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THE COURT COMPETENT TO CONSIDER ADVERSE CLAIMS UNDER THE EXECUTION PROCEDURE

INTRODUCTION

1. Pursuant to Article 843 (1) of the Code of Civil Procedure¹, the civil actions provided for in the Chapter 6, Title 1 of the third volume of the Code of Civil Procedure, that is the adverse claims lodged under the execution procedure, such adverse claims are filed with the court of competence *ratione materiae*, within the judicial district of which the execution procedure is being instituted. The subsequent Section indicates that in the event of the execution procedure that has not yet been instituted, the injunction to discharge the writ of execution is applied for under the provisions governing general competence.

The aforementioned provision remained unchanged since the moment of having passed the Code of Civil Procedure in 1964. An identical provision was included in the Code of Civil Proceedings, which consists of united regulations of the President of the Republic of Poland of 29 November 1930² and of 27 October 1932³. Both with reference to the opposition claim, and to inter-pleaded claim (Article 566 (2) of the Code of Civil Procedure of 1932, Article 567 (2) of the Code of Civil Procedure of 1932), it was assumed that the court action is to be brought by the court of

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¹ Act of 17 November 1964 – Code of Civil Procedure, unified text: Dz. U. [Journal of Laws] of 2014, item. 101 with subsequent amendments

²Dz. U. [Journal of Laws] No 83, item 651.

³Dz. U. [Journal of Laws] No 93, item 803.

competence *ratione materiae*, within the judicial district of which the execution procedure is being administered.

2. Interestingly, over many years, the notion of the competence of the court in similar cases has not been called into question⁴, and whenever necessary the claims breaching the provision governing the court competence were submitted to competent courts, using the mode indicated in Article 200 and 201 of the Code of Civil Procedure⁵.

Over the span of the last years, these issues have been igniting disputes around contradictory opinions; on the one hand: on the necessity of linking the venue of the execution procedure with the address of the principal seat of the bailiff instituting the execution procedure⁶ (irrespective of the bailiff being appointed under the provisions the Code of Civil Procedure, or appointed by the creditor, according to the provisions of the Article 8 of the Act of 29 August 1997 on Court Bailiffs and Execution Procedure⁷), on the other hand – about the obligation to appoint the bailiff taking into account the location of assets or property rights that the execution procedure is targeted at⁸.

The abovementioned discrepancy resulted in the intervention of the legislator, who by the Act of 10 July 2015 amending the Civil Code, the Code of Civil Procedure and Some Other Acts of Law⁹ provided for the amendment of the provisions in force. It is advisable to ask the question whether such an amendment was, in fact, indispensable.

⁴ The subject of the opinion of the Supreme Court consisted in the issues of the division of jurisdiction between the divisions of the court, which differ in terms of function – the civil division and the labour division (Decision of the Supreme Court of 28 June 2012, II PK 291/11, LEX No. 1254682) as well as the principles governing the method of computing the value of the value of the object of litigation in similar cases (Decision of the Supreme Court of 12 July 1957, III CZ 216/57, OSNCK 1959/3/71).

In the Poland's twenty years of independence after World War II, the relations of the provisions of the Code of Civil Procedure and the Resolution of the President of the Republic of Poland of 27 October 1932 about the entitlements of some land and municipal credit societies and mortgage banks in carrying out the execution procedures against real estate (Decision of the Supreme Court of 27 September 1937, II C 725/37, OSN(C) 1938/7/321).

⁵ Decision of the Supreme Court of 27 January 1971, II CZ 16/71, OSNC 1971/9/162.

⁶ Decision of the Court of Appeal in Gdańsk of 26 January 2015, V ACz 24/15, Legalis No. 1259988.

⁷ Act of 29 August 1997 on Court Bailiffs and Execution Procedure, unified text: Dz.U. [Journal of Laws] of 2015, item 790.

⁸ Decision of the Regional Court in Słupsk of 22 May 2013, IV Cz 283/13, [http://orzeczenia.ms.gov.pl/content/843\\$0020w\\$0142a\\$015bciwo\\$015b\\$0107\\$0020s\\$0105du/151020000002003_IV_Cz_000283_2013_Uz_2013-05-22_001](http://orzeczenia.ms.gov.pl/content/843$0020w$0142a$015bciwo$015b$0107$0020s$0105du/151020000002003_IV_Cz_000283_2013_Uz_2013-05-22_001).

⁹ Dz. U. [Journal of Laws] of 2015, item. 1311.

1. COURT COMPETENCE *RATIONE MATERIAE*

3. Taking into account that the Polish legislator revoked the principle of a unified court of first instance, civil cases in courts of first instance may be examined by district courts and regional courts, depending on the value of the object of litigation or other criteria specified in Article 17 of the Code of Civil Procedure.

The provisions of the Article 843(1) of the Code of Civil Procedure, which govern the notion of the court competence *ratione materiae*, clearly indicate that the adverse claims examined by courts of first instance may be examined by the district and regional courts, in line with the general principles. As a consequence, it is evident that the aforementioned provision does not modify the regulation concerning the court competence *ratione materiae*¹⁰, neither does it influence the functional competences of civil courts (divisions), commercial courts or labour courts, which results from the fact of acknowledging the source of the obligation resulting in the writ of execution¹¹.

Since 3 May 2012, pursuant to Article 2 (2.8) of the Act of 24 May 1989 about the recognition of commercial cases by commercial court¹², the commercial courts, were entrusted with the obligation to decide claims regarding the unenforceability of the writ of execution, based on final and binding and immediately enforceable decision of commercial court or a settlement reached before the abovementioned court, as well as any other writ of execution containing a claim, which would fall within the jurisdiction of commercial court, in case it were examined before a court.

4. The value of the object of litigation has profound significance for determining the court competence *ratione materiae* with reference to adverse claims lodged under the execution procedure. In case of a claim referring to the decision ordering cash consideration, the computing of the value of the object of litigation shall not be problematic in the light of the Article 19-26 of the Code of Civil Procedure¹³.

In case of a claim against the decision ordering non-pecuniary consideration, the value of the object of litigation is computed by the debtor acting as a plain-

¹⁰ Decision of the Supreme Court of 19 November 1971, II CZ 165/71, LexPolonica No. 322284. cf. also: A. ADAMCZUK, *Komentarz do art. 843 Kodeksu postępowania cywilnego*, [in:] M. MANOWSKA (ed.), *Kodeks postępowania cywilnego. Komentarz*, Publishing House: 2, Warsaw 2013 (thesis No. 1).

¹¹ Decision of the Supreme Court of 28 June 2012, II PK 291/2011, Lex Polonica No. 5042216.

¹² Unified text: Dz.U. [Journal of Laws] of 2015, item 127.

¹³ Decision of the Supreme Court of 17 March 1938, II C 2446/37, OSN(C) 1939/3/118.

tiff¹⁴; the aforementioned value may be subject to relevant verification at the request of the creditor acting as defendant.

The practice shows that in case of claims regarding the unenforceability of the writ of execution, the value of the object of litigation depends on the value of the consideration subject to execution to the extent challenged by the debtor¹⁵, whereby in case of inter-pleaded claims, the value of the object of litigation is depends on the value of the distressed objects and rights¹⁶. In case of inter-pleaded claims, a third party faces the risk of suffering damage corresponding with the value of the distressed objects (rights), rather than with the value of the executed amount. Should a third party refrain from bringing a civil action and permit selling the distrained objects (rights) belonging to the aforementioned third party and the possible pecuniary surplus resulting from such selling shall be received by the executed debtor and not by an interested third party. For this reason, it cannot be excluded that the adverse claim is examined by a regional court of first instance, even if the district court was adjudicating the claim to the extent of which the writ of execution was granted.

2. COURT COMPETENCE *RATIONE LOCI*

5. In case of the adverse claims, the legislator specifies the court competence *ratione loci* applying the notion of a ‘judicial district, in which the execution is being conducted’. *Opinio communis* in literature indicates that this is the exclusive jurisdiction¹⁷.

¹⁴ M. ALLERHAND, *Kodeks postępowania cywilnego. Część druga: Postępowanie zabezpieczające i egzekucyjne*, Lvov 1933, p. 136.

¹⁵ The debtor is entitled to request the discontinuation of the writ of execution partially or as a whole.

¹⁶ Decision of the Supreme Court of 12 July 1957, III CZ 216/57, OSNCK 1959/3/71.

¹⁷ F. ZEDLER, *Powództwo o zwolnienie od egzekucji*, Warsaw 1973, p. 112; A. RÓZALSKA, *Wybrane zagadnienia procesowe powództw przeciwegzekucyjnych*, “Problemy Egzekucji Sądowej” 1998, No 29, p. 74; H. PIETRZKOWSKI, *Kodeks postępowania cywilnego. Komentarz. Postępowanie egzekucyjne*, Publishing House: 4, Warsaw 2012 (thesis No. 1); T. ŻYZNOWSKI, *Komentarz do art. 843 Kodeksu postępowania cywilnego*, [in:] H. DOLECKI, T. WIŚNIEWSKI (ed.), *Kodeks postępowania cywilnego. Komentarz*, vol. 4: *Artykuły 730-1088*, Publishing House: 4, Warsaw 2014 (thesis No. 1); D. ŻAWISTOWSKI, *Komentarz do art. 843 Kodeksu postępowania cywilnego*, [in:] J. GOŁA-CZYŃSKI (ed.), *Kodeks postępowania cywilnego. Postępowanie zabezpieczające i egzekucyjne. Komentarz*, Warsaw 2012 (thesis No. 3); K. GOLINOWSKA, *Komentarz do art. 843 Kodeksu postępowania cywilnego*, [in:] J. JANKOWSKI (ed.), *Kodeks postępowania cywilnego. Postępowanie egzekucyjne. Komentarz do art. 730-1217*, Publishing House: 2, Warsaw 2015 (Nb 1); I. GIL, *Komentarz do*

As a consequence, it is impossible to apply the principle of alternating jurisdiction, with the exception of the dispute, in which a creditor is an employee and the writ of execution entails his or her claim against the debtor (an employer) resulting from employment relationship¹⁸. However, these are the only convergent opinions in terms of doctrine and judicial decisions because the interpretation of this provision had, after many years of enforceability thereof, started to arouse serious doubts in the practice of common courts.

6. The analysis of the question presented above, shall be commenced with relatively scarce opinions presented so far in the literature of the subject with reference to determining the court competent to examine a adverse claim lodged under the execution procedure.

Analysing the jurisdiction of the courts in the case of a adverse claim, F. Zedler indicated that this notion refers to the judicial district, where an execution-related activity which infringed the right of a third party has taken place, that is the place of distraintment¹⁹.

A. Różalska indicated that the venue of the execution procedure, within the meaning of the Article 843 (1) of the Code of Civil Procedure, is determined depending on the jurisdiction of the court of law administering the execution procedure, which is precisely governed by the provisions of the respective manners of the execution procedure²⁰.

A. Adamczuk reckons that the competent court is this one, within the judicial district of which the execution procedure is being administered and targeted at the assets of the debtor, depending on the type and manner of the execution procedure, under and in terms of the provisions governing the execution procedure, defining the competent execution authority (court and bailiff). As a general rule, it will be the competent court having the general jurisdiction over the debtor (place of residence or registered office of the debtor), or the competent court having the jurisdiction over the place, in which the asset, against which the execution procedure was instituted, is located²¹.

art. 843 Kodeksu postępowania cywilnego, [in:] E. MARSZAŁKOWSKA-KRZEŚ (ed.), *Kodeks postępowania cywilnego. Komentarz*, Publishing House: 13, Warsaw 2015 (Nb 1).

However, the opposite is the case according to E. WENGEREK, *Przeciwegzekucyjne powództwa dłużnika (powództwo opozycyjne)*, Warsaw 1998, p. 126.

¹⁸A. RÓŻAŁSKA, *Wybrane zagadnienia*, p. 74-75; H. PIETRZKOWSKI, *Kodeks* (thesis No. 1). According to E. WENGEREK – *Przeciwegzekucyjne*, p. 127 – the alternating jurisdiction encompasses also the situation, in which the claim was brought by the employer.

¹⁹F. ZEDLER, *Powództwo*, p. 113.

²⁰A. RÓŻAŁSKA, *Wybrane zagadnienia*, p. 73.

²¹A. ADAMCZUK, *Komentarz*, (thesis No. 1).

R. Kulski related the judicial district, within which the execution procedures are being conducted in respect of the competence *ratione loci* of the court of law instituting the execution procedure, defined in the specific regulation, taking into consideration the manner and type of the execution procedure²². However, the aforementioned author did not refer to the situation of appointing the bailiff by the creditor.

K. Golinowska reasoned that the notion of the venue of conducting the execution procedure should be established under the specific regulations indicating the competent court instituting the execution procedure, taking into consideration the manner and type of the execution procedure, emphasizing that the abovementioned notion should not be associated with the principal seat of the bailiff instituting the execution procedure, in particular in the case of appointing the bailiff by the creditor, under the Article 8 of Act on Court Bailiffs and Execution Procedure²³.

The opinions described hereinabove, expressed in the doctrine and judicial decisions induce one to assess, which of the two stances is more valid. This refers especially to the question, whether the bailiff (court) administers the execution procedure in its registered office, or in the place of out-of-office duties (e.g. in case of distress of personal property) or in a registered office of debtor of the attached claim (e.g. in case of execution procedure instituted against remuneration, from a bank account).

7. Upon analysing of the issue under consideration one should be reminded about the fact that the notions of ‘execution procedure’ and ‘execution’ are not synonymous. The institution of the execution procedure takes place as of the date the motion for instituting execution is filed or the claim is lodged to the law enforcement authority for instituting execution *ex officio*.

As a matter of principle, the execution authority as such takes place at the moment of conducting the first execution activity (cf. Article 805 of the Code of Civil Procedure), which entails the activity towards debtor and aiming at fulfilling the creditor’s claims, i.e. the distress of the given asset belonging to the debtor. Furthermore, it should be borne in mind that the activities of the bailiff to the extent of the execution procedure may be undertaken both at the office of the bailiff and outside of the office of the bailiff (the so called out-of-office duties).

8. In respect of available implied interpretations of the notion ‘the judicial district, in which the execution procedure is administered’, the position, that the venue as referred to in Article 843 Paragraph 1 of the Code of Civil Procedure is

²² R. KULSKI, *Komentarz do art. 843 Kodeksu postępowania cywilnego*, [in:] K. PIASECKI (ed.), *Kodeks postępowania cywilnego. Komentarz*, vol. III, Publishing House: 6, Warsaw 2014 (Nb 4).

²³ K. GOLINOWSKA, *Komentarz*, (Nb 1).

determined by the principal seat of the bailiff who administers the execution procedure, is most tempting. Most of all it allows to – due to the immovable and immobile seat of a bailiff – define a competent court precisely and undoubtedly²⁴, as well as to contact an execution authority easily and especially to access execution files. It also enables to avoid serious consequences in case when a bailiff administers the execution procedure under one and the same writ of execution in a number of various venues, for instance when a debtor's salary or other accounts receivable from economic operators seated at various addresses are seized by a bailiff, tangible assets located in the area within the jurisdiction of various courts are seized by a bailiff, etc. In such a case, disregarding the fact that respective execution proceedings may be undertaken in the area within the jurisdiction of various courts will make it possible to associate the execution procedure venue with the location, in which the decisions that are preconditions for such proceedings are made. The argument related with the political system must not be disregarded since this position links the execution procedure with the execution authority (a specific execution authority that executive powers are vested in) and not with the authority, namely – the location and person, that judicial decisions are served on, or the authority, namely the location where effects of judicial decisions are brought about.

Furthermore, it bears noting about the position of the Supreme Court that interprets the notion 'the judicial district, in which the execution procedure has been administered' as the judicial district, in which the execution authority that institutes the execution procedure is seated, notwithstanding the fact that 'the judicial district, in which an asset or a property right subject to seizure is located' as well as 'the judicial district, in which a bailiff is competent to administer execution procedure in conformity with the provisions of the Code of Civil procedure' have also been taken into consideration. The Supreme Court applied the criterion that is easy to grasp, taking into account the fact that otherwise one would face the difficulties in defining a court competent to make judicial decisions when the execution procedure is not targeted at movable or immovable property – in such a case it would be indispensable to refer to doctrinal concepts about the location of accounts receivable, shares, stock or other property rights, that may raise some doubts²⁵.

²⁴ The only difficulties may arise whenever several bailiffs – conducting their activities at different district courts – institutes the execution procedure under the same writ of execution, which is possible in the light of the Article 793 of the Code of Civil Procedure.

²⁵ Decision of the Supreme Court of 21 February 2003, III CZP 89/02, OSNC 2003/11/147. cf. the criticism against this standpoint voiced by B. Janiszewska (B. JANISZEWSKA, *Glosa do uchwały SN z dnia 21 lutego 2003 r., III CZP 89/02*, "Przegląd Sądowy" 2004, No. 1, LEX No. 41780).

9. However, the point of view linking competence of the court hearing a complaint in the course of execution proceedings with the principal seat of a bailiff constitutes literal ignorance of the interpretation arising from Article 843 Paragraph 1 of the Code of Civil Procedure. It is most visible in case a bailiff undertakes site visits – that is the case when it is impossible to prove that a bailiff, seizing movable property at the domicile address of a debtor, ‘administers the execution procedure’ in the bailiff’s office in a convincing manner. Additionally, it bears noting that the provisions of Article 8 Sub-paragraph 1 of the Act on Court Bailiffs and Execution Procedure stipulate that a bailiff is competent to act within the relevant district unless Sub-paragraph 5 provides for otherwise. This last mentioned provision stipulates that in case a bailiff is appointed by a creditor, a bailiff may act beyond the relevant district of a bailiff’s competence, which seems to support the statement that the execution procedure is in such a case administered beyond the district, in which a bailiff’s principal seat is located. Opposite conclusions are unacceptable since they would mean that a bailiff in such a case administers the execution procedure in a bailiff’s office, at the same administering the same beyond the relevant district of a bailiff’s competence.

It is worth mentioning the linguistic argument. The Code of Civil Procedure refers to the definition of competence of the court that is involved in the execution procedure (the court of execution procedure that is not the execution authority) by referring to ‘the court that appoints a bailiff’. In conformity with Article 767 Paragraph 1 Clause 3-4 of the Code of Civil Procedure, the court that appoints a bailiff is competent to consider a complaint about a bailiff and in case a bailiff from beyond the general jurisdiction and competence is appointed for the purpose of the execution procedure, such a complaint is considered by the court that would conform to the general competence. The provisions of Article 843 Paragraph 1 of the Code of Civil Procedure refer to a different definition (‘the competent court, in the jurisdiction district of which the execution procedure is administered’), which means that there are no legal grounds to identify the same definitions in a simpler or easier way – since the lawmaker does not use the notions that are synonyms in informal speech, it is out of question to attach synonymous meaning *a priori* to them on the grounds of an act of law.

10. The above ascertainments allow to abandon the point of view directly linking the venue of the execution procedure with the principal seat of a bailiff (court) that administers the execution procedure. On the contrary they make it necessary to seek another clear criterion of defining competence of the court hearing the complaint in the course of the execution procedure, taking into consideration

the fact that according to the standards governed by Article 843 Paragraph 1 of the Code of Civil Procedure, the criterion for the court competence *ratione loci* is the criterion of specific 'location' of the execution procedure. It seems that this question should be answered in correspondence with the objective of enforcing specific regulations governing competence of the court, that circumvent the general competence rules and that principally linked with the domicile address or registered office of the defendant. To this end the lawmaker must have addressed the issue of expediency and efficiency of court proceedings, concluding that the assurance of efficiency of court proceedings in the course of considering adverse claims (and this feature of proceedings explicitly arises from the legal regulations governing the limitation to the extent of the right to present accusations that serve the grounds for adverse claims – Article 843 Paragraph 3 of the Code of Civil Procedure) requires circumvention of the general rules governed by Article 27-30 of the Code of Civil Procedure. One cannot disregard the fact that the provisions of Article 843 Paragraph 1 of the Code of Civil Procedure (and previously the equivalent provisions of the Code of Civil Procedure from 1932) was enforced in a different social and legal space, including a shorter catalogue of property rights and smaller mobility of objects and subjects of law, in reality, in which detachment from a specific site in a time-space was hard even to think of. Then it was obviously easier to interpret 'location' of things or property rights. Currently, technology advancement, specifically in terms of information technology implementable in banking institutions, implies to read those legal regulations anew; to slightly detach from 'location' or placement of accounts receivable and other property rights.

These theoretical teleological considerations may be illustrated by means of the following example: a creditor residing in Warsaw requested for appointment of a bailiff acting within the jurisdiction of the District Court in Zakopane for the purpose of the execution procedure targeted at assets owned by a debtor residing in Szczecin; in the course of the execution procedure that bailiff seized movable property located within the jurisdiction of the District Court in Olsztyn and valued at PLN 25.000, in breach of a third party's rights. Thus the third party is entitled to claim the seized property to be released in court, however, according to the aforementioned position, it would be plausible to state that the District Court in Zakopane would be competent for that case, although the property has been seized in the area within the jurisdiction of the District Court in Olsztyn. It is consequently obvious that all and any arguments are in favour of the interpretation of law based on the location of the execution procedure, that takes into account the location of execution-related actions.

11. It bears noting that the lawmaker, defining the competence of a bailiff in the act of law, made exact reference to the placement of assets that the execution procedure is targeted at. Accordingly, Article 844 Paragraph 1 of the Code of Civil Procedure stipulates that the execution procedure targeted at movable property needs to be administered by a bailiff of the court, within the jurisdiction of which the movable property is located (unless a creditor chooses to appoint a different bailiff), and Article 921 Paragraph 1 of the Code of Civil Procedure – that the execution procedure targeted at immovable property needs to be administered by a bailiff of the court, within the jurisdiction of which the immovable property is located, and Article 1015 of the Code of Civil Procedure – that the execution procedure targeted at a vessel needs to be administered by a bailiff of the court, within the jurisdiction of which the vessel is located at the institution of the execution procedure, and Article 1041 Paragraph 1 of the Code of Civil Procedure and Article 1046 Paragraph 1 of the Code of Civil Procedure – that the execution procedure targeted at the discharge of the movable property, immovable property, vessel or premises to be vacated needs to be administered by a bailiff of the court, within the jurisdiction of which such property is located. The legal regulations governing the execution procedure targeted at immovable property are also applicable to the execution procedure instituted on the grounds of a writ of execution that aims at dissolution of co-ownership of immovable property by means of public transfer (Article 1066 of the Code of Civil Procedure), in the course of the execution procedure targeted at fractional share in the immovable property and the execution procedure targeted at the perpetual usufruct right (Article 1004 of the Code of Civil Procedure) as well as the title to the premises in the housing co-operative (Article 17¹³ of the Act of 15 December 2000 on Housing Co-operatives²⁶).

Identical premises have served the grounds for the definition of competence of the court in its capacity as the execution authority. In the case of execution actions that are substitutable as well as actions that may not be performed by a third party in substitution for a debtor, the court, within the jurisdiction of which execution actions are performed, is competent (Article 1049 Paragraph 1 of the Code of Civil Procedure, Article 1050 Paragraph 1 of the Code of Civil Procedure), in the case of execution of the obligation to discontinue actions or not to interfere with a creditor's actions – the court, within the jurisdiction of which a debtor has been operating in breach of the obligation imposed on the debtor (Article 1051 Pa-

²⁶ Unified text: Dz. U. [Journal of laws] of 2013, item 1222 with subsequent amendments.

paragraph 1 of the Code of Civil Procedure). For the purpose of the execution procedure administered by the receivership, the competent court is the one, within the jurisdiction of which a company's registered office is located or a farmstead is located (Article 1064⁴ Paragraph 1 of the Code of Civil Procedure), whereas the execution procedure administered by means of transfer of a company or farmstead falls within the competence of the court, within the jurisdiction of which a debtor's company has got its registered office or a debtor's farmstead is situated (Article 1064¹⁴ Paragraph 1 of the Code of Civil Procedure).

The legal regulations that have been referred to apply to movable and immovable property as well as the situation, in which it is comparatively easy to find the location of an asset that the execution procedure is targeted at. In other cases of the execution procedure, the lawmaker regards a bailiff of the district court that is generally competent for a debtor as competent since the general competence arises from a debtor's domicile address or address of stay or in case a debtor is not a natural person – a debtor's registered office (Article 27-30 of the Code of Civil Procedure in relation to Article 13 Paragraph 2 of the Code of Civil Procedure); this applies to the execution procedure targeted at salary (Article 880 of the Code of Civil Procedure), the execution procedure targeted at accounts receivable on the bank account (Article 889 Paragraph 1 of the Code of Civil Procedure), the execution procedure targeted at other accounts receivable (Article 895 Paragraph 1 of the Code of Civil Procedure) and the execution procedure targeted at other property rights (Article 895 Paragraph 1 of the Code of Civil Procedure in relation to Article 909 of the Code of Civil Procedure). The last mentioned group of cases, for which it is literally difficult to find their 'location' for the execution procedure purposes seem to convince some authors to link the venue of the execution procedure with a bailiff's principal seat, which the author of this paper refuses to accept.

12. The conducted analyses have proven that on the grounds of competence of the court under Article 843 Paragraph 1 of the Code of Civil Procedure, the placement of a debtor's assets is meaningful, although it is not always possible to define competence of the court by mere reference to the location, in which an asset that the execution procedure is targeted at is found. Since it is out of question to refer to 'placement' or 'location' of accounts receivable or other property rights. Thus, in this last case the intention of the lawmaker needs to be taken into account because the lawmaker has principally instructed that the execution procedure targeted at accounts receivable or other property rights should be administered by a bailiff of the district court of general competence for a debtor. Accordingly, the general competence for

a debtor must define competence of the court under Article 843 Paragraph 1 of the Code of Civil Procedure, even though for the execution procedure purposes a bailiff acting beyond the bailiff's jurisdiction is appointed.

Summing up, the venue of the execution procedure within the meaning of Article 843 Paragraph 1 of the Code of Civil Procedure must be defined in conformity with specific legal regulations governing the competence *ratione loci* of the execution authority, taking into account the manner and type of the execution procedure and not merely the principal seat of a bailiff administering the execution procedure.

13. In order to supplement the above elaboration, it bears noting that it seems obvious that for due definition of competence of the court within the meaning of Article 843 Paragraph 1 of the Code of Civil procedure, it is significant to determine, within the jurisdiction of which court a bailiff administers the execution procedure on the date of lodging a adverse claim under the execution procedure, which does not necessarily have to be the court, within the jurisdiction of which the execution procedure has been instituted²⁷. This arises from the usage of the verb in the present simple tense 'administers' (instead of 'has been administered', 'has been instituted') and correspondence of this verb with a adverse claim being lodged under the execution procedure. Regardless of the site, in which first action is undertaken under the execution procedure as well as regardless of the venue/venues, in which the execution procedure has been administered, the venue, in which the execution procedure is administered now is exclusively legally relevant.

Furthermore, in case when competence of several courts is reasoned (for instance due to actions undertaken to be targeted at assets located in various jurisdiction districts), Article 43 of the Code of Civil Procedure is applicable since it provides for unrestricted selection of a court out of a number of competent courts.

FINAL CONCLUSIONS

14. The interpretation elaborated upon above has not been sufficient for the lawmaker, thus the government's draft of the act of law amending the Code of Civil Procedure includes complementary provisions in relation to Article 843 Paragraph 1 of the Code of Civil Procedure in order to eliminate any doubts regarding competence of the court for the cases, in which adverse claims are lodged.

²⁷ Z. HAHN, *Powództwo o umorzenie egzekucji i o zwolnienie od egzekucji*, "Polski Proces Cywilny" 1934, p. 132; M. ALLERHAND, *Kodeks*, p. 136; F. KRUSZELNICKI, *Zarys systemu polskiego prawa egzekucyjnego i zabezpieczającego*, Warsaw 1934, s. 102.

According to the draft maker, the currently binding provision of Article 843 Paragraph 1 of the Code of Civil Procedure is the source of discrepancies that allows for a variety of interpretations²⁸.

In effect of the amendments enforced under the Act of Law of 10 July 2015 amending the Civil Code, the Code of Civil Procedure and Some Other Acts of Law, after 8th of September 2016 Article 843 Paragraph 1 of the Code of Civil Procedure will read as follows: ‘Lawsuits governed by this Section shall be brought before the court of competence *ratione materiae*, within the jurisdiction of which the execution procedure is administered. The venue of the execution procedure shall be determined on the grounds of the provisions of this Code, that govern competence *ratione loci* of the execution authority, which shall also apply to the cases when a bailiff from beyond general jurisdiction and competence has been appointed for the execution procedure purposes’. The lawmaker has thus taken the position that the competent court will be the court, within the jurisdiction of which there is a bailiff who is competent to administer the execution procedure in conformity with the provisions of the Code of Civil Procedure regardless of the fact whether a bailiff administers the execution procedure or another bailiff has been appointed for the execution procedure purposes under Article 8 Sub-paragraph 5 of the Act on Court Bailiffs and Execution Procedure.

The amendments that have been enforced raise other significant comments.

According to the Author, the manner of defining competence of the court hearing and considering a adverse claim lodged under the execution procedure, that has been made more precise by means of the aforementioned amendments, had been applicable under the Polish law and its regulations for years. The decision of the contemporary and historical lawmaker is reasoned by weighty arguments of expediency and efficiency of execution proceedings, especially the ones related in practice to the fact that the majority of execution proceedings are administered by bailiffs of general competence (instead of bailiffs appointed by a creditor) and that a debtor’s assets that the execution procedure is targeted at are located in the area within the bailiff’s jurisdiction of general competence as well as that this criterion seems to be precise at a first glimpse.

It, however, may not be ignored that the applicable legal regulations are not free of faults or imperfections that the provisions of the Code of Civil Procedure provide for such an arrangement that in the course of one execution procedure

²⁸ Parliamentary printed matter No. 2678 of the Sejm of the Republic of Poland of the 7th term of office (<http://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=2678>).

there may be several competent bailiffs, for instance, due to the location of movable property and immovable property owned by a debtor in several jurisdiction districts of courts (Article 844 Paragraph 1 of the Code of Civil Procedure, Article 921 Paragraph 1 of the Code of Civil Procedure). Since that is the case, it finally is plausible to express dissatisfaction that the makers of the draft of the legal regulations have not taken advantage of few postulates that have been claimed for recent years and that have put forward the proposal to establish the authority that would be competent to discharge the writ of execution for the benefit of the court that has issued the judicial decision²⁹, without any prejudice to the competence of the court, within the jurisdiction of which execution procedures are administered in respect of adverse claims lodged under the execution procedure.

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²⁹ E. WENGEREK, *Niektóre uwagi o postępowaniu egzekucyjnym według projektu k.p.c.*, "Państwo i Prawo" 1960, vol. 11, p. 819; S. ZEMANEK, *Powództwa przeciwegzekucyjne w świetle nowelizacji kodeksu postępowania cywilnego z dnia 2 lipca 2004 r.*, [in:] *Czterdziestolecie kodeksu postępowania cywilnego. Zjazd katedr postępowania cywilnego w Zakopanem*, [Kraków] 2006, p. 193.

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O SĄDZIE WŁAŚCIWYM DO ROZPOZNANIA POWÓDZTWA PRZECIWEGZEKUCYJNEGO

STRESZCZENIE

Przedmiotem rozważań podjętych w artykule jest określenie, czy nowelizacja art. 843 § 1 Kodeksu postępowania cywilnego dokonana ustawą z 10 lipca 2015 r. o zmianie ustawy – Kodeks cywilny, ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw doprowadziła do zmiany stanu prawnego w zakresie właściwości sądu rozpoznającego powództwo przeciwegzekucyjne. W ocenie Autorki, przepis ten w brzmieniu obowiązującym od 1 stycznia 1965 r., jak również jego odpowiedniki w poprzednio obowiązującym Kodeksie postępowania cywilnego z 1930 r., nie pozostawiały uzasadnionych wątpliwości co do tego, że miejsce prowadzenia egzekucji – istotne dla określenia sądu właściwego do rozpoznania powództwa przeciwegzekucyjnego – należało ustalać zgodnie z przepisami szczególnymi wskazującymi właściwość miejscową organu prowadzącego egzekucję, przy uwzględnieniu sposobu i rodzaju egzekucji, nie zaś z uwagi na siedzibę komornika prowadzącego postępowanie egzekucyjne. Stąd też znacznie bardziej, niż wprowadzenia w art. 843 k.p.c. definicji miejsca prowadzenia egzekucji, należałoby oczekiwać zmiany właściwości sądu rozpoznającego powództwo opozycyjne w postaci ustanowienia wyłącznej kompetencji sądu wydającego wyrok, którego wykonalność jest zwalczana.

Słowa kluczowe: powództwo przeciwegzekucyjne, właściwość sądu, miejsce prowadzenia egzekucji, czynności egzekucyjne, egzekucja z ruchomości, egzekucja z nieruchomości

THE COURT COMPETENT TO CONSIDER
ADVERSE CLAIMS UNDER THE EXECUTION PROCEDURE

SUMMARY

The objective of the article is to specify whether the amendment of the Article 843 of the Code of Civil Procedure enforced under the Act of 10 July 2015 amending the Civil Code, the Code of Civil Procedure and Some Other Acts of Law resulted in the change in the legal status to the extent of the competence of the court hearing and considering adverse claims under the execution procedure. In the opinion of the Author of this paper, the aforementioned provision in the version prevailing since 1965, as well as its equivalents in the previous version of the Code of Civil Procedure of 1930, did not leave any well-founded doubts that the venue of the execution procedure (essential in order to specify the court competent to hear and consider adverse claims lodged under the execution procedure) should be established pursuant to the regulations determining the entity competent to administer the execution procedure, taking into account the manner and type of the execution procedure, rather than the address of the principal seat of the bailiff instituting the execution procedure. Therefore, the Article 843 of the Code of Civil Procedure should introduce changes not in terms of the venue of execution procedure, but rather to the extent of the court competent to hear and consider the adverse claim in a form of establishing the sole competence/jurisdiction of the adjudicating court, the enforceability of which is examined to be rendered null and void.

Key words: adverse claim, competence of a court, venue of execution procedure, execution action, execution procedure targeted at moveable property, execution procedure targeted at immovable property