



When the report is seriously deficient and not intelligible.

The Court of Rome focuses on the nature and content of the summary explanatory note.

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The **condominium report** - often improperly called final balance sheet or simply final balance sheet - is apparently simple, but like all simple things it is complex.

Since 2013 we have learned that there is only one report, but it is made up of various documents which must all be present, otherwise the report and consequently the resolution that approved it will be invalidated.

With the ruling under comment, the Court of Rome examines an affair where some condominiums challenge the resolution to approve the report, highlighting various irregularities and therefore provides us with the opportunity to return to examine art. 1130 *bis* of the Civil Code

When the report is seriously deficient and not intelligible. The story

Tizio and Caia challenge the resolution of their condominium with which, among others, the **financial statements had been approved**.

The reasons for the complaint are various and are mainly based on the failure to deliver the definitive version of the report to the condominiums, on the absence, in the same, of the amounts paid by the condominiums in fulfillment of a stipulated contract, nor the payments made or the sums owed to third parties outside to the condominium.

According to Tizio and Caia, the allocation of expenses is also wrong, because either they do not take into account the assumption of expenses assumed by some only among the condominiums or they divide the expenses for a number of condominiums lower than the real one.

Equally unintelligible are the funds, since, for example, for a non- **payment cash fund**, it is not possible to understand the reason, the specification of the consequent payments and the division between the condominiums, while, in general, for the cash funds allocated over time the statement does not clarify either the imputation or the eventual restitution.

Finally, allotment criteria are used that are different from those provided for by the Regulation and by a sentence of the Court of Rome which, evidently, had regulated a previous case in which third parties outside the aforementioned Condominium were involved.

Tizio and Caia are also challenging another *decisum* of the resolution that approved the report, i.e. the works on the road, stating that this **point** was not among those on **the agenda of the Assembly** that voted for it.

Finally, Tizio and Caia demand **compensation** from the Condominium which they accuse of the failure of the same to the obligation to make the connection to the gas pipeline to their apartment, which had to take place by a certain date, according to the settlement agreement reached between them and the Condominium, while the connection was made only a year later. The condominiums therefore ask the reimbursement of a sum of approximately Euro 1,000.00 by way of increased consumption in the year of time for the execution of the connection, the cost of the inherent certification, the cost for the restoration of the lawn and cost charged by the supplying company for the connection.

The Condominium defends itself by arguing the regularity of the contested resolutions and, with



respect to compensation for damages, that the fault of the delay in the execution of the connection should not be attributed to the entity, but to the company required to do so.

The **Tribunal of Rome** , with **sentence n. 14863 of 12 October 2022** , **accepts** the request of Tizio and Caia in the terms set out below.

Report, one and triune

After carrying out two expert witnesses on the subject of the dispute, the Judge concludes, starting from the results of his consultant's appraisals, that *"the accounting management of the condominium appears to be **deficient** to such an extent as to **invalidate the perfect intelligibility of the final balance**"*.

It is then specified, as we often read in judgments of merit and legitimacy, that the condominium report must not be drawn up in the rigorous form required by law for corporate financial statements, but must borrow **three fundamental requirements from those** , namely:

- **clarity** (i.e. it must be understandable for all recipients; the process of substantial formation and formal representation must be transparent, i.e. it must be possible to trace the expense or income items from the condominium, administrative and accounting documentation)
- **correctness** (i.e. it must comply with the principles of accounting technique)
- **truthfulness** (that is, it must report exact and objective quantities and, where appropriate, reliable estimates).

These three requisites are met, for the condominium report, also and above all by the **three documents** that make it up (in addition to the report itself), i.e.

- the **Accounting Register** (provided under penalty of revocation by the Administrator by articles 1130, n. 7), cc and 1129, 12th paragraph, n. 7) cc)
- the **financial summary**
- there **summary explanatory note**

The set of these 3 documents should allow the tenant who on average is not an expert in accounting, to retrace the movements in and out of the condominium current account as well as any movements of the mandatory funds - cash (for example, the severance indemnity of the concierge) or approved (for example, for work or arrears or other) and match the current account statement with respect to the situation crystallized in the previous year (previous year, *rectius*).

Particularly valuable is the part of the sentence in which the Judge dwells on the **nature and content of the explanatory summary note** which, almost 10 years after the reform that introduced it, is still absent in almost all of the reports. Italian condominiums.

What is it about? In the words of the drafter: *«the report consists of an accounting register, a financial summary and an **explanatory summary of the management** , also indicating the relationships in progress and the pending issues.*

*The purpose of the explanatory note is to **briefly describe the entire annual management giving an account not only of ongoing relationships but also of pending issues , commenting on the most relevant issues as well as those subject to the most evident changes (compared to the previous year)** , representing the **events of particular importance for their financial implications** (sentence of this Court n. **10624/2021**)".*

In the present case, in addition to the lack of the summary note, the rest of the report was **seriously deficient or unintelligible** , on the basis of the CCTU's statements.

The **general debt/credit situation of the Condominium** , according to the CCTU, was not clear, so much so that they go so far as to hope for *«an **overall audit** that sheds light on the matter but which is assisted by the full availability of the Condominium both in terms of incoming and outgoing which it is advisable to carry out up to a date as close to the present as possible»*.

Resolution on an issue absent from the OdG

The question of Tizio and Caia on this point (remember, the resolution concerning the execution of works on the road) is rejected because the Judge observes that **the actors were present at the Assembly** that adopted the resolution and, at the time of the vote, **did not they pointed out** that the point about to vote was absent from the agenda .

The magistrate reports the consolidated orientation that *"The failure to indicate a topic, then resolved, on the agenda of a condominium assembly, **cannot be detected by the condominium dissenting on the merits, if he has not previously objected in that seat the irregularity of the call** (thus, among others, Cass. n. 24456/2019) "*.

In reality, in the present case and according to what was reported in the sentence, it would even seem that Tizio and Caia, present, **voted in favour** , because the names of the condominiums indicated as abstentions with respect to the resolution approving the works do not coincide with those of Tizio and Caia, but we cannot go into further detail, as we do not have the court documents or the minutes containing the contested resolution available.

Compensation for the damage, the Condominium is also liable for the third

By peaceful affirmation of the parties, the gas connection to the apartment of Tizio and Caia had taken place a year after the transaction reached and the date set in it for the realization.

Well, according to the Judge, *"the alleged absence of responsibility on the part of the Condominium (obliged by virtue of the settlement) - given the alleged delay attributable to [company in charge, NdA] (concretely delegated to the realization of the connection) - appears contradicted by the general rule established on the matter in **art . 1228 cod. civ.** ("Unless otherwise agreed by the parties, **the debtor who avails himself of the work of third parties in the fulfillment of the obligation, is also liable for the willful or negligent acts of the latter** ")* " without prejudice to the demonstration of unforeseeable circumstances or force majeure with regard to the behavior of the auxiliary.

Therefore, concludes the Court, in the main report the responsibility of the condominium must remain firm for the delay of the company in charge due to the omitted deduction of any causes for exemption, while the internal reports inherent to the traceability of the non-fulfillment to the exclusive responsibility of the condominium or any culpable liability of the third party may possibly be the subject of an independent assessment (since the latter was not called in this judgment).

Source: <https://www.condominioweb.com/rendiconto-un-chiarimento-sullintelligibilita.19911#2>

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