

Management Properties, LLC v. Town of Redington Shores, 352 So. 3d 909 (Fla. 2d DCA 2022)

Second DCA Holds Requirement for Vacation Rental Operators to Report Violations of the Town's Vacation Rental Standards May Violate Florida Constitution

Management Properties, LLC (“Management Properties”) operates a single-family, beachfront property in the Town of Redington Shores, Florida, (the “Town”) as a vacation rental. Whether short-term rentals are permissible and, if so, in which zoning districts, is governed by the Town’s Land Development Code (the “Code”). Previously, the Town’s Code only allowed rentals shorter than thirty days in its Commercial Tourist Facilities District—where the subject property is located—and in Planned Unit Development Districts with a Future Land Use Plan category of Resort Facilities Medium. There were no regulations or restrictions on vacation rentals within the Commercial Tourist Facilities District prior to August 2020.

On August 5, 2020, the Town adopted an ordinance that set forth new regulations for vacation rental properties in the Commercial Tourist Facilities District. The ordinance requires vacation rental operators (operators) to obtain a certificate of use from the town to operate vacation rentals. The ordinance also imposes recordkeeping requirements on vacation rental operators and regulates a variety of other matters related to the operation of a vacation rental.

In relevant part, the ordinance requires operators to provide guests with written notice of all vacation rental standards prior to occupancy. The notice must include reference to all “other applicable laws, ordinances, or regulations concerning noise, public nuisance, vehicle parking, solid waste collection, and common area usage,” and make this information available to guests inside the property. The ordinance further requires operators to ensure total compliance with the Town’s vacation rental standards and to “promptly address and report any violations of this section or of such other law or regulation of which the responsible party knows or should know to the Town or law enforcement.”

Management Properties filed an action for declaratory relief challenging the ordinance’s validity. Management Properties asserted that the ordinance’s provisions at least partially violated the Florida Constitution because the written notice and requirement to report violations of laws and regulations amounted to compelled speech in violation of article 1, section 4 of the Florida Constitution. The trial court concluded that the provisions at issue involved commercial speech and did not violate the Florida Constitution. Management Properties appealed.

On appeal, the Second DCA agreed with the trial court, holding that trial court may have failed to consider whether there was a constitutionally meaningful difference between the speech regulated by the ordinance’s disclosure provision and the speech regulated by the mandatory reporting provision. The court concluded that further proceedings were necessary to address that aspect of Management Properties’ claim. Accordingly, the court affirmed the trial court’s holding in part, reversed in part, and remanded for further proceedings.