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CEASE-AND-DESIST ORDER AND ABUSIVE FILLING OF THE BLANK SIGNED SHEET

The new article 648 of the Italian Code of Civil Procedure seems to be a useful tool in order to streamline the procedure of injunction. Let us see how, by considering a practical case involving the filling in of the blank signed sheet as well.

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1) The case examined by the Court of Vallo della Lucania

A client opposed against the cease-and-desist order by which the payment of an amount, which exceeded 10,000 Euros, was enjoined in favour of his lawyer by way of professional competencies, in addition to interest payments and charges. The client argued not to owe anything to the counterparty and to have always paid the required bills, objecting to the settlement of the right to require the payment and the signing of blank sheets that had been used against his will, also arguing the quantum of the claim.

With appearance and answer, and also in the first hearing, the counterparty's lawyer demanded the concession of the provisional execution of the cease-and-desist order, considering the counterparty's claim as unfounded, specious and merely time-consuming.

2) Article 648 of the Italian Code of Civil Procedure: provisional execution in pending execution

The law confers the discretionary power of allowing the provisional execution of the opposite decree on the opposition's judge, given that the opposition is not based on written proof or its solution requires the completion of an appraisal of the evidence.

Article 648 of the Italian Code of Civil Procedure – provisional execution in pending opposition: 'If the opposition is not based on written proof or it does not have a ready solution, the examining magistrate can allow the provisional execution of the decree, arranging for it in the first hearing and with non-appealable orders, in case it has not already been given in accordance with article 642. The Judge allows the partial provisional execution of the opposite cease-and-desist order only as regards to the uncontested amounts, unless the opposition is proposed for procedural errors'.

In this case, the judge issues non-appealable orders that cannot be revised or revoked. The reason, as explained by the Constitutional Court with sentence n.306/07, is that the judge himself is required to evaluate the *fumus boni iuris* of the creditor, comparing the 'evidentiary intensity' of the elements that have been offered during the screening stage (which, if contested with written proof, have to possess proof efficacy in ordinary court hearing, or be integrated with further adequate documentation) with the ones adduced by the opponent's legal proceeding. In any case, as the trial's nature is provisory and precautionary, the measure interfering on its definition is inadequate and its effects are bound to end with the sentence pronouncing on the opposition.

Following the modification introduced by the legislative decree 231/2002, where the opposition regards part of the amount ordered to pay and is not based on procedural errors as well, **the judge is obliged to grant the provisional execution of the opposite decree in relation to the amounts not contested.**

In view of the above, the subsistence of the *fumus boni iuris* will be easily supportable in the present case. The regulation influences the adoption of the provisional execution's measure if two negative and alternative prerequisites may occur: **the lack of written proof** in support of the opposition and **the presence of a proof which is not of ready solution** – these two must coexist – in view of the interpretative guidance of the Constitutional Court (sentence n.137/1984 and order n.295/1989) and of the well-established case-law – to evidence supporting the creditor's claim, allowing the opponent's demand *ius boni iuris* to be sufficiently proved. The latter has to be considered as the necessity of sufficient supporting documents on the constituent elements of the right claimed by the opponent. Moreover, in the present case, the opposition was not built on written proof, as the opponent had not attached any written proof of the executed defences.

3) Abusive filling of the blank sheet

With regard to the agreements conferring professional duties, that is to say, the defender's prosecutors, produced in the monitoring phase, the opponent has not denied the authenticity of the signature, which has to be verified, but he has inferred the circumstance of the filling in of the blank signed sheets by the opponent. As for this last defence, it has to be highlighted that, in accordance with strict case-law, **the denial does not constitute adequate processual means in order to demonstrate the abusive filling in** (Italian Court of Cassation, Section III, sentence n.25445/2010).

Italian Civil Cassation, section III, 16/12/2010, n.25445: 'The denial does not constitute adequate processual means in order to demonstrate the abusive filling in of the blank sheet, whether it is *absque pactis* or *contra pacta*. Suing for forgery is possible if it is deemed that there has not been an agreement on the filling in between the parties; the proof of an agreement whose content is different from the signed sheet, has to be provided if it is deemed that the agreement reached is different'.

In the present case, it is noted that the opponent's defence, even if qualified for the abusive *contra pacta* filling in, was not based on any proof. On the contrary, the circumstance of the partial paid amounts deducted from the opposite and not contested from the opponent turns out to be adequately proved. In view of the request of preliminary evidence, the issue does not appear to be easy to solve. The credit proves to be based on

the production of orders regarding the professional activity as well.

4) Conclusions

Based on the abovementioned discussion, the judge, Doctor Maria Lamberti, accepted the request ex. article 648 of the Italian Code of Civil Procedure, and according to it, allowed the provisional execution of the aforementioned cease-and-desist order, reserving her position on the evaluation.
