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Articles

Studia Iuridica Lublinensia vol. XXX, 1, 2021
DOI: 10.17951/sil.2021.30.1.307-323

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Cessio legis During Court Proceedings for Payment: Withdrawal of the Suit with a Waiver of the Claim Resulting in Damage to the Purchaser of the Claim

Cessio legis w trakcie procesu o zapłatę. Cofnięcie pozwu ze zrzeczeniem się roszczenia przez zbywcę skutkujące wyrządzeniem szkody nabywcy wierzytelności

ABSTRACT

The article is of a scientific-research nature. The author based her conclusions on the literature and jurisdiction regarding the assignment of claims and on the withdrawal of a lawsuit with a waiver of the claim. A hypothetical situation is presented, in which a plaintiff, during the proceedings concerning the claim for payment, assigns to a third party a claim covered by the lawsuit, after entering into a dispute. A purchaser of a claim is entitled to enter the proceedings, pursuant to Article 192 point 3 of the Code of Civil Procedure, with the consent of the opposing party (defendant). In practice, the judicature extends the interpretation of this provision to the consent of both parties to the proceedings. The problem arises in a situation in which the plaintiff does not consent to the purchaser of the claim being replaced. The latter may thus be deprived of court proceedings through no fault of his own. In addition, the current plaintiff no longer has any interest in continuing the proceedings and may withdraw the lawsuit with a waiver of the claim. The effect of waiving the claim will be, in a way, releasing the defendant from his debt, and thus changing the nature of the claim into natural obligation. The above-mentioned action of the plaintiff, the seller of the claim in the process, will cause damage to the purchaser of the claim up to the amount of the withdrawn lawsuit together with the waiver of the claim. The article indicates the possibility of a broader perspective on subjective changes in the process and the material and legal effects of the parties' formal actions.

Keywords: waiver of the claim; withdrawal of the suit; plaintiff; third party

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THE INSTITUTION OF *CESSIO LEGIS* REGULATED IN ARTICLE 518 OF THE CIVIL CODE

As a rule, a third party paying off someone else's debt does not acquire a receivable towards the debtor. Undoubtedly, this action results in the cancellation of the debtor's debt to the repaid creditor. This fact alone may result in a claim of the repaying party against the debtor for unjust enrichment (reduction of liabilities in the form of debt). Nevertheless, the legislator has provided for the possibility of simplifying the basis for recovery of the amount paid by entering into the rights of the satisfied creditor. Thus, pursuant to § 1 Article 518 of the Civil Code,[1] a third party, who repays the creditor, acquires the repaid claim up to the amount of the payment made:

1) if it repays someone else's debt for which it is liable personally or against certain property. The situations in which these rules will apply are most common in business transactions. They usually occur in the case of sureties (personal liability) or mortgages or lien on the assets of a third party (material liability). A guarantor who repays someone else's debt is personally released to the creditor and also releases the main debtor from this debt. However, a debt conversion occurs for the principal debtor, because the guarantor acquires the original creditor's claim on the principal debtor up to the amount of the payment made. There is singular succession between the guarantor who pays the claim and the creditor. In the case of a material liability, the third party is liable to the creditor only with certain assets and on this basis has an interest in satisfying the creditor. After paying the creditor for someone else's debt, it acquires a claim up to the amount of the payment it has made. Thus, it releases itself from its material liability to the creditor, releases the debtor from the original debt and enters into the rights of the satisfied creditor under the original debt to the debtor,
2) if it has a right over which the repaid claim has a priority. In this case, the most common situation is that of a mortgage creditor registered under a mortgage entry subsequent to another mortgage creditor. The further mortgage creditor has an economic interest in acquiring the claim secured above and satisfying itself in the same way as the creditor with the higher mortgage entry would satisfy itself. For example, two mortgage creditors are identified in the course of enforcement of real property debt. The creditor with the first mortgage entry has priority over the creditor with the second mortgage entry. The creditor with the second mortgage entry is interested in taking over the enforced property debt in the circumstances described in Article 984 of

[1] Act of 23 April 1964 – Civil Code (consolidated text Journal of Laws 2020, item 1740), hereinafter: CC.

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the Civil Procedure Code[2] and in crediting its claim towards the purchase price. However, it cannot be done "cash-free" if there is a priority claim. By purchasing that debt, it eliminates the obstacle and can make economically advantageous declarations,

3) if it is acting with consent of the debtor in order to assume the rights of the creditor; the debtor's consent should be expressed in writing under pain of being declared null and void. There are situations where a third party can be a better creditor than the original creditor from the point of view of the debtor. In such a case, the debtor, under pain of nullity, consents for the third party to repay its creditor in order to assume the rights to the claim. Most often in such a case the debtor is already in agreement with the third party, e.g. as regards spreading the debt in instalments and agrees, in fact, to a change of the creditor. Sometimes the debtor is in conflict with the creditor and it is impossible to reach any settlement. In such cases, entering into the rights of the creditor by someone who is not emotionally involved is beneficial to the debtor wishing for a settlement. As mentioned above, it is necessary for the debtor to consent to the substitution of the satisfied creditor by a third party. Such consent should be given in writing under pain of nullity,
4) where specific provisions so provide. One of such special provisions is § 1 Article 828 CC[3], which regulates the situation of an insurer who pays compensation to an entitled beneficiary on the basis of an insured event. These provisions in a way reproduce the contents of Article 518 CC, which particularly regulates the effects of subrogation in atypical insurance regression.[4] In this case, unless otherwise agreed, the insurer becomes the creditor for the policyholder or the insured, up to the amount of the compensation paid, in case of an insured event. It is not creation of a new liability of the policyholder or the insured, but only a change of the creditor, from the party entitled on the basis of the insurance to the insurer. The insurer may be subject to the same claims as can be held against the entitled party, including a statute of limitations.

[2] Act of 17 November 1964 – Civil Procedure Code (consolidated text Journal of Laws 2020, item 1575 as amended), hereinafter: CPC.

[3] § 1. Unless otherwise agreed, on the date of payment of compensation by the insurer, the claim of the policyholder against the third party responsible for the damage is transferred by law to the insurer up to the amount of the compensation paid. If an undertaking has covered only part of the damage, the policyholder has priority for the remainder of its claim to be satisfied over the insurer's claim.

[4] B. Gnela, *Ubezpieczenia gospodarce. Wybrane zagadnienia prawne*, Warszawa 2011, p. 73.

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DISPOSAL OF A RIGHT INVOLVED IN A DISPUTE IN THE COURSE OF PROCEEDINGS

Pursuant to Article 192 point 3 CPC "once the suit is served […], disposal of items or rights involved in the dispute in the course of the proceedings shall not affect the subsequent course of the proceedings; however, the purchaser may assume the seller's place with consent of the other party". Undoubtedly, transfer of a claim covered by the statement of claim meets the conditions of this provision. The purchaser of the claim may enter the proceedings on the part of the seller with consent of the other party, in this case the defendant. In recent doctrine[5] and judicature there are recent views that in order for a purchaser of a claim to enter, it is necessary for both parties to the proceedings to agree, contrary to the literal wording of the provision. Thus, based on the thesis of the judgement of the Supreme Court of 24 May 2019[6]: "An exception to the principle of continuation of proceedings in the existing subjective system is admissibility of procedural succession as a consequence of substantive succession, in a situation where both parties to the proceedings agree to such a change. The indication in Article 192 point 3 CPC of the requirement for the opposing party to give consent to the seller for the purchaser to assume its place does not prejudge the exclusivity of its right. It follows from the essence of the procedural relationship that a party cannot be deprived of its previous status against its will (cf. judgement of the Supreme Court of 19 October 2005, V CK 708/04, not published), therefore, only consent of both parties to the proceedings will lead to an exit of the seller from the proceedings and entry into its place of the purchaser (relative procedural substitution). It is clear that the seller and the purchaser cannot act simultaneously as a party, therefore, in the event of a lack of consent only notification of an auxiliary intervention is permissible (Article 76 CPC)". While it is reasonable to make the subjective change dependent on the consent of the other party, which wishes for the pending case to be settled in court, I do not see such a necessity on the plaintiff's side. However, the Court of Appeal in Gdańsk also clearly indicated that "consent of both parties is necessary for the purchaser of goods or rights to assume the place of their seller in court proceedings".[7] If the defendant consents, the plaintiff is theoretically entitled to exit the proceedings, close the court case for itself so that the purchaser may enter. The

[5] O.M. Piaskowska, *Komentarz do art. 192*, [in:] M. Kuchnio, A. Majchrowska, K. Panfil, J. Parafianowicz, A. Partyk, A. Rutkowska, D. Rutkowski, A. Turczyn, O.M. Piaskowska, *Kodeks postępowania cywilnego. Postępowanie procesowe. Komentarz*, Warszawa 2020; M. Manowska, *Komentarz do art. 192*, [in:] A. Adamczuk, P. Pruś, M. Radwan, M. Sieńko, E. Stefańska, M. Manowska, *Kodeks postępowania cywilnego. Komentarz*, vol. 1, Warszawa 2020.

[6] I CSK 225/18, LEX no. 2675113.

[7] Judgement of the Court of Appeal in Gdańsk of 24 September 2015, I ACa 31/14, LEX no. 1917071.

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existing plaintiff is satisfied by the purchaser of the claim and *de facto* it no longer has any material basis or economic interest in pursuing the claim.

The situation may be different in the case of *cessio legis*. Often in such a case the creditor-plaintiff does not know about the willingness of a third party to pay them and may not want such a subject change. However, it is clear from Article 518 § 2 CC that if a claim is due, the creditor has no right to refuse payment by a third party. "If the claim is due, the creditor may not refuse to accept the benefit (Article 518 § 2 CC), but if the claim is not yet due, then the creditor may accept payment and then Article 518 § 1 point 1 CC also applies".[8] The same provision is also featured in Article 356 CC,[9] however, it also mentions a possibility of the debtor's lack of knowledge about the creditor having been satisfied. J. Jastrzębski approached the subject even more broadly in one of the theses of his gloss:

> Although Article 518 § 1 CC strictly defines the prerequisites for subrogation, it does not include the due date of the paid claim. It is also impossible to derive such a condition from Article 518 § 2 CC, which only concerns the creditor's obligations. However, Article 518 § 2 CC does not affect the creditor's right to accept a benefit from a third party – also in the conditions specified in Article 518 § 1 points 1–4 CC – also before the due date. The debtor's protection only requires that the subrogation that follows does not affect the due date of the claim – in particular that it does not accelerate its occurrence. Therefore, the ascendant will only be able to claim payment from the debtor on the date on which the performance could have been claimed by the original creditor at the earliest – regardless of when the subrogation took place. This is in line with the translative nature of the acquisition of receivables pursuant to Article 518 CC.[10]

Even against the knowledge and will of the creditor-plaintiff, a third party paying off the creditor acquires the debt covered by the claim and is therefore entitled to enter the proceedings as the plaintiff. A contract is not necessary for this. Such a transfer of claim may be proved with any event giving rise to a transfer of right.

> Transfer of the right referred to in Article 192 point 3 shall be understood as any cases of transfer of rights other than the transfer of assets (e.g. assignment of receivables – Article 509 ff. CC, entry of a third party into the right of the satisfied creditor – Article 518 CC, transfer of a right other than a claim – appropriate application of Articles 510 and 555 CC).[11]

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[8] I. Heropolitańska, *Wstąpienie w prawa wierzyciela (art. 518 k.c.)*, [in:] *Prawne zabezpieczenia zapłaty wierzytelności*, Warszawa 2018.

[9] Article 356 § 2 CC: Where a monetary debt is due, the creditor may not refuse to accept payment from a third party, even if it is acting without the debtor's knowledge.

[10] J. Jastrzębski, *Przelew wierzytelności w orzecznictwie Sądu Najwyższego*, „Glosa" 2006, no. 2, pp. 45–67.

[11] M. Manowska, *Komentarz do art. 192*.

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The same was stipulated by the Court of Appeal in Warsaw in the judgement of 10 April 2013[12]: "The provision of Article 192 point 3 CPC applies when a party invokes an event which, under substantive law, is capable of producing legal succession, i.e. transfer of a right or obligation which is the subject-matter of the proceedings onto another entity". As a side note, the last line of jurisprudence[13], pursuant to Article 192 point 3 CPC, also includes a transfer of an obligation, which cannot be directly deduced from the provision. However, the transfer of a right or object cannot be interpreted on the contrary as the transfer of an obligation.

Coming back to the question of maturity of outstanding debt, it would be difficult to imagine a situation in which proceedings are initiated prematurely against a debt that is not yet due. Of course, there are situations in which the legislator, in Article 190 CPC, provided for a possibility to sue for future periodic claims, but these are rare cases. Although proceedings for payment under a lease or tenancy agreement are common, the value of the dispute usually includes only due claims. Nevertheless, in such a situation, *cessio legis* may occur against the will of the creditor, if only the due part of the claim is paid. In the remaining part, the repaid creditor enjoys a priority right to satisfy its claim over a claim acquired by a third party. For example, the creditor sues the debtor for rent only for future monthly payments for one year. After a six-month trial, the creditor is repaid up to the amount of the claim due by a third party, whereas the non-due amount remains part of its assets. In such a case, the third party acquires the claim up to the amount of the payment made and is entitled to enter the proceedings in that scope on the plaintiff's part, while the partially paid off plaintiff is only left, in substantive law terms, with the claim for non-due rent, in this case for the period of six months. In this state of affairs, two scenarios are possible:

- on the plaintiff's side, two entities legitimized in substantive law terms may appear with substantive and procedural legitimacy (if the defendant consents, pursuant to Article 192 § 3 CPC, for the purchaser of the claim to enter the proceedings),
- the existing creditor remains on the plaintiff's side and the third party does not enter the proceedings due to a failure to fulfil the conditions of Article 192 § 3 CPC, and thus the third party is only legitimized in substantive law terms during the pending proceedings, without a possibility to sue the debtor.

[12] I ACa 1224/12, LEX no. 1428248.

[13] Judgement of the Supreme Court of 2 February 2012, II CSK 306/11, LEX no. 1170223. As M. Manowska (*Komentarz do art. 192*) writes: "The disposal of the liabilities concerned by the process should be understood primarily as an assumption of debt (Article 519 ff. CC). However, it also includes the transfer of obligations related to the disposal of a subjective right or thing (e.g. the buyer of real estate in relation to which certain activities are prohibited under the neighbourhood law)".

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In such a scenario, in turn, two solutions are possible, assuming no control by the court in accordance with Article 203 § 4 CPC.

First of all, the partially repaid creditor-plaintiff withdraws the suit in this respect and waives the claim, which produces a substantive effect of an inability of the purchaser of the claim to pursue the claim, while a judgement with a court decision on discontinuance of the proceedings in this respect will have extended validity for the purchaser of the claim.

Secondly, the partially repaid creditor-plaintiff does not withdraw the suit and does not waive the claim, which results in the fact that a reasonable court will award the plaintiff the full amount of the claim. As mentioned above, such a judgement will have extended validity for the purchaser of the claim, who, pursuant to Article 788 CPC, will be entitled to demand that the enforcement clause is issued for this judgement within the scope of the right to pursue the acquired claim.

At this point, a few words of explanation should be given as to why, despite the fact that the lawsuit has not been withdrawn as regards the amount paid for the defendant by a third party, the court should not dismiss the lawsuit against the defendant. Such a possibility exists only if the claim of the plaintiff is paid in order to release the defendant from the debt. The Supreme Court presents a uniform view on this issue, so in the decision of the Supreme Court of 15 March 1955[14], the thesis reads: "Where the defendant has satisfied the plaintiff in the course of proceedings and the plaintiff does not uphold the claim, judgement becomes unnecessary primarily if the defendant has made the payment with willingness to satisfy the claim pursued by the plaintiff. However, if the defendant has paid to avoid enforcement but continued to oppose the plaintiff's claim, a judgement has not yet become redundant as there is still a dispute between the parties as to the merit of the claim, on which the court should decide". Similarly is in the judgement of the Supreme Court of 22 December 2000[15], whose justification refers to circumstances in which not only the defendant but even the plaintiff does not wish to recognise the payment made to the plaintiff as fulfilment of the obligation: "A monetary payment in nominal value does not always constitute proper performance of the obligation (Article 354 CC). Although the creditor has no objection to valorisation of the payment or to treating it as partial payment, acceptance by the creditor of the nominal payment implies performance of the obligation only if it is made in circumstances which justify the view that the creditor knowingly assesses the effects of the act performed by the debtor, taking into account all factual and legal aspects". M. Kotowicz described the grounds for satisfying the plaintiff and the formal effects of this even more broadly:

[14] II CR 1449/54, LEX no. 118007.

[15] II CKN 358/00, LEX no. 52545.

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It seems, however, that the cause of the plaintiff's satisfaction should not affect the type and direction of the judgement that is made in such a situation. The court in each case, due to the contestation of the claim, must decide on the same thing – whether the claimant was entitled to the benefit that he received from the defendant.[16]

To summarise, the entry of a third party in the course of proceedings for payment as a result of repayment, even partial, of the creditor-plaintiff by that third party results in a transfer of the right, in the material sense, onto the third party pursuant to Article 518 CC, but may also result in a transfer of formal rights in the pending proceedings, if the conditions of Article 192 point 3 CPC are fulfilled.

EXTENDED VALIDITY OF JUDGEMENT

The lis pendens of a dispute over a right does not, in principle, preclude the disposal of that right. An event of major importance for a substantive right[17] causing "disposal of right" has its proper effects irrespective of the fact that the right has been the subject of court proceedings. A situation where the seller of an object or right which is the subject of a dispute remains on the plaintiff's side in proceedings which had been pending before the disposal is classed as an example of so-called relative procedural substitution (indirect procedural substitution or otherwise legal substitution). Thus, according to the decision of the Supreme Court of 27 May 2015[18] "Article 192 point 3 CPC contains a mixed-type standard, regulating so-called relative procedural substitution". The essence of that institution is that instead of the addressee of the substantive law rule to which the proceedings relate another entity acts as a party in the proceedings. In this case, the substituted entity's procedural legitimacy is not connected with its loss by the entity covered by the action of the substantive law rule quoted in the procedural claim.

According to the decision of the Supreme Court of 11 January 2013[19] "If proceedings concerning an object or a right disposed of after the dispute with the participation of the seller has been brought to an end, the final judgement will have the force of res judicata in relation to it, pursuant to Article 366 CPC, but also in relation to the purchaser of the object or the right (the entity covered by the action of the legal rule quoted in the procedural claim). The source of this extended va-

[16] M. Kotowicz, *Zaspokojenie żądania pozwu przez pozwanego w toku sprawy przy jednoczesnym kwestionowaniu zasadności powództwa. Glosa do wyroku s. apel. z dnia 6 czerwca 2017 r., V ACa 687/16*, „Przegląd Sądowy" 2020, no. 6, pp. 107–121.

[17] Article 192 point 3 CPC.

[18] Decision of the Supreme Court of 27 May 2015, II CSK 461/14, LEX no. 1764801.

[19] I CZ 184/12, LEX no. 1288613.

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lidity of the judgement issued in such a case is Article 788 CPC. As a result, if the plaintiff disposes of an object or a right, then the purchaser of the object or right cannot make the same demands and invoke the same factual basis against the person who acted as the defendant in the concluded proceedings involving the seller, and if the disposal of an object or a right takes place on the part of the defendant, the plaintiff from the concluded proceedings cannot make a claim against the purchaser of the object or right with the same demands and by invoking the same factual basis as previously. Within these subjective limits, res judicata applies to the final and binding judgement. The effect of legal succession and the extension of res judicata to the successor is that the successor is treated as if it was a party to the proceedings and there can only be one final judgement on a specific claim".

In the judicature it has been assumed that in the possessory action the "application of the consequences provided for in the aforementioned provision is excluded", which means that, "in the court's opinion, it is impossible both for the defendant to retain his legitimacy and the procedural outcome of the person to whom he transferred possession is out of the question, which is provided for *in fine* by the same provision",[20] which in my opinion is incorrect, and which is broadly expressed by K. Stefaniuk in his glossary to the resolution of the Supreme Court of 29 June 2016.

Thus, even if the purchaser of the right does not enter the proceedings, the consequences of a judgement issued with the participation of the plaintiff-seller against the defendant also cover the purchaser. The extended validity of the judgement, in this case, entitles the purchaser to perform further acts to the extent that the seller, as specified in the judgement, would do so. The most significant effect is a possibility of having an enforcement clause issued for the judgement, subject to a transfer of rights to the purchaser of the claim. However, in order to meet the requirements of Article 788 § 1 CPC, the purchaser of the claim must prove the transfer of the right with an official or private document with a notarized signature. The Court of Appeal in Kraków in the judgement of 17 January 2013[21] stipulated that "Res judicata of a judgement issued in the situation described in the provision in question covers, within its subjective boundaries, also the purchaser. An enforceability clause may be issued in favour of or against the purchaser even though the enforcement title does not lie with the purchaser, either against or in favour of the seller. However, the transfer of rights or obligations must be indicated by an official or private document bearing an officially certified signature (Article 788 § 1, see also Article 825 point 3 and Article 840 § 1 point 2)".

[20] K. Stefaniuk, *Przeniesienie przez pozwanego uzyskanego samowolnie posiadania na inną osobę w toku procesu posesoryjnego – skutki materialne i procesowe. Glosa do uchwały SN z dnia 29 czerwca 2016 r., III CZP 25/16*, „Przegląd Sądowy" 2018, no. 2, pp. 94–99.

[21] I ACa 1150/12, LEX no. 1362725.

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However, there are also situations in which the purchaser does not hold the documents listed in Article 788 CPC and thus is not able to enforce its claim in a mandatory manner. As a side note, the aforementioned Court of Appeal in Kraków in the judgement quoted above also indicates a necessity to prove "from scratch" the existence and amount of the claim purchased from the plaintiff in a situation where the defendant from the first proceedings brings a separate suit for payment against the purchaser of the claim from the same proceedings, and the purchaser wants to raise a set-off claim. In this state of affairs, the Court of Appeal held the position that the decision from the "original proceedings", which the purchaser of the claim did not participate in, is irrelevant for the burden of proof under Article 6 CPC as to the evidence of the existence of the purchased claim. "Nevertheless, this solution does not mean that in the circumstances in which the purchaser of a claim (Article 509 CC) pursued in a trial initiated earlier by the seller, undertakes to defend itself in other proceedings by requesting the purchased claim (Article 498 CC) to be set-off against the claim due to its creditor, the fact of earlier initiation of a dispute by the seller of the claim relieves the assignee from the obligation to prove the existence of the claim in the subsequent proceedings (Article 6 CC) and, first of all, relieves the assignor from taking a substantive stance on upholding the claim pursued in the first case. The solution adopted in Article 192 CPC does not create on the part of the seller, in favour of the purchaser, a preliminary character of the proceedings – within the limits expected by the appellant – but is a legal and procedural act creating possible privileges within the scope of enforcement-clause proceedings, and within the scope of debt-enforcement proceedings – for discontinuance of such proceedings, or for a counter-enforcement action. Therefore, if the purchaser of the claim (assignee) intends to raise a substantive set-off claim within the limits of its own rights, it is obliged to prove the claim in these proceedings in accordance with Article 6 CC".[22]

Following the methodology presented by the Court of Appeal above, it should be considered that the purchaser of a claim who cannot benefit from being issued an enforcement clause will have to bring further action against the debtor, previously sued for the same claim. Such a position cannot, for obvious reasons, be approved. The defendant is entitled to expect that the same claim will no longer be pursued in proceedings with its participation if the dispute has previously been settled by a legally binding court decision. In such a situation, the debt transferred to the purchaser in the course of the proceedings becomes natural, impossible to pursue in a mandatory manner.

[22] *Ibidem*.

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WAIVING THE CLAIM BY THE SELLER PAID OFF PURSUANT TO ARTICLE 518 § 1 CC

In ordinary proceedings for payment, where the defendant, after entering the dispute, fulfils its obligations directly towards the plaintiff, the latter no longer has an interest in bringing the matter for settlement before the court. Usually, the plaintiff withdraws the claim to the extent of the amount paid. In this case, three scenarios are possible:

1) the defendant does not consent to withdrawal of the suit and the plaintiff does not waive the claim, the proceedings continue, however, with an unfavourable effect for the plaintiff, as the court in its judgement will dismiss the claim in this respect and decide on the costs,
2) the defendant consents to withdrawal of the suit and the plaintiff does not waive the claim, the court in its judgement discontinues the proceedings with respect to the withdrawn claim and decides on the costs of the proceedings. The substantive existence of the claim remains unaffected,
3) the defendant does not consent to withdrawal of the suit and the plaintiff waives the claim, the court in its judgement discontinues the proceedings with respect to the waived claim and decides on the costs of the proceedings. In substantive law terms, the claim is remitted.

When translating this into *cessio legis*, we should stress the problem of waiving the claim by the plaintiff – the seller of the claim. No provision imposes on the seller, acting formally as the plaintiff in proceedings for payment, an obligation to have the purchaser's consent to waive the claim.

Since there is no express prohibition, in principle, the seller of an object or right in a dispute remains entitled to waive the claim with effect for the purchaser of such object or right. The aim of the regulation provided for in Article 192 point 3 CPC is to stabilise the proceeding by making it independent of any out-of-court disposition activities of the parties to the proceedings and eliminating the possibility of "torpedoing" the proceedings by disposing of the object which is the subject of the dispute.[23]

It should be noted that the plaintiff-seller in the proceedings invariably holds procedural legitimacy, but no longer has any material legitimacy in relation to the disposed of right. Material legitimacy lies with the purchaser of the right. If it does not enter the proceedings, even if it is not at fault, it will not have any real influence on the plaintiff's statements regarding the purchased claim. If the plaintiff-seler, after payment made by a third party pursuant to Article 518 § 1 CPC, withdraws the suit in this respect and waives the claim, the claim is remitted for the purchaser.

[23] O. Marcewicz, *Cofnięcie pozwu ze zrzeczeniem się roszczenia po zbyciu w toku sprawy rzeczy lub prawa objętych sporem*, „Przegląd Sądowy" 2019, no. 3, pp. 84–99.

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The seller's procedural statements aimed at discontinuance of proceedings have a substantive effect on the purchaser of the claim. So the Supreme Court in the decision of 24 February 2016[24], "Withdrawal of the suit, which is a manifestation of the appeal of procedural actions and the implementation of the principle of availability (disposability), is the plaintiff's action consisting in resigning from investigating in a given civil proceeding a demand for legal protection in the form specified in the lawsuit. Withdrawal of a suit with waiving the claim causes not only procedural effects, but also material and legal ones". It is worth recalling here an even broader interpretation of the Court of Appeal in Warsaw in the judgement of 11 December 2018[25]: "In terms of material and legal effects, the statement of waiving claims is similar to debt relief (Article 508 CC), thus resulting in the expiry of the obligation. If the declaration on waiving the claim is an element of the settlement, there is no doubt that the will of the parties is also covered by the conclusion of the debt waiver agreement". If the plaintiff, in proceedings for payment, withdraws the suit and waives the claim which it no longer has in substantive law terms, it acts in a manner detrimental to the purchaser of the claim by abusing its procedural rights.

It should also be pointed out that there is no uniform line of jurisprudence in the judiciary regarding the effects of waiving a claim in the process. The doctrine also notes this problem, and the most neutral position on this was taken by P. Telenga:

> Until the hearing begins (that is, until the case is called by the President – see Article 210), it is sufficient for the plaintiff to make a mere statement that it is withdrawing the claim. It can still withdraw the application afterwards, but only if it declares that it is waiving (renouncing) the claim or if the defendant agrees to withdraw the application. The prevailing view in the previous case-law was that a waiver covers a substantive claim (cf. *inter alia*, the justification of a resolution of a panel of seven judges of the Supreme Court – legal principle of 23 February 1970, III CZP 81/69, OSNC 1970, no. 7–8, item 119). At present, the position should be noted, according to which the waiver of a claim referred to in Article 203 § 1 concerns a waiver of a claim in the procedural sense, resulting in the impossibility of effective future substantive claims (judgement of the Supreme Court of 26 September 2012, II CSK 3/12, LEX no. 1224679). In science, the issue is disputed.[26]

On the other hand, O.M. Piaskowska presents an unambiguous position of only procedural effects, completely detached from debt relief[27], contrary to the arguments of M. Manowska, which I consider to be right and worth mentioning:

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[24] I CSK 81/15, LEX no. 2015120.

[25] VI ACa 673/17, LEX no. 2728642.

[26] P. Telenga, *Komentarz do art. 203*, [in:] *Kodeks postępowania cywilnego. Komentarz aktualizowany*, vol. 1: *Art. 1–729*, ed. A. Jakubecki, Gdańsk 2019.

[27] "Withdrawal of the suit combined with a waiver of the claim (Article 203 § 1 CPC) shall not have the effect of releasing the defendant debtor from debt (Article 508 CPC)" (O.M. Piaskowska, *Komentarz do art. 203*, [in:] M. Kuchnio, A. Majchrowska, K. Panfil, J. Parafianowicz, A. Partyk, A. Rutkowska, D. Rutkowski, A. Turczyn, O.M. Piaskowska, *op. cit*.).

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The fact that the waiver concerns a material claim is evidenced above all by the fact that the defendant is not required to give his consent to withdraw the suit in such a situation (cf. also the decision of the Supreme Court of 1 February 2017, III SO 6/16, LEX no. 2255418). The defendant is then certain that his next attempt to bring an action will end in its dismissal due to the expiry of the claim. Renunciation of the claim, as the Supreme Court rightly pointed out in the judgement of 3 February 2009, I PK 142/08, LEX no. 724988, is similar in effect to debt relief (Article 508 CC), but does not require the consent of the respondent (so does the Supreme Court in its decision of 20 January 2004, II CK 80/03, LEX no. 602410). If the legislator, in Article 203 § 1, had only regulated the issue of waiving a claim of procedural nature, any different requirements as to withdrawal of the claim without the consent and with the consent of the defendant would have been unnecessary. Withdrawal of a suit understood only as a procedural claim would not have any effect in the sphere of substantive law. This position has been challenged in the jurisprudence of the Supreme Court, where it has, however, been accepted that a waiver of a procedural claim under Article 203 § 1 means that it is impossible to effectively pursue a possible substantive and legal claim in the future. By waiving a procedural claim, the plaintiff resigns from examining its legitimacy in the same facts and against the same defendant. Therefore, if the same claim is brought again and against the same defendant, the suit shall be dismissed.[28]

Another scenario, not any better for the purchaser of the claim, is that the seller does not withdraw the suit and the purchaser of the claim does not enter the proceedings. It follows from the very structure of Article 518 CC that the purpose of direct payment to the creditor is to release the debtor from the debt held with the given creditor. Only as a consequence of this, in certain situations, a third party may assume the rights of the satisfied creditor. Thus, the consequence of payment to the plaintiff-creditor is only expiry of the defendant's liability and not expiry of the claim itself. In this case, it is only up to the court whether it considers this payment as fulfilment of the obligation covered by the dispute in order to satisfy the plaintiff or, as I indicated earlier, as an act not directed aimed at elimination of the subject of the dispute, but only at a change of the creditor. In the first case, the court, due to the non-withdraw of the suit after payment, will dismiss this part of the claim, and in the second case, the parties will continue to have an interest in reaching a final settlement of the dispute. If a judgement dismisses a suit which has been transferred onto a third party in the course of the proceedings, the third party, being aware of the extended validity of the judgement, will not be able to pursue its claim in court. Only if the court examines the merit of the claim covered by the suit, the third party who has acquired the claim will be able to access the possible, as previously demonstrated, benefits of Article 366 CPC.

It is important to stress that a statement of waiving a claim which has been transferred onto a third party in the course of proceedings is contrary to the principles of social coexistence and the purpose of that legal norm. As clearly emphasized by

[28] M. Manowska, *Komentarz do art. 203*, [in:] A. Adamczuk, P. Pruś, M. Radwan, M. Sieńko, E. Stefańska, M. Manowska, *op. cit*.

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O. Marcewicz,[29] a great role in these proceedings is played by the court which, in the course of examining the case pursuant to Article 203 § 4 CPC may recognize the act of waiving the claim as inadmissible. If the court does not examine this aspect, the injured – due to the waiving of the claim purchaser of the claim – will only be entitled to a claim for compensation. The statement of the plaintiff-seller should be examined in terms of the provisions of Article 5 CC, which, however, cannot in itself be the basis for the claim. The purchaser's claim should be based on general legal principles, i.e. Article 415 CC in conjunction with Article 5 CC, which contains provisions similar to those under Article 203 § 4 CPC. The judicature has repeatedly interpreted the content and possible applications of Article 5 CC, and so the Supreme Court in the judgement of 3 July 2015[30], stated that "A lack of general clauses could lead to decisions formally compliant with the law, but unjust in specific situations, as they would not take into account the universal values that make up the notion of not only formal, but also material justice in the examined cases. The general clause included in Article 5 CC, referring to the principles of social coexistence, i.e. rules of conduct that are separate from legal norms and that are closely related to moral and social norms, aims precisely at preventing application of the law in a manner that leads to immoral consequences or that deviates substantially from the purpose for which the law was established". In this case, however, it is up to the purchaser of the claim to prove that legal conduct of the plaintiff-seller in the original proceedings caused damage consisting in an inability to pursue the claim against the debtor. The amount of damage is determined by the value of the repaid claim under Article 518 § 1 CC, while the causal link is purely formal waiver of the claim by the entitled entity, which results in renunciation of the purchaser's claim or, at best, naturalisation of the claim.

The only point to be added here is that it is possible to attribute fault to the seller of the claim if the seller did not know about the purchaser and the transfer of rights at the time of waiving the claim. In case of contracts concluded between the plaintiff and a third party in accordance with Article 509 ff. CC, such a lack of knowledge should be explicitly excluded. The conduct of the plaintiff-seller, i.e. waiving of the claim against the debtor, will undoubtedly be culpable and the seller itself, as I have already pointed out, will be abusing its procedural rights.

This is not the case if the plaintiff is paid off by a third party without knowing that the payment was made in order to assume its rights. It is only after it becomes aware that the repayment had released the debtor from its debt only towards the seller, but it did not waive the debt itself, as it has been transferred onto the third party making the payment, that the seller would be acting in bad faith by waiving the claim.

[29] O. Marcewicz, *op. cit.*, p. 92.
[30] IV CSK 595/14, LEX no. 1917369.

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CONCLUSIONS

The institution of repayment of a creditor's claim by a third party in order to take the place of the satisfied creditor undoubtedly leads to substitution of the entitled party. If the repayment took place after the original creditor has instituted an action for payment of the debt, the third party, under Article 518 CC, is entitled, pursuant to Article 192 para. 3 CPC, to join the ongoing court proceeding. Of course, this right is subject to obtaining consent of at least the other party or, as indicated in some judicature, consent of both parties to the proceedings.

The original creditor-plaintiff, not always knowing the purpose of the repayment received, may submit a statement in the proceedings on withdrawal of the claim with renunciation of the claim. This statement will also have material and legal consequences for the purchaser. No provision prevents the seller of debt from submitting a statement of renunciation of claim, nor is any consent required for that purpose. Only the court is competent to examine that statement pursuant to Article 203 § 4 CPC or Article 5 CC. In accordance with Article 366 CPC, the decision issued in the proceedings for payment will also be valid with respect to the purchaser of the claim.

Depending on the fault of the seller of the claim – their awareness of the transfer of rights to the purchaser, their renunciation of the claim may cause damage to the purchaser. The essence of the damage is the inability of the purchaser to pursue the claim in court against the previously sued debtor.

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ABSTRAKT

Artykuł ma charakter naukowo-badawczy. Autorka oparła swoje wnioski o literaturę i orzecznictwo w zakresie cesji wierzytelności oraz cofnięcia powództwa wraz ze zrzeczeniem się roszczenia. Przedstawiono hipotetyczną sytuację, w której powód w procesie o zapłatę ceduje na osobę trzecią roszczenie objęte pozwem po wdaniu się w spór. Nabywca wierzytelności jest uprawniony do wstąpienia do procesu na podstawie art. 192 pkt 3 Kodeksu postępowania cywilnego za zgodą strony przeciwnej (pozwanego). W praktyce judykatura rozszerza interpretację tego przepisu o zgodę obu stron procesu. Problem pojawia się w sytuacji, w której powód nie wyrazi zgody na wstąpienie w jego miejsce nabywcy wierzytelności. Ten ostatni może zostać przez to pozbawiony drogi sądowej nie ze swojej winy. Dodatkowo dotychczasowy powód nie ma już interesu w tym, aby dalej toczyć proces i może cofnąć powództwo wraz ze zrzeczeniem się roszczenia. Skutkiem zrzeczenia się roszczenia będzie niejako zwolnienie z długu pozwanego, a tym samym znaturalizowanie nabytej przez osobę trzecią wierzytelności. Przedstawione powyżej działanie powoda, zbywcy wierzytelności w procesie,

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wywoła szkodę po stronie nabywcy wierzytelności do wysokości cofniętego powództwa wraz ze zrzeczeniem się roszczenia. Artykuł wskazuje na możliwość szerszego spojrzenia na zmiany podmiotowe w procesie oraz skutki materialnoprawne posunięć formalnych strony.

Słowa kluczowe: cesja wierzytelności; cofnięcie pozwu; powód; osoba trzecia

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