



Armstrong  
Teasdale

AT Academy: Co-Op and Condo Series

***PULLMAN: Evicting the  
Undesirable Shareholder***

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# The History of *Pullman*

## ■ *Pre-Pullman and Levandusky*

- *Pre-Pullman*: Co-op must prove to a Court that a shareholder's conduct is objectionable
- *Levandusky*: 1990 case that established the Business Judgment Rule for a shareholder challenge to a co-op's decision

## ■ *Facts of Pullman Case*

- Shareholder David Pullman purchased a cooperative apartment at 40 West 67<sup>th</sup> Street, a 38-unit cooperative, in 1998
- "Objectionable conduct" by Pullman: complaints, altercations, illegal alterations
- Shareholders voted to terminate Pullman's proprietary lease
- Pullman refused to vacate the apartment

# The History of *Pullman* (Continued)

- **Lower Court Decision**

- Declined to apply the Business Judgment Rule

- **Court of Appeals Decision and Analysis**

- Applied the Business Judgment Rule
- Shareholder must show that the Board acted: (i) outside the scope of its authority; (ii) in a way that did not legitimately further the corporate purpose; or (iii) in bad faith

- ***Pullman* is the current standard for protecting a co-op's right to terminate a shareholder's proprietary lease**

# How to Prove Repeated Objectionable Conduct

- Objectionable conduct must be repeated
- General rule of thumb is that the thicker the file, the more likely a Court is to rule in the building's favor
- Important to show repeated instances of objectionable conduct, over a period of time, after having provided notice and a reasonable opportunity to cure
- Letters should cite by-law or lease provision about objectionable conduct [most often Paragraph 31(f)]
- Special meeting notice should be as specific as possible, detailing as many instances of objectionable conduct as possible

# Procedure for “Pullman-izing”

- **Vote of Shareholders (Provided for in Lease)**
  - Notice to shareholder detailing each instance of objectionable conduct.
  - Notice must provide time and place of meeting and an opportunity to be heard.
  - Meeting held; opportunity to be heard; vote taken.
  - If vote confirms tenancy is undesirable because of objectionable conduct, the Board must provide termination notice.
  - Termination notice must contain details of the special meeting, that the vote was held, and the lease’s objectionable conduct clause. Must provide a date certain on which the lease expires.
- **Vote of Board (Provided for in Lease)**
  - Same procedure, except the special meeting is held by the board.
  - Most often a supermajority approval is needed.

# Court Action

- **If the shareholder does not vacate upon expiration of the lease, the commencement of an eviction/ejectment proceeding is warranted.**
- **Proceeding should seek the following relief:**
  - Declaratory judgment that the lease was terminated;
  - Judgment of ejectment/possession;
  - Judgment for outstanding charges owed through the date of termination;
  - Money judgment for fair market value of use and occupancy from the date of the lease's expiration; and
  - Attorneys' fees and disbursements.
- **Once the Court determines that termination of the lease is warranted based on the Business Judgment Rule, the mechanism by which the surrender of the apartment is effectuated is outlined in the lease:**
  - Shareholder must surrender the certificate
  - Board may sell the apartment, and if there is excess money (after the building recovers all monies owed) it gets returned to the shareholder.

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- Code Word: **COURT**





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