



The defect of failure to convene can only be asserted by the condominium owner who has not received the notice.

The right to challenge the meeting resolution is personal and the request for removal of the act can only be proposed by the person who has been prevented from participating in the meeting.

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The resolution of the condominiums' assembly is a collective act, which represents the result of the concurrence of wills that each of the participants contributed to expressing within the assembly. For this to be possible, the notice of meeting, which is a reception deed, must be sent by the administrator to all those entitled with the methods and within the terms established by **the art. 66 available att. cc**, which is strictly linked to **the art. 1137 cc** regarding the challenge of meeting resolutions.

Current legislation, in the face of a previous regulatory void, has identified those who are dissenting or absent as the subjects entitled to propose a request for cancellation in the event that the sending of the meeting notice is not successful. On this point the **Court of Avellino**, with **sentence n. 1289 of 24 August 2023**, could only reject the request for annulment of the condominium resolution with which a condominium owner, ritually reached by the notice of meeting, had replaced another participant, raising, for these, the defect of failure to invite the meeting.

The resolution was not annulled due to failure to summon a participant other than the actor. Fact and decision

A condominium owner, co-owner of a share of a building, took legal action to hear a declaration, insofar as it was of specific interest, of the annulment **of the meeting resolution** with which the carrying out of extraordinary administrative works on the building had been decided, complaining about the **failure summoning of some co-owners**; the violation of the deliberative *quorum* for said works as well as the intention of the meeting to cause damage to the actor himself and his wife, co-owner of the relevant share.

The defendants entered an appearance in court, firstly objecting to the **lack of active legitimacy of the plaintiff** who wanted to assert the lack of summons not for himself but for the other co-owners and contesting, on the merits, the facts put forward in court. The Court rejected the request and ordered the plaintiff to pay the legal costs.

Of the reasons put forward for the appeal, **the most interesting** is certainly the one formulated by the defendants with the preliminary objection, which led the Court to disregard the plaintiff's request on the basis of consolidated jurisprudence for which, on this point, it applies *"the principle established by art. 1441 cc according to which the annulment can be requested only by the party in whose interest it was established and, consequently, the convened condominium owner is not entitled to challenge the resolution for the failure to summon other condominium owners including the spouse with whom he has the property in legal communion"* (Cass. section 2, 31 March 2017, n. 8520).

In this case, in fact, since the plaintiff could not be considered as a **pre-term condominium owner**, having received the notice of meeting, he could not raise the defect that would have led to the annulment of the resolution.

As regards the merits, the Court, having ascertained the regularity of the voting with reference to the relative *quorum* , could not do anything other than reject the request, while as regards the alleged intent of the assembly to cause damage to the plaintiff, the judge reiterated that the judge's syndicate cannot influence the choices made by the assembly regarding topics that are solely within its competence.

Final considerations

First of all, there is an obligation to clarify that in this case, **even if the properties had reached the various parties in the proceedings as a result of donation** , followed by subsequent transfers in bare ownership of some properties, it concerns a matter of condominium and not of communion , so much so that the Court correctly recalled the jurisprudential principles that concern this institution.

Consequently, the thousandth shares indicated as belonging to the community can be considered inherent to the figure of the condominium.

The fact that, from what emerges from the reasoning of the sentence, assumes equal importance that the entire building was the sole property of the original assignors of the current owners, so that at the time of the donation the condominium was established.

However, as regards the question inherent to the lack of active legitimacy of the plaintiff with respect to the request for annulment of the resolution, reference must also be made to art. 81 cpc which establishes that, except in the cases expressly provided for by law, no one can assert the rights of others in his own name during the trial.

The rule, moreover, must be placed in direct relation with the art. 66, co.3, disp. att. cc as amended by law no. 220/2012, which clearly establishes that in the event of "**failure, late or incomplete convocation of those entitled**", *the meeting resolution can be annulled pursuant to art. 1137 of the code upon request of dissenters or those absent because they were not ritually convened*".

This is an appropriate, or rather necessary, addition made by the legislator to the previous text, which limited itself to providing that the notice of meeting had to be communicated to the condominium owners at least five days before the date set for the meeting, **opening** the led to procedural hypotheses in which it occurred that the condominium owner who was not summoned attempted to assert in court a defect unrelated to his personal position.

Source: <https://www.condominioweb.com/il-vizio-di-mancata-convocazione-puo-essere-fatto-valere-solo-dal-condomino-che-non-abbia.21058#2>

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