

Action for exemption from enforcement in court enforcement proceedings (abstract).

One of the remedies available in Polish law to a third party to protect its rights in enforcement proceedings is an action requesting the seized thing to be exempted from enforcement. The said institution is regulated in art. 841 of the Code of Civil Procedure which reads as follows: §1 A third party may file an action requesting the seized thing to be exempted from enforcement, if enforcement against that thing violates that party's rights. §2 If the debtor negates the right of the plaintiff, apart from the creditor also the debtor should be sued. § 3. Action may be filed within one month from the date of learning about violation of rights, unless separate regulations provide for a different time limit. A third party may defend its rights also in enforcement carrying out an administrative decision under art. 842 of the Code of Civil Procedure, and in criminal proceedings under art. 28 §3, art. 29 §1, art. 29a §3 and art. 293 §7 of the Executive Penal Code.

This dissertation is an attempt to assess an action to exempt a seized thing from enforcement under Polish law as a whole. Chapter I concerns action for exemption from enforcement in a historical and comparative law analysis. Chapters II through V concern action for exemption from enforcement in the meaning of the Code of Civil Procedure. This dissertation also includes a description of the action for exemption from enforcement in administrative and criminal proceedings.

The subject matter is the legal nature of the action for exemption from enforcement. Studies conducted allow for the formulation of a thesis according to which, under the Code of Civil Procedure existing in Polish law it may be claimed that action for exemption of a seized thing from enforcement has the nature of an action to obtain the transformation of an existing legal relationship. By requesting exemption from enforcement, plaintiff pursues a change of the procedural situation which occurred upon seizure. Plaintiff demands exemption from enforcement. The action does not have the nature of an action for performance as the plaintiff does not require a performance from the defendant. Nor is it a declaratory action since the plaintiff's claim is not about determining a right or legal relation but rather about exemption from enforcement if a third party's right has already been violated.

Action under art. 841 of the Code of Civil Procedure is one of legal remedies available to third parties in enforcement proceedings. In certain cases a third party may achieve the same results as by way of a complaint against an enforcement officer's acts. Therefore, the dissertation discusses the relation between an action for exemption from enforcement and a complaint against an enforcement officer's acts. Considerations led to a conclusion that there

is no conflict in Polish law between an action against an enforcement officer's acts and an action for exemption from enforcement. These are two independent legal measures. Admissibility of one of the said remedies does not preclude the application of the other. A complaint against an enforcement officer's acts is justified if an enforcement officer violated procedural rules. On the other hand, action for exemption from enforcement is admissible only when law was violated in the course of enforcement in accordance with procedural rules.

Parties to enforcement exemption are the third party as the plaintiff and the creditor as the defendant. If a debtor denies the plaintiff's right, both creditor and debtor are the defendants. In Polish legal doctrine there is a dispute on who should be regarded as the third party. The question is whether a debtor who is subject to limited personal liability may be regarded as a third party. The analysis carried out as part of this dissertation makes it possible to formulate a clear thesis that in Polish law the subject is a third party that is not a party to enforcement proceedings. Thus, if somebody is subject to limited personal liability (e.g. husband of a debtor, acquirer of property, receiver in bankruptcy), and an enforcement title was issued against them and enforcement was started, such a person is already an enforcement debtor. Such a person may not file an action for exemption from enforcement. They may however defend their rights using legal measures available to a debtor.

A basis of the petition for exemption from enforcement is the violation of third party's rights as a result of the enforcement against it. Two criteria are decisive when describing the catalogue of rights whose violation constitutes the basis of a complaint i.e. the level of protection enjoyed by a given right under Polish law and the issue of violation of these rights by enforcement. Taking these two criteria into account, the catalogue of rights available to a third party whose violation is the basis for action, is as follows. As far as absolute rights are concerned, these include property, co-property, perpetual usufruct, use of movable property or rights, co-operative right to a flat. The rights in question are violated if a third party is entitled to one of those rights as regards the seized property. Relative rights, on the other hand, may form a basis for legal action only under art. 841 of the Code of Civil Procedure if the seized thing is not a part of debtor's property, and a third party has any rights to the thing seized under a legal title. Such rights may be available under the following: contracts of lease, contract to carry out work from a customer's material, contracts for a loan, contracts of mandate, contract of carriage, shipping contract, contract of storage. Violation of possession should not currently form a basis in Polish law for instituting action for exemption from enforcement if the debtor is not the owner of the seized thing.

