

Giurisprudenza**Dettagli del caso****ID nazionale:** no. 5494/1999**Stato membro:** Italia**Nome comune:** Soc. Aurora v. Bigliardi et alii**Tipo di decisione:** Altro**Data della decisione:** 04/06/1999**Organo giurisdizionale:** Corte di cassazione**Oggetto:****Attore:****Convenuto:****Parole chiave:****Articoli della direttiva**Timeshare Directive, [Article 1](#)**Nota introduttiva**

1. The contribution of an immovable good in a company whose shareholders are the people who want to share the use of that good in separate enjoyments complies with the fundamental character of the “multiproprietà azionaria” that can be distinguished from the “multiproprietà immobiliare” because the immovable good is not held in real property by the shareholders. In consequence of that, the fact that contribution has not been made implies a gross violation able to justify the cancellation of contract, considering also that the lack of contribution diminishes the value of the shares relating to a good which is not possible to use.

Fatti

The company Aurora S.r.l. sued Paolo Bigliardi and Tullia Menozzi before the Tribunale di Trento to condemn them to the payment of the remaining instalments in force of a contract for purchasing some shares of the company Belvedere S.r.l. that was to be set up and to which the plaintiff would have contributed with a lodging establishment. The holding of the share would have given to the defendants the right to use exclusively a specific lodging unit under the regulation of the establishment.

Conversely, the defendants asked for the cancellation of the contract, the restitution of the payment made and the condemnation for damages in consideration of the delay in building the establishment and of the failure in setting up the company Belvedere S.r.l.

The Tribunale of Trento decided in conformity with the request of the defendants. The company Aurora S.r.l. appealed that decision. The Court of Appeal declared ex officio the nullity of the contract and rejected the demand of the plaintiff.

The company Aurora S.r.l. has brought an action before the Corte di cassazione asking the judges to reverse the decision of the Court of Appeal.

Questione giuridica**Decisione**

Apart from the clarification on a point of the controversy, not relevant for this abstract (the extensive interpretation on Art. 2331, paragraph 3, c.c. for declaring the nullity of the contract in case of the limited company Belvedere S.r.l.), the Supreme Court stated that the contribution of an immovable good in a company whose shareholders are the people who want to share the use of that good in separate enjoyments complies with the fundamental character of the “multiproprietà azionaria” that can be distinguished from the “multiproprietà immobiliare” because the immovable good is not held in real property by the shareholders (Cassazione 10/05/1997, no. 4088).

Where that fundamental character is present, the contract is always assessed or assessable in its subject matter (Art. 1346 c.c.) and, therefore, the contract cannot be declared null and void, as the Court of Appeal did.

In consequence of that, the fact that contribution has not been made implies a gross violation able to justify the cancellation of contract, considering also that the lack of contribution diminishes the value of the shares relating to a good which is not possible to use (Cassazione, 12/12/1995, n. 12733).

Testo integrale: [Testo integrale](#)**Casi correlati**

Nessun risultato disponibile

Dottrina

Nessun risultato disponibile

Risultato