

# CASE LAW ROUND UP

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## Duncan v. Savoy, 2020 NSSC 331

The Court in this Nova Scotia case was asked to consider whether a purchaser was able to terminate a purchase after the delivery of the Estoppel Certificate. In a condominium purchase, the Estoppel Certificate is an essential component of the due diligence review which a purchaser's lawyer undertakes. The standard form Agreement of Purchase and Sale for a resale condominium specifies that an Estoppel Certificate must be provided to the purchaser, by the seller, no less than 7 business days prior to closing. In the event that a purchaser is not satisfied with the estoppel they can terminate the agreement and have their deposit returned, so long as they provide their notice to do so within 3 days of receipt of the Estoppel Certificate.

The purchaser in this case, upon reviewing the Estoppel Certificate, was concerned about the financial health of the condominium corporation, and its ability to cover the expenditures required to address deficiencies, such as water leaks, in the building. Based on their review of

the Estoppel Certificate, the purchaser terminated the Agreement and requested the return of their deposit.

The seller refused to return the deposit, stating that the agreement had been improperly terminated. The seller argued that the Estoppel Certificate merely confirmed the information previously provided in the financial statements, reserve fund study, and Board minutes. The seller argued that there were no new or material facts disclosed in the Estoppel Certificate and as such the purchaser was not justified in terminating the agreement.

The Court in their review, examined the role of the Estoppel Certificate in both a property transaction, and in respect of the information it provides. The Court stated at paragraph 23 that "the Estoppel Certificate is not an insignificant part of the property transaction. It is an important component of a condominium sale."

The Court held that the Estoppel Certificate's purpose is to provide further and more detailed information in order to enable a purchaser



to make an informed decision as to the financial health of the condominium corporation. A purchaser is entitled to terminate a transaction, in line with the terms of the agreement, following their review of the Estoppel Certificate. There is no requirement that a material change be revealed in the Estoppel Certificate, in order to allow a purchaser to terminate the transaction.

For those Property Managers and Board Directors who are preparing the Estoppel Certificates on behalf of their Condominium Corporations, it is essential to understand the importance placed on an Estoppel Certificate, at law, and ensure that complete, clear and correct information is provided.

## Condominium Corporation No. 0425177 v. Kuzio, 2019 ABQB 814

The Condominium Corporation in this Alberta case, sought an interim injunction against the Respondents preventing them from listing their unit on AirBnB type sites, and offering their units as short term accommodation.

The Corporation was seeking to enforce the provisions in their Corporation's governing documents, which stated that units were to only be occupied as single-family residences and that they could not be used for any commercial purpose, unless approval was provided by the Board. The Corporation's position was that these provisions in their documents prevented a unit owner from offering their units of short term accommodation.

The Respondents argued that they were allowed to offer their unit for short term accommodation as it was a form of leasing. As per the Alberta *Condominium Property Act* governing documents cannot restrict

the leasing of units. As such the Respondents argued that the Corporation could not prevent them from having short term "rentals" in their units. It is important to note that the Respondents did not have a lease signed by those who were "renting" their units.

In granting the interim injunction, the Court characterized the nature of an AirBnB style arrangement as a licence, not a lease. The Court relied on the fact that the AirBnB Terms of Service explicitly stated that the booking of accommodation, and therefore the contractual relationship between a host and a guest, was a limited licence. Further, the Court stated, at paragraph 61:

**"The nature of the occupancy of units by Customers, in my view, strongly supports the characterization of the arrangement with the Respondents as being a licence only. Customers occupy the premises only briefly. They do not take on the trappings of tenants under the Act or Bylaws. Their occupation is like that of a person who stays in a hotel room. Rather than understanding the relationship as being a very short lease, the relationship is better understood as being a very short stay in the functional equivalent of a very small hotel."**

The Court found that the fact that the nature of the AirBnB style arrangement was a licence, not a lease, the Condominium Corporation could make restrictions in respect of the offering of this type of accommodation.

This decision of the Court was confirmed in *Condominium Corporation No. 0425177 v Kuzio, 2020 ABQB 152* where the Court ordered that the Interim Injunction become permanent. ■

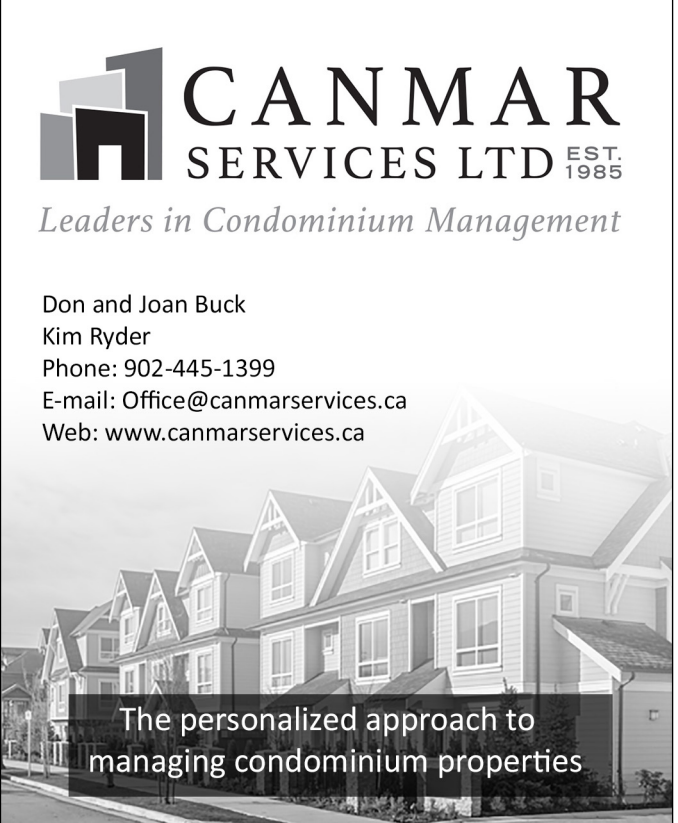



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