

# NEWSLETTER

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## Satisfying the claim after the duration of the guarantee

We would like to inform you about the latest resolution of the Supreme Court on the possibility of satisfying the claim after the duration of the guarantee. In its resolution of June 22, 2016 (file no. III CZP 19/16), the Court stated that the passage indicated in the contract duration of the guarantee does not exclude the obligation of the guarantor to satisfy the claim, which the claimant pursued before the courts, if an action is brought before the deadline expires.

I.

Canvas of this legal problem was the matter of payment. The plaintiff - the lender in 2012 concluded with a limited liability company a loan agreement in the amount of 500 000 PLN, with the term of repayment until December 31, 2013. The guarantee of the loan repayment was established by the shareholders of the company and their wives. However, parties reserved that this guarantee will continue until March 31, 2014.

In the absence of repayment of the loan, on March 28, 2013 lender filed a lawsuit against the guarantors for payment, the court of first instance granted his request in full. The defendants appealed against the judgment, that pointed out in the appeal that the arrival of the date on which the guarantee expires (also during the judicial proceedings), in general releases guarantor from liability for the debt.

The Court of Appeal in Gdańsk hearing the appeal was unsure what the legal consequences are born by such a timely restriction of guarantee and what effect has suing the guarantor before the date indicated in the guarantee and turned to the Supreme Court with the question: 'Does bringing an action before an ordinary court interrupts the period of civil guarantee marked as specific date for debt existing at the date of conclusion of the contract of civil guarantee?'

II.

In the justification, the Court of Appeal in Gdańsk noted that, while there is no doubt the view that the inclusion of the term to take advantage of the guarantee is to limit the liability of the guarantor, on the other hand, such a reservation should not allow a simple extinguish the obligation of the guarantor of the expiry of the period. This would create a situation in which the guarantor could deliberately delay the satisfaction of the creditor, that in this way become free from the obligation incumbent upon it.

The Supreme Court providing answer to this question indicated a compromise solution. It

held that the term of the guarantee expiration is a limitation period. This means that the passage of duration of the guarantee indicated in the contract does not exclude the obligation of the guarantor to satisfy the claim, which the claimant pursued before the courts, if an action is brought before the deadline expires.

Presented resolution presents accurate interpretation direction of the presented issues, the more that this issue is not regulated by law, but an institution widely used. It is very important since it strengthens the position of the creditor, emphasizes the meaning of securities futures and discourages sponsors to avoid the performance of its obligations, using the passage of time.

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