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Article 299 of the Polish Code of Commercial Companies in Terms of Subject, Object and Time

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Abstract: Article 299 of the Commercial Companies Code is a regulation securing the interests of the creditor in the event of non-payment of an obligation by a limited liability company. In the case of a valid statement of ineffectiveness of enforcement proceedings by a Court Bailiff, the creditor has the right to bring an action against the members of the management board of the debtor company whose term of office fell during the period when the claim arose or was due. The described regulation refers primarily to public and private law monetary benefits derived from various titles such as laws, contracts, etc. This article is based on a dogmatic-legal research method.

Keywords: company, creditor, debtor, enforceability, enforcement

1. Introduction

Article 299 of the commercial companies code [hereinafter: CCC] acquired its current wording in the Polish legal system when the above-mentioned bill came into force on the 1st of January 2001. Earlier, a regulation was present in the commercial code under article 298 (Ustawa z dnia 23 kwietnia 1964…). This legal regulation is ancillary, tortious and solidary in nature with regard to members of the management board who bear responsibility for liabilities incurred by the company and not settled by it. The responsibility of members of the management board resulting from the above article comes into force when a Court Bailiff determines via a legally valid statement of the ineffectiveness of enforcement proceedings with regard to a limited liability company. The creditor may then file a lawsuit against the members of the management board with the court that has jurisdiction over the company's registered office. It should be underlined that tort liability is also borne by people who were on a limited liability company's management board when the liability was incurred and when it was due. This means that *de facto* responsibility is unlimited in time from the moment the debt became due to the creditor until the moment it was settled. The regulation of article 299 of the CCC is recognised in three aspects, i.e. subject, object and time. The subject is the person who comes under the above regulation, that is

members of the management board of a limited liability company, and, as indicated by the doctrine, under certain conditions the heirs of a member of the management board. The subject of regulation of the above-mentioned article is of course an existing and due liability held by a limited liability company with regard to its creditor that remains unsettled, and for which the bailiff conducting the enforcement determines its legal ineffectiveness. From the perspective of time, an objection resulting from article 299 of the CCC may be raised by the creditor within three years from the declaration that the enforcement is final and ineffective (Ustawa z dnia 15 września 2000…).

The aim of this article was, above all, to determine:

1) what the liability is resulting from article 299 of the CCC,
2) what the subject and object of the above regulation are, the nature of the discussed regulation in the context of ensuring the security of economic transactions, and the compensation for the improper conduct of company affairs and exposing the creditor to losses.

2. Update to the Payment Obligation Resulting from Article 299 of the CCC

The *sine qua non* condition for a creditor filing a lawsuit for payment against a member of the management board of a limited liability company is a prior declaration of the ineffectiveness of enforcement by a court bailiff on the basis of article 824 § 1 point 3 of the Code of Civil Procedure (Ustawa z dnia 23 kwietnia 1964…). In line with the commentary on the CCP edited by Dr T. Szanciło, it can be derived that this occurs when, from the enforcement of monetary benefits, the amount obtained is not higher than the enforcement costs (Łochowski, 2023). Chronologically, this is the last moment when a creditor can recover a debt directly from a limited liability company. These liabilities must be confirmed by a writ of execution issued in court proceedings against the limited company. This means that it is necessary for:

a) liabilities to be incurred by the limited company in whose name its board acts,
b) the payment due date to have passed ineffectively,
c) a ruling with an enforceability clause to be issued confirming the payment obligation,
d) a legally binding declaration of the ineffectiveness of enforcement to be confirmed by a Court Bailiff.

Referring to point d) above, on receiving a legally confirmed discontinuation of proceedings from the enforcement authority, the creditor may bring a lawsuit against members of the management board, which updates the payment obligation by 'transferring' it from the debtor company as a legal person to physical persons in its management bodies. This is denoted here in inverted commas as from a legal perspective it is a tort liability that arises through mismanagement of the company's resources, is discussed later in the article.

Meanwhile, to finish this point, in order for the discontinuation of enforcement proceedings to update the payment obligation to a member of the board, the enforcement must be ineffective **from all the company's assets**. Moreover, in order for the payment obligation to be updated, the creditor must initiate enforcement proceedings without delay so as to maximise the probability of recovering the debt in the first place from the company's assets. Otherwise, the condition of the ineffectiveness of enforcement 'from the company' will not be fulfilled.

Ultimately, the very definition of enforcement as being ineffective is not immutable. This is indicated by two rulings of the Supreme Court – dated 30 May 2008, act ref. III CSK 12/08, and 8 December 2008, act ref. V CSK 319/06. Based on these rulings, it can be seen that the obligation of payment by a member of the management board on the basis of article 299 of the CCC becomes outdated if the creditor may **again be satisfied from the assets of the debtor company**. The above may occur up until the conclusion of the lawsuit filed by the creditor against the members of the board. The norm derived on this basis indicates that the above lawsuit is a form of final recovery of debt by the creditor, is subsidiary to the original obligation relationship, and, as indicated earlier, that all possibilities have been exhausted for enforcement from the limited liability company, which as a legal person incurs liabilities on its own behalf and is responsible for them.

3. Negative Premise for Payment Obligation by a Member of the Management Board

3.1. Introduction to the Negative Premise for Payment Obligation by a Member of the Management Board

A debtor against whom an objection was raised under article 299 § 1 of the CCC may be released from it in significantly indicated cases listed in § 2, which include, firstly, the timely submission of a bankruptcy petition or at the same time a decision was issued to open restructuring proceedings or to approve the arrangement in the proceedings for the approval of the arrangement, and secondly, the failure to file a bankruptcy petition occurred without the fault of a member of the management board, despite the failure to file a bankruptcy petition and the failure to issue a decision to open restructuring or non-approval of the arrangement in the proceedings for the approval of the arrangement, the creditor did not suffer any losses (Ustawa z dnia 15 września 2000…). Submission of a bankruptcy petition and issuance of a decision on opening restructuring proceedings or approval of the arrangement

This part should be considered in particular through the lens of the bill on Bankruptcy Law and Restructuring Law [hereinafter BanLaw and ResLaw] through inference of *a maiori ad minus*. In article 259 § 3 of ResLaw and 146 § 3 of BanLaw, the legislator indicated the following – if a negative condition for the initiation of bailiff enforcement against a company is its application for bankruptcy, restructuring or remediation proceedings, the more so in such a situation it will not be possible to initiate enforcement against a member of the management board (Ustawa z dnia 28 lutego 2003…; Ustawa z dnia 15 maja 2015…).

In turn, it must be considered what the basis is for the declaration of bankruptcy or the initiation of restructuring. In justification of the ruling of the 28th April 2006, act ref. V CSK 39/06, the Supreme Court noted that permanent cessation of paying debts, which is the above-mentioned condition, constitutes non-payment of due debts at a given point in time, as well as non-payment in the future due to a lack of funds. In light of this, it should be recognised that if there is a situation in which the company is unable to settle its due liabilities, and this state is not temporary, the debtor company can submit an application for the initiation of bankruptcy or restructuring proceedings. First of all, this releases the company from responsibility for the debts of the limited liability company.

The responsibility of a member of the management board expires through inference from the larger to the smaller, as indicated above, because as the norms resulting from the BanLaw and ResLaw Act can be applied as a prohibition on initiating enforcement against a limited liability company after announcement of the arrangement day, the more so it is not possible to raise an allegation resulting from article 299 of the CCC with regard to a member of the management board (Ustawa z dnia 28 lutego 2003…; Ustawa z dnia 15 maja 2015…).

However, as pointed out above, the *sine qua non* of the regulation of article 299 of the CCC is **legally binding and ineffective termination of enforcement** against a limited liability company by a court bailiff. This remains unfulfilled in the case of initiation of enforcement, restructuring or remediation proceedings. Once the arrangement day is registered in the National Debtors Register, it is forbidden for a creditor to initiate proceedings against the debtor company, and thus also against members of its management board, as it is not possible to conduct enforcement and its legally ineffective conclusion (Ustawa z dnia 15 września 2000…).

Restructuring and remediation proceedings are treated differently as they lead to avoiding a declaration of bankruptcy, and can be conducted with regard to a debtor that is insolvent or threatened with insolvency. The definition of an insolvent debtor is that included in Bankruptcy Law and quoted above. Meanwhile, a debtor threatened by insolvency is one “whose economic situation indicates that they may shortly become insolvent” , as defined in article 6 of Restructuring Law. Referring further to article 299

§ 2 of the CCC, of importance is its connection to article 2 of Restructuring Law, i.e. that the conducting of restructuring is possible in proceedings for approval of the arrangement, accelerated arrangement proceedings, and arrangement and remediation proceedings (Ustawa z dnia 15 maja 2015…). Release of a member of the management board from responsibility occurs upon approval of the arrangement or the decision to open proceedings – such a position is held by Szczurowski (2023).

3.2. The Right Time

The starting point for considering the responsibility of a member of the management board, according to article 299 of the CCC, is determining the point at which their responsibility is excluded. The doctrine and rulings present the position that the right time for declaring bankruptcy is 30 days from an objective assessment that it is not possible to fully satisfy all creditors, but that this is possible in part, as indicated by the Supreme Court in its ruling of the 30th September 2004 in the case act ref. IV CK 49/04. This view is also presented by Professor A. Kidyba in his commentary on the CCC (Kidyba, 2005, p. 1331). As an interpretative basis, the jurisdiction accepts the ruling of the Supreme Court of the 30th September 2004 act ref. IV CK 49/04.

Due to the objective nature of the regulation of the right time, this is used in reference not so much to a member of the management board and their responsibility for running company matters, but to the existence of the debtor company's due liabilities with regard to creditors.

3.3. Failure to Submit an Application for Bankruptcy of a Limited Liability Company Through no Fault of a Member of the Management Board

In order to determine the conditions for no fault of a member of the management board, consideration should be made of what constitutes fault in this respect and from where it is issued. According to the Polish language dictionary, fault is "an act violating norms of conduct" (SJP PWN, n.d.). Fault may be intentional, that is "disregard for the consequences of one's actions or not predicting such consequences", and unintentional – "intent to commit a criminal act or to agree to the possible effects of one's actions" (SJP PWN, n.d.). It is worth mentioning that the CCC provides for criminal liability of a member of the management board if they do not submit an application for company bankruptcy. However, taking a holistic view of the above, the norm of conduct shall always be a mandatory submission by a member of the management board of an application for declaring bankruptcy for a limited liability company if such conditions exist there as mentioned above, above all being in default with payment for due liabilities with regard to at least two creditors.

A contrario to the above definition of fault is a lack of fault on the part of a member of the management board. This is a situation in which a limited liability company is not reported for bankruptcy proceedings, but the fault for this is not borne by a member of the management board.

In principle, a management board members are required to carry out their duties with due care, and cannot as part of their defence use the fact that they lack the required skills or knowledge – this results from article 209^1 of the CCC (Ustawa z dnia 15 września 2000…). In a limited liability company, a board member is appointed by a resolution of the partners. Legal persons, invalid legal persons and persons without full legal capacity cannot be board members. The positive combination of the above conditions results in the validity of the adopted resolution. In light of the above, there is no requirement to possess the appropriate qualifications, knowledge or skills to take up the position of board member in a limited liability company. As a result, this condition cannot be used in order to be released from the liability resulting from article 299 of the CCC (Ustawa z dnia 15 września 2000…).

In its ruling of 14 May 2019 regarding case ref. II FSK 1832/17, the Supreme Administrative Court underlined that an entry into the National Court Register [hereinafter NCR] is declaratory in nature. A declaratory entry does not affect the shape of legal transactions, but only confirms the prior existence

of a given action. This is the starting point for further considerations on the lack of responsibility of a member of the management board of a limited liability company for not reporting its bankruptcy.

Just as company partners can appoint a board member, so can they also dismiss them. On issuance of an appropriate resolution, an individually defined entity ceases to fulfil the function of a board member in the company. The resolution is therefore constitutive and creates a new legal order. Meanwhile, an entry into the NCR constitutes information for external entities on the current legal status of a limited liability company. Due to the nature of the copy in the IT system, it is not possible to plead lack of such knowledge.

The constitutive nature of company partners' resolutions described above with regard to the declaratory nature of the entry into the NCR means that on adopting the above-mentioned resolution, such person *de iure* ceases to fulfil their function on the board of a limited liability company, despite that *de facto* they are still present in the NCR entry. If they *de iure* do not fulfil the function of a board member of a limited company, for this reason they do not conduct company affairs from the moment a resolution is issued on their dismissal from the board. This position is held by A. Karolak (see: Karolak and Mariański, 2006, p. 60). Due to the legal nature of the resolutions of management board members, this is the simplest to prove for a board member held to account for not reporting company bankruptcy.

Other conditions for a lack of responsibility are objective conditions in which every rational person would consider that the non-reporting of company bankruptcy by a board member is sufficiently justified. According to A. Rachwał, this can include long-term illness, or a board member not being provided with information regarding the company, if this information is necessary for taking appropriate actions in terms of submitting an application for bankruptcy (Rachwał and Włodyka, 2019, p. 1037). Due to the fact that not all conditions are codified, this catalogue can be considered open, and will include all situations when a board member, through no fault of their own, has no knowledge of an existing obligation to submit an application for bankruptcy, wherein this information is necessary for submitting an application for bankruptcy.

3.4. Lack of Creditor Losses Despite a Failure to Submit an Application for Bankruptcy and Non-issuance of a Resolution on Opening Restructuring Proceedings or Non-approval of the Arrangement in Proceedings Regarding Arrangement Approval

Between losses and the non-reporting of an application for bankruptcy, non-issuance of resolutions on opening restructuring proceedings or non-approval of proceedings arrangement, there must be a sequence of cause and effect. Above all, in order to determine that a tort within the meaning of civil law has occurred, the creditor must suffer losses that are not being satisfied through bankruptcy, restructuring or remediation proceedings in four categories. In this understanding, a tort is committed by a physical person, who is a member of the management board of a limited liability company, by not reporting the above.

For there to be losses, it is required that the limited liability company has assets that can be used to satisfy creditors through bankruptcy, restructuring or remediation proceedings, and as indicated in the previous paragraph, these debts are divided into four categories. Satisfying all the creditors in one category allows creditors from the next category to be satisfied.

Therefore, this must be considered in two situations – namely either an application for bankruptcy submitted at the right time would in any case be rejected due to the value of the company's assets, which could only be used to cover the costs of the bankruptcy proceedings, or an application for bankruptcy submitted at the right time would not result in satisfying the creditor due to their receivables being in a lower category, combined with a lack of assets allowing for full satisfaction of creditors in higher categories.

In the first situation, the legislator refers to article 13 paragraph 1 of the BanLaw Act (Ustawa z dnia 28 lutego 2003…) – if the assets of the person submitting the application for bankruptcy are only sufficient to cover the costs of the proceedings or are not even sufficient for this, the court rejects the application. In its ruling of 12 July 2019 in the case act ref. VII Gz 129/19, the District Court in Bydgoszcz stated that opening bankruptcy proceedings results in the person submitting the application ceasing economic activity, and their assets being liquidated – therefore there was no possibility of obtaining greater assets in the future.

From this it can be inferred that if the financial condition of a limited liability company has been in a bad state for some time, and in addition it does not possess equity or assets that could effectively satisfy any debts apart from the costs of bankruptcy proceedings, then the board member does not assume responsibility for not submitting the above-mentioned application for bankruptcy.

Meanwhile the second situation is more complex, as it assumes the possibility of satisfying a certain number of creditors. Here of key importance is the fact that a creditor raising the allegation of failure to report debts must, after the opening of restructuring proceedings, have their debt in a lower category than that which was satisfied, i.e. from II to IV. According to T. Szczurowski, in a commentary to article 299 of the CCC, a board member may relieve themselves of responsibility if they show that funds from the debtor company's liquidated assets would cover debts belonging to higher categories (Szczurowski, 2023). It is also necessary here to include an objective determination of the state of the company's assets on the last day on which the application would be submitted correctly, i.e. if the then existing financial condition of the limited liability company would not actually lead to satisfying the creditor raising the allegation (Mariański and Karolak, 2006, p. 65).

4. Subjective Scope of Responsibility from Article 299 of the CCC

4.1. Management board member responsibility

In regulating article 299 of the CCC, the legislator precisely defined the objective responsibility for required company liabilities. These are management board members who, due to the function they fulfil, should above all not allow a situation to occur in which a creditor remains unsatisfied. This results from the linguistic interpretation of this provision, where § 1 states that 'If enforcement against the company turns out to be ineffective, the members of the management board are jointly responsible for its liabilities' (Ustawa z dnia 15 września 2000…). Whilst a member of the company's management board is a person who was appointed by resolution of the partners in a manner that is in accordance with the bill and the company's articles of association (Kopaczyńska-Pieczniak, 2007, p. 579).

Due to the above, a norm can also be derived according to which an unlimited group of people appointed to the company's management board will be responsible for the company's liabilities – the *sine qua non* condition of responsibility. A board member must fulfil this function *de iure*, otherwise the legislator would have additionally specified the possibility of responsibility being borne by people fulfilling this function *de facto* (Szczurowski, 2023).

As mentioned earlier, fulfilling this function is not dependent on the entry in the NCR, namely that a board member commences to fulfil their function from the moment of the partners' declaration, which is a legal act. In accordance with the current legal status and the company statute, a person appointed to such a position cannot make reference to their lack of responsibility due to the lack of an entry in the Register. If being appointed to the board is a constitutive act, from that moment a given person should make every effort firstly to deal with limited liability company matters, and secondly to carry out their actions with due diligence (Kopaczyńska-Pieczniak, 2007, p. 579). In considering these issues, attention should be drawn to the fact of becoming a so-called *post*. If a person who is to be appointed to the position of board member knows that it will be impossible for them to conduct limited liability company matters, as in their opinion they will simply 'appear in the register' so as to maintain

the appearance of legality, they should have never agreed to such a move. Approving such actions is at the same time an expression of agreement with the potential consequences of mismanagement by persons actually conducting company matters. As a result, a so-called *post* cannot relieve themselves of responsibility due to being prevented from taking action – this was the position held by the Appeals Court in Warsaw in its ruling of 26 March 2021 in the case ref. VII AGa 1482/18.

In interpreting article 299 of the CCC, it is easy to notice above all the plural form defining the entity responsible for liabilities. However, there are no adjectival issues that would define the potential features of board members affecting their responsibility, and the temporal issue of responsibility is also not defined.

Firstly, responsibility is borne by every board member without the need to specify to what function in the board they are delegated, as their fundamental obligation is the correct, responsible and appropriate management of limited liability company matters. Reference should also be made here to article 20 paragraph 2 point 2 of the BanLaw Act (Ustawa z dnia 28 lutego 2003…), which states that an application for bankruptcy can be submitted by any legal person who, on the basis of the company statute or the bill, has the right to conduct the debtor's matters and to act on its behalf either individually or jointly with other people. If a board member can act on behalf of a limited liability company and can submit a bankruptcy application *nota bene* the liquidation of the company, therefore, concluding *a maiori ad minus* they can all the more carry out any other actions which are included in the scope of conducting other matters, including having the right to access e.g. current debt status, incurred liabilities, their planned repayment etc.

Secondly, subjective responsibility for incurred liabilities includes people during whose term of office the debts were incurred, and finishes with people for whom the debts remained due. In its ruling of 28 February 2007, act ref. III CZP 143/07, the Supreme Court stated that responsibility for the liabilities of a limited liability company was borne by people when a specific liability existed. This precisely locates in time the temporal issue of subjective responsibility – it extends to all those fulfilling a function on the board of a limited liability company until such time as the debt is settled. Due to the nature of fulfilling a function on the board of a limited liability company, every member of such should make every effort to settle due liabilities according to the *pacta sunt servanda* principle originating in Roman law. In terms of time, the responsibility of a member of the management board ends at the moment that enforcement is considered to be ineffective (Dyczkowski, 1994, p. 22). As the responsibility of a board member is drawn from the concept of their running company affairs, and the ineffectiveness of bailiff enforcement is the moment in time from which a creditor may demand the settlement of existing due debts from a board member, this responsibility cannot be borne by a person who at the time was not a member of the management board, and who was appointed only after legal declaration by a court bailiff of the ineffectiveness of enforcement.

4.2. Responsibility of the Heirs of a Board Member

This point should be interpreted along with article 922 § 1 of the CC, which states that "the rights and obligations of a deceased person are transferred onto one or several people […]" (Ustawa z dnia 23 kwietnia 1964…). Debts connected to the deceased are an undeniable obligation that can be transferred onto the person's descendants, or if there are no such persons – onto their ascendants. Due to the specific nature of the regulation of article 299 of the CCC, at the moment of opening the estate of the deceased, it must be payable against them. The specific nature results from fulfilling a function on the board of a limited liability company. This is a law closely connected with the deceased, with their skills, and above all with the agreement binding them to the limited company.

Upon their death, their mandate expires and is not inherited. Due to the fact that liabilities related to the creditor resulting from article 299 of the CCC could have been subject to inheritance, they must have been already due with regard to the deceased testator. In this case, maturity means that the

creditor could successfully raise an allegation resulting from the above-mentioned article with regard to a deceased person fulfilling a function on the management board, that is the incurred liability was not settled with regard to the creditor by the debtor company as a result of court proceedings, and via a ruling or payment order the creditor aimed to be satisfied through bailiff enforcement, which was discontinued due to its ineffectiveness, which opened the possibility of suing board members fulfilling functions at the time the liabilities were incurred and when they were due (Kappes, 2009, p. 150). A declaration of such ineffectiveness, allowing the creditor to seek satisfaction through board members, makes it possible for such liabilities to be inherited by the heirs of a board member.

5. Scope of Objective Responsibility from Article 299 of the CCC

The previous section of this article raised the issue of the subjective and temporal scope of responsibility of a board member of a limited liability company. This section meanwhile addresses the objective scope.

The object of responsibility of a board member of a limited liability company concerns, in the first place, liabilities towards creditors who cannot be satisfied from the assets of the company. Meanwhile, in a lawsuit from article 299 of the CCC the creditor can also demand the return of court costs they are entitled to related to court proceedings opened against the debtor company, the costs of proceedings related to issuing an enforceability clause for an enforcement title against the company, and the costs of enforcement proceedings, together with statutory interest, for any delay from the date of the decision on the ineffectiveness of enforcement. This is confirmed by the ruling of the administrative court in Katowice of 4 November 2021, in the case ref. V AGa 261/19.

Additionally, once an *ex lege* lawsuit is filed, the ban on anatocism is lifted. An interesting phenomenon here is the double anatocism in the case of debts, mainly due to the fact that the creditor was first able to charge interest for delay from the due date of liabilities from e.g. a VAT invoice to the date preceding the filing of the lawsuit, then after the ruling is issued resolving the merits of the case, the creditor obtains the right to charge interest on the amount claimed in the subject of the lawsuit, i.e. the main liability together with interest from the date the lawsuit was filed. This model is repeated in lawsuits against a board member on the basis of article 299 of the CCC, where the debt sought in the lawsuit is the subject of the lawsuit against the company plus statutory interest for any delay from the date the ruling becomes final to the date preceding the filing of the lawsuit against the board member.

It is worth emphasising the fact that article 299 of the CCC in principle covers monetary liabilities for which enforcement from the assets of a limited liability company turned out to be ineffective. In cases where the liabilities include non-monetary elements, the creditor may sue a board member for liability for damages (Kappes, 2009, p. 60).

Through holistic regulation of article 299 of the CCC, the legislator provides for the possibility to pursue both public and private legal claims. Limited liability companies are free to incur liabilities, but are also obliged to regulate certain contributions with regard to the Treasury. Meanwhile, board members are obliged to manage company affairs in an appropriate and responsible manner. Therefore, if they do not ensure due diligence in running company affairs, and as a result an entity or the Treasury suffer losses, such entities can pursue claims based on article 299 of the CCC with regard to the board member from whom enforcement is confirmed by a final decision of a court bailiff on the ineffectiveness of enforcement (Szczurowski, 2023).

The subject of responsibility that may be pursued by a creditor on the basis of article 299 of the CCC are all liabilities for which the debtor party was a limited liability company. As described above, these may be private or public debts resulting from various titles such as agreements, bills, etc., and the creditor may be the partners of a limited liability company, private entities or the Treasury.

6. Conclusion

In the Polish legal system, article 299 of the CCC is not a novel regulation as a similar provision was already present in article 298 of the pre-war Trading Code, indicating that the then legislator made attempts to sanction irresponsible board members from companies incurring liabilities and failing to repay them. In its ruling of 10 December 2021 regarding a pending case act ref. VII AGa 1020/20, the Appeal Court in Warsaw stated that "the responsibility of board members is of a compensatory nature" and indeed this is exactly the case.

The main function that the legislator drew attention to in creating the regulation of article 299 of the CCC is the sanctioning the behaviour of board members who lead a creditor to suffer a loss. The member's presence on the board of a limited liability company is not merely dependent on possessing the appropriate competencies or education, however, it is required from a board member to conduct company affairs in an appropriate manner, in particular to manage debt and not to incur liabilities over and above the ability of the limited liability company to repay them.

In the case of mismanagement or inappropriate conduct of company affairs, the board member should submit an application for company bankruptcy, its restructuring or remediation. This is the last moment when such a person could be released from responsibility for existing incurred and due limited liability company debts. Not fulfilling this obligation provides future conditions for a creditor to pursue debts from the board member whose term of office fell within the period when such liabilities were incurred or were due.

Both in theory and in practice, article 299 of the CCC is closely related to the effectiveness of enforcement from limited liability company assets. Only the final declaration of its ineffectiveness by the court bailiff conducting the proceedings creates the possibility for the creditor to file a lawsuit against board members. This responsibility is tortious due to the failure to fulfil duties, in particular not ensuring due diligence in conducting company affairs. This cannot however be described as a subsidiary responsibility, as the creditor cannot demand payment of debts from a board member concurrently with enforcement from the assets of the limited liability company.

In terms of the tortious nature of the sanction of article 299 of the CCC, in the first place this is of a compensatory nature for the creditor – a lawsuit can be filed against a board member in which the creditor can pursue the main debt owed by the debtor company together with statutory interest for the delay, as well as other necessary costs incurred for recovery of the debt, namely trial costs, the costs of proceedings related to issuing an enforceability clause and the costs of enforcement proceedings.

In commercial law, article 299 of the CCC serves a certain 'safety valve' role, to a certain extent realising the principle that *pacta sunt servanda*. Incurred liabilities must always be repaid, and economic turnover must be secured in such a way that the limited liability company that incurred such liabilities is also insolvent by way of enforcement, in which case those persons who conducted the affairs of the company as board members are obliged to settle such debts. This also includes the responsibility of so-called 'posts' – people who merely appear in the National Court Register but who did not actually conduct company affairs. Board members should make every effort to allow such persons access to company affairs, otherwise they should resign from their position as they are not able to carry out their duties, i.e. effectively manage the company.

The subject meanwhile is any monetary liability, both public and private from any title, e.g. from a bill or agreement, etc. As a rule, this should be a monetary liability. In the case of non-monetary liabilities, the creditor may sue the board member only for the monetary equivalent.

The consequence of conducting limited liability company affairs in an incorrect manner is a creditor bringing to account a board member who did not sufficiently manage the affairs of 'their' company, which in the eventuality of a lost court case entails for them returning to the creditor not only twice the main debt increased by statutory interest for the delay, but also all other costs incurred by the creditor

in the process of recovering their liabilities, i.e. trial costs, the costs of proceedings related to issuing an enforceability clause, and the costs of enforcement proceedings. This is the result of the improper management of limited liability company affairs and mismanagement of its assets.

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Artykuł 299 Kodeksu spółek handlowych w ujęciu podmiotowym, przedmiotowym i temporalnym

Streszczenie: Artykuł 299 Kodeksu spółek handlowych to regulacja zabezpieczająca interesy wierzyciela w razie braku spłaty zobowiązania przez spółkę z ograniczoną odpowiedzialnością. W przypadku prawomocnego stwierdzenia bezskuteczności postępowania egzekucyjnego przez komornika sądowego wierzyciel ma uprawnienie do wytoczenia powództwa przeciwko członkom zarządu dłużnej spółki, których kadencja przypadła na okres, w którym wierzytelność powstała lub była wymagalna. Opisywana regulacja odnosi się przede wszystkim do świadczeń pieniężnych publiczno- i prywatnoprawnych wywodzących się z różnych tytułów, jak np. ustawy, umowy itp. Artykuł opiera się na dogmatyczno-prawnej metodzie badawczej.

Słowa kluczowe: spółka, wierzyciel, dług, wymagalność, egzekucja