

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

PRESENT: Rakower  
Justice

PART 15

Bd. Mgrs. Hudson View

INDEX NO. 110740/11

MOTION DATE \_\_\_\_\_

- v -

Starobinskaya

MOTION SEQ. NO. 02

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for Injunctive Relief

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

**FILED**

DEC 23 2011

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Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

Dated: 12/22/11

  
**HON. EILEEN A. RAKOWER**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

-----X  
THE BOARD OF MANAGERS OF THE HUDSON  
VIEW WEST CONDOMINIUM,

Index No.  
110740/11

Plaintiff,

**DECISION  
and ORDER**

- against -

EDITH STAROBINSKAYA and MARKUS  
STAROBINSKAYA,

Mot. Seq.  
002

Defendants.

**FILED**

-----X  
HON. EILEEN A. RAKOWER:

DEC 23 2011

The Board of Managers of the Hudson View West Condominium (the Board) brings this action seeking damages and a permanent injunction against Defendants, who are the owners of "Unit 9G" in the condominium. The Board alleges that Defendants have violated the bylaws and the rules and regulations of the condominium, as well as State law in several respects. Specifically, the Board alleges that:

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- Defendants consistently dispose of their refuse in an improper manner, causing a nuisance to other residents;
- Defendants consistently dispose of cardboard boxes and other recyclables improperly down the compactor chute, causing damage and clogging;
- Defendants continuously park their car illegally;
- Defendant Markus Starobinskaya ("Markus") loiters in the common areas, vandalizes common areas, smokes in the common areas, verbally threatens condominium agents;
- on March 27, 2011, Markus placed nails in small pieces of cardboard and purposely left them in the driveway of the condominium for cars to drive over.

The Board now moves for a preliminary injunction, enjoining Defendants from threatening or assaulting staff members; vandalizing common areas; using their unit in a manner that disturbs or creates a nuisance to other unit owners; or engaging in

any other activity which interferes with the rights of other unit owners. The Board submits an attorney's affirmation and the affidavit of condominium superintendent John James Karras. Karras states that Markus "is threatening and harassing the Building staff by stalking them in the lobby of the Building and by standing outside the Building peering through the windows for extended periods of time." He further states that "Markus can be viewed on video surveillance making obscene gestures toward the cameras when entering and leaving the Building and the elevators." Karras also alleges that "Markus is believed to be the person" who left nails in the building driveway, and that he spits on common area mirrors. Karras alleges that both Defendants "park their car illegally (over the time allotted by the condominium house rules), consistently for extended periods of time, behind the Building."

Defendants submit a memorandum of law and the affidavit of Edith Starobinskaya ("Edith") in opposition to the motion. Edith states that the Board's allegations "are completely false," and that this action is being brought "solely to harass [her] and [Markus]..." She claims that Markus has been verbally abused daily by the management company's employees since making a complaint about the common areas being dirty. She further alleges that on one occasion, Markus was physically assaulted by an employee. In their memorandum of law, Defendants assert that an injunction is unwarranted because any alleged prior misconduct (which they deny) is compensable by money damages, and because the Board has not demonstrated the threat of imminent harm.

It is well settled that "a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of equities tipping in favor of the moving party" (*1234 Broadway LLC v. West Side SRO Law Project*, 2011 NY Slip Op 3980,\*4 [1st Dept. 2011]) (citations omitted). It is equally axiomatic that "the purpose of a preliminary injunction is to maintain the status quo pending a hearing on the merits," and not to "determine the parties' ultimate rights" (*360 W. 11<sup>th</sup> LLC v. ACG Credit Co. II, LLC*, 2007 NY Slip Op 9939 [1st Dept. 2007]).

Here, the court finds that the Board has not demonstrated its entitlement to a preliminary injunction. The Board's allegations are strongly and unequivocally disputed by Defendants, and the Board has not provided any evidence other than the Karras affidavit. Moreover, to the extent that Defendants have caused property

damage or have otherwise interfered with other residents' enjoyment of their respective units, recourse is available in the form of monetary damages. Nor has any evidence been submitted to establish that Markus poses an imminent danger to condominium staff or to other residents. Accordingly, an injunction is unwarranted at this stage (*see Newmann v. Mapama Corp.*, 96 A.D.2d 793, 794 [1st Dept. 1983]) ("In view of the sharply disputed factual issues ... and in the absence of any showing of imminent danger or irreparable harm, it was error to ... grant [an] injunction.").

Lastly, the court notes that the Defendants are already obligated to comply with condominium bylaws and regulations, and to conduct themselves in a lawful manner.

Wherefore it is hereby

ORDERED that Plaintiff's motion for a preliminary injunction is denied.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: December 22, 2011

  
FILED  
EILEEN A. RAKOWER, J.S.C.

DEC 23 2011

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