CAPES SOKOL SECURES JUDGMENT FOR ST. LOUIS AND ST. CHARLES CORPORATE HOUSING PROVIDER

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Category: Representation
Tag: Short-Term Property Rentals

Following a two-day bench trial, the St. Charles County, Missouri Circuit Court issued a Judgment in favor of corporate housing provider, Arch Interim Housing, LLC, which was represented by Capes Sokol. In ruling for Arch, the Court rejected an attempt by the St. Charles County Convention and Sports Facilities Authority to:

- **(a)** expand the scope of the 5% hotel/motel room tax (authorized by Mo. Rev. Stat. § 67.1158) to corporate apartment providers; and
- **(b)** levy approximately $400,000.00 in tax, penalties and interest against Arch.

Section 67.1158 authorizes St. Charles County to "impose a tax on the charges for all **sleeping rooms** paid by the **transient guests** of **hotels** or **motels**." The Court ruled that the statute was inapplicable to Arch, which provides furnished apartments primarily to individuals relocating to the City of St. Louis, St. Louis County and St. Charles County.

Specifically, the Court held that Arch does not charge for "sleeping rooms," does not serve "transient guests" and is not a "hotel" or "motel":

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> *In short, Arch's apartments are completely unlike any hotel or motel. They are apartments—not hotels or motels, which even the Authority admits are not one and the same. It is easy to imagine a bed and breakfast as a hotel or motel. That truly is just another name for a type of hotel or motel. An apartment, however, is fundamentally different. This Court is not permitted to construe the scope of a statute expressly restricted to hotels and motels to cover a fundamentally different type of living arrangement that even the party asking the Court to do so admits is different. If one were to subscribe to such a broad position that every subtenant, regardless of length, is transient, and that apartments are hotels and motels, then all apartments are subject to the tax. This defies any rational understanding of the intent of the legislature.*

The ruling has implications for all types of temporary lodging and short-term property rental providers (many Missouri counties and cities have similar, if not, identical room taxes), including, but not limited to, actual hotels and motels:

The Transiency Presumption:

The Court held that the Authority may not presume transiency, even if it is agreed that the business is a hotel or motel. "Section 67.1158 authorizes a tax only on '*transient*'."

The fact that the legislature chose to modify the word 'guests' with 'transient' indicates that the legislature did not intend for the charges on all guests to be taxed—just those deemed 'transient.'

St. Charles County hotels and motels are wise to scrutinize their guest lists prior to filling out their quarterly sleeping room reports to determine whether each individual guest was actually transient or not. This determination includes an analysis of a guests' length of stay and reasons for staying.

The Scope of the Missouri Hotel/Motel Tax:

Taxing authorities should not be permitted to broaden the scope of a tax expressly limited to "hotels" and "motels" to other types of lodging, including

- (a) short-term property and vacation rentals;
- (b) HomeAway, VRBO, FlipKey and Airbnb listings; and
- (c) corporate housing and apartments.

> *Missouri law provides that "the right of the taxing authority to levy a particular tax must be clearly authorized by the statute, and that all such laws are to be construed strictly against such taxing authority."*

Office Depot, Inc. v. Dir. of Revenue, 484 S.W.3d 793, 794 (Mo. banc 2016).

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Missouri Landlord/Tenant Laws:

Missouri law treats tenants and guests differently. A tax on guests is not a tax on tenants. A business that follows Missouri landlord/tenant laws or requires individuals to execute a lease agreement should not be subject to the tax.

The "Sleeping Room" Tax:

The tax only applies to charges for "sleeping rooms." Hotels and motels that provide multi-room suites inherently provide more to their guests than just a room in which they may sleep.

With respect to Arch's apartments, the Court held:

> *Only in the loosest sense could the one, two and three bedroom apartments, all with separate kitchens, bedrooms, and living rooms, that Arch rents be considered 'sleeping rooms' within the meaning of the statute. The apartments Arch rents do have 'rooms', and people do presumably sleep in at least one of the rooms in the apartment unit. That is as far as the analogy goes. Arch does not rent studio apartments, not does it break down its rent by room. Arch does not rent its apartments by the 'night.' It provides housing-not a room to its subtenants. The plain and ordinary meaning of sleeping room does not encompass a multi-room, traditional apartment with a written lease.*

A suite style hotel or motel can argue that the taxing authority may only tax revenue associated with the room in which a "guest" sleeps, and that it is the authority's burden to determine the same. And vacation homes and other short-term rentals, like apartments, offer numerous rooms, permitting them to make the argument that they are not "hotels" or "motels" under the statute authorizing a room tax.

The Amount of the Tax:

Even assuming the tax is applicable to a business, it is the taxing authority's responsibility to determine the amount of tax. Doing so is not as easy as calculating the amount of revenue and multiplying it by the tax. The authority must scrutinize the charge for *each* "guest" to determine whether the revenue associated with said "guest" is subject to taxation.

Though the legal landscape for temporary lodging is constantly changing in the State of Missouri, the Court's ruling provides certainty that Missouri hotel/motel room taxes may no longer be indiscriminately assessed against any type of entity providing temporary living arrangements.

A copy of the Judgment can be found here: *St. Charles County Convention and Sports Facilities Authority v. Arch Interim Housing, LLC*, Case No. 1411-CC00320.

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