LEGITIMACY *AD CAUSAM* FOR POSSESSORY INTERDITES AGAINST POSSESSION MOLESTIES PRACTICED IN THE TIME-SHARING SYSTEM

A LEGITIMIDADE AD CAUSAM PARA OS INTERDITOS POSSESSÓRIOS CONTRA MOLÉSTIAS DA POSSE PRATICADAS NO SISTEMA TIME-SHARING

GILBERTO FACHETTI SILVESTRE[1]
JOÃO VICTOR PEREIRA CASTELLO[2]
JULIA DE CARLI BAIÔCCO[3]

ABSTRACT

It's a research that questioned and investigated how is the protection of possession in the case of disseisin practiced against co-owners in the time-sharing regime of arts. 1.358-B to 1.358-N of the Civil Code. For this, the research worked with two hypothetical situations: the first is the case of a disseisin practiced by a third party, that is, by a person outside the time-sharing contract; and the second concerns the possibility of the disseisin being practiced by one of the co-owners against another specifically or against all the others. To confirm the hypothesis, the research had to discuss, preliminarily, about the possibility or not of the split of possession (direct and indirect) in time-sharing, demonstrating that there is such a possibility, both in theoretical and practical bias. In order to achieve these objectives, the research carried out a qualitative bibliographic review to deductively confirm the hypothesis of the split of possession and disseisin practiced among co-owners.

KEYWORDS: Time-sharing. Disseisin. Repossession. Legitimacy. Possessory injunction.

1 Professor at the Law Department and the Postgraduate Law Program (Master in Procedural Law) at the Federal University of Espírito Santo (UFES); Doctor in Civil Law from the Pontifical Catholic University of São Paulo (PUC/SP); Master in Civil Procedural Law from the Federal University of Espírito Santo (UFES); Coordinator of the Research Groups "Process Challenges" and "Defensive Medicine" (PPGDIR/UFES); Lawyer. Lattes: http://lattes.cnpq.br/7148335865348409. ORCID: https://orcid.org/0000-0003-3604-7348. E-mail: gilberto.silvestre@ufes.br.

2 Master's student in Civil Procedural Law at the Federal University of Espírito Santo (UFES); Researcher at the Research Group "Process Challenges". ORCID Id: https://orcid.org/0000-0003-0074-5363. E-mail: joaov.castello@hotmail.com.

3 Law Student at the Federal University of Espírito Santo (UFES); Researcher at the Research Group "Process Challenges". E-mail: judecarlib@hotmail.com.

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RESUMO

Trata-se de pesquisa que questionou e investigou como é a tutela da posse no caso de esbulho, turbação e ameaça praticados contra coproprietário no regime de multipropriedade (time-sharing) dos arts. 1.358-B a 1.358-N do Código Civil. Para isso, a pesquisa trabalhou com duas situações hipotéticas: a primeira é o caso de moléstia praticada por terceiro, ou seja, por pessoa estranha ao negócio jurídico de multipropriedade; e a segunda diz respeito à possibilidade de a moléstia ser praticada por um dos coproprietários contra outro em específico ou contra todos os demais. Para confirmar a hipótese, a pesquisa precisou discutir, preliminarmente, sobre a possibilidade ou não de desdobramento da posse (direta e indireta) no time-sharing, demonstrando que há sim essa possibilidade, tanto no viés teórico quanto no prático. Para alcançar esses objetivos, a pesquisa procedeu a uma revisão bibliográfica qualitativa para, dedutivamente, confirmar a hipótese de desdobramento da posse e de moléstia praticada entre coproprietários.

PALAVRAS-CHAVE: *Multipropriedade. Esbulho possessório. Interditos possessórios. Legitimidade ativa. Liminar possessória.*

1. INTRODUCTION

This is a research that aims to ascertain how the possessory interdital protection occurs in the multiproperty or timeshares regime, specifically on the multiproperty rights established by Law nº 13.777/2018, which added to the Brazilian Civil Code the arts. 1.358-B to 1.358-N. If this objective is achieved, the result will be the solution of doubts not only as to the legitimacy *ad causam* in possessory protection, as it will also allow to understand the impact of the legal regime of possession on multiproperty. Through this research it was found that there are few studies that specifically deal with multiproperty in its possessory aspect.

Adequate management of interdict tutelage provides an evident advantage to the tutelage, who may benefit from the eventual granting of an injunction *inaudita altera pars* in the possessory lawsuit of new force. To do so, we start from material law, making it necessary a conceptual and theoretical approach on the diseases of possession applied under the multiproperty/timeshares regime, which innovates with the division of property into temporal fractions, instead of the traditional concept of division of property into spatial fractions.

The problem becomes evident precisely in the face of the peculiar division of property into temporal fractions, as it consequently implies in the manner and in the moment in which the multi-owners exercise the possession. Consequently, doubts arise in the face of the occurrence of possessory conflicts, specifically with regard to the possibility of disease between multi-owners, as well as in the hypothesis that the exercise of the possession of a co-owner is limited by a third party (*penitus extraneus*), in which one wonders: who would be the legitimate part to figure in the active pole of possessory lawsuit.

From the analysis of the split of possession, it was possible to find the answer to the problem presented, so that, theoretically, the multi-owners will be in possession of the thing, either directly, while exercising full control over the thing - while using it during the period pre-established -, as well as when they don't exercise power directly over the thing, as they would be indirect owners - indirect possession.

However, as owners of indirect possession, multi-owners must refrain from using the property, in compliance with the period pre-established in the existing agreement between

multi-owners. Thus, if multi-owners are always possessors, they could suffer disease at any time, so they can avail themselves of interdict protection even if they aren't in direct possession of the property and in the face of any person, even if the other is also a holder of the enjoyment of multiproperty in that fraction of time.

Still, when deepening in the analysis of the diseases and in the unfolding of the possession, the hypotheses were approached: of self-protection and the role of the administrator, as a model, in the occurrence of a disease, which allowed an analysis of the interdict protection in a larger scope. Furthermore, when entering more specifically into the active legitimacy of interdictial possessory, it's proposed the possibility of the administrator representing the interests of the multi-owner in court, in analogy to the rule that deals with the building condominium ("*condomínio edilício*").

Consequently, it was possible to verify the active legitimacy of all multi-owners for the possessory heterotutela ("*heterotutela possessória*") - which necessarily runs through the consequences of possession -, in order to thus propose possessory interdictions with the objective of ending the disease of possession.

In order to achieve the research result, the deductive method was chosen, so that with the deepening of the studies of the diseases and the deployment of possession within the multiproperty/timeshares, it was possible to extract theoretical premises and practical examples that confirmed the hypothesis suggested.

2. MOLESTIES OF POSSESSION IN TIME-SHARING

The time-sharing regime presupposes the existence of different owners for the same thing, be it mobile or immovable, so that the division between them occurs in alternating temporal fractions, and not in spatial fractions as occurs in the building condominium (ALPA, 1998, p. 193-200) (PÉREZ, 1992, p. 25 e ss.) (CASTRO, 1989, p. 10 e ss.).

In the case of immovable things, there is the connection of the owners to the legal business (testament or convention) of institution of this sui generis condominium modality (art. 1.358-F of the Brazilian Civil Code), being the responsibility of an administrator (trustee) - who acts as a liquidator or head - control the property and its facilities, equipment and furniture, according to the *caput* of art. 1.358-M.

Despite being a way of exercising property, with peculiar characteristics, in time-sharing there may be limitations to the exercise of possession by multiproprietaries possessors, to the point that sometimes the existence of possession illness practiced by one of the owners before the others is configured (CERVALE, 2014, p. 358-370) (BERNAT, 1992, p. 50). It's to verify this possibility and to discover how to fight it that the investigations of this research were intended.

In Brazil, there are three types of possession molesties: disseisin, turbulence/disturbance and threat (*caput* of art. 1.210 of the Civil Code) (SILVESTRE, 2019, p. 340) (LINS, 1914, p. 155-174). Regarding its practice by third parties, there are no significant changes in rela-

tion to traditional property, that is, one in which there is no periodic fractionation, except for the discussion on active legitimacy.

The disease practiced by a third party - that is, for a *penitus extraneus* to the multi-owner legal business - occurs when a person who is not the owner of the condominium commits acts that prevent the full exercise of possession by the co-owner, either by removing the possessor of the thing, either for acts that hinder the free exercise of possession or, even, for the consistent risk of a future depletion or turbulence. In these cases, the molester will not have legitimate possession of the property before the multi-owners, and it's appropriate to propose possessory interdital tutelage/guardianship for the protection and defense of possession (SILVESTRE, 2019, p. 340-350).

Due to the so-called deployment of possession, these actions can be proposed by any of the multi-owners, considering that everyone keeps the quality of possessors, even those who are not in the exercise of cyclical usufruct, as in this case they will maintain indirect possession. Possession is divided into direct and indirect, so that the direct possessor makes an immediate physical contact about the property, while the indirect mediates this contact through a legal transaction (art. 1.197 of the Civil Code) (PENTEADO, 2014, p. 622).

This development, however, "doesn't cancel the possessory protection that must be granted to each one of the holders of the possessory situation" (*"não anula a proteção possessória que deve ser deferida a cada um dos titulares da situação possessória"*) (PENTEADO, 2014, p. 622), so that both the direct and indirect possessors can defend their possession against third parties, or even against another possessor.

The existence of a nomogenetic time-sharing agreement between the multi-owners presupposes the agreement of the owners to use the property only in its periodic unit, abstaining from the use in the period of the other multi-owners (SMORTO, 1999, p. 279) (MARQUES, 1998, p. 23). Then, there is a distribution of possessory powers among them, resulting from the legal business and which divides possession into direct and indirect.

The direct possession of the property, in the context of time-sharing, is exercised at the moment when the owner is legitimately enjoying his time share.

Art. 1.358-E establishes that the period corresponding to each unit of time can be fixed and determined, floating or mixed. The fixed system requires that possession be exercised by the owner over the same period of time in each year. Thus, the day and time of entry and departure of the multi-owners of their periodic units are previously established. In the floating regime, on the other hand, the determination of the time lapse of each holder will be carried out periodically, not necessarily occurring at the same time of the year. Finally, the mix combines the two systems, merging their characteristics.

Whatever the system adopted in the multi-owner condominium/timeshares condominium, the exercise of all the powers inherent to the property simultaneously occurs only within the agreed time lapse, when the owner will have direct possession of the property (DE COS, 2011, p. 44) (BARDAJÍ, 2000, p. 1429). However, this doesn't remove the quality of possessor of the owner who isn't in use and enjoyment, since "the direct possession, of a person who has the thing in his possession, temporarily, by virtue of personal or real right, doesn't nullify the indirect, of which it was held, and the direct possessor can defend its possession against the indirect one" (art. 1.197 of the Civil Code) (*"a posse direta, de pessoa que tem a coisa em*

seu poder, temporariamente, em virtude de direito pessoal, ou real, não anula a indireta, de quem aquela foi havida, podendo o possuidor direto defender a sua posse contra o indireto").

In a different way, it occurs in the "composse" (common possession of two or more people) (§2º of article 73 of the Brazilian Civil Procedure Code). Here, the division of property takes place in the physical space of the property and the owners jointly exercise possession, imposing the need for both to participate in a possible lawsuit. There is no split or deployment of possession in direct and indirect, since they occur simultaneously.

The time-sharing regime, on the other hand, divides the thing/good into periodic units: each co-owner exercises possession over the entire property during a certain period of time, so that there is no distribution of the physical space itself. (DE COS, 2011, p. 44) (BARDAJÍ, 2000, p. 1429).

The division of possession into direct and indirect guarantees that the possessory protection in the face of a third party is invoked by any of the possessors, according to art. 1.197 of the Civil Code. In this way, the possessory interdicts can be proposed by any of the multi-owners, since the legitimacy *ad causam* results from the quality of possessing the thing, according to item I of art. 561 combined with art. 560, both of the Brazilian Civil Procedure Code: to propose the possessory lawsuit the plaintiff needs to prove his possession, that is, prove that he is the possessor; and the normative formulations speak only of "possession" and "possessor", without specifying whether it's direct or indirect.

Therefore, in this regime, in the case of active legitimacy for interdital protection in the face of a third molester, active litisconsortium will not be necessary, but the optional, guaranteeing the multi-owners the freedom to sue without imposing the obligation to integrate the lawsuit.

In the diseases practiced among the co-owners (proprietaries), the rules for characterizing debris, turbulence and threat, and the consequent possessory protection, are different when compared to the situation of third molester.

First, it should be noted that items VII and VIII of the caput of art. 1.358-J of the Brazilian Civil Code create the obligations of the multi-owner to use the property exclusively in its fraction of time and vacate it until the date fixed in the institution or in the condominium agreement.

Failure to comply with these duties, in addition to resulting in the payment of the agreed fine, will constitute an disseisin (*"esbulho"*), which consists of the act by which the possessor will be deprived of exercising possession. The origin of the disseisin may be in some act practiced through violence, clandestinity or precariousness (abuse of trust) (AVENDAÑO VALDEZ, 1986, p. 59-63) (GONÇALVES, 2008, p. 151 and next), pursuant to art. 1.200 of the Civil Code.

Therefore, for example, the owner who continues to use the property after the end of his time, threatening with physical violence (threat of injury or death) the other owner who wishes to exercise his possession and the faculties inherent to his property, practices disseisin (*"esbulho"*). This is because, at that moment, the owner who refuses to return the property does not have the legitimate possession of the thing, given that he remains illegally in the periodic unit of another co-owner. So having the first: unfair possession. (MACCORMACK, 1974, p. 71-80) (RICCOBONO, 2012, p. 1-10) (FERRETTI, 2020, p. 11-36).

It should be emphasized that this disseisin will be practiced only against the owner who is entitled to use the property, since he will be the only possessor prevented from exercising his possession. The other multi-owners aren't legitimate to use the thing in the time fraction of another holder/owner, which means that this impediment doesn't directly affect all of them.

Despite this, the disseisin constitutes a threat to the possession of the next owners, since there is no guarantee that the disease will cease when the periodic unit in which it's occurring is closed. If it persists, making the threat come true, it will be characterized as a disseisin against the owner of the next fraction of time. Furthermore, it's still a disease against his indirect possession.

The owner of the multi-property/timeshares can also practice the disseisin when, realizing that another owner isn't using his corresponding time fraction, he invades the property to enjoy it (SIQUEIRA e SIQUEIRA, 2017, p. 65). The disease/molesty is characterized, in this hypothesis, therefore, by the existence of clandestinity.

Another example concerns the peaceful disseisin, resulting from the vice of precariousness. This case can be verified when the owner, having knowledge that the owner of the next unit will not use the property and abusing the trust deposited in it, remains using it as if he were the owner of that time fraction (that is, basically: doesn't deliver the thing to the next owner with the right to use).

As for the disturbance/turbidity, it's said of acts on the thing or actions that embarrass or hinder the free exercise of possession, so that the turbid continues to possess, however the extent of the factual power that he exercises remains limited by the practice of the disease/molesty (GONÇALVES, 2019, p. 151). The disease can occur directly, when it occurs immediately on the thing, or indirectly, when - although practiced externally - it affects the possessed thing (GONÇALVES, 2019, p. 151).

As an example of direct disturbance, there is the hypothesis that one of the multi-owners causes disturbance to the legitimate possessor of the current time fraction, by means of telephone calls or messages asking when he will leave the property; or, also hypothetically, makes unexpected visits that cause discomfort and imbalance in the established business relationship.

As for the indirect disturbance, it can be observed at the moment when the one who causes disturbance, knowing that another owner wants to rent the property in his respective time fraction, practices acts to prevent or hinder the disposition of the thing.

Well then. Still regarding the diseases of possession practiced by the multi-owner themselves, it should be noted that art. 1.358-J of the Brazilian Civil Code provides for a fine if the holder/owner exceeds the time established in the institution or in the condominium convention in time-sharing. But this fine will have an indemnity character. For this reason, it's also possible for the co-owner(s) to appeal to the possessory court for the protection of their possession(s). In this case, it should be noted that the condition of possessor, whether direct or indirect, is essential to obtain legitimacy *ad causam* (item I of art. 561 combined with art. 560, both of the Brazilian Civil Procedure Code). On the passive pole, on the other hand, there must be the subject responsible for the disseisin (*"esbulho"*), the disturbance/turbidity (*"turbação"*) or the threat.

In addition, just as in the case of the occurrence of disseisin or disturbance in possession in general situations, when there is violence or clandestinity, possessory self-protection will also be admitted, through the legitimate defense of possession and immediate effort. In this case, the possessor himself acts by his own force to defend his possession and ward off the disease/molesty to which he is being subjected, without the need to depend to the judicial process/lawsuit.

For this, §1º of art. 1.210 of the Civil Code provides that the defensive act of one's own strength must be practiced "soon". Thus, the possessor, in legitimate defense of possession, has the right to practice acts of violence against the robber (*"esbulhador"*) right at the moment the disease is occurring or, acting in immediate effort, right after it has occurred. However, this reactive violence must be proportional to that seen in the disease, that is, only what is necessary to prevent the disease.

Acting in circumstances different from these, such as at a time much later than the knowledge of the disease or with excessive violence, can constitute the crime of arbitrary exercise of the reasons (art. 345 of the Brazilian Penal Code) and cause compensation for the damages caused.

In addition, it's up to the administrator to inspect the interior of the unit to verify if there was no damage to the property and if it's in conditions of use by the legitimate owner of the next time fraction.

If the permanence of the owner is verified, even when the respective fraction of time has ended, it's also the responsibility of the administrator, immediately, to perform acts to recover possession, using self-protection to defend the common interests of the tenants (*"condôminos"*) (MENDO, 2009).

As for self-protection, it's worth remembering that most of the time, only in the case of violence against the thing, which authorizes the action of the possessor through his own force. However, it must keep in mind that preventing the legitimate possessor from entering the property is also a kind of violence.

Just possession presupposes, in addition to the absence of violence and clandestinity, that there is no precariousness (art. 1.200 of the Brazilian Civil Code). Precarious possession is one that starts out just, but becomes unfair due to an act of abuse of trust practiced by the possessor, who, after the possession that has been granted, refuses to return the thing, becoming a detainer and robber (*"esbulhador"*) *ipso facto* (COSTA, 1998, p. 113).

This hypothesis involves resistance from the "robber" (*"esbulhador"*) to vacate the property or intimidation by him to prevent the legitimate possessor from entering the property. It can be done by changing locks, verbal threats or even obstructing the passage, acting as a barrier to prevent the entry.

It is configured, then, by physical or moral violence, as well as by clandestine. Therefore, self-protection is also applicable in the case of precarious possession, since possession that was just and authorized becomes a disease against the possession of the legitimate possessor.

In this sense, both the administrator and the owner of the temporal fraction in which the disease/molesty is occurring can act in self-protection. However, it's necessary to analyze

whether the other multi-owners, who will have future use of the property and maintain indirect possession over it, are legitimate to react in self-defense of possession.

The paragraph 1º of art. 1.210 of the Brazilian Civil Code doesn't specify whether the self-protection will be exercised by the direct or indirect possessor, generally stating that the possessor who suffered the disease in possession can maintain or restore himself by his own strength. As there is no legal restriction, it's permitted to be exercised by both possessors. It's also possible that whoever owns the thing - the servant of art. 1.198 or the authorized in art. 1.208, *ab ovo* - practice these acts of self-protection for the benefit of the possessor. (By the way, in the case of the servant, he is there for just that).

The indirect possessor, in this system, despite giving physical contact about the property to the direct possessor according to a legal business, remains the owner of the property, retaining legitimacy to defend his property when he observes that his domain is being molested.

In the real estate multiproperty regime or real estate timeshare property, however, holders own a fraction of time, and not just the physical space itself. There is, therefore, a limitation of the right to property as to its exercise, so that the disseisin (*"esbulho"*) practiced against one owner will not extend to the other multi-owners (TRANCHANT, 2014, p. 276) (SANDRI, 2014, p. 79). In relation to them, the disease in question constitutes a threat.

The normative formulation of §1º of art. 1.210 is clear in stating that only the possessor who suffered the disseisin or the disturbance (*"esbulho"* or *"turbação"*) will be able to defend his possession by his own strength, and the self-protection isn't allowed when the possessor is facing a threat. Therefore, we could imagine that: only the owner of the periodic unit that is suffering the disseisin could act in legitimate defense of possession or in immediate effort.

The other multi-property owners, who are waiting for their respective shifts to use the thing, would only be allowed to go to court, through the lawsuit of prohibitory interdiction (*"ação de interdito proibitório"*) in the possessory court, under penalty of violating civil law.

Then, when closing the time unit of the owner who was being molested and when starting the shift of the next owner, the one who was facing a threat would begin to see his possession in a situation of disseisin (*"esbulho"*). However, the §1º of art. 1.210 of the Civil Code is explicit in determining that the reaction is "soon", and it isn't possible to act in self-protection after a considerable period of time has elapsed.

Therefore, if the next owner's shift started at a time close to the occurrence of the disease, he could maintain or restore himself by his own strength. Otherwise, the only way out would be the "hetero guardianship possessory" ("*heterotutela possessória*"), through the action of the Judiciary.

If this understanding prevails, the indirect possesor should choose between observing an molesty occurring in his possession, without being able to do anything to prevent it, or resort to justice, and can wait for months or years for a judicial response.

If that were not enough, although the indirect possessor is facing a threat to his direct possession, it isn't just a fear, as is the case with traditional property. The disseisin is in fact taking place against possession, it isn't a mere possibility.

When the law created the deployment of possession, the objective was precisely to guarantee the legitimacy of the indirect possessor for his defense, either by *heterotutela* / hetero-protection or by self-protection. This is extremely necessary to ensure that the holder/owner exercises the powers arising from the property in a free and clear way.

As there is no legal restriction for the defense of possession through own strength by the indirect possessor, it isn't compatible to require the co-owner to watch a disseisin or the disturbance (*"esbulho"* or *"turbação"*) occurring in his possession and wait for his shift to act. Or, to demand that he take a possessory lawsuit and be exposed to the delay of justice, being able to see the thing damaged due to time, when he could prevent the damages.

As for *heterotutela*/hetero-protection, it could also be maintained that the effectiveness of the repossession would be realized by granting the preliminary injunction.

The *caput* of art. 562 of the Brazilian Civil Procedure Code prescribes that, if the initial petition is properly instructed, the judge will grant, without hearing the defendant, the issuance of the injunction for maintenance or reinstatement. For this, it's only required that the plaintiff has proved his possession, the disseisin or the disturbance (*"esbulho"* or *"turbação"*) practiced by the defendant, as well as the date of occurrence, and the continuation or loss of possession, depending on the disease (art. 561 of the Civil Procedure Code).

In addition, if the owner has proposed the repossession - because it is a threat to his future direct possession - and the disease will become concrete, becoming in fact a disseisin or disturbance, the interdital fungibility would be applied, transforming the lawsuit into reinstatement or maintenance of possession (art. 554 of the Civil Procedure Code) and, hypothetically, guaranteeing the efficiency of judicial protection.

Then, if the judge remains superficially convinced, based on an incomplete cognition, he will determine, on his own (*"de ofício"* or *ex officio*), the alteration of the prohibitory interdict (*"interdito proibitório"*) for maintenance or restitution of possession, depending on the molesty verified, granting the appropriate possessory injunction and proceeding with the rite ordinary (GONÇALVES, 2019, p. 159 e 173).

However, the injunction *inaudita altera pars* requires that the action be of new force, with possession resulting from an molesty that occurred in up to one year and one day from the date of the disseisin or disturbance. So, if the owner uses the thing only after this period has elapsed, he will lose the benefit of the special procedure and, consequently, the anticipation of the protection without the hearing of the opposing party.

In this sense, the fungibility of the possessory interdicts/repossession and the preliminary injunction will not always guarantee him the exercise of the faculties inherent to the property since the beginning of his shift, resulting, numerous times, in a judicial process that does not bring an effective outcome to the possessor.

The huge amount of lawsuits, constantly without adequate and definitive resolution, coupled with the slowness of justice, made the legal system search for alternative solutions for the resolution of controversies, such as mediation, conciliation and arbitration, as well as dejudicialization - phenomenon that displaces some activities that were attributed to the Judiciary Power to the scope of extrajudicial services (MARQUES, 2020).

Therefore, the objective is evident: whenever possible, to decide matters outside the judicial sphere, taking care to reduce the amount of litigation in the courts, which are increasingly crowded, and guarantee effectiveness in the sphere of material law.

In this logic, it's compatible that the possessor can defend his possession without having to turn to the Judiciary, appeal to Justice, considering that the effectiveness of justice must be sought not only in the scope of lawsuits, but also in extrajudicial solutions.

The most appropriate, timely, efficient and cost-effective result must be guaranteed to the Judiciary - aiming, also, to avoid the huge amount of lawsuits in courts and procedural economics.

Thus, a faster and more effective result is guaranteed to the possessor in the defense of possession, without prejudice to the other multi-owners or other subjects of the legal relationship.

Finally, the third disease/molesty of possession is the threat, provoked by acts that cause a just fear of coming out of a disseisin or disturbance, according to the *caput*, in fine, of art. 1.210 of the Civil Code combined with art. 567 of the Civil Procedure Code. Therefore, the act must be objectively considered, that is, be able to provoke fear in an ordinary person, due to conduct that indicates imminence and inevitability of the occurrence of the diseases or molesties (GONÇALVES, 2019, p. 170-171).

Exempli gratia, there is the case of the owner who states that he will not deliver the property on the date and time specified in the institution or condominium convention time-sharing. In this way, he practices threat, an act that can lead to the proposition of a preventive possessory lawsuit - that is, the the prohibitory interdict - in order to prevent the realization of such intimidation.

According to Carlos Roberto Gonçalves (2019, p. 172), the prohibitory interdict resembles the cominator lawsuit, as it provides for pecuniary condemnation to prevent the threat from being consummated. Based on the plaintiff's request and a reasonable amount set by the judge, the aim is to discourage the intimidating defendant from proceeding with the act. But if, even so, in the course of the lawsuit, the imminent threat materializes, this lawsuit will be transferred to the maintenance or repossession of possession (depending on the disease verified).

Thus, it's true that the owner is, in fact, the owner of the property at a certain time of the year, being able to use the thing freely in his respective periodic unit. However, once its time fraction is over, it will become as "molester" as a third party that has no relationship with the thing, since he prevents the next legitimate possessor of the periodic unit from exercising freely the faculties resulting from his property.

It should also be noted that, within the scope of the building condominium (*"condomínio edilício"*), lawsuites that indicate the occurrence of disseisin (*"esbulho"*), turbulence/disturbance (*"turbação"*) and threat (*"ameaça"*) practiced by the liquidator are recurrent in the appellate courts. As an example, the following judged: Rio de Janeiro Court of Justice (*TJRJ*), Civil Appeal nº 0032149-80.2015.8.19.0014, 22nd Civil Chamber, Rapporteur Judge Marcelo Lima Buhatem, judged on 08/06/2019; São Paulo Court of Justice (*TJSP*), Civil Appeal nº 1001933-25.2017.8.26.0477, 27th Chamber of Private Law, Judge Rapporteur Alfredo Attié, judged on 06/17/2019; Court of Justice of Rio Grande do Sul (*TJRS*), Civil Appeal nº 70080816424, 20th

Civil Chamber, Rapporteur Judge Glênio José Wassserstein Hekman, judged on 4/10/2019 (*"Tribunal de Justiça do Rio de Janeiro (TJRJ), Apelação Cível nº 0032149-80.2015.8.19.0014, 22ª Câmara Civil, Relator Desembargador Marcelo Lima Buhatem, julgado em 06/08/2019; Tribunal de Justiça de São Paulo (TJSP), Apelação Civil nº 1001933-25.2017.8.26.0477, 27ª Câmara de Direito Privado, Relator Desembargador Alfredo Attié, julgado em 17/06/2019; Tribunal de Justiça do Rio Grande do Sul (TJRS), Apelação Civil nº 70080816424, 20ª Câmara Cível, Relator Desembargador Glênio José Wassserstein Hekman, julgado em 10/04/2019"*).

This occurs when, for example, he prevents the owner from entering the property due to the delay in paying the condominium expenses on a personal initiative. In this case, he acts in an arbitrary exercise of its own reasons, and not in obedience to any rule of the condominium or resolution of the assembly (which, even if it exists, will be illegal).

In an analogical interpretation, it appears that the molesties of possession can also be committed by the administrator of the property object of the multiproperty/timeshares.

As an example of acts that hinder the free and full exercise of possession, we mention the case where the administrator, as well as the building condominium manager, doesn't allow an owner to enter the property, despite being in front of his legitimate unit time, or else restrict the *in totum* use of the property. There is also the possibility that the administrator threatens to retain the thing if the holder/owner doesn't pay an expense related to its maintenance. The administrator can also change the lock on the property's entrance door and use the fraction of time corresponding to an owner.

Then, the time-sharing administrator, as well as third parties and the multi-owner themselves, can practice possession molesties and, consequently, figure in the passive pole of possessory lawsuits.

3. POSSESSORY INTERDITAL ACTIVE LEGITIMACY IN MOLESTED TIMESHARES: MOLESTRY FOR *PENITUS EXTRANEUS* AND CO-OWNER

The heterotutela of possession in the event of disseisin (*"esbulho"*), turbulence/disturbance (*"turbação"*) and threat (*"ameaça"*) occurs through possessory interdictions (or possessory lawsuits), that is, repossession, maintenance of possession and prohibitory interdiction (IHERING, 2007, p. 30 et seq.).

In this context, it is questionable who owns the legitimacy to propose these lawsuits in cases of time-sharing.

Articles 1.358-B to 1.358-N, included in the Brazilian Civil Code by Law nº 13.777/2018, didn't expressly deal with this matter. But, as article 1.358-B determines the subsidiary application of the condominium building legal regime (*"condomínio edilício"*) (Law nº 4.591/1964) to time-sharing, and as in that type of property the handling of possessory lawsuits is common, it's possible to solve doubts about time-sharing interdictions from the daily forensic experience of the building condominium.

According to the item II of the caput of art. 1.348 of the Civil Code, in the building condominium the liquidator is responsible for representing the building condominium in extrajudicial and judicial acts, through the actions necessary to defend the common interest.

In an interpretation by analogy, as the administrator is responsible for the management of the multi-owner condominium and its facilities, equipment and furniture (art. 1,358-M), it's valid to equate him with the figure of the liquidator (OLIVEIRA, 2020a). Furthermore, this procedural legitimacy is repeated by item XI of the caput of art. 75 of the Civil Procedure Code.

In this perspective, it's up to the administrator, also, to represent the interests of the time-sharing condominium in or out of court, actively and passively, including in possessory lawsuits.

However, representation by the administrator will follow the same legal regime as the building condominium. The manager must be aware that he must not act on his own and in accordance with his personal desires, but in accordance with the common and legitimate claims of the multi-owners, in accordance with the condominium agreement or resolution of the assembly.

It's valid to conclude, then, that the administrator has, by itself, legitimacy *ad causam* to propose possessory interdicts and appear in the active pole of the demand, as well as to act in the direct protection of possession through self-protection.

And as for the multi-owners, do they retain active legitimacy for the possessory interdital heterotutela / "hetero-guardianship" (*"heterotutela interdital possessória"*)?

It stands out, first of all, as constitutive faculties of the right to property, the rights to use, enjoy, dispose and claim. In the real estate time-sharing, the faculties to use and enjoy are limited to the fraction of time of each buyer, however they don't only concern the physical structure of the property (PAIVA, 2020). The holder/owner of the periodic unit has broad powers over the space and any facilities, equipment and furniture that are part of it.

However, co-owners are prohibited from carrying out any activities that alter or deteriorate the unit, even improvements, as provided for in item IV of the *caput* of art. 1.358-J of the Civil Code. Otherwise, the intrusion into the property of the other property owners would remain evident.

In the same way, the right to dispose of the property is restricted to the fraction of time of the owner, giving ample freedom to the holder/owner to assign his right of use and enjoyment, as well as to transfer or dispose of the thing to another. Following this logic, Gustavo Tepedino (1993, p. 103) concludes that: "Therefore, the principle by which *nemo plus juris in alium transferre potest quam ipse habet*: the use, the enjoyment and the disposition of the thing are limited to the space-time extension of the object of the law, reduced to the ends of the housing unit in the determined shift and expressed unambiguously and visually in the calendar" (*"Vale, portanto, para a multipropriedade, o princípio pelo qual nemo plus juris in alium transferre potest quam ipse habet: o uso, o gozo e a disposição da coisa limitam-se à extensão espaço-temporal do objeto do direito, reduzido aos confins da unidade habitacional no turno determinado e expresso inequívoca e visualmente no calendário"*).

As for the power to claim the thing (*jus vindicandi*), it's the protection of property, that is, the right to claim it from anyone who unjustly owns or holds it, through the claiming lawsuit (GONÇALVES, 2019, p. 226).

According to Gustavo Tepedino (1993, p. 58-59 and 124), the real estate time-sharing presents itself as a legal relationship of economic use of the property, divided into fixed units of time, so that the multipropriators use the thing exclusively during your turn.

In this way, it becomes evident that this modality divides the thing into units of time in which the owner can use the property, and not the physical space itself.

By Law nº 13.777/2018 the multiproperty/time-sharing regime was introduced in the Brazilian Civil Code as a real right, confirming the understanding already applied by the Third Panel of the Superior Court of Justice (*Terceira Turma do Superior Tribunal de Justiça*) in the judgment of Special Appeal nº 1.546.165/SP (*Recurso Especial nº 1.546.165/SP*) (STJ, Special Appeal nº 1.546.165/SP, 3rd Panel, Rapporteur Minister Ricardo Villas Bôas Cueva, Rapporteur for the judgment of Minister João Otávio de Noronha, judged on 04/26/2016) (*STJ, Recurso Especial nº 1.546.165/SP, 3ª Turma, Relator Ministro Ricardo Villas Bôas Cueva, Relator para o acórdão Ministro João Otávio de Noronha, julgado em 26/04/2016*).

In this sense provides the caput of art. 1.358-C of the Civil Code, *in verbis*: "Art. 1.358-C. Time-sharing is the condominium regime in which each owner of the same property is entitled to a fraction of time, which corresponds to the faculty of use and enjoyment, exclusively, of the immovable property, to be exercised by the owners alternately. [...]" (*"Art. 1.358-C. Multipropriedade é o regime de condomínio em que cada um dos proprietários de um mesmo imóvel é titular de uma fração de tempo, à qual corresponde a faculdade de uso e gozo, com exclusividade, da propriedade imóvel, a ser exercida pelos proprietários de forma alternada. [...]"*).

Therefore, all the characteristics related to real rights must fall on time-sharing; including the right to get the thing back or right to recover the thing *("direito de sequela")*, which gives rise to the power to claim the thing of who unjustly holds it (ALARCÓN e ALARCÓN, 1995, p. 20).

Furthermore, perpetuity is understood as a right without maturity, that is, that it exists even if the holder/owner doesn't exercise it. In this line, Gustavo Tepedino highlights:

> From these considerations, the real character of real estate time-sharing arises. The legal bond that is established immediately adheres to the immovable property on which it relates, serving the contract, although essential, only to define the object of the right and to discipline the relationship between multi-owners, and between them and the promoting company, to which it's delegated the function of managing the property. However, the reciprocal limitation (space-time) of powers isn't a factor of intermediation, but of mere coordination and demarcation of legal spheres, thus not removing the real nature of multiproprietary right, with *erga omnes* prevalence [...]. If the right to property falls exclusively on the shift, the projection of the individual right on the whole is, on the contrary, universal, reaching all corners of the property, albeit in low intensity [...]. Co-ownership over the common parts ensures the joint possession of the land to the multi-owner, even though their possession is only indirect in those periods outside their shift (*De tais considerações decorre o caráter real da multipropriedade imobiliária. O vínculo jurídico que se instaura adere imediatamente ao bem imóvel sobre o qual incide, ser-*

> *vindo o contrato, embora imprescindível, unicamente para definir o objeto do direito e disciplinar a relação entre os multiproprietários, e entre estes e a empresa promotora, à qual é delegada a função de gerir o imóvel. Entretanto, a recíproca limitação (espaço-temporal) de poderes não é fator de intermediação, senão de mera coordenação e demarcação de esferas jurídicas, não retirando, pois, a natureza real do direito do multiproprietário, com prevalência erga omnes. [...]. Se o direito de propriedade incide exclusivamente sobre o turno, a projeção do direito individual sobre o todo é, ao contrário, universal, atingindo todos os recantos do imóvel, ainda que em intensidade diminuta [...]. A co-titularidade sobre as partes comuns assegura ao multiproprietário a composse do solo, ainda que sua posse seja apenas indireta naqueles períodos estranhos ao seu turno*) (TEPEDINO, 1993, p. 58-9, 124).

Thus, the property right is perpetual as to duration, although temporary as to exercise. Perpetuity guarantees the permanence of this right regardless of whether it's put into practice or not, that is, it's imprescriptible due to the lack of exercise of the faculties.

So, the co-owner has the right to claim the thing even if it isn't included in the time unit assigned to him, especially if the possibility of loss of property by adverse possession is observed. However, obviously, this owner will not be able to claim the property of the owner who is legitimately enjoying his time fraction, being admitted only if proposed in the face of a third molester.

In addition to the claims lawsuits (petition court) arising from the property, it's necessary to analyze those resulting from possession, namely repossession, maintenance of possession or prohibitory interdict.

Possession is likely to have consequences/deployments, caused by the authorized distribution of the powers inherent in it to two or more possessors.

The direct possession over the temporal fractions occurs in an alternate way, that is, each owner will exercise it during a time lapse fixed in the institution instrument or in the time-sharing condominium agreement. Therefore, the exercise of all the powers arising from your ownership simultaneously will be restricted to this period.

However, considering that the possessor is "everyone who actually has the exercise, full or not, of any of the powers inherent in the property" ("*todo aquele que tem de fato o exercício, pleno ou não, de algum dos poderes inerentes à propriedade*"), under the terms of art. 1.196 of the Civil Code, possession isn't restricted to those who are legitimately enjoying their time share.

The owner who isn't in direct possession of the thing remains as the possessor, since he continues to exercise the power to claim the thing - even if limited to the third molester.

The *ad causam* legitimacy of the owner who has no material contact with the property - the corpus, in the sense of Friedrich Karl von Savigny's subjective theory - is therefore justified by indirect possession, given that the act of delivering the thing to the holder/owner of the following time fraction doesn't imply loss of possession, only the indirect split/deployment indirect.

Therefore, the co-owner, although he doesn't have direct possession, may use the possessory judgment, since one possession will not nullify the other (art. 1.197 of the Brasilian Civil Code). Both start to coexist in time and space, so that both the direct and the indirect

possessors can invoke possessory protection against third parties, as well as use it against each other.

In this way, if the occurrence of an molesty of possession is verified in the periodic unit of one of the multi-owners, the others will also have legitimacy to propose possessory lawsuit. *Exempli gratia*, Bearing in mind that the disseisin (*"esbulho"*) verified in the current periodic unit becomes a threat to those who will occupy the property in the next period, as well as to the other multi-owners, there is legitimacy and interest from all holders/owners to propose possessory interdictions, in order to stop it this molesty of possession.

To understand the opposite would be to admit that the co-owner who will occupy the property in the next period of time has limited powers of use, enjoyment and disposition. Therefore, it's incompatible to require the holder/owner to wait weeks or months to guarantee the full exercise of the rights arising from his property.

However, the possesor who doesn't suffer any loss/disseisin will not be able to propose the action of restitution of possession, since he will not be able to return and take advantage of the temporal fraction of another owner. In the same sense, the owner who doesn't suffer from the turbidity in his possession, that is, during his shift/period, will not be able to file a maintenance action in possession, since it isn't possible for him to remain in possession that doesn't correspond to his unit periodic.

Thus, it's up to the other multi-owners only the prohibitory interdict, with the intention of interrupting the disseisin (*"esbulho"*) or turbulence (*"turbação"*) and, consequently, the threat over their possession.

However, as stated by Adroaldo Furtado Fabrício (GONÇALVES, 2019, p. 137), the possessor who goes to the Judiciary, in search of protection against the offensive act of his possession, intends to interrupt the action and stop the molesty. The request, then, will always be the same: possessory protection.

As an indirect possessor, therefore, the co-owner keeps the possessory protection of the caput and of §1º of art. 1.210 of the Civil Code against molesties that may suffer.

Therefore, it's necessary to recognize the legitimacy *ad causam* of the owner of the multi-property/time-sharing to bring actions in defense of property and possession, since he is both owner and possessor of the thing.

However, legitimacy must be differentiated from interest in acting. This must be examined from the perspective of the binomial necessity and usefulness of the jurisdictional provision. In other words, the process/lawsuit must be a means of providing the plaintiff with a more favorable result than that in which he finds himself and, at the same time, it must be seen as the last way to resolve the conflict.

It's possible that the owner, despite having ad causam legitimacy, doesn't fulfill the requirement of interest in acting, which is essential to posture in court (art. 17 of the Brazilian Civil Procedure Code).

The legal business that institutes the time-sharing regime aims at the division of property in the temporal sphere of the thing, among the subjects that celebrated it. The relationship between the multi-owners is based on the confidence that there will be mutual respect

between the owners, especially with regard to the conservation of the property and its use only within the agreed timeframe.

The third party who practices disseisin, turbulence or threat is foreign to the relationship established between the owners, there is no guarantee that the molesty of possession will be interrupted in the next fraction of time, a fact that causes a fair fear in all the owners.

Thus, even if the disease of possession isn't occurring in the periodic unit of the holder, it's imperative to recognize, in addition to the legitimacy ad causam inherent in his quality of owner and indirect possessor, his interest in acting.

In this context, the question arises: in the possessory lawsuits proposed by the owner of the time-sharing, there is or not a need to form an active litisconsortium, which is equivalent to asking, in procedural terms, if the proposition of the possessory lawsuit occurs through optional or necessary litisconsortium.

The necessary litisconsortium, unlike the optional, is directly linked to the indispensability of the presence of all subjects - in casu, all the multi-owners of the property - in the active pole of demand.

According to Fredie Didier Jr. (2017, p. 513), the litisconsortium will be necessary in two situations, according to art. 114 of the Brazilian Civil Procedure Code: if a passive unit (*"unitário passivo"*), or when the law so expressly provides.

This author states that, as a rule, there is no necessary active litisconsortium, since the right of access to justice, based on the faculty of going to court, cannot depend on the will of others.

From a different perspective, Nelson Nery Jr. and Rosa Maria Barreto Boriello de Andrade Nery (2017, p. 518) understand that there is a necessary active litisconsortium. However, they accept the possibility of a single person to sue, provided that in the passive pole of the legal relationship includes the person who should be their active litisconsorte (active lysconsorte) (*"litisconsorte ativo"*).

José Manoel de Arruda Alvim Neto (2016, p. 86) presents as a solution the summons of who should be a necessary active party (*"litisconsorte necessário ativo"*) to compose the dispute. In this way, the litisconsorte can: integrate the active pole; occupy the passive pole, if he wishes to defend an interest contrary to that of the author; or remain inert, a situation in which he will not participate in any of the poles of the demand, but will be affected by the res judicata in the same way.

In the context of time-sharing, it should be noted: all holders are in fact owners, direct possessors of the periodic unit and indirect possessors when they aren't taking advantage/enjoying of the thing (ALARCÓN and ALARCÓN, 1995, p. 20). Therefore, the nature of the legal relationship could justify the existence of the necessary active litisconsortium or active necessary joinder (*"litisconsórcio necessário ativo"*), valuing the effectiveness of the sentence in relation to all the subjects that integrate it, according to art. 114, in fine, of the Brazilian Civil Procedure Code.

Well then. This property fractionation model, although also presupposing the existence of multiple owners for the same thing, is different when compared to the traditional exercise of possession by two or more people.

Under the joint possession regime (*"posse conjunta"* or *"composse"*), civil procedural law requires the agreement of the other holder to bring the claim. The caput of art. 73 of the Brazilian Civil Procedure Code prescribes that "the spouse will need the consent of the other to propose a lawsuit that deals with real estate right, except when married under the regime of absolute separation of assets" (*"o cônjuge necessitará do consentimento do outro para propor ação que verse sobre direito real imobiliário, salvo quando casados sob o regime de separação absoluta de bens"*), with the spouse's participation in possessory lawsuits being indispensable only in the hypothesis of joint possession regime (*"posse conjunta"* or *"composse"*) or act by both practiced, according to §2º of art. 73.

The spouses exercise possession over the same thing, that is, they spatially divide the property and the faculties inherent to the property in the same period of time, including the power to defend possession through possessory interdicts or self-protection.

It's forbidden to those who own the thing jointly, joint possession (*"compossuidor"*), then, to take actions that harm the exercise of possessory acts by the other owner, according to art. 1.199 of the Civil Code, including the filing of possessory lawsuits: "Art. 1.199. If two or more people have an undivided thing, each one can exercise possessory acts on it, as long as they don't exclude the acts of the other joint possessors" (*"Art. 1.199. Se duas ou mais pessoas possuírem coisa indivisa, poderá cada uma exercer sobre ela atos possessórios, contanto que não excluam os dos outros compossuidores"*).

On the other hand, in time-sharing, the thing is divided into periodic units: each holder/owner exercises exclusive possession over a temporal fraction of which he is the owner, so that there is no spatial division of the thing (FERNÁNDEZ, 2015).

While an owner is in direct possession of the property, exercising all the faculties inherent to the property, the others exercise indirect possession over the thing, in view of the deployments of possession resulting from art. 1.197 of the Brazilian Civil Code.

Unlike the joint possession of the thing (*"composse"*), there is a limitation on the exercise of possession by the holders, resulting from the institution instrument or the time-sharing condominium agreement signed by them. The faculties of using and enjoying are restricted to those who are legitimately exercising the effective control resulting from their period.

The direct possession, however, doesn't prevent the exercise of the indirect, in such a way that the possessors can defend their possession autonomously against the practiced molesties, independently of the other holders of the thing.

Thus, since they are different possession regimes, different rules are applied, so that in time-sharing, contrary to what occurs in the joint possession of the thing (*"composse"*), the litisconsortium will be optional.

In the case of the real estate time-sharing regime, the most appropriate is the positioning of José Manoel de Arruda Alvim Neto (2016, p. 86), since it leaves the discretion of the owner to ascertain whether there is interest in participating in the active pole of demand, or if he prefers to remain inert in the face of the dispute in question.

In this case, it cannot be admitted that the right of lawsuit of the other holders/owners, especially of those who are facing a current limitation of their powers resulting from owner-

ship, is conditioned to the performance of those who preferred not to participate in the litigation.

Whatever the decision of the owner - whether or not to include the procedural relationship -, it's imperative to make your subpoena, in order to respect the adversary. In this way, the participation of the interested owner and his information is guaranteed, without obliging him to demand and, further, without conditioning the right of sue of the molested owner to the will and power of the others.

Therefore, the imposition of the necessary active litisconsortium (*"litisconsórcio ativo necessário"*) within the scope of time-sharing occurs only when there is the joint possession of the thing (*"composse"*) in the periodic unit, that is, when the spouses are owners and exercise possession over the same time fraction; or in hypothetical situations in which people without a marriage or cohabitation relationship are owners of the period; or, still, in situations of hereditary right of representation. Among them, the rule of §2º of art. 73 of the Civil Procedure Code, so that one cannot sue without the other's consent. Among the other multi-owners, however, there is no need to talk about the necessary active litisconsortium (*"litisconsórcio ativo necessário"*).

Another point of controversy is to ascertain whether the judge, in view of the real estate time-sharing, will be able to impose the introduction of the other multi-owners, if he deems their presence in the process as opportune.

Despite the sole paragraph of art. 115 of the Brazilian Civil Procedure Code deals only with the necessary passive litisconsortium (*"litisconsórcio passivo necessário"*), the determination by the judge may also affect the active modality, even if observed less frequently.

In the legal literature there are those who recognize that the intervention *iussu iudicis* is related to the order of mandatory integration, whether on the passive pole or on the active side of the demand. However, the position of Fredie Didier Jr. (2017, p. 594-597) is assumed here, according to which the necessary litisconsortium (*"litisconsórcio necessário"*) is a typical case of this type of intervention, but isn't limited to it.

The recognition of the possibility of intervention *iussu iudicis* in addition to the cases expressed in the legal provision - that is, in an atypical manner - is suitable for implementing the principles of adequacy, reasonable duration of the process, efficiency, contradictory and equality (DIDIER JR., 2017, p. 596), as well as legal certainty and procedural economics.

So, according to the Brazilian Superior Court of Justice (*Superior Tribunal de Justiça - STJ*) in Special Appeal nº 1.170.028/SP: it's given "the third party is aware of the existing demand, allowing him to enter the lawsuit under the condition he chooses, thus protecting himself of the effects of the sentence and ensuring the effectiveness of the judicial provision. Therefore, it isn't appropriate to impose on the third party the duty to demand" (Superior Court of Justice, Special Appeal nº 1.170.028/SP, 4th Panel, Rapporteur Minister Raul Araújo, judged on 08/15/2017) (*"ciência ao terceiro da demanda existente, permitindo-lhe o ingresso na lide na condição que escolher, resguardando-o, assim, dos efeitos da sentença e garantindo a efetividade do provimento judicial. Não se presta, pois, a impor ao terceiro o dever de demandar" (STJ, Recurso Especial nº 1.170.028/SP, 4ª Turma, Relator. Ministro Raul Araújo, julgado em 15/08/2017*)).

The time-sharing regime creates a material relationship between the multi-owners, so that the lawsuit and the res judicata will have consequences for all owners of the thing. In this sense, "third party" means the co-owners of the property who weren't aware of the demand.

Thus, the judge can determine the intervention of the owner who is likely to be affected by the res judicata even in cases in which there is no formation of a necessary litisconsortium, but the optional. The holder/owner is guaranteed, in this condition, the exercise of fundamental freedom of demand, without being obliged to integrate the procedural relationship/lawsuit. (DIDIER JR., 2017, p. 594-597).

The caput of art. 564 of the Civil Procedure Code prescribes that: whether or not the injunction for maintenance or reinstatement is granted, the plaintiff will promote the defendant's summons to, if he wishes, contest in the lawsuit. Thus, after this citation, the special procedure becomes common.

In the face of a common procedure, the same rules as for other lawsuits will be applied to possessory lawsuits. Thus, the judge has the duty to summon all the owners of the time-sharing condominium to assume a position in the process.

From that moment on, therefore, the intervention of the other multi-owners becomes mandatory, so that the judicial pronouncement, which will possibly have repercussions in the patrimonial sphere of all the holders, can also have effects in their face or before them.

Well then. Possessory lawsuits may also take place between multi-owners. Molesties of possession can be practiced both by third parties to the time-sharing business - the so-called *penitus extranei* - and by the multi-owner themselves and the administrator. In view of this, the holders/owners and the administrator are allowed to use the possessory hetero-guardianship or possessory self-protection, guaranteeing the broad defense of possession.

Gustavo Tepedino (1993, p. 125) states that "as an indirect possessor, the multi-owner can make use of possessory lawsuits for the protection of the soil on which his ideal fraction falls against possible injuries from third parties or other tenants" (*"na qualidade de possuidor indireto, pode o multiproprietário fazer recurso das ações possessórias para a proteção do solo sobre o qual incide sua fração ideal contra eventuais lesões de terceiros ou de outros condôminos"*).

Thus, *v.g.*, the owner who is prevented from exercising his possession by the action of another holder, who practices disseisin (*"esbulho"*), can be returned in his possession from the filing of a possessory lawsuit.

However, there is no deployment of ownership between the direct and indirect possessor if the occurrence of molesties is verified, since it is essential that the possession is authorized for the distribution of powers, that is, it must be derived from legal business, a requirement that is not fulfilled in the event of disseisin (*"esbulho"*), turbulence (*"turbação"*) or threat.

So, the holder/owner who practices the molesty doesn't have legitimate possession of the thing, allowing the possessory defense by the other multi-owners through the interdicts.

The filing of a possessory lawsuit may result in the arbitration of the fine, in addition to the author's possessory request being combined with the condemnation of losses and damages and indemnity of the "fruits" (goods or utilities), according to art. 555 of the Civil Procedure Code.

A hypothesis of pecuniary condemnation occurs in lawsuits of prohibitory interdict, that is, lawsuits that aim to prevent the threat from materializing. In this situation, the penalty imposed is intended to alert the defendant of the consequences that the practice of disseisin (*"esbulho"*), turbulence (*"turbação"*) will cause to him, serving to discourage the act.

In addition, if the owner exceeds the time spent on the property provided for in the institution instrument or in the time-sharing condominium agreement, another fine must be applied to him. If this situation is recurrent, he may also temporarily lose the right to use the thing in the period corresponding to his fraction of time.

This is because the use of the property exclusively during the period corresponding to his fraction of time and the vacancy until the day and time set are obligations of the co-owners listed in items VII and VIII of art. 1.358-J of the Brazilian Civil Code.

Therefore, the person who commits acts that constitute disseisin (*"esbulho"*), turbulence (*"turbação"*) or threat is subject to the payment of two fines: one arbitrated in court and the other originating in the condominium agreement signed between the owners.

Since the rules for the use of the property and the corresponding fractions of time for each owner are provided in the institution or in the time-sharing condominium convention, it should be noted that the consequences listed in the legal provision consist of penalties of a contractual default nature or noncompliance contractual.

In other words, the fine is fixed in advance, in order to cover losses and damages in the event of non-compliance or non-observance with the duties established in the legal relationship.

In a different way, the fine fixed in the possessory court consists of an instrument of coercion or punishment, with the objective of complying with the judicial decision or preventing the molesty or the "disease" from being practiced.

All parties mentioned, both the third party, subject who has no relationship with the multi-owner condominium, and the administrator and the property owners, are subject to this pecuniary condemnation.

On the other hand, that fine resulting from the breach of contract is opposable only to the co-owners inserted in the time-sharing regime, who became responsible for the breach of the obligations established in the agreed agreement.

Then, finally, in the case of ownership molesties practiced by the multi-owner themselves, there will be the sum of the contractual and coercive fines. And considering that they have different natures, there is no need to talk about the existence of *bis in idem* due to this cumulation of fines.

4. CONCLUSION

This research was developed by investigating responses to the question of which co-owner would be a legitimate part of possessory protection in cases of molesties practiced by

another co-owner or by a third party. The doubt arose from the fact that the use of the property in the multiproperty/time-sharing occurred in predetermined periods.

Based on the deployment of possession, resulting from the legal business between the multi-owners, it was found that everyone keeps the quality of possessors, even if they aren't exercising the property, the uso of the proterty (hypothesis in which they will have indirect possessioin of the thing). As a result, all multi-owners can claim possessory protection, even if they aren't taking advantage of their time share of use.

As for the possibility of molesty between the multi-owners, it was found that there is a possibility of disseisin (*"esbulho"*), turbulence/disturbance (*"turbação"*) and threat (*"ameaça"*) among them. The investigation revealed that the co-owner who isn't in the exercise of his time share is only the holder/owner of indirect possession, and should refrain from harassing/molest to allow the other multi-owners to exercise direct possession of the thing. Hence, it was possible to confirm the hypothesis that the co-owner may impede the exercise of possession by another co-owner, if he practices any unlawful limitation.

In view of the deployment of possession, direct possession doesn't prevent the exercise of indirect, so that the possessors can defend their possession autonomously. It's, therefore, an "optional joint consortium" (*"litisconsórcio facultativo"*).

Thus, in the way it was proposed, from the premises constructed through the analysis of molesties and the deployment of possession, it was possible to confirm the hypothesis for the problem of temporal fractionation in the possession of multiproperty/timashare/time-sharing and to propose measures to face the problematic issues that surrounded the legitimacy ad causam to the exercise of interdict protection in multiproperty/time-sharing.

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