CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART

WINDSOR TERRACE AT JAMAICA ESTATES OWNERS INC., **Petitioner,** **-against-** **ARUNA ADVANI** **Respondent,** **"JOHN DOE", and "JANE DOE",** **Respondent(s)-Undertenant(s).**	**Index No. L&T 3024682/22** **DECISION/ORDER**

Procedural History

Petitioner is a cooperative corporation that owns the building located at 170-40 Highland Avenue, Jamaica Estates, NY 11434. Respondent is the holder of shares appurtenant to Apartment 401 at 170-40 Highland Avenue. Petitioner and Respondent entered into a proprietary lease. Petitioner commenced this holdover proceeding on March 3, 2022, seeking possession of the subject cooperative apartment after Petitioner terminated Respondent shareholder-tenant's shares due to objectionable conduct under Article 31, subdivision (f) of the proprietary lease (Exhibit "D"). Between May 29, 2018 and April 14, 2021, Petitioner issued Respondent at least five notices of Respondent's objectionable conduct under the terms of the proprietary lease (Exhibits "H", "I", "J", "K", and "L").

Petitioner invited Respondent to respond to the claims of objectionable conduct before the cooperative Board of Directors ("the Board") at a special meeting held on May 5, 2021 (Exhibit "N"). Respondent refused to attend (*id.*). The Board then voted unanimously to terminate Respondent's proprietary lease. The Board subsequently issued a five-day notice of termination, indicating Respondent's tenancy would terminate on February 28, 2022 (Exhibit "A"). Respondent continued in possession of the subject premises after the termination of the proprietary lease. Petitioner now moves for summary judgment on the petition, alleging that this Court must give deference to the Board's decision to terminate the shares. Respondent cross-moved for the same relief.

Summary Judgment

A party moving for summary judgment must demonstrate that "the cause of action or defense . . . [is] established sufficiently to warrant the court as a matter of law in direction judgment in favor of any party" (CPLR § 3212 [b]). Summary judgment is granted only where the moving party "make[s] a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324). Once the moving party has established entitlement to judgment, the burden shifts to the non-moving party to "come forward with admissible proof establishing the existence of triable issues of fact or demonstrate an acceptable excuse for its failure to do so" (*London Terrace Towers, Inc. v. Davis*, 6 Misc. 3d 600, 608 [Civ Ct, New York County 2004]) In considering a motion for summary judgment, the court "must view the evidence in the light most favorable to the nonmoving party and give the nonmoving party all the reasonable inferences that can be drawn from the evidence" (*Id.*).

Business-Judgment Rule

The business-judgment rule "is a common-law doctrine by which courts exercise restraint and defer to good faith decisions made by boards of directors in business settings" (*40 W. 67th St. Corp. v. Pullman*, 100 N.Y.2d 147, 153 [Ct App 2003]) (*see also Levandusky v. One Fifth Ave. Apt. Corp.*, 75 N.Y.2d 530, 537-538 [Ct App 1990]). The *Levandusky* court applied an analogous rule to the actions of residential cooperative boards: "So long as the board acts for the purposes of the cooperative, within the scope of its authority and in good faith, courts will not substitute their judgment for the board's" (75 N.Y.2d at 538). Where a cooperative board votes to terminate the tenancy of a shareholder-tenant due to objectionable conduct under RPAPL § 711 [1], "courts should defer to a board's vote as competent evidence that the shareholder-tenant's conduct is objectionable under RPAPL 711 . . . ." (*13315 Owner's Corp. v. Kennedy*, 4 Misc. 3d 931, 938 [Civ Ct, New York County 2004]) (citing *Pullman*, 100 N.Y.2d at 155 [affirming a lower court's application of the business-judgment rule to grant a cooperative's motion for summary judgment against a shareholder]) (*see also* RPAPL § 711[1]). A cooperative board of directors' vote is entitled to the same deference under the business judgment rule as a cooperative shareholders' vote (*London Terrace Towers, Inc. v. Davis*, 6 Misc. 3d 600, 613 [Civ Ct, New York County 2004]).

The court in *13315 Owner's Corp.* set forth a two-step framework under *Pullman* to analyze a shareholder-tenant's challenge to a cooperative board's decision (4 Misc. 3d 931, 938). First, the court determines whether to apply the business judgment rule to the cooperative board's decision. "It is the shareholder-tenant's burden to persuade the court why it should not apply the business judgment rule and defer to the vote" (*13315 Owner's Corp.*, 4 Misc. 3d at 938). To satisfy the burden of persuasion, the shareholder-tenant "must make a showing that the board acted (1) outside the scope of its authority, (2) in a way that did not legitimately further the corporate purpose or (3) in bad faith." (*Pullman*, 100 N.Y.2d, at 155). If the shareholder successfully raises one of these defenses, and the court does not apply the business judgment rule, and must determine "from its own evaluation of the competent evidence whether the cooperative is entitled to possession" (*13315 Owner's Corp.*, 4 Misc 3d at 938). In this second step, "the cooperative has the burden to prove to the court that it is entitled to possession" (*Id.*).

Application

A. Whether the Board acted within the scope of its authority

A determination of whether a cooperative board acted within the scope of its authority rests on whether the cooperative board followed termination procedures as they are laid out in the proprietary lease, to which each shareholder-tenant agrees (*Pullman*, 100 NY2d at 156) (holding a cooperative board acted within the scope of its authority when "[t]he cooperative unfailingly followed the procedures contained in the lease when acting to terminate defendant's tenancy.") (*cf. 13315 Owner's Corp.*, 4 Misc. 3d) (holding a cooperative board acted outside the scope of its authority where it failed to adhere to the board election procedure outlined in the proprietary lease).

Petitioner has demonstrated that the Board acted within the scope of its authority in terminating Respondent's tenancy. Article 31, subdivision (f) of the proprietary lease establishes the procedure by which the Board may terminate a shareholder-tenant's shares for objectionable conduct (Exhibit "D"). "[R]epeatedly to violate or disregard the House Rules . . . or to permit or tolerate a person of dissolute, loose or immoral character to enter or remain in the Building or the Apartment, shall be deemed to be objectionable conduct" (Exhibit "D"). The Lessor is to issue "written notice" when the shareholder-tenant, or "a person dwelling or visiting in the apartment" is observed engaging in said objectionable conduct. If the shareholder-tenant or their counterpart persists in such conduct, the Board may proceed to terminate the shareholder-tenant's lease if it

determines "upon the affirmative vote of two-thirds of its then Board of Directors, at a meeting duly called for that purpose . . . that the tenancy of the Lessee is undesirable" (Exhibit "D"). In that event, "the Lessor shall give to the Lessee a notice stating that the term hereof will expire on a date at least five (5) days thereafter . . . ." (Exhibit "A").

Petitioner issued Respondent five notices of her objectionable conduct and granted several opportunities for Respondent to cure said objectionable conduct, a courtesy not typically extended in nuisance holdover proceedings (Exhibits "H", "I", "J", "K", and "L"). Petitioner afforded Respondent an opportunity to contest the allegations of objectionable conduct before the Board, which Respondent refused (Exhibits "L" and "N"). Petitioner sent Respondent notice of the Board's "unanimous resolution" from this meeting that, if Respondent's behavior continues, the Board "will exercise the remedies available to it pursuant to Article 31 of the proprietary lease" (Exhibit "O"). Subsequently, Petitioner issued a five-day notice of termination to Respondent (Exhibit "P"). To this extent, Petitioner has demonstrated that the Board followed its own procedure for termination, and thereby acted within the scope of its authority.

Respondent has not successfully raised a claim that the Board acted beyond the scope of its authority. Respondent's allegation that the holdover petition was invalid or "false" is not a valid argument. Nor is this position supported by any evidence. There is no requirement in Article 31 of the proprietary lease that two-thirds of the cooperative board "approve" the holdover petition, nor how many board members must sign the termination notice (Exhibit "D"). The two-thirds threshold applies to the board votes necessary to terminate the shares.

B. Whether the Board's Decision Legitimately Furthered the Corporate Purpose

The business judgment rule "prohibits judicial inquiry into Board actions that, presupposing good faith, are taken in legitimate furtherance of corporate purposes" (*Pullman* 100 NY2d at 156). For the actions of a cooperative board to "legitimately further the corporate purpose[,] . . . there must be a legitimate relationship between the Board's action and the welfare of the cooperative" (*Id.*). "The very concept of cooperative living entails a voluntary, shared control over rules, maintenance and the composition of the community" (*Pullman* 100 NY2d at 158). Upon signing the proprietary lease, shareholder-tenants "voluntarily agree[] to submit to the authority of a cooperative board" (*Id.*). Thus, a shareholder-tenant is bound to the terms of their proprietary lease, which are established by fellow shareholder-tenants and enforced by the cooperative board for the purpose of maintaining the welfare of the cooperative.

Petitioner has demonstrated that the Board's decision to terminate Respondent's proprietary lease legitimately furthered the corporate purpose. Petitioner enumerated Respondent's objectionable conduct in each of the five notices the Board issued. (Exhibits "H", "I", "J", "K", and "L"). In each of the five notices issued to Respondent, the Board cited violations of the lease, some of which escalated to the point of necessitating police involvement or amounting to statutory violations. Respondent caused disturbances "in violation of paragraph '18(b)' of the Proprietary Lease[,]" which at one point "involved a very loud fight . . . during which an occupant was taken from [the] Apartment by ambulance with a visible bloody wound" (Exhibit A). Respondent left the door to her apartment "propped open" and caused "excessive smoke/odors to emanate from [the] Apartment and interfere with the other shareholders and building staff in violation of paragraph '18(b)' of the Proprietary Lease" (Exhibit A). Respondent permitted unauthorized occupants to reside in the apartment "in violation of paragraph '14' of the Proprietary Lease[,]" and said occupants were "repeatedly smoking in the public hallways and in the Coop elevators in violation of the New York City Clean Air Act, which, in turn, constitutes a violation of paragraph '18(d)' of the Proprietary Lease" (Exhibit A).

Respondent acted against the will of the cooperative by repeatedly violating the proprietary lease to which she and all other shareholder-tenants agreed. The Board, under its "fiduciary duty to further the collective interests of the cooperative," voted unanimously to terminate Respondent's tenancy so such objectionable conduct no longer occurs on the premises (*Id.*).

In *Pullman*, the court inferred a legitimate relationship between the Board's action and the welfare of the cooperative from an unanimous Board vote to terminate an objectionable tenant (*Id.*). Given that a cooperative's board of directors' vote is granted equal weight to a cooperative's shareholders' vote, this court sees no reason to rule otherwise.

Respondent does not raise a defense under this prong of the *Pullman* analysis.

C. Whether the Board acted in bad faith

A cooperative board's decision is presupposed to be made in good faith, absent a showing of "arbitrariness, favoritism, discrimination or malice on the cooperative's part" (*Id.* at 157).

Respondent argues that the cooperative decided to terminate her lease in bad faith, asserting the eviction proceedings are retaliatory in nature. However, other than her own claims, Respondent presented no evidence that supports her claims. Though Respondent presented an

affidavit of a former shareholder setting forth his experience with the board, said affidavit does not challenge nor contradict the allegations in the notices sent to Respondent. Absent a legitimate showing of any arbitrariness, favoritism, discrimination or malice on the cooperative's part, the Petitioner has successfully established that the Board action was not made in bad faith.

Conclusion

Petitioner is entitled to summary judgment as they have sufficiently established their cause of action to warrant judgment in their favor. Respondent's cross-motion alleges little more than has already been considered and dismissed by this Court, and thereby fails to raise triable issues of material fact. Respondent's cross-motion for summary judgment is denied in its entirety as it is unsupported in any way.

Based on the foregoing, the motion for summary judgment is granted in its entirety. Petitioner is granted a final judgment of possession against Respondent Advani. A warrant may issue forthwith but execution is stayed through September 15, 2023 for Respondent to vacate. If there is a default, Petitioner may cause a marshal's notice to be served. Earliest eviction date is September 18, 2023. Petitioner is also granted a final judgment of possession and a warrant of eviction against John Doe and Jane Doe. Petitioner shall submit a non-military investigation affidavit with its warrant request. Execution and EED as set forth above.

This constitutes the decision/order of the court.

DATED: **QUEENS, NEW YORK**
JULY 31, 2023

Hon. John S. Lansden

HON. JOHN S. LANSDEN