

IV. Правова природа нотаріального акта



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УДК 347.95:347.235

NOTARIAL DEED AS AN ENFORCEMENT ORDER IN THE POLISH LEGAL SYSTEM

ABSTRACT. The author discusses the importance of a notarial deed as an enforceable title as a basis for the initiation of judicial enforcement in civil cases in the Polish legal system. The study discusses all types of notarial deeds, which constitute debtor's declarations of intent enabling the enforcement of debt by the creditor by means of state coercion, bypassing time-consuming court proceedings. In practice, their content and subsequent enforcement in the course of enforcement proceedings raises many interpretation doubts.

The author concludes that the literature indicates four requirements that should be fulfilled by a notarial deed to constitute an enforcement order: the preparation by the notary public in terms of their powers and the form provided for by law, the exact specification of the performance, the exact date of performance, indication of the creditor and debtor whose declaration of voluntary submission to enforcement must be made in a manner that raises no doubts.

In addition to constitutive features, the notarial deed in the cases specified in Art. 777 points 4–6 of Code of Civil Procedure may include additional optional provisions if this is the will of the debtor. In particular, the debtor may: 1) submit to enforcement only against certain assets; 2) indicate the deadline after which the debtor submits to enforcement (later than the date of performance); 3) make submission to enforcement subject to a condition, e. g. the creditor's prior fulfilment of mutual consideration; 4) limit the permissible methods of enforcement, e.g. enforcement against remuneration for work.

The author emphasizes that even if the court dismisses or rejects the application for granting an enforcement clause, this does not change the status of this deed as an official document. In the Polish legal system, this means that it can be used to obtain a payment order in payment-order proceedings.

KEYWORDS: notarial deed; enforceable title; court enforcement; Polish legal system.

The legislator in Art. 777 of the Code of Civil Procedure (hereinafter – CCP)¹ introduced a closed catalogue of enforcement orders, which, after receiving an enforcement clause granted by the court, become enforceable titles, entitling the creditor to effectively submit an application for judicial enforcement. As A. Marciniak rightly observes, the value of an enforcement order can be given only by an act, not by the will of the subjects of proceedings and civil law. Of fundamental importance in this respect is the issue of certainty that the enforcement order created by an act ensures that the duty to perform the obligation actually exists. This is undoubtedly connected with the nature of enforcement as a legal and procedural instrument for the compulsory implementation of individual-specific legal norms imposing the duty to perform a specific obligation. On the other hand, the use of coercive measures characteristic of enforcement is associated with a strong interference of enforcement bodies in the sphere of fundamental freedoms and human and citizen rights, which are also protected by the Constitution². As a consequence, the legislator chose such declarations of intent and knowledge, in many cases authorized or issued by courts or public administration authorities, which guarantee the security of legal transactions. First of all, they must precisely specify the obligation that can be fulfilled by state coercion, and at the same time take a form that minimizes the possibility of any manipulation as to their authenticity. When discussing a notarial deed as an enforcement order, it must be seen as an institution of procedural law, the purpose of which is to enable the creditor to obtain the enforcement order in the event of non-performance of the obligation covered by that order³.

Therefore, in the light of the indicated Art. 777 paragraph 4–6 of CCP, in addition to decisions (of court or court referendary), and settlements (concluded before a common court, arbitral tribunal or mediator), an enforcement order is also a notarial deed containing a declaration of voluntary submission to enforcement. This means that a notarial deed containing the debtor's declaration of submission to enforcement may be provided with an enforcement clause and constitute an enforceable title equivalent to a court judgment with such a clause. It should be noted that in the proceedings for granting an enforcement clause, the court examines only whether the notarial deed meets the formal requirements set out in individual provisions, and whether the deadline for performance of obligation has expired, and whether there has been an event entitling the creditor to initiate the enforcement and whether the deadline before which the creditor may apply to the court for an enforcement clause has not expired⁴. In such cases, there is no question of any substantive assessment as regards both the causa of the debtor's declaration

¹ Act of 17 November 1964 – the Code of Civil Procedure (uniform text, Journal of Laws of 2019, item 1460).

² A Marciniak, 'Komentarz do art. 777 k.p.c.' v *Kodeks postępowania cywilnego, t IV: Komentarz. Art. 730–1095*¹ (Marciniak A ed, Legalis 2020).

³ Decision of the Supreme Court of 6 October 2011, V CSK 426/10, Legalis.

⁴ Judgment of the Court of Appeal in Białystok of 19 March 2019, I ACa 676/18, Legalis.

of a specific content and as to the effects of the performance of the obligation covered by the declaration.

The jurisprudence clearly indicates that on the basis of an enforceable title, which is a notarial deed with an enforcement clause, enforcement may be carried out only up to the amount specified in the deed, and not up to the amount actually agreed by the parties to the agreement. Submission of the debtor to enforcement in a notarial deed concerns a performance defined both as to the subject and as to the legal basis. If, after signing the notarial deed, the parties have concluded a further agreement, based on which the debtor declared the provision of further services to the creditor – then this increased obligation cannot be enforced on the basis of the notarial deed. The same rule applies to performances withheld by the contractors in the notarial deed⁵. Conducting enforcement despite debtor's payment of the amount specified in the deed justifies the revocation of enforceability of the enforceable title pursuant to Art. 840 § 1 of CCP⁶.

The jurisprudence emphasized that the form of a notarial deed is compulsory for all significant elements of the legal act, which is the debtor's declaration of submission to enforcement, including the designation of the legal relationship from which the obligation enforced on the basis of such title arises. The unilateral declaration of the debtor of submission to enforcement contained in the notarial deed is not constitutive, does not create any obligation between the parties, which in the declaration are referred to as debtor and creditor⁷. For example, if the debtor has not submitted a declaration of submission to enforcement regarding guarantee of the execution of the agreement for the transfer of ownership of real estate acquired in a fiduciary way in a form of a notarial deed, allegation of violation in the judgment of Art. 840 § 1 point 1 of CCP in connection with Art. 777 § 1 point 5 of CCP in connection with the provisions of the preliminary donation agreement drawn up in the form of a notarial deed, should have been considered entirely justified. There is no enforceable title with respect to this obligation that could be appended with an enforcement clause⁸. According to the judiciary, the debtor's declaration of submission to enforcement may be submitted in a notarial deed, which creates the debtor's obligation subject to enforcement. The debtor's declaration of submission to enforcement may also be submitted in a separate notarial deed (Art. 777 § 2 of CCP), however, it should indicate the source of the debtor's obligation, i.e. this deed should contain the exact indication of the performance and the source of its creation. The above requirements are absolute. However, the introduction of the possibility of a separate notarial deed allows the parties to draw up a civil law agreement after the conclusion (in the form of a notarial

⁵ Judgment of the Supreme Court of 19 March 1975, III CRN 368/74, OSNC 1976, No. 4, item 86.

⁶ Judgment of the Court of Appeal in Gdansk of 4 March 1997, I ACa 151/96, LEX No. 78678.

⁷ Judgment of the Supreme Court of 12 June 2015, II CSK 455/14, LEX No. 1790977.

⁸ Judgment of the Court of Appeal in Szczecin of 15 February 2018, I ACa 872/17, Legalis.

deed or in ordinary written form) without the debtor making a declaration of submission to enforcement, and then making such a declaration by the debtor in a separate document.

It should be borne in mind that the notarial deed containing the debtor's declaration of submission to enforcement, after granting an enforcement clause to it, gives the creditor the option of initiating enforcement without prior conduction of examination proceedings. The debtor's declaration of submission to enforcement is effective only against a specifically defined claim, both as to the subject and legal basis. However, a declaration of submission to enforcement as a result of withdrawal from the underlying agreement cannot currently be the basis for conducting enforcement (Art. 840 § 1 point 1 of CCP)⁹.

The debtor's declaration of submission to enforcement is usually covered by the creditor's consent or, moreover, is a requirement placed on the debtor by the creditor. However, the creditor's cooperation (consent) is not a necessary element of the action. Therefore, when the debtor makes a declaration of submission to enforcement, no active behaviour of the creditor consisting of signing a notarial deed is required. Hence, this declaration should be classified as unilateral action that shape the creditor's right to pursue the claim covered by the deed in a simplified manner¹⁰. The situation is similarly assessed when the creditor has also signed a declaration of submission to enforcement, although the creditor's participation in the action would suggest the use of a structure of an agreement. Such an agreement could be treated at most as (proper) debt recognition¹¹.

As noted by the Supreme Court, the enforcement order in the form of a notarial deed in which the debtor submitted to enforcement must contain the creditor's identification in the manner specified in Art. 92 § 1 point 4 of the Law on Notaries¹². Consequently, a notarial deed has the power of an enforceable title if it meets the requirements prescribed for it in the Law on Notaries and meets the conditions set out in Art. 777 § 1 points 4, 5, 6 and § 2 of CCP, which will be discussed in further considerations.

The obligation to pay a sum of money specified by a notarial deed may be expressed in Polish or foreign currency. If this obligation was expressed in a foreign currency, the court grants an enforcement clause to a notarial deed with the bailiff's obligation to convert the awarded amount into the Polish currency according to the rules set out in Art. 783 § 1 and 2 of CCP. It is permissible to place in the notarial deed a decision on the interest of the sum of money indicated in it, together with an indication of the interest

⁹ Judgment of the Court of Appeal in Warsaw of 4 December 2015, VI ACa 1768/14, LEX nr 2012816.

¹⁰ Judgment of the Court of Appeal in Bialystok of 26 June 2017, I ACa 30/17, Legalis.

¹¹ Judgment of the Supreme Court of 12 June 2015, II CSK 455/14, LEX No. 1790977.

¹² Resolution of the Supreme Court of 28 June 2017, III CZP 10/17, OSNC 2018, No. 4, item 36.

rate and the date of its payment¹³. Submission to enforcement by a notarial deed may also apply to future debt¹⁴. In Polish doctrine, it is emphasized that future claims (future debts) are claims arising from legal actions made under the condition of suspension, or subject to the initial date, of claims based on only partially realized facts (e.g. claims under a promised contract preceded by a preliminary contract), and claims that are not reflected in the content of the legal relationship (e.g. claims resulting from an agreement that may be concluded on the basis of a framework agreement)¹⁵. However, a notarial deed covering the obligation to perform or refrain from performing certain acts or not to obstruct the creditor's acts cannot be considered an enforceable title, even if it contains the debtor's declaration of submission to enforcement.

Notarial deed covering a declaration of submission to enforcement as to the payment of a specific sum of money, release of things marked as to their kind (in genere) or release of things individually marked (in specie)

In accordance with Art. 777 point 4 of CCP notarial deed in which the debtor submitted to enforcement and which includes the obligation to pay a sum of money or to release things marked as to their kind, quantified in the deed, or to release things individually marked if the deed indicates the date of performance of the obligation or an event on which the execution is dependent.

In the light of this provision, a notarial deed should indicate: 1) the obligation to pay a sum of money, quantified in the deed, or 2) the obligation to release things marked as to their kind, quantified in the deed, 3) or to release things individually marked, 4) date of performance of the obligation or 5) event on which the performance of the obligation is dependent.

If the notarial deed includes the obligation to release things marked as to their kind (in genere), it is necessary to specify in the deed the number of things. However, it is not necessary to determine the quality of the subject of the performance. According to Art. 357 of the Civil Code (hereinafter – CC)¹⁶, if the quality of the thing is not marked or is not due to circumstances, the debtor should provide things of medium quality. However, the sum of money must be marked in Polish or foreign currency. If the interest is reserved, it is necessary to indicate the interest rate and the date from which interest is to be calculated. However, the concept of 'things individually marked' includes both land and housing real estate. It should be assumed that pursuant to Art. 777 § 1 point 4 of the Code of Civil Procedure, it is not possible to submit to enforcement with regard to the obligation to empty

¹³ F Zedler, 'Poddanie się egzekucji aktem notarialnym' (1998) 7–8 Rejent 69.

¹⁴ K Knoppek, 'Akt notarialny jako tytuł egzekucyjny' (1991) 12 PiP 69 et seq.

¹⁵ Among others: A Jakubecki, 'Pojęcie zdarzenia, od którego zależy wykonanie obowiązku dłużnika objętego poddaniem się egzekucji w akcie notarialnym' (art. 777 § 1 pkt 4–6 k.p.c.), v *Notarialne tytuły egzekucyjne* (Marciniak A ed, 2017) 136 et seq, and sources cited therein.

¹⁶ Act of 23 April 1964 – the Civil Code (uniform text, Journal of Laws of 2019, item 1145, 1495).

the premises that is not a separate real estate – this is not a thing that is individually marked¹⁷.

The criterion, which in practice can be particularly problematic for the proper preparation of a notarial deed fulfilling the function of an enforceable title is the determination of the date on which the obligation is to be performed. This deadline is of a substantive legal nature, so the debtor cannot apply for reinstatement. The deadline is determined according to the rules of Polish civil law by indicating a calendar date or establishing a future and certain event (e. g. the first day of Christmas).

The necessary elements of a notarial deed as an enforceable title in the form of an indication of the deadline for performance of an obligation or event on which its performance is dependent require the court to make appropriate arrangements in the enforcement-warrant proceedings in which the enforcement order must be transformed into the enforceable title by appending it with an enforcement clause. It has been argued in the jurisprudence that the effects of a final court decision on granting an enforcement clause to a notarial deed in which the debtor submitted to enforcement are limited, since they are reduced to a preliminary ruling on the issues decided by the court in these proceedings. With regard to the notarial deed in which the debtor submitted to enforcement, the enforcement clause granted is declaratory. The scope of the court's jurisdiction in these proceedings is in principle limited to procedural issues, i. e. examining the existence of procedural prerequisites, determining whether a given deed meets the requirements provided for in the provisions for a given type of enforcement order, determining whether a given deed, due to its content, can be executed, and determining whether there has been an event on which the execution is dependent – substantive legal issues are examined in a narrow scope – and to a limited extent – resulting from special provisions (Art. 788, Art. 787–787¹ and Art. 792 of CCP). Therefore, it cannot be stated that in these proceedings a civil case is resolved (“adjudicated”). In particular, in proceedings for granting an enforcement clause to a notarial deed in which the debtor submitted to enforcement (Art. 777 § 1 point 4 of CCP), it is not admissible to assess the validity of a legal action¹⁸ which for the basis for the debtor's declaration of submission to enforcement.

*Notarial deed covering a declaration of submission to enforcement
as to the payment of a sum of money specified in Polish or foreign currency*

As stated in Art. 777 point 5 of CCP, a notarial deed in which the debtor submitted to enforcement and which includes the obligation to pay a sum of money up to the amount explicitly specified in the deed or specified by

¹⁷ M Łochowski, ‘Komentarz do art. 777 k.p.c.’ w *Kodeks postępowania cywilnego, t I–II: Komentarz* (Szancilo T ed, Legalis 2019).

¹⁸ Judgment of the Supreme Court of 10 August 2017, I CSK 44/17, LEX nr 2365546.

means of an indexation clause, when the deed indicates the event on which the performance of the obligation is dependant, as well as the deadline for the creditor to apply for the enforcement clause to be appended.

In this case, the notarial deed should indicate: 1) the obligation to pay a sum of money up to the amount explicitly specified in the deed or specified by means of an indexation clause, 2) the event on which the performance of the obligation is dependant (expiration of the deadline or the fulfilment of the condition as a future and uncertain event), 3) the deadline for the creditor to apply for the enforcement clause to be appended. The legislator, when referring to the concept of indexation clause, introduced the possibility for the parties to stipulate in the contract that the amount of the pecuniary benefit will be determined according to a value measure other than money (e. g. prices of precious metals or certain raw materials).

The discussed structure refers to the situation when the specificity of the relationship between the debtor and the creditor does not allow for a precise determination of the amount of a sum of money due. It should be considered that it will apply to claims which do not yet exist or future ones. The obligation to pay the sum of money referred to in this provision should indicate only its maximum amount. When applying for an enforcement clause, the creditor must specify the amount of the obligation. This does not mean that the creditor is required to provide documents with the amount due, but only to demonstrate the occurrence of an event justifying the occurrence of the obligation of the debtor. The jurisprudence indicated that the parties may indicate in the notarial deed concerning submission to enforcement the maximum amount of the debtor's liability in respect of interest, however, the lack of such a limit does not compromise the effectiveness of the obligation to pay interest as well as the effectiveness of the declaration of submission to enforcement with regard to interest benefits. For example, if in the notarial deed referred to in Art. 777 § 1 point 5 of CCP, specifies the indexed amount of the loan granted, deadlines for its repayment and interest on this amount on a monthly basis, these data are sufficient to specify the extent of the debtor's performance in respect of interest, since determining its amount boils down to a simple mathematical operation¹⁹.

The deadline limiting the creditor in the possibility of applying for an enforcement clause, provided for in Art. 777 § 1 point 5 of CCP, is considered observed if, before its expiry, the creditor applies for the enforcement clause to be appended, however, the first submission of the application should be considered crucial. The assessment whether the date specified in the deed pursuant to Art. 777 § 1 point 5 of CCP has expired at the date of consideration of the application for granting an enforcement clause to a notarial deed is procedural, not substantive. The expiry of this deadline does not release the

¹⁹ Judgment of the Supreme Court of 23 July 2015, LEX No. 1771519.

limited debtor from liability for claims secured by a mortgage established on the property, and only this issue, i.e. the assessment of the legitimacy or existence of the obligation covered by the content of the enforcement order, may be the subject of an anti-enforcement proceedings as provided for in Art. 840 § 1 point 1 of CCP. Enforcement-warrant proceedings do not serve the purpose of examining the legitimacy and maturity of an obligation covered by an enforceable title. The basis for an anti-enforcement proceeding is the invalidity or ineffectiveness of a declaration of submission to enforcement or the possibility to challenge it²⁰. Similarly, for the observance of this deadline, the fact that the creditor has filed another application for granting an enforcement clause to an enforcement order against the debtor's legal successor after the deadline specified in the notarial deed is no longer relevant. Since the creditor obtained an enforcement clause against the primary debtor within the period specified in the notarial deed, the necessity to obtain an enforcement clause pursuant to Art. 788 § 1 of CCP against their legal successor, cannot have negative effects on the creditor in the form of loss of the right to apply for an enforcement clause against the legal successor of the debtor²¹.

As indicated in the jurisprudence, it is permissible to grant an enforcement clause to a notarial deed in which the debtor submitted a declaration of submission to enforcement of maintenance payments. The court may dismiss the application for granting an enforcement clause to such a notarial deed if its content and the debtor's declaration of submission to enforcement clearly show that it was submitted to circumvent the law²².

Notarial deed covering the debtor's declaration of submission to enforcement against the encumbered object

In accordance with Art. 777 point 6 of CCP a notarial deed specified in Art. 777 points 4 or 5, in which a person, other than a personal debtor, whose property, claim or right is encumbered with a mortgage or pledge, has submitted to enforcement against the encumbered object in order to satisfy the pecuniary claim due to the secured creditor. The term "encumbered with a mortgage" as used in the provision should apply to both claims and real estate, which are subjects of security. A constitutive element of the possibility of granting an enforcement clause to a notarial deed pursuant to the abovementioned Art. 777 § 1 point 6 of CCP is the encumbrance of real estate with a limited property law in the form of a mortgage²³. This type of notarial deed allows submission to enforcement of a limited debtor, i.e. a debtor who is not a personal debtor. The debtor's declaration should contain a limitation of liability to property, claim or right encumbered with a mortgage or pledge, which will make it possible

²⁰ Judgment of the Court of Appeal in Warsaw of 24 July 2013, I ACa 333/13, Legalis.

²¹ Ibid.

²² Resolution of the Supreme Court of 4 December 2013, III CZP 85/13, OSNC 2014 r., No. 3, item 28.

²³ Judgment of the Court Appeal in Cracow of 9 April 2019, I ACa 365/18, Legalis.

to invoke a limitation of liability during the execution. According to Art. 837 of CCP the debtor may invoke a limitation of liability only if this limitation has been specified in the enforceable title. As a consequence, the subject of the security should be precisely described in the deed. In the remaining scope, the deed should meet the requirements of one of the notarial deeds specified in Art. 777 § 1 points 4 or 5 of CCP.

When discussing the requirements which should be met by a notarial deed in the situation described in Art. 777 § 1 point 6 of CCP it should be emphasized that the court – when granting an enforcement clause to the order – was obliged to examine two circumstances: whether from the formal side submission to enforcement by the debtor corresponds to Art. 777 § 1 point 6 of CCP, i.e. whether it was made in the form of a notarial deed, whether it contains a specification of the subject of future execution and whether it was specified enough to be subject to forced execution by a bailiff²⁴.

According to the essence of material collateral for claims, the debtor's declaration of submission to enforcement authorizes the creditor to obtain satisfaction "against the encumbered object". In this case, the encumbered object should be understood as property, claim or right encumbered with a mortgage or pledge. Material collateral, by its very nature, authorizes the creditor only to enforce a pecuniary benefit (secured pecuniary claim).

CONCLUSIONS. To sum up, the literature indicates four requirements that should be fulfilled by a notarial deed to constitute an enforcement order: the preparation by the notary public in terms of their powers and the form provided for by law, the exact specification of the performance, the exact date of performance, indication of the creditor and debtor whose declaration of voluntary submission to enforcement must be made in a manner that raises no doubts²⁵.

As a result, the basic element of the content of the notarial deed used as an enforcement order is the debtor's declaration of submission to enforcement. It must clearly indicate the debtor's submission to enforcement by a specific creditor of a specific performance resulting from the indicated legal relationship between that creditor and the person making the declaration. In particular, the phrase "under pain of enforcement" should be considered insufficient in this regard. It should be considered appropriate to use the statutory expression "to submit to execution" in a notarial deed²⁶. The doctrine indicates that such a solution is intended to protect the right of the debtor, because only on their will expressed in the declaration depends whether the execution of performances from a given legal relationship will be conducted on the basis

²⁴ Decision of the Regional Court in Gdansk of 15 November 2012, III Cz 1125/12, LEX No. 1714481.

²⁵ K Korzan, 'Gloss to the judgment of the Supreme Court of 19 March 1975' (III CRN 368/74, OSPiKA 1976) item 173.

²⁶ A Marciniak, 'W kwestii oświadczenia dłużnika o poddaniu się egzekucji' (1990) 42 AUL 63 and the literature cited therein.

of the enforcement order so obtained or on the basis of e. g. a court decision. Moreover, the omission in the enforcement order of the legal relationship from which the enforced obligation arises would open the way to abuse, as it would enable the use of the title to enforce performances from other legal relationships between the parties, provided that the party making the declaration would be the debtor obliged to analogous performance²⁷.

In addition to constitutive features, the notarial deed in the cases specified in Art. 777 points 4–6 of CPP may include additional optional provisions if this is the will of the debtor. In particular, the debtor may: 1) submit to enforcement only against certain assets; 2) indicate the deadline after which the debtor submits to enforcement (later than the date of performance); 3) make submission to enforcement subject to a condition, e. g. the creditor's prior fulfilment of mutual consideration; 4) limit the permissible methods of enforcement, e. g. enforcement against remuneration for work²⁸. The principle of freedom of contract in force in substantive civil law (Art. 3531 of CC) supports this possibility. The Supreme Court assumed that it is also the court's duty – when considering the creditor's application for granting the enforcement clause to a notarial deed – to consider whether voluntary submission to enforcement is in connection with other provisions of the deed that would limit submission to enforcement or make them dependent on mutual consideration of the creditor²⁹.

However, the problem of not being able to obtain an enforcement clause relates primarily to situations in which a notarial deed is imprecisely formulated, deprived of the formula of submission to enforcement of the debtor, and also when the deadline in which the creditor may use it as an enforcement order has expired. For example, if the defendant made in a notarial deed a commitment to pay a pension, but without the submission to enforcement with regard to this obligation, the creditor has a legal interest in obtaining an enforcement order in the form of a final court judgment awarding the said pension³⁰.

In the event of submission to enforcement in a notarial deed and granting it an enforcement clause as to the required pecuniary benefits and the initiation of enforcement proceedings, the debtor's legal interest should be pursued in anti-enforcement proceedings, not an action to establish a legal relationship (Art. 189 of CCP)³¹. If, after the issue of a notarial enforcement order, and before the enactment of an enforceable title, the obligation established by that order does not exist, the appropriate legal remedy is an action to establish that the claim covered by it does not exist³².

²⁷ Marciniak (n 2).

²⁸ P Gil, 'Tytuł egzekucyjny w postaci aktu notarialnego wg przepisu art. 777 § 1 pkt 4 i 5 k.p.c.' (2000) 1 Rejent 30.

²⁹ Judgment of the Supreme Court of 26 February 1960, III CR 922/59, OSNCK 1961, No. 3, item 70.

³⁰ Judgment of the Supreme Court of 9 September 1963, II PR 596/62, OSNCP 1964, No. 9, item 185.

³¹ Judgment of the Court of Appeal in Białystok of 7 July 2013, I ACa 173/13, Legalis.

³² Judgment of the Supreme Court of 28 June 2017, IV CSK 511/16, LEX nr 2360534.

In order to end the considerations regarding the notarial deed as an enforcement order, it should be emphasized that even if the court dismisses or rejects the application for granting an enforcement clause, this does not change the status of this deed as an official document. In the Polish legal system, this means that it can be used to obtain a payment order in payment-order proceedings.

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Кінга Флага-Герушинська

НОТАРІАЛЬНИЙ АКТ ЯК ВИКОНАВЧИЙ ДОКУМЕНТ У ПОЛЬСЬКІЙ ПРАВОВІЙ СИСТЕМІ

АНОТАЦІЯ. Авторка досліджує важливість нотаріального акта як виконавчого документа, тобто основи для порушення виконавчого провадження у цивільних справах у польській правовій системі. У дослідженні розглядаються всі види нотаріальних правочинів, які становлять волевиявлення боржника, що дають змогу кредиторів стягувати борг за допомогою державного примусу, минаючи тривалий судовий розгляд. На практиці їх зміст і подальше виконання у процесі виконавчого провадження викликає багато сумнівів у тлумаченні.

Авторка доходить висновку, що в літературі зазначаються чотири вимоги, яким має відповідати нотаріальний акт, щоб мати силу виконавчого документа: підготовлений нотаріусом відповідно до його повноважень і форми, передбаченої законом; точна деталізація виконання, точна дата виконання; зазначення кредитора та боржника, заява про добровільне подання яких до виконавчого органу має бути зроблена таким чином, щоб не викликати сумнівів.

Крім конститутивних ознак, нотаріальний акт, у випадках, зазначених у пунктах 4–6 ст. 777 Цивільного процесуального кодексу, може включати додаткові факультативні положення, за бажанням боржника. Зокрема, боржник може: 1) подати до примусового виконання лише щодо певних активів; 2) вказати кінцевий термін, після якого боржник подає до виконання (пізніше дати виконання); 3) зробити подання до примусового виконання залежно від умови, наприклад, попереднє виконання кредитором зустрічного задоволення; 4) обмежити допустимі способи примусового виконання, наприклад, забезпечення виконання оплати праці.

Авторка наголошує, що навіть якщо суд відхиляє чи відмовляє в задоволенні заяви про надання виконавчого застереження, це не змінює статусу цього акта як офіційного документа. У польській правовій системі це означає, що він може бути використаний для отримання платіжного доручення під час провадження у справі щодо платіжного доручення.

Ключові слова: нотаріальний акт; виконавчий документ; виконавче провадження; польська правова система.