



The condominium is not responsible for the fall of the damaged.

For the Court of Appeal of Milan, those who live in the condominium must know the state of the places and avoid any obstacles.

Gianpaolo Aprea 06 nov. 2021

- **Fall in condominium**
- **Fall due to poor yard maintenance**
- **Avoid the obstacle with ordinary diligence**

Fall in condominium.

Those who live in the **condominium** must know the state of the places and avoid any obstacles, so they cannot invoke the responsibility of the **condominium** for a possible fall. This is what the Milan Court of Appeal affirmed, with **Sentence no. 2969 of 14 October 2021**.

The fact.

A condomina commenced proceedings before the Court of Milan your **condo**, as he walked the condominium driveway fell due to some tiles and raised the low light.

The **condominium** contested the request for compensation and called into question the insurance company.

The Court of Milan rejected the application because the responsibility of the **condominium** had not been proven.

The condominium lodged an appeal.

Fall due to poor yard maintenance.

The damaged one appealed to the Court of Appeal, explaining that she had fallen due to poor maintenance of the condominium courtyard and poor lighting of the places. He also complained about the incorrect reconstruction of the facts, of the testimonial and documentary evidence, by the Court of Milan.

Despite this, the Court rejects the appeal and condemns the condominium.

In the decision, the college also refers to the jurisprudence of the Court of Cassation, and in particular to [sentence](#) no. 25243/2006. In this [ruling](#), the Supreme Court specifies that in order for there to be liability for a thing in custody, it is necessary that the damage be caused by external elements and that the thing constitutes the cause or contributing cause of the damage.

As regards the proof, whoever acts for the recognition of the damage must prove in addition to the custody of the asset, the degree of insidiousness of the same asset, and the damaging event.

Where the damages depend on a static and inert thing, a particularly rigorous and delicate proof of the causal link is required, as in such cases "the concrete possibility for the injured user to perceive or foresee the anomaly with ordinary diligence, it excludes the configurability of the pitfall" and the consequent responsibility of the custodian (thus Cass. sentence no. 15375/2011).

Therefore, in such cases it is necessary to carry out further investigations "such as the greater



or lesser ease of avoiding the obstacle, the degree of attention required for the purpose and any other circumstance suitable for establishing whether the thing actually had an intrinsic harmful potential such as to justify the objective responsibility of the custodian.

The testimonial tests carried out in the first degree judgment have not ascertained the responsibility of the [condominium](#) in determining the harmful event.

In fact, the witness, daughter of the injured person, limited herself to reporting that at the point where the mother had fallen "there were no lighting lamps" and that the flooring was "disconnected due to some raised tiles".

The witness did not even report the manner in which the events took place, nor was he able to specify whether the fall was actually caused by raised and invisible tiles.

The further statements, according to which the flooring was uneven, did not even find confirmation in the photographs relating to the state of the places, which instead show that the flooring was in a normal state of maintenance.

The witness's assertion, according to which at the time of the events the driveway was not illuminated, was denied in the testimony of another witness, who reported that "in the spot where the actress fell there are no lamps but next to yes there are lantern lamps about a meter high "and that" the driveway is lit ".

Therefore, any anomaly of the flooring could not have assumed an insidious character, as the driveway is equipped with artificial lighting.

Avoid the obstacle with ordinary diligence.

Furthermore, the actress, who knew the state of the places, living in the [condominium](#) in question, could have avoided a possible obstacle, using ordinary diligence.

For these reasons, it must be considered, as correctly stated by the first instance judge, that the damaging event was caused by the appellant herself, who did not adopt a conduct duly adequate to the context, proceeding with due attention.

Consequently, the court rejected the appeal.

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Source: The condominium is not responsible for the fall of the damaged person <https://www.studiocataldi.it/articoli/43018-il-condominio-non-e-responsabile-della-caduta-del-danneggiato.asp#ixzz7BiTCe11P> (www.StudioCataldi.it)

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