

DISPUTE RESOLUTION

APPEALS
IN THE ENFORCEMENT PROCEEDINGS

Dispute resolution

Regulations important for practice

In the course of the enforcement proceedings, while creditors enforce their claims, both creditors and debtors may make use of legal instruments in order to defend their position. Here, we will outline three of them, the knowledge of which is essential for any creditor or debtor for the purpose of the enforcement proceedings in Poland:

- complaints against enforcement clauses,
- counter-execution court actions,
- complaints against debt collectors' actions/omissions.

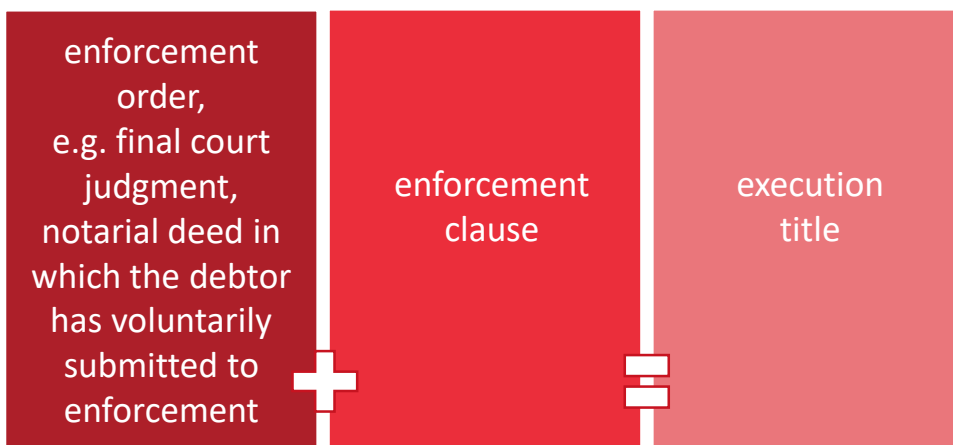
CHALLENGING ENFORCEMENT CLAUSES

Introduction

As a general rule, a creditor can initiate enforcement proceedings only once they have obtained **an execution title**. This means that, for instance, after the court proceedings have been concluded and a judgment obtained, or after another document allowing enforcement has been obtained such as deed in which the debtor has voluntarily submitted to enforcement, but before its actual execution, it is necessary to carry out an intermediate procedure: **the enforcement clause proceedings**. The purpose of these proceedings is for the court to grant an enforceability clause, thereby creating **an execution title**.

Important!

In the vast majority of cases, an execution title is an enforceable order with an enforcement clause. A final judgment, a notarial deed in which the debtor has voluntarily submitted to enforcement, or a settlement concluded before a court are the examples of enforcement orders.



Introduction (cont.)

The court's decision on the granting of an enforceability clause (both the decision to grant the clause and the refusal to do so) may be **appealed against**. The creditor and the debtor have a right of appeal.

Nature of the proceedings

The enforcement clause procedure is simplified and formalised. An appeal against the enforcement clause focuses primarily on formal defects in the granting of the enforcement clause. In principle, the court does not assess whether the awarded claim exists, above all the court does not question the findings and legal assessment made by the courts resolving the merits of the dispute. However, as a result of the amended regulations, the court may refuse to grant an enforcement clause if it follows from the circumstances of the case and the content of the enforcement order that the claim covered by the enforcement order is time-barred, or even if, in light of the circumstances of the case, it is obvious that the motion for the enforcement clause is unlawful or aims at circumventing the law.

Examples of grounds for appeal against the enforcement clause

- erroneous assessment that the judgment is final (and therefore constitutes the basis for the granting of the clause),
- the enforcement order has ceased to be enforceable (e.g. the time limit by which the creditor could have requested the enforcement of the notarial deed has expired).

Deadline

A complaint against an enforcement clause might be submitted within one week.

For the debtor, the time limit runs:

- from the date of service of the enforcement notification,
- if the debtor moves for a written justification – from the date of the service of the statement of reasons.

For the creditor, the time limit runs:

- from the date they are served with the decision or online-made notifications in this respect,
- from the date of publication of the refusal decision, where there has been no publication, from the decision service date.

Important!

If a complaint against an enforcement clause is submitted, the court, at the request of the debtor, may suspend the enforcement proceedings until the complaint is heard, which may lead to a prolongation of the enforcement proceedings.

What if the debtor's complaint is granted?

If the debtor's complaint is granted, the court will revoke the enforcement clause and the enforcement proceedings will be discontinued, providing that they have already been commenced at that time. Under certain circumstances, the court might set aside the appealed decision and remand the case.

COUNTER-EXECUTION COURT ACTIONS

Introduction

Once the court has issued the execution title, the debtor has the right to bring counter-execution court actions aiming at setting aside the enforcement title in full or in part, or limiting the enforcement.

Nature of the proceedings

In the counter-execution court actions, as a rule, it is not so much the validity of the obligation stated in the enforceable title that is assessed, but the court examines the enforceability of the enforceable title itself.

Important!

In the counter-execution court actions the court does not re-examine the merits of the already concluded court case.

Grounds for bringing counter-execution court actions

The debtor may bring a counter-execution court actions if:

- the debtor denies the events on which the issue of the enforcement clause was based, in particular where they contest their obligation under a non-court enforcement order or where they contest the transfer of an obligation despite the existence of a formal document recording that transfer,

or

- after the enforcement order has been issued, an event has occurred as a result of which the obligation has expired or cannot be enforced; where the title is a court judgment, the debtor may also base the claim on events occurring after the hearing was closed, on a fulfilment of the obligation if making such statement in the court case was not allowed, and on a made set-off.

Examples of situations that may give rise to a cause of an action:

- the fact that the obligation has subsequently ceased to exist, for example by setting it off,
- when enforcement is based on a notarial deed, the debtor may raise any objections contesting the existence of the claim covered by the notarial deed, including the claimed amount.



Time limit for bringing an action

- A counter-execution court action can only be brought by the debtor after the court has issued an execution order.
- It is irrelevant whether the enforcement has already been initiated. Also, it does not matter whether the execution title is final.
- It is possible that after the execution title is issued, both the clause is appealed against and the counter-execution court action is brought at the same time. If an appeal against the enforcement clause is granted by a final and binding decision, then the counter-execution court action will be dismissed.

Important!

A counter-execution court action cannot be brought after the claim has already been fully enforced. If only part of the claim has been enforced, the counter-execution court action will only be admissible as to the unenforced part. This does not, however, prevent the debtor from pursuing their rights in separate proceedings, e.g. under unjust enrichment claim or under damages claim.

Granting the counter-execution court action

As a consequence of the granting the counter-execution court action, the execution may not be enforced in whole or in part. Further enforcement on the basis of such an execution title is impossible and the enforcement is discontinued. In the event that the limitation of the request, the court in its ruling shall indicate what the limitation consists in.

COMPLAINTS AGAINST DEBT COLLECTORS' ACTIONS/OMISSIONS

Introduction

In the course of enforcement proceedings, a party or other person whose rights have been violated or threatened by an action or omission of a debt collector, may make a complaint against the debt collectors actions/omissions. A complaint against the debt collector's actions/omissions is a legal remedy to verify the actions/omissions of a judicial officer in terms of their compliance with the procedural rules.

Subject of the complaint

- The complaint against the debt collector's actions may concern the formal decisions (e.g. on the determination of the enforcement costs) or actual enforcement actions (e.g. attachment of a bank account).
- An action for failure to act is available if the debt collector – despite of their duty – fails to take the relevant action, and the action is important from the point of view of the rights of the parties to the proceedings or third parties (e.g. failure to issue decision on discontinuation of the proceedings ex officio). In such a case, the complaint should also present the demand for the debt collector to perform the respective action.

Subject of the complaint

- The complaint against the debt collector's actions may concern the formal decisions (e.g. on the determination of the enforcement costs) or actual enforcement actions (e.g. attachment of a bank account).
- An action for failure to act is available if the debt collector – despite of their duty – fails to take the relevant action, and the action is important from the point of view of the rights of the parties to the proceedings or third parties (e.g. failure to issue decision on discontinuation of the proceedings). In such a case, the complaint should also present the demand for the debt collector to perform the respective action.

Time limits for filing a complaint

- The complaint shall be lodged within one week from the date of the debt collector's action if the person whose right has been violated or threatened by the action was present at the action or was notified of its date.
- In other cases, within one week from the date of notification of the action to the party or person whose right has been violated or threatened by action, or, in the absence of the notification, from the date on which the applicant became aware of the action.
- A complaint against an omission shall be lodged within one week of the day on which the complainant learnt that the act in question was to be carried out.

Important!

Together with the filing of a complaint, the debtor may simultaneously request a suspension of the enforcement proceedings, which may lead to a prolongation of the enforcement proceedings.

Self-correction

The complaint shall be lodged to the debt collector whose action/omission the complaint concerns. The debt collector shall then prepare the explanation of their decisions and forward the complaint with the reasons to the competent district court. The debt collector may yet agree with the complaint in its entirety, in which case they will not refer it to the court and will decide in accordance with the requests made in the complaint.

Effects of upholding a complaint

As a result of proceedings initiated as a result of a complaint, the court may uphold the complaint in whole or in part to the extent that it was justified – e.g. repeal the defective action of the debt collector. For example: if the debtor has challenged an attachment, the debt collector may rescind the attachment made; if the debtor has challenged the enforcement costs, the debt collector may reduce them to the level requested by the applicant.

Important!

An appeal against a court order can only be made in the cases indicated in the law, so not every court decision made as a result of a complaint against debt collector's action/omission will be subject to an appeal.

Contact



Lidia Węclawowicz
ATTORNEY-AT-LAW, PARTNER

lidia.weclawowicz@ngllegal.com



Przemysław Tacij
ADVOCATE, COUNSEL

przemyslaw.tacij@ngllegal.com



Stanisław Wocial
ATTORNEY-AT-LAW TRAINEE, JUNIOR ASSOCIATE

stanislaw.wocial@ngllegal.com

