

Case law

Case Details

National ID: no. 4088/1997

Member State: Italy

Common Name: Storace v. Soc. Cortina Tre Croci

Decision type: Other

Decision date: 10/05/1997

Court: Corte di cassazione (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Timeshare Directive, [Article 1](#)

Headnote

1. It is a case of "multiproprietà azionaria" where, in addition to the agreement for purchasing of shares, a stock company grants for a consideration to the shareholder the right to use an immovable goods for an identified period of time and for a long duration corresponding to the life of the company. The shareholder in that right is not prevented by the Art. 2256 c.c., Art. 2247 c.c. relating to company law and Art. 1573 c.c. relating to the contract of rent.

Facts

Luigi Storace sued the company Cortina d'Ampezzo S.p.A. before the Tribunale di Belluno for having rented to him until 2100 a lodging unit in a hotel in Cortina d'Ampezzo at a price decided every year by the board of directors of such company. The plaintiff claimed the contract was without determination of the sum due for renting and its excessive duration was against the prohibition of contracts of rent for more than 30 years (Art. 1573 c.c.). Accordingly, he asked the Tribunale di Belluno to declare the nullity of contract under Art. 1346 c.c. and Art. 1418 c.c. The Tribunale di Belluno declared the nullity of contract, having qualified such a contract as a rent. The company appealed the decision of the Tribunale, opposing that the contract was not of rent, but of "multiproprietà azionaria" in which the consideration required to Luigi Storace was assessable by the board of directors on the basis of parameters relating to the hotel tariffs and approved by the shareholders' meeting. Therefore, the Corte di Appello di Venezia reversed the decision of the Tribunale, declaring the validity of that contract. Luigi Storace has brought an action before the Corte di cassazione asking the judges to overturn the decision of the Court of Appeal.

Legal issue

The Supreme Court has clarified that the "multiproprietà azionaria" is not a real property but only a right to use the good on the basis of one's right as a shareholder. However, the Court has specified, as already done by the Court of Appeal, that there are two different relationships between the shareholder and the company in the event of "multiproprietà azionaria". The former is the status of partner based on the shareholding and the other is the right of use of the immovable good based on another agreement with the company. This other agreement includes also the rules on the enjoyment of the good (the regulation of condominium).

This specificity does not permit to apply the rules on company law to this second relationship, even if in the case decided by the Court the company completely fulfilled the requirement of the "scopo di lucro" under Art. 2247 c. c. because the company was not only the support for the enjoyment of the immovable good (the so-called "multiproprietà azionaria pura") but it was producing profits for the shareholders through the management of hotels and establishments (the so-called "multiproprietà azionaria impura").

Moreover, the Court has confirmed the decision of the Court of Appeal that qualified assessable the sum required to the plaintiff every year by the board of directors because that sum was not at the only choice of a third party under 1349 c.c. (the board of directors), but it was controlled by the shareholders' meeting to which the plaintiff could participate.

The specificity of the "multiproprietà azionaria" does not permit to apply the rules on the contract of rent, especially when the prohibition of a duration of contract for more than 30 years (Art. 1573) in a case of "multiproprietà azionaria" is linked to the duration of the company and the status of partner and therefore, per relationem, it has a settled duration.

Decision

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