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The Disposal of Items or Rights Covered by a Dispute (Article 192 (3) of the Civil Procedure Code) from the Perspective of the Availability and Effectiveness of Polish Civil Proceedings

Zbycie rzeczy lub prawa objętych sporem (art. 192 pkt 3 k.p.c.) z perspektywy dyspozycyjności i efektywności polskiego procesu cywilnego

ABSTRACT

The disposal of items or rights covered by a dispute in civil proceedings is regulated to ensure stability of the process. However, this leads to a restriction of the principle of disposability and consequently reduces the effectiveness of the proceedings. Material disposals (settlement, acknowledgement of the claim or withdrawal of the claim with waiver of the claim) involving the seller should be deemed inadmissible by the court because the seller cannot dispose of the disputed subjective right freely. As a result of singular succession during the proceedings, this right has been transferred to the buyer, who is its sole disposer from that moment onwards.

Keywords: efficiency; availability; disposal of property or rights during the process

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INTRODUCTION

One of the essential features of a fair trial and also a prerequisite for procedural justice is undoubtedly the efficiency of the proceedings.[1] The efficiency of the proceedings is a determining factor in the realization of procedural justice and, through it, the right to a court of law.[2] The issue of efficiency of civil proceedings is sometimes analyzed from various aspects – from the point of view of the constitutional and constitutional role of civil courts, the position of the judge, the adequacy of court procedures, as well as formal guarantees of a fair trial,[3] or attention to the appropriate level of costs generated by participation in the proceedings. Efficiency is achieved through measures designed to ensure the speed and efficiency of the proceedings, while taking into account legal constructions that guarantee the achievement of the primary goal of the proceedings, which is the accurate and fair settlement of the dispute, or its amicable resolution.[4] The efficiency of civil proceedings, however, should not be considered only from the point of view of systemic solutions, but should also be evaluated from the perspective of specific procedural institutions, verifying whether they have been shaped in a way that does not harm the efficiency and speed of the resolution of litigation.

It is difficult to deny that Article 192 (3) of the Civil Procedure Code[5] serves to protect the efficiency of civil proceedings, as it counteracts the subjective destabilization of the process (as will be discussed further below). This efficiency is also ensured by the provisions regulating dispositive actions such as the conclusion of a court settlement, withdrawal of a lawsuit with a waiver of the claim, or acknowledgment of a lawsuit. This is because each of them makes it possible to end litigation more quickly and efficiently than in the case of standard adjudication. Restrictions on the principle of disposition will, of course, undermine the efficiency of the process, and the current provisions of the Civil Procedure Code introduce such restrictions, among other things, granting the court the authority to declare inadmissible acts of substantive disposition if they are contrary to the law, to the principles of social harmony or are aimed at circumventing the law.[6] And it is in

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[1] A. Łazarska, *Rzetelny proces cywilny*, Warszawa 2012, p. 374.

[2] E. Gapska, *Konkretyzacja stanowisk procesowych stron przed rozprawą i jej wpływ na efektywność postępowania*, [in:] *Postępowanie rozpoznawcze w przyszłym Kodeksie postępowania cywilnego*, eds. K. Markiewicz, A. Torbus, Legalis 2014 and the literature cited therein.

[3] T. Ereciński, K. Weitz, *Efektywność ochrony prawnej udzielanej przez sądy w Polsce*, "Przegląd Sądowy" 2005, no. 10, p. 3 ff.; A. Łazarska, *op. cit.*, p. 374.

[4] K. Flaga-Gieruszyńska, *Szybkość, sprawność i efektywność postępowania cywilnego – zagadnienia podstawowe*, "Zeszyty Naukowe KUL" 2017, no. 3, p. 15.

[5] Act of 17 November 1964 – Civil Procedure Code (consolidated text, Journal of Laws 2024, item 1569, as amended), hereinafter: CPC.

[6] R. Flejszar, *Zasada dyspozycyjności w procesie cywilnym*, Warszawa 2016, p. 616 ff.

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this particular aspect of the efficiency of the proceedings that it is worth considering how the norm of Article 192 (3) CPC affects the permissibility of ending a dispute with a court settlement, withdrawal of a lawsuit with a waiver of the claim, or acknowledgment of the claim by the defendant, and consequently also the efficiency of civil proceedings. The article is analytical in nature. It was developed using the formal-dogmatic method and based on the body of jurisprudence, and its purpose is to consider an issue not yet noticed in the literature.

THE DISPOSAL OF ITEMS OR RIGHTS COVERED BY A DISPUTE – IN THE PAST AND TODAY

In Roman law, there was a prohibition against disposing of a litigated item or claim (*rei vel actionis litigiosae*) during the pendency of a lawsuit, making the disposal ineffective.[7] If several people had a dispute over a thing (*res litigiosa*), they could give it to a third party (*sequestra*) for safekeeping in a so-called sequestration deposit (*depositum sequestre*). The sequester depository was obliged to give the thing to the person who won the dispute. The sequestration deposit differed from the ordinary deposit, in particular, in that the depositary had the thing in his possession (*posessio*) and not in his lease (*detentio*), and consequently was entitled to possessory protection.[8] The prohibition on disposing of a thing or right in the course of litigation was linked to the prohibition on the purchaser from asserting such a thing or right through litigation, and the defendant had a special means of protection in the form of a plea of the disputed thing (*exceptio rei litigiosae*).[9] Thus, in a large generalization, it can be said that in the ancient period the efficiency of the process was achieved at the expense of restricting the right of free disposal of the thing or right by its disposer.

In later times, it was perceived that such a prohibition did not meet the needs of circulation, so instead of it, various legal systems introduced norms governing the effects of disposing of a thing or a right[10] in the course of civil proceedings. Currently in the Polish civil process there is a regulation contained in Article 192 (3) CPC (in

[7] W. Broniewicz, *Następstwo procesowe w polskim procesie cywilnym*, Warszawa 1971, p. 63 ff.

[8] M. Kuryłowicz, A. Wiliński, *Rzymskie prawo prywatne*, Kraków 1999; W. Rozwadowski, *Prawo rzymskie*, Poznań 1992.

[9] W. Broniewicz, *op. cit.*, p. 63.

[10] Legal succession under a special title involves the acquisition of individually designated rights or obligations. Its basis may be not only an agreement of transfer (Article 509 of the Civil Code) or sale (Article 535 of the Civil Code), but also an administrative act or a provision of the law. See P. Grzegorczyk, *Komentarz do art. 365 i 366*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 2: *Postępowanie rozpoznawcze*, ed. T. Ereciński, LEX/el. 2016, margin no. 33 and the literature cited therein.

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the wording similar to Article 205 (3) CPC of 1930[11]), according to which, from the time of service of the lawsuit, the disposal in the course of the case of the property or right in dispute, as a rule, does not affect the further course of the case, but the acquirer may take the place of the seller with the consent of the opposing party. The cited provision provides a procedural reminiscence of the old rule prohibiting (also with substantive effect) the disposal of a claim or thing in dispute during the course of a case.[12] The procedural institution it regulates generally contributes to the efficiency of civil proceedings, and if it were not there, undoubtedly the effect of ending litigation would be more deferred. The procedural institution it regulates generally contributes to the efficiency of civil proceedings, and if it were not there, undoubtedly the effect of ending litigation would be more deferred.[13] At the same time, as an exception to the rule, allows the succession of the purchaser in place of the seller as a party to the lawsuit, conditional on the fact that both parties,[14] as well as the purchaser of the thing or right, agree to such a change in subjectivity.[15]

Paradoxically, the occurrence of a situation envisaged as an exception to the rule is, from the point of view of the efficiency of the proceedings, more desirable if only because then the problem signaled at the outset – the admissibility of performing acts of material disposition under the conditions indicated in Article 192 (3) CPC – will not arise. If, after the disposal in the course of litigation of the thing or right in dispute, there is a procedural succession, i.e. the acquirer takes the place of the transferor, then the procedural status of the acquirer is not in doubt – the acquirer, who is the addressee of a substantive legal norm, is also a party to the litigation. The situation is different when legal succession is not accompanied by procedural succession, which is provided as a rule in Article 192 (3) *in principio* CPC. For in such a case, the singular succession that occurred outside of the trial does not lead to a subjective transformation in the case, since it does not affect the course of

[11] Regulation of the President of the Republic of Poland of 29 November 1930 – Civil Procedure Code (Journal of Laws 1930, no. 83, item 651, as amended). Some authors pointed out what they felt was an important difference between the wording of Article 192 (3) CPC and Article 205 (3) CPC of 1930. Article 205 (3) CPC of 1930 stated "however, the acquirer may not take the place of the transferor without the permission of the opposing party", thus expressing a prohibitive norm, while Article 192 (3) CPC of 1930 introduced an authorizing norm in its place. According to W. Broniewicz (*op. cit.*, pp. 65–66), this change created a kind of incentive for the purchaser to enter in place of the seller. See also S. Włodyka, *Podmiotowe przekształcenia powództwa*, Warszawa 1968, p. 164.

[12] Decision of the Supreme Court of 16 December 2004, V CZ 143/04, Legalis no. 278403.

[13] Decision of the Supreme Court of 16 November 2006, II CSK 183/06, LEX no. 445247.

[14] M. Romańska, *Zbycie rzeczy lub prawa objętych sporem (art. 192 pkt 3 k.p.c.) w orzecznictwie sądowym*, [in:] *Aurea praxis, aurea teoria. Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego*, eds. J. Gudowski, K. Weitz, Warszawa 2011, p. 546 and the literature cited therein; judgment of the Supreme Court of 19 October 2005, V CK 708/04, Legalis no. 179880.

[15] M. Romańska, *op. cit.*, p. 520; M. Jędrzejewska, K. Weitz, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 1: *Postępowanie rozpoznawcze*, ed. T. Ereciński, Warszawa 2012, p. 931.

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the case. The transferor continues to act as a party. At the same time, however, an inconsistency arises between the party and the person acting as the current subject of the legal situation involved in the trial, which is explained by the construction of the so-called procedural substitution.[16] The crux of this institution boils down to the fact that in the proceedings, instead of the addressee of the substantive legal norm that is the subject of the trial, there is another entity as a party.[17]

The consequence of the disposal of the thing or right in dispute can be described as a "separation" of legal standing – the acquirer acquires substantive standing, while the transferor does not lose the right to appear as a party in a given case, and therefore continues to have *ad processum* standing, the source of which, however, is no longer a subjective right, but a provision of procedural law, i.e. Article 192 (3) CPC. Formal standing is vested in the transferor until the purchaser joins the lawsuit, or until the end of the proceedings. Thus, a situation arises in which two entities have standing – the existing litigant and the purchaser of the thing or right.[18] The predecessor in title (transferor) is authorized to act in his own name, but on behalf of the purchaser of that thing or right,[19] and therefore the procedural acts performed by him have effects with respect to the purchaser.

If the proceeding concerning the thing or right disposed of after service of the suit on the defendant ends with the participation of the transferor, the final judgment will have *res judicata* against both him and the purchaser of that thing or right (the addressee of the substantive legal norm).[20] The discussed procedural construction closes with Article 788 CPC, which provides that the court will grant an enforceability clause in favor of or against the acquirer, provided that the transfer of the right or obligation is demonstrated by an official or private document with an officially certified signature. The consequence of extending substantive validity to the successor in title is that it is inadmissible for him or against him to bring a new action in the same case.[21] The judicature of the Supreme Court has adopted the thesis that this obstacle is not overcome by the impossibility of proving succession under the rules of Article 788 of the Civil Code and obtaining an enforcement clause in favor of or against the successor, since the creditor in this situation can bring an action to determine the passage of a right or obligation under Article 189 of the Civil Code.[22]

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[16] W. Broniewicz, *op. cit.*, p. 66.

[17] M. Romańska, *op. cit.*, p. 521.

[18] S. Włodyka, *op. cit.*, p. 162.

[19] W. Broniewicz, *op. cit.*, p. 81.

[20] M. Romańska, *op. cit.*, p. 522. The author notes that the source of this extended legitimacy is Article 788 CPC. See also P. Grzegorczyk, *op. cit.*, margin no. 33; decision of the Supreme Court of 20 October 2004, IV CK 91/04, OSNC 2005, no. 10, item 177.

[21] P. Grzegorczyk, *op. cit.*, margin no. 33 and the jurisprudence cited therein.

[22] Resolution of the seven-judge panel of the Supreme Court of 5 May 1951, C. 689/50, OSN 1952, no 1, item 3.

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(IN)ADMISSIBILITY OF ACTS OF MATERIAL DISPOSITION

In the event that, after a dispute has arisen, the property or right in dispute is disposed of, but the purchaser does not take the place of the transferor, the question must be raised as to whether the transferor is authorized to dispose of the subject matter of the lawsuit in his own name, but for the benefit of the purchaser, and therefore whether it is permissible for the purchaser to perform dispositive acts, such as concluding a settlement (judicial or before a mediator), recognizing a lawsuit, or withdrawing a lawsuit with a waiver of the claim. Article 192 (3) CPC, providing that the transfer of an object or right does not affect the course of the case, in principle allows the transferor to perform any procedural acts in his own name, but with effect for the acquirer. Thus, it does not explicitly exclude dispositive actions from this catalog. At the same time, however, it should be borne in mind that the transferor is no longer the addressee of an individual-specific legal norm and is not the disposer of a subjective right or a legal interest subject to judicial protection, since this right has already passed to the acquirer. According to the paremma *nemo plus iuris ad alium transferre potest quam ipse habet* (no one can transfer to another person more rights than he himself possesses), it should be assumed that a person who does not possess a subjective right cannot effectively perform a legal act with respect to that right, unless there is a norm that expressly authorizes him to do so. The question then arises whether such authorization can be considered to be contained in the wording of Article 192 (3) CPC.

By introducing a solution that makes the course of the trial independent of the extra-procedural dispositive actions of the parties, the legislator sought to guarantee the continuity of the proceedings while preserving the freedom of legal turnover of the thing or right involved in the litigation. Thus, the main emphasis was placed on the procedural consequences of the disposal of *res litigiosa* – ensuring that the proceedings can be effectively concluded and the litigation resolved. The provision of Article 192 (3) CPC is undoubtedly procedural in nature.[23] However, it does not seem to have been the intention of the legislator to equip the transferor of an object or right with the power to perform actions in relation to the purchaser that produce not only procedural, but also substantive legal effects. Given the special status of the transferor as a party to the proceedings equipped only with formal standing, it is worth considering his procedural situation against the background of participants in civil proceedings exercising analogous procedural rights.

In cases of so-called procedural substitution (substitution or subrogation) other than the one in question, the legislator often explicitly prohibits an entity with only formal standing from freely performing acts disposing of the subject matter of the

[23] Decision of the Supreme Court of 16 November 2006, II CSK 183/06, LEX no. 445247.

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dispute.[24] For example, the public prosecutor may not independently dispose of the subject matter of the dispute (Article 56 § 2 CPC), the dispositive actions of the trustee, on pain of nullity, require the permission of the council of creditors (Article 206 (1) (6) of the Bankruptcy Code), the actions of the enforcement administrator of real estate exceeding the scope of ordinary management require the consent of the parties to the proceedings or the permission of the enforcement court (Article 935 CPC).[25] However, there are also examples of formally legitimate entities for which there are no explicit statutory restrictions on the performance of dispositive acts in the process, and yet in the literature their authority in this regard is questioned, which includes the guardian of the estate[26] or the executor of the will.[27] Analogous doubts should be raised with regard to the transferor of the thing or right involved in the litigation.

Seemingly, it might seem that since, in certain situations, the legislator imposes explicit prohibitions on the performance of procedural acts disposing of the subject matter of the dispute, whenever such a prohibition is not placed by the formally legitimate entity, the dispositive act can be performed. Such reasoning, even intuitively, does not seem correct and requires another look. Well, the above-mentioned provisions, i.e. Article 56 § 2 CPC (in conjunction with Article 56 § 1 *in fine* CPC), Article 206 (1) (6) CPC, or Article 935 CPC, do not formulate prohibitions on dispositive actions by a prosecutor, trustee, or executory administrator of real estate, but introduce conditions under which the performance of a dispositive action will be permissible. In the cited examples, the prerequisite for performing a dispositive act is to obtain the consent of a legally specified entity to perform such an act (e.g. the person for whose benefit the prosecutor acts – Article 56 § 1 *in fine* CPC, the council of creditors – Article 206 (6) of the Bankruptcy Code, or the enforcement court – Article 935 CPC). Consequently, it should be assumed that if a party is equipped by a provision of the law only with formal legitimacy, and therefore does not have substantive legitimacy at the same time, then – as a rule – the performance by him of a dispositive action that also produces effects in the sphere of substantive law is inadmissible and is not binding on the court. Exceptions to such a rule are allowed, but on the condition that there is a provision from which the right to dispose of the subject matter of the dispute by an entity that does not have substantive standing can be derived – then the dispositive act cannot be considered inadmissible.

[24] For more on the legitimacy of waiver in cases of so-called procedural substitution, see Ł. Błaszczak, *Charakter prawny zrzeczenia się roszczenia w procesie cywilnym*, Wrocław 2017, p. 120 ff. and the literature cited therein.

[25] For more on this topic, see O. Marcewicz, *Cofnięcie pozwu ze zrzeczeniem się roszczenia po zbyciu w toku sprawy rzeczy lub prawa objętych sporem*, "Przegląd Sądowy" 2019, no. 3, pp. 91–93 and the literature cited therein.

[26] Ł. Błaszczak, *op. cit.*, p. 117 ff.

[27] As a general rule, the executor of a will has no independent authority to waive a claim due to the fact that he is not acting in his own private interest, but in the interest of others. See *ibidem*, pp. 125–126.

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Applying the above reasoning to the situation in which the purchaser of the thing or right in dispute did not take the place of the transferor as a party to the proceedings, it should be assumed that the settlement, waiver of claim, or acknowledgment of action concluded by such a transferor may be declared inadmissible by the court. This is because the transferor, as a consequence of singular succession, loses his substantive legal standing, and at the same time there is no provision of procedural law that would authorize him to dispose of the subject matter of the dispute independently.[28]

LIMITATION OF DISPOSITION – CONTROL OF THE COURT

Ineffectiveness as a consequence of a defect in a procedural action, as noted in the literature, does not occur automatically or immediately. As long as the court does not perceive a defect in a procedural action, the action cannot be deemed to have no procedural effect. The court should prevent making use of the defective procedural action by means of performing other procedural actions.[29] The defectiveness of dispositive acts, including those made with the participation of a *res litigiosa* seller, the court determines by conducting a review of them, which is seen in the literature as a limitation of the principle of dispositiveness.[30] The regulations governing the performance of such actions provide that the court may declare a given dispositive action inadmissible if it is contrary to the law, to the principles of social intercourse, or is aimed at circumventing the law.[31] If the court deems a particular act of material disposition inadmissible, it is not burdened with the obligation to issue a separate decision on this issue. It shall continue the proceedings, while it shall provide the reasons for its position in this matter in the reasons for the decision ending the proceedings. The transferor of the thing or right in dispute, whose dispositive act has been declared inadmissible, or his litigation opponent, may challenge the court's assessment by filing an appeal against such a decision under the general rules, raising a plea negating the correctness of the court's review.

However, if the court, for any reason (e.g. lack of knowledge of the disposal of the property or right during the course of the litigation), did not consider inadmissible the settlement, waiver of the claim, or acknowledgment of the action made with the participation of the seller, then the purchaser will be forced to use legal

[28] I hereby depart from the view expressed earlier that, in the absence of an express provision prohibiting the transferor of the thing or right in dispute, the transferor is entitled to waive the claim with effect for the purchaser of such thing or right. See O. Marcewicz, *Cofnięcie pozwu…*, p. 93.

[29] T. Zembrzuski, *Nieważność postępowania w procesie cywilnym*, Warszawa 2017, pp. 179–180. As in O. Marcewicz, *Cofnięcie pozwu…*, p. 93.

[30] R. Flejszar, *op. cit.*, p. 616 ff.

[31] Article 183^{14} § 3 CPC, Article 184 CPC, Article 203 § 4 CPC, Article 213 § 2 CPC, and Article 223 § 2 in conjunction with Article 203 § 4 CPC, Article 479^{30c} CPC.

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remedies to review the court's decision. The catalog of these remedies is shaped differently depending on the dispositive act performed by the parties, while usually requiring the acquirer to take rather complicated and time-consuming measures.

In the event that the defendant res litigiosa transferor has recognized the action, and the court has determined that this action is in accordance with the law, principles of social intercourse, or does not seek to circumvent the law, the consequence of such an assessment by the court is the issuance of a so-called judgment of recognition, which will include the substantive validity of both the parties to the proceedings and the purchaser of the property or right.[32] Either party may challenge such a judgment by appeal. This right also serves the acquirer, but provided that at the same time, with the consent of the parties, he enters the proceedings in place of the transferor.[33] The consent of the parties is not needed if the acquirer combines the filing of an appeal with the filing of a side intervention, which in this case is self-contained.[34] Among other things, in the appeal it may raise an objection related to the failure of the first-instance court to review the declaration of acknowledgment of the claim by the seller of the thing or right.[35] If the judgment becomes final, the plaintiff can apply for an enforcement clause against the purchaser under the terms of Article 788 CPC, or with an action for determination under Article 189 CPC.[36]

[32] *Res judicata* is determined – in addition to the identity of the parties and the identity of the subject matter of the adjudication – by the identity of the basis of the dispute. Subjective identity occurs when both cases involve the same persons or their legal successors. See decision of the Supreme Court of 31 January 2018, I CSK 645/17, LEX no. 2482578.

[33] In the jurisprudence of the Supreme Court, divergent views can be observed regarding the permissibility of procedural succession under Article 192 (3) CPC in cassation proceedings. See B. Czech, *Komentarz do art. 192*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 1: *Art. 1–366*, eds. A. Marciniak, K. Piasecki, Legalis 2016, margin no. 14; M. Jędrzejewska, K. Weitz, *Komentarz do art. 192*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 2: *Postępowanie rozpoznawcze*, ed. T. Ereciński, LEX/el. 2016, margin no. 19 and the jurisprudence cited therein. However, this provision does not apply in enforcement proceedings. See resolution of the Supreme Court of 5 March 2009, III CZP 4/09, OSNC 2010, no. 1, item 2; judgment of the Supreme Court of 13 December 2012, V CSK 7/12, LEX no. 1294481.

[34] J. Sobkowski, *Następstwo prawne pod tytułem szczególnym w polskim procesie cywilnym*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1966, no. 4, p. 43. See also P. Grzegorczyk, *op. cit.*, margin no. 33.

[35] The good faith of the purchaser is not a necessary prerequisite for the effects of the disposal provided for in Article 192 (3) CPC (decision of the Supreme Court of 11 April 1967, I CZ 12/67, PUG 1967, no. 12, p. 408) and at the same time could not be a circumstance justifying the restoration of the time limit for filing an appeal (possibly combined with the filing of a side intervention), which was to be filed after the judgment had already become final. No procedural deadlines run against the acquirer, who has not become a participant in the proceedings, and therefore their restoration cannot be requested. In such a situation, the acquirer is left only with the possibility of filing a claim against the seller for damages or for unjust enrichment.

[36] If he were unable to prove succession, then (as was mentioned earlier) he can bring an action to establish the transfer of a right or obligation under Article 189 of the Civil Code.

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In such a situation, the buyer has a separate action against the seller for damages, or for unjust enrichment.[37]

Referring, in turn, to the situation in which the transferor of the thing or right in dispute and his litigation opponent would conclude a court settlement,[38] which would not be considered inadmissible by the court, then in accordance with Article 355 CPC, the proceedings should end with the issuance of a decision to discontinue the proceedings. An analogous procedural effect occurs when a lawsuit is withdrawn with a waiver of the claim (Article 355 CPC). The accuracy of the court's review of each of these dispositive actions could be reviewed in a complaint against this order.[39] Legitimacy to file this appeal, have the parties (the transferor and his litigation opponent), and the acquirer only on condition that he combines the filing of the complaint with joining the proceedings in place of the transferor (with the consent of the parties), or with the filing of a self-initiated collateral intervention. However, if the order of discontinuance of the proceedings in the cases in question became final, the question should be raised whether the court settlement concluded with the participation of the seller, or his statement of waiver of the claim, is binding on the purchaser, and in particular, whether the purchaser could in a possible subsequent suit effectively raise the plea of the case settled (exceptio rei transactae), or whether the plea of waiver of the claim by the seller in the previous suit raised in the purchaser's suit for the transferred thing or right would be effective.

Referring first to the allegation of a settled case, it should be noted that despite differences in views on the legal nature of a court settlement, it is generally accepted that a settlement entered into before a court combines features of both legal and procedural actions, and issues concerning a court settlement should be considered in the context of both civil substantive law and procedural law.[40] Hence, the procedural effects of a court settlement should be analyzed according to the law of civil procedure, while the substantive effects should be analyzed according to civil (substantive) law.[41] A court settlement as an act of substantive law should

[37] P. Grzegorczyk, *op. cit.*, margin no. 33.

[38] For the sake of simplicity, I use only the example of concluding a classic court settlement, since the problematics of concluding a settlement before a mediator and the consequences associated with its approval by the court, despite the fact that the *res litigiosa* seller is a party to such a settlement, require a much broader discussion beyond the scope of this paper.

[39] The invalidity of the settlement can be claimed by a party in the proceedings in which the settlement was reached and in separate proceedings. See J. Jagieła, *Komentarz do art. 10*, [in:] *Kodeks postępowania cywilnego. Komentarz*, vol. 1: *Art. 1–366*, eds. A. Marciniak, K. Piasecki, Legalis 2016, margin no. 24.

[40] On this topic, see O. Marcewicz, *Dopuszczalność zawarcia przed sądem ugody w postępowaniu cywilnym*, [in:] *Jus et remedium. Księga jubileuszowa Profesora Mieczysława Sawczuka*, eds. A. Jakubecki, J. Strzępka, Warszawa 2010 and the literature cited therein.

[41] J. Jagieła, *op. cit.*, margin no. 20 and the jurisprudence cited therein.

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be evaluated not only on the basis of Articles 917 and 918 of the Civil Code, but also on the basis of other relevant provisions, primarily on defects in a declaration of intent (Articles 82 ff. of the Civil Code), or on the invalidity and ineffectiveness of legal acts (Articles 58 and 59 of the Civil Code).[42] As a rule, a court settlement concluded in a given case, if a new action is brought for a claim covered by it, constitutes a plea of a substantive (settled case), and therefore is a negative jurisdictional prerequisite, which, however, as J. Jagieła states, does not exclude the possibility of examining its validity in this (new) proceeding. When analyzing the plea of a settled case in a new case, brought for a claim covered by the settlement in the first proceeding, the court cannot ignore the fact that the settlement was concluded by the transferor of the thing or right, i.e. an entity that at the time of the settlement was not a party to the legal relationship to which the settlement related and, in principle, could not conclude such a settlement with effect for the purchaser.

A similar reasoning to the above should be applied to the allegation of waiver of a claim by the transferor of a right or thing in dispute. This issue appears to be more complicated than the effectiveness of raising a plea of a settled case against the transferee, since there was and still is no complete consensus in the literature and judicial decisions on the question of whether Article 203 § 1 CPC refers to a substantive or procedural claim (although the prevailing view is that the referenced provision refers to the waiver of a procedural claim).[43] However, the widely accepted view is that the act of waiving a claim produces effects in the sphere of substantive civil law. The divergence of positions relates only to the question of what substantive-legal effects arise as a consequence of the performance of such an action – definitive, because it leads to the expiration of the substantive claim (and the groundlessness of the subsequent action[44]), or less far-reaching and stating that a substantive claim exists, but is transformed into a natural one, devoid of the characteristic of contestability.[45] Thus, by analogy with the conclusion of a court settlement, it should be assumed that when considering the relevance of the

[42] *Ibidem*, margin no. 21 and the literature cited therein. See also, e.g., judgment of the Supreme Court of 9 May 1997, I PKN 143/97, OSNP 1998, no. 6, item 181.

[43] On this topic, see O. Marcewicz, *Cofnięcie pozwu…*, p. 86 ff. and the literature and the jurisprudence cited therein.

[44] H. Pietrzkowski, *Cofnięcie pozwu i zrzeczenie się roszczenia*, [in:] *Metodyka pracy sędziego w sprawach cywilnych*, LEX/el. 2014.

[45] By waiving the litigation claim, the plaintiff declares that he is giving up the examination of the merits of his claim and that he will not file again against the defendant with this litigation claim. See W. Siedlecki, *Postępowanie cywilne. Zarys wykładu*, Warszawa 1987, p. 215. See also K. Riedl, *Materialnoprawne skutki zrzeczenia się roszczenia w procesie cywilnym*, "Polski Proces Cywilny" 2017, no. 1, p. 105 ff. and the literature cited therein; T. Rowiński, *Zrzeczenie się roszczenia w polskim procesie cywilnym*, "Nowe Prawo" 1965, no. 7–8, p. 829; E. Warzocha, *Cofnięcie powództwa oraz wniosku wszczynającego postępowanie nieprocesowe*, Warszawa 1977, p. 46; justification of the judgment of the Supreme Court of 13 February 2004, II CK 442/02, LEX no. 424439.

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allegation of the waiver of a claim by the seller in a previous lawsuit, raised in the purchaser's lawsuit, the court should re-examine the validity of the declaration of intent made by the seller and assess whether the waiver of a claim by the seller of the thing or right in dispute has effect against the purchaser.

The court's supervision of the dispositive actions of the parties, as mentioned at the outset, is a manifestation of the limitation of the principle of dispositiveness, and as a result also limits the efficiency of the proceedings. Nevertheless, it is necessary if only for the reason that the court should not approve the performance of defective legal acts (such as those affected by nullity) against it.[46] Careful and thorough control of the admissibility of dispositive actions can promote efficiency (balancing the effect of limiting dispositiveness), as is clearly evident from the issues at hand. The court's control not only protects the subjective rights of the purchaser, but also prevents the purchaser from taking actions before the ordinary courts necessary to obtain protection of his rights.

CONCLUSIONS

The above considerations lead to the conclusion that each of the procedural institutions under analysis, in itself, serves to strengthen the efficiency of civil proceedings. The procedural consequences of disposing of the property or right in dispute during the course of the proceedings make the process immune to legal actions by the parties outside the process, ensuring its subjective stability. The principle of disposability is clearly conducive to the prompt and effective conclusion of litigation. However, as it turns out, sometimes, under certain procedural conditions, the parallel operation of these institutions can undermine the efficiency of the proceedings. However, this happens for an important reason, namely to protect the rights of the successor in title obtained by the successor in title as a result of the singular succession that took place in the course of the proceedings. This is an example of a restriction of the principle of disposition of civil proceedings and weakening their efficiency, which, however, seems to be a necessary legislative solution due to the need to ensure the protection of a legal good of greater importance than the consideration of the fastest possible conclusion of the proceedings.

[46] T. Wojciechowski, *Kontrola ugody sądowej*, "Kwartalnik Prawa Prywatnego" 2001, no. 3.

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ABSTRAKT

Zbycie rzeczy lub prawa objętych sporem w toku postępowania cywilnego zostało uregulowane w sposób zapewniający stabilizację procesu, ale zarazem prowadzi do ograniczenia zasady dyspozycyjności, a w konsekwencji również efektywności postępowania. Czynności dyspozycji materialnej (ugoda, uznanie powództwa czy cofnięcie pozwu ze zrzeczeniem się roszczenia) dokonane z udziałem zbywcy powinny być uznane przez sąd za niedopuszczalne, ponieważ zbywca nie może swobodnie dysponować prawem podmiotowym stanowiącym przedmiot sporu, które na skutek sukcesji singularnej dokonanej w toku postępowania zostało przeniesione na nabywcę – od tego momentu jego wyłącznego dysponenta.

Słowa kluczowe: efektywność; dyspozycyjność; zbycie rzeczy lub prawa w toku procesu