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WAYS OF OBTAINING INFORMATION ABOUT THE DEBTOR'S ASSETS IN COURT ENFORCEMENT PROCEEDINGS

The aim of this study is to identify and discuss measures undertaken to gather information about the debtor's assets and, consequently, to ensure an efficient and quick achievement of the purpose of enforcement proceedings which is an effective satisfaction of the creditor in accordance with the content of the enforceable title.

There is a close relationship between the enforcement proceedings and the reconnaissance proceedings. It is so strong that the enforcement proceedings are presented as the second stage of the reconnaissance proceedings¹. The aforementioned relationship between these types of civil proceedings is determined by their common purpose, which is to grant legal protection to subjective rights as elements of specific legal relations. Due to this close relationship between the enforcement proceedings and the reconnaissance proceedings, some of the fundamental principles of the civil process will find appropriate application in the enforcement proceedings. The point here is the principle of availability, formalism of proceedings, adversariality, equality of parties, directness, orality, transparency and the principle of concentration of procedural material. From the point of view of the purpose of this study, it will be reasonable to approximate

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¹ Cf. K. Korzan, *Sądowe postępowanie zabezpieczające i egzekucyjne w sprawach cywilnych*, PWN, Warszawa 1986, p. 90.

only the principle of availability (disposition) and the principle of cooperation between the creditor and the enforcement authority (usually a court enforcement officer)².

There is no doubt that it is in the interest of the creditor to conduct the enforcement proceedings in an efficient and effective manner³. Therefore, the creditor's cooperation with the enforcement authority plays an important role in the enforcement proceedings. The creditor as a person interested in the outcome of the proceedings should actively participate in them. His activity (e.g. submission of applications, participation in enforcement activities, providing the enforcement authority with necessary information for the proper course of execution) should be demonstrated at all stages of the proceedings until their completion. The obligation to cooperate exists regardless of whether the enforcement proceedings were initiated *ex officio*, at the request of the creditor or at the request of the authorized body⁴.

One of the principles of civil procedure is the principle of availability, that is, disposition, indicating who has the ability to dispose of the subject of the proceedings and the offensive and defense measures in the proceedings.⁵This principle is most clearly expressed in court enforcement proceedings⁶. This applies both to the proceedings concerning granting the enforcement clause to the enforceable title as well as the appropriate enforcement proceedings. The creditor is the holder of the enforcement proceedings and takes a dominant position in the proceedings. The scope of his disposition ability is very wide, because he requires the debtor to fulfill the obligation to satisfy the claims stated by the enforceable title. Enforcement proceedings may be taken and discontinued at the request of the creditor (art. 796 §1 of the Code of Civil Procedure, art. 825 point 1 of the Code of Civil Procedure). The enforcement authority will suspend the proceedings at the request of the creditor (art. 820 of the Code of Civil Procedure). The creditor's disposition covers establishing a court guardian for the debtor unknown from the place of residence (art. 802 of the Code of Civil Procedure), designating the second auction of movable property (art. 875 §1 of the Code of Civil Procedure), description and estimation of the real estate (art. 942 of the Code of Civil Procedure), designating the second auction of the real estate (art. 983 of the Code of Civil Procedure) and taking from the debtor the documents needed for entry in the land and mortgage register (art. 1048 of the Code of Civil Procedure).

² The principle of cooperation by its nature applies only to the enforcement proceedings.

³ Although the effectiveness of the enforcement proceedings is of great importance, it should not be forgotten that the enforcement proceedings understood as the singular enforcement as opposed to universal enforcement, such as bankruptcy proceedings, cannot aim at economic elimination of the debtor. Such a conclusion can be interpreted from the content of art. 845 §3 of the Code of Civil Procedure (Act of November 17, 1964 - Code of Civil Procedure, Journal of Laws 2018, item 1555), which prohibits occupying more movable property of the debtor above the one needed to satisfy the claims and enforcement costs.

⁴ Z. Szczurek [in:] Z. Szczurek (ed.), *Egzekucja sądowa w Polsce*, CURRENDA, Sopot 2007, p.111.

⁵ Cf. A. Marciniak, *Postępowanie egzekucyjne w sprawach cywilnych*, Wydawnictwo Prawnicze LexisNexis, Warszawa 2005, p.31.

⁶ Cf. A. Marciniak, *Postępowanie egzekucyjne w sprawach cywilnych*, Wydawnictwo Prawnicze LexisNexis, Warszawa 2005, p.31.

A special manifestation of the creditor's leading role in the enforcement proceedings is the disposition of art. 822 of the Code of Civil Procedure. This provision provides that if the debtor submits undoubted evidence in writing for fulfilling the obligation or for granting him a delay by the creditor, the latter decides on the further course of the enforcement proceedings, and not the bailiff.

The initiation of the execution takes place, as a rule, at the request of the creditor⁷. The creditor also makes a decision on the subject matter of the execution. The application for the initiation of the execution must first and foremost indicate the claims to be satisfied by the debtor. The creditor can also indicate the method or methods of execution⁸. The indicated method of execution must be appropriate for the type of execution. And so the execution of cash benefits can be conducted, for example, from remuneration for work, movables, from a bank account or from other receivables. In the event that the creditor indicates the method of execution, the bailiff will be bound by the claimed method of execution and thus will not be able to apply any other than the one indicated by the creditor⁹. Accurate specification of the claim and individualization of the method of execution is very important to determine whether the limitation period for the claim confirmed by the enforceable title has been interrupted. The claim confirmed by a valid decision of the court expires after ten years. The limitation period is interrupted by any action carried out before the authority appointed to enforce the claims (art. 123 §1 point 1 of the Civil Code). Such an action is the submission of the application for the initiation of the execution by the creditor, which was accepted by the enforcement authority¹⁰. It should be emphasized that the application for the initiation of the execution does not automatically pass the obligation on the bailiff to take further enforcement actions until its completion. The creditor is obliged to support the execution. If he does not support it, the enforcement proceedings may be discontinued, namely when the creditor, within six months, did not perform the action necessary to continue the execution or did not demand that the suspended proceedings be taken.

In order to achieve the purpose of the execution, i.e. satisfy the creditor in accordance with the content of the enforceable title, the enforcement authority

⁷ It is necessary to distinguish the initiation of the execution from the initiation of enforcement proceedings. While the initiation of the enforcement proceedings occurs as a result of submitting the application for the initiation of the execution, the initiation of the execution takes place only after the enforcement authority has carried out the first enforcement action (see W. Broniewicz, *Postępowanie cywilne...*, pp. 423-424).

⁸ Therefore, it does not apply to real estate executions and, consequently, to those methods of execution to which standards of enforcement against immovable property will apply. It is therefore about the execution of a fractional part of the real estate (art. 1004 of the Code of Civil Procedure), perpetual usufruct (art. 1004 of the Code of Civil Procedure), simplified enforcement of the real estate (art. 1013¹ §3 of the Code of Civil Procedure), an execution of sea-going vessels entered into the register of ships (art. 1014 of the Code of Civil Procedure), from the cooperative ownership right to the premises and from parking spaces in multi-seat garages and free standing garages (art. 17¹³ and art. 17¹⁹ of the Act on housing associations), the sale of an enterprise or farm (art. 1064²³ of the Code of Civil Procedure).

⁹ Cf. I. Kunicki, *Wybór sposobu egzekucji i ustalenie majątku dłużnika w świetle projektowanych zmian Kodeksu postępowania cywilnego (druk sejmowy nr 2678)*, „Przegląd Prawa Egzekucyjnego” 2015, No. 5, p. 21.

¹⁰ Only the application which does not contain formal defects, and in particular corresponding to the rigors specified in art. 797 of the Code of Civil Procedure may cause the consequences which the Code of Civil Procedure entails with the submission of the application for the initiation of the execution.

must acquire the necessary knowledge about the debtor's assets, in particular when the application for the initiation of the execution does not specify the components of these assets. While gathering information necessary to conduct the execution effectively, the provisions of art. 761 of the Code of Civil Procedure and art. 2 paragraph 5 of the Act on Court Bailiffs and Enforcement¹¹ are of key importance. According to art. 761 §1 of the Code of Civil Procedure the enforcement authority may demand to provide explanations from the participants of the proceedings and may request information necessary to conduct the execution from public administration bodies, bodies performing public administration tasks, tax authorities, pension bodies, banks, cooperative savings and credit financial institutions, brokerage companies, authorities of housing associations, management of housing communities and other entities managing apartments and commercial premises, as well as other institutions and persons who do not participate in the proceedings. This right is available to all enforcement authorities, i.e. the bailiff and district courts, which act as enforcement authorities. The required explanations and information can only refer to the execution and can be requested if obtaining them is necessary to guarantee its proper conduct¹². It should be emphasized that these explanations and information can not violate the boundary determined by the method of execution requested by the creditor. The regulation contained in art. 761 of the Code of Civil Procedure refers to the participants of the enforcement proceedings as well as institutions and persons not participating in the proceedings¹³.

As a rule, entities covered by the disposition of art. 761 §1 of the Code of Civil Procedure cannot refuse to provide information with reference to the Act on the Protection of Personal Data¹⁴ because art. 23 paragraph 1 point 2 of this Act among the conditions determining the lawfulness of the processing of personal data (including providing information containing these data) lists the authorization by a legal provision. The provision in this situation is art. 761 §1 of the Code of Civil Procedure¹⁵. In the event that an authority or an institution, referring to the provisions of the Act on the Protection of Personal Data, refuses to provide information necessary to conduct the execution, a complaint to the Inspector General for the Protection of Personal Data is admissible. The only possibility of evading the obligation to provide explanations and information is provided for in art. 761 §2 of the Code of Civil Procedure, which refers directly to the restrictions on the documentary evidence (art. 248 §2 of the Code of Civil Procedure) and evidence from the testimonies of witnesses (art. 261 of the Code of Civil Procedure). Unjustified refusal to provide the enforcement authority with expla-

¹¹ I.e. Journal of Laws 2017, item 1277.

¹² See Z. Szczurek, [in:] Z. Szczurek (ed.), *Egzekucja sądowa...*, p. 155.

¹³ More on the participants of the proceedings, see J. Jankowski, *Uczestnicy sądowego postępowania egzekucyjnego*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 1992, along with the literature concluded there.

¹⁴ I.e. Journal of Laws 2016, item 922

¹⁵ More on this subject, see J. Jankowski, *Obowiązek udzielania komornikowi informacji niezbędnych do prowadzenia egzekucji w świetle ustawy o ochronie danych osobowych*, „Problemy Egzekucji” 2001, No. 11 along with the literature indicated there.

nations or information results in a sanction in the form of a fine (art. 762 §1 of the Code of Civil Procedure), which the enforcement authority can impose at the request of the creditor or acting ex officio. In the event that the request for explanations or information was addressed to a legal person or other organization, its employee responsible for carrying out the order of the enforcement authority is subject to a fine. In the situation when it is not possible to indicate such a responsible employee, the head of the unit is subject to a fine.

Art. 2 paragraph 5 of the Act on Court Bailiffs and Enforcement is correlated with the provision of art. 761 of the Code of Civil Procedure. However, while art. 761 of the Code of Civil Procedure only empowers the enforcement authority to request explanations and information, the provision of art. 2 paragraph 5 of the Act on Court Bailiffs and Enforcement imposes an obligation to provide information necessary for the proper conduct of enforcement proceedings at a written request of the bailiff. This information, as in the case of art. 761 of the Code of Civil Procedure, can not go beyond the scope determined by the method of execution which was indicated by the creditor. The bailiff will request only the information which, in his/her judgment after taking into account the facts of the case, is necessary for the proper conduct of the execution¹⁶. As in the case of art. 761 §1 of the Code of Civil Procedure entities listed in the content of art. 2 paragraph 5 of the Act on Court Bailiffs and Enforcement cannot refuse the bailiff to provide him with the information he requires, referring to the provisions of the Act on the Protection of Personal Data, as the provision of Article 2 paragraph 5 of the Act on Court Bailiffs and Enforcement constitutes a condition for allowing the processing of personal data. In the case of a refusal to provide information, of course, a complaint to the Inspector General for the Protection of Personal Data can be submitted¹⁷. If the complaint is justified, the Inspector General issues an administrative decision ordering the restoration of the lawful state by making the data available.

According to art. 2 paragraph 6 of the Act on Court Bailiffs and Enforcement, the bailiff is liable for damage resulting from the disclosure of bank or fiscal secrecy and using it contrary to its intended purpose¹⁸. The bailiff is liable for such damage caused also on general terms¹⁹.

In the enforcement of maintenance, due to its social significance, the bailiff has special obligations related to obtaining all information about the debtor and his financial status²⁰. The bailiff is obliged ex officio to carry out an investiga-

¹⁶ Cf. Z. Szczurek, *Zbieranie informacji niezbędnych dla prowadzenia postępowania egzekucyjnego*, „Nowa Currenda” 2002, No. 12, pp. 64-65; this author, *Gromadzenie w postępowaniu egzekucyjnym informacji o stanie majątkowym dłużnika*, „Przegląd Prawa Egzekucyjnego” 2005, No. 10-12, p.16.

¹⁷ The subject of the complaint may also be a bailiff's request to provide information containing personal data, but lacking the feature of necessity in order to properly carry out the enforcement proceedings. (cf. A. Marciniak, *Ustawa o komornikach sądowych i egzekucji. Komentarz*, LexisNexis, Warszawa 2009, p. 50).

¹⁸ See K. Lubiński, *Nowelizacja ustawy o komornikach sądowych i egzekucji*, „Problemy Egzekucji Sądowej” 2001, No. 18, p. 35 et seq.

¹⁹ Z. Szczurek, *Gromadzenie w postępowaniu...*, p. 19.

²⁰ See K. Flaga-Gieruszyńska [in:] A. Zieliński (ed.), *Kodeks postępowania cywilnego. Komentarz*, Wydawnictwo C.H. BECK, Warszawa 2017, p. 1745.

tion in order to determine the income and financial status of the debtor and his place of residence (art. 1086 §1 of the Code of Civil Procedure). In order to fulfill this obligation, the bailiff primarily exercises the powers given to him by the provision of art. 761 §1 of the Code of Civil Procedure mentioned previously. If, however, despite the actions and efforts, the execution turns out to be ineffective, the bailiff is obliged to periodically repeat activities aimed at determining the information necessary to enforce maintenance. When maintenance arrears amount to more than six months, the bailiff *ex officio* submits the application to the National Court Register for entry of the debtor into the register of insolvent debtors, which is to act as a disciplinary measure for persons who evade their obligations.

In the application for the initiation of the execution or the demand to conduct the execution *ex officio*, as mentioned above, the entity submitting the application or request should indicate the claim to be satisfied (art. 797 of the Code of Civil Procedure). In addition, the creditor may indicate the method or methods of execution chosen by him (art. 799 of the Code of Civil Procedure). This means that when the cash benefits are being enforced, the indication of the method of execution involves indicating the specific property to which enforcement is to be directed, while the enforcement of non-cash benefits will require the indication of the item of the claim. In a situation where the person submitting an application or demand to conduct the execution is unable to indicate the items with which it will be possible to satisfy the creditor, the bailiff will call the debtor to submit an inventory of assets or other explanations necessary to carry out the execution (art. 801 of the Code of Civil Procedure)²¹. The application of this provision by the bailiff takes place *ex officio* and is not dependent on any application of the creditor²². Due to the fact that in the quoted provision the Legislator used the conjunction „or” it means that the bailiff has the right to choose whether to apply the legal mechanism to disclose the assets or to request the debtor to provide other explanations²³. The bailiff, taking into account the circumstances of the enforcement case, will decide on the scope of the request addressed to the debtor²⁴. However, as it is rightly argued in the literature, the submission of „other explanations” should be applied in the first place, due to the lower level of formalization. Only when the debtor does not indicate the assets in this mode, the bailiff should call for submission of the inventory of assets²⁵. For unjustified refusal to submit

²¹ Cf. J. Jankowski [in:] K. Piacecki (ed.), *Kodeks postępowania cywilnego. T. II. Komentarz do artykułów 506-1088*, Wydawnictwo C.H. BECK, Warszawa 2006, p. 581. The provision of art. 801 of the Code of Civil Procedure remains in connection with the general rule, expressed in art. 761 of the Code of Civil Procedure, which is the legal basis for the bailiff's right to obtain information necessary to conduct the execution (cf. O. Marcewicz [in:] A. Jakubecki (ed.), *Kodeks postępowania cywilnego. T. II. Komentarz do art. 730-1217*, Wolters Kluwer, Warszawa 2017, p. 263).

²² Cf. I. Kunicki, *Poszukiwanie przez komornika majątku dłużnika za wynagrodzeniem*, „Przegląd Prawa Egzekucyjnego” 2009, No. 6, p. 121.

²³ Cf. I. Kunicki, *Wybór sposobu...*, p. 23.

²⁴ See K. Flaga-Gieruszyńska [in:] A. Zieliński (ed.), *Kodeks postępowania...*, p. 1433.

²⁵ Cf. I. Kunicki, *Wybór sposobu...*, p. 24.

the inventory of assets or other explanations²⁶ or for providing false explanations deliberately, the debtor may be fined by the bailiff at the request of the creditor or ex officio, because the call on the debtor to submit the inventory of assets or explanations is provided for in art. 762 §1 of the Code of Civil Procedure. The debtor submits the inventory of assets before the bailiff under pain of criminal liability for making false testimony.²⁷

However, if the assets that allow to satisfy the claim cannot be determined, the creditor has the right to request the bailiff to search for the debtor's assets²⁸. Such a solution should be considered as a supplementation of solutions to improve enforcement proceedings. The bailiff's efforts, being a result of searching for the debtor's assets, may contribute to a greater extent to the satisfaction of the creditor's claims. The bailiff within the scope of this order is free to choose the way of searching. The way must comply with applicable law²⁹. Of course, there is no obstacle to the creditor's order being formulated already in the application for the initiation of the execution, however, the bailiff will proceed to execute such an order only after exhausting the ways of determining the debtor's assets, which were referred to earlier. The search for the debtor's assets is of course possible only in the context of ongoing enforcement proceedings³⁰. The search for assets is in fact only an incidental proceeding in relation to the initiated enforcement proceedings. The order may refer to all the assets of the debtor in general or may be limited to a specific component of the assets or to a specific way of searching for assets³¹.

If the debtor's assets seized in the execution are not likely to satisfy the enforced claims or if the creditor demonstrates that as a result of the conducted execution his claims have not been fully satisfied, he may demand that the debtor be obliged to submit the inventory of assets specifying the items and their premises, his receivables and other property rights or information about paid and unpaid legal actions, the subject matter of which is an item or right of the value exceeding on the day of performing these actions the amount of minimum remuneration for work established on the basis of the provisions of the Act of October 10, 2002 on the minimum remuneration for work³², done for third parties, in the five-year period preceding the initiation of the execution, as a result of which he became insolvent or became insolvent to a greater extent than he was before the actions were performed, and the debtor's promise, in which he must state that he is aware of the meaning of his words and liability before the law and ensure that

²⁶ When it comes to "other explanations", they should be made prior to the submission of the inventory of assets, due to the less formal nature of this explanation, in contrast to submitting the inventory of assets.

²⁷ It is commonly accepted in the literature that it is called the bailiff's disclosure of assets.

²⁸ The term "search" is very wide, it covers all the factual and legal actions in enforcement proceedings, aimed at gathering information on the debtor's assets and on the person of the debtor (cf. J. Jankowski, *Poszukiwanie przez komornika majątku dłużnika na zlecenie wierzyciela*, „Przegląd Prawa Egzekucyjnego” 2007, No. 1-2, p. 12).

²⁹ Z. Szczurek, *Gromadzenie w postępowaniu...*, p. 31.

³⁰ A different view on this issue A. Nowak, *Charakter prawny umowy – zlecenia poszukiwania przez komornika majątku dłużnika za wynagrodzeniem*, „Przegląd Prawa Handlowego” 2006, No. 3, pp. 41-42.

³¹ I. Kunicki, *Poszukiwanie przez komornika...*, pp. 113-114.

³² I.e. Journal of Laws 2017, item 847

the inventory of assets he has submitted is true and complete (art. 913 §1 of the Code of Civil Procedure)³³.

At the moment of the debtor's promise, the provisions on criminal liability for making false testimony apply accordingly. And so in accordance with art. 233 of the Criminal Code, who, while making a testimony to serve as evidence in court proceedings or other proceedings conducted pursuant to the Act, testifies untruth or conceals the truth, is punishable by imprisonment from six months to eight years.

A creditor, pursuant to art. 913 §2 of the Code of Civil Procedure, may demand the disclosure of assets also before the commencement of the execution, but then he must substantiate that his claims will not be fully satisfied from the assets known to him or from the current periodic benefits due to the debtor for the period of six months. In addition, he may demand the disclosure of assets before the commencement of the execution also when he proves that after obtaining the enforceable title, he called the debtor to pay the claim stated in it by registered letter with acknowledgment of receipt, and the debtor failed to satisfy the claim within 14 days from the delivery of the summons.

The disclosure of assets is a supplementary enforcement measure³⁴. By definition, it is the final measure that the creditor reaches for to ensure the effective enforcement³⁵. Although the provisions on the disclosure of assets are applied to the execution of non-cash benefits for the occupation of movable property (art. 1045 of the Code of Civil Procedure), in which the supplementary nature of disclosing the items or documents sought is obvious, it should be assumed that primarily these provisions constitute a supplementary measure of the enforcement of cash benefits³⁶. They have even been included among these provisions. The disclosure of assets is one of the activities that another person cannot perform for the debtor³⁷.

The creditor is the first person to submit an application for the disclosure of assets. In cases of court claims, such an application may be submitted by a bailiff (§ 2 of the Regulation of the Minister of Justice of 29 July 2016 on the manner of conducting the enforcement of fines and penalties imposed in civil proceedings, as well as court costs in civil cases due to the State Treasury)³⁸, and in the case of enforcement proceedings initiated ex officio, the court of first instance or the authority which demanded conducting the execution ex officio (art. 796 § 2 and 3 of the Code of Civil Procedure). The public prosecutor is also entitled to submit an application for the disclosure of assets on a general basis (art. 7 of

³³ Disclosing the assets may not be aimed at harassing the debtor (compare A. Marciniak [in:] K. Piasecki (ed.), *Kodeks postępowania cywilnego*. Commentary, vol. III, Wydawnictwo C.H. BECK, Warszawa 2002, p. 137).

³⁴ A. Marciniak, *Postępowanie egzekucyjne...*, p. 230.

³⁵ Cf. F. Kruszelnicki, *Zarys systemu polskiego prawa egzekucyjnego i zabezpieczającego*, Warszawa 1934, p. 133; M. Mrówczyński, *Wyjawnienie majątku w świetle znówelizowanych przepisów kodeksu postępowania cywilnego*, „Przegląd Prawa Egzekucyjnego” 2006, No. 2-8, p. 7.

³⁶ Cf. K. Korzan, *Sądowe postępowanie...*, p. 312.

³⁷ E. Wengerek, *Sądowe postępowanie egzekucyjne w sprawach cywilnych*, PWN, Warszawa 1978, p. 249.

³⁸ Journal of Laws 2016, item 1227.

the Code of Civil Procedure) as well as a non-governmental organization (article 8 of the Code of Civil Procedure) in certain cases. In addition, the administrative enforcement authority or creditor who is a party to the administrative enforcement proceedings may demand to order the obligor the disclosure of assets in cases covered by the enforcement proceedings in administration in the event of ineffectiveness of enforcement. Passive legitimacy in proceedings for the disclosure of assets is held by a debtor with judicial capacity (art. 64 of the Code of Civil Procedure), and thus it may be a natural person, a legal person and an organizational unit without legal personality, to which, however, the law grants legal capacity.

An application to order a debtor the disclosure of assets is filed in the district court of the general jurisdiction of the debtor³⁹. In the case when it concerns a natural person, it will be the court in whose jurisdiction that person has a place of residence or stay, while in the case of a legal person, it will be the court in whose jurisdiction the debtor's registered office is located. The application must be accompanied by a copy of the attachment protocol or other documents justifying the obligation to disclose the assets⁴⁰, and in the case when the application was submitted before the initiation of the execution, additionally the enforceable title (art. 914 of the Code of Civil Procedure)⁴¹. The enforceable title and other documents that justify the debtor's obligation to disclose the assets are documents whose submission determines the further course of the case in general or in a particular mode⁴². If the creditor fails to attach the enforceable title to the application for the disclosure of assets, it is a formal defect within the meaning of art. 130 § 1 of the Code of Civil Procedure⁴³.

The application for the disclosure of assets is primarily subject to examination in terms of the fulfillment of formal and special conditions envisaged for this type of pleading⁴⁴. The court recognizes the application to order the debtor to disclose the assets after summoning and hearing the parties if they appear (art. 915 § 1 of the Code of Civil Procedure). The court examines only the legitimacy of the application and possible allegations of the debtor in this respect, however its cognition does not include claims covered by the enforceable title due to the fact that they are the subject matter of separate proceedings started on the basis of the provision of art. 840 of the Code of Civil Procedure⁴⁵. In the event of the non-appearance of the parties, the court may, depending on the circumstances of the case, postpone the session or issue a conclusive decision on the substance of the case, in a situation where, based on the collected evidence, the case is consid-

³⁹ Proceedings on the disclosure of assets are not admissible in relation to persons not subject to national jurisdiction, except for cases in which these persons are subject to enforcement and in relation to the State Treasury.

⁴⁰ Such a document may be, for example, a bailiff's decision to discontinue the enforcement proceedings based on art. 824 § 1 point 3 of the Code of Civil Procedure.

⁴¹ An enforceable title can be only its original.

⁴² Cf. P. Sokal, *Glosa do uchwały Sądu Najwyższego z dnia 12 grudnia 2001 r., III CZP 70/01*, „Przegląd Prawa Egzekucyjnego” 2003, No. 6-8, p.95.

⁴³ Resolution of the Supreme Court of December 12, 2001, III CZP 70/01, OSNC 2002, No. 10, item 116.

⁴⁴ Cf. O. Marcewicz [in:] A. Jakubecki (ed.), *Kodeks postępowania...*, p. 417.

⁴⁵ Cf. K. Flaga-Gieruszyńska [in:] A. Zieliński (ed.), *Kodeks postępowania...*, p. 1590.

ered sufficiently clarified⁴⁶.

The court, when recognizing the application for the disclosure of assets, issues a decision in this matter. In a situation where it accepts the application of the creditor, it orders the debtor to submit the inventory of assets specifying the items and their premises, his receivables and other property rights, and to bind himself as to the veracity and completeness of the inventory submitted according to the oath provided for in art. 913 § 1 of the Code of Civil Procedure. The complaint against the court's decision on the disclosure of assets may be submitted both in the case of the acceptance and rejection of the application⁴⁷. Making a complaint does not suspend the execution of the decision on the disclosure of assets, however, the court may suspend the execution of the mentioned decision until the settlement of the complaint. The court receives the inventory and the promise immediately. In justified cases, the court may set a deadline for the debtor not longer than a week (art. 915 §2 of the Code of Civil Procedure). The deadline is a date fixed by the court, and thus, at the request of the debtor, it may be extended or shortened. The debtor against whom the court ordered the disclosure of assets, is ex officio entered in the register of insolvent debtors⁴⁸.

The debtor who, without a justified reason, did not appear at the court sitting in order to submit an inventory of assets or a promise⁴⁹ or, having appeared, did not submit the inventory or refused to answer questions asked or to make a promise, the court may order a fine or order his compulsory bringing, taking into account art. 276 § 2⁵⁰. The court may also put him under arrest not exceeding one month. A necessary condition for applying to the debtor coercive measures provided for in art. 916 of the Code of Civil Procedure will be instructing him about the consequences of non-compliance with the court's decision in this regard⁵¹.

In the case when coercive measures have been applied to the debtor, he may submit the inventory and the promise at any time (art. 917 § 1 of the Code of Civil Procedure). On the other hand, if the debtor was put under arrest, he may demand to be brought before the court in order to submit the inventory and the promise. The creditor who was not present in these activities may demand that the debtor be called back to the court sitting in order to ask him questions aimed at detecting the items to which the execution could be directed. The non-appearance of the debtor or the refusal to answer questions or to make an additional promise entails the same legal consequences, mentioned in art. 916 of the Code of Civil Procedure, of which the debtor should be instructed in the summons to the court sitting.

⁴⁶ Cf. A. Marciniak, *Postępowanie egzekucyjne...*, p. 232.

⁴⁷ Cf. O. Marcewicz [in:] A. Jakubecki (ed.), *Kodeks postępowania...*, p. 417.

⁴⁸ Cf. A. Marciniak, *Postępowanie egzekucyjne...*, p. 232.

⁴⁹ The phrase "in order to submit an inventory of assets or a promise", included in the instruction of art. 916 § 1 of the Code of Civil Procedure, gives grounds for accepting the view that the submission of the inventory of assets is independent of the debtor's promise (see M. Krakowiak, *Wyjawienie majątku w świetle nowelizacji Kodeksu postępowania cywilnego*, „Monitor Prawniczy” 2004, No. 23, pp. 1080-1081).

⁵⁰ A fine and arrest may be applied to the debtor independently of one another (see M. Uliasz, *Kodeks postępowania cywilnego. Komentarz do nowelizacji*, Wydawnictwo C.H. BECK, Warszawa 2005, p. 383).

⁵¹ Cf. O. Marcewicz [in:] A. Jakubecki (ed.), *Kodeks postępowania...*, p. 420.

The debtor who made the promise, or relatively against whom coercive measures were applied, is obliged to submit a new inventory of assets and a promise at the request of the same or another creditor, when a period of one year has elapsed since the promise was made or coercive measures were exhausted.

The disclosure of assets also includes the disclosure of savings on bank accounts by the debtor⁵². In the inventory of assets, the debtor is obliged to state whether and what savings he has on the bank account, in which bank they have been accumulated, and if he does not have the bank evidence, he is obliged to indicate the person with whom this evidence is located.

The failure to present a savings book or another appropriate proof by the debtor causes such effects as the refusal to submit the inventory or to answer a question, so the court may order the debtor to pay a fine or order his compulsory bringing. The court may also put him under arrest not exceeding one month.

The conducted considerations lead to the conclusion that the court execution will be fully effective in a situation where the debtor owns assets to which the enforcement may be directed and when the assets are known to the creditor and the enforcement authority. Otherwise, the information about the debtor's assets will have to be gathered and their components determined by means of the measures presented in this report, while the bailiff's disclosure of assets is the basic tool for obtaining this information, and the court disclosure of assets appears to be the final enforcement measure in the event of ineffectiveness of the execution.

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JURISDICTION

Resolution of the Supreme Court of December 12, 2001, III CZP 70/01, OSNC 2002, No. 10, item 116.

Summary: The study deals with the problem of gathering information about the debtor's assets necessary to carry out effective court enforcement. First of all, the method of gathering information about the debtor's assets provided for in art. 761 of the Code of Civil Procedure and art. 2 paragraph 5 of the Act on Court Bailiffs and Enforcement was presented. Then, the issues of the bailiff's disclosure of assets were discussed. Subsequently, the issue of the bailiff's search for the debtor's assets at the request of the creditor was presented. The final part of the study concerns the institution of the court disclosure of the debtor's assets.

Key words: enforcement proceedings, execution, enforcement authority, bailiff, creditor, debtor's assets, inventory of assets, search for assets, disclosure of assets

SPOSOBY POZYSKIWANIA INFORMACJI O MAJĄTKU DŁUŻNIKA W SĄDOWYM POSTĘPOWANIU EGZEKUCYJNYM

Streszczenie: Opracowanie dotyczy problemu zbierania informacji o stanie majątkowym dłużnika niezbędnych do prowadzenia skutecznej egzekucji sądowej. W pierwszej kolejności został przedstawiony sposób zbierania informacji o majątku dłużnika przewidziany w art. 761 k.p.c. oraz art. 2 ust 5 ustawy o komornikach sądowych i egzekucji. Następnie omówiono problematykę komorniczego wyjawienia majątku. W dalszej kolejności przedstawiono kwestię poszukiwania przez komornika majątku dłużnika na zlecenie wierzyciela. Końcowa część opracowania dotyczy instytucji sądowego wyjawienia majątku dłużnika.

Słowa kluczowe: postępowanie egzekucyjne, egzekucja, organ egzekucyjny, komornik, wierzyciel, majątek dłużnika, wykaz majątku, poszukiwanie majątku, wyjawienie majątku