

SUMMARY OF THE PhD DISSERTATION

Author: mgr Jacek Grela

Supervisor: dr hab. Małgorzata Manowska, Professor of the Łazarski University

Supporting Supervisor: dr Małgorzata Sekuła-Lelono

Title of the dissertation: **“The protection of co-owners’ rights in the light of the act on the ownership of premises”**.

The subject of the dissertation touches upon an important aspect of social life. Housing is not only an important branch of both state-owned and private-owned economy, but, above all, it is an important aspect of every person’s functioning. Therefore, the issues raised in the dissertation touch upon everyday life of individuals, and are an interesting ground for various interpersonal relations that are linked with certain solutions in the legislation.

The issues raised in the dissertation touch upon the legal instruments of the substantive civil law, in particular property law. Because of the fact that the author’s intention was to create a theoretical dissertation, but with practical significance, the subject of the analysis are also issues falling within the scope of the procedural civil law.

The dissertation consists of nine chapters, which have been divided in a number of sub-chapters, ordered thematically. The dissertation contains an introduction and the conclusions section and the list of references and the case law quoted.

Chapter one presents legal issues and constructs whose characteristics is of paramount importance for carrying out a proper analysis in the subsequent chapters. The initial part deals with the issue of the complexity of the regulations of the act on the ownership of premises. Further, the legal instruments being at the core of the said act were characterized. The instruments in question, therefore, involved: individual premises, common property and homeowners’ association. These instruments are the necessary background for the understanding of the specific character of further issues.

Chapter two was devoted to the characteristics of potential sources of conflict between the neighbors. First and foremost, the problem of the so-called primary and secondary conflict potential was brought to the forefront and analyzed. The idea of primary conflict potential involves the cases of misunderstandings and disputes between co-owners of developed land before a potential decision is made on the dissolution of shared ownership of such property by creating separate ownership of individual premises. Secondary conflict

potential, on the other hand arises when individual premises have already been created, and the owners are not able to reach any agreement as to the use of common premises and of their own premises, going beyond the norms of the housing law (understood in general terms).

The subsequent chapters are a proposal for the methods of resolving the disputes between neighbors resulting from the aforesaid secondary conflict potential.

Chapter three invokes the construct of the *quoad usum* division, indicating an option for applying the construct accordingly for homeowners' associations. The chapter also contains certain remarks concerning the satisfaction of claims in the course of court and law enforcement proceedings.

Chapter four is closely linked with the issues touched upon in the previous chapter. It presents the characteristics of the lawsuit that would allow for seeking claims for co-ownership and selected issues with regard to court proceedings and enforcement of the rulings in the law enforcement proceedings.

Chapter five includes the characteristics of restitution claims. The legal construct analyzed therein is closely related to the issues touched upon in chapter two, which characterizes e.g. nuisance.

Chapter six deals with the issues related to the possibility of dividing the part of the shared property which is not necessary for the use of the building located therein. The problems, therefore, are focused around the norms contained in art. 5 of the Act on the ownership of premises.

Chapter seven deals with the issue of management of the shared property, understood in general terms. Because of the scope of the dissertation, the analysis covered primarily the core of ordinary management and activities going beyond ordinary management and the ways of satisfying the claims with respect to each of the types of these activities.

Chapter eight deals with the scope of liability for damages imposed upon an owner of a separated property towards other co-owners. The aforesaid liability arises as a result of causing damage, both to another co-owner and to the homeowners' association, while interacting with the shared property.

Chapter nine touches upon the issues related to the forced alienation of the premises.

The aim of this dissertation is to demonstrate that the secondary conflict potential may be solved with the use of legal constructs known in civil law for a long time, and rarely used in homeowners' associations. Of some importance is not only indicating and characterizing the said manners, but, above all, presenting the rules and the scope of adapting individual constructs for the purposes of premises.

The dissertation also touches upon the legal constructs originating directly from the Act on the ownership of premises. This involves the division of shared property, whose basis is art. 5 of the aforesaid act, as well as the issues related to the management of shared property and forced alienation of premises (art. 16 of the Act).

Another aim of the dissertation is to prove that there is a certain grading in the use of proper remedies for solving the disputes between the neighbors arising as a result of secondary conflict potential. It has been long claimed in the legal sciences that the sanction in the form of forced alienation of premises should be used as a last resort, when persuasion and more lenient legal instruments do not bring any effect.

The main research problems subject to analysis in this dissertation focus, therefore, on three main issues:

- 1) the relationships between the legal norms contained in the Act on the ownership of premises and Civil code,
- 2) the possibility for and the scope of adaptation of institutions regulated in the Civil Code for the purposes of certain aspects of the functioning of homeowners' associations,
- 3) gradation of possible remedies for solving potential conflicts between the neighbors.

In the attempt to solve the above mentioned issues, certain methodological assumptions have been made, allowing for the realization of the dissertation's aim.

First and foremost, the subject-matter literature was quoted in order to create the theoretical basis for the analyzed issues. The opinions of the representatives of legal sciences contained in monographs, articles, systems, remarks and case-law commentaries were used. Because of the application character of the dissertation, of much importance were the opinions of individual commentators, both of the Act on the ownership of premises and the Civil code, as well as of the Code of civil proceedings. The core of the research process was the analysis of a number of rulings of the courts of various levels. The facts quoted therein were the source of examples of conflicts between neighbors that require solving by applying proper legal instruments.

Finally, the results of the research were summed up and conclusions were formulated.