DISPUTE RESOLUTION

Enforcement
(forced performance)
of non-monetary claims

Enforcement of non-monetary claims

This time **NGL Legal's Dispute Resolution Team** outlines how to **enforce** (i.e. force the performance) **court-awarded demands** where the judgment decides on performance other than the payment. In case of demands other than a claim for payment, the actions to be undertaken will depend on the type of the demand subject to compulsory enforcement.

Such a non-monetary demand subject to enforcement may include:

- a demand to surrender of movable property, e.g. a demand to surrender a purchased car or a demand to surrender a machine temporarily handed over to a supplier for the purpose of carrying out a task commissioned to them,
- a demand to surrender of immovable property (including the so-called eviction),
- a demand to perform a substitutable act, e.g. a demand for the performance of repair works ordered by the court, which any professional in the sector could carry out,
- a demand to perform a non-substitutable act, e.g. a demand to carry out work requiring such a high degree of specialisation that, in practice, only our opponent in the dispute could carry them out (e.g. thanks to their skills or unique machinery they possess),
  as well as a demand for an apology for an infringement of personal rights,
- a demand for a declaration of will, e.g. a demand to conclude a final contract for the property sale in accordance with a previously concluded preliminary contract – the fulfilment of such a demand does not take place within the framework of enforcement proceedings; a final and binding court judgement is usually sufficient in itself.

Below, we set out the key information on the methods by which such non-monetary demands may be satisfied.

If you have any questions, please do not hesitate to contact us.

Enforcement (forced performance) of non-monetary claims

the surrender
of movable property

surrender
of immovable property
(including the so-called eviction)

substitute
declaration of will

actions
substitutable

actions
non-substitutable
(including a statement on infringement of personal rights)

Enforcement of non-monetary obligations – surrender of movable property

The movable property in the debtor's possession

If **the court orders in its judgment** that the opposing party is to surrender a movable property (a movable thing, e.g. a car, machinery) to the creditor, **the court bailiff** in whose district the property is situated, **will collect** it from the debtor and **hand it over** to the creditor.

Movable property

- The item to be handed over must be precisely identified.
- Under this procedure, also **documents are** recovered.
- Under the animal protection laws, an animal is not a thing; however, it is assumed that the provisions on the collection of movable property apply by analogy to an animal.

Disclosure of information

If the court bailiff were unable to find a movable property at the debtor's premises that in accordance the judgment was to be collected, **the court** will, upon application, order the debtor to **disclose where it is located**, and to give **an oath** that their statements are true.

Enforcement of non-monetary obligations – surrender of immovable property

(including so-called eviction)

Surrender

If our opponent is required to surrender the immovable property, i.e. to hand it over to us or to vacate the premises, **the court bailiff** in whose jurisdiction the property is situated:

- **will summon** the debtor to **voluntarily** fulfil this obligation (evict, surrender, vacate or restore the possession) within a time limit set in accordance with the circumstances of the case; upon the expiry of this time limit without result:
- **will take the necessary steps to put the creditor in possession**.

An example of such situations might be the return of a property at the end of a tenancy or lease agreement.

Residential premises

When carrying out the obligation to vacate premises used for residential purposes, the court bailiff must relocate the debtor to other premises or accommodation to which the debtor has a legal title and in which they may reside. If the debtor has no legal title to another property or premises where they can reside, the court bailiff will suspend the proceedings until the local authority, at the bailiff's request, provides the debtor with temporary accommodation.

There are, however, exceptions to this requirement. These include, amongst others, the following cases:

- the court bailiff may not suspend proceedings if the creditor, the debtor or a third party designates premises meeting the requirements of temporary accommodation,
- the court bailiff will not suspend the eviction if the enforcement order provides for the debtor's entitlement to enter into a social housing tenancy agreement or the right to alternative accommodation.

Compulsory enforcement of non-monetary obligations – declaration of will

Substitute declaration of will

If the debtor is obliged to make a specific declaration of will, a final court judgment ordering the debtor to make such a declaration will substitute the debtor's declaration.

A final court order replaces the debtor's declaration of will, irrespective of the form required by law for such a declaration (such as a notarial deed).

Examples:

- the conclusion of the final contract in accordance with the preliminary agreement,
- the release by the mortgagee of the mortgage charge on the sold part of the property.

The enforcement of such a claim does not take place within the framework of enforcement proceedings; a final and binding court judgement is usually sufficient in itself.

Enforcement of non-monetary obligations – substitutable acts

For example: carrying out construction works, providing services, restoring the property to its previous condition, which may be carried out by persons other than the opposing party.

The court **summons** the debtor to carry out the actions within the specified time limit.

The court **grants** the creditor **authorisation** to carry out the necessary actions at the debtor's expense.

The court may, upon application, set a maximum amount for the costs.

Only once the action has been carried out **the court grants** the creditor the costs from the debtor; they must be reasonable and documented.

A final order awarding the costs is enforceable without the need to have a declaration of its enforceability.

Enforcement of non-monetary obligations – non-substitutable acts

applies to such acts which no one other than the debtor may perform;
the enforcement of an order to desist from specific actions takes place on the same principles

The court,
in whose jurisdiction
the act is to be performed, will specify:
the time limit for performance
and o threaten to impose **a fine** or
an order to pay **a sum of money**

If the obligation is not performed:

The court:
imposes
a fine or **a sum of money**
and sets a new date
with the threat
of a heavier **fine**
or
an order to pay
a sum of money

the fine

in a single order – not exceeding PLN 15,000, unless the imposition of a fine on two occasions has proved ineffective

when imposing a fine, the court will rule – in the event of non-payment – that the fine be converted into a term of imprisonment, with each day of imprisonment for every PLN 50 to 1,500 of the fine; the total period of imprisonment may not exceed 6 months

the total amount may not exceed PLN 1 million

the sum of money

at the creditor's request, for the creditor

The court will take into account the interests of the parties to the extent necessary to ensure the enforceability of the obligation specified in the judgment, and will not impose on the debtor beyond what is necessary

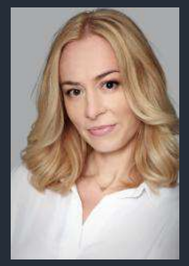
Enforcement of non-monetary obligations – non-substitutable acts (cont.)

Statements in the event of an infringement of personal rights, e.g. an apology.

A statement resulting from infringement of personal rights

If, in cases concerning the infringement of personal rights, the debtor fails to submit a statement of the appropriate content and in the appropriate form, despite being given a deadline for its submission and being threatened with a fine, the court will impose a fine of up to PLN 15,000 on the debtor and order the publication in the ‘Monitor Sądowy i Gospodarczy’ (Court and Economic Gazette), at the debtor’s expense, of a notice corresponding to the content of the required statement and in the appropriate form. The publication of the notice in the ‘Monitor Sądowy i Gospodarczy’ results in the claim fullfilment.

Contact



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