



Who can dispute the validity of the shareholders' proxy?

The ruling of the Apulian Court allows for a reflection on the effectiveness of the delegation in carrying out the condominium assembly.

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With ruling issued on 9 May 2023, n. 1766, the Court of Bari rejected the appeal against a condominium resolution to be considered void and/or voidable, proposed by a condominium.

Deficiency in the interest to act of a condominium to enforce the defect relating to the delegation: Fact and decision

The plaintiff, in support of his reasons, deduced the invalidity of the contested resolution due to irregularity of the legal quorum, and in the absence of the requirements relating to the proxies issued to certain condominiums, as well as the violation of the provisions of art. 1135 of the Civil Code

The condominium-defendant appeared, highlighting the groundlessness of the counterparty's claim, requesting the rejection of the appeal against the condominium resolution, pleading the lack of active legitimacy of the plaintiff to point out defects concerning the participation of the condominiums in the condominium assembly and disputing all aspects relating to the merits of the dispute.

The case was investigated in a purely documentary way and postponed for the clarification of the conclusions; at this hearing the monocratic judge introduced the case for the decision, assigning the terms to the parties for the filing of closing statements and reply briefs, pursuant to art. 190 cpc

The judge examined the dispute deeming the claim of the plaintiff unfounded regarding the aspect of the proxies present in the minutes.

In principle, what was sustained by the magistrate in reference to the Cassation of the United Sections (Cass. SU 7 March 2005, n. 4806), which traces a precise demarcation line of the distinction between null and voidable resolutions, is acceptable, emphasizing that the hypotheses of **nullity are always reserved for radical hypotheses.**

The monocratic judge also noted that the defects connected to the aspects relating to the lack of summoning fell, without a shadow of a doubt, within the scope of annulment, which was not a defect detectable ex officio, with respect to nullity.

Basically, the person who is entitled to request the annulment of an act is only the person who has an interest in making it enforceable.

In fact, the interest in appealing for formal defects of a resolution of the condominium assembly, pursuant to art. 1137 of the civil code, although not conditioned by the verification of the concrete impact on the individual situation of the condominium, however postulates that the resolution in question is suitable for determining a change in the position of the condominiums with respect to the management body, susceptible to possible prejudice (Cass. Civil Code Section VI, **June 25, 2018 No. 16673**; Civil Court of Cassation Section VI - II, Ord. May 10, 2013, No. 11214).

In terms of challenging the resolutions of the condominium assemblies, precisely **the failure to convene a condominium being grounds for annulment**, and not nullity, of the resolutions



passed by the assembly, art. 1441 of the Civil Code, according to which " *the cancellation can only be requested by the party in whose interest it is established by law, and, consequently, the convened condominium is not entitled to challenge the resolution for the omitted convening of other condominiums* " (Civil Court of Cassation section II, 31 March 2017, no. 8520).

The proxy is the tool by which the individual condominium - regularly summoned to the condominium meeting by the administrator or, exceptionally, by one or more condominiums - **who cannot or does not want to participate in the assembly**, to give another person the possibility of in any case consider him present at the meeting, in order to adopt the related decisions on the agenda.

In this way, the delegating condominium is considered "present" to all intents and purposes, with obvious reflections regarding the legitimacy of the appeal and the effective date for recourse to the judicial authority.

Except for express prohibitions contained in the condominium regulation, contained in **paragraphs 1 and 5 paragraph of the aforementioned art. 67 available att. cc** , anyone can represent a condominium in the assembly, be it another condominium, a family member, the conductor, a person unrelated to the condominium structure; nothing excludes, then, that the delegates can represent several condominiums, unless there is a specific provision of the regulation which tends to prevent hoarding of votes.

It follows that the instant-owner could not challenge the collective deed because he has no interest in taking action, given that such action, within the terms provided for by art. 1137 cc, preceded by the media-conciliation procedure (Legislative Decree n.28/2010) could have been opposed only by the condominium interested in the conferred delegation.

It follows that only the **delegating condominium or the one who is considered falsely represented are entitled** to assert any defects in the delegation and not also the other condominiums unrelated to this relationship (civ. Cassation 2218/13 and Cass. 12466/04) .

The work of the delegate within the assembly is neither null nor voidable, but only ineffective towards the principal until the latter is ratified and this temporary ineffectiveness cannot be detected ex officio but only by the pseudo-represented condominium.

For the sake of completeness, the plaintiff's further complaints were also considered unfounded by the judge, with reference to the violation of art. 1135 of the civil code, within the competence of the condominium assembly, since the approved works for the lift would not present the **nature of urgency**.

In the case under examination by the Apulian Court, it was found that the plaintiff had no interest in challenging the condominium resolution and the application was rejected.

Final considerations

*Therefore, only the delegating condominium and the one who is considered falsely represented are entitled to assert any defects in the delegation or the lack of the power of representation, and not also **the other condominiums, because they are unrelated to this relationship*** It is emphasized that it is only the faculty of the delegating condominium to challenge the resolution which assumes that it is flawed for having been falsely represented in the meeting and as it is his duty to provide proof of the illegal use of the proxy.

Source: <https://www.condominioweb.com/chi-puo-contestare-la-validita-della-delega-associazione.20650#2>

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