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Summary of the PhD dissertation  
„Actio pauliana in bankruptcy proceedings”

Actio pauliana protects creditors in the event of the debtor's insolvency. If, as a result of a legal act performed by a debtor to the detriment of creditors, a third party gains a financial benefit, each of the creditors may demand that the said act be declared ineffective with respect to him, if the debtor acted knowingly to the creditor's detriment, and the third party knew or, having used due care, could have learned of it (Article 527 § 1 Civil Code). A creditor in respect of whom a debtor's legal act has been declared ineffective may, with priority over third party creditors, claim satisfaction from property items which, as a result of the act being declared ineffective, left or did not enter the debtor's estate (Article 532 Civil Code).

Protection of creditors against dishonest actions by debtor is of the essence when debtor is threatened with bankruptcy. Shortly before declaration of bankruptcy debtor may take attempt to avoid debt by transferring assets to a third person. Ineffectiveness of legal act enables contribution to bankrupt's assets anything that has been transferred out of, or has not been contributed to the bankrupt's assets in consequence of the such act. Due to this solution the actio pauliana is one of key factors of implementation of the guiding principle of bankruptcy proceeding, namely enabling the claims of the creditors to be satisfied to the greatest extend (Article 2 (2) The Bankruptcy Law).

Issues related to the actio pauliana in the bankruptcy proceeding have been discussed in a manner which enables to present that institution in the bankruptcy proceeding with an emphasis on the differences between the actio pauliana in the bankruptcy proceeding and the actio pauliana based on Civil Code provisions.

The dissertation covers the characteristics of bankruptcy and bankruptcy proceedings (Chapter I) and the presentation of the institution of the actio pauliana at individual stages of the bankruptcy proceedings (Chapter II). As regards to the relation between the bankruptcy



proceedings and the restructuring proceedings, a reference is made to the impact of that relation to the issue of ineffectiveness of legal acts in the former proceedings (Chapter III).

The entitlement to brought court action or to defend against the third party who gained a financial benefit from the act is example of ineffectiveness bankrupt's legal acts. Nevertheless the ineffectiveness of legal acts in the bankruptcy law concerns three situations.

Firstly, the case when the ineffectiveness occurs by virtue of law (Article 127 The Bankruptcy Law, Article 128a The Bankruptcy Law). Secondly, the ineffectiveness of a legal act may result from a decision of a judge-commissioner (Article 128 The Bankruptcy Law, Article 129 The Bankruptcy Law, Article 130 The Bankruptcy Law, Article 130a The Bankruptcy Law). Thirdly, a legal act may be considered ineffective under a constitutive court judgment (Article 527 § 1 Civil Code in connection with Article 131 The Bankruptcy Law). Ineffectiveness of legal act is consequence of upholding the action based on *actio pauliana*. In order for legal act to be considered ineffective, it is necessary to demonstrate not only objective but also subjective premises. There is no such need in relation to the ineffectiveness of the act by virtue of law or by virtue of a judge-commissioner's ruling. The exceptions are situations in which a third party may, by bringing or defending an action, request that acts be considered effective, provided that at the time of performing them the recipient did not know that there were grounds for declaring bankruptcy (Article 127 (3) The Bankruptcy Law).

Issues related to the ineffectiveness of legal act, resulted from virtue of law or by virtue of a judge-commissioner's ruling, constitute the background for the presentation of the ineffectiveness of a legal act under a constitutive court judgment. It is necessary to characterize both the ineffectiveness of legal acts in the bankruptcy law and situations in which it is permissible to refer to the provisions of the Civil Code on the protection of the creditor in the event of the debtor's insolvency. The provisions of the Civil Code on the *actio pauliana* are respectively applied in the bankruptcy proceedings. In the case of the *actio pauliana* brought during the bankruptcy proceedings, the provisions of the bankruptcy law will also apply. Therefore, it is necessary to define the relation between two legal acts and its impact on specific aspects of the application of the *actio pauliana* (Chapter IV).

The dissertation discuss comparative issues. Namely, institutions related to questioning of bankrupt's legal acts in the legal systems of the Member States of the European Union. In addition, it is worth paying attention to questioning of bankrupt's legal acts in soft law (Chapter V).

There are differences between the actio pauliana in bankruptcy proceedings and the actio pauliana based on Civil Code provisions. These differences concern the determination of national jurisdiction and applicable law (Chapter VI), the court competent to hear the case (Chapter VII); legal structure of claim (Chapter XI) and the consequences of upholding the action (Chapter XII). It was required to consider the entitlement to brought court action and capacity to be sued (Chapters VIII and IX) likewise the position of individuals protected by the actio pauliana, i.e. creditors (Chapter X). Eventually, the issue of costs of the proceedings was discussed (Chapter XIII).

The dissertation would not be complete without discussing the second method of questioning of bankrupt's legal acts, namely defense against the third party who gained a financial benefit from the act (Chapter XIV). In addition, it is necessary to determine the institution of the actio pauliana in bankruptcy proceedings against natural persons other than sole traders (Chapter XV).

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