



Opening of a new entrance door on the landing following the splitting of the building into two units, use of the common property and decoration.

Realization of further entrance, limitation of the right to equal enjoyment of the common property and decoration of the building.

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In recent years, with increasing frequency, the need - or the opportunity - has arisen for the owners of large buildings, to carry out works aimed at creating two or more housing units from the original one.

In this regard, it is undoubted how, often, similar practices have created many problems within the condominium structure, both in relation to the attribution of the proportional thousandth value, and for the attention to be paid, at a structural level, to the necessary interventions and preparatory to carrying out the division, including their consequences in terms of any modification also to **the common parts**.

On this last question, the ruling in question is interesting (Court of Civitavecchia of **28 January 2022**), which concerns a dispute relating to the request for restoration of the state of the places advanced by the condominium against the owner of an original single real estate unit, from which two were divided, for having created a further opening for the entrance to the common landing.

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In support of the claim, the condominium raised three objections, deducing the **violation of the condominium regulation** as well as the negative opinion expressed in the assembly resolution on the subject, of art. 1102 cc concerning the equal use of the common thing, as well as art. 1120 and 1122 of the Civil Code due to the damage to the decoration of the building and deprivation of adequate lighting due to the removal of the electrical wires placed on the modified wall.

Appearing in court, the defendant asked to declare her lack of passive legitimacy since the properties appeared to have been sold to third parties for which the Court authorized the call.

Even the current owner who was constituted raised an objection of lack of passive legitimacy, recognizing how he had purchased the property adjacent to the one whose *status quo ante* was requested, or the elimination of the opening.

Considering the cause ripe for the decision based on the documentary evidence taken, without an expert witness or witness experiment, the Court rejected the claim brought by the condominium for the reasons illustrated below.

Equal use of the common good pursuant to art. 1102 cc

The meaning of the expression "equal use of the common thing" does not wait and is equivalent to an identical and contextual use of the same by more than one entitled person.

On this point, the constant and unanimous orientation of the Jurisprudence has reiterated that each co-owner has the right to derive from the common good a greater and more intense benefit from that which may be concretely dealt with by the other co-owners on the assumption that **its**



destination has not been altered or prejudiced to the equal use.

Likewise, it is clear that in the evaluation of every single situation and concrete case it is undoubtedly necessary to carry out a detailed examination of the needs and interests of the participants in the condominium and, at the same time, to reconcile the reciprocal positions, also taking into consideration the circumstance that an asset not all, even hypothetically or abstractly, could, however, achieve equal enjoyment.

On the subject, as confirmed in similar cases, the Court of Cassation expressed itself stating and acknowledging that "[...] the opening of a door in a common part to put a **real estate unit in ownership in communication with the stairwell exclusive of a condominium, it still falls within the scope of a concept of (more intense) use of the common good, and does not require, as a result, the unanimous approval of the condominiums, nor does it determine any constitution of servitude**" (Civil Cassation section VI, 25/01/2018, n.1849).

In this case, it does not appear that the construction of a door on the landing has altered its destination.

The objection raised by the condominium cannot, therefore, be deemed to comply with the regulatory provisions referred to in art. 1102 cc, as interpreted by the consolidated guidelines of the judges of legitimacy.

Architectural decoration

According to consolidated jurisprudence, the architectural decoration of a building represents the aesthetics of the building, as a result of the set of lines and structures, including ornamental motifs, which mark the real estate compendium, both externally and internally, and give it a certain **physiognomy and identity**.

If a party makes a complaint regarding the alteration of the decor with respect to the completion of an intervention, it is necessary to demonstrate the implementation of **visible and significant changes** that compromise the characteristics of a building, such as elements capable of conferring a specific connotation also regardless of the importance and / or value of the same.

From the investigation carried out and, in particular, from the comparison of the photographic material deposited, illustrative and reconnaissance of the state of the places, no alteration according to the notion described above emerged.

For this reason, the Judge did not agree with the complaints raised by the condominium also from this point of view, not recognizing, for the effect, any alteration of the decoration, since the changes were made - among other things - with materials and colors in correspondence and harmony with existing ones.

In conclusion, the application was rejected because the opening of a new door on the landing did not compromise the use of the other condominiums, since no decrease in lighting was demonstrated, nor did it lead to any alteration of the destination and decoration of the building.

Source: <https://www.condominioweb.com/Apertura-di-una-nuova-porta-di-Entrance-sul-pianerottolo-a.18953>

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