



The agreement with which the solidarity bond between condominiums is waived is valid.

The obligations assumed in the interest of the condominium are attributed to the individual components in proportion of their respective thousandth shares.

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An interesting sentence of the Court of Naples (number **6280 of 22 June 2022**) expressed itself on the possibility, for the condominium, to stipulate a contract within which to exclude solidarity between condominiums for the obligation contracted with the firm. Let's analyze the case and see why **the pact by which the bond of solidarity between condominiums is waived is valid**.

Obligation of the condominium: the case.

A contractor obtained an **injunction** in reference to the consideration due for some works carried out in a condominium building by virtue of a regular contract.

The condominium opposed the injunction. In support of the opposition, the team pleaded, on a preliminary basis, its **lack of passive legitimacy** for having been provided, within the **contract** (to be precise, in Article 4), the **waiver of the bond of solidarity between the condominiums**, with the consequence that any claim had to be brought only against the condominiums in arrears, whose name had been indicated by the administrator to the contracting company.

The company appeared before the court, deducing that the objection of lack of legitimacy was unfounded as the condominium had stipulated the contract and had assumed the related obligations; the interpretation of art. 4 of the contract proposed by the plaintiff, moreover, was unjustified given that the negotiating provision did not apply to the credit assessment phase but only to the executive one.

Condominium obligation and solidarity exclusion pact: the decision.

The Court of Naples, with sentence no. **6280 of 22 June 2022** in comment, accepts the condominium's objection, declaring the company's credit claim unfounded.

In the opinion of the Neapolitan judge, **the pact by which the bond of solidarity between condominiums is waived is valid**, with the consequent impossibility of accepting the payment action. Let's see for what reasons.

The nature of the condominium obligations.

The Neapolitan judge preliminarily notes how, with regard to the obligations contractually assumed by a condominium, the Supreme Court, with the sentences given to the United Sections (n.9148 of 8 April 2008 and n. 24832 of 8 August 2008), clarified that, with reference to the **obligations assumed in the interest of the condominium**, in the absence of an express regulatory provision that establishes the principle of solidarity, since it is an obligation having as its object a sum of money, and therefore **divisible**, the responsibility of the condominiums is governed by **the criterion of partiality**, whereby the obligations assumed in the interest of the condominium are attributed to the individual components only in proportion of **their respective shares**, according to criteria similar to those dictated by art. 752 and 1295 cc for inheritance obligations.

The aforementioned judgments of legitimacy also clarify that the **principle of partiality of the condominium obligations** assumed in the interest of the condominium, in the sense of their



distribution among the individual condominiums in proportion to their respective shares, also applies to third parties, but always after obtaining of the administrator's sentence for failure to comply with the same.

In fact, the Supreme Court (sentence n.9148/2008, referred to above), in specifying that the responsibility of the individual participants for the obligations assumed by the condominium are governed by the criterion of partiality and are interpreted in proportion to the respective shares of ownership per thousandth, also establishes that this principle is applied with respect to third parties **after ascertaining the obligation** imposed on the condominium structure, stating that *"once the conviction of the administrator, as representative of the condominiums, has been achieved in the process, the creditor can proceed with the execution individually against the individuals, according to the share of each "*.

In fact, **the contractual relationship** from which the condominium's obligation arises, the latter vice versa **divisible pro quota** and, therefore, susceptible of execution against each of the subjects who, collectively obliged by virtue of the representation conferred to the administrator, is remained in default.

The pact which excludes the solidarity of the obligation.

In the present case, the parties have intended to derogate from the aforementioned principles of law: in fact, in article 4 of the contract, they have expressly agreed that *"The Contractor Company LU.PA. srl **renounces** with the signing of this contract and, therefore, by express agreement, **to the bond of passive solidarity of the condominiums** forming part of the building, accepting as personal creditors the individual condominiums, for the thousandth shares of the individual properties, according to the division or at least of the defaulting condominiums that will be communicated by the Administrator of the Condominium Client to it Contractor Company.*

This exemption from joint and several liability was considered essential and indispensable in the conclusion of this Tender Agreement ".

In the opinion of the Court of Naples, the article is clear in precluding the recognition of a bond of solidarity between the condominiums in relation to the obligations deriving from the contract stipulated by the administrator with the contractor.

Nor is the firm's thesis acceptable, according to which the renunciation of the bond of solidarity would be valid only in the *strictu sensu* executive phase: first of all because the **exemption from joint liability** was considered essential and indispensable in the conclusion of the contract; secondly, the executive phase is in no way made explicit in the negotiating text, neither in this article nor in other clauses.

In general, the exclusion of the bond of solidarity does not preclude the creditor from taking action in advance to ascertain the total amount of the credit towards the condominium, as a management body of common things: it only prevents **action to the payment** , or the constitutive action of conviction against the condominium (as well as, *naturaliter* , against the individual condominiums in good standing with the payments of the contribution accruals).

With regard to the latter, the Court of Naples notes that the judgment is not only aimed at ascertaining the residual credit right of the company; on the contrary, the *petitum* relates mainly to the direct condemnation of the condominium itself, having been initiated through an appeal in the monitoring phase whose content was expressly that of *"ordering the condominium ... to pay instantly ..."*.

By reason of the foregoing, the interpretation of the clause therefore leads to the exclusion of the permanence of the solidarity of the condominiums towards the third party contracting party.

Source: <https://www.condominioweb.com/valido-il-patto-con-cui-si-rinuncia-al-vincolo-di.19534#2>

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