

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

DEC 15 2020

No. S-179918
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN 

THE OWNERS, STRATA PLAN LMS1104

PLAINTIFF

AND

AIRBNB IRELAND UC, AIRBNB INC.,
AIRBNB PAYMENTS, INC., AIRBNB PAYMENTS UK LTD.
JOHN DOE 1 AND JANE DOE 1
JOHN DOE 2 AND JANE DOE 2

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

FURTHER AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview

1. The plaintiff brings this action on its behalf, and on behalf of a proposed class.
2. The defendants, Airbnb Ireland UC, Airbnb Inc., Airbnb Payments Inc., and Airbnb Payments UK Ltd. (collectively referred to as the “Airbnb Defendants”) operate an online property rental business in British Columbia and all other provinces and territories in Canada through the websites airbnb.com, airbnb.co.uk, and airbnb.ca, and others (collectively “Airbnb Websites”).
3. Since on or after September 26, 2016, the Airbnb Defendants have rented out and continue to rent out properties throughout British Columbia and Canada, including the use of the common property and common assets which the plaintiff must manage and maintain (the “Plaintiff’s Property”), in breach of strata corporation or condominium corporation bylaws, municipal bylaws, and without the consent of the strata or condominium corporations where each property is located (the “Unauthorized Rentals”).
4. The Airbnb Defendants directly profit from each Unauthorized Rental without any compensation to the rightful owners, including strata corporations and condominium corporations.

Parties

5. The plaintiff, The Owners, Strata Plan LMS1104, is a residential strata corporation located in Vancouver, British Columbia duly subsisting under the provisions of the *Strata Property Act*, and has an address for service for these proceedings at 1900 – 1177 West Hastings, in the City of Vancouver, in the Province of British Columbia.
6. The proposed definition of the class is as follows:

“All strata corporations and condominium corporations in British Columbia and elsewhere in Canada where the common property or common assets under their management or control, have been used or rented through Airbnb Websites without their consent and in breach of the strata or condominium bylaws or rules since September 26, 2016.”

(collectively, the "Class" or the "Class Members")

7. *[Left intentionally blank.]*

8. The Owners, Strata Plan BCS152, is a member of the Class, and consents and agrees to the representative Plaintiff commencing the within proceedings on its behalf.

9. The defendant, Airbnb Ireland UC, is incorporated in Ireland with a principal office at The Watermarque Building, South Lotts Road, Ringsend, Dublin 4, Ireland.

10. The defendant, Airbnb Inc., is incorporated in the United States with a principal office at 888 Brannan Street, 4th Floor, San Francisco, California, 94107.

11. The defendant, Airbnb Payments Inc., is incorporated in the United States with a principal office at 888 Brannan Street, 4th Floor, San Francisco, California, 94107.

12. The defendant, Airbnb Payments UK Ltd., is incorporated in the United Kingdom with a principal office located at Suite 1, 3rd Floor 11-12 St. James's Square, London, United Kingdom, SW1Y 4LB.

13. The Airbnb defendants each participated in the advertisement, rental, and received payment for each Unauthorized Rental in British Columbia and Canada. The Airbnb defendants, and each of them, knew or ought to have known that each Unauthorized Rental would result in entry upon and use of common property and common assets that the strata corporation or condominium corporation must manage and maintain for the benefit of all its owners (the "Class Member's Property").

14. The Airbnb Defendants each knew or ought to have known that each strata corporation or condominium corporation did not provide consent or otherwise authorize for the entry upon and use of the common property or common assets under its management with respect to each of the Unauthorized Rentals.

15. *[Left intentionally blank]*

16. At all material times, Airbnb Ireland UC, Airbnb Inc., Airbnb Payments Inc., and Airbnb Payments UK Ltd. carried on business as a partnership or joint venture in respect of the promotion, rental and payment related to the Unauthorized Rentals.

17. The defendants, John Doe 1 and Jane Doe 1, are persons or corporations unknown to the plaintiff, that since September 26, 2016, advertised the Unauthorized Rentals on the Airbnb Websites, without the consent of the plaintiff or other strata corporations or condominium corporations (these defendants will be referred to collectively as the “Host Defendants”).

18. The defendants, John Doe 2 and Jane Doe 2, are persons that entered upon and stayed at the Unauthorized Rentals that, since September 26, 2016, were listed or advertised on the Airbnb Websites, without the consent of the plaintiff or other strata corporations or condominium corporations (these defendants will be referred to collectively as the “Guest Defendants”).

Jurisdiction

19. Airbnb, and each of the Host Defendants are subject to the jurisdiction of this Honourable Court because at all material times they operated, conducted, engaged in and carried on business and continue to do so in British Columbia and throughout Canada involving real estate located in British Columbia and throughout Canada. All defendants committed tortious acts within British Columbia and throughout Canada, or directed to British Columbia and throughout Canada.

Airbnb

20. Airbnb is in the business of providing rental or leasing, booking and payment services for rental, leasing, sub-leasing or licensing transactions between owners or renters of real property and prospective tenants or transient users of property.

21. Airbnb provides some of the following services to or on behalf of an owner of residential real estate in British Columbia and throughout Canada:

- (a) Collecting rents and/or security deposits for the use of the real estate;
- (b) Managing the real estate on behalf of the owner by negotiating or entering into contracts; and

- (c) Such further services as may be proven at trial.

22. Airbnb provides the following services to or on behalf of a party to a rental, leasing, and licensing transaction in real estate in British Columbia and Canada:

- (a) advising on the appropriate price for use of the real estate;
- (b) making representations about the real estate;
- (c) finding real estate for a party to rent;
- (d) finding a party to rent the real estate;
- (e) presenting offers to rent the real estate; and
- (f) receiving deposit and rent payment money paid in respect of the real estate.

23. Airbnb does not charge fees for the above services and, instead, collects a percentage commission from both hosts and guests for all accommodations booked through the Airbnb Websites. Thus, Airbnb solicits prospective lessors and tenants and collects both commissions and rent from the rent, lease or license of real property.

24. In addition to acting as a rental broker, Airbnb provides a range of services and guarantees to hosts and guests in order to encourage and facilitate listings and bookings, including, but not limited to the following:

- (a) facilitates communication between hosts and guests;
- (b) verifies personal information of guests and hosts;
- (c) collects taxes in some jurisdictions;
- (d) provides insurance for eligible third party claims, property damage, and bodily injury;
- (e) removes rental or leasing listings in violation of its terms of service;

25. Airbnb also provides a “travel service” and is a “travel agent” as defined in the *Busi-*

ness Practices and Consumer Protection Act, S.B.C. 2004, c. 2 (“BTCPA”) and *Travel Industry Regulation*.

26. Airbnb is not licensed pursuant to the BTCPA and *Real Estate Services Act*, S.B.C. 2004, c. 42 or equivalent legislation in other provinces and territories in Canada.

27. The Airbnb and Host Defendants, or each of them, participated in the advertisement and rental of, and received payment for each Unauthorized Rental in British Columbia and Canada.

28. The defendants, or each of them, knew or ought to have known that each respective strata corporation or condominium corporation did not provide consent for the entry upon and rental of each of the Unauthorized Rentals.

29. The Airbnb and Host Defendants, or each of them, knew or ought to have known and intended that the advertisement, rental, and receipt of payment for each of the Unauthorized Rentals would result in the unauthorized entry and/or occupation of the Plaintiff’s Property and Class Member’s Property without lawful right, by the Guest Defendants.

30. Airbnb knowingly, recklessly or with willful blindness permitted and facilitated and continues to permit and facilitate the rental, lease or license of real properties, including the Plaintiff’s Property and Class Member’s Property in violation of Airbnb’s Terms of Service and in breach of municipal bylaws, strata corporation bylaws, and residential rental agreements in British Columbia and throughout Canada.

The plaintiff

31. The plaintiff brings this action on its own behalf and on behalf of individual owners pursuant to ss.171 and 172 of the *Strata Property Act*, S.B.C. 1998, c.43, and amendments thereto.

32. The plaintiff is a residential strata corporation comprised of common property, common assets and strata lots located in Vancouver, British Columbia (the “Condominium”).

33. The plaintiff strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.

34. The plaintiff's bylaws prohibit rentals of strata lots for less than one year without the prior approval of the plaintiff.

35. The plaintiff's bylaws further provide that an owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that is illegal or injurious to the reputation of the Condominium.

36. On numerous occasions, the Airbnb defendants were involved in a concerted action with the Host Defendants with respect to the strata lots located within the Condominium, for the common purpose of gaining entry onto the Plaintiff's Property in order to earn profit for the Airbnb Defendants and Host Defendants.

37. Airbnb knew or ought to have known that the short-term rental of strata lots in the Condominium were prohibited or restricted by municipal bylaws and strata corporation bylaws but continued to advertise, solicit, permit, facilitate and collect payment for the unauthorized use of the Plaintiff's Property.

38. The defendants have unreasonably interfered with the use and enjoyment of the common property and common assets of the owners of the Condominium through increased foot traffic, wear and tear, parties on common property, unreasonable noise, increased garbage, security issues, and others as may be proven at trial.

39. As a result of the Unauthorized Rentals, the plaintiff suffered damage including:

- (a) damage to common property and common assets such as the lobby, elevators, swimming pool, sauna, gardens;
- (b) increased maintenance costs;
- (c) increased administrative costs;
- (d) interference with enjoyment of property;
- (e) nuisance;
- (f) depreciation of property value;
- (g) other particulars as may be proven at trial.

Part 2: RELIEF SOUGHT

1. The plaintiff claims, on its own behalf and on behalf of the Class, as follows:
 - a. An order certifying this action as a class action proceeding and appointing it as the representative plaintiff under the *Class Proceedings Act*;
 - b. [*Left intentionally blank*]
 - c. [*Left intentionally blank*]
 - d. An injunction requiring the defendants to cease advertising rentals of property located in British Columbia and Canada without the consent of the strata corporations or condominium corporations whose common property and common assets under their management or control are affected;
 - e. An accounting and disgorgement of income received by each of the Airbnb defendants regarding the Unauthorized Rentals;
 - f. General damages;
 - g. Special damages;
 - h. Punitive damages;
 - i. Pre-judgment interest;
 - j. Costs; and
 - k. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. Each of the defendants are joint and several tortfeasors.

Joint Trespass

2. The Airbnb and Host Defendants, or each of them, participated in the advertisement and rental of, and received payment for each Unauthorized Rental in British Columbia and Canada.

3. The defendants, or each of them, knew or ought to have known that each respective strata corporation or condominium corporation did not provide consent for the entry upon and rental of each of the Unauthorized Rentals.

4. The defendants, or each of them, knew or ought to have known that the advertisement, rental, and receipt of payment for each of the Unauthorized Rentals would result in the unauthorized entry, use and/or occupation of the Plaintiff's Property and Class Members' properties without lawful right, by the Guest Defendants.

5. The defendants were engaged in the deliberate and repeated trespass to the Plaintiff's Property and Class Members' Properties carried out in concert with others for the common purpose of making a profit.

6. Further, or alternatively, the plaintiff waives the tort and pleads that the plaintiff and the other Class Members are entitled to recover the unjust enrichment accruing to each of the defendants on restitutionary principles rather than their tort damages.

Unjust Enrichment

7. The Airbnb and Host Defendants, or each of them, were unjustly enriched through the benefit of, the use of, and receiving payment for such use of the Plaintiff's Property and the plaintiff has suffered a corresponding deprivation without any juristic reason.

Conspiracy

8. The Airbnb and Host Defendants entered into an agreement for the rental of the Plaintiff's Property and Class Members' Properties without the consent of the plaintiff and/or the rightful owners of such properties whereby unauthorized persons repeatedly entered upon and used the Plaintiff's Property and Class Member's Properties, resulting in damage to the plaintiff and Class Members.

9. Further, or alternatively, the plaintiff waives the tort and pleads that the plaintiff and the other Class Members are entitled to recover the unjust enrichment accruing to the defendants on restitutionary principles rather than their tort damages.

Further Claims

10. The plaintiff further claims that the defendants have committed the following:

- a. Tort of unlawful interference with economic relations; and
- b. Nuisance;

11. Further, or alternatively, the plaintiff waives the tort and pleads that the plaintiff and the other Class Members are entitled to recover the unjust enrichment accruing to the defendants on restitutionary principles rather than their tort damages.

Plaintiff(s') address for service: 1900 – 1177 West Hastings Street,
Vancouver, British Columbia, V6E 2K3

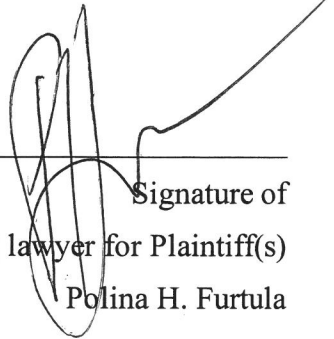
Fax number address for service (if any): none

E-mail address for service (if any): none

Place of trial: Vancouver, British Columbia

The address of the registry is:
Law Courts 800 Smithe Street
Vancouver, BC V6Z 2E1

Date: December 9, 2020



Signature of
[] Plaintiff [x] lawyer for Plaintiff(s)
Polina H. Furtula

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

ENDORSEMENT FOR SERVICE OUTSIDE OF BRITISH COLUMBIA

The plaintiff claims the right to serve this Notice of Civil Claim on the defendants outside British Columbia on the ground that this proceeding concerns a tort committed in British Columbia pursuant to Rule 4-5(2) of the Supreme Court Civil Rules and section 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, chapter 28, and amendments thereto.

APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*⁶

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The defendants have rented out and continue to rent out properties throughout British Columbia and Canada without the consent of the rightful owners or the strata corporations where each property is located

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☒ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4:

1. *Class Proceedings Act*, RSBC 1996, c. 50;
2. *Strata Property Act*, SBC 1998, c. 43;
3. *Trespass Act*, RSBC 1996, c. 462;
4. *Real Estate Services Act*, S.B.C. 2004, c. 42;
5. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.