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HIGHLIGHTS

TRIFIRÒ & PARTNERS AVVOCATI

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HIGHLIGHTS T&P 2021

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01

JOBS ACT: WHEN UTOPIA BECOMES DYSTOPIA

By Salvatore Trifirò[1]

Foreword

The title of Stefano Giubboni's interesting book – "*Anni difficili. I licenziamenti in Italia in tempi di crisi*" (*Difficult years. Dismissals in Italy in times of crisis*) - takes us back in a flash to a past that is still very much alive: to those fiery years which, from the mid-1960s to the end of the 1970s, are remembered by most as the ἀρχή, i.e. the origin of those fields of law that are found in today's labour and trade union law.

Then as it is now, the entrepreneurial class was called into question.
Then it reacted to the picketing, to the forced reinstatements in the workplace under Article 18 of the Workers' Statute, or to the reinstatement of thousands of employees under Article 28 of the same law under the strong pressure of the trade unions supported by politicized judges.

Today, it is benefiting, as Giubboni recalls, from "*the political and ideological showdown long sought after and yearned for by large strata of our entrepreneurial class, which has only had to wait for the most politically propitious moment for the awaited revenge: a moment that has finally arrived, firstly, with the 'technical' government of Mario Monti and, then, above all, thanks to that unrepeatable conjunction of stars that for a composite group of interests turned out to be the government headed by Matteo Renzi*".

And here we must immediately point out that the battle over the abolition of the reinstatement protection under art. 18 was, all in all, a distraction of energy on a false problem: the relaunch of the Italian economy, as Giubboni writes, "*must pass from the rediscovered centrality of work: therefore, of its rights and its just protections, which are clearly not in contrast with the reasons of the enterprise*".

Now, for the purposes of carrying out an analysis aimed at expressing an assessment of the latest reforms intervened to regulate the labour market, a comparison with the categories resulting from the relationship between economy and law is essential. Said relationship is made even more delicate by the increasingly evident complexity of the current social organisations and the consequent fragmentation of individual skills and doctrinal elaborations.

The role of economic analysis of law

Given the extent of the legislator's intervention in the affairs of the country, it is believed that this is, at least traditionally and at least in part, implemented by means of an ethical design. The latter is to be understood in its most widespread and broadest sense as a normative set of principles governing human conduct.

Economic science thus passes from being a descriptive science to a philosophical science, as it happened centuries ago with the sciences of aesthetics and morality. This has more practical importance than one might think. As anticipated by Hegel in the famous note to §189a, the economic analysis of law becomes what Kant had expressly excluded: a universal ethical principle and, therefore, a criterion of action in any human activity, at least potentially.

The above raises the problem of the relationship between law and economics.

The issue of the economic analysis of law

The above considerations justify the introduction of economic analysis in civil law, and more specifically in labour law, as a legal argumentation which, by dealing with the economic effects of a rule, identifies the *ratio or intentio legislatoris* and the consequent justification in terms of effectiveness and efficacy. The particularity of the method lies in the use of economic notions to express a value judgement on legal norms.

These processes are commonly identified in the *Economic Analysis of Law*, of the Chicago School and Richard Posner in particular; or in the less consequentialist *Law and Economics*, of the Yale School with Guido Calabresi.

But irrespective of whether we are discussing of *Economic Analysis of Law or Law and Economics*, these expressions mean nothing if it is not clear to the interpreter which analysis and which economics we are talking about. In fact, there are many analyses and many economics that can be applied in this field.
And yet, there is often a basic ambiguity on this point due to the mistaken conviction that the economic analysis contemplates only monetary data, leaving aside its moral or existential implications.

The still widely followed model of the *homo oeconomicus* is based on this concept. This is a theory that describes man's behaviour according to perfect rationality and unbreakable egoism.

This conception has often led many lawyers to use an economic argument imbued with the (sole) concepts of expected utility and cost-benefit. One of such arguments is Cost-Benefit Analysis (CBA), which consists in evaluating regulations by comparing their benefits and costs expressed solely as monetary values. The value judgement derived from this analysis will depend on whether the benefit produced is greater, lower or equal to its cost. This is

a model of economic rational behaviour, synthetised by the most elementary opportunity-cost curves.

But the limitation of the model consists precisely in the assumption that the benefits and costs of an intervention can be measured by quantities of money.

In fact, there is no link between the concepts of utility and cost and those of egoism and *humanitas oeconomica*. Nevertheless, the studies developed so far have shown that it is impossible to isolate in *homo* one or more *homunculi*, making man stop at the pure *homo oeconomicus*.

In fact, *homo oeconomicus*, *homo juridicus*, *homo philosophicus* and *homo faber* are but a pure abstraction that cannot do justice to the biological, psychological and social complexities that make man and his actions human.

Consequently, in the economic sphere too, objections have been raised that have emphasised both the limited nature of human rationality in decision-making and the presence of additional criteria for action beyond the maximisation of one's wealth (moral, social needs, etc.).

Moreover, it has been widely experienced that man is influenced by cognitive short-circuits, prejudices and contextual elements that lead him to prefer a quick and simple solution to choices that would instead be very complex.

The result is a phenomenon that has been extensively tested in behavioural economics, whereby humans - *even if they are economically oriented - have a tendency to make many errors in reasoning, judgement and decision-making that are detrimental to their well-being*. Specialists call these errors cognitive biases and heuristics.

Such behaviour, even if it is by no means certain that it makes man irrational per se, makes his economic conduct undoubtedly distant from the model of perfect rationality referred to above.

From this point of view, in the elaboration of the rule of law, the application of cognitive and behavioural sciences finds its place *as a method of "law making" or as a tool for constructing a favourable context of choice on the part of the citizen*.
Indeed, behavioural economics has challenged the paradigm of rationality, laying the foundations for the new

normative technique of behavioural insights (BIs). This scientific trend is based on the aforementioned empirical fact that decision-makers in a state of uncertainty behave in a way that is not in line with the results expected from traditional models. Thus, people's behaviour is modelled by incorporating behavioural dynamics into economic theories. Having thus recognised the fallibility of human decisions, it is up to behavioural economics to model it and incorporate it into economic models, by improving the accuracy of regulatory objectives.

On these different economic foundations, the legislator can thus elaborate its interventions, where the results of models of behavioural economics show ample margins for the effective construction of *choice architecture* for the benefit of citizens, which would encourage them to act in a way that is useful to themselves and others. In short, *choice architecture* operates by designing the context within which people are called upon to express their preferences, bearing in mind human cognitive processes and failures.
In this sense, the results of behavioural economics are useful first for the construction of public interventions and then for their evaluation. In fact, they make it possible to define regulatory policies *ex ante*. But at the same time, the same tools allow to appreciate *ex post* the cause-effect relations and the consequent value of the rules issued.

This is increasingly imposing the definitive abandonment of the *homo oeconomicus* in favour of the *homo human*, focusing on levers other than the cold rationality of the cost-benefit and conduct-sanction mechanisms. This is why other Western systems have already adopted a legislative technique that has abandoned the threat of sanctions in favour of education, information and cooperation.

Concluding on the recent Jobs Act reform

In conclusion, coming to the reform that the 2015 legislator intended to justify precisely on the basis of economic data, one is led - on the basis of the above-mentioned principles - to find that there is instead a discrepancy between the mechanism of the so-called "*increasing protections*" and its desired economic effects of flexibility and competitiveness of the labour market.

The discrepancy lies precisely in the repeated recourse to cost-benefit analysis as the only planning and regulatory evaluation technique in the field of economic and labour policies, without paying any attention to behavioural data that has been shown to be just as relevant as purely monetary data. This is made even more evident by the increasing complexity of the economic and social organisation typical of western countries, where aggregate dynamics are increasingly difficult to control and predict by individuals, even if they are invested with public functions and/or are qualified scientific observers. This hyper-complexity is completely disregarded by Cost-Benefit Analyses, unlike behavioural economics models, which have been shown to benefit from statistical data. And it is precisely on the behavioural - as well as constitutional - aspect that the choices made by the Jobs Act on the subject of dismissals by employers are based.

This is made particularly evident by the fact that the so-called "increasing protections" system under Legislative Decree no. 23 of 4 March 2015 is still perceived as having decreasing protections with respect to the dictate of Article 18 of the Workers' Statute, despite the fact that at present it provides for monetary consequences (i.e., cost-benefit) at least on a general and abstract level, that are much more onerous, reaching 36 monthly salaries.

In fact, the Jobs Act ignored the need for employers to have a *choice architecture* in which to place their economic choices. This

aspect was not implemented at all by the reform in question, which left a semblance of freedom to the entrepreneur, who nevertheless found itself without a regulatory framework of reference that would allow it a weighted assessment of its decisions. Thus, employers emerged from the structures of the old Article 18 of the Workers' Statute only to realize that they did not know how to administer and control the freedom they had obtained with respect to employment termination. All this with effects that are sometimes even more pernicious than those envisaged by the old rules, with excessive recourse to turnover and impoverishment of the instead very valuable human capital at the company's disposal, and consequently with higher costs in terms of training and know-how dispersion.

The Jobs Act has therefore eliminated Article 18 of the Workers' Statute and replaced it with nothing, other than very limiting monetary compensation.

Thus, with the elimination of Article 18 of the Workers' Statute, the Italian entrepreneurial world has found itself - so to speak - in the utopia long considered desirable. And so there has been a blossoming of terminations of employments that have been poorly weighed by the entrepreneur and have not affected the concrete problems of the national labour market.
All this - if nothing else - helped us to understand that the problem of the country's labour market did not lie in Article 18 of the Workers' Statute.

02

WHAT'S NEW IN 2021 LEGISLATION

By Marina Tona e Noemi Spoleti

If we want to summarise the main legislative measures of interest to labour law in the year just ended, we can only place ourselves in substantial continuity with the analysis already carried out with reference to the legislative production of 2020; in fact, 2021 too was unquestionably dominated by the need to deal with the pandemic emergency, acting in the wake of the action already undertaken, although adapting legislative policy choices to the continuous and often unpredictable development of the health emergency.

The main interventions with reference to labour legislation were therefore once again directed at **providing income support tools for workers and businesses**, **departing from the strict rules governing the use of fixed-term employment contracts**, **prohibiting dismissals for objective reasons, encouraging the use of agile working methods**, and **granting special leave** and "babysitting allowances" to workers with extraordinary needs - linked to the pandemic - to look after underage children or people with disabilities.

In addition, with the advent of the vaccination campaign, after a wide debate among legal experts and public opinion, a complex legislation was introduced concerning, on the one hand, the vaccination requirement for certain categories of workers (most recently, even age-based categories) and, on the other, the green pass requirement to have access to workplaces.

Wishing to go into details, we cannot refrain from synthetising the fundamental **wage supplementation measures** guaranteed also for the whole 2020, with no break in continuity compared to the previous year.

With reference to the legislation on the prohibition of dismissals, it should be noted that in 2021 the possibility of dismissal for economic reasons or, in any case, of activating collective dismissal procedures, **has always been linked to the use of wage subsidies**.

In particular, the prohibition to dismiss - already provided for by the Care Italy and August decrees - has been recently extended to **31 December 2021**, i.e. throughout the duration of the wage supplementation treatment used by companies of national strategic interest with a number of employees of no less than one thousand, which benefit until 31 December 2021 of the additional period of ordinary redundancy fund (CIGO) due to Covid.

The rules on the **renewal and acausal extension of fixed-term employment contracts** have also been introduced in full continuity with respect to what was already provided for in 2020; in fact, the deadline for renewal and acausal extension to 31

December 2020, already established by the ***August Decree***, was first extended to **31 March 2021** by the ***Budget Law* for 2021** (**Law 178/2020**) and, finally, to **31 December 2021 by the *Support Decree*** (**Article 17 of Decree-Law 41/2021**).

The latter decree also specified that, in the application of the rules contained therein concerning the renewal and extension of fixed-term contracts even in the absence of a justification, no account should be taken, quantitatively, of the renewals and extensions already occurred by virtue of the previous provisions issued in the emergency context.

With respect to the use of "simplified" agile work in the private sector, the so-called ***Christmas Decree*** (**Decree-Law No. 221 of 2021**) has finally extended to **31 March 2022** the validity of the rules set forth in Article 90, paragraph 4, of the ***Relaunch Decree*** (**Decree-Law No. 34 of 2020**).

The ***Relaunch Decree*** provided, in fact, that agile work could be applied by private employers to any employment relationship, **notwithstanding the absence of the individual agreements provided for by Law No. 81 of 2017**.

On this point, it is worth noting that on 7 December 2021, the Government and the Social Partners signed the National Protocol with **guidelines for collective bargaining on agile work in the private sector**.

It is therefore clear that, as the pandemic emergency has evolved, the needs of the world of work have also changed, and hence the choices of legislative policy, which are increasingly geared towards the need to resume full work activity, including by having recourse to compulsory vaccination.

03

NATIONAL PROTOCOL ON REMOTE WORKING

By Stefano Trifirò

On 7 December 2021, at the Ministry of Labour and Social Policies, an agreement was reached on the first protocol for agile work in the private sector.

The protocol establishes the reference framework for the definition of remote working, identifying the guidelines for national, corporate and territorial collective bargaining in compliance with the regulations set out in Law 22 May 2017, n. 81 and those collective agreements already in place. It also entrusts collective bargaining with what is necessary for implementation in the diverse and specific production contexts.

Here are the key points of the protocol:

Voluntary membership

Adherence to remote working takes place on a voluntary basis and is subject to the signing of an individual agreement, without prejudice to the right of withdrawal. Furthermore, any refusal by the worker to join or carry out his work in an agile way does not integrate the details of the dismissal for just cause or justified reason, nor is it relevant on a disciplinary level.

Individual agreement

The signing of a written agreement between the employer and the worker as defined by articles 19 and 21 of Law no. 81/2017 and in accordance with any provisions of collective bargaining.

This agreement must adapt to the contents of any provisions of the collective bargaining agreement of reference and must be consistent with the following guidelines defined in the protocol, providing:

a) the duration of the agreement, which can be for a term or for an indefinite period;

b) alternation between working periods inside and outside the company premises;

c) any places excluded for the performance of work outside the company premises;

d) aspects relating to the execution of work performed outside the company premises, also with regard to the forms of exercise of the managerial power of the employer and the conduct that may give rise to the application of disciplinary sanctions in compliance with the regulations provided for in collective agreements;

e) work tools;

f) the worker's rest times and the technical and / or organisational measures necessary to ensure disconnection;

g) the forms and methods of control of the work performance outside the company premises, in compliance with the provisions of art. 4 of Law no. 300/1970 (Workers' Statute), and by the legislation on the protection of personal data;

h) any training activity necessary for carrying out the work performance in an agile way;

i) the forms and methods of exercising trade union rights.

In the presence of a justified reason, both the employer and the employee can withdraw before the expiry of the term in the case of a fixed-term agreement or without notice in the case of an open-ended agreement.

Disconnection

The work activity carried out in an agile mode is characterised by the absence of a precise working time. It is also defined by autonomy in carrying out the service within the scope of the set objectives, in compliance with the organisation of the activities assigned by the manager to guarantee the operations of the company and the interconnection between the various company functions.

The remote working service can be divided into time slots, identifying, in any case, the disconnection slot in which the worker does not provide the work service. To this end, specific technical and / or organisational measures must be adopted to guarantee the disconnection period. In cases of absence, the so-called legitimate (e.g. illness, accidents, paid leave, holidays, etc.), the worker can deactivate their connected devices. The worker can request the use of the hourly permits provided for by collective agreements or by law (for example, permits for particular personal or family reasons, as per art. 33 of Law no. 104/1992). On the other hand, overtime work cannot normally be provided for and authorised.

Work place and tools

The worker is free to identify the place where to perform the service in an agile way provided that it has characteristics such as to allow the regular execution of the service, in conditions of security and confidentiality. Unless otherwise agreed, the employer usually provides the technological and IT equipment necessary to carry out the work performance in an agile way.

However, if the parties agree on the use of technological and IT tools specific to the worker, they establish the criteria and minimum safety requirements and any forms of compensation for expenses that may be envisaged.

Health, safety, accidents and occupational diseases

In terms of health and safety in the workplace, the protocol sets out the discipline referred to in Articles 18, 22 and 23 of Law no. 81/2017, as well as compliance with the health and safety obligations provided for by Legislative Decree no. 81/2008. Furthermore, the work performance in agile mode must be performed exclusively in suitable environments, in accordance with current legislation on health and safety and confidentiality of the data processed.

Moreover, the agile worker has the right to protection against accidents at work and occupational diseases; to this end, the employer guarantees INAIL insurance coverage against accidents at work and occupational diseases, including those deriving from the use of video terminals, as well as protection against accidents while travelling, in accordance with the provisions of the law.

Equal treatment, equal opportunities, fragile and disabled workers

Each agile worker has the right, with respect to workers who perform the same tasks exclusively within the company premises, to the same economic and regulatory treatment, also with reference to performance bonuses, and to the same opportunities with respect to career paths, of training initiatives and any other opportunity for specialisation and progression of one's professionalism. They also have the right

to the same forms of corporate welfare and benefits provided for by collective bargaining agreements. The social partners promote the development of work in an agile way, guaranteeing equality between genders, also to favour the effective sharing of parental responsibilities and increase the balance between personal life and work life.

Furthermore, the social partners undertake to facilitate access to agile work for workers in conditions of fragility and disability, also with a view of using this way of working as a reasonable accommodation measure.

Training

To guarantee all agile workers equal opportunities to the use of work tools, the social partners deem it necessary to provide training courses aimed at increasing specific technical, organisational and digital skills, also for an effective and safe use of the work tools provided. These training courses may also be of interest to company managers at all levels, in order to acquire better skills for the management of remote working groups.

04

CASE LAW HIGHLIGHTS OF EMPLOYMENT LAW 2021

By Tommaso Targa and Federico Manfredi

1. Mobbing - The qualifying element of mobbing conduct is to be found in the persecutory intent which links the individual actions.

The qualifying element of mobbing is not to be found in the illegality of an individual action, but in the persecutory intent which links all of them. The legitimacy of the measures may be indirectly relevant because it is symptomatic of the absence of the subjective element, but also the conflictual nature of personal relations within the office, which requires the employer to intervene in order to restore the serenity necessary for the proper performance of work, can be appreciated by the judge to exclude that the measures adopted had the sole purpose of mortifying the personality and dignity of the employee. (Civil Court of Cassation, Labour Law Division, 4 March 2021, n. 6079)

2. Discrimination in the workplace - Criteria for verifying the existence of indirect gender discrimination.

In order to verify the existence of indirect gender discrimination, it is first necessary to take into account the total number of workers covered by the provision in question. The best method of comparison is then to compare the respective proportions of workers who are and who are not "affected" by the alleged unequal treatment within the male workforce (falling within the scope of the provision) and the same proportions within the female workforce.
(Civil Court of Cassation, Labour Law Division, 29 July 2021, n. 21801)

3. Tips - Tips received by an employee in connection with its employment are also subject to taxation.

Tips received by employees in the context of their employment relationships are subject to taxation. So ruled the Court of Cassation, recalling the all-inclusive concept of income established by Article 51, paragraph 1, of the Consolidated Income Tax Act. Since tips are sums received by the taxpayer in the context of its employment relationship, the concept of all-inclusive income justifies the full taxability of everything the employee receives, even if not directly from the employer.
(Civil Court of Cassation, Tax Division, 30 September 2021, n.26512)

4. Termination with notice – The non-terminating party who gives up notice owes nothing to the other party by way of compensation.

Given the mandatory nature of notice, the non-terminating party who has given up notice owes nothing to the other party, who has no right to continue the employment relationship until the end of the notice period. In fact, there is no legally qualified interest in favour of the terminating party and the fact that notice can be freely waived precludes it from having any mandatory effects on the waiving party. (Civil Court of Cassation, Labour Law Division, 13 October 2021, n. 27934)

5. A worker who falls while returning to the office after a coffee break is not entitled to compensation for occupational injury.

An accident occurred to a worker during a coffee break, consisting of a fall on the way to the coffee shop, is not eligible for compensation. In this case, the necessary link between the risk incurred and the activity carried out is lacking, which is essential for compensation. Such a link is excluded when the worker has voluntarily exposed himself to a risk which is not necessarily connected to his work activity in order to satisfy a postponable and non-urgent need, thus breaking the necessary causal connection between work activity and accident. The customary nature of the coffee break among employees is also irrelevant, since a mere practice or, in any event, any form of agreement between the parties to the employment relationship cannot extend the objective area of applicability of the concept of work opportunity.
(Civil Court of Cassation, Labour Law Division, 8 November 2021, n. 32473)

05

HIGHLIGHTS OF UNION LAW 2021

BY Tommaso Targa and Leonardo Calella

3.

Unilateral termination of a collective labour agreement or a company agreement does not require written notice in order to be valid and effective.

Oral communication of the employer's notice of termination of supplementary company agreements is effective, given the lack of rules requiring collective bargaining to be in writing and by virtue of the civil law principle of the freedom of forms of legal transactions.

(Court of Cassation, Labour Law Division, 11 February 2021, n. 3542)

4.

The arbitrary application to food-delivery workers ("riders") of a collective agreement signed (only) by a trade union that is not comparatively representative is unlawful.

A food delivery company pretending to impose the application of the collective agreement entered into between Assodelivery and UGL Rider on all riders, making the continuation of their employment relationship conditional on such acceptance, is anti-union and discriminatory.

(Court of Bologna, Labour Law Division, 30 June 2021; along the same lines, Court of Florence, Labour Law Division, 24 November 2021)

5.

A provision of a foreign company collective agreement that fully precludes the exercise of trade union activities on Italian territory is discriminatory in nature.

The Court of Cassation ordered a well-known airline company to pay compensation, on an equitable basis, for the damage caused by the prohibition, laid down in the company contract concluded under Irish law with an Irish trade union, for cabin crew to carry out trade union activities on Italian bases.

(Court of Cassation, Joint Divisions, 21 July 2021 n. 20891)

7.

Even in the presence of regular notice of termination, the constant and prolonged application by the employer of the collective rules entails their full application.

The payment of various pay items under the supplementary company agreement, even after termination by the employers' trade union, implies the implicit implementation in the individual employment relationship of the rules laid down in the collective agreement.

(Court of Cassation, Labour Law Division, 19 October 2021 n. 28905; along the same lines Court of Cassation, Labour Law Division, 31 December 2021, n. 42097)

06

INSURANCE, LEASES, LIABILITY

By Teresa Cofano

Court of Cassation Caselaw: Life insurance - suicide - compensation – exclusion

The provision included in an insurance contract against fatal accidents, according to which only events due to "fortuitous, violent and external causes" are indemnifiable, amounts to the explicit covenant that, pursuant to article 1927 of the Italian Civil Code, excludes the possibility of indemnifying a fatal accident due to suicide.
(Civil Court of Cassation, 03/12/2021, n.38218)

Damages

Breach of the seller's contractual obligation to clear the mortgages on the property sold falls within the scope of non-performance and obliges the seller to pay damages, which may consist not only in the sum necessary to clear the mortgages and to complete the relevant formalities, but also in the final loss of the gain which a timely sale would have made possible and for which the plaintiff will have to provide evidence.
(Civil Court of Cassation, 03/12/2021, n.38317)

Indemnification of future damage

In order for future damage to be indemnifiable, a mere possibility or a generic or hypothetical danger is not sufficient, but the certainty (to which a high degree of probability can be equated) of the occurrence of damage is required, which, even if it has not occurred in whole or in part, is reasonably based on an injury that has already occurred, or on objective facts that are directly linked to the wrongful act and represent an efficient cause that is already in progress.
(Civil Court of Cassation, 15/12/2021, n.40120)

Designation of beneficiary and distribution of the indemnity

When the insured party has generically indicated its "legitimate heirs" as the beneficiaries of the insurance benefit, the latter are identified on the basis of the title of the abstract devolution and each of them is entitled to an equal share of the insurance indemnity, since the proportions of the inheritance do not apply.
(Civil Court of Cassation, Joint Divisions, 30/04/2021, n.1142)

Agent's commissions and breach of exclusivity agreement

An agent who, in order to obtain payment of the relevant commissions, alleges the conclusion of direct business by the principal in the area reserved to him, in breach of the exclusivity agreement, has the burden of proving that such business was concluded,

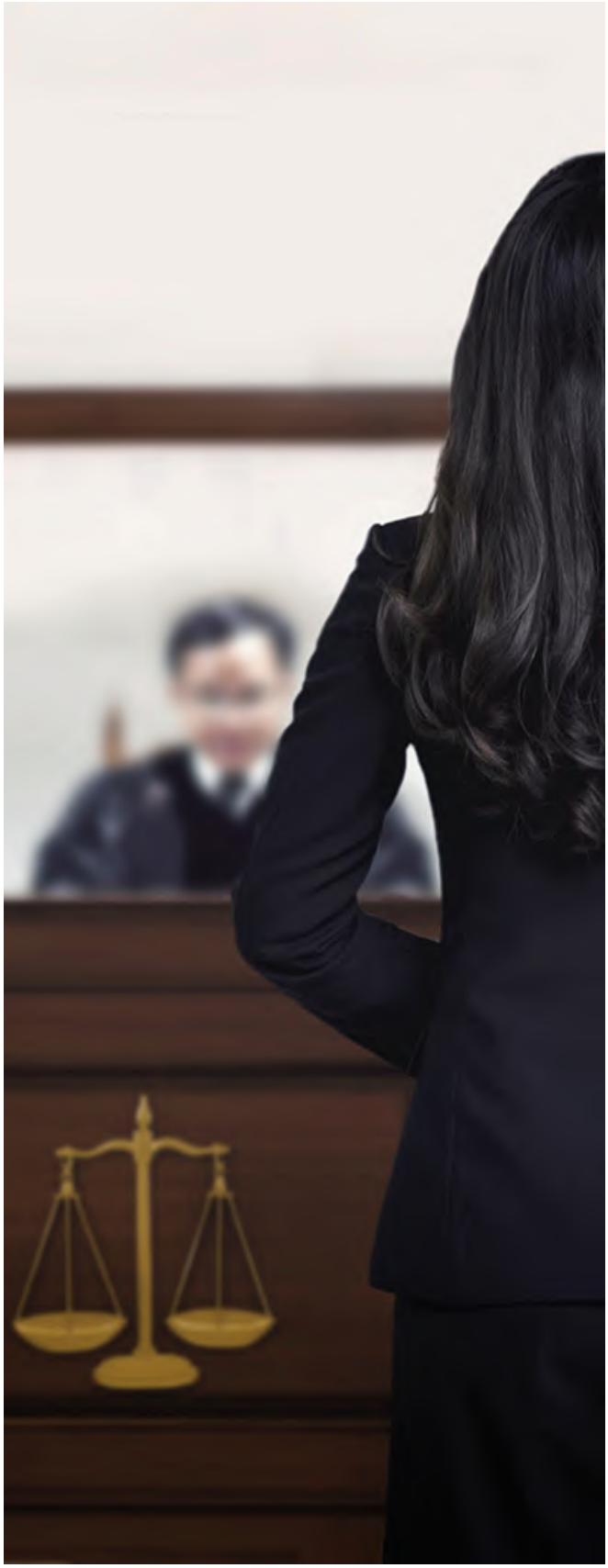
and cannot make up for the failure to do so by requesting production of the principal's accounts relating to the years in which the breach of the agreement is alleged to have occurred, but may require only the production of specifically identified and identifiable actions and documents.
(Civil Court of Cassation, 11/11/2021, n.33572)

TRA LE NOSTRE SENTENZE

Proof of payment of insurance premium

The receipt of payment signed by the agent, being it a document from a third party, can only have circumstantial value and cannot have probative value in a lawsuit unless it is corroborated by testimony admitted and taken in the manner prescribed by law.

Moreover, if the acknowledgement of receipt contains the words "subject to collection", that wording indicates a kind of condition attached to the payment, of which only a provisional acknowledgement is given, so that only when the instrument is cashed will payment be considered to have been made. Even a bank draft issued to the order of the company, although constituting a means of payment, retains the nature of a credit instrument, the delivery of which is not equivalent to payment, the extinction of the obligation being subject to the successful collection of the cheque, unless the parties agree otherwise.
(Court of Appeals of Naples, judgment of 13 December 2021, case followed by Bonaventura Minutolo and Teresa Cofano)



07

OFFICE T&P

PARTNERS & ASSOCIATES

Salvatore Trifirò
view profile »

Paola Siniramed
view profile »

Giacinto Favalli
view profile »

Bonaventura Minutolo
view profile »

Vittorio Provera
view profile »

Stefano Trifirò
view profile »

Anna Maria Corna
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Marina Olgiati
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Marina Tona
view profile »

Mario Cammarata
view profile »

Luca Peron
view profile »

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view profile »

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view profile »

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view profile »

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view profile »

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view profile »

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view profile »

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view profile »

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view profile »

Tiziano Feriani
view profile »

Filippo Salvo
view profile »

Paola Balletti

view profile »

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view profile »

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Paola Lonigro

view profile »

Andrea Beretta

view profile »

Francesco Chiarelli

view profile »

Marta Filadoro

view profile »

Francesco Cristiano

view profile »

Alice Testa

view profile »

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view profile »

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view profile »

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view profile »

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view profile »

Enrico Vella

view profile »

Selene Catanzaro

view profile »

Francesca Merli

view profile »

Anna Minutolo

view profile »

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view profile »

Leonardo Calella

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view profile »

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Avv. Salvatore Trifirò
Avv. Giacinto Favalli

OFFICE T&P
LOCATIONS AND CONTACTS

MILAN

Via San Barnaba, 32 - 20122
Tel.: + 39 02 55 00 11
Fax.: + 39 02 54 60 391; + 39 02 55 185 052;
+39 02 55 013 295

TURIN

Via Giuseppe Giusti, 3 - 10121
Tel.: + 39 011 19 47 6553
Fax.: + 39 011 51 19 137

PARMA

Strada XXII Luglio, 15 - 43121
Tel.: + 39 0521 23 94 65
Fax.: + 39 0521 23 0724

ROME

Piazza Giuseppe Mazzini, 27 - 00195
Tel.: + 39 06 3204744; + 39 06 37351176
Fax.: + 39 02 54 60 391; + 39 02 55 185 052;
+39 06 36000362

TRENTO

Via Galileo Galilei, 24 - 38122
Tel.: + 39 0461 26 06 37
Fax.: + 39 0461 26 44 41

BERGAMO

Via San Lazzaro, 46 - 24122
Tel.: +39 035 0041661
Fax.: +39 035 19837161

PADOVA

Piazzetta A. Sartori, 18 - 35137
Tel.: + 39 049 66 16 61
Fax.: + 39 02 54 60 391; + 39 02 55 185 052;
+39 02 55 013 295

HIGHLIGHTS T&P 2021

Trifirò & Partners
avvocati

CONTACTS

www.trifiro.it

trifiro.partners@trifiro.it