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Alberta Court Rules that Condominium Bylaws can Restrict Short-Term Rentals like Airbnb

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In *Condominium Corporation No 042 5177 v Kuzio*, 2020 ABQB 152 [Kuzio], the Alberta Court of Queen's Bench determined that section 32(5) of the *Condominium Property Act* does not invalidate condominium bylaws that restrict or prohibit short-term rentals through web-based platforms such as Airbnb. Here, the Board of Directors of a condominium corporation sought an injunction against four unit owners listing their units on short-term accommodation websites, which the Board claimed was contrary to the corporation's bylaws.

The Court first considered whether an individual who occupies a condominium unit for a short period enters into a lease or merely has a licence to occupy the unit. Noting that Airbnb renters are the functional equivalent of hotel guests, the Court concluded that rentals through online platforms like Airbnb, where the parties do not enter into a lease agreement, are licences.

While section 32(5) of the *Condominium Property Act* states that "No bylaw operates to prohibit or restrict the devolution of units or any transfer, lease, mortgage or other dealing," the Court held that the section does not create an unrestricted right to alienate a condominium unit. The *Condominium Property Act* creates a regime for communal living where owners must accept some restrictions on their autonomy. Creating an unrestricted right to alienation would significantly impair the power of condominium boards to manage a property. As such, the Court interpreted section 32(5) to permit condominium bylaws that restrict alienation through means other than by transfer, lease, mortgage or other dealing.

Having determined that the corporation's bylaws do not violate the *Condominium Property Act*, the Court concluded that listing the units on short-term accommodation websites constituted a commercial purpose, as doing so generated income. This was contrary to the bylaws and would result in a fundamental change to the structure and character of the condominium. Thus, the Court (i) declared that the corporation's bylaws are valid and prohibit short-term, Airbnb-style rentals and (ii) issued an injunction against the owners listing their units on short-term accommodation websites.

The decision in *Kuzio* is a departure from a previous case in Alberta holding that condominium boards cannot restrict a unit owner's ability to enter into short-term rentals. In *Condominium Corporation No 0312235 v Scott*, 2015 ABQB 171, the Alberta Court of Queen's Bench struck a condominium bylaw that created a mandatory rental pool because it restricted owners' right to alienation, which included the right to select the rental mechanism an owner wishes to use. By contrast, *Kuzio* explicitly permits constraints on certain rental mechanisms, recognizing that condominium property owners do not have the same rights as owners of property in fee simple and are subject to condominium bylaws.

If you have questions about your condominium property, Bennett Jones lawyers can advise.

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