreement with ALSA Development LLC (ALSA) granting ALSA a license to use a parking space “for parking of automobiles only, forever until surrendered by [ALSA]” (Exhibit 3). ALSA was the sponsor for the development of the Condominium. The license agreement provided that said license “is assignable without any consent of [The Board]”(Exhibit 3). On October 15, 2009, ALSA assigned its “right, title and interest” in the license agreement to plaintiffs (Exhibit 4). In their affidavits, plaintiffs aver that, in 2011, one of the members of the Board requested that they pay the sum of \$25.00 per month for the license which they have been doing since that date. Plaintiffs further aver that in 2011, they complained to The Board about a neighbor using the subject parking space. According to plaintiffs, in response to their request, The Board sent a letter (Exhibit 6) to said neighbor advising that plaintiffs were the “legal owner[s]” of the parking space and warning that if said neighbor did not stop parking in the space, his or her vehicle would be towed. Plaintiffs claim that they recently learned that the plans of the Condominium on file with the New York City Department of Buildings (DOB) did not list

the subject parking space. Plaintiffs further claim that they hired an engineer and paid filing fees to the DOB to make the parking space legal (Exhibit 8). Plaintiffs claim that the parking space is now legal but that they received a notice to auction the subject parking spot from The Board. On December 6, 2012, The Board circulated a letter notifying condominium unit owners that the subject parking space was up for auction until December 15, 2012 (Exhibit 9).

Plaintiffs then brought the instant order to show cause which directed a stay, pending the hearing of this application” and temporarily enjoined and restrained its agents, employees, representatives, servants and any other persons or entities acting by or on its behalf, or under its direction or supervision, jointly or severally, from interfering with the exclusive license of plaintiffs to use parking space PS11 at the Oceanview Tower Condominium Association, including but not limited to selling either another license or the subject license to another or conducting the already announced auction to do so.

The court may grant a preliminary injunction when the moving party demonstrates: (1) likelihood of ultimate success on the merits; (2) irreparable injury if the court withholds provisional relief; and (3) a balance of the equities tipping in the moving party’s favor (*Doe v Axelrod*, 73 NY2d 748, 750 [1998]). Preliminary injunctions are a drastic remedy and therefore as a general rule, the court issues them cautiously (*Uniformed Firefighters Assn. of Greater New York v City of New York*, 79 NY2d 236, 241 [1992]). A preliminary

injunction may be granted to preserve the status quo pending a full hearing of the merits of the action (*see JRT, Inc. v STG Properties, LLC*, 4 Misc3d 1023[A], *2 [2004]).

“CPLR 6312(b) requires the Court to fix the undertaking in an amount sufficient to compensate [the Board] for damages sustained if it is determined that the preliminary injunction was improvidently granted. The amount of the undertaking is within the discretion of the Court” (*JRT, Inc.* , 4 Misc3d 1023[A], *2, internal citation marks omitted; *see Margolies v Encounter, Inc.*, 42 NY2d 475 [1977]).

Here, the Board failed to submit any papers in opposition to the relief requested herein. At oral arguments of the instant motion, a non-attorney Board member, Lillian Brenner appeared, on behalf of the Board, in opposition. However, CPLR 321 (a) provides that “a corporation or voluntary association shall appear by attorney.” A corporation must be represented by an attorney (*Hilton Apothecasy v State of New York*, 89 NY2d 1024 [1997], *rearg denied*, 90 NY2d 845 [1997]). Hence, Ms. Brenner “lacks standing to raise any arguments on behalf of [the Board]” (*People v Park Ave. Plastic Surgery, P.C.*, 48 AD3d 367, 367 [2008]; *Pere v 1470-1488 U&R Inc.*, 247 AD2d 477, 478 [1998] [“A corporation is in default in a civil proceeding when it is not represented by an attorney”]).

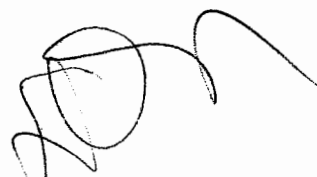
Based upon a review of the record, the court finds that plaintiffs have demonstrated their entitlement to a preliminary injunction to preserve the status quo (*see JRT, Inc. v STG Properties, LLC*, 4 Misc3d 1023[A], *2; *see also Peyton v PWV Acquisition LLC*, 35 Misc3d 1207[A], [2012]). Plaintiffs attained the right to park in the subject parking space by

assignment of the License Agreement between the Board and ALSA. Plaintiffs demonstrated that they have been submitting payments to the Board for use of the parking spot for several months prior to the commencement of the instant action. In addition, plaintiffs have expended sums in order to make the subject parking space in compliance with the DOB.

Accordingly, plaintiffs' motion for a preliminary injunction is hereby granted only to the extent that the defendant Board is precluded from selling, auctioning or transferring the license or any license to the subject parking space to anyone else pending the final resolution of this action. Within forty-five days of the date of this decision and order, plaintiffs are directed to post with the Clerk of the Court an undertaking in the sum of \$1,000 (*see Rourke Developers, Inc. v Cottrell-Hajek, Inc.*, 285 AD2d 805, 805 [2001]).

The foregoing constitutes the decision and order of the court.

E N T E R,



J. S. C.

HON. LARRY MARTIN
JUSTICE OF THE SUPREME COURT

JUL 08 2013