

Author: Edyta Gapska

Title: Specyfika i odrębność procesu posesoryjnego a przedmiotowa kumulacja roszczeń / Specificity and separation of the proceedings for the protection of possession and the objective joinder of claims

Source: Kwartalnik Prawa Prywatnego ("Quarterly of Private Law")

Year: 2022, vol. XXXI, number 1, pages: 67-103

Keywords: possession, protection of possession, proceedings for protection of possession

Discipline: Private Law

Language: Polish

Document Type: Article

Publication order reference: John Paul II Catholic University of Lublin [egapska@kul.pl]

Abstract:

The objective joinder of claims in the proceedings for protection of possession, as separate proceedings, is in principle excluded by virtue of Art. 191 and Art. 478 of the Code of Civil Procedure. Such a procedure emphasizes the importance that the legislator attaches to the status of the possessor and his economic interests. Thanks to the limited scope of the court jurisdiction, and thus the reduced object and purpose of the claims pursued in the proceedings for the protection of possession, leading to the elimination of their accumulation, the possessor can obtain protection in a quick manner and in advance of the possible protection of the rights of the infringer.

The above mentioned goal of the possession proceedings can be achieved by the prohibition of joinder of claims for the protection of possession with other claims (Article 191 of the Code of Civil Procedure). This provision cannot be interpreted broadly with extending its content, what could give rise to a conclusion that any accumulation of claims in this proceeding is excluded and one is allowed to disclose only one claim. The condition for the admissibility of joining claims in the process for the protection of possession is, however, that all of them can be examined in this separate proceeding, what is determined by their object and purpose, decoding of which requires consideration of substantive law. According to the law, the abovementioned proceedings are to be aimed solely at guaranteeing the possessor further exercise of possession over the thing, which, on the basis of procedural regulations, requires the limitation of the court's jurisdiction to examining only those issues which constitute the fulfilment of the hypothesis of Art. 344 § 1 of the Civil Code. Thus, if the same plaintiff files against the same defendant more than one claim aimed at protecting the possession of the same or even different things, such cumulation should be considered admissible.

Nevertheless, the normative separation of proceedings for the protection of possession is the subject of a discussion. According to its opponents, the abolition of separate court proceedings, along with maintaining the current substantive law regulations, would allow for similar limitation of the scope of the recognition of claims for protection of possession.

The postulates to abolish separate possession proceedings remains questionable. In such a case the reduction of the scope of examination of the case and the achievement of the goal of quickly granting protection to the infringed possession would depend on a decision of the claimant, who should refrain from disclosing other claims. The fulfillment of the above objective would also be conditional on the defendant not taking steps in the proceedings which could complicate the process for example filing a counterclaim.

The paper aims at balancing all the above mentioned arguments and evaluating the legal necessity of possession proceedings.