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Abstract:

The subject matter of the article is the right of an insolvency receiver to rescind a mutual contract pursuant to Article 98 and Article 99 of the Polish Insolvency Law. In particular, it deals with the consequences for the interpretation of these articles of amendments introduced as of 1 January 2016. Article 98 of the Polish Insolvency Law provides that if, on the day of the declaration of insolvency, obligations arising from a mutual contract have not been performed in full or in part, the insolvency receiver may, with the consent of the judge-commissioner, perform an obligation of the insolvent debtor and either demand from the other party its mutual performance or rescind the contract with the effect as of the day of the declaration of insolvency. The author of the article argues, inter alia, that this right of rescission only affects such part of the obligations of the parties that remains unperformed as of the day of the declaration of insolvency, taking into account the advancement in performance of an obligation by that party to the contract, which, as of that day, was more advanced in doing so. In particular, it means that if the insolvency receiver decides not to rescind the contract, at most such part of the obligation of the insolvent debtor is to be satisfied as a debt of insolvency assets and not as a debt of the insolvent debtor that is equivalent to the part of the obligation of the other party to be performed after the declaration of the insolvency. The remaining part is to be satisfied by splitting the proceeds of the liquidation of insolvency assets, i.e. in a manner typical for the satisfaction of the debts of the insolvent debtor. The article covers, in particular, the analysis of various situations that may arise in this respect, including where, as of the day of the declaration of insolvency, both parties’ advancement in the performance of their respective obligations is equal, and where one of the parties (either the insolvent debtor or the counterparty) is more advanced in doing so.