



GECOSEI

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Fall in a hole in a condominium: responsibility and concurrence in the damage.

Even in the condominium area, the predictability and avoidability of a trap can affect the compensation for a fall

Marco Borriello 07/12/2021

Holes, unevenness and cracks in the asphalt are not an exclusive prerogative of public roads since, even in the condominium area, it is possible to find certain situations. It is therefore not unlikely that an access road is so bumpy as to be risky for the **integrity of the cars** circulating there.

Similarly, it is not unlikely that a common courtyard will have cracks, to the point of representing a danger to the **safety of the people** who walk in it.

Well, if this is the case with your building and if you hit the ground after stepping into a hole, you should know that you are not always entitled to **compensation** for all the damage suffered.

This is because, according to jurisprudence, the pedestrian must be diligent and careful in avoiding pitfalls and pitfalls produced by the **maintenance status** of a condominium property, especially if it is a situation known to him.

This is what happened, for example, in the matter submitted to the Court of Milan and concluded with the recent sentence no. 9575 of November 19, 2021, where the poor maintenance of a common courtyard was not sufficient to justify the full recovery of all the **damages** accused by a condominium following a fall.

Let's see, however, in more detail what happened in this real estate complex in the Milan area.

Fall in a hole in a condominium: responsibility and biological damage

According to the reconstruction offered by the actress, in December of 2017, she fell tumbling to the ground because of a **hole** present in ' **asphalt of the courtyard** .

The story also highlighted the poor lighting conditions of the property at the time of the event which took place at 19.30.

Unfortunately for the victim, the consequences of the accident were significant, given the fracture of the patella of the knee.

The legal action was therefore inevitable and, within the same, the defendant condominium defended itself by arguing, mainly, that the **injured party** had contributed to **the event with her imprudent behavior** . Furthermore, the insurance company with which the so-called global building policy was stipulated was called into question as a guarantee.

The investigation of the procedure was characterized by the examination of various witnesses, including that of the caretaker of the building who confirmed the bad maintenance of the courtyard, but also the fact that the actress had been residing in the building for about 25 years. Finally, the usual expert witness was carried out to ascertain the so-called degree of invalidity produced by the accident.

At this point, having examined the case files, the Court of Milan decided to accept, only partially, the claim for compensation. The magistrate has, in fact, **reduced** the quantification of the **biological damage** suffered by the actress by **50%** .

The co-responsibility of the injured party in the unlawful act



According to the civil code, the compensation for damage deriving from the debtor's default must be reduced in proportion to the creditor's responsibility in causing the event.

*" If the culpable act of the creditor has contributed to causing the damage, **the compensation is reduced according to the gravity of the fault and the extent of the resulting consequences** (Art. 1227 paragraph 1 of the civil code)".*

This principle also finds common application in the matter of compensation for damages deriving from the pitfalls coming from the **things in custody**. In this case, in fact, the injuring party essentially bears the burden of proving that he had behaved absolutely diligently and attentively, that is, such as not to have contributed, in any way, to the occurrence of the accident. In short, it must demonstrate that the **event** was obviously **inevitable**.

Otherwise, in fact, the relief could be significantly reduced if not totally excluded " *Compensation is not due for the damages that the creditor could have avoided using ordinary diligence* (Art. 1227 co. 2 cc)", despite the 'maintenance obligation on the property charged to the owner / custodian of the same.

Fall in condominium and conditions for compensation

Undoubtedly, **the condominium must provide for the ordinary and extraordinary maintenance of the common goods**. Therefore, just to give some examples, the presence of a condominium courtyard with split asphalt or a disjointed pedestrian access avenue are certainly not admissible and may result in liability for the entity, should any accidents occur to the detriment of the cars or pedestrians.

Despite this, however, each condominium must be very careful about their behavior. Indeed, it must emerge that he was unexceptionable in terms of **prudence** and **diligence** in assessing the situation in which he found himself.

This is because " *the voluntary exposure to a risk, or in any case, the awareness of placing oneself in a situation which results in the probability that a detrimental event will occur to one's own damage, is suitable for integrating a **co-responsibility of the injured party** and reducing, proportionally, the liability of the injuring party, as it constitutes a necessary causal precedent for the occurrence of the event* (Cass. n.11698 / 14, Cass. Civ. section III, 31/10/2017, n. 25837) ".

According to jurisprudence, therefore, the pedestrian who walks in a condominium courtyard on which he is known that there are **pitfalls and pitfalls**, such as the presence of **holes or cracks**, adopting due caution, is able to foresee and avoid any accident. Otherwise, the compensation would be significantly reduced.

In the case submitted to the Court of Milan,

The actress had lived in the building for about 25 years and had full knowledge of the poor state of maintenance of the condominium courtyard. For the Milan office, therefore, with a more prudent behavior, the injured party could have eluded the occurrence of the event. Not having done so, the amount of the compensation was reduced, since he contributed to the fact with his own carelessness.

Source: <https://www.condominioweb.com/caduta-in-una-buca-in-condominio-responsabilita-e-concorso-nel.18715>

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