

"Legal nature of the list of claims in bankruptcy proceedings"

Summary

1. The main task of this dissertation is to answer the question what is the legal nature of the list of claims. In connection with the discussed issue, the following questions arise: what is the legal nature of the actions of the proceedings authorities (the trustee and the judge-commissioner) resulting in the creation of a list of claims; what is the legal nature of the list of claims at particular stages of its formation, i.e. during the creation by the trustee, upon the delivery of the list to the judge-commissioner, from the date of the announcement on the list and the delivery to the judge-commissioner and upon its approval by the judge-commissioner; whether the list of claims possesses attributes of a court ruling and whether the list is a substitute for such ruling; and if so, at what point the list takes on the characteristics of the ruling – whether already at the stage of the trustee's action or only as a result of the activities of the judge-commissioner.

In order to determine whether the list of claims is even similar to a court ruling, it was necessary to examine, firstly, whether it takes the form of a ruling, and secondly, whether the content of the list is tantamount to the content of a ruling. If the answer to the above questions is yes, one needs to indicate at which point the list takes on the characteristics of the decision and who is the body issuing the decision. In relation to the scope of the trustee and the judge-commissioner, the question arose whether the actions of the judge-commissioner on the list of claims constitute a form of issuing a ruling regarding placing a given claim on the list or verifying a previously taken sovereign decision or ruling by a trustee, regarding a given claim.

The considerations aimed at answering the above questions were carried out in two stages. First of all, it was necessary to make general arrangements regarding the nature of activities resulting in the creation of a list of claims. We are talking both about technical and substantive activities. Secondly, a detailed analysis of the legal nature of the list at particular stages of its creation was carried out.

2. Considerations regarding the legal nature of the list of claims could not be carried out without a detailed discussion of the process of creating this list. In the course of the work the subject of the analysis were: the legal nature of the claim submission (filing), the procedure for examination of the claim, the legal nature of the objection against the list of claims, the nature of the opposition proceedings, as well as legal effects exerted by the prepared and approved list of claims – both as part of bankruptcy proceedings as well as those beyond the framework of this procedure.

3. As a part of the conducted considerations, an in-depth analysis of the conceptual network operating under the Bankruptcy Act was made. Considerations regarding the legal nature of the list of claims were preceded by an analysis of the meaning of the term "list of claims in bankruptcy proceedings" as well as related terms in the field of contract law. In order to discuss the meaning of the concept of a list of claims, it was necessary to discuss in advance the meaning and scope of the terms "claim" and "creditor" as well as "debt" and "debtor". These terms form the subjective and objective designation of the list of claims. It was also necessary to discuss the following terms: "obligation", "benefit", "claim", "receivable". Bankruptcy law operates on all these meanings.

4. One cannot also ignore the fact that in recent years the Bankruptcy Act has been the subject of very important legislative changes. The analysis of the causes, scope and nature of these changes in the scope related to the subject of work was also the subject of considerations included in the discussed work.

5. The basic research method used during the dissertation was the dogmatic method, including the analysis of applicable provisions of substantive law and procedural law, relevant Polish literature and case law. The choice of the dogmatic method is a derivative of the fact that the work is essentially theoretical.

The comparative law method, including the analysis of current solutions regarding the creation of a list of claims in force in Germany and Austria, as well as historical analysis, including the evolution of development models for the list of claims in Poland, as well as in Germany and the Austro-Hungarian Empire, has also been applied.

6. The dissertation consists of an introduction and five chapters. Chapter 1 is devoted to the analysis of the concept of claim in the doctrine of civil law; relations between the terms "liability", "claim", "benefit" and "debt" under civil law; the concept of "receivable" under the Bankruptcy Act; and finally, the analysis of the concepts of "bankruptcy claim" and "bankruptcy estate claim".

The considerations in Chapter 2 are a necessary complement to the considerations covered by the preceding chapter. These include a discussion of the characteristics of the concept of "creditor" in civil law; analysis of the concepts of "creditor" and "bankruptcy creditor" under bankruptcy law, as well as discussing the procedural status of a bankruptcy creditor.

In Chapter 3, the following are discussed in detail: the process of establishing a list of claims, including the legal nature of filing claims and the nature and type of proceedings for the consideration of a claim. This chapter also discusses other methods of claim enforcement in the

course of bankruptcy proceedings, such as an action against a trustee regarding payment of a bankruptcy claim *sensu stricto* (claim created before the declaration of bankruptcy) and an action brought against the bankrupt after declaring his bankruptcy.

Chapter 4 covers fundamental considerations regarding the legal nature of the list of claims. The considerations contained in this chapter begin with the analysis of the concept of "creation (preparation, setting) of a list of claims". Also discussed are: technical aspect and substantive aspect of preparing the list of claims by the trustee, effects related to the transfer of the list by the trustee to the judge-commissioner, as well as effects following the announcement of its preparation and transmission to the judge-commissioner. The discussion is complemented by a discussion of the change in the nature of the list of claims upon the approval of the list by the judge-commissioner.

Chapter 5 discusses the possibilities of changes and additions to the contents of the list of claims after its approval by the judge-commissioner, as well as the impact of these changes and additions on the legal nature of the prepared and approved list of claims.

7. As can be seen from the considerations made, the concept of claim under the Bankruptcy Act has a broader meaning than in civil law. In civil law, the concept of claim is strictly connected to legal obligations. On the other hand, bankruptcy claims include not only civil claims (including those based on labor and family law relations), but also claims having a source in public law relations. All claims resulting from the above relationships are defined as bankruptcy claims because they are subject to payment from the bankruptcy estate.

Bankruptcy claims consist of claims from the bankrupt, created before the date of bankruptcy and claims in relation to the bankruptcy estate, arising after the declaration of bankruptcy, the source of which in general are the trustee's activities.

The basic method of satisfying bankruptcy claims is participation in the general plan for the division of bankruptcy funds. The discussed method of payment takes the form of payment to the creditors by the trustee of the sum of money (cash benefits).

Other methods of satisfying from the bankruptcy estate include: satisfying the creditor of the bankruptcy estate pursuant to Article 343 par. 1, as the relevant sums are transferred to the bankruptcy estate; a breakdown of sums obtained from the sale of object-laden objects (satisfaction method related to the persons entitled under the mortgage, pledge, registered pledge, tax pledge, maritime mortgage); satisfying the personal creditor by remitting mutual claims by offsetting; taking over ownership or sale by the pledgee of a registered pledge of the subject of the pledge (a special way of satisfying the creditors entitled under the registered pledge in certain circumstances); taking ownership of the property by the creditor with the

simultaneous crediting towards the purchase price of the claim due to the given creditor (a special way of satisfying the movable property that can not be disposed of under the Bankruptcy Law).

Not only insolvency claims, but also exceptionally different rights and property claims due from the bankrupt are covered by the bankruptcy estate. The rights and property claims subject to satisfaction from the bankruptcy estate include claims for the exclusion of the object from the bankruptcy estate, as well as rights in rem and personal rights and claims on real estate, if they expire upon the sale of the property by the trustee.

The joint feature of claims and other rights subject to satisfaction in bankruptcy proceedings is their property nature. The non-pecuniary claims directed against the bankrupt are not subject to satisfaction from the bankruptcy estate and remain outside the scope of bankruptcy proceedings.

8. Regarding the concept of 'bankruptcy creditor', any creditor with a bankruptcy claim is a bankruptcy creditor. Each bankruptcy creditor is entitled to satisfy his claims from the bankruptcy estate. Insolvency creditors are not the only category of entities authorized to satisfy the bankruptcy estate. Such an entitlement also serves the so-called third parties in bankruptcy proceedings. These persons have the right to satisfy their right and claim from a specific component of the bankruptcy estate, strictly related to the given law (claim), but the third party's claim (right) is not a bankruptcy claim.

Insolvency creditors include civil law creditors and public creditors. The inclusion of public creditors in the group of bankruptcy creditors means that the notion of a bankruptcy creditor has a broader scope than the creditor's concept under civil law.

The so-called third parties in bankruptcy proceedings include persons entitled to demand the exclusion of a given asset from the bankruptcy estate and persons who have rights, personal rights and claims that expire upon the sale of the real property.

9. The basic way to assert from bankrupt receivables arising prior to the bankruptcy (bankruptcy claims *sensu stricto*) is to submit a claim to the list. After the declaration of bankruptcy, with the exception of strictly defined cases, the enforcement of these claims through a lawsuit becomes forbidden.

Submission (filing) of a claim initiates proceedings in the matter of considering the application. This procedure is essentially non-contentious. The creditor, the bankrupt and the trustee take part in the proceedings regarding the handling of the claim, although their position and the scope of rights and obligations differ from each other.

The procedure for the recognition of the submission is autonomous in relation to the bankruptcy proceedings. The proceedings in question have some special features that distinguish them from other civil proceedings. Those include: a special form of the letter initiating the proceedings (claim submission); trustee as an entity with a special position in the proceedings; lack of adversarial proceedings; simplified procedure for examining the claim from the substantive side; the unique form and nature of the issued ruling (list of claims).

Due to the aforementioned special features, the procedure for the recognition of a claim is a *sui generis* procedure, unique for the Bankruptcy Act. This is neither a civil process nor a non-litigious proceeding.

The following stages of the procedure for recognizing the claim can be distinguished. In the first stage, the submission is subject to formal control by the judge-commissioner (Article 241 of the Insolvency Act). After verifying the submission from the formal side, the judge-commissioner forwards it to the trustee who checks the claim being the subject of the submission. After checking all the claims (Article 243 of the Insolvency Act), the trustee makes a decision regarding the placement or refusal to place a claim on the list. As a result of checking all claims filed and making a decision on their recognition or refusal of recognition on the list, the trustee draws up a list of claims (Article 244 of the Insolvency Act). After the list is drawn up, the trustee transfers it to the judge-commissioner, who manages the announcement of its preparation and placing it in the Register (Article 255 of the Insolvency Act). The above-mentioned activities make up the procedure for the recognition of the claim.

Subsequently, after the list of claims has been drawn up and published, the placement or refusal to place a claim that was previously the subject of the submission may be the subject of an objection from the list of claims (Article 256 paragraph 1 of the act) and possible complaint against the decision of the judge-commissioner regarding the inclusion or the dismissal of the objection (Article 259 (2) of the Insolvency Act). After recognizing objections, the corrected list of claims is subject to approval by the judge-commissioner (Article 250 paragraphs 1-3 of the Act), which, before and after approval, is authorized to make changes or additions on it (Article 261 of the Act).

All the above-mentioned activities – both those carried out in the course of the proceedings regarding the recognition of the claim and the following list after the drawing up and publication of the list of claims – consist the process of preparing a list of claims in the bankruptcy proceedings.

10. The model for preparing a list of claims appearing in the Bankruptcy Act of 2003 is unique. At the individual stages of preparation, the legal nature of the list of claims is subject to significant transformations.

At the stage of the trustee's preparation, the nature of list of claims is twofold. The preparation of the list is primarily of a technical nature and it results in the preparation of a statement (table) containing a list of claims against the bankrupt. However, for correct preparation of the list from the technical side, it is necessary for the trustee to take substantive decisions. In relation to each claim submitted, the administrator must decide whether or not to include it on the list. Therefore, the list of claims prepared by the trustee is also a procedural act of a decision-making and content-related nature. However, this act does not have the character of a court ruling, because the trustee has no juridical competence (jurisdiction).

The legal nature of the list of claims changes after being given to the judge-commissioner. According to the content of Article 221 par. 1 - 3 of the Insolvency Act, after receiving the list from the trustee, the judge-commissioner issues an order on the announcement of the preparation and submission of the list by the trustee and placing the content of the list in the Register. Conducted considerations lead to the conclusion that after receiving a list of claims from the trustee and before ordering its inclusion in the Register, the judge-commissioner verifies the substantive content of the list, and if it is necessary to change its content, returns the list to the trustee along with an order issued in the mode of Article 152 par. 1 of the Insolvency Act requiring the trustee to make certain changes to the list.

If prior to the publication of the list of claims in the Register, the judge-commissioner verifies substantively its content and decides about introducing any changes, the inclusion of a list of claims in the Register results in a significant change in its legal nature. From the moment of placing the list of claims in the Register we are dealing with the judge-commissioner's ruling. Making the list public by posting its contents in the Register may be considered as a kind of "announcement of a ruling". The ruling is appealing, because it is subject to an objection against the list of claims.

The ruling of the judge-commissioner, in the form of a list of claims published in the Register, is a jurisdictional activity. The list of claims listed in the Register is included in legal protection activities other than the judiciary, as in accordance with Article 154 of the Insolvency Act, the judge-commissioner, in the scope of his activities, has the rights and obligations of the court and court chairman.

11. After the preparation and publishing in the Register, and later ruling upon all of the objections from the list or – if no objections were filed – after the deadline for their submission,

the list of claims is subject to approval by the judge-commissioner. Approval of the list of claims by the judge-commissioner is purely formal. Before issuing the decision on the approval of the list, the judge-commissioner does not verify the content of the list of claims from the substantive side. Therefore, the approval by the judge-commissioner does not affect the legal nature of the list of claims as a procedural act. After approval of the list of claims, it remains the judgment of the judge-commissioner.

Approval of the list of claims has specific legal consequences that can be divided into effects in bankruptcy proceedings and effects that go beyond the scope of these proceedings. As regards the legal consequences in the bankruptcy proceedings, approval of the list confirms that it is final and non appealable. The creditor, whose claim is on the approved list, has the right to satisfy himself from the bankruptcy estate. However, the effects exerted by the approved list of claims apply only to a limited extent beyond the bankruptcy proceedings. In particular, the determination and placement of a claim on the list in bankruptcy proceedings does not have the effect of *res iudicata*.

12. Both after approval by the judge-commissioner and before the approval, the list of claims may be subject to changes and additions. Changes or additions to the content of the list may take place in the following four ways. First, the change of the content of the list takes place in the case of the creditor's submission of receivables after the trustee has prepared and forwarded the list of claims to the judge-commissioner (although before approving the final plan for the division of the bankruptcy funds). In this case, the trustee draws up the so-called supplementing the list of claims (Article 262 (1) of the Insolvency Law). Secondly, the content of the list changes when the judge-commissioner issues a decision under Article 261 of the Insolvency Law about placing (entering on the list) a claim which should be placed by the trustee without any submission. Thirdly, changes in the content of the list occur when issued by the judge-commissioner in the mode of Article. 261 of the Insolvency Law a decision to remove a claim that does not exist. Fourth and finally, the list of claims may be corrected from the office in accordance with final and non appealing court rulings (Article 262 (2) of the Insolvency Law). The changes and additions to the list of claims possibly made in the above-mentioned modes do not affect its legal nature.

De lege lata changes in the list of claims may also take place after the approval of the list by the judge-commissioner. The permission for the judge-commissioner to make changes to the list after its approval has been criticized in doctrine due to the fact that such action questions the juridical sense of the institution of list approval, and also removes confidence that the recognition (refusal to recognize) certain claims on the list are definitive. *De lege ferenda*,

it should be postulated to give the judge commissioner the competence to change the contents of the list from office only until the list is published in the Register. At a later stage of the proceedings, the judge-commissioner would not have the right to interfere in the content of the list, except only for situations where the change of the list is made as a result of a final ruling issued by the court (Article 262 (2) of the Insolvency Act).

Of the above-mentioned ways of changing and supplementing the list of claims, the most common change is the change made as a result of considering the objection from the list of claims. Opposition from the list of claims is a means of appeal that is available from the judgment of the judge-commissioner, which is a list of claims from the moment of its inclusion in the Register. The institution of objection from the list – just like the list of claims – occurs only in the bankruptcy proceedings. Objection from the list of claims is included in the special appeals category. It is characterized by suspense and lack of devolution.


Submitting an objection from the list of claims initiates proceedings in the matter of examining the objection. This proceeding is an incidental procedure under bankruptcy proceedings. The body before which the proceedings are pending is the judge-commissioner. Participants in the proceedings in the matter of examining the objection from the list of claims are: the creditor lodging the objection; the creditor whose receivables the claim relates, the bankrupt and the trustee. Giving the trustee the status of a participant is due to the fact that while at the stage of proceedings for the recognition of claims, the result of the proceedings remained indifferent to the trustee, in the proceedings regarding the opposition from the list of claims the trustee defers to his previous decision whether or not to accept the claim on the list.

In contrast to the proceedings initiated by the submitting claims, the proceedings to examine the objection are controversial. The subject of the objection is a request to change the content of the list of claims. Between the entity submitting the objection from the list and the trustee, a dispute arises as to the legitimacy of the claim in the bankruptcy proceedings covered by the objection from the list. The proceedings in question also have an adversarial character. The participants, i.e. the creditor, the bankrupt and the trustee, are the dispatchers of the evidence in the course of recognizing the objection. The body that recognizes the opposition, i.e. the judge-commissioner, allows *ex officio* evidence only in exceptional situations, as is the case of civil process.

The procedure for the consideration of an objection from the list of claims has certain specific features that distinguish it from the appellate or appeal proceedings regulated in the Code of Civil Procedure. There are, in particular, numerous limitations and restrictions concerning the taking of evidence, as well as limiting the principle of directness.

13. The amending of the model for the creation of a list of claims, made in Insolvency Act of 2003, raises doubts as to the scope of cognitions and competence of the trustee and the judge-commissioner. It has to be noted that during the validity period of the Bankruptcy Act of 1934, the trustee prepared a "draft list of claims", which he then submitted to the judge-commissioner. The list of claims arose when the judge-commissioner issued a ruling of recognition or refusal to recognize all or part of the claims. Whereas currently, as provided in Article 244 of the Insolvency Act, the list of claims is drawn up by the trustee, who then passes it to the judge-commissioner.

However, since the judge-commissioner is unable to prepare the list without the trustee, and at the same time the actions of the trustee do not produce any legal effect in the bankruptcy proceedings without the action of the judge-commissioner, it is reasonable to accept that despite the introduction of the aforementioned regulation of Article 244, the trustee is still preparing only the draft list, whereas the project becomes a list of claims only after its substantive verification by the judge-commissioner, and then the order about placing the list in the Register. It seems that the content of Article 244, which says that the trustee prepares a list of claims, is the result of the mistake of the legislator, which *de lege ferenda* should be amended.



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