



Broken step and compensation for damages in favor of the condominium .

Even knowing of the deterioration, the condominium must be compensated .

Avv. Caterina Tosatti 07/07/2022

The argument that the subject damaged by a common good, if he also holds the quality of condominium, is **aware of the state of the places** and for this reason is not entitled to request compensation for the damage suffered, is not acceptable. such assumption to assume the function - which would assume in this case - of **exempting from responsibility** , to the detriment of the condominiums, the condominium itself, which has the task of supervising the condominium environments and promptly neutralizing any sources of danger.

This is the decision of the **Court of Appeal of Venice** , which with **sentence no. 1357 of 9 June 2022** had the opportunity to settle a dispute between a condominium and its own condominium relating to the damage from the fall of the first.

Broken step and compensation for damages in favor of the condominium: the story.

Tizia, while descending the steps that led from the exit from the elevator to the entrance hall of her condominium, tripped and fell due to the instability present on the edge of the marble floor of the first step and the poor lighting enjoyed in the area where it happened. the left.

It therefore sued the Condominium in order to obtain compensation for the damage suffered, which we deduce to have been particularly serious, given that the functionality of a limb is not fully recoverable as **a consequence of the fall** .

The Condominium defends itself by stating that, being Tizia condòmina, she was well aware of the state of the step and that it was chipped, but not on the supporting surface, but below; that the area was illuminated, that there was also a handrail.

After hiring **witnesses** and a **medical - legal expert witness** , **the Court accepted the request** and sentenced the Condominium to compensate Tizia more than € 60,000.00.

The Condominium appeals, complaining that the First Judge would not have correctly considered the causal link between the damage and the *res* in custody.

The **Court of Appeal rejects the appeal**, confirming the sentence of first instance.

Liability from things in custody.

Already commenting on another ruling of the Court of Santa Maria Capua Vetere we have examined what the jurisprudence thinks of the **liability governed by art. 2051 cc .** which is applied to condominiums, as custodians of common goods and services.

Responsibility arises **directly from the thing and its dangerousness**, in the sense that the damage occurs in the context of the **dynamism inherent** in the thing or for **the onset in this of a harmful process** even if caused by **external elements**.

On this point, the Court of Appeal observes that *«the observation of the appellant in relation to*



the degree of damage, only potential or "concrete", of the res source of damage does not appear decisive. This observation seems to neglect the consideration that **it is not the intrinsic danger of the thing that decides on the existence or otherwise of the etiological link** between the thing in custody and the harmful event.

The dangerousness of the thing is a **quality** of it that **can carry out an indicative function as to the existence of the causal link**, however having to deal with the other circumstances of the case (for example **with the conduct of the injured party himself**).

Again according to the Court of Appeal, in the present case, every defensive argument vanished before the objective finding of the **state of the places**, which was, forgive the repetition, **'objectively' dangerous**.

In particular, «the step in correspondence with which Ms Tizia lost her balance (see testimony of...), presented a chipping, not very visible but existing, and incident on the flatness of the step.

In correspondence with the chipping, the linearity of the edge of the step was slightly compromised, presenting a recess that reduced, albeit slightly, the support surface of the foot.

As can be seen from the photographs produced, the described defect in the step was difficult to perceive in the descent phase (i.e. the one traveled by the damaged one) also by virtue of the fact that no change in color was discernible from the perspective of a descending subject. step material (marble).

The slipperiness of this material, which makes a loss of balance very likely in correspondence with obstacles or pitfalls, the small size of the chipping (which increases the danger making it less visible), the presumably dim degree of illumination (the lighting, as also confirmed from the texts, it was guaranteed only by a wall light, replaced only after the accident by a LED lighting system, nor did the environment receive light from the outside since the fact took place around 20:00 on February 27), are all elements that converge to confirm the danger of the state of the places ».

Add to this that the Condominium **Administrator**, in finding Tizia's initial warning for legal compensation, **declared that he was aware of the breaking of the step de quo** and announced that he had planned the rehabilitation in one with the entrance hall, which were then carried out, albeit after the event that happened to Tizia.

The Court concludes that, given that liability for damage from things in custody can be **excluded when there is a fortuitous event**, since the Condominium has not provided any evidence of such an element, it is not possible to exempt it from the sentence for compensation.

We remind you that the fortuitous event, according to the jurisprudence, **does not concern the behavior of the person responsible**, but the causal profile of the event and is integrated by an external factor, including the fact of the third party and the **fault of the injured party**, which intervenes in the determination of the damage with an **autonomous impulse** with the characteristics of **unpredictability** and **inevitability**, thus breaking the causal link between the thing in custody and the harmful event.

The Court excludes that the circumstance for which Tizia was a condominium owner and, therefore, aware of the failure of the step, is valid as a fortuitous event, thus *completely excluding* the responsibility of the entity.

According to the Appeal Judges, "the fact that the injured party lived in the condominium where the event occurred **cannot be considered a suitable circumstance to place the responsibility for the fall on her**, because it is not reasonable to require a 77-year-old Mrs. his attention on every small pitfall of the condominium environments, especially since the pitfall itself, as mentioned, was placed on the edge of the step, compromising its linearity, it was small and hardly noticeable during the descent.

Given the specific characteristics of the danger, the argument of the condominium cannot be shared, for which the lady, as a condominium, was aware of the state of the places, **since she could not attribute to this assumption the function** - which would assume in this case - **of exempting to the detriment of the condominiums, the condominium itself**, which is

responsible for supervising the condominium environments and promptly neutralizing any sources of danger ".

We allow ourselves to quietly observe the following.

If the above stated by the Court is true and what is reported about the condition of visibility and light, the opposite is also true, that is, that the step was not only 'descended', but also 'ascended': if the chipping was not visible from the high, it is likely that it was visible from below.

Furthermore, it does not appear, at least from the narrative of the pronouncement, that any investigation has been carried out regarding the knowledge of the state of the places, which instead and nevertheless is taken for granted by the Court: that is, at the moment in which it affirms that the **knowledge of the places by di Tizia** does not reveal, she is implicitly telling us that she recognizes it as **established** .

So Tizia knew of the failure of the step: and then, we allow ourselves to softly highlight, this statement 'clashes' with the one immediately following, so **the Condominium** is not exempt because **it has the task of " Monitor the condominium environments and promptly neutralize any sources of danger "**.

Isn't Tizia, which condominium owner, part of the condominium guardian of the step?
Could she, as a condominium, not have been able or should have pointed out the situation by soliciting an assembly that would adopt the appropriate decisions regarding maintenance? If the step had caused **damage to third parties** , we are sure that we would have had a ruling that would also have held Tizia, as condominium, responsible for the lack of maintenance and then why not in this case?

At least by way **of guilt former art. 1227 cc** .?

Source: <https://www.condominioweb.com/quando-le-parti-comuni-ledono-il-condomino.19519#2>

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