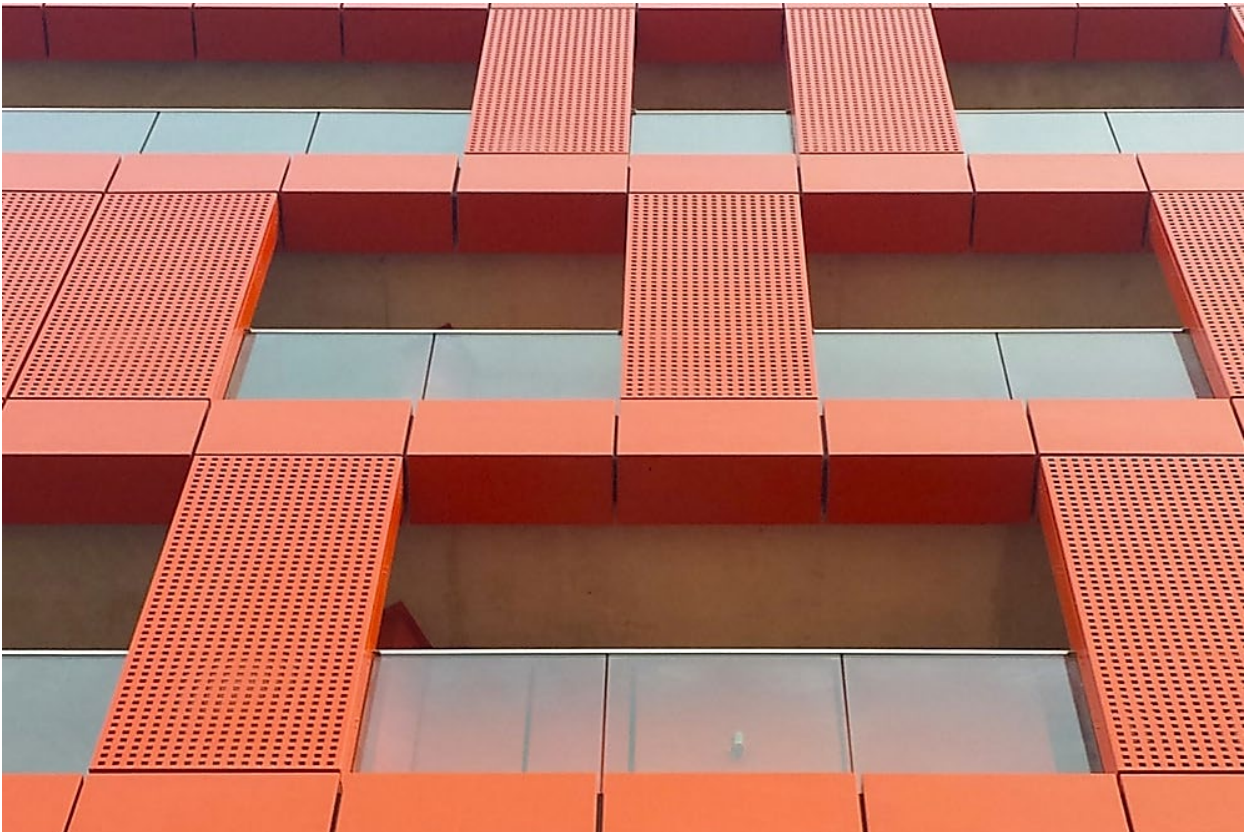


**LEGAL ALERT**

**HIGH COURT DECISION ON SHORT TERM RENTAL**

**12, May 2022**



On March 22<sup>nd</sup> 2022, the Portuguese Supreme Court of Justice, standardized the jurisprudence regarding the application of short term rental, also known as “Local Lodging” or “Airbnb” to restrict such type of lodging in residential properties. (Proc. n.º 24471/16.4T8PRT.P1.S2-A-RUJ).

**Background:**

The decision of the Supreme Court of Justice focused on whether a unit under strata title regime for residential purposes can be used for Local Lodging purposes or if such activity is in violation with the constitutive strata title of the property.

In fact, up until March 2022, innumerable residential units were being used as Local Lodging which has been raising legal arguments in court decisions, the summary of the decision clarifies the divergence by stating that: “under the strata title property regime, when there is a reference in the constitutive title that a certain unit is intended for residential purposes, it must be interpreted that it is not allowed to carry out therein a Local Lodging.”

**Legal Grounds and Considerations:**

This discussion is related to the nature of Local Lodging, i.e., should it be considered as a commercial activity or, instead, a short-term property lease in its strict sense. According to this decision, to determine whether the activity of exploring Local Lodging is for commercial purposes or not, it should be considered that the Local Lodging is not taxed as the residential units and, also, that exploring a Local Lodging establishment is legally defined as the exercise of the activity of providing accommodation services, which is different from the nature of the residential units.

In addition, this court decision takes the view that exploring Local Lodging in a residential unit violates the constitutive title of the strata title since it is being given a different purpose other than the one it is intended for.

**Practical Implications:**

It is important to note that, with regards to a unit under strata title regime for residential purposes, even if its owner has obtained all proper licensing, performing Local Lodging in such property will be considered illegal as it violates the intended use of the property given on the constitutive strata title of the property.

Additionally, this decision will allow any property owner to demand the termination of Local Lodging in the building where they live, if the relevant unit is not for commercial use.

Finally, notwithstanding the established jurisprudence, it should be clarified that the constitutive strata title of the property and the condominium regulation may be subject to amendment, by agreement of

the condominium owners, which means that the purpose of a unit may be changed for commercial use or others, allowing therefore the Local Lodging exploration.

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