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LIABILITY OF SPOUSES REMAINING IN THE SYSTEM OF JOINT PROPERTY FOR THE OBLIGATIONS OF ONE OF THEM AND ANTI-ENFORCEMENT ACTIONS AS A MEANS OF SUBSTANTIVE DEFENCE OF THE DEBTOR'S SPOUSE

ODPOWIEDZIALNOŚĆ MAŁŻONKÓW POZOSTAJĄCYCH W USTROJU WSPÓLNOŚCI MAJĄTKOWEJ ZA ZOBOWIĄZANIA JEDNEGO Z NICH ORAZ POWÓDZTWA PRZECIWEGZEKUCYJNE JAKO ŚRODKI OBRONY MERYTORYCZNEJ MAŁŻONKA DŁUŻNIKA

Summary: The study concerns the scope of liability with the joint property for the obligations of one of the spouses and the issue of the defence of the debtor's spouse by way of anti-enforcement actions. First, the matter of the property liability of the spouses for the obligations incurred by one of them when they remain in the matrimonial regime is discussed. Next, the issue of the joint property liability for the obligations due to the public law liabilities has been outlined. Further on, anti-enforcement actions as an expression of the substantive defence of the debtor's spouse have been discussed. Finally, it was pointed out that the debtor's spouse had an opportunity to defend himself/herself in the event of the execution from the joint bank account of the debtor and his spouse.

Keywords: joint property of the spouses, property liability of the spouses, matrimonial regime, debtor's substantive defence, interpleader claim, opposition action

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Streszczenie: Opracowanie dotyczy zakresu odpowiedzialności majątkiem wspólnym za zobowiązania jednego z małżonków oraz kwestii obrony małżonka dłużnika w drodze powództw przeciwegzekucyjnych. W pierwszej kolejności omówiono problem odpowiedzialności majątkowej małżonków za zobowiązania zaciągnięte przez jednego z nich, gdy ci pozostają w ustawowym ustroju majątkowym. Następnie przedstawiono w zarysie kwestię odpowiedzialności majątkiem wspólnym za zobowiązania z tytułu należności publiczno-prawnych. W dalszej części zostały omówione powództwa przeciwegzekucyjne stanowiące wyraz merytorycznej obrony małżonka dłużnika. Na koniec wreszcie wskazano na możliwość podjęcia obrony przez małżonka dłużnika w wypadku prowadzenia egzekucji ze wspólnego rachunku bankowego dłużnika i jego małżonka.

Słowa kluczowe: majątek wspólny małżonków, odpowiedzialność majątkowa małżonków, ustawowy ustrój majątkowy, merytoryczna obrona dłużnika, powództwo ekscydencyjne, powództwo opozycyjne

Liability for obligations is one of the most important elements of the wider problem of matrimonial property relations. The issue of spouses' liability for obligations has a significant social significance because, on the one hand it relates to the legitimate interests of creditors and on the other it concerns the fundamental interests of the family. However, the amendment to the Family and Guardianship Code of 17 June 2004 has radically changed the rules of liability for the obligations of one of the spouses, but there are still serious doubts about many important issues. These doubts lead to re-addressing the problem of anti-enforcement actions in confrontation with the liability of the spouses of joint property.

The liability of spouses for obligations to which one spouse is a debtor, depends on the property regime in which the spouses remain. Differently this responsibility will be realized when it comes to the contractual matrimonial regime, differently in the statutory matrimonial regime, and yet differently in the compulsory matrimonial regime. In this paper, only issues that relate to the statutory matrimonial regime will be analyzed.

I

During the marriage, if the spouses remain in the system of matrimonial regime, the liability for the obligations incurred by both spouses, i.e. for their joint debt is based on the general principles of civil law and, as a rule, will apply to both their personal property and joint property¹. The situation is different when the spouses are in a joint property and the debtor is only one of the spouses. Pursuant to art. 42 of the Family and Guardianship Code (hereinafter referred to as FGC), the creditor's ability to satisfy his / her spouse during the statutory joint life is

¹ J. Zrałek, *Odpowiedzialność małżonków za zobowiązania po nowelizacji przepisów o ustawowej wspólności majątkowej*, „Rejent” 2005, No. 9, p. 362.

excluded from the share which, in the event of termination of such communion, will fall to that spouse in joint property or in individual items belonging to that property. He may not, during the statutory joint property, seize the rights which the spouse personally has to demand that the court establish separate property agreement and bring about the cessation of joint property, which would undoubtedly give him the opportunity to satisfy himself from the share in the property which was covered by it².

The existence of a marriage at the level of property relations requires that in certain situations the other spouse be responsible for the obligations incurred by the spouse³. Considering the well-being of the family, in particular in its material aspect, and due protection of the creditor's rights, a compromise solution was introduced in the sense that the liability for the obligations of one of the spouses from the joint property is limited to situations indicated by the legislator⁴.

The rules of this liability are included in art. 41 of the FGC, which provision is mandatory, and therefore its operation cannot be excluded or changed by the will of the spouses⁵. Therefore, if the commitment was incurred by one of the spouses, it should be determined whether the spouse gave his/her consent⁶. According to art. 41 § 1 of the FGC the creditor may request satisfaction from joint property only if such consent has been given. The consent of one of the spouses to perform a legal act is a declaration of the will of a third party in relation to the parties to this act within the meaning of art. 63 § 1 of the Civil Code⁷.

With this rule of responsibility, the provision of art. 787 of the Code of Civil Procedure, concerning the implementation by court enforcement of the creditor's rights to satisfy themselves from the joint property of the spouses for the obligations of one of them. Indeed, the granting of an enforcement clause to an enforcement order issued against a married person, enabling the enforcement to be carried out also on joint property, was conditional on the creditor's demonstration by an official or private document that the claim as enforceable was the result of a legal act carried out with the consent of the debtor's spouse.

² M. Sychowicz [in:] K. Piasecki (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2006, p. 229.

³ T. Smoczyński [in:] T. Smoczyński (ed.), *System prawa prywatnego*, Vol. 11: *Prawo rodzinne i opiekuńcze*, Warszawa 2009, p. 481.

⁴ A. Stępniań-Sporek, *Działalność gospodarcza z udziałem małżonków*, Warszawa 2009, p. 410.

⁵ J. St. Piątkowski [in:] J. St. Piątkowski (ed.), *System prawa rodzinnego i opiekuńczego*, Ossolineum 1985, p. 445; J. Ciszewski, *Niektóre zagadnienia odpowiedzialności małżonków za zobowiązania zaciągnięte w czasie trwania wspólności ustawowej*, „Problemy Egzekucji Sądowej” 1997, No. XXVII, p. 8.

⁶ The wider range of assets that a creditor can satisfy applies to both cases where consent was optional and mandatory.

⁷ T. Mróz, *Wymóg zgody małżonka do dokonania czynności prawnej*, [in:] J. Wroceński, J. Krawczyński (ed.), *Finis legis Christus. Księga pamiątkowa dedykowana księdzu profesorowi Wojciechowi Góralskiemu z okazji siedemdziesiątej rocznicy urodzin*, Vol. 2, Warszawa 2009, p. 1204.

The initiative to request the consent of the other spouse to enter into an obligation, regardless of its type and value the FGC leaves to the creditor⁸. The consent referred to is an optional consent⁹ as opposed to the mandatory consent¹⁰ expressed in art. 37 § 1 of the FGC¹¹.

To the consent referred to in art. 41 § 1 of the FGC, art. 63 of the Civil Code will not apply. Therefore, it is a declaration of will in the technical and legal sense, a statement to be submitted to another person (art. 61 § 1 of the Civil Code)¹². The spouse who consented does not therefore become a party to the legal act carried out by the spouse¹³. The consent of the other spouse to act does not have to include the exact content of the intended action, and in addition, this declaration does not have to be addressed to the spouse's contractor; it is enough that the addressee is the spouse who intends to perform the specific action. When it comes to the date on which it is to be expressed, it is generally accepted that a statement of its expression may be made both before and at the same time. According to J. Pietrzykowski, there are no obstacles for the other spouse to confirm it after the act¹⁴. The question arises in what form the debtor's spouse is to agree to the commitment. It should be considered whether the principle of arbitrariness applies in this respect or whether consent should be expressed in the form required for the given legal act from which the claim arises. There is no doubt that the consent in question does not affect the validity of the legal act, but only the extent of the liability of the spouses on their joint property¹⁵. However, one must remember about the disposal of art. 787 of the Code of Civil Procedure. Therefore, the lack of a requirement to consent in the form required for a given legal act justifies the view that consent, regardless of the nature of the obligation and the nature of the subject of the obligation, may be expressed in any form¹⁶. Although the spouse's debt incurred with the consent of the other is also borne by his / her spouse from joint assets, this does not mean that he / she becomes a co-debtor. In this case, s/he is re-

⁸ E. Holewińska-Łapińska, *Ochrona interesów małżonka dłużnika w postępowaniu o nadanie klauzuli wykonalności przeciwko osobie pozostającej w związku małżeńskim*, „Przegląd Sądowy” 1999, No. 5, p. 87.

⁹ This means that the lack of consent is irrelevant to the legal act itself and does not invalidate this act, but it affects the scope of liability for the contracted obligation (I. Gredka, *Odpowiedzialność majątkiem wspólnym za zobowiązania jednego z małżonków*, „Rodzina i Prawo” 2007, No. 2, p. 24).

¹⁰ Mandatory consent extends the liability to the joint property of the spouses.

¹¹ J. Pietrzykowski [in:] K. Pietrzykowski (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2010, p. 439. According to J. Ignatowicz (J. Ignatowicz, M. Nazar, *Prawo rodzinne*, Warszawa 2005, p. 160-161) the scope of application of the provision of art. 41 (1) of the FGC should include the incurring of obligations by one spouse with both mandatory and optional consent of the other spouse.

¹² M. Sychowicz [in:] *Kodeks rodzinny...*, p. 223.

¹³ CF judgment of Supreme Court of 24.06. 2005r., VCK 799/04, unpublished).

¹⁴ J. Pietrzykowski [in:] *Kodeks rodzinny...*, p. 439.

¹⁵ A. Lutkiewicz-Rucińska, *Uwagi do projektu zmiany małżeńskiego prawa majątkowego*, „Kwartalnik Prawa Prywatnego” 2001, p. 154.

¹⁶ M. Sychowicz [in:] *Kodeks rodzinny...*, p. 223; J. Ignaczewski, *Małżeńskie ustroje majątkowe. Art. 31-54 KRO. Komentarz*, Warszawa 2006, p. 109. Of different opinion was J. Pietrzykowski (J. Pietrzykowski [in:] *Kodeks rodzinny...*, p. 439).

sponsible for someone else's debt, i.e. the debt of his/her spouse, and his/her liability is limited to all or part of the joint property. The second spouse's obligation comes down to removing (*pati*) enforcement of joint property.

Who is the debtor is decided by the legal event that is the source of the obligation, not the content of art. 41 § 1 of the FGC, in the light of which the debtor is only one of the spouses and only the creditor is entitled to a claim for the performance¹⁷.

The rules of liability contained in art. 41 of the FGC, as is commonly accepted, apply only to civil law obligations. In order to define a civil law obligation, it is necessary to specify the nature of the civil law relationship. The constitutive feature of this relationship is the equivalence (equality) of the parties, which means that none of the entities of this relationship, regardless of whether it is a natural person, a legal person or an organizational unit within the meaning of art. 33¹ of the Civil Code, is not subordinated to another¹⁸. Another important feature of this relationship is the autonomy of the entities, in particular its basic link, which is the freedom of contract, which is, as A. Stelmachowski puts it, the guiding principle of civil law, its distinctive feature¹⁹. In the civil law relationship, the parties' services are also characterized by their equivalence. Therefore, having regard to the above, it can be stated that the civil law obligations are those resulting from civil law relations regulated by the provisions of the Civil Code, and, moreover, those that result from employment, family and guardianship law, and other legal relationships governed by other laws, whose subjects are characterized by parity, and their provision is generally equivalent. Liability with joint property also applies to civil claims that have been awarded in criminal proceedings by means of an adhesive action²⁰. It does not matter in which proceedings the claim corresponding to the existing obligation of one of the spouses may be enforced²¹.

II

The model of limited liability of joint property for the obligations of one spouse adopted in the Family and Guardianship Code does not cover the fulfillment of obligations arising from public law provisions. Therefore, liability for receivables from the Treasury and other public law entities is governed by separate provisions.

¹⁷ F. Zedler, *Dochodzenie roszczeń majątkowych od małżonków*, Warszawa 1976, p. 39.

¹⁸ Z. Banaszczyk [in:] M. Safjan (ed.), *System prawa prywatnego*, t. 1: *Prawo cywilne – część ogólna*, Warszawa 2007, p. 837.

¹⁹ A. Stelmachowski, *Wstęp do teorii prawa cywilnego*, Warszawa 1984, p. 40-41.

²⁰ T. Smyczyński [in:] *System prawa...*, p. 487.

²¹ E. Skowrońska-Bocian, *Rozliczenia majątkowe małżonków w stosunkach wzajemnych i wobec osób trzecich*, Warszawa 2005, p. 122.

And so according to the content of art. 28 § 1 of the Executive Penal Code²² imposed in criminal proceedings against one of the spouses, fines, court fees and debts are subject to satisfaction from the convict's personal property and remuneration for work or other gainful activities, as well as his/her copyrights and related rights. Only when the satisfaction of the debtor's assets mentioned above is ineffective, can enforcement be carried out from joint assets. The basis for referring enforcement to joint property will most often be a report drawn up by a bailiff on the ineffectiveness of enforcement. In its absence, it is sufficient if the creditor demonstrates that the enforcement of personal property will not give the desired results. Therefore, the above provision allows the enforcement of the receivables listed in the joint property only on a subsidiary basis²³. Unlike in the civil law regulation, we are dealing here with a certain statutory order of satisfying creditor's claims, which takes into account the division of joint property into earnings and benefits as well as other income from personal property²⁴.

The provision of art. 29 of the Executive Penal Code regulates the effects of a final judgment of a criminal measure forfeiture in the sphere of joint property of spouses. The rules for adjudicating a criminal measure for forfeiture of items are set out in art. 44 of the Penal and 29-33 of the Executive Penal Code. Pursuant to the content of art. 29 of the Executive Penal Code upon the final decision of a criminal measure forfeiture against one of the spouses who are under a joint property, the property subject to forfeiture or subject to enforcement of the forfeiture of equivalent items or benefits shall lose the nature of the elements of joint property and shall become the property of the State Treasury. At this point, it should be noted that it is also permissible, therefore, to secure financially a fine, interest, court fees, forfeiture on joint assets, if it is suspected that satisfaction from other sources will prove impossible or the forfeiture is part of the joint property²⁵.

The liability of the spouses' joint property for tax liabilities is different²⁶. First of all, it should be noted that the spouse's liability is not shaped like the responsibility of a third party²⁷. The Tax Code – in accordance with the doctrine postulates already submitted in the 1970s²⁸ – excluded them from the circle of third parties²⁹. Pursuant to art. 26 p § 1 the Tax Code the taxpayer is liable for all taxes arising from tax lia-

²² This provision uses terms such as "separate assets" and "remuneration for other services rendered in person", and therefore terminology prior to the amendment to the Family and Guardianship Code of 17 June 2004.

²³ K. Korzan, *Czy do egzekucji z majątku wspólnego wystarczy tytuł wykonawczy przeciwko jednemu z małżonków?* "Rejent" 1996, No. 2, p. 17.

²⁴ T. Sokołowski, *Prawo rodzinne. Zarys wykładu*, Poznań 2010, p. 94.

²⁵ J. Misztal-Konecka, *Zabezpieczenie majątkowe w postępowaniu karnym na składnikach majątku wspólnego małżonków*, "Monitor Prawniczy" 2007, No. 10, p. 554-555.

²⁶ This problem is regulated by the Act of 27.08.1997. The Tax Code (Journals of Law No. 139, item 926).

²⁷ K. Czerna, *Małżonkowie jako przedsiębiorcy*, "Przegląd Podatkowy" 1999, No. 2, p. 14.

²⁸ M. Gintowit-Jankowicz, *Odpowiedzialność małżonków za zobowiązania podatkowe*, "Studia Prawnicze" 1972, No. 32, p. 170.

²⁹ According to the content of art. Tax Code 110 a divorced spouse is included in the category of third parties.

bilities³⁰. This is an unlimited personal liability. Details of the taxpayer's obligation are included in art. 29 § 1 the Tax Code, which states that the liability of married persons includes the personal property of the taxpayer and the joint property of the taxpayer and his/her spouse³¹.

By compiling art. 26 the Tax Code with the content of art. 29 § 1 of that ordinance, it can be seen that the Act distinguishes between the taxpayer's personal property and the joint property of the taxpayer and his/her spouse, while Art. 29 § 1 the Tax Code only extends the taxpayer's liability to the joint property of the taxpayer and his/her spouse³². The spouse's liability does not extend to his/her personal property³³. Although the spouses are not jointly and severally liable, the tax debt may be satisfied from the joint and personal property of the taxpayer³⁴. However, joint and several liability with the taxpayer for his/her tax arrears that arose during the course of joint property is borne by the divorced spouse with all his/her personal property and all joint property. The spouse's liability applies not only to the principal claim itself, but also to interest on tax arrears, since the spouse is liable to the same extent as the taxpayer³⁵. The payer's spouse is responsible for tax liabilities from the moment such liability arises. The Tax Code is associated with the attribute of a party to tax proceedings (art. 133).

Any modifications to the property regime of the spouses will be effective in relation to tax obligations arising after the modification of the property regime. Therefore, the limitation, lifting, exclusion or cessation of joint property will not apply to tax obligations arising before the date of the conclusion of the contract on limitation or exclusion of statutory joint property, the abolition of joint property by a final court decision, cessation of joint property in the event of the spouse's legal incapacitation or the court's decision on separation of spouses

Similar rules of liability of the debtor's spouse apply to claims arising from social security contributions. At the same time by contributions due, in accordance with art. 24 (2) of the Act on the social security system³⁶, one understands not only the social security contributions, but also interest for late payment, enforcement costs, warning costs and an additional fee. Pursuant to art. 31 of this Act, the provisions

³⁰ A. Mariański, *Odpowiedzialność małżonka i rozwiedzionego małżonka podatnika (płatnika, inkasenta) za zobowiązania podatkowe na gruncie ordynacji podatkowej*, „Palestra” 2000, No. 2-3.

³¹ This provision uses the term “separate assets” and therefore the terminology prior to the amendment to the Family and Guardianship Code of 17 June 2004.

³² D. Krzyżanowski, *Odpowiedzialność majątkiem wspólnym małżonków za przedmażeńskie zobowiązania podatkowe oraz należności z tytułu składek na ubezpieczenie społeczne*, „Palestra” 2012, No. 11-12, p. 70.

³³ A. Mariański, *Odpowiedzialność za zobowiązania podatnika, płatnika, inkasenta w prawie polskim*, Warszawa 1999, p. 35.

³⁴ According to A. Stępień-Sporek, the liability of the taxpayer and his spouse should be classified as an example of incorrect solidarity (*Działalność gospodarcza z udziałem małżonków*, Warszawa 2009, p. 433).

³⁵ A. Mariański, *Odpowiedzialność małżonka...*, p. 20.

³⁶ Uniform text: Journal of Laws of 2007, No. 11, item 74.

of Art. 26 and 29 Tax Code the provisions shall apply accordingly. Therefore, the claims regarding liability for tax obligations remain valid in relation to the social security contributions.

III

In the proceedings regarding the granting of an enforcement clause, the court may not analyse the content of the writ of execution, and the consideration of the creditor's claim and the debtor's obligation under this clause remains beyond the scope of its jurisdiction. Therefore, the debtor, unable to combat the writ of execution, should take a legal opposition action under Art. 840 § 1 point 1 of the Code of Civil Procedure, which provides him/her with the opportunity to take the substantive defence against the enforcement procedure against him³⁷. The regulation of this means of defence in the procedural law has a clear tendency to provide greater efficiency, which is reflected in the possibility of taking this action before the commencement of the enforcement procedure in order to prevent it by depriving the enforcement order of the enforcement right, as well as granting the active right to the spouse of the enforcement debtor, which corresponds to provisions of art. 319 of the Code of Civil Procedure and 787 CCP³⁸.

The provision of art. 840 § 1 of the Code of Civil Procedure indicates three grounds on which the legal opposition action can be based. The present request for deprivation the enforcement order of the enforceability in whole or in part or its restrictions may be based on:

- denial of the events on which the issuing of the enforcement clause is based;
- reference to the occurrence of events after the enforcement order that resulted in the expiry of the obligation or its inability to be enforced, and when the order is a court decision
- also, events occurring after the close of the trial;
- demonstration by the debtor's spouse against whom the court has issued an enforcement clause pursuant to art. 787 of the Code of Civil Procedure, that the enforced liability should not be due to the creditor.

The above situations create three separate legal opposition actions. Because of the subject of the article, it will be limited to a detailed discussion of the third basis of the opposition action, which differs from the grounds provided in point 1 and 2. First of all, it should be noted that only the spouse of the debtor has the right to bring the action in question. He/she may show that the creditor should not be entitled to the

³⁷ K. Korzan, *Kilka uwag na temat powództw przeciwegzekucyjnych*, „Nowe Prawo” 1966, No. 9, p. 1114; A. Różalska, *Wybrane zagadnienia powództw przeciwegzekucyjnych*, „Problemy Egzekucji Sądowej” 1998, No. 29, p. 91.

³⁸ P. Pogonowski, *Małżonek dłużnika w postępowaniu egzekucyjnym*, „Monitor Prawniczy” 2002, No. 22, p. 1019.

liabilities, indicating at the same time those events that arose after the issuing of the writ of execution, as well as those that occurred before its issuing³⁹. The basis for the action under art. 840 § 1 point 3 covers three types of objections, namely:

1) that the creditor's claim cannot be levied on the enforcement of the joint property,

2) that the enforcement claim should not be due to the creditor at all,

3) that the enforcement claim has expired as a result of objections based on the debtor's spouse's own right.

The specificity of this action is that the debtor's spouse may, in the analysed action, challenge the existence of the claim confirmed by a valid enforcement order. It should be remembered, however, that the debtor's spouse did not participate in the proceedings, as a result of which the enforcement order was issued, and therefore the *res judicata* issued in the previous case does not extend to the debtor's spouse and he/she may – to show that the creditor is not entitled to the enforcement claim – raise objections not only from his/her own right, but also from those which the debtor could not raise before⁴⁰. When it comes to the allegations from the debtor's spouse's own right, the opposition action may be based on the charge of offsetting his/her own claim included in the personal property and due to him/her from the creditor, and charges limiting or excluding the liability of the debtor's spouse in matters of the management of the joint property⁴¹. The objections of the debtor's right will be substantive objections, which are aimed at demonstrating that the enforced liability is not due to the creditor⁴².

There is no consensus in the literature as to whether the debtor's spouse can raise in his/her action objections that were previously raised in the trial by his/her spouse. J. Jodłowski⁴³, H. Mądrzak⁴⁴ oraz K. Korzan⁴⁵ were in favour of the debtor's spouse re-admitting those charges previously reported by the debtor himself/herself. A different approach was revealed by E. Wengerek⁴⁶, F. Zedler⁴⁷, A. Marci-

³⁹ F. Zedler, *Zakres rozpoznania sprawy przez sąd w postępowaniu o nadanie klauzuli wykonalności przeciwko małżonkowi dłużnika (art. 787 C.C.P.)*, „Nowe Prawo” 1978, No. 3, p. 424; A. Różalska, *Powództwa przeciwegzekucyjne jako środki obrony merytorycznej dłużnika. Powództwo opozycyjne*, „Problemy Egzekucji Sądowej” 1997, No. 27, p. 43.

⁴⁰ A. Marciniak, *Sądowe postępowanie egzekucyjne*, Warszawa 2011, p. 308.

⁴¹ J. Jankowski [in:] K. Piasecki (ed.), *Kodeks postępowania cywilnego*, Vol. II: *Komentarz do artykułów 506-1088*, Warszawa 2006 p. 813.

⁴² F. Zedler, *Dochodzenie roszczeń...*, p. 171.

⁴³ J. Jodłowski, *Glosa do wyroku SN z 26.06.1970, I CR 151/70*, „Państwo i Prawo” 1972, z. 4, pp. 164 et seq.

⁴⁴ H. Mądrzak, *Przymusowe zaspokojenie wierzyciela z tytułu długu jednego z małżonków*, Warszawa 1977, pp. 108 et seq.

⁴⁵ K. Korzan, *Sądowe postępowanie zabezpieczające i egzekucyjne w sprawach cywilnych*, Warszawa 1986, p. 216-217.

⁴⁶ E. Wengerek, *Glosa do wyroku SN z 26.06.1970, I CR 151/70*, „Państwo i Prawo” 1972, z. 4, pp. 161 et seq.

⁴⁷ F. Zedler, *Dochodzenie roszczeń...*, p. 173.

niak⁴⁸, H. Pietrzykowski⁴⁹, J. Jankowski⁵⁰. When considering this problem, it should be noted that the literal interpretation of art. 840 § 1 point 3 excludes this possibility. In addition, the very nature of the opposition is against such a solution. From the procedural point of view, it is not appropriate that the same plea be heard by two courts in different proceedings. Attention should also be paid to the statements of the Supreme Court in this matter. Originally this court advocated the admissibility of the debtor's spouse re-reporting such allegations⁵¹. However, it later changed its position in this matter, considering that in the case initiated as a result of the action provided for in Article. 840 § 1 point 3 of the CCP it is unacceptable for the debtor's spouse to re-invoke those objections that the debtor has already raised in the process preceding the judgment against him⁵².

It is widely accepted in the doctrine that the spouse of the debtor against whom the court has issued an enforcement clause pursuant to art. 787 of the Code of Civil Procedure, may also base his/her claim on the grounds indicated in point 1 and 2 § 1 art. 840 of the Code of Civil Procedure⁵³. An opposition action should be taken only after the enforcement order has been issued, however, before enforcing the obligation found in it⁵⁴.

The court's consideration of the claim of the debtor's spouse does not entail a change in the content of the writ of execution, but only limits the group of entities against whom the enforcement may be carried out⁵⁵. The enforcement body should, based on the judgment considering the claim, discontinue the enforcement proceedings against the debtor's spouse (Civil Procedure Code Art.825 item 2)⁵⁶. As a result of such a decision, the creditor may continue the enforcement not only from the personal property of the debtor's spouse, but also from the remuneration collected by him/her for work or income obtained from conducting other gainful activities and the benefits obtained from the copyright and related rights, industrial property rights and other rights of the creator (art. 7761 § 1 of the Code of Civil Procedure).

⁴⁸ A. Marciniak, *Sądowe postępowanie...*, p. 308.

⁴⁹ H. Pietrzykowski [in:] *Kodeks postępowania...*, p. 200.

⁵⁰ J. Jankowski [in:] *Kodeks postępowania...*, pp. 812-813.

⁵¹ Judgment of the Supreme Court of 25.06.1970, I CR 151/70, OSNCP 1971, No. 3, item 51.

⁵² Judgment of 29.06. 2005, V CK 807/ 04, Biul. SN 2005, No. 11, item 12.

⁵³ E. Wengerek, *Przeciwegzekucyjne powództwa dłużnika*, Warszawa 1967, p. 140; F. Zedler, *Dochodzenie roszczeń...*, s. 165; J. Rodziewicz [in:] S. Dalka, J. Rodziewicz, *Postępowanie zabezpieczające i egzekucyjne. Komentarz*, Gdańsk 1994, p. 180. A different opinion was also expressed by A. Napiórkowski, *Powództwo ekscydencyjne małżonka dłużnika*, „Palestra” 1973, z. 6, p. 3 et seq.

⁵⁴ Judgment of the Supreme Court of 4.04.2002, I PKN 197/01, Court calendar 2002, No. 12, p. 27.

⁵⁵ Judgment of the Supreme Court of 25.02.1998, II CKN 603/97, OSNC 1998, No. 10, item 165.

⁵⁶ H. Mądrzak, *Przymusowe zaspokojenie...*, p. 110.

IV

An action for release of a seized object from the enforcement constitutes a means of substantive defence of a third party whose rights have been violated by the enforcement. The condition for suing it is the initiation of the enforcement proceedings⁵⁷. This action, unlike the opposition action, is not intended to combat the enforcement order, but aims to oppose the enforcement of a specific property item⁵⁸. It may be taken at the earliest after the commencement of the enforcement, and no later than one month from the date of becoming aware of the violation of law, unless specific provisions provide otherwise. However, this action may be brought at the latest until the end of the enforcement proceedings. The entity entitled to bring such an action is only a third party within the meaning of art. 841 of the Code of Civil Procedure. A question therefore arises that is relevant for further investigation, whether the third party referred to in the said provision may also be the debtor's spouse. Unless there is any doubt that the debtor's spouse uses the attribute of a third party in the event that it has not been covered by an enforcement clause pursuant to art. 787 of the Code of Civil Procedure, or on another basis, it is doubtful whether the spouse may be considered a third party if an enforcement order has been issued against him/her or pursuant to art. 787 or 787¹ of the Code of Civil Procedure, or on the basis that he/she participated as co-respondent in the investigation⁵⁹. However, this issue is disputed in the doctrine.

According to the views represented by some authors, who mainly take into account the procedural criteria, there are no grounds to assume that the debtor's spouse is a third party within the meaning of Art. 841 of the Code of Civil Procedure, since after issuing the enforcement clause against him/her and covering him/her with an application to initiate the enforcement, he/she becomes an enforcement debtor⁶⁰. Also in the jurisprudence of the Supreme Court, which held divergent positions in the discussed issue, finally the view was dominant that the spouse of the debtor against whom an enforcement clause was granted with the limitation of his/her liability to property covered by the joint marital property, there is no action to release the seized object from the enforcement procedures⁶¹.

⁵⁷ T. Żyznowski [in:] H. Dolecki, T. Wiśniewski (ed.), *Kodeks postępowania cywilnego. Komentarz*, Vol. IV, Warszawa 2011, p. 324.

⁵⁸ G. Tracz, *Przesłanki wytoczenia powództwa ekscydencyjnego*, „Przegląd Sądowy” 1996, No. 7-8, p. 89 et seq.

⁵⁹ K. Korzan, *Zakres rozpoznania sprawy przez sąd w postępowaniu o nadanie klauzuli wykonalności przeciwko małżonkowi dłużnika (art. 787 k.p.c.)*, „Palestra 1982”, No. 4-5, p. 14.

⁶⁰ E. Wengerek, *Sądowe postępowanie egzekucyjne w sprawach cywilnych*, Warszawa 1978, p. 145; F. Zedler, *Powództwo małżonka dłużnika o zwolnienie od egzekucji*, „Państwo i Prawo” 1968, z. 12, p. 1013; idem, *Powództwo o zwolnienie od egzekucji*, Warszawa 1973, p. 63; idem, *Dochodzenie roszczeń...*, p. 149; idem, *Jeszcze w sprawie powództwa małżonka dłużnika o zwolnienie od egzekucji*, „Nowe Prawo” 1975, p. 705.

⁶¹ Resolution of the Supreme Court of 19.11.2008, III CZP 105/08, OSNC 2009, No. 10, item 136.

Other authors take a different position. According to their view, only a spouse who has incurred an obligation can be considered a debtor. The spouse is only the person responsible for this debt. This will also be the case after the enforcement clause has been given to the writ of execution under Art. 787 or 787¹ of the Code of Civil Procedure. The distinction between the debt and liability cannot justify the construction that the spouse, as the person responsible for the debt, is not the debtor, because this construction is separate from the nature of the obligation relationship. The existence of a liability as an element of a civil relationship is decisive for the legal existence of each debtor, not the extent of liability from the strictly defined property⁶². It should therefore be assumed that the provision of art. 841 of the Code of Civil Procedure includes a third person in the procedural sense, and therefore outside the enforcement proceedings, i.e. a person who does not possess the attribute of a party to these proceedings.

Thus, it should be assumed that the debtor's spouse acquires the position of an enforcement debtor once the enforcement clause is issued against him/her. In a situation where the enforcement is directed to his/her personal property based on the enforcement order with limitation of his liability to the joint property, then the bailiff's seizure carried out outside the statutory authorisation (unlawful seizure) is not able to either liquidate or limit the right which is a component of the legal relationship. Therefore, considering the assumption that a procedural act is a legal act in the broad sense, objections cannot be raised that the inadmissible seizure does not give rise to a constitutive effect in the form of a ban on disposing of property.

It should be emphasized that due to the constitutive nature of the judgment taking into account an interpleader claim, its taking will be necessary only if in order to defend the rights of the debtor's spouse, it will be necessary to transform the legal relationship arising from the procedural act of seizure. Such a necessity will arise in the event of a violation of the rights in question through a bailiff's seizure carried out in legally admissible conditions, since only such seizure creates a new legal status, which can be changed by this action.

Due to the fact that the seizure carried out beyond the statutory authorisation, i.e. unlawful, does not give rise to a constitutive effect, which means that it does not change the existing legal relationship, the removal of this seizure by means of an action provided for in art. 841 of the Code of Civil Procedure cannot occur due to the lack of legal relationship subject to change in the course of the present action. The debtor's spouse will be able to defend his/her rights by submitting a motion to discontinue the enforcement proceedings pursuant to art. 825 points 3 CCP demonstrating that the enforcement is carried out contrary to the content of the writ of execution, and in the event of a refusal to discontinue the enforcement he/she may lodge a complaint against the bailiff's actions and then a plaint⁶³.

⁶² K. Korzan, *Glosa do postanowienia Sądu Najwyższego z dnia 11 czerwca 1969 r. IIC 261/69*, OSPiKA 3/71, item 57, p. 129.

⁶³ J. Turek, *Postępowanie klauzulowe z art. 787 k.p.c.*, „Monitor Prawniczy” 2001, No. 3, p. 153; H.

However, in a situation where the creditor has not obtained the enforcement clause against the debtor's spouse and the enforcement was, however, directed to the joint property or his/her personal property on the basis of an enforcement order issued only against the debtor, the debtor's spouse, as a third party, may bring an action under Article 841 of the Code of Civil Procedure.⁶⁴ It should be emphasized that this action will be valid only if the procedural provisions regarding the admissibility of seizure of an object at a third party's are not violated. In the event of their violation, the debtor's spouse may complain about the bailiff's actions⁶⁵.

V

It can be concluded from the content of art. 776¹ of the Code of Civil Procedure that the enforcement of obligations incurred without the consent of the debtor's spouse or not arising from legal transactions is permissible on the basis of an enforcement order issued exclusively against the debtor, provided that the enforcement is directed to the remuneration for work or to the income obtained from other gainful activities and the benefits obtained from the copyright and related rights, industrial property rights and other rights of the creator. The norm included in the provision of art. 891² of the Code of Civil Procedure constituting a permit to carry out the enforcement from a joint bank account of the debtor and his/her spouse, corresponds with the rule adopted in this provision.

The regulation adopted in art. 891² of the Code of Civil Procedure gives an opportunity to carry out the enforcement from the joint account of the debtor and his/her spouse without having to extend the enforcement clause to the debtor's spouse. This solution essentially aims to improve the enforcement directed at funds deposited on the spouses' bank account, because the clause proceedings against the debtor's spouse, delaying the enforcement, would give the debtor an opportunity to take such actions that would lead to the concealment of the property⁶⁶.

However, the debtor's spouse may undertake the substantive defence in such a situation. Pursuant to the content of § 2 of the said provision, he/she is entitled to an interpleader claim in the event that the joint account of the spouses has accumulated

Pietrzykowski [in:] *Kodeks postępowania...*, p. 211. The Supreme Court spoke in the same way in the decision of 13.06.2001, (II CKN 498/00, „Gazeta Prawna” 2004, No. 236, p. 2), where it decided that the debtor's spouse became an enforced debtor when the enforcement clause was issued against him and therefore as a debtor he can bring an opposition action and for discontinuation of the enforcement.

⁶⁴ D. Pawłyszczke, *Podstawy egzekucji ze szczególnym uwzględnieniem egzekucji mienia objętego współwłasnością*, „Przegląd Sądowy” 1999, no. 3, p. 86.

⁶⁵ E. Wengerek, *Postępowanie zabezpieczające...*, pp. 369-370; H. Mądrzak, *Obrona małżonka dłużnika przed egzekucją skierowaną do jego majątku odrębnego*, „Acta Universitatis Wratislaviensis” 1979, Prawo 74, p. 101.

⁶⁶ J. Jankowski [in:] *Kodeks postępowania...*, p. 914; H. Pietrzykowski [in:] *Kodeks postępowania...*, p. 296; K. Flaga-Gieruszyńska [in:] A. Zieliński (ed.), *Kodeks postępowania cywilnego. Komentarz*, Warszawa 2012, p. 1425.

funds that are not derived from the remuneration for work collected by the debtor, income obtained by the debtor from other gainful activities, as well as from benefits obtained from the copyright and related rights, industrial property rights and other rights of the creator. Therefore, we are dealing here with a special form of action for release from the enforcement of funds seized on a joint account in the event that the enforcement concerns funds accumulated on a joint account which are not derived from the debtor's personal property or from the sources indicated in art. 41 § 2 of the Family and Guardianship Code⁶⁷. It should be remembered that the burden of proof in this respect lies with the debtor's spouse as the one who submits the claim⁶⁸.

The above considerations give rise to the following general reflections:

1. Liability for the obligations of one of the spouses from joint property is limited to situations indicated by the legislator. The rules of this responsibility are expressed in the content of art. 41 of the Family and Guardianship Code and apply only to civil law obligations.

2. The liability rules contained in art. 41 of the Family and Guardianship Code are connected with the provision of art. 787 of the Code of Civil Procedure, which gives grounds for the creditor's rights to be satisfied from the joint property of the spouses, when only one of them is liable and an enforcement order is issued only against him/her.

3. The scope of responsibility for joint property for the liabilities of one of the spouses adopted in the Family and Guardianship Code does not apply to satisfying those claims whose source are the provisions of the public law.

4. In a situation where the spouses remain in the statutory matrimonial regime, the debtor's spouse will be able to substantively revoke the writ of execution, depending on the specific procedural situation, by means of one of the counter-enforcement actions.

References

Banaszczyk Z. [in:] M. Safjan (ed.), *System prawa prywatnego*, t. 1: *Prawo cywilne – część ogólna*, Warszawa 2007.

Ciszewski J., *Niektóre zagadnienia odpowiedzialności małżonków za zobowiązania zaciągnięte w czasie trwania wspólności ustawowej*, „Problemy Egzekucji Sądowej” 1997, No. XXVII.

Czerska K., *Małżonkowie jako przedsiębiorcy*, „Przegląd Podatkowy” 1999, No. 2.

Dyoniak A., *Zasada ochrony rodziny a odpowiedzialność małżonków za zobowiązania*, „Ruch Prawniczy Ekonomiczny i Socjologiczny” 1977, z. 2.

⁶⁷ M. Romańska, *Środki merytorycznej obrony małżonka dłużnika przed egzekucją*, „Transformacje Prawa Prywatnego” 2013, p. 76.

⁶⁸ O. Marcewicz [in:] A. Jakubecki (ed.), *Kodeks postępowania cywilnego. Komentarz*, Warszawa 2012, p. 1146.

Flaga-Gieruszyńska K. [in:] Zieliński (ed.), *Kodeks postępowania cywilnego. Komentarz*, Warszawa 2012.

Gintowit-Jankowicz M., *Odpowiedzialność małżonków za zobowiązania podatkowe*, „Studia Prawnicze” 1972, No. 32.

Gredka I., *Odpowiedzialność majątkiem wspólnym za zobowiązania jednego z małżonków*, „Rodzina i Prawo” 2007, No. 2.

Holewińska-Łapińska E., *Ochrona interesów małżonka dłużnika w postępowaniu o nadanie klauzuli wykonalności przeciwko osobie pozostającej w związku małżeńskim*, „Przegląd Sądowy” 1999, No. 5.

Ignaczewski J., *Małżeńskie ustroje majątkowe. Art. 31-54 KRO. Komentarz*, Warszawa 2006.

Ignatowicz J. [in:] J. Ignatowicz, M. Nazar, *Prawo rodzinne*, Warszawa 2005.

Jankowski J., [in:] K. Piasecki (ed.), *Kodeks postępowania cywilnego, t. II: Komentarz do artykułów 506-1088*, Warszawa 2006.

Jędrejek G., *Postępowanie egzekucyjne a regulacja stosunków majątkowych małżonków*, „Studia Prawnicze” 2009, No. 3.

Jodłowski J., *Glosa do wyroku SN z 26.06.1970, I CR 151/70*, „Państwo i Prawo” 1972, z. 4.

Korzan K., *Glosa do postanowienia Sądu Najwyższego z dnia 11 czerwca 1969 r. IIC 261/69, OSPiKA 3/71, item 57*.

Korzan K., *Kilka uwag na temat powództw przeciwegzekucyjnych*, „Nowe Prawo” 1966, No. 9.

Korzan K., *Zakres rozpoznania sprawy przez sąd w postępowaniu o nadanie klauzuli wykonalności przeciwko małżonkowi dłużnika (art.787 k.p.c.)*, „Palestra 1982”, No. 4-5.

Korzan K., *Sądowe postępowanie zabezpieczające i egzekucyjne w sprawach cywilnych*, Warszawa 1986.

Korzan K., *Czy do egzekucji z majątku wspólnego wystarczy tytuł wykonawczy przeciwko jednemu z małżonków?*, „Rejent” 1996, No. 2.

Krzyżanowski D., *Odpowiedzialność majątkiem wspólnym małżonków za przedmałżeńskie zobowiązania podatkowe oraz należności z tytułu składek na ubezpieczenie społeczne*, „Palestra” 2012, No. 11-12.

Lutkiewicz-Rucińska A., *Uwagi do projektu zmiany małżeńskiego prawa majątkowego*, „Kwartalnik Prawa Prywatnego” 2001.

Marcewicz O. [in:] A. Jakubecki (ed.), *Kodeks postępowania cywilnego. Komentarz*, Warszawa 2012.

Marciniak A., *Sądowe postępowanie egzekucyjne*, Warszawa 2011.

Mariański A., *Odpowiedzialność małżonka i rozwiedzionego małżonka podatnika (płatnika, inkasenta) za zobowiązania podatkowe na gruncie ordynacji podatkowej*, „Palestra” 2000, No. 2-3.

Mariański A., *Odpowiedzialność za zobowiązania podatnika, płatnika, inkasenta w prawie polskim*, Warszawa 1999.

Mądrzak H., *Obrona małżonka dłużnika przed egzekucją skierowaną do jego majątku odrębnego*, „Acta Universitatis Wratislaviensis” 1979, Prawo 74.

Mądrzak H., *Przymusowe zaspokojenie wierzyciela z tytułu długu jednego z małżonków*, Warszawa 1977.

Misztal-Konecka J., *Zabezpieczenie majątkowe w postępowaniu karnym na składnikach majątku wspólnego małżonków*, „Monitor Prawniczy” 2007, No. 10.

Mróz T., *Wymóg zgody małżonka do dokonania czynności prawnej*, [in:] J. Wroceński and J. Krawczyński (ed.), *Finis legis Christus. Księga pamiątkowa dedykowana księdzu profesorowi Wojciechowi Góralskiemu z okazji siedemdziesiątej rocznicy urodzin*, Vol. 2, Warszawa 2009.

Napiórkowski A., *Powództwo ekscydencyjne małżonka dłużnika*, „Palestra” 1973, z. 6.

Pawłyszcz D., *Podstawy egzekucji ze szczególnym uwzględnieniem egzekucji mienia objętego współwłasnością*, „Przegląd Sądowy” 1999, No. 3.

Piątkowski J.St. [in:] *System prawa rodzinnego i opiekuńczego* ed. , Ossolineum 1985.

Pietrzykowski J. [in:] K.Pietrzykowski (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2010.

Pogonowski P., *Małżonek dłużnika w postępowaniu egzekucyjnym*, „Monitor Prawniczy” 2002, No. 22.

Rodziewicz J. [in:] S. Dalka, J. Rodziewicz, *Postępowanie zabezpieczające i egzekucyjne. Komentarz*, Gdańsk 1994.

Romańska M., *Środki merytorycznej obrony małżonka dłużnika przed egzekucją*, „Transformacje Prawa Prywatnego” 2013.

Różalska A., *Powództwa przeciwegzekucyjne jako środki obrony merytorycznej dłużnika. Powództwo opozycyjne*, „Problemy Egzekucji Sądowej” 1997, No. 27.

Różalska A., *Wybrane zagadnienia powództw przeciwegzekucyjnych*, „Problemy Egzekucji Sądowej” 1998, No. 29.

Skowrońska-Bocian E., *Rozliczenia majątkowe małżonków w stosunkach wzajemnych i wobec osób trzecich*, Warszawa 2005.

Smyczyński T. [in:] T. Smyczyński (ed.), *System prawa prywatnego*, t. 11: *Prawo rodzinne i opiekuńcze*, Warszawa 2009.

Sokołowski T., *Prawo rodzinne. Zarys wykładu*, Poznań 2010.

Spyra T., *Egzekucja ze wspólnych rachunków bankowych*, „Prawo Bankowe” 2001.

Stelmachowski A., *Wstęp do teorii prawa cywilnego*, Warszawa 1984.

Stępień-Sporek A., *Działalność gospodarcza z udziałem małżonków*, Warszawa 2009.

Sychowicz M. [in:] K. Piasecki (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2006.

Tracz G., *Przesłanki wytoczenia powództwa ekscydencyjnego*, „Przegląd Sądowy” 1996, No. 7-8.

Turek J., *Postępowanie klauzulowe z art. 787 k.p.c.*, „Monitor Prawniczy” 2001, No. 3.

Wengerek E., *Sądowe postępowanie egzekucyjne w sprawach cywilnych*, Warszawa 1978.

Wengerek E., *Przeciwegzekucyjne powództwa dłużnika*, Warszawa 1967.

Wengerek E., *Glosa do wyroku SN z 26.06.1970, I CR 151/70*, „Państwo i Prawo” 1972, z. 4.

Zedler F., *Powództwo małżonka dłużnika o zwolnienie od egzekucji*, „Państwo i Prawo” 1968, z. 12.

Zedler F., *Powództwo o zwolnienie od egzekucji*, Warszawa 1973.

Zedler F., *Jeszcze w sprawie powództwa małżonka dłużnika o zwolnienie od egzekucji*, „Nowe Prawo” 1975.

Zedler F., *Dochodzenie roszczeń majątkowych od małżonków*, Warszawa 1976.

Zedler F., *Zakres rozpoznania sprawy przez sąd w postępowaniu o nadanie klauzuli wykonalności przeciwko małżonkowi dłużnika (art. 787 k.p.c.)*, „Nowe Prawo” 1978, No. 3.

Zrałek J., *Odpowiedzialność małżonków za zobowiązania po nowelizacji przepisów o ustawowej wspólności majątkowej*, „Rejent” 2005, No. 9.

Żyznowski T. [in:] H. Dolecki, T. Wiśniewski (ed.), *Kodeks postępowania cywilnego. Komentarz*, Vol. IV, Warszawa 2011.