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Short Term Rentals: Santa Monica Short Term Ordinance Does not Violate the Dormant Commerce Clause

Rosenblatt v. City of Santa Monica. no 17-55789 (9th Cir. Oct. 3, 2019).

Affirming the lower court, the Ninth Circuit rejects an Airbnb host's argument that Santa Monica's short term rental ordinance requiring a minimal 30-day stay impermissibly affects interstate commerce.

Santa Monica resident Arlene Rosenblatt (Rosenblatt) used to rent out her house on Airbnb when she and her husband went on vacation, charging $350 per night. Santa Monica passed an ordinance prohibiting property rentals of 30 days or less ("vacation rentals") with an exception for rentals where a primary resident remained in the dwelling ("home sharing"). In enacting the ordinance, the Santa Monica City Council sought to preserve the "available housing stock and the character and charm which result, in part, from cultural, ethnic, and economic diversity of its resident population," and "its unique sense of community which derives, in large part, from residents' active participation in civic affairs, including local government, cultural events, and educational endeavors."

Rosenblatt brought a putative class action against the city of Santa Monica and Santa Monica's City Council (collectively, Santa Monica), arguing that the ordinance violated the dormant Commerce Clause.

The district court dismissed, and the Ninth Circuit affirmed .The panel first held that the ordinance was not a per se violation of the dormant Commerce Clause because it did not directly regulate interstate commerce; at most, the ordinance had an modest

interstate effect because it made lodging in Santa Monica less accessible, available and affordable. But the ordinance penalized only conduct in Santa Monica, regardless of whether the visitors were in-state or from outside California.

The panel rejected Rosenblatt's argument that the ordinance violated the dormant Commerce Clause by directly regulating booking and payment transactions that may occur entirely out-of-state--the ordinance applied evenhandedly and did not directly restrain interstate commerce although it might regulate transactions with an interstate component. The panel further held that nothing in the ordinance suggested that its advertising ban was intended to have extraterritorial application.

The Circuit held that the ordinance did not discriminate against interstate commerce: Santa Monica's ban on vacation rentals applied in the same manner to persons nationwide, including Santa Monica residents who might be interested in renting a vacation home from another resident. The panel further noted that the ordinance applied equally to renters and property owners from outside California, California, residents outside of Santa Monica, and Santa Monica residents. The court held that the complaint did not adequately allege that the ordinance increases the relative market share of local businesses or that it has a net negative effect on commerce outside of California. Finally, the panel held that the complaint failed to plausibly allege that the home-sharing exception clearly advantages Santa Monica residents at the expense of out-of-state homeowners.

To the extent that the ordinance burdened interstate commerce through incidental effects, the complaint had not adequately demonstrated how the alleged burden would clearly exceed the stated benefits of the ordinance.

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