



The communication of the compensation after the appointment of the director does not make the resolution valid: it is always null and void.

An interesting decision on the age-old question of the nullity of the appointment of the condominium administrator due to failure to specifically indicate the compensation.

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The resolution appointing the condominium administrator, not expressly containing the quantification of the compensation due to the administrator for the activity to be carried out, must be considered null and void due to violation **of the art. 1129 of the Civil Code**, notwithstanding, for the purposes in question, the possible circumstance that in the specific case the Administrator has, **in the shortest possible way**, communicated, upon acceptance of the assignment, the amount of his consideration, as stated by third parties, given the need, *pursuant to* the combined provisions of the art. 1130 n. 7 and 1136 last paragraph of the Civil Code, that the appointment resolution and the related administration contract are in **written form**.

Thus the **Court of Taranto**, with **sentence no. 2665 of 8 November 2023**, returns to the age-old question of the nullity of the appointment of the condominium administrator due to failure to indicate, specifically and analytically, the compensation that he will receive for his service.

Communication of the compensation after the appointment of the director and invalid resolution. Fact and decision

Tizio challenges the resolution adopted on 20 February 2020 by his condominium, with which the previous Administrator Caio was revoked and Sempronio was appointed as his successor; Tizio complains that he was not summoned, that the resolution appointing Sempronio lacked the **quorum to** be valid and that it was also void due to the lack of indication of the compensation that Sempronio would have received, in addition to the fact that the duration of the role assumed was indicated in a manner that differs from the provisions of the Civil Code.

Before the appeal, Tizio had appealed to the Court as a precautionary measure, in order to obtain the **suspension of the resolution** of 20 February 2020, which was then effectively granted; in the face of the resistance put forward by Sempronio in the face of the precautionary measure notified to him (suspension of his appointment), Tizio had to take executive action in order to obtain compliance with the said provision.

Tizio was also forced to defend himself in the complaint (challenge of the precautionary suspension) promoted by the condominium, then rejected and, despite having promoted mediation, it did not give the desired outcome - it therefore ended with the failure to reach an agreement.

The Condominium does not participate in the appeal, but Mevio and Alfa Srl, two condominium owners, are participating in the proceedings, in the process of **intervening**, who maintain that the **matter of dispute would have ceased** following the **appointment of an Administrator other** than Sempronio by the 'Meeting held on 18 January 2021, that the appeal would be inadmissible for having been promoted beyond the limitation period and contesting the defects raised by Tizio, in particular noting that Sempronio, once appointed, would have communicated the remuneration in the shortest possible way at the of acceptance of the assignment.

The Court of Taranto, with the sentence in question, **upholds the appeal**, declaring the appointment resolution null and void due to **failure to indicate the remuneration**, having absorbed the other issues.

The motivation given to consider **the admissibility of the intervention** of Mevio and Alfa Srl is introduced, in light of the exception raised by Tizio against them, which the magistrate classifies as a dependent adhesive intervention, permitted in disputes where the management of assets is discussed exclusively municipalities and where, therefore, the only passive legitimated person is the Administrator, since this power of the individual condominium owner is not undermined by the **contumacy of the Condominium** - as in the present case - since *"each individual condominium owner [has the right to, Editor's note] intervene in support of the abstract substantial reasons that can be used in court by the condominium, even if it remains in default, without prejudice to the typical preclusions of the intervention in question, first of all the impossibility of proposing an independent appeal "* (Cassation, no. **22952/2022** are cited, no. 2636/2021, SSUU nos. 5992/2012 and 27300/2020).

It is also premised on the **rejection of the exception of cessation of the matter of dispute**: the appointment of another person, according to the Court, does not eliminate the interest in obtaining a ruling on the resolution *sub iudice*, even if it is suspended as a precaution - we imagine that this is also only in terms of costs for virtual defeat.

As regards the **nullity** of the appointment resolution, the Taranto Court believes that the communication, carried out by the Administrator, following the acceptance of the assignment - or rather, in conjunction with its acceptance - of the amount of his compensation does not satisfy the requirements of the written form provided for by the art. 1130, n. 7), cc and 1136, last paragraph, cc, citing in support the ruling of the **Supreme Court no. 12927/2022** and therefore rejecting the hypothesis of **lateness of the appeal** brought beyond the deadline **of the art. 1137 cc**, given that **nullity is imprescriptible**.

Final considerations

We must clarify for the reader the apparently difficult reasoning adopted by the Court to resolve the question submitted to it.

It should first of all be underlined that, according to the narrative of the facts as reported in the sentence, the newly elected Director Sempronio, once he learned - we imagine - of the outcome of the vote, **communicated** his acceptance of the position and his **compensation** , as also prescribes the **art . 1129, 14th paragraph, cc**

However, in the sentence it is reiterated that said acceptance of the assignment took place **"by short notice "**, an expression that usually indicates a **telephone call**.

It is evident, then, that **this method does not integrate the requirement of (proof of) written form** that the role of condominium administrator must have in order to be considered complete and valid.

The aforementioned ruling of the Supreme Court was also used by another judge of merit to resolve a similar dispute, which we commented on recently in this magazine (ruling of the Court of Appeal of Bari, with ruling no. 1201 **of 20 July 2023**): the **Supreme Court, with sentence no. 12927 of 22 April 2022** , observed how *"the resolution through which the director is appointed without specifying the compensation is null and void, unless the communications sent to the condominium owners with the indication of the amount to be paid are recalled and attached to it .*

The appointment of the administrator, following the 2012 reform, is structured as an exchange of proposal and acceptance, as can be deduced from paragraphs 2 and 14 of article 1129 of the Civil Code, as well as from article 1130 of the Civil Code, which provides that the appointment must be noted in a specific register and, more generally, the appointment resolution and the related administration contract must be in written form", so that, again according to the Stoats, art. 1129, 14th paragraph, of the civil code regulates a hypothesis of **textual nullity**, so that the

specific indication of the compensation becomes **necessary** even in the event of **renewal** of the office (not only, therefore, for the first appointment) and cannot be considered **implicit**.

It is therefore clear that the communications referred to by the Court must be in written form or at least be documentarily provable, to provide **proof** that the **condominium owners** had been made **aware** of the amount due as **compensation** to the appointed Administrator.

Source: <https://www.condominioweb.com/non-salva-la-comunicazione-del-compensa-dopo-la-nomina-dellassociazione.21179#2>

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