



GECOSEI

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Co-owner in the condominium and payment of the full fee.

The responsibility of the co-owners of an apartment is joint and several towards the condominium.

Lawyer Marco Borriello 01/27/2023

Each condominium has the duty to pay the **condominium fees**. They are calculated according to the millesimal value of the property and are the result of the budget and final account approved at the meeting. For the administrator it is, therefore, legitimate and dutiful to ask for the payment of the common charges to the various owners of the building.

However, it may happen that a single **property** belongs to several subjects. Consider, for example, the apartment in the name of the children by their parents or the quarter purchased, jointly, by the couple who have decided to elect their family home in it.

Well, in these, as in other circumstances, who has to pay the condominium fees? Can the administrator apply, without distinction, to the various **co-owners**, demanding payment of the entire amount due or can he only demand, in proportion, the share of the single co-owner?

The recent sentence of the Court of Terni n. **22 of 9 January 2023**. He did so in the context of an opposition to an injunction proposed by the co-owner of a condominium property in opposition to the **injunction** obtained by the institution for various common arrears charges.

First of all, however, it is good to examine the concrete case.

Co-owner in the condominium and payment of the full fee. The concrete case.

In an Umbrian building, following the approval of the 2018 final balance and the 2019 budget, paid by the **co-owner of a property**, there was a backlog of around 7,500 euros for common charges never paid.

The outcome of the assembly in which the budgets were ratified was, ritually, communicated to the co-owner in question in January 2020. Well, despite this communication and the multiple reminders regarding the payment of the arrears of condominium fees, the **mentioned** co-owner did not pay anything.

In June 2020, therefore, an injunction against the defaulting condominium was requested and obtained from the institution. However, the defendant proposed opposition to this provision.

Before the competent Court of Terni, the **opponent** argued that he owed nothing, having **never received any summons** to the various assemblies that followed one another over time. Among these was included the one in which the budgets on which the undue claim of the condominium was based would be approved. Thus, the title on which the injunction was based was invalid.

Furthermore, for the opponent, it would have been correct to pay the common charges only partially, given that he was the co-owner of the property in question only for 2/9.

Well, the Umbrian office, having examined the documents, rejected the opposition, confirmed the opposite decree and sentenced the losing party to pay the costs of the proceedings.

Failure to call a meeting to approve the budget: when can it be challenged?

In the dispute in question, the opponent had objected to the failure to convene the meeting which had approved the budgets on which the injunction was based. For this reason, he was asking for **the title to be voided**. Well, this conclusion is not wrong, but in compliance with two essential



conditions:

- the term of thirty days must not have elapsed from the knowledge of the meeting, as required **by art. 1137 civil code** «*failure to convene does not result in nullity but, rather, the annulment of the resolution taken, to be enforced **within 30 days of communication** of the resolution in the event of non-attendance (Cass., n. 6735/2020)*»;
- in the opposition, the invoked **invalidity of the assembly** must be raised in the form of the counterclaim «*although admitting the assessment of the nullity and voidability of the resolution in the opposition proceedings - i.e. incidentally, requires, however, unavoidably that such requests are not proposed as an exception but, rather, **by means of a specific counterclaim** in compliance with the peremptory term established by art. 1137 of the Italian Civil Code (Court of Cassation, Un. Section, no. 9839/2021)*».

However, this did not happen in the proceedings before the Court of Terni.

In fact, many months had passed since the opponent had been formally informed of the meeting for the approval of the balance sheets and of his consequent debt for **common charges**.

Any claim of invalidity of the resolution, therefore, due to the failure to convene the assembly in question, had now become untimely and, therefore, inadmissible.

Co-owner in the condominium and joint liability of the shares.

On the occasion of the opposition in question, the opponent objected to the condominium's claim of wanting the payment of the entire common shares referable to the property in question. According to the tenant, his **limited co-ownership** (only 2/9) had not been considered. Well, the institution's request was not illegitimate.

passive solidarity operates between the condominium and the various co-owners of a building . The building, therefore, through its administrator, can legitimately request payment of the whole even from the single co-owner.

Whoever has paid will then have the right to recover the amount due from the other co-owners, by way of recourse «*the **responsibility of the co-owners** of an apartment towards the condominium has a joint and several nature in relation to the payment of the condominium charges, which is why the condominium can well demand from each of the co-owners the entire amount of the debt, without prejudice to the **recourse** of the solvens against the co-debtors (Cass., no. 21907/2011; Court of Cassation, no. 4769/1978)*».

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