

A Challenge to a Local Government's Requirements for Property Rentals

1114829 B.C. Ltd. v. Whistler (Municipality) 2019 BCSC 752

In this May 14, 2019 decision, the owners of strata units in a hotel in Whistler and their real estate management companies commenced a judicial review challenging the Resort Municipality of Whistler's (the "RMOW") amendments to its Zoning and Business Licensing Bylaws as well as a s. 219 covenant registered on title to the strata lands in favour of the RMOW (the "Rental Pool Covenant"). The bylaws were passed to support the continued implementation of rental pool covenants such as the Rental Pool Covenant. The purpose of the rental pool covenants was to ensure the provision an adequate supply of tourist accommodations within Whistler, which was an objective articulated in the RMOW's Official Community Plan. The RMOW's goal was to maximize the number of people able to visit and stay within the RMOW and to ensure a positive visitor experience. The Rental Pool Covenant limited owner use of its strata units to 56 days per calendar year. When not used by the owner, the accommodation had to be made available for use by the public through a single rental pool within the particular development. The covenant expressly required a rental management agreement and outlined how much owners could use their property and when. The Court held that the RMOW's interest in ensuring an adequate supply of traditional hotel accommodations within the resort community was legitimate. As such, the bylaws and covenant were found to be *intra vires* the powers of the RMOW. Further, the Court held that the RMOW was expressly empowered to regulate the operation of businesses through its licensing bylaw, even where the licensing bylaw incidentally regulated the use of land. The petitioners were also unsuccessful in their arguments that the covenant and bylaws were impermissibly vague or uncertain. While the covenant re-

Municipalities have the power to limit how much and when owners can use their properties.

ferred to a rental management agreement that was not included in the covenant, the Court found that the covenant and publicly available information that was readily accessible provided a potential purchaser with enough information to know what was or was not permitted by the covenant. Additionally, the bylaws were found to be capable of being understood on their face and to provide a basis for legal debate and judicial interpretation. Consequently, the bylaws and covenant were upheld, and the RMOW was successful in having the proceedings dismissed.

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Adrienne brings over 24 years of legal experience in litigation and dispute resolution representing local governments and other public entities, insurers and corporations, including in-house as Senior Staff Lawyer at Municipal Insurance Association of BC. Adrienne has represented and provided strategic and practical advice in relation to a variety of complex matters, including procurement, construction (including builders' lien, delay and defect claims), environmental, regulatory, expropriation, bylaw and FOIPPA disputes and processes, municipal jurisdiction, procedure, constitutional challenges, judicial reviews, remedial action orders, administrative hearing processes, contract claims, and privacy, insurance and risk management issues. Adrienne has extensive experience at all levels of Court in British Columbia, administrative tribunals, mediations and arbitrations. Adrienne regularly writes and presents on a variety of matters of interest to public entities and the construction industry.