

**Summary of the doctoral dissertation: “Transfer of mortgage receivables”**

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The doctoral dissertation “Transfer of mortgage receivables” concerns extended analysis of the subject of the transfer of mortgage receivables, in particular it takes into consideration the provisions of The Act of 6<sup>th</sup> July 1982 on Land Registers and Mortgage from (uniform text: Official Journal of Laws from 2017, item 1007) in the version applicable after the amendments made by the Act of 26<sup>th</sup> June 2009 amending the Act on the Land Registers and Mortgage and other Acts (Official Journal of Laws from 2009, no 131, item 1075). In the dissertation the assessment of the binding regulation was made, as well as *de lege ferenda* postulates were formulated.

The main scientific purpose of the dissertation was to analyse the legal construction of the transfer of mortgage receivables. Conducted research, in particular comparative analysis, leads to the conclusion that the transfer of mortgage receivables results in *ipso iure* acquisition of the mortgage by the transferee (art. 79 sec. 1 sentence 1 and art. 83<sup>1</sup> of the Act on Land Registers and Mortgage). Dogmatic analysis confirmed the hypothesis that art. 79 of the Act on Land Registers and Mortgage is a peremptory norm. The consequence of the aforementioned conclusion is that the parties cannot exclude the legal result of the transition of the mortgage, with exceptions that arise from special ruling (art. 79<sup>1</sup> and art. 79<sup>2</sup> of the Act on Land Registers and Mortgage).

The Author of the dissertation is in favour of admissibility of stipulating conditions or time limits in the contract leading to the transfer of mortgage receivables, as well as the acceptability of disclosing a conditionally or timely authorized entity (both, on suspensive and resolute conditions, as well as subject to an initial and final time limit) in the land register.

The relation between the preliminary agreement to the contract leading to transfer of the mortgage receivables and the agreement concluded under this agreement was also analysed. The research conducted within the scope of this dissertation lead to the conclusion that there is no causal relationship between preliminary and final agreements, which justifies the statement that the defective nature of the preliminary agreement has no impact on the validity of the final contract. The aforementioned situation allows (only if the presumptions are fulfilled) to evade the legal effects of one's declaration of intent made under the influence of an error [art. 84 of the Act of 23<sup>rd</sup> April 1964 – Civil Code (uniform text: Official Journal of Laws from 2017, item 459, as amended)].

The Author also made an attempt to define the impact of the transfer of mortgage receivables in the case of establishing the mortgage administrator. Conducted investigation justifies the statement that an acquirer of mortgage receivables “automatically” enters into a legal relation with a mortgage administrator, on the basis of art. 221 of Civil Code applied by analogy.

The purpose of the investigation was also to find legal instruments that would protect the good faith of the owner of the property and the personal debtor, especially in the period from the date of the submission of the motion to enter the assignment in the land register to the day of the final resolution of the court in respect of this motion. The Author proposes to apply by analogy the regulation of joint and several entitlements of creditors, that in an appropriate way protects the legal interest of the creditor (transferor or transferee of the mortgage receivables), as well as the personal debtor or the owner of the property.

The research also enquired whether it was possible to apply the rules concerning the principle of public credibility of land registers in order to acquire the mortgage. The investigation allowed to verify the research hypothesis that the principle of public credibility applies only to the mortgage and only if the secured receivables actually exist and if it adheres to the subject entered in the land register.

It was also relevant to analyse the legal situation of the transferor and the transferee of the mortgage receivables due to the requirement of the constitutive entry of the mortgage, as well as the assignment of mortgage receivables in the land register. It had to be determined which provisions apply especially in the period between the submission of the motion to enter the mortgage in the land register and the final conclusion with regard to this motion, with regard to the retrospective effect of the entry, i.e. as from the date of the submission of the motion (art. 29 of the Act on Land Registers and Mortgage). Conducted research justifies the statement that if the court dismisses a motion after concluding the contract leading to the transfer of mortgage receivables, the contract results in an ordinary assignment and the provisions of art. 509 and following of the Civil Code shall apply. However, if the court grants a motion – the agreement results in a transfer of mortgage receivables and art. 79 of the Act on Land Registers and Mortgage shall apply.

An interpretation of art. 83 of the Act on Land Registers and Mortgage was also a subject of the analysis. According to the aforementioned regulation the provisions concerning the transfer of mortgage receivables shall not apply to the transfer of claims for accessory performances. Conducted investigation justifies a statement that in this situation the transferee would not acquire the mortgage. If the parties desire to cover claims for accessory performance with the mortgage, they should conclude the contract concerning a transfer of a mortgage as well as constitutive entry of the transfer is a prerequisite (art. 245<sup>1</sup> of the Civil Code).

Separate attention must be given to the issue of the transfer of mortgage receivables arising from the document transferred by endorsement or bearer instruments. It had to be analysed whether it was admissible to assign the receivables incorporated in the aforementioned documents, as well as what are the effects of such assignment. Conducted research justifies the statement that there is no possibility of disposal of such receivables by way of the assignment. As the dominant opinion in literature is contrary, the Author decided to hypothetically determine whether in case of an assignment the receivables arising from the document transferred by endorsement or bearer instruments the entry in the land register is constitutive or declarative. According to conducted research it has to be stated that art. 83<sup>1</sup> of the Act on Land Registers and Mortgage and in a case of an assignment of the aforementioned documents, the entry in the land register is declarative.

The issue of the international transfer of receivables was also the subject of the dissertation. The research concerned in particular problematic aspects of the assignment of the mortgage receivables in a situation when the mortgage was established on a real property situated in Poland and, regarding to conflicts of laws rules, aforementioned receivables is a subject of foreign law. Conducted analysis lead to a conclusion that art. 79 sec. 1 sentence 2 of the Act on Land Registers and Mortgage is not an overriding mandatory provision. Moreover, it defines presumptions of acquiring receivables, not presumptions of acquiring a mortgage. The only presumption of obtaining a mortgage is effective acquisition of receivables. As a consequence, if, according to foreign law, acquisition of receivables does not require to be entered in the land register, then transferee would also obtain the mortgage (art. 79 sec. 1 sentence 1 of the Act on Land Registers and Mortgage). The entrance of an assignment in the land register would be declarative.

Conducted research with its conclusions, which in majority confirm the introductory hypothesis, have significant impact on understanding, as well as assessing the model of regulation of the transfer of mortgage receivables. They also allowed to formulate *de lege ferenda* postulates which would help to adjudge doubts which have arisen during the interpretation of art. 79 and following of the Act on Land Registers and Mortgage.

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