



The condominium administrator can also request payment from just one of the co-owner spouses.

The co-owners of the real estate unit are jointly and severally debtors towards the condominium for the payment of the expenses referred to in the art. 1123 cc.

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The co-owners of the real estate unit located in a condominium building are **jointly and severally debtors** towards the condominium for the payment of the expenses referred to in the art. 1123 cc for the management of common goods and services.

Consequently, the administrator can demand payment of the entire amount due even from just one of them, without prejudice to the **right of recourse** of the person who paid his share against the co-debtor.

For the same reason it is not necessary for the administrator to request the injunction against all the co-owners, although he can act in a monitoring manner even against just one of these.

These are the conclusions that can be drawn from reading sentence **no. 1246 of 9 November** last, with which the **Court of Appeal of Catanzaro** rejected the appeal brought by a condominium owner against the decision taken by the Court of Cosenza following a proceeding to challenge an injunction.

Administrator and injunction against one of the spouses who co-own the property. Fact and decision

A condominium owner took her condominium to court, in the person of its pro tempore administrator, filing an opposition against the injunction with which she had been ordered to pay the outstanding **condominium expenses**, plus legal interest, as well as the costs and responsibilities of the monitoring proceedings.

The condominium owner objected that the credit in relation to which the condominium had activated the recovery procedure referred, in part, to the balance of the balance sheet closed in December 2011 and, in part, to the share of the extraordinary renovation works of the square; that the request for payment was not supported by suitable evidence, as the injunction was based on unilateral documentation; that from the **final statement** for the year 2008 it appeared that he had a credit towards the condominium; that he had never received any notice of the meeting in which the financial statements for the years 2010/2011 were approved nor had he received documentation subsequent to the approval resolutions; that the property in question was owned by both **spouses** and that it had been subjected to real estate enforcement, with the consequent appointment of a sales representative.

The condominium appeared before the court, contesting the validity of the opposition, requesting its rejection with confirmation of the injunction. It noted, in particular, that the administrator could obtain an injunction for the recovery of condominium fees based on the annual report approved by the assembly; that the **assembly resolutions** approving the various financial statements had been attached, from which the condominium's debt exposure had emerged both with respect to management costs and the sums due for the **renovation of the condominium square**; that the accounting document approved by the condominium meeting in relation to the 2008 final balance was not the one attached to the opposing party's file, but rather the one attached to the opposing party's file, which showed a debt towards the condominium; that the recovery of said arrears could also be requested from just one of the spouses, since it was a joint debt.

The Court rejected the opposition and the Court of Appeal confirmed its decision. In particular, in relation to the **ground of appeal** according to which the Court did not take into account the fact that the property was co-owned by the husband of the co-owner of the injunction, the appeal judges confirmed its groundlessness, observing that this question concerns the **internal relationships** between the co-owners and not between them and the condominium, which is entitled to obtain an executive title even against only one of the co-owners of the property. Moreover, according to the jurisprudence of legitimacy, the co-owners of an apartment in a condominium building are **jointly and severally debtors** towards the condominium for the payment of the expenses referred to in the art. 1123 cc, so that the condominium administrator can demand from each of them the entire amount of the debt, except for the right of recourse by the person who paid against the co-debtors, co-owners of the same portion of the plan.

Final considerations

In justifying the rejection of the appeal on the issue of co-ownership of the apartment on which the outstanding expenses had accrued, the Calabrian Court recalled a recent precedent of legitimacy (Cass. Civ. n. 21907/2011), on the basis of which the co-owners of a real estate unit located in a condominium are **jointly liable**, towards the condominium itself, to pay the condominium charges, both because said contribution obligation weighs on the co-owners of the plan or portion of the plan intended as a single thing and the communists themselves represent, in compared to the condominium, a whole, both by virtue of the general principle dictated by the art. 1294 of the Civil Code (according to which, in the case of multiple debtors, solidarity is presumed), the applicability of which is not hindered by the fact that the shares of the real estate unit have been received by the co-owners under different titles.

On this occasion the Supreme Court had the opportunity to clarify that the principle expressed does not conflict with that already enunciated by the United Sections with the well-known decision no. 9148 of 2008, since this last ruling concerns the different problem of the obligations contracted by the representative of the condominium **towards third parties** and not the question relating to the fact whether in the **ordinary community regime**, the obligations of the co-owners, in particular in relation to the condominium expenses inherent to the joint ownership pro undivided of an apartment forming part of a condominium, whether or not they fall within the discipline of joint debt.

A confirmation of this approach, according to the Supreme Court, is confirmed by the fact that the last of the rulings whose orientation was intended to be confirmed with the aforementioned 2011 decision (i.e. Civil Cassation no. 14813/2008) was issued by simple section following the aforementioned intervention of the United Sections.

Source: <https://www.condominioweb.com/lassociazione-condominiale-puo-chiedere-il-pagamento-anche-a-uno-solo-dei-coniugi.21194#2>

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