Push and Pullman

Appellate Court Rules on Objectionable Tenants

By Hannah Fons

In a decision with profound repercussions throughout the co-op community, the New York Court of Appeals decided last month to allow the application of the business judgment rule in situations involving so-called "objectionable tenants."

In a nutshell, the ruling provides that co-op boards can terminate the leases of troublesome or recalcitrant tenants without having to go to court to prove those people to be "nuisance tenants" under the definition of such under the law. Now, a co-op board faced with a tenant who, for example, insists upon practicing his drums at 2 a.m. every morning or cranking his stereo at all hours of the night, can vote to oust that tenant without trial, provided the board is acting in good faith and the building's proprietary lease contains language that clearly defines what constitutes objectionable behavior.

Drama On West 67th Street

The case that decided all of this has been raging since 1998 between the board of 40 West 67th Street and one shareholder in that building, a bond trader by the name of David Pullman. Shortly after Pullman moved into the co-op, he allegedly began complaining loudly and often about his neighbors and certain members of the board, and made unauthorized alterations to his apartment. Pullman filed noise complaints against the elderly couple living upstairs from him, sent multiple, strongly-worded letters to board members and management, and filed at least four lawsuits against various neighbors and the board - some of which are still pending.

Pullman himself still takes issue with the actions of his former board. "I kept my case going this year because I feel the Court of Appeals was hiding behind the language [of the law]. Right now, it's on the record that my kitchen's renovated. My kitchen's not renovated. It's the original kitchen, but since the Court of Appeals says it's renovated, it must be renovated. Also, [according to the court and the board], I "˜illegally redecorated' my apartment. What does that mean - that I moved a pillow from the couch to the chair?"

Whatever the case, the board of directors at 40 West 67th found Pullman's actions objectionable, and in 2000, voted to terminate his lease. Pullman disregarded the board's order to vacate, and the board in turn approved an action to evict him.

The case went to the Supreme Court, which initially held that Pullman had the right to remain in the building. Simply put, that decision found that the business judgment rule - by virtue of the 1990 ruling in Levandusky vs. One Fifth Avenue, which provides that courts generally stay out of matters of internal corporate policy and let boards of directors make decisions in the best interests of their shareholders - does not apply in cases of tenancy.

Last month's First Department Appellate ruling reversed the Supreme Court's judgment,

and allowed boards to extend the reach of the judgment rule to include taking action against individual shareholders, if it's deemed to be in the best interest of the corporation - all without mandatory judicial involvement. According to Judge Albert M. Rosenblatt of the Court of Appeals, "[The defendant] argued that termination may rest only upon a court's independent evaluation of the reasonableness of the cooperative's action. We disagree. In reviewing the cooperative's actions, the business judgment standard governs a cooperative's decision to terminate a tenancy in accordance with the terms of the parties' agreement."

What It Means To You and Your Building

According to Adam Leitman Bailey, a Manhattan-based attorney specializing in co-op and condo law who was recently hired by David Pullman to oversee the sale of Pullman's apartment and various other legal matters after his original team of lawyers were defeated, "The law until now was that a resident's conduct had to be reprehensible and ongoing in order to qualify as a "˜nuisance.' Now, you no longer have to prove to a judge that you were right or wrong in trying to evict the person for the conduct that's alleged."As long as a building's proprietary lease contains language that clearly defines objectionable conduct, says Bailey, legal action may be taken.

And according to many of the city's real estate attorneys, this is what has a lot of tenants concerned - what's "objectionable" to one person may not cause another to so much as bat an eye. Is it really a good idea to put a person's very home into the hands of others under such subjective terms?

There's really no one answer to that question. The impact of this ruling cuts both ways, according to observers. And now, boards and shareholders who've had to put up with obnoxious, disruptive, out-of-control neighbors for years without legal recourse can take decisive steps to restore peace in their buildings.

"It's a wonderful thing for boards," says Bailey, "because it was so hard to evict people before the Pullman decision came out. You would go to a judge, and the housing court was so liberal in favor of tenants that it was very difficult for co-ops to evict anybody. There was a huge burden of proof, and it cost thousands of dollars, and you had to have a trial over whether or not the behavior actually reached the level of a legally-defined nuisance."

On the other hand, the Court of Appeals ruling has struck fear into the hearts of many shareholders, who now may think twice before sending that stern letter to their managing agent or board president about the lousy water pressure, or the unresponsive superintendent. What, they wonder, does my board consider "objectionable?" Could I be looking down the barrel of eviction if I speak out against my board's policies or practices?

Pullman himself says he's "Getting e-mails, letters, and calls from people who say they've written letters to their board, and are worried they're going to get evicted because they've been complaining about this person or that person. These votes are important."

Bailey agrees, saying, "It's a double-edged sword, and as such [this decision] could be very dangerous. As a shareholder, am I going to be afraid to say what I believe now, and lobby to get things changed? I don't want to be kicked out and sell my shares because I got voted out."

And what about shareholders unaffected by - or unacquainted with - an allegedly objectionable tenant? Will they be given fair and balanced information about the case before a vote is held to evict the so-called problem shareholder? Pullman is dubious. In his case, he says "[My] building only has 30-plus apartments, and 20 owners, of which six are on the board. Six plus 14 [voted to evict], ten of which were proxies. [The shareholders'] view was that they would be retaliated against if they didn't vote [to evict me]."

Know Your Lease - Or Change It

The key to keeping things under control after the Pullman verdict lies in the proprietary lease - and, by extension, the bylaws and house rules. In a statement made to the New York Law Journal after the Appellate Court's ruling, John T. Van Der Tuin, a partner in the Manhattan law firm of Balber Pickard Battistoni Maldonado & Van Der Tuin and counsel for 40 West 67th throughout the Pullman case, said that "This is a good decision for cooperatives in the sense that it should enhance the value of co-op living and assure people who live in co-ops that they have some protection against out-of-control neighbors. At the same time"¦if there is a vendetta against a particular shareholder, there are still plenty of tools for the shareholder to use in the good faith requirement and the fiduciary duty requirement."

Enter your proprietary lease. According to Bailey, most buildings' leases already contain language providing for lease termination of objectionable, disruptive tenants. If you and your board feel that - in the words of Judge Rosenblatt - someone in your building is "engag[ing] in repeated actions inimical to cooperative living, and objectionable to the corporation and its stockholders that make his continued tenancy undesirable," and your lease contains provisions for you to eject that tenant, you've got an open-and-shut case for eviction.

If, on the other hand, the board has shown, according to Bailey, "the slightest indication of any bad faith, arbitrariness, favoritism, discrimination, or malice," there's reason for a judge to believe that a vendetta may be afoot, and the shareholder's case has merit, no matter how unpopular that shareholder may be.

The vital thing for boards to consider is that even though they no longer have to prove a shareholder's bad conduct to a judge, they'll still need to go to court to get the actual eviction. The difference is that now, if their action is challenged, it'll be challenged as to whether or not they followed their own rules, and whether or not they did so in good faith, not as to just how obnoxious or troublesome the disputed resident is.

The court in the Pullman case ruled that a board "may significantly restrict the bundle of rights a property owner normally enjoys." At the same time, the court also insists that this be done in good faith. The way to insure good faith is to ensure that the proprietary lease contains clear language defining objectionable conduct. According to Bailey, "Every cooperative should get a new proprietary lease if they don't have sufficient language, or they don't have the one Pullman had. The judge doesn't get to say how objectionable he or she thinks the behavior is. It's up to the co-op board to determine that."

I'll Still See You In Court

Aside from changing the tenor of a great deal of co-op-shareholder litigation, the Pullman verdict may have some impact on the way people behave before they start suing each other. If you're a shareholder who prides him- or herself on being a gadfly, or has ongoing feuds with several neighbors at any given time, this might be a good time to reassess some things.

"Anybody who's been a nuisance for years is in danger," says Bailey. "The Court of Appeals didn't reach much of a middle road with [this decision]. It's so one-sided in favor of cooperatives that it could be dangerous to shareholders. What if you wanted to make changes in your cooperative? You start petitioning them for new mailboxes, or a new lobby, or you don't like someone on a board. All that work could result in you getting evicted. What they'll say is that you've cost the board a lot of time and money, made people angry, and made a lot of enemies, so now, they'll say it's good faith that we're getting rid of you, because you're not living in our community the way we want you to."

Which means that maybe you can prove that the board's decision to give you the boot was unwarranted, and maybe you can't. The bottom line is, if you've made a hobby of being a pain in the neck, and have blithely gone about alienating your neighbors, your super, your board of directors, and your building's manag-

ing agent, you may be shopping for a new place to live, should all those people decide that they've had it with you - even if you haven't done anything explicitly criminal.

Had he to do it all over again, Pullman says he might handle his beef with the board and building a little differently. "I would have had a letter written that would have cost an attorney an hour or two to write. I would never have gotten involved directly with [the board] in anything to do with the co-op. It would have been the attorney - not me - writing them a letter saying I had a complaint."

After the Storm

Of course, even if you can prove that the board has discriminated against you, or acted with malice, will you want to continue to live in an atmosphere of such ill will? If a shareholder wins a lawsuit against their board and then opts to leave the building anyway, the specter of that litigation will follow them forever, raising eyebrows - and probably inspiring rejections - in every board that reviews that ex-shareholder's application. In the post-Pullman climate, win or lose, if you've been through a case like this, you've been branded "objectionable,"and that label may cause some long-term headaches.

"If you get evicted under this new ruling, you're done - you're not getting into another co-op," says Bailey. "Every good co-op does a litigation search, and there's no way they'll miss that. David Pullman is now buying a condo."

The only up side, according to Bailey, is that, "Even if you're evicted, you get to sell your unit, and you get the equity or money back. You have to move, which is a horrible thing, but it's not like you lose your place without getting the money. That's a misconception that a lot of the newspapers aren't addressing."

The Appellate Court said as much in its decision regarding the Pullman case, in that, "The cooperative emphasized that upon the sale of the apartment, it will turn over to the defendant all proceeds after deduction of unpaid use and occupancy, costs of sale, and litigation expenses incurred in this dispute." So even if you lose your home, you probably won't lose your shirt. According to Bailey and Pullman, Pullman has been allowed to sell his apartment on West 67th Street for full share value "to avoid a fire sale," using a broker of his choice.

The Last Word?

The Appellate decision is the most important legal precedent to emerge from the West 67th Street saga - and while it seems that a whole new era of shareholder-board relations is beginning, the decision made last month is still open to possible judicial review. So it's not a completely done deal yet, but the precedent has been set, and all over the city, questions are being raised, both by boards and by shareholders.

In the words of one attorney, "If you're a tenant, be careful what you say. Tenants are going to be much better behaved. Co-ops are calling attorneys with lists, and tenants are calling scared."

And, says Pullman, "Since this was a precedence case, no one can know the end result. Everyone in the real estate community thought I would be overturned. But I'll continue to fight for shareholders' rights. [The courts] are supposed to be of the people, not of the pack. They saw me as if I'm in the building driving them crazy, but I have just as much right as [the board members]. Just because you're on the board doesn't mean that you have more shares than I do. It was the principle of the thing."

The ultimate impact of Pullman vs. 40 West 67th Street will be measurable over time - for now, it's a new precedent just waiting to be tested by the litigious masses in New York's co-op community.

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